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ATTORNEYS FOR THE AD HOC GROUP OF FIRST LIEN LENDERS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	
	§	
TEXAS RANGERS BASEBALL PARTERS	§	**Case No. 10-43400 (DML)-11**
	§	**(Chapter 11)**
	§	
Debtor.	§	
	§	

MOTION OF THE AD HOC GROUP OF FIRST LIEN LENDERS TO COMPEL TEXAS RANGERS BASEBALL PARTNERS' AND THE OFFICE OF THE COMMISSIONER OF BASEBALL'S RESPONSE TO AD HOC GROUP'S FIRST REQUESTS FOR PRODUCTION

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Pursuant to section 105 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code") and Federal Rules of Civil Procedure 34 and 37 (the "Civil Rules"), made applicable to this matter by Federal Rules of Bankruptcy Procedure 7034 and 7037 (the "Bankruptcy Rules"), the Ad Hoc Group of First Lien Lenders pursuant to a certain Amended and Restated First Lien Credit and Guaranty Agreement dated December 19, 2006, as amended, modified or supplemented and in effect from time to time, (the "First Lien Credit Agreement"), among Hicks Sports Group LLC, Hicks Sports Group Holdings LLC, and certain subsidiaries of Hicks Sports Group LLC, as guarantors, and certain first lien lenders (the "Ad Hoc Group"), on behalf of members Monarch Alternative Capital LLC, Kingsland Capital Management, Sankaty Advisors, LLC, and Stonehill Capital Management LLC, hereby files this motion (the "Motion to Compel") for an order compelling Texas Rangers Baseball Partners ("TRBP" or the "Debtor") and the Office of the Commissioner of Baseball ("Baseball") to immediately respond to the Ad Hoc Group's First Requests for Production (the "Document Requests") propounded on TRBP and Baseball on May 28, 2010. In support of the Motion to Compel, the Ad Hoc Group respectfully states as follows:

I. BRIEF FACTUAL BACKGROUND

1. On May 24, 2010, the Debtor commenced in this Court a voluntary case under the Bankruptcy Code (the "Chapter 11 Case"). On the same day, the Debtor filed with this Court a proposed Disclosure Statement and a proposed prepackaged plan of reorganization (the proposed "Plan"). By order of this Court dated June 2, 2010, a hearing regarding certain issues relating to the Disclosure Statement and proposed Plan was held on June 15, 2010 (the "June 15 Hearing").

2. On June 22, 2010, the Court entered its Memorandum Opinion, in which it found, inter alia, that the Plan needed certain modifications to be confirmable by the Court. A hearing to consider confirmation of any amended Plan proposed by the Debtor is currently scheduled for July 9, 2010 (the "July 9 Hearing").

3. In anticipation of both the June 15 and July 9 Hearings, on Friday, May 28, 2010, the Ad Hoc Group propounded on each of the Debtor and Baseball its First Requests for Production (collectively the "Document Requests"), seeking production of documents which are relevant to and on which the Ad Hoc Group may rely at the July 9 Hearing.

4. On May 30, 2010, Baseball propounded on, inter alia, the Ad Hoc Group, Baseball's First Requests for Production and Interrogatories (collectively, the "Baseball Discovery Requests"). On June 2, 2010, the Debtor propounded on the Ad Hoc Group the Debtor's First Requests for Production (collectively, the "Debtor's Discovery Requests").

5. The Ad Hoc Group has met and conferred, in good faith, on multiple occasions, with the Debtor regarding both the Document Requests and the Debtor's Discovery Requests.

6. While the Debtor produced certain documents in response to the Document Requests in advance of the June 15 Hearing,[1] the Debtor has indicated that it does not intend to produce any further documents at this time. This refusal persists even though the Ad Hoc Group has narrowed the scope of its requests to: (a) documents

[1] In particular, in response to the Ad Hoc Group's narrowed request for documents in advance of the June 15 hearing, the Debtor produced its pre-petition communications with Baseball. The Debtor also produced certain other files which it had collected prior to its initial meet and confer session with the Ad Hoc Group.

reflecting communications with Baseball; (b) documents relating to any bids to purchase the Debtor; (c) documents relating to the decision to file the Chapter 11 Case or the Plan; (d) documents relating to any appraisals or valuations of any bids to purchase the Debtor or the Debtor's assets; (e) documents relating to the Land Sale Agreement,[2] including without limitation communications with third parties; (f) documents relating the allocations of the purchase price to be paid under the Greenberg APA for the sale of the Debtor and the BRE Property; (g) documents relating to any transfers of assets made by the Debtor or any of its affiliates on or around May 23, 2010; (h) documents relating to the Overdraft Protection Agreement (as such term is defined in the Plan); (i) documents relating to the Financial Advisory Fees (as such term is defined in the Greenberg APA); and (j) documents relating to the financial ability of the Greenberg Group to close on the sale transaction contemplated in the Plan (collectively the "Narrowed Topics").

7. On June 23, 2010, the Debtor and the Ad Hoc Group held a meet-and-confer to discuss ongoing discovery-related issues. The Ad Hoc Group outlined the reasons why the Narrowed Topics are relevant to the July 9 Hearing and why documents in the possession of the Ad Hoc Group are not relevant to the July 9 Hearing. The Debtor explained that it does not believe any further discovery is warranted, but that it would consider producing additional documents in response to the Ad Hoc Group's Narrowed Topics if the Ad Hoc Group also produced documents in response to the Debtor's Discovery Requests. Additionally, the Debtor refused to produce any communications with Baseball dated after late April 2010 on the basis that such communications are purportedly protected by a common interest privilege with Baseball. The Ad Hoc Group

[2] Terms not otherwise herein defined have the meaning ascribed to them in the Ad Hoc Group's brief filed with this Court on June 11, 2010 [Case No. 10-43400, Docket No. 163].

believes, as discussed below, that a common interest privilege is inapplicable in these circumstances.

8. Similarly, the Ad Hoc Group has met and conferred in good faith, on numerous occasions, with Baseball regarding both the Document Requests and the Baseball Discovery Requests. On June 23, 2010, the Debtor and Baseball held a meet-and-confer to discuss ongoing discovery-related issues. During the meet-and-confer the Ad Hoc Group communicated to Baseball the Narrowed Topics on which it seeks discovery. Like the Debtor, Baseball explained that it does not believe any further discovery is warranted, but that it would consider producing additional documents in response to the Ad Hoc Group's Narrowed Topics if the Ad Hoc Group also produced document in response to the Baseball Discovery Requests. Baseball also asserted that it shared a common interest privilege with the Debtor and refused to produce any documents purportedly protected by such common interest privilege. To date, Baseball has produced no documents in response to the Document Requests.

II. ARGUMENT

A. The Debtor And Baseball Should Be Compelled To Produce All Relevant Non-Privileged Documents Responsive To The Ad Hoc Group's Narrowed Topics

9. Civil Rule 37(a), made applicable to this proceeding by Bankruptcy Rule 7037, allows the Ad Hoc Group to move to compel discovery where a party "fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34." Fed. R. Civ. P. 37(a)(1), (3)(B)(iv); Fed. R. Bankr. P. 7037. Discovery relevant to the objections and arguments to be made by the Ad Hoc Group at the July 9 Hearing is expressly permitted by Civil Rule 26, made applicable to this proceeding by Bankruptcy Rule 7026, which provides, in relevant part: "Parties may

obtain discovery regarding any nonprivileged matter that is **relevant to any party's claim or defense** . . ." Fed. R. Civ. P. 26(b)(1) (emphasis added); Fed. R. Bankr. P. 7026; see also Groden v. Allen, CIV.A. 303CV1685R, 2004 WL 627496, at *1 (N.D. Tex. Mar. 25, 2004) ("Courts construe discovery rules liberally.").

B. Documents Requested By Ad Hoc Group Are Highly Relevant To Plan Confirmation, Including The Issue Of Good Faith

10. As explained to the Debtor and Baseball, if the July 9 Hearing goes forward with respect to an amended Plan, the only factual issues will relate to confirmability of any amended Plan, including the Debtor's good faith in proposing or the feasibility of the Plan or any amendment thereto. The Ad Hoc Group's Narrowed Topics seek only documents that are directly relevant to those issues.

11. In addition to other requirements of the Bankruptcy Code, section 1129(a)(3) of the Bankruptcy Code requires that a debtor's plan be proposed in good faith and not by any means forbidden by law. See 11 U.S.C. § 1129(a)(3). To be proposed in good faith, a plan must "fairly achieve a result consistent with the [Bankruptcy] Code." Ronit, Inc. v. Stemson Corp. (In re Block Shim Dev. Co.-Irving), 939 F.2d 289, 292 (5th Cir. 1991) (citations omitted). More specifically, in the Fifth Circuit, the good faith inquiry focuses on the totality of the circumstances surrounding the proposed plan, and whether the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success. See In re Bullough, No. 05-31531, 2006 WL 6510983, at *1 (Bankr. N.D. Tex. April 7, 2006) (citing Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.), 844 F.2d 1142, 1160 (5th Cir. 1988) and B.M. Brite v. Sun Country Dev., Inc. (In re Sun Country Dev., Inc.), 764 F.2d 406, 408 (5th Cir. 1985)). "If good faith is challenged, the Debtor bears the burden of proof on the issue by a

preponderance of the evidence." See id. (citations omitted); Fin. Sec. Assurance, Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship), 116 F.3d 790, 802 (5th Cir. 1997).

12. Importantly, a plan is not proposed in good faith when the purpose of the proceeding is solely to take advantage of Bankruptcy Code provisions that do not apply outside of bankruptcy. See NMSBPCSLDHB, L.P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.), 384 F.3d 108, 120, 129 (3d Cir. 2004) ("To be filed in good faith, a petition must do more than merely invoke some distributional mechanism in the Bankruptcy Code. It must seek to create or preserve some value that would otherwise be lost-not merely distributed to a different stakeholder-outside of bankruptcy."), cert. denied, 545 U.S. 1110 (2005); accord In re Mirant, No. 03-46590, 2005 WL 2148362, at *7 (Bankr. N.D. Tex. Jan. 26, 2005) (stating that the "valid bankruptcy purposes" test, as exemplified by In re Integrated Telecom, is generally accepted in testing for good faith). Additionally, when considering the totality of circumstances surrounding a proposed plan, courts consider conflicts of interest that would prevent the debtor or its agents from proposing a plan in good faith under 1129(a)(3). See In re Coram Healthcare Corp., 271 B.R. 228, 240 (Bankr. D. Del. 2001).

13. Here, the documents requested by the Ad Hoc Group are directly relevant to (i) whether the Plan was "proposed with the legitimate and honest purpose to reorganize" or for the sole purpose of avoiding certain contractual obligations owed to the First Lien Lenders outside of bankruptcy; (ii) whether the Debtor had conflicts of interests that prevented it from filing the Plan in good faith; and (iii) whether the Plan is proposed by a means forbidden by law, in violation of section 1129(a)(3), insofar as it

compels the Debtor and its affiliates to breach their contractual obligations to the First Lien Lenders. These issues will be relevant to plan confirmation no matter how the plan is amended. Thus, such discovery is appropriate pursuant to Civil Rule 26 and is properly compelled pursuant to Civil Rule 37(a).

C. Documents Requested By The Debtor And Baseball Are Not Relevant To The Issue Of Good Faith Or Plan Confirmation

14. In contrast, the Baseball Discovery Requests and the Debtor's Discovery Requests seek documents that are wholly irrelevant to Plan confirmation. Specifically, in the context of the various meet and confer sessions, both Baseball and the Debtor have requested that the Ad Hoc Group produce documents related to communications regarding the bids received for the assets of Texas Rangers Baseball Partners. This topic is not relevant to Plan confirmation or the good faith of the Debtor in proposing the Plan. The Ad Hoc Group possesses no documents relevant to issues related to confirmation of the Debtor's Plan or the Debtor's good faith. Moreover, the Ad Hoc Group invited the Debtor and Baseball to articulate a basis for relevance of their respective Discovery Requests, but neither the Debtor nor Baseball was able to do so to the satisfaction of the Ad Hoc Group.[3] A search for and a review and production of the irrelevant documents sought by the Debtor and Baseball would present an enormous and expensive burden on the Ad Hoc Group with no corresponding benefit to Baseball or the Debtor's Estate.

15. In sum, the Debtor and Baseball are refusing without justification to produce documents to which the Ad Hoc Group is entitled under the Civil Rules and

[3] The Debtor, for example, suggested that a production by the Ad Hoc Group might turn up a document indicating that some member of the Ad Hoc Group was at some point favorably disposed to the bid submitted by the Greenberg Group. If any such document exists, it would not be relevant to the issues slated for the July 9 Hearing.

the Bankruptcy Rules. This delay tactic is jeopardizing the Ad Hoc Group's ability to obtain documents that may be critical to its position at the July 9 Hearing.

D. Application Of A Common Interest Privilege Between The Debtor And Baseball Is Inappropriate

16. To the extent that the basis for the refusal of either the Debtor or Baseball to produce documents is a common interest privilege, application of a such a common interest is inappropriate as between Baseball and the Debtor in this case. See Fed. Trade Comm'n v. Think All Publ'g, L.L.C., No. 4:07cv011, 2008 WL 687456, at *1 (E.D. Tex. Mar. 11, 2008) (citing In re Santa Fe Int'l Corp., 272 F.3d 705, 710 (5th Cir. 2001) (because it is "an obstacle to truth seeking," the common interest privilege is construed narrowly).

17. As far as counsel to the Ad Hoc Group has been able to determine, no court in the Fifth Circuit has applied a common interest privilege to communications between parties other than co-defendants or potential co-defendants. Cf. id. (In the Fifth Circuit, the joint defense privilege applies to "(1) communications between co-defendants in actual litigation and their counsel and (2) communications between potential co-defendants and their counsel."); In re Santa Fe Int'l, 272 F.3d at 711 (for the common interest privilege to apply, "it appears that there must be a palpable threat of litigation at the time of the communication, rather than a mere awareness that one's questionable conduct might some day result in litigation, before communications between one possible future co-defendant and another, . . . could qualify for protection.").[4] Moreover, applying

[4] In In re Quigley Co., No. 04-15739 (SMB), 2009 Bankr. LEXIS 1352 (Bankr. S.D.N.Y. April 24, 2009), a case decided outside the Fifth Circuit, the court found that parties who seek to jointly prosecute a chapter 11 case for their common (legal) benefit may be entitled to assert the common interest privilege. Id. at *9-17. This case arose in the Second Circuit, which generally has a broader articulation of the Common Interest doctrine than does the Fifth Circuit. Further, the facts of In re Quigley are highly distinguishable from the facts presented here. First, in Quigley,

a common interest privilege to communications between a debtor and one of its creditors would be contrary to the debtor's fiduciary obligations to all creditors. This is particularly so where Baseball, the creditor in question, is not a plan proponent, but simply a creditor with individual interests that are more narrow than the interests of the Debtor and its constituents as a whole. Baseball is simply one of many creditors of the Debtor; finding a common interest privilege between the Debtor and Baseball would run afoul of the Debtor's broad fiduciary obligations to its other creditors, including the First Lien Lenders.

18. Second, assuming arguendo application of a common interest privilege under these circumstances in this Circuit, the Debtor and Baseball have failed to identify any specific legal interest as the basis for the assertion of a common interest privilege.[5] See In re Santa Fe Int'l, 272 F.3d at 710 (the burden of demonstrating the applicability of the common interest privilege is on the party asserting the protections of the privilege). To the extent the Debtor and Baseball rely on the Plan as the basis for their common legal interest, the Plan or the transactions contemplated thereunder reflect broad commercial transactions, not a well-defined legal interest that would give rise to a common interest privilege.

Quigley and Pfizer sought to jointly prosecute Quigley's chapter 11 case. Id. at *10. Here, although Baseball supports the Plan, the Debtor is the sole proponent of the Plan. Second, Quigley and Pfizer had engaged in an organized joint defense strategy for nearly 30 years prior to Quigley's bankruptcy and had entered into a Joint Defense Agreement in September 2003. Id. at *15 (noting that the legal interest at issue in the bankruptcy was the same legal interest implicated in earlier litigation in which Quigley and Pfizer were co-defendants). In contrast, in this case, upon information and belief, there is no pre-existing joint defense agreement between the Debtor and Baseball.

[5] This is in stark contrast to the Ad Hoc Group members who, in addition to sharing common counsel, share a common legal interest in recovering the amounts owed to the First Lien Lenders under the First Lien Credit Agreement.

19. Third, the Debtor and Baseball have failed to establish that there was a "meeting of the minds that the documents subject to attorney-client or work product privilege are being shared in the expectation that the privilege is not being waived by the sharing and that each party will protect the documents from disclosure or loss of privilege" as is required for a finding of joint privilege. Brown v. Adams (In re Fort Worth Osteopathic Hosp.), No. 07-04015-DML, 2008 WL 2095601, at *2 (Bankr. N.D. Tex. May 15, 2008).

III. RELIEF REQUESTED

20. For the foregoing reasons and under the circumstances described above, this Court should compel the Debtor and Baseball to produce the documents sought by the Ad Hoc Group pursuant to the Narrowed Topics without further delay.

IV. CERTIFICATION

21. Pursuant to Civil Rule 37(a)(1) and Bankruptcy Rule 7037, the Ad Hoc Group hereby certifies that it has, in good faith, conferred with the Debtor and with Baseball in an effort to obtain the foregoing relief without court action.

Dated: June 24, 2010

Respectfully submitted,

/s/ Daniel C. Stewart

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ATTORNEYS FOR THE AD HOC GROUP OF FIRST LIEN LENDERS

CERTIFICATE OF CONFERENCE

I certify that on June 23, 2010, I was advised that Aaron Renenger of Milbank, Tweed, Hadley & McCloy LLP, counsel to the Ad Hoc Group of First Lien Lenders, spoke with counsel for the Office of the Commissioner of Baseball via telephone to inquire whether the Office of the Commissioner of Baseball would oppose the Motion to Compel and an expedited hearing on the Motion to Compel. Counsel to the Office of the Commissioner of Baseball have indicated that they will oppose the Motion to Compel. Counsel to the Office of the Commissioner of Baseball are not opposed to an expedited hearing on the Motion to Compel.

/s/ Daniel C. Stewart
Daniel C. Stewart

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I certify that on June 23, 2010, I was advised that Aaron Renenger of Milbank, Tweed, Hadley & McCloy LLP, counsel to the Ad Hoc Group of First Lien Lenders, spoke with counsel for Texas Rangers Baseball Partners via telephone to inquire whether Texas Rangers Baseball Partners would oppose the Motion to Compel and an expedited hearing on the Motion to Compel. Counsel to the Office of the Commissioner of Baseball have indicated that they will oppose the Motion to Compel. Counsel to the Office of the Commissioner of Baseball are not opposed to an expedited hearing on the Motion to Compel.

/s/ Daniel C. Stewart
Daniel C. Stewart

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2010, true and correct copies of the foregoing were served on the parties receiving electronic notice via the Electronic Court Filing system and on the parties identified on the attached service list via electronic mail.

/s/ Daniel C. Stewart
Daniel C. Stewart

SERVICE LIST

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8. Counsel to GSP Finance LLC, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019, Attn: Jason P. Young, Esq. (Jason.Young@cliffordchance.com);

9. Counsel to MLB, Paul Weiss Rifkind Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Stephen J. Shimshak, Esq. (sshimshak@paulweiss.com), Jordan E. Yarett, Esq. (jyarett@paulweiss.com) and Philip A. Weintraub, Esq. (pweintraub@paulweiss.com); and

10. The Office of the Commissioner of Baseball, 245 Park Avenue, New York, New York 10167, Attn: Thomas J. Ostertag, Esq. (Tom.Ostertag@mlb.com).

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	
	§	
TEXAS RANGERS BASEBALL PARTERS	§	**Case No. 10-43400 (DML)-11**
	§	**(Chapter 11)**
	§	
Debtor.	§	
	§	

ORDER COMPELLING TEXAS RANGERS BASEBALL PERTNERS' AND THE OFFICE OF THE COMMISSIONER OF BASEBALL'S RESPONSE TO AD HOC GROUP'S FIRST REQUESTS FOR PRODUCTION

The Ad Hoc Group, by and through its counsel, has submitted to this Court a *Motion of the Ad Hoc Group of First Lien Lenders to Compel Texas Rangers Baseball Partners' and the Office of the Commissioner of Baseball's Response to Ad Hoc Group's First Requests For Production* (the "Motion to Compel").[1] The Motion to Compel was made pursuant to Rules 34

[1] Capitalized terms used herein but not otherwise defined shall have the meanings assigned to them in the Motion to Compel.

and 37 of the Federal Rules of Civil Procedure, made applicable to this proceeding through Rules 7034 and 7037 of the Federal Rules of Bankruptcy Procedure.

The Court, having read and considered all pleadings and paper filed in support of the Motion to Compel, and for good cause shown, finds that the Ad Hoc Group has shown good cause for an order compelling Texas Rangers Baseball Partners and the Office of the Commissioner of Baseball to respond to the Ad Hoc Group's Narrowed Topics.

THEREFORE, IT IS HEREBY ORDERED that the Debtor and Baseball produce all documents responsive to the Narrowed Topics by June ___, 2010.

 # # # END OF ORDER # # #

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