

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

DECLARATION OF KENNETH B. MCCLAIN
IN SUPPORT OF CONFIRMATION OF DEBTORS' AND OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' FIRST AMENDED JOINT PLAN OF LIQUIDATION

I, Kenneth B. McClain, hereby declare, pursuant to 28 U.S.C § 1746, as follows:

1. I am a partner at the firm Humphrey, Farrington & McClain P.C. I represent clients nationwide focusing on personal injury, asbestos, and toxic tort claims and have obtained nationally recognized verdicts for my clients. I have been involved in tort litigation, including mass personal injury litigation, for more than 30 years. I am co-counsel to Karen Gueniot-Kornegay and David Calder, who are members of the Official Committee of Unsecured Creditors (the "Committee") and other claimants. By way of further background, I incorporate my proffered testimony presented in this case at the hearing on December 18, 2013.

2. I submit this declaration ("Declaration") (i) in support of confirmation of the *Debtors' and Official Committee of Unsecured Creditors' Joint Amended Joint Plan of Liquidation* dated December 18, 2013[D.I. 2007](including all exhibits thereto and as amended, modified or supplemented from time to time in accordance with its terms and the Bankruptcy Code, the "Plan")² and (ii) in response to the objections to confirmation of the Plan filed by the

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. 98825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and MiamiOK, f/k/a F3 Brands LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 309 North Main Street, Miami, OK 74354.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.



Bauman, Cataldi and Newby Claimants. Unless otherwise stated below, I have personal knowledge of the matters set forth herein and if called, could competently testify to the information provided below.

3. The Committee, together with the debtors and debtors in possession (collectively, the “Debtors”, and with the Committee, the “Proponents”) are the Proponents of the Plan. The Plan is the byproduct of many months of good faith, arm’s-length negotiations among various constituencies and encompasses a delicate balance of important competing interests. Despite the incredibly complex claims and interests at play, the Debtors’ major constituents have produced a consensus which represents the only viable exit strategy for these Chapter 11 Cases, as demonstrated by the overwhelming votes in favor of the Plan. The commitments for substantial contributions by Wal-Mart, the Participating Insurers and the BAH Settling Parties, borne out of these negotiations, pave the way for a significant recovery to creditors in need of prompt access to funds along with a full and final resolution of disputes surrounding the Debtors’ insurance policies.

4. The Plan contemplates the separate substantive consolidation of the USA Debtors³ and the BAH Debtors⁴. The Plan establishes two trusts pursuant to section 105 of the Bankruptcy Code: (i) a Blitz Personal Injury Trust that is responsible for administration of Blitz Personal Injury Trust Claims and payment of Allowed Covered Blitz Personal Injury Claims, and (ii) a Blitz Liquidating Trust for the benefit of holder of Administrative Claims, Priority Claims and General Unsecured Claims against the USA Debtors. As for the BAH Debtors, the Plan contemplates the appointment of the BAH Plan Administrator who will have responsibility for liquidating the remaining assets of the BAH Debtors and for making distributions to holders of Allowed Claims against the BAH Debtors (other than the holders of Blitz Personal Injury Trust Claims).

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

⁴ The BAH Debtors are comprised of: (1) Blitz Acquisition Holdings, Inc.; and (2) LAM 2011 Holdings, LLC.

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

6. The Blitz Personal Injury Trust is funded from contributions by Wal-Mart, the Participating Insurers and the BAH Settling Parties with (i) Wal-Mart contributing approximately \$24.1 million (plus waiving its rights to payment under the Participating Insurer Policies and Assigned Blitz Insurance Policies); and (ii) the Participating Insurers contributing approximately \$137.5 million. The Blitz Liquidating Trust is funded through (i) payment of \$6.25 million by the BAH Settling Parties, and (ii) Wal-Mart's release of accounts payable in the amount of \$1.54 million that are secured by Wal-Mart's right of setoff.

7. The claims channeled to the Blitz Personal Injury Trust consist of: (i) Blitz Personal Injury Claims based on injuries that occurred between July 31, 2007 at 12:01 a.m. CST and July 31, 2012 at 12:01 a.m. CST ("Covered Blitz Personal Injury Claims"); and (ii) Blitz Personal Injury Claims based on injuries that occurred prior to July 31, 2007 at 12:01 a.m. CST ("Pre-2007 Blitz Personal Injury Claims").⁵ Liquidation and payment of Covered Blitz Personal Injury Claims will be administered by the Blitz Personal Injury Trustee (selected by the Committee) from the funds contributed by Wal-Mart and the Participating Insurers in accordance with the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP. The Pre-2007

⁵ The Plan also provides that all Vendor Claims, Co-Defendant Claims and Direct Action Claims, will be channeled to the Blitz Personal Injury Trust. The necessity for inclusion of these claims is that they are derivative of the Debtors' insurance policies which are being purchased or otherwise assigned to the Blitz Personal Injury Trust. In order for the Protected Parties, namely the Participating Insurers, to ensure that all liabilities arising from these insurance policies are fully and finally resolved pursuant to the Plan, these types of Claims are subsumed into the category of Blitz Personal Injury Trust Claims.

Blitz Personal Injury Claims are channeled to the Blitz Personal Injury Trust, but will not receive a distribution from the \$162 million, except for Michael Montgomery Claim which was settled separately. Instead, holders of Pre-2007 Blitz Personal Injury Claims retain any existing rights to recover from the Assigned Insurance Policies that will be allocated to the Blitz Personal Injury Trust.

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

9. The Blitz Liquidating Trust will be funded through the \$6.25 million contribution from the BAH Settling Parties along with Wal-Mart’s release of approximately \$1.54 million in accounts payable that are secured pursuant to Wal-Mart’s right of setoff. The Blitz Liquidating Trust operates in the form of a “pot plan” by which eligible claims will receive the appropriate pro rata share upon becoming Allowed pursuant to the terms of the Plan and the Blitz Liquidating Trust Agreement.

10. Further, pursuant to the BAH Settlement, any proofs of claim filed by any members of the Committee and any holder of a Blitz Personal Injury Trust Claim against the BAH Debtors shall be deemed withdrawn with prejudice as against the BAH Debtors and all Blitz Personal Injury Trust Claims shall be channeled to, and may be exclusively asserted against, the Blitz Personal Injury Trust. Any funds remaining in the BAH Debtors’ Estates after the payment of the BAH Settlement Payment will be distributed to the remaining creditors of the BAH Debtors in accordance with the Bankruptcy Code’s priority scheme by the BAH Plan Administrator.

I. Blitz Personal Injury Claims, Blitz Personal Injury Trust and Blitz Personal Injury TDP

11. I understand that each of the Committee members was appointed as a fiduciary charged with protecting the rights of all creditors holding general unsecured claims against the Debtors' estates. I was retained by Karen Guenoit-Kornegay and David Calder to act as counsel, to represent them as members of the Committee in these Chapter 11 Cases, and to assist in conducting due diligence and negotiating the terms of the Plan, the Blitz Personal Injury Trust and other Plan Documents.

12. I have reviewed and I am generally familiar with the terms and provisions of the Plan, the Plan Documents, the Insurance Settlement Term Sheet, the BAH Settlement Term Sheet as well as the requirements for issuance of a channeling injunction under section 105(a) of the Bankruptcy Code.

13. I understand that the primary effect of the Plan is to resolve the liability for all Blitz Personal Injury Trust Claims by channeling them to the Blitz Personal Injury Trust. Pursuant to the terms of the Plan, in exchange for the Blitz Personal Injury Trust Assets being transferred to the Blitz Personal Injury Trust, the Blitz Personal Injury Trust will assume and be responsible for all liability for Allowed Blitz Personal Injury Trust Claims and payment of Allowed Covered Blitz Personal Injury Claims.⁶ All Blitz Personal Injury Trust Claims will be resolved pursuant to the terms, provisions, and procedures of the Blitz Personal Injury Trust, the Blitz Personal Injury Trust Agreement, and the Blitz Personal Injury TDP. Pursuant to section 105(a) of the Bankruptcy Code, the Channeling Injunction will permanently enjoin holders of Blitz Personal Injury Trust Claims from pursuing a recovery or satisfaction from any of the Protected Parties with respect to Blitz Personal Injury Trust Claims, provided however, that

⁶ As noted above, the Plan provides that all Vendor Claims, Co-Defendant Claims and Direct Action Claims will be channeled to the Blitz Personal Injury Trust and are included as Blitz Personal Injury Trust Claims. These claims are included because they are derivative of the Debtors' insurance policies which are being purchased or otherwise assigned to the Blitz Personal Injury Trust. In order for the Protected Parties, namely the Participating Insurers, to ensure that all liabilities arising from these insurance policies are fully and finally resolved pursuant to the Plan, these types of Claims are subsumed into the category of Blitz Personal Injury Trust Claims. However, while these claims are channeled to the Blitz Personal Injury Trust, these claims will not receive any distributions from the Blitz Personal Injury Trust.

holders of Pre-2007 Blitz Personal Injury Claims shall obtain automatic stay relief on the Effective Date of the Plan and shall be permitted to pursue any existing rights to recover from the Assigned Insurance Policies that will be allocated to the Blitz Personal Injury Trust.

14. In order to fulfill my responsibilities as a representative of members of the Committee, a substantial amount of work was needed to evaluate and negotiate the structure and level of funding for the Blitz Personal Injury Trust, and other terms of the Plan and the Plan Documents. As part of my due diligence, I analyzed the scope of the Debtors' available insurance coverage and performed an analysis of the statistical likelihood of recovery with respect to Blitz Personal Injury Claims to be asserted against the Debtors. With the assistance of counsel to the Committee, I engaged in extensive, arms'-length negotiations with the Debtors, counsel for various individual personal injury claims, the Participating Insurers and Wal-Mart regarding the terms of the Plan and the Blitz Personal Injury Trust, including the terms of the Blitz Personal Injury Trust Agreement and Blitz Personal Injury TDP.

15. Based on my review of the information in these Chapter 11 Cases and my own experience in tort litigation, it is my view that it is likely that the Debtors will be subject to a substantial amount of liability for payments arising out of Blitz Personal Injury Claims. Although the precise number, timing and actual amount of liability for each Blitz Personal Injury Claim cannot be calculated with precision, it is my view that the likelihood of the Debtors' liability being in the multiples of millions is considerable.

16. My involvement in assisting the Committee included all aspects of the Chapter 11 Cases that could affect people who may assert Blitz Personal Injury Claims. To further this assessment, I reviewed documents produced by the Debtors and the Participating Insurers as well as proofs of claim filed by personal injury claimants. The goal of this investigation was to identify and evaluate any Blitz Personal Injury Claims and potential recoveries for such claims with respect to the Debtors' assets, namely any available insurance coverage, in order to quantify any ascertainable Blitz Personal Injury Claims.

17. Moreover, I was integrally involved in negotiations that resulted in the Plan,

including negotiations relating to the Plan Documents. This evaluation and negotiation process began in early 2012 and continued intensively through December 2013. The negotiations of the Plan and the Plan Documents were vigorous, and often contentious, arm's-length negotiations undertaken in good faith and were comprised of numerous in-person and telephonic meetings.

18. The Plan contemplates, and it is a condition to the occurrence of the Effective Date thereunder, that the Channeling Injunction will be issued to assure that all Blitz Personal Injury Trust Claims are channeled exclusively to the Blitz Personal Injury Trust. The Plan, through the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP, has established structures to process Blitz Personal Injury Claims according to specific medical criteria, and all Blitz Personal Injury Trust Claims will be resolved, and all Allowed Covered Blitz Personal Injury Claims will be paid pursuant to and in accordance with the Blitz Personal Injury TDP. The Blitz Personal Injury TDP constitutes a prescribed set of rules and procedures by which the Blitz Personal Injury Trustee will receive, process, evaluate, allow or disallow, and pay Allowed Covered Blitz Personal Injury Claims. I, as well as other representatives of the Committee, participated in extensive discussions concerning the provisions of the Blitz Personal Injury TDP with the Debtors, the Participating Carriers and Wal-Mart.

19. Due diligence and negotiations have produced a Plan that I believe was proposed in good faith and is consistent with the objectives and the purposes of the Bankruptcy Code. Based on my view of the terms of the Plan, the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP, along with discussions with the Committee's legal advisors, I believe that the Releases and Channeling Injunction contained in the Plan are appropriate, fair and equitable, and consistent with the applicable provisions of the Bankruptcy Code. These provisions are the result of arms-length negotiations among key constituencies in these cases, and given for valuable consideration. The Protected Parties are limited to those entities and individuals who played an integral role during the administration of these Chapter 11 Cases and in the development of the Plan, and are making significant monetary contributions, either through direct cash contributions or otherwise facilitating liquidation of the Debtors' estates.

II. Insurance Coverage Issues, Substantial Contributions and Criticality of Releases

20. It is my understanding that in each of the years spanning from July 2006 through July 2012 (the “Relevant Period”), the Debtors obtained primary general liability insurance as well as additional layers of excess coverage through commercial umbrella liability insurance policies, all from various insurance companies. It is my understanding that the primary and/or first level excess policies for the Relevant Period also contain endorsements that broaden the policies’ definitions of “insured” to include vendors (i.e., distributors) of Blitz’s products. It is my understanding that the Debtors maintained approximately \$250 million in face coverage for its liability insurance policies during the Relevant Period. Based on my review of the relevant insurance policies and discussions with the Committee’s professionals, I understand that there exists substantial coverage disputes, including, without limitation, whether all of the self-insured retentions (“SIRs”) for each of the applicable policies was exhausted to trigger coverage from the Participating Insurers. In light of these significant threshold coverage issues, I have been informed that certain of the Debtors’ insurers have taken the position that certain policies cannot be accessed to satisfy Blitz Personal Injury Claims if litigated in the tort system.

21. Moreover, it is my understanding that for the policy years during the Relevant Period, a vendor (such as Wal-Mart), officer, director and/or shareholder of Blitz sued on a Blitz Personal Injury Claim might be entitled to coverage under the Debtors’ insurance policies. Thus, since any of the foregoing entities or individuals may be considered insureds under the Debtors’ insurance policies, if any claims are brought against such persons or entities, they could potentially tender such claims to the insurers for defense and indemnity.

22. In addition to the foregoing, it is my understanding that Blitz U.S.A. and Wal-Mart were parties to Wal-Mart Vendor agreements which contractually required the Debtors to indemnify Wal-Mart for all personal injury suits, including Blitz Personal Injury Trust Claims. Therefore, the indemnity relationship between the Debtors and Wal-Mart created a relationship by which monies expended by Wal-Mart in defending against Blitz Personal Injury Claims could be recouped from the Debtors’ estates via recovery from the Debtors’ insurance policies.

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

24. Pursuant to the Insurance Settlement Term Sheet and the BAH Term Sheet, Wal-Mart, the Participating Insurers and the BAH Settling Parties each have provided or agreed to provide substantial consideration to or for the benefit of the Blitz Personal Injury Trust in return for the protections provided by the Releases and Channeling Injunction. Wal-Mart has provided the following contributions to the Plan: (i) approximately \$24.1 million and waiver of rights under the insurance policies to fund the Blitz Personal Injury Trust; and (ii) approximately \$1.54 million in released payables, that are secured by Wal-Mart's setoff rights, to fund the Blitz Liquidating Trust.

25. In negotiations with the Participating Insurers and Wal-Mart concerning their contributions, I considered the substantial potential barriers to accessing proceeds of the insurance policies on behalf of the Blitz Personal Injury Claims in light of the asserted coverage disputes by the Participating Insurers, such as the satisfaction of the SIRs. Moreover, I considered the fact that Wal-Mart had asserted rights to recover its costs relating to any Blitz Personal Injury Claims from the Debtors' insurance coverage, and that any settlement with the Participating Insurers was only feasible with Wal-Mart's cooperation.

26. If all of the Protected Parties are not covered by the Releases and Channeling Injunction, this would expose the Debtors to the possibility of the continued prosecution of Blitz Personal Injury Claims that would embroil all parties with rights under the Debtors' insurance policies in litigation and incur substantial costs that ultimately diminish the assets available to the holders of Blitz Personal Injury Trust Claims. Instead, it is my view that the terms of the Plan will provide certainty of recovery and prompt access to funds from both the Participating Insurers and Wal-Mart that absent the insurance settlement embodied in the Plan, would only be

available, if at all, after years of costly and time-consuming litigation.

27. From my perspective, if prosecution of Blitz Personal Injury Claims continued outside the procedures proposed in the Plan, such prosecution would threaten the equitable treatment of such claims and demands. Absent the Blitz Personal Injury Trust and the Channeling Injunction, holders of Blitz Personal Injury Trust Claims would be forced to litigate their claims in the tort system and would have limited access only to the limited, dwindling funds of the Debtors with respect to any recovery on such claims. Furthermore, without the Channeling Injunction, the Debtors would be subject to a “race to the courthouse” whereby the Debtors’ assets would be consumed by those claimants who first file suit, leaving nothing for the remaining Blitz Personal Injury Claims. Specifically, I considered that since Wal-Mart qualifies as an additional insured with respect to at least certain of the Debtors’ insurance coverage during the Relevant Period, absent the insurance settlement and the cooperation of the Participating Insurers and Wal-Mart, there existed a significant possibility that Wal-Mart would deplete the available insurance coverage to satisfy Blitz Personal Injury Claims asserted against it, whereas holders of Blitz Personal Injury Claims that do not implicate Wal-Mart would be left with a diminished or no source of recovery.

28. Furthermore, each of Wal-Mart, the Participating Insurers and the BAH Settling Parties has expressed clearly its unwavering position to the Committee that all monetary contributions contemplated by the Plan are unequivocally contingent on securing the Releases and Channeling Injunctions on the terms set forth in the Plan. The Participating Insurers also conditioned any contributions pursuant to the Insurance Settlement Term Sheet and/or the Plan on securing the releases of all named insureds, insureds and additional insureds under the insurance policies being re-purchased by the Participating Insurers. Absent the finality that all potential claims will be resolved pursuant to the Plan, the Participating Insurers and Wal-Mart have expressed their unwillingness to make any contribution to the Plan. Thus, I believe that identifying each of the Protected Parties in the Channeling Injunction is fair and equitable with respect to persons who may assert Blitz Personal Injury Claims in light of the benefits provided

or to be provided to the Blitz Personal Injury Trust on behalf of such Protected Parties.

III. Plan Provides Mechanism for Payment of Substantially All Claims

29. A primary focus of the due diligence evaluations by the Committee and all negotiations was at all times to assess whether any proposed plan of liquidation would provide for the fair and equitable treatment of holders of Blitz Personal Injury Claims. A specific focus of my involvement was assessing whether the Plan provides reasonable assurance that the Blitz Personal Injury Trust will value, and be in a financial position to pay, Blitz Personal Injury Trust Claims that involve similar claims in substantially the same manner, and to provide the most meaningful recovery to Allowed Blitz Personal Injury Trust Claims under all the facts and circumstances of these Chapter 11 Cases.

30. The contribution of the Blitz Personal Injury Trust Assets to the Blitz Personal Injury Trust pursuant to the Plan ensures that the Blitz Personal Injury Trust will have sufficient resources on the Effective Date to begin processing Blitz Personal Injury Trust Claims in accordance with the Blitz Personal Injury TDP. The Blitz Personal Injury TDP was the subject of lengthy and time consuming arms' length negotiation amongst the representatives of the tort claimants who sit on the Committee. These representatives consist of the nation's leading burn injury lawyers who represent nearly 70% of the personal injury claimants in these Chapter 11 Cases, including claimants who suffered diverse types of injuries in many different jurisdictions.

31. These negotiations led to an initial draft of Blitz Personal Injury TDP that provided for the allocation of funds available to the Blitz Personal Injury Trust into two separate funds, a non-appealing fund and a special circumstances fund. The Blitz Personal Injury TDP also adopted a TDP Scoring System that provided for a four step evaluation of Blitz Personal Injury Claims. First, claims would be evaluated to determine whether they met threshold criteria for viability, including timely filing of a proof of claim, product identification, causation, and compliance with applicable statutes of limitations. Second, claims meeting the threshold criteria would be scored by the Blitz Personal Injury Trust considering elements of cognizable damages,

including pain and suffering, loss of enjoyment of life, lost earning capacity, past and future medical costs, and loss of financial support and services (in cases of wrongful death), and funds in the non-appealing fund would be allocated to claimants based on their gross score. Third, claimants dissatisfied with the amount of their proposed distribution from the non-appealing fund would be permitted to appeal their award and seek additional compensation from the special circumstances fund. The primary concept behind the special circumstances fund was that the Committee recognized that the TDP Scoring System might not take into account every potential aspect of compensable damages and that providing the trustee with discretion to enhance awards to claimants that suffered damages not fully compensable under the TDP Scoring System would result in a more fair and equitable distribution of the funds available to the Blitz Personal Injury Trust. Finally, claimants not satisfied with their overall awards from the Blitz Personal Injury Trust are permitted to go to arbitration, or mediation and then to liquidate their claims in the tort system.

32. While the Committee was negotiating the terms of the Blitz Personal Injury TDP and TDP Scoring System, the Committee circulated drafts of the documents to tort claimants that did not sit on the committee to solicit their input. While non-Committee claimants had few comments regarding the structure of the trust and the criteria for scoring claims, concern was expressed that it was impossible for claimants to glean the amount of proposed distributions from the scoring system and that the special circumstances that would allow claimants access the special circumstances fund were not spelled out. In response to this input, the Committee prepared a schedule of proposed distributions under the TDP Scoring System that was annexed to the Plan and Disclosure Statement and revised the Blitz Personal Injury TDP to provide specific criteria for application to the special circumstances fund. In developing these criteria, the Committee, together with tort claimants not serving on the Committee, reached agreement that the following injuries were not adequately compensated under the TDP Scoring System formula and constituted "special circumstances" entitling the claimant to apply for additional compensation from the special circumstances fund:

- a. Wrongful death;
- b. Amputation of a limb (this does not include amputation of individual digits, but shall include amputation or loss of all fingers on the hand);
- b. Severe and permanent internal organ damage other than damage to the respiratory tract (including, without limitation, the mouth, lungs, or esophagus); and
- d. Female who suffered severe burn injuries when less than 18 years of age and survived such injuries.

33. Based upon my review of the information available in these Chapter 11 Cases, as well as my own experience, I believe that the Plan is fundamentally fair and equitable to holders of Blitz Personal Injury Trust Claims. Specifically, the Plan, the Blitz Personal Injury Trust Agreement and the Blitz Personal Injury TDP provide for mechanisms, which provide reasonable assurance that the Blitz Personal Injury Trust will value, and be in a financial position to pay all or some significant portion of the value of Blitz Personal Injury Trust Claims, that involve similar claims in substantially the same manner.

34. In the absence of the implementation of the Blitz Personal Injury Trust and the channeling of Blitz Personal Injury Trust Claims to a trust, holders of Blitz Personal Injury Claims will pursue such claims in the tort system. Liquidation of Blitz Personal Injury Claims in the tort system will not provide any of the protections contained in the Plan for similar treatment of Blitz Personal Injury Trust Claims and does not provide for funding for payment on account of Blitz Personal Injury Trust Claims in any amount.

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

35. The Blitz Personal Injury TDP was designed to treat all Blitz Personal Injury Claims equitably to provide assurance of protection against the general uncertainty of liquidation and recovery of each such claim in the tort system. To that end, the Blitz Personal Injury TDP is intended to pay holders of Allowed Covered Blitz Personal Injury Claims as equivalent a share as reasonably practicable of the value of their claims based on historical values for substantially

similar claims. The Blitz Personal Injury TDP establishes a schedule of recovery values that is based on specific medical and other criteria designed to achieve this purpose. These criteria are the principal mechanisms to distinguish between claims with, and without merit, and serious and less serious claims. The values established by the Blitz Personal Injury TDP are consistent with the settlement values paid to personal injury claimants with comparable injuries under similar circumstances.

V. Objections to Confirmation Should Be Overruled

36. As of the submission of this Declaration, objections to confirmation of the Plan have been filed by three Personal Injury Claimants: (i) Michael Bauman, Jr., Michael Bauman Sr., and Donna (Bauman) Greer (the “Bauman Claimants”); (ii) Estate of Joseph M. Cataldi and Lori Cataldi (the “Cataldi Claimants”) and (iii) Carrie Larkin and Billy Ray Newby (the “Newby Claimants”) and collectively, the “Objections”). I have reviewed each of the Objections with the Committee and Committee counsel and believe that each of the Objections should be overruled.

37. The Bauman Claimants object to confirmation of the Plan claiming the proposed Blitz Personal Injury TDP and TDP Scoring System violate Michael Bauman Jr.’s Fifth Amendment right to due process and equal protection. Specifically, the Bauman Claimants contend that the TDP Scoring System discriminates against males because one of the four criteria making application to the special circumstances fund permits female (and not male) claimants who suffered severe burn injuries when less than 18 years of age to seek compensation from the special circumstances fund. The Bauman Claimants contend, without any legal support, that this criteria in the Blitz Personal Injury TDP and TDP Scoring System (and by extension, the Plan) is an unconstitutional government action that denies the Bauman Claimants their equal protection and due process rights. The Bauman Claimants urge the Court to discard the entire Blitz Personal Injury TDP and TDP Scoring System and appoint a special master to devise new trust distribution procedures.

38. The Bauman Claimants’ Objection is baffling as counsel for the Bauman Claimants was among the non-Committee tort counsel that received and commented on the draft

Blitz Personal Injury TDP and TDP Scoring System. Indeed, by e-mail dated November 18, 2013, a copy of which is annexed hereto as Exhibit A, counsel for the Bauman Claimants agreed to withdraw his objection to the motion to approve the Insurance Policy Buy-Back and the adequacy of the Disclosure Statement and to accept the amount allocated to his clients under the TDP Scoring System. The Committee relied upon the Bauman Claimants agreement to withdraw their objections and to support confirmation of the Plan in negotiating and resolving other objections to the Plan, and the Bauman Claimants should not now be permitted to reverse course and reassert the same objections in order to try to hold up confirmation of the Plan in order to enhance their recovery under the Blitz Personal Injury TDP.

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

40. The Newby Claimants' Objection focuses on the proposed third-party Releases and Channeling Injunction under the Plan and challenges the amounts paid by Wal-Mart in exchange for the Releases. As discussed above, pursuant to the Insurance Settlement Term Sheet and the BAH Term Sheet, Wal-Mart, the Participating Insurers and the BAH Settling Parties each have provided or agreed to provide substantial consideration to or for the benefit of the Blitz Personal Injury Trust in return for the protections provided by the Releases and Channeling Injunction. Under applicable standards, the consideration being paid by Wal-Mart is more than

adequate to justify the releases being afforded to Wal-Mart under the Plan

41. Notably, the Newby Claimants are the only claimants that challenge the releases being afforded to Wal-Mart and the amount of consideration being paid by Wal-Mart. Having negotiated the settlement on behalf of the Committee, I am satisfied that the contribution being made by Wal-Mart is fair and adequate in the context of these Chapter 11 Cases. Based on the lack of objection by any of the approximately 100 tort claimants in these cases, it appears that all creditors other than Newby Claimants are in agreement. The views of one recalcitrant claimant should not be permitted to preempt the views of the entire remaining creditor body.

42. Moreover, the Committee and its professionals have reviewed the proof of claim filed by the Newby Claimants on October 11, 2013, and have serious doubts about the viability of the claim. The Newby POC asserts a personal injury claim in the amount of \$49,000,000.00 in conjunction with an occurrence described therein as “Blitz 5-gallon diesel fuel container exploded as Rayne Newby was attempting to re-kindle a fire his uncle had started earlier to burn brush...”. Diesel fuel has a very high flash point and does not generate vapor sufficient to cause a flash back and can explosions like those caused by gasoline. No other claimant has made a claim that a diesel can containing diesel exploded because it is not scientifically possible. Discovery taken in the underlying tort case also discloses wildly inconsistent evidence and testimony regarding the cause of Rayne Newby’s injuries, all of which will lead to this claim being hotly contested by the Trust and in the tort system.

43. The Cataldi Claimants’ Objection is a contingent objection. The Cataldi Claimants, who failed to file a Personal Injury Claim by the Supplemental Bar Date, recently filed a motion to extend the Supplemental Bar Date. The Committee has opposed the Cataldi Claimants’ motion. Should the Cataldi Claimants prevail on their motion, they do not object to confirmation of the Plan. Should the Court deny the motion, the Cataldi Claimants object to the proposed Releases in favor of Wal-Mart and others. This objection should be over ruled for the same reasons that the Newby Claimants’ objection should be over ruled.

CONCLUSION

The Plan embodies the extraordinary results of the mediation process and extensive, arm's length negotiations achieved over the prior 16 months. It satisfies each of the requirements for confirmation under section 1129 of the Bankruptcy Code as I understand such requirements. It also provides the best means to distribute substantial value to Blitz Personal Injury Claimants and general unsecured creditors. I therefore urge the Court to confirm the Plan.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Dated: January 25, 2014

/s/ Kenneth B. McClain
Kenneth B. McClain

EXHIBIT A

Exhibit A

On 11/18/13 4:53 PM, "Lawrence L. Jones II" <larry@jonesward.com> wrote:

>No, thank you!

>

>On Nov 18, 2013, at 5:52 PM, Diane Breneman <Diane@litigationkc.com>

>wrote:

>

>> Thank you

>>

>> Sent from my iPhone

>>

>>> On Nov 18, 2013, at 4:19 PM, "Lawrence L. Jones II"

>>><larry@jonesward.com> wrote:

>>>

>>> Agreed.

>>>

>>>> On Nov 18, 2013, at 5:15 PM, Diane Breneman <Diane@litigationkc.com>

>>>>wrote:

>>>>

>>>> Larry

>>>> Before tomorrow's status hearing, can you confirm for me that you

>>>>have agreed to drop your objection and take your matrix amount. The

>>>>carriers are asking everyone to confirm their positions. Thank you,

>>>>Larry.

>>>> Diane

>>>>

>>>> Sent from my iPhone

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