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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.	:	

DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO PAY THE PREPETITION CLAIMS OF CERTAIN CREDITORS IN THE ORDINARY COURSE OF BUSINESS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Texas Rangers Baseball Partners ("TRBP" or the "Debtor"), hereby files this motion (the "Motion") seeking entry of an interim order (the "Interim Order") pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing, but not directing, the Debtor to pay prepetition claims of certain creditors in the ordinary course of business pending the entry of a final order granting the relief sought herein

(the "Final Order"), and scheduling a final hearing (the "Final Hearing") to consider the relief requested herein on a final basis. In support of the Motion, the Debtor submits the Declaration of Kellie L. Fischer in Support of the Debtor's Chapter 11 Petition and Requests for First Day Relief (the "Fischer Declaration"), filed contemporaneously herewith, and respectfully represents as follows:

Background

1. On the date hereof (the "Commencement Date"), the Debtor commenced with this Court a voluntary case under the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

The Debtor's Business

TRBP Partnership Structure

2. Texas Rangers Baseball Partners ("TRBP" or the "Debtor") owns and operates the Texas Rangers Major League Baseball Club, a professional baseball club (the "Texas Rangers") in the Dallas/Fort Worth Metroplex, pursuant to the Major League Constitution (the "Major League Constitution") and the Membership Agreement, dated as of November 18, 1960, by and between The American League of Professional Baseball Clubs, as assumed by the Office of the Commissioner of Baseball (the "BOC"), and WBC Baseball Club, Inc., as assumed by TRBP pursuant to an Assumption Agreement, dated as of June 16, 1998.

3. TRBP is a Texas general partnership, in which Rangers Equity Holdings, L.P. ("Rangers Equity LP"), a Delaware limited partnership, holds a 99% partnership interest and Rangers Equity Holdings GP, LLC ("Rangers Equity GP"), a Texas limited liability company, holds a 1% partnership interest. Rangers Equity GP is a wholly-owned subsidiary of Rangers Equity LP. Both Rangers Equity LP and Rangers Equity GP are holding companies

with no operating assets and are indirect, wholly-owned subsidiaries of HSG Sports Group LLC ("HSG"). HSG is a sports and entertainment holding company, which is an affiliate of, and indirectly controlled by, Thomas O. Hicks ("Mr. Hicks"). The Texas Rangers have had five owners since the team moved to Arlington in 1972. Mr. Hicks became the fifth owner in the history of the Texas Rangers on June 16, 1998, when HSG completed the acquisition of the franchise from the George W. Bush/Edward W. Rose partnership.

Major League Baseball

4. With a history and tradition dating back to 1869, professional baseball is one of America's oldest organized league sports. From April through the end of September every year, Major League Baseball ("MLB") runs a 162-game regular season. MLB's clubs are divided into two leagues (American and National) and six divisions (AL East, AL Central, AL West, NL East, NL Central and NL West).

5. The BOC, doing business as Major League Baseball, is an unincorporated association of its 30 member clubs. It is headquartered in New York City and is governed by the Major League Constitution. The primary purpose of the BOC is to undertake centralized activities on behalf of the 30 clubs. Among other things, the BOC hires and maintains the sport's umpiring crews, and negotiates marketing, labor, and television contracts.

The Texas Rangers

6. The Texas Rangers are located in the fourth largest metropolitan area and the largest metropolitan market with a single MLB franchise. The Texas Rangers are one of only 30 MLB franchises and one of two MLB clubs in the state of Texas and its bordering states. The Texas Rangers have a rich and colorful history and have established themselves as a young, up-and-coming contender supported by a strong fan base. The team's executives have successfully combined players from their farm system with key veterans to produce a team that today is in

first place in the American League's West Division. Founded in 1961 as the second incarnation of the Washington Senators, the franchise moved to Texas in 1972 and currently competes in the American League West together with the Los Angeles Angels of Anaheim, the Oakland Athletics, and the Seattle Mariners.

7. The Texas Rangers' home field, the Rangers Ballpark in Arlington (the "Ballpark"), is located in Arlington, Texas and is an open-air, natural grass ballpark that was designed and built with tradition and intimacy in mind. The proximity of the fans to the action is one of the closest in MLB. The overall seating of the Ballpark is 49,170 seats on five levels, making it MLB's sixth largest ballpark.

Prepetition Indebtedness

8. Pursuant to that certain First Lien Credit Agreement and that certain Second Lien Credit Agreement (together, the "HSG Credit Agreement"), HSG and certain affiliates of HSG are indebted to the Lenders (as defined below) in the amount of $525 million. The HSG Credit Agreement is guaranteed by certain of HSG's subsidiaries, although the guaranties of the Texas Rangers and the security interests securing them are limited to $75 million (the "TRBP Guaranty Cap"). The First Lien Credit Agreement is secured by a first lien on substantially all of the assets of HSG and its affiliates including a pledge of the equity interests those entities have in their subsidiaries, including TRBP, and the Second Lien Credit Agreement is secured by a second lien on substantially all of the assets of HSG, its affiliates, including a pledge of the equity interests those entities have in their subsidiaries, including TRBP.

9. TRBP is also party to that certain Amended and Restated Secured Revolving Promissory Note, dated November 25, 2009, by TRBP in favor of Baseball Finance LLC, an affiliate of the BOC (the "Baseball Finance Note"). Pursuant to the Baseball Finance

Note, Baseball Finance agreed to make available to TRBP a secured revolving loan facility in an aggregate principal amount not to exceed $25 million. The loans under the Baseball Finance Note are secured by liens on substantially all of the assets of TRBP that are junior in priority to the liens granted pursuant to the HSG Credit Agreement that are subject to the TRBP Guaranty Cap. As of the Commencement Date, approximately $18.45 million in principal is outstanding under the Baseball Finance Note, plus accrued interest.

Events Leading to TRBP's Chapter 11 Filing

10. Since 2005, TRBP has experienced, and continues to experience, cash flow deficiencies. For the entire period that Mr. Hicks has owned the Texas Rangers, he has provided financial support to the team through capital contributions and loans to HSG in excess of $100 million.

11. Beginning in August 2008, HSG retained advisors to provide financial advice and assistance in connection with a capital raise, potential restructuring, or sale. While HSG and TRBP explored their options, TRBP continued to suffer operating losses. As a result of such losses, HSG was unable to service its $525 million long-term debt obligations under the HSG Credit Agreement. On March 31, 2009, HSG failed to make a scheduled interest payment under the HSG Credit Agreement, and on April 7, 2009, the lenders to the HSG Credit Agreement (the "Lenders") accelerated the entire amount of indebtedness thereunder. As a result of the acceleration, the Lenders under the HSG Credit Agreement have claims against TRBP on account of TRBP's secured guaranty of $75 million of such indebtedness, as discussed above.

Sale Process

12. During the second half of 2008 and throughout 2009, HSG and TRBP, in conjunction with their advisors, pursued a variety of options for a capital raise or a sale of the Texas Rangers. Ultimately, they concluded that a sale of the Texas Rangers was the only viable

option. A lengthy and active marketing process culminated with an agreement among HSG, TRBP and Rangers Baseball Express LLC (the "Purchaser"), whose principals include the current President of the Texas Rangers, Nolan Ryan, and Chuck Greenberg, a sports lawyer and minor league club owner, dated as of January 23, 2010 (the "January APA"), governing the sale of the Texas Rangers franchise and certain related assets.

13. Pursuant to the terms of the January APA, consummation of the sale required, among other closing conditions, the consent of the Lenders pursuant to the terms of the HSG Credit Agreement. Despite HSG's, TRBP's, and the Purchaser's lengthy good faith negotiations with the Lenders following the execution of the January APA, the Lenders refused to consent to the transactions contemplated by the January APA and thus prevented TRBP from moving forward with the sale of the Texas Rangers. Ultimately, TRBP, in consultation with MLB, concluded that a chapter 11 filing designed to facilitate a sale of TRBP's assets to the Purchaser (the "Sale") pursuant to a prepackaged plan of reorganization ("the Prepackaged Plan") was the most efficient manner in which to consummate the Sale and was, therefore, in the best interests of the Texas Rangers franchise, its fans, MLB and all other parties involved, including TRBP's creditors. As described herein, the Prepackaged Plan will facilitate the sale of the Texas Rangers franchise to the Purchaser and the payment of all of TRBP's creditors in full, allowing the Texas Rangers franchise to compete successfully on and off the field with assurance of long-term financial stability.

Asset Purchase Agreement

14. On May 23, 2010, after further negotiation, in anticipation of the implementation and consummation of the Sale through a chapter 11 plan of reorganization, the parties to the January APA terminated the January APA and entered into that certain Asset

Purchase Agreement (the "Asset Purchase Agreement") for the sale of the Texas Rangers franchise and certain related assets.[1]

15. Under the Asset Purchase Agreement, substantially all of the Debtor's assets, including the Texas Rangers franchise and substantially all contractual rights related the operation of the Texas Rangers will be sold to the Purchaser. The aggregate consideration paid and obligations assumed by the Purchaser at the Closing will equal more than $500 million. Pursuant to the Sale, the Purchaser will also assume virtually all of the obligations of the Texas Rangers, including deferred compensation obligations, sponsorship, ticketholder, employee and specified tax obligations, with the exception of certain excluded liabilities that will be paid under the Prepackaged Plan. Under the Asset Purchase Agreement and the Prepackaged Plan, TRBP also intends to assume and assign to the Purchaser all contracts relating to the Texas Rangers franchise, including all marketing, media, advertising, and merchandising contracts, all minor league and major league player contracts and certain real property Leases. The Sale anticipates a complete and orderly transition of the operations of the team — all tickets to games and other events will be fully honored, and all employees will keep their jobs. Although accomplished through a chapter 11 plan, the Sale will resemble in all significant respects the sale of any other sports franchise.

16. The Sale will allow TRBP's creditors that are Lenders under the HSG Credit Agreement to recover 100 percent of their guaranty claims against TRBP. As described more fully below, subject to Court approval, the Sale is expected to be completed by mid-

[1] A more thorough description of the Asset Purchase Agreement and the Prepackaged Plan are contained in the Declaration of Kellie L. Fischer in Support of Debtor's Chapter 11 Petition and Request for First Day Relief, filed contemporaneously herewith and incorporated herein by reference.

summer, allowing the franchise to exit the chapter 11 process expeditiously in order to reduce any potential adverse impact to the Texas Rangers and its operations.

MLB Approval

17. The Debtor, as a member of Major League Baseball, is subject to the rules and regulations of MLB. In particular, any sale of the Texas Rangers franchise cannot be consummated without first obtaining the requisite approval from the BOC and 75% of the MLB clubs. The sale of any MLB club must comply with the process set forth in the Major League Constitution and the MLB ownership guidelines. Accordingly, TRBP has worked very closely with MLB throughout the negotiation of the Asset Purchase Agreement and all related events leading to the filing of the chapter 11 case. As of the date hereof, the Debtor is not aware of any opposition by MLB or the requisite percentage of MLB clubs required to consent to the Sale.

The Prepackaged Plan

18. As stated above, concurrently herewith, the Debtor has filed its Prepackaged Plan. The primary purpose of the Prepackaged Plan is to bridge the impasse between TRBP and the Lenders under the HSG Credit Agreement and to effectuate the Sale of the Texas Rangers franchise to the Purchaser and satisfy TRBP's creditors in full.

19. The Prepackaged Plan provides for the Sale to be consummated on the effective date (the "Effective Date") and sets forth the distribution that each class of the Debtor's creditors and equity holders is to receive on the Effective Date under the Prepackaged Plan. All TRBP's creditors will be paid in full under the Prepackaged Plan or have their claims assumed by the Purchaser under the Asset Purchase Agreement. Specifically, each holder of an (i) Allowed Priority Non-Tax Claim, (ii) Allowed First Lien Holder Claim, (iii) Allowed Second Lien Holder Claim, (iv) Allowed MLB Prepetition Claim, (v) Allowed Secured Tax Claim, (vi) Allowed Other Secured Claim, (vii) Allowed Assumed General Unsecured Claim,

(viii) Allowed Non-Assumed General Unsecured Claim, (ix) Allowed Emerald Diamond Claim, (x) Allowed Overdraft Protection Agreement Claim, (xi) Allowed Intercompany Claim, and (xii) Allowed TRBP Equity Interest (all as defined in the Prepackaged Plan) is unimpaired and will be paid in full.

20. Additionally, TRBP believes that the Purchaser will build on past team successes and that the future of the Texas Rangers will be in the hands of an ownership group that will be a good steward for the game.

21. TRBP believes that because the Prepackaged Plan satisfies in full all claims against TRBP, is supported by TRBP's equity holders, and will lead to the least disruption to the Texas Rangers' business of playing baseball, the Prepackaged Plan is in the best interests of the Texas Rangers franchise and all parties in interest.

Jurisdiction

22. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

23. By this Motion, the Debtor requests entry of an order authorizing but not directing the Debtor, subject to the procedures set forth herein, to pay, in the ordinary course of business, the liquidated, noncontingent, and undisputed prepetition claims (the "Payable Claims") of holders of General Unsecured Claims and Debtor's Other Secured Claims[2] (each as defined in the Prepackaged Plan) (collectively the "Prepetition Creditors").

[2] Certain of the Debtor's prepetition trade creditors, such as shippers and mechanics, may be secured creditors because of their right to assert liens on the Debtor's property.

24. The Debtor requests that the proposed order authorize the Debtor to pay the Payable Claims (i) on the condition that by accepting payment, the Prepetition Creditor agrees to maintain or reinstate trade terms during the pendency of these chapter 11 cases that are at least as favorable as those existing on or prior to the Commencement Date or (ii) on terms satisfactory to the Debtor in its business judgment. The Debtor also proposes that if a Prepetition Creditor, after receiving a payment on account of its prepetition claim, does not maintain or reinstate trade terms at least as favorable as those existing on or prior to the Commencement Date during the pendency of these chapter 11 cases, or does not maintain terms agreed to by the Debtor, then any payments made on account of the Payable Claims to such Prepetition Creditor after the Commencement Date may, solely in the Debtor's discretion, either be (i) deemed applied to postpetition amounts payable to such Prepetition Creditor or (ii) treated as an unauthorized postpetition transfer recoverable by the Debtor upon a motion by the Debtor to enforce the terms requested herein.

The Payable Claims

25. Under the Prepackaged Plan, General Unsecured Claims, as well as all of the Debtor's other claims, are unimpaired, and the holders of such claims will receive payment in full, in cash, or have their claims reinstated. As, such, the Debtor seeks authority to pay Prepetition Creditors, in the ordinary course of business, amounts that they will be entitled to receive upon consummation of the Prepackaged Plan.

26. In the ordinary course of its business, the Debtor incurs numerous obligations to vendors that provide vital supplies and services necessary to operate the Debtor's business. These include, among other things, various items related to sales of concessions,

merchandise the Debtor resells to customers, and equipment and other goods and services necessary to field a professional baseball team.

27. Allowing the payment of the Payable Claims on the terms set forth herein will allow for smooth operations in this prepackaged case. The Debtor estimates that, as of the Commencement Date, it owes a total of approximately $3,500,000 on account of undisputed Payable Claims.[3] In the ordinary course of its business, the Debtor makes payments of approximately $800,000 per week as invoices become due. Most of the Payable Claims are on rolling 30 or 45-day terms. Upon receiving an invoice, the Debtor first sends the invoice to various department heads for approval before submitting the invoice to be added to the accounts payable system.

28. Of the Payable Claims, the Debtor estimates that approximately $2,400,000 would be entitled to administrative priority status pursuant to section 503(b)(9) of the Bankruptcy Code because they relate to goods delivered to the Debtor in the ordinary course of business within 20 days of the Commencement Date. Furthermore, approximately $200,000 of the Payable Claims may be secured, as that amount of the Payable Claims arise from capital projects with vendors that may be able to assert mechanics' liens on the Debtor's property and a *de minimis* amount arising from transporters that may be able to assert possessory liens on the Debtor's property.[4] These amounts of Payable Claims are typical for the Debtor in the ordinary course of its business throughout the Major League Baseball season.

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[3] This figure does not include the value of goods in transit and not received by the Debtor as of the Commencement Date because amounts due for such goods will be paid in the ordinary course as administrative expense priority claims.

[4] With the exception of one merchant, the Debtor does not take possession of any property until its arrival at the Debtor's principal place of business or merchandise stores.

29. The Debtor is current with virtually all of its payments to Prepetition Creditors as of the Commencement Date. As discussed above, many of the Payable Claims are on rolling, 30 or 45-day terms, and the Debtor does not intend to pay the Payable Claims until they would come due in the ordinary course of its business. The Debtor estimates that approximately $2,400,000 of Payable Claims will become due and payable within the first 20 days of this chapter 11 case.

Payment of the Payable Claims is Warranted

30. Although the pre-plan payment of general unsecured claims is generally disfavored in this district, the Debtor submits that given the unique nature of this Chapter 11 Case – particularly the fact that all Claims and Equity Interests are unimpaired under the Prepackaged Plan and, therefore, will be paid in full by the Debtor or the Purchaser –the payment of Payable Claims as requested herein is justified and supported by existing case law. The relief is further supported by the fact that a substantial portion of the Payable Claims are priority claims. Moreover, paying the Payable Claims would enhance the value of the estate and benefit all parties in interest.

31. Section 1107(a) of the Bankruptcy Code, which provides that a debtor in possession shall perform all the functions and duties of a trustee, contains an implied duty that a debtor in possession act as a fiduciary "to protect and preserve the estate, including an operating business's going-concern value," on behalf of the debtor's creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)). The Debtor submits that the Court has the authority under section 105(a) of the Bankruptcy Court to enter an order authorizing the relief

requested herein as necessary and appropriate to carry out the Debtor's duties under section 1107(a) of the Bankruptcy Code.

32. Pursuant to section 105(a) of the Bankruptcy Code, "[t]he [C]ourt may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The purpose of section 105(a) is to "assure the bankruptcy court's power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction." COLLIER ON BANKRUPTCY ¶ 105.01 (15th ed. rev. 2007). Moreover, section 105(a) of the Bankruptcy Code, in conjunction with other provisions of the Bankruptcy Code, empowers the Court to issue any order "necessary or appropriate" to allow a debtor in possession to fulfill its duty to preserve the going-concern value of the business, including an order authorizing payment in full or in part of certain prepetition claims of unsecured creditors prior to confirmation of a plan. *See CoServ*, 273 B.R. at 496–97 (court may use section 105(a) to allow the payment of prepetition claims if necessary to performance of debtor in possession's fiduciary duty); *see also In re Mirant Corp., et al.*, 296 B.R. 427, 429–30 (Bankr. N.D. Tex. 2003) (court recognizing that a company operating in chapter 11, especially early in the case, is in a "precarious position", and that serious damage could occur to a debtor's business if prepetition claims could not be paid outside of a confirmed plan).

33. In this Court's opinion in *CoServ*, while the Court articulated a high standard for paying general unsecured creditors outside of the Plan context, the Court noted that an exception existed for certain claims that are priority claims under the Bankruptcy Code. *CoServ*, 273 B.R. at 493. The Court reasoned that the prepayment of priority claims does not raise the same issues as prepayment of select general unsecured claims. Specifically, because priority claims are entitled to payment in full ahead of general unsecured creditors, the only

parties that could be affected by the early and full payment of priority claims are parties that are senior to those priority creditors, particularly professionals (which are entitled to priority status under section 507(a)(1)) and secured creditors. *Id.* at 494. Thus, paying priority claims early in a chapter 11 case, "non-payment of which could impair a debtor's ability to operate," may be justified. *Id.* Other Courts in this Circuit have agreed that prepayment of priority creditors does not implicate the typical concerns that exist for prepaying other general unsecured creditors early in the case, namely that doing so would "(1) effect a different priority scheme than the priorities established by Congress in the Bankruptcy Code . . ., and (2) result in an unfair and impermissible discrimination among holders of general unsecured claims." *CEI Roofing*, 315 B.R. at 60 (citing *CoServ*, 273 B.R. at 494).

34. Under that reasoning, courts routinely authorize pre-plan payment of prepetition unsecured claims when such claims are entitled to priority status under the Bankruptcy Code and it is reasonable to believe such payments will benefit the debtor's estate and creditors. *See, e.g.*, *In re CEI Roofing*, 315 B.R. at 59–61. In *CEI Roofing* the court authorized payment of prepetition employee wage claims to the extent that such claims would have been entitled to priority status, and likely payment in full, at the time of plan confirmation, *see* 11 U.S.C. § 503(a)(3), because early payment of the claims was "common sense" in that it prevented the debtors' employees from leaving and thus preserved their businesses. *CEI Roofing*, 315 B.R. at 61. Because claims entitled to priority status will likely be paid in full, courts frequently authorize early payment of priority status claims when such timing and early payment is intended to prevent some harm or to procure some benefit for the estate. *See id.* at 60–61 (stating that as long as higher priority creditors fail to timely object, authorization of early payment in full of priority claims does not trigger concerns of upsetting the priority scheme of

the Bankruptcy Code nor of unfairly discriminating amongst general unsecured creditors); *see also CoServ*, 273 B.R. at 483 (implying that a bankruptcy court may authorize early payment of prepetition claims accorded priority treatment in instances where nonpayment could impair a debtor's ability to operate); *Equalnet Comms. Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (stating that a court may authorize pre-plan payment of certain priority status claims, to the extent the Bankruptcy Code affords priority status to such claims, because "the need to pay these claims in an ordinary course of business time frame is simple common sense").

35. Under the circumstances of this prepackaged case, the same principles that support the conclusions in *CoServ* and *CEI Roofing* that payment of prepetition claims may not be prohibited – *i.e.*, the fact such payment does not upset the priority scheme or result in discrimination among holders of general unsecured claims – support a conclusion that the payment of the Payable Claims should be authorized, even though they are not all priority claims. Specifically, because all creditors are being paid in full under the Prepackaged Plan, none of them are prejudiced or have their priorities affected as a result of the payment of the Payable Claims. On the contrary, the creditors will benefit from the enhanced value of the estate that results from paying those claims, as described below.

36. In addition to the fact that paying the Payable Claims will not disrupt priorities because all creditors are being paid in full under the Prepackaged Plan, the payment of the Payable Claims is also supported by the fact that, like payments to the debtors' employees in *CEI Roofing*, a significant portion of such claims are, in fact, entitled to priority, irrespective of their treatment under the Prepackaged Plan. Specifically, many of the Payable Claims in this case are entitled to priority status and payment in full pursuant to section 503(b)(9) of the Bankruptcy Code, because such claims arise from the delivery of goods to the Debtor, in the

ordinary course of business, within the 20-day period preceding the Commencement Date. Section 503(b)(9) provides that:

> After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—
> . . . .
> (9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under [title 11] in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 U.S.C. § 503(b)(9). Moreover, as described above, some of the Payable Claims would be entitled to priority as secured claims, as a result of mechanics liens or similar liens arising under state law. Therefore, authorization of payment of many of the Payable Claims that are priority claims is directly supported by *CoServ*, *CEI Roofing*, and similar cases that allow for early payment of priority claims on the basis that their pre-plan payment is just a matter of timing.

37. Many courts have authorized chapter 11 debtors to make payment in full or in part of the prepetition claims of nonpriority general unsecured creditors where necessary to preserve or enhance the value of the debtor's estate to the benefit of all creditors. *See, e.g.*, *In re Just for Feet, Inc.*, 242 B.R. 821 (D. Del. 1999) (authorizing payment of certain critical trade vendors); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15 (M.D. Fla. 2005) (authorizing payment of amounts owing to certain critical vendors); *Mirant Corp.*, 296 B.R. at 429–30 (granting chapter 11 debtors authorization to pay prepetition claims of certain classes of "critical" vendors); *CoServ*, 273 B.R. at 497 (noting that "it is only logical that the bankruptcy court be able to use section 105(a) of the Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate").[5]

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[5] *See also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175, 177 (Bankr. S.D.N.Y. 1989) ("The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.") (citation omitted); *see also In re Lehigh & New England Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that the "doctrine of necessity" permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their

38. While the Debtor recognizes that Courts in this district do not always agree with the conclusions of those cases, the cases are important in that they recognize that there are times where payment of prepetition claims provides a real benefit to the estate. In this case, the benefit to the estate combined with the fact that the priority scheme will not be affected by the payment of the Payable Claims due to the Prepackaged Plan justifies the payment of the Payable Claims.

39. The court in *CoServ* acknowledged that there are occasions when a debtor in possession's duty to preserve the business "can only be fulfilled by the preplan satisfaction of a prepetition claim." 273 B.R. at 497. Payment of prepetition claims is necessary, and may be authorized, when it is established that (1) it is critical the debtor deal with the claimant, (2) a failure to deal with the claimant risks probable harm or eliminates an economic advantage disproportionate to the amount of the claim, and (3) there is no practical or legal alternative to payment of the claim. *Id.* at 498. The *CoServ* Court provided an illustrative list of situations where payment of prepetition obligations by a debtor in possession may be a necessary predicate to preservation of the business. For example, the Court noted that "[c]laims may require payment to avoid loss of a license through the exercise of a jurisdiction's police power." *Id.* at 497. In addition, prepetition warranty or refund claims of consumer customers fell into this category because, if not honored, they "could so harm the debtor's good will as to destroy its going concern value." *Id.* The Court stated that, "like employees, the bankruptcy court cannot force consumers to deal with the debtor, nor is there any practical alternative to satisfying warranty or

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pre-reorganization claims shall have been paid"); *In re Boston & ME. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor's continued operation); *CoServ*, 273 B.R. at 500 (permitting chapter 11 debtors to pay the claim of a prepetition general unsecured creditor in full because the "[d]ebtors very likely must deal with [such creditor] or risk harm to their estates or their going concern value").

refund claims." *Id.* The Court also noted that where "payment of a prepetition unsecured claim is the only means to effect a substantial enhancement of the estate . . . payment would be justified." *Id.*

40. In the present case, absent continuity of payment of the Payable Claims in the ordinary course of business, the Debtor's business will be harmed. The Debtor's inability to maintain existing terms with vendors could cause disruptions to its ability to operate a professional baseball team, its ability to sell concessions and merchandise, and other basic business operations attendant to the operations of a Major League Baseball team that enhance the value of the estate. Although some vendors are under contracts that require them to continue to supply goods or services to the Debtor, many are not. And although there may be alternate suppliers or service providers, taking the time to locate and select the right replacement vendors and negotiate terms with them would inevitably cause disruption, especially in the busy baseball season. Even negotiating with each existing vendor regarding providing payment security in the form of cash on delivery or a deposit would take time. Furthermore, even the vendors under contract may cease providing necessary goods or services notwithstanding the automatic stay, causing havoc and disruption until the Debtor can take them into Court to enforce the automatic say.

41. Given the nature of the Debtor's business – the operations of a Major League Baseball team – any cessation in the delivery of goods and services to the Debtor, even for a short period of time, would imperil the Debtor's restructuring efforts and damage the goodwill established with its customers. This is especially so now, in the middle of the busy baseball season, when the Texas Rangers play a game almost every single day. Delays in the delivery of goods or services could, for example, leave the team without the proper equipment to

play, or could leave visitors without certain amenities that they not only expect at the park, but that provide additional sources of income for the Debtor. The Debtor cannot risk alienating or losing valuable customers during the expected short period of this chapter 11 case. The risk of disruption is one the Debtor should not have to take under the facts of this case.

42. Paying the Prepetition Creditors in the ordinary course of business further minimizes disruption to the Debtor's operations by preventing the initiation of reclamation claims, adversary proceedings and other motions filed by the Prepetition Creditors seeking payment of their prepetition claims, and ensuring Prepetition Creditors agree to continue supplying the Debtor postpetition under current trade terms. Maintaining current trade terms allows the Debtor to avoid the inherent operational inefficiencies of paying cash on demand and managing billing processes for numerous vendors that require cash in advance or shorten their trade terms to less than a week.

43. The relief requested herein is appropriate because it spares the Debtor the expense and time required to analyze each Payable Claim to determine which amounts are payable as postpetition administrative expenses, which amounts are subject to administrative priority under section 503(b)(9), and which amounts should be held back until effectuation of the Prepackaged Plan. The *Mirant* framework, which allows the Debtor to pay certain critical prepetition claims after an exacting analysis of whether the *CoServ* factors are met, while necessary in most cases to justify the extraordinary relief of paying critical vendors, is not justified here. Engaging in such a time-consuming analysis is unnecessary in light of the anticipated short duration of this chapter 11 cases and the fact that the Prepackaged Plan provides for the payment in full to holders of claims in all Classes, as described herein.

44. For the foregoing reasons, the benefit to the Debtor of paying the Payable Claims is substantial, and the authority to pay those claims will enable the Debtor to carry out its fiduciary duty of preserving the value of the estate under section 1107(a) of the Bankruptcy Code. The Debtor has reached agreement in principle with the [Purchasers] on a reorganization plan. Now, the paramount goal of parties in interest is to protect the value of the Debtor's business during the pendency of this chapter 11 case by preventing operational disruptions. The relief requested herein preserves the value of the Debtor's estate by (i) ensuring that the Debtor has access to the goods and services that it needs to remain stable and (ii) enabling the Debtor to maintain good relationships with its trade creditors to enhance value and allow for a smooth transition of the business to the Purchaser, and is thus supported by sections 1107(a) and 105(a) of the Bankruptcy Code.

45. In fact, courts have routinely authorized payment of prepetition claims in the context of prenegotiated and prepackaged chapter 11 cases in this and other districts. *See, e.g., In re Integrated Electrical Services, Inc.*, Ch. 11 Case No. 06-30602 (BJH) (Bankr. N.D. Tex. Feb. 14, 2006) [Docket No. 56]; *In re Electrical Components International, Inc.*, Ch. 11 Case No. 10-11054 (KJC) (Bankr. D. Del. March 30, 2010) [Docket No. 41]; *In re NTK Holdings, Inc.*, Ch. 11 Case No. 09-13611 (KJC) (Bankr. D. Del. Nov. 19, 2009) [Docket No. 123]; *In re Vertis Holdings, Inc.*, Ch. 11 Case No. 08-11460 (CSS) (Bankr. D. Del. July 16, 2008) [Docket No. 49]; *In re Hilex Poly Co. LLC*, Ch. 11 Case No. 08-10890 (KJC) (Bankr. D. Del. May 7, 2008) [Docket No. 37]; *In re Holley Performance Prods., Inc.*, Ch. 11 Case No. 08-

10256 (PJW) (Bankr. D. Del. Mar. 5, 2008) [Docket No. 107]; *In re DJK Residential LLC*, Ch. 11 Case No. 08-10375 (JMP) (Bankr. S.D.N.Y. Feb. 5, 2008) [Docket No. 47].[6]

46. Furthermore, recognizing that in prepackaged chapter 11 cases such as this Chapter 11 Case, the pre-plan payment of prepetition claims is often justified, the Bankruptcy Court for the Southern District of New York has incorporated a motion to pay prepetition claims of creditors whose claims will be paid in full in its prepackaged bankruptcy guidelines for first-day motions. *See* S.D.N.Y. Procedural Guidelines for Prepackaged Chapter 11 Cases (Admin. Order 387) § VI.C.16. Accordingly, the Court should grant this Motion.

Reservation of Rights

47. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of the Debtor's or any party in interest's rights to dispute any claim under applicable law, or (iii) an assumption or rejection of any agreement, contract, program, policy or lease between the Debtor and any third party under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, (i) the Debtor will not be required to make any of the payments authorized herein, and (ii) any payment made pursuant to the Court's order shall not be intended as nor construed as an admission to the validity of any claim or a waiver of the Debtor's rights to dispute such claim subsequently. Finally, the relief requested herein shall not oblige the Debtor to accept any services, or the shipment of and goods, or prevent the Debtor from returning or rejecting goods.

[6] Because of the voluminous nature of the orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon request of Debtor's counsel.

Request for Authority for Banks to Honor and Pay Checks Issued and Electronic Funds Transfers Requested to Pay Prepetition Creditors

48. As part of its cash management system, the Debtor maintains disbursement accounts (collectively, the "Disbursement Accounts") at various banks and other financial institutions (collectively, the "Banks"). The Debtor draws upon funds in its Disbursement Accounts to satisfy obligations arising from the Payable Claims. The Debtor requests that the Court authorize and direct the Banks and any other applicable financial institutions to receive, process, honor, and pay any and all checks drawn or electronic funds transferred to pay the Payable Claims, whether such checks were presented prior to or after the Commencement Date. The Debtor also seeks authority to issue new postpetition checks, or effect new electronic funds transfers, on account of such claims to replace any prepetition checks or electronic funds transfer requests that may be dishonored or rejected as a result of the commencement of the Debtor's chapter 11 cases. The Debtor submits that it has sufficient liquidity to pay such amounts as they become due in the ordinary course of the Debtor's businesses.

The Debtor Has Satisfied Bankruptcy Rule 6003

49. Bankruptcy Rule 6003 provides that to the extent "relief is necessary to avoid immediate and irreparable harm," a Bankruptcy Court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty-one days after the Commencement Date. As described herein and in the Fischer Declaration, the Debtor's business operations require the uninterrupted provision of goods and services from the Prepetition Creditors in order to operate the professional baseball team and provide amenities for customers. Accordingly, the Debtor submits that the relief requested herein is necessary to avoid immediate

and irreparable harm, and, therefore, the requirements of Bankruptcy Rule 6003 for expedited relief is satisfied.

The Relief Requested is Appropriate

50. The requested relief is further supported by the prepackaged nature of these cases. As set forth above and in greater detail in the Fischer Declaration, the Prepackaged Plan contemplates the payment of all classes in full, in cash, or reinstates the claims and equity interest of all classes. The most critical and complex task required to effectuate a successful reorganization – the negotiation and formulation of a chapter 11 plan of reorganization – has already been accomplished. Thus, the Debtor respectfully submits that given the backdrop of these cases, the relief requested herein is appropriate inasmuch as such relief will assist the Debtor to move towards expeditious confirmation of the Prepackaged Plan with the least possible disruption or harm to its business. Based on the foregoing, the Debtor submits that the relief requested is necessary and appropriate, is in the best interests of its estates and creditors, and should be granted in all respects.

Notice

51. No trustee, examiner or statutory creditors' committee has been appointed in this chapter 11 case. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) the Debtor's thirty largest unsecured creditors; (iii) counsel to the Purchaser; (iv) counsel to Major League Baseball, (v) counsel to the Major League Baseball Players Association (vi) counsel to JPMorgan Chase Bank, N.A., as administrative agent under the First Lien Credit Facility, (vii) counsel to GSP Finance LLC, as successor in interest to Barclays Bank PLC, as administrative agent under the Second Lien Credit Facility; and (viii) the Banks. The Debtor respectfully submits that no further notice of this Motion is required.

No Previous Request

52. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtor respectfully request entry of the proposed order granting the relief requested herein and such other and further relief as is just and proper.

Dated: May 24, 2010
Fort Worth, Texas

/s/ Martin A. Sosland

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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.	:	

INTERIM ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO PAY PREPETITION CLAIMS OF CERTAIN CREDITORS IN THE ORDINARY COURSE OF BUSINESS

Upon the motion (the "Motion"), dated May 24, 2010, of Texas Rangers Baseball Partners, as debtor and debtor in possession in the above-captioned chapter 11 case (the "Debtor"), pursuant to sections 105(a) and 363(b) of the Bankruptcy Code,[1] for entry of an interim order (the "Interim Order") and a final order authorizing, but not directing the Debtor to

[1] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

pay certain prepetition creditors in the ordinary course of business, all as more fully described in the Motion; and upon consideration of the Declaration of Kellie L. Fischer in Support of the Debtor's Chapter 11 Petition and Requests for First Day Relief (the "Fischer Declaration"); and the Court having considered the Motion at an interim hearing on _____, 2010 (the "Interim Hearing"); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due and proper notice of the Interim Hearing to consider the relief requested therein having been provided to: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) the Debtor's thirty largest unsecured creditors; (iii) counsel to the Purchaser; (iv) counsel to Major League Baseball; (v) counsel to the Major League Baseball Players Association; (vi) counsel to JPMorgan Chase Bank, N.A., as administrative agent under the First Lien Credit Facility; (vii) counsel to GSP Finance LLC, as successor in interest to Barclays Bank PLC, as administrative agent under the Second Lien Credit Facility; and (viii) the Banks (collectively, the "Notice Parties"), and no further notice being necessary; and the legal and factual bases set forth in the Motion establishing just and sufficient cause to grant the relief requested therein; and the relief granted herein being in the best interests of the Debtor, its estate, creditors, and all parties in interest; and the relief granted herein being necessary to avoid immediate and irreparable harm; and the Court having held the Interim Hearing with the appearances of interested parties noted in the record of the Interim Hearing; and upon the entire record and all of the proceedings before the Court, the Court hereby ORDERS that:

1. The Motion is granted to the extent set forth herein on an interim basis.

2. Pursuant to this Interim Order, the Debtor is authorized, but not required, to pay all amounts due for liquidated, noncontingent, and undisputed prepetition amounts owed to Prepetition Creditors on account of the Payable Claims on terms that are at least as favorable as the terms of such obligations existing on the date of the commencement of these cases (the "Commencement Date") that become due and payable by the Debtor prior to entry of a final order on the Motion (the "Interim Period") *provided, however*, that if any such Prepetition Creditor refuses to continue to supply goods and services to the Debtor during the pendency of these cases on trade terms that are at least as favorable as those existing on or prior to the Commencement Date, consistent with past practice, or satisfactory to the Debtor in its business judgment, the Debtor may obtain the relief provided in paragraph 3 below.

3. In the event that a Prepetition Creditor does not maintain or reinstate trade terms that are at least as favorable as those existing on or prior to the Commencement Date or consistent with past practice during the pendency of these cases, or does not maintain trade terms agreed to by the Debtor, any payments made pursuant to this Order after the Commencement Date shall be, in the Debtor's sole discretion and subject to the rights of all parties in interest, either (i) deemed applied to postpetition amounts payable to such Prepetition Creditor or (ii) recoverable by the Debtor as unauthorized postpetition transfers under section 549 of the Bankruptcy Code or other applicable bankruptcy or non-bankruptcy law.

4. During the pendency of these cases, the Debtor is only authorized to pay those Payable Claims that (i) were, as of the Commencement Date, due and owing or (ii) become due and owing (without regard to any acceleration of payment arising as a result of the commencement of these chapter 11 cases) after the Commencement Date.

5. The undisputed obligations of the Debtor for goods and services received by the Debtor after the Commencement Date shall be afforded administrative expense priority status pursuant to section 503(b) of the Bankruptcy Code and are not Payable Claims addressed by this Order.

6. The Debtor's banks or other financial institutions are authorized and directed to process, honor, and pay any checks drawn or electronic funds transfers requested on the Debtor's account to pay the Payable Claims, and the costs and expenses incident thereto, whether those checks or electronic funds transfer requests were presented prior to or after the Commencement Date, *provided however*, that such checks or electronic funds transfers are identified by the Debtor as relating directly to the payment of the Payable Claims authorized to be paid pursuant to this Order, in each case solely to the extent that there exist sufficient funds to make such payments or other transfers; *provided* that in no event shall any such bank or other financial institution that takes any such action either (i) at the direction of the Debtor, (ii) in good faith belief that the Court has authorized such action consistent with the implementation of reasonable item handling procedures, or (iii) as a result of an innocent mistake made despite the implementation of reasonable item handling procedures, be deemed in violation of this Order or have liability in connection therewith.

7. The Debtor is authorized to issue replacement checks, resubmit electronic funds transfer requests, or otherwise make payment to any Prepetition Creditor on account of the Payable Claims authorized to be paid pursuant to this Order without the need for further Court approval.

8. Nothing herein constitutes (i) an admission as to the validity of any claim against the Debtor or (ii) a waiver of the Debtor's or any party in interest's rights to subsequently dispute any of the Payable Claims under applicable nonbankruptcy law.

9. Nothing contained in the Motion or in this Order (i) constitutes an assumption or rejection of any executory contract or agreement between the Debtor and any third party or (ii) requires the Debtor to make any of the payments authorized herein.

10. Any objections to the Motion ("Objections") on a final basis shall be in writing, filed with the Clerk of the United States Bankruptcy for the Northern District of Texas, Fort Worth Division together with proof of service thereof, set forth the name of the objector, the nature and amount of any claim or interest asserted by the objector against the estate or property of the Debtor, and state the legal and factual basis for such Objection. Any such Objections should be served upon the following parties so as to be received no later than _____ _.m. (Central Time) on _____, 2010 at __:__ _.m. (the "Objection Deadline"): (i) counsel to the Debtor, Weil, Gotshal & Manges LLP, 200 Crescent Court, Suite 300, Dallas, Texas 75201, Attn: Martin A. Sosland, Esq. and Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Ronit J. Berkovich, Esq.; (ii) counsel to the Purchaser, Foley & Lardner LLP, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, Attn: Mary K. Braza, Esq. and Kevin R. Schulz, Esq. and Foley & Lardner LLP, 321 North Clark Street, Suite 2800, Chicago, Illinois 60610, Attn: Michael J. Small, Esq.; (iii) counsel to the Purchaser, Barlow Garsek & Simon, LLP, 3815 Lisbon Street, Fort Worth, Texas 76107, Attn: Robert A. Simon, Esq.; (iv) counsel to the Purchaser, Sherrard, German & Kelly, P.C., 28th Floor, Two PNC Plaza, 620 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Attn: David J. Lowe, Esq.; (v) counsel to the Committee, if one shall have been appointed; (vi) the U.S. Trustee, 1000 Commerce Street,

Room 976, Dallas, Texas 75242, Attn: Lisa L. Lambert, Esq.; (vii) counsel to JPMorgan Chase Bank, N.A., Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022, Attn: Ronan Wicks, Esq. and David Teh, Esq.; (viii) counsel to GSP Finance LLC, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019, Attn: Jason P. Young, Esq.; (ix) counsel to MLB, Paul Weiss Rifkind Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Stephen J. Shimshak, Esq., Jordan E. Yarett, Esq. and Philip A. Weintraub, Esq.; and (x) the Office of the Commissioner of Baseball, 245 Park Avenue, New York, New York 10167, Attn: Thomas J. Ostertag, Esq.

11. If an Objection to the Motion is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the Court may enter a final order approving the Motion without a hearing.

12. Rule 6003 of the Federal Rules of Bankruptcy Procedure has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor.

13. The Debtor shall serve this Order within three business days of its entry on the parties in interest identified in Local Rule 2002.1(b), including the Notice Parties.

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

15. The terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

###END OF ORDER###