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Subcommittee on the Constitution and Civil Justice

Hearing on Excessive Litigation's Impact on America's Global Competitiveness

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Chairman Franks, Ranking Member Nadler, and Members of the Subcommittee, my name is Rocky Flick, formerly the CEO of Blitz, USA. I appreciate the invitation to testify today.

Today's hearing explores the costs of the U.S. legal system on our global competitiveness. I can personally attest that these costs are not hypothetical – they are real. They are just not an accountant's numbers on a page indicating decreased GDP or employment figures. The costs of an out-of-control legal system are borne by employers, consumers, and employees in the form of lost jobs, wages, market share, and higher prices for goods and services.

Until last July, Blitz, USA was the largest manufacturer of gas cans in America — a true market leader – and I was its proud CEO. We were in the gas can business for 50 years and sold approximately 15 million of the 20 million red plastic gas cans sold annually. Blitz employed about 120 people on July 31, 2012 – salt of the earth people that you would be proud to have as a friend or neighbor. Blitz was the third largest employer in Miami, OK, and losing 120 jobs was a major blow to the economy of that heartland community.

Many lament the eroding manufacturing base in the U.S. and there are many causes. At least for the gas can industry, the threat to U.S. jobs doesn't come from cheap overseas labor; the biggest threat comes from plaintiffs' lawyers.

When Blitz closed its doors, the entire Miami, OK community suffered and were victims of a legal system gone awry. These jobs were good jobs with decent pay and good health care. When the 120 employees lost their jobs, about 400 people, including the spouses and children of our employees, lost their health care.

One of our employees, Trish Deaton, is a perfect example. She worked for Blitz for 6 years. She met her husband, Nick, at Blitz. He is battling stage 4 colon cancer and the health care provided by Blitz was critical to their family. Chemotherapy for Nick costs \$4,000 per treatment and the health care provided by Blitz defrayed those costs. Trish and Nick were struggling to get by, and having

a job at Blitz and their health care benefits was critical. The Deaton's lost their benefits when Blitz closed its doors and they struggled unnecessarily. The Deaton's are far from being rich, but the trial lawyers who took Blitz down are.

Blitz shuttered its doors because the trial bar got greedy. It is that simple. Consumer fuel containers are a critical product owned by almost every household in America. Gas cans are used hundreds of millions of times a year. Red plastic gas cans are ubiquitous and are designed so that people can store, transport, and dispense gasoline safely. Even though it should go without saying that gasoline is dangerous and its fumes can ignite when gasoline is poured on a fire, a permanent warning is boldly displayed on the side of each can and hang tags are attached to the cans to hammer the point home that gasoline is dangerous near ignition sources.¹ Notwithstanding those warnings, hang tags, and other educational efforts, it is reported that approximately 30 times a year someone is injured because of the manner in which they dispense gasoline – typically lighting a fire or accelerating an existing fire with gasoline. This dangerous behavior is deadly and can lead to horrific disfiguring injuries. I have nothing but sympathy for people injured in this manner, but it is not the fault of the gas can.

Plaintiff's attorneys allege that a different design could prevent the accidents that are caused even when those accidents are the result of someone pouring gasoline on a fire. In fact, defense experts have testified that the design as proposed by the plaintiff bar could sometimes make consumer gas cans less safe or cause other adverse consequences. Furthermore, under no circumstances will it ever be safe to pour gasoline on a fire even with some design change. We also know that people improperly disable the safety and environmental features included with gas cans and engage in other misuse. One need only search "fixing gas cans" on YouTube to find several videos on how to increase gasoline flow by disabling these safety features.

¹ The Portable Fuel Container Manufacturers Association sponsors the National Gasoline Safety Project, www.StopGasFires.org, (see also http://www.pfcma.com/safety_project.php) which is a national safety public awareness campaign promoting safe gasoline handling practices and specifically spreading the message that gasoline and fire never mix.

In 1980, after thorough study and review, the Consumer Product Safety Commission (CPSC) denied a petition requesting it to issue a consumer product safety standard for gasoline cans. The CPSC concluded that, “current information does not indicate that the design or performance of gas cans presents an unreasonable risk of injury” and further stated their belief that “the majority of accidents occur because of the way gasoline and containers are used around ignition sources.”²

About a decade ago, we started to see a couple of law suits here and there. Then, as our insurance provider started to increase settlement payments, we saw a flood of lawsuits. This became lucrative business for the trial bar. In fact, AAJ – the ironically named American Association for Justice – has held seminars and produced materials about how to sue gas can manufacturers. The industry was squarely in their sites. They even have a gas can “litigation group.” Blitz was the trial bar’s target because we were the biggest manufacturer. In many accidents, there was no remnant of a can left after the explosion, but the trial bar alleged it was a Blitz can because of our dominant market share. We tried our best to survive, but couldn’t withstand the trial bar’s onslaught. We even were forced to raise our prices hoping to build enough cash reserves so that we could self-insure for some period of time. All our efforts were insufficient and the rest is history for a once proud American manufacturer. As we said in our June 11, 2012 press release announcing that Blitz would not be able to emerge from Chapter 11 bankruptcy, “Unfortunately, Blitz, its lenders, and insurers could not find a viable solution with personal injury attorneys to address the untenable litigation costs.” Imagine having to explain that to your loyal employees who lost jobs and local vendors that were never paid when Blitz closed its doors.

The trial bar, however, is not finished. They have turned their sites on other companies, including retailers such as Wal-Mart, Home Depot and Lowes. So long as the lawyers can obtain settlements from product liability insurers or convince a jury to compensate a badly injured person even if they misused the gas can, the industry will be under tremendous pressure and stress. More people

² Petition Concerning Gasoline Cans; Denial of Petition, 45 Fed. Reg. 59376 (Sept. 9, 1980).

will lose their livelihoods; the price of gas cans will increase; and the only true beneficiaries will be a handful of plaintiff's firms.

If the trial bar makes it so uncomfortable that all fuel container manufacturers shutter their manufacturing plants, what would America be like without gas cans? Everyone has seen pictures of people filling water jugs, coolers, and other containers with gasoline after a natural disaster which poses incredible danger to the person transporting the gasoline and the people around him.

There is a silver lining in this story for the people of Miami, OK. Another manufacturer of gasoline containers bought the Blitz factory and assets, and will hopefully be opening soon, although I understand it will not be at previous employment levels. I still am very worried about the remaining portable fuel container manufacturing companies and what the trial bar has in store for them. I think we can all agree, as a July 23, 2012, Wall Street Journal editorial concluded, that "stories like this cry out for a bipartisan counter-offensive against these destructive raids that loot law-abiding companies merely because our insane tort laws make them vulnerable."³

I appreciate the opportunity to testify and look forward to your questions.

³ *The Tort Bar Burns On*, The Wall Street Journal, A12, July 23, 2012.