IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
BLITZ U.S.A., Inc., et al.,	Case No. Case No. 11-13603 (PJW)
Debtors.	(Jointly Administered)
	Re: Docket Nos. 2007, 2041, 2090, 2091, 2092, 2116

MEMORANDUM OF LAW AND OMNIBUS REPLY IN SUPPORT OF THE DEBTORS' AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS' FIRST AMENDED JOINT PLAN OF LIQUIDATION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

RULES

PRELIMINARY STATEMENT

1. This memorandum of law (the "Memorandum")[1] is submitted 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") in support of confirmation of the *Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* [D.I. 2007] (including all exhibits thereto and as amended, modified or supplemented from time to time, the "Plan").

2. The Plan is the result of many months of good faith, arm's-length negotiations and encompasses a delicate balance of important competing interests. Despite the incredibly complex claims and interests at play, the Debtors' major constituents have produced a consensus which represents the only viable exit strategy for these Chapter 11 Cases, as demonstrated by the overwhelming votes in favor of the Plan. The commitments for substantial contributions by Wal-Mart, the Participating Insurers and the BAH Released Parties, borne out of these negotiations, pave the way for a significant recovery to creditors in need of prompt access to funds along with a full and final resolution of disputes surrounding the Debtors' insurance policies.

3. The Plan represents a path to implement a global resolution of claims in an orderly fashion. The process reflected in the Plan resolves creditors' claims equitably while avoiding lengthy and protracted litigation that would deplete resources and negatively impact all interested parties. The Plan constitutes the only credible option to resolve these cases while respecting creditors' rights and achieving a meaningful recovery.

4. The proposed Plan has a dual trust structure that establishes the (i) Blitz Personal Injury Trust funded with approximately $162 million in funds contributed by Wal-Mart and the

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

Participating Insurers, along with certain assigned insurance policies; and (ii) Blitz Liquidating Trust funded by the BAH Released Parties and Wal-Mart to liquidate and make distributions for administrative claims and general unsecured claims. The trust structure and Channeling Injunction underlying the Plan was the focal point of negotiations and the impetus behind the funding contributions from Wal-Mart, the Participating Insurers and the BAH Released Parties. Upon the Effective Date, the Debtors will have resolved all outstanding issues surrounding the Participating Insurer Policies and will liquidate these assets (in conjunction with the substantial contributions from Wal-Mart and the BAH Released Parties) to provide meaningful recoveries for creditors.[2] The orderly and equitable resolution of Claims afforded by these funding contributions cannot be effectuated without the Releases and Channeling Injunction contemplated by the Plan.

5. The Plan represents a tremendous outcome under the circumstances of these Chapter 11 Cases, as demonstrated by the overwhelming support from the Debtors' stakeholders. Critically, the Committee, acting in its fiduciary capacity on behalf of all creditors, was integral in development of the Plan and supports its confirmation.[3] As set forth below and in the supporting declarations, the Proponents respectfully submit that the Plan satisfies the applicable requirements of the Bankruptcy Code and should be confirmed.

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[2] The Plan further provides for the contribution of the Assigned Insurance Policies to the Blitz Liquidating Trust as a source of recovery for Pre-2007 Blitz Personal Injury Claims (as defined herein).

[3] Importantly, the Committee represents the entire cross-section of Blitz Personal Injury Claims and other general unsecured creditors. See *Reply in Further Support of Motion for Order under 11 U.S.C. §§ 101 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 Participating Insurers Free and Clear of Liens, Claims, Interests and Other Encumbrances*, at 2-4 [D.I. 1935]. In addition, the law firms representing the personal injury claimants seated on the Committee have extensive experience and institutional knowledge regarding mass tort litigation. The Committee played an active role in formulation of the Plan and vigorously advocated on behalf of all of its constituents. Moreover, the Committee was the architect of the Blitz Personal Injury TDP – which provides the scoring matrix assigning value to Blitz Personal Injury Trust Claims. The Committee's support of the Plan demonstrates that it represents the best opportunity for all creditors to obtain a full and fair recovery under the circumstances.

6. Notwithstanding the Plan's manifest benefits and broad-based support, four objections have been filed with respect to the Plan. As discussed herein, these objections are not supportable based on the record of these Chapter 11 Cases, applicable law or comparable chapter 11 plans confirmed in this jurisdiction.

GENERAL BACKGROUND OF CHAPTER 11 CASES

7. The Court is respectfully referred to the Disclosure Statement, the *Declaration of Rocky Flick, President and Chief Executive Officer of Blitz U.S.A., Inc. in Support of Debtors' Chapter 11 Petitions and First Day Motions* [D.I. 13], the declaration filed or to be filed in support of confirmation of the Plan, and the entire record of these Chapter 11 Cases, including the record presented to the Court in conjunction with the Insurance Policy Buy-Back Order entered on December 18, 2013, for an overview of the Debtors, their pre-Petition Date business, the litigation involving Blitz Personal Injury Claims and all other facts relevant to the Plan.

THE PLAN

I. Plan Formulation Process

8. The Proponents, along with Wal-Mart and the Participating Insurers, have worked diligently to formulate an exit strategy for these Chapter 11 Cases that distributes the value of the Debtors' estates to creditors in an equitable manner consistent with the principles of the Bankruptcy Code and the parties' respective rights under applicable law. See Begier v. IRS, 496 U.S. 53, 58 (1990) ("Equality of distribution among creditors is a central policy of the Bankruptcy Code."); Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 453 (1999) (observing that underpinning policy of the Bankruptcy Code is maximizing property available to satisfy creditors). To accomplish this result the Debtors engaged in negotiations spearheaded by the Committee, Wal-Mart and the Participating Insurers, all of whom expended considerable resources to achieve a virtually unanimous consensus among

competing constituencies regarding the structure and substance of the Plan. Ultimately, after difficult negotiations spanning almost a year, the Debtors' stakeholders reached agreement based on a careful balance of accommodations captured in the Plan. Simultaneously, the Committee, the Debtors and the BAH Settling Parties engaged in parallel negotiations resulting in the BAH Settlement, which is also incorporated into the Plan. The settlements embodied in the Plan resulted from good faith negotiations over complex, economically significant and intensely disputed issues under the supervision of two highly respected jurists.[4]

9. Furthermore, in addition to their significant involvement and funding commitments underlying the Plan, Wal-Mart, the Participating Insurers and the BAH Released Parties have made ancillary contributions to support the Plan process. Namely, each provided funding for administration of these Chapter 11 Cases when no other source was obtainable. These contributions were critical in facilitating the Plan process and were utilized to complete crucial tasks, such as notice publication for the Blitz Personal Injury Claim Bar Date Order and solicitation of the Plan.

II. Summary of Plan Structure

10. The Plan contemplates the separate substantive consolidation of the USA Debtors[5] and the BAH Debtors.[6] The Plan establishes two trusts pursuant to section 105 of the Bankruptcy Code: (i) a Blitz Personal Injury Trust that is responsible for administration and

[4] Both Chief Judge Kevin Gross and the Honorable Richard Cohen (Ret.) were heavily involved in supervising the negotiation process among the Debtors' constituents that ultimately resulted in the Plan before the Court. See generally In re Tribune Co., 464 B.R. 126, 157, n. 44 (Bankr. D. Del. 2011) (noting the involvement of Chief Judge Gross as a "highly respected" and "much sought after" mediator whose involvement "weighs in favor of concluding that the [settlement] was achieved as a result of arms-length, good faith negotiations.").

[5] The USA Debtors are comprised of: (1) Blitz Acquisition, LLC; (2) Blitz U.S.A., Inc.; (3) MiamiOK, LLC (f/k/a F3 Brands, LLC); and (4) Blitz RE Holdings, LLC.

[6] The BAH Debtors are comprised of: (1) Blitz Acquisition Holdings, Inc.; and (2) LAM 2011 Holdings, LLC.

payment of Blitz Personal Injury Trust Claims; and (ii) a Blitz Liquidating Trust for the benefit of Administrative Claims and General Unsecured Claims of the USA Debtors. As for the BAH Debtors, the Plan contemplates the appointment of the BAH Plan Administrator who will have the responsibility of liquidating all assets of the BAH Debtors and making distributions to holders of Allowed Claims against the BAH Debtors (other than the holders of Blitz Personal Injury Trust Claims).

11. The trusts established by the Plan are inextricably intertwined with the corresponding releases and permanent injunction shielding the Debtors and certain enumerated Protected Parties from further liability with respect to Blitz Personal Injury Trust Claims. The effectuation of the Plan through the framework of the trusts and Channeling Injunction is the culmination of extensive efforts by the Debtors, the Committee, Wal-Mart, the Participating Insurers, the BAH Settling Parties and their professional advisors to afford a greater recovery than would be obtained if the Chapter 11 Cases were converted to chapter 7 or dismissed.

12. The Blitz Personal Injury Trust is funded from a joint contribution by Wal-Mart and the Participating Insurers with (i) Wal-Mart contributing approximately $23.8 million (plus waiving its rights to payment under the Participating Insurer Policies and Assigned Blitz Insurance Policies) and the Participating Insurers contributing approximately $137.5 million. The Blitz Liquidating Trust is funded through (i) payment of $6.25 million by the BAH Released Parties, and (ii) Wal-Mart's release of account payables in the amount of $1.54 million that are secured by Wal-Mart's right of setoff.

13. The claims covered under the Blitz Personal Injury Trust consist of: (i) Blitz Personal Injury Claims based on injuries that occurred between July 31, 2007 at 12:01 a.m. CST and July 31, 2012 at 12:01 a.m. CST ("Covered Blitz Personal Injury Claims"); and (ii) Blitz

Personal Injury Clams based on injuries that occurred prior to July 31, 2007 at 12:01 a.m. CST ("Pre-2007 Blitz Personal Injury Claims").[7] Liquidation and payment of Covered Blitz Personal Injury Claims will be administered by the Blitz Personal Injury Trustee (selected by the Committee) from the approximately $162 million contributed by Wal-Mart and the Participating Insurers in accordance with the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP. The Pre-2007 Blitz Personal Injury Claims are channeled to the Blitz Personal Injury Trust, but will not receive a distribution from the approximately $162 million contribution. Instead holders of Pre-2007 Blitz Personal Injury Claims retain any existing rights to recover from the Assigned Insurance Policies that will be allocated to the Blitz Personal Injury Trust.[8]

14. The Plan further contemplates that holders of personal injury claims for damages arising after July 31, 2012 at 12:01 a.m. CST (the "Post-2012 Blitz Personal Injury Claims") will not be subject to the provisions of the Plan and are exempted from the Releases and the Channeling Injunction. See Plan § 4.3.3.2(a). All rights of creditors holding Post-2012 Blitz Personal Injury Claims against all third parties, including the Protected Parties such as Wal-Mart, are expressly preserved pursuant to the Plan.

[7] Moreover, the Plan provides that Claims that will be funneled to the Blitz Personal Injury Trust include any Vendor Claims, Co-Defendant Claim or Direct Action Claim. The necessity for inclusion of these claims is that they are derivative of the Debtors' insurance policies which are being purchased or otherwise assigned to the Blitz Personal Injury Trust. In order for the Protected Parties, namely the Participating Insurers, to ensure that all liabilities arising from these insurance policies are fully and finally resolved pursuant to the Plan, these types of Claims are subsumed into the category of Blitz Personal Injury Trust Claims**.**

[8] Westchester is a Participating Insurer. It has policies in the period from 2005 to 2007 that are subject to the same release, buyback and injunction as the other relevant policies after resolution of the *Bosse* and *Calder* claims which fall within this period. 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. Furthermore, the policy issued by Liberty Surplus Insurance Corporation for the policy year 2006 – 2007 is also subject to the release, buyback and injunction provisions.

15. The Blitz Liquidating Trust will be funded through the $6.25 million contribution from the BAH Released Parties along with Wal-Mart's release of approximately $1.54 million in accounts payable that are secured pursuant to Wal-Mart's right of setoff. Furthermore, pursuant to the BAH Settlement, certain BAH Released Parties are waiving their claims against the USA Debtors. The Blitz Liquidating Trust operates in the form of a "pot plan" by which eligible claims will receive the appropriate pro rata share upon becoming Allowed pursuant to the terms of the Plan and the Blitz Liquidating Trust Agreement.

16. Further, pursuant to the BAH Settlement, 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 shall be channeled to, and may be exclusively asserted against, the Blitz Personal Injury Trust. Any funds remaining in the BAH Debtors' Estates after the payment of the BAH Settlement Payment will be distributed to the remaining creditors of the BAH Debtors in accordance with the Bankruptcy Code's priority scheme by the BAH Plan Administrator.

PLAN SOLICITATION AND RESULTS THEREOF

17. On November 12, 2013, the Proponents filed the *Disclosure Statement for the Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation* [D.I. 1922] (including all exhibits thereto and as amended, modified or supplemented from time to time, the "Disclosure Statement"). On November 27, 2013, the Proponents filed the *Joint Motion of the Debtors and the Official Committee of Unsecured Creditors for 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 [D.I. 1971] (the "Solicitation Motion").

18. On December 18, 2013, the Court entered an order granting the Solicitation Motion [D.I. 2005] (the "Solicitation Order"). The Solicitation Order, among other things, (i) approved the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code, (ii) approved the form and manner of various notices, ballots, and the procedures for tabulating votes, (iii) authorized the Proponents to solicit acceptances or rejections of the Plan, and (iv) established various deadlines, including January 21, 2014 as the deadline by which all ballots must be received (the "Voting Deadline"). The Court also scheduled a hearing to consider confirmation of the Plan on January 27, 2014, which hearing was subsequently moved to January 28, 2014 at 1:30 p.m. (the "Confirmation Hearing").

19. On or about December 19, 2013, the Proponents began soliciting votes on the Plan by distributing the Disclosure Statement and related materials to holders of Claims in Impaired Classes entitled to vote on the Plan. The Classes entitled to vote on the Plan (the "Voting Classes") are: (i) General Unsecured Claims against the USA Debtors and the BAH Debtors (Classes 3(a), 3(b)); and (ii) Blitz Personal Injury Trust Claims against the USA Debtors and the BAH Debtors (Classes 4(a), 4(b)). Specifically, the Proponents transmitted a solicitation package (the "Solicitation Package") to known holders of Claims in the Voting Classes as of December 18, 2013, containing, among other things, notice of the Confirmation Hearing and deadlines for filing objections to confirmation of the Plan and copies of the Disclosure Statement and the Plan (together with all exhibits annexed thereto). Pursuant to the Solicitation Order, the

Voting Deadline was set for January 21, 2014, which provided parties in the Voting Classes with approximately thirty (30) days to consider and cast a vote on the Plan.[9]

20. The Proponents employed Kurtzman Carson Consultants, LLC as balloting agent (the "Balloting Agent") to receive and tabulate ballots on the Plan received from the Voting Classes. In connection with the tabulation of votes, 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* [D.I. 2111] sworn to on January 23, 2014 (the "Voting Certification") was filed with the Court. As set forth in the Voting Certification, the Proponents received overwhelming acceptances from the Voting Classes.

21. A summary of the voting results is set forth below:

Total Ballots Received			
Accept		**Reject**	
Number	**Amount**	**Number**	**Amount**
Class 3(a) - General Unsecured Claims against the USA Debtors			
64 (96.97%)	$4,903,111.47 (98.76%)	2 (3.03%)	$61,800.94 (1.24%)
Class 3(b) – General Unsecured Claims against the BAH Debtors			
6 (100.00%)	$23,592,096.85 (100.00%)	0 (0.00%)	$0.00 (0.00%)
Class 4(a) – Blitz Personal Injury Trust Claims against the USA Debtors			
81 (95.29%)	$81.00 (95.29%)	4 (4.71%)	$4.00 (4.71%)
Class 4(b) – Blitz Personal Injury Trust Claims against the BAH Debtors			
3 (100.00%)	$3.00 (100.00%)	0 (0.00%)	$0.00 (0.00%)

22. In anticipation of the Confirmation Hearing, on January 6, 2014, the Proponents filed their Plan Supplement, which includes the form of Blitz Liquidating Trust Agreement.

[9] The parties in the Voting Classes were also apprised of the critical terms embodied in the Plan – funding of the trusts, the Releases and the Channeling Injunction – at least as early as July 2013 when the Settlement Motions were filed with the Court.

23. Prior to the Confirmation Hearing, the Proponents will also file the *Notice of Proposed Findings of Fact, Conclusions of Law, and Order Confirming Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation,* attaching a proposed form of order confirming the Plan (the "Proposed Confirmation Order").

24. In addition, in conjunction with the filing of this Memorandum, the following documents were filed or will be filed in support of confirmation of the Plan:

(i) *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. 2121];

(ii) *Declaration of Ken B. McClain in Support of Confirmation of Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation* (the "McClain Declaration");

(iii) *Declaration of James A. Pearson in Support of Confirmation of the Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation*;

(iv) *Declaration of Timothy P. Harkness in Support of the Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation* [D.I. 2105];

(v) *Declaration of Christian Michalik in Support of the Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation* [D.I. 2104];

(vi) *Declaration of Robert Elmburg in Support of the Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation* [D.I. 2108];

(vii) *Expert Report of James Marshall, Jr.* [D.I. 2113];

(viii) *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]; and

(ix) *Expert Report of Denise Neumann Martin* [D.I. 2112].

25. Additionally, that certain Bates White Report Regarding the Participating Insurer Settlement (the "Insurer's Export Report") was admitted as evidence at the hearing on the Insurance Settlement Motion. The Insurer's Expert Report also supports confirmation of the Plan.

OBJECTIONS TO PLAN

26. The Proponents received four objections to the Plan (collectively, the "Objections") from the following parties: (i) Carrie Larkin, Individually and as next friend of Rayne Newby, a minor, and Billy Way Newby (the "Newby Claimants") [D.I. 2090]; (ii) Michael J. Bauman, Jr., Michael Bauman, Sr., and Donna (Bauman) Greer (the "Bauman Claimants") [D.I. 2092]; (iii) Estate of Joseph M. Cataldi and Lori Cataldi in her capacity as guardian, parent and natural guardian for minors Michael Cataldi and Brianna Cataldi [D.I. 2091] (the "Cataldi Claimants"); and (iv) the Office of the United States Trustee [D.I. 2116] (the "U.S. Trustee," together with the Newby Claimants, the Bauman Claimants and the Cataldi Claimants, the "Objectors"). In the relevant Objections: (i) the Newby Claimants generally argue, among other things, that the Releases and Channeling Injunction as to Wal-Mart are improper, the Plan is not in the best interest of creditors and the Insurance Settlement should not be approved; (ii) the Bauman Claimant generally argues that the Plan violates Michael J. Bauman, Jr.'s constitutional rights of due process and equal protection; (iii) the Cataldi Claimants argue that, in the event they are precluded from filing their claims, the third-party Releases are improper; and (iv) the U.S. Trustee generally argues that the exculpation provision in the Plan is overbroad and that Proponents must meet their burden to obtain the Releases as to the non-Debtor Protected Parties. The Proponents have attempted to resolve the Objections without the need for litigation. As set forth in further detail below, to the extent any Objections remain unresolved at the time of the Confirmation Hearing, the Proponents submit that they should be overruled.

ARGUMENT

27. As set forth herein, the Proponents demonstrate by a preponderance of the evidence that the Plan satisfies the applicable provisions of section 1129 of the Bankruptcy Code, and therefore should be confirmed. See In re Armstrong World Indus., Inc., 348 B.R. 111, 120 (D. Del. 2006) (citation omitted); Tribune Co., 464 B.R. at 151-52 (citation omitted). The Plan, as demonstrated by the record before the Court, complies with all relevant sections of the Bankruptcy Code, including sections 1122, 1123, 1125, 1126 and 1129, and all applicable non-bankruptcy law. Thus, the Plan should be confirmed. See In re PWS Holding Corp., 228 F.3d 224, 243 (3d Cir. 2000) (noting that a court "shall confirm" a plan if it complies with the applicable provisions of the Bankruptcy Code).

I. The Plan Satisfies Each Mandatory Requirement for Confirmation

28. Section 1129(a) of the Bankruptcy Code provides that the Court shall confirm a chapter 11 plan if all of the requirements of sections 1129(a)(1) through (a)(13) of the Bankruptcy Code are satisfied. 11 U.S.C. § 1129(a). The Plan fully complies with these requirements, and each is addressed in turn.

A. The Plan Complies with Section 1129(a)(1) of the Bankruptcy Code

29. Bankruptcy Code section 1129(a)(1) requires that a plan comply with the "applicable provisions" of the Bankruptcy Code, including rules governing classification of claims and interests and the contents of a plan. 11 U.S.C. § 1129(a)(1). In determining whether the Plan complies with section 1129(a)(1), courts primarily consider sections 1122 and 1123 of the Bankruptcy Code. See Kane v. Johns-Manville Corp., 843 F.2d 636, 648-49 (2d Cir. 1988) (observing that the "applicable provisions" in section 1129(a)(1) includes the provisions of Chapter 11 "such as section 1122 and 1123"); In re Mirant Corp., Case No. 03-46590, 2007 WL 1258932, at *7 (Bankr. N.D. Tex. Apr. 27, 2007) (section 1129(a)(1) is intended to assure

compliance with Bankruptcy Code's scheme governing classification and contents of a plan) (citations omitted).

1. The Plan Satisfies Section 1122 of the Bankruptcy Code

30. Section 1122 of the Bankruptcy Code provides that the claims or interests within a given class must be "substantially similar." 11 U.S.C. § 1129(a)(1). Section 1122(a) of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if it is "substantially similar" to the other claims or interests in that class. Section 1122(a) does not mandate, however, that all claims or interests be identical or that claims or interests must be classified together solely because they share certain attributes. See In re Jersey City Med. Ctr., 817 F.2d 1055, 1060 (3d Cir. 1987) ("The express language of [11 U.S.C. § 1122] explicitly forbids a plan from placing dissimilar claims in the same class . . . ."); In re DRW Prop. Co 82, 60 B.R. 505, 511 (Bankr. N.D. Tex. 1986).

31. Section 1122 of the Bankruptcy Code is satisfied when a "reasonable basis" exists for a classification structure and the claims and interests in a particular class are substantially similar. See In re Armstrong World Indus., Inc., 348 B.R. 136, 159 (Bankr. D. Del. 2006) (citing Jersey City Med. Ctr., 817 F.2d at 1060-61). Plan proponents generally have significant flexibility in classifying claims and courts should consider the specific facts of each case in determining whether a classification scheme complies with section 1122(a) of the Bankruptcy Code. See John Hancock Mutual Life Ins. Co. v. Route 37 Bus. Park Assocs., 987 F.2d 154, 158-59 (3d Cir. 1993) (instructing that classification is proper where a class is "sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed"); Jersey City Med. Ctr., 817 F.2d at 1060-61 ("Congress

intended to afford bankruptcy judges broad discretion [under section 1122] to decide the propriety of plans in light of the facts of each case.").

32. Separate classification is appropriate where members of a class possess distinguishable legal rights or articulable business reasons exist. See, e.g., In re Chateauguay Corp., 89 F.3d 942, 949 (2d Cir. 1996) (finding that Bankruptcy Code requires a "legitimate reason supported by credible proof" to justify separate classification of similar claims); In re Kaiser Aluminum Corp., Case No. 02-10429, 2006 WL 616243, at *5-6 (Bankr. D. Del. Feb. 6, 2006) (approving separate classification of personal injury claims and equity interests due to diverse characteristics of creditors' legal rights under the Bankruptcy Code); In re Magnatrax Corp., Case No. 03-11402, 2003 WL 22807541, at *4 (Bankr. D. Del. Nov. 17, 2003).

33. The Plan's classification scheme is summarized as follows:

Summary of Classification, Status and Voting Rights		
Class	**Designation**	**Impairment**
1(a)	Priority Claims against the USA Debtors	Unimpaired
1(b)	Priority Claims against the BAH Debtors	Unimpaired
2(a)	Secured Claims against the USA Debtors	Unimpaired
2(b)	Secured Claims against the BAH Debtors	Unimpaired
3(a)	General Unsecured Claims against the USA Debtors	Impaired
3(b)	General Unsecured Claims against the BAH Debtors	Impaired
4(a)	Blitz Personal Injury Trust Claims against the USA Debtors	Impaired
4(b)	Blitz Personal Injury Trust Claims against the BAH Debtors	Impaired
5(a)	Intercompany Claims against the USA Debtors	Impaired
5(b)	Intercompany Claims against the BAH Debtors	Impaired
6(a)	Equity Interests in the USA Debtors	Impaired
6(b)	Equity Interests in the BAH Debtors	Impaired

34. The classification of Claims and Equity Interests under the Plan satisfies the requirements of section 1122 of the Bankruptcy Code because the Claims or Equity Interests placed within each Class are substantially similar. Further, the Claims or Equity Interests in each Class differ from the other Classes based on reasonable legal and factual criteria. The Plan

categorizes Claims and Equity Interests at a macro level based on legal distinctions recognized by the Bankruptcy Code for administrative claims, secured claims, unsecured claims, and equity interests. See generally 11 U.S.C. §§ 101(5), 101(16), 503, 506, 507, 1111. Moreover, consistent with section 1122, the Plan segregates Claims and Equity Interests between the USA Debtors and the BAH Debtors based on their distinct legal status and the attendant rights of holders of Claims or Equity Interests against the respective Debtor entities.

35. The Plan further bifurcates general unsecured claims dependent upon whether they relate to personal injury claims, and therefore would be eligible for recovery from the Debtors' insurance policies. Certain personal injury claimants maintain a potential entitlement to the proceeds of the Debtors' insurance policies that would be unavailable to holders of other general unsecured claims. See In re Allied Prods. Corp., 288 B.R. 533, 535-38 (Bankr. N.D. Ill. 2003) (rejecting liquidation of debtor's liability insurance policies to make funds available to the estate on behalf of all creditors rather than segregating proceeds for claims covered by policies); In re Adelphia Commc'ns Corp., 364 B.R. 518, 526-27 (Bankr. S.D.N.Y. 2007) (recognizing potential rights of non-debtors covered under debtor's insurance policies). Therefore, a legitimate basis exists for separately classifying General Unsecured Claims and Blitz Personal Injury Trust Claims. See In re W.R. Grace & Co., 475 B.R. 34, 110 (D. Del. 2012) (instructing that claim classification should focus on the character of the claim relative to the debtor's assets and "plan proponents should attempt to group together those claims that exhibit a similar effect on the debtor's bankruptcy estate") (citation omitted); see generally In re Barnes Bay Development Ltd., Case No. 11-10792, 2011 WL 3607880, at *8 (Bankr. D. Del. Aug. 15, 2011).

36. Similarly, since the fundamental provisions of the Plan concerning the Releases and Channeling Injunction are aimed at resolving Blitz Personal Injury Trust Claims, these Claims are sufficiently distinct from other General Unsecured Claims to "merit a separate voice" for purposes of Plan confirmation, and vice versa. See Armstrong World Indus., 348 B.R. at 147 (holding that it was reasonable to separately classify personal injury claims and general unsecured claims despite their equal priority status); In re Tribune Co., 476 B.R. 843, 857 (Bankr. D. Del. 2012) (finding separate classification of senior noteholders was reasonable where distinguishable creditor interests warranted a "separate voice in [the] bankruptcy case").

37. In sum, valid legal and factual reasons exist to validate the Plan's classification scheme. Importantly, the class structure was not created to affect the outcome of voting on the Plan, as evidenced by the overwhelming support of the Voting Classes coupled with the absence of any objection to the Plan's classification scheme. See Armstrong World Indus., 348 B.R. at 147 (observing that the "classification scheme was not proposed to create a consenting impaired class or to manipulate class voting" and finding it represented reasonable classification). Moreover, the Claims and Equity Interests in each respective Class are substantially similar. Accordingly, the classification structure established by the Plan is proper, thereby satisfying the requirements of section 1122 of the Bankruptcy Code.

2. The Plan Satisfies the Seven Mandatory Plan Requirements of Sections 1123(a)(1) – (a)(7) of the Bankruptcy Code.

38. Section 1123(a) of the Bankruptcy Code sets forth seven mandatory requirements with which every chapter 11 plan must comply. 11 U.S.C. §§ 1123(a)(1)-(7). These requirements are as follows:

(1) designate classes of claims and interests;

(2) specify impaired classes of claims and interests;

(3) specify unimpaired classes of claims and interests;

> (4) provide similar treatment for each claim or interest of a particular class, unless the holder agrees to a less favorable treatment;
>
> (5) provide adequate means for implementation;
>
> (6) prohibition of non-voting equity securities and provision of appropriate distribution of voting power among classes of securities; and
>
> (7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner and selection of the reorganized company's officers and directors.

11 U.S.C. §§ 1123(a)(1)-(7).

39. Article III of the Plan satisfies the first three requirements of section 1123(a) by: (i) designating Classes of Claims and Equity Interests, as required by section 1123(a)(1) of the Bankruptcy Code (Plan §§ 3.3, 3.4); (ii) specifying the Classes that are unimpaired under the Plan, as required by section 1123(a)(2) of the Bankruptcy Code (Plan §§ 3.3, 3.4); and (iii) specifying the treatment of each Class that is Impaired, as required by section 1123(a)(3) of the Bankruptcy Code (Plan §§ 3.3, 3.4, 3.5).

40. The Plan further satisfies section 1123(a)(4) of the Bankruptcy Code because the treatment of each Claim or Interest within a Class is the same as the treatment of each other Claim or Interest within that Class. While holders of Blitz Personal Injury Trust Claims ultimately may receive disparate net recoveries by virtue of the elections under the Blitz Personal Injury TDP, the treatment that is potentially available is equivalent for all Blitz Personal Injury Trust Claims.

41. Articles IV, V, VI, VII, IX and XII, along with various other provisions of the Plan, provide adequate means for implementation in accordance with section 1123(a)(5) of the Bankruptcy Code. The Plan provides adequate means for implementation of the Plan through, among other things: (i) the separate substantive consolidation of the USA Debtors and the BAH Debtors; (ii) the establishment of the Blitz Personal Injury Trust and the Blitz Liquidating Trust

and the appointment of the Blitz Personal Injury Trustee and the Blitz Liquidating Trustee with the duties and responsibilities set forth in Sections 4.7 and 5.7, respectively; (iii) the provisions governing Distributions under the Plan, including the incorporation of the Blitz Personal Injury TDP; (iv) integration of the terms of the Insurance Settlement and the BAH Settlement – which establishes orderly liquidation and distribution of the Debtors' remaining assets; (v) the imposition of the Channeling Injunction; (vi) assignment of the Assigned Blitz Insurance Policies; (vii) the dissolution and wind-down of certain of the Debtors; and (viii) procedures governing the allowance of Claims under the Plan. See Plan Arts. IV, V, VI, VII, IX and XII.

42. The Proponents and their professional advisors have worked diligently with Wal-Mart, the Participating Insurers and the BAH Settling Parties regarding each of the foregoing terms, and submit that this Plan structure will enable successful consummation of the Plan. The proposed implementation steps, specifically the creation of the Blitz Personal Injury Trust and Blitz Personal Injury TDP, have been carefully developed to ensure that the Plan provides for a viable distribution mechanism for Allowed Claims post-Effective Date. These transactions provide more than adequate means for implementation of the Plan to satisfy section 1123(a)(5).

43. Section 1123(a)(6) is inapposite to the Plan with regards to the USA Debtors as it provides that as of the Effective Date all Equity Interests in the USA Debtors shall be cancelled and no new shares will be issued pursuant to the Plan. See Plan § 12.1.2. With regards to the BAH Debtors, pursuant to Section 12.4.2 of the Plan, upon the Effective Date, among other things: (i) LAM shall merge with and into BAH; (ii) the number of directors of BAH shall be fixed at one; (iii) the BAH Plan Administrator, who shall be a current member of the board of directors of BAH and chosen by the board of directors of BAH, 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 BAH shall be deemed to have been removed; (iv) all existing stock in BAH shall be canceled; and (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 Kinderhook Capital Fund II, L.P. to receive, make or call for any distribution, dividends or redemptions from BAH). Because all voting power is vested with Kinderhook Capital Fund II, L.P. as of the Effective Date, there is no issue as to the distribution of such power. The Plan satisfies section 1123(a)(6).

44. Finally, section 1123(a)(7), which provides that a plan's provisions with respect to the manner and selection of any officer, director, or trustee, or any successor thereto, be "consistent with the interests of creditors and equity security holders and with public policy" is satisfied by the Plan. 11 U.S.C. § 1123(a)(7). The Plan provides for the appointment of Hon. Richard Cohen and Mr. Steven D. Sass to serve as trustees of the Blitz Personal Injury Trust and the Blitz Liquidating Trust, respectively. In accordance with the Plan, the board of directors of BAH have selected Louis Aurelio, a current director of both BAH Debtors, to serve as the BAH Plan Administrator. See Plan § 12.4.2. Accordingly, the Plan satisfies the requirement of section 1123(a)(7) of the Bankruptcy Code.

II. The Discretionary Contents of the Plan are Appropriate and Comply with the Bankruptcy Code

45. Section 1123(b) of the Bankruptcy Code enumerates various discretionary provisions that may be included in a chapter 11 plan. Here, the Plan contains a litany of such provisions, the most critical of which are the Releases and Channeling Injunction discussed herein, but all of which are reasonable and appropriate in light of the circumstances of these Chapter 11 Cases. For example, Article III of Plan provides that certain Classes of Claims will

remain unimpaired; Article XIII rejects all executory contracts or unexpired leases not previously assumed; and Articles IV and V, along with the respective liquidating trust agreements and Blitz Personal Injury TDP, establish procedures for the settlement of Claims and mechanics for distribution with respect to Allowed Claims. See 11 U.S.C. §§ 1123(b)(1); (b)(2); (b)(3)(A).

46. Moreover, section 1123(b)(6) of the Bankruptcy Code provides that a plan "may include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1123(b)(6). Consistent with section 1123(b)(6), Sections 12.1.5 and 12.1.6 of the Plan provide for the separate substantive consolidation of the USA Debtors and BAH Debtors for all purposes, including voting, confirmation and distributions. Plan §§ 12.1.5, 12.1.6. The Proponents believe that such separate substantive consolidation is fair, appropriate and necessary and should be approved.

47. "Substantive consolidation . . . emanates from equity [and] treats separate legal entities as if they were merged into a single survivor left with all the cumulative assets and liabilities . . . ." In re Owens Corning, 419 F.3d 195, 205 (3d Cir. 2005) (citations omitted). It is well established that bankruptcy courts may use their equitable powers under section 105 of the Bankruptcy Code to consolidate cases involving related debtors. See, e.g., In re New Century TRS Holdings, Inc., 390 B.R. 140, 159 (Bankr. D. Del. 2008) ("Substantive consolidation is a construct of federal common law that emanates from equity.") (citing Owens Corning, 419 F.3d at 205); In re Lisanti Foods, Inc., 329 B.R. 491, 497 (Bankr. D.N.J. 2005) ("The power to order substantive consolidation of bankruptcy estates is within the Bankruptcy Court's equitable powers under § 105 of the Code.") (citing Fed. Deposit Ins. Corp. v. Colonial Realty Co., 966 F.2d 57, 59 (2d Cir. 1992)); In re Stone & Webster, Inc., 286 B.R. 532, 539 (Bankr. D. Del. 2002) (citation omitted).

48. Moreover, section 1123(a)(5)(C) of the Bankruptcy Code expressly contemplates plan provisions that provide for a merger or consolidation of the debtor with one or more persons as a means for the implementation of the chapter 11 plan. See 11 U.S.C. § 1123(a)(5)(C); Stone & Webster, 286 B.R. at 542 ("[S]ubstantive consolidation such as that proposed by the Plan is, by reason of § 1123(a)(5)(C), clearly an allowable provision in a Chapter 11 plan.").

49. Under the circumstances of these Chapter 11 Cases, the substantive consolidation contemplated by the Plan is appropriate. The purpose of the proposed substantive consolidation is to merge the assets and liabilities of the USA Debtors and, separately, the assets and liabilities of the BAH Debtors consistent with the Plan's structure. This separate substantive consolidation will facilitate distributions to creditors of the USA Debtors from the Blitz Personal Injury Trust and the Blitz Liquidating Trust and to creditors of the BAH Debtors from the assets remaining after the payment of the BAH Settlement Payment. The Proponents submit that substantive consolidation as delineated in the Plan is warranted here because preserving the separate legal status of the individual Debtors could add significant and unnecessary expense to administration of these Chapter 11 Cases and result in the inequitable treatment of creditors.

50. Critically, no creditor/party-in-interest has objected to the substantive consolidation provided under the Plan. See Owens Corning, 419 F.3d at 211 (indicating that consent among creditors is adequate basis for substantive consolidation); In re New Century TRS Holdings, Inc., 407 B.R. 576, 591 (D. Del. 2009) (citing Owens Corning and explaining that in the Third Circuit substantive consolidation is appropriate "where the parties consent"). Accordingly, substantive consolidation is consistent with section 1123(b)(6) of the Bankruptcy Code and should be approved.

51. Article XIII of the Plan provides that, among other things, this Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan, except as otherwise specifically stated therein. This provision is appropriate because the Court otherwise has jurisdiction over all of these matters during the pendency of the Chapter 11 Cases, and the Third Circuit has established that a bankruptcy court may retain jurisdiction over the debtor or the property of the estate following confirmation. See In re Resorts, Int'l, Inc., 372 F.3d 154, 164-67 (3d Cir. 2004). Moreover, this continuing jurisdiction is particularly appropriate based on the Channeling Injunction established by the Plan. The Channeling Injunction contemplates the liquidation of tort claims outside of the bankruptcy process, but the administration and payment of such claims via the Blitz Personal Injury Trust under the auspices of this Court or through the Assigned Insurance Policies. Accordingly, the continuing jurisdiction of the Court is consistent with applicable law and therefore permissible under section 1123(b) of the Bankruptcy Code.

III. The Releases, Channeling Injunction and Exculpation Embodied in the Plan are Permissible and Should be Approved

52. Section 1123(b)(6) of the Bankruptcy Code authorizes a plan to include any provision "not inconsistent" with the Bankruptcy Code. 11 U.S.C. § 1123(b)(6). The centerpiece of the Plan is the liquidation and distribution to holders of allowed Blitz Personal Injury Claims either through the Blitz Personal Injury Trust or recovery under the Assigned Insurance Policies. A precondition to the significant recoveries anticipated on the Blitz Personal Injury Claims is that the Debtors will be releasing the enumerated Protected Parties to resolve all issues of liability with finality under the Plan. Moreover, the Channeling Injunction is necessary to enforce the Releases in the Plan and it is narrowly tailored to achieve that purpose. These third party releases and the Channeling Injunction, along with the Debtors' Releases, are all

supported by valuable consideration from the Protected Parties, are indispensable components of the Plan and are appropriate equitable relief under Third Circuit law.

A. The Third Party Releases and Channeling Injunction Should be Approved

1. Non-Consensual Releases and Permanent Injunctions under Third Circuit Law

53. Bankruptcy courts "as courts of equity, have broad authority to modify creditor-debtor relationships." U.S. v. Energy Resources Co., 495 U.S. 545, 549 (1990). To effectuate these broad equitable powers, section 105(a) of the Bankruptcy Code vests a bankruptcy court with broad authority "to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a); See Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery, 330 F.3d 548, 568 (3d Cir. 2003) (recognizing that bankruptcy courts "are able to craft flexible remedies that, while not expressly authorized by the [Bankruptcy] Code, effect the result the Code was designed to obtain.").

54. In accordance with this broad equitable authority under section 105(a) of the Bankruptcy Code, the Third Circuit has recognized that non-consensual third party releases and channeling injunctions are appropriate where exceptional circumstances warrant such relief. See Gillman v. Continental Airlines (In re Continental Airlines), 203 F.3d 203, 212 (3d Cir. 2000) (explaining that non-consensual third party release and permanent channeling injunctions are available in "extraordinary cases"). The Third Circuit has instructed that the "hallmarks of permissible, non-consensual third party releases [and permanent injunctions are] fairness, necessity to the reorganization and specific factual findings to support these conclusions . . . ." Continental, 203 F.3d at 214. These hallmarks also include the requirement that the releases be

"given in exchange for fair consideration." In re United Artists Theatre Co., 315 F.3d 217, 227 (3d Cir. 2003) (citing Continental, 203 F.3d at 214-15).[10]

55. Consistent with Continental's teaching, courts within the Third Circuit have recognized that non-consensual releases and channeling injunctions under section 105(a) of the Bankruptcy Code are permissible where the appropriate hallmarks are present. See, e.g., In re Global Indus. Techs., Inc., 2013 WL 587366, at *39 (Bankr. W.D. Pa. Feb. 13, 2013) (approving channeling injunction for tort claims relating to silica products under section 105(a) of the Bankruptcy Code);[11] In re Kaiser Aluminum Corp., Case No. 02-10429, 2006 WL 616243 (Bankr. D. Del. Feb. 6, 2006) (approving three separate channeling injunctions under section 105(a)); In re Am. Family Enters., 256 B.R. 377, 406-08 (D.N.J. 2000) (authorizing issuance of third party release and channeling injunction for consumer fraud claims under 11 U.S.C. § 105(a)). Cf. In re Lower Bucks Hosp., 471 B.R. 419, 464, n.43 (Bankr. E.D. Pa. 2010) ("[C]onfirmation of a plan that includes a third-party release requires that the court makes specific factual findings regarding the release's fairness and necessity.") (citing Continental, 203 F.3d at 214); In re Genesis Health Ventures, Inc., 266 B.R. 591, 608 (Bankr. D. Del. 2001) (citing to the "threshold Continental criteria of fairness and necessity for approval of non-consensual third-party releases," but finding releases inappropriate under the circumstances); In re Saxby's Coffee Worldwide, LLC, 436 BR 331, 338 (Bankr. E.D. Pa 2010) (denying requested

[10] The Third Circuit's decision in Continental did not explicitly identify "fair consideration" as a "hallmark" for a third party release and channeling injunction, however, the Third Circuit's subsequent decision in United Artists discussed Continental and clarified that "[a]dded to these requirements [i.e., Continental's three hallmarks,] is that the releases 'were given in exchange for fair consideration.'" United Artists, 315 F.3d at 227 (quoting Continental, 203 F.3d at 215).

[11] See also In re Global Indus. Techs., Inc., 645 F. 3d 201, 207 (3d Cir. 2011) (considering a plan containing a trust and channeling injunction for silica tort claims and explaining in dicta that "for the Plan to be approved as designed (i.e., with the inclusion of the Silica Injunction), the debtors needed to show that the Plan's resolution of silica-related claims is necessary or appropriate under 11 U.S.C. § 105(a), which, under our precedent, requires showing with specificity that the Silica Injunction is both necessary to the reorganization and fair."); In re Combustion Engineering, Inc., 391 F. 3d 190, 237 n. 50 (3d Cir. 2004).

releases under the circumstances, but acknowledging that non-consensual releases are permissible when the "plan is widely supported by the creditor constituency that includes the parties being restrained, accords significant benefits to that constituency and . . . the creditors being restrained are also being treated fairly"); In re Congoleum Corp., 362 B.R. 167, 192 (Bankr. D.N.J. 2007) (denying request for third party release because "under the general jurisprudence for nonconsensual third party releases . . . [m]any of [the Continental] hallmarks are lacking in the proposed releases.").[12]

56. Moreover, courts outside of the Third Circuit repeatedly have recognized, consistent with Continental, that a non-consensual third party release and corresponding channeling injunction are appropriate under section 105(a) of the Bankruptcy Code where "extraordinary circumstances" exist to justify this relief. See e.g., Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136, 141-43 (2d Cir. 2005); Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.), 280 F.3d 648, 657-59 (6th Cir. 2002) (authorizing channeling injunction for silicone breast implant claims); In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285 (2d Cir. 1992)

[12] As shown above, the clear weight of authority in the Third Circuit is that non-consensual third party releases and channeling injunctions are permissible in the appropriate circumstances. Thus, any decisions directing that consent is a prerequisite for such relief are inapposite. First, those cases are rooted in a contract theory of binding releasing parties, rather than through a bankruptcy court's general equitable powers under section 105(a) of the Bankruptcy Code. See In re Coram Healthcare Corp., 315 B.R. 321, 336 (Bankr. D. Del. 2004) ("[A] Plan is a contract that may bind those who vote in favor of it.") (citation omitted); In re Arrowmill Dev. Corp., 211 B.R. 497, 506 (Bankr. D.N.J. 1997) ("When a release of liability of a nondebtor is a consensual provision, however, agreed to by the effected [sic] creditor, it is no different from any other settlement or contract . . . ."). Second, cases that have ruled that consent is a prerequisite for granting a third party release did not involve rare or unique circumstances. See, e.g., In re Zenith Elecs. Corp., 241 B.R. 92, 111 (Bankr. D. Del. 1999); In re Washington Mutual, Inc., 442 B.R. 314, 346 (Bankr. D. Del. 2011) (holding that releases must be consensual, but acknowledging that while the "Third Circuit has not barred third party releases, it has recognized that they are the exception, not the rule."). Indeed, the Third Circuit in Continental expressly considered the Zenith decision and distinguished it on the ground that it did not involve any extraordinary circumstances, such as mass litigation. Continental, 203 F.3d at 214 n. 11; see also Genesis Health, 266 B.R. at 608 (citing to Zenith reference in Continental and concluding that "the message of Continental appears to be that the type of financial restructuring plan under consideration here would not present the extraordinary circumstances required to meet even the most flexible test for third party releases."). Thus, cases focusing on non-consensual releases in typical financial reorganization are inapposite to this Court's analysis under Continental and its progeny.

(authorizing channeling injunction for securities class action claims); In re A.H. Robins Co., Inc., 880 F.2d 694 (4th Cir. 1989) (authorizing channeling injunction for Dalkon Shield birth control device claims); In re Fidelis, Inc., 481 B.R. 503, 535 (Bankr. E.D. Mo. 2012) (approving non-consensual third party releases for consumer fraud claims).[13]

57. Based on the foregoing, it is clear that a chapter 11 plan that includes a compelled third party release and permanent injunction is permissible under section 105(a) of the Bankruptcy Code provided that an adequate record is presented demonstrating that such exceptional relief is warranted. Further, while a release and a channeling injunction are distinct legal concepts, the high degree in similarity of effect renders these largely interchangeable concepts. See generally Metromedia, 416 F.3d at 142 (noting the distinction between claims subject to a release that are extinguished and those that are channeled to a settlement fund); In re Adelphia Commc'ns Corp., 364 B.R. at 528 (explaining that proposed channeling injunction shared many important characteristics with third party release as it proscribed litigation between non-debtor entities and would in substance release the protected party from any further obligations to creditors); In re Wool Growers Cent. Storage Co., 371 B.R. 768, 778 (Bankr. N.D. Tex. 2007) (characterizing a "release that, in effect, channels the creditors' recovery to a source other than the debtor" as a "channeling release"). As discussed further herein, case law addressing requests for non-consensual releases and channeling injunctions apply an equivalent

[13] The Courts of Appeal for the Fifth, Ninth and Tenth Circuits have held that non-consensual third party releases are prohibited under the Bankruptcy Code. See In re Zale Corp., 62 F.3d 746, 760 (5th Cir. 1995); In re Lowenschuss, 67 F.3d 1394, 1401-02 n.6 (9th Cir. 1995); In re W. Real Estate Fund, Inc., 922 F.2d 592, 601 (10th Cir. 1990). The First, Eleventh, and D.C. Circuits have yet to address directly whether the Bankruptcy Code authorizes a third party release or permanent injunction, however, authority from these Circuits is aligned with those approving such releases. See In re Munford, Inc., 97 F.3d 449 (11th Cir. 1996) (approving third party non-debtor releases in a settlement agreement in a related adversary proceeding); Monarch Life Ins. Co. v. Ropes & Gray, 65 F.3d 973, 980 (1st Cir. 1995) (agreeing with pro-release courts that in "extraordinary circumstances, a bankruptcy court can grant permanent injunctive relief essential to enable the formulation and confirmation of a reorganization plan"); In re AOV Indus., Inc., 792 F.2d 1140 (D.C. Cir. 1986).

legal framework. Thus, the facts relevant to the Court in approving the Plan's contemplated non-consensual Releases as compared with the Channeling Injunction are indistinguishable in scope. Importantly, the findings needed to support each form of relief requested are satisfied under the circumstances of these Chapter 11 Cases.

2. Framework for Approval of Third Party Releases and Channeling Injunction

58. As set forth above, the determination of whether non-consensual releases and a channeling injunction are warranted lies within this Court's equitable discretion. The baseline in determining whether such relief is appropriate is the "hallmarks" established in Continental: (1) fairness, (2) necessity to the reorganization, (3) fair consideration given in exchange, and (4) specific findings supporting each of the foregoing. See Continental, 203 F.3d at 214-15; In re United Artists, 315 F.3d at 227 (citing Continental, 203 F.3d at 215). These "hallmarks" have been construed by courts into various criteria in identifying whether the equitable circumstances exist to justify a third party release and channeling injunction. See generally Continental, 203 F.3d at 217 n.17 (explaining that in considering a permanent injunction courts the "key considerations" include "identity of interest . . . whether the non-debtors made a substantial contribution to the reorganization, whether affected parties overwhelmingly have agreed to accept the proposed treatment, and whether the plan pays all or substantially all of the affected parties claims.") (citing Master Mortgage Inv. Fund, Inc., 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994)).[14]

[14] As discussed further herein, the factors considered by courts in approving releases on behalf of a debtor's estate mirror the considerations regarding third party releases and permanent injunctions. These overlapping criteria are: (1) an identity of interest between the debtor and non-debtor; (2) a substantial contribution by the released party; (3) the necessity of the release to the plan; (4) the overwhelming acceptance of the plan by creditors; and (5) a mechanism to pay all or substantially all of the claims of the creditors and interest holders affected by the release. See Washington Mutual, 442 B.R. at 347. As discussed herein, the record presented before this Court supports the factual and legal findings for releases by third parties as well as the Debtors' estates.

59. The considerations employed by courts in analyzing whether non-consensual releases and channeling injunctions are appropriate under the circumstances were distilled aptly by the Sixth Circuit's decision in Dow Corning as follows:

> (1) an identity of interest between the debtor and non-debtor such that a suit against the non-debtor will deplete the estate's resources;
>
> (2) a substantial contribution to the plan by the non-debtor;
>
> (3) the necessity of the release to the plan;[15]
>
> (4) the overwhelming acceptance of the plan and release by creditors and interest holders;
>
> (5) the plan provides a mechanism to pay all or substantially all of the claims of the creditors and interest holders affected by the release;
>
> (6) the plan provides an opportunity for those claimants who choose not to settle to recover in full; and
>
> (7) the bankruptcy court made a record of specific factual findings that support its conclusions

Dow Corning, 280 F.3d at 658.

60. Although the considerations set forth in Dow Corning are instructive in analyzing third party releases in a Chapter 11 plan, these should not be viewed as a set of conjunctive requirements. See Dow Corning, 280 F.3d at 658 (explaining that the factors represented a summary of the considerations employed by other courts, including the Continental decision); Metromedia, 416 F. 3d at 142 (citing to Dow Corning and Continental and explaining that the analysis of whether sufficiently unique circumstances exist to justify third party releases is "not a matter of factors and prongs"); see generally Washington Mutual, 442 B.R. at 346 (analyzing debtor releases and applying certain factors cited in Dow Corning, and explaining that these are not exclusive or conjunctive requirements); In re Indianapolis Downs, LLC, 486 B.R. 286, 303-04 (Bankr. D. Del. 2013) (approving debtor releases where broad creditor support existed despite

[15] This factor has been phrased as the release or injunction being essential to the debtor's "reorganization." As discussed further herein, while the majority of cases have examined third party releases and injunctions in the context or reorganization cases, as opposed to liquidating plans in Chapter 11, Continental or decisions interpreting it have not conditioned such relief on a reorganization of a debtor's going concern business.

finding that two of the same factors cited in Dow Corning were not met under the circumstances).[16] The considerations abridged in Dow Corning are helpful in weighing the equities of the case after a fact-specific review, however, the guidepost for the Court's analysis remains whether the Continental "hallmarks" are established.

3. Releases and Channeling Injunction are Warranted Under the Circumstances

61. Each of the Protected Parties provided a critical financial contribution that was necessary to make the Plan feasible in exchange for the release of liability; and the Releases and Channeling Injunction provide a fair result for affected creditors. See Continental, 203 F.3d at 215. As discussed in further detail herein, an adequate record exists to establish the hallmarks required under Continental (as well as the criteria summarized in Dow Corning) to support a finding that the Releases and Channeling Injunction are appropriate.

(i) Identity of Interest with the Protected Parties

62. The Protected Parties share an identity of the interest with the Debtors sufficient to approve the Releases. An identity of interest exists, *inter alia*, where the debtor maintains an indemnification obligation to the released party. See Indianapolis Downs, 486 B.R. at 303; Washington Mutual, 442 B.R. at 347. Significant financial relationships exist between the Debtors, on the one hand, and the Protected Parties, on the other hand, primarily arising from the

[16] Notably, the United States Bankruptcy Court for the Eastern District of Pennsylvania recently articulated a more flexible, albeit similar, framework for analyzing third party releases based on the following:

> (1) whether the third party who will be protected by the injunction or release has made an important contribution to the reorganization; (2) whether the requested injunctive relief or release is "essential" to the confirmation of the plan; (3) whether a large majority of the creditors in the case have approved the plan; (4) whether there is a close connection between the case against the third party and the case against the debtor; and (5) whether the plan provides for payment of substantially all of the claims affected by the injunction or release.

In re Saxby's Worldwide Coffee, 436 B.R. 331 (Bankr. E.D. Pa. 2010) (citing In re South Canaan Cellular Investments, Inc., 427 B.R. 44 (Bankr. E.D. Pa. 2010)).

Debtors' insurance policies. Thus, there are numerous instances of indemnification obligations establishing an identity of interest with the Protected Parties.

63. Wal-Mart maintains an identity of interests with the Debtors in two significant ways. First, Blitz U.S.A. and Wal-Mart were parties to Wal-Mart Vendor agreements (the "Vendor Agreements") which contractually required the Debtors to indemnify Wal-Mart for all personal injury suits, including Blitz Personal Injury Trust Claims.

64. Second, the Vendor Agreements required Blitz U.S.A. to maintain insurance which provided coverage for Wal-Mart in addition to Blitz U.S.A.'s indemnification obligations. Pursuant to these forms of vendor endorsements under the Debtors' applicable insurance policies, Wal-Mart contends it is an additional insured with respect to product liability claims against Wal-Mart during the applicable coverage periods. Thus, suits against Wal-Mart are covered by the Debtor's insurance and undoubtedly would deplete the assets of the Debtors' estates. Thus, the necessary identity of interest between the Debtors and Wal-Mart is established.[17]

65. Further, each of the BAH Released Parties have direct or indirect indemnification and/or coverage rights against the Debtors in connection with, among other things, fees and expenses and alleged liability in connection with Blitz Personal Injury Claims, arising out of one or more of the following: (i) the Management Services Agreement 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 resolution of the Debtors' Boards of Directors; (iv) certificates of incorporation, certificates of limited partnership, articles of organization or certificates of formation of the Debtors (as

[17] Similarly, the inclusion of holders of Co-Defendant Claims, Vendor Claims and Direct Action Claims is appropriate since these entities potentially are eligible for coverage under the Debtors' insurance policies and could assert indemnification claims against the Debtors' estates.

applicable); (v) bylaws and operating agreements of the Debtors; or (vi) statutory or common law. Any indemnification or coverage claims by the BAH Released Parties asserted under any of the foregoing bases would deplete the assets of the Debtors' estates and demonstrates an identity of interest.

66. The identity of interest between the Debtors' estates and the Participating Insurers is established based on their mutual interests in the Participating Insurer Policies and the contribution of approximately $137.5 million pursuant to the Insurance Policy Buy-Back Order. Any recovery from the Participating Insurers under the Participating Insurer Policies would impact the assets of the Debtors' estates. See generally Coram Healthcare, 315 B.R. at 335 (observing that a debtor's insurance carrier with an indemnification agreement has a demonstrable identity of interest); A.H. Robins, 880 F.2d at 700-01 (approving releases and injunction where debtor's insurer supplied $350 million to a fund from which product liability claimants were paid).

67. Under each of these relationships, any claim asserted against a Protected Party would essentially be a claim against the Debtors. Therefore, any such claim, even if ultimately unsuccessful, would further deplete the Debtors' resources. Accordingly, the Protected Parties all share an identity of interest with the Debtors.

68. Moreover, in addition to these specific indemnification obligations, each of the Protected Parties is a critical stakeholder in these Chapter 11 Cases. Specifically, Wal-Mart, the Participating Insurers, and the BAH Released Parties all share in the common goal of resolving their interrelated and competing claims and achieving a fair and equitable distribution of the Debtors' remaining assets accomplished through the Plan. This unified interest in formulating and confirming the Plan establishes an identity of interest. See Coram Healthcare, 315 B.R. at

335 (explaining that the debtors' noteholders, "as the largest creditors and preferred shareholders [] do share a common goal of achieving a reorganization of the Debtors"); Zenith Elecs., 241 B.R. at 111 (parties being released "who were instrumental in formulating the Plan, similarly share an identity of interest [with the Debtor] in seeing the Plan succeed . . . ."); Tribune, 464 BR at 187 (holding that debtors and their secured lenders "share the common goal of confirming the [] Plan" and implementing the consummation thereof, thus creating an identity of interest between the parties).

(ii) Substantial Contribution by the Protected Parties

69. The substantial contribution being made by the Protected Parties is evident. The Blitz Personal Injury Trust is funded through collective contributions of (i) $137,540,639.36 from the Participating Insurers on behalf of themselves and all entities covered under the Participating Insurer Policies; and (ii) $24,129,360.64 from Wal-Mart (in addition to its waiver of valuable rights under the Debtors' insurance policies). Wal-Mart is further contributing $1.54 million in order to fund the Blitz Liquidating Trust.

70. In addition to its funding obligations, Wal-Mart has waived significant claims against the Debtors' estates and agreed to allocate portions of recoveries to which it otherwise would be entitled under the Debtors' insurance policies to fund other Claims under the Plan. Specifically, Wal-Mart, along with other parties asserting Vendor Claims, Co-Defendant Claims, and Direct Action Claims, have consented (either affirmatively or through non-objections) to the Insurance Policy Buy-Back and the contribution of the Assigned Insurance Policies for the benefit of the Blitz Personal Injury Liquidating Trust. Thus, Wal-Mart and these other parties eligible to recover against the Debtors' insurance policies are allowing their valuable rights to be

extinguished to further a final resolution regarding all outstanding coverage issues and facilitate a prompt distribution to Blitz Personal Injury Claims.

71. In addition to its monetary contribution of approximately $23.4 million and waiver of rights under the insurance policies to fund the Blitz Personal Injury Trust, Wal-Mart is contributing approximately $1.54 million in released payables, that are secured by Wal-Mart's setoff rights, to fund the Blitz Liquidating Trust. The Blitz Liquidating Trust will provide a distribution to Allowed Administrative Claims and General Unsecured Claims in accordance with the terms of the Plan and the Blitz Liquidating Trust Agreement. Beyond these Plan contributions, Wal-Mart further sustained the Plan process by supplementing the Debtors' estates with funds critical for administration of these Chapter 11 Cases. Namely, these ancillary funds were employed to complete publication notice regarding the Blitz Personal Injury Bar Date Order and Plan solicitation, absent which confirmation of the Plan could not be considered at this time.

72. BAH on behalf of the BAH Released Parties, upon consummation of the Plan, will make a payment in the amount of $6,250,000 (plus up to an additional $250,000 to pay the Flick Claim, to the extent it is Allowed) to the USA Debtors' estates, without which the USA Debtors would be administratively insolvent and therefore unable to confirm any plan. To the extent that there are funds in excess of those required to satisfy Allowed Administrative Expense Claims, these funds may be distributed to General Unsecured Claims.[18] There is no other party that would be willing to provide the funds contributed pursuant to the BAH Settlement Payment.

73. BAH is only able to contribute the BAH Settlement Payment to the USA Debtors with the consent and agreement of the other BAH Released Parties who have claims against

[18] The allocation of the BAH Settlement Payment is to be determined by the Committee.

BAH (including Crestwood Holdings, Inc., Kinderhook Industries II, LP, Kinderhook Capital Fund II, LP, Mr. Aurelio and Mr. Michalik), which claims will receive a diminished, if any, return as a result of the BAH Settlement. The same is true for all of BAH's non-debtor upstream affiliates and equity holders and their shareholders, members, employees, professionals, advisors, consultants, representatives, attorneys, agents and successors, which also will have no recourse to the $6.25 million BAH Settlement Payment being paid to the USA Debtors' estates.

74. In addition, Mr. Michalik, Mr. Aurelio, Kinderhook Capital Fund II, LP, and Kinderhook Industries II, LP each have agreed to waive their claims and any distributions to which each would be entitled on account of such claims against the USA Debtors. These claims include actual out of pocket expenses and contingent and unliquidated indemnification claims triggered by continuing litigation by the USA Debtors and the personal injury claimants. Without the BAH Settlement, these claims would not be waived, could potentially be the subject of litigation as to priority and amount, and, in addition to potentially impairing the ability of the USA Debtors to confirm the Plan, certainly would dilute recoveries of general unsecured creditors.

75. As established on the record in support of the Insurance Policy Buy-Back Order, the Participating Insurer Policies maintained approximately $250 million in maximum coverage available for Blitz Personal Injury Trust Claims. There exists substantial coverage disputes under the Participating Insurer Policies, including the responsibility to satisfy the SIRs and a potential unauthorized buy-back of approximately $65 million in insurance policies for the policy years 2008-2009. The disputes surrounding the Participating Insurer Policies involve complex issues of claim liability and insurance coverage. If litigation proceeded, the available coverage under the Participating Insurer Policies unquestionably would be eroded quickly and

substantially. When measured against these substantial potential barriers to coverage, the approximately $137.5 million contributed by the Participating Insurers represents a substantial contribution to the Plan that allows for meaningful recovery for Blitz Personal Injury Claims.

76. Additionally, substantially all of the Protected Parties have direct or indirect plan support arrangements by execution of the Insurance Settlement and the BAH Settlement, whereby they have agreed to support and not to object or otherwise contest the Plan.

77. Simply put, without the foregoing contributions, there would be no basis for the Plan. In light of these contributions, the Plan is the only viable opportunity to provide for payment Administrative Claims and Blitz Personal Injury Trust Claims, as well as a meaningful recovery for Allowed General Unsecured Claims.

(iii) The Releases and Channeling Injunction are Indispensable to Plan

78. The Releases and Channeling Injunction are integral to the Plan and act as the fulcrum to produce meaningful distributions to the Debtors' creditors. The Plan is unequivocal that the Insurance Settlement and the BAH Settlement will not be effective absent the Releases and the Channeling Injunction. See Plan §§ 11.1.1, 11.1.3, 11.1.8; see also BAH Settlement, at ¶ 2, 8; Insurance Settlement, at ¶¶ 5–7. Without the funds provided by the Insurance Settlement and the BAH Settlement, the Debtors cannot continue on a chapter 11 course.

79. Absent the finality provided by the Releases and the Channeling injunction, the Participating Insurers, Wal-Mart and the BAH Released Parties will not make the Insurance Settlement Payment and/or the BAH Settlement Payment. Without these funds, the Debtors cannot confirm any chapter 11 plan—and certainly not one that provides the robust distributions offered in the Plan. Furthermore, the Insurance Settlement and the BAH Settlement are dependent on one another; neither can be consummated without the other. The Releases and

Channeling Injunction are explicitly tethered to the contributions by the Protected Parties. Without these significant contributions, the Debtors are left without assets to satisfy claims, and certainly not without incurring substantial litigation and administrative costs that would deplete the recovery to creditors. The Releases and Channeling Injunction are paramount to each of the Protected Parties' contributions and these mechanisms are the only means to ensure unmitigated closure regarding the personal injury litigation that implicates the economic interests of all of the Protected Parties.

80. The Releases and Channelling Injunction for the Protected Parties were negotiated at arm's-length and represent fair value in exchange for the substantial monetary contributions by the Protected Parties. There is no chance of a confirmable Plan without the Releases and Channeling Injunction. If the Plan is not confirmed, certain of these Chapter 11 Cases will immediately be converted to chapter 7 or dismissed.

81. Courts examining whether a release or injunction is critical to the proposed plan often have phrased this consideration as whether the relief is "essential to the debtor's reorganization." See, e.g., Dow Corning, 280 F. 3d at 658; see also In re Berwick Black Cattle Co., 394 B.R. 448, 461 (Bankr. C.D. Ill. 2008)("[R]ationale for granting third-party releases is far less compelling, if it exists at all, in a liquidation then in a reorganization."). While the majority of cases have examined third party releases and injunctions in the context of reorganization cases, as opposed to liquidating plans in chapter 11, Continental and subsequent decisions have not held that reorganization of a going concern business is a mandatory precondition to such relief. See, e.g., Medford Crossings, 2011 WL 182815, at *18 (denying third party releases for inadequacy of consideration, but rejecting argument that a liquidating plan is per se ineligible for such relief and citing Continental); Official Comm. of Unsecured

Creditors v. Bechtle (In re Labrum & Doak), 237 B.R. 275, 283, 305 (Bankr. E.D. Pa. 1999) (approving of a post-confirmation permanent injunction even though the debtor-partnership filed a chapter 11 liquidating plan); see also Fidelis, 481 B.R. at 520 ("[E]ven though this Case is a liquidation, the same principal applies as in a reorganization. A release of a non-debtor is appropriate only if, without it, there would be little likelihood of the accomplishing of the goal of the chapter 11: the confirmation of a successful plan of liquidation that benefits the creditors, including the unsecured creditors.").

82. In fact, a significant number of cases have approved of non-debtor releases contained in chapter 11 liquidating plans. See, e.g., Greer v. Gaston & Snow (In re Gaston & Snow), Nos. 93 Civ. 8517 (JGK), 93 Civ. 8628 (JGK), 1996 WL 694421, at *2-*5 (S.D.N.Y. Dec. 4, 1996) (holding that the non-debtor releases in the debtor-partnership's liquidating chapter 11 plan were valid); Abel v. Shugrue (In re Ionosphere Clubs, Inc.), 184 B.R. 648, 654-55 (S.D.N.Y. 1995) (upholding a non-debtor release contained in the corporate debtors' chapter 11 liquidating plan); In re Heron, Burchette, Ruckert & Rothwell, 148 B.R. 660, 666-68, 685-87 (Bankr. D.D.C. 1992); Polygram Distrib., Inc. v. B-A Sys., Inc. (In re Burstein-Applebee Co.), 63 B.R. 1011, 1012, 1018-20 (Bankr. W.D. Mo. 1986) (approving permanent non-debtor injunction in liquidating Chapter 11). Moreover, recent cases have authorized third party releases in a liquidation scenario outside of the context of a Chapter 11 plan altogether. See, e.g., Apps v. Morrison (In re Superior Homes & Invs., LLC, Case No. 12-15451, 2013 WL 2477057 (11th Cir. June 10, 2013) (issuing a "bar order" enjoining claims against settling defendants in a chapter 7 case); O'Toole v. McTaggart (In re Trinsum Group, Inc.), Case No. 08-12547, 2013 WL 1821592 (Bankr. S.D.N.Y. Apr. 30, 2013) (issuing a "bar order" enjoining non-consenting third party claims against settling defendants in a post-confirmation liquidating chapter 11 case).

83. Rather than focusing on whether a chapter 11 plan contemplates reorganization or liquidation, the proper inquiry is the criticality of the release or injunction to the implementation of the proposed plan. See Fidelis, 481 B.R. at 520; In re Union Fin. Servs. Group, Inc., 303 B.R. 390, 428 (Bankr. E.D. Mo. 2003) ("Where the success of the reorganization is premised in substantial part on such releases, and the failure to obtain releases means the loss of a critical financial contribution to the debtor's plan that is necessary to the plan's feasibility, such releases should be granted."). This approach is consistent with the well-established principle that a chapter 11 plan is an appropriate means to effectuate the orderly liquidation of a debtor's business. See In re Insilco Techs., Inc., 480 F.3d 212, 214 n.1 (3d Cir. 2007) (stating that it is "not uncommon for debtors to use the Chapter 11 process to liquidate . . . because [it] provides more flexibility and control in determining how to go about selling off the various aspects of the debtor's business and distributing the proceeds."); In re EBC I, Inc., 380 B.R. 348, 364 (Bankr. D. Del. 2008) ("[A] debtor can liquidate its assets under chapter 11 as well as under chapter 7 of the Bankruptcy Code."); see also Loop Corp. v. U.S. Trustee, 379 F.3d 511, 517 n. 3 (8th Cir. 2004) (recognizing that liquidation under chapter 11 is permitted by most courts); In re Sandy Ridge Dev. Corp., 881 F.2d 1346, 1352 (5th Cir.1989) (discussing the propriety of liquidating reorganizations and noting that "although Chapter 11 is titled 'Reorganization,' a plan may result in the liquidation of the debtor).

84. Based on the foregoing, the Releases and Channeling Injunction are indispensable keystones of the Plan, and thus weighing in favor of confirmation of the Plan.

(iv) Voting Classes Have Overwhelmingly Accepted the Plan

85. As evidenced by the Voting Certification, all eligible Voting Classes have accepted the Plan. Most importantly, approximately 94% of the holders of Blitz Personal Injury

Trust Claims that voted on the Plan have voted in favor of confirmation.[19] The overwhelming voting in support of the Plan reflects that the creditors most directly affected by the Releases and Channeling Injunction recognize that the Plan provides the best scenario for recovery under the unique circumstances of these Chapter 11 Cases.[20] The approval rate reflected in each of the Voting Classes constitutes the overwhelming acceptance to demonstrate the fairness of the Releases and the Channeling Injunction consistent with Continental and weighs heavily in favor of confirmation of the Plan. See Indianapolis Downs, 486 B.R. at 304 (approving plan containing debtor releases despite finding releases not essential and the plan not providing a mechanism for substantial payment of claims in light of the overwhelming creditor support in favor of the plan).[21]

(v) Plan Includes Mechanism for Payment of Affected Claims

86. This concept is rooted in the Third Circuit's instruction that fair consideration must be provided in exchange for the release. See United Artists, 315 F.3d at 227 (citing Continental, 203 F.3d at 214-15). Courts have interpreted this factor as necessitating a substantial satisfaction of the claims affected by the third party releases and channeling injunction. See In re Exide Technologies, 303 B.R., 48 74 n. 37 (Bankr. D. Del. 2003) (noting

[19] Moreover, of the four members of that class that voted against the Plan, only two filed objections to the Plan. Because the other two holders that voted no did not file an objection to the Releases or the Channeling Injunction, they could be found to have to have consented to the Releases and the Channeling Injunction. See In re Spansion, Inc., 426 B.R. 114, 144 (Bankr. D. Del. 2010) (finding the fact that no member of a class deemed to accept the third party releases objected to the releases persuasive in overruling objection by United States Trustee); see also Fidelis, 481 B.R. at 520-21.

[20] See In re A.H. Robins Co., 880 F.2d at 698, 702 (finding overwhelming acceptance when 94.38% of personal injury claimants subject to channeling injunction voted in favor of the plan); In re Coram Healthcare Corp., 315 B.R. at 335 (finding overwhelming acceptance by general unsecured creditors voting 96.6% in amount and 87.2% in number in favor of the plan); Master Mortgage, 168 B.R. at 938 (finding that the two classes most affected by the injunction overwhelming supported it when analyzing voting results indicating that between 93.4% and 96.2% supported the plan).

[21] Notably, at least one court as suggested that overwhelming support should be viewed as "the single most important factor" in determining whether to grant non-consensual releases. Master Mortgage, 168 B.R. at 938.

that this factor may be satisfied "upon presentation of a consensual plan, in the absence of objection to the release/injunction provisions, or upon a [] meaningful distribution to unsecured creditors"). The necessity of showing fair consideration is satisfied where the Plan provides a mechanism to generate a significant contribution to affected claims that otherwise would be unavailable. See Am. Family, 256 B.R. at 386-87, 390-92, 405-08 (approving third party release and injunction even though the plan did not provide for payment in full on the extinguished claims, where claimants received approximately 90% projected recovery on their claims); Metromedia, 416 F. 3d at 142 (explaining that a finding of "good and sufficient consideration" being paid to an enjoined creditor has weight in equity, but is not an absolute requirement to justify a third party release); Drexel Burnham, 960 F.2d at 288-93 (approving multi-billion dollar settlement of 850 securities claims against debtor, but where creditors did not receive payment in full from contributing debtor personnel); Fidelis, 481 B.R. at 520 (non-consensual third party release permissible where creditors were set to receive a meaningful distribution under the plan). To the extent that a plan provides for payment in full of clams affected by the releases and channeling injunction, as the proposed Plan does, "fair consideration" undoubtedly is etsablsihed in accordance with Continental. See In re A.H. Robins Co., 880 F.2d at 701 (approving plan providing for payment in full of enjoined claims); Dow Corning Corp., 280 F.3d at 658 (approving channeling injunction providing for full payment of covered claims).

87. As will be established at the Confirmation Hearing, the funds provided to the Blitz Personal Injury Trust exceed the Debtors' projected exposure in the tort system after taking into account defenses to liability and availability of insurance coverage (which is inclusive of the liability for its distributors, such as Wal-Mart). The significant and colorable defenses to the underlying personal injury litigation along with the complex and threshold coverage issues

surrounding the Participating Insurer Policies casts doubt on the projected recoveries of Blitz Personal Injury Claims if liquidated on a one-off basis in the tort system. In contrast, the Plan provides for an orderly distribution on account of Blitz Personal Injury Trust Claims based on a comprehensive analysis under the Blitz Personal Injury TDP which takes into account numerous individual factors in deriving the ultimate assigned value to a particular Blitz Personal Injury Claim. Thus, the Plan ensures that no particular claimant will be advantaged or disadvantaged by the pace at which their claims are liquidated in the tort system and that no one particular claimant will have access to the Debtors' insurance coverage to the prejudice of others. Therefore, in conjunction with the terms and conditions of the Blitz Personal Injury TDP, the Plan provides for payment in full of Allowed Blitz Personal Injury Trust Claims.

(vi) TDP Provides for Liquidation of Claims in the Tort System

88. The Blitz Personal Injury TDP provides a mechanism for holders of Blitz Personal Injury Claims to reject the offers they receive from the Blitz Personal Injury Trust and proceed to mediation/arbitration and ultimately litigation in the tort system with respect to their respective Blitz Personal Injury Claim. See Blitz Personal Injury TDP at § 6.5(a)-(c). Therefore, since claimants will have an opportunity to liquidate their respective claims in the tort system, this weighs in favor of approving of the Releases and Channeling Injunction.

(vii) Record Supports Specific Factual and Legal Findings

89. The evidence to be produced at the Confirmation Hearing will provide more than adequate support to demonstrate the specific factual and legal findings required to justify the Releases and Channeling Injunction set forth in the Plan. Moreover, the Proposed Confirmation Order will set out each of these necessary findings in detail to establish that the record justifies the requested relief.

B. The Debtor Releases Should be Approved

90. The Releases on behalf of the Debtors provided in the Plan are permissible under section 1123(b)(3)(A) of the Bankruptcy Code. A debtor may release claims in a plan provided that the bankruptcy court finds that the decision to grant such an estate release is a valid exercise of the debtor's business judgment, is fair and reasonable, and in the best interests of the estate. See In re Spansion, 426 B.R. 114, 143 (Bankr. D. Del. 2010); In re DBSD N. Am., Inc., 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009); (approving releases and discharges of claims and causes of action pursuant to section 1123(b)(3)(A) as a valid exercise of debtor's business judgment); In re General Homes Corp., 134 B.R. 853, 861 (Bankr. S.D. Tex. 1991) ("To the extent that the language contained in the plan purports to release any causes of action . . . such provision is authorized by § 1123(b)(3)(A), subject to compliance with provisions of the [Bankruptcy Code] requiring that the plan be fair and equitable as to creditors and that the plan be proposed in good faith."). Where a compromise is integrated into a chapter 11 plan, the court should apply a similar standard employed under Bankruptcy Rule 9019 and consider all factors relevant to a full and fair assessment of the settlement. See In re Nutraquest, Inc., 434 F.3d 639, 644 (3d Cir. 2006) (approval of a settlement under Bankruptcy Rule 9019 is warranted where it is "fair and equitable."); Coram HealthCare, 315 B.R. at 335 (citing Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968)).

91. Certain courts have a applied a similar, albeit distinct, analysis of a release on behalf of a debtor's estate under the following five so-called "Master Mortgage" factors (which mirror 5 of the 7 Dow Corning criteria discussed above): (1) an identity of interest between the debtor and non-debtor such that a suit against the non-debtor will deplete the estate's resources; (2) a substantial contribution to the plan by the released party; (3) the necessity of the release to

the plan; (4) the overwhelming acceptance of the plan and release by creditors; and (5) the plan provides a mechanism to pay all or substantially all of the claims of the creditors and interest holders affected by the release. See Washington Mutual, 442 B.R. at 346 (citing Master Mortgage, 168 B.R. at 937). As with the analysis set forth above with respect to third party releases, these Master Mortgage factors are not a conjunctive test, but instead are applied to weigh the equities based on the specific circumstances of the case. See Indianapolis Downs, 486 B.R. at 303 (citation omitted).

92. Irrespective of whether the Court applies a Bankruptcy Rule 9019 standard or the five Master Mortgage factors enumerated above,[22] the Releases on behalf of the Debtors under the Plan are appropriate and should be approved. Consistent with Bankruptcy Rule 9019, the Releases by the Debtors represent a final resolution of complex insurance coverage and related liability issues without the need for protracted delay and unnecessary administrative expenses. Critically, the Releases allow the Debtors to obtain prompt access to funds attributable to their insurance policies that can be made available to Blitz Personal Injury Trust Claim holders in an expedited fashion.

93. The Plan also provides for the release of any and all estate claims and causes of action against the BAH Released Parties, including, without limitation, the parties named as putative defendants in the causes of action alleged by the Committee in the Motion for Authorization to Prosecute Certain Claims on behalf of the Estate of Blitz U.S.A., Inc. (docket no. 978) (the "Standing Motion Claims"). Consistent with Bankruptcy Rule 9019, the Releases by the USA Debtors, on behalf of their Estates, of these claims and causes of action represents

[22] The Court is respectfully referred to the foregoing discussion for more in-depth analysis as to the Master Mortgage factors, which overlap with the considerations summarized by Dow Corning discussed above. The Proponents submit that the same factual findings underlie each analyses and are established by the record in support of the Plan.

the product of complex negotiations that are an inextricable part of the BAH Settlement. The BAH Settlement allows the USA Debtors' Estates to settle the claims and causes of action against the BAH Released Parties, with the support of the Committee, who were the primary proponents of the Standing Motion Claims, in exchange for valuable consideration, in the form of the BAH Settlement Payment. If these claims and causes of action were not settled, the putative defendants of the Standing Motion Claims were prepared to vigorously defend against those claims. As such, the settlement of these claims allows the USA Debtors' Estates to realize a significant recovery on the claim without the risk and expense of a full blown litigation.

94. Moreover, and as set forth in the record in support of the Insurance Policy Buy-Back Order, the Debtors, in the exercise of their business judgment, considered the input and judgment of the Committee in endorsing the Insurance Settlement and the BAH Settlement as a global solution in the best interests of the Debtors' estates and the Committee's constituents as a whole.

95. Based on the foregoing, the Debtors' exercised their business judgment in providing the Releases to the Protected Parties in the interest of providing certainty of recovery for its creditor constituents, as opposed to conversion or dismissal of these Chapter 11 Cases which would result in many creditors receiving delayed or no recovery. Therefore, the Releases on behalf of the Debtors pursuant to the Plan constitute a reasonable exercise of the Debtors' business judgment which is fair to all affected parties and furthers the interests of the bankruptcy estates.

C. Exculpation Should be Approved

96. It is well established in the Third Circuit that exculpation is appropriate for certain individuals and entities acting on behalf of a debtor's estate, including the debtors' officers, directors, employees and professionals, as well as a creditors' committee, its members and

advisors. PWS Holding, 228 F.3d at 246; Washington Mutual, 442 B.R. at 350. The underlying rationale for approval of these releases is that the covered individuals are acting in a fiduciary capacity on behalf of the debtor's estate. See Washington Mutual, at 350-51. Therefore, the exculpation provision set forth in Section 15.4 of the Plan is appropriate and customary with respect to Protected Parties serving as officers, directors and employees of the Debtors and members of the Committee, as well as their respective professionals.

97. With respect to the remaining Protected Parties, the unique circumstances of these Chapter 11 Cases dictate that the limited expansion of the exculpation clause is consistent with applicable law and should be approved. Here, the extension of the exculpation clause is intertwined with the Releases and the Channeling Injunction, both of which are fundamental to resolving any liability associated with Blitz Personal Injury Claims with finality. The exculpation clause is narrowly tailored to effectuate the Releases and Channeling Injunction. Therefore, the scope of the exculpation is fair and equitable and should facilitate completion of these Chapter 11 Cases.

IV. The Plan Complies with Section 1129(a)(2) of the Bankruptcy Code

98. Section 1129(a)(2) of the Bankruptcy Code requires that the "proponent of the plan comply with the applicable provisions of the [Bankruptcy Code]." 11 U.S.C. § 1129(a)(2). While section 1129(a)(1) of the Bankruptcy Code focuses on the form and content of the plan, section 1129(a)(2) mandates compliance with the disclosure and solicitation requirements of sections 1125 and 1126 of the Bankruptcy Code. See PWS Holding, 228 F.3d at 248; In re Lapworth, 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2)."). The Proponents have satisfied section 1129(a)(2) by distributing

the Disclosure Statement and soliciting acceptances of the Plan through their Balloting Agent pursuant to the procedures authorized by the Solicitation Order.

99. The Proponents have complied with all solicitation and disclosure requirements set forth in the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Order, governing notice, disclosure and solicitation in connection with the Plan and the Disclosure Statement. The Court approved the Disclosure Statement as containing adequate information. The Disclosure Statement, the Plan, appropriate ballots, notices and other related documents were distributed to parties in the Voting Classes in accordance with the Solicitation Order. Furthermore, the Debtors have complied with all orders of the Court entered during the pendency of these Chapter 11 Cases and with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules with respect to disclosure and solicitation of votes on the Plan. Accordingly, the requirements of section 1129(a)(2) are satisfied.

V. The Plan has been Proposed in Good Faith (1123(a)(3))

100. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). The Bankruptcy Code does not define "good faith" for purposes of section 1129(a)(3). The good faith standard requires that the plan be proposed with good intentions in order to obtain a result that is consistent with the objectives and the purposes of the Bankruptcy Code. See PWS Holding, 228 F. 3d at 243 ("For purposes of determining good faith under section 1129(a)(3) . . . the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.") (quoting In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 150 n.5 (3d Cir. 1986)); see also In re Integrated Telecom Express, Inc., 384 F.3d 108, 119 (3d Cir. 2004) ("At its most fundamental level, the good faith requirement

ensures that the Bankruptcy Code's careful balancing of interests is not undermined by petitioners whose aims are antithetical to the basic purposes of bankruptcy[.]").

101. "[D]enial of confirmation for failure to satisfy section 1129(a)(3) should be reserved for only the most extreme of cases." 7 Collier on Bankruptcy ¶ 1129.02[3][a], at 1129-26 (16th ed. rev. 2009). [Good faith is not lacking simply because a plan "may not be one which the creditors would themselves design and indeed may not be confirmable." In re T-H New Orleans Ltd. P'ship, 116 F.3d 790, 803 (5th Cir. 1997); see W.R. Grace, 475 B.R. at 90 (citing In re Frascella, 360 B.R. 435 (Bankr. E.D. Pa. 2007)); Zenith Elecs., 241 B.R. at 107 (fundamental fairness is not offended by one group receiving better treatment than another under a plan). The good faith standard does not demand that a debtor offer more to its creditors than the Bankruptcy Code requires. See In re G-I Holdings, Inc., 420 B.R. 216, 263-64 (D.N.J. 2009). Further, a bankruptcy plan is not deemed to be proposed in bad faith because it allows the debtor to avail itself of the specialized protections afforded by the Bankruptcy Code. See In re PPI Enters., Inc., 228 B.R. 339, 347 (Bankr. D. Del. 1998) (finding that debtor's bankruptcy filing to take advantage of Bankruptcy Code provisions limiting damages for rejection of lease was not evidence of bad faith).]

102. Whether the good faith requirement is established is a fact intensive inquiry based on the totality of the facts and circumstances" which affords considerable discretion to the court. See W.R. Grace, 475 B.R at 88; In re Coram Healthcare Corp., 271 B.R. 228, 234 (Bankr. D. Del. 2001). Accord Am. Family, 256 B.R. at 401. The Plan has been proposed in good faith, with the legitimate and honest purpose of allowing creditors to realize the highest possible recoveries under the circumstances of these Chapter 11 Cases. The Plan is the culmination of significant arm's-length, good faith negotiations among the Debtors, the Committee, Wal-Mart,

the Participating Insurers and the BAH Settling Parties. The Plan is fundamentally fair to all stakeholders and has been proposed with the legitimate purpose of liquidating and winding down the Debtors and expeditiously distributing the value remaining in the Debtors' estates. Notably, in light of the Committee's statutorily-charged duty of representing all unsecured creditors' interest, its role in formulating and supporting the Plan speaks volumes to the finding of good faith under section 1129(a)(3).

103. The Plan is a concerted effort among the Debtors, the Committee, a substantial contingent of personal injury claimants, the Participating Insurers and Wal-Mart to provide for an orderly and prompt resolution of Blitz Personal Injury Trust Claims through the monetary contributions by Wal-Mart and the Participating Insurers along with the assignment of the Assigned Insurance Policies. In addition, the Blitz Liquidating Trust is established through funds provided by the BAH Released Parties and Wal-Mart in order to administer such proceeds to Allowed Administrative Claims and General Unsecured Claims in a manner consistent with the priority scheme under the Bankruptcy Code. Finally, the BAH Debtors will be wound-down by the BAH Plan Administrator in a manner consistent with the Bankruptcy Code's structure.

104. Moreover, the structure underlying the Plan was anchored by numerous mediation sessions that were conducted under the auspices of two respected jurists, Chief Judge Kevin Gross and the Honorable Richard Cohen (Ret.), each of whom was heavily involved in supervising the negotiation process among the Debtors' constituents. The substantial compromises embodied in the Plan along with the broad-based, overwhelming support by the Debtors' constituents negate any suggestion of bad faith or collusion.

105. The Plan is designed to centralize all liabilities involving the assets of the Debtors' estates, namely the available insurance policies, and to resolve all outstanding issues to

provide finality to all parties in interest. The Plan satisfies the objectives of the bankruptcy Code, and is in no way an attempt to abuse the judicial process or delay of frustrate the legitimate efforts of creditors to enforce their rights. See In re Sound Radio, Inc., 93 B.R. 849, 853 (Bankr. D.N.J. 1988). In short, the Plan accomplishes the precise goals underpinning the Bankruptcy Code.

106. For these reasons, the Plan was filed in good faith to promote the objectives and purposes of the Bankruptcy Code, and therefore satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

VI. Plan Provides for Court Approval of Professional Fees and Expenses (1123(a)(4))

107. Section 1129(a)(4) of the Bankruptcy Code requires that any payments by a debtor for post-petition professional fees remain subject to the Court's review and approval for reasonableness. 11 U.S.C. § 1129(a)(4). Section 1129(a)(4) has been construed to require that all payments for professional fees and expenses be subject to the Court's review and approval. In re Resorts Int'l, Inc., 145 B.R. 412, 476 (Bankr. D.N.J. 1990).

108. In accordance with section 1129(a)(4) of the Bankruptcy Code, all payments made or to be made by the Debtors for services rendered or expenses incurred in connection with the Chapter 11 Cases prior to Confirmation, including Claims for professional fees, will be paid only after allowance of such Claims by the Court to the extent not previously approved and paid in accordance with existing orders from the Court. See Plan Art. V. In addition, the Court will retain jurisdiction after the Effective Date to grant or deny applications for allowance of Claims for professional fees or reimbursement of expenses authorized pursuant to orders of the Court, the Bankruptcy Code or the Plan. See Plan § 13.2.8. Thus, the Plan complies with section 1129(a)(4) of the Bankruptcy Code.

VII. Plan Discloses Necessary Information Regarding Directors and Officers (1123(a)(5))

109. Section 1129(a)(5)(A) requires the proponent of any plan to disclose the "identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan," along with a finding that "the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and public policy. 11 U.S.C. § 1129(a)(5)(A)(i)-(iii). In addition, a plan must disclose the "identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider." 11 U.S.C. § 1129(a)(5)(B).

110. The requirements of section 1129(a)(5) of the Bankruptcy Code have been fully satisfied since 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. These appointments are consistent with the best interests of Holders of Claims and Equity Interests. The trustees for each of the Blitz Personal Injury Trust and Blitz Liquidating Trust are not "insiders," as defined in section 101(31) of the Bankruptcy Code. Thus, section 1123(a)(5) is satisfied.

VIII. The Plan Does Not Require Governmental Regulatory Approval (1129(a)(6))

111. Section 1129(a)(6) of the Bankruptcy Code requires that any regulatory commission having jurisdiction over the debtor post-confirmation to approve any rate change provided for the in the debtor's plan. 11 U.S.C. § 1129(a)(6). Section 1129(a)(6) is inapplicable to these Chapter 11 Cases because the Debtors' business does not involve the establishment of rates subject to approval of any governmental regulatory commission.

IX. The Plan is in the Best Interests of Creditors and Interest Holders (1129(a)(7))

112. Section 1129(a)(7) of the Bankruptcy Code – the "best interests test" – requires that, with respect to each class, each holder of a claim or an equity interest in such class either: (i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtors liquidated under chapter 7 of [the Bankruptcy Code] on such date. 11 U.S.C. § 1129(a)(7).

113. As section 1129(a)(7) makes clear, the liquidation analysis applies only to individual holders of impaired claims or interests that do not accept the plan. See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. at 441 n.13 ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."). Section 1129(a)(7)(A) requires a determination whether "a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization." In re Lason, Inc., 300 B.R. 227, 232 (Bankr. D. Del. 2003) (internal quotation marks and citation omitted). The measuring date for such a comparative recovery is the effective date of the proposed bankruptcy plan. Thus, a bankruptcy court must contrive a hypothetical chapter 7 liquidation on the effective date of the plan to determine each creditor's treatment. See Lason, 200 B.R. at 232 (citing In re Sierra-Cal, 210 B.R. 168, 171-172 (Bankr. E.D. Cal. 1997)). Given that a hypothetical chapter 7 liquidation is inherently speculative, it is appropriate for bankruptcy courts to rely on credible assumptions and judgments. See In re Adelphia Commc'ns Corp., 361 B.R. 337, 366-67 (Bankr. S.D.N.Y. 2007).

114. The best interests test of section 1129(a)(7) of the Bankruptcy Code is satisfied because the Plan itself provides for an orderly liquidation of the Debtors and the payment of Claims against the Debtors without the delay and the additional overlay of expenses that would

occur in a Chapter 7 liquidation. Absent Wal-Mart's contribution of $1.54 million and the payment of the BAH Settlement Payment, the Debtors would have insufficient funds to satisfy all Administrative Claims, and the holders of General Unsecured Claims against the USA Debtors would not receive any Distributions on account of their Claims. And, neither Wal-Mart nor the BAH Released Parties is obligated or willing to contribute to the payment of these amounts if the Plan is not confirmed.

115. Further, with respect to Blitz Personal Injury Trust Claims, the Plan provides for the processing, liquidation and payment of such Claims from the Blitz Personal Injury Trust Assets. The Insurance Settlement Payment and the assignment of the Assigned Insurance Policies are the sole sources of funding for the Blitz Personal Injury Trust Assets, and none of the Participating Insurers nor Wal-Mart is obligated, or willing, to contribute their respective portion of the Insurance Settlement Payment if the Plan is not confirmed. Absent the contributions from the non-debtor parties, the recovery from the Debtors' assets in a chapter 7 liquidation undoubtedly would be lower than the meaningful recoveries provided pursuant to the Plan. See In re W.R. Grace & Co., 47 B.R. at 145-50; In re Dow Corning Corp., 237 B.R. 380, 411 (Bankr. E.D. Mich. 1999).

116. The mechanics of the Plan and the Debtors' illiquidity demonstrates that each Holder of a Claim or Equity Interest will receive at least as much under the Plan as they would receive in a chapter 7 liquidation. The proposed administration of the Debtors' assets under the Plan is more efficient, less expensive, and more likely to result in maximum distributions to holders of Allowed Claims. The best interests test is satisfied as to each Holder of an Impaired Claim or Equity Interest. Accordingly, the Plan satisfies the requirements of section 1129(a)(7).

X. Acceptance of Impaired Classes (Section 1129(a)(8))

117. Section 1129(a)(8) of the Bankruptcy Code requires that, with respect to each class of claims or interests, such class has accepted the plan or is not impaired under the plan. 11 U.S.C. § 1129(a)(8). As reflected in the Voting Certification, the Plan has been accepted by creditors holding well in excess of two-third in amount and one-half in number in the Voting Classes by voting overwhelmingly to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code. Classes 1(a), 1(b), 2(a), and 2(b) are unimpaired and deemed to accept the Plan, whereas Classes 5(a), 5(b), 6(a) and 6(b) are not entitled to receive or retain any property under the Plan and therefore deemed to have rejected the Plan (the "Rejecting Classes"). 11 U.S.C. §§ 1126(f), (g). The Proponents seek confirmation of the Plan despite the rejection by Rejecting Classes pursuant to section 1129(b) of the Bankruptcy Code, as described herein.

XI. The Plan Provides for Payment of Allowed Priority Claims (11 U.S.C. § 1129(a)(9))

118. Section 1129(a)(9) of the Bankruptcy Code requires that persons holding allowed claims entitled to priority under section 507(a) receive full compensation absent agreement to differing treatment. See 11 U.S.C. § 1129(a)(9). As required by section 1129(a)(9), Article III of the Plan provides for full payment to Holders of Allowed Administrative Claims and Allowed Priority Tax Claims. Accordingly, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

XII. At Least One Class of Impaired Claims Has Accepted the Plan (Section 1129(a)(10))

119. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of at least one impaired class of claims, excluding the votes of any insider. 11 U.S.C. § 1129(a)(10). As set forth in the Voting Certification, all of Voting Classes voted to accept the Plan by an overwhelming majority. The Plan, therefore, satisfies the requirements of section 1129(a)(10).

XIII. The Plan is Feasible (Section 1129(a)(11))

120. Section 1129(a)(11) of the Bankruptcy Code requires that, as a condition precedent to confirmation, the Court find that the Plan is feasible. Specifically, the Court must determine that:

> Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

11 U.S.C. § 1129(a)(11)

121. "[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed." Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.), 843 F.2d at 649; Mercury Capital Corp. v. Milford Conn. Assocs., L.P., 354 B.R. 1, 9 (D. Conn. 2006) ("A 'relatively low threshold of proof' will satisfy the feasibility requirement.") (quoting In re Brotby, 303 B.R. 177, 191 (9th Cir. B.A.P. 2003)). "Even a planned liquidation 'must be feasible.'" In re Am. Capital Equipment, LLC, 688 F. 3d 145, 155-56 (3d Cir. 2012) (quoting In re Calvanese, 169 B.R. 104, 107 (Bankr. E.D. Pa. 1994)).

122. The key element of feasibility is whether there exists a reasonable probability that the provisions of the Plan can be performed. See W.R. Grace, 475 B.R. at 115 ("The test is whether the things which are to be done after confirmation can be done as a practical matter under the facts.") (internal citations and quotations omitted); In re Aleris Int'l, Inc., No. 09-10478 (BLS), 2010 WL 3492664, at *28 (Bankr. D. Del. May 13, 2010). The purpose of the feasibility test is to protect against visionary or speculative plans. See Pizza of Hawaii, Inc. v. Shakey's, Inc. (In re Pizza of Hawaii, Inc.), 761 F.2d 1374, 1382 (9th Cir. 1985). A speculative prospect of failure does not itself defeat feasibility. See In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 762 (Bankr. S.D.N.Y. 1992) ("The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds.") (citation omitted).

123. The feasibility test is satisfied with respect to the Plan because the Proponents will be able to satisfy all the conditions precedent to the Effective Date and there are sufficient funds to meet all post-Effective Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Chapter 11 Cases. Following entry of the Proposed Confirmation Order, the Plan Proponents will be able to secure the necessary funding for the Plan through the Insurance Settlement Payment and the BAH Settlement Payment. The terms of the Insurance Settlement Term Sheet and the BAH Settlement Term Sheet, as well as the identity of the parties contributing the respective funds, lends further credence that adequate funding will be provided to the Blitz Personal Injury Trust and the Blitz Liquidating Trust in accordance with the terms of the Plan.

124. Similarly, the Assigned Insurance Policies will be part of the Blitz Personal Injury Trust Assets and made available to Pre-2007 Blitz Personal Injury Claims in accordance with the terms of the Blitz Personal Injury Trust Agreement. Moreover, the Debtors have adequate funds earmarked for the Blitz Liquidating Trust to pay all Allowed Priority Claims, reserve for pro rata distributions to Allowed General Unsecured Claims, and account for future expenses in completing the administration of these Chapter 11 cases. Lastly, the terms of the Plan expressly provided that Post-2012 Blitz Personal Injury Claims will not be bound by the Releases and Channeling Injunction contained in the Plan, and therefore will not be attributable to the Blitz Personal Injury Trust.

125. Based upon the record, the Proponents have demonstrated that sufficient assets will be made available to administer and consummate the Plan, satisfy the projected post-Effective Date obligations and close the Chapter 11 Cases when necessary. Therefore, the Plan

is workable and has a reasonable likelihood of success, thereby satisfying the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code.

XIV. All Statutory Fees will be Paid (1129(a)(12))

126. Section 1129(a)(12) requires the payment of "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan[.]" 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930] of title 28" are afforded priority as administrative expenses. 11 U.S.C. § 507(a)(2). In accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, Section 2.2 of the Plan provides that all fees payable pursuant to section 1930 of title 28 of the United States Code shall be paid on the earlier of when due or the Effective Date, or as soon thereafter as practicable. Accordingly, the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

XV. Sections 1129(a)(13)-(a)(16) are Inapplicable.

127. Section 1129(a)(13) of the Bankruptcy Code requires that a chapter 11 plan provide for the continued payment of certain retiree benefits "for the duration of the period that the debtor has obligated itself to provide such benefits." 11 U.S.C. § 1129(a)(13). The Debtors have no obligation to provide any such retiree benefits. Nor are the Debtors (a) required to pay any domestic support obligations, (b) individuals, or (c) nonprofit corporations or trusts. Accordingly, the Proponents submit that the requirements of sections 1129(a)13) through (16) of the Bankruptcy Code are inapplicable.

XVI. Plan Satisfies the "Cram Down" for Rejecting Classes (11 U.S.C. § 1129(b))

128. Section 1129(b) of the Bankruptcy Code provides that if all applicable requirements of section 1129(a) are met, then the court may confirm a plan over the dissenting vote of an impaired class of claims as long as the plan does not "discriminate unfairly" and is

"fair and equitable" with respect to such dissenting class or classes. 11 U.S.C. § 1129(b)(1). The express terms of section 1129(b) dictate that its requirements are only applicable to a class of creditors that rejects a plan. See 11 U.S.C. § 1129(b) (instructing that requirements apply only "with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.") (emphasis added). Thus, a dissenting creditor in an accepting class is without standing to object to the plan on the basis of unfair discrimination or absolute priority. See Jersey City Med. Ctr., 817 F.2d at 1062. Given the overwhelming support received by the Voting Classes, the prerequisites for "cram down" are only relevant to those Classes that are deemed to have rejected the Plan, namely the Intercompany Claims and Equity Interests in the Rejecting Classes. The Plan may be confirmed as to each of these Classes pursuant to section 1129(b) of the Bankruptcy Code because the Plan provides no party in either of the Rejected Classes has challenged the satisfaction of section 1129(b). Notwithstanding the consent of each of the Rejecting Classes, the Plan is consistent with the priorities afforded to each Class as established by the Bankruptcy Code.

A. The Plan Does Not Discriminate Unfairly

129. Section 1129(b)(1) does not prohibit discrimination between classes. Instead, it prohibits only discrimination that is unfair with respect to the dissenting class. The weight of judicial authority holds that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar claims are treated differently without a reasonable basis for the disparate treatment. In re Exide Techs., 303 B.R. 48, 78 (Bankr. D. Del. 2003); In re Kennedy, 158 B.R. 589, 599 (Bankr. D.N.J. 1993); In re Buttonwood Partners, Ltd., 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990). The unfair discrimination standard of section 1129(b) "ensures that a dissenting class will receive relative value equal to the value given to all other similarly situated classes." Armstrong, 348 B.R. at 121 (citing In re Johns-Manville Corp., 68 B.R. 618, 636

(Bankr. S.D.N.Y. 1986)); Aleris Int'l, 2010 WL 3492664, at *31. "Section 1129(b)(1) of the Bankruptcy Code does not prohibit discrimination between classes; it only prohibits discrimination that is unfair." Aleris, 2010 WL 3492664, at *31 (citing Armstrong, 348 B.R. at 121 and In re 11, 111, Inc., 117 B.R. 471, 478 (Bankr. D. Minn. 1990)).

130. "In considering whether a plan unfairly discriminates, courts apply a rebuttable presumption that unfair discrimination exists if there is: (1) a dissenting class, (2) another class of the same priority, and (3) a difference in the plan's treatment of the two classes that results in either (a) a materially lower percentage recovery for the dissenting class (measured in terms of net present value of all payments) or (b) regardless of percentage recovery, an allocation under the plan of materially greater risk to the dissenting class in connection with its proposed distribution." Aleris, 2010 WL 3492664, at *31(citing Armstrong, 348 B.R. at 121 and In re Dow Corning Corp., 244 B.R. 696, 701 (Bankr. E.D. Mich. 1999)); see also In re Lernout & Hauspie Speech Products, N.V., 301 B.R. 651, 661 (Bankr. D. Del. 2003) (explaining rebuttable presumption); In re Greate Bay Hotel & Casino, Inc., 251 B.R. 213, 228 (Bankr. D.N.J. 2000) (adopting rebuttable presumption test). Absent such factors, there cannot be unfair discrimination. Further, the presumption can be rebutted by a showing that there is a reasonable basis for disparate treatment. In re Genesis Health Ventures, Inc., 266 B.R. at 611-12.

131. The Plan does not discriminate unfairly with respect to the Intercompany Claims and Equity Interests. Each set of Claims and Equity Interests are classified together and afforded the same treatment under the Plan. Accordingly, there are no similarly situated Classes to the Rejecting Classes and, if there were, sufficient basis exists to justify the disparate treatment afforded to that Class. See, e.g., Lernout, 301 B.R. at 661-62 (approving disparate treatment of subordinated claims are not discriminating unfairly); Aleris, 2010 WL 3492664, at *31 (same).

132. As such, there is no discrimination, let alone unfair discrimination, with respect to the Rejecting Classes. Thus, the Plan does not discriminate unfairly with respect to any impaired Class of Claims or Equity Interests in accordance with section 1129(b)(1). Based on the foregoing, the Plan does not "discriminate unfairly" with respect to any of the Rejecting Classes.

B. The Plan is Fair and Equitable

133. Section 1129(b)(2) sets forth the standards for determining whether a plan is "fair and equitable" with respect to impaired dissenting claims or interests. Section 1129(b)(2)(B) and (C) summarize the "absolute priority rule" with respect to unsecured claims and interests, and provide that a plan is fair and equitable with respect to a class of impaired claims or interests if it provides that the holder of any claim or interest in a class junior to the claims or interests of such class will not receive or retain under the plan on account of such junior claim or interest any property. 11 U.S.C. §§ 1129(b)(2)(B)(ii) and (C)(ii); Northwest Bank Worthington v. Ahlers, 485 U.S. 197, 202 (1988) (absolute priority rule "provides that dissenting class of unsecured creditors must be provided for in full before any junior class can recover or retain any propery.") (citation omitted). "[A] corollary of the absolute priority rule is that a senior class cannot receive more than full compensation for its claims." In re Exide Techs., 303 B.R. 48, 61 (Bankr. D. Del. 2003) (citing Genesis, 266 B.R. at 612).

134. The Plan is "fair and equitable" within the meaning of section 1129(b) of the Bankruptcy Code. Section 1129(b)(2)(C) provides that a plan is "fair and equitable" with respect to a class of interests if either: (i) the holder of the interest receives are retains the greater of the allowed amount of any liquidation preference, redemption price or the value of the interest or (ii) no holder of a junior interest receives or retains any property on account of its interest. First, no Holder of an Intercompany Claim or Equity Interest has challenged whether its respective

treatment is fair and equitable under the Plan. Moreover, neither Intercompany Claims nor the Equity Interests has any value and as such they would not be entitled to retain or receive any value in a proceeding under chapter 7 of the Bankruptcy Code. Further, there are no holders of interests that are junior in priority to Intercompany Claims or Equity Interests that will be receiving any property on account of such interests under the Plan. Accordingly, the Plan satisfies the requirement of section 1129(b) of the Bankruptcy Code.

XVII. The Plan Satisfies Sections 1129(c), (d) and (e) of the Bankruptcy Code

135. The Plan is the only current plan on file presented for confirmation in the Chapter 11 Cases and, as such, section 1129(c) of the Bankruptcy Code does not apply.[23] The principal purpose of the Plan is not the avoidance of taxes or the avoidance of Section 5 of the Securities Act of 1933, and no party in interest has alleged otherwise. The principal purpose of the Plan is to effectuate the Debtors' orderly liquidation through a distribution mechanism that will maximize creditor recoveries. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code Finally, these Chapter 11 Cases are not "small business cases" as defined in the Bankruptcy Code and, accordingly, section 1129(e) of the Bankruptcy Code does not apply.

XVIII. Omnibus Reply to Outstanding Objections

A. The Newby Claimants' Objection

136. The Newby Claimants make three basic arguments in their objection: (1) a generalized complaint about the process that led to the settlements embodied in the Plan, including the Insurance Settlement, in which Wal-Mart was and remains an indispensable participant; (2) the Plan is not in the best interest of the creditors under section 1129(a)(7) of the

[23] Certain of the Participating Insurers did previously file a proposed plan of liquidation. [D.I. 1314]. Importantly, however, this potential plan was filed prior to the completion of the Insurance Settlement Term Sheet and the BAH Settlement Term Sheet, and has never been submitted for solicitation to creditors. Thus, this plan has effectively been superseded by the instant Plan.

Bankruptcy Code; and (3) the release and channeling injunction provisions of the Plan as they relate to Wal-Mart.

137. The Newby Claimants cannot now complain about the Insurance Settlement with respect to the settlement involving the Participating Insurers or the buyback of the Participating Insurers Policies pursuant to the Insurance Policy Buy-Back Order granting relief sought by the Debtors and the Committee in connection with the Insurance Settlement Motion. The Newby Claimants filed an objection to the Insurance Settlement Motion [D.I. 1537], fully participated in discovery and other proceedings leading to the hearing on the Insurance Settlement Motion, and were in attendance through counsel at the hearing on the Insurance Settlement Motion, at which a full evidentiary record was made through the testimony of five witnesses and the introduction of 100 exhibits. They cannot now re-litigate the rulings made by the Court based on the evidentiary record presented which, as set forth in the Insurance Policy Buy-Back Order, included that:

- the Settling Parties took into account in entering into the Insurance Settlement, several factors which, based on the evidence, supported entry of the Insurance Settlement Approval Order: (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;

- the Insurance Settlement (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;

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

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

- approval of the Insurance Settlement under and pursuant to Bankruptcy Rule 9019, and the sale by the Debtors of the Participating Insurer Policies to the Participating Insurers free and clear of all interests in the Subject Policies under and pursuant to 11 U.S.C. § 363; and

- the finding that the Participating Insurers' buyback of the Participating Insurer is in good faith within the meaning of 11 U.S.C. § 363(m).

138. In addition, to the extent that the Newby Claimants' good faith/fairness settlement related objections relate solely to Wal-Mart's participation in the proceedings leading to the Insurance Settlement and the Insurance Settlement itself, the evidence at the confirmation hearing, as referenced in this brief, will provide a more than sufficient basis for findings of Wal-Mart's good faith and of the reasonableness and fairness of the settlement vis-à-vis Wal-Mart

139. The Newby Claimants have also raised an argument under section 1129(a)(7) of the Bankruptcy Code. But based on the plain language of the statute, courts only should consider the amounts a creditor would receive from a chapter 7 trustee, and not from hypothetical recoveries from non-debtor third parties, in determining whether section 1129(a)(7) is satisfied. See W.R. Grace, 475 B.R. at 141-42 ("Under the best interests of the creditors test, courts should only consider 'the dividend the creditor would receive from the [C]hapter 7 trustee — and only that amount — for comparison with the dividend available under the [Chapter 11] plan.'") (quoting In re Dow Corning, Corp., 237 B.R. at 411 (emphasis added); see also In re Rimgale, 669 F.2d 426, 430 (7th Cir. 1982) (applying best interest test under section 1325(a)(4) and concluding that liquidation analysis "does not include additional amounts that a creditor may be able to collect after a liquidation"). Thus, the focus of the best interest test is limited to analyzing the pro rata amount that could be awarded to a creditor by a chapter 7 trustee. The underlying purpose of section 1129(a)(7) s to ensure that creditors "are no worse off under a plan of reorganization than they would be with the Debtor in [C]hapter 7." W.R. Grace, 475 B.R. at

141-42 (citing In re Kellog Square Partnership, 160 B.R. 343, 358 (Bankr. D. Minn. 1993)). Valuation of claims in determining a distribution in a hypothetical chapter 7 is "not an exact science" and "entails a considerable degree of speculation." W.R. Grace, 475 B.R. at 142 (internal quotation marks and citation omitted); In re PC Liquidation Corp., 383 B.R. 856, 868 (E.D.N.Y.2008) ("[T]he valuation of a hypothetical [C]hapter 7 liquidation is, by nature, inherently speculative[.]") (internal quotations and citations omitted).

140. In W.R. Grace, the Delaware District Court held that (i) the specific amount of a creditor's recovery in a chapter 7 need not be determined by the Bankruptcy Court under section 1129(a)(7), and (ii) where the debtor provided an expert witness that personal injury claimants would recover more under the plan than in chapter 7 (and the objecting claimants did not rebut this evidence with any contrary expert testimony), it was appropriate for the Bankruptcy Court to accept the well-reasoned estimates in the absence of any conflicting evidence. W.R. Grace, 475 B.R. at 142. Similar to *W.R. Grace*, the Newby Claimants have not, and cannot, present any evidence showing their likelihood of recovery would be higher in a chapter 7 liquidation despite the fact that there may be an opportunity to pursue Wal-Mart, which would be limited to Wal-Mart's allocated share of liability vis-à-vis the Debtors, at some point in the future. Given the significant and colorable defenses to liability, the outcome of any such litigation against Wal-Mart is highly speculative and dependent on numerous uncertain variables, including the probability of a successful judgment weighed against the time and cost required to litigate the affirmative claims. This uncertainty is heightened by the potential of insurance coverage issues between Wal-Mart and the insurance carriers which would need to be resolved prior to the Newby Claimants actually receiving any monetary distribution at all

141. The balance of the Newby Claimants' Objection relates to its jury trial rights and to the release and channeling injunction provisions of the Plan. Regarding the release and channeling injunction provisions, reference is made to pages 22-44 of this brief, as such in great detail adequately sets forth the bases on which such provisions of the Joint Plan are appropriate under applicable law. In addition, the rights of the Newby Claimants are protected by the Plan and, the constitutionally-based aspect of the Newby Claimants' Objection lacks merit as (i) the Plan does not finally adjudicate or extinguish the claims of the Newby Claimants as the Blitz Personal Injury TDP includes an "opt out" provision for the holders of Blitz Personal Injury Claims to litigate their claims in the tort system, including to a jury trial if they so choose, see Blitz Personal Injury TDP, ¶6.5(c), and (ii) the evidence that will be presented at confirmation will demonstrate that the amounts that will be contributed to the Blitz Personal Injury Trust, net of administrative costs, will be sufficient to pay all Blitz Personal Injury Claims in full.

142. Moreover, the objection based on the alleged lack "related to" jurisdiction is equally misplaced. The Newby Claimants are entitled to but one satisfaction of their claims (under whatever state law theory), be it against Blitz U.S.A., Wal-Mart or the Blitz Personal Injury Trust. There is no basis, other than the Newby Claimants' say-so, to conclude that their claims against Wal-Mart are not derivative of their claim against Blitz U.S.A.; and they must be put to its proof at the confirmation hearing to introduce competent evidence to support any such finding and conclusion upon which its entire argument rests. Further, despite the Newby Claimants' "doubts", Newby Claimants' Objection, ¶ 39, "related to" jurisdiction exists and provides a sufficient jurisdictional basis for the bankruptcy court to channel the Newby Claimants' claims to the Blitz Personal Injury Trust. Here, as will be fully demonstrated by the evidence to be presented at the Confirmation Hearing, because of the intertwined relationship

created by rights to shared insurance assets, the claims against Wal-Mart sufficiently impact the debtor-creditor relationship to establish "related to" jurisdiction.

143. Finally, based on the expert testimony demonstrating adequacy of funding for all Blitz Personal Injury Claims, including those against Wal-Mart, as well the ability to ultimately liquidate such claims by a jury trial, the Newby Claimants' claims are not being extinguished. It is an analytical red-herring to conflate the channeling of these to the Blitz Personal Injury Trust (subject to ultimate jury trial rights) with their release and adjudication. They are not the same; and there is nothing inconsistent with the bankruptcy court exercising its powers under section 105(a), in accordance with well-established Third Circuit law.

B. The Bauman Claimants' Objection

144. The Bauman Claimants assert personal injury claims for injuries suffered by Michael Bauman, Jr. and filed a proof of claim in these Chapter 11 Cases for $50,000,000. The Bauman Claimants' sole objection to confirmation of the Plan alleges the proposed Blitz Personal Injury TDP and TDP Scoring System violate Michael Bauman Jr.'s Fifth Amendment right to due process and equal protection under the laws. Specifically, the Bauman Claimants contend that the TDP Scoring System discriminates against males as one of the eligibility criteria to qualify for the Special Circumstances Fund under the Blitz Personal Injury TDP involves female claimants who suffered severe burn injuries when less than 18 years of age. The Bauman Claimants contend, without any support, that this criteria in the Blitz Personal Injury TDP and TDP Scoring System (and by extension, the Plan) violates Michael Bauman, Jr.'s equal protection and due process rights and thus confirmation of the Plan is "an unconstitutional government action". The Bauman Claimants ask this Court to discard the entire Blitz Personal Injury TDP and TDP Scoring System and appoint a special master to devise new trust distribution procedures. See Bauman Objection at p. 7.

145. The Bauman Claimants' Objection is baffling as counsel for the Bauman Claimants was among the non-Committee tort counsel that received and commented on the draft Blitz Personal Injury TDP and TDP Scoring System. Indeed, by e-mail dated November 18, 2013, a copy of which is annexed to the McClain Declaration as Exhibit A, counsel for the Bauman Claimants agreed to withdraw his objection to the Insurance Settlement Motion and adequacy of the Disclosure Statement and to accept the amount allocated to his clients under the Blitz Personal Injury TDP scoring system. The Committee relied upon the Bauman Claimants' agreement to withdraw their objections and to support confirmation of the Plan in negotiating and resolving other objections to the Plan, and the Bauman Claimants should not now be permitted to reverse course and reassert the same objections in order to try to hold up confirmation in order to enhance their recovery under the Blitz Personal Injury TDP.

146. Even more puzzling, Michael Bauman, Jr. meets one of the other criteria for application to the Special Circumstances Fund (permanent organ damage) and is therefore eligible to apply for a distribution from the Special Circumstances Fund. The Bauman Claimants therefore lack standing to assert that their constitutional rights are being violated because they are not being denied any rights. Indeed, in making this argument, counsel to the Bauman Claimants is not representing his own clients' interests and appears to be violating his fiduciary duties to his own clients, as successful prosecution of this argument could open the Special Circumstances Fund to many additional claimants (who in the view of the Committee are adequately compensated under the Blitz Personal Injury TDP scoring system and therefore do not have "special circumstances") and will therefore reduce the amount that could be paid to his own clients from the Special Circumstances Fund.

147. The Bauman Claimants fail to establish a violation of due process or equal protection rights. The Bauman Claimants assert that confirmation of the Plan by this Court is a sufficient "governmental action" to support their allegations of an equal protection violation. See Bauman Objection at p 7. However, the Bauman Claimants cite no authority for their position that this Court's approval of the Plan establishes "a governmental action" for purposes of an equal protection analysis. The Bauman Plaintiffs cite no authority – because there is none. It is well established that "a government action is required to state a constitutional claim." In re Dow Corning Corp., 255 B.R. 445 (E.D. Mich. 2000) at 523-524 (internal citation omitted). In Dow Corning, the bankruptcy court confirmed a joint plan which would, among other things, distribute funds to personal injury claimants based on certain specific criteria set forth in trust distribution procedures. One of the issues raised on appeal was whether the Dow Corning plan violated the appellants' due process rights under the Fifth Amendment of the Constitution. Id. at 523. After acknowledging that the appellants failed to raise their constitutional arguments before the bankruptcy court, the Dow Corning court noted that such arguments were without merit. "Appellants have cited no authority that a Bankruptcy Court or any court's approval of an order establishes a governmental action. A governmental action is required to state a constitutional claim and a 'mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the government responsible for those initiatives.'" Id. at 523.(quoting Blum v. Yaretsky, 457 U.S. 991, 1002 (1982))

148. Further, while not framed as such, the Bauman Claimants' objection could be construed as an argument that the Plan violates section 1123(a)(4) of the Bankruptcy Code. The Bauman Claimants focus extensively on the alleged violation of Michael Baumann Jr.'s Fifth Amendment rights to due process and equal protection should the Plan be confirmed, but fail to

establish that they will be treated differently under the Plan (i.e. discriminated against) from other personal injury claimants. The Plan satisfies section 1123(a)(4) of the Bankruptcy Code because the treatment of each Blitz Personal Injury Trust Claim, such as the Bauman Claimants, is the same. While holders of Blitz Personal Injury Trust Claims ultimately may receive disparate net recoveries by virtue of the elections under the Blitz Personal Injury TDP, the treatment that is potentially available is equivalent for all Blitz Personal Injury Trust Claims.

149. Section 1123(a)(4) requires a plan to "provide the same treatment for each claim or interest of a particular class." 11 U.S.C. § 1123(a)(4); see In re Combustion Eng'g., 391 F.3d at 239 ("Equality of distribution among creditors is a central policy of the Bankruptcy Code.") (quoting Begier, 496 U.S. at 58). For this Plan (or any plan) to be confirmable under the Bankruptcy Code, it must "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." In re Pittsburgh Corning Corp., Case No. 00-22876 (JKF), 2013 WL 2299620 at * 37 (Bankr. W.D. Pa. May 24, 2013) (citing In re Dow Corning Corp., 255 B.R. at 500). However, section 1123(a)(4) of the Bankruptcy Code "is not to be interpreted as requiring precise equality of treatment, but rather, some approximate measure [of equality]." Id. (citing In re Resorts Int'l, Inc., 145 B.R. at 447 (emphasis added)); see Pittsburgh Corning Corp., 2013 WL 2299620 at *57 ("provision is fair and equitable to the asbestos claimants and future demand holders inasmuch as the Bankruptcy Code requires the TDP to pay similar claims in 'substantially the same manner.").

150. Case law construing section 1123(a)(4) interprets equal treatment to mean that: (1) all class members must be subject to the same process for claim satisfaction, see In re W.R. Grace & Co., 475 B.R. at 121 (citing In re Cent. Med. Ctr., 122 B.R. 568, 575

(Bankr.E.D.Mo.1990)); (2) all class members' claims must be of "equal value" through the application of the same pro rata distribution or payment percentage procedures to all claims, see Id. (citing In re Quigley Co., Inc., 377 B.R. 110, 116 (Bankr.S.D.N.Y.2007)), and (3) all class members must give up the same degree of consideration for their distribution under the plan. See Id. (citing Quigley, 377 B.R. at 116–17). However, perfect or precise equality is not required—only approximate equality. See Id., (citing Quigley, 377 B.R. at 117); see also, In re Resorts Int'l, Inc., 145 B.R. at 447 ("This is not to be interpreted as requiring precise equality of treatment, but rather, some approximate measure since there is no statutory obligation ... to quantify exactly what each class member is relinquishing[.]") (internal citation omitted).

151. Here, the Plan, through the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP, provides for equal treatment as required under section 1123(a)(4) as the Plan has established structures to process Blitz Personal Injury Claims according to specific medical criteria, and all Blitz Personal Injury Trust Claims will be resolved and paid pursuant to and in accordance with the Blitz Personal Injury TDP.

C. The Cataldi Claimants' Objection

152. The Cataldi Claimants, who failed to file a personal injury proof of claim by the Supplemental Bar Date, object to the Releases and the Channeling Injunction. As noted in pages 22-44 of this Memorandum, the Releases and the Channeling Injunction are appropriate and warranted by the record in these Chapter 11 Cases.

D. The U.S. Trustee's Objection

153. The U.S. Trustee's Objection generally argues: (i) the exculpation provision of the Plan is overbroad; and (ii) the Proponents must be held to their burden regarding the non-Debtor third party Releases. As noted in pages 22-45 of this Memorandum, the Releases,

Channeling Injunction and exculpation provisions of the Plan are appropriate and warranted by the record in these Chapter 11 Cases.

CONCLUSION

154. For all the foregoing reasons, and based on the authorities and evidence presented above, and as will be further demonstrated at the Confirmation Hearing, the Proponents submit that the Plan satisfies all of the applicable requirements of the Bankruptcy Code and the Bankruptcy Rules and should be confirmed. Accordingly, the Proponents respectfully request that the Court enter the Proposed Confirmation Order confirming the Plan and all provisions thereof and grant such other relief as is just and proper.

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Dated: January 24, 2014

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