



Case Alert: In re Blitz U.S.A., Inc.

In re Blitz U.S.A., Inc., Case No. 11-13603 (PJW) (Bankr. D. Del. July 9, 2012)

In *Blitz U.S.A.*, Judge Walsh held that the debtors' EBITDA-based employee bonus plan was an ordinary course transaction made with sound business judgment and in good faith. As a result, he authorized the bonus payments over objections from the creditors' committee and the U.S. Trustee.

The proposed bonus plan had been calculated in accordance with the same parameters and process since 2008, but the EBITDA targets had recently been lowered in light of the prepetition spinoff of one of the debtors' businesses. At issue was whether the bonus plan was an ordinary course transaction and, if so, whether it met the business judgment standard under 11 U.S.C. § 363. Applying the Third Circuit's two-part inquiry, the court concluded the bonus plan was an ordinary course transaction because (i) the debtors had had similar plans for the preceding three years, and (ii) because other manufacturers employed similar plans.

In finding that the bonus plan met the business judgment test, Judge Walsh rejected the committee's arguments that (i) the plan approval process was incomplete and payments were too high, (ii) EBITDA targets were too low in light of subsequent projections, and (iii) the targets should have been revised upwards once the bankruptcy stayed product liability suits.

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