Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
WHITE & CASE LLP
633 West Fifth Street, Suite 1900
Los Angeles, California 90071
Telephone: (213) 620-7704

Mary Kay Braza
Michael J. Small
FOLEY & LARDNER LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
Telephone: (414) 271-2400

Henry W. Simon, Jr.
State Bar No. 18394000
Robert A. Simon
State Bar No. 18390000
BARLOW GARSEK & SIMON, LLP
3815 Lisbon Street
Fort Worth, Texas 76107
Telephone: (817) 731-4500

ATTORNEYS FOR RANGERS BASEBALL EXPRESS, LLC

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 Case No. 10-43400 (DML)
In re RANGERS EQUITY HOLDINGS, L.P., Debtor.	)))))))	Chapter 11 Case Case No. 10-43624 (DML)
In re RANGERS EQUITY HOLDINGS, G.P., Debtor.	)))))))	Chapter 11 Case Case No. 10-43625 (DML)

OBJECTION OF RANGERS BASEBALL EXPRESS LLC TO MOTION TO EXPEDITE HEARING REGARDING MOTION OF RANGERS EQUITY HOLDINGS, L.P. AND RANGERS EQUITY HOLDINGS GP, LLC PURSUANT TO 11 U.S.C. § 363(B) OF THE BANKRUPTCY CODE FOR AUTHORITY TO FILE MOTION FOR SUBSTANTIVE CONSOLIDATION

Rangers Baseball Express LLC ("RBE") hereby files its Objection to the Motion (the "Motion to Expedite") to Expedite Hearing Regarding Motion of Rangers Equity Holdings, L.P. ("Rangers Equity") and Rangers Equity Holdings GP, LLC ("Rangers Equity GP," and, collectively with Rangers Equity, the "Holdings Companies") Pursuant to 11 U.S.C. § 363(b) of the Bankruptcy Code for Authority to File Motion for Substantive Consolidation [Docket No. 396]; and in opposition to the Motions states as follows:

PRELIMINARY STATEMENT

The Motion to Expedite filed by William Snyder, the CRO of the Holding Companies, is without merit and should be denied for at least three reasons. First, there is no emergency or urgency that would justify an expedited hearing. Mr. Snyder claims that he must substantively consolidate the Holding Companies and Texas Rangers Baseball Partners ("TRBP") prior to confirmation of TRBP's plan of reorganization to preserve certain purported avoidance actions held by TRBP. This position is simply wrong. Mr. Snyder has already been authorized to vote against and object to TRBP's plan of reorganization, and Mr. Snyder can raise all of his concerns regarding TRBP's purported fraudulent transfer actions at confirmation whether or not TRBP has been substantively consolidated with the Holding Companies. There is simply no need to rush Mr. Snyder's ill conceived motions to hearing under these circumstances, especially at this critical juncture of the Debtors' bankruptcy cases.

Second, Mr. Snyder does not have (and should not have) the authorization he seeks. Neither Mr. Snyder's current grant of authority nor section 363(b) of the Bankruptcy Code allow Mr. Snyder to use, sell or lease property of the estate and, contrary to his motion for authority, there is no legal basis for him to obtain such authority based on his "business judgment." To the

contrary, there is a well established presumption that a debtor in possession should retain control of its assets and Mr. Snyder has made no showing to rebut that presumption.[1]

Third, even if Mr. Snyder could prevail on his motion for authority, substantive consolidation is simply not appropriate under these circumstances. Mr. Snyder is clear that he seeks substantive consolidation for the exclusive purpose of obtaining control of TRBP's purported fraudulent transfer actions for the benefit of equity. Indeed, in his proposed substantive consolidation motion, Mr. Snyder offers to preserve the current distribution priorities notwithstanding substantive consolidation. It is simply inappropriate to substantively consolidate the Holding Companies and TRBP so that equity can obtain the right to prosecute fraudulent transfer actions that do not even belong to it. That is particularly true here, where the Holding Companies' only creditors are the First Lien Lenders and Second Lien Lenders that expressly agreed to limit TRBP's liability under their respective loan documents to $75 million. The lenders are unhappy with their bargain and, through Mr. Snyder, seek to use substantive consolidation to re-write their loan documents. They cannot do so and the Motion to Expedite should be denied.

ARGUMENT AND AUTHORITIES

1. On July 19, 2010, William Snyder filed the Motion of Rangers Equity Holdings, L.P. and Rangers Equity Holdings GP, LLC Pursuant to Section 363(b) of the Bankruptcy Code for Authority to File Motion for Substantive Consolidation (the "363(b) Motion") [Docket No. 395]. The 363(b) Motion seeks authority for Mr. Snyder to file another motion to substantively consolidate TRBP with the Holding Companies. A form of consolidation motion (the "Consolidation Motion") is attached to the 363(b) Motion as an exhibit [Docket No. 395-1].

[1] Since the relief is of dubious merit, it is unlikely to be prosecuted with the checks and balances provide by Federal Rule of Bankruptcy Procedure 9011.

2. The Motion to Expedite seeks an expedited hearing of the 363(b) Motion and, presumably, the Consolidation Motion as well. The Court should deny the Motion to Expedite for several reasons. Most importantly, the Section 363(b) Motion has no merit and the Holding Companies, TRBP and RBE should not be forced to respond to it on an expedited basis at this critical stage of these cases.

A. There is no emergency requiring an expedited hearing

3. As an initial matter, the Motion to Expedite should be denied because there is no emergency requiring immediate substantive consolidation. This Court has already authorized Mr. Snyder to vote against TRBP's plan of reorganization and to file any pleadings related to such vote. If Mr. Snyder believes that TRBP is not properly pursuing fraudulent transfer actions, he can vote against and object to the plan and advise the Court of his views concerning confirmation without the need for any "emergency" hearings. No further relief need be granted for Mr. Snyder to be heard on this point.

B. Mr. Snyder has no authority to file the 363(b) Motion and he cannot seize control of estate assets based on his purported "business judgment"

4. Mr. Snyder has no authority to file the 363(b) Motion and the 363(b) Motion should be denied on that basis alone. Section 363(b) of the Bankruptcy Code only permits a *trustee* to "use, sell, or lease" property other than in the ordinary course of business. Mr. Snyder is not a trustee of the Holding Companies, which remain in possession of their assets, and has no authority to act for the debtor in possession under these circumstances.[2]

5. Importantly, the application of the Holding Companies to employ Mr. Snyder [Docket No. 30 in Case 10-43624-DML] clearly defines the scope of Mr. Snyder's authority. Mr. Snyder is authorized to (a) advise the Holding Companies and the Court of his views

[2] The bankruptcy cases of the Holding Companies were originally commenced as involuntary proceedings. Orders for relief have since been entered with the consent of the Holding Companies.

regarding TRBP's plan of reorganization; (b) vote on such plan on behalf of the Holding Companies and file any pleadings related to such vote; and (c) perform such investigation and analysis as he may deem appropriate incident to the performance of such duties. Application, p. 4. Nowhere does the application grant Mr. Snyder the authority to "use, sell or lease" property of the estate. Further, the order appointing Mr. Snyder as CRO limits his authority to "approving" transactions outside the ordinary course of business, but does not allow him to propose them.[3]

6. The 363(b) Motion is further flawed because it wrongfully seeks to strip the debtor in possession Holding Companies of control over one of their assets based on a "business judgment" standard. This is contrary to the dictates of chapter 11. The Bankruptcy Code presumes that a chapter 11 debtor will remain in possession of its assets throughout its case, and such presumption cannot be overcome based on Mr. Snyder's purported "business judgment." Among other things, a trustee can only be appointed in a chapter 11 case by establishing cause through "clear and convincing evidence" that overcomes the "strong presumption" that a chapter 11 debtor should remain in possession of its assets. *See In re G-1 Holdings*, 385 F.3d 313, 317-18 (3rd Cir. 2004). The 363(b) Motion does not and cannot make such a showing. And, there is simply no evidence before the court that the Holding Companies have unjustifiably refused to assert a substantive consolidation claim. *See Louisiana World Exposition v. Federal Insurance Co.*, 858 F.2d 233, 247 (5th Cir. 1988) (creditors committee can assert estate causes of action

[3] Mr. Snyder was presumably required to approve transactions outside the ordinary course of business because the order for relief in the Holding Companies' cases had not yet been entered at the time the order approving Mr. Snyder's employment was entered. That has since occurred and the Court, not Mr. Snyder, should now decide such matters.

where debtor in possession unjustifiably refuses to prosecute such action). Indeed, the Consolidation Motion is facially flawed and without merit.[4]

C. Substantive consolidation is improper on its face

7. Mr. Snyder is clear about his motives for seeking substantive consolidation. Mr. Snyder wants to consolidate the Holding Companies and TRBP for the sole purpose of obtaining control of purported fraudulent transfer actions belonging to TRBP's estate for the exclusive benefit of TRBP's equity holders (i.e., the Holding Companies) and their creditors, the First Lien Lenders and Second Lien Lenders. There is simply no authority for asserting fraudulent transfer actions exclusively for the benefit of equity and Mr. Snyder does not cite any. To the contrary, the primary purpose of fraudulent transfer actions is to pay a debtor's unsecured *creditors*. *See ASARCO, LLC v. Americas Mining Corp.*, 404 B.R. 150, 161 (S.D. Tex. 2009) ("[t]he Court agrees with AMC that the ultimate purpose of most fraudulent-transfer laws, and in particular § 550, is to protect unsecured creditors and, as far as possible, to make them whole."); *see also In re Matter of Texas General Petroleum*, 52 F.3d 1330, 1335 (5th Cir. 1998) ("[t]he proceeds recovered in avoidance actions should not benefit the reorganized debtor; rather, the proceeds should benefit the unsecured creditors."). Here, TRBP is solvent, all of its creditors are being paid in full, and there is no dispute that any proceeds of TRBP's fraudulent transfer actions would benefit only the Holding Companies (i.e., TRBP's equity holders) and *their* creditors. Fraudulent transfer actions cannot be used for this purpose.

8. Substantive consolidation is also improper for other reasons. Substantive consolidation is a remedy that should be used sparingly. *In re Augie/Restivo Baking Co.*, 860 F.2d 515, 518 (2nd Cir. 1988). Further, many courts have found that substantive consolidation is

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[4] This objection is not intended to comprehensively address all of the potential substantive consolidation issues and RBE reserves the right to file a more detailed objection to substantive consolidation should the Court grant Mr. Snyder's ill-conceived 363(b) Motion.

only proper where creditors dealt with the entities as a single economic unit, or where separateness was so disregarded that creditors treated such entities as a single legal entity. *Augie/Restivo*, 860 F.2d at 518 (substantive consolidation appropriate where creditors dealt with entities as a single economic unit and did not rely on separate identity in extending credit); *accord In re Bonham*, 229 F.3d 750, 767 (9th Cir. 2000); *In re Owens Corning,* 419 F.3d 195, 205 (3rd Cir. 2005) (substantive consolidation is only proper where separateness was so disregarded that creditors relied on the breakdown of entity borders and treated them as one legal entity). Neither test is satisfied here.

9. As Mr. Snyder concedes in the Consolidation Motion, TRBP's guarantee of the amounts due to the First Lien Lenders and the Second Lien Lenders is contractually limited to $75 million. The Holding Companies' exposure is not. This establishes a clear intent to treat each of TRBP and the Holding Companies as separate economic and legal units. Indeed, Mr. Snyder seeks substantive consolidation precisely because TRBP and the Holding Companies have different rights and were treated as separate legal entities at the time the lenders' loans were structured. Put another way, Mr. Snyder wants to substantively consolidate the Holding Companies with TRBP, not because such entities were treated the same by creditors, but because they were treated differently. Substantive consolidation is simply not available under such circumstances.[5] Moreover, Mr. Snyder cannot credibly argue that the First Lien Lenders and the Second Lien Creditors did not appreciate the legal separateness of TRBP and the Holding Companies when they structured their loans. They are sophisticated parties that knew exactly what they were getting when the loans were structured.

[5] Indeed, under the facts of this case, substantive consolidation would not even be proper under the more liberal "substantial identity" test set forth in *In re Auto-Train Corp.*, 810 F.2d 270, 276 (D.C. Cir. 1997). TRBP and the Holdings Companies were not treated the same by the lenders or other parties in interest and have very different identities.

10. We note that assets of the Holding Companies and TRBP are not "so scrambled that that separating them is prohibitive and hurts *all* creditors." *Owens Corning,* 419 at 212. Indeed, the purpose of the $75 million limitation in TRBP's guarantee was to limit the exposure of TRBP's baseball assets to the First Lien Lenders and the Second Lien Lenders. Once again, Mr. Snyder seeks to turn substantive consolidation on its head, seeking it not because the assets are commingled, but because they are separate.

11. Finally, we note that all of the factors cited by Mr. Snyder in his proposed Consolidation Motion, such as the fact that TRBP and the Holding Companies have similar officers and directors, common payroll, are affiliates and filed common tax returns, are typical of any parent-subsidiary relationship and simply do not form an adequate basis for granting the extraordinary remedy of substantive consolidation.[6]

[6] Mr. Snyder cites the fact that TRBP and the Holding Companies are all guarantors of the First Lien Credit Agreement as a factor in favor of substantive consolidation. As noted above, this is clearly misleading. Indeed, TRBP and the Holdings Companies have different liabilities in connection with their guarantees that make it clear that such entities were treated differently by the lenders. This fact, in and of itself, precludes substantive consolidation.

CONCLUSION

For the reasons set forth above, the Court should deny the Motion to Expedite and the Motion for Leave, neither of which have any merit.

Dated: Fort Worth, Texas
July 22, 2010

By /s/ Craig Averch
Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
WHITE & CASE LLP
633 West Fifth Street, Suite 1900
Los Angeles, California 90071
Telephone:(213) 620-7704

Mary Kay Braza
Michael J. Small
FOLEY & LARDNER, LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Henry W. Simon, Jr.
State Bar No. 18394000
Robert A. Simon
State Bar No. 18390000
BARLOW GARSEK & SIMON, LLP
3815 Lisbon Street
Fort Worth, Texas 76107

ATTORNEYS FOR RANGERS
BASEBALL EXPRESS LLC

CERTIFICATE OF SERVICE

I CERTIFY that on July 22, 2010, the foregoing was served on the parties receiving electronic notice via the Electronic Court Filing system and by email on the parties identified on the Master Service List, filed on June 24, 2010 [Docket No. 263].

/s/ Craig H. Averch