

George H. Barber (State Bar No. 01705650)
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ATTORNEYS FOR NEW ERA CAP, INC.

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

In re: §
§ Chapter 11
§
TEXAS RANGERS BASEBALL PARTNERS, § Case No. 10-43400-dml11
§
Debtor. § **Hearing Date and Time: July 9, 2010 at 9:30 a.m. (Central)**
§ **Response Date and Time: July 2, 2010 at 4:00 p.m. (Central)**
§

**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 ASSUMED AND ASSIGNED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

New Era Cap, Inc. (“**New Era**”), by and through its undersigned counsel, files this limited objection (“**Limited Objection**”) to (I) the Second Amended Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners under Chapter 11 of the Bankruptcy Code (“**Plan**”) (Docket No. 276) filed by Texas Rangers Baseball Partners (“**Debtor**”) on June 25, 2010, and (II) the Schedule of Assumed and Assumed and Assigned Executory Contracts and Unexpired Leases (“**Cure Schedule**”) (Docket No. 254-21) filed by the Debtor on June 21, 2010. New Era objects to the Cure Schedule because it does not accurately state the cure amount due to New Era in connection with the assumption and assignment of the Contract (as defined below) and objects to the Plan to the extent it seeks to eliminate New Era’s right to setoff, as

more specifically set forth herein. In further support of its Limited Objection, New Era respectfully states as follows:

BACKGROUND

1. On May 24, 2010 (“**Petition Date**”), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is operating its businesses and managing its affairs as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. New Era and the Debtor are parties to a Purchase Agreement dated July 24, 1998 (“**Contract**”), pursuant to which New Era sells certain New Era merchandise to the Debtor. A copy of the Contract is attached as **Exhibit A**.

3. The Debtor made certain purchases of merchandise from New Era under the Purchase Agreement prior to the Petition Date in the aggregate amount of \$106,595.64 (“**Prepetition Purchases**”). A copy of a statement of the Debtor’s account with New Era is attached as **Exhibit B**.

4. Article IX of the Plan provides that, as of the Effective Date of the Plan, the Debtor will be deemed to have assumed and assigned to Rangers Baseball Express LLC (“**Purchaser**”) or its subsidiaries all executory contracts and unexpired leases of the Debtor not excluded.

5. The Contract does not appear on the list of excluded contracts attached as Exhibit 1.1(a)(ii) to the Asset Purchase Agreement between the Debtor and the Purchaser.

6. As such, the Contract is proposed to be assumed and assigned pursuant to the Article IX Plan.

7. Furthermore, the Contract is not listed on the Cure Schedule. Pursuant to the Summary of Prepackaged Plan of Reorganization and Notice of Hearing to Consider

Confirmation of Plan of Reorganization (Docket No. 254-21), the executory contracts being assumed and assigned, but not listed on the Cure Schedule, are believed by the Debtor to be owed no cure amount in connection with the assignment and assumption of such contract.

8. As of the Petition Date, the amount owing to New Era as a result of goods provided to the Debtor by New Era pursuant to the Contract is \$106,595.64 prior to the Petition Date, which amount is required to be paid to New Era pursuant to Section 365(b) of the Bankruptcy Code (“**Corrected Cure Amount**”).

9. New Era and the Debtor are also parties to Advertising and Promotional Agreement dated as of April 28, 2008 (“**Advertising Agreement**”), whereby New Era purchased from the Debtor certain advertising and promotional rights. New Era owes the Debtor \$106,090.00 for fees due to the Debtor under the Advertising Agreement prior to the Petition Date (“**New Era Debt**”).

10. New Era plans to file a motion in this case, seeking an order lifting the automatic stay to permit New Era to offset the New Era Debt against the amounts owed for the Prepetition Purchases, which New Era intends to file prior to the effective date of the Plan (“**Setoff Motion**”).

OBJECTIONS TO ASSUMPTION AND ASSIGNMENT

11. New Era objects to the Cure Schedule to the extent that the Contract is deemed executory on the following grounds:

A. The Contract cannot be assumed without concurrent cure of all arrearages. “Section 365(b) of the executory contracts section of the [Bankruptcy] Code requires a debtor to cure pre-petition defaults as a precondition of assuming an executory contract.” In re Stoltz, 315 F.3d 80, 86 (2nd Cir. 2002). The pre-petition cure amount alleged by the Debtors to be owed to New Era pursuant to the Contract, i.e. \$0, is incorrect. The

correct cure amount that the Debtor is required to pay to New Era is equal to the Corrected Cure Amount.

B. The Contract cannot be assumed or assigned without an adequate showing of future performance. 11 U.S.C. § 365(b)(1); In re Luce Industries, Inc., 14 B.R. 529 (S.D.N.Y. 1981) (court erred in allowing debtor to assume agreement without assurance by debtor that arrearages would be paid and that debtor could perform). No adequate assurance of future performance by the Purchaser has been established in the Plan.

LIMITED OBJECTION TO PLAN

12. The Plan proposes that on the Effective Date¹, the Asset Purchase Agreement shall be consummated and substantially all of the Debtor's property shall be sold and transferred to the Purchaser, presumably including the New Era Debt which is an account receivable of the Debtor.

13. Furthermore, Section 6.3 of the Plan provides in pertinent part that upon the occurrence of the Effective Date, any Lien securing any Secured Claim (i.e. a right of setoff) shall be deemed released.

14. As such, New Era objects to the Plan and the sale contemplated therein to the extent it seeks to eliminate or extinguish New Era's right to setoff or does not provide New Era with adequate protection with respect to such right of setoff, prior to New Era having the opportunity to file and be heard with respect to the Setoff Motion.

15. New Era reserves its right to amend this Limited Objection to include any additional facts as may be determined by its further investigation of the Plan, the Cure Schedule or the Contract.

¹ Capitalized terms not expressly defined herein have the meaning ascribed to them in the Plan.

RESERVATION OF RIGHTS

16. New Era reserves the right (a) to amend, supplement, or otherwise modify this Limited Objection and all attachments and exhibits hereto as necessary or proper; and (b) to raise such other and further objections to any proposed assumption and assignment, and/or the cure amount with respect to the proposed assumption and assignment of the Contract.

CONCLUSION

WHEREFORE, New Era respectfully requests that the Court enter an Order (a) sustaining this Limited Objection in its entirety and denying confirmation of the Plan to the extent inconsistent with this Limited Objection, (b) directing the Debtor to satisfy the Correct Cure Amount to New Era, and (c) providing New Era with such other and further relief as is appropriate.

Dated: July 2, 2010

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

By: /s/ John J. Kane

George H. Barber
State Bar No. 01705650
John J. Kane
State Bar No. 24066794

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Dallas, Texas 75201
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and

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Angela Z. Miller, Esq.
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Texas Rangers Baseball Partners
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Counsel to GSP Finance LLC, Agent for the Second Lien Lenders

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EXHIBIT A



#15995
TEXAS RANGER BB
1000 BALL PARKWAY
ARLINGTON TX 76011

FOR OFFICE USE ONLY	
CUST. #	1007865
CUST. TYPE	
D & B RATING	
DATE	
UNIT	

CUSTOMER INFORMATION REQUEST

Service to our valued customers is the most important priority of New Era Cap Co., Inc. In order to respond and communicate effectively we request that you help us by providing up to date information about your company. Thank you for taking time to complete the following information to ensure that our future communication is the best it can be.

PS# 15995

Individual company responses will be kept confidential and shared only with New Era Cap Co., Inc. management personnel.

PLEASE RETURN IMMEDIATELY

BILLING INFORMATION

COMPANY NAME			
TEXAS RANGERS BASEBALL PARTNERS (DBA: TEXAS RANGERS BASEBALL)			
ATTENTION			
ACCOUNTS PAYABLE			
STREET ADDRESS			
1000 BALLPARK WAY #400			
MAILING ADDRESS (if other than street address)			
PO BOX 90111, ARLINGTON TX 76004			
CITY	COUNTY	STATE	ZIP
ARLINGTON	TARRANT	TX	76011
SALES TAX IDENTIFICATION NUMBER		PHONE	FAX
75-2585320		(817) 273-5222 (main)	(817) 273-5174 (A/P OR PURCH)
DUN & BRADSTREET #		Other billing information	
N/A		MUST INCLUDE OUR PO# ON ALL INVOICES!!	

SHIPPING INFORMATION

COMPANY NAME			ATTENTION
TEXAS RANGERS BASEBALL RETAIL WAREHOUSE			(PO#)
STREET ADDRESS			
1901 Road to Six Flags Drive			
CITY	STATE	SHIP VIA	
ARLINGTON	TX 76011	SHIP PER PO INSTRUCTIONS	
Other information or shipping instructions			
1-250# SHIP UPS OR UPS CWT, 251# AND UP SHIP VIA Roadway Collect.			
Submit Routing Guide or Delivery Schedule if applicable			

PRINCIPAL OWNERS, OFFICERS OR STOCKHOLDERS

NAME	POSITION OR TITLE	FULL TIME / PART TIME	ADDRESS:	STREET	CITY	STATE	ZIP
see attached.							
		<input type="checkbox"/> Full <input type="checkbox"/> Part					
		<input type="checkbox"/> Full <input type="checkbox"/> Part					
		<input type="checkbox"/> Full <input type="checkbox"/> Part					

PROPRIETORSHIP <input type="checkbox"/>	S.S. #	BANK NAME
PARTNERHIP <input checked="" type="checkbox"/>		See attached.
CORPORATION <input type="checkbox"/>	STATE OF INCORPORATION	BANK ADDRESS
CORPORATE I.D. #		BANK ACCOUNT NO.
BRANCH <input type="checkbox"/>		OFFICER TO CONTACT
		PHONE

NAME OF PARENT OR HOME OFFICE

YEARS IN THIS BUSINESS

1 or less 2 to 3 4 or more

YOUR PRIMARY BUSINESS

TEAM SALES LICENSE

ANNUAL SALES

Under \$500M \$500M - \$1MM \$1MM - \$5MM Over \$5MM



PURCHASE AGREEMENT

General Information

All orders are subject to acceptance by corporate headquarters. Verbal agreements are not binding unless approved by the company in writing. All orders for custom-made items not in-stock must be submitted via mail or fax in legible writing on New Era - supplied order forms. No orders for custom-made items will be accepted over the telephone or voice mail systems. An opening order to become a New Era account must consist of a minimum dollar value of \$10,000.

Account activity is monitored on a regular basis. Accounts that have not ordered within one year or that have not made purchases amounting to at least \$1,000 in the past year are deactivated from the system. Should a deactivated account desire to become active again, an opening order consisting of a minimum dollar value of \$1,000 is required, in addition to a completed New Era Cap Credit Application which reflects current ownership, assets, and trade references. Most important are the statement of ownership, the trade references, and a recent financial statement. Without all of these items, New Era Cap will not extend credit.

Terms

All sales to our customers are based on net thirty (30) day terms. Title to all goods rest with the customer when the merchandise is delivered to a common carrier consigned to our customer's specified shipping address.

Other Terms and Conditions

The terms specified herein and on our order form, and invoice are the only terms by which New Era Cap sells merchandise. New Era Cap does not agree to terms and conditions stipulated on buyer's purchase order or similar documents, correspondence or statements of policies, unless written agreement is reached with an officer of New Era Cap stipulating New Era Cap's acceptance of such terms and conditions.

Cost of Collection

If the buyer fails to pay any amount when due including service charges, buyer agrees to pay the full amount of any costs or expenses, including reasonable attorney's fees incurred by New Era Cap in the collection of such overdue amounts by litigation or otherwise.

Cancelled Orders / Changes to Orders

All New Era Cap products are custom-made. Changes or cancellations of custom-made orders can not be accepted more than twenty-four (24) hours after the receipt of the order and/or design approval, if applicable. Any cancellations or changes must be made in writing via fax from an authorized staff member. Example: Buyer, Manager, and / or Officer.

Shipping

New Era Cap ships most merchandise prepaid via regular UPS. UPS tracers will be run at no charge if merchandise was not delivered. If merchandise was received as specified there will be a \$20.00 charge for the tracer request.

Prices

All prices are subject to change without notice. The line item prices shown on the printed invoice are the only prices honored. Verbal quotations are only estimates and are not binding.

Returned Checks and Refused Shipments

New Era Cap reserves the right to impose a handling charge for each returned check or refused shipment.

No Trans-Shipments

New Era Cap has a policy of selling directly to selected retail outlets for resale by them at specified locations. Proposed sale at any retail outlet requires advance written approval from New Era Cap's corporate office. Resale or trans-shipments of our merchandise to an unauthorized location or to another business contravenes that policy and the terms and conditions of the sale and may result in non-shipment or termination of the retailer's business relationship with New Era Cap.

Representative Amount of the Line

New Era Cap has a policy of selling only to retail outlets which carry a representative amount of the line as deemed appropriate by New Era Cap's line or lines of merchandise and marketing conditions. Failure to do so contravenes that policy and the terms and conditions of sale and may result in non-shipment or termination of the retailer's business relationship with New Era Cap.

Allocations

Acceptance of orders and sales are also subject to allocation by New Era Cap in lines of product shortage in response to factors deemed most appropriate by New Era Cap at the time.

Limitation of Liability

New Era Cap assumes no liability except as expressly provided in these terms and conditions and in no event will be liable for special, indirect, incidental or consequential damage, whether arising in contract, in tort, under any warranty or otherwise.

Warranty and Return Policy

All New Era caps are guaranteed against defective workmanship or materials. New Era Cap reserves the right to examine all caps to determine, at its sole discretion, if the caps are in fact defective due to workmanship or materials. No returns are ever allowed on custom-made products, unless it is determined that an error has occurred which is the fault of New Era Cap. No worn or dirty caps will be accepted for credit. If worn or dirty caps are found within the return, the worn or dirty caps will be not be returned to the customer or credited. New Era Cap will destroy the worn or dirty caps due to health and sanitary handling regulations and will not issue credit for the worn or dirty caps.

No returns will be accepted without proper return authorization documents intact (i.e., the Return Authorization Tag). Returns are not accepted

without permission from New Era Cap for return authorization. Packages without Return Authorization Tags are refused at our receiving dock. New Era Cap reserves the right to inspect caps and determine whether to repair, replace, issue credit, or return the caps as based upon our findings. Each Return Authorization is issued for specific caps. Customers can not substitute product for return with an incorrect authorization number.

Collect shipments will not be accepted. Buyer agrees to pay return freight and/or reasonable storage charges for caps returned without proper authorization, regardless of the reason for the return.

If applicable, a 35% restocking fee will be charged to your account on a separate invoice. Customer will be required to agree to the restocking fee in advance and in writing prior to the return being authorized.

No returns will be authorized after thirty (30) days.

Terms and Conditions

Parties hereby agree that all purchases made are subject to the following terms and conditions.

The undersigned purchaser hereby agrees that all amounts due for the goods and services purchased from New Era Cap or its subsidiaries are payable at the location specified by New Era Cap.

The undersigned purchaser hereby agrees to pay service charges on accounts over thirty (30) days old. These service charges will accrue at the rate of 1.25% per month 15% per annum or the maximum allowed by law.

The undersigned purchaser agrees to pay, in the event this account becomes delinquent and is turned over to an attorney for collection, reasonable attorney's fees plus all court and attendant collection costs.

The parties hereby acknowledge that the goods and/or services purchased from New Era Cap are not payable in installments, but are payable in full as stated herein.

All payments received by New Era Cap shall be first applied to interest, collection costs and expenses, if any and then to reduce outstanding debt due and owing.

Any extension of credit by New Era Cap shall be made solely upon the terms, conditions, and policies published by New Era Cap from time to time and any modification thereof shall not be effective unless accepted in writing by New Era Cap.

New Era Cap reserves the right, in its sole discretion, to refuse to extend credit at any time or to honor any order prior to delivery thereof.

New Era Cap may, on discovery of the undersigned purchaser's insolvency, refuse delivery except for cash and stop delivery in transit except for cash.

Where the undersigned purchaser has already received the goods on credit while insolvent, New Era Cap, may reclaim the goods upon demand within ten (10) days after receipt, but if misrepresentation of solvency has been made to New Era Cap in writing within three (3) months before delivery, the ten day limitation does not apply.

Are products purchased for resale? Yes No

Resale Tax Number: 75-2585320 State: TX

All statements and information on this purchase agreement are true and complete and are made for the purpose of purchasing from New Era Cap Company.

Date: 7/24/98

Firm Name: TEXAS RANGERS BASEBALL

Print Name of Signer: MILICENT VAN WIE

Title: DIRECTOR, PURCHASING

Signature: Milicent VanWie

**#15985
TEXAS RANGER BB
1000 BALL PARKWAY
ARLINGTON TX 76011**

EXHIBIT B



STATEMENT

Statement Date

5/25/2010

Page

1

Remit To:

Credit Analyst

New Era Cap, Inc. USA
PO Box 054
Buffalo
NY 14240
Phone # 877 NEC 5950

Lynette Schroeter

Corporate Customer

1007865

TEXAS RANGERS BB RETAIL

P O BOX 90111

ARLINGTON, TX 76011

US

Activity Type Key

IN

Invoice

CM

Credit Memo

PY

Payment

MT

Matched Invoices and Credits

Currency: USD

Item	Type	Date	PO#	Order #	Activity	Amount Due	Due Date
90211831	CM	8/21/2009	1814365	60008109	-13,746.88	-297.00	9/20/2009
100332512	MT	1/22/2010	90211831		13,233.60		
100396228	MT	5/10/2010	90211831		216.28		
90341087	IN	1/26/2010	2564540	212990	4,257.88	4,081.93	2/25/2010
100350284	MT	2/20/2010	90360081		76.60		
100388404	MT	5/6/2010	90430574		99.46		
90341716	IN	1/27/2010	2564480	212051	2,703.90	2,703.90	2/26/2010
90342655	IN	1/29/2010	2564504	250904	1,101.60	1,101.60	2/28/2010
90343927	IN	2/1/2010	CAP BRUSHES	212246	2,248.54	268.54	3/3/2010
100396226	MT	5/10/2010	90376686		-1,980.00		
90344713	IN	2/2/2010	BOBWOW	212044	4,147.70	4,147.70	3/4/2010
90346268	IN	2/4/2010	2564504	255772	1,713.60	1,713.60	3/6/2010
90349855	IN	2/8/2010	2564420	249702	3,765.60	3,765.60	3/10/2010
90351044	IN	2/8/2010	BP312010	304716	4,692.40	4,692.40	3/10/2010
90375317	IN	3/5/2010	ADULTIMP5950	212108	241.75	241.75	4/4/2010
90380096	IN	3/10/2010	2846857	320206	372.57	365.57	4/9/2010
100364345	MT	3/26/2010	90394114		-7.00		
90383135	IN	3/16/2010	2564590	274941	2,327.04	2,327.04	4/14/2010
90390039	IN	3/22/2010	2846857	342777	260.00	260.00	4/21/2010
90390040	IN	3/22/2010	2846857	344457	1,300.00	1,300.00	4/21/2010
90391081	IN	3/23/2010	2564129	348064	1,499.04	1,499.04	4/22/2010
90391192	IN	3/25/2010	2564590	274941	1,101.60	1,101.60	4/24/2010
90392956	IN	3/25/2010	2901045	349082	8,424.00	8,424.00	4/24/2010
90397154	IN	3/30/2010	2564194	274112	5,385.60	3,316.16	4/29/2010
1400038478	PY	5/17/2010	9710		4,069.44		
90397249	IN	3/30/2010	2564543	274127	1,101.60	1,101.60	4/29/2010
90398563	IN	3/31/2010	2564194	274112	4,497.12	4,497.12	4/30/2010
90399487	IN	4/1/2010	2846857	342777	273.00	273.00	5/1/2010
90411836	IN	4/13/2010	2564194	274113	3,209.16	3,209.16	5/13/2010
90412593	IN	4/14/2010	2943694	367411	4,032.00	4,032.00	5/14/2010
1400031008	PY	4/16/2010	9118		28.75	28.75	4/16/2010
90415465	IN	4/17/2010	2942863	368022	18,408.00	18,408.00	5/17/2010
90419946	IN	4/22/2010	2942863	368022	117.00	117.00	5/22/2010
90423387	IN	4/28/2010	2979754	378385	3,061.44	3,061.44	5/28/2010
90424025	IN	4/29/2010	BP512010	228277	7,714.09	7,714.09	5/28/2010
90425525	IN	4/30/2010	2846857	344457	156.00	156.00	5/30/2010
90429642	IN	5/4/2010	2564129	304441	3,581.28	3,581.28	6/3/2010
90429643	IN	5/4/2010	2564420	304442	2,571.84	2,571.84	6/3/2010
90430559	IN	5/5/2010	BP512010	228277	36.56		7/4/2010
1600010425	CM	5/10/2010	2010 SPONSORSHIP		-27,500.00	-27,500.00	5/10/2010
90437922	IN	5/12/2010	2980795	390608	1,041.94	1,041.94	6/11/2010



STATEMENT

Statement Date 5/25/2010
 Page 2
 Remit To: Credit Analyst
 Lynette Schroeter
 New Era Cap, Inc. USA
 PO Box 054
 Buffalo
 NY 14240
 Phone # 877 NEC 5950

Corporate Customer
 1007865
 TEXAS RANGERS BB RETAIL
 P O BOX 90111
 ARLINGTON, TX 76011
 US

Activity Type Key
 IN Invoice
 CM Credit Memo
 PY Payment
 MT Matched Invoices and Credits
 Currency: USD

Item	Type	Date	PO#	Order #	Activity	Amount Due	Due Date
90439944	IN	5/12/2010	2864441	325694	13,135.54	13,135.54	6/11/2010
1400033478	PY	5/17/2010	9710		3,083.67	2,257.47	5/17/2010
100396711	MT	5/19/2010	1400033478		326.20		
90445808	IN	5/19/2010	3012389	400201	9,139.00	9,139.00	6/18/2010
90448170	IN	5/21/2010	2564129	351199	8,568.00	8,568.00	6/20/2010
90449799	CM	5/22/2010	2564194	60020157	-216.00	-216.00	6/21/2010
90449814	CM	5/22/2010	2564129	60020172	-394.56	-394.56	6/21/2010
90450778	IN	5/25/2010	3012389	400206	3,042.00	3,042.00	6/24/2010
90450779	IN	5/25/2010	2564349	211998	6,187.02	6,187.02	6/24/2010
90450780	IN	5/25/2010	2564525	212994	1,964.40	1,964.40	6/24/2010
90450781	IN	5/25/2010	2564593	212999	4,173.60	4,173.60	6/24/2010
90450782	IN	5/25/2010	2564549	213199	1,964.40	1,964.40	6/24/2010
Statement Total						106,596.64	

FUTURE	1-30	31-60	61-90	90+	TOTAL
65,726.55	3,196.57	15,495.25	22,475.27	-297.00	106,596.64