U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed June 15, 2011

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

IN RE:	§	
	§	**CHAPTER 11**
TEXAS RANGERS BASEBALL PARTNERS,	§	
	§	
DEBTOR.	§	**CASE NO. 10-43400 (DML)**
	§	

MEMORANDUM ORDER APPROVING STIPULATION

Before the court is the *Stipulation Resolving Post-Effective Date Debtor's and Plan Administrator's Objection to Application of GSP Finance LLC for Allowance of Administrative Claim Pursuant to 11 U.S.C. §§ 503(b)(3) and (4)* (the "Stipulation") which is intended to dispose of disputes respecting the *Application of GSP Finance LLC for Allowance of Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(b)(3) and (4)* (the "Application"). By the Application GSP Finance, LLC ("GSP") asked that the court award it compensation and expenses pursuant to 11 U.S.C. § 503(b)(3)(D) and (4) totaling $1,265,795.96. GSP requested

this sum on the basis of its "substantial contribution" to the excellent result in this case. GSP claims this contribution was made through its and its professionals' efforts in furtherance of GSP's role as agent for the holders of claims secured by a second lien on the assets of Texas Rangers Baseball Partners ("Debtor").

The Application was opposed by Debtor, acting through its plan administrator (the "Administrator"), by the United States Trustee (the "UST"), and by JP Morgan Chase Bank, N.A. ("Chase"), acting as agent for the holders of claims secured by a first lien on Debtor's assets.[1] The court held a hearing on the Application on February 8, 2011, but the court withheld ruling on the Application after notification that the parties were attempting a consensual resolution of their disputes.

The Administrator approved the Stipulation, and Chase does not oppose it. The UST, however, opposes approval, arguing that GSP does not meet the criteria of section 503(b)(3)(D) and (4).

Pursuant to the Stipulation, if approved, the Administrator will pay GSP $120,000 in full satisfaction of its substantial contribution claims. The only parties economically affected by the payment to GSP would be Chase's constituents.

Although the court has some doubt whether, in fact, GSP meets the requirements of section 503(b)(3)(D) and (4), it believes the proper test to apply in disposing of the Stipulation is that applicable to the settlement of a dispute pursuant to Fed. R. Bankr. P. 9019. The Stipulation was not offered or noticed as a settlement, but it clearly is so in its effect. Because the court has the authority under 11 U.S.C. § 102(1) to regulate and determine the adequacy of notice, it

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1 Chase withdrew its objection to the Application on January 18, 2011. *See* docket no. 883.

concludes that Chase, the UST and the Administrator have received sufficient notice for the court to consider the Stipulation under Rule 9019.[2]

Generally, a settlement proposed under Rule 9019 must be "fair and equitable" and must be "in the best interest of the estate." *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Whether the settlement meets this standard will be tested by comparing the settlement's result for the estate to the probable result should the litigation be continued. In doing so, the court must consider the following factors: (1) the likelihood of success in the litigation; (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience, or delay; (3) any other factors bearing on the wisdom of the compromise, including the interests of creditors with proper deference to their reasonable views and the extent to which the settlement is truly the product of arms-length negotiations. *See Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 355-56 (5th Cir. 1997); *see also Korngold v. Loyd (In re S. Med. Arts Cos.)*, 343 B.R. 250, 256 (B.A.P. 10th Cir. 2006) (citing similar factors).

In the case at bar, the court concludes that the Stipulation should be approved. Under the Stipulation, GSP will receive less than 10% of the total amount sought in the Application. While the court does not disagree that GSP is unlikely to prevail at this level or on appeal should the Application be litigated to a conclusion, the court does consider GSP's chances of prevailing to be better than 10%. Indeed, though the court has previously indicated it would not be likely to

[2] Though neither GSP nor the Administrator expressly seeks approval by the court of the Stipulation under Rule 9019, there is authority for the proposition that a court can grant relief to which a party is entitled even where the party has not specifically requested such relief in its pleadings. *See* Fed. R. Civ. P. 54(c), applicable in contested matters through Fed. R. Bankr. P. 7054(a) and 9014(c); *New Amsterdam Cas. Co. v. Waller*, 323 F.2d 20, 24-25 (4th Cir. 1963) (court will award appropriate relief to plaintiff if plaintiff is entitled to it under any theory). Authority respecting analogous situations therefore supports the court's conclusion that the Stipulation may be reviewed under a Rule 9019 standard.

rule in GSP's favor on the Application, it is quite possible that, upon more careful review of the record and applicable law, the court would award some part of the amount sought in the Application. Furthermore, the costs to the estate of continuing the litigation would substantially offset the $120,000 saved by virtue of the court's decision not to approve the Stipulation. Finally, as Chase, representative of the only affected parties, does not oppose the Stipulation, the court concludes it would defy common sense to now frustrate this settlement. Surely forcing the Administrator – essentially acting for Chase's constituents – to litigate in this situation cannot be "fair and equitable" under any definition of the term.

For all these reasons the Stipulation must be approved.

It is so ORDERED.