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10  
11 **UNITED STATES BANKRUPTCY COURT**  
12 **DISTRICT OF ARIZONA**

13 In re:  
14 DEWEY RANCH HOCKEY, LLC,  
15 COYOTES HOLDINGS, LLC,  
16 COYOTES HOCKEY, LLC, and  
17 ARENA MANAGEMENT GROUP, LLC,  
18 Debtors.

Chapter 11 Proceedings

Case No. 2:09-bk-09488-RTB  
(Jointly Administered)

**NATIONAL HOCKEY LEAGUE  
PLAYERS' ASSOCIATION'S SECOND  
STATEMENT OF POSITION  
REGARDING COLLECTIVE  
BARGAINING AGREEMENT AND  
DEBTORS' MOTION TO ASSUME,  
ASSIGN AND CURE**

**Hearing Date: September 10, 2009  
9:00 a.m.**

21  
22 The National Hockey League Players Association ("NHLPA"), through undersigned  
23 counsel, hereby files this Second<sup>1</sup> Statement of Position regarding the NHLPA's Collective

24  
25 \_\_\_\_\_  
26 <sup>1</sup> The NHLPA's First Statement of Position is at Dkt. No. 509.

1 Bargaining Agreement (“CBA”)<sup>2</sup> with the National Hockey League (“NHL”) and its member  
2 Clubs. It is submitting this Statement of Position in response to the Motion of Debtors and  
3 Debtors In Possession For An Order Authorizing Assumption and Assignment of Executory  
4 Contracts and Unexpired Leases Under Section 365 of the Bankruptcy Code in Connection with  
5 Sale of Substantially All of Their Assets ( the “Debtors’ Motion to Assume”) (Dkt. No. 817)  
6 seeking assumption and assignment of certain contracts (including the CBA),<sup>3</sup> depending upon  
7 which of the three entities that submitted bids for substantially all of the Debtors’ assets is the  
8 successful bidder.

9  
10 Of the three potential bidders, PSE Sports & Entertainment LP (“PSE”) and the National  
11 Hockey League (“NHL”) have both confirmed to the NHLPA that it is their unequivocal intent  
12 to seek assumption and assignment of the CBA as part of their bid to purchase the Coyotes  
13 Hockey Team. As further set forth herein, the assumption and assignment of the CBA includes,  
14 *inter alia*, all Standard Player Contracts (“SPCs”) and/or buyout agreements incorporated  
15 therein as to which the Coyotes are currently bound, as well as the obligations and  
16 responsibilities for resolving and satisfying all pending claims and disputes that may exist under  
17 such SPCs.

18 It appears that only one of the potential bidders, Ice Edge Team, LLC (“Ice Edge”), has  
19 elected not to designate the CBA for assumption and assignment, although it does designate  
20 several SPCs for assumption and assignment. The NHLPA does not consent to, and specifically  
21 objects to, any attempt to piecemeal assume or assign the CBA in the event that Ice Edge is  
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23 <sup>2</sup> Throughout this submission, we refer to the CBA and to various sections of the CBA. The CBA is a voluminous  
24 document and the NHLPA presumes it was previously provided by the Debtors to each bidder as part of the due  
diligence process. In the event any party does not have a copy, the NHLPA will provide it upon request.

25 <sup>3</sup> As a technical matter, under Section 1113 of the Bankruptcy Code a debtor does not have to “assume” a collective  
26 bargaining agreement to continue to be bound by it. Rather, the debtor remains a party bound by the agreement  
until and unless the debtor has complied with that section’s substantive and procedural requirements and the court  
completes a full evidentiary hearing on the debtor’s motion to reject.

1 deemed the successful bidder herein. Further, the NHLPA objects to the Debtors' proposed  
2 cure amounts in the Motion to Assume to the extent they are interpreted to be anything other  
3 than the full amounts claimed by the NHLPA. In further support of these positions, the NHLPA  
4 states as follows:

5 **A. BACKGROUND**

6 1. The NHLPA's is a labor organization recognized by the NHL and its constituent  
7 Member Clubs as joint employers as the "exclusive bargaining representative" of all NHL  
8 Players. That recognition, in turn, arises from § 9(a) of the National Labor Relations Act, 29  
9 USC § 159(a). In its capacity as exclusive bargaining representative of the Players, the  
10 NHLPA, and only the NHLPA or its designated agents, may bargain with the NHL and the  
11 Clubs over terms and conditions of employment for the Players collectively and individually.  
12 The NHL Players are obligated to play for the Member Clubs pursuant to the terms of any  
13 current collective bargaining agreement; conversely, the Players have no obligation to play for  
14 any Club that is not a party to the then-current collective bargaining agreement.  
15

16 2. The agreements reached between the NHLPA and the NHL and its Member Clubs  
17 are manifested in two ways. First, they are embodied in a collective bargaining agreement that  
18 is binding on the parties for its term. The CBA at issue is one that is in effect for the period July  
19 22, 2005 through September 15, 2011. Second, they are embodied in individual Standard  
20 Player Contracts ("SPC") that are negotiated between Player-Agents (or the Players  
21 themselves) and the Clubs. These SPCs are specifically provided for, and are regulated in detail  
22 by, the CBA. Once agreed upon, they become an integral part of the CBA and are enforceable  
23 through the CBA's grievance and arbitration process. In short, they are "terms" of the CBA, as  
24 fully as though they were set out between the CBA's covers. In the same vein, the SPCs do not  
25 exist as free-standing agreements separate and apart from the CBA.  
26

1 **B. THE PURCHASE OFFERS AND PROPOSED ASSUMPTION**

2 3. Among the three bidders, PSE and the NHL appear to have structured their proposed  
3 transaction in ways that satisfy the NHLPA, and to the extent there was any confusion, have  
4 since confirmed directly to the NHLPA their intent to seek assumption and assignment of the  
5 CBA in its entirety. The NHL proposes that the Debtors assume the CBA and assign it to the  
6 NHL which will thereafter be responsible for future as well as past performance of the  
7 obligations thereunder. PSE proposes that the Debtors assume the CBA and assign it to PSE  
8 which will be responsible for future performance, while the Debtors will be responsible for  
9 promptly curing existing obligations and breaches under the CBA. Either of these approaches  
10 is acceptable to the NHLPA.

11 4. Ice Edge, in contrast, has not provided such assurances. Ice Edge's bid proposes that  
12 the Debtors assume and assign only certain SPCs. To the extent that proposed transaction  
13 purports to leave the CBA and its included past and future obligations in the Debtors' estate, it  
14 is ineffective as a vehicle for creating a satisfactory bargaining relationship going forward. For  
15 the reasons set forth in the preceding paragraphs, the SPCs do not exist independently of the  
16 CBA and, accordingly, cannot be "assumed" and "assigned" independent of a CBA. See, In re  
17 Dewey Ranch Hockey, LLC, 406 B.R. 30, 37 (Bankr. AZ 2009). ("It is basic bankruptcy law  
18 regarding the assumption and assignment of executory contracts that the assuming party cannot  
19 assume only the benefits of a contract; rather, assumption is the entire agreement, benefits and  
20 burdens. [Citation omitted.]")

21 5. Although not stated in Ice Edge's bid proposal, it must be premised on the notion that  
22 it can simply "succeed to" the CBA with the NHLPA on a going-forward basis, for without a  
23 CBA in place, the Club will – as a practical matter – be unable to field a team in the 2009-2010  
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1 season. Without the CBA in place, players will have no obligation to play for the Club and,  
2 indeed, will be free agents with rights to negotiate with other Clubs who are parties to the CBA.

3 6. Ice Edge's unstated assumption is not correct. Under well-settled principles of law  
4 governing the relationship between employers and unions, an employer that is a "successor" to  
5 an employer who is a party to a collective bargaining agreement seamlessly and automatically  
6 becomes a party to the existing collective bargaining agreement as a matter of law. The question  
7 in all cases involving business transactions between entities is whether the "new" entity is or is  
8 not a successor for labor relations' purposes. In this transaction, the answer is straightforward –  
9 a stock purchaser is a successor and an asset purchaser is not. *Compare NLRB v. Burns Int'l*  
10 *Sec. Servs.*, 406 U.S. 272, 288 (1972)(neither union nor employer bound by terms of asset  
11 seller's collective bargaining agreement) *with TKB International Corp.*, 240 NLRB1082  
12 (1979).<sup>4</sup> Thus, Ice Edge is not a "successor" as a matter of non-bankruptcy law and cannot  
13 automatically succeed to the CBA and its incorporated SPCs. It can become party to the CBA  
14 only through negotiations and agreement with the Players' exclusive bargaining representative –  
15 the NHLPA.<sup>5</sup>

17 6. Furthermore, the NHLPA is unwilling to enter into a CBA with Ice Edge that would  
18 permit it only to be obligated by the terms of those individual SPCs its bid designates as  
19 contracts to be assumed and assigned. That said, the NHLPA assumes that Ice Edge's failure to  
20 structure the transaction in a way that allows for the seamless transfer of the CBA, the SPCs and  
21 their various obligations is not an intentional decision but rather is a product of its unfamiliarity  
22 with the CBA and the bargaining process. Accordingly, the NHLPA stands ready to consult

23 <sup>4</sup> On questions concerning who is or is not a successor to rights and obligations regarding labor agreements, the  
24 NLRB – applying principles of labor law – and not the bankruptcy courts have primary jurisdiction. *See In re*  
*James M. Goodman, Debtor*, 873 F.2d 598 (2d Cir. 1989) *citing San Diego Bldg. Trades Council v. Garmon*, 359  
25 U.S. 236, 245 (1959).

26 <sup>5</sup> This same analysis applies to the NHL and PSE. However, for the reasons stated in Paragraph 3, subject only to  
the limitations in Paragraphs 8 and 9, the NHLPA consents to become a party to the CBA with PSE and the NHL.

1 with Ice Edge in advance of the auction date to assure that if it is the successful bidder, it will be  
2 in a position to ice a team in the 2009-2010 season. However, in the event Ice Edge is the  
3 successful bidder and it has not amended its bid to designate the CBA for assumption and  
4 assignment, the Court should determine the designation of the assignment of the SPC's a void  
5 act, as without the CBA, any player covered by a SPC will be free to exercise his free agency  
6 rights.

7 **C. PROPOSED CURE**

8 7. As noted, the NHLPA is fully prepared to consent to the assumption and assignment  
9 of the CBA to any of the three bidders, but its willingness to do so is not unconditional. The  
10 NHLPA expects that, as a condition of such an agreement, the successful bidder shall assume  
11 all current and future obligations under the CBA and arrange for the prompt cure of existing  
12 claims thereunder. These existing claims include expense reimbursements, SPC buy out  
13 obligations, and a handful of player grievances that are set for resolution under the arbitration  
14 provisions of the CBA. These accrued obligations – some disputed and some undisputed – are  
15 set out in Exhibit A attached to this submission and have been previously provided to the  
16 Debtors and all bidding parties.

17 8. In their Motion to Assume, the Debtors set forth in various exhibits those contracts  
18 intended to be assumed and assigned, which include for PSE and the NHL, the CBA, and for all  
19 three bidders, several SPCs. While the NHLPA does not believe it was necessary for the  
20 bidders to separately list the SPC's for assumption, the list of SPCs for each bidder was  
21 outdated as of the date of the Motion to Assume, and the NHLPA has so notified each of the  
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1 bidders and the Debtors. (See, August 28, 2009, letter attached hereto as Exhibit B.)<sup>6</sup> With  
2 respect to the estimated cure amounts due under the CBA, however, the Debtors' Motion to  
3 Assume simply includes a footnote setting forth the amounts that the NHLPA has asserted are  
4 owing, but noting that "these amounts are currently disputed, and Coyotes Hockey, LLC is in  
5 the process of confirming whether such amounts are owed under the CBA."<sup>7</sup> In fact, it is the  
6 NHLPA's position that the claimed amounts are not subject to dispute; the Debtors simply have  
7 not internally confirmed the amounts. It is the NHLPA's understanding from discussions with  
8 Debtors' counsel that the NHLPA need not "prove" the amounts due at this juncture while the  
9 Debtors are in the process of confirming them internally, and whatever amounts are proven to  
10 be owed will, in fact, be promptly cured as required under 11 U.S.C. Section 365. NHLPA  
11 expects, based on these discussions that an agreement as to the amounts owed for cure (or a  
12 mechanism for resolving any unresolved disputes) as well as an agreement to set aside from the  
13 sale proceeds funds sufficient to make all cure payments will be reached prior to the hearing on  
14 September 10, but files this statement in order to preserve its position.  
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16  
17 <sup>6</sup> The NHLPA understands that it is the intention of the Debtors and all bidders to include each SPC that is in  
18 existence as of the date of a sale and to the extent necessary will endeavor to work with the Debtors to provide  
19 updated information prior to the sale.

20 <sup>7</sup> The footnote in Debtors' Motion to Assume reads as follows:

21 "The National Hockey League Players Association asserts there are pre-petition amounts owed under the CBA to  
22 the following individuals: Brendan Bell (\$5,438.15 for reimbursement of expenses); Nigel Dawes (\$4,800.00 for  
23 reimbursement of expenses); Stephen Goertzen (\$1,400.00 for reimbursement of expenses); Olli Jokinen  
24 (\$19,200.00 for reimbursement of expenses); Dimitri Kalinin (\$13,462.00 for reimbursement of expenses); Joakim  
25 Lindstrom (\$6,341.41 for reimbursement of expenses); Brandon Prust (\$11,226.00 for reimbursement of expenses);  
26 Tony Amonte (\$960,000.00 for monies improperly withheld from signing bonus payments paid under Mr.  
Amonte's September 11, 2002 Standard Player Contract); Kevin Cormier (either \$40,000.00 or \$10,500.00 as a  
consequence of Coyotes Hockey LLC's assignment of Mr. Cormier to Major Juniors during the 2006-2007  
season); Michael Morrison (\$6,600.00 for reimbursement of expenses incurred during the 2006-2007 season); and  
Dave Scatchard (\$1,066,666.00, in accordance with the Buy-Out Agreement dated July 2, 2007, paragraph 13 of  
Mr. Scatchard's Standard Player Contract, and Article 50 of the CBA). These amounts are currently disputed, and  
Coyotes Hockey, LLC is in the process of confirming whether such amounts are owed under the CBA."

As noted in its August 29, 2009, letter, the NHL has indicated in its bid that it believes the amounts owed to Dave  
Scatchard under his Buy-Out Agreement currently total \$1,093,558.23. As the NHL's records are likely the most  
accurate with respect to this particular claim, the NHLPA agrees with this number and requests that \$1,093,558.23  
be the required cure amount with respect to the Scatchard Buy-Out Agreement.

1 **D. CONCLUSION**

2 For the reasons set forth herein, the NHLPA 1) objects to the Ice Edge bid to the extent  
3 it attempts to accomplish the piecemeal assumption and assignment of the CBA, 2) consents to  
4 the bids of PSE and the NHL, to the extent each directs the assumption and assignment of the  
5 CBA in its entirety, along with the prompt cure of those amounts set forth in Exhibit A hereto,  
6 either by the Debtor or the successful purchaser, and 3) requests such other relief as is just under  
7 the circumstances.

8 RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of September 2009.

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22 COPY of the foregoing sent via U.S. Mail  
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