FINANCIAL DISTRESS AND THE CULTURE OF SPORTS

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Sports franchise bankruptcies pose a challenging array of issues from what property is available to the creditors to what influence bankruptcy law may have on sports governance and franchise/league relations. This article asserts that these issues are better understood through a cultural lens. Contrasting the Texas Rangers bankruptcy case with the Los Angeles Dodgers bankruptcy case, the article constructs a cultural context in which bankruptcy courts have confronted foundational issues in bankruptcy law and in internal league governance. At the present stage of development, owner conduct and his or her relationship with the commissioner of the sports league appear to be key determinants in the complexion of a sports franchise bankruptcy case. It remains unresolved, however, whether a league's internal governance would preempt foundational bankruptcy principles, although it appears unlikely.

Introduction

Professional sports are almost a religion across the globe. Fans follow their favorite sports teams with devotion, loyalty, and faith; and professional athletes are adored and worshipped with the adoration reserved for saints. Baseball is America's sport and, through that sports experience, a lens into deep-seated American and even Western culture.

Debt also has a deep tradition in the United States ('US'). Many of the original colonies were settled by debtors from debtor's prisons in Great Britain. As colonists moved west into what would be the middle continental US, many did so just ahead of their creditors seeking to collect debts, seize assets, and satisfy their claims. This constant struggle over debt and the relative power between debtors (who had little) and creditors (who had the upper hand) led to the early enactment of bankruptcy laws, powers that were relegated to the central federal government under the *US Constitution*.

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So when a sports franchise encounters financial hardship, it is not surprising that it will garner attention from the public. What is less obvious is that the clash between sports, labour, and the financial markets through the institution of bankruptcy provides a portal into important cultural concepts like tradition, keeping promises, freedom to convey one's property, and relative commercial power. It is not very common, but a number of sports franchises and leagues have sought relief from their secured and unsecured debts under the US bankruptcy laws.[1] In this restricted entertainment sports market, professional baseball teams operate as highly lucrative – often highly leveraged – businesses that seek the protection of relief under chapter 11 of the *Bankruptcy Code*.[2] Chapter 11 of the *Bankruptcy Code* is reserved for those debtors that seek to reorganise or rehabilitate their businesses, as opposed to those debtors that seek to liquidate their assets as they would in a chapter 7 bankruptcy case. A baseball team resorting to relief under chapter 11 is relatively rare, but the Texas Rangers and Los Angeles Dodgers filed for bankruptcy relief under chapter 11 in back-to-back years.[3]

Professional sports are a business, but the architecture of that business is unique. A sports franchise needs its competitors, that is, other franchises, to bring a joint product to market. Without the New York Mets, for example, the Atlanta Braves could not present a baseball game to the consumer. In contrast, General Motors does not need Toyota to bring its products to market. These sports franchises then need a central power or authority to mine the benefits of economies of scale through sharing services such as governance, league-wide financing and accounting, the scheduling of games, marketing, and possibly even revenue sharing. Thus, sports leagues are born. In Major League Baseball ('MLB'), the American League and the National League exist as two separate leagues brought together by contract to create it.

There are several attributes of professional sports team bankruptcies that differ from more traditional chapter 11 bankruptcies because of the sports league's unique architecture.[4] For example, when a typical business competitor seeks relief under the *Bankruptcy Code*, its competitors may be able to take advantage of the erosion of value, the impairment of goodwill, and the strain to suppliers and customer relations that bankruptcy ultimately brings.[5] In sports, however, the teams are dependent on the viability of other clubs. Moreover, the league

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[1] The US bankruptcy laws may be found at: 11 USC (2012) ('*Bankruptcy Code*').
[2] John Dillon, 'Major League Baseball Team Bankruptcies: Who Wins? Who Loses?' (2012) 32 *Loyola of Los Angeles Entertainment Law Review* 297, 304.
[3] The Texas Rangers filed for chapter 11 bankruptcy relief on 24 May 2010, and the Los Angeles Dodgers filed for chapter 11 bankruptcy relief on 27 June 2011.
[4] See Dillon, above n 2, 304.
[5] To be sure, there are many advantages to filing for bankruptcy relief, like the ability to reject collective bargaining agreements, to discharge debts for less than their legal amounts without creditor consent, the ability to reject unprofitable leases, etc. However, these advantages are short-lived and possibly ameliorated in bankruptcy cases involving sports franchises.

can restrict team ownership through contractual 'constitutional' provisions and agreements.[6] These contractual rights and remedies are in place for the benefit and protection of all member teams. Yet, it is these pre-existing league contractual rights that may conflict with bankruptcy law, and it is these conflicts that are at the forefront of all professional sport team bankruptcies. It is clear, therefore, that the normal rules of the bankruptcy game – including the goal of maximising value for all the creditors – do not always apply in professional sports team cases with the same vigour present in traditional business bankruptcy cases.[7]

'The financial viability of a professional sports team is derived from a complex combination of revenue sources and expenses.'[8] Sports teams and ownership are subject to financial downturns just like any other industry.[9] In the context of American baseball, '[w]hen a team encounters financial distress, an immediate culture clash between team ownership and the League[10] inevitably results.'[11] Once a club files for chapter 11 bankruptcy, MLB must confront the intricacies of bankruptcy law. MLB's desire for dominance and control can conflict with bankruptcy's goal of maximising the value of the assets for both secured and unsecured creditors and for equity holders like the owner.[12] The owner often wants to maximise the value of the team; MLB wants control over the larger industry of competing teams and who owns them. Thus, it is easy to see why owners will employ extraordinary means to maximise the value of the team even at the expense of the best interests of the league. This is evident in both the Texas Rangers and the Los Angeles Dodgers bankruptcies.[13]

Overview of Bankruptcy Law

The major purposes of bankruptcy law are to provide for the efficient collection of debts, distribute the debtor's property in accordance with uniform and

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[6] MLB, *Major League Constitution* (at June 2005) art vIII s 4(1) ('*MLB Constitution*') allows for the termination of the rights and privileges of a Major League Club who files a voluntary petition in bankruptcy pursuant to the approval of three-fourths of all Major League Clubs.

[7] Redfield T Baum, Thomas J Salerno and Jordan A Kroop, 'Chapter 11 Cases Involving Professional Sports Franchises', in Alan N Resnick and Henry J Sommer (eds), *Collier Guide to Chapter 11: Key Topics and Selected* Industries (LexisNexis, 2013) ¶28.01; Dillon, above n 2, 300.

[8] Dillon, above n 2, 304. The driving revenue and expenses include: '(a) ticket sales; (b) broadcast media revenue; (c) venue revenues; (d) license revenues; (e) naming rights revenues; (f) concessions; (g) player costs; (h) venue costs; and (i) operating expenses.' See also Jack F Williams, 'The Coming Revenue Revolution in Sports' (2006) 42 *Willamette Law Review* 669.

[9] See generally Dillon, above n 2. Financial distress may result from 'huge debt, bad investments, or the financial hardship of the owner's primary business': at 304. When the liabilities exceed the assets of the team or there is a default in financing, an owner faces the choice of turning the team over to the league or league-sponsored buyer, usually for little return on the owner's investment, or file for chapter 11 bankruptcy relief. See also Baum, Salerno and Kroop, above n 7, ¶28.01.

[10] This is particularly notable in the case of MLB. The Commissioner of MLB has broad power and discretion vested in his or her office due to the 'best interest of baseball' clause. This will be discussed later in this article.

[11] Baum, Salerno and Kroop, above n 7, ¶28.01. See *MLB Constitution* art VIII s 4(l).

[12] See Baum, Salerno and Kroop, above n 7, ¶28.01.

[13] See Dillon, above n 2, 300.

national priorities, capture going concern value, discharge of debts to provide a fresh start, and facilitate the debtor's ability to reorganise.[14] The paramount public policy rationale embraced by the *Bankruptcy Code* in regard to a business debtor is the reallocation of limited and finite resources through court-supervised and approved asset sales to other entities that can make a better economic 'go of it' or the reorganisation of the business through a court-approved chapter 11 plan of reorganisation that restructures secured and unsecured debt, discharges debt not paid pursuant to the plan, and often modifies the management and operations of the operating assets. The premise of a chapter 11 bankruptcy – the reason the business is allowed to reorganise – is that the value of the business is greater as a going concern than as a liquidating business.[15]

A chapter 11 bankruptcy begins by filing a petition with the US bankruptcy court. The petition may be filed voluntarily by the debtor or involuntarily by the debtor's creditors.[16] Through the commencement of a chapter 11 case, the debtor attempts to reorganise itself either through rehabilitation or orderly liquidation.[17] Generally, a chapter 11 debtor maintains control of its property and assets as a debtor-in-possession ('DIP') and continues to operate the business in the ordinary course with little bankruptcy court oversight for the purpose of proposing and obtaining confirmation of a plan of reorganisation. However, for the DIP to engage in transactions outside of the ordinary course of business, such as a sale of a substantial asset or all assets, the debtor must provide notice to all creditors and other parties in interest and obtain court approval.

In a chapter 11 case, the DIP's proposed plan of reorganisation blends both its business plan, including financing for emergence from bankruptcy and beyond, and its bankruptcy treatment plan wherein it attempts to provide a satisfactory schedule of payments and possibly collateral to secured and unsecured creditors and shareholders. Thus, the plan or reorganisation, once confirmed, becomes an operative court order that provides the means by which the claims of creditors, shareholders, and other parties in interest are satisfied and the means by which the debtor will operate business upon emergence.[18] The DIP's main evidentiary goal in a proposed plan is to prove to holders of secured and unsecured claims that the plan minimises their risk; the plan should make a creditor at least 'economically indifferent' if not better off than it would be under a hypothetical chapter 7 liquidation and distribution of the bankruptcy assets.[19]

[14] See Stan Bernstein, Susan H Seabury and Jack F Williams, *Business Bankruptcy Essentials* (American Bar Association, 12th ed, 2009) ch 3, 25-26para 1, para 3.
[15] See ibid.
[16] See Dillon, above n 2, 300.
[17] See Bernstein, Seabury and Williams, above n 14, ch 4, 28.
[18] See 11 USC §§ 1141–2 (2012).
[19] See 11 USC § 1129(a)(7) (2012).

Upon filing of a bankruptcy petition, voluntarily or involuntarily, an automatic stay arises.[20] The automatic stay suspends all creditor activity associated with any debts or claims arising before the filing of the petition that may be brought against the debtor or property of the bankruptcy estate.[21] The purpose of the stay is to afford a debtor time to focus on efforts to propose and obtain confirmation of a plan of reorganisation. Without the protection of the automatic stay, creditors might be tempted to try to be the first to collect under the 'first in time, first in right' priority rules of a state,[22] thereby eroding the going concern value of the business. Any action taken in violation of the automatic stay is ineffective and void because the stay is self-enforcing.[23]

Once a chapter 11 bankruptcy petition is filed, a debtor can file a motion with the court to authorise the DIP to obtain post-petition financing to fund working capital or other financial needs that may arise in bankruptcy.[24] The purpose of post-petition financing is to allow the debtor to pay the current operating expenses as they become due while reorganising its affairs and preparing for emergence from bankruptcy.[25] DIP financing arrangements are often entered into even if the debtor can fund its operations through the use of its own cash collateral because they may serve as a signal that affords comfort to vendors and other constituencies that the debtor has the means to operate while in a chapter 11 case.

A DIP typically obtains working capital in one of three ways: (1) the debtor uses its existing secured lender's cash collateral to meet expenses incurred in the ordinary course of business (the debtor does this either with the consent of the secured lender or with authorisation from the bankruptcy court over the lender's objection);[26] (2) the debtor obtains more funding from an existing secured lender (usually the debtor will grant the lender a first priority lien on all of the debtor's assets if the lender does not already have it);[27] or (3) it obtains new funding from a third party (usually the debtor will grant this new source a

[20] See 11 USC § 362 (2012). The stay is theoretically infinite; it continues until terminated by the court (11 USC § 362(d) (2012)) or by the occurrence of a particular event (11 USC §362(c) (2012).
[21] See 11 USC §362(a) (2012).
[22] Most jurisdictions, including all states within the US, maintain a system for recording liens. In general, the first one to execute a legal transaction has a priority claim. This is widely considered the 'first in time, first in right' rule, the common law rule of priority among holders of liens.
[23] See Lawrence P King et al (ed), *Collier on Bankruptcy* (Matthew Bender, 15th revised ed, 1997) vol 3, ¶362.11 n 1; *Kalb v Feuerstein*, 308 US 433 (1940); *Re Soares; Soares v Brockton Credit Union*, 107 F 3d 969 (1st Cir, 1997); *Re Schwartz; Schwartz v United* States, 954 F 2d 569 (9th Cir, 1992).
[24] See 11 USC §364 (2012). Although a debtor operating as a DIP has the right to continue to engage in business in the ordinary course, it is necessary for the debtor to seek prior approval from the bankruptcy court to grant additional securities or liens because it is outside the ordinary course.
[25] See generally 11 USC § 364 (2012).
[26] See 11 USC § 363(c) (2012).
[27] See 11 USC § 364 (2012).

first-priority lien on all of the debtor's assets that primes existing liens of pre-bankruptcy secured lenders).[28]

In all three circumstances, the lender with the senior-most lien on all of the debtor's assets will exert significant control over the course of the chapter 11 bankruptcy case. This lender will exercise aggressive oversight on the debtor's day-to-day operations and typically participate in formulating a strategy to exit chapter 11 with a confirmed plan. Thus, if an existing lender provides post-petition financing, the relationship between the debtor and lender is likely to resemble the same relationship as pre-petition. If a third party becomes the DIP lender, however, the relationships between the debtor and the lenders, both old and new, may change dramatically because the new DIP lender may exert significant influence over the debtor's operations and overall exit strategy for the chapter 11 case.[29]

The final stage of a chapter 11 bankruptcy is confirmation of the reorganisation plan.[30] The court is required to hold a confirmation hearing. To gain approval of a plan, the debtor must receive the acceptance of the plan by each class of claims and interests, or absent unanimous consent, may seek to cram down the plan over the objection of classes of creditors so long as at least one class of impaired non-insider creditors voted to approve the plan.[31] Prior to confirmation of a plan, the court must be satisfied that the plan complies with all applicable requirements under the *Bankruptcy Code*, even in the absence of objections. The court must be satisfied, among other things, that the plan: (1) is feasible;[32] (2) proposed in good faith;[33] and (3) complies with the *Bankruptcy Code*.[34] With this context, we now turn to the bankruptcy cases involving the Texas Rangers and the Los Angeles Dodgers.

[28] DIP lenders often demand and receive: (1) a lien on all property of the estate not subject to a lien; and (2) a priming lien on all property of the debtor's estate already subject to existing liens. This first priority lien sits atop the existing liens.

[29] If the debtor does not get the consent of the pre-petition lenders for the priming lien, a 'priming fight' is possible. In a 'priming fight' the debtor has the burden of establishing that any lienholders being primed by the DIP lenders are adequately protected: see 11 USC § 364(d) (2012). For what could be adequate protection, see 11 USC §361.

[30] Jeffrey M Schlerf, 'At Bat in Bankruptcy Court' (2012) 30(3) *Delaware Lawyer* 22, 26.

[31] See generally Bernstein, Seabury and Williams, above n 14, ch 11. A class of claims accepts a plan if creditors holding two-thirds in amount and one-half in number of the allowed claims in the class votes in favor of the plan. If a class of claims is not 'impaired' by the plan, all members of the unimpaired class are deemed to have accepted the plan as a matter of law. A class is 'impaired' if it receives under the plan less than the full amount of its allowed claims. Chapter 11, pp. 97-98 (Page 97 ¶ 4 and Page 98 ¶ 1)

[32] 11 USC § 1129(a)(11) (2012).

[33] 11 USC §1129(a)(3) (2012).

[34] 11 USC §1129(a)(1) (2012). If all the requirements under § 1129(a) are met and the requirement of consent is lacking under § 1129(a)(8), the debtor may turn to § 1129(b) of the *Bankruptcy Code*.

The Texas Rangers

2004 – The Acquisition by Hicks

In 1998, Thomas O Hicks ('Tom Hicks') bought the Texas Rangers for $250 million from a group run by partners Rusty Rose, Richard Rainwater, and George W Bush, then-governor of Texas.[35] Tom Hicks did not use any of the funds from his private equity firm to purchase the Rangers.[36] 'Rather, he brought in qualified outside investors to cover the cost of' the acquisition.[37] Tom Hicks acquired the team as part of his Hicks Sports Group LLC ('HSG').[38] HSG was one of the four principle business entities under Hicks Holdings LLC.[39] Established in 2005, Hick Holdings LLC is a family-owned private investment enterprise. The Texas Rangers Baseball Partners ('TRBP') owned and operated the Texas Rangers Major League Baseball Club.[40] TRBP is directly owned by Rangers Equity Holdings LP and Rangers Equity Holding GP LLC. Together they were the Rangers' equity owners. TRBP and the Ranger's equity owners are indirect, wholly-owned subsidiaries of HSG Sports Group LLC.[41]

The Hicks Era

The Rangers were not profitable following Hicks' acquisition in 1998.[42] Nevertheless, Hicks spent heavily on acquiring players, including Alex Rodriguez. During his ownership, Hicks covered the cash flow shortfalls with advances totaling over $100 million by 2008.[43] Eventually in 2008, because of the fledging economy and global credit crisis, Hicks decided that he could not

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[35] See Robert Mays, 'Who Owns the Rangers?' on *Grantland* (28 October 2011) <http://grantland.com/the-triangle/who-owns-the-texas-rangers/>.

[36] Tom Hicks co-founded the private investment firm, Hicks, Muse, Tate & Furst in 1989. Between 1989 and 2004, the firm raised over $12 billion of private equity funds and acquired over $50 billion via leveraged buyouts: see Matthew L Winkel, 'The Not-So-Artful Dodger: The McCourt-Selig Battle and the Powers of the Commissioner of Baseball' (2013) 31 *Cardozo Arts & Entertainment Law Journal* 539, 557 n 128.

[37] Ibid.

[38] HSG also had an ownership interest in the National League Hockey team, the Dallas Stars.

[39] The other three entities are Hicks Equity Partners LLC, Hicks Real Estate Holdings LLC, and Hicks Trans American Partners LLC.

[40] Bryan Krakauer, 'Sports Teams in Bankruptcy' (Paper presented at Pucks, Baseballs, and … Franchise Auctions? Lessons from the Wide World of Sports Bankruptcies, Chapter 11 Subcommittee Luncheon, New Orleans, Louisiana, 14 October 2010).

[41] See ibid.

[42] See, eg, Ken Belson and Richard Sandomir, 'A Long Year for Thomas O Hicks', *The New York Times* (New York), 22 October 2010, B10; Eric Morath, 'Judge Says Hicks Lenders Can't Veto Sale of Texas Rangers', *Dow Jones Bankruptcy and Debt News* (online), 22 June 2010 <http://bankruptcynews.dowjones.com/article?pid=10&an=DJFDBR0020100622e66m000gp&ReturnUrl=http%3a%2f%2fbankruptcynews.dowjones.com%2farticle%3fpid%3d10%26an%3dDJFDBR0020100622e66m000gp>; Evan Grant, 'Report: Ruling Does Not Give Lenders Abilityt to Veto Sale of Rangers' on The Dallas Morning News, *Texas Rangers Blog* (22 June 2010) <http://rangersblog.dallasnews.com/2010/06/report-ruling-does-not-give-le.html/>.

[43] See Morath, above n 42.

ANZSLA_Journal 2013 Vol 8.indd 27 4/12/2014 4:01 pm

continue to advance funds to support the team.[44] In a statement to the Associated Press, Hicks said:

> Like so many other companies and institutions, HSG has been impacted by a global credit crisis which no one could have anticipated, … the company is not asking for additional money; it is only asking for full access to the interest reserve account and revolving credit line as well as some amendments in the debt covenants.[45]

'HSG began exploring a possible sale of the Texas Rangers in May of 2009, and worked with potential buyers and investors through the summer of 2009.'[46] MLB 'was significantly involved in the Texas Rangers' financial affairs prior to' the team filing for bankruptcy.[47] For example:

> In June 2009, Baseball Finance LLC [('Baseball Finance')], an affiliate of the Office of the Commissioner of Baseball … agreed to make available to TRBP a secured revolving loan facility ('the Baseball Finance Note'). The loans under the Baseball Finance Note were secured by liens on substantially all of the assets of the TRBP and are junior to the liens granted pursuant to the HSG Credit Agreement.[48]

Baseball Finance was established to serve as a lender of last resort, among other things. At the bankruptcy '[p]etition [d]ate, approximately $18.45 million in principle was outstanding under the Baseball Finance Note.'[49]

Texas Rangers For Sale

Hicks approached the looming bankruptcy filing by involving MLB early in the process in order to preserve the integrity of the league structure and ensure that the Texas Rangers remained 'good citizens' of the league. Rather than assert its powers and privileges under a contemplated bankruptcy filing, Hicks reached out to MLB and the two agreed on a process to sell the Rangers. 'In connection with the Baseball Finance Note, TRBP, HSG, HSGH,' Tom Hicks and the Rangers' equity owners entered into a voluntary support agreement ('VSA') with the

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[44] See ibid.

[45] See *Stars Owner Hicks Defaults on Loans* (3 April 2009) Sports Illustrated <http://www.si.com/nhl/2009/04/03/stars-hicksdefault>. A financial news website, FINalternatives, first reported that HSG did not make its interest payment on a $350 million bank-term loan, $100 million second-lien loan and a $75 million revolving credit facility.

[46] See Krakauer, above n 40, 4.

[47] See ibid 3.

[48] See ibid 4. TRBP was a 'limited guarantor under a First Lien Credit Agreement and a Second Lien Credit Agreement among HSG, HSG Sports Group Holdings LLC ('HSGH'), certain subsidiaries of HSG as guarantors, and lenders party thereto (collectively, the 'HSG Credit Agreement').' The Ranger's equity owners were also guarantors under the HSG Credit Agreement.

[49] Ibid 4.

Commissioner under which MLB 'agreed to provide certain operational support to HSG and TRBP'.[50] The use of a VSA by a debtor before commencing a chapter 11 bankruptcy case to lock up strategic creditor support is not unusual. The parties modified the VSA in November 2009. The modifications provided that MLB 'would continue to provide operational and logistical support … [and] continue to monitor the day-to-day operations of the Texas Rangers', but it also inserted a timetable for concluding the sale of the Texas Rangers and a deadline of 15 January 2010.[51]

On 18 August 2009, 'six parties submitted non-binding bids for the purchase of the Texas Rangers'.[52] HSG and TRBP consulted with the Office of the Commissioner to select three finalists to submit final bids. In turn, the three finalists had three months to conduct their due diligence after which time, on 20 November 2009, they submitted final, binding bids.[53] HSG negotiated enhanced offers with two bidders: the Greenberg Group[54] (or rather, its acquisition vehicle, Rangers Baseball Express LLC) and Houston businessman Jim Crane (the 'Crane Group'[55]).

MLB Steps Up to the Plate

During negotiations, MLB made it crystal clear that it supported the sale of the team to the Greenberg Group.[56] When HSG's counsel, Glenn D West,[57] sent an email updating MLB on the status of ongoing negotiations to sell the team he informed MLB that there were two offers on the table: the Greenberg bid and a 'clearly superior economic' bid from the Crane Group.[58] In response, MLB informed West that the Texas Rangers had permission to negotiate with Greenberg only.[59] In response, West advised the MLB lawyers, '[i]t appears Greenberg is using your position to simply refuse to negotiate in good faith; and the result will be a bad one for the team and our lenders (whose consent is absolutely required, just like yours, for whatever is ultimately done here).'[60]

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[50] Ibid.

[51] Ibid.

[52] Ibid.

[53] Ibid.

[54] Ibid 4–5. The Greenberg Group was a group of investors led by Texas Rangers' president and Hall of Famer, Nolan Ryan, and sports attorney, Chuck Greenberg.

[55] The Crane Group is a holding company based out of Columbus, Ohio that is primarily involved in the manufacturing and distribution of building products. The company was founded in 1947 by Jim Crane, Sr and remains a private, family operated business.

[56] Richard Sandomir, 'Bats; Bids at Issue in Rangers Sale', *The New York Times* (online), 12 June 2010 <http://query.nytimes.com/gst/fullpage.html?res=9B0CEFDC123AF931A25755C0A9669D8B63>.

[57] Glenn D West was HSG counsel at Weil Gotchall & Manges LLP.

[58] Sandomir, above n 56.

[59] Ibid.

[60] Ibid.

HSG continued to negotiate with both the Crane Group and the Greenberg Group despite MLB's directive.[61] West also informed the lenders of the situation and provided them with the email exchange between him and MLB, explaining that HSG had decided *not* to sign an exclusivity agreement with the Greenberg Group.[62] West informed the lenders that:

> basically the response from MLB was to prohibit us from negotiating with anyone other than Greenberg. Their intent seems to be to lock us into Greenberg even though the Crane Group now has the clearly superior economic deal – and may always have had based on Greenberg's current position. We need help here. Unless the lenders weigh in, we are going to be stuck negotiating a deal that is clearly worse than Crane's.[63]

Interestingly, MLB also issued what seemed to be a stern warning to any other parties that might be interested in becoming involved in the sale.[64] MLB fired off a press release on 21 April 2010 that stated:

> Major League Baseball is currently in control of the sale process and will use all efforts to achieve a closing with the chosen bidder [Greenberg Group]. Any deviation from or interference with the agreed upon sale process by Mr. Hicks or any other party, or any actions in violation of MLB rules or directives will be dealt with appropriately by the Commissioner.[65]

Ultimately, HSG and TRBP selected the Greenberg Group 'as the most viable bidder for the sale of the Texas Rangers.'[66] The parties entered into an asset

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[61] See, eg, Richard Durrett, 'Source: Sale of Rangers Nears $570M', *ESPN* (online), 25 January 2010 <http://sports.espn.go.com/dallas/mlb/news/story?id=4852837>.

[62] Email from G West,, Weil, Gotshal & Manges LLP to T Ostertag, Office of the Commissioner of Baseball, 31 December 2009.

[63] See 'HSG Claims Crane Made Higher Offer than Greenberg for Rangers', *Sports Business Daily* (online), 14 June 2010 <http://www.sportsbusinessdaily.com/Daily/Issues/2010/06/Issue-188/Franchises/HSG-Claims-Crane-Made-Higher-Offer-Than-Greenberg-For-Rangers.aspx.online), 27 June 2011 <gersdge Throws OUt the Commissioner of Baseball, 31 December 2009.>. As lender groups later wrote in their briefs, 'MLB used extraordinary measures to try to force Lenders to consent to the sale to the Greenberg Group. When faced with resistance, MLB became only more aggressive': 'Joint Brief of Ad Hoc Group of First Lien Lenders, JP Morgan Chase Bank, NA, as First Lien Agent, and GSP Finance LLC, as Second Lien Agent, Regarding Certain Issues Related to Proposed Plan of Reorganization and Disclosure Statement', Brief in *Re Texas Rangers Baseball Partners*, 10-43400 (DML)-11, 11 June 2010, 10.

[64] See Richard Durrett, 'MLB Warns of Interference from Hicks', ESPN (online), 22 April 2010 <http://sports.espn.go.com/dallas/mlb/news/story?id=5123470>.

[65] See ibid. 'Commissioner Selig sought to broaden his "best interests" power further by threatening to invalidate the liens that the lenders held on the team and force a sale to Nolan Ryan's ownership group. … This would represent a new use of the "best interests" clause, as it would be applied to outsiders not within the game of baseball': Winkel, above n 36, 559 n 140.

[66] See Krakauer, above n 40, 4. 'A definitive agreement had not been executed by January 15, 2010, as required by the Voluntary Support Agreement, but the MLB agreed to allow additional time for the negotiations': at 5.

ANZSLA_Journal 2013 Vol 8.indd 30 4/12/2014 4:01 pm

purchase agreement with the Greenberg Group through Rangers Baseball Express. The agreement included the sale of the franchise, the stadium lease, and 153 acres of parking lots around the ballpark.

The lenders effectively stonewalled the sale under the original plan. The lenders refused to consent to the out-of-court sale because HSG, the team's parent, owed $525 million under the HSG Credit Agreement.[67] 'The lenders' concern about the structure of the deal revolved around how Tom Hicks … allocated sales proceeds as part of the Ryan transaction [original Greenberg Group purchase agreement]. Hicks wanted to sell real estate not owned by the debtor, but by another, non-debtor Hicks entity'.[68]

The Texas Rangers File Bankruptcy

Subsequently, HSG filed for chapter 11 bankruptcy relief. Ironically, the commencement of the chapter 11 bankruptcy case was precipitated by lenders who refused to abide by the deal structure negotiated between MLB and HSG,[69] and the chapter 11 filing was intended to get the Greenberg Group bid approved over the lenders' objections. TRBP believed that the pre-negotiated plan of reorganisation 'would pay the creditors in full and there would be no need for a vote on the plan'.[70]

'After a bidding war between the [l]enders and MLB to provide the interim financing,' the bankruptcy court 'approved MLB's DIP financing in the amount of $21.5 million'.[71] Baseball Finance agreed to provide TRBP with a DIP loan of $11.5 million 'to fund any amounts necessary above the available cash collateral'.[72] In connection with the DIP loan, TRBP and Baseball Finance agreed to a 13-week budget.[73]

The lenders insisted upon an auction in bankruptcy, believing the team would bring higher value; the lenders and other creditors did not believe that the proposed sale to the Greenberg Group represented the intrinsic value of the Rangers. TRBP used MLB's support of Rangers Baseball Express 'as support for their position that no auction [wa]s necessary'.[74] TRBP argued that under the plan no secured or unsecured creditors would be impaired and therefore were deemed to accept the plan under section 1126(d) of the *Bankruptcy Code*.

[67] The lenders filed involuntary petitions against Rangers Partners' equity parents: ibid 9.
[68] Baum, Salerno and Kroop, above n 7, ¶28.04 n 10. 'The lenders did not have a direct lien on this asset, and they argued that Hicks structured the transaction to allocate proceeds away from their collateral for the benefit of Hicks personally'.
[69] MLB and TRBP in consultation decided to file a bankruptcy case to bridge the impasse and facilitate the sale of the Rangers.
[70] Krakauer, above n 40, 5.
[71] Ibid.
[72] Ibid.
[73] Ibid.
[74] Ibid 6.

Moreover, the Rangers' equity owners consented to the plan. TRBP argued that because of the circumstances, TRBP did 'not need to hold an auction to maximize the value of its estate, and the sale can be approved and the plan confirmed.'[75] In response, the lenders argued that the proposed plan of reorganisation did indeed 'impair their rights under section 1124 of the Bankruptcy Code', entitling them to the right to vote.[76]

Bankruptcy Ruling

The Bankruptcy Court issued a thoughtful memorandum opinion with respect to the arguments on 22 June 2010.[77] First, the court concluded that if 'the proposed plan provided for full payment of all creditors of TRBP and all the equity holders had accepted the proposed plan, then the plan is confirmable even if a better offer … is available.'[78] Further, the court concluded, TRBP did not have a duty to maximise the value obtained for its estate if all creditors were unimpaired and equity owners had consented to the sale.[79]

However, the bankruptcy court found that the lenders were in fact impaired under section 1124 of the *Bankruptcy Code* without modifications to the plan.[80] Likewise, the court found that the equity holders were also impaired. The court stated that any modifications to the plan were material enough that any pre-petition acceptance of the plan by the equity holders would no longer be binding. As a result, the court determined that the equity owners of the Texas Rangers must be given the opportunity to vote whether to accept or reject a proposed plan, and because both Rangers Equity LP and Rangers Equity GP are in bankruptcy, their acceptance of the modified plan required court approval under section 363 of the *Bankruptcy Code*.[81]

Ultimately, the court appointed a Chief Restructuring Officer ('CRO') who solicited new bids, because the court found that the team's filing reopened the bidding process. TRBP proposed 'bidding procedures'[82] which the court initially approved on 15 July 2010. As part of these bidding procedures, the potential bidder had to receive 'MLB Sales Clearance' prior to the disclosure

[75] Ibid.

[76] Ibid.

[77] *Re Texas Rangers Baseball Partners*, 434 BR 393 (2010).

[78] Krakauer, above n 40, 8.

[79] Ibid.

[80] Ibid 9.

[81] Ibid. See also 11 USC §363 (2012).

[82] Krakauer, above n 40, 9, The bidding procedures included:

> [a requirement that a potential bidder must] complete and submit Part I of Baseball's Ownership Application. The BOC's [Office of the Board of Commissioner's] Security Department … [then would] conduct a background investigation of all applicants, which may include a preliminary assessment of a potential bidder's financial wherewithal. After the background investigation and after the applicant provides standard releases and indemnifications required by and in favor of MLB relating to consideration of the bid, the Commissioner must, absent cause … approve the release of Club financial information to the proposed purchasers.

of any financial information.[83] The court order[84] that approved the bidding procedures also established the Greenberg Group as the stalking horse bidder with an initial bid valued at approximately $496 million. In mid-July, Mark Cuban,[85] the colourful owner of the Dallas Mavericks (a National Basketball Association franchise) confirmed his interest in acquiring the team. Notably, MLB did not hold back in making it known that Cuban was not the preferred buyer. The court then set the date for the single-day bankruptcy auction to be conducted in open court.

The Auction

The highly intense in-court auction began on 4 August 2010, and lasted until 1.00am on 5 August 2010. For almost 12 hours, profanity flew back and forth between the competing groups[86] as they battled for the franchise. Cuban's first bid came in $25.3 million in cash higher than the Greenberg Group's initial offer. The Greenberg Group responded with a $2 million increase that Cuban then trumped by $15 million. Just before 1.00am, Cuban withdrew from the bidding after his top offer of $581.2 million fell about $12 million short of the Greenberg Group's final offer of $593 million.

Rangers Baseball Express, the initial proposed bidder, was declared the winner by the bankruptcy court. The final bid of $593 million was $68 million more than their initial bid.[87] Moreover, their final bid was restructured as to eliminate the provisions to which the lenders objected.[88] The auction concluded successfully, having both enhanced the initial offer by a substantial cash amount and avoided a clash between the bankruptcy policy of maximising value and MLB's policy of governance and approval of franchise ownership. Thus, the bankruptcy court did not need to decide which of the policies would prevail if a true conflict existed.

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[83] Ibid. 'Bidders who receive MLB Sales Clearance are "Qualified Bidders" and may submit a "Qualified Bid"': at 10.

[84] See generally Douglas C Baird, *Elements of Bankruptcy* (Foundation Press, 5th ed, 2010). 'Bankruptcy judges are likely to balk if the debtor has conducted its search for potential buyers narrowly and proposes bidding procedures that require buyers to assume exactly the same obligations as its chosen stalking horse.'

[85] Mark Cuban is a widely known businessman and investor in the US. Cuban sold his company, Broadcast.com, in 1999 to Yahoo! for $5.7 billion in Yahoo! Stock. On 4 January 2000, he purchased a majority stake in the Dallas Mavericks for $285 million.

[86] See Krakauer, above n 40, 10.

[87] Ibid.

[88] The initial bid from the Greenberg Group would have netted the secured lenders about $75 million from the sale proceeds. The bid, as restructured following the auction, netted the lenders $340 million: see, eg, 'Nolan Ryan Group Wins Rangers Auction', *ESPN* (online), 5 August 2010 <http://sports.espn.go.com/dallas/mlb/news/story?id=5436579>.

ANZSLA_Journal 2013 Vol 8.indd 33 4/12/2014 4:01 pm

The Los Angeles Dodgers

If the Texas Rangers bankruptcy case seemed contentious, the Los Angeles Dodgers bankruptcy case afforded all the drama, scandal, and spite found in a trashy beach read. In 2011, the Los Angeles Dodgers filed for relief under chapter 11 of the *Bankruptcy Code* to prevent a sale or forfeiture of the team prompted by the divorce of the owners. As the divorce played out, the media covered every salacious detail. Bitter and lengthy, the media also reported every blow-by-blow of the very public deterioration of the relationship between the Los Angeles Dodgers owner, Frank McCourt, and the Commissioner of MLB, Bud Selig.

2004 – The Acquisition by McCourt

On 29 January 2004, Boston parking lot magnate Frank McCourt purchased the Los Angeles Dodgers in a highly-leveraged transaction from Fox Entertainment Group for a then record $430 million.[89] The deal had two separate agreements: $330 million for the baseball club and $100 million for the real estate surrounding the stadium. The transaction was financed by almost all debt. McCourt received a $196 million debt package from Fox, and he borrowed $125 million from Bank of America and $75 million from MLB.[90] McCourt even borrowed $8 million from two friends back in Boston. Despite concerns that the transaction was too highly leveraged, MLB unanimously approved McCourt as the new owner of the club.[91] In fact, MLB stated that the 'transaction meets all of baseball's debt service rules and financial requirements in every way.'[92]

MLB did place important conditions on the acquisition. First, McCourt and the Dodgers were required to acknowledge their obligation to comply with the terms and conditions imposed by the MLB, including the *MLB Constitution* and other rules and regulations. Second, MLB 'required that Mr. McCourt agree to provide an additional $30 million in liquid equity within three years [of acquisition] through the sale of certain real estate assets or by securing equity investors.'[93]

In connection with the purchase, McCourt agreed to an Amended Telecast Rights Agreement ('ATR Agreement') with Fox.[94] Under the ATR Agreement, Fox

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[89] Winkel, above n 36, 550.

[90] Ibid; Larry Behrendt, 'Frank McCourt Must Go (Updated)' on *It's About the Money* (21 June 2011) <http://itsaboutthemoney.net/archives/2011/06/21/commissioner-selig-frank-mccourt-must-go-a-petition/>.

[91] Ibid.

[92] David Wharton, 'Dodgers' New Owner Steps Up to the Plate', *Los Angeles Times* (online), 30 January 2004 <http://articles.latimes.com/2004/jan/30/sports/sp-dodgersale30>.

[93] Office of the Commissioner of Baseball, 'Objection of Major League Baseball to Debtors' Motion to Obtain Post-Petition Financing and for Related Relief', objection in *Re Los Angeles Dodgers LLC*, 11-12010 (KG), 28 June 2011, 7 [14].

[94] See generally *Re Los Angeles Dodgers LLC*, 457 BR 308 (2011).

ANZSLA_Journal 2013 Vol 8.indd 34 4/12/2014 4:01 pm

Sports had exclusive rights to broadcast the Dodgers through 2013.[95] Moreover, Fox Sports received the exclusive renegotiation right for an additional five-year term. The timetable for this potential renegotiation was set for 15 October – 30 November 2012. Finally, the ATR Agreement afforded Fox the right of first refusal as to third-party offers.[96]

The McCourt Era

Apparently, Frank McCourt did not have sufficient personal wealth to purchase and own the Los Angeles Dodgers; his highly-leveraged purchase appeared to be evidence of that condition.[97] Once the purchase closed, he refinanced the acquisition debt. McCourt traded ownership of his Boston parking lots in exchange for forgiveness of some of the Fox debt package.[98] He had 'personally received $50 million from Fox as part of' that package. Finally, McCourt used the Dodger affiliate, Dodgers Tickets LLC, to borrow $250 million to refinance the remaining acquisition debt.[99]

As the Dodgers were the only source of income for the McCourts, the ball club funded the McCourts's lavish lifestyle. First, Jamie McCourt received an annual salary of $2 million as the Chief Executive Officer of the Los Angeles Dodgers ('CEO'); Frank McCourt received $5 million each year.[100] The McCourts used the club like a blend of personal piggy-bank and credit card. Between 2004 and 2011, the McCourt family received – through distributions and other payments – over $180 million from the franchise.

To facilitate their lifestyle, McCourt created subsidiaries under The McCourt-Broderick Limited Partnership ('TMBLP'[101]) and shuffled assets around the corporate entities. McCourt frequently borrowed against the assets of Dodger affiliates and subsidiaries.[102] For example, in 2005, McCourt restructured his enterprise to transfer the right to sell tickets to Dodgers games to a special purpose vehicle, Dodger Tickets LLC.[103] He then utilised that vehicle to

[95] Winkel, above n 36, 553.
[96] See Behrendt, above n 90.
[97] See ibid. 'The terms of the sale and the subsequent refinancing of the debt indicate that Frank McCourt "essentially bought the Dodgers on a credit card"': Winkel, above n 36, 551 n 79, quoting Gene Maddaus, 'Does Dodger Debt Hold Key to Team's Payroll Woes?', on *LA Weekly Blogs* (11 August 2010) <http://www.laweekly.com/informer/2010/08/11/does-dodger-debt-hold-key-to-teams-payroll-woes>.
[98] Winkel, above n 36, 550.
[99] Ibid.
[100] See ibid 551. Two of their sons also received annual compensation of $600 000. One son was a student at Stanford University and the other was employed at Goldman Sachs.
[101] TMBLP was owned 90 per cent by Frank McCourt and 10 per cent by The McCourt Co Inc.
[102] See Behrendt, above n 90; Winkel, above n 36, 551.
[103] Letter from Commissioner of Baseball Allan H (Bud) Selig to Mr Frank H McCourt Jr, 20 June 2011.

securitise and borrow in total $390 million[104] against those ticket revenues.[105] Eventually McCourt had expanded the Dodgers into more than 20 separate businesses to facilitate the monetisation of future income streams.[106]

Through a variety of companies, the key assets (the team, the stadium and the parking lots) were all owned by TMBLP: Los Angeles Dodgers LLC ('TeamCo') owned the team; LA Real Estate LLC ('RealCo') owned Dodger Stadium; Blue Landco LLC ('Blue Land'), a direct subsidiary of TMBLP, owned the parking lots.[107] TeamCo gave the stadium to RealCo. Likewise TeamCo gifted the Dodger parking lots to Blue LandCo. After the transfer, the Dodgers paid approximately $6 million to $9 million in annual rent to Blue LandCo; ie, the team was paying rent on property it previously owned.[108] McCourt leveraged the rental stream into a $70 million loan to Blue LandCo for the McCourts's personal use.[109] To create an additional rental stream, McCourt gave Dodger stadium away to RealCo.[110] He divided key assets and segregated significant revenue streams, without consideration to the club, to borrow against them for personal gain.

Throughout his ownership, Frank McCourt was on a perpetual spending spree; it appeared that only some of these exorbitant expenditures directly (or indirectly) benefitted the Dodgers.[111] Some of the more notable expenditures were the following:

- In April 2004, the McCourts bought a $21 million Brentwood mansion. They also bought the house next door for $8 million to build an indoor pool and sauna.
- In August 2007, the McCourts bought a 'trophy house' in Malibu for $27 million. They also bought the property next door for $19 million. McCourt borrowed the $19 million from the Dodgers organisation.
- In November 2007, to replace retiring manager Grady Little, McCourt hired former Yankees manager Joe Torre and agreed to pay him $13 million over three years.
- In August 2008, McCourt took on the famed Boston Red Sox star Manny Ramirez. McCourt agreed to pay Ramirez a $1 million relocation

[104] The $390 million includes the $250 million he had already borrowed to finance the acquisition of the club: see Behrendt, above n 90; Jonah Keri, 'State of the Dodgers: Crime Does Pay' on *Grantland* (28 March 2012) http://grantland.com/the-triangle/state-of-the-dodgers-crime-does-pay/.
[105] Letter from Commissioner of Baseball Allan H (Bud) Selig to Mr Frank H McCourt Jr, 20 June 2011, 5.
[106] Winkel, above n 36, 551. Ownership of all these companies can be traced back to Frank McCourt: see Behrendt, above n 90.
[107] Winkel, above n 36, 551.
[108] Ibid 552.
[109] Ibid.
[110] Ibid.
[111] Behrendt, above n 90.

> bonus. He also picked up the $7 million balance of his contract with the Red Sox. Ramirez then received a new contract for $45 million for two years. In May 2009, Manny Ramirez was banned from baseball for 50 games after failing drug tests (the Dodgers were 21–8 going into his suspension). In August 2009, the Dodgers traded Ramirez to the White Sox (at which point Ramirez retired from baseball). At the time bankruptcy relief was sought, Ramirez was owed in excess of $20 million of deferred compensation from the Dodgers.[112]

Divorce, Ownership Dispute and Liquidity Crisis

The night before the Dodgers played in Game 1 of the 2009 National League Championship Series, Jamie and Frank McCourt announced their separation after 30 years of marriage.[113] A few days later, Frank McCourt announced that he retained 100 per cent ownership of the team. In response, Jamie McCourt maintained that she had a 50 per cent ownership interest in the Dodgers. Frank McCourt subsequently fired Jamie McCourt as the CEO. On 24 October 2009, Commissioner Bud Selig made the public statement that MLB will monitor the ownership dispute but doesn't expect it to have a 'major effect' on day-to-day operations of the Dodgers. On 27 October 2009, Jamie McCourt filed for divorce and spousal support.

By filing the divorce petition, Ms McCourt exposed to the public the gross commingling of the McCourts' indulgent lifestyle and the Dodgers' internal operations.[114] In addition to her claim of half-ownership of the team, Ms McCourt asserted in her petition her right to enjoy all 'prerequisites, emoluments, and benefits of co-ownership' of and or employment by the Dodger Entities.'[115] These benefits included unlimited travel expenses, flights on private jets, stays at five-star hotels, five nights of business dinners and lunches per week, Dodger payment of her private country club membership dues and expenses, and

[112] See Schlerf, above n 30, 22. Manny Ramirez became one of the largest creditors in the Dodgers chapter 11 filing. 'The top unsecured creditors listed on the bankruptcy schedules included various notable MLB players: Manny Ramirez ($21 million), Andruw Jones ($11.1 million), Hiroki Kuroda ($4.5 million), Rafael Furcal ($3.7 million), and Ted Lilly ($3.4 million), plus the Chicago White Sox and famed broadcaster Vince Sculley': at 27 n 2.

[113] The news commanded more attention than the team; it was later described as a major distraction. See, eg, Helene Elliott and Bill Shaikin, 'Dodgers Owner Frank McCourt, Wife Jamie Separate', *Los Angeles Times* (online), 15 October 2009 <http://articles.latimes.com/2009/oct/15/sports/sp-mccourts15>.

[114] Frank J Marallo Jr, 'Permeating the Good Old Boys Club: Why Holding the Commissioner of Baseball to a Fiduciary Duty of Loyalty is in the "Best Interests" of the Game' (2012) *7 Brooklyn Journal of Corporate, Financial & Commercial Law* 475, 482–3.

[115] See Jamie McCourt, 'Declaration of Petitioner Jamie McCourt', Petition for Dissolution of Marriage in *McCourt v McCourt*, B0514300, 27 October 2009, 12–13 [52], 14 [53].

access to her Dodger credit card.[116] Needless to say, the publication of her list of 'benefits' highlighted the questionable financial practices of the ownership and only added to the drama surrounding the divorce and eventual bankruptcy case of the Dodgers. In May 2010, the divorce court ordered Frank McCourt to pay Jamie $640 000 per month in support; the amount consists of $225 000 of spousal support and $412 159 per month to cover costs associated with their real property. In all, Frank McCourt was ordered to pay Jamie in excess of $7.6 million a year.[117]

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[116] Ibid 14–15 [53]. Some of the prerequisites, emoluments, and benefits listed in the divorce petition are as follows:

Travel

- Travel by private plan via Net Jets
- Five Star hotel accommodations
- Travel Expenses – Unlimited

Business Related Expenditures

- Business Dinners – 5 nights a week
- Business Lunches – 5 days a week
- Payment of all fees for Boards on which Petitioner sits
- Continued payment of private and country club fees and expenses paid by the Dodgers
- Continued use of Suburban vehicle
- All maintenance related to vehicles
- Payment of certain vehicle insurance
- Parking sports immediately adjacent to the office doors at Dodgers Stadium
- 24 hour security at Charing Cross property
- 24 hour security at Malibu Residence
- Security while traveling in dangers locations
- 24 hour driver
- Office supplies
- Office furnishings
- Flowers in the office
- Making Dodger Legends available for events and speaking engagements without charge
- Making current Dodger players available for events and speaking engagements without charge
- Hair and Makeup for Dodgers Events
- Access to team doctors for McCourt family members

Tickets

- Access and right to use the Owners Suite, dugout seats for home and road games
- Access and right to use all dining facilities at Dodger Stadium
- Access and right to All-Star Games and All-Star related events and parties
- Access and right to Post-Season Tickets to all games even if Dodgers are not in the Post-Season
- Credentials: Complete Access to all of Dodger Stadium, on the road as requested and Pass to all National League Games.

[117] Carla Hall, 'Judge Orders Dodgers' Frank McCourt to Pay His Wife More than $637,000 a Month in Spousal Support [Updated]', on *LA Now* (7 May 2010) <http://latimesblogs.latimes.com/lanow/2010/05/judge-orders-dodgers-frank-mccourt-to-pay-jamie-mccourt-637159-in-spousal-support.html>. See generally Marallo, above n 114, 484 n 58. On 7 December 2010, the judge in the divorce case invalidated

> the postnuptial marital property agreement that Frank McCourt had claimed provided him with sole ownership of the Dodgers. In the wake of this decision, McCourt's lawyers said Frank would use other legal avenues to establish his sole ownership of the Dodgers, while Jamie McCourt's lawyers said she would be confirmed as the co-owner of the team because it was community property of their marriage: Houston Mitchell, 'Frank McCourt and the Dodgers: A Chronology', *Los Angeles Times* (online), 27 June 2011 <http://articles.latimes.com/2011/jun/27/sports/la-sp-0628-mccourt-chronology-20110628>.

ANZSLA_Journal 2013 Vol 8.indd 38 4/12/2014 4:01 pm

Because of McCourt's mounting personal financial obligations on top of his financial duties associated with the Dodgers, the club did not possess enough cash to make payroll or cover basic operating expenses in April 2011.[118] Because he had diverted all of the money generated by ticket sales, the parking lot, and stadium rental streams to other needs, Frank McCourt decided to obtain a $30 million personal loan from Fox Sports to pay the Dodgers' operating costs.[119] McCourt leveraged the loan from Fox by approaching Fox's broadcasting rival, Time Warner.[120] McCourt personally guaranteed the loan, and because it was not a loan to the Dodgers, it circumvented the need for approval by the Commissioner. It was this action that triggered Commissioner Bud Selig's involvement.[121] Selig invoked the 'best interest of baseball clause' and announced that he would appoint a trustee to oversee 'all business and day-to-day operations' of the Dodgers, effectively removing Frank McCourt from power, after McCourt took out the personal $30 million loan. Commissioner Selig appointed Ambassador J Tom Schieffer as trustee to monitor the situation.[122]

In spite of Schieffer's physical presence at Dodgers' headquarters, McCourt excluded him from critical decisions.[123] In fact, unbeknownst to Schieffer, Frank McCourt approached Fox Sports to renegotiate their television rights deal. Although the rights were not yet 'ripe', McCourt sought to remedy the bleak financial status of the baseball club by extending the club's existing media rights contract. On 15 April, 'per Major League Rules, Frank McCourt submitted a seventeen-year, $2.7 billion television deal between the Dodgers and Fox to Major League Baseball for approval.'[124]

McCourt Strikes Out

On 17 June 2011, Jamie and Frank McCourt announced they had settled the ownership dispute. The settlement was contingent on MLB approving a new broadcasting contract with Fox TV that McCourt and Fox had negotiated. In a letter dated 20 June 2011, Commissioner Selig informed McCourt that he would not approve the proposed media deal. Once again, the Commissioner invoked the 'best interest of baseball' clause to reject the contract. MLB's veto nullified the divorce settlement.

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[118] See Winkel, above n 36, 552–3. The appearance that the McCourts were wasting team funds frustrated the fan base. Simultaneously, the team was performing poorly. Both of these factors affected ticket sales negatively toward the end of the 2010 season. On opening day, a Giants fan, Bryan Stow, was attacked in one of the Dodger parking lots. With all these factors compounded attendance fell even more in 2011; the Dodgers dropped from third to tenth in attendance and filled 600 000 fewer seats than the previous year: Marallo, above n 114, 483.

[119] See Winkel, above n 36, 552. Faced with one of its biggest competitors providing McCourt a financial bailout, Fox almost had to grant him the personal loan.

[120] Ibid.

[121] See Schlerf, above n 30, 23.

[122] Ibid; Marallo, above n 114, 484.

[123] Schlerf, above n 30, 23.

[124] Winkel, above n 36, 553.

Selig vetoed the media deal because of his concerns about the deal itself and diversion of the funds away from the Dodgers.[125] He asserted that the deal 'mortgag[ed] the future of the Dodgers franchise to the long-term detriment of the club' and approving an extension with Fox prior to the renegotiation period would 'hamstring' the club by foregoing all other opportunities.[126] The Commissioner admitted that the proposed media deal would indeed result in a meaningful increase in the rights fees payable to the club in comparison to the previous contract. Yet, the Commissioner asserted that the club 'would have substantially more leverage in its negotiations, and would likely be able to command better terms, were it to wait until the "exclusive negotiation period" with Fox expires'. He also pointed out that the club 'would likely have multiple offers to choose from' which would allow the club to 'fully maximize its rights fees through a competitive process.' The Commissioner determined that he could not approve the transaction because it was not in the long-term interest of the Dodgers, noting that the club was in the disadvantageous position of negotiating with a single party without the benefit of the leverage that sports properties typically achieve when all potential licensees bid to acquire rights.

Finally, the Commissioner took the letter as an opportunity to lambast McCourt's pattern of conduct of putting his personal needs ahead of the club. He admonished McCourt for separating so many of the club's key assets from the franchise. He noted that McCourt had already created another holding company, LA Media Holding LLC ('Media HoldCo') and another subsidiary, LA Media LLC ('Media') within his enterprise. He challenged, despite McCourt's

> repeated attempts to characterize the Proposed Transaction as a 'capital infusion' or an 'equity contribution,' that is simply not the case. There is no new equity in this transaction. Rather, all … [McCourt is] doing is selling the Dodgers' media rights to an affiliated entity and transferring to … [himself], for no consideration

[125] Ibid 555 n 107:
Commissioner Selig's statement:

> [t]he Commissioner's Office has spent the better part of one year working with Mr. McCourt and his representatives on the financial situation of the Los Angeles Dodgers, which was caused by Mr. McCourt's excessive debt and his diversion of club assets for his own personal needs. We have consistently communicated to Mr. McCourt that any potential solution to his problems that contemplates mortgaging the future of the Dodgers franchise to the long-term detriment of the club, its loyal fans and the game of Baseball would not be acceptable. My goal from the outset has been to ensure that the Dodgers are being operated properly now and will be guided appropriately in the future for their millions of fans. To date, the ideas and proposals that I have been asked to consider have not been consistent with the best interests of Baseball. The action taken [] by Mr. McCourt does nothing but inflict further harm on this historic franchise.

[126] Winkel, above n 36, 555. Earlier in the year, the Texas Rangers negotiated a $1.6 billion, twenty-year television rights extension with Fox Sports. MLB approved this deal because the proceeds went directly to payroll, operating expenses, funding free agent acquisitions and capital improvements to Rangers Ballpark: at 554. See also Letter from Commissioner of Baseball Allan H (Bud) Selig to Mr Frank H McCourt Jr, 20 June 2011, 4.

ANZSLA_Journal 2013 Vol 8.indd 40 4/12/2014 4:01 pm

> to the Club, an extraordinarily valuable [Club asset – Ie, the right to pursue a Dodgers-branded regional sports network.[127]

The Commissioner alleged that McCourt consistently failed to act in the best long-term interest of the franchise and of Baseball and the proposed transaction would continue to exacerbate McCourt's 'ongoing pattern of using Club funds and Club-generated revenues' to pay for his personal financial needs and obligations.[128] He said that too much – almost all – of the cash was designated for 'non-baseball purposes'[129] but stopped short of stating that the deal between the Dodgers and Fox Sports was solely a financial bailout for McCourt himself. The deal called for an upfront payment of $385 million. Almost the entirety of this upfront payment would go to McCourt for matters unrelated to baseball.[130] First, $173.5 million would be directed to the family and McCourt's attorneys. Another $80 million would go towards the family's debt, $23.5 million would go to repaying the previous personal loan from Fox to McCourt, and $10 million would pay off legal fees from the divorce proceedings.[131] Finally, $50 million of the up-front cash payment would be immediately diverted to pay half of the $100 million divorce settlement required for Jamie to relinquish her claim to half-ownership of the Dodgers. Ultimately, the Commissioner admitted that other media deals similar to the proposed transaction had been approved in the past, but in this case McCourt is 'not selling the Club's media rights and other valuable assets to improve the Club's on-field performance, renovate Dodger Stadium or enhance the fan experience.'[132] Rather, the Commissioner contended that McCourt would merely be continuing to exploit the Dodgers for his personal needs given the history of his ownership and financial condition.[133]

The Dodgers File For Bankruptcy Relief

Once Commissioner Selig advised McCourt that the deal would not be approved by MLB, the Dodgers did not have enough cash to meet the estimated $30 million payroll due on 30 June 2011. As a result, the Los Angeles Dodgers and LA Real

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[127] Letter from Commissioner of Baseball Allan H (Bud) Selig to Mr Frank H McCourt Jr, 20 June 2011, 4.
[128] Ibid 5.
[129] Ibid.
[130] Ibid. Winkel, above n 36, 554. '[N]o matter how to try and frame it, money that should be going to the Dodgers funnels into the divorce. Whether money from the TV deal goes into the Dodgers, and other funds go to Frank or visa-versa, it's [sic] a matter of semantics.': at 554 n 104 quoting Maury Brown, 'Divorce Settlement Shows Frank McCourt is Rearranging Deckchairs on the Titanic with the Dodgers', on *The Biz of Baseball* (17 June 2011) <http://bizofbaseball.com/index.php?option=com_content&view=article&id=5283:divorce>.
[131] Brown, above n 130.
[132] Letter from Commissioner of Baseball Allan H (Bud) Selig to Mr Frank H McCourt Jr, 20 June 2011, 7.
[133] The Commissioner charged that approving the transaction would be nothing more than implicitly permitting McCourt to finance his personal needs. He argued that this would undoubtedly risk further erosion of public confidence in the Dodgers; the 'erosion of public confidence' triggers action to be taken by the Commissioner to protect the Game: ibid.

ANZSLA_Journal 2013 Vol 8.indd 41 4/12/2014 4:01 pm

Estate (and a number of the intervening holding companies between them and TMBLP) filed a voluntary petition for relief under chapter 11 of the *Bankruptcy Code* on 27 June 2011, with the Bankruptcy Court for the District of Delaware. Blue LandCo and TMBLP did not join in the bankruptcy filing.[134]

Immediately, the Dodgers sought approval by the bankruptcy court for the authority to obtain DIP financing.[135] The main goal of the Dodgers' DIP motions was to obtain a bridge loan from Highbridge Senior Loan Fund II[136] (a hedge fund associated with JPMorgan Chase).[137] Under the proposed financing agreement, the Dodgers would borrow $150 million from Highbridge. The loan would be secured by a senior, priming lien on all of the Dodgers' assets as collateral.[138]

The terms of the loan imposed a minimum 10 per cent interest rate, an unused line fee of 0.5 per cent, and commitment fee of $4.5 million in addition to other 'standard' fees.[139] In addition, the agreement obligated the Dodgers to 'conduct a process to license [the Dodgers] media rights.'[140] Moreover, the loan terms required the Dodgers and the DIP lender, Highbridge, to have agreed to steps in a process to market and license the media rights within the month. Finally, a failure by the Dodgers to complete a step would result in a default in the DIP financing.

The very next day, 28 June 2011, MLB filed their '*Objection of Major League Baseball to Debtors' Motion to Obtain Postpetition Financing and for Related Relief*'. MLB vehemently opposed this proposed financing, arguing that it was not commercially reasonable or the best financial option. Furthermore, MLB proposed alternative financing.[141] MLB offered the Dodgers an unsecured loan with far less expensive terms.[142]

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[134] Los Angeles Dodgers LLC, 'Emergency Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 USC §§ 105, 362, and 364 and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)' in b) and e y petition iny Rules 4001(B) and 4001(C)l to the e Debtors'all, 31 December 2009. *Re* Los Angeles Dodgers LLC, 11-12010 (KG), 27 June 2011.

[135] Ibid.

[136] Highbridge Capital Management is an alternative investment management company whose core investment strategies include convertible bond arbitrage, credit, global macro, long/short equity and statistical arbitrage. The Highbridge Senior Loan Fund II falls within the credit strategy. JPMorgan Asset Management acquired a majority position in Highbridge in 2004.

[137] Thomas J Salerno, Jordan A Kroop and Redfield T Baum, 'Professional Sports Leagues as DIP Lenders in Sports Team Chapter 11 Cases' (Bankruptcy Emerging Issues No 6055, LexisNexis).

[138] A debtor's ability to obtain a priming lien usually hinges on the second requirement of 11 USC §364(d) (2012), which states that the 'interests of the current lien holder will be adequately protected should the proposed senior or equal lien be granted.': Jill C Walters and Lisa P Sumner, *Priming Liens in Bankruptcy: 'Don't Throw Me Under the Bus!'* (24 October 2008) <http://www.poynerspruill.com/publications/Pages/PrimingLiensinBankruptcy%E2%80%9CDon%E2%80%99tThrowMeUndertheBus!%E2%80%9D.aspx>.

[139] Standard fees include closing date fees paid per fee letter, agent fee, delayed draw fee, and deferred commitment fee.

[140] See Dodgers DIP Financing Motion, in *Re* Los Angeles Dodgers LLC, 11-12010 (KG), 27 June 2011.

[141] See generally *Re Los Angeles Dodgers LLC*, 457 BR 308 (2011).

[142] Ibid.

The bankruptcy court entered an interim order temporarily approving the Highbridge financing until a final hearing on 20 July 2011, over the objection of MLB. The Interim Order had two important modifications. First, the Order omitted any reference to the media rights requirement. Second, if the bankruptcy court ultimately approved MLB's DIP loan, resulting in Highbridge being paid in full, the $4.5 million commitment fee would be reduced to $250 000.[143] Meanwhile, MLB continued to object to the DIP loan and proposed a more favorable unsecured loan.[144] Determining which party would be the DIP lender is significant in circumstances like these because that entity would have far more control over the debtor through post-petition obligations and monitoring rights imposed on the debtor as a condition to obtaining the funds.[145]

Following an evidentiary hearing on 20 July 2011, to consider the final approval of the proposed senior-secured Highbridge financing, the bankruptcy court denied the motion.[146] In rendering its decision, the court noted that 'to date, Debtors have flatly refused to negotiate' with MLB on the terms of unsecured DIP financing offered by MLB to the Dodgers.[147] The court denied the motion because section 364(b) of the *Bankruptcy Code* explicitly precludes the approval of a DIP financing agreement where the debtors fail to prove that they are 'unable to obtain unsecured credit allowable under §503(b)(1).'[148] Thus, the debtors could not show that the Highbridge secured financing was a superior alternative given the unsecured financing offered by MLB.

The Dodgers argued that the court should defer to the business judgment rule[149] and not second-guess the team's selection of a DIP lender. The court acknowledged that deference is usually paid to the debtor's judgment in obtaining DIP financing, but the court refused to 'defer to the business judgment of a debtor in the selection of a lender' because the Dodgers 'not only failed to attempt to obtain unsecured financing, they refused to engage Baseball

[143] MLB continued to object to the Dodgers' proposed financing. See Office of the Commissioner of Baseball, 'Objection of Major League Baseball to Final Approval of Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Financing, Pursuant to Bankruptcy Rules 4001(B) and 4001(C)', voluntary petition in *Re Los Angeles Dodgers LLC*, 11-12010 (KG), 14 July 2011.

[144] MLB also argued that the Dodgers did not have standing to file for bankruptcy because Tom Schieffer had been appointed trustee effectively taking over the club; MLB argued only Schieffer had the power to file for bankruptcy relief.

[145] See generally *Re Los Angeles Dodgers LLC*, 457 BR 308 (2011). Thus, the reason for such vitriolic proceedings. The Dodgers claim that 'Highbridge is motivated to lend for commercial' reasons whereas the MLB 'has a nefarious strategy to seize control of the Dodgers away from Mr McCourt': at 314. The Court found that the Baseball Loan was not a vehicle for Baseball to control Debtors.

[146] Ibid 311.

[147] See Salerno, Kroop and Baum, above n 137.

[148] 11 USC 364(c); see generally *Re Los Angeles Dodgers LLC*, 457 BR 308 (2011).

[149] The business judgment rule in Delaware establishes a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was taken in the best interest of the company: see *Aronson v Lewis*, 473 A 2d 805, 811–12 (Del, 1984); *Pogostin v Rice*, 480 A 2d 619, 624 (Del, 1984).

in negotiations.'[150] Moreover, the court noted that McCourt's 'independent judgment' was 'clearly compromised' by virtue of McCourt having 'potential personal liability' to Highbridge for $5.25 million.[151] Because McCourt was not disinterested, the Dodgers were not entitled to the benefit of the business judgment rule.[152] Therefore the court applied 'the entire fairness standard', to the terms and conditions of the proposed DIP financing with Highbridge, which the Dodgers did not meet.[153] Under the entire fairness standard,[154] the Dodgers had the burden to prove the entire fairness of the Highbridge Loan, that is, the Dodgers needed to prove fair dealing and fair price. Because MLB was willing to extend unsecured credit on better terms, coupled with the Dodgers refusal to negotiate with MLB, the court found that the Dodgers failed to meet their burden of proof on the entire fairness issue.

MLB and Dodgers Settlement – The Team Will Be Sold

During the bankruptcy process, there were several attempts to reconcile between McCourt's Dodgers and MLB. Eventually, the Los Angeles Dodgers and MLB agreed to a process to sell the Dodgers.[155] On 1 November 2011, the Dodgers filed a motion of approval of settlement; the settlement included a court-supervised auction of the broadcast rights of the team.[156] As part of the Dodgers' efforts to sell the team in the bankruptcy case, the Dodgers sought to render unenforceable the exclusive negotiation rights under their agreement so that they could negotiate with third parties prior to the exclusive renegotiation period.

Accordingly, on 7 November 2011, Fox filed a pleading with the bankruptcy court reserving all its rights. Fox informed the court that it had been excluded from the negotiation process and asserted that it would vigorously defend its exclusivity under the existing telecast contract through 2013.

On 12 November 2011, the Dodgers filed the *Amended Motion of Los Angeles Dodgers LLC to Approve Marketing Procedures for Licensing of Telecast*

[150] See Salerno, Kroop and Baum, above n 137.
[151] Ibid.
[152] Ibid.
[153] Ibid.
[154] The 'entire fairness' standard is applied when a party demonstrates that those involved in the decision-making process lack independence when determining fair process and fair price. The presumptions of the business judgment rule are removed and the burden of proving the process was followed fairly is shifted to the party being challenged.
[155] On 17 October 2011, 'Frank and Jamie McCourt reach a final divorce settlement.': Winkel, above n 36, 556. The announcement came just two weeks before Frank McCourt and MLB announced he will sell the team. In the settlement Frank McCourt will pay Jamie McCourt $130 million tax-free. As part of the agreement, Jamie withdraws her opposition to the proposed sale of the Dodgers and cedes her claim of a fifty percent ownership interest in the baseball club.
[156] Motion to Approve: (I) Marketing Procedures for the Licensing of Telecast Rights, including the Scheduling of an Auction, Objection Deadline, and Disposition Hearing; and (II) and Authorize the Licensing of Telecast Rights to the Highest and Best Bidder Filed by Los Angeles Dodgers LLC. See *Re Los Angeles Dodgers LLC*, 468 BR 652 (2011).

ANZSLA_Journal 2013 Vol 8.indd 44 4/12/2014 4:01 pm

Rights ('*Amended Motion*').[157] Again the motion for approval of the settlement between the Dodgers and MLB reiterated that the settlement occasioned a court-supervised auction of the broadcast rights for the team.[158] The *Amended Motion* addressed Fox's opposition claiming that Fox was actively and publicly using the threat of litigation to intimidate the Dodgers and prospective licensees of the telecast rights and purchasers of the team. The Dodgers alleged that Fox wanted to minimise the value of the post-2013 telecast rights in order to decrease what Fox would have to pay for those rights if it were the successful bidder. The Dodgers also claimed that they could obtain a higher sale price by marketing those telecast rights without abiding by Fox's exclusive renegotiation time frames.[159]

Dodgers v Fox – From White Knight to Adversary

Fox faced a serious loss of its rights to broadcast Dodgers games. As a result, Fox sent a cease and desist letter to the Dodgers in response to their settlement agreement. On 16 November 2011, the Dodgers responded by filing a request for enforcement of the automatic stay, alleging the cease and desist letter from Fox was a violation of the automatic stay.[160] The very next day, Fox filed a *Complaint for Declaratory Judgment, Specific Performance, and Injunctive Relief*.[161] In the complaint, Fox alleged that the Dodgers were abusing the bankruptcy process by shopping for media deals to replace Fox while simultaneously asking Fox to be barred from asserting its rights because of the stay. Furthermore on 18 November 2011, Fox filed its *Motion of Fox Sports Net West 2, LLC to Dismiss Debtors Chapter 11 Cases for Lack of Good Faith*, asking the bankruptcy court to dismiss the entire bankruptcy case as improperly prosecuted for the sole benefit of McCourt.[162] Fox argued that there was no disputing the solvency of the Dodgers and the bankruptcy case had 'devolved into nothing more than a vehicle for Mr. McCourt … to extract yet more value from the Debtors for Mr. McCourt's benefit, not the benefit of the Debtors or creditors.'[163] Fox argued that the team manufactured the liquidity crisis because of the dispute between the Dodgers and MLB. Consequently, after the announcement that the two parties had settled, Fox alleged that there was an absence of financial distress. No one disputed that the Dodgers' estate was solvent, in fact, and Fox argued that with the team 'indisputably solvent',

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[157] See generally ibid.
[158] It is notable that MLB was now working with the Dodgers to license the team considering Selig previously rejected McCourt's prior attempts to do the same.
[159] See *Re Los Angeles Dodgers LLC*, 468 BR 652 (2011).
[160] See Bill Shaikin, 'Dodgers Sue Fox Sports over Alleged Interference in Team's Sale', *Los Angeles* Times (online), 16 November 2011 <http://articles.latimes.com/2011/nov/16/sports/la-sp-1117-mccourt-dodgers-fox-20111117>.
[161] See Ken Gurnick, 'Fox Responds to Dodgers' Lawsuit', *MLB* (online), 17 November 2011 <http://m.dodgers.mlb.com/news/article/25984522/>.
[162] See generally *Re Los Angeles Dodgers LLC*, 457 BR 308 (2011).
[163] See Baum, Salerno and Kroop, above n 7, ¶28.04.

the bankruptcy case was being improperly maintained as a weapon to attack Fox's contractual rights and breach the telecast agreement.[164]

Bankruptcy Ruling and Appeal

'The bankruptcy court approved the Amended Marketing Motion over the objection of Fox following an evidentiary hearing in early December 2011,'[165] and invalidated the exclusive renegotiation time frame in the telecast agreement. Further, the court approved the sale of the Dodgers, pursuant to a plan of reorganisation on or before 30 April 2012.[166]

Fox took an immediate and emergency appeal, and sought a stay pending appeal from the US District Court. Judge Stark granted the stay pending appeal – in a lengthy opinion, he ruled that the Bankruptcy Court erred in relieving the Dodgers from its contractual obligations under the telecast agreement. Judge Stark stayed the marketing of future telecast rights and the sale of the team.[167] First, the court found that the Dodgers and Fox were parties to a telecast rights agreement, and the Dodgers and Fox entered into an amended agreement in 2004. Next, the court found that Fox showed a strong likelihood of success on the merits of its appeal – the exclusive negotiation period was distinguishable from a 'no-shop provision'[168] and consistent with the *Bankruptcy Code*. Importantly, the court concluded that the Dodgers were bound on appeal not to contest their solvency.[169] Thus, the court found that the case was a solvent debtor case, 'and, as such, the equities strongly favor holding the debtor to his contractual obligations so long as those obligations are legally enforceable under applicable non-bankruptcy law.'

Finally, the Court found that the Bankruptcy Court made at least two clearly erroneous findings of fact: (1) it is necessary to separate the marketing of the future telecast rights from the sale of the team to ensure full payment to creditors, and (2) the marketing of the telecast rights separate from the team is necessary to maximise the value of the Dodgers. Ultimately, the court found that Fox demonstrated that it would suffer irreparable harm in the absence of a stay.[170]

The granting of the stay put the Dodgers case in limbo, which neither party could afford. On 10 January 2012, the Dodgers and Fox reached a settlement. Both the

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[164] Ibid.
[165] Ibid.
[166] Ibid. The new settlement provided the (i) Property to be sold; (ii) Mediation Agreement for Future Disputes; (iii) Sale Procedures; (iv) Timing Issues; (v) Telecast Issues; (vi) the exclusion of McCourt; and (vii) Mutual Releases.
[167] *Re Los Angeles Dodgers LLC*, 465 BR 18 (2011).
[168] A 'no shop' provision is a covenant in a merger or acquisition agreement that restricts the target company or seller from soliciting competing bids from other potential buyers.
[169] Throughout the proceedings in the Bankruptcy Court, counsel for the Dodgers repeatedly informed the Bankruptcy Court that the debtors were solvent: Baum, Salerno and Kroop, above n 7, ¶28.04.
[170] *Re Los Angeles Dodgers LLC*, 465 BR 18, 34 (2011).

Dodgers and Fox withdrew their motions and the agreement provided for the assumption of telecast rights. The Bankruptcy Court approved the settlement on 11 January 2012, allowing for a sale through a plan of reorganisation.[171]

Closing Act

On 6 April 2012, the Dodgers filed their 'Plan Supplement in Support of the Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code for Los Angeles Dodgers LLC and its Debtor Affiliates Plan of Reorganization' ('Plan').[172] The Plan revealed the details of the proposed sale of the Dodgers, including a potential buyer.

The cornerstone of the Plan was the purchase agreement dated 27 March 2012. The purchase agreement was the culmination of an auction process led by Blackstone[173] over several months in an effort to attract numerous bidders and bids. The agreement contemplated the sale of the Dodgers to Guggenheim Baseball Management LP.[174] Under the agreement, the purchaser would pay $2 billion to acquire 100 per cent of the equity interests in LA Holdco LLC. The proceeds from the sale of the team would go to the Plan distributions. Under the Plan, all creditors would be paid in full. In fact, the proceeds were so large that all creditors would be paid in full and there would be a substantial distribution to HoldCo's equity holder.

Under the Plan, the only impaired class was 'Class 1E, the existing equity interests in HoldCo'.[175] Thus, the entity holding Class 1E interest was the only class entitled to vote on confirmation of the Plan. The entity holding the Class 1E interest was LA Partners LLC.[176] Ultimately, the person in control of LA Partners LLC was none other than Frank McCourt. Ironically, McCourt became

[171] See Los Angeles Dodgers LLC, 'Second Amendment Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Los Angeles Dodgers LLC and its Debtor Affiliates' in *Re Los Angeles LLC* 11-12010 (KG), 6 April 2012; Guggenheim Baseball Management LP, 'Findings of Fact, Conclusions of Law, and Order Confirming Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code for Los Angeles Dodgers, LLC and its Debtor Affiliate*'* in *Re Los Angeles LLC* 11-12010 (KG), 27 March 2012.

[172] Prior to this date, the Dodgers filed: Los Angeles Dodgers LLC, 'Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Los Angeles Dodgers LLC and its Debtor Affiliates' in *Re Los Angeles Dodgers LLC*, 11-12010 (KG), 20 January 2012; Los Angeles Dodgers LLC, 'Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Los Angeles Dodgers LLC and its Debtor Affiliates' in *Re Los Angeles Dodgers LLC*, 11-12010 (KG), 17 February 2012.

[173] Blackstone is an alternative investment management firm whose services also include financial advisory and consulting in the merger and acquisition arena.

[174] Guggenheim Baseball Management LP is comprised of Guggenheim Partners, a privately held global financial services firm, and former Los Angeles Lakers basketball star Ervin 'Magic' Johnson: The Blackstone Group LP, 'Guggenheim Baseball Management Acquires Los Angeles Dodgers' (Press Release, 29 March 2012) <https://www.blackstone.com/news-views/press-releases/details/guggenheim-baseball-management-acquires-los-angeles-dodgers>; Winkel, above n 36, 557.

[175] Baum, Salerno and Kroop, above n 7, ¶28.04.

[176] Ibid.

the only person who needed to vote to confirm the Plan as he was in control of the only impaired class. He accepted the Plan.[177]

LA Partners LLC received under the Plan:[178]

(1) the excess real property (defined as 5 separate parcels in LA County);

(2) the parking receivable (Blue Landco's prepaid parking rental expense);

(3) the initial distributable sale proceeds (all non-cash sale proceeds plus the cash portion of the sale proceeds minus the aggregate amount of cash to satisfy all allowed claims in full, plus amounts necessary to find disputed claim reserves, the disbursing agent expense reserve, and the professional fee reserve); and

(4) the remaining distributable sale proceeds (unused portion of the disputed claim reserves, the professional fee reserves, and disbursing agent expense reserves after the final distribution).

One week later, the bankruptcy court held the confirmation hearing.[179] The court confirmed the plan and approved the sale on 13 April 2012.[180]

On 1 May 2012, the sale closed for approximately $2.15 billion.[181] Out of that purchase price, Guggenheim assumed $412 million in team debts.[182] Therefore, after McCourt made tax payments of $460 million, he walked away with $1.278 billion and retained a 50 per cent ownership stake in the parking lots.[183]

The Evolution of Sports Bankruptcies

Two men, two teams, one league – what can we learn from these two bankruptcy sagas? Initially, one must accept that a MLB team enters a bankruptcy case like any other business. It files its bankruptcy petition under section 301 of the *Bankruptcy Code*; the filing of that petition commences a chapter 11 bankruptcy case and an order for relief is automatically entered. At that point, like any other case, management has the authority to continue to operate the team in the ordinary course without seeking prior court approval. However, management must seek prior court approval to conduct its business affairs outside the ordinary course of business. Thus, many of the transactions undertaken by McCourt

[177] Ibid.
[178] Ibid; Winkel, above n 36, 558.
[179] See *Federal Rules of Bankruptcy Procedure*, rr 3017–18 (1 December 2013); 11 USC §§ 1126, 1128–9 (2012).
[180] Baum, Salerno and Kroop, above n 7, ¶28.04.
[181] The Blackstone Group LP, above n 174; Baum, Salerno and Kroop, above n 7, ¶28.04.
[182] The $412 million is existing debt financing to Dodger Tickets LLC and Dodger Club Trust LLC that remained in plan following the closing: Baum, Salerno and Kroop, above n 7, ¶28.04.
[183] See ibid; The Blackstone Group LP, above n 174.

would have been characterised as outside the ordinary course of business of a MLB team and would have been prevented absent prior court approval.

Once the team stabilised operations, it would, like any other business debtor in bankruptcy, seek to either sell its assets or reorganise through a chapter 11 plan. An asset sale is usually conducted under section 363 of the *Bankruptcy Code* and does not require adherence to the plan process. In essence, under a section 363 sale, the asset is exchanged for the purchase price with any liens that encumbered the asset attaching to those funds. The funds are essentially a form of replacement collateral. That asset may be an ongoing business, like a sports franchise.

A sale pursuant to a chapter 11 plan requires the plan proponent to adhere to all the milestones and safeguards embedded in the *Bankruptcy Code*. First, the debtor or other plan proponent (like a possible purchaser or MLB) must negotiate and propose a plan of reorganisation. Second, the plan must designate various classes of stakeholders and the proposed treatment of those classes. The *Bankruptcy Code* allows considerable discretion in the classification of claims and requires only that dissimilar claims not be placed in the same class. For example, one class may include one secured creditor by name and propose the treatment that the secured creditor's debt and liens be reinstated. Another typical class may include administrative expenses, that is, claims resulting from the actual administration of the bankruptcy case, which are then required to be paid in full and in cash as of the effective date of the plan. Third, the plan must also designate which classes are impaired. Impairment tests for any legally significant change in the terms, conditions, or treatment of a claim. Failure to pay a claim in full, including all interest, is a typical form of impairment. Fourth, the plan proponent must seek votes from various stakeholders in favor of or in opposition to the proposed plan. Before it may solicit those votes, the proponent must obtain approval by the bankruptcy court of a disclosure statement. The disclosure statement operates as a prospectus of sorts; ie, the disclosure statement is designed to fully disclose the terms and conditions of the plan and other salient bits of information, so that a hypothetical investor in the debtor could make an informed decision on whether or not to vote in favor of the plan. Fifth, a court approves the plan and it becomes the binding document between the debtors and its creditors if all requirements under section 1129 are met. The primary gating issue under section 1129 is whether all non-insider classes of creditors that have been impaired under the plan voted in favour of the plan. A non-insider class is a class of creditors that is not affiliated with or related to the debtor. McCourt was a creditor of the LA Dodgers but would be an insider creditor. Because of the close relationships and the potential abuse through control, the *Bankruptcy Code* does not count these votes. Creditors vote pursuant to their class. A class is deemed to accept the plan if the plan leaves the class unimpaired. A class is deemed to reject a plan if the members of that class

receive nothing under the plan. A class of impaired creditors that does receive some distribution, must vote either to accept or reject a plan. A class of creditors votes in favor of a plan if over one-half in number of members and at least two-thirds in amount of claims that actually voted does. If one impaired class voted in favor of the plan but not all impaired classes accepted the plan, then a plan proponent may seek confirmation through the cram down provisions of section 1129(b). The key to cram down is that the plan must not unfairly discriminate against a dissenting class and must be fair and equitable.

Within the architecture of chapter 11 described above lies a substantial amount of discretion. For example, a debtor may tentatively select a particular suitor for purposes of a proposed section 363 sale, even though that suitor may not be acceptable to MLB. However, that discretion is not limitless. Sports franchise cases amplify these discretionary limits. Take the Rangers and the Dodgers: should these bankruptcy cases have been handled differently? How can the Commissioner justify his different approaches in these cases?

Here is the basic tension of a MLB team in bankruptcy. On the one hand, maximising the value of the bankruptcy estate for the benefit of the creditors and shareholders of a debtor is a fundamental policy embedded in bankruptcy practice. On the other, MLB maintains a governance policy that limits franchises and heavily regulates who may be an owner of a baseball franchise. This MLB imposed limitation of ownership may have a chilling effect, negatively influencing the value achieved in any bankruptcy sale. Permeating this potential collision of bankruptcy policy and MLB governance principles is the attitudes that the present owner and the Commissioner bring to the process.

MLB's active interference in the bankruptcies of the Texas Rangers and Los Angeles Dodgers is premised on the well-establish doctrine of 'the best interest of baseball'.[184] The power to act with the best interest of baseball has been vested in the Office of the Commissioner of Baseball. The bankruptcy manifestation of this power is found at article VIII, section 4(l) of the *MLB Constitution*, which allows for the termination of the rights and privileges of a Major League Club who files a voluntary petition in bankruptcy pursuant to the approval of three-fourths of all Major League Clubs. That section is likely unenforceable in bankruptcy because it constitutes a forfeiture, an ipso facto provision, in violation of section 541 of the *Bankruptcy Code*. Bankruptcy law abhors forfeitures of property interests tied to seeking bankruptcy relief. However, the section encapsulates the importance of league approval where competitors must work together to bring the joint product to market and has clearly influenced bankruptcy practice. Take the Rangers: the Texas Rangers sale is an example of a heavily indebted ownership group amicably ceding control of the team to MLB

[184] The Commissioner's broad authority to act in the 'best interest of baseball' stems from: *MLB Constitution* article 1. See also Winkel, above n 36, 540.

to preserve and protect the best interests of the team and of baseball. Although initial creditor opposition existed to the sale process originally contemplated by the Commissioner, the owners and Commissioner generally worked together to achieve a sale through the auction process that maximised value to the estate and was consistent with MLB governance concerns.

Now consider the Dodgers: the Los Angeles Dodgers sale, conversely, is an example of a team owner daring the Commissioner to try a pick-off attempt. McCourt commenced the bankruptcy process to rattle the powers of the Commissioner and extract even greater value from MLB by various procedural threats.

Both the Texas Rangers and Los Angeles Dodgers bankruptcy cases ended in a transfer of ownership to third parties. Both clubs were sold pursuant to a bankruptcy auction, and MLB ultimately approved of each bidder. Yet, the total debt and conduct of former Rangers majority owner Tom Hicks stand in stark contrast to the character of debt and financial mismanagement of Frank McCourt. Tom Hicks spent significant money on player payroll, stadium upgrades, and other upgrades to the Rangers ball club. These are the types of expenses that is expected in the operation of a major league team. These expenses should redound to the benefit of the team, the fans, and the league. Frank McCourt, on the other hand, acquired the team in a highly leveraged transaction, and refinanced and restructured the organisation to line his own pockets. He also incurred personal expenses that were satisfied out of the operating funds of the ball club.

Eventually, Tom Hicks actually defaulted on the interest-only loan forcing the Commissioner to step-in and effect a sale. Frank McCourt filed for bankruptcy relief because the Commissioner would not approve a loan to satisfy personal financial obligations and thus he could not make payroll. Although Hicks did file for bankruptcy relief as well (in contravention of League rules), his intent was to expedite a sale to the MLB-approved bidder. McCourt, on the other hand, filed for bankruptcy relief to frustrate or block a sale or MLB takeover.

In both cases, the creditors were paid in full and the sales were approved by the Commissioner, but were the goals of bankruptcy served in both cases? Technically the bankruptcy process worked in both cases.[185] The reaction to the auction and sale process highlights the tensions in play when bankruptcy involves a professional sports team. The Rangers case also demonstrates how much MLB can affect a bankruptcy proceeding should it decide to 'flex its

[185] See Baum, Salerno and Kroop, above n 7, ¶28.04. 'Imagine, in any other industry, commentators criticizing a bid process wherein more value is extracted for an asset for the benefit of legitimate creditors' owed money'; Corinne Ball, et al 'Asset Sales/Business Reorganization' (Annual Spring Meeting Materials, American Bankruptcy Institute, 19 April 2013) 258 n 10.

organizational muscle.' Judge Lynn[186] made clear that if the agenda of MLB and the *Bankruptcy Code* came to a confrontation, there was uncertainty as to which would prevail. Of course, how that tension would be resolved, according to Judge Lynn, would be decided by the bankruptcy court, the essential actor in the protection of the institution of bankruptcy.

Both cases illustrate that MLB's putative control over the sale of a team may impede an owner's ability to maximise returns to creditors in bankruptcy. Moreover, MLB's interest in control does not always square with bankruptcy law or the public policy behind it.[187] The critics of the Texas Rangers' auction slammed the process, alleging that the auction was an attempt to squeeze out a little more cash in the transaction. However, in what other context would underpaying for an asset be championed? In odd contrast, MLB's reaction to Frank McCourt stripping the Dodgers of value, for personal profit, was palatable relief that McCourt was no longer the owner.

The Rangers case foreshadowed potential problems where there are competing interests in play; however, the Dodgers case introduced a potential for abusing the bankruptcy process. MLB tried to ignore the principles of bankruptcy in the Rangers case but ended up forging a process that converged MLB governance principles with the wealth maximisation goals of bankruptcy. This was accomplished, in part, by crafting a bidding procedure that required that a potential bidder must complete and submit Part I of Baseball's Ownership Application. The Office of the Board of Commissioner's Security Department then would conduct a background investigation of all applicants that may include a preliminary assessment of a potential bidder's financial information. After the background investigation and after the applicant provides standard releases and indemnifications required by and in favor of MLB relating to consideration of the bid, the Commissioner must, absent cause, approve the release of the Club financial information to the proposed purchasers. Thus, through negotiations, the parties crafted procedures that accommodated MLB's concern over who owns a franchise with the bankruptcy policy of wealth management. If MLB would have pushed the issue, one is hard pressed to conclude that wealth maximisation would yield to internal governance. Such is the power of the fundamental principle of wealth maximisation in a bankruptcy case.

Conclusion

Professional sports in the US have generally been viewed outside the normal strictures of accepted rules in many ways. There is something special about sports even if we begrudgingly concede that it, too, is a business. The same

[186] Judge D Michael Lynn is a bankruptcy court judge for the Northern District of Texas. Judge Lynn oversaw the bankruptcy proceedings for the Texas Rangers.
[187] The Rangers case is easier to accept on a moral level.

holds true for professional sports bankruptcies, where we are quick to offer up differences without distinguishing between the business of sports and the business of any other business. It is important that MLB govern the franchises that are an integral part of the league and exercise control over membership and club ownership. However, the universe of stakeholders greatly expands in a bankruptcy case because the creditors of an insolvent franchise, under the *Bankruptcy* Code, are treated as the owners of the venture. MLB simply cannot continue to operate as if it is business as usual. The better approach is the one reflected in the Rangers case. MLB should be involved early in the process and support a sale through auction while negotiating terms that allow MLB a role in vetting and approving potential bidders, ensuring that any such approval would not be unreasonably withheld. MLB should avoid a direct conflict with the maximisation policy and the bankruptcy court; it is a collision at the plate, which it will most likely lose.

ANZSLA_Journal 2013 Vol 8.indd 54

4/12/2014 4:01 pm