

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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In re DHB INDUSTRIES, INC. CLASS	:	Civil Action No. 2:05-cv-04296-JS
ACTION LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	x	

LEAD PLAINTIFFS’ SUPPLEMENTAL MEMORANDUM OF LAW  
IN FURTHER SUPPORT OF MOTION FOR APPROVAL OF  
SUPPLEMENTAL SETTLEMENT AGREEMENT

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Lead plaintiffs George Baciu and the NECA-IBEW Pension Fund (together, “Lead Plaintiffs”) respectfully submit this supplemental memorandum of law in further support of their Motion for Approval of Supplemental Settlement Agreement (Dkt. No. 414), and to bring before the Court an addendum to the Supplemental Settlement,<sup>1</sup> recently entered into by the Parties, and a revised Notice Regarding Supplemental Settlement.<sup>2</sup> The Addendum will resolve an Objection to the Supplemental Settlement submitted by the Official Committee of Equity Security Holders of Point Blank Solutions, Inc. (the “Equity Committee”) in connection with the Debtors’ motion seeking the Bankruptcy Court’s approval of the settlement in *In re SS Body Armor I, Inc., et al.*, No. 10-11255 (Bankr. D. Del.) (the “Bankruptcy Action”). The Equity Committee is the statutory representative of current shareholders of the Debtor in the Bankruptcy Action. The Addendum represents a very favorable development for the Supplemental Settlement, because now every major constituency in the Bankruptcy Action supports the settlement.

## **I. RELEVANT PROCEDURAL HISTORY**

In tandem with the Supplemental Settlement’s approval process before this Court, the Debtors, who now hold and are responsible for the claims in the Derivative Action, are seeking approval of the settlement by the Bankruptcy Court pursuant to Fed. R. Bankr. P. 9019 (“Rule 9019 Motion”). While the Supplemental Settlement has had the support of each Debtor and the Official Committee of Unsecured Creditors (“Creditors Committee”), the Rule 9019 Motion has drawn objections from D. David Cohen, David Brooks, an individual equity holder (who is not an investor victim), and the Official Committee of Equity Security Holders of Point Blank Solutions, Inc.

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<sup>1</sup> All capitalized terms not defined herein have the same meanings as set forth in Lead Plaintiffs’ opening memorandum of law, the Supplemental Settlement Agreement, or the Addendum to Amended Settlement Agreement, dated on or about June 10, 2015 (the “Addendum”). (See Dkt. Nos. 415, 416-1, and Appendix 1 hereto.)

<sup>2</sup> The revised notice is annexed hereto as Appendix 2.

(“Equity Committee”), a major constituency in the Bankruptcy Action. The thrust of the Equity Committee’s objections has been that the Supplemental Settlement is weighted too much in favor of the investor victims of Brooks’ fraud, to the detriment of the Debtor and the current equity holders (many of whom purchased the Company’s stock after the disclosure of Brooks’ fraud). *See generally* Bankruptcy Action, Dkt. Nos. 2945, 3029. The Equity Committee also recently, for the first time, filed an objection to the Class’s proofs of claim in the Bankruptcy Action, *see* Bankruptcy Action, Dkt. No., which will spawn yet more litigation about approval of the Supplemental Settlement.

Proceedings were held on June 4, 2015 before Judge Sontchi in the Bankruptcy Action on the Debtors’ Rule 9019 Motion. In the days leading up to the hearing, Lead Plaintiffs’ bankruptcy counsel and Plaintiffs’ Counsel, the Debtors, and the Creditors Committee had discussions with counsel for the Equity Committee in an attempt to resolve the Objection the Equity Committee had submitted in connection with the Rule 9019 Motion. Those discussions continued before and during the June 4 hearing on the motion, ultimately resulting in an agreement in principle to resolve the Equity Committee’s Objection being placed on the record before Judge Sontchi. As a result, the proceedings were continued to June 12, 2015, to permit the parties to memorialize the agreement.<sup>3</sup> The Addendum now before this Court is the memorialization of the agreed-to modifications to the Supplemental Settlement.

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<sup>3</sup> A hearing on the Rule 9019 Motion was held before the Bankruptcy Court on June 12, during which testimony was taken and Mr. Cohen was heard. The hearing has been adjourned to July 6, 2015.

## II. THE ADDENDUM

The Addendum modifies the Supplemental Settlement's 50/50 division of the Recoveries/Proceeds<sup>4</sup> realized by the Parties to the settlement.<sup>5</sup> Compare Supplemental Settlement Agreement ¶3(a) with Addendum. Prior to the Addendum, all Recoveries/Proceeds were to be divided 50/50 between the investor victims on the one hand and the Debtors on the other, except that the Investor Victims' Restitution Award was to be paid solely to those victims identified in this Court's Restitution Order (even though it would be factored into the overall 50/50 determination). See Supplemental Settlement Agreement ¶3(a). As modified by the Addendum, the 50/50 Division will apply to the Plaintiffs' Stock Share and the first \$128,400,000 of any and all other Recoveries/Proceeds realized by any of the Parties, individually or collectively. *Id.* ¶3(a) and Addendum. The sum of \$128,400,000, as of the date of the Addendum, reflects the combined amount of the Debtors' Restitution Award, the Investor Victims' Restitution Award, and the Escrowed Funds. (To the extent that the combined amount of the Recoveries/Proceeds ultimately realized by the Parties, individually or collectively, arising out of the Debtors' Restitution Award, the Investor Victims' Restitution Award, and the Escrowed Funds is less than \$128,400,000, the 50/50 Division shall nonetheless continue to apply to the first \$128,400,000 of any and all Recoveries/Proceeds realized by any of the Parties, and to the Plaintiffs' Stock Share.) See Addendum.

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<sup>4</sup> The term "Recoveries/Proceeds" has not changed. It means the recoveries or proceeds realized by any of the Parties arising out of the Shared Recovery Matters, the Escrowed Funds, and the Plaintiffs' Stock Share. Supplemental Settlement Agreement ¶3(c).

<sup>5</sup> The Equity Committee is not a party to the Supplemental Settlement.

As to Recoveries/Proceeds realized by the Parties in *excess* of \$128,400,000 (the “Excess Recoveries”), the Parties will utilize their reasonable best efforts, consistent with their respective fiduciary duties, to effectuate a division (the “63/37 Division”) of the Excess Recoveries such that:

(a) the ultimate value of sixty-three percent (63%) of the Excess Recoveries is realized by the Debtors’ bankruptcy estates, and shall be considered part of the “Debtors’ Share,” as that term is used in the Supplemental Settlement Agreement; and

(b) the ultimate value of thirty-seven percent (37%) of the Excess Recoveries is realized by the Plaintiffs for the benefit of the investor victims identified in the Class Action and the Criminal Action, as set forth in ¶3(f) of the Supplemental Settlement Agreement, and shall be considered part of the “Plaintiffs’ Share,” as that term is used in the Supplemental Settlement Agreement – provided that any portion of the Excess Recoveries realized by the Plaintiffs arising out of the 63/37 Division necessary to satisfy any shortfall in the Escrowed Funds distributable to the investor victims with allowed claims in the Class Action shall be distributed exclusively to those Class Members in accordance with the Prior Settlement and the Plan of Allocation previously approved by the Court, prior to any distribution of the remainder of the Excess Recoveries. *See* Addendum.

The 63/37 Division approximates the Court’s allocation of total restitution as between the Debtors and Class Members in the Restitution Order. This division of future recoveries that have not yet been realized will provide a slight premium to the Debtors and current equity holders (some of whom are also Class Members), but one that is in line with the restitution findings of the Court.

Lead Plaintiffs respectfully submit that the Supplemental Settlement, together with the Addendum, continues to represent an enormous opportunity for the Class, as well as the additional victims of the criminal conduct for which David Brooks stands convicted identified in the

Restitution Order, to resolve myriad litigation matters and claims, ensure that the Class benefits from some or all of the Escrowed Funds, and move forward to maximize and accelerate a distribution to investors.

### **III. THE REVISED NOTICE**

The revised notice concerning the Supplemental Settlement, annexed hereto as Appendix 2, contains all of the changes discussed with the Court at the May 28, 2015 hearing, but also explains the modifications to the settlement in the Addendum. A redline of the revised notice, comparing it to the version submitted to the Court on May 29, 2015, is annexed hereto as Appendix 3. Lead Plaintiffs respectfully request that the Court authorize the mailing of the revised notice, and a proposed order is submitted herewith as Appendix 4.

### **IV. CONCLUSION**

For all the foregoing reasons, Lead Plaintiffs respectfully request that the Court: (1) order the mailing of notice in the form submitted herewith to (a) those members of the Class who submitted valid claims in the Class Action claims administration process, and (b) any additional investor victims identified in the Criminal Action who submitted a valid claim through the claims administration process in the Criminal Action; (2) schedule a hearing, to be held not fewer than 30 days after the completion of mailing of the notice, for the consideration of approval of the Supplemental Settlement Agreement and Addendum; and (3) after the hearing, approve the Supplemental Settlement Agreement.

DATED: June 18, 2015

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SAMUEL H. RUDMAN

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