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

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

Attorneys for Debtor and
Debtor in Possession

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

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

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE THIRD AMENDED PLAN OF REORGANIZATION OF TEXAS RANGERS BASEBALL PARTNERS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

BACKGROUND 4

I. CHAPTER 11 CASE 4

II. PARENT CHAPTER 11 CASES 5

III. PLAN AND DISCLOSURE STATEMENT 6

IV. SOLICITATION, NOTICE AND VOTING 9

V. THE BID PROCEDURES AND AUCTION 10

VI. CONFIRMATION IS WARRANTED 15

FACTS 16

JURISDICTION AND VENUE 16

ARGUMENT 16

I. SECTION 1129(a)(1): THE PLAN COMPLIES WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE 17

A. The Plan Complies with Bankruptcy Rule 3016(a) 18

B. The Plan Complies with Section 502(a) of the Bankruptcy Code 18

C. Proper Classification: The Plan Complies with Sections 1122 and 1123(a)(1) of the Bankruptcy Code 18

D. The Plan Complies with the Remaining Subsections of Section 1123(a) of the Bankruptcy Code 21

E. The Plan Complies with Section 1123(b) of the Bankruptcy Code 29

F. Section 1123(c) 36

G. Section 1123(d): Cure of Defaults 37

II. SECTION 1129(a)(2): THE DEBTOR HAS COMPLIED WITH THE BANKRUPTCY CODE 38

A. Compliance with Section 1125: Postpetition Disclosure and Solicitation 38

B. Compliance with Section 1126: Acceptance of Plan 39

III. SECTION 1129(a)(3): THE PLAN HAS BEEN PROPOSED IN GOOD FAITH AND NOT BY ANY MEANS FORBIDDEN BY LAW 41

A. The Plan Has Been Proposed in Good Faith 43

B. The Plan Has A Reasonable Hope of Success 48

C. The Lenders' Arguments Do Not Speak to the Good Faith Standards of the Fifth Circuit Under Section 1129(a)(3) 48

TABLE OF CONTENTS
(continued)

Page

IV. SECTION 1129(a)(4): THE PLAN PROVIDES THAT PROFESSIONAL FEES AND EXPENSES ARE SUBJECT TO COURT APPROVAL 56

V. SECTION 1129(a)(5): THE DEBTOR HAS DISCLOSED ALL NECESSARY INFORMATION REGARDING DIRECTORS, OFFICERS, AND INSIDERS 57

VI. BANKRUPTCY CODE SECTION 1129(a)(6) IS NOT APPLICABLE 58

VII. THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129(a)(7) OF THE BANKRUPTCY CODE 58

A. Classes of Claims Under the Plan 59

B. Class 12 TRBP Equity Interests Under the Plan 59

C. The Bidding Procedures Provided for a Full and Fair Market Test for the Assets 60

D. There Is No Evidence that an Additional Delay, Including in the Event of a Hypothetical Chapter 7 Conversion, Would Produce Additional or Better Bids 63

E. Delay Would Result in the Loss of the Only Bidder Still Standing 66

F. All Holders of a Class 12 TRBP Equity Interest Would Fare Worse Under a Conversion to a Hypothetical Chapter 7 Case Due to Added Costs of Administration, Potential Costs of Additional Litigation, and Other Critical Impacts 68

VIII. SECTION 1129(a)(8): THE PLAN HAS BEEN ACCEPTED BY IMPAIRED CLASSES, AND, AS TO SUCH CLASSES, THE REQUIREMENTS OF SECTION 1129(a)(8) HAVE BEEN SATISFIED 70

IX. SECTION 1129(a)(9): THE PLAN PROVIDES FOR PAYMENT IN FULL OF ALL ALLOWED PRIORITY CLAIMS 71

A. Section 1129(a)(9)(A): Administrative Expense Claims 72

B. Section 1129(a)(9)(B): Priority Non-Tax Claims 73

C. Section 1129(a)(9)(C) and (D): Priority Tax Claims and Secured Tax Claims 73

X. SECTION 1129(a)(10) IS SATISFIED 74

XI. SECTION 1129(a)(11): THE PLAN IS NOT LIKELY TO BE FOLLOWED BY LIQUIDATION OR THE NEED FOR FURTHER REORGANIZATION 74

A. Legal Standard 75

B. The Plan Satisfies the Feasibility Requirement 76

TABLE OF CONTENTS
(continued)

Page

XII. SECTION 1129(A)(12): ALL STATUTORY FEES HAVE BEEN OR WILL BE PAID 77

XIII. SECTION 1129(A)(13): RETIREE BENEFITS 77

XIV. SECTIONS 1129(A)(14), 1129(A)(15), 1129(A)(16), 1129(C), 1129(D), AND 1129(E) DO NOT APPLY 79

XV. THE PLAN SATISFIES THE "CRAM DOWN" REQUIREMENTS OF SECTION 1129(B) OF THE BANKRUPTCY CODE WITH RESPECT TO THE CLASS THAT MAY REJECT THE PLAN 80

A. The Legal Standards under Section 1129(b) 80

XVI. THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1127 OF THE BANKRUPTCY CODE 83

XVII. DISCHARGE, EXCULPATION, INJUNCTION AND INDEMNIFICATION PROVISIONS OF THE PLAN SHOULD BE APPROVED 85

A. The Discharge, Exculpation and the Injunction Are Limited, Customary, and Not Overly Broad 85

TABLE OF AUTHORITIES

CASES

In re 11,111, Inc.,
117 B.R. 471 (Bankr. D. Minn. 1990) 81

Abramoff v. Life Ins. Co. of Georgia (In re Abramoff),
92 B.R. 698 (Bankr. W.D. Tex. 1988) 27

In re ASARCO LLC,
420 B.R. 314 (S.D. Tex. 2009) 51

In re Armstrong World Indus., Inc.,
348 B.R. 111 (D. Del. 2006) 81

Bank of N.Y. Trust Co., N.A. v. Official Unsecured Creditors' Comm.
(In re Pac. Lumber Co.), 584 F.3d 229 (5th Cir. 2009) 87

In re Bankston,
No. 09-10675, 2010 WL 1027806 (Bankr. W.D. La. Jan. 15, 2010) 57

In re Barney & Carey Co.,
170 B.R. 17 (Bankr. D. Mass. 1994) 81

In re Block Shim Dev. Co.-Irving,
118 B.R. 450 (N.D. Tex. 1990) 43, 53, 80, 81

In re Brooks,
60 B.R. 155 (Bankr. N.D. Tex. 1986) 42

In re Buttonwood Partners, Ltd.,
111 B.R. 57 (Bankr. S.D.N.Y. 1990) 81

In re Chateaugay Corp.,
89 F.3d 942 (2d Cir. 1996) 19

Copeland v. Merrill Lynch & Co., Inc.,
47 F.3d 1415 (5th Cir. 1995) 32

Coram Healthcare Corp.,
271 B.R. 228 (Bankr. D. Del. 2001) 54

In re Cypresswood Land Partners, I,
409 B.R. 396 (Bankr. S.D. Tex. 2009) 17, 44

In re Datavon, Inc.,
No. 02-38600-SAF-11, 2003 Bankr. LEXIS 2290
(Bankr. N.D. Tex. June 5, 2003) 48

Deviney v. Nationsbank,
993 S.W.2d 443 (Tex. App.–Waco 1999) 27

In re Drexel Burnham Lambert Group, Inc.,
138 B.R. 723 (Bankr. S.D.N.Y. 1992)....................75, 76

In re Elsinore Shore Assos.,
91 B.R. 238 (Bankr. D.N.J. 1988) 57

In re Energy Co-Op., Inc.,
832 F.2d 997 (7th Cir. 1987) 23

In re Energy Partners, Ltd.,
No. 09-32957, 2009 WL 2898876 (Bankr. S.D. Tex. Aug. 3, 2009) 83

In re Ferch,
333 B.R. 781 (Bankr. W.D. Tex. 2005)....................43, 44, 53

In re Food City, Inc.,
110 B.R. 808 (Bankr. W.D. Tex. 1990)....................52

In re Future Energy Corp.,
83 B.R. 470 (Bankr. S.D. Ohio 1988)....................57

In re Gen. Homes Corp.,
134 B.R. 853 (Bankr. S.D. Tex. 1991) 53

In re Granite Broad. Corp.,
369 B.R. 120 (Bankr. S.D.N.Y. 2007)....................53

In re Guilford Telecasters, Inc.,
128 B.R. 622 (Bankr. M.D.N.C. 1991)....................76

Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enter., Ltd., II
(In re Briscoe Enter., Ltd., II), 994 F.2d 1160 (5th Cir. 1993)....................16, 41, 43, 75

In re Herby's Foods, Inc.,
2 F.3d 128 (5th Cir. 1993) 17

In re Heritage Org., L.L.C.,
375 B.R. 230 (Bankr. N.D. Tex. 2007)....................20, 81

Highland Capital Mgmt. LP v. Chesapeake Energy Corp.
(In re Seven Seas Petroleum, Inc.), 522 F.3d 575 (5th Cir. 2008)....................36

Hohn v. Gay,
No. CV-08-0372-PHX-ROS, 2009 WL 886842 (D. Ariz. Mar. 31, 2009) 44, 53

In re Hysky Commc'ns, LLC,
No. 09-35340-HDH, 2010 WL 148407 (Bankr. N.D. Tex. Jan. 12, 2010) 83

In re Idearc Inc.,
423 B.R. 138 (Bankr. N.D. Tex. 2009)..19, 38, 68, 75

In re Johns-Manville Corp.,
68 B.R. 618 (Bankr. S.D.N.Y. 1986),
aff'd, 78 B.R. 407 (S.D.N.Y. 1987) 17, 38, 75, 81

L & J Anaheim Assocs. v. Kawasaki Leasing Int'l, Inc.
(In re L & J Anaheim Associates), 995 F.2d 940 (9th Cir. 1993).....................................32

In re Landing Assocs., Ltd.,
157 B.R. 791 (Bankr. W.D. Tex. 1993)...81

In re Lernout & Houspie Speech Prods. N.V,,
308 B.R. 672 (D. Del. 2004)...41

In re Leslie Fay Cos., Inc.,
207 B.R. 764 (Bankr. S.D.N.Y. 1997)..75, 76

MCI Telecomms. Corp. v. AT&T Co.,
512 U.S. 218 (1994)...25

In re MCorp Fin., Inc.,
160 B.R. 941 (S.D. Tex. 1993) 44, 53

In re M&S Assocs., Ltd.,
135 B.R. 845 (Bankr. W.D. Tex. 1992)..76

Mabey v. Sw. Elec. Power Co. (In re Cajun Elec. Power Co-op., Inc.),
150 F.3d 503 (5th Cir. 1998) 17, 57

In re Madison Hotel Assocs.,
749 F.2d 410 (7th Cir. 1984) 44, 53

Mattern v. Herzog,
367 S.W.2d 312 (Tex. 1963)..27

Metro. Transp. Auth. v. Bruken Realty Corp.,
492 N.E.2d 379 (N.Y. 1986)..27

Mims v. Kennedy Capital Mgmt., Inc. (In re Performance Nutrition, Inc.),
239 B.R. 93 (Bankr. N.D. Tex. 1999)..55

In re Mirant Corp.,
No. 03-46590DML11, 2007 WL 1258932
(Bankr. N.D. Tex. Apr. 27, 2007)..57

In re Mortgage Inv. Co. of El Paso, Tex.,
111 B.R. 604 (Bankr. W.D. Tex. 1990) 41

N.L.R.B. v. Bildisco & Bildisco,
465 U.S. 513 (1984) 42

In re Oceanaire Tex. Rest. Co., L.P.,
No. 09-34262-bjh-11, 2010 WL 1741095
(Bankr. N.D. Tex. Apr. 29, 2010) 81, 83

Olympia & York Fla. Equity Corp. v. Bank of N.Y.
(In re Holywell Corp.), 913 F.2d 873 (11th Cir. 1990) 20

In re One Times Square Assocs. Ltd. P'ship, 159 B.R. 695 (Bankr. S.D.N.Y. 1993) 75

Patterson v. Shumate,
504 U.S. 753 (1992) 42

Pepper v. Linton,
308 U.S. 295 (1939) 17

Pereira v. Foong (In re Ngan Gung Rest.),
254 B.R. 566 (Bankr. S.D.N.Y. 2000) 42

Phoenix Mut. Life Ins. Co. v. Greystone III Joint Venture
(In re Greystone III Joint Venture), 995 F.2d 1274 (5th Cir. 1991) 19

In re Phoenix Rest. Group, Inc.,
316 B.R. 671 (Bankr. M.D.Tenn. 2004)(5) 23

In re Pilgrim's Pride Corp.,
No. 08-45664-DML-11, 2010 WL 200000
(Bankr. N.D. Tex. Jan. 14, 2010) 87

In re Premiere Network Servs., Inc.,
No. 04-33402-HDH-11, 2005 Bankr. LEXIS 2298
(Bankr. N.D. Tex. July 1, 2005) 80

In re Prudential Energy Co.,
58 B.R. 857 (Bankr. S.D.N.Y. 1986) 75, 76

In re Rivera Echevarria,
129 B.R. 11 (Bankr. D.P.R. 1991) 81

In re Sound Radio, Inc.,
93 B.R. 849 (Bankr. D.N.J. 1988) 44

In re Sovereign Group, 1984-21, Ltd.,
88 B.R. 325 (Bankr. D. Colo. 1988) 52

In re Sun Country Dev., Inc.,
764 F.2d 406 (5th Cir. 1985) 41, 43

In re Sutton,
78 B.R. 341 (Bankr. S.D. Fla. 1987)....................22

In re TCI 2 Holdings, LLC,
428 B.R. 117 (Bankr. D.N.J. 2010) 54

In re T-H New Orleans Ltd. P'ship,
116 F.3d 790 (5th Cir. 1997) 41, 43, 75, 77

In re Tex. Extrusion Corp.,
68 B.R. 712 (N.D. Tex. 1986)....................41, 53

In re Texaco Inc.,
84 B.R. 893 (Bankr. S.D.N.Y. 1988)....................75, 76

U.S. Brass Corp. v. Travelers Ins. Group, Inc. (In re U.S. Brass Corp.),
301 F.3d 296 (5th Cir. 2002) 36

In re U.S. Truck Co., Inc.,
47 B.R. 932 (E.D. Mich. 1985)....................75, 76

U.S. v. Energy Res. Co., Inc.,
495 U.S. 545 (1990)....................75

Universal Oil Ltd. v. Allfirst Bank (In re Millennium Seacarriers, Inc.),
419 F.3d 83 (2d Cir. 2005)....................36

In re Woodmere Investors Ltd. P'ship,
178 B.R. 346 (Bankr. S.D.N.Y. 1995)....................75

In re Wool Growers Cent. Storage Co.,
371 B.R. 768 (Bankr. N.D. Tex. 2007)....................86

In re Zale Corp.,
62 F.3d 746 (5th Cir. 1995) 87

STATUTES/RULES

11 U.S.C.§ 101....................23

11 U.S.C.§ 105....................36

11 U.S.C. § 507....................77

11 U.S.C. § 1122....................19

11 U.S.C. § 1123 .... *passim*

11 U.S.C. § 1125 38

11 U.S.C. § 1126 .... 39, 40

11 U.S.C. § 1127 83

11 U.S.C. § 1129 .... *passim*

11 U.S.C. § 1141 85

28 U.S.C. § 157 16

28 U.S.C. § 1334 16

28 U.S.C. § 1408 16

28 U.S.C. § 1409 16

Fed. R. Bankr. Proc. 3016 18

Fed. R. Bankr. Proc. 3019 .... 83, 84

Fed. R. Bankr. Proc. 9001 84

OTHER

2 Collier on Bankruptcy § 101.09 28

7 Collier on Bankruptcy § 1129.02 .... 59, 76

H.R. Rep. No. 95-595 (1977) 38

S. Rep. No. 95-989 (1978) 38

RESTATEMENT OF PROPERTY § 404(1)(a), (2) 26

RESTATEMENT OF PROPERTY § 405 26

RESTATEMENT (SECOND) OF PROPERTY § 3.1 26

RESTATEMENT (SECOND) OF PROPERTY § 4.1(1) 26

TO THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE:

Texas Rangers Baseball Partners ("TRBP", or the "Debtor") submits this Memorandum of Law (the "Memorandum") in support of confirmation of the Debtor's proposed Plan (as defined below) pursuant to section 1129 of title 11 of the United States Code (the "Bankruptcy Code"), and respectfully represents as follows:

PRELIMINARY STATEMENT

After more than two months of intense litigation, one thing is clear: the mud that the Lenders[1] have thrown at the Debtor both in this Court and in the press, while dirty, falls short of their goal of obscuring the facts or the law. It is also clear that the Debtor's Plan was negotiated and proposed in good faith, complies with section 1129 of the Bankruptcy Code, and should be confirmed.

The Lenders' primary argument against the Plan – that the Debtor and its principals wanted to sell the Texas Rangers Major League Baseball Club to a particular buyer without regard to the amount of consideration – is completely contradicted by the Lenders' own evidence. Rather, the evidence demonstrates that the Debtor ran a robust marketing process, both prepetition and postpetition, to attempt to find the best bid for the team.

The Debtor does not dispute that MLB played an important role in the prepetition process. Indeed, the Debtor was contractually obligated to allow, and its funding for payroll and other critical expenses depended on allowing, MLB to exercise control over the process. However, rather than lying down and passively accepting direction from MLB on which bidder and what price to accept, the Lenders' own "damning" emails show that the Debtor pushed back. Hard. It pushed back on the buyer favored by MLB – Baseball Express. And it pushed back on the price. Moreover, the Debtor asked the Lenders to intervene to help it get the highest price. In the end, the Lenders refused to step in.

[1] Capitalized terms in this Preliminary Statement are defined below.

Left with no choice, the Debtor pursued the only option available to it. It negotiated as well as it could with Baseball Express to push the price up as high as possible. It ended up with a deal that it thought was fair. The Debtor also negotiated in good faith with MLB and the Lenders to try to get to a point where the Lenders would approve the deal. However, the Lenders ultimately refused to consent to a release of their liens.

When it was clear that the stalemate could not easily be resolved, the Debtor's options were limited. Importantly, based on provisions that MLB had insisted on inserting in the Debtor's partnership agreement as a condition to providing the Debtor financing, the Debtor could not file for bankruptcy, nor could it amend its partnership agreement, without MLB's consent. At that point, MLB was only willing to support a sale based on the Baseball Express deal, as improved. In the end, the Debtor decided to file a chapter 11 petition and prepackaged plan of reorganization that would consummate a sale transaction that the Debtor thought was fair and would pay all of its creditors in full. The Lenders, with all of their hyperbolic and vociferous criticisms, never have suggested another alternative available to the Debtor under the circumstances.

The Lenders' arguments of bad faith and insider dealings do not withstand even basic scrutiny. To accomplish the sale of the team through its chapter 11 plan, the Debtor entered into several transactions with its affiliates prior to the filing to place into the Debtor those assets and liabilities that have historically been treated as the Debtor's assets and liabilities. Before doing so, the Debtor confirmed that these transactions were permitted under its credit agreements and, where the Debtor believed value was transferred from one affiliate to another as a result of a transaction (such as the Centerfield Office Lease), value was provided. There was nothing nefarious about these transactions.

The Lenders' assertion that the Plan was filed to benefit Thomas O. Hicks is likewise unsupported. Again, it is undisputed that, at the beginning of the process, Baseball Express was not the Debtor's preferred bidder. Moreover, the Lenders' assertions that the sale of the land surrounding the ballpark to Baseball Express by BRE somehow suggests that the Debtor's sale of the Texas Rangers

Baseball Club was done to benefit Mr. Hicks are not true and not supported by the evidence. In fact, when the process for selling the Texas Rangers Baseball Club began in late 2008, BRE did not want to sell its land. Moreover, BRE was under no obligation to sell the land. It only agreed to do so as an accommodation to the Debtor when all bidders indicated that they were unwilling to buy the team without the land. And once BRE agreed to do so, it was entitled to sell the land for a price that it believed to be fair, including a 1% interest in the purchaser. It was also entitled to bargain for releases and indemnifications. The Lenders seem to posit an unconstitutional proposition that an officer or director of a company is required to sell its own property for less than what it believes to be a fair price. There is no such requirement in this country. Regardless, this is not an issue that affects any of the requirements for plan confirmation under 11 U.S.C. § 1129.

The Debtor's actions in this case further demonstrate its good faith and willingness to compromise. In fact, as the Debtor hoped when it filed its Plan, the bankruptcy process — and this Court's rulings and guidance in particular — have provided the Debtor with the power to improve on the deal it negotiated prepetition, proving further that the filing of the Plan was in good faith. The Debtor has amended the Plan and negotiated with Baseball Express to amend the Asset Purchase Agreement to address various concerns expressed by the Court and parties in interest. The Debtor even entered into an agreement with the CRO – although he later changed his position – on a bidding process to give the CRO and the Lenders exactly what they had been asking for – a postpetition marketing of the assets. And once the Court approved a bidding process, the evidence will demonstrate that the Debtor actively marketed its assets and solicited bids for higher or better offers. At this time, it is unknown whether any other bidders will actually show up at the table. It appears based on the July 30 hearing that there are at least two other bidders that are interested and do not have any timing or financing impediments to submitting a bid. However, even if Baseball Express is the only bidder on August 4, the Debtor is confident that the evidence will demonstrate that the bidding process provided a true market test for the

assets. If the two other bidders do not show up, it can only be because they concluded they did not value the assets above the existing Baseball Express deal.

While the Lenders (or the CRO) may not like the Plan or the result of the bidding process, that, in and of itself, is not a basis for denying confirmation. The Plan satisfies all the requirements of sections of 1129(a) of the Bankruptcy Code, with the possible exception of section 1129(a)(8) of the Bankruptcy Code, depending on the CRO's vote. However, even if the CRO votes to reject, the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to the holders of equity interests and should, therefore, be confirmed.

Given that the deadline for filing this Memorandum, at the time it was being prepared, the Debtor did not know whether the Court would ultimately approve the Settlement and vacate the Bidding Procedures. The Memorandum, therefore, addresses alternative scenarios. It cannot be disputed, in any case, that the Debtor's efforts in negotiating constructively with the CRO and reaching the Settlement, even though it was not ultimately approved, further demonstrate the Debtor's good faith and support confirmation of the Plan.

BACKGROUND

I. CHAPTER 11 CASE

On May 24, 2010 (the "Commencement Date"), the Debtor, a Texas general partnership, commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"). The Debtor has been operating its business and managing its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee has been appointed in this Chapter 11 Case. On June 3, 2010, the U.S. Trustee[2] appointed the committee of unsecured creditors (the "Creditors' Committee") [Docket No. 128].

[2] Capitalized terms used by not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or the Disclosure Statement, as may be applicable.

II. PARENT CHAPTER 11 CASES

On May 28, 2010, certain creditors[3] of the Debtor's parent entities, Rangers Equity Holdings, L.P. ("Rangers Equity L.P.") and Rangers Equity Holdings GP, LLC ("Rangers Equity GP" and together with Rangers Equity L.P., "Rangers Equity"), filed involuntary chapter 11 bankruptcy petitions against such entities. The filing of those involuntary petitions commenced the bankruptcy cases styled *In re Rangers Equity Holdings, L.P.*, Case No. 10-43624-DML-11 (Bankr. N.D. Tex.), May 28, 2010 [Docket No. 1] and *In re Rangers Equity Holdings GP, LLC*, Case No. 10-43625-DML-11 (Bankr. N.D. Tex.), May 28, 2010 [Docket No. 1] (collectively, the "Parent Chapter 11 Cases"). The Parent Chapter 11 Cases are jointly administered with the Chapter 11 Case.[4] Rangers Equity did not contest the involuntary filings, and on July 19, 2010, the Court entered orders for relief in those cases [Case No. 10-43624; Docket No. 45] [Case No. 10-43625; Docket No. 42].

On June 28, 2010, the Court authorized the engagement of William K. Snyder, through his firm CRG Partners Group LLC ("CRG"), to act as Chief Restructuring Officer (the "CRO") of Rangers Equity for certain limited purposes (as more fully described below) [Case No. 10-43624; Docket No. 34] [Case No. 10-43625; Docket No. 32] (the "CRO Order"). Pursuant to the CRO Order, the CRO is charged with "(i) advising [Rangers Equity] and the Court of his views regarding the Plan and any modifications to the Plan; (ii) voting on the Plan and any modifications to the Plan on behalf of [Rangers Equity]; (iii) performing such investigation and analysis as he may deem appropriate incident to the performance of [the] duties and responsibilities."[5]

---

[3] Kingsland Capital Management, LLC, Monarch Alternative Capital, L.P., Sankaty Advisors LLC, and Stonehill Capital Management LLC, each in their capacity as lenders or managers and/or advisors of entities serving as lenders under the First Lien Credit Agreement, among others.

[4] On July 19, 2010, Rangers Equity filed a motion in the Chapter 11 Case for authority to substantively consolidate the Parent Chapter Cases with the Chapter 11 Case [Docket No. 395] (the "Motion to Consolidate"). Contemporaneously therewith, Rangers Equity also filed a motion to expedite hearing regarding the Motion to Consolidate [Docket No. 396] (the "Motion to Expedite"). On July 22, 2010, the Court entered an order denying the Motion to Expedite [Docket No. 419].

[5] *See* Emergency Application Pursuant to 11 U.S.C.§ 105(a) and 363(b) for Authorization to (a) Employ CRG Partners Group LLC to Provide a Chief Restructuring Officer and Additional Personnel and (b) Designate William Snyder as the Chief

III. PLAN AND DISCLOSURE STATEMENT

On the Commencement Date, the Debtor filed (i) that certain Prepackaged Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code [Docket No. 31] (as amended on June 6, 2010 [Docket No. 227] the "Amended Plan",[6] and on June 25, 2010 [Docket No. 276] (the "Second Amended Plan",[7] and further amended on July 30, 2010 (the "Third Amended Plan"),[8] and as may be further modified, the "Plan"), and (ii) that certain Disclosure Statement Relating to the Prepackaged Plan of Reorganization for Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code [Docket No. 34] (as amended on June 17, 2010 [Docket No. 226], the "Disclosure Statement"). The Plan submitted by TRBP provides for the sale of substantially all of the assets of TRBP – including the Texas Rangers Major League Baseball Club – to Rangers Baseball Express LLC ("Baseball Express"), an entity controlled by Chuck Greenberg and Nolan Ryan, or potentially to another bidder, in the event of an auction (as discussed below) (the "Sale").

On June 2, 2010, the Court entered the Order (I) Scheduling a Hearing to Consider Issues Relating to the Disclosure Statement and Issues Relating to Plan Confirmation; (II) Establishing Deadlines with Respect Thereto; (III) Approving the Form and Manner of Notice of the Deadlines and the Hearing; and (IV) Granting Related Relief) [Docket No. 119] (the "Scheduling Order"). Pursuant to the Scheduling Order, the Court held a hearing on June 15, 2010 (the "June 15 Hearing") to consider the following issues related to the Disclosure Statement and issues related to plan confirmation: (i) whether

---

Restructuring Officer for Initial Limited Purpose [Case No. 10-43624; Docket No. 30] [Case No. 10-43625; Docket No. 28] (the "CRO Application"). The CRO Order itself does not outline the CRO's duties and responsibilities; rather, the CRO Order authorizes the employment and retention of CRG pursuant to the terms and conditions of the CRO Application and the engagement letter attached thereto.

[6] The Amended Plan was largely intended to address the objection filed by the Creditors' Committee with respect to the original Plan filed on the Commencement Date.

[7] The Debtor filed the Second Amended Plan, modifying the treatment of Class 2 and Class 3 Claims in accordance with the Court's June 22 Opinion (as defined below), in order that such claims be rendered unimpaired.

[8] The Debtor filed the Third Amended Plan to incorporate changes related to the Bidding Procedures (as defined below), and to respond to comments made by the Court and certain objections filed by parties in interest.

the Disclosure Statement is adequate (including whether any disclosure is required by the Bankruptcy Code), (ii) whether under the Plan any class of creditors or equity holders is impaired and entitled to vote on the Plan, (iii) who may speak for Rangers Equity in the Chapter 11 Case, (iv) what obligations are owed to whom by Rangers Equity respecting their conduct in the Chapter 11 Case, and (v) whether the Debtor is under an independent duty to maximize the value of the estate in connection with disposition of the Chapter 11 Case (the "Confirmation Issues"). While certain oral rulings were made by the Court at the June 15 Hearing, the Court formally ruled on Confirmation Issues (ii)-(v) by virtue of its June 22 Opinion (as defined below).

On June 17, 2010, the Debtor amended its Disclosure Statement in order to address the oral rulings made by the Court at the June 15 Hearing with respect to the First Lien Holder Claims and Second Lien Holder Claims (the claimholders thereof, collectively, the "Lenders") and Rangers Equity's entitlement to vote on the Plan. On June 21, 2010, the Court entered the Disclosure Statement Order,[9] which, among other things, (i) approved the Disclosure Statement, finding that it contained "adequate information" within the meaning of section 1125 of the Bankruptcy Code, and (ii) set forth the procedures for solicitation of votes to accept or reject the Plan, including, but not limited to setting (a) June 15, 2010 as the voting record date, (b) July 9, 2010 as the date of the hearing to consider confirmation of the Plan (the "Confirmation Hearing"), (c) July 2, 2010 as the deadline for any party to file an objection to the Plan (the "Objection Deadline"), (d) June 21, 2010 as the date on which solicitation materials would be mailed to parties entitled to receive notice of the Confirmation Hearing, and (e) July 2, 2010 as the voting deadline (the "Voting Deadline"). The deadlines proscribed in the Disclosure Statement Order were superseded by the June 25 Orders, the July 1 Order, and ultimately by the Final Scheduling Order (each as defined below).

[9] *See* Order (i) Approving the Disclosure Statement, (ii) Approving the Procedures to Solicit Acceptances of the Debtor's Prepackaged Plan (If Needed), Including Ballots and Notices Relating Thereto, and (iii) Scheduling a Confirmation Hearing, and (iv) Establishing Notice and Objection Procedures for Confirmation of the Debtor's Prepackaged Plan [Docket No. 254] (the "Disclosure Statement Order").

On June 22, 2010, the Court entered a memorandum opinion [Docket No. 257] (the "June 22 Opinion") and concluded as follows on the Confirmation Issues:[10] (i) the Debtor does not have a duty to maximize the value obtained for its estate, (ii) management of Rangers Equity continues to speak for Rangers Equity, (iii) Rangers Equity has the same fiduciary duty to its creditors, the Lenders, as would a trustee, and (iv) (a) the Lenders may be impaired, but that the impairment of the Lenders may be cured by providing that the Lenders' post-Effective Date rights against TRBP and its affiliates would remain unaffected, and (b) Rangers Equity is impaired and must be allowed to vote. *See* June 22 Opinion at p. 11, 14, 16, 25, and 27.

On June 24, 2010, the Court entered an order [Docket No. 265] appointing Judge Russell F. Nelms to act as mediator (the "Mediator") in this Chapter 11 Case (the "Mediation Order"). Pursuant to the Mediation Order, mediation was scheduled to commence on July 16, 2010 and the Confirmation Hearing was reset to July 22, 2010. The Court entered subsequent orders on June 25, 2010 [Docket No. 274; Docket No. 275] (the "June 25 Orders"), which, among other things, granted a motion filed by Baseball Express to reset mediation for July 6, 2010 and the Confirmation Hearing for July 9, 2010.[11]

On June 25, 2010, the Debtor filed the Second Amended Plan, which preserved the Lenders' rights under their credit documents post-Effective Date. As part of the confirmation of the Plan, the Court will determine whether the Lenders are unimpaired under the Plan such that the Lenders are presumed to accept the Plan and no longer entitled to vote on account of their claims.

On July 1, 2010, the Court entered the Agreed Order Modifying Mediation Schedule and Resetting Hearing and Deadlines for Confirmation of the Debtor's Plan [Docket No. 304] ("July 1 Order") which, among other things, reset (i) mediation to commence on July 6, 2010, (ii) the

---

[10] The first of the five Confirmation Issues, *i.e.* whether the Disclosure Statement is adequate, had previously been disposed of by way of the Disclosure Statement Order.

[11] The deadlines proscribed by the June 25 Orders were superseded by the July 1 Order and ultimately by the Final Scheduling Order.

Confirmation Hearing to July 22, 2010, (iii) the Objection Deadline to July 15, 2010, (iv) the Voting Deadline for the Lenders to July 15, 2010, (v) the Voting Deadline for the CRO to July 20, 2010, and (vi) the deadline to file any brief in advance of the Confirmation Hearing ("Briefing Deadline") to July 19, 2010.[12] *See* July 1 Order at p. 3-4.

On July 6, 2010, mediation occurred at the Dallas office of Fulbright & Jaworski LLP. On July 19, 2010, the Court entered the Order Resetting Hearing on Confirmation of Debtor's Plan of Reorganization and Related Deadlines [Docket No. 388] (the "Final Scheduling Order"). Pursuant to the Final Scheduling Order, the Court set: (i) the Confirmation Hearing on August 4, 2010 (depending on the need for an auction, as discussed below), (ii) the Objection Deadline to July 28, 2010, (iii) the Voting Deadline for all parties to July 28, 2010,[13] (iv) the Briefing Deadline to July 30, 2010, (v) a non-evidentiary pre-trial conference on issues related to confirmation of the Debtor's Plan for July 22, 2010,[14] (vi) the deadline to object to the assumption or assignment of executory contracts or unexpired leases under the Plan to July 28, 2010, and (vii) August 4, 2010 at 9:00 a.m. Central Time as the date and time for an auction of the Debtor's assets, should one be necessary. *See* Final Scheduling Order at p. 1-2.

IV. SOLICITATION, NOTICE AND VOTING

Commencing on June 21, 2010, the Disclosure Statement, the Plan, the Ballots, the Notice of the Confirmation Hearing, the Notice of Non-Voting Status (each as defined in the Disclosure Statement Order), and the Disclosure Statement Order (collectively, the "Solicitation Materials") were served in compliance with the Bankruptcy Rules, the Local Bankruptcy Rules for the United States Bankruptcy Court for the Northern District of Texas (the "Local Bankruptcy Rules"), and the Disclosure

---

[12] The deadlines proscribed by the July 1 Order were superseded by the Final Scheduling Order.

[13] The CRO's Voting Deadline was subsequently extended to August 2, 2010 by agreed order [Docket No. 456].

[14] The non-evidentiary pre-trial conference did not take place, because in lieu thereof the Court heard continued argument on the Emergency Joint Motion of Lender Parties for Reconsideration of Court's Order Adopting Bidding Procedures filed on July 15, 2010 [Docket No. 367] (the "Motion to Reconsider"), as discussed below.

Statement Order, as applicable. As set forth in the Franks Declaration (as defined below), (i) the service of the Solicitation Materials was adequate and sufficient under the circumstances of this Chapter 11 Case and (ii) adequate and sufficient notice of the Confirmation Hearing and other requirements, deadlines, hearings, and matters described in the Disclosure Statement Order was timely provided in compliance with the Bankruptcy Rules and the Disclosure Statement Order. *See* Franks Declaration at p. 3-6.

As evidenced by the Franks Declaration, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules. As stated above, as part of confirmation of the Plan, the Court will determine whether the Lenders are deemed unimpaired under the Plan and, thus, whether their votes on the Plan will need be tabulated. If the Court finds, as the Debtor believes, that the Lenders are unimpaired, or that the Plan can be further amended in a manner to render the Lenders unimpaired, then the Lenders' votes will be deemed null and void and the Lenders will be presumed to have accepted the Plan.

Class 12 (TRBP Equity Interests) is the only known impaired Class under the Plan. However, because the CRO's current Voting Deadline is August 2, 2010, which falls after the Briefing Deadline, the Debtor will not know as of the filing of this Memorandum whether Rangers Equity has voted to accept or reject the Plan. This Memorandum addresses both possibilities.

V. <u>THE BID PROCEDURES AND AUCTION</u>

Subsequent to the appointment of the CRO in the Parent Chapter 11 Cases, it became clear to the Debtor, following discussions with the CRO, that the CRO would be more likely to support and vote to approve the Plan if there were an auction process. With the consent of the Debtor, the CRO and the Baseball Express entered into discussions that resulted in an agreement regarding an auction process. Consequently, on July 5, 2010, the Debtor filed a Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball

Partners' Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Break-Up Fee and (iv) the Setting of Related Auction and Hearing Dates [Docket No. 310] (the "First Bid Procedures Motion"). The First Bidding Procedures Motion sought entry of an order (a) approving the procedures for (i) submitting bids for TRBP's assets and (ii) conducting an auction (the "Auction") with respect to the Sale of TRBP's assets if the Debtor received more than one bid on the assets; (b) approving the Asset Purchase Agreement (as amended, restated, or otherwise modified from time to time, the "Asset Purchase Agreement") to be entered into by and between TRBP and Baseball Express for the purpose of establishing a minimum acceptable bid at which to begin the Auction (the "First Stalking Horse Bid"); (c) providing Baseball Express with a break-up fee of $15 million, in exchange for Baseball Express's agreement to modify the exclusivity provisions under section 7.16 of the Asset Purchase Agreement (the "Break-Up Fee"); (d) scheduling the Auction for July 16, 2010; and (e) providing that the Court consider up to two bids selected by the Debtor at the Confirmation Hearing.

Three days after the Debtor filed the First Bid Procedures Motion at the CRO's request, on July 8, 2010, the CRO filed a Notice of Withdrawal of Consent to the First Bid Procedures Motion [Docket No. 325], withdrawing his support for the First Bid Procedures Motion. As a result, on July 8, 2010, the Debtor filed a notice of withdrawal of the First Bid Procedures Motion [Docket No. 326].

On July 12, 2010, Baseball Express filed a complaint (the "Complaint") [Docket No. 347] against the Debtor, alleging, among other things, that the Debtor breached the Asset Purchase Agreement by (i) soliciting and negotiating with prospective bidders other than Baseball Express regarding the Sale in contravention of the Asset Purchase Agreement, (ii) failing to use commercially reasonable efforts to take all actions necessary or appropriate to consummate the transaction contemplated by the Asset Purchase Agreement and (iii) filing pleadings in the Chapter 11 Case without providing Baseball Express with an opportunity to review such pleadings, as well as filing pleadings

inconsistent with the terms of the Asset Purchase Agreement. Complaint at ¶ 2. Pursuant to the Complaint, Baseball Express sought specific performance under the Asset Purchase Agreement and an injunction prohibiting the continued alleged breach of thereof. *Id.* at ¶ 3.

Contemporaneously with the Complaint, which was filed in the Chapter 11 Case, on July 12, 2010, Baseball Express commenced a separate adversary proceeding by the filing of an Emergency Motion of Rangers Baseball Express LLC For a Preliminary Injunction and Temporary Restraining Order (i) Prohibiting Debtor From Continuing to Breach the Asset Purchase Agreement and (ii) Directing Debtor to Comply With Its Obligations Under the Asset Purchase Agreement (the "TRO Motion") [Case No. 10-04121; Docket No. 3]. Shortly thereafter, several motions to intervene were filed by various Lenders and by Rangers Equity,[15] and several Plan-related objections were filed by other Lenders.[16]

Around the same time, following a July 9, 2010 status conference with the Court, the Debtor and Baseball Express entered into negotiations intended, from the Debtor's perspective, to amend the original Asset Purchase Agreement in a way that enhanced the value of Baseball Express's First Stalking Horse Bid in exchange for reinstating bid procedures similar to those in the First Bid Procedures Motion. Under the amended terms of the Asset Purchase Agreement, Baseball Express improved its overall bid for the Debtor's assets by $2.7 million to $306.7 million. In addition, Baseball Express agreed to reduce the amount held in escrow following the transfer of the Debtor's assets from $30 million to between $10-$12 million, depending on the Closing Date (as defined in the Asset Purchase Agreement). Baseball Express also agreed to modify section 7.16 of the Asset Purchase Agreement such that the bidding procedures could take effect. In addition, HSG agreed that its certain Shared Charter Services Agreement for use of the charter airplane is terminable at the end of the current

[15] [Case No. 10-04121; Docket Nos. 6, 7, 9 and 11.]

[16] [Case No. 10-04121; Docket Nos. 8 and 10.]

baseball season without penalty. These three heavily-negotiated compromises, representing concessions from both Baseball Express and the indirect parent of the Debtor, HSG, enhanced the attractiveness of the overall bid of Baseball Express and evidenced a willingness by all sides to provide additional value to the Debtor's estates.

On July 13, 2010, the Debtor filed the Debtor's Second Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for (i) Approval of Procedures for the Sale of the Texas Rangers Baseball Partners' Assets to Rangers Baseball Express LLC or Other Successful Bidder, (ii) Authorization to Use the Asset Purchase Agreement as a Stalking Horse Agreement with Rangers Baseball Express LLC in Connection Therewith, (iii) Approval of the Payment of Break-Up Fee and (iv) the Setting of Related Auction and Hearing Dates [Docket No. 352] (the "Second Bid Procedures Motion"). An amended Asset Purchase Agreement, reflecting the terms of the negotiated enhanced bid of Baseball Express, was filed as Exhibit D to the Second Bid Procedures Motion. The Debtor sought to use the Asset Purchase Agreement, along with its amendment, as a stalking horse bid. Baseball Express again agreed to waive the exclusivity provisions under section 7.16 of the Asset Purchase Agreement, in exchange for the $15 million Break-Up Fee, to permit the Debtor to implement the bid procedures. *See* Exhibit B of the Second Bid Procedures Motion.

On July 13, 2010, the Court held a hearing on the TRO Motion, treating it as a motion filed in the Chapter 11 Case, and, among other things, promulgated its own bidding procedures, which were adopted pursuant to the Court's Order Adopting Bidding Procedures (the "Bid Procedures Order") [Docket No. 363]. The bidding procedures, attached to the Bidding Procedures Order as Exhibit A (the "Bidding Procedures"), set, among other things, a deadline for any Qualified Bidder wanting to participate in the Auction to submit a Qualified Bid (each as defined in the Bidding Procedures) (the "Bid Deadline") for August 3, 2010 at 8:00 a.m. Central Time and the Auction for August 4, 2010 at 9:00 a.m. Central Time. Unlike the bidding procedures outlined under the First Bid Procedures Motion or Second Bid Procedures Motion, the Bidding Procedures allow a bidder to submit a bid to purchase the

Debtor's assets through (i) a plan which conforms with the Asset Purchase Agreement or (ii) a sale under section 363 of the Bankruptcy Code.

On July 15, 2010, the Lenders, joined by Rangers Equity [Docket No. 371], filed the Motion for Reconsideration in an attempt to have the Court reconsider approval of the Bidding Procedures. In the following days, Baseball Express, the Office of the Commissioner of Baseball ("MLB"), and the Debtor all objected to the Motion for Reconsideration.[17]

On July 20, 2010, the Court heard the Motion to Reconsider, including testimony in connection therewith, and continued its hearing thereon on July 21, 2010 and July 22, 2010.

On July 26, 2010, the Court held a status conference to consider issues raised by the parties after the hearing on the Motion to Reconsider. It was determined at that status conference that no further scheduling changes would take effect in regards to confirmation of the Plan and /or the Bidding Procedures.

On July 28, 2010, TRBP, Baseball Express, and the CRO reached a settlement relating to (i) the Plan, (ii) the Asset Purchase Agreement (iii) the Land Sale Agreement and (iv) various related matters (collectively, the "Settlement"). The Debtor and the CRO believed the Settlement resulted in significant value to the estate, through a variety of concessions, an increase to the overall purchase price offered by Baseball Express, and the elimination of certain controversial provisions. The settlement was conditioned on the Court vacating its Bidding Procedures Order.

Due to the magnitude of the increased consideration provided under the Settlement, the CRO had agreed as part of the Settlement to (i) support confirmation and consummation of the Plan (and the transactions contemplated by the Plan and the Asset Purchase Agreement) and (ii) vote the Class 12 Equity Interests in TRBP to accept the Plan.

[17] Docket Nos. 372 and 394, 386, and 398, respectively.

In order to effectuate the Settlement, the Debtor, the CRO, and Rangers Express requested that the Court withdraw the Bidding Procedures. The Lenders objected to the Settlement and the withdrawal of the Bidding Procedures. Following a hearing on July 30, 2010, the Court declined to withdraw the Bidding Procedures, and the Settlement became ineffective.

As noted above, on July 30, 2010, the Debtor filed its Third Amended Plan to incorporate changes related to the Bidding Procedures, among other things. The principal changes to the Plan included modifying the Plan, as follows: (i) Baseball Express may (or may not) be the winning bidder and Purchaser under the Plan; (ii) the Overdraft Protection Agreement Claim will not be allowed pursuant to the Plan; (iii) there may be a Stalking Horse Protection Claim; (iv) Class 2 (First Lien Holder Claims) and Class 3 (Second Lien Holder Claims) are unimpaired and Class 12 (TRBP Equity Interests) is impaired under the Plan; (v) the LSA would only be assumed if Baseball Express is the Purchaser; (vi) the exculpations provided under the Plan are limited in scope to those previously approved by this Court and other courts in the Fifth Circuit; and (vii) post-Effective Date injunctions will not affect parties' setoff rights or the right of governmental units to enforce regulatory powers.

VI. CONFIRMATION IS WARRANTED

Certain entities filed or asserted formal objections to confirmation of the Plan (the "Objections"). The various grounds for objection are set forth more fully in the chart attached hereto as Exhibit A (the "Objections Summary"). In addition, the Debtor modified the Plan to address certain of the Objections, also as more fully described in the Objections Summary. Additionally, pursuant to the Final Scheduling Order, the deadline for any party wishing to submit a trial brief in advance of the Confirmation Hearing is July 30, 2010.

As discussed below, and as may be further demonstrated as necessary at the Confirmation Hearing, the Plan satisfies all of the confirmation requirements contained in sections 1122, 1123, 1125, 1126, 1127 and 1129 of the Bankruptcy Code. Accordingly, any objections that have not been resolved should be overruled and the Plan confirmed.

In further support of confirmation of the Plan, the Debtor has also filed contemporaneously herewith the Declaration of John S. Franks of AlixPartners, LLP ("AlixPartners") Regarding Voting on and Tabulation of Ballots Accepting and Rejecting Confirmation of the Debtor's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Franks Declaration").

FACTS

The pertinent and salient facts relating to the Debtor's Chapter 11 Case and the Plan are set forth in the pleadings and other documents filed on the docket in this Chapter 11 Case, including the Disclosure Statement, the Plan, as well as in orders entered by the Court in this Chapter 11 Case. Such facts are incorporated herein as though set forth fully at length. Salient facts, as necessary, will be referred to in connection with the discussion of applicable legal principles.

JURISDICTION AND VENUE

The Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has jurisdiction to enter a final order with respect thereto. The Debtor is an eligible debtor under section 109 of the Bankruptcy Code. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

ARGUMENT

To obtain confirmation of the Plan, the Debtor must demonstrate that the Plan satisfies the applicable provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence. *Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enter., Ltd., II (In re Briscoe Enter., Ltd., II)*, 994 F.2d 1160, 1165 (5th Cir. 1993). The Lenders argue in their Objection[18] that a heightened evidentiary

[18] Joint Objection 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, to Confirmation of Debtor's Second Amended Plan [Docket No. 451] (the "Objection"). The Lenders assert multiple arguments in the Lenders' Objection in that could only be made by equity because, among other things, the Lenders are unimpaired under the Plan. For reasons discussed at greater length in the Debtor's Memorandum of Law Regarding Legal Issues to Be Address at June 15, 2010 Hearing, dated June 11, 2010 (the "June 11 Brief") [Docket No. 158], the Lenders do not speak for equity in this Chapter 11 Case and, otherwise, have no standing to object to confirmation as creditors of Rangers Equity Owners. See, e.g., June 11 Brief at 36-38 (citing cases that stand for the proposition that parties lack standing to assert objections for other parties). The Court did not address this issue

standard applies to confirmation when it relates to a transaction involving insiders. (Obj. at 9 n.14.) However, the Lenders admit that the general standard is preponderance of the evidence. *Id.* at 9. In addition, none of the cases cited by the Lenders for this proposition address standards applicable to confirmation. In fact, these cases do not address confirmation at all. *See Pepper v. Linton*, 308 U.S. 295, 296 (1939) ("The case presents the question of the power of the bankruptcy court to disallow either as a secured or as a general or unsecured claim a judgment obtained by the dominant and controlling stockholder of the bankrupt corporation on alleged salary claims."); *In re Herby's Foods, Inc.,* 2 F.3d 128, 131 (5th Cir. 1993) (concerning equitable subordination of creditors' claim). Thus, the general standard of preponderance of the evidence should be applied by the Court here.

Through filings with the Court and additional testimonial evidence that may be adduced at the Confirmation Hearing, the Debtor will demonstrate, by a preponderance of the evidence, that all applicable subsections of section 1129 of the Bankruptcy Code have been satisfied with respect to the Plan.

I. SECTION 1129(A)(1): THE PLAN COMPLIES WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE

Section 1129(a)(1) of the Bankruptcy Code requires that a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]." The legislative history of section 1129(a)(1) informs that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of a plan, respectively.[19]

As demonstrated below, the Plan fully complies with the requirements of sections 1122, 1123, and all other applicable provisions of the Bankruptcy Code.

---

in its June 22 Opinion; therefore, to the extent not superseded by the June 22 Opinion, the Debtor incorporates by reference its June 11 Brief.

[19] H.R. REP. NO. 95-595, at 412 (1977); S. REP. NO. 95-989, at 126 (1978); *see also Mabey v. Sw. Elec. Power Co. (In re Cajun Elec. Power Co-op., Inc.)*, 150 F.3d 503, 513 n.3 (5th Cir. 1998)*; In re Cypresswood Land Partners, I.,* 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009)*; In re Johns-Manville Corp*., 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986), *aff'd in part, rev'd in part on other grounds*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd,* 843 F.2d 636 (2d Cir. 1988).

A. The Plan Complies with Bankruptcy Rule 3016(a)

Bankruptcy Rule 3016(a) provides that "[e]very proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it." FED. R. BANKR. PROC. 3016(a). The Plan is dated and identifies the Debtor as the Plan proponent, thereby satisfying Bankruptcy Rule 3016(a).

B. The Plan Complies with Section 502(a) of the Bankruptcy Code

The Lenders allege that the Plan impermissibly "allows" the following claims: (i) the Overdraft Protection Claim, (ii) the MLB Prepetition Claim, and (iii) the MLB Postpetition Claims. (Obj. at 17.) Taking the claims in order, the Debtor has amended the Plan to no longer provide for the allowance of the Overdraft Protection Claim; therefore, the Objection is moot. As to the MLB Prepetition Claim, this Claim was allowed under the Final Order Authorizing Debtor in Possession to (i) Enter into Postpetition Financing Documents and Obtain PostPetition Financing Pursuant to Sections 363 and 364 of the Bankruptcy Code, (ii) Grant Liens, Security Interests, and Superpriority Claims, (iii) Provide Adequate Protection to Prepetition Secured Creditors and (iv) Use Cash Collateral, dated June 15, 2010 [Docket No. 206] (the "DIP Order"). *See* DIP Order at ¶ 16. Accordingly, the Lenders' objection is misplaced. Lastly, the MLB Postpetition Claim is not "allowed" under the Plan. It is merely classified as an administrative claim and treated as such under the Plan. *See* Plan § 2.1.

C. Proper Classification: The Plan Complies with Sections 1122 and 1123(a)(1) of the Bankruptcy Code

Section 1123(a)(1) of the Bankruptcy Code provides in pertinent part that a plan shall designate, "subject to section 1122 of this title," (i) classes of claims other than claims that qualify as allowed administrative expenses under section 503(b) of the Bankruptcy Code or priority tax claims under section 507(a)(8) of the Bankruptcy Code, and (ii) classes of interest. 11 U.S.C. § 1123(a)(1). Section 1122(a) of the Bankruptcy Code provides in pertinent part as follows:

> Except as provided in subsection (b) of this section, a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

Id. § 1122(a). For a classification structure to satisfy section 1122(a) of the Bankruptcy Code, not all substantially similar claims or interests need to be designated in the same class. Instead, claims or interests designated to a particular class must be substantially similar to each other. *Phoenix Mut. Life Ins. Co. v. Greystone III Joint Venture (In re Greystone III Joint Venture)*, 995 F.2d 1274, 1278-79 (5th Cir. 1991); *In re Chateaugay Corp.*, 89 F.3d 942, 949 (2d Cir. 1996); *In re Idearc Inc.*, 423 B.R. 138, 160 (Bankr. N.D. Tex. 2009).

The Plan designates classes of claims against and equity interests in the Debtor pursuant to section 1123(a)(1) of the Bankruptcy Code, and provides, in a manner consistent with section 1122(a) of the Bankruptcy Code, for the separate classification of claims and equity interests based upon valid business, factual, and legal reasons. Specifically, Article III of the Plan designates the following 12 classes of claims and equity interests (the "Classes of Claims and Equity Interests" and each a "Class" or "Equity Interest", as applicable):

- Class 1 (Priority Non-Tax Claims);
- Class 2 (First Lien Holder Claims);
- Class 3 (Second Lien Holder Claims);
- Class 4 (MLB Prepetition Claim);
- Class 5 (Secured Tax Claims);
- Class 6 (Other Secured Claims);
- Class 7 (Assumed General Unsecured Claims);
- Class 8 (Non-Assumed General Unsecured Claims);
- Class 9 (Emerald Diamond Claim);
- Class 10 (Overdraft Protection Agreement Claim);
- Class 11 (Intercompany Claims); and

- Class 12 (TRBP Equity Interests).

Each of the Claims or Equity Interests in each particular Class is substantially similar to the other Claims or Equity Interests in such Class. Specifically, all Claims entitled to priority treatment under section 507(a) of the Bankruptcy Code (other than Priority Tax Claims and Administrative Expense Claims) are classified in Class 1. All Claims arising under the First Lien Credit Agreement are classified in Class 2. All Claims arising under the Second Lien Credit Agreement are classified in Class 3. All Claims arising under the terms of, or otherwise provided for in, the Baseball Finance Note, the VSA, the Second Amended and Restated VSA, or the Interim Agreement are classified in Class 4. All Claims that, absent their secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code are classified in Class 5. All Secured Claims other than Secured Tax Claims, the MLB Prepetition Claim, First Lien Holder Claims, and Second Lien Holder Claims are classified in Class 6. All General Unsecured Claims that will be assumed by the Purchaser under the Asset Purchase Agreement are classified in Class 7. All General Unsecured Claims that will not be assumed by the Purchaser under the Asset Purchase Agreement are classified in Class 8. All Claims arising under or in connection with the Emerald Diamond Note are classified in Class 9. All Claims arising under the Overdraft Protection Agreement are classified in Class 10. All Claims that are Claims held by a non-Debtor affiliate against the Debtor are classified in Class 11. All Equity Interests in TRBP are classified in Class 12.

Based on the foregoing, the classification of Claims and Equity Interests does not prejudice the rights of holders of such Claims and Equity Interests, is consistent with the requirements of the Bankruptcy Code and, thus, is appropriate.[20]

---

[20] *See In re Heritage Org., L.L.C.,* 375 B.R. 230, 303 (Bankr. N.D. Tex. 2007) ("[T]he Fifth Circuit has recognized that separate classification of claims of equal rank and priority may, in certain circumstances, be justified; the only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan."); *Olympia & York Fla. Equity Corp. v. Bank of N.Y. (In re Holywell Corp.)*, 913 F.2d 873, 880 (11th Cir. 1990) (plan proponent allowed considerable discretion to classify claims and interests according to facts and circumstances of case so long as classification scheme does not violate basic priority rights or manipulate voting).

Section 1122(b) of the Bankruptcy Code is an elective, not mandatory, provision relating to the designation of a class of *de minimis* claims for administrative convenience. The Plan does not include a *de minimis* convenience class of claims. Therefore, section 1122(b) of the Bankruptcy Code is inapplicable.

D. The Plan Complies with the Remaining Subsections of Section 1123(a) of the Bankruptcy Code

In addition to subsection 1123(a)(1) of the Bankruptcy Code, discussed above, the Plan fully complies with each of the additional enumerated requirements of section 1123(a).

(1) *Section 1123(a)(2): Classes that Are Not Impaired by the Plan*

Section 1123(a)(2) requires a plan to specify which classes of claims or interests are unimpaired by the Plan. The Plan specifies that Class 1, Class 2, Class 3, Class 4, Class 5, Class 6, Class 7, Class 8, Class 9, Class 10, and Class 11 are unimpaired by the Plan. *See* Plan at art. III. Although ultimately the Court will determine whether Class 2 and Class 3 are unimpaired as part of the Plan confirmation process, as discussed below in section D, the Debtor submits that the treatment afforded to the holders of claims in Class 2 and Class 3 renders them unimpaired in accordance with the Court's June 22 Opinion. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

(2) *Section 1123(a)(3): Treatment of Classes that Are Impaired By the Plan*

Section 1123(a)(3) requires a plan to specify how it will treat impaired classes of claims or interests. The Plan sets forth the treatment of Equity Interests in Class 12, the only Class, that the Debtor believes is impaired. *See* Plan at art. III. To the extent that the Lenders in Class 2 and Class 3 are impaired, the Plan sets forth the treatment of these Classes, as well. Accordingly, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

(3) *Section 1123(a)(4): Equal Treatment Within Each Class*

Section 1123(a)(4) requires that a plan provide the same treatment for each claim or interest within a particular class unless any claim or interest holder agrees to receive less favorable

treatment than other class members. Pursuant to the Plan, the treatment of each Claim against or Equity Interest in the Debtor in each respective Class is the same as the treatment of each other Claim or Equity Interest in such Class. *See* Plan at art. III. Accordingly, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

(4) *Section 1123(a)(5): Adequate Means for Implementation*

Section 1123(a)(5) requires that a plan provide "adequate means for the plan's implementation." The Plan provides for adequate and proper means for implementation of the Plan, including, without limitation, (a) the continued corporate existence of the Debtor, (b) details regarding management of the Post-Effective Date Debtor, (c) consummation of the transactions contemplated by the Asset Purchase Agreement, (d) the cancellation of certain liens, (e) the continued vesting of the assets of the Debtor's estate in the Post-Effective Date Debtor, and (f) the execution, delivery, filing, or recording of all contracts, instruments, releases, and other agreements or documents related to the foregoing. Contrary to the cases cited by the Lenders[21] in support of their argument that the Plan fails to provide adequate means for implementation, the Debtor's Plan incorporates a specific offer and contemplates a timely sale, thereby satisfying section 1123(a)(5) of the Bankruptcy Code.

The Lenders argue that their existing lawsuits against the Debtor relating to certain pre-filing transfers somehow prevent implementation of the Plan. However, such assertion is unsupported by the Bankruptcy Code or case law (indeed, they cite no cases). "Claim" is defined broadly in the Bankruptcy Code to include all rights to payment, whether contingent, unmatured, unliquidated, etc.[22]

---

[21] *See In re Sutton*, 78 B.R. 341, 342 (Bankr. S.D. Fla. 1987) (finding lack of means for implementation of the plan existed where there was no specific offer of purchase, no specific sale date, and long windows over which a sale process is to occur).

[22] As set forth in section 101(5) of the Bankruptcy Code,

> The term "claim" means--
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

See In re Phoenix Rest. Group, Inc., 316 B.R. 671, 676 (Bankr. M.D.Tenn. 2004) ("Claim is the operative term in the definition of both creditor and debt. As has been often repeated, "Congress sought to give claim 'its broadest possible definition . . . .' [A]ll legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.''"") (citing *In re Energy Co-Op., Inc.*, 832 F.2d 997, 1001 (7th Cir. 1987) (citations omitted); *Id.* at 1001 ("By defining a debt as a 'liability on a claim,' Congress gave debt the same broad meaning it gave claim."). If the Lenders prevail in their lawsuits, which the Debtor believes is unlikely, they will have claims against the Debtor. The Debtor intends to reserve sufficient funds to satisfy all such claims by not making a distribution on account of Equity Interests until all such claims are resolved.

The Lenders' two adversary proceedings – one for a declaratory judgment that the May 23, 2010 transfer by Rangers Ballpark LLC of the Ballpark at Arlington lease (the "Ballpark Lease") to the Debtor (the "Ballpark Lease Transfer") is null and void; the other to avoid it as a fraudulent transfer – cannot block confirmation. To the contrary, none of the Lenders' legal theories asserted in these adversary proceedings can withstand motions to dismiss under Rule 12(b)(6).

In the declaratory judgment action, the lender plaintiff alleges that the Ballpark Lease Transfer is void under the terms of the leasehold deed of trust (the "Leasehold Mortgage").[23] In their confirmation objection, the Lenders assert that without the consent of the Collateral Agent to the Ballpark Lease Transfer, § 3.11.1 of the Leasehold Mortgage "voids" the assignment of the Ballpark

---

> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5).

[23] Based on this same legal theory, JPMorgan Chase Bank, N.A., as First Lien Agent acting at the direction of the First Lien Lenders, filed a declaratory judgment action in this court on July 16, 2010. The adversary proceeding is docketed at 10-4124 and states one claim for relief – a declaration that the Ballpark Lease Transfer violated § 3.11.1 of the Leasehold Mortgage, is null and void, and therefore, the Ballpark Lease is not property of the Debtor's estate. The Debtor and Rangers Ballpark LLC have moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failing to state a claim upon which relief can be granted.

Lease to the Debtor. The Lenders' assertion that the Ballpark Lease Transfer is void fails for multiple, independent reasons.

Foremost, the terms of the First Lien Credit Agreement authorize the Ballpark Leasehold Transfer without the need for prior consent. In fact, the Collateral Agent does not hold consent rights over the Ballpark Lease Transfer. As explained in the prior section, § 6.9(p) of the First Lien Credit Agreement contemplates that Guarantor Subsidiaries (and both the Debtor and Rangers Ballpark LLC qualify) may convey and transfer assets without prior consent. The Lenders wholly ignore this provision of their own credit documents.

Likely because the First Lien Credit Agreement forecloses their position, the Lenders instead rely on one subsection of the Leasehold Mortgage, which sets forth certain representations, warranties and covenants, and provides:

> [E]xcept as set forth in the Credit Agreement, Grantor shall not, without the prior written consent of Beneficiary . . . enter into any modification of the Subject Lease which materially impairs the practical realization of the security interest granted by this Deed of Trust, and any such attempted . . . modification . . . without Beneficiary's written consent shall be void.

Leasehold Mortgage § 3.11.1.

Pursuant to the introductory clause of § 3.11.1, the Leasehold Mortgage yields to the terms of the First Lien Credit Agreement, and it expressly permits the assignment of the Ballpark Lease from Rangers Ballpark LLC to the Debtor. Put another way, both the Debtor and Rangers Ballpark LLC are Guarantor Subsidiaries authorized by § 6.9(p) of the First Lien Credit Agreement to effectuate the Ballpark Lease Transfer. And, moreover, § 10.3 of the Leasehold Mortgage mandates the terms of the First Lien Credit Agreement control the Leasehold Mortgage. Because the Collateral Agent's consent to the Ballpark Lease Transfer is not required under § 6.9(p) of the First Lien Credit Agreement, the issue of consent under the Leasehold Mortgage is of no consequence. Consequently, the Lenders' assertion that § 3.11.1 of the Leasehold Mortgage renders the Ballpark Lease Transfer null and void must fail by the terms of their own documents.

Notwithstanding this fatal flaw in the Lenders' reliance on § 3.11.1 of the Leasehold Mortgage, the Lenders' legal theory fails for three additional, independent reasons. First, the Ballpark Lease Transfer is not a modification of the Ballpark Lease. Section 3.11.1 states that "any such attempted . . . modification . . . shall be void." The use of the term "modification" is further qualified in that any such "attempted modification" is void without the Collateral Agent's consent if the modification "materially impairs the practical realization of the security interest granted by this Deed of Trust." Section 3.11.1, therefore, governs modifications to the Ballpark Lease, not assignments of it.

No viable interpretation of the term modification connotes a transfer in whole. As held by the Supreme Court, "'[m]odify,' in our view, connotes moderate change." *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218, 228-29 (1994).[24] Additionally, based on any dictionary definition of modify, the complete transfer and assignment in whole of the Ballpark Lease would not (and could not) constitute a "modification." None of the terms of the Ballpark Lease were altered. None were moderately changed. Rather, the Ballpark Lease was transferred from a wholly owned subsidiary of the Debtor to the Debtor itself. And, the Ballpark Lease is freely assignable as § 7.1 of the Ballpark Lease permits assignments thereof without the consent of the landlord (or any other party). Accordingly, the Ballpark Lease was not modified – it was assigned as contemplated therein.

Secondly, the phrase qualifying a "void" modification further frustrates the Lenders' assertion the Ballpark Lease Transfer can be undone. The Leasehold Mortgage only purports to void a modification that impairs the "practical realization" of the Collateral Agent's security interest in the Ballpark Lease. The assignment from Rangers Ballpark LLC to the Debtor did not impair the practical realization of a security interest in the Ballpark Lease because: (a) the transfer was made subject to the lien; (b) the assignment substituted one Guarantor Subsidiary for another Guarantor Subsidiary, a transfer specifically authorized by the First Lien Credit Agreement; and (c) the Debtor is the parent of

[24] In *MCI v. AT&T*, the Supreme Court flatly rejected the petitioner's argument that "modify", as defined by *Webster's Third*, could mean "to change in some respects" and "to change fundamentally." 512 U.S. at 227.

Rangers Ballpark LLC and Rangers Ballpark LLC is the Debtor's wholly-owned subsidiary. Consequently, no practical impairment of the Collateral Agent's lien occurred. Further, § 10.1 of the Leasehold Mortgage expressly states that it "shall be binding upon and inure to the benefit of Beneficiary and Grantor and their respective successors and assigns." Notably, this provision is preceded by another reference that certain assignments and transfers (between Guarantor Subsidiaries) are "permitted" under the First Lien Credit Agreement.

A third independent reason the Lenders' argument fails is that § 3.11.1 is a disabling restraint on alienation. Thus, assuming *arguendo* that the Ballpark Lease Transfer constituted a modification requiring the Collateral Agent's prior consent, a premise that directly contradicts both § 6.9(p) of the First Lien Credit Agreement and a correct interpretation of the term "modification," if § 3.11.1 renders the assignment of the Ballpark Lease "void," it is a disabling restraint on alienation. Disabling restraints are invalid and unenforceable.

A disabling restraint on alienation is "an attempt by an otherwise effective conveyance, or contract, to cause a later conveyance . . . to be void." RESTATEMENT OF PROPERTY § 404(1)(a), (2) (1944); *accord* RESTATEMENT (SECOND) OF PROPERTY: DONATIVE TRANSFERS § 3.1 (1983). The position of the Restatement is that "[d]isabling restraints, other than those imposed on equitable interests under a trust, are invalid." RESTATEMENT OF PROPERTY § 405 (1944); *accord* RESTATEMENT (SECOND) § 4.1(1) (1983). The rationale articulated by the reporters is that:

> All restraints on alienation run counter to the policy of freedom of alienation so that to be upheld they must in some way be justified. But disabling restraints have an additional objection to their validity since to be effective they must enable the person restrained to deny the validity of his own conveyance and also, unless the restraint is only as to voluntary conveyances, to deny his creditors resort to the property interests which he is enjoying.

RESTATEMENT § 405, cmt. a.

Disabling restraints are unenforceable under Texas and New York law.[25] *Mattern v. Herzog*, 367 S.W.2d 312, 319 (Tex. 1963); *Deviney v. Nationsbank*, 993 S.W.2d 443, 449 (Tex. App.–Waco 1999, pet denied); *Abramoff v. Life Ins. Co. of Georgia (In re Abramoff)*, 92 B.R. 698, 702-03 (Bankr. W.D. Tex. 1988); *Metro. Transp. Auth. v. Bruken Realty Corp.*, 492 N.E.2d 379, 381 (N.Y. 1986). It is impossible to read § 3.11.1 (and its "shall be void" verbiage) as anything other than a disabling restraint. Indeed, the Lenders' argument that the Ballpark Lease Transfer is null and void, and that the Ballpark Lease did not become a part of the Debtor's estate requires that § 3.11.1 *ipso facto* voided the transfer. Because the Lenders' argument requires § 3.11.1 to be interpreted as disabling restraint, and disabling restraints are unenforceable, § 3.11.1 of the Leasehold Mortgage cannot "void" the Ballpark Lease Transfer.

Thus, in final review, the Ballpark Lease is part of the Debtor's estate and can be transferred to the a Purchaser as part of the Debtor's Plan. The Lenders' reliance on § 3.11.1 of the Leasehold Mortgage affords them not one sustainable legal theory by which to undo the Ballpark Lease Transfer. The Lenders' tangential assertion that the Debtor does not have the legal right to effectuate the transfer because the Ballpark Lease Transfer was fraudulent under Texas law also not sustainable as a reason to deny confirmation.[26] Texas fraudulent transfer law does not operate to allow the Ballpark Lease Transfer to be undone.

No party disputes the fact that the amounts outstanding under the Credit Agreements exceed the value of the Ballpark Lease. Consequently, Rangers Ballpark had no equity in the Ballpark Lease at the time of its assignment to the Debtor. This simple mathematical fact means that the Ballpark

[25] Texas and New York are the two jurisdictions whose law may apply pursuant to the First Lien Credit Agreement and the Leasehold Mortgage's choice-of-law provisions.

[26] Certain of the Lenders filed a complaint against the Debtor and Rangers Ballpark seeking to avoid the Ballpark Lease Transfer as a fraudulent transfer. This adversary proceeding, filed June 11, 2010, is docketed at 10-4098. The Debtor and Rangers Ballpark have moved to dismiss the complaint under Rule 12(b)(6).

Lease is not an "asset"[27] for purposes of UFTA, and therefore, the Ballpark Lease Transfer is not a "transfer"[28] avoidable thereunder.

(5) *Section 1123(a)(6): Prohibition on the Issuance of Non-Voting Securities*

Section 1123(a)(6) provides for the inclusion in the debtor's charter, if the debtor is a corporation, or in the charter of any corporation, organized before or after the confirmation of the plan, to which all or any part of the property of the estate is being transferred, of a provision prohibiting the issuance of nonvoting equity securities. 11 U.S.C. § 1123(a)(6). In addition, section 1123(a)(6) requires that the charter "provid[e], as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes." *Id.*

The Debtor is a partnership, which does not fall within the Bankruptcy Code's definition of "corporation" used in section 1123(a)(6).[29] Accordingly, section 1123(a)(6) does not require the Debtor's charter to include a provision (i) prohibiting the issuance of nonvoting equity securities or (ii) regarding the appropriate distribution of power among the several classes of securities possessing voting power in the Debtor's charter.

(6) *Section 1123(a)(7): Provisions Regarding Directors and Officers*

Section 1123(a)(7) requires that the Plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." 11 U.S.C. § 1123(a)(7). Section 6.2(c) of the Plan provides the manner of selection of officers of the Post-Effective Date Debtor. Post-Effective Date, the officers of the Debtor will consist of the

---

[27] Under the Uniform Fraudulent Transfer Act as adopted in Texas ("UFTA"), an "asset" does not include "property to the extent it is encumbered by a valid lien." UFTA, section 24.002(2).

[28] Transfer means "every mode, direct or indirect . . . of disposing of or parting with an asset . . . ." UFTA, section 24.002(12).

[29] 2 COLLIER ON BANKRUPTCY ¶ 101.09 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009) (noting the exclusion of partnerships from the definition of corporation under the Bankruptcy Code because their liability extends beyond their capital contribution).

following individuals, each of who was appointed prior to the Commencement Date: (i) Chief Executive Officer, Thomas O. Hicks, (ii) Executive Vice President, Thomas O. Hicks, Jr., (iii) Executive Vice President, Mack Hardin Hicks, and (iv) Vice President, Lori McCutcheon. Each of these officers is an insider and will receive no compensation from TRBP for his or her service as an officer of TRBP.[30] The continuance and appointment of these officers is consistent with the interests of creditors and equity security holders and with public policy. TRBP is a general partnership and does not have directors. Accordingly, the Plan is consistent with section 1123(a)(7) of the Bankruptcy Code.

E. <u>The Plan Complies with Section 1123(b) of the Bankruptcy Code</u>

Section 1123(b) sets forth certain permissive provisions that may be incorporated into a chapter 11 plan. Each provision of the Plan is consistent with section 1123(b) of the Bankruptcy Code.

(1) ***Section 1123 (b)(1): Impairment/Unimpairment of Claims and Interests***

Section 1123(b)(1) provides that a plan may "impair or leave unimpaired any class of claims, secured or unsecured, or of interests." 11 U.S.C. § 1123(b)(1). As discussed below, Equity Interests in Class 12 are impaired by the Plan. The remaining Classes are not impaired by the Plan. Accordingly, the Plan is consistent with section 1123(b)(1) of the Bankruptcy Code.

Class 12 (TRBP Equity Interests)

Pursuant to the June 22 Opinion, the Court determined that Class 12 is impaired and entitled to vote to accept or reject the Plan. Pursuant to the CRO Order and Final Scheduling Order, the CRO is vested with the authority to cast this vote. At the time this Memorandum is being prepared, the Debtor does not know the result of the CRO's vote. However, the Debtor submits that even if Class 12 votes to reject the Plan, the Plan may still be confirmed because it satisfies the requirements set forth in section 1129(b) of the Bankruptcy Code (as described in Art. XV below).

[30] This should resolve the Lenders' objection that such information was not disclosed.

Class 2 (First Lien Holder Claims) and Class 3 (Second Lien Holder Claims)

The Court determined in the June 22 Opinion that the Lenders were, at the time, impaired under the Plan. However, the Court ruled that certain amendments to the Plan would unimpair the Lenders. To satisfy the requirements of section 1124(1) as it applies to Class 2 and Class 3 Claims, the Court specified that the Plan must (i) provide for payment of "$75,000,000 plus interest" to the Lender Claims and (ii) allow the Lenders to exercise their rights under their respective loan documents following the Effective Date.[31]

The Plan now provides that Class 2 and Class 3 Claims will be paid, in addition to $75,000,000, postpetition interest for the period from the Commencement Date through the Effective Date (to the extent the Court determines that holders of such Claims are entitled to postpetition interest in order for such Claims to be unimpaired). *See* Plan §§ 4.2 and 4.3.[32] The Plan also provides that on and after the Effective Date, the Lenders shall retain all existing contractual rights against the Debtor or its affiliates to which they are entitled under the First and Second Lien Credit Agreements and related documents. *Id.* Therefore, in accordance with the June 22 Opinion, the Debtor submits Class 2 and Class 3 are unimpaired under the Plan.[33] *Id.*

---

[31] *See* June 22 Opinion, p. 25 ("while payment of the $75,000,000 plus interest will satisfy and discharge Debtor's monetary obligations as required by section 1124(1), in order for the Plan to be confirmed without the acceptance of the Lenders or satisfaction of Code section 1129(b)(1), the treatment of the Lenders must be modified to allow them to exercise their rights under their loan documents following the effective date").

[32] The Debtor asserts that the Lenders are not entitled to postpetition interest in accordance with sections 506, 726 and 1124 of the Bankruptcy Code and the terms of the HSG Credit Agreement.

[33] Plan §§ 4.2 and 4.3 provides that Class 2 and Class 3 will receive "On the Effective Date, an amount of Cash equal to $75 million (or the amount outstanding under the First Lien Credit Agreement and Second Lien Credit Agreement if less than $75 million is outstanding in the aggregate under the First Lien Credit Agreement and Second Lien Credit Agreement on the Effective Date), together with postpetition interest for the period from the Commencement Date through the Effective Date (to the extent the Bankruptcy Court determines that holders of such Claims are entitled to postpetition interest in order for such Claims to be unimpaired), shall be paid to JPMorgan Chase Bank, N.A., as administrative agent for the holders of Allowed First Lien Holder Claims, to be applied in accordance with the First Lien Credit Agreement, the Second Lien Credit Agreement, and the Intercreditor Agreement. On and after the Effective Date, the holders of Allowed First Lien Holder Claims [Allowed Second Lien Holder Claims] shall retain all existing contractual rights against the Debtor or its affiliates to which they are entitled under the First Lien Credit Agreement [Second Lien Credit Agreement] and related documents."

Several of the arguments raised in the Lenders' Objection are rendered moot by modifications made in the Debtor's Third Amended Plan, including modifications to the exculpation provision in section 11.4 of the Plan to clarify that the Debtor and the Post-Effective Date Debtor are not exculpated from Lender Claims. Likewise, the Lenders' Objection to the Debtor's discharge under section 11.3 is subject to sections 4.2 and 4.3, which preserve the Lenders' contractual rights against the Debtor that may be enforced on and after the Effective Date.[34]

The Lenders also argue that their liens cannot be released because the Court ruled that the Lenders had to retain the right to pursue the Post-Effective Date Debtor in order for their claims to be unimpaired. However, the Lenders conveniently ignore the fact that the Debtor's obligations to the Lenders are capped at $75 million. Section 7.1 of the First Lien Credit Agreement is clear that the Lenders' security interests are subject to the $75 million cap. *See* Section 7.1 of the First Lien Credit Agreement. Accordingly, $75 million constitutes the full value of their liens. Upon payment of the $75 million to the Lenders, the liens securing the Debtor's obligations will be released pursuant to section 6.3 of the Plan in accordance with section 1123(a)(5) of the Bankruptcy Code.[35] While the Lenders will retain all existing contractual rights against the Debtor and its affiliates to which they are entitled under their respective agreements after the Effective Date, these rights are not secured by liens after the $75 million is paid, nor are they unsecured claims against the Debtor on account of the Debtor's guaranty of the credit agreements.

Finally, in the Lenders' Objection, the Lenders have attempted to revisit the same issues of impairment that were previously decided by the Court in the June 22 Opinion. The well-settled doctrine of "law of the case" should limit the Lenders' ability to raise these issues again at this

---

[34] *See* Plan § 11.3 "*Except as otherwise specifically provided in the Plan*, all Persons shall be precluded from asserting against the Debtor, the Purchaser, the Post-Effective Date Debtor, or their respective properties or interests in property, any other Claims based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date."(Emphasis in original)

[35] Under section 1123(a)(5) of the Bankruptcy Code, as a means of implementing the Plan, the Debtor is authorized to sell assets free and clear of liens and release the Lenders liens upon payment of the $75 million. *See* 11 U.S.C. § 1123(a)(5).

juncture.[36] *See Copeland v. Merrill Lynch & Co., Inc.*, 47 F.3d 1415, 1423 (5th Cir. 1995) (the "law of the case" doctrine "provides that once a court of competent jurisdiction decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages of the same case").

For the sake of brevity, the Debtor will not belabor the Court with a full reargument on impairment. Rather, the Debtor respectfully refers the Court to the June 22 Opinion in which this Court reasoned that under section 1124(1), Class 2 and Class 3 Claims would be rendered unimpaired (*i.e.*, their legal, equitable, and contractual rights would be unaltered) if they receive under a plan everything to which Class 2 and Class 3 would be entitled in a judgment entered immediately following the Effective Date of the Plan. *See* June 22 Opinion, p. 19. While the Court determined that the Debtor had other obligations to Class 2 and Class 3 in addition to the $75 million guaranty, the Court ultimately concluded that, unlike plan treatment required under section 1124(2), section 1124(1) is only prospective. *Id.* Section 1124(1) does not require that the Debtor's Plan cure prepetition defaults. Instead, for Class 2 and Class 3 to be unimpaired under section 1124(1), the Plan must prospectively recognize and preserve the rights of Class 2 and Class 3 to enforce these additional obligations. *Id.* at p. 20. Even if the sale will have already been consummated upon the Effective Date, to the extent the Lenders are harmed by the actions of the Debtor, the Lenders may proceed against the Debtor after the Effective Date. *Id.* at p. 21.

The Lenders cite to *L & J Anaheim Associates v. Kawasaki Leasing International, Inc. (In re L & J Anaheim Associates)*, 995 F.2d 940, 943 (9th Cir. 1993) to support their argument that the treatment of Class 2 and Class 3 under the Third Amended Plan constitutes impairment. However, *L & J Anaheim Assocs.* is distinguishable in that it involved an insolvent estate and the primary secured creditor's claims were neither capped nor paid in full under the plan of reorganization. Unlike *L & J Anaheim Assocs.*, in this case, the Lenders' claims are capped at $75 million and are being paid in full

[36] *See* Lenders Objection, p. 11 ("Furthermore, the Lender Parties respectfully disagree with the Memorandum Opinion on the issue of impairment").

under the Plan. Furthermore, consistent with the June 22 Opinion, the Lenders are allowed to assert breach of contract claims against the Debtor and its affiliates following the Effective Date. This is the remedy that would be available to the Lenders outside of bankruptcy for a breach of the First and Second Lien Credit Agreements, including the Lenders' consent rights under these agreements.[37]

As this Court concluded in the June 22 Opinion, the rules of statutory construction and the legislative intent of section 1124(1) is to permit an unimpaired class, upon the effective date of the plan, "to pursue remedies not otherwise in conflict with the Code, the plan or bankruptcy court order for defaults existing as of the effective date." *Id.* at p. 23. For the foregoing reasons, in order for the Lenders to be unimpaired, the Court required the Debtor to (i) pay $75 million to satisfy and discharge the Debtor's monetary obligations under the HSG Credit Agreement, and (ii) modify the Plan to allow the Lenders to exercise their rights against the Debtor and its affiliates following the Effective Date. *Id.* Both of these conditions have been satisfied under the Third Amended Plan, and therefore, Class 2 and Class 3 are rendered unimpaired.

(2) *Section 1123(b)(2): Assumption/Rejection of Executory Contracts and Leases*

Section 1123(b)(2) allows a plan to provide for the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. *See* 11 U.S.C. § 1123(b)(2). Pursuant to Section 9.1 of the Plan and the Asset Purchase Agreement, as of the Effective Date, the Debtor shall assume and assign to Purchaser, pursuant to sections 365(a) and (f) of the Bankruptcy Code, each executory contract and unexpired lease to which it is a party other than the Excluded Contracts. Excluded Contracts, as defined in the Plan, generally include all contracts with professionals who provided assistance with the Sale, all contracts between the Debtor (or any of its subsidiaries) and any affiliate of the Debtor (including directors) or affiliates of

---

[37] *See* June 22 Opinion, p. 21 ("As would be the case with a breach outside of bankruptcy, except to the extent the Code excuses such a breach as a matter of law, if the Lenders are damaged by the actions of Debtor or [Rangers Equity] or their parents through a pre-effective date failure to honor the Lenders' rights under section 4.4.1(c)(i)(3) or 4.4.2(b)(i), they may assert in this court a claim against Debtor for their damages or pursue its affiliates in an appropriate forum.").

Thomas O. Hicks, certain indemnification agreements between the Debtor and certain officers and directors of HSG and the Debtor, and all contracts of the Debtor or any of its subsidiaries relating to the HSG Credit Agreement.

On the Effective Date, each Excluded Contract that is an executory contract or unexpired lease shall either be terminated by its terms or assumed by the Debtor. Prior to the Commencement Date, all contracts of HSG Sports Group LLC (f/k/a Hicks Sports Group LLC) that relate primarily to the Texas Rangers, were assigned to TRBP (the "HSG Assigned Contracts"). The HSG Assigned Contracts will be assumed and assigned to the Purchaser as of the Effective Date pursuant to sections 365(a) and (f) of the Bankruptcy Code. That certain Amended and Restated Land Sale Agreement, dated as of May 23, 2010, by and among Purchaser, Ballpark Real Estate, L.P., and for the sole purpose of section 6.12 thereof, TRBP, shall be assumed by the Debtor on the Effective Date if Baseball Express is the Purchaser.

(3) ***Section 1123(b)(3): Settlement of Claims and Causes of Action***

Section 1123(b)(3)(A) allows a plan to provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." *See* 11 U.S.C. § 1123(b)(3)(A). Section 1123(b)(3)(B) provides that a plan may "provide for the retention and enforcement by the debtor" of any such claim or interest. *See* 11 U.S.C. § 1123(b)(3)(B). Section 13.5 of the Plan provides that, to the extent not specifically provided under the Plan or the Asset Purchase Agreement, or any contract, instrument, release, or other agreement entered into in connection with the Plan, (i) the Debtor shall retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits, and proceedings, whether in law or in equity, whether known or unknown, that the Debtor or its Estate may hold against any Person or entity without the approval of the Bankruptcy Court, and (ii) the Debtor or its successor(s), or the Purchaser, as applicable, may pursue such retained claims, rights or causes of action, suits, or proceedings as appropriate, in accordance with

the best interests of the Post-Effective Date Debtor or its successor(s) who hold such rights. Section 13.5 of the Plan is consistent with and authorized by section 1123(b)(3) of the Bankruptcy Code.

(4) ***Section 1123(b)(4): Sale of All or Substantially All Assets***

Section 1123(b)(4) provides that a plan may "provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests." *See* 11 U.S.C. § 1123(b)(4). The Plan submitted by the Debtor provides for the Sale on the Effective Date of substantially all of the assets of the Debtor. As a result of the Sale, all creditors of the Debtor will receive payment in full of all of their allowed claims. Most claims will be assumed by the Purchaser. Claims that are not assumed by the Purchaser will be paid in full by the Debtor from the proceeds of the Sale.

(5) ***Section 1123(b)(5): Modification of Creditor Rights***

Section 1123(b)(5) provides that a plan may "modify the rights of holders of secured claims . . . or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims." *See* 11 U.S.C. § 1123(b)(5). Here, the Plan leaves unaffected the rights of holders of Claims in Class 1 (Priority Non-Tax Claims), Class 4 (MLB Prepetition Claim), Class 5 (Secured Tax Claims), Class 6 (Other Secured Claims), Class 7 (Assumed General Unsecured Claims), Class 8 (Non-Assumed General Unsecured Claims), Class 9 (Emerald Diamond Claim), Class 10 (Overdraft Protection Agreement Claim), and Class 11 (Intercompany Claims). The Debtor believes the Plan, as amended, also leaves unaffected the rights of holders of Claims in Class 2 (First Lien Holder Claims) and Class 3 (Second Lien Holder Claims). Accordingly, the Plan is consistent with section 1123(b)(5) of the Bankruptcy Code.

(6) ***Section 1123(b)(6) and Section 105(a): Other Appropriate Provisions***

Section 1123(b)(6) is a "catch-all" provision, which permits inclusion in a plan of any appropriate provision as long as such provision is consistent with applicable sections of the Bankruptcy Code. 11 U.S.C. § 1123(b)(6). In addition, section 105(a) of the Bankruptcy Code provides that the

Court may issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

The Plan provides that, among other things, the Court will retain jurisdiction until the closing of the Chapter 11 Case as to all matters involving the Plan and the claims allowance and distribution process. *See* Plan at art. XII. These provisions are appropriate because the Court otherwise would have had jurisdiction over all of these matters during the pendency of the Debtor's Chapter 11 Case. Moreover, case law establishes that a Court may retain jurisdiction over the debtor or the property of the estate following confirmation.[38] Accordingly, the continuing jurisdiction of the Court is consistent with applicable law and therefore permissible under section 1123(b)(6) of the Bankruptcy Code.

The other provisions of the Plan are likewise appropriate and consistent with the applicable provisions of the Bankruptcy Code, including, without limitation, provisions for (a) distributions to holders of Claims and Equity Interests (Article VII), (b) approval of and authorization to enter into the Asset Purchase Agreement (Section 6.1), (c) treatment of Disputed Claims (Article VIII); (d) treatment of indemnification obligations (Section 11.7), (e) discharge of Claims (Section 11.3); and (f) exculpations of certain parties (Section 11.4).

F. <u>Section 1123(c)</u>

Section 1123(c) only applies in a case concerning an individual debtor and therefore does not apply to this Chapter 11 Case.

---

[38] *See Highland Capital Mgmt. LP v. Chesapeake Energy Corp. (In re Seven Seas Petroleum, Inc.)*, 522 F.3d 575, 589 (5th Cir. 2008) ("After a plan is confirmed, the bankruptcy court's jurisdiction is limited to matters pertaining to the implementation or execution of the plan. This jurisdiction extends to matters that 'impact compliance with or completion of the reorganization plan.'" (citations omitted)); *U.S. Brass Corp. v. Travelers Ins. Group, Inc. (In re U.S. Brass Corp.)*, 301 F.3d 296, 304-05 (5th Cir. 2002); *see also Universal Oil Ltd. v. Allfirst Bank (In re Millennium Seacarriers, Inc.)*, 419 F.3d 83, 96 (2d Cir. 2005).

G. <u>Section 1123(d): Cure of Defaults</u>

Section 1123(d) provides that "if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law." *See* 11 U.S.C. § 1123(d). Section 9.2 of the Plan provides the Purchaser will promptly satisfy the cure amount as to each executory contract or unexpired lease to be assumed or assumed and assigned by the Debtor under the Plan, and provides each contract counterparty an opportunity to object to and be heard by the Court with respect to such proposed cure amount. *See* Plan § 9.2. The Debtor also filed and served on all contract counterparties a schedule listing estimated cure amounts as of the Commencement Date for assumed executory contracts and unexpired leases along with the Confirmation Hearing Notice, as approved by the Disclosure Statement Order. *See* Exhibit 3 of the Disclosure Statement Order; *see* Franks Declaration at p. 2. In addition, the Confirmation Hearing Notice outlines in detail the process for objecting to the assumption and assignment of a particular executory contract or unexpired lease and explains that a party wishing to object to such assumption and assignment must follow the instructions outlined therein for objecting to the proposed cure. Exhibit 3 of the Disclosure Statement Order at ¶ 11; *see also* Final Scheduling Order at p. 2, ¶ 6. If there is a dispute as to the cure amount for an assumed executory contract or unexpired lease or other matters related to assumption and assignment that remained unresolved as of the Effective Date, the Court will resolve the dispute and cure will be provided shortly thereafter. *Id.* at p.11-12. Accordingly, the Plan complies with section 1123(d) of the Bankruptcy Code.

Based upon all of the foregoing, the Plan fully complies with the requirements of sections 1122 and 1123, as well as with all other provisions of the Bankruptcy Code, and thus satisfies the requirement of section 1129(a)(1) of the Bankruptcy Code.

II. SECTION 1129(A)(2): THE DEBTOR HAS COMPLIED WITH THE BANKRUPTCY CODE

Section 1129(a)(2) of the Bankruptcy Code requires that the plan proponent "compl[y] with the applicable provisions of [the Bankruptcy Code]." *See* 11 U.S.C. § 1129(a)(2). The legislative history of section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code.[39]

As set forth more fully below, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126, regarding disclosure and Plan solicitation.

A. Compliance with Section 1125: Postpetition Disclosure and Solicitation

Section 1125(b) of the Bankruptcy Code provides, in pertinent part:

> An acceptance or rejection of a plan may not be solicited after the commencement of the case under [the Bankruptcy Code] from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information.

See 11 U.S.C. § 1125(b). Pursuant to the Disclosure Statement Order, the Court approved the Disclosure Statement as containing "adequate information" pursuant to section 1125(b) of the Bankruptcy Code.

On June 21, 2010, the Debtor commenced its solicitation of votes to accept the Plan. Franks Declaration at p. 4. The Disclosure Statement Order required AlixPartners to transmit (i) the Disclosure Statement (which includes as an exhibit a copy of the Plan as of such date) and any additional solicitation materials approved by the Court in the Disclosure Statement Order to each holder of a Claim or Equity Interest in Class 2, Class 3, and Class 12 that is entitled to vote to accept or reject

[39] *See* H.R. REP. NO. 95-595, at 412 (1977); S. REP. NO. 95-989, at 126 (1978) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *see also Idearc, Inc.*, 423 B.R. at 163; *Johns-Manville Corp.*, 68 B.R. at 630.

the Plan, and (ii) certain non-voting materials approved by the Court in the Disclosure Statement Order to holders of Claims and Equity Interests that are not entitled to vote to accept or reject the Plan. *See* Disclosure Statement Order at ¶¶ 13-15, 17. The Debtor did not solicit acceptances of the Plan from any holder of Claims or Equity Interests prior to the transmission of the Disclosure Statement.

The Franks Declaration confirms that AlixPartners solicited and tabulated votes in accordance with the Disclosure Statement Order. Franks Declaration at p. 3-6. In addition, the Franks Declaration describes the methodology for the tabulation and results of voting with respect to the Lenders' vote on the Plan. *Id.* at p.5. Although AlixPartners has not yet received the CRO's vote on behalf of Rangers Equity, it will supplement the Franks Declaration to include the results of voting with respect to the CRO's vote on the Plan once that vote is received.

B. <u>Compliance with Section 1126: Acceptance of Plan</u>

Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a chapter 11 plan. Pursuant to section 1126, only holders of allowed claims or equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan. Section 1126 provides, in pertinent part, as follows:

> (a) The holder of a claim or interest allowed under section 502 of [the Bankruptcy Code] may accept or reject a plan.
>
> * * *
>
> (f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.
>
> (g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

See 11 U.S.C. § 1126.

As set forth in the Disclosure Statement Order and the Franks Declaration, the Debtor solicited acceptances of the Plan from the holders of all Equity Interests in Class 12 (the only Class the Debtor believes is currently impaired under the Plan), and from the holders of Claims in Class 2 and Class 3 (those Classes for which the Court has yet to determine the issue of impairment), in accordance with section 1126 and the solicitation procedures approved by the Court with respect to the Plan. *See* Disclosure Statement Order at ¶¶ 13-15; Franks Declaration at p. 3-6. The Plan reflects that all other Classes are unimpaired, and thus, are conclusively presumed to have accepted the Plan. The Voting Deadline for the Lenders to accept or reject the Plan was July 28, 2010. The results of the votes cast by the Lenders in respect of the Plan were included in the Franks Declaration and are discussed in more detail below. The CRO's Voting Deadline is August 2, 2010. The results of the vote cast by the CRO in respect of the Plan are unknown at the time of the filing of this Memorandum.

Section 1126(c) and (d) of the Bankruptcy Code specify the requirements for acceptance of a plan by impaired Classes of Claims or Equity Interests entitled to vote to accept or reject a plan of reorganization:

> (c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than the entity designated under subsection (e) of this section, that have accepted or rejected the plan.
>
> (d) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

See 11 U.S.C. § 1126(c) and (d).

As stated above, the Debtor believes that the Lenders' Claims are not impaired under the Plan and therefore the holders of Claims in Class 2 and Class 3 are presumed to have accepted the Plan. Accordingly, section 1126(c) of the Bankruptcy Code does not apply to acceptance of the Plan by the

holders of claims in Class 2 and Class 3 because the Claims in these classes are not impaired and thus votes in such Classes will not be counted towards acceptance.

With respect to section 1126(d) of the Bankruptcy Code, holders of Equity Interests in Class 12 will either be deemed to have accepted the Plan if holders of Class 12 holding in excess of two-thirds in amount of the Allowed Equity Interests that voted in such Class have voted to accept the Plan, or, will otherwise be deemed to have affirmatively rejected the Plan. Accordingly, the Debtor submits that the requirements of section 1129(a)(2) of the Bankruptcy Code have been satisfied.

III. SECTION 1129(A)(3): THE PLAN HAS BEEN PROPOSED IN GOOD FAITH AND NOT BY ANY MEANS FORBIDDEN BY LAW

Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." "The Bankruptcy Code does not define the term 'good faith.'" *In re Lernout & Houspie Speech Prods. N.V*, 308 B.R. 672, 675 (D. Del. 2004). "The test for good faith is whether there is a reasonable likelihood that the plan will achieve a result consistent with the standards under § 1129." *In re Tex. Extrusion Corp.*, 68 B.R. 712, 723 (N.D. Tex. 1986), *aff'd*, 836 F.2d 217 (5th Cir. 1988). Moreover, good faith requires a legitimate, honest purpose to reorganize and a reasonable probability of success. *See In re T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 802 (5th Cir. 1997); *In re Sun Country Dev., Inc.,* 764 F.2d 406, 408 (5th Cir. 1985); *In re Mortgage Inv. Co. of El Paso, Tex.*, 111 B.R. 604, 611 (Bankr. W.D. Tex. 1990). The requirement of good faith must be viewed in light of the totality of the circumstances surrounding the establishment of a chapter 11 plan. *Sun Country Dev.*, 764 F.2d at 408. "A plan may not be the one that the creditors would themselves design and may indeed not be confirmed and yet still pass the good faith requirement." *Briscoe Enters.*, 994 F.2d at 1167.

The Debtor, as the plan proponent, has met its good faith obligation under the Bankruptcy Code. The Debtor proposed the Plan with the purpose of selling substantially all of the assets of the

Debtor and expeditiously distributing value to creditors. This type of plan is expressly permitted by the Bankruptcy Code. 11 U.S.C. § 1123(b)(4).

The evidence will demonstrate that the Plan (including all documents necessary to effectuate the Plan) is the result of extensive negotiations among the Debtor, Major League Baseball, Baseball Express, and their respective advisors. The January Asset Purchase Agreement, which forms the substantive basis for the Asset Purchase Agreement, was the result of a months-long process of diligence and bidding by various parties, including Baseball Express. The May Asset Purchase Agreement was intended to provide parties with substantially similar economics to the January Asset Purchase Agreement. In addition, the changes the Debtor has made to the Plan and the Asset Purchase Agreement since the Commencement Date have further increased the value to the estate.

Importantly, all holders of Allowed Claims will be paid in full under the terms of the Plan, and the remaining value will ultimately be provided to Rangers Equity. Accordingly, the Plan provides for a distribution of the value of the Debtor's estate to creditors and equity holders in accordance with the priorities and provisions of the Bankruptcy Code. Furthermore, as the Purchaser will continue the business of the Debtor, the Plan achieves the primary objectives underlying a chapter 11 bankruptcy: the reorganization of a debtor and the distribution of value to creditors for amounts owing. *See N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources."); *In re Brooks*, 60 B.R. 155, 159 (Bankr. N.D. Tex. 1986) (stating that the two-fold purpose of bankruptcy law is providing for payments to creditors and giving the debtor a fresh start), *abrogated on other grounds*, *Patterson v. Shumate*, 504 U.S. 753 (1992))); *Pereira v. Foong (In re Ngan Gung Rest.)*, 254 B.R. 566, 570 (Bankr. S.D.N.Y. 2000) (stressing the importance of payment of creditors in chapter 11 cases). Because the Plan promotes the rehabilitative objectives and purposes of the Bankruptcy Code, the Plan and the related documents have been filed in good faith and in compliance with section 1129(a)(3) of the Bankruptcy Code.

A. The Plan Has Been Proposed in Good Faith

The Fifth Circuit has held that "[w]here the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of § 1129(a)(3) is satisfied." *T-H New Orleans Ltd. P'ship*, 116 F.3d at 802. A creditor's disagreement with certain plan provisions does not defeat a showing of good faith. *See Briscoe Enters.*, 994 F.2d at 1167 (holding that while a plan may not be one that the creditors would design, it may still pass good faith). Here, the Debtor's Plan meets both Fifth Circuit requirements for good faith — it has been proposed with the honest purpose to pay all creditors through the disposition of the Debtor's assets and has a reasonable hope of success.

1. The Plan Has Been Proposed With an Honest Purpose to Effectuate a Sale of the Debtor's Assets and Pay Off Creditors in Full

The Debtor has proposed the Plan with an honest purpose to effectuate a sale of its assets and pay off creditors in full. As the Fifth Circuit has noted, the purpose of the Bankruptcy Code is to give debtors a reasonable opportunity to make a fresh start. *In re Sun Country Dev.*, 764 at 408. "The court views the good faith requirement in light of the totality of the circumstances surrounding establishment of the plan, keeping in mind the purpose of the Bankruptcy Code to give debtors a reasonable opportunity to make a fresh start." *In re Block Shim Dev. Co.-Irving*, 118 B.R. 450, 455 (N.D. Tex. 1990), *aff'd*, 939 F.2d 289 (5th Cir. 1991). Because a plan to sell the debtor's assets is envisioned by the Bankruptcy Code, *see* 11 U.S.C. § 1123(b)(4), a Plan that accomplishes that result plainly satisfies the "honest purpose" standard.

Additionally, the Fifth Circuit has stated that, in addition to providing a debtor a fresh start, the other of the twin pillars of the Bankruptcy Code is the payment of claims. *T-H New Orleans Ltd. P'ship*, 116 F.3d at 802. Courts in this circuit have found that where a debtor's plan proposed to pay all creditors' claims with interest, such a plan definitively showed both a legitimate and honest purpose and a reasonable hope of success. *See In re Ferch*, 333 B.R. 781 (Bankr. W.D. Tex. 2005)

("Accordingly, the Debtor now proposes to pay all creditors' claims with interest. . . . All of the evidence reflects that the Debtor will be able to make these payments. Good faith under 11 U.S.C. § 1129(a)(3) is not a state of mind. This record establishes that the Debtor's plan was proposed with the legitimate and honest purpose to reorganize and that it has a reasonable hope of success. The good faith requirement of 11 U.S.C. § 1129(a)(3) is, therefore, satisfied.").[40] The Debtor's Plan also provides for the payment of postpetition interest to the extent due and owing under state law or applicable agreements. There can be no doubt that the Plan not only adequately addresses one of the "twin pillars" of bankruptcy and thus is proposed in good faith, it addresses this important component in the most significant way possible — by paying all creditors in full.

Finally, in determining whether a plan is proposed in good faith, courts place far more weight on the objective nature of the proposed plan than on the alleged internal motivations of a Debtor's executives. *See In re MCorp Fin., Inc.*, 160 B.R. 941, 961 (S.D. Tex. 1993) ("A plan must be proposed in good faith, and the faith of the proposal is ascertained from the objective consequences of the plan, not the moral consciousness of the various proponents.")[41] Here, the Plan's consequences evidence its good faith: the Debtor's creditors will be paid in full; TRBP's assets will be sold to a third party in a manner that will allow TRBP to exit bankruptcy expeditiously; and the Texas Rangers will remain a viable asset to the Dallas/Ft. Worth community. There is no reason to consider evidence of prepetition conduct because these factors, among others, demonstrate that the Plan will achieve a result

---

[40] *See also In re Madison Hotel Assocs.*, 749 F.2d 410 (7th Cir. 1984) (payment or reinstatement of all creditors in full was important factor in determining plan was filed in good faith); *Cypresswood Land Partners, I*, 409 B.R. at 425-26 ("As payment of claims is one of the twin pillars of bankruptcy, this result underscores that the Amended Plan is proposed in good faith.") (internal citation omitted); *In re Sound Radio, Inc.*, 93 B.R. 849, 854 (Bankr. D.N.J. 1988), *aff'd in part*, 909 F.2d 964 (3d Cir. 1990) (payment or reinstatement of all creditors in full was important factor in determining plan was filed in good faith).

[41] *See Ferch*, 333 B.R. at 785 ("Good faith under 11 U.S.C. § 1129(a)(3) is not a state of mind."); *Hohn v. Gay*, No. CV-08-0372-PHX-ROS, 2009 WL 886842, at *2 (D. Ariz. Mar. 31, 2009) ("Under Appellants' interpretation of § 1129(a)(3), any 'significant business relationship' between a trustee and a creditor implicates a bad faith conflict of interest . . . . This interpretation is squarely at-odds with Ninth Circuit case law requiring the good faith of a proposed reorganization plan to be determined by the extent to which it achieves a result consistent with the objectives and purposes of the Code." (internal quotation marks omitted)).

consistent with the standards promulgated by the Bankruptcy Code, and was unequivocally filed in good faith.

2. Even if the Court Were to Consider Evidence of the Debtor's Prepetition Conduct, It Fully Supports the Proposition that the Plan Was Proposed in Good Faith

Although the Court need not and should not consider the Debtor's prepetition conduct in evaluating the good faith standard, the evidence shows that the purpose for proposing this Plan is to pay creditors in full by effectuating the sale of the Debtor's assets.

There is no question that prior to the Commencement Date, the Debtor found itself in an unsustainable financial position. The Debtor was losing money and needed to borrow approximately $20 million from Baseball Finance LLC over the course of 2009 and 2010 to meet its obligations, including its payroll obligations. As a condition to obtaining this critical financing, the Debtor was required by MLB to enter into agreements that provided MLB with a certain degree of control over the Debtor's operations and affected the Debtor's ability to file for bankruptcy without MLB's consent.

Given the Debtor's financial position, it had little choice but to sell the team. Importantly, after deciding to do so, the Debtor did not just pick a favored purchaser and agree to sell the team to that purchaser at any price. Rather, the evidence will show that prior to the Commencement Date, the Debtor conducted a full and robust market canvass over the course of several months to select the best bidder for the TRBP Assets. The Debtor spent months working closely with financial advisors in an attempt to solicit bids for the TRBP Assets from as many bidders as possible. The Debtor, in consultation with MLB, narrowed those bids down in various stages until the Debtor selected what it believed to be the best bid for the TRBP Assets. That bid — the Baseball Express bid — was the result of an arduous, arm's length negotiation that resulted in the creation of the January Asset Purchase Agreement. As is obvious from the contemporaneous communications made public by the Lenders, during this period, the Debtor did not favor Baseball Express or any one particular bidder; the Debtor sought only to get the best price for the assets. The Debtor pushed back hard against Baseball Express

and MLB to attempt to get the highest price for its assets and signed the January Asset Purchase Agreement after obtaining comfort that it was the best deal at the time under the circumstances.

With TRBP needing only the approval of the Lenders to send the Baseball Express bid to a vote of MLB owners and the BOC for approval, the Lenders balked. In response, the Debtor for months tried to bridge the gap between the Lenders and Baseball Express, even convincing Baseball Express to enhance its bid. Still, the Lenders' approval was not forthcoming. Finally, after months of unproductive negotiations between the parties, and the Debtor's recognition that it would continue to have cash flow shortfalls requiring additional funding, the Debtor sought to complete the sale to the Baseball Express under the provisions of the Bankruptcy Code. When it was clear that the stalemate could not easily be resolved, the Debtor's options were limited. Importantly, based on the provisions in the Debtor's partnership agreement mentioned above, the Debtor could not file for bankruptcy, nor could it amend its partnership agreement, without MLB's consent. MLB was only willing to support a sale based on the Baseball Express as the purchaser. In the end, the Debtor decided to file a chapter 11 petition and prepackaged plan of reorganization that would consummate a sale transaction that the Debtor thought was fair and would pay all of its creditors in full.

Even though the Debtor also had negotiated with the Lenders regarding other potential options, the Lenders have never suggested any viable alternative to the filing of the chapter 11 case. Instead, the Lenders have made it clear, both through their words and their actions in this chapter 11 case, that they would not have allowed the Sale to the Purchaser as proposed by the Plan under any circumstances; going so far as to state in Court that that they preferred to have the Baseball Express bid evaporate than to complete the sale to Baseball Express. July 20 Hearing Tr. 82:12-14.

The Debtor did not consider such a situation a positive option, believing instead that losing the locked-in Baseball Express bid could be disastrous. Such an alternative would again leave the Debtor languishing in perpetuity while the Lenders demanded the emergence of an unidentifiable—and

possibly not forthcoming—"higher bidder." While the Lenders may not agree with the Debtor's decision, it is not unreasonable or in bad faith.

In addition, the Lenders' focus on prepetition conduct ignores completely the numerous concessions of the Debtor that brought the Plan to its current manifestation. The filing of the chapter 11 case, which could only be done with MLB's consent, and the Court's rulings in the chapter 11 case actually provided the Debtor the ability to free itself from MLB's tight control and force concessions on other parties. These results, which the Debtor had no ability to achieve outside of chapter 11, coupled with the concessions the Debtor has made, demonstrate unequivocally the Debtor's good faith in proposing and pursuing the Plan.

The Debtor has, for example, agreed to a postpetition bidding process. The amended Plan currently provides for the TRBP Assets to be subjected to a second market test to determine whether there is a deal that could provide more value to the Debtor's estate than the Baseball Express proposal. The Debtor's willingness to compromise and alter its initial process to try to obtain the approval of interested parties evidences an honest purpose to reorganize. The Debtor and Baseball Express have made continual concessions throughout the Chapter 11 Case, foregoing the original prepackaged Plan in favor of a Plan that provides for the bidding process. The Debtor bargained for and obtained Baseball Express's agreement to the bidding process to ensure that a fair and open sale process will take place. The Debtor believes the bidding process will result in the identification of a purchaser that will pay the highest consideration for the TRBP Assets. And, while the Debtor and Lenders may disagree on who should be the ultimate purchaser, the two sides do not disagree that a sale of substantially all its assets is the correct course of action for the Debtor.

The Debtor filed this Chapter 11 Case in an effort to effectuate the results of a fair and robust prepetition marketing process, break a longstanding stalemate with the Lenders, and complete a transaction that it believed to be in the best interest of its creditors by paying them in full. The Bankruptcy Code is a statutory scheme that provides languishing companies such as TRBP the tools

necessary to break through the type of standstill that TRBP found itself and pay its creditors. The Plan effectuates this goal, and therefore, was proposed in good faith.

B. The Plan Has A Reasonable Hope of Success

The Debtor's Plan also meets the requirement that it have a reasonable hope of success. Courts in this district have found that where a plan provides for the sale of substantially all of the assets under an asset purchase agreement to a purchaser, that there was adequate means for implementation and execution of the plan, and thus, a reasonable hope of success. *See In re Datavon, Inc.*, No. 02-38600-SAF-11, 2003 Bankr. LEXIS 2290, at **15-16 (Bankr. N.D. Tex. June 5, 2003) (approving a plan contemplating the sale of all the assets of a business to a purchaser).

As set forth below in the section on 1129(a)(11) of the Bankruptcy Code, the Plan has considerably greater than a "reasonable" chance of success.

C. The Lenders' Arguments Do Not Speak to the Good Faith Standards of the Fifth Circuit Under Section 1129(a)(3)

The Lenders have devoted more than 10 pages of their objection to arguing that various prepetition actions taken by the Debtor preclude a finding of good faith under section 1129(a)(3). Unfortunately for the Lenders, their arguments are based not only on a distortion of the facts, but on criteria entirely unrelated to the Fifth Circuit's good faith standards. Indeed, several of the Lenders' arguments have already been rejected by the ruling, findings, and conclusions of this Court set forth in Memorandum Opinion of this Court on June 22, 2010 (the "June 22 Opinion").

1. The Plan Does Not Improperly Eliminate Any Contractual Rights of the Lenders

The Debtor readily admits that it filed for bankruptcy in order to break the stalemate between MLB and the Lenders; both had pre-bankruptcy rights to consent to the sale of a team, while only MLB had the right to consent to a bankruptcy. The Lenders, however, argue that filing for bankruptcy to exercise the rights and powers under the Bankruptcy Code somehow is made in bad faith. (*See* Obj. at 35.) This position is fundamentally at odds with the tenets of bankruptcy law. Moreover,

nothing the Debtor has done or seeks to do violates the Lenders' contractual rights other than relying upon the Bankruptcy Code to sell assets and release the Lenders' liens, a benefit that is explicitly permitted by the Bankruptcy Code. *See* 11 USC 1123(b)(4). Finally, even assuming *arguendo* that the Debtor did violate any contractual obligation, a Debtor's breach of contract does not amount to bad faith. Indeed, debtors are often in bankruptcy because they have violated or are imminent danger of violating their contractual obligations under credit agreements.

Undaunted by the actual good faith standards in the Fifth Circuit, the Lenders allege that several of the so called "Midnight Transfers" (hereinafter, the "Transfers") violate specific provisions of the First Lien Credit Documents and that these violations defeat a good faith finding under section 1129(a)(3). (*See* Obj. at 35-36.) This argument is misguided. The Transfers are expressly permitted by the terms of the contracts and had a valid business purpose. As such, these Transfers are not improper in any sense and do not affect the Debtor's ability to the good faith standards under section 1129(a)(3).

As an initial matter, these supposedly nefarious Transfers were clearly disclosed from the very outset of this Chapter 11 Case in the Disclosure Statement and hardly were secretive transactions as the Lenders have insinuated. Additionally, each Transfer had a valid purpose. As set forth therein and as the evidence will demonstrate, the Transfers were effected to memorialize and reflect the historic operational make-up of the Texas Rangers organization, including properly documenting the use and ownership of certain assets and equipment in accordance with past operational practices and to facilitate the Sale.

Moreover, regardless of the exact nature of each of the Transfers, the overall effect of each transfer is neutral as to the position of the Lenders under the terms of the Sale. While the Lenders correctly note that the Transfers were from entities that are obligated for the full amount of the debt owed under the First Lien Credit Agreement to the Debtor, as opposed to the Debtor's capped obligation of $75 million, the Lenders fail to recognize that funds in excess of the amount required to pay Allowed Claims will flow to equity. Equity, in turn, is also obligated for the full amount of the First Lien Debt.

Thus, in reality, the Transfers ultimately went from one HSG-affiliated entity that is obligated for the full amount of the First Lien Debt to another HSG-affiliated entity that is obligated for the full amount of the First Lien Debt. Thus, the Transfers do not affect the economic position of the Lenders. Rather, short on legal arguments, the Lenders resort to using these Transfers as an optical tool to try to intimate in the press and elsewhere that the Debtor and its principals are somehow self-dealing.

Further, the Lenders repeat their arguments that the Debtor did not have the corporate authority to execute the May Asset Purchase Agreement and certain other transactions. (*See* Obj. at 35 n. 40.) This argument was explicitly rejected by the Court in its June 22 Opinion and should not be revisited at this stage. For the reasons set forth by the Court in its decision, the Collateral Agent for the Lenders never obtained the requisite approvals by MLB and did not have the authority to take any actions with respect to the Debtor until it had done so. *See* June 22 Decision at 13 ("As the Lenders have not obtained such approval, it follows, according to Debtor and Express, that Chase is not entitled to exercise control as permitted by section 4.4.1(c)(i)(3) of the Pledge Agreement.").

Finally, the Lenders challenge the transfers of certain assets from Emerald Diamond L.P. and from Rangers Ballpark LLC to the Debtor as being prohibited by the terms of the contracts. (*See* Obj. at 37-38.) Each transfer, however, was expressly permitted under the relevant credit agreements. First, the Lenders challenge the transfer the lease of an office building adjacent to the Ballpark at Arlington and other assets by Emerald Diamond, L.P. to the Debtor. However, under § 6.9(p) of the First Lien Credit Agreement, a Guarantor Subsidiary (as defined therein) may convey, sell, lease, transfer or otherwise dispose of, in one or a series of transactions, all or any part of its business property or assets to another Guarantor Subsidiary. The Debtor and Emerald Diamond both were Guarantor Subsidiary. Therefore, there is no contractual prohibition to the Transfers.

Second, the Lenders challenge Ballpark Lease Transfer by Rangers Ballpark LLC to the Debtor. However, under § 6.5(f) of the First Lien Credit Agreement, each subsidiary of HSG may make

"Restricted Junior Payments" Guarantor Subsidiaries such as the Debtor. The Ballpark Lease Transfer, as defined, qualifies as a Restricted Junior Payment from Rangers Ballpark LLC.

2. The Good Faith Standard Is Satisfied Despite a Contention that the Debtor Received a Fraudulent Transfer.

The Lenders next argue that the Plan was not proposed in good faith by claiming that the certain transactions violate the Uniform Fraudulent Transfers Act ("UFTA"). (Obj. at 36-38.) This argument disregards long-standing law in this circuit and others that a Plan need not comply with state law; specifically, a plan can be confirmed regardless of alleged (or actual) fraudulent transfers. Indeed, in *In re ASARCO*, the Bankruptcy Court for the Southern District of Texas found that the good faith standard was satisfied even in a situation where the parent corporation proposing the plan had perpetuated a fraudulent transfer of stock between affiliates and proposed a plan that granted itself releases from liability with respect to those fraudulent transfers. *In re ASARCO LLC*, 420 B.R. 314, 332 (S.D. Tex. 2009). As the court stated:

> Even considering the [plan proponent's] pre-petition conduct, which this Court agrees was not model corporate behavior, the [plan proponent] has by a preponderance of the evidence met the good faith standard: [the proposed capital infusion] suffices to demonstrate that its plan will at the very least allow it to pay off the allowed creditor claims and thereby erase nearly all of the burdensome liabilities that stand between the Debtor and profitability.

Id. In contrast, the cases cited by the Lenders involve adversary proceedings contesting allegedly fraudulent transfers, and do not involve plan confirmation or the good faith standard. (*See* Obj. at 37.) Importantly, confirmation of the Plan does not foreclose the ability of Lenders or any other party in interest to challenge the Transfers because Section 6.2(d) of the Plan provides that the Debtor will reserve against any existing or potential litigation claims before making any payment to its equity holders. Therefore, there is no threat that the Lenders will lose a viable fraudulent transfer claim against he Debtor. The mere fact that there is a claim for fraudulent transfer against the Debtor does not prevent a finding that the good faith standard of 1129(a)(3) has been satisfied.

In other contexts, courts throughout the country have rejected similar claims that the good faith standard is not satisfied simply because alleged violations of state law have occurred. For instance, in *In re Sovereign Group*, the Bankruptcy Court for the District of Colorado reviewed an objection to a plan on good faith grounds where certain provisions of the plan allegedly violated Colorado partnership law. *In re Sovereign Group, 1984-21, Ltd.*, 88 B.R. 325 (Bankr. D. Colo. 1988). The court disagreed, holding:

> [The Objector] asserts that the phrase "not by any means forbidden by law" is an indication that state law governs the provisions under which a partnership agreement may be changed under the Bankruptcy Code. However, an examination of the meaning of this Code section indicates that the purpose of 1129(a)(3) was to insure that the *proposal* of a plan of reorganization was to be done in good faith and not in a way that was forbidden by law.

Id. at 328; *see also In re Food City, Inc.*, 110 B.R. 808, 811-12 (Bankr. W.D. Tex. 1990) ("So long as the *proposal* of the plan is not 'by a means forbidden by law,' the plan should pass muster under that portion of section 1129(a)(3)."). The *Food City* court, in reviewing a plan that contained a possible securities law violation, further reasoned that construing section 1129(a)(3) in such a broad manner, "would convert the bankruptcy judge into an ombudsman without portfolio, gratuitously seeking out possible 'illegalities' in every plan. Such a role is both inimical to the basic function of bankruptcy judges in bankruptcy proceedings and a thoroughly unnecessary gloss on the statute." *Id.* at 812.

3. The Lenders' Claims of Breach of Fiduciary Duty Can be Remedied by Unreleased Causes of Action, and Do Not Preclude a Finding of Good Faith

1. The Court Should Not Consider Claimed Breaches of Fiduciary Duty in Determining the Debtor's Good Faith.

Next, the Lenders allege that management of the Debtor engaged in breaches of fiduciary duties before the bankruptcy filing, and as a result, the Plan cannot be confirmed. (Obj. at 38.) For the reasons stated above, this argument fails because an alleged violation of state law does not preclude a finding of good faith.

Moreover, courts within the Fifth Circuit do not consider the debtors' prepetition conduct in determining good faith under section 1129(a)(3) of the Bankruptcy Code. *Tex. Extrusion Corp.*, 68 B.R. at 723 ("The test for good faith is not based on what the plan proponents' behavior prior to petition was. It is only based on the Plan itself and its acceptance."); *In re Gen. Homes Corp.*, 134 B.R. 853, 862 (Bankr. S.D. Tex. 1991) (same); *cf. Block Shim Dev. Co.-Irving*, 939 F.2d at 292 ("To be proposed in good faith, a plan must fairly achieve a result consistent with the Code. This requirement is viewed in the context of the circumstances surrounding the plan."). Therefore, even if the Lenders have alleged prepetition breaches of fiduciary duty, any such claimed breach does not impact the good faith standard.

Further, if, as the Lenders claim, they are beneficiaries of the fiduciary duties owed by the Debtor's management (Obj. at 40.), the Lenders are free to attempt to bring any such breach of fiduciary duty claims they believe appropriate. But the mere contention that the management of a debtor breached its fiduciary duties is insufficient to invalidate a proposed plan of reorganization. To the contrary, a debtor still can propose a plan for the legitimate purpose of paying off its creditors (as the Debtor's Plan does in full) and achieving the goals of the Bankruptcy Code, notwithstanding alleged breaches of fiduciary duties. *See Madison Hotel Assocs.*, 749 F.2d at 425 ("Thus, for purposes of determining good faith under section 1129(a)(3), as well as section 1325(a)(3), the important point of inquiry is the plan itself and whether such plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code."); *Ferch*, 333 B.R. at 785 ("Good faith under 11 U.S.C. § 1129(a)(3) is not a state of mind."); *MCorp Fin., Inc.*, 160 B.R. at 961 ("A plan must be proposed in good faith, and the faith of the proposal is ascertained from the objective consequences of the plan, not the moral consciousness of the various proponents."); *In re Granite Broad. Corp.*, 369 B.R. 120, 137 (Bankr. S.D.N.Y. 2007) ("In any event, irregular or improper procedures at some point in a debtor's past do not necessarily cause a plan to fail the 'good faith test.'"); *Hohn*, 2009 WL 886842, at *2 ("Under Appellants' interpretation of § 1129(a)(3), any 'significant business relationship' between a trustee and a creditor implicates a bad faith conflict of interest . . . . This interpretation is squarely at-

odds with Ninth Circuit case law requiring the good faith of a proposed reorganization plan to be determined by the extent to which it achieves a result consistent with the objectives and purposes of the Code.").

The Lenders cited to two cases for the proposition that a breach of fiduciary duty by a debtor's officers or directors may defeat conformability under 1129(a)(3). In the first case, *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 144 (Bankr. D.N.J. 2010), the court found the plan was proposed in good faith. Moreover, the only case it relied on was *In re Coram Healthcare Corp.*, 271 B.R. 228 (Bankr. D. Del. 2001), a case with highly distinguishable facts. In *Coram Healthcare Corp.*, the debtor's CEO secretly had a separate employment contract with one of the debtor's largest creditors under which he was being paid almost $1 million per year and the court held that this "continuous conflict of interest by the CEO of the Debtor preclude[d] the Debtors from proposing a plan in good faith under 1129(a)(3)." *Id.* at 235-36, 239. No such secretive, collusive situation exists in the case at bar.

Further, even if the Lenders could somehow draw a factual parallel between *Coram Healthcare Corp.* and the present case, the Lenders cite to no case within the Fifth Circuit that applies such a factor in addition to the two factors clearly established by the Fifth Circuit on numerous occasions — that of a legitimate, honest purpose to reorganize and a reasonable probability of success, factors that, as noted above, the Plan certainly meets. There is no reason for the Court to address this "factor."

2. The Lenders Cite No Evidence to Suggest that a Breach of Fiduciary Duty Existed Sufficient to Negate the Debtor's Good Faith.

Even if the court does address alleged breaches of the duty of loyalty at the Plan confirmation stage, any such claim should be rejected because any such claim is nothing more than supposition. As to Mr. Ryan, the Lenders have presented no evidence whatsoever that Mr. Ryan was engaged in any negotiation on behalf of the Debtor or had any authority to enter into a transactions on behalf of the Debtor. Moreover, it is unclear why the Lenders claim an impropriety about Mr. Ryan

being part of the future of the Texas Rangers, as even the Lenders affirmatively have acknowledged their approval of Mr. Ryan's position, requesting on various occasions that Mr. Ryan remain in charge of the baseball operations of the Debtor throughout the pendency of this Chapter 11 Case.

As to Mr. Hicks, there is no evidence whatsoever that Mr. Hicks interests drove the Debtor to propose the Plan. Moreover, as the evidence will demonstrate, Ballpark Real Estate, an entity controlled by Mr. Hicks, originally was not willing to sell its land as part of the transaction. The fact that BRE reluctantly sold the land and received consideration through the Land Sale Agreement does not mean that any party breached its fiduciary duty. To the contrary, the willingness of BRE to engage in a transaction that it otherwise was not interested in entering is an indication that no fiduciary duties were breached.

Further, the Lenders rely upon *Performance Nutrition*, another case that did not involve issues related to plan confirmation. *Mims v. Kennedy Capital Mgmt., Inc.* (*In re Performance Nutrition, Inc.*), 239 B.R. 93 (Bankr. N.D. Tex. 1999). The Lenders claim that *Performance Nutrition* involved a situation where sold the assets to one of its vendors without shopping the assets on the open market. In this case, however, the evidence is clear that the Debtor's assets were marketed extensively. Only through a months' long process was the Baseball Express bid chosen as the winning bidder. To imply that no market test took place is beyond disingenuous. Indeed, the Lenders argue that the Debtor chose the Baseball Express bid to secure the greatest personal gain for Mr. Hicks, despite the fact that emails from the Debtor's counsel to the Lenders implored the Lenders to help the Debtor fight for a different bidder. Therefore, there is absolutely no evidence that the Debtor entered into the transaction with Baseball Express in order to benefit certain insiders at the expense of the Debtor.

Regardless, as stated above, if the Lenders truly believed that breaches of fiduciary duty have occurred, they should assert those claims and not attempt to use the threat of such a claim as a basis to hold up the Plan.

4. The Court Has Stated the Debtor Has No Duty to Maximize Value

Curiously, the Lenders also argue that the Plan does not satisfy the good faith standard because the Debtor allegedly failed to maximize value.[42] (Obj. at 42.) As the Court stated in its June 22 Opinion, however, that in the context of plan confirmation "Debtor does not have a duty to maximize the value obtained for its estate." June 22 Opinion at 11. The Lenders further argue, contrary to the direct findings of the Court following a three-day trail, that the Court's own Bidding Procedures could not support a finding of fairness with respect to the sale process. (Obj. at 43.)

What the Lenders do not explain, however, is how either the Debtor's failure to maximize value or the use of the Bidding Procedures has anything to do with the whether the Debtor proposed its Plan in good faith under section 1129(a)(3). The Court has held the Debtor had no duty to maximize value and the supposedly nefarious Bidding Procedures are the procedures promulgated by the Court and adopted into the Debtor's Plan pursuant to order of the Court. A vote of "no" by equity does not preclude a finding of good faith under section 1129(a)(3), and the Debtor cannot surmise how administering an open auction process pursuant to this Court's order could be in bad faith.

In sum, the Court should reject the Lenders' contention that the Plan was not proposed in good faith.

IV. SECTION 1129(A)(4): THE PLAN PROVIDES THAT PROFESSIONAL FEES AND EXPENSES ARE SUBJECT TO COURT APPROVAL

Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, the debtor, or a person receiving distributions of property under the plan, be subject to approval by the Court.

The Plan provides that professionals seeking awards by the Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date

---

[42] The Lenders' argument is premised on the rejection of the Plan by the CRO. To the extent the Court approves the Settlement and the CRO votes to approve the Plan, the Lenders' argument falls even shorter of the mark.

under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code, other than professionals retained in the ordinary course of business that are not required to submit applications for reimbursement, shall (a) file, on or before the date that is ninety days after the Effective Date, their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (b) receive payment in full, in Cash, of any unpaid portion as soon as practicable after Court approval thereof. *See* Plan § 2.2.

Section 12.1 of the Plan further provides that the Court shall retain jurisdiction "to hear and determine all applications of retained professionals under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date." *Id.* § 12.1. All fees and expenses of professionals accrued through the Confirmation Date thus remain subject to final review by the Court for reasonableness pursuant to sections 330, 331, and 503(b) of the Bankruptcy Code.

The foregoing procedures for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtor satisfy the objectives of section 1129(a)(4).[43] Based upon the foregoing, the Plan complies with the requirements of section 1129(a)(4).

V. SECTION 1129(A)(5): THE DEBTOR HAS DISCLOSED ALL NECESSARY INFORMATION REGARDING DIRECTORS, OFFICERS, AND INSIDERS

Section 1129(a)(5) of the Bankruptcy Code requires that the plan proponent disclose the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director or officer of the debtor, or a successor to the debtor under the plan; that the appointment or continuance

---

[43] *See In re Mirant Corp.*, No. 03-46590DML11, 2007 WL 1258932, at **9-10 (Bankr. N.D. Tex. Apr. 27, 2007) (section 1129(a)(4) satisfied where plan complied with requirement that "any payments made or to be made under the plan for services or for costs and expenses has been approved or is subject to approval by the court as reasonable." (quoting *In re Cajun Elec. Power Co-op., Inc.*, 230 B.R. 715, 738 (Bankr. M.D. La. 1999))); *In re Bankston*, No. 09-10675, 2010 WL 1027806, at *9 (Bankr. W.D. La. Jan. 15, 2010) ("Court approval of payments for services and expenses is governed by various Code provisions — *e.g.*, §§ 328, 329, 330, 331, and 503(b) — and need not be explicitly provided for in a Chapter 11 plan." (quoting *In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988))); *In re Elsinore Shore Assos.*, 91 B.R. 238, 268 (Bankr. D.N.J. 1988) (requirements of section 1129(a)(4) satisfied where plan provided for payment of only "allowed" administrative expenses).

of such directors and officers be consistent with the interests of creditors and equity security holders and with public policy; and that there be disclosure of the identity and compensation of any insiders to be retained or employed by the reorganized debtor. *See* 11 U.S.C. § 1129(a)(5).

The Plan satisfies the foregoing requirements. As stated above, section 6.2(c) of the Plan provides the manner of selection of officers of the Post-Effective Date Debtor. As noted above, Post-Effective Date, the officers of the Debtor will consist of the following individuals, each of who was appointed prior to the Commencement Date: (i) Chief Executive Officer, Thomas O. Hicks, (ii) Executive Vice President, Thomas O. Hicks, Jr., (iii) Executive Vice President, Mack Hardin Hicks, and (iv) Vice President, Lori McCutcheon. Each of these officers is an insider and will receive no compensation from TRBP for their service as an officer of TRBP. The continuance and appointment of these officers of TRBP is consistent with the interests of creditors and equity security holders and with public policy. TRBP is a general partnership and does not have directors.

VI. BANKRUPTCY CODE SECTION 1129(A)(6) IS NOT APPLICABLE

Bankruptcy Code section 1129(a)(6) provides that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." *See* 11 U.S.C. § 1129(a)(6). The Debtor submits that this provision of the Bankruptcy Code is not applicable to its Chapter 11 Case as the Debtor is not subject to any form of rate regulation that would require such regulatory approval to satisfy section 1129(a)(6) of the Bankruptcy Code. Second, by its terms, section 1129(a)(6) of the Bankruptcy Code applies only where a rate change is "provided for in the plan." Here, the Plan provides for no such rate change and section 1129(a)(6) is inapplicable.

VII. THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129(A)(7) OF THE BANKRUPTCY CODE

Section 1129(a)(7) of the Bankruptcy Code provides, in relevant part:

With respect to each *impaired* class of claims or interests –

> (A) each holder of a claim or interest of such class –
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date . . . .

11 U.S.C. § 1129(a)(7)(A) (emphasis added). Section 1129(a)(7) of the Bankruptcy Code is often referred to as the "best interests test" or the "liquidation test." The best interests test of section 1129(a)(7) operates on the individual creditor or equity holder level. 7 COLLIER ON BANKRUPTCY § 1129.02[7][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

As an initial matter, the best interests test, by its terms, only applies to creditors and equity interest holders that are (i) in impaired classes and (ii) do not accept the plan. Under the best interests test, the court must find that each non-accepting creditor or interest holder in an impaired class will receive or retain value that is not less than the amount it would receive under a hypothetical chapter 7 liquidation. *Id.*

A. <u>Classes of Claims Under the Plan</u>

The Debtor believes all Classes of Claims are unimpaired, and thus the best interest test is inapplicable to all holders of Claims. Specifically, all Classes of Claims are indisputably unimpaired except for Class 2 (First Lien Holder Claims) and Class 3 (Second Lien Holder Claims). As described in greater detail herein, the Debtor believes that based upon this Court's June 22 Opinion, the treatment provided to Classes 2 and 3 in the Plan renders Classes 2 and 3 unimpaired and deemed to accept the Plan; therefore, the best interest test is inapplicable as to holders of Claims in Classes 2 and 3.

B. <u>Class 12 TRBP Equity Interests Under the Plan</u>

In addition, based on the Court's June 22 Opinion, the Court has determined that Class 12 TRBP Equity Interests is impaired and is entitled to vote to accept or reject the Plan. In light of the Court's decision on Debtor's Motion Pursuant to Section 105 of the Bankruptcy Code and Federal Rule

of Bankruptcy Procedure 9024 to Vacate or Reconsider, filed July 29, 2010 (the "Debtor's Motion to Reconsider") [filed under seal], by the time of the Confirmation Hearing, one of two alternative scenarios will prevail:

1. Class 12 Will Have Accepted the Plan

Although the Debtor is hopeful that the Bidding Procedures will yield additional bidders for their assets and that even the Lenders will support the Plan, the Debtor believes that because the CRO supported the Debtor's Motion to Reconsider and learned at the July 30, 2010 hearing on the Debtor's Motion to Reconsider (the "July 30 Hearing") that other interested bidders did not have financing or timing impediments to submitting bids, the CRO will recognize that the Plan is in the best interest of Rangers Equity (and giving up the Baseball Express Purchase Agreement is not) and vote to accept the Plan on behalf of Rangers Equity, regardless of the number of bidders that ultimately emerge and regardless of whether the Lenders support the Plan. If Class 12 votes to accept the Plan, the best interests test is satisfied under the terms of the statute because, on its face, the best interests test is satisfied with respect to creditors and equity holders that accept the plan. 11 U.S.C. § 1129(a)(7)(A)(i).

2. Class 12 Will Have Voted to Reject the Plan

As described above, the Debtor believes that Class 12 will vote to accept the Plan. If Class 12 votes to reject the Plan, the Plan satisfies the best interests test nonetheless because, as the Court acknowledged at the July 30, 2010 Hearing, the existence of multiple bidders with no impediments to bidding is, in and of itself, proof that the assets have been subject to an appropriate market test. Moreover, the best interest test is satisfied because each holder of a Class 12 TRBP Equity Interest would fare worse in a hypothetical chapter 7 liquidation than under the Plan for other reasons relating to the nature and uncertainties of a chapter 7.

C. The Bidding Procedures Provided for a Full and Fair Market Test for the Assets

A hypothetical chapter 7 liquidation would necessarily involve either the piecemeal sale of the Debtor's individual assets or the going-concern sale of the Club. The Court has instructed the

parties to assume for the purposes of the best interests test that any sale would be a going-concern sale of the assets of the Debtor.[44] In order for this Court to find that the Plan does not satisfy the best interests test, among other things, the Court would have to find that any hypothetical prospective post-conversion sale by a chapter 7 trustee will obtain consideration for the assets in excess of the consideration being provided by Baseball Express. Moreover, it would have to find that such excess consideration would be sufficient to offset the additional costs of delay of sale, including professional fees for a chapter 7 trustee and other costs of the sale.

The Bidding Procedures Order and the process the Debtor, in conjunction with its general partners, conducted thereunder demonstrates that the best interest test is satisfied. The Court crafted its Bidding Procedures Order to generate additional bids for the assets of the Debtor and provide any party interested in purchasing the Debtor's assets a meaningful opportunity to participate in the bidding process. The Debtor complied in all respects with the Court's Bidding Procedures Order in order to encourage bidding on the assets.[45] As will be demonstrated herein and at the Confirmation Hearing, (1) the Bidding Procedures represented a full and fair market test for the assets, and (2) if there is no other

---

[44] A liquidation sale of the debtor's individual assets would yield substantially less than the value of being provided to the Debtor and its stakeholders under the Plan. As an illustration, the Debtor's Schedules filed on June 28, 2010 [Docket No. 293] (the "Schedules") reveal the disparate treatment that would be provided to Class 12 under a piecemeal liquidation of the Debtor rather than a sale of the Club under the Plan: the Schedules reflect that the Debtor has $79,593,260 in Assets (as defined in the Schedules), not including the value of the franchise, related intellectual property, goodwill, and other general intangibles. Under this analysis, in the event of a hypothetical chapter 7, the Liabilities would exceed the Assets and no value would flow to the Debtor's equity holders in Class 12. Under the Plan, however, all of the Debtor's creditors are being paid in full and substantial value is flowing to the Debtor's equity holders in Class 12.

Moreover, it remains unclear whether MLB would support a sale to an alternate bidder in the context of a chapter 7 conversion. The trustee acting for the estate and MLB would likely become mired in litigation that could only act to destroy value. Therefore, an expeditious sale of the team through the auction contemplated by the Plan that satisfies the Debtor's creditors in full and provides for the residual value to flow to the Debtor's equity holders in Class 12 would provide more to each holder of Class 12 TRBP Equity Interests than each would receive in a hypothetical chapter 7 liquidation and the likely accompanying litigation and delay.

[45] The Debtor understands that the Court's statements on the record on July 26, 2010 suggest that in the event no second bid is made for the assets, the Plan could still be confirmed if the Debtor is able to establish that the postpetition auction process constituted a fair market test for the assets.

bidder, the bid by Baseball Express will represent the highest and best offer for the Debtor's assets under the circumstances.

The marketing process conducted under the Bidding Procedures Order (and following a robust prepetition process and readily available diligence) was a full and fair market test for the assets. The evidence will demonstrate that this process involved all potential bidders and was calculated to lead to and would have led to additional offers for the Debtor's assets if anyone was willing to provide more consideration than Rangers Express. Indeed, the two other bidders that attended the July 30 Hearing stated that they did not have timing or financing impediments to submitting bids. If no one comes forward to make a bid, it is because, after diligence, they were not interested in these assets for the price being asked.

Many of the Interested Parties[46] had previously been interested in purchasing the Club and involved in the prepetition marketing process that began over a year ago. In fact, much of any diligence that would otherwise be required in a sale of the Club had been completed in connection with the prepetition process. For example, since August 2008, the Debtor has maintained an online dataroom, hosted by Merrill Corporation ("Merrill Corp."), under project name "Homerun" (the "Dataroom") for the storage of documents for diligence purposes, including all material contracts to which the Debtor is party. Material contracts have been added to the Dataroom continuously since August 2008, including since the Commencement Date.

In the postpetition period, Kevin M. Cofsky of Perella Weinberg Partners ("PWP") led the marketing efforts for the Debtor's assets. In order to encourage bidding on the assets, the day after the Court entered the Bidding Procedures Order, on July 16, 2010, the Debtor reached out to parties who had previously submitted indications of interest in the prepetition marketing process. PWP sent Interested Parties a letter and a copy of the Bidding Procedures Order, including a copy of the Baseball

[46] As defined in the Bidding Procedure Order.

Express Purchase Agreement, and were encouraged to contact Mr. Cofsky if they had any questions or wanted additional information on the bidding process. The Debtor and PWP had multiple telephone calls and meetings with Interested Parties in the weeks leading up to the Auction, in an effort to encourage bidding on the assets. There has been no suggestion from any party that the Debtor and PWP have not complied in any way with the Bidding Procedures Order or that the Debtor has acted in any way to frustrate or "chill" bidding since the Bidding Procedures Order was entered. In fact, all evidence is to the contrary.

The process was indisputably in compliance with this Court's Bidding Procedures Order, and the evidence demonstrates that that a robust and full process was conducted pursuant thereto. In addition to this postpetition marketing process, the evidence supports that there was a vigorous prepetition marketing process for the Club. It is beyond peradventure that the processes, which began in November 2009 and did not end until August 2010, provided the opportunity for any interested party that was willing to pay consideration in excess of the Rangers Express Purchase Agreement to come forth and make a bid. If no such party submits a bid by the Bidding Deadline, it does not mean that the processes were not adequate, it means that the price received was the right price. As such, the best interests test is satisfied.

D. There Is No Evidence that an Additional Delay, Including in the Event of a Hypothetical Chapter 7 Conversion, Would Produce Additional or Better Bids

The suggestion that a longer bidding process conducted in a chapter 7 case would yield additional bids is contradicted by the evidence. Importantly, none of the Interested Parties that communicated with PWP ever indicated that the timeframe provided under the Bidding Procedures Order was prohibitive and that it would only be prepared to submit a bid if it had more time. In fact, on the contrary, counsel to the Mark Cuban group ("Cuban Group"), that entered the process relatively late in the process and has only had access to the Dataroom since July 22, 2010, made representations at July 30 Hearing that it had adequate time to determine whether to submit a bid in the timeframe established

in the Bidding Procedures Order. Counsel to Jim Crane's group ("Crane Group") also represented at the July 30 Hearing that it had adequate time to determine whether to submit a bid in the timeframe under the Bidding Procedures Order.

There has, importantly, been no evidence that a higher or better offer will be obtained if the sale process were to be delayed. The Lenders' mere speculation in that regard — particularly in the face of the certainty that a delay beyond August 12, 2010 will result in the termination of the Baseball Express Purchase Agreement and the debt and equity commitments in support thereof — should not be sufficient to defeat the Plan and risk the potentially devastating effects of a prolonged chapter 11 case. There can be no guarantee that any further delayed process, such as a later sale in a hypothetical chapter 7, will yield additional bidders — particularly considering the length and depth of the pre and post-petition solicitation process. Nor is there any guarantee that a later sale would increase the amount of consideration to be paid in respect of the assets and to be distributed under the Plan. Nor does it guarantee that the Lenders will not cry foul following a later auction process, notwithstanding that as described above, the Lenders have insisted since the "first day" hearings that:

> Our objective is clear: run an open, transparent sale process. Don't fast-track the sale to the lower bidder. Whatever comes out of a fair and open process will be acceptable to us.

Tr. of May 25 Hrg. 35:5-8 (statements of Dennis F. Dunne of the Milbank firm, counsel to the ad hoc group of first lien lenders). As such, any argument by the Lenders that the Bidding Procedures were not reasonable because it did not provide sufficient time to locate alternate bidders is belied by their own statements that as early as June 1 — a week after this Chapter 11 Case was filed and more than two months prior to the Confirmation Hearing — that at least one potential bidder was prepared to participate in an auction process[47] and the representations of counsel to the Cuban Group and Crane Group at the July 30 Hearing.

---

[47] From the Lenders' counsel's own mouth:

If the Lenders continue to object to confirmation of the Plan based on the inadequacy of the Bidding Procedures, they will be doing so notwithstanding that the Bidding Procedures Order gave the Lenders everything they said they were seeking since the beginning of the case. The Bidding Procedures Order set the Auction for August 4, 2010 (a later date than the date to which the CRO had originally agreed in the First Bidding Procedures Motion) and included an ability for an interested party to make a bid to purchase the assets in a section 363 sale as opposed to solely under the Plan (which was not available under the procedures the CRO originally requested). The Bidding Procedures Order provides that to the extent debt financing commitments are not finalized as of the Bid Deadline, the Successful Bidder may post a $15 million deposit in order to satisfy the requirement that financing commitments be no more contingent than the financing commitment of the Stalking Horse Bid. Bidding Procedures Order at 8.

Throughout these Chapter 11 Cases, the Lenders have insisted that they were merely seeking an auction process. *See* Debtor's Opposition to Reconsideration at ¶ 2 (compiling testimony of counsel to the Lenders repeatedly asserting that an open auction process would satisfy their concerns regarding the Plan). The Lenders' argument that potential bidders did not have enough time in this regulatory climate to obtain a debt financing commitment in order make a Qualified Bid is belied by the fact that the Lenders themselves could provide bridge or seller financing to assist Interested Parties in bidding and, ultimately, consummating a transaction. In fact, the Lenders have considered providing nine-figure seller financing in take-back notes to a potential bidder.[48] Moreover, that the Bidding

---

> We are prepared, Your Honor, to advise the Court and we're pleased to advise the Court that we've been in contact with a particular bidder, in the view of the Debtors at least at various times, the high bidder for these assets prepetition. 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.

Tr. of June 1 Hrg. 24:25; 25:1-7 (statements of Andrew LeBlanc of the Milbank firm, counsel to the counsel to the ad hoc group of first lien lenders).

[48] Notably, Salvatore Galatioto of Galatioto Sports Partners testified at the July 21 Hearing that the Lenders were considering providing nine-figure financing in take-back notes to one of the potential bidders. Tr. of July 21 Hrg. at 264:22-25; 265:1-16.

Procedures Order allows the Successful Bidder to make a deposit to extend the period to obtain debt financing should alleviate any concern that a bidder's ability to secure a debt financing commitment by the Bidding Deadline will be an impediment to participating in the Auction. *See* Bidding Procedures Order at 8 (providing that a Qualified Bidder may post a deposit to provide additional time after the Auction to obtain a debt financing commitment if selected as the Successful Bidder).

Therefore, the Lenders have provided no evidence that additional time would have a material effect on the results of the bidding process.

E. Delay Would Result in the Loss of the Only Bidder Still Standing

One must contrast the lack of certainty that any delay to the sale, including a delay caused by the conversion of this Chapter 11 Case to one under chapter 7, would yield additional bidders or a higher or better bid, with the possibility that a delay could have disastrous effects if the delay results in the termination of the Baseball Express Purchase Agreement on August 12, 2010. If the Baseball Express Purchase Agreement terminates on August 12, 2010, the Debtor may not have the ability to consummate the transaction if the sale does not close by that date.[49] Thus, if Baseball Express is the only bidder and the Plan is not confirmed, the Debtor and its estates and creditors will lose the one certain bid (a market-tested bid) that exists.

Any delay beyond August 12, 2010, and the Debtor may lose its ability to bind the Purchaser to the deal and purchase price agreed to prepetition. Denial of confirmation of the Plan would deprive the estate of the certainty of the Baseball Express bid. The Baseball Express deal is not only

[49] Greenberg testified that the subscription agreement that commits the equity investors to the purchase similarly expires on August 12, 2010. Tr. of July 21 Hrg. at 43:18-25; 44:1-7. Upon the termination date, the funds must be returned to the investors automatically, without any demand needed by the investors. Tr. of July 21 Hrg. at 44:8-23. Greenberg also testified that in order to extend the equity commitment under the subscription agreement, all investors would have to provide separate written acknowledgements. Tr. of July 21 Hrg. at 49:1-5. When asked whether he had written acknowledgements, Greenberg replied, "No, I do not." Tr. of July 21 Hrg. at 49:1-5. Greenberg also testified that he did not believe that he could get the required acknowledgements in order to extend the subscription agreement. Tr. of July 21 Hrg. at 49:9-21; 51:2-4.

fully committed, but the equity component is *fully funded* and the debt component is *fully syndicated and is virtually without condition*.[50]

If the Baseball Express Purchase Agreement were allowed to terminate, including under a hypothetical chapter 7 conversion, the Interested Parties would have no economic incentive to submit an offer that was higher or better than the consideration provided in the Baseball Express Purchase Agreement — particularly if the bidder has already seen through the bid process that no bidder other than Baseball Express was interested in purchasing the assets. And because the Debtor will no longer be able to bind Baseball Express to the purchase price agreed to prepetition, Baseball Express, if it could even get the funding to submit another bid, would also have an incentive to submit a lower bid. Lastly, if the Baseball Express Purchase Agreement were allowed to terminate, it is possible that Baseball Express could potentially assert a damage claim against the Debtor. Although the Debtor believes any damage claim could be small, it is possible, depending on the Court's determination, if any, of the damage claim, that the damage claim could vitiate any potential upside from a higher offer price that might result from the delay.

For all of the foregoing reasons, time is of the essence for the Court to confirm the Plan.

---

[50] Greenberg testified that the equity commitment of $260 million dollars is fully funded and is being held by Baseball Express in two bank accounts:

> We have over a quarter of a billion dollars of equity from a group of investors. And all of that money is not only committed, but it has been fully funded. It is actually in two Rangers Baseball Express bank accounts as we speak.

Tr. of July 21 Hrg. at 42:16-19. Greenberg also testified that there are virtually no conditions on the debt financing commitments associated with the Baseball Express Purchase Agreement:

> We also have a loan in the amount of $160 million from a loan syndicate consisting of seven lenders, and that loan is manifested by a signed credit agreement that is essentially without contingencies. As so, as a result, that's as committed as money can possibly be without actually having closed on the transaction.

Tr. of July 21 Hrg. at 42:19-25.

F. All Holders of a Class 12 TRBP Equity Interest Would Fare Worse Under a Conversion to a Hypothetical Chapter 7 Case Due to Added Costs of Administration, Potential Costs of Additional Litigation, and Other Critical Impacts

Judge Houser recently found that a plan satisfied the best interests test, highlighting the additional costs of a chapter 7 liquidation and the decline in value over time:

> would result in substantially smaller distributions being made to creditors than those provided under the Plan due to, *inter alia*, . . . (c) the limitations of section 721 of the Bankruptcy Code; (d) loss of value through the passage of time; (e) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a chapter 7 trustee for bankruptcy and other necessary professional advisors; (f) the adverse effects on the salability of business segments as a result of the likely departure of key employees and the loss of customers; (g) the substantial increases in Claims which would have to be satisfied on an administrative or priority basis or on parity with creditors in the Chapter 11 Cases; and (h) the likelihood of contentious litigation by and between parties-in-interest and the high costs attendant thereto.

In re Idearc Inc., 423 B.R. 138, 165 (Bankr. N.D. Tex. 2009). Although the court analyzed whether the plan in *Idearc* satisfied the best interests test in the context of a post-conversion liquidation rather than a going-concern sale, many of the factors the court considered, such as the increased costs and expenses of a chapter 7 trustee and the likelihood of contentious litigation, would be the same whether in a liquidation or going-concern sale.

A number of other factors also counsel that if this Chapter 11 Case were converted to one under chapter 7 of the Bankruptcy Code, all holders of Class 12 TRBP Equity Interests would fare worse than under the Plan. The costs of administration would be greatly increased as a chapter 7 trustee would be appointed, who would appoint professionals and potentially others to assist him or her in his or her duties to liquidate the assets of the estate. The fees of the chapter 7 trustee and his or her professionals would be cumulative to the costs of this Chapter 11 Case.

Moreover, every day until the Debtor emerges from chapter 11 is another day the Debtor incurs additional indebtedness under the DIP Facility. Every dollar drawn under the DIP Facility is another dollar that is deducted from the proceeds of sale and diverted to MLB as DIP Lender, instead of

flowing up to benefit the holders of Class 12 Equity Interests in TRBP. That is, every dollar that is spent on administrative expenses of this Chapter 11 Case and any subsequent chapter 7 case is one less dollar that will flow up to Rangers Equity to pay over to the Lenders. In addition, every day that the Lenders delay the sale and the ultimate distribution of hundreds of millions of dollars to Rangers Equity and its creditors is a day of lost opportunity cost of reinvesting the proceeds of sale. Advocating an indefinite delay is tantamount to ignoring the time value of money and the economic benefits to be derived from an immediate sale. Although it would be impossible to discount to present value the as-of-yet unknown potentially increased purchase price that might be obtained some time in the future, to lose a bird in hand, and the bird in hand's ability to almost immediately close with virtually no condition, would not be prudent. Following a hypothetical conversion to chapter 7, the Debtor could also suffer a decrease in value due to the likely negative media coverage, loss of fan confidence, and impact on team morale resulting from the uncertainty following such a conversion to chapter 7.

Additionally, any chapter 7 trustee would also have to consider the potential litigation risk of challenging MLB's consent right, to the extent he or she sought to sell the Club to an entity not approved by MLB.[51] Any protracted litigation would quickly generate additional administrative

---

[51] Any sale of the Club, including one in a chapter 7 liquidation by a trustee, may constitute a "sale or transfer of a control interest" under the MLB Constitution, and therefore may be subject to certain MLB rules and regulations. Article V, Section 2(b)(2) of the MLB Constitution provides that: "The vote of three-fourths of the Major League Clubs shall be required for the approval of any of the following . . . (2) The sale or transfer of a control interest in any Club. . . . For purposes hereof, *the term "control" shall mean the possession by the transferee, directly or indirectly, of the power or authority to influence substantially the management policies of the Club*." MLB Constitution, Section 2(b)(2) (emphasis added).

In addition, changes in control are subject to the MLB Control Interest Transfer Guidelines, which provide that:

> There must be within each ownership structure a clearly designated person who is accountable to Baseball for the Club's operation and its compliance with the Rules of Baseball and responsible for and empowered solely to make all Club decisions, whether player-related, operational, business or financial. . . . *A change in the single person in control, regardless of how it is effected, will constitute a control interest transfer and may not occur without all required [Baseball] approvals.*

MLB Control Interest Transfer Guidelines, ¶ I.A. (emphasis added). The MLB Control Interest Transfer Guidelines further provide that:

> Ownership of a control interest in a Club other than by an individual, for instance by a corporation, LLC or partnership, creates the potential for effective change in control of

expenses for the estate, thereby directly reducing recoveries to the holders of Class 12 TRBP Equity Interests.

Factoring in the costs of administration and the associated litigation risks, it is unlikely that any purchase price obtained after a conversion to chapter 7 would materially increase sufficient to offset the substantial increase in costs and litigation risk. Therefore, all holders of Class 12 TRBP Equity Interests likely would fare worse under a hypothetical chapter 7 case due to added costs of administration. Based upon the foregoing, the best interest test is satisfied with respect to holders of Class 12 TRBP Equity Interests and the Plan should be confirmed as submitted.

VIII. SECTION 1129(A)(8): THE PLAN HAS BEEN ACCEPTED BY IMPAIRED CLASSES, AND, AS TO SUCH CLASSES, THE REQUIREMENTS OF SECTION 1129(A)(8) HAVE BEEN SATISFIED

Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests either accept the plan or not be impaired by the plan. Holders of Claims in Classes 1, 4, 5, 6, 7, 8, 9, 10 and 11 are unimpaired under the Plan and, pursuant to section 1126(f) of the Bankruptcy Code, are conclusively presumed to have voted to accept the Plan. The Debtor believes that it has modified the Plan to render the Lenders unimpaired and therefore, pursuant to section 1126(f) of the Bankruptcy Code, Claims in Classes 2 and 3 are also conclusively presumed to have voted to accept the Plan. Thus, the requirements of section 1129(a)(8) have been satisfied by the Debtor as to these Classes.

> the Club through a change in ownership or management of the ownership entity or any parent company. Therefore, a change in control in any such entity, or a change in the individual designated by, for instance, the corporate owner to make all Club decisions, shall be deemed to be a control interest transfer. . . . All corporate, LLC or partnership documents must reflect that any Club control or non-control interest transfer must receive the appropriate Baseball approvals.

MLB Control Interest Transfer Guidelines, ¶ I.D.

Lastly, MLB has broad power to take actions in respect of each of the baseball Clubs under the MLB Constitution, which the Debtor believes could include termination of the Club's franchise. *See* MLB Constitution Art. II, Secs. 2, 4. Therefore, the Debtor believes that to the extent MLB does not approve of a transfer of ownership of the team, MLB could take extraordinary actions to prevent the transfer, including the termination of the Texas Rangers' association with MLB. Therefore, any future sale conducted in a (hypothetical) chapter 7 case without MLB consent presents substantial litigation risk.

As to the impaired Class entitled to vote to accept or reject the Plan, Class 12 (TRBP Equity Interests), the Debtor does not know as of the filing of this Memorandum whether the CRO will vote to reject or accept the Plan. However, as set forth below, as to such class, the Plan may nevertheless be confirmed under the "cram down" provision of section 1129(b) of the Bankruptcy Code even if Class 12 rejects the Plan.

IX. SECTION 1129(A)(9): THE PLAN PROVIDES FOR PAYMENT IN FULL OF ALL ALLOWED PRIORITY CLAIMS

Section 1129(a)(9) of the Bankruptcy Code requires that persons holding claims entitled to priority under section 507(a) receive specified cash payments under the Plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) requires a plan to provide as follows:

> (A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of [the Bankruptcy Code], on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
>
> (B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(7) of [the Bankruptcy Code], each holder of a claim of such class will receive —
>
> > (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
> >
> > (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;
>
> (C) with respect to a claim of a kind specified in section 507(a)(8) of [the Bankruptcy Code], the holder of such claim will receive on account of such claim regular installment payments in cash –
>
> > (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
> >
> > (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

11 U.S.C. § 1129(a)(9).

A. **<u>Section 1129(a)(9)(A): Administrative Expense Claims</u>**

With respect to Administrative Expense Claims, the Plan provides that (a) to the extent that an Allowed Administrative Claim is assumed by the Purchaser under the Asset Purchase Agreement, that Claim shall be paid by the Purchaser in the ordinary course of business as and when due, (b) Allowed Administrative Expense Claims representing liabilities incurred by the Debtor in the ordinary course of business, consistent with past practice, whether incurred in the ordinary course of business, that are not assumed by the Purchaser shall be paid by the Debtor in accordance with the terms and conditions of the particular transaction and any related agreements and instruments, (c) other Allowed Administrative Expense Claims that are not assumed by the Purchaser shall be paid, in full satisfaction, settlement, and release of, and in exchange for, such Allowed Administrative Expense Claim, in full, in Cash, on the Effective Date or as soon thereafter as is practicable, or on such other terms to which the Debtor and the holder of such Administrative Expense Claim agree, and (d) on the Effective Date, the MLB Postpetition Claim shall be indefeasibly paid in full in Cash from, *inter alia*, the proceeds of the Asset Purchase Agreement, as provided therein. *See* Plan § 2.1. Thus, the Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code.

As stated above in Article IV of this Memorandum, in regards to payment of professional fees and expenses, the Plan further provides that professionals seeking awards by the Court of compensation for services rendered or reimbursement of expenses incurred through and including the

Confirmation Date, other than professionals retained in the ordinary course of business that are not required to submit applications for reimbursement, shall receive payment in full, in Cash, of any unpaid portion as soon as practicable after Court approval thereof. *See* Plan § 2.2. Professionals retained by the Debtor in the ordinary course of business that are not required to submit applications for reimbursement shall be paid in accordance with Section 2.1 of the Plan. *Id.*

The Plan further provides that except as otherwise ordered by the Court, any reasonable and documented fees and expenses incurred by the Disbursing Agent (including taxes and reasonable attorney's fees and expenses) on or after the Effective Date shall be paid in Cash by the Post-Effective Date Debtor in the ordinary course of business. *See id.* § 7.5. In addition, the Plan provides that on the Effective Date, all DIP Claims shall be paid in full in Cash from, *inter alia*, the proceeds of the Asset Purchase Agreement, as provided therein. *See id.* § 2.4.

Accordingly, because the Plan provides that generally each Administrative Expense Claim shall be paid on or prior to the Effective Date unless such Claim is not Allowed as of the Effective Date, in which case such Claim will be paid at the time that it becomes an Allowed Administrative Expense Claim, the Plan satisfies section 1129(a)(9)(A) of the Bankruptcy Code.

B. Section 1129(a)(9)(B): Priority Non-Tax Claims

With respect to the payment of Allowed Priority Non-Tax Claims, in accordance with section 1129(a)(9)(B) of the Bankruptcy Code, the Plan provides that, except to the extent that a holder of an Allowed Priority Non-Tax Claim against the Debtor agrees to a different treatment, most Allowed Priority Non-Tax Claims, if any, will be assumed by Purchaser and paid in Cash on the later of (i) the Effective Date and (ii) the date such Claim becomes Allowed. *See* 11 U.S.C. § 1129(a)(9)(B). Thus, the Plan satisfies section 1129(a)(9)(B) of the Bankruptcy Code.

C. Section 1129(a)(9)(C) and (D): Priority Tax Claims and Secured Tax Claims

With respect to the payment of Secured Tax Claims, in accordance with section 1129(a)(9)(D) of the Bankruptcy Code, the Plan provides that, each holder of an Allowed

Secured Tax Claim that is assumed by the Purchaser under the Asset Purchase Agreement shall retain its existing lien, if any, in the Purchased Assets, and shall be paid in Cash by the Purchaser when such Allowed Secured Tax Claim becomes due and owing in the ordinary course of business. *See* Plan § 4.5. With respect to any Allowed Secured Tax Claim that is not assumed by the Purchaser, except to the extent that a holder of any other Allowed Secured Tax Claim against the Debtor agrees to a different treatment, each such holder shall retain its existing lien, if any, and shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Secured Tax Claim, Cash in an amount equal to such Allowed Secured Tax Claim, on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) the date such Allowed Secured Tax Claim becomes due and owing in the ordinary course of business. *See id.* Thus, the Plan satisfies section 1129(a)(9)(D) of the Bankruptcy Code.

Based upon the foregoing, the Plan satisfies all the requirements of section 1129(a)(9) of the Bankruptcy Code.

X. SECTION 1129(A)(10) IS SATISFIED

Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Plan by at least one Class of impaired Claims, "determined without including any acceptance of the plan by any insider" *if a Class of Claims is impaired by the Plan*. This requirement is inapplicable to the Plan because the Debtor submits that there is no Class of Claims impaired by the Plan.

XI. SECTION 1129(A)(11): THE PLAN IS NOT LIKELY TO BE FOLLOWED BY LIQUIDATION OR THE NEED FOR FURTHER REORGANIZATION

Section 1129(a)(11) of the Bankruptcy Code requires that, as a condition to confirmation, the Court determine that the Plan is feasible. Specifically, the Court must determine that:

> Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

See 11 U.S.C. § 1129(a)(11). The evidence will show that the Plan is feasible within the meaning of this provision.

A. Legal Standard

The feasibility test set forth in section 1129(a)(11) requires the Court to determine whether the Plan is workable and has a reasonable likelihood of success.[52] The Fifth Circuit has stated that "the [bankruptcy] court need not require a guarantee of success . . ., "[o]nly a reasonable assurance of commercial viability is required." *Briscoe*, 994 F.2d at 1165.[53]

The key element of feasibility is whether there exists a reasonable probability that the provisions of the plan can be performed. *T-H New Orleans Ltd. P'ship.*, 116 F.3d at 801. The purpose of the feasibility test is to protect against visionary or speculative plans.[54] Just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility.[55]

Applying the foregoing standards of feasibility, courts have identified the following factors, as probative:

(1) the adequacy of the capital structure;

(2) the earning power of the business;

(3) economic conditions;

---

[52] *See U.S. v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990); *T-H New Orleans Ltd. P'ship.*, 116 F.3d at 801; *In re Leslie Fay Cos" Inc.*, 207 B.R. 764, 788 (Bankr. S.D.N.Y. 1997); *In re Woodmere Investors Ltd. P'ship*, 178 B.R. 346, 361 (Bankr. S.D.N.Y. 1995); *In re Drexel Burnham Lambert Group, Inc*., 138 B.R. 723, 762 (Bankr. S.D.N.Y. 1992); *Johns-Manville Corp*., 68 B.R. at 635.

[53] *See also T-H New Orleans Ltd. P'ship.*, 116 F.3d at 801 (same); *see also In re U.S. Truck Co., Inc.*, 47 B.R. 932, 944 (E.D. Mich. 1985) ("'Feasibility' does not, nor can it, require the certainty that a reorganized company will succeed."), *aff'd*, 800 F.2d 581 (6th Cir. 1986); *In re One Times Square Assocs. Ltd. P'ship*, 159 B.R. 695, 709 (Bankr. S.D.N.Y. 1993) ("'It is not necessary that the success be guaranteed, but only that the plan present a workable scheme of reorganization and operation from which there may be a reasonable expectation of success.'") (quoting 5 COLLIER ON BANKRUPTCY 1129.02[11], at 1129-54 (15th ed. 1992), *aff'd*, 165 B.R. 773 (S.D.N.Y. 1994)); *In re Texaco Inc.*, 84 B.R. 893, 910 (Bankr. S.D.N.Y. 1988) ("All that is required is that there be reasonable assurance of commercial viability."); *In re The Prudential Energy Co.*, 58 B.R. 857, 862 (Bankr. S.D.N.Y. 1986) ("Guaranteed success in the stiff winds of commerce without the protection of the Code is not the standard under § 1129(a)(11).").

[54] *Drexel Burnham*, 138 B.R. at 762.

[55] *Idearc, Inc.*, 423 B.R. at 167; *see also Drexel Burnham*, 138 B.R. at 762 ("The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds.") (citing *U.S. Truck Co.,* 47 B.R. at 944).

(4) the ability of management;

(5) the probability of the continuation of the same management; and

(6) any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.[56]

B. The Plan Satisfies the Feasibility Requirement

Applying the foregoing legal standards, the Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code.

The vast majority of the Plan contemplates the Effective Date as the date that most of the provisions of the Plan will take effect. On that date, creditors with allowed claims will be paid in full with interest or have their positions reinstated. Other liabilities will be assumed by the Purchaser. The majority of the executory contracts will be assumed and assigned to the Purchaser, and the Plan does not call for the rejection of any executory contracts. Baseball Express's financing is in place, and it is prepared to carry out these provisions of the Plan as required. In fact, Baseball Express has arranged for both equity and debt financing commitments, the proceeds of which will be used to fund the cash portion of the purchase price for the acquisition of substantially all of the assets of the Debtor.

The evidence will show that the Debtor has analyzed the ability of Baseball Express to fulfill its obligations under the Asset Purchase Agreement. Baseball Express has provided projections to TRBP whereby it has evidenced its reasonable expectations that Baseball Express will not, following the purchase, become financially unstable in the next 4 years.[57] "[W]here the projections are credible, based

---

[56] *In re M&S Assocs., Ltd.,* 138 B.R. 845, 849 (Bankr. W.D. Tex. 1992) (citing *In re Guilford Telecasters, Inc.*, 128 B.R. 622, 627 (Bankr. M.D.N.C. 1991); *see also Leslie Fay*, 207 B.R. at 789 (citing 7 COLLIER ON BANKRUPTCY ¶ 1129 LH[2], at 1129-82 (15th ed. rev. 1996)) (using the additional factors of (1) the availability of prospective credit, both capital and trade; (2) the adequacy of funds for equipment replacements; and (3) the provisions for adequate working capital); *see also Texaco Inc.*, 84 B.R. at 910 (same); *Prudential Energy*, 58 B.R. at 862-63 (same). The foregoing list is neither exhaustive nor exclusive. *Drexel Burnham*, 138 B.R. at 762-63; *cf. U.S. Truck Co.*, 800 F.2d at 589.

[57] If Baseball Express is not the Successful Bidder at the Auction, such purchaser will be required to prove feasibility at the Confirmation Hearing.

upon the balancing of all testimony, evidence, and documentation, even if the projections are aggressive, the court may find the plan feasible." *T-H New Orleans Ltd. P'ship.*, 116 F.3d at 802 (citation omitted).

In addition, the consideration received for the Purchased Assets under the Plan is more than adequate to cover all the debts of the Debtor, with money left over for equity. The Lenders' arguments that their claims for damages will jeopardize feasibility is contrary to this Court's holding that, consistent with the Lenders' contractual rights, the Lenders' claims are limited to $75 million. Upon the Effective Date, the Debtor will have sufficient funds to pay all creditors, and thus, the feasibility of the Plan should not be called into question.

Based upon the foregoing, the Plan has more than a reasonable likelihood of success and satisfies the feasibility standard of section 1129(a)(11).

XII. SECTION 1129(A)(12): ALL STATUTORY FEES HAVE BEEN OR WILL BE PAID

Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28 [of the United States Code], as determined by the court at the hearing on confirmation of the plan." *See* 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930 of] chapter 123 of title 28" are afforded priority as administrative expenses. *See* 11 U.S.C. § 507(a)(2). In accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, the Plan provides that the Debtor shall pay all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code, as determined by the Court at the Confirmation Hearing, on the Effective Date and thereafter as may be required. *See* Plan § 13.1.

XIII. SECTION 1129(A)(13): RETIREE BENEFITS

Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. That section provides that the plan must

> provide for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

11 U.S.C. § 1129(a)(13).

The Debtor does not directly sponsor any employee benefit plans or retirement plans. Employees of the Debtor are provided with various benefits pursuant to employee benefit plans and retirement plans sponsored by HSG.[58] The Purchaser does not intend to assume any of the employee benefit plans and retirement plans currently sponsored by HSG. Rather, under the terms of the Asset Purchase Agreement, the Purchaser will establish employee compensation and employee benefit plans providing benefits substantially comparable to those provided to employees of the Debtor prior to the Closing Date of the Asset Purchase Agreement. The Purchaser will assume the Debtor's obligations under applicable MLB-wide benefit plans with respect to Rangers Player Employees and Rangers Non-Player Employees (as such terms are defined in the Asset Purchase Agreement), in accordance with the Asset Purchase Agreement. Notwithstanding the foregoing, except and to the extent previously assumed by an order of the Bankruptcy Court, on or before the Confirmation Date, all employee compensation and employee benefit plans directly sponsored by the Debtor, including employee benefit plans and programs subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before or after the Commencement Date and not since terminated, will be deemed to be, and will be treated as if they were, executory contracts that are to be assumed under the Plan and assigned to the Purchaser under the Asset Purchase Agreement. *See* Plan § 9.4. Accordingly, the obligations under such plans and programs will survive confirmation of the Plan, except for (i) executory contracts or benefit plans specifically rejected pursuant to the Plan (to the extent such rejection does not violate sections 1114 and

[58] HSG acts as the common paymaster for payment of compensation to employees of the Debtor. Pursuant to the Shared Services Agreement and the Interim Services Agreement, the Debtor reimburses HSG for the cost of compensation and employee benefits provided to employees of the Debtor.

1129(a)(13) of the Bankruptcy Code) and (ii) such executory contracts or employee benefit plans as have previously been rejected, are the subject of a motion to reject as of the Confirmation Date, or have been specifically waived by the beneficiaries of any employee benefit plan or contract. Thus, the Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code.

XIV. SECTIONS 1129(A)(14), 1129(A)(15), 1129(A)(16), 1129(C), 1129(D), AND 1129(E) DO NOT APPLY

Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations. *See* 11 U.S.C. § 1129(a)(14). The Debtor is not subject to any domestic support obligations, and, as such, section 1129(a)(14) does not apply.

Section 1129(a)(15) applies only in cases in which the debtor is an "individual" (as that term is defined in the Bankruptcy Code). *See* 11 U.S.C. § 1129(a)(15). The Debtor is not an "individual," and, accordingly, section 1129(a)(15) is inapplicable.

The Debtor is not a corporation or trust that is not a moneyed, business, or a commercial corporation or trust, and, as such, section 1129(a)(16) of the Bankruptcy Code is inapplicable. *See* 11 U.S.C. § 1129(a)(16).

The Plan is the only plan filed in this case and, as such, section 1129(c) of the Bankruptcy Code is inapplicable. *See* 11 U.S.C. § 1129(c).

The Plan has not been filed for the purpose of avoidance of taxes or the application of Section 5 of the Securities Act of 1933, as amended, and thus section 1129(d) of the Bankruptcy Code is inapplicable. *See* 11 U.S.C. § 1129(d).

The Chapter 11 Case is not a small business case, as defined by the Bankruptcy Code, and, as such, section 1129(e) of the Bankruptcy Code is inapplicable. *See* 11 U.S.C. § 1129(e).

XV. THE PLAN SATISFIES THE "CRAM DOWN" REQUIREMENTS OF SECTION 1129(B) OF THE BANKRUPTCY CODE WITH RESPECT TO THE CLASS THAT MAY REJECT THE PLAN

Notwithstanding the fact that Class 12 (TRBP Equity Interests) may vote to reject the Plan, the Plan may still be confirmed because it satisfies the requirements set forth in section 1129(b) of the Bankruptcy Code. Although the Lenders suggest in their Objection that the Plan may not be confirmed pursuant to section 1129(b) because the requirements thereunder are not satisfied with respect to their claims, it is the Debtor's belief that the Court's application of 1129(b) of the Bankruptcy Code should be limited to whether or not the requirements are met with respect to Class 12 because all other Classes of Claims, including Classes 2 and 3, are unimpaired under the Plan and thus conclusively presumed to have accepted the Plan.

A. The Legal Standards under Section 1129(b)

Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a plan in circumstances where the plan is not accepted by all impaired classes of claims and equity interests. This mechanism is known colloquially as "cram down."[59] Section 1129(b) provides in pertinent part:

> [I]f all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirement contained in section 1129(a)(8) that a plan must be accepted by all impaired classes] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

[59] *See Block Shim Dev. Co.-Irving*, 118 B.R. at 452 (citing 1129(b) as the "cram down" provision of the Code); *In re Premiere Network Servs., Inc.*, No. 04-33402-HDH-11, 2005 Bankr. Lexis 2298, at *5 (Bankr. N.D. Tex. July 1, 2005) ("In the case of rejection by an impaired class the court, at the proponent's request, may confirm the plan under the section 1129(b) 'cram down' provision").

11 U.S.C. § 1129(b)(1). Thus, under section 1129(b), the Bankruptcy Court may "cram down" a plan over rejection by impaired classes of claims or equity interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such classes of claims or interests.[60]

As discussed above, Class 12 (TRBP Equity Interests) is the only impaired class under the Plan[61] and it may vote to reject the Plan. However, the Plan may nonetheless be confirmed over the rejection by this class pursuant to section 1129(b) of the Bankruptcy Code because the Plan does not discriminate unfairly and is fair and equitable with respect to all classes.

1. The Debtor's Plan Does Not Discriminate Unfairly With Respect to the Class 12 Equity Interests

The unfair discrimination standard of section 1129(b) of the Bankruptcy Code ensures that a plan does not unfairly discriminate against a dissenting class with respect to the value it will receive under a plan when compared to the value given to all other similarly situated classes. *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 121 (D. Del. 2006) (citing *Johns-Manville Corp.*, 68 B.R. at 636; *In re Barney & Carey Co.*, 170 B.R. 17, 25 (Bankr. D. Mass. 1994).[62]

---

[60] *Block Shim Dev. Co.-Irving*, 118 B.R. at 452-53 ("Section 1129(b) permits confirmation when all other requirements of § 1129(a) are met and 'the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.'" (citing section 1129(b) of the Bankruptcy Code)); *In re Landing Assocs., Ltd.*, 157 B.R. 791, 809 (Bankr. W.D. Tex. 1993) (notwithstanding rejection of a plan of reorganization by an impaired class, a court may, upon request of the plan proponent, nonetheless confirm the plan under section 1129(b) of the Bankruptcy Code, the cram down provision).

[61] The Debtor submits that the treatment afforded to the holders of claims in Class 2 and Class 3 renders them unimpaired and as such they are presumed to accept the Plan and not subject to the cram down.

[62] Section 1129(b)(1) does not prohibit discrimination between classes; it prohibits only discrimination that is unfair. *See In re Oceanaire Tex. Rest. Co., L.P.*, No. 09-34262-bjh-11, 2010 WL 1741095, at *9 (Bankr. N.D. Tex. Apr. 29, 2010) (confirmation a plan of reorganization because it was "driven by the priority scheme established under the Bankruptcy Code and not by any attempt to unfairly discriminate against [the class]."); *Heritage Org.*, 375 B.R. at 312-13; *In re 11,111, Inc.*, 117 B.R. 471, 478 (Bankr. D. Minn. 1990). The weight of judicial authority holds that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar classes are treated differently without a reasonable basis for the disparate treatment. *See In re Buttonwood Partners, Ltd.*, 111 B.R. 57 (Bankr. S.D.N.Y. 1990). Accordingly, as between two classes of claims or two classes of equity interests, there is no unfair discrimination if (i) the classes consist of dissimilar claims or interests, *see, e.g.*, *Johns-Manville Corp.*, 68 B.R. at 636, or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment, *see, e.g., Buttonwood Partners*, 111 B.R. at 63; *In re Rivera Echevarria*, 129 B.R. 11, 13 (Bankr. D.P.R. 1991).

The Plan does not discriminate unfairly with respect to Equity Interests in Class 12. Class 12 (TRBP Equity Interests) consists of all the Equity Interests in TRBP. Plan § 4.12. The "unfair discrimination" standard in section 1129(b)(1) does not apply to Class 12 because there are no other classes of Equity Interests under the Plan and the other Classes of claims under the Plan are by definition not substantially similar to Class 12.

2. The Debtor's Plan Is Fair and Equitable With Respect to the Class 12 Equity Interests

Section 1129(b)(2) of the Bankruptcy Code sets forth the minimum standards that a chapter 11 plan must meet in order to satisfy the "fair and equitable" test as to classes of equity interests:

> (C) With respect to a class of interests—
>
> (i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or
>
> (ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

11 U.S.C. § 1129(b)(2).

Class 12 (TRBP Equity Interests) consists of all Equity Interests in TRBP. Pursuant to the Bankruptcy Code, equity interests are afforded the lowest priority in the distribution of a debtor's estate. Although there can at times be different levels of priority among different equity interests, in this case, there is only one level of equity interests and only one class of equity interests. Accordingly, there are no Classes junior to Class 12. Therefore, because no holder of a junior interest will receive or retain any property on account of any distributions under the Plan, the Plan satisfies the absolute priority rule of section 1129(b)(2)(C) of the Bankruptcy Code and provides for fair and equitable treatment of Equity

Interests in Class 12.[63] Accordingly, the "fair and equitable" test is satisfied as to Class 12 (TRBP Equity Interests) under the Plan, and the Plan can be confirmed over the rejection of Class 12 (TRBP Equity Interests), if necessary.

XVI. THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1127 OF THE BANKRUPTCY CODE

Pursuant to section 1127 of the Bankruptcy Code, a plan proponent may modify a plan at any time before confirmation so long as the plan, as modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code. *See* 11 U.S.C. § 1127. In addition, Bankruptcy Rule 3019 provides, in relevant part:

> after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

FED. R. BANKR. PROC. 3019.

The Debtor filed its (i) original Prepackaged Plan on May 24, 2010, (ii) Amended Plan on June 17, 2010, (iii) Second Amended Plan on June 25, 2010 and (iv) Third Amended Plan on July 30, 2010. Pursuant to the Disclosure Statement Order entered on June 21, 2010, the Debtor solicited votes from Class 2, Class 3 and Class 12 on the Amended Plan, as may thereafter be amended. Subsequent to solicitation of votes on the Amended Plan, the Debtor, as it is authorized to do by Section 13.3 of the Prepackaged Plan and section 1127(a) of the Bankruptcy Code, modified the Amended Plan by filing the

---

[63] *See Oceanaire Tex. Rest. Co.*, 2010 WL 1741095, at *9 (confirming a plan of reorganization when the plan provided that "no holder of an interest junior to the interest of such Equity Interests will receive or retain property under [the plan] on account of such junior interest"); *In re Energy Partners, Ltd.*, No. 09-32957, 2009 WL 2898876, at *7-8 (Bankr. S.D. Tex. Aug. 3, 2009) (confirming a plan deemed to have been rejected by an impaired class of equity interests when the plan did not discriminate unfairly, and it provided that "no [h]olders of junior [e]quity [i]nterests will receive or retain any property"); *see also In re Hysky Commc'ns, LLC*, No. 09-35340-HDH, 2010 WL 148407, at *3 (Bankr. N.D. Tex. Jan. 12, 2010) (confirming the plan where no holder of a claim or equity interest junior to the rejecting class received or retained any property on account of such junior claim or equity interest).

Second Amended Plan on June 25, 2010, which modified the treatment of Class 2 and Class 3 consistent with the June 22 Opinion in order to render such claims unimpaired. None of the modifications in the Second Amended Plan adversely impact any Class of Claims. Rather, the treatment of Class 2 and Class 3 Claims was enhanced. The only impacted Class is Class 12, which will not have submitted a ballot prior to the filing of this Memorandum.[64]

Contrary to the Lenders' Objection, the Debtor was wholly within its rights to amend the Plan. The Lenders assert that pursuant to Bankruptcy Rule 9001 the Debtor can only act through and at the direction of Rangers Equity to amend the Plan; however, the corporate resolutions attached to the Debtor's chapter 11 petition authorize the Debtor's Chief Financial Officer, Kellie Fischer, to amend the Plan. *See* Petition and attached resolutions [Docket No. 1]. The authority granted to the Debtor's authorized officers in this regard remains in place, and the Court has not ordered otherwise. In fact, this Court denied the CRO's request to become the sole party authorized to amend the Plan. Thus, the power to amend the Plan still lies exclusively with the Debtor.

In addition, other modifications may be made to the Plan prior to or at the Confirmation Hearing in response to objections to the Plan. As will be demonstrated at the Confirmation Hearing, such modifications will have no material adverse impact on the treatment of any Claims or Equity Interests and, thus, pursuant to Bankruptcy Rule 3019, any acceptances of the Prepackaged Plan should also be deemed acceptances of the amended plan as may be further modified prior to or at the Confirmation Hearing. FED. R. BANKR. PROC. 3019.

While the Debtor believes that modifications made in the Second Amended Plan have rendered Class 2 and Class 3 unimpaired and not entitled to vote, all ballots submitted by Class 2 and

[64] As the Court noted in the June 22 Opinion, changes embodied in the Second Amended Plan (and the current Plan) adversely changed the treatment for Class 12. *See* June 22 Opinion at p. 26-27 (since the modifications made to the plan provide for "payment of interest to both the Lenders and other unsecured creditors, the return to equity will necessarily be reduced by the amount of that interest not previously provided for in the Plan"). As a result, the modifications in the Second Amended Plan cannot be deemed accepted by Class 12. *Id.* at 27. Pursuant to the CRO Order, the Court appointed the CRO, acting in a fiduciary capacity for Class 12, to vote on behalf of Class 12 for the Second Amended Plan. The CRO will have submitted its ballot after the filing date of the Second Amended Plan.

Class 3 rejected the Prepackaged Plan. Accordingly, the Lenders' argument is a red herring.[65] Moreover, the Lenders' argument that the Debtor did not properly conduct solicitation of the Second Amended Plan is also without merit. The Lenders cite to no case that support a finding that the amendments made to the Second Amended Plan would require the Debtor to file a further disclosure statement. No new solicitation was required under the circumstances of this Chapter 11 Case because the Second Amended Plan did not materially adversely alter the rights of the Lenders. Therefore, section 1127 is not implicated.

XVII. DISCHARGE, EXCULPATION, INJUNCTION AND INDEMNIFICATION PROVISIONS OF THE PLAN SHOULD BE APPROVED

A. The Discharge, Exculpation and the Injunction Are Limited, Customary, and Not Overly Broad

The Plan, as amended, does not include the types of third party releases and exculpations that are generally included in plans of reorganization upon which objections are often raised. Instead, the Debtor's Plan includes customary discharge (Section 11.3), exculpation (Section 11.4), and injunction (Section 11.6) provisions that are limited in scope and necessary to the overall success of the Plan. These provisions are furthermore consistent with the Bankruptcy Code.

1. Discharge of Claims Against the Debtor

Section 1141 of the Bankruptcy Code governs the effect of confirmation. Pursuant to section 1141(d) of the Bankruptcy Code, upon confirmation, a chapter 11 debtor receives a "discharge" of claims against it. *See* 11 U.S.C. § 1141(d).

Section 11.3 of the Plan (the "Discharge") provides that:

> To the extent that the Debtor is entitled to a discharge, confirmation of the Plan effects a discharge of all Claims against the Debtor. To the fullest extent permitted by the applicable law (*including, without limitation*), section 105 of the Bankruptcy Code, and except as otherwise specifically

---

[65] Furthermore, Debtor's counsel informed counsel to the First Lien Lenders' Agent on June 28, 2010 (at which time, relatively few Ballots had been submitted) that all Ballots would apply to the Second Amended Plan, in accordance with Section 1127.

> provided [in the Plan], the treatment of all Claims against or Equity Interests in the Debtor under the Plan shall be in exchange for and in complete satisfaction, discharge and release of, all Claims against the Debtor of any nature whatsoever, known or unknown, including any interest accrued or expenses incurred thereon from and after the Commencement Date, or against its Estate or property or interests in property. Except as otherwise provided in the Plan, upon the Effective Date, all Claims against the Debtor shall be satisfied, discharged and released in full in exchange for the consideration provided under the Plan. Except as otherwise provided in the Plan, all Persons shall be precluded from asserting against the Debtor, the Purchaser, the Post-Effective Date Debtor, or their respective properties or interests in property, any other Claims based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date.

Plan § 11.3. The discharge is a fundamental tenet of bankruptcy reorganization. Section 11.3 of the Plan is limited in that it merely discharges Claims against the Debtor "[t]o the fullest extent permitted by the applicable law (including, without limitation), section 105 of the Bankruptcy Code." The Lenders argue that the Debtor is not entitled to a discharge. (Obj. at 23.) However, the Discharge does not apply to the Lenders' claims (as Sections 4.2 and 4.3 of the Plan specifically provide that the Lenders may enforce their rights post-Effective Date); thus, the Discharge does not affect the Lenders.[66] Accordingly, the Discharge is consistent with section 1141 of the Bankruptcy Code and allows the Debtor to effectuate its Plan and should therefore be approved.

2. Exculpation for Actions Relating to Chapter 11 Case.

Section 524(e) of the Bankruptcy Code, governing the effect of discharge under the Bankruptcy Code, indicates that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." *Id.* § 524(e).[67] Notwithstanding this

---

[66] The Discharge only applies "except as otherwise specifically provided herein." *See* Plan § 11.3.

[67] The Lenders cite *In re Wool Growers Cent. Storage Co.*, 371 B.R. 768 (Bankr. N.D. Tex. 2007) as support for a bright-line rule that section 524(e) prevents all non-debtor releases. (Obj. at 18). *Wool Growers* does not stand for this proposition. Rather, the bankruptcy court in *Wool Growers* detailed and applied a number of factors that courts have considered to determine whether non-consensual non-debtor releases are permissible, the most "critical" of which was whether the "plan provides payment of all, or substantially all, of affected classes' claims." *Id.* at 777-78. In stark contrast to the Debtor's Plan, which provides for payment in full to creditors, the *Wool Growers* plan provided for only 60-70% recovery to creditors. Accordingly, *Wool Growers* is distinguishable on its facts.

express limitation of the discharge to the debtor, a debtor may also settle and release its claims against third parties. *Id.* § 1123(b)(3)(A).

As it has been amended, the Debtor's Plan does not include an exculpation provision, which relieves third parties from liability for any acts or omissions related to the Chapter 11 Case. Rather, the Plan's exculpation provision is entirely consistent with this Court's holding in *In re Pilgrim's Pride Corp.,* No. 08-45664-DML-11, 2010 WL 200000 at * 3-5 (Bankr. N.D. Tex. Jan. 14, 2010) in that it merely provides that neither the Debtor, the Post-Effective Date Debtor, nor the Committee (including its members) shall be liable for actions taken since the Commencement Date in connection with this Chapter 11 Case (the "Exculpation"). *See* Plan § 11.4. The Exculpation is narrowly crafted and limited to protect only TRBP and the Committee from claims or causes of action arising in connection with, or out of, the Chapter 11 Case, as well as limited to a qualified immunity for acts of negligence, but does not relieve any party of liability for willful misconduct, gross negligence, actual fraud, criminal conduct, or intentional unauthorized misuse of confidential information that causes damage. *Id.* In this way, the Exculpation is both customary and reasonable and within the confines of what has been approved in the Fifth Circuit.[68] The Lenders' arguments regarding the Exculpation are moot because the Exculpation, as amended pursuant to the Third Amended Plan, is limited to the specific provisions of Sections 4.2 and 4.3 of the Plan.[69] As such, the Exculpation does not affect the Lenders' claims. Accordingly, the Exculpation does not violate section 524 or 1123 of the Bankruptcy Code and is well within the confines of Fifth Circuit precedent and should thus be approved.

---

[68] *See Bank of N.Y. Trust Co., N.A. v. Official Unsecured Creditors' Comm. (In re The Pac. Lumber Co.)*, 584 F.3d 229, 253 (5th Cir. 2009) (upholding approval of exculpation provision because it limited the scope of the exculpation to protection "which does not insulate [the exculpated party] from willfulness and gross negligence"); *see also In re Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995) (finding that nondebtors may be protected by the automatic stay when particular circumstances exist, including that such protection contributes to the debtor's ability to accomplish reorganization); *Pilgrim's Pride Corp.,* 2010 WL 200000, at *4 (concluding that "releases . . . in so far as they apply to Debtors and the Reorganized Debtors, are valid to the extent consistent with sections 524 and 1141 of the Code" and that releases "provided to the Committees [and] members of the Committees . . . comply with the law because they do not extend to immunity from liability for willful misconduct or *ultra vires* activity").

[69] The Exculpation is limited in that it only applies "except as otherwise specifically provided in the Plan." *See* Plan § 11.4.

3. Injunction Against Actions with Respect to Claims

Section 11.6(a) of the Plan (the "Injunction") provides that:

> Except as otherwise specifically provided [in the Plan,] all Persons who have held, hold, or may hold Claims against the Debtor are permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim against the Post-Effective Date Debtor or the Purchaser, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Post-Effective Date Debtor or the Purchaser with respect to any such Claim, and (iii) creating, perfecting or enforcing any encumbrance of any kind against the Post-Effective Date Debtor or the Purchaser, or against the property or interests in property of the Post-Effective Date Debtor or the Purchaser with respect to any such Claim.

Plan § 11.6(a).

Section 11.6(b) of the Plan provides that unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. *Id.* § 11.6(b).

The Injunction is a customary plan provision and is necessary to effect the provisions of a confirmation order and effectuation of the Plan. The Injunction also similarly complies with the Bankruptcy Code and should therefore be approved.

4. Indemnification Obligations

Section 11.7 of the Plan provides that:

> Notwithstanding anything to the contrary herein, subject to the occurrence of the Effective Date, all obligations of the Debtor as provided in the Debtor's organizational documents, applicable law or other applicable agreements as of the Commencement Date to indemnify, defend, reimburse, exculpate, advance fees and expenses to, or limit the liability of its partners or officers, or its direct or its indirect parent entities' partners, members, shareholders, managers, directors or officers, who were partners or officers of the Debtor or its direct or indirect parent entities' partners, members, shareholders, managers, directors or officers at any time prior to the Effective Date, respectively, against any claims or causes of action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or

> unknown, foreseen or unforeseen, asserted or unasserted, shall survive confirmation of the Prepackaged Plan, remain unaffected thereby after the Effective Date and not be discharged, irrespective of whether such indemnification, defense, advancement, reimbursement, exculpation, or limitation is owed in connection with an event occurring before or after the Commencement Date. Any Claim based on the Debtor's obligations in the Prepackaged Plan shall not be a Disputed Claim or subject to any objection in either case by reason of section 502(e)(1)(B) of the Bankruptcy Code.

Plan § 11.7.

Similar to the Debtor's Exculpation provision, section 11.7 of the Plan is also permissible under section 524(e) of the Bankruptcy Code. Contrary to the Lenders' assertions in their Objection, which are not supported by any case law, the Debtor has not attempted to "enlarge" the indemnification rights available to its partners, directors, and officers. The indemnifications which are assumed in Section 11.7 of the Plan are no broader than those that existed on the Commencement Date. The Lenders have asserted that the indemnification agreements (the "Officer Indemnification Agreements"), which were entered into with newly appointed officers in May 2010, were "impermissible." However, the evidence will show that the Officer Indemnification Agreements provide indemnities on substantially similar terms to those outlined in the Second Amended and Restated General Partnership Agreement of TRBP, dated as of June 2, 1999 (as amended from time to time). Furthermore, the evidence will show that the indemnifications provided in the Officer Indemnification Agreements were part of the consideration necessary to induce the officers to serve in such positions. Thus, Section 11.7 of the Plan complies with the Bankruptcy Code and allows the Debtor to effectuate its Plan and should therefore be approved.

Moreover, because the Debtor is solvent, assuming the Officer Indemnification Agreements will not have a negative impact on the Lenders because the officers would otherwise have an unsecured claim that is entitled to payment in full under the Plan.

Lastly, while numerous parties have throughout this Chapter 11 Case insisted that the Debtor is seeking "all these indemnifications and releases," those allegations could not be further from

the truth. Notably, the Lenders do not object to the release provisions provided under the Asset Purchase Agreement. Furthermore, the evidence will show that indemnifications and releases under the LSA were bargained for and are appropriate under the facts of this case. As an inducement to BRE to sell the BRE Property in the LSA in order to accomplish the Sale, TRBP agreed to release, *inter alia*, BRE, its directors, officers, agents and certain affiliates from any and all claims (Section 6.12(b) of the Land Sale Agreement) and indemnify BRE and Baseball Express and, *inter alia*, their directors, officers, agents and certain affiliates in connection with any claims and litigation arising from or related to the Land Sale Agreement (Section 12.9 of the LSA). These releases and indemnities are appropriate in sale transactions of this nature and are part of the consideration package given to BRE as an inducement to sell the BRE Property, which BRE was not otherwise marketing for sale at the time.

CONCLUSION

The Plan complies with and satisfies all of the requirements of the Bankruptcy Code. All objections should, therefore, be overruled and the Plan confirmed.

Dated: July 30, 2010
Fort Worth, Texas

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

-and-

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

Attorneys for Debtor and
Debtor in Possession