

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re)	Chapter 11
)	Case No. 11-13603 (PJW)
BLITZ U.S.A., INC., <i>et al.</i> ,)	(Jointly Administered)
)	
Debtors.)	Related to Docket No. 2007
)	Hearing Date: January 28, 2014 at 9:30 p.m.
)	

**DECLARATION OF JEFFREY ROBERTS IN SUPPORT OF
CONFIRMATION OF DEBTORS' AND OFFICIAL COMMITTEE OF
UNSECURED CREDITOR'S FIRST AMENDED JOINT PLAN OF REORGANIZATION**

Jeffrey Roberts, being duly sworn according to applicable law, declares and states as follows:

1. I make this Declaration in the context of the proceedings with respect to confirmation of the *Debtors' and Official Committee of Unsecured Creditor's First Amended Joint Plan of Reorganization* (the "Joint Plan"). The Joint Plan incorporates the Insurance Settlement¹ approved by the Court by its order of December 20, 2013. Pursuant to the Insurance Settlement the Participating Insurers, including Liberty (as defined herein), have agreed to a full and final settlement with respect to the Participating Insurer Policies and have agreed to buy back the Participating Insurer Policies for just under \$138 million. The obligations of the Participating Insurers under the Insurance Settlement are condition upon entry of an order confirming the Joint Plan, which shall become a final order, and which must contains all required terms and conditions, including, without limitation, the release and injunction provisions set forth in Article VII of the Joint Plan.

¹ Capitalized terms not defined herein have the meanings given to them in the Joint Plan.

Background:

2. I am employed by Liberty International Underwriters as Assistant Vice President, Claims; and have been in this position for 7 years. Liberty International Underwriters both (i) sells liability insurance policies issued by Liberty Surplus Insurance Corporation and Liberty Insurance Underwriters Inc. and (ii) manages claims made under those policies.

3. I have worked in claims management in the insurance industry for 20 years. I currently hold an adjuster license in more than ten (10) states, including without limitation, New York, Connecticut, Texas, Wyoming, Kentucky, Georgia, North Carolina, New Hampshire, Rhode Island, Oklahoma and South Carolina.

4. My duties as Assistant Vice President, Claims for Liberty International Underwriters include, without limitation, managing serious bodily injury claims, claims involving fatalities, catastrophic property damage claims, product recall claims and product contamination claims. In managing these types of claims, I often am required to: (a) review and confirm coverage under the insurance policy or policies at issue; (b) identify and communicate with the insured concerning potential coverage issues; (c) coordinate and communicate with defense counsel and the insured concerning the defense of the claim and the potential exposure presented by the claim; (d) analyze the potential exposure presented by the claim; (e) analyze the insured's potential liability for the injury or damage claimed; (f) recommend whether to settle a claim or take it to trial; and (g) negotiate a reasonable settlement of the claim, if possible.

Liberty's Policies and Evaluation of Blitz Personal Injury Claims:

5. Within the period from July 31, 2006 through July 31, 2012, Liberty Surplus Insurance Corporation ("LSIC") issued four commercial general liability insurance policies to Blitz U.S.A., Inc. ("Blitz"); and Liberty Insurance Underwriters Inc. ("LIUI") issued three excess

insurance policies to Blitz. Other companies issued insurance policies to Blitz within the period from July 31, 2006 through July 31, 2012. Each policy year ran from 12:01 a.m. on July 31st to 12:01 a.m. on the next following July 31st.

6. At all times to the settlement at issue, I was the person at Liberty International Underwriters with primary responsibility for managing Blitz Personal Injury Claims tendered under the insurance policies issued by LSIC and LIUI; and for negotiating the Insurance Settlement.

7. In discharging this responsibility, I evaluated many issues involving liability and damages related to the Blitz Personal Injury Claims; and evaluated the potential for coverage for such claims under the insurance policies issued by LSIC and LIUI. Also, in the context of my involvement in the negotiation of the Insurance Settlement, I evaluated the potential for coverage for Blitz Personal Injury Claims under some of the other Participating Insurers' insurance policies.

8. The Blitz Personal Injury Claims presented serious questions concerning the insured's liability and the availability of insurance coverage. The insurance coverage issues presented by the Blitz Personal Injury Claims included, without limitation, the effect of Blitz's inability to satisfy its contractual obligation to pay substantial self-insured retentions for each occurrence, and that, in the final two policy years (2010-11 and 2011-12), the costs of defending against the Blitz Personal Injury Claims reduced the limits of available insurance under each policy in those policy years.

9. Additionally, several of the Participating Insurers in the last two years of available coverage have raised issues of material misrepresentation by Blitz in obtaining the policies and have reserved the right to rescind coverage under these policies in their entirety.

Negotiation of the Insurance Settlement:

10. I personally participated in numerous mediations concerning the Blitz Personal Injury Claims conducted under the auspices of a mediation order issued by this Court and presided over by two different mediators: (a) the Honorable Kevin Gross, Chief Judge of the United States Bankruptcy Court for the District of Delaware; and (b) the Honorable Richard Cohen (Ret.), who served as a New Jersey Superior Court trial judge for eleven years and as an Appellate Division Judge for ten years. The mediation included, without limitation, sessions that occurred on the following dates:

- September 4, 2012 in Wilmington, DE, presided over by Judge Gross (in which my superior, Jessica Rogin, participated for LIU and LSIC)
- September 27, 2012 in Wilmington, DE, presided over by Judge Gross
- December 7, 2012, in Wilmington, DE, presided over by Judge Gross
- February 5, 2013, in New York, presided over by Judge Cohen
- February 15, 2013, in New York, presided over by Judge Cohen
- March 8, 2013 in New York, presided over by Judge Cohen
- May 17, 2013 in New York, presided over by Judge Cohen

11. In addition, I engaged in numerous additional settlement and mediation-related communications in between and after these mediation sessions involving the Creditors' Committee, Wal-Mart and other Participating Insurers, some of which also involved the presiding mediator.

12. Each of the mediation sessions that I attended also were attended by representatives of the Creditors Committee and its attorneys, counsel for individual holders of Blitz Personal Injury Claims, representatives and attorneys for most, if not all, of the

Participating Insurers, and representatives and attorneys for Wal-Mart. Attorneys for the Debtors also attended one or more of these mediations.

13. The Insurance Settlement, which was approved by this Court's order of December 20, 2013, is a key component of the Joint Plan. The settlements embodied in the Term Sheet attached to the Insurance Settlement Motion are fair and reasonable to all parties, including the Debtors, the Creditors Committee, the Participating Insurers, the holders of Blitz Personal Injury Claims and Wal-Mart.

14. The settlement negotiations in connection with the Insurance Settlement were conducted at arm's length and in good faith. They were some of the most complex, difficult and hard fought negotiations in which I ever have been involved.

15. Based on my experience, this extremely complex and at times fragile settlement could not have been accomplished without the good faith of all the participants or without the patience and skill of the two very able and experienced mediators involved in this matter. Each mediation consisted of several subsidiary mediations occurring simultaneously. There were parallel settlement negotiations between the Participating Insurers and the Committee, between the Participating Insurers and Wal-Mart, between Wal-Mart and the Committee, and, importantly, among the Participating Insurers themselves. In short, there was nothing easy about the process that eventually led to the complex settlement set forth in the Term Sheet.

The Necessity of the Third-Party Releases as Set Forth in the Joint Plan:

16. As set forth above, Liberty provided primary commercial general liability insurance for Blitz and others (as set forth in detail below) for each of the 2006-07, 2007-08, 2008-09 and 2009-10 policy years. Ace/Westchester provided the first layer of excess coverage for these years through commercial umbrella liability insurance policies. Old Republic

Insurance Company provided the primary commercial general liability insurance for Blitz (and others) for the 2010-2011 and 2011-2012 policy years, with First Specialty Insurance Corporation providing the first level excess coverage for each of these years.

17. In each of the foregoing policy years, Blitz also obtained additional excess insurance from various insurance companies. All of these additional excess policies “follow form” to either the underlying primary policy or the first level excess policy; meaning, generally, that unless specifically changed or excluded by the excess policy, all the terms and conditions of the primary and/or first level excess policy apply equally to the excess policies.

18. The primary and/or first level excess insurance policies for the 2006-07 through 2011-12 policy years define who is insured under such policies. The definitions of insured in these policies include, among others, officers, directors, and shareholders, to the effect that the insurer, subject to its rights and defenses under its policy, might be obligated to defend and/or indemnify a claim brought not only against Blitz but also against its officers, directors and shareholders.

19. By way of example only, the definition of “insured” under the Old Republic policies for the 2010-11 and 2011-12 policy years states as follows:

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

...

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

20. The primary and/or first level excess policies for the 2006-07 through 2011-12 years also contain endorsements that broaden the policies' definitions of "insured" to include vendors, *i.e.*, distributors, of Blitz's products and/or persons or entities that Blitz has agreed in a written contract to name as an insured. By way of example only, the vendors endorsement of the Old Republic policies amends the definition of "insured" to include all vendors of Blitz's products whom Blitz has agreed to name as an "insured" and, subject to certain limitations, extends coverage to this "insured" for liability "arising out of" Blitz's products which are distributed or sold in the regular course of the vendor's business.

21. It also is my understanding that Wal-Mart, and possibly other vendors, had written agreements with Blitz requiring that Blitz name them as an "insured" under its liability insurance policies.

22. For the policy years 2006-07 through and including 2011-12, 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. The effect of the above-referenced provisions in the Participating Insurer Policies (which have been bought back by the Participating Insurers, pursuant to the Insurance Settlement, subject to confirmation of the Joint Plan) is that vendors, officers, directors and stockholders of the debtors, in the relevant policy periods, and subject to the terms of the respective policies at issue, may be insureds thereunder. If any claims are brought against such persons or entities, they could tender such claims to the insurers for defense and indemnity.

23. Accordingly, any settlement relating to, and any buyback of, the Participating Insurer Policies must also resolve all claims as against vendors, officers, directors and shareholders to the same extent as they are being resolved as to the debtors; and is why debtors'

vendors, officers, directors and shareholders are included as Protected Parties under the Joint Plan and being released by confirmation of the Joint Plan.

24. The Insurance Settlement, including the nearly \$138 million being paid by the Participating Insurers, would not be possible without claims against all named insureds, insureds or additional insureds under the Participating Insurer Policies, which includes vendors, officers, directors and shareholders, being released such that the claimants could not later, in turn, assert claims against the Participating Insurers or someone qualifying as an "insured" under the Participating Insurer Policies. Indeed, Liberty would not have agreed to participate in the Insurance settlement if the finality and certainty that flows from inclusion of such parties in a comprehensive third-party release could not be obtained.

25. Because of the effect of the Participating Insurer Policies as outlined above, the contribution that, in effect, is being made by, or on behalf of certain Protected Parties, including vendors other than Wal-Mart, and officers, directors and shareholders of the debtors, is the \$138 million by the Participating Insurers. This contribution is being made directly by the Participating Insurers on their behalf, but also, indirectly by or on behalf of all named insureds, insureds and additional insureds under the Participating Insurer Policies.

26. In addition, the Participating Insurers also will be waiving their claims against the debtors, thus, avoiding dilution of distributions to other creditors. In addition, all indemnification claims and all claims to insurance coverage by vendors, officers, directors and shareholders will be channelled to the Blitz Personal Injury Trust and, in effect, released by all such persons and entities.

27. Under the Insurance Settlement, only after a confirmation order has been entered and becomes final, which confirms a plan which includes releases of the Participating Insurers

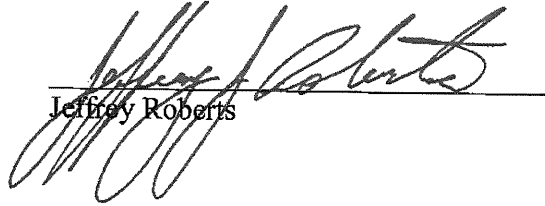
and all named insureds, insureds and additional insureds under the Participating Insurer Policies will the nearly \$138 million from the Participating Insurers be contributed to the Blitz Personal Injury Trust.

28. Simply, Liberty (as well as each of the other Participating Insurers) would not be willing to buy back the Participating Insurer Policies for nearly \$138 million without the release and injunction protecting all named insureds, insureds and additional insureds under the Participating Insurer Policies. Without the nearly \$138 million from the Participating Insurers, there could not be a confirmed plan in this case; and, the Insurance Settlement, including the feasibility of the Plan, is contingent upon all of the named insureds, insureds and additional insureds under the Subject Policies receiving the comprehensive benefit of the channelling injunction and release.

29. The release and injunction provisions for vendors, officers, directors and shareholders was negotiated at arm's length by the Participating Insurers with the Debtors and the Committee and, as the Court already has found, the contribution being made by the Participating Insurers provides fair value in exchange for the buy-back of the Subject Policies.

30. The Participating Insurers bargained for, and must receive, full and complete releases and finality in return for their contribution, which I understand will provide for a sufficient fund to pay all Blitz Personal Injury Claims in full.

I make the foregoing declaration as true and correct to the best of my knowledge, information and belief, and subject to the penalties for perjury provided for in 28 U.S.C. § 1746.


Jeffrey Roberts