SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TCR SPORTS BROADCASTING HOLDING, LLP,

Petitioner,

-against-

WN PARTNER, LLC; NINE SPORTS HOLDING, LLC; WASHINGTON NATIONALS BASEBALL CLUB, LLC; THE OFFICE OF COMMISSIONER OF BASEBALL; and ALLAN H. "BUD" SELIG, AS COMMISSIONER OF MAJOR LEAGUE BASEBALL,

Respondents,

-and-

THE BALTIMORE ORIOLES BASEBALL CLUB and BALTIMORE ORIOLES LIMITED PARTNERSHIP, in its capacity as managing partner of TCR SPORTS BROADCASTING HOLDING, LLP,

Nominal Respondents.

Index No. 652044/2014
(IAS Part 41)

**AFFIRMATION OF ROBERT D. MANFRED, JR.**

ROBERT D. MANFRED, JR., Esq., an attorney duly admitted to practice before the courts of the State of New York, herein affirms the truth of the following, under penalties of perjury, pursuant to CPLR § 2106, and submits this Affirmation in Support of the Office of Commissioner of Baseball's Memorandum of Law in Opposition to Petitioner's Motion for Leave To Conduct Discovery in the above-styled litigation:

1. I am currently the Chief Operating Officer of the Office of the Commissioner of Baseball, which does business as Major League Baseball ("MLB"). I first joined MLB in 1998 and have served in a number of positions at MLB, including as Executive Vice President of Labor Relations and Human Resources and Executive Vice President, Economics and League Affairs.

2. I previously submitted an affirmation in this matter (Doc. No. 286) in support of MLB's Memorandum of Law in Opposition to Petitioner's Amended Petition To Vacate Arbitration Award ("First Affirmation").

3. I make this affirmation based on personal knowledge. In making this affirmation, I do not waive any privilege, work product protection, or other right of immunity or confidentiality of MLB, the Revenue Sharing Definitions Committee ("RSDC" or "Committee"), or myself.

## I. The Revenue Sharing Definitions Committee

4. The RSDC's typical role is to hear appeals from the Clubs on issues related to Baseball's Revenue Sharing Plan and to provide recommendations to the Commissioner, as Administrator of the Revenue Sharing Plan, as to the appropriate resolution of those issues. Among other things, the RSDC analyzes related-party transactions involving Clubs, including transactions between Clubs and regional sports networks (known as "RSNs") in order to ensure that the rights fees received by the Clubs under those arrangements—which are subject to revenue sharing—are of fair market value.

5. Since the Revenue Sharing Plan's inception, MLB's staff has provided administrative, legal and organizational support to the RSDC. The administrative assistance provided by MLB staff includes organizing the proceedings and coordinating the schedules of the Committee members and representatives of the Clubs involved in matters heard by the Committee. Additionally, MLB attorneys, at times including myself, provide legal advice to the Committee as well as assist in preparing draft decisions under the direction of the RSDC. When procedural matters arise in the course of an RSDC proceeding, MLB staff members often address such issues on behalf of the RSDC. Furthermore, it is standard practice for MLB staff members to attend and ask questions at RSDC hearings.

6. As an internal body of Baseball composed of Club officials whose function is to hear issues from other Clubs, RSDC proceedings have always been conducted informally. For example, witnesses do not testify under oath, there is no cross-examination, and the rules of evidence do not apply. Typically, prior to the hearing the Club involved in the matter will make written submissions accompanied by briefs and supporting evidence (including in some cases documents and expert reports), and then orally present its position at an in-person hearing before to the RSDC. Unless the RSDC specifically asks for post-hearing submissions, the record is regarded as closed at the end of the merits hearing.

7. In my experience, the RSDC's standard procedures provide Clubs with a full and fair opportunity to be heard on the issues.

8. After a Club has made its oral presentation to the RSDC at the meeting (which also typically involves questioning by the RSDC members), the RSDC members meet to discuss the merits and decide the outcome of the matter. The RSDC then advises the MLB staff—either at the meeting or at a later date after further deliberations—of how it intends to rule. The appropriate members of the MLB staff —historically attorneys—then draft a decision that reflects, and is consistent with, the directions provided by the RSDC members. The draft decision is subsequently circulated to the RSDC members for their review and comment. The RSDC members then provide feedback, including any edits and comments that they may have. When the RSDC members are satisfied that the written report accurately reflects their decision and reasoning, it is finalized and sent to all of the Clubs by MLB. From my experience, the nature of the support provided to the RSDC in the decision-drafting process is similar to the interaction between a judge and his law clerk in drafting a judicial opinion or between an arbitrator and his assistant in drafting an arbitral award.

9. In my earlier roles as Executive Vice President of Labor Relations and Human Resources and Executive Vice President, Economics and League Affairs, as well as in my current role as Chief Operating Officer, I have had the lead responsibility for facilitating the RSDC process. In this regard, I, along with other MLB staff members, have resolved procedural issues for the RSDC such as the timetable for submissions and the procedures to be followed at the hearing. This allocation of responsibility makes sense, for RSDC members usually are not attorneys; their background and expertise is in other areas, such as Club operations, media rights, and the types of substantive issues that typically come to the RSDC for decision. For that reason, since its inception, MLB staff—including at times myself—has handled procedural questions for the RSDC.

10. In deciding issues before them, the members of the RSDC exercise their own independent judgment, and the RSDC's decisions are not controlled or determined by the Club with which the RSDC member is associated, the Commissioner, me, or any other MLB officials or personnel.

## II. The Baltimore Orioles' Longstanding Knowledge of the RSDC's Practices and Procedures

11. The RSDC practices and procedures described above, including the support role that the MLB staff plays, have been in place for many years and certainly long before the March 28, 2005 Agreement was negotiated and signed. They have been followed in dozens of RSDC proceedings, and are well known to MLB Clubs, including the Baltimore Orioles Limited Partnership ("the Orioles").

12. In particular, the Orioles participated in multiple RSDC proceedings before the execution of the March 28, 2005 Agreement. Of particular note, the Orioles appeared before the RSDC in 2004 concerning the broadcast television rights fees received by the Orioles from the

Orioles' then-wholly-owned regional sports network, TCR (the very same entity that I understand is the Petitioner in the present proceeding).

13. In the March 28, 2005 Agreement, the Orioles chose to have the RSDC resolve any disputes concerning the fair market value of the future telecast rights fees to be paid to the Washington Nationals Baseball Club ("the Nationals"). When that agreement was executed, the Orioles had first-hand experience with, and were necessarily well aware of, the RSDC process, including the nature of the supporting role of MLB staff members and their assistance in preparing draft decisions for the RSDC after the Committee members had internally decided an issue.

**III. Allegations Related to the RSDC Proceeding**

14. The RSDC practices and procedures described above also were in place in 2012 when the dispute between TCR Sports Broadcasting Holding, LLP ("MASN") and the Nationals regarding future telecast rights fees (the "RSDC Proceeding") was heard, and they remain in place today.

15. Before the RSDC Proceeding was initiated, I discussed with MASN and its controlling partner, the Orioles, MLB's role in support of the RSDC. I also answered questions posed about the RSDC process, with which the Orioles' attorneys were already familiar. On January 25, 2012, Alan M. Rifkin, counsel to the Orioles, emailed me to ask "How is the RSDC comprised? That is, who sits on the committee and how is it staffed?" I responded to Mr. Rifkin the same day: "It is three club reps appointed by the commissioner. The staff is a combination of my people (including Bob starkey), members of our finance department and the auditor, PWC." Annexed hereto as Exhibit 1 is a true and correct copy of my January 25, 2012 email correspondence with Mr. Rifkin.

16. At no point during the RSDC Proceeding did MASN or the Orioles object to the participation or role of MLB staff, including the role I played in the matter.

17. All of MASN's and the Orioles' pre-hearing submissions regarding the fair market value of the Nationals' telecast rights were provided to the RSDC. As I detailed in my First Affirmation, MASN, the Orioles, and the Nationals made submissions in excess of 1800 pages to the RSDC on March 7, 2012 and March 23, 2012. The MLB staff forwarded these submissions to the RSDC members in advance of the merits hearing.

18. On April 3, 2012, the RSDC conducted an in-person hearing on the merits of the dispute between MASN and the Nationals at MLB offices in New York City. I attended the hearing and had reviewed beforehand the voluminous submissions to the RSDC. The hearing lasted approximately four hours. During the merits hearing, no party objected to my participation or conduct in any respect, including with regard to where I was seated in the room or any questions I asked or comments I may have made. Similarly, no party objected to the presence or participation of any other MLB staff members at the merits hearing.

19. From the inception of the RSDC Proceeding through the June 30, 2014 rendering of the decision, no party ever complained that it had not been given a full and fair opportunity to be heard or to present its case. Similarly, no party to the RSDC Proceeding ever objected to the procedure followed by the RSDC, the supporting role of MLB staff or the role that I personally played.

20. I have reviewed the Affidavit of Alan M. Rifkin filed November 7, 2014 ("Rifkin November 2014 Affidavit"). In that document, Mr. Rifkin asserts that I made a number of "rulings" and "binding decisions" about various matters. Rifkin Nov. 2014 Aff. ¶ 11.b. His

assertions are inaccurate, misleading, or both. Indeed, the exhibits he cites and attaches to his Affidavit either do not support or refute his contentions.

a. The Rifkin November 2014 Affidavit claims that I "instructed the parties that all filings and submissions with respect to the arbitration should be submitted directly and exclusively to [my] office." Rifkin Nov. 2014 Aff. ¶ 11.a. I have no recollection of instructing or directing the parties to this effect. In any event, the usual and customary practice is for Clubs appearing before the RSDC to send their substantive submissions to MLB, which collects them and distributes them to the RSDC members. That practice, which is a convenience and courtesy to the parties and the RSDC members, was discussed at the February 2, 2012 organizational meeting and was followed thereafter; the parties provided their pre-hearing submissions and expert reports to MLB, which distributed them to the RSDC members. At the same time, apart from pre-hearing submissions, I did not suggest or promise that I or MLB would forward every email or letter sent to me by MASN or the Orioles to the RSDC. MLB does not customarily pass along such communications to the RSDC and did not agree to do so for this RSDC Proceeding. In fact, MASN and the Orioles never requested that I send emails or letters addressed to me to the RSDC.

b. The Rifkin November 2014 Affidavit claims that I "denied MASN's and BOLP's request to disqualify Proskauer [Rose LLP ("Proskauer")] …." To the contrary, I did not "den[y]" the request to disqualify Proskauer Rose LLP ("Proskauer"). What I advised—correctly, in my view—was that the RSDC lacked authority to rule on requests to disqualify counsel or to provide the relief requested. The Rifkin November 2014 Affidavit also asserts that I rejected MASN's and BOLP's request to

"communicate directly with the arbitrators with respect to their Clubs' relationship with Proskauer." Rifkin Nov. 2014 Aff. ¶ 11.b. With respect to contacting the Clubs, as I noted in my First Affirmation, only eleven days before that meeting, MLB's General Counsel, Thomas J. Ostertag, had advised Mr. Rifkin to "seek such information [about Proskauer's work for the RSDC members' Clubs] from the various Clubs." Annexed hereto as Exhibit 2 as a true and correct copy of the January 23, 2012 correspondence between Messrs. Ostertag and Rifkin, on which I was copied. I had no ability or authority to prevent Mr. Rifkin from seeking such information, and assumed that he would have done so had such possible Proskauer representations been of significance to him or his client.

c. The Rifkin November 2014 Affidavit claims that I "granted to MASN and BOLP a continuing objection and full reservation of rights with respect to Proskauer's representations in the arbitral process" and advised the Orioles to document those objections by means of letters to me. Rifkin Nov. 2014 Aff. ¶ 11.c. My statement about putting the objection in writing was in the context of an attempt to draft a submission agreement among the parties. That agreement never came to fruition and was not signed. With respect to MASN's or the Orioles' objections to Proskauer, I indicated that they could object; however, my view remained that the RSDC lacked authority to disqualify counsel. Accordingly, I viewed the objection as beside the point because the disqualification request was being made in a forum that lacked authority to act. Moreover, it was obvious that there were also other avenues that MASN and the Orioles could have pursued (outside of Baseball) if they wished to

make an ethical complaint against Proskauer. To the best of my knowledge, they never pursued such avenues.

d. The Rifkin November 2014 Affidavit claims that I "denied MASN's request for discovery to MLB" and "denied MASN's request to MLB for unaggregated telecast data for certain Clubs." Rifkin Nov. 2014 Aff. ¶ 11.d. As I explained in my First Affirmation, because the RSDC's typical role is to evaluate related-party transactions between Clubs and RSNs, there is no ability—and no right—for Clubs or RSNs to make general discovery requests of MLB. MLB was not a party to the RSDC Proceeding. Moreover, MASN was seeking confidential business and financial information that belonged to the Clubs, not MLB; MLB had an obligation to protect the confidentiality of the Clubs' information and was not permitted to disclose it to others, including third-party experts. Nevertheless, as an accommodation to the parties to the RSDC Proceeding, MLB agreed to (and did) provide information on comparable industry contracts in an aggregated format that protected the Clubs' confidentiality interests. I informed MASN, the Orioles, and the Nationals of this accommodation in an email to the parties' counsel on February 9, 2012. Neither MASN, nor the Orioles, nor the Nationals objected to MLB's decision to provide only aggregated information on comparable industry contracts.

e. The Rifkin November 2014 Affidavit claims that I "made a final ruling on the wording of a nondisclosure agreement that governed the confidentiality of the information exchanged in the proceedings." Rifkin Nov. 2014 Aff. ¶ 11.d. This, again, is mistaken. The nondisclosure agreement was a negotiated document memorialized among the parties, as shown in the document that the Rifkin November

2014 Affidavit attaches in support of his contention. There, I advised "the result should be an agreement among the parties." Rifkin Ex. 13. Neither Mr. Rifkin nor any other representative of the parties objected to this statement at the time or indicated that they disagreed with the final nondisclosure agreement.

f. The Rifkin November 2014 Affidavit claims that I "drafted a proposed submission agreement for the arbitrators." Rifkin Nov. 2014 Aff. ¶ 11.e. As noted above, this would have been an agreement that MASN would have voluntarily signed. However, no agreement was reached; it never came to fruition; and it was not executed. The draft submission agreement was not a "ruling" or "decision" by me (or anyone else).

g. The Rifkin November 2014 Affidavit notes that I "propounded requests for information to MASN and directed MASN to provide the requested information directly to [me] and to his staff." Rifkin Nov. 2014 Aff. ¶ 11.e. Here again, I was acting on behalf of the RSDC. The RSDC determines what information from the Club or regional sports network is germane to the issue and requests that the information be provided to the RSDC so it can be considered in its deliberations. Indeed, analyzing the information requested from MASN was necessary to undertake, among other analyses, the very analysis that MASN and the Orioles advocated the RSDC to undertake in resolving the dispute. Neither MASN nor the Orioles ever objected to these requests or to providing the information needed to perform the analysis they themselves requested the RSDC to do.

h. The Rifkin November 2014 Affidavit claims that I "ordered a standstill" among the parties. Rifkin Nov. 2014 Aff. ¶ 12.c. This, again, is a mischaracterization and is contradicted by the operative documents. I did encourage the parties to try and reach

a voluntary agreement concerning MASN's payment of telecast rights fees pending the RSDC Decision, and the parties ultimately did agree to such an arrangement. The standstill agreement that was reached was a product of those voluntary negotiations among the parties. I helped to document that agreement, and noted it as such, but I did not "order" it. *See* Rifkin Ex. 25 ("I think the following should be sufficient to form a final agreement on the standstill issue[.]").

i. The Rifkin November 2014 Affidavit claims that I, "on behalf of the RSDC ruled on various matters, including as to a dispute regarding the submission of certain post-hearing information." Rifkin Nov. 2014 Aff. ¶ 13. With respect to the Nationals' PowerPoint slide deck, I issued no ruling at all. Rather, in response to MASN's objection, I advised the Nationals to submit only those slides that had been displayed at the hearing. The Nationals complied with that request. With respect to MASN's attempt to submit an additional, post-hearing brief on a court decision, I made no ruling at all. Rather, I reported the RSDC's decision on this request to the parties. As I explained at the time, "The RSDC has decided not to consider the additional materials on the Fourth Circuit decision submitted by either party." Rifkin Ex. 30. That decision of the RSDC, to which no party objected, was consistent with the RSDC's longstanding practice of not taking post-hearing, substantive submissions that were not invited by the RSDC at the hearing and thus were attempted to be submitted after the record had closed.

## IV. MASN's Proposed Document Requests

21. I am familiar with some of the documents that would be responsive to MASN's draft Document Requests. MASN's draft Document Request Numbers 2 and 3 ask MLB to produce documents that reflect the legal advice that MLB counsel, including me, Daniel Halem,

and Christopher Park, provided to the RSDC during the RSDC Proceeding. The documents responsive to those Requests also reflect the deliberations of the RSDC members during their decision-making process.

22. The RSDC does not maintain meeting minutes, formal attendance sheets, or formal memoranda of its deliberations. Accordingly, if MLB were directed to produce such documents in response to draft Document Request Number 1, MLB would be required to search through a variety of different types of documents, including email, paper documents, and other electronic documents, to attempt to identify every document that might reflect who attended a particular RSDC meeting over a four-year period.

23. MLB would be required to undertake a similarly burdensome search if it were directed to produce or identify on a privilege log all documents of any kind concerning "the analysis, consideration and application by" the RSDC of the "RSDC's established methodology for evaluating all other related party telecast agreements in the industry" over a four-year period, as requested in draft Request Number 2(a).

## V. Response to Improper References to Inadmissible Statements and Documents Made in Furtherance of Settlement

24. The Rifkin November 2014 Affidavit impermissibly discloses (and often mischaracterizes) a number of conversations that took place, and at least one document that was generated, as part of confidential settlement discussions. Mr. Rifkin repeatedly not only agreed on behalf of the Orioles and MASN, but affirmatively insisted that those discussions were for settlement purposes only and were inadmissible for any purpose; indeed, Mr. Rifkin typically conditioned his statements with such a requirement of confidentiality and non-admissibility. MLB agreed to hold those conversations on that basis. The following paragraphs of the Rifkin November 2014 Affidavit were made during settlement discussions that all participants agreed

were inadmissible for any purpose: 11.c, 15, and 17 through 19. Additionally, Exhibit 9 to the Rifkin November 2014, which is partially and selectively redacted without explanation, was sent in furtherance or otherwise as part of settlement discussions that all participants agreed were inadmissible for any purpose. Given the agreement between MLB and the Orioles that such conversations were confidential and inadmissible for any purpose, I believe that those communications cannot be considered in this litigation. If, however, the Court should nevertheless consider these settlement statements and documents, I am providing additional context and explanation so that the Court will not be misled by them.

25. The Rifkin November 2014 Affidavit attempts to use Exhibit 9 as evidence that I agreed that the Orioles had properly preserved an objection to Proskauer's involvement in the RSDC Proceeding. That is a mischaracterization that requires divorcing the email from its context, which was part of a confidential settlement discussion. My statement in Rifkin Exhibit 9 that MLB would "never assert that you have waived your objection to [P]roskauer's involvement" was made in response to Mr. Rifkin's claim that Peter G. Angelos, the principal owner of the Orioles, would not attend a settlement meeting unless MLB agreed that the Orioles' *participation in the meeting* would not be used against the Orioles. My email simply confirmed that MLB would not allege that the Orioles' continuing participation in settlement discussions would operate as a waiver of their position on Proskauer's involvement. MLB has abided by that agreement and has never advanced such an argument. The email does not say—and does not mean—that I or MLB have accepted the validity of the Orioles' positions regarding Proskauer's involvement, including Mr. Rifkin's position now that the Orioles had a so-called "continuing objection" to Proskauer's involvement that carried any weight.

26. In the Rifkin November 2014 Affidavit, Mr. Rifkin mistakenly claims that I told him during a settlement meeting on July 24, 2014 that my staff had written the RSDC Decision. Rifkin Aff. ¶ 19. In fact, what I explained to Mr. Rifkin during that meeting, as I had on several other occasions, was that, consistent with longstanding RSDC practice, MLB staff had prepared a draft decision for the RSDC's review.

27. Mr. Rifkin also claims that I instructed RSDC members as to their "mandate" and suggests that this instruction amounts to improper influence on the RSDC process. The RSDC's "mandate" for this matter was set forth in detail in the March 28, 2005 Agreement. The parties to the RSDC Proceeding presented argument in their submissions and during the merits hearing about the requirements of the March 28, 2005 Agreement concerning the Nationals' future telecast rights.

28. Indeed, before the RSDC process began, Mr. Rifkin asked me about the RSDC's "established methodology for evaluating all other related party telecast agreements in the industry." In response, I sent him a letter dated November 10, 2011 providing him with my thoughts on it. Annexed hereto as Exhibit 3 is a true and correct copy of my November 10, 2011 letter to Mr. Rifkin. I sent a substantively identical copy of the same letter to the Nationals. Annexed hereto as Exhibit 4 is a true and correct copy of my December 14, 2011 letter to Joseph M. Leccese. In their pre-hearing briefs and at the merits hearing itself, the parties addressed and presented argument on the meaning of the contract. The RSDC then took those arguments under advisement and rendered its decision.

Dated: Kansas City, Missouri
November 19, 2014

Robert D. Manfred, Jr.