

1 C. Taylor Ashworth, 010143
2 Alan A. Meda, 009213
3 STINSON MORRISON HECKER LLP
4 1850 North Central Avenue, Suite 2100
5 Phoenix, Arizona 85004
6 Telephone: (602) 279-1600
7 Facsimile: (602) 240-6925
8 tashworth@stinson.com
9 ameda@stinson.com

6 J. Gregory Milmoie (admitted *pro hac vice*)
7 Shepard Goldfein (admitted *pro hac vice*)
8 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
9 4 Times Square
10 New York, New York 10036
11 Telephone: (212) 735-3000
12 Facsimile: (212) 735-2000
13 gregory.milmoie@skadden.com
14 shepard.goldfein@skadden.com

11 Anthony W. Clark (admitted *pro hac vice*)
12 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
13 One Rodney Square
14 P.O. Box 636
15 Wilmington, Delaware 19899
16 Telephone: (302) 651-3000
17 Facsimile: (302) 651-3001
18 anthony.clark@skadden.com

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) **National Hockey League's (A) Renewed**
22 ARENA MANAGEMENT GROUP, LLC,) **Motion for Determination of (I) Authority**
23 Debtors.) **to Manage the Business and Affairs of the**
24) **Debtors, and (II) that William Daly is the**
25) **Representative of the Estates, or (B) in the**
26) **Alternative, Motion for Appointment of a**
27) **Chapter 11 Trustee**

25 **(REDACTED PUBLIC VERSION)**

26 This filing applies to:

- 27 All Debtors
28 Specified Debtors

Date:
Time:
Location: U.S. Bankruptcy Court
230 N. First Ave, Courtroom 703
Phoenix, AZ 85003

1 and relocating a modern professional sports club. The Debtors' original procedures were
2 designed and intended to tilt the playing field heavily in favor of PSE's relocation bid and to
3 discourage any other alternatives. This has damaged the value of the Club as an ongoing
4 enterprise in Arizona and threatens great harm to the City of Glendale if PSE were allowed to
5 buy and move the Club in violation of the NHL's lawful consent rights.²
6

7 The League, which has been covering the Club's debts for nearly a year – ever
8 since Mr. Moyes refused to do so in breach of his agreements with the NHL – was concerned
9 from the beginning of these cases of the threat to creditors posed by Mr. Moyes' continuing
10 control. Through the Authority Motion, the League sought to avoid this harm by exercising its
11 contractual right to manage the team under the Consent Agreement and the Proxies Mr. Moyes
12 gave to the League in November 2008 to exercise all authority and control over the Debtors.
13

14 The Authority Motion was heard on May 19, 2009. The Court did not rule but,
15 rather, directed the parties to mediate. In order to minimize disruption to Club operations, and in
16 the hope of preserving its value as an ongoing enterprise in Glendale, the NHL agreed with the
17 Debtors to a protocol, set forth in a stipulated order entered by the Court (May 26, 2009, Dkt. #
18 203) (the "Management Protocol Order"), pursuant to which day-to-day management is vested in
19 three senior officers of the Debtors, but all non-ordinary course matters are required to be vetted
20 and approved by representatives of the NHL and Mr. Moyes or, if they do not agree, by the
21 Court. This Management Protocol Order was designed to insure that the Debtors – who continue
22 to be financed by the League, as DIP lender – would remain neutral in the disputes between
23 Messrs. Moyes and Balsillie, on the one hand, and the NHL, on the other.
24

25 _____
26 ² That the NHL's consent rights to ownership transfers and team relocations are legitimate and
27 enforceable under controlling law already has been determined by the Court. *See In re Dewey Ranch*
28 *Hockey, LLC*, 406 B.R. 30, 35-37 (Bankr. D. Az. 2009).

1 Ignoring the requirements of the Management Protocol Order, Mr. Moyes has
2 caused the Debtors to prosecute these bankruptcy cases to unabashedly favor the Balsillie
3 relocation bid, chill any other bidder interest, and run down the value of the Club in Glendale as
4 much as possible. In short, the current regime has shown that it is not capable of conducting a
5 fair process to sell the Club. Accordingly, if all potential bidders are to be encouraged to
6 participate and trust in the integrity of the sale process, it is time for the League to exercise its
7 lawful management control rights, subject to Court supervision, for the benefit of all creditors.

9 FACTUAL BACKGROUND

10 **The Prepetition Agreement**

11 From the discovery, it is clear that Mr. Balsillie and his advisors devised the
12 scheme to put the Debtors into bankruptcy, in violation of their agreements with the League,
13 specifically to prevent an anticipated sale that would keep the Club in Glendale and to force a
14 relocation sale to PSE. It is also clear that Mr. Balsillie co-opted Mr. Moyes to his scheme, and
15 to ignore his fiduciary duties to the City of Glendale and the other creditors, with an offer of cash,
16 which Mr. Moyes was only too eager to take. Thus, exactly one month before the bankruptcy
17 filing, Richard Rodier, Mr. Balsillie's advisor, wrote to Earl Scudder, Mr. Moyes' personal
18 attorney and advisor, as follows:
19

20 We are doing our best to accommodate you and respect Mr. Moyes wishes.....but
21 please remember our info is that the league plans to act within days and the
22 documentation takes time to prepare. *It would be a shame if Mr. Moyes lost out on \$75*
23 *million or so through indecision. With sincere respect, at this point there are only two*
24 *choices.....walk away or take the \$\$\$ from us.....and the choice needs to be made*
25 *tomorrow.*

26 April 5, 2009 R. Rodier email to E. Scudder (Exhibit A) (emphasis added). Mr. Moyes wanted
27 to "take the \$\$\$" and, therefore, the following day, he indicated his willingness to move forward
28

1 with the bankruptcy strategy in order to stymie a sale of the Club in Glendale and force the
2 relocation sale to PSE.³

3 By mid-April, Mr. Rodier made clear to Messrs. Scudder and Moyes (as well as
4 the Debtors' bankruptcy counsel) that Mr. Balsillie was calling the shots and the time for Mr.
5 Moyes to make a final decision had arrived:
6

7 If you and Mr. Moyes want to discuss a transaction based on our original proposal, that's
8 fine. Happy to do so. The concept is very simple. We basically take over the team and
9 use it to try and achieve our objective. We fund all transaction costs, which become a
10 debt of the team. *If we achieve our objective Mr. Moyes gets a very very generous price.*
11 If not, the team reverts back to the NHL with a little more debt.

12 If, on the other hand Mr. Moyes chooses not to go ahead and at least try, then the team
13 reverts back to the NHL in 2 weeks, he pays Gretz[ky], and possibly pays the NHL on his
14 guarantee.

15 We think we are a better alternative.

16 April 14, 2009 R. Rodier email to E. Scudder, copied to J. Moyes, T. Salerno and others (Exhibit
17 B) (emphasis added). Mr. Moyes made his choice. At "a very very generous price," he sold out
18 to Mr. Balsillie and his bankruptcy scheme, electing to advance his self-interest while
19 dishonoring his fiduciary duties to the NHL, the City of Glendale and the other creditors.

20 **Postpetition Breaches of Fiduciary Duty**

21 From the outset of the bankruptcy cases, in keeping with the prepetition deal he
22 made with Mr. Balsillie, Mr. Moyes has been single-mindedly committed only to a relocation
23 sale to PSE, and the Debtors have acted to achieve that end and to prefer Mr. Moyes' interests
24 over those of the estates and creditors. Accordingly, the conduct of these cases by the Debtors
25 under the control of Mr. Moyes has fallen far short of that required of fiduciaries under the law.

26 ³ See April 6, 2009 E. Scudder email to R. Rodier (Exhibit A) ("Our counsel believes our managing
27 member could cause the franchise-owning entity to initiate a Chapter 11 in the U.S.").

1 Thus, the first day papers were supported by a declaration, which the Debtors
2 represented had been signed under penalty of perjury by the Debtors' chief financial officer,
3 Michael Nealy (May 5, 2009, Dkt. # 8), claiming that Mr. Moyes had "provided the organization
4 approximately \$380,000,000 to fund operations" (§ 41) and implying that he had lost it all. The
5 clear implication – that it was impossible for the Coyotes to make money in Glendale – was
6 calculated to chill bidding for the Club in Glendale. **REDACTED**
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14 When the NHL uncovered these facts and moved to strike
15 the declaration,⁵ the Debtors filed a substantially revised Nealy declaration (May 19, 2009, Dkt.
16 # 150) from which the \$380 million assertion was excised and replaced with a watered down
17 claim that Mr. Moyes had "provided the organization a significant amount of money to fund
18 operations" (§ 39).⁶

19 That Messrs. Moyes and Balsillie secretly agreed to act in concert to prevent any
20 competing bids for a Glendale-based sale is illustrated by their involvement with the Goldwater
21 Institute, a self-described government watchdog group that opposes any lease concessions
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23 _____
24 ⁴ See Reply To Glendale Sale Objections And Summary Of Newly Discovered Evidence (Filed Under Seal), at 11-12 (August 3, 2009, public redacted version, Dkt. # 556).

25 ⁵ Motion to Strike Declarations of Michael Nealy and Donald A. Wall (May 18, 2009, Dkt. # 127).

26 ⁶ The original unauthorized declaration was 43 pages and 122 paragraphs long; the May 19
27 declaration that Mr. Nealy did execute was nine pages and 28 paragraphs shorter.
28

1 between the Coyotes and the City of Glendale and has been looking into the matter since March
2 2009.⁷ Because Mr. Rodier had made it clear from the start that Mr. Balsillie had no interest
3 whatsoever in investing in the Club in Glendale,⁸ he had no legitimate reason to know what
4 concessions the City might be prepared to make in order to keep the Club in Glendale.
5 Nevertheless, on May 8, just three days after the bankruptcy filing, Mr. Rodier asked for the
6 details of the prepetition discussions between the City and the Club, and Mr. Scudder provided
7 them: "The City never made Jerry a firm proposal as to a subsidy, although, *if you promise not*
8 *to quote Jerry or me*, I will tell you that Ed Beazley [Glendale City Manager] believed an annual
9 payment of \$14.6 million could be raised by way of a special tax on purchases in the Arena and
10 Westgate, and from other users of the area benefited by the team's continued presence (e.g.
11 Ellman)." May 8, 2009 E. Scudder email to R. Rodier, copy to J. Moyes and T. Salerno (Exhibit
12 C) (emphasis added). They then discussed how this information might be secretly funneled to
13 the Goldwater Institute without attribution to Mr. Moyes, so that his effort to help the Goldwater
14 Institute could be hidden, quite obviously for the purpose of interfering with efforts by potential
15 competing bidders to reach a deal with the City that would allow the Club to remain in Glendale:
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17
18 Jerry feels he must maintain a profile as the long-time Glendale resident who engineered
19 what has led to a virtual Renaissance of Glendale (e.g., Cardinals, White Sox-Dodgers,
20 and Cabello's, as well as other business activities) by financing the hockey team to the
tune of more than \$300MM.

21 He has described Jim's bid as the beginning – not the end – of a process that will attract
22 the highest price for the creditors. *He is concerned that aiding an effort to prevent the*
city of Glendale from offering a subsidy could "chill the bidding" that he has publicly
said he endorses. If the group you described files a suit that is based on opposition to
23

24 ⁷ See Goldwater Institute "Not Ruling Out" Legal Action Against Phoenix Coyotes and Glendale,
March 10, 2009, at
25 http://blogs.phoenixnewtimes.com/valleyfever/2009/03/goldwater_institute_not_ruling.php.

26 ⁸ See April 14, 2009 R. Rodier email to E. Scudder, J. Moyes, T. Salerno and others (Exhibit B) ("I
can tell you there is absolutely no chance Jim will invest in the Yotes while in Glendale. None
27 whatsoever. Even if he was a majority owner.").

1 using tax dollars for hockey, they are free to do so without inside information from Jerry.
2 Please keep us informed of any developments.

3 *Id.* (emphasis added). A few hours later, Mr. Rodier said he wanted to publicly disclose the
4 confidential details regarding the City of Glendale's position, and he and Mr. Scudder plotted
5 how to do so without the true source, Messrs. Scudder and Moyes, being identified, *i.e.*, by
6 claiming falsely that the information came from an unidentified potential buyer in violation of its
7 confidentiality agreement with the City:

8 Rodier: "Re your email(s) last night on Beasley/14.6 million/etc.....***are u OK if that is***
9 ***leaked to media WITHOUT your team's fingerprints on it anywhere?***" May 8, 2009 R.
10 Rodier email to E. Scudder (Exhibit D) (capitalization in original, emphasis added).

11 Scudder: "The information that Glendale might subsidize a new buyer to the tune of
12 \$15MM was provided to prospective buyers to indicate the amount the city thought could
13 be provided by way of annual subsidy for 5 years. ***If one of those buyers violated its***
14 ***non-disclosure agreement and told you what the city indicated, we have no control over***
15 ***them. Jerry cannot have been the source*** of the specific (\$14.6MM amount, which was
16 not given to buyers) and would state, if asked, that we gave it to you under strict
17 confidentiality." May 8, 2009 E. Scudder email to R. Rodier, copy to T. Salerno (Exhibit
18 D) (emphasis added).

19 Rodier: "One of those buyers must have violated its non-disclosure agreement and told
20 our people what the city indicated, since it is something that came their way
21 independently of you or me. I don't know the source." May 8, 2009 R. Rodier email to E.
22 Scudder (Exhibit D).

23 Read objectively, this correspondence cannot be read innocently. Mr. Rodier, acting for Mr.
24 Balsillie, wanted to shut down any Glendale-based competing bids, and Mr. Scudder, the
25 Debtors' *de facto* CEO and Point Person under the Management Protocol Order, Nealy Tr. 106:6-
26 16, gave him the ammunition to do so. A more stark breach of fiduciary duty is difficult to
27 imagine.

28 Mr. Rodier, acting for Mr. Balsillie, also co-opted Mr. Scudder, acting for Mr.
Moyes, to keep close tabs on the competing postpetition bidders, the Reinsdorf and Ice Edge
groups, and their activity in the Debtors' confidential virtual data room while they conducted

1 their due diligence, and to report back to Mr. Rodier. Mr. Scudder obliged.⁹ By leaking and
2 revealing the competitors' due diligence activities and plans to Mr. Rodier, Messrs. Scudder and
3 Moyes have compromised the integrity of the sale process, and breached their fiduciary duties to
4 the bankruptcy estates. Such behavior mandates their immediate removal from the sales process
5 and from a position of control of the Debtors.
6

7 In another example of how the Debtors have tried to steer the process to favor Mr.
8 Balsillie's bid, they have made no effort ever to market the team to other relocation bidders, or to
9 market to local bidders postpetition, or to sell tickets in Glendale, and Mr. Scudder has interfered
10 when the Club management has tried to do so. For instance, during these cases, the Debtors have
11 served the Club's season ticket holders with only one pleading other than the bar date notice: the
12 Debtors' Objection to the Offer to Purchase the Assets of Coyotes Hockey and Arena
13 Management (July 31, 2009, Dkt. # 526), which argued that the Reinsdorf Group is not a
14 qualified bidder and detailed the alleged inadequacies of that proposal. The only purpose for
15 publishing this to season ticket holders was to destabilize the franchise by undermining (i) the
16 Phoenix area fans' and public's confidence and hope that the Coyotes will remain in Glendale,
17 thereby depressing ticket sales for the 2009-10 season, and (ii) the ongoing negotiations between
18 the Glendale-only bidders and the estates' creditors. Similarly, in a significant departure from
19 virtually all operating chapter 11 cases, the Debtors have never sought permission to honor their
20 customer obligations by assuring that fans who pay in advance for tickets would be repaid if the
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25 ⁹ See June 22 and 26, 2009 email exchanges between Messrs. Rodier and Scudder (Exhibit E)
26 (discussing Reinsdorf Group data room diligence efforts and management plans); July 8-9, 16-17, 2009
27 email exchanges between Messrs. Rodier and Scudder (Exhibit F) (discussing Ice Edge Group data room
28 diligence efforts).

1 team were not to play in Glendale next season.¹⁰ Instead, the Debtors, through their gratuitous
2 mailing, threaten the season ticket holders who made pre-petition deposits with the loss of their
3 advances in order to discourage them from completing payment for their tickets post-petition.

4 Mr. Moyes also has installed Mr. Scudder as the Debtors' *de facto* CEO and their
5 Point Person under the Management Protocol Order. Nealy Tr. 106:6-16 (relevant excerpts of the
6 July 29, 2009 deposition of Michael Nealy are attached hereto as Exhibit G). Mr. Scudder has
7 no experience in running a hockey club, and he has managed the Debtors' affairs only to protect
8 Mr. Moyes' personal interests.¹¹ In the most recent example, the Club's general manager and the
9 team's travel coordinator sought approval to pursue a favorable contract with USAir, which
10 provides charter air services to many professional sports teams, for the 2009-10 season that
11 would result in substantial savings over what the team paid Mr. Moyes' affiliate, Swift Air, for
12 the same services last season. Mr. Scudder rejected the recommendation and insisted that the
13 Club continue to use Swift Air. This forced the NHL to file an Emergency Motion to Authorize
14 Team Management to Enter Into Agreement With US Airways for Team Travel Service (August
15 10, 2009, Dkt. # 600), after which Mr. Moyes and his counsel finally relented to allow the
16 Debtors to select a more cost effective alternative. There simply was no legitimate basis for Mr.
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21 ¹⁰ In chapter 11 cases where retaining the loyalty of existing customers is important – as would be
22 the case here, if the Debtors had any desire to keep the Club in Glendale – courts have authorized debtors
23 to honor prepetition obligations to customers and to continue customer support programs. *In re Zounds,*
24 *Inc.*, Case No. 09-06053 (GBN) (Bankr. D. Ariz. April 6, 2009); *In re Western Medical, Inc.*, Case No.
25 06-01784 (GBN) (Bankr. D. Ariz. June 21, 2006); *In re Z Gallerie*, Case No. 09-18400 (VZ) (Bankr. C.D.
Cal. April 15, 2009); *In re Sportsman's Warehouse, Inc., et al.*, Case No. 09-10990 (CSS) (Bankr. D. Del.
Mar. 23, 2009); *In re Mrs. Fields' Original Cookies, Inc., et al.*, Case No. 08-11953 (PJW) (Bankr. D. Del.
Aug. 26, 2008).

26 ¹¹ See Moyes Tr. 25:3-6: "Q. And in any event, throughout this whole time do you consider Mr.
27 Scudder to do what is best for you? A. Yes."; see also *id.* at 67:14-21 (relevant excerpts of the July 31,
28 2009 deposition of Jerry C. Moyes are attached hereto as Exhibit H).

1 Scudder to insist on using the Moyes affiliate at a much higher cost. The only reason to do so
2 was to favor Mr. Moyes' personal interests over the best interests of the creditors.

3 The Debtors also have tried to hide other examples of Mr. Moyes' self-dealing to
4 the detriment of creditors that have only recently come to light in the discovery. For example,
5 the Debtors' court filings have indicated that the estates owe the team's coach, Wayne Gretzky,
6 \$22.5 million under certain contracts,¹² **REDACTED**

8
9 Also, during the prepetition preference period, Mr. Moyes caused
10 the Debtors to transfer \$2.0 million in cash to him because, in his words, "I needed the money."¹⁴
11 The Debtors have not taken any action to avoid these transfers for the benefit of creditors,
12 because that would not be in the interest of Mr. Moyes, and he controls the Debtors.

13
14 And then there is the disclosure of the highly confidential terms of the ongoing
15 negotiations between the Reinsdorf Group and the City of Glendale by Mr. Moyes' bankruptcy
16 counsel in violation of the protective order entered by the Court (July 18, 2009, Dkt. # 455).
17 Whether, as Mr. Moyes' counsel say, the violation was an unintentional mistake, this disclosure
18 was still shocking because it struck such an obvious blow at the lynchpin of the Reinsdorf
19 Group's Glendale-based bidding effort which, like the Goldwater Institute collaboration
20 discussed above, plainly serves Mr. Balsillie's interests, as well as Mr. Moyes' interest to "take
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22 ¹² See, e.g., Motion of Debtors for an Order Under Sections 105(a), 363, and 365 of the Bankruptcy
23 Code (i) authorizing Coyotes Hockey, LLC's Sale of Substantially All of Its Assets, Free and Clear of
24 Liens, Claims, and Encumbrances, Subject to Higher and Better Offers, and (ii) Approving an Asset
25 Purchase Agreement, at 8-9 (May 5, 2009, Dkt. # 18) (describing proposal under PSE asset purchase
agreement for PSE to pay \$8.0 million to Mr. Gretzky "to discharge Coyote Hockey's compensation
obligation to Mr. Gretzky" and to pay another \$14.5 million "under the terms of [Mr. Gretzky's] current
employment arrangement with Coyotes Hockey").

26 ¹³ Moyes Tr. 127:14-128:7; 132:8-11.

27 ¹⁴ Moyes Tr. 141:20; see also *id.* at 141:11-142:22., Nealy Tr. 48:13-49:4.

28

1 the \$\$\$ from" Mr. Balsillie.¹⁵ No wonder the Reinsdorf Group has been unwilling to entrust a
2 \$10 million deposit to the Debtors under Mr. Moyes' control.

3 Lastly, despite the fact that Mr. Balsillie now has been turned down as unsuitable
4 to be an NHL owner, the Debtors continue to spend money that the estates do not have – and that
5 the League, as DIP lender, will not provide – to challenge the NHL Board of Governors'
6 determination and join in taking discovery focused on the denial and relocation issues, thereby
7 further subordinating the interests of legitimate creditors to the Debtors' professionals'
8 administrative claims which, if left unchecked, will be substantial. For instance, the antitrust
9 issues that Mr. Balsillie seeks to litigate here, with the Debtors' support, cannot be decided after
10 two weeks of discovery and a two or three day hearing – litigation over the same issues in the
11 *Raiders* case, with which the Court is familiar, lasted close to five years. Similarly, if the
12 bankruptcy issues raised by the Debtors' efforts to force a sale to Mr. Balsillie and a relocation of
13 the Club to Canada were to be decided adversely to the NHL in the first instance, the dispute will
14 be tied up on appeal for months, possibly years.

15 Moreover, the Debtors' continued support of Mr. Balsillie's challenge to the
16 decision by the NHL Board of Governors also is a breach of the Debtors' agreements with the
17

18
19
20 ¹⁵ The explanation from Mr. Moyes and his bankruptcy counsel that he was not involved in this
21 alleged mistake raises other concerns:

22 I am confident that, throughout this process, no attorney or staff member from Jennings Strouss
23 consulted with Mr. Moyes or any of his representatives. Similarly, I am confident that no attorney
24 or staff member from Jennings Strouss received any instructions or directions whatsoever from
25 Mr. Moyes or any of his representatives regarding the content or form of the Objection. Neither
26 Mr. Moyes nor any of his representatives reviewed any draft of the Objection or of Appendix A.

27 Declaration of Peter W. Sorensen ¶ 9, Exhibit 1 to Response to Motion/Application for Order to Show
28 Cause (August 6, 2009, Dkt. # 576); *see also id.* Exhibit 4, Declaration of Jerry Moyes ¶¶ 4-6. If, as Mr.
Moyes and his lawyers assert, he has failed to oversee, supervise or control his personal attorneys in filing
critical pleadings in these cases, why should he be entrusted as a fiduciary to oversee, supervise and
control the conduct of the Debtors and their advisors?

1 NHL and subjects the team to an array of disciplinary measures ranging from monetary penalties
 2 to suspension or expulsion of the owner or even termination of the franchise. It is also a
 3 postpetition breach of the agreements which cannot be cured without the NHL's consent, which
 4 means the Debtors cannot assume the agreements and assign them to any prospective buyer
 5 unless the League agrees. See 11 U.S.C. §§ 365(b)(1).
 6

7 There is a solution to these problems, which is to recognize that the NHL
 8 Commissioner's designee, Mr. Daly, is the appropriate person to be in charge of the Club,
 9 including the conduct of these cases and the process to sell the Debtors' assets. Consistent with
 10 its well established policies and years of experience with ownership transfer, the NHL will use
 11 its good faith best business judgment to effect a sale in Glendale if possible and, if not, on a
 12 properly marketed relocation basis.
 13

14 **ARGUMENT**

15 **1. The Authority Motion Should Be Granted.**

16 For the reasons fully set forth in the Authority Motion and supporting memoranda
 17 and declarations, which will not be repeated here, the NHL has the right to control the Debtors,
 18 as a matter of fact and law, which right is enforceable notwithstanding the bankruptcy filing. As
 19 a result, the Court should enter an order declaring that Mr. Daly, not Mr. Moyes, is the proper
 20 representative of the Debtors' estates.
 21

22 **2. Mr. Moyes' and the Debtors' Breaches of Fiduciary Duty Also Warrant His**
Removal From Control.

23 As detailed above, events since entry of the Management Protocol Order have
 24 made it clear that Mr. Moyes has exercised his control of the Debtors to promote and protect his
 25 own economic self-interests to the detriment of legitimate creditors. Specifically, Mr. Moyes
 26 and the Debtors have: (i) filed false pleadings with the Court, including the purported Nealy first
 27
 28

1 day declaration and the papers based on the untrue and unauthorized statements therein; (ii)
2 damaged the value of the Club as an ongoing enterprise in Glendale and otherwise manipulated
3 the sale process in order to favor Mr. Balsillie's bid to buy and relocate the Club and to
4 discourage all other potential bidders from proposing a Glendale-based solution; (iii) managed
5 the Club's business decisions to personally benefit Mr. Moyes; (iv) failed to disclose material
6 prepetition insider transfers between Mr. Moyes and the Debtors; (v) failed to take any action to
7 avoid Mr. Moyes' improper insider transactions; (vi) violated the Court's confidentiality
8 protective order by publicly disclosing the Reinsdorf Group's negotiations with the City of
9 Glendale; and (vii) incurred administrative expenses to the detriment of unsecured creditors to
10 advance the interests of Mr. Moyes and his favored bidder, Mr. Balsillie. These are textbook
11 breaches of fiduciary duty which, coupled with the NHL's legal rights under the Consent
12 Agreement and the Proxies, provide even more reason for the League to be permitted to exercise
13 its right to take control of the Debtors.
14
15

16 These same facts also provide the basis to remove Mr. Moyes and appoint a
17 chapter 11 trustee for these estates. Section 1104(a) of the Bankruptcy Code provides in
18 pertinent part as follows:

19 At any time after the commencement of the case but before confirmation of a plan, on
20 request of a party in interest or the United States trustee, and after notice and a hearing,
21 the court shall order the appointment of a trustee —

22 (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of
23 the affairs of the debtor by current management, either before or after the commencement
24 of the case, or similar cause ...;

25 (2) if such appointment is in the interests of creditors[.]

26 Improper manipulation and unauthorized transfers of estate assets provide cause
27 to appoint a chapter 11 trustee in the interests of creditors. *See In re Lowenschuss (Lowenschuss*
28

1 v. *Selnick*), 171 F.3d 673, 685 (9th Cir. 1999). See also *In re U.S. Mineral Prods. Co.*, 105
2 Fed.Appx. 428 (3d Cir. 2004) (where president and principal shareholder of debtor had conflict
3 as potential buyer, trustee appointed due to "the contentious and acrimonious nature of the
4 relationships among the parties, the lack of trust, the lack of progress, and the need for a neutral
5 party to 'maximize value and construct a plan ... acceptable to creditors.'"); *In re Nat'l Farm Fin.*
6 *Corp.*, 2008 WL 410236 (Bankr.N.D.Cal. Feb. 12, 2008) (trustee appointed because debtor in
7 possession violated duty to deal impartially with all parties in interest). The record here
8 establishes those breaches and many others. Therefore, if the Authority Motion is not granted
9 for any reason, the NHL respectfully requests that the Court order the appointment of a trustee
10 for cause and in the interests of the creditors.
11

12 CONCLUSION

13
14 For all of the foregoing reasons, the NHL hereby requests the Court to grant the
15 relief requested in the Authority Motion or, in the alternative, appoint a chapter 11 trustee in
16 these cases.

17 DATED: August 18, 2009

18 STINSON MORRISON HECKER LLP

19
20 By: /s/ Alan A. Meda (#009213)
C. Taylor Ashworth, 010143
21 Alan A. Meda, 009213

22 and

23 SKADDEN, ARPS, SLATE, MEAGHER & FLOM,
LLP

24 J. Gregory Milmoe
Shepard Goldfein
25 Anthony W. Clark

26 Attorneys for the National Hockey League
27
28