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8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF ARIZONA**

10 In re:
11 DEWEY RANCH HOCKEY, LLC,
12 COYOTES HOLDINGS, LLC,
13 COYOTES HOCKEY, LLC, and
14 ARENA MANAGEMENT GROUP, LLC,
15 Debtors.

Chapter 11

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

**PSE SPORTS & ENTERTAINMENT'S
POSITION ON RELOCATION AND
OWNERSHIP TRANSFER DISCOVERY**

**Hearing Date: August 11, 2009
Hearing Time: 1:30 p.m.**

16

17 This Filing Applies to:

- 18 All Debtors
19 Specified Debtors
20

21 PSE Sports & Entertainment, LP (“PSE”) requests that the National Hockey League
22 (“NHL”) be ordered to provide the following discovery, now and not after a September 2 hearing
23 and ruling. Through its recently filed Motion for a Determination that Debtors’ NHL Membership
24 Rights May Not Be Transferred to PSE, the NHL has affirmatively put at issue the propriety of its
25 Board of Governors’ rejection of Mr. Balsillie’s ownership Transfer Application, and its *de facto*
26 rejection of the Debtors’/PSE’s Relocation Application. PSE (and the Debtors) are entitled to

1 discovery concerning whether the NHL's treatment of these Applications (1) has been consistent
2 with fundamental principles of bankruptcy, antitrust and other laws, including the NHL's
3 obligations of good faith and fair dealing and its past practices, or (2) whether the NHL's
4 purported bases for rejecting the Applications are mere pretext to punish PSE for seeking to
5 purchase the Coyotes in bankruptcy and/or to protect the Toronto Maple Leafs "territorial veto"
6 for Southern Ontario. PSE also needs information now for its expert to prepare his economic
7 opinion related to determining a proper relocation fee. He needs the remainder of August to
8 synthesize the information, and prepare to take into account the NHL's position on relocation and
9 a relocation fee when provided by the NHL under the Amended Sale Procedures on September 1,
10 2009. The following constrictions of the previous discovery requests is tailored to elicit this
11 critical information while minimizing the burdens on the NHL and its witnesses.

12 **Document Production:**

13 1. Documents reflecting all relocation fees charged and received by the NHL, and all
14 indemnity or similar payments made to other NHL teams, as a result of NHL franchise
15 relocations since 1990: Northstars, Nordiques, Jets, Whalers (requested by PSE's expert).

16 2. Documents reflecting all expansion fees charged (and payment terms) and
17 received by the NHL and all indemnity or similar payments to NHL teams in connection with
18 expansion teams since 1990 (nine expansion teams) (requested by PSE's expert).

19 3. NHL Board of Governors reports on proposed expansions since 1990, and any
20 proposed expansions to Hamilton regardless of when produced, and any other documents since
21 1990 setting out the NHL's methodology or factors considered in determining an appropriate
22 expansion, relocation and any indemnity fee. (directly relevant to the issue of how the NHL has
23 set such fees historically and, if disclosed, will enable the parties' respective expert reports to be
24 comparable to the extent possible; PSE understands the Board reports on expansions are readily
25 retrievable).

26

1 4. NHL summaries (provided to the NHL Executive Committee or otherwise) of all
2 purchase agreements for NHL teams since 2000: Islanders (2000), Sabres (2000), Panthers
3 (2001), Sharks (2002), Senators (2003), Canucks (2004, 2006), Blues (2005), Coyotes (2005),
4 Ducks (2005), Devils (2005), Predators (2007), Lightning (2007), Wild (2008), Oilers (2008).
5 (needed by PSE's expert to evaluate comparable sales and determine to what extent the purchase
6 price was for the team (vs. an arena or other assets)).

7 5. The NHL's Hockey Related Revenue reports for seasons after the 2005 Collective
8 Bargaining Agreement, when financial reporting was standardized for all NHL teams, for all new
9 franchises, teams sold or relocated during that time period, plus for the Maple Leafs and Sabres.
10 (Information about revenue, net income, and cash flow is necessary to establish comparable data
11 points for purposes of the relocation fee analysis).

12 6. Team gate receipts for the following teams for each year since 1996: Maple Leafs,
13 Sabres, Kings, Ducks, Rangers, Islanders and Devils, and gate receipts for all other NHL teams
14 from 2000-2009. (These teams are comparable insofar as they exist in or near each other's NHL
15 territories, relevant to addressing the impact on teams from competition within their territories.
16 Gate receipt reports, regularly produced and maintained by the NHL, have been requested by
17 PSE's expert to validate the pro forma projections for a Hamilton team).

18 7. All documents (other than media reports) pertaining to the prospect of another
19 franchise entering the southern Ontario market, including but not limited to any correspondence
20 with the Maple Leafs or Sabres or their respective representatives regarding the prospect of an
21 NHL team in Hamilton and any NHL study of expansion into Hamilton. (Any such documents
22 will bear directly on the value of a Hamilton expansion opportunity, and the issue of whether the
23 NHL's opposition to PSE arises from its desire to avoid a team in Hamilton. The NHL has
24 confirmed the existence of a Hamilton expansion study, and did not mention correspondence).

25 8. All documents reflecting or summarizing any expenditures the Toronto Maple
26 Leafs, Buffalo Sabres or the NHL have made in order to develop goodwill in the market for NHL

1 hockey in Hamilton Ontario. (This request tracks the language of the applicable NHL By-Law.
2 Any such information would be minimal insofar as it specifically concerns Hamilton. To the
3 extent the NHL construes such “expenditures” more broadly, PSE’s and Debtors’ expert should
4 be able to evaluate that position).

5 9. NHL Consent Agreements executed with teams since 1990. Copies of these
6 agreements may be redacted, as long as all provisions relating to relocation or non-relocation are
7 provided. (These are fundamental documents that the NHL has readily available, and would have
8 been signed in conjunction with any new franchise or change in ownership. These are relevant to
9 the NHL’s contention that Mr. Balsillie is unfit due to his unwillingness to sign a Penguins or
10 Predators Consent Agreement with a purportedly “standard” 7-year non-relocation provision.
11 PSE does not believe this was “standard,” as the NHL has claimed. The NHL has offered to
12 produce a list of which agreements have 7-year covenants. That is not sufficient because some
13 agreements may have such provisions, but also have additional terms or addendums qualifying or
14 limiting the language).

15 10. The Kroll investigation report, Eisner report on Mr. Balsillie and PSE, and any
16 other documents not previously produced that were considered by the NHL’s Executive
17 Committee and/or Board of Governors underlying their determination on July 29, 2009 that Mr.
18 Balsillie and PSE are unfit to own a NHL team. (Such documents go directly to the validity of the
19 NHL’s rejection of PSE’s Application and *de facto* rejection of relocation).

20 11. All written agreements between Mr. Balsillie and the NHL (and/or any of its
21 franchise holders) that allegedly have been breached by Mr. Balsillie, with an identification of the
22 specific portions or provisions allegedly breached. (This is a significant component of the
23 asserted grounds for disapproval of Mr. Balsillie).

24 12. The emails allegedly from Richard Rodier to the Director of Finance for Nashville
25 referenced in Mr. Leopold’s statement attached to the Second Declaration of William Daly filed
26

1 in this case. (Documents are needed to evaluate the accuracy of information provided to the NHL
2 and on which it determined that Mr. Balsillie should not be allowed to acquire the Coyotes).

3 13. Documents sufficient to identify all persons/entities that have had applications for
4 ownership transfers or for expansion franchises denied as a result of a determination by the NHL
5 that such person/entity lacked necessary “good character and integrity” under NHL By-Laws.
6 (PSE believes that no such documents exist because no other persons/entities have had transfer of
7 ownership or expansion applications denied on this basis. If such a situation occurred before, it
8 would be relevant to determine comparability and the NHL’s good faith in rejecting Mr. Balsillie.
9 If the NHL wishes to limit its search to post-1990, that would be acceptable).

10 14. All documents created prior to May 5, 2009 in which the NHL or Toronto Maple
11 Leafs refer to the existence, viability or status of Article 4.3 (including any portion thereof) of the
12 NHL Constitution or the ability of a NHL team to exercise a territorial veto. Despite case law
13 establishing its invalidity and other sports leagues expressly deleting such provisions, the NHL
14 has elected to keep the “territorial veto” in its NHL Constitution. PSE’s view is that the territorial
15 veto has not been legally abandoned by the NHL as Mr. Bettman has claimed).

16 **Depositions**

17 PSE joins the Debtors in requesting depositions of: NHL Commissioner Bettman and
18 Deputy Commissioner Daly (who have submitted declarations and are most familiar with the
19 NHL’s actions); the two NHL Executive Committee members who provided declarations with
20 respect to the rejection of Mr. Balsillie, *i.e.* Messrs. Leipold and Jacobs, who should be subject to
21 examination on their statements; and Richard A. Peddie (president and CEO of the owner of the
22 Toronto Maple Leafs), because PSE believes that, notwithstanding the NHL’s pretextual
23 arguments, the Maple Leafs are trying to block PSE’s purchase of the Coyotes in order to prevent
24 a Hamilton relocation and competition with the Maple Leafs in Southern Ontario. Mr. Peddie is
25 thus a central witness on the relocation issue. Each deponent should produce documents in his
26 possession and/or control relating to the Applications in advance to facilitate efficient questioning

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RESPECTFULLY SUBMITTED this 12th day of August, 2009.

LEWIS AND ROCA LLP

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