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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11
WHITTAKER, CLARK & DANIELS, INC., *et al*.,	Case No. 23-13575 (MBK)
Debtors.[1]	(Jointly Administered)

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND THE CONTRIBUTING PARTIES, (II) AUTHORIZING THE DEBTORS TO PERFORM ALL OF THEIR OBLIGATIONS THEREUNDER, AND (III) GRANTING RELATED RELIEF

[1] The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification numbers, are: Whittaker, Clark & Daniels, Inc. ("WCD") (4760); Brilliant National Services, Inc. ("Brilliant") (2113); L. A. Terminals, Inc. ("LAT") (6800); and Soco West, Inc. ("Soco West") (3400). The location of the Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is 100 First Stamford Place, Stamford, Connecticut 06902.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion (the "Motion"):[2]

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit B** (the "Order"), (a) authorizing (i) entry into that certain settlement agreement attached as Exhibit 1 to the Order (the "Settlement Agreement")[3] between and among the Debtors, Brenntag,[4] NICO,[5] and DB US[6] (Brenntag, NICO, and DB US, collectively, the "Contributing Parties"), and (ii) the Debtors (together with the Contributing Parties, the "Parties") to perform all of their obligations thereunder; and (b) granting related relief.

[2] The Debtors have filed or soon will file (a) the *Declaration of Tim Pohl in Support of the Debtors' Motion for Entry of an Order (I) Approving the Settlement Agreement Between the Debtors and the Contributing Parties, (II) Authorizing the Debtors to Perform All of Their Obligations Thereunder, and (III) Granting Related Relief* (the "Pohl Declaration"); (b) the *Declaration of David L. McKnight in Support of the Debtors' Motion for Entry of an Order (I) Approving the Settlement Agreement Between the Debtors and the Contributing Parties, (II) Authorizing the Debtors to Perform All of Their Obligations Thereunder, and (III) Granting Related Relief* (the "McKnight Declaration"); and (c) the *Declaration of Brian J. Griffith in Support of the Debtors' Motion for Entry of an Order (I) Approving the Settlement Agreement Between the Debtors and the Contributing Parties, (II) Authorizing the Debtors to Perform All of Their Obligations Thereunder, and (III) Granting Related Relief* (the "Griffith Declaration"). A detailed description of the facts and circumstances supporting the Settlement Agreement is set forth in greater detail in the Pohl Declaration, McKnight Declaration, and the Griffith Declaration, which are also incorporated by reference herein. The Debtors have also filed or will soon file the *Declaration of Gavin C.P. Campbell in Support of Debtors' Motion for Entry of an Order (I) Approving the Settlement Agreement Between the Debtors and Contributing Parties, (II) Authorizing the Debtors to Perform All of Their Obligations Thereunder, and (III) Granting Related Relief* (the "Campbell Declaration"), which attaches a number of exhibits concerning the historical facts described in this Motion. All references to "Ex." refer to exhibits to the Campbell Declaration.

[3] A summary of the terms contained in the Settlement Agreement is attached to this Motion as **Exhibit A**.

[4] "Brenntag" means, collectively, Brenntag Canada, Inc., Brenntag Great Lakes, LLC, Brenntag Mid-South, Inc., Brenntag North America, Inc., Brenntag Northeast, LLC, Brenntag Pacific, Inc., Brenntag Southwest, Inc., Brenntag Specialties, LLC (f/k/a Brenntag Specialties, Inc., and as Mineral and Pigment Solutions, Inc. ("MPSI")) ("Brenntag Specialties"), and Coastal Chemical Co., LLC.

[5] "NICO" means, collectively, Berkshire Hathaway Inc., BH Columbia Inc., Columbia Insurance Company, National Indemnity Company ("National Indemnity"), Resolute Management, Inc., Ringwalt & Liesche Co. ("Ringwalt"), and National Liability & Fire Insurance Company.

[6] "DB US" means DB US Holding Corporation.

Preliminary Statement

2. For more than a year, the Debtors have worked hard to reach a consensual, efficient, and value-maximizing outcome in these cases. The Debtors have now successfully negotiated a $535 million contribution to their estates to resolve their estate causes of action against Brenntag, DB US, and NICO. While the Debtors remain hopeful that they can achieve a fully consensual resolution to these cases, the Settlement Agreement will benefit all of the Debtors' stakeholders regardless of whether a global deal is ultimately reached. The Settlement Agreement is a significant achievement, provides a material recovery that exceeds what tort claimants could have recovered against Brenntag, DB US, and NICO even if these bankruptcy proceedings had never been filed, and easily satisfies the factors courts consider in deciding whether to approve a settlement of estate claims. It is not a close call.

3. The challenges in these cases are well known. The Debtors have finite assets—and limited cash flows from interest on such assets—that are rapidly depleting as these chapter 11 cases proceed without a resolution. Indeed, besides cash and insurance assets, the Debtors' only material assets are the potential estate causes of action they hold. Accordingly, the Debtors have sought to maximize the value of their assets by investigating and assessing these causes of action and engaging in extensive arm's-length negotiations with the Contributing Parties to achieve the value-maximizing outcome reflected in the Settlement Agreement. This is similar to what other debtors have done with similar claims in other cases.[7]

[7] *See, e.g.*, *In re Emoral, Inc.*, 740 F.3d 875, 882 (3d Cir. 2014) (affirming bankruptcy court's approval of settlement agreement of successor liability and other related claims); *see also In re Wilton Armetale, Inc.*, 968 F.3d 273, 283–84 (3d Cir. 2020) ("[T]he Bankruptcy Code makes a creditor's derivative causes of action property of the estate. From there, the trustee decides how best to manage them for the benefit of all creditors. One option is to prosecute those claims to judgment. Another is to settle and extinguish them.") (internal citations omitted).

4. As the Court has ruled, any causes of action for alter ego and successor liability against the Contributing Parties are property of the estate.[8] The Debtors view the settlement of these and any other potential estate causes of action as the most equitable, efficient, and value-maximizing means of resolving them, and one that avoids "an effective race to the courthouse."[9] Indeed, the Settlement Agreement ensures that *all* of the Debtors' stakeholders benefit from resolution of the Debtors' estate causes of action. Importantly, the Settlement Agreement does not prohibit claimants from pursuing any *direct* claims they may have against the Contributing Parties, including any claims against Brenntag for liabilities arising from Brenntag's own post-February 2004 operations.

5. The $535 million contribution that the Debtors were able to negotiate is sufficient to cover all or nearly all of the Debtors' total tort liabilities. As the Court has observed, all estate causes of action asserting successor liability or alter ego theories attempt to hold non-Debtors liable for the Debtors' tort liabilities.[10] As a result, the value of such causes of action can never exceed the amount of the Debtors' own liabilities. The claims then must be discounted for the likelihood of success on the merits. The Debtors' claims valuation expert estimates that the Debtors' asbestos and asbestos-related talc liabilities in the tort system but for these bankruptcies would be between $474 million and $571 million (in present value terms). Thus, the settlement amount either exceeds or covers the vast majority of the Debtors' tort liabilities *before* necessary adjustments for litigation risks and uncertainties. This remarkable outcome was only possible

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8 *See* [Adv. Proc. Docket No. 268] (the "MSJ Opinion") at 36–37, 45; *see also* [Adv. Proc. Docket No. 292].

9 MSJ Opinion at 40.

10 *E.g.*, *id.* at 30 ("Here, the Successor Liability Claims seek to establish a non-debtor's liability bottomed on Debtors' liability, through allegations of successor liability, alter ego, or some similar theory."); *id.* at 36 ("In sum, all Successor Liability Claims seek—in some fashion—to impute Debtors' liability to a non-debtor entity.").

because the Debtors were able to negotiate for millions of dollars in additional consideration based on what the Contributing Parties otherwise would spend to litigate absent a resolution here—value that, absent settlement, would go to *defense* lawyers and experts, and *not* to tort claimants. Of course, the Debtors are not required to obtain such a significant recovery for the Court to approve the Settlement Agreement. Once litigation risks and uncertainties are considered, the "lowest point" in the range of reasonable settlements is well below $300 million. But the fact that the Debtors were able to achieve a settlement that either exceeds or covers nearly all of their tort liabilities demonstrates the inherent reasonableness of the compromise—and that "pursuit of Successor Liability Claims in good faith by the Debtors" has in fact "result[ed] in more efficient and equitable resolutions, thus, maximizing value to creditors."[11]

6. Not surprisingly, the settlement easily satisfies the four factors courts in the Third Circuit consider in approving settlements of estate claims. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). ***First***, the probability of successfully litigating the claims resolved under the Settlement Agreement is inherently uncertain. With respect to the Debtors' strongest claims, the Debtors believe they have no more than a 50%—and potentially materially lower—likelihood of success on their successor liability claims against Brenntag. Even making the plaintiff-friendly assumption of continuity of operations and personnel between the relevant Debtors and the Brenntag entities that purchased their assets, the law of two of the three states most likely to apply also requires a continuity of ownership for successor liability claims to succeed, which indisputably does not exist here. As to estate causes of action against DB US and NICO: (a) claims against DB US based on historical dividends before it sold the Debtors in 2007 are likely either time-barred or otherwise lack merit, (b) NICO did not take dividends or otherwise

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[11] *Id.* at 27.

extract value from the Debtors during its ownership of the Debtors, (c) any alter ego claims against either DB US or NICO are likely curtailed because the Debtors' liabilities did not arise when they were owned by DB US or NICO, and (d) any alter ego claims against DB US and NICO would face substantial hurdles on the merits, including because the Debtors continued to generally pay their liabilities in the ordinary course until these bankruptcy proceedings.

7. ***Second***, there would also be challenges to collecting any judgment on any estate causes of action against Brenntag, DB US, or NICO. Absent settlement, Brenntag likely would assert recoupment defenses against the Debtors that could materially diminish any recovery. Additionally, to obtain a significant recovery through litigation, the Debtors would need to obtain judgments against specific entities with sufficient assets to satisfy them or for which solvent entities remain part of an indemnification chain.

8. ***Third***, any litigation over the Debtors' estate causes of action outside of a settlement would be complex, expensive, and time-consuming, requiring litigation over complicated factual and legal issues, often concerning events that took place over twenty years ago and for which memories have dramatically faded or for which witnesses may be unavailable.

9. ***Fourth***, the paramount interest of all the Debtors' stakeholders is served by entering into the Settlement Agreement because it maximizes recoverable value for all of the Debtors' stakeholders, creates value for the Debtors' estates that would not be available in tort litigation outside of a settlement, does not release creditors' direct claims against non-Debtor parties (including based on Brenntag's post-2004 conduct), avoids any potential dilution of tort claimant recoveries by releasing any claims assertable against the estates by the Contributing Parties, and is the product of hard-fought, good-faith, arm's-length negotiations conducted and overseen by the Debtors' disinterested directors.

10. For more than six months, the Debtors participated in the Court-ordered mediation process with the Contributing Parties, the Official Committee of Talc Claimants (the "Committee"), and the future claimants' representative (the "FCR") in good faith to try to reach a consensual, global, and workable resolution for the benefit of all the Debtors' stakeholders. That did not happen. Nevertheless, if these cases are to have a value-maximizing, efficient, and equitable outcome for the benefit of *all* of the Debtors' stakeholders, the Settlement Agreement paves the best path forward and provides a source of substantial funding for a confirmable chapter 11 plan. To be clear, the Debtors remain open to discussions with the Committee and the FCR and are still hopeful that a fully consensual deal can be reached. But the Debtors must move these chapter 11 cases forward for the benefit of all their stakeholders.

11. The Debtors require liquidity to facilitate and administer the Settlement Agreement and bring these chapter 11 cases to a conclusion in the near term. Accordingly, the Debtors have negotiated for a portion of the settlement amount to be paid promptly to fund these chapter 11 cases in the form of a $50 million first priority secured debtor-in-possession delayed draw term loan facility (the "DIP Facility," and loans thereunder, the "DIP Loans"), as more fully explained in the motion to approve the DIP Facility filed substantially contemporaneously with this Motion (the "DIP Motion").

12. For these and other reasons set forth in this Motion and the Pohl, McKnight, and Griffith Declarations, the Settlement Agreement falls within the range of reasonableness and should be approved as fair and equitable under the standard set forth by the Third Circuit in *Martin*.[12]

[12] On August 30, 2024, the Committee and the FCR filed the *Joint Motion of the Official Committee of Talc Claimants and the Future Claimants' Representative for Entry of an Order Granting Standing and Authorizing the Committee and the FCR to Commence, Prosecute, and Settle Certain Causes of Action on Behalf of the Debtors' Estates* [Docket No. 1293] (the "Standing Motion") seeking relief with respect to certain estate causes

Jurisdiction and Venue

13. The United States Bankruptcy Court for the District of New Jersey (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

14. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

15. The bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), rules 2002, 6004, and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 6004-1 of the Local Bankruptcy Rules for the District of New Jersey (the "Local Rules").

Background

16. The Debtors highlight below some of their operational and corporate history leading up to the Petition Date, as well as the indemnification relationships among the Debtors and the Contributing Parties, to provide additional context for the claims resolved under the Settlement Agreement and additional support for the reasonableness and fairness of the settlement.

I. The Debtors' Corporate History

17. The Debtors' corporate history collectively goes back more than 100 years. Until November 1998, however, the entities that now constitute the Debtors were part of two separate

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of action that are property of the Debtors' estates. Approval of the relief requested in this Motion would moot the relief sought in the Standing Motion. The Debtors reserve all rights to object to and all defenses regarding the arguments raised in the Standing Motion, with which the Debtors strongly disagree.

revenue generating businesses that were *not* under the same corporate ownership: (a) the "SOCO Chemical" group and (b) WCD.

18. Debtor Brilliant, the parent entity in these proceedings, has historically been a holding company, and was known for the majority of its pre-2004 history as first "Stinnes Oil & Chemical Company" (hence the abbreviation "SOCO") and then as SOCO Chemical.[13] During that time, Brilliant (f/k/a SOCO Chemical) served as a North American parent entity for chemical operations within the German industrial conglomerate Stinnes AG.[14] Brilliant was a direct, wholly owned subsidiary of Stinnes Corp., a US holding company.[15]

19. Between Brilliant's founding in 1977 and 2004, Brilliant formed or acquired other operating companies. By 2004, Brilliant owned the equity of multiple separate chemical distribution businesses largely organized by region, which in turn were often the result of combining multiple different corporate entities.[16] For example, what is now Soco West was built by combining—over more than twenty years—multiple distributors with connections to California (Western Chemical & Manufacturing, A.J. Lynch, and Crown Chemical) with two entities (Dyce Chemical and Holchem) acquired from the Holland Chemical group (which was brought into the Stinnes corporate family around 2000).[17]

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[13] *See* Ex. 1 (original Dec. 1977 certificate of incorporation as Stinnes Oil & Chemical Company, Inc.); Ex. 2 at BNS-TCC-0978235 (1986 name change to SOCO Chemical, Inc.); *id.* at BNS-TCC-0978238 (1998 name change to Brenntag, Inc.); *id.* at BNS-TCC-0978240 (2004 name change to Brilliant National Services, Inc.).

[14] *See* Ex. 7 at DBUS0036544 (Stinnes Corp.'s year-end financial statements for 2003 and 2002 describing Brilliant as Stinnes Corp.'s "chemical distribution subsidiary" in the United States and describing corporate chain from Stinnes Corp. to Stinnes AG).

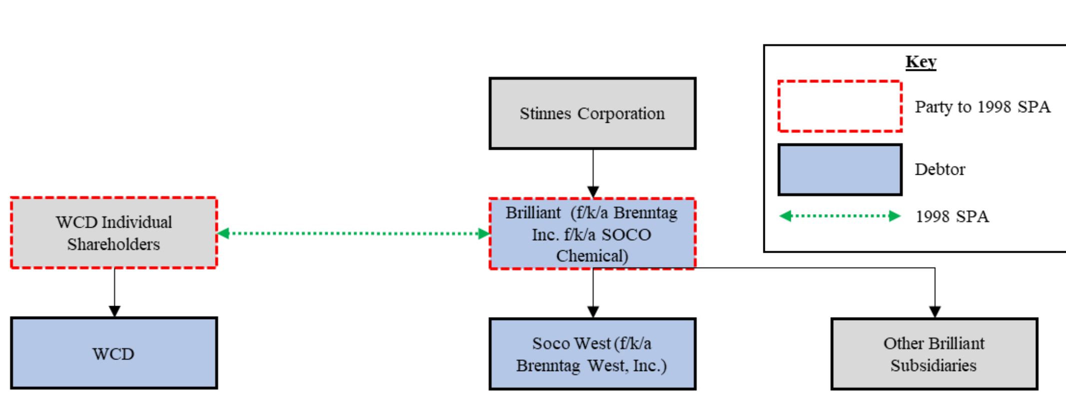
[15] *See id.*

[16] *See* Ex. 29 (Dec. 2002 printout of various pages from Brilliant's website describing six "full-line distribution companies in the U.S." including Soco West, and three "specialty chemical distributors" including WCD, as well as listing various corporate acquisitions).

[17] *See* Ex. 3 at BNS-TCC-0007542–43 (noting merger of Western Chemical); *id.* at BNS-TCC-0007556 (same for A.J. Lynch); at BNS-TCC-0007557 (same for Crown Chemical); *id.* at BNS-TCC-0007564–65 (same for

20. During the multi-decade build-up of various chemical distribution businesses owned by Brilliant, Brilliant did *not* own WCD. Instead, WCD was privately held for over 100 years after it first began business (and over twenty-five years after it was reorganized from a New York corporation to a New Jersey corporation),[18] operating as a distributor of minerals and pigments, including talc. It was only in November 1998 that Brilliant acquired WCD from its then-individual stockholders and WCD became, indirectly, part of the Stinnes corporate family.[19]

Figure 1: Simplified 1998 Transaction Diagram



21. In 2002, Deutsche Bahn AG became the ultimate parent of the Stinnes group but it did not want to retain Stinnes' chemical businesses, including the U.S. operations conducted by Brilliant's subsidiaries.[20] In a series of transactions between 2003 and 2004, Deutsche Bahn

Holchem); *id.* at BNS-TCC-0007567–68 (same for Dyce Chemical); *see also* Ex. 31 (letter and attachment describing ownership of various Holland Chemical entities eventually acquired by Stinnes Corp. or Brilliant, noting Holchem and Dyce Chemical were owned by HCI USA Distribution); Ex. 2 at BNS-TCC-0978242 (May 2001 certificate of merger between HCI USA Distribution and Brilliant).

[18] *See* Ex. 5 (materials concerning 1972–73 reorganization of WCD from a New York corporation to a New Jersey corporation).

[19] *See* Ex. 6 (Nov. 1998 share purchase agreement between Brenntag, Inc. and WCD's individual shareholders).

[20] *See* Ex. 7 (Stinnes Corp. financial report noting that "On October 7, 2002, Deutsche Bahn AG ('DB') acquired 99.7% of the outstanding shares of Stinnes AG. . . . In 2003, DB acquired the remaining .3% of the outstanding shares of Stinnes AG."); Ex. 8 at 12 (Deutsche Bahn AG 2002 financial statements noting that "the [Stinnes] Chemicals division (Brenntag group) is an international leader in chemicals logistics . . . . Despite [its] high profitability and development potential, we plan to divest the Chemicals . . . division[] in the medium term, as [its] activities do not fit in with our core business.").

divested itself of these businesses by selling them to affiliates of Bain Capital. These transactions were effectuated with respect to Brilliant and its subsidiaries by two sets of agreements (collectively, the "2004 Transaction"): (a) a December 2003 master sale and purchase agreement (the "2003 MSPA") to which both Brilliant and its immediate parent Stinnes Corp. were parties, and (b) a series of February 2004 agreements between Brilliant or its subsidiaries on the one hand, and newly created Bain-affiliated "Brenntag" entities on the other.[21] The result of these agreements was that Brilliant sold most of its operating subsidiaries to Brenntag North America, and Brilliant's remaining subsidiaries, including WCD and Soco West, sold their operating assets to other subsidiaries of Brenntag North America.[22] In particular, WCD sold its assets to MPSI (n/k/a Brenntag Specialties), and Soco West sold its assets to Brenntag Pacific.[23]

22. As a result of the February 2004 sales, Brilliant received approximately $140 million of cash from selling the equity in its other subsidiaries, WCD received approximately $16 million of cash from selling its operating assets, and Soco West received approximately $44 million of cash from selling its operating assets.[24]

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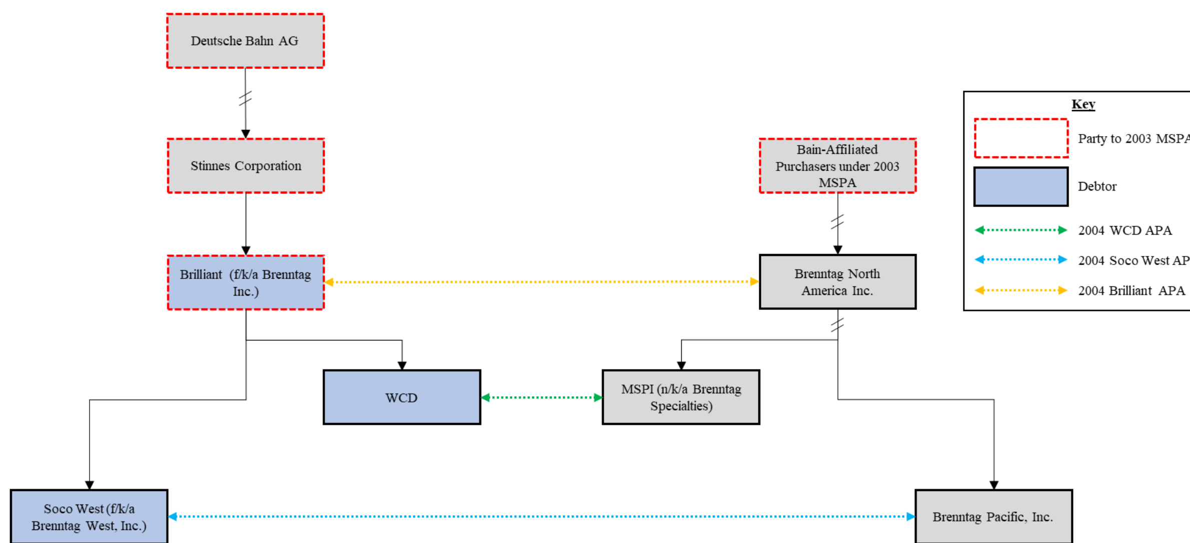
[21] *See* Ex. 9 (2003 MSPA); Exs. 10–12 (2004 asset purchase agreements for Brilliant, WCD, and Soco West). A further description of the 2004 Transaction is contained in the Debtors' filings in the adversary proceeding. *See, e.g.*, [Adv. Proc. Docket Nos. 1, 4].

[22] *See* Ex. 7 at DBUS0036544 (Stinnes Corp. financial report noting that "[a]s part of the Sale, in the United States, five companies' shares were committed for sale and four companies committed to sell certain operating assets less certain assumed liabilities").

[23] *See* Exs. 11–12 (Soco West and WCD asset purchase agreements). Brilliant changed its name from SOCO Chemical to Brenntag, Inc. in July 1998. Ex. 2 at BNS-TCC-0978238. By 2004, the majority of Brilliant's subsidiaries also had "Brenntag"-prefix names (for example, Soco West was named "Brenntag West"). Ex. 3 at BNS-TCC-0007563 (Mar. 2001 name change to "Brenntag West"). WCD, however, never had a "Brenntag"-prefix name.

[24] *See* Ex. 30 (cash flow statement showing "Funds Collected on Sale" for Brilliant, Soco West, and WCD). WCD received an additional approximately $2.3 million because one of its subsidiaries (Crozier-Nelson Sales, Inc.) also sold its operating assets to a Brenntag entity in the 2004 Transaction, and Crozier-Nelson Sales then merged into WCD shortly after the 2004 Transaction, which is why just over $18 million is listed for WCD's sale proceeds. *See* Ex. 13 (Crozier-Nelson Sales asset purchase agreement); Ex. 4 at BNS-TCC-0975135–38 (May 2004 certificate of merger and agreement of merger).

Figure 2: Simplified 2004 Transaction Diagram



23. Between February 2004 and December 2007, Brilliant, WCD, and Soco West managed their liabilities under the direct ownership of Stinnes Corp. and the indirect ownership of Deutsche Bahn.

24. In December 2007, National Indemnity paid $1.00 to acquire the Debtors, with the possibility of an up to $45 million purchase price adjustment payable by Stinnes Corp. (and guaranteed by Deutsche Bahn) to National Indemnity if the Debtors actually paid (or incurred before paying) more than specified thresholds for asbestos and environmental claims.[25] At closing in December 2007, National Indemnity assigned the right to acquire the Debtors' stock to Ringwalt—a NICO affiliate under a different corporate chain—such that Ringwalt is Brilliant's sole direct equityholder (together with National Indemnity's 2007 acquisition of the Debtors, the "2007 Transaction").[26]

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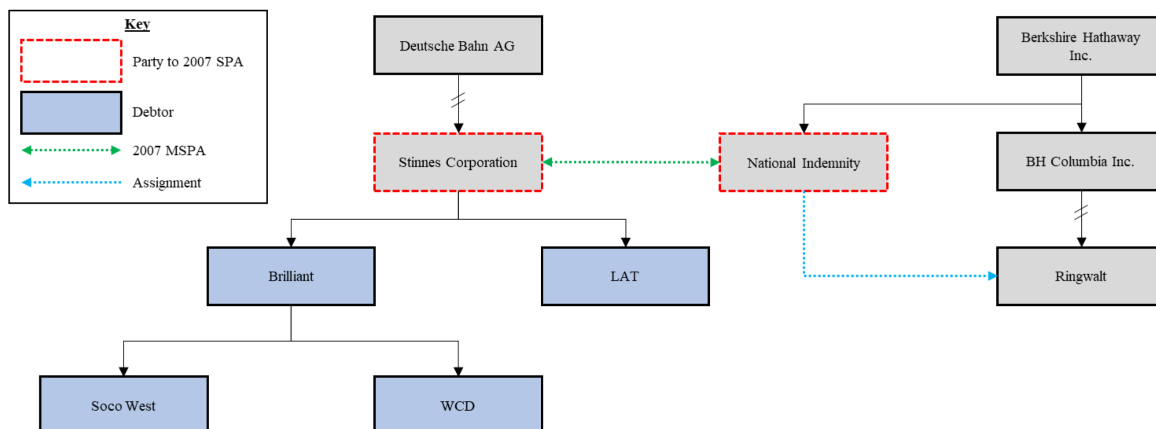
[25] Ex. 14 (2007 share purchase agreement between National Indemnity and Stinnes Corp. (the "2007 SPA")).

[26] Ex. 15 (2007 assignment agreement between National Indemnity and Ringwalt).

Figure 3: Simplified 2007 Transaction Diagram



25. From 2007 through the Petition Date, Brilliant, WCD, and Soco West invested their assets and managed their liabilities under the direct ownership of Ringwalt, and the indirect ownership of NICO.[27] In connection with their claims management and investment activities, the Debtors also entered into intercompany services and tax sharing agreements with various non-Debtor NICO affiliates.[28]

26. The third Debtor that is a subsidiary of Brilliant is LAT. LAT stands apart from both WCD and Soco West because LAT (a former chemical business located at the Los Angeles harbor) was *never* a revenue-generating entity while it was a subsidiary of Brilliant. LAT had already ceased operations by the mid-1990s before it was brought into the Stinnes corporate family as part of the Holland Chemical transactions around 2000.[29] As a result, LAT was not involved in

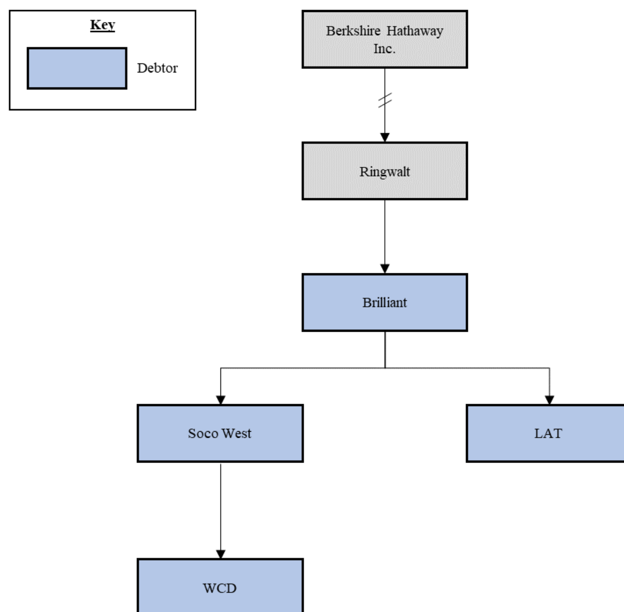
[27] In 2008, WCD was moved underneath Soco West. *See* Ex. 24 (Apr. 2008 reorganization agreement transferring WCD from Brilliant to Soco West).

[28] *See, e.g.*, Exs. 16–23 (intercompany services agreements and tax sharing agreements between NICO entities and the Debtors).

[29] *See* Ex. 31 (letter and attachment describing ownership of various Holland Chemical entities eventually acquired by Stinnes Corp. or Brilliant, noting LAT was owned by HCI Americas, Inc.); Ex. 32 (Apr. 2001 certificate of merger between Stinnes Corp. and HCI Americas, Inc.).

the 2004 Transaction. LAT was sold to Ringwalt as part of the 2007 Transaction between Stinnes Corp. and National Indemnity and was moved underneath debtor Brilliant in 2008.[30]

Figure 4: Simplified 2008 to Present Structure Diagram



II. Indemnification Relationships Among the Debtors, Brenntag, DB US, and NICO[31]

27. Under the 2003 MSPA, WCD and Soco West were responsible for indemnifying the entities that purchased their assets and specified Brenntag-related entities and individuals from claims seeking damages "allegedly caused by asbestos, asbestiform minerals and/or asbestos-

30 *See* Ex. 14 at BNS-TCC-0979379 (2007 SPA recitals noting LAT shares exclusively owned by Stinnes Corp. and included in "Shares" conveyed to National Indemnity); Ex. 15 (Ringwalt assignment of all "Shares" transferred under 2007 SPA); Ex. 25 (Apr. 2008 reorganization agreement transferring LAT from Ringwalt to Brilliant).

31 The summary descriptions of certain indemnification provisions in the 2003 MSPA and 2007 SPA are qualified in their entirety by reference to their terms, which contain additional provisions and specificity with respect to the scope of the relevant indemnification obligations and conditions and/or exclusions to such obligations. *See generally* Ex. 9 (2003 MSPA) § 10 ("Environmental Indemnity"); *id.* § 12 ("Asbestos Indemnity"); Ex. 14 (2007 SPA) art. VIII ("Indemnification").

containing products allegedly mined, manufactured, distributed, sold, used, installed, maintained, or possessed by" WCD, Soco West, or their predecessors prior to the 2004 Transaction.[32]

28. If WCD or Soco West could not fulfill their asbestos-related indemnification obligations to their Brenntag-related indemnitees, Brilliant guaranteed those obligations; if Brilliant could not fulfill its indemnification obligations, Stinnes Corp. (now DB US) guaranteed those indemnification obligations.[33]

29. Additionally, although Brilliant itself was a holding company and had no legacy asbestos or environmental operations giving rise to liability, Brilliant and Stinnes Corp. agreed to indemnify the asset purchasers and other Brenntag-related entities and individuals from asbestos-related claims arising from the pre-transaction operations of the business entities that were sold outright to Brenntag (*i.e.*, even when unrelated to WCD or Soco West) as well as certain liabilities arising from existing environmental conditions at those sold businesses (in addition to any equivalent conditions at Soco West and WCD).[34]

30. In connection with the 2007 Transaction, when National Indemnity and Ringwalt acquired the Debtors from Stinnes Corp., National Indemnity agreed to indemnify Stinnes Corp. and specified Stinnes-related entities and individuals for (a) asbestos-related claims seeking to hold Stinnes-related entities and individuals liable "under any theory that such party is liable for the acts or financial obligations of" WCD or Soco West and (b) any obligations owed by such

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[32] *See* Ex. 9 (2003 MSPA) § 12.1.1–12.1.2, 12.2.

[33] *See id.*

[34] *See* Ex. 9 (2003 MSPA) §§ 12.1.5, 12.3 (relating to "Non-Retained Subsidiary Asbestos Claims"); *id.* § 10 ("Environmental Indemnity").

Stinnes-related entities and individuals under the asbestos-related (and certain environmental-related) indemnification provisions of the 2003 MSPA.[35]

III. The Appointment of the Disinterested Directors, Their Investigation of Estate Causes of Action, and the Negotiation of the Settlement Agreement.

31. Tim Pohl and Paul Aronzon were appointed as disinterested directors of the Debtors effective as of March 30, 2023.[36] Other than their directorships, neither Mr. Pohl nor Mr. Aronzon have any relationships with the Debtors or any of their respective major debtholders or equityholders that would cause them to be unable to exercise independent judgment based on the best interests of the Debtors.

32. The Debtors' disinterested directors have authority to both investigate and approve any transaction, settlement, or other action with respect to any "Conflict Matter," which is defined to include any matter pertaining to a strategic transaction or any chapter 11 proceeding in which a conflict of interest exists or is reasonably likely to exist between the Debtors, on the one hand, and any of the Debtors' equityholders, affiliates, subsidiaries, directors, managers, and officers, or other stakeholders (collectively, the "Related Parties"), on the other hand.[37] Specifically, in connection with their appointment, the Debtors' disinterested directors were given the authority to (a) investigate and determine, in their business judgment, whether any matter constitutes a Conflict Matter, and (b) take any action with respect to the Conflict Matters, as determined in their sole judgment, including but not limited to: (i) any release or settlement of potential claims or causes of action of the Debtors against Related Parties; (ii) any decision regarding all or part of a strategic

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[35] *See* Ex. 14 (2007 SPA) § 8.03.

[36] *See* Ex. 28 (April 8, 2023 unanimous consent appointing Mr. Pohl and Mr. Aronzon as disinterested directors of the Debtors effective as of March 30, 2023).

[37] *Id.*

transaction to the extent it constitutes a Conflict Matter; and (iii) any other transaction implicating the Debtors in which a Related Party has an interest.[38]

33. At the direction of their disinterested directors, the Debtors investigated their potential causes of action against third parties. The Debtors focused on potential successor liability theories against Brenntag entities, as well as any estate causes of action against DB US or NICO based on transactions and governance during their respective periods of ownership of the Debtors.

34. During these cases, the Debtors have provided extensive discovery to all parties in interest, including the Committee, FCR, Brenntag, DB US, and NICO, and participated in good faith in a mediation with retired Judge Gerber. This included producing more than 240,000 documents regarding the Debtors' corporate history, the litigation claims asserted against the Debtors, and other documents responsive to more than 100 formal document requests served by the Committee and FCR. Following the breakdown in that mediation (as described by Judge Gerber in his report to the Court [Docket No. 1121]), the Debtors' disinterested directors and their advisors commenced discussions with the Contributing Parties and their advisors about the possibility of settling some or all of the estate causes of action held by the Debtors against those parties.

35. Because NICO entities are affiliated with the Debtors, the process for negotiating and approving the Settlement Agreement on the Debtors' behalf was conducted entirely by and at the direction of the Debtors' disinterested directors and the Debtors' external advisors, without the participation of the Debtors' remaining NICO-affiliated director. *See* Pohl Decl. ¶ 12. As part of considering potential offers and the ultimate terms of the Settlement Agreement, the disinterested directors requested and received advice from their advisors, including from the Debtors' counsel

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[38] *Id.*

and claims estimation advisor, The Brattle Group Inc. ("Brattle").[39] *See* Pohl Decl. ¶ 10. The disinterested directors have participated in multiple negotiation sessions, sometimes with advisors and sometimes on a principals-only basis. *Id.* ¶ 11. The Debtors and the Contributing Parties have exchanged multiple settlement offers and drafts of settlement documentation in the nearly two months since they began negotiations. *Id.* ¶ 11.

36. The hard-fought, good faith, arm's-length negotiations between the Debtors and the Contributing Parties have resulted in the Settlement Agreement. The Settlement Agreement provides for, among other things, a mutual release of claims and the Contributing Parties' agreement to make an aggregate payment to the Debtors in the amount of $535 million. The terms of the Settlement Agreement were reviewed and approved by the Debtors' disinterested directors. *See id.* ¶¶ 11–13.

Basis for Relief

I. The Settlement Agreement Should be Approved Pursuant to Sections 105(a), 363(b), and Bankruptcy Rule 9019(a).

37. Bankruptcy Rule 9019(a) provides, in relevant part:

> On motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement.

Fed. R. Bankr. Proc. 9019(a). In addition, section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

38. If a settlement is outside of a debtor's ordinary course of business, it requires approval under section 363(b) of the Bankruptcy Code. *Myers v. Martin (In re Martin)*, 91 F.3d

[39] Brattle is an experienced economic consulting group that has over four decades of combined experience and has represented a variety of parties as a claims estimation expert in other mass tort chapter 11 cases. *See* McKnight Decl. ¶¶ 4–5.

389, 394 n.2 (3d Cir. 1996) ("Section 363 of the Code is the substantive provision requiring a hearing and court approval; Bankruptcy Rule 9019 sets forth the procedure for approving an agreement to settle or compromise a controversy."). Courts normally defer to a debtor's business judgment if there is a legitimate business justification for the use of estate property. *See Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999) (holding that only a "sound business purpose" is needed to justify use of estate property pursuant to section 363(b)).

39. "The federal courts have a well-established policy of encouraging settlement to promote judicial economy and limit the waste of judicial resources." *Russian Standard Vodka (USA), Inc. v. Allied Domecq Spirits & Wine USA, Inc.*, 523 F. Supp. 2d 376, 384 (S.D.N.Y. 2007). The force of this established federal policy is particularly acute in the bankruptcy context, where compromises and settlements are "a normal part of the process of reorganization." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). Indeed, to "minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy." *Martin*, 91 F.3d at 393 (cleaned up).

40. Whether to approve a proposed settlement is committed to the discretion of the bankruptcy court, which must determine whether a proposed compromise is fair and equitable. *TMT Trailer*, 390 U.S at 424; *Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644–45 (3d Cir. 2006). In making this determination, the Third Circuit has stated that courts should consider: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." *Martin*, 91 F.3d at 393; *In re NovaPro Holdings, LLC*, 815 F. App'x 655, 658 (3d Cir. 2020).

41. In determining whether to approve a proposed settlement, "[t]he Bankruptcy Court need not probe the merits of all claims or conduct a 'mini-trial' before approving the settlement; rather, avoiding litigating the issues is one of the main advantages of settlement." *NovaPro Holdings*, 815 F. App'x at 658; *In re ID Liquidation One, LLC*, 555 F. App'x 202, 207 (3d Cir. 2014) (similar). "Instead, the court need only canvas the issues to determine whether the settlement falls above the lowest point in the range of reasonableness." *In re Immune Pharms. Inc.*, 635 B.R. 118, 122 (Bankr. D.N.J. 2021) (cleaned up); *see also In re Annunziata*, 2018 WL 1091291, at *5 (D.N.J. Feb. 28, 2018) ("A settlement does not need to be the best possible compromise available, it only needs to be above the lowest point in the range of reasonableness.") (cleaned up).

42. Here, the Settlement Agreement should be approved because it easily meets the *Martin* standard and is a reasonable exercise of the Debtors' business judgment.

A. Probability of Success in Litigation

43. Success on the merits of the Debtors' estate causes of action is inherently uncertain and there are significant hurdles to asserting colorable claims. Given the significant risks in litigating the Debtors' estate causes of action to judgment, the recovery provided by the Settlement Agreement provides material benefits for the Debtors, their estates, and creditors and easily exceeds the lowest point in the range of reasonableness. *See Immune Pharms.*, 635 B.R. at 122; *Annunziata*, 2018 WL 1091291, at *5.

1. Claims Against DB US and NICO

44. The Debtors have evaluated—and the Settlement Agreement would resolve—estate causes of action against NICO and DB US (the Debtors' existing and prior equityholders, respectively). In evaluating those causes of action, the Debtors have focused on any (a) potential claims based on transfers of value from the Debtors to NICO or DB US during their respective

ownership of the Debtors (*e.g.*, fraudulent transfer, unlawful dividend, and breach of fiduciary duty claims); and (b) potential alter ego or corporate veil-piercing claims. Because these face significant factual and legal hurdles, settling them is in the best interests of the Debtors' estates.

(a) Claims Based on Transfers of Value From the Debtors

45. With respect to transfers of value to DB US, the Debtors historically paid dividends to DB US during its ownership of the Debtors, with the last dividend of $25 million paid in December 2004, after the sale of the Debtors' operating assets.[40] Any potential fraudulent transfer claims based on financial distress (*i.e.*, "constructive" fraudulent transfer claims), however, are likely completely time-barred for transactions during DB US's ownership of the Debtors (even assuming the applicability of a ten-year statute of limitations based on a potential governmental "golden creditor").[41] Other potential claims based on historical dividends or any other intercompany transactions during DB US's pre-December 2007 ownership of the Debtors, such as unlawful dividend, would likely also be entirely time-barred.[42] The most notable claims the Debtors could potentially assert without a time limitation against DB US are fraudulent transfer claims based on an "actual intent" to hinder, delay, or defraud creditors, based on the existence of any "golden creditor" tort claimant whose disease only manifested in the year leading up to the Petition Date.[43] Even assuming that theory could be used to extend the statute of limitations for

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[40] *See* Ex. 33 at BNS-TCC-0978255 (unanimous consent of the Brilliant board of directors approving $25 million dividend to Stinnes Corp. (n/k/a DB US) payable on December 31, 2004); *see also, e.g., id.* at BNS-TCC-0978297, 310, 337 (unanimous board consents approving $10.34 million, $10.41 million, and $8.34 million dividends to Stinnes Corp. payable on January 1, 2000, January 1, 1999, and January 1, 1998, respectively).

[41] *See In re Gilbert*, 642 B.R. 687, 704–05 & n.75 (Bankr. D.N.J. 2022) (discussing availability of and limitations on invoking IRS as a golden creditor triggering a 10-year lookback period under section 544(b)).

[42] *See, e.g.*, 8 Del. C. § 174 (six-year limitations period for unlawful dividend claims for Delaware corporations).

[43] *See, e.g.*, *Lippe v. Bairnco Corp.*, 225 B.R. 846, 855 (S.D.N.Y. 1998); *In re G-I Holdings, Inc.*, 313 B.R. 612, 639–40 (Bankr. D.N.J. 2004), *aff'd in relevant part*, 2006 WL 1751793, at *15–16 (D.N.J. June 21, 2006).

such claims, however, there is no indication that DB US's historical dividends were intended to hinder, delay, or defraud creditors. As a result, there are significant hurdles to any estate causes of action based on historical transfers of value to DB US. Accordingly, the Debtors believe that settling any such causes of action is a reasonable exercise of their business judgment and in the best interests of their estates.

46. With respect to transfers of value to NICO, the Debtors did not make any regular or extraordinary dividend payments to NICO during its ownership of the Debtors.[44] The only recurring transfers of value from the Debtors to NICO over the course of NICO's ownership of the Debtors were (a) payments for intercompany services provided by NICO to the Debtors and (b) payments under tax sharing agreements between Brilliant and NICO.[45] The payments for intercompany services totaled approximately $5.2 million paid to NICO entities over the more than 15 years of NICO's ownership—less than $350,000 a year.[46] In exchange for these payments, NICO provided the Debtors with the services of its officers and directors, and those of other NICO employees, who, together, provided the Debtors with their claims handling, finance, accounting, tax, and other functions.[47] With respect to tax sharing payments, while the Debtors did make certain payments to NICO entities, the Debtors also *received* substantial payments *from* NICO entities pursuant to their tax sharing agreements, resulting in net tax sharing payments *to* the Debtors of approximately $51 million over the course of NICO's prepetition ownership of the

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44 *See* Griffith Decl. ¶ 8.

45 *See id.* ¶ 9.

46 *See id.*

47 In negotiating the Settlement, the Debtors also considered the outstanding net intercompany and tax sharing balances NICO entities owe to the Debtors of approximately $4.4 million as of July 31, 2024, and are otherwise resolving any claims under (and terminating) the intercompany agreements between the Debtors and NICO. *See id.* ¶ 10.

Debtors.[48] As a result, there are significant hurdles to any estate causes of action based on the intercompany payments and tax sharing payments to NICO, and the Debtors believe settling any such causes of action is a reasonable exercise of their business judgment and in the best interests of their estates.[49]

(b) Alter Ego and Veil-Piercing Claims

47. With respect to alter ego or veil-piercing claims against both DB US and NICO, a threshold defense that significantly reduces the likelihood of success on the merits is the timing of when those entities owned the Debtors as compared to when the Debtors were engaged in the underlying operations giving rise to potential liabilities. Alter ego and veil-piercing claims generally seek to impose the liabilities incurred by a debtor on another entity that is controlling the debtor as an alter ego or sham front.[50] Such theories are premised on the concept that a controlling entity is using a debtor as an alter ego or sham front *at the time* it is transacting business and creating the liabilities to be imposed on the controlling entity. *See, e.g.*, *Fluorine On Call, Ltd. v. Fluorogas Ltd.*, 380 F.3d 849, 861–62 (5th Cir. 2004) ("[Alter ego] theories, therefore, presume that the corporations are unified *at the time of the wrongful act*.") (emphasis added). As a result, "[i]t is illogical, for example, to hold a parent liable for controlling another corporation's debts when it had no control at the time the debts were incurred." *Id.* Here, there is a significant

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[48] *See id.* ¶ 9.

[49] In negotiating the Settlement, the Debtors also considered, among other transactions, any potential estate causes of action that might have been associated with (a) the 2008 commutation of an XL insurance policy assigned by Deutsche Bahn to National Indemnity as part of the 2007 Transaction and the contribution of the commutation proceeds plus interest to the Debtors in 2017, (b) the purchase price adjustment owed to National Indemnity under the 2007 SPA, and (c) the intercompany sales of Apple stock from the Debtors to other NICO affiliates at market prices prior to the Petition Date.

[50] *See, e.g.*, *Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 903 A.2d 475, 498 (N.J. App. Div. 2006) ("Veil piercing is an equitable remedy whereby . . . the parent corporation may be found liable for the actions of the subsidiary.").

disconnect between the time at which the Debtors' operations gave rise to liabilities and the timing of their ownership by DB US and NICO.

48. Specifically, the only time at which WCD—the primary source of the talc liabilities that constitute the overwhelming majority of the Debtors' liabilities—was operating as a distributor of talc under the indirect ownership of either DB US or NICO was between November 1998 and February 2004, when WCD was indirectly owned by DB US (then known as Stinnes Corp.). WCD never operated as a talc distributor under NICO's ownership of the Debtors. Prior to November 1998, WCD was owned by individual shareholders, not by DB US. And after February 2004, WCD's operating assets, including any related to talc distribution, were sold to Brenntag. As a result, this timing mismatch is a potentially claim-dispositive hurdle to using any alter ego or veil-piercing theory to impose *any* WCD liabilities on NICO, or any WCD liabilities on DB US other than those incurred between November 1998 and February 2004.

49. Similarly, any distribution of raw asbestos or asbestos-containing products by WCD that would result in "traditional" asbestos claims occurred far before either NICO's indirect ownership of WCD (beginning December 2007) or DB US's indirect ownership of WCD (beginning November 1998). The only source of traditional asbestos liabilities based on *any* of the Debtors' operations during DB US's indirect ownership (and thus the only source of potential alter ego claims against DB US for such liabilities) would be if Western Chemical—which was acquired by and merged into Soco West in 1980—had distributed asbestos or asbestos-containing products after 1980, and even then, only for the portion of products (if any) sold after the acquisition.

50. Even if any alter ego claims against NICO are not barred as a matter of law by the mismatch between its ownership of the Debtors and when they conducted operations giving rise

to alleged liabilities, such claims would still have to meet the two-pronged showing for any alter ego or veil-piercing theory: (a) that there is significant interconnectedness, control, and a disregard of corporate formalities between a debtor with liabilities and a specific non-debtor entity; and (b) respecting corporate formalities would somehow effectuate a fraud or injustice (*e.g.*, where entities are "shams" or created solely as vehicles for fraud).[51] Additionally, any alter ego or veil-piercing claim here would have to go up (and across) multiple steps in corporate chains—first within the Debtors (from either Soco West to Brilliant or from WCD to Soco West to Brilliant), and then outside the Debtors. This gives rise to potential defenses based on whether each layer in a corporate chain requires a separate veil-piercing analysis.[52] Brilliant's direct parent is solely the NICO entity Ringwalt, and National Indemnity (the original NICO signatory on the 2007 SPA and a provider of intercompany services to the Debtors) is in a different corporate chain from—and is not an indirect parent entity of—the Debtors.

51. On the merits of the two-prong test for imposing the Debtors' liabilities on NICO under an alter ego theory, the factors that would most support alter ego or veil-piercing claims against NICO would be: (a) the Debtors' officers and directors between December 2007 and April 2023 were all employees of NICO; (b) NICO shared services employees provided back-office, administrative, and investment services on behalf of the Debtors; and (c) NICO shared services employees were involved in the litigation and settlement of tort and environmental claims against the Debtors. Such relationships, however, are typically held to be insufficient on their own

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[51] *See, e.g.*, *Verdantus Advisors, LLC v. Parker Infrastructure Partners*, LLC, 2022 WL 611274, at *2 (Del. Ch. Mar. 2, 2022); *Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 903 A.2d 475, 500 (N.J. App. Div. 2006).

[52] *Compare, e.g.*, *In re HH Liquidation, LLC*, 590 B.R. 211, 273 (Bankr. D. Del. 2018) ("[W]hen dealing with multiple layers of parents and subsidiaries, the corporate veil likely must be pierced at each level."), *with In re Moll Indus., Inc.*, 454 B.R. 574, 587 (Bankr. D. Del. 2011) ("The Court concludes that it is not necessary for the Committee to make allegations sufficient to pierce every layer of the corporate structure . . . .").

to establish alter ego liability.[53] Moreover, against these factors showing interconnectedness, NICO could likely raise factors including that: (a) the Debtors and NICO existed separately long before the 2007 Transaction, and the Debtors' post-2007 operations and assets were and are distinct from those of NICO; (b) the Debtors maintained separate and distinct boards of directors from NICO entities (despite some overlap) and enacted separate corporate resolutions;[54] (c) the Debtors did not intermingle funds with NICO or use bank accounts shared with NICO;[55] (d) the Debtors did not transfer funds to NICO without explanation, and only ever transferred limited amounts for intercompany services and tax sharing payments;[56] and (e) the Debtors have paid millions to tort claimants and other third parties in connection with defending and resolving claims since the 2007 Transaction.[57] These factors likely go to both the interconnectedness and fraud or injustice prongs of the alter ego test. In particular, NICO may argue that the intercompany services it provided to the Debtors led to the payment of far more tort and environmental claims against WCD and Soco West in the fifteen years leading up to the Petition Date than could have been accomplished using the less than $30 million in cash on their balance sheets at the time of the

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[53] *See, e.g.*, *Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459–60 (2d Cir. 1995) (concluding that "[c]ourts have generally declined to find alter ego liability based on a parent corporation's use of a cash management system," that domination could not be found based on evidence that a parent's "approval was required for [the subsidiary's] real estate leases" and "major capital expenditures" and was instead "conduct [that] is typical of a majority shareholder or parent corporation," and that "[p]arents and subsidiaries frequently have overlapping boards of directors while maintaining separate business operations"); *cf. In re Teleservs. Grp., Inc.*, 2009 WL 838157, at *14 (Bankr. D.N.J. Jan. 15, 2009) (citing *Fletcher* in analyzing breach of fiduciary duty claims under New Jersey law).

[54] *Compare, e.g.*, Exs. 26–27 (Dec. 2007 consent appointing Raj Mehta, John Arendt, and Forrest Krutter as directors of Brilliant, May 2012 consent appointing Carmel O'Sullivan in place of Forrest Krutter on Brilliant board); *and* Ex. 28 (Apr. 8, 2023 consent replacing Carmel O'Sullivan and John Arendt with Paul Aronzon and Tim Pohl as directors of Brilliant), *with, e.g.*, Exs. 34–35 (lists of historical National Indemnity and Ringwalt directors and officers).

[55] *See* Griffith Decl. ¶ 14.

[56] *See supra* ¶ 47.

[57] *See* Griffith Decl. ¶ 15.

2007 Transaction. As a result, there are significant hurdles to any estate causes of action seeking to impose the Debtors' liabilities on NICO under an alter ego or veil-piercing theory, and the Debtors believe settling any such causes of action is a reasonable exercise of their business judgment and in the best interests of their estates.

52. On the merits of the two-prong test for imposing the Debtors' liabilities on DB US under an alter ego theory (again putting aside the potentially dispositive timing mismatch described above), the Debtors have more limited records in their possession, custody, and control for the pre-2007 period under DB US's ownership. However, both WCD and Soco West had many different directors and officers from both their immediate parent Brilliant and indirect parent DB US.[58] Moreover, board materials make clear that WCD and Soco West had operations distinct from each other, their sibling corporations (other chemical distribution businesses), and from Brilliant and DB US (holding companies).[59] Indeed, WCD had decades of separate operations and existence prior to being acquired by DB US. And because DB US was the sole former direct parent of Brilliant, any attempt to impose liability on different or deeper-pocketed DB US-affiliated entities would require additional levels of veil-piercing. As a result, there appear to be significant hurdles to any estate causes of action seeking to impose the Debtors' liabilities on DB US under an alter ego or veil-piercing theory, and the Debtors believe settling any such causes of action is in the best interests of their estates.

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[58] *Compare, e.g.*, Exs. 36–37 (historical Stinnes Corp. director and officer lists) *with* Exs. 38–39 (historical Brilliant director and officer lists), Exs. 40–41 (historical Soco West director and officer lists), Exs. 42–43 (1998–2002 WCD director and officer lists).

[59] *See, e.g.*, Ex. 44 (April 2000 Brilliant board minutes describing review of separate performance of different subsidiaries with and discussion with president of Brilliant); Ex. 45 (December 1999 WCD board minutes describing review of WCD's performance alone and discussion with WCD management); Ex. 46 (November 1999 Soco West board minutes describing review of Soco West's performance alone and discussion with Soco West management).

2. Claims Against Brenntag

53. Because Brenntag never owned the Debtors, the key estate cause of action against Brenntag entities are any claims for successor liability. Theories of successor liability are generally consistent across state lines (with the exception of the handful of states that have adopted a "product-line" theory of successor liability); however, application of these theories can vary significantly from state to state.[60] As the Debtors have previously explained in the Adversary Proceeding, they believe the most likely potential choice of law for successor liability claims against Brenntag would be Delaware, New Jersey, or New York.[61]

54. "The general rule of corporate-successor liability is that when a company sells its assets to another company, the acquiring company is not liable for the debts and liabilities of the selling company simply because it has succeeded to the ownership of the assets of the seller."[62] The four traditional exceptions to this rule are: "(1) the successor expressly or impliedly assumes the predecessor's liabilities; (2) there is an actual or *de facto* consolidation or merger of the seller and the purchaser; (3) the purchasing company is a mere continuation of the seller; or (4) the transaction is entered into fraudulently to escape liability."[63] In addition to these traditional exceptions, a minority of states (including New Jersey) have adopted a fifth "product-line" exception.[64]

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[60] *See generally United States v. Gen. Battery Corp.*, 423 F.3d 294, 301 (3d Cir. 2005) ("Beneath a veneer of uniformity, the 'entire issue of successor liability . . . is dreadfully tangled, reflecting the difficulty of striking the right balance between the competing interests at stake.'").

[61] Choice of law issues were briefed extensively in the Debtors' motion for summary judgment and reply in support thereof. *See, e.g.*, [Adv. Proc. Docket Nos. 3, 99].

[62] *Lefever v. K.P. Hovnanian Enterprises, Inc.*, 160 N.J. 307, 310 (1999).

[63] *Id.*

[64] *See id.*

55. The Debtors' strongest claims for successor liability against Brenntag entities would be grounded in a mere continuation or *de facto* merger theory. An express or implied assumption theory would be unlikely to succeed on the merits because none of the Brenntag asset purchasers assumed WCD or Soco West's asbestos-related liabilities, and instead any such liabilities were expressly identified as "Excluded Liabilities."[65] A fraud-based theory of successor liability would be unlikely to succeed on the merits because the 2004 Transaction where the Debtors sold their assets was between unrelated parties—a German industrial conglomerate and a sophisticated private equity firm—and occurred years before the present wave of talc litigation had appeared. A product-line theory also would be unlikely to succeed. Neither New York nor Delaware has recognized the product-line theory.[66] New Jersey has recognized the exception.[67] But courts applying New Jersey law have been reluctant to apply the "product-line" theory of successor liability to distributors like the Debtors and Brenntag.[68]

56. With respect to the mere continuation or *de facto* merger theories, most courts consider four factors in determining whether a particular transaction amounts to a de facto consolidation or mere continuation: "(i) continuity of management, personnel, physical location,

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[65] *See* Exs. 10–12 (2004 asset purchase agreements for Brilliant, WCD, and Soco West) at Schedule 1.2 ("Excluded Liabilities") ¶ 2 ("Any and all Liabilities relating to or arising from any Retained Subsidiary Asbestos Claims and Non-Retained Subsidiary Asbestos Claims (as defined in [the 2003 MSPA]).").

[66] *See Semenetz v. Sherling & Walden, Inc.*, 7 N.Y.3d 194, 201 (2006) ("We [] join the majority of courts declining to adopt the 'product line' exception[.]"); *The O'Brien Corp. v. Hunt-Wesson, Inc.*, 1999 WL 126996, at *7 n.3 (Del. Ch. Feb. 25, 1999) (suggesting that product line theory is "not particularly well-thought out"); *see also Dickens v. A-1 Auto Parts & Repair Inc.*, 2020 WL 6265078, at *3 (S.D. Miss. Oct. 23, 2020) ("There is no indication that Delaware has adopted the product line exception to the general rule against successor liability.").

[67] *Ramirez v. Amsted Indus., Inc.*, 86 N.J. 332, 358 (1981).

[68] *See Falor v. G&S Billboard*, 2008 WL 539225, at *6 (D.N.J. Feb. 27, 2008) ("This Court has not located, and the parties have not identified, any case applying the product-line exception announced in *Ramirez* to a situation such as this where a third party plaintiff (or any plaintiff) argued, much less won the argument, that a defendant *distributor* was liable as a successor-in-interest to a predecessor *distributor* for strict products liability where the *manufacturer* is a viable defendant in the case at bar.").

assets, and general business operations; (ii) a cessation of ordinary business and dissolution of the predecessor as soon as practically and legally possible; (iii) assumption by the successor of the liabilities ordinarily necessary for the uninterrupted continuation of the business of the predecessor; and (iv) continuity of ownership/shareholders."[69] There is a significant likelihood that a court applying any relevant state law would deem the first and third factors satisfied based on the evidence supporting (a) the continuity of assets, physical locations, management, and business operations following the 2004 Transaction between WCD and Soco West on the one hand, and Brenntag entities on the other, and (b) the Brenntag entities' assumption of the vast majority of the Debtors' operational liabilities in connection with the 2004 Transaction. The second and fourth factors, however, are far less certain.

57. With respect to the second factor—the cessation of ordinary business and dissolution of the predecessor—there is no dispute that the Debtors ceased all ordinary business operations following the closing of the 2004 Transaction. But it is equally undisputed that the Debtors were not formally dissolved in connection with the 2004 Transaction and instead continued their corporate existence for the purpose of administering their assets and managing their liabilities for decades thereafter.[70] Consequently, a court could well conclude that the Debtors were not left a "barren continuation" or "corporate shell" given their decades-long existence in this capacity following the 2004 Transaction.[71]

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[69] *Pub. Serv. Elec. & Gas Co. v. Cooper Indus., LLC*, 678 F. Supp. 3d 611, 622 (D.N.J. 2023).

[70] *See* Griffith Decl. ¶¶ 9–15.

[71] *See In re New York City Asbestos Litig.*, 15 A.D.3d 254, 257 (N.Y. App. Div. 2005) (corporation was not a mere "shell" following sale of most of its operating assets because corporation retained significant assets, including cash, receivables, and causes of action, and retained obligations, including indemnification, insurance, and environmental remediation obligations).

58. The fourth factor—continuity of ownership—is likely the most critical factor for two reasons. First, it has not been consistently applied by courts across the relevant states. And second, it weighs heavily against a finding that the 2004 Transaction amount to a *de facto* consolidation or mere continuation. Indeed, the Debtors have not identified any evidence supporting continuity of ownership between the Debtors and Brenntag, as the 2004 Transaction constituted a cash purchase of assets by unrelated corporate entities. New York and Delaware courts emphasize continuity of ownership in adjudicating the *de facto* merger/mere continuation theory and would likely dismiss any such claims that cannot satisfy this factor.[72] On the other hand, a court applying New Jersey law is likely to omit the fourth factor from its analysis entirely.[73] Accordingly, whether the 2004 Transaction constitutes a *de facto* merger is highly dependent upon which state's law is applied such that the successor liability claims are subject to significant litigation risk.

59. Based on the foregoing, the Debtors believe that the likelihood of success on the merits on their successor liability claims against Brenntag are no greater than 50%, and possibly materially lower.

B. Valuation of Claims

60. In valuing any claim that seeks to hold another entity liable for the Debtors' liabilities—such as alter ego and successor liability claims—the Debtors have considered the likelihood of success on those claims as applied to the value attributable to the Debtors' liabilities.

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[72] *Battino v. Cornelia Fifth Ave., LLC*, 861 F. Supp. 2d 392, 401 (S.D.N.Y. 2012) ("The Second Circuit has explained that continuity of ownership is the essence of a merger, and therefore the [mere continuation/*de facto* merger] exception[s] cannot apply in its absence." (citations and internal quotations omitted)); *see also Simple Glob., Inc. v. Brathwait Watches, Inc.*, 2022 WL 100363, at *2 (Del. Super. Ct. Jan. 10, 2022).

[73] *Pub. Serv. Elec. & Gas Co.*, 678 F. Supp. 3d at 622 ("[T]he more modern view of New Jersey law . . . no longer require[es] continuity of shareholder interest." (quoting *Woodrick v. Jack J. Burke Real Est., Inc.*, 306 N.J. Super. 61, 75, 703 A.2d 306, 313 (App. Div. 1997))).

61. To assist the Debtors and the disinterested directors' assessment of the value of the Debtors' estate causes of action, the Debtors retained estimation experts at Brattle, who reviewed documents from the Debtors' productions (as well as documents produced by the Contributing Parties)—in particular, the Debtors' historical claims and sales data (where available)—and calculated reasonable estimates of what the Debtors' liabilities in the tort system would be but for the Debtors' bankruptcy. *Cf. In re Soup Kitchen Int'l Inc.*, 506 B.R. 29, 42 (Bankr. E.D.N.Y. 2014) (where trustee "retained a reputable valuation expert and utilized that valuation as a baseline in negotiating the Settlement," it was "neither necessary nor appropriate to engage in [valuation] litigation in the context of a Rule 9019 motion").

62. With respect to successor liability theories against Brenntag, the Debtors have considered the value of (a) WCD cosmetic talc asbestos-related liabilities, (b) WCD industrial talc asbestos-related liabilities, (c) WCD and Soco West traditional asbestos-related liabilities, and (d) Soco West environmental liabilities. With respect to alter ego claims against DB US and NICO, the same liabilities were considered, as well as environmental liabilities at Brilliant and LAT, which would not be subject to a potential successor liability theory against Brenntag.[74] Brattle's estimates of these liabilities in present value terms are as follows:[75]

WCD cosmetic talc liabilities	$428–$516 million
WCD industrial talc liabilities	$32–$41 million
WCD and Soco West traditional asbestos liabilities	$14 million
Soco West environmental liabilities	$24 million
Total liabilities subject to potential successor liability theories	**$498–$595 million**

74 Successor liability is not even theoretically available to impose such liabilities on Brenntag because as noted above, Brilliant and LAT had no legacy operations or assets giving rise to environmental liabilities that were sold to Brenntag in the 2004 Transaction.

75 *See* McKnight Decl. ¶ 7.

Brilliant and LAT environmental liabilities	$13 million
Total liabilities subject to potential successor liability and alter ego theories	**$511–$608 million**

63. Notably, with respect to claims that alleged the presence of asbestos in cosmetic and industrial talc distributed by WCD, the Debtors recognize there can be a wide range of disputes over the merits of such claims. The Debtors vigorously disputed the tort claims prior to these chapter 11 proceedings and firmly believe in their defenses to the underlying liabilities on their merits. However, for purposes of negotiating the Settlement Agreement, the Debtors took the approach that the value of estate causes of action that attempt to impose WCD and Soco West's liabilities on non-Debtors should be calculated off of a reasonable estimate of what WCD and Soco West would face in the tort system but for the Debtors' bankruptcy—not what the Debtors actually "should" be liable for under a legal liability approach.[76] Brenntag, DB US, and NICO have emphasized to the Debtors what they believe to be fundamental weaknesses and flaws in many or most underlying talc-related claims against the Debtors, which would counsel in favor of basing a settlement off a much lower number than that calculated by Brattle, but the Debtors have diligently sought to maximize recoveries for their estates and all stakeholders by using the numbers calculated by their own advisors as a basis for negotiations.

64. The estimated liability numbers calculated by Brattle must be discounted, as noted above, by a reasonable estimate of likelihood of success on the merits of any successor liability or alter ego claims. For the reasons set forth above, the Debtors believe the likelihood of success on the merits of successor liability claims is much greater than the likelihood of success on alter ego

[76] If actual legal liability were at issue (as would be the case in claims estimation under 11 U.S.C. § 502(c)), that figure should take into account not just causation evidence, but evidence of inefficiencies, settlement dynamics, and other confounding factors that can render figures derived from the tort system unreliable and overstated indicators of true liability. *See In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 94–97 (Bankr. W.D.N.C. 2014).

claims. The Debtors do not assess the likelihood of success on the merits on those claims cumulatively above 50% (and indeed believe the likelihood of success on the merits could be materially lower). This places a reasonable potential settlement of estate causes of action—and at a minimum, the "the lowest point of reasonableness"—at a number below $300 million.

65. The Debtors, however, negotiated for a far higher recovery in the Settlement Agreement. In negotiating with NICO, DB US, and Brenntag, the Debtors advocated and obtained consideration that, in the Debtors' view, reflects two additional key factors.

66. ***First***, the Debtors negotiated with Brenntag, DB US, and NICO over the inclusion of tort system defense costs. Brattle estimated that absent a bankruptcy, tort system defense costs associated with estimated claims alleging solely pre-2004 exposure would be approximately $158–$185 million in present value terms (using a percentage of indemnity methodology). *See* McKnight Decl. ¶¶ 7, 22–24.[77] Notably, the inclusion of *any* amount of defense costs during negotiations, and ultimately in the amount reflected in the Settlement Agreement, are a significant benefit to the Debtors' stakeholders. But for the settlement, tort system defense costs would never be paid to claimants—they would be paid to Brenntag's defense lawyers and experts. The inclusion of these costs—and the fact that the settlement amount is far greater than the value of the estate causes of action standing on their own—demonstrates not only the reasonableness of the settlement, but its superiority for the Debtors' stakeholders over the prepetition *status quo*.

67. ***Second***, the Debtors negotiated with Brenntag, DB US, and NICO over an amount (or "premium") to reflect (a) the avoidance of uncertainty in the tort system provided by the settlement and the benefits to those entities from finally resolving all estate claims arising out of

[77] The Debtors focused on calculating tort system defense costs for claims alleging only pre-2004 exposures because Brenntag will not have to incur such costs if the successor liability claims are settled, whereas it will continue to have to defend claims asserting post-2004 exposures even if successor liability claims are settled.

the Debtors' operations, (b) any residual value of other estate causes of action, (c) the costs of administering the chapter 11 cases, and (d) the costs of administering any future trust or trusts as part of an eventual resolution of these proceedings.

68. In sum, after considering all these component parts of value, the Debtors negotiated a $535 million resolution of estate causes of action that provides for far more than the "the lowest point of reasonableness" for settling those causes of action.

C. Difficulties in Collection

69. As explained above, any estate causes of action face significant hurdles to succeeding on their merits, regardless of any difficulties in collection. The Settlement Agreement further benefits the Debtors and their creditors by locking in payment from NICO and thus eliminating any potential difficulties in collection.

70. Absent settlement, Brenntag likely would raise equitable recoupment defenses against any successor liability claims asserted by WCD or Soco West against Brenntag Specialties and Brenntag Pacific, respectively. *See, e.g.*, *In re Revel AC Inc.*, 909 F.3d 597, 603 (3d Cir. 2018) ("When a claim against a debtor qualifies for equitable recoupment, the claim avoids the usual bankruptcy channels, in that it receives full value in the netting of obligations between a creditor and the debtor without regard to the bankruptcy priority of the claim—thus, in essence, the claim is given priority over other creditors' claims.") (cleaned up). Following the 2004 Transaction, WCD and Soco West owe indemnification obligations to Brenntag entities for asbestos and environmental claims relating to the Debtors' pre-2004 operations, but the 2004 Transaction is also what gives rise to the Debtors' potential successor liability claims against Brenntag entities. As a result, Brenntag could argue that the transactional overlap and factual nexus between the Debtors' successor liability claims and the Debtors' potential indemnification obligations meets

the standard for equitable recoupment. *See Revel AC*, 909 F.3d at 603 (explaining equitable recoupment requirements). While the Debtors could assert that any such indemnification claims do not meet the standard for equitable recoupment and should be disallowed as contingent indemnification claims under section 502(e)(1)(B), that issue would be disputed and at a minimum reduces the potential collectability of any successor liability claims asserted against Brenntag.

71. If any recoupment defenses are overcome, any successor liability claims that seek to impose the tort liabilities of WCD and Soco West onto Brenntag would likely be limited to the specific entities that purchased WCD and Soco West's assets: Brenntag Specialties and Brenntag Pacific, respectively. In particular, successor liability for WCD's asbestos-related talc liabilities—which constitute the overwhelming majority of the Debtors' total liabilities—would most likely be assertable only against Brenntag Specialties, which in turn would likely seek indemnification from DB US. Whatever the financial condition or strength of the overall Brenntag or Deutsche Bahn groups, it is the financial condition of these specific entities that would normally be directly relevant to assessing potential collectability challenges.

72. In *this* case, however, collectability on successor liability claims against Brenntag Specialties ultimately rests on a chain of indemnity relationships that relies on payment not from Brenntag Specialties or DB US, but from National Indemnity. Specifically, successor liability claims against a Brenntag entity will likely be tendered to DB US under the 2003 MSPA, and DB US will likely tender such claims to National Indemnity under the 2007 SPA. Any pressure on either of the steps on this indemnification chain further reduces the potential collectability of any successor liability claims. Since the Debtors' bankruptcy, DB US, Brenntag, and National Indemnity have exchanged correspondence contesting their respective obligations in this indemnification chain. Most notably, National Indemnity commenced an international arbitration

proceeding against DB US seeking, among other relief, to declare its indemnification obligations to DB US null and void. If the outcome of that pending proceeding is that National Indemnity is not obligated to indemnify DB US for claims relating to the Debtors' liabilities, the likelihood of collectability on any successor liability claim is undoubtedly less than if National Indemnity remains in the indemnification chain.

73. As to any potential estate causes of action directly against NICO and DB US, while there is no doubt that various NICO entities (including National Indemnity) have significant assets, any estate causes of action against NICO would have to succeed on a claim against a specific NICO entity with such assets—the assets of the entire NICO group are not available to satisfy any claim that the Debtors might have against any specific NICO entity. Similarly, while DB US may be part of a larger Deutsche Bahn group, the assets of that group are not readily available to satisfy any claim that the Debtors might have against DB US alone.

74. The Settlement Agreement avoids all of the uncertainties of collectability identified above by preserving National Indemnity's involvement and securing its backing of the payment obligations under the Settlement Agreement, and resolving any potential recoupment defenses that Brenntag might have been able to assert. As a result, the $535 million provided by the Settlement Agreement can be locked in now for the benefit of the Debtors' estates and all their stakeholders immediately, without the risks and costs associated with an uncertain litigation.

D. Complexity of the Litigation Involved and the Attendant Expense, Inconvenience, and Delay

75. "The balancing of the complexity and delay of litigation with the benefits of settlement is related to the likelihood of success in that litigation." *Nutraquest*, 434 F.3d at 646. And it is "axiomatic that settlement will almost always reduce the complexity and inconvenience of litigation." *Id.* (citing *TMT Trailer*, 390 U.S. at 434 ("Litigation and delay are always the

alternative to settlement, and whether that alternative is worth pursuing necessarily depends upon a reasoned judgment as to the probable outcome of litigation.")). Where probability of success is low, a bankruptcy court is well within its discretion to find that escaping complex defenses via settlement is in the best interests of the debtor's estate. *See id.*

76. As noted above, the Debtors believe even the strongest of their estate causes of action have no greater than a 50% likelihood of success on the merits, and many of the claims released have a materially lower likelihood of success. Absent settlement, all of the considerations that the Debtors set forth above would have to be litigated, requiring complex and expensive litigation over both factual and legal issues, likely concerning events that took place over twenty years ago and for which memories have dramatically faded or for which witnesses may be unavailable. Among other issues, it is likely that absent the Settlement Agreement: (a) Brenntag would aggressively litigate the merits of the successor liability claims, including the Debtors' working assumption (as discussed above) of a high degree of operational and personnel continuity between pre-2004 WCD and Soco West and post-2004 Brenntag Specialties and Brenntag Pacific, as well as the choice of law for successor liability, and the applicability of the equitable recoupment doctrine; (b) DB US and NICO would aggressively litigate the merits of any alter ego or other non-successor liability estate causes of action; and (c) each of Brenntag, DB US, and NICO would dispute the value of the Debtors' liabilities that the Debtors have used during negotiations.

77. All of these disputes would be complex, time-consuming, and expensive, without any guarantee that the outcomes would be more favorable than those achieved through the Settlement Agreement. The complexities, uncertainties, and risks surrounding these disputes are obviated by approval of the Settlement Agreement. The Court should find that the complexity of

the litigation involved and the attendant expense, inconvenience, and delay weighs in favor of granting the Motion and approving the Settlement Agreement.

E. Paramount Interest of the Creditors

78. In considering whether a settlement is in the paramount interest of the creditors, courts will conduct an independent review of the fairness of the proposed settlement agreement. *See In re Scripsamerica, Inc.*, 634 B.R. 863, 874 (Bankr. D. Del. 2021). Courts have recognized that not all constituencies affected by a proposed settlement agreement may be involved in the negotiations, and the views of potential objectors "are not dispositive and cannot be permitted to predominate over the best interests of the estate as a whole." *Id.* (internal citations omitted).[78]

79. In this case, the Debtors' potential estate causes of action against Brenntag, DB US, and NICO are their most valuable asset for monetization and distribution under the Bankruptcy Code. Because this is a fixed asset case, monetizing and maximizing the value of those estate causes of action is in the best interests of all of the Debtors' creditors.[79] For the reasons discussed above, the Debtors *have* maximized the value of the estate causes of action released under the Settlement Agreement and achieved a settlement far exceeding the lowest point of reasonableness. As explained above, the Debtors negotiated for the inclusion of value reflecting tort defense system costs (and an additional premium) in the Settlement Agreement—value that would not be available

[78] *See also In re NovaPro Holdings, LLC*, 2018 WL 2102323, at *9 (Bankr. D. Del. May 4, 2018) ("[Objecting creditor] argues that the paramount interest of creditors does not favor settlement approval because 99% of the creditors object to the settlement. Indeed, if the decision was up to [two of the debtors' largest creditors], they may prefer to take a gamble by taking this case to trial. Even so, I am persuaded that the settlement serves the paramount interest of creditors."), *aff'd*, 2019 WL 1324950 (D. Del. Mar. 25, 2019), *aff'd*, 815 F. App'x 655 (3d Cir. 2020); *In re Summit Metals, Inc.*, 477 F. App'x 18, 22 (3d Cir. 2012) (affirming approval of settlement where "[c]oncerning . . . the paramount interest of the creditors, the Bankruptcy Court concluded that despite some creditors' objections to the settlement, and an indication some were willing to wait longer for the slightest chance of a more substantial recovery, 'the exercise is all about maximizing value for creditors'").

[79] *See Summit Metals*, 477 F. App'x at 22 (affirming approval of settlement where bankruptcy court, in discussing the paramount interest of creditors, emphasized "the exercise is all about maximizing value for creditors").

to the Debtors' creditors absent the Settlement Agreement. This allowed the Debtors to obtain a settlement of more than half a billion dollars for the estates. Moreover, the avoidance of collection risk, and the uncertainty, costs, and delay associated with otherwise litigating these causes of action also directly benefit all creditors.

80. Another specific benefit that will improve the distributions to *all* creditors in these cases is that the Settlement Agreement avoids any dilution of distributable value due to potential allowance of, or the expense of litigating disputes regarding, potential unsecured indemnification claims that might be asserted by Brenntag against the Debtors in the absence of any settlement.[80]

81. The limited scope of the releases in the Settlement Agreement also confirm that it is in the best interests of creditors. The only claims released by the Debtors are estate causes of action and any other claims assertable by the Debtors—not direct claims of individual tort creditors against non-Debtors. And notably, nothing in the Settlement Agreement releases Brenntag from independent, direct liability for its own conduct after the sale of the Debtors' assets to Brenntag in February 2004. The principled and limited scope of the Settlement Agreement thus ensures that Debtors' estates are maximized, while independent, direct claims for post-February 2004 non-Debtor conduct are not released.

82. The Debtors' hard-fought, arm's-length, and good faith negotiations also support the conclusion that the Settlement Agreement is in the best interests of all stakeholders. *See ID Liquidation One*, 555 F. App'x at 206 (affirming approval of settlement where the bankruptcy court had "found that the Settlement was fair and equitable, given that the negotiations were

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[80] *See, e.g.*, *NovaPro Holdings*, 2018 WL 2102323, at *9 & n.59 (noting benefits of a release "eliminat[ing] the need to litigate over the validity of [a] claim, and remov[ing] a sizable claim from the claims distribution pool" as supporting the paramount interest of creditors); *Immune Pharms.*, 635 B.R. at 126 (identifying a creditor's agreement to reduce the amount of its claim as favoring the paramount interest of creditors).

conducted in good faith and a special committee of the Debtors' board had approved and authorized the Settlement"). The Debtors' disinterested directors, unaffiliated with any of the other settling parties, were personally involved in negotiating the Settlement Agreement and received advice from their advisors and valuation experts, while Brenntag, DB US, and NICO were represented by separate principals and advisors. The nature of these negotiations therefore also supports approval of the Settlement Agreement.

83. For the reasons described in this Motion, the Debtors respectfully submit that the Settlement Agreement satisfies the standards for approval under applicable law and that the Court should therefore approve the Settlement Agreement pursuant to Bankruptcy Rule 9019.

II. The Settlement Agreement Should Be Approved Under a Business Judgment Standard, and Regardless, Meets the Entire Fairness Standard.

84. The Debtors submit that the Settlement Agreement should be approved under the business judgment rule. *See Montgomery Ward*, 242 B.R. at 153 (explaining that the "sound business purpose" required to justify use of estate property pursuant to section 363(b) "essentially represent[s] a 'business judgment test'"). Such business judgments can only be set aside upon a showing that directors did not actually make a decision or were uninformed, grossly negligent, or lacking independence.[81] "A plaintiff faces 'an uphill battle' to carry this burden of proof."[82] Here, the Settlement Agreement is plainly a reasonable exercise of the Debtors' business judgment,

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[81] *See In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[T]he business judgment rule governs unless the opposing party can show one of four elements: (1) the directors did not in fact make a decision, (2) the directors' decision was uninformed; (3) the directors were not disinterested or independent; or (4) the directors were grossly negligent."); *Immune Pharms.*, 635 B.R. at 123 ("Although the 'business judgment rule,' ordinarily would protect fully informed corporate decisions made in good faith, it does not apply to grossly negligent acts; acts tainted with fraud, self-dealing, or unconscionable conduct; or decisions which lack a business purpose or result from an obvious and prolonged failure to exercise oversight or supervision.").

[82] *HH Liquidation, LLC*, 590 B.R. at 272; *see also id.* ("The burden is on the plaintiff to show that the Business Judgment Rule is not applicable.").

because as described above, the Settlement Agreement was entered into for the valid purpose of monetizing and maximizing the value of the Debtors' estate causes of action and falls well within the range of reasonableness. It should therefore be approved.

85. The business judgment standard should apply to approval of the Settlement Agreement even though it settles causes of action against the Debtors' current direct and indirect equityholders (NICO) and related parties. The Settlement Agreement was negotiated and approved on behalf of the Debtors exclusively by their disinterested directors (with the assistance of the Debtors' advisors), and without interference from NICO. Bankruptcy courts have approved transactions with insiders without applying an "entire fairness" analysis akin to that applied in derivative suits for breach of fiduciary duty when, as here, the transaction is negotiated by a debtor without interference by any allegedly controlling insider. *E.g.*, *In re Charter Commc'ns*, 419 B.R. 221, 261 (Bankr. S.D.N.Y. 2009) (where settlement was "reviewed and approved by independent directors" who were "highly qualified individuals who had a regular practice during board meetings of convening separately from [an insider] and his designated directors to consider what was in [the debtor's] best interest," the court concluded that "[g]iven the role played by the independent directors and the evidence indicating that [the insider] did not exert any undue influence over [the debtor] in negotiating the CII Settlement, the CII Settlement should be evaluated under the standards applicable to approval of bankruptcy settlements in this Circuit and not under the 'entire fairness' standard of Delaware law applicable to transactions with controlling insiders"), *appeal dismissed*, 449 B.R. 14 (S.D.N.Y. 2011), *aff'd*, 691 F.3d 476 (2d Cir. 2012); *In re Dewey & LeBoeuf LLP*, 478 B.R. 627, 642 (Bankr. S.D.N.Y. 2012) (finding that settlements with insiders that were negotiated on the debtor's behalf "without interference from" those insiders

were "not related party transactions that, in other contexts, make application of the entire fairness doctrine appropriate").

86. For the same reasons, an entire fairness analysis should not apply to the approval of the Settlement Agreement. Consistent with the delegation of authority to exclusively determine and handle any Conflict Matters, the disinterested directors led the settlement negotiations on behalf of the Debtors—and did not discuss these negotiations with the only NICO-affiliated director, who did not have input on the Debtors' positions on those negotiations. Given the disinterested directors' independence from the other parties to the Settlement Agreement, and their extensive role (to the exclusion of any NICO-affiliated individuals) in negotiating, reviewing, and approving the Settlement Agreement on behalf of the Debtors, the "entire fairness" standard should not apply and the Settlement Agreement should be approved as a valid exercise of the Debtors' business judgment. *See* Pohl Decl. ¶¶ 5, 11–13.

87. Even if the Court determined that an "entire fairness" standard applies to approval of the Settlement Agreement, the approval of the Settlement Agreement by the Debtors' disinterested directors shifts the burden of proving unfairness to any objecting party—it is not the Debtors' burden to prove fairness. *See Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1117 (Del. 1994) ("[A]n approval of the transaction by an independent committee of directors . . . *shifts the burden of proof on the issue of fairness* from the controlling or dominating shareholder *to the challenging shareholder-plaintiff*.") (emphasis added); *In re Match Grp., Inc. Deriv. Litig.*, 315 A.3d 446, 462 (Del. 2024) ("*Lynch* . . . clarified that if the defendants demonstrated that the transaction was . . . negotiated by a well-functioning special committee of independent directors . . . then the burden shifted to the plaintiffs to prove that the transaction was not entirely fair."); *see also Teleservs. Grp., Inc.*, 2009 WL 838157, at * 9 ("New Jersey courts have previously sought

guidance and instruction from Delaware case law when deciding matters involving corporate directors' decision-making. . . . In the absence of binding doctrinal authority from New Jersey, the Court here too reviews Delaware case law for guidance.").

88. For the same reasons the Settlement Agreement should be approved, no potential objecting party could sustain its affirmative burden of proving that the terms of the Settlement Agreement are unfair—and the Debtors could readily demonstrate that the Settlement Agreement is entirely fair as a matter of both fair price and fair dealing. *See Match Grp.*, 315 A.3d at 459 ("The concept of fairness has two basic aspects: fair dealing and fair price . . . entire fairness is a unitary test, under which a reviewing court will scrutinize both the price and the process elements of the transaction as a whole.").

89. The Settlement Agreement is entirely fair as a matter of fair price because it resolves the settled causes of action well above the range of reasonableness, avoids collection risks, avoids the complexities and costs of litigating the issues resolved, and benefits all creditors by monetizing and maximizing estate assets.

90. As described more fully above and in the Pohl Declaration, the Settlement Agreement was negotiated and approved on behalf of the Debtors by experienced and well-informed independent and disinterested directors. *See Match Grp.*, 315 A.3d at 461–62 ("[F]airness in this context can be equated to conduct by a theoretical, wholly independent, board of directors acting upon the matter before them . . . . Particularly in a parent-subsidiary context, a showing that the action taken was as though each of the contending parties had in fact exerted its bargaining power against the other at arm's length is strong evidence that the transaction meets the test of fairness.").

91. The Settlement Agreement is therefore entirely fair both as a matter of price and process and should be approved under any standard.

Request of Waiver of Stay

92. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to prosecute their chapter 11 cases and preserve the value of their estates.

Waiver of Memorandum of Law

93. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

Reservation of Rights

94. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an admission as to the validity of any particular claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds (other than as expressly provided for in the Settlement Agreement), (c) a promise or requirement to pay any particular claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion, (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (f) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all

such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

No Prior Request

95. No prior request for the relief sought in this Motion has been made to this Court or any other court.

Notice

96. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the Committee; (c) the Top Counsel List;[83] (d) NICO and counsel thereto; (e) the Office of the United States Attorney for the District of New Jersey; (f) the Internal Revenue Service; (g) the Securities Exchange Commission; (h) the Environmental Protection Agency; (i) the offices of the attorneys general in states where the Debtors conduct their business operations; (j) Brenntag and counsel thereto; (k) DB US and counsel thereto; (l) the FCR and counsel thereto; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice is required.

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[83] As defined in the *Debtors' Motion for Entry of an Order (A) Authorizing the Debtors to (I) File a List of the Top Law Firms and Use the Addresses of Counsel in Lieu of Claimants' Addresses and (II) Redact Personally Identifiable Information, (B) Approving Certain Notice Procedures, and (C) Granting Related Relief* [Docket No. 8].

WHEREFORE, the Debtors respectfully request that the Court enter an order, in substantially the form submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: September 3, 2024

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: WHITTAKER, CLARK & DANIELS, INC., *et al.*, Debtors.[1]	Chapter 11 Case No. 23-13575 (MBK) (Jointly Administered) **Hearing Date: September 24, 2024, at 2:00 p.m. (ET)** **Obj. Deadline: September 17, 2024, at 4:00 p.m. (ET)** **Oral Argument Waived Unless Objections Timely Filed**

NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND THE CONTRIBUTING PARTIES, (II) AUTHORIZING THE DEBTORS TO PERFORM ALL OF THEIR OBLIGATIONS THEREUNDER, AND (III) GRANTING RELATED RELIEF

[1] The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification numbers, are: Whittaker, Clark & Daniels, Inc. (4760); Brilliant National Services, Inc. (2113); L. A. Terminals, Inc. (6800); and Soco West, Inc. (3400). The location of Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is 100 First Stamford Place, Stamford, Connecticut 06902.

PLEASE TAKE NOTICE that on **September 24, 2024, at 2:00 p.m. (ET)**, or as soon thereafter as counsel may be heard, the above-captioned debtors and debtors in possession (the "Debtors"), by and through their undersigned counsel, shall move (the "Motion") before the Honorable Chief Judge Michael B. Kaplan, Clarkson S. Fisher United States Courthouse, 402 East State Street, Second Floor, Courtroom 8, Trenton, New Jersey 08608 (the "Court"), for entry of an order (the "Order"), substantially in the form submitted herewith, authorizing and approving entry into the Settlement Agreement and granting related relief.

PLEASE TAKE FURTHER NOTICE that in support of the Motion, the Debtors shall rely on the accompanying Motion and Declarations of Tim Pohl, David L. McKnight, Brian J. Griffith, and Gavin Campbell, which set forth the relevant legal and factual bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the Motion is also submitted herewith.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall: (a) be in writing; (b) state with particularity the basis of the objection; and (c) be filed with the Clerk of the Court electronically by attorneys who regularly practice before the Court in accordance with the (a) *Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief* [Docket No. 67] (the "Case Management Order") and (b) *General Order Regarding Electronic Means for Filing, Signing, and Verification of Documents dated March 27, 2002* (the "General Order") and the *Commentary Supplementing Administrative Procedures* dated as of March 2004 (the "Supplemental Commentary") (the General Order, the Supplemental Commentary, and the User's Manual for the Electronic Case Filing System can be found at www.njb.uscourts.gov, the official website for the Court) and, by all other parties-in-interest, on CD-ROM in Portable Document Format (PDF), and

shall be served in accordance with the Case Management Order, the General Order and the Supplemental Commentary, so as to be received no later than seven (7) days before the hearing date set forth above.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 11 cases may be obtained free of charge by visiting the website of Stretto, Inc. at https://cases.stretto.com/whittaker. You may also obtain copies of any pleadings by visiting the Court's website at https://www.njb.uscourts.gov in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that, unless responses are timely and properly filed and served, the Motion shall be decided on the papers in accordance with D.N.J. LBR 9013-3(d), and the relief requested may be granted without further notice or hearing.

Dated: September 3, 2024

/s/ Michael D. Sirota

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and Debtors in Possession

Exhibit A

Settlement Agreement Summary of Proposed Terms

As set forth more fully in Exhibit 1 to the Order, the key provisions of the Settlement Agreement are summarized below:[1]

Settlement Agreement Summary of Terms	
Effective Date	The first date by which both the following have occurred: (a) the Settlement Order has become a Final Order and (b) the Summary Judgment Order has become a Final Order.
Settlement Payment	The Settlement Payment is comprised of: (a) an initial contribution of a first priority secured debtor-in-possession delayed draw term loan facility of up to $50 million (the "DIP Facility," and loans thereunder, the "DIP Loans"), available upon the Court's entry of an order approving the DIP Motion (the "Initial Settlement Contribution"); and (b) an amount equal to $535 million *less* the aggregate principal amount of DIP Loans funded in Cash by NICO or its designee, within five business days of the Debtors giving NICO notice of the occurrence of the Effective Date and provided the Effective Date has occurred (the "Settlement Contribution, and together with the Initial Settlement Contribution, the "Settlement Payment").
Estate Causes of Action	Any and all actions, Claims, rights, remedies, defenses, counterclaims, suits, and Causes of Action (a) owned or held, or assertable by or on behalf of any Debtor or its Estate (including, without limitation, claims assertable by the Tort Claimants' Committee or FCR, or by any other creditors, on behalf of any Debtor or its Estate), (b) that constitute property of the Estates under section 541 of the Bankruptcy Code, (c) that are or may be commenced or pursued by a representative of the Debtors or the Estates, including pursuant to sections 323 or 362 of the Bankruptcy Code or chapter 5 of the Bankruptcy Code, (d) to avoid, invalidate or recover any transfer of any kind made by any Debtor, or any obligation of any Debtor, including under chapter 5 of the Bankruptcy Code or other applicable law, (e) that constitute Successor Liability Claims, or (f) otherwise assertable by any Debtor or its Estate under any federal, state, or other applicable law seeking to establish a non-Debtor's liability for existing or future Tort Claims, Environmental Claims, Indirect Environmental Claims, or other Claims against the Debtors; in all cases, however denominated and whether or not asserted, whether known or unknown, in law, at equity or otherwise, whenever and wherever arising under the laws of any jurisdiction.
Chapter 11 Plan	The Contributing Parties shall support confirmation of a chapter 11 plan, including all exhibits, supplements, and amendments thereto (collectively,

[1] To the extent there is any inconsistency between the terms set forth in the Settlement Agreement and the terms described herein, the Settlement Agreement shall control in all respects.

Settlement Agreement Summary of Terms	
	as may be amended from time to time, the "Plan") that is consistent in all respects with the terms in the Plan Term Sheet attached as Exhibit B to the Settlement Agreement and is otherwise consistent with the Settlement Agreement and reasonably acceptable to NICO.
Mutual Releases	Without limitation, the Contributing Parties and the Debtors release each other, as well as their respective Related Parties, of and from any and all Causes of Action and Estate Causes of Action, as applicable, arising out of, in connection with, or relating to any matters occurring before the Effective Date, all as more fully set forth in the Settlement Agreement.
Conditions Precedent	The terms of the Settlement Agreement shall be dependent upon entry of the Settlement Order containing terms and provisions acceptable to the Parties, as well as certain other conditions set forth therein.
Retention of Jurisdiction	The Court shall retain exclusive jurisdiction to enforce the Order, including to determine, without limitation, whether (a) any claim brought against any Non-Debtor Released Party constitutes a Debtor Estate Cause of Action and is subject to the prohibition against prosecution of such claim and (b) any claims brought against any of the Debtor Releasees constitute Brenntag Released Claims, NICO Released Claims, and/or DB US Released Claims, as applicable, and are subject to the prohibition against prosecution of such claims.
Termination Events	NICO may terminate this Settlement Agreement, effective upon five business-days' notice to the Debtors, if any of the following occur: (1) entry of an order by any court denying the Settlement Motion; (2) entry of an order by any court reversing or vacating an order approving the Settlement Motion; (3) entry of an order by any court reversing, modifying, or vacating the Summary Judgment Order; (4) entry of an order by any court appointing a chapter 11 trustee in the Chapter 11 Cases; (5) entry of an order by any court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to chapter 7; (6) entry of an order by any court granting any person other than the Debtors standing to assert the Estate Causes of Action; or (7) an uncured default or Event of Default under the DIP Order and DIP Term Loan Facility pursuant to the terms of the DIP Order and the DIP Credit Agreement. NICO shall not be required to seek relief from the automatic stay in order to serve notice of termination, and to terminate, the Settlement Agreement pursuant to this paragraph.

Exhibit B

Proposed Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Co-Counsel for Debtors and
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In re:	Chapter 11
WHITTAKER, CLARK & DANIELS, INC., *et al.*,	Case No. 23-13575 (MBK)
Debtors.[1]	(Jointly Administered)

ORDER (I) APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND THE

[1] The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification numbers, are: Whittaker, Clark & Daniels, Inc. (4760); Brilliant National Services, Inc. (2113); L. A. Terminals, Inc. (6800); and Soco West, Inc. (3400). The location of Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is 100 First Stamford Place, Stamford, Connecticut 06902.

CONTRIBUTING PARTIES, (II) AUTHORIZING THE DEBTORS TO PERFORM ALL OF THEIR OBLIGATIONS THEREUNDER, AND (III) GRANTING RELATED RELIEF

The relief set forth on the following pages, numbered three (3) through eight (8), is **ORDERED**

Upon the *Debtors' Motion for Entry of an Order (I) Approving the Settlement Agreement Between the Debtors and the Contributing Parties, (II) Authorizing the Debtors to Perform All of Their Obligations Thereunder, and (III) Granting Related Relief* (the "Motion"),[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order"): (a) authorizing (i) entry into that certain settlement agreement attached as **Exhibit 1** to this Order (the "Settlement Agreement") between and among the Debtors, Brenntag,[1] NICO,[2] and DB US[3] (Brenntag, NICO, and DB US, collectively, the "Contributing Parties") and the Debtors (together with the Contributing Parties, the "Parties") and (ii) the Debtors to perform all of their obligations thereunder; and (b) granting related relief, all as more fully set forth in the Motion; and upon the Pohl Declaration, the McKnight Declaration, the Griffith Declaration, and the Campbell Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference to the Bankruptcy Court Under Title 11 of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Settlement Agreement.

[1] "Brenntag" means, collectively, Brenntag Canada, Inc., Brenntag Great Lakes, LLC, Brenntag Mid-South, Inc., Brenntag North America, Inc., Brenntag Northeast, LLC, Brenntag Pacific, Inc., Brenntag Southwest, Inc., Brenntag Specialties, LLC (f/k/a Brenntag Specialties, Inc., and as Mineral and Pigment Solutions, Inc.), and Coastal Chemical Co., LLC.

[2] "NICO" means, collectively, Berkshire Hathaway Inc., BH Columbia Inc., Columbia Insurance Company, National Indemnity Company, Resolute Management, Inc., Ringwalt & Liesche Co. ("Ringwalt"), and National Liability & Fire Insurance Company.

[3] "DB US" means DB US Holding Corporation (f/k/a Stinnes Corporation).

having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Settlement is fair and equitable and that the probability of success in litigation, the likely difficulties in collection, the complexity of the litigation involved and the attendant expense, inconvenience, and delay, and the paramount interest of the creditors all weigh in favor of approving the Settlement; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice of the Motion need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY FOUND, DETERMINED AND ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.

2. Any objections to the Motion and to the relief requested therein and/or granted in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.

3. The Parties are authorized to enter into the Settlement Agreement, substantially in the form attached hereto as **Exhibit 1** and the terms contemplated therein are hereby approved in all respects.

4. The claims to be released by the Debtors in the Settlement Agreement, defined as the Estate Causes of Action in the Settlement Agreement, are property of the Debtors' estates.

5. The Settlement Agreement, including the releases contained therein, is fair and equitable and in the best interests of the Debtors and their estates, based upon the evidence and arguments made at the hearing on the Motion as to the probability of success in litigation; the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and the paramount interest of creditors.

6. The probability of success on the claims the Debtors are releasing under the Settlement Agreement, and the value of any recovery in the event the Debtors were to prevail, are both uncertain.

7. In the absence of a settlement, the resolution of the Debtors' claims against the Contributing Parties would require lengthy and costly litigation. There is no assurance that such litigation would result in higher recoveries for the Debtors' creditors. By entering into the Settlement Agreement, the Debtors avoid this delay, uncertainty, and risk.

8. When considering the challenges the Debtors face on the merits of the Estate Causes of Action, the Settlement Payment is reasonable and exceeds the lowest point in the range of reasonableness.

9. The Settlement Agreement was the product of good faith negotiations conducted at arm's-length between the Debtors and the Contributing Parties, each of which was separately represented by counsel.

10. The terms and conditions of the Settlement Agreement, including the rationale underlying the agreement, have been adequately disclosed to the Court.

11. In accordance with the terms of the Settlement Agreement, the Debtor Releasing Parties and creditors of the Debtors' estates, as applicable, are enjoined from commencing, prosecuting, accepting payment on account of, or otherwise pursuing Debtor Released Estate Causes of Action against the Non-Debtor Released Parties, and the Court will retain exclusive jurisdiction to enforce this Order and to determine, without limitation, whether any claim brought against any Non-Debtor Released Party constitutes a Debtor Estate Cause of Action and is thus subject to the prohibition against prosecution of such claims.

12. The Non-Debtor Released Parties are forever barred from asserting the Brenntag Released Claims, the NICO Released Claims, and the DB US Released Claims, as applicable, against the Debtor Releasees, and the Court will retain exclusive jurisdiction to enforce this Order and to determine, without limitation, whether any claim brought against any of the Debtor Releasees constitutes a Brenntag Released Claim, NICO Released Claim, and/or DB US Released Claim and is thus subject to the prohibition against prosecution of such claims.

13. Notwithstanding anything to the contrary contained herein (including, but not limited to, this paragraph 13) or in the Settlement Agreement, each Contributing Party reserves all, and does not release any, rights, claims, and defenses (whether contractual or otherwise) against each other Contributing Party, including but not limited to all rights, claims, and defenses under the 2003 MSPA and 2007 SPA (including in the arbitration proceeding pending under the 2021 Arbitration Rules of the International Chamber of Commerce, Case Ref. 27945/PDP), defined in

the Settlement Agreement as Preserved Rights. For the avoidance of doubt, the Contributing Parties agree that the releases of the Brenntag Released Claims, the DB US Released Claims, and the NICO Released Claims by the respective Contributing Parties shall not be raised as a defense and shall not constitute a defense to the assertion of Preserved Rights.

14. For the avoidance of doubt, the effectiveness of the terms of the Settlement Agreement are not contingent upon the confirmation of a chapter 11 plan, and this Order shall be binding on all the Debtors, all holders of claims against the Debtors, the respective successors and assigns referenced in this paragraph, and any chapter 11 trustee, liquidating or other trustee, or other trust or other form of distribution vehicle established under a chapter 11 plan of the Debtors, and on any chapter 7 trustee if any of the Debtors' cases is converted to a chapter 7 proceeding.

15. Nothing in the Settlement Agreement or this Settlement Order bars any person from asserting a Cause of Action against a Non-Debtor Released Party that is not an Estate Cause of Action.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

17. Notwithstanding Bankruptcy Rule 6004(h), 7062, 9014, or otherwise, this Order shall be effective and enforceable immediately upon entry hereof.

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

19. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

20. As set forth in the Settlement Agreement, any damages payable by the Debtors under the Settlement Agreement for breach of the Settlement Agreement shall be entitled to administrative expense priority under 11 U.S.C. § 503(b)(1) against each of the Debtors' estates.

21. No party shall be required to seek relief from the automatic stay to enforce the Settlement Agreement or to exercise any rights thereunder, including to exercise rights of termination in accordance with the terms of the Settlement Agreement.

22. This Court shall retain exclusive jurisdiction to interpret provisions of the Settlement Agreement and this Order in all respects and further to hear and determine any and all disputes relating to the Settlement Agreement; in the event the Debtors' cases are closed, there shall be cause to reopen the Debtors' cases upon motion or application for such purposes, absent which the parties may seek enforcement or interpretation of the Settlement Agreement or this Order in the District Court for this District.

Exhibit 1

Settlement Agreement

[EXECUTED VERSION]

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Settlement Agreement") is made and executed as of the third day of September, 2024 by and between: (a) BRENNTAG CANADA, INC.; BRENNTAG GREAT LAKES, LLC; BRENNTAG MID-SOUTH, INC.; BRENNTAG NORTH AMERICA, INC.; BRENNTAG NORTHEAST, LLC; BRENNTAG PACIFIC, INC.; BRENNTAG SOUTHWEST, INC.; BRENNTAG SPECIALTIES, LLC (F/K/A BRENNTAG SPECIALTIES, INC.; AND AS MINERAL AND PIGMENT SOLUTIONS, INC. ("MPSI")) ("Brenntag Specialties"), AND COASTAL CHEMICAL CO., LLC (collectively, "Brenntag"), a group of affiliated entities; (b) BERKSHIRE HATHAWAY INC.; BH COLUMBIA INC.; COLUMBIA INSURANCE COMPANY; NATIONAL INDEMNITY COMPANY; RESOLUTE MANAGEMENT, INC.; RINGWALT & LIESCHE CO.; and NATIONAL LIABILITY & FIRE INSURANCE COMPANY (collectively, "NICO"), a group of affiliated entities; (c) DB US HOLDING CORPORATION (f/k/a Stinnes Corporation) ("DB US," and together with Brenntag and NICO, collectively, the "Contributing Parties," and each individually, a "Contributing Party"), a corporation; and (d) WHITTAKER, CLARK & DANIELS, INC. ("WCD"); BRILLIANT NATIONAL SERVICES, INC. ("Brilliant"); L. A. TERMINALS, INC. ("LAT"); and SOCO WEST, INC. ("Soco," and together with WCD, Brilliant, and LAT, collectively, the "Debtors," together with Brenntag, NICO, and DB US, the "Parties," and each of the foregoing individually, a "Party").

WITNESSETH:

WHEREAS, Stinnes Corp. (n/k/a DB US), Stinnes AG, Stinnes UK Limited, Schenker-BTL, S.A., and Deutsche Bahn Aktiengesellschaft (collectively, the "DB Parties") and certain of its affiliates entered into a master sale and purchase agreement with certain affiliates of Bain Capital L.P. (the "2003 MSPA"), which contemplated, in part, sales of certain of the Debtors' assets to Brenntag North America, Inc., a then-affiliate of Bain Capital L.P., and certain of its affiliates in exchange for cash and the assumption of certain non-asbestos and non-environmental liabilities, while certain defined asbestos and environmental liabilities remained with the Debtors;

WHEREAS, the 2003 MSPA provided that WCD and Soco would indemnify Brenntag North America, Inc. and certain of its affiliates for certain defined asbestos-related liabilities, which indemnification obligations were guaranteed by Brilliant, which in turn were guaranteed by DB US if WCD, Soco, and Brilliant were unable to satisfy such claims, as applicable;

WHEREAS, Soco entered into that certain asset purchase agreement whereby Soco divested substantially all of its assets in exchange for, among other things, cash and the assumption of certain ongoing liabilities by the purchaser, Brenntag Pacific, Inc. (the "2004 Soco APA");

WHEREAS, WCD entered into an agreement divesting substantially all of its assets in exchange for, among other things, cash and the assumption of certain ongoing liabilities by the purchaser, MPSI (the "2004 WCD APA");

WHEREAS, Brilliant engaged in an asset sale transaction with Brenntag North America divesting its intellectual property assets, resigning from certain LLC agreements, and terminating certain management fee agreements in exchange for Brenntag North America assuming certain

non-asbestos-related and non-environmental related ongoing liabilities, in addition to the consideration paid under the Soco APA and WCD APA (the "2004 Brilliant APA," and together with the 2003 MSPA, the 2004 Soco APA, and the 2004 WCD APA, the "2004 Transaction Documents");

WHEREAS, Brenntag acquired substantially all of WCD's, Soco's, and Brilliant's operating assets pursuant to the 2004 Transaction Documents (collectively, the "2004 Transaction");

WHEREAS, pursuant to the 2004 Transaction Documents, the Debtors retained liabilities as to certain tort claims and retained certain assets, including certain asbestos- and environmental-related insurance receivables and certain real property;

WHEREAS, pursuant to the 2004 Transaction Documents, Brenntag asserts claims against the Debtors for indemnification of certain claims arising from the Debtors' historical business practices prior to the 2004 Transaction;

WHEREAS, in December 2007, National Indemnity Company purchased the equity in Brilliant (which owned all of the equity of WCD and Soco) and LAT from DB US (the "2007 Acquisition"), pursuant to a stock purchase agreement (the "2007 SPA");

WHEREAS, in the 2007 Acquisition, National Indemnity Company agreed to indemnify DB US for, among other things, certain indemnification obligations arising under the 2003 MSPA in connection with certain asbestos-related and environmental liabilities;

WHEREAS, after the consummation of the 2007 Acquisition, National Indemnity Company assigned the equity interests in Brilliant and LAT to its affiliate Ringwalt & Liesche Co.;

WHEREAS, on April 26, 2023, WCD, Soco, Brilliant, and LAT filed for chapter 11 bankruptcy relief under title 11 of the United States Code (the "Bankruptcy Code") and such bankruptcy cases are being jointly administered under the case captioned *Whittaker, Clark & Daniels, Inc. et al*, Case No. 23-13575 (MBK) in the United States Bankruptcy Court for the District of New Jersey (the "Court," and such cases, the "Chapter 11 Cases");

WHEREAS, on September 7, 2023, the Debtors initiated an adversary proceeding against Brenntag AG and other defendants under the caption *Whittaker, Clark & Daniels, Inc. v. Brenntag AG*, Adv. Proc. No. 23-01245 (MBK) (the "Adversary Proceeding");

WHEREAS, on September 8, 2023, the Debtors filed a motion for summary judgment in the Adversary Proceeding [Adv. Proc. Docket No. 3] (the "Summary Judgment Motion") seeking a declaration that Successor Liability Claims, as defined in the Summary Judgment Motion (the "Successor Liability Claims"), are property of the Debtors' Estates;

WHEREAS, on August 13, 2024, the Court issued a Memorandum Decision granting the Summary Judgment Motion [Adv. Proc. Docket No. 268] and entered an order to such effect on August 28, 2024 [Adv. Proc. Docket No. 292] (the "Summary Judgment Order");

WHEREAS, the Debtors own certain Estate Causes of Action (as defined below), including the Successor Liability Claims;

WHEREAS, the Contributing Parties deny liability on any potential Estate Causes of Action the Debtors may or could assert against the Contributing Parties and their Related Parties;

WHEREAS, the Debtors, Brenntag, NICO, and DB US wish to fully and finally resolve the disputes described in the above recitals;

WHEREAS, the Debtors believe that this Settlement Agreement is in the best interests of the Debtors' Estates and claimants;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Brenntag, NICO, DB US, and the Debtors agree as follows:

1. Additional Defined Terms. The following additional definitions apply to this Agreement. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Bankruptcy Code. The singular form of a word includes the plural and *vice versa*; the disjunctive "or" is not exclusive and thus includes the conjunctive "and"; all pronouns apply to the male, female, and neutral genders; the word "any" includes the word "all" and *vice versa*; the words "includes" and "including" are without limitation; and the past tense of a word includes the present tense and *vice versa*.

A. "Avoidance Actions" means any and all actual or potential avoidance, recovery, subordination, or other Claims and Causes of Action, actions, or remedies that may be brought by, or on behalf of, the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy Law, including Claims, Causes of Action, actions, or remedies arising under sections 502, 510, 541, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common Law, including fraudulent transfer Laws.

B. "Brenntag Releasees" means Brenntag and Brenntag's Related Parties.

C. "Causes of Action" means, collectively, any and all claims, interests, controversies, actions, proceedings, reimbursement claims, contribution claims, recoupment rights, debts, obligations, third-party claims, indemnity claims, damages (including claims for or award of costs and/or expenses, court costs and attorneys' fees), losses, remedies, causes of action, demands, rights, lawsuits, suits, litigation, arbitration, legal proceeding, obligations, liabilities, accounts, judgments, defenses, offsets, powers, privileges, licenses, franchises, guaranties, Avoidance Actions, agreements, counterclaims, and cross-claims, of any kind or character whatsoever, whether known or unknown or hereafter discovered, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, asserted or unasserted, direct or indirect, assertable directly or derivatively, choate or inchoate, reduced to judgment or otherwise, secured or unsecured, whether arising before, on, or after the Petition Date, in tort, Law, equity, or otherwise pursuant to any theory of civil Law (whether local, state, or federal U.S. Law or non-U.S. Law). Causes of Action

also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by Law or in equity; (b) any Claim (whether under local, state, federal U.S. Law or non-U.S. civil Law) based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction Law, violation of local, state, or federal non-U.S. Law or breach of any duty imposed by Law or in equity, including securities Laws, negligence, and gross negligence; (c) the right to object to or otherwise contest Claims or interests; (d) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

D. "Claim" means any "claim," as defined in section 101(5) of the Bankruptcy Code.

E. "DB US Releasees" means DB US and DB US's Related Parties, including the DB Parties.

F. "Debtor Releasees" means the Debtors, the Estates, and their predecessors, and their past, present, and future officers, directors, employees, agents, servants, and representatives.

G. "Debtor Releasing Parties" means the Debtors and the Estates, on behalf of themselves and (a) their respective predecessors and representatives, (b) any (i) trust, plan administrator, or trustee established under a chapter 11 plan, (ii) chapter 7 trustee, or (iii) chapter 11 trustee, and (c) any other persons claiming under or through each of the foregoing, including the Debtors and the Estates.

H. "Effective Date" shall mean the first date by which both the following have occurred: (i) the Settlement Order has become a Final Order and (ii) the Summary Judgment Order has become a Final Order.

I. "Estate" means as to each Debtor, the estate created in its Chapter 11 Case under section 541 of the Bankruptcy Code.

J. "Estate Causes of Action" means any and all actions, Claims, rights, remedies, defenses, counterclaims, suits, and Causes of Action (a) owned or held, or assertable by or on behalf of any Debtor or its Estate (including, without limitation, claims assertable by the Tort Claimants' Committee or FCR, or by any other creditors, on behalf of any Debtor or its Estate), (b) that constitute property of the Estates under section 541 of the Bankruptcy Code, (c) that are or may be commenced or pursued by a representative of the Debtors or the Estates, including pursuant to sections 323 or 362 of the Bankruptcy Code or chapter 5 of the Bankruptcy Code, (d) to avoid, invalidate or recover any transfer of any kind made by any Debtor, or any obligation of any Debtor, including under chapter 5 of the Bankruptcy Code or other applicable law, (e) that constitute Successor Liability Claims, or (f) otherwise assertable by any Debtor or its Estate under any federal, state, or other applicable law seeking to establish a non-Debtor's liability for existing or future Tort Claims, Environmental Claims, Indirect Environmental Claims, or other Claims against the Debtors; in all cases, however denominated and whether or not asserted, whether known or unknown, in law, at equity or otherwise, whenever and wherever arising under the laws of any jurisdiction.

K. "Environmental Claims" means any Claim or Cause of Action against a Debtor asserted by any Government Environmental Unit, and other civil responsibilities, obligations or liabilities with respect to sites relating to or arising under the Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, or any other environmental Laws, including Claims for restoration, corrective action, or remediation of environmental or natural resource conditions.

L. "Final Order" means, as applicable, an order or judgment of the Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken or filed, or as to which any appeal that has been taken or any petition for certiorari that has been filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion under rule 60 of the Federal Rules of Civil Procedure or any comparable Bankruptcy Rule may be filed relating to such order or judgment shall not cause such order or judgment to not be a Final Order.

M. "Governmental Environmental Unit" means federal, state, local, or tribal Governmental Units asserting claims or having regulatory authority or responsibilities with respect to environmental Laws.

N. "Governmental Unit" means governmental unit as defined in section 101(27) of the Bankruptcy Code.

O. "Indirect Environmental Claims" means a Claim held by a private party for breach of contract, indemnification, contribution, reimbursement, or cost recovery related to environmental monitoring or remediation, including Claims for contribution, personal injury, property damage, or direct costs under any environmental Law.

P. "Law" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Court).

Q. "NICO Releasees" means NICO and NICO's Related Parties.

R. "Non-Debtor Intercompany Agreements" means any agreement between a Debtor and NICO, including any delegation of authority by a Debtor to NICO or a Related Party of NICO.

S. "Non-Debtor Released Parties" means the Brenntag Releasees, the NICO Releasees, and the DB US Releasees.

T. "Petition Date" means April 26, 2023.

U. "Related Party" means, with respect to an entity, (a) such entity's current and former

affiliates and (b) such entity's and such entity's current and former affiliates' directors, managers, officers, shareholders, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, assigns (whether by operation of law or otherwise), subsidiaries, current, former, and future associated entities, managed or advised entities, accounts or funds, partners, limited partners, general partners, principals, members, management companies, fund advisors, managers, fiduciaries, trustees, employees, agents (including any disbursing agent), advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, other representatives, and other professionals, representatives, advisors, predecessors, successors, and assigns, each solely in their capacities as such (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an entity), and the respective heirs, executors, estates, servants and nominees of the foregoing.

V. "Settlement Order" means an order approving this Settlement Agreement containing terms and provisions acceptable to the Debtors and each of the Contributing Parties.

W. "Tort Claims" means any Claim or Cause of Action against a Debtor whether known or unknown, manifested or unmanifested, for costs or damages, including with respect to any manner of alleged bodily injury, death, sickness, disease, emotional distress, fear of cancer, medical monitoring, or other personal injuries (whether physical, emotional or otherwise), directly or indirectly arising out of or in any way relating to the presence of or exposure to asbestos, talc, asbestiform minerals or any other chemical compound, or asbestos-, talc-, asbestiform- or any other chemical compound containing products caused or allegedly caused by, based on or allegedly based on, arising or allegedly arising from, attributable or allegedly attributable to, or in connection with, directly or indirectly, in whole or in part, the alleged acts, omissions, or conduct of the Debtors or any of the Debtors' predecessors-in-interest, including any such claims directly or indirectly, in whole or in part, arising out of or in any way relating to: (a) any products previously mined, manufactured, engineered, assembled, distributed, sold, used, consumed, installed, maintained, owned, occupied, stored, possessed, processed, designed, marketed, fabricated, constructed, supplied, produced, serviced, specified, selected, repaired, removed, replaced, released, and/or in any other way made available by the Debtors or any of the Debtors' predecessors-in-interest; (b) any materials present at any premises owned, leased, occupied, or operated by the Debtors or the Debtors' predecessors-in-interest; or (c) any talc in any way connected to the Debtors alleged to contain asbestos, asbestiform minerals, asbestos-containing products, or other constituent.

2. Subject to the terms and conditions of the debtor-in-possession financing order (such order, the "DIP Order") and the debtor-in-possession credit agreement approved by the DIP Order and that is consistent in all respects with the terms in the DIP Term Sheet attached as **Exhibit A** (the "DIP Credit Agreement"), and the entry of the DIP Order by the Court, NICO or its designee shall provide to the Debtors a first priority secured debtor-in-possession delayed draw term loan facility of up to $50 million (the "DIP Term Loan Facility," and loans thereunder, the "DIP Loans"). The aggregate principal amount of DIP Loans funded in Cash by NICO or its designee shall be deemed the "Initial Settlement Contribution."

3. Within five business days of the Debtors giving NICO notice of the occurrence of the Effective Date, and provided that the Effective Date has occurred, (a) NICO or its designee shall pay the Debtors an amount equal to $535 million *less* the aggregate principal amount of DIP Loans funded in Cash by NICO or its designee (the "Settlement Contribution" and, together with the Initial Settlement Contribution, the "Settlement Payment") and (b) the DIP Loans and other obligations under the DIP Credit Agreement shall be deemed satisfied in full. The Settlement Payment shall be made in full and final settlement and satisfaction of the Estate Causes of Action released in this Settlement Agreement against Brenntag, NICO, DB US, and their Related Parties. The Settlement Contribution shall be paid to the Debtors via wire transfer in lawful currency of the United States of America ("Cash").

4. NICO may terminate this Settlement Agreement, effective upon five business-days' notice to the Debtors, if any of the following occur: (1) entry of an order by any court denying the Settlement Motion; (2) entry of an order by any court reversing or vacating an order approving the Settlement Motion; (3) entry of an order by any court reversing, modifying, or vacating the Summary Judgment Order; (4) entry of an order by any court appointing a chapter 11 trustee in the Chapter 11 Cases; (5) entry of an order by any court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to chapter 7; (6) entry of an order by any court granting any person other than the Debtors standing to assert the Estate Causes of Action; or (7) an uncured default or Event of Default under the DIP Order and DIP Term Loan Facility pursuant to the terms of the DIP Order and the DIP Credit Agreement. NICO shall not be required to seek relief from the automatic stay in order to serve notice of termination, and to terminate, the Settlement Agreement pursuant to this paragraph.

5. Upon NICO's payment of the Settlement Payment, and without the need for the execution or delivery of any further documents or the taking of any other action by the Debtors, the Debtor Releasing Parties, waive, release, acquit, and forever discharge the Brenntag Releasees of and from the Estate Causes of Action arising out of, in connection with, or relating to any matters occurring before the Effective Date (the "Debtor Released Brenntag Estate Causes of Action"). The Brenntag Releasees other than Brenntag (which is a Party) are intended third-party beneficiaries of this Settlement Agreement and may independently enforce all or any portion of the rights created hereunder without in any way diminishing the rights of any Party. The Debtor Releasing Parties agree not to file, commence, or assert any of the Estate Causes of Action against the Brenntag Releasees after the effectiveness of the releases granted herein (*i.e.*, the occurrence of the Effective Date).

6. Upon NICO's payment of the Settlement Payment, and without the need for execution or delivery of any further documents or the taking of any other action by Brenntag, on behalf of itself and its respective successors and assigns, Brenntag waives, releases, acquits, and forever discharges the Debtor Releasees of and from any and all Causes of Action arising out of, in connection with, or relating to any matters occurring before the Effective Date (the "Brenntag Released Claims"). The Debtor Releasees other than the Debtors (which are Parties) are intended third-party beneficiaries of this Settlement Agreement and may independently enforce all or any portion of the rights created hereunder without in any way diminishing the rights of any Party. Brenntag agrees not to file, commence, or assert any of the Brenntag Released Claims against the Debtor Releasees after the effectiveness of the releases granted herein (*i.e.*, the occurrence of the

Effective Date), including, for the avoidance of doubt, by filing a proof of claim in the Chapter 11 Cases.

7. Upon NICO's payment of the Settlement Payment, and without the need for the execution or delivery of any further documents or the taking of any other action by the Debtors, the Debtor Releasing Parties waive, release, acquit, and forever discharge the NICO Releasees of and from the Estate Causes of Action arising out of, in connection with, or relating to any matters occurring before the Effective Date, including the Non-Debtor Intercompany Agreements (the "Debtor Released NICO Estate Causes of Action"). The NICO Releasees other than NICO (which is a Party) are intended third-party beneficiaries of this Settlement Agreement and may independently enforce all or any portion of the rights created hereunder without in any way diminishing the rights of any Party. The Debtor Releasing Parties agree not to file, commence, or assert any of the Estate Causes of Action against the NICO Releasees after the effectiveness of the releases granted herein (*i.e.*, the occurrence of the Effective Date).

8. Upon NICO's payment of the Settlement Payment, and without the need for execution or delivery of any further documents or the taking of any other action by NICO, on behalf of itself and its respective successors and assigns, NICO waives, releases, acquits, and forever discharges the Debtor Releasees of and from any and all Causes of Action arising out of, in connection with, or relating to any matters occurring before the Effective Date, including the Non-Debtor Intercompany Agreements (the "NICO Released Claims"). The Debtor Releasees other than the Debtors (which are Parties) are intended third-party beneficiaries of this Settlement Agreement and may independently enforce all or any portion of the rights created hereunder without in any way diminishing the rights of any Party. NICO agrees not to file, commence, or assert any of the NICO Released Claims against the Debtor Releasees after the effectiveness of the releases granted herein (*i.e.*, the occurrence of the Effective Date), including, for the avoidance of doubt, by filing a proof of claim in the Chapter 11 Cases.

9. Upon NICO's payment of the Settlement Payment, and without the need for the execution or delivery of any further documents or the taking of any other action by the Debtors, the Debtor Releasing Parties waive, release, acquit, and forever discharge the DB US Releasees of and from the Estate Causes of Action arising out of, in connection with, or relating to any matters occurring before the Effective Date (the "Debtor Released DB US Estate Causes of Action," and together with the Debtor Released Brenntag Estate Causes of Action and the Debtor Released NICO Causes of Action, the "Debtor Released Estate Causes of Action"). The DB US Releasees other than DB US (which is a Party) are intended third-party beneficiaries of this Settlement Agreement and may independently enforce all or any portion of the rights created hereunder without in any way diminishing the rights of any Party. The Debtor Releasing Parties agree not to file, commence, or assert any of the Estate Causes of Action against the DB US Releasees after the effectiveness of the releases granted herein (*i.e.*, the occurrence of the Effective Date).

10. Upon NICO's payment of the Settlement Payment, and without the need for execution or delivery of any further documents or the taking of any other action by DB US, on behalf of itself and its respective successors and assigns, DB US waives, releases, acquits, and forever discharges the Debtor Releasees of and from any and all Causes of Action arising out of, in connection with, or relating to any matters occurring before the Effective Date (the "DB US Released Claims"). The Debtor Releasees other than the Debtors (which are Parties) are intended

third-party beneficiaries of this Settlement Agreement and may independently enforce all or any portion of the rights created hereunder without in any way diminishing the rights of any Party. DB US agrees not to file, commence, or assert any of the DB US Released Claims against the Debtor Releasees after the effectiveness of the releases granted herein (*i.e.*, the occurrence of the Effective Date), including, for the avoidance of doubt, by filing a proof of claim in the Chapter 11 Cases.

11. Notwithstanding anything to the contrary contained herein (including, but not limited to, paragraph 16 herein) or in the Settlement Order, each Contributing Party reserves all, and does not release any, rights, claims, and defenses (whether contractual or otherwise) against each other Contributing Party, including but not limited to all rights, claims, and defenses under the 2003 MSPA and 2007 SPA (including in the arbitration proceeding pending under the 2021 Arbitration Rules of the International Chamber of Commerce, Case Ref. 27945/PDP) ("Preserved Rights"). For the avoidance of doubt, the Contributing Parties agree that the releases of the Brenntag Released Claims, the DB US Released Claims, and the NICO Released Claims by the respective Contributing Parties shall not be raised as a defense and shall not constitute a defense to the assertion of Preserved Rights.

12. The Parties expressly acknowledge that there may be changes in the law or the Parties may hereafter discover facts different from, or in addition to, those that they now believe to be true with respect to any and all of the claims released in this Settlement Agreement. Nevertheless, the Parties hereby agree that the foregoing releases shall be and remain effective in all respects, notwithstanding any changes in the law and/or the discovery of such additional or different facts. In addition, the Parties acknowledge that they have been advised by their respective legal counsel and are familiar with the provisions of Section 1542 of the California Civil Code, which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

13. As a material condition to the Effective Date of this Settlement Agreement, the Settlement Order must provide that holders of Claims against, and interest holders in, the Debtors, as applicable, are barred from asserting or recovering upon, directly or indirectly, the Estate Causes of Action against any Non-Debtor Released Party. The Court shall have exclusive jurisdiction to enforce the Settlement Order and to determine, without limitation, whether any such claims brought against any of the Non-Debtor Released Parties constitute Estate Causes of Action and are subject to the prohibition against prosecution of such claims.

14. As a material condition to the Effective Date of this Settlement Agreement, the Settlement Order must provide that the Non-Debtor Released Parties are forever barred from asserting the Brenntag Released Claims, the NICO Released Claims, and the DB US Released Claims, respectively, against the Debtor Releasees, and the Court shall have exclusive jurisdiction to enforce the Settlement Order and to determine, without limitation, whether any such claims brought against any of the Debtor Releasees constitute Brenntag Released Claims, NICO Released

Claims, and/or DB US Released Claims, as applicable, and are subject to the prohibition against prosecution of such claims.

15. As a material condition to the Effective Date of this Settlement Agreement, subject to the Debtors' compliance with the requirements of the Bankruptcy Code with respect to a plan and disclosure statement, each Contributing Party agrees they shall support confirmation of a chapter 11 plan, including all exhibits, supplements, and amendments thereto (collectively, as may be amended from time to time, the "Plan") that is consistent in all respects with the terms in the Plan Term Sheet attached as **Exhibit B** to this Settlement Agreement and is otherwise consistent with this Settlement Agreement and reasonably acceptable to NICO. For the avoidance of doubt, confirmation of a Plan is not a condition precedent to the effectiveness of this Settlement Agreement.

16. Nothing in this Settlement Agreement or Settlement Order bars any person from asserting a Cause of Action against a Non-Debtor Released Party that is not an Estate Cause of Action.

17. Each Party shall use its reasonable efforts and take all such steps and execute all such documents as are reasonably necessary and proper to secure the purpose and intent of this Settlement Agreement, including entry of the Settlement Order. In the event that any objection, action, proceeding, or appeal is commenced by any person to invalidate, hinder, or prevent approval, validation, enforcement, or carrying out of any provisions of this Settlement Agreement or entry of the Settlement Order, the Parties agree to cooperate in good faith and undertake reasonable efforts in opposing any such objection, action, proceeding, or appeal. The Parties acknowledge that they share a common interest in effecting this Settlement Agreement, including that the Settlement Order becomes a Final Order.

18. NICO shall be entitled to treat the Settlement Payment (and any portion thereof) in a manner that yields the most advantageous tax consequences to NICO; *provided* that, for the avoidance of doubt, NICO shall make each Settlement Payment within the time frame indicated in paragraph 3 of this Settlement Agreement.

19. The Debtors' obligations under this Settlement Agreement shall be binding on their Estates and any representatives thereof, including any reorganized or wind-down Debtors, and any trust, plan administrator or trustee established under a chapter 11 plan, chapter 7 trustee, or chapter 11 trustee. Following the Effective Date, the Debtors, and any successor or assignee of the Debtors, including any plan administrator or trustee appointed under a chapter 11 plan, shall indemnify and defend, and seek, at its sole cost and expense, the dismissal of any litigation asserting a Debtor Released Estate Cause of Action against Non-Debtor Released Parties in violation of this Settlement Agreement or the Settlement Order.

20. The effectiveness of this Settlement Agreement is subject to entry of the Settlement Order. Within five business days of execution of this Settlement Agreement, counsel for the Debtors shall file with the Court a motion to approve this Settlement Agreement acceptable in form and substance to the Parties (the "Settlement Motion"). Should any creditor or party in interest object to this Settlement Agreement, the Debtors shall oppose any such objection and each Contributing Party agrees to file a pleading opposing any such objection.

21. Counsel for the Debtors shall seek relief from the Court establishing procedures and deadlines for filing proofs of claim for all claims arising before commencement of the Debtors' Chapter 11 Cases acceptable in form and substance to the Parties in conjunction with or prior to entry of an order confirming the Plan.

22. The Parties agree that this Settlement Agreement constitutes settlement of disputed claims and that nothing stated herein shall constitute an admission of liability on the part of any Party, such liability being expressly denied by the same.

23. Nothing contained in this Settlement Agreement, or in any negotiations, discussions, correspondence, other materials of any kind relating to this agreement or relating to the negotiation of this agreement waives or shall be deemed to waive any Party's work product protection or right to claim the protections of any privilege, including attorney-client privilege, common-interest privilege, or mediation privilege.

24. This Settlement Agreement constitutes the entire agreement between and among the Parties hereto with respect to the matters contained herein and shall inure to the benefit of the predecessors, successors, and assigns of each. The Parties hereto further state that they have carefully read the foregoing, understand the contents thereof, and each have been independently represented by counsel in entering this Settlement Agreement.

25. The Parties warrant and represent that they each have the power and authority to sign, execute, and deliver this Settlement Agreement and to consummate the terms contemplated hereby. The Parties further warrant and represent that they have not assigned to any person or entity any Claims or Causes of Action that are subject to this Settlement.

26. In the event of a breach of this Agreement, the Parties shall have all remedies available in law and equity. The Debtors acknowledge that the assertion of any claim or demand against any Non-Debtor Released Party in breach of this Settlement Agreement shall cause irreparable injury to the Non-Debtor Released Party for which there is no adequate remedy at law. Accordingly, the Debtors agree that a Non-Debtor Released Party shall have the right, in addition to any other remedies it may have under this Settlement Agreement or at law, to specific performance to enforce, or injunctive or other equitable relief to prevent a threatened breach of, this agreement. No party shall assert that the automatic stay in the Debtors' bankruptcy case precludes an action for breach or enforcement of this agreement. The Parties agree and the Settlement Order shall provide that damages, if any, payable by the Debtors hereunder for breach of this agreement shall be entitled to administrative expense priority under Section 503(b)(1) of the Bankruptcy Code against each of the Debtors' estates, and assertable against any reorganized or wind-down Debtors, and any trust established under a chapter 11 plan.

27. This Settlement Agreement is entered into, and is to be construed in accordance with, and enforceable pursuant to, the laws of the State of New York without regard to the principles of conflicts of laws. Any applications by any Party regarding the enforcement or non-enforcement of this Settlement will be limited to the exclusive jurisdiction of the United States Bankruptcy Court for the District of New Jersey or, if the Chapter 11 Cases have been closed and cannot be reopened, to the United States District Court for the District of New Jersey, to which jurisdiction the Parties consent.

28. No persons or entities shall be considered third-party beneficiaries of this Settlement Agreement except the Debtor Releasees and Non-Debtor Released Parties (other than the Debtors, Brenntag, DB US, and NICO), each of which are not signatories hereto, but who shall be third-party beneficiaries under this Settlement Agreement and entitled to enforce it in accordance with its terms; *provided*, *however*, the consent of the Debtor Releasees and the Non-Debtor Released Parties (other than the Debtors, Brenntag, DB US, and NICO) shall not be required to amend, modify, or terminate this Settlement Agreement, or waive any of its provisions.

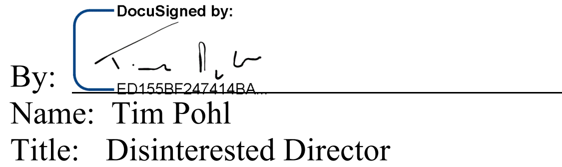
29. This Settlement Agreement and the Plan Term Sheet attached hereto may be amended or modified only by a writing signed by or on behalf of each Party.

30. This Settlement Agreement may be executed in one or more counterparts and by facsimile, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.

[*Rest of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the Debtors and the Contributing Parties have executed this Settlement Agreement as of the date and year first written above.

WHITTAKER, CLARK & DANIELS, INC.
BRILLIANT NATIONAL SERVICES, INC.
SOCO WEST, INC.
L. A. TERMINALS, INC.

By: 

Name: Tim Pohl
Title: Disinterested Director

By: ______________________________
Name: Paul Aronzon
Title: Disinterested Director

IN WITNESS WHEREOF, the Debtors and the Contributing Parties have executed this Settlement Agreement as of the date and year first written above.

WHITTAKER, CLARK & DANIELS, INC.
BRILLIANT NATIONAL SERVICES, INC.
SOCO WEST, INC.
L. A. TERMINALS, INC.

By: ______________________________
Name: Tim Pohl
Title: Disinterested Director

DocuSigned by:
Paul Aronzon
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By: ______________________________
Name: Paul Aronzon
Title: Disinterested Director

[*Debtors' Signature Page to Settlement Agreement*]

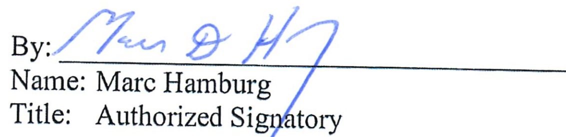
IN WITNESS WHEREOF, the Debtors and the Contributing Parties have executed this Settlement Agreement as of the date and year first written above.

BRENNTAG CANADA, INC.
BRENNTAG GREAT LAKES, LLC
BRENNTAG MID-SOUTH, INC.
BRENNTAG NORTH AMERICA, INC.
BRENNTAG NORTHEAST, LLC
BRENNTAG PACIFIC, INC.
BRENNTAG SOUTHWEST, INC.
BRENNTAG SPECIALTIES, LLC (F/K/A BRENNTAG SPECIALTIES, INC., AND AS MINERAL AND PIGMENT SOLUTIONS, INC.)
COASTAL CHEMICAL CO., LLC

DocuSigned by:
By: Jaime Skinner
6D30022C278242A...
Name: Jaime Skinner
Title: General Counsel, Brenntag North America, Inc.

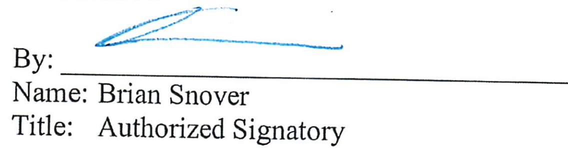
IN WITNESS WHEREOF, the Debtors and the Contributing Parties have executed this Settlement Agreement as of the date and year first written above.

BERKSHIRE HATHAWAY INC.



By: ______________________
Name: Marc Hamburg
Title: Authorized Signatory

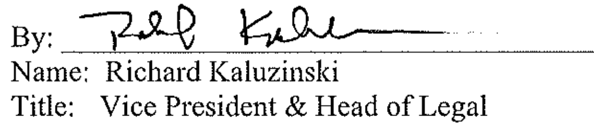
BH COLUMBIA INC.
COLUMBIA INSURANCE COMPANY
NATIONAL INDEMNITY COMPANY
RESOLUTE MANAGEMENT, INC.
RINGWALT & LIESCHE CO.
NATIONAL LIABILITY & FIRE INSURANCE COMPANY



By: ______________________
Name: Brian Snover
Title: Authorized Signatory

IN WITNESS WHEREOF, the Debtors and the Contributing Parties have executed this Settlement Agreement as of the date and year first written above.

DB US HOLDING CORPORATION



By: ______________________
Name: Richard Kaluzinski
Title: Vice President & Head of Legal

EXHIBIT A

DIP Term Sheet

THIS TERM SHEET IS AN INDICATIVE SUMMARY OF SELECTED TERMS AND IS NOT COMPLETE OR A COMMITMENT, OFFER, OR AGREEMENT IN PRINCIPLE TO PROVIDE FINANCING. THIS TERM SHEET IS NOT BINDING ON ANY PARTY AND THE PARTIES DO NOT INTEND TO BE BOUND UNLESS AND UNTIL THEY ENTER INTO DEFINITIVE DOCUMENTATION REGARDING THE SUBJECT MATTER OF THIS TERM SHEET. NOTHING CONTAINED IN THIS TERM SHEET IS OR SHALL BE CONSTRUED AS AN ADMISSION OF FACT OR LIABILITY OR DEEMED BINDING ON ANY OF THE PARTIES HERETO, BE ADMISSIBLE IN ANY ACTION RELATED TO THE MATTERS ADDRESSED HEREIN, OR CONSTITUTE A WAIVER OF ANY RIGHTS OF THE PARTIES HERETO, WITH RESPECT TO THE PLAN OR ANY OTHER DOCUMENTS CONTEMPLATED BY THE FOREGOING.

THIS TERM SHEET DOES NOT CREATE A DUTY TO NEGOTIATE IN GOOD FAITH TOWARD DEFINITIVE DOCUMENTATION AND SHALL NOT BE RELIED UPON BY ANY PERSON AS THE BASIS FOR ANY LIABILITY OR THE BASIS FOR A CONTRACT BY ESTOPPEL OR OTHERWISE.

THIS TERM SHEET IS SUBJECT TO MATERIAL CHANGES AND IS BEING DISTRIBUTED FOR DISCUSSION PURPOSES ONLY.

INTRODUCTION

This Term Sheet describes potential structural terms for a financing transaction. This Term Sheet does not include a description of all of the terms, conditions, and other provisions that are to be contained in any definitive documents (the "DIP Financing Documents"), which remain subject to negotiation and completion, and none will become effective until agreed-to by the relevant parties.

TERMS	
Parties to the Proposed DIP Facility:	Borrower: Brilliant National Services, Inc., a Delaware corporation. Guarantors: Guaranteed, on a joint and several basis, by (a) Whittaker, Clark & Daniels, Inc., a New Jersey corporation; (b) L. A. Terminals, Inc., a California corporation; and (c) Soco West, Inc., a Delaware corporation (together with the Borrower, the "Debtors"). DIP Lenders: National Indemnity Company and/or certain of its affiliates or designees.
DIP Facility:	The DIP Lenders agree, severally and not jointly, to make senior secured superpriority debtor-in-possession loans to the Borrower consisting of new money delayed-draw term loans (the "DIP Loans") to be made from time to time pursuant to a term loan facility (the "DIP Facility") during the Availability Period (as defined below) in an aggregate principal amount (exclusive of interest) not to exceed at any time outstanding aggregate principal commitments of $50,000,000 (the "DIP Commitment"), which shall be made available to the Borrower subject to the terms of the DIP Credit Agreement. The proceeds of the DIP Loans shall be funded into a deposit account of the Borrower. Such account shall be subject to the DIP Liens (as defined below) in favor of the DIP Lenders, which shall be perfected pursuant to the DIP Financing Order (as defined below) and shall be subject to an account control agreement reasonably satisfactory to the DIP Lenders and the Debtors. "Availability Period" means the period from the Closing Date to the Maturity Date (each as defined below).

Interest Rate:	5.35% per annum, payable in kind in arrears, on the last business day of the month. Interest shall be computed on the basis of a 365/366-day year for the actual number of days elapsed. At all times following the earlier of (a) December 31, 2024 and (b) upon the written election of the DIP Lenders following the occurrence and during the continuance of an Event of Default (as defined below), the principal, interest and all other amounts due on the DIP Loans shall bear interest at a rate equal to 4.00% per annum in excess of the interest rate set forth above.
Security and Priority:	The DIP Lenders shall be granted, pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code (as defined below), continuing, valid, binding, enforceable, non-avoidable, and automatically perfected, post-petition first priority security interests and liens to secure the DIP Facility (the "DIP Liens") on all tangible and intangible real and personal property of the Debtors, and all other property of the Debtors of whatever kind, nature or description, whether acquired or created prepetition or post-petition, and the proceeds of each of the foregoing (the "DIP Collateral"). Notwithstanding the foregoing, the DIP Liens shall not extend to, and the DIP Collateral shall not consist of, (w) Avoidance Actions (as defined in the DIP Order), (x) Successor Liability Claims (as defined in the DIP Order), (y) other estate causes of action and estate claims, if any, against the DIP Lenders and their Affiliates (as defined in the DIP Financing Documents) (together with subclauses (w) and (x), the "Specified Estate Claims") and (z) Excluded Assets (as defined in the DIP Order); *provided*, that DIP Collateral shall include the proceeds of Specified Estate Claims and Excluded Assets; *provided*, *however*, that DIP Collateral shall not include the proceeds of the EPA Trust Account (as defined in the DIP Order). For the avoidance of doubt, all estate causes of actions and estate claims other than the Specified Estate Claims shall be DIP Collateral. The DIP Facility shall constitute allowed superpriority administrative expense claims (the "DIP Claims") in the Chapter 11 Cases (as defined below) and shall have priority over all other claims and administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code. The DIP Liens and the DIP Claims shall be subject to the Carve Out (as defined below). All of the liens described herein with respect to the assets of the Debtors shall be effective and perfected by the DIP Financing Order and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements. Notwithstanding the foregoing, the Debtors shall take all action that may be reasonably necessary or desirable, or that the DIP Lenders may reasonably request, to at all times maintain the validity, perfection, enforceability and priority of the DIP Liens, or to enable the DIP Lenders to protect, exercise or enforce its rights under the DIP Financing Order and the DIP Documents.
Carve Out:	The DIP Financing Order shall include the professional fee carve out as set forth in **Annex A** attached hereto (the "Carve Out").
Fees and Expenses:	None.
Closing Date:	Closing to occur upon satisfaction (or waiver by the DIP Lenders in their sole discretion) of the "Closing Conditions" (the date on which such conditions have been satisfied or waived, the "Closing Date").
Closing Conditions; Conditions Precedent to	The DIP Facility and the making of each DIP Loan shall be conditioned upon the satisfaction of conditions precedent usual for facilities and transactions of this type and appropriate in these circumstances as set forth in the DIP Financing Documents, including, (a) no continuing default or Event of Default; (b) in the case of the initial DIP Loan, entry of an Approved Order

Extensions of Credit:	(as defined below) by the Bankruptcy Court approving the DIP Financing and DIP Financing Documents, on a final basis, which order shall not have been reversed, modified, amended, supplemented, stayed, vacated or subject to stay (the "DIP Financing Order") and delivery of the Initial Approved Budget; and (c) in the case of subsequent DIP Loans, delivery of (i) a Notice of Borrowing and (ii) a Subsequent Approved Budget.
Budget:	The Debtors shall prepare and deliver to the DIP Lenders a budget beginning with the week which includes the Closing Date of the DIP Facility through January 31, 2025 (the "Budget Period"), showing anticipated cash receipts and cash disbursements in form and substance satisfactory to the DIP Lenders in their sole discretion (the "Initial Approved Budget"). The Debtors shall prepare and deliver with a Notice of Borrowing an updated budget for the remainder of the Budget Period in form and substance reasonably satisfactory to the DIP Lenders and the Debtors (a "Subsequent Approved Budget"); *provided*, that any Subsequent Approved Budget that shows "Net Available Unrestricted Cash" of the Debtors at the end of the Budget Period of less than $5 million must be satisfactory to the DIP Lenders in their sole discretion
Milestones:	The Debtors shall comply with the following milestones (the "Milestones"), and the failure to timely comply shall constitute an immediate Event of Default: (a) The hearing to approve the Proposed Settlement (which hearing may be the hearing to approve the Approved Plan) shall be scheduled to begin on or before December 1, 2024; (b) Entry by the Bankruptcy Court of an Approved Order approving the Proposed Settlement (a "Settlement Order") on or before December 31, 2024; (c) Filing an Approved Plan and Approved Disclosure Statement with the Bankruptcy Court on or before October 28, 2024; and (d) Commencement of solicitation of acceptances of an Approved Plan on or before December 26, 2024.
Draw of Initial DIP Loan:	Subject to the satisfaction of certain conditions precedent, the Borrower may borrow DIP Loans in the amount of $20 million upon the Closing Date.
Subsequent Draws of DIP Loans:	At any time on or after October 12, 2024, subject to the satisfaction of certain conditions precedent, including the Borrower providing the DIP Lenders with (a) a Notice of Borrowing and (b) a Subsequent Approved Budget, the Borrower may borrow DIP Loans in amounts requested by the Borrower and the DIP Lenders shall promptly make available funds equal to the amount of the requested DIP Loan to the Borrower by wire transfer to the account specified in the Notice of Borrowing; *provided* that, notwithstanding anything to the contrary in this Term Sheet or Annex A, the DIP Lenders shall have no obligation to make DIP Loans to the extent that such DIP Loans would cause the aggregate amount of outstanding DIP Loans to exceed the DIP Commitment.
Maturity Date:	All obligations in respect of the DIP Facility and DIP Loans shall be due and payable in full and in cash, and the DIP Commitments (if any) shall terminate, on the earliest to occur (the "Maturity Date") of (i) the date the Debtors' receive the Settlement Contribution (as defined in the Proposed Settlement) (the "Settlement Contribution Date"), (ii) the date the DIP Loans are accelerated in accordance with the DIP Financing Documents and the DIP Financing Order, and (iii) the date of the dismissal of any of the chapter 11 cases or conversion of the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

	No order confirming a plan of reorganization entered in the Chapter 11 Cases shall discharge or otherwise affect in any way the joint and several obligations of the Debtors to the DIP Lenders under the DIP Facility. Notwithstanding the foregoing, upon the occurrence of the Settlement Contribution Date, the DIP Lenders hereby irrevocably agree that: (a) the Debtors' obligations under the DIP Financing Documents to repay the principal of the DIP Loans and any interest thereon shall be automatically forgiven, released, and terminated, and (b) any DIP Liens or securities interests granted to the DIP Lenders by the Debtors on any DIP Collateral shall be automatically released and terminated.
Use of Proceeds and Cash Collateral:	Proceeds of the DIP Facility and other cash collateral will be used (i) for general corporate purposes of the Debtors, including to fund the costs of the administration of the Chapter 11 Cases and to pay such prepetition expenses, in each case in a manner consistent with the Approved Budget; (ii) to pay professional fees and expenses; (iii) to pay premiums, fees, expenses, penalties, and other amounts owed under the DIP Financing Documents, to the extent applicable; (iv) to fund a wind-down budget in form and substance acceptable to the DIP Lender; and (v) to fund the Carve Out; *provided*, that in no event shall any such proceeds be used to assert, support or prosecute (or to seek standing to assert, support or prosecute) any claims or causes of action against, or which are indemnified by, the DIP Lenders or any of their Affiliates; *provided*, however, that such proceeds may be used to seek approval of (or object to or otherwise respond to) the Proposed Settlement.
Representations and Warranties:	The DIP Facility (and the making of any DIP Loan) shall include representations and warranties of the Debtors usual for facilities and transactions of this type and appropriate in these circumstances.
Covenants:	The DIP Facility shall include covenants usual for facilities and transactions of this type and appropriate in these circumstances, including as set forth above.
Events of Default:	Each of following shall constitute an "Event of Default": (i) failure of any representation or warranty to be true and correct in all material respects (or, to the extent qualified by materiality, in all respects) when made and, to the extent capable of being cured, such representation or warranty is not corrected or clarified (in each case, in a manner which causes such representation or warranty to no longer be incorrect or misleading) within 5 days after it was initially made; (ii) failure by any Debtor to be in compliance in all respects with the Milestones and any other provisions of the DIP Facility and/or the DIP Financing Order, unless, in the case of certain affirmative covenants, such failure is cured within 15 days after written notice thereof; (iii) entry of an order of the Bankruptcy Court with respect to any Debtor, dismissal of its Chapter 11 Case or converting it to a case under Chapter 7 of the Bankruptcy Code, or the appointment in any of the Chapter 11 Cases of a trustee, receiver, examiner, or responsible officer with enlarged powers relating to the operation of the business of any Debtor (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code), or, in each case, any Debtor shall seek approval therefor or support or fail to object to any motion seeking the foregoing; (iv) the Bankruptcy Court declines to approve the Settlement Order or the Confirmation Order; (v) entry of an order of the Bankruptcy Court or other court of competent jurisdiction reversing, amending, supplementing, staying, vacating or otherwise modifying the Estate

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Claims Decision, DIP Financing Order, the Settlement Order or the Confirmation Order or any Debtor shall seek approval therefor or support or fail to object to and motion seeking the foregoing, in each case;

(vi) entry of an order in the Chapter 11 Cases confirming a plan that is not an Approved Plan or any Debtor shall seek approval therefor or support or fail to object to any motion seeking the foregoing;

(vii) entry of an order of the Bankruptcy Court for any financing pursuant to Section 364 of the Bankruptcy Code (other than the DIP Financing), or any Debtor shall seek approval therefor or support or fail to object to and motion seeking the foregoing;

(viii) entry of an order of the Bankruptcy Court granting (x) any Liens in any of the Chapter 11 Cases that (i) are senior to or pari passu with the DIP Liens or (ii) encumber any Specified Estate Claims, or (y) any claims that are senior to or pari passu with the DIP Claims or, in each case, any Debtor shall seek approval therefor or support or fail to object to and motion seeking the foregoing;

(ix) any Debtor shall seek to, or shall support any motion to disallow in whole or in part the DIP Claims;

(x) based on (a) the most recent Subsequent Approved Budget, (b) actual cash disbursements made by the Debtors as of such date and (c) fees incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code, as reflected on any fee statement or fee application filed with the Court as of such date, cash of the Debtors at the end of the Budget Period will be less than $5 million; and

(xi) the DIP Financing Order or any DIP Financing Document shall cease, for any reason, to be in full force and effect or the Debtors shall so assert in writing.
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<tr><td>Remedies Upon Event of Default:</td><td>
Subject to the terms of the DIP Financing Order, the Carve Out, and the DIP Financing Documents, upon the occurrence and during the continuance of any Event of Default, subject to notice to the Debtors required under the DIP Financing Order, the DIP Lenders may take all or any of the following actions without further order of or application to the Bankruptcy Court, and notwithstanding the automatic stay:

(a) declare the DIP Loans (including principal of, and accrued interest on, any outstanding DIP Loans) to be immediately due and payable; and/or

(b) exercise rights and remedies pursuant to the terms of the DIP Financing Order, the DIP Financing Documents or applicable law (including, without limitation, direct any or all of the Debtors (or file a motion in the name of the Debtors)), (i) to enforce the terms and provisions of the DIP Financing Documents, and (ii) to sell or otherwise dispose of or otherwise monetize any all of the DIP Collateral on terms and conditions reasonably acceptable to the DIP Lenders pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code; provided that, subject to the DIP Financing Order, the Debtors shall take all action that is reasonably necessary to cooperate with the DIP Lenders' exercise of their rights and remedies and facilitate the realization upon the DIP Collateral by the DIP Lenders.
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CERTAIN DEFINITIONS	
Approved Disclosure Statement	A disclosure statement in form and substance mutually agreeable to the DIP Lenders and the Debtors.
Approved Order	An order of the Bankruptcy Court in form mutually agreeable to the DIP Lenders and the Debtors.
Approved Plan	A plan of reorganization in form and substance mutually agreeable to the DIP Lenders and the Debtors.
Bankruptcy Code	Title 11 of the United States Code, 11 U.S.C. §§ 101–1532.
Bankruptcy Court	The United States Bankruptcy Court for the District of New Jersey or such other court having jurisdiction over the Chapter 11 Cases.
Chapter 11 Cases	When used with reference (a) to a particular Debtor, the case pending for that Debtor in the Bankruptcy Court under chapter 11 of the Bankruptcy Code, and (b) to all Debtors, the procedurally consolidated and jointly administered chapter 11 cases pending for the Debtors in the Bankruptcy Court under Case No. 23-13575 (MBK) pursuant to the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 72].
Estate Claims Decision	The order of the Bankruptcy Court entered on August 28, 2024 in Case No. 23-01245 (MBK) at Adv. Proc. Docket No. 292.
Proposed Settlement	That certain Settlement Agreement between the Debtors and various other parties settling estate claims and causes of action.
Notice of Borrowing	An irrevocable notice (which notice must be received by the Lender no later than 10:00 a.m., New York time, five (5) Business Days prior to the requested borrowing date). Such notice shall be signed by an authorized officer of the Borrower and state that, to the best of their knowledge, (a) the proceeds of the DIP Loans to be made in connection with such Notice of Borrowing shall be used in accordance with the terms of the DIP Credit Agreement, (b) no default or Event of Default has occurred and is continuing, and (c) the representations and warranties contained in the DIP Credit Agreement are true and correct in all material respects as at the applicable borrowing date.

Annex A

Carve Out

1. *Carve Out.*

(a) Carve Out. As used in this Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals"), the FCR pursuant to section 105(a) or 1103 (the "FCR Professionals"), and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals and FCR Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Lenders of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $500,000 incurred after the first business day following delivery by the DIP Lenders of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap"). For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Lenders to the Debtors, their lead restructuring counsel, the U.S. Trustee, counsel to the FCR, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by the DIP Lenders to the Debtors with a copy to counsel to the FCR and counsel to the Committee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall (i) be deemed a draw request and notice of borrowing by the Debtors for DIP Loans under the DIP Commitments (each, as defined in the DIP Credit Agreement), in an amount equal to the then unpaid amounts of the Allowed Professional Fees (any such amounts actually advanced shall constitute DIP Loans) and (ii) also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees (the "Pre-Carve Out Trigger Notice Reserve") prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also (i) be deemed a request by the Debtors for DIP Loans under the DIP Commitments, in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Loans) and (ii) constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice Reserve" and, together with the Pre-Carve Out Trigger Notice Reserve, the "Carve Out Reserves") prior to any and all other claims. On the first business day after the DIP Lenders give such notice, notwithstanding anything in the DIP Credit Agreement to the contrary, including with respect to the existence of a Default (as defined in the DIP Credit Agreement) or Event of Default, the failure of the Debtors to satisfy any or all of the conditions precedent for DIP Loans under the DIP Facility, any termination of the DIP Commitments following an Event of Default, or the occurrence of the Maturity Date (as defined in the DIP Credit Agreement), the DIP Lenders shall make available to the Debtors such borrowing in accordance with the DIP Facility. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the "Pre-Carve Out Amounts"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the Debtors. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "Post-Carve Out Amounts"), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Lenders, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments

have been terminated, in which case any such excess shall be paid to the Debtors. Notwithstanding anything to the contrary in the DIP Facility Documents or this Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 7, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this paragraph 7, prior to making any payments to the DIP Lenders. Notwithstanding anything to the contrary in the DIP Facility Documents or this Order, following delivery of a Carve Out Trigger Notice, the DIP Lenders shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Lenders for application in accordance with the DIP Facility Documents. Further, notwithstanding anything to the contrary in this Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute DIP Loans (as defined in the DIP Credit Agreement) or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Order or the DIP Facility, the Carve Out shall be senior to all liens and claims securing the DIP Facility and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations.

(c) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(d) No Direct Obligation To Pay Allowed Professional Fees. The DIP Lenders shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Order or otherwise shall be construed to obligate the DIP Lenders in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Order, the DIP Facility Documents, the Bankruptcy Code, and applicable law.

EXHIBIT B

Plan Term Sheet

THIS IS AN ILLUSTRATIVE TERM SHEET AND IS NOT AND SHALL NOT BE CONSTRUED AS AN OFFER WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS ILLUSTRATIVE TERM SHEET IS OR SHALL BE CONSTRUED AS AN ADMISSION OF FACT OR LIABILITY OR DEEMED BINDING ON ANY OF THE PARTIES HERETO, BE ADMISSIBLE IN ANY ACTION RELATED TO THE MATTERS ADDRESSED HEREIN, OR CONSTITUTE A WAIVER OF ANY RIGHTS OF THE PARTIES HERETO, WITH RESPECT TO THE PLAN OR ANY OTHER DOCUMENTS CONTEMPLATED BY THE FOREGOING.

THIS ILLUSTRATIVE TERM SHEET DOES NOT CREATE A DUTY TO NEGOTIATE IN GOOD FAITH TOWARD DEFINITIVE DOCUMENTATION AND SHALL NOT BE RELIED UPON BY ANY PERSON AS THE BASIS FOR ANY LIABILITY OR THE BASIS FOR A CONTRACT BY ESTOPPEL OR OTHERWISE.

THIS ILLUSTRATIVE TERM SHEET IS SUBJECT TO MATERIAL CHANGES AND IS BEING DISTRIBUTED FOR DISCUSSION AND ILLUSTRATIVE PURPOSES ONLY.

ILLUSTRATIVE TERM SHEET[1]

INTRODUCTION

This Illustrative Term Sheet describes potential structural terms of a chapter 11 plan, incorporating the implementation of a consensual resolution regarding estate causes of action against NICO, Brenntag, and DB US and related parties. This Illustrative Term Sheet does not include a description of all of the terms, conditions, and other provisions that are to be contained in any definitive documents, which remain subject to negotiation and completion, and none will become effective until agreed-to by the relevant parties. This Illustrative Term Sheet incorporates the rules of construction as set forth in section 102 of the Bankruptcy Code.

CLAIMS TREATMENT	
Treatment of Environmental Claims and Indirect Environmental Claims	(i) Treatment: On the Plan Effective Date, each Holder of an Allowed Environmental Claim and each Holder of an Allowed Indirect Environmental Claim shall receive, in full and final satisfaction of such Environmental Claim its Pro Rata share of the Environmental Remediation Trust Assets in accordance with the Environmental Remediation Trust Agreement after all DIP Claims, Administrative Claims, Priority Tax Claims, Professional Fee Claims, and Priority Claims have been paid in full. (ii) Impairment and Voting: Environmental Claims and Indirect Environmental Claims are impaired. Holders of Environmental Claims and Holders of Indirect Environmental Claims are entitled to vote to accept or

[1] This Illustrative Term Sheet is presented for discussion purposes only and is subject in its entirety to (a) approval of the Debtors' boards of directors, and with respect to conflicts matters, the Disinterested Directors, and (b) confirmatory tax diligence. Capitalized Terms not otherwise defined herein have the meaning ascribed to them in the Settlement Agreement.

	reject the Plan.
Treatment of Tort Claims	(i) Treatment: On the Plan Effective Date, each Holder of an Allowed Tort Claim shall receive, in full and final satisfaction of such Tort Claim, its Pro Rata share of the Tort Claims Trust Assets in accordance with the Plan, Tort Claims Trust Agreement, and Tort Claims Trust Distribution Procedures after all Administrative Claims, Priority Tax Claims, Professional Fee Claims, and Priority Claims have been paid in full. (ii) Impairment and Voting: Tort Claims are impaired. Holders of Tort Claims are entitled to vote to accept or reject the Plan.
Treatment of General Unsecured Claims	On the Plan Effective Date, each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction of such General Unsecured Claim, its Pro Rata share of the GUC Trust Assets in accordance with the Plan and GUC Claims Trust Agreement, after all Administrative Claims, Priority Tax Claims, Professional Fee Claims, and Priority Claims have been paid in full.
Treatment of Administrative, Priority and Priority Tax Claims	On or as soon as practicable after the later to occur of (i) the Plan Effective Date and (ii) the date such claim becomes allowed (or as otherwise set forth in the Plan), each holder of an administrative, priority, or priority tax claim will either be satisfied in full, in cash, or otherwise receive treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.
Treatment of DIP Claims	On or as soon as practicable after the Plan Effective Date, each Holder of a DIP Claim shall receive, in full and final satisfaction of such DIP Claim, upon the earlier of: (i) the occurrence of the Settlement Effective Date, pursuant to the Estate Claims Settlement, a dollar-for-dollar reduction on account of the principal amount of the DIP Loans funded in cash otherwise required to be paid by such holder (or its designated affiliate); or (ii) the occurrence of a termination event pursuant to paragraph 4 of the Settlement Agreement, payment in full in cash of such DIP Claims.
Treatment of Non-Debtor Intercompany Claims	On the Plan Effective Date, each Holder of a Non-Debtor Intercompany Claim shall waive such Non-Debtor Intercompany Claim pursuant to the Estate Claims Settlement.
GENERAL PROVISIONS REGARDING THE RESTRUCTURING	
Wind-Down Transactions	On the Plan Effective Date, or as soon as reasonably practicable thereafter, the Wind-Down Debtors shall take all actions as may be necessary or appropriate to effectuate the Wind-Down Transactions, which shall be reasonably acceptable to NICO, including, without limitation: (1) the execution and delivery of any appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption,

	or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state law; (4) such other transactions that are required to effectuate the Wind-Down Transactions; (5) all transactions necessary to provide for the purchase of some or all of the assets of, or Interests in, any of the Debtors which purchase may be structured as a taxable transaction for United States federal income tax purposes; and (6) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.
Distributable Proceeds and Waterfall Recovery	On or after the Plan Effective Date, the Disbursing Agent shall make Distributions on account of Allowed Claims in accordance with the Plan, the Environmental Remediation Trust Agreement, Tort Claims Trust (and Tort Claims Trust Distribution Procedures), and GUC Trust Agreement, as applicable, using the Distributable Proceeds. In accordance with this Plan, Distributable Proceeds shall be paid to Holders of Allowed Claims until satisfied in full from time to time in the following priority: (1) *first*, on account of DIP Claims (if any remain outstanding after giving effect to the Estate Claims Settlement), (2) *second*, on account of Allowed Administrative Claims and Priority Tax Claims; (3) *third*, on account of Allowed Priority Claims; and (4) *fourth*, (A) Distributable Proceeds that constitute the Tort Claims Trust Assets shall be paid to Holders of Allowed Tort Claims in accordance with the Tort Claims Trust Distribution Procedures, (B) Distributable Proceeds that constitute the Environmental Remediation Trust Assets shall be paid to Holders of Allowed Environmental Claims and Holders of Allowed Indirect Environmental Claims, and (C) Distributable Proceeds that constitute the GUC Trust Assets shall be paid to Holders of Allowed General Unsecured Claims (collectively, the "**Waterfall Recovery**"); *provided*, for the avoidance of doubt, that the foregoing shall be subject in all respects to the funding of the Professional Fee Escrow Account prior to or on the Plan Effective Date.
Environmental Remediation Trust[2]	The trust to be established by the Debtors on the Plan Effective Date, to which the Debtors will contribute the Environmental Remediation Trust Assets and which will be governed by the Environmental Remediation Trust Agreement to be filed with the Plan Supplement.
Environmental Remediation Trust Assets	(a) the Cash proceeds obtained through the pursuit of Assigned Insurance Rights on account of Environmental Claims and Indirect Environmental Claims (the "Environmental Claim Insurance Proceeds" and (b) [●]% of the Settlement Proceeds.

[2] For the avoidance of doubt, trust structure is subject in all respects to confirmatory tax diligence.

GUC Claims Trust[3]	The trust to be established by the Debtors on the Plan Effective Date, to which the Debtors will contribute the GUC Trust Assets and which will be governed by the GUC Trust Agreement to be filed with the Plan Supplement, which shall be reasonably acceptable to NICO.
GUC Claims Trust Assets	(a) the Cash proceeds obtained through the pursuit of Assigned Insurance Rights on account of General Unsecured Claims (the "General Unsecured Claim Insurance Proceeds") and (b) [●]% of the Settlement Proceeds.
Tort Claims Trust[4]	The trust to be established by the Debtors on the Plan Effective Date, to which the Debtors will contribute the Tort Claims Trust Assets and which will be governed by the Tort Claims Trust Agreement to be filed with the Plan Supplement.
Tort Claims Trust Assets	(a) the Cash proceeds obtained through the pursuit of Assigned Insurance Rights on account of Tort Claims (the "Tort Claim Insurance Proceeds") and (b) [●]% of the Settlement Proceeds.
Tort Claims Trust Distribution Procedures	The document to be included in the Plan Supplement governing the procedures for submission, resolution, and distribution in respect of all Tort Claims, which shall be reasonably satisfactory to NICO.
Plan Administrator	The Debtors, in consultation with NICO, shall appoint a Plan Administrator, who shall act for the Wind-Down Debtors in the same fiduciary capacity as applicable to a president and chief executive officer (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same) and retain and have all the rights, powers, and duties necessary to carry out his or her responsibilities under this Plan in accordance with the Wind-Down and as otherwise provided in the Confirmation Order. The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to administer and distribute the Distributable Proceeds to the Environmental Remediation Trust, Tort Claims Trust, and GUC Trust, as applicable, in accordance with the Plan, the Environmental Remediation Trust Agreement, Tort Claims Trust, and GUC Trust Agreement, and the Waterfall Recovery and wind down the affairs of the Debtors and Wind-Down Debtors, including (all without further order of the Bankruptcy Court): (1) receiving, holding, investing, liquidating, supervising, and protecting the assets of the Wind-Down Debtors (2) taking all steps to execute all instruments and documents necessary to effectuate the Distributions to be made under the Plan; (3) making Distributions as contemplated under the Plan; (4) establishing and maintaining bank accounts in the name of the Wind-Down Debtors; (5) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (6) paying all

[3] For the avoidance of doubt, trust structure is subject in all respects to confirmatory tax diligence.

[4] For the avoidance of doubt, trust structure is subject in all respects to confirmatory tax diligence.

	reasonable and documented fees, expenses, debts, charges, and liabilities of the Wind-Down Debtors; (7) administering and paying taxes of the Wind-Down Debtors, including filing tax returns; (8) representing the interests of the Wind-Down Debtors or the Estates before any taxing authority in all matters, including any action, suit, proceeding, or audit; (9) investigating commencing, prosecuting, or settling the Retained Causes of Action; (10) pursuing Claims related to the Insurance Contracts subject to the terms and conditions of the Plan and applicable terms, conditions, and other provisions of the applicable Insurance Contracts and applicable Law; (11) taking all steps to enforce the Settlement Order and the Confirmation Order, including by acting for the Wind-Down Debtors with respect to actions to enforce the Settlement Order and the Confirmation Order and/or defend appeals of the Settlement Order and/or the Confirmation Order, and (12) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.
Estate Claims Settlement	A settlement of all claims or causes of actions that are property of the Debtors' estates or that Debtors otherwise have standing to assert under the Bankruptcy Code, by and among the Debtors and the Contributing Parties, the proceeds of which (the "Settlement Proceeds") shall be used to fund the Professional Fee Amount and Distributions pursuant to the Waterfall Recovery, pursuant to terms agreeable to the parties and contingent upon Bankruptcy Court approval. Following the Effective Date of the Settlement Agreement, the Debtors, and any successor or assignee of the Debtors, including any plan administrator or trustee appointed under a chapter 11 plan, shall indemnify and defend, and seek, at its sole cost and expense, the dismissal of any litigation asserting a Debtor Released Estate Cause of Action against the NICO Releasees, the DB US Releasees, or the Brenntag Releasees (each as defined in the Settlement Agreement) in violation of this Settlement Agreement or the Settlement Order.
Gatekeeping Provisions	The Settlement Order and the Confirmation Order shall, among other provisions, enjoin prosecution of any claims released pursuant to the Estate Claims Settlement and provide that the Bankruptcy Court shall retain jurisdiction to enforce the Settlement Order (as defined in the Settlement Agreement) and Confirmation Order, including to determine, without limitation, whether (a) any claim brought against any NICO Releasees, Brenntag Releasees, or DB US Releasees (each as defined in the Settlement Agreement) constitutes an Estate Cause of Action and is subject to the prohibition against prosecution of such claim and (b) any claims brought against any of the Non-Debtor Released Parties constitutes a Brenntag Released Claim, NICO Released Claim, and/or DB US Released Claim (each as defined in the Settlement Agreement) and are subject to the prohibition against prosecution of such claims.
Releases	In addition to the releases granted pursuant to the Estate Claims Settlement, which are subject to terms agreeable to the parties, the Plan shall provide for customary releases of Debtor Claims and Causes of Action.

Bar Date	A Bar Date for all claims arising before commencement of the Debtors' Chapter 11 Cases shall be established in accordance with the Estate Claims Settlement in advance of or pursuant to the Confirmation Order.
Related Parties	Collectively, with respect to an Entity, (a) such Entity's current and former Affiliates and (b) such Entity's and such Entity's current and former Affiliates' directors, managers, officers, shareholders, equity Holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, assigns (whether by operation of Law or otherwise), subsidiaries, current, former, and future associated entities, managed or advised entities, accounts or funds, partners, limited partners, general partners, principals, members, management companies, fund advisors, fiduciaries, trustees, employees, agents (including any Disbursing Agent), advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, other Representatives, and other Professionals, Representatives, advisors, predecessors, successors, and assigns, each solely in their capacities as such (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), and the respective heirs, executors, estates, servants, and nominees of the foregoing.
Non-Debtor Released Parties	The parties benefitting from the releases of Debtor Released Estate Causes of Action granted pursuant to the Estate Claims Settlement.
Exculpation	The Plan shall provide for customary exculpation.
Procedures for Payment of Administrative Claims	The Debtors will be responsible for payment of all allowed administrative claims through the Plan Confirmation Date. The TCC shall be dissolved on the Confirmation Date and the FCR shall be discharged from her duties on the Confirmation Date. There shall be no further obligation of the Debtors to pay any of the FCR's or TCC's fees and expenses after the Confirmation Date; *provided*, *however*, that notwithstanding the foregoing, the TCC may, at its option and without taking any action or seeking or receiving any approval, continue to serve and function after the Confirmation Date for the purposes of participating in any hearing on a Committee Professional Fee Claim. To the extent that the Committee determines to continue to serve and function after the Confirmation Date pursuant to the preceding sentence, the Committee shall dissolve upon entry of a final order approving such Committee Professional Fee Claim.
Conditions Precedent to the Plan Effective Date	The Plan shall provide for customary conditions precedent to the Effective Date, including funding of the remaining contribution of the Estate Claims Settlement, pursuant to terms agreeable to the Parties.
DEFINITIONS	
Debtors	Whittaker, Clark & Daniels, Inc., a New Jersey corporation, Brilliant National Services, Inc., a Delaware corporation; L. A. Terminals, Inc., a California corporation; and Soco West, Inc., a Delaware corporation.
NICO	Berkshire Hathaway Inc., BH Columbia Inc., Columbia Insurance Company, National Indemnity Company, Resolute Management, Inc., Ringwalt & Liesche Co., and National Liability & Fire Insurance Company.

Brenntag	Brenntag Canada, Inc., Brenntag Great Lakes, LLC, Brenntag Mid-South, Inc., Brenntag North America, Inc., Brenntag Northeast, LLC, Brenntag Pacific, Inc., Brenntag Southwest, Inc., Brenntag Specialties, LLC (f/k/a Brenntag Specialties, Inc., and as Mineral and Pigment Solutions, Inc.), and Coastal Chemical Co., LLC.
DB US	DB US Holding Corporation (f/k/a Stinnes Corporation).
Bankruptcy Code	Title 11 of the United States Code, 11 U.S.C. §§ 101–1532.
Bankruptcy Court	The United States Bankruptcy Court for the District of New Jersey or such other court having jurisdiction over the Chapter 11 Cases.
Chapter 11 Cases	When used with reference (a) to a particular Debtor, the case pending for that Debtor in the Bankruptcy Court under chapter 11 of the Bankruptcy Code, and (b) to all Debtors, the procedurally consolidated and jointly administered chapter 11 cases pending for the Debtors in the Bankruptcy Court under Case No. 23-13575 (MBK) pursuant to the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 72].
Plan	A plan under chapter 11 of the Bankruptcy Code in the Debtors' bankruptcy proceedings, proposed by the Debtors in form and substance consistent with this Term Sheet and in all respects otherwise reasonably acceptable to the Debtors and NICO, confirmed by the Confirmation Order of the Bankruptcy Court and, to the extent required, affirmed by order of the District Court.
Plan Effective Date	The date that is the first business day after all conditions precedent to the effectiveness of the Plan, including that the Plan has become final and non-appealable, have been satisfied or waived by the Parties.
Petition Date	April 26, 2023.
Avoidance Actions	Any and all actual or potential avoidance, recovery, subordination, or other Claims and Causes of Action, actions, or remedies that may be brought by, or on behalf of, the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy Law, including Claims, Causes of Action, actions, or remedies arising under sections 502, 510, 541, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common Law, including fraudulent transfer Laws.
Causes of Action	Collectively, any and all claims, interests, controversies, actions, proceedings, reimbursement claims, contribution claims, recoupment rights, debts, obligations, third-party claims, indemnity claims, damages (including claims for or award of costs and/or expenses, court costs and attorneys' fees), losses, remedies, causes of action, demands, rights, lawsuits, suits, litigation, arbitration, legal proceeding, obligations, liabilities, accounts, judgments, defenses, offsets, powers, privileges, licenses, franchises, guaranties, Avoidance Actions, agreements, counterclaims, and cross-claims, of any kind or character whatsoever, whether known or unknown or hereafter discovered, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, asserted or unasserted, direct or indirect, assertable directly

	or derivatively, choate or inchoate, reduced to judgment or otherwise, secured or unsecured, whether arising before, on, or after the Petition Date, in tort, Law, equity, or otherwise pursuant to any theory of civil Law (whether local, state, or federal U.S. Law or non-U.S. Law). Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by Law or in equity; (b) any Claim (whether under local, state, federal U.S. Law or non-U.S. civil Law) based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction Law, violation of local, state, or federal non-U.S. Law or breach of any duty imposed by Law or in equity, including securities Laws, negligence, and gross negligence; (c) the right to object to or otherwise contest Claims or interests; (d) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.
Law	Any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Court).
Claim	Any claim, as defined in section 101(5) of the Bankruptcy Code, against a Debtor.
Confirmation Order	The order of the Bankruptcy Court approving the Plan under Section 1129 of the Bankruptcy Code, which order shall be reasonably acceptable to NICO.
Debt	Any "debt," as defined in section 101(12) of the Bankruptcy Code.
Distributable Proceeds	All (a) Cash, (b) Cash proceeds generated from the use, sale, lease, liquidation, or other disposition of Estate property, including, for the avoidance of doubt, proceeds generated from the Insurance Contracts, and (c) Cash proceeds generated by the use, sale, lease, liquidation, or other disposition of any property belonging to the Wind-Down Debtors, *less* (x) the Professional Fee Amount required to be funded into the Professional Fee Escrow Account on or prior to the Effective Date and (y) the Reserve Funds.
Reserve Funds	On the Effective Date, the Wind-Down Debtors shall (a) with respect to each unpaid Administrative Claim, Priority Tax Claim, and Priority Claim, either pay the Allowed amount of such Claim in full in Cash (collectively, the "**Effective Date Payment**") or reserve Cash sufficient for payment of the Allowed amount of such Claim in full and (b) reserve Cash sufficient for payment of all legal fees and expenses reasonably likely to be incurred by the Wind-Down Debtors through the closing of the Chapter 11 Cases, including all legal fees and expenses necessary to defend to final resolution any appeal of the Confirmation Order, the Motion to Dismiss Denial Order, or any other matter arising in or related to these Chapter 11 Cases, hearing on a Professional Fee Claim, and any adversary proceeding pending as of the Effective Date (the aggregate amount of such reserved Cash pursuant to clauses (a) and (b), the "**Reserve Funds**"). The Wind-Down Debtors will transfer, or cause to be transferred, to the to the Environmental Remediation

	Trust, Tort Claims Trust, and GUC Trust, on a *pro rata* basis, any Reserve Funds remaining following the Wind-Down Debtors' payment in full of all DIP Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Priority Claims as well as all other post-Effective Date legal fees and expenses.
DIP Order	The order approving the first priority secured debtor-in-possession delayed draw term loan facility, entry into related documentation, including the debtor-in-possession credit agreement, and related relief.
DIP Claim	All Claims against any Debtor with respect to any DIP Obligations, as defined in the DIP Order, which shall be superpriority administrative expense claims against each of the Debtors' estate with priority over all other Administrative Claims, secured by perfected first priority liens on all assets of the Debtors.
Environmental Claim	Any Claim or Cause of Action against a Debtor asserted by any Government Environmental Unit, and other civil responsibilities, obligations or liabilities with respect to sites relating to or arising under the Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, or any other environmental Laws, including Claims for restoration, corrective action, or remediation of environmental or natural resource conditions.
Indirect Environmental Claim	A Claim held by a private party for breach of contract, indemnification, contribution, reimbursement, or cost recovery related to environmental monitoring or remediation, including Claims for contribution, personal injury, property damage, or direct costs under any environmental Law.
Tort Claims	Any Claim or Cause of Action against a Debtor whether known or unknown, manifested or unmanifested, for costs or damages, including with respect to any manner of alleged bodily injury, death, sickness, disease, emotional distress, fear of cancer, medical monitoring, or other personal injuries (whether physical, emotional or otherwise), directly or indirectly arising out of or in any way relating to the presence of or exposure to asbestos, talc, asbestiform minerals or any other chemical compound, or asbestos-, talc-, asbestiform- or any other chemical compound containing products caused or allegedly caused by, based on or allegedly based on, arising or allegedly arising from, attributable or allegedly attributable to, or in connection with, directly or indirectly, in whole or in part, the alleged acts, omissions, or conduct of the Debtors or any of the Debtors' predecessors-in-interest, including any such claims directly or indirectly, in whole or in part, arising out of or in any way relating to: (a) any products previously mined, manufactured, engineered, assembled, distributed, sold, used, consumed, installed, maintained, owned, occupied, stored, possessed, processed, designed, marketed, fabricated, constructed, supplied, produced, serviced, specified, selected, repaired, removed, replaced, released, and/or in any other way made available by the Debtors or any of the Debtors' predecessors-in-interest; (b) any materials present at any premises owned, leased, occupied, or operated by the Debtors or the Debtors' predecessors-in-interest; or (c) any talc in any way connected to the Debtors alleged to contain asbestos, asbestiform minerals, asbestos-containing products, or other constituent.

Estate Causes of Action	Any and all actions, Claims, rights, remedies, defenses, counterclaims, suits, and Causes of Action (a) owned or held, or assertable by or on behalf of any Debtor or its Estate (including, without limitation, claims assertable by the TCC or FCR, or by any other creditors, on behalf of any Debtor or its Estate), (b) that constitute property of the Estates under section 541 of the Bankruptcy Code, (c) that are or may be commenced or pursued by a representative of the Debtors or the Estates, including pursuant to sections 323 or 362 of the Bankruptcy Code or chapter 5 of the Bankruptcy Code, (d) to avoid, invalidate or recover any transfer of any kind made by any Debtor, or any obligation of any Debtor, including under chapter 5 of the Bankruptcy Code or other applicable law, (e) that constitute Successor Liability Claims, or (f) otherwise assertable by any Debtor or its Estate under any federal, state, or other applicable law seeking to establish a non-Debtor's liability for existing or future Tort Claims, Environmental Claims, Indirect Environmental Claims, or other Claims against the Debtors; in all cases, however denominated and whether or not asserted, whether known or unknown, in law, at equity or otherwise, whenever and wherever arising under the laws of any jurisdiction.
General Unsecured Claims	Any unsecured Claim against any of the Debtors that is not: (a) paid in full prior to the Plan Effective Date pursuant to an order of the Bankruptcy Court; (b) a DIP Claim; (c) an Administrative Claim; (d) a Tort Claim; (e) an Environmental Claim; or (f) an Indirect Environmental Claim.
Non-Debtor Intercompany Claims	Any Claim (including Claims related to setoff rights) held against a Debtor by NICO or NICO's Related Parties.
TCC	The Official Committee of Talc Claimants appointed in the Chapter 11 Cases [Docket No. 121].
FCR	Honorable Shelley C. Chapman, retired Bankruptcy Judge for the United States Bankruptcy Court for the Southern District of New York, in the capacity as legal representative for future tort claimants in the Chapter 11 Cases [Docket No. 231].
Other Sites	The sites not owned by any Debtor as of the Petition Date and to be identified in the Other Sites exhibit attached, as applicable, to any settlement agreement entered into with respect to Environmental Claims and Indirect Environmental Claims.
Owned Site	1353 Taylor Place, Billings, MT 59101.
Governmental Unit	A governmental unit as defined in section 101(27) of the Bankruptcy Code.
Government Environmental Unit	Federal, state, local, or tribal Governmental Units asserting claims or having regulatory authority or responsibilities with respect to environmental Laws.
Settlement Agreement	The *Settlement Agreement* by and between the Debtors, Brenntag, NICO, and DB US.
Settlement Effective Date	"Settlement Effective Date" shall have the meaning ascribed to "Effective Date" in the Settlement Agreement.