

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
BLITZ U.S.A., INC., <i>et al.</i> ,)	Case No. 11-13603 (PJW)
)	
Debtors.)	Jointly Administered
)	
)	Obj. Deadline: 1/21/2014 at 4:00 p.m.
)	Hearing Date: 1/28/2014 at 9:30 a.m.
)	

**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**

The Estate of Joseph M. Cataldi and Lori Cataldi in her capacity as guardian, parent and natural guardian for minors Michael Cataldi and Brianna Cataldi (collectively “the Cataldi Claimants”) by and through the undersigned counsel, hereby object on a limited basis to confirmation of the Debtors’ (the “Debtors”) and Official Committee of Unsecured Creditors’ (the “Committee”) First Amended Joint Plan of Liquidation [D.I. 2007] (the “Plan”), and in support thereof, state as follows:

Background

1. On November 9, 2011 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of title 11 of the Bankruptcy Code in this Court.

2. On November 21, 2011, the Office of the United States Trustee for the District of Delaware appointed the Committee. As of the date hereof, no trustee or examiner has been appointed in these cases.



1113603140121000000000012

3. On August 14, 2013, the Court entered an Order setting a bar date of October 14, 2013 specifically pertaining to any Blitz Personal Injury Claims¹ arising on or after November 9, 2011 and prior to July 31, 2012. [D.I. 1619] (the “Supplemental Bar Date”).

4. On December 19, 2013, the Debtors and the Committee filed the Plan. A component of the Plan involves the creation of the Blitz Personal Injury Trust to administer and liquidate Blitz Personal Injury Trust Claims.

5. On January 3, 2014, the Cataldi Claimants filed their Motion of the Estate of Joseph M. Cataldi and Lori Cataldi (as guardian, parent and natural guardian for minors Michael Cataldi and Brianna Cataldi) for and Order Extending the Time Under the Supplemental Bar Date Order (D.I. 1619) to File Certain Proofs of Claim [D.I. 2035] (the “Extension Motion”).

6. The Cataldi Claimants requested through the Extension Motion that the Court extend the Supplemental Bar Date to permit the filing of certain claims related to the fatal injuries sustained by Joseph M. Cataldi as a result of an exploding Blitz gas can.

7. On January 17, 2014, the Committee filed an objection to the Extension Motion (the “Committee Objection” [D.I. 2077]).

8. On January 17, 2014, the Cataldi Claimants initiated an action against Walmart and certain of the Vendors with the filing of a Writ of Summons in the Philadelphia Court of Common Pleas (the “PA State Court Action”).

Objection

9. In the event the Committee Objection is sustained and the Cataldi Claimants are

¹Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

precluded from filing their claims and from participating in the Blitz Personal Injury Trust, the Cataldi Claimants object to confirmation of the Plan in that the terms of the Plan provide for an impermissible non-debtor third party release without consent or consideration of which the Cataldi Claimants have neither given nor received.

10. Section 4.3.3 of the Plan purports to impose a Channeling Injunction upon all Blitz Personal Injury Trust Claims and further provides that “the Protected Parties shall have no obligation to pay any liability of any nature or description arising out of, relating to, or in connection with any Blitz Personal Injury Trust Claims...” *See* Plan, p. 22 §4.3.3.

11. Section 4.3.4 of the Plan also provides that the establishment of the Blitz Personal Injury Trust and the transfer of the Blitz Personal Injury Trust Assets “shall 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 (and the Confirmation Order shall so provide for such release).” *See* Plan, p. 25 §4.3.4.

12. The Protected Parties, as defined in Exhibit 1 to the Plan, include, among others, Walmart and Vendors (further defined as *any entity* that sold or distributed any product manufactured or produced by the Debtors).

13. Section 524(e) of the Bankruptcy Code specifically “precludes discharging the liabilities of nondebtors.” *In re Continental Airlines*, 203 F.3d 203, 211 - 212 (3d Cir. 2000). Generally speaking, non-debtor third party releases are permissible only when the releasing party consents and receives compensation for such release. *Id.* (See also, *In re Washington Mutual, Inc.*, 442 B.R. 314, 352 (Bankr. D. Del. 2011)).

14. Neither Walmart nor the Vendors are debtors in this matter. To the extent the Cataldi Claimants are precluded from filing their claims and participating in the Blitz Personal Injury

Trust, they have not consented to the releases and an injunction for the benefit of Walmart and the Vendors and they will not have received any compensation to do so. If the release and injunction in favor of Walmart and the Vendors are upheld, the Cataldi Claimants will be stripped of the only remaining avenue available to address their claims.

15. Accordingly, absent their allowed participation in the Blitz Personal Injury Trust, the Cataldi Claimants do not consent to the release of Walmart and the Vendors from liability on their claims or to an injunction of the PA State Court Action.

16. To the extent not inconsistent with the arguments raised herein, the Cataldi Claimants join in the objections filed by other creditors and/or parties in interest to confirmation of the Plan.

WHEREFORE, the Cataldi Claimants respectfully request that this Court deny confirmation of the Plan and request such other and further relief as this Court deems just and proper.

Dated: January 21, 2014

FERRY, JOSEPH & PEARCE, P.A.

/s/ Lisa L. Coggins
Lisa L. Coggins, Esq. (No. 4234)
824 Market Street, Suite 1000
P.O. Box 1351
Wilmington, DE 19899
Tel: (302) 575-1555
Fax: (302) 575-1714
Counsel to the Cataldi Claimants

CERTIFICATE OF SERVICE

I, Lisa L. Coggins, hereby certify that on this 21st day of January, 2014, I caused one copy of the foregoing 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 to be served upon the following parties in the manner indicated:

SEE ATTACHED SERVICE LIST

Upon penalty of perjury I declare that the foregoing is true and correct.

/s/ Lisa L. Coggins

Lisa L. Coggins, Esquire (#4234)

Service List

Office of the United States Trustee
Attn: Richard Schepacater, Esq.
U.S. Department of Justice
J. Caleb Boggs Federal Bldg.
844 King Street, Suite 2207
Lockbox #35
Wilmington, DE 19899-0035
By Hand Delivery

Daniel J. DeFranceschi, Esq.
Richards, Layton & Finger, P.A.
One Rodney Square
Wilmington, DE 19899
defranceschi@rlf.com
By Hand Delivery & E-mail

Sean M. Beach, Esq.
Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
sbeach@ycst.com
By Hand Delivery & E-mail

Francis A. Monaco, Jr., Esq.
Womble Carlyle Sandridge & Rice
222 Delaware Ave., Suite 1501
Wilmington, DE 19801
fmonaco@wcsr.com
By Hand Delivery & E-mail

Jeremy W. Ryan, Esq.
Potter Anderson & Corroon LLP
1313 North Market St.
P.O. Box 951
Wilmington, DE 19899
jryan@potteranderson.com
By Hand Delivery & E-mail

John D. Demmy, Esq.
Stevens & Lee, P.C.
1105 N. Market St., Suite 700
Wilmington, DE 19801
jdd@stevenslee.com
By Hand Delivery & E-mail

Leonard P. Goldberger, Esq.
Stevens & Lee, P.C.
620 Freedom Business Center
King of Prussia, PA 19406
lpg@stevenslee.com
By First Class Mail & E-mail

Jeffrey Prhl, Esq.
Lowenstein Sandler P.C.
65 Livingston Avenue
Roseland, NJ 07068
jprol@lowenstein.com
By First Class Mail & E-mail

Richard W. Riley, Esq.
Duane Morris LLP
222 Delaware Ave., Suite 1600
Wilmington, DE 19801
rw Riley@duanemorris.com
By Hand Delivery & E-mail

Tancred Schiavoni, Esq.
O'Melveny & Myers LLP
7 Times Square
New York, NY 10036
tschiavoni@omm.com
By First Class Mail & E-mail

Brett D. Fallon, Esq.
Morris James LLP
500 Delaware Ave., Suite 1500
Wilmington, DE 19899
bfallon@morrisjames.com
By Hand Delivery & E-mail

Margaret M. Anderson, Esq.
Fox, Swibel, Levin & Carroll LLP
200 W. Madison St., Suite 3000
Chicago, IL 60606

panderson@fslc.com

By First Class Mail & E-mail

James S. Yoder, Esq.
White and Williams LLP
824 North Market St., Suite 902
Wilmington, DE 19899

yoderj@whiteandwilliams.com

By Hand Delivery & E-mail

Abbey Walsh, Esq.
Freshfields Bruckhaus Deringer US LLP
601 Lexington Ave., 31st Floor
New York, NY 10022

abbey.walsh@freshfields.com

By First Class Mail & E-mail