

## **The Texas Rangers Play Ball in the Bankruptcy Arena—Part 1: The Early Innings**

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In an unusual event, the seemingly divergent realms of Major League Baseball and complex chapter 11 bankruptcy reorganization have intersected. A closer look at the Texas Rangers' bankruptcy case, however, reveals that these two realms have more in common than one might observe at first glance.

### **The Warm-Up: Background on Rangers Bankruptcy Filing**

On May 24, 2010, Texas Rangers Baseball Partners ("Rangers Partners"), current owners of the Texas Rangers Baseball Club (the "Baseball Club"), filed a voluntary chapter 11 petition in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division. The Rangers Partners' filing included a "prepackaged" chapter 11 plan of reorganization calling for the sale of the team to a group of investors led by Pittsburgh attorney Chuck Greenberg and baseball hall of famer and former Ranger, Nolan Ryan (the "Greenberg-Ryan Group"). The primary purpose of the bankruptcy filing was to effectuate the orderly sale of substantially all of the assets of Rangers Partners, including the Baseball Club and the lease of the Rangers Ballpark in Arlington, to the Greenberg-Ryan Group.<sup>1</sup> Rangers Partners has represented that, if the sale is not consummated, it does not believe that the funds from current and future operations will be sufficient to meet its guaranty and debt service requirements.

### **The Line-up: The Significant Players in the Game**

Rangers Equity Holdings, L.P. holds a 99% partnership equity interest in debtor Rangers Partners and Rangers Equity Holdings GP, LLC holds the remaining 1% partnership equity interest in debtor Rangers Partners. Both of these holdings companies are, in turn, indirect wholly-owned subsidiaries of HSG Sports Group, LLC ("HSG"), a Tom Hicks-led entity. HSG Sports Group also is the indirect owner of the Dallas Stars hockey team.

In addition to the major pre-petition lenders,<sup>2</sup> other significant creditors include former players, such as Alex Rodriguez ("A-Rod"), who is owed approximately \$25 million in deferred compensation. A-

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<sup>1</sup> Much of the information included in this article concerning the events leading to the bankruptcy filing, the operations and financial condition of the Rangers Partners, and the treatment of creditors and other stakeholders in the Ranger Partners' proposed plan of reorganization is taken from the disclosure statement filed by the Rangers Partners in support of their proposed plan of reorganization.

<sup>2</sup> Rangers Partners is a limited guarantor under first and second secured lien credit agreements (together, the "HSG Credit Agreements"), pursuant to which certain lenders loaned money to HSG and HSG Sports Holdings LLC ("HSGH"). Other subsidiaries of HSG are also guarantors of the Credit Agreements. Rangers Partners' guaranty is limited to a maximum of \$75 million. The debtor's obligations with respect to the guaranty are secured by a first and second lien on substantially all of the assets of the debtors. In addition, Baseball Finance LLC ("Baseball

Rod and certain other creditors are members of the Official Committee of Unsecured Creditors (the “Creditors’ Committee”)--frequently a major player in chapter 11 bankruptcies. The Bankruptcy Code provides for the formation of a Creditors’ Committee in a chapter 11 case.<sup>3</sup> The Creditors’ Committee ordinarily consists of the persons, willing to serve, that hold the larger unsecured claims against the debtor (an “all-star team” of unsecured creditors, in baseball terms).<sup>4</sup> The Creditors’ Committee acts as the representative of unsecured creditors as a whole, monitoring the actions of the debtor, making court appearances and filings, and ensuring that the interests of the unsecured creditor body are represented. The Creditors’ Committee is required to provide information to, and solicit comments from, other similarly situated creditors who are not serving on the Committee.<sup>5</sup> As a practical matter, in large chapter 11 cases, this may involve setting up a website where the large multitude of (minor league) creditors can monitor developments in the case and provide comments.

### **The Losing Streak: The Rangers and HSG’s Finances Slide**

Despite relatively strong fan support and ticket sales, since 2005, Rangers Partners has experienced cash flow problems, leading to the need for Mr. Hicks to inject a series of capital contributions and loans. Mr. Hicks, however, is no longer willing to provide Rangers Partners with additional capital, as he has provided in the past. In addition, HSG defaulted on approximately \$525 million in loans.<sup>6</sup> Despite additional attempts to secure capital, Rangers Partners concluded that a sale was the only viable course of action. Rangers Partners and HSG began to search for a buyer for the purchase of the Texas Rangers franchise. In an initial round of pre-bankruptcy confidential bidding, they received six (6) confidential bids by August 18, 2009, then selected three (3) bidders to participate in an additional round of bidding. The Greenberg-Ryan Group was selected as the winning bidder among the 3 finalists.

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Finance”) loaned money to Rangers Partners under a revolving loan facility in an aggregate amount not to exceed \$25 million. This debt is secured by liens on substantially all of the assets of Rangers Partners, junior in priority to the HSG Credit Agreements. Rangers Partners also owes Tom Hicks \$5 million in principal, plus accrued interest. Rangers Partners further owes Emerald Diamond, L.P. over \$15 million on a note that was consideration for the May 23, 2010 purchase by Rangers Partners of Emerald Diamond, L.P.’s assets, including leases of land and improvements relating to Rangers Ballpark in Arlington.

<sup>3</sup> 11 U.S.C. §1102(a)(1).

<sup>4</sup> 11 U.S.C. §1102(b)(1).

<sup>5</sup> 11 U.S.C. §1102(b)(3).

<sup>6</sup> Monarch Alternative Capital and others purchased distressed debt for investment purposes prior to the bankruptcy filing. The purchase of distressed debt, usually at a discount to the face amount of the debt, and the subsequent involvement of the distressed debt investor in a bankruptcy, is an increasingly common play often used to achieve a substantial return on investment. Debt and bankruptcy claims trading is a field with many pitfalls however, and the often-complex bankruptcy implications should always be thoroughly considered and discussed with an attorney experienced in chapter 11 bankruptcies before buying or selling debt or a claim in or outside of a bankruptcy proceeding.

Rangers Partners then entered into an initial asset purchase agreement (an “APA”) with the Greenberg-Ryan Group on January 23, 2010. On May 23, 2010, the initial APA was subsequently terminated by mutual consent of the parties thereto in favor of a new APA. The APA requires the consent of the Lenders to HSG to close, as is the Lenders’ right under the HSG Credit Agreements.

### **The Strategic Call from the Dugout: The Rangers file for Bankruptcy Protection**

Over a period of time following the execution of the APA, certain lenders refused to consent to the sale to the Greenberg-Ryan Group. Realizing that, despite lengthy negotiations, they were unlikely to obtain the requisite lender consent, Rangers Partners, in consultation with Major League Baseball, concluded that a chapter 11 filing designed to facilitate a sale of Rangers Partners’ assets pursuant to a pre-packaged chapter 11 plan was the most efficient manner in which to consummate the sale of the Texas Rangers.

Unlike a chapter 7 liquidation, in which a chapter 7 trustee is appointed and commences a relatively rapid liquidation of the debtor’s assets, in a chapter 11 bankruptcy, the debtor company continues to operate its business after the bankruptcy filing as the “debtor-in-possession,” usually with the same management.<sup>7</sup> The chapter 11 debtor<sup>8</sup> seeks to reorganize or liquidate through a chapter 11 plan, negotiated with and voted on by its creditor and other constituents. Often the chapter 11 debtor will sell many, or even most of its assets prior to confirmation of a chapter 11 plan through asset sales during the course of the chapter 11 case.<sup>9</sup> In addition to the bankruptcy petition, the debtor often files certain “first day motions” concerning things such as administrative items, financing, utilities, taxes, notice, and procedures. The debtor-in-possession then continues operating its business as before, but with bankruptcy court oversight. In the case of the Rangers, the Rangers continue to play ball games, honor tickets, pay salaries, pay vendors and suppliers, and otherwise operate the business of a Major League Baseball franchise.

A prepackaged chapter 11 plan (commonly referred to as a “prepack”) is typically negotiated with certain key creditors and other parties-in-interest prior to the bankruptcy filing. As in the Rangers Partners bankruptcy case, however, significant creditor constituencies may not agree to the terms of the

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<sup>7</sup> In some cases, particularly when there is fraud or gross incompetence on the part of the debtor’s management, a chapter 11 trustee is appointed to run the debtor-in-possession during the bankruptcy proceeding. In most cases, however, the debtor’s management continues to run the debtor-in-possession in a chapter 11 case. As of yet, no party has filed a motion in the Rangers case to appoint a trustee.

<sup>8</sup> The terms “chapter 11 debtor,” “debtor” in a chapter 11 context, and “debtor-in-possession” are used interchangeably in this article.

<sup>9</sup> 11 U.S.C. §363 provides a mechanism for the debtor-in-possession to sell its assets, outside of the ordinary course of business, after obtaining bankruptcy court approval. This process is often accomplished through a “stalking horse” bidder that submits an initial bid that other potential purchasers may match or exceed in an auction or auction-like event. Often, when the stalking horse is outbid, pursuant to bankruptcy court-approved bidding procedures, it will receive a break-up fee as consideration for its due diligence efforts.

prepackaged chapter 11 plan. In such cases, the debtor may attempt to “cram down” the plan over the objection of the dissenting creditors at the plan confirmation hearing.<sup>10</sup> In a prepack bankruptcy, when the bankruptcy is filed, the prepackaged chapter 11 plan is also filed along with a disclosure statement explaining the terms of the plan, the history leading up to the filing, and other information that creditors and other parties-in-interest need to vote on the plan.<sup>11</sup>

### **The Relief Pitcher Finishes His Warm-ups and Enters the Game: The Greenberg-Ryan Group Seek to Buy the Rangers Through a Proposed Chapter 11 Plan**

According to the Rangers Partners’ disclosure statement, the proposed prepackaged chapter 11 plan calls for the sale of the Texas Rangers franchise to the Greenberg-Ryan Group and the payment of all of Rangers Partners’ creditors in full. Under the proposed prepackaged chapter 11 plan, the Greenberg-Ryan Group will purchase substantially all of the assets of Rangers Partners, including the Texas Rangers franchise, all franchise assets and privileges, the spring training facilities, and all of Rangers Partners’ rights to any minor league, little league, hall of fame and foreign operations affiliated with the Texas Rangers. The consideration paid to the Rangers Partners by the Greenberg-Ryan Group will consist of \$304,000,000, plus a promissory note (contingent on the Rangers’ revenue being in the top five for all MLB clubs in a given year), less certain deductions for fees and expenses and an amount necessary to pay a land note. The Greenberg-Ryan Group will also assume, and agree to pay and perform, certain liabilities and obligations of Rangers Partners, including deferred compensation obligations to players. The players association has filed an appearance in the bankruptcy case, and one can be assured that they will fight for the compensation due to the present and former players.

In addition, the proposed prepackaged chapter 11 plan calls for the sale of certain property belonging to Ballpark Real Estate, L.P. (“BRE”), an entity also indirectly owned by Tom Hicks, to the Greenberg-Ryan Group. The BRE property is adjacent to the Ballpark and includes parking lots, a greenbelt, a lake, irrigation system, and other amenities. In exchange for the sale of most of its property, non-debtor BRE will receive \$5,000,000.00 in cash, a \$53,158,991.04 promissory note (with interest at 4.1% per annum), a 1% equity interest in the purchaser, and the assumption and payment in full by the purchaser of certain BRE obligations of approximately \$12.8 million.

Certain secured creditors, including Monarch Alternative Capital (the “Dissenting Creditors”), are opposing the proposed prepackaged chapter 11 plan. The Dissenting Creditors assert that the bankruptcy estate should receive more money from the sale of the team and assets than the Greenberg-Ryan Group has agreed to pay under the proposed plan. The Dissenting Creditors may push to re-open the bidding process, which could potentially result in an influx of more money into the estate.

### **The Depth Chart: the Financing Necessary to Get the Rangers Through the Game**

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<sup>10</sup> 11 U.S.C. §1129(b).

<sup>11</sup> A pre-packaged plan is not the only form of chapter 11 plan. Often, the chapter 11 plan is negotiated by the debtor, the creditors, and other parties-in-interest over the course of the bankruptcy case, and is not a “pre-pack.”

In many cases, a chapter 11 debtor's most pressing concern prior to and upon entering bankruptcy is obtaining financing. Without adequate financing and cash flow to meet its immediate operational and administrative needs, the chapter 11 debtor is unlikely to be able to ultimately confirm a successful chapter 11 plan, or even to orderly liquidate assets through asset sales.

Any company in distress, much less a company in bankruptcy, has a difficult time obtaining new financing without granting some sort of special concessions to a lender that extends new financing. As is often said, in bankruptcy, as outside the bankruptcy arena, "new money makes the rules." A version of this principle is codified in 11 U.S.C. §364. Pursuant to Section 364(c), if otherwise unable to obtain credit, the debtor-in-possession may grant a lender that provides new financing a lien on the debtor's assets, as well as a claim that is higher in priority than any administrative claim (such as the debtor's attorney's fees and other administrative costs).<sup>12</sup> The ability to obtain a lien and a "superpriority claim" often induces lenders to extend credit to the chapter 11 Debtor. The proposed financing is approved (or rejected) by the bankruptcy court after a motion and hearing. The bankruptcy lender is referred to as the debtor-in-possession lender, or the "DIP lender."

In recent years, with the general unavailability of credit in the markets, fewer lenders have been willing to step forward and make loans to companies entering bankruptcy. Hence, despite the protections in the Bankruptcy Code that are available to lenders making loans to companies in bankruptcy, chapter 11 debtors have often found it difficult to obtain financing during the credit crunch of recent years. In baseball terms, a DIP lender has become as difficult to obtain as a good left-handed power hitter.

### **The Lead-Off Batter for the Rangers' Opponents at the Plate: The Dissenting Creditors Start a Bidding War in Open Court as to Who Should be the DIP Lender**

The events leading up to the approval of a DIP lender in the Rangers bankruptcy made for an unusual play. In the Rangers bankruptcy case, two competing lenders (the Dissenting Creditors and Major League Baseball) emerged, each seeking to be the DIP lender. Major League Baseball ("MLB") offered the debtor a DIP loan with a 7% interest rate. In a hearing to approve the DIP loan, the Dissenting Creditors objected and offered to loan the debtors a DIP loan facility of nearly twice the amount offered by MLB, and at a lower interest rate, conditioned upon the debtor allowing new offers for the purchase of the Ranger Partners' assets. The Dissenting Creditors did not want the debtor to be locked into selling its assets to the Greenberg-Ryan Group. MLB then matched the Dissenting Creditors' offer. The Dissenting Creditors upped the ante and offered to lend up to \$20 million at a low rate to pay off the team's loan to MLB. MLB then matched this latest offer and agreed to remove certain references in the DIP order to the prepackaged plan. The bankruptcy court approved MLB as the DIP lender and entered an interim DIP order with an interest rate of LIBOR plus 1%. For this at bat, the Dissenting Creditors may have been called out in a close play at the plate. However, they were at least successful in forcing MLB to offer more favorable DIP financing terms to the debtor. Further, the meat of the

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<sup>12</sup> Under other subsections of 11 U.S.C. §364, the debtor-in-possession (or trustee as the case may be) is authorized to obtain credit with other levels of priority, if it cannot otherwise obtain the necessary credit.

Dissenting Creditors' line-up (tactics to prevent the sale to the Greenberg-Ryan Group and/or achieve a higher offer for the estate's assets) is on deck and will soon be at the plate during the confirmation hearing on the proposed chapter 11 plan.

This is one thing that makes the circumstances of the Texas Rangers' bankruptcy so unusual. In this era of difficulty in obtaining DIP loans, competing lenders actually battled it out in the courthouse to be the DIP lender! Also, at the May 26, 2010 DIP loan hearing, bankruptcy judge Michael Lynn reminded the Ranger's CFO, in no uncertain terms, that her duty was to obtain the best available outcome for the creditors (to whom she owed a fiduciary duty). In the bankruptcy realm, the interests of the creditor body generally come first. Hence, when a debtor becomes bankrupt, and even when the pre-bankruptcy debtor enters the somewhat amorphous "zone of insolvency," the debtor's management owes fiduciary duties to the creditor body. Therefore, the debtor-in-possession is usually obligated to agree to the loan or other course of action that is in the best interests of the creditor body. At times, this may conflict with the desires of management, or third-party entities (such as MLB). A DIP loan with a lower interest rate, and keeping open the possibility of new bids for the team/assets may not have been in the debtor's, or MLB's, play book going into the hearing on the DIP facility, but the umpire (bankruptcy judge) called the balls and strikes as he saw them for the benefit of the creditor body.

**The Squeeze Play: Dissenting Creditors file an Involuntary Bankruptcy Petition Against Rangers Equity Holdings, L.P. and Rangers Equity Holdings GP, LLC, Owners of Bankruptcy Debtor, Rangers Partners**

On May 27, 2010, Dissenting Creditors filed an involuntary bankruptcy petition against Rangers Equity Holdings, L.P. and Rangers Equity Holdings GP, LLC (the "Holding Companies") the two Hicks-related holding companies that together own Rangers Partners. Prior to this time, the Holding Companies were not party to the bankruptcy proceedings. Under Section 303 of the Bankruptcy Code, creditors may force a person or company into an involuntary bankruptcy.<sup>13</sup> An involuntary bankruptcy petition requires the filing of an involuntary case against the debtor by three or more creditors each holding a non-contingent claim that is not subject to a bona fide dispute as to liability or amount, and that aggregate at least \$13,475 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.<sup>14</sup> If there are fewer than 12 such holders, excluding employees, insiders, or transferees of avoidable transfers, then only one holder is required to file an involuntary bankruptcy petition against the debtor.<sup>15</sup> The involuntary debtor may controvert/answer the involuntary petition, and the bankruptcy court will order relief (placing the involuntary debtor into bankruptcy) if the debtor is generally not paying its debts as they become due.<sup>16</sup> If the bankruptcy court dismisses the involuntary petition, however, the petitioners are subject to sanctions in the form of costs,

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<sup>13</sup> 11 U.S.C. §303.

<sup>14</sup> 11 U.S.C. §303(b)(1).

<sup>15</sup> 11 U.S.C. §303(b)(2).

<sup>16</sup> 11 U.S.C. §303(h).

attorneys' fees, and (in the case of a bad faith involuntary filing) damages caused along with punitive damages.<sup>17</sup>

The Dissenting Creditors claim that they filed the involuntary petition in order to ensure that the bankruptcy proceedings meet the objective of maximizing value for all creditors.<sup>18</sup> The Dissenting Creditors also claim that the Baseball Club and related assets are worth more than the purchase price contemplated in the proposed chapter 11 plan. It appears that the Dissenting Creditors seek to reopen the bidding in an attempt to bring in more money to the estate. Meanwhile, in the other dugout, Rangers Partners continues to press forward with its strategy and does not believe that the involuntary filing will affect its schedule.

At this point, the Rangers' bankruptcy case is still in the early innings, yet we've already seen some exciting, and rather unusual plays. Stay tuned for further developments in future innings.

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<sup>17</sup> 11 U.S.C. §303(i).

<sup>18</sup> The Dissenting Creditors hold a lien on the stock of the Rangers, and will almost certainly attempt to maximize the value relating to that asset as well.

