

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
)	
BLITZ U.S.A., Inc., et al.)	Case No. 11-13603 (PJW)
)	Jointly Administered
Debtors.)	
)	Obj. Deadline: Sept. 10, 2012 @ 12:00 p.m. EST
)	Hearing Date: Sept. 11, 2012 @ 9:30 a.m. EST
)	Re: D.I. 574, 629
)	

**LIMITED OBJECTION OF CHAD FUNCHESS AND CHRIS AND HOLLY BOLING
TO DEBTOR'S NOTICE OF SALE OF SUBSTANTIALLY ALL ASSETS FREE AND
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS**

Chad Funchess and Chris and Holly Boling (the "Plaintiffs"), by and through their undersigned counsel, hereby submit their limited objection (the "Limited Objection") to the above-captioned Debtors' *Notice of Sale of Substantially All Assets Free and Clear of Liens, Claims, Encumbrances and Interests* (the "Sale Notice") (D.I. 629; filed 07/23/2012). In support of their Limited Objection, the Plaintiffs state the following:

Background

1. On May 20, 2009, Chris and Holly Boling filed a complaint, subsequently amended, in the United States District Court for the Western District of Kentucky [*Christopher Boling and Holly Boling in their individual capacities v. Blitz USA, Inc.*, civil action number 1:09CV-67-M] (the "Boling Action"). The Boling Action relates to a portable gas container accident occurring on May 23, 2008 in Kentucky.

2. On July 31, 2009, Chad Funchess filed a complaint, subsequently amended, in the Court of Common Pleas, Orangeburg County, South Carolina in the First Judicial Circuit of South Carolina [*Chad Funchess v. Blitz U.S.A., Inc.; Palmetto Distributors of Orangeburg, LLC*;



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Express Lane, LLC; Joseph E. Carroll; & Foley's, Inc., civil action number 2009-CP-38-1257] (the “Funchess Action”). The Funchess Action relates to a portable gas can container accident occurring on August 15, 2007 in Orangeburg, South Carolina.

3. On November 9, 2011 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On November 10, 2011, the Court entered an order jointly administering the Debtors’ cases for procedural purposes [D.I. 31].

4. On November 14, 2011, counsel for the Debtors in the Funchess and Boling Actions filed “Suggestions of Bankruptcy” in the South Carolina state court and Kentucky federal court, respectively. The Funchess and Boling Actions are therefore stayed with respect to the Debtors as a consequence of the automatic stay provisions of 11 U.S.C. § 362(a). The Funchess Action had previously been set for trial on December 5, 2011, while the Boling Action has been set for mediation on November 16, 2011 and a jury trial scheduled to begin March 5, 2012.

5. On June 15, 2012, Chad Funchess filed his *Motion for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code* [D.I. 525]. This Motion has not yet been heard. On the same day, Chris and Holly Boling filed their *Motion for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code* [D.I. 526].

6. On June 29, 2012, the Debtors filed their *Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006 for (I) Entry of An Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors Assets; (B) Establishing Procedures for Approval of Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Notice Procedures for Determining*

Cure Amounts for Executory Contracts and Leases to be Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors Assets Free and Clear of All Liens, Claims, Encumbrances And Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the “Sale Motion”) [D.I. 574].

7. On July 17, 2012, the Court entered its *Order* approving the sale procedures and notice provisions [D.I. 618].

8. The Debtors conducted an auction on September 6, 2012 and now seek approval of the result.

Limited Objection

9. Rule 6004-1(b)(iv)(J) of the Local Rules of Bankruptcy Procedure states that where the debtor proposes to sell substantially all of its assets, the Sale Motion must highlight whether the debtor will retain, or have reasonable access to, its books and records to enable it to administer its bankruptcy case. The Sale Motion however does not address this issue, nor does the Proposed Sale Order. In fact, the Proposed Sale Order appears to waive this requirement. *See Proposed Sale Order*, ¶ 26 (attached as Exhibit C to Sale Motion).

10. The APA is somewhat clearer on the disposition of books and records, particularly those relevant to the 36 pending lawsuits relating to portable gas can container accidents. For example, Article II of the APA implies that the Purchaser will acquire most of the relevant documents, including “Documents that are Products Liability Defense Records.” *See APA*, Art. 2.1. The APA defines “Products Liability Defense Records” as follows:

[A]ny and all Documents that refer or relate to, arise from, or were produced or withheld from production (including material subject to the attorney-client privilege, work product doctrine or any other applicable privilege) in, any action, investigation or proceeding

(including, without limitation, as part of any subpoena, court order, similar judicial process, administrative proceeding, any government agency or other regulatory agency or civil investigatory demand, in each case whether oral or written, or any other legal or regulatory process) arising from or related to the Debtors' testing, manufacture and/or sale of portable consumer fuel containers or the Debtors' review, consideration, investigation, defense, settlement or other disposition thereof, and any insurance-related matters associated with or deriving therefrom, in whatever form such Documents might be or become, wherever such Documents are located, whether on-site or at an off-site location, and whether within the Debtors' direct possession, custody or control or within the possession, custody or control of others (including but not limited to the Debtors' Affiliates, shareholders, directors, officers, employees and attorneys or any third-party), including but not limited to any document hosting or other service provider or agent of the Debtors.

APA, p. 7. However, the APA also states that the Products Liability Defense Records are excluded assets that the Purchaser will not acquire under Article 2.2(g)(iv). *See* APA, Art. 2.2(g)(iv). Accordingly, it is not clear who is responsible for keeping the Products Liability Defense Records.

11. Furthermore, the Purchaser's acquisition of the Products Liability Defense Records appears to be a qualified one (to the extent it is not negated by Article 2.2(g)(iv)), since the Sellers (the Debtors) may copy of any of these Documents and, pursuant to the APA, the Debtors retain the right to access these documents in the future in order to defend the lawsuits currently brought against them. The APA does not state who will determine which documents or records are Products Liability Defense Records, where any such documents will be kept, by whom, and to what extent third parties other than the Purchaser and the Debtors will be allowed to access such documents. Moreover, the APA allows the Debtors to request that the Purchaser return documents to the Debtors which the Debtors later claim are privileged in order for the Debtors to destroy such documents. *See* APA, Art. 2.1(g). Additionally, the Debtors plan to

“deliver the following servers and/or virtual data storage space to Purchaser at Closing, which servers shall be scrubbed to ensure that all information that are not related to the Purchased Assets have been removed.” The Debtors have not described the information they plan to delete from these servers and virtual machines. Given the Debtors’ past practice of destroying relevant evidence, the Debtors should retain at their own cost a bit-stream copy of these servers, including metadata, scheduled to be deleted.¹

12. Article 8.7(a) of the APA addresses the preservation of other business records, and charges the Debtors and the Purchaser with an obligation to “preserve and keep the records or in the case of the Sellers, arrange for preservation and keeping of the records, held by it or their Affiliates relating to the Business for a period of six (6) years” and to make such records available to third parties as reasonably required. APA, Art. 8.7(a). Like Article 2.1(g), however, the APA allows the Seller or Purchaser to destroy these records unless a third party is notified of their pending destruction and agrees to pay to preserve these records. *See* APA, Art. 8.7(b). It still remains unclear what documents will be preserved and to what extent, if any, third parties, including personal injury victims, can access the Debtors’ books and records or prevent their destruction.

13. The proper retention of books and records is of particular importance in this Chapter 11 case because the Debtors have sought bankruptcy protection as a result of the 36 pending lawsuits against the Debtors relating to portable gas can containers manufactured by the Debtors; several of these lawsuits are also the subject of numerous motions for relief from the

¹ Metadata” means: (i) information embedded in a Native File that is not ordinarily viewable or printable from the application that generated, edited, or modified such Native File; and (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted or otherwise manipulated by a user of such system. “Native format” means electronically stored information in the electronic format of the application in which the file/bit-stream is normally created, viewed and/or modified.

automatic stay that have been filed with this Court. The APA's records preservation provisions are inadequate for the following reasons:

- (a) As discussed above, the APA does not make clear where the Products Liability Defense Record will be kept, and how third parties can request access to these records. Furthermore, the APA is ambiguous about the identity of the party that will have responsibility for keeping the relevant records, including the Products Liability Defense Records. The APA leaves open the question of whether the Debtors or the Purchaser bears this responsibility and consequently leaves open the question of which party must cooperate with personal gas can container litigants with respect to the Debtors' continuing discovery obligations. The Sale should not be approved until a records custodian is appointed whose obligation it will be to not only preserve the relevant records in a single location but also to make the Products Liability Defense Records available to third parties, particularly the personal gas can container litigants, as required in the course of litigation. If the Debtors designate the Purchaser as the records custodian, the Purchaser must be required to make these records available to the personal gas can container litigants, including the Plaintiffs, under applicable rules, procedures or orders;
- (b) The Debtors have hard drive archives and e-mail archives that have not been searched or copied and which contain electronically stored information ("ESI") relevant to the pending litigation, including the Funchess and Boling Actions. It is unclear from the APA's definition of excluded assets, or Article 8.7(a), if such documents are being preserved, by whom, and whether they are included in the definition of "Products Liability Defense Records". The APA should clarify who is responsible for maintaining ESI and what "search terms" define the universe of ESI that has been or will be preserved pursuant to the document preservation provisions of the APA; and
- (c) As set forth in the Affidavit Regarding Blitz U.S.A., Inc.'s Supplemental Production of Documents (the "Hegarty Affidavit"), filed by Mark C. Hegarty (attached hereto as **Exhibit A**), an attorney with the law firm of Shook, Hardy & Bacon, National Coordinating Counsel to Blitz in the portable gas can container litigation, the Debtors have already undertaken an extensive review of its books and records in connection with discovery obligations in pending gas can

container litigation. However, the 36 pending cases are in various stages of litigation, and in many cases, disputes over the scope of document production or over assertions of confidentiality or privilege with respect to certain documents have not yet been resolved. Accordingly, any transfer of Product Liability Defense Records must preserve all documents for which a demand for production has been made or for which a claim of privilege or confidentiality has been asserted, in a manner which will permit these issues to be resolved in the pending cases as they are addressed by the courts which will hear such cases, without the threat of the loss of those documents.

- (d) While the APA's records preservation provisions described in Article 8.7(a) appear to grant relevant third parties the right to object, and at their expense preserve, certain books and records relevant to litigation, Article 2.1(g) appears to give the Debtors and/or Purchaser the unfettered right to destroy Products Liability Defense Records that the Debtors deem privileged. None of these documents, including their Products Liability Defense Records, privilege logs, or other books and records relevant to this litigation or those documents described in subparagraph (c) above should be destroyed without notice to all personal gas can container litigants in the 36 pending lawsuits. Such documents must be preserved, and should be destroyed only with Court permission after full notice to all gas can container litigants and a hearing on any objections to the proposed destruction. At the very least, the notice requirements applicable to documents described in Article 8.7(a) must be made applicable to the Products Liability Defense Records (specifically, the privilege logs) that are subject to destruction rights according to Article 2.1(g).
- (e) If, as the APA reflects, the Debtors intend to make the Purchaser the custodian of the Products Liability Defense Records, then the Debtors must make a witness available for deposition for the purpose of identifying and authenticating the transferred records, to ensure that there is no confusion when such records are needed for any subsequent litigation involving portable gas can containers.
- (f) Additionally, Debtors plan to "deliver the following servers and/or virtual data storage space to Purchaser at Closing, which servers shall be scrubbed to ensure that all information that are not related to the Purchased Assets have been removed." Debtors have not described the information they plan to delete from these servers and virtual machines. Debtors should retain at their

own cost a bit-stream copy of these servers, including metadata, scheduled to be deleted.²

14. Finally, in the event that the Debtors inadvertently transfer any of the documents described or encompassed by the preservation requirements of APA Articles 2.1 and 8.7(a), either as electronic information or as hard copies of documents which constitute part of its books and records, without retaining copies, provision must be made to retrieve copies of the documents or data for the administration of the estate. This can only be accomplished through the granting of limited access rights to the books and records transferred to the Purchaser pursuant to the sale in favor of third parties, pursuant to appropriate procedures established to permit such access.

Conclusion

WHEREFORE, for the foregoing reasons, the Plaintiffs request that this Honorable Court modify the proposed Sale Order attached to the Debtor's Sale Motion consistent with this Objection and grant such other and further relief as is just and proper.

Dated: September 10, 2012
Wilmington, Delaware

SULLIVAN • HAZELTINE • ALLINSON LLC

/s/ William D. Sullivan

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and

² "Metadata" means: (i) information embedded in a Native File that is not ordinarily viewable or printable from the application that generated, edited, or modified such Native File; and (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted or otherwise manipulated by a user of such system. "Native format" means electronically stored information in the electronic format of the application in which the file/bit-stream is normally created, viewed and/or modified.

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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CHRIS GADDY, ET AL,

v.

BLITZ U.S.A., INC., ET AL.

§
§
§
§
§
§
§

CIVIL ACTION NO. 2:09-CV-052
CHIEF JUDGE FOLSOM
JURY TRIAL DEMANDED

**AFFIDAVIT REGARDING BLITZ U.S.A., INC.'S
SUPPLEMENTAL PRODUCTION OF DOCUMENTS**

BEFORE ME, the undersigned authority, duly appeared Mark C. Hegarty, and, after being sworn by me on his oath, stated as follows:

1. I am over the age of eighteen (18), of sound mind, and otherwise fully competent to render this declaration. I make this affidavit based upon my personal knowledge, to the best of my recollection, and from my understanding of Blitz U.S.A. Inc.'s initial and supplemental document production based on information provided to me by those knowledgeable of and/or involved in the process.

2. I am an attorney at law duly admitted to practice law in the States of Missouri and Kansas, I am a partner with the law firm of Shook, Hardy & Bacon, L.L.P., and my principal office is located at 2555 Grand Boulevard in Kansas City, Missouri.

3. My firm has represented the defendant, Blitz U.S.A., Inc. ("Blitz") since December 2009, and serves as its National Coordinating Counsel with respect to all pending litigation involving its portable plastic consumer gasoline containers, and as such, I am familiar with the facts, circumstances, pleadings, and proceedings in the *Gaddy* and *Zecaida* cases.

4. As defined below, and pursuant to the Court's September 13, 2010 Order and without waiving its Rule 72(a) rights¹, Blitz has made a reasonable search for and has produced all relevant materials from this search related to both the *Gaddy* and *Zecaida* matters.

Introduction and Procedural Posture

5. Blitz U.S.A., Inc. is a manufacturing company located in Miami, Oklahoma that employs between 300-350 people. It is one of the leading domestic manufacturers of portable plastic consumer gasoline containers. Blitz traces its history in the fuel containment business back to before World War II, when it was one of six companies that provided metal gasoline containers to the U.S. government to assist in the war effort. Today, in addition to metal and plastic gasoline containers, Blitz's product line includes oil-change accessories, funnels, vehicle ramps, trailer blocks and chocks, customizable outdoor furniture, and storage solutions for garages and workrooms.

6. Over the course of its litigation involving consumer gasoline containers, Blitz has produced documents responsive to requests for production in numerous cases. Blitz has also supplemented its productions over the years on a number of occasions. Before supplemental discovery in these cases, Blitz produced documents in several dozen categories, comprising thousands of pages of emails and other documents.

7. Before 2009, gasoline container product liability cases against Blitz were typically predicated upon Plaintiffs' theory of design defect—namely that Blitz gas cans should have included additional safety features.

8. More particularly, until December 2009, Plaintiffs allegations in the *Gaddy* case (and other cases involving Plaintiff's counsel) centered around the alleged need for a flame

¹ Today Blitz is also filing in both *Gaddy* and *Zecaida* its Rule 72(a) Objection and Motion to Reconsider the September 13, 2010 Memorandum Decision and Order.

arrestor in portable plastic gasoline containers to keep gas containers from allegedly “exploding” and that the “arrestor” was a simple disc or screen affixed to the tip or base of the spout. Plaintiffs contended that the alleged injuries would have been prevented had a “flame arrestor”—a term in dispute among the parties as to economic/technological feasibility, specific design, or the actual existence of a safer alternative—been incorporated into the design of Blitz’s containers. In *Zecaida*, Plaintiffs focused on this issue as well as other theories concerning child-resistant features on gasoline containers. These allegations focused Blitz’s discovery efforts.

9. Since 2009, more than a dozen new product liability cases and claims against Blitz involving portable plastic gasoline containers have arisen.

10. In December 2009, a former Blitz employee named Will Bailey raised new allegations against Blitz that touched upon nearly every aspect of gas can design, manufacture, and quality control. These allegations changed the landscape of the pending litigation against Blitz and the posture of discovery in these cases and others involving Plaintiffs’ counsel. For instance, Mr. Bailey raised issues regarding plastic resin, regrind of unused plastic, Underwriters Laboratories (“UL”) testing, machine maintenance, component manufacturers, counsel about email communications, use of shredders, operator training, can weights, can wall thickness, can seams, can spouts, product specifications, product packaging, CARB compliance, and machine calibration. These allegations are just a handful of Mr. Bailey’s complaints, which span a period of more than 10 years. Given these new allegations, it is not surprising that the extent of allegedly discoverable documents expanded exponentially, and that documents were inevitably located that were not discovered earlier and/or were not created at the time of the initial productions.

11. At the end of 2009 Blitz retained Shook, Hardy & Bacon L.L.P. to coordinate and assist in the defense of litigation involving Blitz consumer gasoline containers, including responses to discovery requests and supplementing its document production as necessary.

12. Blitz also undertook an e-discovery, consultant-based review of its legacy systems. The purpose of this part of the project was to allow for additional searching of email and other electronic documents, and to permit Blitz to supplement its responses to discovery requests to the extent warranted. Additionally, as to hard copy documents, Blitz and its counsel visited key document custodians and locations and conducted additional collections for purposes of evaluating and further complying with its current and supplemental production obligations.

13. To establish the parameters of the supplemental hard-copy and electronically stored information ("ESI") collection and the responsiveness criteria to be applied during document review, Blitz counsel reviewed (i) standing discovery orders; (ii) Plaintiffs' discovery requests in these cases; (iii) the discovery requests conceivably within the proper scope of discovery across all of its other cases; and (iv) new and old allegations made in *Gaddy*, *Zecaida*, and other pending cases. These factors, along with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, Blitz's objections to Plaintiffs' requests, and the bounds of proper scope of discovery informed Blitz's determination of what documents were potentially relevant and slated for production in these and other pending cases. Blitz reserves the right to challenge the relevancy of the documents produced in each of its cases. Next, Blitz and its counsel set out to identify and collect electronic and hard copy documents to address the host of issues raised.

14. Generally speaking, those documents identified for production from the documents reviewed concerned a wide variety of issues pertaining to portable plastic gasoline containers, including product development and design; ASTM standards; product certification;

Blitz's dealings with Underwriters Laboratories and the Testing Services Group; compliance with regulatory standards; product testing; gas can manufacture; corporate policies; communications with retailers and consumers; gasoline research; product safety and warnings about gasoline and gasoline containers; safety initiatives; corporate strategy and culture; market research; child resistant closures; and flame arrestors. To the extent stand-alone case pleadings were included (*i.e.*, complaints, briefs, etc.) in the document collection, these items were designated as non-responsive; if a pleading accompanied a privileged communication or piece of work product, it was placed on the privilege log.

15. The documents collected, reviewed, and prepared for production as a result of these supplemental production efforts have been disseminated in all the cases where document production is ongoing, and the same documents are being produced in all of the cases. The reason for this is that some Plaintiffs' counsel have voiced complaints that other counsel might be getting documents that were not being produced to them. Blitz has identified on a privilege log those documents it is withholding pursuant to the attorney-client privilege, the work product doctrine, and the joint defense/common interest privilege.

16. As one might imagine, this comprehensive, good-faith supplementation effort has been time-consuming and costly. Blitz assembled a dedicated review team of 10 analysts, each with a *juris doctor*, to examine the collected documents for potential responsiveness, confidentiality, and privilege. This team worked essentially full time from early March until August to complete the review and finish the production. Ultimately, over one million pages of documents were reviewed and over 200,000 pages were produced.

17. In all, the document review team and its managers spent over 9,000 hours reviewing and preparing documents for production at a cost of over \$750,000 to Blitz. These

figures do not begin to account for vendor expenses or the additional time also spent by Blitz employees, coordinating counsel, local counsel, and trial counsel in connection with the supplemental production of documents. Details concerning the review team's efforts are described below.

Collection of Paper Documents

18. With respect to its production of hard copy documents, Blitz visited key document custodians (*i.e.*, those employees identified by Blitz as possibly having potentially relevant documents) and Company files to collect paper documents for review in supplemental discovery. The collected items were reviewed for responsiveness, confidentiality, and privilege; the potentially-responsive, non-privileged hard-copy documents from this collection have been produced with the bates prefix of "BLUSA."

19. The following individuals are Blitz hard copy document custodians from whom documents were collected, reviewed, and produced:

Alan Ball	Jared Fuser	Harvey 'Pete' Moyer
Brian Brassfield	Mindi Fuser	Anthony Nelson
Jim Calcagno	Lisa Garrett	Larry Palmer
Larry Chrisco	Miriam George	Holly Price
Chuck Craig	Jason Heardt	Sherry Rains
Connie DeLeon	Scott Herbst	Dana Riley
Dan Eisenbrandt	Jim Jay	Phil Scarborough
Amanda Emerson	Grant Kernan	Bhavna Singh
Rocky Flick	Gene Landers	Sandy Von Moss
Charlie Forbis	Todd McClain	Dan Weibel
Perry Franks	Kristi McClain	

See also Blitz Document Custodians and Titles (Exhibit A).

20. At the direction of Blitz counsel, potentially relevant hard copy documents were also collected from Blitz North Stored Records, Blitz South Stored Records, Risk Management Central Files, Patent Files, and Blitz's Regulatory Laboratory.

21. Shook, Hardy & Bacon organized the collection of hard copy documents with assistance from David Jones, Donna Smith, Miriam George, and Carolyn Forbis. Paralegals Jennifer Schreiner and Michael Cross from Shook, Hardy & Bacon visited each document custodian and potentially relevant departmental file to collect paper documents potentially responsive in supplemental discovery. Ms. Schreiner and Mr. Cross interviewed the key custodians to identify the custodian's job responsibilities and his or her creation or possession of documents related to the manufacture of portable gas containers. Potentially relevant Company documents were identified in the employee's work areas and departmental files. Further, interviewees were asked to identify other document custodians and Company files that might be sources of other hard copy documents for the collection. Ms. Schreiner and Mr. Cross pursued these leads as part of the collection process.

22. The potentially relevant documents were collected as they were kept in the usual course of business, and the custodian or source of each document was recorded. The documents were removed from the employee files and sent to an outside vendor for scanning and processing. In packaging the potentially relevant hard copy documents for the scanning vendor, special care was taken to maintain the order and arrangement of the files as they existed at the Company in the usual course of business. Documents were not to be reordered or altered. Potentially relevant files from drawers or cabinets were collected in the order in which they existed and then sent for processing.

23. Blitz's scanning vendor processed the hard copy documents by creating TIFF images of the papers collected. A TIFF image is basically a digital photocopy. Further, the vendor scanned all "organizational labeling"—that is file folder labels, binder covers, binder tabs, and the like—as it existed in the collected Blitz documents.

24. As part of the scanning process, the vendor made a digital record of the page range for each hard-copy document and the source or custodian from which it came. The vendor also conducted an OCR (optical character recognition) scan of the hard copy documents, which makes the images of the documents keyword-searchable. As described *infra*, Blitz has provided Plaintiffs with this document-level information about hard copy documents produced in supplemental discovery.

25. Once the scanning process was complete, the original documents were returned to the custodians. The custodians have been instructed to permanently retain the original copies of the documents that were collected and processed.

26. Over 137,000 pages of hard copy documents were collected for review as part of this process.

Collection of Electronically Stored Information (ESI)

27. Blitz engaged an e-discovery, consultant-based review of its legacy systems and current hard drives and servers to identify those items containing potentially relevant electronic files.

28. Throughout this process, Blitz counsel worked with Blitz and a litigation consultant whose identity is privileged to identify servers and drives that possibly contained potentially relevant documents.² The documents would include items like emails, letters, memoranda, Word documents, .pdf files, PowerPoints, spreadsheets, and other similar files and documents.

²

Consistent with the federal rules and its approach throughout its litigation, Blitz is not identifying the identity of its confidential consultants. Indeed, this Court has already properly denied Plaintiffs' counsels' attempts to compel disclosure of this consultant. *See* Hotline Order (6/17/2010), *Gaddy v. Blitz U.S.A.*, Dkt. No. 151.

29. Hard drives from the following custodians are electronic resources that Blitz searched for ESI:

Mike Adams	Lisa Garrett	Terry Spunaugle
Pat Anderson	Miriam George	Sandy Von Moss
Alan Ball	Jason Heardt	Dan Weibel
Will Bailey	Scott Herbst	
Tammy Becker	Grant Kernan	<i>Multiple User Drive:</i>
Brian Brassfield	Gene Landers	Scott Herbst
Jim Calcagno	Kristi McClain	Sandy VonMoss
Chuck Craig	Todd McClain	Martha Landers
Connie DeLeon	Brett McMinn	Vondie Fletcher
Amanda Emerson	Harvey "Pete" Moyer	Rex Stewart
Dan Eisenbrandt	Anthony Nelson	Christie Hadley
Lee Fick	Larry Palmer	
Vondie Fletcher	David Price	<i>Multiple User Drive:</i>
Rocky Flick	Holly Brandon Price	Robert Elmburg
Charlie Forbis	Dana Riley	Susie Gamble
Perry Franks	Phil Scarborough	Sam Jackson
Jared Fuser	Becky Shirley	Paul Hale
Mindi Fuser	Bhavna Singh	

See also Exhibit A.

30. Likewise, Blitz searched for ESI on the following Company servers:

00Server1	Anita Blitz 7	HDD SCSI 046
04srvr1 Server	Anita 8 SLO Server	HDD SCSI 047
04Server1	Alice Work Station	MessageLabs
04SRVR2	Backup Scan Station	PC 48
05Server3	GPSRVR	SharePoint Server
06SRVR2	HDD SCSI 043	SharePoint Extracted Files
07SRVR2	HDD SCSI 044	SQLSRVR1
07SRVR3	HDD SCSI 045	Traffic Computer

31. After compiling the Company's hard drives and servers that potentially contained relevant electronic files, it was estimated that the data collected would amount to approximately 21 million pages of documents. Of note, this collection was without regard to subject matter, time frame, or custodian. In other words, all users' documents were searched without regard to

content. Accordingly, this collection would have picked up ESI regarding Blitz products and activities unrelated to the gasoline container business or any issue in these cases.

32. To identify potentially relevant ESI documents from the data collected, and because it was estimated that the cost to Blitz to review 21 million pages of documents would exceed \$10 million, Blitz explained to Plaintiffs in these and other cases the need to conduct keyword searches to create an economically feasible and workable set of potentially relevant documents for review. Blitz solicited Plaintiffs' input regarding possible terms to include in its search. *See* Hegarty letter to Breneman (3/23/2010) (Exhibit B).

33. Plaintiffs did not provide any search terms addressing the merits of their claims.³ Blitz ultimately identified to Plaintiffs the key words it intended to use and again solicited their input to no avail. *See* Hegarty letter to Breneman (4/29/2010) (Exhibit C); Hegarty letter to Breneman (8/13/2010) (Exhibit D). The key words that Blitz provided to Plaintiffs and used to identify documents were:

Arrester	Discovery Plastic	FireXX
arrestor	Dunbar	flashback
ASTM Task Force	erupt*	flash back
Business Insights	(erupted)	flame
child proof	(erupting)	flame arrester
child resist*	(eruption)	flame arrestor
(child resistance)	(eruptible)	Great Lakes
(child resistant)	(eruptive)	IDG Consulting
(child resister)	(erupts)	Market Directions
(child resisting)	Excess /2 Explo	mesh and wire
(child resistive)	EXCO	mesh and screen
child safety	Explo /2 Safe	Nitec
CRC	explod*	Robbin /2 "Design Group"
CRP	(explode)	Salter Mitchell
deflagration	(exploded)	Sektam
Designing Spaces	(exploder)	Shriner
detonat*	(explodes)	Suppress X-S

³ As explained below at ¶ 49, Plaintiffs' counsel Diane Breneman informally provided a set of key words concerning document destruction.

(detonatable)	(exploding)	Vemco
(detonatability)	explos*	Wayne Wire
(detonate)	(explosion)	Worcester Polytechnic Institute
(detonated)	(explosions)	WPI
(detonates)	(explosive)	
(detonating)	(explosively)	
(detonation)	F15.10 and (committee or	
(detonative)	subcommittee)	
(detonator)		

34. Blitz's confidential litigation consultant used these key words to search across the data compiled from the servers and hard drives listed above. If the key word was present within an electronic document, that document was a "hit" under the rules of the search. Another confidential litigation support vendor then hosted those documents for review. Next, Blitz's review team reviewed the search hits—emails, Word documents, .pdf files, spreadsheets, presentations, and the like—for responsiveness, confidentiality, and privilege, and then produced them to Plaintiffs under the prefix of "BLUSA."

35. Blitz also used these terms to search across its off-site email archive, MessageLabs. To the extent the search hits were non-duplicative, they were produced to Plaintiffs under the prefix of "BLUSA."

36. The responsive, non-privileged ESI hits from this collection were produced to Plaintiffs primarily as TIFF images, though some native files were produced. Additionally, Blitz provided Plaintiffs with over 30 fields of metadata for its electronic BLUSA documents.

37. Within the larger set of Blitz ESI that was collected, Blitz identified electronic files concerning the design of portable plastic consumer gasoline containers. Blitz did not run its search terms across this segment of ESI. Rather, Blitz reviewed each of the ESI files in this discreet set for responsiveness, privilege, and confidentiality. The potentially responsive, non-privileged documents from this group were produced under the prefix of "BZDF."

38. Blitz also gathered various Company databases, including its Consumer Complaint Database and its Quality Database. Blitz has produced the results of a keyword search across the Consumer Complaint Database. It has not searched across or produced electronic data from the Quality Database or any other databases and does not plan to do so.

39. Media storage devices such as compact disks, DVDs, and thumb drives containing potentially relevant electronic documents were collected at the same time hard-copy documents were gathered from Blitz core custodians and departmental files. Because of the manner in which these items were collected and the volume of the electronic information contained on them, Blitz did not apply search terms to this batch of electronic data. The potentially responsive, non-privileged documents from this group were produced under the prefix of "BLUSA" along with the available metadata.

40. Approximately 863,000 pages of ESI were reviewed by Blitz's team of analysts for responsiveness, privilege, and confidentiality.

Production Format

41. The production format Blitz utilized contemplates use of the now-ubiquitous modern legal tool, the litigation-support database. Indeed, the volume of documents that Blitz has produced demands the use of a database for reviewing, organizing, searching, and tracking these documents.

42. The hard copy and ESI documents from Blitz's supplemental collection (*i.e.*, the "BLUSA" and "BZDF" documents) have been provided to Plaintiffs primarily in TIFF format, though some electronic documents were produced in native format for technical reasons or for ease of review. Blitz chose to provide TIFF images to Plaintiffs because this format is usable and reasonable for many reasons, among others:

- TIFF images provide a clear image of how the original electronic document appeared, like a photocopy.
- TIFF images are easily tracked, are very usable and stable.
- TIFF images can be easily loaded to a database.
- The full text field of the load file allows fast and easy searching across a full collection of documents. This approach is much easier and faster than searching across a variety of native file formats.
- TIFF images allow proper Bates numbering and consistent pagination for exhibits.
- TIFF images eliminate the risk of inadvertent modification of information and reduces the risk of manipulation of information.

43. Blitz has also provided Plaintiffs with “load files,” which allows the documents to be loaded into Concordance, Summation, or another compatible document management database.

44. The load files that accompany the TIFF images of hard copy BLUSA documents contain the following fields (1) beginning document bates number (BEGPROD); (2) ending document bates number (ENDPROD); and (3) custodian. For searchability, Blitz provided a separate OCR file for each hard copy document. This file allows for the produced items to be searched by text at the document level.

45. The load files that accompany the TIFF images of electronic documents contain metadata that corresponds to each produced electronic file. This metadata explains how the electronic file was kept in the usual course of business at the Company. Blitz is producing over 30 fields of metadata.⁴

⁴ Not every metadata field listed here is applicable to each file. For example, the “To” and “From” fields for email messages are not relevant to files like PowerPoint documents.

46. For ESI bearing the BLUSA and BZDF prefixes, Plaintiffs received information across the following metadata fields:

Beginning Bates number	File name	Comments
Ending Bates number	File extension	Page count
Beginning Bates number of an attachment	Subject (email)	Title
Ending Bates number of an attachment	To (email)	Category
Number of attachments	From (email)	Revision history
Source	Cc (email)	Edit time
Date last modified	Bcc (email)	Application
Date sent/received (email)	File system create date	File size
Path	Author	Confidential
	Company	Last saved by
	Revision number	

**Bates Ranges Used In Supplemental Discovery
And In The Production of Other Documents**

47. Each page of a produced document has a legible, unique page identifier (“bates number”) on the image at a location that does not obliterate, conceal, or interfere with any information from the source document. Each confidential document also includes the word “Confidential” at the bottom of each image page in such a way so as not to obliterate, conceal or interfere with any information from the source document. Where Blitz produced electronic documents in native format, the Bates number was incorporated into the filename of the document and the confidentiality designation, if applicable, was included in the load file.

48. The primary bates prefixes that Blitz used in supplemental discovery are “BLUSA” and “BZDF.” As explained above, the “BLUSA” prefix represents potentially responsive, non-privileged hard copy and ESI documents collected as part of Blitz’s supplemental discovery efforts. The load files accompanying the “BLUSA” documents provide information about how they existed at the company in the usual course of business, including whether a document was collected in paper or electronic form.

49. Documents bearing the “BZMT” prefix have been produced in these cases pursuant to request from Plaintiffs’ counsel Diane Breneman. In an email, Ms. Breneman requested that Blitz search for documents using the following key words:

Shred	Dump	Deletion
Shredding	Destruction	“Get rid of”
Burn	“Litigation review”	Retain
Burning	Discard	Retention
Incinerate	“Throw away”	Trash
Destroy	Delete	

Though apparent from the search terms themselves, Blitz counsel determined that Ms. Breneman sought the production of documents concerning document destruction and document retention at Blitz.

50. The “BZMT” documents are the product of keyword searches across (1) the hard copy documents collected in supplemental discovery; (2) hard drives and servers identified as potentially containing relevant documents; and (3) MessageLabs. Blitz reviewed the “hits” from the plaintiff-supplied search terms for responsiveness, confidentiality, and privilege. Non-privileged, responsive documents were produced with the “BZMT” prefix.

51. An analysis showed that three of Ms. Breneman’s search terms—“destroy,” “discard,” and “delete”—yielded tens of thousands of false hits that in no way concerned document retention or destruction. In particular, these three words appeared frequently in signature blocks of emails⁵; consequently, these terms yielded thousands upon thousands of emails that did not begin to touch upon the topic of document retention/destruction. To identify these non-responsive documents, Blitz’s confidential consultant utilized the following strings:

⁵ For example, many companies have email software that adds transmittal script to account for potential inadvertent disclosure, namely, an email sent to the wrong recipient, to protect confidential or privileged information. These signature block transmittals clearly are not responsive to plaintiffs’ counsel’s requests for documents regarding document destruction or retention.

- (destroy or delete or discard) and not (confidential or confidentiality or error or intended or disseminate or disseminated or dissemination or disclose or disclosure or unauthorized or distribution)
- delete not w/10 (disseminate or disseminated or dissemination or distribution)

The consultant ran these strings across the yield of hits from Plaintiffs' search terms and the subset of hits was not further reviewed, as it consisted of non-responsive ESI, *i.e.*, where it was determined that Plaintiffs' search terms of "destroy," "delete," and "discard" only appeared in the signature blocks of email.

52. Further responding to requests from Ms. Breneman, Blitz counsel also searched for documents by running the following search string across the universe of documents and ESI described in paragraph 50: "(top 10 or top ten or top 20 or top twenty) and (email or emails or mail or mails or user or users or storage)." Hits from this search responsive to Plaintiffs' request were also included under the "BZMT" prefix.

53. Additional documents in the "BZMT" set come from compact disks of archived email belonging to Blitz employee Paul Hale; the review of documents on these disks was not limited by keyword search.

54. Along with its supplemental discovery documents ("BLUSA" and "BZMT") and production of documents responsive to a specific discovery request from Plaintiffs' counsel ("BZMT"), Blitz has produced additional sets of documents. These documents utilize different bates prefixes to reflect that they were collected or obtained in a manner outside of Blitz's supplemental discovery process. These documents are:

- **BZCB** – Documents bearing this prefix concern Blitz's recent dealings with the California Air Resources Board;
- **BPUB** – Documents bearing this prefix are primarily publicly-available documents gathered by Blitz to support its defenses;

- **BOUL** – Documents bearing this prefix were produced by Underwriters Laboratories, Inc. in another gasoline container case involving Blitz;
- **BTUL** – Documents bearing this prefix are internal documents from Underwriters Laboratories, Inc. that the lab sent to Blitz in .pdf format;
- **BZUL** – Documents bearing this prefix are internal documents from Underwriters Laboratories, Inc. that the lab sent to Blitz in paper format;
- **BZTF** – Documents bearing this prefix concern work involving ASTM's Flame Arrester Task Group and independent testing conducted by the Worcester Polytechnic Institute.
- **BLVID** – This bates prefix was assigned to a video consisting of expert discovery / expert reliance material to be used as a demonstrative for evidentiary purposes.

55. Blitz's initial productions of documents in these case utilized bates prefixes of Blitz01, Blitz02, Blitz03, and so on, to Blitz42. The initial production and supplements thereto consisted of over 20,000 pages of documents, including over 4,000 pages of emails counting their attachments. [Doc. No. 108 at 11]. These documents included correspondence, memoranda, reports, corporate policies, meeting minutes, research, hand written notes, emails, sales materials, and the like touching upon the following non-exhaustive list of topics: regulatory standards and authorities; product development; corporate strategy and policies; child resistant features; flame arrestors; gasoline container design; dealings with the governmental bodies; product warnings and safety initiatives; consumer communications; and market research.

Timing of Supplemental Document Productions

56. As explained to Plaintiffs in correspondence, Blitz did not to wait until the review process was complete before producing documents; rather, Blitz produced non-privileged, potentially responsive documents as they were being reviewed. Throughout supplemental discovery, Blitz kept Plaintiffs' counsel abreast of its supplemental discovery efforts. *See, e.g.*, Exhibits A-C; Letter from Scott Sayler to Plaintiffs' Counsel (3/8/2010) (Exhibit E); Letter from

Mark Hegarty to Diane Breneman (4/14/2010) (Exhibit F); Letter from Mark Hegarty to Diane Breneman (6/9/2010) (Exhibit G); Letter from Mark Hegarty to Diane Breneman (7/15/2010) (Exhibit H); Letter from Mark Hegarty to Diane Breneman (7/30/2010) (Exhibit I); Letter from Mark Hegarty to Diane Breneman (8/20/2010) (Exhibit J); Letter from Mark Hegarty to Diane Breneman (8/27/2010) (Exhibit K).

57. The following chart tracks the timing and content of Blitz's initial and supplemental document productions in the *Gaddy* case:

Date of Production	Bates Numbers of Items Produced
9/8/2009	BLITZ01-00001 - BLITZ01-00041
	BLITZ02-00001 - BLITZ02-00050
	BLITZ03-00001 - BLITZ03-00781
	BLITZ04-00001 - BLITZ04-00186
	BLITZ05-00001 - BLITZ05-00054
	BLITZ06-00001 - BLITZ06-00021
	BLITZ07-00001 - BLITZ07-00591
	BLITZ08-00001 - BLITZ08-01668
	BLITZ09-00001 - BLITZ09-00243
	BLITZ10-00001 - BLITZ 10-00046
	BLITZ11-00001 - BLITZ11-01536
	BLITZ12-00001 - BLITZ12-00077
	BLITZ13-00001 - BLITZ13-00330
	BLITZ14-00001 - BLITZ14-00474
	BLITZ15-00001 - BLITZ15-00190
	BLITZ16-00001 - BLITZ16-00016
	BLITZ17-00001 - BLITZ17-00446
	BLITZ18-00001 - BLITZ18-00064
	BLITZ19-00001 - BLITZ19-00311
	BLITZ20-00001 - BLITZ20-00076
	BLITZ21-00001 - BLITZ21-01002
	BLITZ22-00001 - BLITZ22-00175

Date of Production	Bates Numbers of Items Produced
9/8/2009 (continued)	BLITZ23-00001 - BLITZ23-01005 BLITZ24-00001 - BLITZ24-01953 BLITZ25-00001 - BLITZ25-00070 BLITZ26-00001 - BLITZ26-00118 BLITZ27-00001 BLITZ28-00001 - BLITZ28-00010 BLITZ29-00001 - BLITZ29-00060 BLITZ30-00001 - BLITZ30-00004 BLITZ31-00001 - BLITZ31-00258 BLITZ32-00001 - BLITZ32-00007 BLITZ33-00001 - BLITZ33-00030
10/01/09	BLITZ15-00191 - BLITZ15-00194
10/22/09	BLITZ33-000031-BLITZ33-000114
12/28/2009	Blitz10-000054-000136 Blitz22-000176-001394 Blitz33-000115-001911 Blitz36-000001-001105 Blitz37-000001-000058 Blitz38-000001-001098 Blitz39-000001-001945
2/12/2010	Blitz08-001669-001800 Blitz10-000137-000142 Blitz22-001395-001420 Blitz35-000396-000571 Supplemental privilege log
3/16/2010	Blitz 42-00001-00343
3/23/2010	Blitz10-00143-00321
4/14/2010	BLUSA0000000001-BLUSA000010137
4/26/2010	BLUSA000010138-BLUSA000022879

Date of Production	Bates Numbers of Items Produced
5/7/2010	BLUSA000022880-BLUSA000034162
5/18/2010	BZCB000000001 – BZCB000000025
5/24/2010	BLUSA000034163 - BLUSA000046589
6/2/2010	BLUSA000046590 - BLUSA000046682 BPUB000000001-BPUB000000267 BOUL000000001-BOUL000000418 BTUL000000001-BTUL000000754 BZUL000000001-BZUL0000002145
6/8/2010	Supplemental privilege log
6/23/2010	BLUSA000046683 - BLUSA000071207
6/28/2010	BZMT0000000001-BZMT0000000021
7/8/2010	BLUSA000071208-BLUSA000092208 Supplemental privilege log
7/9/2010	BZMT0000000022-BZMT0000000416
7/15/2010	BLUSA000092209 - BLUSA000209161 BZDF0000000001-BZDF0000011579 BLVID000001
7/16/2010	BZTF0000000001 – BZTF0000000049
7/23/2010	BLUSA000209162 - BLUSA000212812 20 documents reviewed for privilege from prior productions
7/30/2010	BZMT0000000417 - BZMT000015618 BLUSA000212813-BLUSA000213178
8/13/2010	BLUSA000213179 - BLUSA000231324

Date of Production	Bates Numbers of Items Produced
8/16/2010	BZTF000000050 – BZTF000000074 123 documents reviewed for privilege from prior productions Supplemental privilege log
8/20/2010	39 documents reviewed for privilege from prior productions Supplemental privilege log
8/27/2010	28 documents reviewed for privilege from prior productions Final privilege log

58. The following chart identifies the categories of documents produced by Bates ranges to Plaintiffs in supplemental discovery in the *Gaddy* case:

Bates Range	Description
BLUSA000000001 to -000092208	Hard copy Company documents including correspondence, memoranda, reports, corporate policies, meeting minutes, research, hand written notes, sales materials, and the like.
BLUSA000092209 to -000213178	ESI collected from Company hard drives, servers, and cds/dvds/thumb drives consisting of .tiff, .pdf, and user files, including Word documents, Excel spreadsheets, Power Point presentations, emails, and the like.
BZDF000000001 to -000011579	ESI design files concerning portable plastic consumer gasoline containers.
BZMT000000001 to -000015618	Hard copy documents and ESI containing key words provided by Plaintiffs, as well as items from compact disks of email belonging to Paul Hale.
BZCB000000001 to -000000025	Hard copy documents collected from Blitz counsel concerning Blitz's recent dealings with the California Air Resources Board.

Bates Range	Description
BPUB000000001 to -000000267	Hard copy, publicly-available documents gathered by counsel to aid in Blitz's defense.
BOUL000000001 to -000000418 BTUL000000001 to -000000754 BZUL000000001 to -000002145	Internal documents from Underwriters Laboratories concerning the lab's dealings with Blitz.
BZTF000000001 to -000000074	Presentations, correspondence, and other documents concerning the ASTM Flame Arrester Task Group and independent testing conducted by the Worcester Polytechnic Institute.
BLVID00001_confidential	Video file of expert discovery/expert reliance material to be used as a demonstrative for evidentiary purposes.
BLITZ01-00001 - BLITZ01-00041 BLITZ02-00001 - BLITZ02-00050 BLITZ03-00001 - BLITZ03-00781 BLITZ04-00001 - BLITZ04-00186 BLITZ05-00001 - BLITZ05-00054 BLITZ06-00001 - BLITZ06-00021 BLITZ07-00001 - BLITZ07-00591 BLITZ08-00001 - BLITZ08-01800 BLITZ09-00001 - BLITZ09-00243 BLITZ10-00001 - BLITZ10-00321 BLITZ11-00001 - BLITZ11-01536 BLITZ12-00001 - BLITZ12-00077 BLITZ13-00001 - BLITZ13-00330 BLITZ14-00001 - BLITZ14-00474 BLITZ15-00001 - BLITZ15-00194 BLITZ16-00001 - BLITZ16-00016 BLITZ17-00001 - BLITZ17-00446 BLITZ18-00001 - BLITZ18-00064 BLITZ25-00001 - BLITZ25-00070 BLITZ26-00001 - BLITZ26-00118 BLITZ27-00001 (continued)	Other hard copy documents and ESI provided to Plaintiffs consisting of emails, memoranda, reports, research, correspondence, corporate policies, hand written notes, sales materials, and the like.

Bates Range	Description
BLITZ28-00001 - BLITZ28-00010 BLITZ29-00001 - BLITZ29-00060 BLITZ30-00001 - BLITZ30-00004 BLITZ31-00001 - BLITZ31-00258 BLITZ32-00001 - BLITZ32-00007 BLITZ33-00001 - BLITZ33-01911 BLITZ35-00001 - BLITZ36-00571 BLITZ36-00001 - BLITZ36-01105 BLITZ37-00001 - BLITZ37-00058 BLITZ38-000001 - BLITZ38-01098 BLITZ39-000001 - BLITZ39-01945 BLITZ42-000001 - BLITZ42-0321	

59. Throughout discovery, Blitz has made clear to Plaintiffs that is committed to working with them to address questions, difficulties, or problems that may arise as they access the discovery documents.

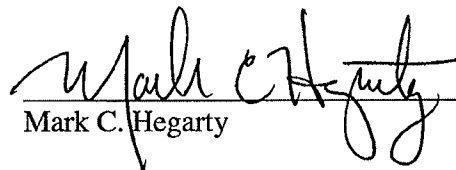
60. Blitz has attempted to not inadvertently produce any privileged or protected documents. However, Blitz advised Plaintiffs that in the event it discovered it has, Blitz will notify them as promptly as possible. Likewise, Blitz asked Plaintiffs to notify it if they believed it inadvertently produced any privileged or protected document and to take any such other measures as required by the protective order and relevant law.

61. Blitz's efforts to provide supplemental discovery documents to Plaintiffs have been time-consuming, expensive, and also diligent. Blitz, its counsel, and its confidential litigation consultant conducted a reasonable search in light of the volume, costs, and pertinent issues to locate, collect, review, and produce relevant documents in this case. Blitz provided materials to Plaintiffs' as quickly as possible and in a format that facilitated their ability to use discovery documents. Indeed, Plaintiffs have used documents produced in discovery to work up their case and develop their case theories. Several dozens of documents from Blitz's supplemental production of documents are included on Plaintiffs' Rule 26(a)(3) pretrial

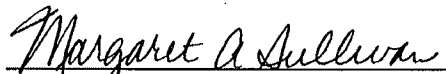
disclosures exhibit list filed August 23, 2010 in Gaddy. *See* Dkt. No. 227. In addition, on September 15, 2010, at the hearing on Blitz's motion to continue the trial in *Gaddy* that was in predicated, in part, on Plaintiffs' claimed need to keep depositions "open" pending the review of additional documents, Plaintiffs' counsel "addresse[d] the [C]ourt and announce[d] that all discovery deadlines have been met and they are not requesting any additional discovery." *See* Dkt. No. 253.

Further affiant sayeth not.

Dated: September 27, 2010
Kansas City, Missouri


Mark C. Hegarty

SUBSCRIBED AND SWORN TO BEFORE ME on this 27 day of September, 2010.


Notary Public In and For the State of Missouri

Commission No.: 08452117
Commission Expires: April 4, 2012

MARGARET A. SULLIVAN
Notary Public-Notary Seal
STATE OF MISSOURI
Commissioned in Jackson County
Commission # 08452117
My Commission Expires April 4, 2012

CERTIFICATE OF SERVICE

I, William D. Sullivan, do hereby certify I am not less than 18 years of age and that on this 10th day of September 2012, I caused copies of the within *Limited Objection of Chad Funchess to Debtor's Notice of Sale of Substantially All Assets Free and Clear of Liens, Claims, Encumbrances and Interests* to be served upon the parties listed below in the manner indicated.

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September 10, 2012
Date

/s/ William D. Sullivan
William D. Sullivan