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### Inside Baseball: The Story of the Texas Ranger's Bankruptcy

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# **INSIDE BASEBALL: THE STORY OF THE TEXAS RANGER’S BANKRUPTCY**

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**I. BACKGROUND**

**a. *Meet the Rangers***

When the Washington Senators baseball franchise moved to Arlington, Texas in 1971, the Texas Rangers were born. The Texas Rangers, a professional baseball team that plays in Major League Baseball (“MLB”), are located in the fourth largest metropolitan area and the largest metropolitan market with a single MLB franchise.<sup>1</sup> In 1989, future President of the United States, George W. Bush led an investment group that purchased the Rangers from previous owner, Eddie Chiles, for approximately \$89 million.<sup>2</sup> President Bush invested only about \$500,000 and received a minority stake in the Rangers. However, after the purchase, President Bush became the managing general partner of the Rangers.<sup>3</sup>

Between 1989 and 1994, President Bush was instrumental in securing public funds to build a desperately needed new stadium.<sup>4</sup> These efforts were not without criticism, and were

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<sup>1</sup> Declaration of Kellie L. Fischer In Support of Debtor’s Chapter 11 Petition and Request For First Day Relief, Docket No. 14.

<sup>2</sup> Tom Farrey, A Series of Beneficial Moves, ESPN, November 1 (undated) (Last visited April 23, 2015); Robert Mayes, Who Owns the Texas Rangers?, Grantland, Oct. 28, 2011 (Last visited April 23, 2015).

<sup>3</sup> Tom Farrey, A Series of Beneficial Moves, ESPN, November 1 (undated) (Last visited April 23, 2015).

<sup>4</sup> Tom Farrey, A Series of Beneficial Moves, ESPN, November 1 (undated)(Last visited April 23, 2015).

used against him when he first ran for governor of Texas in 1994.<sup>5</sup> Nonetheless, the construction of the new stadium, officially known as The Ballpark at Arlington, greatly increased fan attendance and the overall value of the Rangers.

During this time, Nolan Ryan broke Sandy Koufax's long-held record for the most no-hitters in MLB history. Mr. Ryan also struck out over 5,000 batters before retiring as a Ranger in 1993, a league record which he still holds. This upward trend in the Rangers franchise was followed by an insurgence of young talent that included names like Ivan Rodriguez, Rafael Palmeiro, and Juan Gonzalez. The team also secured its first playoff appearance in franchise history in 1996.

After successfully running for governor, President Bush resigned from his position as managing general partner, but retained his ownership interest in the team. At that time his ownership interest in the team was approximately 1.8 percent. However, he would later be granted an additional 10 percent.

#### **b. *Hicks Purchases the Rangers***

In 1996, Financial World magazine estimated the value of the franchise to be \$173 million.<sup>6</sup> Two years later, in 1998, Tom Hicks ("Hicks"), a Texas businessman, purchased the team for \$250 million dollars, the second highest price ever paid for a MLB team. The sale netted President Bush \$14.9 million dollars.<sup>7</sup>

Hicks purchased the team through a Texas general partnership called Texas Rangers Baseball Partners ("TRBP" or the "Debtor").<sup>8</sup> TRBP is an indirect, wholly-owned subsidiary of HSG Sports Group LLC ("HSG"), a sports and entertainment holding company controlled by

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<sup>5</sup> Tom Farrey, A Series of Beneficial Moves, ESPN, November 1 (undated)(Last visited April 23, 2015).

<sup>6</sup> Tom Farrey, A Series of Beneficial Moves, ESPN, November 1 (undated) (Last visited April 23, 2015).

<sup>7</sup> Tom Farrey, A Series of Beneficial Moves, ESPN, November 1 (undated) (Last visited April 23, 2015).

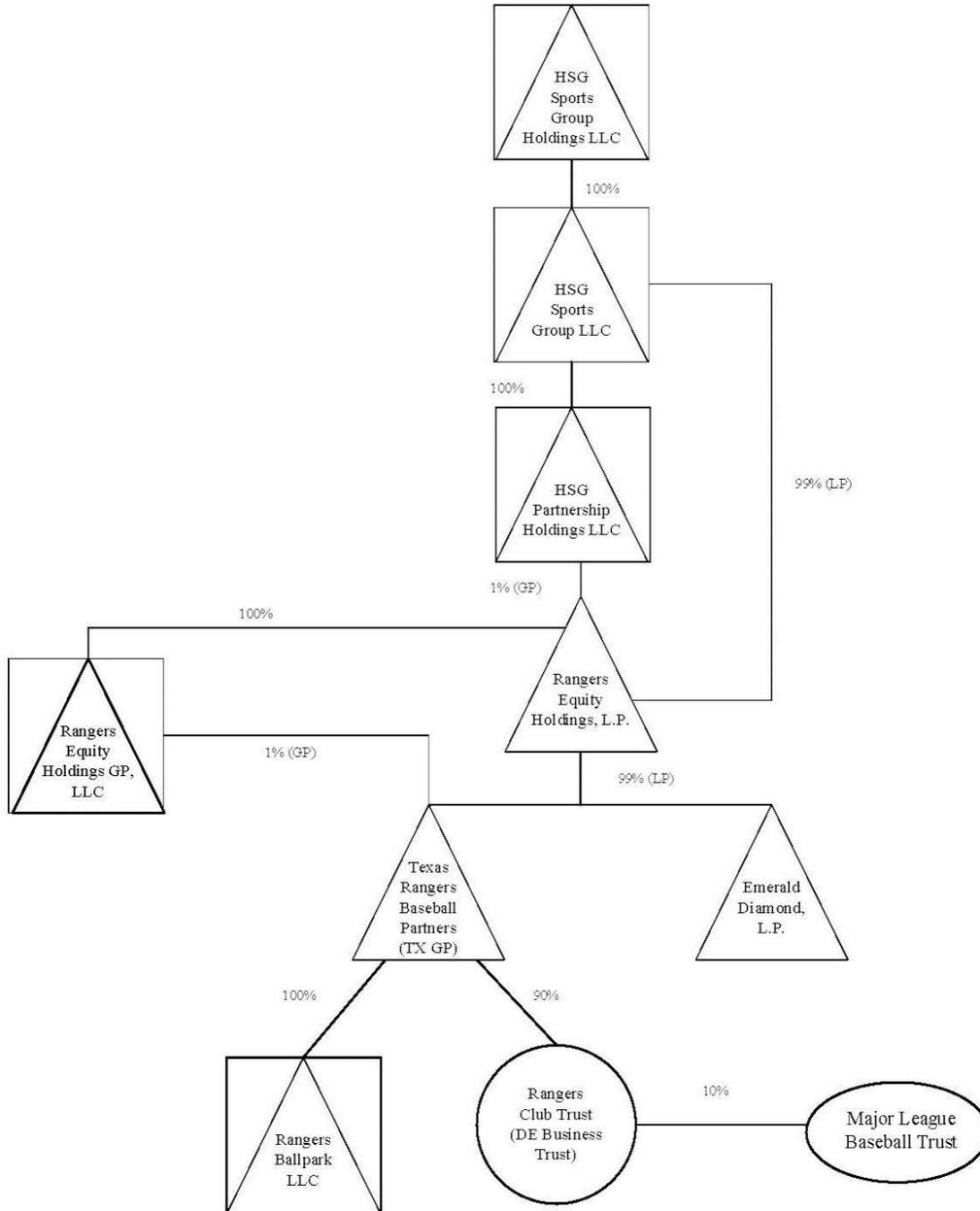
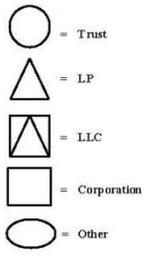
<sup>8</sup> In re Texas Rangers Baseball Partners, 434 B.R. 393, 398 (Bankr. N.D. Tex. 2010); see Jonathan S. Covin & David G. Gamble, *Texas Rangers Play Ball in Bankruptcy Arena Part II: Possible Conflicts Between Sports Leagues' Goals and the Code*, AM. BANKR. INST. J., Oct. 2010, at 18, 18.

Hicks.<sup>9</sup> HSG also indirectly wholly owns Dallas Stars, L.P., which owns and operates the Dallas Stars National Hockey League franchise (the “Dallas Stars”). TRBP itself is composed of Rangers Equity Holdings LP (“Rangers Equity LP”), which holds a 99% partnership interest, and Rangers Equity Holdings GP, LLC (“Rangers Equity GP”) and together with Rangers Equity LP, (“Rangers Equity”), which holds a 1% partnership interest. Both Rangers Equity LP and Rangers Equity GP are holding companies with no operating assets.<sup>10</sup> Below is a chart that represents the relationships between these entities (the “HSG Family”).

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<sup>9</sup> Jonathan S. Covin & David G. Gamble, *Texas Rangers Play Ball in Bankruptcy Arena Part II: Possible Conflicts Between Sports Leagues' Goals and the Code*, AM. BANKR. INST. J., Oct. 2010, at 18, 18.

<sup>10</sup> Jonathan S. Covin & David G. Gamble, *Texas Rangers Play Ball in Bankruptcy Arena Part II: Possible Conflicts Between Sports Leagues' Goals and the Code*, AM. BANKR. INST. J., Oct. 2010, at 18, 18.



The Rangers made the playoffs in each of Hicks' first two years as owner. In 2000, Hicks personally negotiated and signed Alex Rodriguez to a ten-year, \$252 million contract. It was the largest contract in the history of MLB. Unfortunately, the deal was a sports and financial disaster. In each year Rodriguez was on the team, the Rangers finished in last place, and in 2004 Rodriguez was traded to the New York Yankees. The Rangers were forced to agree to pay \$67 million of the remaining \$179 million that Rodriguez was owed, plus an additional \$4 million signing bonus.<sup>11</sup>

Despite strong attendance, the Rangers were never profitable under Hicks.<sup>12</sup> Between 1998 and 2008 Hicks personally covered cash flow shortfalls, and by 2008 he had advanced a total of approximately \$100,000,000.<sup>13</sup> In 2008, Hicks decided he could no longer infuse cash into the Rangers. Shortly thereafter, HSG retained advisors to provide financial advice.<sup>14</sup> TRBP, however, continued to suffer cash flow deficiencies. On March 31, 2009 HSG failed to make a scheduled interest payment under its \$525 million long term credit facility (the "HSG Credit Agreement" or "Credit Agreement"), and on April 7, 2009, the lenders to the HSG Credit Agreement (the "Lenders")<sup>15</sup> accelerated the entire amount of the loan.<sup>16</sup> TRBP was a guarantor under the HSG Credit Agreement with its liability capped at \$75 million.<sup>17</sup>

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<sup>11</sup> Gordon Edes, *Rangers Borrow Money From MLB*, Yahoo Sports, July 2, 2009 (Last visited April 23, 2015).

<sup>12</sup> Jonathan S. Covin & David G. Gamble, *Texas Rangers Play Ball in Bankruptcy Arena Part II: Possible Conflicts Between Sports Leagues' Goals and the Code*, AM. BANKR. INST. J., Oct. 2010, at 18, 18.

<sup>13</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 398 (Bankr. N.D. Tex. 2010).

<sup>14</sup> *Declaration of Kellie L. Fischer In Support of Debtor's Chapter 11 Petition and Request For First Day Relief*, Docket No. 14.

<sup>15</sup> JP Morgan Chase Bank, N.A. is administrative agent of the first lien credit agreement, and GSP Finance LLC is administrative agent of the second lien credit agreement. These agreements together constitute the HSG Credit Agreement. *Declaration of Kellie L. Fischer In Support of Debtor's Chapter 11 Petition and Request For First Day Relief*, Docket No. 14.

<sup>16</sup> *Declaration of Kellie L. Fischer In Support of Debtor's Chapter 11 Petition and Request For First Day Relief*, Docket No. 14.

<sup>17</sup> *Declaration of Kellie L. Fischer In Support of Debtor's Chapter 11 Petition and Request For First Day Relief*, Docket No. 14.

To cover operating shortfalls, TRBP subsequently entered into loan agreements with an affiliate of the Office of the Commissioner of Baseball, Baseball Finance LLC.<sup>18</sup> TRBP was able to borrow in excess of \$25 million dollars under these loan facilities (the “Baseball Finance Note”).<sup>19</sup> The Baseball Finance Note was secured by a lien on substantially all of the Debtor’s assets but it was subordinate to the HSG Credit Agreement.<sup>20</sup> As a condition to the loans, TRBP, as well as HSG, also entered into “Voluntary Support Agreements” with the Commissioner of Baseball.<sup>21</sup> Under these agreements, MLB agreed to provide certain operational support to HSG and TRBP and to monitor the day-to-day operations of the Texas Rangers.<sup>22</sup> In addition, the Voluntary Support Agreements gave MLB the express right to approve a purchaser in the event of a sale of the Rangers.<sup>23</sup>

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<sup>18</sup> *Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>19</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 398 (Bankr. N.D. Tex. 2010).

<sup>20</sup> *Debtor’s Motion Pursuant to Bankruptcy Rules 1007 and 2002(D) for an Order Extending the Time to File Schedule of Assets And Liabilities, Schedule Of Executory Contracts and Unexpired Leases, List of Equity Security Holders, Schedule of Current Income and Expenditures and Statement of Financial Affairs*, Docket No. 15.

<sup>21</sup> *Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>22</sup> *Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>23</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 398 (Bankr. N.D. Tex. 2010). In fact, MLB already had such approval rights under the Major League Constitution, and the Lenders acknowledged the rights in the HSG Credit Agreement. *Id* at 402 n.20.

**c. *Hicks' Sale Efforts***

By the summer of 2009, HSG and TRBP decided to try and sell the Texas Rangers to pay down the debt they owed to the Lenders.<sup>24</sup> After searching for potential bidders, on July 2, 2009 HSG and TRBP distributed sales information memoranda to at least ten parties who had executed confidentiality agreements and received MLB approval.<sup>25</sup> TRBP and HSG received six bids by the August 18 initial deadline, including a bid from a group led by Nolan Ryan, the current team President, and Chuck Greenberg, a Pittsburgh sports attorney and minor league club owner. TRBP and HSG selected three of these bidders to submit final bids.<sup>26</sup> The three finalists, including the Ryan-Greenberg group, were given three months to complete due diligence.

On November 20, 2009, the three finalists submitted final bids. After more negotiations, on December 15, 2009 HSG and TRBP chose Rangers Baseball Express LLC (“Express” or the “Purchaser”), an entity formed by the Ryan-Greenberg group, as the winning bidder. On January 23, 2010, the parties entered into an asset purchase agreement (“APA 1”) for the sale of the Texas Rangers.

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<sup>24</sup> *Declaration of Kellie L. Fischer In Support of Debtor's Chapter 11 Petition and Request For First Day Relief*, Docket No. 14.

<sup>25</sup> *Declaration of Kellie L. Fischer In Support of Debtor's Chapter 11 Petition and Request For First Day Relief*, Docket No. 14. The Major League Constitution, the document governing major league baseball franchises, required team owners to be approved by the Commissioner of Baseball.

<sup>26</sup> *Declaration of Kellie L. Fischer In Support of Debtor's Chapter 11 Petition and Request For First Day Relief*, Docket No. 14.

**d. Lenders Refuse to Consent to Sale**

The closing of the Asset Purchase Agreement, however, was contingent upon obtaining consent from the Lenders. This proved to be a problem. As the Debtor would later state in its first day bankruptcy filings:

Despite HSG's, TRBP's, and the Purchaser's lengthy good faith negotiations with the Lenders since the execution of [APA 1], the Lenders . . . refused to consent to the transactions contemplated by [APA 1] and . . . prevented TRBP from moving forward with the sale of the Texas Rangers.<sup>27</sup>

The Lenders refused to consent to the sale because, in their view, the auction process was flawed. Citing emails from HSG's own legal counsel, Glenn West, the Lenders argued that one of the other final bidders, Jim Crane ("Crane"), offered the highest bid.<sup>28</sup> The Lenders quoted from one of West's emails: "In contrast to the Greenberg Group's proposal, the Crane proposal could be ready to sign in less than a day. Crane is at least \$13 million and perhaps more than \$20 million ahead of Greenberg with a lot more certainty of closing."<sup>29</sup> HSG did not consider the Crane offer, argued the Lenders, because MLB directed HSG to limit its negotiation to the Ryan-Greenberg group.<sup>30</sup> In fact, West had admitted to the Lenders that MLB's "intent seem[ed] to be to lock [HSG] into Greenberg even though Crane [had] a clearly superior economic deal."<sup>31</sup>

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<sup>27</sup> *Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>28</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163

<sup>29</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163. The Lenders also attached Glen West's email as an exhibit to their brief. Exhibit A to Docket No. 163.

<sup>30</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163.

<sup>31</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163.

The Lenders also took issue with the proposed distribution of proceeds under APA 1. The Lenders believed they should receive all of the approximately \$300 million in net sales proceeds.<sup>32</sup> Hicks, however, was seeking \$30 million of the proceeds for himself.

Between January and May, HSG, the Lenders, MLB, and the Ryan-Greenberg group attempted to negotiate terms under which the Lenders would consent to the sale.<sup>33</sup> However, a deal was never reached. Faced with an impasse, in that the Lenders would not consent to the sale to Express and MLB would not agree to seek and consider alternative offers for the Rangers, TRBP decided to file Chapter 11 Bankruptcy.<sup>34</sup>

The day before filing, however, TRBP and Express terminated APA 1 and entered into a second asset purchase agreement (“APA 2”).<sup>35</sup> In addition, TRBP entered into a series of transactions that shifted assets and liabilities amongst the HSG Family (the “Midnight Transfers”). TRBP asserted that these transactions were entered into in order to facilitate the sale. A summary of the Midnight Transfers includes:<sup>36</sup>

- On May 23, 2010, the Land Sale Agreement was modified to provide that TRBP (i) would pay fees and expenses of BRE and its affiliates, including Mr. Hicks, (ii) would release those same people, and (iii) would indemnify them with respect to any claims asserted against them relating to the sale of the BRE Property. (See Fischer Decl. ¶¶ 47, 50.) TRBP was not previously a party to the Land Sale Agreement, and was added only for the purpose of incurring these liabilities and granting releases. Based on these changes, any claim that Mr. Hicks breached his fiduciary duties through self-dealing in respect of the sale of the BRE Property would be indemnified by the Debtor. Moreover, the Debtor’s equity holders would be deprived of the ability to bring claims against Mr.

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<sup>32</sup> *United States Trustee’s Brief in Connection With First Day Matters*, Docket No. 39

<sup>33</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163.

<sup>34</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 399 (Bankr. N.D. Tex. 2010).

<sup>35</sup> *Declaration of Kellie L. Fischer In Support of Debtor’s Chapter 11 Petition and Request For First Day Relief*, Docket No. 14; see *Exhibit C to Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>36</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163. This list of the Midnight Transfers was compiled by the Lenders. However, in compiling this list, the Lenders cited both the Debtor’s CFO’s declaration and the Debtor’s disclosure statement. At times, one can see where the Lenders took literary license with how they described the transactions.

Hicks for self-dealing transactions.

- On May 23, 2010, TRBP and the Greenberg Group terminated the January APA and immediately executed a new agreement (the “May APA”) that provides for materially worse terms for TRBP as compared to the January APA, including (1) a \$10 million termination fee payable to the Greenberg Group if the transaction does not close (both agreements provide for only a \$1.5 million deposit by the Greenberg Group if it cannot close); (2) a reduction in cash payable by the Greenberg Group; (3) a \$30 million escrow for a one-year period (despite the Greenberg Group’s offer to reduce the escrow to \$15 million for nine months in the April 2 proposal), as well as changes to make it easier for the Greenberg Group to claim against the escrow; and (4) substantially increased reimbursement for fees, including those incurred by BRE, which were not previously required.
- As compared to the January APA, the May APA removed from assumed liabilities indemnification obligations to Lynn Nolan Ryan, Jr., Thomas O. Hicks, Lori K. McCutcheon, Thomas O. Hicks, Jr., Joseph B. Armes, Mack H. Hicks. Because these liabilities will not be assumed, they will remain with the Debtor after the sale closes, providing the Greenberg Group with more valuable assets than had ever been offered to other bidders.
- The Greenberg Group executed a side letter with Hicks pursuant to which Hicks would be named “Chairman Emeritus” of the Texas Rangers and would receive season tickets and other benefits. (See *id.* ¶ 52.) These newly-added benefits are in addition to substantial value that Hicks is receiving as part of the Land Sale Agreement.<sup>6</sup>
- On May 23, 2010, TRBP signed a Shared Charter Services Agreement with HSG, whereby TRBP became obligated to pay HSG, at a price substantially above market, for a charter aircraft lease that HSG had entered into with an entity in which Hicks has an interest. TRBP was not previously a party to this contract.
- TRBP, which was not previously obligated to certain financial advisors retained by HSG signed new agreements with those entities to reimburse them for at least \$9 million in transaction costs. (See Disclosure Statement, at 11.) In the absence of the new agreement with TRBP, these financial advisors would have been unsecured creditors of HSG, a non-debtor affiliate of TRBP that has more than \$600 million of secured debt.
- On May 23, 2010, Emerald Diamond, a limited partnership in which TRBP’s general partner owns a 1% partnership interest and TRBP’s limited partner owns a 99% partnership interest, transferred its lease of an office building adjacent to the Ballpark at Arlington and other assets to TRBP in return for a promissory note of approximately \$15 million, without any effort to market these assets. (See *id.* ¶ 19.) Such sale was effectuated without an approval of the Collateral Agent, who was the only entity capable of granting such approval. (See Ex. I (Pledge Agreement) §§ 4.4.1(c)(3), 4.4.2(b).) Emerald Diamond is obligated to the Lenders for the full amount of the claims under the Credit Agreements.
- On May 23, 2010, the lease for the Texas Rangers to play in Arlington Stadium, to which Rangers Ballpark LLC (“Rangers Ballpark”), an entity obligated to the Lenders for the full amount of the claims under the Credit Agreements, was a party, was transferred to

TRBP for no consideration. (See Fischer Decl. ¶ 34(ii).) Such transfer was effectuated without an approval of the Collateral Agent, who was the only entity capable of granting such approval. (See Ex. I §§ 4.4.1(c)(3), 4.4.2(b)). Additionally, the transfer is *void ab initio* under the terms of the deeds of trust. The lease is scheduled to be sold to Rangers Baseball Express LLC (the “Purchaser”) under the May APA, (see Fischer Decl. ¶ 36), but no value is expected to be provided to Rangers Ballpark in return for its rights under the lease.

- Other contractual rights belonging to HSG, against which the Lenders have a full claim, were transferred to TRBP, and are to be sold to the Purchaser under the May APA. No consideration was provided to HSG in return for these contract rights, nor was the Collateral Agent’s approval obtained.

- On May 23, 2010, TRBP executed a Second Amended and Restated VSA and an Interim Services Agreement with MLB that purports to provide a complete indemnification of MLB for all actions it took pre-petition. (See *id.* ¶ 33.) As such, MLB would have the right to complete indemnification for any actions it took when it was in control of the sale process.

On May 24, 2010, TRBP filed its petition in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “Court”).<sup>37</sup> Judge Dennis Michael Lynn presided over the case (“Judge Lynn”).

## II. BANKRUPTCY

### a. *Filing*

The financial viability of a professional sports team is driven by a complex combination of revenues and expenses: (a) ticket sales; (b) broadcast media revenue; (c) venue revenues; (d) license revenues; (e) naming rights revenues; (f) concessions; (g) player costs; (h) venue costs; and (i) operating expenses.<sup>38</sup> Of the nine professional teams that have filed for bankruptcy in the past forty years (with the Pittsburgh Penguins filing twice), six are National Hockey League teams and three are MLB teams. These bankruptcies did not lead to a forfeiture or dissolution of the sports team, but rather resulted in a shift in ownership. The Texas Rangers’ filing was no exception. TRBP filed Chapter 11 Bankruptcy for one reason: in order to consummate its sale

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<sup>37</sup> Voluntary Petition, Docket No. 1

<sup>38</sup> John Dillon, *Major League Baseball Team Bankruptcies: Who Wins? Who Loses?*, 32 LOY. L.A. ENT. L. REV. 297 (2012).

to Express.<sup>39</sup> In fact, TRBP filed its plan of reorganization (the “Prepackaged Plan” or “Plan”), which provided for the sale under APA 2, concurrently with its petition.<sup>40</sup> Such “prepackaged” plans are not uncommon in Chapter 11 cases, and are expressly contemplated by the Bankruptcy Code (the “Code”).<sup>41</sup>

**b. First Day Motions**

Contemporaneously with the filing of the Prepackaged Plan and the Disclosure Statement,<sup>42</sup> TRBP filed a series of “first day motions” seeking orders from the bankruptcy court to minimize any disruption of its business operations and to facilitate its reorganization.<sup>43</sup> As the Rangers were in the heart of their 2010 season, these motions were particularly important. Although §§ 1108 and 1107 of the Code provide that debtors-in-possession have the authority to operate the business, and although § 363(c)(1) provides that they may use, sell or lease property in the ordinary course of business without notice and a hearing, these first-day motions are necessary because a number of things that debtors wish to do at the outset of a case do not fit the definition of “ordinary course of business” and cannot be done without court approval.<sup>44</sup> For example, debtors in bankruptcy are generally prohibited from paying pre-petition claims, because it is only upon the confirmation of a plan or, in Chapter 7, the liquidation of the debtor

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<sup>39</sup> *Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34; see Jonathan Stempel, *Texas Rangers File Bankruptcy*, Reuters, May 24, 2010 (Last visited April 22, 2015) (Where Nolan Ryan was quoted as saying that the filing was “the best way to complete the sale and smoothly transition to new ownership”).

<sup>40</sup> See generally *Prepackaged Plan of Reorganization Of Texas Rangers Baseball Partners Under Chapter 11 of The Bankruptcy Code*, Docket No. 31; *Exhibit C to Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>41</sup> 11 U.S.C. § 1121(a).

<sup>42</sup> No one may solicit acceptance of a plan until the court approves a “disclosure statement” sufficient so a voter can “make an informed judgment about the plan.” See 11 U.S.C. § 1125(a)(1).

<sup>43</sup> *Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>44</sup> MICHAEL A. GERBER & GEORGE W. KUNEY, *BUSINESS REORGANIZATIONS* 107 (3d ed. 2013).

that creditors' pro-rata shares of the estate are determined. However, courts recognize that few businesses will survive if they can't continue to pay some prepetition claims. Thus, pursuant to their authority under Code §§ 363(b) and 105(a), courts will, for cause shown, allow debtors to pay certain pre-petition claims.

TBRP's first day motions included a motion to continue to pay its employees, including their prepetition wages,<sup>45</sup> a motion authorizing continuance of its insurance policies,<sup>46</sup> a motion to continue to use its prepetition bank accounts and cash management system,<sup>47</sup> a motion to pay prepetition taxes and assessments,<sup>48</sup> a motion to pay prepetition claims of critical vendors,<sup>49</sup> and a motion to honor certain prepetition customer programs.<sup>50</sup> All of these first day motions addressed issues that required immediate attention at the beginning of the case if the Debtor was to have any hope of preserving its business. For example, the Debtor's motion to continuing paying employee wages and benefits urged the Court that:

[A]ny delay or failure to pay wages, salaries, expense reimbursements, benefits, severance, and other similar items could irreparably impair the Employees' morale, dedication, confidence, and cooperation and could adversely affect the

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<sup>45</sup> *Debtor's Motion Pursuant to Sections 105(a), 363(b), and 507(a) of the Bankruptcy Code for Authorization (I) to Pay Certain Employee Compensation and Benefits and (II) to Maintain and Continue Such Benefits and Other Employee-Related Programs*, Docket No. 24.

<sup>46</sup> *Debtor's Motion For Interim and Final Orders Pursuant to Sections 105(a), 362(d), 363(b), 363(c), 503(b), and 1107(a) of The Bankruptcy Code For Authorization to (A) Continue Its Worker's Compensation, Liability, Property, And Other Insurance Programs and (B) Pay All Obligations In Respect Thereof*, Docket No. 16.

<sup>47</sup> *Debtor's Motion Pursuant to Sections 105(a), 363(c), and 345(b) of the Bankruptcy Code for (I) Authorization to (A) Continue Using the Existing Cash Management System (B) Maintain Existing Bank Accounts and Business Forms, and (II) an Extension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code*, Docket No. 23.

<sup>48</sup> *Debtor's Motion For Interim And Final Orders Pursuant To Sections 105(a), 363(b), and 541 of The Bankruptcy Code For Authorizing To Pay Prepetition Sales And Use Taxes And Certain Other Governmental Assessments*, Docket No. 21.

<sup>49</sup> *Debtor's Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for Authorization to Pay the Prepetition Claims of Certain Creditors in the Ordinary Course of Business*, Docket No. 26.

<sup>50</sup> *Debtor's Motion Pursuant to Sections 105(a), 363(b), and 503(b)(1) of the Bankruptcy Code for Authorization to Honor Prepetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business*, Docket No. 22.

Debtor's relationship with the Employees at a time when the Employees' support is critical to the success of the Debtor's chapter 11 case.<sup>51</sup>

And the Debtor's motion to honor customer programs emphasized programs that were "integral to the Debtor's efforts to maintain fan loyalty to the team, increase sales of tickets, concessions, and team merchandise, and ultimately deliver the most value to all stakeholders in the Debtor's prepackaged chapter 11 case."<sup>52</sup> These programs included promotional ticket pricing programs such as "Military Monday," and other fan-based programs such as the "Jr. Rangers Club," which offers Rangers gear and ticket vouchers to children.

***c. Weil, Gotshal & Manges LLP Application of Employment***

The Debtor also, as part of its first day motions, sought to employ Weil Gotshall and Manges LLP ("WG&M") as its counsel, pursuant to §§ 327(a)<sup>53</sup> and 328(a)<sup>54</sup> of the Code.<sup>55</sup> In support of its motion, the Debtor stated that WG&M would be paid at its normal hourly rates, and the Debtor cited WG&M's previous experience handling bankruptcy matters. It also cited the prepetition representation the firm had provided the Debtor, including the Debtor's attempted sale efforts and the filing of the petition.

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<sup>51</sup> *Debtor's Motion Pursuant to Sections 105(a), 363(b), and 507(a) of the Bankruptcy Code for Authorization (I) to Pay Certain Employee Compensation and Benefits and (II) to Maintain and Continue Such Benefits and Other Employee-Related Programs*, Docket No. 24.

<sup>52</sup> *Debtor's Motion Pursuant to Sections 105(a), 363(b), and 503(b)(1) of the Bankruptcy Code for Authorization to Honor Prepetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business*, Docket No. 22.

<sup>53</sup> 11 U.S.C. 327(a) of the Code provides that "[e]xcept as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys...that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title."

<sup>54</sup> Under 11 U.S.C. 328(a), after the court grants § 327(a) approval, those approved professional may be paid.

<sup>55</sup> *Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(A) and 2016 for Authorization to Employ and Retain Weil, Gotshal & Manges LLP as Attorneys for the Debtor Nunc Pro Tunc to the Commencement Date*, Docket No. 35.

The motion also declared WG&M's disinterestedness under Code §§ 101(14)<sup>56</sup> and 1107(b). In support of this assertion, WG&M attached a declaration of WG&M's lead counsel for the Debtor. WG&M also stated that, to the extent a conflict may arise, the conflict could be minimized by the retention of Forshey & Prostok LLP as conflicts counsel.<sup>57</sup>

The United States trustee objected to the employment of WG&M, citing that WG&M had previously represented Thomas Hicks and the HSG family of entities.<sup>58</sup> Specifically, the trustee asserted that WG&M "represented HSG Sports Group for a year before bankruptcy, negotiated HSG Sports Group's January sale, and provided legal advice in connection with the event of bankruptcy transfers into the Debtor as well as transactions that arguably worsened the Debtor's economic positions and penalized an unwinding of the sale."

Relying on its authority to monitor employment eligibility,<sup>59</sup> the trustee asserted that WG&M had an "adverse interest" because they "possess[ed] and assert[ed] an economic interest...that tend[ed] to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant."<sup>60</sup> Furthermore, the trustee contended that there was the possibility that WG&M attorneys might need to testify in connection with the Midnight Transfers.<sup>61</sup>

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<sup>56</sup> In pertinent part, a "disinterested person" is a person who "does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor...or for any other reason." 11 U.S.C. § 101(14)(C).

<sup>57</sup> *Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(A) and 2016 for Authorization to Employ and Retain Weil, Gotshal & Manges LLP as Attorneys for the Debtor Nunc Pro Tunc to the Commencement Date*, Docket No. 35.

<sup>58</sup> *United States Trustee's Objection to Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for Authorization to Employ and Retain Weil Gotshal and Manges LLP as Attorneys for the Debtor Nunc Pro Tunc to the Commencement Date*, Docket No. 173.

<sup>59</sup> 28 U.S.C. § 586(a)(3)(I).

<sup>60</sup> *In re West Delta Oil Co., Inc.*, 432 F.3d 347, 356 (5th Cir. 2005). An adverse interest could also exist where a party "possesses a predisposition under circumstances that render such a bias against the estate."

<sup>61</sup> *United States Trustee's Objection to Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for Authorization to Employ and Retain Weil Gotshal and Manges LLP as Attorneys for the Debtor Nunc Pro Tunc to the Commencement Date*, Docket No. 173.

The hearing on this motion was held on June 17, 2010. At the hearing, the trustee's primary concern was the relationship between Hicks and WG&M. Hicks, the trustee argued, was a longtime client of WG&M. Given WG&M's previous and expected future role, argued the trustee, it was impossible for WG&M to know exactly who its client was. In support, the trustee demonstrated that HSG paid most of WG&M's fees. Additionally, the trustee argued that as Hicks was still a client of WG&M, and at some point they owed Hicks a duty of loyalty which would conflict with the Debtor's interests.

Interestingly, though present at the hearing, the Lenders did not object to WG&M's employment for economic reasons. They believed it would be more expensive and less advantageous to bring in completely new counsel. WG&M emphasized that there was no present conflict, and to the extent a conflict arose, the retention of conflicts counsel could mitigate any issues. After hearing argument, the Court took the matter under advisement and provisionally approved WG&M's employment application.<sup>62</sup> Subsequently, the court entered an interim order approving WG&M's employment.<sup>63</sup>

#### **d. DIP Financing**

Perhaps TRBP's most vital first day motion was its motion for authorization to enter into postpetition financing agreements ("DIP Financing") and to use cash collateral.<sup>64</sup> As bankruptcy experts often say, "in Chapter 11, cash is king."<sup>65</sup> Debtors not only need cash to honor pre-petition debts and obligations such as the ones listed above, but, more importantly, they need cash to fund their ongoing operations and to pay the costs of administering their Chapter 11 case. In the words of TRBP's chief financial officer, Kelli Fisher:

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<sup>62</sup> *Transcript of June 17 Hearing*, Docket No. 295.

<sup>63</sup> *Interim Order Pursuant to Section 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) and 2016 Authorizing the Employment of Weil, Gotshal & Manges LLP as Attorneys for the Debtor, Nunc Pro Tunc to the Commencement Date*, Docket No. 356.

<sup>64</sup> *Debtor's Motion For Interim and Final Orders Authorizing Debtor In Possession to (I) Enter Into Postpetition Financing Documents and Obtain Postpetition Financing Pursuant To Sections 363 and 364 of The Bankruptcy Code, (II) Grant Liens, Security Interest and Superpriority Claims, (III) Use Case Collateral Pursuant To Sections 105, 361, 362, 363, and 507 of The Bankruptcy Code, (IV) Provide Adequate Protection To Prepetition Secured Creditors, and (V) Set Final Hearing*, Docket No. 17.

<sup>65</sup> MICHAEL A. GERBER & GEORGE W. KUNEY, *BUSINESS REORGANIZATIONS* 13 (3d ed. 2013).

Without such funds, the Debtor will not be able to meet its payroll obligations, including paying salaries for coaches, players and front, back and box office staff and maintenance and grounds keepers; pay for utilities and other expenses of operating the Ballpark and its training facilities; or pay for advertising and other promotional expenses; or professional and other expenses needed to carry on its business during this sensitive period. I believe the Debtor would not be able to carry on its essential business activities without the requested postpetition finance, the result of which would cause swift and irreparable harm to the Debtor's estate.<sup>66</sup>

The Debtor sought to enter into a credit agreement that allowed it to borrow up to \$11.5 million dollars.<sup>67</sup>

Additionally, the Debtor sought to use the cash that it had on hand, which was encumbered under the HSG Credit Agreement and the Baseball Finance Note and was, then, "cash collateral" as defined in § 363 of the Code. In order to use cash collateral, a debtor must obtain either an agreement from the secured parties or court authorization based upon a finding of adequate protection for the party with a security interest in the cash collateral.<sup>68</sup> Here, TRBP argued that the prepetition lenders were adequately protected by the substantial equity cushion that existed, as the cash proceeds TRBP expected to receive from the prepackaged sale it was proposing (approximately \$300 million) were substantially in excess of the aggregate secured claims (approximately \$93 million).<sup>69</sup>

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<sup>66</sup> Declaration of Kellie L. Fischer In Support of Debtor's Chapter 11 Petition and Request For First Day Relief, Docket No. 14.

<sup>67</sup> Debtor's Motion For Interim and Final Orders Authorizing Debtor In Possession to (I) Enter Into Postpetition Financing Documents and Obtain Postpetition Financing Pursuant To Sections 363 and 364 of The Bankruptcy Code, (II) Grant Liens, Security Interest and Superpriority Claims, (III) Use Case Collateral Pursuant To Sections 105, 361, 362, 363, and 507 of The Bankruptcy Code, (IV) Provide Adequate Protection To Prepetition Secured Creditors, and (V) Set Final Hearing, Docket No. 17.

<sup>68</sup> 11 U.S.C. § 363.

<sup>69</sup> Debtor's Motion For Interim and Final Orders Authorizing Debtor In Possession to (I) Enter Into Postpetition Financing Documents and Obtain Postpetition Financing Pursuant To Sections 363 and 364 of The Bankruptcy Code, (II) Grant Liens, Security Interest and Superpriority Claims, (III) Use Case Collateral Pursuant To Sections 105, 361, 362, 363, and 507 of The Bankruptcy Code, (IV) Provide Adequate Protection To Prepetition Secured Creditors, and (V) Set Final Hearing, Docket No. 17.

Judge Lynn granted the Debtor’s motion for DIP financing as well as the Debtor’s other first day motions,<sup>70</sup> as most of them were fairly routine and noncontroversial.<sup>71</sup> This relief would prove to be effective, as just a few months later the Texas Rangers would be playing in the 2010 Baseball World Series.

**e. *The Prepackaged Plan***

TRBP sought to get the ball rolling towards the confirmation of its Prepackaged Plan by moving to set a date for a confirmation hearing.<sup>72</sup> TRBP’s theory was that, under §1124 of the Code, all classes of claims and interests were unimpaired under its Plan.<sup>73</sup> Thus, under §1129(a), no classes were entitled to vote on the Plan and, instead, under § 1126(f) of the Code,

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<sup>70</sup> *Final Order granting motion To (I) Enter into Post Petition Financing Documents & PostPetition Financing, (II) Grant Liens, Security Interests & SuperPriority Claims, (III) Provide Adequate Protection to PrePetition Secured Creditors & (IV) Use Cash Collateral*, Docket No. 206; *Order granting motion Pursuant to Sections 105(a), 363(b), and 503(b)(1) of the Bankruptcy Code Authorizing the debtor to Honor PrePetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business*, Docket No. 48; *Order granting motion Pursuant to Sections 105(a), 363(c), and 345(b) of the Bankruptcy Code (I) Authorizing Debtor to (A) Continue Using Existing Cash Management System (B) Maintain Existing Bank Accounts, and (II) Granting an Extension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code*, Docket No. 49; *Final Order granting motion For Payment of PrePetition Sales & Use Taxes*, Docket No. 201; *Final Order granting motion to Pay PrePetition Claims of Certain Creditors*, Docket No. 202; *Final Order granting motion To (I) Pay Certain Employee Compensation & Benefits & (II) Maintain & Continue Such Benefits & Other Employee-Related Programs*, Docket No. 203; *Final Order granting motion To (A) Continue Worker's Compensation & Other Insurance Programs & (B) Pay All Obligations in Respect Thereof*, Docket No. 204.

<sup>71</sup> In addition to specific statutory authority authorizing some of the first day rulings, such as §§ 363(b)-(c) and 364, § 105(a) of the Code grants bankruptcy courts the power to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions.” This provides judges a basis for ordering equitable relief that is not otherwise provided for in the Code. Many first-day motions are granted pursuant to § 105(a) of the Code.

<sup>72</sup> *Debtor’s Motion for an Order (I) Scheduling a Hearing to Consider Confirmation of the Prepackaged Plan; (II) Establishing an Objection Deadline to Object to the Prepackaged Plan; (III) Approving the Form and Manner of Notice thereof; (IV) and Granting Related Relief*, Docket No. 28. Section 1128(a) of the Code requires the Court, after notice, to hold a confirmation hearing.

<sup>73</sup> Under § 1124(1) of the Code, a class is deemed unimpaired if the plan “leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest.”

all classes were deemed conclusively to have accepted the Plan.<sup>74</sup> The Debtor offered the following table in its Disclosure Statement summarizing the different classes and their alleged treatment:

Class	Designation	Impairment	Entitled to Vote
Class 1	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
Class 2	First Lien Holder Claims	Unimpaired	No (deemed to accept)
Class 3	Second Lien Holder Claims	Unimpaired	No (deemed to accept)
Class 4	MLB Prepetition Claim	Unimpaired	No (deemed to accept)
Class 5	Secured Tax Claims	Unimpaired	No (deemed to accept)
Class 6	Other Secured Claims	Unimpaired	No (deemed to accept)
Class 7	Assumed General Unsecured Claims	Unimpaired	No (deemed to accept)
Class 8	Non-Assumed General Unsecured Claims	Unimpaired	No (deemed to accept)
Class 9	Emerald Diamond Claim	Unimpaired	No (deemed to accept)
Class 10	Overdraft Protection Agreement Claim	Unimpaired	No (deemed to accept)
Class 11	Intercompany Claims	Unimpaired	No (deemed to accept)
Class 12	TRBP Equity Interests	Unimpaired	No (deemed to accept)

“The primary purpose of the Prepackaged Plan,” read the Debtor’s Disclosure Statement, “is to bridge the impasse between TRBP and the Lenders under the HSG Credit Agreement and to effectuate the Sale of the Texas Rangers franchise and certain related assets to the Purchaser in order to satisfy TRBP’s creditors in full.”<sup>75</sup> The Plan called for the sale of the Debtor under the terms of APA 2. Under APA 2, substantially all of TRBP’s assets, including the Texas Rangers franchise and substantially all contractual rights related to the operation of the Texas Rangers,

<sup>74</sup> *Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>75</sup> *Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

would be sold to Express, the entity formed by the Greenberg-Ryan group, for a purchase price of \$304 million.<sup>76</sup> The Debtor's \$75 million guaranty obligation under the HSG Credit Agreement and its obligations under the Baseball Finance Note would be paid in full from the proceeds of the sale.<sup>77</sup> Substantially all other obligations, including deferred compensation obligations such as the \$25 million owed Alex Rodriguez,<sup>78</sup> all liabilities under the purchased contracts, sponsorship obligations, and ticketholder obligations, would be assumed by Express.<sup>79</sup> "Although accomplished through a chapter 11 plan," stated the Debtor, "the Sale will resemble in all significant respects the sale of any other sports franchise."<sup>80</sup> The Debtor concluded:

TRBP believes that because the Prepackaged Plan satisfies in full all claims against TRBP, is supported by TRBP's equity holders, and will lead to the least disruption to the Texas Rangers' business of playing baseball, the Prepackaged Plan is in the best interests of the Texas Rangers franchise and all parties in interest.<sup>81</sup>

#### **f. Squeeze Play by the Lenders**

Three days after TRBP's filing, in a strategic move, the Lenders commenced involuntary Chapter 11 proceedings against Rangers Equity LP and Rangers Equity GP, TRBP's two partners (the "Parent Chapter 11 Cases").<sup>82</sup> The Lenders did so in order to, in their words, ensure

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<sup>76</sup> *Exhibit C to Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>77</sup> *Declaration of Kelli Fischer In Support of Debtor's Chapter 11 petition and Request for First Day Relief*, Docket No. 14.

<sup>78</sup> *See Voluntary Petition*, Docket No. 1.

<sup>79</sup> *Exhibit C to Disclosure Statement Relating To The Prepackaged Plan of Reorganization For Texas Rangers Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 34.

<sup>80</sup> *Declaration of Kelli Fischer In Support of Debtor's Chapter 11 petition and Request for First Day Relief*, Docket No. 14.

<sup>81</sup> *Debtor's Motion for an Order (I) Scheduling a Hearing to Consider Confirmation of the Prepackaged Plan; (II) Establishing an Objection Deadline to Object to the Prepackaged Plan; (III) Approving the Form and Manner of Notice thereof; (IV) and Granting Related Relief*, Docket No. 28.

<sup>82</sup> *Involuntary Petition, Rangers Equity LP; Involuntary Petition, Rangers Equity GP*. The filing of these involuntary petitions commenced the bankruptcy cases styled *In re Rangers Equity Holdings, L.P.*, Case No. 10-43624-DML-11 (Bankr. N.D. Tex.), May 28, 2010 and *In re Rangers Equity Holdings GP, LLC*, Case No. 10-43625-DML- 11 (Bankr. N.D. Tex.), May 28, 2010 .

that they received maximum value for their claims.<sup>83</sup> Rangers Equity LP and Rangers Equity GP were both parties to the HSG credit agreement, and, furthermore, the Lenders held a lien on the stock of TRBP, the partners' only asset.<sup>84</sup>

Under §303 of the Code, three or more creditors holding claims over \$14,425 may force an entity into bankruptcy. Involuntary petitions, however, are very uncommon. One reason for this is because it is hard for creditors to gain relief from the automatic stay in order to foreclose upon their collateral if they commenced the case in the first place. Here, however, the Lenders' collateral, the stock of TRBP, was already in a Chapter 11 proceeding.

### **III. THE PLAN IS CHALLENGED**

#### **a. *Pre-Confirmation Issues***

On June 2, 2010, in response to the Debtor's motion to set a confirmation hearing, the Court entered an order setting out five issues that needed to be addressed.<sup>85</sup> It set a hearing date of June 15, 2010 and instructed all interested to address: (i) whether the Debtor is under an independent duty to maximize the value of the estate in connection with disposition of the Chapter 11 case, (ii) who was to represent Rangers Equity, (iii) whether under the Prepackaged Plan any class of creditors or equity holders were impaired and entitled to vote on the Plan, (iv) what obligations were owed to whom by Rangers Equity respecting their conduct in the Chapter 11 case, and (v) whether the Debtor's Disclosure Statement was adequate.<sup>86</sup> The Debtor, the

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<sup>83</sup> Jonathan S. Covin & David G. Gamble, *Texas Rangers Play Ball in Bankruptcy Arena Part I: The Early Innings of the Case*, 29-Aug. AM. BANKR. INST. J. 36 (2010).

<sup>84</sup> See *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 398 n. 6 (Bankr. N.D. Tex. 2010).

<sup>85</sup> *Order (I) Setting Hearing to Consider Issues Relating to the Disclosure Statement & Issues Relating to Plan Confirmation; (II) Establishing Deadlines with Respect thereto; (III) Approving the Form & Manner of Notice of the Deadlines & the hearing; and (IV) Granting Related Relief*, Docket No. 119. The court sought to address these issues prior to a plan confirmation hearing in the interests of judicial economy and as authorized by Fed. R. Bankr. P. 7042, incorporating Fed. R. Civ. P. 42. *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 398 n. 2 (Bankr. N.D. Tex. 2010).

<sup>86</sup> *Order (I) Setting Hearing to Consider Issues Relating to the Disclosure Statement & Issues Relating to Plan Confirmation; (II) Establishing Deadlines with Respect thereto; (III) Approving the Form & Manner of Notice of the Deadlines & the hearing; and (IV) Granting Related Relief*, Docket No. 119.

Official Committee of Unsecured Creditors (“The Committee”), the Lenders, Baseball Express, and the Commissioner of Baseball submitted briefs on the issues.

**b. Arguments of the Official Committee of Unsecured Creditors**

The Committee, consisting of class 7, Assumed General Unsecured Claims, and Class 8, Non-Assumed General Unsecured Claims, filed its brief on June 11, 2010.<sup>87</sup> The Committee argued that under § 1124 of the Bankruptcy Code these Classes were impaired under the Plan because their legal, equitable, and contractual rights were altered.<sup>88</sup> In support of its claim, the Committee focused on four issues.

First, the Committee argued under the terms of the Plan, Class 7 and 8 unsecured creditors were impaired because the Plan denied them the ability to receive interest. Specifically, Section III.B of the Plan acknowledged that “the holder of an unimpaired claim will receive...payment in full, in [c]ash with Postpetition interest to the extent appropriate.”<sup>89</sup> Yet, the Debtor’s Plan went on to state that “postpetition interest shall not accrue or be paid on any Claims . . . and no holder of a Claim . . . shall be entitled to interest accruing on or after the [Petition Date].”<sup>90</sup> The Committee’s argument was straightforward: under either contract law or state law these creditors were entitled to interest, and a plan that denied them this right left them impaired.

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<sup>87</sup> *Objection to The Disclosure Statement [Docket No. 34] And Brief Of The Unsecured Creditors Committee Pursuant To Court Order On Disclosure-Statement-Related Issues [Docket No. 119]*, Docket No. 156. On June 3, 2010, the United States Trustee, pursuant to 11 U.S.C. § 1102(a)(1), appointed Essey Alley (Vratsinas Construction Co.), Harold Thompson (RTKL) and Alexander Rodriguez to the Official Unsecured Creditors Committee. *Appointment of the Official Unsecured Creditors’ Committee*, Docket No. 128.

<sup>88</sup> *Objection to The Disclosure Statement [Docket No. 34] And Brief Of The Unsecured Creditors Committee Pursuant To Court Order On Disclosure-Statement-Related Issues [Docket No. 119]*, Docket No. 156. 11 U.S.C. § 1124 provides that claims are impaired unless a “plan—(1) leaves unaltered the legal, equitable, and contractual rights to which such claim...entitles the holder of such claim.” 11 U.S.C. § 1124(1).

<sup>89</sup> *Objection to The Disclosure Statement [Docket No. 34] And Brief Of The Unsecured Creditors Committee Pursuant To Court Order On Disclosure-Statement-Related Issues [Docket No. 119]*, Docket No. 156

<sup>90</sup> *Objection to The Disclosure Statement [Docket No. 34] And Brief Of The Unsecured Creditors Committee Pursuant To Court Order On Disclosure-Statement-Related Issues [Docket No. 119]*, Docket No. 156

Second, the Committee contended that the Plan improperly restricted the right of the creditors to pursue either the Debtor or the Purchaser for future claims in the forum of their choosing. The Committee pointed to Section 12.1 of the Plan, which provided that the “Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, or related to, the Chapter 11 Case and the Prepackaged Plan” and for the purpose of “(c) ensur[ing] that distributions to holders of Allowed Claims . . . are accomplished as provided in the Prepackaged Plan.”<sup>91</sup> Under this provision, the Committee argued, the Bankruptcy Court would have exclusive jurisdiction because these creditors would not have a claim against either the Purchaser or the Debtor that would not fall into that category.

Third, the Plan provided that the Purchaser would assume the Debtor’s entire obligations to Class 7 creditors but in exchange for that assumption, Class 7 creditors would be required to discharge the Debtor for all claims they might have. The Committee argued that changing the party who is responsible for repaying the creditors would change the legal, equitable, and contractual rights of the Class 7 creditors. The Class 7 creditors signed a contract with TRBP and not the Purchaser. By changing the responsible party on that debt, under Code § 1124 Class 7 creditors were impaired.

The last argument of the Committee’s brief pointed to the uncertainty in the Disclosure Statement regarding the treatment of Class 8 unsecured creditors. The Disclosure Statement, argued the Committee, lacked any indication as to the scope of Class 8 creditors, the number of Class 8 creditors, or the amounts they were owed. Furthermore, the Disclosure Statement did not identify the amount that was reserved to be paid to Class 8 creditors, and instead simply stated that “appropriate amounts” would be reserved for Class 8 creditors.

### ***c. Arguments of First Lien Lenders and Second Lien Lenders***

Class 2 and 3 creditors, the First Lien Lenders with JP Morgan Chase as its lien agent, and the Second Lien Lenders with GSP Finance LLC as its lien agent, were the Lenders under the HSG Credit Agreement. They filed a joint brief. Unsolicited by the court, the Lenders devoted significant time attempting to demonstrate that the actions of the Debtor, MLB, and

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<sup>91</sup> *Objection to The Disclosure Statement [Docket No. 34] And Brief Of The Unsecured Creditors Committee Pursuant To Court Order On Disclosure-Statement-Related Issues [Docket No. 119]*, Docket No. 156

other entities controlled by Tom Hicks were involved in a series of coordinated and shady transactions prior to their filing. The Lenders provided specific instances of where they believed these transactions<sup>92</sup> occurred and concluded by stating generally that:

Debtor shifted significant assets, without the corresponding liabilities, from certain affiliates, where the liability to the Lenders is not limited, to TRBP, where the guaranty liability is capped at \$75 million. As a result, the Lenders' recourse to such assets was limited in an amount to \$75 million, *i.e.*, the limit of TRBP's guaranty. The Debtor also shifted to TRBP new liabilities for which it had not been previously liable and which it is not obligated to assume. Among these liabilities were new, contingent and unlimited indemnification obligations to insiders and a \$10 million termination obligation to Purchaser.<sup>93</sup>

With respect to one of the Midnight Transfers, the Lenders, on behalf of their investors, filed an adversary proceeding.<sup>94</sup> The complaint, filed concurrently with the Lenders' brief, alleged that the Debtor and Rangers Ballpark LLC ("Rangers Ballpark"), which was indirectly owned by Hicks, engaged in a fraudulent transfer the day before TRBP filed its petition. Rangers Ballpark's sole asset was a lease agreement with the City of Arlington that governed the rights to use the Ballpark at Arlington. Prior to filing its petition, this lease was transferred to the Debtor in exchange for \$10 plus assumption of all of Rangers Ballpark's obligations under the Credit Agreement.<sup>95</sup> Unlike TRBP, Rangers Ballpark was a full, uncapped guarantor of the obligations under the Credit Agreement. As such, if the sale to Baseball Express went through in its current form, this transaction would result in the Lenders having lost significant collateral.

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<sup>92</sup> For a full list of the Lender's grievances see pages 12 and 13 of *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163.

<sup>93</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163.

<sup>94</sup> *Complaint by Avery Point CLO, Limited, Chatham Light II CLO, Limited, Kingsland I, Ltd., Kingsland II, Ltd., Kingsland III, Ltd., Monarch Master Funding Ltd., Nash Point CLO, Race Point IV CLO, Ltd., Stonehill Offshore Partners Limited against Texas Rangers Baseball Partners, Rangers Ballpark, LLC*, Docket No. 167.

<sup>95</sup> *Complaint by Avery Point CLO, Limited, Chatham Light II CLO, Limited, Kingsland I, Ltd., Kingsland II, Ltd., Kingsland III, Ltd., Monarch Master Funding Ltd., Nash Point CLO, Race Point IV CLO, Ltd., Stonehill Offshore Partners Limited against Texas Rangers Baseball Partners, Rangers Ballpark, LLC*, Docket No. 167.

Moreover, this type of transfer was explicitly forbidden under the Credit Agreement without first obtaining the Lenders' approval.

The Lenders' brief then focused on how they (classes 2 and 3) were impaired under the Plan. The Lenders argued that just because they would be paid in full (*i.e.*, receive payment of their \$75 million guaranty) did not mean their rights, legal, equitable, or contractual, were left unaltered, as required under Code § 1124. Specifically, the Lenders pointed to negative and affirmative covenants that the Debtor had agreed to comply with under the Credit Agreement until total repayment of the credit facility.<sup>96</sup> These covenants required, *inter alia*, that the Debtor not acquire debt, not enter into transactions with its affiliates, and not dispose of assets that were potentially detrimental to the Lenders' rights.<sup>97</sup> "If we were sitting outside of bankruptcy, they could not write us a \$75 million check and tell us to go away. That simply isn't correct under the credit agreement at all," the Lenders argued at the June 15 hearing.<sup>98</sup> Furthermore, the Plan did not acknowledge the Lenders' alleged right to, upon default, speak for and vote on behalf of Rangers Equity. The Lenders were thus left impaired under the Plan, and entitled to vote.

The Lenders also argued that Class 12, Rangers Equity, was impaired under the Plan. The right to approve or not approve a sale of substantially all of the assets was a fundamental right held by the partners, pursuant to their Partnership Agreement, argued the Lenders. "The Plan, however, would strip this fundamental right . . . by the simple expedient of declaring their rights 'unimpaired.'"<sup>99</sup>

The remainder of the Lenders' brief focused on Rangers Equity's fiduciary duties owed to the Lenders as a result of the involuntary Chapter 11 filings, and the Debtor's duty to

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<sup>96</sup> The total outstanding indebtedness under the Credit Agreement was around \$525 million.

<sup>97</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163 ; see *Exhibit J Section 5 and 6 of to Credit Agreements Relating to Affirmative and Negative Covenants*.

<sup>98</sup> *Transcript, June 15 Hearing*, Docket No. 240.

<sup>99</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163.

maximize the sale price of the Rangers, the “crown jewel of the Lender’s collateral.”<sup>100</sup> The Lenders explained that a debtor in possession has a fiduciary duty to maximize the value of its estate for the benefit of its creditors and other stakeholders. As such, argued the Lenders, not only did TRBP owe fiduciary duties to its creditors (the Lenders), but also the Rangers Equity partners, as putative Chapter 11 debtors,<sup>101</sup> owed fiduciary duties to *their* creditors (the Lenders).

**d. *Arguments of the Debtor, Baseball Express and the Office of the Commissioner of Baseball***

The Debtor’s brief addressed few of the Committee’s concerns directly. Devoting less than a full page to the Committee’s brief and without mentioning either Class 7 or Class 8 creditors specifically, the Debtor simply stated that it would “modify the Plan to provide that Unsecured Creditors will receive payment in full, in cash, upon the effective date of the Plan, plus postpetition interest.”<sup>102</sup>

In the rest of its brief, the Debtor repeated its overall theme of the case: “everyone is going to get paid,” the sale to Baseball Express was conducted in a thorough and competitive manner, and TRBP appropriately exercised its business judgment when it approved the sale. TRBP relied on § 1129 of the Code to argue that its Plan was proposed during the exclusivity period under § 1121(b), and that if the Plan satisfied the requirements of § 1129 then the Plan must be confirmed. TRBP’s position was that because the creditors were going to be paid in full, they were unimpaired under § 1124 and thus were deemed conclusively to accept the Plan under 1126(f). In this same vein, as long as the creditors were going to be paid in full, then TRBP had “no independent obligation to ensure that the Plan ‘maximizes value.’”<sup>103</sup>

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<sup>100</sup> *Supplement of GSP Finance LLC, Agent for the Second Lien Lenders to Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, as Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 164.

<sup>101</sup> In an involuntary case an order for relief is not granted until a hearing is held and the court gives judgment granting the creditors’ petition. This is in contrast to a voluntary case, where the filing of the petition itself constitutes an order for relief. *See* 11 U.S.C. §301(a)-(b).

<sup>102</sup> *Debtor’s Memorandum of Law Regarding Legal Issues to be Addressed at June 15, 2010 Hearing*, Docket No. 158.

<sup>103</sup> *Debtor’s Memorandum of Law Regarding Legal Issues To Be Addressed At June 15, 2010*, Docket No. 158.

The Debtor's last argument focused on the Lenders' security interest under the pledge agreement associated with the HSG Credit Agreement (the "Pledge Agreement") in the Debtor's equity, and their related right to, upon default, "exercise or refrain from exercising the voting and other consensual rights." The Debtor pointed to a provision in the HSG Credit agreement that made the Lenders' rights to exercise control over the Debtor and its owners explicitly subject to the Major League Constitution, the document governing major league baseball franchises. The Major League Constitution, in turn, required that any change in control of the Rangers be approved by the Office of the Commissioner of Baseball ("OCB") and at least 75% of the other baseball team owners. Thus, argued the Debtor, the Lenders' equity interests never vested and none of their rights in the would-be collateral were impaired.<sup>104</sup>

Although representing slightly different interests, Baseball Express's brief echoed the Debtor's and OCB's positions regarding the creditors' lack of impairment under the Plan, the lack of a duty to maximize the value of the estate when all creditors were being paid in full, and OCB's and MLB's approval rights with respect to any change of control of TRBP.<sup>105</sup> The Purchaser also spent significant time addressing the sale and characterizing the transaction as being done in a professional, thorough, and competitive matter. They stressed that the Lenders were acting in "apparent zeal to exploit perceived hostage leverage" and that their actions "ha[d] cost all parties in interest a great deal of time and money."

#### **IV. THE COURT'S DECISION**

##### **a. *Pre-Confirmation Hearing***

On June 15, 2010, the Court held the pre-confirmation hearing to consider the five issues it had laid out. Several matters were resolved at the hearing. The Court disposed of one of the five issues, concerning the adequacy of the Disclosure Statement, entirely. Judge Lynn held that subject to some changes, the Disclosure Statement would be considered satisfactory for

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<sup>104</sup> The Office of the Commissioner of Baseball filed a brief statement in which it supported the legal positions of the Debtor and Baseball Express. *Statement of the Office of the Commissioner of Baseball in Support of the Legal Positions of the Debtor and Rangers Baseball Express LLC*, Docket No. 159.

<sup>105</sup> *Brief of Interested Party Rangers Baseball Express, LLC*, Docket No. 161.

transmission.<sup>106</sup> In addition, as a result of certain modifications the Debtor agreed to make, the Committee agreed to stipulate that they were not impaired under the Plan.<sup>107</sup> The modifications included providing the unsecured creditors with post-petition interest at the rate they were entitled to under their pre-existing agreements, and altering the venue of suits provision to provide that wherever a suit was pending at the time of the filing of the bankruptcy, it could remain in that place.<sup>108</sup>

On June 17, 2010 the Debtor amended the Plan and Disclosure Statement to reflect the agreed-upon changes.<sup>109</sup> On June 21, 2010 the Court entered an order approving the Disclosure Statement and setting the confirmation hearing for July 9, 2010.<sup>110</sup> On June 22, 2010 the Court issued a memorandum opinion making formal rulings on the pre-confirmation issues (the “June 22 Opinion” or the “Opinion”).<sup>111</sup> The Opinion was published as *In re Texas Rangers Baseball Partners*.<sup>112</sup>

**b. The Ruling—*In re Texas Rangers Baseball Partners***

In *In re Texas Rangers Baseball Partners*, the Court held that: (1) the Debtor did not have a duty to maximize the value of the estate’s assets where the Plan provided that creditors would be paid in full; (2) the Debtor’s equity holders, Rangers Equity, continued to represent

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<sup>106</sup> *Transcript, June 15 Hearing*, Docket No. 240. The requirements for disclosure statements are laid out in 11 U.S.C. § 1125.

<sup>107</sup> *Transcript, June 15 Hearing*, Docket No. 240.

<sup>108</sup> Interestingly, Judge Lynn stated that the Committee would have lost on their venue objection, and called it a very weak argument. According to the Judge, the venue provision resulted in a “statutory impairment,” and “it’s black letter law that impairments occurring through the statute are not impairments that occur through the plan.” The Judge conceded, however, that if the Debtor wanted to make the changes it was fine with him. *Transcript, June 15 Hearing*, Docket No. 240.

<sup>109</sup> See *infra* Part V.b; see also *Amended Disclosure Statement relating to the Amended Prepackaged Plan of Reorganization*, Docket No. 226; *Blackline Version of Amended Disclosure Statement relating to the Amended Prepackaged Plan of Reorganization*, Docket No. 228.

<sup>110</sup> *Order Approving Disclosure Statement and Setting Hearing on Confirmation of Plan*, Docket No. 254.

<sup>111</sup> *Memorandum Opinion*, Docket No. 257. Published as *In re Texas Rangers Baseball Partners*, 434 B.R. 393 (Bankr. N.D. Tex. 2010).

<sup>112</sup> 434 B.R. 393 (Bankr. N.D. Tex. 2010).

themselves; (3) Rangers Equity, as involuntary Chapter 11 debtors, owed fiduciary duties to their creditors—the Lenders; and (4) the Lenders (Classes 2 and 3) and Rangers Equity (Class 12) were impaired under the Plan.<sup>113</sup>

### 1. The Debtor Had No Obligation to Maximize the Value of the Estate

First, the Court ruled that the Debtor had no duty as a debtor-in-possession to maximize the value obtained for its estate.<sup>114</sup> The Lenders argued that the Debtor had an obligation to seek out the highest possible economic return for its assets—*i.e.* test the purchase offer of Baseball Express in the market place to see if it could be sold for a higher price. The Lender’s relied on a statement in a previous decision by Judge Lynn, *Pilgrim’s Pride*.<sup>115</sup> There, the Judge had stated that it was “unquestionably true that Debtors’ officers and directors have a duty to maximize Debtors’ estates to the benefit of shareholders as well as creditors.”<sup>116</sup> The Court, however, stated that the selected quote was “not only dicta but was offered in a context too remote from that of the case at bar to be relevant.” In contrast to *Pilgrim’s Pride*, held the Court, the Plan in the case at bar provides for full payment of all creditors, and has been consented to by the equity class.<sup>117</sup> Given this, the Court ruled, the Plan is confirmable even if a better offer for the Rangers could be had.<sup>118</sup>

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<sup>113</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393 (Bankr. N.D. Tex. 2010).

<sup>114</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 402 (Bankr. N.D. Tex. 2010).

<sup>115</sup> 407 B.R. 211, 218 (Bankr.N.D.Tex.2009).

<sup>116</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 401 (Bankr. N.D. Tex. 2010) (quoting *In re Pilgrim’s Pride*, 407 B.R. 211, 218 (Bankr.N.D.Tex.2009)).

<sup>117</sup> The Court explained that allowing the equity class to accept less recovery than it might be entitled to was sensible:

A class—particularly one of equity interests—may have motives other than maximizing return. For example, a class of trade creditors or equity owners may elect to give up value to maintain business relationships or continue particular management in control of a debtor. In a case such as that at bar, equity owners may favor one purchaser over another because of an interest in maintaining the debtor’s location.

<sup>118</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 402 (Bankr. N.D. Tex. 2010).

## 2. Rangers Equity Continues to Represent Itself

Judge Lynn's second ruling was that management of Rangers Equity, the partnership that owned TRBP, continued to control Rangers Equity. The Lenders had argued that, pursuant to the Pledge Agreement, after the loan went into default they acquired the right to control Rangers Equity, and thus had the right to approve the sale. The Debtor, in turn, had pointed to a provision in the HSG Credit agreement where the Lenders had agreed that their rights were subject to the Major League Constitution, which did not allow such changes in control without the approval of the Commissioner of Baseball and other team owners.

The Court, however, refused to decide the extent to which the Major League Constitution could abrogate the rights of the Lenders. Instead, the Court made its ruling on other grounds. First, reasoned Judge Lynn, the Lenders acquiesced in the continued control of Rangers Equity by its management for all purposes since their loan went into default. The Lenders had permitted the Debtor to act in connection with the sales process (up to the point of entering an agreement with Baseball Express), and the Lenders did not dispute the authority of Rangers Equity to cause the Debtor's Chapter 11 filing. Furthermore, and perhaps most telling, continued the Judge, the Lenders had commenced *involuntary* Chapter 11 cases against Rangers Equity. Were they entitled to act for Rangers Equity they would have commenced *voluntary* cases instead.<sup>119</sup>

The second basis for Judge Lynn's decision was that any effort on the part of the Lenders to enforce their contractual right to control Rangers Equity would amount to a violation of the automatic stay of Code § 362(a). Although the Lenders informed the Court that they intended to seek relief from the stay in order to exercise their contractual rights, and Judge Lynn agreed that he would consider such a motion upon its filing, the Court stated that it was unlikely such a motion would be granted.<sup>120</sup> Thus, Rangers Equity continued to represent itself.

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<sup>119</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 404 (Bankr. N.D. Tex. 2010).

<sup>120</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 404 fn. 23 (Bankr. N.D. Tex. 2010).

### 3. Rangers Equity Owes Fiduciary Duties to the Lenders

The third ruling by Judge Lynn was that, as a result of the involuntary Parent Chapter 11 cases, Rangers Equity owed fiduciary duties to their creditors—the Lenders—as if they were debtors-in-possession. The duties of bankruptcy trustees are extensive, as laid out in Code § 1106(a). The trustee is the representative of the estate,<sup>121</sup> and owes fiduciary duties to the estate, its creditors, and its shareholders.<sup>122</sup> Furthermore, pursuant to Code § 1107(a), “a debtor in possession shall have all the rights . . . powers . . . and duties of a trustee.” The Lenders thus argued that Rangers Equity, as debtors-in-possession in the Parent Chapter 11 cases, owed fiduciary duties to the Lenders.<sup>123</sup>

The Debtor, however, pointed out that under Code § 303(f), “except to the extent that the court orders otherwise, and until an order for relief in the case” a debtor in an involuntary Chapter 11 case can continue to conduct its business “as if an involuntary case . . . had not been commenced.”<sup>124</sup> Hence, argued the Debtor, until an order for relief was entered, the management of Rangers Equity was merely subject to the business judgment rule.<sup>125</sup>

The Court agreed with the Debtor's statement of the law. However, Judge Lynn chose to invoke his authority to order that § 303(f) did not apply in the involuntary cases of Rangers Equity, and that, even prior to the entry of any orders for relief, Rangers Equity must manage their sole asset—the Debtor— “consistent with the fiduciary responsibilities of debtors-in-possession.”<sup>126</sup> As such, Rangers Equity, the equity class, was not necessarily free to accept a plan that did not maximize value for the Lenders.<sup>127</sup>

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<sup>121</sup> 11 U.S.C. § 323(a).

<sup>122</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163.

<sup>123</sup> The Rangers Equity partners were also parties to the HSG Credit Agreement.

<sup>124</sup> The rationale behind § 303(f) of the Code is that prior to the entry of an order for relief, the subject of an involuntary petition should not be adversely affected by the case. *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 404 (Bankr. N.D. Tex. 2010).

<sup>125</sup> See *supra* text accompanying note 101.

<sup>126</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 405 (Bankr. N.D. Tex. 2010).

#### 4. The Lenders and Rangers Equity are Impaired Under the Plan

Judge Lynn’s final ruling was that both the Lenders (classes 2 and 3) and Rangers Equity (class 12) were impaired under the Plan. This ruling was important because, absent a cramdown, in order for a plan to be confirmed each class of claims or interests that is impaired must vote to accept the Plan.<sup>128</sup>

Under Code §1124(1), “a class of claims or interests is impaired under a plan unless . . . the plan leaves unaltered the legal, equitable, and contractual rights.” Here, the Lenders had “fundamental and bargained-for rights” *vis-a-vis* the Debtor in addition to mere payment of the capped \$75,000,000 guaranty obligation.<sup>129</sup> As part of the HSG family of entities, the Debtor had agreed to comply with specified covenants until repayment in full of the HSG Credit Agreement. Because the Plan did not provide for the Lender’s full, prospective rights under the Credit Agreement after the effective date, the Court held that the Lenders were impaired.<sup>130</sup> The court noted that “in order for the Plan to be confirmed without the acceptance of the Lenders . . . the treatment of the Lenders must be modified to allow them to exercise their rights under their loan documents following the effective date.”<sup>131</sup>

The Court also held that Rangers Equity was impaired under the Plan. The Court agreed with the Lenders that the right to approve or not approve a sale of substantially all of the assets was a fundamental right held by the partners, pursuant to their partnership agreement. Furthermore, the Court held that the prepetition consent to the Plan by Rangers Equity did not amount to acceptance of the Plan, as the requirements under the Code for acceptance were different from the requirements under their partnership agreement. “In any case,” stated Judge Lynn, “even if the court assumed that the prepetition approval of the Plan by [Rangers Equity]

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<sup>127</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 402 n.17 (Bankr. N.D. Tex. 2010).

<sup>128</sup> 11 U.S.C. § 1129(a)(8).

<sup>129</sup> *Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, As Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement*, Docket No. 163.

<sup>130</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 410 (Bankr. N.D. Tex. 2010).

<sup>131</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 410 (Bankr. N.D. Tex. 2010).

satisfied the requirement of their acceptance of it, the post-petition changes to the Plan require, at a minimum, affording [Rangers Equity] the opportunity to change their votes.”

In addition, Judge Lynn pointed out that acceptance of the Plan would be an act outside the ordinary course of business for Rangers Equity.<sup>132</sup> As such, under § 363(b) of the Code, their acceptance would require Court approval.<sup>133</sup> And in choosing whether to accept the Plan, the Judge reminded the equity class, as involuntary debtors-in-possession they should be acting in accordance with their fiduciary duties owed to the Lenders.

## V. THE DEBTOR REGROUPS

### a. *Second Amended Plan*<sup>134</sup>

Although the Court ruled that the Lenders were impaired under the Plan, the Court was explicit that “the impairment of the Lenders [could] be cured without significant changes to the Plan.”<sup>135</sup> As such, two days after the Court’s ruling the Debtor filed its Second Amended Plan which, in accordance with the Opinion, amended the treatment of the Lenders to read “On and after the Effective Date, the holders of Allowed [First/Second] Lien Holder Claims shall retain all existing contractual rights against the Debtor or its affiliates to which they are entitled under the [First/Second] Lien Credit Agreements and related documents.”<sup>136</sup> Other than this, the

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<sup>132</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 411 (Bankr. N.D. Tex. 2010).

<sup>133</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 411 (Bankr. N.D. Tex. 2010).

<sup>134</sup> The Amended Prepackaged Plan was filed prior to the court’s June 22 Opinion. Small changes were made. Specifically, the Debtor amended the treatment of Class 7 and 8 Creditors so that those classes would receive interest. Their concerns regarding the jurisdictional issues were also changed. No significant changes were made with respect to Class 2 and 3 Creditors. *Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 227 ; *Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code (Blacklined Version)*, Docket No. 229.

<sup>135</sup> *In re Texas Rangers Baseball Partners*, 434 B.R. 393, 411 (Bankr. N.D. Tex. 2010).

<sup>136</sup> *Second Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 276; *see also Second Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code (Blacklined Version)*, Docket No. 277.

Second Amended Plan had very few changes. The Debtor offered the following table in its Second Amended Plan:

Class	Designation	Impairment	Entitled to Vote
Class 1	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
Class 2	First Lien Holder Claims	Undetermined <sup>1</sup>	Yes (unless unimpaired then deemed to accept)
Class 3	Second Lien Holder Claims	Undetermined <sup>2</sup>	then deemed to accept)
Class 4	MLB Prepetition Claim	Unimpaired	No (deemed to accept)
Class 5	Secured Tax Claims	Unimpaired	No (deemed to accept)
Class 6	Other Secured Claims	Unimpaired	No (deemed to accept)
Class 7	Assumed General Unsecured Claims	Unimpaired	No (deemed to accept)
Class 8	Non-Assumed General Unsecured Claims	Unimpaired	No (deemed to accept)
Class 9	Emerald Diamond Claim	Unimpaired	No (deemed to accept)
Class 10	Overdraft Protection Agreement Claim	Unimpaired	No (deemed to accept)
Class 11	Intercompany Claims	Unimpaired	No (deemed to accept)
Class 12	TRBP Equity Interests	Undetermined	Yes (unless unimpaired then deemed to accept)

<sup>1</sup> Based upon the Bankruptcy Court’s Memorandum Opinion dated July 22, 2010 (Dkt. No. 257), the Debtor believes that the treatment provided herein with respect to Class 2 First Lien Holder Claims renders such Class unimpaired. The Bankruptcy Court will determine whether Class 2 is unimpaired as part of confirmation of the Prepackaged Plan.

<sup>2</sup> Based upon the Bankruptcy Court’s Memorandum Opinion dated July 22, 2010 (Dkt. No. 257), the Debtor believes that the treatment provided herein with respect to Class 3 Second Lien Holder Claims renders such Class unimpaired. The Bankruptcy Court will determine whether Class 3 is unimpaired as part of confirmation of the Prepackaged Plan.

After the Second Amended Plan was filed with the Court, smaller creditors filed limited objections. For example, the Debtor owed New Era Cap, Inc. (“New Era”) \$106,595.64 and at the same time, through an advertising arrangement with the Debtor, New Era owed the Debtor \$106,090.00. New Era was in a strange position because the Second Amended Plan provided that Express or its subsidiaries would be deemed to have “assumed and assigned...all executory contracts and unexpired leases of the Debtor not excluded.” However, although New Era’s contract with the Debtor was not excluded under the Second Amended Plan, it was also not listed in the Cure Schedule. This was problematic for New Era because the Second Amended Plan provided that “if an executory contract...is not listed on the Cure Schedule, then the Debtor does

not believe that any cure amounts are owed under 365(b)(1)<sup>137</sup> of the Bankruptcy Code.” Furthermore, under Section 6.3 of the Second Amended Plan, a right of setoff was deemed released after the Effective Date.<sup>138</sup> New Era wanted to be sure that its set-off rights were not extinguished by the Plan.<sup>139</sup>

Concussion, LLP (“Concussion”) had a similar objection to the plan. Concussion and the Debtor had an agreement where the Debtor would provide advertising space to Concussion for a fee. This contract was not excluded under the plan and was therefore set to be assumed and assigned to Express. However, Concussion claimed it did not receive adequate assurance of future performance under the terms of the Plan and thus did not satisfy the requirement of section 365 of the Code.<sup>140</sup>

In the background of the TRBP’s bankruptcy activities was the GloryPark Town Center project (“GloryPark”).<sup>141</sup> GloryPark was a land development initiative wherein the HSG Family and other third party entities attempted to develop 75 acres<sup>142</sup> outside of the Ballpark at Arlington. The project commenced in the fall of 2005 but Hicks’s financial troubles were not limited to the Texas Rangers, and in 2008 the project was abandoned. This resulted in numerous

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<sup>137</sup> 11 U.S.C. § 365(b)(1)(A)-(C) provides, in pertinent part, that “if there has been a default in an executory contract or unexpired lease of debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—cures, or provides adequate assurance that the trustee will promptly cure...compensates, or provides adequate assurance that the trustee will promptly compensation, a party other than the debtor to such contract...and provides adequate assurance of future performance under such contract or lease.”

<sup>138</sup> The right to setoff refers to a general principle of law whereby the debts of two persons who are mutually indebted may be set off against each other. Under § 553 of the Code, subject to a few limitations, creditors’ setoff rights are generally unaffected by the Code.

<sup>139</sup> *Limited Objection of New Era Cap, Inc. to (I) Second Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code, and (II) Schedule of Assumed and Assigned Executory Contracts and Unexpired Lease*, Docket No. 307.

<sup>140</sup> *Limited Objection of Concussion, LLP to (I) Second Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code, and (II) Schedule of Assumed and Assumed and Assigned Executory Contracts and Unexpired Leases*, Docket No. 308.

<sup>141</sup> *Suit: Rangers, Hicks Didn’t Pay \$6.9 Million*, ESPN Feb. 1, 2010 (Last visited April 23, 2015); *Tom Hicks Settles Two Lawsuits*, ESPN, Sept. 26, 2012 (Last visited April 23, 2015). These articles provide some background information about GloryPark, as well as information regarding the ultimate resolution of that matter.

claims being filed against the HSG Family beginning in January 2010.<sup>143</sup> In connection to TRBP's bankruptcy, SEG of Ohio, Inc. ("SEG"), one of HSG's co-defendants in the lawsuits, filed an objection to the Second Amended Plan.<sup>144</sup> More than anything else, this objection was a "precautionary objection on the grounds that purchaser of [property that was held by Ballpark Real Estate] at any auction would not take free and clear of any liens, claims and encumbrances against the non-Debtor property...."<sup>145</sup>

#### **b. Amended Disclosure Statement**

As mentioned above, two days after the pre-confirmation hearing the Debtor filed the Amended Disclosure Statement, taking into account the Court's suggested revisions.<sup>146</sup> This Amended Disclosure Statement was approved by the Court on June 21, 2010, the day before the Court issued the June 22 Opinion.<sup>147</sup> In addition to changing the status of the Class 2 and 3 creditors and the Class 12 equity class from "impaired" to "undetermined," the Debtor also went to much greater trouble to explain the Midnight Transfers.<sup>148</sup>

Prior to the June 15th hearing, the Lenders had painted a picture of the Debtor, Tom Hicks through his indirect ownership of the HSG Family, and Express conspiring against them

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<sup>143</sup> *RTKL Associates, Inc. and Vratsinas Construction Company versus Texas Rangers Partners, HSG Partnership Holdings LLC, Hicks Holdings LLC, Hicks Glorpark, LLC, SEG of Ohio, Inc. d/b/a Steiner + Associates, Inc., Ball Park Real Estate, LP, SSR GP Interest, LP, SWS Realty, LLC, Arlington Interests, LP, Arlington Devco, LLC, Southwest Sports Realty Partners, LP.* Note that the plaintiffs in this suit were appointed the Unsecured Creditors Committee.

<sup>144</sup> *Objection of SEG Ohio, Inc. to Confirmation of Debtor's Second Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 313.

<sup>145</sup> *Objection of SEG Ohio, Inc. to Confirmation of Debtor's Second Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 313.

<sup>146</sup> *Amended Disclosure Statement relating to the Amended Prepackaged Plan of Reorganization*, Docket No. 226; *Blackline Version of Amended Disclosure Statement relating to the Amended Prepackaged Plan of Reorganization*, Docket No. 228.

<sup>147</sup> *Order Approving Disclosure Statement and Setting Hearing on Confirmation of Plan*, Docket No. 254.

<sup>148</sup> The Midnight Transfers were mentioned in the Debtor's original disclosure statement but the Debtor presented them in a more casual manner.

when they executed the Midnight Transfers. Although the Court did not seem too interested in these transactions, the Lenders appeared to successfully have concerned the Debtor enough to cause the Debtor to explain them in more detail in its Amended Disclosure Statement.

In defense of the transactions, such as the Rangers Ballpark lease transfer, TRBP explained that they were intended to more accurately “reflect the operations of the Texas Rangers,” and that “[h]istorically, TRBP ha[d] operated the Ballpark and paid all expenses and other liabilities in connection with the Ballpark lease.”<sup>149</sup> The Debtor also described the transaction as being commensurate with HSG’s custom of taking advantage of operational synergies that existed between the related companies.

***c. Rangers Equity Appoints a Chief Restructuring Officer***

Following the June 22 Opinion, Rangers Equity were now obligated to act in a fiduciary capacity when deciding whether to accept or reject the Plan, considering the interests of their creditors, the Lenders. Furthermore, as such a decision would be outside the ordinary course of business, the court would have to approve their vote.<sup>150</sup> As a result, Rangers Equity sought to have an independent party represent them. This, they asserted, would avoid disputes over alleged conflicts of interest, avoid the need for a trustee to be appointed, and was necessary in light of the short amount of time until the Court was to address the confirmation of the Plan.<sup>151</sup> On June 27, 2010 Rangers Equity filed a motion to employ William Snyder of CRG Partners Group LLC to act as a chief restructuring officer (the “CRO”). As defined in his engagement letter, the CRO’s duties were to “provide an independent analysis of the proposed sale of the Rangers,” and to provide his “independent business judgment and determine whether the Rangers Equity Owners should continue to support or should instead oppose the Plan, and to vote on the Plan on behalf of the Rangers Equity Owners.”

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<sup>149</sup> *Amended Disclosure Statement relating to the Amended Prepackaged Plan of Reorganization*, Docket No. 226; *Blackline Version of Amended Disclosure Statement relating to the Amended Prepackaged Plan of Reorganization*, Docket No. 228.

<sup>150</sup> 11 U.S.C. § 363(b).

<sup>151</sup> *Emergency Application Pursuant To 11 U.S.C. §§ 105(a) and 363(b) for Authorization To (a) Employ CRG Partners Group LLC to Provide a Chief Restructuring Officer and Additional Personnel And (b) Designate William Snyder as the Chief Restructuring Officer for Initial Limited Purpose*, Docket No. 30.

## VI. THE AUCTION PROCESS<sup>152</sup>

### a. *Negotiations*

Subsequent to the appointment of the CRO in the Parent Chapter 11 Cases, it became apparent that the CRO would be more likely to support and vote to approve the Plan if there were an auction process.<sup>153</sup> With the consent of the Debtor, the CRO and Baseball Express entered into discussions that resulted in an agreement regarding an auction process.

### b. *First Motion to Establish Bidding Procedures*

On July 5, 2010, the Debtor, pursuant to sections 105(a) and 363 of the Code, submitted to the Court the proposed bidding procedures.<sup>154</sup> Prior to this submission, the Debtor received

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<sup>152</sup> Prior to the negotiations and subsequent disputes relating to the auction procedures, the Commissioner of Baseball, the Lenders, and the Debtor engaged in a discovery dispute. The Lenders filed a motion to compel those parties to respond to previous discovery motions. The Lenders were seeking information and communications related to the 2009 Auction. *Texas Rangers Baseball Partners' Response to the Ad Hoc Group's Motion to Compel Production of Documents in Response to the Ad Hoc Group's First Requests for Production and the Motion for Expedited Hearing Related Thereto*, Docket No. 284. The Commissioner objected on the grounds of the common interest privilege, and argued that it did not need to respond. And, further, to the extent it had to respond, the Lenders should also be required to provide them with discovery. *The Office of the Commissioner of Baseball's Response in Opposition to the Ad Hoc Group's Motion to Compel Discovery and Cross-Motion to Compel*, Docket No. 281. The Debtor argued that they had already produced over 80,000 documents, and that such a request related to the pre-petition communications and negotiations would “chill the pre-petition solicitation process inherent in every prepackaged plan.” *Texas Rangers Baseball Partners' Response to the Ad Hoc Group's Motion to Compel Production of Documents in Response to the Ad Hoc Group's First Requests for Production and the Motion for Expedited Hearing Related Thereto*, Docket No. 284. After ruling that the common interest privilege did not apply as between the OCB and the Debtor, the court proceeded to “split the baby,” and ordered the Lenders and the Commissioner to respond to one another’s “Narrowed Topics” list. *Order granting motion to (I) Compel Texas Rangers Baseball Partners' & the Office of the Commissioner of Baseball's Response to Ad Hoc Group's 1st Requests For Production & (II) Compelling the Ad Hoc Group's Response to the Office of the Commissioner of Baseball's and to the Texas Rangers Baseball Partner's Requests For Production*, Docket No. 320.

<sup>153</sup> *Memorandum of Law In Support Of Confirmation of the Third Amended Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 481.

<sup>154</sup> *Debtor's Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball Partners' Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Break-up Fee and (iv) the Setting of Related Auction and Hearing Dates*, Docket No. 310.

Express's approval to use APA II as the "Stalking Horse Bid."<sup>155</sup> In exchange for these concessions, Express agreed to a \$ 15 million break-up fee. A stalking horse bid is where a potential buyer and a debtor-in-possession negotiate a purchase agreement that serves as a model and allows other potential buyers to submit competing bids. Using a stalking horse bid is beneficial in Chapter 11 auctions because it guarantees at least one bid and it increases the ability of other bidders to bid. A break-up fee is generally awarded to the stalking horse bidder if a competing bid wins the auction in order to compensate the stalking horse for the time and expense associated with its due diligence.<sup>156</sup>

One of the key provisions of the bidding procedures required that a bid be submitted by a "Qualified Bidder," a bidder that had been granted MLB approval.<sup>157</sup> Additional provisions included that the conditions to close in APA 2 need to be substantially similar in a new agreement, that any new purchase must exceed the purchase price in APA 2 by \$ 20 million dollars, and that a bidder's offer was irrevocable until August 12, 2010 or until the consummation of a transaction involving another bidder. There were other financial commitments as well. For example, Qualified Bidders would also have to make a "Good Faith Deposit" of \$1.5 million prior to the auction and the financial wherewithal of any bidder would have to be approved by the Debtor's financial consultants.<sup>158</sup>

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<sup>155</sup> According to Express, any auction would require its waiver of the exclusivity provisions contained in APA 2.

<sup>156</sup> MICHAEL A. GERBER & GEORGE W. KUNEY, BUSINESS REORGANIZATIONS 405 (3d ed. 2013).

<sup>157</sup> Not only did every bidder have to be approved by MLB, every equity holder or investor in a qualified bidder had to be approved. *Debtor's Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball Partners' Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Break-up Fee and (iv) the Setting of Related Auction and Hearing Dates*, Docket No. 310.

<sup>158</sup> *Debtor's Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball Partners' Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Break-up Fee and (iv) the Setting of Related Auction and Hearing Dates*, Docket No. 310.

**c. *Withdrawal of First Motion to Establish Bidding Procedures***

According to Express, the bidding procedures were established after negotiations between the CRO, the Debtor, and Express. On July 8<sup>th</sup>, however, the night before the hearing regarding the bidding procedures, the CRO withdrew his consent to the procedures.<sup>159</sup> The CRO told the Court that his decision was “[b]ased on changes in facts and circumstances since the filing of the Motion,” and that he no longer believed the procedures to be in the best interest of Rangers Equity Owners. Subsequently, the Debtor withdrew the motion to establish the bidding procedures.<sup>160</sup>

In response to the CRO’s withdrawal, on July 12, 2010 Express filed an adversary proceeding<sup>161</sup> and requested that the court grant a temporary restraining order (“TRO”) that would prevent the Debtor from violating the terms of APA 2.<sup>162</sup> According to Express, in the time between the filing of the proposed bidding procedures and the withdrawal of the CRO’s support, the CRO engaged in a “personal media campaign” where he was “advertising his perceived role” in the bankruptcy case.<sup>163</sup> Specifically, in a phone interview with Bloomberg, the CRO stated that “Everything’s up in the air” and that the team may scrap the sale with

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<sup>159</sup> *CRO’s Notice of Withdrawal of Consent Filed by Creditor Rangers Equity Holdings GP, LLC*, Docket No. 325.

<sup>160</sup> *Debtor’s Notice of Withdrawal of Debtors Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball Partners Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Break-Up Fee and (iv) the Setting of Related Auction and Hearing Dates*, Docket No. 326.

<sup>161</sup> Express’s adversarial proceeding against the Debtor was filed in the United States Bankruptcy Court for the Northern District of Texas Forth worth Division. It was filed on July 12, 2010 and its case number is 10-04121. The complaint was filed in the core proceeding as *Verified Complaint of Rangers Baseball Express, LLC*, Docket No. 347.

<sup>162</sup> *Emergency Motion of Rangers Baseball Express LLC For a Preliminary Injunction and Temporary Restraining Order (I) Prohibiting Debtor From Continuing to Breach the Asset Purchase Agreement and (II) Directing Debtor To Comply With Its Obligations Under the Asset Purchase Agreement*, Docket No. 3.

<sup>163</sup> Express cited multiple interviews that Mr. Snyder conducted with various news outlets. *Verified Complaint of Rangers Baseball Express, LLC*, Docket No. 347.

Express.<sup>164</sup> Express alleged that the CRO had been soliciting other potential bidders and negotiating with them. According to Express, these actions exceeded the terms of his role as CRO and caused the Debtor to violate the exclusivities provisions contained in its APA 2.<sup>165</sup> The CRO defended his decision by stating that he was “going to go forward to find something that will maximize the value” of the team.<sup>166</sup>

**d. *Second Motion to Establish Bidding Procedures***

On July 13, 2010, one day after Express filed its adversary complaint, the Debtor filed its second motion to establish the bidding procedures. The second motion was the result of negotiations whereby the APA 2 was amended to increase the value of the stalking horse bid. The three major amendments were: (1) Express increased its overall cash bid by \$2.7 million;<sup>167</sup> (2) Express reduced the amount that was to be held in escrow after the transfer of the Debtor’s assets from \$30 million to between \$10 million and \$12 million; and (3) Express agreed to modify the exclusivity provisions of APA II to allow for the bidding procedures to take effect. In exchange, the Debtor agreed to reinstate bidding procedures similar to those in the first motion to establish bidding procedures.<sup>168</sup> The Debtor requested that the auction take place on July 22, 2010 rather than originally request date of July 16, 2010.

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<sup>164</sup> David McLaughlin, *Texas Rangers May Negotiate Sale Agreement with New Bidder, Official Says*, Bloomberg News (Last visited April 21, 2015).

<sup>165</sup> *Verified Complaint of Rangers Baseball Express, LLC*, Docket No. 347. It was section 7.16 of APA II that provided “Seller shall not, and shall cause their affiliates not to: (A) solicit or initiate or knowingly encourage any inquiries, proposals or offers....from any Persons other than Purchasers....(B) participate in any discussions, conversations, negotiations or other communications with any person other than Purchasers and their Affiliates.” See also *Emergency Motion of Rangers Baseball Express LLC For a Preliminary Injunction and Temporary Restraining Order (I) Prohibiting Debtor From Continuing to Breach the Asset Purchase Agreement and (II) Directing Debtor To Comply With Its Obligations Under the Asset Purchase Agreement*, Docket No. 3.

<sup>166</sup> David McLaughlin, *Texas Rangers May Negotiate Sale Agreement with New Bidder, Official Says*, Bloomberg News (Last visited April 21, 2015).

<sup>167</sup> This increased the overall cash price to \$ 306.7 million.

<sup>168</sup> *Verified Complaint of Rangers Baseball Express, LLC*, Docket No. 347.

**e. July 13 Hearing Regarding Bidding Procedures and Express's TRO**

On July 13 the Court held a hearing on the TRO motion and the second motion to establish bidding procedures. Prior to hearing argument from the parties, the court impressed upon the parties that it took Express's August 12 financing deadline seriously. Judge Lynn stated, "we're going to have this case done by [August 12], regardless of anyone's wishes, and that includes the Lenders, too. It's going to be done one way or another."<sup>169</sup> With this date in mind, the court informed the parties that it sought to hold the auction on August 4, 2010.

The Lenders' adamantly objected to the bidding procedures, as they believed the contemplated timeframe of August 4 was too short.<sup>170</sup> The Lenders argued that potential bidders simply weren't in a position to get financing by that time. In support of their claim, the Lenders referenced the timeframe in which Express obtained its financing. They demonstrated that from the date of executing APA I, it took Express about two months to secure financing from its syndicate of lenders. The Lenders believed that an auction date sometime in September would be optimal.

The Lenders also brought up the Midnight Transfers, arguing that the August 4 deadline and Midnight Transfers combined would not allow "for anyone meaningfully to come in and bid on this" and resulted in the entire auction process to be flawed. The Lenders informed the court that they had conversations with several potential bidders who told them these events prevented them from bidding by August 4, 2010.

Finally, the Lenders urged that the proposed roles of MLB and Commissioner Bud Selig (the "Commissioner") would "chill bidding." In support of this claim, the Lenders referenced

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<sup>169</sup> Additionally, Judge Lynn stated "let me make something—I think I made this clear last Friday. I take seriously the August 12th date." *Transcript From the July 13, 2010 Hearing*, Docket No. 21.

<sup>170</sup> The Lender also argued that the break-up fee was not reasonable and not necessary because of the all the other "advantages" Express enjoyed over the other potential bidders. According to the Lenders, these other advantages included the support of MLB, the fact that Express has already obtained financing, that other potential bidders would have trouble obtaining financing, and that Express had detailed knowledge of the even of bankruptcy transfers. The Lenders argued this point more cohesively in the *Emergency Motions to Reconsider* and will be discussed more fully there. However, these arguments are still deviations from the Lenders' ultimate point that the time was too short. The Lenders also challenged the court's interpretation of the August 12 deadline and asked that proof be shown that August 12 was a firm deadline.

comments made by Commissioner Bud Selig in support of the Greenberg-Ryan Group.

Specifically, the Lenders read to the court the following comments by Commissioner Bud Selig:

The Greenberg-Ryan Group, I think, has lived up to everything they said they would, but we have to deal with the law and the bankruptcy laws. Hopefully, we can get this resolved as soon as possible. I would have like to have the Greenberg-Ryan Group approved a while ago, but as we move forward, hopefully we can solve this problem.

In the same interview, the Commissioner made it clear that “Baseball has always had the right to select its ownership. There's a long history of that that predates even my entry into baseball in 1970. There's no doubt in my mind that we have the right to select ownership, and we will do that.”<sup>171</sup> This outspoken support was not atypical for the Commissioner.

Before the bankruptcy petition was even filed, the New York Times reported that the Commissioner threatened to use the “best interests of baseball”<sup>172</sup> clause to take control of the Rangers team if the Lenders did not approve the sale to the Greenberg-Ryan Group.<sup>173</sup> And whether he had the ability or not, the Commissioner informed the Lenders that he could void their liens.<sup>174</sup> Although he did not invoke the clause, the Commissioner stated that the bankruptcy filing “serve[d] the best interests of the team, its fan, MLB and all other parties involved” and that it would help “assure[] an orderly process to expeditiously transfer Rangers

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<sup>171</sup> During the hearing, the Lenders did not provided a source but the comments can be found here. Ada J. Morris, Bud Selig Speaks on the Bankruptcy, Lone Star Baseball, July 6, 2010 (Last visited April 22, 2015). Although not quoted by the Lender at the hearing, the Commissioner, in the same interview, stated that “I’ve talked to Nolan Ryan this morning already...Hopefully we can get this resolved as quickly as possibly [sic]. We’ve told everybody that. I would have liked to have the Ryan-Greenberg group approved a while ago.”

<sup>172</sup> The “best interest of baseball” clause is the MLB equivalent of the al writs provision of 11 U.S.C. § 105 in the Bankruptcy Code. It allows to the Commissioner to take actions that are specifically proscribed to him but that he feels are in the “best interests” of the MLB. A previous use of the “best interest of baseball” clause was when Pete Rose received a lifetime ban from MLB.

<sup>173</sup> Richard Sandomir, Selig Widens ‘Best Interests’ View in Rangers Bid, New York Times, May, 14, 2010 (Last visited April 22, 2015).

<sup>174</sup> Richard Sandomir, Selig Widens ‘Best Interests’ View in Rangers Bid, New York Times, May, 14, 2010 (Last visited April 22, 2015).

ownership to the Greenberg-Ryan Group....”<sup>175</sup> Ken Bilas and Richard Sandomire, of the New York Times, quoted Rob Tillas, a consultant for MLB teams and owners, who said that “You’d think they’d approve any qualified buyer, but there’s definitely some inside game going on...it’s become personal and there a lot of barbs back and forth and there’s a lot of emotion riding on this.”<sup>176</sup> Additionally, there was an email from Glenn West, one of Hicks’s lawyers, who said that MLB seemed intent to “lock us into Greenberg, even though [Tom] Crane has a clearly superior economic deal.”<sup>177</sup> These comments aside, MLB’s and the Commissioner’s support of Express is apparent from its ubiquitous and no doubt expensive involvement in these proceedings.

This support, in and of itself, does not create an issue. However, the bidding procedures afforded MLB and the Commissioner approval rights during and after the auction. Specifically, only a person “who has obtained MLB Sales Clearance will considered a ‘Qualified Bidder’ eligible to submit a Qualified Bid...and participate in the [a]uction.”<sup>178</sup> In order to become a Qualified Bidder required the Commissioner’s approval. This was still not the last round of approval a potential bidder would have to go through. If a Qualified Bidder should ultimately become the “Successful Bid” at the auction, then the Qualified Bidder was required to “seek approval of Major League Baseball in accordance with the Major League Baseball Constitution, the MLB Guidelines, and other relevant rules and regulations of MLB.” Moreover, in the event the Qualified Bidder is not granted such approval, then the “Backup Bid”<sup>179</sup> shall be submitted to

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<sup>175</sup> Evan Grant, *Texas Rangers Declare Bankruptcy to Speed Up Sale*, Dallas Morning News, May 24, 2010 (Last visited April 22, 2015).

<sup>176</sup> Ken Belson and Richard Sandomire, *Staring Down Lenders, Selig Complicates Rangers’ Sale*, New York Times, July 18, 2010 (Last visited April 22, 2015).

<sup>177</sup> Ken Belson and Richard Sandomire, *Staring Down Lenders, Selig Complicates Rangers’ Sale*, New York Times, July 18, 2010 (Last visited April 22, 2015).

<sup>178</sup> *Debtor's Second Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball Partners' Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Break-up Fee and (iv) the Setting of Related Auction and Hearing Dates*, Docket No. 352.

<sup>179</sup> The Bidding Procedures defined the “Backup Bid” as the second highest and best bid. *Debtor's Second Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball Partners' Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse*

MLB for such approval.”<sup>180</sup> Thus, the Lenders were concerned about a potential scenario where a bidder other than Express became the Successful Bid and Express was the Backup Bid. Then, MLB would proceed to deny approval of the Successful Bid and by default, Express would win the auction because MLB had already approved them.<sup>181</sup>

Although these concerns were valid, they were still abstract. The Lenders did not provide the Court or any other parties a declaration of Crane or any other bidder that demonstrated that he would not bid at an auction under these procedures. Instead, the extent of the Lenders’ proof that these procedures would “chill bidding” was limited to anecdotal hearsay evidence, from unidentified potential bidders.

The abstract nature of the Lenders’ claims did not escape Express’s observations. Express reminded the court that on June 1, 2010, Lenders’ counsel told the court that there were buyers “in the courtroom ready, willing, and able”<sup>182</sup> to purchase make a bid. Express used these comments to argue that if they were ready on June 1 than they would be ready at the time of the auction.<sup>183</sup>

In contrast the lengthy arguments made by the Lenders, MLB, Express, and the Debtor responded with argument that were essentially the converse of the Lenders’ position. For example, MLB argued that it would not unreasonably withhold approval of a Successful Bid and

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*Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Break-up Fee and (iv) the Setting of Related Auction and Hearing Dates, Docket No. 352.*

<sup>180</sup> *Debtor's Second Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball Partners' Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Break-up Fee and (iv) the Setting of Related Auction and Hearing Dates, Docket No. 352.*

<sup>181</sup> *Transcript From the July 13, 2010 Hearing, Docket No. 21.*

<sup>182</sup> As it turned out, in its emergency motion to reconsider, the Lenders pointed out that what they actually said at the June 1 Hearing was that a “bidder has told us they they’re ready, willing and able to participate in an auction of these assets to the extent that it’s open, fair and transparent, the requirement we think are necessary under the Bankruptcy Code.” *Emergency Joint Motion of Lender Parties for Reconsideration of Court’s Order Adopting Bidding Procedures, Docket No. 367.*

<sup>183</sup> *Transcript From the July 13, 2010 Hearing, Docket No. 21.*

that it would expedite the approval process to qualify a bidder before the auction. Likewise, Express argued the break-up fee was necessary and reasonable.<sup>184</sup>

After hearing the arguments, the court ruled from the bench. The court adopted the bidding procedures with some modifications that it made. Specifically, the Court permitted bids to consist of “cash or substantially equivalent consideration,” and it adopted a break-up fee which allowed Express to choose between either \$ 10 million or 125% of the damages associated with Express’s cost of transaction. It also added the sentence “in event MLB declines approval of the successful bidder, the Bankruptcy Court may determine on motion whether MLB has acted in good faith.” Lastly, the court set a bid deadline of August 3, moved the auction to August 4, and moved the confirmation hearing back to August 5, 2010.<sup>185</sup> On July 15, 2010, the court also issued a written order adopting the bidding procedures.<sup>186</sup>

#### **f. *Emergency Motions Objecting to Bidding Procedures***

After the court entered its written order, the Lenders immediately filed an emergency motion requesting that the court reconsider its order adopting the Bidding Procedures.<sup>187</sup> Further, the Lenders asked that the court expedite the hearing<sup>188</sup> on that motion. The court granted that motion and set a hearing for July 22, 2010.<sup>189</sup>

In its motion, the Lenders reiterated much of its oral arguments from the July 13 hearing. The Lenders again brought the eve of bankruptcy transfers between the HSG entities back at the forefront of this matter. During discovery, the Lenders became aware of communications

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<sup>184</sup> After the court issued order adopting the bidding procedures that it modified. The Lenders and the CRO filed emergency motions to reconsider. In their response to those motions, Express, MLB, and the Debtor arguments were more nuanced and will be discussed in [Insert Section Number].

<sup>185</sup> *Transcript From the July 13, 2010 Hearing*, Docket No. 21.

<sup>186</sup> *Order Adopting Bidding Procedures*, Docket No. 363; *Exhibit A to Order Adopting Bidding Procedures*, Docket No. 363.

<sup>187</sup> *Emergency Joint Motion of Lender Parties for Reconsideration of Court’s Order Adopting Bidding Procedures*, Docket. No 367.

<sup>188</sup> *Request for Emergency Hearing on Emergency Joint Motion of Lender Parties for Reconsideration of Court’s Order Adopting Bidding Procedures*, Docket No. 368.

<sup>189</sup> *Order Regarding Lender Parties’ Request For Emergency Hearing*, Docket No. 387.

between Glenn West<sup>190</sup> and MLB's president that discussed those transfers and the purposes for those transfers. The Lenders focused on two main arguments in their motion. First, that the terms of the Bidding Procedures and were both procedurally<sup>191</sup> and substantively<sup>192</sup> unfair. And second, that the break-up fee, as modified by the court was unreasonable.<sup>193</sup>

From a procedural standpoint, the Lenders argued that they were not afforded the appropriate time to oppose the bidding procedures and prepare for the July 13 Hearing. The Lenders pointed out that the original bidding procedures were filed after a holiday weekend and one day before the court ordered the mutually agreed upon mediation<sup>194</sup> that was scheduled where all the parties were to negotiate "mutually-acceptable sale mechanics and bidding procedures."<sup>195</sup> Then, the Debtor removed those bidding procedures and filed a second round bidding procedures and at the same, requested an emergency hearing<sup>196</sup> which was granted on 24 hours' notice. Lastly, the Lenders pointed out that during that time Express filed an adversary proceeding and an emergency motion requesting a TRO to enforce a contract that it signed with

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<sup>190</sup> Glenn West had previously represented multiple Hicks-related entities.

<sup>191</sup> By "procedurally" unfair, the authors are referring to the timing of when the motions were filed by opposing parties and how the court scheduled emergency hearings for those motions.

<sup>192</sup> By "substantively" unfair, the authors are referring to the Lenders' objections to the actual substance of bidding procedures. (*i.e.*, the break-up fee, the auction date, the requirement that a bidder must receive MLB's approval before they could participate in the auction and after the auction).

<sup>193</sup> *Emergency Joint Motion of Lender Parties for Reconsideration of Court's Order Adopting Bidding Procedures*, Docket No. 367.

<sup>194</sup> The court had previously ordered TRBP, OCB, the Lenders, and the Committee to mediation which was to be held on July 16, 2010. *Order Requiring Mediation, Resetting Hearing on Confirmation, and Suspending Discovery Pending Mediation*, Docket No. 265.

<sup>195</sup> *Emergency Joint Motion of Lender Parties for Reconsideration of Court's Order Adopting Bidding Procedures*, Docket No. 367.

<sup>196</sup> *Motion for Emergency Hearing on Debtor's Second Motion Pursuant to Section 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball Partners' Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to use the Asset Purchase Agreement as a Stalking Horse Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Breakup fee and (iv) The Setting of Related Auction and Hearing Dates*, Docket No. 353.

the Debtor only 24 hours prior to the Debtor's filing.<sup>197</sup> In such a short time frame, the Lenders did not believe they had adequate time to challenge any of these proceedings and wanted to the court to reconsider its adoption of the bidding procedures.

With respect to the procedures themselves, the Lenders argued that the court did not receive any evidence in support of their appropriateness.<sup>198</sup> The Lenders, for example, urged the court to reconsider the weight it afforded Express's August 12 financing deadline because Express has not demonstrate that it was "either real or meaningful." Furthermore, the Lenders argued, if the current August 4 timeframe remained in place, potential bidders would have less than three weeks to gain pre-approval from MLB, obtain financing, post a non-refundable \$ 15 million deposit, and negotiate an acceptable form to constitute a Qualified Bid.<sup>199</sup> These factors prevented any auction that was to take place in this compressed period to be fair and competitive, the Lenders asserted.

The Lenders then again focused on the "Midnight Transfers" as posing a risk to fairness of the auction. As a result of the Midnight Transfers, the Lenders asserted, the very integrity of the stalking horse bid, APA 2, was questionable. Potential bidders "cannot possibly reflect the fair value of the TRBP Assets," the Lenders argued.<sup>200</sup> According to the Lenders, these factors

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<sup>197</sup> *Motion for Expedited Hearing on Plaintiff's Emergency Motion for Preliminary Injunction and a Temporary Restraining Order*, Docket No. 4. The court subsequently granted Express's request for an expedited hearing and set the hearing for the following day. *Order Granting Plaintiff's Motion for Expedited Hearing*, Docket No. 5. This was the July 13 Hearing that was discussed at length in the above section.

<sup>198</sup> *Emergency Joint Motion of Lender Parties for Reconsideration of Court's Order Adopting Bidding Procedures*, Docket No. 367. Specifically, that Express did not demonstrate to the court that the August 12 deadline was as important as they purported it to be.

<sup>199</sup> *Emergency Joint Motion of Lender Parties for Reconsideration of Court's Order Adopting Bidding Procedures*, Docket No. 367.

<sup>200</sup> The Lenders' entire case was predicated on the idea that someone else was willing to pay more for the Debtor than Express. Assuming arguendo that the auction procedures were indeed flawed and that no other bidders showed up to the auction, the Debtor would use the failed auction attempt as proof that the Debtor's assets were sold at fair market value. Thus, leaving the Lenders in a difficult situation to prevent the ultimate confirmation of a plan.

prevented any auction that was to take place in this compressed period from being fair and competitive.<sup>201</sup>

As to the break-up fee which the court set at the greater of \$ 10 million dollars or 125% of the proven damages and costs of Express, the Lenders argued the stalking horse protections were inappropriate under the circumstances because a lack of evidence put forth by the Express that such a fee was necessary or appropriate.<sup>202</sup> In support of this contention, the Lenders cited *In re Integrated Resolution Incorporated*<sup>203</sup> and the standard that it articulated that must be met in order to determine whether a break-up fee was appropriate. Under that case, the criteria are: (a) the relationship between the initial bidder and the seller; (b) whether the fee is designed to encourage bidding; and (c) the size of the fee in relation to the purchase price.<sup>204</sup> With these criteria in mind, the Lenders argued that the Debtor failed the first criteria because the relationship between Express and TRBP was “clearly tainted by self-dealing and conflicts of interest.”<sup>205</sup> Next, that the break-up fee would discourage bidding because Express had a significant head start in comparison to potential bidder as it pertains to a potential bidder’s ability to negotiate and facilitate the purchase of the Debtor. Moreover, the break-up fee coupled with the minimum \$ 2 million overbid requirement would discourage potential bidders.<sup>206</sup> And last, that the break-up fee provided that Express’s costs could be a portion of the break-up which provided Express with incentive to increase its fees associated with the bidding.<sup>207</sup>

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<sup>201</sup> *Emergency Joint Motion of Lender Parties for Reconsideration of Court’s Order Adopting Bidding Procedures*, Docket No. 367.

<sup>202</sup> *Emergency Joint Motion of Lender Parties for Reconsideration of Court’s Order Adopting Bidding Procedures*, Docket No. 367.

<sup>203</sup> 147 B.R. 650 (Bankr. S.D.N.Y. 1992).

<sup>204</sup> *In re Integrated Resolution Incorporated*, 147 B.R. 650, 657-63 (Bankr. S.D.N.Y. 1992).

<sup>205</sup> *Emergency Joint Motion of Lender Parties for Reconsideration of Court’s Order Adopting Bidding Procedures*, Docket No. 367.

<sup>206</sup> *Emergency Joint Motion of Lender Parties for Reconsideration of Court’s Order Adopting Bidding Procedures*, Docket No. 367.

<sup>207</sup> Rangers Equity filed a joinder motion agreeing with the Lenders. They objected to the bidding procedures adopted by the Court on the grounds that they did “not provide a process by which a fair and commercially reasonable auction can occur...” *Limited Joinder of Rangers Equity Holdings, L.P. and*

Express and the Commissioner of Baseball both filed responses to the Lenders' and Rangers Equity's objections. Their responses largely mirrored each other. From Express's perspective,

[t]he motion for reconsideration is nothing but a rehash of arguments previously made by the Lender Parties and [Rangers Equity], and rejected by the Court, at the hearing on [Express's] request for a temporary restraining order. This court specifically advised the parties that it understood the arguments and would not allow more argument.<sup>208</sup>

The Commissioner echoed this sentiment.<sup>209</sup> The Commissioner also challenged what it believed to be a recurring statement of the Lenders. Specifically, the Commissioner alleged, "the Lenders have managed to push off confirmation of the Debtor's plan twice with the promise that they had another bidder...If the Lenders do indeed have another credible bidder, the Court's bidding procedures provide substantially the same amount of time that the CRO request at the July 13 hearing." In essence, the Commissioner called on the Lenders "to put up or shut up."

The Debtor also pursued this argument. It stated that "either the Lender Parties and the CRO have misled the Court and the Debtor regarding how far along the negotiations are on the purposed alternative asset purchase agreement or they have no basis to object to the Bidding Procedures Order."<sup>210</sup> The Debtor also stated that it had contacted "several other parties who

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*Rangers Equity Holdings GP, LLC in Emergency Joint Motion of Lender Parties for Reconsideration of Court's Oder Adopting Bidding Procedures*, Docket No. 371.

<sup>208</sup> *Preliminary Objection of Rangers Baseball Express LLC to Lender Parties' (1) Emergency Motion for Reconsideration of Court's Order Adopting Bidding Procedures (and the Limited Joinder of Rangers Equity Holdings, L.P. and Rangers Equity Holdings GP Therein), (2) Motion for Emergency Hearing, and (3) Motion to File Under Seal*, Docket No. 372.

<sup>209</sup> "The Motion for Reconsideration rehashes arguments already made by the Lenders at the July 13, 2010 hearing in this case. It raises no material issues that this Court has not already overruled." *Objection and Comment to Emergency Joint Motion of Lender Parties for Reconsideration of Court's Order Adopting Bidding Procedures*, Docket No. 386.

<sup>210</sup> *Debtor's Objection to (I) Emergency Joint Motion of Lender Parties for Reconsideration of Court's Order Adopting Bidding Procedures and (II) Limited Joinder of Rangers Equity Holdings, L.P. and Rangers Equity Holdings GP, LLC.*, Docket No. 398. In defense of this assertion, Debtor offered seven statements made by the Lenders in reference to the willingness of other purchases. The statements were from various hearings throughout the bankruptcy proceeding. In particular at hearing on June 1, 2010, counsel for the Lender Parties stated that "We are prepared, Your Honor, to advise the Court and we're pleased to advise the Court that we've been in contact with a particular bidder who was, in the view of the Debtors, at least at various times, the high bidder for these assets prepetition. That bidder's representatives are here in the courtroom, and that bidder has told us that they're ready, willing and able

may bid” and none of them indicated that they would be precluded by the bidding procedures adopted by the court.

In the last round of objections related to Lenders’ and the CRO’s motion to reconsider, Express filed a supplemental objection. Express repeated its position that the Lenders and the CRO have misled the court about other bidders. But this was not the major substance of the brief. Instead, Express sought to demonstrate to the court why the break-up from was necessary and reasonable. Additionally, Express emphasized the importance of the August 12, 2010 deadline for the financing arrangements it had previously made. In respect to the break-up fee, Express argued that it was reasonable because “[i]f the Lender Parties insinuations in their Motion For Reconsideration are correct and there are parties ready, willing, and able to bid tens of millions more than [our] current bid, the \$ 15 million overbid requirement in the approved Bidding Procedures creates no impediment to such a prospective bidder.” In respect to the August 12 deadline, Express stated that its debt financing was obtained through a syndicate of lenders and that any extension granted to it would have to approve by the all of the lenders. Moreover, those lenders were under no obligation to grant Express’s request for an extension. Lastly, as the Lenders and CRO had failed to identify another potential bidder, continued Express, it would be in the Debtor’s best interests that Express’s financing not be jeopardized.<sup>211</sup>

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to participate in an auction of these assets to the extent that it’s open, far and transparent....” *Transcript From June 1 Hearing*, Docket No. 200. Additionally, the Debtor attached as an exhibit to its motion discovery requests that it served on Monarch Capital. The requests inquired about conversations and documents regarding Monarch Capital’s negotiations or conversations with other bidders. Monarch objected and refused to produce any of the requested documents. *Exhibit B to Debtor’s Objection to (I) Emergency Joint Motion of Lender Parties for Reconsideration of Court’s Order Adopting Bidding Procedures and (II) Limited Joinder of Rangers Equity Holdings, L.P. and Rangers Equity Holdings GP, LLC.*, Docket No. 398.

<sup>211</sup> *Supplemental Objection of Rangers Baseball Express LLC to the Lender Parties (1) Emergency Motion for Reconsideration of Courts Order Adopting Bidding Procedures (And the Limited Joinder of Rangers Equity Holdings, L.P. and Rangers Equity Holdings GP therein), (2) Motion for Emergency Hearing, and (3) Motion to File Under Seal filed by Interested Party Rangers Baseball Express, LLC.*, Docket No. 394. During the time between the filing of the emergency motions, the responses to those motions, and the court’s ruling on those motions, the CRO requested a substantive consolidation of the Debtor’s voluntary petition and the involuntary petition filed against Rangers Equity. *Motion of Rangers Equity Holdings L.P. and Rangers Equity Holdings GP, LLC, Pursuant to 11 U.S.C. § 363(b) of the Bankruptcy Code for Authority to File Motion for Substantive Consolidation*, Docket No. 395. The CRO argued the objective of which was to preserve the “potentially sizable value of certain avoidance actions that may otherwise be lost if the Court permits confirmation of the Debtor’s current Plan.” Mr. Snyder

***g. The Court Denies Emergency Motions to Reconsider and Adopts Final Bidding Procedures***

On July 30, 2010, the court rendered its opinion regarding the emergency motions to reconsider the court's previous adoption of the bidding procedures. While commenting that the Lenders lacked sufficient evidence of a higher and better bid, the court highlighted that it still considered the Express's August 12 deadline to very important to the process. The court also provided commentary on why it saw fit to adopt the procedures that it did. Specifically, it referenced that the procedures were originally agreed to by the CRO and the Debtor after previous negotiations and the court felt its modifications were the only way to establish procedures in the time available. The Court, subject to one modification, implemented the procedures as ordered on July 13.<sup>212</sup>

With respect to the Lenders' primary objections, (the appropriateness of the break-up fee and the compressed time schedule), the court quickly dispatched those issue. It found the compressed schedule to be necessary "to preserve the APA" while at the same facilitating a fair and adequate auction process. The court was not concerned about the MLB's approval process because MLB had already qualified two bidders from the previous sales process—Mr. Beck and Mr. Crane. The court also gave weight to Kevin Cofsky's<sup>213</sup> declaration where he stated that "none of the potential bidders with which he has communicated would be unable to make a bid by August 4."<sup>214</sup>

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was referring to the Midnight Transfers. Wishing to keep the focus on the auction, the court denied the motion. *Memorandum Order*, Docket No. 419.

<sup>212</sup> *Memorandum Opinion and Order*, Docket No. 478.

<sup>213</sup> Kevin Cofsky was the managing director of Perella Weinberg Partners LP ("Perella"). Perella was retained to provide financial and investment bank services to facilitate the sale of the Debtor's assets. He was involved the original sale of the Debtor in 2009 and talked to other potential bidders. Kevin Cofsky also stated that based on information that has already been made available to potential bidders that "any serious bidder with an ability to purchase the assets of the Debtor should be in a position to make any such bid by August 3, 2010 and to participate in an auction on August 4, 2010. *Exhibit A to Debtor's Objection to (I) Emergency Joint Motion of Lender Parties for Reconsideration of Court's Order Adopting Bidding Procedures and (II) Limited Joinder of Rangers Equity Holdings, L.P. and Rangers Equity Holdings GP, LLC.*, Docket No. 398.

<sup>214</sup> *Memorandum Opinion and Order*, Docket No. 478.

The Court was equally unconcerned about the ability of prospective bidders to secure financing. The court noted that any potential purchaser of the TRBP will already be of significant means. Moreover, the Approved Procedures included a mechanism which would have allowed a bidder to deposit \$ 15,000,000 and defer closing for a period of two months, which the court viewed as sufficient time to secure the remaining financing. Finally, the Court addressed the break-up fee. The Court found that the break-up was reasonable considering that the original break-up fee negotiated by Mr. Snyder was greater than the break-up fee included in the Approved Procedures. It also cited that the break-up fee was approximately 2% of the purchase price. However, the Court did place a \$13 million cap on the break-up fee.<sup>215</sup>

Finally, in reference to the Lenders' claims regarding the Midnight Transfers, the Court rejected the Lenders' argument as one that presented a false alternative. The Court did not agree that the only courses of action for a potential bidder was to either "negotiated with separate agreements" with the parties who actually had the rights to transfers the assets or to wait to conduct the auction until the completion of the litigation regarding the transfer of those assets. Instead, the Court ruled that potential bidders could "exclude tainted assets from its bid" which was allowed under the Approved Procedures, or negotiate so as to preserve its claim for damages related to the Midnight Transfers.<sup>216</sup> The court Concluded its opinion by stating that it was aware that the Debtor and the HSG family of entities were under the indirect control of Hicks and warned the Debtor against being "overly attentive of Hicks's interests and opinions...." <sup>217</sup>

## **VII. THE AUCTION**

At approximately 8:00 P.M. on August 3, 2010, just before the bid deadline, the Court received a qualifying bid from Radical Pitch LLC, an entity formed by Mark Cuban, the owner of the Dallas Mavericks basketball team, and Jim Crane, the Houston Businessman the Lenders alleged was the high bidder in the original pre-petition auction.<sup>218</sup> The next day, August 4, 2010,

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<sup>215</sup> *Memorandum Opinion and Order*, Docket No. 478.

<sup>216</sup> *Memorandum Opinion and Order*, Docket No. 478.

<sup>217</sup> *Memorandum Opinion and Order*, Docket No. 478.

<sup>218</sup> *Transcript From August 4th Auction*, Docket No.539.

the auction began. Although the auction was held at the same Bankruptcy Court in Fort Worth, Judge Russell F. Nelms conducted the proceeding.

According to the Debtor, the Cuban-Crane bid exceeded the Stalking Horse Bid by approximately \$25 million, before the subtraction of the break-up fee.<sup>219</sup> After accounting for break-up fee, this put the bid at approximately \$318.7 million.<sup>220</sup> Express immediately took issue with the bid, pointing out that they had received the bid package only the night before, and they could not be expected to respond to it in a short amount of time.<sup>221</sup> In response, Mr. Strubeck, the attorney for the CRO, quickly pointed out that the Crane-Cuban offer was red-lined against the Stalking Horse Bid, and that Express should be able to assess the bid quickly. Although, the Judge Nelms expressed sympathy towards Express's complaints,<sup>222</sup> he ultimately concluded that the auction should continue.<sup>223</sup>

The Debtor and its counsel, as well as the CRO and his counsel served as the evaluators of the bids. They assessed the differences and applied any economic discounts they deemed appropriate.<sup>224</sup> Furthermore, the Cuban-Crane bids were discounted by \$ 13 million *ab initio* to account for the break-up fee.

Judge Nelms granted a recess in order to allow Express to confer with the Debtor and the CRO about the competing bid. After the initial evaluation, Judge Nelms was hopeful that the parties would appreciate and understand each other's bid, and that they would be able to move forward with the auction with 30 minute increments between bids.

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<sup>219</sup> *Transcript From August 4<sup>th</sup> Auction*, Docket No.539.

<sup>220</sup> The Stalking Horse Bid was \$306.7 million. This meant that the Cuban-Crane overbid of \$25million totaled approximately \$331.7 million. After subtracting the approximately \$13 million break-up fee, the bid was worth approximately \$318.7 million.

<sup>221</sup> *Transcript From August 4<sup>th</sup> Auction*, Docket No.539.

<sup>222</sup> Judge Nelms acknowledged that "bid procedures and auctions aren't easy . . . because it's almost impossible . . . to anticipate every contingency or exigency that's going to arise." *Transcript From August 4<sup>th</sup> Auction*, Docket No.539.

<sup>224</sup> *Transcript From August 4<sup>th</sup> Auction*, Docket No.539. The evaluators considered discounts for, inter alia, the time value of money, differences in the purchase contracts, and the possibility that the Cuban-Crane group would not obtain financing or be denied approval by the MLB.

Two and a half hours later, at 5:40 P.M., Express returned. “We would like to make a bid that we believe . . . top[s] . . . the Rapid whoever-they-are bid,”<sup>225</sup> Express exclaimed. Express then stated that there was a general understanding that the Cuban-Crane bid was worth \$318 million, and that they wished to top it by \$2 million, the minimum overbid. This put Express at \$320 million.

The Cuban-Crane group then immediately topped Express’s bid by two million, putting their bid at \$335 million before the break-up fee, and \$322 million after. In response, Express requested to meet with the evaluators to discuss how they were valuing the Cuban-Crane bid. Judge Nelms granted a recess. “I have it as a quarter to 6:00,” stated Judge Nelms. “I’m going to plan to reconvene at 6:15 unless I get a request for an extension.”

At 9:05 P.M., the auction reconvened. The three hour break was apparently the result of much debate between the two parties and the CRO as to the appropriate valuation of the Cuban-Crane bid.<sup>226</sup> Upon returning from the recess, Express explained to Judge Nelms that it understood that there would be various discounts applied to the Cuban-Crane deal, including a \$6.7 million discount for the time value of money, a \$4.7 million discount for items in their bid contract that were not comparable, and a \$23.5 million discount based on the risk the Cuban-Crane group would not be able to close. Judge Nelms, however, explained:

At this particular point . . . I think it’s not going to be very helpful for parties to come and make their arguments or cases to me any longer. To the extent that you need to make your argument or case, you need to make it to those people who are making the determination, and that’s the CRO and the [D]ebtor.<sup>227</sup>

Furthermore, the Debtor announced that they were going to defer to the CRO’s determination of the bid valuations.

Mr. Strubeck, the attorney for the CRO, announced that it was the CRO’s determination that, at that point in time, the two bids were “neck-and-neck.” This infuriated Express because that meant that other than the \$13 million break-up fee, the Cuban-Crane deal was only being discounted by \$2 million. Judge Nelms, however, again emphasized the imperfect nature of auction proceedings, and stated that it did not

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<sup>225</sup> Both Ryan and Greenberg were very familiar with who the other bidders were and this comment epitomizes the tension between the two groups.

<sup>226</sup> The CRO was going back and forth, meeting with each side separately.

<sup>227</sup> *Transcript From August 4<sup>th</sup> Auction*, Docket No.539.

see any benefit to delaying the proceeding. Judge Nelms ruled that all of Express's rights were preserved, but ordered the auction to continue.

As the CRO had determined that the bids were effectively even, the Court looked to the Cuban-Crane group for the next bid. At that point, the Cuban-Crane group raised their bid to \$355 million, worth \$342 million after the break-up fee. Judge Nelms then again granted a recess while Express evaluated its options.

At 11:35 P.M., Express returned and increased its bid to \$365 million, and Judge Nelms granted another recess. A half-hour later the Cuban-Crane group increased its offer to \$ 390 million, which amounted to approximately \$377 million after accounting for the break-up fee. After a brief in-court recess, Express submitted a bid of \$385 million. After another brief break, at 12:40 A.M., on August 5, 2010, the Cuban-Crane group returned to the courtroom. "Your Honor," stated the attorney for the group, "on behalf of Radical Pitch, we would like to congratulate Rangers Baseball [Express]."

Judge Nelms thanked the parties and congratulated Mr. Ryan and Mr. Greenberg. Judge Nelms adjourned the proceedings, but not before he reminded the parties that the Confirmation Hearing to confirm the Debtor's plan would be in a few short hours--at 9:00 A.M. sharp.<sup>228</sup>

## **VIII. CONFIRMATION**

The morning following the auction, at the confirmation hearing, the Debtor submitted its Fourth Amended Plan.<sup>229</sup> The Plan reflected Express as the official Purchaser of TRBP. In addition, the CRO, expressing great satisfaction with the result of the auction proceeding, formally accepted the Plan on behalf of Rangers Equity.

As such, finding that all classes under the Debtor's Plan were either unimpaired by the Plan or had accepted the Plan, Judge Lynn entered an order confirming the Debtor's Plan of Reorganization.<sup>230</sup> The Judge would later issue a memorandum opinion memorializing his

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<sup>228</sup> *Transcript From August 4<sup>th</sup> Auction*, Docket No.539.

<sup>229</sup> *Fourth Amended Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 532.

<sup>230</sup> *Order Confirming the Plan of Reorganization of Texas Rangers Baseball Partners under Chapter 11 of the Bankruptcy Code*, Docket No. 534.

findings of fact and conclusions of law.<sup>231</sup> The opinion noted that “[e]ach of the Debtor, the Purchaser, MLB, the Ad Hoc Group of First Lien Lenders, the First Lien Administrative Agent, the Second Lien Administrative Parties, Rangers Equity, the CRO and the DIP Lender supports the Sale of the Purchased Assets to the Purchaser and confirmation of the Plan.”<sup>232</sup>

The original APA 1 provided for a sale of TRBP for approximately \$300 million. In the end, Express would succeed in purchasing the Debtor, but would be required to pay \$385 million. From a bankruptcy point of view, seeking to maximize the value of the estate for all creditors, the Chapter 11 proceeding appears to have been successful.

In the end nearly every party appears to have got what it wanted. Express succeeded in purchasing the team, MLB got its preferred buyer, and the Lenders that forcefully challenged the process wound up realizing the benefits from a competitive bidding process that maximized the value of the team assets.

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<sup>231</sup> *Amended and Restated Findings of Fact and Conclusions of Law With Respect To the Order Confirming the Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code*, Docket No. 651. With this support of the 4th Amended Plan, it seemed that the Lenders issues related to the Midnight Transfers were resolved.

<sup>232</sup> *Order Confirming the Plan of Reorganization of Texas Rangers Baseball Partners under Chapter 11 of the Bankruptcy Code*, Docket No. 534.