

EXHIBIT 9

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

AA/sr

In Re:)	Chapter: 11
)	
DEWEY RANCH HOCKEY, LLC,)	Case No. 2:09-BK-09488-
)	RTBP
COYOTES HOLDINGS, LLC,)	
)	
COYOTES HOCKEY, LLC,)	
)	
ARENA MANAGEMENT GROUP, LLC,)	
)	
Debtors,)	

This is the Deposition of JAMES LAURENCE BALSILLIE,
in the above noted matter, taken via teleconference at the
offices of Bennett Jones LLP, Suite 3400, One First
Canadian Place, Alberta Room, Toronto, Ontario, on the 26th
day of August, 2009.

MR. KESSLER: Objection. Argumentative and misstates the declaration.

BY MR. KEYTE:

20. Q. Go ahead.

A. Well, I don't think that is a correct thing to say because it says, "One of the most important contributions I can make to my country is to bring a seventh NHL franchise to Hamilton". But in my life, I mean, I have many contributions I try to make in my work and my philanthropy and my passions. So this was not to the exclusion of any other possible things. Pittsburgh became an unbelievably exciting opportunity, to have a team in Pittsburgh and keep it in Pittsburgh and pursue it in Pittsburgh.

21. Q. Well, have you ever sought to purchase an NHL team of no thought of eventually relocating the team to southern Ontario?

A. Yes, I have been involved in teams and evaluating them and reviewing books in the past and looking to invest in them with absolutely no interest in moving them whatsoever. Yes.

22. Q. Which teams are those?

A. Well, I was brought into the

team to invest in or buy that was viable in its market. So, the real critical element is is it a strong location for a franchise, not whether it is in Canada or not.

24. Q. So, in your view, you were fully committed to Pittsburgh and the Penguins staying in Pittsburgh if they got a new arena?

A. Yes, I was fully committed to staying in Pittsburgh if they got a new arena, provided the terms of the new arena deal made reasonable economic sense. Absolutely, I was fully committed. Pittsburgh was very close to where I live. I think the flight was 45 minutes from my home. And I think the transport was 15 to 20 minutes from the airport. So, of all the ironies, I could get to The Igloo for Pittsburgh faster than I could get to downtown Toronto for a Leafs game from my home in Waterloo. So, it seemed unbelievably exciting and with such an unbelievable history and a great young team, I was thrilled and excited about the prospect of owning the Penguins and fully committed to it and fully excited with it.

25. Q. And what, in your view, made Pittsburgh such a viable market?

A. Well, the most important thing for

Montreal Canadiens book when they were for sale several years ago and the Ottawa Senators. And there was no contemplation of moving them at the time. I didn't have the resources that I do now to **really pay for it at that time, and there was a lot** of uncertainty in terms of the Canadian dollar and the financial future of these teams, which definitely turned around. And so I didn't think I could afford the investment at the time. But there was absolutely no contemplation of moving those teams. I have dreamed of owning a team in many different places.

23. Q. Other than Canada, which teams have you dreamed of owning in the U.S. and keeping in the U.S. in the long term?

A. Well, you dream of owning a team. And the dream really gets catalyzed by teams for sale. So, the only one that I have really been drawn into in any depth outside of Canada has been Pittsburgh. And I was perfectly content with them being there, provided they got a new arena. Because, as I understand, the arena that they had was designed when Eisenhower was president as an opera centre that was transformed to a hockey arena. But beyond that, I can't recall being drawn into a

viability of a market, to me, is, you know, from the very beginning is avidity or fan interest. And I just thought they had a deep and rich fan base that loved the game. You know, clearly you also need an arena. And in my conversations with other owners, they just said life was far better owning a team where you don't have to fly too far to see a team. I remember talking to George Gillett saying, as much as he loved the Habs, he told me directly it is really difficult living in Colorado and travelling to Montreal. And so the most important thing is the interest of the fan base. And I think Pittsburgh had that in spades. You know, passionate, sophisticated fans. They had Mario Lemieux there. They had two cups. They had a long history. It all seemed very, very good.

26. Q. ~~Let me ask you this: Have you ever~~ considered buying a team in the U.S. and helping build a new arena yourself?

A. Yes. Under the Pittsburgh situation, the plan would be I would build the arena. I would have to build the arena. The fundamental question is, what would be the economic structure under which you would build the arena and varying concessions and investments that would

1 support that financially? But, absolutely, I
2 considered that. And in the Pittsburgh case, there
3 were designs and architects. There was a site.
4 There were plans. There were schedules. Yes, I...

5 27. Q. And so...sorry. So you fully
6 assessed the...

7 A. Yes, I had...fully was interested
8 and committed to building in Pittsburgh, because it
9 was the only situation that I had been involved in
10 for evaluating a team where getting an arena was a
11 critical pre-condition for the sustained viability
12 of the team.

13 28. Q. Understood. So, if either the IOC
14 plan or plan B, as you understood it at the time,
15 came to fruition, you were fully committed to
16 Pittsburgh and keeping the team there; is that
17 correct?

18 A. Yes, I was very committed to
19 Pittsburgh. Yes, I had travelled there with my
20 wife. We were looking at places to stay in
21 Pittsburgh. We were getting to know the people. We
22 were starting to build an extended life in
23 Pittsburgh. And we were very, very excited and
24 committed to Pittsburgh, yes.

25 29. Q. And we will get into these details,

1 to a plan B and arena. So, my sense is that plan B
2 was very much a work in progress, as I understood
3 it. I did not understand it to be something that
4 was fully fleshed out, all material terms clarified
5 and it was something that you could say, "We will
6 take this as-is and this is what we want". I didn't
7 understand it like that and it was never presented
8 to me like that.

9 31. Q. You certainly knew there was room
10 and you wanted to make it better; correct? The
11 terms, you thought there was room to maybe make the
12 plan B better for you if it came to fruition;
13 correct?

14 A. I don't specifically recall that
15 situation. It is possible. Of course, all things
16 being equal, you want a better deal.

17 32. Q. Yes.

18 A. And, of course, you had a team that
19 was in some economic challenges at that time. So, a
20 good arena structure was very, very important. But
21 I just can't recall the exact parameters of the deal
22 and what we were trying to do with it.

23 33. Q. Understood. Did you...

24 A. Going back, I just don't recall
25 specifically. It has been a long time.

1 but at various times you also represented to the
2 league that if either the IOC or plan B, as then
3 constituted, came to fruition, you were committed
4 fully to Pittsburgh; correct?

5 A. Yes. If IOC came to fruition, I was
6 definitely committed to Pittsburgh. And if plan B
7 came to fruition within a reasonable set of economic
8 structures, because plan B, as it was being bandied
9 about, was very vague and it was to be fleshed out.
10 But if it fleshed out in a reasonably...I am a
11 business man, in a reasonably viable way, yes, I was
12 committed to staying in Pittsburgh, absolutely.

13 30. Q. Well, plan B...you knew when plan
14 B...with the governor's proposal, you knew the basic
15 terms leading into your discussions with Pittsburgh;
16 correct?

17 A. I knew that there were general
18 parameters, and the parameters were being
19 negotiated. But I was not under the view that they
20 were in any sense of the word finalized. And I
21 didn't have a sense that all the material terms were
22 tied down. And I was well aware that Mario Lemieux,
23 who is nothing short of an icon in Pittsburgh, had
24 been very frustrated for well over a decade in
25 getting funding for an arena and getting commitment

1 34. Q. Understood. Do you recall that when
2 you first met with the Commissioner and Bill Daly,
3 that you committed that if plan B stayed the same,
4 as you understood at that time...you would try to
5 make it better but if it stayed the same, you were
6 committed to stay in Pittsburgh?

7 A. Yes, I do recall saying if plan B
8 materializes as generally framed in the economic
9 deliverables that we are seeking for the team, that
10 I am committed to staying in Pittsburgh and I am
11 excited to stay in Pittsburgh.

12 35. Q. Now, let me ask you about...you are
13 obviously aware of bylaw 35.1(b) with respect to
14 character integrity; correct?

15 MR. KESSLER: I am just going to object.
16 If you are going to ask him about the terms
17 of a bylaw, if you please could show it to
18 him.

19 MR. KEYTE: Yes, let me show it.

20 MR. KESSLER: He is obviously not an
21 expert on NHL bylaws.

22 MR. KEYTE: Yes, let me show it to you.
23 If you could mark that Balsillie 2, please.
24
25

1 and then came back...prior, and came back
2 when they said, "Okay", and gave me the
3 understanding that the consent agreement
4 will only deal with the financial matters
5 of this inherently difficult dilemma.

7 BY MR. KEYTE:

8 120. Q. There is a lot of things in that
9 answer, so let me just try to understand pieces of
10 it. Just so I understand, you were aware, then, in
11 August, obviously, before you first talked to the
12 Commissioner of the potential of this provision
13 being in the consent agreement; correct?

14 A. I was aware of...yes, that the
15 potential he may insert it, as he was aware very up
16 front from me that it was an absolute deal breaker
17 for me and this team, while the team have this
18 uncertainty of the arena that was designed when
19 Eisenhower was president as an opera centre.

20 121. Q. Understood. Now, did you, to the
21 best of your recollection, discuss the terms of the
22 consent agreement with the NHL at the August 29,
23 2006 meeting?

24 A. Yes, to the best of my recollection.
25 Not specific elements, because there would be

1 had a meeting with the sellers' agents and many of
2 the sellers themselves and their representatives and
3 the NHL in the league offices and there was a...to
4 the best of my recollection, a very clear
5 understanding that the league will not seek consent
6 provisions beyond financial requirements to backstop
7 the team. That was my recollection. That is my
8 current recollection of that meeting. And I am not
9 trying to confuse it with the league and the
10 sellers.

11 123. Q. So your recollection of the August
12 29th meeting of the NHL is that you said you
13 absolutely will not go forward if there is a seven-
14 year itch provision in the standard consent
15 agreement?

16 A. The best of my recollection is that,
17 yes, the Commissioner represented that they will not
18 require consent provisions beyond financial consent
19 provisions.

20 124. Q. Did you confirm that understanding
21 at any time in writing, your understanding?

22 A. Yes, it was reduced to writing very
23 quickly in the purchase agreement that codified this
24 and codified what the consent provisions would be,
25 and those were very, very...when done, I don't think

1 negotiating the amount of guarantees and bonds that
2 you place and things like that, but I was of the
3 clear understanding that the Commissioner was not
4 going to require anything beyond financial consent
5 issues in the...financial support issues in the
6 consent agreement. That was my understanding from
7 our discussions. To the very best of my
8 recollection.

9 122. Q. Mr. Balsillie, could you be
10 confusing discussions you had with the sellers with
11 respect to a consent agreement and discussions you
12 had with the NHL league office as of August, 2006?

13 A. No. Because I had had discussions
14 with Gary prior in the summer on the Penguins where
15 we had clear discussions, and they broke based on
16 this seven-year imperative. And I just said, "I am
17 not prepared to take those...to be locked in a
18 situation where there is this nested, massively
19 material contingent event and not have the
20 wherewithal to deal with it". And I figured the
21 deal was off.

22 And then the sellers came back and I
23 presumed there was considerable...their agent, the
24 banker, who has close relationships with the NHL,
25 had considerable interplay with the NHL in that we

1 it was...those were supplied to the NHL and never
2 did they say, "This is not consistent with our
3 August meeting and we are not going to support
4 this". So the reduction to writing was very
5 quickly, with the sellers who were in the same room
6 with us, with experienced bankers and experienced
7 lawyers, and the understandings of that meeting were
8 clearly codified.

9 And it was codified what would be done if
10 the Commissioner changed his mind from that meeting.
11 In fact, the clause began to be called, "If Gary
12 changes his mind clause". And this was reduced to
13 writing and it was committed to as an asset purchase
14 agreement and it was supplied to the league, and
15 never was there any commentary on that for an
16 extensive period of time that the league had that.
17 And so I would say, yes, it was reduced to writing
18 between the buyers and sellers in the purchase
19 agreement and the league was kept in the loop. And
20 that seemed to me the appropriate way to do a deal,
21 and all these agents and lawyers and so on were
22 doing it. So, to answer your question, yes, it
23 was...it seemed to me it was being reduced to
24 writing, yes.

25 125. Q. Well, you understood, did you not,

1 there would be no seven-year itch provision as of
2 August 29th. And that you would reduce that into
3 the APA and at a later time reduce that into a
4 consent agreement; correct?

5 A. Yes, that is correct, to the best of
6 my recollection, yes.

7 132. Q. And then based on your answer,
8 during the negotiation of the APA, you learn that
9 there may be an issue with respect to the seven-year
10 itch but you were not going to budge; is that how I
11 understand your answer?

12 A. That is not how I recall it. It was
13 more that the sellers wanted a deposit, and so most
14 of the discussions, as I recall, though I was not
15 directly in the discussions, were...so it was
16 Richard, so you are better to talk to Mr. Rodier.

17 133. Q. I understand that.

18 A. But it generally revolved around
19 refundability provisions of that deposit in the
20 event that the NHL changed its mind on its prior
21 assurances as to what they would require in a
22 consent agreement. And those changes would have
23 been of the form that made the deal untenable for me
24 as a businessman.

25 134. Q. Certainly in the...what I will call

1 that...I think you used the phrase, and I may have
2 it wrong, that twice you essentially walked away
3 from negotiations of the APA over that issue.

4 A. And I might have even walked away
5 from the league, like, dealing with the league on
6 this one even prior to that. I think it was...I
7 don't recall the different times, but I was very
8 clear and transparent that this is just not
9 something that I can...a thoughtful businessman can
10 accept. You put yourself in a terrible box.

11 136. Q. So certainly this was going on with
12 the APA negotiations when the sellers, in your
13 words, raised the issue, "Well, when we actually
14 negotiate the consent agreement, we may have a
15 seven-year itch provision in there"?

16 A. I wasn't directly involved in the
17 negotiations, so you will have to talk to Mr. Rodier
18 on that. But as I think I have said before, there
19 was a clause in it that was called the "if Gary
20 changes his mind clause", that allows me to get my
21 deposit refunded if he inserts the seven-year non-
22 relocation in the consent agreement. So the
23 agreement clearly covered what was acceptable to be
24 in the consent agreement and what was not
25 acceptable, and if the NHL required the consent

1 the post August but pre executive committee time
2 period, the sellers had raised the issue with you
3 that you were going to have to have this seven-year
4 itch provision and you said, "I don't want to have
5 that in there"; is that correct?

6 A. I wasn't directly involved in the
7 negotiations, so I am drawing vague recollections of
8 how they were relayed to me. So, you are better to
9 talk to Richard Rodier on these things. But my
10 understanding of...that the deal had not changed,
11 and my understanding was that the sellers had some
12 nervousness that the Commissioner may change his
13 mind. And I was not prepared to bear the risk that
14 the Commissioner may change his mind on the deposit
15 refundability aspects, so that was codified. And I
16 thought that was a reasonable position because they
17 had nested the contingency in this deal when they
18 sold it, and I felt they were getting full value.
19 And that if they wanted me to bear that risk, there
20 should be some substantial discount in the value.
21 So as a businessman, this was simply negotiations
22 around risk that the league or the Commissioner
23 changes his mind and how that would affect...simply
24 affect refundability of a deposit.

25 135. Q. Understood. You testified before

1 agreement...required things in the consent agreement
2 that went beyond what was acceptable, then that
3 triggered refundability of the deposit.

4 And these were codified provisions in the
5 agreement. They were negotiated extensively, as I
6 understand it, by the buyer and the seller. They
7 were made very clear to the Commissioner. And, in
8 fact, even when we went into side letter discussions
9 with the league subsequent when I was, quite
10 frankly, surprised by the late side letter that they
11 inserted, I recall on telephone conversations the
12 Commissioner citing very precise clauses of the
13 asset purchase agreement, which led me to believe
14 that they were very familiar with the details of
15 that purchase agreement and they had had it in their
16 possession for a long, long period of time.

17 So, you know, as is the way I try to do
18 business around the world, we were very fair, very
19 transparent and very consistent. And the
20 proceedings in Pittsburgh were no different in this
21 respect, for me.

22 137. Q. But just so I understand it, prior
23 to the meeting with the executive committee on
24 December 4th, and let's say in the September/
25 October time period, you still were concerned about

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1 uncertainty with respect to the seven-year itch
2 provision?

3 A. Yes, in the respect that I am a
4 businessman. I like to think I am a thoughtful and
5 experienced businessman. And when you are giving
6 somebody 15 million dollars of deposit of your own
7 money, and that is going into escrow, it is very,
8 very important to codify the release provisions of
9 that escrow. And so if your understanding of what
10 underpins a fair deal change in a material
11 construct, that has to be codified in the escrow
12 agreement and the funds release business.

13 So, of course, to answer the question, yes,
14 what I am most concerned about is, here is a deposit
15 and what are the provisions under which they get
16 released? And naturally when you are dealing with a
17 buyer and seller, a buyer wants a very high deposit
18 with very narrow release provisions, and a buyer
19 wants a smaller deposit with broad release
20 provisions.

21 And, quite frankly, we negotiated a
22 very...what I thought was a very large deposit, 15
23 million dollars, and a very narrow release
24 provision, which is we are committed to this deal
25 except to the extent that the league changes its

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1 somebody would bring it to my attention before it is
2 codified in a letter. But my common practice is I
3 allow people to work independently, but I have no
4 specific recollection of this deal and dealing with
5 Vicky Gilbert on these letters or other letters at
6 that time.

7 139. Q. Given the discussions and the issues
8 with respect to what I will call...what you called
9 "Gary changes his mind" issue or what...

10 A. It is not...just to be clear, it is
11 not what I called it. It was the naming that the
12 sellers and the buyers gave to that clause. I
13 didn't give it that name. That was the name given
14 by the buyers and sellers.

15 140. Q. Given the issue that was out there
16 over the...whether a seven-year itch provision would
17 eventually be in an NHL consent agreement, isn't it
18 correct that, in your view, your interest in
19 Pittsburgh, pursuing the Pittsburgh deal, was
20 conditional on that being resolved?

21 A. Can you re-ask that question? It
22 was just a compound question and...

23 141. Q. Let me rephrase that. As of
24 November of 2006, was it your view that you would
25 not go forward with a deal if there was a seven-year

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1 mind and shackles us, me, in my capacity to do with
2 this nested contingent event of an arena that was
3 designed when Eisenhower was president. And that
4 was the only material element that...you know, that
5 **I had to make sure gets attended to in a commercial**
6 **agreement that has a deposit, a large deposit going**
7 **to escrow with very, very precise and very specific**
8 **and, quite frankly, very narrow deposit refunding**
9 **provisions.**

10 138. Q. Let me go back to Exhibit 4, if you
11 could take a look at the November 7th letter from
12 Vicky Gilbert to the NHL. And look at page 4, if
13 you would. And let me ask you, before I direct you
14 to a specific part of page 4, did you review letters
15 at all sent by Vicky Gilbert to the league with
16 respect to the payments?

17 A. I don't have a specific
18 recollection. My common practice is that I have
19 people work very independently in what I do. If it
20 is appropriately mandated that I review something,
21 because it has got important representations from me
22 that are personal, of course I review it and I
23 expect it to be brought to my attention by counsel
24 before I review it. If there is some very material
25 shift that is very urgent, common practice would be

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1 itch provision in an eventual consent agreement with
2 the league?

3 A. Well, that wasn't really in my mind
4 in November. It had been in my mind prior. And I
5 thought it was resolved. And I was fully, fully
6 committed to the success of the team. I
7 participated in the IOC...or the hearings on behalf
8 of IOC for the gaming boards in the capital of
9 Pennsylvania. I was involved in attending games and
10 planning media events. I was really planning a big
11 part of my life to be in Pittsburgh. So, I was
12 fully and completely of the expectation that this
13 deal was basically done and we were full steam
14 ahead. And so I really had precious little thought
15 that there would be any kind of reversal of the
16 deal. We were all very pregnant on this deal and
17 **very excited about the baby.**

18 142. Q. But as of November 7th, you had
19 nothing in writing, no confirmation of your view
20 that the NHL consent agreement would not have a
21 seven-year itch provision; correct?

22 A. I have a vague recollection, of
23 which I am sure Richard can clarify. Because he was
24 directly involved at this. That there were
25 consistent overtures to the league to get a draft

1 really didn't care either way whether you had a
2 seven-year itch; correct?

3 A. As long as plan B...I mean, yes, but
4 I need to be clear. Plan B was a very vague and
5 general agreement. So, you know, there has to be a
6 reasonableness test in the implementation of plan B.
7 Because as I recall plan B, it had a couple
8 overriding financial things, that there is X amount
9 of money up front and Y amount of money per year.
10 But in my experience of these things, there is
11 enormous details that can...you can swing all the
12 economics of the deal under associated terms.

13 150. Q. Right.

14 A. That, you know, are they fair, are
15 they reasonable, are they common commercial
16 practice. So that was the general essence. But
17 there still had to be some very clear negotiations
18 for what plan B got codified as. Obviously, that
19 was a minimum type of deal we were looking for. We
20 were hoping to improve upon the deal and there was
21 some sense that that could be improved upon.

22 151. Q. Just to finish this subject. But as
23 long as that minimum was met with plan B, the seven-
24 year itch provision would become irrelevant in your
25 mind?

1 Pittsburgh?

2 A. I had absolutely no expectation of
3 that going in. I was of the view that this was a
4 formality. An important formality to see them, to
5 demonstrate respect. To have them meet and if they
6 had any particular issues that they wanted to
7 discuss, that it is possible they would come up, but
8 that that was highly unlikely. I had very friendly
9 interplay with directors in the breakfast beforehand
10 that day. And they had given me assurances that
11 this is very pleasant and very nice and people want
12 to meet you and that this was...in fact, three of
13 them had had those discussions with me and then the
14 Commissioner. So I was of the view that it was a
15 formality and very simple, very straightforward. We
16 were all systems go.

17 155. Q. And who were those owners that you
18 said you talked to?

19 A. I had breakfast with Craig Leipold
20 and Bob Naegele. We had a nice chat. And I had a
21 nice chat with Tim Leiweke. And then when I
22 arrived, the Commissioner came up to greet me and
23 took me aside and talked to me and told me how I
24 should expect it to go and it was very friendly. I
25 had a sense it was very straightforward. And I was

1 A. Yes, as long as...yes.

2 MR. KEYTE: We will take five.

3
4 --- A BRIEF RECESS

5
6 JAMES LAURENCE BALSILLIE, resumed
7 CONTINUED EXAMINATION BY MR. KEYTE:

8 152. Q. Mr. Balsillie, do you recall the
9 December 4th, 2006 executive committee meeting?

10 A. Yes, I do recall the meeting and my
11 attendance at that executive committee meeting on
12 December 4th.

13 153. Q. What is your understanding of the
14 purpose of that meeting?

15 A. Going into the meeting, my
16 understanding was it was a bit of a formality. And
17 that is how I understood it, and I thought, you
18 know, when the Commissioner came out and greeted me,
19 he said, "This will be fine. This is very
20 straightforward, very simple to get to know you". I
21 viewed it as a formality. An important formality,
22 but a formality nonetheless.

23 154. Q. Well, wasn't it your understanding
24 that the executive committee could set its own
25 proposed conditions on your going forward with

1 very excited.

2 156. Q. Was it a pleasant meeting?

3 A. I thought it was a very pleasant
4 meeting and very cordial. I thought it was very
5 pleasant and cordial and professional and we were
6 all systems go and there was no issues. I was
7 really, really, really feeling good coming out of
8 that meeting.

9 157. Q. Now, do you recall the commitments
10 that the executive committee wanted out of you in
11 order to proceed?

12 A. No. That is the part that is so
13 striking, because I remember the conversations and I
14 remember Mr. Hotchkiss being very, very thoughtful
15 and a very fine gentleman who was the chairman of
16 the board at that time. And he is from nearby...he
17 grew up in Tillsonburg and my family is from Jarvis,
18 a small town. They have been there for 150 years as
19 a farming family. So we had good conversations
20 then. And I remember Mr. Bill Wirtz, who has since
21 passed away, being very, very...asking, "How do you
22 want to pay for this team?" and all that stuff. And
23 he said, "I am all for OPM. OPM is the way you want
24 to do these things". And everybody looks around the
25 table and furrows their brow; "What is OPM?" And he

1 says, "Other people's money". And we all laughed.
2 It was very, very pleasant. And Mr. Lou Lamoriello
3 was very kind and generous about how he thought I
4 would be a good owner.

5 And so my sense of the meeting was...and I
6 do a lot of meetings around the world. Like, we are
7 in 165 countries. I am a tradesman's son that has
8 built a business based on my own trust of my own
9 capacities and my own sense of how to conduct myself
10 in situations. And I came out of this meeting with
11 a very clear sense that all systems go, everything
12 straight ahead, there were no additional commitments
13 in that meeting. Mr. Jacobs said...you know, he had
14 some interplay with me on what happens here and
15 there. And I thought those were general
16 discussions.

17 I didn't sense that it was a negotiation or
18 a commitment on my part or on either part. I
19 thought they were just trying to size me up, really.
20 My sense of it is these people were just trying to
21 get a sense of who I am, how I think, who they are
22 dealing with, what kind of person I am. And it was
23 a general assessment as a final formality in what
24 has been an extended process. I didn't get any
25 sense that there were clear commitments out of that

1 to make a commitment? No.

2 160. Q. Let me ask you about three things.
3 One of them, which we talked about, which I believe
4 you have already testified was a commitment, so
5 maybe this one is easy. Did you reconfirm your
6 commitment with the executive committee that if the
7 IOC proposal failed and plan B came to fruition on
8 no worse financial terms, that you would keep the
9 club in Pittsburgh? Did you reconfirm that to the
10 executive committee?

11 A. Yes. Beyond general discussion of
12 me and friendliness and hockey and all that kind of
13 wonderful stuff, the focus was really around the
14 arena and how you deal with this contingent nested
15 event. And so, yes, there was...and that is where
16 Bill Wirtz really spoke up and said, you know, "I
17 like this idea of you using OPM. I have always been
18 a fan of OPM. That is how I did what I did and
19 where possible you do that". And so...

20 161. Q. You reconfirmed that commitment?

21 A. Yes, within the context of...within
22 a general discussion, yes. Yes.

23 162. Q. And did you also commit that if the
24 IOC proposal failed and negotiation over plan B
25 stalled, that Commissioner Bettman would be involved

1 meeting whatsoever. And as I say, I have grown a
2 business in 165 countries, 170,000 percent growth in
3 13 years, internal organic. I generally have a good
4 sense of reading situations and reading people. So,
5 ~~I didn't think~~ I made a commitment in that meeting
6 and I didn't think they asked for a commitment of me
7 at that meeting.

8 158. Q. So your testimony is in that
9 meeting, they didn't ask you to make any commitments
10 and you didn't make any commitments?

11 A. A firm and clear binding commitment?
12 No, I had no sense of a clear and firm commitment in
13 that meeting, no.

14 159. Q. I don't know what you mean by
15 "binding". I am talking about your commitment, your
16 word.

17 A. Nobody asked me for my word on, you
18 know, "Do we have your word on this?" No. There
19 were general discussions in a couple of areas, "What
20 do you think of this? How would you consider that?"
21 But I would put that in the context of feeling
22 somebody out or trying to understand their thinking.
23 But in no respect was it...you know, in my
24 experience, was I giving a commitment and in my
25 experience ~~did I understand that I was being asked~~

1 in the negotiations?

2 A. I don't recall that. In prior
3 times, the Commissioner had said to me, "I am
4 prepared to help you as needed and I can be very
5 helpful for you, so make sure you know that I am
6 there and you use me as appropriate". And he could
7 be very effective. I don't have any recollection of
8 that coming up in that meeting or there being any
9 commitment in that respect at that meeting.

10 163. Q. You don't recall even the subject
11 being discussed at the meeting?

12 A. That the Commissioner take over...be
13 involved in the negotiations...

14 164. Q. If they stalled. If the
15 negotiations over plan B stalled.

16 A. I have no recollection. There was a
17 lot of banter going on. It was actually quite
18 friendly and...

19 165. Q. I am not suggesting it wasn't.

20 A. And so it was a very friendly
21 interplay. And there was a lot of very friendly
22 people. I mean, Craig Leipold was very friendly.
23 Lou Lamoriello, Bob Naegle was friendly, Harley
24 Hotchkiss was friendly, Tim Leiweke was friendly,
25 Bill Wirtz was friendly. There was a lot of very

1 sound okay, you have done a good job". And it is
2 that final...it is important, but I can't think of a
3 case where I have ever overturned that. And so it
4 is not to say that that isn't important, but I
5 wasn't going in there to have the deal materially
6 changed. They have final approval, they have final
7 control, they are the bosses. But it is really to
8 approve the deal as presented and the person as
9 presented. That is how I understood this to be.

10 197. Q. So you had no understanding that the
11 executive committee could ask you to do anything
12 else and you didn't...correct?

13 A. Well, I had the understanding that
14 they would have the power to do that, of course.
15 But the common practice and the protocol was that
16 that just doesn't happen. And that is not the
17 nature of that forum. And, really, that this is a
18 formality. Kind of like to go with my parallel of
19 people hiring. I can go there and say, "I am sorry,
20 I think this person should be paid less or paid more
21 or should be looked at for a different job", or all
22 that. But then what you are doing is you are
23 invalidating all of the processes of the operation
24 of the company, not unlike the league. And absent
25 finding something totally surprising that nobody

1 the road of a call. You didn't understand, in your
2 mind, that to be a commitment to do so subject to
3 your wanting to work out a put?

4 A. That is correct. I said I am
5 generally happy if you want to consider a call with
6 a put and we can proceed that, if that is what is
7 necessary. But I also know, as somebody who is
8 sophisticated on puts and calls, that is going to be
9 a very involved and complex issue. And when someone
10 has got a put to you, you better have a balance
11 sheet ready to absorb that put. And if I am going
12 to be an owner and I am going to put this money on
13 the line, I am going to take all these risks, I am
14 not going to give somebody just an absolute
15 unilateral ability to pull it back from me at any
16 time on any terms they want but then still have the
17 option to strand me there any time, any terms they
18 want.

19 So, you know, I mean, I just thought that
20 was a very reasonable way to do it. But, again, it
21 was in the context of a very general discussion by a
22 senior gentleman in Mr. Jacobs that was just kind of
23 part of the later part of a lot of interplay. And I
24 never gave it any particular accord at the time.

25 200. Q. With respect to the side letter,

1 considered, it was highly unusual. So I went into
2 that meeting with that sense of perspective and
3 expectation.

4 198. Q. So, you didn't understand how
5 important the call was to the executive committee;
6 is that your testimony?

7 A. That is correct. I was in that
8 meeting, as I do many meetings in my work. And when
9 I left that meeting to go on a plane to go to China,
10 I had absolutely no expectation or sense in my mind
11 that I had committed to something like that that was
12 going to be codified...I thought it was a general
13 what-if discussion, amongst a number of sort of
14 general discussions. Because you have to put this
15 in context. You are in a room. There is a round
16 table. There is kind of 10 or 11 of these executive
17 committee members around. There is several staff of
18 the NHL. And I think I am there by myself. And
19 there is considerable interplay. And it was very
20 friendly. So, you know, I just sort of walked out
21 and thought, "What a nice bunch of people. I am
22 excited. We are going to get this done. We are
23 going to win a Cup*."

24 199. Q. And you testified before that you
25 were generally okay with headed down...going down

1 didn't you understand that the idea of a side letter
2 was to give you more leverage in negotiating plan B,
3 the final terms of plan B?

4 A. No, I didn't understand it at all.
5 I was on some kind of business trip. I can't
6 remember where I was, but I...it was, like, on a
7 Friday and it was late. And I can't remember, I
8 think we were to close on a Monday or the Tuesday,
9 but there was one business day before closing. And
10 I just remember getting an e-mail, and I can't
11 remember who it was from, whether it was from
12 bankers or from Ms. Gilbert or Mr. Rodier, but
13 something to the extent that, "We just got this side
14 letter and it has got a couple dozen provisions in
15 it", and shock was an understatement. We were just,
16 like, floored.

17 We were all-teed up to close, we expected a
18 very sort of normal little consent agreement, I had
19 the money all lined up and we are...you know? So,
20 there was absolutely no contemplation of a side
21 letter. I don't have any recollection of the frame
22 side letter being used. There was no expectation of
23 it. Shock and surprise is an understatement for
24 that to happen. And, in particular, to have it so
25 late on the eve of closing that...I don't want to be

1 too...I don't want to cross into impropriety, but
2 there are elements of good faith that come into
3 negotiations. And I must say I was really shocked
4 at that side letter.

5 201. Q. Let's talk about two things. First,
6 the concept of a side letter. You had no
7 discussions with anybody that the idea of a side
8 letter was to help you negotiate plan B? No
9 discussions of that?

10 A. If there was, I don't have any
11 recollection of it at the time. But I certainly
12 didn't expect to receive anything like I received at
13 that place and that time. If there is some kind of
14 discussion of a side letter some months before under
15 some different context, it is possible, but I don't
16 recall it. But I certainly didn't have any
17 expectation of receiving a side letter like that. I
18 certainly didn't contemplate even receiving a side
19 letter, let alone one like that.

20 And I can't see how that kind of side
21 letter would help me in my negotiations. And it
22 seems to me to be a side letter that completely
23 undermines the...you know, what is a reasonable
24 business deal for me. And this is exactly what was
25 contemplated on the refundability provisions of the

1 of the people who were owners did not have such a
2 commitment to the league, never did. And I don't
3 have any recollection of it being brought up or
4 discussed at that meeting. I would have thought I
5 would have remembered it if it did, but I don't
6 recall it being brought up at the executive
7 committee then. It was a surprise to me because I
8 would have said, "This is something that has been
9 negotiated and I can't accept that. Given the
10 contingent event here, it completely undermines my
11 leverage". So, you know, it would have been
12 inconsistent for me to accept it in that meeting.

13 205. Q. As of December 4th, you were
14 certainly still concerned about the potential of a
15 seven-year itch provision in a consent agreement;
16 correct?

17 A. Well, as of December 4th, I was of
18 the presumption that we were basically done
19 negotiations and that, you know, the NHL board of
20 governors meeting was a formality and we were going
21 to get this deal done and closed. And I had no
22 expectation that the provisions that we negotiated
23 were in any way going to be unilaterally reversed at
24 that time, because it was just so...we were so
25 pregnant. And I pride myself in being a clear

1 deposit under the asset purchase agreement.

2 202. Q. We will get to the side letter. I
3 am just wondering about the concept of the side
4 letter for leverage for your negotiations; finish up
5 with that. **Do you know whether any of your**
6 **representatives were discussing putting terms in a**
7 **side letter to increase your negotiation leverage**
8 **with respect to plan B?**

9 A. It is possible. Like I said before,
10 my people that work with me, they work with
11 considerable autonomy and independence.

12 203. Q. Yes.

13 A. And you will have to ask them. And
14 my work and my life are very busy and I had a busy
15 day job and I was very focused on the success of the
16 franchise as a driver. If there were these kinds of
17 things with others, you will have to ask them. I
18 don't have any recollection of it, but it is
19 possible. But I don't have any current
20 recollection.

21 204. Q. Do you recall raising your lingering
22 concern over this seven-year itch at the December 4
23 executive committee meeting?

24 A. I don't have any recollection of it
25 being raised. I was under the impression that many

1 communicator and a consistent person in my business
2 dealings, and I just can't see how I gave people
3 representations that I was going to materially
4 change my deal at the 11th hour for unnecessary
5 reasons.

6 206. Q. Who was charged with negotiating the
7 terms of the consent agreement with the league,
8 separating out what you put in your own APA with
9 respect to a consent agreement?

10 A. I can't recall specific machinations
11 at that time. There are lawyers that come and go.
12 I think it would be Ms. Victoria Gilbert doing it.
13 But there might have been other lawyers involved. I
14 wouldn't have been involved in those calls and those
15 meetings, so these people worked pretty autonomously
16 and I was of the view it was going to be pretty
17 simple, pretty standard.

18 And the only real material condition was
19 going to be how big was my financial guarantee. Was
20 it going to be...you know, that you backstop the
21 financial operations of the team. And, all things
22 being equal, they want a bigger number and, all
23 things being equal, I want a smaller number and you
24 don't want to tie up a big letter of credit, because
25 that costs money. So, you know, the big thing is,

1 of what we would put into this. It was just really
2 trying to...you know, it is the first time you have
3 a phone call on this side letter and you are trying
4 to say, "Are you serious on all these things? What
5 about this? What about that?" you know? And so you
6 are kind of negotiating against yourself
7 dramatically, the idea that you actually have the
8 ability to negotiate against another party.

9 I can't remember if we were discussing put.
10 The call as it was codified was so outrageous. And
11 I can't remember if the concept of a put was in it,
12 but the point of it is we are negotiating against
13 ourselves. I am just sitting there saying, "This is
14 a terribly difficult...this is going to be a
15 terribly difficult deal to live with if this
16 document in any way, shape or form preserves what it
17 is as presented unilaterally on the 11th hour".

18 252. Q. A couple questions on that. Is it,
19 in fact, Mr. Balsillie, that you would never agree
20 to a call because it would remove your ability to
21 relocate the Penguins to Hamilton?

22 A. I think that is a very unfair
23 question. And I think that it is not true. And,
24 you know, you look at this call here and they can do
25 it at cost, they can do it with no

1 deal. And they were refusing to give extensions on
2 the deal. So, we were really twisting in the wind
3 on the refundability provisions and on the solidity
4 of the deal. And it always struck me as...I could
5 never understand why the seller's counsel was so
6 acrimonious with us, because they had such an
7 interest in closing. We were their best friend.
8 But maybe they were just trying to play leverage on
9 me? Maybe they thought I had deal heat? I don't
10 know. But I was at a point where the deal did not
11 make business sense anymore, where the deposit was
12 greatly at risk. And this was unravelling very
13 quickly.

14 254. Q. You did know you needed to negotiate
15 and finalize a consent agreement to close?

16 A. Yes. And I was hoping that that
17 would have been done prior. And my expectation was
18 it would be quite simple and straightforward, as
19 codified under the asset purchase agreement that was
20 shared with the NHL and they knew full well what was
21 in that. So, I didn't expect a second set of
22 negotiations.

23 255. Q. But didn't you know that consent
24 agreements are always negotiated and finalized after
25 a meeting with the executive committee?

1 additional...like, there was a lot of losses I was
2 incurring, a lot of investments. They can do it at
3 a time to their discretion with payments to their
4 discretion, they can assign it to their discretion.
5 So I put all this time and money into it and then
6 that can be just brokered out at their discretion.

7 And so I think for you to suggest there was
8 some other hidden agenda, I think is tremendously
9 unfair. And it is not borne out in the behaviours
10 and activities that were undertaken with the
11 Penguins and the personal investment that I put into
12 this deal and the personal credibility and the
13 personal time. I don't think that is a fair
14 characterization at all.

15 253. Q. Now, where is the...a couple
16 questions before I get to that. What was the
17 pressure to close and what was dictating that?

18 A. I don't remember all of the details.
19 But I do know one of them was that refundability of
20 the deposit had elements that modified...that were
21 lost after some period of time after the board of
22 governors gave approval. And we didn't quite know
23 when they did, because Gary could do them on an
24 informal basis. And so, you know, there was...and
25 we had been asking the sellers for extensions on our

1 A. No.

2 256. Q. Where was the...given the timing of
3 the situation, where was the proposed markup of
4 provisions of the call and a proposal for your
5 option...your put option? Who was in charge of
6 that?

7 A. I didn't agree to a put/call. I
8 agreed to discuss it. And I would have been happy
9 to discuss it in good faith if a principal
10 approached me and said, "This is the one or two
11 principal issues that the executive committee has
12 come forward. We have to come to an agreement". I
13 do not think this kind of unilateral, multi-dozen
14 clause, eve of closing document reflects good faith.

15 And so for you to comment that it is
16 incumbent upon me to try and codify something that I
17 had no real understanding was actually to be
18 codified in a document that has just got a tsunami
19 of unilateral new positions, and then you have a
20 deal team that is absolutely struggling to hold this
21 alive while my confidence in this deal is shattered,
22 to try and sort of pull one piece at one time and
23 say, "Well, why didn't you construct this that way?"
24 is to completely disregard the context under which
25 this was unfurling.

1 257. Q. Well, Mr. Balsillie, apart from the
2 discussion of the relocation fee, which counsel
3 raised and you raised, the call issue and the put
4 option issue, as you put it, was the only major
5 economic term left to be done; isn't that correct?

6 MR. KESSLER: Objection. Misstates
7 facts and evidence.

8 THE DEPONENT: I have answered, I think
9 there is a number of economic elements that
10 are at play here. And you will have to
11 talk to counsel or others, if you are
12 allowed to, to try to understand what their
13 strategy was. But there was so much that
14 was extremely objectionable. And then
15 there were other things which were just
16 severely objectionable. Where do you
17 begin?

18 And, again, I know I am sounding like a
19 broken record, but I have deals with 500 carriers in
20 165 countries around the world. I deal with the
21 largest companies in the world. We have 250,000
22 servers. I deal with leaders of companies around
23 the world in the technology, in the telecom, in the
24 business base. And I have never in my business
25 career had any experience remotely close to this

1 anybody within your group working at all on
2 documentation of what kind of call you would accept
3 and what kind of put option you desired?

4 MR. KESSLER: And I direct you not to
5 discuss any attorney/client discussions.

6
7 BY MR. KEYTE:

8 261. Q. Other than attorney/client.

9 A. It would have been all an attorney/
10 client activities. But, again, I have to say...so
11 whatever they were doing it would have been in
12 attorney/client things. But, again, you have to
13 know when this document was unilaterally dropped on
14 me on the 11th hour, for all intents and purposes
15 this unbelievably shifted the economics of the deal.

16 And after I talked to the Commissioner on
17 the Monday night, my optimism that this is a deal
18 that I am prepared to live with and I am excited to
19 live with and is consistent in any reasonable sense
20 or shape of the asset purchase agreement that I
21 negotiated has been violated and, absent some very
22 quick progress on this by the NHL, my optimism of
23 this deal is completely undermined. And thank
24 goodness I was careful in the refundability
25 provisions of that deposit, the mind-change, the

1 where I had such a misunderstanding, that was so
2 dramatically recodified at the last minute that, you
3 know, people are reeling at this point. And my view
4 of it is, you know, I know when a deal is
5 emotionally on life support and legally and
6 economically. And so I suspect this was a bit of a
7 Hail Mary to try and get this back into some
8 possible set of discussions of digestibility.

9
10 BY MR. KEYTE:

11 258. Q. Mr. Balsillie, isn't it a fact that
12 everything in the side letter was either the subject
13 of ongoing discussions over the consent agreement or
14 was expressly discussed with the executive committee
15 on December 4th?

16 A. Categorically no.

17 259. Q. Did anybody...

18 MR. KESSLER: And I note it is about
19 three or four minutes before we need to
20 break.

21 MR. KEYTE: Just a couple more questions
22 on this subject.

23
24 BY MR. KEYTE:

25 260. Q. After December 4th, was there

1 economic terms of the deal. Because, sure enough,
2 it happened.

3 262. Q. Two follow-up questions and then we
4 can break. One, I am not asking you the substance
5 of what they were doing. Did you have anybody
6 working at all on the call or put option after
7 December 4th?

8 A. I can't recall specifically what
9 anyone was working on. And when I left that
10 meeting, I didn't...on the executive committee, I
11 didn't think...I didn't have even a synapse of
12 thought that there was going to be a put or a call
13 in our deal. And I think we got this draft...I sort
14 of got in on a Friday night and I am on China time
15 and I think there was a call some time early in the
16 week with the Commissioner. So, you know, the idea
17 that there is some kind of constructive interplay,
18 it is possible somebody was doing it, but I think
19 everybody is just sitting there thinking, "We don't
20 know what to do with this. We don't even know where
21 to begin".

22 263. Q. And what is it in this side letter
23 that dramatically, in your words, changed the
24 economics of the deal?

25 MR. KESSLER: Objection. Asked and

1 answered. You can answer one more time and
2 then we will take our break.
3 THE DEPONENT: I have answered this, but
4 you have...in many respects, the
5 unilateralness of the countering of the
6 consent agreement provisions for relocation
7 and the sole discretion, sole discretion of
8 the league on any relocation fees, the
9 introduction of a very, very strong call
10 provision with incredibly one-sided
11 benefits to the league, the power of the
12 Commissioner to take over and unilaterally
13 put on the team the most important economic
14 deal that the team will likely ever do in
15 its history, which is this new arena lease,
16 taking on all kinds of obligations to
17 inform and report to the Commissioner. I
18 mean, you know, as somebody who has lots of
19 responsibilities in life, this was such a
20 burdensome set of responsibilities and
21 obligations and economic constructs. All
22 for the privilege of writing \$175,000,000.
23 I did not feel comfortable at all with
24 many, many aspects of this deal. Not the
25 least of which are the three or four items

1 suggestion that you didn't agree to?
2 A. I recall saying, "We have time bombs
3 in the asset purchase agreement with the sellers".
4 And I don't remember the exact timing, because there
5 were vague elements of when the clock started,
6 because it started with NHL consent, and we were
7 uncertain, and he, in a very detailed fashion,
8 started discussing the APA, and says, "Well, you
9 have got a clause here that says that, and a clause
10 there that says that, and you can just ask for an
11 extension of that".
12 And so that led me to believe he was very
13 sophisticated and aware of our asset purchase
14 agreement details, but also that the sellers had
15 been intransigent in our efforts in the past to seek
16 an extension, plus by delaying this, I just didn't
17 have a lot of optimism on the IOC people. I thought
18 it was a clear long shot. All the political tea
19 leaves seemed to be suggesting it was an even longer
20 shot.
21 And I was very concerned in the good
22 faithness of...in the transparency that I tried to
23 bring to negotiations that the more we engaged on
24 this side letter that had been unilaterally
25 introduced, the more it was legitimized. At the end

1 I just mentioned to you.

2
3 BY MR. KEYTE:

4 264. Q. The last question. Which of those
5 items were never discussed before with the league?
6 MR. KESSLER: You know what? We will do
7 that when we come back from the break,
8 because it is going to take him a while to
9 go through each of them and I really did...
10 MR. KEYTE: Let me strike that question
11 and we will start over.

12
13 --- A LUNCHEON RECESS

14
15 JAMES LAURENCE BALSILLIE, resumed
16 CONTINUED EXAMINATION BY MR. KEYTE:

17 265. Q. Mr. Balsillie, do you recall, in
18 your discussion with Commissioner Bettman on
19 December 11th, 2006, that you had agreed to defer
20 any decision on the deal until after the gaming
21 decision vote that was expected on December 20th?
22 A. I do not recall agreeing to that. I
23 have a recollection that he suggested deferring to
24 that time, but I don't recall agreeing to that.
25 266. Q. So, from your perspective, it was a

1 of the day, I just didn't feel that I was going to
2 be able to reasonably get an extension. If I did,
3 it didn't matter, and the more this sat around, the
4 more my deposit was at risk, and the more I
5 legitimized this side letter...and so I needed to act
6 very quickly on this evidence, even how you are
7 taking pieces out now, and saying, "Well, you
8 actually responded".

9 So you know that it can just start to be
10 construed, and I started to be having a real bad
11 taste of misconstruing. So, the bottom line of it
12 is, he suggested it, but there was a lot of moving
13 parts, and I just didn't comfortable about the deal
14 at all anymore.

15 267. Q. Let me ask you two simple factual
16 questions. Under your APA, you certainly had time
17 to wait for the IOC vote?

18 A. It all depends, and I just can't
19 remember when the clock started for...when actual
20 approval happened, because the Commissioner said
21 that he can get it in a fax vote, and he may get it
22 prior to the meeting. So I didn't know if the clock
23 was actually ticking on the refundability aspect of
24 the deal, and the buyers were not giving us
25 extensions in our deal.

1 And quite frankly, I started to get very
2 concerned about ever seeing my deposit back again,
3 because I didn't feel there was good faith anymore
4 going on with my dealings. And so I started to feel
5 very, very uncomfortable, and \$15 million is a lot
6 of money for a deposit. I was starting to feel that
7 that was being abused as a leverage point, and I was
8 feeling very uncomfortable about the whole deal at
9 that time.

10 268. Q. Okay. If the IOC vote had gone your
11 way, all these issues that you have been talking
12 about would essentially dissolve, correct?

13 A. That is true, but it was a long
14 shot, and I figured the sellers were being
15 unilateral and not extending the deal, and
16 leveraging me, and the lead was being unilateral in
17 leveraging me with this deal here, and I didn't
18 enjoy the negotiating treatment I was receiving, as
19 somebody who does a lot of business around the
20 world, I understand fair and balanced dealings, and
21 I knew I was playing full price for this team, \$175
22 million was setting a very, very high bar.

23 I knew it, and I was very happy to
24 re-engage with that, and I didn't think they would
25 get a higher offer anyway. In fact, I think there

1 were even some contingency payments; if they get
2 that, I pay them a top-up anyway. So I wasn't
3 enjoying the one-sidedness anyway, because they
4 could break at any time, they could unilaterally
5 change at any time, and I am sitting there, flipping
6 in the wind, so I figured if this is becoming so
7 one-sided, to be having a meeting of the minds,
8 let's just get back together...we could always get
9 back together.

10 269. Q. So you pulled out before the IOC
11 vote, correct?

12 A. Yes.

13 270. Q. Terminated the deal before the IOC
14 vote?

15 A. Yes, I wanted my deposit back while
16 I knew that I could still get my deposit, yes.

17 271. Q. And isn't it a fact that Mario
18 Lemieux was quite upset with you pulling out of the
19 deal?

20 A. Yes, Mario was upset with me pulling
21 out of the deal, though at all the times, there was
22 quite...their counsel was very strident with us, a
23 lot of the time. At no time did Mario ever call me
24 and say, "How is the deal going? What do you need?
25 What do you want?"

1 At no time was there support for me in this
2 deal, and when I was pushing for extensions of our
3 deal, because we were getting consent agreements
4 from the NHL, they were not playing hardball with
5 me, and not giving extensions, and we were hanging
6 in the wind, so people can be as upset as they want,
7 but quite frankly, I don't think...for somebody
8 writing a full-size \$175 million cheque, as a buyer
9 who is going to dramatically enrich his pockets.
10 I think if he really cared about that deal closing,
11 he could have been somewhat more active in
12 supporting and nurturing me in the deal, and
13 nurturing the deal. So I didn't think he had
14 grounds to be upset. People reserve the right to
15 respond as they choose to respond.

16 272. Q. And why did you write him an
17 apology?

18 A. Because he is an icon of hockey. I
19 love the game. I respect what he has done. He is a
20 good person. I have socialized with him. I pride
21 myself in building long and trusting relationships,
22 and I wanted him as a friend, and I also wanted to
23 try and keep this deal alive. I like Mario. I
24 revere what he has done on ice. I am a passionate
25 hockey fan. I totally wanted to buy the team, but I

1 couldn't be put in the position that I was being put
2 into, but that didn't mean I didn't want to buy the
3 team.

4 273. Q. Well, he was upset because he
5 believed you killed the deal; isn't that correct?

6 A. Well, I mean, the deal wouldn't...I
7 wouldn't have had the right to kill the deal, had
8 they extended. They had the right to keep me locked
9 in. All they had to do was extend the deal, and
10 keep playing ball with me, but they kept hanging me
11 in the wind and not extending it, and basically
12 thinking that they could treat me any way they want,
13 and put me in any position they want. So, people
14 can have whatever emotional reaction they want, but
15 if you put any sort of reasonably objective review
16 of the facts, I couldn't have done any of this, had
17 they simply extended the deal, as they had every
18 prerogative to do, and we, effectively, implored
19 them to do that, and they just rebuffed us.

20 274. Q. Let me move on to the July 29th,
21 2009 meeting with the executive committee. Do you
22 recall that?

23 A. Yes. You mean the recent one...

24 275. Q. Yes.

25 A. ...in Chicago?

by Mr. Balsillie

BY MR. KEYTE:

289. Q. I assume you have seen that before at some point. You signed it, correct? If you look on page 8, it has your signature? I am not going to ask you details.

A. Okay, yes. This has my signature.

290. Q. Okay. From our discussions, it appears that you keep track of, very carefully, the relative risks in deals you may pursue involving the NHL, correct?

A. No, I don't think that is...I keep track of the really big risks when they really come into play...

291. Q. Right.

A. ...and you are about to really step onto a big risk.

292. Q. Yes.

A. To the best of my knowledge of assessing the situation, I try to understand the big dollar risks when they are played, yes.

293. Q. Do you recall, with respect to the May 15th, 2007 term sheet with Nashville that you retained the risk that a relocation may not be

approved after you closed the deal?

A. Well, I don't know if that is entirely accurate, because there was a lot of interplay to be done with the league and in codifying this, subsequent to this term sheet.

294. Q. Yes.

A. So I am not...I wasn't prepared to bear unilateral, open and absolute risk in the deal, no. At no time was I comfortable with that, particularly with the taste in my mouth of the unilateralness that I experienced in the Pittsburgh situation. I started to become very, very wary of the risk of arbitrating it. So I don't think...I wasn't prepared to take on absolute risk on the relocation.

295. Q. Well, this May 15th term sheet does not have, as a condition of closing, approval of the relocation for you, correct?

A. That is correct, if that is what it says.

MR. KESSLER: I would also tell the witness that if you are not sure what it says, and he can give you the...

THE DEPONENT: Yes.

MR. KESSLER: ...sheet and you can...

THE DEPONENT: Okay.

MR. KESSLER: ...remind yourself of what is says.

BY MR. KEYTE:

296. Q. I am asking for your recollection. If you don't recall that at all, if you recall it...

A. Could you ask your question again, please?

297. Q. Isn't it a fact that your May 15 term sheet with the Predators did not involve, as a closing condition, that you had an approved relocation application?

A. It is possible it didn't have that, but because of the experience of the Pittsburgh Penguins, really what I was intending to do, and subsequently did, was to be very transparent with the league, as I have tried to be in all of my dealings with the league, to be very straightforward and transparent in my dealings with them, and appeal directly to the Commissioner, and appeal directly to the governors, the executive committee that this...I knew that Mr. Leipold was going to terminate the lease, invoke the lease termination option. So this team was going to be put into uncertainty by the

owner.

It had very challenging performance requirements to maintain the lease, as with the determination option, so for all practical purposes, there was a very high likelihood that this team was not going to have a lease, and being compelled to relocate. So, my approach, just like in Pittsburgh, and just like before Pittsburgh, and just like in Nashville, was to be right up front, and say, "I would like a contingent approval from the board of governors, and I would like this dealt with up front, and I need this dealt with up front, because I am paying an even bigger cheque here, and I may not have a place to play in a year, and I need to deal with this", and so...

298. Q. Not in this term sheet?

A. But if it is not in this term sheet, that doesn't mean it wasn't being contemplated and being dealt with in another way outside of this term sheet.

299. Q. Outside of this term sheet, wasn't it, in fact, at this time that Mr. Leipold told you that he would sell you the team where-is, as-is, and that you would have to deal with relocation after closing?

1 A. Well, that would be a
2 mischaracterization, because Mr. Leipold represented
3 the team to me as a moveable franchise, that
4 everybody knows it has to be moved, that he is going
5 to cancel the lease, and that this has to be dealt
6 with...this was going to have to be dealt with, and
7 it is going to have to be dealt with imminently.

8 And then he might have said, "Look, you
9 have to deal with it as is, but everybody has to
10 deal with it...but everybody knows this has to be
11 dealt with". Based on what happened in the
12 Pittsburgh situation, I realized that any form of
13 ambiguity is not going to be good here, and I wanted
14 this stuff dealt with up front. What are we going
15 to do if the team doesn't have a lease in a year?
16 And before I wrote this \$220 million cheque, which
17 is a big cheque, I needed to know, what do I do in
18 this circumstance, this inevitability that not only
19 seems possible, it actually seems likely?

20 300. Q. Well, your draft APA, asset purchase
21 agreement, was different from the term sheet, in
22 that you then tried to make approved relocation a
23 condition; isn't that correct?

24 A. I don't recall specifically what was
25 in the draft APA, but I do recall that this was a

1 MR. KESSLER: Objection to the form of
2 the question.

3 THE DEPONENT: You lost me on that
4 question.

5 BY MR. KEYTE:

6 302. Q. As of May 15th, 2007, around the
7 time of this term sheet, wasn't it your
8 understanding that you would not seek relocation
9 until after closing?

10 A. Is that codified in the term sheet
11 somewhere, that I have...

12 303. Q. I am asking your understanding with
13 Mr. Leipold.

14 MR. KESSLER: Could I ask the witness,
15 if are you asking him, just start reading
16 the whole document.

17 MR. KEYTE: I am not even...I am not
18 referencing the document. This is just a
19 question of your understanding of your
20 agreement with Mr. Leipold.

21 MR. KESSLER: I understand that, but you
22 are asking him specifically questions about
23 the term sheet...

24 MR. KEYTE: No, the time period.
25

1 non-binding term sheet, and how we interplay with
2 the league on relocation was going to be a really,
3 really important thing, and Mr. Leipold wanted this
4 done expeditiously, and with the league issues to be
5 dealt with after closing, and my view was, at the
6 price I am paying, I really...in an asset purchase
7 agreement or in a separate path, I am going to need
8 to get some clarification as to how I deal with the
9 fact that there is a high likelihood the lease is
10 going to terminate, and as you brought out earlier
11 in your discussions on Pittsburgh, some of these
12 discussions are between the buyer and the seller.
13 Some of these are between the league and the buyer,
14 and thus I was trying to adapt and learn from my
15 prior experiences that I guess I had better go
16 straight to the Commissioner on this one, and have a
17 straight-up meeting and straight-up application and
18 straight-up codification to deal with this very real
19 contingency on the cusp of me writing a cheque of
20 \$220 million.

21 301. Q. Well, during this time, where Mr.
22 Leipold understood he had a where-is, as-is deal
23 with you, wasn't it your agreement with Mr. Leipold
24 that you would not seek relocation until after a
25 closing?

1 MR. KESSLER: ...the time sheet is a
2 single...but that was his understanding, as
3 in these 8 pages, and it is a
4 single-spaced, eight-page document...

5 MR. KEYTE: Jeffrey, it has nothing to
6 do with...just the time period.

7 MR. KESSLER: I will inform the witness
8 that he has a right to read the entire term
9 sheet if you are going to ask questions
10 about it.

11 MR. KEYTE: I am not asking about the
12 term sheet.

13 BY MR. KEYTE:

14 304. Q. Do you want the question again, sir?

15 A. I am happy to have the question.

16 You are inter-relating things of expectation that
17 are material at the time. Now, if you want me to
18 answer them, just please let me refresh the term
19 sheet, so that I can bring out all aspects of
20 contextualization at the time. But I am happy to
21 answer it...

22 305. Q. Let me start over...

23 A. ...as long as you let me
24 get...prepare to answer your question.
25

1 306. Q. I understand. Let me ask a simpler
2 question, then. Around this time, May of 2007, did
3 you have an understanding with Mr. Leipold that you
4 would not file a relocation application until after
5 closing?

6 A. It is hard for me to recall in
7 isolation one aspect of understanding, because we
8 were working at reducing this to the term sheet. It
9 would help me give you a better answer to that
10 question if I read the term sheet and refreshed my
11 memory as to the context of what was going on, but
12 you are asking elements that may or may not be in
13 the term sheet that were around the same time, and
14 it is very difficult for me to be confident in
15 giving you an answer, absent refreshing my memory by
16 going through this term sheet, but I am very happy
17 to answer it, if you just give me a couple of
18 minutes to go through the term sheet.

19 307. Q. Take a look at it. Actually, Mr.
20 Balsillie, in the interests of time, let me just
21 move on. If you don't recall, then that is fine.
22 You do recall, don't you, putting in what you
23 thought was a relocation application without
24 informing Mr. Leipold?

25 A. I recall putting in the relocation

1 reasonableness. Whether Mr. Daly advised me against
2 it, I can't specifically recall, but I knew that the
3 Commissioner would prefer that I not deal with it
4 now, that I give it my best efforts, that I sign the
5 seven-year non-relocation application, and we let
6 the chips fall where they may.

7 309. Q. Do you recall committing that if you
8 did the Nashville deal, you would make a go of it
9 first in Nashville, to try to make it succeed.

10 A. I remember committing to make a go
11 of it...I did not commit to Mr. Leipold, but when I
12 met with Commissioner Bettman, he said "Make a go of
13 it for the year", and I committed that yes, if we
14 made the performance criteria of 14,000 tickets to
15 maintain the lease, that I was prepared to stay and
16 commit to Nashville.

17 But I also said that I am very, very
18 uncomfortable with sort of informal waivers to seek
19 what the board of governors on the subsequent...late
20 in the season on a seven-year non-relocation,
21 because I am at the whims of others, and it made me
22 particularly concerned, because I had a conversation
23 with Mr. Karmanos, who had approached me on some
24 other matters, and said to me...and I was talking
25 about Craig's very difficult situation, and he said,

1 application, and I recall meeting with the
2 Commissioner, and discussing in detail the need to
3 deal with this contingency that was looming over the
4 team with the cancelled lease agreement, and I
5 **believe Mr. Daly was at that meeting. So I knew**
6 **that this was a...**but I don't recall the exact
7 sequencing of events and the timing and the
8 noticing.

9 308. Q. Okay. Do you recall Mr. Daly
10 advising against making a conditional relocation
11 application?

12 A. I don't specifically recall that,
13 but I do recall the Commissioner not being
14 **supportive of the concept of a conditional**
15 **application.** He said the league deals with things
16 on a specific basis when they happen, and they don't
17 want to deal with them on a contingent basis, to
18 which my position was, well, I am writing a cheque
19 for \$220 million personally, and this is a very,
20 very big issue, and somehow, this has to be dealt
21 with up front and transparently, and somewhat
22 predictability.

23 So, as a person about to write the cheque,
24 I needed this for this to be a business deal, as a
25 **businessman that has any form of economic**

1 "Craig is a grown man. He signs his agreements, and
2 lives with them as they are, and he has to live with
3 the commitments he has made".

4 So, it told me that you live with what you
5 sign. If you get a waiver or a break in the future,
6 so be it, but as they say in hockey, skate with your
7 **head up**, get the explicit terms codified up front,
8 and don't count on any special waivers or favours
9 from anybody in the future. And so...because this
10 is business.

11 And so with the Nashville deal, it **made it**
12 pretty clear to me that the only way I can move
13 forward in this one is for the board of governors to
14 **realize that I am going to do a very good job in**
15 **increasing franchise values, I am going to take a**
16 **troubled team in a troubled situation, and give a**
17 **very strong situation to Mr. Leipold, but I went**
18 **directly to them in this application, and said, "I**
19 **need the capacity to deal with this contingent**
20 **event".**

21 310. Q. One more question on your
22 discussions with Mr. Daly and Commissioner Bettman
23 and making a go of it in Nashville for the year. Do
24 you recall them voicing concern that any relocation
25 discussions would undermine the efforts to sell

1 tickets in Nashville?

2 A. I don't specifically recall it, but
3 it is possible that they said it. But that is
4 really...seemed to me a bit of a stretch, because
5 the current owner had publicly cancelled the lease,
6 and a prospective owner, doing a relocation
7 application, which could be done very discretely, if
8 they wished, nothing...the destabilizing act was
9 cancelling the lease.

10 Now, as a buyer, I am inheriting a ticking
11 clock, and I am writing a \$220 million cheque for
12 the privilege. So I think the destabilizing was not
13 a relocation contingent application, but in fact the
14 cancelling of the lease, and it was the community's
15 responsibility to either respond to that favourably,
16 or lose their team, as had been represented to me by
17 Mr. Leipold in the very, very first conversation.

18 311. Q. Isn't it a fact that very often,
19 under leases, under the provisions, leases are
20 terminated, and the team stays in the city with a
21 new subsequent lease?

22 A. It is possible one could renegotiate
23 a lease, and it is possible it could be economically
24 viable, but Mr. Leipold was unambiguously
25 pessimistic of the team and its future economic

1 at these terms, please move on". And it was all
2 their problem.

3 312. Q. As of the beginning of June, Mr.
4 Leipold still believed he was selling you the team
5 where-is, as-is, is that correct?

6 MR. KESSLER: In your understanding.

7 THE DEPONENT: I can't tell you what was
8 in Mr. Leipold's mind. I knew that yet
9 again, we had a team that was being sold,
10 top dollar, with an uncertain contingent
11 event being nested in it. And the fact of
12 the matter is that when you nest a
13 contingent event, which has potential, very
14 very dramatic consequences in it, you have
15 to contemplate that in a deal, and Mr.
16 Leipold was very interested in the urgency
17 of this deal, because he had an opportunity
18 to buy another team, which he really wanted
19 to own closer to his home, and he needed
20 the funds to do that, and he very much much
21 had had his fill of being in Nashville.

22 So, you have to accept a much lower
23 number, or you must help me reasonably
24 digest this contingency, and so I tried to
25 be quite straightforward, and you weren't

1 prospects, and any form of lease renegotiation would
2 have all kinds of risks to it and delays, and this
3 team was presented to me as a moveable team, that
4 everybody knew it could make a go, and a very good
5 man in Mr. Leipold put a lot of effort into it for a
6 long period to time, and incurred an awful lot of
7 losses.

8 So I wasn't optimistic that I could do a
9 better job than he had and so I agreed to the
10 Commissioner to give it a good effort for the one
11 year, and if they met the threshold, that we would
12 stay with the lease, but undertaking all sorts of
13 other Herculean efforts was not what I was signing
14 up for in the \$220 million.

15 If that is what I was signing up for, I
16 might have put a much lower number onto it, if that
17 is what I was interested in doing, but no matter
18 what, I was very upfront and transparent with Mr.
19 Leipold and with the Commissioner, and quite
20 frankly, in my application, trying to be very clear
21 to the board of governors what I am thinking, what I
22 am trying to achieve, why I am putting this money on
23 the table. Mr. Leipold knew it, the Commissioner
24 knew it, and they could have said, "Thank you very
25 much. We don't want your money. We don't want it

1 going to get a binding term sheet from me
2 with non-refundable deposits until you had
3 this contingency clearly resolved.

4 BY MR. KEYTE:

5 313. Q. Did these issues come to a head in a
6 June 4th meeting in Waterloo with Mr. Leipold?

7 A. I can't remember when they came to a
8 head exactly, and which way, according to Mr.
9 Leipold, but I do recall a telephone call I had with
10 him when I was in Calgary, and it was on a Sunday
11 morning, and it was fundamentally...at that point,
12 he said, "No more ambiguity. You have to give a
13 deposit. It has to be non-refundable. You have to
14 pay this price. You have to take this team as is,
15 where is".

16 And that is when it came to a head, and at
17 that point...or, you know, and so I had to
18 deliberate that. So there was a later time that
19 that happened. I don't recall it coming to a head
20 in Waterloo. I know there was a meeting in
21 Waterloo, but I don't recall the details of it.

22 314. Q. Okay. At that June 4th meeting in
23 Waterloo, did Mr. Rodier threaten, in some fashion,
24 Mr. Leipold with a Canadian Competition Bureau
25

1 MR. KESSLER: I don't see a Bates number
 2 on this document. Was it produced?
 3 MR. DANELLA: It is an exhibit to the
 4 Jacobs declaration.
 5 MR. KESSLER: Excuse me?
 6 MR. DANELLA: It is an exhibit to the
 7 Jacobs declaration.
 8 MR. KESSLER: Exhibit to the Jacobs
 9 declaration?
 10 MR. DANELLA: That is right.
 11 MR. KESSLER: Okay. It should have been
 12 produced, as well, in when we call for
 13 discovery, but okay.
 14 MR. KEYTE: I will check, and you can
 15 check and see if you have produced it, as
 16 well.
 17 MR. KESSLER: I am pretty sure we did
 18 not produce this, nor would we...unless it
 19 had been printed out in files, we would
 20 have had this. Okay, go ahead.
 21
 22 BY MR. KEYTE:
 23 319. Q. Looking at your e-mail to Mr.
 24 Bettman of that day, you say:
 25 "...I got taken by surprise an hour ago,

1 Was that a genuine sentiment in passing along to
 2 Commissioner Bettman, at that time?
 3 A. Yes, it was genuine.
 4 321. Q. Wasn't this the very kind of
 5 aggravation you were desiring to cause?
 6 A. I don't know why you are inferring
 7 that, no.
 8 322. Q. Now, with respect to Nashville, it
 9 is a fact, is it not, that on June 14th, you began
 10 selling season tickets in Hamilton?
 11 A. We took deposits, yes. We took
 12 deposits for seasons tickets.
 13 323. Q. Whose idea was that?
 14 A. I can't remember whose idea it was.
 15 324. Q. Was it your idea?
 16 A. I can't remember whose idea it was,
 17 but I remember that it is...before you do an
 18 application for transfer, it is a pre-condition that
 19 you demonstrate interest, fan interest in the game,
 20 and that you have enough fan interest, and the
 21 capacity to sell tickets, and when I met with the
 22 Commissioner, the first time I met him, I showed him
 23 our plans to renovate the Copps Arena, which were
 24 done by a very reputable architect the league knows
 25 well, and they were expensive.

1 received a call from the Canadian
 2 Competition Bureau. They kept me on the
 3 phone for almost 45 minutes, asking
 4 questions..."
 5 My question to you, Mr. Balsillie, is, were you
 6 truly taken by surprise to get a call from the
 7 Canadian Competition Bureau at this time?
 8 MR. KESSLER: I will let you answer that
 9 question. I won't let you answer anything
 10 about the contents of your communications
 11 with the Canadian Competition Bureau.
 12 THE DEPONENT: Yes, I wrote I was
 13 surprised, and I would have been surprised,
 14 yes, and...
 15 MR. KESSLER: But that is all. Don't go
 16 on in this subject.
 17 THE DEPONENT: Yes.
 18 MR. KESSLER: That, I will let you
 19 answer.
 20
 21 BY MR. KEYTE:
 22 320. Q. And then you write:
 23 "...I thought I should inform you right
 24 away, this kind of aggravation, we don't
 25 need!..."

1 And I also had a market study that showed
 2 very high avidity and fan interest in the Hamilton
 3 region for hockey, and the Commissioner said,
 4 "Before you do an application to move the team, you
 5 have to show interest in the fans there". And I
 6 said, "Well, we have a market study here". He said,
 7 "Well, we are not contemplating Hamilton, so I don't
 8 want to look at the report".
 9 And I said, "But the report shows there is
 10 a pent-up demand here", and there wasn't a desire to
 11 see it. So, the way I understand the NHL's very own
 12 rules and bylaws, is that before you can make an
 13 application for relocation, contingent or otherwise,
 14 you have to demonstrate that you have sufficient fan
 15 interest, and principally, we had a competitor for
 16 the Predators.
 17 There was a man by the name of Mr. Del
 18 Biaggio, who was a part owner of the San JosT
 19 Sharks. He is one of the owners in the NHL, and one
 20 of the team. He was a minority owner, but he also
 21 had an option for the team in Kansas City, and he
 22 was endeavouring to buy control of the Predators,
 23 and move them to Kansas City.
 24 And in that context, he had taken deposits
 25 for the suites, and I believe sold out the suites in

Kansas City to show avidity to hockey. So, I believed that there was a bit of a competition that Hamilton was viable like Kansas City. Should this team need to be relocated, and before I plunk down \$220 million, I wanted some contingent clarification of that, so yes, I took deposits as a pre-condition to fulfilling my obligation under the NHL's guidelines and bylaws for an application transfer.

325. Q. Now, Mr. Del Biaggio did not use any reference to the particular team for his deposits, correct?

A. I don't know if he did or not, but I do know subsequent, he was marketing Nashville to investors as a moveable team. So, whether he was doing it publicly or privately...I know he was doing it privately. He may not have done it publicly, but I know he was doing it privately.

326. Q. By this time, you had already been told by the league that they don't even accept conditional applications, correct?

A. Well, the Commissioner had said he didn't, but he has bosses. He has bosses that own the teams, and that he reports to, and so it became rather troublesome to me that he seemed to be going out of his way to protect Toronto and the Toronto

Maple Leafs' regional rights, because there seemed to be so much friendliness to Kansas City and any place but Southern Ontario. And there seemed to be such strange machinations in the Pittsburgh deal, and they seemed to be strange again in the Nashville deal that it struck me that there was an undeclared effort to protect Toronto's territorial rights, and so the application was to his bosses.

327. Q. In your declaration, you say you believed it was league policy at the time that there was a substantial number of season ticket deposits had to be obtained to demonstrate that a community could support an NHL team. Do you remember that?

A. Yes, I do.

328. Q. What is the basis of that? What league policy requires that?

A. I have been advised that one of...and again, I didn't read the bylaws, but I had been advised that you have to demonstrate that there is interest in success in the team before you can apply to relocate, and so the easiest way to do that would be to sell...show deposits for seasons tickets.

329. Q. Now, you said you wanted to be candid with the league, correct?

A. That is correct.

330. Q. Now, why didn't you keep the league informed of this plan from the beginning?

A. Well, I sent Commissioner Bettman an e-mail...first of all, I did.

331. Q. From the beginning.

A. Well, I sent Commissioner Bettman an e-mail saying, we are going to be taking deposits for a team, and it is, I believe, to demonstrate interest in the market. And he said, "I advise against it", but he did not say, "Don't do it", and he did not say it was against league policy, or against league bylaws.

So, he didn't say that it is wrong to do, he just prefers that I didn't, which, you know...and so I did advise him of that, and again, I respect that he may want to keep all franchises where they are. I am not sure if he is going to unbelievably great lengths to protect Toronto.

It appears to be such, but I am the one writing the cheque for the \$220 million, and once I buy that team, I am one of the owners, and so it is very important that I go to his bosses, and get an appropriate clarification on this deal. And I did let the Commissioner know that I am going to do

this, and he didn't say, "Don't do this", or, "This is wrong", or, "This is against league guidelines, or against league bylaws". He didn't tell me that in his response.

332. Q. You let the Commissioner know the night before?

A. Yes, I did let him know the night before, and he responded, and did not say, "This is wrong, don't do it". He did not tell me that this was anything that was of that nature.

333. Q. And was this several weeks in the planning or several months in the planning, the ticket sales in Hamilton?

A. I don't...it wasn't in planning very long.

334. Q. Days, weeks?

A. I don't have any exact recollection. It wasn't a hard thing to do. It was a small ad in a newspaper.

335. Q. You had to set up taking deposits, and...

A. It is not hard to do very quickly. You get somebody to take it from a site, and you get a small ad. As I have said all along, Hamilton, I believe, is by far the largest underserved or

1 unserved hockey market in North America. I have
2 full confidence that this thing would sell out in a
3 day or two, and amply demonstrate that this would be
4 a successful place for another team.

5 MR. KESSLER: I think...good time for a
6 break?

7 MR. KEYTE: Sure.

8
9 --- A BRIEF RECESS

10
11 JAMES LAURENCE BALSILLIE, resumed
12 CONTINUED EXAMINATION BY MR. KEYTE:

13 MR. KEYTE: Let me mark as Exhibit 8 the
14 e-mail exchange between you and
15 Commissioner Bettman of June 13th and 14th.

16
17 --- EXHIBIT NO. 8 : E-mail exchange of June 13 and 14,
18 2007 between Mr. Balsillie and
19 Commissioner Bettman

20
21 BY MR. KEYTE:

22 336. Q. You recall this e-mail exchange;
23 correct? You have to read from the back of it going
24 forward if you want to read it chronologically.

25 A. I send and receive a lot of e-mails

1 A. Correct.

2 339. Q. ...in Hamilton?

3 A. Correct.

4 340. Q. And then you have already referenced
5 his response. Let's go over some of that response.
6 And look at the second...his response starting at
7 the second sentence, he states to you:

8 "...Your e-mail of earlier today, I
9 believe, will exacerbate these concerns
10 because your encouragement of the sale of
11 tickets anywhere other than Nashville
12 clearly sends another discouraging message
13 to the fans and business partners in
14 Nashville, and hardly is consistent with
15 the representation that you would try in
16 good faith to make it work in Nashville..."

17 Do you see that?

18 A. Yes, I do.

19 341. Q. Do you agree with that?

20 A. No, I don't. Because the existing
21 owner was cancelling the lease, and that is a
22 materially destabilizing effect. So this action
23 that I took was entirely consistent with what was
24 going on with the team. And in my discussions with
25 Craig and in my discussions with Gary, in hindsight,

1 and I don't specifically recall this e-mail at this
2 time but I am going to read it now to try to refresh
3 my memory.

4 337. Q. That is fine.

5 MR. KESSLER: Did we mark this or is
6 this the same as the Bettman?

7 MR. KEYTE: It probably is.

8 MR. KESSLER: You re-marked it as
9 Balsillie 8?

10 MR. KEYTE: Yes.

11 MR. KESSLER: To the extent you can, we
12 have tried not to do that. But I am pretty
13 sure this is a Bettman exhibit. It just
14 makes it a little confusing. I think it
15 was actually your partner who insisted upon
16 that.

17 MR. KEYTE: It would not surprise me.

18 THE DEPONENT: Okay, I have read these
19 e-mails.

20
21 BY MR. KEYTE:

22 338. Q. So, the first e-mail is from you to
23 Gary on the 13th informing him of what you plan to
24 do, what you are doing the next day, correct, with
25 respect to selling tickets...

1 you know, really what I should have done is I wish I
2 had called Craig. This was consistent with our
3 expectations of the team and that it was a moveable
4 team and that it is long odds of surviving in
5 Nashville in a viable way. And the clearly
6 destabilizing act, if anything, is going to be the
7 notification by Craig that he is terminating the
8 lease. Which really sends a message to the fans;
9 either show up and support the team or you lose it.

10 The irony of these things is by putting
11 down the gauntlet to the fans, it looks like they
12 sort of responded, that attendance went up and
13 interest went up and there were rallies and
14 corporate sponsorship. So, sometimes leverage is
15 the necessary part to show people responding. And I
16 said if they performed to their requirements under
17 the lease, I was prepared to stay there. And so I
18 didn't mean it to be especially stabilizing nor
19 destabilizing, but it appears to be that the irony
20 of it is that it was, in fact, a rather helpful act.
21 But the destabilizing event was the cancellation of
22 this by Mr. Leipold.

23 342. Q. Well, the sentence says:

24 "...Is hardly consistent with a
25 representation that you would try in good

MR. KESSLER: And that was my objection, because there is no evidence he ever said that. You are exactly getting to my objection.

THE DEPONENT: I am saying that if there is any benefit, it is ironic.

BY MR. KEYTE:

370. Q. So, no harm, no foul is what you are saying?

A. I am not saying no harm, no foul. I am saying you cannot say that this destabilized the team. And I am also saying that you structured the pre-condition of needing to show interest in avidity for purpose of a transfer application. And this team was brought to me as a mobile team and marketed as a mobile team that is most likely not sustainable in its current market. And so this is the set of facts I had to deal with.

371. Q. You were aware, were you not, that your announcement for selling Predator tickets in Hamilton was on the same day as the NHL Award ceremony show in Toronto?

A. If you refresh my memory that that is the fact, so be it. But that is not of any...

A. Very much so.

378. Q. And Mr. Gillett was upset, that he thought he was going to get an affidavit through Mr. Rodier so he could go after the newspaper; correct?

A. Mr. Gillett was very upset and he accused me of ruining the team's season and taking a team from second place down to barely making the playoffs, and attributed all aspects of the team's decline to this newspaper article. Yes, he was upset.

379. Q. Were you aware that at least Mr. Gillett believed that Mr. Rodier had committed you to giving him an affidavit for any action they may file against the newspaper?

A. Mr. Gillett attributed a lot of things to me. I wasn't in those meetings with Mr. Rodier with seeking an affidavit. You will have your chance to talk to Mr. Rodier. But suffice it to say, this was an egregious mischaracterization by a report, a French language...it was a conversation that the photographer was asking me with the reporter on the other side of the room. And we sent a very stern record to...letter to the editor setting the record straight. And it is not a...I didn't see at that time how it would be helpful

372. Q. Did you know it at the time?

A. That wasn't any particular consideration in doing this.

373. Q. I understand. My question is, did you know it at the time?

A. Did I know it at the time? The timing of this coming out...we might have known it incidentally at the day it happened. I can't think that that was any particular factor in what was going on.

374. Q. Your testimony is that was a coincidence?

A. M'hmm. Yes.

375. Q. Now, let me ask you about this...it was raised at the 7/29 executive committee meeting with respect to Mr. Gillett. And your statement in...if I say it right...I will say La Presse. You remember that?

A. Ca va bien.

376. Q. And your statement was purported to be the team, the Canadiens, is for sale; correct?

A. They purported something and they took it massively out of context.

377. Q. You said it was lost in translation, there was some out of context?

getting into a frivolous lawsuit with a newspaper over something that is very hard to win and very hard to prove damages when I have a...you know, when basically the key is to set the record straight.

380. Q. Did you have an understanding that Mr. Gillett believed he was getting an affidavit from you through Mr. Rodier?

A. I have subsequently had Mr. Gillett say that to me, that he thought that, in the process of articulating many things to me, not the least of which is that he thinks I am a very good guy, that I would be a very good member of the league, that he doesn't have a lot of fondness for Mr. Rodier. And he directly attributed the precipitous decline of the team to me on that article, which I strike as rather unfair.

381. Q. Let me ask you, moving on to another...

A. Especially since the team apparently had somebody engaged to sell the team at that time and subsequently did sell it, so it looks like there was truth to it and it looks like this was, you know, something that the reporters twisted.

382. Q. You have used the phrase with respect to this...the Coyotes, you couldn't get in

J.L. Balsillie
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