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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 ) **Supplemental Submission of the National**  
22 ARENA MANAGEMENT GROUP, LLC, ) **Hockey League in Support of Motion for**  
23 Debtors. ) **a Determination that Debtors' NHL**  
24 ) **Membership Rights May Not Be**  
25 ) **Transferred to PSE or an Affiliate**  
26 ) **Thereof**

27 Date: September 2, 2009  
Time: 9:00 am  
28 Location: U.S. Bankruptcy Court  
230 N. First Ave, Courtroom 703  
Phoenix, AZ 85003

26 This filing applies to:

- 27 ☐ All Debtors  
28 ☐ Specified Debtors

1 The National Hockey League (the "NHL" or "League") hereby submits this supplemental  
2 filing in support of its Motion for a Determination that Debtors' NHL Membership Rights May Not  
3 Be Transferred to PSE or an Affiliate Thereof (August 7, 2009, Dkt. # 584) (the "Motion").

4 **PRELIMINARY STATEMENT**

5 There is an old joke about the three biggest, one of which is, "the check is in the mail." In  
6 this case, the first two "big lies" have been: (i) "the NHL's reason for turning down Mr. Balsillie is  
7 pretextual – the League really wants to protect the super-secret territorial veto of the Toronto  
8 Maple Leafs;" and (ii) "this case was filed to protect the creditors." The third "big lie" has now  
9 been added to the litany: "the NHL's making of a non-contingent bid to try to keep the Phoenix  
10 Coyotes in Glendale means that it acted in bad faith in rejecting Mr. Balsillie as an owner." There  
11 is no bad faith by the NHL in making a firm bid that, to the extent possible, puts creditors in the  
12 same position as if the case had never been filed. There is something sad, however, about Mr.  
13 Balsillie's inability to grasp the plain fact that it is his conduct, insensitivity, perceived lack of  
14 trustworthiness and unwillingness to accept responsibility for his own actions over several years  
15 that has caused the NHL Board of Governors (the "Board") to wish to not be associated with him in  
16 the business of professional hockey.

17 The NHL's overwhelming preference in this case has been to find one or more satisfactory  
18 owners of the Club in Glendale. To that end, it worked to recruit and assist potential bidders to  
19 become qualified and to finalize their bids. As the Court is aware, although the Board  
20 conditionally approved the Reinsdorf Group at a specially convened meeting, it withdrew its  
21 proposal, believing it had been harassed and impeded in its efforts to acquire the Club including by  
22 the inappropriate disclosure of sensitive details regarding its negotiations. The Ice Edge Team,  
23 LLC and Ice Edge Arena, LLC (together, the "Ice Edge Group") continues their quest, but by the  
24 bidding deadline still had significant contingencies that the NHL reasonably believed could take  
25 months to resolve. Meanwhile, the Club is stuck in a limbo created by the uncertainty of this case,  
26 and its business continues to deteriorate at a dramatic rate. Against that background, the NHL's bid  
27 can hardly be considered to be in bad faith. Nor does its bid in any way undermine its good faith  
28

1 with respect to its earlier actions in rejecting Mr. Balsillie or passing on the qualifications of the Ice  
2 Edge Group.

### 3 ARGUMENT

#### 4 **I. PSE MISCHARACTERIZES THE NHL AS AN "INSIDER."**

5 Contrary to the PSE's assertions, the NHL is clearly not an insider of the Debtors. PSE  
6 asserts the NHL is an insider under its arrangement for sharing of management control and through  
7 its "control" over the bidder qualification process.<sup>1</sup> Despite PSE's repeated use of the word  
8 "control," however, it is patently evident that the NHL does not have any control over the Debtors  
9 in these cases. First, if the NHL were in control of the Debtors, these cases would never have been  
10 filed, nor would the NHL have a need to seek control in its Renewed Authority Motion. It is also  
11 safe to assume that if the NHL was in control, the Debtors would not be suing the NHL under the  
12 antitrust laws. Second, any exercise of control that the NHL may have over its own internal  
13 policies and procedures does not translate into the NHL being "in control of the debtor[s]." 11  
14 U.S.C. § 101(31)(B)(iii). Quite simply, PSE has not shown, and cannot show, that the NHL is an  
15 "insider" of the Debtors under the Bankruptcy Code.

16 Even if this Court were to grant the Renewed Authority Motion, and the NHL became an  
17 insider of the Debtors, the NHL has acted and will continue to act in good faith. It is not bad faith  
18 for an insider to have an interest in the purchase of the debtor. In re Andy Frain Servs., Inc., 798  
19 F.2d 1113, 1125 (7th Cir. 1986). A sale to an insider, "without more would not suffice to show a  
20 lack of good faith." Id. (citing Sulmeyer v. Karbach Enters. (In re Exennium, Inc.), 715 F.2d 1401,  
21 1404-05 (9th Cir. 1983)). To show lack of good faith, there must be "fraud or collusion between  
22 the purchaser and the seller or other bidders, or that the purchaser's actions constituted 'an attempt  
23 to take grossly unfair advantage of other bidders.'" 255 Park Plaza Assocs. Ltd. P'ship v. Conn.  
24 Gen. Life Ins. Co. (In re 255 Park Plaza Assocs. Ltd. P'ship), 100 F.3d 1214, 1218 (6th Cir. 1996)  
25 (quoting Onouli-Kona Land Co. v. Estate of Richards (In re Onouli-Kona Land Co.), 846 F.2d

26  
27 <sup>1</sup> See Reply in Support of PSE's Motion for Determination that the Debtors' Interests May be  
28 Transferred to PSE Notwithstanding the NHL's Refusal to Consent (August 31, 2009, Dkt. # 852)  
("PSE's Reply").

1 1170, 1173 (9th Cir. 1998). Insiders "do not forfeit their good faith status unless it is shown that  
2 they colluded with the debtor or engaged in conduct that was intended to control the sale price or  
3 take unfair advantage of other bidders." Sugarloaf Indus. & Mktg. Co., LLC v. Quaker City  
4 Castings, Inc. (In re Quaker City Castings, Inc.), 2005 Bankr. LEXIS 2211, \*20 (B.A.P. 6th Cir.  
5 2005) (citing In re Bakalis, 220 B.R. 525, 538 (Bankr. E.D.N.Y. 1998)).

6 The same is true when an insider becomes a potential purchaser. See Prichard v. Sherwood  
7 & Roberts, Inc. (In re Kings Inn, Ltd.), 37 B.R. 239, 243 (B.A.P. 9th Cir. 1984) (upholding sale  
8 despite argument that good faith was lacking where purchaser controlled various entities in  
9 bankruptcy case). "The requirement that a purchaser act in good faith, of course, speaks to the  
10 integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would  
11 destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the  
12 purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other  
13 bidders." In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978). Wearing multiple  
14 hats does not make a potential purchaser an insider, nor does it impose a presumption of bad faith.  
15 See SBA v. XACT Telesolutions, Inc. (In re XACT Telesolutions, Inc.), 2006 U.S. Dist. LEXIS  
16 621 (D. Md. 2006) (member of board of directors who was also DIP lender was good faith  
17 purchaser where board had rejected all outside offers and insider made a subsequent offer to  
18 purchase substantially all of assets of debtors).

19 Here, PSE asserts that the NHL should be stripped of its right to use its business judgment  
20 and act in accordance with its internal procedures and policies simply because it has now emerged  
21 as a potential purchaser. But PSE has not shown, and cannot show, that the NHL has acted in bad  
22 faith. The cases that PSE has cited are wholly inapplicable because (i) the NHL, a reluctant buyer,  
23 has not engaged in any self-dealing; (ii) the NHL has disclosed the information it is required to  
24 disclose; and (iii) the NHL has not illegally colluded with the Debtors or anyone else. Curiously,  
25 in one of the cases cited by PSE, the court found that, in another bankruptcy case, Mr. Moyes failed  
26 to disclose material information in the context of an asset sale and that he should not benefit from  
27 the lack of disclosure. See In re Simon Transp. Servs., Inc., 292 B.R. 207, 216 (Bankr. D. Utah  
28 2003). Further, in each of the cases that PSE cited, the insider stood to benefit from its actions at

1 the expense of the estate. In this case, the exact opposite is true – the NHL's bid is in the best  
2 interests of creditors and any profit the NHL may see in the near future will be shared with the  
3 estates.

4 Finally, PSE asserts that the NHL is acting in bad faith in order "to acquire for itself the  
5 Coyotes relocation opportunity right for a fraction of its value." (PSE's Reply at 2.) However, this  
6 Court already has acknowledged that the NHL owns the right to place a team in Hamilton, Ontario.  
7 (6/15/09 Order (Dkt. # 341) at 10-12.) While that is not why the NHL is bidding for the Club, it is  
8 not bad faith to protect that which is already yours.

9 **II. THE BOARD DID NOT AUTHORIZE A BID IN ORDER TO MAKE MONEY.**

10 While it is difficult for Mr. Balsillie to accept that the NHL does not want to do business  
11 with him given the entire fabric of his interactions with the League and its members over time, this  
12 is a reasonable business judgment by 26 individual governors (3 abstentions) whose clubs will have  
13 at most a 1/29 interest in a team that, according to the Debtors, has lost vast sums. The facts and  
14 opinions that were considered by the Board in rejecting Mr. Balsillie are set forth at length in the  
15 National Hockey League's Reply in Support of Motion for Determination that Debtors' NHL  
16 Membership Rights May Not Be Transferred to PSE or an Affiliate Thereof (August 31, 2009, Dkt.  
17 # 863, at 26-34).

18 In sum, the Board is not, and did not become, an insider with respect to the purchase of the  
19 Club by determining to have the League make a bid under these circumstances. Accordingly, the  
20 Board's reasonable business judgment in rejecting Mr. Balsillie as an owner should not be affected  
21 in any way by the subsequent decision of the NHL to make a bid.

22 **CONCLUSION**

23 WHEREFORE, for the reasons set forth above, the NHL's Motion for a Determination that  
24 Debtors' NHL Membership Rights may not be Transferred to PSE or an Affiliate Thereof should be  
25 granted.

1 DATED: September 1, 2009

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