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

In Re:	)	**Case No. 10-43400-dml**
	)	Chapter 11
TEXAS RANGERS BASEBALL PARTNERS,	)	Fort Worth, Texas
	)	Tuesday, June 15, 2010
Debtor.	)	10:30 a.m. Docket
	)	
	)	MOTIONS; DISCLOSURE STATEMENT AND PRE-CONFIRMATION ISSUES

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

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FORT WORTH, TEXAS - JUNE 15, 2010 - 10:35 A.M.

THE COURT: Please be seated. All right. This is the Texas Rangers Baseball Partners case. I'm going to start by calling the roll first. Mr. Coffey for an interested party?

MR. COFFEY: Yes, Your Honor.

THE COURT: Ms. Buergel for the Commissioner of Baseball?

MS. BUERGEL: Yes. Good morning, Your Honor.

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

MR. BROMBERG: Yes, Your Honor.

THE COURT: And do we have Ms. Meyers?

MS. MEYERS: Yes, Your Honor. Thank you.

THE COURT: Okay. And I'm sorry, Ms. Meyers. My court reporter highlighted some, and you weren't highlighted, so I wasn't sure if you were there or not.

And Ms. Simkulak for Ace American Insurance?

MS. SIMKULAK: Wendy Simkulak, Your Honor, for Ace American Insurance.

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

MR. SOSLAND: Good morning, Your Honor. Martin Sosland of Weil, Gotshal & Manges for the Debtor. And with me today, Your Honor: Ronit Berkovich, Yolanda Garcia, Vance Beagles and Michelle Larson.

THE COURT: All right. Is that it?

(Laughter.)

THE COURT: Okay.

MR. ESSERMAN: Not quite, Your Honor.

THE COURT: I kind of thought that was the case. Go ahead.

MR. ESSERMAN: Good morning, Your Honor. Sandy Esserman and Steve Shimshak for the Office of the Commissioner.

MR. SHIMSHAK: Good morning, Your Honor.

THE COURT: Good morning.

MR. SIMON: Good morning, Your Honor. Robert Simon, Michael Small and Zack Garsek for Rangers Baseball Express.

THE COURT: All right.

MR. FINE: Good morning, Your Honor. Jeffrey Fine and Dan Morenoff of K&L Gates on behalf of the Official Unsecured Creditors' Committee.

Your Honor, since the last hearing in this matter, a Committee has been formed and was appointed by the United States Trustee. We are proposed counsel for the Committee. We've filed an application to be retained. And we may be seeking a motion for expedited hearing on that application to be heard this Thursday at 1:30, along with the other applications that are set at that time. If we do seek that relief, we'll file a motion today and ask the Court to set it at that time.

THE COURT: All right.

MR. FINE: Thank you very much, Your Honor.

THE COURT: Thank you.

MS. O'NEIL: Good morning, Your Honor. Holly O'Neil with Gardere Wynne Sewell on behalf of GSP Finance, LLC, the second lien agent lenders. And with me in the courtroom are two of my colleagues from Clifford Chance, Mr. Jason Young and Mr. David Sullivan.

THE COURT: All right.

MS. O'NEIL: Thank you, Your Honor.

MR. STEWART: On behalf of the Ad Hoc Group of First Lien Lenders, I'm Dan Stewart with Vinson & Elkins, along with Andy LeBlanc and Dennis Dunne of Milbank Tweed, Your Honor.

THE COURT: All right.

MR. LEBLANC: Good morning, Your Honor.

THE COURT: Good morning.

MR. SEIDER: Good morning, Your Honor. Mitchell Seider of Latham & Watkins, along with Buzz Rochelle of Rochelle & McCullough, on behalf of JPMorgan Chase as agent on the Debtor's first lien senior secured debt and also as collateral agent on the first lien debt and second lien debt.

THE COURT: All right.

MR. SELTZER: Good morning, Your Honor. Richard Seltzer of Cohen Weiss & Simon, LLP for the Major League Baseball Players Association. With me today is Ian Roberts of

Baker & Botts, our local counsel, and David Prouty, who's inside labor counsel.

THE COURT: All right.

MS. LAMBERT: Lisa Lambert for the U.S. Trustee.

THE COURT: All right.

MR. FRANKE: Your Honor, Bob Franke; Strasburger & Price; for Fox Sports. With me today is Paul Laurin from the Los Angeles firm of Rutter Hobbs & Davidoff, and we've made application for him to appear.

THE COURT: All right. Anyone else?

(No response.)

THE COURT: All right. I would ask you, when you speak, if you do, to again identify yourself and your client for the benefit of the court reporter, to say nothing of me with my bad memory.

Before we begin, I wanted to mention to you that Judge Nelms called me last night to tell me and ask me to tell you that he is satisfied thus far that everyone who is participating or has had interaction with him respecting mediation of differences has been acting in the best of good faith. So he was concerned that some of you may have wondered about his changing of the 17th date, and he wanted you to know that that was not a result of his concern with anybody's conduct.

All right. I had sent out yesterday a suggested agenda for

the matters other than the regular matters, and perhaps we should start with your regular agenda, which would include the various motions, administrative motions, if that's satisfactory to you, Mr. Sosland, and then we'll move from there, if everybody is satisfied with it, to my agenda.

MR. SOSLAND: Whatever pleases the Court, Your Honor.

THE COURT: Well, we may be able to let some people go home if we go through the motions first.

MR. SOSLAND: Your Honor, with regard to all of the First Day motions that were approved on an interim basis and are up today for a final, I don't believe that we've received any objections to any of them. With regard to the DIP, we will need a little bit of time for some presentation regarding an amended form of final DIP order, and Ms. Berkovich would handle that.

Given the evidence at the First Day hearings, does the Court wish presentation on any of the other orders?

THE COURT: No. Is there anyone who wants to be heard on any of the motions other than the financing motion?

(No response.)

THE COURT: All right. Then you may --

MS. SIMKULAK: Your Honor?

THE COURT: Oh, yes. Wait a minute. Yes?

MS. SIMKULAK: Wendy Simkulak from Duane Morris. I'd like to comment on the insurance motion. Is that one of the

motions that's included in what you're discussing?

THE COURT: I believe it is.

MS. SIMKULAK: Okay. We had contacted the U.S. Trustee and Debtor's counsel, and I believe that the final order has been revised to incorporate some of our concerns.

THE COURT: Mr. --

MR. SOSLAND: Your Honor, that's correct. I had forgotten about that. The final order on the -- this relates as to Worker's Comp claims. The ruling at the First Day hearing, based on an objection of the U.S. Trustee, was that the stay would only be lifted as to certain enumerated parties. What we've agreed -- the issue was raised by the insurance company, and we've agreed to language reflected in the form of order we'll hand up, is that the stay will be lifted as to all Worker's Comp claims, but the Debtors will update the schedule to the extent that there are additional claims that become subject to that agreement for the lifting of the automatic stay.

THE COURT: All right. Anyone want to be heard with respect to that?

(No response.)

THE COURT: All right. Then, Ms. Larson, are you the finance person today?

MS. LARSON: No, I'm the bearer of orders to the extent --

THE COURT: All right.

MS. LARSON: -- that the Court needs them. I think they've been uploaded, --

THE COURT: Okay.

MS. LARSON: -- but I have hard copies.

THE COURT: I think that I --

MS. LARSON: And blacklines.

THE COURT: I think that I have seen hard copies, have I not? And they will be executed in chambers. All right?

MS. LARSON: Thank you, Your Honor.

THE COURT: All right.

MR. SOSLAND: And Ms. Berkovich will handle the financing --

THE COURT: All right. That's what I thought you said to begin with, but the way Ms. Larson jumped, I thought that she was the responsible person.

MS. BERKOVICH: Your Honor, Ronit Berkovich; Weil Gotshal & Manges; for Texas Rangers Baseball Partners.

I have blacklines of the DIP order to hand up to the Court, if I may.

THE COURT: All right. Bring it on up.

MS. BERKOVICH: We do have extra copies of this blackline in the courtroom. However, we did circulate, or Ms. Myers circulated copies of the DIP order to all of the major parties in this case, and we don't believe that there are any

objections. Almost all of the changes that were made to the DIP order are just the typical changes that would reflect the change from the interim DIP order to the final DIP order. There really are, in my view, only two changes that I think are worth noting to the Court.

The first is in Paragraph 5 at the end of the paragraph. We did provide that the DIP Lenders' lien would not be subject to any 506(c) charge. And Paragraph 6 contains a provision regarding a new credit card program that the Debtors would like to enter into.

As we discussed at a prior hearing, there have been some issues with the Debtors' current credit card program with JPMorgan that have caused some problems for the operations. The Debtor therefore approached Wells Fargo to get a new credit card to use for its travel-related and other similar expenses. Before doing that, we made sure that it was okay with JPMorgan that we did this, and JPMorgan was fine with it. Wells Fargo requires a deposit of up to $1.5 million to serve as security for the credit card.

We've talked to MLB, we've sent copies of this DIP order to the lenders, we've talked to the U.S. Trustee, we've talked to the purchaser, and as we understand it no one has objections to us entering into the credit card program. The credit card would be for administrative convenience only, to pay for ongoing expenses, and the Debtor expects to pay off the credit

card in full each month, such that there would be no continued incurrence of credit beyond the single month. In addition, at the end of -- upon the consummation of the sale, as requested by the purchaser, the Debtor would pay off the credit card in full and receive back the deposit.

The deposit, which would be in the hands of Wells Fargo, would be -- Wells Fargo would have a first priority lien in that cash, but the DIP lenders have agreed to that. And that language is set forth on Pages 13 and 14 of the blackline.

THE COURT: All right. Does anyone want to be heard with respect to the modifications that Ms. Berkowitz has referred to?

(No response.)

THE COURT: All right. I am assuming that the 506(c) does not affect the ability to assess against the prepetition liens 506(c) charges?

MS. BERKOVICH: I just want to take a minute to review the order to make sure that I answer correctly.

THE COURT: Yes. Well, better you than me. I was trying to read it while you were talking, but I couldn't digest it very well.

MS. BERKOVICH: Yes. It applies only to the DIP loans --

THE COURT: All right.

MS. BERKOVICH: -- and the DIP liens.

THE COURT: All right.

MS. BERKOVICH: Correct.

THE COURT: The reason why I asked is because we did modify the prepetition lien as part of the DIP financing, as I recall. Correct?

MS. BERKOVICH: Correct.

THE COURT: Okay. All right. Well, I will approve the financing, then, on that basis.

MS. BERKOVICH: Thank you, Your Honor.

THE COURT: All right. All right. Do we have anything else that we need to do before we go on to the main event?

(No response.)

THE COURT: Okay. I gather no one wants to leave now? Okay. All right. Then do you have -- Mr. Sosland or any of the other parties, do you have a problem with the schedule that I suggested in yesterday's e-mail?

MR. SOSLAND: No, Your Honor. I assume that we're using the letter that you sent yesterday --

THE COURT: Right.

MR. SOSLAND: -- as the agenda for the remainder of the hearing.

THE COURT: All right. And to begin with, it's my understanding from reading your brief that you're proposing to modify your plan to provide for interest at the federal rate,

the federal judgment rate, or, I've forgotten, what is the other rates are you provided?

MR. SOSLAND: Well, Your Honor, if I may, --

THE COURT: Please.

MR. SOSLAND: -- since the brief, there have been --

THE COURT: Somebody has suggested they'd like the contract rate, I'll bet?

MR. SOSLAND: That's possible, Your Honor.

THE COURT: Yes.

MR. SOSLAND: As a matter of fact, that's true.

THE COURT: Yes.

MR. SOSLAND: And the Court probably read the Unsecured --

THE COURT: Unsecured Creditors' Committee's brief.

MR. SOSLAND: -- Creditors' Committee position, brief.

THE COURT: I had already come up with the contract thing. Mr. Fine didn't need to tell me that one.

(Laughter.)

THE COURT: Yes.

MR. SOSLAND: And as a result of that, we've had a number of discussions and made a number of revisions. We also had discussions with, among others, Latham & Watkins, their disclosure statement provision.

So if we look at your letter of yesterday as the agenda for today's hearing, Ms. Berkovich will advise the Court pursuant

to Paragraph 1 of the alterations that the Debtors propose to make that go beyond what we suggested in our brief.

With regard to the evidence, I'm pleased to tell the Court that, in discussions that were underway even well in advance of the letter we received from you, that I believe all the evidence is stipulated to. But Ms. Garcia will handle that on behalf of us, and then when we get to the legal argument, then you will have me to deal with again.

THE COURT: Ah, well, I'll look forward to that.

All right. Let me hear, then, what modifications are proposed to the plan. I'm not sure that I require to hear them with respect to the disclosure statement. I'm not sure that I'd understand them. But go ahead, Ms. Berkovich.

MS. BERKOVICH: May I?

THE COURT: Yes, you may. (Pause.) Thank you.

MS. BERKOVICH: For the record, Ronit Berkovich; Weil Gotches -- Weil Gotshal & Manges; for the Debtor.

We've actually handed up to you --

THE COURT: I don't think they're going to like that, Weil *Gotcha* & Manges.

(Laughter.)

MS. BERKOVICH: We've actually --

THE COURT: That's one Mr. Miller may take exception to. Go ahead.

MS. BERKOVICH: Weil Gotshal & Manges.

What we've handed up to you is actually the disclosure statement. It contains all the changes that we would make to the plan. So we thought it was easier --

THE COURT: All right.

MS. BERKOVICH: -- to walk through it in one document. We're not addressing at this moment the question of whether a disclosure statement is required.

THE COURT: I understand.

MS. BERKOVICH: We'll address that later. But with this disclosure statement, it's always been the Debtor's view to try to put as much disclosure as possible, as would be appropriate under the circumstances. And we endeavored to do that in the beginning, and we continued to endeavor to do that after we filed it. So the changes that we made were based on conversations we had with the first lien lenders, professionals, as well as the objection that the Lenders filed and the objection filed by the Committee. We took everything that they said seriously, we studied them all, and we are proposing to make certain changes based on those conversations and those objections.

The Committee will speak for itself, but the understanding that I have is that based on the discussions we've had with the Committee and the changes that we've made, that if we do make these changes to the Committee's treatment and if there are no other classes that are impaired, that the Committee would be

willing to stipulate that the Unsecured Creditors aren't impaired.

We also believe that we've resolved all of their objections to the adequacy of the disclosure in the disclosure statement. Again, they would need to see the plan itself in order to agree to it completely, but we would make all the similar changes from the disclosure statement to the plan.

And I'll just walk through what I think are the significant changes. And we did, prior to the hearing, hand out blacklines of this disclosure statement to the major parties, so they have it in front of them as well.

First is Page iii, just to point you to two additional exhibits that we would propose to put in the disclosure statement. One is the list of the contracts transferred to TRBP pursuant to the HSG contribution agreement. These relate to what the Lenders have called the "eve of transfer," "eve of filing transfers." And then, secondly, in Exhibit F, we have described the proceeds that go to Lenders from various sources through the sale transaction.

Next is Page vii, and this change will be made in several places, and it's the one Your Honor referred to earlier with regard to the interest. What the plan would provide is that the interest that would be provided to Unsecured Creditors would be the federal judgment rate or some other rate determined by the Bankruptcy Court as the rate applicable by

contract, statute or otherwise. And that last statement I just read, "is the rate applicable by contract, statute or otherwise," is not actually in your document. The Committee spoke to us about it this morning. But that we would specify that as well.

The next change on Page 5, questions were asked about Tom Hicks' ownership in BRE, so we specified that he indirectly owns approximately 80 percent of BRE, and the other 20 percent is indirectly owned by a third party.

Page 7, we put more specification as to when the various financial advisors were retained by the Debtor.

Page 10 and 11, we provide a lot more detail about the HSG contribution agreement and the assignment of the ballpark lease to explain the transactions and also the reasons for the transactions, and also to specify that none of these transactions are prohibited by the HSG credit agreement.

Page 12, again, in response to questions that were raised, we explained how we determined the value of the Emerald Diamond note.

Page 13, the changes we made here are important. They described the excluded liabilities in the asset purchase agreement. The way the asset purchase agreement works is the purchaser is assuming all liabilities other than those specifically excluded. Those that are specifically excluded would be paid out of the sale proceeds by the Debtor, so it's

important to the Lenders and the Equity Holders to understand that, so we put a lot more description around that. And we also added the exhibit that I referred to earlier that would explain how the Lenders get the proceeds that they would get.

On the top of Page 14, at the request of the Committee, they just made it this morning, when we discuss reserving for the excluded liabilities that haven't been paid, instead of "as permitted by -- under state law" at the end of that provision, we would change it to "to the extent required by state law."

And again, Page 15 describes the proceeds that would go to the Lenders.

Page 17 is a further description of the litigation claims. Again, parties raised questions as to which -- who would be responsible for the litigation claims. Under the APA, the purchaser is assuming liability for those litigation claims. However, they're technically -- they remain liabilities of the Debtor, and this explains that more clearly.

We made some changes beginning on Page 20 that simply bring the disclosure statement current as to what has happened in the case so far, particularly with regards to the First Day motions.

Page 27, we specify that we estimate that there would be no material amount of priority tax claims, since there are some of those that would be excluded liabilities.

We made some changes to the classes, the unsecured classes,

as I discussed earlier.

On the bottom of Page 35, the Committee had raised some concerns with the procedures that we had proposed for objecting to claims and the fact that all the proofs of claim that were filed would be withdrawn as of the effective date, so we changed this to provide that claims would only be deemed withdrawn if no objection was filed by the claims objection deadline and the claim has been paid.

And I believe those are all the material changes that we made to the disclosure statement that we believe satisfied the reasonable requests of the parties.

THE COURT: All right. Do I understand -- as I recall, the Committee had asserted three bases on which its constituency was impaired, the first being the interest rate issue, which has been resolved; the second being the release of liability on the part of the Debtor; and the third being the forum where claims would be pursued. Do I understand that, the second two, the Committee has acquiesced in, or am I mistaken?

MS. BERKOVICH: On the second point, for contracts that are assumed and assigned, --

THE COURT: Yes?

MS. BERKOVICH: -- the purchaser would assume all liabilities and the Debtor would no longer be liable. That's under 365.

THE COURT: Yes. I understand that.

MS. BERKOVICH: For the other liabilities, for example, --

THE COURT: The Debtor would --

MS. BERKOVICH: -- the litigation liabilities, the Debtor actually is liable, but there is an indemnification obligation --

THE COURT: I understand.

MS. BERKOVICH: -- from the purchaser to the Debtor.

THE COURT: I understand. But the Debtor would retain liability?

MS. BERKOVICH: Correct.

THE COURT: All right.

MS. BERKOVICH: And on the third point, we did put a provision in here that I didn't mention in that the Debtor would not seek to move venue for any litigation on the basis of this bankruptcy case. We do believe it's important to use this forum to object to claims.

THE COURT: Yes.

MS. BERKOVICH: There are many basis for objecting to claims. And I'll let the Committee speak for itself, --

THE COURT: All right.

MS. BERKOVICH: -- but at this time, based on the changes we've made --

THE COURT: All right.

MS. BERKOVICH: -- or would propose to make, I believe

the Committee -- and subject to seeing the actual plan, I believe we've satisfied the Committee's concerns.

THE COURT: All right. Mr. Fine?

MR. FINE: Your Honor, first of all, I want to advise the Court that the Committee has met regularly since it was formed on June 3rd and has seriously considered all of the plan documents and the disclosure statement and the plan that were submitted by the Debtor, and they participated actively in formulating the objection that was filed with the Court.

Having said that, Your Honor, I'm pleased to report to you that we have worked with Debtor's counsel and they have worked through the language with us, and on those three basic issues of impairment -- on the interest rate, I believe that's resolved.

The second one, on the Debtor retaining liability, I believe that the provisions that were provided in the disclosure statement, assuming now of course that the plan provisions that's actually filed by the Debtor comports to these things, assuming that fact, they have altered that treatment and they've met that objection that we interposed. And we think, by the way, Your Honor, that that was an important part of the impairment argument.

The third one, Your Honor, on the venue of suits, here's what the issue was.

THE COURT: I know what it was.

MR. FINE: I'm sorry?

THE COURT: I know what it was.

MR. FINE: Okay.

THE COURT: And I, frankly, think you lose on that. That's a statutory impairment, and I don't think -- I think it's black letter law that impairments occurring through the statute are not impairments that occur through the plan. But if the Debtor wants to let you go -- if the Debtor wants to sue you in Chicago, it's fine with me. Or New York. Or Delaware.

(Laughter.)

MR. FINE: Your Honor, I hope that we don't snatch defeat from the wings of victory.

THE COURT: Yes.

MR. FINE: The Debtor has agreed to modify the language --

THE COURT: Yes.

MR. FINE: -- in the disclosure statement and in the plan --

THE COURT: Right.

MR. FINE: -- to provide that, essentially, wherever a suit was pending at the time of the filing of the bankruptcy, it can remain in that place.

THE COURT: All right. That's fine.

MR. FINE: And --

THE COURT: As I say, if the Debtor is agreeable to

that, I'm certainly agreeable. I'm not going to hog these suits if I can avoid it.

MR. FINE: And Your Honor, I will concede to you that that was one of the weaker points on impairment that we had --

THE COURT: Yes. I thought it was right up there with a straw, but --

(Laughter.)

THE COURT: You would not have --

MR. FINE: Not that weak, Your Honor.

THE COURT: -- prevailed on that. You would not have prevailed on that. But it doesn't matter. I mean, it makes better sense, especially if a court has some experience with a case, to let that court keep the case.

MR. FINE: Now, Your Honor, counsel referenced what the Committee would do at this point, and I'd say it's important -- I think our position is important to state to the Court. Your Honor, as far as the Committee is concerned, what's before the Court is the Debtor's plan. As far as the plan is concerned, if -- assuming that these changes are made as described by counsel, then indeed the Unsecured Creditors may not be impaired.

However, Your Honor, we're not sure how this hearing is going to develop. We don't know what the Court may find about impairment issues for the other classes.

THE COURT: No, we're leaving -- if you saw or if you

read the e-mail that I sent out yesterday, which should have gone to you, you will have noted that we're taking up the disclosure statement after we take up the more hotly-contested issues, and that's the reason for that, so that if we need to, you will then be able to say, based on what's gone before, "I feel very impaired" or something like that. Okay?

MR. FINE: Thank you, Your Honor.

THE COURT: All right.

MR. FINE: Broadly speaking, I would say, Your Honor, that the Debtor has gone a long way to resolving our issues. And we'd like to see how the hearing develops, and we will have further things to say to the Court.

THE COURT: Very well.

MR. FINE: Thank you, Your Honor.

THE COURT: All right. Then do we need to proceed -- no, I'm talking now to Mr. Sosland. Do we need anything further before we go into the issues that were set up by the June 2nd order?

MR. SOSLAND: No, Your Honor. And as I stated at the outset, Ms. Garcia will address the evidentiary issues --

THE COURT: All right. Okay.

MR. SOSLAND: -- and the stipulations regarding documents.

THE COURT: Okay. Hang on a second. Ms. O'Neil wants to be heard.

MS. O'NEIL: I apologize, Your Honor. Once again, got here late, so I'm having to come from the back row.

Just real quickly, we were just handed these revisions on the disclosure statement. I know the Court is going to take the disclosure statement last, but we would like, obviously, at least maybe during the lunch break, --

THE COURT: Okay.

MS. O'NEIL: -- if we're having one, to have an opportunity to read these. This is the first time this document has been handed to us in any in iteration.

THE COURT: All right.

MS. O'NEIL: So this -- we would like to have enough time to review it.

THE COURT: Ms. O'Neil, would it be helpful to you if I had one of these good gentlemen bring in a chair for you so that you can get up front here?

MS. O'NEIL: If you don't mind me coming from the back, it's fine with me. It's okay. No, I'm fine. Thank you.

THE COURT: All right. All right, then. Let's hear about the facts.

MS. GARCIA: Good morning, Your Honor. Yolanda Garcia with Weil Gotshal & Manges on behalf of the Debtors.

And Your Honor, per your agenda that you sent out via the letter yesterday, we have been able to reach an agreement with all of the major parties regarding the admissibility of the

evidence that the Debtors would like to put on the record. Specifically, there are eight documents that the Debtors would like to submit as evidence in the case, and Your Honor, they are all in a binder that is in front of you that's labeled "Debtors' Exhibits." They've been pre-marked as TRBP 1 through 8. I believe that your clerks as well as the court reporter also have copies of this.

And if I can just take each in order, Your Honor, I can tell you that we have an agreement as to both authentication and admissibility for the eight documents that are listed on Debtors' exhibit list for the June 15th hearing.

TRBP Exhibit #1 is the Amended and Restated First Lien Credit Agreement that's dated December 29, 2006. And Your Honor, I can ask that they be moved into evidence one by one, or I could give you the description and we'd move them all in the end, if that's acceptable to you.

THE COURT: Go ahead.

MS. GARCIA: Okay.

THE COURT: Whatever you want.

MS. GARCIA: Sure. The second exhibit is TRBP Exhibit #2. It is dated December 19, 2006, and it is Second Lien Credit & Guaranty Agreement.

The third exhibit is TRBP #3, dated 12/19/06. It is the Intercreditor Agreement.

The fourth exhibit is TRBP 4, dated 12/19/06. It's the

Amended and Restated First Lien Pledge and Security Agreement.

The fifth exhibit, TRBP #5, is dated 12/19/06. It's the Second Lien Pledge and Security Agreement.

The sixth exhibit, TRBP #6, is dated November 9, 2005, and it is a memorandum from the Commissioner of Major League Baseball Selig to All Major League Clubs regarding Control, Interest, Transfers - Guidelines and Procedures.

The seventh exhibit, TRBP #7, is the Major League constitution.

And Debtor's final exhibit, TRBP #8, is dated 6/2/99, and it is the Second Amended and Restated General Partnership Agreement for TRBP, with all amendments thereto.

Your Honor, in the interests of saving time, we have agreed with all the parties here that these documents are authenticated, that they are admissible, so at this time, Your Honor, I would like to move Debtor's Exhibits, TRBP's Exhibits 1 through 8 into the record.

THE COURT: Anyone want to be heard?

(No response.)

THE COURT: All right. They'll be admitted.

MS. GARCIA: Thank you, Your Honor.

Now, Your Honor, in terms of discussing the documents themselves, we are also hopeful that we can help streamline the argument by talking about the exhibits within the context of a legal argument, rather than going through and telling you right

now what important facts or how they relate, because they are very interconnected --

THE COURT: That's --

MS. GARCIA: -- to the legal arguments.

THE COURT: That's what I had anticipated would occur.

MS. GARCIA: Wonderful, Your Honor.

THE COURT: But Mr. LeBlanc, at our prior hearing, was dropping hints that he might want to put on more evidence, so I didn't want to foreclose that, at least not until he was up and someone objected.

MS. GARCIA: Thank you, Your Honor.

THE COURT: So that was the reason for my inquiry. All right. Good. That's the Debtor's evidence.

(Debtor's Exhibits 1 through 8 are received into evidence.)

THE COURT: And now do I understand the Lenders wish to do something similar?

MR. LEBLANC: Yes, Your Honor, we do. We too have reached a stipulation. If I may approach, Your Honor, I'm going to hand the Court a binder that contains the exhibits.

THE COURT: All right.

MR. LEBLANC: May I approach, Your Honor?

THE COURT: Please. (Pause.) Okay.

MR. LEBLANC: Your Honor, in the interests of time, if it pleases the Court, I won't go through the exhibits. We included at the beginning our preliminary exhibit list, which

has identified as Ad Hoc Group Exhibits A through L the exhibits that we attached already to the pleading that was filed with the Court last Friday. And the Debtors and the major parties have stipulated to the admissibility of those documents, with two -- I'll call them caveats. There's limitations as to the admissibility of two of the documents that I'll identify, Your Honor.

The first is Exhibit G, which is a January 18th letter from Jim Crane to Bob DuPuy. And there was a hearsay objection raised to that. We agree that that's offered only for the purpose to show that it was received by the Debtor and to demonstrate its effect on the listener.

And Exhibit J, which is the dallasnews.com SportsDay article written by Evan Grant, similarly is admitted only for the purpose of showing its effect on the listener.

THE COURT: Of showing its effect on what?

MR. LEBLANC: Effect on the reader or the audience, Your Honor. And the point is made in our brief as to what relevance that had as to what followed up from that particular action.

THE COURT: All right.

MR. LEBLANC: Your Honor, in addition to the documents that are identified A through L, at the back of our exhibit binder we have two additional documents whose admission has also been stipulated by the parties. The first is Exhibit N.

And they're out of sequence, Your Honor, only because we had identified additional documents, but we, in light of the Court's --

THE COURT: That's fine.

MR. LEBLANC: -- letter, we're not choosing to admit those at this time.

Exhibit N is the -- an execution version of the Voluntary Support Agreement. I'll note for the Court that it's not signed, but we've been receiving documents and reviewing them over the weekend, and this is the only execution version that we've been able to identify of the VSA. We haven't yet seen the executed one.

THE COURT: All right.

MR. LEBLANC: And lastly, Exhibit U, which is also in the binder, is a letter agreement between the City of Arlington and the Arlington Sports Facilities Development Authority and Ballpark Real Estate. And that again is a document that was produced in discovery that we were able to review over the weekend, and there's been no objection to the admissibility of that document either, Your Honor.

So, with that, we'd move the admission of Exhibits A through L, as well as N and U, of the Ad Hoc Group's evidence.

THE COURT: All right. Anyone want to be heard? Yes, Mr. Esserman?

MR. ESSERMAN: Your Honor, we don't think any of these

documents need to be proved up. They are what they are. But we would object on relevance grounds to many of these. Not the credit agreement, obviously, to the Exhibits #C through L and Exhibit --

THE COURT: You have a problem with D?

MR. ESSERMAN: No.

THE COURT: I didn't think so.

MR. ESSERMAN: It's the Amended and Restated Agreement. I'm sorry.

THE COURT: So C, E, F, G, --

MR. ESSERMAN: C, D [*sic*], E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T and U.

THE COURT: Well, he hasn't gotten past N yet, so --

MR. ESSERMAN: Okay. Well, it's the same --

THE COURT: Yes.

MR. ESSERMAN: It's going to be the same objection.

THE COURT: Yes. Okay. All right. Well, the exhibits -- your objection will be sustained as to the exhibits that he's not provided.

MR. ESSERMAN: Thank you, Your Honor.

(Laughter.)

THE COURT: With respect to the balance, I will take your objection under advisement.

MR. ESSERMAN: You had to give me something, Your Honor.

THE COURT: Yes. There you go.

MR. ESSERMAN: Thank you. We would also object not only on relevance but we would -- we believe that they don't prove anything, which is part of relevance, as to the issues before the Court today. Thank you.

THE COURT: I understand. Yes, Mr. LeBlanc?

MR. LEBLANC: Your Honor, I --

THE COURT: Well, wait a minute now. Mr. Simon wants to piggyback Mr. Esserman.

MR. SIMON: Good morning, Your Honor. Robert Simon for Rangers Baseball Express.

Your Honor, we have the same objections to this series of e-mails.

THE COURT: Okay.

MR. SIMON: We don't -- we agree that they're authentic.

THE COURT: Right.

MR. SIMON: They don't have to be further authenticated. But we disagree that they prove anything for purposes of today's hearing --

THE COURT: All right.

MR. SIMON: -- and their admissibility should be subject to --

THE COURT: All right.

MR. SIMON: -- a showing that they matter.

THE COURT: All right. All right. Well, you know, you can take comfort that if Mr. LeBlanc uses his time to talk about things that are irrelevant, he will have less time to impress me with the things that are relevant. Go ahead, Mr. LeBlanc, if you want to respond to that. Not to me, to him. Okay.

MR. LEBLANC: Well, I've been taught, Your Honor, to respond to you, even if it's really talking to him.

Your Honor, we'll obviously take whatever -- do whatever the Court would like us to do, but I think what would make sense, all of the parties argued in their pleadings, with the possible exception of Major League Baseball's pleading that was filed yesterday, not on Friday, all of the parties argued as to whether this was the highest offer. They didn't put in any evidence to support it. We put in our evidence to support it. They argue that it's not relevant, that their statements should just go in. We're happy to address it as it comes up to the extent that it's relevant.

THE COURT: Well, if it will help you, it seems to me that for purposes of this hearing I have to assume that there is a potential bidder who would pay more than the existing bidder. That doesn't mean there is one, and I don't think I need to reach it at this point. And I think they're correct that I don't need to reach it yet, but I think, on the other hand, you are correct that I must assume the existence of such

a party out there.

MR. LEBLANC: Right.

THE COURT: For purposes of this hearing.

MR. LEBLANC: Right. And Your Honor, I think it's important also to assume for purposes of this hearing, as I think the Court alluded to in its letter of yesterday, that I think you have to assume that Major League Baseball would consent to any alternative purchaser, because you're not taking up that issue.

THE COURT: Well, I'm not -- what I am going to do is what I said I would do. I do not want to leave the issue alone, necessarily, because I have some questions for both the Commissioner's counsel and counsel for the Debtor and counsel for the purchaser. But I am not going to, particularly in light of Judge Baum's decision in June in the *Phoenix Coyote* case, I am not going to assume at this point that there is a constraint upon what can be done in this Chapter 11 case based on those documents. You've not had an opportunity to argument it, and I do not intend to do that. Okay?

MR. LEBLANC: Thank you, Your Honor.

THE COURT: All right. Anything else before we start? All right.

MR. SEIDER: Yes, Your Honor, if I might.

THE COURT: Yes, please.

MR. SEIDER: Thank you, Your Honor. Mitchell Seider

on behalf of JPMorgan Chase, as agent.

Your Honor, we have three exhibits which are in the way of rebuttal exhibits to what is Footnote 12 in the Debtor's brief. I think, based on conversations I've been informed of, these exhibits are acceptable to the Debtors as to their authenticity, and also for the purpose of demonstrating notice. With the Court's permission, I'd like to approach and hand them up.

THE COURT: All right. Thank you. Do you have a set of this for my law clerks as well?

MR. SEIDER: Yes, Your Honor. For the record, they have been marked JPM Exhibits 1, 2 and 3.

THE COURT: All right. I'm feverishly looking for Footnote 12. I don't memorize those things when I go through the briefs.

MR. SEIDER: Yes. Your Honor, for clarification, Footnote 12 in the Debtor's brief suggests --

THE COURT: Has to do with waiver?

MR. SEIDER: Yes, Your Honor.

THE COURT: Yes. I've seen it now. All right.

MR. SEIDER: And these letters, for Your Honor's background, are reservation of rights letters.

THE COURT: All right. All right. Ms. Garcia?

MS. GARCIA: Your Honor, simply to clarify what the Debtor's position is, we did receive notice that they wanted to

use these documents late last night. And this morning, I did inform counsel for JPMorgan that we would not dispute authenticity. What I indicated was that if they were going to be admitted for some purpose other than the truth of the matter asserted, then we would not object to them. But I wanted to state on the record that our objection is to considering these things true for the purposes of the truth of the matter asserted.

THE COURT: Okay. I'm not sure that a reservation of rights is subject to the "truth of the matter asserted" type of reservation. I mean, it is what it is.

I'm going to admit JPMorgan Chase 1 through 3, and I will also admit the Lender Group's A through L, N and U. And I'm doing so, you will understand, Mr. Esserman, Ms. Garcia, and everybody else, that I'm not doing this accepting that any of the documents that Mr. Esserman and Mr. Simon referred to before are relevant, all right, to what we're doing today.

(First Lien Lenders' Exhibits A through L, N and U are received into evidence. JPMorgan Chase Exhibits 1 through 3 are received into evidence.)

MS. GARCIA: I appreciate that, Your Honor. Thank you.

THE COURT: Okay. Thank you. Mr. Esserman?

MR. ESSERMAN: Your Honor, Sandy Esserman for Major League Baseball.

We have no problems with the submission of these documents. We do have a question as to the relevance, which Your Honor just stated that they are what they are.

THE COURT: Yes. I mean, I want you to understand. Depending on where we go, many of these documents may prove to be relevant at some time in the future, --

MR. ESSERMAN: No, --

THE COURT: -- but in terms of today's hearing, I don't think we're going to get to that. Okay, Ms. O'Neil?

MR. ESSERMAN: Yes. Our comments are strictly for today.

THE COURT: I understand.

MR. ESSERMAN: We understand they may be relevant at some time in the future.

THE COURT: I understand. Ms. O'Neil?

MS. O'NEIL: Your Honor, for purposes -- Holly O'Neil on behalf of the second lien agent.

For purposes of today as well, we would like to reserve our rights to submit additional rebuttal exhibits. For example, from reviewing the edits to the disclosure statement that the Debtor has made, they make certain assertions about the ballpark lease transaction being in compliance with the credit agreements. We are going to bring the mortgages and some other documents, including the ballpark lease, and at that point in time --

THE COURT: All right. You're going to --

MS. O'NEIL: -- we might submit additional exhibits.

THE COURT: You're going to be able to raise what questions you want respecting issues such as that when we get, if we get, to the plan.

MS. O'NEIL: Thank you, Your Honor.

THE COURT: At this point, though, I don't understand that they would run to concerns we have.

I have a question which you may be able to answer for me, Ms. O'Neil, and perhaps Mr. Stewart and Mr. LeBlanc or Mr. Dunne will answer it for this group. Is there any lender who is not effectively represented by one of the parties, one of the lender group parties that's in court today?

MS. O'NEIL: From the second lien lenders' perspective, I believe that we have the authority on behalf of the agent --

THE COURT: Okay.

MS. O'NEIL: -- and are representing all of the second lien lenders.

THE COURT: So, what you know, I can attribute to the constituency for which you act?

MS. O'NEIL: That is correct, Your Honor.

THE COURT: All right. Mr. LeBlanc, is the same true for the senior --

MR. LEBLANC: Your Honor, we represent a defined group

of lenders, and so we are only representing that defined group. We've submitted a 2019 and notice of appearance on behalf of those particular lenders.

THE COURT: Okay. Are there any lenders at the first lien position that are not part of that group?

MR. LEBLANC: Sure. Yes, Your Honor.

THE COURT: All right.

MR. LEBLANC: Yes. I think, in total, the numbers are a little rough, but we're approximately 48 percent of the total first lien lender class. So I'll defer to Mr. Seider on JPMorgan.

THE COURT: All right. All right. Thank you.

All right. Then I guess we're ready to go ahead. Mr. Sosland, for information, today I go out to speak to consumer debtors at noon. And so at approximately noon, we are going to recess. I will allow you -- I don't know how you split your time with the Commissioner and the purchaser, but I assume that they will want some time at the lectern as well. Is that a safe bet?

MR. SOSLAND: I believe that's a safe bet, Your Honor.

THE COURT: All right.

MR. SOSLAND: The -- I'm looking at my watch. Oh, one thing, if I might, before I begin.

THE COURT: Sure.

MR. SOSLAND: Although Ms. O'Neil spoke for the agent,

then Mr. LeBlanc answered your question on behalf of the lenders he represents, the agent for the first lien holders is in the courtroom, represented.

THE COURT: I understand that.

MR. SOSLAND: So --

THE COURT: I understand that.

MR. SOSLAND: Representing all of the first lien holders.

THE COURT: And I'm not -- for a variety of reasons, I'm not sure that the question has as much significance as it had before the hearing began.

MR. SOSLAND: Right. Thank you.

THE COURT: All right.

MR. SOSLAND: Your Honor, if I may, in your agenda letter, you indicated you'd like an hour per side allotted, and then 15 minutes for the other parties. I will probably take up the bulk of the time. In looking at my watch, it may take me to right around noon, --

THE COURT: All right. Well, that's --

MR. SOSLAND: -- in terms of my prepared remarks.

THE COURT: Are you allowing for the questions with which I will harass you?

MR. SOSLAND: We may have to --

THE COURT: You were not expecting any questions, Mr. Sosland?

(Laughter.)

MR. SOSLAND: I was expecting that I would be modifying my presentation based on questions from the Court, Your Honor.

THE COURT: All right.

MR. SOSLAND: If -- I don't know whether the Court intends to allow any reply, so I would reserve five minutes in the event that any issues not previously briefed are raised by the other side. The Court -- if the -- it's up to the Court. Then I'll know that. But otherwise, the remainder of our hour, I would then cede to MLB and the purchaser.

THE COURT: All right. All right. Go ahead, then.

MR. SOSLAND: Good morning, Your Honor. Martin Sosland from Weil Gotshal on behalf of the Debtor, Texas Rangers Baseball Partners, which I will in my remarks refer to sometimes as TRBP.

If it pleases the Court, this is a hearing to consider five legal issues outlined in your June 2nd order setting the hearing. And I may take the issues slightly out of order as they were listed in the paragraph in your June 2nd order.

The first issue I will address is whether any class of creditors is impaired under the plan the Debtor has proposed, and the answer to that is no, no class of creditors is.

Second, --

THE COURT: Do you mean to include, when you say no

class of creditors is impaired, do you mean to include Equity as well?

MR. SOSLAND: I will address Equity --

THE COURT: All right. All right.

MR. SOSLAND: -- as well, Your Honor, although the parties --

THE COURT: You're going to address that separately?

MR. SOSLAND: Well, I'll address it as part of the argument, Your Honor.

THE COURT: Go ahead.

MR. SOSLAND: So I'll address Equity -- I'm sorry. Any class of creditors or Equity is impaired. And the answer remains no, Your Honor.

Second, whether the Debtor has an independent duty to maximize the value of the estate in connection with the disposition of this Chapter 11 case. With a Chapter 11 plan on file and the consent of Equity in hand, the answer to that is also no, Your Honor, as I will explain.

Third, who may speak for equity holders in this Chapter 11 case. The answer to which, Your Honor, is the equity holders.

Fourth, what obligations are owed to whom by Debtor's equity holders respecting their conduct in this Chapter 11 case.

And then based on Your Honor's letter of yesterday, after this, as the Court directs, we'll get to issues relating to the

disclosure statement.

Your Honor, the plan that we have on file in this case, with the modifications that Ms. Berkovich announced at the beginning of the hearing, does not impair the rights of any class of creditors or equity. First of all, Classes 2 and 3, the first and second lien holders, are not impaired. And that's because the Lenders are receiving under this plan everything that they're entitled to receive under the credit agreement.

THE COURT: Would they receive -- are they going to receive under the plan that which they could receive if they sued on the Debtor's obligations and won everything that their obligations entitled them to?

MR. SOSLAND: Yes, Your Honor. And it's important --

THE COURT: Does that --

MR. SOSLAND: It's important to understand --

THE COURT: Does that include interest on their obligation?

MR. SOSLAND: Your Honor, the -- let me explain. Let's go to the evidence, Your Honor. Let's look at Exhibit 2, Page -- which is on -- which is the credit agreement on Page 75, which will help answer the Court's question. And in particular, let's look at Section 7.1 of the credit agreement.

This defines the guaranty -- as Your Honor is aware, the credit agreement is itself a credit agreement with HSG, the

ultimate parent of the Debtor, of TRBP. And it's in this paragraph -- if you look at the provision which defines this, starting with the "Provided that not..." -- if you -- the loan, collectively, the guaranteed obligations, here is the limit. "Provided that notwithstanding anything to the contrary contained in this agreement or the first lien credit agreement, in no event shall the Rangers' guaranty of the obligations, and the obligations as defined in the first lien credit agreement, exceed in the aggregate $75 million."

Your Honor, $75 million is the amount. And --

THE COURT: Well, let me stop you and ask you this. You filed -- if you had paid the $75 million the day before you filed, I would agree with you. But you are now staying them from their payment. Is that correct?

MR. SOSLAND: We --

THE COURT: They're not entitled to payment until you confirm a plan, right?

MR. SOSLAND: I'm staying them from the payment until --

THE COURT: Of the $75 million. Right?

MR. SOSLAND: The statute is staying them from payment.

THE COURT: I understand.

MR. SOSLAND: Yes, Your Honor.

THE COURT: I understand. But you didn't -- the

statute was not invoked by accident, and so does that mean that -- and I don't think it makes a functional difference. I'm just trying to focus on the term "impairment."

MR. SOSLAND: I think --

THE COURT: Are they --

MR. SOSLAND: I'm sorry.

THE COURT: Are they entitled to interest on that $75 million from commencement of the case to the effective date of the plan, when they're actually paid?

MR. SOSLAND: I think not here, Your Honor, because they agreed that they would not be. And if we look in the same document, in Exhibit 2 on Page 21, where the obligations are defined, "obligations," Your Honor, means all obligations of any -- of every nature of each credit party under the credit agreements. And as -- if you go down and read -- it's on the screen, Your Honor, and highlighted, if that's helpful to you.

THE COURT: All right.

MR. SOSLAND: "Obligation" means all obligations of every nature of each credit party under the credit agreements, and continuing on, including obligations from time to time owed to the agents, the lenders, or any of them under the credit document, whether for principal, interest, including interest which, but for the filing of the petition in bankruptcy, with respect to such party would have accrued on the obligation, whether or not a claim is allowed against the credit party for

such interest in the related bankruptcy proceeding; fees; expenses, indemnification or otherwise.

So all of that, including interest, as the Court will see, with the reference to bankruptcy, is part of the defined obligation which is, we showed a moment ago in Section 7.1, is capped at $75 million. And they agreed to that. So, Your Honor, --

THE COURT: So, you could have $75 million left due and owing to them out of all the debt, put the Rangers in bankruptcy, keep it there for three years, and at the end of the three years, all they'd be entitled to get would be the $75 million?

MR. SOSLAND: Yes, Your Honor.

THE COURT: Okay.

MR. SOSLAND: Although, of course, that's not what we're trying to do.

THE COURT: I understand.

MR. SOSLAND: We're trying to exit and pay them the $75 million as quickly as we can, just as we would have liked to have paid them the $75 million without ever having to have filed the Chapter 11 case at all.

THE COURT: Go ahead.

MR. SOSLAND: The Lenders are not entitled to rewrite the terms of their credit agreement. Under the plan, we'll satisfy in full the $75 million which they defined as the

obligation. This is not a case, Your Honor, where there's $75 million plus interest is accruing. Your Honor's question would apply to the typical credit agreement, where interest would be accruing absent bankruptcy on the $75 million, and bankruptcy stays it. So that given time payment of money, which is exactly the obligation that's accruing up on top against HSG, Your Honor, given the time value of money accruing, the reimbursement for interest, that is continuing to accrue. But against this debtor, it's $75 million, whether the obligation is $525 million of principal only, whether it's $525 million with $75 million of interest, or if three years from now it's $525 million regardless of how much interest is -- plus whatever interest has accrued, the obligation against this debtor is $75 million, because that's what the Debtor -- that's what the creditors themselves agreed to. And that's why, Your Honor, they're unimpaired under Section 1124(1) of the Bankruptcy Code. It's because their legal rights are not altered by this plan. What they're entitled to is $75 million and they go away. And they bargained for that; we're proposing to give it to them. That's unimpairment under Section 1124, under 1124(1), because it's their bargain.

Now, in their brief, Your Honor, they incorrectly interpret Section 1124. They read the deletion of 1124(3) in response to the *New Valley* case as somehow altering 1124(1), when it does not. As Your Honor is aware, 1124(3) was added to the

Bankruptcy -- was deleted from the Bankruptcy Code because of a case that said that even in a solvent estate, unsecured creditors who would be entitled to interest under Section 726 of the Bankruptcy Code ended up with the anomalous result that they weren't entitled to interest, at least based on the *New Valley* decision in a solvent estate, and that -- and so Congress deleted 1124(3).

And the legislative history on the deletion of 1124(3), which can be found in *House Report 103-835* at Pages --

THE COURT: Well, now, let me stop you.

MR. SOSLAND: Okay.

THE COURT: I'm looking at 726(a)(5), and (a)(5) provides, "Fifth, and payment of interest at the legal rate from the date of the filing of the petition on any claim paid under Paragraphs 1, 2, 3 or 4," which would include the Lenders' claims. And it doesn't say anything about what they were entitled to under their documents. It says "interest at the legal rate," period.

MR. SOSLAND: That's right, Your Honor.

THE COURT: Okay. But you're not --

MR. SOSLAND: But --

THE COURT: You're not proposing to pay them at the legal rate.

MR. SOSLAND: Well, I'm not proposing to pay them at the legal rate, Your Honor, because they agreed they wouldn't

be.

THE COURT: All right.

MR. SOSLAND: But the -- as opposed to Mr. Fine's clients, who -- the beneficiaries of the Unsecured Creditors' Committee have documents that allow them to continue to accrue interest in this case, but they don't because, subject to the estate being solvent, otherwise, interest on an uninsured claim is not allowable. Similarly, that would be the same for a secured or unsecured claim, for example, on MLB. And in the MLB third lien note, which whether or not it accrues interest depends on the value of its collateral. The difference here is this is an obligation that by its terms doesn't accrue interest. It doesn't accrue interest outside of bankruptcy under any body of law, under any agreement, against this debtor.

So it's accruing interest where, according to the contract terms, it's accruing interest, which is then --

THE COURT: So, in other words, you're going back to *New Valley* and saying essentially that here we have the same case that was faced in *New Valley* and we can ignore 1129(a)(7), since they would presumably, in a liquidation context, be entitled to interest at the legal rate. But you're saying, because you're paying them under 1124(1), they're not entitled to interest at the legal rate?

MR. SOSLAND: No, Your Honor. It's not *New Valley*. I

represented the Creditors' Committee in *New Valley*. We had bonds that would have accrued interest -- that were accruing interest at 12 percent under their contracts.

THE COURT: I understand that. But what I'm saying is, if you were in a liquidation context and we were going to sell off the assets of the Rangers in a Chapter 7, and if the Chapter 7 resulted in there being money left over after all creditors have been paid in full, the way I read 726(a)(5) is that they would be entitled to interest at the legal rate from the petition date. And the way I read 1129(a)(7), that says that they are entitled to at least as good treatment as they would get in Chapter 7, whether impaired or unimpaired. And the way I understand *New Valley* was it said that 1129(a)(7) is trumped by 1124(3). And now we've gotten rid of (3), so 1129(a)(7) is no longer trumped by 1124(3).

You're telling me, however, in this particular case, because of the limitation contained in the agreement, the creditor here is actually trumped by 1124(1) --

MR. SOSLAND: Well, --

THE COURT: -- vis-à-vis 1129(a)(7). Again, I'm not sure it matters, because they're going to get the money regardless.

MR. SOSLAND: Well, Your Honor, I'm not sure that 726(a)(5) applies to these claims, because I don't believe they're any of the claims specified in (a)(1), (2), (3) or (4).

(a)(1) relates to priority claims, (a)(2) relates to unsecured claims, (a)(3) relates to tardily-filed claims, and (a)(4) relates to claims for fines, penalties or forfeitures.

THE COURT: All right. Go ahead.

MR. SOSLAND: And these are secured claims, Your Honor.

THE COURT: Right. Go ahead.

MR. SOSLAND: So Section 506, Your Honor, is where their claim is determined, and it's capped under their contract.

So, Your Honor, I don't think it's the same as 1124(3)'s deletion in the *New Valley* case.

And I also think, Your Honor, that the Lenders mischaracterize Section 1124 when they try to read the cure requirements under 1124(2), which relates to claims being reinstated, into 1124(1), which has to do with leaving the rights unaltered, which is how we intend and do unimpair these claims under the plan that's been proposed. By its structure, Your Honor, 1124 says you can be unimpaired -- you're impaired or unimpaired under 1124(a)(1) -- 1124(1) or 1124(2). You don't have to meet the requirements of both. And that's what the Lenders are arguing in their brief, Your Honor.

Your Honor, the Equity Holders are also not impaired under the plan. The objective of the plan, Your Honor, is to effectuate the sale of TRBP's assets to the purchaser. The

plan does not alter the rights of the Equity Holders for two reasons. First, Equity's right to the residual value is maintained. Secondly, Equity has consented to the sale of the plan. And I'll get to why they had and have the power to do that.

THE COURT: Let me ask you a question. If -- let's suppose this were a plan proposed by a third party. Exclusivity expires. It's a plan proposed by a third party, and there was no prepetition consent. Would this then amount to impairment?

MR. SOSLAND: No, Your Honor, because there is -- it doesn't, as long as the current -- well, the creditors have the right -- equity holders that are being paid in full have the right to determine what happens to their equity interests. They might. But --

THE COURT: Well, I understand. And what I'm saying is, if a third party -- let's eliminate the consent for a minute, hypothetically, okay? They didn't consent prepetition. Okay? Let's eliminate that. If they -- and as I understand it, under the partnership agreement, this is a major decision, selling all the assets of the partnership. Right?

MR. SOSLAND: Correct.

THE COURT: Okay. So let's suppose that a third party comes in, files a plan which proposes the sale of all of the assets. That would be a major decision. And let's suppose

that the equity partners had not consented. Would they then be impaired?

MR. SOSLAND: I think that -- and it's both retaining the residual value and the fact that they've consented, Your Honor, that makes them unimpaired.

THE COURT: Okay. Okay. So what I'm saying is let's take away the consent. Would they then be impaired at this point?

MR. SOSLAND: If all of the assets are sold without their agreement? They should be entitled to vote on the plan --

THE COURT: Okay.

MR. SOSLAND: -- one way or the other.

THE COURT: Well, but let me ask you this. Is their -- is it your position that their consent is the equivalent to a prepetition vote under 1126(b) and 3018(b)?

MR. SOSLAND: It could be, Your Honor, but I don't think we need to go there. It could be the equivalent of a prepetition vote under a solicitation. But this isn't a corporate structure, Your Honor, where shareholders have to approve an action by a shareholder vote that's governed by whatever the law is. This is a Texas general partnership.

THE COURT: Yes. I understand that.

MR. SOSLAND: It acts through the general partner.

THE COURT: But you would agree with me that if they

were voting on the plan, as opposed to the 51 percent for a major decision provided in the partnership agreement, that if they were voting on the plan, their acceptance by a two-thirds majority would be required? And I understand that doesn't matter because, either way, it's the same vote, right?

MR. SOSLAND: If they were voting on the plan, acceptance by two-thirds would be required.

THE COURT: Okay.

MR. SOSLAND: That's correct.

THE COURT: So you would agree, then, that this, absent the consent, would constitute an impairment, right?

MR. SOSLAND: Yes, Your Honor.

THE COURT: Okay. Well, let me ask you the next question. Can they withdraw their consent?

MR. SOSLAND: They haven't withdrawn their consent, Your Honor.

THE COURT: No, I understand. I'm asking you, can they withdraw their consent?

MR. SOSLAND: I don't -- I suppose -- Your Honor, the Debtor is -- this is a partnership, and that would -- that's like saying, can the Debtor withdraw its plan? So, yes, the Debtor has the right to withdraw its plan.

THE COURT: Okay. So the Debtor -- the Debtor --

MR. SOSLAND: It could only do so on -- I'm sorry, Your Honor.

THE COURT: That's all right. The Debtor also, then, could say, "We don't like this prepack anymore. We want to do something else." Right?

MR. SOSLAND: The Debtor has that right, Your Honor.

THE COURT: Okay. And similarly, if -- and we're going to get back to this, I suspect, later -- if in some form or fashion a trustee were appointed for the two equity partners, and the trustee said, "I don't like the deal. I want to withdraw my consent," would you agree that he could?

MR. SOSLAND: If that happens, Your Honor, I suppose that's a possibility.

THE COURT: Okay. Because -- and similarly, let me ask you this. And again, we're speaking hypothetically, Mr. Sosland, because I understand this is different than the facts that we're looking at. You essentially agree that what is happening here would be an impairment but for the consent, right?

MR. SOSLAND: Yes.

THE COURT: Okay. Let me ask you this. Let's suppose that the partnership were structured differently, and instead of 100 percent consent, you had 51 percent consent. All right? Would the Court -- which satisfies the partnership agreement, but does not satisfy the acceptance requirements of 1126. Would the Court then have to consider that the plan -- that they were (a) unimpaired; or (b) the plan was accepted?

MR. SOSLAND: Well, --

THE COURT: I mean, if they're -- they're impaired.

MR. SOSLAND: Your Honor, I'm not sure that we would even be -- we would have to change the hypothetical even more to be before you today, because this is a general partnership.

THE COURT: I understand that.

MR. SOSLAND: Without the consent of 100 percent of the general partners, we never could have commenced the Chapter 11 case in the first place as a voluntary filing. All that --

THE COURT: I don't disagree with that, but I'm asking you -- it doesn't matter to me what way you got in at this point. What I'm trying to get at is the question of whether or not the prepetition consent by the general partners, first, satisfies the requirements of Section 1126, if we assume that the treatment would constitute an impairment but for consent. Do you see what I'm saying?

MR. SOSLAND: I understand what you're saying, Your Honor, but I don't -- I can't imagine a situation in which it would not satisfy 1126, because these are the general partners running the partnership, so it would not satisfy it if they didn't have enough information to know what they were doing?

THE COURT: No, I'm asking --

MR. SOSLAND: I'm asking that as a legitimate question.

THE COURT: I'm asking you in terms of -- we're not

dealing with the facts here. I'm trying to get at -- I have two issues here that I'm concerned about. The first is it seems to me that that which requires a major decision would be impairment but for the consent. And therefore my first question is, is the consent the equivalent to the vote in favor of accepting the impairment? And my second question is, can the vote be withdrawn and can be Debtor still go and look at other deals? I mean, that's really what we're here about, isn't it?

MR. SOSLAND: Well, we are -- it's part of what we're here about, Your Honor.

THE COURT: I mean, they wouldn't be here if -- if this couldn't -- if you couldn't either withdraw the plan or the Equity could not change things around, this would be a much simpler case, wouldn't it?

MR. SOSLAND: I'm not -- Your Honor, it might or it might not be. There are really two questions embodied in your question, in my opinion. There is the: Can the Equity change its course of action? And the other is: Would it change its -- or, will it change its course of action? Because even if it can, if it doesn't, we would still be here before your Court. And it's not on the list of issues today, and we didn't bring a witness --

THE COURT: The question --

MR. SOSLAND: -- on why it was the right decision to

make in the first place.

THE COURT: The question is, does this constitute impairment of Equity? And you've told me that, but for the consent, it would be impairment of Equity. And I'm asking you, first, was the consent the equivalent of an acceptance that I should look at as accepting the impairment?

MR. SOSLAND: I don't think you have to go that far, but if you -- but if you want to, --

THE COURT: Well, let's suppose --

MR. SOSLAND: -- I don't think the result --

THE COURT: Let's suppose that I want to.

MR. SOSLAND: -- is any different.

THE COURT: Okay.

MR. SOSLAND: I don't think the result is any different.

THE COURT: Well, do you think that the consent, then, is the equivalent of a vote to accept?

MR. SOSLAND: I think it's the equivalent of a vote for the purposes of this argument. Yes, Your Honor.

THE COURT: All right. Go ahead.

MR. SOSLAND: So, Your Honor, if you want me to go through it early, I will, and I'll briefly address all of the reasons why, under Texas general partnership law, we believe that Equity's rights are maintained by virtue of their -- that the retention of the full residual value of the equity --

that's what we were talking on. I'm mindful of the time, Your Honor. I can --

THE COURT: Go ahead.

MR. SOSLAND: -- go through that. So, --

THE COURT: I've read the brief. Perhaps not with the same care that you applied in writing it, but I've read it.

MR. SOSLAND: If you don't mind, then, Your Honor, I'll highlight a couple of points.

THE COURT: Please.

MR. SOSLAND: Texas general partnership law provides that upon disposition of the assets of a partnership, the proceeds will first be applied to discharge all of the obligations to the partnership's creditors, and then a surplus would be distributed to the partners. And that's found in Texas Business Organizations Code Section 152.706. And under the prepackaged plan, the equity owners are receiving the full residual value from the sale of the obligations to the creditors of -- after the obligations to the creditors of TRBP are satisfied.

And that residual value, Your Honor, is estimated to be in excess of $150 million. And it does represent a substantial recovery to equity owners, and in turn to their creditors, to the creditors of the equity owners. And those are really the people that are complaining here today, not -- people aren't complaining that they're [*not*] getting everything that TRBP is

obligated to pay them. They're complaining because, at the levels of -- in their capacity as a creditor of another party, a creditor of an equity holder, they would like to get more money.

Moreover, Your Honor, the prepackaged plan does not amend TRBP's partnership agreement or in any other way modify the partnership agreement in a way that would affect the Equity Owners vis-à-vis the partnership. On the --

THE COURT: It's not your contention that if the sale were for far below fair market value -- and I'm not talking about the numbers we're talking about here, but I'm talking about let's suppose the team is worth a half a billion dollars and the debt is $150 million. Could the equity partners agree to sell the team for $151 million?

MR. SOSLAND: I don't know, Your Honor. They didn't. I will say this. To the extent -- if the Court believes that that's a relevant issue, as we said in our brief, we're prepared to demonstrate, when we do have an evidentiary hearing, --

THE COURT: I understand that. But we're not --

MR. SOSLAND: -- that they exercised their rational business judgment.

THE COURT: We're not there yet. And I understand that. But my question is, could -- well, go ahead. Go ahead.

MR. SOSLAND: Well, --

THE COURT: I don't want to pester you with that too much.

MR. SOSLAND: One of the -- whether or not it's relevant in the confirmation of the plan, when we get to it, Your Honor, we do talk about what duty is owed by the partners. And I don't think that doing what you just suggested would be consistent with that duty. Now, there's a separate issue of whether or not -- we'll get to it, whether it should be before this Court or a different court, but I'm not suggesting that, to the extent equity holders have duties of their own, they should shirk them, Your Honor.

Because the rights of the partners as partners of the partnership aren't altered by the plan, the sale -- and 100 percent of the equity consented in advance to the sale, then the sale of the assets under the prepackaged plan does not impair their rights as the Equity Holders.

And Your Honor, there is an argument that we don't alter -- that you don't alter their rights under the plan. The rights included -- I think this was your question earlier. The rights included the right to vote and consent. Even -- you could argue that in some circumstances, that the Bankruptcy Code provisions regarding voting trump the voting provisions that exist outside of bankruptcy, that there are some things that creditors don't have to vote on in bankruptcy that they do outside, or vice versa. But here, you know, for these

purposes, it doesn't matter because the Equity Holders have consented to the plan.

And Your Honor, notwithstanding the argument in the Lenders' brief, valuation is not relevant to the determination of impairment. There is no -- Congress could have written into 1124 that impairment has to do with the value of the equity interest or other interest that's retained, but it doesn't. There is nothing in 1124 that relates to the value of what the creditor receives under the Chapter 11 plan.

And just by way of example, assume we did have a secured note for any dollar amount and that we were unimpairing it by leaving every single aspect of it in place, and if there were any defaults, curing them, complying with every aspect of 1124(2). If that's a piece of paper that happens to trade below 100 percent of the face amount of the paper, it's still unimpaired. Valuation is not applicable to the determination of impairment under Section 1124.

Now, speaking of value, Your Honor, that leads us to the issue of, did the Debtors have a duty to maximize value in this case, which was the ultimate question in the order that the questions were listed in your order. And the answer is, no, not where what is before the Court is a Chapter 11 plan. Section -- we've -- despite all -- there have been a number of recent press reports that the Lenders have been talking about the duty to maximize value under the plan. In their brief,

they devote less than a page to the duty to maximize value under a plan.

There's a good reason for that, Your Honor. The reason for that is it doesn't appear anywhere in the Bankruptcy Code. Section 1129 of the Bankruptcy Code lists 16 factors, if they are applicable. The Debtor has a duty to prove by a preponderance of the evidence, and we will at the confirmation hearing, that every applicable factor is met in this case. And if we meet our burden of proof on those factors, the statute says the Court shall confirm the plan.

It's the Court's duty to determine whether we meet our burden to prove to you that we satisfied the requirements of 1129. If we do, the statute is clear: the Court will confirm the plan. Now, --

THE COURT: I'm inclined to agree with your position on the maximization of value. I can see where considerations -- so I'm going to look forward to Mr. LeBlanc or Mr. Dunne explaining to me why I'm wrong, but it seems to me that there can be considerations beyond value that will play a role in deciding what to do with a solvent debtor. So, go ahead. You can spend more time on it if you want, but at this point, you're ahead on that one.

MR. SOSLAND: Your Honor, I will take that.

(Laughter.)

THE COURT: It's always best to shut up when you're

ahead.

MR. SOSLAND: So --

THE COURT: Remember what used to happen in front of Judge Abramson if you kept talking.

MR. SOSLAND: In that case, Your Honor, I will turn to who has the right to speak for Rangers Equity in this Chapter 11 case. And the answer to that is Rangers Equity has the right to speak for itself in this Chapter 11 case.

THE COURT: Let me ask you this. Let's suppose that either an order for relief is entered, or one of the phrases you overlooked in your brief in Section 303(f), which I believe says if the Court orders otherwise, that you have to comply with Section 363. Let's suppose that that's the case. Would you consider the decision as to how to vote on this plan, whether to withdraw the consent and cause a revote to be a decision made outside the ordinary course of business?

MR. SOSLAND: Probably a decision to change the vote. I don't think that, under 303(f), if the Court says a decision -- I don't think a new decision has to be made, Your Honor.

THE COURT: No, I understand that. I understand that's your position. My question to you is, again, let's assume that there is no consent and we're just talking about a regular vote, an ordinary, normal type of vote. Would it be -- would you agree with me -- I'm giving you a hint there -- would you agree with me that --

MR. SOSLAND: Got it.

THE COURT: -- the casting of the vote on the plan would be an act outside the ordinary course of business?

MR. SOSLAND: Yes, Your Honor.

THE COURT: Good. That was wise.

(Laughter.)

THE COURT: You passed that test.

MR. SOSLAND: So, Your Honor, the Lenders argue that as of -- I think it's March 31, 2009; we might say the date should be April 6th for their argument, but it really makes no difference -- that following the occurrence and the continuation of the event of default in connection with the failure to make the required payments at HSG, that all voting and consent rights of Rangers Equity vested in them. And they cite to the credit agreement, Section 4.41 of the pledge agreement, for that proposition. And at the same time, the Lenders argue that they -- that all of the voting rights automatically vested in a collateral agent. And --

(Beeping.)

THE COURT: Who's making that noise?

(No response.)

THE COURT: Own up.

(No response.)

THE COURT: Okay. All right. I'll let it -- it wasn't loud enough for a sanction or for a search, but anybody

who's got a cell phone, a BlackBerry or anything like that, turn it off unless you want to pay me -- pay, not me, but the Clerk of the Court, some money. Okay? Go ahead.

MR. SOSLAND: Your Honor, we've noted that the Lenders haven't done anything to take control since March of 2009, but we don't even need to go to actions that were taken. We can look at the documents to see what the truth is, what relevant evidence do you have before you today that the Lenders omit from their version of the story.

So, to go to the documents, Your Honor, and we'll put this up on the screen again, let's look at Exhibit 4, Page 33. It's Section 11 of the pledge agreement. And if we look at Section A, "Notwithstanding any contrary provisions contained in this agreement or any other credit document, the collateral agent is aware of the provisions contained in Article V, Section 2(b)(2) of the Major League Constitution and recognizes that the Ownership Committee" -- and it goes on.

So, let's start, though, with Article V, Section 2(b)(2) of the Major League Constitution. That's also in evidence, Your Honor. That's at Exhibit 7 on Page 2 -- Page 6, I believe, which we'll put up. And it says that, "The vote of three-fourths of the Major League Clubs shall be required to approve" -- and this is also up on the screen, Your Honor, --

THE COURT: Yes.

MR. SOSLAND: -- "to approve any of the following."

And you'll see, "The sale or transfer of a control interest in any Club." And if you go down to the next sentence, Your Honor, "For purposes hereof, the term 'control' shall mean the possession by the transferee, directly or indirectly, of the power or authority to influence substantially the management policies of the Club." And that "A sale or transfer of a non-control interest," which is not at issue here, requires only the approval of the Commissioner.

Your Honor, the point is, the Lenders were aware of and entered into this -- their agreement is subject to this agreement. If we go back to Exhibit 4 on Page 33 and we look at the Provision B also, "Notwithstanding any contrary provisions in this agreement, the collateral agent acknowledges that Article V, Section 2(b)(2) of the Major League Constitution and the MLB Control Interest Transfer Guidelines require that the transfer of a control interest in either the Rangers franchise or the Rangers be subject to the approving vote of Major League Baseball in their absolute discretion."

And Your Honor, if we turn to Exhibit 6, Page 3, and we look at -- that defines what is the Major -- MLB Control Interest Transfer Guidelines at Section 1(d) says -- defines ownership by corporation of other entities and change of control, and if you look at the sentence in the middle the begins, "Therefore, a change in control in any such entity or a change in the individual designated by, for instance, the

corporate owner to make all Club decisions shall be deemed to be a control interest transfer."

Your Honor, what that means in this case is the Lenders can't cause anyone other than Tom Hicks to be the control person for this --

THE COURT: Could the Lenders move for appointment of a trustee in the equity owner cases?

MR. SOSLAND: I don't know that the Lenders could move for it. The Court can do whatever the Court can do, but the Lenders --

THE COURT: So it's your view, you would agree with Judge Baum, then, in the *Coyote* decision, that the Court could cause a transfer or otherwise transfer the club other than to someone approved by Major League Baseball?

MR. SOSLAND: The issues are different, Your Honor. And the issue in the *Phoenix Coyotes* case is different than the issue here. The issue in that case, Your Honor, was whether or not the debtor could cause -- if the debtor wanted to transfer interest in the partnership, was there a provision in the NHL agreement, franchise agreement, that the debtor was a party to that was enforceable or not as it related to the NHL. And the Court in a couple of decisions goes into determinations or discussions of whether or not a decision to not approve a sale was in absolute discretion or had to be rational. That's not what's before the Court.

THE COURT: Well, my understanding of the June decision by Judge Baum was that he held that, under 365(f), he could cause the transfer, I believe, to the Toronto or, pardon me, Hamilton Group, but for the change in location, as the Hamilton Group had been previously approved by the NHL. And as I understand it, I've looked at the briefs and, interestingly, the NHL argued, just as does the purchaser in this case, that 365(c) prevented the Court from doing -- approving such a transfer. But that's the way I read Judge Baum's decision. I'm sure I haven't read it as carefully as you. I haven't had as much time as you have.

MR. SOSLAND: I'm sure you read it more carefully than I did.

THE COURT: Yes. Good answer, but not correct.

(Laughter.)

THE COURT: Mr. Sosland, I'm going to ask you to -- and I'll give you more time after we return, if you wish it, but I'm going to ask you to shut down in just a couple of minutes because I have to -- I owe the consumer debtors the same kind of concern that I accord to this debtor, and I'm going to need to run out to North Richland Hills pretty soon.

MR. SOSLAND: I'll shut down now, if you'd like, Your Honor.

THE COURT: All right. All right. Well, we'll talk more about these subjects thereafter. And I'll give you

another five or 10 minutes when we return. I'm going to ask that you be back here at 1:15. We probably will start a little bit past that, but I'd rather be able to start as soon as I can be ready, rather than losing any time. So, if you'd be back then, I'd be most grateful.

We'll be in recess until 1:15.

THE CLERK: All rise.

(A luncheon recess ensued from 12:04 p.m. until 1:22 p.m.)

THE COURT: Please be seated. All right, Mr. Sosland.

MR. SOSLAND: Your Honor, good afternoon now.

THE COURT: Good afternoon to you.

MR. SOSLAND: I will try to touch on a couple of more additional points in the outline, and then, cognizant of the time, I'll then turn over the lectern to parties aligned with us --

THE COURT: All right.

MR. SOSLAND: -- after I do that.

But Your Honor, we were discussing what are the rights -- or, who has the rights to speak for Rangers Equity when we recessed for the noon break. And one provision -- there is another provision in evidence that I'd like to call the -- point the Court's attention to. That's in the pledge agreement, which I believe is Exhibit 4 that's been admitted in. Debtor's Exhibit 4 on Page 34. And -- oh, it's actually the next paragraph.

"This agreement and any rights or exclusivities granted by the Rangers thereof in respect of the collateral and any other intellectual property owned by the Rangers shall in all respects be subject to each of the following, as may be amended from time to time, collectively, the MLB documents."

And it goes on to lay out the documents that we've previously referred to in the argument and that are in evidence before the Court. And it's important, Your Honor, to note that. This is -- in this case, when we're talking -- one of the points we addressed today, what are the rights of the Lenders? What rights did the Lenders receive from the Debtor, TRBP, in respect of its pledge, its pledge, that it was the grant itself? The grant of the security interest or pledge rights or whatever it is that the Lenders received, anything that the Lenders received under these documents, that the grant was only given subject to the MLB consent. The Lenders accepted the grant subject to the MLB Constitution, to the rules and regulations that we've referred to, that their rights are subject to that. They -- the Lenders entered into this agreement voluntarily, and they defined the terms and conditions of the Lenders' rights.

This is about the rights of the Lenders based on their agreements. This is not about the Debtors altering a right or an arrangement that they have with MLB. It's what rights do the Lenders have, and whether or not they have any rights in

this case that are greater than the rights that they have outside of Bankruptcy Court. And we would say not. That goes all the back to *Butner*, Your Honor.

THE COURT: Let me ask you this. Under the plan as it is written, will the Lenders receive all relief vis-à-vis the Debtor that they could have received pursuant to a judgment, the Court having jurisdiction over a dispute between them if the bankruptcy weren't here?

MR. SOSLAND: Yes.

THE COURT: Okay. Go ahead.

MR. SOSLAND: Your Honor, there's some points I was going to make related to the *Dewey Ranch* case, the *Phoenix Coyotes* case. Because I know it's in the remarks that the MLB's attorneys want to make, I'm going to skip over that so that we avoid duplication.

Your Honor, I do want to make a point that, putting aside other sports teams cases, that as I said before, having a right subject to some third party's approval rights is not unique. Lenders often take pledges that are -- that can't -- where they can't take -- actually exercise control or take control or transfer title without some other authority or some other third party's rights to approve that.

Often, that comes up in a regulatory environment where you have some sort of governmental or quasi-governmental agency. There are examples of that. One that we have cited in the

case is with the FCC as it relates to broadcast rights. And we cited, Your Honor, a case out of the District of Arizona in which -- called *Uno Broadcasting Corp.*, which is at 167 B.R. 189, in which the court, in ruling that the lender took subject to the FCC consent rights and that the secured creditor couldn't transfer ownership or take ownership without FCC approval as was required under the documents, basically said that if FCC approval of the transfer is required, the provisions in the pledge agreement requiring the FCC's prior approval effectively gut the provisions granting the pledgee the right to exercise all voting powers. In other words, you've got the right, but you still have to go get the third party's consent.

That's exactly the situation the Lenders face in this case. It's just it's not a governmental agency, but it is a third party with whom the Lenders agreed that they cannot exercise control without the third party's consent. That is, MLB's consent.

The last point for this part of the argument, Your Honor, is on what are the fiduciary duties that are owed by Rangers Equity? To whom do they owe fiduciary duties? You asked us to address that, and we do that in the brief. I won't go through every point in the brief, but the point is Rangers Equity management owes duties to their partners. The duties that they owe are determined by the law -- in the first

instance, by the law of the jurisdictions in which those entities are organized. We have one of the general partners is a Texas LLC, and the other one is a Delaware limited partnership.

So, but whether we look at Texas law or Delaware law, there is significant authority for the proposition, which came up in this district in a case decided by Judge Jernigan called *TOCFHVI, Inc.* that directors owe no direct fiduciary duties to creditors of a corporation, even during insolvency or the zone of insolvency. The duty is owed to the corporation.

Now, as I said --

THE COURT: Well, let me ask you this. Let's suppose that in the two involuntaries pending, let's suppose that an order for relief were entered. Does that change the picture?

MR. SOSLAND: Your Honor, I think that -- not in -- not *de facto*. The duty is really a duty to exercise due care on behalf of the enterprise, which includes not wasting value and a number of other components, Your Honor. And so what I believe and I believe the case law supports is that the question is whether the entity, whether it's the partnership in bankruptcy or out of bankruptcy, is exercising its reasonable business judgment and exercising due care to preserve the value of that entity, is the test in or out of bankruptcy.

Now, do the creditors of that entity benefit from the proper exercise of the duty of due care? Of course they do.

And they should. But the question is whether --

THE COURT: So, you don't think a trustee has a higher duty of care than management outside of bankruptcy?

MR. SOSLAND: I think that the trustee has the additional duties generally that is put on it by the Bankruptcy Code, and it has fiduciary obligations. But in -- I'm not denying that a debtor in possession or a trustee is a fiduciary. It is.

THE COURT: Well, --

MR. SOSLAND: But the question is, how does it satisfy its fiduciary obligations?

THE COURT: Well, and I'm aware of the theory that the business judgment rule applies, and that absent a showing to the contrary, the Court is supposed to take the word of the debtor in possession or the trustee respecting proper exercise of business judgment. Is that a fair statement of your position?

MR. SOSLAND: Yes, Your Honor.

THE COURT: Okay. Go ahead.

MR. SOSLAND: And so, Your Honor, we don't believe that there's a -- so, we believe the answer --

THE COURT: Let me ask you this.

MR. SOSLAND: Yes.

THE COURT: The equity owners in this case, when they made their decision to accept the Express offer, their

perception, as I understand it from your pleadings, was that they owed duties to the partnership and to the partners. Correct?

MR. SOSLAND: Correct.

THE COURT: Okay. Now, if there were an order for relief, or if a trustee were appointed in the involuntary context, does that trustee post-petition have a fiduciary duty to maximize recovery? And again, I understand it's your position that the existing deal does maximize recovery. But for purposes of this hearing, we're assuming that there might be someone out there that would pay more.

MR. SOSLAND: Right.

THE COURT: If I appointed -- and I'm not saying that I would. And Mr. LeBlanc, don't start telling your associates to prepare a petition for appointment of a trustee in the partners' cases, because I doubt seriously that I'd be inclined that way. But let's suppose that I appointed a trustee. Would he be obligated to look to see if there was a better offer than the one on the table given that the debt, I think at the partners' level, and I'm not clear on this, but the debt at the partners' level exceeds the value of the assets that they have available to them. Is that not so?

MR. SOSLAND: That's correct, Your Honor.

THE COURT: Okay. So, they're insolvent.

MR. SOSLAND: No one disputes that.

THE COURT: All right. So, if they were subject to the duties as a debtor in possession, or if I appointed a trustee in those cases, would he not be obligated to entertain offers that are higher and better than the Express offer?

MR. SOSLAND: Well, I think that your -- well, --

THE COURT: I --

MR. SOSLAND: "Higher and better" almost assumes the conclusion, Your Honor. But if I --

THE COURT: No, no, no. I mean, at this point, one of the questions that I have to address is whether or not there is a reason for higher and -- for any offer to be entertained. Let's just, for purposes of argument, say that there is one that would provide greater return to the creditors of those two general partners of the Debtor. Would the trustee -- let's make it easy. So that it is isn't poor Mr. Ryan, who has the various hats here, let's make it a trustee. We'll make it Diane Reed. If it's Diane Reed, does Diane Reed have an obligation to listen to other offers?

MR. SOSLAND: Diane Reed, Your Honor, as a trustee would have the -- first of all, I think she has the obligation, as the trustee coming in and taking over the fiduciary duties on behalf of the estate, to investigate the assets and liabilities and to assess their value based on all of the facts. So, in other words, --

THE COURT: Okay. So, your answer --

MR. SOSLAND: -- to get up to speed.

THE COURT: Your answer, to cut through what you're saying, your answer is yes. Like any other trustee, she would be obligated to maximize value. And if there were a better way to maximize value, she'd have to look at it, right?

MR. SOSLAND: Correct.

THE COURT: Okay. By the way, for the benefit of those who don't know, Diane Reed is one of the Chapter 7 panel trustees, and it was the first name that came to mind. I do not mean to suggest anything about anything respecting anybody. But that was -- I guess I could have used Joe Schmoe or something like that. Or perhaps I should have, given what we're dealing with here, I should have used one of our other panel trustees, Robert Newhouse.

(Laughter.)

THE COURT: That would be perhaps more appropriate. But, all right. So --

MR. SOSLAND: Or another sport.

THE COURT: So, essentially, you are agreeing with the proposition that if the Debtors at the equity level were not alleged debtors but were debtors in possession, since they'd have the same duty as the trustee would, that they would have to -- if someone came in and said, "I will offer a higher price," they would have to look into that?

MR. SOSLAND: I agree with the proposition that the

trustee --

THE COURT: Okay.

MR. SOSLAND: There are a lot of cases that say a trustee has --

THE COURT: All right. Right. Okay.

MR. SOSLAND: -- a duty to maximize value, --

THE COURT: Okay.

MR. SOSLAND: -- and the trustee would look at all of the facts and circumstances here and determine what does so.

THE COURT: All right. Okay. Go ahead.

MR. SOSLAND: So --

THE COURT: That's good, Mr. Sosland. One of the most frustrating things when you're a judge is when you say to a lawyer, "How much is 2 plus 2?" and the best answer from his client's point of view is 7-1/2, and he says 7-1/2, that kind of detracts from his credibility. So, I appreciate your candor.

MR. SOSLAND: So, the question though, in the context we don't have a trustee and we do have alleged debtors, what duty -- was there a direct fiduciary duty owed by Rangers Equity or Mr. Hicks on behalf of Rangers Equity to the creditors, and the answer, for the reasons and the cases we've cited in our brief and the rationale in our brief, is there's no direct duty from that entity to its creditors.

And I'd say, Your Honor, if there is such a duty, even if

there is a duty, it's not before the Court on this case at this hearing. And if the Lenders are complaining about that, they have filed involuntaries, or there are -- depending on what entity they're complaining about, there are other forums that are available to them or other parties to address those issues, and they can.

THE COURT: Okay. And let me ask you this. Let's suppose that I invoke those magic words in 303(f). You know, the ones about where I order otherwise. In other words, where you now would have to come to me to make a decision with respect to property of the partner. You wouldn't have to, because you wouldn't be representing that partners, I assume. But whoever was representing them would have --

MR. SOSLAND: I would not be representing the partners, Your Honor.

THE COURT: Right. So, whoever it was would have to come to me. And we're now -- we're looking at a situation where we have an alleged debtor, right? But -- well, let's take a step back first. Let's suppose -- and of course, they're in involuntary 11's, right?

MR. SOSLAND: That's correct, Your Honor.

THE COURT: So they would be subject to appointment of a trustee on an 1104 standard, right?

MR. SOSLAND: That's correct.

THE COURT: Okay. And would you agree that if a

trustee were appointed, even prior to an order for relief, the trustee's duties would be substantially the same as they would be if the order for relief had been entered?

MR. SOSLAND: If a trustee were appointed --

THE COURT: Right.

MR. SOSLAND: -- before or after an order for relief under --

THE COURT: Right. Right.

MR. SOSLAND: -- 11, the trustee has the duties that a trustee has.

THE COURT: Right. Right. Okay.

MR. SOSLAND: Yes, Your Honor.

THE COURT: Okay.

MR. SOSLAND: I agree with that.

THE COURT: Okay. So, the next question I have for you is let's suppose that the magic words of 303(f) were brought into play such that decisions outside the ordinary course of business had to be brought before the Court before they could be taken. Okay? Under those circumstances, would the alleged debtor have duties parallel to those of a Chapter 11 trustee, or would the alleged debtor's duties to creditors be the same as they were absent the filing of the petition?

MR. SOSLAND: Your Honor, I don't want -- I'm not trying to parse this, but the truth is it would depend on what the 303(f) order said. If you provided in a 303(f) order that,

"Consider yourself to have -- you, alleged debtor, consider yourself to have the same duties as a trustee under 1104," then of course the answer would be that the Debtor does. Because the statute is worded so that those duties don't exist unless you order it, it really would depend upon what your order says.

THE COURT: All right. But if I don't -- in other words, if I don't specify that you would have the fiduciary duties of a DIP or a trustee, then you would -- and I would test your decisions, you're saying, on the same basis as I would test them -- as I would test your prepetition decisions. Is that correct?

MR. SOSLAND: Yes. I also don't --

THE COURT: All right. Let me --

MR. SOSLAND: At the end of the day, Your Honor, --

THE COURT: Let me ask you another question, then. And I understand we're dealing with hypotheticals here, and I'm not saying what I will or won't do. I'm just trying to understand. We've got some moving pieces in this case that I've got to understand how they fit together and how they move.

So, my next question is, let us suppose for a minute that, notwithstanding the entry of an order saying that the Court must pass on any transaction outside the ordinary course of business, if the standard that I would apply to the alleged debtor is a lesser standard in terms of maximizing recovery than would be the case for a debtor in possession or a trustee,

meaning that the alleged debtor would not have to maximize recovery whereas the debtor in possession or trustee would have to maximize recovery, does that constitute a basis for me either (a) to say that I'm going to impose on you the duties of a debtor in possession, or (b) impose upon you a trustee? Because otherwise we don't get the estate maximized.

MR. SOSLAND: I don't --

THE COURT: Did I not make sense with that?

MR. SOSLAND: No, you made sense, Your Honor. But I don't -- the issue is that I think that ultimately it doesn't make any difference. I understand the Court's point about the duty of a trustee to maximize value, but I also believe, Your Honor, that the exercise of the duty of due care and the exercise of the reasonable business judgment of the management of the partners in exercising the duty of due care ends up at exactly the same place as the trustee exercising the duty to maximize value.

This is -- Your Honor, and specifically in this case, with this asset, with the -- under the facts and circumstances that we'll prove at such time as it is appropriate to have live testimony on these issues. Because Your Honor, I think that when you take all of -- if you take into account all of the facts that were known by management at the time the decision was made that are not in evidence today, and notwithstanding the assumption that there is, in fact, a higher and better

offer there -- that's the assumption for purposes of --

THE COURT: I understand that. And --

MR. SOSLAND: -- this hearing, right? But I believe -- that you'll end up in the -- I'm sorry, Your Honor.

THE COURT: That's all right. It's hard for you, I know.

(Laughter.)

THE COURT: Those other judges, they don't mind. I do. Sorry.

What I'm trying to get at here and what I'm trying to look at, and it seems to me there are two key issues to this, is whether the Debtor must be/should be/can be/is locked into the present transaction, or whether the Debtor has a duty/should have a duty/may have a duty to shop the deal.

I mean, basically, if I understand, and I may be mistaken, but if I understand the Lenders, their view is that if you shop the deal and this is the best deal, they'll shut up and go home and lick their wounds. But if there's a better deal, then -- from their perspective, a monetary one -- and I understand there may be other concerns. But, I mean, that's the question, it seems to me.

And it seems to me there are two -- there are several issues that I have to address to get to that bottom line, and those issues are pretty much the issues that we're dealing with today.

Go ahead.

MR. SOSLAND: Your Honor, that may very well be what the Lenders have stated. The position of the Debtors is they did shop this asset --

THE COURT: Yes, I understand.

MR. SOSLAND: -- and it resulted in the contract that's before you. And you asked that we not present evidence --

THE COURT: Yes.

MR. SOSLAND: -- on any actions that took place prior to the petition date.

THE COURT: I understand that.

MR. SOSLAND: And we believe that we can demonstrate at the appropriate time that that's precisely what we did.

THE COURT: Yes, yes, yes. But Mr. Sosland, it's the same old game, isn't it? You may have -- this may have been the best deal available prior to the date of the filing of the petition, and it may be the best deal available today, too. But if there were a better deal available today, too, do you have to look at that deal or not?

And it's my understanding that it's the Debtor's position that the Debtor does not have to look at an alternative deal which would provide a greater return to creditors. And it's also the Debtor's position, at least in part, that they can't look at a better deal because of the Major League Baseball

Constitution. Is that essentially correct?

MR. SOSLAND: Not the latter, Your Honor. Your Honor instructed the Debtors that we're not constrained.

THE COURT: Yes.

MR. SOSLAND: Now, and the Debtors took Your Honor seriously on --

THE COURT: Okay. Okay.

MR. SOSLAND: Not constrained and not directed, and the Debtors are behaving accordingly.

But the, you know, not all offers are created equal. I mean, assume hypothetically that there was a higher offer with a $6 or $7 million difference, but it has a working capital adjustment and assumes a closing rate --

THE COURT: Yes.

MR. SOSLAND: -- that came and went a long time ago, and it's --

THE COURT: Okay. I understand.

MR. SOSLAND: There are a lot of factors that go into it.

THE COURT: Yes, or there could be one where it says, "We want to move the team to Honolulu," and Major League Baseball has a very strong and valid interest in keeping that from happening.

MR. SOSLAND: That's right, Your Honor.

THE COURT: And I understand that, and that would be

consistent with Judge Baum's decision in the *Coyote* case, right?

MR. SOSLAND: Correct, Your Honor.

THE COURT: Okay. All right. Go ahead. Anything further?

MR. SOSLAND: Not at this point, Your Honor.

THE COURT: Can I see if I have any more questions of you? I know how much you enjoy them.

(Laughter.)

THE COURT: Let me ask you, does the good faith requirement of Section 1129(a)(3) include a requirement that the petition has been filed in good faith?

MR. SOSLAND: I believe it does, Your Honor.

THE COURT: Okay. You might want to give a second -- and you have a good argument to the contrary. Look at -- this is what happens. Business owners don't look at Chapter 12 and 13. So you might want to look at 1225 and 1325.

MR. SOSLAND: I'll take a lesser standard.

THE COURT: It's --

MR. SOSLAND: Your question did -- or, the pause did prompt one other point.

THE COURT: Okay.

MR. SOSLAND: The Court was asking, you were asking about -- earlier questions about the appointment of a trustee. The reason, Your Honor, that the standards for an appointment

of a trustee in a Chapter 11 case are so high include a variety of things. There's --

THE COURT: Well, I'm not so sure they're quite as high as they once were since the 2005 Act and the addition of additional provisions respecting appointment of a trustee. But I'm inclined to agree with you. And I'm disinclined to see trustees appointed in Chapter 11 cases, particularly this one.

MR. SOSLAND: I think, in any event, Your Honor, that the case law under the statute supports the proposition that if the Debtor is properly exercising its duty of due care, the duties of management that exist outside of bankruptcy, I would offer to the Court it would be very difficult for a court to find grounds to appoint a trustee under Chapter 11.

THE COURT: Would you say that grounds, and what I was getting at before, would you say that grounds would exist for appointment of a trustee if a trustee would maximize recovery and the Debtor would not?

MR. SOSLAND: If you could actually prove -- maybe.

THE COURT: Okay. Let me ask you this. This is one, too, for Mr. Esserman or Mr. Shimshak. If I were to direct that the magic words in 303(f) applied here, and therefore you had to -- and I recognize at this point we're talking about not an action but an inaction. But let's just make it, for the sake of a simple judge, let's make it that it works either way. If I am the one who passes on the transaction -- in other

words, you come in and say, "We now want to sell to Express," is my ability to pass on that a change of control for purposes of the MLB Constitution?

MR. SOSLAND: I think that your ability -- I'll let Mr. Shimshak answer for himself, --

THE COURT: That's a good answer.

MR. SOSLAND: -- but I'll give you the Debtor's answer.

THE COURT: Okay.

MR. SOSLAND: So, I will answer your question.

THE COURT: Okay.

MR. SOSLAND: I don't think that your ability to rule on the issues before you is a change of control under the MLB provisions. I think that what they -- my view of what they go to, though, is who is the party who can make the decisions about the baseball club? And I'm -- not, do we also need Bankruptcy Court approval, because we voluntarily sought to be here, but it is, who can make the decisions about running the baseball club? Who -- what chain of command exists to approve, whether it's trades or salaries or decisions at the operating -- when it comes to the operations of the ball club?

THE COURT: Well, it's also --

MR. SOSLAND: That's really what we're talking about.

THE COURT: It also has to do with the transfer of ownership. And at that point, I'm the one passing on the

transfer of ownership, am I not?

MR. SOSLAND: You are -- you have to approve the transfer of ownership of the Debtor's assets.

THE COURT: Okay.

MR. SOSLAND: There's no question about that.

THE COURT: Okay.

MR. SOSLAND: But the point --

THE COURT: All right. How about appointment of a trustee? Would that violate the MLB Constitution?

MR. SOSLAND: I'll let Mr. Shimshak answer that one, but I think the answer is going to be it depends what the trustee is doing.

THE COURT: Well, I mean, the trustee would have the powers of a trustee. I don't think -- so far as I know, I can adjust the powers of an examiner, but I don't think I can fool around with the powers of a trustee. Congress gave him his powers.

Let me ask you a couple of more here, I think, and then you're off the hook. (Pause.) I think I have the answer to that.

Am I correct that -- well, let me ask you this. The Lenders have asserted that -- and we're not even dealing with whether this is true or not today, or whether this constitutes an issue that they can deal with. But they have asserted that property was fraudulently transferred by others of their

borrowers into the Debtors, as I understand it.

MR. SOSLAND: They have alleged that.

THE COURT: For example, the stadium. Right?

MR. SOSLAND: Correct.

THE COURT: Okay. If that were so, then they would have a claim against the Rangers by reason of the transfer of the property into the Rangers, correct? I mean, generally speaking, when you bring a fraudulent transfer suit -- when you, as a creditor, bring a fraudulent transfer suit against the transferee of your borrower, --

MR. SOSLAND: If they can prove the --

THE COURT: I understand.

MR. SOSLAND: -- elements, which I highly doubt.

THE COURT: What class -- if they have such a claim, what class does the claim fall in?

MR. SOSLAND: I assume it would be an unsecured claim, Your Honor.

THE COURT: Okay. Then which class would it be, 7 or 8? Do you know offhand?

MR. SOSLAND: I don't.

THE COURT: Okay.

MR. SOSLAND: I don't know, but I'll assume it's not an assumed liability by the purchaser.

THE COURT: All right. One more and then I'll let you go.

Am I correct that it is the Debtor's position that to the extent that the Lenders are complaining of the effect of this proposed transaction on their relationships with other borrowers, that the change in those relationships that will result through this transaction are beyond the control of the Debtor and therefore do not constitute impairment of the Lenders?

MR. SOSLAND: Yes. First of all, we dispute that --

THE COURT: I understand that. And it's --

MR. SOSLAND: -- that there are -- that there is any change in the relationship with the other parties --

THE COURT: Right.

MR. SOSLAND: -- or their agreements, but --

THE COURT: The reason why we're not going to talk about interesting little details like Mr. West's e-mails is the same as why we're going to assume that this is so. Okay?

MR. SOSLAND: Yes.

THE COURT: Okay. All right. Well, thank you.

MR. SOSLAND: Thank you, Your Honor.

THE COURT: Who's next?

MR. SHIMSHAK: Good afternoon, Your Honor. Steve Shimshak; Paul Weiss; for the Office of the Commissioner of Major League Baseball.

Let me take your questions --

THE COURT: Let me say, to begin with, I'm not -- I

don't mean -- when I ask questions, I have various purposes. And it's sometimes to mask what my thoughts are, to be honest with you. So, please do not try to read me, because I make a real effort to keep that from happening.

MR. SHIMSHAK: I'm learning that. I'm learning with each appearance that that's becoming increasingly difficult to do, so I'm not even going to venture to try and read you.

THE COURT: Good. But I think you have some idea of what my concerns --

MR. SHIMSHAK: I do.

THE COURT: -- and questions are here.

MR. SHIMSHAK: I do. And I want to start with the questions that Mr. Sosland left for me to answer. Quite appropriately, I think.

Let's start with the question about your authority, and your exercise of your authority, and does that conflict with Major League Baseball guidelines. Of course not. You have to look at the reality of the situation right now. The Rangers are in bankruptcy. The ability of the Rangers to convey assets lawfully under the purchase agreement, because they're in bankruptcy, is dependent on Bankruptcy Court approval. And when we address the question of the admissibility of a new owner, it has to be premised on a contract that is lawful and that all the requirements to completing and fulfilling that contract have been satisfied.

So, because the Rangers are in bankruptcy, one of the requirements to execute the contract and to perform under the contract is Bankruptcy Court approval. So, no, I don't see that as an issue.

You asked questions about the appointment of a trustee and what would the consequences be of the appointment of a trustee from Major League Baseball's perspective. Obviously, the ability to appoint a trustee is one that exists as a matter of federal law under the Bankruptcy Code. It's the -- the standards are specified in Section 1104. We don't believe that any of those standards apply here and we shouldn't assume that they apply here. But as a purely intellectual matter, no, the appointment of a trustee would not, in and of itself, in our view, violate Major League principles and complicate life under the Major League guidelines.

It does introduce, necessarily, very critical issues about the operation of the team and that region of decision-making which we believe does not intrude on the interests of Major League Baseball and that region of decision-making that would intrude on the prerogatives of Major League Baseball. In simple terms, I don't think anyone would be surprised to hear that we would -- Major League Baseball would have serious issues with a trustee effectively putting on the manager's cap and making everyday decisions about the operation of the team.

THE COURT: The owner can't even do that, can he?

MR. SHIMSHAK: No.

THE COURT: Yes.

MR. SHIMSHAK: There has to be a designated individual who has that power and capability. And very importantly, under the Major League guidelines, we've located those interests that are very vital to Baseball in a particular person that is satisfactory to us. So, you know, that -- so, there's not a *per se* prohibition about the appointment of a trustee, but the devil would be in the details in terms of the powers that that trustee would exercise, and there certainly could be circumstances we could foresee where a trustee, in the exercise of his powers, would intrude on areas where we felt that that was implicating a change of control and invading the prerogatives of the person who was in the control position. And we would be quite vocal about that and quite protective of that, because if goes to the fundamental interests that the Commission's Office has in the integrity of the game, the quality of the performance on the field, and the like.

You mentioned -- you asked about the ability of a trustee to perhaps withdraw this decision. I think that's an area that is a more difficult one, but I think that we would conclude that that is something that a trustee could do, because he'd be focusing on, in doing it, on his fiduciary obligations as you articulated them. Or, said another way, it would be very hard to put a trustee in a position where he is discharging his

statutory obligations and then to say that he can't do that, that there's -- that, in effect, the bankruptcy powers are overridden.

But there certainly are critical areas, and we're not discussing them today, where we believe the rights of Major League Baseball are absolutely paramount, and that's in the area of membership in the team and respect for -- membership in the League, excuse me, and respect for our process, when we get to that point, whenever anyone who is proposing a sale brings a buyer to us.

I wanted to comment on the *Coyote* decision. I don't want to dwell on it. I refer to the June decision as *Coyote I*. And as the Court knows, the issue on the ability to assign the contract was very fact-specific. And in fact, one can read that decision as a recognition as a general principle of the ability of a league like the National Hockey League to have concerns about the members and to have provisions in an executory contract that were enforceable.

THE COURT: Let me ask you this.

MR. SHIMSHAK: Yes?

THE COURT: And I have -- I mean, this is my first introduction to the Constitution, so I've not -- I mean, not the federal Constitution, your Constitution. But let me ask you this.

MR. SHIMSHAK: Sure.

THE COURT: Would it be a correct assumption that the League's consent is something that cannot be unreasonably withheld? For example, if we had -- let's make it easy. Let's suppose that the new proposed owner of the Texas Rangers was Jimmy Carter and all of the League members, George Steinbrenner and all those folks, said, "We're all Republicans. We don't want that guy here." Would that be something that they could just do on that basis? In other words, a relatively irrational basis? Or could they say, "We don't want" -- to take from the *Pilgrim's Pride* case -- "We don't want Hungarians owning our ball clubs, so we will exclude all Hungarians"? Could they do that, or is there some reasonableness standard?

MR. SHIMSHAK: Your Honor, Major League Baseball is a private association, and the law has been incredibly protective and nonintrusive about the decision-making powers and the decision-making rights of the members who join this organization. And there are decisions in which courts in effect say, to your point, "We're not going there. We're not going to get into that. We're not going to even examine that."

THE COURT: Well, I don't disagree with you in the general context that cases go that way, but I think we're in a unique situation --

MR. SHIMSHAK: Uh-huh.

THE COURT: -- and it's somewhat different from the norm.

MR. SHIMSHAK: I think you should assume this. I think that you should assume that it will never be an issue because Baseball will always act reasonably, necessarily act reasonably, in the pursuit of what it sees as being in the best interests of Baseball. So it is not going to take a position on the application of a member or on an application -- or on any issue that is inconsistent -- indefensible, frankly -- from the perspective of what's in the best interest of Baseball.

Going back to the argument on the Lenders' rights, and I appreciate that the Court, in its statement of the issues, did not limit it to the question of the Lenders' ability to exercise their rights. You were asking more broadly, and quite fairly, who can exercise a control decision at the level of the two partners. And I've touched on some of the questions that you've raised in that regard concerning a trustee.

I would just amplify on the comments that Mr. Sosland made, that in addition to the contractual undertakings that the Lenders took with these borrowers and with these guarantors and these pledgors -- so, the contract between them -- there is a separate contract that bears on this very critically as well, and that is the partnership agreement itself. That is the agreement between the two partners. And the agreement between the two partners as well respects the Baseball authority's approval powers and in effect says, as between -- as a contract between them, anything that we do that is inconsistent with

Baseball approval powers is null and void.

So I wanted to make sure that that additional point was noted.

Otherwise, on the other issues, as we indicated, we support the positions that Mr. Sosland has so well articulated from the podium this afternoon.

THE COURT: All right.

MR. SHIMSHAK: Thank you, Your Honor.

THE COURT: Well, thank you, Mr. Shimshak. Mr. Small? Oh, wait a minute. Wait a minute. Mr. Shimshak, come back.

MR. SHIMSHAK: Yes?

THE COURT: Let me see if there's anything else --

MR. SHIMSHAK: Sure.

THE COURT: -- that I want to ask you. I'm sorry. You guys took up my weekend, but I didn't get as much time in on this as I would have liked to have.

(Pause.)

THE COURT: All right.

MR. SHIMSHAK: Thank you. Thank you, Your Honor.

THE COURT: Okay. Mr. Small?

MR. SMALL: Thank you, Your Honor. Michael Small on behalf of Rangers Baseball Express, the Greenberg/Ryan Group.

Your Honor, the first point that we would like to make is consistent with and in agreement with Mr. Sosland's descriptions of the Lenders' rights and the limitations on

their rights. In addition to the pledge agreement at Pages 33 and 34, --

THE COURT: Let me stop you. And I don't mean to interrupt. I'm happy to listen to this, but what I am principally interested in is the petition date forward. And there is very little doubt in my mind, and I don't know that the Lenders would quarrel with me, but there is very little doubt in my mind that their contractual ability to pass on a deal disappeared when the case was filed. I may be mistaken in terms of their position, and I'll be surprised if they concede it too readily, but that's my view. And what happened prepetition, I'm not terribly interested in, either from their perspective or from the Debtor's perspective.

Go ahead. I mean, unless there are some bodies buried out at the stadium that I'm unfamiliar with. And I mean, literally, bodies buried.

MR. SMALL: Your Honor, the point simply addresses the nature of the impairment argument.

THE COURT: Okay. Go ahead.

MR. SMALL: And in addition to the pledge agreement, the first lien credit agreement at Section 10.23(b), (c) and (c) provides the parallel language and parallel constraints that Mr. Sosland referred to in the pledge agreement.

The second point, Your Honor, is not only applicable to secured creditors of the Debtor, but any person who would

presume to act in control of TRBP. TRBP's own partnership agreement itself subjects itself to Major League Baseball and to the Major League Constitution under Sections 2.4(a), 2.5, 4.1 and 5.3, among others.

Third, Your Honor asked about the duties of the general partners of TRBP. And to the extent that TRBP is a general partnership, their duties run not only to creditors who have creditor claims against them, the equity holders at TRBP, but all of the creditors of TRBP. And so any exercise of duties by Rangers Equity, LP or Rangers Equity, GP, LLC would have to take into account duties to all creditors of TRBP.

In addition, Your Honor, there would be no off-the-rack duty to explore the possibility of a different deal, again, at the equity debtor levels, because that has the potential to be inconsistent with duties owed down through the TRBP partnership.

THE COURT: Now, now, I'm not sure I understand that, Mr. Small. I thought that we had, at least from Mr. Sosland, he agreed -- and let's take the simple case. A trustee is appointed for the two equity owners. It was my understanding that he agreed with me that the trustee would have a value maximization duty by virtue of his role as trustee. So --

MR. SMALL: But not that such assumed duty would require additional shopping or jeopardizing of the plan before the Court in this case. Nor would it free such a debtor from

continuing to comply with Major League --

THE COURT: So you're saying that a trustee would -- you're almost saying a trustee would be obligated to not consider other options.

MR. SMALL: No, I'm not going that far, Your Honor.

THE COURT: Okay.

MR. SMALL: I'm saying that a trustee would be at risk if, in pursuing other options, it created harm in the TRBP bankruptcy to the confirmation of the plan before the Court. And while the liability of trustees has limitations, a trustee would not be immune from taking a course of action that was, in fact, mistaken. It is not unconstrained to swing for the fences no matter what. A trustee in any of those cases would not land in a hypothetical situation, but rather the situation that in fact exists before the Court.

THE COURT: Well, now, are you saying to me that -- and we're not looking at a trustee at this point, and I would not expect it. I think one thing that almost everybody in this room agrees with is that the Rangers need to be out of this room just as soon as possible, in a fashion where there is as little risk as possible that they're going to wind up back in here again. I mean, I think that's a fair statement, don't you?

MR. SMALL: Yes, Your Honor.

THE COURT: Even Mr. Shimshak's nodding, so that's a

good sign. And I share that view. And one of the things that I would not want to see, and you are familiar with this because it was in the e-mail that I send all of you when we were first discussing a mediator, I would not want to see the shadow, the long shadow of an appellate process hanging over these proceedings, if at all possible. If and when your group acquires the Rangers, I want you to go on and play baseball and not come back and pay lawyers. Including you, as nice as you are.

But are you saying to me that a trustee who, if he, in the exercise of his good business judgment, which is what I'm being told to rely on here in the adoption of Express as the purchaser, if a trustee, in the exercise of his good business judgment, said, "I want to talk to" -- we'll use Mr. Crane because he's the only name I have on the table at this point, and I'm not suggesting he's real or anything else. But if he said, "I want to talk to him," are you saying that this would put him personally at risk on his bond?

MR. SMALL: Your Honor, --

THE COURT: That would be a very scary thing for you to be saying.

MR. SMALL: I am not saying that, Your Honor, --

THE COURT: Okay.

MR. SMALL: -- because what you've just described is the exercise of the business judgment. I am saying there is no

requirement, the moment that the debtor in possession in either of those cases, should an order for relief be entered, or in the hypothetical where there was a trustee, which we don't obviously concede.

THE COURT: I'm using a trustee because it's easier to distinguish between him and the alleged debtor, the hypothetical trustee. But yes, I agree with you. So, what you're saying is that he has the option of saying, "In my good business judgment, I want to proceed to the conclusion of this deal," as opposed to looking at other deals. Is that correct?

MR. SMALL: Certainly has the option, and perhaps has the requirement, based on the facts of what would qualify as the proper exercise of business judgment, yes.

And further, Your Honor, again, the last point I wanted to make along those lines is that the Rangers Equity entities are also subject to acting consistently and subject to the Major League Constitution and the other Major League rules.

THE COURT: All right. Very good. Then we're ready to switch sides. Who's going to be the first?

MR. LEBLANC: Your Honor, Mr. LeBlanc from -- Andrew LeBlanc from Milbank Tweed. I don't know if the Unsecureds had anything to say. I don't know if you wanted them to go --

THE COURT: Well, I was going to put them and the U.S. Trustee, if either of them wanted to comment, at the end, and let you guys go first. Because at this point, I don't think

that they are aligned with the Debtor, and it seems to me the principal dispute here is between that side and this side. And I think Mr. Fine it sitting over there just by chance, not by --

MR. FINE: That is correct, Your Honor. If I had my choice, I would be somewhere in the middle.

(Laughter.)

THE COURT: Yes. We'll put a chair for you in the aisle.

All right. Okay. Mr. LeBlanc, how are you going to split your time?

MR. LEBLANC: Your Honor, it's my hope, subject to the questions the Court has, that I will take roughly half of it and leave the balance of the time for my colleagues from Latham and Gardere and/or Clifford Chance, the agents' counsels.

THE COURT: All right.

MR. LEBLANC: Obviously, though, any of that, Your Honor, is subject to the Court's questions. We obviously want to be as responsive as possible to the questions that the Court has.

Your Honor, I think where we begin the analysis is where we begin the analysis in our brief, and that is with the question of whether we are impaired as secured creditors. Mr. Sosland made a comment in his presentation that I think is just

remarkable, and Mr. Sosland said that, "The credit agreement provides that if we pay them $75 million, then they go away." That actually is wholly inconsistent with the terms of the credit agreement. If we were sitting outside of bankruptcy, they could not write us a $75 million check and tell us to go away. That simply isn't correct under the credit agreement at all.

And I think, Your Honor, it's a little plodding, but I think we actually have to spend a little time looking at the credit agreement itself. And unfortunately, we don't have the high-tech that Weil Gotshal has here in front of Your Honor, and I'm going to look at the documents themselves. But there are two provisions that make quite plain that, notwithstanding any prepayment, the guaranteed obligations are not extinguished. In particular, Section 7.8 of the credit agreement and Section 7.4(f). And Your Honor, I'm looking at --

THE COURT: This is Debtor's Exhibit 1, is it not? I think that's the same as your exhibit, is it not?

MR. LEBLANC: I believe -- I don't have the Debtor's exhibits, but I think, if that's the first lien credit agreement, Your Honor, then it is.

THE COURT: It's the first lien credit agreement.

MR. LEBLANC: I think at some point they were looking at the second lien credit agreement, but we've just used the

first lien.

THE COURT: I just don't want to dig your exhibits out if I can avoid it, because I already have these open.

MR. LEBLANC: I'm going to ask if you in a few minutes, Your Honor, --

THE COURT: All right.

MR. LEBLANC: -- but until we get to that point, I don't think you have to.

THE COURT: All right.

MR. LEBLANC: Section 7.8 of the credit agreement, which is on Page 82, I'm sorry, 92, says that, "The guaranty is a continuing guaranty and shall remain in effect until all of the guaranteed obligations, other than continuing obligations, shall have been paid in full and the revolving commitment shall have been terminated and all letters of credit shall have been expired or canceled."

The guaranteed obligations. Mr. Sosland showed you the definition in Section 7.1. The guaranteed obligations are the full amount of the outstanding indebtedness. And there's really no dispute about that.

THE COURT: So is it your position that if they give you a check for $75 million, you'll say, "Thank you very much. You owe us $75 million"?

MR. LEBLANC: Your Honor, we -- I think, outside of bankruptcy, we would say that, but I think there's actually a

more important point. There is an economic element to their obligations. There is a non-economic element to their obligations. Because the Debtor here is not merely a guarantor under the pledge -- under the credit agreements. The Debtor is a credit party under the credit -- under this credit agreement. And if we take a look, Your Honor, at the definition of the obligations under the credit agreement on Page 23 -- and I'll read this, Your Honor; I don't know that you need to turn to it -- but it says, "means all obligations of every nature of each credit party under the credit documents." Those are what are the obligations.

Now, each credit party has the obligations of every nature under the credit documents. Those obligations, as we looked at a second ago in Section 7.8 and as is consistent with what's in Section 7.4 of the credit agreement, include the affirmative covenants that are in Article 7 of the credit agreement, and one in particular. Page 84, Section 6.9. "Fundamental Changes, Disposition of Assets or Acquisitions. No credit party shall, nor shall it permit any of its subsidiaries to, enter into any transaction or merger or consolidation." But, as relevant, "sell any or all part of its business, assets or property of any kind whatsoever." And then it goes on to have certain exceptions to those, none of which apply to the case at hand.

THE COURT: Let me ask you this. Let's suppose for a

minute that you sued the Debtor. All right? What would you be entitled to get from the Debtor?

MR. LEBLANC: Your Honor, we'd be entitled to get $75 million in guaranteed obligations, and I'll get to that in a second, --

THE COURT: All right.

MR. LEBLANC: -- in cash payment. We'd also be entitled to enforce every other obligation of the credit agreement against the Debtor, without any question. So we'd have two causes for action there, one of which, the latter of which, the obligation to comply with the affirmative covenants in Section 6.9, for example, would be a claim either for injunctive relief or money damages, depending on how we viewed the harm from that.

To the extent -- we're entitled -- we'd be entitled to enforce their an injunction the obligation not to sell assets without our consent. And there's no dispute about that, and that includes after we were paid $75 million. There is nothing in this credit agreement that says anything approaching what Mr. Sosland said. Pay you $75 million and you go away. It doesn't exist. What it says pretty plainly, and I think -- we looked at Section 7.8. I think Section 7.4(f) is even more clear on this.

THE COURT: Well, how could you be -- let me ask you this, then. How could you be unimpaired under a plan, other

than with your consent? I mean, if you say, "I'm unimpaired," then you're unimpaired. How can they leave you unimpaired, period?

MR. LEBLANC: Your Honor, --

THE COURT: Is there any way they can do that?

MR. LEBLANC: The only way that they can do that, to not affect any of the other obligations imposed upon the Debtor, is if the entire enterprise were filed and we were paid in full. If all of the guaranteed obligations were paid in full.

Now, Your Honor, it's -- and it shouldn't be a surprise or shouldn't sound unusual. The structure that was set up here was intended to cause this Debtor to be bankruptcy-remote, to cause this Debtor not to be insolvent, to not have to file for bankruptcy, so you didn't have the disruption of a voluntary bankruptcy -- either voluntary or involuntary bankruptcy filing during the baseball season. That bankruptcy-remote status was taken away because they chose to file in an involuntary bankruptcy. But it doesn't change the fact that we absolutely have the right to rely upon the affirmative covenants that are in the credit agreement, notwithstanding the payment of $75 million. So, outside of -- there isn't any real question that outside of bankruptcy, we had the right to consent if they wanted to sell their assets, even if they were paying us $75 million.

THE COURT: Do you think your right to consent must be honored for you to be unimpaired?

MR. LEBLANC: We do think it must be honored for us to be unimpaired, yes, Your Honor.

THE COURT: Okay.

MR. LEBLANC: And because they're taking away that right, we think we're impaired. It's really that simple. I think the Debtors really kind of passed over this entire idea of impairment of the secured class.

THE COURT: Suppose that they were not going to pay you. Suppose they were going to cure and reinstate. Would they have to still get your approval to the sale, as long as the Rangers remain on the hook and owe you $75 million?

MR. LEBLANC: Well, Your Honor, if they could prove unimpairment under 1124(2), then I think the answer to that is they could do so. And if they could prove reinstatement, then I think they could satisfy that standard, yes.

THE COURT: All right. What would your relief, what would your injunctive relief be if you were not before this Court?

MR. LEBLANC: Your Honor, it would be to prevent them from selling the assets without our consent.

THE COURT: All right. So the only thing you're really talking about is the approval of the sale?

MR. LEBLANC: Well, Your Honor, the element that I'm

talking about right now is approval of the sale. There are a variety of other defaults that occurred in the immediately-prepetition transactions with affiliates, fraudulent transfers, those types of things. Those obligations also would have to be complied with. But under the hypothetical, the circumstance that what we're talking about is them trying to sell the assets outside of bankruptcy, we would absolutely have the right to consent to that sale. And that would be what we would seek to enforce if the only thing they did was to try to sell the assets without our consent.

And I think it's important to note, Your Honor, we've been at this for five months, where they've been seeking our consent and trying to get our consent, and we couldn't get there, neither party could get there. The negotiations didn't result in that. So there is no question that, outside of bankruptcy, they believed at least some portion of the transaction required our consent. They just think that because they filed it for bankruptcy, they can take that right away from us and declare us unimpaired, on a mistaken belief that they can give us $75 million and we have to go away. That's just not correct.

THE COURT: Go ahead.

MR. LEBLANC: Okay. Now, Your Honor, there are other provisions of the pledge agreement that are equally if not more clear about what the obligations are and about what they're trying to abrogate through the plan by taking away our right to

consent. Now, -- and I'll talk about those when we talk about the questions relating to who gets to act for Equity.

Now, the question Your Honor discussed with Mr. Sosland about Equity being impaired, I think that's well covered in our brief. I think, actually, if I understand the state of play correctly as we sit here right now, the Debtors and we agree, at least in principle, that the Equity Holders had to consent to what's happening here for them not to be impaired. If that's correct, then I don't know that there's material disagreement among us, because that's the fundamental linchpin of what we were contending, and we understood the Debtors to take the position that Equity was not being impaired simply because they were getting the distribution of whatever the residual value was.

Now, with respect to that, Your Honor, I'll note what's interesting is Mr. Sosland conceded that with respect to Equity, if they merely get the economic value that they're entitled to, which is the residual value, they would be impaired if their right to consent to the transaction was taken away.

Now, when he applies that same --

THE COURT: Do you think -- all right. Go ahead. Never mind.

MR. LEBLANC: Okay. But when, Your Honor -- we think that same analysis applies to the question of whether we are

impaired when we get the economic value to which we are entitled but we are not given the right to consent. We don't think it's any different.

THE COURT: I did not understand Mr. Sosland to say what you're saying he said. What I understood him to say was that if there had been no consent, then there would be a vote by Equity on the plan. And the reason for that is because the sale of all the assets constitutes something that amounts to an impairment in and of itself. He's differentiating between that and your situation by the fact that you have a quantifiable claim, as I understand, if I understand his argument correctly.

MR. LEBLANC: Your Honor, let me make sure, then, that there's no lack of confusion about the quantifiability of our claim. Because I --

THE COURT: You -- I don't think meant that you want to make sure there's no *lack* of confusion.

MR. LEBLANC: If I said something other, I apologize.

THE COURT: Yes.

MR. LEBLANC: I want to make sure that --

THE COURT: That's all right. It was funny.

MR. LEBLANC: -- that I'm being clear about --

(Laughter.)

MR. LEBLANC: I want to make sure, Your Honor, that I am clear.

THE COURT: I know you didn't intend to be funny, but

it was funny.

MR. LEBLANC: No.

(Laughter.)

MR. LEBLANC: Your Honor, what I think is critical, then, to look at, to the extent that there's any continuing question about our impairment, is the language of Section 7.1. The limitation of Section 7.1 is only a limitation on the amount of the guaranty by the Debtor. So, to the extent that the Debtor has monetary obligations under the credit agreement, they are not limited by the guaranty. Because the Debtor, in that circumstance, would be an obligor, with obligations.

Now, there are examples throughout the credit agreement of obligations that are imposed, and we talked about some of the nonmonetary ones, like the affirmative covenants in Section 6.9 not to sell assets. But if we look, for example, at the indemnity under Section 10.3(a), which is at Page 104 of the Debtor's Exhibit 1, the indemnity says, "In addition to the payment of expenses pursuant to Section 10.2, whether or not the transaction contemplated here shall be consummated, Holdings and each credit party agrees to defend" -- and then goes on from there.

Now, what's clear in that is that the credit parties, which includes the Debtors, have incurred obligations to the Lenders that are outside of the $75 million guaranty that is contained in Section 7.1. To the extent that they have obligations

beyond that, then it's clear that those also have to be satisfied in a plan, and there's no contemplation that they would satisfy those in furtherance of this plan.

In addition to that, we think Your Honor alluded to this earlier: To the extent that they're obligated to the Lenders as plaintiffs, the Lenders in their capacity as plaintiffs in the fraudulent transfer action we filed on Friday respecting -- and I assume the Court is aware of it, but if not, --

THE COURT: Nope.

MR. LEBLANC: Okay. Your Honor, we filed on Friday afternoon -- and with ECF being down, it didn't hit the docket until Monday -- a fraudulent transfer complaint, commenced an adversary proceeding in this case against the Debtor as it related to only one of the eve-of-filing transactions, and that was the ballpark lease transfer. So we have commenced that fraudulent transfer action as of Friday, and it's obvious the working its way through the system.

But Your Honor, that's clearly another obligation that would have to be satisfied by the Debtors to satisfy the obligations that are owed upon -- that are part of the obligations that they owe, in addition to what they can owe in the $75 million as a guarantor.

So, I think, Your Honor, in addition to the non-economic obligations that are imposed upon them and have to be satisfied in the plan, there are economic obligations that without

question have to be satisfied by them, in addition to the $75 million that they contend they can satisfy and then, to borrow Mr. Sosland's words yet again, to give us $75 million and we go away. It just doesn't exist in the document at all.

Now, Your Honor, I think -- I may have misunderstood Mr. Sosland with respect to the impairment of Equity, but I did -- what I understood him to say is that consent was absolutely required. And what I understand that to mean is that -- and he contends consent was given, and we'll talk about that in a moment. But if consent is required, then simply giving them the economic value isn't enough. You have to give them also their contractual right to consent to the sale, because they have that contractual right. He seeks at the same time to take that very right away from us, to consent to the sale. And we don't think that that's appropriate. We do think that that's necessarily impairment.

We also think, Your Honor -- and I think this goes without saying, and the Court is well aware -- impairment alone of our class would require that this plan is unconfirmable. There isn't a -- they don't contend there's another impaired accepting -- another impaired class that could possibly accept, so that would mean they'd have to go back to the drawing board. And we think the drawing board is pretty clear what should happen here, so I won't belabor that point at all.

Now, Your Honor, I do want to take a few minutes to speak

to the question of who can speak for Equity. And that's the second of the questions that was addressed by Mr. Sosland. I think there's a fundamental disagreement, I think, between us. And what's important in our view, Your Honor, is you have to separate two very distinct questions.

The first is, could the people who spoke for Equity and the people who are purporting to speak for Equity now, can they speak for Equity? That's one question. The second question is, can the Lenders speak for Equity? And frankly, Your Honor, as between the two questions, I don't think the second one is all that important at this moment in time because we're not purporting to speak for anybody. What we're saying, fundamentally -- and I think we can speak for Equity, but, fundamentally, we're saying that they cannot speak for themselves as we sit here today. And the --

THE COURT: So aren't you saying, then, that the event of default effected a change of control?

MR. LEBLANC: We aren't, Your Honor. We aren't.

THE COURT: Before default, could Equity not have done or made the decisions it made?

MR. LEBLANC: Your Honor, I think Your Honor's questions of the Debtor and of Mr. Shimshak highlight exactly what our proposition here is. When a company files for bankruptcy, it has the right to make decisions, but those decisions are subject to the consent of this Court. That

doesn't effectuate a change of control of that debtor. So, and similarly, outside of bankruptcy, where we have the right to consent to a transaction, that doesn't effect a change of control of the Debtor, but it does make the Debtor incapable of taking the act without our consent.

THE COURT: Could the Debtor's equity have taken the actions it took had there been no default?

MR. LEBLANC: They could not have, Your Honor.

THE COURT: All right.

MR. LEBLANC: And I'll --

THE COURT: So then the event of default was meaningless?

MR. LEBLANC: Well, I think the event of default, it is -- the event of default, under the terms of the pledge agreement, and we'll look at it in a second, vests the right to act in the collateral agent. But --

THE COURT: Okay. Well, if it vests in the collateral agent, then, on the event of default, why was that not a change in control?

MR. LEBLANC: Well, Your Honor, there's a couple of reasons. The change in control obviously would have happened back in April of '09, to the extent that that was correct. And we do think the right vested in the collateral agent. But I think, before we get to that question -- and I want to be responsive to Your Honor's questions, so let me try to address

that immediately.

Your Honor, we think that the structure of the pledge agreement and MLB's consent to the pledge agreement are such that we think that MLB has consented to everything that is contained in the pledge agreement, including the automatic vesting of the rights to act on behalf of Equity in the collateral agent. That's a right that is contained in the credit agreement -- in the pledge agreement that happens immediately upon default.

But I think, Your Honor, before we turn to that question, I think it is important to recognize -- to deal with the first question, and that is: Could the people who are arguing -- who are being argued to have consented, were they capable of offering that consent? One, at any time? And then, two, in the post-default environment? And the answer to both of those questions is no. And it's actually very clear. In an otherwise not-terribly-clear set of documents, it's very clear on this -- on these very points.

The relevant provision of the pledge agreement, Your Honor -- and the pledge agreement is Exhibit I to our materials. I'm not sure exactly which exhibit it is, but we'll get it in a second. Exhibit 4 in the Debtor's set of exhibits. With respect to pledged equity interests, Your Honor -- and this is on Page 18, and it's Section 4.4.2. And this is entirely in a pre-default scenario. With respect to pledged equity

interests, under Subsection (b), Covenants and Agreements, it says, "Each grantor hereby covenants and agrees that...without the prior written consent of the collateral agent, it shall not vote to enable or take any other action to" -- and then if we go down to Subsection (c) within that, "other than as permitted under the credit agreement, permit any issuer of any pledged equity interest to dispose of all or a material portion of their assets."

THE COURT: Well, but isn't there -- the consent, isn't that something that arises under the partnership agreement, and their breach of this agreement gives rise to a cause of action against the party breached this agreement, as opposed to a right to vitiate their consent?

MR. LEBLANC: No, Your Honor. I don't think that's correct. They didn't have -- well, I don't believe they had the right to do so. And I don't know if Your Honor is alluding to the partnership agreement provision that's been cited only by -- interestingly, only by the purchaser. And that's the right of the partners each to encumber their partnership interest.

THE COURT: Well, I'm saying that to the extent that the general partners take an action with respect to the partnership that involves a third party in this case, and I recognize this is a sophisticated third party who knows what's going on, but surely the fact that general partners do

something that breached their agreement with your client with respect to the partnership does not mean that their act with respect to the partnership is invalid.

MR. LEBLANC: Well, Your Honor, I --

THE COURT: Does it?

MR. LEBLANC: I think that it's plainly a breach of this. And may not -- that may not rise to the level of being *ultra vires*.

THE COURT: I understand that. But what I'm saying is that -- well, *ultra vires* is an interesting question. But what it seems to me is that this gives rise to your being able to say, "You equity partners breached your agreement with us. We're going to sue you."

MR. LEBLANC: Well, and Your Honor --

THE COURT: I'm not sure it gives you the ability to prevent the action that they took from proceeding to consummation.

MR. LEBLANC: Okay. That's fair, Your Honor. So let me go to the section in a post-default environment that very cleanly takes away their ability to have taken the action. And that's contained in Section -- the immediately-prior section, in Section 4.4.1, which is entitled, "Investment-Related Property, Generally." And the structure of this, what essentially happened is under Subsection (b) of this, there's a grant to the collateral agent of the right of pledged -- a

pledged asset right. So they have the right to take actions. In Subsection (i) -- (i) Subsection (1), they then grant those rights outside of the event of default back to the Rangers Partners to take the actions.

In Subsection (3)(a), however, what happens in a post-default environment, and this is on Page 17 of the pledge agreement, it says, "Upon the occurrence and during the continuation of an event of default, all rights of each grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease."

THE COURT: Yes, and then it goes on to say that they're vested in the collateral agent. It sounds to me like what you're telling me is that the Debtor's partners can't do anything because of this, and you can't do anything because of the Major League Baseball Constitution, so nobody can do anything about anything.

MR. LEBLANC: Your Honor, I don't think that's that unusual a situation. And I admit, Your Honor, that if we can't do anything, then nobody can do anything without anyone's consent. But I also submit, Your Honor, that's exactly what is intended to happen here, and it's exactly intended to happen here so that the parties are forced to work with one another. Because it is not the case that Major League Baseball's rights, the rights that they assert that they have under these

documents, trump the rights that we clearly have under the documents as well.

THE COURT: Well, let's suppose -- let me ask you this. Let's suppose, just for the heck of it, that the Debtors had an accepting impaired class in their plan. Would this prevent them from selling the team, cramming you down and selling the team in Chapter 11?

MR. LEBLANC: Well, it wouldn't prevent the Debtors --

THE COURT: Yes.

MR. LEBLANC: -- from doing so. It would prevent their Equity Holders from supporting that. They would otherwise have to satisfy the requirements of the cram-down provisions, which we don't think they could do.

THE COURT: So, is it your view that if a trustee were appointed for the equity partners, could the trustee elect to vote the equity partners' interest whatever way he wanted, or would you be able to tell him what to do, too?

MR. LEBLANC: Well, Your Honor, I think -- it's a fair question, because I think, now that the Equity Holders are in bankruptcy, they have the rights as a debtor in possession in the absence of --

THE COURT: Well, not yet. They're an alleged debtor at this point, --

MR. LEBLANC: Alleged --

THE COURT: -- though we could argue about whether

Section 1107 puts them in the same position as a trustee in an involuntary context. That's a good question.

MR. LEBLANC: Your Honor, I think that to the extent that they become debtors in possession, to the extent that there's a trustee appointed to act, I think that under those circumstances the trustee would be empowered to take those actions, as the trustee would always be empowered.

We -- and Your Honor, we're trying to take -- I understand we're not supposed try to read anything into what the Court is saying. I didn't have to send an associate out to file a trustee motion. We have one sitting here with us we had intended to file. We contemplated filing it before. We thought it made more sense to come to this hearing and try to read what we could out of the Court. But we're prepared to take those steps and to ask the Court to lift the stay to permit us only to take actions as it relates to voting on the plan of reorganization, in the first instance, which, if I understand your colloquy with Mr. Shimshak correctly, those actions might not be the types of actions that are prevented from being taken by someone other than the control party under the Major League Baseball Constitution, so I'm not even sure that there would be an issue there.

We also are prepared to ask the Court to appoint a trustee for the pledged equity interest entity's only. And what we're contemplating, Your Honor, is a fiduciary -- a responsible

party would be ideal here. We don't necessarily need somebody with all the rights of a trustee to displace management or anything like that, but a responsible party to act as a fiduciary for these estates, for those estates, in making decisions as they relate to the plan.

And we think, Your Honor, it would be appropriate to consider that at the appropriate time. But I think, if that happens, then, yes, they could make the decision to support the plan. Now, the plan could be -- the plan could go forward even if they didn't support the plan, the Equity Holders, if they could otherwise satisfy the requirements of 1129, including (a) and (b) if they're trying to cram down the secured lenders.

The most important element of it, Your Honor, I think, for the purposes of today is that we are impaired and therefore we are entitled to vote on the plan. And in the absence of some other impaired accepting class, 1129(a)(10) is quite clear that they can't confirm that plan. If they change the plan to impair -- to recognize that we're impaired and then allow us to vote and then impair someone else and allow that party to vote, and they end up with an impaired accepting class, then the circumstances, of course, would change and we'd have to deal with the circumstances that existed at that time.

And I think that, then, gets us to -- that transitions us, at least in part, to the duty to maximize value question that I think we addressed. But I don't want to leave the question of

who has the right to act on behalf of Equity here until we -- I want to make sure that we cover all of the grounds. And I think -- what's important for today's hearing, I think, Your Honor, is simply to recognize that the Debtors didn't have the right to act. In the words of the pledge agreement, their right to act ceased upon the event of default. Whether there was -- whether it vested in us, we haven't sought to take any actions or the agents have sought to take any actions.

THE COURT: If they -- if, let's suppose for a minute that I were to say that -- and let's leave you out of the equation for a moment. Okay? If I were to say Equity is impaired and you are not, and let us suppose, then, that Equity says, "We vote for the plan," wouldn't you, by exercising the rights you claim to have under the pledge agreement, be violating the stay?

MR. LEBLANC: We -- if --

THE COURT: Unless I lifted the stay to allow you to do so?

MR. LEBLANC: Yes, Your Honor.

THE COURT: Okay.

MR. LEBLANC: We would seek to lift the stay in that circumstance. And the motion that we're contemplating filing seeks to lift the stay for the very limited purpose. We want the automatic stay to apply across the board.

THE COURT: All right. Then if I lift the stay and I

let you exercise that right of control, haven't we had a change of control such that you're crosswise with Major League Baseball?

MR. LEBLANC: I don't believe we have, Your Honor. I think -- you asked a bunch of questions of Mr. Shimshak on a very related question, I think.

THE COURT: Yes, but he -- I think he was carefully walking a line between debtors in possession and trustees on the one hand and secured lenders on the other.

MR. LEBLANC: I appreciate -- he absolutely was, Your Honor. I know Mr. Shimshak, I don't know if it's catching on the transcript, is saying, "Yes, I was, Your Honor."

THE COURT: Yes. I saw that, too. But that's all right. I've been watching everybody. You understand that doesn't mean anything. And I'm going to go up and shake Sandy Esserman's hand after the hearing, and you understand that doesn't mean anything, either.

MR. LEBLANC: And I wasn't criticizing.

THE COURT: Yes, I know.

MR. LEBLANC: I wanted to make sure that it was clear.

THE COURT: I know.

MR. LEBLANC: I understood exactly.

THE COURT: And then I'll shake Stewart's hand, too, and that doesn't mean anything.

MR. LEBLANC: I hope I don't get left out of this one,

Your Honor. I hope I haven't offended you in any way.

THE COURT: In fact, Rochelle over there has been my partner at two different firms. Do you know that?

MR. LEBLANC: I do, Your Honor.

THE COURT: So, yes.

MR. LEBLANC: Your Honor, I think what is critical is to look at the language that the Debtors even showed you. Mr. Sosland talked about this in the Major League Baseball Constitution, and this is their Exhibit 7, TRBP's Exhibit 7 on Page 6. The control provisions say, "For purposes hereof, the term 'control' shall mean the possession by the transferee, directly or indirectly, of the power or authority to influence substantially the management policies of the Club." That's what Major League Baseball cares about. They care about who plays first base for the Rangers.

THE COURT: Well, I think they also care about if -- well, let me avoid that. If organized crime were in here and saying "We want to buy the Rangers," I rather assume that they'd care about that.

MR. LEBLANC: I agree, Your Honor. But I think it's important to define what we're --

THE COURT: I mean, this isn't the NFL.

(Laughter.)

MR. LEBLANC: To my colleagues on that side, and I'm sure the good friends of Major League Baseball are good friends

with the NHL -- NFL. I'm sure they won't --

THE COURT: I was trying to be facetious.

MR. LEBLANC: I understand that.

THE COURT: And, please, to the reporters in the courtroom, do not repeat that.

(Laughter.)

THE COURT: I want to survive this case.

MR. LEBLANC: Thankfully, there's no transcript of this, Your Honor.

But Your Honor, I think -- I completely agree with you. And I'm not -- what Your Honor -- and I agree with you, I shouldn't say completely, because I agree to an extent. I think that to the extent that they run afoul of the *Dewey Ranch* decisions, to the extent that they tried to exercise their control in an unreasonable way, then we would have an issue. But as it relates to the question of who gets to vote in support of this plan or not, we don't believe that when that motion is before Your Honor that you would conclude it's the type of control that they're protecting in there Constitution, that that's the type of control that they seek to protect.

And I think, actually, Your Honor, the *Uno Broadcasting* is a case that Mr. Sosland cited. It's a fascinating case, because actually the holding of *Uno Broadcasting* is that the -- that they allowed the pledgor to receive the rights that it had. So the entity, the lender there, got to vote the shares.

It got to vote the shares notwithstanding the fact that there was an FCC consent right, and it got to vote the shares notwithstanding that it had to take an affirmative action to opt in to voting those shares. It wasn't like the pledge agreement was here, where the right automatically vested.

Now, what's more important, Your Honor, is what the court said about the rights of the FCC. They said the FCC -- and I'm paraphrasing here -- the FCC is concerned about the internal affairs of the broadcast companies, and the broadcast company in that case was in receivership. So what they recognized is that what was critical to the FCC in their consent rights and the reason they allowed the transfer of the voting rights to the lender in that circumstance was because it wasn't dealing with the internal affairs of the broadcast company. That's what the FCC cares about.

And the same can be said here. What we're talking about -- and to the extent we're talking about a lift stay motion, we're talking about for the very limited purpose of exercising the right to consent, yea or nay, on the plan. And we think that we should have that right. We think the documents provide us that right. We don't think Major League Baseball requirements language in the agreement modify that. But to the extent that we wanted to do much more than that, if I wanted to decide who should play second base for the Rangers, that would be a real problem. I have little doubt about that. But that's not at

all what we're talking about here.

I think, Your Honor, there is one prepetition element of this that I do think is absolutely critical for the Court to understand. And I say this only because it wasn't part of our brief. I think that the first 15 pages of our brief that give the Court the background and give the Court the details of that background, with the exhibits, are critical to understanding what happened here and who actually exercised control. But there is one element that I think is critical for the Court to understand of a prepetition contract that we were unaware of until we got discovery from the Debtors over the weekend. And we attached as Exhibit -- I believe it's Exhibit U, Your Honor -- a May 21, 2010 letter agreement between the City of Arlington and BRE. And we -- and you have admitted that subject to it becoming relevant.

There's one provision, Your Honor, that I think is critical. And it actually is necessary to think about this in the context of the VSA, which we've also admitted, and that's Exhibit N.

THE COURT: Uh-huh.

MR. LEBLANC: And the VSA -- and I think Mr. Sosland admitted this earlier -- the VSA, Exhibit N, in the very -- in the preamble identifies the control party clearly as Mr. Hicks. That is the person in control. And to the extent that there is the one person who's been approved, it is Mr. Hicks. So we

understand from the documents that have been filed that the decision to file the bankruptcy was actually done by somebody other than Mr. Hicks. We don't know if that makes it inconsistent with MLB control rights, but the VSA, at least as it existed back in November, Mr. Hicks was the control party.

Now, there is -- the BRE issue, Your Honor, and this May 21, 2010 letter, provision -- let me just give a little context. And the context is at the bottom of the first page, carry over to the second page. There is a cross-default. BRE owns certain of -- controls certain of its land pursuant to a leasehold agreement with the City of Arlington. There is a cross-default provision that, if the Rangers file for bankruptcy, that BRE is subject to -- those leases are subject to termination because that's a cross-default event of default under those leases.

The City of Arlington, the Friday before this team filed for bankruptcy, agreed with BRE that it would not exercise remedies with respect to that default, that that would not -- that that event of default would not mature into a default because of the cross-default of the Debtors. But there were conditions imposed on them, and Condition G of that says that, "This letter agreement shall be null and void if such sale is not made to Baseball Express unless Baseball Express decides not to close or otherwise go forward with such sale."

So we had understood before that Mr. Hicks was selling his

own assets, separate and apart from it. And Exhibit F to the disclosure statement that's now been prepared shows that Mr. Hicks is receiving $75.2 million of consideration in connection with that sale. What we now understand, based upon documents we received on Friday -- on Thursday and Friday of last week and were able to review over the weekend, is that Mr. Hicks has tied himself intricately to this particular buyer. Because if he chooses to sell to a higher bidder, then he loses or puts himself at least at risk of losing valuable leases on the BRE land and puts at risk the $75.2 million that he's negotiated and arguably is entitled to if this plan goes forward.

So, to the extent that the only person Major League Baseball says that can actually control this entity has a conflict that is insurmountable because he's tied to this particular purchaser, then we don't think that there is anyone who can act for Equity in these circumstances. And that's -- the question that was posed is, who can act for Equity?

What we think is clear under the documents and what we don't think are disputed facts is that the party that did in fact choose to act for Equity and the only person MLB recognizes as having the right to do so didn't have the right to do so, whether because of an insurmountable conflict -- and we cite the *Philadelphia Athletic Club* case to recognize the notion that if you have a conflict of this nature, that you can't act as a fiduciary -- or, alternatively, because the

pledge agreement clearly take that right away. Not so clear whether it gives it to somebody else, and we can deal with that issue when it becomes ripe. But it clearly takes it away from the Debtor, or from the Equity Holders of the Debtor, to make these -- to take these actions and vote this consent.

So we think, Your Honor, that the requisite agreements make clear that they don't have the right. We can leave for another day, and I think that day will come soon, unless Your Honor really thinks it's a bad idea, for us to file the trustee motion. That will come sooner rather than later. Because to the extent that this is going forward on July 9th, we've got to get that motion on file so we can have -- that there can be the requisite fiduciary acting on behalf of those estate as soon as possible.

Your Honor, I think the last issue I want to address, and I want to yield the podium to my colleagues, is the question of maximization of value. Mr. Sosland noted that we provided in our papers only one page on the duty to maximize value. I think the reason for that, Your Honor, is because you issued a decision last year that said it is, quote, "unquestionably true," close quote, --

THE COURT: Well, you're quoting me out of context on that. I mean, with all due respect, and it's not the only case that any of you have done that on, and I've practiced law and I know you take out of cases what you can, but that was a very

different situation, and I do not necessarily -- I believe, and I'm going to cut you short on this one, because it's my view that if, for example, Mr. Hicks had two offers for the team, and one was $100 million more but for one reason or another he was especially fond of Mr. Ryan, say, and he wanted to sell it to him, leaving your rights above the team level aside, I don't think the Texas Rangers are obligated to do anything more than see to it that their creditors are paid and that their equity is happy with the deal. And if the deal involves magic beans or a cow instead of money, so be it.

So I don't buy that, and I don't think -- I think taking a case where the opinion related to whether or not an Equity Committee should be appointed, and the question was one of whether management could represent Equity adequately, and my comment was, as I recall, that management's job is to maximize the value for everybody and to get the company out of bankruptcy, not to take care of Equity specifically. I think that's an unreasonable quota out of context.

MR. LEBLANC: And Your Honor, we didn't intend to quote it out of context. It -- we --

THE COURT: Sure you did. But that's okay.

MR. LEBLANC: Well, --

(Laughter.)

THE COURT: I mean, I would too if I were in your shoes. But that's okay. You knew what I was getting at there,

and that's a totally different thing than what we're talking about here.

MR. LEBLANC: I think, Your Honor, this is a very unusual case.

THE COURT: I mean, I think that you may have an argument that the two equity partners who are obligated on your entire debt -- and I understand your argument about the obligations of the Rangers -- have an obligation to maximize your recovery. I question seriously whether the Debtor who is now before me today has an obligation to Equity to maximize recovery beyond what it understands Equity wants.

Go ahead.

MR. LEBLANC: Well, Your Honor, I do think that that -- it's hard to fathom a situation. This type of case, nobody has found a case that's on all fours with this. The efforts that -- we presented a series of cases that admittedly don't deal with this situation, including Your Honor's decision in *Pilgrim's Pride*, all of which say that there's a duty to maximize value for the benefit of Equity and for creditors. And, admittedly, there's no case that says that you have to do so when you have a solvent debtor, and --

THE COURT: Yes. I mean, look. If you have someone selling a Rembrandt and you've got two potential buyers, one is Bill Gates who's going to keep it and his hunting lodge in Alaska and the other is the Metropolitan Museum of Art, it may

well be that the seller is going to say, "I'd rather sell to the Met." And I think that that's a fair position. I'm not saying that's what fits here, but it does not seem to me, even -- as long as creditors at the level we're talking about are paid in full, I think if Equity chooses to take a discount -- just as, I'll bet you, I'll bet you that some of you guys have occasionally argued that, as a lender, you have the right to gift back to unsecured creditors or something like that under a plan. And that's not maximizing value. So, I mean, I'm sorry, you can have reasons other than getting as much as possible, and --

MR. LEBLANC: I --

THE COURT: Go ahead.

MR. LEBLANC: I apologize. I don't mean to interrupt. I apologize, Your Honor.

THE COURT: No, that's all right.

MR. LEBLANC: I think -- I'm happy to deal with the gifting context. I don't know that we need to digress.

THE COURT: No.

MR. LEBLANC: I have a case in front of the Second Circuit in a few weeks on that.

THE COURT: It's just an example of what I'm talking about. I think that there can be motivations above and beyond simply getting as much as humanly possible. Now, you may well have a fair argument that the alleged debtors had a duty to

maximize vis-à-vis you, but I don't think you do at the Rangers level.

MR. LEBLANC: Well, I think, Your Honor, just to -- I don't want to beat a dead horse, but I do want to just try to make a couple of points with respect to that. I think that the situation fundamentally changes if the owner of the Rembrandt files for bankruptcy. That's Situation #1. Then they do have the duties to maximize value. And the trustee, a trustee, if appointed, would have that duty.

THE COURT: Yes. And I'm agreeing with you, because the alleged debtors are analogous to our owner of our Rembrandt.

MR. LEBLANC: Well, I actually think, Your Honor, if the owner of the Rembrandt -- if I'm -- if TRBP owned the Rembrandt, I think they'd have the obligation to maximize value. And there's two reasons for that. The first is, Your Honor, because they're a debtor in possession, and that's where that duty flows from.

I don't think there's any distinction -- we have not seen a distinction that says if it's a solvent debtor, the duty to maximize value goes away, but rather --

THE COURT: Well, again, I hear you, but your horse is dead --

MR. LEBLANC: Well, let me --

THE COURT: -- and I'd move on to another one if I

were you.

MR. LEBLANC: Well, let me just make one point that's different than the one that I'm making, then, and see if it fits any better.

To the extent that these are Delaware corporations, or to the extent that Texas would incorporate *Revlon* duties, those *Revlon* duties apply whether the entity is solvent or insolvent. And that duty is, when you're in play, you have a duty to maximize the value of your assets. And so I think that applies, and I don't think there's any real question that *Revlon* duties apply in Bankruptcy Court.

THE COURT: Yes, but you're not old enough to remember Chapter 10. But under Chapter 10, there was only one way you could avoid the absolute priority rule, and that was by 100 percent acceptance in a class. Okay? If you -- it seems to me, if you have 100 percent acceptance in a class that says, "We'll take more than we can get and that we're entitled to," that that's okay. And at this point, the question is, Equity, by 100 percent, has accepted this deal. Now, it may be you've got a reasonable complaint with Equity, but I don't think you do at the Rangers level. That's all I'm telling you. And I think you made what may turn out to be a good or may turn out not to be a good move by filing those involuntaries. We'll see.

MR. LEBLANC: Okay. And I will move on, Your Honor.

I think it's covered well -- we think it's covered well in our pleadings.

Just before I cede that the podium, you had posed a question with respect to whether the Lenders -- your understanding of the Lenders' position is, if you shop the deal and this is the best, we will go home. And the answer to that is -- our response to that is unequivocally that's absolutely correct. The issue, Your Honor, is that the asset that has to be shopped has to be done so -- done in a fair, equitable way, and also the asset that is now a debtor in this Court, and that's different than what existed some five months ago, the last time that there was any market test for this asset. The last time this Debtor was not locked into a credit -- locked into an asset purchase agreement was in January, I guess it was January 22nd of this year, was the last time they weren't locked into a purchase agreement, and a lot has changed in that time, not the least of which is that it's now a debtor in possession and the subject of Major League Baseball's consent rights and whether they have to be applied reasonably is at least a fair question for the Court. So there may be people who are interested in bidding on this asset that weren't interested before.

And so I think that the question is -- the answer to the question is unequivocally yes, but we think that the asset has to actually be shopped in a fair way, not the way that it was

done in the prepetition environment.

And I know Your Honor is looking for questions of me.

THE COURT: You've got it.

MR. LEBLANC: I'm happy to do my best to respond.

THE COURT: Okay. I think you indicated that you agreed with me -- well, let me rephrase that -- that you agreed that a trustee would be free to vote the equity interests of the two alleged debtors. Is that correct?

MR. LEBLANC: If a trustee were put in place, it would have the right to vote is interest, yes.

THE COURT: Okay. Would you agree that a debtor in possession would as well?

MR. LEBLANC: If the -- if there wasn't a trustee appointed and the stay motion was not lifted, we agree with that as well, yes.

THE COURT: All right. Finally, you will recall, I think I asked Mr. Sosland, but if I were to invoke the magic words in 303(f), is it your view that the duty of the alleged debtor would be the same as or less than a debtor in possession's duties?

MR. LEBLANC: I think, Your Honor, if you invoked the language of Section 303 and declared them to have those duties, they would absolutely have those duties.

THE COURT: What if I didn't say that they had those duties?

MR. LEBLANC: Well, I think, Your Honor -- I hate to agree with Mr. Sosland, but it does depend in some respects on what you say, only because there are --

THE COURT: Suppose I just say 303(f) shall not apply, period?

MR. LEBLANC: Then I think the answer is yes, they'd have the duties of a debtor in possession as it relates to these issues, Your Honor.

THE COURT: All right. And as I understand it, the agents' exhibits relate to the issue of waiver of the right to consent.

MR. LEBLANC: I believe that is correct, Your Honor.

THE COURT: Okay. I have not looked at those, obviously.

MR. LEBLANC: Your Honor, I'll note with respect to that question that, Section 11, they -- the Debtors like to focus on certain parts of Section 11 of the pledge agreement. Specifically, the sections that relate to Major League Baseball consent. Section 11 of the pledge agreement actually begins with a series of lines that say that no inaction by the agents shall constitute a waiver of any rights. And so the Debtor is seeking to approbate and probate the contract simultaneously, and not just separate sections of it, but the very same section. If they want to live by the provisions of Section 11 that they like, they need to live by --

THE COURT: Why didn't the Lenders, in the period between December 15th -- and I really don't want to get too much into this period -- and January 15th, why didn't they go in and seek equitable relief to prevent Equity from consenting to a deal that they apparently were unhappy with?

MR. LEBLANC: Your Honor, I think there are a couple of issues there that are factual issues, but let me try to be as responsive as I can. The communications that we have presented as part of our exhibit were communications made to the agents in real time. Those were sent to me personally by Mr. West, and the e-mails show that, sometime after the relevant period in time. I can't answer the question as to why -- what the agents' decision-making was in the December 15th to January 15th time frame. We were not, we personally, I personally was not actively involved in the matter at that time. So I think that might be a better question for Mr. Seider or the Clifford Chance folks.

THE COURT: All right. We're going to take a ten-minute recess. Did you have anything else before we --

MR. LEBLANC: Your Honor, if you don't -- I think I'm done, but if you don't mind, if we're taking a ten-minute recess anyway, I might have a couple of things as I look through my notes.

THE COURT: Well, I may let you get back up. I don't know. We'll see.

MR. LEBLANC: Thank you, Your Honor.

THE COURT: All right. We'll be in recess for ten minutes.

THE CLERK: All rise.

(A recess ensued from 3:05 p.m. until 3:19 p.m.)

THE COURT: Please be seated. Okay. I gather, since you're sitting down, Mr. LeBlanc, that you have nothing to add?

MR. LEBLANC: I do not, unless the Court has any questions.

THE COURT: No. That's fine.

MR. LEBLANC: Thank you.

THE COURT: Okay. Who's next?

MR. SEIDER: Good afternoon, Your Honor. Mitchell Seider of Latham & Watkins on behalf of JPMorgan Chase, as agent.

I will be brief, Your Honor. I'd like to start by answering the questions that Your Honor asked of Mr. LeBlanc on which he deferred. Your Honor, the agent did not know about the execution of the current asset purchase agreement until after it was filed with Your Honor on May 23rd. Similarly, the agent did not know about the filing of the bankruptcy case until after it had occurred.

THE COURT: Yes, but you certainly -- I mean, the bankruptcy case, let's leave that aside. You certainly knew that -- and you raise a good question there. You raise a very

good question that might be fun to explore, but we'll get to that in a second.

You knew, starting on December 15th or shortly thereafter, from the e-mails -- and again, I don't want to get into this prepetition stuff -- but you knew that this was the road down which they were going, and you had a month to do something to stop them going down that road. And the end of the road, I mean, you know, there was only one end to that road, and that was a signed asset purchase agreement or something like it.

MR. SEIDER: Yes, Your Honor. And that, in fact, is the third question that Your Honor had asked that I wanted to answer. And that is, between December 15th, Your Honor, and January 15th, the agent and lenders were the subject -- or, subject to what is known as the NHL Standstill Letter. As Your Honor may recall, there are two aspects to the Hicks Sports Group business. There is the baseball side, and there is also the NHL side. Pursuant to an agreement that had been made with the NHL, the agents were estopped from pursuing the sorts of remedies that Your Honor alluded to between that period that Your Honor mentioned of December 15th and January 15th. And that NHL Standstill Letter applied to the baseball side of the business as well.

THE COURT: All right. Now, let me ask you another question. Is it the position of the Lenders that the partners of the Texas Rangers could not authorize a Chapter 11 petition

for the partnership? I mean, I'm thinking of the *Heritage Press* case, where, as I recall, a lender -- out of Eighth Circuit, where a lender had a proxy, effectively, which is what you're talking about here, and the court dismissed the bankruptcy case that was filed without the consent of the lender. I mean, is it your position that we should all go home now?

MR. SEIDER: No, Your Honor. Simply, there's no motion to dismiss pending. But I think, to get to the meat of what Your Honor is asking, --

THE COURT: Well, if they didn't have the authority to put the Rangers in Chapter 11, it would be like a board that is no longer the board authorizing --

MR. SEIDER: Yes.

THE COURT: -- a filing for corporation.

MR. SEIDER: Your Honor, I think the answer to that is the bell has been rung, but it goes back to a question that Your Honor had asked Mr. LeBlanc that I'd like to comment on, which in turn goes to the impairment issue. Your Honor had asked Mr. LeBlanc about whether, under Debtor's Exhibit 4, Section 4.4.1(c), which is the pledge agreement, and Your Honor may recall that Mr. LeBlanc read to you from that provision, and it essentially says that all rights of each grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to

exercise pursuant hereto shall cease, and then such rights shall vest in the collateral agent, excuse me, upon the event of default.

Your Honor asked whether that just didn't simply give the agent and the lenders a cause of action against the general partner for the breach of that provision in the pledge agreement. I wanted to point out to Your Honor that the Debtor is a party to this pledge agreement as well, and this pledge agreement is a contractual obligation of the Debtor. That contractual obligation has been breached. The plan before Your Honor does not provide for the cure of that breach. And as a matter of law, by virtue of that, as well as the other points that Mr. LeBlanc made, Your Honor, the agent and the lenders are impaired under this plan and they are entitled to vote on it pursuant to a properly approved and then solicited disclosure statement.

If Your Honor has questions, I'd be delighted to answer them. Otherwise, that's all that I wanted to share with Your Honor.

THE COURT: No, I did notice, while -- during the recess, I pulled up Google News, and I noticed that Associated Press says you guys won. I thought you'd want to know that.

(Laughter.)

MR. SEIDER: Your Honor, I'm reminded of something that I learned from Arthur Moller a long time ago, and that is

that someone who is seldom in doubt is frequently wrong.

THE COURT: Someone who is what?

MR. SEIDER: Seldom in doubt is frequently wrong.

THE COURT: You said that, not me.

MR. SEIDER: Yes, I know, Your Honor.

(Laughter.)

MR. SEIDER: Thank you.

THE COURT: All right. Does the second lien holder want to -- pardon me. The agent for the second lien holder.

MS. O'NEIL: Thank you, Your Honor. Your Honor, we'll be very brief. We just want to make one point on the impairment. We otherwise, in addition to our joint brief submission, have adopted the position of Mr. LeBlanc, and hear the Court's comments as well.

The only issue we wanted to just, by way of example, is another impairment that we think is fairly blatant and why the Lenders are impaired under this plan, even if it is -- a $75 million check is written, as Mr. Sosland would suggest. As the Court is aware, our briefs have set forth -- and in fact, the Debtor's disclosure statement describes -- the transfer of the ballpark lease. I'm not talking about the BRE land.

THE COURT: No, I understand.

MS. O'NEIL: I'm talking about the actual lease that the facility sits on, which is a long-term lease with the City of Arlington. That lease was previously, before the midnight

transfers, as we like to call them, before those transfers was the asset, in fact, the sole asset, of a subsidiary, Rangers Ballpark, LLC. Rangers Ballpark, LLC is a wholly -- a full guarantor, I guess is the way to put it, under the credit agreement, obligated to the full extent of the debt. The Debtor was a -- and the Debtor has acknowledged that that lease was transferred from Rangers Ballpark, LLC to Texas -- to TRBP for no consideration.

Now, so we have an asset, the sole asset from a party, one of the obligors to the Lenders, that has been transferred on the eve of filing to the Debtor. Again, completely in violation of the credit agreement, in violation of the mortgage. The Lenders have a deed of trust leasehold mortgage on that facility. And the toothpaste is out of the tube, if you will, on that particular transaction.

To claim that we are unimpaired when that transaction has occurred with no consideration, it really flies in the --

THE COURT: Well, but the Debtor -- I mean, I understand. There's no question in my mind that, leaving aside Section 1124, just talking about impairment in a general sense, that there have been transactions here that violated your documents. But I'm not sure that that's an impairment by the Debtor, is it?

MS. O'NEIL: Your Honor, we believe that it is impairment by the Debtor. The Debtor was completely complicit

in that fraudulent transfer, which -- and not only a fraudulent transfer, breach of contract. This -- these are credit agreements that they, as Mr. LeBlanc identified to the Court, are credit obligors on. They are aware of the restrictions on the transfer of those assets. This is a wholly -- this was or is a wholly-owned subsidiary and was the only asset of that wholly-owned subsidiary.

I wanted to point out to the Court, in the credit agreement -- which I apologize, I don't have the Debtor's exhibits in front of me; I brought the Lenders' exhibits --

THE COURT: That's fine. You can go to either one.

MS. O'NEIL: It's Exhibit -- it's Provision J of the first lien -- I've just got the credit -- first lien credit agreement before me, but the second lien credit agreement is identical. In Section 6.12 on Page 86 of the credit agreement -- I'll give the Court a moment to look at that.

THE COURT: Did you say 86?

MS. O'NEIL: Page 86. Yes, Your Honor.

THE COURT: Yes.

MS. O'NEIL: And this is, again, Exhibit J.

THE COURT: And this is -- well, I'm looking at Exhibit D of the Lenders, which says it is the Second Lien Credit and Guaranty Agreement. Is that --

MS. O'NEIL: I'm sorry, Your Honor. Again, I'm looking at the first lien credit agreement. It's my --

MR. STEWART: J.

THE COURT: Okay.

MR. STEWART: J.

MS. O'NEIL: It's Exhibit J of the Lenders, and I'm --

THE COURT: Okay.

MS. O'NEIL: I will ask Mr. Sosland if he could assist me, of what the counter-provision is.

THE COURT: Okay. Exhibit J that I have of the Lenders is a *Dallas News* SportsDay.

(Counsel confer.)

THE COURT: I think it's D.

MS. O'NEIL: It's -- I'm sorry, Your Honor. It's Exhibit 1 of the Debtors.

THE COURT: All right. All right.

MS. O'NEIL: Exhibit J of the Lenders. The first lien credit agreement. I'm sorry, Your Honor. That is the copy that I have.

THE COURT: Okay. All right. The problem is that you're referring to Exhibit J to the Lenders' brief. The Exhibit J that they introduced today is, in point of fact, I believe, a news story.

MS. O'NEIL: Oh, I apologize. Wasn't sure what --

THE COURT: And the Exhibit D --

MS. O'NEIL: -- set of exhibits was --

THE COURT: -- is the one. But that's -- I'll look at

the Debtor's Exhibit 1. How's that?

MS. O'NEIL: I appreciate it. I'm sorry. I didn't know which --

THE COURT: That's all right.

MS. O'NEIL: -- set was provided to the Court.

THE COURT: Well, I've got both of them up here. You're just confusing me. And more importantly, you're confusing the appellate court.

(Laughter.)

MS. O'NEIL: Well, we'll take a moment. So it's Exhibit 1 of the Debtor's exhibits. And I would direct the Court to Section 6.12 on Page 86. And while the Court is pulling --

THE COURT: Page 86, 6.12. I'm there.

MS. O'NEIL: It's "Transactions with Shareholders or Affiliates." And specifically, this provision says, "No credit party shall, nor shall it permit any of its subsidiaries to, directly or indirectly, enter into or permit to exist any transaction, including the purchase, sale, lease or exchange of any property or the rendering of any service, with any affiliate of Company on terms that are less favorable to Company or that subsidiary, as the case may be, than those that might be obtained at the time from a person who is not such a holder or affiliate, provided" -- there are some exceptions to that. And the only potential exception is "(a) any transaction

between Company and any guarantor subsidiary." Well, for purposes of this particular document, "Company" is HSG. There is no allowance for inter-guarantor or subsidiary transfers, particularly without the consent of the Lenders and particularly for no consideration. And so --

THE COURT: Could HSG have taken the property from Stadium and then transferred it to Texas Rangers and fallen under (a)?

MS. O'NEIL: In our opinion, the answer to that is no, not without the Lenders' consent.

So, Your Honor, the point being that the -- those types of transactions, and there are myriad and that is just one in particular, exemplify further why the impairment of the Lenders continues, is provided -- continues in the plan. In particular, the plan to transfer this particular asset for no additional consideration to the buyer. And for those reasons, in addition with the others that have been described, we believe that we are -- the Lenders are impaired.

THE COURT: All right.

MS. O'NEIL: Thank you, Your Honor.

THE COURT: Thank you. Does anyone on the Debtor -- the Debtor-aligned parties want to respond to anything?

MR. SOSLAND: Not really, Your Honor, unless you have questions.

I just want to point out: with regard to all of the

prepetition transactions, including what the Lenders refer to as the eve-of-filing transactions, we would describe at the appropriate time, and the Court said it didn't want evidence today on those transactions, we can -- it can easily be demonstrated that they didn't result in a dime's bit of difference in economic recovery to the Lenders. And the appropriate parties will be prepared to do that, Your Honor.

THE COURT: All right. Anyone else?

(No response.)

THE COURT: Okay. I want to do two more things today. One is address the disclosure statement, and the other is I want to visit with counsel briefly, and you're all welcome in, but what I want to talk about is compensation of professionals and give you -- we're set up now so that you'll have a record, if you want it, in chambers -- but I want to go over what I'm willing to do on that in terms of procedures. I'm not going to settle on what you get paid or anything like that, but in terms of what I'm prepared to have the Debtor do going forward. And I would like to do that in chambers, because I think it will be a little bit easier than doing it out here. All right? So, can we go -- yes, Mr. Fine?

MR. FINE: Your Honor?

THE COURT: You're going to have to talk into the microphone, Mr. Fine. Otherwise, we don't get you on the record. And that would be a shame.

MR. FINE: Jeffrey Fine on behalf of the Unsecured Creditors' Committee.

Your Honor, at some point, we just want to make a few comments, and I think, according to --

THE COURT: Oh, I'm sorry. I did not mean -- you're quite right. I had said you and the U.S. Trustee and anyone else who wanted to address the issues that were teed up by the June 2nd order could do so, and I rather assumed that all that could be said had pretty much been said, but please, by all means, go ahead.

MR. FINE: Well, Your Honor, we do have a few things that we want to say to the Court. And the first thing I'd like to tell the Court is that I view my role here almost as a risk manager. It's a point of view different than that of any of the other constituencies.

There's been a tremendous amount of argument today about what the duties are to maximize recovery, essentially, to Equity, to an equity group that's already said that it's in favor of this particular sale. But what we're concerned about is that there is an asset purchase agreement that does provide for the payment in full of unsecured creditors, and we don't want to risk that treatment.

If there is going to be some alternative procedure or something that's going to happen here that's going to put that into play, we would like to advise the Court that we're very

concerned that it be done in a very timely fashion, and that we do not want to come out at the other end with any treatment less than what is on the table now from this group.

One way that I look at this is, if this bankruptcy had been filed five months ago rather than a few weeks ago, essentially, what the discussion today would be is, well, were the procedures that brought forward this asset purchase agreement appropriate? And that's in part really what the discussion is about.

But I don't forget, from the moment that I've been appointed in this case by the Committee -- at least, I haven't been approved by the Court yet -- but I don't forget that we do have an asset purchase agreement on the table.

One thing, Your Honor, I would want to bring to the Court's attention is that, according to the asset purchase agreement, we cannot find a termination right by the purchaser if there is an appointment of a trustee at the equity -- at the holding company level. We cannot find that. And the provision in the asset purchase agreement regarding termination rights of the purchaser, which we are focused upon, are in Section 4.2 of the asset purchase agreement, at least the version that was filed with the Court on May 24th by the Debtor.

Your Honor, we may have additional comments to make, but there was one other observation I had, and it's something that was troubling to me during the course of the presentation, and

that is that, by the filing of the adversary proceeding by the Lender Group, there is a suggestion that they may have a claim against -- an unsecured claim against the estate greater than the recovery of the $75 million that they are provided for under their documents. And I'm troubled by that concept, and I'm not sure that I'm willing to concede that that is a possibility, that the Lender Group can actually essentially recover more from the estate because of the filing of the bankruptcy and the filing of the adversary proceeding than they otherwise were permitted under their documents. And that -- and that's something --

THE COURT: I think my understanding of the adversary proceeding is that, even if this were outside of bankruptcy, they would be able to assert the same rights under state fraudulent transfer law and it would give them the same claim. My guess is, and I certainly don't want to put thoughts in their mind or words in their mouth, but I'm assuming that what they want to do is get the asset out of the Texas Rangers, because if the Rangers pay a judgment on that asset, that just reduces what gets upstreamed to Equity to them anyway, and they come out worse off than they would if the property were held by an entity other than the Debtor here. At least, that's my rough sense of what the math is. I could be wrong. I haven't really thought it through that carefully.

But I don't think that the bankruptcy created the cause of

action. It was the transfer that created the cause of action, if there is a cause of action and if the transfer was one that is avoidable under state fraudulent transfer law.

MR. FINE: I concur. I concur with what you're saying, Your Honor. However, I do want to point out that it's a point that troubles me, because as of today we believe our constituency is approximately $204 million. And --

THE COURT: Does that discount their contracts back to present value?

MR. FINE: No, Your Honor. As far as I know, that is in today's dollars.

THE COURT: Hmm. Okay. You might want to read the opinion I did in *Mirant* on discounting of contracts.

MR. FINE: Your Honor, that's all the comments that I have at the moment, and I'd reserve the right, if possible, to come forward later.

THE COURT: All right.

MR. FINE: And I would also point out to the Court that, from the Committee's standpoint, there is important feasibility and implementation issues that may come and may be before the Court, and we're obviously not talking about those today.

THE COURT: All right.

MR. FINE: Thank you, Your Honor.

THE COURT: Does anyone else want to address the

issues before the Court?

MR. SMALL: Thank you, Your Honor. Michael Small on behalf of the Greenberg/Ryan Group.

Your Honor, I wanted to make one very narrow point, to go back over some territory where we have been in the hearing, for the purposes of clarification. And that is with regard to the language of Section 7.1 of the credit agreement, which is the section entitled "Guaranty of Obligations." And I want to focus on the operative verb -- subject, verb and object of that sentence, which is, "The guarantors guarantee the due and punctual payment of all obligations in Section 7.1." And that obligation of guaranteeing payment is also carried forward in Section 7.4(b). They do not guarantee performance of all obligations. The guaranteed obligations are defined at Page 21, and at Page 87 in Section 7.1 it states that they guarantee payment.

THE COURT: Thank you, Mr. Small. All right, Mr. LeBlanc.

MR. LEBLANC: I apologize, Your Honor, but I have to address that. That's --

THE COURT: I'm going to read the document. I mean, you understand that?

MR. LEBLANC: I'm going to try to highlight a couple of provisions, Your Honor, so when you're reading it that they are clear. First of all, the Debtor signed the agreement, not

as a guarantor, just as a credit party. The credit parties are defined in the agreement that Page 10, "means the Company and the guarantor subsidiaries." Those are -- that's the definition of the "credit parties." The obligations in Section 6.9 that I referred Your Honor to earlier, the definition of obligations themselves all refer to the obligations imposed on the credit parties. So the affirmative covenants absolutely are covenants of each of the guarantor subsidiaries, including the Debtor. There are negative covenants, Your Honor, that are -- that distinguish, and this is in Article V, that distinguish between those obligations imposed on the company in certain instances and those obligations imposed separately on the credit parties.

There is no fair dispute that the obligations imposed on the Debtor include not just the payment obligations under Section 7.1 as a guarantor, but also the obligations imposed on all credit parties, including the obligation under Section 6.9 to give consent to -- or, to allow the Lenders to consent to a sale of assets. It's just a misreading, a plain misreading of the document. And I'm not -- I apologize, Your Honor, but I can't let that last be the last word as it relates to it.

THE COURT: All right.

MR. LEBLANC: Thank you, Your Honor.

THE COURT: All right. Anyone else? Yes, Mr. Sosland?

MR. SOSLAND: I don't -- I don't want to argue the agreement.

THE COURT: I don't think you're going to be the last word, Mr. LeBlanc.

(Laughter.)

MR. LEBLANC: I may well yet be.

THE COURT: Actually, I can tell you who's going to be the last word. Me.

MR. SOSLAND: If the Court --

THE COURT: Well, probably not. Fifth Circuit.

MR. SOSLAND: If the Court would indulge one point, based on the colloquy between the Court and Mr. Fine, I thought maybe I would rise to explain the arithmetic. And to borrow from a good friend of mine, Robin Phelan of Haynes and Boone, the purchaser in January of this year was paying consideration, which is assumption of debt -- Mr. Fine's big number on the assumption -- and cash for a bunch of stuff. That's what I borrow from Mr. Phelan, the "bunch of stuff." And the bunch of stuff, in --

THE COURT: It's a technical term.

MR. SOSLAND: It's a very technical term. The "bunch of stuff" on January 23rd of this year resided in several different entities, one of which -- most of which resided in what's currently the Debtor, and some of which resided in several different other entities, which included the subsidiary

of the Debtor; the sister company of the debtor, Emerald Diamond; and parents of the Debtor at the HSG level. And before we filed, all of the "stuff" was put into the Debtor. The purchase price is the purchase price. The cash is the same. The "stuff" is still being sold. Under -- all of these entities are obligated to the Lenders, either as the original obligor or as guarantors.

The guaranty of the Texas Rangers Baseball Partners, TRBP, this debtor, is $75 million. We explained that. I'm not going back over it. The obligations of all of the other entities is, I believe, not subject to the cap. But it doesn't really matter, Your Honor, whether the purchase price comes in to -- the entities that have unlimited guarantees include the Equity of the TRBP, which also have unlimited obligations to the Lenders. And at the appropriate time, we can demonstrate all of this by evidence. But it is important for the Court to understand that $75 million gets paid by TRBP to the Lenders because that's what it owes on the guaranty, and whatever -- whichever of the other entities receives cash, the money would go to the Lenders.

And by the way, there wouldn't have been any money that would have gone to that subsidiary for the lease in the original deal. And in 2007, a year after the -- the lease the fraudulent transfer suit was filed about. In 2007, when that lease was situated in that debtor by an amendment and

restatement, when previously -- I'm sorry, in that subsidiary of the Debtor, when previously it had been situated at TRBP, where it is currently, for reasons that have only to do with liability insurance, the Lenders didn't require that consideration be paid to TRBP, its obligor, when it went into this entity. There's also a provision about, that Ms. O'Neil didn't cite, about why it is permitted under the agreement. I won't go into that.

The fact is, Your Honor, as I said earlier, we can show at the appropriate time that there's no difference in the recovery of the Lenders based on those transactions, but since the Court made some reference to the arithmetic, I thought I would rise to tell you what my understanding was.

THE COURT: Okay. Thank you. Okay. Once more. This is it.

MR. LEBLANC: Thank you, Your Honor.

THE COURT: You are going to get the last word.

MR. LEBLANC: I'm sorry, Your Honor?

THE COURT: You are going to get the last word.

MR. LEBLANC: I didn't -- I'm not doing it for that purpose. I just can't leave incorrect assertions unrebutted.

Your Honor, I'll focus on one of the transactions. They signed new agreements with certain financial advisors who were not previously obligated by this Debtor, for $9 million. Those became unsecured claims, arguably, of this Debtor. They were

previously unsecured claims of HSG. That assumption of liabilities that occurred is intended to reduce the proceeds. It's actually on their disclosure statement chart, trying to show the proceeds to Lenders. That's $9 million out of our pocket.

So I -- we'll show -- we will prove it up with evidence, Your Honor, but it's fundamentally incorrect to say that those transactions don't affect our recoveries. We just disagree completely with that, Your Honor.

THE COURT: I think Mr. Sosland was principally talking about the stadium at that point.

MR. LEBLANC: If that's the only transaction he was referring to, I disagree with that as well, but we'll deal with that at a different time.

THE COURT: All right.

MR. LEBLANC: But they're --

THE COURT: All right.

MR. LEBLANC: If he's referring more generally to the eve-of-filing transactions, it's clearly incorrect.

THE COURT: All right. All right. Anyone else?

(No response.)

THE COURT: Okay. Now, let me ask you a question. Am I correct in the understanding -- well, this is probably dangerous, but am I correct in understanding that at this point the Debtor has largely taken care of the disputes respecting

the disclosure statement?

MR. LEBLANC: Your Honor, we were handed the Debtor's amended disclosure statement when we walked in here. We haven't had a chance to look at it.

THE COURT: Okay.

MR. LEBLANC: I will note, we don't think that it does.

THE COURT: All right.

MR. LEBLANC: We think it creates new issues.

THE COURT: Well, I'll tell you what. What I want to do is I want to see counsel in chambers. And those of you who are here for -- who are not necessary to that meeting, I would be grateful, since my chambers are not as large as Chief Justice Roberts', if you would hear from someone else what happened.

But I want to see you and we're going to talk about three things. One, I do want to talk about the disclosure statement briefly. But two, I want to talk about compensation of professionals. And three, I want to talk about scheduling, because we're running up against some real scheduling issues here. All right?

So we're going to do that in chambers, and we're set up to record that if anyone wishes to have a copy of the record. This isn't going to be -- pardon me? Okay. I thought I heard a moaning sound from the court reporter.

(Laughter.)

COURT REPORTER: You did.

THE COURT: I did? Okay. All right. We will be in recess. We'll resume probably in about 20 or 30 minutes.

THE CLERK: All rise.

(Chambers conference conducted from 3:51 p.m. until 4:26 p.m.)

THE COURT: Please be seated.

All right. In chambers, we discussed three matters. The first was the disclosure statement, and it's my understanding that, subject to the provision of the Lenders' version of the way the funds flow to the Lenders -- that is, a chart that would be different from that provided currently in the disclosure statement by Debtors -- and subject to the second lien agent's comments, if any, respecting the disclosure statement, that the disclosure statement will be considered satisfactory for transmission.

In chambers, I advised the parties that I will rule as soon as I can on the various issues that have been posed in my order of June 2nd, but that I am not prepared to rule today as to whether or not either the Lenders or Equity are or are not impaired under the plan filed by the Debtor. And that therefore, in order to keep to the July 9th confirmation schedule, the plan should be transmitted to those two classes to give them an opportunity to vote on the plan, understanding

that if I determine either or both are unimpaired, the votes will not count for anything.

It's my understanding the Debtor will prepare appropriate notices and an appropriate form of ballot in that regard so that the parties may vote if it turns out that the vote is necessary.

I further indicated that I do not believe that the other classes provided for in the Debtor's plan are impaired, and therefore it is my expectation that they will receive not the plan and disclosure statement and ballot, but rather a notice advising them that the Court has preliminarily concluded that they are unimpaired and do not have a vote. And if any of them wishes a copy of the plan and disclosure statement, the notice will provide a means for them to request the plan and disclosure statement.

The second matter that we discussed was scheduling. The involuntary petitions filed against Debtor's equity owners are due for a status conference next Tuesday, and we will conduct that status conference at that time. Because it is a status conference, it will probably be limited to attorneys and conducted in chambers.

Third, we discussed simply procedures for payment of professionals. I don't think there's anything that would be of great concern to anyone who was not in the conference. Essentially, the procedures that I have advised the Debtor I

would consent to are consistent with the procedures that I have used in other large Chapter 11 cases in the past, and they relate to employment of and payment of ordinary-course professionals and payment of professionals employed under Section 327(a) or (e) of the Bankruptcy Code.

Mr. Sosland, Mr. LeBlanc, Mr. Shimshak, Mr. Small, have I forgotten anything? Mr. Fine?

COUNSEL: No, Your Honor.

THE COURT: Okay. Well, as I understand it, our next hearing, which should make this look scintillatingly exciting by comparison, has to do with employment of professionals by the Debtor and the Creditors' Committee. For those of you who are not familiar with Bankruptcy Court procedures, the Court must approve the employment by any statutory fiduciary of most professionals. That does not include professional baseball players, but it does include attorneys, investment advisors, and their like. So we will be hearing that, I believe, Thursday afternoon at 1:30.

Does anyone have anything further?

(No response.)

THE COURT: Well, I want to thank especially those counsel who argued to the Court. I thought they all did an excellent job. You are all -- for those of you who are clients out there, you should all be proud of your lawyers and pay their bills with a smile.

On that note, court will be adjourned.

THE CLERK: All rise.

(Proceedings concluded at 4:31 p.m.)

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CERTIFICATE

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

Kathy Rehling

Digitally signed by Kathy Rehling
DN: cn=Kathy Rehling, c=US, o=Transcription Service, email=kathy.rehling@tx.rr.com
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