Exhibit 1

JEREMY JACOBS

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

Case No. 2:09-bk-09488-RTBP
Chapter 11

In Re
DEWEY RANCH HOCKEY, LLC,
COYOTES HOLDINGS, LLC,
COYOTES HOCKEY, LLC, and
ARENA MANAGEMENT GROUP, LLC,
Debtors.

Examination before trial of JEREMY JACOBS, taken pursuant to Notice, in the offices of JACK W. HUNT & ASSOCIATES, INC., 1420 Liberty Building, Buffalo, New York, on August 19, 2009,

commencing at 9:03 a.m., before JOAN M.

METZGER-HUBBELL, CRR, RMR, RPR, Notary Public.

APPEARANCES: SQUIRE, SANDERS & DEMPSEY, LLP.
By RICHARD GURBST, ESQ.,
4900 Key Tower,
127 Public Square,
Cleveland, Ohio 44114-1304,
Appearing for the Debtors.

DEWEY & LeBOEUF,
By DAVID GREENSPAN, ESQ.,
1301 Avenue of the Americas,
New York, New York 10019-6092.
Appearing for PSE Sports &
Entertainment, LP.

JENNINGS, STROUSS & SALMON, LLC.
By L. EDWARD HUMPHREY, ESQ.,
201 E. Washington Street, 11th Floor,
Phoenix, Arizona 85004-2385,
Appearing for Jerry Moyes,
via telephone.

ALLEN, SALA & BAYNE, PLC,
By PAUL SALA, ESQ.,
Viad Corporate Center,
1850 N. Central Avenue, Suite 1150,
Phoenix, Arizona 85004,
Appearing for the Unsecured
Creditors Committee,
via telephone.

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM, LLP,
By SHEPARD GOLDFEIN, ESQ.,
4 Times Square,
New York, New York 10036,
Appearing for the National Hockey
League and The Witness.

DELAWARE NORTH COMPANIES,
By BRYAN J. KELLER, ESQ.,
General Counsel,
Law Department,
40 Fountain Plaza,
Buffalo, New York 14202-2285,
Appearing as Personal Counsel
for The Witness.

THE REPORTER: Are there any stipulations?
MR. GOLDFEIN: Usual stipulations.

JEREMY JACOBS, 1300 North Davis Road, East Aurora, New York, after being duly called and sworn, testified as follows:

EXAMINATION BY MR. GREENSPAN:

Q. Good morning, Mr. Jacobs.
A. Good morning.
Q. We just met. My name again is David Greenspan, the Dewey & LeBoeuf firm representing PSE.
I'm going to begin the questioning today. Mr. Gurbst on behalf of the debtors is going to take over at some point, and then I guess it's possible that people on the phone may have some questions, also.
A. PSE is?
Q. PSE, PSE Sports & Entertainment.
MR. GOLDFEIN: Mr. Balsillie's acquiring entity.

THE WITNESS: That's the name of the acquiring entity? Thank you.
MR. GREENSPAN: Yes, where Mr. Balsillie is the principal.
BY MR. GREENSPAN:
Q. Have you ever had your deposition taken before.
A. Yes, I have.
Q. Okay. How many times?
A. I don't know.
Q. Many times?
A. More than once.
Q. Okay. So you're familiar with how the process goes?
A. Yes.
Q. Okay. So I won't belabor the rules but, first of all, if at any time today you need a break, we can all be flexible and accommodating, so please let me know.
To the extent that any of my questions are unclear to you, please let me know so we can try to work together to get on the same page.
Your attorney, Mr. Goldfein, I'm sure will

have objections throughout the day, but that's to preserve the record. Unless he instructs you not to answer my question, then you need to go ahead and answer my question.
Do you understand all that so far?
A. I understand what you said.
Q. Okay. I'm sure the court reporter and everybody on the phone as well will appreciate if you give audible answers instead of nodding so everybody can follow along. I think that's about it for now.
Is there anything today to prevent you from giving me your best and most truthful testimony?
A. No.
Q. Okay. Sir, you are the owner of the Boston Bruins?
A. Yes.
Q. And for how long have you owned the team?
A. I acquired the team in 1975.
Q. Okay. And can you give me a brief overview of your participation in NHL governance since 1975?

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1 Jacobs, four pages
2 MR. GOLDFEIN: For the record, Jacobs 1 does
3 not -- I think there were attachments to this, were
4 there not, counsel?
5 MR. GREENSPAN: Yes. This is just the
6 declaration.
7 MR. GOLDFEIN: All right. So is there a
8 reason you didn't mark the attachments or include
9 the entirety of it?
10 MR. GREENSPAN: To the extent that we're
11 going to look at any of the attachments, I'm going
12 to mark them as separate exhibits. I thought that
13 would be easier for --
14 MR. GOLDFEIN: Maybe you should mark them
15 now, because I'd like to have the witness have the
16 entire affidavit in front of him.
17 MR. GREENSPAN: That's fine. I believe the
18 only attachment was the executive -- the memo, the
19 July 27th memo to the executive committee, and it
20 had a number of tabs.
21 Again, to make life easier, we had it put
22 together this way, so for people on the phone, with
23 physical tabs so we can flip through to the back.

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1 So I will mark the -- again, for people on the
2 phone, what's been marked as Jacobs 1 is the
3 declaration of Jeremy Jacobs dated --
4 MR. GOLDFEIN: That's the redacted.
5 MR. GREENSPAN: -- August 7th, 2009. Yes.
6 And then we're marking as Jacobs Exhibit
7 number 2 the July 27th --
8 THE WITNESS: Memo?
9 MR. GREENSPAN: -- memo, July 27th, 2009,
10 memo to the NHL executive committee, cc. NHL board
11 of governors, and the 32 tabs that were appended to
12 it.
13 The following was marked for Identification:
14 JACOBS EXH. 2 multi-paged document
15 headed Executive Committee
16 Memorandum & Exhibits, July
17 27, 2009
18 MR. GOLDFEIN: Okay. And you now have --
19 counsel's telling me you have the totality of what
20 your declaration was. This, and this was attached
21 to it.
22 You can take a minute to review it.
23 THE WITNESS: I'm just reviewing this, and

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1 to the extent that we need to wade through that, I
2 will.
3 MR. GREENSPAN: Yes. Please take your time.
4 (Discussion off the record.)
5 THE WITNESS: Okay. Yes, this is my
6 statement. I can't -- I didn't look at any of the
7 redacted information here on the executive
8 committee memorandum and exhibits.
9 BY MR. GREENSPAN:
10 Q. And everybody here will be happy to
11 know we will not be looking at the vast majority of
12 the exhibits to the memorandum today, and to the
13 extent that we do --
14 A. I will refer to them.
15 Q. Absolutely, and you'll have time to
16 review every one.
17 The declaration, generally speaking, you
18 stand by everything that's in this declaration?
19 A. Yes, I do.
20 Q. Okay. And I imagine you read this
21 declaration carefully before -- before signing it?
22 A. Yes, I did.
23 Q. Okay. Now, if you take a look at

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1 paragraph 16, second-to-last page --
2 A. Yeah.
3 Q. -- it states that the executive
4 committee denied Mr. Balsillie's application
5 because of the conclusion that he lacks the good
6 character and integrity required of a new owner of
7 an NHL member club.
8 And is that the -- is that, indeed, the
9 basis for denying Mr. Balsillie's ownership
10 application?
11 A. That's -- we recommended a unanimous
12 vote of the ten members of the executive committee
13 to recommend to the board that they deny
14 Mr. Balsillie's application based on his character
15 and integrity, yes.
16 Q. Okay. And in your 34 years as a
17 governor --
18 A. Yes.
19 Q. -- is this the first time that an
20 ownership application has ever been rejected on
21 character and integrity grounds?
22 A. I don't know.
23 Q. Can you recall any other instance in

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1 which an ownership application has been rejected on
2 character and integrity grounds?
3 A. I've had -- it's the first time that I
4 know that that has gotten -- had to go to the full
5 board on that basis. There have been people that
6 have been recommended not going forward with. He's
7 the only person we went all the way through to that
8 extent with.
9 Q. I'm sorry, I'm just -- I'm not
10 following your answer.
11 A. In other words, if somebody didn't fill
12 the criteria that we thought was acceptable, we
13 would suggest they not pursue it any more.
14 Q. The board would make that suggestion to
15 the applicant?
16 A. No, that would happen before it got to
17 the board.
18 Q. I see. But Mr. Balsillie is the first
19 instance where --
20 A. That it's gone the whole way.
21 Q. -- where the executive committee has
22 recommended to the full board, do not vote for this
23 applicant because he lacks the good character and

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1 integrity that we require?
2 A. That's the first time I've done that,
3 yes.
4 Q. Okay.
5 A. Now, that's my memory on this right
6 now.
7 Q. I understand. But sitting here
8 today --
9 A. Yeah.
10 Q. -- you can't identify any other
11 instance of that?
12 A. I can't identify doing that before.
13 Q. Does Mr. Balsillie have the lowest or
14 worst character and integrity of any ownership
15 applicant that you can recall in your 35 years as a
16 governor?
17 MR. GOLDFEIN: Object to the form of the
18 question.
19 THE WITNESS: I can't answer it.
20 BY MR. GREENSPAN:
21 Q. Is part of your -- let me start over.
22 Part of your assessment about
23 Mr. Balsillie's insufficient character and

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1 integrity is because he is trying to purchase the
2 Coyotes out of bankruptcy; is that correct?
3 A. Say that again.
4 Q. Is part of your assessment that
5 Mr. Balsillie lacks the character and integrity
6 required of a new NHL owner due to Mr. Balsillie's
7 attempt to purchase the Coyotes out of bankruptcy?
8 MR. GOLDFEIN: I'm going to object to the
9 form of the question. Are you asking was it the
10 executive committee or his personal view?
11 MR. GREENSPAN: Your personal view.
12 THE WITNESS: My personal view was formed
13 partially based on his activities with regard to
14 the -- what happened in the endeavor, in the
15 Coyotes endeavor, yes. There were parts that I
16 found objectionable in that, and it indicated a
17 course of conduct.
18 BY MR. GREENSPAN:
19 Q. Mr. Balsillie's attempt to buy the
20 Coyotes out of bankruptcy reflects negatively on
21 his character and integrity in your personal
22 assessment?
23 MR. GOLDFEIN: Object to the form of the

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1 question. It is leading, and suggest that he
2 answer the question in his own words, and he should
3 do so again.
4 THE WITNESS: Can you read back what my
5 answer was the last time?
6 (The above-requested question was then read
7 by the reporter.)
8 THE WITNESS: No.
9 BY MR. GREENSPAN:
10 Q. The answer's no?
11 A. No.
12 Q. Let's take a look at paragraph 12 of
13 your declaration. This is page 4.
14 (Discussion off the record.)
15 BY MR. GREENSPAN:
16 Q. Looking at the last sentence of
17 paragraph 12, quote, I reminded Mr. --
18 A. Is it 12 or 14?
19 Q. 12.
20 A. Oh.
21 (Discussion off the record.)
22 BY MR. GREENSPAN:
23 Q. I'll read the sentence for the record

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1 which is, quote, I reminded Mr. Balsillie that he
2 understood full well the NHL's rules and procedures
3 for franchise ownership and relocation when he
4 attempted to purchase the Penguins, the Nashville
5 Predators, and the Coyotes, and I informed him that
6 he should have used the front door into the league.
7 A. That's correct.
8 Q. Closed quote.
9 What did you mean by -- when you told
10 Mr. Balsillie that he should have used the front
11 door into the league? What did you mean by that?
12 A. He shouldn't have -- he should have
13 followed the league's rules and procedures with
14 regard to acquisition, and he had much experience
15 in dealing with the Penguins and the Predators
16 prior to his pursuing the Coyotes. He was an
17 informed purchaser. He was an informed acquirer.
18 He knew the rules and regulations with regard to
19 this directly from the commissioner, and he's
20 already once been before this group of ten people.
21 Then it was perhaps a little different. Certain
22 members were not there or were there before, but by
23 and large, this committee had known Mr. Balsillie

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1 before. He was an informed purchaser.
2 Q. Do you believe --
3 A. And he specifically stated when he
4 couldn't go through the front door, he was going to
5 go through the side door or the back door or climb
6 over it, however he was going to do it.
7 Q. Do you believe that Mr. Balsillie is
8 now trying to circumvent the league rules and
9 procedures in his attempt to acquire the Coyotes?
10 MR. GOLDFEIN: Object to the form of the
11 question. You can answer.
12 THE WITNESS: In his statements he has so
13 indicated. It's in his own statements he so
14 indicated it.
15 BY MR. GREENSPAN:
16 Q. I'm asking you for your view, and is it
17 your view, Mr. Jacobs, that Mr. Balsillie is trying
18 to circumvent league rules and procedures in his
19 attempt to acquire the Coyotes?
20 MR. GOLDFEIN: Asked and answered.
21 Objection.
22 MR. GREENSPAN: You have to go ahead.
23 MR. GOLDFEIN: You can answer. He asked you

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1 that question, you answered it.
2 THE WITNESS: Yes, I believe so. I believe
3 that Mr. Balsillie's statement that that was his
4 attempt was true and accurate, that he was looking
5 to circumvent it.
6 BY MR. GREENSPAN:
7 Q. But here we're looking in paragraph 12
8 at your statement.
9 A. Yes.
10 Q. I'll start over.
11 Mr. Jacobs, your statement, that
12 Mr. Balsillie should have used the front door into
13 the league, does this mean that Mr. Balsillie
14 should not be using the bankruptcy procedures to
15 acquire an NHL franchise?
16 A. That is not what I said.
17 Q. Okay. What do you mean here when you
18 say, Mr. Balsillie, you should have used the front
19 door into the league?
20 A. There's a -- he should have gone
21 through the commissioner's office, whether
22 bankruptcy is the place or not. He should have --
23 he should have not attempted to undermine the

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1 league as a whole as he -- as he indicated in a
2 document here. I can't put my hands on it. I'd
3 like to be able to put my hands on the document
4 that indicated that.
5 There was a statement of Bill Daly's. It
6 was in here. Where was it? I'd like to read that
7 and give you --
8 MR. GOLDFEIN: It's in the summary.
9 (Discussion off the record.)
10 MR. GOLDFEIN: Take your time.
11 MR. GREENSPAN: Could we go off the record
12 while he's looking for this?
13 MR. GOLDFEIN: Yes.
14 (Discussion off the record.)
15 MR. GOLDFEIN: For the record, I'm pointing
16 to the July 27th memorandum --
17 THE WITNESS: Memorandum.
18 MR. GOLDFEIN: -- to the board.
19 THE WITNESS: This may or may not -- oh,
20 yes.
21 MR. GURBST: Mr. Jacobs, have you found it?
22 THE WITNESS: I think I found it here.
23 MR. GURBST: Just tell us what page.

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1 THE WITNESS: On page 27.
2 MR. GURBST: Thank you.
3 THE WITNESS: Of Bill Daly's statement here.
4 This is a lengthy statement. I'm not reading the
5 whole statement, and don't hold me necessarily to
6 all of this.
7 Commissioner -- let me read this and then --
8 MR. GOLDFEIN: And, for the record, it's
9 Jacobs Exhibit 2.
10 THE WITNESS: Okay. While I find all of the
11 second paragraph on 27 to be contributing to an
12 opinion, on the next page, 28, there were a number
13 of things.
14 One, in addition to the general concerns
15 raised by Mr. Balsillie's overall strategy,
16 including attempting to hold the league and
17 Commissioner Bettman up to public ridicule as
18 allegedly anti-Canadian and harming the league's
19 goodwill with fans in Phoenix and throughout North
20 America, and what it indicates in terms of
21 Mr. Balsillie's willingness to follow league rules
22 and procedures and abide by league determination,
23 during the course of the bankruptcy proceeding

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1 Mr. Balsillie, through his counsel, has taken a
2 number of legal positions that are not in the
3 league's best interest. Mr. Balsillie has asserted
4 that the NHL is an illegal cartel, that the NHL's
5 rules and procedures are anticompetitive under the
6 antitrust laws, and that the bankruptcy court has
7 the power to set aside the league's consent rights
8 and order the sale and relocation of the Coyotes.
9 Mr. Balsillie has asserted that the NHL is
10 not a single entity for antitrust purposes, and
11 Mr. Balsillie included a term in his asset purchase
12 agreement requiring Mr. Moyes to initiate antitrust
13 litigation against the NHL.
14 I think that helped form, although it was
15 not everything, but it did -- did go towards
16 forming the opinion of Mr. Balsillie in my mind,
17 for me.
18 BY MR. GREENSPAN:
19 Q. I understand. So these --
20 A. Now, there was -- there was a little
21 bit more that goes to that in the prior, earlier in
22 the same -- into the front door, side door comments
23 of his. I spent five years looking for front

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1 doors. We couldn't find a front door. I found a
2 side door.
3 Similarly, a press article on May 19th
4 reports that Mr. Balsillie and Mr. Rodier's
5 strategy is to buy an NHL team out of bankruptcy
6 and then move it over the league's objections by
7 winning an antitrust lawsuit, if necessary.
8 Q. Okay. Page 28, the three bullet
9 points, these legal positions that Mr. Balsillie
10 has taken contribute to your assessment that he
11 lacks the good character and integrity required of
12 an NHL owner?
13 A. This goes -- a simple yes with an
14 explanation, that it goes to showing his desire to
15 go around the -- the process that has been
16 established over many years by the league and not
17 work within the league but to go outside of the
18 league. That -- that helped to formulate whether
19 he would be a good partner in the league, and it
20 was -- it definitely -- in this -- in my individual
21 opinion, yes, it did.
22 Q. How about with the rest of the board --
23 excuse me, with the rest of the executive

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1 committee?
2 A. I can't respond to that, because I
3 don't know what they were thinking.
4 Q. There was no discussion of whether
5 Mr. Balsillie's legal positions that he had taken
6 in this bankruptcy contributed to the other
7 executive committee members' conclusion that he
8 lacks the requisite good character and integrity?
9 A. I don't know how the individuals in
10 there valued this issue in their thinking. There
11 was such a preponderance of experience that they --
12 what really swayed their opinion, I don't know.
13 Q. Okay. You point out in your
14 declaration that Mr. Balsillie's desire to move the
15 Coyotes to Hamilton was not a factor in the
16 executive committee's recommendation to the full
17 board.
18 A. That's correct.
19 Q. Okay. Why did you make that point in
20 your declaration?
21 A. It was most specifically spoken to by
22 the commissioner prior to our -- our reviewing
23 this. He said, this has got nothing to do with --

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1 or that that's the presumption that -- it was -- so
2 he was -- he was regret -- the regrets I gleaned
3 from this had only to do to the extent that we
4 didn't agree with what he did.
5 Q. All right. And in your mind, did those
6 statements of regret counterbalance any of the
7 negativity about the Predators tickets situation?
8 A. Actions speak louder than words, and
9 his words were -- were of little comfort for his
10 course of conduct.
11 Q. Mr. Leipold's statement, to your
12 knowledge, was everything that he read accurate?
13 A. To my knowledge, everything he read was
14 accurate and was his -- was his statement, yes.
15 Q. And do you know -- and you relied on
16 his statements in part in making your
17 recommendation?
18 A. It had -- it played a role. I have
19 known Mr. Leipold for several years, and I found
20 him to be a very credible individual, and his
21 experience played a role in my evaluation, yes.
22 Q. Do you know whether other executive
23 committee members relied on Mr. Leipold's

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1 statements in making their recommendations?
2 A. It proved -- it provided a basis for
3 conversation with Mr. Balsillie as to how he did
4 what he did and why he did what he did, so to that
5 extent, it was relied on, but I don't know if it
6 was -- as to the truthfulness or accuracy or
7 anything like that, I don't know if that was very
8 important to any other individual.
9 Q. Do you recall whether Mr. Balsillie
10 filed an ownership transfer application in
11 connection with his pursuit of the Predators
12 franchise?
13 A. No, I -- you know, I -- I can't tell
14 you where it broke off and at what level it was and
15 whether it ever got to that -- that degree. I
16 don't think he -- I don't know if he could do that
17 without owning it, so I would doubt that, but
18 maybe -- maybe he can.
19 Q. You don't recall the executive
20 committee investigating an ownership application
21 from Mr. Balsillie in connection with the
22 Predators?
23 A. There was discussion about the

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1 potential sale of the Predators to Mr. Balsillie.
2 I don't believe it got to a formal interview on the
3 subject of the Predators. I don't believe it did.
4 Q. Okay. You don't recall the executive
5 committee making a recommendation to the full board
6 with respect to Mr. Balsillie's pursuit of the
7 Predators?
8 A. I have no current recollection of that.
9 Q. But you were aware at the time that
10 Mr. Balsillie was pursuing a purchase of the
11 Predators?
12 A. The newspapers were full of it.
13 Q. Okay. And in your mind, had you
14 reached any conclusion as to whether you would have
15 voted for or against an ownership application in
16 connection with the Predators?
17 MR. GOLDFEIN: What time period in that
18 question?
19 BY MR. GREENSPAN:
20 Q. At the time you're reading in the
21 newspapers Mr. Balsillie is pursuing the Nashville
22 Predators, what was your thinking, your personal
23 thinking at the time about whether you would

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1 recommend to the full board that such an
2 application be approved?
3 A. I had no opinion on that.
4 Q. No opinion. So you were not -- you had
5 not made up your mind that you would approve such
6 an ownership application?
7 A. I had no thoughts on -- I had no
8 thought as to -- as to whether or not it would be
9 approved or not approved or whether I would be in
10 favor of it or not in favor of it. All I could do
11 is influence my opinion, and my opinion, I didn't
12 have one at that time.
13 Q. You had no opinion. So as of that
14 time, you had not concluded that Mr. Balsillie
15 would not be a suitable ownership applicant for the
16 Predators?
17 MR. GOLDFEIN: Objection. Asked and
18 answered.
19 THE WITNESS: Asked and answered, right?
20 MR. GURBST: That's his statement.
21 MR. GREENSPAN: Would you mind reading the
22 question again.
23 (The above-requested question was then read

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1 by the reporter.)
2 THE WITNESS: I did not have in front of me
3 that question. I was not being asked upon to make
4 a judgment there, so I had no -- I had -- I really
5 didn't entertain the idea. His acquisition of the
6 Predators was taken in several different
7 directions, and it never -- never got to me.
8 BY MR. GREENSPAN:
9 Q. In 2007 you had not ruled out the
10 possibility of recommending Mr. Balsillie to become
11 the new owner of the Nashville Predators?
12 MR. GOLDFEIN: Object to the form of the
13 question. 2007 is a long period of time. When?
14 MR. GREENSPAN: Any time in 2007.
15 THE WITNESS: My recollection, it wasn't a
16 question that I had in front of me. I just -- I
17 didn't make a determination on something I didn't
18 have in front of me. I wasn't predetermined.
19 BY MR. GREENSPAN:
20 Q. Okay. You had no predetermination as
21 to whether Mr. Balsillie would be a suitable owner
22 for the Predators?
23 A. At that time I had no predetermination

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1 on that, yes, that's correct.
2 Q. Did you have any discussions with other
3 members of the executive committee in 2007 about
4 the prospect of Mr. Balsillie becoming the owner of
5 the Predators?
6 A. I don't have a recollection of having
7 any conversation on that.
8 Q. Okay. Do you recall any member of the
9 full board of governors in 2007 indicating that
10 they would not vote for Mr. Balsillie to become the
11 new owner of the Nashville Predators?
12 A. No.
13 Q. Did anyone in 2007, to your knowledge,
14 tell Mr. Balsillie, don't bother submitting an
15 ownership application in connection with the
16 Predators because you will not pass this vote?
17 A. Never.
18 Q. Okay. Let's take out your declaration
19 again. This would be Jacobs Exhibit number 1, and
20 what I'm going to focus now on is the Pittsburgh
21 transaction or I guess the failed Pittsburgh
22 transaction is --
23 A. Right. That preceded the failed

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1 Nashville.
2 Q. That's right. Is a better way to put
3 it.
4 It's fair to say that Mr. Balsillie's
5 pursuit of the Penguins and the circumstances
6 surrounding that failed transaction weighed
7 significantly into your recommendation against
8 Mr. Balsillie as an owner of the Coyotes?
9 MR. GOLDFEIN: Object to the form of the
10 question.
11 THE WITNESS: The attempted acquisition of
12 Balsillie for the Pittsburgh Penguins was our first
13 experience with him and one which myself, as a
14 member of the executive committee, met
15 Mr. Balsillie and engaged him in the -- in what his
16 plans and purposes were with regard to keeping the
17 franchise of Pittsburgh in Pittsburgh and going to
18 Pittsburgh, yes.
19 BY MR. GREENSPAN:
20 Q. Okay. In paragraph 11 of your
21 declaration, and I'm looking about midway through
22 the paragraph beginning with the sentence, quote, I
23 also recall discussion of a call provision that

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1 would have allowed the league to buy back the
2 Penguins at the price Mr. Balsillie paid for it if
3 the two arena deals under contemplation failed and
4 he sought to relocate the club. Mr. Balsillie's
5 agreement to such a provision played a major role
6 in the executive committee's decision to recommend
7 Mr. Balsillie for approval in 2006, closed quote.
8 And I gather this is an accurate statement?
9 A. Yes.
10 Q. Okay. What can you tell me, what do
11 you remember about the discussion about this,
12 quote/unquote, call provision with Mr. Balsillie at
13 the 2006 executive committee interview?
14 A. I specifically asked Mr. Balsillie that
15 if neither of the new arenas were built and he were
16 to seek to relocate the team, which -- which -- let
17 me just stop, which also meant that he would not
18 undertake building the arena himself, that he would
19 give us the opportunity, meaning the league the
20 opportunity, to buy that franchise back from him
21 and to retain -- and our purpose being to retain it
22 in Pittsburgh at our cost obviously, the cost of
23 the league, and he agreed to that.

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1 Q. He made a commitment to what you refer
2 to as the call provision here?
3 A. Absolutely.
4 Q. Okay. Do you recall what were the
5 terms, specific terms of the call provision?
6 A. At his cost, at the price he paid for
7 it. That was what I meant by the cost.
8 Q. The price that he was going to pay for
9 the Penguins, that was a combination of payment of
10 funds and assumption of debt; is that right?
11 A. Don't know.
12 Q. Okay. Do you -- do you know, was there
13 any discussion in terms of the league's call option
14 whether it would cover assumption of debt?
15 A. No, don't know.
16 Q. Do you recall Mr. Balsillie making a
17 reciprocal request for a put option?
18 A. Absolutely he did not.
19 Q. Okay. You don't recall Mr. Balsillie
20 saying anything about he wanted to have the right
21 to --
22 A. Put it back?
23 Q. Yes.

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1 A. He specifically did not.
2 Q. Okay.
3 A. This was an offhand, if you fail at
4 this, will you give us the call -- will you give us
5 an option to buy it back from you. It was an
6 option the league had. He said yes.
7 Q. Okay. And you have no recollection of
8 any option on Mr. Balsillie's part?
9 A. I have full recollection. He didn't.
10 Q. There was no discussion of an option on
11 Mr. Balsillie's part is what I mean.
12 A. That's right.
13 Q. For how long would the -- at what point
14 in time would the league's call option have gone
15 into effect?
16 A. I don't understand. The details and
17 specifics of whether there would be interest rate,
18 whether there would be a timing, none of that
19 detail was gone into. It was just two business
20 people looking at one another and saying, I want a
21 call on this if -- if this fails.
22 Q. Don't you believe those -- those
23 details, the specific terms of the call, are a

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1 critical part of any agreement about such a call
2 option?
3 A. Not in principle, no.
4 Q. So there was no discussion -- you said
5 that the league would have a call option if stadium
6 option A and stadium option B failed?
7 A. Right.
8 Q. What did it mean if stadium option B
9 would fail?
10 MR. GOLDFEIN: Objection to the form of the
11 question. It mischaracterizes his prior testimony.
12 He also said, and if he didn't build the arena
13 himself.
14 MR. KELLER: And if he didn't build the
15 arena himself.
16 MR. GOLDFEIN: Do you want to restate the
17 question?
18 MR. GREENSPAN: Did you understand my
19 question?
20 THE WITNESS: I'd appreciate it if you'd
21 restate it if it doesn't cause you any trouble.
22 MR. GREENSPAN: No.
23 THE WITNESS: Okay. Good.

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1 BY MR. GREENSPAN:
2 Q. If plan B didn't come to fruition, then
3 it's your position that Mr. Balsillie had made a
4 commitment to sell the Penguins back to the league?
5 A. That's correct.
6 Q. Okay. And my question is: How
7 would -- was there any discussion of at what point
8 plan B would have been determined to have failed?
9 A. The specifics were not discussed.
10 Q. Okay. Was there any discussion about
11 how long the call option to the league would be
12 open for?
13 A. No.
14 Q. Okay. And this discussion of the
15 league's call option in your mind was a critical
16 component of the executive committee recommending
17 that Mr. Balsillie be approved as an owner?
18 A. I would say that from my discussions
19 with other members subsequent, that was an
20 extraordinary important item to both myself and to
21 others, but I did not know at the time how
22 controlling -- how important that was, but to us it
23 was important.

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1 MR. GREENSPAN: Yes, my apologies.
2 BY MR. GREENSPAN:
3 Q. I'm going to ask you next about the
4 following purported commitment. Quote, if the IOC
5 proposal failed and negotiations over plan B
6 stalled, Commissioner Bettman would be permitted to
7 take over the negotiations with the state and
8 county on behalf of the Penguins, closed quote.
9 A. Yes.
10 Q. Do you recall Mr. Balsillie making this
11 commitment during the executive committee meeting?
12 A. No.
13 Q. Okay. I'm going to show you --
14 MR. GREENSPAN: This will be Jacobs Exhibit
15 3.
16 The following was marked for Identification:
17 JACOBS EXH. 3 e-mail with attachments
18 BY MR. GREENSPAN:
19 Q. This is an e-mail from Thomas Gowan at
20 Skadden to Vicky Gilbert at Kaye Scholer copying
21 Don Zimmerman and --
22 MR. GOLDFEIN: David.
23 BY MR. GREENSPAN:

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1 Q. Sorry, David Zimmerman and D. Ages at
2 nhl.com. And attached to this e-mail is a consent
3 agreement.
4 MR. GOLDFEIN: It's a draft of a form of
5 consent agreement, I guess.
6 MR. GURBST: It is what it is.
7 MR. GOLDFEIN: It says so in the first
8 paragraph.
9 THE WITNESS: What about it?
10 BY MR. GREENSPAN:
11 Q. Okay. Have -- did you ever see any
12 form of consent agreement that was proposed to
13 Mr. Balsillie --
14 A. No.
15 Q. -- by the league?
16 A. No, I have not.
17 Q. Okay. And are you aware that --
18 VGilbert@kayescholer.com, is that name familiar to
19 you?
20 A. No.
21 Q. Do you know if Ms. Gilbert was
22 Mr. Balsillie's attorney in connection with the
23 Pittsburgh transaction?

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1 A. No.
2 Q. Okay. May I represent to you that she
3 was?
4 A. Yes.
5 Q. Okay. You did not see any consent
6 agreement proposed by the NHL --
7 A. No.
8 Q. -- to Mr. Balsillie?
9 The only provision I'm going to ask you
10 about in here is -- it's section 4-C, which I think
11 it's about six pages into the document that I've
12 handed you.
13 A. Does anybody know where it is?
14 MR. KELLER: No.
15 THE WITNESS: Count the number of pages in,
16 please, for me.
17 MR. GREENSPAN: It's the sixth page in.
18 MR. GOLDFEIN: Not counting double sides?
19 MR. GREENSPAN: Oh, mine is single-spaced.
20 Mine's one-sided, that's all.
21 MR. GURBST: All right. Let's stop, let's
22 stop. What is it now?
23 MR. GREENSPAN: 4-C. 4 is location and

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1 territory of franchise. Should be about --
2 counting double sides it will be six pages into
3 yours.
4 THE WITNESS: Okay. What does it start
5 with?
6 MR. GREENSPAN: 4-C, the acquiring parties.
7 MR. GURBST: Wait a minute. We've got a
8 problem. We're not sure we got 4. We got 3, we
9 got 6.
10 MR. GREENSPAN: It looks like there was a
11 copying problem.
12 MR. GURBST: It may be somewhere else. I
13 will look.
14 MR. GREENSPAN: Let's try to do this without
15 the document.
16 THE WITNESS: The document is meaningless,
17 quite honestly. I mean, it doesn't -- it's
18 incomplete, correct? The document you just gave me
19 is incomplete.
20 MR. GREENSPAN: Yes.
21 THE WITNESS: So you want to leave this in
22 the record as Exhibit 3 or not?
23 MR. GREENSPAN: Yes. It just will be a

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1 meaningless Exhibit 3 for -- just to remind us of
2 the good times we had looking for the nonexistent
3 page.
4 MR. GURBST: Let the record reflect
5 everybody was paying attention.
6 MR. GOLDFEIN: Right. And looking.
7 MR. GREENSPAN: Well, I am glad that the one
8 paragraph in a 50-page document that I wanted to
9 ask about is not actually -- is the one that's not
10 in the exhibit.
11 BY MR. GREENSPAN:
12 Q. Do you know whether the -- whether the
13 NHL had asked Mr. Balsillie to make an absolute
14 commitment to keep the franchise in Pittsburgh for
15 seven years?
16 A. My understanding is that in most all of
17 transfer of ownership there is a commitment to
18 keeping it in that jurisdiction for seven years.
19 That doesn't stop somebody from asking to relocate
20 if terms and conditions are -- the situation's bad,
21 but by and large it is understood that we are
22 asking that whenever a franchise is transferred,
23 ownership is transferred, the new owner agrees to

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1 keep it in that territory for a period of seven
2 years.
3 Q. Putting aside what may have been in a
4 consent agreement proposed to Mr. Balsillie, from
5 the executive committee's perspective was he
6 required to make an absolute condition to keep the
7 Penguins in Pittsburgh for seven years?
8 A. Our presumption is that he was going to
9 sign the consent agreement as determined, and that
10 was a provision of the consent agreement. We
11 weren't negotiating the consent agreement with him
12 in the executive committee.
13 Q. By that do you mean it wasn't the
14 executive committee that was responsible for
15 negotiating the consent agreement?
16 A. I'm saying that's what happened. We
17 weren't negotiating it. We were interviewing
18 Mr. Balsillie as a -- as an owner of a new
19 franchise -- or a franchise, an old existing
20 franchise.
21 Q. Did Mr. Balsillie ever commit to the
22 executive committee to keep the Penguins in
23 Pittsburgh no matter what?

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1 A. No, he did not.
2 Q. Okay.
3 A. But he did agree to sell back to us if
4 he were -- if he found himself where he was trying
5 to transfer them out of Pittsburgh.
6 Q. I understand. We've talked about
7 some --
8 A. Yes.
9 Q. -- some different conditions. My
10 question, though, is whether Mr. Balsillie was
11 asked to make a commitment to keep the Penguins in
12 Pittsburgh unconditionally.
13 A. Not at the executive committee meeting.
14 It was understood at the executive committee
15 meeting that a prospective owner would have to sign
16 a consent agreement which embodied such instant
17 detail as you're reflecting.
18 Q. Okay. And in practice, if a -- when
19 owners have signed these consent agreements,
20 they're nevertheless able to submit a relocation
21 application pursuant to the bylaws and the
22 constitution?
23 A. We're very -- we're very accepting of

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1 conditions as they find them throughout their
2 career there, yes.
3 Q. Okay. And so Mr. Balsillie was not
4 required to make an absolute commitment to keep the
5 Penguins in Pittsburgh for seven years as a
6 condition of having his ownership application
7 approved?
8 MR. GOLDFEIN: Object to the form.
9 THE WITNESS: You want to read the question
10 back?
11 (The above-requested question was then read
12 by the reporter.)
13 THE WITNESS: That is not what I said.
14 There were -- there was a consent agreement,
15 traditional, refined over time and all, that added
16 such features as keeping it there for seven years.
17 What I did say was that irrespective of that,
18 within the judgment of the commission --
19 commissioner along with the board of governors, we
20 could waive that feature and allow a variance from
21 it, but it was -- in the front end he would have to
22 commit to keeping it there seven years.
23 He also, however, enjoyed an opportunity of

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1 been proposed to Mr. Balsillie had a seven years
2 now relocation term?
3 MR. GOLDFEIN: I'm going to object to the
4 form, whether you knew or not, did know or not
5 know. It's a yes or no. I think he's confused on
6 the timing, frankly, that's what I -- I think
7 that's the problem, because you've shown him a
8 document that's dated in --
9 MR. KELLER: December 4-5, '06.
10 MR. GOLDFEIN: Yes.
11 BY MR. GREENSPAN:
12 Q. So my question is -- I understand what
13 Mr. Goldfein's saying.
14 My question is: As of this executive
15 committee meeting --
16 A. I don't understand what he's saying, so
17 if you maybe could help me.
18 Q. Okay. As of the December 4-December 5
19 executive committee meeting, did you know one way
20 or the other the terms of the consent agreement
21 that had been proposed by the league office to
22 Mr. Balsillie?
23 MR. GOLDFEIN: And I'll object to the form

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1 of the question. Go ahead. You can answer.
2 THE WITNESS: I'm not familiar with that
3 specific consent agreement. I have generally heard
4 and have been aware that there was a seven-year
5 agreement to keep a franchise in its location when
6 purchased by an owner, and I know it's been
7 referred to in other consent agreements, and I
8 would presume that it existed in this agreement as
9 well.
10 BY MR. GREENSPAN:
11 Q. But you don't know one way or
12 another --
13 A. No.
14 Q. -- as of that time what had been
15 proposed to Mr. Balsillie?
16 A. That's correct.
17 Q. And at the December 4-5, 2006, meeting,
18 there was specific discussion of Mr. Balsillie
19 availing himself of the NHL's relocation
20 procedures?
21 A. He was made aware of what the
22 relocation procedures were.
23 Q. Okay.

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1 MR. GURBST: Could we take another
2 five-minute break?
3 MR. GOLDFEIN: Sure.
4 MR. GURBST: Is that okay?
5 MR. GREENSPAN: That's fine with me.
6 MR. GURBST: And then we can go another hour
7 and get something to eat or something like that.
8 (A recess was then taken.)
9 MR. GURBST: Back on the record.
10 BY MR. GREENSPAN:
11 Q. Okay. Mr. Jacobs, if you would take a
12 look at paragraph 11 of your declaration which is
13 Jacobs Exhibit 1. I'm going to focus on the last
14 sentence of that paragraph which is at the top of
15 page 4 of your declaration.
16 This talks about a side letter in connection
17 with the Pittsburgh transaction.
18 A. Let me -- let me go over this totally.
19 Q. Sorry.
20 A. Go ahead.
21 Q. Okay. So you're familiar at least
22 generally --
23 A. Yeah.

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1 Q. -- with the fact that the NHL proposed
2 a side letter --
3 A. Yes.
4 Q. -- to Mr. -- to Mr. Balsillie.
5 And your understanding is that the purpose
6 of this side letter was to memorialize the
7 commitments that Mr. Balsillie had made to the
8 committee during his interview?
9 A. Yes.
10 Q. Okay. Let me direct you to this side
11 letter which should be tab 11 of your big book
12 which is Jacobs Exhibit 2.
13 MR. GOLDFEIN: I'm sorry, which tab was it?
14 MR. GREENSPAN: Tab 11.
15 BY MR. GREENSPAN:
16 Q. So this is tab 11 of Jacobs 2. It's an
17 e-mail from Thomas Gowan to Vicky Gilbert copying
18 others with nhl.com and skadden.com addresses dated
19 December 8th, 2006.
20 Have you ever seen this cover e-mail or the
21 attachment for Mr. Jacobs?
22 A. If it came to the executive committee,
23 I have seen it, but I haven't read it in depth.

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1 Q. Okay. Do you recall seeing the --
2 A. The document?
3 Q. -- side letter that was initially
4 proposed to Mr. Balsillie?
5 A. No, I did not.
6 MR. GOLDFEIN: You're talking about at the
7 time it was proposed.
8 MR. GREENSPAN: Yes.
9 THE WITNESS: Yes, subsequently I would
10 have -- I would have perused it subsequently, but I
11 did not see it prospectively.
12 BY MR. GREENSPAN:
13 Q. Okay. When would you have perused it
14 after the fact?
15 A. Just prior to going to the executive
16 committee meeting.
17 Q. Okay. And the date of this e-mail from
18 Mr. Gowan is December 8th, 2006, and that's a few
19 days after the executive committee meeting we've
20 been discussing?
21 A. No. I wouldn't have seen it -- I would
22 have seen it prior to the July 27th meeting.
23 MR. GURBST: He was talking about -- I'm

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1 sorry, he was talking about he would have seen it
2 prior to the executive committee meeting of July
3 27th of this year, not prior to the executive
4 committee meeting that you're talking about.
5 THE WITNESS: No, I never saw it, never saw
6 it.
7 BY MR. GREENSPAN:
8 Q. Okay. And now putting aside July 2009,
9 we're back in time --
10 A. Yes.
11 Q. -- to December 2006 --
12 A. Right.
13 Q. -- at that time you didn't see this
14 side letter?
15 A. No.
16 Q. Okay. And this is the side letter that
17 was supposed to memorialize the commitments that
18 Mr. Balsillie had made to the executive committee
19 in its 2006 interview.
20 MR. GOLDFEIN: I think if you look at
21 Exhibit 10 which you have been referring to, you'll
22 see a reference to that in the -- in the notes of
23 the board meeting, the sentence you didn't read.

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1 THE WITNESS: The top sentence?
2 MR. GOLDFEIN: No, right here.
3 THE WITNESS: Let me see. Show me where
4 you -- I'll read this. Commissioner Bettman
5 reported that following the executive committee
6 interview of Mr. Balsillie and based in part on his
7 response to questions asked of him and on the
8 representation agreement made by Mr. Balsillie both
9 during his interview and before, including
10 representation agreement made on behalf of
11 Mr. Balsillie through his counsel, the executive
12 committee had recommended approval of the proposed
13 transaction.
14 BY MR. GREENSPAN:
15 Q. That doesn't mention anything about a
16 side letter, does it?
17 A. It's part of the agreements that we
18 felt were made by Mr. Balsillie during that. Bear
19 in mind, we're talking about an executive committee
20 meeting, not a series of legal documents, and now
21 that it unfortunately finds itself in this form, I
22 can understand your position in trying to attempt
23 to undermine the credibility of the executive

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1 committee, which is obviously fair for you to do.
2 Q. Focusing on the statement about the
3 side letter, in your declaration of a week or so
4 ago it states that the executive committee wanted
5 the side letter to memorialize the commitments that
6 Mr. Balsillie had made to the committee during his
7 interview.
8 A. Right.
9 Q. And that -- today that's still your
10 understanding of --
11 A. My understanding, there were a series
12 of commitments that were made by Mr. Balsillie to
13 us that for his benefit or for our benefit were
14 better off put in a side letter than put in the
15 original document. He indicated that it -- if
16 it -- in one part but maybe not in all, that if
17 some of his commitments were made, it would -- it
18 would jeopardize his ability to negotiate with the
19 government agencies in getting the best possible
20 deal himself, because if he were standing behind
21 it, they knew of his -- of his wealth and all and
22 that they perhaps could pass some of the costs on
23 to him.

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1 BY MR. GREENSPAN:
2 Q. Right. And Mr. Balsillie wanted to try
3 to negotiate --
4 A. Avoid.
5 Q. -- a better version of plan B if plan A
6 failed?
7 A. Mm-hmm.
8 Q. All right. Taking a look --
9 A. You're testifying for him in that case?
10 Q. Well, I'm just asking the question of
11 your understanding.
12 A. My understanding is what you said. I
13 believe you.
14 Q. Thanks.
15 A. You're welcome.
16 Q. Taking a look at the side letter, and
17 I'm going to start with paragraph 4, just quote,
18 the purchasers will use their best efforts to
19 assist and facilitate IOC being awarded the
20 category 2 slot machines license, the slots
21 license, to be issued for operation in Pittsburgh
22 and to consummate the transactions contemplated by
23 the development agreement, closed quote.

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1 Do you see that?
2 A. Yes.
3 Q. Is this something that was discussed at
4 the executive committee meeting?
5 A. No.
6 Q. Okay. So this was a --
7 A. Not -- not in this form. Not in this
8 detail.
9 Q. So this was a new term put into the
10 side letter?
11 MR. GOLDFEIN: Object to the form of the
12 question.
13 BY MR. GREENSPAN:
14 Q. This was a -- let me try again.
15 Purchasers using their best efforts to
16 assist to facilitate IOC being awarded the category
17 2 slot machines, that was a new commitment that was
18 being asked of Mr. Balsillie --
19 A. No, absolutely.
20 Q. -- subsequent to the meeting?
21 A. No, you're wrong, that was discussed,
22 that the IOC was the better plan. In general that
23 was spoken of, that the IOC was a better one and

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1 that we should do everything to enable that to
2 occur.
3 Q. And did Mr. Balsillie commit to using
4 his best efforts to make that IOC plan occur?
5 A. My presumption was he was in agreement
6 with it.
7 Q. And I'm -- my question is a little
8 different. Was it a commitment that he
9 specifically made at the executive committee
10 interview?
11 A. I don't recall.
12 Q. Okay. Going next to paragraph 7 which
13 is the purchasers have full knowledge of the
14 current terms of plan B and of the proposed lease
15 with the Sports and Entertainment Authority of
16 Pittsburgh in Allegheny County contemplated by plan
17 B.
18 And, again, at the executive committee
19 meeting a few days prior to this, had there been
20 discussion with Mr. Balsillie about whether, in
21 fact, he had full knowledge of plan B?
22 A. Well, full knowledge is relative, so I
23 can't --

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1 MR. GOLDFEIN: Excuse me, that's a
2 misstatement of the document. It says full
3 knowledge of the current terms of plan B.
4 BY MR. GREENSPAN:
5 Q. Did Mr. Balsillie at the executive
6 committee meeting -- was there any discussion as to
7 whether he had full knowledge of the current terms
8 of plan B?
9 A. I don't know if he had full knowledge.
10 Q. Okay.
11 A. But we did speak of plan B, and he
12 was -- expressed awareness of it.
13 Q. Was there any discussion of concern on
14 Mr. Balsillie's part that he did not have full
15 knowledge of the current terms of plan B?
16 A. No. He projected himself as competent
17 and informed.
18 Q. Take a look at paragraph 10. Quote, in
19 the event that the IOC is not awarded the slots
20 license and in the event purchasers are unable to
21 consummate the transactions contemplated by plan B
22 and the related lease within 45 days from the date
23 that the slots license is awarded to a party other

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1 than IOC, purchaser agrees that the commissioner of
2 the NHL shall have the right exercising his sole
3 discretion at any time thereafter to take over
4 negotiations with the appropriate and relevant
5 parties concerning plan B and the related lease
6 with full authority to negotiate for and on behalf
7 of and to bind the club to terms at least
8 consistent with plan B, closed quote.
9 There was no discussion of this term at the
10 executive committee meeting, correct?
11 A. I don't know where I became aware that
12 the commissioner would personally engage himself in
13 helping to resolve the new -- the building of a new
14 arena in Pittsburgh and that he was to be given
15 authority to do so by the ownership, but I know
16 that was -- that subject existed, and I don't know
17 who asked to do it, and I don't know --
18 Q. But you don't recall Mr. Balsillie
19 making --
20 A. No, I don't.
21 Q. -- an affirmative agreement to that at
22 the executive committee meeting?
23 A. I don't remember that, no.

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1 Q. Okay. In paragraphs 11 through 14 --
2 and, please, take your time to read them. My
3 question for all of them will be if you recall at
4 the executive committee meeting Mr. Balsillie
5 agreeing to make the commitments set forth in each
6 one of these paragraphs.
7 A. That's through 14 or --
8 Q. 11 through 14, including 14.
9 A. Well, okay. Do you want to go through
10 them?
11 Q. Sure. So in number 11, do you recall
12 Mr. Balsillie committing to take -- that he had
13 taken no actions nor made any plans whatsoever to
14 explore alternative venues outside of Pittsburgh?
15 A. He said he was totally committed to
16 Pittsburgh, and that was the -- where he was going.
17 Q. Did he commit not to --
18 A. Yes.
19 Q. -- explore any other possibilities?
20 A. Yes, he was not interested.
21 Q. Okay. Did he commit that he had had --
22 now I'm looking at number 12. Did Mr. Balsillie
23 commit that he had had no discussions or

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1 interactions with any person regarding moving the
2 Penguins from Pittsburgh?
3 A. Yes. He basically -- I don't believe
4 any of the language that was used in the executive
5 committee mirrored -- that the impression was yes,
6 that he hadn't talked to anybody, he had no
7 intentions of moving them.
8 Q. Did Mr. Balsillie say in words or
9 substance, I commit not to even talk to anyone else
10 about the possibility of moving the Penguins
11 outside of Pittsburgh?
12 A. That was the impression he left with
13 me.
14 Q. In number 14, did Mr. Balsillie commit
15 that if he was contacted by any person or
16 government about moving the Penguins, that he would
17 report that immediately to the commissioner?
18 A. I'm not aware of that last one.
19 Q. Okay. Number 19 is the provision --
20 and please take your time to look at it, but this
21 deals with the call option that we were discussing
22 before. I'm not going to read this one into the
23 record for everybody's sake, but, Mr. Jacobs, if

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1 you would tell me when you're done reading it.
2 A. Yes.
3 Q. Okay. And am I right that there was no
4 discussion at the executive committee meeting about
5 the option being open to the league for 45 days?
6 A. The specifics?
7 Q. Correct. That's my question.
8 A. My answer to you, to tell you what did
9 happen, and what did happen is we would have a call
10 on your -- on your acquisition of the Penguins if
11 you have an intention of moving them or not keeping
12 them in Pittsburgh. And he said yes. The
13 specifics of the detail of it, 45 days, three days,
14 12 hours, none of that was talked about.
15 Q. Okay. And is the same true for the
16 last sentence of 19 where it states the purchasers
17 agree that the league may assign its right to so
18 purchase the franchise to a third party?
19 A. That was not necessarily discussed, no.
20 Q. Okay. So, again, these were additional
21 commitments that were being asked of Mr. Balsillie?
22 MR. GOLDFEIN: Object to the -- object to
23 the form of the question.

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1 THE WITNESS: Could you ask -- restate the
2 question.
3 MR. GURBST: Restate it or have her reread
4 it?
5 THE WITNESS: Reread it, I'm sorry.
6 (The above-requested question was then read
7 by the reporter.)
8 MR. GOLDFEIN: I object to the form of the
9 question, because you used the plural.
10 THE WITNESS: This -- this was bringing into
11 specifics the general call. This was -- this was
12 to itemize in detail the call. I don't know what
13 part was offensive or was not agreed upon.
14 BY MR. GREENSPAN:
15 Q. But these specifics were new specifics?
16 They had not been discussed at the executive
17 committee meeting?
18 A. None of the specifics were.
19 Q. Okay. In paragraph 21, why don't you
20 take a minute to read that.
21 A. Yes.
22 Q. Okay. I'm focusing on sub 5, which
23 says the purchasers will be obligated to pay a

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1 relocation fee to the NHL and its other member
2 clubs to be determined at the league's sole
3 discretion in the event that the purchasers
4 relocate the franchise.
5 Was this provision discussed at the
6 executive committee meeting?
7 A. Not specifically, no.
8 Q. Was there any discussion of
9 Mr. Balsillie paying a relocation fee --
10 A. No.
11 Q. -- at the executive committee meeting?
12 A. No. There was no intention of that
13 Pittsburgh franchise playing someplace other than
14 Pittsburgh.
15 Q. You would agree this is an obligation
16 where -- a requested obligation on Mr. Balsillie's
17 part to commit to what the relocation fee would be
18 if he sought to move the Penguins?
19 MR. GOLDFEIN: Object to the form of the
20 question. It does not say that.
21 BY MR. GREENSPAN:
22 Q. Provision 5 deals with a relocation fee
23 for the Penguins moving from Pittsburgh, right?

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1 A. Provision 5? Oh, here you mean.
2 Q. Sub 5 of paragraph 21.
3 A. My understanding is that any relocation
4 necessitates consideration by the board at large as
5 to what's to the best interest and long-range
6 interest of both the franchise and the league in
7 toto, and there may or may not be a relocation fee.
8 Q. This here, however, is a request that
9 the purchaser, Mr. Balsillie, commit to a
10 relocation fee, quote, to be determined in the
11 league's sole discretion.
12 A. Right.
13 Q. Closed quote.
14 A. Right.
15 Q. Is that how relocation fees are
16 normally determined?
17 MR. GOLDFEIN: I'm going to object to the
18 form of the question.
19 THE WITNESS: I don't know.
20 BY MR. GREENSPAN:
21 Q. Do you know what -- is it bylaw 36 that
22 governs the calculation of relocation fees?
23 A. I don't know.

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1 MR. GOLDFEIN: Object to the form.
2 MR. GREENSPAN: Let's take a look at bylaw
3 36. This will be Jacobs Exhibit 4.
4 The following was marked for Identification:
5 JACOBS EXH. 4 document headed Bylaws,
6 Section 36, Transfer of
7 Franchise Location, three
8 pages
9 BY MR. GREENSPAN:
10 Q. And I believe the provision about
11 relocation fees is 36.6, which would be on the last
12 page of the document I handed you.
13 A. You said it was on the last page?
14 Q. Yes. If you take a look at 36.6. I
15 think you're on the right page.
16 (Discussion off the record.)
17 THE WITNESS: I read this, yes.
18 BY MR. GREENSPAN:
19 Q. Okay.
20 A. I've never read this before.
21 Q. You've never seen 36.6 before?
22 A. I haven't read it.
23 Q. Okay. Have you been involved -- who's

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1 responsible, whether it's the executive committee,
2 a different committee, the NHL office, for
3 calculating relocation fees, in your experience?
4 A. There would be a number of factors,
5 but -- a broad number of factors, I believe, but
6 the relocation fee would first be sponsored by the
7 commissioner and his -- his executives and then
8 looked -- would be looked at by the executive
9 committee to determine how well it's been framed
10 and then taken from there. So -- but that -- that
11 would be a future task, and it's in contemplation
12 of not one -- there isn't necessarily an existing
13 standing committee talking about that subject.
14 Q. And is your understanding that the
15 commissioner's office in calculating a relocation
16 fee would be bound by bylaw 36.6?
17 MR. GOLDFEIN: Objection to the form of the
18 question to the extent that he's just testified he
19 hasn't read it before this moment. Do you have an
20 opinion?
21 THE WITNESS: I don't have an opinion on it.
22 BY MR. GREENSPAN:
23 Q. You have no opinion on whether the

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1 commissioner's office is bound by the constitution
2 and bylaws with respect to calculating relocation
3 fees?
4 MR. GOLDFEIN: Object to the form of the
5 question.
6 THE WITNESS: I don't have.
7 BY MR. GREENSPAN:
8 Q. Okay. Do you know -- strike it.
9 The side letter, going on to paragraph 26,
10 this is a paragraph about what courts would have
11 jurisdiction over any dispute relating to the side
12 letter. I imagine that -- I imagine that this
13 subject did not come up at the executive committee
14 meeting.
15 A. That's correct. They're just
16 establishing jurisdiction and agreeing on it.
17 Q. Have you ever seen or did you see
18 Mr. Balsillie's ownership transfer application in
19 connection with the purchase of the Coyotes, the
20 actual application itself?
21 A. No, I haven't.
22 Q. All right. The commissioner did not
23 provide that to the executive committee?

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1 A. He may have, but I didn't see it.
2 Q. Do you have any recollection of --
3 A. It's not in this book, right?
4 Q. I don't believe so.
5 A. So then I didn't see it.
6 Q. Do you have any recollection of anyone
7 from the league office providing the executive
8 committee with Mr. Balsillie's ownership
9 application?
10 A. They normally would not. If we asked
11 for it, we could probably see it. There's nothing
12 that's not open to disclosure, but we wouldn't see
13 that, no.
14 Q. The July 27th memo to the executive
15 committee makes some references to Mr. Balsillie's
16 philanthropic endeavors.
17 A. Yeah.
18 Q. Was there any discussion of that at
19 the --
20 A. It was enumerated, yes, in the
21 memorandum.
22 Q. Yes. Was there any discussion of that
23 at the executive committee meeting? And now I'm at

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1 the 2009 executive committee meeting.
2 A. Yes, there was some.
3 Q. What were the discussions about?
4 A. It had to do with his -- was he
5 supporting youth hockey and had he considered doing
6 it, and is this something that he would be
7 interested in, and why hadn't he done it if he was
8 interested in it, of that type. It was sort of
9 talking about youth hockey and what he could do
10 within the greater southern Ontario area to support
11 hockey for young and developing teams. So that was
12 the -- because they illustrated his philanthropy in
13 the area.
14 Q. Who's "they"?
15 A. His -- the statements that were made.
16 I don't know if it was by Kroll or if it was made
17 by somebody else, but it was representations that
18 he was a generous person and whether his generosity
19 extended itself to youth hockey was the question.
20 And he answered he didn't.
21 Q. Okay. Were there -- during the
22 executive committee's deliberations prior to voting
23 on what the recommendation would be, were there any

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1 Q. And those were subjects that were still
2 being discussed by the parties?
3 A. Yes.
4 Q. Okay.
5 A. Towards resolution, yes.
6 Q. And let's put in order the subject of
7 the put and the call.
8 A. The call. There was no put.
9 Q. Okay. The league had a right to call.
10 A. Yes.
11 Q. And subsequent to that, there was a
12 sub -- there was a discussion Mr. Balsillie had,
13 okay, I want to be able to have a put?
14 A. No.
15 Q. He never raised a put with you?
16 A. Not with the executive committee nor
17 me.
18 Q. Okay. To your knowledge, when the NHL
19 had raised the call issue, had the NHL told
20 Mr. Balsillie about the seven-year --
21 A. Mr. Jacobs asked for the call.
22 Q. You asked for the call?
23 A. Yeah.

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1 Q. Okay. Sorry. When Mr. Jacobs asked
2 for the call --
3 A. He agreed.
4 Q. -- he agreed?
5 A. Yes.
6 Q. At that point in time had the issue of
7 the seven-year commitment been raised with
8 Mr. Balsillie as far as you know?
9 A. I don't know specifically.
10 Q. Okay. As a business person, if you
11 were entering a new business with someone, could
12 you understand why a business person would want
13 protections in addition to just the word of
14 somebody?
15 MR. GOLDFEIN: Objection. If you can
16 understand the question, you can answer it.
17 THE WITNESS: I can't answer it.
18 BY MR. GURBST:
19 Q. Okay. We draw up legal documents so
20 people know all of the issues and try to reach
21 agreement. We have moved past something other than
22 trust and a simple handshake; is that fair enough?
23 A. When you asked your question about the

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1 call, you asked me what I knew.
2 Q. Yes, sir.
3 A. What I believe is that they were far
4 down that line on the seven-year issue, but I'm not
5 able to answer that I knew it of my own knowledge.
6 Q. Okay. And when I read the documents as
7 what happened in the order I read them is that,
8 okay, there's a call on the table, and the next
9 thing that happens is the league says, and by the
10 way, we want you to stay there for seven years, and
11 while we, the league, might -- we'll treat you
12 differently when you're one of us because we will
13 sincerely review your relocation application, you
14 still have signed this binding agreement to stay
15 there for seven years. That's your commitment to
16 us.
17 And in response to that, Mr. Balsillie's
18 counsel says, that's fine, but I want to be able to
19 put it back to you if you say no. Is that -- do
20 you understand that to occur?
21 MR. GOLDFEIN: I'm going to object to the
22 form of that question. It's not a question. It's
23 a speech.

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1 BY MR. GURBST:
2 Q. Do you understand how it was that
3 Mr. Balsillie first put the question of a put to
4 the NHL?
5 A. Give me -- that's your question?
6 Q. Yes.
7 A. I know of no put.
8 Q. Okay.
9 A. I don't believe it ever occurred.
10 Q. But he raised the subject, didn't he?
11 A. No.
12 Q. He never raised the subject, okay.
13 A. Not with me. Not with the executive
14 committee.
15 Q. Okay. Do you know whether the lawyers
16 ever discussed it?
17 A. I don't know what the lawyers did.
18 Q. In preparing for the meeting in July
19 you just had concerning Mr. Balsillie's
20 application, did you review any of the supporting
21 information that's set forth in Jacobs number 2?
22 A. Yes.
23 Q. Okay. What is it -- can we go through

I hereby CERTIFY that I have read the foregoing 269 pages, and that they are a true and accurate transcript of the testimony given by me in the above entitled action on August 19, 2009.

JEREMY JACOBS

Sworn to before me this

-------- day of ---------, 2009.

NOTARY PUBLIC.

STATE OF NEW YORK)
ss:
COUNTY OF ERIE)

I DO HEREBY CERTIFY as a Notary Public in and for the State of New York, that I did attend and report the foregoing deposition, which was taken down by me in a verbatim manner by means of machine shorthand. Further, that the deposition was then reduced to writing in my presence and under my direction. That the deposition was taken to be used in the foregoing entitled action. That the said deponent, before examination, was duly sworn to testify to the truth, the whole truth and nothing but the truth, relative to said action.

JOAN M. METZGER-HUBBELL,
CRR, RMR, RPR,
Notary Public.

INDEX TO EXHIBITS

Exhibit	Description	Page
JACOBS EXH. 1	declaration of Jeremy M. Jacobs, four pages	25
JACOBS EXH. 2	multi-paged document headed Executive Committee Memorandum & Exhibits, July 27, 2009	27
JACOBS EXH. 3	e-mail with attachments	94
JACOBS EXH. 4	document headed Bylaws, Section 36, Transfer of Franchise Location, three pages	125
JACOBS EXH. 5	document headed Constitution of the National Hockey League, several pages	155

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