

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

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<b>In re:</b>	)	
	)	<b>Chapter 11</b>
	)	
<b>BLITZ U.S.A., Inc., et al.,<sup>1</sup></b>	)	<b>Case No. 11-13603 (PJW)</b>
	)	
<b>Debtors.</b>	)	<b>(Jointly Administered)</b>
	)	
	)	<b>Re: D.I. 2007</b>

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**DECLARATION OF ROCKY FLICK IN SUPPORT OF CONFIRMATION OF THE  
DEBTORS’ AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS’  
FIRST AMENDED JOINT PLAN OF LIQUIDATION**

I, Rocky Flick, hereby declare, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I am the President and Chief Executive Officer of Blitz U.S.A., Inc. (“Blitz”), a corporation organized under the laws of the State of Oklahoma, and a member of the board of directors of each one of the above-captioned debtors and debtors in possession (collectively, the “Debtors”). I have been employed by the Debtors for over 20 years and have held the position of Chief Executive Officer since 2007. Immediately prior to becoming Chief Executive Officer, I held the position of President of Blitz from approximately 1998. In my capacity as Chief Executive Officer and member of the board of directors of each of the Debtors, I am familiar with the Debtors’ day-to-day operations, businesses, financial affairs, and books and records. I am also familiar with the Debtors’ business as it relates to agreements and contracts.

2. I submit this declaration (the “Declaration”) in support of the *Debtors’ and*

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and MiamiOK LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 309 North Main Street, Miami, OK 74354.



*Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation*, dated December 19, 2013 [D.I. 2007] (as may be further modified, supplemented, or restated, the "Plan").<sup>2</sup> I am familiar with the terms and provisions of the Plan, the disclosure statement relating thereto [D.I. 2008] (the "Disclosure Statement") and the documents comprising the *Plan Supplement* [D.I. 2041].

3. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with the Debtors' professional and financial advisors, my review of relevant documents, or my opinion based on experience, knowledge and information concerning the Debtors' operations and financial affairs. I am authorized to submit this declaration on behalf of the Debtors and, if called on to testify, I would testify competently to the facts set forth in this Declaration.

4. Based upon my personal involvement in the process leading up to the Plan and discussions with the Debtors' advisors, it is my understanding that the Plan complies with the applicable provisions of title 11 of the United States Code (the "Bankruptcy Code"), the Plan was proposed in good faith, and the Debtors, acting through their officers, directors and professionals, have conducted themselves in a manner that complies with applicable law in relation to the formulation and negotiation of, and voting on, the Plan.

#### **Background of the Chapter 11 Cases and the Debtors**

5. On November 9, 2011 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court.

6. As of the Petition Date, Blitz was the leading producer of portable consumer

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<sup>2</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan or in the *Memorandum of Law and Omnibus Reply in Support of Confirmation of Debtors' and Official Committee of Unsecured Creditors' First Amended Joint Plan of Liquidation*, to be filed subsequently to this Declaration.

gasoline containers (“PCGCs”) in the United States. As discussed in my previous declarations in these Chapter 11 Cases<sup>3</sup> which I incorporate herein for purposes of the record, approximately three years prior to the Petition Date, Blitz began to experience an increase in litigation relating to PCGCs with approximately four to seven new personal injury cases filed against Blitz each year. Although Blitz previously had been able to manage its litigation exposure and associated defense costs, the marked increase in PCGC related lawsuits compelled Blitz to divert virtually all net operating cash flows after debt service to fund its self-insured retention payments. Indeed, between March 2011 and the Petition Date, as many as 22 new cases were filed against, for a total of 36 lawsuits (the “PCGC Litigation”) pending against one or more of the Debtors as of the Petition Date. Thus, the Debtors were forced to commence the Chapter 11 Cases to obtain a much needed breathing spell from this pending litigation. I have general knowledge of the personal injury claims asserted against the Debtors, including claims arising prior to and during these Chapter 11 Cases.

7. During the course of my employment with the Debtors, I have become familiar with the allegations raised by holders of Blitz Personal Injury Claims that commonly are litigated in connection with such claims. The general allegations underlying many of the Blitz Personal Injury Claims include that the Blitz brand plastic gas container exploded when the claimant poured gas on a fire or on embers to start a fire. Some claimants allege that Blitz brand plastic

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<sup>3</sup> The previously filed declarations include the following: *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]; *Declaration of Rocky Flick in Support of Omnibus Objection of the Debtors and Debtors in Possession to Motions of Personal Injury Claimants for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code* [D.I. 1136]; *Declaration of Rocky Flick in Support of Second Omnibus Objection of the Debtors and Debtors in Possession to Motions of Personal Injury Claimants for Relief From the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code* [D.I. 1218]; *Declaration of Rocky Flick in Support of Objection of the Debtors and Debtors in Possession to Motion of Dylan Trevino, by and Through His Mother and Next Friend, Diana Trevino (I) to Transfer Adversary Proceedings to the United States District Court for the Middle District of Tennessee and (II) for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code* [D.I. 1287]; and *Declaration of Rocky Flick in Support of Settlement Motion* [D.I. 1947].

gas containers are defective such that when gas is poured from the container on or near a flame, gasoline vapors outside the container ignite and the flame follows the vapor trail back inside the container causing it to explode. Other claimants allege that they were injured when a Blitz plastic gas container was opened around flames or other combustion sources. The Debtors vigorously have defended against such allegations and continue to maintain that Blitz gas containers are safe when used properly.

8. Often the factual and legal issues raised in these personal injury cases are complex and rely on the testimony of expert witnesses. Moreover, the damages alleged in each case are substantial and often seek to recover multiples of millions of dollars. As of the Petition Date, the Debtors estimated that the cost to the Debtors alone in defending against the then pending lawsuits could exceed \$30 million.

9. Prior to the Petition Date, the Debtors actively defended against any liability in the PCGC Litigation. The Debtors also were providing a defense to their largest customer Wal-Mart Stores, Inc. and certain of its affiliates (collectively, "Wal-Mart") who were named in one or more of the PCGC Litigation lawsuits, including subject to and pursuant to certain indemnification agreements between the parties and a Supplier Agreement, dated March 11, 2010. Of the 36 lawsuits pending on the Petition Date, approximately 11 also named Wal-Mart as a defendant.

10. Wal-Mart is an additional insured under the Debtors' commercial liability insurance policies. Thus, Wal-Mart is an integral party in the resolution of Blitz Personal Injury Claims, and its involvement adds a further layer of complexity with regard to such claims.

11. Since the Petition Date, the Debtors have successfully consummated the sale of substantially all of the Debtors' assets. Specifically, by an order dated February 24, 2012, the

Court established certain auction and bidding procedures with respect to the sale of the F3 Brands business line (the “F3 Brand Assets”) [D.I. 275]. Competing bids were due on March 21, 2012, and an auction was held on March 23, 2012. The winning bidder for the F3 Brands Assets was Hopkins Manufacturing Corporation. The sale closed on April 3, 2012.

12. On July 31, 2012, the Debtors announced that they would liquidate rather than continuing to operate their business as a going concern. Following Court approval of bidding procedures, the Debtors initiated a process to sell substantially all of their assets. On September 11, 2012, the Court entered the *Order (A) Approving the Sale of Substantially All of the Debtors Assets Free and Clear of All Liens, Claims, Encumbrances And Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [D.I. 758] approving the sale of substantially all of the Debtors’ assets. The winning bidder was Scepter Holdings, Inc. and the sale closed on September 28, 2012. Accordingly, the Debtors are no longer operating as an on-going business.

13. On July 24, 2013, the Debtors and the Official Committee of Unsecured Creditors (the “Committee”) filed a motion (the “Insurance Settlement Motion”) seeking authorization to enter into a term sheet (the “Insurer Term Sheet”) with Wal-Mart Stores, Inc., certain insurers and personal injury claimants. *See* D.I. 1537. Also on July 24, 2013, the Debtors and the Committee filed a motion (the “BAH Settlement Motion” and together with the Insurance Settlement Motion, the “Settlement Motions”) seeking authorization to enter into a term sheet (the “BAH Term Sheet”, and together with the Insurer Term Sheet, collectively, the “Term Sheets”) that resolved certain claims as between certain Debtors and other parties. *See* D.I. 1538.

14. Several parties in interest, including the U.S. Trustee and certain holders of Blitz

Personal Injury Claims, filed objections to the Settlement Motions, asserting that they improperly sought substantive relief that was only available, if at all, through a plan and seeking additional information in connection with the settlement motions. After extensive discussions regarding the extent of the relief sought, the parties submitted revised forms of order that limited the relief to among other things, authorizing the signatory parties to enter into the Term Sheets, memorializing the binding nature of the obligation of the signatory parties to seek confirmation of a chapter 11 plan, and permitting the signatory parties to take actions necessary to seek approval of a chapter 11 plan as required by the Term Sheets. After a hearing, the Court entered the revised orders (the “Settlement Orders”) approving the Settlement Motions. *See* D.I. 1616, 1618.

15. The Settlement Orders reserved all other relief requested in the Settlement Motions for future hearings. Consistent with those orders, the Court entered an agreed scheduling order setting an evidentiary hearing on whether the relief requested in the Insurance Settlement Motion with respect to the buyback of certain of the Debtors’ insurance policies (the “Insurance Policy Buy-Back”) should be approved.

16. At a hearing held on November 19, 2013, a settlement with three of the six objectors to the Settlement Motions was placed on the record. That settlement resulted in certain modifications to the originally filed plan and certain plan related documents as reflected in the Plan, Blitz Personal Injury Trust Agreement, Blitz Personal Injury Trust Distribution Procedures and TDP Scoring System, filed on December 18, 2013, and the execution of a Plan Support Agreement, pursuant to which three of the six objectors agreed to support confirmation of the Plan, as amended, and to withdraw their objections to the Settlement Motions or confirmation of the Plan.

17. On December 20, 2013, the Court entered the *Order Under 11 U.S.C. Sections 105 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 the Participating Insurers Free and Clear of All Liens, Claims, Interests and Other Encumbrances* [D.I. 2011] (the “Insurance Settlement Order”). Among other things, the Insurance Settlement Order found that (i) the Insurance Settlement (and the Insurer Term Sheet) was the product of good faith, arms’ length negotiations among the Settling Parties; (ii) was fair, reasonable, appropriate, and in the best interests of the Debtors’ estates; and (iii) represented a sound exercise of the Debtors’ business judgment. The Insurance Settlement Order also approved the Debtors’ sale of the Subject Policies to the Participating Insurers pursuant to Section 363 of the Bankruptcy Code, and held that the Participating Insurers’ buyback of the Subject Policies was in good faith within the meaning of Section 363(m) of the Bankruptcy Code. The Insurance Settlement Order was binding on all parties other than the few objectors that did not withdraw or otherwise compromise their objections to the Settlement Motions.

### **The Plan and Related Documents**

18. On November 27, 2013, the Plan Proponents filed their *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 Trust 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 Procedures Motion”).

19. Prior to the hearing on the Disclosure Statement and as noted above, the Plan Proponents amended the plan and disclosure statement originally filed by the Debtors and the Committee on November 11, 2013 (*See* D.I. 1921, 1922) to address certain objections and comments received to same. On December 19, 2013, the Plan Proponents filed the amended Plan and Disclosure Statement.

20. On December 19, 2013, following a hearing to consider the Disclosure Statement and the Solicitation Procedures Motion, this Court entered its *Order Granting 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 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. 2005] (the “Solicitation Procedures Order”), which (i) approved the Disclosure Statement; (ii) established procedures for soliciting and tabulating votes to accept or reject the Plan; (iii) scheduled a hearing on confirmation of the Plan for January 27, 2014 at 9:30 a.m. (prevailing Eastern Time) (the “Confirmation Hearing”)<sup>4</sup> and (iv) fixed certain notice procedures in connection with the Plan and Confirmation Hearing.

21. As set forth in the *Affidavit of Service* [D.I. 2025], and further supplemental affidavits that were filed thereafter [*See* D.I. 2037, 2054, 2082], on or before December 23, 2013, the Plan Proponents, through the Debtors’ claims, noticing, balloting and solicitation agent, Kurtzman Carson Consultants LLC (“KCC”), caused a CD-ROM of the Disclosure Statement,

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<sup>4</sup> The Confirmation Hearing was originally scheduled to begin on January 27, 2014 at 9:00 a.m. (prevailing Eastern Time). On January 15, 2014, with permission from the Court, the Debtors filed the *Notice of Rescheduled Confirmation Hearing Date and Time* [D.I. 2065] rescheduling the Confirmation Hearing for January 28, 2014 at 9:30 a.m. (prevailing Eastern Time).

the Solicitation Procedures Order, the Plan, and the appropriate ballots to be mailed to each party in interest entitled to vote on the Plan in accordance with the Solicitation Procedures Order. Only members of classes that are impaired under the Plan, and not otherwise deemed to automatically reject the Plan pursuant to the Bankruptcy Code, were entitled to vote on the Plan. As such, only members of Class 3(a) (General Unsecured Claims against the USA Debtors), Class 3(b) (General Unsecured Claims against the BAH Debtors), Class 4(a) (Blitz Personal Injury Trust Claims against the USA Debtors) and Class 4(b) (Blitz Personal Injury Trust Claims against the BAH Debtors) were entitled to accept or reject the Plan. Class 1(a) (Priority Claims against the USA Debtors), Class 1(b) (Priority Claims against the BAH Debtors), Class 2(a) (Secured Claims against the USA Debtors) and Class 2(b) (Secured Claims against the BAH Debtors) are unimpaired under the Plan and, consequently, are deemed to have accepted the Plan pursuant to the Bankruptcy Code. Holders of Claims in Class 5(a) (Intercompany Claims against the USA Debtors), Class 6(a) (Equity Interests in the USA Debtors), Class 5(b) (Intercompany Claims against the BAH Debtors), and Class 6(b) (Equity Interests in the BAH Debtors) shall not receive a distribution under the Plan and are conclusively deemed to have rejected the Plan pursuant to the Bankruptcy Code. Pursuant to the Solicitation Procedures Order, the Debtors caused a *Notice of Non-Voting Status Under the Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation* to be mailed to holders of Claims or Equity Interests in Class 1(a) (Priority Claims against the USA Debtors), Class 1(b) (Priority Claims Against the BAH Debtors), Class 2(a) (Secured Claims against the USA Debtors), Class 2(b) (Secured Claims against the BAH Debtors), Class 5(a) (Intercompany Claims against the USA Debtors), Class 6(a) (Equity Interests in the USA Debtors), Class 5(b) (Intercompany Claims against the BAH Debtors), and Class 6(b) (Equity Interests in the BAH Debtors) on December 23, 2013,

twenty-nine days prior to January 21, 2014. The Solicitation Procedures Order established January 21, 2014 at 4:00 p.m. (prevailing Pacific Time) as the deadline for receipt of votes to accept or reject the Plan (the “Voting Deadline”).

**The Blitz Personal Injury Trust**

22. 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 Claims based on injuries that occurred prior to July 31, 2007 at 12:01 a.m. CST (“Pre-2007 Blitz Personal Injury Claims”). The Plan also provides for a Channeling Injunction, pursuant to which each covered party will be permanently stayed, restrained and enjoined from taking any action for the purpose of directly or indirectly recovering or receiving satisfaction with respect to such Blitz Personal Injury Trust Claim as to any Protected Party.

23. Liquidation and payment of Covered Blitz Personal Injury Claims will be administered by the Blitz Personal Injury Trustee (selected by the Committee). The Blitz Personal Injury Trust Assets consist of approximately \$137.5 million in proceeds from the buy-back of certain of the Debtors’ insurance policies previously approved by this Court along with approximately \$23.8 million cash contribution from Wal-Mart and assignment of the Assigned Insurance Policies.

24. The funds provided to the Blitz Personal Injury Trust will be administered on behalf of Covered Blitz Personal Injury Trust Claims in accordance with the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP.

25. The Pre-2007 Blitz Personal Injury Claims are channeled to the Blitz Personal Injury Trust, but will not receive a distribution from the \$162 million. 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.

26. Based on my understanding, the Plan further contemplates that holders of personal injury claims 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. Instead, 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.

27. It is my understanding based on my discussions with the Debtors’ legal advisors, that the Releases and Channeling Injunction contained in the Plan are appropriate, fair and equitable, and consistent with the applicable provisions of the Bankruptcy Code. These provisions are the result of arms-length negotiations among key constituencies in these cases, and given for valuable consideration.

#### **COMPLIANCE WITH THE BANKRUPTCY CODE**

28. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). I believe that the Plan complies with the following requirements of the Bankruptcy Code:

29. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). Article III of the Plan designates six Classes (with each Class having subclasses based on whether the Claims or Equity Interests relate to the BAH Debtors or the USA Debtors) of Claims and Equity Interests. I am familiar with the classification of Claims and Equity Interests in the Plan and believe that such classification system is based upon the legal nature and relative rights of the Claims and Equity Interests, and is not proposed for any improper purposes. Each Class contains only Claims or Equity Interests that are substantially similar to other Claims and Equity Interests therein.

Additionally, Article II of the Plan designates (but does not classify) Claims of the type described in section 503(b) of the Bankruptcy Code (Administrative Expense Claims).

30. Specified Treatment of Unimpaired Claims (11 U.S.C. §§ 1123(a)(2)). Article III of the Plan specifies whether each Class of Claims and Equity Interests is Impaired or Not Impaired under the Plan.

31. Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article III of the Plan further sets forth the treatment of each Class of Claims and Equity Interests.

32. No Discrimination (11 U.S.C. § 1123(a)(4)). Pursuant to the Plan, the treatment of each Claim or Equity Interest in each particular Class is the same as the treatment of each other Claim or Equity Interest in such Class, unless the holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such particular Claim or Equity Interest. 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.

33. Implementation of the Plan (11 U.S.C. § 1123(a)(5)). Articles IV, V and XII of the Plan and various other provisions of the Plan provide adequate and proper means for implementation of the Plan. Article XII provides that title to all the assets and properties and interests in the property of the USA Debtors dealt with by the Plan shall either vest in the Blitz Personal Injury Trust or the Blitz Liquidating Trust, as applicable, free and clear of all Claims, Liens and/or Equity Interests and title to all assets and properties and interests of the BAH Debtors dealt with by the Plan shall vest in BAH, free and clear of all Claims, Liens and Equity Interests.

34. Specifically, the Plan with respect to the USA Debtors, shall be implemented

through a substantive consolidation of the assets and liabilities of the USA Debtors with one another. The Chapter 11 Cases of the USA Debtors shall be deemed consolidated into the case of Blitz U.S.A., Inc. as a single consolidated case with respect to Claims against the USA Debtors. Further, on the Effective Date, the Blitz Personal Injury Trust shall be established in accordance with the Plan Documents. The Blitz Personal Injury Trust shall assume the liability for all Blitz Personal Injury Trust Claims; shall administer, process, settle, resolve and liquidate such Blitz Personal Injury Trust Claims; and shall use the Blitz Personal Injury Trust Assets and the proceeds and income therefrom to satisfy and make payment to all such Blitz Personal Injury Trust Claims that may qualify for recovery. Blitz Personal Injury Trust Claims shall be channeled to the Blitz Personal Injury Trust pursuant to the Channeling Injunction set forth in Section 4.3.3 of the Plan. In addition, on the Effective Date, the USA Debtors and the Blitz Liquidating Trustee shall execute the Blitz Liquidating Trust Agreement and shall establish the Blitz Liquidating Trust.

35. With respect to the BAH Debtors, on the Effective Date or as soon as reasonably practicable thereafter, LAM shall merge with and into BAH, as set forth in Section 12.4.2 of the Plan. The Chapter 11 Cases of the BAH Debtors shall be consolidated into the case of BAH as a single consolidated case with respect to the Claims against the BAH Debtors. All property of the estate of each BAH Debtor shall be deemed to be property of BAH's Estate with respect to payment of Claims against BAH.

36. The directors and officers of the USA Debtors, the Blitz Liquidating Trustee, and the Blitz Personal Injury Trustee, as applicable, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases and other agreements or documents and take such other actions as they may deem, in their sole discretion, necessary or appropriate to effectuate

and implement the provisions of the Plan. The BAH Plan Administrator shall be authorized to execute, deliver, file, or record such contracts, instruments, releases and other agreements or documents and take such other actions as the BAH Plan Administrator may deem, in the BAH Plan Administrator's sole discretion, necessary or appropriate to effectuate and implement the provisions of the Plan.

37. Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan is a liquidating plan that calls for the liquidation of the USA Debtors' remaining assets, the wind-down of their remaining operations and, ultimately, the dissolution of the USA Debtors. Accordingly, I believe that section 1123(a)(6) of the Bankruptcy Code is not applicable. Further, with respect to the BAH Debtors, the Plan is a liquidating plan for the BAH Debtors and pursuant to section 12.4.2 of the Plan. As all voting power is vested in the Kinderhook Capital Fund II, L.P. as of the Effective Date, there is no issue as to the distribution of such power and the Plan therefore satisfies the requirement of section 1123(a)(6) of the Bankruptcy Code.

38. Continuation of Existing Corporate Officers and Directors (11 U.S.C. § 1123(a)(7)). Upon the Effective Date or as soon as thereafter as reasonably practicable, after the vesting of the Blitz Liquidating Trust Assets in the Blitz Liquidating Trust, the USA Debtors other than Blitz U.S.A., Inc. shall be deemed to have been dissolved and terminated. Upon the effective Date, the terms of all directors and officers of each USA Debtor shall be deemed to have expired, all such directors and officers shall be released of their duties and all actions in furtherance of the Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by the USA Debtors, holders of Claims or Equity Interests, directors, managers, or officers of the USA Debtors, or any other Entity, including the transfer of assets, of the USA Debtors to the Blitz Liquidating Trust

and the Blitz Personal Injury Trust, respectively, and the dissolution or winding up of the USA Debtors other than Blitz U.S.A., Inc. Further, upon the Effective Date or as soon as reasonably practicable thereafter, the number of directors constituting the entire board of directors of BAH shall be fixed at one; and 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 the BAH Debtors shall be deemed to have been removed as of the occurrence of the Effective Date.

39. Impairment of Classes (11 U.S.C. § 1123(b)(1)). Article III of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims or Equity Interests under the Plan.

40. Treatment of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Pursuant to Article VIII of the Plan, except for executory contracts and unexpired leases which the Debtors have either assumed, have rejected or have filed a motion to assume prior to the Confirmation Date and which remains pending as of the Confirmation Date, all executory contracts and unexpired leases for goods, services or premises used in connection with the Debtors' business operations shall be deemed rejected by the Debtors on the Effective Date, and the Plan shall constitute a motion to reject such executory contracts and unexpired leases.

41. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). To the best of my knowledge, the Debtors, as proponents of the Plan, have complied with the Bankruptcy Code in proposing the Plan and with the Solicitation Procedures Order in commencing and conducting the solicitation of acceptances or rejections of the Plan.

42. Retention, Enforcement and Settlement of Claims of the Debtors (11 U.S.C. § 1123(b)(3)). Section 4.13 of the Plan provides that the Blitz Personal Injury Trust, pursuant to

section 1123(b)(3)(B) of the Bankruptcy Code and applicable State corporate law, is appointed as the successor-in-interest and representative of, the USA Debtors and their Estates for the retention, enforcement, settlement or adjustment of all Blitz Personal Injury Trust Claims. Pursuant to section 5.4 of the Plan, in furtherance of and consistent with the purpose of the Blitz Liquidating Trust Agreement and the Plan, solely for the purpose of carrying out the Plan and discharging the duties in the Blitz Liquidating Trust Agreement, the Blitz Liquidating Trustee shall be deemed to be a judicial substitute for each of the USA Debtors as the party-in-interest in these Chapter 11 Cases, and pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable State corporate law, is appointed as the successor-in-interest to, and the representative of, the USA Debtors' Estates for the retention, enforcement, settlement or adjustment of all claims and rights, known and unknown, and all interests belonging to the USA Debtors or their Estates, which arose prior to the Confirmation Date, except in connection with any proceeding involving, relating to or arising out of, in whole or in part, the Blitz Personal Injury Trust Claims. Further, section 15.1 of the Plan provides that pursuant to sections 1123(a)(5) and 1123(b)(3)(B) of the Bankruptcy Code and consistent with section 5.3 of the Plan, the Blitz Liquidating Trust or the BAH Debtors, as applicable, shall retain and shall be the appointed representative with exclusive authority to pursue, litigate, enforce, adjust and compromise and settle any such rights, claims, or causes of action, as appropriate, in accordance with what is in the best interests of and for the benefit of the Creditors who will receive Distributions from the Blitz Liquidating Trust or the BAH Debtors, as applicable.

43. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have met their good faith obligation under the Bankruptcy Code because, among other reasons, the Plan was proposed with the legitimate purpose of allowing creditors to realize the highest possible

recoveries under the circumstances of these Chapter 11 Cases. The Debtors proposed the Plan with the purpose of liquidating the Debtors' assets and expeditiously distributing value to creditors, while also providing for a mechanism to resolve the pending PCGC Litigation and other PCGC related claims asserted against the Debtors.

44. The Plan (including the Plan Supplement, Exhibits to the Plan, and all documents necessary to effectuate the Plan) are the result of extensive arm's-length, good faith negotiations among the Debtors, the Committee, the Insurers, Wal-Mart, and other parties in interest and their respective advisors. The Plan contemplates and is premised upon all of the USA Debtors' remaining assets vesting in two liquidating trusts pursuant to section 105 of the Bankruptcy Code: (i) a Blitz Personal Injury Trust, for resolution of Blitz Personal Injury Trust Claims; and (ii) a Blitz Liquidating Trust, for the benefit of all holders of all other Claims against the USA Debtors. Each of the Blitz Personal Injury Trust and the Blitz Liquidating Trust will be established to administer and resolve specific Claims and each will be subject to its own trust agreement and its own rules with respect to the administration and satisfaction of Claims.

45. The Blitz Personal Injury Trust will provide a streamlined system for the resolution of any Blitz Personal Injury Trust Claim against any Protected Party. All Blitz Personal Injury Trust Claims will be channeled to the Blitz Personal Injury Trust for resolution in accordance with the terms of the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP.

46. Claims against the USA Debtors (other than the Blitz Personal Injury Trust Claims) will be administered and treated in accordance with the terms of the Plan by and through the Blitz Liquidating Trust. The Blitz Liquidating Trust will have the responsibility of liquidating all assets of the USA Debtors other than Blitz Personal Injury Trust Assets, and for

making Distributions to the holders of Allowed Claims against the USA Debtors other than the holders of Blitz Personal Injury Trust Claims.

47. Claims against the BAH Debtors (other than the Blitz Personal Injury Trust Claims) shall be administered and treated in accordance with the terms of the Plan by the BAH Plan Administrator. The BAH Plan Administrator will have the responsibility of liquidating all assets of the BAH Debtors, and for making Distributions to holders of Allowed Claims against the BAH Debtors other than the holders of Blitz Personal Injury Trust Claims.

48. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Court as reasonable.

49. Directors, Officers, Voting Trustee and Insiders (11 U.S.C. § 1129(a)(5)). The Plan Proponents have disclosed, or intend to disclose prior to the commencement of the Confirmation Hearing, the identity, affiliations and compensation of the Blitz Personal Injury Trustee, the Blitz Personal Injury TAC, Blitz Liquidating Trustee, and the BAH Plan Administrator. Pursuant to Article IV, there shall be one (1) Blitz Personal Injury Trustee. Prior to the Confirmation Hearing, the Participating Blitz Personal Injury Claimants that serve on the Committee shall select the initial Blitz Personal Injury Trustee. Further, pursuant to section 4.8 of the Plan, prior to the Confirmation Hearing, the Participating Blitz Injury Claimants that serve on the Committee shall select the initial members of the Blitz Personal Injury TAC.

50. Pursuant to section 4.5 of that certain *Blitz Personal Injury Trust Agreement* (substantially in the form filed with the Plan, the “Blitz Personal Injury Trust Agreement”), the Blitz Personal Injury Trustee shall be reimbursed for all reasonable out-of-pocket costs and

expenses incurred by the Blitz Personal Injury Trustee in connection with the performance of his or her duties and the Blitz Personal Injury Trustee shall be compensated in the manner set forth in section 4.5 of the Blitz Personal Injury Trust Agreement. Further, the members of the Blitz Personal Injury TAC shall be compensated in an amount and manner set forth in section 5.6 of the Blitz Personal Injury Trust Agreement.

51. Pursuant to section 2.4 of that certain *Blitz Liquidating Trust Agreement* (substantially in the form filed with the Plan Supplement, the “Blitz Liquidating Trust Agreement”), the Blitz Liquidating Trustee shall be entitled to receive reasonable compensation (fees and expenses) incurred in connection with the Blitz Liquidating Trust Agreement and shall be compensated in an amount and manner set forth in section 2.4 of the Blitz Liquidating Trust Agreement.

52. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for rate changes subject to the jurisdiction of any governmental regulatory agency.

53. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). With respect to each impaired Class, each holder of a Claim or Equity Interest against the Debtors either has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would have received or retained had the Debtors been liquidated under chapter 7 of the Bankruptcy Code on such date.

54. Acceptance of Plan by Each Impaired Class (11 U.S.C. § 1129(a)(8)). Class 1(a) (Priority Claims against the USA Debtors), Class 1(b) (Priority Claims against the BAH Debtors), Class 2(a) (Secured Claims against the USA Debtors) and Class 2(b) (Secured Claims against the BAH Debtors) are not impaired by the Plan and are conclusively presumed to have

voted to accept the Plan. Class 5(a) (Intercompany Claims against the USA Debtors), Class 5(b) (Intercompany Claims against the BAH Debtors), Class 6(a) (Equity Interests in the USA Debtors) and Class 6(b) (Equity Interests in the BAH Debtors) will receive no distributions under the Plan and are therefore deemed to have rejected the Plan and are not entitled to vote. Based upon review of the certification of ballots (the "Vote Certification") prepared by KCC and upon information and belief, Classes 3(a), 3(b), 4(a) and 4(b) voted to accept the Plan.

55. Treatment of Administrative and Tax Claims (11 U.S.C. § 1129(a)(9)). Pursuant to Article II, section 2.1 of the Plan, subject to the Bar Date provisions set forth in section 2.3 of the Plan, unless otherwise agreed to by the Blitz Liquidating Trustee or the BAH Plan Administrator, as applicable, and the holder of a particular Administrative Expense Claim, each holder of an Allowed Administrative Expense Claim shall receive Cash equal to the unpaid portion of such Allowed Administrative Expense Claim on the later of (a) the Effective Date or as soon thereafter as is reasonably practicable, and (b) such other date as is mutually agreed upon by the Blitz Liquidating Trustee or the BAH Plan Administrator, as applicable, and the holder of such Claim. Pursuant to Article III, sections 3.3.1 and 3.4.1 of the Plan, Allowed Priority Claims, including Allowed Priority Claims of governmental units under section 507(a)(8) of the Bankruptcy Code, will be paid the Allowed Amount of its Claim, in full, in Cash, on the Effective Date or as soon as practical thereafter.

56. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). More than a majority in number and two-thirds in dollar amount of the non-insider creditors in classes 3(a), 3(b), 4(a), and 4(b) who were entitled to accept or reject the Plan have voted to accept the Plan. Therefore, section 1129(a)(10) of the Bankruptcy Code is satisfied.

57. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan itself calls for liquidation of the

Debtors; therefore, confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtors, thereby satisfying (or eliminating the need to consider) section 1129(a)(11) of the Bankruptcy Code.

58. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on the earlier of when due or the Effective Date, or as soon thereafter as practicable. From and after the Effective Date, the Blitz Liquidating Trust shall be liable for and shall pay the fees assessed against the USA Debtors' estate under 28 U.S.C. § 1930 until entry of a final decree closing the Cases. In addition, the Blitz Liquidating Trustee, shall, on behalf of the USA Debtors' Estates, file post-confirmation quarterly reports in conformity with the U.S. Trustee guidelines, until entry of an order closing or converting the USA Debtors' Chapter 11 Cases. The USA Debtors shall file all pre-confirmation monthly operating reports prior to the Confirmation Hearing. BAH shall be liable for and shall pay the fees assessed against the BAH Debtors' Estates under 28 U.S.C. § 1930 and BAH and/or the BAH Plan Administrator shall file post-confirmation quarterly reports in conformity with the U.S. Trustee guidelines until entry of an order closing or converting the BAH Debtors' Chapter 11 Cases.

59. Retiree Benefits (11 U.S.C. § 1129(a)(13)). The Debtors provide no "retiree benefits" as such term is defined in section 1114 of the Bankruptcy Code. Therefore, 11 U.S.C. § 1129(a)(13) is inapplicable and need not be addressed.

60. Identification of Plan Proponents (Fed. R. Bankr. P. 3016(a)). As required by Bankruptcy Rule 3016(a), the Plan is dated and identifies the Plan proponents as the Debtors and the Committee.

61. Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b)). Classes 1(a), 1(b), 2(a) and 2(b) are not impaired by the Plan and are conclusively presumed to have

voted to accept the Plan. As attested to in the Vote Certification, Classes 3(a), 3(b), 4(a), and 4(b) have voted to accept the Plan. The Plan Proponents have requested that the Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code notwithstanding the deemed rejection of the Plan by Classes 5(a), 5(b), 6(a) and 6(b). With respect to Classes 5(a) and 5(b), holders of such Claims have consented to the proposed treatment of under the Plan through the settlements embodied in the Plan (i.e. the BAH Settlement), to which they are a proponent. As for the holders of Classes 6(a) and 6(b) Interests, no holder of Claims or Equity Interests junior to the Equity Interests in Classes 6(a) and 6(b) will receive or retain any property under the Plan on account of such junior Claim or Equity Interest, and no class of Claims senior to Class 5 is receiving more than full payment on account of the Claims in such Class. Accordingly, the Plan does not discriminate unfairly and is fair and equitable with respect to Classes 5(a), 5(b), 6(a) and 6(b); therefore, the Plan complies with section 1129(b) of the Bankruptcy Code and may be confirmed notwithstanding Classes 5(a), 5(b), 6(a) and 6(b)'s deemed rejection of the Plan.

62. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.

63. Section 1129(c) -- Only One Plan. On March 13, 2013, Liberty Surplus Insurance Corporation and Liberty Insurance Underwriters, Inc. filed that *Certain Insurers Liquidating Plan of Reorganization* [D.I. 1314] (the "Insurer Plan"). Upon Information and belief, the proponents of the Insurer Plan are no longer pursuing confirmation of the Insurer Plan and are supportive of the Plan. Other than the Plan and the Insurer Plan (which is not being pursued) no other plan has been filed in the Chapter 11 Cases and neither the Debtors nor any other party are presently seeking confirmation of any plan other than the Plan. Therefore, the Plan complies

with section 1129(c) of the Bankruptcy Code.

64. Compliance with Bankruptcy Rule 3016(c). In accordance with Bankruptcy Rule 3016(c), the Plan describes in specific and conspicuous bold language all acts to be enjoined and identifies the entities that would be subject to the injunction to the extent required thereunder

**Certain Specific Terms of the Plan**

**A. Compromise and Settlement**

65. Pursuant to section 12.03 of the Plan, the Plan proposes, and its terms embody, a compromise of certain controversies pursuant to Bankruptcy Rule 9019. It is my understanding that, in consideration for the classification, distribution, and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan, including all Claims arising prior to the Petition Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, by or against the Debtors, arising out of, relating to or in connection with the business or affairs of or transactions with the Debtors. I believe that the compromises and settlements are in the best interests of the Debtors, the Debtors' Estates, creditors, and other parties in interest, and are fair, equitable and within the range of reasonableness.

**B. Satisfaction of Consolidation Criteria**

66. A central component of the compromise and settlement is found in sections 12.1.5 and 12.1.6 of the Plan, which provides for the separate substantive consolidation of the USA Debtors and BAH Debtors for all purposes, including voting, confirmation and distributions. Section 12.1.5 of the Plan provides for the deemed consolidation of the liabilities and properties of all of the USA Debtors for purposes of distribution, and section 12.1.6 of the Plan provides for the deemed consolidation of the liabilities and properties of all of the BAH Debtors for purposes

of distribution. It is my understanding that plan provisions may 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. In that regard, I would note the following:

(1) 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.

(2) I believe 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.

(3) I also believe substantive consolidation as delineated in the Plan is warranted here because no creditor or other party-in-interest has objected to the substantive consolidation provided under the Plan.

67. For each of these reasons, I believe that the requirements for consolidation of the Debtors with respect to voting and treatment of all Claims and Equity Interests, as I understand such requirements, are satisfied.

**C. The Releases, Exculpations and Injunctions Are Fair and Necessary**

**1. The Plan's Debtor Release Provisions Should Be Approved**

68. It is my understanding that section 7.2.1 of the Plan provides for releases by the (i) the Debtors, on behalf of themselves and their respective Estates and their respective Affiliates, members, officers, directors, and employees, and any person claiming by or through them and (ii) the Committee, on behalf of itself and its members (solely in their capacities as members of the Committee), (the "Debtor Releases"). Subject to the exceptions found in section 7.2.3 of the Plan, the Debtor releasees include (a) the Debtors; (b) the present and former

directors and officers of each of the Debtors; (c) the Participating Insurers; (d) Wal-Mart; (e) Vendors; (f) any holder of a Co-Defendant Claim; (g) any other Additional Insureds; (h) the BAH Released Parties; (i) Shareholders of Debtors solely in their capacity as shareholders and solely related to the Blitz Personal Injury Claims; and (j) Representatives, Affiliates, subsidiaries and/or successors of each of the foregoing Entities (collectively, the “Protected Parties”).

69. It is also my understanding that these provisions provide releases to the Protected Parties with respect to any and all any and all claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, controversies, costs, expenses, attorneys’ fees and losses whatsoever, whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, foreign law, common law or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued based upon any acts, omissions, conduct or other matters occurring prior to the Effective Date and in any way related to the Debtors, their businesses, operations, activities, their Chapter 11 Cases, and/or any Blitz Product.

70. It is also my understanding that all holders of Claims against and Equity Interests in the Debtors are deemed to release the Protected Parties from all claims that could be brought by such holders of Claims and/or Equity Interests against the Protected Parties related to any Blitz Product or any Blitz Personal Injury Trust Claim. These releases also are subject to the exceptions found in section 7.2.3 of the Plan.

71. I believe the Debtors have exercised their reasonable business judgment in proposing the Debtor Releases and that the Debtor Releases are reasonable and satisfy the standard that courts generally apply when reviewing settlements. The Debtor Releases were the subject of extensive negotiations among all of the parties and are an essential part of the Plan. I

believe that the Debtor Releases are well-considered and reasonable and represent a valid settlement of whatever claims or causes of action the Debtors may have against the Debtor released parties.

**a. Identity of Interest with Protected Parties**

72. It is my understanding that in each of the years spanning from July 2006 through July 2012 (the “Relevant Period”), the Debtors obtained primary general liability insurance as well as additional layers of excess coverage through commercial umbrella liability insurance policies, all from various insurance companies. All of the additional excess insurance policies during the Relevant Period “follow form” to either the underlying primary policy or the first level excess policy, meaning that generally all terms and conditions of the primary and/or first level excess policy apply equally to all excess policies.

73. It is my understanding that the primary and/or first level excess policies for the Relevant Period also contain endorsements that broaden the policies’ definitions of “insured” to include certain vendors (i.e., distributors) of Blitz’s products.

74. Based on the foregoing, it is my understanding that for the policy years during the Relevant Period, a covered vendor (such as Wal-Mart), officer, director and/or shareholder of Blitz sued on a Blitz Personal Injury Claim would be entitled to coverage under the Debtors’ insurance policies, with certain limited exceptions. Thus, since any of the foregoing entities or individuals are additional insureds under the Debtors’ insurance policies, if any claims are brought against such persons or entities, they could potentially tender such claims to the insurers for defense and indemnity. The status as an additional insured under the Debtors’ insurance policies could lead to depletion of insurance proceeds that otherwise would be available for the Debtors’ estates.

75. In addition to the foregoing, Blitz U.S.A. and Wal-Mart were parties to Wal-Mart Vendor agreements which contractually required the Debtors to indemnify Wal-Mart for all personal injury suits, including Blitz Personal Injury Trust Claims. Therefore, the indemnity relationship between the Debtors and Wal-Mart created a relationship by which monies expended by Wal-Mart in defending against Blitz Personal Injury Claims could be recouped from the Debtors' estates.

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

77. Finally, each of the following parties is a signatory to the Insurance Settlement Term Sheet and/or the BAH Settlement Term Sheet: (i) Wal-Mart, (ii) each of the Participating Insurers, and (iii) the BAH Settling Parties. Each of the Insurance Settlement Term Sheet and the BAH Settlement Term Sheet contains a component requiring the signatory parties to support the terms of the Plan. This has aligned the interests of the Debtors with these Protected Parties in

furtherance of the Plan confirmation process.

**b. Substantial Contribution by Protected Parties**

78. I believe the Debtors are receiving substantial contribution in exchange for the Debtor Releases, including from Wal-Mart, the Participating Insurers, and the Debtors' directors, officers and employees. Pursuant to the Insurance Settlement Term Sheet and the BAH Term Sheet, Wal-Mart, the Participating Insurers and the BAH Released Parties each have provided or agreed to provide substantial consideration to or for the benefit of the Blitz Personal Injury Trust in return for the protections provided by the Releases and Channeling Injunction. Extending the Channeling Injunction to these non-debtor entities who are parties to such settlements is appropriate in the context of these Chapter 11 Cases.

79. Wal-Mart has provided the following contributions to support the Plan and facilitate payment of Blitz Personal Injury Claims: (i) \$23.8 million and waiver of rights under the insurance policies to fund the Blitz Personal Injury Trust; (ii) approximately \$1.54 million in released payables, that are secured by Wal-Mart's setoff rights, to fund the Blitz Liquidating Trust; and (iii) ancillary funds to the Debtors' estates 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.

80. The Participating Insurer Policies are contributing approximately \$137.5 million to the Blitz Personal Injury Trust pursuant to the Plan. This amount is based on the approximately \$250 million in maximum coverage available for Blitz Personal Injury Trust Claims during the Relevant Period. Based on my understanding, there exist substantial coverage disputes, including whether all of the self-insured retentions ("SIRs") for each of the applicable policies was exhausted to trigger coverage from the Participating Insurers. I understand that

certain of the Participating Insurers have taken the position that certain coverage under the Debtors' insurance policies cannot be accessed. The Debtors' carriers issued reservation of rights letters asserting various defenses to coverage, which in my view implicate virtually the entirety of the insurance coverage during the Relevant Period.

81. It is my understanding that the Participating Insurers are contributing approximately \$137.5 million on their behalf as well as on behalf of all named insureds, insureds and additional insureds under the relevant insurance policies. In addition, all indemnification claims and all claims to insurance coverage by vendors will be channeled to the Blitz Personal Injury Trust.

82. BAH on behalf of the BAH Released Parties, upon consummation of the Plan, will make a payment in the amount of \$6,250,000 to the USA Debtors' estates, without which the USA Debtors would be administratively insolvent and therefore unable to confirm any plan.

83. If all of the Protected Parties are not covered by the Releases and Channeling Injunction, this would expose the Debtors to the possibility of the continued prosecution of Blitz Personal Injury Claims that would embroil all parties with rights under the Debtors' insurance policies in litigation and result in substantial costs being incurred that ultimately diminish the assets available to the holders of Blitz Personal Injury Trust Claims. Thus, I believe that including each of the Protected Parties in the Channeling Injunction is fair and equitable with respect to persons who may assert Blitz Personal Injury Claims in light of the benefits provided or to be provided to the Blitz Personal Injury Trust on behalf of such Protected Parties.

84. Moreover, many of the Debtor releasees, over many months, have been active participants in the development of the Plan of which the Debtor Releases are a significant component. These parties' willingness to negotiate and work with the Debtors enabled the

Debtors to bring before this Court the pending Plan. Without the cooperation of such parties, the Debtors would have likely have been unable to propose the Plan, to the detriment of the Debtors' Estates and their creditors.

**c. Releases are Indispensable to Plan and Only Feasible Option for the Chapter 11 Cases**

85. From my perspective, the centerpiece of the Plan is the Blitz Personal Injury Trust and the contemplated distribution to holders of Allowed Blitz Personal Injury Claims.

86. In the absence of the Channeling Injunction, the Debtors likely would be subject to a substantial number of claims. If prosecution of Blitz Personal Injury Claims continued outside the procedures proposed in the Plan, such prosecution would threaten the equitable treatment of such claims and demands. Absent the Blitz Personal Injury Trust and the Channeling Injunction, holders of Blitz Personal Injury Trust Claims would be forced to litigate their claims in the tort system and would have recourse only to the limited, dwindling funds of the Debtors' insurance coverage with respect to any recovery on such claims. Furthermore, without the Channeling Injunction, the Debtors would be subject to a "race to the courthouse" whereby the Debtors' assets would be consumed by those claimants who first file suit, leaving nothing for the remaining Blitz Personal Injury Claims.

87. Furthermore, each of Wal-Mart, the Participating Insurers and the BAH Settling Parties has expressed clearly its unwavering position to the Debtors that all monetary contributions contemplated by the Plan are unequivocally contingent on securing the Releases and Channeling Injunctions on the terms set forth in the Plan. The Participating Insurers also conditioned any contributions pursuant to the Insurance Settlement Term Sheet and/or the Plan on securing the releases of all named insureds, insureds and additional insureds under the insurance policies being re-purchased by the Participating Insurers. Absent the finality that all

potential claims will be resolved pursuant to the Plan, the Participating Insurers have expressed their unwillingness to make any contribution to the Plan.

**2. The Plan's Exculpation Provisions Are Permissible and Should Be Approved**

88. It is my understanding that section 15.4 of the Plan (the "Exculpation") provides an exculpation and limitation of liability for (i) the Debtors, and any of their respective successors or assigns, and any of their respective Representatives; (ii) the Committee, its members and any of their respective Representatives; and (iii) the Protected Parties and any of their respective Representatives (collectively, the "Exculpated Parties") for any act or omission with respect to or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for gross negligence, fraud or willful misconduct or any obligations that they have under or in connection with the Plan, the Plan Documents, or any transactions contemplated thereby, and in all respects shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

89. I believe that approval of the Exculpation is supported for many of the same reasons that the Debtor Releases meet the standard for the approval. Additionally, as set forth above, the Debtors formulated the Plan after negotiating extensively with numerous parties in good faith. These negotiations resulted in the compromise and settlement which, as noted above, made a consensual Plan possible. I believe negotiation and compromise were vital to the formulation and success of the Plan and could not have occurred without the protection from liability that the Exculpation provisions provide to the constituents involved in negotiating and supporting the Plan. Finally, I would note that the Exculpation excludes, among other things, an Exculpated Party's fraud, gross negligence or willful misconduct with respect to matters covered

by the Exculpation. Thus, in light of all the circumstances, I believe the Exculpation provisions contained in the Plan are necessary to the Debtors' Plan.

**3. The Plan's Corresponding Injunction Provisions Should Be Approved**

90. It is my understanding that section 7.3 of the Plan sets out the Plan's injunction provisions with respect to the Debtor Releases, the Protected Parties (the "Third Party Injunction"), the Blitz Liquidating Trust Assets and/or the Blitz Personal Injury Trust Assets. I believe the Third-Party Injunction is necessary to preserve and enforce the Debtor Releases, and is narrowly tailored to achieve that purpose. I further believe that the Third-Party Injunction is a key component of the Debtors' liquidation.

**D. Plan Provides Mechanism for Payment of Substantially All Claims**

91. The Debtors, the Committee, the Participating Insurers, and Wal-Mart extensively negotiated the composition of assets between the Blitz Personal Injury Trust and the Blitz Liquidating Trust, which focused on known and potential Blitz Personal Injury Claims and the minimum amount of money required to make administration of the Blitz Personal Injury Trust feasible.

92. During the bankruptcy proceedings, the Debtors and/or their representatives, obtained and reviewed extensive material on the Blitz Personal Injury Claims and became familiar with valuation of similar personal injury claims. Based on my knowledge of the potential liability associated with Blitz Personal Injury Trust Claims, it is my view that the Blitz Personal Injury Trust likely will be able to provide a substantial and prompt payment to all Allowed Blitz Personal Injury Claims in accordance with the terms of the Blitz Personal Injury Trust Agreement and Blitz Personal Injury TDP.

**E. TDP Provides a Mechanism for Opt-Out and Fair and Efficient Procedures**

93. It is my understanding that the Blitz Personal Injury TDP reflects a set of rules that the Blitz Personal Injury Trust will use to receive, process and, if valid, pay Blitz Personal Injury Trust Claims. It is my further understanding that the Committee engaged in lengthy negotiations concerning the provisions of the TDP with the Protected Parties. I believe that the processes set forth in the Blitz Personal Injury TDP provide reasonable assurance that the Blitz Personal Injury Trust will value and be in a financial position to pay Blitz Personal Injury Trust Claims in substantially the same manner.

94. I understand that the Blitz Personal Injury Trust Claims will be valued based on separate injury levels pursuant to a matrix based on historical values and that the Blitz Personal Injury Trust provides mechanisms to pay all covered claims affected by the Releases and Channeling Injunction. It is my further understanding that requiring evidence that will satisfy the criteria set forth in the TDP is the principal mechanism by which frivolous claims and meritorious claims, and more and less serious claims, will be distinguished. I have been advised that the criteria set forth in the Blitz Personal Injury TDP mirror those evidentiary standards that generally must be met to recover in the tort system. I have also been informed that the allocated payment for Claims can be reviewed and adjusted periodically to provide reasonable assurance that the Blitz Personal Injury Trust will value, and will be in a financial position to pay Blitz Personal Injury Trust Claims that involve similar claims in substantially the same manner.

95. Based on my experience and consultation with the Debtors' advisors, I believe that the Blitz Personal Injury TDP provides procedures for efficient and expeditious allowance or disallowance of claims and for prompt distributions to holders of Allowed Blitz Personal Injury Trust Claims.

