

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

In re:	)	Chapter 11
	)	
BLITZ U.S.A., Inc., <i>et al.</i> , <sup>1</sup>	)	Case No. 11-13603 (CSS)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Response Deadline: April 29, 2015 at 4:00 p.m. (ET)
	)	Hearing Date: May 6, 2015 at 11:00 a.m. (ET)

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**MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER DEEMING  
CERTAIN HOLDERS OF UNSECURED CLAIMS UNDER THE PLAN TO  
HAVE WAIVED THEIR RIGHT TO RECEIVE DISTRIBUTIONS**

The Blitz Liquidating Trustee on behalf of the Blitz Liquidating Trust, (the “Liquidating Trustee”), by and through its undersigned counsel, moves (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A, providing that any of the creditors identified on Schedule 1 attached hereto are holders of Claims, classified as Class 3(a) (General Unsecured Claims against the USA Debtors) under the Plan (as defined below) that failed to provide a taxpayer identification number within thirty (30) of service of the order will be deemed to have waived its right to receive any distributions in these cases. In support of his Motion, the Liquidating Trustee represents as follows:

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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.



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## **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, section 12 of the Plan, and paragraph 37 of the Confirmation Order (as defined herein). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are Bankruptcy Rule 3021 and section 1142 of the Bankruptcy Code.

## **FACTUAL BACKGROUND**

3. On November 9, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). On November 21, 2011, the Office of the United States Trustee appointed the Committee pursuant to section 1102 of the Bankruptcy Code.

4. Additional background facts concerning the Chapter 11 Cases, including an overview of the Debtors’ businesses, the Debtors’ corporate structure and information on events leading up to the filing of the Chapter 11 Cases, is contained in 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* (the “Flick Declaration”) [Docket No. 13] filed in the Chapter 11 Cases, and incorporated herein by reference.

5. On November 12, 2013, the Debtors’ and Official Committee of Unsecured Creditors’ Joint Plan of Liquidation [Docket No. 1921] (as amended, the

“Plan”) and the accompanying Disclosure Statement [Docket No. 1922] (as amended, the “Disclosure Statement”) were filed.

6. On December 18, 2013, this Court entered an order approving the adequacy of the Disclosure Statement and the procedures for solicitation of the Plan [Docket No. 2005]. The First Amended Plan and Disclosure Statement were filed on December 19, 2013 [Docket Nos. 2007 and 2008, respectively] and the solicitation process was immediately commenced.

7. On January 30, 2014, the Plan was confirmed by entry of the Court’s *Findings of Fact, Conclusions of Law and Order Confirming Debtors’ and Official Committee of Unsecured Creditors’ First Amended Joint Plan of Liquidation* [Docket No. 2152] (the “Confirmation Order”).

8. Pursuant to the Plan, the Effective Date occurred on March 20, 2014. *See* Confirmation Order at ¶ 47. A Notice of Effective Date was filed March 20, 2014 [Docket No. 2224].

9. A copy of the Blitz Liquidating Trust Agreement (the “Trust Agreement”) is attached as Exhibit C to the Confirmation Order. The Trust Agreement provides that all federal, state, or local taxes required to be withheld shall be deducted from the distributions to holders of Claims. *See id.* at Art. VII at § 7.9. The Trust Agreement further provided that “[a]ll holders of Claims shall be required to provide the Blitz Liquidating Trustee with any information necessary to effect the withholding of such taxes, including a completed W-9 form.” *Id.*

10. The Trust Agreement also requires the Liquidating Trust to comply with all applicable tax withholding and reporting requirements. *See id.* at Art. VIII § 8.2. Under federal tax law, the Liquidating Trustee is required to file a Form 1041 - U.S. Income Tax Return for Estates and Trusts. One of the requirements for a Form 1041 is the preparation of a schedule identifying each of the Beneficiaries of the Liquidating Trust. This requires the Liquidating Trustee to provide the name, address and taxpayer identification number (“TIN”) of each of the Beneficiaries.

11. To comply with these tax requirements, the Liquidating Trustee has contacted each of the Beneficiaries to request that they provide a TIN. The vast majority of the Beneficiaries have provided a TIN. However, despite numerous subsequent requests, the Beneficiaries identified on the Schedule 1 attached hereto have failed to provide a TIN to the Liquidating Trustee.

### **RELIEF REQUESTED**

12. Because the Liquidating Trustee has been unable to obtain a TIN from the Beneficiaries identified on Schedule 1, he is requesting that the Court enter an order providing that any Beneficiary who fails to provide a TIN to the Liquidating Trustee within 30 days after entry of the order will be deemed to have forfeited the right to receive any distributions from the Liquidating Trust and will no longer be a Beneficiary of the Liquidating Trust.

### **BASIS FOR RELIEF**

13. The Claims identified on Schedule 1 are Claims, classified as Class 3(a) (General Unsecured Claims against the USA Debtors), and the holders of those

claims would be Beneficiaries of the Liquidating Trust. *See*, Plan §3.3.3; Trust Agreement at 2.

14. However, despite repeated requests by the Trustee that these Beneficiaries provide a TIN, they have failed to provide a TIN. The failure to provide a TIN makes it impossible for the Liquidating Trustee to prepare tax returns that allocate the gains and losses of the Liquidating Trust to these Beneficiaries and to provide the required reporting of those gains and losses to taxing authorities. This is prejudicial to the vast majority of Beneficiaries who have responded and cooperated with the Liquidating Trustee.

15. Because most of the parties listed on Schedule 1 have not responded to the Liquidating Trustee, the reasons for their failure are unknown. However, many of these parties have not filed a proof of claim – they became Beneficiaries because they were identified as an unsecured creditor in the Debtors' Schedules – and not having made a decision to participate in the Chapter 11 Cases, they may simply be ignoring communications that relate to the bankruptcy proceedings.

16. Nevertheless, whatever the motivations of any of these parties, the lack of a TIN has made it impossible for the Liquidating Trustee to identify these Beneficiaries in filings under applicable tax laws. Moreover, as the Liquidating Trust is preparing to make distributions to its Beneficiaries, it would be manifestly unfair to allow these non-complying parties to receive the benefits of being a Beneficiary without complying with the statutory duty to comply with tax reporting requirements. Moreover, their failure to comply could have an adverse impact on

both the Liquidating Trust and the other Beneficiaries, who could have gains or losses “over allocated” to them when the Liquidating Trust files its tax returns.

17. For these reasons, the Liquidating Trustee is requesting that the Court enter an order that requires each of these non-complying entities with one final opportunity to respond, and if they fail to provide a TIN within 30 days of the service by mail of a copy of the Court’s order, that they be deemed to have waived their right to receive any distributions from, or be deemed Beneficiaries of, the Liquidating Trust.

18. Granting the requested relief would permit the Liquidating Trustee to eliminate these non-complying parties from any participation in the Liquidating Trust, which would result in the re-allocation of the interests reserved for them among the other Beneficiaries on a *pro rata* basis. This would be fair and equitable since any forfeiture is due solely to the omission or noncompliance of the parties listed on Schedule 1, and the resulting re-allocation to the other Beneficiaries is consistent with the *pro rata* distributions provided for in the Plan.

19. The Liquidating Trustee notes that – unlike some plans that condition a creditor’s right to receive distributions on compliance with tax reporting obligations – the confirmed Plan in these Chapter 11 Cases do not specifically condition the right to receive distributions on compliance with federal tax law. Accordingly, this Motion is necessary to place a finite limit on the period of time within which these parties may provide their TIN to the Liquidating Trust.

**NOTICE AND NO PRIOR REQUEST**

20. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of Delaware; (ii) all Beneficiaries identified on the Schedule 1 attached hereto; and (iii) all parties who have filed a notice of appearance pursuant to Fed. R. Bankr. P. 2002 in these Chapter 11 Cases. In light of the nature of the relief requested herein, the Liquidating Trustee submits that no other or further notice is required.

21. No prior request for the relief sought herein has been made to this or to any other court.

WHEREFORE, the Liquidating Trustee respectfully requests that the Court enter an order, substantially in the form hereto as Exhibit A, granting the Motion and grant such other and further relief as is just and proper.

Dated: April 14, 2015  
Wilmington, Delaware

**WOMBLE CARLYLE SANDRIDGE  
& RICE, LLP**

By: /s/ Kevin J. Mangan  
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Kevin J. Mangan, Esq. (No. 3810)  
Thomas M. Horan (No. 4641)  
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-and-

**LOWENSTEIN SANDLER PC**  
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*Counsel to the Blitz Liquidating Trustee  
on behalf of the Blitz Liquidating Trust*



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

In re:	)	CHAPTER 11
	)	
BLITZ U.S.A., Inc., <i>et al.</i> , <sup>1</sup>	)	Case No. 11-13603 (CSS)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Response Deadline: April 29, 2015 at 4:00 p.m. (ET)
	)	Hearing Date: May 6, 2015 at 11:00 a.m. (ET)

---

**NOTICE OF MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER  
DEEMING CERTAIN HOLDERS OF UNSECURED CLAIMS UNDER THE  
PLAN TO HAVE WAIVED THEIR RIGHT TO RECEIVE DISTRIBUTIONS**

PLEASE TAKE NOTICE that on April 14, 2015, the Blitz Liquidating Trustee on behalf of the Blitz Liquidating Trust, (the “Liquidating Trustee”), by and through its undersigned counsel, has filed the Motion of the Liquidating Trustee for an Order Deeming Certain Holders of Unsecured Claims Under the Plan to Have Waived Their Right to Receive Distributions (the “Motion”).

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, must be made in writing, filed with the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, and served so as to be received by the following parties on or before **April 29, 2015 at 4:00 p.m.** Prevailing Eastern Time (the “Objection Deadline”). At the same time, you must also serve a copy of the response so as to be received by undersigned counsel by no later than the Objection Deadline.

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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.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **May 6, 2015 at 11:00 a.m. (prevailing Eastern time)** before The Honorable Christopher S. Sontchi, United States Bankruptcy Court Judge. Only objections made in writing and timely filed will be considered by the Bankruptcy Court at such hearing.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: April 14, 2015  
Wilmington, Delaware

**WOMBLE CARLYLE SANDRIDGE  
& RICE, LLP**

By: /s/ Kevin J. Mangan  
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*Counsel to the Blitz Liquidating Trustee  
on behalf of the Blitz Liquidating Trust*

**Schedule 1**

**List of Creditors Who Have Failed  
to Provide a Taxpayer Identification Number**

<b>Name of Claimant</b>	<b>Claim Number/ Scheduled</b>	<b>Claim Amount Scheduled Amount</b>
1-800-CONFERENCE(R)	Scheduled	231.17
ALEXANDER & HAMILTON, INC.	Scheduled	24.75
ALLIED OIL & SUPPLY, INC.	Scheduled	4,015.00
B & L WATERWORKS OF OKLA.	Scheduled	269.64
BEEHLER WRIGHT LOCKSHOP	Scheduled	141.70
BOBS AWNING	Scheduled	12,260.34
BONNIE SWIATKOWSKI DBA DO-U-RIGHT CLEANING	Scheduled	550.00
BONNIE SWIATKOWSKI DBA DO-U-RIGHT CLEANING	Scheduled	1,525.00
Britt, Ruth Marie	390	50.00
CED/AMERICAN ELECTRIC	115	3,669.04
CED/AMERICAN ELECTRIC	116	5,429.16
CINTAS FIRST AID #F70	Scheduled	2,684.80
CINTAS FIRST AID #F70	Scheduled	5,185.15
David Gold	427	100.00
Davis-Standard, LLC	70	2,034.73
DIRECTV	Scheduled	37.99
Exponent, Inc.	307	40,374.17
Faegre Baker Daniels LLP	47	30,651.38
Fair Harbor Capital, LLC	Scheduled	10,181.46
GLOBAL CROSSING CONFERENCING	Scheduled	6.62
GRANT BROTHERS SALES LTD, INC.	Scheduled	263.25
HYSPECO, INC.	103	562.67
HYSPECO, INC.	Scheduled	764.45
ILPEA INDUSTRIES, INC.	Scheduled	7,029.90
JOHNSON EQUIPMENT	Scheduled	3,183.85
KATNER-MILLS MOTOR SUPPLY	Scheduled	185.17
KIPP & CHRISTIAN P.C.	Scheduled	1,029.50
LYNDA.COM, INC.	Scheduled	1,750.00
M.E.I. LABELS	Scheduled	3,888.53
M.E.I. LABELS	Scheduled	19,348.20
MARC ALAN ASSOCIATES, INC.	Scheduled	2,883.45
MARCIA JONES	Scheduled	290.00
MIAMI GLASS & MIRROR	Scheduled	1,020.00
MMR STRATEGY GROUP	Scheduled	221.29
MUTUAL ASSURANCE ADMINISTRATOR INC	Scheduled	416.67
NEECE CONCRETE	308	4,375.00
OREILLY AUTOMOTIVE	Scheduled	9.84
PERFECTION SERVO	Scheduled	18,532.45
PREMIER PNEUMATICS, INC.	Scheduled	1,355.00
PREMIUM FINANCING SPECIALISTS CORP	Scheduled	7,602.28

PRITCHARDS CARPET MILL OUTLET INC	Scheduled	217.70
PROCT	Scheduled	156.25
PROLIFT INDUSTRIAL EQUIPMENT INC.	Scheduled	843.16
PRUDENTIAL GROUP INSURANCE	Scheduled	2,786.86
PRUDENTIAL GROUP INSURANCE	Scheduled	4,028.57
PUROLATOR EFP	Scheduled	219.62
RADIO SHACK	Scheduled	54.91
Robinson, Bradshaw & Hinson PA	53	50,870.40
Romolo Grilli	356	40.00
SHERWIN-WILLIAMS	Scheduled	217.24
Sierra Liquidity Fund, LLC	Scheduled	110.00
Sierra Liquidity Fund, LLC	Scheduled	350.00
Sierra Liquidity Fund, LLC	107	457.00
SMC TECHNOLOGIES	Scheduled	1,957.86
STANDARD TRANSPORTATION	Scheduled	1,598.50
STANDARD TRANSPORTATION	Scheduled	11,745.24
TESTING SERVICES GROUP LLC	Scheduled	2,850.00
The Sportsmans Guide, Inc.	125	173.36
TOFINO SOFTWARE, INC.	Scheduled	300.00
TOFINO SOFTWARE, INC.	Scheduled	900.00
U.S. CELLULAR	Scheduled	808.64
ULTRA BARCODE, LLC	Scheduled	1,636.88
Uniloy Milacron	66	997.27
VISION SERVICE PLAN OF OKLAHOMA	Scheduled	285.84
W W Grainger Inc	32	926.14
W. W. GRAINGER, INC.	Scheduled	169.87
WASHINGTON ELECTRONICS INC.	Scheduled	862.00
WAVE MEDIA TECHNOLOGIES INC.	Scheduled	90.00

**Exhibit A**  
**Proposed Order**

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

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

**ORDER DEEMING CERTAIN HOLDERS OF UNSECURED CLAIMS  
UNDER THE PLAN TO HAVE WAIVED THEIR RIGHT  
TO RECEIVE DISTRIBUTIONS**

The Blitz Liquidating Trustee on behalf of the Blitz Liquidating Trust, (the “Liquidating Trustee”) having moved for entry of an order providing that certain creditors, identified on the Schedule 1 attached to the Motion, that are holders of Claims, classified as Class 3(a) (General Unsecured Claims against the USA Debtors) under the Plan that fails to provide a taxpayer identification number within thirty (30) days will be deemed to have waived its right to receive any distributions in these cases and any responses thereto, the Court having found that it has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, section 12 of the Plan, and paragraph 37 of the Confirmation Order (as defined in the Motion); and the Court having determined that (i) notice of the Motion is adequate, and no further notice is necessary, (ii) the relief requested in the Motion is appropriate, and (iii)

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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.

other good and sufficient cause exists to support the relief requested by the motion; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted.
2. The Liquidating Trustee shall cause a copy of this Order to be mailed, by first class mail, to each of the creditors identified on Schedule 1 attached to the Motion, and shall thereafter file proof of such service on the docket of these cases.
3. Any creditor identified on the Schedule 1 annexed to the Motion who fails to provide the Liquidating Trustee (i) if the creditor is a U.S. resident, a taxpayer identification number on a duly executed IRS Form 9, or (ii) if the creditor is not a U.S. resident, a properly executed IRS Form 8, within thirty (30) days of the date hereof, will be deemed to have irrevocably and forever waived any right to receive distributions from the Liquidating Trust in these cases and will no longer be deemed a beneficiary of the Liquidating Trust.
4. The Liquidating Trustee is authorized to proceed in accordance with the provisions of this Order, which shall take effect immediately upon entry.



5. This Court shall retain jurisdiction to enforce or interpret the provisions of this Order.

Dated: Wilmington, Delaware  
May \_\_, 2015

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Hon. Christopher S. Sontchi  
United States Bankruptcy Judge

**CERTIFICATE OF SERVICE**

I, Judith B. Wray, certify that I am not less than 18 years of age, and that on April 14, 2015 I caused copies of the *Motion of the Liquidating Trustee for an Order Deeming Certain Holders of Unsecured Claims Under the Plan to Have Waived Their Right to Receive Distributions* to be served upon the parties listed on the service list attached hereto as Exhibit 1 via U.S. First Class Mail, postage paid.

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

Dated: April 14, 2015

/s/ Judith B. Wray

Judith B. Wray

**Exhibit 1**

ERIC BALCH  
C/O WATTS GUERRA & CRAFT  
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BLDG. ONE  
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