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UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re DEWEY RANCH HOCKEY, LLC, COYOTES HOLDINGS, LLC, COYOTES HOCKEY, LLC, and ARENA MANAGEMENT GROUP, LLC, Debtors.	Case No. 2:09-bk-09488 (Jointly Administered) Chapter 11 **DEBTORS' RESPONSE TO GLENDALE'S OBJECTION TO ANY RELOCATION SALE**
This Filing Applies to: ■ All Debtors ❐ Specified Debtors	Hearing Date: September 10, 2009 Hearing Time: 9:00 a.m. Location: U.S. Bankruptcy Court 230 N. First Ave., Courtroom 703 Phoenix, AZ 85003

INTRODUCTION[1]

1. The *City of Glendale, Arizona's Objection to Any Relocation Sale* (the "**Objection**") is largely a repetition of its prior arguments, and the allegations of the NHL in its *(A) Renewed Motion for Determination of (I) Authority to Manage the Business and Affairs of the Debtors, and (II) that William Daly is the Representative of the Estates, or (B) in the*

[1] In footnotes 1 and 3, Glendale incorporates by reference "the facts" in nine previous filings. The Debtors hereby incorporate their responses, as applicable, to those filings. The Debtors note that many of Glendale's incorporated filings are not factual, but simply reflect Glendale's repetitive and oft-disproven allegations.

Alternative, Motion for Appointment of a Chapter 11 Trustee (Docket No. 682; the "**Renewed Control Motion**"). Consequently, the Debtors' Response to that motion [Docket No. 778] addresses most of the City of Glendale's ("Glendale") current allegedly factual attacks. The Debtors addressed the lease issues in multiple prior pleadings.[2] Therefore, the Debtors respond in part to Glendale's Objection by reference to prior responses to the same allegations.

2. It bears noting that Glendale, while not explicitly saying so, and while not attacking the conduct of the NHL, also now objects to the NHL bid, which contemplates a relocation sale at the end of the 2009-10 season and requires a rejection of the Arena lease at that time.

3. The Debtors are interested in the highest and best offer, in order to return as much money as possible to the creditors. Until recently, PSE was the only bidder. Supporting the only bid that will pay creditors is not only proper, but required by the Debtors' fiduciary duties, and the evidence shows that the Debtors have acted properly and responsibly under very difficult circumstances.

4. Glendale understandably argues based upon what is good for Glendale. It is regrettable, however, that Glendale relies on *ad hominem* attacks rather than substance, and on sensationalized rhetoric rather than facts.

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[2] *Debtors' Memorandum of Points and Authorities in Support of Motion to Sell Substantially All of Coyotes Hockey's Assets (Glendale Issues)*, dated June 5, 2009 [**Docket No. 287**]; *Debtors Motion For An Order Approving Rejection Of The Arena Lease Under Bankruptcy Code § 365(a) Effective As Of The Closing Date Of A Relocation Sale*, dated August 11, 2009 [**Docket No. 611**]; *Memorandum of Points and Authorities in Support of Debtors' Motion for an Order Approving Rejection of the Arena Lease Under Bankruptcy Code § 365(a) Effective as of the Closing Date of a Relocation Sale*, dated August 18, 2009 [**Docket No. 685**]; *Debtors' Response to NHL's (A) Renewed Motion for Determination of (I) Authority to Manage the Business and Affairs of the Debtors, and (II) that William Daly is the Representative of the Estates, or (B) in the Alternative, Motion for Appointment of a Chapter 11 Trustee*, dated August 25, 2009 [**Docket No. 778**]; and *Debtors' Reply to City of Glendale's Reply to Memorandum of Points and Authorities in Support of Debtors' Motion for an Order Approving Rejection of the Arena Lease Under Bankruptcy Code § 365(a) Effective as of the Closing Date of a Relocation Sale*, dated August 31, 2009 [**Docket No. 853**]; *Supplemental Evidence in Support of Debtors' Response to NHL's (A) Renewed Motion for Determination of (I) Authority to Manage the Business and Affairs of the Debtors, and (II) that William Daly is the Representative of the Estates, or (B) in the Alternative, Motion for Appointment of a Chapter 11 Trustee*, dated August 31, 2009 [**Docket No. 859**].

ARGUMENT

I. Glendale Has No Cognizable Property Interest.

1. As demonstrated in previous filings, Glendale has no interest in the assets being sold. Glendale's specific performance remedy is neither a lien nor any other kind of property interest in the Team. Indeed, Glendale has been, and remains, unable to even articulate what "interest" it purports it possess. Instead, Glendale has a (unenforceable) remedy under the Lease triggered by the Team's breach of the Team Use Covenant. The Debtors have moved for an order approving rejection of the Lease under Bankruptcy Code § 365, contingent on approval of a relocation sale. Rejection of the Lease would constitute a breach of the entire Lease, including a breach of the Team Use Covenant, and Glendale's claim for damages resulting from such rejection would be capped under Bankruptcy Code § 502(b)(6). *See, e.g., In re McSheridan*, 184 B.R. 91, 102 (B.A.P. 9th Cir. 1995) ("rejection of the lease results in the breach of each and every provision of the lease, ***including covenants***, and § 502(b)(6) is intended to limit the lessor's damages resulting from that rejection.") (emphasis added); *see also RM 18 Corp. v. Aztex Assoc., LP (In re Malease 14FK Corp.)*, 351 B.R. 34, 43 (E.D.N.Y. 2006) (liquidated damages resulting from rejection of a lease are capped by § 502(b)(6)); *In re Premier Entertainment Biloxi, LLC*, 2009 Bankr. LEXIS 1222, *7-11 (Bankr. D. Miss. 2009) (liquidated damages are capped by § 502(b)(6) even if the lessor is entitled to liquidated damages under state law).

2. Accordingly, Glendale's ability to block a relocation sale (and avoid the mandatory cap on its rejection damages) is as illusory as its "interest" in property that is not even being sold to PSE.[3]

Glendale's Objection Should Be Overruled

3. Glendale uses the Objection to rehash the same invalid arguments it has made

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[3] Glendale alleges an interest in the "Team," defined to be Coyotes Hockey, LLC, but it is that entity's *assets*, not the entity itself, which is being sold. This distinction does not matter, however, since Glendale has no property interest in either Glendale Hockey, LLC or its assets.

previously, and the Debtors incorporate prior filings in response.[4] Those papers conclusively demonstrate:

- The Lease is a lease under Arizona law, is not severable, and is subject to rejection under Bankruptcy Code § 365(a).

- Glendale's claim for damages resulting from the Debtors' proposed rejection of the Lease are capped under Bankruptcy Code § 502(b)(6); and it is Glendale's *capped* claim that is relevant for determining whether rejection is in the best interests of creditors.

- The Court must consider unsecured claims of all creditors (including unsecured claims of insiders) when it evaluates whether rejection of the Lease is in the best interests of creditors.

- Rejecting the Lease and capping Glendale's claim necessarily results in a larger recovery for the other unsecured creditors (*i.e.,* a greater benefit to those creditors), which is precisely the result Congress intended when it implemented the mandatory cap of in § 502(b)(6).

- In all events, if the Court approves a relocation sale, then rejection of the Lease is necessary (and satisfies the business judgment test) because no rational debtor would continue to incur obligations under a lease for a building it will never use again.

- Glendale is not entitled to specific performance of the Team Use Covenant because Glendale has an alternative and adequate remedy at law in the form of a quantifiable claim under both Arizona law and the Bankruptcy Code.

- Lease provisions purporting to grant Glendale a specific performance remedy are unenforceable because they circumvent policies underlying the Bankruptcy Code; requiring specific performance would prevent the Debtors from exercising their rights and satisfying their fiduciary duties to reject a burdensome lease where rejection is a critical component of maximizing value for creditors.

- The Debtors' concerns for the integrity of the sale process were entirely justified in light of the NHL's public statement that four potential bids somehow "coalesced" into only a

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[4] *See* Motions, Responses and Replies, referenced in footnote 2, *supra.*

single bid; the U.S. Trustee expressed the same concerns to the Court in light of the "multiple hats" that the NHL is wearing in these cases.

- Glendale does not care about other creditors; instead, Glendale desperately wants the team to stay in Glendale, regardless of its financial condition, regardless of its repeated losses, regardless of the increasing debt, and regardless of who picks up the tab (so long as it is not the City).

- As discussed more fully below, and as refuted in the Debtors' Response to the NHL's Renewed Control Motion, the Debtors have not engaged in the purported collusion, bid chilling, or conspiracies which would be required to defeat a good faith finding.

II. The Debtors Have Acted In Good Faith In This Bankruptcy.

4. The Debtors do not dispute the legal good faith standard as expressed in the Objection. The facts, as discussed below, establish that Debtors have satisfied the good faith standard.

5. Ironically, Glendale's arguments call into question the NHL's good faith in rejecting the only other bidder at the very time the NHL was considering its own bid.

6. As noted above, the Debtors have already addressed most of the repetitive factual allegations in the Response to the Renewed Control Motion. Those allegations are either untrue or misrepresent the facts and in no way show a lack of good faith.

Coyotes Financial Woes

7. Glendale makes the fanciful assertion that the Coyotes are not really in financial trouble and are on the verge of success. Objection at 16. No doubt Mr. Moss is sincere in his hopes, as he has been since he came to the Coyotes in 2003, but the Coyotes' financial condition cannot be denied. While the uncertainty inherent in the bankruptcy is not helping team sales, and economic conditions have depressed both corporate and individual sports spending, the objective facts are that the Coyotes were in a dire financial condition before the bankruptcy and have survived this long only because of equity investments and huge loans, most recently from Mr. Moyes and now the NHL.

8. Contrary to the repeated allegations by Glendale and the NHL, the Debtors had good grounds for their bankruptcy filing. Chapter 11 cases are not limited to impending financial crises, but continued losses of tens of millions of dollars surely confirm that the Coyotes are and have most assuredly been in the midst of a financial crisis by any definition.

Mr. Moyes' Debt

11. Glendale repeatedly asserts that Mr. Moyes is not a "legitimate" creditor and persists in calling his debt "equity." *See, e.g.*, Objection at 2. Glendale ignores that the debt is represented by formal loan agreements and supporting paperwork, and that in the Ninth Circuit the remedy for a challenge to debt is equitable subordination under § 510(c). There is no claim for "recharacterizing" debt into equity in this Circuit. *In re Pacific Express, Inc.*, 69 B.R. 112, 115 (BAP 9th Cir. 1986). Mr. Moyes is a creditor.

The Goal: Greatest Return to Creditors

9. The Debtors at all times have sought a sale that will generate the largest amount for all creditors. That is hardly an improper motive or evidence of bad faith, however defined. The Debtors have supported PSE as a stalking horse bidder because, after months of marketing the team, PSE was the only bidder. Post-petition, the Debtors have supported the PSE bid because it will bring the largest amount into the estates. There is no dispute about that fact. That the law allows the rejection of the Glendale lease and the capping of Glendale's damages, and that the Debtors seek to apply bankruptcy law in this Court, is also hardly evidence of bad faith.

10. Glendale's goal is, as it has always been, to keep the Coyotes in Glendale, regardless of the cost to others. There is nothing wrong in Glendale's effort to protect its self-interest, but Glendale's concoction and repetition of false and inflammatory claims about others is wrong.

11. Glendale's allegations regarding prepetition emails (at 16-19) are interesting but irrelevant. Paragraphs 9-14 of the Debtors' Response to the Renewed Control Motion, Docket No. 778, along with evidence referenced therein, address these emails. *See also* August 27, 2009 deposition of Jerry Moyes, 35:11-24; 54:21-24; 60:11-61:5; 61:19-62:6; 63:14-23; 67:19-25;

74:9-75:2; 83:1-84:9; 102:18-21; 103:21-104:4; 106:10-107:5; 120:23-121:3; 124:7-16; 127:6-18; 128:7-17; 199:12-22 **(UNDER SEAL)**, August 25, 2009 deposition of Earl Scudder, 22:20-23:9; 71:22-72:9; 101:1-17; 112:23-113:1.[5]

12. Glendale's suggestion that PSE was directing the Debtors prepetition is false, as shown by the very difficult negotiations, the disagreements between PSE and the Debtors, and the fact that even as of the morning of May 5, 2009, the filing date, the bankruptcy filing and the PSE APA were in doubt. *See* Debtors' Response to the Renewed Control Motion at paragraphs 15-22, along with evidence referenced therein. *See also* Supplemental Evidence: July 30, 2009 deposition of Jeff Shumway, 114:1-12; 114:16-23; 116:16-117:2; 118:7-119:3; 120:13-121:18; Rodier depo. **(UNDER SEAL)**, 28:16-30:15; 35:9-37:22; 41:17-46-15; 58:13-64:1; 117:4-118:14; 292:1-24; Scudder depo., 69:8-70:2; 71:22-72:9; 74:1-75:4; 76:1-20; 85:2-6; 85:11-20; 86:2-87:11; 102:1-13; 108:2-7; 112:23-113:1; 120:5-17; 126:12-127:4; 127:23-128:1; 128:11-14; 134:18-22; 134:23-135:2; 135:3-136:13; 149:1-19; 154:9-11; 208:4-10; August 27, 2009 Moyes depo., 37:4-12; 47:23-48:8; 75:24-76:3; 102:18-21; 103:21-104:4; 106:10-15; 120:23-121:3; 198:3-199:11 **(UNDER SEAL)**.

Marketing the Coyotes

13. Glendale once more decries (at 19-20) what it considers to be inadequate efforts to market the Coyotes. Even inadequate marketing efforts, however, judged with the benefit of hindsight, would not equate to bad faith or provide a basis for rejection of a bid that brings the largest amount of cash into the estate.

14. Glendale ignores completely the difficulty in selling a team saddled with the enormous losses, and projected losses, of the Coyotes. The negative numbers, as shown in the audited financials, and the relative numbers as shown by comparisons to other teams, cannot be disputed. Even Glendale is not so bold as to claim that there is another buyer with an open

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[5] These citations come from the *Supplemental Evidence in Support of Debtors' Response to NHL's (A) Renewed Motion for Determination of (I) Authority to Manage the Business and Affairs of the Debtors, and (II) that William Daly is the Representative of the Estates or (B) in the Alternative, Motion for Appointment of a Chapter 11 Trustee* (the "Supplemental Evidence"), filed on August 31, 2009, at Docket No. 859.

checkbook that the Debtors, the NHL and the City have overlooked.

15. The Debtors worked closely with the NHL for many months prior to the bankruptcy filing to try to find investors in or buyers for the team. The NHL, and Glendale, have known for nearly a year of the Coyotes' critical situation, and the Debtors have no reason to believe that the NHL, and Glendale, with all of their considerable hockey and local contacts and self-interest, did not exhaustively search for new investors or buyers. Several investment banking firms were considered; Mr. Scudder, with the NHL's approval, enlisted Citigroup, which has very close ties to the NHL, to assist with the marketing of the team; and Citigroup pursued its contacts. Mr. Scudder pursued all those who expressed an interest, provided information, and followed up both pre- and post-petition. *See* Scudder depo., pp 21 – 32, 39 – 55, 59 – 68, 138 – 143, 169 – 170, and 205 – 207; *see also*, August 27, 2009 Moyes depo., 31:17-32:12; 124:13-22; 127:6-18; 128:10-17.

16. While Mr. Scudder had not previously sold a professional sports team, he and his affiliates had marketed dozens of businesses, and had recently sold two companies, one for approximately $125 million and one for more than $300 million. *See* Scudder depo., 204:25-206:10. Prior experience with a particular type of business is not a critical factor in many contexts. For example, First Solar, Inc. a prominent local business, recently hired a new CEO from the Honeywell aerospace industry, thus entrusting the solar panel business to a person with no experience in that field. *See* Arizona Republic, Sept. 4, 2009, p. D 1.

17. Relying on Mr. Moss's deposition, Glendale argues (Objection at 20) that Mr. Moyes and Mr. Scudder were acting only in Mr. Moyes' interest, apparently hoping that the Court will infer incorrectly that what is in Mr. Moyes' best interest—maximizing the money coming into the estate—is somehow not in the best interest of creditors. Glendale neglects to point out that Mr. Moss's view is based on "just a sense" and the fact that Mr. Moyes publicly said that "the team just isn't going to work in Phoenix." Moss depo. at 70:16-71:1; 90:3-14 (immediately following the portions quoted by Glendale). Mr. Moyes' opinion regarding the financial facts of the Coyotes in Phoenix is hardly evidence of bad faith.

18. Paragraphs 32-36 of the Debtors' Response to the Renewed Control Motion, along with evidence referenced therein, further respond to Glendale's repeated misrepresentations regarding the Debtors' marketing efforts.

The Reinsdorf Group

19. It is ironic that Glendale, which has negotiated with the Reinsdorf group for many months and actually knows why that bid was never finalized, resorts to a press release to blame the Debtors for the withdrawn bid. Objection at 20. Glendale has known since at least January what the Reinsdorf group required, and Glendale knows full well the content of its negotiations and the reasons for its failure to reach an agreement with the Reinsdorf group. If Glendale believes in good faith that the Debtors played any role in the withdrawal of the Reinsdorf group, then Glendale should disclose to the Court and the Debtors what really occurred in Glendale's negotiations with the Reinsdorf group.

Wayne Gretzky Contract Issues

20. Glendale ignores that Mr. Gretzky was always intended to be an employee of the Coyotes, with his Deal Memo to be reduced to a formal employment agreement between Mr. Gretzky and Coyotes Hockey. *See* ¶¶ 45-56 of the Debtors' Response to the Renewed Control Motion, along with evidence referenced therein.[6] This issue will not be decided in the auction process and provides no evidence of a lack of good faith, and the Debtors have assigned this matter to the Creditors Committee. *See* Declaration of Kelly Singer at ¶ 15 [Docket No. 782].

The Mailing to Season Ticketholders

21. Glendale's repeated claim that the Debtors intentionally tried to devalue the team in Glendale by a mailing to season ticketholders (Objection at 22) is as offensive as it is false. If the highest and best bid includes continued hockey in Glendale, the Debtors will support it. However, the only bid until recently was the PSE bid, and the only other bid (from the NHL)

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[6] Additional evidence regarding these issues includes specimen e-mails attached to Debtors' Supplemental Evidence as Exhibit 7 capturing an overview of the negotiations that occurred regarding Mr. Gretzky's employment contract; August 27, 2009 Moyes depo., 179:22-180:1; 181:13-18; Scudder depo., 88:15-91:3; 92:1-15; 93:4-95:2; 99:5-12.

includes delayed relocation. Thus, the only bids before the Court include relocation.

22. The reason for the mailing to season ticketholders, who had paid deposits and had rights as creditors, was fully discussed in open court a month ago. *See* Debtors' Response to the Renewed Control Motion at paragraphs 37-38, and the August 5, 2009 Hearing Transcript at 33:17-35:21. Glendale knows the facts but nonetheless has chosen to repeat this false claim.

The Anti-Fraud Disclaimer

23. Once again, Glendale tries to manufacture a claim. Glendale apparently claims (at 22) that the Debtors should not have disclosed to potential season ticket purchasers the fact that the team might not be in Glendale for the season. While a disclaimer might affect sales, and failure to disclose known material facts could be viewed as fraud. Counsel for the Debtors and for the NHL agreed that "subject to change" be included in the schedule. *See* July 15, 2009 Email chain among Messrs. Salerno, Moss, Daly, Scudder, and Meda attached hereto as Exhibit 1. Mr. Salerno accurately stated: "There is a possibility that this schedule (given a possible relocation) will change. That's the reality." *Id.* The specific reason for the disclaimer was "so as not to be accused of misleading folks." *See* July 13, 2009 Email chain among Messrs. Salerno, Meda, Milmoe, Goldfein, Clark, Ashworth and Keyte attached hereto as Exhibit 2. Glendale's accusation against the Debtors and their counsel again has no factual basis.

US Airways

24. Once more, Glendale is simply wrong. Objection at 23. The Debtors addressed this issue in their Response to Renewed Control Motion at ¶¶ 39-44.[7] Glendale apparently chose to repeat this demonstrably false allegation without bothering to check the facts.

25. The US Airways bid was not acceptable because (1) US Airways decided to cancel its sponsorship with the team, and (2) US Airways "had no flexibility on payment terms nor were we comfortable with language in the contract to protect us against delays, mechanical

[7] The August 27, 2009 Deposition of Jerry Moyes as referenced in Debtors' Supplemental Evidence, including 92:9-93:16, is also relevant on this point.

problems, etc." *See* August 18, 2009 email from Don Maloney, attached as Exhibit F to Mr. Scudder's Declaration [Docket No. 780].

26. The Debtors approved a transportation agreement with another carrier, and not Swift Air, after the other carrier reduced its bid. Far from evidence of self-dealing or bad faith, this transaction simply shows that a significant matter—the team's charter air contract—was evaluated by the team, the NHL and the Debtors, and an agreement was reached in a responsible and appropriate manner.

Deadlines

27. Glendale alleges that false deadlines have been set by PSE. The Court has been well aware of the deadlines in this case, and the reasons for them. With the NHL avowing that the time for deciding to relocate had expired even before the bankruptcy filing, the reasons for PSE's deadlines are apparent. In no way do such deadlines show any bad faith by the Debtors.

28. PSE has offered to pay $212.5 million, based upon certain assumptions. PSE is entitled to decide on the terms on which it is willing to buy the Coyotes and pay, by far, the largest amount. Glendale and the NHL have done everything within their power to drive away PSE and eliminate it as a bidder. What Glendale cannot do is make PSE's business decision as to the value to it of the Coyotes if the bid assumptions are changed

Purported Confidential Information to Mr. Rodier

29. Because Glendale's arguments regarding information given to Mr. Rodier mirror those of the NHL, paragraphs 21-31 of Debtors' Response to the Renewed Control Motion, along with evidence referenced therein, respond to such arguments. *See also* Debtors' Supplemental Evidence: Rodier depo. **(UNDER SEAL)**, 289:9-292:24; Scudder depo., 176:1-177:10; 177:17-178:21; 180:13-181:5; 182:2-184:2; August 27, 2009 Moyes depo., 117:23-119:4.

30. Glendale cites the necessity that "the application of all bidders" be confidential. Objection at 24. Mr. Scudder did not have applications of other bidders, and did not give them to Mr. Rodier. Indeed, they were not in the data room, and only the NHL had them.

31. Glendale further complains (at 26) that Mr. Scudder did not give ResearchEdge a copy of the Reinsdorf Group APA before it was filed with the Court. Yet that document was confidential until it was filed. Mr. Scudder testified that this was the case with all bids, which were confidential until filed with the Court. This is consistent with the fact that Mr. Scudder did not provide Mr. Rodier with any substantive information about any bids. Scudder depo., 182:2 - 184:2.

32. Glendale also misleads when it argues that Mr. Scudder did not give any other bidders "information regarding negotiations between PSE and Mr. Moyes. ..." (Objection at 26). Mr. Scudder testified that no one asked him for any information regarding the PSE bid, Mr. Scudder did not provide information "regarding negotiations" as to any bidder, PSE or otherwise, and the PSE bid was a matter of public record on May 5, 2009. *See* Docket No. 18.

33. The NHL and Glendale would have the Court believe that Mr. Scudder provided detailed negotiation information about other bids to Mr. Rodier. The Debtors encourage the Court to read the actual emails, which discuss who people are and, at a very superficial level, whether they have been in the data room. There is no secret information about other bids, or about negotiations or negotiation strategy.

34. Glendale apparently objects to telling PSE Mr. Scudder's understanding of the level of concessions to which Glendale had committed. But that information was given to every party that even expressed interest, and was known to the NHL and to all potential bidders. There was no basis to discriminate against PSE, the only actual bidder at the time, by withholding information given to several dozen others in what was supposed to be a fair and transparent process. *See* Scudder depo., 168:24 - 171:6; 177:6-10.

35. Allegations that PSE was not entitled to this superficial and non-substantive information rings hollow in light of two other facts. First, the NHL, now the only bidder other than PSE, has had access to virtually <u>all</u> information at all times, including very detailed ownership and transfer applications and personal and financial information. Yet no one has suggested any impropriety for that bidder to know all about other bidders. Second, one other

bidder asked for the same kind of superficial information that Mr. Rodier requested, and the reason, "curiosity," was identical to the reason for Mr. Rodier.[8] *See* Antonio Tavares Deposition at 49:21 - 50:15; 53:4-18, attached as Exhibit 13 to the Debtors' Response to the NHL's Renewed Control Motion. Yet neither Glendale nor the NHL has cried "foul" in that instance.

36. Finally, there is no claim that PSE received a competitive advantage or benefitted in any way from the very limited information Mr. Rodier received.

The Goldwater Institute

37. Glendale knows that no information was leaked to the Goldwater Institute ("Goldwater") because the Goldwater attorney's declaration confirms that all information she received was from public sources. Glendale simply ignores the facts. Paragraphs 26-27 of Debtors' Response to the Renewed Control Motion, along with evidence referenced therein, also refute Glendale's allegation. *See* Declaration of Carrie Ann Sitren [Docket No. 781] at ¶ 4-5; Scudder depo., 154:15-155:22; 157:9-158:22; 161:11-162:5; 195:16-197:17; Rodier depo. **(UNDER SEAL)**, 261:4-262:3; 284:22-285:11; 302:2-8; 308:16-309:12; August 27, 2009 Moyes depo., 107:6-109:23; 112:21-113:13.

38. No information of any kind was given by either Mr. Scudder or Mr. Rodier to Goldwater, and there is neither substance nor truth to Glendale's claim.

39. Glendale relies on multiple-hand hearsay regarding Goldwater funding. (Objection at 28) The Debtors encourage the Court to read Mr. Rodier's actual testimony, which is that someone else told him, in a passing comment, that Mr. Moyes "may contribute" to Goldwater. Rodier Depo. at 260:3-16; 282:11 - 285:11.

Counsel's Inadvertent Disclosure

40. Glendale perpetuates the myth of nefarious motives by devoting nearly three pages of its 36-page Objection to what was obviously a completely unintentional act. Despite having counsel's Declaration and four depositions on the subject which clearly and

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[8] In addition, the NHL provided non-public information to a potential bidder regarding which bidders had submitted applications to the NHL. *See* NHL000163, attached as part of Exhibit 1 to the July 22, 2009 Deposition of Gary Bettman and as Exhibit 11 to the August 4, 2009 Deposition of Antonio Tavares.

unequivocally disprove Glendale's claim, Glendale nonetheless repeats an argument it knows is baseless. No more need be said on this subject.

41. Glendale is apparently now claiming that it was somehow the Debtors' fault that this mistake was made because the Debtors took depositions of two Glendale officials. The limited depositions were taken with the agreement of the parties and the Court, and were consistent with the facts known at the time. Any suggestion that the Debtors caused counsel's error is baseless and irresponsible. In addition, of course, the information disclosed was from a document Glendale produced, and not from the depositions.

III. CONCLUSION.

42. Glendale's Objection adds no new substance, simply repeats prior erroneous arguments, and again makes demonstrably false assertions. The Objection should play no role in the Court's resolution of these issues.

RESPECTFULLY SUBMITTED this 4th day of September, 2009.

SQUIRE, SANDERS & DEMPSEY L.L.P.

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