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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,** **Debtor.**	**Chapter 11** **Case No. 10-43400 (DML)**

OBJECTION AND COMMENT TO EMERGENCY JOINT MOTION OF LENDER PARTIES FOR RECONSIDERATION OF COURT'S ORDER ADOPTING BIDDING PROCEDURES

The Office of the Commissioner of Baseball ("BOC" or "MLB") respectfully submits this Objection and Comment to Emergency Joint Motion of Lender Parties for Reconsideration of Court's Order Adopting Bidding Procedures:

I.

PRELIMINARY STATEMENT

At a July 13, 2010 hearing, this Court circulated bidding procedures that *this Court* had determined to be acceptable, stating:

> I've reviewed your sale procedures with some care, and I've made some revisions to them that in my judgment would make them acceptable to the Court . . . and I'm pretty confident, going through them, that all of you will dislike them. So that's probably a pretty good indication that I did something right.

July 13, 2010 Transcript 8:25-9:6. After adjourning and allowing counsel present at the hearing an opportunity to review its bidding procedures, this Court heard extensive argument over them. At the end of the hearing, this Court further revised the bidding procedures to address objections and concerns expressed by the parties—including numerous objections and concerns asserted by counsel for the Ad Hoc Group of First Lien Lenders (the "Ad Hoc Group") and the CRO. To the extent that this Court did not revise the bidding procedures in response to the Ad Hoc Group's or CRO's objections, it clearly overruled those objections. Subsequently, on July 14 the parties including the Ad Hoc Group and GSP Finance LLC ("GSP" and together with the Ad Hoc Group, the "Lenders") exchanged comments by email on a proposed form of order, copying a representative of this Court's chambers on the relevant emails.

The following day, July 15, 2010, this Court entered its Order Adopting Bidding Procedures (the "Bidding Procedures Order"), approving the bidding procedures as revised during the July 13, 2010 hearing, with some additional modifications. Hours later, Lenders filed a 25-page Emergency Joint Motion of Lender Parties for

Reconsideration of Court's Order Adopting Bidding Procedures (the "Motion for Reconsideration").

The Motion for Reconsideration rehashes arguments already made by the Lenders at the July 13, 2010 hearing in this case. It raises no material issues that this Court has not already overruled. What the Motion for Reconsideration does do, however, is attempt to re-write history through a series of distortions; for example, it willfully mischaracterizes statements of MLB made to this Court orally and by email. In the end, there is nothing to reconsider, and by the Lenders' own statements to this Court, no "emergency" warrants further judicial action. The Motion for Reconsideration should be denied.

II.
ARGUMENT

A. The Lenders' assertion that this Court's bidding procedures will chill potential bidders rehashes arguments already lost and contradicts representations made by counsel for the Ad Hoc Group.

The Lenders argue that "the Bidding Procedures will, in fact, chill the bidding for the TRBP assets and prevent a 'fair, free and open sale;'" they argue principally that the "expedited timing" does not allow for a competitive auction. Motion for Reconsideration at 8, 10. The Ad Hoc Group made this very same argument at the July 13, 2010 hearing when their counsel argued that the Court's bidding procedures were "fundamentally flawed" and that "we understand that bidders simply aren't in a position to get financing in the time frame that we're talking about." July 13, 2010 Transcript 35:12-21; 40:17-19. This Court has already considered and rejected this argument.

Further, the Ad Hoc Group counsel's statements at the July 13, 2010 hearing contradict representations previously made to this Court, as counsel for the BOC pointed out at the July 13th hearing. July 13, 2010 Transcript 65:2-10 (Mr. Esserman: "I do want to remind the Court of a statement Mr. Leblanc made, I believe on June 1st. He said there were buyers in the courtroom ready, willing and able to make a bid on the Rangers. You know, if they were ready, willing and able on June 1st, I suspect they'll be ready, willing and able to make that bid on July 22…or whenever Your Honor decides to have the auction."). Rather than simply acknowledge the fact that BOC's counsel accurately quoted Mr. Leblanc's June 1 statement, the Lenders choose instead to distort the record. The Lenders charge that "[o]nly by conveniently ignoring the actual statements made on the record could counsel to Major League Baseball be so confused." Motion for Reconsideration at 4. A stark accusation, and one utterly contradicted by the record: Here are the "actual statements made on the record" of Mr. Leblanc on June 1:

> Mr. Leblanc: … That bidder's representatives are ***here in the courtroom***, and that 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.

June 1, 2010 Transcript at 25:4-8 (emphasis added).

Had this Court ordered an auction satisfactory to the Ad Hoc Group's counsel on June 1, "that bidder" was "ready, willing and able to participate." This record excerpt clearly shows that there was no confusion on the part of counsel to BOC as to what Mr.

Leblanc told the Court on June 1st. [1] In fact, the Lenders through their counsel told the Court on June 1 that there were parties then present who were ready then, willing then and able to comply then with auction procedures that are "open, fair and transparent."

The Lenders directly challenge, again, this Court's own procedures, with arguments already heard and already rejected. At the July 13th hearing the Lenders argued that the bid procedures were not open, fair and transparent. *See, e.g.*, July 13, 2010 Transcript 34:19 - 35:24 (Mr. Leblanc: "There isn't a fair process in this. … The Debtor – and we've discovered this in discovery – they filed this bankruptcy because it eliminated the risk of higher and better offers. Those are their words. … [T]he process is fundamentally flawed…."). Missing from this repetitive rhetoric is any indication whatsoever of why this Court's own procedures are not "open, fair and transparent." Simply saying so does not make it so.

The Lenders have managed to push off confirmation of the Debtor's plan twice already with the promise that they had another bidder, delaying this Chapter 11 case by almost a month. If the Lenders do indeed have another credible bidder, then the Court's bidding procedures provide adequate time for that bidder to submit a bid. In fact, this Court's bidding procedures provide substantially the same amount of time that the CRO requested at the July 13 hearing. July 13, 2010 Transcript at 17:12-14 (Mr. Strubeck: "I think he [Mr. Snyder] would like to have until about August the 6th, Your Honor, for an auction, which is one week longer than what Your Honor has been talking about.")

[1] The Lenders cannot possibly be asserting in the Motion for Reconsideration that, with respect to a bidder, to "participate in an auction" means something other than "bid".

B. The Bidding Procedures Order's treatment of prequalified bidders is consistent with statements made by the BOC at the July 13, 2010 hearing.

In the Motion for Reconsideration, the Lenders also attack MLB. The Motion for Reconsideration includes a July 14, 2010 email chain (see Motion for Reconsideration, Exhibit B ("Exhibit B")) accompanied by this misrepresentation: "After agreeing on the record that the parties that had been prequalified would be permitted to bid, … 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." Motion for Reconsideration at 10, n.9. The Lenders complain that this is "MLB's newly articulated position," and they suggest they "have reason to believe that this will allow MLB to pursue its own agenda." *Id.* MLB did nothing of the sort. Even a cursory review of the email chain shows nothing more than a temperate exchange among lawyers over the final terms of the bidding procedures. A wide circle of counsel received all of the emails, and this Court's chambers received every email, as well. MLB made suggestions; the Lenders responded. This Court then entered an order that reflected an intermediate position.

It is disingenuous for the Lenders to say that MLB "settl[ed] the terms of the Bidding Procedures Order" when clearly the Court established the procedures after notice, hearing, argument, and an opportunity to suggest modifications via email communications that included this Court's chambers. It is equally spurious to characterize MLB counsel's suggested modifications (and those are the precise words

used by MLB counsel in the email) as "*demanding* changes". MLB has maintained a consistent position on prequalification of those seeking to acquire a baseball franchise throughout this case, a position that in fact pre-dates the filing of this case. Indeed, as this Court has acknowledged, MLB has gone to extraordinary lengths to expedite the pre-qualification process of a candidate so as to accommodate the demands of the bankruptcy process.

Moreover, the statements by MLB counsel in the email exchange at Exhibit B are completely consistent with public statements by MLB counsel. For example, at the July 13, 2010 hearing, Mr. Esserman articulated for the Court that the entire Greenberg-Ryan group had already been prequalified and Messrs. Crane and Beck, individually, had been prequalified, "[b]ut if there's someone else in that group, they need to submit an application and we will jump through hoops to so submit and so clear them to bid, and we'll be happy to do that. But we need to receive their documentation, if we haven't already. I just wanted to make sure that that's clear." July 13, 2010 Transcript 63:15 - 64:11.

Mr. Esserman's email to the parties and to this Court (unnecessarily attached by the Lenders to their Motion for Reconsideration as Exhibit B) conforms completely to his statement in open court the day before. Mr. Esserman's email reads:

> Those people in "groups" change, we just know who we have already approved to bid. Rangers Baseball Express, Crain [sic] 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 an MLB franchise. There are very solid reasons for this process and I

> do not think the Court wants to interfere with normal MLB requirements here that would apply to any party wishing to purchase an MLB franchise.

These standard MLB requirements and forms are part of the normal procedure for anyone who wants to buy a Major League Baseball Club; they predate this case and in no way evince some ulterior motive connected to this bankruptcy case. It is unfair and excessive for the Lenders to characterize these logical, openly-enunciated, traditional requirements as "newly articulated," or as "impediments" imposed by MLB in pursuit of its "own agenda." MLB rejects the Lenders' characterization of completely reasonable requirements as "additional MLB qualification hoops," particularly when MLB had stated to this Court that it would be MLB itself that would jump through hoops: "*they need to submit an application and we will jump through hoops* to so submit and so clear them to bid, and we'll be happy to do that. But we need to receive their documentation, if we haven't already. I just wanted to make sure that that's clear." July 13, 2010 Transcript 64:6-11(emphasis added).

C. Exhibit B reveals that the Lenders would jeopardize the legitimate privacy interests of bidders.

The Lenders themselves have made demands, some unjustifiable and one at least potentially injurious to the privacy interests of a bidder. They insist that parties other than a bidder rejected by MLB may publicly challenge MLB's decision in this Court. As Mr. Esserman put it in the Exhibit B email exchange:

> We have modified the language on page 11 to provide that 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 want 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.

In response, Mr. Leblanc rejected Mr. Esserman's proposal and argued:

> The winning bidder will no doubt make his/her wishes known, but there should not be a limitation on who can file that motion.

Motion for Reconsideration, Exhibit B.

The Lenders have no basis to accuse MLB of seeking "its own agenda" in relation to this issue. As Mr. Esserman further stated in the Exhibit B email exchange, MLB thinks "it is inappropriate for any party to force a rejected successful bidder to submit to judicial review against the wishes of that successful bidder." This MLB position anticipates and respects the likely personal privacy interests of any rejected bidder, who may choose to forego a contested public airing of background information which may have contributed to the failure to gain the requisite 75% vote of the club owners; outside of bankruptcy, these potentially sensitive matters do not receive a public airing. In modifying MLB's suggestion, this Court gave standing to two additional parties: the Debtor and its general partners. The Lenders, it appears, prefer to sacrifice the privacy concerns of the rejected bidder on the altar of the Lenders' monetary interests. The Lenders' forcing of this issue advances no legitimate interest of their own, jeopardizes the privacy interests of bidders, and may well produce the bid-chilling effect that the Lenders are quick to attribute to others.

CONCLUSION

The Lenders fail to satisfy the standards for reconsideration. The Motion for Reconsideration is without merit and this Court should summarily deny it.

Dated: July 18, 2010

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CERTIFICATE OF SERVICE

I certify that on July 18, 2010, the foregoing was served on the parties receiving electronic notice via the Electronic Court Filing system and be email on the parties identified on the Master Service List, filed on June 24, 2010 as Docket Number 263.

/s/ Peter C. D'Apice