

LEWIS
AND

ROCA
LLP

L A W Y E R S

40 North Central Avenue
Phoenix, Arizona 85004-4429
Facsimile (602) 734-3824
Telephone (602) 262-5756

Susan M. Freeman State Bar No. 004199
E-mail: SFreeman@LRLaw.com
Randy Papetti, State Bar No. 014586
Email: RPapetti@LRLaw.com
Stefan M. Palys, State Bar No. 024752
Email: SPalys@LRLaw.com

DEWEY & LEBOEUF LLP
1301 Avenue of the Americas
New York, NY 10019

Jeffrey L. Kessler
jkessler@dl.com
Aldo A. Badini
abadini@dl.com
David L. Greenspan
dgreenspan@dl.com

Attorneys for PSE Sports & Entertainment LP

**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.

Chapter 11

Case No. 2:09-bk-09488-RTBP

**PSE'S SUPPLEMENTAL SUBMISSION
IN SUPPORT OF ITS OWNERSHIP
TRANSFER AND RELOCATION
MOTIONS**

This Filing Applies to:

- All Debtors
 Specified Debtors

I. Introduction

New evidence became available near the end of last week that confirms that the NHL continues to adhere to the territorial and veto rights that the NHL has, in these proceedings, denied exist. PSE thus respectfully makes this supplemental submission in

1 support of its Motion for Determination that the Debtors' Interests May Be Transferred to
2 PSE Notwithstanding the NHL's Refusal to Consent [DE 701] ("PSE Ownership Motion")
3 and its Motion for Determination that the Coyotes May Be Relocated to Hamilton
4 Notwithstanding the NHL's Refusal to Consent [DE 824] ("PSE Relocation Motion").
5 *See In re Financial News Network*, 134 B.R. 737 (S.D.N.Y. 1991) (upholding decision to
6 allow newly available evidence to be submitted after auction, but before the court's ruling,
7 because it might affect which bid should prevail), *aff'd*, 980 F.2d 165 (2d Cir. 1992).

8 **II. Background**

9 On September 17, 2009, Eugene Melnyk, the owner of the Ottawa Senators, gave
10 an interview that was broadcasted on the Toronto radio station, The Fan590. *See*
11 Transcript of Sept. 17, 2009 interview of Eugene Melnyk ("Melnyk Interview Tr."),
12 attached hereto as Exhibit 1. The interview may be heard at
13 http://fan590.com/ondemand/media.jsp?content=20090917_180841_672. During that
14 interview,¹ Mr. Melnyk admitted the continued effectiveness of the illegal NHL
15 Constitutional territorial veto that the NHL has persistently denied exists. Moreover, his
16 remarks confirm that the real reason for the rejection of Mr. Balsillie's ownership
17 application is this veto and the NHL's animus towards bankruptcy proceedings, rather than
18 any alleged "character" issues. Thus, his remarks support PSE's motions demonstrating
19 that PSE's ownership application and refusal to consider its relocation application were
20 not in good faith.

21 _____
22 ¹ PSE appreciates and agrees with the Court's statements that it would not consider
23 statements attributed to persons in articles or on the Internet. What PSE is presenting is
24 fundamentally different in that it is a transcript of statements made by a member of the
25 NHL's Board of Governors that are directly at odds with what the NHL in this case
26 represents to be the understanding and position of the Board of Governors. As the Court
knows, PSE's opportunity to take discovery from the Board of Governors in this matter
was very limited, making this type of public admission important for the Court to consider.
Further, as the live interview is available online, there can be no dispute about the fact that
Mr. Melnyk in fact made these public comments, which directly contradict the NHL's
representations to this Court.

1
2 **III. Mr. Melnyk Confirmed that All NHL Teams – Including the Toronto Maple**
3 **Leafs – Possess a Unilateral Veto Over Relocation of Another Team Into Their**
4 **Territory**

5 The NHL has denied the existence of the territorial veto throughout these
6 proceedings, downplaying PSE’s hard evidence that the veto continues to exist – such as
7 its existence in the NHL Constitution to this day, and the Toronto Maple Leafs letter
8 asserting their veto rights. Instead, the NHL has tried to minimize this irrefutable evidence
9 by calling it part of an imaginary “conspiracy theory,” a “big lie” and making sarcastic
10 references to Alice in Wonderland.

11 In contrast to the NHL assertions, Mr. Melnyk, the owner of the Ottawa Senators
12 and a member of the NHL Board of Governors, recently admitted that every NHL team
13 has the unilateral right under the NHL Constitution to veto any team moving within its
14 territory:

15 Interviewer: Here’s a hypothetical one. . . . Somebody comes along and
16 says . . . I want to put a team in Hull [which is within 50 miles of Ottawa],
17 do you have the constitutional ability to block that?

18 Mr. Melnyk: *I believe we do. Yes, we have territorial rights. Yes,*
19 *absolutely.*

20 Melnyk Interview Tr. at 17-18 (emphasis added).

21 Mr. Melnyk went on to confirm that the Toronto Maple Leafs have a territorial veto
22 and that no other team can play within the Maple Leafs’ territory without their consent:

23 Mr. Melnyk: Mississagua, St. Mike’s Mississauga Majors, wouldn’t it be
24 great me bringing the Ottawa Senators playing there for an exhibition
25 match? I can’t do that. You can’t do it.

26 Interviewer: It’s Leafs’ territory.

Mr. Melnyk: *I know for a fact that I can’t do that.*

Interviewer: But you could have maybe negotiated with the Leafs to do it?

1
2 Mr. Melnyk: Yeah, Yeah, Yeah, sure, absolutely but you got to negotiate it.
3 Melnyk Interview Tr. at 18-19 (emphasis added).

4 Mr. Melnyk's admissions of the continued existence of an NHL constitutional
5 territorial veto provide further support of the evidence of such veto that PSE has already
6 provided in this case. *See* PSE Relocation Motion at 17-22; PSE Reply in Support of its
7 Relocation Motion [DE 936] at 15-24; PSE Reply in Support of its Ownership Motion [DE
8 852] at 14-21.

9 **IV. Mr. Melnyk Confirmed that the NHL's Rejection of PSE's Ownership**
10 **Application on "Character and Integrity" Grounds was Pretextual**

11 In its Ownership Motion, PSE demonstrated that the NHL's rejection of Mr.
12 Balsillie's ownership transfer application for purportedly lacking "good character and
13 integrity" was entirely pretextual, and that the purported grounds upon which the NHL
14 based its rejection of Mr. Balsillie had no basis in fact. *See* PSE Ownership Motion at 13-
15 33; PSE Reply in Support of its Ownership Motion at 14-28. Rather, the NHL's actions
16 and statements have established that its rejection of Mr. Balsillie's application was based
17 in large part in its animus toward the Debtors' use of these bankruptcy proceedings to
18 maximize the value of the estate to provide the creditors the greatest possible recovery,
19 and PSE's participation in those proceedings. *Id.*

20 The NHL has been forced to admit that PSE's participation in these bankruptcy
21 proceedings was a "contributing factor" in its rejection of his ownership application. *See*
22 PSE's Opp'n to the NHL's Motion for a Determination that Debtors' NHL Membership
23 Rights May Not Be Transferred to PSE or an Affiliate Thereof [DE 779] at 11-13. Now,
24 Mr. Melnyk has further confirmed that PSE's participation in this bankruptcy – and not
25 Mr. Balsillie's purported lack of "good character and integrity" – was one of the reasons
26 for the NHL's rejection of PSE. When discussing PSE's efforts to purchase the Coyotes,
Mr. Melnyk did not once mention Mr. Balsillie's character, and instead focused

1 specifically on these bankruptcy proceedings, characterizing them as “a hostile takeover,”
2 disparaging Mr. Balsillie’s use of the bankruptcy process as a violation of “unwritten rules
3 that are followed” and “taking a bulldozer and going through the door.” *See* Melnyk
4 Interview Tr. at 9. As set forth in PSE’s Ownership Motion, under well-established
5 principles of bankruptcy law, such animus toward the bankruptcy process was not a good
6 faith basis to reject Mr. Balsillie as an NHL owner.

7 Indeed, the fact that none of this has anything to do with Mr. Balsillie’s character
8 was confirmed by Mr. Melnyk’s answer to a follow up question where he was asked what
9 his reaction would be if Mr. Balsillie asked “was there a door that could be opened without
10 a bulldozer.” In response, Mr. Melnyk never raised any character issues whatsoever.
11 Rather, his answer demonstrates yet again that the real issues relate to the territorial veto
12 and *where* Mr. Balsillie wants to relocate the team:

13 if somebody came and said, you know, Winnipeg, I’d love to buy a franchise
14 and start a team up in Winnipeg, you know what, they would listen, they
15 would say okay, well, what are we going to do about the stadium, it’s only
16 15,000 seats, can you expand it, can you do this. You work the problem that
you may have and you have to have the financial wherewithal.

17 Melnyk Interview Tr. at 9-11.

18 Thus, according to Mr. Melnyk, if Mr. Balsillie’s goal was to move the team to
19 Winnipeg, “they [the NHL] would listen” and would “work the problem.” Apparently,
20 however, if the goal is to move the team to Hamilton, then Mr. Balsillie lacks adequate
21 character and integrity.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RESPECTFULLY SUBMITTED this 21st day of September, 2009.

DEWEY & LeBOEUF LLP
By: Jeffrey L. Kessler
Aldo A. Badini
David L. Greenspan

and

LEWIS AND ROCA LLP
By /s/ SMF (004199)
Susan M. Freeman
Randy Papetti
Stefan Palys
Attorneys for PSE Sports & Entertainment LP

LEWIS
AND
ROCA
LLP
LAWYERS

1 COPY of the foregoing
2 e-mailed this 21st day of
3 September, 2009, to:

3 C. Taylor Ashworth
4 Alan A. Meda
5 STINSON MORRISON HECKER, LLP
6 1850 N. Central Avenue, Suite 2100
7 Phoenix, AZ 85004
8 tashworth@stinson.com
9 ameda@stinson.com
10 Attorneys for NHL

7 J. Gregory Milmoie
8 Shepard Goldfein
9 SKADDEN, ARPS, SLATE, MEAGHER &
10 FLOM LLP
11 4 Times Square
12 New York, NY 10036
13 Gregory.milmoie@skadden.com
14 Shepard.goldfein@skadden.com
15 Attorneys for NHL

12 Anthony W. Clark
13 SKADDEN, ARPS, SLATE, MEAGHER &
14 FLOM LLP
15 One Rodney Square
16 Wilmington, DE 19899
17 Anthony.clark@skadden.com
18 Attorneys for NHL

16 Andrew V. Banas
17 Kelly Singer
18 Thomas J. Salerno
19 SQUIRE SANDERS & DEMPSEY LLP
20 40 N. Central Avenue, Suite 2700
21 Phoenix, AZ 85004-4498
22 abanas@ssd.com
23 ksinger@ssd.com
24 tsalerno@ssd.com
25 Attorneys for Debtor

22 Larry L. Watson
23 Connie S. Hoover
24 OFFICE OF THE U.S. TRUSTEE
25 230 N. First Avenue
26 Phoenix, AZ 85003-1706
Larry.watson@usdoj.gov
Connie.s.hoover@usdoj.gov

LEWIS
AND
ROCA
LLP

LAWYERS

1 Steven M. Abramowitz
VINSON & ELKINS, LLP
2 666 Fifth Avenue, 26th Flr.
New York, NY 10103-0040
3 sabramowitz@velaw.com
Attorneys for SOF Investments LP, White Tip
4 Investments, LLC, and Donatello Investments,
LLC

5 Donald L. Gaffney
6 SNELL & WILMER LLP
One Arizona Center
7 Phoenix, AZ 85004-2202
dgaffney@swlaw.com
8 Attorneys for SOF Investments, LP, White Tip
Investments, LLC, and Donatello Investments,
9 LLC

10 Richard H. Herold
HINSHAW & CULBERTSON LLP
11 3200 N. Central Avenue, Suite 800
Phoenix, AZ 85012
12 rherold@hinshawlaw.com
Attorneys for Aramark

13 James E. Cross
14 Brenda K. Martin
Warren J. Stapleton
15 OSBORN MALEDON PA
2929 N. Central Avenue, Suite 2100
16 Phoenix, AZ 85012-2794
jcross@omlaw.com
17 bmartin@omlaw.com
wstapleton@omlaw.com
18 Attorneys for National Hockey League Players”
Association

19 Carolyn J. Johnsen
20 Peter W. Sorensen
JENNINGS, STROUSS & SALMON PLC
21 201 E. Washington St.
Phoenix, AZ 85004-2385
22 cjjohnsen@jsslaw.com
psorenson@jsslaw.com
23 Attorneys for Jerry Moyes

24 Jeffrey Freund
BREDHOFF & KAISER PLLC
25 805 15th St. NW
Washington, DC 20005
26 jfreund@bredhoff.com
Attorneys for National Hockey League Players” Association

LEWIS
AND
ROCA
LLP
LAWYERS

1 Sean P. O'Brien
2 GUST ROSENFELD PLC
3 201 E. Washington, Suite 800
4 Phoenix, AZ 85004
5 spobrien@gustlaw.com
6 Attorneys for Drawbridge Special Opportunities
7 Fund LP

8 Richard W. Havel
9 SIDLEY & AUSTIN LLP
10 555 W. Fifth St. 40th Flr.
11 Los Angeles, CA 90013
12 rhavel@sidley.com
13 Attorneys for Drawbridge Special Opportunities
14 Fund LP

15 Lori Lapin
16 LORI LAPIN JONES PLLC
17 98 Cutter Mill Rd., #201 N
18 Great Neck, NY 11021
19 ljones@jonespllc.com
20 Attorneys for BWD Group

21 Ivan L. Kallick
22 Ileana M. Hernandez
23 MANATT PHELPS & PHILLIPS
24 11355 W. Olympic Blvd.
25 Los Angeles, CA 90064
26 ikallick@manatt.com
ihernandez@manatt.com
Attorneys for Ticketmaster

Louis T.M. Conti
HOLLAND & KNIGHT LLP
100 N. Tampa St., Suite 4100
Tampa, FL 33602
Louis.conti@hklaw.com
Attorneys for Facility Merchandising Inc.

Cathy L. Reece
Nicolas B. Hoskins
FENNEMORE CRAIG
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012
creece@fclaw.com
nhoskins@fclaw.com
Attorneys for City of Glendale, Arizona

LEWIS
AND
ROCA
LLP
LAWYERS

1 William R. Baldiga
Andrew M. Sroka
2 BROWN RUDNICK, LLP
One Financial Center
3 Boston, MA 02111
wbaldiga@brownrudnick.com
4 asroka@brownrudnick.com
Attorneys for City of Glendale, Arizona

5 Jonathan P. Ibsen
6 Laura A. Rogal
JABURG & WILK PC
7 3200 N. Central Avenue, Suite 2000
Phoenix, AZ 85012
8 jpi@jaburgwilk.com
lar@jaburgwilk.com
9 Attorneys for Wayne Gretzky

10 Thomas P. Allen
Paul Sala
11 ALLEN SALA & BAYNE, PLC
1850 N. Central Avenue, Suite 1150
12 Phoenix, AZ 85004
psala@asbazlaw.com
13 tallen@asbazlaw.com
Attorneys for the Official Joint Committee
14 Of Unsecured Creditors

15 William Novotny
MARISCAL WEEKS McINTYRE &
16 FRIEDLANDER PA
2901 N. Central Avenue, Suite 200
17 Phoenix, AZ 85012
William.novotny@mwmf.com

18 Jonathan K. Bernstein
19 Andrew J. Galo
BINGHAM McCUTCHEN LLP
20 One Federal St.
Boston, MA 02110
21 Jon.bernstein@bingham.com
Andrew.gallo@bingham.com

22 Mark C. Dangerfield
23 Dean C. Short
GALLAGHER & KENNEDY PA
24 2575 E. Camelback Rd.
Phoenix, AZ 85016
25 mcd@gknet.com
dcs@gknet.com
26 Attorneys for Arizona Cardinals Football Club

