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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, )  
20 COYOTES HOLDINGS, LLC, ) (Jointly Administered)  
21 COYOTES HOCKEY, LLC, and ) Chapter 11  
22 ARENA MANAGEMENT GROUP, LLC, ) **National Hockey League's Reply in**  
23 Debtors. ) **Support of (A) Renewed Motion for**  
24 ) **Determination of (I) Authority to Manage**  
25 ) **the Business and Affairs of the Debtors,**  
26 ) **and (II) that William Daly is the**  
27 ) **Representative of the Estates, or (B) in the**  
28 ) **Alternative, Motion for Appointment of a**  
 ) **Chapter 11 Trustee**

26 This filing applies to: ) Date:  
27 ) Time:  
28 § All Debtors ) Location: U.S. Bankruptcy Court  
• Specified Debtors ) 230 N. First Ave, Courtroom 703  
 ) Phoenix, AZ 85003

1 The National Hockey League (the "NHL" or the "League") hereby submits this  
2 reply in support of its (A) Renewed Motion for Determination (I) of Authority to Manage the  
3 Business and Affairs of the Debtors, and (II) that William Daly is the Representative of the  
4 Estates, or (B) in the Alternative, Motion for Appointment of a Chapter 11 Trustee (August 18,  
5 2009, Dkt. # 682).

6  
7 **ARGUMENT**

8 The Debtors<sup>1</sup> take great offense, in indignant tones, at being called out for their  
9 unrestrained support of the PSE relocation bid and their joint effort with PSE, thus far  
10 successful,<sup>2</sup> to shut down any third party bids for the Club based in Glendale. But the record  
11 cannot be read otherwise, and no amount of lawyers' argument and spin can change the facts.

12  
13 The Debtors defend Mr. Moyes as "a public-spirited citizen who lost a fortune  
14 supporting a hockey team in Glendale, Arizona, for the good of Glendale" and who "has allowed  
15 the Coyotes to borrow more than \$90 million on a revolving credit line, and has not required  
16 them to pay interest"<sup>3</sup> – that is, of course, except for the \$2,000,000.00 he took from the Club,

17  
18 <sup>1</sup> All capitalized terms not defined herein shall have the meanings ascribed to them in the Memorandum of  
19 Points and Authorities in Support of National Hockey League's Motion for Determination (I) of Authority to  
Manage the Business and Affairs of the Debtors, and (II) that William Daly is the Representative of the Estates  
(May 13, 2009, Dkt. #91).

20 <sup>2</sup> Debtors claim that the so called "inadvertent disclosure" of Glendale's sensitive and confidential  
21 negotiations with local bidders "did not drive away the Reinsdorf group." Response at 22, ¶ 62. In announcing its  
22 withdrawal from the bidding process in an August 25, 2009 press release (Exhibit A hereto), the Reinsdorf Group  
suggests otherwise:

23 [T]he unwilling seller [*i.e.*, Debtors] created an expensive litigious environment and pressed a public  
24 relations strategy that has had the effect of chilling the negotiations with the city. It is unfortunate that this  
conduct continues. We have faced an organized publicity effort designed to provide negative and  
25 misleading information to interested parties. Not only has this stymied negotiations, but is has eroded  
local market demand for Coyotes tickets, luxury boxes, and sponsorships.

26 <sup>3</sup> Debtors' Response to NHL's (A) Renewed Motion for Determination of (I) Authority to Manage the  
27 Business and Affairs of the Debtors, and (II) that William Daly is the Representative of the Estates, or (B) in the  
Alternative, Motion for Appointment of a Chapter 11 Trustee, at 6-7, n.7 (August 25, 2009, Dkt. # 778) (the  
"Response").

1 during the prepetition preference period, as a "[p]aydown of *interest* on line of credit at the  
2 request of the owner."<sup>4</sup> (Emphasis added) The citizens of Glendale can judge for themselves  
3 whether Mr. Moyes is a local hero, but the undeniable acts of his representatives on his behalf,  
4 both before and after these cases were filed, point to a different conclusion.

5  
6 Debtors say that the NHL has "cherry-picked a few pages among thousands to try  
7 to portray a false picture[.]"<sup>5</sup> We are content to let the Rodier/Scudder emails speak for  
8 themselves.

9 For example, Debtors describe (but are careful not to quote) the pre-bankruptcy  
10 "emails between Messrs. Scudder and Rodier that discuss Mr. Moyes' ability to obtain some  
11 payment on his significant loans to the Coyotes" as "unremarkable" and "part of normal  
12 negotiation[.]"<sup>6</sup> These are the emails in which Mr. Rodier offered Mr. Moyes "*\$75 million or*  
13 *so*", "*a very very generous price*", and urged him to "*take the \$\$\$ from us*", to help Mr.  
14 Balsillie buy something Mr. Moyes did not, and does not, have to sell – an NHL franchise in  
15 Hamilton, Ontario – by agreeing to make the bankruptcy filing that Mr. Moyes had no power to  
16 authorize.<sup>7</sup> (Emphasis added)

17  
18 Similarly, PSE, in an epic understatement, acknowledges that, after these cases  
19 were filed, Mr. Rodier "did suggest informing the media" about the admittedly highly  
20 confidential information provided by Mr. Scudder concerning the City's sensitive negotiations to  
21

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22 <sup>4</sup> Response at 20, ¶ 57.

23 <sup>5</sup> Response at 3, ¶ 5.

24 <sup>6</sup> Response at 7-8, ¶ 16 and n.9.

25 <sup>7</sup> See National Hockey League's (A) Renewed Motion for Determination of (I) Authority to Manage the  
26 Business and Affairs of the Debtors, and (II) that William Daly is the Representative of the Estates, or (B) in the  
27 Alternative, Motion for Appointment of a Chapter 11 Trustee, at 3-4 (August 18, 2009, Dkt. # 682) ("Renewed  
28 Motion").

1 keep the team in Glendale, when Mr. Rodier asked Mr. Scudder for the Debtors' consent to  
2 "leak[]" that information "to media WITHOUT your team's fingerprints on it anywhere".<sup>8</sup>  
3 (Emphasis in original) Had Mr. Scudder been acting as the fiduciary he was supposed to be,  
4 instead of as Mr. Moyes's agent in an improper partnership with Messrs. Balsillie and Rodier to  
5 support the PSE bid at all costs, Mr. Scudder's answer would have been a succinct "Absolutely  
6 NOT!" Instead, Mr. Scudder went on carefully, and at some length, to explain that if Mr. Rodier  
7 did leak the confidential information as proposed, Messrs. Scudder and Moyes would deny  
8 "hav[ing] been the source", and Rodier agreed to go with that story: "I don't know the source."<sup>9</sup>

10 Debtors' Response simply ignores these emails. They are never even specifically  
11 discussed. Debtors never explain why Mr. Scudder breached their agreement with Glendale to  
12 keep the information confidential by giving it to Mr. Rodier in the first place. Debtors never  
13 explain why Mr. Scudder did not "just say no" to Mr. Rodier's clearly wrongful scheme to  
14 subvert the City's efforts to negotiate with potential Glendale-based bidders.  
15

16 As for the first day declaration attributed to Mr. Nealy that he never authorized or  
17 executed – even though it was falsely represented that he had – Debtors argue that, at his recent  
18 deposition, Mr. Nealy "affirm[ed] ... the substance of the information" included in that  
19 document that was deleted from the later declaration that Mr. Nealy actually did sign.<sup>10</sup> And  
20 Debtors offer a declaration from the lawyer who prepared the unauthorized first day declaration  
21 that Mr. Nealy did not sign presumably to suggest that the filing of the unauthorized document  
22

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25 <sup>8</sup> Renewed Motion at 7.

26 <sup>9</sup> Renewed Motion at 7.

27 <sup>10</sup> Response at 9, ¶ 23.

1 was somehow just one more innocent mistake.<sup>11</sup> Yet, nowhere do Debtors ever try to explain  
2 why they filed the unauthorized, unexecuted declaration in the first place, or why fully 28  
3 paragraphs and 9 pages of text had to be excised from the document before Nealy would sign  
4 and authorize the document to be filed.

5  
6 As the Official Joint Committee of Unsecured Creditors says, these matters "are  
7 serious and require further investigation and perhaps even legal action[.]"<sup>12</sup> The League agrees  
8 and respectfully submits that this evidence further supports the relief sought in the Authority  
9 Motion or the appointment of a trustee.

10 If, however, the Court prefers, it is not necessary to reach these thorny issues at  
11 this time in order to grant the relief requested by the League, because the clear legal authority  
12 therefor is in the Proxies provided to the League by Mr. Moyes (as well as Debtors and their  
13 affiliates) in November 2008. These Proxies expressly ceded all management authority to the  
14 NHL Commissioner by irrevocably appointing the Commissioner as Mr. Moyes's  
15

16 true and lawful attorney and proxy in respect of all of [Moyes's] interest and rights in the  
17 Club ... and all rights as managing member of the Club ... with all powers [Moyes]  
18 possesses ... to vote or express consent or dissent in the sole discretion of such proxy ...  
19 for any and all purposes and upon any and all subjects, matters and issues (collectively,  
20 the "Voting Rights")... including, without limitation, ... the voluntary or involuntary  
21 bankruptcy, dissolution, liquidation, termination or reorganization of the Club and/or any  
22 of its subsidiaries ... [and] the sale of all or substantially all of the assets of the Club  
23 and/or any of its subsidiaries[.]<sup>13</sup>

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23 <sup>11</sup> See Declaration of Kelly Singer at 1-3, ¶¶ 2-9 (August 24, 2009, Dkt. # 782).

24 <sup>12</sup> Response And Objection Of The Official Joint Committee Of Unsecured Creditors To National Hockey  
25 League's (A) Renewed Motion For Determination Of (I) Authority To Manage The Business And Affairs Of The  
26 Debtors, And (Ii) That William Daly Is The Representative Of The Estates, Or (B) In The Alternative, Motion For  
Appointment Of A Chapter 11 Trustee, at 2 (August 24, 2009, Dkt. # 763)

27 <sup>13</sup> Declaration of William L. Daly (May 13, 2009, Dkt. #93) (Exhibit F).

1 Moyes also expressly agreed "that immediately upon the execution by [Moyes] of [the Proxy],  
2 [Moyes] shall have no right or ability to exercise any Voting Rights."<sup>14</sup> A broader grant of  
3 exclusive management authority is difficult to imagine.

4 The crux of Debtors' argument to show that the Proxies did not mean what they  
5 say and did not give the Commissioner all management authority over Debtors is that "the NHL  
6 never took control of the Debtors."<sup>15</sup> Rather, Debtors claim that Mr. Moyes was managing the  
7 Club even after the Proxies were executed.<sup>16</sup> That is simply untrue. Under oath, Mr. Moyes  
8 admitted that he has "*never* been involved in the day-to-day management of the Coyotes" and, in  
9 the past year, the only management decision he made "was to put it into Chapter 11."<sup>17</sup>  
10 (Emphasis added) Similarly, Doug Moss, the Club's president, confirmed that since late 2008, it  
11 is the NHL that has been in control and guiding the Club's operations, and that Moyes had no  
12 involvement in the operation of the Club.<sup>18</sup>

13 The Proxies expressly reserved to the Commissioner the exclusive authority,  
14 among other things, to determine whether or not to commence bankruptcy proceedings, and Mr.  
15 Moyes expressly acknowledged that he had no such authority. Thus, absent ratification by the  
16 NHL Commissioner, Mr. Moyes' filing of these cases was *ultra vires*. Accordingly, the Court  
17 should grant the Authority Motion and determine that Mr. Daly, the Commissioner's designee, is  
18 the estate representative.

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21 <sup>14</sup> Declaration of William L. Daly (May 13, 2009, Dkt. #93) (Exhibit F).

22 <sup>15</sup> Debtors' Reply Regarding Managing Members' Authority to Commence These Cases and In Opposition to  
23 the National Hockey League's Motion for Determination, at 12, ¶ 30 (May 15, 2009, Dkt. # 109).

24 <sup>16</sup> Debtors' Reply Regarding Managing Members' Authority to Commence These Cases and In Opposition to  
25 the National Hockey League's Motion for Determination, at 15-16, ¶¶ 40-42 (May 15, 2009, Dkt. # 109).

26 <sup>17</sup> Deposition of Jerry Moyes, August 27, 2009, at 13-14.

27 <sup>18</sup> Deposition of Doug Moss, August 26, 2009, at 48-53.

1  
2 **CONCLUSION**

3 For all of the foregoing reasons, the NHL hereby requests the Court to grant the  
4 relief requested in the Authority Motion or, in the alternative, appoint a chapter 11 trustee in  
5 these cases.  
6

7 DATED: August 31, 2009

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