

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In Re:)	Case No. 10-43400-dml
)	Chapter 11
TEXAS RANGERS BASEBALL)	
PARTNERS,)	Fort Worth, Texas
)	Tuesday, June 1, 2010
Debtor.)	1:15 p.m. Docket
)	
)	STATUS CONFERENCE
)	
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For GSP Finance, LLC: <i>(Telephonic Appearance)</i>	John Ford Thomas K. Schulte Jason Young CLIFFORD CHANCE U.S., LLP 31 West 52nd Street New York, NY 10019-6131 (212) 878-8134
For the Office of the Commissioner of Baseball: <i>(Telephonic Appearance)</i>	Diane Meyers PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP 1285 Avenue of the Americas New York, NY 10019-6064 (212) 373-3133
For the Office of the Commissioner of Baseball: <i>(Telephonic Appearance)</i>	John Bromberg STUTZMAN BROMBERG ESSERMAN & PLIFKA, PC 2323 Bryan Street, Suite 2200 Dallas, TX 75201 (214) 969-4900
For the Debtor:	Martin A. Sosland Vance Beagles Yolanda Garcia WEIL, GOTSHAL & MANGES LLP 200 Crescent Court, Suite 300 Dallas, TX 75201-6950 (214) 746-7730

1 APPEARANCES, cont'd.

2 For the Debtor: Ronit J. Berkovich
3 WEIL, GOTSHAL & MANGES LLP
4 767 Fifth Avenue
New York, NY 10153-0119
(212) 310-8534

5 For Ad Hoc Group of First Daniel C. Stewart
6 Lien Holders: VINSON & ELKINS LLP
Trammell Crow Center
7 2001 Ross Avenue, Suite 3700
Dallas, TX 75201-2975
8 (214) 220-7761

9 For Ad Hoc Group of First Andrew M. LeBlanc
Lien Holders: MILBANK, TWEED, HADLEY & MCCLOY
LLP
10 International Square Building
11 1850 K Street, NW
Washington, DC 20006
12 (202) 835-7574

13 For Ad Hoc Group of First Dennis Dunne
Lien Holders: MILBANK, TWEED, HADLEY & MCCLOY,
LLP
14 One Chase Manhattan Plaza
15 New York, NY 10005-1413
(212) 530-5770

16 For the U.S. Trustee: Meredyth Kippes
17 OFFICE OF THE UNITED STATES TRUSTEE
1100 Commerce Street, Room 976
18 Dallas, TX 75242
(214) 767-8967

19 For Rangers Baseball Robert A. Simon
20 Express, LLC: Zack Garsek
BARLOW GARSEK & SIMON LLP
21 3815 Lisbon Street
Fort Worth, TX 76107
22 (817) 731-4500

23 For Rangers Baseball Michael J. Small
Express, LLC: FOLEY & LARDNER LLP
24 321 North Clark Street, Suite 2800
Chicago, IL 60610-4764
25 (312) 832-5832

1 APPEARANCES, cont'd.

2 For RTKL Associates, Inc. Jeffrey Fine
3 and Vratsinas Construction K&L GATES LLP
4 Company: 1717 Main Street, Suite 2800
Dallas, TX 75201-7342
(214) 939-5567

5 For JPMorgan Chase: Michael Rochelle
6 Scott DeWolf
7 ROCHELLE MCCULLOUGH LLP
8 325 N. St. Paul St., Suite 4500
Dallas, TX 75201
(214) 953-0182

9 For JPMorgan Chase: Joseph S. Faviani
10 Mitchell Seider
11 LATHAM & WATKINS LLP
53rd at Third 855 Third Avenue
New York, NY 10022-4834
(212) 906-1200

12 For GSP Finance, LLC: Holland N. O'Neil
13 GARDERE, WYNNE AND SEWELL LLP
14 1601 Elm Street, Suite 3000
Dallas, TX 75201
(214) 999-4961

15 For the Office of the Sander Esserman
16 Commissioner of Baseball: Peter D'Apice
STUTZMAN BROMBERG ESSERMAN &
17 PLIFKA PC
2323 Bryan Street, Suite 2200
18 Dallas, TX 75201
(214) 969-4900

19 For the Office of the Stephen J. Shimshak
20 Commissioner of Baseball: William B. Michael
Susanna M. Buergel
21 PAUL, WEISS, RIFKIND, WHARTON &
GARRISON, LLP
22 1285 Avenue of the Americas
New York, NY 10019-6064
23 (212) 373-3133

24

25

1 APPEARANCES, cont'd.

2 For Major League Baseball Ian Roberts
3 Players Association: BAKER BOTTS LLP
4 2001 Ross Avenue
Dallas, TX 75201
(214) 953-6719

5 For Alexander Rodriguez: Joseph J. Wielebinski, Jr.
6 MUNSCH, HARDT, KOPF, & HARR, P.C.
7 3800 Lincoln Plaza
500 North Akard Street
Dallas, TX 75201-6659
8 (214) 855-7561

9 Court Recorder: Sandy Maben
10 UNITED STATES BANKRUPTCY COURT
510 W. 10th Street
Fort Worth, TX 76102
11 (817) 333-6015

12 Transcription Service: Kathy Rehling
13 209 Bay Circle
Coppell, TX 75019
14 (972) 304-1998

15
16
17
18
19
20
21
22
23
24

25 Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 FORT WORTH, TEXAS - JUNE 1, 2010 - 1:17 P.M.

2 THE COURT: Please be seated. All right. We have the
3 Texas Rangers Baseball Partners case. This is a status
4 conference. Let me call the telephone roll first, and then
5 I'll ask for in-court appearances.

6 First, we have Mr. Ford for GSP Finance?

7 MR. YOUNG: Yes, hi. It's John Ford and Jason Young
8 from Clifford Chance, and Tom Schulte, for GSP Finance.

9 THE COURT: All right. And we have Ms. Meyers for the
10 Office of the Commissioner of Baseball?

11 MS. MEYERS: Yes, Your Honor. Thank you. Diane
12 Meyers of Paul Weiss Rifkind Wharton & Garrison on behalf of
13 Major League Baseball.

14 THE COURT: And Mr. Bromberg also for the Commissioner
15 of Baseball?

16 MR. BROMBERG: Present, Your Honor.

17 THE COURT: All right. Could I have appearances in
18 the courtroom, please?

19 MR. SOSLAND: Good afternoon, Your Honor. Martin
20 Sosland, Ronit Berkovich, Vance Beagles and Yolanda Garcia for
21 the Debtor, Texas Rangers Baseball Partners.

22 MR. STEWART: On behalf of the Ad Hoc Group of First
23 Lien Lenders, Your Honor, Dan Stewart of Vinson & Elkins and
24 Andrew LeBlanc and Dennis Dunne of Milbank.

25 MS. KIPPES: Good afternoon, Your Honor. Meredyth

1 Kippes on behalf of the United States Trustee.

2 MR. SIMON: Good afternoon, Your Honor. Robert Simon,
3 Zack Garsek and Michael Small for Rangers Baseball Express,
4 LLC.

5 MR. FINE: Good afternoon, Your Honor. Jeffrey Fine
6 on behalf of Vratsinas Construction Company and RTKL
7 Associates, Inc.

8 MR. ROCHELLE: Good afternoon, Your Honor. Michael
9 Rochelle and Mitchell Seider, Joseph Faviani and Scott DeWolf
10 for JPMorgan Chase, the agent bank.

11 MS. O'NEIL: Good afternoon, Your Honor. Holly O'Neil
12 on behalf of GSP Finance. And for purposes of today, Your
13 Honor, I have several -- as Mr. Young announced, there are
14 several parties from Clifford Chance on the phone, and I would
15 ask the Court, there may be a topic that comes up that they may
16 need to weigh in on, and if the Court will indulge them today.
17 Thank you.

18 THE COURT: All right.

19 MR. ESSERMAN: Good afternoon, Your Honor. Sandy
20 Esserman and Peter D'Apice of Stutzman Bromberg Esserman &
21 Plifka for MLB. And present also in the courtroom is Steve
22 Shimshak, Susanna Buerger and Bill Michael from Paul Weiss.
23 Thank you.

24 THE COURT: All right.

25 MR. ROBERTS: Good afternoon, Your Honor. Ian Roberts

1 of Baker Botts on behalf of the Major League Baseball Players
2 Association.

3 THE COURT: All right.

4 MR. WIELEBINSKI: Good afternoon, Your Honor. Joe
5 Wielebinski with Munsch Hardt. I represent Alex Rodriguez, a
6 creditor.

7 THE COURT: All right. All right. Well, this -- I
8 guess if I can get this kind of attendance for this, the
9 Rangers ought to be getting better attendance, too, because
10 this is just a status conference.

11 What I wanted to do was establish or discuss what issues,
12 legal issues, we thought we could address earlier in the
13 process than at the time of a confirmation hearing. And I
14 believe where we left things last week was that we expected to
15 have a hearing on June 15th. And during the June 15th hearing,
16 we would, number one, address the disclosure statement to the
17 extent that there might be objections to it. Number two, we
18 would address the United States Trustee's issue respecting
19 impairment of unsecured creditors. Number three, we would
20 address the issue raised by the Ad Hoc Lender Group regarding
21 the Debtor's duty to maximize value in terms of recovery based
22 on estate assets.

23 Was there anything else that we had at that point? Did we
24 have any other issues? Yes, Ms. O'Neil?

25 MS. O'NEIL: Your Honor, to the extent you're

1 outlining issues to discuss today, we had discussed at the last
2 hearing a confidentiality agreement. I think the parties were
3 to attempt to reach agreement on a confidentiality agreement to
4 disclose certain information with Major League Baseball. And
5 so we'd like to add that to the agenda, because, from my
6 clients' perspective, which are the second lien holders, we
7 have not worked out an agreement.

8 THE COURT: All right. Anything else? And what I'm
9 looking for here is it seems to me -- okay, Mr. Dunne?

10 MR. DUNNE: Yes. Good afternoon, Your Honor. Dennis
11 Dunne; Milbank Tweed; on behalf of the Ad Hoc Group of First
12 Lien Lenders.

13 On the impairment point, I thought it included both
14 impairment to the unsecured creditors and impairment of the
15 equity.

16 THE COURT: Well, it was my understanding that the
17 issue raised by the U.S. Trustee was impairment of unsecured
18 creditors by reason of the absence of interest in the plan.
19 And I mean, I'm happy -- one of the purposes of asking is to
20 ask you to formulate issues that we can address. And I think
21 it's important that we do formulate them with some accuracy,
22 because there will not be a briefing schedule where you'll have
23 time to decide about whether or not you're talking about the
24 same thing.

25 So I don't have a problem with the question of whether or

1 not equity is impaired under the plan, addressing that at that
2 time.

3 I'm aware that the lender group has commenced involuntary
4 cases for both of the equity owners of the Debtor, and I have
5 requested -- I've taken the liberty of requesting that those
6 cases be, to the extent that they are not in this Court, be
7 transferred to this Court, because it does not make sense to me
8 to have Judge Nelms hearing those. And especially, as you're
9 all aware, Judge Nelms is going to have another role to play in
10 the case that I hope will be much more fruitful than anything
11 he could do in connection with one of the two equity partners.

12 But if you -- I mean, is this the question of whether, by
13 virtue of retaining their interest in the partnership by virtue
14 of this being an asset sale, since the assets of the
15 partnership will not be there anymore, that the equity owners
16 are in fact impaired? Or is this some other issue?

17 MR. DUNNE: No, it's precisely that, Your Honor.

18 THE COURT: All right.

19 MR. DUNNE: That, unlike in a standalone
20 reorganization case, where the number of shares for equity
21 remain constant -- whatever the value is of the company, it is;
22 they get that entire residual value -- it's clearly being
23 capped here. It's being capped by virtue of the sale, as Your
24 Honor just referenced. So we believe that constitutes
25 impairment and we'd like to address it in the briefing.

1 THE COURT: All right. Well, that's fine. I mean, I
2 think we should.

3 Yes, Mr. Sosland?

4 I didn't mean to cut you off, Mr. Dunne. Were you done,
5 Mr. Dunne?

6 MR. DUNNE: Yes, I was.

7 THE COURT: Okay.

8 MR. DUNNE: Thank you, Your Honor.

9 THE COURT: Thank you. Then, Mr. Sosland?

10 MR. SOSLAND: No issues to add, and I don't know
11 whether this subtracts or not. From the Debtor's perspective,
12 this case should proceed as -- we want the case to proceed as
13 we've proposed that it proceed, moving to confirmation as
14 quickly as possible. And the Court suggested, subject to
15 rulings on June 15th, a July 9th date.

16 THE COURT: Yes.

17 MR. SOSLAND: And to the extent that any issue that
18 was outlined last week or otherwise can be heard by the Court
19 on -- briefed in advance, heard by the Court on the 15th, and
20 we can then dispose of that issue or adjust accordingly, then
21 the Debtors are in favor of doing so.

22 With regard to the impairment issue, we filed a plan that
23 didn't pay interest to general unsecured creditors because at
24 the same time we filed a motion to --

25 THE COURT: Yes. I understand.

1 MR. SOSLAND: -- pay those in full. The UST objected.

2 The UST objected, the Court sustained the objection, and --

3 THE COURT: Right.

4 MR. SOSLAND: -- and if --

5 THE COURT: Well, my assumption --

6 MR. SOSLAND: My point is -- pardon me.

7 THE COURT: My assumption is that if I address the
8 issue and rule that you have to pay interest, you'll pay
9 interest and make a modification to the plan accordingly. It
10 doesn't strike me that this is a debilitating number in this
11 particular case. If you want to -- I mean, I understand what
12 you're saying. Go ahead.

13 MR. SOSLAND: I was -- what you just -- I was going to
14 jump ahead, if you will.

15 THE COURT: All right.

16 MR. SOSLAND: We can amend the plan even in advance to
17 provide that we pay interest to the extent that the Court
18 determines --

19 THE COURT: That's --

20 MR. SOSLAND: You don't have to guess how we would
21 react if the Court rules.

22 THE COURT: Okay. That's -- all right.

23 MR. SOSLAND: We can amend the plan to provide that,
24 to the extent the law requires that we pay --

25 THE COURT: That's fine.

1 MR. SOSLAND: -- interest, that we would pay the
2 interest.

3 THE COURT: And I would typically allow you in a case
4 like this to, at confirmation, amend the plan if I concluded
5 that you were required to provide interest. I don't think it's
6 a negative. I don't think it's an adverse change. I would
7 think it would fall under Rule 3019, and the only people who
8 would be hurt by it are your equity owners, who may or may not
9 be able to advise the Court that they have not changed their
10 views on the plan.

11 So, I mean, I don't care. You can do whatever you want to
12 do on that, Mr. Sosland.

13 MR. SOSLAND: Okay.

14 THE COURT: My guess is, and I'm not deciding the case
15 today, but we've had similar issues, as you know, in other
16 cases, and it's pretty clear that if there is an unsecured
17 claim that was due and payable as of the commencement of the
18 case, that between commencement and effective date, the Debtor
19 must pay interest to the extent provided for by contract, law,
20 or otherwise, in order for the claim to be unimpaired. So you
21 can do what you want to do on that.

22 MR. SOSLAND: I think here what we have most -- by and
23 large, --

24 THE COURT: I think it is -- I think --

25 MR. SOSLAND: -- what we're going to have are claims

1 that come due after --

2 THE COURT: Shh. Shh.

3 MR. SOSLAND: I'm sorry.

4 THE COURT: Yes. I think that this is not a big
5 issue, but you can address it whatever way you want. I don't
6 care. I would ask that you let everybody know if you're going
7 to file a modification of the plan to provide for interest, so
8 that the other folks don't take up the time necessary to brief
9 it. Okay?

10 MR. SOSLAND: That's fine. And the only other point I
11 was going to make, Your Honor, was that, by and large, what we
12 have here are unsecured claims coming due after the
13 commencement --

14 THE COURT: Right.

15 MR. SOSLAND: -- date but prior to confirmation, --

16 THE COURT: Right.

17 MR. SOSLAND: -- that we --

18 THE COURT: Right.

19 MR. SOSLAND: But there may be a few that were due on
20 the --

21 THE COURT: Right.

22 MR. SOSLAND: -- commencement date.

23 There's also, obviously, an overlap between the impairment
24 and the disclosure issue. If there is no one impaired, there
25 isn't -- the purpose of the disclosure -- we would be briefing

1 the --

2 THE COURT: I understand the Debtor's theory on this.

3 MR. SOSLAND: Thank you.

4 THE COURT: All right. Okay.

5 MR. SMALL: Good afternoon, Your Honor. Michael Small
6 on behalf of Rangers Baseball Express.

7 And perhaps as a housekeeping matter, since we've gotten
8 down to correctly referring to the Ad Hoc Group as the Ad Hoc
9 Group and not only with regard to one member, when we refer to
10 the proposed purchaser, that we say Rangers Baseball Express or
11 the Greenberg/Ryan Group for counsel.

12 We agree that the issues that have been brought up today
13 are better handled sooner rather than later, but we are also
14 concerned that there not be an impression before the Court that
15 the deal presented through the plan and the asset purchase
16 agreement is not the highest value, because --

17 THE COURT: I've made no such determination, Mr.
18 Small, nor do I intend to until I need to.

19 MR. SMALL: Thank you, Your Honor.

20 THE COURT: Okay. Anybody else? Ms. O'Neil?

21 MS. O'NEIL: I'm sorry, Your Honor. I didn't get here
22 early enough to get a front-row seat.

23 THE COURT: You should have gotten into the owner's
24 box.

25 MS. O'NEIL: Apparently.

1 I was a little troubled by Mr. Sosland's comments, and want
2 to just ask for clarification. And I had actually tendered the
3 question to Weil Gotshal over the weekend, but I did not get a
4 response. Which is that: is it the Court's anticipation --
5 maybe I should ask it in a positive way. The Court is not
6 expecting that all 1129 issues would be resolved by June 15th,
7 the purpose being that this isn't intended to circumvent, to
8 the extent that there are other confirmation issues when the
9 Court sets a schedule today or whenever on the confirmation
10 schedule of the plan, that the parties would have the
11 opportunity to raise whatever other issues there are.

12 THE COURT: I do not intend to preclude anything along
13 those lines.

14 MS. O'NEIL: Okay.

15 THE COURT: What I want to do -- look. Here's the way
16 I see this. It does not seem to me -- and we're going to talk
17 more about this in a little bit -- and I think the parties
18 would, to a large extent, agree: it does not seem to me that
19 it is beneficial for any of the parties in this case to have
20 this case last two or three years while matters are litigated
21 in this Court. While it might be more interesting than my
22 average Chapter 11 case, I don't think that a baseball club is
23 well-suited to being administered while in the custody of a
24 court.

25 So I would prefer that we, first of all, identify if there

1 are any dispositive issues that would -- particularly of a
2 legal nature; in fact, only have a legal nature, really -- that
3 would derail this plan such that it is facially unconfirmable.

4 By way of example, and this is not the case so far as I
5 know, and I haven't read the plan yet -- sorry, but I haven't
6 read it yet -- but if there were a release in the plan that was
7 a necessary element of the plan, which release was barred under
8 applicable Fifth Circuit precedent, it would be nice to address
9 that and determine that in advance of the confirmation hearing
10 so that you have an answer on that.

11 It seems to me at this point the only potential -- and I've
12 got a couple of others that I want to ask you about and I want
13 you to tell me what you think -- but it seems to me that at
14 this point the only potentially dispositive issue that is being
15 faced here -- and as Mr. Small notes, I haven't determined that
16 this is not the highest and best offer for the club -- but is
17 whether or not the Debtor has an obligation in Chapter 11 to
18 pursue and accept only the highest and best offer.

19 And at this point -- and I would also like you to couch
20 that for me in terms that are not quite so vague, Mr. Stewart.
21 I would like to know -- I would like you to relate them to
22 where you have in mind that they would fall in in a
23 confirmation analysis. What are we talking about? And I'll
24 give you an example. Are we talking about 1129(a)(6), which
25 obviously is inapplicable but has the advantage that, by

1 telling you that, I don't reveal to you what I'm thinking,
2 which I don't want you to know quite yet.

3 So, does that make it clearer what I'm talking about here?
4 This will not prevent you from contesting, for example,
5 feasibility. What I would ask is, if there is something that
6 is facially problematic with this plan, that we deal with this,
7 if we can, in advance. Okay?

8 MS. O'NEIL: And would -- and is that in advance by
9 June 15th? That's just the --

10 THE COURT: That is --

11 MS. O'NEIL: Is the question.

12 THE COURT: On the June 15th schedule.

13 MS. O'NEIL: Okay.

14 THE COURT: I'm not going to prevent you, assuming
15 that we reach confirmation of the plan on July 9th, I'm not
16 going to prevent you from standing up and saying, "We have now
17 realized that Section 1129(a)(1) has not been complied with
18 because the plan contains this provision." I'm going to ask
19 you to explain to me why you didn't raise that before, but I'm
20 not going to preclude you necessarily from raising it. I mean,
21 if you say, "Well, we didn't raise it before because we wanted
22 to blindside the Debtor," then I probably won't let you pursue
23 it at that time. But if you can explain to me, "No, we didn't
24 realize that this would work this way because of such-and-
25 such," fine.

1 Am I making myself clear? In other words, I want the legal
2 issues. I'm not talking about the facts.

3 MS. O'NEIL: I understand.

4 THE COURT: I'm talking about the legal issues at this
5 point. Okay?

6 MS. O'NEIL: Thank you, Your Honor. I mean, that does
7 clarify it of -- for purposes of this --

8 THE COURT: Perhaps not to your satisfaction, but
9 probably --

10 MS. O'NEIL: Perhaps not to my satisfaction.

11 THE COURT: -- as much as you're going to get.

12 MS. O'NEIL: Thank you.

13 THE COURT: Okay. Mr. LeBlanc?

14 MR. LEBLANC: Thank you, Your Honor. Andrew LeBlanc
15 of Milbank Tweed on behalf of the Ad Hoc Group.

16 Your Honor, we -- just responding or adjusting ourselves to
17 the comments Your Honor just made, I think we do envision what
18 has to happen on the 15th, or at least the questions that have
19 been raised as raising evidentiary issues.

20 For example, one of the questions that was raised is: who
21 can speak for equity? I think we need to begin by
22 understanding who has spoken here for equity. And that, in our
23 view, is an evidentiary issue that needs to be presented.
24 Because what we learned last week is there were a few people
25 that it might have been. It was not the one that was

1 testifying, and the two people that it could have been that she
2 identified are people that we don't think are in a position to
3 speak for equity, given their other interests here.

4 THE COURT: Well, let me ask you this, Mr. LeBlanc.
5 And let me cut to the chase here. Is it the position of the Ad
6 Hoc Group that, by virtue of the lending transaction with the
7 partners, that the lenders can speak for equity?

8 MR. LEBLANC: It is, Your Honor.

9 THE COURT: All right.

10 MR. LEBLANC: We do believe that, pursuant to the
11 pledge agreement, we can.

12 THE COURT: All right. All right. Then that's --

13 MR. LEBLANC: And we could have at the time.

14 THE COURT: That's going to be determined basically
15 based on documents, right?

16 MR. LEBLANC: That question, I think, Your Honor, will
17 be, although I do think it has changed now because of the
18 involuntary filing on Friday, and I do think that that -- the
19 question is different now than it was when the Debtors filed
20 the plan.

21 The entities that signed the petition, signed the plan,
22 signed the asset purchase agreement on the eve of bankruptcy,
23 those entities are now debtors in their own right pursuant to
24 the involuntaries, and they won't be before your Court before
25 June 15th. And we don't know what the Debtor's response to

1 that will be. They've given statements over the weekend that
2 it was unsurprising that that happened.

3 But I think that that actually changes the question fairly
4 fundamentally that's before the Court, because I think the
5 question of who could speak for them -- which we view was us,
6 pursuant to the pledge agreement, which we can show you
7 documents that would establish that -- is now different than
8 who can speak for them today, given that they're debtors in
9 their own right.

10 So I think that is -- that question has changed. In our
11 view, it's somewhat overcome by events, as are, in our view, --

12 THE COURT: All right. Well, is it a fair statement,
13 Mr. LeBlanc, that you would like to then add to our agenda for
14 the 15th the question of who can speak for the equity owners of
15 the Debtor, and that you would like an opportunity to present
16 evidence as well as providing briefs on that question?

17 MR. LEBLANC: It is, Your Honor. We would -- we do
18 think -- we think it's necessary to understand, Your Honor, in
19 the first instance, to respond to the question that was posed,
20 who can speak for equity, to understand who did speak for
21 equity when equity chose to enter into this plan. That's an
22 evidentiary question without any -- I don't think there can be
23 fair dispute that that's an evidentiary question.

24 We haven't had discovery, but given what we heard last
25 week, it's not entirely clear who made the decisions to file

1 the team in bankruptcy, and we think that's a fair question
2 with the issues that have been posed.

3 THE COURT: Well, I'm not sure -- I'm not satisfied
4 that I agree with you on that. It's here. If you think the
5 case should be dismissed, then I suppose that's another issue.
6 But that hasn't been raised at all to date. I mean, last week,
7 you were telling me you kind of liked the idea of being here so
8 that you'd have a judge to oversee it. And if you're content
9 to be here, I'm not sure that it matters how we got here.

10 The question, it seems to me, is whether or not equity has
11 properly -- or, whether or not there is, on some basis, there
12 is a reason why the equity partners, either because of your
13 pledge or because they are now alleged debtors, are in a
14 position such that their consent to the plan should be
15 disregarded. Isn't that it?

16 MR. LEBLANC: It is, Your Honor. And I think, to be
17 clear, we're not at this moment in time -- we do like being in
18 front of the Court. We think that's the right place for this
19 issue to be resolved. We're not advocating dismissal of the
20 petition.

21 But the Debtor made -- took a variety of actions on the
22 23rd of May in connection with advocating the plan. The
23 affidavit of Ms. Fischer, which says that the Debtor -- the
24 equity holders support the plan, someone had to make that
25 decision to articulate that. I don't think what we're talking

1 about here is the decision to put the Debtor into bankruptcy,
2 but rather, Your Honor, the decision, as you've articulated it,
3 to support this plan, to support this asset purchase -- to
4 execute the asset purchase agreement, and to move this forward.
5 And I think that --

6 THE COURT: Well, what I'm saying to you is, at this
7 point -- I mean, let's suppose for a minute, *arguendo*, okay,
8 very clear -- I have not looked at your documents; I don't know
9 -- but let's suppose that you have an irrevocable proxy to vote
10 the stock of those two companies, and you can take over the
11 companies and you can now come in and say to me, "Whatever we
12 said before, we're 'unsaying' it, and we now want to oppose
13 this plan." I don't see -- I mean, it seems to me that's --
14 perhaps at that point you can say, "We was robbed," to use a
15 baseball expression --

16 MR. LEBLANC: Uh-huh.

17 THE COURT: -- "by the filing of this to begin with."
18 But I'm going to tell you that, I mean, if you come in and show
19 me that you have now taken over and you have a right to vote
20 the stock and to vote the equity interests in the Debtor, I
21 very probably -- I don't want to speak out of turn, but the
22 odds are pretty good that I'm going to let you vote it and
23 change the vote. I mean, in fact, there hasn't been a vote.

24 MR. LEBLANC: Correct. And under their view of the
25 world, there wouldn't be a vote because of the decisions made

1 prepetition to file the plan of reorganization, in their view,
2 unimpairing equity. So I think the vote that has happened
3 seeks to preclude a later vote by the equity holder. So I --

4 THE COURT: Well, okay.

5 MR. LEBLANC: But if Your Honor --

6 THE COURT: I mean, let me ask you this.

7 MR. LEBLANC: I apologize.

8 THE COURT: And I'm not trying to be difficult. But
9 are you saying that, in your view, you think there is a real --
10 that there is a real likelihood that the corporate formalities
11 have been inadequately observed such that the decisions of the
12 two equity partners to join in the filing of the plan and the
13 asset purchase agreement, that that was not done properly?

14 MR. LEBLANC: Yes, Your Honor. We think that -- we
15 haven't had the benefit of discovery, but we think that there
16 are real questions about those decisions and whether they were
17 permitted under the corporate documents, whether they were
18 *ultra vires*, whether the people making those decisions were
19 necessarily conflicted, given other interests. We think those
20 are all fair questions about who in fact acted and what effect
21 those acts had.

22 And again, Your Honor, this is without the benefit of
23 discovery, which we're seeking from the Debtor in connection
24 with the issues that are to be raised both on the 15th of June
25 and on the 9th of July.

1 And so I think -- the reason, Your Honor, for addressing
2 this is just to make the point that we believe that the issues
3 as we understand them today are quite possibly going to be
4 evidentiary issues and not just legal issues. And I think
5 holding these predicate issues, be they factual or legal, until
6 the 9th of July doesn't, in our view, make a lot of sense. I
7 think we should be --

8 THE COURT: Well, I don't have a problem, as I said,
9 if you -- I will give you an opportunity to present evidence on
10 the 15th. You can still brief the issue based on what you
11 believe the evidence to be. I think that's called a trial
12 brief. And that will do fine for me. And I don't want this to
13 turn into a five-day trial. If it looks like it's going to be
14 a five-day trial, well, we'll revisit that when we get closer
15 to the date.

16 MR. LEBLANC: Your Honor, and I appreciate that. Your
17 Honor, there's another issue that I think we want to touch
18 upon, and this draws in some respects on Mr. Small's comment
19 that they're -- to the effect that the evidence will show or
20 they believe that they're the highest bidder. Your Honor, we
21 have been in contact with other bidders for these assets over
22 the last week, following up on Your Honor's direction to the
23 Debtors of last week with respect to the role of the Debtors in
24 this process.

25 We are prepared, Your Honor, to advise the Court and we're

1 pleased to advise the Court that we've been in contact with a
2 particular bidder who was, in the view of the Debtors, at least
3 at various times, the high bidder for these assets prepetition.
4 That bidder's representatives are here in the courtroom, and
5 that bidder has told us that they're ready, willing and able to
6 participate in an auction of these assets to the extent that
7 it's open, fair and transparent, the requirements we think are
8 necessary under the Bankruptcy Code.

9 THE COURT: Well, and, it seems to me, goes to your
10 maximization of value issue.

11 I do not understand -- it's my understanding of the law
12 that so long as either creditors agree with the treatment and
13 equity owners agree with the treatment or the equity owners and
14 creditors are being fully satisfied within the meaning of the
15 Code, that if the Debtor or the Debtor's equity owners elect to
16 -- and this is what you're going to try to convince I'm wrong
17 on, Mr. LeBlanc -- that if the equity owners say, "Yes, we'll
18 give up some money because we'd rather see this guy own this
19 deal" -- and let's take an example. Okay? We're not talking
20 about this, but let's suppose we had two buyers who wanted to
21 buy this club. And one said, "I'm going to pay \$20 million
22 less or \$30 million less, but I will keep it in Arlington" and
23 the other said, "I want to pay \$30 million more, but I've
24 always wanted to have a team in Anchorage, Alaska. And my plan
25 is, as soon as possible, to get Major League Baseball to

1 approve my moving it there."

2 I think at that point for the owners to say -- for the
3 equity owners to say, "Well, we'd rather take less and know
4 that the club is going to stay here" is not something that I
5 would find improper, per se. But you're going to try to
6 persuade me on the 15th that the Debtors have an obligation to
7 seek the highest and best offer, whether that occurs through an
8 auction -- and how we'd do an auction, I don't know, but we'll
9 get to that on the 15th.

10 MR. LEBLANC: Your Honor, I agree with you to some
11 extent. I think everything Your Honor said was true, up until
12 the point that -- well, when two things were true, or two facts
13 that need to be added to that. The first is that we heard
14 testimony last week that the equity holder itself is an
15 insolvent institution, and therefore the persons who act on
16 behalf of that institution owe their duties to their creditors.
17 And so that debtor, when faced with that same decision, I don't
18 believe can make the decision --

19 THE COURT: All right. All right. And I don't at
20 this point agree or disagree with you.

21 MR. LEBLANC: Right.

22 THE COURT: I understand what you're saying. And I've
23 understood that this was the key dynamic of the case here. But
24 that's something that you're going to have to convince me on
25 one way or another.

1 And that leads to two issues. The first is what duty I can
2 impose on whatever it is that is the insolvent entity -- and
3 that may be the two involuntary or the two alleged debtors, --

4 MR. LEBLANC: Uh-huh.

5 THE COURT: -- or it may be their parent or their
6 parent's parent or Mr. Hicks; I don't know -- but what duty, if
7 any, I can impose on them. And the second issue, it seems to
8 me, is whether or not the Debtor, *qua* debtor, is obligated for
9 the benefit of the creditors of its non-filing parent's parent
10 to maximize value. You're going to have a chance to make that
11 argument.

12 MR. LEBLANC: And Your Honor, I appreciate that. And
13 drawing upon something the Court said a few minutes ago with
14 respect to the timing, none of us believe that it serves the
15 interests of anybody in this case for this case to linger for
16 any length of time in bankruptcy, given the nature of the team.
17 We think, given the willingness of a bidder to compete in this
18 process, --

19 THE COURT: Okay. Look. I don't -- this is a status
20 conference, Mr. LeBlanc, and I don't want -- you're going to go
21 on and argue why I should have an auction. I have not crossed
22 the bridge that I should, must, should or must require an
23 auction in this case. So after you're done, Mr. Sosland is
24 going to get up and then Mr. Shimshak is going to get up and
25 they're going to argue the other side, and I don't want to

1 argue those points yet. Okay?

2 So what I want to do is to identify issues that we can
3 address on the 15th, in an effort to ensure that we don't go
4 through a process that will turn out to be fruitless in terms
5 of arriving at a final disposition of this case. That's my
6 purpose in setting the June 15th hearing. And today, I don't
7 -- I mean, I'm not going to tell them, "You've got to do an
8 auction" today, and I'm not going to tell you that I won't
9 decide later that they should do an auction. Okay? We're not
10 going to decide that today, and I don't want to hear argument
11 on it today. And you know that: --

12 MR. LEBLANC: Right.

13 THE COURT: -- the more you talk, the more they're
14 going to talk.

15 MR. LEBLANC: I understand.

16 THE COURT: Right? I mean, that's what lawyers do,
17 right?

18 MR. LEBLANC: Yes. Absolutely.

19 THE COURT: Okay. So what I want, then: what is
20 there about the issue, other than what we've talked about
21 already, that I need to address?

22 MR. LEBLANC: Well, Your Honor, I think there are two
23 things that would be -- that could be fairly put on the agenda,
24 then, for the 15th.

25 THE COURT: All right.

1 MR. LEBLANC: The first issue is, to the extent that
2 the Court does require an auction or concludes that the
3 Debtor's fiduciary duties obligate them, in the instance of
4 having more than one interested bidder, to go through some
5 auction process, what bid procedures should be in place for
6 such an auction? Because I think delaying the decision until
7 the 15th -- until after the 15th of June to begin the process
8 of establishing bid procedures I don't think benefits the
9 estate or any of the constituencies. So I think that would be
10 a fair question to consider on the 15th.

11 Your Honor, the other question I think that would be fair
12 to consider on the 15th is to understand whether there are
13 people at the Debtor who can act in a nonconflicted way or
14 whether there needs to be a fiduciary put in place at the
15 Debtors and a Chief Restructuring Officer of some sort who can
16 make decisions with respect to the questions that --

17 THE COURT: Okay.

18 MR. LEBLANC: -- we've just been discussing.

19 THE COURT: All right. Well, let me give you two
20 answers. The first is I am not going to establish bidding
21 procedures on June 15th. If I determine that there has to be a
22 methodology for maximizing the value of the Debtor beyond what
23 has already been done, we'll deal with that after the 15th.
24 I'm sorry, but I'm not going to put the parties in a position
25 of developing an alternative to the existing plan that's on the

1 table, and that's what that amounts to. And it may be we'll
2 get there, but we aren't there yet. My guess is the bidders
3 all know what's going on here and that it could be done fairly
4 quickly. And heaven knows, any of the law firms represented in
5 this courtroom today has about 26 forms each of bidding
6 procedures for an asset sale or the sale of an entity. So I'm
7 not going to do that.

8 Secondly, if you think a fiduciary needs to be appointed in
9 this case -- and notwithstanding the 2005 amendments to Section
10 1104, I am inclined to believe that the Code still is biased in
11 favor of leaving a debtor in possession -- if you think
12 something like that needs to be done, there are mechanisms
13 available to you under Section 1104 to move for appointment of
14 a trustee or an examiner, and under Section 1108 to seek an
15 order that otherwise limits the Debtor's authority to manage
16 the business.

17 At this point, at this point, I do not see that there is a
18 need to believe that the Debtor is managing its business
19 improperly at all. I've not heard any evidence to that effect.
20 Ms. Fischer clearly, whether or not she was cognizant of her
21 fiduciary responsibilities in connection with potential
22 financing transactions, it's very clear that she is acutely
23 aware of her responsibilities as an officer of the Texas
24 Rangers Baseball Partners and that she will operate this
25 business properly and in a fashion such that we can all be

1 pleased with the way it goes forward.

2 But if you think we need another fiduciary, there are ways
3 you can raise that. I do not believe that that is something
4 that need be addressed in connection with getting from here to,
5 if we do, a July 9th hearing on confirmation of a plan. And
6 that's all I'm interested in right now.

7 MR. LEBLANC: Okay.

8 THE COURT: Okay?

9 MR. LEBLANC: Your Honor, unless Your Honor wants me
10 to address the issue that you raised earlier with respect to
11 Judge Nelms, or would like to handle that separately, --

12 THE COURT: We're going to talk about that in a
13 minute.

14 MR. LEBLANC: Fair enough.

15 THE COURT: But does anyone else, again, without
16 arguing the issues that we're going to talk about on the 15th,
17 is there anyone else who has an issue that you think is what I
18 would refer to as a gatekeeper issue between now and reaching a
19 plan? Mr. Rochelle? We'll let him talk first.

20 MR. ROCHELLE: I apologize, Your Honor. I'm a little
21 confused. And if I am, I hope maybe some others are and I'm
22 not the goat in the class.

23 The Court has asked for briefing on such issues as may be
24 resolved between now and the 15th of June, or can be addressed
25 between now and the 15th of June and addressed before a

1 confirmation hearing. The question in my mind, then, is where
2 do we go from there? Is the Court then saying that, after the
3 15th, we will -- a process will be set out by the Court for how
4 we will get to wherever the Court deems it appropriate to be
5 heading at that point, be it confirmation, conflagration, you
6 name it?

7 THE COURT: Possibly. I don't know yet. I mean, I
8 don't know what we're going to get to. But among the things
9 that seem possible to me is that the Court would conclude that
10 the plan is not facially unconfirmable and would go forward
11 toward a confirmation hearing. Another possibility would be
12 that the Court would conclude that it could go forward to a
13 confirmation hearing, but at that confirmation hearing the
14 Debtor would be required to demonstrate that, indeed, the
15 Greenberg/Ryan Group's offer is the highest and best offer.
16 The Court might say, "No, it appears at this point that you
17 need to re-shop this deal."

18 I don't know what's going to happen, and I won't know until
19 I know more about the case. You guys are all way ahead of me.
20 Keep that in mind.

21 MR. ROCHELLE: Thank you, Your Honor.

22 THE COURT: Does that help?

23 MR. ROCHELLE: The world -- yes. I felt we were
24 outdriving our lights, and now I think I have a sense of what
25 the Court's sense is.

1 THE COURT: Okay.

2 MR. ROCHELLE: Thank you.

3 THE COURT: All right. Did you want to add something,
4 Mr. Sosland? I have two issues that I want to raise and ask
5 you if they're things that should be addressed.

6 MR. SOSLAND: Your Honor, the -- I won't argue whether
7 or not there should be an auction. You know our position on
8 that.

9 In the colloquy between the bench and Mr. LeBlanc a few
10 minutes ago, there was a suggestion by Mr. LeBlanc that the
11 filing of the involuntaries, of the involuntary petitions
12 against the two general partners, somehow changed the landscape
13 as it relates to the impairment and voting issue. And if the
14 Court expects there will be briefing on that issue as part of
15 the June 11th briefing for the June 15th hearing, and evidence
16 on that, which I think might -- some could be largely
17 documentary, then there's another issue that I think all the
18 parties are aware of but the Court is probably not, because I
19 don't think it was raised in any of the First Day pleadings,
20 but you can't argue one without the other. And that would be
21 whether or not the Court should be adjusting contractual rights
22 that involve not just the Debtor and its creditors or the
23 Debtor's fiduciary duties, but third parties as well. And I
24 refer specifically, Your Honor, to provisions in the loan
25 documents that -- in which each lender acknowledges that the

1 change of control of a major league baseball club, and in
2 particular, with this loan, the Texas Rangers, is subject to --
3 and I'm not going to read it all to Your Honor, but basically
4 the Constitution of Major League Baseball, the rules and
5 regulations --

6 THE COURT: Okay. That was -- you're raising one of
7 the two issues that it seems to me we could add to our list.
8 And one of them is whether or not -- and I understand -- I
9 haven't looked at it, but I understand the Phoenix hockey team
10 addressed this issue to some extent, though it may be different
11 with Major League Baseball than it is with the Phoenix hockey
12 team case. I don't know. You're all way ahead of me, I'm
13 sure.

14 But it seems to me the two issues that we need to consider
15 or we might consider would be whether or not this Court may
16 approve and cause the Debtor to effect a sale that has not been
17 approved by Major League Baseball, and the same thing with
18 respect to, as I understand it, the lenders have restrictions
19 in their documents that, outside of court, at least, have given
20 them some power to prevent a sale of the team other than with
21 their consent.

22 And it seems to me that both of those questions are
23 questions that would be suitable to address on the 15th. That
24 is, number one, whether in any event if Major League Baseball
25 says, "We don't care what the price is. It makes no difference

1 to us. The only person you're going to sell to is the
2 Greenberg/Ryan Group," if that is something that they can
3 indeed enforce in this Chapter 11 case. And similarly, whether
4 the restrictive -- which I understand to be contractual but I
5 don't know, so don't jump on me, Mr. LeBlanc. I haven't seen
6 any of the documents yet. But from what I've seen in the
7 newspaper -- and of course, they're always accurate. By the
8 way, whichever was the reporter that promoted me to District
9 Judge, thank you.

10 (Laughter.)

11 THE COURT: But, in any event, it seems to me that
12 those are questions as to the extent to which those
13 restrictions on the ability of the club to be transferred are
14 going to be enforceable in the Chapter 11 context. Does
15 anybody disagree with that?

16 MR. SHIMSHAK: Your Honor, I'd like to be heard on
17 that point.

18 THE COURT: All right. Mr. Shimshak?

19 MR. SHIMSHAK: Let me take them in order and take them
20 -- and speak with some precision about where we are in this
21 case, first concerning the provisions of the loan documentation
22 and the contention that the lenders are precluded from
23 objecting or opposing the transaction that's on the table by
24 reason of those provisions.

25 It is not necessary at this juncture to implicate those

1 issues under the terms of the present plan, because the
2 position of Major League Baseball as it relates to the
3 structure of the plan is that the plan is providing for full
4 payment of the lenders' claims. They're getting every cent
5 that they're owed under the loan documents. They therefore are
6 not impaired.

7 And they have not filed an objection or stated an objection
8 to the transaction, save for their concern about opening up the
9 process, which I understand that we're not addressing until the
10 15th or some later date.

11 So, in that perspective, I question whether there is a ripe
12 controversy that's justiciable for purposes of dealing with
13 that issue.

14 THE COURT: Well, would you not agree, Mr. Shimshak,
15 that if the sale requires Major League Baseball's approval, and
16 if this Court determines that, that that also disposes of
17 potential controversies down the road? I mean, --

18 MR. SHIMSHAK: I can see --

19 THE COURT: And why --

20 MR. SHIMSHAK: I can see both sides of the issue, Your
21 Honor.

22 THE COURT: All right.

23 MR. SHIMSHAK: I can certainly understand the view
24 that if it's determined in Major League Baseball's favor, then
25 that's a tremendous result and it's very time-saving and

1 everything of the sort. But this is an important issue, and we
2 should think about when, if ever, we have to litigate it. I
3 would -- and it's the same point, I think, on the question of
4 Major League Baseball's approval as it relates to any other
5 potential bid.

6 At present, there is a transaction on the table which Major
7 League Baseball has indicated it does not disapprove. And to
8 get into the weeds a little bit, the approval requirement in
9 Major League Baseball is a three-quarters vote of the owners of
10 the teams. So there is no, at this point, preapproval of Mr.
11 Greenberg. There is an indication, as the papers reflect and
12 as Ms. Fischer's declaration reflects, that Major League
13 Baseball is supporting the effort that's underway here, but it
14 does not rise to the level of an approval at this time. That's
15 a more formal requirement.

16 Again, to --

17 THE COURT: Well, don't you think, though, that the
18 question of the Debtor's duty to maximize value, I mean, if I
19 were the Debtor, one of the things that I'd say to me is,
20 "Look. Whatever duty we have to maximize value is subject to
21 the requirement that any transfer of the club be approved by
22 Major League Baseball, and we know this one or we're confident
23 this one will be approved and we're not so confident the other
24 one will be approved." I'd make that argument, wouldn't you?

25 MR. SHIMSHAK: I understand that. But in that

1 hypothetical, you've touched on some key facts which I think
2 are imperative to any consideration of the issue. You heard
3 Mr. LeBlanc stand here and say that there were bidders who were
4 prepared to come forward and to make offers. But we're not at
5 that point. In that sense, the consideration of this question
6 is purely hypothetical.

7 There is no other offer on the table. There has not been
8 any -- despite the Court's comments last week that the Debtor
9 was free to receive offers, there have been none that have been
10 received. There has been no record of decision-making by the
11 Debtor either way. And while the Court, I think, can fairly
12 speculate about what the thought process of the Debtor might be
13 in that regard, it hasn't taken place. And on June 15th, as we
14 presently stand, --

15 THE COURT: Okay.

16 MR. SHIMSHAK: -- I would suggest --

17 THE COURT: All right. We'll do it your way, Mr.
18 Shimshak.

19 MR. SHIMSHAK: Thank you.

20 THE COURT: We won't touch that issue. And if it
21 winds up extending the case by a month, so be it.

22 MR. SHIMSHAK: Thank you, Your Honor.

23 THE COURT: All right. All right. Anybody have
24 anything else?

25 (No response.)

1 THE COURT: All right. It is my understanding that
2 the parties are of the view that it would be useful for there
3 to be a mediation process, and I have taken the liberty of
4 visiting with my colleague, Judge Russell Nelms, to see if he
5 would participate as a mediator in this case, and he's agreed
6 to do so. And what I propose to do, if there is not an
7 objection -- boy, is that an invitation. What I propose to do
8 is to design an order with Judge Nelms -- actually, I asked him
9 to write an order that would make it satisfactory to him -- and
10 what I'm asking him to do is to mediate at two levels.

11 And one would be if there are operating issues that would
12 involve transactions outside the ordinary course of business
13 during the time that this Debtor is before this Court, and my
14 view is that it would be beneficial for the parties to have a
15 less formal avenue, should there be disagreements about such a
16 transaction, to address the transaction before coming to court,
17 rather than doing it in court. To be blunt with you, what I'm
18 thinking of is that some player transactions, should the team
19 want to engage in them, it might be better to exchange your
20 information other than through a hearing on a motion to enter
21 into a transaction. Okay? So that's one level.

22 And then the other level, though I'm not sure that it's
23 going to do much good, the other level is the hope that the
24 mediator might assist the parties to find common ground such
25 that the Rangers' exit from bankruptcy court could be

1 consensual rather than a matter of dispute.

2 Now, have I correctly -- is that inconsistent with what
3 anyone understood? Mr. Sosland?

4 MR. SOSLAND: No, Your Honor, although the Debtor's
5 belief is that any player transaction that I can conceive of
6 would be an ordinary course transaction. I suppose it could
7 conceivably involve use of cash collateral. But subject to
8 that, we believe that, in the ordinary course of business, that
9 --

10 THE COURT: So you think the acquisition of Mr.
11 Rodriguez was in the ordinary course? Because it sure was an
12 expensive ordinary course transaction.

13 MR. SOSLAND: Sometimes ordinary course transactions
14 are expensive, Your Honor.

15 THE COURT: Yes. Well, I will leave it to you on
16 that, though I will tell you that -- well, I will leave it to
17 you on that. I'm not going to --

18 MR. SOSLAND: I could say I'm fairly --

19 THE COURT: I'm not going --

20 MR. SOSLAND: I'm sorry.

21 THE COURT: I'm not going to express an opinion as to
22 whether or not those things are ordinary course. But my view
23 is, in any event, whether ordinary course or not, there is some
24 value to having some means of communication other than by
25 putting witnesses on the witness stand and examining them. Is

1 that okay?

2 MR. SOSLAND: Yes, Your Honor.

3 THE COURT: Okay. All right. Ms. Kippes?

4 MS. KIPPES: Thank you, Your Honor. The United
5 States Trustee has a couple of points with regard to the
6 mediation. The U.S. Trustee, first, doesn't envision
7 participating in the mediation, but wanted to make, first, a
8 request: that no mediation occur until after the Committee is
9 appointed and has had the opportunity to obtain counsel. We
10 had the Committee formation meeting this Thursday at 10:00 a.m.

11 And second, cognizant of the fact that the Court is going
12 to be out of town for a period of time, to the extent that any
13 emergency hearings need be held, --

14 THE COURT: If there are any emergency hearings, one
15 of my Dallas colleagues will hear them.

16 MS. KIPPES: That would be our request, Your Honor.

17 THE COURT: All right. Judge Nelms understands that
18 this eliminates him as a potential adjudicator of disputes if
19 there should be a need for an emergency hearing.

20 As to the first request, I anticipate that the mediator and
21 the parties will design whatever they believe is an appropriate
22 way to proceed with the mediation. If anything occurs in the
23 next 48 hours, I doubt that it will be dispositive of the case.
24 I would encourage -- and this is up to you. I mean, I'm aware
25 that the parties have some disagreement about whether the

1 mediator should defer consideration of -- or, any effort to
2 find common ground among the parties until after the June 15th
3 hearing, or should begin now. And my suggestion would be that
4 you see what Judge Nelms thinks on that. And I'm guessing that
5 he would like to at least start not necessarily mediating but
6 at least talking about how to talk sometime in the fairly near
7 future.

8 In other words, it's my understanding there's also some
9 question about who should participate in this, and there are a
10 number of potential participants, and it would be my
11 expectation that Judge Nelms would attempt to resolve who
12 should be involved in what discussions fairly early on, even
13 though those discussions may not begin. All right?

14 MS. KIPPES: Okay.

15 THE COURT: And so -- but I'm not going to tell him
16 what to do.

17 MS. KIPPES: Okay.

18 THE COURT: Okay?

19 MS. KIPPES: Thank you, Your Honor.

20 THE COURT: Okay. Anything else? Mr. Rochelle?

21 MR. ROCHELLE: The Court may not remember this, but in
22 the *Mirant* case, Your Honor appointed Professor Warren as a
23 mediator between the Debtor and --

24 THE COURT: I remember it very well. And if Professor
25 Warren were not currently employed by a gentleman named Obama,

1 I would have considered her, possibly, for this equally
2 difficult mediation.

3 MR. ROCHELLE: Speaking as a participant in that
4 mediation in Boston, I would remind the Court that one of the
5 things Your Honor did was tell the mediator that if agreement
6 were not achieved, that one of the mediator's duties was to
7 report to this Court why it was not achieved. I think that
8 might be useful here as well.

9 THE COURT: Well, what I'm going to do, what I intend
10 to do in the order -- and I'm going to pass on the order; it
11 will be my order, though I've asked Judge Nelms to draft it --
12 is I am going to direct that the parties will participate in
13 whatever efforts the mediator engages in in good faith, and the
14 mediator will tell me if they did not.

15 MR. ROCHELLE: Well enough. Thank you, Your Honor.

16 THE COURT: All right. Yes, Mr. Small?

17 MR. SMALL: Your Honor, again, Michael Small on behalf
18 of Rangers Baseball Express.

19 It's not our intention to ask Your Honor to inform Judge
20 Nelms how to run his mediation, but I did want the record to be
21 very clear that we believe we should be included in that
22 mediation and that it should take place as soon as possible.

23 THE COURT: Well, he -- as I say, he's going to -- I
24 can tell you what I would do if I were he, which is I would
25 probably start with the Ad Hoc Lender Group, the second lien

1 holder, the Debtor, and Major League Baseball, and then decide
2 whom to add. But I don't -- and that may include you. I don't
3 know whether it will or not. I think that that's going to be,
4 in part, up to what happens in those discussions.

5 And I'm not trying to be difficult about that. I just
6 think, if I were doing it, that is where I would start, not in
7 terms of saying, "Okay, let's try to cut a deal here without
8 Mr. Small here" but rather in terms of "Who are we going to
9 have in this process and how will they participate?" Because I
10 think those are the four key parties. That's where your
11 dispute, at this point, truly lies. You are on one side, and
12 you have some good advocates there. Heaven knows, Mr. Shimshak
13 is a very strong advocate, just as Mr. Leblanc is. All right?

14 MR. SMALL: Thank you, Your Honor. I believe the
15 Debtor and Major League Baseball may have positions on that as
16 well. Thank you.

17 THE COURT: I am confident that they will. And I
18 don't mean -- I'm not saying that you would be excluded, Mr.
19 Small. I don't mean that at all. Nor am I saying that if
20 someone actually puts an offer on the table, since there are
21 none at this point, whether that party would have a right to
22 participate in the mediation.

23 That's one of the problems that you have with it. If you
24 are there and someone else makes an offer, shouldn't they be
25 there as well? And I'm not entirely sure that that would be

1 entirely beneficial to a mediation process. And since I'm not
2 the mediator, I'm not going to pass on it, other than to make
3 the observation.

4 MR. SMALL: An important distinction between that
5 hypothetical party and Rangers Baseball Express is that we're a
6 party to a contract that's the center of the plan that's been
7 filed with the Court.

8 THE COURT: I understand. I understand. And the day
9 after confirmation, even before the effective date, I guarantee
10 you that you will be a participant in any mediations that
11 occur. Okay?

12 MR. SMALL: Thank you, Your Honor.

13 THE COURT: All right. Anything further?

14 (No response.)

15 THE COURT: All right. All right. Well, I appreciate
16 your participation in the status conference. I will look
17 forward -- as I understand it, at this point, the issues that
18 you are going to ask me to address on the 15th are, first, if
19 the Debtor has not obviated the issue, impairment. Second, who
20 -- whether equity is being properly spoken for at this point.
21 And third, whether the Debtor has an independent obligation to
22 maximize the value received for its assets.

23 Have I missed anything? Ms. Kippes?

24 MS. KIPPES: Your Honor, I had also understood that,
25 to the extent there are objections, adequacy of disclosure.

1 THE COURT: Yes. The disclosure. This will be also a
2 disclosure statement hearing.

3 Okay. Anything else? Mr. Sosland?

4 By the way, before I forget, because I forgot before, the
5 Clerk's Office advises me that CM/ECF is going to be shut down
6 on June 10th and will continue to be shut down until the 14th
7 of June. So if anyone is filing a brief, please keep in mind
8 you must provide a hard copy to chambers, because otherwise I
9 won't get it and I won't have read it.

10 Go ahead, Mr. Sosland.

11 MR. SOSLAND: Your Honor, if we've finished with the
12 status conference, we did leave open last week the form of
13 notice and objections and -- objection deadline, form of notice
14 of commencement, the dates. Ms. Berkovich has handled that,
15 and if the Court would entertain that now, so we can send out
16 the notice --

17 THE COURT: Okay. This is on the notice for the 15th,
18 correct?

19 MR. SOSLAND: Yes, Your Honor.

20 THE COURT: Right. All right. Ms. Berkovich, do you
21 have -- is there any -- does anyone want to fight about this?
22 No, Ms. Kippes, please. Not the U.S. Trustee.

23 MS. KIPPES: Your Honor, I would just like some time
24 to review the form of --

25 THE COURT: Okay.

1 MS. KIPPES: -- the document.

2 THE COURT: You're going to have very little time,
3 because we need to get it done today if we're looking at June
4 15th.

5 MS. KIPPES: Yes, Your Honor. We had asked for a copy
6 of it prior to the hearing, but it somehow didn't make it to
7 us.

8 MS. BERKOVICH: For the record, we did send a copy of
9 the revised notice to the U.S. Trustee early in the weekend,
10 but we have a further revised notice that we did not send to
11 her before the hearing.

12 THE COURT: Okay. All right. I'll tell you what. As
13 far as I'm concerned, on the form of notice and the order
14 setting dates and objection deadline, first of all, I'd suggest
15 objection deadlines be the 11th, but I'm going to leave it up
16 to you. What I'd like to do is allow the parties to go over
17 this, including Ms. Kippes, see if you're satisfied with what
18 they've got, and I'll approve anything that you all can agree
19 to. I recognize that anything you all can agree to may be a
20 really rare thing, but perhaps you can find some common ground
21 on objection deadlines and so on. Is that all right with you,
22 Ms. Berkovich?

23 MS. BERKOVICH: Yes, Your Honor.

24 THE COURT: Okay. Anybody have a problem with that?
25 Yes, Mr. Small?

1 MR. SMALL: I was just switching seats --

2 THE COURT: Oh, okay.

3 MR. SMALL: -- to raise a different issue once Ms.
4 Berkovich is finished, Your Honor.

5 THE COURT: All right. Okay. Then what we'll do,
6 when we recess, I'm going to ask you -- and from your side and
7 over there, you each can -- each party designate one guy, okay?
8 We don't need too much drafting-by-committee here. Okay?

9 All right. Mr. Small?

10 MR. SMALL: Your Honor, I was going to ask if we could
11 have about a 15-minute break to discuss a potential additional
12 issue for the hearing as a result of the comments already made
13 at today's hearing, to discuss with the Debtor and with MLB.

14 THE COURT: That's fine. I'll tell you what. It's
15 2:20. Why don't we recess until 2:35? During that time,
16 perhaps the parties can agree on a notice and you can determine
17 whether or not you want to address any other issues. Okay?
18 Anybody have any problem with that?

19 (No response.)

20 THE COURT: Okay. Well, thank you very much. We'll
21 be in recess for 15 minutes.

22 THE CLERK: All rise.

23 (A recess ensued from 2:19 p.m. until 2:47 p.m.)

24 THE COURT: Please be seated. I'm sorry. I was
25 misinformed. I was told that you needed a little bit more

1 time, and I do apologize for keeping --

2 MR. SHIMSHAK: It wasn't as long as we thought.

3 THE COURT: Okay.

4 MR. SHIMSHAK: Thank you, Your Honor.

5 THE COURT: All right. Yes? Mr. Sosland or Mr.
6 Small? And Mr. Small won the race.

7 MR. SMALL: Thank you, Your Honor. We believe there's
8 a full agenda for the 15th and for the briefing deadline for
9 that, so we're not going to ask for additional items.

10 THE COURT: All right. Very good. Well, I will get
11 out to you as soon as I can an order on Judge Nelms. And do I
12 understand that we've reached an accord on the form of notice?
13 No? Of course not. Okay. Mr. LeBlanc?

14 MR. LEBLANC: Your Honor, I apologize. The notice
15 that we were presented at the break to review and consider is
16 the notice of the confirmation hearing on July 9th. We had
17 understood that what Your Honor was referring to was the notice
18 of the hearing for the 15th of June. In fact, there was
19 colloquy last week about the confirmation hearing notice, and
20 Your Honor had offered that you would be amenable to a motion
21 to shorten notice of the confirmation hearing after the June
22 15th hearing determined that there was going to be a
23 confirmation --

24 THE COURT: Yes. That was my understanding as well,
25 was that this notice related to the June 15th hearing. Ms.

1 Berkovich?

2 MS. BERKOVICH: Your Honor, when we had discussed this
3 last week, I had asked whether we could delay sending notice
4 until after the 15th, and I had understood from our discussion
5 that we should send notice prior to the 15th. So what we had
6 prepared was a notice of the June 15th hearing. That notice
7 also provides that if the Court rules at the June 15th hearing
8 that a confirmation hearing can proceed on July 9th, that the
9 confirmation hearing would proceed on July 9th.

10 Both from a sort of efficiency perspective, in terms of not
11 having to do the cost of a duplicative notice, plus for the
12 purposes of giving creditors more notice of our plan rather
13 than less notice, we think, if we are going to send out a
14 notice now of the June 15th hearing, that it makes sense to
15 also include the July 15th [sic] hearing in that notice.

16 THE COURT: Well, I'm inclined not to do that, and
17 I'll tell you why. It seems to me that, depending -- that I'm
18 not prepared at this point to say what's going to go into the
19 notice, assuming one goes out, of July 9th. And I have two
20 concerns. First, that we may not get everything we need in now
21 and then we're going to have to send a second notice anyway.
22 And second, that if we have two notices, people are going to
23 get confused.

24 And I am inclined to say that what we ought to do at this
25 point -- and if I misspoke last week, I do apologize to you;

1 I'm sure it was my fault -- but I -- and look. I don't want
2 anybody to misunderstand here. I have not -- first of all,
3 I've not decided anything about the plan, the sale or anything
4 else. Secondly, my natural reaction, like I think that of many
5 bankruptcy judges, is that 100 percent plans are beautiful
6 things that you don't encounter all the time, and therefore
7 they should be looked upon with favor.

8 I'm not telling you and I've not come to any final
9 conclusions on anything, but I don't want anyone to get the
10 idea from the fact that I am doing my best to ensure that this
11 case proceeds in a proper fashion that I have arrived at a
12 conclusion that I am not going to approve the deals that the
13 Debtor is proposing to the Court.

14 I'm saying that because you've got some -- you and Mr.
15 Sosland now and Mr. Shimshak, for that matter, and Mr. Small
16 all have a few bruises on you from today and last week, and I
17 don't want you to misunderstand that. I don't want anybody to
18 think, particularly to the extent that there's media in the
19 courtroom, I don't want any of them to think that this is a
20 case where these are signals about what's going to happen on
21 June 15th or July 9th. They're not.

22 But, that said, I think that this notice should be limited
23 to June 15th, and we should get out an additional notice
24 thereafter. Because I don't know what it's going to say yet
25 for sure.

1 MS. BERKOVICH: Yes, Your Honor. So, procedurally, in
2 order to modify this notice to make it really relate just to
3 June 15th, I would ask that we can work on that in our office
4 and then e-mail it to chambers after the parties have agreed on
5 the form.

6 THE COURT: Well, if you can get that, --

7 MS. BERKOVICH: Because I think it would just be
8 tortured --

9 THE COURT: -- but I want that to go out by tomorrow.

10 And I'll tell you what. I'm going to let you do that. Can
11 you agree on the deadlines? We agree? Can we agree that
12 objections to the disclosure statement must be received in hard
13 copy by the Court by the 11th of June at 4:30 p.m.?

14 MS. BERKOVICH: I believe that every party that I
15 spoke to was okay with that deadline.

16 THE COURT: All right. And the same thing for briefs
17 on those issues to be addressed on June 15th. Is that a fair
18 statement? Can we agree to that? Okay.

19 MS. BERKOVICH: And --

20 THE COURT: Go ahead.

21 MS. BERKOVICH: I'm sorry. One more matter,
22 procedurally. We would probably circulate in advance of the
23 June 15th hearing a notice that we would propose to be --

24 THE COURT: That's --

25 MS. BERKOVICH: -- our notice in the event that you do

1 rule that the July 9th confirmation hearing can proceed.

2 THE COURT: I think that's an excellent idea.

3 MS. BERKOVICH: Okay. And our existing motion is a
4 motion to approve a notice for the confirmation hearing, so I
5 don't think that we have to file a separate motion or a motion
6 to shorten notice. We would just circulate the order to the
7 parties and then submit it to Your Honor on the 15th.

8 THE COURT: Well, if -- let me put it this way again.
9 To the extent that you wish to shorten time on the confirmation
10 hearing or if you want an order shortening time on the
11 disclosure hearing, I will be happy to enter both orders and I
12 will so rule right now that I will shorten the time on the
13 hearings to conform to the schedule that we've just discussed.
14 All right?

15 MS. BERKOVICH: Great. Do we need a separate order?

16 THE COURT: That's up to you.

17 MS. BERKOVICH: Okay. Thank you.

18 THE COURT: Mr. Sosland?

19 MR. SOSLAND: One --

20 THE COURT: And by the way, if we don't -- just let me
21 add one thing. If we don't have an agreed scheduling order or
22 notice by tomorrow, we'll write it, and then you're going to be
23 stuck with whatever I say, which nobody -- I promise you, no
24 one will like it. You will all dislike it. I will say bad
25 things about all of you in the notice.

1 (Laughter.)

2 MR. SOSLAND: One suggestion, Your Honor, since we
3 know that the electronic filing system will be down --

4 THE COURT: Yes.

5 MR. SOSLAND: -- at this point in time, is that each
6 of us -- each party filing a brief commit to, by the same
7 deadline that we give a hard copy to the Court, to serve by e-
8 mail the copies on the other parties.

9 THE COURT: Yes. I would suggest that that is
10 accurate. I think that is a fair request and a fair
11 requirement.

12 Let me ask you. I want -- who, other than the Ad Hoc Group
13 of Lenders, the second lien holder, JPMorgan Chase, the Debtor,
14 Major League Baseball and Rangers Express, intends, if anyone,
15 to file a brief on the issues that we've indicated we're going
16 to take up on the 15th? Is there anyone else? The U.S.
17 Trustee? That's --

18 MS. KIPPES: Your Honor, I'm not going to commit to
19 the U.S. Trustee filing a brief, but I just wanted to --

20 THE COURT: There may be a Creditors' Committee brief
21 on --

22 MS. KIPPES: There may be a Creditors' Committee who
23 may wish to weigh in.

24 THE COURT: I understand that. Anyone else?

25 (No response.)

1 THE COURT: Okay. Good. I would -- and this -- I
2 trust you will understand when I ask you that, to the extent
3 that you have common interests and can work together such that
4 I do not have to read the same thing three or more times, I
5 would be most grateful. In other words, to the extent that you
6 can file either a joint brief or can piggyback one another. I
7 had a case not long ago with 35 defendants in it. Mr. Simon
8 remembers it. And we had a motion to dismiss, and every
9 defendant filed an almost-but-not-quite-identical brief of
10 about 40 pages. So I got to read about 1,200 pages of briefs
11 in that case, which annoyed me no end. And I would be most
12 grateful if you can save me from that.

13 Anybody else? Yes, Mr. LeBlanc?

14 MR. LEBLANC: Your Honor, we have one other issue that
15 we want to address, but I wonder if the Court might indulge us
16 in a chambers conference to address the issue, rather than
17 doing it publicly. I'm prepared to do so, but I'm not sure
18 that the other parties --

19 THE COURT: All right.

20 MR. LEBLANC: -- would like that.

21 THE COURT: Well, I have no problem with that. Let's
22 go ahead and we'll adjourn into chambers. This will be lawyers
23 only, correct?

24 MR. LEBLANC: Yes, Your Honor. And I would -- given
25 the topic, I would suggest that we include the parties that you

1 had identified previously as the first people you would speak
2 to in a mediation. That would be the --

3 THE COURT: No, I'm not going to -- I'm not going to
4 exclude any attorney. I would ask you, to the extent that we
5 have three or four from one firm or seven or eight representing
6 one client, that we limit ourselves to perhaps two in chambers,
7 simply because of the number of chairs that I have.

8 MR. LEBLANC: Understood.

9 THE COURT: All right? All right. Very good. We'll
10 see you in chambers in a minute. Thank you.

11 THE CLERK: All rise.

12 (Proceedings adjourned to chambers at 2:57 p.m. and
13 concluded at 3:17 p.m.)

14 --oOo--

15

16

17

18

19

CERTIFICATE

20 I certify that the foregoing is a correct transcript from
21 the electronic sound recording of the proceedings in the above-
22 entitled matter.

23

24

Kathy Rehling
Certified Electronic Court Transcriber
CET**D-444

Date

25

1	INDEX	
2		
3	PROCEEDINGS	5
4	WITNESSES	
5	-none-	
6	EXHIBITS	
7	-none-	
8	RULINGS	
9	Notice of Hearing and Objection Deadlines	50
	Order Shortening Time	53
10	END OF PROCEEDINGS	56
11	INDEX	57
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		