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

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

EMERGENCY JOINT MOTION OF LENDER PARTIES FOR RECONSIDERATION OF COURT'S ORDER ADOPTING BIDDING PROCEDURES

The Lender Parties[1] respectfully submit this emergency motion seeking reconsideration of the Court's Order Adopting Bidding Procedures (Dkt. No.363; the "Bidding Procedures Order"), and in support thereof, respectfully submit as follows:

PRELIMINARY STATEMENT

Discovery has confirmed that the Debtor's goal in engaging in the Midnight Transfers and filing this bankruptcy case, as stated by Glenn West (then representing multiple Hicks-related entities) to Major League Baseball's president (among others) in an email with the subject line [REDACTED] was that it was designed specifically to:

[REDACTED]

(MLB-e 48850 (emphasis added)(attached hereto as Exhibit A).) The Bidding Procedures Order, which the Court believed would serve the laudable goal of bringing order from chaos, will actually do nothing more than assure that the Debtor achieves its stated goal of [REDACTED]. The Bidding Procedures Order unfortunately falls far short of balancing the unfair playing field created by the Debtor and Rangers Baseball Express and does not assure a fair, open and transparent process through which the Debtor's assets should be sold.

The Bidding Procedures are unfair to the Lender Parties, as they were largely based on the procedures sought by the Debtor and its preferred buyer, Rangers Baseball Express, were presented to the Lender Parties and all other parties in interest literally only minutes before they were argued, and were entered without the support of a

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[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, N.A., as First Lien Agent, and GSP Finance LLC, as Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement, submitted on June 11, 2010 (the "June 11 Brief") (Docket No. 163) or the Second Sale Motion (as defined herein), as applicable.

single word of testimony or single document entered into evidence. The Bidding Procedures serve only the purpose of overlaying the façade of an auction process over a case that has been fundamentally flawed from the beginning.

The Bidding Procedures do not provide sufficient time for potential bidders to be able to participate meaningfully in the sale process and are too skewed to the advantage of Rangers Baseball Express – the one party that does not need any added incentive to participate in an auction or any other advantages in the sale process. The Court's decision to enter the Bidding Procedures Order was based on certain factual conclusions for which there is no evidentiary support. The timing of the auction is driven entirely by what appears to be a "pretend" deadline for Rangers Baseball Express's financing commitments, which has been taken for granted without the Court hearing any evidence demonstrating that it could not be extended (as is clearly contemplated under the May APA). Moreover, the break-up fee component of the Bidding Procedures, which bears no relationship to any potential damages that Rangers Baseball Express may incur and actually creates an incentive for greater litigation by Rangers Baseball Express, is not designed to foster fair bidding and will not do so.

The Lender Parties believe that other bidders will participate in an auction if the process is fair, open and transparent. In argument, counsel for Major League Baseball, in an effort to suggest that an auction process on any timetable should be acceptable to the Lender Parties and fair to all potential bidders, stated that counsel for certain of the Lender Parties had argued on June 1, 2010 that other bidders were "ready, willing and able to make a bid on the Rangers." (Hr'g Tr. July 13, 2010 at 65.) The actual statement made by counsel on June 1 was as follows:

"bidder has told us that they're ready, willing and able ***to participate in an auction of these assets to the extent that it's open, fair and transparent, the requirements we think are necessary under the Bankruptcy Code***."

(Hr'g Tr. June 1, 2010 at 25.) Only by conveniently ignoring the actual statements made on the record could counsel to Major League Baseball be so confused.

The Court should reconsider and vacate the Bidding Procedures Order. At that point, the parties will have two choices: (i) go forward to confirmation on the Debtor's plan, which has no meaningful prospect of being confirmed given its failings; or (ii) negotiate a reasonable auction schedule and procedures that ensure a true level playing field for all bidders and the maximization of value for the estate.[2] Either of these outcomes will reintroduce rationality into this process without affecting the operational abilities of the Debtor. Anything less than vacating the Bidding Procedures Order would violate due process.

RELEVANT FACTUAL BACKGROUND

On July 5, 2010, the Debtor initially filed its motion [Docket No. 310] (the "Initial Sale Motion") seeking approval of the bidding procedures for the sale of the TRBP Assets. Such Initial Sale Motion (and its proposed bidding procedures) was filed by the Debtor on a holiday and immediately preceding the all-hands mediation scheduled by the Mediator for the purpose of negotiating mutually-acceptable sale mechanics and bidding procedures. Before the Lender Parties had an opportunity to file their objection to these bidding procedures, the Debtor then withdrew the Initial Sale Motion. (See

[2] Should the Court vacate the Bidding Procedures Order and schedule a hearing to consider more appropriate bidding procedures, the Lender Parties reserve the right to submit a draft of such procedures and to file briefs and present evidence in support thereof.

Debtor's Notice of Withdrawal of Initial Sale Motion [Docket No. 326], dated July 8, 2010.)

Thereafter, on July 13, 2010, the Debtor filed its second motion [Docket No. 352] (the "Second Sale Motion"), seeking approval of slightly revised bidding procedures (the "Debtor Bidding Procedures"), which were as objectionable to the Lender Parties as those initially proposed. The day prior, in connection with its commencement of the Proposed Purchaser Adversary[3], Rangers Baseball Express LLC (the "Proposed Purchaser") filed an emergency motion for a preliminary injunction and temporary restraining order [Proposed Purchaser Adversary, Docket No. 3] (the "TRO Request"), whereby it argued that it could prohibit the Debtor from breaching the Asset Purchase Agreement – a pre-petition contract made with the Debtor less than twenty-four hours prior to the Debtor's chapter 11 filing and which has not been assumed by the Debtor – and to direct the Debtor to comply with its obligations under that agreement. It appears that another set of bidding procedures for the sale of the TRBP Assets was attached to the TRO Request (the "Purchaser Bidding Procedures").[4] The Proposed Purchaser was seeking an emergency hearing on the TRO Request on 24 hours' notice, which was granted. There was nothing in the TRO Request to indicate that the hearing with respect thereto would deal with the substance of the bidding procedures for the sale of the TRBP Assets. Needless to say, the Lender Parties did not have any opportunity to object to either the Debtor Bidding Procedures or the Purchaser Bidding Procedures.

[3] Rangers Baseball Express LLC v. Texas Rangers Baseball Partners, Adv. Pro. No. 10-04121 (July 12, 2010) (Lynn, J.) (the "Proposed Purchaser Adversary").

[4] The Lender Parties were never served with the Purchaser Bidding Procedures (and they were not made available on the docket), but, from the Court's remarks at the July 13 Hearing (as defined below), it appears that the Court did receive a copy and, indeed, used the Purchaser Bidding Procedures as its template for the Bidding Procedures (as defined below).

Nevertheless, to the Lender Parties' surprise, at the hearing on the TRO Request (the "July 13 Hearing"), there was no hearing on, nor evidence introduced regarding, the TRO Request. Instead, the Court, *sua sponte*, proposed its own bidding procedures, based almost entirely on the Purchaser Bidding Procedures, which procedures have been approved by the Bidding Procedures Order (the "Bidding Procedures"). The Lender Parties have no choice but to seek reconsideration of the Bidding Procedures Order because, *inter alia*, (i) they had no meaningful opportunity to formulate their objections to the fundamentally flawed premises on which the Bidding Procedures are based, (ii) the Court did not receive any evidence to support the appropriateness of the Bidding Procedures, and (iii) the Bidding Procedures fail to establish a fair, open and competitive sale process.

RELIEF REQUESTED

Accordingly, the Lender Parties respectfully request that the Court vacate the Bidding Procedures Order.

APPLICABLE STATUTORY STANDARDS

The Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure do not specifically provide for motions for reconsideration. See Shepherd v. Int'l Paper Co., 372 F.3d 326, 328 n.1 (5th Cir. 2004). Nonetheless, motions to reconsider are generally analyzed under Fed. R. Civ. P. 59(e), as made applicable to this case by Fed. R. Bankr. P. 9023. See Ramirez v. Rodriguez (In re Ramirez), Adv. No. 09-07004, 2010 WL 2639880, at *2 (Bankr. S.D. Tex. June 24, 2010). Fed. R. Civ. P. 59(e)

provides, in pertinent part, that "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."[5]

Courts have "considerable discretion" in deciding whether to grant a motion for reconsideration. Edward H. Bohlin Co. v. Banning Co., 6 F.3d 350, 355 (5th Cir. 1993). To prevail on a motion for reconsideration under Fed. R. Civ. P. 59(e), a movant must (i) clearly establish a manifest error of law or fact, (ii) present newly discovered evidence, or (iii) demonstrate that there has been an intervening change in the controlling law. See Simon v. United States, 891 F.2d 1154, 1159 (5th Cir. 1990). As demonstrated below, "manifest error of law or fact" clearly exists here, and thus, the motion for reconsideration should be granted.[6]

ARGUMENT

It is axiomatic that "[s]tructured bid procedures should provide a vehicle to enhance the bid process and should not be a mechanism to chill prospective bidders'

[5] Fed. R. Bankr. P. 9023 limits this filing deadline to 14 days after the entry of judgment. See In re Ramirez, Adv. No. 09-07004, 2010 WL 2639880, at *2. Neither deadline, however, is applicable to the reconsideration of interlocutory orders. Id. at *2 (citing Standard Quimica De Venezuela v. Cent. Hispano Int'l, Inc., 189 F.R.D. 202, 205 (D.P.R. 1999)). Instead, "[m]otions to reconsider interlocutory orders are left to the Court's discretion as long as they are not filed unreasonably late." Id. at *2.

[6] The motion also satisfies the requirements of Fed. R. Civ. P. 60(b)(1) and (6), as made applicable to this case by Fed. R. Bankr. P. 9024. Fed. R. Civ. P. 60(b) provides that a court "may relieve a party . . . from a final judgment, order, or proceeding for . . . (1) mistake, inadvertence, surprise, or excusable neglect; . . . or (6) any other reason that justifies relief." As described above, the Lender Parties received no notice that the Court was going to consider bidding procedures at the July 13 Hearing or what procedures it would actually consider and had no opportunity to object to either the Debtor Bidding Procedures or the Purchaser Bidding Procedures, or present any evidence in support of any such objection. Accordingly, the requirements of Rule 60(b)(1) are satisfied. The Fifth Circuit has "frequently recognized that Rule 60(b)(6) is a grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses," but has also "narrowly circumscribed its availability, holding that Rule 60(b)(6) relief will only be granted if extraordinary circumstances are present." Batts v. Tow-Motor Forklift Co., 66 F.3d 743, 747 (5th Cir. 1995) (internal citations and quotations omitted). As demonstrated below, extraordinary circumstances are present here to necessitate the granting of this emergency motion for reconsideration under Rule 60(b)(6) if the Court decides that relief under Rule 60(b)(1) is not warranted.

interests." In re President Casinos, Inc., 314 B.R. 784, 786 (Bankr. E.D. Mo. 2004). As such, courts generally do "not allow anything to chill an active marketing and auction process." Crown Village Farm, LLC v. Arl, L.L.C. (In re Crown Village Farm, LLC), 415 B.R. 86, 93 n.4 (Bankr. D. Del. 2009); cf. Christie v. First State Bank of Stratford (In re Keener), 268 B.R. 912, 922 (Bankr. N.D. Tex. 2001) (this Court stated, in the context of a foreclosure sale, that "any act of . . . the party selling, or of third parties as purchasers which prevents a fair, free and open sale, or which diminishes competition and stifles or chills the sale, is contrary to public policy and vitiates the sale." (internal citations and quotations omitted)). The Bidding Procedures will, in fact, chill the bidding for the TRBP Assets and prevent a "fair, free and open sale." The pre-petition auction for the TRBP Assets was so infused with conflicts of interest that it was not a credible determination of fair value. The auction process proposed to be conducted by the Bidding Procedures Order, while no longer controlled by Thomas O. Hicks as the pre-petition process was, creates a new set of issues that once again will result in a flawed auction that will not allow for the maximization of the value of the TRBP Assets. This is not a situation where two wrongs make a right; holding two flawed auctions means that no real auction has happened.

The Court has agreed with the Lender Parties that, without conducting a fair, competitive auction, the Debtor will be hard pressed to demonstrate compliance with section 1129(a)(7) of the Bankruptcy Code when seeking confirmation of the Plan over an objection of the Debtor's equity owners (the "Equity Owners").[7] By approving the

[7] (See Hr'g Tr. July 13, 2010 at 18) ("[T]he plan is going to be confirmed or not confirmed under Section 1129 of the Code, and that means either Snyder has to vote for the plan, which I don't think is going to happen as it stands, or you're going to have to show that there isn't [sic] any

Bidding Procedures, which virtually assure that no competitive process is possible but allow the Debtor and the Proposed Purchaser to "go through the motions" of an auction process, the Court has greatly and unfairly disadvantaged not only the Lender Parties but also the Equity Owners. Based on the pretense of an auction process that will necessarily result from the Bidding Procedures, the Debtor will undoubtedly argue that the Asset Purchase Agreement has undergone a market test and emerged as the Successful Bid, thus potentially providing the evidence necessary for the Debtor to meet its evidentiary burden under section 1129(a)(7).[8] The Bidding Procedures will do nothing other than provide the parties that benefited from the conflicted pre-petition auction, including Thomas O. Hicks and Rangers Baseball Express, another argument to try to whitewash and jam through confirmation of a fundamentally flawed Plan, thereby achieving their goal of avoiding the risk of a higher or better offer and protecting the multiple benefits Thomas O. Hicks stands to receive.

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other potential bidders who will pay more. And my suspicion is that at this point pretty good evidence could be put on to the contrary.")

[8] That is precisely why both the Lender Parties and the CRO expressed their preference at the July 13 Hearing to go forward with the confirmation hearing, rather than proceed to a "pretend" auction under the Bidding Procedures. (See Hr'g Tr. July 13, 2010 at 16) ("And if you were to ask Mr. Snyder today, would you rather support these bid procedures, even with the changes Your Honor has made, or just say there should be no competitive bidding procedure and just go forward with the plan that has Mr. Lauria's client as the only, the exclusive purchaser, I think at this point he'd say he would prefer to just go forward with the plan, [with] a confirmation hearing on the 22nd, and he'll either vote no or ordeal [sic] that yes."); (see also Hr'g Tr. July 13, 2010 at 34-35) ("To begin with, Your Honor, I think we echo the concerns Mr. Strubeck has raised. There isn't a fair process in this. If this is our choice, even an auction that goes to August 6th, with all due respect to Mr. Strubeck, if that's the choice, we'd rather go forward next week and consider their plan, give it the up or down vote they claim that they want, and let's go forward and have that.").

I. BIDDING PROCEDURES ARE FUNDAMENTALLY FLAWED

A. Expedited Timing Does Not Allow For Competitive Auction

The Lender Parties have always maintained that a fair, open and competitive auction process is required to obtain fair price for the TRBP Assets. The timing dictated by the Bidding Procedures, however, leaves no hope for such a process.

The Bidding Procedures essentially provide Interested Parties with less than three weeks to gain pre-approval from Major League Baseball (including for any partners they may wish to add),[9] conduct their due diligence, obtain equity commitments, become sufficiently comfortable with their ability to obtain adequate financing[10] that they post a non-refundable $15 million deposit (ten times the size of the deposit that the Proposed Purchaser purportedly had to put up), analyze the Asset Purchase Agreement (including all the intricacies and implications of the Midnight Transfers that are inextricably tied therewith) and negotiate an acceptable form thereof to constitute a Qualified Bid. This timing is neither necessary nor reasonable.

1. There is No Evidence of Any Emergency

This extraordinary schedule is not justified by the facts of this case. While this case continues to receive outsized publicity given the Debtor's industry, it is not

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[9] After agreeing on the record that the parties that had been prequalified would be permitted to bid (see Hr'g Tr. July 13, 2010 at 20-24 and 63-64) MLB, in settling the terms of the Bidding Procedures Order, demanded changes that imposed impediments to parties, other than the three specified bidders, to participate in the Auction and refused to permit other parties who had previously pre-qualified (including the partners of the named bidders) from actively participating without jumping through additional MLB qualification hoops. (See Emails from Sander L. Esserman to Andrew LeBlanc, Liz Boydston, Mitchell Seider, et al. (July 14, 2010) (attached hereto as Exhibit B).) The Court has adopted MLB's newly-articulated position, and extended these prequalification requirements to every party other than the three specifically named in the Bidding Procedures Order. Unfortunately, the Lender Parties have reason to believe that this will allow MLB to pursue its own agenda. See, e.g., e-mail from Tom Hicks to Jamey Newberg (a blogger and reporter for www.newbergreport.com), dated April 25, 2010 [TRBP 099464 (attached hereto as Exhibit C)], stating that [REDACTED].;

[10] Syndicating debt financing could take six to eight weeks at a minimum.

Lehman Brothers, Chrysler, GM, or any of the other cases where the debtor's very existence, or the United States' economy, hung in the balance. This is an unusual bankruptcy case in that the Debtor is solvent and its operations are wholly unrelated to and unaffected by what happens in this Court. The Court has not received any evidence that the fact that the Texas Rangers have operated while in bankruptcy for the past several months has had any negative effect on the team's value. Quite to the contrary, since filing for bankruptcy, the Debtor (i) has obtained guaranteed financing for the remainder of the season, (ii) has obtained significantly cheaper credit than pre-petition (thanks to the benefits of a Court-sanctioned DIP financing auction), (iii) has demonstrated the operational and financial flexibility to engage in some of the most significant trades to occur in baseball this year, and (iv) continues to win at an almost historical pace. The Debtor is fundamentally sound and there is absolutely no need for unreasonable speed to ensure its continued existence – there is no proverbial melting ice cube here.

Instead, the purported justification for this compressed scheduling is the Proposed Purchaser's assertion that its financing commitments expire on August 12, 2010. (See TRO Request at 2 and 9.) In fact, the Court has not received ***any evidence*** to show that this asserted "deadline" is either real or meaningful. Instead, there is ample reason to believe that the Proposed Purchaser's financing commitments would be extended if needed to accommodate a fair and open process. Indeed, only a few days before the Debtor's bankruptcy petition was filed, Mary K. Braza, the Proposed Purchaser's counsel, in an exchange with Glenn West of Weil Gotshal, made clear what they wanted to do with the termination date: [REDACTED] (TRBP 123075 (attached

hereto as Exhibit D) (emphasis added)) This correspondence strongly suggests that the Proposed Purchaser expected that it could obtain extensions of its commitments if it sought them.

The Court does not have any basis upon which to conclude that the August 12 deadline was not manufactured by the Proposed Purchaser to ensure that any auction would have no chance of success. The parties in interest only have the Proposed Purchaser's word for the existence of such deadline. The Proposed Purchaser has not provided any evidence to the Court – not even as a proffer of sworn testimony that could then be subject to cross examination – of its existence or terms, and has strenuously resisted all efforts of the Lender Parties to take discovery with respect to the terms of any such commitments. (See Hr'g Tr. July 13, 2010 at 39) ("Now, I'll tell the Court what Mr. Lauria, once he got involved in the case, told us with respect to discovery good [sic] and that was, 'You can't have anything from us. You're not getting anything from us because we are no longer plan proponents; we're simply a bidder in an auction process.' So we've received no documents from Rangers Baseball Express. We haven't seen the documents that have been referenced that suggest August 12th is a real date. We haven't been able to inquire with anybody as to whether it's in fact a real date.")

Significantly, this is not the first time that the Proposed Purchaser has argued that the Court had to act by a specific deadline or TRBP would suffer significant harm. The fact that the financing commitment deadline is now being cited as the reason for the need for this exigency should, however, be surprising to the Court. In its Motion to Reconsider Order Requiring Mediation, Resetting Hearing on Confirmation, and Suspending Discovery Pending Mediation [Docket No. 266] (the "Proposed Purchaser

Motion to Reconsider"), which the Court granted, the Proposed Purchaser ***never even mentioned*** the purported expiration of its financing commitments as a reason for the need to proceed promptly to a closing. Instead, the Proposed Purchaser cited, in the following order, (i) the continued costs to the debtor of being in bankruptcy (which costs are borne entirely by the Lender Parties) (Proposed Purchaser Motion to Reconsider at ¶ 1), (ii) the July 31 major league trade deadline (Proposed Purchaser Motion to Reconsider at ¶ 2), as to which bankruptcy appears to have been no impediment,[11] (iii) the need for "material capital improvements to Rangers Ballpark before next season"[12] (Proposed Purchaser Motion to Reconsider at ¶ 3), and (iv) the termination date of the Asset Purchase Agreement. (Proposed Purchaser Motion to Reconsider at ¶ 4.)

Only the ***fourth*** reason cited by the Proposed Purchaser, that of the termination date of the Asset Purchase Agreement, is arguably related to the financing commitments and even that relationship is indirect. With respect to the "Termination Date" contained in section 4.2(a) of the Asset Purchase Agreement, the Asset Purchase Agreement clearly provides that ***either side*** "has the option to extend" such date up until October 31, 2010, although such extensions must be within the time remaining in the

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[11] This is also the argument made by a principal of Rangers Baseball Express to the media at the time it filed the Proposed Purchaser Motion to Reconsider. See Grant, Evan, Chuck Greenberg Says "Rome is Burning;" will ask bankruptcy judge to rescind delay order, Dallas News, June 24, 2010, http://rangersblog.dallasnews.com/archives/2010/06/chuck-greenberg-says-rome-is-b.html ("A delay of 13 days in the confirmation hearings would make it impossible to complete the sale before the deadline," Greenberg said. "When we entered into this sales agreement in January, it was with every intention of being aggressive at the trade deadline. The club would be at a tremendous disadvantage. Any delay that precludes the closing of the sale by the trade deadline does irreparable damage to the franchise. We respect the desire to all the homework they want, but every day Rome is burning. We can't sit idly by.").

[12] This argument presumes that the Proposed Purchaser will own the team, which obviously could not be assumed if there were a fair process. Moreover, if this issue were so critical for the success of the Proposed Purchaser's acquisition, it would not have agreed to a "drop dead" date of October 31, 2010. The desire to renovate the stadium hardly qualifies as an emergency that requires the trampling of due process rights of the Debtor's creditors and Equity Owners.

financing commitments. Indeed, the fact that the Proposed Purchaser agreed to an October 31 "drop dead" date and the pre-petition correspondence of Ms. Braza strongly suggest that the Proposed Purchaser thought that it could gain extensions of those commitments until at least October 31. There has been no evidence presented to the Court upon which it could conclude that August 12 is a real deadline or one that, if required, would not be extended by the financing sources.[13]

Most significantly, the Lender Parties (and, apparently, the Equity Owners) – the only parties with a pecuniary stake – are willing to accept the risk (and have so advised the Mediator and the CRO) that the Proposed Purchaser may not be able to bid if the auction were to be held on a reasonable schedule as it should be. There is no need to impose the unnecessary and unreasonable schedule contained in the Bidding Procedures Order.

2. Timing Is Unreasonable to Permit Meaningful Bidding on the TRBP Assets

The timing mandated by the Bidding Procedures is wholly unreasonable to permit a meaningful sale process and can only result in yet another flawed auction. The unreasonableness of the proposed timing, which gives parties only three weeks to bid, is best demonstrated by considering the amount of time that the Proposed Purchaser had been provided to complete the same tasks: (i) the prepetition auction process began in or about August of 2009, with bids submitted in December 2009; (ii) the Proposed Purchaser negotiated the terms of the January APA for more than a month after its bid

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[13] As discussed below, in the absence of the Bidding Procedures Order, the maximum damages that the Proposed Purchaser is entitled to for the rejection of the Asset Purchase Agreement is $1.5 million. The Debtor has offered no evidence to support its apparent position that selling its assets to the Proposed Purchaser, even if it is forced to do so on a schedule that assures that no other bidders may participate in the sale process, is preferable to conducting a true sale process on a more relaxed schedule. The Debtor must at the very least weigh these alternatives and demonstrate that the one it has chosen is in the best interests of its estate.

was selected, from December 15, 2009 through January 23, 2010; (iii) even after the January APA was signed, the Proposed Purchaser had: (a) 20 days (until February 12, 2010) to obtain written commitments from one or more equity sources in an aggregate amount of not less than $217,000,000 (see January APA at ¶ 4.2(i)), (b) two more weeks (until February 26, 2010) to raise additional equity in an aggregate amount of not less than $229,000,000 (see January APA at ¶ 4.2(j)), (c) 23 days (until February 15, 2010) to obtain an engagement letter with an accompanying term sheet setting forth financing terms (see January APA at ¶ 4.2(k)), and (d) 35 additional days to have a negotiated credit agreement for debt financing (see January APA at ¶ 4.2(l)).

Because of the extremely compressed and completely unreasonable timing the Bidding Procedures establish for the auction, there will be no meaningful opportunity for any Interested Party to submit a competitive bid, leaving the Proposed Purchaser the only game in town – thereby satisfying the goal of avoiding the risk of higher and better offers.

B. Process Is Fundamentally Flawed Because It Sanctions Midnight Transfers

The Bidding Procedures are also flawed and will not allow for a fair competitive auction because the stalking horse bid, in the form of the Asset Purchase Agreement, incorporates, and is premised on, various Midnight Transfers, including those that are already being challenged in this Court.[14]

As discussed in detail in the June 11 Brief, on the eve of bankruptcy, TRBP's assets and liabilities were fundamentally altered by a series of transfers of assets

[14] See Avery Point CLO, Ltd. v. Texas Rangers Baseball Partners, Adv Pro. No. 10-04098 (Bankr. N. D. Tex. June 11, 2010) (Lynn, J.). In addition, the Lender Parties expect that other components of the Midnight Transfers will be the subject of challenges in the near future.

and incurrence of obligations. Many of those transactions are likely fraudulent and are subject to avoidance. Even though the Bidding Procedures now allow potential bidders to exclude some or all of the assets purported to be transferred under the Asset Purchase Agreement (presumably, at least those where the Debtor's title is being actively challenged in pending litigation), it is impossible for any potential bidders – in the time allotted for due diligence under the Bidding Procedures – to negotiate their own separate agreements for the transfer of certain of these assets with the parties that in fact have the right to transfer the title thereto.[15]

Similarly, as long as the potential bidders have to factor into their bids the liabilities wrongfully assumed by the Debtor on the eve of bankruptcy, their bids cannot possibly reflect the fair value of the TRBP Assets. These various poison pills contained in the many Midnight Transfers, are the type of bid-chilling practices designed to "press the limits of bankruptcy confirmation and valuation rules." Bank of New York Trust Co., NA v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.), 584 F.3d 229, 244 and n.19 (5th Cir. 2009) (noting that bankruptcy doctrine "should protect legitimate expectations of parties to bankruptcy cases but should not be a shield for sharp or unauthorized practices" as "Lenders will be reluctant to work with debtors who may unilaterally decide to file bankruptcy, propose a plan that aggressively undervalues the collateral, and may then thwart appellate review by rotely incanting equitable mootness.")

[15] (See Hr'g Tr. July 13, 2010 at 71) (Counsel to the asserted lienholder on the BRE land stating "the point I'm trying to make is whatever party wants to buy this property needs to come to us and needs to work out their own asset purchase agreement. . . . I'd just like to make clear that whatever deal somebody wants to make for this land, it can't be done through the bankruptcy. It has to be done under a separate APA.")

Moreover, any due diligence conducted by any potential bidders prior to the Midnight Transfers did not provide such potential bidders with an accurate picture of the post-Midnight Transfers Debtor's assets or liabilities. While the Proposed Purchaser was privy to the Midnight Transfers, understood the altered landscape and structured the Asset Purchase Agreement taking the Midnight Transfers into account, the other potential bidders do not have such an advantage.

Accordingly, requiring potential bidders to submit their bids before all of the legal issues raised by the Midnight Transfers have been resolved by this Court (or another court of competent jurisdiction) or fully absorbed by the bidders will not be conducive to a fair, open and competitive process to which the parties in interest are entitled.

II. BREAK-UP FEE IS NOT APPROPRIATE AND HIGHLY PREJUDICIAL

The stalking horse protections provided to the Proposed Purchaser are wholly inappropriate. Neither the Debtor nor the Proposed Purchaser presented any evidence whatsoever to demonstrate that the stalking horse protections are either necessary or appropriate. Indeed, given the facts of this case, the opposite is true: these protections are highly inappropriate and completely unnecessary and will only serve to chill, if not prevent, bidding.

Every one of the advantages already given to the Proposed Purchaser – such as Major League Baseball's overwhelming and inappropriate pre-petition support, a seven month head start on exclusive diligence and literally months to arrange its financing – makes it the one party that does not need any bid protections to induce its

participation in an auction process. If anything, the Court should consider providing bid protection for other bidders to induce other parties to actively participate in the auction process to overcome the prejudicial effects of the flawed pre-petition process.[16]

Legal Standards for Granting Break-Up Fee Were Not Met

The Fifth Circuit has not specifically adopted any one of the three existing tests for determining the appropriateness of break-up fees in bankruptcy cases. In the Second Sale Motion, the Debtor, citing In re Integrated Res., Inc., 135 B.R. 746, 750 (Bankr. S.D.N.Y. 1992), aff'd, 147 B.R. 650 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993), relied on the most liberal of such tests, known as the "business judgment" test. However, even under this most liberal of all available tests, no break-up fee is appropriate under the circumstances of this case.[17]

There was no evidentiary record before the Court demonstrating that the Debtor's proposal to grant a break-up fee to the Proposed Purchaser was based on sound

[16] The Lender Parties would consider providing some amount of reasonable fee reimbursement to other bidders as well as including a "non-approval fee" should the winning bidder at the auction not be approved by Major League Baseball and that non-approval is confirmed by the Court. Given that bidders that participated in the pre-petition process understandably feel that the process was not fair, providing these inducements to the bidders to expend again the resources necessary to bid against the Proposed Purchaser would be appropriate and value maximizing. These expenses would be borne entirely by the Lender Parties.

[17] While Integrated Res. is based on the "business judgment test," utilized primarily in New York, the two other tests, the "best interests of the estate test" and the "necessary to preserve value test" are significantly more stringent and much more cognizant of the constraints of a bankruptcy case. See, e.g.,In re Am. West Airlines, Inc., 166 B.R. 908, 913 (Bankr. D. Ariz. 1994) (under the "best interests of the estate" test, the court must look at the best interests of the debtor, its creditors and equity holders); In re O'Brien Envtl. Energy, Inc., 181 F.3d 527, 535 (3d Cir. 1999) (under the "preservation of value" test, the court must analyze a request for approval of a break-up fee as it would any other administrative expense under section 503 of the Bankruptcy Code, i.e., by determining whether such expense is "necessary to preserve the value of the estate").

business judgment.[18] See GBL Holding Co. v. Blackburn/Travis/Cole, Ltd., 331 B.R. 251, 254 (N.D. Tex. 2005) (stating that a debtor "must satisfy [its] fiduciary duty to the debtor, creditors and equity holders, [by articulating some] business justification for using, selling, or leasing the property outside the ordinary course of business").

The Second Sale Motion sets forth the three criteria allegedly used by the Debtor to determine that a break-up fee was appropriate: (a) the relationship between the initial bidder and the seller; (b) whether the fee is designed to encourage bidding; and (c) the size of the fee in relation to the purchase price. (Second Sale Motion at ¶ 37 (citing Integrated Res., 147 B.R. at 657-63.)) Clearly, the break-up fee approved by the Court fails this test.

First, the Debtor has no disinterested fiduciaries who could have negotiated the break-up fee with the Proposed Purchaser. Thus, the "relationship between the bidder and the seller" in this case was clearly tainted by self-dealing and conflicts of interest.

Second, under the circumstances of this case, a break-up fee will not encourage competitive bidding. Indeed, the failing of the pre-petition process was that competing bids that were higher and better than the bid of the Proposed Purchaser were rejected for reasons other than their value. (See June 11 Brief at 5-8.) Giving the Proposed Purchaser a "head start" over every other bidder – and reinforcing the concept that the rules are different for the Proposed Purchaser – will simply repeat the flaws of the pre-petition auction. Under such circumstances, it is unlikely that "the proposed break-up fee will . . . induce further bidding or bidding generally." Am. West Airlines,

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[18] In addition to this complete lack of evidence, now that the amount of the break-up fee is determined by the formula contained in the Bidding Procedures, it would never be possible to test it by any business judgment.

Inc., 166 B.R. at 913 (holding that payment of break-up fee was not appropriate where break-up fee would not induce further bidding, unnecessarily chill bidding and deplete estate assets). Given that the size of the break-up fee determines the unreasonably high overbid requirement and the amount by which the Proposed Purchaser can underbid other bidders, its chilling effect is obvious.

Moreover, the Proposed Purchaser itself would have bid, and, in fact, did bid twice, without the protection of a break-up fee beyond the $1.5 million termination fee it negotiated pre-petition. (See January APA and May APA.) Given its willingness to bid without the protection of a break-up fee and its clear desire to own the team, it is not likely that the Proposed Purchaser will withdraw its bid or end its participation in the process if the break-up fee is not approved. Accordingly, no break-up fee is necessary or appropriate. See In re Reliant Energy Channelview LP, 594 F.3d 200, 206 (3d Cir. 2010) ("a break-up fee is not 'necessary to preserve the value of the estate' when the bidder would have bid even without the break-up fee."); O'Brien, 181 F.3d at 535 (observing that award of break-up fee "cannot be characterized as necessary to preserve the value of the estate" in cases where "a potential purchaser will bid whether or not break-up fees are offered").

Finally, the unique formula created by the Court to calculate the break-up fee (the greater of $10 million or 125% of the proven damages and costs of the Proposed Purchaser) exceedingly chills bidding for at least two reasons. First, it will be almost impossible to determine whether any alternative bid submitted at the auction is, indeed, a higher or better offer than that of the Proposed Purchaser because the latter, due to the

indeterminate and uncapped amount of the break-up fee, will perpetually remain a moving target.

Second, although the Court stated that it was approving the large break-up fee with the admirable goal "[p]artly to shut [the Proposed Purchaser] up" and so that it "ha[s] enough that [it] ha[s] an incentive not to litigate the issues that Mr. Lauria raised last Friday," the break-up fee actually provides the ***exact opposite incentive*** to the Proposed Purchaser and its counsel. If the Proposed Purchaser's fees and expenses are already greater than $8 million (the Court did not receive *any* evidence of what the Proposed Purchaser's costs to date were, so neither the Lender Parties nor the Court have any basis upon which to guess), which makes the break-up fee likely to be greater than $10 million, the Proposed Purchaser is more likely to win the auction by spending $1 million more on professional fees than it is by bidding $1 million more in the auction. The $1 million in professional fees increases the break-up fee by $1.25 million, meaning that any other bidder would have to be $1.25 million higher than the Proposed Purchaser's bid to win at the auction, while adding $1 million to the bid only increases the overbid requirement by $1 million. Put simply, every incremental dollar spent on legal fees is worth more than an incremental dollar of bidding. The proposed formulation for the break-up fee provides greater, not less, incentive to the Proposed Purchaser to litigate. The Proposed Purchaser does not need that incentive to participate in the auction process.[19]

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[19] To the extent there was any doubt in the Court's mind about whether the Proposed Purchaser would file litigation for strategic purposes, it should be noted that the Proposed Purchaser filed a 36-page complaint, a motion for a TRO and other pleadings against the Debtor in an apparent coordinated effort with the Debtor that resulted in a proposed settlement within 12 hours. The Court recognized that what these acts were "designed to do is to establish sale procedures, which ordinarily would be handled by a motion." (Hr'g Tr. July 12, 2010 at 7.)

Potential Purchaser Had No Contractual Right to Break-Up Fee

The break-up fee could potentially be justified if it corresponded to the damages for which the Debtor would be responsible for rejecting the pre-petition May APA. Given the circumstances of this case, setting the break-up fee at the amount of the rejection damages could reflect economic realities of how to maximize value for the estate. The break-up fee, however, bears no relationship to the amount of damages that could possibly result from the rejection of the Asset Purchase Agreement. Therefore, this rationale cannot justify the awarded break-up fee.

The termination fee payable to the Proposed Purchaser, if any, for the breach of the Asset Purchase Agreement is only $1.5 million. (Asset Purchase Agreement § 4.4(b).) Although the Asset Purchase Agreement does provide for a $10 million termination fee, it is payable ***only*** after the Plan encompassing the Asset Purchase Agreement has been approved by the Court. (Asset Purchase Agreement § 4.4(g).) Clearly, no such approval has taken place. Accordingly, the Proposed Purchaser is not entitled to any fee more than $1.5 million under the terms of the Asset Purchase Agreement.[20]

[20] While a $10 million break-up fee is purportedly provided under the so-called "side letter" dated May 23, 2010, such break-up fee never became part of the Asset Purchase Agreement. Section 11.4 of the Asset Purchase Agreement provides that the Asset Purchase Agreement "constitutes the entire agreement of the parties respecting the transactions contemplated [therein], and the parties . . . expressly disclaim that they are . . . entitled to any remedies not expressly set forth in the [Asset Purchase] Agreement." Even if the side letter were not precluded by the integration clause, the side letter only requires payment upon the valid termination of the Asset Purchase Agreement by the Proposed Purchaser, which cannot occur if the Debtor rejects it, given that such rejection is deemed to occur prior to the petition date (see 11 U.S.C § 365(g)(1)). Furthermore, the Lender Parties believe that any obligations purportedly incurred by the Debtor under the side letter are avoidable as fraudulent transfers because they were designed to hinder, delay or defraud entities to which the Debtor was indebted, and, as such, the obligation to pay $10 million which first appeared on the day before the bankruptcy filing would be avoided.

The Debtor could not have justified the break-up fee as a settlement of the pretextual litigation commenced by the Proposed Purchaser seeking specific performance of the Asset Purchase Agreement. To the contrary, it is well established that an estate may sell property free and clear of any interest of a pre-petition purchaser, including an asserted right to specific performance. GBL Holding Co, 331 B.R. 251 (holding that pre-petition purchaser could not enforce contract for sale of land through specific performance because debtor could reject contract).

Moreover, contrary to the asserted position of the Proposed Purchaser, the unavailability of specific performance as a matter of law does not invalidate the clear liquidated damages provisions of the Asset Purchase Agreement. Nothing in the Asset Purchase Agreement says that the liquidated damages clause is inapplicable when specific performance is denied for any reason by a court, meaning that the Proposed Purchaser took the risk that it would not get specific performance and would be stuck with its negotiated liquidated damages provision. In a clear recitation of the state of the law on this issue, admittedly in *dicta*, that demands quotation in full, the United States Bankruptcy Court for the District of Columbia recently held:

> This case is distinguishable from a trustee's utilizing his powers under the Bankruptcy Code to eliminate the rights to specific performance held by a purchaser under a debtor's prepetition contract of sale. If a trustee invokes 11 U.S.C. § 365 to reject the contract of sale, the Bankruptcy Code recognizes that although that step is inconsistent with what the debtor had agreed to prepetition, it is not inconsistent with conduct of the trustee. The rejection of a prepetition executory contract that has not been assumed in the case constitutes a breach of the contract immediately before the date of the filing of the petition, 11 U.S.C. § 365(g)(1), and gives rise to a claim that is allowed "the same as if such claim had arisen before the date of the filing of the petition." 11 U.S.C. § 502(g)(1). ***Accordingly, a purchaser entering into a contract of sale outside of bankruptcy ought not make the mistake of agreeing to a provision that fixes liquidated damages for breach of the contract at a relatively small***

> ***amount, thinking that he can always obtain specific performance if the liquidated damages provision would not make him whole.*** Contracts are written with the bankruptcy laws being an element of the contract that will govern what happens when bankruptcy intervenes, and ***the remedy of specific performance under the prepetition contract of sale can be eliminated through rejection of the executory contract.*** The purchaser's right under nonbankruptcy law to have a court prevent the seller from frustrating its right to specific performance does not come into play because the trustee is not bound by the contract (other than with respect to a claim for breach as of the petition date) if she rejects the contract."

In re Linton Props., LLC, 400 B.R. 1, 6 (Bankr. D.C. 2009) (considering breach of a post-petition contract and contrasting it with the remedies available for rejection of a pre-petition contract).

Given that the Asset Purchase Agreement has not been assumed and that there is no argument that the Proposed Purchaser could be entitled to rejection damages of anything more than $1.5 million, the gift of a break-up fee of at least $10 million is wholly unwarranted. It does not achieve the desired purpose of "shutting up" the Proposed Purchaser's counsel, it does not make the Proposed Purchaser more or less likely to participate in the bidding, and it is not necessary to ensure that an auction can happen. To the contrary, it invites the Proposed Purchaser's counsel to litigate more and makes it more likely that no auction will actually happen.

WHEREFORE, for all of the foregoing reasons, the Lender Parties respectfully request that the Court reconsider and vacate the Bidding Procedures Order. To the extent that the Debtor wants to proceed with futilely seeking confirmation of the Plan, it should not be permitted to try to cleanse the flaws of its pre-petition process with a flawed post-petition auction. To the extent that the Debtor and the Proposed Purchaser instead are willing to have a fair auction with reasonable bidding procedures that will ensure a fair process, a level playing field, and completion of the auction well within the

termination date in the Asset Purchase Agreement of October 31, 2010, the Lender Parties are prepared to proceed on that basis. The Court should reconsider, however, the ordered façade of an auction reflected by the Bidding Procedures Order, which is fundamentally flawed and was entered without affording the Lender Parties due process.

Dated: July 15, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2010, true and correct copies of this Motion were served on the parties receiving electronic notice via the Electronic Court Filing system. Also on July 15, 2010 I caused this Motion to be served via first class United States mail on the parties identified on the Master Service List, filed on June 24, 2010 as Docket Number 263.

/s/ Paul E. Heath
Paul E. Heath

EXHIBIT A

(REDACTED)

EXHIBIT B

(UNREDACTED)

Subject: RE: TRBP Bid Procedures and Proposed Order

From: Sander L. Esserman [mailto:Esserman@sbep-law.com]
Sent: Wednesday, July 14, 2010 6:52 PM
To: Leblanc, Andrew; Boydston, Liz; Mitchell.Seider@lw.com; Joseph.Fabiani@lw.com; David Sullivan; Jason.Young@CliffordChance.com; martin.sosland@weil.com; Jeff Prostok; Fine, Jeffrey; Stewart, Daniel; buzz.rochelle@romclawyers.com; honeil@gardere.com; tlauria@whitecase.com; rsimon@bgsfirm.com; Ian.Roberts@bakerbotts.com; Peter D'Apice; Steindorf, Michael; Jennifer.DeMarco@cliffordchance.com; smccaffity@rhmlawyers.com; Michael.Mcconnell@khh.com; lisa.l.lambert@usdoj.gov; ronit.berkovich@weil.com; Stephen J Shimshak; EWeinberger@PAULWEISS.COM; jyarett@paulweiss.com
Cc: julian_vasek@txnb.uscourts.gov; Shane Lynch
Subject: RE: TRBP Bid Procedures and Proposed Order

My change is consistent with that transcript provision and I referenced it specifically. The original bidding procedures proposed by the Lenders and CRO completely left out the bringing of this issue before the Court by motion as was stated stated by the Court. I stand by the transcript, and what I have suggested. I will accept the Court's interpretation after reviewing our comments, thanks.

Sandy

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Cc: 'julian_vasek@txnb.uscourts.gov'; 'Shane Lynch'
Subject: RE: TRBP Bid Procedures and Proposed Order

I would simply ask the Court to consider whether it has already decided this issue, when it dictated the changes that should be made to this provision, at page 80:13-20:

"The second thing that we're going to do is we're going to add, right above B on Page 10, where it says, "MLB shall act in respect of such approval in good faith," instead of ending with the a period, it will end with a semicolon and be followed by "in the event MLB declines approval of the successful bidder, the Bankruptcy Court may determine on motion whether MLB has acted in good faith.""

From: Sander L. Esserman [mailto:Esserman@sbep-law.com]
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To: Leblanc, Andrew; Boydston, Liz; Mitchell.Seider@lw.com; Joseph.Fabiani@lw.com; David Sullivan; Jason.Young@CliffordChance.com; martin.sosland@weil.com; Jeff Prostok; Fine, Jeffrey; Stewart, Daniel; buzz.rochelle@romclawyers.com; honeil@gardere.com; tlauria@whitecase.com; rsimon@bgsfirm.com; Ian.Roberts@bakerbotts.com; Peter D'Apice; Steindorf, Michael; Jennifer.DeMarco@cliffordchance.com; smccaffity@rhmlawyers.com; Michael.Mcconnell@khh.com; lisa.l.lambert@usdoj.gov; ronit.berkovich@weil.com; Stephen J Shimshak; EWeinberger@PAULWEISS.COM; jyarett@paulweiss.com
Cc: julian_vasek@txnb.uscourts.gov; Shane Lynch
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Your formulation allows the matter to be reviewed involuntarily in contravention of the wishes and conceivably the privacy concerns of the successful bidder. My formulation would not preclude anyone joining in the successful bidder's motion.

At this point I think the Court just needs to decide the issue.

Sandy

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Subject: RE: TRBP Bid Procedures and Proposed Order

I would not presume to speak for what the successful bidder would want. They may well want someone else to file the motion to overcome a vote by MLB ownership that they believe was cast in bad faith, which your formulation would preclude. We should let the successful bidder speak, but should not preclude them from relying on other people to carry their argument, particularly where the expense of that motion would be borne by the party making it.

From: Sander L. Esserman [mailto:Esserman@sbep-law.com]
Sent: Wednesday, July 14, 2010 6:31 PM
To: Leblanc, Andrew; Boydston, Liz; Mitchell.Seider@lw.com; Joseph.Fabiani@lw.com; David Sullivan; Jason.Young@CliffordChance.com; martin.sosland@weil.com; Jeff Prostok; Fine, Jeffrey; Stewart, Daniel; buzz.rochelle@romclawyers.com; honeil@gardere.com; tlauria@whitecase.com; rsimon@bgsfirm.com; Ian.Roberts@bakerbotts.com; Peter D'Apice; Steindorf, Michael; Jennifer.DeMarco@cliffordchance.com;

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Subject: RE: TRBP Bid Procedures and Proposed Order

I will let the Court decide on our changes which we stand by.

1. Those people in "groups" change, we just know who we have already approved to bid. Rangers Baseball Express, Crain and Beck have been approved to bid. If others were previously approved to bid they are subsequently approved , subject to their bring-down requirements. These forms listed in the next paragraph on page 4 (after the sentence referencing those who have been approved), are all part of MLB procedures and are required of anyone participating in any group bid or anyone that wants to own ar MLB franchise. There are very solid reasons for this process and I don't think the Court wants to interfere with normal MLB requirements here that would apply to any party wishing to purchase an MLB franchise.

2. As to your third comment, we are just trying to be consistent with the transcript, what the Court said, and what the successful bidder would want. We think it is inappropriate for any party to force a rejected successful bidder to submit to judicial review against the wishes of that successful bidder.

Sandy

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Sent: Wednesday, July 14, 2010 5:08 PM
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Cc: 'julian_vasek@txnb.uscourts.gov'; 'Shane Lynch'
Subject: RE: TRBP Bid Procedures and Proposed Order

Sandy,

Here are my comments corresponding to the numbering of your comments:

1. If there are other parties that have received prior approval to bid those parties should be included as well. I believe there were more people than just those two, including those you referenced in the disussion yesterday as being part of other people's "groups". For example, you argued yesterday that "[a]ssuming that the same people are in their group as before, that . . . I think

they were approved." (Tr. 24:7-10) You later said of other people in those groups "we need to receive their documentation, if we haven't already." (Tr. 64:9-10) We believe that what was represented to the Court yesterday was that the people who have been approved previously, including those in the Crane and Beck groups, are pre-qualified. Our draft procedures would have provided a separate document on which you would have identified everyone who had been pre-approved previously so that those names did not have to become part of the public record, and we would not be opposed to that now if you would rather do that.

We don't believe that the further paragraph you added is consistent with what the Court ordered yesterday and we object to adding that further impediment to bidding.

2. We are fine with that.

3. We don't think that is an appropriate change and is not consistent with what was discussed yesterday. The winning bidder will no doubt make his/her wishes known, but there should not be a limitation on who can file that motion.

Andy

From: Sander L. Esserman [mailto:Esserman@sbep-law.com]
Sent: Wednesday, July 14, 2010 5:45 PM
To: Boydston, Liz; Mitchell.Seider@lw.com; Joseph.Fabiani@lw.com; David Sullivan; Jason.Young@CliffordChance.com; martin.sosland@weil.com; Jeff Prostok; Fine, Jeffrey; Stewart, Daniel; Leblanc, Andrew; buzz.rochelle@romclawyers.com; honeil@gardere.com; tlauria@whitecase.com; rsimon@bgsfirm.com; Ian.Roberts@bakerbotts.com; Peter D'Apice; Steindorf, Michael; Jennifer.DeMarco@cliffordchance.com; smccaffity@rhmlawyers.com; Michael.Mcconnell@khh.com; lisa.l.lambert@usdoj.gov; ronit.berkovich@weil.com; Stephen J Shimshak; EWeinberger@PAULWEISS.COM; jyarett@paulweiss.con
Cc: julian_vasek@txnb.uscourts.gov; Shane Lynch
Subject: RE: TRBP Bid Procedures and Proposed Order

I am attaching a clean and redlined version of the bid procedures with suggested modifications and explanations by MLB.

1. On page 4 of procedures we reference that Greenberg/Ryan, Beck and Crane have all received approval to submit a Qualified Bid--the language was agreed to be changed by the Court to our suggested language--See page 20 of the transcript.

Further, we have added a paragraph on that page which identifies the MLB forms that have to be brought down to date.

2. We have added MLB to be a notice party. MLB under its rules I believe is to be provided with the bids by club but we might as well add them as a notice party.

3. We have modified the language on page 11 to provide that the there must be a motion made by the successful bidder to determine whether MLB has turned down his application to purchase the Rangers in good faith. I would think all parties would wan to be respectful of the successful bidder's wishes in that regard. Further the Court stated that such issue must be addressed by filed motion. See page 80 of the transcript.

Finally, all the above changes should be made in any document, motion, notices etc. that adopt or reflect the bidding procedures. I want to make sure there is consistent language in these documents. Thanks.

Sandy

Sander L. Esserman
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From: Boydston, Liz [mailto:lboydston@fulbright.com]
Sent: Wednesday, July 14, 2010 1:40 PM
To: 'Mitchell.Seider@lw.com'; 'Joseph.Fabiani@lw.com'; David Sullivan; 'Jason.Young@CliffordChance.com'; Marty Sosland (martin.sosland@weil.com); Jeff Prostok; Fine, Jeffrey; Sander L. Esserman; 'Stewart, Daniel'; 'aleblanc@milbank.com'; buzz.rochelle@romclawyers.com; 'honeil@gardere.com'; tlauria@whitecase.com; 'rsimon@bgsfirm.com'; 'Ian.Roberts@bakerbotts.com'; Peter D'Apice; Steindorf, Michael; 'Jennifer.DeMarco@cliffordchance.com'; 'smccaffity@rhmlawyers.com'; 'Michael.Mcconnell@khh.com'; 'lisa.l.lambert@usdoj.gov'; 'ronit.berkovich@weil.com'
Cc: julian_vasek@txnb.uscourts.gov; Shane Lynch
Subject: TRBP Bid Procedures and Proposed Order

All,

Attached please find:

1) a blackline of Judge Lynn's bidding procedures that includes the changes Judge Lynn suggested in court;
2) a clean version of the marked-up procedures; and
3) Judge Lynn's original procedures

Also attached is

4) the proposed order approving the procedures.

Please be advised that Judge Lynn has directed that **any comments** to the bidding procedures or the order **be sent to both of the following e-mail addresses** by **5:00 p.m. CST today, Wednesday, July 14, 2010**:

shane.lynch@yahoo.com
julian_vasek@txnb.uscourts.gov

And finally, also attached are the APA, as Exhibit B to the Order, and the Amendment to the APA, as Exhibit C to the Order.

Liz Boydston, *Associate*
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EXHIBIT C

(REDACTED)

EXHIBIT D

(REDACTED)