

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Perry M. Buckner, Circuit Court Judge

Case No. 2015-001947

Alice Hazel, as GAL for Jacob N., Respondent,

v.

Blitz U.S.A., Inc., Fred's Inc., Tiger Express Varnville, LLC and James Nix Defendants.
Of Whom Fred's Inc. is the Appellant.

And

Melinda Cook, Respondent,

v.

Blitz U.S.A., Inc., Fred's Inc., Tiger Express Varnville, LLC and James Nix, Defendants.
Of Whom Fred's Inc. is the Appellant.

RECORD ON APPEAL
VOLUME 1

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STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

MELINDA COOK,

Plaintiff,

v.

BLITZ U.S.A., INC., FRED'S, INC.,
TIGER EXPRESS VARNVILLE, LLC,
AND JAMES NIX

Defendants.

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO. 2013-CP-25-352

ORDER

MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

2014 NOV 18 PM 12:50

FILED

This matter came before the Court on Defendant Fred's Stores of Tennessee, Inc. ("Defendant" or "Fred's") Motion to Permanently Enjoin or Alternatively to Stay Proceedings as to Fred's. The Court heard the Motion on October 27, 2014. Present for Defendant was Matthew C. LaFave. Present for Plaintiff Melinda Cook ("Cook") was Mark D. Ball. Cook submitted a Memorandum in Opposition to Defendant Fred's Motion to Permanently Enjoin or Alternatively to Stay Proceedings. Cook made a Motion to Amend the Complaint at the hearing. Dale E. Lang, Jr., appeared on behalf of Defendant Tiger Express Varnville, LLC, and stated Tiger Express took no position as to Fred's Motion. After reviewing the parties' submissions and hearing argument from counsel for Fred's and Cook, the Court denies Fred's Motion and grants Cook's Motion to Amend the Complaint.

This case arises out of alleged severe burn injuries suffered by Cook's minor son, Jacob N₁ ("N₁"), resulting from an allegedly defective gas can manufactured by Blitz USA, Inc., and sold by Fred's. On November 5, 2010, Nix suffered burns to a significant portion of his body when a Blitz gas can used by his father exploded, spraying fuel onto N₁. Cook filed this action on November 5, 2013, against Defendants Blitz USA, Inc; Fred's, Inc.; Tiger Express

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Varnville, LLC; and James Nix. Cook's original Complaint asserted general negligence and products liability causes of action against Fred's. Before this Court is a Motion to Amend the Complaint to dismiss any cause of action against Blitz USA without prejudice and remove the products liability cause of action against Fred's.

Defendant Blitz and its related entities filed for Chapter 11 bankruptcy in November 2011 in the United States Bankruptcy Court for the District of Delaware. In re Blitz USA, Inc., et al., Case No. 11-13063 (Bankr. Del.). Fred's is not a related entity of Blitz and was not a party to the bankruptcy proceeding. As part of the resolution of its bankruptcy and liquidation, Blitz sought to settle its products liability claims for dozens of personal injury claims pending and anticipated across the country, in addition to settling claims of its other creditors. On July 24, 2013, Blitz filed a *Motion for Order Under 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 2002, 6004, and 9019 Approving Settlement and Authorizing Debtors to (I) Compromise, Settle Release and Dismiss Claims of and Against the Debtors Pursuant to Insurance Term Sheet, and (II) Sell Certain Insurance Policies Back to the Participating Insurers Free and Clear of Liens, Claims, Interests and Other Encumbrances*. On January 30, 2014, the Bankruptcy Court filed *Findings of Fact, Conclusions of Law and Order Confirming Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* ("Bankruptcy Order"). The Order approved the proposed "First Amended Joint Plan of Liquidation" ("Plan").

The Bankruptcy Order contains a release of the Blitz debtors, Participating Insurers, and Protected Parties¹ from liability only for Blitz Personal Injury Claims.² Fred's argues that the

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¹ A Protected Party includes a vendor of Blitz gas cans. (Plan, p. 22).

² A "Blitz Personal Injury Claim" is defined as:

All Claims for damages or other relief for, based upon, arising out of, relating to or in any way involving bodily injury and/or property damage that occurred on or before 12:01

negligence claim by Cook is a released Blitz Personal Injury Claim included in the channeling injunction as “any direct action claims by a claimant against the Participating Insurers.” (Plan, p. 8).

Finally, under the channeling injunction, a “Blitz Personal Injury Trust Claim against the Protected Parties, or any of them, shall be permanently stayed, restrained, and enjoined,” and “channeled” to the Trust, unless the claim falls within an exception to the channeling injunction or is otherwise not within the scope of the claims covered by the Trust. (Bankruptcy Order, p. 30). The injunction basically provides that a claim covered by a Blitz insurance policy that paid into the Trust is “channeled” to the trust and otherwise enjoined. One exception to the channeling injunction is “the rights of any Entity to assert any claim, debt, obligation or liability for payment against a Non-Participating Insurer.” (Bankruptcy Order, pp. 31-32).

“[T]he interpretation of a judgment is a question of law for the court.” Doe v. Bishop of Charleston, 407 S.C. 128, 134, 754 S.E.2d 494, 498 (2014). “The power of the court to grant an injunction is in equity.” Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). “The remedy of an injunction is a drastic one and ought to be applied with caution.” Id. at 544, 627 S.E.2d at 689. “A motion to amend is addressed to the sound discretion of the trial judge.” Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005).

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AM CST on July 31, 2012, and shall include asserted claims, whether known or unknown, based upon, arising out of, or in any way involving the products, premises or operations of the Debtors and, without any limitation of the foregoing shall include any such claims against Wal-Mart directly or indirectly relating to the Debtors’ products, premises or operations, and any direct action claims by a claimant against the Participating Insurers.

(Plan, p. 8).

Cook made a Motion to Amend the Complaint at the hearing. The Amended Complaint removes the causes of action against Blitz and the products liability causes of action against Fred's. The Court grants Cook's Motion. "Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and freely given when justice so requires and does not prejudice any other party." Parker, 362 S.C. at 286, 607 S.E.2d at 716. Cook's original Complaint contained a general negligence action—the cause of action remaining against Fred's after dismissal of the products liability claims. The case is still in the early stages of pleadings and discovery due to the bankruptcy stay imposed when Blitz filed bankruptcy. Therefore, Fred's is not prejudiced by a lack of opportunity to refute Cook's general negligence claim.

Cook argues that Cook's general negligence cause of action against Fred's is outside the scope of the injunction and release. "In construing a judgment, it is necessary to determine the intention of the court issuing that judgment. The intended scope of the judgment must be considered when applying the language used." Mason v. Mason, 571 A.2d 787 (Del. 1990); accord Doe v. Bishop of Charleston, 407 S.C. 128, 135, 754 S.E.2d 494, 498 (2014) ("[J]udgments are to be construed like other written instruments. The determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself. Hence, in construing a judgment, it should be examined and considered in its entirety.").

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In this case, the judgment to be interpreted is the Order from the Bankruptcy Court. The Order plainly states: "To the extent any third party has a claim against the Participating Insurers, such claim must arise out of an incident subject to coverage under one or more of the Participating Insurer Policies." (Bankruptcy Order, p. 10).

The Participating Insurance Policy under which Fred's claims an injunction or a stay of proceeding in this case is Old Republic Insurance Company, Policy numbers MWZY58888 and IRE 98445. (Plan, Exh. 6). These Old Republic policies provide coverage for products liability insurance. (Exh. D to Fred's Motion).


Cook's remaining claim against Fred's for general negligence is not a products liability cause of action subject to coverage under a Participating Insurer policy. Therefore, it is not within the scope of the bankruptcy release or injunction and does not involve the property of the bankruptcy debtor—Defendant Blitz U.S.A.

Based on the language of the Bankruptcy Order and exhibits, this Court finds the bankruptcy court intended for the injunction and release to apply to a third party vendor such as Fred's only as to claims covered by a Participating Insurer policy. Cook's general negligence claim is not covered by the products liability Participating Insurer policy under which Fred's is an additional insured. Therefore, Cook's general negligence claim is outside the scope of the injunction and release.

For the reasons stated above, the Court denies Fred's Motion to Permanently Enjoin or Alternatively to Stay Proceedings. The case shall proceed based on the Amended Complaint against the remaining parties Fred's, Tiger Express Varnville, Inc., and James Nix.

AND IT IS SO ORDERED.

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Dated: November 14, 2014
Walterboro, South Carolina


Perry M. Buckner
Circuit Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

MELINDA COOK,

Plaintiff,

v.

BLITZ U.S.A., INC., FRED'S, INC.,
TIGER EXPRESS VARNVILLE, LLC,
AND JAMES NIX

Defendants.

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO. 2013-CP-25-352

**ORDER DENYING DEFENDANT
FRED'S INC.'S MOTION TO
RECONSIDER**

FILED
2015 JUL -9 PM 4:46
CLERK OF COURT
JUDICIAL CIRCUIT
14TH

This matter came before the Court on Defendant Fred's Inc.'s Motion for Reconsideration of the Court's November 18, 2014 Order denying Fred's Motion to Enjoin or Stay Proceedings. The Court heard the Motion on June 15, 2015. Present for Defendant was Matthew C. LaFave. Present for Plaintiff Melinda Cook was Mark D. Ball. E. Dale Lang appeared for Defendant Tiger Express Varnville but did not argue. After hearing and considering the parties' arguments, the Court denies Fred's Motion.

At the hearing, Fred's argued the Court should reconsider its ruling mainly because Cook's general negligence claim against Fred's is really a derivative claim from a product's liability action. In addition, Fred's argued that it was a "vendor" entitled to the protection envisioned by the channeling injunction. Finally, Fred's argued that the general negligence claim related to the product, so it should not be allowed to go forward, pursuant to Article IV of *Findings of Fact, Conclusions of Law and Order Confirming Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* ("Bankruptcy Order").

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The Plaintiff amended its complaint to include a general negligence claim instead of a products liability claim. At the hearing, Fred's argued that the general negligence claim asserted in the Amended Complaint is a derivative claim of a product's liability action. The allegation made in the Amended Complaint is that Fred's continued to knowingly sell gas cans, even though Fred's allegedly knew the product was dangerous. Fred's argues that if the general negligence claim is a derivative claim of a product liability claim, then the general negligence claim is subject to the channeling injunction.

However, general negligence and product liability negligence have different elements of proof, so the general negligence claim is not derivative of a products liability claim. "Generally, the elements of negligence are (1) duty, (2) breach, (3) proximate cause, and (4) injury." Cody P. v. Bank of Am., N.A., 395 S.C. 611, 620, 720 S.E.2d 473, 478 (Ct. App. 2011). In contrast, the elements of a product liability negligence claim are

(1) [the plaintiff] was injured by the product; (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user; and (3) that the product at the time of the accident was in essentially the same condition as when it left the hands of the defendant[, and] . . . [4] the defendant (seller or manufacturer) failed to exercise due care in some respect.

Bragg v. Hi-Ranger, Inc., 319 S.C. 531, 539, 462 S.E.2d 321, 326 (Ct. App. 1995). These are distinct causes of action with different elements of proof. Therefore, the Plaintiff's claim that Fred's was negligent in continuing to sell a product it knew to be dangerous is not a "derivative" product liability claim but a general negligence claim based on Fred's conduct. Fred's argues that without the product defect, the claim would not exist. However, the claim is based on Fred's conduct in selling the product, in which Fred's alleged negligence is the focus.

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In support of its argument, Fred's cites the definition of a "Blitz Personal Injury Claim," which "shall include asserted claims whether known or unknown, based upon, arising out of, or

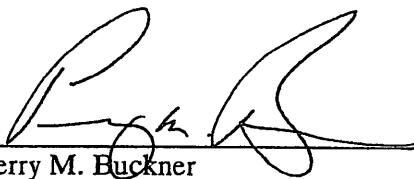
in any way involving the products." Article IV, Bankruptcy Order. Further, Fred's argues that because it satisfied the definition of a 'vendor', it should be included in the channeling injunction.

Rather, as this Court held previously, "the bankruptcy court intended for the injunction and release to apply to a third party vendor such as Fred's only as to claims covered by a Participating Insurer policy." (Order p. 5). The relevant question is not whether Fred's is a "vendor" but whether the Plaintiff's general negligence claim against Fred's falls within the claims intended to go to the channeling injunction. The general negligence claim against Fred's is not a claim intended to go to the channeling injunction. Additionally, this claim involves the conduct of Fred's, so it is not "based upon, arising out of, or in any way involving the product." The general negligence claim only considers the conduct of Fred's.

Finally, Fred's argues that the Vendor Agreement between Blitz USA and Fred's contemplates indemnification for any claim related to the "the sale" of the product. However, the Bankruptcy Order is clear that only claims covered by a Participating Insurer policy would get the protection of the channeling injunction. Since the claim for general negligence against Fred's is outside of scope of the channeling injunction as set forth in the Bankruptcy Order, the Vendor Agreement does not give Fred's the protection of the channeling injunction. Therefore, the Motion for Reconsideration is respectfully denied. The case shall proceed against Fred's as stated in the Amended Complaint.

AND IT IS SO ORDERED.

Dated: June 30, 2015
Walterboro, South Carolina



Perry M. Buckner
Circuit Court Judge

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HAMPTON)
)
 ALICE HAZEL, AS GAL FOR JACOB)
 N. ,)
)
 Plaintiff,)
)
 v.)
)
 BLITZ U.S.A., INC., FRED'S, INC.,)
 TIGER EXPRESS VARNVILLE, LLC,)
 AND JAMES NIX)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2013-CP-25-351

**ORDER DENYING DEFENDANT
 FRED'S INC.'S MOTION TO
 RECONSIDER**

FILED
 2015 JUL -9 PM 4:15
 CLERK OF COURT
 HAMPTON COUNTY

This matter came before the Court on Defendant Fred's Inc.'s Motion for Reconsideration of the Court's November 18, 2014 Order denying Fred's Motion to Enjoin Stay Proceedings. The Court heard the Motion on June 15, 2015. Present for Defendant was Matthew C. LaFave. Present for Plaintiff Melinda Cook was Mark D. Ball. E. Dale Lang appeared for Defendant Tiger Express Varnville but did not argue. After hearing and considering the parties' arguments, the Court denies Fred's Motion.

At the hearing, Fred's argued the Court should reconsider its ruling mainly because Cook's general negligence claim against Fred's is really a derivative claim from a product's liability action. In addition, Fred's argued that it was a "vendor" entitled to the protection envisioned by the channeling injunction. Finally, Fred's argued that the general negligence claim related to the product, so it should not be allowed to go forward, pursuant to Article IV of *Findings of Fact, Conclusions of Law and Order Confirming Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* ("Bankruptcy Order").

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The Plaintiff amended its complaint to include a general negligence claim instead of a products liability claim. At the hearing, Fred's argued that the general negligence claim asserted in the Amended Complaint is a derivative claim of a product's liability action. The allegation made in the Amended Complaint is that Fred's continued to knowingly sell gas cans, even though Fred's allegedly knew the product was dangerous. Fred's argues that if the general negligence claim is a derivative claim of a product liability claim, then the general negligence claim is subject to the channeling injunction.

However, general negligence and product liability negligence have different elements of proof, so the general negligence claim is not derivative of a products liability claim. "Generally, the elements of negligence are (1) duty, (2) breach, (3) proximate cause, and (4) injury." Cody P. v. Bank of Am., N.A., 395 S.C. 611, 620, 720 S.E.2d 473, 478 (Ct. App. 2011). In contrast, the elements of a product liability negligence claim are

(1) [the plaintiff] was injured by the product; (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user; and (3) that the product at the time of the accident was in essentially the same condition as when it left the hands of the defendant[, and] . . . [4] the defendant (seller or manufacturer) failed to exercise due care in some respect.

Bragg v. Hi-Ranger, Inc., 319 S.C. 531, 539, 462 S.E.2d 321, 326 (Ct. App. 1995). These are distinct causes of action with different elements of proof. Therefore, the Plaintiff's claim that Fred's was negligent in continuing to sell a product it knew to be dangerous is not a "derivative" product liability claim but a general negligence claim based on Fred's conduct. Fred's argues that without the product defect, the claim would not exist. However, the claim is based on Fred's conduct in selling the product, in which Fred's alleged negligence is the focus.

In support of its argument, Fred's cites the definition of a "Blitz Personal Injury Claim," which "shall include asserted claims whether known or unknown, based upon, arising out of, or

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in any way involving the products." Article IV, Bankruptcy Order. Further, Fred's argues that because it satisfied the definition of a 'vendor', it should be included in the channeling injunction.

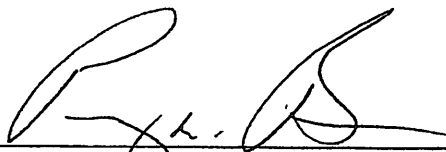
Rather, as this Court held previously, "the bankruptcy court intended for the injunction and release to apply to a third party vendor such as Fred's only as to claims covered by a Participating Insurer policy." (Order p. 5). The relevant question is not whether Fred's is a "vendor" but whether the Plaintiff's general negligence claim against Fred's falls within the claims intended to go to the channeling injunction. The general negligence claim against Fred's is not a claim intended to go to the channeling injunction. Additionally, this claim involves the conduct of Fred's, so it is not "based upon, arising out of, or in any way involving the product." The general negligence claim only considers the conduct of Fred's.

Finally, Fred's argues that the Vendor Agreement between Blitz USA and Fred's contemplates indemnification for any claim related to the "the sale" of the product. However, the Bankruptcy Order is clear that only claims covered by a Participating Insurer policy would get the protection of the channeling injunction. Since the claim for general negligence against Fred's is outside of scope of the channeling injunction as set forth in the Bankruptcy Order, the Vendor Agreement does not give Fred's the protection of the channeling injunction. Therefore, the Motion for Reconsideration is respectfully denied. The case shall proceed against Fred's as stated in the Amended Complaint.

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AND IT IS SO ORDERED.

Dated: June 30, 2015
Walterboro, South Carolina



Perry M. Buckner
Circuit Court Judge

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)	CIVIL ACTION NO.: 2013-CP-25-
MELINDA COOK,)	
)	
Plaintiff,)	
)	
v.)	
)	
BLITZ U.S.A., INC., FRED'S INC., TIGER)	
EXPRESS VARNVILLE, LLC & JAMES)	
NIX,)	
Defendants.)	

COMPLAINT
(Jury Trial Requested)

FILED
2013 NOV -5 PM 4:59
CLERK OF COURT
HAMPTON COUNTY, S.C.

The Plaintiff alleges:

1. That Melinda Cook is a resident of the State of South Carolina and the parent of Jacob N. ; a minor; that this action is brought to recover medical expenses incurred on behalf of Jacob . N.
2. The Defendant Blitz U.S.A., Inc. is a foreign corporation and is engaged in the business of manufacturing and distributing containers for distribution of gas and other liquids. Blitz U.S.A., Inc. distributes its containers in South Carolina through distributors; that Blitz U.S.A., Inc. placed the container which is the subject of this action into the stream of commerce through its distribution network with the intent that its container would be sold and used in South Carolina; on November 5, 2010, the subject container exploded causing injury.
3. The Defendant Fred's Inc. is a corporation organized and existing under the laws of a State other than South Carolina but is licensed and doing business in Hampton County the site of the events complained of here in;
4. The Defendant Tiger Express Varnville, LLC, is a corporation organized and existing under the laws of the State of South Carolina, with its primary place of business located in Hampton, South Carolina.

5. The Defendant James Nix was at the time of the incident a citizen and residents of Hampton County South Carolina.

6. On or about November 5, 2010, the Defendant, James Nix was pouring kerosene on a pizza box where a fire had previously been burnt in the yard. While pouring kerosene out of a five (5) gallon Blitz container, it exploded spraying fuel all over the yard and onto Jacob N. At the time of the incident, Jacob had been standing ten (10) or fifteen (15) feet behind James Nix;

7. As a direct and proximate result of the accident, Jacob N. suffered serious and severe injuries and the Plaintiffs have incurred medical expenses as a result of the injuries sustained by her minor son.

8. The injuries and damages to Jacob N. were due to and proximately caused by the negligent, grossly negligent and reckless conduct of the Defendants in the following particulars:

FOR A FIRST CAUSE OF ACTION AS TO BLITZ U.S.A., INC.
(Negligence – Product Defect)

9. Each and every allegation contained in this Complaint, which is not inconsistent with this cause of action, is hereby incorporated by reference as if repeated verbatim herein.

- a. In designing and manufacturing the subject container in such a manner that it was unstable and subject to flash back or explosion under reasonably foreseeable conditions;
- b. In failing to warn of the subject container's propensity to explode;
- c. In failing to ensure that the subject container was manufactured properly and in compliance with industry standards.

FOR A SECOND CAUSE OF ACTION AS TO BLITZ U.S.A., INC.
(Strict Liability)

10. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

- a. The subject container was defective and unreasonably dangerous in the condition in which they were sold by Blitz, U.S.A., Inc., and
- b. Blitz, U.S.A., Inc. is strictly liable for all damages caused by the defective condition of the subject container.

FOR A THIRD CAUSE OF ACTION AS TO BLITZ U.S.A., INC.
(Breach of Warranty)

11. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

- a. Blitz, U.S.A., Inc. breached express and implied warranties in the sale of the subject container in the defective condition herein described.

FOR A FIRST CAUSE OF ACTION AS TO FRED'S INC.
(Negligence)

12. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

13. The injuries and damages were caused by a defective nature of the Blitz container which allows the container to be subject to flash back fires, danger of explosions and/or failing to warn the intended users of the dangers of the containers with volatile substances;

14. The Defendant, Fred's Inc. was negligent in the following particulars:

- a. In failing to properly evaluate the fuel container prior to selling it to the public;
- b. In failing to warn users of the container of the risk of serious injury from use of the container;

15. That by reason and in consequence of the Defendant's actions or inactions, the Plaintiff suffered significant and permanent injuries to various parts of his body; that such injuries were of such a nature as to require him to expend monies for doctor's care and other medical necessities; the Plaintiff has suffered and will continue to suffer great pain, humiliation, and mental anguish.

FOR A SECOND CAUSE OF ACTION AS TO FRED'S INC.
(Strict Liability)

16. Each and every allegation contained in this Complaint which is not Inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

17. The container was defective when it left Defendant's control in that it was not reasonably safe for the reasonably foreseeable uses since the container exploded and caused the Plaintiff to be severely injured while it was being using in its intended manner.

18. The Defendants placed this defective and unreasonably dangerous container into the stream of commerce, expecting it to reach users and consumers without substantial change in condition; that the container reached Jamie Nix's hand in substantially the same condition as when sold by Defendant.

19. The injuries and damages suffered by Plaintiff were directly and proximately caused by the defective and unreasonably dangerous condition of the container sold by the Defendants.

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FOR A THIRD CAUSE OF ACTION AS TO FRED'S INC.
(Breach of Warranty)

20. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

21. At one or more times, Defendant either expressly or by implication, represented and warranted that the container was safe for use, fit for the purpose intended, and of merchantable quality.

22. By virtue of Defendant sale of the container for use by an ultimate consumer, Defendant warranted to Plaintiff that the container was merchantable and fit for the purpose intended.

23. These express and implied warranties became part of the basis of the bargain and were relied upon.

24. The express representations that the container was safe, of merchantable quality, and fit for the purpose intended were false.

25. In truth, container was not merchantable, nor fit for its intended purpose.

26. As a direct and proximate result of the Defendant breach of its express and implied warranties of merchantability and fitness for intended use, Plaintiff suffered injuries and damages as set out above.

FOR A FIRST CAUSE OF ACTION AS TO TIGER EXPRESS VARNVILLE, LLC.
(Negligence)

27. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

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28. The injuries and damages were caused by a defective nature of the Blitz container which allows the container to be subject to flash back fires, danger of explosions and/or failing to warn the intended users of the dangers of the containers with volatile substances and; selling kerosene that contained volatile petroleum distillates and additives that increased the flash point, thus causing the kerosene to flash back into a defective container;

29. The Defendant, Tiger Express Varnville, LLC. was negligent in the following particulars:

- a. In failing to properly evaluate the fuel it was selling under the label of kerosene to selling it to the public;
- b. In failing to warn users of the volatility of the fuel being marketed as kerosene and the risk of serious injury to user of the fuel;

30. That by reason and in consequence of the Defendant's actions or inactions, the Plaintiff suffered significant and permanent injuries to various parts of his body; that such injuries were of such a nature as to require him to expend monies for doctor's care and other medical necessities; the Plaintiff has suffered and will continue to suffer great pain, humiliation, and mental anguish.

FOR A SECOND CAUSE OF ACTION AS TO TIGER EXPRESS VARNVILLE, LLC.
(Strict Liability)

31. Each and every allegation contained in this Complaint which is not Inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

32. The fuel was defective when it left Defendant's control in that it was not SCCA 401 (5/02)

reasonably safe for the reasonably foreseeable uses since the fuel flashed and caused the storage container exploded thus causing the Plaintiff to be severely injured while it was being using in its intended manner.

33. The Defendants placed this defective and unreasonably dangerous fuel into the stream of commerce, expecting it to reach users and consumers without substantial change in condition; that the fuel reached Jamie Nix's hand in substantially the same condition as when sold by Defendant.

34. The injuries and damages suffered by Plaintiff were directly and proximately caused by the defective and unreasonably dangerous condition of the fuel sold by the Defendants.

FOR A THIRD CAUSE OF ACTION AS TO TIGER EXPRESS VARNVILLE, LLC.
(Breach of Warranty)

35. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

36. At one or more times, Defendant either expressly or by implication, represented and warranted that the fuel was safe for use, fit for the purpose intended, and of merchantable quality.

37. By virtue of Defendant sale of the fuel for use by an ultimate consumer, Defendant warranted to Plaintiff that the fuel was merchantable and fit for the purpose intended.

38. These express and implied warranties became part of the basis of the bargain and were relied upon.

39. The express representations that the fuel was safe, of merchantable

SCCA 401 (5/02)

quality, and fit for the purpose intended were false.

40. In truth, fuel was not merchantable, nor fit for its intended purpose.

41. As a direct and proximate result of the Defendant breach of its express and implied warranties of merchantability and fitness for intended use, Plaintiff suffered injuries and damages as set out above.

AS TO JAMIE NIX
(Negligence)

42. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

- a. In failing to keep the Plaintiff and others at a safe distance prior to reigniting the fire; and
- b. In failing to use the degree of care expected by another under the same or similar circumstances;

43. That as a result of the described acts and omissions of the Defendants, Plaintiff has endured and continues to suffer severe pain, suffering, emotional distress and mental anguish. In addition, the Plaintiff has incurred expenses such as medical bills and other costs associated with treatment.

44. That as a result of the described acts and omissions of the Defendants, Plaintiff has sustained severe injuries to his entire body.


45. The Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, for both actual and punitive damages, all of which were directly and proximately caused by the Defendants' acts and/or omissions as more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

46. In order to investigate this claim, the Plaintiff will need access to certain information concerning the design and manufacture of the fuel and container including but not limited to: design specifications with change histories; design evaluations; compounding formulae and molding techniques. Some or all of this information may fall subject to a claim of trade secret. Without access to this information, the Plaintiff will be substantially prejudiced in his investigation and proof of defect herein. Plaintiff believes that access to this information will likely lead to admissible evidence at the trial of this case.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs and disbursements of this action, and for such other and further relief as the Court may deem just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____


Mark D. Ball
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

November 5, 2013

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)
)
ALICE B. HAZEL AS GAL FOR JACOB)
 N,)
)
 Plaintiff,)
)
 v.)
)
BLITZ U.S.A., INC., FRED'S INC., TIGER)
 EXPRESS VARNVILLE, LLC, & JAMES)
 NIX)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-25-

COMPLAINT
(Jury Trial Requested)

FILED
2013 NOV - 5 PM 4:59
CLERK OF COURT
HAMPTON COUNTY, S.C.

The Plaintiff alleges:

1. This matter is brought under the statutory and common law of the State of South Carolina.
2. The Plaintiff is a citizen and resident of Hampton County, South Carolina for the benefit of Jacob N. , a minor and resident of Hampton County.
3. The Defendant Blitz U.S.A., Inc. is a foreign corporation and is engaged in the business of manufacturing and distributing containers for distribution of gas and other liquids. Blitz U.S.A., Inc. distributes its containers in South Carolina through distributors; that Blitz U.S.A., Inc. placed the container which is the subject of this action into the stream of commerce through its distribution network with the intent that its container would be sold and used in South Carolina; on November 5, 2010, the subject container exploded causing injury.
4. The Defendant Fred's Inc. is a corporation organized and existing under the laws of a State other than South Carolina but is licensed and doing business in Hampton County the site of the events complained of here in;
5. The Defendant Tiger Express Varnville, LLC, is a corporation organized and existing under the laws of the State of South Carolina, with its primary place of business located in Hampton, South Carolina.

6. The Defendant James Nix was at the time of the incident a citizen and residents of Hampton County South Carolina.

7. On or about November 5, 2010, the Defendant, James Nix was pouring kerosene on a pizza box where a fire had previously been burnt in the yard. While pouring kerosene out of a five (5) gallon Blitz container, it exploded spraying fuel all over the yard and onto Jacob N. At the time of the incident, Jacob had been standing ten (10) or fifteen (15) feet behind James Nix;

8. The kerosene contained in the Blitz container was purchased from the Tiger Express located in Varnville, South Carolina. The five (5) gallon Blitz container was purchased at the Fred's store located in Varnville, South Carolina.

9. At the time of the explosion, the Blitz container had never been used to store anything but kerosene in it and all the kerosene was purchased from the Tiger Express. It is believed that the kerosene purchase from the Tiger Express contained other volatile combustibles which raised the flash point of the fuel. As Jamie Nix poured the kerosene on to the pizza box, a flash ignition occurred which allowed flame to enter through the unguarded pour spout of the Blitz container thus causing it to explode and sending fuel spraying onto Jacob N, and others.

10. As a result of the ensuing fire, the Plaintiff suffered severe and permanent burn injuries over a majority of his body; that the injuries complained of were due to and caused by the following:

FOR A FIRST CAUSE OF ACTION AS TO BLITZ U.S.A., INC.
(Negligence – Product Defect)

11. Each and every allegation contained in this Complaint, which is not inconsistent with this cause of action, is hereby incorporated by reference as if repeated verbatim herein.
SCCA 401 (5/02)

- a. In designing and manufacturing the subject container in such a manner that it was unstable and subject to flash back or explosion under reasonably foreseeable conditions;
- b. In failing to warn of the subject container's propensity to explode;
- c. In failing to ensure that the subject container was manufactured properly and in compliance with industry standards.

FOR A SECOND CAUSE OF ACTION AS TO BLITZ U.S.A., INC.
(Strict Liability)

12. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

- a. The subject container was defective and unreasonably dangerous in the condition in which they were sold by Blitz, U.S.A., Inc., and
- b. Blitz, U.S.A., Inc. is strictly liable for all damages caused by the defective condition of the subject container.

FOR A THIRD CAUSE OF ACTION AS TO BLITZ U.S.A., INC.
(Breach of Warranty)

13. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

- a. Blitz, U.S.A., Inc. breached express and implied warranties in the sale of the subject container in the defective condition herein described.

FOR A FIRST CAUSE OF ACTION AS TO FRED'S INC.
(Negligence)

14. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated
SCCA 401 (5/02)

verbatim herein.

15. The injuries and damages were caused by a defective nature of the Blitz container which allows the container to be subject to flash back fires, danger of explosions and/or failing to warn the intended users of the dangers of the containers with volatile substances;

16. The Defendant, Fred's Inc. was negligent in the following particulars:

- a. In failing to properly evaluate the fuel container prior to selling it to the public;
- b. In failing to warn users of the container of the risk of serious injury from use of the container;

17. That by reason and in consequence of the Defendant's actions or inactions, the Plaintiff suffered significant and permanent injuries to various parts of his body; that such injuries were of such a nature as to require him to expend monies for doctor's care and other medical necessities; the Plaintiff has suffered and will continue to suffer great pain, humiliation, and mental anguish.

FOR A SECOND CAUSE OF ACTION AS TO FRED'S INC.
(Strict Liability)

18. Each and every allegation contained in this Complaint which is not Inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

19. The container was defective when it left Defendant's control in that it was not reasonably safe for the reasonably foreseeable uses since the container exploded and caused the Plaintiff to be severely injured while it was being using in its intended manner.

20. The Defendants placed this defective and unreasonably dangerous container into the stream of commerce, expecting it to reach users and consumers without substantial change in condition; that the container reached Jamie Nix's hand in substantially the same condition as when sold by Defendant.

21. The injuries and damages suffered by Plaintiff were directly and proximately caused by the defective and unreasonably dangerous condition of the container sold by the Defendants.

FOR A THIRD CAUSE OF ACTION AS TO FRED'S INC.
(Breach of Warranty)

22. Each and every allegation contained in this Complaint which is not Inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

23. At one or more times, Defendant either expressly or by implication, represented and warranted that the container was safe for use, fit for the purpose intended, and of merchantable quality.

24. By virtue of Defendant sale of the container for use by an ultimate consumer, Defendant warranted to Plaintiff that the container was merchantable and fit for the purpose intended.

25. These express and implied warranties became part of the basis of the bargain and were relied upon.

26. The express representations that the container was safe, of merchantable quality, and fit for the purpose intended were false.

27. In truth, container was not merchantable, nor fit for its intended purpose.

28. As a direct and proximate result of the Defendant breach of its express and implied warranties of merchantability and fitness for intended use, Plaintiff suffered
SCCA 401 (5/02)

injuries and damages as set out above.

FOR A FIRST CAUSE OF ACTION AS TO TIGER EXPRESS VARNVILLE, LLC.
(Negligence)

29. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

30. The injuries and damages were caused by a defective nature of the Blitz container which allows the container to be subject to flash back fires, danger of explosions and/or failing to warn the intended users of the dangers of the containers with volatile substances and; selling kerosene that contained volatile petroleum distillates and additives that increased the flash point, thus causing the kerosene to flash back into a defective container;

31. The Defendant, Tiger Express Varnville, LLC. was negligent in the following particulars:

- a. In failing to properly evaluate the fuel it was selling under the label of kerosene to selling it to the public;
- b. In failing to warn users of the volatility of the fuel being marketed as kerosene and the risk of serious injury to user of the fuel;

32. That by reason and in consequence of the Defendant's actions or inactions, the Plaintiff suffered significant and permanent injuries to various parts of his body; that such injuries were of such a nature as to require him to expend monies for doctor's care and other medical necessities; the Plaintiff has suffered and will continue to suffer great pain, humiliation, and mental anguish.

21

FOR A SECOND CAUSE OF ACTION AS TO TIGER EXPRESS VARNVILLE, LLC.
(Strict Liability)

33. Each and every allegation contained in this Complaint which is not Inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

34. The fuel was defective when it left Defendant's control in that it was not reasonably safe for the reasonably foreseeable uses since the fuel flashed and caused the storage container exploded thus causing the Plaintiff to be severely injured while it was being using in its intended manner.

35. The Defendants placed this defective and unreasonably dangerous fuel into the stream of commerce, expecting it to reach users and consumers without substantial change in condition; that the fuel reached Jamie Nix's hand in substantially the same condition as when sold by Defendant.

36. The injuries and damages suffered by Plaintiff were directly and proximately caused by the defective and unreasonably dangerous condition of the fuel sold by the Defendants.

FOR A THIRD CAUSE OF ACTION AS TO TIGER EXPRESS VARNVILLE, LLC.
(Breach of Warranty)

37. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

38. At one or more times, Defendant either expressly or by implication, represented and warranted that the fuel was safe for use, fit for the purpose intended, and of merchantable quality.

39. By virtue of Defendant sale of the fuel for use by an ultimate consumer, SCCA 401 (5/02)

Defendant warranted to Plaintiff that the fuel was merchantable and fit for the purpose intended.

40. These express and implied warranties became part of the basis of the bargain and were relied upon.

41. The express representations that the fuel was safe, of merchantable quality, and fit for the purpose intended were false.

42. In truth, fuel was not merchantable, nor fit for its intended purpose.

43. As a direct and proximate result of the Defendant breach of its express and implied warranties of merchantability and fitness for intended use, Plaintiff suffered injuries and damages as set out above.

AS TO JAMIE NIX
(Negligence)

44. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

- a. In failing to keep the Plaintiff and others at a safe distance prior to reigniting the fire; and
- b. In failing to use the degree of care expected by another under the same or similar circumstances;

45. That as a result of the described acts and omissions of the Defendants, Plaintiff has endured and continues to suffer severe pain, suffering, emotional distress and mental anguish. In addition, the Plaintiff has incurred expenses such as medical bills and other costs associated with treatment.

46. That as a result of the described acts and omissions of the Defendants, Plaintiff has sustained severe injuries to his entire body.

47. The Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, for both actual and punitive damages, all of which were directly and proximately caused by the Defendants' acts and/or omissions as more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.


48. In order to investigate this claim, the Plaintiff will need access to certain information concerning the design and manufacture of the fuel and container including but not limited to: design specifications with change histories; design evaluations; compounding formulae and molding techniques. Some or all of this information may fall subject to a claim of trade secret. Without access to this information, the Plaintiff will be substantially prejudiced in his investigation and proof of defect herein. Plaintiff believes that access to this information will likely lead to admissible evidence at the trial of this case.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs and disbursements of this action, and for such other and further relief as the Court may deem just and proper.

(Signature Block On Following Page)

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____


Mark D. Ball
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111: Phone
(803) 943-3943: Fax
ATTORNEYS FOR PLAINTIFFS

November 5, 2013
Hampton, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)
MELINDA COOK,)
Plaintiff,)
vs.)
BLITZ U.S.A, INC., FRED'S INC., TIGER)
EXPRESS VARNVILLE, LLC, & JAMES)
NIX,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THE THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-25-352

DEFENDANT FRED'S STORES OF
TENNESSEE, INC'S, ANSWER TO
PLAINTIFF'S COMPLAINT AND
CROSS-CLAIMS AS TO BLITZ
U.S.A., INC. AND TIGER EXPRESS
VARNVILLE, LLC

(Jury Trial Requested)

BY
MELINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.
2014 FEB 10 PM 2:00

FILED

Defendant, Fred's Stores of Tennessee, Inc., ["Defendant"] incorrectly identified as
Fred's Inc. in Plaintiff's Complaint, by and through his undersigned counsel, hereby responds to
the Complaint as follows:

FOR A FIRST DEFENSE

1. This Defendant admits the allegations contained in Paragraph One (1) upon information and belief.
2. This Defendant admits, the allegations contained in Paragraph Two (2) upon information and belief; with the exception that this Defendant expressly denies the alleged subject container exploded causing injury and strict proof is demanded thereof.
3. This Defendant admits the allegations contained in Paragraph Three (3) upon information and belief.
4. This Defendant admits the allegations contained in Paragraph Four (4) upon information and belief.

5. This Defendant admits the allegations contained in Paragraph Five (5) upon information and belief.
6. This Defendant expressly denies the allegations contained in Paragraph Six (6) and strict proof is demanded thereof.
7. This Defendant expressly denies the allegations contained in Paragraph Seven (7) and strict proof is demanded thereof.
8. This Defendant expressly denies the allegations contained in Paragraph Eight (8) and strict proof is demanded thereof.
9. Paragraph Nine (9) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
10. This Defendant expressly denies subsections a, b, and c, contained below Paragraph Nine (9) and strict proof is demanded thereof.
11. Paragraph Ten (10) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
12. This Defendant expressly denies subsections a and b contained below Paragraph Ten (10) and strict proof is demanded thereof.
13. Paragraph Eleven (11) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
14. This Defendant expressly denies subsection a contained below Paragraph Eleven (11) and strict proof is demanded thereof.
15. Paragraph Twelve (12) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.

16. This Defendant expressly denies the allegations contained in Paragraph Thirteen (13) and strict proof is demanded thereof.
17. This Defendant expressly denies the allegations contained in Paragraph Fourteen (14) including subsections a and b and strict proof is demanded thereof.
18. This Defendant expressly denies the allegations contained in Paragraph Fifteen (15) and strict proof is demanded thereof.
19. Paragraph Sixteen (16) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
20. This Defendant expressly denies the allegations contained in Paragraph Seventeen (17) and strict proof is demanded thereof.
21. This Defendant expressly denies the allegations contained in Paragraph Eighteen (18) and strict proof is demanded thereof.
22. This Defendant expressly denies the allegations contained in Paragraph Nineteen (19) and strict proof is demanded thereof.
23. Paragraph Twenty (20) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
24. This Defendant expressly denies the allegations contained in Paragraph Twenty-one (21) and strict proof is demanded thereof.
25. This Defendant expressly denies the allegations contained in Paragraph Twenty-two (22) and strict proof is demanded thereof.
26. This Defendant expressly denies the allegations contained in Paragraph Twenty-three (23) and strict proof is demanded thereof.

27. This Defendant expressly denies the allegations contained in Paragraph Twenty-four (24) and strict proof is demanded thereof.
28. This Defendant expressly denies the allegations contained in Paragraph Twenty-five (25) and strict proof is demanded thereof.
29. This Defendant expressly denies the allegations contained in Paragraph Twenty-six (26) and strict proof is demanded thereof.
30. Paragraph Twenty-seven (27) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
31. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Twenty-eight (28) thus said allegations are expressly denied and strict proof is demanded thereof.
32. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Twenty-nine (29) including subsections a and b thus said allegations are expressly denied and strict proof is demanded thereof.
33. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty (30) thus said allegations are expressly denied and strict proof is demanded thereof.
34. Paragraph Thirty-one (31) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
35. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-two (32) thus said allegations are expressly denied and strict proof is demanded thereof.

36. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-three (33) thus said allegations are expressly denied and strict proof is demanded thereof.
37. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-four (34) thus said allegations are expressly denied and strict proof is demanded thereof.
38. Paragraph Thirty-five (35) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
39. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-six (36) thus said allegations are expressly denied and strict proof is demanded thereof.
40. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-seven (37) thus said allegations are expressly denied and strict proof is demanded thereof.
41. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-eight (38) thus said allegations are expressly denied and strict proof is demanded thereof.
42. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-nine (39) thus said allegations are expressly denied and strict proof is demanded thereof.
43. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty (40) thus said allegations are expressly denied and strict proof is demanded thereof.

44. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-one (41) thus said allegations are expressly denied and strict proof is demanded thereof.
45. Paragraph Forty-two (42) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
46. This Defendant is without sufficient information or belief to admit the allegations contained in subsections a and b below Paragraph Forty-two (42) thus said allegations are expressly denied and strict proof is demanded thereof.
47. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-three (43) thus said allegations are expressly denied and strict proof is demanded thereof.
48. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-four (44) thus said allegations are expressly denied and strict proof is demanded thereof.
49. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-five (45) thus said allegations are expressly denied and strict proof is demanded thereof.
50. Paragraph Forty-six (46) contains no allegations but rather is fashioned as a Request for Production thus it is improper in Plaintiff's Complaint. To the extent that Paragraph Forty-eight (48) can be interpreted as containing any allegations same are expressly denied by this Defendant and strict proof is demanded thereof.

51. As to the final unnumbered paragraph containing Plaintiff's prayer for judgment this Defendant expressly denies Plaintiff is entitled to any judgment in this matter against this Defendant.

FOR A SECOND DEFENSE

52. Paragraphs One through Fifty-three (53) are hereby incorporated herein as if repeated verbatim.

53. Each and every allegation of the Plaintiff's Complaint not specifically admitted is denied.

FOR A THIRD DEFENSE

54. Paragraphs One through Fifty-five (55) are hereby incorporated herein as if repeated verbatim.

55. The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted against this Defendant and should, therefore, be dismissed. The Defendant reserves his right to file motions pursuant to 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A FOURTH DEFENSE
(Comparative Negligence)**

56. Paragraphs One through Fifty-seven (57) are hereby incorporated herein as if repeated verbatim.

57. This Defendant alleges, and would show, that if the Plaintiff sustained any injuries or damages as set forth in the Plaintiff's Complaint, the same were due to the willful, wanton, reckless, careless and negligent act and conduct of the Plaintiff, which combined with,

concurrent with, and exceeded any willful, wanton, reckless or negligent acts and conduct on the part of this Defendant, which is specifically denied, to bring about the injuries and damages, if any, as the proximate cause thereof, and without which the same would not have occurred and bars any recovery by the Plaintiff.

58. That if the Defendant were equally negligent as the Plaintiff, or more negligent than the Plaintiff, which is specifically denied, the amount of recovery of damages, if any, must be reduced in proportion to the amount of Plaintiff's negligence.

**FOR A FIFTH DEFENSE
(Failure to Mitigate)**

59. Paragraphs One through Sixty (60) are hereby incorporated herein as if repeated verbatim.

60. That the Plaintiff failed to take reasonable actions to adequately mitigate her damages, if any, by not undertaking proper preventative or curative measures.

**FOR A SIXTH DEFENSE
(Assumption of the Risk)**

61. Paragraphs One through Sixty-two (62) are hereby incorporated herein as if repeated verbatim.

62. This Defendant alleges, and would show, that the Plaintiff understood, appreciated, and assumed the risks associated with the conduct and activities that brought about the alleged injury thereby barring him from recovery. In the alternative this Defendant pleads assumption of the risk as an element of comparative negligence.

**FOR A SEVENTH DEFENSE
(Negligence of Others)**

63. Paragraphs One through Sixty-four (64) are hereby incorporated herein as if repeated verbatim.
64. This Defendant alleges, and would show, that if there was any negligence surrounding the events of November 5, 2010 same was attributable to the sole and exclusive negligence of other parties, either named or unnamed, for which this Defendant had no opportunity to exercise control over thereby barring any recovery against this Defendant.

**FOR AN EIGHTH DEFENSE
(Material Alteration)**

65. Paragraphs One through Sixty-six (66) are hereby incorporated herein as if repeated verbatim.
66. This Defendant alleges, and would show, that the gas can in question was materially altered in its condition from its state when it was originally purchased thereby barring any recovery against the Defendants.

**FOR A NINTH DEFENSE
(Punitive Damages)**

67. Paragraphs One through Sixty-eight (68) are hereby incorporated herein as if repeated verbatim.
68. This Defendant would show the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damage issues are tried only after and if liability on the merits of this action has been found will violate this Defendant's due process rights guaranteed by the

United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

69. An award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate this Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

70. This Defendant alleges the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- a. Provided with sufficient clear standards for determining the appropriateness of a punitive damage award of the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- c. Instructed that awarding punitive damages on individually discriminatory characteristics of the Defendant is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of the Defendant upon which an award of punitive damages may be based; and
- e. Subjected to judicial review at both the trial and appellate court level under objective standards for determining the appropriateness and reasonableness;

would violate this Defendant's equal protection and due process rights as guaranteed by the Constitution of the United States and the South Carolina constitution and would also violate the laws of the State of South Carolina.

**FOR A TENTH DEFENSE AND BY WAY OF CROSS-CLAIM
AS TO BLITZ U.S.A., INC.
(Contractual Indemnification)**

71. Paragraphs One through Seventy-two (72) are hereby incorporated herein as if repeated verbatim.
72. This Defendant alleges, and would show, that in accordance with a valid and enforceable Vendor Hold Harmless and Indemnity Agreement they are entitled to protection, defense, and indemnification by Blitz U.S.A, Inc.
73. This Defendant prays that this honorable Court order strict compliance by Blitz U.S.A., Inc. with the valid and enforceable Vendor Hold Harmless and Indemnity Agreement.

**FOR AN ELEVENTH DEFENSE AND BY WAY OF CROSS-CLAIM
AS TO TIGER EXPRESS VARNVILLE, LLC
(Equitable Indemnification)**

74. Paragraphs One through Seventy-Five (75) are hereby incorporated herein as if repeated verbatim.
75. This Defendant alleges, and would show, that it is entitled to equitable indemnification relative to Tiger Express Varnville, LLC by operation of law and as a matter of equity to the extent that this honorable Court finds any negligence on the part of Tiger Express Varnville, LLC relative to the alleged sale of defective kerosene.

**FOR A TWELFTH DEFENSE
(Amendments)**

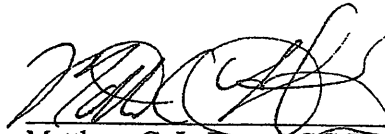
76. Paragraphs One through Seventy-seven (77) are hereby incorporated herein as if repeated verbatim.

77. This Defendant hereby reserves the right to amend this Answer to assert additional defenses pursuant to South Carolina Rules of Civil Procedure, Rule 15 as they become known throughout the discovery process

WHEREFORE, having fully answered the Complaint, Defendant demands that:

- a) the Plaintiff's Complaint be dismissed;
- b) for costs associated with this action;
- c) for any further relief as this honorable Court deems just and proper.

RESPECTFULLY SUBMITTED,



Matthew C. LaFave – SC Bar No. 75365

Crowe LaFave, LLC

Post Office Box 1149

Columbia, South Carolina 29202

Phone: 803.553.8049

matt@crowelafave.com

ATTORNEY FOR DEFENDANT, FRED'S
STORES OF TENNESSEE, INC.

This 4th Day of February, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)
ALICE B. HAZEL AS GAL FOR JACOB)
. Nix,)
Plaintiff,)
vs.)
BLITZ U.S.A, INC., FRED'S INC., TIGER)
EXPRESS VARNVILLE, LLC, & JAMES)
NIX,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THE THIRTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-25-351

DEFENDANT FRED'S STORES OF
TENNESSEE, INC'S, ANSWER TO
PLAINTIFF'S COMPLAINT AND
CROSS-CLAIMS AS TO BLITZ
U.S.A., INC. AND TIGER EXPRESS
VARNVILLE, LLC

(Jury Trial Requested)

Defendant, Fred's Stores of Tennessee, Inc., ["Defendant"] incorrectly identified as Fred's Inc. in Plaintiff's Complaint, by and through his undersigned counsel, hereby responds to the Complaint as follows:

FILED
2014 FEB 10 PM 1:54
MAYNARD D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

FOR A FIRST DEFENSE

1. This Defendant admits the allegations contained in Paragraph One (1) upon information and belief.
2. This Defendant admits the allegations contained in Paragraph Two (2) upon information and belief.
3. This Defendant admits, the allegations contained in Paragraph Three (3) upon information and belief; with the exception that this Defendant expressly denies the alleged subject container exploded causing injury and strict proof is demanded thereof.
4. This Defendant admits the allegations contained in Paragraph Four (4) upon information and belief.

5. This Defendant admits the allegations contained in Paragraph Five (5) upon information and belief.
6. This Defendant admits the allegations contained in Paragraph Six (6) upon information and belief.
7. This Defendant expressly denies the allegations contained in Paragraph Seven (7) and strict proof is demanded thereof.
8. This Defendant expressly denies the allegations contained in Paragraph Eight (8) and strict proof is demanded thereof.
9. This Defendant expressly denies the allegations contained in Paragraph Nine (9) and strict proof is demanded thereof.
10. This Defendant expressly denies the allegations contained in Paragraph Ten (10) and strict proof is demanded thereof.
11. Paragraph Eleven (11) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
12. This Defendant expressly denies subsections a, b, and c, contained below Paragraph Eleven (11) and strict proof is demanded thereof.
13. Paragraph Twelve (12) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
14. This Defendant expressly denies subsections a and b contained below Paragraph Twelve (12) and strict proof is demanded thereof.
15. Paragraph Thirteen (13) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.

16. This Defendant expressly denies subsection a contained below Paragraph Thirteen (13) and strict proof is demanded thereof.
17. Paragraph Fourteen (14) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
18. This Defendant expressly denies the allegations contained in Paragraph Fifteen (15) and strict proof is demanded thereof.
19. This Defendant expressly denies the allegations contained in Paragraph Sixteen (16) including subsections a and b and strict proof is demanded thereof.
20. This Defendant expressly denies the allegations contained in Paragraph Seventeen (17) and strict proof is demanded thereof.
21. Paragraph Eighteen (18) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
22. This Defendant expressly denies the allegations contained in Paragraph Nineteen (19) and strict proof is demanded thereof.
23. This Defendant expressly denies the allegations contained in Paragraph Twenty (20) and strict proof is demanded thereof.
24. This Defendant expressly denies the allegations contained in Paragraph Twenty-one (21) and strict proof is demanded thereof.
25. Paragraph Twenty-two (22) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
26. This Defendant expressly denies the allegations contained in Paragraph Twenty-three (23) and strict proof is demanded thereof.

27. This Defendant expressly denies the allegations contained in Paragraph Twenty-four (24) and strict proof is demanded thereof.
28. This Defendant expressly denies the allegations contained in Paragraph Twenty-five (25) and strict proof is demanded thereof.
29. This Defendant expressly denies the allegations contained in Paragraph Twenty-six (26) and strict proof is demanded thereof.
30. This Defendant expressly denies the allegations contained in Paragraph Twenty-seven (27) and strict proof is demanded thereof.
31. This Defendant expressly denies the allegations contained in Paragraph Twenty-eight (28) and strict proof is demanded thereof.
32. Paragraph Twenty-nine (29) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
33. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty (30) thus said allegations are expressly denied and strict proof is demanded thereof.
34. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-one (31) including subsections a and b thus said allegations are expressly denied and strict proof is demanded thereof.
35. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-two (32) thus said allegations are expressly denied and strict proof is demanded thereof.
36. Paragraph Thirty-three (33) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.

37. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-four (34) thus said allegations are expressly denied and strict proof is demanded thereof.
38. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-five (35) thus said allegations are expressly denied and strict proof is demanded thereof.
39. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-six (36) thus said allegations are expressly denied and strict proof is demanded thereof.
40. Paragraph Thirty-seven (37) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
41. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-eight (38) thus said allegations are expressly denied and strict proof is demanded thereof.
42. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Thirty-nine (39) thus said allegations are expressly denied and strict proof is demanded thereof.
43. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty (40) thus said allegations are expressly denied and strict proof is demanded thereof.
44. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-one (41) thus said allegations are expressly denied and strict proof is demanded thereof.

45. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-two (42) thus said allegations are expressly denied and strict proof is demanded thereof.
46. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-three (43) thus said allegations are expressly denied and strict proof is demanded thereof.
47. Paragraph Forty-four (44) merely restates and incorporates previous allegations and to that extent this Defendant restates and reiterates admissions and denials accordingly.
48. This Defendant is without sufficient information or belief to admit the allegations contained in subsections a and b below Paragraph Forty-four (44) thus said allegations are expressly denied and strict proof is demanded thereof.
49. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-five (45) thus said allegations are expressly denied and strict proof is demanded thereof.
50. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-six (46) thus said allegations are expressly denied and strict proof is demanded thereof.
51. This Defendant is without sufficient information or belief to admit the allegations contained in Paragraph Forty-seven (47) thus said allegations are expressly denied and strict proof is demanded thereof.
52. Paragraph Forty-eight (48) contains no allegations but rather is fashioned as a Request for Production thus it is improper in Plaintiff's Complaint. To the extent that Paragraph Forty-

eight (48) can be interpreted as containing any allegations same are expressly denied by this Defendant and strict proof is demanded thereof.

53. As to the final unnumbered paragraph containing Plaintiff's prayer for judgment this Defendant expressly denies Plaintiff is entitled to any judgment in this matter against this Defendant.

FOR A SECOND DEFENSE

54. Paragraphs One through Fifty-three (53) are hereby incorporated herein as if repeated verbatim.

55. Each and every allegation of the Plaintiff's Complaint not specifically admitted is denied.

FOR A THIRD DEFENSE

56. Paragraphs One through Fifty-five (55) are hereby incorporated herein as if repeated verbatim.

57. The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted against this Defendant and should, therefore, be dismissed. The Defendant reserves his right to file motions pursuant to 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A FOURTH DEFENSE
(Comparative Negligence)**

58. Paragraphs One through Fifty-seven (57) are hereby incorporated herein as if repeated verbatim.

59. This Defendant alleges, and would show, that if the Plaintiff sustained any injuries or damages as set forth in the Plaintiff's Complaint, the same were due to the willful, wanton, reckless, careless and negligent act and conduct of the Plaintiff, which combined with, concurred with, and exceeded any willful, wanton, reckless or negligent acts and conduct on the part of this Defendant, which is specifically denied, to bring about the injuries and damages, if any, as the proximate cause thereof, and without which the same would not have occurred and bars any recovery by the Plaintiff.
60. That if the Defendant were equally negligent as the Plaintiff, or more negligent than the Plaintiff, which is specifically denied, the amount of recovery of damages, if any, must be reduced in proportion to the amount of Plaintiff's negligence.

**FOR A FIFTH DEFENSE
(Failure to Mitigate)**

61. Paragraphs One through Sixty (60) are hereby incorporated herein as if repeated verbatim.
62. That the Plaintiff failed to take reasonable actions to adequately mitigate his damages, if any, by not undertaking proper preventative or curative measures.

**FOR A SIXTH DEFENSE
(Assumption of the Risk)**

63. Paragraphs One through Sixty-two (62) are hereby incorporated herein as if repeated verbatim.
64. This Defendant alleges, and would show, that the Plaintiff understood, appreciated, and assumed the risks associated with the conduct and activities that brought about the alleged

injury thereby barring him from recovery. In the alternative this Defendant pleads assumption of the risk as an element of comparative negligence.

**FOR A SEVENTH DEFENSE
(Negligence of Others)**

65. Paragraphs One through Sixty-four (64) are hereby incorporated herein as if repeated verbatim.

66. This Defendant alleges, and would show, that if there was any negligence surrounding the events of November 5, 2010 same was attributable to the sole and exclusive negligence of other parties, either named or unnamed, for which this Defendant had no opportunity to exercise control over thereby barring any recovery against this Defendant.

**FOR AN EIGHTH DEFENSE
(Material Alteration)**

67. Paragraphs One through Sixty-six (66) are hereby incorporated herein as if repeated verbatim.

68. This Defendant alleges, and would show, that the gas can in question was materially altered in its condition from its state when it was originally purchased thereby barring any recovery against the Defendants.

**FOR A NINTH DEFENSE
(Punitive Damages)**

69. Paragraphs One through Sixty-eight (68) are hereby incorporated herein as if repeated verbatim.

70. This Defendant would show the claim of Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damage issues are tried only after and if liability on the merits of this action has been found will violate this Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

71. An award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate this Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

72. This Defendant alleges the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- a. Provided with sufficient clear standards for determining the appropriateness of a punitive damage award of the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- c. Instructed that awarding punitive damages on individually discriminatory characteristics of the Defendant is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of the Defendant upon which an award of punitive damages may be based; and

e. Subjected to judicial review at both the trial and appellate court level under objective standards for determining the appropriateness and reasonableness; would violate this Defendant's equal protection and due process rights as guaranteed by the Constitution of the United States and the South Carolina constitution and would also violate the laws of the State of South Carolina.

**FOR A TENTH DEFENSE AND BY WAY OF CROSS-CLAIM
AS TO BLITZ U.S.A., INC.
(Contractual Indemnification)**

73. Paragraphs One through Seventy-two (72) are hereby incorporated herein as if repeated verbatim.
74. This Defendant alleges, and would show, that in accordance with a valid and enforceable Vendor Hold Harmless and Indemnity Agreement they are entitled to protection, defense, and indemnification by Blitz U.S.A, Inc.
75. This Defendant prays that this honorable Court order strict compliance by Blitz U.S.A., Inc. with the valid and enforceable Vendor Hold Harmless and Indemnity Agreement.

**FOR AN ELEVENTH DEFENSE AND BY WAY OF CROSS-CLAIM
AS TO TIGER EXPRESS VARNVILLE, LLC
(Equitable Indemnification)**

76. Paragraphs One through Seventy-Five (75) are hereby incorporated herein as if repeated verbatim.
77. This Defendant alleges, and would show, that it is entitled to equitable indemnification relative to Tiger Express Varnville, LLC by operation of law and as a matter of equity to the

extent that this honorable Court finds any negligence on the part of Tiger Express Varnville, LLC relative to the alleged sale of defective kerosene.

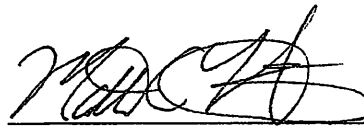
**FOR A TWELFTH DEFENSE
(Amendments)**

78. Paragraphs One through Seventy-seven (77) are hereby incorporated herein as if repeated verbatim.
79. This Defendant hereby reserves the right to amend this Answer to assert additional defenses pursuant to South Carolina Rules of Civil Procedure, Rule 15 as they become known throughout the discovery process

WHEREFORE, having fully answered the Complaint, Defendant demands that:

- a) the Plaintiff's Complaint be dismissed;
- b) for costs associated with this action;
- c) for any further relief as this honorable Court deems just and proper.

RESPECTFULLY SUBMITTED,



Matthew C. LaFave – SC Bar No. 75365

Crowe LaFave, LLC

Post Office Box 1149

Columbia, South Carolina 29202

Phone: 803.553.8049

matt@crowelafave.com

ATTORNEY FOR DEFENDANT, FRED'S
STORES OF TENNESSEE, INC.

This 4th Day of February, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

FILED
2014 SEP -5 AM 11:09

COURT OF COMMON PLEAS
IN THE FOURTEENTH JUDICIAL
CIRCUIT

MELINDA COOK,
Plaintiffs,

HYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

Civil Action No. 2013-CP-25-352

vs.

BLITZ U.S.A., INC., FRED'S, INC., TIGER
EXPRESS VARNVILLE, LLC, AND JAMES
NIX,

Defendants.

**NOTICE OF MOTION AND
MOTION TO PERMANENTLY
ENJOIN OR ALTERNATIVELY TO
STAY PROCEEDINGS AS TO
DEFENDANT, FRED'S STORES OF
TENNESSEE, INC.**

TO: MARK BALL, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for Defendants, will move before the Court at a time and date set by the Court for an Order to stay the proceedings of the above captioned action respective to the Defendant, Fred's Stores of Tennessee, Inc. incorrectly identified as Fred's, Inc. Defendant, Fred's Stores of Tennessee, Inc. would show the following:

1. Plaintiff commenced this action on or about November 5, 2013, in which she asserts three causes of action including negligence, strict liability, and breach of warranty. Specifically, Plaintiff alleges that her son was injured when a gas can, containing kerosene, exploded as it was being used in an attempt to reignite a fire. Plaintiff seeks damages for personal injuries, pain and suffering, and other injuries allegedly arising out of the incident.
2. Defendant, Blitz U.S.A., Inc. filed for Chapter 11 Bankruptcy in United States Bankruptcy Court for the District Delaware on November 9, 2011.
3. Upon learning of the Chapter 11 filing by Defendant Blitz U.S.A., Inc. a claim was made against the personal injury trust that was established in conjunction with those

proceedings, on behalf of Plaintiff's injured son by and through Alice Hazel as Guardian Ad Litem, thereby making Jacob N. a "Participating Blitz Personal Injury Claimant." See Exhibit A, specifically page 25 of the term sheet, attached hereto.

4. The Bankruptcy Plan created a personal injury trust, which specifically accounted for claims arising from incidents between July 31, 2007 and July 31, 2012, with this incident having occurred November 9, 2012.

5. A Confirmation Hearing took place on January 28, 2014 to consider confirmation of *Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation*. See Exhibit B, attached hereto.

6. Contained within the *Findings of Fact Conclusions of Law and Order Confirming Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* is a section addressing enjoinder of judicial actions, which states specifically: "Effective on the Effective Date, without any further action of the Court or other entity, any suit, legal action, or other proceeding (including a judicial, arbitration, administrative or other proceeding) in any forum in the United States against or affecting any Protected Party, shall be stayed, enjoined or otherwise prohibited from continuation as to any Protected Party except for those parties excepted from the channeling injunction provided in paragraph 10(b) of this Confirmation Order." See Exhibit B, attached hereto.

7. As an additional component of the bankruptcy proceedings a "Channeling Injunction" was established pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code that "(i) permanently enjoins and channels to the Plan Trust all Blitz Personal Injury Claims, and (ii) permanently enjoins the prosecution of all Blitz Personal Injury Claims against any Released Party." See Exhibit A, attached hereto, specifically page 2 of the Term Sheet.

8. "Released Parties" is defined as "Debtors, Participating Insurers, Wal-Mart, and any other person or entity insured under the Subject Policies, including, but not limited to (i) any distributor or retailer of Debtors' products...." See Exhibit A, specifically page 3 of the Term Sheet, attached hereto.

9. Defendant, Fred's Stores of Tennessee, Inc. was for the applicable period of time established for claims in the Bankruptcy Plan, was an additional insured under two participating insurers and was a distributor/retailer of Debtors' products. See Exhibits A, specifically page 30 of the Term Sheet and C, attached hereto.

10. On account of Jacob N: being a "Participating Blitz Personal Injury Claimant" and Defendant, Fred's Stores of Tennessee, Inc. qualifying as a "Released Party" the "Channeling Injunction" applies to this suit. See Exhibit D, specifically pages 10-12, attached hereto.

11. Defendant, Fred's Stores of Tennessee, Inc. asserts they are entitled to have these proceedings permanently enjoined or alternatively stayed consistent with the Bankruptcy Plan of Defendant, Blitz U.S.A., Inc.

WHEREFORE, Defendant, Fred's Stores of Tennessee, Inc. respectfully request that this Court issue an Order to permanently enjoin or alternatively stay the instant proceedings against this Defendant. This Motion is based on the attached exhibits and applicable law.

(SIGNATURE PAGE FOLLOWS)

RESPECTFULLY SUBMITTED,



Matthew C. LaFave, SC Bar No. 75365

CROWE LAFAVE, LLC

Post Office Box 1149

Columbia, South Carolina 29202

803.724.5727 (office)

803.724.5726 (fax)

matt@crowelafave.com

Attorney for Defendant

This 26th Day of August 2014
Columbia, South Carolina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BLITZ U.S.A., Inc., et al.,¹

Debtors.

Chapter 11

Case No. Case No. 11-13603 (PJW)

(Jointly Administered)

Re: Docket No. _____

ORDER UNDER 11 U.S.C. §§ 105 AND 363 AND FED. R. BANKR. P. 2002, 6004 AND 9019 APPROVING SETTLEMENT AND AUTHORIZING DEBTORS TO (I) COMPROMISE, SETTLE RELEASE AND DISMISS CLAIMS OF AND AGAINST THE DEBTORS PURSUANT TO INSURANCE TERM SHEET, AND (II) SELL CERTAIN INSURANCE POLICIES BACK TO THE PARTICIPATING INSURERS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND OTHER ENCUMBRANCES

This matter coming before the Court on the *Motion for Order Under 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 2002, 6004 and 9019 Approving Settlement and Authorizing Debtors to: (I) Compromise, Settle, Release and Dismiss Claims of and Against the Debtors Pursuant to Insurance Term Sheet, and (II) Sell Certain Insurance Policies Back to the Participating Insurers Free and Clear of Liens, Claims, Interests and Other Encumbrances* (the "Motion");² the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) notice to an attorney for the holder of a Blitz Personal Injury Claim constitutes notice to such holder for purposes of notice of the Motion, the Hearing, the Term Sheet, and this Settlement Approval Order; (d) notice of the Motion and Hearing was sufficient under the circumstances and in full compliance with Bankruptcy Rule 2002 and the Local Rules of this Court; (e) each of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and MiamiOK LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is 309 North Main Street, Miami, OK 74354.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

EXHIBIT A

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the following factors has been taken into account by the Settling Parties in reaching the compromises embodied in the Term Sheet, and each factor supports approval of the Term Sheet and the entry of this Settlement Approval Order pursuant to Bankruptcy Rule 9019: (i) the probability of success in the litigation of any claims between the Settling Parties, including the ranges of recoverable damages, (ii) the complexity of potential litigation between the Settling Parties, and the expense, inconvenience, and delay necessarily attending it, (iii) the paramount interest of creditors and proper deference to their reasonable views regarding the Settlement, and (iv) whether the Term Sheet promotes the integrity of the judicial system; (f) the Term Sheet (i) is the product of good faith, arms' length negotiation among the Settling Parties, without collusion, (ii) is fair, reasonable, appropriate, and in the best interests of the Debtors' estates, and (iii) represents a sound exercise of the Debtors' business judgment; (g) the Term Sheet is supported by proper and sufficient consideration provided by each of the Settling Parties; and (h) this Settlement Approval Order is "final" within the meaning of 28 U.S.C. § 158(a)(1); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is hereby GRANTED.
2. The Term Sheet memorializing the resolutions and settlements among the Settling Parties, which is annexed hereto as Exhibit 1, is approved pursuant to Bankruptcy Rule 9019.
3. The failure specifically to include or reference any particular term or provision of the Term Sheet in this Settlement Approval Order shall not diminish or impair the effectiveness of such term and provision, it being the intent of the Court that the Term Sheet be authorized and approved in its entirety.

4. The Subject Policies are property of the Debtors, and this Court has the jurisdiction and power to approve the Term Sheet and the compromises and releases contained therein.

5. The Court hereby finds and concludes that the Participating Insurers' buyback of the Subject Policies is in good faith within the meaning of 11 U.S.C. § 363(m) and, therefore, the protections of Section 363(m) apply.

6. The Debtors are authorized to enter into the Term Sheet and are further authorized to execute any documents, and take any additional steps necessary to implement the provisions of and requirements of the Term Sheet.

7. This Court shall retain jurisdiction to (i) enforce and interpret the terms and provisions of this Order and the Term Sheet, (ii) resolve any disputes, controversies, or claims arising out of or relating to this Order or the Term Sheet, and (iii) interpret, implement, and enforce the provisions of this Order or any other Order of this Court entered in these Cases.

8. This Settlement Approval Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing and shall not be stayed under Bankruptcy Rule 6004(g).

Dated: _____, 2013
Wilmington, Delaware

THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE

02

EXHIBIT 1
(Term Sheet)

TERM SHEET

The Debtors, the Committee, the Participating Insurers, the Participating Blitz Personal Injury Claimants, and Wal-Mart have agreed to a Settlement of any and all past, present, and future issues that could arise between them with respect to the Blitz Personal Injury Claims.

Certain of the most important terms of the Settlement are summarized in the numbered paragraphs set forth below and subject to the Settling Parties' intent that the terms of the Settlement to be incorporated into a Chapter 11 Plan containing customary provisions relating to the implementation and enforcement of the Settlement, they acknowledge by their signatures set forth below their intent to be legally bound and that they are legally bound by the terms set forth in this Term Sheet and that the Term Sheet is legally enforceable by the Parties (subject to approval by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in a final non-appealable order pursuant to Rule 9019 of the Bankruptcy Rules). A motion will be filed with the Bankruptcy Court seeking an order approving the Term Sheet and the Settlement, which motion shall be on notice in form, substance and effect acceptable to the Settling Parties and approved by the Bankruptcy Court as being adequate to bind all claimants asserting Blitz Personal Injury Claims. Also, the terms and conditions of the Settlement Approval Order shall be in form and substance acceptable to the Settling Parties. The Debtors' obligation to take the actions contemplated by this Term Sheet and the Agreement is subject to the Debtors' having funding necessary to do so and the Debtors are only required to take such actions as are reasonably practical under the circumstances. Moreover, any final Settlement is contingent upon the confirmation of the Chapter 11 Plan. The Committee will support and take actions reasonably necessary to obtain approval of the Settlement and a Chapter 11 Plan incorporating the Settlement.

DEFINITIONS

The following terms, as used herein, shall be defined as follows:

- a. "BAH Settlement" shall mean the consensual settlement of all claims and causes of action by and between the BAH Settling Parties.
- b. "BAH Settling Parties" shall mean the Committee, the Debtors, the Participating Blitz Personal Injury Claimants, Michael Montgomery, Kinderhook Industries II, LP Kinderhook Capital Fund II, LP, Crestwood Holdings, Inc., Bergan, LLC and any other party that may be a signatory to the BAH Settlement.
- c. "Bar Date Motion" shall mean a motion filed with the Bankruptcy Court to establish a bar date for all Blitz Personal Injury Claims that do not fall within the claims barred by the bar date order that was entered on May 23, 2012 .
- d. "Blitz Personal Injury Claims" shall mean and include all claims for damages or other relief for, based upon, arising out of, relating to, or in any way involving bodily injury and / or property damage that occurred on or before 12:01 AM CST on July 31, 2012, and shall

include asserted and unasserted claims, whether known or unknown, based upon, arising out of, or in any way involving the products, premises or operations of the Debtors and, without any limitation of the foregoing shall include any such claims against Wal-Mart directly or indirectly relating to the Debtors' products, premises or operations, and any direct action claims by a claimant against the Participating Insurers.

e. "Channeling Injunction" shall mean an injunction pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code that to the fullest extent permitted by law (i) permanently enjoins and channels to the Plan Trust all Blitz Personal Injury Claims, and (ii) permanently enjoins the prosecution of all Blitz Personal Injury Claims against any Released Party. The Participating Blitz Personal Injury Claimants and the Committee shall be responsible for the development and drafting of the terms and procedures with respect to the valuation, allowance and payment of Blitz Personal Injury Claims including the allocation of the Settlement Amount. For the avoidance of doubt, the Channeling Injunction shall not channel or enjoin any claim for damages on account of a bodily injury and / or property damage that occurred on or after 12:01 AM CST on July 31, 2012.

f. "Committee" shall mean the Official Committee of Unsecured Creditors, its co-chairs and members appointed in the Debtors' chapter 11 cases.

g. "Confirmation Order" shall mean an Order of the Bankruptcy Court confirming the Chapter 11 Plan.

h. "Debtor Representatives" shall mean officers, directors, employees, agents, representatives, and attorneys of the Debtors or the successors of any of them, each in their capacity as such.

i. "Debtors" shall mean the USA Debtors and the Holdings Debtors.

j. "Holdings Debtors" shall mean LAM 2011 Holdings, LLC and Blitz Acquisition Holdings, Inc.

k. "Interests" shall mean any rights, claims, liens, interest, and/or encumbrances in connection with the described subject matter.

l. "Non-Participating Insurers" shall mean Hartford Insurance Company, Lumbermens Mutual Casualty Company, Admiral Insurance Company, American International Group, Nautilus Insurance Company, Arrowood Indemnity, RSUI Group, Inc., and any other insurer who is not a Participating Insurer. The known policies of insurance issued to Debtors by the Non-Participating Insurers include, without limitation, the policies listed on Exhibit 3 hereto.

m. "Participating Blitz Personal Injury Claimants" shall mean and include the claimants identified on Exhibit 1 attached hereto and their respective counsel.

n. "Participating Insurers" shall mean Old Republic Insurance Company, First Mercury Insurance Company, First Specialty Insurance Corporation, Liberty Surplus Insurance Corporation, Liberty Insurance Underwriters Inc., Arch Insurance Company, Continental Casualty Company, Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company (collectively, "Westchester"), Endurance American Specialty Insurance

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Company, Interstate Fire and Casualty Insurance Company, Navigators Specialty Insurance Company and Axis Surplus Insurance Company and United States Fire Insurance Company (solely in its capacity as claims handler for the policies issued to the Debtors on behalf of First Mercury Insurance Company that are listed on Exhibit 1 and not on behalf of policies, if any, that might have been issued by United States Fire Insurance Company) and each of their predecessors, and present or past parents, subsidiaries, divisions, affiliates, directors, officers, agents, employees, representatives, members, and attorneys, their successors and assigns but only in their capacity as such, and any entity that acquires any of the foregoing entities through assignment, merger, or otherwise, but only to the extent that such acquiring entity succeeds to such foregoing entity's rights and obligations as they existed on the execution date of the Term Sheet. Notwithstanding the above, "Participating Insurers" shall not mean or include the "Non-Participating Insurers" or any of them.

o. "Parties" shall mean Debtors, the Committee, the Participating Insurers, the Participating Blitz Personal Injury Claimants, and Wal-Mart.

p. "Payment Date" shall mean thirty (30) days after entry of a Confirmation Order (i) which has become non-appealable, or (ii) if any appeals from the Confirmation Order have been filed, either (x) such appeals have been fully and finally concluded consistent with the material terms of this Settlement, or (y) the Participating Insurers and Wal-Mart, each in their sole discretion, agree to waive final resolution of such appeal(s) as a condition to the Payment Date.

q. "Chapter 11 Plan" shall mean one or more liquidating plans, pursuant to chapter 11 of the Bankruptcy Code, applicable to all Debtors that contains customary provisions and includes the terms necessary to implement and enforce the Settlement, and this Term Sheet.

r. "Plan Trust" shall mean the Blitz Personal Injury Plan Trust.

s. "Released Parties" shall mean the Debtors, the Participating Insurers, Wal-Mart and any other person or entity insured under the Subject Policies, including, but not limited to (i) any distributor or retailer of Debtors' products, (ii) the Debtor Representatives, and (iii) the shareholders of Debtors solely in their capacity as shareholders and solely related to Blitz Personal Injury Claims. The release of the shareholders of the Debtors shall include all claims asserted against such shareholders that are or would be covered by the Subject Policies. The Released Parties are not released for Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST with the exception that: (a) Wal-Mart shall be released for all Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST, (b) Westchester shall be released for all Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST with the exception of *Calder* and *Bosse*, and *Green* shall retain and not release his claim to sanctions which is now pending appeal until such time as the Debtors, pursuant to paragraph 2 below, dismiss their appeal and release the \$250,000 that has already been deposited to his counsel in escrow at which time any claim by *Green* shall be released, and (c) the Participating Insurers shall be released from any and all liability under the insurance policies identified on Exhibit 2 for all Blitz Personal Injury Claims, except that Westchester shall not be released from the *Calder* and *Bosse* claims. All outstanding Blitz Personal Injury Claims are retained against the USA Debtors and all Non-Participating Insurers during the period prior to July 31, 2007 at 12:01 a.m. CST and are not released but are channeled into the Plan Trust.

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t. "Releasers" shall mean Debtors and their respective (a) parents, (b) past or present subsidiaries and affiliates, (c) any joint ventures in which they have interests, and (d) officers, directors, employees, agents, representatives, shareholders, and attorneys, or the successors of any of them. The USA Debtors shall not be released by this Settlement for Blitz Personal Injury Claims prior to July 31, 2007 at 12:01 a.m. CST so such cases may proceed solely against the policies or proceeds of Non-Participating Insurers.

u. "Settlement" shall mean the settlement of any and all past, present, and future issues that could arise between the Settling Parties with respect to the Blitz Personal Injury Claims as reflected in this Term Sheet. For the avoidance of doubt, the Settlement shall not include the Settlement of any claim for damages on account of a bodily injury and / or property damage that occurred on or after 12:01 AM CST on July 31, 2012.

v. "Settlement Amount" shall mean the total sum, in cash or its equivalent, of ONE HUNDRED SIXTY ONE MILLION AND THREE HUNDRED TWENTY THOUSAND DOLLARS AND NO CENTS (\$161,320,000.00).

w. "Settlement Approval Motion" shall mean a motion filed with the Bankruptcy Court seeking a Settlement Approval Order.

x. "Settlement Approval Order" shall mean the Order of the Bankruptcy Court approving the Term Sheet, and authorizing the Settlement as set forth in this Term Sheet, the terms of which shall be acceptable to each of the Settling Parties, in their sole discretion.

y. "Settling Parties" shall mean the Debtors, the Committee, the Participating Insurers, the Participating Blitz Personal Injury Claimants and Wal-Mart.

z. "Subject Policies" shall mean the policies of insurance listed on Exhibit 2 hereto and all other, known and unknown, insurance policies issued to Debtors or any of them by any of the Participating Insurers except directors and officers policies, if any, that may have been issued by the Participating Insurers.

aa. "Term Sheet" shall mean this Term Sheet.

bb. "USA Debtors" shall mean Blitz USA, Inc., Blitz Acquisition, LLC, Blitz RE Holdings, LLC and Miami OK, LLC f/k/a F3 Brands LLC.

cc. "Wal-Mart" shall mean Wal-Mart Stores, Inc., each of its predecessors, and present or past parents, subsidiaries, divisions, affiliates, their successors and assigns but only in their capacity as such, and any entity that acquires any of the foregoing entities through assignment, merger, or otherwise, but only to the extent that such acquiring entity succeeds to such foregoing entity's rights and obligations as they existed on the execution date of the Term Sheet, and the directors, officers, agents, employees, representatives, members, and attorneys for any of the foregoing in their capacity as such.

A. Rule 9019 Motion and Settlement Approval Order

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1. On or before July 24, 2013 and after all Parties have executed this Term Sheet, the Settling Parties shall file a Settlement Approval Motion with the Bankruptcy Court seeking a Settlement Approval Order, in form and substance agreeable to the Settling Parties approving pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, the Settlement and binding the Settling Parties to support and vote to accept the Chapter 11 Plan, which (i) shall contain the Channeling Injunction and other customary terms and conditions, including exculpation, some of which are specifically set forth herein, and (ii) pursuant to Section 363 of the Bankruptcy Code, the Debtors' sale back to the Participating Insurers of the Subject Policies free and clear of all interests of any person or entity in the Subject Policies and including findings of fact and conclusions of law providing for protection of the Participating Insurers under Section 363(f) and (m). The Debtors and the Committee shall use their respective best efforts to obtain approval of the Settlement and entry by the Bankruptcy Court of the Settlement Approval Order and to ensure that the Settlement Approval Order becomes a final non-appealable order. The Settlement Approval Motion shall be on notice in form, substance and effect acceptable to the Settling Parties and approved by the Bankruptcy Court as being adequate to bind all Participating Blitz Personal Injury Claimants. The Settlement Approval Order shall be on terms which shall be acceptable to each of the Settling Parties, in their sole discretion.

B. Resolution of Claims and Policy Buy Back

2. The Participating Insurers and Wal-Mart, collectively, will pay the Settlement Amount to the Plan Trust. The Settlement Amount shall be paid on or before the Payment Date. The Participating Blitz Personal Injury Claimants and their undersigned counsel represent and warrant that the Participating Blitz Personal Injury Claimants along with the following claimants: *Beadore, Bosse, Calder, Delatorre, Green* and *Tvedt* constitute all Blitz Personal Injury Claims of which the Participating Blitz Personal Injury Claimants and their counsel are aware or have knowledge. Upon the occurrence of the Payment Date, and the vacatur of the sanctions order by the Green court (to which the Debtors and the *Green* plaintiffs consent and the Participating Blitz Personal Injury Claimants do not oppose), the \$250,000 in escrow paid to counsel for the *Green* plaintiffs shall be released and the parties to the *Green* case agree to mutually dismiss their appeals.

3. Except as otherwise provided herein, the specific amounts contributed by individual contributors to the Settlement Amount shall remain confidential as among the contributors and subject to the terms of a side-agreement among the Participating Insurers and Wal-Mart; provided however, that to the extent any of the Settling Parties that are contributing to the Settlement Amount defaults on its funding obligation, the identity of the defaulting party, and the amount it agreed to contribute and owes, shall be released. The Committee or the Plan Trust, as appropriate, may either: (a) seek to enforce the Settlement with respect to any defaulting Settlement Party; or (b) opt to treat any defaulting Participating Insurer as a Non-Participating Insurer under the terms of the Settlement. The Participating Insurers and Wal-Mart may also reveal the amount of their individual contributions, but not that of other participants, as they deem necessary, in their sole discretion, (i) to obtain Bankruptcy Court approval of the Chapter 11 Plan and the releases and Channeling Injunction in the Chapter 11 Plan, and (ii) to their attorneys, auditors, tax consultants, regulators, reinsurers or retrocessionnaires for the purpose of obtaining reinsurance for any portion of their contribution to the Settlement Amount, or complying with applicable regulations. The Participating Insurers and Wal-Mart shall be

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individually liable for the amounts each has agreed to contribute and not jointly and/or severally liable for the Settlement Amount. Under no circumstances shall any of the Participating Insurers or Wal-Mart be required to satisfy the funding obligation of any defaulting party. Funding of eighty percent (80%) of the Settlement Amount is a condition precedent to the effectiveness of the Chapter 11 Plan. If within ten days after the Payment Date less than eighty percent (80%) of the Settlement Amount has been paid, a super-majority of seventy-five percent (75%) of the Participating Blitz Personal Injury Claimants may, at their election, file a Notice of Non-Occurrence of Effective Date, which notice shall give the Participating Insurers and Wal-Mart twenty (20) days to cure any such deficiency by providing funds to achieve eighty percent (80%) of the Payment Amount. If the Participating Insurers and Wal-Mart do not timely cure in accordance with the foregoing, the filing of the Notice of Non-Occurrence of Effective Date shall have the effect of terminating the Settlement and the Settling Parties shall be returned to the position that they were in prior to the Settlement.

4. The insurance policies issued to and related agreements with the Debtors by the Non-Participating Insurers shall *not* be released or subject to the buyback contemplated by this Term Sheet. These policies and related agreements and/or their proceeds shall be assigned to the Plan Trust, upon confirmation of the Chapter 11 Plan, which shall thereafter have all rights that the Debtors and/or claimants had to pursue such coverage subject only to the terms and procedures of the Chapter 11 Plan. For the avoidance of doubt, to the extent that the Debtors have insurance coverage from the Non-Participating Insurers applicable to the claims asserted by Michael Montgomery (incident date: 6/20/02), John Delatorre (incident date 10/3/02) and Landon Beadore (incident date 10/3/03) and such other plaintiffs as who may be named in the complaints in these three aforementioned cases or whose injuries occurred prior to 12:01 a.m. CST on July 31, 2007 (subject to the provisions of paragraph 27, below), such insurance coverage from the Non-Participating Insurers is not released or bought back by the settlement contemplated by this Term Sheet and these claimants do not release their claims as against the USA Debtors or insurers other than the Participating Insurers. Notwithstanding anything to the contrary in the foregoing, all Blitz Personal Injury Claims, including those identified in this paragraph, shall be subject to the Channeling Injunction and all release provisions contained in this Term Sheet.

C. Policy Release and Buyback Provisions

5. The Chapter 11 Plan shall fully release the Released Parties from any liability for, based upon, arising out of, directly or indirectly relating to, or in any way involving, the Blitz Personal Injury Claims and shall enjoin anyone from asserting Blitz Personal Injury Claims against the Released Parties, provided further however, that the foregoing releases shall not operate to bar any response, objection, defense or counterclaim to any filed or scheduled claim or motion or request for payment of administrative expense filed by any Debtor Representative as against any Debtor or its estate. Such releases shall be sufficient to provide finality to the Participating Insurers from all claims, rights, demands, and obligations of any kind or nature arising out of or relating to the Subject Policies, or any agreements related to the Subject Policies, brought by or on behalf of any person or entity insured thereunder, including, but not limited to, Debtors, Debtor Representatives or any distributor or retailer of Debtors' products, including without limitation Wal-Mart. The Released Parties are not released for Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST with the exception that: (a) the Released Parties shall be released for all Blitz Personal Injury Claims occurring on or before

July 31, 2007 at 12:01 a.m. CST as against Wal-Mart, (b) Westchester shall be released for all Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST with the exception of Calder and Bosse, and Green shall retain and not release his claim to sanctions which is now pending appeal until such time as the Debtors, pursuant to paragraph 2 above, dismiss their appeal and release the \$250,000 that has been paid to his counsel in escrow, at which time any claim by Green shall be released, and (c) the Participating Insurers shall be released from any and all liability under the insurance policies identified on Exhibit 2 for all Blitz Personal Injury Claims, except that Westchester shall not be released from the Calder and Bosse claims. All outstanding Blitz Personal Injury Claims are retained against the USA Debtors and all Non-Participating Insurers during the period prior to July 31, 2007 at 12:01 a.m. CST and are not released but are channeled into the Plan Trust.

6. The Chapter 11 Plan shall further provide that each Participating Blitz Personal Injury Claimant be deemed to consensually release the Released Parties from any Blitz Personal Injury Claim and that each such claimant, as a condition precedent to receiving funds from the Plan Trust, shall deliver a written release to the Plan Trust sufficient to provide finality, and on terms acceptable, to the Released Parties for any Blitz Personal Injury Claim that was or might have been brought by such claimant. With respect to such finality for claims by Participating Blitz Personal Injury Claimants who are minors, the Chapter 11 Plan shall contain requirements, in terms acceptable to Wal-Mart and the Participating Insurers, that the guardian or other party legally responsible for the interests of any such Participating Blitz Personal Injury Claimants who are minors seek approval from any and all courts having jurisdiction over such minor. The Released Parties shall be provided copies of these releases. However, the Channeling Injunction and release provisions of the Chapter 11 Plan shall not be dependent for their efficacy with respect to any Blitz Personal Injury Claim on whether or not a written release has been provided with respect to such Blitz Personal Injury Claim. To the extent that any Released Party, in its discretion, determines that it is appropriate to petition the bankruptcy court for the appointment of a *guardian ad litem* to represent the interests of all Participating Blitz Personal Injury Claims who are minors, the Settling Parties shall support such a petition.

7. The Chapter 11 Plan shall further provide that any claimant who is not a Participating Blitz Personal Injury Claimant shall be deemed to release the Released Parties for all Blitz Personal Injury Claims.

8. The Debtors shall provide the Participating Insurers with a complete policy buyback of the Debtors' interests in the Subject Policies free and clear of all Interests of any person or entity pursuant to Section 363 of the Bankruptcy Code, and, with respect to any Interests held by any non-affiliated entities in the Subject Policies, if any, such relief as is sufficient to extinguish any such Interests in the Subject Policies and provide finality for claims asserted thereunder. By executing this Term Sheet, all Settling Parties consent to the Debtors' buyback of the Subject Policies free and clear of all Interests of any person or entity pursuant to Section 363 of the Bankruptcy Code.

9. Upon the occurrence of the Payment Date, all interests of any of the Releasers in the Subject Policies and any other insured shall be deemed to have been released and sold back to the Participating Insurers free and clear of all Interests pursuant to Section 363 of the Bankruptcy Code without any further action being required.

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10. Upon the occurrence of the Payment Date and subject to the terms of paragraph 12 below, (a) the Participating Insurers shall be irrevocably released from (i) all claims of the Releasors or anyone else, including without limitation Wal-Mart, under, arising from, related to, or in connection with the Subject Policies and / or the Blitz Personal Injury Claims, (ii) any claims for contribution or indemnity under, arising from, related to, or in connection with the Subject Policies (whether from other insurers or not) and / or the Blitz Personal Injury Claims, (iii) all extra-contractual claims arising from, related to, or in connection with the Subject Policies and / or the Blitz Personal Injury Claims, and (b) all rights and obligations between the Releasors and anyone else, including without limitation Wal-Mart, on the one hand, and the Participating Insurers, on the other hand, with respect to the Subject Policies and / or the Blitz Personal Injury Claims shall be fully and finally extinguished. The release of the Participating Insurers shall leave the Participating Insurers completely released as if the Participating Insurers had never issued the Subject Policies and had never had any dealings with, or actual or alleged duties or obligations whatsoever to, any Releasors or any other person, including without limitation persons allegedly harmed or injured by Debtors. This Settlement and the releases to be delivered pursuant thereto are explicitly acknowledged by all concerned to be effective notwithstanding any facts, legal theories, alleged mistakes, misrepresentations, or failures to disclose that are presently known to, or that subsequently become known to, the Releasors or anyone else. Upon the occurrence of the Payment Date and subject to the terms of paragraph 12 below, the Participating Insurers shall release Wal-Mart from all claims under, arising from, related to, or in connection with the Subject Policies, including but not limited to claims that Wal-Mart breached any of its obligations as an additional insured under the Subject Policies or any of its obligations under the covenant of good faith and fair dealing.

11. Notwithstanding anything else to the contrary, the Settlement contemplated by this Term Sheet is not intended to release any claim for damages on account of bodily injury and / or property damage that occurred after 12:01 AM CST on July 31, 2012.

12. If Wal-Mart or a Participating Insurer defaults and does not pay its agreed upon share of the Settlement Amount on the Payment Date, that defaulting party shall, after ten days notice and an opportunity to cure, not receive any of the benefits provided by this Settlement until such time as the defaulting party, makes full payment, including but not limited to the releases, injunction or policy buy back provided for herein. If Wal-Mart and the Participating Insurers collectively deliver less than eighty (80%) percent of the Settlement Amount on the Payment Date and the Participating Blitz Personal Injury Claimants elect to terminate pursuant to the terms of paragraph 3, and there is no cure pursuant to paragraph 3 and the Settlement is terminated, no Settling Party or Released Party shall receive any of the benefits provided by this Settlement, including but not limited to the releases, the Channeling Injunction or policy buy back provided for herein and all amounts paid by Wal-Mart or the Participating Insurers shall be returned to the paying party.

D. Channeling Injunction Pursuant to Section 105 of the Bankruptcy Code

13. The Chapter 11 Plan and Confirmation Order shall provide for and include the Channeling Injunction. For the avoidance of doubt, all claims for insurance coverage for bodily injury claims under policies issued to the Debtors and all claims against the Released Parties for contribution or indemnification or other relief with respect to the Blitz Personal Injury Claims shall be channeled to the Plan Trust pursuant to the Channeling Injunction. The Plan Trust shall

not take any action that would undermine the enforcement of the Channeling Injunction or that would serve to deprive any of the Released Parties of the benefits of the injunction, including but not limited to the Debtors, the Participating Insurers and Wal-Mart.

E. The Chapter 11 Plan

14. Among other terms and conditions as referred to above, the Chapter 11 Plan will include reasonable terms to ensure that the Plan Trust will be responsible for ensuring compliance with Medicare secondary payer ("MSP") requirements, and that the Plan Trust will retain, at its expense, a qualified vendor (such as the Garretson Group) to provide such services as may be required to ensure such compliance. The Participating Insurers and Wal-Mart shall have the right to approve the vendor retained by the Plan Trust to provide such services (with such approval not to be withheld unreasonably) and to obtain such information from such vendor, the Plan Trust and the Blitz Personal Injury Claimants as they may reasonably request for the purpose of ensuring that the Plan Trust has complied with MSP requirements or for the purpose of internal audits and insurance or reinsurance claims. The Plan Trust shall be prohibited from making a distribution to a Blitz Personal Injury Claimant who refuses to provide the information necessary to meet MSP requirements with regard to that claimant.

15. The conditions precedent to the Participating Insurers' and Wal-Mart's payment obligations will include, without limitation, that both the Settlement Approval Order and the Confirmation Order must first become final, non-appealable orders. Wal-Mart and the Participating Insurers may agree, which agreement must be unanimous among Wal-Mart and the Participating Insurers and with Wal-Mart and each Participating Insurer exercising their sole discretion, to waive the Confirmation Order becoming a final, non-appealable order.

16. The terms of the Plan Trust will be drafted consistent with the terms of this Settlement and, upon its creation, the Plan Trust shall be bound to the terms of this Settlement as if it had been a party thereto as of the execution date of this Term Sheet.

17. If before the effective date of the Chapter 11 Plan any person or entity asserts any claim against the Released Parties under, arising from, related to, or in connection with the persons and entities released by the Settlement, Debtors will, at their expense if they have the funding to do so, use their best reasonable efforts to enforce, if necessary, the automatic stay of Section 362 of the Bankruptcy Code, and, if appropriate, obtain an order from the Bankruptcy Court pursuant to Section 105(a) of the Bankruptcy Code enjoining or otherwise prohibiting the prosecution of any such claim against the Released Parties. The Committee shall support Debtors in such efforts, including, without limitation, (i) by being a co-movant in respect of any such motion to enforce the automatic stay, or objecting to any motion filed for relief from the automatic stay, as the case may be, (ii) by the filing of a joinder to any such motion or objection of the Debtors, as the case may be, and (iii) by arguing in support of the relief requested by such motion or objection at any hearing on such motion or objection by the Debtors.

18. The Plan Trust shall fully and completely defend Released Parties in connection with any proceeding involving, relating to, or arising out of, in whole or in part, the enforcement or enforceability of the Channeling Injunction. In the event any person or entity asserts any claim that is subject to the Channeling Injunction, the Plan Trust shall, at its own expense, defend the validity of the Channeling Injunction and its application and use its best efforts to

establish that such claim is enjoined. The Participating Insurers and Wal-Mart shall have consultation and approval rights with respect to selection of counsel hired by the Plan Trust for such defense obligations. The Participating Insurers and Wal-Mart shall have the right, at their own cost and expense, to associate in the defense in any proceeding concerning the enforcement and application of the Channeling Injunction. If the Plan Trust breaches its duty to fully and completely defend then the Plan Trust is obligated to indemnify the Released Parties, including advancement of defense costs.

19. The Chapter 11 Plan shall further include such other terms and conditions as have generally been included in similar insurance-related settlements in other bankruptcy cases or which a Settling Party reasonably believes is necessary to obtain the full benefits of this Term Sheet.

F. Bar Date Motion and Notice

20. No later than July 24, 2013 and after execution of this Term Sheet, the Settling Parties will agree on the terms of and file a Bar Date Motion with the Bankruptcy Court to address all Blitz Personal Injury Claims. The Bar Date Motion shall establish a specific bar date for all Blitz Personal Injury Claims and any such claims that are not asserted prior to the bar date shall be forever barred. The Bar Date Motion will contain minimum requirements for the assertion of a Blitz Personal Injury Claim as shall be agreed upon by Wal-Mart, the Participating Insurers, the Debtors, the Committee, and the Participating Blitz Personal Injury Claimants. The Bar Date Motion shall set forth, and the order approving the Bar Date Motion shall approve, the manner in which notice of the bar date shall be provided, including publication notice, which shall be acceptable to Wal-Mart and the Participating Insurers in their sole discretion. The Participating Insurers and Wal-Mart shall share the first \$100,000 of costs for running publication notice of the bar date for Blitz Personal Injury Claims on a basis proportionate to their contributions to the Settlement Amount. Wal-Mart and the Participating Insurers shall each pay fifty percent (50%) of such costs in excess of \$100,000, with the Participating Insurers' portion being allocated equally among the Participating Insurers. The Participating Insurers and Wal-Mart shall not be obligated to pay any costs for notice for any entity or person who is not a Participating Insurer or Wal-Mart. For the avoidance of doubt, publication notice costs shall include notice publication in any type of media, including print and electronic media.

G. Implementation of the Settlement

21. Upon the execution of this Term Sheet, (i) the Participating Blitz Personal Injury Claimants shall withdraw without prejudice their motions to modify the automatic stay, (ii) the Debtors and Westchester shall withdraw without prejudice their motion to compel compliance by the Participating Blitz Personal Injury Claimants with Rule 2019, and (iii) the Participating Blitz Personal Injury Claimants shall take such action as is necessary to stay, suspend or adjourn all Blitz Personal Injury Claims against the Released Parties. The Debtors shall withdraw without prejudice their motion to modify the automatic stay in the *Calder* case.

22. Upon the Payment Date and payment of the Settlement Amount, (i) all of the Blitz Personal Injury Claims arising on or after 12:01 PM CST on July 31, 2007 (except for *Calder* and *Bosse*) and for which litigation was commenced as of the date of the execution of this Term Sheet shall be deemed as dismissed and withdrawn with prejudice without any further

action of the Settling Parties, (ii) the automatic stay for non-settling Blitz Personal Injury Claims shall be replaced by the Channeling Injunction and the rights of non-settling Blitz Personal Injury Claimants shall be determined pursuant to the Chapter 11 Plan, the Plan Trust and the Trust Distribution Procedures (the "TDP"), with the Participating Blitz Personal Injury Claimants and the Committee being responsible for the development and drafting of the TDP, which TDP shall be filed as an exhibit to the Chapter 11 Plan, and (iii) the Participating Insurers shall (x) withdraw their proofs of claim in the Debtors' bankruptcy cases; or (y) with the consent of the Committee, gift or assign such claims. In the event that any other action is required by a court or other tribunal to document or reflect the dismissal with prejudice of a Blitz Personal Injury Claim such Blitz Personal Injury Claimant shall be solely responsible for taking such action to dismiss his or her Blitz Personal Injury Claim, subject to the requirements of paragraph 6 above. Upon the Payment Date, Wal-Mart shall waive (or assign or gift, with the consent of the Committee) any and all claims it may have against the Debtors arising on or before July 31, 2012, including, but not limited to its pre-petition contribution and indemnity claims, which are secured, in part, by \$1.54 million in payables owed to the Blitz U.S.A. debtor. Upon the Payment Date, Wal-Mart shall release and pay to the liquidating trustee under the Chapter 11 Plan on behalf of the bankruptcy estate of Blitz U.S.A the \$1.54 million held as security. To the extent that Wal-Mart has a claim against any of the Debtors arising on or after July 31, 2012, Wal-Mart shall retain such claims but shall waive any rights to distribution from any of the Debtors' estates or the Plan Trust. For the avoidance of doubt, the release of the \$1.54 million is separate, apart and in addition to Wal-Mart's contribution to the Settlement Amount, it shall be considered an asset of Blitz U.S.A.'s bankruptcy estate and shall not be contributed to, or otherwise be construed as an asset of, the Plan Trust.

23. The Settling Parties shall cooperate with each other in effectuating the provisions of this Term Sheet. Notwithstanding anything else in this Term Sheet, the Settling Parties agree that any of the Settling Parties may challenge or object to confirmation of the Chapter 11 Plan if the Chapter 11 Plan or any actual or proposed alteration, modification, or revision of the Chapter 11 Plan (a) is inconsistent with the terms of this Term Sheet, (b) materially and adversely affects the interests of any such Participating Insurer and/or Wal-Mart and or the Debtors under this Term Sheet, or (c) does not include the releases and Channeling Injunction. If such objection is sustained, the objecting party, at its discretion and after a 20 day opportunity to cure or remedy the objection, may terminate the Settlement. In the event that the Settlement is so terminated, the Settling Parties shall be returned to the position that they were in prior to the Settlement.

24. The Participating Insurers will be free to pursue reinsurance claims from reinsurers or retrocessionaires regarding any consideration paid by them in connection with this settlement. The Participating Insurers are free to allocate their settlement payment among their Subject Policies at their sole discretion as long as doing so does not reduce the overall Settlement Amount.

25. The Debtors or the Plan Trust, as the case may be, shall cooperate with the Participating Insurers in any litigation against the Participating Insurers seeking contribution, indemnification, or other similar payments with respect to any liability under, arising from, related to, or in connection with any of the Subject Policies that is released under this Settlement, and shall support arguments made by the Participating Insurers that their obligations with respect to such claims have been fully released, satisfied, and extinguished by the Settlement.

26. If (i) less than seventy percent (70%) of the Participating Blitz Personal Injury Claimants (individually or through their counsel) fail to execute this Term Sheet by July 19, 2013 or (ii) less than an overwhelming majority of all holders of Blitz Personal Injury Claims entitled to vote on the Chapter 11 Plan fail to vote to accept the Chapter 11 Plan following the deadline to cast ballots on the Chapter 11 Plan, then Wal-Mart may, within 10 days of the expiration of either deadline, elect to terminate the Settlement upon written notice to the Participating Blitz Personal Injury Claimants and the Participating Insurers, effective 20 days from such notice. The Participating Blitz Personal Injury Claimants may use such 20 day period to cure. In the event that the Settlement is so terminated, the Settling Parties shall be returned to the position that they were in prior to the Settlement.

27. The Chapter 11 Plan will include provisions indicating that the participation of the Debtors, Participating Insurers and Wal-Mart in this Term Sheet, the Settlement and/or the Chapter 11 Plan does not constitute an admission or concession on any issue, including liability for any Blitz Personal Injury Claim or that there is coverage under any of the Subject Policies. The Plan Trust and any recipient of a distribution from the Plan Trust on account of a Blitz Personal Injury Claim shall be solely responsible for the payment of any taxes, if any, associated with the money received by such recipient.

H. Treatment of *Calder* and *Bosse* Claims

28. Notwithstanding anything contained herein to the contrary, Westchester Policy CUW788371001 (7/31/05-7/31/06) and Westchester Policy G22053504001 (7/31/06-7/31/07) shall not be released or subject to the buyback contemplated by the Settlement and this Term Sheet with respect to the claims asserted by *Calder* and *Bosse* respectively, but shall be released and bought back with respect to all other claims upon the occurrence of the Payment Date. If the *Calder* and *Bosse* claims are not settled (and it is contemplated, pursuant to paragraph 28 below, that *Calder* will be settled), all rights that the Debtors and/or that the plaintiffs in the *Calder* or *Bosse* cases have or may have to pursue coverage for the *Calder* and *Bosse* claims shall be fully preserved and assigned to the Plan Trust and all defenses, if any, that Westchester Fire Insurance Company or Westchester Surplus Lines Insurance Company, as the case may be, may have with respect to these claims shall also be fully preserved. Upon the resolution of the *Calder* and *Bosse* claims with finality either by compromise or adjudication, Westchester Fire Insurance Company or Westchester Surplus Lines Insurance Company, as the case may be, shall receive the remainder of the release and protections for Policies bearing Nos. CUW788371001 and G22053504001 that are afforded to the other Subject Policies and Policies Nos. CUW788371001 and G22053504001 shall be deemed exhausted. With respect to the *Calder* claim, the Chapter 11 Plan shall further provide that the individual appellees in the *Calder* appeal shall be entitled to payment in full of the amounts bonded for the *Calder* appeal if their appeals goes forward and they prevail on their appeal so that their claim may be satisfied by payment of the bonded amount to them in the full amount of the award by the trial court. Alternatively, should the *Calder* claim be resolved by compromise prior to the final adjudication of the appeal pursuant to the terms of paragraph 28 below or otherwise, Westchester may call upon, and require be paid to *Calder*, the full amount of the Debtors' bond for *Calder* that is returnable to the estate as part of any compromise of the *Calder* claim and the Chapter 11 Plan shall provide that in the event such a compromise is reached, the appellees in the *Calder* case shall have first

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priority to the amounts agreed upon by compromise. Should the appellants prevail in the appeal and the case be remanded for another trial which again results in a plaintiffs' verdict, then Westchester Surplus Lines Insurance Company would be entitled to a full and complete release upon payment of such verdict to the appellees/plaintiffs.

29. The Debtors, Westchester Fire Insurance Company ("Westchester Fire") and the Calder claimants hereby agree to settle and compromise in full the claims of the Calder claimants by (a) Westchester Fire paying \$2,942,014, and (b) the Debtors causing to be paid, or directing RLI Insurance Company ("RLI") to pay, to the Calder claimants from the proceeds of the Debtors' bond that is returnable to the estate (Bond Number RSB4174412) the full amount of that bond that they posted for the Calder appeal (\$1,057,986.31). The forgoing payments shall be made within thirty days of the Payment Date but shall be further subject to the exchange of full and mutual releases, compliance with Medicare secondary payer requirements and the dismissal with prejudice of the Calder appeal. The automatic stay will remain in place through the Payment Date. If the Debtors are unable to deliver to the Calder claimants the full amount of their bond (\$1,057,986.31) from the proceeds of the Debtors' bond, for reasons beyond their control, the Debtors and/or the Calder claimants shall be free to go forward with their appeal(s) and otherwise prosecute their claims and, if they opt to do so, the other parties to this settlement of the Calder claims shall be relieved of their obligations under this paragraph.

I. Old Republic Specific Terms

30. To settle all matters between Old Republic Insurance Company ("ORIC") and the Debtors, ORIC will waive any distribution from the Debtors on account of its reimbursement claim against the Debtors, and will withdraw its Proofs of Claim. ORIC, however, retains all of its rights to proceed against and realize the proceeds of a letter of credit in the amount of \$3,000,000, which it may do so upon the Payment Date and without further order of the court.

J. Dispute Resolution

31. After this Term Sheet is fully executed, any disputes concerning the memorialization of the terms of this Term Sheet into the Chapter 11 Plan shall be subject to non-binding mediation by Hon. Richard Cohen (Ret.), or if he is not available, another neutral mediator experienced with bankruptcy insurance coverage settlements. If Hon. Richard Cohen (Ret.) is not available and the parties cannot agree upon an alternative candidate, then the administrator of JAMS' New York office shall appoint a substitute neutral mediator, subject to the consent of all Settling Parties, to perform that function. The Settling Parties further agree that any disputes not resolved through mediation shall be submitted to the Bankruptcy Court and all Settling Parties agree to the jurisdiction of the Bankruptcy Court to hear such disputes and consent to the authority of the Bankruptcy Court to enter any final orders regarding such disputes.

K. Confidentiality

32. Subject to disclosure obligations imposed by law, the fact and terms of this Settlement shall be maintained as confidential until the filing of the Settlement Approval Motion. The Settling Parties can waive this confidentiality requirement at any time upon mutual written consent.

L. Media

33. If any Settling Party requests from the other Settling Parties to issue any public statement regarding the Settlement, the Settling Parties shall agree on the terms and language of one joint press statement with respect to this Settlement to be released to the public at a mutually agreed upon time, but in no instance until after the filing of the Settlement Approval Motion. No Settling Party shall make any other statements to the media concerning the Settlement, except that the Settling Parties may refer the media to the press statement and any court filings not under seal. This Paragraph shall not preclude plaintiffs' counsel from identifying on their respective web sites and in any other materials describing their respective law firms, the fact that they were one of the counsel involved in the Settlement.

M. No Admission of Liability

34. The Chapter 11 Plan shall recite that: (1) the Debtors, Wal-Mart and the Participating Insurers deny liability for the Blitz Personal Injury Claims asserted; (2) neither the Chapter 11 Plan nor this Term Sheet, nor any other item pertaining to the Settlement contemplated herein, shall be offered in any other case or proceeding, including as evidence of any admission by the Debtors, Wal-Mart or a Participating Insurer of any liability with respect to any claim for damages or other relief; and (3) any stipulation or admission by the Debtors, Wal-Mart or a Participating Insurer contained in this Term Sheet, the Chapter 11 Plan or in any other document pertaining to the Settlement, is made for settlement purposes only.

N. Other Provisions

35. The Settling Parties will agree on language to be included in the Chapter 11 Plan or related documents on the following provisions, which language shall be consistent with customary and usual provisions in similar Wal-Mart settlement agreements (and not inconsistent with the Terms of this Term Sheet): (1) providing for the return or destruction of discovery materials provided by Wal-Mart in any of the personal injury actions; and (2) establishment of the Plan Trust as a Qualified Settlement Fund pursuant to the Internal Revenue Code and related regulations, which language shall be acceptable to Wal-Mart and the Participating Insurers.

O. Authority

36. The signatories hereto declare, warrant, and represent that they have agreed to the terms of this Term Sheet and that they have all requisite authority to enter into this Term Sheet. This Term Sheet may be signed in counterparts. Any revisions, amendments or modifications to the express terms of this Term Sheet shall only be effective if in writing, and if executed by each of the Settling Parties.

P. Condition Precedent

37. It shall be a condition precedent to the effectiveness of this Settlement that there be a BAH Settlement and that such BAH Settlement be approved by the Bankruptcy Court as part of the Confirmation Order, which order shall be a final order.

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WHEREFORE, intending to be legally bound to the foregoing, the Settling Parties hereby acknowledge their agreement to the Term Sheet by execution below.

DEBTORS

Blitz USA, Inc., Blitz Acquisition, LLC, Blitz RE Holdings, LLC and Miami OK, LLC f/k/a F3 Brands LLC, LAM 2011 Holdings, LLC and Blitz Acquisition Holdings, Inc.

Blitz USA, Inc.

By: 

Its: CEO

Dated: _____

LAM 2011 Holdings, LLC

By: _____

Its: _____

Dated: _____

Blitz Acquisition Holdings, Inc.

By: _____

Its: _____

Dated: _____

WHEREFORE, intending to be legally bound to the foregoing, the Settling Parties hereby acknowledge their agreement to the Term Sheet by execution below.

DEBTORS

Blitz USA, Inc., Blitz Acquisition, LLC, Blitz RE Holdings, LLC and Miami OK, LLC f/k/a F3 Brands LLC, LAM 2011 Holdings, LLC and Blitz Acquisition Holdings, Inc.


Blitz USA, Inc.

By: _____

Its: _____

Dated: _____


LAM 2011 Holdings, LLC

By: 

Its: Director

Dated: 7/24/2013

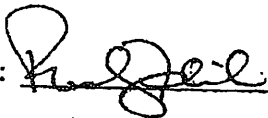
Blitz Acquisition Holdings, Inc.

By: 

Its: Director

Dated: 7/24/2013

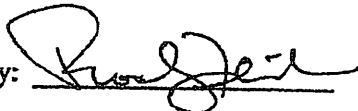
Blitz Acquisition, LLC

By: 

Its: CEO

Dated: _____

Blitz RE Holdings, LLC

By: 

Its: CEO

Dated: _____

Miami OK, LLC f/k/a/ F3Brands LLC

By: 

Its: CEO

Dated: _____

COMMITTEE

By: _____

Dated: _____

COMMITTEE, CO-CHAIR

I am one of the two co-chairs of the Official Committee of Unsecured Creditors, and have represented to the Settling Parties that the Committee consents to the Debtors' execution of the Term Sheet and entry into the Settlement.

By: _____

Dated: _____

COMMITTEE, CO-CHAIR

I am one of the two co-chairs of the Official Committee of Unsecured Creditors, and have represented to the Settling Parties that the Committee consents to the Debtors' execution of the Term Sheet and entry into the Settlement.

By: _____

Dated: _____

JARDEN PLASTIC SOLUTIONS, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

BECKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

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**RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS
FOR RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS
ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT 1**

By: _____

Dated: _____

**WATTS, GUERRA & CRAFT, AS ATTORNEYS FOR ERIC BALCH, A MEMBER OF
THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED
ON EXHIBIT 1**

By: _____

Dated: _____

**THE ANDERSON LAW FIRM, AS ATTORNEYS FOR DAVID CALDER, A MEMBER
OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS
IDENTIFIED ON EXHIBIT 1**

By: _____

Dated: _____

**BRENEMAN DUNGAN, AS ATTORNEYS FOR KAREN GUENIOT-KORNEGAY, A
MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER
CLIENTS IDENTIFIED ON EXHIBIT 1**

By: _____

Dated: _____

OLD REPUBLIC INSURANCE COMPANY

By: _____

Dated: _____

FIRST MERCURY INSURANCE COMPANY

By: _____

Dated: _____

FIRST SPECIALTY INSURANCE CORPORATION

By: _____

Dated: _____

LIBERTY SURPLUS INSURANCE CORPORATION

By: _____

Dated: _____

LIBERTY INSURANCE UNDERWRITERS INC.

By: _____

Dated: _____

ARCH INSURANCE COMPANY

By: _____

Dated: _____

CONTINENTAL CASUALTY COMPANY

By: _____

Dated: _____

WESTCHESTER FIRE INSURANCE COMPANY

By: _____

Dated: _____

WESTCHESTER SURPLUS LINES INSURANCE COMPANY

By: _____

Dated: _____

ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY

By: _____

Dated: _____

INTERSTATE FIRE AND CASUALTY INSURANCE COMPANY

By: _____

Dated: _____

NAVIGATORS SPECIALTY INSURANCE COMPANY

By: _____

Dated: _____

AXIS SURPLUS INSURANCE COMPANY

By: _____

Dated: _____

WAL-MART STORES, INC.

By: *D. Steh*

Dated: _____

**EXHIBIT 1
PARTICIPATING BLITZ PERSONAL INJURY CLAIMANTS**

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
6/20/2002	Montgomery, Michael	CA	12CV3057-L-WVG	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
8/15/2007	Funchess, Chad	SC	2009-CP-38-1257	Breneman Dungan, L.L.C. Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/9/2007	Johnson, Randall	CA	-	Choulos Choulos & Wyle
12/30/2007	Barnett, Jerry	MS	3:09-cv-00366	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/30/2007	Fulton, Daniel	MS	3:09-cv-00366	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
5/23/2008	Boling, Christopher	KY	1:09-cv-00067	Walker & Morgan, L.L.C Janet, Jenner & Suggs, LLC
6/22/2008	Strickland, Steve	FL	8:12-cv-02402	Bodiford Law Group
7/17/2008	Ballew, Jasmine Alexis	NC	10-cvs-691	The Anderson Law Firm
1/18/2009	Thornton, Dennis	AL	09-902481	The Anderson Law Firm
3/6/2009	Tillman, Donald	SC	11-CP-04-01200	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
7/24/2009	Fenn, Est. of Ja-el	GA	11-cv-1532-1 12-cv-1674-1	Walker & Morgan, L.L.C Breneman Dungan, L.L.C.

7/24/2009	Fenn, Jessica	GA	11-cv-1532-1 12-cv-1674-1	Walker & Morgan, L.L.C Breneman Dungan, L.L.C.
7/24/2009	Fenn, Est. of Jerimiah	GA	11-cv-1532-1 12-cv-1674-1	Walker & Morgan, L.L.C Breneman Dungan, L.L.C.
8/15/2009	Pierce, Brandon	IN	1:11-cv-01022	The Anderson Law Firm Richardson, Patrick, Westbrook, & Brickman, L.L.C.
10/11/2009	Melvin, William	FL	8:11-cv-2542	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
10/12/2009	Shickel, Jordan	IL	3:11-cv-03380	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
10/23/2009	Guillory, Kaleb	MS	Not Filed	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
12/6/2009	Grooms, Ethan	SC	4:11-cv-1327	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/18/2009	Crouch, Brooke	TX	5:11-cv-00150	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
12/23/2009	Trevino, Dylan	TN	1:10-cv-00115	The Anderson Law Firm
1/23/2010	Mims, David	AL	1:12-cv-00244	Glenda Cochran Associates
2/5/2010	Jacoby, Robert	OR	1:10-cv-03075	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.

3/5/2010	Kornegay, Est. of Matthew	MS	3:10-cv-00429	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
3/16/2010	Brogdon, Ronnie	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
3/24/2010	Kassim, Kamal	CT	Not Filed	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
4/11/2010	VanBrunt, Devan	MN	0:11-cv-01771	The Anderson Law Firm Richardson, Patrick, Westbrook, & Brickman, L.L.C.
6/18/2010	Madox, Robert	-	Not Filed	unknown
7/17/2010	Balch, Eric	TX	6:10-cv-00284	Ramsey Hill L.L.P.
7/17/2010	Balch, Cade	TX	6:10-cv-00284	Ramsey Hill L.L.P.
7/17/2010	Balch, Est. of Mason	TX	6:10-cv-00284	Ramsey Hill L.L.P.
9/19/2010	Al-Shara, Est. of Aliaa	MI	2:11-cv-14954	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
9/19/2010	Al-Shara, Majd	MI	2:11-cv-14954	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
9/28/2010	Burch, Timothy	GA	5:11-cv-00084	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/5/2010	N., Jacob	-	Not Filed	unknown
11/13/2010	Shilich, John	UT	Not Filed	The Anderson Law Firm
11/23/2010	Ferguson, Est. of Jim	SC	9:11-cv-02207	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, &

				Brickman, L.L.C. Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/4/2010	Stahl, Est. of Coty	SC	2:11-cv-02193	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/12/2010	Droney, Christopher	SC	6:11-cv-1320	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/30/2010	Mills, Ronald	SC	5:11-cv-01313	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/31/2010	Xiong, Joey	NC	Not Filed	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
1/11/2011	Ward, Curtis	GA	1:11-cv-00039	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/11/2011	Ward, Kenneth	GA	1:11-cv-00039	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Purvis, James C.	GA	7:11-cv-00111	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Purvis, Dusty	GA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Purvis, Tony	GA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Joyner, Est. of Jacob	FL	5:11-cv-00334 5:12-cv-00318	Walker & Morgan,

				L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Blount, Betty	FL	5:12-cv-00318	Law Offices of Brian J Wolk
1/15/2011	Blount, Zackery	FL	5:12-cv-00318	Law Offices of Brian J Wolk
1/20/2011	Wilson, Est. of Marshall	FL	3:11-cv-00496	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/22/2011	Guilford, Wade	FL	5:11-cv-00336	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
2/25/2011	Feldman, Est. of Clarence	FL	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
2/25/2011	Feldman, Scott	FL	5:11-cv-00335	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
2/25/2011	Loveridge, Est. of Sonja	FL	Not Filed	Kinsey, Troxel, Walborsky & Bradley, P.A.
2/25/2011	McClelland, Dorsey	FL	5:11-cv-00335	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
3/1/2011	Weddle, Susan	AL	3:12-cv-00651	Morris, Haynes, Hornsby, Wheeles and Knowles
3/1/2011	Smith, Adam	AL	3:12-cv-00651	Morris, Haynes, Hornsby, Wheeles and Knowles
3/1/2011	Smith, Megan	AL	3:12-cv-00651	Morris, Haynes, Hornsby, Wheeles and Knowles
4/1/2011	Hale, Kevin	PA	Not Filed	Walker & Morgan, L.L.C

				Richardson, Patrick, Westbrook, & Brickman, L.L.C.
5/1/2011	Delia, Cyrus Owen	OR	Not Filed	Law Offices of Danny Lang
8/16/2011	Jones, Dalan	TX	Not Filed	Sico, White, Hoelscher & Braugh, LLP
8/16/2011	Jones, Leiya	TX	Not Filed	Sico, White, Hoelscher & Braugh, LLP
9/24/2011	Hayes, Jacob	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
10/1/2011	Morgan, Johnny C.	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
10/24/2011	Gutierrez, Est of Dale	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/2011	Perez, Aliha	TX	Not Filed	Julian C. Gomez
11/2011	Perez, Irene	TX	Not Filed	Julian C. Gomez
11/2011	Perez, Jose	TX	Not Filed	Julian C. Gomez
11/17/2011	Hawkins, Est. of Michael	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/17/2011	Broach, Eddie Cory	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/17/2011	Broach, Justin A.	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/23/2011	Newby, Wayne	CA	Not Filed	Mark Sudderth
12/1/2011	Coleman, John Marcus	SC	Not Filed	Walker & Morgan,

				L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/17/2011	Mizell, Est. of James O.	GA	5:12-cv-00104	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/19/11	Bauman, Jr., Michael	KY	12-738	Jones Ward
1/21/2012	Arwood, Michael Todd	AL	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
5/17/2012	Torres, Anthony	TX	-	Sico, White, Hoelscher & Braugh, L.L.P.
5/17/2012	Warren, Colton	TX	-	Sico, White, Hoelscher & Braugh, L.L.P.
5/28/2012	Williams, Jacob	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
7/14/2012	Callihan, Est. of Bruce R.	LA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
7/14/2012	Ramos, Helen Louise	LA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.

EXHIBIT 2
PARTICIPATING INSURERS
SUBJECT POLICIES

Insurer	Policy No.	Policy Period
* Old Republic Insurance Company	MWZY 58888	07/31/10-07/31/11
* Old Republic Insurance Company	MWZY 59256	07/31/11-07/31/12
First Specialty Insurance Corporation	IRE98445	07/31/10-07/31/11
First Specialty Insurance Corporation	IRE984451	07/31/11-7/31/12
First Mercury Insurance Company	CEGA000205	07/31/10-07/31/11
First Mercury Insurance Company	CEGA000307	07/31/11-07/31/12
Continental Casualty Company	L4017503244	07/31/09-07/31/10
Continental Casualty Company		07/31/10-07/31/11
Westchester Surplus Lines Insurance Company	CUW788371001	07/31/05-07/31/06
Westchester Fire Insurance Company	G22053504001	07/31/06-07/31/07
Westchester Fire Insurance Company	G22053504002	07/31/07-07/31/08
Westchester Fire Insurance Company	G22053504003	07/31/08-07/31/09
Westchester Fire Insurance Company	G22053504004	07/31/09-07/31/10
Liberty Surplus Insurance Corporation	EGL-BO184170-016	07/31/06-07/31/07
Liberty Surplus Insurance Corporation	EGL-BO-184170-026	07/31/07-07/31/08
Liberty Surplus Insurance Corporation	EGL-BO-184170-036	07/31/08-07/31/09
Liberty Surplus Insurance Corporation	EGL-BO-184170-046	07/31/09-07/31/10
Liberty Insurance Underwriters Inc.	LQ1-B71-213221-019	07/31/09-07/31/10
Liberty Insurance Underwriters Inc.	EXCAT0687652	07/31/10-07/31/11
Liberty Insurance Underwriters Inc.	EXCAT068765-3	07/31/11-07/31/12
Interstate Fire and Casualty Insurance Company	HFX1002572	07/31/08-07/31/09
Navigators Specialty Insurance Company	CH08EXC499507NC	07/31/08-07/31/09
Axis Surplus Insurance Company	EAU741333/01/2008	07/31/08-07/31/09
Endurance American Specialty Insurance Company	ELD 10000712700	07/31/07-07/01/08
Arch Insurance Company	UXP004536700	07/31/11-7/31/12

EXHIBIT 3

KNOWN POLICIES ISSUED BY NON-PARTICIPATING INSURERS

Insurer	Policy No.	Policy Period
Hartford Insurance Company	38 UUNQS 4661	2000-2001
	38 UENQS 4661	2001-2002
Lumbermens Mutual Casualty Company	3SX 130772-00	2000-2001
Admiral Insurance Company	A02AG14372	2002-2003
	CA000005350-02	2003-2004
American International Group	BE3207024	2003-2004
Admiral Insurance Company	CA000005350-02	2004-2005
American International Group	BE974595	2004-2005
Nautilus Insurance Company	BK0011111-0	2005-2006
RSUI Group, Inc.	NHA2169-4 AND NHA216981	2006-2007

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BLITZ U.S.A., Inc., et al.,¹

Debtors.

Chapter 11

Case No. 11-13603 (PJW)

(Jointly Administered)

Re: Docket Nos. 2007, 2008 & 2005, 2014

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CONFIRMING DEBTORS' AND OFFICIAL COMMITTEE OF UNSECURED
CREDITORS' FIRST AMENDED JOINT PLAN OF LIQUIDATION**

A HEARING HAVING BEEN HELD BEFORE THE COURT AND CONCLUDED on January 28, 2014 (the "Confirmation Hearing"), to consider confirmation of the *Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation*, dated December 18, 2013 (including all exhibits thereto and as modified, the "Plan"),² proposed by the debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), together with the Official Committee of Unsecured Creditors (the "Committee," and collectively, the "Proponents");

IT APPEARING TO THE COURT that the *Disclosure Statement for the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation*, dated December 18, 2013 [Docket No. 2000-2] (the "Disclosure Statement") was approved by the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and MiamiOK LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 309 North Main Street, Miami, OK 74354.

² Capitalized terms used herein without definition have the meanings provided for in the Plan. In addition, any term used in the Plan or this Confirmation Order that is not defined in the Plan or this Confirmation Order, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules.



Court on December 18, 2013, pursuant to the *Order (A) Approving the Disclosure Statement; (B) Approving Form and Manner of Notice of Confirmation Hearing; (C) Approving Procedures for the Solicitation and Tabulation of Votes to Accept or Reject the Plan; (D) Estimating Each Blitz Personal Injury Claim at \$1.00 for Voting Purposes; (E) Approving Notice and Objection Procedures in Respect Thereof and (F) Granting Related Relief* [Docket No. 2005] (the "Disclosure Statement Order"), which, among other things, also established procedures for the solicitation and tabulation of votes to accept or reject the Plan, scheduled a hearing on confirmation of the Plan and approved related notice procedures;

IT FURTHER APPEARING TO THE COURT that solicitation and noticing procedures with respect to the Plan approved by the Court pursuant to the Disclosure Statement Order have been followed as set forth in the *Certification of P. Joseph Morrow IV with Respect to the Tabulation of Votes on the Debtors' and Official Committee of Unsecured Creditors First Amended Joint Plan of Liquidation* sworn to on January 23, 2014 [Docket No. 2111] (the "Voting Declaration"); and affidavits of service having been executed by Kurtzman Carson Consultants, LLC (the "Balloting Agent") with respect to the mailing of notice of the Confirmation Hearing and solicitation materials in respect of the Plan in accordance with the Disclosure Statement Order (collectively, the "Affidavits of Service") and having been filed with the Court [Docket Nos. 2025, 2026, 2027, 2028, 2029, 2037, 2054 and 2082];

IT FURTHER APPEARING TO THE COURT that on January 6, 2014, the Proponents filed with the Court, as Exhibit 3 to the Plan, the form of the Blitz Liquidating Trust Agreement [Docket No. 2041], together with any other documents necessary to implement the Plan, the "Plan Documents";

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IT FURTHER APPEARING TO THE COURT that on January 15, 2014, the Proponents filed the *Notice of Rescheduling of Confirmation Hearing Date and Time* [Docket No. 2065] stating that the hearing to consider confirmation of the Plan had been adjourned to January 28, 2014 at 9:30 a.m. (Eastern Time) before the Honorable Peter J. Walsh, Judge of the Bankruptcy Court, in the United States Courthouse, at 824 Market Street, Wilmington, Delaware 19801.³

IT FURTHER APPEARING TO THE COURT that the deadline for filing objections to the Plan has passed;

IT FURTHER APPEARING TO THE COURT that the deadline for casting ballots to accept or reject the Plan has passed and that the results of voting have been certified by the Balloting Agent, acting as voting agent for the balloting permitted for Classes 3(a) and 3(b) (Blitz Personal Injury Trust Claims), and Classes 4(a) and 4(b) (General Unsecured Claims), pursuant to the Disclosure Statement Order and as set forth in the Voting Declaration;

IT FURTHER APPEARING TO THE COURT that the following have been filed or offered in support of the Plan: (a) the *Declaration of Rocky Flick in Support of Confirmation of the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* [D.I. 2133] (the "Flick Declaration"); (b) the *Declaration of Ken McClain in Support of Confirmation of the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* [D.I. 2135] (the "McClain Declaration"); (c) *Declaration of Brian Mottet on behalf of Wal-Mart Stores, Inc. with respect to the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* [D.I. 2114] (the "Mottet Declaration"); (d) the *Declaration of Christian Michalik in Support of he Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* [D.I. 2104]

³ The confirmation hearing time was subsequently moved to 2:30 p.m. at the request of the parties to allow for a mediation session before Chief Judge Kevin Gross, Judge of the Bankruptcy Court, among the Proponents and the remaining objectors.

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(the "Michalik Declaration"); (e) the Declaration of Timothy P. Harkness in Support of the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation [D.I. 2105] (the "Harkness Declaration"); (f) the Declaration of Robert Elmburg in Support of the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation [D.I. 2108] (the "Elmburg Declaration"); (g) the Declaration of James A. Pearson in Support of Confirmation of the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation [D.I. 2134] (the "Pearson Declaration"); (h) the Declaration of Jeffrey Roberts in Support of Confirmation of the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation [D.I. 2118] (the "Roberts Declaration"); (i) the Declaration of Steve Snyder in Support of Confirmation of Debtors' and Official Committee of Unsecured Creditor's First Amended Joint Plan of Liquidation [D.I. 2147] (the "Snyder Declaration," and with the Flick Declaration, McClain Declaration, Mottet Declaration, Michalik Declaration, Harkness Declaration, Elmburg Declaration, Pearson Declaration, Roberts Declaration, collectively, the "Declarations"); (j) the Expert Report of James Marshall, Jr. [D.I. 2113] (the "Marshall Report"); (k) the Expert Report of Denise Neumann Martin [D.I. 2112] (the "Martin Report"); (l) that certain Bates White Report Regarding the Participating Insurer Settlement admitted as evidence at the hearing on the Insurance Settlement Motion (the "Bates White Report," and with the Marshall Report and the Martin Report, collectively the "Expert Reports"); and (m) the record from the December 18, 2013 hearing approving the Insurance Settlement Motion (the "December 18, 2013 Record");

IT FURTHER APPEARING TO THE COURT that the following objections to confirmation of the Plan have been filed: (a) *Objection of Newby Claimant to Confirmation of*

the Debtors' and Official Committee of Unsecured Creditors' First Amended Plan of Liquidation [D.I. 2090]; (b) *Objection of Estate of Joseph M. Cataldi and Lori Cataldi (as Guardian, Parent, and Natural Guardian for Minors Michael Cataldi and Brianna Cataldi) to Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* [D.I. 2091]; (c) *Objection to Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* [D.I. 2092]; and (d) *The United States Trustee's Objection to Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* [D.I. 2116] (collectively, the "**Objections**"), each of which was withdrawn and resolved on the record at the Confirmation Hearing.

NOW, THEREFORE, based upon the Court's review of (a) the Disclosure Statement, (b) the Plan, (c) the Plan Documents, (d) the Declarations and the Expert Reports, each of which was admitted into the record without objection, (e) the Voting Declaration, (f) all of the other evidence proffered or adduced, filings and arguments of counsel during these Chapter 11 Cases and the Confirmation Hearing, including the December 18, 2013 Record; and after due deliberation thereon and good cause appearing therefor, and for the reasons set forth on the record at the Confirmation Hearing:

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law stated in this Confirmation Order and on the record at the Confirmation Hearing constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

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B. Jurisdiction; Venue; Core Proceeding. This Court has jurisdiction over the Debtors' Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue in the District of Delaware was proper as of the Petition Date and continues to be proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L) over which this Court has exclusive jurisdiction.

C. Transmittal and Mailing of Solicitation Materials and Notices. The solicitation materials and notices prescribed by the Disclosure Statement Order were served in compliance with the Disclosure Statement Order, and such service was adequate and sufficient. Adequate and sufficient notice of the Confirmation Hearing and the other deadlines and matters required to be noticed pursuant to the Disclosure Statement Order was given in compliance with the Bankruptcy Rules and the Disclosure Statement Order, and no other or further notice is or shall be required.

D. Adequacy of Voting Procedures. All procedures used to distribute the solicitation materials to the appropriate creditors entitled to vote on the Plan and to tabulate the ballots returned by creditors were fair and were conducted in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order. Votes for acceptance or rejection of the Plan were solicited and cast in good faith, and only after transmittal of the approved Disclosure Statement, and otherwise in compliance with Bankruptcy Code sections 1125 and 1126 and Bankruptcy Rules 3017 and 3018. As evidenced by the Voting Declaration, all Ballots were properly tabulated.

E. Good Faith Solicitation – 11 U.S.C. § 1125(e). Based on the record before the Court in the Chapter 11 Cases, the Proponents, and any of their respective directors, officers, employees, members, participants, agents, representatives, partners, affiliates, counsel, other

advisors, successors or assigns, have acted in good faith within the meaning of Bankruptcy Code sections 1125(e) and 1129(a)(3), and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in Bankruptcy Code section 1125, and are entitled to the protections afforded by Bankruptcy Code section 1125(e).

F. Impaired Class that Has Voted to Accept or Reject the Plan. Classes 3(a), 3(b), 4(a) and 4(b) are impaired and, as evidenced by the Voting Declaration, which certified both the method and results of the voting, have voted to accept the Plan pursuant to the requirements of Bankruptcy Code sections 1125 and 1126. Thus, at least one impaired Class of Claims has voted to accept the Plan.

G. Classes Deemed to have Accepted or Rejected the Plan. Classes 1(a), 1(b), 2(a) and 2(b) are not impaired under the Plan and are deemed to have accepted the Plan pursuant to Bankruptcy Code section 1126(f). Classes 5(a), 5(b), 6(a) and 6(b) are not expected to receive any distributions under the Plan and are deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g).

H. Releases, Channeling Injunction, Exculpation and Indemnification Provisions. The Releases and Channeling Injunction with respect to each Protected Party, as set forth in Sections 4.3.3, 4.34 and 7.2 and (ii) exculpation and limitation of liability with respect to each Exculpated Party, as set forth in Section 15.4 of the Plan are appropriate under applicable law. The Court's findings of fact to support the approval of the Releases and Channeling Injunction, based on the record established at the Confirmation Hearing, including the Declarations, the Expert Reports, and the December 18, 2013 Record are set forth below.

(1) *Fairness.*

(a) The Participating Insurers, on behalf of themselves and all entities covered under the Participating Insurer Policies, are contributing \$137,540,639.36 to the Blitz Personal Injury Trust, through the buy-back of the Participating Insurer Policies. Moreover, the Participating Insurers have previously provided the Debtors' Estates with approximately \$200,000 to fund a portion of the notice costs in connection with the Blitz Personal Injury Claim Bar Date Order. This payment, and the compromises by the Participating Insurers providing for the payment, is a substantial contribution and is critical to the Plan.

(b) In connection with the Insurance Settlement, Wal-Mart is contributing \$26,429,360.64 to the Blitz Personal Injury Trust. Wal-Mart contends that the amount of cash it contributed to fund the Blitz Personal Injury Trust is in excess of the contribution, if any, needed to satisfy the self-insured retention obligations and activate coverage under the Participating Insurance Policies. In addition, Wal-Mart is contributing \$1.54 million to the Blitz Liquidating Trust to fund distributions to holders of Administrative Expense Claims and General Unsecured Claims against the USA Debtors' Estates. Moreover, Wal-Mart has previously provided the Debtors' Estates with approximately \$100,000 to fund a portion of the notice costs in connection with the Blitz Personal Injury Claim Bar Date Order. Finally, Wal-Mart has agreed to waive significant claims against the Debtors' Estates and agreed to relinquish valuable insurance rights and against the Participating Insurer Policies consented to the Insurance Buy-Back in connection with the Insurance Settlement. The consideration provided by Wal-Mart constitutes a substantial contribution and is critical to the Plan.

(c) In connection with the BAH Settlement, Blitz Acquisitions Holdings, Inc., on behalf of the BAH Released Parties, is paying \$6.25 million (plus up to an additional \$250,000 to pay the Flick Claim, to the extent it is allowed) to the USA Debtors' Estates. Without this infusion of funds, the USA Debtors would be administratively insolvent. The BAH Settlement Payment would not be possible without the consent of all the BAH Released Parties. As additional consideration, Mr. Michalik, Mr. Aurelio, Kinderhook Capital Fund II, LP and Kinderhook Industries II, LP are also waiving their claims against the USA Debtors. The consideration provided by the BAH Released Parties constitutes a substantial contribution and is critical to the Plan.

(d) As reflected in the Voting Declaration, 95.29% (81 out of 85) of the holders of Blitz Personal Injury Claims in Class 4(a) of the Plan that voted on the Plan and 100% (3 out of 3) of the holders of Blitz Personal Injury Claims in Class 4(b) of the Plan have voted to accept the Plan. On the record at the Confirmation Hearing, three of the parties that had originally voted against confirmation of the Plan announced that they were changing their votes to votes in support of the Plan. As a result of those announcements, only one vote against confirmation of the Plan in Class 4(a) remains, and that claimant did not object to confirmation of the Plan. Accordingly, the Plan has been overwhelmingly accepted by the classes of creditors affected by the Releases and the Channeling Injunction and there is no remaining objection to confirmation of the Plan.

(e) Expert testimony as to the valuation of the pending Covered Blitz Personal Injury Claims in the tort system was provided at the Confirmation Hearing by Wal-Mart. The Court finds this evidence credible. The Court finds this evidence consistent with the evidence adduced in the December 18, 2013 Record. No contrary evidence was provided in the record. The aggregate value of the Covered Blitz Personal Injury Claims would be \$102.9 million if those claims were litigated in the tort system. The Blitz Personal Injury Trust is being funded with \$163,970,000 in funds from the Insurance Settlement Payment. Further, of the 61 Covered Blitz Personal Injury Claims projected to be included in the Non-Appealing Fund, the aggregate value of those claims, if litigated in the tort system would be \$96.8 million. Similarly, of the 32 pending Covered Blitz Personal Injury Claims projected to be eligible for participation in the Special Circumstances Fund, the aggregate value of those claims, if litigated in the tort system, would be \$6.1 million. The Blitz Personal Injury Trust will have sufficient assets on the Effective Date to process and pay Covered Blitz Personal Injury Trust Claims in accordance with the terms of the Plan, the Blitz Liquidating Trust Agreement and the Blitz Personal Injury TDP. The Plan, through the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP, has criteria, rules and procedures that are reasonable and equitable to process, evaluate, allow or disallow, and pay (where applicable) Covered Blitz Personal Injury Trust Claims in a similar and fair manner. Because the allocations contained in the Blitz Personal Injury TDP provide substantially greater recoveries to holders of Covered Blitz Personal Injury Claims than their projected recoveries in the tort system, the holders of Covered Blitz Personal Injury Claims are receiving fair consideration in exchange for the Releases and the Channeling Injunction.

(f) The Blitz Personal Injury TDP provides a fair and equitable mechanism for holders of Covered Blitz Personal Injury Claims to reject the offers they receive from the Blitz Personal Injury Trust and proceed to mediation/arbitration, and ultimately the tort system, to liquidate their respective Covered Blitz Personal Injury Claims.

(g) Holders of Blitz Personal Injury Trust Claims arising prior to the Release Date retain their rights under the Assigned Blitz Insurance Policies issued by the Non-Participating Insurers. Accordingly, these claimants are receiving fair consideration in exchange for the Releases and the Channeling Injunction.

(2) *Necessity to the Reorganization.* The Releases and the Channeling Injunction are critical to the success of the Plan. Without the Releases and the Channeling Injunction, the Protected Parties are not willing to make their contributions under the Plan. Moreover, the BAH Settlement and the Insurance Settlement are mutually dependent on each other and neither can be consummated without the other. Absent those contributions, the Plan is not feasible.

(3) *Record Supports Specific Findings.* The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the Release, Channeling Injunction and exculpation provisions contained in the Plan.

(4) *Extraordinary Circumstances.* These Chapter 11 Cases were precipitated by a significant number of personal injury claims arising out of accidents involving the Debtors' products. The increasing number of Blitz Personal Injury Claims ultimately drove the Debtors into bankruptcy where they were forced to sell substantially all their assets. The Debtors' primary remaining assets, the proceeds from the Blitz Insurance Policies, are the subject of numerous substantial coverage issues, including whether all of the self-insured retentions had been exhausted to trigger coverage under certain of the Participating Insurer Policies. Moreover, Wal-Mart vigorously defended its rights as an additional insured under the Participating Insurer Policies both pre- and post-petition. After months of arms-length, contentious negotiations before Chief Judge Kevin Gross and Judge Richard A. Cohen (Ret.), the Debtors, the Committee and the Protected Parties came to terms on a global settlement that formed the foundation of the Plan. These extensive efforts and substantial contributions by each of the Protected Parties, along with the magnitude of the recoveries, provided under the Plan to holders of Allowed Claims constitute extraordinary circumstances warranting the Releases and Channeling Injunction set forth in the Plan.

(5) *Identity of Interest.* There is a substantial identity of interest between the Debtors and the Protected Parties, such that a Blitz Personal Injury Claim asserted against a Protected Party is essentially a claim against the Debtors.

(a) *Participating Insurers.* The Participating Insurers are the Debtors' insurance providers under the Participating Insurer Policies. The Blitz Insurance Policies are the primary remaining assets of the Debtors' Estates. Accordingly, any Blitz Personal Injury Claim asserted against the Debtors, if successful, would ultimately be paid from the proceeds of the Blitz Insurance Policies (subject to the policies' terms and conditions and any applicable coverage defenses). To the extent any third party has a claim against the Participating Insurers, such claim must arise out of an incident subject to coverage under one or more of the Participating Insurer Policies. Because any claim successfully asserted against a Participating Insurer will be paid from the proceeds of the Participating Insurer Policies, a claim against a Participating Insurer will directly reduce the coverage available to the Debtors and any other insureds under those policies. Thus, a claim against a Participating Insurer is essentially a claim against the Debtors.

(b) *Wal-Mart.* Each of the supplier agreements in place between Wal-Mart and Blitz U.S.A., Inc. in effect during the period from July 31, 2007 through July 31, 2012 contains a clause that requires (i) Blitz U.S.A., Inc. to defend and indemnify Wal-Mart from all claims and litigation relating to products manufactured by Blitz U.S.A., Inc.; and (ii) that Blitz U.S.A., Inc. is required to obtain or extend its general liability insurance policies to cover Wal-Mart as a named insured or as an insured under a general endorsement. As a result, Wal-Mart is an additional insured under the Participating Insurer Policies. Accordingly, suits against Wal-Mart are covered by the Debtors' insurance and would deplete the assets of the Debtors' Estates.

(c) *BAH Released Parties.* Each of the BAH Released Parties have direct or indirect indemnification and/or coverage rights against the Debtors in connection with any alleged liability in connection with Blitz Personal Injury Claims, arising out of one of more of the following: (i) the Management Services Agreement

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dated as of September 21, 2007 among Blitz USA, Inc., Blitz Holdings, LLC (n/k/a LAM 2011 Holdings, LLC) and Kinderhook Industries II, L.P.; (ii) applicable insurance policies; (iii) specific actions or resolutions of the Debtors' Boards of Directors; (iv) certificates of incorporation, certificates of limited partnership, articles of organization or certificates of formation (as applicable); (v) bylaws and operating agreements of the Debtors; or (vi) statutory or common law. Claims asserted by any of the BAH Released Parties under any of the foregoing bases would deplete the assets of the Debtors' Estates.

(d) *Unified Interest.* Each of the Protected Parties share a common goal of resolving their competing and interrelated claims and achieving a fair and equitable distribution of the Debtors' remaining assets through the Plan. Absent the involvement of each of the Protected Parties, none of the settlements required for, or entered into in connection with, the confirmation of the Plan would be possible, and few, if any, assets would be available for distribution to the Debtors' Creditors.

I. Compromise and Settlement. Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Petition Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, by or against the Debtors, arising out of, relating to or in connection with the business or affairs of or transactions with the Debtors. The Court's specific findings of fact to support the approval of the Insurance Settlement and the BAH Settlement, based on the record established at the Confirmation Hearing, including the Declarations, the Expert Reports and the December 18, 2013 Record, are set forth below.

(1) The Debtors and the Committee performed sufficient due diligence into the scope of the Debtors' available insurance coverage and the likelihood of recovery with respect to Blitz Personal Injury Claims against the Debtors.

(2) The Participating Insurers have asserted the position that certain policies cannot be accessed to satisfy Blitz Personal Injury Claims if litigated in the tort system due to failure to exhaust the self-insured retentions ("SIRs") of these certain policies. The Blitz Personal Injury Claims present serious questions concerning the liability of each respective Blitz Insurer and the availability of coverage under the Blitz Insurance Policies.

(3) In the absence of each of the Protected Parties being protected by the Releases and the Channeling Injunction, the continuation of litigation of Blitz Personal Injury

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Claims in the tort system would result in the incurrence of costs that would materially diminish the assets available to satisfy Blitz Personal Injury Trust Claims.

(4) The attorneys representing the holders of Blitz Personal Injury Claims appointed to the Committee represent an appropriate cross-section of diverse types of injuries and are adequately representative of all holders of Blitz Personal Injury Claims.

(5) The Committee communicated with holders of Blitz Personal Injury Claims not appointed to the Committee regarding the terms of Blitz Personal Injury TDP and TDP Scoring System.

(6) All communications between the Committee and its representatives, on the one hand, and any holder of a Blitz Personal Injury Claim, on the other, were undertaken in good faith.

(7) A Vendor, officer, director and/or shareholder of Blitz sued on a Blitz Personal Injury Claim might be entitled to coverage under the Participating Insurer Policies. If any of the foregoing are insureds under the respective policies, they could tender the Blitz Personal Injury Claims to the Participating Insurers for defense and indemnity. Accordingly, any settlement relating to, and the buy-back of, the Participating Insurer Policies must also resolve all claims against Vendors, officers, directors and shareholders to the same extent such claims are being resolved against the Debtors, which justifies the inclusion of the Vendors, officers, directors and shareholders as Protected Parties under the Plan.

(8) The potential indemnification claims of Wal-Mart with respect to the Participating Insurer Policies, if successful, would materially deplete the Debtors' available insurance coverage and reduce the assets otherwise available to satisfy Blitz Personal Injury Claims.

(9) Based on the settlements and compromises set forth in the Plan, including the Insurance Settlement, Wal-Mart consented to the Participating Insurers' buyback of the Participating Insurer Policies under 11 U.S.C. § 363(f)(2) thus avoiding any need for litigation of issues under other subparagraphs of 11 U.S.C. § 363(f).

(10) Wal-Mart's contributions to the Plan facilitate/provide for payment to Blitz Personal Injury Claims which do not assert liability against Wal-Mart.

(11) The Participating Insurer Policies are property of the Debtors and the Debtors' estates pursuant to 11 U.S.C. § 541(a).

(12) With the exception of the Blitz Insurance Policies, the Debtors' estates possess few to no assets to fund a recovery for Blitz Personal Injury Trust Claims.

(13) The Debtors appropriately exercised their business judgment in connection with the negotiation and solicitation of the Plan, including considering the input of the Committee with respect to the terms of the Insurance Settlement, the BAH Settlement, the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP.

(14) The distributions to be provided on account of Allowed Covered Blitz Personal Injury Claims represent a better opportunity to recover more funds at a faster pace than would be available by liquidation through the tort system.

(15) The USA Debtors, the BAH Debtors and the Committee performed sufficient due diligence into the claims by and between the USA Debtors on the one hand, and the BAH Debtors and their non-debtor subsidiaries and affiliates on the other, including consideration of the complexity, expense and delay of any litigation resolving such claims and the likelihood of success in such litigation.

(16) The compromises and settlements, including the Insurance Settlement and the BAH Settlement, are in the best interests of the Debtors, the Estates, creditors and other parties in interest, and are fair, equitable and within the range of reasonableness.

J. Deemed Consolidation. Based on, among other things, the Disclosure Statement, the Flick Declaration and the record of the Confirmation Hearing, no class of creditors or interest holders is disadvantaged by the deemed substantive consolidation of the USA Debtors and the BAH Debtors, respectively.

K. Plan Compliance with Bankruptcy Code -- 11 U.S.C. § 1129(a)(1). The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code section 1129(a)(1).

(1) *Proper Classification—11 U.S.C. §§ 1122, 1123(a)(1).* Aside from Administrative Expense Claims and Priority Claims, which need not be classified, the Plan designates twelve (12) Classes of Claims and Equity Interests. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate among holders of Claims and Equity Interests. Thus, the Plan satisfies Bankruptcy Code sections 1122 and 1123(a)(1).

(2) *Specified Unimpaired Classes—11 U.S.C. § 1123(a)(2).* Article III of the Plan specifies that Classes 1(a), 1(b), 2(a), and 2(b) are unimpaired under the Plan, thereby satisfying Bankruptcy Code sections 1123(a)(2).

(3) *Specified Treatment of Impaired Classes—11 U.S.C. § 1123(a)(3).* Article III of the Plan designates Classes 3(a), 3(b), 4(a), 4(b), 5(a), 5(b), 6(a), and 6(b) as impaired and specifies the treatment of Claims and Equity Interests in those Classes, thereby satisfying Bankruptcy Code section 1123(a)(3).

(4) *No Discrimination*—11 U.S.C. § 1123(a)(4). The Plan provides for the same treatment by the Debtors for each Claim or Equity Interest in each respective Class unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying Bankruptcy Code sections 1123(a)(4).

(5) *Implementation of Plan*—11 U.S.C. § 1123(a)(5). Articles IV, V, VI, VII and XII of the Plan provide adequate and proper means for its implementation, thereby satisfying Bankruptcy Code sections 1123(a)(5).

(6) *Non-Voting Equity Securities*—11 U.S.C. § 1123(a)(6). The Plan, as a plan of liquidation, contemplates that all Equity Interests of the USA Debtors shall be cancelled as of the Effective Date and that a single share of BAH shall be issued to Kinderhook Capital Fund II, L.P. for purposes of complying with Delaware corporate law and effectuating the BAH Debtors' liquidation under the Plan. As a result thereof, the Plan complies with section 1123(a)(6) of the Bankruptcy Code.

(7) *Selection of Officers and Directors*—11 U.S.C. § 1123(a)(7). The initial trustees of both the Blitz Liquidating Trust and the Blitz Personal Injury Trust have been identified. Similarly, the BAH Plan Administrator has been identified and will be vested with authority to act on behalf of the BAH Debtors post-confirmation. These appointments are consistent with the best interests of holders of Claims and Equity Interests and public policy. Accordingly, the requirements of Bankruptcy Code section 1123(a)(7) are satisfied.

(8) *Additional Plan Provisions*—11 U.S.C. § 1123(b). The Plan's additional provisions are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code. The failure to specifically address a provision of the Bankruptcy Code in this Confirmation Order shall not diminish or impair the effectiveness of this Confirmation Order.

(a) *Impairment of Claims and Interests and Assumption, Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases*—11 U.S.C. § 1123(b)(1)-(2). In accordance with Bankruptcy Code section 1123(b)(1), Article III of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Equity Interests. In accordance with Bankruptcy Code section 1123(b)(2), Article VIII of the Plan provides for the rejection of all executory contracts and unexpired leases of the Debtors that have not expired by their own terms as of the Effective Date, except for those executory contracts and unexpired leases that have been assumed, assumed and assigned or rejected pursuant to previous orders of the Bankruptcy Court. The Plan is therefore consistent with Bankruptcy Code section 1123(b)(1)-(2).

(b) *Modification of the Rights of Holders of Claims*—11 U.S.C. § 1123(b)(5). Article III of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of each Class of Claims, and therefore, the Plan is consistent with Bankruptcy Code section 1123(b)(5).

(c) *Other Provisions Not Inconsistent with Applicable Provisions of the Bankruptcy Code*—11 U.S.C. § 1123(b)(6). The Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code,

including: (a) the provisions of Article XII of the Plan regarding the means for executing and implementing the Plan; (b) the provisions of Article VIII of the Plan governing the treatment of executory contracts and unexpired leases; (c) the provisions of Article VI concerning the preservation of certain rights and defenses with respect to certain insurance policies; (d) the provisions of Article XII of the Plan with respect to the separate substantive consolidation of the USA Debtors and the BAH Debtors; and (e) the provisions of Article XIII of the Plan regarding retention of jurisdiction by the Court over certain matters after the Effective Date. The Plan is therefore consistent with Bankruptcy Code section 1123(b)(6).

(9) *Plan Compliance with Fed. R. Bankr. P. 3016.* The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b). Further, the Plan and Disclosure Statement describe in specific and conspicuous language all acts to be enjoined and identify the entities that are subject to the injunction, satisfying Bankruptcy Rule 3016(c) to the extent applicable.

(10) *Compliance with Fed. R. Bankr. P. 3017.* The Proponents have given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d) and the Disclosure Statement Order. The solicitation materials prescribed by the Disclosure Statement Order were transmitted to the creditors entitled to vote on the Plan in accordance with Bankruptcy Rule 3017(d).

(11) *Compliance with Fed. R. Bankr. P. 3018.* The solicitation of votes to accept or reject the Plan satisfies Bankruptcy Rule 3018. The Plan was transmitted to all creditors entitled to vote on the Plan, sufficient time was prescribed for such creditors to accept or reject the Plan, and the solicitation materials used and solicitation procedures followed comply with Bankruptcy Code sections 1125 and 1126, thereby satisfying the requirements of Bankruptcy Rule 3018.

L. Compliance with Bankruptcy Code—11 U.S.C. § 1129(a)(2). The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code section 1129(a)(2). Specifically:

- (1) The Debtors are proper debtors under Bankruptcy Code section 109.
- (2) The Debtors have complied with all applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by order of the Court.
- (3) The Proponents have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order, including, but not limited to, the provisions of Bankruptcy Code sections 1125 and 1126 in transmitting the Plan, the Disclosure Statement, the ballots and related documents and notices and in soliciting and tabulating votes to accept or reject the Plan.

M. Plan Proposed in Good Faith—11 U.S.C. § 1129(a)(3). The Proponents have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying Bankruptcy Code section 1129(a)(3). The Proponents' good faith is evident from the Flick Declaration, the McClain Declaration and the record of these Chapter 11 Cases, including the record of the hearing to approve the Disclosure Statement and the record of the Confirmation Hearing. Based upon the evidence proffered at the Confirmation Hearing, the Court finds and concludes that the Plan has been proposed with the legitimate and honest purpose of liquidating the Debtors' assets and distributing any proceeds among the creditors. Moreover, the sufficiency of disclosure, the support of the Debtors' primary constituencies, and the overwhelming acceptance of the Plan by holders of Claims who voted on it, all provide independent evidence of the Proponents' good faith in proposing the Plan in compliance with Bankruptcy Code section 1129(a)(3). Further, the Plan's classification and treatment of Claims and Equity Interests, its compromise provisions, and its provisions respecting the Releases, Channeling Injunction and exculpation have been negotiated in good faith and at arms'-length and are consistent with Bankruptcy Code sections 105, 1122, 1123(b)(3)(A), 1123(b)(6), 1129, and 1142.

N. Payments for Services or Costs and Expenses—11 U.S.C. § 1129(a)(4). Except as otherwise provided in the Plan or certain prior orders of the Court, any payments made or to be made for services or for costs and expenses incurred in connection with the Chapter 11 Cases are subject to the Court's approval. Fees to be paid to the Debtors' retained professionals are subject to the Court's approval, through the fee application process.

O. Directors, Officers and Insiders—11 U.S.C. § 1129(a)(5). Under the Plan, the Debtors' directors and officers are deemed to resign as of the Effective Date of the Plan. The trustees of both the Blitz Liquidating Trust and the Blitz Personal Injury Trust have been

identified. Similarly, the BAH Plan Administrator has been identified and will be vested with authority to act on behalf of the BAH Debtors post-confirmation. The Blitz Personal Injury Trustee and the Blitz Liquidating Trustee are not "insiders," as defined in section 101(31) of the Bankruptcy Code. As required by Section 12.4.2 of the Plan, the board of directors of BAH has chosen a current director of BAH, Louis Aurelio, as the BAH Plan Administrator. The nature of the BAH Plan Administrator's compensation, if any, shall be determined by the board of directors of BAH on or prior to the Effective Date. The Plan therefore complies with Bankruptcy Code section 1129(a)(5).

P. No Rate Changes—11 U.S.C. § 1129(a)(6). This section is inapplicable because there is no governmental regulatory commission that has jurisdiction over the rates that the Debtors charge.

Q. Best Interests of Creditors—11 U.S.C. § 1129(a)(7). The Plan satisfies Bankruptcy Code section 1129(a)(7). The Flick Declaration and the McClain Declaration and other evidence proffered or adduced at the Confirmation Hearing: (1) are persuasive and credible, (2) have not been controverted by other evidence, and (3) establish that each holder of an impaired Claim or Equity Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. Furthermore, a liquidation under chapter 7 would adversely affect the ultimate proceeds available for distribution to all holders of Allowed Claims in the Chapter 11 Cases. Moreover, the increased costs associated with a liquidation under chapter 7 would substantially reduce the proceeds available for distribution. These costs would include, among other things, administrative fees and costs

payable to a trustee in bankruptcy and professional advisors to such trustee. Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. Therefore, the "best interests" test is satisfied with respect to each of these classes.

R. Deemed Acceptance or Rejection by Certain Classes—11 U.S.C. § 1129(a)(8).

(1) Classes 1(a), 1(b), 2(a) and 2(b) are unimpaired and are conclusively presumed to have accepted the Plan under Bankruptcy Code section 1126(f). As to these Classes, Bankruptcy Code Section 1129(a)(8) has been satisfied.

(2) Classes 3(a), 3(b), 4(a) and 4(b) are impaired by the Plan. At least two-thirds in amount and more than one-half in number of the Claims held by Creditors in Classes 3(a), 3(b), 4(a) and 4(b) have voted to accept the Plan, as established by the Voting Declaration, in accordance with Bankruptcy Code Section 1126(c). As to these Classes, Bankruptcy Code section 1129(a)(8) has been satisfied.

(3) Classes 5(a), 5(b), 6(a) and 6(b) are impaired and not entitled to receive or retain any property under the Plan and, therefore, are deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). Although Bankruptcy Code section 1129(a)(8) has not been satisfied with respect to Classes 5(a), 5(b), 6(a) and 6(b), the Plan is confirmable because the Plan satisfies Bankruptcy Code section 1129(b) with respect to those Classes of Claims and Equity Interests, as set forth below.

S. Treatment of Administrative, Priority and Tax Claims—11 U.S.C. § 1129(a)(9).

Through the provisions of the Plan governing Administrative Expense Claims and Priority Claims, the Plan provides for the payment in full, on the later of (a) the Effective Date, or as soon as reasonably practicable thereafter, and (b) as soon as reasonably practicable after the date such Claim becomes an Allowed Claim, of all Claims entitled to priority under Bankruptcy Code section 507(a). Accordingly, Bankruptcy Code section 1129(a)(9) is satisfied.

T. Acceptance by Impaired Class—11 U.S.C. § 1129(a)(10). Classes 3(a), 3(b), 4(a) and 4(b) have voted to accept the Plan within the meaning of Bankruptcy Code section 1126(c), without the need to include any acceptance of any insider. Therefore, Bankruptcy Code section 1129(a)(10) is satisfied.

U. Feasibility—11 U.S.C. § 1129(a)(11). The evidence proffered or adduced at, or prior to the Confirmation Hearing: (a) is reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilizes reasonable and appropriate methodologies and assumptions; (c) has not been controverted by other evidence; and (d) establishes that the Debtors will have sufficient funds, including the receipt of the Insurance Settlement Payment and the BAH Settlement Payment upon the Effective Date of the Plan, to satisfy their obligations under the Plan. As a result, the requirements of section 1129(a)(11) of the Bankruptcy Code have been satisfied.

V. Payment of Fees—11 U.S.C. § 1129(a)(12). In accordance with 1129(a)(12) of the Bankruptcy Code, section 2.2 of the Plan provides for the payment of all fees payable under 28 U.S.C. § 1930(a). As a result, the requirements of section 1129(a)(12) of the Bankruptcy Code have been satisfied.

W. Continuation of Retiree Benefits—11 U.S.C. § 1129(a)(13). No retiree benefits existed in the Chapter 11 Cases. As such, the Debtors are not obligated to pay any such benefits and Bankruptcy Code section 1129(a)(13) is inapplicable.

X. Domestic Support Obligations, Individuals and Certain Transfers—11 U.S.C. § 1129(a)(14)-(16). The Debtors are not required to pay any domestic support obligations and, therefore, Bankruptcy Code section 1129(a)(14) is satisfied. The Debtors are not individuals and, accordingly, Bankruptcy Code section 1129(a)(15) is inapplicable in these Chapter 11 Cases. The Debtors are moneyed, business or commercial corporations or trusts, as the case may be and, accordingly, Bankruptcy Code section 1129(a)(16) is inapplicable in these Chapter 11 Cases.

Y. Fair and Equitable; No Unfair Discrimination—11 U.S.C. § 1129(b). Pursuant to Bankruptcy Code section 1129(b), as to any impaired class of unsecured claims or equity interests that rejects a plan, such plan must be “fair and equitable” with respect to each such class. Classes 5(a) and 5(b) Intercompany Claims, and Classes 6(a) and 6(b) Equity Interests will not receive any property under the Plan. No Classes junior to Classes 5(a), 5(b), 6(a) and 6(b) are receiving any recovery and, thus, the “fair and equitable” test has been satisfied. Furthermore, the Plan does not discriminate unfairly against any Class that is deemed to reject the Plan.

Z. Only One Plan—11 U.S.C. § 1129(c). Other than the Plan (including previous versions thereof), no other plan has been presented for confirmation or ever presented and approved for solicitation in the Chapter 11 Cases. Accordingly, the requirements of Bankruptcy Code section 1129(c) have been satisfied.

AA. Principal Purpose—11 U.S.C. § 1129(d). The principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the requirements of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. The Plan therefore satisfies the requirements of Bankruptcy Code section 1129(d).

BB. Findings Required as Conditions to Confirmation of the Plan. Section 11.1.8 of the Plan requires that certain findings of fact and conclusions of law be contained within this Confirmation Order. While many of these findings of fact and conclusions of law are addressed elsewhere in this Confirmation Order, out of an abundance of caution, and without diminishing any other provision of this Confirmation Order, the Court makes the following additional findings of fact, conclusions of law, orders and/or decrees based on the record established at the Confirmation Hearing:

- (1) As of the Petition Date, certain of the Debtors have been named as defendants in personal injury or wrongful death actions seeking recovery for damages allegedly caused by Blitz Products;
- (2) The Blitz Personal Injury Trust, as of the Effective Date, will assume the liabilities of the Debtors and the Protected Parties with respect to the Blitz Personal Injury Trust Claims and shall assume all obligations of the Blitz Personal Injury Trust set forth in the Plan Documents;
- (3) The Blitz Personal Injury Trust, upon the Effective Date, shall have received the Blitz Personal Injury Trust Assets or the right to receive such assets in accordance with the terms of the Plan and the Plan Documents, as applicable;
- (4) Pursuit of the Blitz Personal Injury Trust Claims outside the procedures prescribed by the Plan is likely to threaten the Plan's purpose to deal equitably with Blitz Personal Injury Trust Claims;
- (5) The Blitz Personal Injury Trust shall use its assets and income to pay Blitz Personal Injury Trust Claims and Blitz Personal Injury Trust Expenses in accordance with the Plan and the Plan Documents;
- (6) The actual amounts and timing of payment to the Blitz Personal Injury Trust Claims cannot be determined at the time of the entry of this Confirmation Order;
- (7) Unless otherwise provided in the Plan and this Confirmation Order, the sole and exclusive remedy of holders of Blitz Personal Injury Trust Claims against the Debtors and the Protected Parties shall be against the Blitz Personal Injury Trust, and no such Blitz Personal Injury Trust Claims may be asserted against the Debtors or any Protected Party;
- (8) An identity of interests exists between the Debtors and the non-debtor Protected Parties such that a Claim asserted against any non-debtor Protected Party gives rise to a claim against the Debtors by contract and/or operation of the law of indemnity and/or contribution;
- (9) The terms of the Channeling Injunction, including any provisions barring actions against third parties, are set out in conspicuous language in the Plan and in the Disclosure Statement and are essential elements of the Plan and the Debtors' liquidating efforts, and are appropriate under the circumstances;
- (10) The procedures and payment mechanisms set forth in the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP are fair and equitable to the holders of Blitz Personal Injury Trust Claims and provide reasonable assurance that the Blitz Personal Injury Trust will value, and be in a financial position to pay, Blitz Personal Injury Trust Claims that involve similar claims in substantially the same manner;
- (11) The Plan provides a mechanism to address and resolve all, Blitz Personal Injury Trust Claims, as allowed;

(12) The transfer of Blitz Personal Injury Trust Assets to the Blitz Personal Injury Trust does not violate any obligations of the Debtors;

(13) Any transfers of property by the Debtors (i) to the Blitz Liquidating Trust and/or the Blitz Personal Injury Trust (a) are or will be legal, valid and effective transfers of property, (b) vest or will vest the Blitz Liquidating Trust and/or the Blitz Personal Injury Trust, as the case may be, with good title to such property free and clear of all Liens, Claims, encumbrances or Equity Interests, except as expressly provided in the Plan or Confirmation Order, (c) do not and will not constitute avoidable transfers under the Bankruptcy Code or under applicable bankruptcy or nonbankruptcy law, and (d) except as provided otherwise in the Plan Documents, do not and will not subject the Debtors, the Blitz Liquidating Trust, the Blitz Personal Injury Trust and/or the BAH Plan Administrator to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, any laws affecting successor, transferee or stamp or recording tax liability, and (ii) to holders of Claims under the Plan are for good consideration and value;

(14) The Bankruptcy Court has subject-matter jurisdiction to issue the Channeling Injunction; and the Channeling Injunction is authorized by section 105 of the Bankruptcy Code and/or by the Bankruptcy Court's inherent authority or other statutory authority;

(15) Approval of the Insurance Settlement, the BAH Settlement and any other settlement agreement between the Debtors and any other Entities not previously approved by the Bankruptcy Court is appropriate under Bankruptcy Rule 9019 and the applicable law governing approval of such settlements and compromises and is granted as part of this Confirmation Order;

(16) Upon satisfaction of the conditions set forth in section 14.2.7 of the Plan, each of the Participating Insurers who have paid its share of the Insurance Settlement Payment shall be released and its Participating Insurer Policy was bought back pursuant to the Insurance Policy Buy-Back Order free and clear of all rights, claims, liens, interest, and/or encumbrances in the Participating Insurer Policy pursuant to section 363 of the Bankruptcy Code.

(17) Upon satisfaction of the conditions set forth in section 14.2.7 of the Plan, each of the Protected Parties who has paid its share of the Insurance Settlement Payment, or who had its share of the Insurance Settlement Payment made by another Entity on its behalf, shall be deemed dismissed in any action and any complaint, petition, counterclaim, cross-claim, cause of action or other request for relief shall be deemed withdrawn with prejudice without any further action of such Protected Party. For the avoidance of doubt, those parties excepted from the Releases and Channeling Injunction in paragraphs 10(b)(4), 53 and 54 of this Confirmation Order are not released and any pending complaint, petition, counterclaim, cross-claim, cause of action or other request for relief against such non-released party shall survive;

(18) The Plan complies with all applicable sections of the Bankruptcy Code, and the Debtors have complied with all applicable sections of the Bankruptcy Code;

(19) The substantive consolidation of the USA Debtors for purposes of Distributions as set forth in section 12.1.5 of the Plan and the substantive consolidation of the

BAH Debtors for purposes of Distributions as set forth in section 12.1.6 of the Plan are approved;

(20) In light of the respective direct and indirect benefits provided, or to be provided, to the Blitz Personal Injury Trust or the USA Debtors, as applicable, by, or on behalf of, each Participating Insurer, Wal-Mart or any other Protected Party pursuant to the Insurance Settlement Term Sheet, the identification of the Participating Insurers, Wal-Mart or any other Protected Party in the Channeling Injunction is fair and equitable with respect to any Entity that might subsequently assert Blitz Personal Injury Trust Claims or any other Claim against a Participating Insurer, Wal-Mart or any other Protected Party pursuant to the Insurance Settlement Term Sheet. The Insurance Settlement constitutes a reasonable settlement and fair resolution of the Participating Insurers' alleged liabilities and obligations under the Participating Insurer Policies. The Insurance Settlement constitutes a reasonable settlement and fair resolution of Wal-Mart's alleged liabilities and obligations with respect to any Blitz Personal Injury Trust Claim and Wal-Mart's rights under the Blitz Insurance Policies;

(21) In light of the respective direct and indirect benefits provided, or to be provided, to the Blitz Personal Injury Trust or the USA Debtors, as applicable, by, or on behalf of, each BAH Released Party or any other Protected Party pursuant to the BAH Settlement, the identification of the BAH Released Parties or any other Protected Party in the Channeling Injunction is fair and equitable with respect to any Entity that might subsequently assert Blitz Personal Injury Trust Claims or any other Claim against a BAH Released Party or any other Protected Party pursuant to the BAH Settlement. The BAH Settlement constitutes a reasonable settlement and fair resolution of the BAH Settling Parties' alleged liabilities by the Creditors' Committee on behalf of the USA Debtors' Estates and for the Blitz Personal Injury Claims;

(22) The contributions to be made by Protected Parties to the Blitz Personal Injury Trust and the USA Debtors' Estates are substantial and are a fundamental, integral and essential component of the success and implementation of the Plan;

(23) The Channeling Injunction and Releases, as applied to Blitz Personal Injury Trust Claims against the Protected Parties, are essential and necessary for the Debtors because, among other reasons, the Protected Parties would not be willing to make their contributions to the Blitz Personal Injury Trust or the USA Debtors' Estates without the protection provided by the Channeling Injunction and Releases;

(24) The Plan would not be able to be confirmed and the Insurance Settlement would not be able to be consummated without the BAH Settlement Payment to the USA Debtors' Estates; the BAH Settling Parties would not have agreed to the terms of the BAH Settlement if they did not include the Channeling Injunction and Releases for the BAH Released Parties;

(25) The identification and designation of each Protected Party is fair and equitable with respect to Entities that might subsequently assert Blitz Personal Injury Trust Claims against any such Protected Party, in light of the benefits provided, or to be provided, to the Blitz Personal Injury Trust by or on behalf of the Protected Parties;

(26) In view of the substantial contributions to the Blitz Personal Injury Trust and the USA Debtors' Estates made by or on behalf of the Protected Parties, it is reasonable and fair for the Plan to provide that holders of Blitz Personal Injury Trust Claims be enjoined from pursuing any action against the Protected Parties as set forth in the Plan or this Confirmation Order;

(27) The Plan does not violate any consent to assignment, or similar clause in any Assigned Blitz Insurance Policy;

(28) The Plan does not materially increase any Non-Participating Insurer's risk of providing coverage for any Blitz Personal Injury Trust Claims under the relevant Assigned Blitz Insurance Policy as compared to the risk that was otherwise being borne by such Non-Participating Insurer prior to the Effective Date;

(29) Except for an agreed upon joint press statement with respect to the Insurance Settlement to be released to the public at an agreed upon time, no Insurance Settling Party shall make any statement to the media concerning the Insurance Settlement other than referring the media to such press statement and any court filings not under seal. This paragraph shall not preclude plaintiff's counsel from identifying on their respective websites and in other materials describing their respective law firms, the fact that they were one of the counsel involved in the Insurance Settlement; and

(30) The provisions of this Confirmation Order are non-severable and mutually dependent.

CC. No Objection to Deemed Rejection of Contracts and Leases. No party to an executory contract or unexpired lease to be rejected by the Debtors pursuant to the Plan has objected to such rejection.

DD. Plan Modifications. The modifications reflected in this Confirmation Order (collectively, the "Modifications") do not materially or adversely affect or change the treatment of any holder of a Claim or Equity Interest. Accordingly, pursuant to Bankruptcy Rule 3019, such Modifications do not require additional disclosure under Bankruptcy Code section 1125 or resolicitation of acceptances or rejections under Bankruptcy Code section 1126, nor do they require that holders of Claims be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

EE. Burden of Proof. The Debtors and the Committee, as proponents of the Plan, have met their burden of proving the elements of Bankruptcy Code sections 1129(a) and 1129(b) by a preponderance of the evidence.

FF. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in Bankruptcy Code section 1129.

GG. Retention of Jurisdiction. The Court properly may retain jurisdiction over the matters set forth in Article XIII of the Plan.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The Insurance Policy Buy-Back Order, attached hereto as Exhibit A, is incorporated in full as a part of this Confirmation Order.

2. Approval of Modifications. The Modifications are approved. In accordance with Bankruptcy Code section 1127 and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Modifications. No Holder of a Claim shall be permitted to change its vote as a consequence of the Modifications. The Plan as modified by the Modifications shall constitute the Plan and all references herein to the Plan shall mean the Plan as so modified.

3. Confirmation of Plan. All requirements for confirmation of the Plan have been satisfied. The Plan, a copy of was filed on the docket at Docket Number 2007, and each of its provisions (whether or not specifically mentioned herein) and all exhibits and schedules thereto as amended to the date hereof are **CONFIRMED** in each and every respect, pursuant to section 1129 of the Bankruptcy Code.

4. Confirmation Hearing Record. The record of the Confirmation Hearing is closed.

5. Formal and Informal Objections to Confirmation. Except as otherwise expressly set forth below in this paragraph, the Objections, as well as any and all other formal and informal objections to Confirmation, are hereby overruled in their entirety. All parties have had a full and fair opportunity to be heard with respect to all issues raised, and all issues that may have been raised, by the objections. Any objection that has been withdrawn is deemed to be withdrawn with prejudice. All objections have been resolved and withdrawn on the terms and subject to the conditions set forth below. The compromises and settlements contemplated by the resolution of such objections described herein are fair, equitable and reasonable, are in the best interests of the Debtors, their respective Estates and Creditors and are expressly approved pursuant to Bankruptcy Rule 9019.

a. **Cataldi Claimants:** The Cataldi Claimants' motion to allow a late filed Blitz Personal Injury Claim is granted because of the agreement and compromises of the parties and the submission of the motion prior to commencement of the Confirmation Hearing. The Cataldi Claimants (i) shall be eligible to participate in a distribution under the Blitz Personal Injury TDP as Covered Claimants and qualify to apply to the Special Circumstances Fund and (ii) as to the Non-Appealing Fund, agree to accept the offer amount made by the Blitz Personal Injury Trust upon compliance with the TDP and TDP Scoring System, which Offer Amount is estimated to be \$138,846.

b. **McKenzie Claimants:** The McKenzie Claimants' motion to allow a late filed Blitz Personal Injury Claim is granted because of the agreement and compromises of the parties and the submission of the motion prior to commencement of the Confirmation Hearing. The McKenzie Claimants (i) shall be eligible to participate in a distribution under the Blitz Personal Injury TDP as Covered Claimants and (ii) agree to accept the offer amount made by the Blitz Personal Injury Trust upon compliance with the TDP and TDP Scoring System, which Offer Amount is estimated to be \$2,300,000.

c. **Bauman Claimants:** The Bauman Claimants' objection to confirmation of the Plan is withdrawn and the Bauman Claimants shall be deemed to vote in favor of the Plan. The Bauman Claimants shall be deemed eligible for the Special Circumstances Fund as if the Bauman Claimants had met the enumerated criteria set forth in paragraph H of the TDP Scoring System for compensation from the Special Circumstances Fund.

d. **Newby Claimants:** The Newby Claimants' objection to confirmation of the Plan is withdrawn and the Newby Claimants shall be deemed to vote in favor of the Plan. The Newby Claimants agree to accept a fixed offer amount of \$6.2 Million Dollars in full and final satisfaction of their Blitz Personal Injury Claim.

e. **Bosse Claimant:** The Bosse Claimant shall be deemed to vote in favor of the Plan and shall qualify to participate in the \$650,000 allocated to reimburse fees and expenses of objecting claimants pursuant to Section 2.3(g) of the Blitz Personal Injury Trust Agreement.

f. **United States Trustee:** The United States Trustee's objection is resolved by amending the Plan's definition of Exculpated Parties as set forth in paragraph 49 of this Confirmation Order.

g. **Anthony Torres, Andrew Torres, Valerie Torres, Colton Warren, Cindy Nichols, Tiffany St. John, Marion "B.J." Jones, Dalan Jones (a minor represented by his parents, Tiffany St. John and Marion Jones), the estate of Leiya Jones (deceased, represented by her parents, Tiffany St. John and Marion Jones), Irene Perez, Aliha Perez (a minor represented by her mother Irene Perez), and the Mims Claimant** affirmed on the record their support for confirmation of the Plan as modified by this Confirmation Order.

6. **Incorporation of Terms and Provisions of Plan.** Subject to paragraph 33 of this Confirmation Order, the terms and provisions of the Plan are incorporated by reference into and are an integral part of this Confirmation Order. Each term and provision of the Plan is valid, binding, and enforceable as though fully set forth herein. The provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are non-severable and mutually dependent. The failure specifically to include or reference any particular term or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such term and provision, it being the intent of the Court that the Plan be confirmed in its entirety.

7. **Plan Classification Controlling.** The terms of the Plan shall solely govern the classification of Claims and Equity Interests for purposes of the distributions to be made thereunder. The classifications set forth on the Ballots tendered to or returned by the holders of Claims and Equity Interests in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claim or Equity Interest under the Plan for distribution purposes; (c) may not be relied upon by

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any holder of a Claim or Equity Interest as representing the actual classification of such Claim or Equity Interest under the Plan for distribution purposes; and (d) shall not bind the Debtors, the Blitz Liquidating Trust or the Blitz Personal Injury Trust.

8. Binding Effect. Effective on the Effective Date or any other date if so provided in the Plan, and except as expressly provided otherwise in this Confirmation Order, the Plan, and its provisions shall be binding to the fullest extent of the law upon the Debtors, any party in interest, any entity acquiring or receiving property or a distribution under the Plan and any holder of a Claim against or Equity Interest in the Debtors, including all governmental entities, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder or entity has accepted the Plan. The Plan Documents constitute the legal, valid, binding, enforceable, and authorized obligations of the respective parties thereto and shall be enforceable in accordance with their terms. Pursuant to Bankruptcy Code sections 1123(a) and 1142(a) and the provisions of this Confirmation Order, the Plan, the Plan Documents, and all other Plan-related documents shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

9. Propriety of Releases and Channeling Injunction. Based on the findings of fact set forth in this Confirmation Order, including paragraph H, and the record established at the Confirmation Hearing, the Releases and Channeling Injunction with respect to each Protected Party is appropriate under applicable law:

- a. Substantial contributions by or on behalf of each of the Protected Parties are being made to fund the distributions provided under the Plan.
- b. The Plan has been overwhelmingly accepted by the classes of creditors affected by the Releases and the Channeling Injunction.
- c. The holders of Blitz Personal Injury Claims are receiving fair consideration in exchange for the Releases and the Channeling Injunction.

- d. The Plan provides holders of Blitz Personal Injury Claims with the opportunity to reject the settlement offers they receive from the Blitz Personal Injury Trust and resort to the tort system to liquidate their claims.
- e. The Releases and the Channeling Injunction are necessary and critical provisions of the Plan, without which the Plan cannot be confirmed.
- f. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the Releases and the Channeling Injunction.
- g. The Plan is the product of the global settlement that was reached in the extraordinary circumstances of these Chapter 11 Cases. These extraordinary circumstances support the approval of the Releases and the Channeling Injunction.
- h. There is a substantial identity of interest between the Debtors and each of the Protected Parties, such that a Blitz Personal Injury Claim asserted against a Protected Party is essentially a claim against the Debtors.
- i. This Court has subject matter jurisdiction over the third party claims against the Protected Parties because of the unity of interest between the Protected Parties and the Debtors.

10. Approval of Plan Releases, Channeling Injunction, Exculpation and Indemnification Obligations. Each of the release, exculpation, injunction and indemnification provisions set forth in the Plan, including without limitation the provisions in Sections 3.8.2, 4.3.2.5, 4.3.3, 4.3.4, 4.14, 7.2, 7.3, 11.1.8, 14.2.5, and 15.4 of the Plan, is hereby approved in all respects in its entirety, is so ordered and shall be immediately effective on the Effective Date of the Plan without further action or notice by this Court, any of the parties to such releases, exculpation, injunction and indemnifications or any other party. For the avoidance of doubt, upon satisfaction of the conditions set forth in section 14.2.7 of the Plan, (a) Westchester shall be released from all Blitz Personal Injury Trust Claims occurring on or after the July 31, 2005 and on or before July 31, 2012 with the exception of the *Calder* and *Bosse* claims (which shall be treated in accordance with paragraphs 28 and 29 of the Insurance Settlement Term Sheet, as applicable); and (b) each of the Participating Insurers who have paid its share of the Insurance

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Settlement Payment shall be released from any and all liability under the Participating Insurer Policies, except that Westchester shall not be released from the *Calder* and *Bosse* claims. Upon the resolution of the *Calder* and *Bosse* claims with finality either by compromise or adjudication, Westchester Fire Insurance Company or Westchester Surplus Lines Insurance Company, as the case may be, shall receive the remainder of the release and protections for Policies bearing Nos. CUW788371001 and G22053504001 that are afforded to the Participating Insurer Policies and Policies Nos. CUW788371001 and G22053504001 shall be exhausted. Also for the avoidance of doubt, the sole and exclusive remedy of holders of Blitz Personal Injury Trust Claims against the Debtors and the Protected Parties shall be against the Blitz Personal Injury Trust, and no such Blitz Personal Injury Trust Claims may be asserted against the Debtors or any Protected Party. As required by Section 4.3.3 of the Plan, and without diminishing any other provision of this Confirmation Order, the Court orders and decrees that:

(a) Imposition of Channeling Injunction: In order to preserve and promote the settlements contemplated by and provided for in the Plan and to supplement, where necessary, the injunctive effect of the Channeling Injunction and the Releases described in section 7.2 of the Plan, and pursuant to the exercise of the equitable jurisdiction and power of the Bankruptcy Court under section 105(a) of the Bankruptcy Code, all Entities that have held or asserted, or that hold or assert any Blitz Personal Injury Trust Claim against the Protected Parties, or any of them, shall be permanently stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery from any such Protected Party with respect to any such Blitz Personal Injury Trust Claim, including, but not limited to:

(1) commencing, conducting or continuing, in any manner, whether directly or indirectly, any suit, action or other proceeding of any kind with

respect to any such Blitz Personal Injury Trust Claim, against any of the Protected Parties, or against the property of any Protected Party with respect to any such Blitz Personal Injury Trust Claim;

(2) enforcing, levying, attaching, collecting or otherwise recovering, by any manner or means, or in any manner, either directly or indirectly, any judgment, award, decree or other order against any of the Protected Parties or against the property of any Protected Party with respect to any such Blitz Personal Injury Trust Claim;

(3) creating, perfecting or enforcing in any manner, whether directly or indirectly, any Lien of any kind against any Protected Party or the property of any Protected Party with respect to any such Blitz Personal Injury Trust Claim;

(4) asserting, or accomplishing any setoff, right of subrogation, indemnity, contribution or recoupment of any kind, whether directly or indirectly, against any obligation due any Protected Party or against the property of any Protected Party with respect to any such Blitz Personal Injury Trust Claim; and

(5) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents, with respect to such Blitz Personal Injury Trust Claim.

(b) Reservations: Notwithstanding anything to the contrary in paragraph 10(a) above or Section 4.3.3 of the Plan, the Channeling Injunction shall not enjoin:

(1) any claim for damages on account of bodily injury and/or property damage that occurred on or after 12:01 A.M. CST on July 31, 2012;

(2) the rights of Entities to the treatment afforded them under the Plan, including the right of Entities holding Blitz Personal Injury Trust Claims to assert such Claims in accordance with the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP solely against the Blitz Personal Injury Trust whether or not there are funds to pay such Blitz Personal Injury Trust Claims;

(3) the rights of Entities to assert any Claim, debt, litigation, or liability for payment of Blitz Personal Injury Trust Expenses solely against the Blitz Personal Injury Trust whether or not there are funds to pay such Blitz Personal Injury Trust Expenses;

(4) the rights of holders of Blitz Personal Injury Trust Claims that arose prior to the Release Date to pursue and/or prosecute any Insurance Actions, including, but not limited to, a Direct Action Claim, against any Non-Participating Insurer;

(5) if and to the extent necessary to preserve rights against any Non-Participating Insurer, the rights of the Blitz Personal Injury Trust to prosecute any

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Direct Action Claim, as attorney in fact for a holder of Blitz Personal Injury Trust Claim, including the participation of such claimant in such Direct Action Claim;

(6) the rights of any Entity to assert any claim, debt, obligation or liability for payment against a Non-Participating Insurer;

(7) the rights of any Entity (other than the Debtors and Additional Insureds, in their capacity as such) to assert against a Protected Party any claim, debt, or obligation for payment that is not in any way based upon, related to, or arising out of, any Blitz Insurance Policy, Blitz Product or otherwise subject to the Insurance Settlement and BAH Settlement;

(8) the Blitz Personal Injury Trust from enforcing its rights under the Insurance Settlement Term Sheet, the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP; and

(9) the rights of any Indemnified Party to demand the Blitz Personal Injury Trust to fulfill its obligations to enforce the terms of the Channeling Injunction consistent with section 4.14 of the Plan, the Insurance Settlement Term Sheet and the BAH Settlement Term Sheet.

(c) Modifications: There can be no modification, dissolution or termination of the Channeling Injunction, which shall be a permanent injunction.

(d) Non-Limitation Channeling Injunction: Nothing in this Confirmation Order, the Plan or the Plan Documents shall be construed in any way to limit the scope, enforceability, or effectiveness of the Channeling Injunction issued in connection with the Plan or the Blitz Personal Injury Trust's assumption of all liability with respect to Blitz Personal Injury Trust Claims.

(e) Bankruptcy Rule 3016 Compliance: The Proponents' compliance with the requirements of Bankruptcy Rule 3016 shall not constitute an admission that the Plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

(f) Releases of Liabilities of Blitz Personal Injury Claims: Except as provided in the Plan, the transfer to, vesting in, and assumption by the Blitz Personal Injury Trust of the Blitz Personal Injury Trust Assets as contemplated by the Plan shall, as of the Effective

Date, release all obligations and liabilities of and bar recovery or any action against the Protected Parties and their respective estates, Affiliates and subsidiaries, for or in respect of all Blitz Personal Injury Claims. The Blitz Personal Injury Trust shall, as of the Effective Date, assume sole and exclusive responsibility and liability for all Blitz Personal Injury Trust Claims, and such Claims shall be liquidated, resolved and, where appropriate, paid by the Blitz Personal Injury Trust from the Blitz Personal Injury Trust Assets or as otherwise directed in the Blitz Personal Injury Trust Documents. For the avoidance of doubt, holders of Vendor Claims, holders of a Co-Defendant Claims, and Direct Action Claims shall not receive distributions or other payment of any funds attributable to the Insurance Settlement Payment or the BAH Settlement Payment on behalf of, related to or with respect to such Claims. As set forth in section 4.14 of the Plan and the Blitz Personal Injury Trust Agreement, the Blitz Personal Injury Trust shall defend and indemnify the Indemnified Parties in connection with any proceeding involving, relating to or arising out of, in whole or in part, the enforcement or enforceability of the Channeling Injunction.

11. Enjoinment of Judicial Actions. Effective on the Effective Date, without any further action of the Court or other entity, any suit, legal action, or other proceeding (including a judicial, arbitration, administrative or other proceeding) in any forum in the United States against or affecting any Protected Party, shall be stayed, enjoined or otherwise prohibited from continuation as to any Protected Party except for those parties excepted from the channeling injunction provided in paragraph 10(b) of this Confirmation Order. Without limiting the foregoing, on or after the Effective Date, without any further action of the Court or any entity, the Blitz Personal Injury Trustee or any Protected Party, as applicable, is authorized and empowered to file or record this Confirmation Order with respect to any suit, legal action, or

other proceeding (including a judicial, arbitration, administrative or other proceeding) in any forum in the United States, and such Confirmation Order shall be binding upon all entities and governmental authorities, including, all filing agents, filing officers, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials, with respect to the stay or enjoinder of each such action. Each and every governmental authority, and any other person or entity, is hereby authorized and directed to accept this Confirmation Order as independent and conclusive authorization to effectuate a stay or enjoinder of any suit, legal action, or other proceeding described herein.

12. Plan Implementation Authorization. The Debtors, the Blitz Personal Injury Trust and the Blitz Liquidating Trust, as the case may be, and their respective directors, officers, members, agents, and attorneys, are authorized and empowered from and after the date hereof to negotiate, execute, issue, deliver, implement, file, or record any contract, instrument, release, or other agreement or document, including, without limitation, the Plan Documents, as the same may be modified, amended and supplemented (including such modifications to the Blitz Personal Injury Trust and/or the Blitz Liquidating Trust that are substantially consistent with the terms and provisions of such form and necessary to satisfy the conditions to the effectiveness of the Plan), and to take any action necessary or appropriate to implement, effectuate, consummate, or further evidence the Plan in accordance with its terms, or take any or all corporate actions authorized to be taken pursuant to the Plan, whether or not specifically referred to in the Plan or any exhibit thereto, without further order of the Court. To the extent applicable, any or all such documents shall be accepted upon presentment by each of the respective state filing offices and recorded in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law. Pursuant to section 303 of the General Corporation Law of the

State of Delaware and any comparable provision of the business corporation laws of any other state, as applicable, no action of the Debtors' Boards of Directors or the trustee of the Blitz Personal Injury Trust and/or the Blitz Liquidating Trust will be required to authorize the Debtors to enter into, execute and deliver, adopt or amend, as the case may be, the Plan Documents, and following the Effective Date, each of the Plan Documents will be a legal, valid and binding obligation of the Debtors, enforceable against the Debtors in accordance with the respective terms thereof.

13. Debtors' Status Prior to Effective Date. The Debtors shall remain Debtors-in-Possession under the Bankruptcy Code until the Effective Date. The Blitz Liquidating Trustee, the Blitz Personal Injury Trustee and/or the BAH Plan Administrator shall wind-up the affairs of the Debtors and may make distributions to creditors after the Effective Date in accordance with the Plan, the Blitz Liquidating Trust, Blitz Personal Injury Trust, and the Blitz Personal Injury TDP.

14. Dissolution of Securities. In accordance with the terms of the Plan, as soon as practicable after the Effective Date, the Equity Interests in the Debtors shall be dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith.

15. Continued Corporate Existence. As of the Effective Date, the USA Debtors, other than Blitz U.S.A., Inc., shall be deemed to have been dissolved and terminated in accordance with Section 12.4.1 of the Plan. Upon the Effective Date, or as soon as reasonably practicable thereafter, (i) LAM shall merge with and into BAH; (ii) the number of directors constituting the entire board of directors of BAH shall be fixed at one; (iii) the BAH Plan Administrator shall be deemed to be elected as the sole officer and sole director of BAH and each existing officer and

member of the board of directors of the BAH Debtors shall be deemed to have been removed as of the occurrence of the Effective Date; (iv) all existing stock in BAH shall be cancelled; (v) a single share of the stock of BAH shall be issued to Kinderhook Capital Fund II, L.P. (which single share shall be issued for the sole purpose of allowing BAH to comply with any annual meeting or election of director requirements after the Effective Date, but shall not entitle the Kinderhook Capital Fund II, L.P. to receive, make, or call for any distribution, dividends or redemptions from BAH); (vi) all actions in furtherance of the Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by the BAH Debtors, holders of Claims or Equity Interests, directors, members, managers, or officers of the BAH Debtors, or any other Entity, including the dissolution or winding up of BAH; and (vii) the BAH Plan Administrator shall be authorized to execute, deliver, file, or record such contracts, instruments, release, and other agreements or documents and take such other actions as the BAH Plan Administrator may deem, in the BAH Plan Administrator's sole discretion, necessary or appropriate to effectuate and implement the provisions of the Plan. As soon as reasonably practicable after making distributions provided for under the Plan, BAH shall be dissolved and the BAH Plan Administrator, without further action of the directors or stockholders of BAH, shall be authorized to file a certificate of dissolution and take any other action that may be necessary to terminate the corporate existence of BAH.

16. Transfer of Records. Notwithstanding anything to the contrary in the Plan or the Plan Documents, the Blitz Liquidating Trustee shall be and is hereby appointed as custodian of all books and records in the possession and control of the USA Debtors, which shall include but not be limited to, (i) all electronic documents and data, (ii) hard drives, (iii) software, (iv) cloud storage, (v) archives, (vi) hard copies, (vii) molds, gas cans and prototypes (the "Books and

Records") and is authorized to testify (i) that the Books and Records or other tangible property in his possession were once kept in the ordinary course of business in the files and/or possession of the USA Debtors, and (ii) for purposes of establishment of business records foundation under state or federal evidence laws, all other objections to the admissibility of such records shall be preserved. For the avoidance of doubt, the provisions of sections 4.10 and 5.12 of the Plan apply to the Books and Records unless otherwise specifically provided herein.

(a) All Books and Records shall be transferred to the Blitz Liquidating Trustee. The Blitz Liquidating Trustee shall preserve all Books and Records for a period of not less than six (6) months from the Effective Date (the "Retention Period"). At the end of the Retention Period, the Blitz Liquidating Trustee may file a motion to abandon or destroy some or all of the Books and Records.

(b) Wal-Mart, the Blitz Insurers and any Vendors or holders of a Co-Defendant Claims against whom Blitz Personal Injury Claims are asserted prior to the Release Date (the "Review Parties") shall have four (4) months from the commencement of the Retention Period to review the Books and Records for privileged documents and communications, with all such privileges or protections being preserved and not waived pursuant to Federal Rule of Evidence 502(d), with such review to be performed where the Books and Records are located, unless otherwise agreed to by the Blitz Liquidating Trustee. There shall be a presumption of privilege for (i) all Books and Records as to which the Debtors previously asserted a privilege or similar protection, (ii) all documents authored by counsel, and (iii) all communications between any of the USA Debtors and

their counsel. Retrieval of electronically stored information shall be performed by a nationally recognized vendor with all costs to born among the Review Parties.

(c) All Books and Records as to which the Debtors previously asserted a privilege or similar protection or for which a privilege is asserted by a Review Party shall be transferred to the possession of a neutral third party (the "Privileged Records Custodian"), agreed to by the Review Parties, the Blitz Liquidating Trustee and the Blitz Personal Injury Trustee, with the Review Parties asserting privileges responsible for the fees and costs of the Privileged Records Custodian.

(d) The Privileged Records Custodian, at the conclusion of the four month review period shall provide a log of all documents sufficient to analyze whether a privilege exists (the "Privilege Log"). The Privilege Log will be provided to the Blitz Liquidating Trustee and the Blitz Personal Injury Trustee.

(e) Any party seeking discovery in litigation relating to the USA Debtors may challenge the assertion of any privilege in the court where the litigation is pending. The Privileged Records Custodian shall give notice to the Review Party asserting the privilege so that they may defend the assertion of privilege in the court where the litigation is pending.

(f) The Review Parties shall be responsible for reimbursing the Blitz Liquidating Trustee for any fees and costs incurred in the exercise of the Blitz Liquidating Trustee's duties under the provisions of this paragraph to the extent such fees and costs exceed \$100,000. Prior to any reimbursement under the

foregoing sentence, Wal-Mart shall be entitled to audit the books and records of the Blitz Liquidating Trustee.

17. The Blitz Personal Injury Trust. The Blitz Personal Injury Trust shall be established on the Effective Date and shall be maintained thereafter in accordance with the terms of the Plan and the Blitz Personal Injury Trust Agreement. The Blitz Personal Injury Trust Agreement, in the final form annexed hereto as Exhibit B, and all of the provisions therein, are hereby approved by this Confirmation Order. The designation of Hon. Richard Cohen as the initial Blitz Personal Injury Trustee and Hank Anderson, Diane Breneman, Richard Denney, and Daniel Haltiwanger as initial members of the Blitz Personal Injury TAC is approved. Pending the occurrence of the Effective Date, the Proponents are authorized to take all actions as may be necessary to facilitate the creation and implementation of the Blitz Personal Injury Trust. On the Effective Date, pursuant to Section 4.3 of the Plan, a newly-formed trust which qualifies as a "Qualified Settlement Fund" within the meaning of section 468B of the Internal Revenue Code shall be created to hold the Blitz Personal Injury Trust Assets, make certain distributions pursuant to Article IV of the Plan and liquidate or otherwise administer the Blitz Personal Injury Trust Assets. The Blitz Personal Injury Trust is authorized and empowered, pursuant to the Plan, including, without limitation, Article IV of the Plan, and the Blitz Personal Injury Trust Agreement, to liquidate or otherwise administer the Blitz Personal Injury Trust Assets.

18. Transfer of Assets to Blitz Personal Injury Trust. Pursuant to Section 4.5.1 of the Plan, and upon the Effective Date, the Debtors shall be deemed to have transferred all Blitz Personal Injury Trust Assets, other than the Insurance Settlement Payment, the Supplemental Insurance Settlement Payment and \$1.54 million (which shall be remitted by the Blitz

Liquidating Trust) to the Blitz Personal Injury Trust subject to all rights, defenses and setoffs in accordance with the Plan.

19. The Blitz Liquidating Trust. The Blitz Liquidating Trust shall be established on the Effective Date and shall be maintained thereafter in accordance with the terms of the Plan and the Blitz Liquidating Trust Agreement. The Blitz Liquidating Trust Agreement, in the final form annexed hereto as Exhibit C, and all of the provisions therein, are hereby approved by this Confirmation Order. The designation of Steven D. Sass as the initial Blitz Liquidating Trustee is approved. Pending the occurrence of the Effective Date, the Debtors are authorized to take all actions as may be necessary to facilitate the creation and implementation of the Blitz Liquidating Trust. On the Effective Date, pursuant to Section 5.6.1 of the Plan, a newly-formed trust which qualifies as a "grantor trust" for federal income tax purposes shall be created to hold the Blitz Liquidating Trust Assets, make certain distributions pursuant to Article V of the Plan and liquidate or otherwise administer the Blitz Liquidating Trust Assets. The Blitz Liquidating Trust is authorized and empowered, pursuant to the Plan, including, without limitation, Article V of the Plan, and the Blitz Liquidating Trust Agreement, to liquidate or otherwise administer the Blitz Liquidating Trust Assets.

20. Transfer of Assets to the Blitz Liquidating Trust. Pursuant to Section 5.5 of the Plan, and upon the Effective Date, (i) the Debtors shall be deemed to have transferred the Blitz Liquidating Trust Assets to the Blitz Liquidating Trust, and (ii) Wal-Mart shall waive its secured setoff claim against Blitz U.S.A., Inc., and will pay to the Blitz Liquidating Trust the sum of \$1.54 million.

21. Special Provisions from the BAH Settlement. On the Effective Date, any proofs of claim filed by any members of the Committee and any holder of a Blitz Personal Injury Trust

Claim against the BAH Debtors shall be deemed withdrawn with prejudice as against the BAH Debtors and all Blitz Personal Injury Trust Claims against the BAH Debtors are released and shall be channeled to the Blitz Personal Injury Trust and may thereafter be asserted exclusively against the Blitz Personal Injury Trust and resolved in accordance with the terms, provisions and procedures of the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP. Furthermore, the Committee and/or the Blitz Personal Injury Trustee shall support any objection by the BAH Debtors to Claims by any Blitz Insurer against the BAH Debtors. For avoidance of doubt, and notwithstanding anything that may be construed to the contrary herein, in the Plan, the Plan Documents or any other document, the Releases of the BAH Released Parties are, and shall be construed to be, as broad as the broadest Releases provided to any other Entity.

22. Proofs of Claim of the Participating Insurers. Upon the Effective Date, the Participating Insurers shall be deemed to withdraw their proofs of claim filed against the Debtors.

23. Ratification. All actions taken by the Debtors from the Petition Date through the Confirmation Date are hereby ratified. All actions taken by the Debtors from the Confirmation Date through the Effective Date shall be deemed automatically ratified on the occurrence of the Effective Date.

24. Post-Effective Date Fees and Expenses. From and after the Effective Date, the Blitz Personal Injury Trustee and the Blitz Liquidating Trustee shall, in accordance with the Blitz Personal Injury Trust Agreement and the Blitz Liquidating Trust Agreement, respectively; but without the necessity for any approval by the Court, pay the reasonable fees and expenses of the professional Persons thereafter incurred by each of the respective trustees related to the implementation and consummation of the Plan (i.e., fees and expenses that are not

Administrative Expense Claims). From and after the Effective Date, BAH shall, without the necessity for any approval by the Court, pay the reasonable fees and expenses of any professionals retained by BAH and related to the implementation and consummation of the Plan. For the avoidance of doubt, this Paragraph is not intended to limit or preclude the payment of any post effective date fees or expenses incurred at the request of the Blitz Personal Injury Trust or the Blitz Liquidating Trust or defending fees and expenses incurred in defending or pursuing fee applications relating to fees and expenses incurred prior to the Effective Date.

25. Approval of Compromise and Settlement. The settlements, compromises, releases and injunctions set forth in Article XIV of the Plan, including those described in the Insurance Settlement and the BAH Settlement, are approved and incorporated into this Confirmation Order in all respects.

26. Approval of Deemed Consolidation. Pursuant to Sections 12.5.1 and 12.6.1 of the Plan, the terms of the separate substantive consolidation of the USA Debtors and the BAH Debtors are approved. On the Effective Date, without further action of the Debtors, the cases of the following Debtors shall be closed: (i) LAM 2011 Holdings, LLC (Case No. 11-13605); (ii) Blitz Acquisition, LLC (Case No. 11-13606); (iii) Blitz RE Holdings, LLC (Case No. 11-13607); and (iv) MiamiOK, LLC f/k/a F3 Brands LLC (Case No. 11-13604). In the event the Clerk of the Court requests an additional order or orders regarding the closing of these cases, the Debtors may submit such order or orders under certification of counsel.

27. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any State or any other governmental authority with respect to the implementation or consummation of the Plan, the Plan Documents, and any other documents, instruments, or agreements, and any amendments

or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement, the Plan Documents, and any other documents, instruments, or agreements, and any amendments or modifications thereto.

28. Exemption from Certain Taxes. Pursuant to Bankruptcy Code section 1146(a), the issuance, transfer or exchange of any security or the making or delivery of any instrument of transfer under the Plan may not be taxed under any law imposing a stamp tax, use tax, sales tax or similar tax. Bankruptcy Code section 346 shall apply to any taxes that may potentially result from, or may be related to, the events, transactions and occurrences of the Chapter 11 Cases and, in particular, pursuant to Bankruptcy Code section 346, no state or local tax imposed on, or measured by, income shall be imposed on the Debtors.

29. Applicable Non-Bankruptcy Law. Pursuant to Bankruptcy Code sections 1123(a) and 1142(a), the provisions of this Confirmation Order, the Plan, or any other amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

30. Approval of Deemed Rejection of Remaining Contracts and Leases. Unless otherwise provided in an order of or in proceedings before the Court specifically dealing with an executory contract or unexpired lease that is subject to rejection pursuant to Section 8.1 of the Plan, the rejection of such contract or lease is hereby approved as of the Effective Date as proposed in the Plan. If the rejection pursuant to Plan Section 8.1 results in a Claim for damages, then such Claim shall be forever barred and shall not be enforceable against the Estates, the Blitz Liquidating Trust, their successors or properties, unless a Proof of Claim is filed and served on the Blitz Liquidating Trust within thirty (30) days after the Effective Date.

31. Governing Law. Except to the extent that the Bankruptcy Code or Bankruptcy Rules or other federal laws are applicable, and subject to the provisions of any contract, instrument, release, or other agreement or document entered into in connection with the Plan, the construction, implementation, and enforcement of the Plan and all rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to conflicts of law principles which would apply the law of a jurisdiction other than the State of Delaware.

32. Administrative Expense Claims Bar Date. Unless required to be filed by an earlier date by another order of this Court, all (i) holders of Administrative Expense Claims that have not been Allowed by Final Order of the Bankruptcy Court and (ii) Bankruptcy Professionals requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code for services rendered during the Chapter 11 Cases (including, without limitation, any compensation requested by any Bankruptcy Professional or any other Entity for making a substantial contribution to the Chapter 11 Cases), shall file with the Bankruptcy Court, as applicable, a request for Allowance of their Administrative Expense Claim (which request shall specify whether the Claim is asserted against the USA Debtors or the BAH Debtors), or, in the case of Bankruptcy Professionals, an application for final allowance of compensation and reimbursement of expenses on or before the date that is forty-five (45) days after the Effective Date. Any request for payment of a Administrative Expense Claim that is not timely filed as set forth above will be forever barred, and holders of such Claims will not be able to assert such Claims in any manner against the Debtors, the Estates, the Blitz Liquidating Trust or the Blitz Liquidating Trustee.

33. Effect of Conflict Between Plan and Confirmation Order. This Confirmation Order shall control over the terms of the Plan and the Plan Documents in the event of any modification, clarification or supplement to the Plan and/or in the event of any inconsistency or ambiguity between the Plan and this Confirmation Order.

34. Reversal. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified, or vacated by subsequent order of the Court or any other court, in the absence of a stay of this Confirmation Order, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken in good faith under or in connection with the Plan prior to the Debtors' receipt of written notice of entry of any such order. Notwithstanding any such reversal, modification, or vacatur of this Confirmation Order, in the absence of a stay of this Confirmation Order, any such act or obligation incurred or undertaken in good faith pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification, or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan or any amendments or modifications thereto.

35. Retention of Jurisdiction. Pursuant to section 105(a) and 1142 of the Bankruptcy Code, the Court hereby retains jurisdiction of the Chapter 11 Cases and all matters arising under, arising out of, or related to, the Chapter 11 Cases and the Plan (i) as provided for in the Plan, (ii) as provided for in this Confirmation Order, and (iii) for the purposes set forth in sections 1127 and 1142 of the Bankruptcy Code.

36. Continuation of the Automatic Stay. Unless otherwise provided in this Confirmation Order or a separate order from the Court, until the Effective Date, all injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code sections 105(a) or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect. After

the Effective Date, all injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code sections 105(a) or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect to the extent provided in section 7.1 of the Plan and in this Confirmation Order.

37. Payment of Statutory Fees. With respect to the period prior to the Effective Date, all statutory fees pursuant to 28 U.S.C. § 1930(a)(6) shall be paid by the Debtors on the Effective Date or other required payment date. From and after the Effective Date, the Blitz Liquidating Trust shall be liable for and shall pay the fees assessed against the USA Debtors' estate under 28 U.S.C. § 1930 until entry of a final decree closing the USA Debtors' Chapter 11 Case and the Blitz Liquidating Trust shall file post-confirmation quarterly reports in conformity with the U.S. Trustee guidelines until entry of an order closing or converting the USA Debtors' Chapter 11 Cases. From and after the Effective Date, BAH shall be liable for and shall pay the fees assessed against the BAH Debtors' Estates under 28 U.S.C. § 1930 and BAH and/or the BAH Plan Administrator shall file post-confirmation quarterly reports in conformity with the U.S. Trustee guidelines until entry of an order closing or converting the BAH Debtors' Chapter 11 Cases.

38. Provisions Governing Distributions. The Blitz Personal Injury Trustee, the Blitz Liquidating Trustee and/or the BAH Plan Administrator, as applicable, shall make all distributions required under the Plan and the distribution provisions of Articles IV and V of the Plan, the Blitz Liquidating Trust Agreement, the Blitz Personal Injury Trust Agreement, and the Blitz Personal Injury TDP, shall be, and hereby are, approved in their entirety.

39. Procedures for Resolution of Claims. The claims resolution procedures and reserves to be established in accordance with Articles IV and V of the Plan, the Blitz Liquidating

Trust Agreement, the Blitz Personal Injury Trust Agreement, and the Blitz Personal Injury TDP, shall be, and hereby are, approved in their entirety.

40. Setoff Rights. In the event that the Debtors have a Claim of any nature whatsoever against the holder of a Claim against the Debtors, then the Debtors, the Blitz Liquidating Trustee and/or the BAH Plan Administrator, as the case may be, are authorized, but not required to, set off against the Claim (and any payments or other Plan distributions to be made in respect of such Claim under the Plan) the respective Debtor's Claim against such holder, subject to the provisions of Bankruptcy Code sections 553, 556 and 560. Neither the failure to set off nor the allowance of any Claim under the Plan shall constitute a waiver or release of any Claims that the Debtors may have against the holder of any Claim. Such setoff rights of the USA Debtors shall inure to the benefit of the Blitz Liquidating Trust and any successors thereto.

41. Dissolution of the Committee. On the Effective Date, the Committee shall be dissolved in accordance with Section 15.3 of the Plan.

42. Final Order; Authorization to Consummate Plan. This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof. Notwithstanding Bankruptcy Rule 3020(e), this Confirmation Order shall take effect immediately upon its entry and the Debtors are authorized to consummate the Plan immediately after entry of this Confirmation Order and the satisfaction or waiver of all other conditions to the Effective Date of the Plan, in accordance with the terms of the Plan. The Proponents, the Blitz Personal Injury Trust and the Blitz Liquidating Trust, as applicable, are authorized to consummate the Plan after entry of this Confirmation Order subject to satisfaction of the conditions precedent to the occurrence of the Effective Date set forth in Section 11.2 of the Plan, or waiver of such conditions pursuant to Section 11.5 of the Plan.

43. Substantial Consummation. The substantial consummation of the Plan, within the meaning of Bankruptcy Code section 1127, is deemed to occur on the first date, on or after the Effective Date, on which any distributions are made in accordance with the terms of the Plan to holders of any Allowed Claims.

44. Post-Confirmation Modification of the Plan. Section 10.1 of the Plan shall govern any post-confirmation Plan modifications.

45. Filing and Recording. This Confirmation Order (a) is and shall be effective as a determination that, on the Effective Date, all Claims and Equity Interests existing prior to such date have been unconditionally released, discharged and terminated, and (b) is and shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials and all other Persons and entities who may be required, by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any document or instruments. Each and every federal, state and local government agency is hereby directed to accept any and all documents and instruments necessary, useful or appropriate (including Uniform Commercial Code financing statements) to effectuate, implement and consummate the transactions contemplated by the Plan and this Confirmation Order without payment of any recording tax, stamp tax, transfer tax or similar tax imposed by state or local law.

46. Notice of Entry of Confirmation Order. No later than [five] business days following the date of entry of this Confirmation Order, the Creditors' Committee or the Blitz Liquidating Trustee shall serve notice of the entry of this Confirmation Order pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c) on all holders of Claims and Equity Interests,

the U.S. Trustee, and the parties named on the Master Service List maintained in these Chapter 11 Cases, by causing notice substantially in the form attached hereto as Exhibit D to be delivered to such parties by first-class mail, postage prepaid.

47. Notice of Effective Date. Within five business days following the occurrence of the Effective Date, the Blitz Liquidating Trustee shall file notice of the Effective Date with the Court.

48. Judicial Notice. The Court takes judicial notice of the docket of these Chapter 11 Cases maintained by the clerk of the Court and/or its duly appointed agent (the "Docket") including, without limitation, all pleadings and other documents on file, all orders entered and all evidence and arguments made, proffered or adduced at the hearings held before the Court during the pendency of the Chapter 11 Case.

49. The definition of Exculpated Parties in Exhibit 1 to the Plan is deleted and replaced with the following:

Exculpated Parties: Each of (i) the Debtors and any of their respective Representatives; and (ii) the Creditors' Committee, its members and any of their respective Representatives.

50. The Plan and Plan Documents are modified to reflect that Wal-Mart shall make an additional \$2.0 Million contribution to the Insurance Settlement Payment. The \$2.0 Million contribution shall be allocated as follows: (a) \$1.2 Million to the Non- Appealing Fund; (b) \$700,000 to the Special Circumstances Fund and (c) \$100,000 to the Blitz Liquidating Trust.

51. Section 7.2.1 of the Plan is modified to include the Creditors' Committee, its members and any of their respective Representatives as receiving releases from each of the Debtors, on behalf of themselves and their respective Estates and their respective Affiliates,

members, officers, directors, and employees, and any person claiming by or through them as contemplated by such paragraph.

52. Section 7.2.2 of the Plan is modified to include the Creditors' Committee, its members and any of their respective Representatives as receiving releases from each present and former holder of a Claim or Equity Interest as contemplated by such paragraph.

53. (a) For the avoidance of doubt, other than (i) Wal-Mart, (ii) the BAH Released Parties, (iii) the USA Debtors' Representatives, (iv) the Participating Insurers and, (v) all Vendors and Additional Insureds under the Participating Policies, no other parties shall be released from, and the Releases and Channeling Injunction provisions of the Plan shall not apply to, any claim against any party that arose prior to 12:01 A.M. CST on July 31, 2007; provided however, that Westchester's rights and protections, including with regard to the Releases and the Channeling Injunction, shall be as stated in, and consistent with paragraph 10 of this Confirmation Order.

(b) Between July 31, 2007 and July 31, 2012, holders of a Co-Defendant Claim, which holder is not a Vendor, BAH Released Party or an Additional Insured, shall not receive a release. In addition to all of the other rights and remedies afforded to (i) Wal-Mart, (ii) the BAH Released Parties, (iii) the USA Debtors' Representatives, (iv) the Participating Insurers and, (v) all Vendors and Additional Insureds under the Participating Policies under the Plan, the Plan Documents or this Confirmation Order, in the event that any of (i) Wal-Mart, (ii) the BAH Released Parties, (iii) the USA Debtors' Representatives, (iv) the Participating Insurers and, (v) all Vendors and Additional Insureds under the Participating Policies is named as a defendant or co-defendant in any action by the holder of a surviving Co-Defendant Claim, (i) Wal-Mart, (ii) the BAH Released Parties, (iii) the USA Debtors' Representatives, (iv) the Participating Insurers

and, (v) all Vendors and Additional Insureds under the Participating ^{Insures} Policies, as the case may be, shall be entitled to recover, with priority, liability and/or reasonable defense costs from any proceeds received on account of such surviving Co-Defendant Claim.

54. Paragraph 2.3(b) of the Blitz Personal Injury Trust is clarified as follows: (i) holders of Blitz Personal Injury Claims that arose prior to July 31, 2005 may pursue their claims against Vendors (except for Wal-Mart), holders of Co-Defendant Claims (except for Wal-Mart and the BAH Released Parties) and other third parties liable for the Blitz Personal Injury Claim and the automatic stay is lifted as of the Effective Date and (ii) any recoveries obtained by the holder of a Blitz Personal Injury Claim shall be directly payable to such holder and shall not be payable to the Blitz Personal Injury Trust and no holder of a Blitz Personal Injury Trust Claim shall have an interest in or be entitled to a distribution from any such recoveries.

55. The TDP Scoring System is hereby modified to extend the deadline for delivery of all materials required by the Personal Injury POC form (including medical records and expert reports) and any materials to be considered in support of a Special Circumstances claim to thirty (30) calendar days after the Confirmation Hearing. All such materials are required to be sent electronically to the Blitz Personal Injury Trust, at blitzclaim@litigationkc.com, dhaltiwaner@rpwb.com and adr@richardcohen.net so as to be received on or before February 28, 2014 by 5:00 p.m. Central Standard Time. Materials received after this time will not be considered by the Blitz Personal Injury Trust.

56. Notwithstanding anything to the contrary in this Confirmation Order, the Plan or the Plan Documents, the automatic stay provided for in these Chapter 11 Cases, whether pursuant to section 105, section 362 or any other provision of the Bankruptcy Code or other applicable law, in existence immediately prior to the Confirmation Date shall expire on the


Effective Date solely with respect to Blitz Personal Injury Claims that arose prior to the Release Date.

57. Nothing in this Confirmation Order, the Plan or the Blitz Personal Injury TDP shall be interpreted as releasing or impairing any Blitz Personal Injury Claim against any Vendor, Wal-Mart or holder of a Co-Defendant Claim for incidents occurring on or after July 31, 2102 at 12:01 CST.

58. The claims of Melissa Weeks and Paul Beadore, Individually and as parent of Landon Beadore, as set forth in the Complaint filed in the case of *Beadore v. Stewart's Shops Corp. et al*, Complaint Index No. 10062122, pending in the Supreme Court of the State of New York, Saratoga County, (the "Beadore Action"), which arise from an incident which occurred on September 16, 2003, constitute Blitz Personal Injury Claims which are excepted from the Release provisions of sections 7.2.1 and 7.2.2 by virtue of Section 7.2.3.6 of the Plan. Accordingly, and notwithstanding anything to the contrary in the Plan or any other provision of this Confirmation Order, (1) neither Central Hudson Gas & Electric Corporation nor Central Hudson Energy Services, Inc., nor CH Energy Group (collectively, "Central Hudson"), nor any other co-defendant in the Beadore Action, constitute a Protected Party entitled to a Release under the Plan; (2) the cross-claims for contribution and indemnification asserted against the Debtors by Central Hudson as well as any other co-defendant in the Beadore Action are likewise excepted from the Release and Injunction provisions of sections 7.2.1, 7.2.2, and 7.3; (3) nothing in this Confirmation Order or the Plan shall prejudice or in any way alter or restrict the rights of the co-defendants in the Beadore Action to assert their cross claims and affirmative defenses as set forth in their Amended Answers; (4) the rights of the co-defendants in the Beadore Action to a recovery on their cross claims, if any, from the Debtors or the Blitz Personal Injury Trust, shall

be limited to the coverage available from the Assigned Blitz Insurance Policies assigned to the Blitz Personal Injury Trust; (5) for the avoidance of doubt, the rights of Central Hudson, pursuant to Article 16 of the New York Civil Practice Laws and Rules, New York State General Obligations Law §15-108, as well as any other rights claimed in the affirmative defenses and cross claims contained in the Amended Verified Answer filed on behalf of Central Hudson, if any, are unaffected by this Confirmation Order or the Plan, and (6) nothing in this paragraph is intended to in any way limit the right of the plaintiffs in the above-described Beadore Action to collect the full amount of any judgment in such action against any defendant in such action under their joint and several liability as determined under New York law, including Article 16 of the CPLR. For the avoidance of doubt, none of the BAH Released Parties party to the Beadore Action.

Dated: Jan. 30, 2014
Wilmington, Delaware



THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Insurance Settlement Buy-Back Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:
BLITZ U.S.A., Inc., et al.,¹
Debtors.

Chapter 11
Case No. Case No. 11-13603 (PJW)
(Jointly Administered)
Re: Docket No. 1537

ORDER UNDER 11 U.S.C. §§ 105 AND 363 AND FED. R. BANKR. P. 2002, 6004 AND 9019 APPROVING SETTLEMENT AND AUTHORIZING DEBTORS TO (I) COMPROMISE, SETTLE, RELEASE AND DISMISS CERTAIN CLAIMS OF AND AGAINST THE DEBTORS PURSUANT TO INSURANCE TERM SHEET AND (II) SELL CERTAIN INSURANCE POLICIES BACK TO THE PARTICIPATING INSURERS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND OTHER ENCUMBRANCES

This matter, coming before the Court on the *Motion for Order Under 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 2002, 6004 and 9019 Approving Settlement and Authorizing Debtors to: (I) Compromise, Settle, Release and Dismiss Claims of and Against the Debtors Pursuant to Insurance Term Sheet and (II) Sell Certain Insurance Policies Back to the Participating Insurers Free and Clear of Liens, Claims, Interests and Other Encumbrances* [Docket No. 1537] filed on July 24, 2013 (the "Insurance Settlement Motion");² and the Court having entered on August 14, 2013, the *Scheduling Order With Respect to Evidentiary Hearing on Motion for Order Under 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 2002, 6004 and*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and F3 Brands LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is 394 North Main Street, Miami, OK 74354.

² Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Insurance Settlement Motion.

9019 *Approving Settlement and Authorizing Debtors to (I) Compromise, Settle Release and Dismiss Claims of and Against the Debtors Pursuant to Insurance Term Sheet and (II) Sell Certain Insurance Policies Back to the Participating Insurers Free and Clear of Liens, Claims, Interests and Other Encumbrances* [Docket No. 1671] (the "Insurance Motion Scheduling Order"), pursuant to which the Court set an evidentiary hearing, initially for November 19, 2013, but thereafter adjourned to December 18, 2013 (the "Hearing"), on the following requests for relief in connection with the Motion (collectively, the "Insurance Settlement"):

- (a) Whether the settlement set forth and described in the Insurance Settlement Motion between Debtors and the Participating Insurers satisfies the standards for settlements under Fed. R. Bankr. P. 9019, as set forth in *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *In re RFE Indus., Inc.*, 283 F.3d 159, 165 (3d Cir. 2002); and *In re Nutraquest, Inc.*, 434 F.3d 639, 644 (3d Cir. 2006), including: (i) the probability of success in the litigation; (ii) the difficulties associated with collection; (iii) the complexity of the litigation, and attendant expense, inconvenience and delay; and (iv) the paramount interests of creditors; and
- (b) Whether the Subject Policies are property of the Debtors' estates;
- (c) Whether there is sound business justification for Debtors' agreement to sell the Subject Policies to the Participating Insurers as set forth and described in the Insurance Settlement Motion;
- (d) Whether the Participating Insurers' buyback of the Subject Policies is in good faith within the meaning of 11 U.S.C. § 363(m); and
- (e) Whether it is appropriate under the circumstances for Debtors to sell the Subject Policies free and clear of all interests in the Subject Policies under 11 U.S.C. § 363(f).

The Court, after notice and hearing, having determined that the legal and factual bases set forth in the Insurance Settlement Motion and at the Hearing establish just cause for the relief granted herein; and the Court, hereby incorporating the record made at the Hearing on the Insurance Settlement Motion; and the objections of the Texas Claimants to the Insurance Settlement having been withdrawn without prejudice upon and subject to the terms of the Plan Support Agreement (the "Plan Support Agreement") attached to the Disclosure Statement for Debtors' and Official Committee of Unsecured Creditors First Amended Plan of Liquidation; and the Court, having considered and overruling any remaining objections to the Insurance Settlement Motion and the Insurance Settlement; hereby finds and concludes as follows:³

Findings: The Court by this Order (this "Insurance Settlement Approval Order") hereby finds that

- (a) it has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334;
- (b) this contested matter is a core proceeding pursuant to 28 U.S.C. § 157(b);
- (c) notice to an attorney for the holder of a Blitz Personal Injury Claim constitutes notice to such holder for purposes of notice of the Insurance Settlement Motion, the Hearing, the Term Sheet, and this Insurance Settlement Approval Order;
- (d) notice of the Insurance Settlement Motion and Hearing was sufficient under the circumstances and in full compliance with 11 U.S.C. § 102(1), Fed. R. Bankr. P. 2002 and the Local Rules of this Court;

³ This Insurance Approval Order constitutes the Court's findings and conclusions of law under and pursuant to Fed. R. Bankr. P. 7052. To the extent necessary and appropriate, any finding made by the Court in this Insurance Approval Order shall be considered as a conclusion of law; and, to the extent necessary and appropriate, any conclusion of law made by the Court in this Insurance Approval Order shall be considered as a finding.

(e) each of the following factors has been taken into account by the Settling Parties in reaching the compromises with respect to the Insurance Settlement, and each factor supports entry of this Insurance Settlement Approval Order pursuant to Bankruptcy Rule 9019: (i) the probability of success in the litigation of any claims among the Settling Parties, including the ranges of recoverable damages, (ii) the complexity of potential litigation among the Settling Parties, and the expense, inconvenience, and delay necessarily attending it, (iii) the paramount interest of creditors and proper deference to their reasonable views regarding the Insurance Settlement, and (iv) whether the Insurance Settlement promotes the integrity of the judicial system;

(f) the Insurance Settlement (and the Term Sheet) (i) is the product of good faith, arms' length negotiation among the Settling Parties, without collusion, (ii) is fair, reasonable, appropriate, and in the best interests of the Debtors' estates, and (iii) represents a sound exercise of the Debtors' business judgment;

(g) the Insurance Settlement is supported by proper and sufficient consideration provided by each of the Settling Parties;

(h) the Subject Policies are property of the Debtors and of the Debtors' estates pursuant to 11 U.S.C. § 541(a),

(i) this Court has the jurisdiction and power to approve the Insurance Settlement as set forth in the Term Sheet; and

(j) this Insurance Settlement Approval Order is "final" within the meaning of 28 U.S.C. § 158(a)(1).

Conclusions of Law and Order:

IT IS HEREBY ORDERED THAT:

1. The Insurance Settlement Motion, to the extent it seeks approval of the Insurance Settlement, is hereby GRANTED, as set forth herein.
2. The Insurance Settlement, in accordance with the terms of the Term Sheet as such relates to the Insurance Settlement under and pursuant to Bankruptcy Rule 9019, and the sale by the Debtors of the Subject Policies to the Participating Insurers, free and clear of all interests in the Subject Policies under and pursuant to 11 U.S.C. § 363, is hereby APPROVED.
3. The Court hereby finds and concludes that the Participating Insurers' buyback of the Subject Policies is in good faith within the meaning of 11 U.S.C. § 363(m) and, therefore, the protections of section 363(m) apply.
4. The entry of this Order is without prejudice to any of the rights of the Debtors, the Committee, Wal-Mart, the Texas Claimants,⁴ or the Participating Insurers with respect to the Subject Policies and their construction in the event that confirmation of the Plan as a condition for implementation of the buyback of the Subject Policies is not met. Further, should the Plan not be confirmed or not go effective, and the buyback not be implemented for whatever reason, none of the evidence adduced at the Hearing or findings made in this Order shall be binding upon the Debtors, the Committee, Wal-Mart, the Texas Claimants or the Participating Insurers.
5. If, prior to or at the hearing to consider confirmation of the First Amended Joint Plan of Liquidation (the "Confirmation Hearing"), the Texas Claimants have actually terminated

⁴ "Texas Claimants," as used herein, mean and refer to Anthony Torres, Andrew Torres, Valerie Olivarez Torres, Colton Warren, Cindy Nichols, Tiffany St. John, Marion "B.J." Jones, Dalan Jones, a minor child represented by his parents Tiffany St. John and Marion Jones, and the Estate of Leiya Jones, a deceased minor child represented by her parents Tiffany Jones, Marion Jones, Irene Perez on behalf of Aliha Perez (Minor), Irene Perez individually, and Jose Perez individually.

the Plan Support Agreement pursuant to Paragraph 6 thereof, then their right to raise their objections to the Insurance Settlement at the Confirmation Hearing shall be preserved.

6. This Court shall retain jurisdiction to (i) enforce and interpret the terms and provisions of this Insurance Settlement Approval Order and the Term Sheet, (ii) resolve any disputes, controversies, or claims arising out of or relating to this Insurance Settlement Approval Order or the Term Sheet, and (iii) interpret, implement, and enforce the provisions of this Insurance Settlement Approval Order or any other Order of this Court entered in these Cases.

7. This Insurance Settlement Approval Order is intended to approve the Insurance Settlement in accordance with the Term Sheet and the omission of any term or condition of the Insurance Settlement herein shall not diminish or impair the effectiveness of such term and provision, it being the intent of the Court that the Insurance Settlement, as more specifically set forth and described in the Term Sheet, be authorized and approved in its entirety by this Insurance Settlement Approval Order.

8. This Insurance Settlement Approval Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing and shall not be stayed under Bankruptcy Rule 6004(g).

Dated: December ~~20~~ 2013
Wilmington, Delaware



The Honorable Peter J. Walsh
United States Bankruptcy Judge

EXHIBIT B

Blitz Personal Injury Trust Agreement

BLITZ PERSONAL INJURY TRUST AGREEMENT

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01/30/2014 28028468.5

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BLITZ PERSONAL INJURY TRUST AGREEMENT¹

This Blitz Personal Injury Trust Agreement (the "Agreement"), dated as of _____, 2013, and effective as of the later of the date on which all parties to this Agreement have executed this Agreement or the Effective Date of the Plan, is entered into by Blitz USA, Inc., Blitz Acquisition, LLC, Blitz RE Holdings, LLC, and MiamiOK LLC f/k/a F3Brands LLC (collectively, the "USA Debtors") and LAM 2011 Holdings, LLC and Blitz Acquisition Holdings, Inc. (the "BAH Debtors", and together with the USA Debtors, the "Debtors" or the "Settlers"), debtors and debtors-in-possession in the Chapter 11 Cases, as Settlers and by the Blitz Personal Injury Trustee and the Blitz Personal Injury Trust Advisory Committee ("Blitz Personal Injury TAC") identified on the signature page hereof.

WHEREAS, on the Petition Date, each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with the Bankruptcy Court. The Chapter 11 Cases, which are captioned *In re Blitz USA, Inc. et al.*, Case No. 11-13603 (PJW), are being jointly administered by the Bankruptcy Court.

WHEREAS, as of the Petition Date, some of the Debtors had been named as defendants in Blitz Product Litigation.

WHEREAS, the Plan was confirmed by the Confirmation Order dated _____, 2014 and entered by the Bankruptcy Court.

WHEREAS, the Plan Documents, provide, among things, for the creation of the Blitz Personal Injury Trust.

WHEREAS, pursuant to the Plan, the Blitz Personal Injury Trust shall be established to, among other things, assume liability for all Blitz Personal Injury Trust Claims; administer, process, settle, resolve and liquidate such Blitz Personal Injury Trust Claims; and to use the Blitz Personal Injury Trust Assets to satisfy all such Blitz Personal Injury Trust Claims that may qualify for a recovery in accordance with the terms of this Agreement and the Blitz Personal

¹ All capitalized terms not otherwise defined herein shall have their respective meanings as set forth in the *Debtors' and Official Committee of Unsecured Creditors' Amended Joint Plan of Liquidation*, as may be amended, modified or supplemented from time to time (the "Plan") and such definitions are incorporated herein by reference. All capitalized terms not defined herein or in the Plan, but defined in the Bankruptcy Code or Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), shall have the meanings given to them by the Bankruptcy Code and Bankruptcy Rules, and such definitions are incorporated herein by reference.

Injury TDP; preserve, hold, manage, maximize and use the Blitz Personal Injury Trust Assets to administer, process, settle, resolve, liquidate and make payments as may be appropriate to holders of Blitz Personal Injury Trust Claims in accordance with this Agreement, the Blitz Personal Injury TDP and the Plan Documents.

WHEREAS, the Plan provides that on the Effective Date, the Blitz Personal Injury Trust Assets will be transferred to the Blitz Personal Injury Trust.

WHEREAS, on the Effective Date, the Debtors shall assign the Assigned Blitz Insurance Policies to the Blitz Personal Injury Trust.

WHEREAS, pursuant to the Plan, the Blitz Personal Injury Trust is intended to qualify as a "qualified settlement fund" within the meaning of section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code (the "IRC").

WHEREAS, it is the intent of the Settlers, the Proponents, the Blitz Personal Injury Trustee and the Blitz Personal Injury TAC that the Blitz Personal Injury Trust be administered, maintained, and operated at all times through mechanisms that provide reasonable assurance that the Blitz Personal Injury Trust will administer, process, settle, resolve, liquidate, satisfy and pay, if applicable, all Blitz Personal Injury Trust Claims pursuant to this Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP in compliance with the terms of this Agreement.

WHEREAS, it is the intent of the Settlers, the Proponents, the Blitz Personal Injury Trustee and the Blitz Personal Injury TAC that holders of Covered Blitz Personal Injury Claims shall receive Offer Amounts that are substantially in accordance with the amounts listed on Exhibit B to the Blitz Personal Injury TDP assuming that (i) the Covered Claimants can support the level of injury and other compensation sought in their respective proofs of claim (with the understanding that (a) Covered Claimants who provide documentation supporting a higher recovery than sought in their proof of claim may receive Offer Amounts greater than the amounts listed for such claimant on Exhibit B, which would impact all Covered Claimants' Offer Amounts, and (b) Covered Claimants who provide documentation supporting a lower recovery than sought in their proof of claim may receive Offer Amounts less than the amounts listed for such claimant on Exhibit B, which would impact all Covered Claimants' Offer Amounts), and (ii) the Covered Claimants can satisfy the Threshold Components set forth in the TDP Scoring System.

WHEREAS, the Bankruptcy Court has determined that the Blitz Personal Injury Trust and the Plan satisfy all the legal prerequisites for issuing the Channeling Injunction pursuant to section 105 of the Bankruptcy Code, and such Channeling Injunction has been entered in connection with the Confirmation Order.

NOW, THEREFORE, for good and valuable consideration, it is hereby agreed as follows:

SECTION 1

AGREEMENT OF TRUST

1.1. **Creation and Name.** The Debtors, as Settlers, hereby create the Blitz Personal Injury Trust, which is the trust provided for and referred to in Article IV of the Plan. The Blitz Personal Injury Trustee may transact the business and affairs of the Blitz Personal Injury Trust in the name of the Blitz Personal Injury Trust.

1.2. **Purpose.** On the Effective Date, the Blitz Personal Injury Trust shall be established in accordance with the Plan Documents. The Blitz Personal Injury Trust shall be a "Qualified Settlement Fund" within the meaning of section 468B of the Internal Revenue Code and the regulations promulgated thereunder. The Blitz Personal Injury Trust shall assume the liability for all Blitz Personal Injury Trust Claims; shall administer, process, settle, resolve and liquidate such Blitz Personal Injury Trust Claims; and shall use the Blitz Personal Injury Trust Assets and the proceeds and income therefrom to satisfy and make payment to all Blitz Personal Injury Claims that may qualify for a recovery only in accordance with the terms of this Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP, all in accordance with the Plan, the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP. In this regard, holders of Covered Blitz Personal Injury Claims shall receive Offer Amounts that are substantially in accordance with the amounts listed on Exhibit B to the Blitz Personal Injury TDP assuming that (i) the Covered Claimants can support the level of injury and other compensation sought in their respective proofs of claim (with the understanding that (a) Covered Claimants who provide documentation supporting a higher recovery than sought in their proof of claim may receive Offer Amounts greater than the amounts listed for such claimant on Exhibit B, which would impact all Covered Claimants' Offer Amounts, and (b) Covered Claimants who provide documentation supporting a lower recovery than sought in their proof of claim may receive Offer

Amounts less than the amounts listed for such claimant on Exhibit B, which would impact all Covered Claimants' Offer Amounts), and (ii) the Covered Claimants can satisfy the Threshold Components set forth in the TDP Scoring System. The Blitz Personal Injury Trust will (i) administer, process, settle, resolve, liquidate, satisfy and/or pay, as applicable, Blitz Personal Injury Trust Claims in such a way that the holders of Blitz Personal Injury Claims are treated equitably and in a substantially similar manner, subject to the terms of the Plan, the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP and (ii) in accordance with section 4.14 of the Plan and the Blitz Personal Injury Trust Agreement, defend and indemnify the Protected Parties, at the Blitz Personal Injury Trust's sole expense, in connection with any proceeding involving, relating to or arising out of, in whole or in part, the enforcement or enforceability of the Channeling Injunction. Blitz Personal Injury Trust Claims shall be channeled to the Blitz Personal Injury Trust pursuant to the Channeling Injunction set forth in section 4.3.3 of the Plan and may thereafter be asserted only and exclusively against the Blitz Personal Injury Trust. All such Blitz Personal Injury Claims shall be liquidated and paid in accordance with this Blitz Personal Injury Trust Agreement, the Blitz Personal Injury TDP, the Plan and the Confirmation Order. For the avoidance of doubt, notwithstanding anything to the contrary in this Blitz Personal Injury Trust Agreement, the Blitz Personal Injury TDP, the Plan or the Confirmation Order, from among the categories of Blitz Personal Injury Trust Claims, only Blitz Personal Injury Claims that are Covered Blitz Personal Injury Claims shall be entitled to payment or compensation from the proceeds of the Insurance Settlement Payment (except for Michael Montgomery, whose sole recovery from the Blitz Personal Injury Trust is set forth below at paragraph 2.2(d)). The Blitz Personal Injury Trust shall be administered and implemented by the Blitz Personal Injury Trustee as provided in this Blitz Personal Injury Trust Agreement.

1.3 Transfer of Assets. Pursuant to Section 4.5 of the Plan, the USA Debtors, the Participating Insurers, Wal-Mart and the Blitz Liquidating Trust will transfer, issue or assign as appropriate and deliver to the Blitz Personal Injury Trust, the Blitz Personal Injury Trust Assets at the time and in the manner contemplated by the Plan Documents, in each case free and clear of any Claims, Liens, Equity Interests or other interests of any creditor, shareholder or other Entity.

1.4 Acceptance of Assets and Assumption of Liabilities.

(a) In furtherance of the purposes of the Blitz Personal Injury Trust, the Blitz Personal Injury Trustee, on behalf of the Blitz Personal Injury Trust, hereby expressly accepts the transfer and assignment to the Blitz Personal Injury Trust of the Blitz Personal Injury Trust Assets in the time and manner contemplated by the Plan. The Blitz Personal Injury Trust shall receive the benefits of and shall be bound by the Insurance Settlement as if it had been a party thereto at the time of execution of the Insurance Settlement Term Sheet.

(b) In furtherance of the purposes of the Blitz Personal Injury Trust, the Blitz Personal Injury Trustee, on behalf of the Blitz Personal Injury Trust, expressly assumes liability for all Blitz Personal Injury Trust Claims, subject to and as provided in the Plan and the Plan Documents. The Blitz Personal Injury Trust shall have all defenses, cross-claims, offsets, and recoupments, as well as rights of indemnification, contribution, subrogation, and similar rights, regarding such claims that the Debtors and/or the Protected Parties had, have or would have had under the Plan, applicable law or under any agreement related thereto; *provided, however*, that the Blitz Personal Injury Trust shall not have any cross-claims, rights of recovery, reimbursement, defense, indemnity, offset, recoupment, contribution, subrogation and similar rights against any Protected Party or the Proponents. Regardless of the foregoing, however, to be eligible to receive any payment from the Blitz Personal Injury Trust on account of a Covered Blitz Personal Injury Claim, a Claimant's Covered Blitz Personal Injury Claim must not be barred by any applicable federal, state or foreign statute of limitations or repose.

(c) No provision herein or in the Blitz Personal Injury TDP shall be construed to mandate distributions on any Blitz Personal Injury Claim or other actions that would contravene the Blitz Personal Injury Trust's compliance with the requirements of a "qualified settlement fund" within the meaning of section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under section 468B of the IRC.

(d) The Blitz Personal Injury Trust shall fully and completely defend each of the Debtors, the present and former directors and officers of each of the Debtors, the Participating Insurers, Wal-Mart, the BAH Released Parties, shareholders of the Debtors solely in their capacity as shareholders and solely related to the Blitz Personal Injury

Claims, and the Representatives, Affiliates, subsidiaries and/or successors of each of the foregoing connection with any proceeding involving, relating to or arising out of, in whole or in part, the enforcement or enforceability of the Channeling Injunction as set forth in section 4.14 of the Plan. In the event any person or Entity asserts any claim that is subject to the Channeling Injunction, the Blitz Personal Injury Trust shall, at its own expense, defend the validity of the Channeling Injunction and its application and use its best efforts to establish that such Claim is enjoined by filing a motion to defend the Channeling Injunction in the Bankruptcy Court or the Court where the underlying claim is filed. The Participating Insurers, Wal-Mart and the BAH Settling Parties (i) shall have consultation and approval rights with respect to the selection of counsel hired by the Blitz Personal Injury Trust for such defense obligations and (ii) shall have the right, at their own cost and expense, to associate in the defense in any proceeding concerning the enforcement and application of the Channeling Injunction. If the Blitz Personal Injury Trust breaches its duty to fully and completely defend the Protected Parties, the Blitz Personal Injury Trust is obligated to indemnify the Protected Parties, including advancement of defense costs. All defense and indemnity costs described in this section shall be assessed pro rata against the Non-Appealing Fund and the Special Circumstances Fund as set forth in the TDP Scoring System provided, however, that in the event that either the Non-Appealing Fund or the Special Circumstances Fund is unable to satisfy its pro rata obligations to the Protected Parties, such obligations shall be satisfied in full by the other Fund.

(e) Nothing in this Agreement shall be construed in any way to limit or expand the scope, enforceability, or effectiveness of the Channeling Injunction issued in connection with the Plan or the Blitz Personal Injury Trust's assumption of all liability for Blitz Personal Injury Trust Claims.

(f) The sole and exclusive remedy on account of Blitz Personal Injury Trust Claims shall be against the Blitz Personal Injury Trust, and no Blitz Personal Injury Trust Claim that has been channeled to the Blitz Personal Injury Trust may be asserted against any Protected Party or any Covered Claimant individually. Should any action based on or arising from or in connection with any Blitz Personal Injury Trust Claim be commenced against any of the Debtors, the present and former directors and officers of each of the Debtors, the Participating Insurers, Wal-Mart, the BAH Released Parties, shareholders of

the Debtors solely in their capacity as shareholders and solely related to the Blitz Personal Injury Claims, and the Representatives, Affiliates, subsidiaries and/or successors of each of the foregoing Protected Party in any tribunal whatsoever, the Blitz Personal Injury Trust shall seek to enjoin the prosecution of such action in the Bankruptcy Court in connection with these Chapter 11 Cases or in the jurisdiction where the underlying action is filed.

SECTION 2

POWERS AND TRUST ADMINISTRATION

2.1 Powers.

(a) The Blitz Personal Injury Trustee is and shall act as the fiduciary to the Blitz Personal Injury Trust in accordance with the provisions of this Agreement and the Plan, and shall have the power, on behalf of the Blitz Personal Injury Trust, to exercise all rights and fulfill all obligations of the Blitz Personal Injury Trust hereunder and under the Plan. The Blitz Personal Injury Trustee shall, at all times, administer the Blitz Personal Injury Trust and the Blitz Personal Injury Trust Assets in accordance with the purposes set forth in section 1.2 above. Subject to the limitations set forth in this Agreement, the Blitz Personal Injury Trustee shall have the power to take any and all actions that, in the judgment of the Blitz Personal Injury Trustee, are necessary or proper to fulfill the purposes of the Blitz Personal Injury Trust, including, without limitation, each power expressly granted in this section 2.1, any power reasonably incidental thereto, and any trust power now or hereafter permitted under the laws of the State of Delaware.

(b) Except as required by applicable law or otherwise specified herein, the Blitz Personal Injury Trustee need not obtain the order or approval of any court in the exercise of any power or discretion conferred on the Blitz Personal Injury Trustee hereunder.

(c) Without limiting the generality of section 2.1(a) above, and except as limited below, the Blitz Personal Injury Trustee shall have the power to:

- (i) receive and hold the Blitz Personal Injury Trust Assets;
- (ii) invest the monies held from time to time by the Blitz Personal Injury Trust;

- (iii) enter into leasing and financing agreements with third parties to the extent such agreements are reasonably necessary to permit the Blitz Personal Injury Trust to operate;
- (iv) pay the Blitz Personal Injury Trust Expenses;
- (v) in accordance with section 3.1 below, establish such reserves and accounts for the Blitz Personal Injury Trust Expenses, with the Blitz Personal Injury Trust Assets as deemed by the Blitz Personal Injury Trustee to be useful in carrying out the purposes of the Blitz Personal Injury Trust;
- (vi) sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitative, or other proceeding;
- (vii) establish, supervise and administer the Blitz Personal Injury Trust in accordance with the Plan, this Agreement and the Blitz Personal Injury TDP, and take any and all actions contemplated to be taken by the Blitz Personal Injury Trustee under the Blitz Personal Injury TDP;
- (viii) engage legal, financial, accounting, investment, and auditing consultants and agents as the business of the Blitz Personal Injury Trust may require; and to delegate to such persons power and authority as the fiduciary duties of the Blitz Personal Injury Trustee permit and as the Blitz Personal Injury Trustee, in his or her discretion, deems advisable or necessary to carry out the purposes of the Blitz Personal Injury Trust in accordance with the Plan and this Agreement;
- (ix) pay reasonable compensation to legal, financial, accounting, investment, and auditing consultants and agents hired or retained by the Blitz Personal Injury Trust, including, without limitation, any such persons hired or retained in connection with the alternative dispute resolution and litigation activities of the Blitz Personal Injury Trust, and allocate such costs, as permitted under the TDP Scoring System, to one or more Covered Claimants as an Individual Cost or as a General Cost (as defined and using the methodology described in the TDP Scoring System);

- (x) compensate the Blitz Personal Injury Trustee and the Blitz Personal Injury TAC member and reimburse the Blitz Personal Injury Trustee and the Blitz Personal Injury TAC members for reasonable out-of-pocket costs and expenses incurred by such persons in connection with the performance of their duties hereunder;
- (xi) execute and deliver such instruments as the Blitz Personal Injury Trustee considers proper in administering the Blitz Personal Injury Trust;
- (xii) enter into such other arrangements with third parties as are deemed by the Blitz Personal Injury Trustee to be reasonably necessary in carrying out the purposes of the Blitz Personal Injury Trust, provided such arrangements do not conflict with any other provision of this Agreement;
- (xiii) defend and indemnify, and if appropriate purchase insurance indemnifying (A) the Blitz Personal Injury Trustee and (B) the Blitz Personal Injury TAC, to the fullest extent that a corporation or trust organized under the law of the State of Delaware is from time to time entitled to indemnify and/or insure its directors, officers, employees, agents, advisors and representatives (as set forth in the TDP Scoring System, the foregoing indemnification costs shall be borne pro rata between the Non-Appealing Fund and the Special Circumstances Fund in the manner described therein);
- (xiv) in accordance with section 1.4(d) above and section 4.14 of the Plan, defend the Channeling Injunction;
- (xv) delegate any or all of the authority herein conferred with respect to the investment of all or any portion of the Blitz Personal Injury Trust Assets to any one or more reputable individuals or recognized institutional investment advisors or investment managers without liability for any action taken or omission made because of any such delegation, except as provided in section 4.4 below;

- (xvi) consult with the Blitz Personal Injury TAC at such times and with respect to such issues relating to the conduct of the Blitz Personal Injury Trust as the Blitz Personal Injury Trustee considers desirable; and
- (xvii) make, pursue (by litigation or otherwise), collect, compromise or settle, in the name of the Blitz Personal Injury Trust, any Claim, right, action, or cause of action, if any, included in the Blitz Personal Injury Trust Assets before any court of competent jurisdiction; provided that the Blitz Personal Injury Trust must seek approval of any settlement of actions that are pending before the Bankruptcy Court from the Bankruptcy Court after notice to parties in interest;
- (xviii) process, resolve and object to Blitz Personal Injury Trust Claims as provided in the Plan, this Agreement and the Blitz Personal Injury TDP.
- (d) The Blitz Personal Injury Trustee shall not have the power to cause the Blitz Personal Injury Trust to guarantee debt of any other Entity.
- (e) The Blitz Personal Injury Trustee shall give the Blitz Personal Injury TAC prompt notice of any act performed or taken pursuant to sections 2.2(c)(i) and (ii), and 2.2(d), and any act proposed to be performed or taken pursuant to section 2.2(f) below.
- (f) The Blitz Personal Injury Trustee shall have the power, but not the obligation, to, at the request and sole cost and expense of a Blitz Personal Injury Claimant whose claim arose prior to the Release Date, seek or sue for insurance coverage proceeds only in connection with the rights transferred to the Blitz Personal Injury Trust pursuant to Article IV of the Plan and the Assigned Blitz Insurance Policies.

2.2 General Administration.

- (a) The Blitz Personal Injury Trustee shall act in accordance with this Agreement, the Blitz Personal Injury TDP (including the TDP Scoring System attached thereto and incorporated therein), and the Plan. In the event of an inconsistency between the Plan and this Agreement, the Plan shall govern. In the event of any inconsistency between this Agreement and the Blitz Personal Injury TDP, the Blitz Personal Injury TDP shall control. The Blitz Personal Injury Trust may, at the sole discretion of the Blitz Personal Injury

Trustee, adopt bylaws (if adopted, "Blitz Personal Injury Trust Bylaws"). The Blitz Personal Injury Trust Bylaws cannot supersede this Agreement, the Plan, the Blitz Personal Injury TDP, or the Blitz Personal Injury TDP Scoring System. To the extent not inconsistent with the terms of this Agreement, if and as when adopted the Blitz Personal Injury Trust Bylaws shall govern the affairs of the Blitz Personal Injury Trust. In the event of an inconsistency between Blitz Personal Injury Trust Bylaws and this Agreement, this Agreement shall govern.

(b) The Blitz Personal Injury Trustee shall: (i) timely file such income tax and other returns and statements required to be filed by the Blitz Personal Injury Trust and shall from the Blitz Personal Injury Trust Assets timely pay all taxes required to be paid by the Blitz Personal Injury Trust, (ii) comply with all withholding obligations, as required under the applicable provisions of the IRC and of any state law and any regulations promulgated thereunder, (iii) meet without limitation all requirements necessary to qualify and maintain qualification of the Blitz Personal Injury Trust as a qualified settlement fund within the meaning of section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under section 468B of the IRC, and (iv) take no action that could cause the Blitz Personal Injury Trust to fail to qualify as a qualified settlement fund within the meaning of section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under section 468B of the IRC. As set forth in the TDP Scoring System, the foregoing reporting costs shall be borne pro rata between the Non-Appealing Fund and the Special Circumstances Fund in the manner described therein.

(c) The Blitz Personal Injury Trustee shall timely account to the Bankruptcy Court as follows:

- (i) Depending on whether the Blitz Personal Injury Trustee decides, in his or her sole discretion, to operate the Blitz Personal Injury Trust on a calendar or fiscal year basis, the Blitz Personal Injury Trustee shall cause to be prepared and filed with the Bankruptcy Court, as soon as available, but in no event later than one hundred and twenty (120) days following the end of each calendar or fiscal year, an annual report containing, *inter alia*, financial statements of the Blitz Personal Injury Trust (including, without limitation,

a balance sheet of the Blitz Personal Injury Trust as of the end of such fiscal year and a statement of operations for such fiscal year) audited by a firm of independent certified public accountants selected by the Blitz Personal Injury Trustee and accompanied by an opinion of such firm as to the fairness of the financial statements' presentation of the cash and investments available for the payment of claims and as to the conformity of the financial statements with generally accepted accounting principles. The Blitz Personal Injury Trustee shall provide a copy of such report to the Blitz Personal Injury TAC, when such reports are filed with the Bankruptcy Court.

- (ii) Simultaneously with delivery of each set of financial statements referred to in section 2.2(c)(i) above, the Blitz Personal Injury Trustee shall cause to be prepared and filed with the Bankruptcy Court a report containing a summary regarding the number and type of Blitz Personal Injury Trust Claims disposed of during the period covered by the financial statements. The Blitz Personal Injury Trustee shall provide a copy of such report to the Blitz Personal Injury TAC, when such report is filed with the Bankruptcy Court.
- (iii) All materials required to be filed with the Bankruptcy Court by this section 2.2(c) shall be available for inspection by the public in accordance with procedures established by the Bankruptcy Court.
- (iv) As set forth in the TDP Scoring System, the foregoing reporting costs shall be borne pro rata between the Non-Appealing Fund and the Special Circumstances Fund in the manner described therein.

(d) The Blitz Personal Injury Trustee shall cause to be prepared as soon as practicable prior to the commencement of each calendar or fiscal year a budget and cash flow projections covering such calendar or fiscal year. The Blitz Personal Injury Trustee shall provide a copy of the budget and cash flow projections to the Blitz Personal Injury TAC.

(e) The Blitz Personal Injury Trustee shall consult with the Blitz Personal Injury TAC (i) on the general implementation and administration of the Blitz Personal Injury Trust;

(ii) on the general implementation and administration of the Blitz Personal Injury TDP; and (iii) on such other matters as may be required under this Agreement and the Blitz Personal Injury TDP.

(f) Without limiting the generality of the foregoing section 2.2(e), the Blitz Personal Injury Trustee shall be required to consult with the Blitz Personal Injury TAC pursuant to the Consultation Process set forth in section 6.1 below:

- (i) to require that Claimants provide additional kinds of medical or other evidence pursuant to the Blitz Personal Injury TDP or the TDP Scoring System;
- (ii) to change the form of release to be provided pursuant to section 6.6 of the Blitz Personal Injury TDP, provided that the changed release must be consistent with the requirements of the Plan and the Plan Documents and the Settlement Term Sheet;
- (iii) to terminate the Blitz Personal Injury Trust;
- (iv) to settle rights assigned to the Blitz Personal Injury Trust;
- (v) to change the compensation of the Blitz Personal Injury Trustee, other than to reflect cost-of-living increases or changes approved by the Bankruptcy Court as otherwise provided herein;
- (vi) to take structural or other actions to minimize any tax on the Blitz Personal Injury Trust Assets;
- (vii) to adopt Blitz Personal Injury Trust Bylaws in accordance with section 2.2(a) above or to amend the Blitz Personal Injury Trust Bylaws in accordance with the terms thereof;
- (viii) to amend any provision of this Agreement or the Blitz Personal Injury TDP in accordance with the terms thereof, provided that any such amendments must be consistent with the requirements of the Plan and the Plan Documents; and
- (ix) to develop methods for auditing the reliability of medical evidence.

(g) For the avoidance of doubt, as set forth in Section 6.5(c) below, the Blitz Personal Injury Trustee may not amend (i) the TDP Scoring System, (ii) the enumerated criteria listed in paragraph H of the TDP Scoring System for application to the Special Circumstances Fund, or (iii) the amount of the Insurance Settlement Payment allocated to the Non-Appealing Fund and the Special Circumstances Fund.

(h) The Blitz Personal Injury Trustee shall meet with the Blitz Personal Injury TAC no less often than quarterly. The Blitz Personal Injury Trustee otherwise may meet with the Blitz Personal Injury TAC as and when deemed advisable by the Blitz Personal Injury Trustee.

(i) The Blitz Personal Injury Trustee, upon notice from the Blitz Personal Injury TAC, if practicable in view of pending business, shall at the next meeting with the Blitz Personal Injury TAC, consider issues submitted by the Blitz Personal Injury TAC for consideration by the Blitz Personal Injury Trust.

(j) Periodically, but not less often than once a year, the Blitz Personal Injury Trustee shall make available to Covered Claimants and other interested parties the number of claims that have been resolved by the Blitz Personal Injury Trust and the amounts of the awards in each case.

2.3 Claims Administration.

The bulk of the personal injury claims involving Blitz gasoline containers arise from incidents that occurred between July 31, 2007 (the "Release Date") and July 31, 2012. In contrast, only a discrete number of claims arise from incidents that occurred on or before the Release Date. The monies contributed to the Blitz Personal Injury Trust by the Participating Insurers pursuant to the Insurance Settlement represent consideration for the buy back of Participating Insurance Policies in effect for the period from the Release Date to July 31, 2012, the channeling of Blitz Personal Injury Trust Claims covered by the Participating Insurance Policies to the Blitz Personal Injury Trust, and the releases granted to the Participating Insurers under the Plan. The monies contributed by Wal-Mart under the Insurance Settlement represent consideration for, among other things, the channeling of all Blitz Personal Injury Claims to the Blitz Personal Injury Trust and the release being granted to Wal-Mart under the Plan. As set forth in detail below, in the

Blitz Personal Injury TDP and the TDP Scoring System, a portion of the consideration paid under the Insurance Settlement and the BAH Settlement in the sum of \$131,020,000 shall be allocated to the Non-Appealing Fund and \$30,700,000 to the Special Circumstances Fund to pay claims involving Blitz gasoline containers that arise from incidents that occurred between the Release Date and July 31, 2012. The claims that arose prior to the Release Date are not released against the Non-Participating Insurers and are channeled to the Blitz Personal Injury Trust. Holders of Blitz Personal Injury Claims arising prior to the Release Date will be subject the Channeling Injunction and shall retain all rights to pursue their claims against the Assigned Insurance Policies issued by the Non-Participating Insurers.

Blitz Personal Injury Trust Claims shall be administered as follows:

(a) **Covered Blitz Personal Injury Claims.** The Blitz Personal Injury TDP shall provide mechanisms such as *pro rata* and/or percentage distributions of the proceeds of the Insurance Settlement and the BAH Settlement allocable to the Blitz Personal Injury Trust, net of reserves for fees, costs, expenses and indemnification obligations incurred by the Blitz Personal Injury Trust, on account of Allowed Covered Blitz Personal Injury Claims and; periodic review of estimates of the numbers and values of Allowed Covered Blitz Personal Injury Claims or other comparable mechanisms, that provide reasonable assurance that the Blitz Personal Injury Trust will value and be in a financial position to pay similar Allowed Covered Blitz Personal Injury Claims in substantially the same manner. From and after the Effective Date, the Blitz Personal Injury Trust shall liquidate and pay the Allowed Covered Blitz Personal Injury Claims in accordance with the Blitz Personal Injury TDP. Notwithstanding the foregoing, the Blitz Personal Injury Trustee shall use his or her best efforts deliver Offer Amounts to the holders of Covered Blitz Personal Injury Claims that are substantially in accordance with the amounts listed on Exhibit B to the Blitz Personal Injury TDP assuming that (i) the Covered Claimants can support the level of injury and other compensation sought in their respective proofs of claim (with the understanding that (a) Covered Claimants who provide documentation supporting a higher recovery than sought in their proof of claim may receive Offer Amounts greater than the amounts listed for such claimant on Exhibit B, which would impact all Covered Claimants' Offer Amounts, and (b) Covered Claimants who provide

documentation supporting a lower recovery than sought in their proof of claim may receive Offer Amounts less than the amounts listed for such claimant on Exhibit B, which would impact all Covered Claimants' Offer Amounts), and (ii) the Covered Claimants can satisfy the Threshold Components set forth in the TDP Scoring System. All distributions the Blitz Personal Injury Trust makes on account of Allowed Covered Blitz Personal Injury Claims shall be final and, other than for demonstrative mathematical errors, shall not subject to recapture or disgorgement by the Blitz Personal Injury Trust or any other party.

(b) **Blitz Personal Injury Claims Arising Prior to the Release Date.** As set forth in Article VII of the Plan, all Blitz Personal Injury Claims that arose prior to the Release Date shall be channeled to the Blitz Personal Injury Trust and will be subject to the Channeling Injunction but shall not be deemed to have released their Blitz Personal Injury Claims against the USA Debtors and the Non-Participating Insurers. Holders of such claims shall retain the right to (i) liquidate their claims and seek payment from the Non-Participating Insurers in accordance with the Plan; (ii) assert their claims against, and, if necessary, prosecute an action against the Non-Participating Insurers, and (iii) may initiate an Insurance Action against the Blitz Personal Injury Trust if necessary to preserve their rights against Non-Participating Insurers.

(c) **Vendor Claims, Co-Defendant Claims and Direct Action Claims.** Vendor Claims, Co-Defendant Claims and Direct Action Claims shall be channeled to the Blitz Personal Injury Trust and will be subject to the Channeling Injunction. Holders of Vendor Claims, Co-Defendant Claims and Direct Action Claims shall receive the Releases and the benefit of the Channeling Injunction and shall retain their rights, if any, with respect to the Assigned Blitz Insurance Policies but shall not receive any distributions from the Blitz Personal Injury Trust on account of their claims.

(d) **Claims Related to Michael Montgomery.** In satisfaction of the claims of Michael Montgomery: (i) the Blitz Personal Injury Trust shall pay to Michael Montgomery the sum of \$3,075,000; (ii) Michael Montgomery shall retain and be entitled to pursue his Claims against the insurance policies issued by Non-Participating Insurers that were in effect on the date that his injuries occurred and against Home Depot; and (iii)

Michael Montgomery shall have no other or further claims against the Blitz Personal Injury Trust or any of the Protected Parties.

(e) Claims Related to David Calder. In satisfaction of the claim of David Calder and his co-plaintiffs, Debtors, Westchester Fire Insurance Company ("Westchester Fire") and David Calder and his co-plaintiffs agree to settle and compromise in full the claims of David Calder and his co-plaintiffs by (a) Westchester Fire paying \$2,942,014, and (b) the Debtors or the Blitz Personal Injury Trustee causing to be paid, or directing RLI Insurance Company to pay from the proceeds of the Debtors' bond that is returnable to the Blitz USA estate (Bond Number RSB4174412) the full amount of that bond that the Debtors posted for on appeal (\$1,057,986.31). The forgoing payments shall be made within thirty (30) days of payment of the Insurance Settlement Amount but shall be further subject to the exchange of full and mutual releases, compliance with Medicare secondary payer requirements and the dismissal with prejudice of all appeals. The automatic stay of section 362 of the Bankruptcy Code shall remain in place through the payment of the Insurance Settlement Amount. If the Debtors or the Blitz Personal Injury Trustee are unable to deliver the full amount of their bond (\$1,057,986.31) from the proceeds of the Debtors' bond for reasons beyond their control, the Debtors and/or the David Calder and his co-plaintiffs shall be free to go forward with their appeal(s) and otherwise prosecute their claims and, if they opt to do so, the other parties to the settlement of Calder's Claims shall be relieved of their obligations under this paragraph.

(f) Claims Related to Jonathan Green. Jonathan Green shall retain and shall not release his claim for sanctions, which is now pending appeal, until the occurrence of the Payment Date (as defined in the Insurance Settlement), and the vacatur of the sanctions order by the Green court (to which the Debtors and the Green plaintiffs consent and the Participating Blitz Personal Injury Claimants do not oppose), at which time the \$250,000 that has already been deposited with his counsel in escrow, shall be released and paid to Jonathan Green, and any claim asserted by Green shall be released and the parties to the Green case agree to mutually dismiss their appeals.

(g) Fees and Expenses of Objecting Claimants. \$650,000 shall be paid to reimburse legal fees and expenses incurred in connection with these Chapter 11 Cases

through and including 10:00 a.m. on December 18, 2013, by the Torres claimants, Jones claimants, Perez claimants, Newby claimants, Bauman claimants, Mims claimants and Bosse claimants provided that such claimants either: (i) sign on to the Plan Support Agreement by not later than 10:00 a.m. December 18, 2013; or (ii) withdraw any written opposition to the Insurance Settlement by not later than 10:00 a.m. on December 18, 2013 and do not prosecute objections to approval of the Insurance Settlement, do not file or prosecute objections to the adequacy of the Disclosure Statement, do not file or prosecute objections to confirmation of the Plan and do not vote against or take any other action to oppose confirmation of the Plan. Qualifying claimants shall submit a request for reimbursement of legal fees and costs to the Blitz Personal Injury Trustee within 10 days of the Effective Date. Claims not timely filed shall be deemed waived. The Blitz Personal Injury Trustee in consultation with the Blitz Personal Injury TAC shall review and determine the amount of legal fees and costs allowable for each Qualifying Claimant. In the event that total allowed legal fees and costs exceed \$650,000, the \$650,000 shall be distributed pro-rata amongst allowed legal fees and costs. To the extent that allowed legal fees and costs are less than \$650,000, allowed legal fees and costs shall be paid in full, and the remaining balance shall be added to the Non-Appealing Fund and shall be distributed to Covered Claimants in accordance with the procedures for distributions from the Non-Appealing Fund. Allowed legal fees and costs shall be paid within 10 days of allowance on a first in first out basis. For purposes of this provision, "legal fees and expenses" shall include fees billed at the regular hourly rate of bankruptcy counsel for any qualifying claimant. "Legal fees and expenses" shall not include fees incurred by plaintiff's tort counsel, unless such claimant has not retained separate bankruptcy counsel, in which case legal fees incurred by tort counsel only in connection with the Chapter 11 Cases, and not the underlying tort cases, shall be reimbursable under this provision at that attorney's regular hourly rate (or is such attorney does not have a regular hourly rate at the average hourly rate for attorneys of similar experience in the jurisdiction where such attorney's office is located to be determined by the Blitz Personal Injury Trustee in consultation with the Blitz Personal Injury TAC). "Legal fees and expenses" shall include travel expenses, expert fees and deposition transcript costs incurred in connection with the Bankruptcy Cases by

bankruptcy counsel or by tort counsel in the instance where separate bankruptcy counsel has not been retained.

2.4 MSP Claims Reporting.

(a) It is the position of the Proponents that neither Debtors nor any Protected Party will have any reporting obligations in respect of their contributions to the Blitz Personal Injury Trust, or in respect of any payments, settlements, resolutions, awards, or other claim liquidations by the Blitz Personal Injury Trust, under the reporting provisions of section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L.110-173), or any other similar statute or regulation, and any related rules, regulations, or guidance issued in connection therewith ("MMSEA"). Unless and until there is definitive regulatory, legislative, or judicial authority (as embodied in a final non-appealable decision from the United States Court of Appeals for the Third Circuit or the United States Supreme Court), or a letter from the Secretary of Health and Human Services confirming that the Debtors or any Protected Party have no reporting obligations under MMSEA with respect to any settlements, payments, or other awards made by the Blitz Personal Injury Trust or with respect to contributions made or will make to the Blitz Personal Injury Trust, the Blitz Personal Injury Trust shall, at its sole expense, in connection with the implementation of the Plan, act as a reporting agent for the Debtors and/or the Protected Parties and shall timely submit all reports that would be required to be made by the Debtors and/or the Protected Parties under MMSEA on account of any claims settled, resolved, paid, or otherwise liquidated by the Blitz Personal Injury Trust or with respect to contributions to the Blitz Personal Injury Trust including, but not limited to, reports that would be required if the Debtors and/or any Protected Party were determined to be "applicable plans" for purposes of MMSEA, or any of the Debtors and/or any Protected Party were otherwise found to have MMSEA reporting requirements. The Blitz Personal Injury Trust, in its role as reporting agent for the Debtors and/or any Protected Party shall follow all applicable guidance published by the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services and/or any other agent or successor Entity charged with responsibility for monitoring, assessing, or receiving reports made under MMSEA (collectively, "CMS") to determine whether or not, and, if so, how, to report to CMS pursuant to MMSEA.

(b) If the Blitz Personal Injury Trust is required to act as a reporting agent for the Debtors and/or any Protected Party pursuant to the provisions of section 2.4(a) above, the Blitz Personal Injury Trust shall provide a written certification to each of the Debtors and/or any Protected Party within ten (10) days following the end of each calendar quarter, confirming that all reports to CMS required by section 2.4(a) have been submitted in a timely fashion, and identifying (i) any reports that were rejected or otherwise identified as noncompliant by CMS, along with the basis for such rejection or noncompliance, and (ii) any payments to Medicare benefits recipients or Medicare-eligible beneficiaries that the Blitz Personal Injury Trust did not report to CMS.

(c) With respect to any reports rejected or otherwise identified as noncompliant by CMS, the Blitz Personal Injury Trust shall, upon request by the Debtors and/or any Protected Party, promptly provide copies of the original reports submitted to CMS, as well as any response received from CMS with respect to such reports; *provided, however*, that the Blitz Personal Injury Trust may redact from such copies the names, social security numbers other than the last four digits, health insurance claim numbers, taxpayer identification numbers, employer identification numbers, mailing addresses, telephone numbers, and dates of birth of the injured parties, Claimants, guardians, conservators and/or other personal representatives, as applicable.

(d) If the Blitz Personal Injury Trust is required to act as a reporting agent for the Debtors and/or any Protected Party pursuant to the provisions of section 2.4(a) above, with respect to each claim of a Medicare benefits recipient or Medicare-eligible beneficiary that was paid by the Blitz Personal Injury Trust and not disclosed to CMS, the Blitz Personal Injury Trust shall, upon request by the Debtors and/or any Protected Party, promptly provide the last four digits of the Claimant's social security number, the year of the Claimant's birth, the Claimant's injury, and any other information that may be necessary in the reasonable judgment of the Debtors and/or any Protected Party to satisfy their obligations, if any, under MMSEA, as well as the basis for the Blitz Personal Injury Trust's failure to report the payment. In the event the Debtors and/or any Protected Party disagrees with the Blitz Personal Injury Trust's decision not to report a claim paid by the Blitz Personal Injury Trust, the Blitz Personal Injury Trust shall promptly report the payment to CMS. All documentation relied upon by the Blitz Personal Injury Trust in

making a determination that a payment did not have to be reported to CMS shall be maintained for a minimum of six years following such determination.

(e) If the Blitz Personal Injury Trust is required to act as a reporting agent for the Debtors and/or any Protected Party pursuant to the provisions of section 2.4(a) above, the Blitz Personal Injury Trust shall make the reports and provide the certifications required by sections 2.4(a) and (b) above until such time as each of the Debtors and/or any Protected Party all determine, in their reasonable judgment, that they have no further legal obligation under MMSEA or otherwise to report any settlements, resolutions, payments, or liquidation determinations made by the Blitz Personal Injury Trust or contributions to the Blitz Personal Injury Trust. Furthermore, following any permitted cessation of reporting, or if reporting has not previously commenced due to the satisfaction of one or more of the conditions set forth in section 2.4(a) above, and if the Debtors and/or any Protected Party reasonably determine, based on subsequent legislative, administrative, regulatory, or judicial developments, that reporting is required, then the Blitz Personal Injury Trust shall promptly perform its obligations under sections 2.4(a) and (b) above.

(f) Section 2.4(a) above is intended to be purely prophylactic in nature, and does not imply, and shall not constitute an admission, that the Debtors and/or any Protected Party are in fact "applicable plans" within the meaning of MMSEA, or that they have any legal obligation to report any actions undertaken by the Blitz Personal Injury Trust or contributions to the Blitz Personal Injury Trust under MMSEA or any other statute or regulation.

(g) In the event that CMS concludes that reporting done by the Blitz Personal Injury Trust in accordance with section 2.4(a) above is or may be deficient in any way, and has not been corrected to the satisfaction of CMS in a timely manner, or if CMS communicates to the Blitz Personal Injury Trust, the Debtors and/or any Protected Party a concern with respect to the sufficiency or timeliness of such reporting, or there appears to the Debtors and/or any Protected Party a reasonable basis for a concern with respect to the sufficiency or timeliness of such reporting or non-reporting based upon the information received pursuant to section 2.4(b), (c) or (d) or other credible information, then each of the Debtors and/or any Protected Party shall have the right to submit its own reports to

CMS under MMSEA, and the Blitz Personal Injury Trust shall provide to any party that elects to file its own reports such information as the electing party may require in order to comply with MMSEA, including, without limitation, the full reports filed by the Blitz Personal Injury Trust pursuant to section 2.4(a) above without any redactions. The Debtors and/or any Protected Party shall keep any information they receive from the Blitz Personal Injury Trust pursuant to this section 2.4(g) confidential and shall not use such information for any purpose other than meeting obligations under MMSEA.

(h) Notwithstanding any other provisions hereof, if the Blitz Personal Injury Trust is required to act as a reporting agent for the Debtors and/or any Protected Party, then such Entities shall take all steps necessary and appropriate as required by CMS to permit any reports contemplated by this section to be filed. Furthermore, until the Debtors and/or any Protected Party provide the Blitz Personal Injury Trust with any necessary information that may be provided by CMS's Coordination of Benefits Contractor (the "COBC") to effectuate reporting, the Blitz Personal Injury Trust shall have no obligation to report under section 2.4(a) above with respect to any such entity that has not provided such information.

2.5 Payment of MSP Obligations.

In connection with the implementation of the Plan, the Blitz Personal Injury Trustee shall obtain to the satisfaction of the Blitz Personal Injury Trustee and the Garretson Group, prior to remittance of funds to Covered Claimants' counsel or the Covered Claimant, if *pro se*, in respect of any Blitz Personal Injury Trust Claim a certification from the Covered Claimant to be paid that said Covered Claimant has provided for the payment and/or resolution of any obligations owing or potentially owing under 42 U.S.C. § 1395y(b), or any related rules, regulations, or guidance, in connection with, or relating to, such Blitz Personal Injury Trust Claim. The Blitz Personal Injury Trust shall provide a quarterly certification of its compliance with this section to each of the Debtors and each Protected Party, and permit reasonable audits by such entities, no more often than quarterly, to confirm the Blitz Personal Injury Trust's compliance with this section.

For the avoidance of doubt, the Blitz Personal Injury Trust shall be obligated to comply with the requirements of this section regardless of whether the Debtors and/or any Protected Party elects to file its own reports under MMSEA pursuant to section 2.4(g) above.

2.6 Retention of Qualified MSP Compliance Vendor.

In accordance with section 4.12 of the Plan, the Blitz Personal Injury Trust shall, at its expense, retain the Garretson Group to provide such services as are required to ensure compliance with the Blitz Personal Injury Trust's MSP requirements. The Participating Insurers and Wal-Mart shall have the right to obtain information from the Garretson Group, the Blitz Personal Injury Trust and any holder of a Covered Blitz Personal Injury Claim as they may reasonably request to ensure that the Blitz Personal Injury Trust has complied with MSP requirements or for the purpose of internal audits and insurance or reinsurance claims. The Blitz Personal Injury Trust is prohibited from making a distribution to any holder of a Blitz Personal Injury Claim who refuses to provide the information necessary to meet MSP requirements with regard to that claimant. If a Covered Claimant fails to provide the information necessary to meet MSP requirements by the date by which the Blitz Personal Injury Trustee intends to terminate the Blitz Personal Injury Trust in accordance with section 6.4 of this Agreement, any amount reserved for such Covered Claimant shall be treated as a residual fund to be redistributed to other Covered Claimants pursuant to either paragraph I of the TDP Scoring System (if such funds were reserved from the Special Circumstances Fund for the benefit of a Covered Claimant with a claim against the Special Circumstances Fund) or paragraph K of the TDP Scoring System (if such funds were reserved from the Non-Appealing Fund for the benefit of a Covered Claimant who does not have a claim against the Special Circumstances Fund).

2.7 Indemnification for Medicare Claims Reporting and Payment Obligations.

For the avoidance of doubt, the Blitz Personal Injury Trust shall defend, indemnify save and hold harmless each Protected Party from any claims in respect of Medicare claims reporting and payment obligations in connection with Blitz Personal Injury Trust Claims, including any obligations owing or potentially owing under MMSEA or 42 U.S.C. § 1395y(b) or any related rules, regulations, or guidance issued in connection therewith, or relating thereto, and any claims arising from or related to the Blitz Personal Injury Trust's obligations under sections 2.4 and 2.5 above. All defense and indemnity costs described in this section shall be assessed pro rata

against the Non-Appealing Fund and the Special Circumstances Fund as set forth in the TDP Scoring System provided, however, that in the event that either the Non-Appealing Fund or the Special Circumstances Fund is unable to satisfy its pro rata obligations to the Protected Parties, such obligations shall be satisfied in full by the other Fund.

SECTION 3

ACCOUNTS, INVESTMENTS, AND PAYMENTS

3.1 Accounts. The Blitz Personal Injury Trustee may, from time to time, create such accounts and reserves as he or she may deem necessary, prudent, or useful to (i) provide for the payment, or to make provision for future payment, of expenses incurred or reasonably anticipated to be incurred by the Blitz Personal Injury Trust (the "Cost Reserve") and (ii) provide for the payment, or to make provision for future payment, on account of liquidated Blitz Personal Injury Trust Claims; and may, with respect to any such account or reserve, restrict the use of monies therein; provided, however, that such reserve be consistent with the allocation of expenses between the Non-Appealing Fund and the Special Circumstances Fund as set forth in the TDP Scoring System. With respect to the reserves contemplated under subpart (ii) above, reserves will be set consistent with Section 6.5 of the Blitz Personal Injury Trust Distribution Procedures. Because there are limited funds available in the Blitz Personal Injury Trust for the payment of the Blitz Personal Injury Claims, no Covered Claimant is entitled to payment "in full," payment that is disproportionately larger than similarly situated Covered Claimants with the same injuries and similar characteristics, or payment that is at the expense of other Covered Claimants. The amount of the initial Cost Reserve shall be \$1,000,000.00, deducted *pro rata* from the Non-Appealing Fund and the Special Circumstances Fund (*i.e.*, Because the \$30,700,000 allocated to the Special Circumstances Fund represents 18.98% of \$161,720,000, \$189,800 of the \$1,000,000 reserve shall come from the Special Circumstances Fund and \$810,200 shall come from the Non-Appealing Fund). After consultation with the Blitz Personal Injury TAC, the Blitz Personal Injury Trustee may increase the size of the Cost Reserve in an amount necessary to provide for expenses incurred or reasonably anticipated to be incurred by the Blitz Personal Injury Trustee. The Blitz Personal Injury Trustee shall include a reasonably detailed description of any account or reserve created in accordance with this section 3.1 in the annual reports described in section 2.2(c)(i) hereof, which description shall include, with respect

to any such account, the transfers made to such account, the proceeds of or earnings on the assets held in each such account, and the payments or disbursements made from each such account.

3.2 Investments. Investment of monies held in the Blitz Personal Injury Trust shall be administered in a manner consistent with the standards set forth in the Uniform Prudent Investor Act, subject to the following limitations and provisions:

(a) The Blitz Personal Injury Trust may invest in well diversified equity portfolios whose benchmark is a broad equity market index such as, but not limited to, the S&P 500 Index, Russell 1000 Index, S&P ADR Index or MSCI EAFE Index. The Blitz Personal Injury Trust shall not acquire, directly or indirectly, equity in any entity or business enterprise if, immediately following such acquisition, the Blitz Personal Injury Trust would hold more than 5% of the equity in such entity or business enterprise. The Blitz Personal Injury Trust shall not hold, directly or indirectly, more than 10% of the equity in any entity or business enterprise.

(b) The Blitz Personal Injury Trust shall not acquire or hold any long-term debt securities unless (i) such securities are included in the Blitz Personal Injury Trust Assets under the Plan, (ii) such securities are rated "Baa" or higher by Moody's, "BBB" or higher by Standard & Poor's ("S&P's"), or have been given an equivalent investment grade rating by another nationally recognized statistical rating agency, or (iii) have been issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof. This restriction does not apply to any pooled investment vehicles where pooled assets receive an investment grade rating (i.e., "BBB" rating or above) by a nationally recognized rating agency.

(c) Notwithstanding (b) above, the Blitz Personal Injury Trust may acquire or hold additional non-investment grade debt securities for longer than ninety (90) days if the Blitz Personal Injury Trust holds these securities as part of the Blitz Personal Injury Trust's intermediate-term bond manager portfolio, and such securities represent no more than 5% of the bond manager's portfolio.

(d) The Blitz Personal Injury Trust shall not acquire or hold for longer than ninety (90) days any commercial paper unless such commercial paper is rated "Prime-1" or

higher by Moody's or "A-1" or higher by S&P's or has been given an equivalent rating by another nationally recognized statistical rating agency.

(e) The Blitz Personal Injury Trust shall not acquire any debt securities or other instruments issued by any entity if, following such acquisition, the aggregate market value of all debt securities and instruments issued by such entity held by the Blitz Personal Injury Trust would exceed 5% of the aggregate value of the Blitz Personal Injury Trust Assets. There is no limitation on holding debt securities or other instruments issued or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof.

(f) The Blitz Personal Injury Trust shall not acquire or hold any certificates of deposit unless all publicly held, long-term debt securities, if any, of the financial institution issuing the certificate of deposit and the holding company, if any, of which such financial institution is a subsidiary, meet the standards set forth in Section 3.2(b) above.

(g) The Blitz Personal Injury Trust may acquire and hold any securities or instruments obtained as proceeds of litigation or otherwise to resolve disputes, without regard to the limitations set forth in Subsections (a)-(f) above.

(h) The Blitz Personal Injury Trust shall not acquire or hold any repurchase obligations unless, in the opinion of the Blitz Personal Injury Trustee, they are adequately collateralized based on the advice and recommendation of its investment managers, the Blitz Personal Injury Trust may allow its investment managers to acquire prudently or hold derivative instruments like options and futures in the normal course of portfolio management. Specifically, the Blitz Personal Injury Trust may acquire or hold derivatives to manage or mitigate portfolio risk, including, but not limited to, interest rate risk and equity market risk. Using derivative instruments to leverage a portfolio to enhance returns (at a much greater risk to the portfolio) is prohibited.

(i) The Blitz Personal Injury Trust may lend securities on a short-term basis, subject to adequate, normal and customary collateral arrangements.

3.3 Source of Payments. All Blitz Personal Injury Trust Expenses and all other liabilities of the Blitz Personal Injury Trust shall be payable solely by the Blitz Personal Injury Trustee in a manner consistent with the allocation of costs and expenses pro rata between the Non-Appealing Fund and the Special Circumstances Fund as set forth in the TDP Scoring System. Neither any Protected Party or their respective subsidiaries, successors in interest, or the present or former shareholders, directors, officers, employees or agents, or their respective subsidiaries, nor the Blitz Personal Injury Trustee in his or her personal capacity, the Blitz Personal Injury TAC, or any of their respective officers, agents, advisors, or employees shall be liable for the payment of Blitz Personal Injury Trust Expenses or any other liability of the Blitz Personal Injury Trust. The Blitz Personal Injury Trustee shall include a reasonably detailed description of Blitz Personal Injury Trust Expenses and other liabilities paid in accordance with this section 3.3 in the annual reports described in section 2.2(c)(i) above.

SECTION 4

BLITZ PERSONAL INJURY TRUSTEE

4.1 Number. There shall be one (1) Blitz Personal Injury Trustee. The initial Blitz Personal Injury Trustee shall be the person named on the signature page hereof.

4.2 Term of Service.

(a) The initial Blitz Personal Injury Trustee named pursuant to section 4.1 above shall serve an initial term of three (3) years. Thereafter each term of service shall be five (5) years. The initial Blitz Personal Injury Trustee shall serve from the Effective Date until the earlier of (i) the end of his or her term, (ii) his or her death, (iii) his or her resignation pursuant to section 4.2(b) below, (iv) his or her removal pursuant to section 4.2(c) below, or (v) the termination of the Blitz Personal Injury Trust pursuant to section 7.2 below.

(b) A Blitz Personal Injury Trustee may resign at any time by written notice to the Blitz Personal Injury TAC. Such notice shall specify a date when such resignation shall take place, which shall not be less than 90 days after the date such notice is given, where practicable.

(c) A Blitz Personal Injury Trustee may be removed by order of the Bankruptcy Court upon notice and motion filed by the Blitz Personal Injury TAC in the event that the

Blitz Personal Injury Trustee becomes unable to discharge his or her duties hereunder due to accident or physical or mental deterioration, or for other good cause. Good cause shall be deemed to include, without limitation (i) substantial failure to comply with the general administration provisions of section 2.2 above, (ii) a consistent pattern of neglect and failure to perform or participate in performing the duties of the Blitz Personal Injury Trustee hereunder, (iii) repeated nonattendance at scheduled meetings, or (iv) one of the circumstances set forth in section 4.7 of this Agreement. Removal shall take effect at such time as the Bankruptcy Court shall determine.

4.3 Appointment of Successor Blitz Personal Injury Trustee.

(a) In the event of a vacancy in the position of a Blitz Personal Injury Trustee, the Blitz Personal Injury TAC shall consult concerning appointment of a successor (a "Successor Blitz Personal Injury Trustee"). The vacancy shall be filled by the vote of a majority of the Blitz Personal Injury TAC members. In the event that the Blitz Personal Injury TAC members fail to secure a majority vote for the appointment of a Successor Blitz Personal Injury Trustee, the Bankruptcy Court shall make the appointment. Nothing shall prevent the reappointment of a Blitz Personal Injury Trustee for an additional term or terms except that a Blitz Personal Injury Trustee removed for cause shall not be reappointed.

(b) Immediately upon the appointment of any Successor Blitz Personal Injury Trustee, all rights, titles, duties, powers and authority of the predecessor Blitz Personal Injury Trustee hereunder shall be vested in, and undertaken by, the Successor Blitz Personal Injury Trustee without any further act. No Successor Blitz Personal Injury Trustee shall be liable personally for any act or omission of his or her predecessor Blitz Personal Injury Trustee.

(c) Each Successor Blitz Personal Injury Trustee shall serve until the earlier of (i) the end of a full term of five (5) years if the predecessor Blitz Personal Injury Trustee completed his or her term, (ii) the end of the remainder of the term of the Blitz Personal Injury Trustee whom he or she is replacing if said predecessor Blitz Personal Injury Trustee did not complete said term, (iii) his or her death, (iv) his or her resignation

pursuant to section 4.2(b) above, (v) his or her removal pursuant to section 4.2(c) above, or (vi) the termination of the Blitz Personal Injury Trust pursuant to section 7.2 below.

4.4 Liability of Blitz Personal Injury Trustee, Blitz Personal Injury TAC.

Neither the Blitz Personal Injury Trustee nor the members of the Blitz Personal Injury TAC shall have any liability to the Blitz Personal Injury Trust, to any Blitz Personal Injury Trust Claimant, or to any other Entity, for actions taken or not taken in connection with the operation of the Blitz Personal Injury Trust or the administration, processing, settlement, resolution, liquidation, satisfaction and/or payment of Blitz Personal Injury Trust Claims under the Blitz Personal Injury TDP except for a breach of fiduciary duty by any of the foregoing committed through fraud, gross negligence or willful misconduct.

4.5 Compensation and Expenses of Blitz Personal Injury Trustee.

(a) For all time expended (i) administering the Blitz Personal Injury Trust in accordance with the terms of this Agreement and the Plan, (ii) preparing for and attending Blitz Personal Injury Trust meetings, and (iii) receiving, processing, administering, resolving, liquidating and/or paying Blitz Personal Injury Trust Claims, the Blitz Personal Injury Trustee shall receive the sum of \$600.00 per hour, plus reasonable out-of-pocket costs and expenses. The Blitz Personal Injury Trustee shall record all hourly time to be charged to the Blitz Personal Injury Trust on a daily basis. If any payments received from by the Blitz Personal Injury Trustee are determined by the Blitz Personal Injury Trustee to be properly allocable to a particular Covered Claimant as an Individual Cost (each, a "Reimbursable Payment"), then, at the time the Individual Cost that qualifies as a Reimbursable Payment would have otherwise been deducted from the distribution to be made to such Covered Claimant, an amount equal to such Reimbursable Payment shall be transferred to the Cost Reserve from the Non-Appealing Fund or the Special Circumstances Fund (as applicable, depending on whether the Covered Claimant at issue is to be paid from the Non-Appealing Fund or the Special Circumstances Fund).

(b) On a monthly basis, by the 15th day of each month for the preceding month, the Blitz Personal Injury Trustee shall submit bills for compensation for such preceding month to the Blitz Personal Injury TAC and to any counsel for a Covered Claimant that

has requested copies of such bills. If no objection is made in writing to such bill within seven (7) days of submission, then the Blitz Personal Injury Trustee shall be entitled to pay such bill from the Retainer or, if the Retainer has been exhausted, from the Blitz Personal Injury Trust Assets. If a written objection is timely submitted to the Blitz Personal Injury Trustee, the objecting party shall discuss its objection in good faith with the Blitz Personal Injury Trustee in an effort to reach a consensual resolution. If no resolution is reached within seven (7) days of submission of a written objection then the Blitz Personal Injury Trustee shall be entitled to payment of the monthly bill to which such objection was submitted unless a written objection is filed with the Bankruptcy Court seeking a determination of the matter. An objection to a monthly bill filed with the Bankruptcy Court and notice of any hearing scheduled on such matter must be served on the Blitz Personal Injury Trust and the members of the Blitz Personal Injury TAC. If a written objection is filed, payment of the bill to which the objection relates shall be made only pursuant to (i) an order of the Bankruptcy Court or (ii) agreement of the Blitz Personal Injury Trustee and the party filing the objection, which agreement also would result in a withdrawal of the objection filed with the Bankruptcy Court.

(c) The Blitz Personal Injury Trust will promptly reimburse the Blitz Personal Injury Trustee for all reasonable out-of-pocket costs and expenses incurred by the Blitz Personal Injury Trustee in connection with the performance of his or her duties hereunder, provided however, that the Blitz Personal Injury TAC may make such motion to the Bankruptcy Court as it deems advisable to seek disgorgement of any cost or expense for which the Blitz Personal Injury Trustee has received reimbursement that the Blitz Personal Injury TAC believes was not reasonable under the circumstances. The costs and expenses incurred by the Blitz Personal Injury Trustee shall be apportioned between the Non-Appealing Fund and the Special Circumstances Fund as set forth in the TDP Scoring System.

(d) The hourly compensation payable to the Blitz Personal Injury Trustee hereunder shall be reviewed every year by the Blitz Personal Injury Trustee and, after consultation with the members of the Blitz Personal Injury TAC, appropriately adjusted as may be reasonable under the circumstances including, without limitation, for changes in the cost of living.

(e) The Blitz Personal Injury Trust shall include a description of the amounts paid under this section 4.5 in the accounts to be filed with the Bankruptcy Court and provided to the Blitz Personal Injury TAC pursuant to section 2.2(c)(i) above.

4.6 Blitz Personal Injury Trustee's Employment of Experts. The Blitz Personal Injury Trustee may, but shall not be required to, retain and/or consult with legal counsel, accountants, auditors, experts, or financial and investment advisors on the matters submitted to the Blitz Personal Injury Trustee (a "Trust Professional"). In the absence of gross negligence, the written opinion of, or information provided by, any such Trust Professional on the particular matter in respect of which such Trust Professional is an expert may be relied upon by the Blitz Personal Injury Trustee and shall be full and complete authorization and protection to the Blitz Personal Injury Trustee in respect of any action taken or not taken in good faith by the Blitz Personal Injury Trustee otherwise consistent with this Agreement and in accordance with the written opinion of or information provided by such Trust Professional. The reasonable and necessary fees for any Trust Professional(s) will be paid from the Blitz Personal Injury Trust Assets and allocated, as permitted under the TDP Scoring System, to one or more Covered Claimants as an Individual Cost (as defined and using the methodology described in the TDP Scoring System) to be charged to a particular Covered Claimant or as a General Cost (as defined and using the methodology described in the TDP Scoring System) to be paid from the Cost Reserve.

4.7 Blitz Personal Injury Trustee's Independence. The Blitz Personal Injury Trustee shall not, during the term of his or her service, hold a financial interest in, act as attorney or agent for, or serve as any other professional for any Entity with a financial interest in the operation of the Blitz Personal Injury Trust. No Blitz Personal Injury Trustee shall act as an attorney for any Claimant either (i) in connection with such Claimant's Blitz Personal Injury Trust Claim, or (ii) otherwise prior to final payment on account of such Blitz Personal Injury Trust Claim, and (iii) the Blitz Personal Injury Trustee shall not make any agreement with the holder of any Blitz Personal Injury Trust Claim or such Claimant's representative prior to final payment on account of such Blitz Personal Injury Trust Claim applicable after such final payment. In addition to the circumstances set forth in section 4.2(c) of this Agreement, any violation of this section 4.7 shall be cause for removal of the Blitz Personal Injury Trustee.

4.8 **Bond.** The Blitz Personal Injury Trustee shall not be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

SECTION 5

TRUST ADVISORY COMMITTEE

5.1 **Formulation and Members.** The Blitz Personal Injury TAC shall be formed pursuant to the Plan as of the Effective Date. The Blitz Personal Injury TAC shall consist of four (4) members, who shall initially be the persons named on the signature page hereof. Because there will be an even number of members of the Blitz Personal Injury TAC, in the event a vote of the Blitz Personal Injury TAC results in a tie, the Blitz Personal Injury Trustee shall hold a tiebreaker vote. In the event a member of the Blitz Personal Injury TAC is unable to attend an in-person or telephonic meeting of the Blitz Personal Injury TAC, such member may designate an alternate to attend such meeting on his or her behalf with such alternate having the same rights to be heard and vote on all matters discussed.

5.2 **Duties.** The members of the Blitz Personal Injury TAC shall serve in a fiduciary capacity representing all Blitz Personal Injury Claimants and Protected Parties. The Blitz Personal Injury Trustee must consult with the Blitz Personal Injury TAC on matters identified in section 2.2(e) above and may consult with the Blitz Personal Injury TAC with respect to such other matters relating to the Blitz Personal Injury Trust and the administration, processing, settlement, resolution, liquidation, satisfaction and/or payment, as applicable, of Blitz Personal Injury Trust Claims as the Blitz Personal Injury Trustee and the Blitz Personal Injury TAC deem advisable.

5.3 **Term of Office.**

(a) The initial members of the Blitz Personal Injury TAC appointed in accordance with section 5.1 above shall serve the staggered three-, four-, or five-year terms shown on the signature pages hereof. Thereafter, each term of office shall be five (5) years. Each member of the Blitz Personal Injury TAC shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to section 5.3(b) below, (iii) his or her removal pursuant to section 5.3(c) below, (iv) the end of his or her term as provided above, or (v) the termination of the Blitz Personal Injury Trust pursuant to section 7.2 below.

(b) A member of the Blitz Personal Injury TAC may resign at any time by written notice to the other members of the Blitz Personal Injury TAC and the Blitz Personal Injury Trustee. Such notice shall specify a date when such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) A member of the Blitz Personal Injury TAC may be removed in the event that he or she becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence, or a consistent pattern of neglect and failure to perform or to participate in performing the duties of such member hereunder, such as repeated nonattendance at scheduled meetings, or for other good cause. Such removal shall be made at the recommendation of the remaining members of the Blitz Personal Injury TAC with the approval of the Bankruptcy Court.

5.4 Appointment of Successor Members.

(a) A vacancy in the Blitz Personal Injury TAC caused by resignation, death or as a result of removal, shall be filled with an individual, not a firm, approved by the majority vote of the Blitz Personal Injury Trustee and all remaining members of the Blitz Personal Injury TAC. Nothing in this Agreement shall prevent the reappointment of an individual serving as a member of the Blitz Personal Injury TAC for an additional term or terms, except that a member removed for cause may not be reappointed, and there shall be no limitation on the number of terms that a Blitz Personal Injury TAC member may serve.

(b) Each successor member of the Blitz Personal Injury TAC shall serve until the earlier of (i) the end of the full term of five (5) years for which he or she was appointed if his or her immediate predecessor member of the Blitz Personal Injury TAC completed his or her term, (ii) the end of the term of the member of the Blitz Personal Injury TAC whom he or she replaced if his or her predecessor member did not complete such term, (iii) his or her death, (iv) his or her resignation pursuant to section 5.3(b) above, (v) his or her removal pursuant to section 5.3(c) above, or (vi) the termination of the Blitz Personal Injury Trust pursuant to section 7.2 below.

5.5 Blitz Personal Injury TAC's Employment of Professionals. The Blitz Personal Injury TAC may at the sole and non-reimbursable cost of its members (but is not required to)

retain and/or consult counsel, accountants, appraisers, auditors, forecasters, experts, and financial and investment advisors, and such other parties deemed by the Blitz Personal Injury TAC to be qualified as experts on matters submitted to the TAC (the "TAC Professionals"). Subject to the provisions of section 6.1 of this Agreement, the Blitz Personal Injury TAC and the TAC Professionals shall at all times have complete access to the Blitz Personal Injury Trust's officers, employees and agents, as well as to the Trust Professionals, and shall also have complete access to all information generated by them or otherwise available to the Blitz Personal Injury Trust or the Blitz Personal Injury Trustee other than the Blitz Personal Injury Privileged Information (as defined in the Plan), provided that any information provided by the Trust Professionals shall not constitute a waiver of any applicable privilege, and provided further that the foregoing provisions shall not amend, modify, or alter in any fashion the provisions regarding and/or restrictions applicable to Blitz Personal Injury Privileged Information or Blitz Personal Injury Confidential Information (each as defined in the Plan), the terms of which apply fully hereunder. In the absence of gross negligence, the written opinion of or information provided by any such TAC Professional on the particular matter in respect of which such TAC Professional is an expert may be relied upon by the Blitz Personal Injury TAC and shall be full and complete authorization and protection to the Blitz Personal Injury TAC in respect of any action taken or not taken in good faith by the Blitz Personal Injury TAC otherwise consistent with this Agreement and in accordance with the written opinion of or information provided by such TAC Professional.

5.6 Compensation and Expenses of Blitz Personal Injury TAC. The members of the Blitz Personal Injury TAC shall receive compensation from the Blitz Personal Injury Trust from the Blitz Personal Injury Trust Assets for their services as members of the Blitz Personal Injury TAC in the form of an hourly rate of no more than \$350 per hour for preparation for and attendance at meetings or other conduct of the Blitz Personal Injury Trust as may be specifically requested by the Blitz Personal Injury Trustee and for which the Blitz Personal Injury Trustee agrees in advance to provide reasonable compensation. The members of the Blitz Personal Injury TAC shall also be reimbursed promptly for all reasonable out-of-pocket costs and expenses incurred by the members of the Blitz Personal Injury TAC in connection with their attendance at meetings and as may be agreed upon by the Blitz Personal Injury Trustee. Any such reimbursement or direct payment shall be deemed a Blitz Personal Injury Trust Expense and allocated, as permitted under the TDP Scoring System, to one or more Covered Claimants as

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an Individual Cost (as defined and using the methodology described in the TDP Scoring System) to be charged to a particular Covered Claimant or as a General Cost (as defined and using the methodology described in the TDP Scoring System) to be paid from the Cost Reserve. The Blitz Personal Injury Trust shall include a description of the fees, costs, and expenses incurred under this section 5.6 in the accounts to be filed with the Bankruptcy Court and provided to the Blitz Personal Injury Trustee and the Blitz Personal Injury TAC, pursuant to section 2.2(c)(i) above.

SECTION 6

GENERAL PROVISIONS

6.1 Procedures for Consultation with Blitz Personal Injury TAC. In the event the Blitz Personal Injury Trustee is required to consult with the Blitz Personal Injury TAC as provided herein, the Blitz Personal Injury Trustee shall provide the Blitz Personal Injury TAC with written advance notice of the matter under consideration, and with all relevant information concerning the matter as is reasonably practicable under the circumstances. The Blitz Personal Injury Trustee shall also provide the Blitz Personal Injury TAC with such reasonable access to Trust Professionals and other experts retained by the Blitz Personal Injury Trust and its staff (if any) as the Blitz Personal Injury TAC may reasonably request during the time that the Blitz Personal Injury Trustee is considering such matter, and shall also provide Blitz Personal Injury TAC the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on such matter with the Blitz Personal Injury Trustee; provided that in no event shall the Blitz Personal Injury TAC or its members (A) have any role, whether by consent, consultation or otherwise, in the Blitz Personal Injury Trust's selection of counsel, experts or other professionals to defend Blitz Personal Injury Trust Claims against the Blitz Personal Injury Trust, or (B) have any right to consult with or obtain information from the Blitz Personal Injury Trust or anyone employed by the Blitz Personal Injury Trust concerning the defense of any such Blitz Personal Injury Trust Claims.

In determining when to take definitive action on any matter subject to the consultation process set forth in this section 6.1, the Blitz Personal Injury Trustee shall take into consideration the time required for the Blitz Personal Injury TAC, if its members so wish, to engage and consult with its own independent financial or investment advisors as to such matter. In any event, the Blitz Personal Injury Trustee shall not take definitive action on any such matter

until at least thirty (30) days after providing the Blitz Personal Injury TAC with the initial written notice that such matter is under consideration by the Blitz Personal Injury Trustee, unless such time period is waived by the Blitz Personal Injury TAC.

6.2 Indemnification.

(a) The Blitz Personal Injury Trust shall indemnify, hold harmless and defend the Blitz Personal Injury Trustee, and the members of the Blitz Personal Injury TAC in the performance of their respective duties hereunder to the fullest extent that a corporation or trust organized under the laws of the State of Delaware is entitled to indemnify and defend such persons against any and all liabilities, expenses, claims, damages or losses incurred by them in the performance of their duties hereunder. Notwithstanding the foregoing, no individual shall be indemnified or defended in any way for any liability, expense, claim, damage, or loss for which he or she is ultimately held liable as a result of such individual's own breach of fiduciary duty committed through fraud, gross negligence or willful misconduct. As set forth in the TDP Scoring System, the foregoing indemnification costs shall be borne pro rata between the Non-Appealing Fund and the Special Circumstances Fund in the manner described therein.

(b) The Blitz Personal Injury Trust shall fully and completely defend each of the Debtors, the present and former directors and officers of each of the Debtors, the Participating Insurers, Wal-Mart, the BAH Released Parties, shareholders of the Debtors solely in their capacity as shareholders and solely related to the Blitz Personal Injury Claims, and the Representatives, Affiliates, subsidiaries and/or successors of each of the foregoing in connection with any proceeding involving, relating to or arising out of, in whole or in part, the enforcement or enforceability of the Channeling Injunction. In the event any person or Entity asserts any claim that is subject to the Channeling Injunction, the Blitz Personal Injury Trust shall, at its own expense, defend the validity of the Channeling Injunction and its application and use its best efforts to establish that such Claim is enjoined. The Participating Insurers, Wal-Mart and the BAH Settling Parties (i) shall have consultation and approval rights with respect to the selection of counsel hired by the Blitz Personal Injury Trust for such defense obligations and (ii) shall have the right, at their own cost and expense, to associate in the defense in any proceeding

concerning the enforcement and application of the Channeling Injunction. If the Blitz Personal Injury Trust breaches its duty to fully and completely defend the Protected Parties, the Blitz Personal Injury Trust is obligated to indemnify the Protected Parties, including advancement of defense costs. As set forth in the TDP Scoring System, the foregoing indemnification costs shall be borne pro rata between the Non-Appealing Fund and the Special Circumstances Fund in the manner described therein provided, however, that in the event that either the Non-Appealing Fund or the Special Circumstances Fund is unable to satisfy its pro rata obligations to the Protected Parties, such obligations shall be satisfied in full by the other fund.

(d) The Blitz Personal Injury Trust may but is not required to (after consulting with the Blitz Personal Injury TAC) purchase and maintain reasonable amounts and types of insurance on behalf of an Indemnified Party to provide for payment of the obligations of the Blitz Personal Injury Trust under this section 6.2 of this Agreement. As set forth in the TDP Scoring System, the costs of any such insurance shall be borne pro rata between the Non-Appealing Fund and the Special Circumstances Fund in the manner described therein.

6.3 Irrevocability. The Blitz Personal Injury Trust is irrevocable.

6.4 Termination.

(a) The Blitz Personal Injury Trust shall automatically terminate on the date that is ninety (90) days after the first to occur of the following events (the "Termination Date"):

- (i) the Blitz Personal Injury Trustee decides to terminate the Blitz Personal Injury Trust because the Blitz Personal Injury Claims duly filed with the Blitz Personal Injury Trust have been liquidated and paid to the extent provided in this Agreement and the Blitz Personal Injury TDP or disallowed; or
- (ii) if the Blitz Personal Injury Trustee has procured (after consulting with the Blitz Personal Injury TAC) and has in place irrevocable insurance policies and has established claims handling agreements and other necessary arrangements with suitable third parties adequate to discharge all expected

remaining obligations and expenses of the Blitz Personal Injury Trust in a manner consistent with this Agreement and the Blitz Personal Injury TDP, the date on which the Bankruptcy Court enters an order approving such insurance and other arrangements and such order becomes a Final Order.

(b) On the Blitz Personal Injury Trust Termination Date, after the payment of all the Blitz Personal Injury Claims have been provided for and the liquidation of all properties and other non-cash trust assets then held by the Blitz Personal Injury Trust, all monies remaining in the Non-Appealing Fund (including any funds originating from the Non-Appealing Fund held in the Cost Reserve described in paragraph 3.1 above) shall be distributed pro rata to holders of Allowed Covered Blitz Personal Injury Claims that accepted their Offer Amount from the Blitz Personal Injury Trust and received an award from the Non-Appealing Fund in proportion to the amount each Covered Claimant received from the Non-Appealing Fund. Or, if in the judgment of the Blitz Personal Injury Trustee, such sums are determined to be *de minimis* such that the costs associated with making such a distribution would outweigh the impact of the distribution, then the excess funds may be given to such organization(s), exempt from federal income tax under section 501(c)(3) of the IRC, at the discretion of the Blitz Personal Injury Trustee. The amount of monies allocated to the Special Circumstances Fund shall be completely exhausted by costs and payments to Covered Claimants making application to the Special Circumstances Fund. All remaining monies originating from the Special Circumstances Fund held in the Cost Reserve described in paragraph 3.1 above shall be distributed pro rata among Covered Claimants receiving payment from the Special Circumstances Fund. Notwithstanding any contrary provision of the Plan and related documents, this section 6.4(b) cannot be modified or amended.

6.5 Amendments.

(a) Except as otherwise provided in sections 6.5(b) and 6.5(c) below, the Blitz Personal Injury Trustee, after consultation with the Blitz Personal Injury TAC, may modify or amend this Agreement and the Blitz Personal Injury Trust By-laws, provided that any such amendments must be consistent with the requirements of the Plan. The Blitz Personal Injury Trustee, after consultation with the Blitz Personal Injury TAC, may modify or

amend the Blitz Personal Injury TDP, *provided, however*, that no amendment to the Blitz Personal Injury TDP shall be inconsistent with the limitations on amendments provided therein, and provided further that any such amendments must be consistent with the requirements of the Plan and that the Blitz Personal Injury Trustee shall give the Blitz Personal Injury TAC prior notice of the proposed amendments. Any modification or amendment made pursuant to this section 6.5 must be done in writing. Notwithstanding anything contained in this Agreement, any Blitz Personal Injury Trust Bylaws, or the Blitz Personal Injury TDP to the contrary, neither this Agreement, the Blitz Personal Injury Trust Bylaws, nor the Blitz Personal Injury TDP shall be modified or amended in any way that could jeopardize, impair, or modify (i) the efficacy or enforceability of the injunctions entered in connection with confirmation of the Plan, or (ii) the status of the Blitz Personal Injury Trust as a qualified settlement fund under section 468B of the IRC.

(b) Sections 2.4, 2.5 and 2.6 of this Agreement may not be amended without the prior written consent of the Participating Insurers and Wal-Mart.

(c) There shall be no amendments to (i) the TDP Scoring System, (ii) the enumerated criteria listed in paragraph H of the TDP Scoring System for application to the Special Circumstances Fund, (iii) the amounts allocated to the Non-Appealing Fund and the Special Circumstances Fund, (iv) the mechanisms for allocating costs and expenses to Covered Claimants (including the Cost Reserve mechanism described in section 3.1 above), (v) the mechanism for review and objection to fees and expenses incurred by the Blitz Personal Injury Trustee described in section 4.5 above, or (vi) this section 6.5(c).

6.6 Severability. Should any provision in this Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Agreement.

6.7 Notices. Notices to Blitz Personal Injury Claimants asserting Blitz Personal Injury Trust Claims shall be given electronically to the e-mail address of such person in each case as provided on such person's claim form submitted to the Blitz Personal Injury Trust with respect to his or her Blitz Personal Injury Trust Claim.

(a) Any notices or other communications required or permitted hereunder to the following parties shall be in writing and delivered at the e-mail addresses designated

below, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows, or to such other address or addresses as may hereafter be furnished in writing to each of the other parties listed below in compliance with the terms hereof.

To the Blitz Personal Injury Trust: blitzclaim@litigationkc.com; adr@richardcohen.net; dhaltiwanger@rpwb.com

To the Blitz Personal Injury Trustee: adr@richardcohen.net; blitzclaim@litigationkc.com; dhaltiwanger@rpwb.com

To the Blitz Personal Injury TAC: blitzclaim@litigationkc.com; dhaltiwanger@rpwb.com

(b) All such notices and communications shall be effective, if electronically transmitted, when the communication is received at the designated addresses and confirmed by the recipient by return transmission.

6.8 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Protected Parties, the Blitz Personal Injury Trust, the Blitz Personal Injury Trustee, and their respective successors and assigns, except that neither the Protected Parties, the Blitz Personal Injury Trust, the Blitz Personal Injury Trustee, may assign or otherwise transfer any of its, or their, rights or obligations under this Agreement except, in the case of the Blitz Personal Injury Trust and the Blitz Personal Injury Trustee, as contemplated by section 2.1 above.

6.9 Entire Agreement; No Waiver. The entire agreement of the parties relating to the subject matter of this Agreement is contained herein and in the Plan Documents referred to herein, and this Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

6.10 Headings. The headings used in this Agreement are inserted for convenience only and do not constitute a portion of this Agreement, nor in any manner affect the construction of the provisions of this Agreement.

6.11 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of law principles.

6.12 Debtors' Representations and Cooperation. The USA Debtors are hereby irrevocably designated as the settlors, and are hereby authorized to take any action required of the settlors in connection with this Agreement. Subject to possession of necessary funds to do so, the USA Debtors agree to reasonably cooperate as may be requested by the Blitz Personal Injury Trustee in implementing the goals and objectives of the Blitz Personal Injury Trust.

6.13 Dispute Resolution. Any disputes that arises under this Agreement or under the Blitz Personal Injury TDP may be resolved by (i) submission of the matter to an alternative dispute resolution ("ADR") process mutually-agreeable to the parties involved with such dispute, or (ii) application to the Bankruptcy Court for a judicial determination of the matter. Any review by the Bankruptcy Court of an agreed upon non-binding ADR procedure shall be *de novo*.

6.14 Enforcement and Administration. The provisions of this Agreement and the Blitz Personal Injury TDP shall be enforced by the Bankruptcy Court pursuant to the Plan. The parties hereby further acknowledge and agree that the Bankruptcy Court shall have exclusive jurisdiction over the settlement of the accounts of the Blitz Personal Injury Trustee and over any disputes hereunder not resolved by ADR in accordance with section 6.13 above.

6.15 Effectiveness. This Agreement shall not become effective until it has been executed and delivered by all the parties hereto.

6.16 Counterpart Signatures. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of January, 2014.

BLITZ USA, INC., BLITZ RE HOLDINGS, LLC, BLITZ ACQUISITION, LLC
and MIAMIOK, LLC f/k/a F3BRANDS

By: _____

Name and Title:

LAM 2011 HOLDINGS, L.L.C. and BLITZ ACQUISITION HOLDINGS, INC.

By: _____
Name and Title:

BLITZ PERSONAL INJURY TRUSTEE

Expiration Date of Initial Term: _____
Anniversary of the date of this Agreement

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Accepted and Agreed:

**BLITZ PERSONAL INJURY TRUST
ADVISORY COMMITTEE**

Expiration Date of Initial Term: _____
Anniversary of the date of this Blitz
Personal Injury Trust Agreement

Expiration Date of Initial Term: _____
Anniversary of the date of this Blitz
Personal Injury Trust Agreement

Expiration Date of Initial Term: _____
Anniversary of the date of this Blitz
Personal Injury Trust Agreement

Expiration Date of Initial Term: _____
Anniversary of the date of this Blitz
Personal Injury Trust Agreement

EXHIBIT C

Blitz Liquidating Trust Agreement

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____)	
In re)	
_____)	Case No. 11-13603 (PJW)
BLITZ U.S.A., Inc., <i>et al.</i> ¹)	Chapter 11
_____)	
Debtors.)	Jointly Administered
_____)	

BLITZ LIQUIDATING TRUST AGREEMENT

This Blitz Liquidating Trust Agreement (the "Blitz Liquidating Trust Agreement") is made this _____ day of January, 2014 by and among Blitz U.S.A, Inc., Blitz Acquisition, LLC, Blitz RE Holdings, LLC and Miami OK LLC (f/k/a F3 Brands LLC) (each a "Debtor" and, collectively, the "USA Debtors"), and Steven D. Sass, as trustee (the "Blitz Liquidating Trustee") and executed in connection with the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation dated December 18, 2013 (as the same has been or may be amended, the "Plan")² filed in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

RECITALS

WHEREAS, on November 9, 2011, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Chapter 11 Cases, which are captioned *In re Blitz U.S.A., Inc. et al.*, Case No 11-13603 (PJW) are being jointly administered by the Bankruptcy Court; and

WHEREAS, the Debtors have liquidated substantially all of their assets under the provisions of the Bankruptcy Code and intend for the Blitz Liquidating Trust to liquidate any remaining assets; and

WHEREAS, the Debtors and the Official Committee of Unsecured Creditors of Debtors filed the Plan on December 18, 2013;

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: LAM 2011 Holdings (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC(8979); Blitz RE Holdings, LLC (9071) Blitz U.S.A., Inc. (8104) ; and MiamiOK LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is 309 North Main Street, Miami, OK 74354.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Plan.

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WHEREAS, on _____, 2014, the Bankruptcy Court entered an Order Confirming the Plan (the "Confirmation Order"); and

— WHEREAS, the Effective Date of the Plan occurred on _____, 2014; and

WHEREAS, the Plan contemplates, on the Effective Date, (a) the creation of a Blitz Liquidating Trust (the "Blitz Liquidating Trust") and the creation of the beneficial interests in the Blitz Liquidating Trust solely for the benefit of holders of Allowed General Unsecured Claims against the USA Debtors (collectively, the "Blitz Liquidating Trust Beneficiaries" and, each individually, a "Beneficiary"), and (b) the Blitz Liquidating Trust will be vested with the BAH Settlement Payment, Cash and all of the assets remaining in the USA Debtors' Estates on the Effective Date, including, without limitation, the sum of \$1.54 million due from Wal-Mart to Blitz USA (collectively, the "Blitz Liquidating Trust Assets") to be liquidated and distributed to the Blitz Liquidating Trust Beneficiaries, as set forth in the Plan; and

WHEREAS, the Plan contemplates that, pursuant to Treasury Regulation Section 301.7701-4(d), the Blitz Liquidating Trust shall be created for the purpose of: (a) administering the Blitz Liquidating Trust Assets; (b) resolving all Disputed Claims; (c) pursuing any causes of action, and (d) making all Distributions to the Blitz Liquidating Trust Beneficiaries provided for under the Plan, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to and consistent with the liquidating purpose of the Blitz Liquidating Trust and the Plan; and

WHEREAS, the Blitz Liquidating Trust is intended to qualify as a "grantor trust" for U.S. federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the "IRC"), with the Blitz Liquidating Trust Beneficiaries to be treated as the grantors of the Blitz Liquidating Trust and deemed to be the owners of the Blitz Liquidating Trust Assets (subject to the rights of creditors of the Blitz Liquidating Trust), and consequently, the transfer of the Blitz Liquidating Trust Assets to the Blitz Liquidating Trust shall be treated as a deemed transfer of those assets from the USA Debtors and their Estates to the Blitz Liquidating Trust Beneficiaries followed by a deemed transfer by such Blitz Liquidating Trust Beneficiaries to the Blitz Liquidating Trust for federal income tax purposes.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the premises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, it is hereby agreed as follows:

ARTICLE I DECLARATION OF TRUST

1.1 Creation and Purpose of the Blitz Liquidating Trust. The USA Debtors and the Blitz Liquidating Trustee hereby create the Blitz Liquidating Trust for the primary purpose of liquidating and distributing the Blitz Liquidating Trust Assets to the Blitz Liquidating Trust Beneficiaries in accordance with the Plan, the Confirmation Order, and applicable tax statutes, rules, and regulations, and in an expeditious but orderly manner, with no objective to continue or

engage in the conduct of a trade or business. In particular, the Blitz Liquidating Trustee shall (a) make continuing efforts to collect and reduce the Blitz Liquidating Trust Assets to Cash, and (b) make timely Distributions and not unduly prolong the duration of the Blitz Liquidating Trust.

1.2 Declaration of Trust. In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the USA Debtors and the Blitz Liquidating Trustee have executed this Blitz Liquidating Trust Agreement and, effective on the Effective Date, the USA Debtors hereby irrevocably transfer to the Blitz Liquidating Trust, all of the right, title, and interests of the USA Debtors in and to the Blitz Liquidating Trust Assets, to have and to hold unto the Blitz Liquidating Trust and its successors and assigns forever, under and subject to the terms of the Plan and the Confirmation Order for the benefit of the Blitz Liquidating Trust Beneficiaries and their successors and assigns as provided for in this Blitz Liquidating Trust Agreement and in the Plan and Confirmation Order.

1.3 Vesting of Estate Assets. On the Effective Date, pursuant to the terms of the Plan, the Blitz Liquidating Trust Assets shall be vested in the Blitz Liquidating Trust, which also shall be authorized to obtain, liquidate, and collect all of the Blitz Liquidating Trust Assets in the possession of third parties and pursue all causes of action, if any. Subject to the provisions of the Plan, all such Blitz Liquidating Trust Assets shall be delivered to the Blitz Liquidating Trust free and clear of interests, Claims, Liens, or other encumbrances of any kind. The Blitz Liquidating Trustee shall be conclusively entitled to rely on the legality and validity of such transfers. Moreover, on the Effective Date, all privileges with respect to any Blitz Liquidating Trust Assets, including the attorney/client privilege, to which the USA Debtors are entitled shall be automatically vested in, and available for assertion by the Blitz Liquidating Trustee on behalf of the Blitz Liquidating Trust. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Confirmation Order or this Agreement, the USA Debtors shall, on the Effective Date, execute such other and further documents as are reasonably necessary to effectuate all of the foregoing.

1.4 Funding of the Trust. The Blitz Liquidating Trust shall be funded, on the Effective Date, with the Blitz Liquidating Trust Assets, as provided for in the Plan and in the Confirmation Order.

1.5 Acceptance by Blitz Liquidating Trustee. The Blitz Liquidating Trustee hereby accepts the trust imposed upon it by this Blitz Liquidating Trust Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Blitz Liquidating Trust Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Blitz Liquidating Trust, the Blitz Liquidating Trustee hereby accepts the transfer of the Blitz Liquidating Trust Assets.

1.6 Name of the Liquidating Trust. The Blitz Liquidating Trust established hereby shall be known as the "Blitz Liquidating Trust".

1.7 Appointment of Oversight Committee. On or before the Effective Date, the Creditors' Committee shall designate the members of an Oversight Committee. The Blitz Liquidating Trustee shall confer with, and obtain approval of, the Oversight Committee

as set forth in this Blitz Liquidating Trust Agreement.

ARTICLE II THE LIQUIDATING TRUSTEE

2.1 Appointment. The Blitz Liquidating Trustee has been selected by the Creditors' Committee pursuant to the provisions of the Plan and has been appointed as of the Effective Date. The Blitz Liquidating Trustee's appointment shall continue until the earlier of (a) the date that the Blitz Liquidating Trust is dissolved in accordance with this Agreement, or (b) the date of the Blitz Liquidating Trustee's resignation, death, dissolution, removal or liquidation.

2.2 General Powers. Except as otherwise provided in this Blitz Liquidating Trust Agreement, the Plan, or the Confirmation Order, the Blitz Liquidating Trustee may control and exercise authority over the Blitz Liquidating Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the business of the Blitz Liquidating Trust. Nothing in this Agreement shall be deemed to prevent the Blitz Liquidating Trustee from taking, or failing to take, any action that, based upon the advice of counsel, it determines it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty which the Blitz Liquidating Trustee owes to the Blitz Liquidating Trust Beneficiaries or any other Person or Entity. No Person dealing with the Blitz Liquidating Trust shall be obligated to inquire into the Blitz Liquidating Trustee's authority in connection with the acquisition, management, or disposition of Blitz Liquidating Trust Assets. Without limiting the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Blitz Liquidating Trust Agreement, the Blitz Liquidating Trustee shall be expressly authorized to, with respect to the Blitz Liquidating Trust and the Blitz Liquidating Trust Assets:

- (a) Hold legal title to any and all Blitz Liquidating Trust Assets.
- (b) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken with respect to the Blitz Liquidating Trust Assets by any officer, director, shareholder or other party acting in the name of the USA Debtors or their Estates with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders or other party.
- (c) Open and maintain bank accounts on behalf of or in the name of the Blitz Liquidating Trust, calculate and make Distributions, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves, including the USA Debtors Contingent Claims Cash Reserve and the USA Debtors Disputed Claims Reserve, in accordance with the terms of the Plan.
- (d) Receive, manage, invest, supervise, and protect the Blitz Liquidating Trust Assets, subject to the limitations provided herein.
- (e) Subject to the applicable provisions of the Plan and this Blitz Liquidating Trust Agreement, collect and liquidate all Blitz Liquidating Trust Assets pursuant to the Plan.

(f) Conduct an analysis of Administrative Expense Claims (including fee applications of Bankruptcy Professionals, *provided however*, any analysis of such fee applications shall be subject to and in accordance with the BAH Settlement Term Sheet) against the USA Debtors, Priority Claims against the USA Debtors, Secured Claims against the USA Debtors and General Unsecured Claims against the USA Debtors, and prosecute objections thereto or settling or otherwise compromising such Claims if necessary and appropriate.

(g) Supervise and administer the commencement, prosecution, settlement, compromise, withdrawal or resolution in any manner approved by the Bankruptcy Court of all Disputed Claims and the Distributions to the Blitz Liquidating Trust Beneficiaries and creditors of the Blitz Liquidating Trust, in accordance with this Blitz Liquidating Trust Agreement, the Plan, and the Confirmation Order.

(h) Subject to Article IV of this Blitz Liquidating Trust Agreement, commence, prosecute, compromise, settle, withdraw, abandon, or resolve in any manner approved by the Bankruptcy Court any causes of action.

(i) Seek a determination of tax liability under Section 505 of the Bankruptcy Code; file, if necessary, any and all tax and information returns required with respect to the Blitz Liquidating Trust; make tax elections for and on behalf of the Blitz Liquidating Trust; and pay taxes, if any, payable for and on behalf of the Blitz Liquidating Trust.

(j) Pay all lawful expenses, debts, charges, taxes and liabilities of the Blitz Liquidating Trust.

(k) Make Distributions to the Blitz Liquidating Trust Beneficiaries, and to creditors of the Blitz Liquidating Trust as provided for, or contemplated by, the Plan, the Confirmation Order, and this Blitz Liquidating Trust Agreement.

(l) Withhold from the amount distributable to any Person or Entity such amount as may be sufficient to pay any tax or other charge which the Blitz Liquidating Trustee has determined, based upon the advice of its agents and/or professionals, may be required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof.

(m) Enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Blitz Liquidating Trust Agreement and perform all obligations thereunder.

(n) If any of the Blitz Liquidating Trust Assets are situated in any state or other jurisdiction in which the Blitz Liquidating Trustee is not qualified to act as trustee, nominate and appoint a person duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the Blitz Liquidating Trustee in its discretion; confer upon such trustee all the rights, powers, privileges, and duties of the Blitz Liquidating Trustee hereunder, subject to the conditions and limitations of this Blitz Liquidating Trust Agreement, except as modified or limited by the Blitz Liquidating Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in

which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such trustee to be answerable to the Blitz Liquidating Trustee for all monies, assets and other property that may be received in connection with the administration of all property; and remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Blitz Liquidating Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal.

(o) Subject to Section 3.5 of this Blitz Liquidating Trust Agreement, purchase and carry all insurance policies and pay all insurance premiums and costs it deems reasonably necessary or advisable.

(p) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Blitz Liquidating Trust Agreement.

(q) Employ and compensate such professionals and other agents as are necessary and appropriate in furtherance of the Blitz Liquidating Trustee's duties.

(r) Undertake all administrative functions remaining in the USA Debtors' Chapter 11 Cases, including the preparation and filing of post-Effective Date operating reports for the USA Debtors and the ultimate closing of the USA Debtors' Chapter 11 Cases.

(s) Invest the Blitz Liquidating Trust Assets transferred to the Blitz Liquidating Trust, the proceeds thereof, or any income earned by the Blitz Liquidating Trust in Permissible Investments, provided however, that the scope of any such Permissible Investments shall be limited to include only those investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any modification in the Internal Revenue Services ("IRS") guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise.

(t) Take all other actions consistent with the provisions of the Plan which the Blitz Liquidating Trustee deems reasonably necessary or desirable to administer the Blitz Liquidating Trust and the Plan.

2.3 Limitations on the Blitz Liquidating Trustee. Notwithstanding anything under applicable law, this Blitz Liquidating Trust Agreement or the Plan to the contrary, the Blitz Liquidating Trustee shall not do or undertake any of the following:

(a) Take, or fail to take, any action that would jeopardize treatment of the Blitz Liquidating Trust as a "liquidating trust" for federal income tax purposes.

(b) Receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business, except as is absolutely necessary or required under the Plan and the Confirmation Order; provided, however, that in no event shall the Blitz Liquidating Trustee receive any such investment that would jeopardize treatment of the Blitz Liquidating Trust as a "liquidating trust" for federal income tax purposes.

(c) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills or other investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any modification in the IRS guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise.

(d) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation with operating assets, except as is absolutely necessary or required under the Plan and the Confirmation Order; provided, however, that in no event shall the Blitz Liquidating Trustee receive or retain any such asset or interest that would jeopardize treatment of the Blitz Liquidating Trust as a "liquidating trust" for federal income tax purposes.

(e) Notwithstanding any of the foregoing, the Blitz Liquidating Trustee shall not be prohibited from engaging in any trade or business on its own account, provided that such activity does not interfere with the Blitz Liquidating Trustee's administration of the Blitz Liquidating Trust.

2.4 Compensation of Blitz Liquidating Trustee and its Agents and Professionals.

(a) The Blitz Liquidating Trustee shall be entitled to receive reasonable compensation (fees and reasonable out-of-pocket expenses, if any incurred in connection with this Blitz Liquidating Trust Agreement prior to the Effective Date and retroactive to January 6, 2014, as well for the performance of its duties after the Effective Date, as negotiated between the Blitz Liquidating Trustee and the Oversight Committee, plus the reimbursement of all reasonable out-of-pocket expenses incurred in connection with this Blitz Liquidating Trust Agreement. Any successor to the Blitz Liquidating Trustee shall also be entitled to reasonable compensation in connection with the performance of its duties, which compensation may be different from the terms provided herein, plus the reimbursement of reasonable out-of-pocket expenses.

(b) The Blitz Liquidating Trustee's fees shall be paid by wire transfer on the first day of each month.

(c) The Blitz Liquidating Trustee (only with respect to its fees and expenses incurred prior to the Effective Date and the reimbursement of its reasonable out-of-pocket expenses incurred after the Effective Date) and each of its agents and professionals (unless any such agents or professionals and the Blitz Liquidating Trustee agree to different treatment) seeking compensation or reimbursement shall serve a statement on the Blitz Liquidating Trustee and the Oversight Committee. The Blitz Liquidating Trustee and the Oversight Committee will have fifteen (15) days from the date such statement is received to review the statement and object to such statement by serving an objection on the party seeking compensation (including the Blitz Liquidating Trustee) setting forth the precise nature of the objection and the amount at issue. At the expiration of the fifteen (15) day period, and without further order of the Bankruptcy Court (except as provided herein), the Blitz Liquidating Trustee shall pay from the Blitz Liquidating Trust Assets, or the proceeds or income thereof, 100% of the amounts requested, except for the

portion of such fees and expenses to which any objection has been made. The parties shall attempt to consensually resolve objections, if any, to any statement. If the parties are unable to reach a consensual resolution of any such objection, the party who received an objection to its fees and expenses may seek payment of such fees and expenses by filing a motion with and obtaining an order from the Bankruptcy Court and providing notice to the Blitz Liquidating Trustee [and the Oversight Committee]. If the Blitz Liquidating Trustee or its agents or professional fails to submit a statement, it shall be ineligible to receive payment of fees and expenses therefore as provided in this Blitz Liquidating Trust Agreement until the statement is submitted.

2.5 General Duties, Obligations, Rights, and Benefits of the Liquidating Trustee.

The Blitz Liquidating Trustee shall have all duties, obligations, rights, and benefits assumed by, assigned to or vested in the Blitz Liquidating Trust under the Plan, the Confirmation Order, this Blitz Liquidating Trust Agreement and any other agreement entered into pursuant to or in connection with the Plan. Such duties, obligations, rights and benefits include, without limitation, all duties, obligations, rights and benefits relating to the collection and liquidation of the Blitz Liquidating Trust Assets, administration of Claims, satisfaction of claims of creditors of the Blitz Liquidating Trust, the pursuit of causes of action, if any, Distributions to Blitz Liquidating Trust Beneficiaries, administration of the Blitz Liquidating Trust and any other duties, obligations, rights, and benefits reasonably necessary to accomplish the purpose of the Blitz Liquidating Trust under the Plan, the Confirmation Order, this Blitz Liquidating Trust Agreement, and any other agreement entered into pursuant to or in connection with the Plan. Without limiting the duties, obligations, rights, and benefits of the Blitz Liquidating Trustee under this Section or any other provision of this Blitz Liquidating Trust Agreement, the Blitz Liquidating Trustee shall have all duties, obligations, rights, and benefits assigned to the Blitz Liquidating Trustee under the Confirmation Order.

2.6 USA Debtors Contingent Claims Cash Reserve. The Blitz Liquidating Trustee may establish, from time to time fund, and administer a reserve (the "USA Debtors Contingent Claims Cash Reserve"), that shall consist of Cash in an amount which shall be the good faith estimate of the total Distributions to be made on account of all Contingent Claims against the USA Debtors as of the Effective Date. The USA Debtors or the Blitz Liquidating Trustee as applicable, shall seek Bankruptcy Court approval of such Contingent Claims Cash Reserve on the Effective Date or as soon thereafter as practicable. The Blitz Liquidating Trustee shall be authorized to make distributions from the USA Debtors Contingent Claims Cash Reserve in satisfaction of such Contingent Claims, once Allowed, in accordance with this Blitz Liquidating Trust Agreement, the Plan, and the Confirmation Order.

2.7 USA Debtors Disputed Claims Cash Reserve. The Blitz Liquidating Trustee may establish, from time to time fund, and administer a reserve (the "USA Debtors Disputed Claims Cash Reserve"), that shall consist of Cash in an amount which shall be the good faith estimate of the total Distributions to be made on account of all Disputed Claims against the USA Debtors as of the Effective Date, as determined by the Blitz Liquidating Trustee. The Blitz Liquidating Trustee shall be authorized to make distributions from the USA Debtors Disputed Claims Cash Reserve in satisfaction of such Disputed Claims, once Allowed, in accordance with this Blitz Liquidating Trust Agreement, the Plan, and the Confirmation Order.

2.8 **Replacement of the Blitz Liquidating Trustee.** The Blitz Liquidating Trustee may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court [and the Oversight Committee], provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Blitz Liquidating Trustee. The Blitz Liquidating Trustee may also be removed by the Bankruptcy Court upon application [by the Oversight Committee] and after notice and a hearing. In the event of the resignation or removal of the Blitz Liquidating Trustee, a successor Blitz Liquidating Trustee shall be appointed by the Bankruptcy Court based upon submissions from interested parties (including the Oversight Committee, Blitz Liquidating Trustee or any Blitz Liquidating Trust Beneficiary). Upon its appointment, the successor Blitz Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, except as provided in Section 2.4(a) above, and all responsibilities of the predecessor Blitz Liquidating Trustee relating to the Blitz Liquidating Trust shall be terminated. In the event the Blitz Liquidating Trustee's appointment terminates by reason of death, dissolution, liquidation, resignation, or removal, such Blitz Liquidating Trustee shall be immediately compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced. The provisions of Article V of this Blitz Liquidating Trust Agreement shall survive the resignation or removal of any Blitz Liquidating Trustee.

2.9 **Blitz Liquidating Trust Continuance.** The death, dissolution, liquidation, resignation, or removal of the Blitz Liquidating Trustee shall not terminate the Blitz Liquidating Trust or revoke any existing agency created by the Blitz Liquidating Trustee pursuant to this Blitz Liquidating Trust Agreement or invalidate any action theretofore taken by the Blitz Liquidating Trustee, and the provisions of this Blitz Liquidating Trust Agreement shall be binding upon and inure to the benefit of the successor Blitz Liquidating Trustee and all its successors or assigns.

ARTICLE III LIABILITY OF BLITZ LIQUIDATING TRUSTEE

3.1 **Standard of Care; Exculpation.** Neither the Blitz Liquidating Trustee, nor any director, officer, affiliate, employee, employer, professional, successors, assigns, agent, or representative of the Blitz Liquidating Trustee (each, an "Exculpated Party" and collectively, the "Exculpated Parties") shall be liable for any losses, claims, damages, liabilities, obligations, settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as "Losses"), whether or not in connection with litigation in which any Exculpated Party is a party, or enforcing this Blitz Liquidating Trust Agreement (including these exculpation provisions), as and when imposed on the Blitz Liquidating Trustee, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Blitz Liquidating Trustee's execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties and obligations under this Blitz Liquidating Trust Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission or error of an Exculpated Party; provided, however, that the foregoing limitation shall not apply to any Losses suffered or incurred by any holder of an Allowed Claim of a Blitz Liquidating Trust Beneficiary that are found in a final

judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence or willful misconduct of such Exculpated Party. Every act taken or omitted, power exercised or obligation assumed by the Blitz Liquidating Trust or any Exculpated Party pursuant to the provisions of this Blitz Liquidating Trust Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Blitz Liquidating Trust or any Exculpated Party acting for and on behalf of the Blitz Liquidating Trust and not otherwise; provided, however, that none of the foregoing Entities or Persons are deemed to be responsible for any other such Entities' or Persons' actions or inactions. Except as provided in the first proviso of the first sentence of this Section 3.1, every Person, firm, corporation, or other Entity contracting or otherwise dealing with or having any relationship with the Blitz Liquidating Trust or any Exculpated Party shall have recourse only to the Blitz Liquidating Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings or relationships and the Blitz Liquidating Trust and the Exculpated Parties shall not be individually liable therefore. In no event shall the Blitz Liquidating Trustee be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Blitz Liquidating Trustee has been informed of the likelihood of such loss or damages and regardless of the form of action.

3.2 Indemnification.

(a) The Blitz Liquidating Trustee and any director, officer, affiliate, employee, employer, professional, successor, assign, agent, or representative of the Blitz Liquidating Trustee (each, an "Indemnified Party" and collectively, the "Indemnified Parties") shall be defended, held harmless, and indemnified from time to time by the Blitz Liquidating Trust against any and all Losses, including, without limitation, the costs for counsel or others in investigating, preparing, defending, or settling any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Blitz Liquidating Trust Agreement (including these indemnity provisions), as and when imposed on the Blitz Liquidating Trustee, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Blitz Liquidating Trustee's execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties, and obligations under this Blitz Liquidating Trust Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission, or error of an Indemnified Party; provided, however, such indemnity shall not apply to any such Losses to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the fraud, gross negligence, or willful misconduct of such Indemnified Party. Satisfaction of any obligation of the Blitz Liquidating Trust arising pursuant to the terms of this Section shall be payable only from the Blitz Liquidating Trust Assets, shall be advanced prior to the conclusion of such matter and such right to payment shall be prior and superior to any other rights to receive a distribution of the Blitz Liquidating Trust Assets.

(b) The Blitz Liquidating Trust shall promptly pay to the Indemnified Party the expenses set forth in subparagraph (a) above upon submission of invoices therefore on a current basis. Each Indemnified Party hereby undertakes, and the Blitz Liquidating Trust hereby accepts its undertaking, to repay any and all such amounts so paid by the Liquidating Trust if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefore under this Blitz Liquidating Trust Agreement.

3.3 No Liability for Acts of Successor/Predecessor Liquidating Trustees. Upon the appointment of a successor Blitz Liquidating Trustee and the delivery of the Blitz Liquidating Trust Assets to the successor Blitz Liquidating Trustee, the predecessor Blitz Liquidating Trustee and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Blitz Liquidating Trustee shall have no further liability or responsibility with respect thereto. A successor Blitz Liquidating Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Blitz Liquidating Trustee shall be in any way liable for the acts or omissions of any predecessor Blitz Liquidating Trustee unless a successor Blitz Liquidating Trustee expressly assumes such responsibility. A predecessor Blitz Liquidating Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Blitz Liquidating Trustee for any events or occurrences subsequent to the cessation of its role as Blitz Liquidating Trustee.

3.4 Reliance by Blitz Liquidating Trustee on Documents or Advice of Counsel. Except as otherwise provided in this Blitz Liquidating Trust Agreement, the Blitz Liquidating Trustee, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Blitz Liquidating Trustee may rely, and shall be protected from liability for acting or failing to act, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Blitz Liquidating Trustee to be genuine and to have been presented by an authorized party. Neither the Blitz Liquidating Trustee nor any director, officer, affiliate, employee, employer, professional, agent, or representative of the Blitz Liquidating Trustee shall be liable for any action taken or omitted or suffered by the Blitz Liquidating Trustee, in reasonable reliance upon the advice of counsel or other professionals engaged by the Blitz Liquidating Trustee in accordance with this Blitz Liquidating Trust Agreement. The Blitz Liquidating Trustee shall be fully indemnified by the Blitz Liquidating Trust for or in respect of any action taken, suffered or omitted by it and in accordance with such advice or opinion.

3.5 Insurance. The Blitz Liquidating Trustee, may purchase, using the Blitz Liquidating Trust Assets, and carry all insurance policies and pay all insurance premiums and costs the Blitz Liquidating Trustee deems reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any Losses it may incur, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of its fraud or willful misconduct, with respect to the implementation and administration of the Plan or this Blitz Liquidating Trust Agreement. [The Blitz Liquidating Trustee shall obtain the approval of the Oversight Committee prior to purchasing any such insurance policies].

3.6 The provisions of this Article III shall survive the termination of this Blitz Liquidating Trust Agreement and the death, resignation, removal, liquidation, dissolution, or replacement of the Blitz Liquidating Trustee.

**ARTICLE IV
GENERAL PROVISIONS CONCERNING
ADMINISTRATION OF THE LIQUIDATING TRUST**

4.1 Liquidating Trust Reserves. The Blitz Liquidating Trustee may, at its discretion, establish the Blitz Liquidating Trust Reserves as set forth in Section 2.6 and 2.7 of this Blitz Liquidating Trust Agreement.

4.2 Register of Blitz Liquidating Trust Beneficiaries. The Blitz Liquidating Trustee shall maintain at all times a register of the names, distribution addresses, amounts of Allowed Claims, and the ratable interests in the Blitz Liquidating Trust of the Blitz Liquidating Trust Beneficiaries (the "Register"). The initial Register shall be delivered to the Blitz Liquidating Trustee by the USA Debtors and shall be based on the list of holders of General Unsecured Claims against the USA Debtors maintained by KCC as of the Effective Date and prepared in accordance with the provisions of the Plan and the Confirmation Order. The Blitz Liquidating Trustee shall file the initial Register on the docket of the USA Debtors' Chapter 11 Cases. All references in this Blitz Liquidating Trust Agreement to holders of beneficial interests in the Blitz Liquidating Trust shall be read to mean holders of record as set forth in the Register maintained by the Blitz Liquidating Trustee and shall exclude any beneficial owner not recorded on such Register. The Blitz Liquidating Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Blitz Liquidating Trustee from time to time.

4.3 Books and Records.

(a) On the Effective Date, the USA Debtors shall transfer and assign to the Blitz Liquidating Trust full title to, and the Blitz Liquidating Trust shall be authorized to take possession of, all of the books and records of the USA Debtors except those that pertain to (a) the Blitz Personal Injury Trust Claims, and (b) the Blitz Personal Injury Trust Assets, including but not limited to, insurance policies, self-insured retentions, deductibles, retrospective premiums, dividend payments, procurement of insurance, and the submission or payment of insurance claims and any other books and records transferred in accordance with Section 4.9 of the Plan. The Blitz Liquidating Trust shall have the responsibility of storing and maintaining books and records transferred hereunder until the USA Debtors' Chapter 11 Cases are closed, after which time such books and records may, to the extent not prohibited by applicable law, be abandoned or destroyed without further Bankruptcy Court order. For the purpose of this Section 5.3, books and records include computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of the USA Debtors maintained by or in possession of third parties and all of the claims and rights of the USA Debtors in and to their books and records, wherever located.

(b) The Blitz Liquidating Trustee also shall maintain in respect of the Blitz Liquidating Trust and the Blitz Liquidating Beneficiaries books and records relating to the Liquidating Trust Assets and any income or proceeds realized therefrom and the payment of expenses of and claims against or assumed by the Blitz Liquidating Trust in such detail and for

such period of time as may be necessary to enable it to make full and proper reports in respect thereof. Except as expressly provided in this Blitz Liquidating Trust Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law (including securities law), nothing in this Blitz Liquidating Trust Agreement is intended to require the Blitz Liquidating Trust to file any accounting or seek approval of any court with respect to the administration of the Blitz Liquidating Trust, or as a condition for making any payment or distribution out of the Blitz Liquidating Trust Assets. Blitz Liquidating Trust Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Blitz Liquidating Trustee to inspect the Blitz Liquidating Trust's books and records, including the Register, provided such Blitz Liquidating Trust Beneficiary shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Blitz Liquidating Trustee. Satisfaction of the foregoing condition notwithstanding, if (a) the Blitz Liquidating Trustee determines in good faith that the inspection of the Blitz Liquidating Trust's books and records, including the Register, by any Beneficiary would be detrimental to the Blitz Liquidating Trust or (b) such Blitz Liquidating Trust Beneficiary is a defendant (or potential defendant) in a pending (or potential) action brought by the Blitz Liquidating Trust, the Blitz Liquidating Trust may deny such request for inspection. The Bankruptcy Court shall resolve any dispute between any Beneficiary and the Liquidating Trustee under this Section 5.3.

4.4 Transfer of Privileged Information and Confidential Information. On the Effective Date or as soon as practicable thereafter as is reasonably practicable, except for the Blitz Personal Injury Privileged Information (which shall be treated as set forth in Section 4.10 of the Plan), the Privileged Information of the USA Debtors shall be transferred, assigned, given over to, and shall vest exclusively in the Blitz Liquidating Trustee. Further, with regard to any such privileges, (i) they are transferred or contributed for the sole purpose of enabling the Blitz Liquidating Trustee to perform its duties to administer the Blitz Liquidating Trust and for no other reason, (ii) they are vested solely in the Blitz Liquidating Trustee, and not in the Blitz Liquidating Trust or any other entity, committee or subcomponent of the Blitz Liquidating Trust, or any other person (including counsel) who has been engaged by, represents or has represented any Blitz Personal Injury Trust Claimant or any person who alleges or may allege a claim directly or indirectly relating to or arising from the Debtors' products, premises or operations, (iii) they shall be preserved and not waived, (iv) for the avoidance of doubt (if any), any such transfer or contribution shall have no effect on any right, claim or privilege of any person other than the Debtors, and (v) no information subject to a privilege or a prior assertion thereof shall be publicly disclosed by the Blitz Liquidating Trustee or the Blitz Liquidating Trust or communicated to any person not entitled to receive such information nor in a manner that would diminish the protected status of any such information. To the extent not subject to an applicable privilege or immunity in accordance with the foregoing, the Blitz Liquidating Trustee and any of his or her Representatives shall maintain the confidentiality of all Confidential Information and such Confidential Information may only be disclosed to the following Persons: (i) the Blitz Liquidating Trustee and outside counsel to the Blitz Liquidating Trustee; (ii) experts, consultants or non-legal professionals who actively assist the Blitz Liquidating Trustee in the analysis, valuation and/or litigation of any Claim against the Blitz Liquidating Trust or the Blitz Liquidating Trust Assets; (iii) the Blitz Personal Injury Trustee and outside counsel to the Blitz Personal Injury Trustee solely to the extent necessary to comply with Section 4.9 and/or 5.11 of the Plan; (iv) paralegal, stenographic, technical, clerical, document management and secretarial personnel employed by any of the foregoing; (v) the Bankruptcy Court and court personnel,

including stenographic, video, or audio reporters; (vi) any person identified on the face of any such Confidential Information as an author or recipient thereof; (vii) any person who is determined to have been an author and/or previous recipient of the Confidential Information, but is not identified on the face thereof; and (viii) during depositions or trial testimony (or preparation therefor), witnesses to whom disclosure is reasonably necessary, *provided, however* that none of the foregoing Entities is, has not been engaged by, represents or has represented any holder of a Blitz Personal Injury Claim or any other person who has or may assert a claim directly or indirectly relating to, based upon or arising from the Debtors' products, premises or operations.

4.5 Final Accounting of Blitz Liquidating Trustee. The Blitz Liquidating Trustee (or any such successor Blitz Liquidating Trustee) shall within one hundred twenty (120) days after the termination of the Blitz Liquidating Trust or the death, dissolution, liquidation, resignation, or removal of the Blitz Liquidating Trustee, render an accounting containing the following information:

- (a) A description of the Blitz Liquidating Trust Assets.
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Blitz Liquidating Trust and the Blitz Liquidating Trust Assets during the Blitz Liquidating Trustee's term of service, including their source and nature.
- (c) The ending balance of all Blitz Liquidating Trust Assets as of the date of the accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept.
- (d) All known liabilities of the Blitz Liquidating Trust.
- (e) All pending actions.

4.6 Filing of Accounting. The final accounting described in Section 4.5 shall be filed with the Bankruptcy Court and all Blitz Liquidating Trust Beneficiaries shall have notice that the final accounting has been filed and an opportunity to have a hearing on the approval of the accounting and the discharge and release of the Blitz Liquidating Trustee.

ARTICLE V BENEFICIAL INTERESTS AND BENEFICIARIES

5.1 Trust Beneficial Interests. Each holder of an Allowed General Unsecured Claim against the USA Debtors, shall be entitled to receive beneficial interests in accordance with the treatment of such Claim under the Plan, and shall be entitled to distributions as set forth in the Plan.

5.2 Interest Beneficial Only. Ownership of a beneficial interest in the Blitz Liquidating Trust shall not entitle any Blitz Liquidating Trust Beneficiary to any title in or to the

Blitz Liquidating Trust Assets or to any right to call for a partition or division of the Blitz Liquidating Trust Assets or to require an accounting.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Blitz Liquidating Trust shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Blitz Liquidating Trust by the Blitz Liquidating Trustee, which may be the Register.

5.4 Exemption from Registration. The parties hereto intend that the rights of the holders of the beneficial interests arising under this Blitz Liquidating Trust Agreement shall not be "securities" under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by Section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan.

5.5 Transfers of Beneficial Interests. Beneficial interests in the Blitz Liquidating Trust shall be nontransferable except upon death of the interest holder or by operation of law. The Blitz Liquidating Trust shall not have any obligation to recognize any transfer of Claims occurring after the Record Date. Only those holders of Claims of record stated on the transfer ledgers as of the close of business on the Record Date, to the extent applicable, shall be entitled to be recognized for all purposes hereunder.

5.6 Absolute Owners. The Blitz Liquidating Trustee may deem and treat the Blitz Liquidating Trust Beneficiary reflected as the owner of a beneficial interest on the Register as the absolute owner thereof for the purposes of receiving Distributions and payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever.

5.7 Change of Address. A Blitz Liquidating Trust Beneficiary may, after the Effective Date, select an alternative distribution address by filing a notice with the Bankruptcy Court (copy served on the Blitz Liquidating Trustee) identifying such alternative distribution address. Absent such notice, the Blitz Liquidating Trustee shall not recognize any such change of distribution address. Such notification shall be effective only upon receipt by the Blitz Liquidating Trustee.

5.8 Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Liquidating Trust shall not operate to terminate the Liquidating Trust during the term of the Liquidating Trust nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Liquidating Trust Assets or for a partition thereof nor shall it otherwise affect the rights and obligations of the Beneficiary under this Liquidating Trust Agreement or in the Liquidating Trust.

5.9 Standing. Except as expressly provided in this Blitz Liquidating Trust Agreement, the Plan or the Confirmation Order, a Blitz Liquidating Trust Beneficiary does not

have standing to direct the Blitz Liquidating Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Blitz Liquidating Trust Assets.

ARTICLE VI PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

6.1 Incorporation of Plan Provisions. As of the Effective Date, the Blitz Liquidating Trust shall assume responsibility for all Claims matters against the USA Debtors, other than Blitz Personal Injury Claims, as set forth in Section 5.7 of the Plan. In accordance with the Plan, the Blitz Liquidating Trust shall establish an appropriate USA Debtors Disputed Claims Cash Reserve and a USA Debtors Contingent Claims Cash Reserve pending resolution, as set forth in the Plan, of all contested matters and adversary proceedings concerning Disputed Claims and Contingent Claims against the USA Debtors.

6.2 USA Debtors Disputed Claims Cash Reserve.

(a) **Establishment of USA Debtors Disputed Claims Cash Reserve.** On the Effective Date, the Blitz Liquidating Trustee shall establish a separate USA Debtors Disputed Claims Cash Reserve and deposit Cash in an amount which shall be the good faith estimate of the total Distributions to be made on account of all Disputed Claims against the USA Debtors, as determined by the Blitz Liquidating Trustee.

(b) **Amounts to Be Reserved.** The Blitz Liquidating Trustee shall reserve the Cash (or other property allocated for Distribution on account of each Disputed Claim) based upon the asserted amount of each such Disputed Claim or such lesser amount as may be estimated by the Blitz Liquidating Trustee or the Bankruptcy Court in accordance with the Plan. All Cash or other property allocable to Disputed Claims hereunder shall be distributed by the Blitz Liquidating Trustee from the USA Debtors Disputed Claims Cash Reserve on the initial Distribution date (or such other date on which Distributions are made pursuant to the Plan and this Blitz Liquidating Trust Agreement). To the extent that the property placed in a USA Debtors Disputed Claims Cash Reserve consists of Cash, that Cash shall be deposited in an interest-bearing account at a qualified institution, consistent with the terms and limitations of this Blitz Liquidating Trust Agreement.

(c) **Distribution.** Payments on any Disputed Claim that becomes an Allowed Claim shall be distributed by the Blitz Liquidating Trustee from the USA Debtors Disputed Claims Cash Reserve on the first Distribution Date after the Claim is Allowed. Distributions shall be made only to the extent of the aggregate distributions that the holder of any such Allowed Claim would have received had such Claim been Allowed as of the Effective Date (less any taxes paid with respect to amounts held in the USA Debtors Disputed Claims Cash Reserve). Distributions to each holder of a Disputed Claim that has become an Allowed Claim (and to the extent that the holder of the Disputed Claim has not received prior distributions on account of that Claim) shall be made in accordance with the provisions of the Plan.

(d) **Termination of USA Debtors Disputed Claims Cash Reserves.** The USA Debtors Disputed Claims Cash Reserve shall be closed and extinguished by the Blitz

Liquidating Trustee when all Distributions and other dispositions of Cash or other property required to be made therefrom under the Plan and this Blitz Liquidating Trust Agreement have been made. Upon closure of the USA Debtors Disputed Claims Cash Reserve, all Cash and other property held in that Disputed Claims Cash Reserve shall revert in the Blitz Liquidating Trust as a part of the general Blitz Liquidating Trust Assets and such Cash and property shall be used to pay the fees and expenses of the Blitz Liquidating Trust in accordance with this Blitz Liquidating Trust Agreement, and thereafter distributed on a Pro Rata basis to holders of Allowed General Unsecured Claims against the USA Debtors.

(e) **Limitation of Liability for Funding the USA Debtors Disputed Claims Cash Reserve.** The Blitz Liquidating Trustee shall have no duty to fund any USA Debtors Disputed Claims Cash Reserve beyond the good faith estimate as contemplated in the Plan.

(f) **Transmittal of Distributions and Notices.** Any property or notice which a person is or becomes entitled to receive pursuant to the Plan and this Blitz Liquidating Trust Agreement may be delivered by regular mail, postage prepaid, in an envelope addressed to that person's address listed in the Register. Property distributed in accordance with this subsection shall be deemed delivered to such person regardless of whether such property is actually received by that person. Notice given in accordance with this subsection shall be effective only upon receipt.

ARTICLE VII DISTRIBUTIONS

7.1 **Distributions to Beneficiaries from Blitz Liquidating Trust Assets.** All payments to be made by the Blitz Liquidating Trust to any Blitz Liquidating Trust Beneficiary shall be made only in accordance with the Plan, the Confirmation Order and this Blitz Liquidating Trust Agreement and from the Blitz Liquidating Trust Assets (or from the income and proceeds realized from the Blitz Liquidating Trust Assets) net of the Blitz Liquidating Trust Expense Reserve, USA Debtors Disputed Claims Cash Reserve, USA Debtors Contingent Claims Cash Reserve and other reserves established by the Blitz Liquidating Trustee, if any, and only to the extent that the Blitz Liquidating Trust has sufficient Blitz Liquidating Trust Assets (or income and proceeds realized from the Blitz Liquidating Trust Assets) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order, and this Blitz Liquidating Trust Agreement.

7.2 **Distributions; Withholding.** The Blitz Liquidating Trustee shall make Distributions to holders of Allowed Claims as provided in the Plan and, following the Distribution required under the Plan, the Blitz Liquidating Trustee shall make Distributions to holders of Allowed General Unsecured Claims of the USA Debtors (including distributions of all net Cash (including net Cash proceeds)) on quarterly Distribution dates, to the extent possible; provided, however, that the Blitz Liquidating Trust may retain and supplement from time to time a reserve (the "Blitz Liquidating Trust Reserve") in such amount (a) as is reasonably necessary to meet contingent liabilities and to maintain the value of the Blitz Liquidating Trust Assets during the term of the Blitz Liquidating Trust; (b) to pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and

necessary costs, fees, and expenses (including attorneys' fees and expenses and other professionals' fees and expenses) of the Blitz Liquidating Trustee in connection with the performance of their duties in connection with this Blitz Liquidating Trust Agreement; and (c) to satisfy all other liabilities and claims of creditors of the Blitz Liquidating Trust incurred or assumed in respect of the Blitz Liquidating Trust (or to which the Blitz Liquidating Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this Blitz Liquidating Trust Agreement. All such distributions shall be made as provided, and subject to any withholding or reserve, in this Blitz Liquidating Trust Agreement, the Plan or the Confirmation Order. Additionally, the Blitz Liquidating Trustee may withhold from amounts distributable to any Blitz Liquidating Trust Beneficiary any and all amounts, determined in the Blitz Liquidating Trustee's sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. In addition, all distributions under this Blitz Liquidating Trust Agreement shall be net of the actual and reasonable costs of making such distributions.

7.3 No Distribution Pending Allowance. No payment or Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim and/or a Contingent Claim unless and until such Disputed Claim and/or Contingent Claim becomes an Allowed Claim, except for distributions into a USA Debtors Disputed Claims Cash Reserve or USA Debtors Contingent Claims Cash Reserve in accordance with the Plan, Confirmation Order, and this Blitz Liquidating Trust Agreement.

7.4 Distributions after Allowance. Distributions to each holder of a Disputed Claim and/or a Contingent Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan, Confirmation Order, and this Blitz Liquidating Trust Agreement.

7.5 Non-Cash Property. Subject to Section 2.3 hereof, any non-Cash property of the Blitz Liquidating Trust may be sold, transferred or abandoned by the Blitz Liquidating Trustee [upon prior written notice to, and consent of, the Oversight Committee]. Notice of such sale, transfer, or abandonment shall be provided to the holders, if any, of Secured Claims holding liens on such non-Cash property. If, in the Blitz Liquidating Trustee's reasonable judgment, such property cannot be sold in a commercially reasonable manner, or the Blitz Liquidating Trustee believes, in good faith, such property has no value to the Blitz Liquidating Trust, the Blitz Liquidating Trustee shall have the right to abandon or otherwise dispose of such property, including by donation of such property to a charity designated by the Blitz Liquidating Trustee, [after written notice to, and consent of, the Oversight Committee]. Except in the case of fraud, willful misconduct, or gross negligence, no party in interest shall have a cause of action against the Blitz Liquidating Trustee or any director, officer, employee, consultant, or professional of the Blitz Liquidating Trustee arising from or related to the disposition of non-Cash property in accordance with this Section.

7.6 Undeliverable Distributions. If any Distribution is returned as undeliverable, the Blitz Liquidating Trust may, in its discretion, make such efforts to determine the current address of the holder of the Claim with respect to which the Distribution was made as the Blitz Liquidating Trustee deems appropriate, but no Distribution to any holder shall be made unless

and until the Blitz Liquidating Trust has determined the then-current address of the holder, at which time the Distribution to such holder shall be made to the holder without interest. Amounts in respect of any undeliverable Distributions made by the Blitz Liquidating Trust shall be returned to, and held in trust by, the Blitz Liquidating Trust until the Distributions are claimed or are deemed to be unclaimed property under section 347(b) of the Bankruptcy Code ("Unclaimed Property").

7.7 Unclaimed Property. Except with respect to property not Distributed because it is being held in the USA Debtors Disputed Claims Cash Reserve or the USA Debtors Contingent Claims Cash Reserve, Distributions that are not claimed by the expiration of six months from the time the Distribution is delivered shall be deemed to be Unclaimed Property and shall vest or revert in the Blitz Liquidating Trust, and the Claims with respect to which those Distributions are made shall be automatically canceled. After the expiration of that six month period, the claim of any Person or Entity to those Distributions shall be discharged and forever barred. Nothing contained in the Plan or this Blitz Liquidating Trust Agreement shall require the Blitz Liquidating Trust to attempt to locate any holder of an Allowed Claim. All funds or other property that vests or reverts in the Blitz Liquidating Trust pursuant to this Section 7.7 shall be distributed by the Blitz Liquidating Trustee to the other holders of Allowed General Unsecured Claims of the USA Debtors in accordance with the provisions of the Plan and this Blitz Liquidating Trust Agreement. A Claim, and the Unclaimed Property distributed on account of such Claim, shall not escheat to any federal, state, or local government or other entity by reason of the failure of its holder to claim a Distribution in respect of such Claim.

7.8 Time Bar to Cash Payments by Check. Checks issued by the Blitz Liquidating Trust on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to the Plan and this Section 7.8 shall be made directly to the Blitz Liquidating Trustee by the holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the date that is six months after the Distribution was made. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall revert in and become property of the Blitz Liquidating Trust as Unclaimed Property in accordance with Section 347(b) of the Bankruptcy Code and be distributed as Unclaimed Property.

7.9 Withholding Taxes and Expenses of Distribution. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. All holders of Claims shall be required to provide the Blitz Liquidating Trustee with any information necessary to effect the withholding of such taxes, including a completed W-9 form. In addition, all Distributions to be made by the Blitz Liquidating Trust under the Plan shall be net of the actual and reasonable costs of making such Distributions.

7.10 Distributions on Non-Business Days. Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

7.11 **No Distribution in Excess of Allowed Amount of Claim.** Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the Allowed amount of such Claim.

7.12 **Setoff and Recoupment.** The Blitz Liquidating Trust may, but shall not be required to, setoff against, or recoup from, any Claim and the Distribution to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that any of the USA Debtors, their Estates or the Blitz Liquidating Trust may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the USA Debtors, their Estates or the Blitz Liquidating Trust of any claim, defense, right of setoff, or recoupment that any of them may have against the holder of any Claim.

ARTICLE VIII TAXES

8.1 **Income Tax Status.** Consistent with Revenue Procedure 94-45, 1994-28 I.R.B. 124, the Blitz Liquidating Trust shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to IRC Sections 671-677. As such, the Blitz Liquidating Trust Beneficiaries will be treated as both the grantors and the deemed owners of the Blitz Liquidating Trust. Any items of income, deduction, credit, and loss of the Blitz Liquidating Trust shall be allocated for federal income tax purposes to the Blitz Liquidating Trust Beneficiaries.

8.2 **Tax Returns.** In accordance with IRC Section 6012 and Treasury Regulation Section 1.671-4(a), the Blitz Liquidating Trust shall file with the IRS annual tax returns on Form 1041. In addition, the Blitz Liquidating Trust shall file in a timely manner such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon out of the Blitz Liquidating Trust Assets (or the income or proceeds thereof). Within a reasonable time following the end of the taxable year, the Blitz Liquidating Trust shall send to each Blitz Liquidating Trust Beneficiary a separate statement setting forth the Blitz Liquidating Trust Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct each such Blitz Liquidating Trust Beneficiary to report such items on their federal income tax returns. The Blitz Liquidating Trust may provide each Blitz Liquidating Trust Beneficiary with a copy of the Form 1041 for the Blitz Liquidating Trust (without attaching any other Blitz Liquidating Trust Beneficiary's Schedule K-1 or other applicable information form) along with such Blitz Liquidating Trust Beneficiary's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement. The Blitz Liquidating Trust shall allocate the taxable income, gain, loss, deduction, or credit of the Blitz Liquidating Trust with respect to each Blitz Liquidating Trust Beneficiary.

8.3 **Withholding of Taxes and Reporting Related to Blitz Liquidating Trust Operations.** The Blitz Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions made by the Blitz Liquidating Trust shall be subject to any such withholding and reporting requirements. To the extent that the operation of the Blitz Liquidating Trust or the

liquidation of the Blitz Liquidating Trust Assets creates a tax liability, the Blitz Liquidating Trust shall promptly pay such tax liability out of the Blitz Liquidating Trust Assets (or the income or proceeds thereof) and any such payment shall be considered a cost and expense of the operation of the Blitz Liquidating Trust payable without Bankruptcy Court order. The Blitz Liquidating Trust may reserve a sum, the amount of which shall be determined by the Blitz Liquidating Trustee, sufficient to pay the accrued or potential tax liability arising out of the operations of the Blitz Liquidating Trust or the operation of the Blitz Liquidating Trust Assets. The Blitz Liquidating Trustee, on behalf of the Liquidating Trust, may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. All Blitz Liquidating Trust Beneficiaries shall be required to provide any information necessary to effect the withholding of such taxes.

8.4 Valuations. As soon as reasonably practicable after the Effective Date, the Blitz Liquidating Trustee (to the extent that the Blitz Liquidating Trustee deems is necessary or appropriate in his or her sole discretion) shall value the Blitz Liquidating Trust Assets based on the good faith determination of the value of such Blitz Liquidating Trust Assets. The valuation shall be used consistently by all parties (including the USA Debtors, the Blitz Liquidating Trustee, and the Blitz Liquidating Trust Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Blitz Liquidating Trust Assets.

8.5 Treatment of USA Debtors Disputed Claims Cash Reserves. Notwithstanding any other provision of this Blitz Liquidating Trust Agreement to the contrary, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Blitz Liquidating Trust shall (i) treat any Blitz Liquidating Trust Assets allocable to, or retained on account of, a USA Debtors Disputed Claims Cash Reserve in accordance with Section 8.2 of this Blitz Liquidating Trust Agreement as held by one or more discrete trusts for federal income tax purposes, consisting of separate and independent shares to be established in respect of each Disputed Claim, in accordance with the trust provisions of the IRC (sections 641 et seq.), (ii) treat as taxable income or loss of each USA Debtors Disputed Claims Cash Reserve, with respect to any given taxable year, the portion of the taxable income or loss of the Blitz Liquidating Trust that would have been allocated to the holders of Disputed Claims had such Claims been Allowed on the Effective Date (but only for the portion of the taxable year with respect to which such Disputed Claims are unresolved), (iii) treat as a distribution from the USA Debtors Disputed Claims Cash Reserve any increased amounts distributed by the Blitz Liquidating Trust as a result of any Disputed Claims resolved earlier in the taxable year, to the extent such distributions relate to taxable income or loss of the USA Debtors Disputed Claims Cash Reserve determined in accordance with the provisions hereof, and (iv) to the extent permitted by applicable law, report consistent with the foregoing for state and local income tax purposes. All Blitz Liquidating Trust Beneficiaries shall report, for income tax purposes, consistent with the foregoing. In the event, and to the extent, any Cash retained on account of Disputed Claims in the USA Debtors Disputed Claims Cash Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of

Disputed Claims, or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Blitz Liquidating Trustee as a result of the resolutions of such Disputed Claims.

8.6 Expedited Determination of Taxes. The Blitz Liquidating Trust may request an expedited determination of taxes of the Blitz Liquidating Trust, including the USA Debtors Disputed Claims Cash Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for the Blitz Liquidating Trust for all taxable periods through the termination of the Blitz Liquidating Trust.

ARTICLE IX TERMINATION OF BLITZ LIQUIDATING TRUST

9.1 Termination of Blitz Liquidating Trust. The Blitz Liquidating Trustee shall be discharged and the Blitz Liquidating Trust shall be terminated, at such time as (a) all Disputed Claims have been resolved, (b) all of the Blitz Liquidating Trust Assets have been liquidated, (c) all duties and obligations of the Blitz Liquidating Trustee hereunder have been fulfilled, (d) all Distributions required to be made by the Blitz Liquidating Trustee under the Plan and this Blitz Liquidating Trust Agreement have been made, and (e) the Chapter 11 Cases of the USA Debtors have been closed; provided, however, that in no event shall the Blitz Liquidating Trust be terminated later than the term of the Blitz Liquidating Trust under Section 9.2 of this Blitz Liquidating Trust Agreement, as such term may be extended pursuant to Section 9.2.

9.2 Maximum Term. The term of the Blitz Liquidating Trust shall end no later than the third (3th) anniversary of the Effective Date (the "Initial Blitz Liquidating Trust Term"); provided, however, that the Blitz Liquidating Trustee may, subject to the further provisions of this Section 9.2, extend the term of the Blitz Liquidating Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Blitz Liquidating Trust Assets as follows: within the six (6) month period prior to the termination of the Initial Blitz Liquidating Trust Term, the Blitz Liquidating Trustee may file a notice of intent to extend the term of the Blitz Liquidating Trust with the Bankruptcy Court and upon approval of the Bankruptcy Court of such extension, the term of the Blitz Liquidating Trust shall be so extended. The Blitz Liquidating Trust may file one or more such extension notices, each notice to be filed within the six (6) month period prior to the termination of the extended term of the Blitz Liquidating Trust (all such extensions, collectively, are referred to herein as the "Supplemental Blitz Liquidating Trust Term"). Notwithstanding anything to the contrary in this Section 9.2, however, the Blitz Supplemental Liquidation Term may not exceed three (3) years without a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the Blitz Liquidating Trust as a liquidating trust for federal income tax purposes. In addition, the provisions of this Section 9.2 shall be without prejudice to the right of any party in interest under Section 1109 of the Bankruptcy Code to petition the Bankruptcy Court, for cause shown, to shorten the Supplemental Blitz Liquidating Trust Term.

9.3 Events Upon Termination. At the conclusion of the term of the Blitz Liquidating Trust, the Blitz Liquidating Trustee shall distribute the remaining Blitz Liquidating

Trust Assets, if any, to the Blitz Liquidating Trust Beneficiaries, in accordance with the Plan, the Confirmation Order, and this Blitz Liquidating Trust Agreement.

9.4 Winding Up, Discharge, and Release of the Blitz Liquidating Trustee. For the purposes of winding up the affairs of the Blitz Liquidating Trust at the conclusion of its term, the Blitz Liquidating Trustee shall continue to act as Blitz Liquidating Trustee until its duties under this Blitz Liquidating Trust Agreement have been fully discharged or its role as Blitz Liquidating Trustee is otherwise terminated under this Blitz Liquidating Trust Agreement and the Plan. Upon a motion by the Blitz Liquidating Trustee, the Bankruptcy Court may enter an order relieving the Blitz Liquidating Trustee, its agents and employees of any further duties, discharging, and releasing the Blitz Liquidating Trustee and releasing its bond, if any.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Amendments. The Blitz Liquidating Trustee may modify, supplement, or amend this Agreement in any way that is not inconsistent with the Plan or the Confirmation Order [upon prior written notice to, and consent of, the Oversight Committee]. The Blitz Liquidating Trustee shall seek Bankruptcy Court approval of any material modification, supplement, or amendment.

10.2 Waiver. No failure by the Blitz Liquidating Trust, the Blitz Liquidating Trustee, or its agents, professionals and employees to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

10.3 Cumulative Rights and Remedies. The rights and remedies provided in this Blitz Liquidating Trust Agreement are cumulative and are not exclusive of any rights under law or in equity.

10.4 No Bond Required. Notwithstanding any state law to the contrary, the Blitz Liquidating Trustee (including any successor Blitz Liquidating Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

10.5 Irrevocability. This Blitz Liquidating Trust Agreement and the Blitz Liquidating Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Blitz Liquidating Trust Agreement.

10.6 Tax Identification Numbers. The Blitz Liquidating Trustee may require any Blitz Liquidating Trust Beneficiary to furnish to the Blitz Liquidating Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the Blitz Liquidating Trustee may condition any Distribution to any Blitz Liquidating Trust Beneficiary upon the receipt of such identification number.

10.7 Relationship to the Plan. The principal purpose of this Blitz Liquidating Trust Agreement is to aid in the implementation of the Plan and, therefore, this Blitz Liquidating Trust Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order.

In the event that any provision of this Blitz Liquidating Trust Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control. In the event that any provision of the Plan is found to be inconsistent with a provision of the Confirmation Order, the Confirmation Order shall control.

10.8 Division of Blitz Liquidating Trust. Under no circumstances shall the Blitz Liquidating Trustee have the right or power to divide the Blitz Liquidating Trust unless authorized to do so by the Bankruptcy Court.

10.9 Applicable Law. This Blitz Liquidating Trust shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

10.10 Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Blitz Liquidating Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Blitz Liquidating Trust Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Blitz Liquidating Trustee or any professional retained by the Blitz Liquidating Trustee, in each case in its capacity as such. Each party to this Blitz Liquidating Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Blitz Liquidating Trust Agreement or of any other agreement or document delivered in connection with this Blitz Liquidating Trust Agreement, and also hereby irrevocably waives any defense of improper venue, forum *non conveniens* or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Blitz Liquidating Trust Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Blitz Liquidating Trust Agreement.

10.11 Severability. In the event that any provision of this Blitz Liquidating Trust Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Blitz Liquidating Trust Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Blitz Liquidating Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

10.12 Limitation of Benefits. Except as otherwise specifically provided in this Blitz Liquidating Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Blitz Liquidating Trust Beneficiaries any rights or remedies under or by reason of this Blitz Liquidating Trust Agreement.

10.13 Notices. All notices, requests, demands, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered in person or by facsimile with an electromagnetic report of delivery or if sent by overnight mail, registered mail, certified mail, or regular mail, with postage prepaid, to the following addresses:

If to the Blitz Liquidating Trustee:

with a copy to:

If to a Blitz Liquidating Trust Beneficiary:

To the name and distribution address set forth in the
Register with respect to such Beneficiary.

The parties may designate in writing from time to time other and additional places to which notices may be sent.

10.14 Further Assurances. From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Blitz Liquidating Trust Agreement, and to consummate the transactions contemplated hereby.

10.15 Integration. This Blitz Liquidating Trust Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by and among the parties thereto, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan and in the Confirmation Order. This Blitz Liquidating Trust Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this Blitz Liquidating Trust Agreement, the Plan or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Blitz Liquidating Trust Beneficiaries any rights or remedies under or by reason of this Blitz Liquidating Trust Agreement.

10.16 Interpretation. The enumeration and Section headings contained in this Blitz Liquidating Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Blitz Liquidating Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Blitz Liquidating Trust Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations, and corporations. The words herein, hereby, and hereunder and words with similar import, refer to

this Blitz Liquidating Trust Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise. Any reference to the "Blitz Liquidating Trustee" shall be deemed to include a reference to the "Blitz Liquidating Trust" and any reference to the "Blitz Liquidating Trust" shall be deemed to include a reference to the "Blitz Liquidating Trustee" except for the references in Sections 4.3 and 4.4, and such other provisions in which the context otherwise requires.

10.17 Counterparts. This Blitz Liquidating Trust Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document. Delivery of an executed counterpart of this Blitz Liquidating Trust Agreement by facsimile or email in pdf format shall be equally effective as delivery of a manually executed counterpart.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Blitz Liquidating Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers or representatives, all as of the date first above written.

USA DEBTORS:

BLITZ U.S.A., INC,

By: _____
Name:
Title:

BLITZ ACQUISITION, LLC

By: _____
Name:
Title:

BLITZ RE HOLDINGS, LLC

By: _____
Name:
Title:

MIAMIOK LLC (f/k/a F3 Brands LLC)

By: _____
Name:
Title:

_____ as Blitz Liquidating Trustee

By: _____
Name:
Title:

EXHIBIT D

Notice of Entry of Confirmation Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BLITZ U.S.A., Inc., et al.,¹
Debtors.

Chapter 11

Case No. 11-13603 (PJW)

(Jointly Administered)

Re: Docket Nos. _____

**NOTICE OF (A) ENTRY OF ORDER CONFIRMING DEBTORS' AND OFFICIAL
COMMITTEE OF UNSECURED CREDITORS' FIRST AMENDED JOINT PLAN OF
LIQUIDATION, AND (B) BAR DATES FOR FILING ADMINISTRATIVE EXPENSE CLAIMS
AND REJECTION DAMAGES CLAIMS**

TO: ALL PARTIES IN INTEREST

PLEASE TAKE NOTICE THAT:

1. On [January 30], 2013, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered its Order Confirming Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation (the "Confirmation Order"). Unless otherwise defined herein, capitalized terms used in this Notice shall have the meanings ascribed to such terms in the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation, dated December 18, 2013 (the "Plan").

2. Copies of this Confirmation Order and the Plan may be obtained by accessing <http://www.kccllc.net/Blitz>

3. The Plan will become effective in accordance with its terms on the date on which all conditions to the effective date of the Plan as set forth in section 11.2 of the Plan have been satisfied or waived as provided in section 11.5 of the Plan (the "Effective Date"). The Blitz Liquidating Trustee will file a notice of the occurrence of the Effective Date with the Bankruptcy Court, mail a copy thereof to all parties on the Master Service List maintained in these cases, and post a copy at <http://www.kccllc.net/Blitz>

4. In accordance with section 2.3 of the Plan, other than (a) Administrative Expense Claims for which the Bankruptcy Court established a previous Bar Date, including 503(b)(9) Claims and Administrative Expense Claims arising during the period commencing on the Petition Date and continuing through and including July 13, 2012, which were subject to a Bar Date of July 13, 2012, and (b) Fees of Bankruptcy Professionals, any and all requests for payment or proofs of Administrative

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and MiamiOK LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 309 North Main Street, Miami, OK 74354.

Expense Claims must be filed with the Bankruptcy Court no later than the first Business Day that is at least forty-five (45) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to any Administrative Expense Claims must be filed by the first Business Day that is seventy-five (75) days after the Effective Date, which objection date may be extended by application to the Bankruptcy Court.

5. In accordance with section 8.2 of the Plan, if the rejection of a contract or lease pursuant to any provision of the Plan results in a Claim by the non-Debtor party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Estates, the Blitz Liquidating Trust, the Blitz Personal Injury Trust, their successors or properties, unless a Proof of Claim is filed and served on Blitz Liquidating Trustee or the BAH Plan Administrator, as applicable, within thirty (30) days of the notice of entry of the Confirmation Order.

6. As required by paragraph 55 of the Confirmation Order and the Blitz Personal Injury TDP, all materials required by the Personal Injury POC form (including medical records and expert reports) and any materials to be considered in support of a Special Circumstances claim must be sent electronically by the holders of Blitz Personal Injury Claims to the Blitz Personal Injury Trust, at blitzclaim@litigationkc.com, dhaltiwanger@rpwb.com and adr@richardcohen.net so as to be received on or before February 28, 2014 by 5:00 p.m. Central Standard Time. Materials received after this time will not be considered by the Blitz Personal Injury Trust.

Dated: [_____], 2014

**RICHARDS, LAYTON &
FINGER, P.A.**

Daniel J. DeFranceschi
Michael J. Merchant
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700

*Counsel to Blitz Acquisition, LLC,
Blitz RE Holdings, LLC, Blitz
U.S.A., Inc. and MiamiOK LLC
(f/k/a F3 Brands LLC)*

**YOUNG CONAWAY STARGATT
& TAYLOR, LLP**

Sean M. Beach
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600

*Counsel for LAM 2011 Holdings,
LLC and Blitz Acquisition Holdings,
Inc.*

**WOMBLE CARLYLE
SANDRIDGE & RICE, LLP**

Francis A. Monaco, Jr.
222 Delaware Avenue, Suite 1501
Wilmington, Delaware 19801
-and-

LOWENSTEIN SANDLER LLP

Jeffrey D. Prol, Esq.
65 Livingston Avenue
Roseland, New Jersey 07068

*Counsel to the Official Committee
of Unsecured Creditors*



CERTIFICATE OF LIABILITY INSURANCE

7/31/2011

DATE (MM/DD/YYYY)
7/27/2010

PRODUCER Lockton Companies, LLC-1 Kansas City 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED BLITZ U.S.A., INC 1081013 404 26th AVENUE NW MIAMI OK 74354		INSURERS AFFORDING COVERAGE	
		INSURER A: The Burlington Insurance Company	NAIC # 23620
		INSURER B: First Specialty Insurance Corporation	34916
		INSURER C: Old Republic Insurance Company	24147
		INSURER D:	
		INSURER E:	

COVERAGES BLIUS01 XO


THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$10K Premises def. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	HGL0025031	7/31/2010	7/31/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ XXXXXXXX
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	NOT APPLICABLE			AUTO ONLY - EA ACCIDENT \$ XXXXXXXX OTHER THAN EA ACC \$ XXXXXXXX AUTO ONLY: AGG \$ XXXXXXXX
B		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> UMBRELLA FORM <input checked="" type="checkbox"/> RETENTION \$ 500,000	IRE 98445	7/31/2010	7/31/2011	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ XXXXXXXX \$ XXXXXXXX \$ XXXXXXXX
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under SPECIAL PROVISIONS below	NOT APPLICABLE			<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX
C		OTHER PRODUCTS LIABILITY	MWZY58888	7/31/2010	7/31/2011	\$3,000,000 PER OCC /\$3,000,000 AGG. SUBJECT TO \$1,000,000 SIR

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS
 THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED.

EXHIBIT C

CERTIFICATE HOLDER 2984893 Fred's Deanna Treytag 4300 New Getwell Road Memphis, TN 38118 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BLITZ U.S.A., Inc., et al.,¹
Debtors.

Chapter 11

Case No. Case No. 11-13603 (PJW)

(Jointly Administered)

Objection Deadline: August 7, 2013 at 4:00 p.m. (ET)
Hearing Date: August 14, 2013 at 9:30 a.m. (ET)

**MOTION FOR ORDER UNDER 11 U.S.C. §§ 105 AND 363 AND FED. R. BANKR.
P. 2002, 6004 AND 9019 APPROVING SETTLEMENT AND AUTHORIZING
DEBTORS TO (I) COMPROMISE, SETTLE RELEASE AND DISMISS CLAIMS OF AND
AGAINST THE DEBTORS PURSUANT TO INSURANCE TERM SHEET, AND (II) SELL
CERTAIN INSURANCE POLICIES BACK TO THE PARTICIPATING INSURERS FREE
AND CLEAR OF LIENS, CLAIMS, INTERESTS AND OTHER ENCUMBRANCES**

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors” or “Blitz”), together with the Committee (collectively, the “Movants”), hereby move for entry of an order under 11 U.S.C. §§ 105, 363(b) and 363(f) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 6004 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving the settlement by and among the Debtors, the Committee, the Participating Insurers, Wal-Mart Stores, Inc. (“Wal-Mart”) and the Participating Blitz Personal Injury Claimants, as set forth in the Term Sheet (as defined herein), and authorizing the Debtors to (i) compromise, settle, release and dismiss claims of and against the Debtors pursuant to their settlement with the Committee, the Participating Insurers and Wal-Mart and (ii) sell the Subject Policies back to the Participating Insurers as set forth in the Term Sheet free and clear of liens, claims, interests and other encumbrances,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors’ federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and MiamiOK LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is 309 North Main Street, Miami, OK 74354.

EXHIBIT D

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effective as of the effective date of a confirmed plan of reorganization. In support of this Motion, the Movants respectfully represent as follows:

PRELIMINARY STATEMENT

By this Motion, the Movants seek approval of the term sheet (which is attached as Exhibit A to this Motion, the "Term Sheet")² by and among (i) the Debtors, (ii) the Committee, (iii) the Participating Insurers, (iv) the Participating Blitz Personal Injury Claimants, and (v) Wal-Mart (collectively, the "Settling Parties"). The Term Sheet forms the basis for a forthcoming Chapter 11 plan and marks an important milestone in resolving complex multi-party disputes in, and signaling closure for, these Cases. With the guidance of two mediators (Judge Gross and the Hon. Richard Cohen (Ret.)), the Settling Parties have formulated an exit strategy for these Cases that will maximize the returns for creditors and provide finality for interested stakeholders. These efforts have culminated in the consensual agreement reflected in the Term Sheet, which the Debtors, in the exercise of their business judgment and in consultation with their major constituencies, have determined is in the best interest of their estates.

The Term Sheet, among other things, provides for an infusion of \$161,320,000.00 from the Participating Insurers and Wal-Mart upon effectuation of a Chapter 11 Plan, and assignment of the insurance policies issued by Non-Participating Insurers to a trust for the benefit of Blitz Personal Injury Claims. The funds that will be made available to the Debtors' estates pursuant to the settlement and buyback of the policies of the Participating Insurers and the assignments of the policies of the Non-Participating Insurers, as contemplated by the Term Sheet, will provide the holders of the Blitz Personal Injury Claims with an adequate source of redress and an

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Term Sheet. For the avoidance of doubt, the Settlement shall not include the Settlement of any claim for damages that commenced or occurred on or after 12:01 AM CDT on July 31, 2012 and in the Term Sheet, and herein, the term Blitz Personal Injury Claims is not defined as including, and shall not be construed to include, any such claims.

efficient process to fully resolve their claims. In addition, the Participating Insurers have agreed to withdraw their proofs of claim once the settlement is consummated.

Wal-Mart has also agreed to waive its pre-petition contribution and indemnity claims filed against the Debtors, which current indemnification obligations it asserts exceed \$3 million. Wal-Mart asserts that its claim is secured by approximately \$1.54 million in payables Wal-Mart owed to debtor Blitz U.S.A. as of the Petition Date. Thus, in addition to Wal-Mart's substantial contribution to the \$161.3 million settlement for the benefit of Blitz Personal Injury Claims, Wal-Mart will provide the Blitz U.S.A. estate with a much needed infusion of \$1.54 million once the Settlement is effective. In cases that have often teetered on the brink of administrative insolvency, Wal-Mart's additional contribution over and above its funding obligation for the \$161.3 settlement fund and the withdrawal of the proofs of claim of the Participating Insurers will make it possible to utilize the remaining assets of the Blitz U.S.A. estate to fund a recovery for unsecured creditors as well as pay administrative expenses of these cases.

Concurrently with the presentation of this Motion, the Movants are also moving to approve a settlement among the Debtors, the Committee, Crestwood Holdings, Inc., Kinderhook Industries II, L.P. and Kinderhook Industries, LLC (the "Holdings Debtors' Settlement") which completes the Debtors' wind down strategy for these cases. This Settlement and the Holdings Debtors' Settlement will resolve major litigation claims of and against the Debtors, establish the rights to insurance coverage vis-à-vis the Debtors, the Participating Insurers and Wal-Mart, and outline a structured distribution process for Blitz Personal Injury Claims and other claims. Under the present circumstances, the Term Sheet embodies a pragmatic course of action for resolving this case and one that will maximize estate value and avoid an unproductive Chapter 7 liquidation for certain of the Debtors. As such, the Debtors and the other Settling Parties submit

that the Term Sheet is fair, equitable and in the best interest of the Debtors' estates, and should be approved by this Court.

BACKGROUND

A. The Chapter 11 Filing

1. On November 9, 2011 (the "Petition Date"), the Debtors commenced the above-captioned jointly administered cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Cases"). The Debtors continue to manage their properties as Debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On November 21, 2011, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee") in the Cases. As of the date hereof, no trustee or examiner has been appointed in the Cases.

B. Jurisdiction and Venue

3. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 9019 and Rule 6004-1 of the Local Rules for the United States Bankruptcy Court, District of Delaware (the "Local Rules").³

C. The Blitz Personal Injury Claims

4. Blitz Personal Injury Claimants hold contingent, unliquidated Blitz Personal Injury Claims allegedly resulting from the use of products manufactured by debtor Blitz U.S.A.,

³ The Debtors request—in light of the property of the estate being sold (the Subject Policies), the fact that the Term Sheet has been extensively negotiated by substantially all of the critical parties in interest in these Cases, and that the Settlement embodied in the Term Sheet will only be effectuated through confirmation of a Chapter 11 plan, subject to the disclosure requirements of section 1125 of the Bankruptcy Code—that the disclosures required under Local Rule 6004-1(b)(iv) be deemed satisfied and, to the extent not satisfied, waived under these circumstances.

Inc. ("Blitz"). Attorneys representing the Blitz Personal Injury Claimants have asserted that there are approximately 80 known Blitz Personal Injury Claimants.

5. A known set of Blitz Personal Injury Claimants have filed lawsuits against Blitz. Some have also named distributors of Blitz's products, particularly Wal-Mart, or shareholders and officers of the Debtors as co-defendants in these lawsuits. As of the Petition Date, Blitz and certain of its resellers, including Wal-Mart, along with certain other parties, were named as defendants in thirty-six (36) pending lawsuits known to the Debtors relating to gasoline cans in various state and federal courts across the country. See *Declaration of Rocky Flick in Support of the Second Omnibus Objection of the Debtors and Debtors in Possession to Motions of Personal Injury Claimants for Relief from Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code*, [D.I. 1218] at ¶ 3.

6. In general, these lawsuits seek money judgments for Blitz Personal Injury Claims based on alleged design and manufacturing defects related to the personal consumer gasoline containers produced by Blitz and failure to warn in connection with fires or explosions that allegedly occurred when personal consumer gasoline containers manufactured by Blitz were used or stored in the vicinity of flames or other combustion sources. *Id.* at ¶ 4. As of the date hereof, Blitz remains a defendant in approximately thirty-six (36) such lawsuits and Wal-Mart is a defendant in twenty-five (25) of such lawsuits, not all of which name Blitz as a defendant. *Id.* Blitz and Wal-Mart have vigorously defended these lawsuits and/or similar claims and maintain, among other things, that the personal consumer gasoline containers are safe when properly used.

D. The Debtors' Insurance Policies

7. For the period from July 31, 2002 through July 2012, the Debtors purchased varying amounts of primary, umbrella and excess general liability insurance policies (each a "Policy" and together the "Policies"). The coverage potentially available under each Policy

depends upon a number of factors, including, without limitation, satisfaction of conditions to coverage as set forth in or incorporated by the Policy, the number and amount of paid claims alleging injury in each Policy period; the dates of the claimants' injuries; the satisfaction of any applicable deductibles or self-insured retentions (collectively, "SIRs"); whether a particular Policy's coverage is primary, umbrella or excess; and, whether any underlying coverage has been exhausted by the payment of claims.

8. Not all of the Debtors' insurers are participants in the Settlement. Certain of the insurers for the policy years between July 31, 2002 and July 31, 2005 had either exhausted coverage, previously settled their coverage obligations or chose not to participate in the Settlement (the "Non-Participating Insurers," as further defined in the Term Sheet). The remaining insurers, for the policy years between July 31, 2005 and July 31, 2012 are participating in the Settlement (the "Participating Insurers," as further defined in the Term Sheet).

9. The Participating Insurers are alleged to have issued the following policies, referred to as the Subject Policies, which will be compromised, settled and repurchased as part of the Settlement:

Insurer	Policy No.	Policy Period
Old Republic Insurance Company	MWZY 58888	07/31/10-07/31/11
Old Republic Insurance Company	MWZY 59256	07/31/11-07/31/12
First Specialty Insurance Corporation	IRE98445	07/31/10-07/31/11
First Specialty Insurance Corporation	IRE984451	07/31/11-07/31/12
First Mercury Insurance Company	CEGA000205	07/31/10-07/31/11
First Mercury Insurance Company	CEGA000307	07/31/11-07/31/12
Continental Casualty Company	L4017503244	07/31/09-07/31/10
Continental Casualty Company		07/31/10-07/31/11
Westchester Surplus Lines Insurance Company	CUW788371001	07/31/05-07/31/06
Westchester Fire Insurance Company	G22053504001	07/31/06-07/31/07

Westchester Fire Insurance Company	G22053504002	07/31/07-07/31/08
Westchester Fire Insurance Company	G22053504003	07/31/08-07/31/09
Westchester Fire Insurance Company	G22053504004	07/31/09-07/31/10
Liberty Insurance Underwriters, Inc.	EGL-BO184170-016	07/31/06-07/31/07
Liberty Insurance Underwriters, Inc.	EGL-BO-184170-026	07/31/07-07/31/08
Liberty Insurance Underwriters, Inc.	EGL-BO-184170-036	07/31/08-07/31/09
Liberty Insurance Underwriters, Inc.	EGL-BO-184170-046	07/31/09-07/31/10
Liberty Insurance Underwriters, Inc.	LQ1-B71-213221-019	07/31/09-07/31/10
Liberty Insurance Underwriters, Inc.	EXCAT0687652	07/31/10-07/31/11
Liberty Insurance Underwriters, Inc.	EXCAT068765-3	07/31/11-07/31/12
Interstate Fire and Casualty Insurance Company	HFX1002572	07/31/08-07/31/09
Navigators Specialty Insurance Company	CH08EXC499507NC	07/31/08-07/31/09
Axis Surplus Insurance Company		07/31/08-07/31/09
Endurance American Specialty Insurance Company	ELD 10000712700	07/31/07-07/01/08
Arch Insurance Company	UXP004536700	07/31/11-7/31/12

E. Negotiations Among Settling Parties

10. The Debtors, the Committee, Wal-Mart and the Participating Insurers have engaged in intense, and often fractious, settlement discussions with respect to insurance coverage and claim issues with the goal of resolving all outstanding disputes among the parties through an organized plan process. These efforts were spearheaded by the Participating Insurers and Wal-Mart, in consultation with the Debtors and the Committee.

11. In an effort to facilitate a settlement, the Debtors and the Committee sought the assistance of Judge Kevin Gross to mediate their disputes. Later, the Participating Insurers, Wal-Mart and the Participating Blitz Personal Injury Claimants agreed to add the Hon. Richard Cohen (Ret.) (a former New Jersey Appellate Division Judge) to the process. Judge Cohen has significant mediation experience, having mediated many large mass tort cases, including 17 multi-party products and construction defect cases involving complex insurance coverage issues.

12. Building on the progress made by Judge Gross in the initial series of meetings that he conducted, Judge Cohen oversaw four all-day mediation meetings in New York between

February and May 2013. These sessions took place on February 5, February 15, March 8, and May 17, 2013. The mediation sessions were attended by plaintiff lawyers who represent a majority of the known Blitz Personal Injury Claimants and their clients hold Blitz Personal Injury Claims that are diverse as to type and value. Debtors' counsel (at that time solely Richards, Layton & Finger) was kept apprised of settlement discussions and Daniel J. DeFranceschi attended one of the key sessions in New York in person. Counsel and business representatives of two or more of the Participating Insurers and Wal-Mart also attended each of the mediation sessions overseen by Judge Cohen.

13. As a result of such mediations and the tireless efforts of Judge Gross and Judge Cohen, the parties successfully negotiated a settlement among the Settling Parties.

14. One focus of settlement discussions was the legal merit and value of the Blitz Personal Injury Claims. Another focus of the settlement discussions included the potential insurance available to satisfy Blitz Personal Injury Claims. Based on the substantial cash contribution agreed to by the Participating Insurers and Wal-Mart, along with the understanding that this cash infusion will be tied to a trust mechanism to channel and resolve all outstanding Blitz Personal Injury Claims, the Settling Parties developed the Term Sheet to resolve all pending issues globally.

15. Wal-Mart further agreed to waive its asserted substantial pre-petition contribution and indemnity claims to benefit the entire Blitz U.S.A. estate—not just the holders of Blitz Personal Injury Claims—upon the effective date of the Chapter 11 Plan. The Participating Insurers have likewise agreed to withdraw the claims that they asserted in their proofs of claim as part of the overall settlement. Wal-Mart asserts that its claims are secured by \$1.54 million in payables Wal-Mart owed to Blitz U.S.A. as of the petition date and against which Wal-Mart

asserts it has the right to set off. Wal-Mart's waiver of its claims provides significant monetary benefits to general unsecured creditors by (i) infusing an additional \$1.54 million into the Blitz U.S.A. estate; and (ii) eliminating indemnification and contribution claims—with Wal-Mart's claim alone being asserted in excess of \$3 million—that would have diluted the recoveries of other general unsecured creditors. The estate will further benefit from the resolution of the claims asserted in the proofs of claim filed by the Participating Insurers.

F. The Chapter 11 Plan

16. The Settling Parties have completed an agreement in principle on a Chapter 11 Plan that provides for the establishment of a Plan Trust to be funded with \$161,320,000.00 in proceeds from the sale of the Subject Policies by the Debtors to the Participating Insurers, contributions from Wal-Mart and an assignment of the insurance policies of the Non-Participating Insurers. Conceptually, the Chapter 11 Plan will provide that all Blitz Personal Injury Claims against the Debtors, Wal-Mart, and other retailers and distributors, as well as the Debtors' insurers, will be channeled to a Plan Trust for review, resolution and payment in accordance with trust distribution procedures to be implemented upon consummation of the Chapter 11 Plan. In addition, the Debtors and third parties including Wal-Mart and the Participating Insurers will receive releases from the holders of Blitz Personal Injury Claims. The Plan Trust distribution procedures will be designed to provide for a fair and equitable distribution of assets to claimants asserting Blitz Personal Injury Claims.

17. Holders of Blitz Personal Injury Claims will be required to file proofs of claim for those claims, if any, that are not now known to the Debtors.⁴ Based on information compiled

⁴ Contemporaneously herewith the Committee is filing the *Motion for Order Under 11 U.S.C. §§ 105 and 502 and Fed. R. Bankr. P. 2002(a)(7), 3001(a), 3003(c) and 9007: (I) Approving Procedures for Filing Proofs of Claim Regarding Blitz Personal Injury Claims; (II) Approving Proof of Claim Forms; (III) Establishing Supplemental Bar Date For Filing Proofs of Claim Related to Blitz Personal Injury Claims; and (IV) Approving the Form and Manner*

from the Debtors' records and information supplied by the Settling Parties, including input from counsel to the Participating Blitz Personal Injury Claimants, the Debtors understand that Blitz Personal Injury Claimants will receive a substantial recovery on their Blitz Personal Injury Claims as settled and allowed. The Committee concurs with this view and supports the Chapter 11 Plan. The Debtors hope that the Chapter 11 Plan can be confirmed during the first quarter of 2014, with the goal of providing distributions to a substantial number of Blitz Personal Injury Claimants by early 2014.

18. The Settlement that is the subject of this Motion will form the basis of the Chapter 11 Plan and has emerged as a credible proposal for resolution of these Cases outside of an unfruitful Chapter 7 liquidation for certain of the Debtors. The Settlement is necessary to implement pursuant to the Chapter 11 Plan the global resolution of Blitz Personal Injury Claims against the Debtors, Wal-Mart and the Participating Insurers.

G. Summary of Integration of the Settlement, Sale of Subject Policies and Chapter 11 Plan

19. The Settlement provides for cash payments of \$161,320,000.00 to be made to the Plan Trust upon satisfaction of certain terms and conditions set forth in the Term Sheet, including entry of a final non-appealable order confirming the Chapter 11 Plan (the "Confirmation Order"). The Settlement further provides for Wal-Mart to make an additional \$1.54 million available to the Blitz U.S.A. estate for the benefit of its creditors.

20. It is contemplated that the order approving the Settlement, along with the Confirmation Order, will, among other things, as of the effective date (the "Effective Date") of the Chapter 11 Plan, (a) channel to the Plan Trust all Blitz Personal Injury Claims against the

of Notice of Supplemental Bar Date for Filing Proofs of Claim Regarding Blitz Personal Injury Claims, seeking an order establishing a supplemental bar date applicable to all Blitz Personal Injury Claims and approving a proof of claim form tailored to those claims.

Debtors, Wal-Mart, the Debtors' other vendors, retailers and distributors (collectively, "Vendors"), the additional insureds on the Subject Policies, and the Participating Insurers, and (b) permanently enjoin the prosecution, commencement or continuation of litigation of Blitz Personal Injury Claims.

21. It is contemplated that, under the Settlement, the Participating Insurers and Wal-Mart will collectively pay the Settlement Amount (i) within the specified time period after the Confirmation Order has become final and non-appealable and (ii) when the conditions to effectiveness of the Chapter 11 Plan have been satisfied (or are satisfied concurrently with the payment, as the case may be). Subject to those same conditions being met in accordance with the Term Sheet, Wal-Mart will waive its pre-petition claims and release the additional \$1.54 million.

22. Upon the Confirmation Order becoming final and non-appealable and a Participating Insurer and Wal-Mart paying their share of the Settlement Amount to the Plan Trust, and without limiting the effect of the Channeling Injunction to be entered, the Plan Trust will indemnify such Participating Insurer and/or Wal-Mart against certain losses and liabilities that might be incurred by it in accordance with its Settlement, including claims (including direct action and contribution claims) arising out of or relating to Blitz Personal Injury Claims against the Debtors and/or the Subject Policies.

23. Effective upon a Participating Insurer's payment of its Settlement Amount to the Plan Trust, and upon the Effective Date of the Debtors' confirmed Chapter 11 Plan, each Participating Insurer will purchase its Subject Policies back from the Debtors free and clear of all claims, liens, interests and encumbrances. At that time, the Debtors and any additional named insureds on the Subject Policies, on the one hand, and each of the Participating Insurers, on the

other hand, will be mutually released from Blitz Personal Injury Claims and any other claims that have been or may be asserted under the Subject Policies, except for any claims based on the obligations arising under the Settlement. In general, such mutual releases include the released parties' respective past, present and future officers, directors, stockholders, principals, partners, subsidiaries, predecessors, successors, attorneys, agents and assigns, in their capacity as such.

RELIEF REQUESTED

24. By this Motion, the Movants seek entry of an order under sections 105 and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004 and 9019, approving the Settlement as among them, the Participating Insurers, Wal-Mart and the Participating Blitz Personal Injury Claimants, and authorizing the Debtors to: (i) compromise, settle, release and dismiss claims of and against the Debtors pursuant to the Settlement with the Committee, the Participating Insurers and Wal-Mart, and (ii) sell the Subject Policies back to the Participating Insurers as provided in the Term Sheet free and clear of liens, claims, interests and other encumbrances, effective pursuant to the terms of the Chapter 11 Plan.

BASIS FOR RELIEF⁵

A. The Settlement Is in the Best Interests of the Debtors and Their Estates and Should Be Approved Pursuant to Federal Rule of Bankruptcy Procedure 9019

25. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Settlements and compromises are generally favored in bankruptcy cases. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 COLLIER ON BANKRUPTCY, ¶ 9019.03[1] (15th ed. 1993)). Indeed, settlements are “a normal part of the

⁵ The summary of the Settlement provided herein is a general description of the Term Sheet, which in turn contemplates that further documentation to implement the Settlement, such as the Chapter 11 Plan and ancillary documents, will be required.

process of reorganization.”“ *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. L.A. Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)).

26. To approve a compromise and settlement under Bankruptcy Rule 9019(a), a bankruptcy court must make an independent determination that the compromise and settlement is in the best interests of the Debtors’ estate. See *In re Marvel Entnm’t Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (citing *Anderson*, 390 U.S. at 424); *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). See also *Vaughn v. The Drexel Burnham Lambert Group, Inc. (In re The Drexel Burnham Lambert Group, Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991) (decision to either accept or reject a compromise and settlement is within the sound discretion of the bankruptcy court). The court may consider the opinions of the trustee or debtors-in-possession that the settlement is fair and equitable. See *In re Key3Media Group, Inc.*, 336 B.R. 87, 93 (Bankr. D. Del. 2005) (citing *In re Mickey Thompson Entnm’t Group, Inc.*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003)); *In re The Drexel Burnham Group, Inc.*, 134 B.R. at 505. In addition, the bankruptcy court may exercise its discretion “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998).

27. A bankruptcy court need not decide the numerous issues of law and fact raised by a settlement, but rather “should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness.” *Key3 Media*, 336 B.R. at 93 (citing *In re Jasmine, Ltd.*, 258 B.R. 119, 123 (D.N.J. 2000)); *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004) (“[C]ourt must only conclude that the compromise or settlement falls within the reasonable range of litigation possibilities.”) (citing *In re Penn Central Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979). A full evidentiary hearing to determine the merits of the

underlying litigation is not required under Bankruptcy Rule 9019. See *In re Capmark Fin. Group Inc.*, 438 BR 471, 515 (Bankr. D. Del. 2010) (citing *Jasmine*, 258 B.R. at 123); *Key3 Media*, 336 B.R. at 93; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) (noting that the court “need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation” being settled).

28. Thus, the dispositive question is not whether a better result might have been reached if litigation is fully pursued. Rather, settlements should be approved so long as a minimal threshold of reasonableness is satisfied. See, e.g., *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008) (“In considering a proposed settlement, the court’s duty is to determine whether the compromise is reasonable, not whether the compromise is the best possible settlement.”); *Coram*, 315 B.R. at 330; *In re Sea Containers Ltd.*, No. 06-11156, 2009 WL 4296562, at *5 (Bankr. D. Del. Sept. 19, 2008) (“[The] court . . . need not be convinced that the settlement is the best possible compromise.”).

29. In deciding whether a particular settlement falls within the “range of reasonableness,” courts consider the following factors: (i) the probability of success in the litigation; (ii) the difficulties associated with collection; (iii) the complexity of the litigation, and attendant expense, inconvenience and delay; and (iv) the paramount interests of creditors. See, e.g., *Martin*, 91 F.3d at 393; *In re RFE Indus., Inc.*, 283 F.3d 159, 165 (3d Cir. 2002); *In re Nutraquest, Inc.*, 434 F.3d 639, 644 (3d Cir. 2006).

30. The Settlement should be authorized and approved by this Court because it will provide \$161,320,000.00 in cash to fund the Plan Trust for payment of Blitz Personal Injury Claims, and resolve all disputes by and between the Debtors, the Participating Insurers and Wal-Mart on a fair and reasonable basis. Wal-Mart will further provide an additional \$1.54 million to

the Blitz U.S.A. estate as part of the waiver of the secured claims it asserts against Blitz U.S.A. The Debtors' decision to enter into the Term Sheet serves the estates' best interests because it produces significant funding from the Participating Insurers and Wal-Mart for the Plan Trust to compensate Blitz Personal Injury Claimants under the Chapter 11 Plan, avoids protracted litigation between and among, the Debtors, the Participating Insurers, Wal-Mart and Blitz Personal Injury Claimants that inevitably would delay payments to them — likely for several years—and resolves the uncertainty about potential liabilities and recoveries of interested parties arising from the Subject Policies.

31. With respect to the Participating Blitz Personal Injury Claimants, the claim process contemplated to be included in the Chapter 11 Plan, and effectuated through the Plan Trust, fosters the interests of efficiency in avoiding long, disjointed litigation in state and federal courts for Blitz Personal Injury Claimants. The Settlement embodied by the Term Sheet will allow for a streamlined and vetted process to identify, substantiate and pay-out Blitz Personal Injury Claims. In addition to conserving a significant amount of resources, which would otherwise be dissipated in litigating Blitz Personal Injury Claims, the Settlement also minimizes the risk associated with litigating Blitz Personal Injury Claims on a one-off basis potentially producing significant uncertainty among tort recoveries, and instead injecting uniformity and predictability for Blitz Personal Injury Claims.

32. Moreover, with the advice of experienced legal counsel and consideration of all issues involved, the Debtors and the Committee have considered the risks and benefits of coverage litigation against the Participating Insurers. Such litigation likely would involve complex choice of law and insurance law issues concerning the interpretation and application of the terms, conditions, limitations and exclusions of the Subject Policies—as to all of which there

is substantial dispute. Moreover, insurance coverage litigation has intrinsic risks, both known and unknown, and none of these insurance claims can be guaranteed of success. Additionally, protracted coverage litigation would require the Debtors and/or the Committee to incur the costs and expenses associated with that litigation, including substantial fees and expenses of counsel, expert witnesses and other professionals.

33. Even if the Debtors were to prevail on coverage issues with respect to the Subject Policies—and even if judgments in the Debtors’ favor survived all appeals—fact-intensive issues would remain with respect to applicable coverage periods for claims and policies (such as the dates of occurrence of the claimants’ injuries and the exhaustion of any underlying primary coverage) which would have to be resolved before coverage could be determined for, and payments made on account of Blitz Personal Injury Claims under the Subject Policies. Indeed, the Participating Insurers allege that the Subject Policies generally only obligate the insurers to indemnify the Debtors and additional insureds against any covered judgments or settlements from covered events in excess of their respective underlying limits and the SIRS described above. Accordingly, it is expected that, absent the certainty represented by the Settlement, the Participating Insurers would argue—among other defenses they may raise—that, until the Debtors have paid, or have at least been adjudged liable to pay, money damages to tort claimants that implicate Policy limits and exceed the underlying coverage and SIRS, the Participating Insurers have no duty to actually pay money to the Debtors. Thus, any coverage payments inevitably would be delayed as a result of an extended coverage litigation process.

34. In addition, the Settlement resolves substantial liabilities and pending disputes with Wal-Mart vis-à-vis the Debtors, the Participating Insurers and the Participating Blitz Personal Injury Claimants. Wal-Mart, in its position as both an additional insured under certain

of the Subject Policies as well as co-defendant with the Debtors in certain of the litigation by Blitz Personal Injury Claimants, stands in a critical position with respect to the Settlement and the feasibility of any proposed plan. Wal-Mart has asserted and, absent the Settlement, would continue to assert, coverage claims against the Participating Insurers and contribution and indemnification claims against the Debtors for any potential liability for Blitz Personal Injury Claims. Without the participation and consent of Wal-Mart, settlement by the Participating Insurers with the Debtors, the Committee and the Participating Blitz Personal Injury Claimants would have been more difficult if not impossible. As a practical matter, Wal-Mart's role as a defendant and an additional insured rendered it a necessary party to any settlement. Freeing the Debtors and the Participating Insurers to settle the Subject Policies was of enormous intangible benefit. These potential disputes are inherently complex, both legally and factually, and represent a value of at least tens of millions to the Debtors' estates.

35. Wal-Mart also agreed to make a significant contribution to the \$161,320,000.00 fund to ensure that the Plan Trust can provide recoveries to not only the Participating Blitz Personal Injury Claimants, but also provide *redress and recoveries for the holders of all Blitz Personal Injury Claims*. The proposed Settlement will resolve all outstanding controversies among Wal-Mart, the Debtors and the Participating Insurers with finality to avoid prohibitively expensive litigation and facilitate the successful liquidation of the Debtors' estates.

36. As an added benefit, Wal-Mart agreed to make a significant contribution to the Blitz U.S.A. estate as well. The Settlement cannot be effectuated through a Chapter 11 Plan if a Chapter 11 Plan cannot be confirmed under section 1129(a)(9) of the Bankruptcy Code, which requires that all administrative claims be paid. As part of the Settlement, Wal-Mart has agreed to waive its asserted pre-petition claims, which Wal-Mart asserts are secured by \$1.54 million in

payables, and post-petition indemnity claims asserted in excess of \$3 million, so that the additional \$1.54 million can be used to address the liquidity issues that have plagued the Debtors' estates, and possibly provide an opportunity for unsecured creditors to benefit as well. In concert with the Holdings Debtors' Settlement, Wal-Mart's additional contribution makes it possible to fund these cases and advance a distribution for general unsecured creditors as well.

37. It follows that resolution of the parties' disputes under the Subject Policies and approval of the proposed Settlement will avoid complex and lengthy coverage litigation with an uncertain outcome—and therefore will facilitate earlier and more certain payments to claimants. The Movants therefore have determined, in balancing the risks, expenses, inconveniences, and delay attendant to the coverage litigation against the probability of success and the timing of any possible recoveries, that the proposed Settlement is far more beneficial to the Debtors' estates than the potential value of protracted coverage litigation.

38. In considering the Settlement, the Debtors and the Committee considered, among numerous factors, the potential but uncertain exposure to claims during the relevant coverage period for each Subject Policy, and the underlying limits and respective SIR in each period. The resulting Settlement was reached after months of extensive, arm's length, good faith negotiations between the Debtors, the Committee, the Participating Insurers, the Participating Blitz Personal Injury Claimants, and Wal-Mart. The Settling Parties were represented in these negotiations by competent and experienced law firms with substantial tort, insurance coverage and/or bankruptcy expertise. Further, as set forth above, experienced and capable mediators assisted the Settling Parties in this process.

39. The Settlement will avoid protracted, expensive and uncertain litigation—including the possibility of any adverse judgments in coverage disputes—as well as material

delays in the distribution of recoveries to Blitz Personal Injury Claimants. Without approval of the Settlement, the resultant uncertainty and costs that would accompany continued, complex coverage litigation may frustrate and delay the Debtors' ability to confirm and consummate the Chapter 11 Plan.

40. Moreover, by providing needed funding for the Plan Trust to be established under the Debtors' Chapter 11 Plan for the benefit of Blitz Personal Injury Claims, the proposed Settlement represents an important opportunity to achieve a successful liquidation. When measured against a possible uncertain recovery after trial and possible appeals in the individual tort actions and separate coverage litigation, the Settlement is fair and reasonable, falling well above "the lowest point in the range of reasonableness." Accordingly, the proposed Settlement should be approved under Bankruptcy Rule 9019 as being in the best interests of the Debtors' estates and their creditors.

B. The Sale Of The Subject Policies As Contemplated Under the Term Sheet To The Participating Insurers Should Be Authorized Under Section 363 Of The Bankruptcy Code

41. Section 363(b)(1) of the Bankruptcy Code permits a debtor-in-possession to dispose of property of the estate "other than in the ordinary course of business" after notice and a hearing. *See* 11 U.S.C. § 363(b)(1). A debtor's sale or use of property of the estate outside the ordinary course of business should be approved by the court if the debtor demonstrates a sound business justification for the proposed transaction. *See Martin*, 91 F.3d at 395; *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999) ("In evaluating whether a sound business purpose justifies the use, sale or lease of property under section 363(b), courts consider a variety of factors, which essentially represents a 'business judgment test.'").

42. Applying such a business judgment standard, courts in mass tort bankruptcy cases have approved insurance policy buybacks—like those contemplated under the Term Sheet—under sections 363(b) and (f) of the Bankruptcy Code. *See, e.g., MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93 (2d Cir. 1988) (affirming bankruptcy court “authority to approve the settlements and to channel claims arising under the Subject Policies to the proceeds of the settlement”); *In re Dow Corning Corp.*, 198 B.R. 214, 222 n.7 (Bankr. E.D. Mich. 1996) (proper test for approval of settlements under either Bankruptcy Rule 9019 or section 363(b) of the Bankruptcy Code is the business judgment standard).

43. The Debtors submit that they have a sound business justification for undertaking their obligations under, and seeking approval of, the proposed Settlement and the terms thereunder that contemplate the sale of the Subject Policies as of the effective date of a confirmed Chapter 11 Plan. In the sound exercise of their business judgment, and in consultation with the Committee, the Debtors have determined that it is in the best interests of the Debtors, their estates and creditors to resolve any potential coverage dispute and sell the Subject Policies to the Participating Insurers on the terms set forth in the proposed Settlement. Accordingly, the requisite standards under section 363 of the Bankruptcy Code and Bankruptcy Rule 6004 are satisfied.

44. Section 363(f) of the Bankruptcy Code permits the Debtors to sell property “free and clear of any interest in such property of an entity other than the estate, only if —”

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which the property is to be sold is greater than the aggregate of all liens on such property;
- (4) such interest is in bona fide dispute; or

- (5) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

11 U.S.C. § 363(f)(1) - (5).

45. Section 363(f) of the Bankruptcy Code covers not only liens but also claims and interests in the Debtors' property that derive from the Debtors' rights in that property. *See In re Dow Corning Corp.*, 198 B.R. at 244 ("it is clear that '§363 covers more situations than just sales involving liens'" (quoting *P.K.R. Convalescent Ctrs., Inc. v. Virginia (In re P.K.R. Convalescent Ctrs., Inc.)*, 189 B.R. 90, 94 (Bankr. E.D. Va. 1995)). Section 363(f) of the Bankruptcy Code is drafted in the disjunctive and, therefore, satisfaction of any one of its five requirements is sufficient to permit the proposed sales of the Subject Policies to the respective Participating Insurers.

46. Here, at least two of the conditions enumerated in section 363(f) of the Bankruptcy Code are satisfied. Section 363(f)(1) of the Bankruptcy Code applies because non-bankruptcy law permits a negotiated settlement "of an insured's cause of action against its insurer free and clear of any interest of an injured party whose tort claim would trigger the insurer's duty to defend and indemnify the insured." *In re Dow Corning Corp.*, 198 B.R. at 245. Additionally, given that any alleged liability of the Debtors to the Blitz Personal Injury Claimants is subject to bona fide dispute, section 363(f)(3) of the Bankruptcy Code permits the sale of the Subject Policies free and clear of any purported interest they might assert.

47. Moreover, any interests of the Blitz Personal Injury Claimants in the Subject Policies will be preserved in accordance with section 363(e) of the Bankruptcy Code because those claims will follow the proceeds from the sale of the Subject Policies into the Plan Trust. *See In re Johns-Manville Corp.*, 837 F.2d at 94 ("It has long been recognized that when a

debtor's assets are disposed of free and clear of third-party interests, the third party is adequately protected if his interest is assertable against the proceeds of the disposition.”).

48. Furthermore, the Settlement is the product of good faith, arms-length bargaining among the Settling Parties. The Settlement is being entered into by the parties without fraud or collusion with each party having been represented by counsel during settlement negotiations. The Debtors therefore will in the context of the anticipated plan for these cases request that this Court expressly find that the Participating Insurers are good faith purchasers for value and are entitled to the protections afforded under section 363(m) of the Bankruptcy Code.

49. Finally, courts in this and other jurisdictions have approved insurance policy buy-back arrangements as part of an overall process intended to effectuate the confirmation of a plan in cases involving mass torts. *See, e.g., In re Flintkote Co. & Flintkote Mines Ltd.*, No. 04-11300, 2012 Bankr. LEXIS 6006, at *77-84 (Bankr. D. Del. Dec. 21, 2012) (listing orders approving policy buy-backs in advance of confirmation of the plan in case involving numerous asbestos claims); *In re CFB Liquidating Corp.*, No. 01-45483 RLE, 2012 WL 3929289, at *8-14 (Bankr. N.D. Cal. Sep. 7, 2012) (order confirming plan involving insurance buy-backs with several insurers in asbestos case); *In re Jensen Farms et al.*, No. 12-20982 HRT (Bankr. D. Colo. Oct. 25, 2012) [D.I. 185] (approving buy-back of policy in case involving listeria outbreak and wrongful death suits); *In re Roman Catholic Archbishop of Portland in Oregon*, Case No. 304-37154-elpl1 (Bankr. D. Ore. Feb. 2, 2007) [D.I.4535, 4537, 4539, 4541, 4543, 4545, 4548, 4550, 4559] (orders approving policy buy-backs in advance of plan by several insurers in case involving numerous sex-abuse claims); *In re Delaco Co.*, No. 04-10899 (Bankr. S.D.N.Y. July 29, 2005 & Aug. 1, 2005) [D.I. 512, 513, 516, 519, 520, 521, 522] (orders approving policy buy-backs in advance of plan by several insurers in case involving numerous product liability suits).

NOTICE

50. This Motion and notice thereof will be provided to: (i) those parties included on the master service list maintained by the Debtors in this case, (ii) the known additional named insureds on the Subject Policies, (iii) all the Debtors' insurers known to the Debtors, (iv) all known Blitz Personal Injury Claimants and/or his or her counsel of record known to the Debtors, (v) all parties that timely filed proofs of claim identifying Blitz Personal Injury Claims, including claims for contribution or indemnity relating to Blitz Personal Injury Claims, (vii) all persons known to the Debtors to be holding an equity interest in the Debtors, (viii) the Office of the United States Trustee, (ix) all other parties in interest pursuant to Bankruptcy Rules 2002 and 6004 and any applicable local rules, (x) any other party specified in the Settlement to receive notice, (xi) any other party known to the Debtors to have a lien, claim or interest in the Subject Policies, and (xii) any other party that may be designated by the Court to receive notice.

WHEREFORE, the Debtors respectfully requests that the Court enter an order (i) approving the Settlement by and among Debtors, the Committee, the Participating Insurers, Wal-Mart and the Participating Blitz Personal Injury Claimants, and (ii) authorizing the Debtors to (a) compromise, settle, release and dismiss claims of the Debtors pursuant to the Settlement with the

Participating Insurers, Wal-Mart, the Committee and the Participating Blitz Personal Injury Claimants and (b) sell the Subject Policies back to the Participating Insurers free and clear of liens, claims, interests and other encumbrances, effective as of the Effective Date of the Chapter 11 Plan, and granting such other and further relief as is just and proper.

Dated: July 24, 2013
Wilmington, Delaware

Marcos A. Ramos

Daniel J. DeFranceschi (No. 2732)
Michael J. Merchant (No. 3854)
Marcos A. Ramos (No. 4450)
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-and-

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*Counsel to the Official Committee of
Unsecured Creditors*

EXHIBIT A
(PROPOSED ORDER)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BLITZ U.S.A., Inc., et al.,¹

Debtors.

Chapter 11

Case No. Case No. 11-13603 (PJW)

(Jointly Administered)

Objection Deadline: August 7, 2013 at 4:00 p.m. (ET)
Hearing Date: August 14, 2013 at 9:30 (ET)

**NOTICE OF HEARING ON MOTION FOR ORDER UNDER 11 U.S.C.
§§ 105 AND 363 AND FED. R. BANKR. P. 2002, 6004 AND 9019 APPROVING
SETTLEMENT AND AUTHORIZING DEBTORS TO (I) COMPROMISE, SETTLE
RELEASE AND DISMISS CLAIMS OF AND AGAINST THE DEBTORS PURSUANT
TO INSURANCE TERM SHEET, AND (II) SELL CERTAIN INSURANCE POLICIES
BACK TO THE PARTICIPATING INSURERS FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS AND OTHER ENCUMBRANCES**

PLEASE TAKE NOTICE that on July 24, 2013, the debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors" or "Blitz"), together with the Committee (collectively, the "Movants"), filed their *Motion for Order Under 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 2002, 6004 and 9019 Approving Settlement and Authorizing Debtors to: (I) Compromise, Settle, Release and Dismiss Claims of and Against the Debtors Pursuant to Insurance Term Sheet, and (II) Sell Certain Insurance Policies Back to the Participating Insurers Free and Clear of Liens, Claims, Interests and Other Encumbrances* (the "Motion"). A copy of the Motion is annexed hereto.

PLEASE TAKE FURTHER NOTICE that any objections to approval of the Motion must be made in writing, filed with the Bankruptcy Court, 824 Market Street, Wilmington, DE

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and MiamiOK LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is 309 North Main Street, Miami, OK 74354.

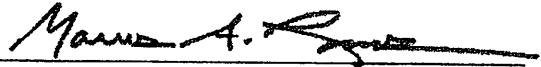
19801 on or before August 7, 2013 at 4:00 p.m. (prevailing Eastern Time) (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief sought in the Motion must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the District of Delaware, and must be served upon (a) Daniel J. DeFranceschi, Richards, Layton & Finger, P.A. One Rodney Square, 920 North King Street, Wilmington, Delaware 19801; (b) Jeffery Prol, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, New Jersey 07068; (c) Francis A. Monaco Jr., Womble Carlyle, Sandridge & Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, Delaware 19801; (d) Jeremy W. Ryan, Potter, Anderson & Corroon LLP, 1313 North Market Street, P.O. Box 951, Wilmington, Delaware 19899-0951; (e) Sean M. Beach, Young, Conaway, Stargatt & Taylor LLP, 1000 North King Street, Wilmington, Delaware 19801; and (f) Richard Schepacarter, Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 in each case so as to be received no later than 4:00 p.m. Eastern Time on August 7, 2013. Only objections made in writing and timely filed and received will be considered by the Bankruptcy Court at the Hearing.

PLEASE TAKE FURTHER NOTICE that, if an objection is properly filed and served in accordance with the above procedures, a hearing on the Motion will be held on August 14, 2013 at 9:30 a.m. (prevailing Eastern Time), before the Honorable Peter J. Walsh, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom 2, Wilmington, Delaware 19801. Only those objections made in writing, timely filed, and served in accordance with the above procedures will be considered at such hearing.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO ENTRY OF AN ORDER ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE ABOVE PROCEDURES, AN ORDER MAY BE ENTERED GRANTING THE RELIEF REQUESTED IN THE APPLICATION WITHOUT FURTHER NOTICE OR A HEARING.

Dated: July 24, 2013
Wilmington, Delaware



Daniel J. DeFranceschi (No. 2732)
Michael J. Merchant (No. 3854)
Marcos A. Ramos (No. 4450)
Robert C. Maddox (No. 5356)
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-and-

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*Counsel to the Official Committee of
Unsecured Creditors*

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON
ALICE HAZEL AS GAL FOR JACOB
N.

Plaintiffs,

vs.

BLITZ U.S.A., INC., FRED'S, INC., TIGER
EXPRESS VARNVILLE, LLC, AND JAMES
NIX,

Defendants.

2014 SEP -5 PM 12:04
COURT OF COMMON PLEAS
IN THE FOURTEENTH JUDICIAL
CIRCUIT
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY _____
Civil Action No. 2013-CP-25-351

**NOTICE OF MOTION AND
MOTION TO PERMANENTLY
ENJOIN OR ALTERNATIVELY TO
STAY PROCEEDINGS AS TO
DEFENDANT, FRED'S STORES OF
TENNESSEE, INC.**

TO: MARK BALL, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for Defendants, will move before the Court at a time and date set by the Court for an Order to stay the proceedings of the above captioned action respective to the Defendant, Fred's Stores of Tennessee, Inc. incorrectly identified as Fred's, Inc. Defendant, Fred's Stores of Tennessee, Inc. would show the following:

1. Plaintiff commenced this action on or about November 5, 2013, in which she asserts three causes of action including negligence, strict liability, and breach of warranty. Specifically, Plaintiff alleges that her son was injured when a gas can, containing kerosene, exploded as it was being used in an attempt to reignite a fire. Plaintiff seeks damages for personal injuries, pain and suffering, and other injuries allegedly arising out of the incident.
2. Defendant, Blitz U.S.A., Inc. filed for Chapter 11 Bankruptcy in United States Bankruptcy Court for the District Delaware on November 9, 2011.
3. Upon learning of the Chapter 11 filing by Defendant Blitz U.S.A., Inc. a claim was made by Plaintiff against the personal injury trust that was established in conjunction with

those proceedings thereby making Jacob N a “Participating Blitz Personal Injury Claimant.” See Exhibit A, specifically page 25 of the term sheet, attached hereto.

4. The Bankruptcy Plan created a personal injury trust, which specifically accounted for claims arising from incidents between July 31, 2007 and July 31, 2012, with this incident having occurred November 9, 2012.

5. A Confirmation Hearing took place on January 28, 2014 to consider confirmation of *Debtors’ and Official Committee of Unsecured Creditors’ First Amended Joint Plan of Liquidation*. See Exhibit B, attached hereto.

6. Contained within the *Findings of Fact Conclusions of Law and Order Confirming Debtors’ and Official Committee of Unsecured Creditors’ First Amended Joint Plan of Liquidation* is a section addressing enjoinder of judicial actions, which states specifically: “Effective on the Effective Date, without any further action of the Court or other entity, any suit, legal action, or other proceeding (including a judicial, arbitration, administrative or other proceeding) in any forum in the United States against or affecting any Protected Party, shall be stayed, enjoined or otherwise prohibited from continuation as to any Protected Party except for those parties excepted from the channeling injunction provided in paragraph 10(b) of this Confirmation Order.” See Exhibit B, attached hereto.

7. As an additional component of the bankruptcy proceedings a “Channeling Injunction” was established pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code that “(i) permanently enjoins and channels to the Plan Trust all Blitz Personal Injury Claims, and (ii) permanently enjoins the prosecution of all Blitz Personal Injury Claims against any Released Party.” See Exhibit A, attached hereto, specifically page 2 of the Term Sheet.

8. “Released Parties” is defined as “Debtors, Participating Insurers, Wal-Mart, and

any other person or entity insured under the Subject Policies, including, but not limited to (i) any distributor or retailer of Debtors' products...." See Exhibit A, specifically page 3 of the Term Sheet, attached hereto.

9. Defendant, Fred's Stores of Tennessee, Inc. was for the applicable period of time established for claims in the Bankruptcy Plan, was an additional insured under two participating insurers and was a distributor/retailer of Debtors' products. See Exhibits A, specifically page 30 of the Term Sheet and C, attached hereto.


10. On account of Jacob N being a "Participating Blitz Personal Injury Claimant" and Defendant, Fred's Stores of Tennessee, Inc. qualifying as a "Released Party" the "Channeling Injunction" applies to this suit. See Exhibit D, specifically pages 10-12, attached hereto.

11. Defendant, Fred's Stores of Tennessee, Inc. asserts they are entitled to have these proceedings permanently enjoined or alternatively stayed consistent with the Bankruptcy Plan of Defendant, Blitz U.S.A., Inc.

WHEREFORE, Defendant, Fred's Stores of Tennessee, Inc. respectfully request that this Court issue an Order to permanently enjoin or alternatively stay the instant proceedings against this Defendant. This Motion is based on the attached exhibits and applicable law.

(SIGNATURE PAGE FOLLOWS)

RESPECTFULLY SUBMITTED,



Matthew C. LaFave, SC Bar No. 75365

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Columbia, South Carolina 29202

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803.724.5726 (fax)

matt@crowelafave.com

Attorney for Defendant

This 26th Day of August 2014
Columbia, South Carolina