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15 Attorneys for the National Hockey League

16 **UNITED STATES BANKRUPTCY COURT**

17 **FOR THE DISTRICT OF ARIZONA**

18 In re	)	Case No. 2:09-bk-09488-RTBP
	)	
19 DEWEY RANCH HOCKEY, LLC,	)	(Jointly Administered)
	)	
20 COYOTES HOLDINGS, LLC,	)	Chapter 11
	)	
21 COYOTES HOCKEY, LLC, and	)	<b>Second Declaration of William L. Daly</b>
	)	
22 ARENA MANAGEMENT GROUP, LLC,	)	Date: August 5, 2009
	)	Time: 9:00 a.m.
23 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 Deputy Commissioner of the National Hockey League ("NHL" or "League"), a position I have held since 2005. I have been employed continuously by the NHL since 1997, when I was hired as the League's senior ranking legal officer. I submit this declaration in support of the National Hockey League's Motion for Rescheduling of 363 Auction Sale. The facts stated herein are based on my own personal knowledge.

2. I have read the "Second Declaration of Jim Balsillie," dated July 31, 2009, and I attended each of the meetings he references in his declaration, including the August 29, 2006 meeting between Mr. Balsillie and Commissioner Gary Bettman at the NHL's League Offices in New York, the December 4, 2006 meeting of the NHL Executive Committee at which Mr. Balsillie was interviewed in connection with his interest in purchasing the Pittsburgh Penguins, and the July 29, 2009 meeting of the NHL Executive Committee at which Mr. Balsillie was interviewed in connection with his current interest in purchasing the Phoenix Coyotes, as well as the NHL Board of Governors meeting that followed on the same date. As described below, Mr. Balsillie has misstated many of the facts related to those meetings.

3. With respect to his August 29, 2006 meeting with Commissioner Bettman, Mr. Balsillie both ignores League policy and practice and materially distorts what transpired during the meeting. At the time, both the League and the Penguins, and ostensibly Mr. Balsillie, were focused on the Penguins' attempts to arrange for the financing of a new arena in Pittsburgh. Mr. Balsillie was also concerned about whether after completing a purchase of the Pittsburgh Penguins he would be allowed to relocate the Club if he was unable to obtain a new arena in Pittsburgh. The League's policy and practice at the time, which remains in place today, requires new owners to execute the NHL's standard form consent agreement. The League's standard form consent agreement includes a term requiring the new owner to operate the Club in its existing home territory for seven years.

1 The Board of Governors always has the discretion, however, to waive enforcement of the seven-  
2 year requirement, and has generally been willing to do so if a Club has made a good faith effort to  
3 succeed in its home territory but has been unsuccessful for reasons beyond its control.

4 4. Mr. Balsillie's statements about the meeting must be understood with those policies  
5 and practices in mind. For example, Mr. Balsillie states that "[t]he Commissioner assured me that  
6 there would be 'no special terms' in the Consent Agreement." (Balsillie Decl. ¶ 12.) The seven-  
7 year requirement is not a "special term"; it is part of the League's standard form consent agreement.  
8 Mr. Balsillie goes on to say that "[t]he Commissioner agreed that as long as I negotiated in good  
9 faith to obtain a new arena deal in Pittsburgh, if I was unable to obtain a feasible deal, I would be  
10 allowed to relocate in accordance with the NHL bylaw." (*Id.*) Commissioner Bettman may have  
11 explained the League's policies and practices relating to relocation, including that if Mr. Balsillie  
12 negotiated in good faith and was unable to obtain a feasible deal, the Board of Governors may have  
13 entertained an application to relocate the franchise pursuant to applicable League rules, but at no  
14 time did the Commissioner ever tell Mr. Balsillie that the League would delete the standard seven-  
15 year requirement from the consent agreement.

16 5. To the contrary, Commissioner Bettman emphasized that it was the League's strong  
17 desire to have the Penguins remain in Pittsburgh and that he was intent on doing everything within  
18 his power (in cooperation with whatever entity or group that might own the Penguins) to seek the  
19 construction of a new arena and the negotiation of satisfactory new arena lease that would enable  
20 the Penguins to remain in Pittsburgh for the long term. The parties discussed at length the two  
21 arena financing plans in Pittsburgh that had been publicized. As to the second plan, which was  
22 referred to as "Plan B," Commissioner Bettman made clear that his judgment was that the plan was  
23 "sufficient" to support the Penguins in Pittsburgh and to avert the Club's need to explore a  
24 relocation of the franchise. When asked if he agreed, Mr. Balsillie expressly stated that he agreed  
25 with the Commissioner's judgment, and that if "Plan B" materialized he would keep the team in  
26 Pittsburgh and would not, under any circumstances, seek to relocate the franchise to another market.

27 6. The day after the meeting I prepared a memorandum to record what happened  
28 during the meeting. A true and correct copy of my memorandum is attached hereto as Exhibit A.

1 The memorandum does not include any mention of the seven-year requirement, much less reflect a  
2 statement that the requirement would be waived. To the contrary, it clearly reflects the  
3 Commissioner's position at the time that the Club should remain in Pittsburgh, and Mr. Balsillie's  
4 agreement with that position:

5           The Commissioner expressed his views with respect to the two arena  
6 financing plans in Pittsburgh that have been publicized to date – (1) the Isle of  
7 Capri ("IOC") plan (to which the Penguins' franchise has contractually obligated  
8 itself to support for a defined period of time) and (2) the "Plan B" structure that  
9 had been announced recently by the state and local governments as an alternative  
10 to the IOC plan. As to the latter, while acknowledging that he would work  
11 diligently to make the deal more financially beneficial to the Penguins, it was the  
12 Commissioner's view that as originally laid out and articulated by government  
13 officials, and even if not improved by a "single penny," the Plan B arrangement  
14 to the extent it materialized was "sufficient" to support the Penguins in  
15 Pittsburgh and to avert the Club's need to explore a relocation of the franchise.  
16 The Commissioner asked Mr. Balsillie if he agreed with the Commissioner's  
judgment in that regard and Mr. Balsillie expressly concurred, stating that even  
[if], despite his best efforts, he was unable to "improve" the financial parameters  
of "Plan B," and such Plan "materialized," he was committed to maintaining the  
Pittsburgh Penguins' franchise in Pittsburgh and would not, under any  
circumstances, seek to relocate the franchise to another market. (Mr. Balsillie  
reiterated his position in this regard two additional times during the course of the  
meeting.) The Commissioner then again made clear his position that to the  
extent "Plan B" materializes (even if not improved), regardless of what the  
Club's position might be, he would not be prepared to recommend to the Board a  
relocation of the Pittsburgh franchise to another market.

(Ex. A at 2 (emphasis added).)

7.       Mr. Balsillie's description of what occurred at the August 29, 2006 meeting is also  
inconsistent with a prior description of the meeting by Mr. Balsillie's own counsel. Attached  
hereto as Exhibit B is a true and correct copy of a November 7, 2006 letter from Ms. Victoria  
Gilbert, counsel for Mr. Balsillie, to David Zimmerman, the General Counsel of the NHL. In Ms.  
Gilbert's letter, she reiterates at length Mr. Balsillie's purported commitment to the City of  
Pittsburgh. In the course of that explanation, she states: "At the meeting at the Commissioner's  
office on August 29, 2006 Jim (together with Richard [Rodier]) made a commitment, in front of  
numerous attendees, regarding their intention to keep the Penguins in Pittsburgh which was  
unequivocal." (Ex. B at 4 (emphasis added).)

1 **Mr. Balsillie's December 4, 2006 Interview with the NHL Executive Committee**

2 8. Mr. Balsillie also misstates what occurred during his interview with the Executive  
3 Committee on December 4, 2006. Mr. Balsillie states, "I was asked, if a new arena was not built,  
4 would I sell the team to the League. I replied that I would give the League the option if I received  
5 a right to put the team to the League in that event. That is all that was said on that subject. We did  
6 not discuss the price or any other terms of how the option/put would work." (Balsillie Decl. ¶ 17.)

7 9. In fact, Mr. Balsillie's commitment to keeping the Penguins in Pittsburgh was a  
8 major topic of conversation during the interview. Mr. Jeremy Jacobs, owner of the Boston Bruins  
9 and Chairman of the NHL Board of Governors, pointedly asked Mr. Balsillie if he was committed  
10 to keeping the Penguins in Pittsburgh. Mr. Balsillie's unequivocal answer was "yes." On the  
11 subject of a potential "buy back" provision, during the interview Mr. Balsillie orally agreed to a  
12 provision that would have given the League the option to buy the Club from Mr. Balsillie at the  
13 price he had paid for the Club in the event that the two arena deals under contemplation failed and  
14 he sought to relocate the Club. There was no discussion of a "put." Based on his representations  
15 and the agreement reached during the interview, the Executive Committee recommended his  
16 approval as an owner to the NHL Board of Governors.

17 10. When it came time to reduce that commitment to writing, however, Mr. Balsillie  
18 refused to do so. He claimed that putting his prior commitments in writing would take away his  
19 "leverage" in negotiations for a new arena in Pittsburgh. To address his stated concern, the League  
20 offered to move the terms related to his commitment to Pittsburgh into a confidential side letter,  
21 rather than the standard form consent agreement. But Mr. Balsillie refused to sign the side letter  
22 and ultimately backed out of the deal.

23  
24 **The League's Evaluation of the Applications of Prospective Owners of the Phoenix Coyotes**

25 11. The League followed the same processes and gave the same consideration to the  
26 applications of each of the three potential ownership groups interested in purchasing the Phoenix  
27 Coyotes: Mr. Balsillie, the group led by Mr. Jerry Reinsdorf, and the "Ice Edge" group led by Mr.  
28 Anthony LeBlanc. To comply with the July 30, 2009 deadline set by the Court, the NHL expedited

1 its processes for considering the applications by the Reinsdorf group and the Ice Edge group and  
2 scheduled their interviews for July 29, 2009, despite not having all the information it normally  
3 collects during the due diligence process. The League also scheduled the interview of Mr. Balsillie  
4 for the same day as the other interviews to complete the consideration of his application within the  
5 two-month timeframe that the NHL had informed the Court was feasible. The League's efforts  
6 included: (i) soliciting background materials regarding all interested parties; (ii) employing  
7 investigators, accountants and attorneys to conduct background investigations of those parties; (iii)  
8 evaluating the results of those investigations; (iv) conducting interviews of the interested parties;  
9 and (v) conducting a vote of the Board of Governors regarding whether to approve the interested  
10 parties as potential owners of the Coyotes.

11 12. At the recent July 29, 2009 meeting of the NHL Executive Committee, the  
12 Executive Committee conducted interviews with the three potential ownership groups. After  
13 deliberating, the Executive Committee held votes as to what recommendations it should make to  
14 the NHL Board of Governors. The Executive Committee voted unanimously to: (i) grant  
15 conditional approval to the Reinsdorf Group pending completion of due diligence and review of  
16 specific transaction terms, including any new equity investors; (ii) defer consideration of the Ice  
17 Edge Group until certain background information was supplied, due diligence was completed, and  
18 its evolving bid was more fully developed; and (iii) disapprove the application of Mr. Balsillie.

19 13. During both the Executive Committee and Board of Governors meetings, it was  
20 repeatedly emphasized that the League was only considering and voting upon the suitability of  
21 each group as owners under Article 3.5 and By-Law 35 of the NHL Constitution and By-Laws.  
22 The Executive Committee and Board of Governors were also both told that they should not  
23 consider the fact that any of the potential ownership groups may want to relocate the Coyotes in  
24 considering whether they met the League's criteria for ownership of an NHL Club, and in fact there  
25 was no discussion during either meeting related to Mr. Balsillie's interest in relocating the Coyotes  
26 to Hamilton, Ontario.

27 14. I understand from Mr. Balsillie's Declaration that he believes he was treated unfairly  
28 by the NHL Executive Committee. That is simply not true. The Executive Committee met on the

1 morning of July 29, 2009, prior to any of the interviews with the three ownership groups, to discuss  
2 the League's investigation and due diligence regarding each group. Members of the Executive  
3 Committee read and discussed a written report that had been prepared regarding each ownership  
4 group. Members of the Executive Committee also orally reported on their prior dealings with Mr.  
5 Balsillie. Mr. Craig Leipold, the current owner of the Minnesota Wild and the former owner of the  
6 Nashville Predators, read to the Executive Committee a lengthy statement that he personally had  
7 prepared recounting his dealings with Mr. Balsillie and his significant concerns about approving  
8 him as an NHL owner. A true and correct copy of Mr. Leipold's statement is attached hereto as  
9 Exhibit C. As reflected in the statement, Mr. Leipold made it clear that he did not believe Mr.  
10 Balsillie would be a suitable owner of an NHL franchise under the standards set forth in the NHL  
11 Constitution and By-Laws. All of the issues discussed in the meeting focused on Mr. Balsillie's  
12 character and integrity, including his willingness to be a good partner within the League and to  
13 comply with League rules and procedures.

14 15. During Mr. Balsillie's interview, a wide range of issues was discussed and this  
15 declaration is not intended to provide an exhaustive list of every issue that was discussed or  
16 considered by the Executive Committee. Several members of the Executive Committee, including  
17 Mr. Jacobs, Mr. Tim Leiweke, Mr. Peter Karmanos, and Mr. Tom Hicks questioned Mr. Balsillie  
18 regarding his prior interview with the Executive Committee and his refusal to follow through with  
19 the commitments he made during that meeting, including the "buy back" agreement. They each  
20 stated that they clearly recall that Mr. Balsillie's unequivocal answer to Mr. Jacob's question in  
21 2006 regarding whether he was committed to keeping the team in Pittsburgh was "yes," he was  
22 committed to keeping the team in Pittsburgh. Mr. Balsillie did not have satisfactory answers to  
23 their questions. Without directly denying his prior commitment, Mr. Balsillie simply argued that  
24 he had never been willing to sign the League's standard form consent agreement, and incorrectly  
25 claimed that the League had attempted to change the deal at the last moment.

26 16. Mr. Leipold and others also questioned Mr. Balsillie at length regarding his actions  
27 in 2007, which appeared to have been taken with the purpose and effect of destabilizing the  
28 Predators franchise in Nashville. Issues that were discussed included the facts that in June 2007:

1 without the consent of Mr. Leipold and against the express direction of Commissioner Bettman, Mr.  
2 Balsillie began soliciting "Hamilton Predators" ticket orders in Hamilton, Ontario using the  
3 Predators' intellectual property; Mr. Balsillie had publicly announced lease negotiations with the  
4 arena in Hamilton; and he had submitted a "conditional relocation application" to the League. Mr.  
5 Leipold, Mr. Gillett, Mr. Ed Snider, Mr. Ted Leonsis and I all questioned Mr. Balsillie about his  
6 conduct relating to these activities and his answers were wholly unsatisfactory. Mr. Balsillie  
7 actually suggested that his unauthorized activities somehow "helped" Mr. Leipold by leading to a  
8 resurgence of interest in the team in Nashville.

9       17. Mr. Gillett also questioned Mr. Balsillie at length about comments he had made to a  
10 reporter in November 2008 that had led to a major media story falsely reporting that the team  
11 owned by Mr. Gillett, the Montreal Canadiens, was for sale. Mr. Gillett said that the team had not  
12 been for sale at the time, but the story led to a major media storm that caused massive damage to  
13 the Canadiens' franchise. Mr. Gillett said he considered suing the newspaper over the story, and  
14 that Mr. Rodier had informed Mr. Gillett that Mr. Balsillie would provide an affidavit stating that  
15 he had been misquoted. Mr. Gillett reported that after days of working on the affidavit with Mr.  
16 Rodier, Mr. Balsillie had refused to sign it. In response, Mr. Balsillie was completely dismissive  
17 and unsympathetic. He told Mr. Gillett that he was a public figure and that he had to be careful  
18 about being drawn into public disputes of that nature. (He did not attempt to reconcile his  
19 statement with his actions in this case.) He also offered Mr. Gillett the unsolicited advice that  
20 damages are tough to prove in the type of case he had been considering pursuing.

21       18. During his interview, I also asked Mr. Balsillie about his refusal to provide all of the  
22 information the League had requested in connection with his application, including e-mail  
23 regarding League rules and procedures with respect to franchise ownership transfer or relocation  
24 and Mr. Balsillie's past attempts to purchase an NHL franchise. In response, Mr. Balsillie, the co-  
25 CEO of Research in Motion, offered a series of evasive answers claiming alternatively that he does  
26 not maintain personal files, that he could not search for them because his e-mail is on RIM's  
27 corporate servers and this is not a RIM matter, or that his e-mails "self-delete" as part of RIM's  
28 document retention policy. Members of the Executive Committee, including Mr. Peter Karmanos,

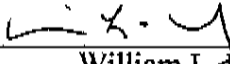
1 CEO of Compuware, and Mr. Ted Leonsis, former Vice Chairman of AOL, who are intimately  
2 familiar with e-mail searches, were astonished by Mr. Balsillie's answers. It was obvious to  
3 everyone present at the meeting that Mr. Balsillie had no satisfactory reason for failing to comply  
4 with the NHL's information requests, and simply chose not to comply.

5 19. After Mr. Balsillie's interview, the Executive Committee deliberated and then voted  
6 unanimously to recommend disapproval of Mr. Balsillie's application for transfer of ownership,  
7 finding that he lacks the good character and integrity required under Article 3.5 and By-Law 35 of  
8 the NHL Constitution and By-Laws. In a meeting later that afternoon, following a report regarding  
9 the interviews and the Executive Committee's deliberations, as well as a discussion regarding the  
10 relevant standard under the NHL Constitution and By-Laws (the Board was read Article 3.5 and  
11 By-Law 35 as part of this discussion), the NHL Board of Governors voted to disapprove Mr.  
12 Balsillie's application. Twenty-six teams voted to disapprove; three teams abstained from the vote;  
13 and one team was absent.

14 20. The events discussed at the July 29, 2009 Executive Committee meeting, each of  
15 which related to conduct subsequent to the Executive Committee's 2006 "vote" in relation to Mr.  
16 Balsillie's attempt to purchase the Pittsburgh Penguins, show that the Executive Committee has  
17 significant and legitimate concerns regarding Mr. Balsillie's trustworthiness as a business partner  
18 and that the NHL properly exercised its business judgment in determining that Mr. Balsillie was  
19 not a suitable owner under Article 3.5 and By-Law 35 of the NHL Constitution and By-Laws.

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

22 Executed this 2nd day of August, 2009, in Fairfield, New Jersey.

23  
24   
25 William L. Daly  
26  
27  
28

## Exhibit A



## M E M O R A N D U M

August 30, 2006

TO: PITTSBURGH PENGUINS FILES

FROM: BILL DALY

RE: JIM BALSILLIE / AUGUST 29 MEETING

Commissioner Bettman and I attended a meeting last night involving the current ownership and management of the Pittsburgh Penguins and a potential new ownership group led by Jim Balsillie that was interested in entering into an agreement to purchase the Club. In attendance representing the Penguins was Ken Sawyer; representing the Lemieux Group Investors were Mario Lemieux, Ron Burkle, Bill Kassling and Tom Grealish; representing Yucaipa (Ron Burkle's company) was Kevin Marchetti; and representing Allen & Company were Steve Greenberg and Salima Vahabzadeh. Jim Balsillie was present in his capacity as a potential buyer of the team, represented by Richard Rodier as his counsel and potential partner in ownership. The meeting began at approximately 6:00 pm and continued until about 6:45 pm.

Upon entering the room we were told that, as between the seller and the potential buyer, they believed they had the framework of an agreement for the sale and purchase of the Club for an overall purchase price of \$175 million, and that, in that connection, they wanted a sense for the Commissioner's level of "support" for the proposed transaction. The Commissioner made clear that it was not his role to judge or make determinations with respect to potential ownership transactions, but rather to evaluate them in the context of all the relevant circumstances and to give his best recommendation (in consultation with the Executive Committee) to the NHL Board of Governors as to whether the transaction is or is not in the best interest of the League as a whole. The Commissioner then emphasized that it was the League's strong desire to have the Penguins remain in Pittsburgh and that he was intent on doing everything within his power (in cooperation with whatever entity or group that might own the Penguins) to seek the construction of a new arena and the negotiation of satisfactory new arena lease that would enable the Penguins to remain in Pittsburgh for the long-term.

The Commissioner expressed his views with respect to the two arena financing plans in Pittsburgh that have been publicized to date – (1) the Isle of Capri (“IOC”) plan (to which the Penguins’ franchise has contractually obligated itself to support for a defined period of time) and (2) the “Plan B” structure that had been announced recently by the state and local governments as an alternative to the IOC plan. As to the latter, while acknowledging that he would work diligently to make the deal more financially beneficial to the Penguins, it was the Commissioner’s view that as originally laid out and articulated by government officials, and even if not improved by a “single penny,” the Plan B arrangement to the extent it materialized was “sufficient” to support the Penguins in Pittsburgh and to avert the Club’s need to explore a relocation of the franchise. The Commissioner asked Mr. Balsillie if he agreed with the Commissioner’s judgment in that regard and Mr. Balsillie expressly concurred, stating that even, despite his best efforts, he was unable to “improve” the financial parameters of “Plan B,” and such Plan “materialized,” he was committed to maintaining the Pittsburgh Penguins’ franchise in Pittsburgh and would not, under any circumstances, seek to relocate the franchise to another market. (Mr. Balsillie reiterated his position in this regard two additional times during the course of the meeting.) The Commissioner then again made clear his position that to the extent “Plan B” materializes (even if not improved), regardless of what the Club’s position might be, he would not be prepared to recommend to the Board a relocation of the Pittsburgh franchise to another market.

Discussion was then had with respect to strategies to achieve the best arena financing deal possible in Pittsburgh. In that connection, Mr. Balsillie and Mr. Rodier expressed that it would be their intention to avoid pursuing discussions with the governmental authorities prior to the expiration of IOC’s “exclusive” period, which early negotiations would involve imposition of a \$12 million fee. Instead, they hoped to support the passage of the IOC deal and to turn to “Plan B” only to the extent it became necessary. The Commissioner suggested that the potential buyer perhaps reconsider that strategy, or at the very least, allow him, on behalf of the League, to explore further with government officials the viability of Plan B and to urge the improvement of Plan B for the Club’s benefit. The parties present undertook to more closely examine the Penguins’ contractual obligations to IOC to ascertain the Commissioner’s ability to have such discussions without potentially violating the terms of the Penguins/IOC Agreement.

Mr. Rodier asked the Commissioner whether there was a prescribed timeframe in which “Plan B” had to “materialize” before the Club might be permitted to apply for a relocation. The Commissioner responded that in his view, the relevant timeframe was “sometime this season,” but specifically allowed for the possibility that other circumstances may arise that might justify a lengthier timeframe.

On the subject of relocation generally, the Commissioner emphasized that any proposed relocation by the Penguins would be evaluated pursuant to relevant League Constitution and By-Law provisions at the time the possibility of relocation became real, and in particular the procedures set forth in By-Law 36. Mr. Rodier expressed that he

Pittsburgh Penguins File  
Re: Jim Balsillie / August 29 Meeting  
August 30, 2006

fully understood and accepted the League's franchise relocation procedures and that the proposed ownership group was fully prepared to abide by them.

Final discussion was then had regarding timetable for execution of purchase and sale documents and League approval. Mr. Greenberg reported on the status of document exchange between the seller and potential buyer, and indicated that binding documentation should be able to be completed within a roughly two-week time period. The Commissioner represented that the League review process would likely take at least between 8-10 weeks, with a report to the Board of Governors and ultimate Board vote taking place thereafter.

BD/ac

cc: Gary Bettman  
David Zimmerman  
Julie Grand

## Exhibit B

# **KAYE SCHOLER LLP**

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Los Angeles, California 90067-6048  
310 788-1000  
Fax 310 788-1200  
www.kayescholer.com

Victoria Gilbert  
310 788-1185  
Fax 310 1985  
vgilbert@kayescholer.com

November 7, 2006

National Hockey League  
1251 Avenue of the Americas  
New York, New York 10020  
Attention: David Zimmerman

Re: Proposed Acquisition of Pittsburgh Penguins

Dear David:

In response to your letter of November 2, 2006, I have had further discussions with Jim Balsillie and Richard Rodier and hopefully the foregoing, based on those discussions, will provide the information you have requested.

1. Aside from having previously explored the possibility of locating a team (not necessarily the Penguins) in Hamilton which was discussed with the Commissioner in his office on March 28, 2006, Jim has not, nor have any of his representatives, including Richard Rodier, taken any actions or made any plans whatsoever to explore any alternative venues for the Penguins in the event a new arena is not available in Pittsburgh by virtue of the IOC proposal or the adoption of Plan B.

However, an unsolicited inquiry has been received regarding an alternate venue for the Penguins by letter dated November 1, 2006 from Osmington, Inc. A copy of that letter, together with the email response, is attached.

2. You have asked, with respect to Richard Rodier, what is the substantive difference between the role of a consultant and counsel in connection with the proposed transaction. Counsel performs legal services; a consultant does not. Richard Rodier has not performed and will not perform any legal services for Jim in connection with this transaction. Bennett Jones is the acting counsel for Canadian matters and Kaye Scholer is the acting counsel for U.S. matters. Brian Wynn, a partner at Gardiner Roberts in Toronto, assisted with our due diligence regarding the Canadian intellectual property involved in the transaction.

If a new arena is not available in Pittsburgh and the Club must be relocated, Richard will not serve as counsel in connection with any proposed relocation.

-9013063.DOC

NEW  
YORK

CHICAGO

LOS  
ANGELES

WASHINGTON,  
D.C.

WEST PALM  
BEACH

FRANKFURT

LONDON

SHANGHAI

Following the consummation of the transaction, Richard's role may be similar in many respects to the role David Moorehouse has played in the current organization on behalf of Ronald Burkle. Richard's role will be to observe and review the day-to-day operations of the Club and report to Jim and Jim's other advisors. No employee of the Penguins will report to Richard.

Jim does not view Richard's involvement with HHC Acquisition Corp. ("HHC") as a conflict of interest with his role on Jim's behalf, to keep the Penguins in Pittsburgh provided a new arena is built under the IOC proposal or Plan B. In any event, HHC no longer has any intention, right or ability to locate an NHL team in Hamilton.

3. All of the discussions with Hamilton government authorities in anticipation of the March 28, 2006 meeting and in connection with HHC obtaining an option for Copps Coliseum in Hamilton took place during the last quarter of 2003 and the first quarter of 2004, ending on or around April 28, 2004 with the approval, by Hamilton City Council, of the option in question. In 2003, Jim participated in a telephone call with the Mayor and identified himself as the person behind HHC's request for the option. Thereafter all discussions with Hamilton governmental authorities were conducted by Richard Rodier. The governmental authority with which those discussions took place was a standing sub-committee made up of City Councilors and included the Mayor. Occasionally some City Staff members would also attend. There were numerous meetings as negotiations were painfully slow. The only topic which was discussed was the terms and conditions under which the City of Hamilton would be willing to grant such an option. These discussions led to the approval and eventual execution of the option agreement by the City of Hamilton. The only topic specifically related to the potential relocation that was discussed was the terms and conditions under which the City of Hamilton would be willing to grant the option. Neither Jim Balsillie nor any Balsillie Representative has had any discussions with any Canadian authorities (such as Infrastructure Canada) with regard to the renovation or construction or the financing of a renovation or construction of any arena located in Canada.

4. Please allow us to clarify what was "disclosed" to the Commissioner in the March 28 meeting regarding discussions or interactions Jim or any Balsillie Representative had with governmental authorities regarding (A) NHL's policies, procedures regarding franchise relocation, (B) potential relocation of an NHL franchise, including the Penguins, outside of Pittsburgh and/or (C) plans for financing, renovation or construction of an arena suitable for an NHL team other than in Pittsburgh. By "disclosed" we meant discussed at the meeting. There was some general discussion with the Commissioner regarding NHL's policies and procedures regarding franchise relocation. There was some discussion with the Commissioner regarding potential relocation of an NHL franchise; that discussion did not focus on Pittsburgh but was general in nature as to the team that might potentially be a candidate for relocation. The subject of the Penguins came up by way of a suggestion from the Commissioner that Jim "take a look at Pittsburgh", but in the context that the League fully expected the team to remain in Pittsburgh. There was also some discussion with the Commissioner regarding plans for financing,

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renovation or construction of an arena suitable for an NHL team other than in Pittsburgh. In this regard, Jim and Richard presented their plans for renovating Copps Coliseum at Jim's expense, the terms and conditions of the 'option to lease Copps', as well as the results of a market study which indicated that the Southern Ontario area known as the "Greater Golden Horseshoe" had 50% more hockey fans than the New York area and double the number of hockey fans of the Los Angeles area. The Commissioner indicated that he did not think Southern Ontario could support another NHL team and that even if renovated in accordance with our presentation, Copps Coliseum was unsuitable as an NHL venue primarily because the lower bowl lacked sufficient seating. Implicit in these discussions with the Commissioner was the fact that certain discussions must have taken place with government authorities in Hamilton otherwise the option to lease Copps could not exist, and those discussions are fully and completely 'disclosed' in paragraph 3 above. We apologize for any confusion our previous letter may have caused you in this regard. Thus, other than as so disclosed to (discussed with) the Commissioner in that March 28 meeting, none of Jim, Richard, or any other representative of Jim (other than Citigroup Sports Advisory or myself in the ordinary course of our representation of other owners and prospective owners of NHL teams not related to this transaction) have had any discussions or interactions with any governmental authorities regarding relocation of NHL teams or constructing or financing arenas in locations other than Pittsburgh and Jim has not authorized any such discussions.

5. 2039802 Ontario Inc. ("2039802") is wholly owned by Jim (or members of his immediate family) and was established for the purpose of investing in HHC. 2039802 owns 100% of HHC. Prior to the formal termination of its option to lease Copps Coliseum as an NHL team venue, HHC's activities consisted of searching for an NHL team to purchase and nothing else. The circumstances surrounding the termination of HHC's option are as follows. Richard Rodier recommended to Jim that the option be terminated immediately following the execution of the APA. The reasons for Richard's recommendation were that Jim was committed to try to keep the team in Pittsburgh and that the option was therefore irrelevant and an unnecessary distraction. Jim accepted Richard's recommendation and HHC terminated its option with Hamilton on October 10, 2006 which was the very first opportunity to do so following the execution of the APA.

Jim does not recall actually denying "any involvement" with HHC in response to questions by media. More likely he refused to comment. While he may have denied related inquiries, it is difficult to address this question unless the time, context and specific question are identified. 2039802 was set up to keep Jim one step removed from HHC to protect his privacy.

6. Neither Jim nor any Balsillie Representative has had any discussions or interactions with any governmental authorities, or anyone acting for or on behalf of any governmental authorities, regarding the NHL rules, procedures, policies or practices regarding franchise relocation.

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WASHINGTON,  
D.C.

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BEACH

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SHANGHAI

By way of summary of our letters of October 30 and today:

- 1) At the meeting at the Commissioner's office on August 29, 2006 Jim (together with Richard) made a commitment, in front of numerous attendees, regarding their intention to keep the Penguins in Pittsburgh which was unequivocal.
- 2) Since that meeting Jim and Richard have been proactive in their support of the IOC proposal, but at the same time mindful of their contractual obligations under the APA. In that regard and a development since my letter to you of October 30, Jim has agreed (at Richard's polite and deferential insistence) to personally appear at the Harrisburg 'Slot hearings' on November 20 in support of the IOC proposal.
- 3) With respect to the Plan B proposal, Richard has twice actively supported initiatives to amend the IOC JDA to allow earlier negotiation of Plan B. In addition, when Richard traveled to Florida to meet with Allan Solomon, he once again asked if the IOC JDA could be amended to allow for earlier negotiation. Three times asked, three times denied.
- 4) Jim is scheduled to spend the weekend of November 17-20 in Pittsburgh, with his wife, getting to know the City and letting the City get to know them.
- 5) On Richard's recommendation, the contractual arrangements with the City of Hamilton were terminated at the very first opportunity following execution of the APA.

We note from your November 2 letter that the League may have additional information requests and/or questions as the process continues. We sincerely hope that any follow up requests and/or questions as the process continues will be in respect of issues other than Jim and Richard's commitment to Pittsburgh.

Very truly yours,



Victoria A. Gilbert

## Exhibit C

I fully understand that our meeting today is designed to interview Jim Balsillie, as a potential owner of the Phoenix Coyotes. However, given the fact that I spent months negotiating with Mr. Balsillie in 2007 regarding the potential sale of the Nashville Predators to him and, in fact, entered into a Term Sheet to sell the Nashville Predators to him, I feel that I know Jim and his counsel well. On the other hand, I think it is exceedingly important that I share with my fellow partners in the NHL my experiences with Jim. To be blunt, I plan on voting against Jim as a potential owner, and it has nothing to do with the Phoenix Coyotes or Jim's desire to move an NHL franchise to Hamilton, Ontario. Rather, I simply don't trust Jim, and don't believe he would be a good partner in the NHL or owner of an NHL franchise.

I have spent a great deal of time organizing my thoughts regarding the failed transaction between Jim and me with respect to the sale of the Predators. To explain why I don't think Jim would be a good owner, I will detail three separate reasons or examples of why my past experiences with Jim will cause me to vote against him today:

1. Jim Balsillie's attempts through his attorney, Richard Rodier, to devalue the Nashville Predators in 2005 prior to even contacting me about potentially purchasing the Predators.
2. Balsillie and Rodier's negotiations in bad faith
3. Balsillie's threats against the NHL, and me personally, with respect to the Canadian Competition Bureau.

Much of this information is going to be new to you. In fact, I never thought I would need to discuss (or even think about) my failed transaction with Mr. Balsillie again. But now, I think I owe it to each of you to disclose these facts.

I. Richard Rodier's attempts to devalue the Nashville Predators in 2005

A. On February 23, 2005, February 25, 2005, and March 7, 2005 (which is prior to any contact between Mr. Balsillie and me regarding the Predators), Richard Rodier, the attorney for Mr. Balsillie, contacted the Director of Finance for Nashville inquiring about the terms of the lease between the Predators and Nashville and the Predators compliance with the lease. I have copies of these emails, and it is my understanding that Mr. Rodier also had telephone conversations with the Director of Finance and, potentially, other members of the Nashville administration. Specifically, Mr. Rodier inquired as to whether the Predators had met the net worth requirements of the lease, and suggested to the Finance Director that the Predators could be in default of their lease due to the unclear language in the lease regarding a net worth provision.

B. Prior to Rodier, The City of Nashville had never inquired about the Predators net worth or the requirements.

C. On March 9, (two days after his last e-mail) Mr. Rodier forwarded me a letter introducing himself and inquiring about purchasing the Predators.

D. Over the next 10 days, three articles appeared in the Toronto Globe and Mail regarding the financial difficulties of the Predators. These articles were printed on March 10 (the day after Mr. Rodier approached me), March 16, and March 18. The March 18 article specifically referenced the fact that the Predators might not meet the net worth requirement under their existing lease with the City of Nashville. I should note that I have learned from subsequent conversations with Nashville officials that they never disclosed to Mr. Rodier that the Predators did not meet the net worth requirement. In fact, the city had absolutely no documentation regarding the Predators net worth, nor had they even requested this information prior to Rodier's requests.

E. Beginning in May of 2005, (and only after the Nashville Media became aware of the Globe and Mail articles) the Nashville administration began to publicly question whether the Predators were in compliance with the terms of the lease, because of our refusal to turn over confidential financial records. Unfortunately, the Nashville administration took an extreme position and argued that only physical assets (hockey pucks) could be used in calculating net worth under the terms of the lease. We believe this was the position being espoused by Rodier. For the next two years, our lawyers had to argue with the administration whether we were in breach or not, and the Nashville administration used this alleged breach to withhold large sums of money from the Predators and the arena manager.

F. To summarize, the City of Nashville had never raised the net worth requirements of the lease with me or the Predators for 8 years, until Mr. Rodier brought the provision to their attention. Mr. Rodier contacted Nashville officials prior to contacting me regarding the potential sale of the team. From the point Mr. Rodier e-mailed the city's Director of Financial and the subsequent public media attention from the Globe and Mail, our relationship with the city deteriorated greatly because the city was emboldened to argue that we were in breach of the lease. The episode ultimately cost the team thousands and thousands of dollars in legal fees and made the sale of the Predators far more difficult.

G. I only learned of Mr. Rodier's emails with the City Finance Director after I broke off negotiations with Mr. Balsillie in the summer of 2007, at which time certain administration officials advised me of the Rodier emails and inquiries of 2005.

## II. Balsillie and Rodier's negotiations in bad faith

A. My negotiations with Rodier and Balsillie began in the winter of 2007. As part of the initial Confidentiality Agreement, Rodier insisted on the insertion of a provision, which required the Predators not to discuss any potential transaction with

Balsillie with any party including the NHL. I naively agreed to this provision, but in hindsight, I wish I never had.

B. The first Term Sheet we received from Rodier required that the Predators relocate to Southern Ontario at the end of the next season and that I be responsible for acquiring an "NHL Relocation Consent". For the next several months, we argued back and forth, but I always refused to guarantee relocation because of the terms of my Nashville lease and the NHL Constitution and Bylaws.

C. I won't bore you with the back and forth of the negotiations, but on May 12, Mr. Rodier, because he was fearful that we were going to sell to another bidder, agreed to a Term Sheet with (i) a substantial increase in the purchase price, (ii) language expressly stating that Balsillie would accept the risks that relocation might not occur (either because the Predators would not be able to terminate their lease or because the NHL would not permit relocation), (iii) that Mr. Balsillie would be required to execute the NHL's standard form of Consent with a 7 year non-relocation provision, (iv) that I would have the unilateral right to make the Term Sheet binding, and (v) that Balsillie would be required to put \$10,000,000 in escrow as a break-up fee.

D. Then on May 15 after meeting with Gary in New York, I met with Balsillie and Rodier in Balsillie's offices (with my attorney taking notes over the telephone). In this meeting, I made it abundantly clear, on numerous occasions, that Mr. Balsillie was buying the Predators "Where Is, As Is" and that there would be no discussions of relocating the Predators until after his acquisition and until it became clear that the Nashville lease would terminate. Jim plainly said to me that he understood that he was buying the Nashville Predators and would be required to attempt to make the franchise work in Nashville. He also made it clear that he understood that he would be accepting any and all risk that he could not relocate the franchise.

E. After that meeting, we executed the Term Sheet. The Term Sheet clearly stated that the Sellers could unilaterally make the Term Sheet binding and that Balsillie would be required to put \$10,000,000 in escrow as a break-up fee.

F. On May 24, we exercised the option to make the Term Sheet binding and to force Balsillie to put \$10,000,000 in escrow. We then publicly announced the potential sale to Mr. Balsillie at a press conference in Nashville.

G. From that point forward, Balsillie never abided by the terms we had negotiated in the Term Sheet.

1. He refused to make the Term Sheet binding;
2. He refused to put \$10,000,000 in escrow;

3. He forwarded a Purchase Agreement, which was not in keeping with the Term Sheet and shifted all risk back to me regarding the Nashville lease or the failure to relocate;

4. In Balsillie's presence, Rodier advised that the Predators should sue the City of Nashville for "bad faith" to create the color of litigation prior to closing.

5. In Balsillie's presence, Rodier advised that after the June 30 closing, Balsillie would move the franchise in the dead of night using the litigation as cover.

6. Most importantly for the first time, Rodier threatened, in Balsillie's presence, that the Canadian Competition Bureau would bring action against the NHL if I did not close the transaction on their terms;

7. In Balsillie's presence, Rodier advised that, with respect to the threat of the Canadian Competition Bureau, Canada was not like the US "with its checks and balances" because "only a few men run the country".

8. On June 11, without our knowledge and without our permission, Balsillie filed an application with the NHL to relocate the franchise;

9. He announced lease negotiations with an Arena in Hamilton;

10. He began taking Hamilton Predator ticket orders for the new franchise in Hamilton; and

11. He began using the Predators trademarks for a franchise in Hamilton.

He did all of this without my permission or knowledge. Essentially he began to act as if he owned the franchise and the Term Sheet meant nothing.

### III. Threats against the NHL and me personally with respect to the Canadian Competition Bureau

I certainly cannot prove that Mr. Balsillie was behind the Canadian Competition Bureau's investigation of the NHL. However, I would like to lay out this timeline for your benefit.

A. On June 4, at our meeting in Waterloo, Rodier threatened, for the first time, that the Canadian Competition Bureau would investigate the NHL if I refused to close the Predators transaction in accordance with their new terms.

B. On June 6, the Canadian media first references a potential inquiry by the Canadian Competition Bureau.

C. On June 10, I advise Rodier in a telephone conversation that the transaction with Balsillie is not going forward. During this telephone conversation, Rodier threatens that I may be subject to personal liability with respect to the investigation by the Canadian Competition Bureau.

D. On June 13, Bill Miller of the Canadian Competition Bureau contacted me regarding a potential deposition.

E. On June 14, the Canadian Competition Bureau acknowledges launching an inquiry of the NHL and its relocation procedures.

F. Over the next several months, my attorney refused to let the Canadian Competition Bureau interview me. However, on August 9, 2007, my attorney personally submits to a formal interview in Toronto in front of the Canadian Competition Bureau. My attorney made it as clear as possible to the Competition Bureau that the potential sale of the Predators to Balsillie did not fail because of any policies of the NHL, rather it failed because of Balsillie's conduct and complete refusal to abide by the terms of the document that we both signed.

G. On October 18, 2007, I was interviewed by the Competition Bureau; and on April 1, 2008, the Canadian Competition Bureau publicly disclosed that it was terminating its investigation of the NHL.

At the beginning, I advised you that I would vote against Balsillie becoming an owner of an NHL franchise. Again, this has nothing to do with the Phoenix situation or a potential franchise in Hamilton, Ontario. Rather, I will vote against Jim, because, from my lengthy negotiations and failed transaction with him, I have simply determined that Jim Balsillie would not be a good partner for me or the other owners of the NHL.

Thank you,