

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

DIAMOND SPORTS GROUP, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-90116 (CML)

(Jointly Administered)

**EMERGENCY JOINT MOTION OF MAJOR LEAGUE BASEBALL AND
CERTAIN MAJOR LEAGUE BASEBALL CLUBS TO COMPEL
PERFORMANCE UNDER TELECAST RIGHTS AGREEMENTS, OR, IN THE
ALTERNATIVE, TO COMPEL ASSUMPTION OR REJECTION OF TELECAST
RIGHTS AGREEMENTS AND FOR RELIEF FROM THE AUTOMATIC STAY**

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN 2:00 P.M. (CENTRAL TIME) ON APRIL 13, 2023.

IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST APPEAR AT THE HEARING IF ONE IS SET, OR FILE A WRITTEN RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON APRIL 13, 2023 AT 2:00 P.M. (CENTRAL TIME). YOU MAY PARTICIPATE IN THE HEARING EITHER IN PERSON OR BY AN AUDIO AND VIDEO CONNECTION.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT 832-917-1510. ONCE CONNECTED, YOU WILL BE ASKED TO ENTER THE CONFERENCE ROOM NUMBER. JUDGE LOPEZ'S CONFERENCE ROOM NUMBER IS 590153. VIDEO COMMUNICATION WILL BE BY USE OF THE GOTOMEETING PLATFORM. CONNECT VIA THE FREE GOTOMEETING APPLICATION OR CLICK THE LINK ON JUDGE LOPEZ'S HOME PAGE. THE MEETING CODE IS "JUDGELOPEZ". CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF BOTH ELECTRONIC AND IN-PERSON HEARINGS. TO MAKE YOUR APPEARANCE, CLICK THE "ELECTRONIC APPEARANCE" LINK ON JUDGE LOPEZ'S HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://cases.ra.kroll.com/DSG>. The Debtors' service address for purposes of these chapter 11 cases is: c/o Diamond Sports Group, LLC, 3003 Exposition Blvd., Santa Monica, CA 90404.

Cleveland Guardians Baseball Company, LLC (the “Guardians”) and Minnesota Twins, LLC (the “Twins”) (each of the Guardians and the Twins, with certain of their affiliates, a “Club” and collectively, the “Clubs”)² and the Office of the Commissioner of Baseball d/b/a Major League Baseball (“MLB”), by and through their undersigned counsel, hereby file this joint motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), pursuant to sections 365 and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), (a) to compel the above-captioned debtors (collectively, the “Debtors”) to perform under the Telecast Rights Agreements (as defined below), including, among other things, to continue to produce and broadcast all games in accordance with the Telecast Rights Agreements and pay all postpetition Telecast Rights Fees (as defined below) and Ancillary Fees (as defined below) as and when due (including those fees that have become due and payable), or, (b) in the alternative, to compel the Debtors to assume or reject the Telecast Rights Agreements and pay all postpetition Telecast Rights Fees and Ancillary Fees through such date, and (c) to the extent necessary, grant the Clubs relief from the automatic stay to issue default notices and exercise their remedies under the Telecast Rights Agreements. In support of the Motion, MLB and the Clubs respectfully state as follows:

Preliminary Statement

1. Baseball fans around the country celebrated Opening Day of the 2023 Major League Baseball (“MLB”) season on March 30, 2023, welcoming live baseball back after

² AZPB Limited Partnership, Atlanta National League Baseball Club, LLC, Detroit Tigers, Inc., Milwaukee Brewers Baseball Club, Limited Partnership, Rays Baseball Club, LLC and Rangers Baseball LLC support the relief requested in this Motion and reserve all rights. If any of these clubs do not receive any payments as and when they become due under their respective telecast rights agreements or any other agreements with the Debtors during these Chapter 11 Cases, these clubs may join in the relief requested.

By supporting this Motion, Rangers Baseball LLC is not waiving any rights regarding the termination of its respective telecast rights agreement or under its current standstill with the Debtors.

a five-month off-season that started with the end of the World Series. For MLB clubs, however, there is no off-season. MLB clubs work throughout the year to ensure that they deliver the most captivating products to their devoted fans. This means hiring coaches and staff, signing free agents, improving facilities, developing content to benefit fan engagement and the viewing experience and perfecting game strategies, while working on the enormous effort of delivering 162 games during the season. These efforts and many more are what makes the broadcasts of MLB games both possible and compelling. Producing an MLB game requires elaborate preparation and coordination of hundreds of workers, contractors and vendors.

2. This year, however, there is a crisis that could disrupt millions of fans' enjoyment of the season and deprive the Clubs of the consideration due from two of the Debtors for the intellectual property developed through the Clubs' extensive efforts. With the filing of these chapter 11 cases, the Debtors have created considerable uncertainty with respect to how, when and where the Clubs' games will be produced and telecast and whether, how and when the Debtors will pay the Clubs for such telecasts. While tens of thousands of fans attend each game in person, many millions more follow their teams through the daily television broadcasts, relying on their MLB club's regional sports network ("RSN") partners, including the Debtors, to bring games into their homes.

3. In a typical season, each Club's 162 regular season games are broadcast live on one of a various group of television networks. On average, 90-95% of every Club's regular season games each season are broadcast to fans via an RSN. The remaining games are selected by MLB's national broadcast partners for exclusive nationwide broadcasts. A separate Debtor serves as the respective RSN (each, a "Debtor RSN" and collectively, the "Debtor RSNs") for each Club. Pursuant to the Telecast Rights Agreements, each Club grants its

respective Debtor RSN the exclusive right to telecast the Club's games and associated pre- and post-game programming within a specific geographic territory, and, in exchange, the respective Debtor RSN pays the Club a periodic fee. Additionally, the games produced by each Debtor RSN are distributed via MLB.TV to millions of baseball fans around the globe. While the percentages vary by Club, the Clubs earn a significant portion of their total revenues from their Telecast Rights Agreements with the Debtor RSNs.

4. Just one day prior to the April 1 due date for the first 2023 installment of the fees due to the Clubs, the Debtor RSNs informed the Guardians and the Twins that the Debtor RSNs would not be making the required payments. The Debtor RSNs made this decision even though they continue to use the Clubs' valuable intellectual property every day. By continuing to broadcast Guardian and Twins games, they generate postpetition revenue, yet boldly refuse to pay the Clubs amounts that are undoubtedly postpetition administrative expenses. The failure of the Debtor RSNs to perform under the Telecast Rights Agreements has already caused material economic harm to the Clubs. It has also created uncertainty for the fans in the regions covered by each Debtor RSN as to where and how they will be able to watch their local Club's games. The Debtors' strategy to continue to broadcast and at the same time refuse to pay is plainly inequitable. It is also untenable under applicable bankruptcy law.

5. The Telecast Rights Agreements are the lifeblood of the Debtor RSNs' businesses. Without the use of the Clubs' intellectual property under these agreements, it is doubtful that the Debtor RSNs could continue to operate. Given that chapter 11 debtors are required to timely pay even the most mundane administrative expenses as they come due, the Debtor RSNs should not be permitted to make an exception for administrative expenses that are critical to the Debtor RSNs' survival.

6. If the Debtor RSNs wish to continue to use the Clubs' intellectual property to generate revenue during these chapter 11 cases, they must pay for those rights as and when due. Otherwise, the Debtor RSNs should promptly reject their agreements with the Clubs to enable the Clubs to contract with an alternative broadcast partner.

Facts Specific to the Relief Requested

7. As set forth in the supporting Declarations,³ submitted herewith, in 2010 and 2012, each Club entered into a telecast rights agreement (collectively, and together with related ancillary agreements, the "Telecast Rights Agreements") whereby each Club granted its respective Debtor RSN the exclusive rights to broadcast the Club's games within a certain geographic territory for a set number of MLB seasons in exchange for the respective Debtor RSN paying the Club certain rights fees (the "Telecast Rights Fees"). Guardians Declaration ¶ 3; Twins Declaration ¶ 3. The Debtor RSNs, which broadcast Guardians and Twins games, also pay their respective Clubs in-market streaming, sponsorship, promotional and other ancillary fees ("Ancillary Fees") in connection with the Telecast Rights Agreements in exchange for digital streaming and/or promotional rights including, for example, game tickets and stadium signage. Guardians Declaration ¶ 3; Twins Declaration ¶ 3. Beyond the Telecast Rights Fees, the Clubs also rely on local telecasts to promote their games and in-person attendance and to meet material binding obligations such as those owed to third parties like Club sponsors.

8. [REDACTED]

³ Simultaneous to the filing of this Motion, the Clubs each filed a declaration in support of the Motion: the *Declaration of Richard Dorffer in Support of the Emergency Joint Motion of Major League Baseball and Certain Major League Baseball Clubs to Compel Performance Under Telecast Rights Agreements, or, in the Alternative, to Compel Assumption or Rejection of Telecast Rights Agreements and for Relief from the Automatic Stay* (the "Guardians Declaration") and the *Declaration of David E. St. Peter in Support of the Emergency Joint Motion of Major League Baseball and Certain Major League Baseball Clubs to Compel Performance Under Telecast Rights Agreements, or, in the Alternative, to Compel Assumption or Rejection of Telecast Rights Agreements and for Relief from the Automatic Stay* (the "Twins Declaration") and together with the Guardians Declaration, the "Declarations").

Guardians Declaration ¶ 4; Twins Declaration ¶ 4.

9. Since the commencement of these chapter 11 cases, Debtors Diamond Ohio Holdings II, LLC and Diamond Sports Net North, LLC, which have local telecast rights for the Guardians and Twins, respectively, have not paid Telecast Rights Fees and/or Ancillary Fees payments owed to the Guardians and Twins, despite continuing to broadcast each Club's games and continuing to exploit the sponsorship, promotional and other rights.⁴ Guardians Declaration ¶ 5; Twins Declaration ¶ 5. As of the filing of this Motion, millions of dollars of postpetition Telecast Rights Fees and postpetition Ancillary Fees have accrued and are overdue to the Clubs in connection with the Telecast Rights Agreements. Guardians Declaration ¶ 5; Twins Declaration ¶ 5.

Relief Requested

10. By this Motion, the Clubs request entry of the Order, attached hereto as Exhibit A, (a) compelling the Debtors to perform their obligations under the Telecast Rights Agreements, including, among other things, to continue to broadcast all games in accordance with the Telecast Rights Agreements and pay all postpetition Telecast Rights Fees and Ancillary Fees as and when due (including those fees that have become due and payable), or, (b) in the alternative, compelling the Debtors to assume or reject the Telecast Rights Agreements and pay

⁴ Debtor Diamond Sports Net Arizona, LLC has not made a payment to AZPB Limited Partnership (the "Diamondbacks") that came due prior to the commencement of these chapter 11 cases (the "Diamondbacks Payment"). By supporting this motion, the Diamondbacks do not waive any rights with respect to the Diamondbacks Payment.

all postpetition Telecast Rights Fees and Ancillary Fees through such date, and granting the Clubs relief from the automatic stay to allow them to exercise remedies under the Telecast Rights Agreements.

Jurisdiction and Venue

11. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Clubs and MLB confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The statutory bases for the relief requested herein are sections 362(d), 365(d)(2), 503(a), 503(b)(1)(A), and 507(a)(2) of the Bankruptcy Code.

Argument

I. THE CLUBS ARE ENTITLED TO IMMEDIATE PAYMENT OF THE POSTPETITION TELECAST RIGHTS FEES, ANCILLARY FEES AND OTHER EXPENSES PURSUANT TO SECTIONS 503(a) AND 503(b)(1)(A) OF THE BANKRUPTCY CODE.

13. Section 503 of the Bankruptcy Code provides for the allowance and payment of administrative expenses incurred by a debtor during the pendency of a bankruptcy case. The rationale underlying section 503 is straightforward: third parties will not provide products or services essential for a debtor to operate its business if they will not be compensated in full. Instead, “[s]ection 503 requires that such claims be given priority, therefore inducing third parties to extend credit and enhancing the likelihood of a successful reorganization.” *In re TransAmerican Nat. Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992) (quoting *In re Coastal*

Carriers Corp., 128 B.R. 400, 403 (Bankr. D. Md. 1991)). Consequently, where a “debtor-in-possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services.” *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984). Because the Debtor RSNs have made the deliberate choice to continue to receive and exploit the Clubs’ valuable telecast rights, the Debtor RSNs are obligated to pay the Telecast Rights Fees and Ancillary Fees owed to the Clubs.

14. Among the categories of permitted administrative expenses, section 503 allows payment of “the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). An expenditure constitutes an “actual and necessary” expense under § 503(b)(1)(A) if (i) the expense arose postpetition as a result of actions taken by the debtor-in-possession and (ii) the goods or services benefited the estate. *In re Whistler Energy II, L.L.C.*, 931 F.3d 432, 441 (5th Cir. 2019) (citing *In re Jack/Wade Drilling, Inc.*, 258 F.3d 385, 387 (5th Cir. 2001)).⁵ The first factor—commonly termed the “Transaction with the Debtor-in-Possession” requirement—examines when (prepetition or postpetition) and with whom (the debtor or pre-debtor) a transaction arose, while the second factor—the “Postpetition Benefit” requirement—focuses on the nature of the transaction and whether it benefited the estate.⁶

15. Bankruptcy courts can require the payment of administrative expenses on an immediate and continuing basis. *See* BLR 4002-1(h) (“The debtor must pay on a current

⁵ The Fifth Circuit first adopted this two-factor test with *In re TransAmerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992), citing it as a method to establish a prima facie case for actual and necessary costs pursuant to section 503(b)(1)(A). *Id.* Later, the Fifth Circuit in *Jack/Wade Drilling* restated the test as a requirement to establish actual and necessary costs. 258 F.3d at 387. The Fifth Circuit in *Whistler Energy II* cites *Jack/Wade Drilling* and similarly imposes the test as a requirement. 931 F.3d 441. Here, the Clubs satisfy the test and do not address whether it is required or whether other methods of establishing “actual and necessary” may exist.

⁶ The party seeking an administrative expense bears the burden of proving entitlement to allowance and payment of such expense. *In re TransAmerican Nat. Gas Corp.*, 978 F.2d at 1416.

basis all obligations incurred by it in operating its business.”); *In re ATP Oil & Gas Corp.*, No. 12-36187, 2014 WL 1047818 at *10 (Bankr. S.D. Tex. Mar. 18, 2014) (citing *In re HQ Global Holdings, Inc.*, 282 B.R. 169, 173 (Bankr. D. Del. 2002)). The Fifth Circuit has recognized in *dicta* that postpetition media rights fees payable by a regional sports network constitute an administrative expense. *See In re Hous. Reg’l Sports Network, L.P.*, 886 F.3d 523, 533 (5th Cir. 2018) (noting within a broader discussion about collateral valuation that postpetition media rights fees are an administrative expense). Finally, courts make the presumption that administrative expenses are valued at the rate set forth in an underlying contract as freely negotiated between the parties. *Meredith Corp. v. Home Interiors & Gifts, Inc. (In re Home Interiors & Gifts, Inc.)*, No. 08-03125, 2008 WL 4772102, at *10 (Bankr. N.D. Tex. Oct. 9, 2008); *In re Beverage Canners Int’l Corp.*, 255 B.R. 89, 93 (Bankr. S.D. Fla. 2000).

A. The Administrative Expense Arose Postpetition as a Result of Actions Taken by the Debtors.

16. A creditor can establish that an expense arose postpetition and as a result of actions by the debtor-in-possession by showing “either a direct request from the debtor-in-possession or other inducement via the knowing and voluntary post-petition acceptance of desired goods or services.” *In re Whistler Energy II*, 931 F.3d at 443. Products or services can arise postpetition from action by the debtor even if a contract providing for those products or services was entered prepetition. *See id.* at 442-43; *see also In re Adelpia Bus. Sols., Inc.*, 296 B.R. 656, 663-64 (Bankr. S.D.N.Y. 2003) (“The cases that articulated the standards for administrative expense treatment . . . consistently used the term “transaction,” rather than “contract,” covering a broader array of post-petition relations. . . . [I]t is the circumstances surrounding the post-petition delivery and receipt of the goods and services, rather than either the presence or absence of a contract for their delivery . . . that is determinative.”); *Kimzey v.*

Premium Casing Equip., LLC, No. 16-CV-01490, 2018 WL 1321971 at *4 (W.D. La. Mar. 14, 2018) (holding that a lease executed prepetition still gives rise to a postpetition transaction with the debtor-in-possession because it “involves an ongoing exchange of benefits and obligations between the lessor and lessee”); *In re Hous. Reg’l Sports Network, L.P.*, 886 F.3d at 533 (noting that the accrual of media rights fees under a prepetition contract during the bankruptcy case constituted an administrative expense). Further, the ongoing use of intellectual property rights constitutes continued action by the licensee. See *In re Home Interiors & Gifts, Inc.*, 2008 WL 4772102, at *5 (holding that a trademark licensee’s use of trademark continued through the time that the licensee introduced products into the stream of commerce bearing the trademark).

17. The Clubs request administrative expense treatment for (a) the Telecast Rights Fees and Ancillary Fees that have accrued and become payable postpetition and (b) the Telecast Rights Fees and Ancillary Fees that will accrue and become payable postpetition. By continuing to telecast the Clubs’ games, the respective Debtor RSNs have knowingly and voluntarily accepted the intellectual property rights (*i.e.*, the exclusive telecast rights) that each Club is providing. The resulting fees therefore are an element of the ongoing postpetition exchange between each of the Clubs and its respective Debtor RSN—each Club has provided and is providing exclusive telecast rights to the respective Debtor RSN, each of which is using such rights. It is evident from the Debtor RSNs’ course of postpetition conduct, moreover, that Debtor RSNs themselves recognize that Telecast Rights Fees and Ancillary Fees are administrative expenses owed and payable postpetition: a distinct majority of the Debtors have paid postpetition Telecast Rights Fees to other clubs when due. That is because, absent the Telecast Rights Agreements, which contain carefully drafted grants of the Clubs’ intellectual property rights, none of the Debtors would have any ability to broadcast any of the clubs’ MLB

games, which is a core element to every Debtors' business. The Debtor RSNs have chosen to continue to use the intellectual property provided by the Clubs, earning revenue from that use while selectively and deliberately not paying the Guardians and the Twins. Therefore, the first requirement of the *Whistler Energy* test—transactions resulting from action by the debtors-in-possession—is clearly satisfied.

B. The Clubs' Telecast Rights Provide a Benefit to the Debtors' Estates.

18. The second prong of the *Whistler Energy* test asks whether the consideration provided by a creditor benefited the debtor's estate. If no benefit was conferred, then the correlating expense must not have been necessary as required by section 503(b)(1)(A). *In re Whistler Energy II*, 931 F.3d at 443 (citing *In re H.L.S. Energy Co.*, 151 F.3d 434, 437 (5th Cir.1998)). Such consideration can benefit the estate even in unobvious ways and can provide a benefit even when such consideration turns out to be unprofitable for the debtor. *See In re ATP Oil & Gas Corp.*, 2014 WL 1047818 at *5 (“[Administrative expense applicant] is entitled to an administrative expense for it [sic] postpetition services, even where the services turn out to be unprofitable for the estate.”).

19. Here, the exclusive rights to broadcast the Clubs' MLB games and related pre- and post-game programming provided to the Debtor RSNs are essential to each Debtor RSN's business, operations and ability to function as a going concern. The Debtor RSNs are in the sole business of televising sports games and other sports team-related content. The right to broadcast the Clubs' games are core to the Debtors' business; indeed, that right is the very right that allows the Debtor RSNs to exist and forms the predicate basis for virtually all of their operating revenue. It is the delivery of the Clubs' games, for example, that drives the value of the fees the Debtor RSNs receive from distributors that carry the Debtor RSNs' channels. If the exclusive rights to broadcast the Clubs' games were not of value to the Debtor RSNs, the Debtor

RSNs would choose not to continue to broadcast those games. The Debtor RSNs are not only continuing to broadcast the games but are in all likelihood paying production costs to parties other than the Clubs to do so, and receiving money from parties like distributors in exchange. The digital streaming and promotional rights provided by the Clubs also provide direct benefits that the Debtor RSNs have chosen to use without compensating the Clubs. Accordingly, the Telecast Rights Fees and Ancillary Fees are *necessary* to the Debtors' estates. The Debtors' selective decision to not pay the two Clubs—while paying all others—is a strategic choice; one that underscores the benefit of the telecast rights to the Debtors' estates.

20. Notwithstanding that Debtor Diamond Sports Net North, LLC also has exclusive rights to broadcast other sports, MLB games and related content dominate the majority of its telecast schedule given the number of MLB games broadcast per season. Further, from April through September, Twins games and associated programming are its primary live sports content. With respect to Debtor Diamond Ohio Holdings II, LLC, it only has the exclusive rights to broadcast Guardians games and does not have any other rights to broadcast other professional sports. Accordingly, the broadcast of the Guardians games is fundamental to the vitality of Debtor Diamond Ohio Holdings II, LLC.

21. Finally, even when the Debtor RSNs are not televising live sports games, a significant portion of their additional content is derived from the telecast rights granted to them under the Telecast Rights Agreements. Those agreements allow the Debtor RSNs to broadcast ancillary programming such as pre- and post-game shows and “week-in-review” segments. The benefit provided by the Clubs to the Debtor RSNs is clear—absent the exclusive right to broadcast, the Debtor RSNs would have to find other content to broadcast in lieu of MLB games and ancillary programming. Moreover, the Clubs' exclusive rights may provide direct benefit to

the Debtor RSNs because if the Debtor RSNs fail to broadcast the Clubs' games, they may be in breach of, or be subject to other consequences under, their key revenue-generating agreements with multichannel video programming distributors.

22. Both *Whistler Energy* requirements are therefore satisfied: the Telecast Rights Fees and Ancillary Fees arise from each Debtor RSN's voluntary acceptance and use of its respective Club's exclusive telecast rights, and the broadcast of such telecast rights benefited each Debtor RSN's estate. The Debtor RSNs cannot continue to accept and use the exclusive telecast rights while the Clubs go uncompensated. Accordingly, this Court should grant the Clubs' request for the allowance of the Telecast Rights Fees and Ancillary Fees as administrative expenses pursuant to section 503(b)(1)(A) and the timely payment of such Telecast Rights Fees and Ancillary Fees.

C. The Clubs Are Entitled to Immediate Payment of Their Allowed Administrative Expenses.

23. Pursuant to section 503(a) of the Bankruptcy Code, “[a]n entity may timely file a request for payment of an administrative expense.” 11 U.S.C. § 503(a). Bankruptcy courts can require the payment of administrative expenses on an immediate and continuing basis. *See* BLR 4002-1(h) (“The debtor must pay on a current basis all obligations incurred by it in operating its business.”); *In re ATP Oil & Gas Corp.*, 2014 WL 1047818 at *10 (citing *In re HQ Global Holdings, Inc.*, 282 B.R. at 173); *cf.* BLR 4002-1(f) (prohibiting a debtor from “incur[ing] administrative and priority expenses unless funds are reasonably expected to be generated to pay them”). Therefore, because the Debtor RSNs have chosen to utilize the exclusive rights provided by the Clubs, the Debtor RSNs must pay the Telecast Rights Fees and Ancillary Fees as an administrative expense.

24. The Bankruptcy Local Rules for the Bankruptcy Court for the Southern

District of Texas (the “Local Rules”) also make clear that the Clubs’ Telecast Rights Fees and Ancillary Fees must be paid as and when they become due in accordance with the terms of the respective Telecast Rights Agreement. *See* BLR 4002-1(h) (“The debtor must pay on a current basis all obligations incurred by it in operating its business.”). The Local Rules serve as a protective measure to ensure compliance with the Bankruptcy Code’s requirement that all administrative expenses be paid in full in cash in order to confirm a plan (absent some other agreement by claims holders). 11 U.S.C. § 1129(a)(9)(A). If a debtor cannot satisfy its administrative expenses in full in cash, then the alternative to chapter 11 is liquidation in chapter 7. As such, Judges on this Court have stressed the importance of the rules. *See* Transcript of Motions Hearing Before the Honorable Marvin Isgur 14:24-15:3, *In re Francis’ Drilling Fluids, Ltd.*, No. 18-35441 (S.D. Tex. Nov. 3, 2018), ECF No. 150 (“What I will require in any case is that the administrative costs . . . have to be paid on a current basis. So if there isn’t money to do that, the case is closed down.”).

25. In addition to the Local Rules, the three common law factors that courts examine when determining the timing of administrative expense payments—(i) prejudice to the debtor, (ii) the hardship to the creditor and (iii) potential detriment to other creditors—all support approval of the Clubs’ requests for payment of the Telecast Rights Fees as and when they become due. *See In re ATP Oil & Gas Corp.*, 2014 WL 1047818 at *10 (citing *In re UTEX Commc’ns Corp.*, 457 B.R. 549, 569 (Bankr. W.D. Tex. 2001)).

26. *Immediate Payment Does Not Prejudice the Debtors.* First, courts consider whether immediate payment would prejudice the debtors and their ability to secure funding for reorganization, among other things. In *In re Global Home Products*, in response to a creditor’s motion to allow and compel immediate payment of an administrative expense, the debtor was

required to show “uncontroverted testimony” regarding ruinous harm to the estate in order to prove that it would face prejudice if required to make the immediate administrative expense payment. 2006 WL 3791955, at *4 (Bankr. D. Del. Dec. 21, 2006). Here, there is no evidence that the Debtor RSNs would be prejudiced by the payment of the Clubs’ requested administrative expenses, including the continued payment of all amounts as and when due under the Telecast Rights Agreements. In particular, there is no evidence of the Debtors’ inability to pay administrative fees as they come due. All currently available evidence indicates that the Debtors have sufficient financing to pay all current administrative expenses, and paying the Clubs’ administrative expense will not impact the Debtors’ reorganization efforts. As of the petition date, the Debtors and their non-debtor joint venture subsidiaries collectively held approximately \$426.6 million of cash on hand. Debtors’ Emergency Mot. Regarding Cash Collateral ¶ 6, ECF No. 25 (the “Cash Collateral Motion”). The approved budget attached as exhibit 1 to the Cash Collateral Motion projects that the cash balance of the Debtors and their non-debtor joint venture subsidiaries would not drop below \$310 million at any point during the pendency of these cases.

27. *The Clubs Have Already Suffered Harm and Will Suffer Further Harm if Payment Is Not Made.* Next, courts consider whether a delayed payment would cause hardship to the creditor. A creditor should show evidence proving how delayed payment will cause it harm. *Cf. In re ATP Oil & Gas Corp.*, 2014 WL 1047818 at *10 (a bare assertion that hardship is “self-evident” is not sufficient). Here, the Clubs have already suffered harm by not receiving payment of millions of dollars of postpetition Telecast Rights Fees and postpetition Ancillary Fees when those payments came due on April 1. The Clubs will suffer additional concrete and provable harm if their administrative expenses are not immediately paid. Telecast Rights Fees made up a substantial percentage of each Club’s annual revenues. The Telecast Rights Fees are

an essential element of each Club's cash flow planning each year, and each Club has negotiated a payment schedule tailored to its unique cash flow needs, as shown in the Telecast Rights Agreements summary *supra* ¶ 7. For example, some of the Clubs' most significant costs, such as player payroll, added seasonal game day employee payroll and team travel, are due during the MLB season—the same period during which Clubs are contractually owed their Telecast Rights Fees. Without immediate payment as provided in the agreements, the Clubs will continue to be harmed.

28. *Other Creditors Will Not Be Harmed by Immediate Payment.* Finally, courts consider whether immediate payment to one creditor would risk a debtor's administrative insolvency, which might then prevent other creditors from receiving payment for their administrative expenses. *Cf. In re Texas Pellets, Inc.*, 2017 WL 6508974 at *4 (limiting immediate payment to a creditor to about a third of its administrative expenses in part because of “the legitimate concerns of other administrative claimants regarding payment”); *In re ATP Oil & Gas Corp.*, No. 12-36187, 2014 WL 1047818 at *10 (denying immediate payment because the debtor was “effectively administratively insolvent on a cash basis and ha[d] extremely limited cash resources” and noting that immediate payment would “only encourage[] a race to the courthouse”). With respect to this factor, courts are primarily concerned with providing for the “orderly and equal distribution [of assets] among creditors” and preventing “a race to a debtor's assets.” *In re HQ Global Holdings, Inc.*, 282 B.R. at 173.

29. In the current cases, there is no evidence that the Debtors cannot pay administrative expenses when due. All indications, including the Debtors' recent payment of rights fees to other clubs and the Debtors' representations to the Court at the first day hearing, are to the contrary. Because the Local Rules make clear that all operating administrative

expenses must be paid on a current basis, other creditors' administrative expenses should also be paid in full. Accordingly, there is no evidence suggesting that other creditors would be harmed by payment of the Clubs' administrative expenses. And, as noted above, if there are insufficient assets to cover all administrative claims, this case is proceeding under the wrong chapter of the Bankruptcy Code.

II. IN THE ALTERNATIVE, THE COURT SHOULD REQUIRE THE DEBTOR RSNs TO PROMPTLY ASSUME OR REJECT THE TELECAST RIGHTS AGREEMENTS AND LIFT THE AUTOMATIC STAY TO PERMIT THE CLUBS TO EXERCISE REMEDIES UNDER THE TELECAST RIGHTS AGREEMENTS

30. If the Debtor RSNs are not compelled to perform under the Telecast Rights Agreements, the Debtor RSNs should be compelled to promptly assume or reject them. While section 365(d)(2) of the Bankruptcy Code generally allows a debtor until confirmation of a chapter 11 plan to assume or reject executory contracts, it also provides that a court may order a debtor to assume or reject a contract within a shorter time frame. Congress intended that this provision would reduce the uncertainty experienced by counterparties to executory contracts that were "left in doubt concerning their status vis-à-vis the estate." H.R. Rep. No. 95-595, at 348 (1977).

31. Courts may consider a range of factors when determining whether to shorten the period in which the debtor must assume or reject the contract. For example, in *In re Panaco*, this Court considered whether the debtor was paying or performing under the contract, whether the debtor's non-performance could damage the non-debtor party beyond compensation available under the Bankruptcy Code, whether the contract was the debtor's primary asset, and whether the debtor had sufficient time to formulate a plan. *In re Panaco, Inc.*, No. 02-37811, 2002 WL 31990368, at *4-5 (Bankr. S.D. Tex. Dec. 10, 2002) (citing *In re Burger Boys, Inc.* 94 F.3d 755, 761 (2d Cir. 1996)). Courts outside this circuit have held that the determination is

within the court's discretion and should be based on the particular facts of each case, considering a myriad of factors.⁷ See *Theatre Holding Corp. v. Mauro*, 681 F.2d 102, 105 (2d Cir. 1982); *In re Hawker Beechcraft, Inc.*, 483 B.R. 424, 429 (Bankr. S.D.N.Y. 2012); *In re Dana Corp.*, 350 B.R. 144, 147 (Bankr. S.D.N.Y. 2006).

32. But focusing on the minutia of an exhaustive factors analysis would frustrate the congressional objective of reducing uncertainty for contract counterparties. The Clubs, and their fans, desperately need certainty as to whether the Debtors will assume or reject the Telecast Rights Agreements, [REDACTED]

[REDACTED] With the 2023 season underway, the Clubs are navigating a complicated and fragile situation without certainty in their ability to consistently provide games for the millions of fans who follow professional baseball through daily televised broadcasts. The Clubs cannot be expected to allow the Debtor RSNs to continue using the Clubs' intellectual property rights on a postpetition basis, to keep the Debtors' businesses afloat until a plan is confirmed (even assuming that a chapter 11 plan *can be* confirmed in these cases), without receiving payment for those rights.

33. The Clubs must know now whether the Debtors intend to assume their contracts, and if they do not, the Clubs should not be subjected to even the slightest delay in exploring and negotiating alternative solutions for the delivery of their games to viewers for the

⁷ Factors cited by other courts include (i) the importance of the contracts to the debtor's business and reorganization; (ii) the debtor's failure or ability to satisfy postpetition obligations; (iii) the nature of the interests at stake; (iv) the balance of hurt to the litigants and the good to be achieved; (v) whether the debtor has had sufficient time to appraise its financial situation and the potential value of its assets in formulating a plan; (vi) the safeguards afforded the litigants; (vii) the damage the non-debtor will suffer beyond the compensation available under the Bankruptcy Code; (viii) whether there is a need for judicial determination as to whether an executory contract exists; (ix) whether exclusivity has been terminated; (x) whether the action to be taken is so in derogation of Congress's scheme that the court may be said to be arbitrary and (xii) the purpose of chapter 11, which is to permit successful rehabilitation of debtors.

2023 season. If the Debtors assume the Telecast Rights Agreements, the status quo remains and fans nationwide will know that they will still be able to watch their home teams on the same RSNs as in prior seasons. If the Debtors reject the Telecast Rights Agreements, the Clubs can proceed with making alternative telecast arrangements to minimize the disruption of local broadcasts, and with promoting those alternatives to their fans. But the uncertainty as to assumption or rejection harms the Clubs and fans alike. The Clubs therefore respectfully request that the Court compel the Debtors to assume or reject the Telecast Rights Agreements.

III. THE CLUBS SHOULD BE GRANTED RELIEF FROM THE AUTOMATIC STAY TO ENFORCE THEIR RIGHTS

34. Bankruptcy Code section 362(d)(1) permits relief from the automatic stay “for cause.” “Because § 362 does not offer guidance as to what constitutes ‘cause,’ reviewing courts must determine whether cause existed on a case-by-case basis.” *Reitnauer v. Tex. Exotic Feline Found., Inc. (In re Reitnauer)*, 152 F.3d 341, 343 n.4 (5th Cir. 1998) (citing *Robbins v. Robbins*, 964 F.2d 342, 345 (4th Cir.1992)). Each case must be viewed on its own facts and the court must balance the interests of the estate and the creditor. *In re Mosher*, 578 B.R. 765, 772 (Bankr. S.D. Tex. 2017). The bankruptcy court’s authority to modify the automatic stay is broad. *Bustamante v. Cueva (In re Mirant Corp.)*, 440 F.3d 238, 251 (5th Cir. 2006) (citing *Bustamante v. Cueva (In re Cueva)*, 371 F.3d 232, 236 (5th Cir. 2004)). Courts in this circuit have considered and weighed the following factors when determining whether to modify the automatic stay for cause: (i) interference with the bankruptcy, (ii) good or bad faith of the debtor, (iii) injury to the debtor and other creditors if the stay is modified, (iv) injury to the movant if the stay is not modified, and (v) the proportionality of the harms from modifying or continuing the stay. *In re Mosher*, 578 B.R. at 772. Finally, “[t]he burden of proof on a motion to lift the automatic stay is a shifting one: section 362(d)(1) requires an initial showing of cause by the

movant; then, with the exception of the debtor's equity in the property . . . section 362(g) places the burden of proof on the debtor for all other issues." *Id.*

35. Here, two of the Debtors have not made Telecast Rights Fees and Ancillary Fees payments owed to their counterparty Clubs, which has resulted in defaults under the Guardians' and Twins' Telecast Rights Agreements. No party disputes that the Debtor RSNs have failed to pay and that defaults exist. The Telecast Rights Agreements permit the Clubs to deliver to the Debtor RSNs notices of default following an event of default and that the notice of default commences a cure period during which the applicable Debtor RSN is entitled to cure the default. If the default is not timely cured as set forth in the respective Telecast Rights Agreements, the Clubs may terminate the agreements and seek alternative broadcast partners. To the extent necessary, this Motion constitutes such notices of default to the Debtor RSNs.

36. Out of an abundance of caution, MLB and the Clubs request limited relief from the automatic stay for the purpose of providing notices of default to any Debtor RSNs that have not timely paid, or in the future fail to timely pay, Telecast Rights Fees and/or Ancillary Fees, with each notice retroactive to the date of this Motion for purposes of calculating the applicable cure period. The Clubs further request relief from the automatic stay to exercise their rights and remedies under the Telecast Rights Agreements, including but not limited to termination rights, in the event that the applicable Debtor RSNs do not timely pay amounts due to the Clubs under the Telecast Rights Agreements following expiration of any applicable contractual cure period.

Emergency Consideration

37. The Clubs request emergency consideration of this Motion pursuant to Bankruptcy Rule 9013 and Local Rule 9013-1. As discussed above, the Telecast Rights Fees

and Ancillary Fees are essential to the continued orderly management of the cash flow needs of the Clubs. The Debtors cannot continue to exploit the Clubs' telecast rights to generate substantial revenue and keep their businesses afloat unless they make immediate payment of the overdue postpetition Telecast Rights Fees and Ancillary Fees owed to the Clubs for the use of such rights and pay the amounts due under the Telecast Rights Agreements as and when due, going forward. The Clubs could not file this Motion any earlier because the Debtor RSNs' postpetition Telecast Rights Fees and Ancillary Fees became due and payable on April 3, 2023,⁸ and the Debtor RSNs failed to make timely payment when due. Accordingly, the Clubs submit that an emergency hearing should be scheduled to consider entry of the Order.

Notice

38. Notice of this Motion has been provided to (a) Debtors and counsel to the Debtors, (b) the Office of the United States Trustee for the Southern District of Texas, (c) counsel to the Committee, (d) any other party that has requested notice pursuant to Bankruptcy Rule 2002 and (e) any other party entitled to notice pursuant to Local Rule 9013-1(d). The Clubs submit that, in light of the nature of the relief requested, no other or further notice need be provided.

Conclusion

WHEREFORE, for the reasons stated herein, MLB and the Clubs respectfully request that the Court (a) enter the Order, substantially in the form attached hereto as Exhibit A, and (b) grant such other and further relief as is just and proper.

⁸ The postpetition Telecast Rights Fees and Ancillary Fees payments were due on April 1, 2023, which was a Saturday, pushing the due date to the following business day, April 3, 2023.

Dated: April 5, 2023
Houston, Texas

BRACEWELL LLP

/s/ William A. (Trey) Wood III
William A. (Trey) Wood (Texas Bar No. 21916050)
711 Louisiana St., Suite 2300
Houston, Texas 77002
Telephone: (713) 221-1166
Facsimile: (713) 221-1212
E-mail: trey.wood@bracewell.com

Mark Dendinger (admitted *pro hac vice*)
CityPlace I, 34th Floor, 185 Asylum Street
Hartford, Connecticut 06103
Telephone: (860) 256-8541
Facsimile: (800) 404-3970
E-mail: mark.dendinger@bracewell.com

-and-

SULLIVAN & CROMWELL LLP

James L. Bromley (admitted *pro hac vice*)
Alexa J. Kranzley (admitted *pro hac vice*)
125 Broad Street
New York, NY 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
E-mail: bromleyj@sullcrom.com
kranzleya@sullcrom.com

Counsel for:
Office of the Commissioner of Baseball
AZPB Limited Partnership
Atlanta National League Baseball Club, LLC
Cleveland Guardians Baseball Company, LLC
Detroit Tigers, Inc.
Milwaukee Brewers Baseball Club, Limited Partnership
Minnesota Twins, LLC
Rays Baseball Club, LLC
Rangers Baseball LLC

Certificate of Service

I certify that on April 5, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ William A. (Trey) Wood III

William A. (Trey) Wood III

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

DIAMOND SPORTS GROUP, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-90116 (CML)

(Jointly Administered)

**ORDER GRANTING EMERGENCY JOINT MOTION OF MAJOR LEAGUE
BASEBALL AND CERTAIN MAJOR LEAGUE BASEBALL CLUBS TO COMPEL
PERFORMANCE UNDER TELECAST RIGHTS AGREEMENTS, OR, IN THE
ALTERNATIVE, TO COMPEL ASSUMPTION OR REJECTION OF TELECAST
RIGHTS AGREEMENTS AND FOR RELIEF FROM THE AUTOMATIC STAY**

Upon the joint motion (the “Motion”)² of Cleveland Guardians Baseball Company, LLC and Minnesota Twins, LLC (with certain of their affiliates, the “Clubs”) and the Office of the Commissioner of Baseball d/b/a Major League Baseball (“MLB”) for entry of an order (this “Order”) pursuant to sections 365 and 503 of the Bankruptcy Code to compel the Debtors to perform under the Telecast Rights Agreements, including, among other things, to continue to produce and broadcast all games in accordance with the Telecast Rights Agreements and pay all postpetition Telecast Rights Fees and Ancillary Fees as and when due, or, in the alternative, to compel assumption or rejection of the Telecast Rights Agreements and grant related relief; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these chapter 11 cases and the Application in this district being

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.ra.kroll.com/DSG>. The Debtors’ service address for purposes of these chapter 11 cases is: c/o Diamond Sports Group, LLC, 3003 Exposition Blvd., Santa Monica, CA 90404.

² Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and that, except as otherwise ordered herein, no other or further notice is necessary; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all proceedings had before this Court; and this Court being satisfied that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Clubs are granted allowed administrative expenses for all outstanding postpetition amounts the Debtors are currently obligated to pay under the Telecast Rights Agreements (the “Allowed Administrative Expense”). The Debtors shall pay the Allowed Administrative Expenses through April 3, 2023 within two (2) business days of entry of this Order.
2. The Debtors shall pay to the Clubs any amounts hereafter arising pursuant to the Telecast Rights Agreements in accordance with the terms set forth therein, including the deadlines therein.
3. The Debtors shall move to assume or reject the Telecast Rights Agreements by no later than April 30, 2023, with a hearing on the motion scheduled for no later than May 21, 2023.
4. The automatic stay in these chapter 11 cases is hereby lifted: (a) to permit the Clubs and MLB to provide notices of default to any Debtor RSN that has not timely paid

Telecast Rights Fees and/or Ancillary Fees, with each notice retroactive to the date of the Motion for purposes of calculating the applicable cure period; and (b) in the event that the Debtor RSNs do not timely pay amounts due to the Clubs under the Telecast Rights Agreements following expiration of any applicable contractual cure period, to permit the Clubs to exercise their rights and remedies under the Telecast Rights Agreements, including but not limited to termination rights.

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

6. To the extent that this Order is inconsistent with the Motion, the terms of this Order shall govern.

7. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____
Houston, Texas

The Honorable Christopher M. Lopez
United States Bankruptcy Judge