

Thomas J. Salerno (AZ Bar No. 007492) tsalerno@ssd.com
George Brandon (AZ Bar No. 017947) gbrandon@ssd.com
SQUIRE, SANDERS & DEMPSEY L.L.P.

Two Renaissance Square, Suite 2700
40 North Central Avenue
Phoenix, Arizona 85004-4498
(602) 528-4000

Counsel to the Debtors-In-Possession

Susan M. Freeman (AZ Bar No. 004199) SFreeman@LRL.com
Stefan M. Palys (AZ Bar No. 024752) SPalys@LRL.com

LEWIS AND ROCA, LLP

Two Renaissance Square, Suite 1900
40 North Central Avenue
Phoenix, Arizona 85004-4498
(602) 262-5756

Counsel to 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.

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

Chapter 11

**JOINT MOTION OF DEBTORS AND
PSE SPORTS & ENTERTAINMENT LP
FOR ORDER REQUIRING GARY
BETTMAN AND WILLIAM DALY TO
APPEAR FOR THE TAKING OF
DEPOSITIONS**

This Filing Applies to:

- All Debtors
 Specified Debtors

These cases continue to move rapidly, and the Court and the parties have responded accordingly. A hearing on the proposed sale of the Debtors' assets is scheduled to begin at 9:00 a.m. on September 10, 2009. The Debtors and PSE Sports & Entertainment, LP ("PSE" and, jointly with the Debtors, the "Movants") expect that Commissioner Gary Bettman and

Deputy Commissioner William Daly will testify as witnesses at the sale hearing. Accordingly, it is critical that the Movants be given an opportunity to depose Mr. Bettman and Mr. Daly prior to the hearing, on the discrete set of topics set forth below, so that the Movants (and the National Hockey League and other interested parties) may adequately prepare for the hearing.

Accordingly, the Movants respectfully request that the Court enter an order requiring Mr. Bettman and Mr. Daly to each appear at the New York office of Squire, Sanders & Dempsey L.L.P. to testify at the taking of a deposition at the dates and times set forth below.

JURISDICTION

1. The Court has jurisdiction over the Debtors' Chapter 11 cases and the matters raised in this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409(a).

2. The statutory predicates for the relief requested are section 105(a) of Title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 2004, 7026, 7030, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

BACKGROUND AND ARGUMENT

3. On July 6, 2009, the Court entered the "Order Approving Bid Procedures for Auction/Sale of Phoenix Coyotes National Hockey League Team and Related Assets and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases" (Docket No. 408) (the "**Bid Procedures Order**"). Under the Bid Procedures Order, and under the Court's Minute Entry/Order filed on August 5, 2009, a sale of the Debtors' assets to be relocated to a venue other than Glendale, Arizona is scheduled to begin at 9:00 a.m. on September 10, 2009 (the "**Sale Hearing**").

4. The Movants expect that Mr. Bettman and Mr. Daly will be witnesses at the Sale Hearing to testify on one or more of the following topics (collectively the "**Topics**"): ¹

¹ In this regard, the Movants intend to serve subpoenas on Mr. Bettman and Mr. Daly to appear and testify at the Sale Hearing pursuant to Bankruptcy Rule 9016.

- a. The amount of a relocation fee and the methods for determining such fee, including a *Raiders II* computation;
- b. The existence of a bona fide dispute under Bankruptcy Code § 363(f);
- c. The NHL's decision to deny the James Balsillie/PSE transfer application and the Coyotes/PSE relocation application;
- d. Any documents obtained by either of the Movants from the National Hockey League or its representatives through discovery; and
- e. The feasibility of relocation of the Coyotes for the 2009-2010 season.

5. The Topics are relevant to the Sale Hearing and the Court's determination of the best bid for the sale of the Debtors' assets. The Movants believe that Mr. Bettman and Mr. Daly have personal knowledge of facts related to the Topics and are the most relevant witnesses from the NHL on these topics, and that the information needed can only be obtained from the NHL. Accordingly, given the expedited nature of the auction procedures, it is critical that the Movants be provided an opportunity to depose Mr. Bettman and Mr. Daly on the Topics, prior to the Sale Hearing, so that the Movants and their counsel (and the National Hockey League and its counsel and other interested parties) have adequate time to analyze the deposition testimony and prepare for the Sale Hearing, including adequate time to prepare any declarations that will be utilized or relied upon as direct testimony at the Sale Hearing. By separate motion, the Movants are requesting that the Court order the National Hockey League to produce documents related to the Topics and other matters relevant to the Sale Hearing.

6. On the motion of any party in interest, the Court may order the examination of any entity. *See* Bankruptcy Rule 2004(a). The examination of an entity under Bankruptcy Rule 2004 may relate to "any matter which may impact the administration of the debtor's estate." *See* Bankruptcy Rule 2004(b); *see also In re International Fibercom*, 283 B.R. 290, 293 (Bankr. D. Ariz. 2002) (Hon. R. J. Haines) (stating that the purpose of Rule 2004 is "to investigate matters that may affect the administration of the debtor's estate."). The Topics are directly relevant to the Sale Hearing and the Court's determination of the best offer for the sale of the

Debtors' assets. Accordingly, Mr. Bettman's testimony and Mr. Daly's testimony regarding the Topics is plainly within Rule 2004's broad scope.

7. Moreover, the Court "holds the ultimate discretion whether to permit the use of Rule 2004, and courts have for various reasons done so despite the existence of other pending litigation." *Id.* at 292 (permitting examination of non-debtor under Rule 2004 provided that "the requirements of Rule 2004, specifically Rule 2004(c) and (e) will be complied with"). In this regard, upon entry of an order granting this Motion, the Movants will comply with the mileage requirements of Rule 2004(e) and comply with the requirements of Rule 2004(c) by serving subpoenas on Mr. Bettman and Mr. Daly to appear and testify at the place, dates, and times set forth below pursuant to Bankruptcy Rule 9016.

8. Furthermore, the Court has the authority to grant the relief requested in this Motion under Bankruptcy Rule 7030, which is applicable to contested matters through Bankruptcy Rule 9014. Accordingly, given the relevance of the Topics to the Sale Hearing and the Movants' immediate need to obtain Mr. Bettman's testimony and Mr. Daly's testimony on the Topics, it is appropriate for the Court to grant the relief requested in this Motion.

9. A draft of this motion was provided to counsel for the NHL on August 5, 2009, after the Court's Minute Entry/Order of the same date, and counsel have been in communication regarding the requested discovery.

RELIEF REQUESTED

10. By this Motion, the Movants respectfully request that the Court enter an order:
- a. directing Gary Bettman to appear at the New York office of Squire, Sanders & Dempsey L.L.P. at 10:00 a.m. (New York Time) on Thursday, August 20, 2009 (or such other date, time, and place mutually agreed upon by Mr. Bettman and the Movants) to be deposed on the Topics for no more than seven (7) hours;
 - b. directing William Daly to appear at the New York office of Squire, Sanders & Dempsey L.L.P. at 10:00 a.m. (New York Time) on Friday, August 21, 2009 (or such

other date, time, and place mutually agreed upon by Mr. Daly and the Movants) to be deposed on the Topics for no more than seven (7) hours;

c. authorizing both Debtors' counsel and PSE's counsel to ask questions of Mr. Bettman and Mr. Daly at such depositions; and

d. authorizing client representatives of the Debtors and client representatives of PSE to attend such depositions, but not to ask questions.

CONCLUSION

For all of the reasons set forth above, the Movants respectfully request that the Court enter an order substantially in the form attached: (a) granting the relief requested in this Motion; and (b) granting any other relief the Court deems appropriate.

RESPECTFULLY SUBMITTED this 7th day of August, 2009

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: /s/ Thomas J. Salerno
Thomas J. Salerno
George Brandon
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004-4498
Counsel to the Debtors-In-Possession

LEWIS AND ROCA, LLP

By: /s/ Susan M. Freeman
Susan M. Freeman
Stefan M. Palys
Two Renaissance Square
40 North Central Avenue, Suite 1900
Phoenix, Arizona 85004-4498
(602) 262-5756
Counsel to PSE Sports & Entertainment LP

COPY of the foregoing mailed and/or e-mailed this
7th day of August, 2009, to all parties listed below:

Geoffrey M. Khotim
Ridenour Hienton & Lewis PLLC
201 N. Central Avenue, Suite 3300
Phoenix, AZ 85004
Attorneys for Glendale Hockey LLC
and Glendale Arena LLC
gmkhotim@rhkl-law.com

Carolyn J. Johnsen
Jennings, Strouss & Salmon, P.L.C.
The Collier Center, 11th Floor
201 East Washington Street
Phoenix, Arizona 85004
Attorneys for Jerry Moyes
cjjohnsen@jsslaw.com

Edward M. Zachary
Bryan Cave
2 North Central Ave. #2200
Phoenix, Arizona 85004
Attorneys for Debtors
edward.zachary@bryancave.com

Larry L. Watson
U.S. Trustee
Office of the U.S. Trustee
230 North First Ave., Suite 204
Phoenix, Arizona 85003
larry.watson@usdoj.gov

C. Taylor Ashworth
Stinson Morrison Hecker
1850 North Central Ave. #2100
Phoenix, Arizona 85004
Attorneys for National Hockey League
tashworth@stinson.com

James E. Cross
Osborn Maledon
2929 North Central Ave. #2100
Phoenix, Arizona 85012
Attorneys for National Hockey League Players' Assoc.
jcross@omlaw.com

Susan M. Freeman
Lewis & Roca
40 North Central Ave.
Phoenix, Arizona 85004
smf@lrlaw.com

Donald L. Gaffney
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, Arizona 85004
Attorneys for Donatello Investments
dgaffney@swlaw.com

Shane D. Gosdis
DLA Piper
2525 E. Camelback Rd. #100
Phoenix, Arizona 85016
Attorneys for Lease Group Resources, Inc.
shane.gosdis@dlapiper.com

Richard Henry Herold, Jr.
Hinshaw & Culbertson
3200 N. Central Ave. #800
Phoenix, Arizona 85012
Attorneys for Aramark Sports and Entertainment Services
rherold@hinshawlaw.com

Alan A. Meda
Stinson Morrison Hecker
1850 N. Central Ave #2100
Phoenix, Arizona 85004
Attorneys for National Hockey League
ameda@stinson.com

Sean P. O'Brien
Gust Rosenfeld
201 E. Washington, #800
Phoenix, Arizona 85004
Attorneys for Drawbridge Special Opportunities Fund
spobrien@gustlaw.com

/ / /

Cathy L. Reece
Fennemore Craig
3003 N. Central Ave. #2600
Phoenix, Arizona 85012
Attorneys for City of Glendale, Arizona
creece@fclaw.com

Dale C. Schian
Schian Walker
3550 N. Central Ave. #1700
Phoenix, Arizona 85012
ecfdocket@swazlaw.com

Scott B. Cohen
Engelman Berger
3636 N. Central Ave. #700
Phoenix, Arizona 85012
Attorneys for John Breslow
sbc@engelmanberger.com

Lori Lapin Jones
98 Cutter Mill Road, #201 North
Great Neck, New York 11021
Attorney for BWD Group
ljones@jonespllc.com

Albert Turi
BWD Group, LLC
BWD Plaza
P.O. Box 9050
Jericho, New York 11753

Ivan L. Kallick
Mannatt, Phelps & Phillips
11355 W. Olympic Blvd.
Los Angeles, California 90064
Attorneys for Ticketmaster
ikallick@manatt.com

Facility Merchandising, Inc.
c/o Arthur E. Rosenberg
Holland & Knight
195 Broadway
New York, New York 10007
arthur.rosenberg@hklaw.com

Facility Merchandising, Inc.
c/o Louis T.M. Conti
Holland & Knight
100 North Tampa Street, Suite 4100
Tampa, Florida 33602
louis.conti@hklaw.com

**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-09-09488
(Jointly Administered)

Chapter 11

**ORDER REQUIRING GARY
BETTMAN AND WILLIAM DALY TO
APPEAR FOR THE TAKING OF
DEPOSITIONS**

This Filing Applies to:

- All Debtors
 Specified Debtors

This Court, having considered the “Joint Motion of Debtors and PSE Sports & Entertainment LP for Order Requiring Gary Bettman and William Daly to Appeal for the Taking of Depositions” (the “**Motion**”),¹

IT IS HEREBY ORDERED:

1. The Motion is GRANTED.

¹ Capitalized terms not defined in this Order retain the meanings given to them in the Motion.

2. Gary Bettman shall appear at the following date, time, and place (or such other date, time, and place mutually agreed upon by Mr. Bettman and the Movants) to be deposed regarding the Topics for no more than seven (7) hours:

DATE OF EXAMINATION: Thursday, August 20, 2009
TIME OF EXAMINATION: 10:00 A.M. (New York Time)
LOCATION: Squire, Sanders & Dempsey L.L.P.
30 Rockefeller Plaza
New York, NY 10112

3. William Daly shall appear at the following date, time, and place (or such other date, time, and place mutually agreed upon by Mr. Daly and the Movants) to be deposed regarding the Topics for no more than seven (7) hours:

DATE OF EXAMINATION: Friday, August 21, 2009
TIME OF EXAMINATION: 10:00 A.M. (New York Time)
LOCATION: Squire, Sanders & Dempsey L.L.P.
Two Renaissance Square
30 Rockefeller Plaza
New York, NY 10112

4. Both Debtors' counsel and PSE's counsel are authorized to ask questions of Mr. Bettman and Mr. Daly at such depositions; and

5. Client representatives of the Debtors and client representatives of PSE are authorized to attend such depositions, but not to ask questions.

DATED AND SIGNED ABOVE