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16 **UNITED STATES BANKRUPTCY COURT**
17 **FOR THE DISTRICT OF ARIZONA**

| | | |
|--|---|---|
| 18 In re |) | Case No. 2:09-bk-09488-RTBP |
| |) | |
| 19 DEWEY RANCH HOCKEY, LLC, |) | (Jointly Administered) |
| |) | |
| 20 COYOTES HOLDINGS, LLC, |) | Chapter 11 |
| |) | |
| 21 COYOTES HOCKEY, LLC, and |) | Objection of The National Hockey League |
| |) | to Motion of Debtors Pursuant to Federal |
| 22 ARENA MANAGEMENT GROUP, LLC, |) | Bankruptcy Rule 2004 for Order Directing |
| |) | Production of Documents of The National |
| 23 Debtors. |) | Hockey League, Office of the |
| |) | Commissioner |
| |) | |
| 24 |) | Date: TBD |
| |) | Time: TBD |
| 25 This filing applies to: |) | Location: U.S. Bankruptcy Court |
| |) | 230 N. First Ave, Courtroom 703 |
| 26 <input type="checkbox"/> All Debtors |) | Phoenix, AZ 85003 |
| <input type="checkbox"/> Specified Debtors |) | |
| 27 |) | |
| 28 |) | |

1 The National Hockey League (the “NHL” or the “League”) hereby files this objection (the
2 “Objection”) to the Motion of Debtors Pursuant to Federal Bankruptcy Rule 2004 for Order
3 Directing Production of Documents of The National Hockey League, Office of the Commissioner
4 [Docket No. 58] (the “Rule 2004 Motion”)¹. In support of this Objection, the NHL respectfully
5 represents as follows:

6 **PRELIMINARY STATEMENT**

7 The Rule 2004 Motion is premature and should therefore be denied. Specifically, the Court
8 has scheduled a hearing on May 19 to consider the League’s Motion for Determination (I) of
9 Authority to Manage the Business and Affairs of the Debtors, and (II) that William Daly is the
10 Representative of the Estates [Docket No. 47] (the “Authority Motion”). Pending the
11 determination of who is in rightful control of the Debtors, there is no justification for the efforts of
12 the Debtors’ former principal, Jerry Moyes, to harass the League with such discovery that may
13 prove wholly unnecessary. Premature disclosure of confidential discussions will jeopardize value
14 for the League and all of its member teams, including the Phoenix Coyotes, as well as the team’s
15 creditors.

16 The Rule 2004 Motion is also procedurally defective and should be denied on that basis as
17 well. The Motion fails to comply with the Local Rules, and misconstrues the purpose of Rule 2004
18 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Specifically, even if the
19 Rule 2004 Motion were granted, at most, a document request could be made to the League, to
20 which the League would be entitled to respond in due course consistent with Bankruptcy Rule
21 9016.

22 **FACTUAL BACKGROUND**

23 On May 5, 2009 (the “Petition Date”), each of the above-captioned debtors (collectively,
24 the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States
25 Code (the “Bankruptcy Code”) before the United States Bankruptcy Court for the District of
26

27 ¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Rule 2004
28 Motion.

1 Arizona (the “Bankruptcy Court”). As noted above, the League disputes the authority of the
2 Debtors’ former principal, Jerry Moyes, to manage the Debtors. A hearing on the Authority
3 Motion to adjudicate such dispute has been requested for May 19, 2009.

4 On May 8, 2009, counsel retained by Jerry Moyes allegedly for the Debtors requested a
5 copy of “any and all offers” that the League may have for the Phoenix Coyotes or the Debtors’
6 assets. On May 10, 2009, the League’s counsel responded that pending the determination of the
7 Authority Motion, the request for a copy of any offers was premature.

8 On May 11, 2009, although proposed counsel for the Debtors and the League were in
9 communication by phone and email throughout the day, the Rule 2004 Motion was filed ex parte
10 without service on the League or anyone else. The Rule 2004 Motion purportedly requires
11 documents “reflecting or related” to such offers described above to be produced by 10:00 AM
12 Eastern Time on May 12, 2009.

13 **ARGUMENT**

14 **I. The Rule 2004 Motion is Premature.**

15 As mentioned above, the NHL filed the Authority Motion seeking a determination that it is
16 the appropriate managing authority of the Debtors. Resolution of the managing authority of the
17 Debtors is a critical threshold issue in these cases. Pending the disposition of that motion, there is
18 simply no need or justification for discovery regarding any offers related to the Phoenix Coyotes or
19 the Debtors.

20 More importantly, premature disclosure of any expressions of interest in the team could be
21 harmful. Investment in a professional sports franchise, including, for example, the Phoenix
22 Coyotes, is a complex transaction. Forcing the early disclosure of information relative to such an
23 investment, especially if it may be given to a competing “bidder” like Mr. Balsillie, could disrupt a
24 value maximizing process.

25 The NHL has demonstrated its commitment to the success and welfare of the Phoenix
26 Coyotes by providing additional financing to support the venture. Once the NHL determines that a
27 legitimate and worthwhile exchange of confidential information with bidders may be productive, it
28 will do so.

1 **II. The Rule 2004 Motion Is Procedurally Defective.**

2 Bankruptcy Rule 2004 authorizes the “examination of any entity.” Fed. R. Bankr. P.
3 2004(a). It does not, however, provide for the suspension of the normal due process requirements
4 nor does it supplant a normal discovery process.

5 Specifically, Rule 2004 requires that a party file a motion requesting the bankruptcy court
6 to order an examination. In this Court, Local Rule 9013-1 governs such motions. In instances
7 where a movant believes that a motion is permitted to be made “ex parte,” the Local Rules require
8 the movant to state in the motion why it is permitted to be granted without notice. Local Rule
9 9013-1(d). The Rule 2004 Motion contains no such statement.

10 Assuming *arguendo* that the movants intended that the Court consider the Rule 2004
11 Motion on an expedited notice basis, rather than ex parte, the Local Rules require the movants to
12 “make every practicable effort to notify opposing parties, if any, and shall serve the pleadings at
13 the earliest possible time and by the most expeditious means practicable.” Local Rule 9013-1(h)(1).
14 Here, the movants made no attempt to notify the NHL of the Rule 2004 Motion. Rather, the NHL
15 was first apprised of the motion by the press, who presumably were alerted by the movants
16 themselves.²

17 Finally, even assuming that the Rule 2004 Motion complied with the Local Rules, Rule
18 2004 still requires compliance with the rules of discovery. In re Int’l Fibercom, Inc., 283 B.R. 290
19 (Bankr. D. Ariz. 2002). Specifically, Bankruptcy Rule 2004 provides as follows:

20 The attendance of an entity for examination and for the
21 production of documents, whether the examination is to be conducted
22 within or without the district in which the case is pending, may be
23 compelled as provided in Rule 9016 for the attendance of a witness at
24 a hearing or trial. As an officer of the court, an attorney may issue
and sign a subpoena on behalf of the court for the district in which
the examination is to be held if the attorney is admitted to practice in
that court or in the court in which the case is pending.

25 Fed. R. Bankr. P. 2004(c) (emphasis added).

26
27 ² The Local Rules contain other special requirements for expedited motions such as special
28 notations in the captions and listings of contact information of the opposing parties, among other
things. The Rule 2004 Motion does not comply with any of these requirements.

1 Here, the Rule 2004 Motion seeks for the Court to order an examination without
2 compliance with Bankruptcy Rule 9016, without the service of a subpoena, and without the due
3 process protections afforded in connection with responding to a subpoena issued under Federal
4 Rule of Civil Procedure 45, not the least of which is a “reasonable time to comply.” Fed. R. Civ. P.
5 45(c)(3)(A)(i). As Judge Haines noted in Int’l Fibercom, the requirements of Bankruptcy Rule
6 2004 include and incorporate the requirements of Bankruptcy Rule 9016 and Fed. R. Civ. P. 45.
7 283 B.R. at 294. Because the movants have ignored such requirements, the Rule 2004 Motion
8 should be denied.

9 **CONCLUSION**

10 WHEREFORE, for the reasons set forth herein, the NHL respectfully requests that the
11 Court deny the Rule 2004 Motion without prejudice.

12 DATED: May 12, 2009

13 STINSON MORRISON HECKER LLP

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