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15 Attorneys for the National Hockey League

16 UNITED STATES BANKRUPTCY COURT
17 FOR THE DISTRICT OF ARIZONA
18

19 In re)	Case No. 2:09-bk-09488-RTBP
)	
20 DEWEY RANCH HOCKEY, LLC,)	(Jointly Administered)
)	
21 COYOTES HOLDINGS, LLC,)	Chapter 11
)	
22 COYOTES HOCKEY, LLC, and)	Declaration of Gary B. Bettman
)	
23 ARENA MANAGEMENT GROUP, LLC,)	Date: June 9, 2009
)	Time: 9:00 a.m.
24 Debtors.)	Location: U.S. Bankruptcy Court
)	230 N. First Ave, Courtroom 703
)	Phoenix, AZ 85003
25)	

26 This filing applies to:

- 27 ☒ All Debtors
28 ☐ Specified Debtors

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1. I am the Commissioner of the National Hockey League ("NHL" or "League"), a position I have held since 1993. I submit this declaration in support of the National Hockey League's Objection to the Debtors' Request to Sell the Phoenix Coyotes Under Sections 365 and 363 of the Bankruptcy Code. This declaration also relies upon the Declaration of William L. Daly, filed on May 13, 2009 [dkt. no. 93], which I have read and hereby incorporate by reference. The facts stated herein are based on my own personal knowledge.

The NHL Structure

3. All the NHL Member Clubs, including the Coyotes, are signatories to the Constitution of the NHL, and "have duly executed [the] Constitution, signifying their acceptance and ratification thereof." In the NHL Constitution each NHL Member Club "accepts and agrees to abide by the foregoing Constitution and each and every alteration, amendment and repeal thereof duly made." In addition, the "Member Clubs agree to conform to and be bound by the By-Laws." Accordingly, the right of each NHL Member Club to regulate its own affairs is expressly subject to the provisions of the NHL Constitution and By-Laws as well as the properly enacted Resolutions of the Board of Governors, which is comprised of one member from each Club. The NHL Constitution provides that each NHL Member Club "accepts and agrees to abide by the foregoing

1 Constitution and each and every alteration, amendment and repeal thereof duly made." (See NHL
2 Constitution, Daly Decl. Ex. A.)

3 4. A franchise simply cannot exist or operate as an NHL Member Club without having
4 agreed to abide by the NHL Constitution, By-Laws, Resolutions, and rules and procedures. These
5 charter documents not only set up the internal governance of the League, but also grant to the
6 Member Clubs the essential rights (and responsibilities) of membership in the NHL – for example,
7 franchise territorial rights. The consent agreement accompanying the purchase of a franchise or
8 signed subsequently when a franchise alters its ownership structure reinforces these various rights
9 and responsibilities under the NHL Constitution and By-Laws and often creates additional rights
10 and responsibilities by way of separate contract. (See Phoenix Coyotes' September 27, 2006
11 Consent Agreement, Daly Decl. Ex. E.) Only the NHL Board of Governors can make "NHL
12 teams," and it is through the NHL Constitution and By-Laws and the consent agreement that the
13 League grants membership to new owners. Further, as a matter of routine practice, the consent
14 agreement (including the one signed by Debtors in 2006) contains a release provision under which
15 the owner gives up the right to challenge in any proceeding the NHL Constitution and By-Laws or
16 League rules and procedures. (See Daly Decl. Ex. E, ¶ 3(a).)

17 5. The NHL Constitution delineates the association's purposes and objects, which
18 include: (i) "To perpetuate hockey as one of the national games of the United States and Canada";
19 (ii) "The promotion of the common interests of the members of the League"; and (iii) "The
20 promulgation of rules governing . . . the relationships between Member Clubs and the League and
21 between the Member Clubs and other hockey clubs." (Daly Decl. Ex. A, Art. 2.)

22 6. Under the NHL Constitution, the affairs of the NHL are governed by the NHL
23 Board of Governors, which is comprised of one representative from each of the thirty Member
24 Clubs. The Board of Governors is charged with upholding and enforcing the NHL Constitution,
25 By-Laws and other NHL rules and procedures.

26 7. As the NHL Commissioner, I serve as the Chief Executive Officer of the League.
27 (Daly Decl. Ex. A, Art. 6.1.) I report to the NHL Board of Governors, which has a Chairman and
28 Executive Committee. I am expressly charged with protecting the integrity of the game of

1 professional hockey and preserving public confidence in the League. I am responsible for the
2 general supervision and direction of all business and affairs of the League. The NHL Constitution
3 grants me, as Commissioner, all powers as may be necessary or appropriate to fulfill my
4 responsibilities. (Daly Decl. Ex. A, Art. 6.3(a).) My role as Commissioner is to maximize the
5 collective value of the entire League. The NHL Constitution grants me, as Commissioner, the
6 authority to interpret the provisions of the Constitution, By-Laws, and League resolutions and rules,
7 and their application and enforcement. My determinations with respect to such matters are final
8 and binding and not subject to review. (Daly Decl. Ex. A, Art. 6.3(d).)

9 **The Jointly Created NHL Hockey Product**

10 8. The League and the Member Clubs together jointly produce an entertainment
11 product – "NHL Hockey" – that requires cooperation among the Member Clubs. No one Club can
12 produce the product alone or outside its membership in the League. The NHL's entertainment
13 product can be produced only by the Member Clubs operating together in the form of a league.

14 9. Although each Member Club is a separate corporate entity or partnership unto itself,
15 no team can produce a game – the NHL Hockey product – by itself, much less a full season of
16 games or the championship series known as the Playoffs that culminate in the Stanley Cup Final.

17 10. To increase the attractiveness of the NHL's entertainment product and promote the
18 competitiveness of the games and the season in which they are played, the Member Clubs
19 determine the geographic alignment of the teams. Although this alignment has been altered from
20 time to time, it has always been done by the Board of Governors in accordance with the
21 Constitution and By-Laws. Presently, the NHL teams are divided into two Conferences (the
22 Eastern and the Western) and six Divisions (the Northeast, Atlantic, Southeast, Central, Northwest
23 and Pacific), which are organized primarily on the basis of geographical compatibility and
24 historical rivalries. These Conferences and Divisions create additional "title" races and seek to
25 develop, perpetuate and promote long-standing rivalries. The Phoenix Coyotes currently play in
26 the Pacific Division of the Western Conference and if relocated under their proposal, they would
27 play their home games thousands of miles and several time zones away from their Division rivals
28 (which include the Anaheim Ducks, Dallas Stars, Los Angeles Kings, and San Jose Sharks). If the

1 Coyotes were to be moved to another Division, there would necessarily be ripple effects requiring
2 one or more other NHL teams also to be moved to one or more other Divisions. A forced
3 relocation of the Phoenix franchise to Hamilton – whether or not accompanied by a Divisional or
4 Conference realignment – would, in turn affect the traditional rivalries among the Member Clubs.
5 These rivalries, culminating in the NHL Playoffs and Stanley Cup Final series, foster public
6 interest in and the commercial appeal of professional hockey, the NHL and its Member Clubs, as
7 well as the intellectual property of the League and its Member Clubs.

8 11. A Member Club's popularity and commercial appeal is necessarily related to the
9 interdependence of all the Member Clubs – a team has no games to play and cannot win games or
10 championships unless it has opponents with which to compete on the ice – and the Member Clubs'
11 individual success is necessarily linked to the success of the League as a whole.

12 12. The production of NHL Hockey, which consists of 1230 regular season games over
13 a period of approximately 184 days, followed by four rounds of Playoffs, including the Stanley
14 Cup Final, requires a massive amount of planning and coordination by and among the teams and
15 the League. In addition, there are almost 200 national broadcasts (on five national broadcast
16 outlets in the United States and Canada) and over 1000 local broadcasts (on a multitude of local
17 and regional broadcast outlets) that need to be scheduled and coordinated annually. Thus, changes
18 to the League-wide schedule resulting from the relocation of one team – particularly if Division
19 realignment is sought in connection with the relocation – affects every other team in the League on
20 a variety of levels, including as it relates to ticket sales, travel and lodging arrangements and
21 associated costs, arena date availability, national and local broadcast scheduling, attractiveness of
22 match-ups, etc. All of these practical considerations and the interdependent nature of NHL Hockey
23 are among the reasons why the NHL Board of Governors requires a sufficient amount of time and
24 opportunity to study and consider whether consent to any particular franchise relocation is in the
25 best interests of the League as a whole.

26 13. The value of a particular Member Club, including the value of its intellectual
27 property, is wholly dependent on that Club's membership in the NHL. The NHL Member Clubs
28 thus share an economic interest in collectively promoting the popularity of NHL Hockey and the

1 "NHL Brand" throughout North America and around the world. Accordingly, the Member Clubs
2 have agreed to joint marketing and advertising, merchandising and licensing, and national and
3 international television contracts and sponsorship agreements, the proceeds of which are then
4 shared among the thirty Member Clubs.

5 14. Additionally, the League owns certain intellectual property rights, the use of which
6 is fundamental to participation as an NHL team, including the NHL Shield and associated names,
7 logos and symbols, the Conference and Division names and logos, League slogans and logos, and
8 League awards, trophies and names such as the Stanley Cup. These rights are owned by the
9 League itself but granted to the individual Member Clubs for their collective use in promoting both
10 their individual operations as well as the League and the NHL Brand. A franchise that has not
11 been granted the right to use these essential names (e.g., the Western Conference) or
12 representations (e.g., the NHL Shield) could not exist or operate as an "NHL hockey team" or,
13 practically speaking, play as part of the League in its regular season, Playoffs or Stanley Cup Final.
14 (See July 1, 1996 License Agreement between NHL and NHL Enterprises, L.P., as amended on
15 July 1, 2006, Daly Decl. Ex. C, §§ 1(b), 5, 6.)

16 **The Importance of the NHL Rules and Procedures for Considering Prospective Members**
17 **and Proposed Franchise Relocations**

18 15. The fundamental essence of the NHL venture is who the members are and where the
19 teams play. Both aspects have an integral and direct correlation to the overall business success of
20 the League as a whole. Accordingly, in overseeing the affairs of the NHL and its Member Clubs,
21 the Board of Governors has a compelling and legitimate interest both in who joins the NHL venture
22 (i.e., who produces NHL Hockey) and where each franchise operates (i.e., where the product is
23 produced and sold). Each NHL game requires collective action and a coordinated series of
24 interlocking agreements between all members of the joint venture. While the NHL teams compete
25 vigorously on the ice, the Member Clubs necessarily work together and depend on one another to
26 govern and conduct the business and affairs of the League.

27 16. The NHL Board of Governors therefore has a critical responsibility in assuring that
28 any new owner of an NHL franchise has the requisite background, character, integrity and skill
necessary to operate an NHL franchise successfully and in accordance with the NHL Constitution,

1 By-Laws, rules and procedures; is and will be a good partner who will conduct his affairs in the
2 best interests of his franchise and the League as a whole; and has the financial wherewithal both to
3 purchase the team and to continuously fund its ongoing operations. Similarly, the NHL Board of
4 Governors has a critical responsibility in assuring that any franchise location to which a Member
5 Club is assigned has, among other things, the requisite population and demographics, suitable arena
6 facilities and a sufficient corporate base and support to sustain an NHL franchise both now and
7 over time. In addition, the location of franchises is important from the perspective of geographic
8 balance and the League's overall footprint in order to expose the League to the greatest number of
9 fans and provide business opportunities both locally and nationally to build the NHL Brand. The
10 NHL consequently has detailed rules and procedures that govern prospective ownership transfers
11 and proposed franchise relocations; significantly, these rules and procedures have not changed
12 since the Debtors' signed the Coyotes' Consent Agreement in 2006. Indeed, each of the other
13 major professional sports leagues (the National Football League, National Basketball Association
14 and Major League Baseball) has similar rules regulating the transfer of franchise ownership and the
15 location of its member franchises and similarly delegates to its governing body of owners the
16 power to make those decisions.

17 **The Board of Governors Assesses Whether a Prospective Member Would Be a Good**
18 **Business Partner Within the NHL Venture**

19 17. To protect their legitimate interests in who becomes a partner in the NHL joint
20 venture, the Member Clubs have several long-standing fundamental rules and procedures to assess
21 prospective members. Article 3.5 of the NHL Constitution sets forth the basic rules relating to
22 ownership transfers. Under Article 3.5, an application for ownership transfer must be submitted in
23 writing to the Commissioner. Upon receipt of such an application, I am charged with investigating
24 the proposed transfer of ownership before then submitting my recommendation to the Board of
25 Governors. Ownership transfers require the consent of three-fourths of the Board. Under Article
26 3.6 of the NHL Constitution, the vote for approval of an ownership transfer may be taken at any
27 annual or special meeting of the Board, provided that each Member Club receives 10 days written
28 notice. (See Daly Decl. Ex. A, Arts. 3.5, 3.6.)

1 18. NHL By-Law 35 sets forth the considerations that guide the Board of Governors in
2 its evaluation of prospective ownership transfers, including whether the prospective member is
3 "able and willing to commit sufficient financial resources to provide for the financial stability of
4 the franchise" and is "of good character and integrity." (See NHL By-Law 35, Daly Decl. Ex. B.)
5 Consent of the Board, as a matter of routine League practice, may be made subject to, among other
6 things, execution and delivery of a consent agreement, security agreements and related instruments,
7 which typically account for the economic interdependence of the Member Clubs (e.g., requiring
8 certain levels of working capital to fund the franchise) and the importance of franchise location
9 (e.g., restrictions on negotiating the terms and conditions of a franchise relocation without League
10 consent). (See, e.g., Daly Decl. Ex. E, ¶¶ 7(a), 7(d)(i), 4(c).) While a new member must have the
11 financial wherewithal to fund the franchise, the Board must have the opportunity to determine
12 whether a prospective owner will also be a good business partner who is committed to the success
13 of the NHL venture as a whole. (See Daly Decl. Ex. B.)

14 19. All owners want their franchises to be successful, but they also desire business
15 success for the other members of the League; unlike businesses in virtually every other industry, no
16 owner should want to see another team's business fail. Because, as discussed above, the Member
17 Clubs are economically interdependent and the success of each franchise necessarily is tied to the
18 success of every other franchise, all owners must operate within the framework of the NHL venture
19 under the NHL Constitution and By-Laws, as well as related Resolutions, rules and procedures. A
20 new member must not only commit to maintaining relationships with the fans, vendors and
21 sponsors in the franchise's local market, but must also understand that NHL Hockey and the NHL
22 Brand is only created and promoted jointly through a partnership with the other twenty-nine
23 owners.

24 20. For this reason, the NHL Board of Governors has adopted Procedural Guidelines
25 implementing the provisions of Article 3.5 and By-Law 35. To guide a prospective member in
26 providing the League with the information necessary to evaluate a proposed ownership transfer, the
27 NHL Constitution also contains an exhibit ("Exhibit O") that further details the relevant procedures,
28 including the specific forms that must be executed and included in any application for a transfer of

1 ownership interest. The procedures make clear that it is the obligation of the transferring owner to
2 ensure that the Commissioner timely receives all information and documents. (See Exhibit O to
3 NHL Constitution, Daly Decl. Ex. K.)

4 21. In October 2008, the League also adopted additional Ownership Transfer
5 Procedures with respect to the preliminary qualification of prospective members. These
6 procedures are specifically intended to involve the League early on in any negotiation process in
7 order to assess the qualifications and suitability of potential new owners so as to expedite a
8 subsequent review process. (See Ownership Transfer Procedures – Preliminary Qualification
9 Procedures, Daly Decl. Ex. L.)

10 **The Board of Governors Has Several Factors That it Must Evaluate and Weigh In**
11 **Considering Proposed Franchise Relocations**

12 22. Each Member Club has a substantial and legitimate interest in the location of each
13 other Member Club because, among other things, the location of the franchises necessarily impacts
14 the value and revenue-generating capabilities of the League as a whole, as well as those of each
15 Member Club. As the Canadian Bureau of Competition found on March 31, 2008, after
16 investigating the NHL rules and procedures regarding franchise relocation:

17 Properly circumscribed restrictions on the location of a franchise can
18 serve a number of legitimate interests of the league; such as: (i)
19 creating and enhancing spectator interest by preserving traditional
20 team rivalries and fostering the development of new ones; (ii)
21 encouraging investment by private parties and municipalities in arena
22 construction and related infrastructure; (iii) respecting the investment
23 made by private parties in the supply of refreshments, parking,
24 transportation, and team and league paraphernalia relating to the
25 franchise; (iv) attracting spectators and corporate sponsors by
26 showing a strong commitment to a local market and the league as a
27 whole; (v) ensuring that the sport is being appropriately promoted
28 and that the reputation and goodwill of the league and its individual
teams are not being compromised; and (vi) maximizing revenues
generated by the league in the form of television and media coverage
rights by promoting the overall stability of the franchises that
constitute the league and creating an appropriate regional balance to
ensure that the greatest number of spectators is reached.

(Canadian Bureau of Competition Backgrounder, summarizing the Bureau's main findings, Daly
Decl. Ex. I.)

23. Under Articles 3 and 4 of the NHL Constitution, each NHL Member Club is granted
the right to operate an NHL franchise only in a particular geographic location in the United States

1 or Canada, known as its "home territory." The Constitution expressly provides that, except as
2 delineated by the Constitution (or properly enacted Resolutions of the Board of Governors), the
3 League controls the exhibition of all NHL games. (See Daly Decl. Ex. A, Arts. 3, 4.)

4 24. As stated above, one of the purposes of the League is to "perpetuate hockey as one
5 of the national games of the United States and Canada." (Daly Decl. Ex. A, Art. 2.1(a).)

6 Accordingly, through its contractually provided review and approval process, the Board of
7 Governors has sought to ensure that Member Clubs are located in a broad and diverse group of
8 geographic areas. The various locations of the NHL franchises also impact, among other things,
9 national and local television arrangements (and rights fees earned by all Member Clubs), tickets
10 sold (based on team rivalries and the attractiveness of match-ups), and the scope and quantity of
11 travel each team experiences during the playing season. In the event that a Member Club would
12 like permission from the Board of Governors to relocate its home territory to another location,
13 NHL By-Law 36 sets forth the rules and procedures governing a prospective franchise relocation as
14 well as 24 factors that the Board of Governors shall consider in its evaluation of any such proposal.
15 (See NHL By-Law 36, Daly Decl. Ex. D.) Under the By-Laws, and as a matter of the NHL's
16 established practice since at least the early 1990s, only a majority of the Board of Governors
17 present and voting is required to approve a proposed franchise relocation. (Daly Decl. Ex. D at
18 36.4(c).) Thus, no single Member Club has "veto" power over a proposed franchise relocation. To
19 be clear, there would be no single-team veto permitted with respect to the Board of Governors'
20 consideration of a proposed relocation to Southern Ontario. Any such proposed relocation would
21 be subject to a majority vote of the Board of Governors. Indeed, this was confirmed by the
22 findings of the Canadian Competition Bureau based upon similar representations made to it by the
23 NHL. (See Daly Decl. Ex. I.)

24 25. Because any proposed relocation may drastically change the functioning and
25 geographic footprint of the League, the League's and Board's review process provides for careful
26 consideration of all of the potential effects of the proposed relocation. A complete application
27 must be submitted to the League addressing the variety of relevant factors addressed in By-Law 36,
28 which then must be studied and verified by the League, generally with the assistance of outside

1 professionals, and a report and recommendation is prepared internally by the League for review
2 and consideration by the League's Executive Committee, and then by the full Board of Governors.
3 At each stage, there typically are additional questions, further information requested and further
4 analysis required and performed. Finally, a significant issue for many potential franchise
5 relocations is whether and how the League can or should realign its teams in the event the proposed
6 relocation is approved by the Board of Governors. Modifying the existing Conference and
7 Division alignments can disrupt and disorient existing rivalries as well as the League's scheduling
8 matrix. Accordingly, By-Law 36 specifically requires that all relocation applications must be made
9 by January 1 of the year prior to the year in which the team proposes to begin play in its new
10 location. (Daly Decl. Ex. D at 36.1(b).) While an existing owner may apply to the Board of
11 Governors to waive this deadline, any such request for waiver should be based on good cause and
12 will only be granted to the extent the Board is comfortable that it will not negatively impact the
13 Board's ability to appropriately study and assess the desirability and consequences of a proposed
14 relocation.

15 26. The NHL has a critical interest in maintaining the viability of franchises in their
16 home markets as already assigned and approved by the Board of Governors. As such, franchise
17 relocation is disfavored when there is a viable local buyer available to keep a Club in its current
18 location, especially when that local buyer is respected and experienced in the operation of a
19 professional sports franchise and has the financial ability and wherewithal to support the team and
20 make it successful in its current location. Government entities commit significant public funds for
21 arena construction and infrastructure and other community resources with an expectation of the
22 NHL's and the franchise's long-term commitment to the local market. Here, for example, less than
23 six years ago, the City of Glendale completed construction of a new, state-of-the-art arena (now the
24 Jobing.com Arena) to house the Coyotes. This arena also anchors the multi-purpose Westgate City
25 Center. In considering any proposed relocation of the Coyotes, the Board would therefore consider
26 the economic impact and consequences to the greater Phoenix area and in particular the City of
27 Glendale in terms of jobs lost, disruption to vendor and other business partner relationships, and
28 the impact of the potential failure of the Westgate project both to the local community and to the

1 NHL's overall image and reputation. Relocation may make other cities skeptical (and potentially
2 resistant) to hosting an NHL team in the future and they will become much less likely to invest in
3 arena facilities and the accompanying infrastructure. This harms not only potential NHL expansion
4 franchises, but also those existing franchises seeking municipal participation in building new
5 infrastructure.

6 27. An unjustified or premature relocation can also disrupt League rivalries, alignment,
7 scheduling, marketing and business plans and relationships, and may also suggest a lack of League
8 stability generally that can be detrimental to fan support in the affected city and in other cities, as
9 well as the financial stability of the individual franchises. Mindful of the League's geographic
10 footprint, the Board of Governors determines franchise locations to reach existing and potential
11 new fan bases, penetrate new regional television markets, and maximize revenue for all of the
12 Member Clubs. While a particular Member Club may perceive a proposed relocation as profitable
13 for its own individual business, exiting the local market may leave fans underserved, negatively
14 affect relationships with local vendors and sponsors, and thus weaken the League as a whole both
15 economically and in terms of its accumulated goodwill with fans and business partners.

16 28. Thus, the rules and procedures governing a prospective franchise relocation
17 emphasize current local market viability first and foremost, rather than focusing on a pure
18 comparison of one market versus another. In balancing the various criteria considered by the
19 Board, factors indicating potential current market viability weigh substantially in favor of keeping
20 the team in its current location. An important component of this analysis assesses the attitude and
21 opinion of local governmental and the willingness of local government authorities to participate in
22 helping to establish the franchise's long-term viability.

23 29. The fact that a particular owner or ownership group has faced difficulties in a
24 particular market does not necessarily signal that the market is not viable. There are numerous
25 examples of NHL teams that have struggled under one ownership group and have since thrived
26 under another in the same location. Examples in recent years include the Buffalo Sabres, Ottawa
27 Senators, and Pittsburgh Penguins, each of which teams faced bankruptcy within the last decade
28 and each of which teams has rebounded to achieve both business and on-ice success in their local

1 markets. Each of the Sabres, Senators, and Penguins routinely sells out its arena now, and each
2 team has enjoyed recent runs deep into the Stanley Cup Playoffs, with the Sabres appearing in the
3 Eastern Conference Finals in two consecutive seasons in 2006 and 2007, the Senators reaching the
4 Stanley Cup Final in 2007, and the Penguins making two consecutive appearances in the Stanley
5 Cup Final in 2008 and 2009.

6 30. In evaluating a potential relocation of the Coyotes, the Board of Governors would
7 need to consider, among other factors listed in By-Law 36, (i) whether the present owner of the
8 Club has made a good faith effort to find prospective purchasers who are prepared to continue
9 operating the Club in its present location, (ii) the extent to which the Club might be operated in its
10 present location in a more prudent, efficient, and/or cost-effective manner than it has been in the
11 past and the ability of the existing home territory to support the team, (iii) the extent to which local
12 government authorities in the present location are prepared to reduce the operating costs of the
13 Club, (iv) the extent to which consent to the proposed transfer is likely to damage the image of the
14 League as a major professional sports league, be a disincentive to participation in the League, or
15 otherwise have an adverse effect on the League's ability to market and promote the League in the
16 United States or Canada, (v) the extent to which consent to the proposed transfer would result in
17 the absence of a League franchise in a major market and the extent to which the fans have
18 historically supported the Member Club in its present location, (vi) the extent to which the Club
19 has, directly or indirectly, received public financial support in its present location by virtue of any
20 publicly financed arena, special tax treatment, or any other form of public financial support, (vii)
21 the extent to which the proposed transfer, if approved, would affect any contract or agreement in
22 effect between the Club and any public or private party and the extent to which League consent to
23 the proposed transfer might expose the League to liability (including for interference with
24 contractual relations due to, among other things, existing lease obligations), (viii) the ability of the
25 proposed new location to support a Member Club, (ix) the ability of the applicant to operate the
26 team successfully in the proposed new location, (x) the quality of the facility in which the team
27 would play in its new location, and (xi) the extent to which the relocation would adversely affect
28 rivalries that have been established between the Member Club in its present location and other

1 Member Clubs. Further, in order to assess all of these relevant factors and others set forth in By-
2 Law 36, the League typically engages one or more outside consultants and experts in areas such as
3 fan demographics, marketing potential, suitability of proposed playing and practice facilities, etc.
4 (See Daly Decl. Ex. D at 36.5.)

5 **THE COYOTES SHOULD NOT BE**
6 **RELOCATED FROM PHOENIX WITHOUT NHL CONSENT**

7 31. At present, it is questionable at best whether there is any need for the Coyotes to
8 relocate from Phoenix. With the benefit of the still new and state-of-the-art Jobing.com Arena and
9 the expressed willingness of the City of Glendale to participate with the Club and/or the Arena to
10 improve their operational performance, I believe that the Coyotes could succeed under new
11 ownership in its current home market.

12 32. The Declaration of Earl Scudder, filed under seal on May 5, 2009, describes several
13 potential buyers who would keep the franchise in Phoenix. A number of these interested
14 individuals are known to the public, including Jerry Reinsdorf, the majority owner of both the
15 Chicago White Sox of Major League Baseball and the Chicago Bulls of the National Basketball
16 Association, and a potential ownership group led by John Breslow, a well-respected local
17 businessman and a current minority owner of the Coyotes. On the very day Mr. Scudder filed his
18 Declaration, I was on my way to present Mr. Scudder and Jerry Moyes, the majority owner of the
19 Coyotes, with a letter of intent that outlined a potential offer for the purchase of the franchise and
20 also contemplated significant increased partnership with and participation from the City of
21 Glendale. If consummated, the transaction contemplated by the letter of intent also would have
22 fully protected the Club's creditors, with the possible exception of Mr. Moyes, whose "loans" to
23 the Club were more properly characterized as capital contributions.

24 33. Further, pursuant to the NHL's Proposed Bid Procedures filed on May 26, 2009 [dkt.
25 no. 195], four potential buyers already have filed a preliminary Background Application seeking
26 League approval to purchase the Coyotes and – in every case – have indicated an interest in
27 operating the franchise in Phoenix. At the time of this filing, the NHL has received Applications
28 from: (i) Mr. Reinsdorf and John Kaite on behalf of a proposed new ownership entity Glendale
Hockey LLC; (ii) Mr. Breslow; (iii) Howard Sokolowski and David Cynamon, co-owners of the

1 Toronto Argonauts of the Canadian Football League; and (iv) a Phoenix businessman who has
2 requested anonymity pending due diligence. Once the Court resolves the so-called relocation issue,
3 I expect that additional applications may be filed before the tentative deadline and complete
4 applications for proposed transfers of ownership will follow. The NHL is currently reviewing the
5 materials these interested buyers have submitted and maintains that – because of the economically
6 interdependent nature of the NHL venture and its Member Clubs, discussed above – it is essential
7 that the Board of Governors have an adequate opportunity to consider and approve any or all of
8 these prospective buyers in accordance with By-Law 35 and the related rules and procedures for
9 franchise ownership transfer.

10 34. These local expressions of interest in owning the Coyotes, as well as the passion of
11 the community fan base as evidenced by the "Save the Coyotes" campaign (savethecoyotes.com)
12 and the City of Glendale's willingness to participate in enhanced partnership initiatives designed to
13 improve the team's financial performance in the state-of-the-art Jobing.com Arena, all indicate that
14 relocation may well be unnecessary and is certainly premature for the 2009-10 season.

15 35. Further, the NHL has committed to continue to fund the franchise in Phoenix under
16 appropriate conditions (as it has been since the beginning of the 2008-09 season) until a suitable,
17 League-approved purchaser can be found. If a suitable local purchaser cannot be found, I am
18 confident that a purchaser for another location can be found under the auspices of this Court and in
19 accordance with League rules and procedures. In the meantime, the NHL's funding will continue
20 under appropriate conditions (into and through next season if necessary) to provide sufficient funds
21 for Club operations until a new owner is approved by the Board and assumes control.

22 36. I believe that all of the secured or unsecured creditors' claims (except perhaps those
23 of Mr. Moyes, who we do not believe is a legitimate "creditor"), will be satisfied if the Coyotes are
24 sold to a purchaser who is committed to operating the team in Glendale. Ensuring that creditors
25 (and particularly secured creditors) are made whole in any sale of the franchise is not only an
26 important League objective, it is also a goal we have achieved in prior bankruptcies.

1 The Opportunity to Relocate the Coyotes Belongs to the NHL

2 37. Even if the Court were to decide (over the NHL's objections) that it could auction
3 the Coyotes franchise free and clear of the League's consent rights, all bids nevertheless would
4 have to account for the fact that Debtors own nothing more than the right to play hockey in the
5 Phoenix market. Under the Constitution and By-Laws, the only right granted to each Member
6 Club is the right to play NHL hockey games within its home territory. (See Daly Decl. Ex. A, Art.
7 4.3.) Each Member Club has no rights whatsoever to locate its team or play NHL hockey games
8 outside of its home territory (except as specifically provided for in the Constitution), and any
9 potential expansion opportunity is the property of the League itself. (See Daly Decl. Ex. A, Art. 4;
10 Ex. D at 36.6.) This League-wide right (ownership and control of the right to determine where
11 NHL hockey games are played) has been recognized by the U.S. courts and, more recently, by the
12 Canadian Competition Bureau (see Daly Decl. Ex. I). This authority recognizes that the value of a
13 potential NHL franchise in any city or region derives from the history and popularity of the NHL's
14 entertainment product, the goodwill developed by the League over time, as well as the particular
15 characteristics and demographics of the geographic territory itself. The NHL has developed a
16 structure of geographically diverse teams, traditions, rivalries, and fan and media interest – all of
17 which have created and/or enhanced the value of any expansion or relocation opportunity in any
18 city or region that does not currently host an NHL franchise.

19 38. Accordingly, under the NHL Constitution and By-Laws, when the Board of
20 Governors grants an expansion franchise, the accumulated value of the opportunity as established
21 by the League and its Member Clubs over the ninety-plus year history of the League is realized by
22 charging the new franchise owner an expansion fee that is collectively shared among the Member
23 Clubs as compensation for the exercise of this opportunity. Likewise, if the Board of Governors
24 were to decide to relocate an existing franchise in accordance with appropriate League rules and
25 procedures, the relocating team could be required to pay a relocation fee (to be shared among the
26 Member Clubs) to compensate the League and its Member Clubs for the value and goodwill
27 accumulated in that region (see Daly Decl. Ex. D at 36.6) and/or an indemnification fee to reflect
28 the goodwill developed by franchises neighboring the new location. These expansion and

1 relocation fees, and the League's inherent right to determine and collect them, have been routinely
2 upheld in the U.S. courts as well as by the Canadian Competition Bureau (see Daly Decl. Ex. I).

3 39. As in other professional sports leagues, the NHL has consistently assessed such fees
4 in appropriate cases. For example, in 1993 the League founded the Anaheim Ducks (at that time,
5 the Mighty Ducks of Anaheim), and the franchise paid both an expansion fee that was shared
6 among the existing Member Clubs and an indemnification fee that was paid to the nearby Los
7 Angeles Kings. There are likewise several other examples of relocation and indemnity fees,
8 including: in 1982, the Colorado Rockies relocated to New Jersey as the New Jersey Devils and
9 paid a collectively shared relocation fee and made indemnity payments to not only the New York
10 Rangers and New York Islanders, but also the Philadelphia Flyers; in 1995, the Quebec Nordiques
11 relocated to Colorado as the Colorado Avalanche and paid a collectively shared relocation fee; and
12 in 1997, the Hartford Whalers relocated from Connecticut to North Carolina as the Carolina
13 Hurricanes and paid a collectively shared relocation fee.

14 40. Payment of a relocation or indemnity fee, though, cannot adequately compensate the
15 League and its Member Clubs for the loss of their consent rights in connection with the relocation
16 of an NHL franchise. A franchise relocation that is not adequately studied and ultimately approved
17 by the Board could very well result in undermining municipal support, fan interest, business
18 partnerships, broadcast relationships, and the stability of the League as whole. The League's
19 interest is in promoting and maximizing the value of NHL Hockey through the choice of good joint
20 venture partners and stable locations rather than simply generating expansion and relocation fees at
21 the expense of overall interest in the NHL product.

22 41. Debtors do not own the right to locate a franchise anywhere other than Phoenix, and
23 any bid to purchase and relocate the Coyotes must also adequately compensate the other twenty-
24 nine Member Clubs for the usurpation of the franchise opportunity in any new territory and
25 likewise indemnify any franchises neighboring the proposed territory. For this reason, PSE Sports
26 & Entertainment LP's purported stalking horse bid contemplates grossly underpaying for the right
27 to locate an NHL team in Southern Ontario, and, after accounting for reasonable relocation and
28 indemnity fees, would clearly leave Debtors' creditors unsatisfied. I believe that PSE's \$212.5

1 million bid would pale in comparison to hypothetical rival bids that could be generated to relocate
2 the Coyotes to Hamilton were the Board inclined to approve such a relocation. The franchise
3 opportunity in Hamilton necessarily has been enhanced by the efforts of, and goodwill generated
4 by, the League as a whole and, in particular, the efforts of the Toronto Maple Leafs and Buffalo
5 Sabres. But that "enhanced value" is not the property of the Debtors – it is the property of the
6 League and the other twenty-nine Member Clubs.

7 42. Moreover, PSE's Asset Purchase Agreement ("APA") by its very terms would leave
8 Debtors' creditors unsatisfied. With respect to the economic effect of the proposed sale on the
9 creditors of Debtors' estate, a close parsing of Section 3.1 ("Purchase Price") of the APA is
10 instructive and demonstrates that the \$212.5 million Purchase Price is overstated. (See Revised
11 Asset Purchase Agreement, dated as of May 5, 2009, between Coyotes Hockey, LLC and PSE
12 Sports & Entertainment LP, attached to the Motion of Debtors for an Order under Sections 105(a),
13 363, and 365 of the Bankruptcy Code (i) Authorizing Coyotes Hockey, LLC's Sale of Substantially
14 All of Its Assets, Free and Clear of Liens, Claims, and Encumbrances, Subject to Higher and Better
15 Offers, and (ii) Approving an Asset Purchase Agreement [dkt. No 18] and the Second Declaration
16 of Richard Rodier, filed on May 26, 2009 [dkt. no. 191]). As I understand it, the Purchase Price
17 begins at \$212.5 but is reduced by the following deductions:

- 18 • Up to \$25 million based on NHL advances outstanding as against League distributions
19 and revenue-sharing funds attributable to the just-completed 2008-09 season;
- 20 • \$8 million already earned but remaining payable to Mr. Gretzky as deferred
21 compensation; and
- 22 • \$14.5 million in future compensation to Mr. Gretzky under his current employment
23 agreement.

24 43. Accounting for these significant deductions within the APA, Debtors stand to
25 receive only approximately \$165 million of the "Purchase Price": \$212.5 million (cash escrow and
26 additional payment) less \$25 million (NHL advances outstanding against League distributions and
27 revenue-sharing funds) and \$22.5 million (\$8 million payable to Mr. Gretzky as deferred
28 compensation plus \$14.5 million payable to Mr. Gretzky as future compensation). This \$165

1 million amount does not include (or apparently even contemplate) any payments that will be
2 required to be made to the City of Glendale or to the NHL and/or its members for unilaterally
3 usurping the Hamilton NHL franchise opportunity. If the team is sold to remain in Phoenix, these
4 additional expenses (which would be quite substantial) would not apply to that sale, and the full
5 amount of any purchase price would be available to satisfy creditors of Debtors' estate.

6 44. The relocation and indemnity fees payable in connection with a relocation to
7 Southern Ontario would be substantial. While the Board of Governors has the ultimate authority
8 both as to approving any prospective relocation and determining potential relocation and indemnity
9 fees (and has not to date conducted any formal analysis regarding either matter), the Debtors have
10 essentially provided their own (conservative) estimate of the potential value of a relocation fee. In
11 the Confidential Information Memorandum attached as an exhibit to the Declaration of Earl
12 Scudder, filed under seal on May 5, 2009, the Debtors estimate that the current value of an NHL
13 expansion franchise would be between [REDACTED], which is a conservative amount, especially
14 for an expansion team in Southern Ontario. Given that PSE's APA assumes a franchise value for
15 the Coyotes of approximately \$165 million, an estimate of a relocation fee in connection with a
16 hypothetical relocation to Southern Ontario – based on the difference between the Debtors'
17 estimated value of an expansion opportunity in Southern Ontario ([REDACTED]) and the Debtors'
18 proposed value of the Coyotes under the APA (\$165 million) – could be [REDACTED] or more,
19 using the Debtors' own assumptions. In fact, though, because the current value of an expansion
20 franchise necessarily depends in part on the proposed location of the franchise, I believe the value
21 of an expansion team in Southern Ontario would exceed the amount estimated by the Debtors,
22 meaning that a reasonable relocation fee could well exceed [REDACTED].

23 45. In addition to relocation and indemnity fees, in the event of a court-ordered
24 relocation that is not approved by the NHL Board of Governors in accordance with League rules, I
25 believe that the other Clubs in the League should also be entitled to seek reimbursement of any and
26 all additional operating costs and expenses that would be associated with a relocation of the
27 Coyotes' franchise to Hamilton, including the additional costs of travel and associated expenses.

28

1 **Relocating the Coyotes for the 2009-10 Season**

2 46. Although I understand that the issues regarding the "feasibility" of relocating the
3 Coyotes for the 2009-10 season are not presently before the Court, I feel compelled to respond to
4 some of the statements in the Second Declaration of Richard Rodier, filed on May 26, 2009 [dkt.
5 no. 191], relating to whether the League could accommodate a relocation at this late date. While
6 the Declaration quotes accurately from Thomas W. Gowan's June 19, 2007 letter (attached hereto
7 as Exhibit 1), it wholly misrepresents the substance of that letter as well as the hypothetical
8 situation under which the Board of Governors would have considered waiving the January 1
9 deadline with respect to a proposed relocation of the Nashville Predators. The facts and
10 circumstances surrounding the Nashville situation would have provided more than sufficient lead
11 time for a proposed relocation of the Predators in the event that, following good faith efforts to
12 support the team in Nashville, it became apparent that the team could not succeed in that market,
13 and as a result, the team became free of its lease obligations in Nashville. Mr. Balsillie and the
14 NHL could have monitored the per-game attendance levels in Nashville from the beginning of the
15 2007-08 season and likely would have known whether the team's lease was likely to terminate on
16 or around January 1, 2008 and in all events no later than the end of the regular season in early April
17 2008. Additionally, the potential for a requested relocation could have been raised by Mr. Balsillie
18 with the Board of Governors (including the potential need for a waiver of the normal filing
19 deadline) well before June 30, 2008, and the parties could have and would have established an
20 ongoing dialogue that would have allowed the League and the teams the ability to begin planning
21 for that potential contingency well in advance.

22 47. Mr. Rodier's Second Declaration thus draws an incorrect analogy with the situation
23 here. Mr. Gowan's letter suggests only that the Board may have waived the January 1 deadline and
24 considered a relocation application in "spring 2008" if Mr. Balsillie had made good faith efforts in
25 Nashville – beginning in June 2007 – and the lease had nevertheless terminated. The equivalent
26 here would necessarily involve a new owner making good faith efforts in Phoenix beginning now
27 (spring 2009) until spring 2010, and then, only if the Phoenix market were to prove not viable, a
28 hypothetical request to relocate might be filed during the spring of 2010, subject of course to the

1 franchise's ability to satisfy or otherwise negotiate a release from its current lease arrangement with
2 the City of Glendale. In that scenario, the prospective owner could advise and collaborate with the
3 NHL Board of Governors over the next year regarding the potential that a request for relocation
4 (and waiver of deadline) could be forthcoming. None of this indicates, as Mr. Rodier has
5 suggested, that a potential waiver of the January 1 deadline could be accommodated for the
6 purpose of relocating the Coyotes' franchise to Hamilton for play in the 2009-10 season. At this
7 late date, the League could not schedule the Coyotes to play the 2009-10 season somewhere other
8 than Glendale without totally disrupting not only the Coyotes' obligations to the City of Glendale
9 under its current lease and the franchise's relationships with local business partners and fans, but
10 also the structure, stability and business relationships of the League and all of its other Member
11 Clubs.

12 48. Mr. Balsillie's self-imposed deadline purporting to require a franchise relocation for
13 the 2009-10 season because of his unwillingness to fund operating losses that may result from a
14 "lame duck" season in Glendale should not be deemed to provide sufficient reason to disrupt the
15 businesses of the remaining twenty-nine Clubs, each of which is his (Mr. Balsillie's) prospective
16 joint venture partner.

17 I declare under penalty of perjury under the laws of the United States that the foregoing is
18 true and correct.

19 Executed this 5th day of June, 2009, in New York, New York.

20
21 
22 Gary B. Bettman
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