

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BLITZ U.S.A., Inc., et al.,¹

Debtors.

Chapter 11

Case No. 11-13603 (PJW)

(Jointly Administered)

Hearing Date: January 28, 2014

Objection Deadline: January 21, 2014

**DECLARATION OF TIMOTHY P. HARKNESS IN SUPPORT OF
THE DEBTORS' AND OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' JOINT PLAN OF LIQUIDATION**

I, Timothy P. Harkness, hereby declare under penalty of perjury:

1. I am a partner at the law firm of Freshfields Bruckhaus Deringer US LLP and I represent Kinderhook Industries II, L.P. and Kinderhook Capital Fund II, L.P. (together, "Kinderhook") in connection with their interest of the above-captioned Debtors, including with respect to lawsuits related to the Debtors' products filed against Kinderhook by personal injury claimants and the Debtors' Chapter 11 Cases.

2. I have personal knowledge of the matters stated herein and they are true and correct. I respectfully submit this Declaration in connection with and in support of the confirmation of the Debtors' and Official Committee of Unsecured Creditors' Joint Plan of Liquidation dated November 12, 2013 (docket no. 1921, as it may be amended, modified or otherwise supplemented, the "Plan")² and the approval of the BAH Settlement and the releases and injunctions included therein. A true and correct copy of the BAH Settlement is annexed hereto as Exhibit A.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and Miami OK LLC (f/k/a F3 Brands LLC) (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW Miami, OK 74354.

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



3. In the past few years, Kinderhook and certain of the other BAH Released Parties have been named as defendants in personal injury lawsuits relating to the Debtors' products (the "Known PI Claims"). During the Chapter 11 Cases, the Committee filed successive motions seeking standing (docket nos. 735, 978, 1249; together, the "Standing Motion") to bring an action against Kinderhook and certain of the BAH Released Parties asserting various causes of action belonging to the estate of Blitz U.S.A., Inc. (the "Standing Motion Claims").

4. Kinderhook and other parties named as putative defendants in the Standing Motion opposed the Standing Motion. No hearing has ever been held on the Standing Motion.

5. Kinderhook and the BAH Settling Parties engaged in extensive, arm's length negotiations with the USA Debtors and the Committee to reach a settlement of the Standing Motion Claims, the Known PI Claims and unknown personal injury claims that arose on or prior to July 31, 2012. The result of those negotiations is the BAH Settlement.

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

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

8. Identity of interests exists between the USA Debtors and the BAH Released Parties based on indemnification rights. Each of the BAH Released Parties have direct or indirect indemnification rights against the USA Debtors in connection with, among other things,

fees and expenses and alleged liability in connection with personal injury suits, 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 USA Debtors' Boards of Directors, (iv) certificates of incorporation, certificates of limited partnership, articles of organization or certificates of formation of the USA Debtors (as applicable), (v) bylaws and operating agreements of the USA Debtors, or (vi) statutory or common law. Any indemnification claims by the BAH Released Parties would deplete the limited assets of the USA Debtors' estates.

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

10. \$6.25 million is a necessary and substantial contribution to the USA Debtors' estates, as it will provide the funds for payment of administrative expense claims and potentially some distribution to general unsecured creditors. Without the BAH Settlement, the USA Debtors' estates would be administratively insolvent and unable to confirm a plan.

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

12. Upon information and belief and as will be evidenced by the Voting Certification to be filed with the Court, the classes of creditors impacted by the BAH Settlement, Class 3(a) (General Unsecured Claims against the USA Debtors) and Class 4(a) (Blitz Personal Injury Trust Claim against the USA Debtors), have voted overwhelmingly in favor of the Plan.

13. The Plan provides a mechanism to pay for all, or substantially all, of the claims in the class or classes affected by the injunction and the release.

a. Personal injury claims against the BAH Released Parties will receive recoveries under the Plan at least equal to, if not greater than, any recovery to which they would be likely to obtain through litigation with Kinderhook.

i. To date, none of the personal injury claimants that have asserted claims against Kinderhook have obtained a successful judgment against Kinderhook. In fact none of the lawsuits filed against Kinderhook by Blitz personal injury claimants have survived a motion to dismiss by Kinderhook where such motion has been decided.

ii. Below is a chart showing the claims filed against Kinderhook or their affiliates and the outcome or current status of each.

Case	Status as to Kinderhook
<i>Thornton v. Kinderhook Capital Fund II, L.P. et al</i> No. 09-902481 (Circuit Court of Mobile County Alabama)	Stayed by the court pending resolution of the bankruptcy. Motion to dismiss has been filed.
<i>Ballew v. Kinderhook Capital Fund II, L.P. et al</i> No. 10-CVS-691(Superior Court of Gaston County North Carolina)	Stayed by the court pending resolution of the bankruptcy. Motion to dismiss has been filed.
<i>Trevino v. Kinderhook Capital Fund II, L.P. et al</i> No. 1:12-ap-50627 (PJW) (Bankr. D. Del.) (transferred from US District Court for the Middle District of Tennessee, No. 1:10-cv-00115)	Stayed by agreement of the parties.
<i>Montgomery v. Wal-Mart Stores, Inc. et al</i> No. 3:12-cv-03034 (S.D. Cal.)	Kinderhook served January 2013. Case currently stayed pending settlement.

<i>Kassim v. Wal-Mart Stores, Inc. et al</i> No. 3:13-cv-00373-MPS (D. Conn.)	Case administratively closed by the Court pending settlement.
<i>Smith v. Blitz U.S.A., Inc. et al</i> No.: 0:11-cv-01771(D. Minn.)	Kinderhook dismissed by the court for lack of personal jurisdiction on 11/6/2012. A true and correct copy of the dismissal order is attached hereto as Exhibit B.
<i>Ward v. Blitz U.S.A., Inc. et al</i> No. 1:11-cv-00039 (M.D. Ga.)	Kinderhook voluntarily dismissed, 5/9/11.
<i>Droney v. Blitz U.S.A., Inc. et al</i> No. 2011-CP30-409 (South Carolina Court of Common Pleas, Laurens County)	Kinderhook voluntarily dismissed, 5/19/11.
<i>Alexson v. Blitz U.S.A., Inc. et al</i> No. 11-34-00080 (South Carolina Court of Common Pleas, Marlboro County)	Kinderhook voluntarily dismissed, 5/19/11.
<i>Tillman v. Blitz U.S.A., Inc. et al</i> No. 2011-CP-04 02100 (South Carolina Court of Common Pleas, Anderson County)	Kinderhook voluntarily dismissed, 5/19/11.
<i>Melvin v. Blitz U.S.A., Inc. et al</i> No. 8:11-cv-2542 (M.D. Fla.)	Kinderhook voluntarily dismissed 12/9/2011.
<i>Al-Shara v. Blitz U.S.A., Inc. et al</i> No. 2:11-cv-14954 (E.D. Mich.)	Kinderhook voluntarily dismissed 12/7/2011.
<i>Shickel v. Blitz U.S.A., Inc. et al</i> No. 3:11-cv-03380 (C.D. Ill.)	Kinderhook voluntarily dismissed 12/2/11.
<i>Mims v. Blitz U.S.A., Inc. et al</i> No. 12-244 (N.D. Ala.)	Dismissed without prejudice subject to a tolling agreement on 2/13/2013.

iii. The foregoing lawsuits asserted alter ego or veil-piercing claims against Kinderhook, which are derivative of the claims against Blitz USA. Blitz USA is receiving a release from the personal injury claimants in connection with the Insurance Settlement. As such, these claims would be legally unsustainable against Kinderhook after consummation of the Insurance Settlement.

b. The USA Debtors, on account of the Estate Claims against Kinderhook and other BAH Released Parties, will receive an amount at least equal to, if not greater than,

any recovery to which they would be likely to obtain through litigation with Kinderhook and the parties named in the Standing Motion.

i. Pursuant to the Standing Motion, the Committee sought standing to assert the following Standing Motion Claims against certain of the BAH Released Parties, including Kinderhook:

1. Declaratory Judgment (claim I);
2. Unjust Enrichment (claim II);
3. Constructive Trust (claims III and IV);
4. Conversion (claim V);
5. Avoidance and recovery of fraudulent transfers under sections 5544, 548(a)(1)(A) and 548(a)(1)(B) of the Bankruptcy Code and Oklahoma statutes 24-116(a)(1)(A) and 24-116(a)(1)(B) (claims VI, VII, VIII, IX, XII and XIII);
6. Avoidance and recovery of preferential transfers under section 547 of the Bankruptcy Code (claims X, XI and XIII); and
7. Disallowance of claims under section 502(d) of the Bankruptcy Code (claim XIV).

ii. The Blitz U.S.A. Estate never sought to assert the Standing Motion Claims.

iii. The hearing on the Standing Motion was repeatedly adjourned by the Committee and therefore the court has not ruled on the Standing Motion.

iv. Pursuant to the Tolling Agreement and Stipulation Among the Debtors and Kinderhook, Blitz U.S.A., the Committee and Kinderhook agreed to toll the Standing Motion Claims until the earlier of March 1, 2014 or the effective date of any plan of liquidation or reorganization confirmed in the Debtors' Chapter 11 Cases. The time to assert any other Blitz U.S.A.

estate causes of action has lapsed and therefore there are no other estate claims that may be asserted against the BAH Released Parties.

- v. Kinderhook, and upon information and belief, the other defendants named in the Standing Motion, believe that the Standing Motion Claims are without merit. Kinderhook is prepared to fully defend itself in litigation with respect to the Standing Motion Claims. A contested litigation over the Standing Motion Claims would be expensive and time consuming for both sides and the return for the USA Debtors' Estates is speculative, in particular after factoring in the litigation costs and the defenses that would be asserted by the putative defendants.

- c. Based on the foregoing, I respectfully submit that the BAH Settlement Payment constitutes a substantial contribution to the USA Debtors' estates.

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

Dated: January 23, 2014



Timothy P. Harkness

EXHIBIT A

BAH SETTLEMENT TERM SHEET

This term sheet (the "BAH Settlement Terms") sets forth the agreement of the undersigned parties to settle all claims or causes of action held by the Blitz USA, Inc. ("USA"), Blitz Acquisition, LLC, Blitz RE Holdings, LLC and Miami OK, LLC f/k/a F3 Brands LLC (the foregoing, together with USA, the "USA Debtors"), The Official Committee of Unsecured Creditors for the Debtors (the "Committee"), the Participating Blitz Personal Injury Claimants and Michael Montgomery against Kinderhook Industries II, LP and Kinderhook Capital Fund II, LP ("Kinderhook"); Christian P. Michalik and Louis Aurelio (the "Kinderhook Directors"); Rocky Flick, James Pearson, and Charles Neal (the "Non-Kinderhook Directors"); LAM 2011 Holdings ("LAM"); Blitz Acquisition Holdings, Inc. ("BAH" and together with LAM, the "Holdings Debtors") and all of the Holdings Debtors non-USA Debtor affiliates and subsidiaries, including, without limitation, Reliance Products Holdings, Inc., Reliance Products, Inc., MollPlasticrafters, Inc., Renaissance Plastics, Inc. (the "Reliance Entities"); and John R. Elmburg, Eric Elmburg, Robert Elmburg, Discovery Plastics, LLC, Crestwood Holdings, Inc., and Bergan, LLC ("Crestwood", and together with Kinderhook, the Kinderhook Directors, the Non-Kinderhook Directors, and the Holdings Debtors, the "BAH Settling Parties") including, without limitation, those claims asserted in the draft complaint attached to the Committee's Standing Motion.

The BAH Settlement Terms represent the most important terms of the settlement, which will be included in the Chapter 11 Plan. Each of the undersigned parties acknowledges and agrees that their signatures set forth below evidence their intent to be legally bound by the BAH Settlement Terms and that the BAH Settlement Terms are legally enforceable by the Parties (subject to approval by the Bankruptcy Court in a final non-appealable order pursuant to Rule 9019 of the Bankruptcy Rules).

Capitalized terms used but not otherwise defined herein have the meanings set forth in the Term Sheet dated on or about July 5, 2013 among the Debtors, the Committee, the Participating Insurers, the Participating Blitz Personal Injury Claimants and Wal-Mart (the "Insurance Settlement Term Sheet"), a copy of which is attached hereto as Exhibit A.

1. Settlement Payment: BAH, on behalf of the BAH Settling Parties, will pay to USA or its designee(s), for the benefit of the USA Debtors and their creditors (a) on the Effective Date, \$6.25 million (the "BAH Settlement Payment") plus (b) on the date on which Rocky Flick's employee bonus claim (claim number 274) (the "Flick Claim") becomes an allowed claim no longer subject to objection, the allowed amount of the Flick Claim, up to a maximum amount of \$250,000 (the "Additional Payment"). The Effective Date shall mean the date on which all conditions precedent to the effectiveness of the Chapter 11 Plan have occurred. For the avoidance of doubt, and without limitation of other conditions precedent, it shall be a condition to the effectiveness of the Chapter 11 Plan that the Channeling Injunction is in full force and effect, the BAH Released Parties are "Released Parties" under the Chapter 11 Plan, the right of the Participating Blitz Personal Injury Claimants to elect to file a Notice of Non-Occurrence of Effective Date (as such term is used in paragraph 3 of the Insurance Settlement Term Sheet) has expired or been waived or the Notice of Non-Occurrence of Effective Date has been withdrawn and the

Confirmation Order shall be a final order for which no appeal shall be pending and the time within which to file an appeal has expired.

2. Releases: In exchange for the payment of the BAH Settlement Payment and the Additional Payment, on the Effective Date, the USA Debtors, the Committee, the members of the Committee, any trustees appointed under the Plan of Reorganization, the Participating Insurers, the Participating Blitz Personal Injury Claimants and Michael Montgomery shall each release and forever disclaim any claims and causes of action against the Holdings Debtors, Kinderhook, the Kinderhook Directors, the Non-Kinderhook Directors, Crestwood and each of the aforementioned's officers, directors, affiliates, subsidiaries (other than the USA Debtors), including the Reliance Entities, current and former shareholders, members, employees, professionals, advisors, consultants, representatives, attorneys, other agents or the successors of any of them, in each case in their capacity as such, and present and former directors and officers of each of the USA Debtors (the foregoing entities and their Related Parties collectively being referred to herein as the "BAH Released Parties"); provided however, that (i) no release shall be provided to Discovery Plastics, LLC with respect to the Fenn or Kornegay cases; (ii) no release shall be provided to professionals, advisors, consultants or attorneys that have filed a proof of claim in the USA Debtors' chapter 11 cases; and (iii) no officers, directors or employees of any of the Debtors that have filed proofs of claim in any of USA Debtors' chapter 11 cases shall receive a release of any defenses, claims, counter-claims or objections in any way related to the claims asserted in such proofs of claim. Upon information and belief, the parties involved in the Kornegay and Fenn matters, including Discovery Plastics, have reached settlements under which Discovery Plastics will receive a release from Kornegay and Fenn, respectively, upon receipt of a settlement payment. For the avoidance of doubt, Michael Montgomery shall not release the USA Debtors pursuant to the BAH Settlement Terms.
3. Reciprocal Releases: On the Effective Date, the BAH Settling Parties shall release and forever disclaim any claims and causes of action against the USA Debtors, the Committee, the members of the Committee, the Participating Insurers, the Participating Blitz Personal Injury Claimants and Michael Montgomery and each of the aforementioned's officers, directors, affiliates, subsidiaries, current and former shareholders, members, employees, professionals, advisors, consultants, representatives, attorneys, other agents or the successors of any of them; provided however, that this reciprocal release shall not be a release by Rocky Flick of the Flick Claim and parties in interest, including, but not limited to the Committee, shall continue to have the right to assert any and all valid defenses or objections to such claim notwithstanding the release provided in paragraph 2 hereof or the provisions of paragraph 10 hereof. On or before the Effective Date, the Holdings Debtors shall secure releases as of the Effective Date in favor of the aforementioned parties from the Reliance Entities.
4. Approval: The parties hereto shall seek approval of these BAH Settlement Terms from the Bankruptcy Court by filing a motion pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "BAH Settlement Approval Motion") by no later than 5 business days after execution of the BAH Settlement Terms. The BAH Settlement Approval Motion shall be drafted by the BAH Settlement Parties and shall be subject to

review and reasonable consent of the Committee prior to filing. The BAH Settlement Terms shall also be incorporated in the Chapter 11 Plan and shall be consummated only upon consummation of the Chapter 11 Plan. The order approving the BAH Settlement Terms shall be in form and substance acceptable to each of the undersigned parties, in each's sole discretion.

5. Crestwood and Kinderhook Claims: Any value remaining in the BAH estate after payment of the BAH Settlement Payment and the Additional Payment shall be for the benefit of Crestwood, Kinderhook, the Kinderhook Directors, and any other holders of allowed claims against the Holdings Debtors' estates, other than the Excluded Creditors (as defined below). The Holdings Debtors shall have the sole and complete authority to negotiate and settle with each of its creditors regarding the allowed amounts of their claims against the BAH and LAM estates, respectively, and to make distributions on account of any allowed claims. Any distributions that BAH and LAM creditors receive on account of such allowed claims shall be in full and final satisfaction of their claims against BAH and LAM, respectively. Kinderhook, Crestwood, the Kinderhook Directors and the Non-Kinderhook Directors shall waive any distributions to which they would be entitled from the USA Debtors in their capacity as such and shall agree that any proofs of claim filed by each of them against the USA Debtors shall be deemed disallowed on the Effective Date of the Chapter 11 Plan. For the avoidance of doubt, the Flick Claim shall not be disallowed by virtue of the foregoing sentence and his distribution on account of such claim, to the extent it is allowed, and subject to Paragraph 10 hereof, shall not be waived by virtue of the foregoing sentence.
6. Excluded Creditors: Any proofs of claim filed by any of the members of the Creditors' Committee and the Blitz Personal Injury Claimants against the Holdings Debtors shall be withdrawn with prejudice on the Effective Date. Furthermore, the Committee shall support any objection by the Holdings Debtors to claims filed by insurers. The holders of claims described in this paragraph shall be referred to herein as the "Excluded Creditors."
7. Standing Motion: The Committee agrees to withdraw the Standing Motion with prejudice on the Effective Date and shall make no further prosecution of the Standing Motion prior to the earlier of (i) the date on which confirmation of the Chapter 11 Plan is denied by a final, non-appealable order of the Court and (ii) the date on which the proponents of the Chapter 11 Plan withdraw it from consideration by the Court. For the avoidance of doubt, the releases described above for the BAH Released Parties shall include a release of the BAH Released Parties by the USA Debtors from all causes of action alleged in the Standing Motion and any and all other causes of action that the USA Debtors may have against the BAH Released Parties.
8. Most Favored Nation Status: Notwithstanding the release language provided above, releases under the Chapter 11 Plan for the BAH Released Parties by the Participating Blitz Personal Injury Claimants and Michael Montgomery shall be no less favorable than those being provided to the Participating Insurers, Wal-Mart or any other party. Furthermore, the Channeling Injunction shall include the BAH Released Parties and Paragraphs 16 and 17 of the Insurance Settlement Term Sheet shall be made applicable to these BAH Settlement Terms.

9. Plan Documents: The Chapter 11 Plan, Disclosure Statement, Disclosure Statement Approval Order and Confirmation Order shall all be in form and substance reasonably acceptable to the Committee, the Holdings Debtors, Crestwood and Kinderhook. The parties hereto shall cooperate with each other in effectuating the provisions of these BAH Settlement Terms. The parties hereto agree to vote in favor of the Chapter 11 Plan to the extent that they have claims that are entitled to vote on the Plan; provided however, that any parties hereto may abstain from voting, vote against the Chapter 11 Plan and/or challenge or object to confirmation of the Chapter 11 Plan if the Chapter 11 Plan or any actual or proposed alteration, modification, or revision of the Chapter 11 Plan (a) is inconsistent with the terms of these BAH Settlement Terms, (b) materially and adversely affects the interests of any party hereto, or (c) does not include the releases and Channeling Injunction. If such objection is sustained, the objecting party, at its discretion and after a 20 day opportunity to cure or remedy the objection, may terminate this settlement. In the event that the settlement is so terminated, the parties hereto shall be returned to the position that they were in prior to entering into these BAH Settlement Terms.
10. Employee Bonus Claims:
 - Rocky Flick agrees to reduce the Flick Claim to \$244,272.65.
 - Rocky Flick, in his capacity as CEO of USA, represents that the USA Debtors' books and records show that the amount of accrued and unpaid employee bonuses do not exceed, in the aggregate, \$589,317.41, exclusive of the Flick Claim.
 - The Committee, on behalf of the USA Debtors' bankruptcy estates reserves the right, and any trustee appointed under the Chapter 11 Plan shall be empowered, to object to or seek further reduction of the Flick Claim and all other employee bonus claims.
11. No Substantive Consolidation: The Chapter 11 Plan shall not provide for the substantive consolidation of the Holdings Debtors with one or more of the USA Debtors.
12. Professional Fees: All accrued and unpaid professional fees and expenses, other than those incurred by Young Conaway, shall be satisfied by the USA Debtors. The Committee and the USA Debtors agree to the budgets set forth on Exhibit B attached hereto.
13. Allocation of BAH Settlement Payment: Subject to the priorities of distribution set forth in the Bankruptcy Code, the Committee may determine the allocation of the BAH Settlement Payment among the creditors of the USA Debtors in their discretion without consultation with the BAH Settling Parties; provided, however, that the BAH Settling Parties bear no responsibility for any shortfall in satisfying any claims against the USA Debtors, whether administrative, unsecured or otherwise. The BAH Settling Parties understand that the BAH Settlement Payment will be allocated to satisfying administrative claims and general unsecured claims other than tort claimants.
14. Committee Support: The Committee will support and take actions reasonably necessary to obtain approval of the BAH Settlement Approval Motion and to obtain votes in favor

of confirmation of the Chapter 11 Plan incorporating the BAH Settlement Terms by the unsecured creditors of the USA Debtors.

15. Publicity: If any party hereto requests from the other parties hereto to issue any public statement regarding the BAH Settlement Terms, the parties shall agree on the terms and language of one joint press statement with respect to the BAH Settlement Terms to be released to the public at a mutually agreed upon time, but in no instance until after the filing of the BAH Settlement Approval Motion. No party shall make any other statements to the media concerning the BAH Settlement Terms, except that the parties may refer the media to the press statement and any court filings not under seal. This Paragraph shall not preclude the undersigned plaintiffs' counsel from identifying on their respective web sites and in any other materials describing their respective law firms, the fact that they were one of the counsel involved in the settlement.
16. No Admission of Liability: The Chapter 11 Plan shall recite that: (1) the BAH Settling Parties deny liability for the Blitz Personal Injury Claims asserted; (2) neither the Chapter 11 Plan nor these BAH Settlement Terms, nor any other item pertaining to the settlement contemplated herein, shall be offered in any other case or proceeding, including as evidence of any admission by the BAH Settling Parties of any liability with respect to any claim for damages or other relief; and (3) any stipulation or admission by the BAH Settling Parties contained in these BAH Settlement Terms, the Chapter 11 Plan or in any other document pertaining to the Settlement, is made for settlement purposes only.
17. Mediation: To the extent of any conflict between these BAH Settlement Terms and the Insurance Settlement Term Sheet and the memorialization of both term sheets into the Chapter 11 Plan, the Holdings Debtors and the Committee shall cause the BAH Settling Parties to meet and confer with the parties to the Insurance Settlement Term Sheet to resolve any such conflicts. Thereafter, such resolution of such conflicts shall be subject to non-binding mediation by Hon. Richard Cohen (Ret.), or if he is not available, another neutral mediator experienced with bankruptcy insurance coverage settlements. If Hon. Richard Cohen (Ret.) is not available and the parties cannot agree upon an alternative candidate, then the administrator of JAMS' New York office shall appoint a substitute neutral mediator, subject to the consent of all Settling Parties, to perform that function.
18. Due Authority: The signatories hereto declare, warrant and represent that they have agreed to the BAH Settlement Terms and that they have all requisite authority to enter into these BAH Settlement Terms. This term sheet may be signed in counterparts.

Wherefore, intending to be legally bound to the foregoing, the parties hereby acknowledge their agreement to the BAH Settlement Terms by execution below.

Holdings Debtors

LAM 2011 HOLDINGS, LLC

By: 

Title: Director

Date: 7/24/2013

BLITZ ACQUISITION HOLDINGS, INC.

By: 

Title: Director

Date: 7/24/2013

Kinderhook

KINDERHOOK INDUSTRIES II, LP

By: _____

Title: _____

Date: _____

KINDERHOOK CAPITAL FUND II, LP

By: _____

Title: _____

Date: _____

Wherefore, intending to be legally bound to the foregoing, the parties hereby acknowledge their agreement to the BAH Settlement Terms by execution below.

Holdings Debtors

LAM 2011 HOLDINGS, LLC

By: _____

Title: _____

Date: _____

BLITZ ACQUISITION HOLDINGS, INC.

By: _____

Title: _____

Date: _____

Kinderhook

KINDERHOOK INDUSTRIES II, LP

By:  _____

Title: Managing Director

Date: July 11, 2013

KINDERHOOK CAPITAL FUND II, LP

By:  _____

Title: Managing Director

Date: July 11, 2013

Crestwood

JOHN R. ELMBURG

By: 

Date: 7/10/13

ERIC ELMBURG

By: 

Date: 7/10/13

ROBERT ELMBURG

By: 

Date: 7/10/2013

DISCOVERY PLASTICS, LLC

By: 

Title: Member

Date: 7/10/13

CRESTWOOD HOLDINGS, INC.

By: 

Title: President

Date: 7/10/2013

BERGAN, LLC

By: 

Title: Manager

Date: 7/10/13

Kinderhook Directors

CHRISTIAN P. MICHALIK

By: 

Date: July 11, 2013

LOUIS AURELIO

By: 

Date: July 11, 2013

Non-Kinderhook Directors

ROCKY FLICK

By: _____

Date: _____

JAMES PEARSON

By: _____

Date: _____

USA Debtors

BLITZ USA, INC.

By: _____

Title: _____

Date: _____

Kinderhook Directors

CHRISTIAN P. MICHALIK

By: _____

Date: _____

LOUIS AURELIO

By: _____

Date: _____

Non-Kinderhook Directors

ROCKY FLICK

By:  _____

Date: _____

JAMES PEARSON

By: _____

Date: _____

USA Debtors

BLITZ USA, INC.

By:  _____

Title: CEO _____

Date: _____

Kinderhook Directors

CHRISTIAN P. MICHALIK

By: _____

Date: _____

LOUIS AURELIO

By: _____

Date: _____

Non-Kinderhook Directors

ROCKY FLICK

By: _____

Date: _____

JAMES PEARSON

By:  _____

Date: 7/24/2013

USA Debtors

BLITZ USA, INC.

By: _____

Title: _____

Date: _____

BLITZ ACQUISITION, LLC

By: 

Title: CEO

Date: _____

BLITZ RE HOLDINGS, LLC

By: 

Title: CEO

Date: _____

MIAMI OK, LLC f/k/a F3BRANDS LLC

By: 

Title: CEO

Date: _____

Committee

COMMITTEE CO-CHAIR

By: _____

Title: _____

Date: _____

COMMITTEE, CO-CHAIR

By: _____

Title: _____

Date: _____

JARDEN PLASTIC SOLUTIONS, IN ITS CAPACITY AS A MEMBER OF THE
COMMITTEE

By: _____

Title: _____

Date: _____

BLITZ ACQUISITION, LLC

By: _____

Title: _____

Date: _____

BLITZ RE HOLDINGS, LLC

By: _____

Title: _____

Date: _____

MIAMI OK, LLC f/k/a F3BRANDS LLC

By: _____

Title: _____

Date: _____

Committee

COMMITTEE CO-CHAIR

By:  _____

Title: GREENMAN DUNN FOR KAREN KORNEGAY

Date: 07-10-13

COMMITTEE, CO-CHAIR

By:  _____

Title: CFo - Bekun America corporation

Date: July 24, 2013

JARDEN PLASTIC SOLUTIONS, IN ITS CAPACITY AS A MEMBER OF THE
COMMITTEE

By: _____

Title: _____

Date: _____

BLITZ ACQUISITION, LLC

By: _____

Title: _____

Date: _____

BLITZ RE HOLDINGS, LLC

By: _____

Title: _____

Date: _____

MIAMI OK, LLC f/k/a F3BRANDS LLC

By: _____

Title: _____

Date: _____

Committee

COMMITTEE CO-CHAIR

By: _____

Title: _____

Date: _____

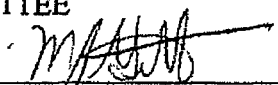
COMMITTEE, CO-CHAIR

By: _____

Title: _____

Date: _____

JARDEN PLASTIC SOLUTIONS, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: 

Title: Vio Finance

Date: 7/11/13

BEKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: 

Title: CFO - VP Treasurer

Date: 7/12/13

RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS FOR RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

JARDEN PLASTIC SOLUTIONS, IN ITS CAPACITY AS A MEMBER OF THE
COMMITTEE

By: _____

Title: _____

Date: _____

BECKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE
COMMITTEE

By: _____

Title: _____

Date: _____

RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER
OF THE COMMITTEE

By:  _____

Date: 6/28/13 _____

ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE
COMMITTEE

By: _____

Date: _____

DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF
THE COMMITTEE

By: _____

Date: _____

KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A
MEMBER OF THE COMMITTEE

By: _____

Date: _____

BECKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Title: _____

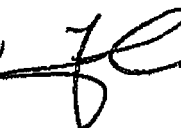
Date: _____

RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: Eric Balch w/ permission 

Date: 1/15/13

DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS FOR RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

BECKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Title: _____

Date: _____

RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: David Calder

Date: 7.21.2013

KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Date: _____

RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS FOR RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

BECKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE
COMMITTEE

By: _____

Title: _____

Date: _____

RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE
COMMITTEE

By: _____

Date: _____

ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE
COMMITTEE

By: _____

Date: _____

DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE
COMMITTEE

By: _____

Date: _____

KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A
MEMBER OF THE COMMITTEE

By:  _____

Date: 07-10-13 _____

RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS FOR
RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR
ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS
FOR RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS
ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: Daniel Halpin

Title: attorney

Date: 7/11/2013

WATTS, GUERRA & CRAFT, AS ATTORNEYS FOR ERIC BALCH, A MEMBER
OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS
IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

THE ANDERSON LAW FIRM, AS ATTORNEYS FOR DAVID CALDER, A
MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER
CLIENTS IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

BRENEMAN DUNGAN, AS ATTORNEYS FOR KAREN GUENIOT-KORNEGAY, A
MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER
CLIENTS IDENTIFIED ON EXHIBIT C

MICHAEL MONTGOMERY

By: _____

Date: _____

WATTS, GUERRA & CRAFT, AS ATTORNEYS FOR ERIC BALCH, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: 

Title: Capital Partner

Date: 7/18/13

THE ANDERSON LAW FIRM, AS ATTORNEYS FOR DAVID CALDER, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

BRENEMAN DUNGAN, AS ATTORNEYS FOR KAREN GUENIOT-KORNEGAY, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

MICHAEL MONTGOMERY

By: _____

Date: _____

WATTS, GUERRA & CRAFT, AS ATTORNEYS FOR ERIC BALCH, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

THE ANDERSON LAW FIRM, AS ATTORNEYS FOR DAVID CALDER, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: Hank Anderson

Title: Attorney

Date: July 8, 2013

BRENEMAN DUNGAN, AS ATTORNEYS FOR KAREN GUENIOT-KORNEGAY, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

MICHAEL MONTGOMERY

By: _____

Date: _____

WATTS, GUERRA & CRAFT, AS ATTORNEYS FOR ERIC BALCH, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

THE ANDERSON LAW FIRM, AS ATTORNEYS FOR DAVID CALDER, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

By: _____

Title: _____

Date: _____

BRENEMAN DUNGAN, AS ATTORNEYS FOR KAREN GUENIOT-KORNEGAY, A MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT C

MICHAEL MONTGOMERY

By:  _____

Date: 07-10-13 _____

EXECUTION VERSION

Exhibit A

Insurance Settlement Term Sheet

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EXECUTION COPY

TERM SHEET

The Debtors, the Committee, the Participating Insurers, the Participating Blitz Personal Injury Claimants, and Wal-Mart have agreed to a Settlement of any and all past, present, and future issues that could arise between them with respect to the Blitz Personal Injury Claims.

Certain of the most important terms of the Settlement are summarized in the numbered paragraphs set forth below and subject to the Settling Parties' intent that the terms of the Settlement to be incorporated into a Chapter 11 Plan containing customary provisions relating to the implementation and enforcement of the Settlement, they acknowledge by their signatures set forth below their intent to be legally bound and that they are legally bound by the terms set forth in this Term Sheet and that the Term Sheet is legally enforceable by the Parties (subject to approval by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in a final non-appealable order pursuant to Rule 9019 of the Bankruptcy Rules). A motion will be filed with the Bankruptcy Court seeking an order approving the Term Sheet and the Settlement, which motion shall be on notice in form, substance and effect acceptable to the Settling Parties and approved by the Bankruptcy Court as being adequate to bind all claimants asserting Blitz Personal Injury Claims. Also, the terms and conditions of the Settlement Approval Order shall be in form and substance acceptable to the Settling Parties. The Debtors' obligation to take the actions contemplated by this Term Sheet and the Agreement is subject to the Debtors' having funding necessary to do so and the Debtors are only required to take such actions as are reasonably practical under the circumstances. Moreover, any final Settlement is contingent upon the confirmation of the Chapter 11 Plan. The Committee will support and take actions reasonably necessary to obtain approval of the Settlement and a Chapter 11 Plan incorporating the Settlement.

DEFINITIONS

The following terms, as used herein, shall be defined as follows:

- a. "BAH Settlement" shall mean the consensual settlement of all claims and causes of action by and between the BAH Settling Parties.
- b. "BAH Settling Parties" shall mean the Committee, the Debtors, the Participating Blitz Personal Injury Claimants, Michael Montgomery, Kinderhook Industries II, LP Kinderhook Capital Fund II, LP, Crestwood Holdings, Inc., Bergan, LLC and any other party that may be a signatory to the BAH Settlement.
- c. "Bar Date Motion" shall mean a motion filed with the Bankruptcy Court to establish a bar date for all Blitz Personal Injury Claims that do not fall within the claims barred by the bar date order that was entered on May 23, 2012.
- d. "Blitz Personal Injury Claims" shall mean and include all claims for damages or other relief for, based upon, arising out of, relating to, or in any way involving bodily injury and / or property damage that occurred on or before 12:01 AM CST on July 31, 2012, and shall

include asserted and unasserted claims, whether known or unknown, based upon, arising out of, or in any way involving the products, premises or operations of the Debtors and, without any limitation of the foregoing shall include any such claims against Wal-Mart directly or indirectly relating to the Debtors' products, premises or operations, and any direct action claims by a claimant against the Participating Insurers.

e. "Channeling Injunction" shall mean an injunction pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code that to the fullest extent permitted by law (i) permanently enjoins and channels to the Plan Trust all Blitz Personal Injury Claims, and (ii) permanently enjoins the prosecution of all Blitz Personal Injury Claims against any Released Party. The Participating Blitz Personal Injury Claimants and the Committee shall be responsible for the development and drafting of the terms and procedures with respect to the valuation, allowance and payment of Blitz Personal Injury Claims including the allocation of the Settlement Amount. For the avoidance of doubt, the Channeling Injunction shall not channel or enjoin any claim for damages on account of a bodily injury and / or property damage that occurred on or after 12:01 AM CST on July 31, 2012.

f. "Committee" shall mean the Official Committee of Unsecured Creditors, its co-chairs and members appointed in the Debtors' chapter 11 cases.

g. "Confirmation Order" shall mean an Order of the Bankruptcy Court confirming the Chapter 11 Plan.

h. "Debtor Representatives" shall mean officers, directors, employees, agents, representatives, and attorneys of the Debtors or the successors of any of them, each in their capacity as such.

i. "Debtors" shall mean the USA Debtors and the Holdings Debtors.

j. "Holdings Debtors" shall mean LAM 2011 Holdings, LLC and Blitz Acquisition Holdings, Inc.

k. "Interests" shall mean any rights, claims, liens, interest, and/or encumbrances in connection with the described subject matter.

l. "Non-Participating Insurers" shall mean Hartford Insurance Company, Lumbermens Mutual Casualty Company, Admiral Insurance Company, American International Group, Nautilus Insurance Company, Arrowood Indemnity, RSUI Group, Inc., and any other insurer who is not a Participating Insurer. The known policies of insurance issued to Debtors by the Non-Participating Insurers include, without limitation, the policies listed on Exhibit 3 hereto.

m. "Participating Blitz Personal Injury Claimants" shall mean and include the claimants identified on Exhibit 1 attached hereto and their respective counsel.

n. "Participating Insurers" shall mean Old Republic Insurance Company, First Mercury Insurance Company, First Specialty Insurance Corporation, Liberty Surplus Insurance Corporation, Liberty Insurance Underwriters Inc., Arch Insurance Company, Continental Casualty Company, Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company (collectively, "Westchester"), Endurance American Specialty Insurance

Company, Interstate Fire and Casualty Insurance Company, Navigators Specialty Insurance Company and Axis Surplus Insurance Company and United States Fire Insurance Company (solely in its capacity as claims handler for the policies issued to the Debtors on behalf of First Mercury Insurance Company that are listed on Exhibit 1 and not on behalf of policies, if any, that might have been issued by United States Fire Insurance Company) and each of their predecessors, and present or past parents, subsidiaries, divisions, affiliates, directors, officers, agents, employees, representatives, members, and attorneys, their successors and assigns but only in their capacity as such, and any entity that acquires any of the foregoing entities through assignment, merger, or otherwise, but only to the extent that such acquiring entity succeeds to such foregoing entity's rights and obligations as they existed on the execution date of the Term Sheet. Notwithstanding the above, "Participating Insurers" shall not mean or include the "Non-Participating Insurers" or any of them.

o. "Parties" shall mean Debtors, the Committee, the Participating Insurers, the Participating Blitz Personal Injury Claimants, and Wal-Mart.

p. "Payment Date" shall mean thirty (30) days after entry of a Confirmation Order (i) which has become non-appealable, or (ii) if any appeals from the Confirmation Order have been filed, either (x) such appeals have been fully and finally concluded consistent with the material terms of this Settlement, or (y) the Participating Insurers and Wal-Mart, each in their sole discretion, agree to waive final resolution of such appeal(s) as a condition to the Payment Date.

q. "Chapter 11 Plan" shall mean one or more liquidating plans, pursuant to chapter 11 of the Bankruptcy Code, applicable to all Debtors that contains customary provisions and includes the terms necessary to implement and enforce the Settlement, and this Term Sheet.

r. "Plan Trust" shall mean the Blitz Personal Injury Plan Trust.

s. "Released Parties" shall mean the Debtors, the Participating Insurers, Wal-Mart and any other person or entity insured under the Subject Policies, including, but not limited to (i) any distributor or retailer of Debtors' products, (ii) the Debtor Representatives, and (iii) the shareholders of Debtors solely in their capacity as shareholders and solely related to Blitz Personal Injury Claims. The release of the shareholders of the Debtors shall include all claims asserted against such shareholders that are or would be covered by the Subject Policies. The Released Parties are not released for Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST with the exception that: (a) Wal-Mart shall be released for all Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST, (b) Westchester shall be released for all Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST with the exception of *Calder* and *Bosse*, and *Green* shall retain and not release his claim to sanctions which is now pending appeal until such time as the Debtors, pursuant to paragraph 2 below, dismiss their appeal and release the \$250,000 that has already been deposited to his counsel in escrow at which time any claim by *Green* shall be released, and (c) the Participating Insurers shall be released from any and all liability under the insurance policies identified on Exhibit 2 for all Blitz Personal Injury Claims, except that Westchester shall not be released from the *Calder* and *Bosse* claims. All outstanding Blitz Personal Injury Claims are retained against the USA Debtors and all Non-Participating Insurers during the period prior to July 31, 2007 at 12:01 a.m. CST and are not released but are channeled into the Plan Trust.

t. "Releasors" shall mean Debtors and their respective (a) parents, (b) past or present subsidiaries and affiliates, (c) any joint ventures in which they have interests, and (d) officers, directors, employees, agents, representatives, shareholders, and attorneys, or the successors of any of them. The USA Debtors shall not be released by this Settlement for Blitz Personal Injury Claims prior to July 31, 2007 at 12:01 a.m. CST so such cases may proceed solely against the policies or proceeds of Non-Participating Insurers.

u. "Settlement" shall mean the settlement of any and all past, present, and future issues that could arise between the Settling Parties with respect to the Blitz Personal Injury Claims as reflected in this Term Sheet. For the avoidance of doubt, the Settlement shall not include the Settlement of any claim for damages on account of a bodily injury and / or property damage that occurred on or after 12:01 AM CST on July 31, 2012.

v. "Settlement Amount" shall mean the total sum, in cash or its equivalent, of ONE HUNDRED SIXTY ONE MILLION AND THREE HUNDRED TWENTY THOUSAND DOLLARS AND NO CENTS (\$161,320,000.00).

w. "Settlement Approval Motion" shall mean a motion filed with the Bankruptcy Court seeking a Settlement Approval Order.

x. "Settlement Approval Order" shall mean the Order of the Bankruptcy Court approving the Term Sheet, and authorizing the Settlement as set forth in this Term Sheet, the terms of which shall be acceptable to each of the Settling Parties, in their sole discretion.

y. "Settling Parties" shall mean the Debtors, the Committee, the Participating Insurers, the Participating Blitz Personal Injury Claimants and Wal-Mart.

z. "Subject Policies" shall mean the policies of insurance listed on Exhibit 2 hereto and all other, known and unknown, insurance policies issued to Debtors or any of them by any of the Participating Insurers except directors and officers policies, if any, that may have been issued by the Participating Insurers.

aa. "Term Sheet" shall mean this Term Sheet.

bb. "USA Debtors" shall mean Blitz USA, Inc., Blitz Acquisition, LLC, Blitz RE Holdings, LLC and Miami OK, LLC f/k/a F3 Brands LLC.

cc. "Wal-Mart" shall mean Wal-Mart Stores, Inc., each of its predecessors, and present or past parents, subsidiaries, divisions, affiliates, their successors and assigns but only in their capacity as such, and any entity that acquires any of the foregoing entities through assignment, merger, or otherwise, but only to the extent that such acquiring entity succeeds to such foregoing entity's rights and obligations as they existed on the execution date of the Term Sheet, and the directors, officers, agents, employees, representatives, members, and attorneys for any of the foregoing in their capacity as such.

A. Rule 9019 Motion and Settlement Approval Order

1. On or before July 24, 2013 and after all Parties have executed this Term Sheet, the Settling Parties shall file a Settlement Approval Motion with the Bankruptcy Court seeking a Settlement Approval Order, in form and substance agreeable to the Settling Parties approving pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, the Settlement and binding the Settling Parties to support and vote to accept the Chapter 11 Plan, which (i) shall contain the Channeling Injunction and other customary terms and conditions, including exculpation, some of which are specifically set forth herein, and (ii) pursuant to Section 363 of the Bankruptcy Code, the Debtors' sale back to the Participating Insurers of the Subject Policies free and clear of all Interests of any person or entity in the Subject Policies and including findings of fact and conclusions of law providing for protection of the Participating Insurers under Section 363(f) and (m). The Debtors and the Committee shall use their respective best efforts to obtain approval of the Settlement and entry by the Bankruptcy Court of the Settlement Approval Order and to ensure that the Settlement Approval Order becomes a final non-appealable order. The Settlement Approval Motion shall be on notice in form, substance and effect acceptable to the Settling Parties and approved by the Bankruptcy Court as being adequate to bind all Participating Blitz Personal Injury Claimants. The Settlement Approval Order shall be on terms which shall be acceptable to each of the Settling Parties, in their sole discretion.

B. Resolution of Claims and Policy Buy Back

2. The Participating Insurers and Wal-Mart, collectively, will pay the Settlement Amount to the Plan Trust. The Settlement Amount shall be paid on or before the Payment Date. The Participating Blitz Personal Injury Claimants and their undersigned counsel represent and warrant that the Participating Blitz Personal Injury Claimants along with the following claimants: *Beadore, Bosse, Calder, Delatorre, Green* and *Tvedt* constitute all Blitz Personal Injury Claims of which the Participating Blitz Personal Injury Claimants and their counsel are aware or have knowledge. Upon the occurrence of the Payment Date, and the vacatur of the sanctions order by the Green court (to which the Debtors and the *Green* plaintiffs consent and the Participating Blitz Personal Injury Claimants do not oppose), the \$250,000 in escrow paid to counsel for the *Green* plaintiffs shall be released and the parties to the *Green* case agree to mutually dismiss their appeals.

3. Except as otherwise provided herein, the specific amounts contributed by individual contributors to the Settlement Amount shall remain confidential as among the contributors and subject to the terms of a side-agreement among the Participating Insurers and Wal-Mart; provided however, that to the extent any of the Settling Parties that are contributing to the Settlement Amount defaults on its funding obligation, the identity of the defaulting party, and the amount it agreed to contribute and owes, shall be released. The Committee or the Plan Trust, as appropriate, may either: (a) seek to enforce the Settlement with respect to any defaulting Settlement Party; or (b) opt to treat any defaulting Participating Insurer as a Non-Participating Insurer under the terms of the Settlement. The Participating Insurers and Wal-Mart may also reveal the amount of their individual contributions, but not that of other participants, as they deem necessary, in their sole discretion, (i) to obtain Bankruptcy Court approval of the Chapter 11 Plan and the releases and Channeling Injunction in the Chapter 11 Plan, and (ii) to their attorneys, auditors, tax consultants, regulators, reinsurers or retrocessionnaires for the purpose of obtaining reinsurance for any portion of their contribution to the Settlement Amount, or complying with applicable regulations. The Participating Insurers and Wal-Mart shall be

individually liable for the amounts each has agreed to contribute and not jointly and/or severally liable for the Settlement Amount. Under no circumstances shall any of the Participating Insurers or Wal-Mart be required to satisfy the funding obligation of any defaulting party. Funding of eighty percent (80%) of the Settlement Amount is a condition precedent to the effectiveness of the Chapter 11 Plan. If within ten days after the Payment Date less than eighty percent (80%) of the Settlement Amount has been paid, a super-majority of seventy-five percent (75%) of the Participating Blitz Personal Injury Claimants may, at their election, file a Notice of Non-Occurrence of Effective Date, which notice shall give the Participating Insurers and Wal-Mart twenty (20) days to cure any such deficiency by providing funds to achieve eighty percent (80%) of the Payment Amount. If the Participating Insurers and Wal-Mart do not timely cure in accordance with the foregoing, the filing of the Notice of Non-Occurrence of Effective Date shall have the effect of terminating the Settlement and the Settling Parties shall be returned to the position that they were in prior to the Settlement.

4. The insurance policies issued to and related agreements with the Debtors by the Non-Participating Insurers shall *not* be released or subject to the buyback contemplated by this Term Sheet. These policies and related agreements and/or their proceeds shall be assigned to the Plan Trust, upon confirmation of the Chapter 11 Plan, which shall thereafter have all rights that the Debtors and/or claimants had to pursue such coverage subject only to the terms and procedures of the Chapter 11 Plan. For the avoidance of doubt, to the extent that the Debtors have insurance coverage from the Non-Participating Insurers applicable to the claims asserted by Michael Montgomery (incident date: 6/20/02), John Delatorre (incident date 10/3/02) and Landon Beadore (incident date 10/3/03) and such other plaintiffs as who may be named in the complaints in these three aforementioned cases or whose injuries occurred prior to 12:01 a.m. CST on July 31, 2007 (subject to the provisions of paragraph 27, below), such insurance coverage from the Non-Participating Insurers is not released or bought back by the settlement contemplated by this Term Sheet and these claimants do not release their claims as against the USA Debtors or insurers other than the Participating Insurers. Notwithstanding anything to the contrary in the foregoing, all Blitz Personal Injury Claims, including those identified in this paragraph, shall be subject to the Channeling Injunction and all release provisions contained in this Term Sheet.

C. Policy Release and Buyback Provisions

5. The Chapter 11 Plan shall fully release the Released Parties from any liability for, based upon, arising out of, directly or indirectly relating to, or in any way involving, the Blitz Personal Injury Claims and shall enjoin anyone from asserting Blitz Personal Injury Claims against the Released Parties, provided further however, that the foregoing releases shall not operate to bar any response, objection, defense or counterclaim to any filed or scheduled claim or motion or request for payment of administrative expense filed by any Debtor Representative as against any Debtor or its estate. Such releases shall be sufficient to provide finality to the Participating Insurers from all claims, rights, demands, and obligations of any kind or nature arising out of or relating to the Subject Policies, or any agreements related to the Subject Policies, brought by or on behalf of any person or entity insured thereunder, including, but not limited to, Debtors, Debtor Representatives or any distributor or retailer of Debtors' products, including without limitation Wal-Mart. The Released Parties are not released for Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST with the exception that: (a)

the Released Parties shall be released for all Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST as against Wal-Mart, (b) Westchester shall be released for all Blitz Personal Injury Claims occurring on or before July 31, 2007 at 12:01 a.m. CST with the exception of Calder and Bosse, and Green shall retain and not release his claim to sanctions which is now pending appeal until such time as the Debtors, pursuant to paragraph 2 above, dismiss their appeal and release the \$250,000 that has been paid to his counsel in escrow, at which time any claim by Green shall be released, and (c) the Participating Insurers shall be released from any and all liability under the insurance policies identified on Exhibit 2 for all Blitz Personal Injury Claims, except that Westchester shall not be released from the Calder and Bosse claims. All outstanding Blitz Personal Injury Claims are retained against the USA Debtors and all Non-Participating Insurers during the period prior to July 31, 2007 at 12:01 a.m. CST and are not released but are channeled into the Plan Trust.

6. The Chapter 11 Plan shall further provide that each Participating Blitz Personal Injury Claimant be deemed to consensually release the Released Parties from any Blitz Personal Injury Claim and that each such claimant, as a condition precedent to receiving funds from the Plan Trust, shall deliver a written release to the Plan Trust sufficient to provide finality, and on terms acceptable, to the Released Parties for any Blitz Personal Injury Claim that was or might have been brought by such claimant. With respect to such finality for claims by Participating Blitz Personal Injury Claimants who are minors, the Chapter 11 Plan shall contain requirements, in terms acceptable to Wal-Mart and the Participating Insurers, that the guardian or other party legally responsible for the interests of any such Participating Blitz Personal Injury Claimants who are minors seek approval from any and all courts having jurisdiction over such minor. The Released Parties shall be provided copies of these releases. However, the Channeling Injunction and release provisions of the Chapter 11 Plan shall not be dependent for their efficacy with respect to any Blitz Personal Injury Claim on whether or not a written release has been provided with respect to such Blitz Personal Injury Claim. To the extent that any Released Party, in its discretion, determines that it is appropriate to petition the bankruptcy court for the appointment of a *guardian ad litem* to represent the interests of all Participating Blitz Personal Injury Claims who are minors, the Settling Parties shall support such a petition.

7. The Chapter 11 Plan shall further provide that any claimant who is not a Participating Blitz Personal Injury Claimant shall be deemed to release the Released Parties for all Blitz Personal Injury Claims.

8. The Debtors shall provide the Participating Insurers with a complete policy buyback of the Debtors' interests in the Subject Policies free and clear of all Interests of any person or entity pursuant to Section 363 of the Bankruptcy Code, and, with respect to any Interests held by any non-affiliated entities in the Subject Policies, if any, such relief as is sufficient to extinguish any such Interests in the Subject Policies and provide finality for claims asserted thereunder. By executing this Term Sheet, all Settling Parties consent to the Debtors' buyback of the Subject Policies free and clear of all Interests of any person or entity pursuant to Section 363 of the Bankruptcy Code.

9. Upon the occurrence of the Payment Date, all interests of any of the Releasers in the Subject Policies and any other insured shall be deemed to have been released and sold back to the Participating Insurers free and clear of all Interests pursuant to Section 363 of the Bankruptcy Code without any further action being required.

10. Upon the occurrence of the Payment Date and subject to the terms of paragraph 12 below, (a) the Participating Insurers shall be irrevocably released from (i) all claims of the Releasors or anyone else, including without limitation Wal-Mart, under, arising from, related to, or in connection with the Subject Policies and / or the Blitz Personal Injury Claims, (ii) any claims for contribution or indemnity under, arising from, related to, or in connection with the Subject Policies (whether from other insurers or not) and / or the Blitz Personal Injury Claims, (iii) all extra-contractual claims arising from, related to, or in connection with the Subject Policies and / or the Blitz Personal Injury Claims, and (b) all rights and obligations between the Releasors and anyone else, including without limitation Wal-Mart, on the one hand, and the Participating Insurers, on the other hand, with respect to the Subject Policies and / or the Blitz Personal Injury Claims shall be fully and finally extinguished. The release of the Participating Insurers shall leave the Participating Insurers completely released as if the Participating Insurers had never issued the Subject Policies and had never had any dealings with, or actual or alleged duties or obligations whatsoever to, any Releasors or any other person, including without limitation persons allegedly harmed or injured by Debtors. This Settlement and the releases to be delivered pursuant thereto are explicitly acknowledged by all concerned to be effective notwithstanding any facts, legal theories, alleged mistakes, misrepresentations, or failures to disclose that are presently known to, or that subsequently become known to, the Releasors or anyone else. Upon the occurrence of the Payment Date and subject to the terms of paragraph 12 below, the Participating Insurers shall release Wal-Mart from all claims under, arising from, related to, or in connection with the Subject Policies, including but not limited to claims that Wal-Mart breached any of its obligations as an additional insured under the Subject Policies or any of its obligations under the covenant of good faith and fair dealing.

11. Notwithstanding anything else to the contrary, the Settlement contemplated by this Term Sheet is not intended to release any claim for damages on account of bodily injury and / or property damage that occurred after 12:01 AM CST on July 31, 2012.

12. If Wal-Mart or a Participating Insurer defaults and does not pay its agreed upon share of the Settlement Amount on the Payment Date, that defaulting party shall, after ten days notice and an opportunity to cure, not receive any of the benefits provided by this Settlement until such time as the defaulting party, makes full payment, including but not limited to the releases, injunction or policy buy back provided for herein. If Wal-Mart and the Participating Insurers collectively deliver less than eighty (80%) percent of the Settlement Amount on the Payment Date and the Participating Blitz Personal Injury Claimants elect to terminate pursuant to the terms of paragraph 3, and there is no cure pursuant to paragraph 3 and the Settlement is terminated, no Settling Party or Released Party shall receive any of the benefits provided by this Settlement, including but not limited to the releases, the Channeling Injunction or policy buy back provided for herein and all amounts paid by Wal-Mart or the Participating Insurers shall be returned to the paying party.

D. Channeling Injunction Pursuant to Section 105 of the Bankruptcy Code

13. The Chapter 11 Plan and Confirmation Order shall provide for and include the Channeling Injunction. For the avoidance of doubt, all claims for insurance coverage for bodily injury claims under policies issued to the Debtors and all claims against the Released Parties for contribution or indemnification or other relief with respect to the Blitz Personal Injury Claims shall be channeled to the Plan Trust pursuant to the Channeling Injunction. The Plan Trust shall

not take any action that would undermine the enforcement of the Channeling Injunction or that would serve to deprive any of the Released Parties of the benefits of the injunction, including but not limited to the Debtors, the Participating Insurers and Wal-Mart.

E. The Chapter 11 Plan

14. Among other terms and conditions as referred to above, the Chapter 11 Plan will include reasonable terms to ensure that the Plan Trust will be responsible for ensuring compliance with Medicare secondary payer ("MSP") requirements, and that the Plan Trust will retain, at its expense, a qualified vendor (such as the Garretson Group) to provide such services as may be required to ensure such compliance. The Participating Insurers and Wal-Mart shall have the right to approve the vendor retained by the Plan Trust to provide such services (with such approval not to be withheld unreasonably) and to obtain such information from such vendor, the Plan Trust and the Blitz Personal Injury Claimants as they may reasonably request for the purpose of ensuring that the Plan Trust has complied with MSP requirements or for the purpose of internal audits and insurance or reinsurance claims. The Plan Trust shall be prohibited from making a distribution to a Blitz Personal Injury Claimant who refuses to provide the information necessary to meet MSP requirements with regard to that claimant.

15. The conditions precedent to the Participating Insurers' and Wal-Mart's payment obligations will include, without limitation, that both the Settlement Approval Order and the Confirmation Order must first become final, non-appealable orders. Wal-Mart and the Participating Insurers may agree, which agreement must be unanimous among Wal-Mart and the Participating Insurers and with Wal-Mart and each Participating Insurer exercising their sole discretion, to waive the Confirmation Order becoming a final, non-appealable order.

16. The terms of the Plan Trust will be drafted consistent with the terms of this Settlement and, upon its creation, the Plan Trust shall be bound to the terms of this Settlement as if it had been a party thereto as of the execution date of this Term Sheet.

17. If before the effective date of the Chapter 11 Plan any person or entity asserts any claim against the Released Parties under, arising from, related to, or in connection with the persons and entities released by the Settlement, Debtors will, at their expense if they have the funding to do so, use their best reasonable efforts to enforce, if necessary, the automatic stay of Section 362 of the Bankruptcy Code, and, if appropriate, obtain an order from the Bankruptcy Court pursuant to Section 105(a) of the Bankruptcy Code enjoining or otherwise prohibiting the prosecution of any such claim against the Released Parties. The Committee shall support Debtors in such efforts, including, without limitation, (i) by being a co-movant in respect of any such motion to enforce the automatic stay, or objecting to any motion filed for relief from the automatic stay, as the case may be, (ii) by the filing of a joinder to any such motion or objection of the Debtors, as the case may be, and (iii) by arguing in support of the relief requested by such motion or objection at any hearing on such motion or objection by the Debtors.

18. The Plan Trust shall fully and completely defend Released Parties in connection with any proceeding involving, relating to, or arising out of, in whole or in part, the enforcement or enforceability of the Channeling Injunction. In the event any person or entity asserts any claim that is subject to the Channeling Injunction, the Plan Trust shall, at its own expense, defend the validity of the Channeling Injunction and its application and use its best efforts to

establish that such claim is enjoined. The Participating Insurers and Wal-Mart shall have consultation and approval rights with respect to selection of counsel hired by the Plan Trust for such defense obligations. The Participating Insurers and Wal-Mart shall have the right, at their own cost and expense, to associate in the defense in any proceeding concerning the enforcement and application of the Channeling Injunction. If the Plan Trust breaches its duty to fully and completely defend then the Plan Trust is obligated to indemnify the Released Parties, including advancement of defense costs.

19. The Chapter 11 Plan shall further include such other terms and conditions as have generally been included in similar insurance-related settlements in other bankruptcy cases or which a Settling Party reasonably believes is necessary to obtain the full benefits of this Term Sheet.

F. Bar Date Motion and Notice

20. No later than July 24, 2013 and after execution of this Term Sheet, the Settling Parties will agree on the terms of and file a Bar Date Motion with the Bankruptcy Court to address all Blitz Personal Injury Claims. The Bar Date Motion shall establish a specific bar date for all Blitz Personal Injury Claims and any such claims that are not asserted prior to the bar date shall be forever barred. The Bar Date Motion will contain minimum requirements for the assertion of a Blitz Personal Injury Claim as shall be agreed upon by Wal-Mart, the Participating Insurers, the Debtors, the Committee, and the Participating Blitz Personal Injury Claimants. The Bar Date Motion shall set forth, and the order approving the Bar Date Motion shall approve, the manner in which notice of the bar date shall be provided, including publication notice, which shall be acceptable to Wal-Mart and the Participating Insurers in their sole discretion. The Participating Insurers and Wal-Mart shall share the first \$100,000 of costs for running publication notice of the bar date for Blitz Personal Injury Claims on a basis proportionate to their contributions to the Settlement Amount. Wal-Mart and the Participating Insurers shall each pay fifty percent (50%) of such costs in excess of \$100,000, with the Participating Insurers' portion being allocated equally among the Participating Insurers. The Participating Insurers and Wal-Mart shall not be obligated to pay any costs for notice for any entity or person who is not a Participating Insurer or Wal-Mart. For the avoidance of doubt, publication notice costs shall include notice publication in any type of media, including print and electronic media.

G. Implementation of the Settlement

21. Upon the execution of this Term Sheet, (i) the Participating Blitz Personal Injury Claimants shall withdraw without prejudice their motions to modify the automatic stay, (ii) the Debtors and Westchester shall withdraw without prejudice their motion to compel compliance by the Participating Blitz Personal Injury Claimants with Rule 2019, and (iii) the Participating Blitz Personal Injury Claimants shall take such action as is necessary to stay, suspend or adjourn all Blitz Personal Injury Claims against the Released Parties. The Debtors shall withdraw without prejudice their motion to modify the automatic stay in the *Calder* case.

22. Upon the Payment Date and payment of the Settlement Amount, (i) all of the Blitz Personal Injury Claims arising on or after 12:01 PM CST on July 31, 2007 (except for *Calder* and *Bosse*) and for which litigation was commenced as of the date of the execution of this Term Sheet shall be deemed as dismissed and withdrawn with prejudice without any further

action of the Settling Parties, (ii) the automatic stay for non-settling Blitz Personal Injury Claims shall be replaced by the Channeling Injunction and the rights of non-settling Blitz Personal Injury Claimants shall be determined pursuant to the Chapter 11 Plan, the Plan Trust and the Trust Distribution Procedures (the "TDP"), with the Participating Blitz Personal Injury Claimants and the Committee being responsible for the development and drafting of the TDP, which TDP shall be filed as an exhibit to the Chapter 11 Plan, and (iii) the Participating Insurers shall (x) withdraw their proofs of claim in the Debtors' bankruptcy cases; or (y) with the consent of the Committee, gift or assign such claims. In the event that any other action is required by a court or other tribunal to document or reflect the dismissal with prejudice of a Blitz Personal Injury Claim such Blitz Personal Injury Claimant shall be solely responsible for taking such action to dismiss his or her Blitz Personal Injury Claim, subject to the requirements of paragraph 6 above. Upon the Payment Date, Wal-Mart shall waive (or assign or gift, with the consent of the Committee) any and all claims it may have against the Debtors arising on or before July 31, 2012, including, but not limited to its pre-petition contribution and indemnity claims, which are secured, in part, by \$1.54 million in payables owed to the Blitz U.S.A. debtor. Upon the Payment Date, Wal-Mart shall release and pay to the liquidating trustee under the Chapter 11 Plan on behalf of the bankruptcy estate of Blitz U.S.A. the \$1.54 million held as security. To the extent that Wal-Mart has a claim against any of the Debtors arising on or after July 31, 2012, Wal-Mart shall retain such claims but shall waive any rights to distribution from any of the Debtors' estates or the Plan Trust. For the avoidance of doubt, the release of the \$1.54 million is separate, apart and in addition to Wal-Mart's contribution to the Settlement Amount, it shall be considered an asset of Blitz U.S.A.'s bankruptcy estate and shall not be contributed to, or otherwise be construed as an asset of, the Plan Trust.

23. The Settling Parties shall cooperate with each other in effectuating the provisions of this Term Sheet. Notwithstanding anything else in this Term Sheet, the Settling Parties agree that any of the Settling Parties may challenge or object to confirmation of the Chapter 11 Plan if the Chapter 11 Plan or any actual or proposed alteration, modification, or revision of the Chapter 11 Plan (a) is inconsistent with the terms of this Term Sheet, (b) materially and adversely affects the interests of any such Participating Insurer and/or Wal-Mart and or the Debtors under this Term Sheet, or (c) does not include the releases and Channeling Injunction. If such objection is sustained, the objecting party, at its discretion and after a 20 day opportunity to cure or remedy the objection, may terminate the Settlement. In the event that the Settlement is so terminated, the Settling Parties shall be returned to the position that they were in prior to the Settlement.

24. The Participating Insurers will be free to pursue reinsurance claims from reinsurers or retrocessionaires regarding any consideration paid by them in connection with this settlement. The Participating Insurers are free to allocate their settlement payment among their Subject Policies at their sole discretion as long as doing so does not reduce the overall Settlement Amount.

25. The Debtors or the Plan Trust, as the case may be, shall cooperate with the Participating Insurers in any litigation against the Participating Insurers seeking contribution, indemnification, or other similar payments with respect to any liability under, arising from, related to, or in connection with any of the Subject Policies that is released under this Settlement, and shall support arguments made by the Participating Insurers that their obligations with respect to such claims have been fully released, satisfied, and extinguished by the Settlement.

26. If (i) less than seventy percent (70%) of the Participating Blitz Personal Injury Claimants (individually or through their counsel) fail to execute this Term Sheet by July 19, 2013 or (ii) less than an overwhelming majority of all holders of Blitz Personal Injury Claims entitled to vote on the Chapter 11 Plan fail to vote to accept the Chapter 11 Plan following the deadline to cast ballots on the Chapter 11 Plan, then Wal-Mart may, within 10 days of the expiration of either deadline, elect to terminate the Settlement upon written notice to the Participating Blitz Personal Injury Claimants and the Participating Insurers, effective 20 days from such notice. The Participating Blitz Personal Injury Claimants may use such 20 day period to cure. In the event that the Settlement is so terminated, the Settling Parties shall be returned to the position that they were in prior to the Settlement.

27. The Chapter 11 Plan will include provisions indicating that the participation of the Debtors, Participating Insurers and Wal-Mart in this Term Sheet, the Settlement and/or the Chapter 11 Plan does not constitute an admission or concession on any issue, including liability for any Blitz Personal Injury Claim or that there is coverage under any of the Subject Policies. The Plan Trust and any recipient of a distribution from the Plan Trust on account of a Blitz Personal Injury Claim shall be solely responsible for the payment of any taxes, if any, associated with the money received by such recipient.

H. Treatment of *Calder* and *Bosse* Claims

28. Notwithstanding anything contained herein to the contrary, Westchester Policy CUW788371001 (7/31/05-7/31/06) and Westchester Policy G22053504001 (7/31/06-7/31/07) shall not be released or subject to the buyback contemplated by the Settlement and this Term Sheet with respect to the claims asserted by *Calder* and *Bosse* respectively, but shall be released and bought back with respect to all other claims upon the occurrence of the Payment Date. If the *Calder* and *Bosse* claims are not settled (and it is contemplated, pursuant to paragraph 28 below, that *Calder* will be settled), all rights that the Debtors and/or that the plaintiffs in the *Calder* or *Bosse* cases have or may have to pursue coverage for the *Calder* and *Bosse* claims shall be fully preserved and assigned to the Plan Trust and all defenses, if any, that Westchester Fire Insurance Company or Westchester Surplus Lines Insurance Company, as the case may be, may have with respect to these claims shall also be fully preserved. 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. With respect to the *Calder* claim, the Chapter 11 Plan shall further provide that the individual appellees in the *Calder* appeal shall be entitled to payment in full of the amounts bonded for the *Calder* appeal if their appeals goes forward and they prevail on their appeal so that their claim may be satisfied by payment of the bonded amount to them in the full amount of the award by the trial court. Alternatively, should the *Calder* claim be resolved by compromise prior to the final adjudication of the appeal pursuant to the terms of paragraph 28 below or otherwise, Westchester may call upon, and require be paid to *Calder*, the full amount of the Debtors' bond for *Calder* that is returnable to the estate as part of any compromise of the *Calder* claim and the Chapter 11 Plan shall provide that in the event such a compromise is reached, the appellees in the *Calder* case shall have first

priority to the amounts agreed upon by compromise. Should the appellants prevail in the appeal and the case be remanded for another trial which again results in a plaintiffs' verdict, then Westchester Surplus Lines Insurance Company would be entitled to a full and complete release upon payment of such verdict to the appellees/plaintiffs.

29. The Debtors, Westchester Fire Insurance Company ("Westchester Fire") and the Calder claimants hereby agree to settle and compromise in full the claims of the Calder claimants by (a) Westchester Fire paying \$2,942,014, and (b) the Debtors causing to be paid, or directing RLI Insurance Company ("RLI") to pay, to the Calder claimants from the proceeds of the Debtors' bond that is returnable to the estate (Bond Number RSB4174412) the full amount of that bond that they posted for the Calder appeal (\$1,057,986.31). The forgoing payments shall be made within thirty days of the Payment Date but shall be further subject to the exchange of full and mutual releases, compliance with Medicare secondary payer requirements and the dismissal with prejudice of the Calder appeal. The automatic stay will remain in place through the Payment Date. If the Debtors are unable to deliver to the Calder claimants the full amount of their bond (\$1,057,986.31) from the proceeds of the Debtors' bond, for reasons beyond their control, the Debtors and/or the Calder claimants shall be free to go forward with their appeal(s) and otherwise prosecute their claims and, if they opt to do so, the other parties to this settlement of the Calder claims shall be relieved of their obligations under this paragraph.

I. Old Republic Specific Terms

30. To settle all matters between Old Republic Insurance Company ("ORIC") and the Debtors, ORIC will waive any distribution from the Debtors on account of its reimbursement claim against the Debtors, and will withdraw its Proofs of Claim. ORIC, however, retains all of its rights to proceed against and realize the proceeds of a letter of credit in the amount of \$3,000,000, which it may do so upon the Payment Date and without further order of the court.

J. Dispute Resolution

31. After this Term Sheet is fully executed, any disputes concerning the memorialization of the terms of this Term Sheet into the Chapter 11 Plan shall be subject to non-binding mediation by Hon. Richard Cohen (Ret.), or if he is not available, another neutral mediator experienced with bankruptcy insurance coverage settlements. If Hon. Richard Cohen (Ret.) is not available and the parties cannot agree upon an alternative candidate, then the administrator of JAMS' New York office shall appoint a substitute neutral mediator, subject to the consent of all Settling Parties, to perform that function. The Settling Parties further agree that any disputes not resolved through mediation shall be submitted to the Bankruptcy Court and all Settling Parties agree to the jurisdiction of the Bankruptcy Court to hear such disputes and consent to the authority of the Bankruptcy Court to enter any final orders regarding such disputes.

K. Confidentiality

32. Subject to disclosure obligations imposed by law, the fact and terms of this Settlement shall be maintained as confidential until the filing of the Settlement Approval Motion. The Settling Parties can waive this confidentiality requirement at any time upon mutual written consent.

L. Media

33. If any Settling Party requests from the other Settling Parties to issue any public statement regarding the Settlement, the Settling Parties shall agree on the terms and language of one joint press statement with respect to this Settlement to be released to the public at a mutually agreed upon time, but in no instance until after the filing of the Settlement Approval Motion. No Settling Party shall make any other statements to the media concerning the Settlement, except that the Settling Parties may refer the media to the press statement and any court filings not under seal. This Paragraph shall not preclude plaintiffs' counsel from identifying on their respective web sites and in any other materials describing their respective law firms, the fact that they were one of the counsel involved in the Settlement.

M. No Admission of Liability

34. The Chapter 11 Plan shall recite that: (1) the Debtors, Wal-Mart and the Participating Insurers deny liability for the Blitz Personal Injury Claims asserted; (2) neither the Chapter 11 Plan nor this Term Sheet, nor any other item pertaining to the Settlement contemplated herein, shall be offered in any other case or proceeding, including as evidence of any admission by the Debtors, Wal-Mart or a Participating Insurer of any liability with respect to any claim for damages or other relief; and (3) any stipulation or admission by the Debtors, Wal-Mart or a Participating Insurer contained in this Term Sheet, the Chapter 11 Plan or in any other document pertaining to the Settlement, is made for settlement purposes only.

N. Other Provisions

35. The Settling Parties will agree on language to be included in the Chapter 11 Plan or related documents on the following provisions, which language shall be consistent with customary and usual provisions in similar Wal-Mart settlement agreements (and not inconsistent with the Terms of this Term Sheet): (1) providing for the return or destruction of discovery materials provided by Wal-Mart in any of the personal injury actions; and (2) establishment of the Plan Trust as a Qualified Settlement Fund pursuant to the Internal Revenue Code and related regulations, which language shall be acceptable to Wal-Mart and the Participating Insurers.

O. Authority

36. The signatories hereto declare, warrant, and represent that they have agreed to the terms of this Term Sheet and that they have all requisite authority to enter into this Term Sheet. This Term Sheet may be signed in counterparts. Any revisions, amendments or modifications to the express terms of this Term Sheet shall only be effective if in writing, and if executed by each of the Settling Parties.

P. Condition Precedent

37. It shall be a condition precedent to the effectiveness of this Settlement that there be a BAH Settlement and that such BAH Settlement be approved by the Bankruptcy Court as part of the Confirmation Order, which order shall be a final order.

WHEREFORE, intending to be legally bound to the foregoing, the Settling Parties hereby acknowledge their agreement to the Term Sheet by execution below.

DEBTORS

Blitz USA, Inc., Blitz Acquisition, LLC, Blitz RE Holdings, LLC and Miami OK, LLC f/k/a F3 Brands LLC, LAM 2011 Holdings, LLC and Blitz Acquisition Holdings, Inc.

Blitz USA, Inc.

By: 

Its: CEO

Dated: _____

LAM 2011 Holdings, LLC

By: _____

Its: _____

Dated: _____

Blitz Acquisition Holdings, Inc.

By: _____

Its: _____

Dated: _____

WHEREFORE, intending to be legally bound to the foregoing, the Settling Parties hereby acknowledge their agreement to the Term Sheet by execution below.

DEBTORS

Blitz USA, Inc., Blitz Acquisition, LLC, Blitz RE Holdings, LLC and Miami OK, LLC f/k/a F3 Brands LLC, LAM 2011 Holdings, LLC and Blitz Acquisition Holdings, Inc.

Blitz USA, Inc.

By: _____

Its: _____

Dated: _____

LAM 2011 Holdings, LLC

By:  _____

Its: Director

Dated: 7/24/2013

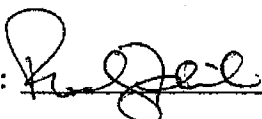
Blitz Acquisition Holdings, Inc.

By:  _____

Its: Director

Dated: 7/24/2013

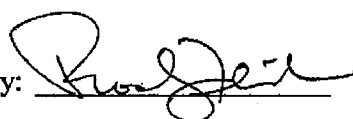
Blitz Acquisition, LLC

By: 

Its: CEO

Dated: _____

Blitz RE Holdings, LLC

By: 

Its: CEO

Dated: _____

Miami OK, LLC f/k/a/ F3Brands LLC

By: 

Its: CEO

Dated: _____

COMMITTEE

By: 

Dated: 07-10-13

COMMITTEE, CO-CHAIR

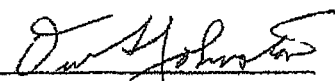
I am one of the two co-chairs of the Official Committee of Unsecured Creditors, and have represented to the Settling Parties that the Committee consents to the Debtors' execution of the Term Sheet and entry into the Settlement.

By: 

Dated: 07-10-13

COMMITTEE, CO-CHAIR

I am one of the two co-chairs of the Official Committee of Unsecured Creditors, and have represented to the Settling Parties that the Committee consents to the Debtors' execution of the Term Sheet and entry into the Settlement.

By: 

Dated: July 24, 2013

JARDEN PLASTIC SOLUTIONS, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

COMMITTEE

By: _____

Dated: _____

COMMITTEE, CO-CHAIR

I am one of the two co-chairs of the Official Committee of Unsecured Creditors, and have represented to the Settling Parties that the Committee consents to the Debtors' execution of the Term Sheet and entry into the Settlement.

By: _____

Dated: _____

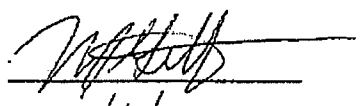
COMMITTEE, CO-CHAIR

I am one of the two co-chairs of the Official Committee of Unsecured Creditors, and have represented to the Settling Parties that the Committee consents to the Debtors' execution of the Term Sheet and entry into the Settlement.

By: _____

Dated: _____


JARDEN PLASTIC SOLUTIONS, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: 

Dated: 7/18/13

BEKUM

**BECKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE
COMMITTEE**

By: 

Dated: 7/12/13

**RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF
THE COMMITTEE**

By: 

Dated: 7/2/13

**ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE
COMMITTEE**

By: _____

Dated: _____

**DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE
COMMITTEE**

By: _____

Dated: _____

**KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A
MEMBER OF THE COMMITTEE**

By: _____

Dated: _____

BECKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: Eric Balch w/ permission jcl

Dated: 7/15/13

DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

BECKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: David Calder

Dated: 7/21/2013

KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

BECKUM AMERICA CORPORATION, IN ITS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

RONALD W. MILLS, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

ERIC BALCH, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

DAVID CALDER, INDIVIDUALLY AND IN HIS CAPACITY AS A MEMBER OF THE COMMITTEE

By: _____

Dated: _____

KAREN GUENIOT-KORNEGAY, INDIVIDUALLY AND IN HER CAPACITY AS A MEMBER OF THE COMMITTEE

By: 

Dated: 07-10-13

**RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS
FOR RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS
ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT 1**

By: Don Hattig
Dated: 7/11/2013

**WATTS, GUERRA & CRAFT, AS ATTORNEYS FOR ERIC BALCH, A MEMBER OF
THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED
ON EXHIBIT 1**

By: _____
Dated: _____

**THE ANDERSON LAW FIRM, AS ATTORNEYS FOR DAVID CALDER, A MEMBER
OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS
IDENTIFIED ON EXHIBIT 1**

By: _____
Dated: _____

**BRENEMAN DUNGAN, AS ATTORNEYS FOR KAREN GUENIOT-KORNEGAY, A
MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER
CLIENTS IDENTIFIED ON EXHIBIT 1**

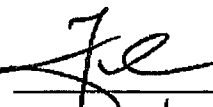
By: _____
Dated: _____

**RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS
FOR RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS
ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT 1**

By: _____

Dated: _____

**WATTS, GUERRA & CRAFT, AS ATTORNEYS FOR ERIC BALCH, A MEMBER OF
THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED
ON EXHIBIT 1**

By: 

Dated: 7/15/13

**THE ANDERSON LAW FIRM, AS ATTORNEYS FOR DAVID CALDER, A MEMBER
OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS
IDENTIFIED ON EXHIBIT 1**

By: _____

Dated: _____

**BRENEMAN DUNGAN, AS ATTORNEYS FOR KAREN GUENIOT-KORNEGAY, A
MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER
CLIENTS IDENTIFIED ON EXHIBIT 1**

By: _____

Dated: _____

**RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS
FOR RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS
ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT 1**

By: _____

Dated: _____

**WATTS, GUERRA & CRAFT, AS ATTORNEYS FOR ERIC BALCH, A MEMBER OF
THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED
ON EXHIBIT 1**

By: _____

Dated: _____

**THE ANDERSON LAW FIRM, AS ATTORNEYS FOR DAVID CALDER, A MEMBER
OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS
IDENTIFIED ON EXHIBIT 1**

By: 

Dated: July 1, 2013

**BRENEMAN DUNGAN, AS ATTORNEYS FOR KAREN GUENIOT-KORNEGAY, A
MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER
CLIENTS IDENTIFIED ON EXHIBIT 1**

By: _____

Dated: _____

**RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC, AS ATTORNEYS
FOR RONALD W. MILLS, A MEMBER OF THE COMMITTEE, AND AS
ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED ON EXHIBIT 1**

By: _____

Dated: _____

**WATTS, GUERRA & CRAFT, AS ATTORNEYS FOR ERIC BALCH, A MEMBER OF
THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS IDENTIFIED
ON EXHIBIT 1**

By: _____

Dated: _____

**THE ANDERSON LAW FIRM, AS ATTORNEYS FOR DAVID CALDER, A MEMBER
OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER CLIENTS
IDENTIFIED ON EXHIBIT 1**

By: _____


Dated: _____

**BRENEMAN DUNGAN, AS ATTORNEYS FOR KAREN GUENIOT-KORNEGAY, A
MEMBER OF THE COMMITTEE, AND AS ATTORNEYS FOR ALL OTHER
CLIENTS IDENTIFIED ON EXHIBIT 1**

By: 

Dated: 07-10-13

OLD REPUBLIC INSURANCE COMPANY

By: 

Dated: 7/13/13

FIRST MERCURY INSURANCE COMPANY

By: _____

Dated: _____

FIRST SPECIALTY INSURANCE CORPORATION

By: _____

Dated: _____

LIBERTY SURPLUS INSURANCE CORPORATION

By: _____

Dated: _____

LIBERTY INSURANCE UNDERWRITERS INC.

By: _____

Dated: _____

OLD REPUBLIC INSURANCE COMPANY

By: _____

Dated: _____

FIRST MERCURY INSURANCE COMPANY

By: Margaret A. Sutton

Dated: 07/16/13

FIRST SPECIALTY INSURANCE CORPORATION

By: _____

Dated: _____

LIBERTY SURPLUS INSURANCE CORPORATION

By: _____

Dated: _____

LIBERTY INSURANCE UNDERWRITERS INC.

By: _____

Dated: _____

OLD REPUBLIC INSURANCE COMPANY

By: _____

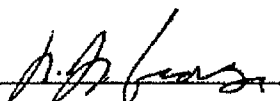
Dated: _____

FIRST MERCURY INSURANCE COMPANY

By: _____

Dated: _____

FIRST SPECIALTY INSURANCE CORPORATION

By: 

Dated: 7/15/13

LIBERTY SURPLUS INSURANCE CORPORATION

By: _____

Dated: _____

LIBERTY INSURANCE UNDERWRITERS INC.

By: _____

Dated: _____

OLD REPUBLIC INSURANCE COMPANY

By: _____

Dated: _____

FIRST MERCURY INSURANCE COMPANY

By: _____

Dated: _____

FIRST SPECIALTY INSURANCE CORPORATION

By: _____

Dated: _____

LIBERTY SURPLUS INSURANCE CORPORATION

By:  Jeffrey Roberts

Dated: July 15, 2013

LIBERTY INSURANCE UNDERWRITERS INC.

By:  Jeffrey Roberts

Dated: July 15, 2013

ARCH INSURANCE COMPANY

By: *M. E. Pureau*
Dated: 7/16/13

CONTINENTAL CASUALTY COMPANY

By: _____
Dated: _____

WESTCHESTER FIRE INSURANCE COMPANY

By: _____
Dated: _____

WESTCHESTER SURPLUS LINES INSURANCE COMPANY

By: _____
Dated: _____

ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY

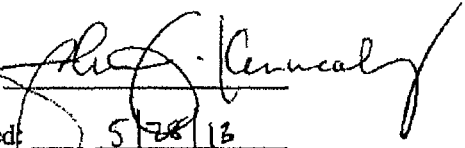
By: _____
Dated: _____

ARCH INSURANCE COMPANY

By: _____

Dated: _____

CONTINENTAL CASUALTY COMPANY

By:  _____

Dated: 5/28/13

WESTCHESTER FIRE INSURANCE COMPANY

By: _____

Dated: _____

WESTCHESTER SURPLUS LINES INSURANCE COMPANY

By: _____

Dated: _____

ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY

By: _____

Dated: _____

ARCH INSURANCE COMPANY

By: _____

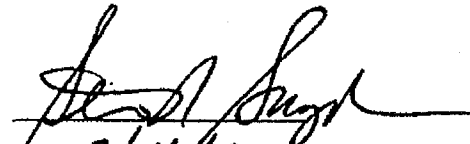
Dated: _____

CONTINENTAL CASUALTY COMPANY

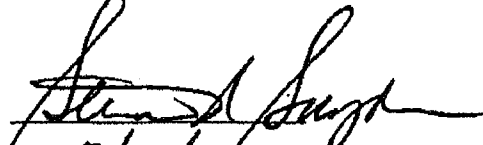
By: _____

Dated: _____

WESTCHESTER FIRE INSURANCE COMPANY

By: 
Dated: 7/16/2013

WESTCHESTER SURPLUS LINES INSURANCE COMPANY

By: 
Dated: 7/16/2013

ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY

By: _____

Dated: _____

ARCH INSURANCE COMPANY

By: _____

Dated: _____

CONTINENTAL CASUALTY COMPANY

By: _____

Dated: _____

WESTCHESTER FIRE INSURANCE COMPANY

By: _____

Dated: _____

WESTCHESTER SURPLUS LINES INSURANCE COMPANY

By: _____

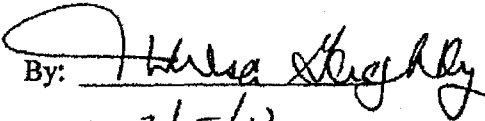
Dated: _____

ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY

By: Brenda Horan

Dated: 7/16/13

INTERSTATE FIRE AND CASUALTY INSURANCE COMPANY

By: 
Dated: 7/15/13

NAVIGATORS SPECIALTY INSURANCE COMPANY

By: _____

Dated: _____

AXIS SURPLUS INSURANCE COMPANY

By: _____

Dated: _____

WAL-MART STORES, INC.

By: _____

Dated: _____

INTERSTATE FIRE AND CASUALTY INSURANCE COMPANY

By: _____

Dated: _____

NAVIGATORS SPECIALTY INSURANCE COMPANY

By: 

Dated: 7/15/13

AXIS SURPLUS INSURANCE COMPANY

By: _____

Dated: _____

WAL-MART STORES, INC.

By: _____

Dated: _____

INTERSTATE FIRE AND CASUALTY INSURANCE COMPANY

By: _____

Dated: _____

NAVIGATORS SPECIALTY INSURANCE COMPANY

By: _____

Dated: _____

AXIS SURPLUS INSURANCE COMPANY

By: John M. Johnston

Dated: 7/10/13

WAL-MART STORES, INC.

By: _____

Dated: _____

INTERSTATE FIRE AND CASUALTY INSURANCE COMPANY

By: _____

Dated: _____

NAVIGATORS SPECIALTY INSURANCE COMPANY

By: _____

Dated: _____

AXIS SURPLUS INSURANCE COMPANY

By: _____

Dated: _____

WAL-MART STORES, INC.

By: 

Dated: _____

EXHIBIT 1
PARTICIPATING BLITZ PERSONAL INJURY CLAIMANTS

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
6/20/2002	Montgomery, Michael	CA	12CV3057-L-WVG	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
8/15/2007	Funchess, Chad	SC	2009-CP-38-1257	Breneman Dungan, L.L.C. Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/9/2007	Johnson, Randall	CA	-	Choulos Choulos & Wyle
12/30/2007	Barnett, Jerry	MS	3:09-cv-00366	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/30/2007	Fulton, Daniel	MS	3:09-cv-00366	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
5/23/2008	Boling, Christopher	KY	1:09-cv-00067	Walker & Morgan, L.L.C Janet, Jenner & Suggs, LLC
6/22/2008	Strickland, Steve	FL	8:12-cv-02402	Bodiford Law Group
7/17/2008	Ballew, Jasmine Alexis	NC	10-cvs-691	The Anderson Law Firm
1/18/2009	Thornton, Dennis	AL	09-902481	The Anderson Law Firm
3/6/2009	Tillman, Donald	SC	11-CP-04-01200	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
7/24/2009	Fenn, Est. of Ja-el	GA	11-cv-1532-1 12-cv-1674-1	Walker & Morgan, L.L.C Breneman Dungan, L.L.C.

7/24/2009	Fenn, Jessica	GA	11-cv-1532-1 12-cv-1674-1	Walker & Morgan, L.L.C Breneman Dungan, L.L.C.
7/24/2009	Fenn, Est. of Jerimiah	GA	11-cv-1532-1 12-cv-1674-1	Walker & Morgan, L.L.C Breneman Dungan, L.L.C.
8/15/2009	Pierce, Brandon	IN	1:11-cv-01022	The Anderson Law Firm Richardson, Patrick, Westbrook, & Brickman, L.L.C.
10/11/2009	Melvin, William	FL	8:11-cv-2542	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
10/12/2009	Shickel, Jordan	IL	3:11-cv-03380	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
10/23/2009	Guillory, Kaleb	MS	Not Filed	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
12/6/2009	Grooms, Ethan	SC	4:11-cv-1327	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/18/2009	Crouch, Brooke	TX	5:11-cv-00150	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
12/23/2009	Trevino, Dylan	TN	1:10-cv-00115	The Anderson Law Firm
1/23/2010	Mims, David	AL	1:12-cv-00244	Glenda Cochran Associates
2/5/2010	Jacoby, Robert	OR	1:10-cv-03075	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.

3/5/2010	Kornegay, Est. of Matthew	MS	3:10-cv-00429	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
3/16/2010	Brogdon, Ronnie	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
3/24/2010	Kassim, Kamal	CT	Not Filed	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
4/11/2010	VanBrunt, Devan	MN	0:11-cv-01771	The Anderson Law Firm Richardson, Patrick, Westbrook, & Brickman, L.L.C.
6/18/2010	Madox, Robert	-	Not Filed	unknown
7/17/2010	Balch, Eric	TX	6:10-cv-00284	Ramsey Hill L.L.P.
7/17/2010	Balch, Cade	TX	6:10-cv-00284	Ramsey Hill L.L.P.
7/17/2010	Balch, Est. of Mason	TX	6:10-cv-00284	Ramsey Hill L.L.P.
9/19/2010	Al-Shara, Est. of Aliaa	MI	2:11-cv-14954	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
9/19/2010	Al-Shara, Majd	MI	2:11-cv-14954	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
9/28/2010	Burch, Timothy	GA	5:11-cv-00084	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/5/2010	Nix, Jacob C.	-	Not Filed	unknown
11/13/2010	Shilich, John	UT	Not Filed	The Anderson Law Firm
11/23/2010	Ferguson, Est. of Jim	SC	9:11-cv-02207	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, &

				Brickman, L.L.C.
12/4/2010	Stahl, Est. of Coty	SC	2:11-cv-02193	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/12/2010	Droney, Christopher	SC	6:11-cv-1320	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/30/2010	Mills, Ronald	SC	5:11-cv-01313	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/31/2010	Xiong, Joey	NC	Not Filed	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
1/11/2011	Ward, Curtis	GA	1:11-cv-00039	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/11/2011	Ward, Kenneth	GA	1:11-cv-00039	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Purvis, James C.	GA	7:11-cv-00111	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Purvis, Dusty	GA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Purvis, Tony	GA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Joyner, Est. of Jacob	FL	5:11-cv-00334 5:12-cv-00318	Walker & Morgan,

				L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Blount, Betty	FL	5:12-cv-00318	Law Offices of Brian J Wolk
1/15/2011	Blount, Zackery	FL	5:12-cv-00318	Law Offices of Brian J Wolk
1/20/2011	Wilson, Est. of Marshall	FL	3:11-cv-00496	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/22/2011	Guilford, Wade	FL	5:11-cv-00336	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
2/25/2011	Feldman, Est. of Clarence	FL	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
2/25/2011	Feldman, Scott	FL	5:11-cv-00335	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
2/25/2011	Loveridge, Est. of Sonja	FL	Not Filed	Kinsey, Troxel, Walborsky & Bradley, P.A.
2/25/2011	McClelland, Dorsey	FL	5:11-cv-00335	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
3/1/2011	Weddle, Susan	AL	3:12-cv-00651	Morris, Haynes, Hornsby, Wheeles and Knowles
3/1/2011	Smith, Adam	AL	3:12-cv-00651	Morris, Haynes, Hornsby, Wheeles and Knowles
3/1/2011	Smith, Megan	AL	3:12-cv-00651	Morris, Haynes, Hornsby, Wheeles and Knowles
4/1/2011	Hale, Kevin	PA	Not Filed	Walker & Morgan, L.L.C

				Richardson, Patrick, Westbrook, & Brickman, L.L.C.
5/1/2011	Delia, Cyrus Owen	OR	Not Filed	Law Offices of Danny Lang
8/16/2011	Jones, Dalan	TX	Not Filed	Sico, White, Hoelscher & Braugh, LLP
8/16/2011	Jones, Leiya	TX	Not Filed	Sico, White, Hoelscher & Braugh, LLP
9/24/2011	Hayes, Jacob	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
10/1/2011	Morgan, Johnny C.	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
10/24/2011	Gutierrez, Est of Dale	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/2011	Perez, Aliha	TX	Not Filed	Julian C. Gomez
11/2011	Perez, Irene	TX	Not Filed	Julian C. Gomez
11/2011	Perez, Jose	TX	Not Filed	Julian C. Gomez
11/17/2011	Hawkins, Est. of Michael	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/17/2011	Broach, Eddie Cory	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/17/2011	Broach, Justin A.	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/23/2011	Newby, Wayne	CA	Not Filed	Mark Sudderth
12/1/2011	Coleman, John Marcus	SC	Not Filed	Walker & Morgan,

				L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/17/2011	Mizell, Est. of James O.	GA	5:12-cv-00104	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/19/11	Bauman, Jr., Michael	KY	12-738	Jones Ward
1/21/2012	Arwood, Michael Todd	AL	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
5/17/2012	Torres, Anthony	TX	-	Sico, White, Hoelscher & Braugh, L.L.P.
5/17/2012	Warren, Colton	TX	-	Sico, White, Hoelscher & Braugh, L.L.P.
5/28/2012	Williams, Jacob	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
7/14/2012	Callihan, Est. of Bruce R.	LA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
7/14/2012	Ramos, Helen Louise	LA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.

EXHIBIT 2

PARTICIPATING INSURERS

SUBJECT POLICIES

Insurer	Policy No.	Policy Period
Old Republic Insurance Company	MWZY 58888	07/31/10-07/31/11
Old Republic Insurance Company	MWZY 59256	07/31/11-07/31/12
First Specialty Insurance Corporation	IRE98445	07/31/10-07/31/11
First Specialty Insurance Corporation	IRE984451	07/31/11-7/31/12
First Mercury Insurance Company	CEGA000205	07/31/10-07/31/11
First Mercury Insurance Company	CEGA000307	07/31/11-07/31/12
Continental Casualty Company	L4017503244	07/31/09-07/31/10
Continental Casualty Company		07/31/10-07/31/11
Westchester Surplus Lines Insurance Company	CUW788371001	07/31/05-07/31/06
Westchester Fire Insurance Company	G22053504001	07/31/06-07/31/07
Westchester Fire Insurance Company	G22053504002	07/31/07-07/31/08
Westchester Fire Insurance Company	G22053504003	07/31/08-07/31/09
Westchester Fire Insurance Company	G22053504004	07/31/09-07/31/10
Liberty Surplus Insurance Corporation	EGL-BO184170-016	07/31/06-07/31/07
Liberty Surplus Insurance Corporation	EGL-BO-184170-026	07/31/07-07/31/08
Liberty Surplus Insurance Corporation	EGL-BO-184170-036	07/31/08-07/31/09
Liberty Surplus Insurance Corporation	EGL-BO-184170-046	07/31/09-07/31/10
Liberty Insurance Underwriters Inc.	LQ1-B71-213221-019	07/31/09-07/31/10
Liberty Insurance Underwriters Inc.	EXCAT0687652	07/31/10-07/31/11
Liberty Insurance Underwriters Inc.	EXCAT068765-3	07/31/11-07/31/12
Interstate Fire and Casualty Insurance Company	HFX1002572	07/31/08-07/31/09
Navigators Specialty Insurance Company	CH08EXC499507NC	07/31/08-07/31/09
Axis Surplus Insurance Company	EAU741333/01/2008	07/31/08-07/31/09
Endurance American Specialty Insurance Company	ELD 10000712700	07/31/07-07/01/08
Arch Insurance Company	UXP004536700	07/31/11-7/31/12

EXHIBIT 3**KNOWN POLICIES ISSUED BY NON-PARTICIPATING INSURERS**

Insurer	Policy No.	Policy Period
Hartford Insurance Company	38 UUNQS 4661	2000-2001
	38 UENQS 4661	2001-2002
Lumbermens Mutual Casualty Company	3SX 130772-00	2000-2001
Admiral Insurance Company	A02AG14372	2002-2003
	CA000005350-02	2003-2004
American International Group	BE3207024	2003-2004
Admiral Insurance Company	CA000005350-02	2004-2005
American International Group	BE974595	2004-2005
Nautilus Insurance Company	BK0011111-0	2005-2006
RSUI Group, Inc.	NHA2169-4 AND NHA216981	2006-2007

Exhibit B**Professional Fees Budgets**

The following represents a list of items that must be completed in order to confirm a plan of reorganization in the Blitz USA bankruptcy cases and our understanding of the professional assigned primary responsibility for accomplishing each task. Based on the following conditions, Lowenstein Sandler LLP and Womble Carlyle, as professionals for the Committee, and Richards Layton & Finger and Zolfo Cooper, as professionals for the USA Debtors, are prepared to cap their monthly fees on a going forward basis commencing on the date on which the BAH Settlement Term Sheet is fully executed at the amounts set forth in the chart below and on the terms and conditions set forth herein.

Professional	Monthly Cap
Lowenstein Sandler	\$50,000
Womble Carlyle	\$25,000
Richards Layton & Finger	\$25,000
Zolfo Cooper	\$12,000

1. With respect to Lowenstein and Womble, the cap applies to fees incurred for performing services listed below for which Lowenstein and Womble are listed as having primary responsibility and for monitoring other services listed below. If Lowenstein or Womble are requested to assume primary responsibility for any services for which another professional is listed as having primary responsibility or to provide services on matters not listed below, the cap shall not apply. Lowenstein and Womble will give notice to the Committee prior to commencing work on matters not covered by the cap.
2. With respect to Richards Layton, the cap applies to fees incurred monitoring the services listed below. If Richards Layton is requested or required to provide services other than monitoring, the cap shall not apply. Richards shall give notice to the USA Debtors and the Committee prior to commencing work on matters not covered by the cap. In connection with Richards Layton's agreement to the foregoing, the Committee agrees that it will not object to any of Richards Layton's fees incurred during the Debtors' chapter 11 cases, other than to the extent that it seeks fees in violation of this agreement.
3. With respect to Zolfo Cooper, the cap applies to the following recurring work matters: (i) preparation of monthly operating reports, (ii) oversight of the Miami office, (iii) wrap up of 2012 tax returns and assisting accountants with preparation of 2013 tax returns, (iv) oversight/coordination of receipts and distributions, from the Miami office and (v) maintenance of cash forecasts and estate budgets, with input of projected fees from various professionals seeking reimbursement from the estates. If Zolfo Cooper is requested or required to provide services other than those listed in the previous sentence, the cap shall not apply. Zolfo Cooper shall give notice to the USA Debtors and the Committee prior to commencing work on matters not covered by the cap. In connection with Zolfo Cooper's agreement to the foregoing, the Committee agrees that it will not object to any of Zolfo Cooper's fees incurred during the Debtors' chapter 11 cases, other than to the extent that it seeks fees in violation of this agreement.

4. The cap applies to fees incurred commencing on the date on which the BAH Settlement Term Sheet is fully executed through the earlier to occur of (i) the effective date of the Chapter 11 Plan; (ii) entry of a final order denying confirmation of the Chapter 11 Plan; or (iii) withdrawal of the Chapter 11 Plan by the plan sponsor(s).

5. The cap shall not apply to fees for services rendered in connection with discovery, contested matters or adversary proceedings related to matters listed below or other litigation that may be brought in these chapter 11 cases.

6. The cap shall not apply to fees incurred in connection with filing or responding to any appeals filed in connection with the bankruptcy cases.

7. The cap shall roll forward and back such that unused cap amounts in any given month can be applied to fee overages in prior or subsequent months.

<u>Event</u>	<u>Primary Responsibility</u>
Complete Negotiations of term sheet	
With Carriers/Wal-Mart	Lowenstein/Womble
Complete Negotiations of settlement	
With Kinderhook/Crestwood	Lowenstein/Womble
9019 Motion to Approve Settlement with Carriers	
Draft Motion	Walmart/Participating Insurers
Review and Comment	Lowenstein/Womble
Review Objections	Lowenstein/Womble
Draft Response (if necessary)	Lowenstein/Womble
Prosecution at Hearing	Walmart/Participating Insurers
9019 Motion to Approve Settlement with Kinderhook	
Draft Motion	A. Landis/T. Harkness
Review and comment	Lowenstein/Womble
Review Objections	Lowenstein/Womble
Draft Response (if necessary)	Lowenstein/Womble
Prosecution at Hearing	A. Landis/T. Harkness

Bar Date Motion – PI Claims

Draft Motion	Walmart
Review and Comment	Lowenstein/Womble
Review Objections	Lowenstein/Womble
Draft Response (if necessary)	Lowenstein/Womble
Prosecution at Hearing	Walmart

PI Claim Review

Draft Objections	Lowenstein/Womble
Prosecution at Hearing	Lowenstein/Womble

Plan and Disclosure Statement

Draft	Walmart/Participating Insurers
Review, Comment and Negotiate	Lowenstein/Womble
Review Objections	Lowenstein/Womble
Draft Response	Lowenstein/Womble
Prosecution at Hearing	Walmart/Participating Insurers

Claim Objections

Employee Claims	Lowenstein/Womble
Attorney Claims	Lowenstein/Womble
Tax Claims – Ottawa City Treasurer	Lowenstein/Womble

Fee Applications

Lowenstein/Womble

Respond to Creditor Inquiries

Lowenstein/Womble

Insurance Issues

Womble/Lowenstein

Trust Agreements

Lowenstein/Womble

TDP and Related Documents

Womble/Lowenstein

EXECUTION VERSION

Exhibit C

PARTICIPATING BLITZ PERSONAL INJURY CLAIMANTS

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
6/20/2002	Montgomery, Michael	CA	12CV3057-L-WVG	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
8/15/2007	Funchess, Chad	SC	2009-CP-38-1257	Breneman Dungan, L.L.C. Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/9/2007	Johnson, Randall	CA		Choulos Choulos & Wyle
12/30/2007	Barnett, Jerry	MS	3:09-cv-00366	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/30/2007	Fulton, Daniel	MS	3:09-cv-00366	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
5/23/2008	Boling, Christopher	KY	1:09-cv-00067	Walker & Morgan, L.L.C Janet, Jenner & Suggs, LLC
6/22/2008	Strickland, Steve	FL	8:12-cv-02402	Bodiford Law Group
7/17/2008	Ballew, Jasmine Alexis	NC	10-cvs-691	The Anderson Law Firm
1/18/2009	Thornton, Dennis	AL	09-902481	The Anderson Law Firm

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
3/6/2009	Tillman, Donald	SC	11-CP-04-01200	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
7/24/2009	Fenn, Est. of Ja-el	GA	11-cv-1532-1 12-cv-1674-1	Walker & Morgan, L.L.C Breneman Dungan, L.L.C.
7/24/2009	Fenn, Jessica	GA	11-cv-1532-1 12-cv-1674-1	Walker & Morgan, L.L.C Breneman Dungan, L.L.C.
7/24/2009	Fenn, Est. of Jerimiah	GA	11-cv-1532-1 12-cv-1674-1	Walker & Morgan, L.L.C Breneman Dungan, L.L.C.
8/15/2009	Pierce, Brandon	IN	1:11-cv-01022	The Anderson Law Firm Richardson, Patrick, Westbrook, & Brickman, L.L.C.
10/11/2009	Melvin, William	FL	8:11-cv-2542	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
10/12/2009	Shickel, Jordan	IL	3:11-cv-03380	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
10/23/2009	Guillory, Kaleb	MS	Not Filed	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
12/6/2009	Grooms, Ethan	SC	4:11-cv-1327	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/18/2009	Crouch, Brooke	TX	5:11-cv-00150	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
12/23/2009	Trevino, Dylan	TN	1:10-cv-00115	The Anderson Law Firm
1/23/2010	Mims, David	AL	1:12-cv-00244	Glenda Cochran Associates
2/5/2010	Jacoby, Robert	OR	1:10-cv-03075	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
3/5/2010	Kornegay, Est. of Matthew	MS	3:10-cv-00429	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
3/16/2010	Brogdon, Ronnie	SC	Not Filed	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
3/24/2010	Kassim, Kamal	CT	Not Filed	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
4/11/2010	VanBrunt, Devan	MN	0:11-cv-01771	The Anderson Law Firm Richardson, Patrick, Westbrook, & Brickman, L.L.C.
6/18/2010	Madox, Robert	-	Not Filed	unknown

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
7/17/2010	Balch, Eric	TX	6:10-cv-00284	Ramsey Hill L.L.P.
7/17/2010	Balch, Cade	TX	6:10-cv-00284	Ramsey Hill L.L.P.
7/17/2010	Balch, Est. of Mason	TX	6:10-cv-00284	Ramsey Hill L.L.P.
9/19/2010	Al-Shara, Est. of Aliaa	MI	2:11-cv-14954	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
9/19/2010	Al-Shara, Majd	MI	2:11-cv-14954	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
9/28/2010	Burch, Timothy	GA	5:11-cv-00084	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/5/2010	Nix, Jacob C.	-	Not Filed	unknown
11/13/2010	Shilich, John	UT	Not Filed	The Anderson Law Firm
11/23/2010	Ferguson, Est. of Jim	SC	9:11-cv-02207	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/4/2010	Stahl, Est. of Coty	SC	2:11-cv-02193	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/12/2010	Droney, Christopher	SC	6:11-cv-1320	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
12/30/2010	Mills, Ronald	SC	5:11-cv-01313	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/31/2010	Xiong, Joey	NC	Not Filed	Breneman Dungan, L.L.C. Humphrey, Farrington & McClain, P.C.
1/11/2011	Ward, Curtis	GA	1:11-cv-00039	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/11/2011	Ward, Kenneth	GA	1:11-cv-00039	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Purvis, James C.	GA	7:11-cv-00111	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Purvis, Dusty	GA	Not Filed	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Purvis, Tony	GA	Not Filed	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/15/2011	Joyner, Est. of Jacob	FL	5:11-cv-00334 5:12-cv-00318	Walker & Morgan, L.L.C. Richardson, Patrick, Westbrook, & Brickman, L.L.C.

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
1/15/2011	Blount, Betty	FL	5:12-cv-00318	Law Offices of Brian J Wolk
1/15/2011	Blount, Zackery	FL	5:12-cv-00318	Law Offices of Brian J Wolk
1/20/2011	Wilson, Est. of Marshall	FL	3:11-cv-00496	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
1/22/2011	Guilford, Wade	FL	5:11-cv-00336	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
2/25/2011	Feldman, Est. of Clarence	FL	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
2/25/2011	Feldman, Scott	FL	5:11-cv-00335	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
2/25/2011	Loveridge, Est. of Sonja	FL	Not Filed	Kinsey, Troxel, Walborsky & Bradley, P.A.
2/25/2011	McClelland, Dorsey	FL	5:11-cv-00335	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
3/1/2011	Weddle, Susan	AL	3:12-cv-00651	Morris, Haynes, Hornsby, Wheelles and Knowles
3/1/2011	Smith, Adam	AL	3:12-cv-00651	Morris, Haynes, Hornsby, Wheelles and Knowles

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
3/1/2011	Smith, Megan	AL	3:12-cv-00651	Morris, Haynes, Hornsby, Wheelles and Knowles
4/1/2011	Hale, Kevin	PA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
5/1/2011	Delia, Cyrus Owen	OR	Not Filed	Law Offices of Danny Lang
8/16/2011	Jones, Dalan	TX	Not Filed	Sico, White, Hoelscher & Braugh, LLP
8/16/2011	Jones, Leiya	TX	Not Filed	Sico, White, Hoelscher & Braugh, LLP
9/24/2011	Hayes, Jacob	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
10/1/2011	Morgan, Johnny C.	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
10/24/2011	Gutierrez, Est of Dale	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/2011	Perez, Aliha	TX	Not Filed	Julian C. Gomez
11/2011	Perez, Irene	TX	Not Filed	Julian C. Gomez
11/2011	Perez, Jose	TX	Not Filed	Julian C. Gomez
11/17/2011	Hawkins, Est. of Michael	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
11/17/2011	Broach, Eddie Cory	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/17/2011	Broach, Justin A.	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
11/23/2011	Newby, Wayne	CA	Not Filed	Mark Sudderth
12/1/2011	Coleman, John Marcus	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/17/2011	Mizell, Est. of James O.	GA	5:12-cv-00104	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
12/19/11	Bauman, Jr., Michael	KY	12-738	Jones Ward
1/21/2012	Arwood, Michael Todd	AL	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
5/17/2012	Torres, Anthony	TX	-	Sico, White, Hoelscher & Braugh, L.L.P.
5/17/2012	Warren, Colton	TX	-	Sico, White, Hoelscher & Braugh, L.L.P.
5/28/2012	Williams, Jacob	SC	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.

Date of Accident	Name of Injured Party	State	Case Number	Law Firm
7/14/2012	Callihan, Est. of Bruce R.	LA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.
7/14/2012	Ramos, Helen Louise	LA	Not Filed	Walker & Morgan, L.L.C Richardson, Patrick, Westbrook, & Brickman, L.L.C.

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Robyn Smith for Devan VanBrunt,
a Minor, by his Mother and Natural
Guardian,

Plaintiff,

Civ. No. 11- 1771 (RHK/LIB)
**MEMORANDUM OPINION
AND ORDER**

v.

Blitz U.S.A. Inc., Wal-Mart Stores, Inc.,
and Kinderhook Industries, LLC,

Defendants.

Daniel S. Haltiwanger, Brady R. Thomas, Richardson, Patrick, Westbrook & Brickman, LLC, Barnwell, South Carolina, Anton Cheskis, Michael R. Strom, Sieben Polk P.A., Hastings, Minnesota, Shauna M. Verheyen, Hamline University School of Law, Saint Paul, Minnesota, Hank Anderson, Benton G. Ross, The Anderson Law Firm, Wichita Falls, Texas, for Plaintiff.

Timothy P. Harkness, Pamila Gudkov, Freshfields Bruckhaus Deringer US LLP, New York, New York, Seth Leventhal, Leventhal PLLC, Minneapolis, Minnesota, for Defendant Kinderhook Industries, LLC.

INTRODUCTION

Plaintiff Robyn Smith represents her son, Devan VanBrunt, a twelve-year-old who was injured by an exploded gas can that Defendant Blitz U.S.A., Inc. ("Blitz") manufactured and Defendant Wal-Mart Stores, Inc. ("Wal-Mart") sold to Smith. Smith initially brought suit against Blitz and Wal-Mart. After Blitz filed for bankruptcy, Smith amended her Complaint to join Blitz's parent company, Defendant Kinderhook

Industries, LLC (“Kinderhook”). Kinderhook now moves to dismiss the claims against it for lack of personal jurisdiction. For the reasons below, the Court will grant the Motion.¹

BACKGROUND

The Court recounts the following facts as alleged by Smith. Devan used a portable plastic gas can to pour gasoline on a charcoal grill to ignite it. The gasoline vapors outside the can ignited and the flame flashed back, following the vapor trail inside the gas can, causing it to explode. He suffered severe burns from the explosion. Smith then commenced this action against Blitz and Wal-Mart alleging that (1) the gas can was defective because its design did not utilize a “flame arrester,” (2) each Defendant knew the gas can was dangerous because of previous lawsuits and yet failed to warn consumers, and (3) Wal-Mart continued to sell this gas can despite knowing it was dangerous and/or defective.

After Smith commenced this action, Blitz filed for bankruptcy and the claims against it were automatically stayed. Smith then filed a First Amended Complaint (Doc. No. 61) adding Blitz’s parent companies, Kinderhook and Kinderhook Capital Fund II, L.P. (“Kinderhook Capital Fund”), as defendants. However, Smith later discovered that Kinderhook Capital Fund was not a diverse party and filed a Second Amended Complaint (Doc. No. 109), dropping her claim against Kinderhook Capital Fund but not against Kinderhook. Kinderhook now moves to dismiss Smith’s claim against it (Count VII, “Piercing the Corporate Veil”) for lack of personal jurisdiction.

¹ The Court need not address Kinderhook’s alternative motions to dismiss for failure to state a claim, to transfer to bankruptcy court, or to stay the claim against it.

STANDARD OF DECISION

In order to survive Kinderhook's Motion, Smith must make a prima facie showing of personal jurisdiction. Lakin v. Prudential Sec., Inc., 348 F.3d 704, 706 n.3 (8th Cir. 2003). Because the Court has not held an evidentiary hearing, it must view the evidence in the light most favorable to Smith. Pangea, Inc. v. Flying Burrito LLC, 647 F.3d 741, 745 (8th Cir. 2011).² To determine whether Smith has discharged her burden, the Court must ask two questions. First, has Minnesota's long-arm statute been satisfied? Second, would exercising jurisdiction comport with the Due Process Clause of the Fourteenth Amendment? See Guinness Import Co. v. Mark VII Distribs., Inc., 153 F.3d 607, 613 (8th Cir. 1998). These two inquiries collapse into one, however, because Minnesota's long-arm statute extends jurisdiction to the outer limits of the Due Process Clause. Id. at 614. Due process requires that a defendant have sufficient "minimum contacts with [the forum state] such that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (internal citation omitted); accord, e.g., World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291-92 (1980). The Court examines five factors to determine whether exercising jurisdiction comports with due process: (1) the nature and quality of the contacts with the state, (2) the quantity of contacts with the state, (3) the relation of the cause of action to these contacts, (4) the state's interest in providing a forum for its

² No party has requested an evidentiary hearing.

residents, and (5) the convenience of the parties. E.g., Stanton v. St. Jude Med., Inc., 340 F.3d 690, 694 (8th Cir. 2003).

ANALYSIS

The parties agree that Kinderhook, on its own, does not have the minimum contacts with Minnesota necessary for personal jurisdiction. Instead, Smith contends that Blitz is Kinderhook's instrumentality or alter ego, and that Kinderhook is subject to personal jurisdiction through Blitz's contacts with Minnesota.³ (Second Am. Compl. ¶ 15.)

Minnesota has recognized that "a non-resident corporation may subject itself to jurisdiction in a state by virtue of its subsidiary company in that state, [but] the companies must be organized and operated so that one corporation is an instrumentality or alter-ego of the other." Zimmerman v. Am. Inter-Ins. Exch., 386 N.W.2d 825, 828 (Minn. Ct. App. 1986) (internal citation omitted). A finding of vicarious personal jurisdiction is uncommon,⁴ however, because "[t]here is a 'presumption of separateness' between a parent and subsidiary corporation." Select Comfort Corp. v. Innovation Ads, Inc., Civ. No. 10-925, 2011 WL 31715, at *4 (D. Minn. Jan. 5, 2011) (Davis, C.J.).

³ The parties do not dispute that Blitz is subject to personal jurisdiction in Minnesota.

⁴ In fact, Smith cites only two Minnesota cases in which a court found that the subsidiary functioned as its parent's instrumentality or alter ego for personal jurisdiction purposes: Scott v. Mego Int'l, Inc., 519 F. Supp. 1118, 1126 (D. Minn. 1981) (Murphy, J.) and JL Schwieters Constr., Inc. v. Goldridge Constr., Inc., 788 N.W.2d 529, 536-37 (Minn. Ct. App. 2010).

To determine whether a subsidiary should be treated as an instrumentality or alter ego of its parent, courts consider the extent to which the entities' management, operations, and finances overlap. Relevant facts include: common officers or directors, consolidated financial statements, joint tax returns, a common address, a subsidiary's general lack of corporate formalities, a parent's funding of the subsidiary, and a parent's control of the subsidiary's operations. See, e.g., Scott v. Mego Int'l, Inc., 519 F. Supp. 1118, 1126 (D. Minn. 1981) (Murphy, J.); Stratasys, Inc. v. ProtoPulsion, Inc., No. A10-2257, 2011 Minn. App. Unpub. LEXIS 682, at *24–25 (Minn. Ct. App. July 18, 2011); Curtis v. Altria Grp., Inc., 792 N.W.2d 836, 846–47 (Minn. Ct. App. 2010), rev'd on other grounds, 813 N.W.2d 891 (Minn. 2012); JL Schwieters Constr., Inc. v. Goldridge Constr., Inc., 788 N.W.2d 529, 535–37 (Minn. Ct. App. 2010); Zimmerman, 386 N.W.2d at 828. Overall, the Court must determine whether the foreign parent “so controlled and dominated the activities of its resident subsidiary that the latter's separate corporate existence was in effect disregarded.” Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Mgmt., Inc., 519 F.2d 634, 637 (8th Cir. 1975). The Court concludes that Smith has not made such a showing.

Smith alleges the following facts in support of vicarious jurisdiction in this case: (1) some of Kinderhook's members are limited partners in Kinderhook Capital Fund, which owns 75.2% of LAM Holdings 2011 LLC (“LAM”), which indirectly owns Blitz (Second Am. Compl. ¶ 107); (2) Kinderhook created a complex corporate structure in order to shield itself from liability (id. ¶ 102.J); (3) two of Blitz's four directors are Kinderhook officers (id. ¶¶ 97–98); (4) Blitz and Kinderhook share an address (Pl.'s

Mem. Opp'n 6; id. Ex. 16); (5) Kinderhook guaranteed Blitz's credit (Second Am. Compl. ¶ 110.B); (6) Kinderhook depleted Blitz's assets "by means of a bargain sale to defraud Blitz's creditors" (id. ¶ 100.E); and (7) Kinderhook used Blitz's assets as collateral on loans used to acquire three other plastic manufacturers (id. ¶ 104). Smith makes further allegations that involve Blitz but not Kinderhook, including a failure to observe corporate formalities between LAM and its subsidiaries and among LAM's subsidiaries. (See, e.g., id. ¶¶ 102, 107, 109–10; id. ¶ 100.G (alleging Blitz was undercapitalized and underinsured).) However, because Smith does not connect these allegations to Kinderhook, they are not relevant to the Court's analysis.

The Court concludes, based on the totality of the evidence, that Smith has not made a prima facie showing of personal jurisdiction over Kinderhook. While direct ownership is not necessary to find that a subsidiary is the alter ego or instrumentality of a parent, the attenuated relationship between Kinderhook and Blitz vitiates Smith's claim. Although Smith alleges that the two companies share an address because Blitz used Kinderhook's address on its lease, Blitz prefaced the address with "C/O Kinderhook Industries LLC" (id. Ex. 16), indicating that the address was Kinderhook's, not Blitz's. Smith also implies that Kinderhook's creation of various subsidiaries in order to avoid liability is suspect, but that is a proper purpose for limited liability companies. See, e.g., Kreuger v. Zeman Constr. Co., 758 N.W.2d 881, 890 (Minn. Ct. App. 2008). Finally, although Smith alleges that Kinderhook depleted Blitz's assets through "bargain sale financing" by selling Blitz's subsidiary, F3 Brands LLC, the sale was approved by the bankruptcy court and it benefited Blitz's creditors, not Kinderhook. (See Second Am.

Compl. ¶ 102.E; Pl.'s Mem. Opp'n Ex. 2.)

The only facts supporting Smith's claim that Blitz operates as an instrumentality or alter ego are that two of Blitz's directors are Kinderhook officers and that Kinderhook guaranteed Blitz's credit and used its assets as collateral. Smith presents "no evidence that [the parent] is or ever has been involved in day-to-day control over production or distribution of [its subsidiary's] products." Curtis, 792 N.W.2d at 847. "[The subsidiary] maintains separate offices, books and accounts [from its parent]. Its employees are not hired or paid by [its parent]." Zimmerman, 386 N.W.2d at 828; see Aurelio Decl. ¶¶ 15–19. And, unlike Scott or JL Schwieters, all of Blitz's officers and half of its directors are unrelated to Kinderhook. 519 F. Supp. at 1126; 788 N.W.2d at 536.

On balance, Smith has not shown that Kinderhook has "exercised the type of control or dominance . . . necessary to subject it to the personal jurisdiction of a Minnesota court." Zimmerman, 386 N.W.2d at 828. Accordingly, Smith's claim against Kinderhook will be dismissed.

CONCLUSION

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** that Kinderhook's Motion to Dismiss or, in the Alternative, Transfer or, in the Alternative, Stay (Doc. No. 115) is **GRANTED IN PART**. Kinderhook's Motion to Dismiss for Lack of Personal Jurisdiction is **GRANTED** and Count VII of

Smith's Second Amended Complaint (Doc. No. 109) is **DISMISSED WITHOUT PREJUDICE**.

Dated: November 6, 2012

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge