

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 No. 2007

DECLARATION OF ROBERT ELMBURG IN SUPPORT OF
THE DEBTORS' AND OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' JOINT PLAN OF LIQUIDATION

I, Robert Elmburg, hereby declare under penalty of perjury:

1. I am a principal and officer at Crestwood Holdings, Inc., and I respectfully submit this declaration (the "**Declaration**") in connection with and in support of the confirmation of the *Debtors' and Official Committee of Unsecured Creditors' Amended Joint Plan of Liquidation* dated December 19, 2013 [Docket No. 2007] (as it may be further amended, modified or otherwise supplemented, the "**Plan**")² and the approval of the BAH Settlement and the releases and injunctions included therein. This Declaration is submitted on behalf of Crestwood Holdings, Inc., Bergan, LLC, Discovery Plastics, LLC, John R. Elmburg, Eric Elmburg, and myself, Robert Elmburg (collectively referred to herein as "**Crestwood**").

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 Miami OK LLC (f/k/a F3 Brands LLC) (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW Miami, OK 74354.

² Capitalized terms used herein that are not defined have the meanings assigned to them in the Plan.



2. I have personal knowledge of the matters stated herein and they are true and correct. Crestwood Holdings, Inc. is the Debtors' former owner and former controlling shareholder. Crestwood Holdings, Inc. has an unsecured claim in these Chapter 11 Cases based on promissory notes received in consideration of the 2007 sale of the business to the Debtors in the amount of \$23,592,091.85.

3. In the past few years, Crestwood and certain of the other BAH Released Parties have been named as defendants in personal injury lawsuits relating to the Debtors' products (the "**Known PI Claims**"). Crestwood has expended a considerable amount of time and resources in defending itself in these lawsuits despite the fact that Crestwood sold the business in 2007.

4. Crestwood and the BAH Settling Parties engaged in extensive, arm's length negotiations with the USA Debtors and the Committee to reach a settlement of the Known PI Claims and unknown personal injury claims that arose on or prior to July 31, 2012. The result of those negotiations is the BAH Settlement. These negotiations occurred over the past two years while this bankruptcy case was pending. I attended several mediation sessions, participated in numerous conference calls, reviewed several draft term sheets, and engaged in inordinate email activity regarding the terms of the BAH Settlement.

5. It is a condition of the BAH Settlement that the BAH Released Parties, which includes Crestwood, be released from any and all liability relating to the Debtors and their products in connection with confirmation of the Plan. The release and injunction are set forth in Article VII of the Plan.

6. Crestwood would not have been willing to enter into the BAH Settlement without the injunction and release provisions contained therein. The BAH Settlement Payment provides a substantial and material amount of money to resolve claims that Crestwood and the other BAH Settling Parties believe are of absolutely no merit. However, they are willing to make the BAH Settlement Payment in order to resolve, once and for all, all litigation claims relating to the Debtors and their products. This is especially true for Crestwood as we are no longer affiliated with the business yet are still subject to what we believe are frivolous lawsuits. Without this closure, neither Crestwood nor the other BAH Settling Parties would be willing or obligated to consummate the BAH Settlement. Without the BAH Settlement, the USA Debtors' estates would undoubtedly be administratively insolvent and unable to confirm a plan.

7. Crestwood is contributing to the BAH Settlement Payment by agreeing to permit BAH to use some of its assets to satisfy the BAH Settlement Payment, which assets would otherwise have been available to satisfy claims of BAH creditors, including Crestwood.

8. The facts in this case are unusual and merit the release of claims against the BAH Released Parties held by the USA Debtors' estates and their creditors and, as such, I hereby submit that the Court should approve the injunction and release in favor of the BAH Released Parties.

9. Identity of interests exist between the USA Debtors and the BAH Released Parties based on indemnification rights. Each of the BAH Released Parties have direct or indirect indemnification rights against the USA Debtors or Kinderhook in connection with, among other things, fees and expenses and alleged liability in connection with

personal injury suits and the indemnification provisions of the asset purchase agreement related to Crestwood's sale of the business. Any indemnification claims by the BAH Released Parties would deplete the limited assets of the USA Debtors' estates.

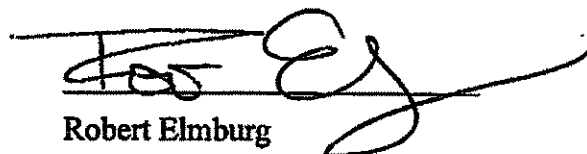
10. The BAH Settlement provides for the payment of the BAH Settlement Payment to the USA Debtors' estates on the effective date of the Plan to the extent that (i) the Plan approves the BAH Settlement, including the release of the BAH Released Parties from any and all liabilities relating to the Debtors and their products, and (ii) the Plan is in form and substance acceptable to the BAH Settling Parties. The BAH Settlement Payment, which will be an amount no less than \$6.25 million, will provide a substantial contribution of assets to the USA Debtors' estates. \$6.25 million is a necessary and substantial contribution to the USA Debtors' estates as it will provide the funds for payment of administrative expense claims and potentially some distribution to general unsecured creditors.

11. The injunction is essential to the viability of the BAH Settlement and will free the USA Debtors from claims by the BAH Released Parties on theories of indemnity and contribution.

12. Based on the foregoing, I hereby submit that the BAH Settlement, including the injunction and release provisions thereof, represents a fair and reasonable settlement of the claims against the BAH Released Parties that results in a necessary and substantial contribution to the USA Debtors' estates, and, as such, should be approved by the Bankruptcy Court.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 23, 2014



Robert Elmburg