Martin A. Sosland (18855645)
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, Texas 75201
Telephone: (214) 746-7700
Facsimile: (214) 746-7777

Ronit J. Berkovich (*pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtor and
Debtor in Possession

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 (DML)**
Debtor.	:	

MEMORANDUM OF LAW IN OPPOSITION TO THE UNITED STATES TRUSTEE'S OBJECTION TO THE DEBTOR'S APPLICATION TO RETAIN WEIL, GOTSHAL & MANGES LLP AS ATTORNEYS FOR THE DEBTOR

Texas Rangers Baseball Partners ("TRBP" or the "Debtor") filed with the Bankruptcy Court for the Northern District of Texas (the "Court") on May 24, 2010 (the "Commencement Date") a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") [Docket No. 1]. Pursuant to the 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 (the "Application") [Docket No. 35] , the Debtor seeks to retain Weil, Gotshal & Manges LLP ("WG&M") as bankruptcy counsel in this chapter 11 case (the "Chapter 11 Case"). As part of the Application, WG&M filed the Declaration of Martin A. Sosland of Weil, Gotshal and Manges LLP in Support of the Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ and Retain Weil, Gotshal & Manges LLP as Attorneys for the Debtor (the "Sosland Declaration").

On June 14, 2010, the United States Trustee for the Northern District of Texas (the "U.S. Trustee") filed an objection (the "Objection") [Docket No. 173] to the Application, alleging that WG&M did not meet the standards required under section 327 of the Bankruptcy Code and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules") to warrant retention as counsel to the Debtor. Additionally, the Ad Hoc Group of First Lien Lenders (the "Ad Hoc Lenders") filed a position statement (the "Position Statement") that requested additional disclosure from WG&M while not formally objecting to the Application [Docket No. 180].

On June 17, 2010, the Court held a hearing to consider, among other things, the Application, the Objection, and the Position Statement (the "June 17th Hearing"). At the June 17th Hearing, counsel for the Ad Hoc Lenders stated that, "our judgment is there is at this time no cause to disqualify Weil, Gotshal." June 17th Hrg. Tr. 71:15-16. The Court took the Application under advisement and authorized WG&M's employment *nunc pro tunc* to the Commencement Date on an interim basis, subject to section 330 of the Bankruptcy Code, pending a final decision on the Application.[1] At the June 17th Hearing, the Court also provided

[1] The Court authorized the retention of WG&M *nunc pro tunc* on the record at the June 17th Hearing. *See* June 17th Hrg. Tr. 75:4–8. The Debtor and the U.S. Trustee are negotiating an appropriate form of order to memorialize the Court's decision that the Debtor expects to be presented to the Court this week.

WG&M one week to provide any additional disclosure to be considered in connection with the Application. The Court also directed the parties to submit any additional authorities in support of their respective positions by July 6, 2010.

On June 24, 2010, WG&M filed the Supplemental Declaration of Martin A. Sosland of Weil, Gotshal and Manges LLP in Support of the Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ and Retain Weil, Gotshal & Manges LLP as Attorneys for the Debtor (the "Supplemental Disclosure") [Docket No. 268].

On July 6, 2010, the U.S. Trustee filed the United States Trustee's Brief Supporting 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 & Manges LLP as Attorneys for the Debtor Nunc Pro Tunc to the Commencement Date, alleging inadequate disclosure and actual conflict (the "July 6 Brief"). [Docket No. 319].

The Debtor files this memorandum of law (the "Response") in opposition to the Objection, to address the points in the Objection, the Position Statement, and the July 6 Brief, and to provide the Court with additional authorities in support of the Application, as requested by the Court at the June 17th Hearing.

I. INTRODUCTION

1. The Objection of the U.S. Trustee consists of (i) a factual statement conveying the relevant facts as the U.S. Trustee understands them to be in this Chapter 11 Case, (ii) a request for additional disclosure regarding the Application, and (iii) legal arguments as to why WG&M should be disqualified as counsel. The July 6 Brief includes additional legal argument and misrepresentations or misunderstandings related to the Supplemental Disclosure. The arguments in the Objection and July 6 Brief, while varied and in many ways unique, do not

result in the conclusion that WG&M cannot meet the standards required by the Bankruptcy Code to be retained as counsel to the Debtor. WG&M is a "disinterested party" that does not "hold or represent an interest adverse" to the Debtor's estates, and WG&M can represent and has diligently and zealously represented the Debtor since the Commencement Date, consistent with the principles guiding retention in chapter 11 cases.

2. In fact, it is common for a single firm to represent a debtor and its affiliates, especially where, as here, conflicts counsel has been retained to represent each of the Debtor and other parties in the event conflicts arise between them. Moreover, the facts of this case do not support a finding that WG&M cannot represent the Debtor with undivided loyalty. The allegations to date have generally been that WG&M has been solely focused *on the good of the Debtor* to the detriment the Debtor's various affiliates, not the reverse. Further, as this Court has undoubtedly recognized, this case is essentially a two-party dispute between the Debtor and Ad Hoc Lenders, which are indisputably represented by sophisticated counsel able to assert all arguments that benefit the lenders. WG&M's longstanding relationship with the Debtor makes it the counsel best able to provide legal services to the Debtor in a manner that will enable it to exit chapter 11 expeditiously, which all parties agree is in the Debtor's best interest. Disqualifying WG&M at this time, on the other hand, would only serve to delay the case and jeopardize the necessary, quick reorganization of the Debtor, while serving no positive purpose.

II. RELEVANT FACTUAL BACKGROUND

3. As a threshold matter, the U.S. Trustee's statements regarding a number of the factual issues in the Chapter 11 Case are either incomplete or incorrect.

B. Facts Related to the Alleged Representation of Ballpark Real Estate, L.P.

4. First, WG&M does not represent Baseball Real Estate, L.P. ("BRE") at this time and has never represented BRE in connection with this Chapter 11 Case. While it is

true that WG&M represented BRE in its acquisition of that certain land surrounding Rangers Ballpark in Arlington (the "Land"), that transaction occurred in 1998. While WG&M from time-to-time thereafter did do work for BRE or its partners, BRE and its partners have at all times since August 15, 2006 been represented by Philip I. Danze ("Mr. Danze") of McGuire, Craddock and Strother, P.C., a Dallas law firm (hereinafter, "MCS"). The relationship between Mr. Danze and BRE in fact predates the credit agreement between the Lenders and the Debtor. Prior to August 15, 2006, Mr. Danze was a lawyer at WG&M and performed legal services for BRE on behalf of WG&M; MCS has been BRE's counsel since 2006 when Mr. Danze left WG&M to join MCS.

5. In connection with its representation of HSG and TRBP, WG&M assisted in the negotiation and drafting of the agreement to sell the land owned by BRE (the "Land Sale Agreement") in connection with the sale of the Texas Rangers and in related transactions contemplated by the asset purchase agreement entered into pursuant to the Prepackaged Plan. Indeed, the negotiation of the sale of the Texas Rangers was necessarily intertwined with and dependant upon the simultaneous negotiation of the sale of the Land by BRE. Pursuant to the Land Sale Agreement, the Debtor pays the fees of MCS for work associated with the Land Sale Agreement. WG&M and MCS do not have a fee sharing arrangement of any kind.

6. At all times during the negotiations regarding the sale of the assets of the Debtor prior to and throughout the pendency of this Chapter 11 Case, Mr. Danze and his firm were counsel for BRE in connection with the Land Sale Agreement.

7. As further described in the Sosland Declaration, WG&M uses a set of procedures developed to ensure compliance with the requirements of the Bankruptcy Code and the Bankruptcy Rules regarding the retention of professionals by a debtor under the Bankruptcy

Code (the "Firm Disclosure Procedures"). Pursuant to the Firm Disclosure Procedures, as is typical, WG&M does not typically disclose relationships with former clients, or clients for which it has billed no time to in the previous two years. Nonetheless, in an attempt to provide all parties with disclosure in the fullest extent, WG&M did in fact take the uncommon step of affirmatively disclosing its role in the 1998 transaction by BRE of the Land.

8. To the extent the U.S. Trustee relies on WG&M's representation of BRE as a basis for a lack of disinterestedness, the Objection should be overruled. As set forth below, the case law is clear regarding disinterestedness and former clients. The acquisition of the Land by BRE in 1998 and the assistance in drafting the Land Sale Agreement in order to facilitate the agreement of HSG Sports Group and TRBP to sell the Texas Rangers is not at issue in this Chapter 11 Case. BRE has independent counsel, in the form of Mr. Danze and his firm of McGuire, Craddock and Strother, P.C. WG&M's former representation of BRE should not provide the basis for disqualification of WG&M.

C. Facts Related to the Representation HSG Sports Group

9. WG&M has a long-standing relationship with Thomas O. Hicks ("Mr. Hicks"), starting in 1989, representing Mr. Hicks and various entities controlled by Mr. Hicks. Also described in the Sosland Declaration and the Supplemental Disclosure, WG&M continues to do work for HSG Sports Group Holdings, LLC (f/k/a Hicks Holdings, LLC) and HSG Sports Group (f/k/a Hicks Sports Group) (collectively, "HSG"), an entity controlled by Mr. Hicks. In its capacity as primary counsel for HSG, WG&M is actively involved with the sale of the Dallas Stars and Dallas Arena LLC, the owner of a 50% interest in the American Airlines Center. In the past three years, work done by the WG&M for other holdings of Mr. Hicks includes KOP Investments LLC; Liverpool Football Club & Athletic Grounds; and Latrobe Steel Co. In the past three years work done by the WG&M for HSG includes work on behalf of various HSG

subsidiaries, including Rangers Equity Holdings, L.P.; Rangers Equity Holdings GP, LLC; Dallas Stars, L.P.; StarCenters LLC; Dallas Arena LLC; Center GP, LLC; Emerald Diamond, L.P.; and Rangers Ballpark LLC. Work done by WG&M for Hicks Holdings LLC included work on behalf of various portfolio companies and other entities in which Hicks Holdings LLC has an equity interest.

10. At this time, however, WG&M does not represent HSG with respect to this Chapter 11 Case, nor has it ever intimated that it did represent HSG with respect to this Chapter 11 Case. HSG has retained Neligan Foley LLP ("Neligan"), a Dallas bankruptcy firm with considerable experience, in the event HSG or any of its subsidiaries need to assert rights with respect to the Debtor or other entities involved in this Chapter 11 Case. Neligan has been representing Rangers Equity Holdings GP, LLC and Rangers Equity Holdings, L.P. (collectively, the "Equity Parents") in the involuntary chapter 11 cases (Case Nos. 10-43625 and 10-43624) filed by the Ad Hoc Lender on May 28, 2010.

11. Since the June 17th Hearing, on June 28, 2010 the Court appointed William K. Snyder ("Mr. Snyder"), through his firm CRG Partners Group LLC ("CRG"), to act as Chief Restructuring Officer ("CRO") for the Equity Parents [Case No. 10-43624; Docket No. 34] [Case No. 10-43625; Docket No. 32]. Mr. Snyder is charged with "(i) advising the Equity Parents and the Court of his views regarding the Plan and any modifications to the Plan; (ii) voting on the Plan and any modifications to the Plan on behalf of the Equity Parents; (iii) performing such investigation and analysis as he may deem appropriate incident to the performance of [the] duties and responsibilities." *See* 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 [Case No. 10-43624; Docket No. 30] [Case No. 10-43625; Docket No. 28]. Mr. Snyder and CRG are separately represented by the law firm of Fulbright & Jaworski L.L.P. Therefore, each of the Equity Parents and the CRO for the Equity Parents are separately represented in this Chapter 11 Case. WG&M does not represent the Equity Parents in this Chapter 11 Case or in any manner connected with the Debtor.

D. Facts Related to the Representation of Mr. Hicks

12. Although it is not addressed specifically in the U.S. Trustee's brief, WG&M also confirms in the Supplemental Disclosure that WG&M is not representing Mr. Hicks in connection with the Overdraft Protection Agreement Claim [Class 10 of the Prepackaged Plan]. Mr. Hicks, as a creditor who will be paid in full under the terms of the Prepackaged Plan, is not required by the Prepackaged Plan to file a proof of claim or otherwise appear in the Chapter 11 Case, and at this time Mr. Hicks has not done so. If Mr. Hicks is at any time required to file a proof of claim, or should his interests as a creditor become adverse to the Debtor, Mr. Hicks anticipates engaging McKool Smith, PC ("McKool"), with which he has a long-standing relationship, to represent him in this Chapter 11 Case.

13. At this time, counsel for Mr. Hicks has not made an appearance in Court. There is no requirement that McKool have made a court appearance at this time, and McKool is not a professional that would be required to file an employment application pursuant to section 327 of the Bankruptcy Code. To the extent Mr. Hicks desires to take some action in this case, presumably he would do so. To the extent the U.S. Trustee relies on WG&M's representation of the Mr. Hicks as a basis for a lack of disinterestedness, the Objection should be overruled.

E. Facts Related to the Representation of the Non-HSG Hicks Entities

14. As described in the Sosland Declaration and further in the Supplemental Disclosure, WG&M also continues to represent other entities owned directly by Mr. Hicks in addition to HSG, including Hicks Holdings LLC, DirecPath Holdings, LLC; KOP Investment, LLC; and Liverpool Football Club & Athletic Grounds (collectively, the "Non-HSG Hicks Entities"). None of the Non-HSG Hicks Entities is a creditor of the Debtor or is an interested party in this Chapter 11 Case. To the extent the U.S. Trustee relies on WG&M's representation of the Non-HSG Hicks Entities as a basis for a lack of disinterestedness, the Objection should be overruled.

F. Facts Related to the Representation of TRBP by Conflicts Counsel

15. In addition, the Court approved the employment of Forshey & Prostok, LLP ("F&P") as special conflicts counsel *nunc pro tunc* to the Commencement Date at the June 17th Hearing. Should any conflict arise between the Debtor and HSG or any other affiliate in the course of this Chapter 11 Case, F&P will step in and act on behalf of the Debtor. F&P is currently defending the Debtor against an adversary proceeding alleging state-law fraudulent transfer causes of action brought by certain of the Debtor's creditors. Contrary to the allegations of the U.S. Trustee, thus far F&P, as conflicts counsel, has had no issues representing the Debtor in this action in a way that calls into question the ability of conflicts counsel to resolve the issues it was retained to handle.

16. While the retention of special conflicts counsel will not go so far as to *per se* make the application for retention of a potentially conflicted law firm unassailable, it is an important safeguard in any case where, as here, a conflict could arise. As the U.S. Trustee recognizes in its Objection, that "large law firms capable of handling complex cases have large conflicts, [and for that reason] courts developed conflicts counsel." Objection ¶ 31. The U.S.

Trustee has not provided any reason why each law firm cannot or will not exercise its duties to its client with the highest of standards and ensure that the Debtor has the best representation possible in this Chapter 11 Case.

G. The U.S. Trustee Misunderstands or Misrepresents the Disclosure in the Sosland Declaration and Supplemental Disclosure

17. In its July 6 Brief, the U.S. Trustee misunderstands or misrepresents several factual matters related to the Supplemental Disclosure and Sosland Declaration.

18. As a preliminary matter, the Supplemental Disclosure was not intended to supplant the Sosland Declaration. The information provided in the Supplemental Disclosure was an attempt to provide additional information requested by the U.S. Trustee.

19. The U.S. Trustee, in its Exhibit A to the July 6 Brief, notes the Hicks-related entities not listed in the Original Disclosure total 10. Of these 10 entities, however, eight are affiliates of HSG Sports Group. Bills for work done on behalf of HSG Sports Group affiliates, except for the Debtor where noted in the Supplemental Disclosure, would have been billed directly to HSG Sports Group. Many are shell corporations with no assets, liabilities, or even bank accounts. Additionally, WG&M did affirmatively disclose that it "has rendered legal services to entities controlled by Mr. Hicks since 1989." Sosland Declaration ¶ 7.

20. The U.S. Trustee, in its Exhibit A to the July 6 Brief, also notes the Hicks-related entities WG&M currently represents. One entity the U.S. Trustee claims is listed as a "current representation" only in the Supplemental Disclosure, Hicks, Muse, Tate & Furst, is no longer affiliated with Mr. Hicks, and was actually never mentioned in the Supplemental Disclosure.[2] HSG Sports Group Holdings is the parent of HSG Sports Group and a shell

[2] Hicks, Muse, Tate & Furst was succeeded by HM Capital. HM Capital is a client of WG&M, but is not affiliated with Mr. Hicks and is not a part in interest in this Chapter 11 Case.

corporation. Mr. Hicks is not being represented by WG&M in connection with this case, but WG&M's representation of Mr. Hicks was noted in the Sosland Declaration. Sosland Declaration ¶¶ 7-8. The remaining entities have no connection whatsoever to this case, either as claimants or otherwise.

21. WG&M disclosed in the Sosland Declaration that $48,826 remained of a retainer that had been paid by the Debtor—the $500,000 retainer. Sosland Declaration ¶ 17. Although WG&M did not disclose the initial amount of the retainer in the Sosland Declaration, it did disclose that it held a "general retainer." Application ¶ 28. Further, though WG&M disclosed the initial amount of the general retainer in the Supplemental Disclosure, WG&M remains unsure as to the relevance to the U.S. Trustee of the initial size of the retainer if the retainer applied prepetition to pay for prepetition services relating to the preparation of the Chapter 11 Case. Additionally, WG&M noted in the Sosland Declaration that it continued to hold a $250,000 retainer on behalf of HSG Sports Group. Sosland Declaration ¶ 17. That retainer is not for the benefit of the Debtor, was not paid for by the Debtor, and is unrelated to work involving the Debtor. At this time, it remains in an account accruing interest.

22. The U.S. Trustee also underscores the "inconsistencies" in the information regarding the payments from Hicks-related entities and WG&M, but these "inconsistencies" reflect nothing more than varied billing disclosures. In the Sosland Declaration, WG&M disclosed that it had billed an approximate aggregate (including expenses) of $7,746,665 in the 12 months prior to the commencement of the case for work by WG&M related to HSG Sports Group and the Debtor. This was an approximately accurate reflection of the amount billed to HSG Sports Group and the Debtor in that time period. In the Supplemental Disclosure, WG&M disclosed that it had received payments of $7,656,463 for the period between June 1, 2009 and

May 31, 2010. This amount represents the fees paid (not including expenses) by HSG Sports Group or the Debtor in that 12-month period. This amount includes payments received after June 1, 2009 for work billed prior to that date. Both numbers are accurate and not inconsistent—merely representations of differing billing metrics.

23. Additionally, the U.S. Trustee notes the difference between the $7,746,665 listed in the Sosland Declaration and $7,455,703.80 figure in Exhibit 2 of the Supplemental Disclosure summarizing the total amount payments provided by WG&M for work related to the Debtor. Despite being close, there are actually different calculations. The $7,455,703.80 figure in Exhibit 2 is the total amount paid for work relating the Debtor since the Debtor began its sale process in 2008. The aggregate of all payments listed on Exhibit 2 made following June 1, 2009, exactly equals the $6,628,888 amount reported by WG&M in the Supplemental Disclosure as the amount paid for work done for the Debtor since June 1, 2009. These numbers are not inconsistent.

24. Finally, the U.S. Trustee continues to ask for the percentage of revenue that Hicks-related entities represents to the Dallas office of WG&M. WG&M does not calculate revenues in such a manner. WG&M is an international firm. Its offices are not individual law firms unto themselves. Frequently, partners and associates from varying offices work hand-in-hand to maximize the value WG&M provides to its various clients. The two WG&M Business, Finance & Restructuring partners representing the Debtor this bankruptcy, Mr. Sosland and Ms. Ronit Berkovich, themselves come from two separate offices – Dallas and New York.

25. WG&M would no more fail to disclose a client relationship that represented more than 1% of the WG&M's revenue simply because a certain office did not do work for that client than it would disclose a client as generating more than 1% of the work in any

specific office. There is no legal basis, nor has the U.S. Trustee explained one, where an international firm would be required to artificially break its corporate structure down to disclose information in this manner. Hicks and Hicks-related entities represent far less than 1% of WG&M's revenues over the past 12 months, as WG&M disclosed in the Supplemental Disclosure. Supplemental Disclosure ¶ 5.

26. Through its chart, the U.S. Trustee attempts to demonstrate that WG&M is somehow inconsistent or misleading in its disclosures. Nothing could be further from the truth. Given the U.S. Trustee's apparent belief that this information is easier to understand in a chart than in the narrative form WG&M originally provided, WG&M has prepared the chart below to assist the U.S. Trustee in understanding the relevant facts:

ITEM DISCLOSED	**WHERE DISCLOSED**	**EXPLANATION**
$7,746,665	Sosland Dec. ¶ 17	Fees and Expenses incurred in connection with HSG Sports Group and the Debtor in 12 months before bankruptcy
$5.7 million	Sosland Dec. ¶ 17	Fees and Expenses incurred in connection with Debtor in 12 months before bankruptcy
$8,762,977	Supp. Disclosure ¶ 5	Amount of money received by WG&M for fees of all Hicks-related entities between June 1, 2009 and May 31, 2010
$7,656,463	Supp. Disclosure ¶ 5	Amount of money received by WG&M for fees of HSG Sports Holdings and related entities between June 1, 2009 and May 31, 2010
$6,628,888	Supp. Disclosure ¶ 5	Amount of money received by WG&M for fees related to TRBP between June 1, 2009 and May 31, 2010
$7,455,703.80	Supp. Disclosure Ex. 2	Amount of money received by WG&M for fees related to TRBP between October 1, 2008 and May 31, 2010
<1%	Supp. Disclosure ¶ 5	Percentage of WG&M firm revenues that all Hicks-related work amounted to between June 1, 2009 and May 31, 2010
$250,000 (*plus interest*)	Sosland Dec. ¶ 17	Retainer held by WG&M for HSG Sports Group
$500,000	Supp. Disclosure Ex. 2	Retainer initially held by WG&M on behalf of TRBP

$48,826	Sosland Dec. ¶ 17	Retainer remaining held by WG&M on behalf of TRBP
Prior Represented Hicks-related entities	Sosland Dec. ¶¶ 7-8; Supp. Disclosure ¶ 3, 6	Hicks, Muse Tate & Furst Ballpark Real Estate, L.P. Rangers Equity Holdings, L.P. Rangers Equity Holdings GP LLC KOP Investments LLC Emerald Diamond, L.P. Rangers Ballpark LLC
Currently Represented Hicks-related entities in matters *not related to this Chapter 11 Case*	Sosland Dec. ¶¶ 7-8 Supp. Disclosure ¶ 3	Thomas O. Hicks Hicks Holdings LLC DirecPath Holdings LLC HSG Sports Group Holdings LLC HSG Sports Group LLC Latrobe Steel Co. Liverpool Football Club & Athletic Grounds Star Centers LLC Center GP LLC Dallas Arena LLC Dallas Stars TRBP
Hicks-related entities WG&M is representing in this Chapter 11 Case	Sosland Dec. ¶¶ 7-8 Supp. Disclosure ¶ 4 Retention Tr. 65:14-22	TRBP

27. WG&M is not attempting through its Supplemental Disclosure to mislead the Court or the U.S. Trustee. Because WG&M does not understand the basis for which the U.S. Trustee requested the information it requested, WG&M simply attempted to disclose as much information as possible consistent with its duties under the Bankruptcy Code. In light of WG&M's disclosure pursuant to the Sosland Declaration and Supplemental Disclosure, and notwithstanding the misrepresentations of the U.S. Trustee in the Objection and the July 6 Brief, WG&M has met its burden of disclosure as required by section 329 of the Bankruptcy Code and sections 2014 and 2016 of the Bankruptcy Rules.

III. LEGAL ARGUMENT

A. Simultaneous Representation is not, Without Further Factual Inquiry, a *Per Se* Actual Conflict of Interest that Rises to a Level Requiring Disqualification

28. As a threshold matter, the mere representation in the bankruptcy context of parties that are affiliates is not *per se* prohibited by courts in the Fifth Circuit. *In re Global Marine, Inc.*, 108 B.R. 998, 1001 (Bankr. S.D. Tex. 1987) (stating "[the] blanket proscription against simultaneous representation does not appear to be accepted by the Fifth Circuit.") "This would imply that dual representation is not in and of itself an actual conflict of interest but that an actual conflict must be factually substantiated upon the evidentiary record." *Id.* at 1002.

29. Expanding on the central import of the factual record with respect to any inquiry in the context of retention under the Bankruptcy Code, courts in this Circuit have routinely said, "[w]hen the issue of a conflict of interests is alleged, the Fifth Circuit requires a 'painstaking analyses of the facts and precise application of precedent.'" *Id.* at 1003 (citing *In re Consolidated BancShares, Inc.*, 785 F.2d 1249, 1256 (5th Cir. 1986) (in which the court remanded for additional findings and conclusions with respect to the issue of whether the "dual representation created a legally disabling conflict of interest")). An inquiry into the factors regarding the propriety of retention is a "fact-bound" inquiry. *In re Humble Place Joint Venture*, 936 F.2d 814, 819 (5th Cir. 1991).

B. The Retention of WGM Should be Approved Because WGM Does not Hold Or Represent an Interest Adverse to the Estate and is Disinterested.

30. While the U.S. Trustee's endeavor in the Objection and July 6 Brief to incorporate Fifth Circuit case law outside of the bankruptcy context is creative, sufficient case law *in the bankruptcy context* exists in this Circuit and others to adequately address the issues at hand.

31. The standard for approval of professionals in a bankruptcy case is set forth in section 327(a) of the Bankruptcy Code, which provides that a professional may be retained if it does "not hold or represent an interest adverse to the estate" and is "disinterested." 11 U.S.C. § 327(a). The Bankruptcy Code defines "disinterested person" as 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." 11 U.S.C. § 101(14)(E). In addition, Bankruptcy Rule 2014(a) requires any professional applying for employment to set forth "to the best of the applicant's knowledge" all known connections of the applicant with the "debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." Fed. R. Bankr. Pro. § 2014(a).

32. In general, the tests of disinterestedness and non-representation of an adverse interest overlap, and courts consider these together. Courts have recognized that there is an overlap in the two prongs of section 327(a). *In re Envirodyne Indus.* 150 B.R. 1008, 1017 (Bankr. N.D. Ill. 1993) (noting that the part of section 327(a) requiring disinterestedness "overlaps with the requirement that counsel for a debtor-in-possession not represent an interest adverse to the estate"). The two prongs "form one hallmark with which to evaluate whether professionals seeking court-approved retention (or to remain retained by the estate) meet the absence of adversity requirements embodied in the Bankruptcy Code." *In re Vebeliunas*, 231 B.R. 181, 189 (Bankr. S.D.N.Y. 1999).

33. As noted by the Fifth Circuit Court of Appeals, "[t]he Bankruptcy Code does not define what it means to "not hold or represent an interest adverse to the estate." *See I.G. Petroleum, L.L.C. v. Fenasci (In re W. Delta Oil Co.),* 432 F.3d 347, 356 (5th Cir. 2005). In

W. Delta Oil Co., the Fifth Circuit, as recognized by the U.S. Trustee, noted the following test for adverse interest formulated by the Bankruptcy Court for the District of Utah: "(1) to possess or assert any economic interest that would tend 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; or (2) to possess a predisposition under circumstances that render such a bias against the estate." *Id.* at 356 (citing *In re Roberts*, 46 B.R. 815, 827 (Bankr. D. Utah 1985)). However, as the U.S. Trustee neglected to mention, the Fifth Circuit noted that although this two-part test alone was "helpful," it was in fact only a starting point and "this definition must be employed with an eye to the specific facts of each case, and with attention to circumstances which may impair a professional's ability to offer impartial, disinterested advice to his or her client." *Id.* Importantly, "[t]he adverse interest must be *material* before the conflict requires disqualification." *In re Contractor Tech., Ltd.*, 2006 U.S. Dist. LEXIS 34466 at *19 (S.D. Tex. May 30, 2006) (citing *In re First Jersey Sec. Inc.*, 180 F.3d 504, 509 (3d Cir. 1999)) (emphasis added).

34. The regulation of the employment of estate professionals under section 327 of the Bankruptcy Code "is designed simply to 'serve the important policy of ensuring that all professionals appointed [to represent the trustee] tender undivided loyalty and provide untainted advice and assistance in furtherance of their fiduciary responsibilities.'" *Contractor Tech.*, 2006 U.S. Dist. LEXIS 34466 at *20 (*citing Rome v. Braunstein*, 19 F.3d 54, 58 (1st Cir. 1994)).

35. WG&M's loyalty to the Debtor should not and cannot be questioned, especially in light of the facts of this Chapter 11 Case. The Ad Hoc Lenders have repeated questioned whether the Debtor has attempted to maximize the value for the benefit of its Equity

Parents. This fact is at the core of the disinterestedness inquiry before the Court. If WG&M's loyalties lay with HSG as opposed to the Debtor as the Objection suggests, one would expect WG&M to advocate for the benefit of the Debtor's Equity Parents rather than the Debtor. The Ad Hoc Lenders have contended exactly the opposite.

36. Further, as explained in greater detail *supra* and in the Sosland Declaration and Supplemental Disclosure, WG&M is not representing HSG, Mr. Hicks, the Equity Parents or any other potential creditor with regards to this Chapter 11 Case. In each instance, other law firms are handling the affairs of those parties with respect to the Debtor's Chapter 11 Case.

37. In addition, the Debtor has retained the services of F&P to handle all aspects of the Chapter 11 Case relating to the Debtor's affiliates, further ensuring WG&M will provide the impartial advice that continues to benefit the Debtor throughout this case.

C. The Theories Asserted by the U.S. Trustee and Ad Hoc Committee Regarding Disinterestedness are not in Accord With the Theories Advanced by these Parties in Every Other Aspect of this Chapter 11 Case

38. As discussed *supra*, when facing a question regarding disinterestedness in the context of a bankruptcy case, the Fifth Circuit has recognized that a determination of disinterestedness is a "fact-bound" inquiry. *Humble Place*, 936 F.2d at 819. The *Humble Place case*, which is cited by the U.S. Trustee regarding the import of evaluating the specific facts of each case in the context of retention under section 327 of the Bankruptcy Code, Objection at ¶ 17, underscores the importance of that very point. In fact, the issues in the *Humble Place* case provide an excellent counterpoint to the case at bar, and the case reiterates why the retention of WG&M is appropriate under section 327(a) of the Bankruptcy Code.

39. In *Humble Place*, the Fifth Circuit disqualified a law firm because it found an *actual conflict* existed between the debtor, a joint venture, and one of the partners of the joint venture who had previously retained the firm before the filing of the case. The facts of *Humble*

Place are in fact diametrically contradictory to the facts in the Chapter 11 Case, and show WG&M's retention is proper. Specifically, in *Humble Place*, the Fifth Circuit, adopting the holding of the bankruptcy court, found that the plan created was "clearly formed to benefit the partners rather than the creditors . . . ." *Id.* The bankruptcy court arrived at this conclusion "after hearing not only on the motion to disqualify counsel, but on several other hotly contested matters in the bankruptcy case." *Id.*

40. The distinction between *Humble Point* and this Chapter 11 Case is a crucial one. At the crux of the majority of the "hotly contested matters" in this Chapter 11 Case, the view of the Ad Hoc Lenders, as adopted at various junctures by the U.S. Trustee, is that WG&M in its representation of the Debtor is acting in a manner which fails to maximize the value of the assets of TRBP's *equity holders*. Stated in another way, the Ad Hoc Lenders and U.S. Trustee have argued on various occasions the exact opposite of the situation that led to disqualification in *Humble Point*—contending in other contexts that WG&M is looking out for the Debtor to the detriment of the equity holders (*i.e.*, WG&M's current client in non-related matters). To argue in connection with the Objection that WG&M may be acting on behalf of the Equity Parents to the detriment of the Debtor — the hypothesis at the core of any lack of disinterestedness argument—is logically incongruous under the facts of this case.

41. Further, TRBP has retained F&P as special conflicts counsel to handle any matters that WG&M is unable to handle on behalf of the Debtor. F&P has been actively involved in this case representing the Debtor, including, for example, in connection with the adversary proceeding the Ad Hoc Lenders filed relating to the transfer of the ballpark lease. If Debtor is adverse to another client of WG&M, F&P will step in and represent the Debtor in whatever capacity is appropriate.

D. Application of Other Cases Cited by the U.S. Trustee are Not Warranted in the Modern Bankruptcy Context[3]

42. The majority of cases cited by the U.S. Trustee in the Objection are not only not in the context of the Bankruptcy Code, they are not remotely applicable to this Chapter 11 Case. Specifically, the cases cited by the U.S. Trustee, while widely referenced in the civil litigation context, are not congruous with the bankruptcy law standards and generally have not been applied in a section 327 context. It is unclear to the Debtor why the U.S. Trustee relied so heavily on cases outside of the bankruptcy context when there are many cases that specifically discuss the standards for retentions under section 327.

1. The Test Articulated in *In re American Airlines, Inc.* in Not Appropriate in this or any Other Chapter 11 Case

43. Of central importance to the U.S. Trustee's Objection is *In re American Airlines, Inc.* 972 F.2d 605 (5th Cir. 1992), a case the U.S. Trustee cites in the Objection to attempt to demonstrate WG&M's alleged disinterestedness. Objection ¶¶ 22-24. However, the U.S. Trustee's reliance on the case is unwarranted and inapplicable in the bankruptcy context.

44. In *American Airlines*, the moving party sought to disqualify a firm that previously represented the movant on multiple occasions. The firm in question wished to represent the movant's opponent in a matter that the court found unquestionably related to its prior representation of the movant. Procedurally, the matter came before the Fifth Circuit on petition for writ of mandamus, following the denial of the movant's a motion to disqualify by the district court. *Id.* The Fifth Circuit found that, in the context of the motion to disqualify, a party seeking to disqualify opposing counsel on the grounds that the firm's former representation of the movant creates a conflict must establish two elements: "1) actual attorney-client relationship

[3] This Response primarily addresses the cases cited by the U.S. Trustee in the Objection, rather than the July 6 Brief, as the latter was filed merely a few hours before the deadline for filing this Response.

between the moving party and the attorney he seeks to disqualify, and 2) a substantial relationship between the subject matter of the former and present representations…" *Id.* at 614. The Fifth Circuit refers to the two-prong test as the "substantial relationship" test.[4]

45. In making this argument, the U.S. Trustee is confusing the issues. The "substantial relationship" test might arguably apply had a motion to disqualify been filed in this case by HSG and if WG&M was now seeking to represent the Debtor in a manner adverse to HSG in a substantially related matter, but this is clearly not the case. First, as described *supra*, WG&M is not representing the Debtor in any matter adverse to HSG. In the event TRBP becomes adverse to HSG, F&P would represent the Debtor. Further, WG&M would also not represent HSG in the event any matter where HSG and the Debtor are adverse, as Neligan is HSG's counsel and Fulbright is the CRO's counsel with respect to matters involving HSG and this Chapter 11 Case.

46. This factually distinguishes this case completely from *American*, where the law firm sought to be adverse to its former client in a substantially related matter. Second, and more importantly, HSG has made no motion to disqualify. The Objection is an objection by third-party U.S. Trustee to a retention application under section 327(a) of the Bankruptcy Code. WG&M can find no case law, and U.S. Trustee cited to no bankruptcy case, where the "substantial relationship" test articulated in the *American Airlines* case has been applied in the context of a section 327(a) retention application. Furthermore, WG&M can find no case law where a third party, like the U.S. Trustee, has successfully disqualified counsel based on the "substantial relationship" test in <u>any</u> context. A plain reading of the two elements required in

[4] In the Objection, the first prong of the substantial relationship test was incorrectly stated to be "whether an attorney-client relationship existed." Objection ¶ 22. This mischaracterization failed to properly illustrate the Fifth Circuit's requirement that the former attorney-client relationship in question in a motion to disqualify should exist between the movant and his former attorney.

American Airlines makes it clear why. The first part of the two part test requires "an actual attorney-client relationship between the moving party and the attorney he seeks to disqualify." *Id.* While it is questionable whether the "substantial relationship" test is applicable at all in the context of an objection to a section 327 retention application when a more formal motion to disqualify has not been filed, it is certainly not in question that there is no attorney-client relationship between the "moving party," the U.S. Trustee, and WG&M.

47. In addition, as stated *supra*, HSG has retained Neligan in connection with this Chapter 11 Case. If HSG wishes to file a formal motion to disqualify WG&M with this Court because it feels that WG&M's retention as Debtor's counsel will result in the ability for WG&M to use confidential information gathered in the course of its representation of HSG in an inappropriate manner, then it may elect to do so through its counsel, Neligan. Only at that point should the Court contemplate the effects of the "substantial relationship" test promulgated by the Fifth Circuit. And while the WG&M certainly respects the difficult yet vital role afforded to the U.S. Trustee in a complex chapter 11 case such as this one, the judgment of the U.S. Trustee should not be substituted for the judgment of HSG and its counsel in this instance. As such, the Court should disregard any argument relating to prior representations and the "substantial relationship" test promulgated by the U.S. Trustee in its Objection.

48. Finally, notwithstanding a lack of case law supporting the U.S. Trustee's ability to step into the shoes of HSG and invoke the "substantial relationship" test, should the the plain language of the Fifth Circuit in formulating the test be read to allow the U.S. Trustee to pass the test's first prong, the "substantial relationship" test is still inapplicable in the context of a section 327 retention application. The Bankruptcy Code provides that a professional may be retained if it does not hold an interest "adverse to the estate." 11 U.S.C. § 327(a). The focus of

the inquiry under section 327 is on any conflict between the estate and its counsel that might render counsel incapable of properly performing its duties to the debtor. The focus of the "substantial relationship" test is instead on the subject matter of the former and present representations and whether the formerly represented party will be prejudiced by counsel's representation of the new client. In the context of the bankruptcy, this would fundamentally shift the focus of the professional retention inquiry from one where the protections focus on the debtor and its estate to one where the protections focus on the creditor. Such a result is inconsistent with the principles of the Bankruptcy Code.

2. The *Horaist v. Doctor's Hospital of Opelousas* Case is Factually Incongruous with this Chapter 11 Case and Further Is Not the Proper Standard in This Court

49. The U.S. Trustee also cited to *Horaist v. Doctor's Hospital of Opelousas*, 255 F.3d 261 (5th Cir. 1992) as a case that supposedly illustrates WG&M's inability to show disinterestedness. Objection ¶ 27. Under the U.S. Trustee's argument, the fact that a WG&M attorney could theoretically be called to the stand in this Chapter 11 Case is a factor the Court should consider with regard to WG&M's retention.

50. The *Horaist* was a case about an employee who sued her former employer for firing her in retaliation for reporting sexual harassment advances from her supervisors. *Id.* at 264-65. At question was whether the employee's attorney, with whom the employee had a prior sexual relationship, should be required to testify and whether such an obligation would force the attorney to be disqualified. *Id.* at 266-67. The Court in *Horaist* did not say that the "[c]ourt should independently evaluate" the issue of whether an attorney might testify in a bankruptcy context, or any context, as is contended by the U.S. Trustee. Objection ¶ 27. No such statement is made anywhere in the *Horaist* ruling. Perhaps even more interestingly, the Fifth Circuit in *Horaist* did not disqualify the attorney, but determined instead that testimony could be elicited

from other parties to the case. *Id.* at 267. But those misstatements aside, WG&M could find no case in this circuit or any other where *Horaist* was cited to in a bankruptcy context. This Chapter 11 Case is not *Horaist* and the application of section 327(a) to the facts of *Horaist* is not warranted.

51. Moreover, to the extent the Court is concerned the lawyer-witness rule applies to the Chapter 11 Case, the standards for the evaluation of a situation where a lawyer could potentially be expected to testify against his or her client are better explained in *FDIC v. U.S. Fire*, 50 F.3d 1304 (5th Cir. 1995), where the Fifth Circuit specifically reviewed this issue in the context of the Local Rules for the Northern District of Texas as opposed to the Western District of Louisiana rules examined in *Horiast*. In *U.S. Fire*, the Fifth Circuit held that in a situation where a third party intended to call the lawyer of party she represented to establish certain affirmative defenses, there need not be disqualification if the interests of the lawyer and its client generally, though perhaps not completely, align. *Id.* at 1314 (holding "[w]e find that the remote possibility that [a lawyer] and the [party she represents] may eventually find themselves at odds is much too tenuous a thread to support the burdensome sanction of law firm disqualification."). The Fifth Circuit added more generally that under the Northern District of Texas Local Rules, the "lawyer-witness rule does not mandate disqualification of [the lawyer's law firm]." *Id.* at 1313.

52. Should the Court determine the information a WG&M attorney could provide was both necessary to some aspect of this Chapter 11 Case and wholly unattainable from any other source, there is no indication that the testimony of any WG&M attorney would be materially adverse to the Debtor. Additionally, under the facts of *U.S. Fire*,[5] there is no reason at

[5] Assuming, *arguendo*, that either *U.S. Fire* or *Horaist* is appropriate in the context of a section 327 retention application hearing.

this juncture to disqualify the entire law firm of WG&M on the basis of such a remote possibility.

3. In re Envirodyne Industries, Inc. is not an Analogous Situation Involving Incomplete Disclosure, as Asserted by the U.S. Trustee

53. Similarly, the U.S. Trustee's statement in the July 6 Brief that *In re Envirodyne Industries, Inc.* involved "an analogous situation involving incomplete disclosure and an actual conflict" illustrates its misunderstanding of the facts at issue in TRBP's case as well as in the *Enirodyne* case. July 6 Brief, at p. 12-13 (*citing In re Envirodyne Indus., Inc.*, 150 B.R. 1008 (Bankr. N.D. Ill. 1993)). In that case, the proposed debtor's counsel ("Cleary") had a relationship with a significant creditor and equity holder ("Salomon") that it did not initially disclose in any manner whatsoever. *Envirodyne*, 150 B.R. at 1021 Cleary represented Salomon in a leveraged buy out of the debtor (the "LBO"), and Salomon "was a party to the LBO that must be investigated." *Id.* at 1017. The Court was concerned that Cleary would be required "to negotiate [sic], investigate or sue another client [Salomon]" and further noted that Cleary's statement that an action by the debtor against Salomon was a "remote contingency" demonstrated bias as Clearly had "already formed the belief that Salomon has no liability to the estate arising out of the LBO." *Id.* at 1019. As a result of these conflicts, the Court found that Cleary "is attempting to serve two masters" and found that Cleary was not qualified to serve as the debtor's counsel under section 327(a) of the Bankruptcy Code. *Id.* at 1021-22.

54. The differences between the issues the U.S. Trustee has raised in this case and the facts of *Envirodyne* highlight and confirm why WG&M's retention in this case is proper. First of all, the original Sosland Declaration clearly disclosed WG&M's relationships with Mr. Hicks, HSG Sports Group, and other related entities. Indeed, this initial disclosure was sufficient to merit several pages of discussion in the U.S. Trustee's initial Objection. Objection, at pp. 1-3.

Although the U.S. Trustee requested further details regarding these relationships, which WG&M supplied in the Supplemental Disclosure, the U.S. Trustee's assertion that its request for further details is analogous to Cleary's complete failure to disclose initially the fact that it represented Salomon and related relationships borders on the absurd. Moreover, unlike *Envirodyne,* where the Court was concerned that Cleary's relationship with Salomon might cause Cleary to favor Salomon vis-à-vis the Debtor, there is no suggestion in this case that any of the prior relationships is causing or may cause WGM to favor the Debtor's HSG affiliates. In fact, the transactions that are being challenged in the case are just the opposite—the Lenders and, oddly enough, the U.S. Trustee are arguing that assets may have improperly been transferred into the Debtor, harming the HSG affiliates.

55. There are many more facts that distinguish the two cases. Here, conflicts counsel has been retained by the Debtor to ensure that there is an independent attorney advising the Debtor with respect to any conflict with an affiliate, need for investigation, etc. The U.S. Trustee neglected to point out that in *Envirodyne*, the debtor did not have conflicts counsel, because Cleary had already determined that no investigation or lawsuit was warranted. *Id.* at 1019. In fact, the U.S. Trustee misreads *Envirodyne* when she states that "[t]he Court concluded that conflicts counsel would not resolve the issues because 'the required unwinding of the LBO accounts for the commencement of these bankruptcy proceedings.'" July 6 Brief at p. 12. The Court in *Envirodyne* was actually not addressing whether conflicts counsel for the debtor would be appropriate, but rather Cleary's argument that there was no conflict because it told *Salomon* that *Salomon* should retain new counsel for any matter relating to the debtor. Here, the Debtor does have conflicts counsel. Moreover, an independent CRO has been appointed to evaluate many of the same issues raised by the U.S. Trustee. In sum, unlike in *Envirodyne*, there is no

danger that the Debtor will not be able to satisfy its fiduciary duties in this case by its retention of WG&M as its primary bankruptcy counsel.[6]

4. The Factual Contexts of *Pepper v. Litton* and *Neary v. Weil* Make the Cases Easily Distinguishable from this Chapter 11 Case

56. The U.S. Trustee cites to *Pepper v. Litton*, decided decades prior to the adoption of the modern Bankruptcy Code, for the proposition that certain improper dealings between a shareholder and a debtor that "the Supreme Court acknowledged as a scheme to increase [the shareholder's] position in the bankruptcy and avoid paying creditors" Objection ¶ 15; (*discussing Pepper v. Litton*, 308 U.S. 295 (1939)). While the U.S. Trustee's argument again ignores the premise the Ad Hoc Lenders and U.S. Trustee have been asserting throughout the Chapter 11 Case — namely that WG&M is acting to the detriment, not to the benefit, of the shareholders — a larger issue is that the facts in *Pepper* is not a case about attorney disqualification and obviously is not a case about the appropriate standards of review in a section 327 retention application. The actions of legal counsel discussed in *Pepper*, though discussed only in the context of a footnote, demonstrate that the same counsel was retained to represent the trustee was representing a creditor whose claim was under attack. *Id.* at 299-300 n. 4. WG&M is not representing *any* creditor in connection with this Chapter 11 Case, and certainly not one whose claim is under attack. The facts in *Pepper* are inconsistent with this Chapter 11 Case and its application to the standards of section 327 is unwarranted.

57. The U.S. Trustee also cites to *Neary v. Weil*, also decided decades prior to the adoption of the modern Bankruptcy Code, to hold that conflicts in the context of employment

[6] In any case, to the extent *Envirodyne*, a case from the Bankruptcy Court of the Northern District of Illinois, suggests that any representation of a potentially adverse party is automatically a disqualifying conflict, it is inconsistent with the Fifth Circuit law discussed *supra* providing that the Court must view each case on a case-by-case basis under the particular facts.

contracts must be scrutinized to prevent evil results. Objection ¶ 14, 16 (*discussing Weil v. Neary*, 278 U.S. 160 (1929)). Again, the U.S. Trustee has cited to a case that factually misses the mark entirely. At issue in the *Weil* case was a contract, specifically entered into by counsel for the trustee and counsel for the creditors, whereby counsel for the creditors was entitled to direct the actions of counsel for the trustee, and whereby payments to the trustee's counsel would be split between the two sets of counsel. The contract was voided as a matter of public policy. There is no basis for asserting a contract has been entered into between WG&M and counsel to any party in this Chapter 11 Case. The facts in *Weil* are inconsistent with this Chapter 11 Case and its application to the standards of section 327 is unwarranted.

IV. CONCLUSION

58. The Debtor and WGM recognize the difficulty the Court and the U.S. Trustee must face in the modern context when evaluating retention applications under section 327 of the Bankruptcy Code. As increasingly sophisticated, complex companies seek the protections of the Bankruptcy Code to help them sell assets, renegotiate credit agreements, de-lever their balance sheets, and generally obtain the 'fresh start' afforded to them under Bankruptcy Code, increasingly sophisticated, complex law firms with a wide breadth of practice areas and clientele are being sought to help guide these companies through the process. The courts and Congress, through creations like the 'Chinese wall' and special conflicts counsel, have sought to ways to simultaneously allow complex, multi-discipline law firms (like the majority of the firms representing all manner of interested parties in this Chapter 11 Case) to provide services in the context of a bankruptcy while balancing the importance of what constitutes the foundation of our entire judicial system — the fairness to all participants through the assurances that all counsel will abide by the ethical canons that guide them.

59. WG&M, through the use of special conflicts counsel and through the other steps it and the Debtor have taken to ensure there is no hint of impropriety, has met the standards established by Congress and the court of this circuit with respect to retention under section 327 of the Bankruptcy Code. In this matter, WG&M solely represents the Debtor, does not hold or represent an interest adverse to the estate, and is a disinterested person as contemplated by sections 101 and 327 of the Bankruptcy Code.

60. The parties in this case are adequately represented by sophisticated counsel. To replace WG&M at this case based on theories of potential conflict and an assumption that WG&M, F&P, and other law firms will act improperly (without any evidence of such misconduct) would not only be contrary to existing case law on section 327 retentions, but would greatly prejudice the Debtor in this Chapter 11 Case and certainly would not be in the Debtor's best interest — the interest which the Debtor and the Ad Hoc Lenders purport to attempt to represent in connection with the Objection and the Statement.

WHEREFORE, the Debtor respectfully request that the Court grant the relief requested in the Application and such other and further relief as the Court may deem just and proper.

Dated: July 6, 2010
Fort Worth, Texas

_/s/ Martin A. Sosland

Martin A. Sosland (18855645)
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, Texas 75201
Telephone: (214) 746-7700
Facsimile: (214) 746-7777

Ronit J. Berkovich (*pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtor and
Debtor in Possession