

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF ARIZONA

3
4 In re:)

5 DEWEY RANCH HOCKEY, LLC CH: 11) 2:09-bk-09488-RTBP

6 1) DEBTOR'S MOTION FOR ORDER (i))
7 AUTHORIZING COYOTES HOCKEY, LLCS)
8 SALE OF SUBSTANTIALLY ALL OF ITS)
9 ASSETS, FREE & CLEAR OF LIENS,)
10 CLAIMS AND ENCUMBRANCES SUBJECT TO)
11 HIGHER & BETTER OFFERS, AND (ii))
12 APPROVING AN ASSET PURCHASE)
13 AGREEMENT)

14 2) ADM: 2:09-BK-09488-RTBP)

15 DEBTOR'S APPLICATION FOR 2004)
16 EXAMINATION AND FOR PRODUCTION OF)
17 DOCUMENTS OF THE NATIONAL HOCKEY)
18 LEAGUE, OFFICE OF THE COMMISSIONER)
19 AND OBJECTION THERETO)

20 3) DEBTOR'S MOTION FOR ENTRY OF ORDER)
21 (A) AUTHORIZING CONDUCT OF AN)
22 AUCTION OF COYOTES HOCKEY, LLCS)
23 ASSETS; (B) ESTABLISHING PROCEDURES)
24 TO BE EMPLOYED IN CONNECTION WITH)
25 THE SALE INCLUDING APPROVAL OF)
TERMINATION FEE; AND (C) APPROVING)
FORM & MANNER OF NOTICE OF)
CONDITIONAL CURE NOTICE AND)
SOLICITATION NOTICE)

4) DEBTOR'S MOTION FOR DETERMINATION OF)
AUTHORITY TO MANAGE BUSINESS &)
AFFAIRS OF THE DEBTORS & THAT)
WILLIAM DALY IS THE REPRESENTATIVE)
OF THE ESTATES)

5) EXPEDITED HEARING ON DEBTOR'S MOTION)
FOR ORDER AUTHORIZING TRANSFER OF)
FUNDS FROM THE DEBTORS' ESTATE TO)
TICKETMASTER ENTERTAINMENT, INC.)

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6) EXPEDITED HEARING ON DEBTOR'S)
MOTION FOR EXTENSION OF TIME TO FILE)
STATEMENT OF FINANCIAL AFFAIRS AND)
SCHEDULES OF ASSETS AND LIABILITIES)
_____)

U.S. Bankruptcy Court
230 N. First Avenue, Suite 101
Phoenix, AZ 85003-1706

May 19, 2009
1:33 p.m.

BEFORE THE HONORABLE REDFIELD T. BAUM, Judge

APPEARANCES:

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APPEARANCES: (Continued)

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APPEARANCES: (Continued)

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Also Appearing: Gabe Macaluso, Interested Party
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Proceedings recorded by electronic sound technician, Juanita Pierson-Williams; transcript produced by AVTranz.

1 THE CLERK: 09-9488, Dewey Ranch Hockey, LLC. We do
2 have a sign-in sheet, and we have parties on the phone that
3 I've taken appearances for.

4 THE COURT: All right. Thank you.

5 MR. SALERNO: Good afternoon, Your Honor. Thomas
6 Salerno, Squire, Sander & Dempsey on behalf of the debtors.

7 Your Honor, we took the liberty of moving some things
8 around on the calendar to accommodate some plane schedules. If
9 it's acceptable to the Court, the item number one on your
10 docket is the actual sale motion itself, which is not -- which
11 was not on for hearing today. The first thing that we would
12 like to take up with the Court's indulgence is an expedited
13 hearing on a motion for an order authorizing transfer of funds
14 to Ticketmaster.

15 There's an urgency because apparently there is a
16 Taylor Swift concert coming up in a couple of days and we want
17 to avoid any disruption with that.

18 The second item is expedited hearing on motion for
19 extension of time to file statement of financial affairs,
20 schedules of assets and liabilities. We asked for another nine
21 days, if we could get that.

22 The third item and the item that I think everyone has
23 referred to as the so-called "gating issue," is the motion to
24 determine authority to manage the business, the so-called "Al
25 Hague" (phonetic) motion.

1 And then the Court -- we've asked that the Court take
2 up the sale procedures motion after that and then the 2004 --
3 objection to the 2004 motion. I've run this order by counsel
4 for the NHL and they didn't have any issue with it. So if it's
5 okay with the Court, we could proceed as follows.

6 THE COURT: That's agreeable.

7 MR. SINGER: Good morning, Your Honor. Kelly Singer
8 on behalf of the debtors.

9 As Mr. Salerno alluded to, we have a Taylor Swift
10 concert coming up on the 21st and we want to do everything in
11 our power to make sure there's no problems with that concert
12 going forward.

13 In that regard, Your Honor, we've been in close
14 contact with AEG Live, which is the second-largest concert
15 promoter in the country, and we filed the emergency motion.
16 And essentially from AEG's concerns is that -- from AEG's
17 perspective is that they wanted to make sure that they were
18 going to get paid after the Taylor Swift concert.

19 In that regard, Your Honor, we filed the emergency
20 motion to essentially allow Ticketmaster, who's been selling
21 tickets for this concert, to hold all the ticket sale proceeds
22 in conclusion of that concert, at which time, what the parties
23 have agreed to is that we're going to direct Ticketmaster
24 through a certain disbursement instruction letter on how to
25 disburse the proceeds of those tickets. A portion of it would

1 go to AEG, which in turn, I'm assuming would go to Taylor
2 Swift. A portion of it will go to the debtors and a portion of
3 it will also go to the City of Glendale, in their parking fee
4 fund that we've set up for them.

5 Your Honor, we propose that this arrangement take
6 place with respect to all of the post-petition events that
7 we're doing with AEG, and this is simply to assure AEG that
8 they will get paid at the conclusion of the concert.

9 Your Honor, we've worked close -- as I mentioned,
10 we've worked closely with AEG and we've also worked closely
11 with the NHL and the City of Glendale to come up with a
12 proposed stipulated order. I believe at this time, with some
13 last-minute comments from the various parties and also
14 including SOF, the SOF facility who's the junior lien holder
15 against the debtors' estates, is subordinate to the NHL. We
16 believe do have a stipulated order that we can propose to the
17 Court and submit it right after this hearing.

18 THE COURT: Anybody want to be heard in opposition to
19 that request?

20 MR. HAVEL: Good afternoon, Your Honor. One of the
21 parties appearing on telephone, may I have a comment on this?

22 THE COURT: If you'd state your name for the record
23 and then go ahead.

24 MR. HAVEL: Thank you, Your Honor. Yes. My name is
25 Richard Havel, I'm with Sidley Austin and we represent

1 Drawbridge Special Opportunities Fund.

2 Your Honor, Drawbridge has an interest under the
3 arena lease and management agreement which is substantially
4 identical to that of the City of Glendale, and we have
5 requested the debtor to respect that portion of the lease which
6 requires that ticket proceeds be segregated and paid over to
7 us. We would like the same protections and provisions for our
8 ticket proceeds that the City has obtained for theirs, and that
9 would be the request, and we have made a formal request to both
10 the City of Glendale and the debtors with respect to this,
11 albeit we just made the request yesterday, so I don't know that
12 it's been fully processed.

13 MR. SINGER: Your Honor, we don't have a problem with
14 that with respect to Drawbridge, as long as it's the same exact
15 provisions that we have with respect to the City, that no one's
16 letting go any -- everyone has a reservation of rights with
17 respect to the treatment of the sale proceed -- of these ticket
18 sale proceeds.

19 I think we can accommodate Drawbridge. Our only
20 concern is that we are in a tight timeline. AEG has requested
21 that we get an order entered today so that the Taylor Swift
22 concert will have no problem going forward.

23 What I would suggest, Your Honor, is that if we could
24 enter the stipulated order and if possible -- and I'm making
25 this suggestion to the parties in the room as well -- if we can

1 enter the stipulated order, and then if possible between this
2 evening and tomorrow morning we can get Drawbridge in there and
3 maybe have an amended stipulated order. And hopefully we can
4 take care of their concerns. But in a nutshell, Your Honor, I
5 don't have a problem with giving Drawbridge the same
6 protections that I've given the City in that regard.

7 MR. HAVEL: Oh, that would be very acceptable to us,
8 Your Honor, and I would rely on the statement of counsel and
9 not object to them proceeding with their current order. And
10 then we'll work with them on an amended order.

11 THE COURT: Anyone else wish to be heard? All right.
12 That motion is granted on the terms and conditions stated on
13 the stipulated order between the named parties.

14 MR. SINGER: Thank you, Your Honor. And we'll upload
15 that order as soon as possible.

16 And Mr. Havel, I will work with you this evening to
17 get that language in an amended order.

18 MR. HAVEL: Thank you very much.

19 MR. SINGER: Your Honor, the second motion that we
20 have on calendar today is the motion to extend the date to file
21 statements and schedules. Your Honor, as you'll recall at the
22 first day hearing, we did request an extension. We withdrew
23 that motion. In light of the recent events and kind of the
24 parties' focus on other issues, specifically regarding
25 governance and also this Ticketmaster issue, we are

1 respectfully requesting a nine-day extension of that. So it
2 would be nine days from tomorrow is when they're due. And I
3 believe that would be a bar date of filing the statements and
4 schedules of May 24th, I believe -- or May 29th.

5 THE COURT: Anybody want to be heard in opposition to
6 that request?

7 MR. BALDIGA: Good afternoon, Your Honor. William
8 Baldiga, Brown Rudnick for the City of Glendale.

9 Your Honor, you may remember that at the first day
10 hearing we did oppose a similar request. If this is really
11 going to be nine days then we do not oppose this particular
12 motion. But I did want to be heard that we think it's
13 important that these be filed as soon as practical and I -- if
14 there's a further motion, I wanted to the parties to hear that
15 we think it's very important that this be the last request for
16 extension. Thank you.

17 THE COURT: I don't disagree with what you said,
18 although given the volume of papers filed on just the one
19 motion, which at some point yesterday I stopped and count up,
20 and we're now past -- the number's 600. And those filings
21 started, I believe about 11:45 Wednesday evening.

22 There does seem to be some merit to the debtors'
23 statement that perhaps they've been involved in some other
24 issues than completing the schedules and statements of affairs.

25 MR. BALDIGA: We appreciate that. There are issues

1 that have been put before the Court that do implicate very much
2 what the debtors' scheduled statements do say. So to the
3 extent that the debtor has seen it necessary -- and we respect
4 that, to put issues before the Court on an expedited basis, we
5 think the schedules and statements should follow accordingly.

6 THE COURT: Thank you.

7 MR. BALDIGA: Thank you.

8 THE COURT: Anybody else wish to be heard?

9 MR. WATSON: Good afternoon, Your Honor. For the
10 Court's information to the extent you aren't already aware, the
11 US Trustee has scheduled the 341 meeting for June 8th, so the
12 timeframe has been moved back a little to allow additional
13 time.

14 We would echo the City's request that the statements
15 and schedules do be on file by the 29th because that provides a
16 little over a week to allow creditors to be able to see what's
17 going to be their -- otherwise we're going to have to rethink
18 that 341 date. And that involves the district court, Your
19 Honor, so I'd prefer not to do that.

20 MR. SINGER: Your Honor, Kelly Singer on behalf of
21 the debtors. I can represent that these statements and
22 schedules are about 80 to 85 percent complete. It's just over
23 the last few days as the Court has recognized, we've been
24 focused on other matters. We'll get these schedules filed
25 within the nine-day time period that we're requesting. And we

1 don't want to push that 341 meeting at all. So we'll get them
2 filed.

3 THE COURT: Being no opposition, the debtor is
4 granted to and including Friday, May 29th, to file the schedules
5 and statements of affairs, and place them in a form of order.

6 MR. SINGER: Thank you, Judge.

7 MR. SALERNO: Your Honor, I think next on the hit
8 parade is the motion which was started by the debtors'
9 statement of position and then a motion by the NHL to determine
10 who's in charge so to speak. If the Court's ready we could
11 proceed with that.

12 THE COURT: I guess I'm as ready as I'm going to be.

13 MR. CLARK: Good afternoon, Tony Clark with Skadden
14 Arps for the National Hockey League. Good to be here again,
15 Your Honor, and thank you for accommodating my -- in scheduling
16 my trip to Ireland -- which --

17 THE COURT: How was it?

18 MR. CLARK: Well, I'm about to tell you, Your Honor.
19 As I said before, you should have come with me, because you
20 would have won a lot of money. I didn't play to my handicap; I
21 played a lot higher than that.

22 THE COURT: Did you happen to watch any of the Irish
23 Open this weekend?

24 MR. CLARK: I did. How about that? A 22-year-old
25 amateur for the first time in the history of that, that is the

1 tournament. And he blew a --

2 THE COURT: I was more impressed with the --

3 MR. CLARK: -- three foot put --

4 THE COURT: -- weather conditions.

5 MR. CLARK: -- on the 72nd hole and had to go into
6 overtime. I guess four holes before he finally --

7 THE COURT: Was your weather as good as theirs?

8 MR. CLARK: We had every kind of weather imaginable
9 during each round of golf with the exception of snow. I kid
10 you not, we had sun, we had rain. We had a little bit of wind
11 and we even had hail, Your Honor. And that was just during the
12 first nine holes of the first day.

13 But let me tell you about that first day at Valley
14 Bunion (phonetic), Your Honor. You know the course. You
15 indicated you've been there, and it is a wonderful course.
16 Well I got there on Friday morning. About ten o'clock I had a
17 tee time. I had flown over, a red-eye flight which is the only
18 way you can get there from the east coast these days, and I got
19 very little sleep on that flight.

20 So when I got up to the first tee with my playing
21 partners who had been there a couple of days before me, they
22 were somewhat sympathetic that I wasn't in the top shape to be
23 playing golf.

24 THE COURT: They give you any strokes?

25 MR. CLARK: Well, what they did was I got up there on

1 the first tee and I, you know, limbered up as best as I could
2 and I took a whack at the ball. And Your Honor knows the
3 graveyard to the right of the first tee, well that's where my
4 fist ball ended up, out of bounds in the graveyard.

5 THE COURT: Sooner or later everybody gets there.

6 (Laughter)

7 MR. CLARK: Jack Nicklaus got -- hopefully later,
8 Your Honor.

9 THE COURT: Understood.

10 MR. CLARK: I'm proud to say that the first time and
11 I think the only time that Jack Nicklaus played the old course
12 that's where his first shot ended up too. But after putting it
13 out of bounds, the guys I was with, as I say were being very
14 sympathetic and they said to me, why don't you take the
15 mulligan. Tee up another one, do a redo and whale away. And
16 I'm not proud to say that I said okay.

17 I took them up on it. I teed up another one, managed
18 to get it out of the golf course, and for the rest of that day,
19 Your Honor, I walked around that golf course with a bag on my
20 back and some clubs in my hand and I hit a little ball around
21 and put it into the hole on occasion.

22 But what I didn't do, what I didn't do that day is I
23 didn't play golf, because I wasn't playing by the rules of
24 golf. I took the mulligan and you're not allowed to do that.
25 And Your Honor my point in mentioning that is the context in

1 which we're here today that I'd like to emphasize for the Court
2 and for everybody, is that there is a fundamental precept that
3 ought to apply here and now, and that's is what's fair is fair.

4 And everyone in the National Hockey League, the
5 players, the referees, the owners and most particularly for
6 today, the proposed owners, they have to play by the same
7 rules. Otherwise what you have is chaos and everyone will
8 suffer.

9 So Mr. Balsillie, who wants to buy this team --

10 THE COURT: Of course, today's hearing really isn't
11 about him.

12 MR. CLARK: It actually -- Your Honor, with all due
13 respect, I think it is.

14 THE COURT: Well isn't today's hearing really about
15 whether the documents that the NHL got allow them to control
16 these debtors and not the Moyes Group?

17 MR. CLARK: Yes.

18 THE COURT: Okay.

19 MR. CLARK: That is exactly right, Your Honor.

20 And so what our proposition is, is that Mr. Balsillie
21 is a proposed owner, is a buyer, a proposed buyer of this team,
22 he ought to have to do so by the by the same rules and
23 regulations that everyone else has to abide by.

24 THE COURT: Well let me -- you know I think that
25 thought may be more appropriate if we start talking about

1 auctions and stuff, so maybe if you could hold that one,
2 because I've got some notes on that, but I think I'm going to
3 ask you to wait on that.

4 MR. CLARK: Very good, Your Honor.

5 Let me just say and then I will turn directly to the
6 authority motion, that no one, not Mr. Balsillie, not any other
7 owner or proposed owner is different and better than anyone
8 else, so we should all play by the same rules, and the rules --

9 Now with respect to the authority motion, Your Honor,
10 Your Honor has been bombarded with a mass of papers over the
11 last couple of weeks and certainly over the last few days.

12 THE COURT: Actually again it started about 11:45
13 Wednesday night because I didn't see anything until then other
14 than your three-page motion of May 7th, which I could read that
15 one pretty quickly.

16 MR. CLARK: Well among the things that you got
17 bombarded with, Your Honor, were a very thick stack of
18 declarations that I think it's fair to summarize by saying that
19 they raised innumerable, hotly contested factual disputes.

20 THE COURT: I think if we get to the declarations,
21 there's some fundamentally inconsistent statements by the two
22 sides, right?

23 MR. CLARK: That's correct, Your Honor.

24 THE COURT: Okay.

25 MR. CLARK: But I don't think that we have to get

1 there. I think that Your Honor on the basis of plainly
2 undisputed facts that Your Honor can decide the central issue,
3 the gating issue, the authority issue today and decide it in
4 favor of the League.

5 Fact number one that isn't disputed. Mr. Moyes on
6 November 14th of 2008, and his wife, those who -- and I guess
7 Mr. Shumway, the people who had some positions of authority at
8 that time with these debtors executed proxies in favor of the
9 Commissioner of the National Hockey League. And those proxies
10 in clear and unambiguous language on their face, undisputedly
11 says a few things that I think determine the issue.

12 Number one, the proxy said without any equivocation,
13 that they were to have "immediate effect."

14 THE COURT: Right.

15 MR. CLARK: So they were operative as of November the
16 14th without Mr. Bettman or anyone else in the League doing
17 anything whatsoever.

18 THE COURT: Well let me ask you a couple of questions
19 just to confirm so I make sure I understand it correctly. Your
20 view is the proxies are unambiguous and clear, right?

21 MR. CLARK: Absolutely, Your Honor.

22 THE COURT: And your view is that as of November 14th
23 the NHL was in control of the debtor entities, right?

24 MR. CLARK: That's correct.

25 THE COURT: And that the Moyes -- what I'll call the

1 Moyes Group relinquished all right of control to the NHL?

2 MR. CLARK: That's correct. What it said was all --
3 they granted to the Commissioner a proxy for, quote, all of the
4 Moyes group's interests and rights in the club and all rights
5 as the managing member of the club which everybody agrees is
6 the entity that has the power to control all of these debtors.

7 THE COURT: And the League's position is that these
8 proxies were self-executing and once they were delivered, it
9 was over.

10 MR. CLARK: That is correct, Your Honor. There were
11 two sets of proxies, just to sort of put it into context.

12 THE COURT: There was a November 20 --

13 MR. CLARK: There was the --

14 THE COURT: -- the 2006 --

15 MR. CLARK: -- proxies and the consent agreement.

16 THE COURT: Right.

17 MR. CLARK: Which would be triggered when there was a
18 triggering event --

19 THE COURT: Right.

20 MR. CLARK: -- a default. And that did occur
21 sometime in the summer of 2008 when Mr. Moyes said I'm not
22 going to -- I can't fund the losses, the operating losses of
23 this club anymore.

24 THE COURT: I'll tell you I'm not sure I agree with
25 you on that because it seemed to me that a triggering event was

1 a breach, and I didn't see in any of the documents, and I've
2 read a lot, that said my rule, statement, is a breach.

3 MR. CLARK: The League -- the consent agreement Your
4 Honor, and the League rules require each of the owners to fund
5 the operations of their respective teams.

6 THE COURT: Right.

7 MR. CLARK: And when Mr. Moyes said he couldn't and
8 wouldn't do that anymore, that was a breach and that gave rise
9 to a rise (sic) in the League to exercise those proxies.

10 Now I think the record's also clear --

11 THE COURT: I think --

12 MR. CLARK: -- that they didn't exercise them
13 immediately.

14 THE COURT: Okay.

15 MR. CLARK: They gave them a little bit of leeway,
16 started advancing funds out of the revenue-sharing pool that
17 the team would ultimately be entitled to in November, but they
18 advanced them a little bit early.

19 Unfortunately for the team that wasn't enough and
20 when November rolled around and they received the rest of the
21 money, the team received the rest of the funds that they were
22 entitled to under the revenue-sharing, there still wasn't
23 enough money there to fund the operations going forward.

24 And that's when Mr. Moyes and the League reached an
25 agreement to execute these new proxies, which essentially

1 restate what the consent agreement said, but made it very
2 clear. They made it --

3 THE COURT: There's no triggering event on the
4 November 14th proxies.

5 MR. CLARK: Exactly. It made it very clear.

6 THE COURT: Oh, so they're not the same.

7 MR. CLARK: That's correct, Your Honor. But what it
8 did is it made it very clear that now there had been a
9 triggering event and the proxies were being executed --

10 THE COURT: But --

11 MR. CLARK: -- and were being exercised by the
12 League --

13 THE COURT: You --

14 MR. CLARK: -- at that point.

15 THE COURT: You say they're very clear. I mean do
16 you consider them very clear?

17 MR. CLARK: I do.

18 THE COURT: Now do you have a copy of the proxy
19 handy?

20 MR. CLARK: I do.

21 THE COURT: You got the first page there?

22 MR. SALERNO: Your Honor, what are we on?

23 MR. CLARK: I --

24 MR. SALERNO: Is it some exhibit number?

25 MR. CLARK: What I'm looking at Your Honor, is --

1 THE COURT: Well they're all the same aren't they?

2 MR. CLARK: Yeah, they are all the same.

3 THE COURT: Yeah.

4 MR. CLARK: I'm look at the attachment --

5 THE COURT: So take any proxy you want.

6 MR. CLARK: -- to our objection to the proposed
7 agenda that was filed, I believe on May the 7th, and it's the
8 first one --

9 THE COURT: And the second --

10 MR. CLARK: -- to be --

11 THE COURT: -- paragraph begins, "the undersigned
12 hereby irrevocably appoints," right?

13 MR. CLARK: Correct.

14 THE COURT: Where does that sentence end?

15 MR. CLARK: I'm sorry, Your Honor?

16 THE COURT: Where does that sentence end?

17 MR. CLARK: That sentence ends on page 2 after sub G.

18 THE COURT: That's what I thought. I have to tell
19 you when you call them "very clear" I have some hesitation and
20 concerns on that point.

21 MR. CLARK: And an English major Your Honor, I
22 believe in more punctuation than this particular sentence has
23 in it.

24 THE COURT: I have -- I'm an old guy. I have a vague
25 memory about somebody with a yardstick talking about

1 run-on sentences.

2 MR. CLARK: Well this qualifies for that. I think
3 that's a fair characterization.

4 THE COURT: Uh-huh.

5 MR. CLARK: But what is clear is unambiguous in that
6 very long sentence is, as I started to say, number one, it says
7 in the first line that this appointment, this proxy has
8 immediate effect, right?

9 THE COURT: Right.

10 MR. CLARK: That's there. And then you go down,
11 let's see, one, two, three --

12 THE COURT: Kind of hard to read, isn't it?

13 MR. CLARK: -- four. All -- the fifth line, it says
14 -- here's what the proxy is granting. What is -- the powers as
15 to which it's granting. It says "all rights as managing member
16 of the club," right?

17 THE COURT: Right.

18 MR. CLARK: And it also says that it is granting to
19 the Commissioner all of the Moyes Group's interest and rights
20 in the club.

21 THE COURT: Right.

22 MR. CLARK: And all rights as managing member of the
23 club.

24 THE COURT: You see at the end of that paragraph?

25 MR. CLARK: Yes.

1 THE COURT: It has the definition of voting rights?

2 MR. CLARK: Yes.

3 THE COURT: Now we're going to go back to start
4 reading in that paragraph to understand, when they say "voting
5 rights" what they're defining because I've struggled with that
6 a little bit.

7 MR. CLARK: To tell you the truth, Your Honor, I
8 think if you go back to the immediately proceeding portion of
9 the sentence, it talks about "to vote or express consent or
10 dissent in the sole discretion of such proxy," and then it goes
11 on.

12 THE COURT: Okay.

13 MR. CLARK: I think that is the reference to voting
14 rights.

15 THE COURT: Let me go back to kind of the League's
16 core position here. So --

17 MR. CLARK: Uh-huh.

18 THE COURT: -- the League's position is that anything
19 that the Moyes Group did after November 14th was without
20 authority.

21 MR. CLARK: No, not precisely Your Honor.

22 THE COURT: Okay.

23 MR. CLARK: Anything that they Moyes Group did after
24 that date without the League's consent and permission was
25 void --

1 THE COURT: Now if I -- the only thing I've seen that
2 the League consented to was the execution of the February loan
3 documents and the February loan.

4 MR. CLARK: Well that was certainly one of the things
5 that was consented to, yes.

6 THE COURT: Well, but there's actually there -- I
7 think there's either a letter or email by the Commissioner
8 saying pursuant to the proxies I'm authorizing this to be done.

9 MR. CLARK: That's correct, Your Honor.

10 THE COURT: Okay. Is there anything else to that
11 affect?

12 MR. CLARK: In writing, I'm not aware, Your Honor.
13 There may well be, I just don't, as I stand here right now, I
14 just don't know.

15 THE COURT: Well, and --

16 MR. CLARK: But as a practical --

17 THE COURT: -- let me ask another question. In the
18 some 600 or pushing 700 pages of documents I've read, there's
19 no statement "and the Commissioner authorized the Moyes Group
20 to do the following other things," is there?

21 MR. CLARK: I don't believe there is a statement in
22 hoc verbae as Your Honor just said it.

23 THE COURT: Okay.

24 MR. CLARK: But what did happen is that Mr. Moyes --
25 number one, Mr. Moyes was allowed to retain his titles in order

1 to avoid embarrassment to him. And number two, the existing
2 management, if you will, on the ground day-to-day, Mr. Nealy,
3 CFO, Mr. Shumway for a period of time who was the CEO, those
4 people remained in place and subject to the direction and
5 control of the League, continued to do the things that had to
6 be done day-to-day.

7 THE COURT: Okay.

8 MR. CLARK: Write checks --

9 THE COURT: Did the League -- did the Commissioner
10 tell those people that?

11 MR. CLARK: Did the Commissioner tell?

12 THE COURT: The man who has the proxy?

13 MR. CLARK: Yes, sir?

14 THE COURT: Did he tell all those people what you
15 just said?

16 MR. CLARK: The Commissioner through his designees,
17 who conducted weekly conference calls and regular
18 communications with the employees of the club, through their
19 actions told the employees of the club what they were to do and
20 how they were to conduct the business of the club. Yes, sir.

21 THE COURT: Now again in all the pages that have been
22 filed, I haven't see anything where the Commissioner says "I
23 designate anybody to execute the proxy on my behalf." Am I
24 missing anything?

25 MR. CLARK: I'm not aware of anything missing in that

1 regard, Your Honor.

2 THE COURT: Okay.

3 MR. CLARK: But my point, Your Honor, is that the
4 document does say that there is a proxy being given to the
5 Commissioner of something and what that something was is
6 whatever the Moyes Group's interests and rights were in the
7 club. There's no limitation on that. There is subsequent in
8 this long sentence, there is an including but not limited to
9 phrase.

10 And then it goes on to make it specifically crystal
11 clear that one of the things as to which the proxy was being
12 given, the sole and exclusive power as to the voluntary or
13 involuntary bankruptcy, et cetera, of the club.

14 THE COURT: Are the words "sole and exclusive power"
15 in here? I don't remember them, that's why I'm asking.

16 MR. CLARK: I believe it is, and just a moment.
17 Yeah. Well it says the "undersigned hereby irrevocably
18 appoints with immediate effect the Commissioner of the NHL,"
19 skipping the parenthetical, "as its true and lawful attorney at
20 proxy in respect of all of the undersigned interests and rights
21 in the club."

22 THE COURT: So the answer to my question is no, the
23 words, "sole and exclusive power" aren't in there.

24 MR. CLARK: It may be. But it's not in that place,
25 but that's the necessary implication of what I just read, Your

1 Honor. There's nothing unclear about that. It doesn't say
2 that Mr. Moyes was retaining any interest or right in the club
3 at that point. There's nothing in the proxy to indicate that
4 and it --

5 THE COURT: Really?

6 MR. CLARK: I don't see anything in their papers
7 arguing that.

8 THE COURT: Turn to page 3.

9 MR. CLARK: Excuse me, Your Honor?

10 THE COURT: Turn to page 3.

11 MR. CLARK: Three, yes, sir.

12 THE COURT: You see the last sentence in the first
13 full paragraph?

14 MR. CLARK: "The undersigned acknowledges and
15 agrees?"

16 THE COURT: Right.

17 MR. CLARK: Yes, sir.

18 THE COURT: "Shall have no right or ability to
19 exercise any voting rights," correct?

20 MR. CLARK: Yes.

21 THE COURT: Now I think it would have been clear had
22 that sentence said something to the effect "shall have no right
23 or ability or power to exercise any management or any authority
24 on behalf of any of the entities granting the proxies." But it
25 doesn't say that, does it?

1 MR. CLARK: Not in that sentence, Your Honor.
2 THE COURT: Does it say it anywhere else?
3 MR. CLARK: Yes. I think that --
4 THE COURT: Where?
5 MR. CLARK: -- is the entire implication of the
6 document. When it says --
7 THE COURT: Whoa, whoa, whoa, whoa.
8 MR. CLARK: -- that it grants --
9 THE COURT: Now --
10 MR. CLARK: -- the --
11 THE COURT: -- it's a clear, unambiguous document.
12 MR. CLARK: Yes.
13 THE COURT: So my question is where does it say that?
14 MR. CLARK: In granting an "irrevocable proxy of all
15 of the undersigned's rights and interests in the club," that's
16 exactly what that says, Your Honor. It doesn't use those
17 words, but there is no other meaning that could be applied to
18 those words.
19 If I have a right, and I give it to you --
20 THE COURT: Well I think this may get to kind of the
21 heart of the issue. What happens if the Commissioner doesn't
22 do anything with the proxy on various things?
23 MR. CLARK: I'm not sure I understand the Court's
24 question.
25 THE COURT: Well assume for the moment that as of

1 November 15th and thereafter Commissioner Bettman did nothing
2 regarding the proxies and the Coyotes and the related entities.
3 Who operates them, who manages them? Who gives the directions?

4 MR. CLARK: Whoever the Commissioner designates to do
5 so.

6 THE COURT: Well, assume he doesn't do anything.

7 MR. CLARK: Then the existing employees presumably
8 would have the right to continue to do their work as they've
9 done it before.

10 THE COURT: Well, you know as a general statement,
11 employees take direction from somebody, right?

12 MR. CLARK: Yes.

13 THE COURT: Who would they take direction from in
14 that instance?

15 MR. CLARK: Well as I said, Your Honor, whoever the
16 Commissioner determined to point them to it.

17 THE COURT: Okay. Well let me go back --

18 MR. CLARK: If he didn't point them to anybody --

19 THE COURT: Let me go back. Assume that he doesn't
20 appoint anybody and he doesn't do anything.

21 MR. CLARK: If he didn't appoint anybody else, to do
22 anything else, then the people who were in place as of the time
23 that the employees were looking to do something, their
24 superiors, Mr. Shumway for example.

25 THE COURT: Mr. Shumway and Mr. Moyes, the Moyes

1 Group.

2 MR. CLARK: Exactly.

3 THE COURT: Okay. Okay.

4 MR. CLARK: That's correct.

5 THE COURT: All right.

6 MR. CLARK: My point though, Your Honor, was that --
7 and again I want to go back to the notion that there are a lot
8 of disputed facts. And if we have to get into the disputed
9 facts, then what we have to do is we have to go through
10 discovery, we've got to have a trial, an evidentiary hearing
11 and Your Honor has to make some difficult calls about who's
12 telling the truth --

13 THE COURT: It's not pretty, is it?

14 MR. CLARK: -- and candidly, who isn't.

15 THE COURT: It's not very pretty, is it?

16 MR. CLARK: That's correct.

17 THE COURT: Okay.

18 MR. CLARK: And you don't have to get there, because
19 under the proxy it clearly says that the Commissioner has the
20 power to exercise all rights and interest of the undersigned in
21 the club.

22 You don't have to decide whether he did that in
23 November or December or January or any other time but on May
24 the 5th of this year, Your Honor.

25 THE COURT: Well --

1 MR. CLARK: When --

2 THE COURT: -- it would depend on when on May the 5th,
3 wouldn't it?

4 MR. CLARK: I'm sorry?

5 THE COURT: It would depend on when on May the 5th,
6 wouldn't it?

7 MR. CLARK: The only question that the "when" would
8 bring up is whether or not we get to the argument by --

9 THE COURT: Whether there's a stay in effect that
10 would preclude some actions.

11 MR. CLARK: Exactly, Your Honor.

12 THE COURT: Okay.

13 MR. CLARK: So if you go to that, on May the 5th, it's
14 clear, undisputed that Mr. Bettman did exercise a document
15 removing Mr. Moyes from all officer and director and
16 authoritative positions --

17 THE COURT: Is that --

18 MR. CLARK: -- whatsoever.

19 THE COURT: -- document in here somewhere?

20 MR. CLARK: It is. I believe it is attached as an
21 exhibit, Exhibit B to the filing that we made, our objection to
22 the proposed agenda for the first day hearings and related
23 matters on May the 7th, Your Honor.

24 THE COURT: Okay. You're --

25 MR. CLARK: The same document that had the proxies

1 attached.

2 THE COURT: Well you're going to have to forgive me
3 because I'm going to say it again, because I kind of got to jab
4 all of you with this. At 11:45 Wednesday night, you all
5 started filing your documents in connection with this hearing.
6 And at some point yesterday I added them up and they were well
7 in excess of 600 pages, plus the cases you all cited, which I
8 have read some, but candidly but not all.

9 And so in all candor to you, I didn't read your
10 objection to the agenda.

11 MR. CLARK: That's where the document's found Your
12 Honor.

13 THE COURT: Okay.

14 MR. CLARK: If --

15 THE COURT: So I haven't seen that.

16 MR. CLARK: If I may approach, I could provide it.

17 THE COURT: I'll look at it for -- I'm not --

18 MR. CLARK: It's the --

19 THE COURT: -- to save the suspense I'm not going to
20 rule from the bench today.

21 MR. CLARK: Well that's where the document's found,
22 Your Honor.

23 THE COURT: Okay.

24 MR. CLARK: And there's no dispute that the
25 document --

1 THE COURT: What time was that document delivered?
2 Does it say?

3 MR. CLARK: What time was --

4 THE COURT: Was that delivered pre- or post-petition,
5 do you know?

6 MR. CLARK: The document was executed post-petition.

7 THE COURT: Okay.

8 MR. CLARK: What happened, as a chronological matter,
9 Your Honor, is that Mr. Bettman was on his way to a meeting
10 here in Phoenix with Mr. Moyes on the 5th. It had been
11 scheduled some days in advance, at which Mr. Bettman was going
12 to speak with Mr. Moyes about an expression of interest in the
13 club that the NHL had received from Mr. Reinsdorf.

14 And as I understand it as they were in the car,
15 heading over to meet with Mr. Moyes, they received a phone call
16 I believe from Mr. Scudder, Mr. Moyes' attorney telling him for
17 the first time -- telling Mr. Bettman that there had been a
18 bankruptcy filed. And at some point thereafter, I believe
19 Mr. Bettman learned that in connection with the bankruptcy
20 filing there was also this proposed transaction and 363 sale
21 involving Mr. Balsillie.

22 But upon learning, as I understand it, upon
23 immediately learning about the bankruptcy filing which had been
24 authorized by the Commissioner's office, the Commissioner
25 executed the action by the Commissioner removing Mr. Moyes from

1 any and all positions in connection with the club and
2 appointing Mr. Daly, Mr. William Daly as the responsible
3 officer of the debtors at that point.

4 So as of that point in time there's no dispute
5 whatsoever that the Commissioner took action to remove Mr.
6 Moyes from authority and to put a League official into that
7 position.

8 THE COURT: The only question is whether that was
9 legally effective or not.

10 MR. CLARK: Exactly. The only issue there is
11 violation of the automatic stay. And we've cited to Your Honor
12 the cases that indicate, Marvel Entertainment, and others that
13 indicate that the exercise, the corporate governance rights are
14 not suspended during Chapter 11. Now the only --

15 THE COURT: Well --

16 MR. CLARK: -- response to that is that the League --
17 is that if a creditor somehow is able to exercise corporate
18 governance rights, during a bankruptcy proceeding in order to
19 gain leverage --

20 THE COURT: Well let me stop you. I don't think we
21 need to get into that issue, because I think it's pretty
22 tangential to today's matters.

23 MR. CLARK: Well only if -- well, if it's tangential,
24 Your Honor, then I don't need to get into it. But my only
25 point was that the case law is very clear that those who have

1 the power to vote the equity of an entity in bankruptcy -- and
2 in this case it's clearly the Commissioner.

3 THE COURT: Well, don't those cases say that routine
4 corporate proceedings, shareholder meetings, director meetings
5 can go forward; that's not a stay violation, right?

6 MR. CLARK: The exercise of corporate governance
7 rights to control the entity is not a violation of --

8 THE COURT: I don't think you cited --

9 MR. CLARK: -- the stay.

10 THE COURT: -- any case that says the creditor is
11 owed some 30-plus million dollars and holds proxies, can remove
12 management, right?

13 MR. CLARK: And that's not what happened here, Your
14 Honor.

15 THE COURT: Well what --

16 MR. CLARK: What happened here is that the League,
17 which held the proxy that predated any creditor status
18 whatsoever, exercised its rights -- the Commissioner exercised
19 his rights the proxy to protect the interest of the League, to
20 protect the interest of all 30 franchises, and to protect the
21 interests of thousands and thousands of stakeholders in all of
22 those enterprises.

23 THE COURT: So the League wasn't owed \$34 million at
24 that point, and it's waiving its claim?

25 MR. CLARK: The League was owed, as a loan, I believe

1 something in the neighborhood of \$13 million and then there
2 were advances on the revenue sharing that added up to, I think
3 at a current -- on a current basis to the number Your Honor's
4 talking about; it's something in that ballpark, yes.

5 THE COURT: The League's asserting that claim, right?

6 MR. CLARK: That is correct.

7 THE COURT: Okay. So there was a creditor for \$34
8 million when the Commissioner took the actions on May 5th;
9 that's all I'm saying.

10 MR. CLARK: That's as a -- yes, Your Honor. That is
11 correct.

12 THE COURT: Do you have --

13 MR. CLARK: That isn't the basis --

14 THE COURT: -- a copy of the November 2008 letter of
15 loan agreement handy?

16 MR. CLARK: I'm sorry, Your Honor?

17 THE COURT: Do you have a copy of the November 2008
18 letter loan agreement?

19 MR. CLARK: I may. If we do, Your Honor, I don't
20 have it right at my fingertips at the moment --

21 THE COURT: All right.

22 MR. CLARK: -- but I can get it.

23 THE COURT: Well maybe you won't need it, but we'll
24 see. Who signed the November 21st letter loan agreement on
25 behalf of the Moyes entities?

1 MR. CLARK: I'm not aware, Your Honor.

2 THE COURT: If I told you it was Mr. Shumway and
3 Mr. and Mrs. Moyes, would that surprise you?

4 MR. CLARK: Would not surprise me.

5 THE COURT: All right. What was --

6 MR. CLARK: I don't think --

7 THE COURT: -- their authority to sign that agreement
8 on that day?

9 MR. CLARK: The authority would have been the
10 authority that the Commissioner allowed them to have at that
11 point.

12 THE COURT: And is that anywhere in the record before
13 the Court?

14 MR. CLARK: That the Commissioner gave permission to
15 Mr. Moyes and Mr. Shumway to sign a document at that point?

16 THE COURT: Yeah.

17 MR. CLARK: I don't believe so, but we can put it in
18 the report if Your Honor would like to see it. As I say, if
19 the Court determines that it needs to decide issues of disputed
20 fact --

21 THE COURT: Well there's no fact about the dispute
22 about loan, is there?

23 MR. CLARK: About the fact that the loan was made?

24 THE COURT: Right.

25 MR. CLARK: No.

1 THE COURT: And that the agreement was signed?

2 MR. CLARK: Correct.

3 THE COURT: And it was signed, I believe, by
4 Mr. Zimmerman on behalf of the National Hockey League.

5 MR. CLARK: Yes.

6 THE COURT: And signed by Misters Shumway, Moyes and
7 Mrs. Moyes on behalf of the Moyes entities.

8 MR. CLARK: I don't know that for a fact, but if Your
9 Honor has the document in front of you then I certainly can't
10 dispute it.

11 THE COURT: Well, and --

12 MR. CLARK: I don't.

13 THE COURT: -- that's what it appears to say.
14 Obviously I wasn't there, so I don't know. I thought maybe you
15 would.

16 Now you know there's statements in there that seem
17 somewhat inconsistent with the League's position. And the
18 Moyes Group in there represents warrants and covenants to the
19 League that they have the full power and authority to execute
20 and deliver the agreement and make it valid and binding
21 obligation.

22 MR. CLARK: If the League allowed them to do so, they
23 had that authority. And the League clearly allowed them to do
24 so --

25 THE COURT: Well --

1 MR. CLARK: -- because they were also on the docket.

2 THE COURT: But in all the papers I've read, I don't
3 see anything on that point.

4 MR. CLARK: The document itself, Your Honor, which
5 shows that the League signed it and these other individuals
6 signed it, I think tells you exactly that.

7 THE COURT: Well if you were in control, would you
8 need the consent of the Moyes Group to review the books and
9 records of the Moyes Group?

10 MR. CLARK: If you were in control of --

11 THE COURT: The Commissioner's in control --

12 MR. CLARK: -- the debtors, would you need -- no.

13 THE COURT: You know --

14 MR. CLARK: Would you need it?

15 THE COURT: -- that's in the letter agreement?

16 MR. CLARK: That what? That they allowed --

17 THE COURT: That the Moyes Group agrees that the
18 Commissioner and the NHL on reasonable notice can inspect the
19 premises, books and records of the Moyes Group entities.

20 MR. CLARK: Okay.

21 THE COURT: Okay. Doesn't sound like somebody who's
22 in complete control, does it?

23 MR. CLARK: Your Honor, it does it you look at the
24 proxy. As of November the 14th, it says they are.

25 THE COURT: Well this is signed after the proxy. Why

1 would the NHL need that kind of consent if they were in
2 complete control?

3 MR. CLARK: I don't think they did need that kind of
4 consent.

5 THE COURT: Well --

6 MR. CLARK: The fact that the thing was documented
7 that way Your Honor, is not inconsistent with the League having
8 the proxy and the proxy giving them the right to control the
9 operations of the debtors. There are officers in that place.
10 The League did not exercise, as we indicated, the League did
11 not exercise its authority to remove the officers on day one.
12 They allowed the officers to remain in place and they allowed
13 Mr. Moyes to remain in place so as not to have a public
14 embarrassment for him, and frankly so as not to hurt the team
15 during this period in which the League and the team were trying
16 to figure out what to do.

17 THE COURT: That sounds like they weren't exercising
18 all their power and control then.

19 MR. CLARK: They were not exercising all the power
20 and control. That's different from they didn't have it, Your
21 Honor. They did have all the power, all the power to control
22 the operations of the debtors as of the proxy -- well actually
23 as of the triggering events under the consent agreement. But
24 they didn't elect to exercise those powers immediately, as I
25 indicated.

1 THE COURT: You know there's a provision also in
2 those letter loan agreements that says it's not in conflict
3 with any other document.

4 MR. CLARK: I don't think there is anything that was
5 in conflict with any other document, Your Honor.

6 THE COURT: Well --

7 MR. CLARK: The League, the Commissioner --

8 THE COURT: -- I mean --

9 MR. CLARK: -- had the power --

10 THE COURT: -- here are the people who you told me
11 ten minutes ago were out, they had not power, authority --

12 MR. CLARK: Now if you're --

13 THE COURT: -- they're now signing first a \$10
14 million loan document from the League, and then I think either
15 a five -- another \$10 million loan document with the League
16 that says that they have the full power and authority, that
17 it's valid and binding and it's not in conflict with any other
18 document.

19 MR. CLARK: Your Honor, pursuant to the power granted
20 to the Commissioner under the proxy, the first time he
21 exercised that proxy to take action with respect to the
22 personnel, the officers of the club, was in January when he
23 directed that Mr. Shumway be requested to resign his position,
24 which he did do.

25 THE COURT: And that's a disputed fact, right? The

1 original doc --

2 MR. CLARK: There is a disputed fact as to whether or
3 not the Commissioner had anything to do with it. That's right.

4 THE COURT: Okay.

5 MR. CLARK: We say he did, they say he didn't.

6 THE COURT: Well that's --

7 MR. CLARK: Mr. Shumway says --

8 THE COURT: -- one of those many things and with all
9 the declarations where there's significant --

10 MR. CLARK: That's correct.

11 THE COURT: -- disparity.

12 MR. CLARK: And then on May the 5th, there is no
13 disputed fact about that.

14 THE COURT: Right.

15 MR. CLARK: There was an execution of an action by
16 the Commissioner that removed Mr. Moyes and put Mr. Daly in
17 position of authority for these debtors.

18 THE COURT: Is the proxy a property interest?

19 MR. CLARK: Is it a property interest? It's an
20 interesting property, I supposed.

21 THE COURT: Okay.

22 MR. CLARK: The point that someone is making for me,
23 Your Honor, with respect to the loan document that the Court
24 was referring to earlier is that obviously the club and the
25 debtor entities, as artificial entities couldn't execute the

1 document themselves. They have to act through human beings.
2 And the human beings who were in the position of acting for the
3 entities at that point with the consent and approval of the
4 Commissioner who had the power to determine who those people
5 would be, were Mr. Moyes --

6 THE COURT: Well --

7 MR. CLARK: -- Mr. Shumway --

8 THE COURT: -- it --

9 MR. CLARK: -- and the others who signed.

10 THE COURT: And again as I sit here right now, I've
11 seen nothing from the League that says Mr. Bettman as the
12 Commissioner granted that power and authority to the Moyes
13 Group.

14 MR. CLARK: Your Honor, the fact that he didn't
15 remove them from office meant they continued in office. That
16 doesn't obviate the fact that he had the power to --

17 THE COURT: That sounds like they've got some power
18 and control then.

19 MR. CLARK: Then did --

20 THE COURT: Well --

21 MR. CLARK: At that point.

22 THE COURT: Remember when we started --

23 MR. CLARK: They did not have --

24 THE COURT: -- I asked you on November 14th, the
25 League says they took over and had all the control.

1 MR. CLARK: They had the power to control the
2 business and affairs of the debtors, Your Honor.

3 THE COURT: And that the Moyes Group relinquished all
4 rights and control.

5 MR. CLARK: The power to control, Your Honor. It's
6 not the same thing. You have the right to elect someone into
7 office but until you do so the person who holds that office
8 continues to have the power to do whatever that office entails.

9 A disputed fact here, is that Mr. Bettman told
10 Mr. Moyes that while he was allowed to retain the title
11 associated with the debtors he was not to exercise any power to
12 do the sorts of things that he has now done, including put
13 these debtors into bankruptcy without the direction and consent
14 of the Commissioner, which he did not obtain.

15 THE COURT: Is that --

16 MR. CLARK: Now that's a disputed fact.

17 THE COURT: Is that in the Bettman declaration? I'm
18 trying to remember where that is.

19 MR. CLARK: I don't believe it is. I don't know
20 actually. It may well be in the Bettman declaration. I'm not
21 recalling off the top of my head. But that's is the League's
22 position, Your Honor. Mr. --

23 THE COURT: Oh, I understand --

24 MR. CLARK: -- Bettman --

25 THE COURT: -- the League's position.

1 MR. CLARK: And we can put the facts in if Your Honor
2 would like to hear them. We can put a witness on the stand --

3 THE COURT: Well --

4 MR. CLARK: -- who will tell you what I just said.

5 THE COURT: Well and of course, I suspect the other
6 side will put a witness on the stand who is going to dispute
7 that, right?

8 MR. CLARK: And Your Honor will have to determine
9 who's telling the truth and who is not.

10 THE COURT: Well let me ask you, what's the legal
11 standard to be applied today to your motion? It is akin to a
12 summary judgment standard, or what is it?

13 MR. CLARK: With respect to the power -- with respect
14 to the proxies and the authority under the proxies, yeah. You
15 can apply a summary judgment standard. The document on its
16 face, as we said is clear and ambiguous (sic), it's a grant of
17 power to the Commissioner as the proxy holder of all right and
18 interest in the debtors that the Moyes Group previously had
19 held.

20 And there is not dispute that the document is
21 authentic and that it says what it says. And there is no
22 dispute that at least as of May the 5th, the Commissioner
23 exercised the property -- the power under that proxy to change
24 the management of the debtors.

25 THE COURT: Post-petition?

1 MR. CLARK: That's correct. That is correct. And
2 having done so the case law says that those exercise -- that
3 exercise of corporate governance is not affected by and is not
4 stayed by § 363 of the Bankruptcy Code.

5 THE COURT: Let me shift the focus a little bit.

6 MR. CLARK: Yes, Your Honor.

7 THE COURT: I think nobody disputes, but I guess I'll
8 ask you. The League believes these entities are insolvent,
9 right?

10 MR. CLARK: Yes.

11 THE COURT: And when an entity becomes insolvent then
12 those in control have a duty -- their primary duty is to the
13 creditors and to act in their best interests, right?

14 MR. CLARK: Creditors, equity holders, all
15 stakeholders. But certainly --

16 THE COURT: Well actually I think the --

17 MR. CLARK: -- the creditors are part of it.

18 THE COURT: -- law's a little different. Now maybe
19 you and I'll part at this one, but I thought the law was that
20 when a corporation, we'll make it easy, becomes insolvent, that
21 the board and the management's duty then lie solely to the
22 creditors and not to the equity. And so if there's a diversion
23 of what's in the best interests, you do what's best for the
24 creditors.

25 MR. CLARK: I think what the law is, Your Honor, is

1 that the fiduciary duties of the board under those
2 circumstances, in insolvency, expand to include a duty to the
3 creditors. But there is, continues to be a fiduciary duty owed
4 to the equity holders as well. But as between the two --

5 THE COURT: Well, let's put --

6 MR. CLARK: -- clearly the creditors --

7 THE COURT: -- the -- we can agree that --

8 MR. CLARK: -- get paid first.

9 THE COURT: -- there's a duty to the creditors,
10 right?

11 MR. CLARK: Right.

12 THE COURT: Okay.

13 MR. CLARK: Yes.

14 THE COURT: Is the League going to fulfill that duty?

15 MR. CLARK: Yes. And it is, Your Honor.

16 THE COURT: Well let me kind of ask half a question,
17 half a statement then you could respond. You know, I was
18 looking when I read through all this about notwithstanding all
19 the things everybody disagrees on, I think everybody agrees on
20 kind of some basic points.

21 These entities are in serious financial trouble,
22 whether they're in or out of bankruptcy. And something's got
23 to happen fairly soon.

24 MR. CLARK: That's correct.

25 THE COURT: Or it's going to get real ugly, right?

1 MR. CLARK: That's correct.

2 THE COURT: I was hoping to see something from the
3 NHL about, Judge here's what we intend to do going forward.
4 And I didn't see any. Now maybe I've missed something, but I
5 looked.

6 MR. CLARK: Your Honor, we did append to our papers,
7 a proposed set of bid procedures to try and have an auction for
8 this club.

9 THE COURT: Okay. I agree with that. But here's all
10 I know and tell me if I'm missing anything. The case was filed
11 May 5th. The first hearings were May 7th, and fairly quickly you
12 stood up and said the League will lend the debtors some money
13 so they can keep the doors open going forward.

14 MR. CLARK: Yes.

15 THE COURT: And as far as I know that's all I know
16 about what the NHL plan is other than they've got some
17 proposals about how to conduct an auction; is that fair?

18 MR. CLARK: They've also indicated that there was an
19 expression of interest by Mr. Reinsdorf that has been explored
20 and that they intend to explore further. They'd love to see
21 expressions from others who would like to buy this team, as is
22 where is.

23 THE COURT: Let me maybe jump down the road a little
24 bit. If I understand it correctly, the battle about the
25 auction, forgetting about relocation for the moment, in terms

1 of scheduling it's really whether or not it'd be in mid to late
2 June or mid to late July, right?

3 MR. CLARK: Your Honor, I'm not sure we can divorce
4 that issue from relocation.

5 THE COURT: Well it's such a hot-button issue. Let's
6 just leave it alone for the moment. The League says there
7 ought to an auction and it ought to be in July, right?

8 MR. CLARK: The League says there should be a sale of
9 the company -- of the team and it should happen expeditiously.
10 I also says that late June is probably too quick and that there
11 should be an additional period of time to solicit interest and
12 get people in to make application for a change of ownership for
13 the club pursuant to the League's rules.

14 And they're like to see that done sooner rather than
15 later, Your Honor. There's no desire to delay that process if
16 we can get a bona fide buyer to buy this club and to operate
17 this club, according to the League's rules, where it is today.
18 We'd love to see that happen and see that happen sooner rather
19 than later.

20 And it is a different question, it is a different
21 question, Your Honor, than the hot-button issue of relocation.
22 And I think the League's position is pretty clear that that the
23 change of ownership procedures can happen much more quickly
24 than a change of location could happen.

25 THE COURT: Let me pursue that thought just a little

1 further with you. In terms of an auction, there's kind of the
2 question of did the auction -- you do the auction and then you
3 go to the League and say please sign off on the high bidder, or
4 do you have all the bidders go to the League, have they say
5 well we'll sign off on all of them, or these words?

6 MR. CLARK: As a logistical matter, Your Honor, what
7 would have to happen is that they would have to submit an
8 application. And application would have to be submitted to the
9 League, in accordance with the constitution and bylaws for a
10 change of ownership that includes the information that the
11 League requires in any case, where somebody proposes to buy --

12 THE COURT: So --

13 MR. CLARK: -- an NHL team.

14 THE COURT: So I think, and I'll acknowledge I've
15 done what I said I didn't want to do and kind of jumped to some
16 of the auction issues. The League's view is conduct the
17 auction, figure out who wins and then it goes to the League and
18 says approve me, let me in?

19 MR. CLARK: No, I don't think so, Your Honor. I
20 think the League's position I that in the context of the
21 auction, as part of the auction procedures, anybody who
22 proposes to buy the team, should submit the information
23 required under the League's rules for a change of ownership.

24 THE COURT: Can --

25 MR. CLARK: So that the League can then -- the board

1 of governors can then assess the competing bidders, if you
2 will, and their qualifications to buy the team. It wouldn't
3 be --

4 THE COURT: Where's the auction --

5 MR. CLARK: If I understand what --

6 THE COURT: Where's the auction finalized?

7 MR. CLARK: Where?

8 THE COURT: Yeah.

9 MR. CLARK: If it's a 363 auction, Your Honor, right
10 here.

11 THE COURT: Okay. So what you're telling me is that
12 the -- if you convince me to hole an auction in late July, that
13 sometime prior to that the League will say we consent to the
14 bidders -- I'm just making up numbers, but one, seven and
15 eight. The rest of them we don't consent to?

16 MR. CLARK: That would be a happy circumstance if we
17 had three bidders that the League could present to Your Honor
18 for -- as having been approved for a change of ownership. And
19 then it just comes down to, you know, bidder seven, eight and
20 nine, who has the higher number -- the highest number there.

21 THE COURT: All right. Let me stop, because I was
22 going to try and do these procedurally as they're filed. I'll
23 share with you I have read carefully everything you've filed in
24 support of your motion. I've read the declarations, the
25 exhibits, the declarations. I have read some but not all of

1 the cases everybody has cited. And I think some are very
2 pertinent when we get so some of the other motion to suppress.

3 But so we try to get everything accomplished today.
4 Is there anything you want to say on the control motion?

5 MR. CLARK: With respect to the authority, Your
6 Honor, I'll just go back to something I already said and
7 reiterate that if the Court finds that there are issues of fact
8 that you need to determine, that aren't disputed in the context
9 of that motion, then what we need to do is we need to have an
10 evidentiary hearing to put those facts before the Court and
11 have Your Honor decide what the true facts are underlying the
12 motion.

13 And I think things like whether or not the League,
14 for example, was acting as a creditor, as opposed to as the
15 League with it's fiduciary obligations to the entirety of the
16 League, when Mr. Bettman removed Mr. Moyes from office, I think
17 those are the kinds of things that you need to look witnesses
18 in the eye, hear their testimony and make a determination
19 about.

20 I don't think you have to get there, if the Court
21 agrees with me that the document, the proxy is clear on its
22 face as to who has the power. But if you determine that you
23 need to get there, Your Honor, then I respectfully submit that
24 you need to hear from people like Mr. Bettman and Mr. Moyes
25 directly.

1 THE COURT: All right.

2 MR. CLARK: Thank you, Your Honor.

3 MR. SALERNO: May I proceed, Your Honor?

4 THE COURT: You may.

5 MR. SALERNO: Your Honor, you know the NHL and these
6 debtors couldn't agree on what day it is, but interestingly
7 they both seem to agree that this proxy notwithstanding the
8 declarations and counter-declarations that the Court has seen
9 does in fact control.

10 And it has always been interesting to me when I've
11 read the NHL's pleadings in this regard that they like to --
12 they like to stop a sentence before it actually stops in the
13 document.

14 THE COURT: Well, the key sentence almost never
15 stops.

16 MR. SALERNO: And I didn't draft that, Your Honor.
17 So I think I've got that going for me.

18 Your Honor, basic premise here is that an LLC
19 operates under its operating agreement and applicable law. I
20 don't think there's any dispute there. Applicable law is
21 Delaware law here because these particular LLCs are Delaware
22 LLCs. Your Honor, attached is Exhibit 4 to the statement of
23 position, is the operating agreement for Coyotes Hockey. And
24 it's just kind of important, I think that we take a look at
25 that, if we may.

1 Your Honor, the operating agreement for Coyotes
2 Hockey, article six defines very specifically the duties of the
3 managing member. And it's pretty clear.

4 "Except as otherwise expressly provided
5 for in this agreement, the managing member
6 shall have full, exclusive and complete
7 control to manage and control the business
8 and affairs of the company and all rights
9 and powers provided to the managing member
10 by the act."

11 They're referring to the Delaware Limited Liability
12 Act.

13 "Without limiting the foregoing and in addition
14 to all of the right provided by in this
15 agreement to the managing member. The
16 managing member shall have the full power
17 and authority, but not the obligation at
18 any time, from time to time, to take the
19 following actions on behalf of the company,"
20 and here's the important stuff:

21 "without the consent of any of the other
22 members on such terms and conditions as the
23 managing member shall deem appropriate unless
24 expressly provided for to the contrary in § 6.3.

25 THE COURT: Did you highlight that in two different

1 colors?

2 MR. SALERNO: I'm sorry, Your Honor?

3 THE COURT: Did you highlight that in two different
4 colors?

5 MR. SALERNO: I did. And I did not stay within the
6 lines. I admit that.

7 THE COURT: Why two different colors?

8 MR. SALERNO: Well I wanted to really have this wow
9 you, have it really kind of --

10 (Laughter)

11 MR. SALERNO: Your Honor, § 6.1.3 under 6.1 is the
12 managing --

13 THE COURT: Well let me ask you --

14 MR. SALERNO: -- of the --

15 THE COURT: -- this question.

16 MR. SALERNO: I'm sorry, Your Honor?

17 THE COURT: Let me ask you this question.

18 MR. SALERNO: Sure.

19 THE COURT: The proxy says that -- all the proxies
20 say that they're appointing the Commissioner as the true and
21 lawful attorney in proxy and among other things, "all rights as
22 managing member."

23 MR. SALERNO: Well and I want -- I do want to get to
24 that because I also have a nice blowup of the proxies
25 themselves.

1 THE COURT: Well why don't you go get it and put it
2 up there?

3 MR. SALERNO: Relevance, Your Honor. The two things
4 that the managing member can do here, sell property, dissolve
5 and liquidate the company. The limitations in § 6.3 are
6 intentionally omitted, that's exactly what's in the document.
7 So there were no limitations. So that's the operating
8 agreement that's had a starting point.

9 THE COURT: Okay.

10 MR. SALERNO: So then we move on, Your Honor. The
11 managing member of Coyotes Hockey is Coyote Holdings, LLC, but
12 again you need to have someone flesh and blood to actually do
13 this and the sole managing member of holdings, putting this
14 proxy issue aside is the flesh and blood person of Jerry Moyes.

15 THE COURT: So what's your view on the effect of the
16 proxies as of November 15th?

17 MR. SALERNO: Your Honor, I'm glad you asked that
18 question.

19 THE COURT: Thank you.

20 MR. SALERNO: I colored these as well. The proxy is
21 really a three-page document, but there's two other pages, but
22 they're signature pages.

23 THE COURT: I got it right here in front of it.

24 MR. SALERNO: The operative provisions are on page 1,
25 2 and 3. Let's see if we've spaced these around.

1 MR. ASHWORTH: But that's the same color.

2 MR. SALERNO: I'll put this up here. Every time the
3 NHL reads this proxy or quotes from this proxy they keep asking
4 the Court to stop reading at a particular point.

5 The NHL wants you to stop reading the grant of proxy
6 here right after "club." They want you to say the undersigned
7 hereby irrevocably appoints with immediate affect --

8 THE COURT: Right.

9 MR. SALERNO: -- the Commissioner of the NHL as its
10 true and lawful attorney and proxy, with respect to all of the
11 undersigned interest in the club, including without limitation
12 the 91.70 percent ownership interest and all rights as a
13 managing member of the club, period, full stop.

14 THE COURT: Well that isn't --

15 MR. SALERNO: That's what they say.

16 THE COURT: That isn't what it says.

17 MR. SALERNO: But that of course is not what this
18 document says. Because the document goes on, Your Honor and it
19 goes on -- this is just some --

20 THE COURT: Actually it goes --

21 MR. SALERNO: -- definitions --

22 THE COURT: It goes on --

23 MR. SALERNO: And on --

24 THE COURT: -- and on --

25 MR. SALERNO: -- and on.

1 THE COURT: -- and on.

2 MR. SALERNO: But Your Honor, what it does is it says
3 with all powers, with full power or substitution and then it
4 says, to do what? To vote or express consent or dissent in the
5 sole discretion of the proxy with respect to all of the
6 Coyote's interest to the extent they are entitled to vote or
7 express consent or dissent whether by operation of law or
8 otherwise. In each case for any and all purposes and upon any
9 and all subjects, matters and issues, collectively the voting
10 rights.

11 And Your Honor, you know how lawyers love defined
12 terms, and I'm certainly no exception. When you define a term,
13 it's a important term. The NHL tells you that when you read
14 that there's only one possible conclusion you can draw, which
15 is everything below "club" is really just kind of surplusage,
16 you don't really need to get to it because right after you put
17 that period after club, where they want you to do --

18 THE COURT: Well, but they didn't put a period after
19 club.

20 MR. SALERNO: I'm sorry, Your Honor?

21 THE COURT: They did not put a period after club.

22 MR. SALERNO: I can actually show you, Your Honor,
23 but in their initial response they did.

24 THE COURT: Well --

25 MR. SALERNO: But that having been said, Your

1 Honor --

2 THE COURT: -- I mean in the proxy.

3 MR. SALERNO: Oh, no. In the proxy, they certainly
4 did not. And by the way, Your Honor, they drafted this proxy.

5 THE COURT: I'm shocked to hear that.

6 MR. SALERNO: I am too.

7 (Laughter)

8 MR. SALERNO: They wanted to tell you, Your Honor,
9 that that proxy created important control of managing members'
10 rights to manage and work all of the -- they make all the
11 decisions for this LLC and there's five reasons Your Honor,
12 where that is simply not the case.

13 Reason number one, when you read this proxy as a
14 whole, it is abundantly clear that this proxy was concerned
15 with voting rights and not managing rights. And Your Honor,
16 Delaware law which again is the controlling law says that you
17 cannot read a contract so as to render some of its terms
18 surplusage.

19 So let's look at it --

20 THE COURT: Let me ask you this question about that
21 point. I mean the first paragraph, it talks about "to provide
22 for the continued management, operation, ownership and
23 financing of."

24 MR. SALERNO: Uh-huh. It does.

25 THE COURT: Yeah.

1 MR. SALERNO: And Your Honor, in order to do that, to
2 continue that management, the club needed money. This is
3 given, they were making advances against money that would
4 otherwise not -- we would not have had an opportunity to get
5 until later on. And so that's clearly what it says.

6 Your Honor, if you stop after "club," the rest of
7 that paragraph is meaningless. And then you look at what is
8 this document called? It's called a proxy. A proxy's one of
9 those odd words, but I actually went and looked it up, in
10 Black's Law Dictionary.

11 THE COURT: What definition did you find?

12 MR. SALERNO: And the proxy is defined, Your Honor --
13 I'm looking at the deluxe eighth edition, not just the standard
14 eighth edition. On page 1263, a proxy is:

15 "One who is authorized to act as a
16 substitute for another; especially in
17 corporate law, a person who is authorized
18 to vote another's stock shares."

19 It's a voting issue. It's a voting issue.

20 THE COURT: Well, even the definition you read starts
21 out by implying that it's more expansive than just voting,
22 because I kind of took a look at that on my own.

23 MR. SALERNO: I'm sorry, Your Honor, I --

24 THE COURT: Well, the definition you read started out
25 by saying something that basically allows you to act for

1 another, especially in relation to.

2 MR. SALERNO: It says in the --

3 THE COURT: It didn't say --

4 MR. SALERNO: -- corporate context.

5 THE COURT: -- solely in relation to.

6 MR. SALERNO: It says in the corporate context. Your
7 Honor, where else does this document seem to focus on voting
8 rights? Well, if you look at page 2, fourth paragraph, again,
9 I highlighted it, talking again:

10 "The voting consent or dissent rights
11 granted by this irrevocable proxy may be
12 exercised by the proxy at any time and from
13 time-to-time at any meeting or in writing,
14 or in any other forum or form permitted by
15 law."

16 Voting rights again, consent, dissent. We'll talk about that
17 in a moment, because those are words of art under Delaware law.

18 And then if you look at the third page, Your Honor,
19 which is what the Court already pointed to --

20 THE COURT: Right.

21 MR. SALERNO: -- in that first full paragraph that
22 talks about the undersigned, being the Moyes entities and
23 Mr. Moyes and his wife Vicky, not having the right to exercise
24 the voting rights. So stipulated, that is exactly what the
25 proxy is for.

1 THE COURT: Well, you heard my question earlier about
2 that point.

3 MR. SALERNO: Yes.

4 THE COURT: Yeah.

5 MR. SALERNO: Reason number two that this could not
6 be as the NHL wants it to be, Your Honor, is that there is a
7 legal distinction under Delaware law between vote or express
8 consent and management control. And again, Delaware controls,
9 and this is briefed in our briefs, Your Honor.

10 Delaware Supreme Court recognized that vote is a term
11 of art under Delaware law, the Matulich case, which is page 9
12 of our reply. And vote is given a narrow construction, narrow
13 --

14 THE COURT: I read that --

15 MR. SALERNO: -- definition.

16 THE COURT: -- that case.

17 MR. SALERNO: The NHL has very good counsel. I don't
18 think there's any doubt about that. What is very interesting
19 to me is what is not in this document. This document does not
20 attempt or purport to modify the operating agreement with
21 respect to voting rights. Doesn't do that. It doesn't say
22 there's written appointments anywhere here of managing members.
23 It's not an assignment of managing member right, it's a voting.

24 Number three reason, Your Honor, is that the NHL's
25 actions since November of 2008 do not support its current

1 exercise and revisionist history. While we have a lot of he
2 said/she said declarations here, Your Honor, we do know that
3 between November of 2008 and May 5th of 2009 the NHL both
4 publicly and in its dealings with the Coyotes did not take an
5 action as if they owned this debtor.

6 THE COURT: Well, let me say this, because you all
7 seem to love to throw newspaper articles and other media
8 statements in your materials. I know the media has a lot of
9 interest in this case. With no respect to them, that's not
10 particularly persuasive evidence, at least for this judge.

11 MR. SALERNO: That's fair, Your Honor.

12 THE COURT: Okay.

13 MR. SALERNO: At the same time --

14 THE COURT: Let me ask you a couple questions.

15 MR. SALERNO: Okay.

16 THE COURT: Same question I asked opposing counsel.
17 Legal standard here basically the summary judgment standard?

18 MR. SALERNO: Your Honor, I think it would be in the
19 sense that both sides are taking the position it's an
20 unambiguous document. There are other facts, but I think it
21 would be, yes.

22 THE COURT: Okay.

23 MR. SALERNO: And to the extent that this Court
24 needed to take testimony, Your Honor, that's fine. One of the
25 things we cannot allow to happen in this case is to lose the

1 \$212 million offer while the NHL drags its -- drags this out.
2 So what we would certainly suggest is a dual track.

3 THE COURT: Hold that thought for just a second. Let
4 me ask you a question. The NHL says the proxy is unambiguous
5 and clear. You agree with that or not?

6 MR. SALERNO: Yes, we believe it is unambiguous.

7 THE COURT: Okay. Let's go back to your comment
8 about you don't want to lose your proposed sale under your
9 asset purchase agreement; right?

10 MR. SALERNO: Yes.

11 THE COURT: You both sound like you want to have some
12 kind of an auction proceeding to sell these assets; right?

13 MR. SALERNO: Correct.

14 THE COURT: And again, leaving aside the relocation
15 issue, which is a big hot button issue, you're really within
16 about 30 days of each other about when the sale ought to occur,
17 I think, aren't you?

18 MR. SALERNO: Well, two things, Your Honor. Number
19 one, we are about 30 days apart. I recognize that. That
20 having been said, that 30 days is critical vis-à-vis the
21 existing offer. But number two, the NHL has never told you
22 what they intend to do if in fact this Court rules that they
23 are in control.

24 For example, they said they did issue these sale
25 procedure orders. But you need to look at the pleading because

1 this pleading says if they so elect to proceed, this is what
2 they would do. So they've not done that, but we are about 30
3 days apart, Your Honor.

4 THE COURT: Okay. And I think everybody recognizes
5 that the -- what I call the relocation issue would have to be
6 resolved well in advance of any auction.

7 MR. SALERNO: I think that is a very hot issue, as
8 the Court had pointed out, the hot button. And there's a
9 reason why it's a hot button. And the NHL is not even --

10 THE COURT: I think everybody agrees. I don't
11 know --

12 MR. SALERNO: Yeah.

13 THE COURT: -- we need to argue about it.

14 MR. SALERNO: But there's -- we know the reason, Your
15 Honor. It's not just that it's a hot button. The reason is
16 self-interest. Exhibit A to the Bettman declaration that was
17 filed literally yesterday.

18 THE COURT: Right.

19 MR. SALERNO: Harry Bettman, who is the NHL
20 commissioner --

21 THE COURT: Thank you.

22 MR. SALERNO: I just learned it myself, Your Honor,
23 so it's important for me. Talks about the reason why the NHL
24 does not want this team to move to Southern Ontario is because
25 it is a "League opportunity." Which really means, Your Honor,

1 that even if the PSE offer or any other offer that seems to
2 move there maximizes value, the NHL wants to keep that market
3 for itself.

4 THE COURT: Well --

5 MR. SALERNO: As a result of that, Your Honor, they
6 are conflict.

7 THE COURT: Well, you know, there's some Ninth
8 Circuit law that supports generally the NHL view on that
9 position. I believe that's the L.A. Coliseum Los Angeles
10 Raiders case.

11 MR. SALERNO: That's true, Your Honor. And there's
12 also antitrust law that says to the extent that the point of
13 keeping people out of markets is anti-competitive, that that is
14 in fact violation of the antitrust laws.

15 THE COURT: Well, I'll leave that one alone for the
16 moment.

17 MR. SALERNO: Your Honor, reason number four that
18 this doesn't work is that the NHL's delegation theory doesn't
19 hold water here. Faced with the language here, they said they
20 wanted to avoid the public embarrassment of Mr. Moyes. That's
21 very nice. And that they said that they ruled with a light
22 touch. I can feel their light touch with their boot on my neck
23 as we speak, Your Honor. And they ruled --

24 THE COURT: I --

25 MR. SALERNO: -- with such a --

1 THE COURT: I think that --

2 MR. SALERNO: -- light touch --

3 THE COURT: -- was until sometime on May 5th they
4 meant.

5 MR. SALERNO: That's true, Your Honor. They ruled
6 with such a light touch that apparently the only people that
7 thought they were in charge was the NHL. There are no written
8 delegations, as the Court was asking. Where are the written
9 delegations here? The issue was until we tell you you can't do
10 it anymore you can continue to do it, but we're continuing to
11 be in control.

12 The NHL is undeniably a creditor. And with respect
13 to its May 5th pronouncement that Mr. Moyes is gone, that is
14 clearly post-petition. They've conceded that issue. And the
15 issue clearly becomes, Your Honor, an automatic stay issue.
16 This is -- this was given --

17 THE COURT: But that somewhat begs the question,
18 because in a simple sense, either prior to the filing the NHL
19 had the authority they claim they do or they didn't. And if
20 they didn't, then the filings are valid. And if they did have
21 the authority, then the debtors didn't and I probably ought to
22 grant the League's motion. And what happened on or after
23 May 5th at that point may become somewhat irrelevant.

24 MR. SALERNO: It may be, Your Honor. But to the
25 extent that they had the authority but had not exercised it,

1 and it is being given as part of a proxy for creditor control,
2 which is what this is, that is a stay issue, Your Honor. It is
3 a stay issue.

4 THE COURT: Well, it may be, but I don't think
5 there's a motion before me about stay violation right now. And
6 I'm -- you all love to do this to me. I'm really trying to
7 deal with the motions before me, not the motions you're going
8 to file --

9 MR. SALERNO: Understand, Your Honor.

10 THE COURT: -- someday in the future. Let me ask --
11 and I probably should have asked opposing question the same
12 question, but, you know, it seems like all of you are spending
13 an awful lot of time and effort on an issue that I know is near
14 and dear to your hearts, but I'm not sure in the big scheme of
15 things it really matters that much. You know, if there's going
16 to be a sale sometime between now and the end of July,
17 whoever's running the team between now and then is somewhat
18 irrelevant, I think.

19 MR. SALERNO: I guess, Your Honor, it would depend
20 upon, if you look again at the NHL sales procedures, their
21 procedures are they're the only ones that see offers. The
22 debtor is not even on that list.

23 THE COURT: Well, let me -- you know, if you're going
24 to have a public auction in the courtroom, seems to me the
25 bidders are going to be pretty well known.

1 MR. SALERNO: Assuming that bids -- I guess you're
2 right, Your Honor, assuming that bids in fact surface. But to
3 the extent that there's back door dealings, those bids might
4 not surface.

5 THE COURT: Well, they may not. And obviously if
6 you're going to go down that path you're going to have to
7 answer the relocation issue sufficiently in advance of the
8 auction so that everybody knows whether that's on the table or
9 not; right?

10 MR. SALERNO: I agree with that, Your Honor. And I
11 also think that you're right, that the parties agree that some
12 disposition of this team needs to happen, and needs to happen
13 quickly.

14 THE COURT: Well, you know, I know there's some hard
15 feelings between the parties, but it sure seems like all of you
16 would be far better off spending your time and effort on
17 getting this thing sold to somebody than having a trial about
18 who said what to whom on what day about the \$34 million loan,
19 or somebody to be fired or not, or whether Mr. Scudder could or
20 couldn't talk to -- and I'm not sure how to pronounce the
21 principal, the buyer's name. Is it Balsill (sic)? How do you
22 pronounce the name of the buyer?

23 MR. SALERNO: I believe it's Balsillie, but I could
24 be wrong.

25 MR. CLARK: Balsillie, Your Honor.

1 THE COURT: Thank you.

2 MR. SALERNO: Balsillie.

3 THE COURT: Wouldn't everybody be far better off
4 doing that than fighting this battle?

5 MR. SALERNO: Your Honor, I'd agree that in the
6 normal course of events you'd say boy, everyone has the same
7 agenda here. Let's get the most we can get for this asset and
8 move on. The problem is, Your Honor, and this is -- I
9 recognize the Court doesn't like these newspaper or these media
10 reports.

11 THE COURT: Well, yeah. You know, I mean that's
12 going to -- in a case like this, there's nothing you can do
13 about it. That's part -- that's the way the world is. Whether
14 I like it or not, it doesn't matter.

15 MR. SALERNO: But, Your Honor, at the end of the day,
16 if the NHL has made up its mind that it is not going to approve
17 or countenance a sale that involves the moving of this team
18 from here, you have automatically -- you have automatically
19 reduced value. Because the one thing I think the parties can
20 also agree on is that at the end of the day this team does not
21 make money in this market. It just doesn't.

22 THE COURT: Well, it certainly hasn't historically.

23 MR. SALERNO: I'm sorry, Your Honor?

24 THE COURT: It certainly hasn't historically.

25 MR. SALERNO: No, it's not since it moved here in

1 1996. Your Honor, the NHL here is like -- it's like a dog
2 chasing a car. And the question is what do they do when they
3 get it. And --

4 THE COURT: Well, you heard me ask the question of --
5 is it Melmoe (sic)? Is that how you pronounce it?

6 MR. CLARK: I'm sorry, Your Honor.

7 THE COURT: How do you pronounce your last name,
8 Melmoe?

9 MR. CLARK: Oh, Mr. Milmoe.

10 THE COURT: Oh.

11 MR. MILMOE: I'm Mr. Milmoe, Your Honor.

12 THE COURT: Okay.

13 MR. CLARK: I'm Mr. Clark.

14 THE COURT: Oh, I'm sorry. Thank you.

15 MR. CLARK: That's okay. I'd rather be Mr. Milmoe.

16 THE COURT: I'll leave that between the two of you.

17 MR. SALERNO: And I'm sorry, was there a question
18 pending, Your Honor?

19 THE COURT: No. Go ahead.

20 MR. SALERNO: Your Honor, we don't know what they're
21 going to do if they in fact are in control. They are fighting
22 our attempts to see the Reinsdorf offer. We just want to see
23 it. We'll keep it confidential. It does lead us to believe,
24 Your Honor, that their agenda here is not to maximize value for
25 creditors, it's to protect some other interest that the NHL

1 has, which is extremely problematic for creditors in this case,
2 for --

3 THE COURT: Well, but --

4 MR. SALERNO: -- all creditors.

5 THE COURT: -- but I mean either you're right of
6 you're wrong. Either you can sell it free of the relocation
7 restriction or you can't.

8 MR. SALERNO: Correct.

9 THE COURT: And that's probably got to be decided, I
10 think, sometime in the next 30 days or so; right?

11 MR. SALERNO: Your Honor, we would think that it
12 would be decided ultimately as part of the sale, the actual
13 sale hearing. Because, Your Honor --

14 THE COURT: Well, let me stop and ask you something
15 about that.

16 MR. SALERNO: Sure.

17 THE COURT: You know, if you don't decide that in
18 advance of the sale hearing, seems to me that's going to have a
19 huge impact on who might come and bid at that hearing. I mean
20 if it's the sale of the Coyotes in Glendale at that location,
21 that's one possibility. If it's the sale of the hockey
22 franchise to be relocated anywhere, that's another possibility.

23 MR. SALERNO: No doubt. Your Honor, bankruptcy
24 courts are faced with this sort of problem -- not this complex.
25 I concede that it's --

1 THE COURT: Thank you.

2 MR. SALERNO: -- complex. But, Your Honor, let's
3 take a look at the whole point of having 363(f) in the
4 bankruptcy code, which is if there is a bona fide dispute, the
5 Court -- for example, Your Honor, if we took the simplest, it's
6 a lien.

7 THE COURT: Well --

8 MR. SALERNO: I think that lien's a --

9 THE COURT: Okay. You --

10 MR. SALERNO: -- fraudulent conveyance.

11 THE COURT: You brought it up, let me ask you about
12 it. Now as I understand it, the Coyotes and the Moyes group
13 have never taken this offer to the League and said approve it
14 or reject it; right?

15 MR. SALERNO: No, Your Honor, we've not. We've not
16 done that. Mr. Balsillie has stated in the response that he
17 filed that this week he's going to submit all of his
18 applications.

19 THE COURT: Well --

20 MR. SALERNO: Mr. Balsillie was one time approved for
21 the Pittsburgh Penguins.

22 THE COURT: Right, but I mean as of May 19th it
23 hasn't happened. I -- did you file that antitrust lawsuit the
24 same day you filed the bankruptcy?

25 MR. SALERNO: Yes, Your Honor. The -- it wouldn't be

1 the Coyotes that would file that pleading.

2 THE COURT: Okay.

3 MR. SALERNO: It would be the prospective new owner.

4 THE COURT: See, it seems to me to have a bona fide
5 dispute you have to kind of, to some extent, get turned down.

6 MR. SALERNO: Well, Your Honor, the antitrust --

7 THE COURT: In fact, I think some of the antitrust
8 cases say that, don't they?

9 MR. SALERNO: No, Your Honor. Actually the antitrust
10 laws say you do not need to have an actual violation of
11 antitrust laws, that there can be injunctive relief --

12 THE COURT: Well --

13 MR. SALERNO: -- for example.

14 THE COURT: -- now that --

15 MR. SALERNO: And, Your Honor, if we're going to get
16 into the specifics of --

17 THE COURT: That wasn't my question now.

18 MR. SALERNO: Okay.

19 THE COURT: I believe the Sullivan First Circuit
20 decision said you couldn't pursue the claim about rejection
21 because you never said to the NFL hey, approve it; right?

22 MR. SALERNO: That's fine, Your Honor.

23 THE COURT: And then in the L.A. Coliseum case, the
24 Raiders and the Coliseum won because the NFL voted to prohibit
25 them from relocating.

1 MR. SALERNO: Your Honor, to the extent that the
2 Court has issues with that or questions, I -- all I wanted to
3 ask the Court to do was to deal with my partner, Barry Pupkin.
4 This is his area of expertise, it is not mine.

5 THE COURT: Good duck. Since I only have --

6 MR. SALERNO: It's what I'm best at.

7 THE COURT: Since I only have you at the moment, and
8 I think your name --

9 MR. SALERNO: He's on the phone actually. He's made
10 an appearance in this case.

11 THE COURT: Well, but, you know, I got you --

12 MR. PUPKIN: I'm on the phone.

13 THE COURT: Good, thank you.

14 MR. PUPKIN: I think that the -- I think what Tom was
15 trying to say is that Section 16 of the Clayton Act is pretty
16 clear. And it says that parties can sue for injunctive relief
17 against threatened, and I quote, "Threatened loss or damage by
18 violation of the antitrust laws."

19 And in fact what happened in the L.A. Coliseum case
20 was also the Court rejected the argument that, on the NFL's
21 part, because it was at odds with Section 16 that permits
22 plaintiff to sue for a threatened loss of damage.

23 THE COURT: Well, but let me ask you this. In that
24 case, didn't the Coliseum through, and Raiders, submit to the
25 NFL for a vote, request of the Raiders to move, and the League

1 voted it down?

2 MR. PUPKIN: The League voted it down, but the --

3 THE COURT: And in the Sullivan case in the First
4 Circuit they wouldn't let Sullivan pursue a claim because he
5 hadn't submitted his request to the League to make a decision
6 on it.

7 So, Mr. Salerno, since this is really a bankruptcy
8 issue, but good effort to duck, it's a question of a bona fide
9 dispute. If you don't ask them, you may have a dispute. I'm
10 just --

11 MR. SALERNO: And that's fair enough, Your Honor.

12 THE COURT: As I sit here right now, I have some
13 hesitation about --

14 MR. SALERNO: Sure.

15 THE COURT: -- whether it's a bona fide dispute.

16 MR. SALERNO: That's fair enough, Your Honor. As I
17 said, Mr. Balsillie has already stated that this week he's
18 going to get the process started with the NHL. My real
19 concern, Your Honor, is that the NHL is going to, what I call
20 pocket veto it. Oh, I'll look at it and we'll get back to you
21 in, you know, 60 days give or take, and then come back with
22 something. As a result of that the offer's now gone.

23 So, Your Honor, if the NHL can commit to giving
24 expedited consideration to Mr. Balsillie's application or
25 anyone else's application for that sense --

1 THE COURT: Well, it -- I think in part this is the
2 relocation issue. And I think -- I'm going to tell all of you,
3 I think sooner probably than later you all are going to present
4 that to the Court and I'm going to have to make a decision on
5 it. And as I think about it, at least in terms of the sale,
6 that ought to be done far enough in advance of the sale so that
7 everybody knows what the ruling is.

8 MR. SALERNO: I think you're right.

9 THE COURT: I suppose it's naïve of me to even
10 express this thought, but it seems like the parties and the
11 Court are spending an awful lot of time on an issue that I know
12 is near and dear to the parties' heart, but I don't know that
13 it matters that much to the creditors. The only way they're
14 going to get paid is if there's a sale.

15 MR. SALERNO: Your Honor, the reason why there's a
16 very practical ramification here of this particular issue is
17 that parties also aren't sure who to negotiate with, who to
18 deal with. The NHL has taken the position I'm in charge,
19 Mr. Moyes is the managing member. There is a serious issue
20 here about --

21 THE COURT: Well, if --

22 MR. SALERNO: -- about who to negotiate with.

23 THE COURT: If there's going to be an auction, does
24 it matter?

25 MR. SALERNO: Well, Your Honor, it absolutely does.

1 This is not like taking a '58 Chevy and saying what am I bid
2 for it. This is a very complex transaction. And I think the
3 parties are in agreement on that, this would be a complex
4 transaction. So it's not someone coming in and saying oh, I'll
5 up that bid by a hundred bucks. It's not quite like that, Your
6 Honor. So I think it's going to require a little more
7 negotiation, significantly more negotiation.

8 THE COURT: Well, I think it's going to require
9 negotiation, but -- you know, maybe I'm wrong, but it seems
10 like you all could put together a pretty good due diligence
11 book that would assist anybody who wanted to take a look at it.

12 MR. SALERNO: Oh, absolutely, Your Honor. Due
13 diligence is not the issue. Due diligence isn't the issue at
14 all.

15 THE COURT: All right. Anything else on the proxy?

16 MR. SALERNO: No, Your Honor.

17 THE COURT: All right. Mr. Clark, last word.

18 MR. CLARK: Mr. Baldiga would like to say something
19 for --

20 THE COURT: Alright.

21 MR. CLARK: -- the City of Glendale, I believe, Your
22 Honor.

23 MR. BALDIGA: Is that --

24 THE COURT: Briefly.

25 MR. BALDIGA: Thank you, Your Honor. Because we have

1 morphed into the sale process issue and I'd like to address, I
2 think a question the Court answered, (sic) that wasn't quite
3 answered. I'd also like to take issue with one conclusion or
4 assumption that was made.

5 And that was does the League intend to fulfill its
6 fiduciary obligation to creditors here. I think that was an
7 important question. We're a creditor. We may be, certainly if
8 the debtors have their way, by far the largest creditor,
9 outweighing all the interests of others in terms of just sheer
10 size. And I think, Your Honor, that ties into the question as
11 well which you asked of Mr. Clark. I think he gave you the
12 wrong answer.

13 You asked him whether these estates were insolvent.
14 Our answer is it depends. It depends on whether the debtors
15 are permitted to proceed with their program, in which these
16 cases are hopelessly insolvent, or whether these cases take a
17 more normal, orderly process, in which we think, Your Honor,
18 there's a chance that these cases are solvent. And I think
19 that's -- you asked there's no creditors' committee formed yet.
20 One will be shortly formed. But I think it's very important
21 that the Court hear from creditors as to where they think we
22 are and why this is critical, and why --

23 THE COURT: Is --

24 MR. BALDIGA: -- the question you're --

25 THE COURT: Is the City considering being on the

1 creditors' committee?

2 MR. BALDIGA: Yes, we are, Your Honor. And it
3 wouldn't be actually the City, Your Honor. It's a corporation.

4 THE COURT: Okay. Whoever holds the claim.

5 MR. BALDIGA: Well, it holds the title to the arena,
6 yes, Your Honor.

7 THE COURT: All right.

8 MR. BALDIGA: And is the party to the use agreement.

9 Your Honor, let me address this here, because I think
10 it's very important. The debtors, if they carry through with
11 their threat, would have this Court approve a rejection of the
12 use agreement, which would give rise to a monstrously large
13 claim. And I think I have to thank Mr. Salerno, if I could
14 approach one of his exhibits and not defile it.

15 One of the reasons we asked why the schedules be
16 filed quickly, the debtors offer of 212, you subtract 22 and a
17 half for the amounts that go to Wayne Gretzky and you come to
18 190.

19 THE COURT: Well, let me make it easy. Let's not
20 mistake something in the math. \$212 million, as large as that
21 amount is, would not pay the creditors in full.

22 MR. BALDIGA: Probably not. You then have 100 rough
23 notes --

24 THE COURT: Well, let me stop you. What are you
25 getting to?

1 MR. BALDIGA: That down here you get 90 -- this is
2 the debtor's program. You have \$90 million that would be
3 generated. There's maybe 5 million of what I would call
4 miscellaneous creditors, we think, possibly based on the 20
5 largest. The City would have a claim of something in the
6 magnitude of 500. Mr. Moyes has, I think --

7 THE COURT: The debtors are hopelessly insolvent.

8 MR. BALDIGA: Right. Mr. Moyes would assert a claim
9 -- it may be a claim, it may be equity, that hundred million
10 under all of the cases. So something in the range of half a
11 billion dollars insolvent.

12 All right. If, on the other hand, we have a process
13 where the relocation rights are respected in this case, both
14 the NHL's rights and the City's rights, press reports are \$130
15 million --

16 THE COURT: Well, you heard what I said earlier. You
17 know, I -- I'm not going to make decisions in a court of law,
18 particularly in this case, based on press reports.

19 MR. BALDIGA: Well, we can pick any number. The
20 issue resolves itself. A hundred million for secured
21 creditors, something in the magnitude of 30 million. The City,
22 Your Honor, instead of having a \$500 million claim, has a very
23 small part, if any at all. There's maybe \$5 million to third
24 party creditors and 25 goes -- frankly, it goes to Mr. Moyes
25 whether it's equity or it's a claim because there's no one

1 left.

2 So the point, Your Honor, is there's a drastic choice
3 that we all -- boy, I didn't realize standing up close that was
4 easy to see. And we'll submit that later, but --

5 THE COURT: I got it.

6 MR. BALDIGA: The case will proceed now down an
7 orderly path or a path which will lead to chaos. Who has been
8 acting in the best interest --

9 THE COURT: Well, I hate it when you use that word
10 because I hate to think of one of my cases being chaos.

11 MR. BALDIGA: Well, so far we've seen a little bit of
12 a caged bear contest, full of fury. We don't think the case
13 has to proceed that way.

14 The City, understandably, has been dealing with this
15 team for a long time, about issues that are very pressing and
16 need to be resolved, and need to be resolved in this court in
17 all likelihood. The NHL has been acting as a fiduciary in
18 those discussions. We had -- we've had conversations on a
19 regular basis with Mr. Moyes, with Mr. Bettman. If there's one
20 of the two who has been acting to try to evaluate the best
21 interest of creditors, it's clearly been the NHL, who has tried
22 to bring order to the process and to bring buyers to the table
23 who would not generate hundreds of millions of dollars of
24 claims because they're in violation of stay clauses and other
25 relocation covenants.

1 THE COURT: But these all really go to the sale
2 issue, not the control issue.

3 MR. BALDIGA: Well, you asked the question about
4 fiduciary interest of creditors in the context of the authority
5 issue. And we wanted to answer your question directly, as the
6 largest counterparty to this team and in -- if the debtor has
7 its way, to the -- as the largest creditor of the estates,
8 which this Court is trying to see fit to deal within a fair
9 basis. And we would answer that if anybody has been acting in
10 a fiduciary capacity, Your Honor, it's been the NHL.

11 Secondly, we do agree completely that on -- as to the
12 sale process, one of two types of buyers are going to come to
13 this process, but not both. If people are interested in having
14 a team in Toronto, then they'll come if there's a team
15 available for Toronto. If this team is going to be --

16 THE COURT: Well, let me ask you this question. If
17 the debtor and Ms. Freeman's client win the relocation issue
18 it's not limited to Hamilton, Ontario then. I wouldn't --

19 MR. BALDIGA: No, it's --

20 THE COURT: That's the stocking horse bid, but that
21 doesn't mean somebody in L.A. or New York or wherever couldn't
22 come in and say judge, I'll pay more but I'm taking it to
23 wherever.

24 MR. BALDIGA: Well, I think that's right, Your Honor.

25 THE COURT: I know you don't like to think about

1 that.

2 MR. BALDIGA: There's a -- well, there's an NHL
3 relocation set of issues, but there's also a City of Glendale
4 set of relocation issues. Frankly, those are independent
5 obligations of this debtor. Either one may be enough to keep
6 the team exactly where it is. The NHL has a governance policy
7 and process and procedures which are elaborate and which they
8 have some experience in handling in a way that's been respected
9 by authorities. The City of Glendale's rights are very much
10 more specific and straightforward.

11 And we filed, Your Honor, an adversary proceeding
12 this morning --

13 THE COURT: I saw that.

14 MR. BALDIGA: -- to specifically enforce those
15 rights. And we think that, again --

16 THE COURT: But that all goes to the relocation
17 issue.

18 MR. BALDIGA: Yes, Your Honor.

19 THE COURT: I mean in a simple sense, either they can
20 or they can't.

21 MR. BALDIGA: That's right.

22 THE COURT: Okay.

23 MR. BALDIGA: But then that goes to the sale process,
24 where there are a lot of buyers who think they can pay a fair
25 price and keep the team in Glendale and make money in this

1 community.

2 THE COURT: Let me ask you this way, as the attorney
3 for the City. Am I missing anything when I say the real fight
4 ought to be -- you ought to answer the relocation issue and
5 then you ought to have a sale. And there ought to be enough
6 space between point 1 and point 2 so that anybody who wants to
7 bid, depending on how issue number 1 is resolved, can.

8 MR. BALDIGA: We think that's exactly right.

9 THE COURT: Okay.

10 MR. BALDIGA: I'll stop there. Thank you.

11 THE COURT: All right.

12 MS. FREEMAN: Good afternoon, Your Honor. Susan
13 Freeman for PSE Sports & Entertainment, the stocking horse
14 bidder. I just had a couple of short points I wanted to make.

15 THE COURT: I wanted to thank you for citing that
16 Chicago Bull 65-page antitrust opinion.

17 MS. FREEMAN: It was delightful read, wasn't it?

18 Two things. Number one, it matters because we did
19 enter into a contract, the asset purchase agreement, with the
20 party that we thought was in control. Certainly had apparent
21 authority. Number two, when you give a proxy, when you give a
22 power of attorney, that does not mean that the individual who's
23 giving it loses all rights. I have my parents' power of
24 attorney. I can sign a check for them and deposit it, but they
25 can still sign contracts, buy groceries, do everything.

1 They --

2 THE COURT: Do they want to bid on the Coyotes?

3 MS. FREEMAN: You know, I wish they had that money
4 and could leave it to me, but they don't. But that's my point,
5 they -- you know how to exercise these rights. The League knew
6 how to exercise the rights. It did so, it just did so after
7 the bankruptcy at the point in time that it was stayed. And
8 under the bankruptcy code, it doesn't matter whether or not it
9 was a creditor, 362(a)(3), any act to obtain possession or
10 property of the estate, exercise control applicable to all
11 entities, not just to creditors.

12 And then the second point is that I really don't
13 think that the NHL is the one that's looking out for the
14 interest of creditors. And I would point to the memorandum
15 that it filed at page 3 --

16 THE COURT: I'll say this.

17 MS. FREEMAN: -- where it says it's not.

18 THE COURT: They're wearing a lot of hats in this
19 case.

20 MS. FREEMAN: Uh-huh. I -- my interest is to get
21 this sale to my client, which we believe is the highest and
22 best, and is in fact going to be the one that succeeds.
23 Frankly, find it extremely unlikely anybody's going to come in
24 and pay \$130 million to keep it here, but if they do, you can
25 decide is this better, is ours better. We'll see.

1 THE COURT: But am I missing anything in your view
2 about relocation and auction? You've got to really answer that
3 question before you can conduct an auction.

4 MS. FREEMAN: Yes, I believe we need to answer that
5 question. As I understand it, it really -- it's not just
6 relocation per se and whether you can or cannot. It makes a
7 difference if you are going to relocate it to L.A. or relocate
8 it to Hamilton. So each individual application would need to
9 say I want to relocate it here and --

10 THE COURT: Well, obviously --

11 MS. FREEMAN: -- you can interpret it.

12 THE COURT: -- a bidder would have to say I want to
13 buy it, I want to pay this price, and if I'm successful, Judge,
14 I'm going to move it to, and fill in the location.

15 MS. FREEMAN: Correct.

16 THE COURT: What I'm getting at is if you and the
17 debtor are successful in that issue, that's one kind of an
18 auction with potentially one group of bidders that might be
19 there. If you lose that issue and it's to sell the Coyotes at
20 Glendale, subject to the lease with the City of Glendale, my
21 assumption is it's a different group of bidders that might show
22 up.

23 MS. FREEMAN: Going to pay a whole lot less, yes.

24 THE COURT: But --

25 MS. FREEMAN: Lease is 40 million a year, yes.

1 THE COURT: --- disagree with that?

2 MS. FREEMAN: On the other hand, I think that Your
3 Honor could determine, as a whole, to try and move this forward
4 quickly, which needs to be done so that decisions are made as
5 to who owns it before the draft goes through. You could say
6 all right, I'm going to consider this application to keep it in
7 Glendale and pay, you know, \$30 million or whatever it is for
8 it, with a huge subsidy from the City of Glendale that it has
9 to get past its taxpayers, or this one from PSE, that wants to
10 move it to Hamilton. And if Mr. Reinsdorf wants to submit an
11 application to move it somewhere else, you know, then you would
12 have that. And Your Honor can rule on those.

13 And I know you have in multiple bankruptcy cases,
14 where you have apples and oranges, and you compare them and you
15 figure out which is really the highest and best interest.

16 THE COURT: But my sense is -- in all the materials
17 I've read that you all filed I didn't see much on this point.
18 In terms of the ultimate sale, I think you attract a very
19 different probable group of bidders if it's a sale with
20 relocation rights versus if it's a sale in place. That's why I
21 say I think that issue ought to be answered well in advance of
22 any auction, so you can attract the best group of bidders you
23 can as opposed to having any uncertainty about that issue.

24 MS. FREEMAN: I have absolutely no doubt that this
25 franchise is worth much more in Hamilton, Ontario than it is

1 worth here.

2 THE COURT: The question is is that power available
3 or not.

4 MS. FREEMAN: Uh-huh.

5 THE COURT: Okay.

6 MR. CLARK: Your Honor, to the extent the Court would
7 permit it, I would like to introduce -- well, reintroduce my
8 partner, Mr. Milmoe, who is our transactional person, to
9 address some of the proxy issues. In your comments -- and
10 these things -- the authority and the bid procedures are kind
11 of bleeding together, but Your Honor had had a dialogue with
12 Mr. Salerno and his partner on the telephone with respect to
13 some antitrust issues. And my partner, Mr. Shep Goldfein, is
14 also here, who has forgotten more about antitrust law than I
15 ever knew. He is our antitrust person. And I'd like him to
16 address those issues for Your Honor.

17 THE COURT: Let me ask you to hold that for just a
18 moment. Let me ask you a blunt question, tangentially related
19 to the control issue. Why shouldn't I order the League and the
20 Moyes group to go mediate and figure out how to run these
21 entities for the next 60 or 90 days, and let's sell it.
22 Because I have some sense that this battle about who gets to
23 have control of the steering wheel on the ship is a lot less
24 important to those who have a financial interest in this case
25 than how you get the best deal under whatever the law is for

1 these assets.

2 MR. CLARK: Well, Your Honor asked a blunt question
3 so I'll give you a blunt answer. I don't know, but it doesn't
4 sound like such a bad idea to me. I haven't had a chance to
5 talk to the League obviously because you just put the question
6 to me, but the notion of the League and Mr. Moyes sitting down
7 with a neutral and talking about some of these issues strikes
8 me as being perfectly sensible under the circumstances. I do
9 though, Your Honor, think that you've hit the nail right on the
10 head --

11 THE COURT: I get one --

12 MR. CLARK: -- with respect to --

13 THE COURT: -- every once in a while.

14 MR. CLARK: Well, I do too once in a while. With
15 respect to the relocation issue. That's clearly the horse
16 that's got to come before the heart -- the cart of the sale.
17 So with that, Your Honor, I'd like to cede the podium to
18 Mr. Milmoe.

19 MR. MILMOE: Thank you, Your Honor. I was actually -
20 - it's Greg Milmoe from Skadden Arps for the record.

21 For the record, I am neither the litigator nor the
22 golfer that Mr. Clark is, but I did pay attention --

23 THE COURT: I guess you're a litigator now, aren't
24 you?

25 MR. MILMOE: Well, Your Honor, I'm going to try to

1 answer the question that you've been posing all afternoon,
2 which is why are we spending so much time fighting over who's
3 in charge and shouldn't we all just get on with an orderly
4 sale. I can at least tell you why the League feels so very,
5 very strongly about it.

6 Your Honor, we don't have to be here in bankruptcy
7 court. We didn't have to be here. The whole reason for the
8 proxies -- and I will not reopen the spirited debate on how to
9 read it, but the whole basis for the proxies is that when a
10 club gets into financial trouble that the League is prepared to
11 step in, including with financial support, to keep things
12 running.

13 And you have been barraged with papers that explain
14 how the League is interrelated and teams can't just play with
15 each other, they have to play with different teams. And you
16 have probably also seen a lot and heard from the City on how
17 important the different relationships are that a team will form
18 in a particular location with the taxing authorities, with the
19 various municipal authorities, with the incredible effort that
20 goes into building a fan base. And all of those things are
21 important to the League, and that's why the League wants to
22 assume control and fund the thing --

23 THE COURT: Well --

24 MR. MILMOE: -- until it gets there. That was the
25 case in November, Your Honor.

1 THE COURT: You know, I looked through the 600 plus
2 pages.

3 MR. MILMOE: Yes, sir.

4 THE COURT: And the only thing I've seen from the
5 League about funding is the statement on May 7th that --

6 MR. MILMOE: Well --

7 THE COURT: -- I think was they're going to advance
8 \$2 million to the debtor so they can operate on an interim
9 basis. And I looked very carefully at that, because one of the
10 things that troubles me about all this is what happens to these
11 entities -- no matter what happens with the ruling on this one,
12 who's going to keep them alive long enough for somebody to buy
13 them? And I have not heard the League say, in the affidavits
14 from Mr. Bettman, Mr. Daly or anybody else, Judge, we're going
15 to do it. We'll keep them alive and we'll get them sold.

16 MR. MILMOE: Well, Your Honor, that's just what we
17 were doing in November.

18 THE COURT: All right.

19 MR. MILMOE: And the damage that has been done to
20 this team by the precipitous filing of bankruptcy when there
21 was no immediate need other than to further this particular
22 proposed stocking horse bid we believe is incalculable, and it
23 continues. We are not able -- the reports that are coming into
24 the League, as they continue to do, are showing the day-to-day
25 damage.

1 Now we -- I think the reason that you sense the
2 outrage of the League, which maybe doesn't count for anything,
3 is that we were providing the funding to be able to do this in
4 an orderly fashion. There was no emergency. There were no
5 bills that weren't being paid. It's come to our attention that
6 things have been stretched in various places, but nonetheless,
7 on a day-to-day basis that was being taken care of. We did
8 believe, we do believe that the proxy that --

9 THE COURT: Let me ask you this question. Your legal
10 background is in what, transactions?

11 MR. MILMOE: I beg your pardon, sir?

12 THE COURT: Your legal background is where?

13 MR. MILMOE: Well, I'm a corporate lawyer by early
14 training, but I'm the co-head of our restructuring department.

15 THE COURT: Okay.

16 MR. MILMOE: The firm no longer checks its
17 malpractice policy automatically when I go to court.

18 THE COURT: Well, so you ought to know the clean
19 answer to this. Insolvent entities, the people in control as a
20 matter of law owe their duty to whom at that point?

21 MR. MILMOE: I believe the case my partner was
22 paraphrasing was Pepper v. Litton, the entire community of
23 interests. It certainly expands to include creditors, but to
24 the extent that there are any equity interests we still owe
25 duties there as well.

1 THE COURT: And the League has a lot of hats on here,
2 don't they?

3 MR. MILMOE: The League, I beg your pardon, sir?

4 THE COURT: Has a lot of hats on.

5 MR. MILMOE: Has a lot.

6 MR. MILMOE: They're owed \$34 million in a first
7 position by these debtor entities; correct?

8 MR. MILMOE: Well, no, sir. The advances that were
9 described were paid back. It was like an advance on the
10 allowance back end of August and was paid back to --

11 THE COURT: Well, but what's --

12 MR. MILMOE: -- a significant --

13 THE COURT: What's the total debt owed to the League
14 in round numbers right now?

15 MR. MILMOE: I believe it's about 13 or \$14 million,
16 Your Honor.

17 THE COURT: Okay. Well, I think somebody said 34
18 million, but okay.

19 MR. MILMOE: That would in --

20 THE COURT: But the League's a secured creditor in
21 first position; right?

22 MR. MILMOE: Yes, sir, that's correct.

23 THE COURT: And the commissioner and the League have
24 duties to the other members of the League independent of any
25 debt relationship with the Coyotes; right?

1 MR. MILMOE: Yes, sir, that's also correct.

2 THE COURT: And then if the League succeeds, they
3 would be in control of the Coyotes?

4 MR. MILMOE: Yes, that's correct.

5 THE COURT: So as I see it, they've got three hats on
6 in this situation.

7 MR. MILMOE: Yes, sir. And --

8 THE COURT: So I say they got a lot of hats on here.

9 MR. MILMOE: Well, yes, Your Honor, except the, as
10 has been mentioned, the League does have an interest in trying
11 to maximize the value within the bounds of what we believe the
12 company has to sell.

13 THE COURT: Well, didn't the League and the proxies
14 -- nobody said much about this -- get a release from these
15 debtors for anything the League does?

16 MR. MILMOE: Yes, sir.

17 THE COURT: So I guess that would be kind of a fourth
18 hat, wouldn't it?

19 MR. MILMOE: Well, sir, as you pointed out, that
20 would amount to our releasing ourselves.

21 THE COURT: Well, you know, there's others out there
22 who might have claims if somebody acted in breach of the duties
23 they owed to creditors.

24 MR. MILMOE: Your Honor, can't discount that
25 possibility. Mr. Moyes is probably the largest creditor in

1 this case, albeit I don't believe secured.

2 THE COURT: All right. Anything else?

3 MR. MILMOE: No, only other than noting as I was
4 listening to the dialogue on the proxy and whether we could end
5 the sentence at one place rather another. Counsel mentioned
6 the comment that to read a particular clause out of the proxy
7 would render the rest of the proxy not to have any meaning.
8 And I think to read the proxy as is being suggested by opposing
9 counsel here would simply render it a nullity.

10 If the managing member is the only entity that can
11 take action with respect to the club, which we do not dispute,
12 and the only way that the managing member under the proxy can
13 take action is by voting, and there is no vote required, whole
14 thing seems kind of silly. And, Your Honor, we have been
15 accused of being a sophisticated international commercial law
16 firm and we would respectfully suggest --

17 THE COURT: Fair, isn't it?

18 MR. MILMOE: I beg your pardon?

19 THE COURT: That's a fair statement, isn't it?

20 MR. MILMOE: We've been called worse. Thank you very
21 much, Your Honor.

22 THE COURT: Thank you.

23 MR. GOLDFEIN: Good afternoon, Your Honor. My name
24 is Shep Goldfein, and I would like to address a couple of the
25 relocation issues. In particular, Your Honor --

1 THE COURT: Who do you represent?

2 MR. GOLDFEIN: I represent the National Hockey
3 League. And I'm an antitrust lawyer by training, and I
4 actually have to plead guilty to having been involved in the
5 Raiders litigation personally, the Sullivan litigation
6 personally, the CDC litigation, St. Louis Convention Center
7 litigation personally, and some of the other litigations that
8 we've cited in our papers regarding the nature of the law in
9 the area of relocation.

10 Your Honor asked the question, do you have to resolve
11 relocation issue first. And I have to make the initial
12 threshold point to Your Honor that Mr. Balsillie does not own a
13 club. Mr. Davis owned a club when he made the relocation
14 application. Mr. Balsillie has no property right to seek a
15 relocation. You must be an owner first.

16 THE COURT: Well, I mean the debtors --

17 MR. GOLDFEIN: The debtors --

18 THE COURT: -- have some rights here.

19 MR. GOLDFEIN: -- have a right, yes, they do. But --
20 and if the debtors wish to make an application to relocate the
21 club, there's nothing in the League rules that would prohibit
22 them from doing that.

23 THE COURT: Well, you heard me say that to
24 Mr. Salerno.

25 MR. GOLDFEIN: I'm sorry?

1 THE COURT: You heard me say that to Mr. Salerno.

2 MR. GOLDFEIN: Yes, I did. And the point here is
3 that Your Honor, a -- an owner, a prospective owner --
4 purchase, excuse me, of the club can purchase this club based
5 upon his qualities to become an owner in the National Hockey
6 League. He can make a decision at some subsequent point in
7 time about whether to make an application to relocate that
8 club. There is no need -- Your Honor asked do you have to
9 reach this decision up front. You don't need to reach the
10 decision up front, and that's where I want to lead Your Honor
11 to the court and the case law.

12 Mr. Moyes had only the right to sell a club located
13 in Arizona. He --

14 THE COURT: Well, I think I'm going to stop you,
15 because although we've discussed a little bit, I'm not going to
16 argue that issue today. It's not before me.

17 MR. GOLDFEIN: I understand, Your Honor. And I just
18 want to make for the record though the point that the Ninth
19 Circuit law could not be more clear under Raiders II and under
20 the Clippers case, the L.A. Clippers case, SDC, that the
21 franchise opportunity belongs to the League. The opportunity
22 to sell a team, the current -- in its current location is
23 subject to League rule and consent. And we briefed those
24 issues and I understand you don't really want to reach those
25 issues today.

1 But I am constrained to point out that not only is it
2 the case that it is as a matter of law, particularly in the
3 Ninth Circuit, that on their face, when a League has relocation
4 rules contrary to what Mr. Pupkin said to you over the phone,
5 when a League has rules that can have objective factors in
6 them, the Raiders II opinion said they may well be illegal
7 under the antitrust laws, "in all cases." And in SDC, the
8 Ninth Circuit went on to reverse summary judgment granted by
9 the district court --

10 THE COURT: I've read the case, but I really think
11 we're now --

12 MR. GOLDFEIN: All right.

13 THE COURT: -- on an issue that I don't have to
14 decide today.

15 MR. GOLDFEIN: And what's important here is there's a
16 proper procedure. The reason that the League is -- needs to
17 have someone in charge of the club here --

18 THE COURT: Okay. Well, now, you know, you're
19 arguing Mr. Clark's motion for him. So I --

20 MR. GOLDFEIN: No, no, I don't --

21 THE COURT: I think I'm going to stop you, because,
22 you know, I heard briefly from Mr. Salerno's co-counsel.
23 You're the, I think the third lawyer --

24 MR. GOLDFEIN: I understand.

25 THE COURT: -- for the League. And --

1 MR. GOLDFEIN: And I appreciate Your --

2 THE COURT: -- you know, normally I have a one lawyer
3 per client rule.

4 MR. GOLDFEIN: I know that, Your Honor, and I
5 appreciate your patience. I really wanted just simply to point
6 out one final point, if I might.

7 The club is dying. It's dying because of what we
8 believe is a effort hatched by Mr. Moyes and Mr. Balsillie to
9 utilize the processes of this Court to basically sidestep the
10 League's proper rules. When Your Honor asked the question why
11 is this important, it's because of the nature of a sports
12 League. The club is worth nothing.

13 THE COURT: Well, you've got the -- what, the NFL,
14 the NBA, and the Commissioner --

15 MR. GOLDFEIN: Yes.

16 THE COURT: -- of Major League Baseball to join in
17 with you. So I understand that this issue's important to --

18 MR. GOLDFEIN: Well, but it's --

19 THE COURT: -- some folks. I'm not deciding it
20 today.

21 MR. GOLDFEIN: No, I understand that. But what I
22 think Your Honor -- when you asked the question about why is it
23 important to decide who's in charge of the club, I, from an
24 antitrust perspective and from a management perspective, from
25 the League's constitutional rules and makeup, I just want to

1 call to the Court's attention the club is worth nothing without
2 its membership in the League. It's the League that grants
3 franchises. It is the League that gives value to this effort.
4 It is the League's scheduling, it's the League's development of
5 the product jointly among all the clubs. No one would pay --

6 THE COURT: All in Mr. Daly's declaration.

7 MR. GOLDFEIN: I'm sorry?

8 THE COURT: It's all in Mr. Daly's declaration.

9 MR. GOLDFEIN: Yes, it is, Your Honor. And --

10 THE COURT: Okay.

11 MR. GOLDFEIN: -- all of that is simply --

12 THE COURT: Enough.

13 MR. GOLDFEIN: -- to point out that --

14 THE COURT: Enough.

15 MR. GOLDFEIN: -- there needs to be someone in
16 charge.

17 THE COURT: I don't disagree with that.

18 MR. GOLDFEIN: Thank you, Your Honor.

19 MR. SALERNO: Your Honor, I'm very much aware of this
20 Court's fondness for mediation. Think at one time you called
21 me the poster child for mediation --

22 THE COURT: Right.

23 MR. SALERNO: -- a number of years back. One of the
24 things that is important here is that, if I heard correctly,
25 you said why don't I send you off to mediate for 60 or 90 days.

1 THE COURT: I didn't say that.

2 MR. SALERNO: Oh, okay. Good, because I looked at
3 that and I said --

4 THE COURT: I think I said --

5 MR. SALERNO: -- boy, if that's the case --

6 THE COURT: -- why shouldn't I order you guys to go
7 mediate.

8 MR. SALERNO: Okay. Okay, Your Honor, then --
9 because one thing is certain. If this process drags on much,
10 much longer, this team will have no choice but to play again in
11 Glendale, without a buyer possibly, and the losses that we have
12 seen before simply continue. You asked the NHL are you going
13 to fund those losses. Well, maybe in their first lien position
14 they might continue to fund it. But, Your Honor, you're
15 looking at anywhere between 20, \$30 million worth of losses for
16 next season if it stays here.

17 THE COURT: Well, I have some sense that both sides
18 are in favor of some procedure to get the club solvent.
19 There's a big dispute about whether the debtors can proceed
20 with the asset purchase agreement they've signed by selling and
21 relocating to Ontario. And as I've said, I think that issue's
22 probably going to have to be resolved sooner rather than later,
23 certainly before any auction.

24 I just struggle a little bit with so far everybody's
25 spent a tremendous of time and resources about who has their

1 hands on the steering wheel of the car. We know it's going to
2 be sold the next 60 days. Seems like it would be a lot better
3 if you all could reach resolution on how to steer the car, we
4 figure out how to get the assets sold and get some money for
5 these creditors.

6 MR. SALERNO: Your Honor, I hear you. I would
7 absolutely agree with counsel for the NHL, that notwithstanding
8 that, the Court does need to determine who's in charge, because
9 as a practical matter, to keep that in limbo will create a
10 vacuum, so to speak. And we just need to know that. If it's
11 the NHL, they can negotiate with themselves. It'll be a lot
12 easier presumably. But we need to know.

13 THE COURT: I can see you'll be a big help in any
14 mediation.

15 MR. BALDIGA: William Baldiga, Your Honor. As you've
16 indicated, Mr. Moyes has his hat as, here, as a \$100 million
17 creditor, the NHL has his hats. We think it's important that
18 there be some creditor representative involved in this
19 mediation. Having no official committee at this point, we
20 would --

21 THE COURT: Let me ask you this question. If either
22 the debtor or the League are going to have control, or they're
23 going to share control, I really, in the context of
24 particularly this kind of case, have some hesitation about
25 putting the City in there, or anybody else. Because I think

1 you can agree, neither the City nor any other creditor today is
2 entitled to run the debtor.

3 MR. BALDIGA: We have no interest in running the
4 debtor. We have a overriding interest, as do the estates, that
5 the result of this process be someone that we can deal with on
6 a day-to-day basis. There is a lot of money each day, as
7 you've heard from the first matter today, in which we have a
8 great deal of interest, and that's being affected on a day-to-
9 day basis. We have a whole community being built around this
10 arena. Decisions are being made by the City council and the
11 City managers. We --

12 THE COURT: All true, but that's not going to change
13 regardless of who's in control.

14 MR. BALDIGA: Well, actually, Your Honor, we think it
15 has. The only reason these debtors have proposed what they
16 have proposed to do, the whole reason why we're in this court
17 in the first place, is the hope that Mr. Moyes can pay himself
18 something on his investment in the team. We otherwise would
19 not be here.

20 We think it's very important that whoever is in
21 control, or whatever the term be used, is not simply trying to
22 return money to himself in derivation of duties to other
23 creditors --

24 THE COURT: Well --

25 MR. BALDIGA: -- and that we --

1 THE COURT: Unless I'm missing something, both sides
2 have serious economic interest in these assets.

3 MR. BALDIGA: And that's --

4 THE COURT: The NHL's got first claim for up to \$34
5 million plus. And I'm not sure what the Moyes group present
6 number is, but I've seen 300 million stated and acknowledged
7 that they know they're not going to get it back.

8 MR. BALDIGA: There's a lot going on; and as you may
9 have noticed, they don't get along particularly well. And we
10 think that the -- there should be some creditor involvement in
11 this mediation so that what's presented to this Court has --

12 THE COURT: Let me ask you this question. Let's say
13 I send them to mediate and they reach some kind of resolution.
14 They're going to have to come back and put it on the record,
15 and the City and anybody else can tell me Judge, that's a
16 really bad deal because. But I'll just be blunt, as I sit here
17 right now -- I guess I should be careful about how and what I
18 say right now.

19 Let me say this. I'm pretty sure I'm going to order
20 these parties to go do a quick mediation on the control issue
21 and see whether they can reach any resolution or not. And
22 given the timing issues, I'm really reluctant to have any third
23 parties involved there because I think it's going to be
24 challenging enough for those two sides, if they can, to find
25 some common ground. And if the City doesn't like the deal they

1 come back with, I'll listen to you as long as you're staying on
2 top.

3 MR. BALDIGA: We appreciate you hearing us on that
4 point, Your Honor. We'll respect your Court's ruling on that.
5 Thank you.

6 MR. ABRAMOWITZ: Your Honor, I'm Steven Abramowitz
7 from Vinson & Elkins on behalf of SOF Investments, Donatello,
8 and White Tip. We are a -- except for the -- we are the other
9 secured creditor of this team. We're owed about \$80 million in
10 principal amount.

11 We actually don't have positions right now on what's
12 going on because there are some critical decisions in front of
13 you that I believe will have to be decided. I believe under
14 the Giwalla (phonetic) case, which is the governing case on
15 duties, the duties of fiduciaries is to maximize the value of
16 the enterprise. And that's what our interest is as a creditor,
17 the value of that enterprise be maximized. But it is raised
18 before you kind of what is the asset that has the ability to be
19 maximized. So I think there are some threshold issues.

20 And we are concerned about the timing aspects that
21 have been brought out. There's, of course, uncertainty about
22 the future status of the team. I imagine if the team ends up
23 having to stay in Glendale there'll be issues about how that
24 team is going to be funded. If the team will be moved, that
25 issue has to be decided quickly.

1 I'd just say that we're, of course, you know, we have
2 not asserted any of our rights yet. We have rights. We're
3 observing this. We're just very concerned about that this --
4 that all these disputes, to the extent they remain as disputes
5 and not either mediated or decided by Your Honor, that it will
6 result in dissipation of value.

7 THE COURT: Let me ask you this question. Do you
8 think the Court is missing anything in saying what I call the
9 control battle is really somewhat secondary than the bigger
10 issue about how you realize upon these bundle of rights?

11 MR. ABRAMOWITZ: I think they're intertwined. I
12 think it's hard to separate them.

13 THE COURT: All right.

14 MR. ABRAMOWITZ: I think they're all intertwined.

15 THE COURT: All right.

16 MR. ABRAMOWITZ: The question really is what is the -
17 - I think the fundamental question is what is, you know, what
18 is the asset that's here to be maximized and what are the
19 rights of the NHL versus the rights of the debtor as provided
20 in the bankruptcy code.

21 MR. CLARK: Your Honor, Tony Clark. Just one last
22 brief comment and then maybe we go to another motion. Or maybe
23 we've already got through it, I don't know.

24 The Court's made the point that the League, in this
25 courtroom at this time, wears a number of different hats.

1 That's one way of looking at it, Your Honor, but in economic
2 substance the League wears one hat. It's the League. There
3 isn't a team in this League, as others have said, that has any
4 value whatsoever other than as a member of the League.

5 And so wearing its creditor hat, what the League did
6 was the League has taken, in the loans, not the advances -- the
7 advances are the advances. That's money that, as somebody
8 said, somebody -- it's like my son gets three bucks a week on
9 his allowance. And if he wants a \$6 toy this week I give him
10 next week's \$3 this week along with this week's three and he
11 gets his toy; right? That's what the advances are.

12 But the League has also loaned \$13 billion of money
13 to fund the operations of this team. That's money that belongs
14 to 30 teams. So there is no League self-interest whatsoever,
15 either as a lender or as the League, or as somebody who -- some
16 entity that has received some kind of a release from one of the
17 teams. At the end of the day, the money all comes out of the
18 same pocket. It's the teams, the 30 teams' pocket that's
19 paying for this thing.

20 And so it is in the League's best interest to see to
21 it that the value gets maximized here, not so that the League
22 gets money it otherwise shouldn't have, but so that the League,
23 the League, is financially viable, healthy, and under control.
24 That's the only interest that we're trying to advocate here
25 that our position's in this court, Your Honor.

1 THE COURT: All right.

2 MR. CLARK: Now if the Court hasn't already done so
3 and would like to hear things about the bidding procedures,
4 we've got some comments to make about that too.

5 THE COURT: I think we have to get to those.

6 MR. CLARK: Great. You want to hear from -- I --
7 well, it's their motion, so they should go first. Thank you.

8 THE COURT: All right. Let me make a partial ruling
9 on the League's motion. The Court's ordering the parties to
10 attempt to go mediate the control issue. The Court expects the
11 parties to pursue that path as quickly as possible. And I'm
12 going to set a status hearing and expect a report from the two
13 sides. I believe we have a hearing -- what day next week?

14 (Court and Clerk Confer)

15 THE COURT: I want a report from the League and the
16 debtors at the hearings on May 27th at --

17 THE CLERK: 9.

18 THE COURT: 9:00. Mr. Salerno, the debtor's motion
19 regarding the auction.

20 MR. SALERNO: Your Honor, I wonder if we could just
21 take a couple minute break for a restroom break?

22 THE COURT: I'm not sure -- well, we can take a -- we
23 can take a break, but you can't get everybody out of this room
24 in a couple minutes. But --

25 MR. SALERNO: That's fine.

1 THE COURT: -- everybody want to take a short recess?
2 All right, we'll take --

3 MR. SALERNO: If you wouldn't mind.

4 THE COURT: -- a 10-minute recess by the --

5 MR. SALERNO: Thank you.

6 THE COURT: -- courtroom clock.

7 (Recess)

8 THE COURT: Be seated, please.

9 MR. SALERNO: Thank you, Your Honor, for that break.

10 Your Honor, we have on calendar today a hearing
11 regarding a sales procedures motion. Many of the issues that
12 were raised in the sales procedure motion were addressed by the
13 Court when we were arguing the other motion regarding control.

14 Your Honor, this Debtor is in a position many debtors
15 finds itself in: they have a stalking horse bid, there is a
16 time urgency; there frequently is in these types of cases.

17 We would urge this Court to dual-track this matter in
18 the sense of allow the sales procedures to start and to move
19 down the road at the same time we're doing the mediation. To
20 the extent that we settle matters through the mediation, that's
21 great. If we don't, and the Court rules one way or the other,
22 that party will either proceed or not proceed with the sale
23 procedure. We need to set up a due diligence room and get that
24 ready to go.

25 The Court's statement earlier about there's two

1 species of buyers here, the people that will bid if it's in
2 Glendale versus the people that will bid if it's -- if it can
3 be moved somewhere, is undoubtedly true.

4 That having been said, Your Honor, I think what we
5 could do is tailor the sale procedures which essentially allows
6 for all bids to come in. In other words, not just a higher bid
7 necessarily, because if it's going to stay here that's one
8 thing. If we don't do this, Your Honor, and we let -- this
9 thing drags through, what we're going to wind up with is this
10 team is going to be here for another season, incur between \$20
11 and \$40 million of losses, we'll have lost a stalking horse
12 bidder, and that is very, very problematic.

13 The sale procedures motion, Your Honor, also involves
14 approval of a break fee in the amount of \$4 million. That
15 break fee is about 1.8 percent of the \$212.5 million
16 transaction fee.

17 THE COURT: Well, on that topic, I'm not sure I'm
18 prepared to have it submitted and ruled upon today. If I
19 recall and remember correctly, the O'Brien Environmental
20 decision was the only Circuit Court that spoke on this issue.

21 MR. SALERNO: On the break fee issue, Your Honor?

22 THE COURT: Yes. Other cases have cited it but,
23 again, the only Circuit Court that has spoken on this issue.

24 MR. SALERNO: Yeah, I -- I've -- that may be so.

25 THE COURT: And they really say it's an

1 administrative claim for what the stalking horse is entitled to
2 for the costs it's incurred being in that position. And
3 generally I'm of the view that that's how that claim ought to
4 be handled.

5 MR. SALERNO: Just simply pay it as an administrative
6 expense, Your Honor? Is that --

7 THE COURT: Right.

8 MR. SALERNO: Obvious --

9 THE COURT: And not necessarily just allow it at some
10 -- I don't mean to be rude, but -- artificial number.

11 MR. SALERNO: Well, Your Honor, I'm in a position, of
12 course, where we're under -- we're required to move forward and
13 to seek a break fee as part of the purchase price. We believe
14 that it's under the exercise of the Debtor's business judgment,
15 that it's reasonable under the facts and circumstances of this
16 case.

17 This again is a very complex transaction on a number
18 of different levels. It's not simply like buying a piece of
19 dirt or real property. It's buying an entire business.

20 THE COURT: Understood. But the economic effect of
21 that fee, if allowed, is to take that money away from the
22 creditors

23 MR. SALERNO: Understand, Your Honor. And I think
24 what we would have to do is, if the Court were not inclined to
25 approve the break fee we would need to talk with PSE, the

1 stalking horse bidder, because it is obviously their
2 requirement and we believe, again, Your Honor --

3 THE COURT: Let me ask you this question. Tell me
4 the schedule the Debtors want on the auction.

5 MR. SALERNO: Yes, Your Honor.

6 THE COURT: What do you want?

7 MR. SALERNO: Critical path.

8 THE COURT: Hmm?

9 MR. SALERNO: The critical path you're referring to.

10 THE COURT: Well, you'll have to excuse me because in
11 the five tons of documents I brought out here with me I forgot
12 your critical path.

13 MR. SALERNO: Sir, we have -- we attached a revised
14 -- so-called revised deadlines given at today's hearing. It
15 was attached, but if it's easier -- Your Honor, this is the so-
16 called Revised Critical Path Memorandum, and under this
17 deadline what we would ask for in order to make a June 30
18 closing deadline would be a June 12 deadline for submission of
19 qualified bids and a deadline for objections to the sale
20 motion.

21 A June 15 deadline for qualified bidders to designate
22 contracts to be assumed and assigned. Two days later the
23 Debtor would file a notice of cure amounts due under those
24 assigned contracts and to notice out the other parties.

25 We would ask for a sale hearing on the week of June

1 23rd of 2009. I would think, Your Honor, under the
2 circumstances we might need two days, and I suspect it would be
3 evidentiary.

4 And then entry of a sale order as soon as possible
5 after that hearing, but in no event later than June 29th of
6 2009, and then a closing on June 30 of, I think I said on this
7 thing 3009, but I think 2009 would probably be more reasonable.

8 We have a \$20 million earnest money deposit in cash
9 that was put up by PSE. While we recognize, Your Honor, that
10 this is an expedited timeframe, at the same time I think we do
11 need to recognize that the universe of potential buyers here is
12 not as huge as the Court might think.

13 It has been public knowledge that this franchise has
14 been available for a little while. We have submitted a
15 declaration that would suggest --

16 THE COURT: Well, let me ask you about the Scudder
17 declaration that you've given to everybody under
18 confidentiality agreements, and you may have delivered to the
19 Court somewhere?

20 MR. SALERNO: Yes, Your Honor. We provided the
21 Scudder declaration to the parties that asked for it.

22 THE COURT: Well, there's one person who hasn't yet
23 received a copy of that.

24 MR. SALERNO: I have a bad feeling that's you.

25 THE COURT: That's me.

1 MR. SALERNO: Yes. That will be remedied
2 immediately.

3 THE COURT: That would be helpful.

4 MR. SALERNO: My apologies. I don't think you
5 specifically provided me notice that you needed one, but I'll
6 make sure you get one, Judge, nonetheless.

7 THE COURT: Thank you.

8 MR. SALERNO: Yeah, we'll get that to you this
9 afternoon, Judge.

10 We do recognize that it is an expedited path but,
11 again, Your Honor, at the end of the day we need to move this
12 thing forward as quickly as possible and we do suggest that we
13 dual-track this because if we don't and we simply wait for the
14 outcome of mediation, there is going to be a delay that is
15 going to cost us the stalking horse bid. I'm sure that's going
16 to be okay with maybe the NHL and the City of Glendale, but I
17 don't think it's ever a good idea to lose a stalking horse bid.

18 THE COURT: When, on your schedule that you provided,
19 would the decision about whether the Debtors can sell and the
20 buyer can relocate, when would that be submitted for a
21 decision?

22 MR. SALERNO: Your Honor, if you wouldn't mind saying
23 that again, I'd --

24 THE COURT: Well, your position is that you can sell
25 the Coyotes franchise and the buyer can move it to Hamilton --

1 MR. SALERNO: Correct, Your Honor.

2 THE COURT: -- Ontario. When is that going to be
3 submitted for a decision on this schedule?

4 MR. SALERNO: Well, Your Honor, the objections are
5 going to be -- come in under my schedule, objections would come
6 in on June 12th. That issue was obviously going to be raised;
7 it's already been raised. We would submit responsive papers,
8 and we think that would be argued and heard at the actual sale
9 hearing itself.

10 And Your Honor, the reason why we think if we did it
11 that way it makes some sense is because if there's a higher and
12 better bid that comes in that keeps the team here, then it
13 becomes a moot issue as opposed to simply moving ahead as if
14 that would be the only bid that's out there.

15 THE COURT: Bearing in mind that I haven't read the
16 affidavit of Mr. Scudder, I have a sense that linking that and
17 submitting that as part of the auction procedure could chill
18 the bidding.

19 MR. SALERNO: That's why we asked to file it under
20 seal.

21 THE COURT: No, no. The deciding at the same time
22 who's got the best bid and whether it can be relocated could
23 chill the bidding. My sense is if the universe of potential
24 buyers knew that you could relocate the franchise, that could
25 affect who would come to the auction. And so I have some sense

1 that that issue needs to be confronted prior to auction day.

2 MR. SALERNO: Prior to the auction date?

3 THE COURT: Yep.

4 MR. SALERNO: Uh-huh? You mean prior to the
5 submission of bids, Your Honor?

6 THE COURT: Well, actually conducting the auction.

7 MR. SALERNO: Okay. Because the auction here we
8 would ask for a hearing on the sale motion, which would be the
9 auction, I suppose, to determine higher and better bids for --

10 THE COURT: And this schedule doesn't really allow
11 much time for a competing bidder to think about what he wants
12 to do in terms of a \$200 million bid.

13 MR. SALERNO: That's true, Your Honor. This is a
14 truncated schedule and we recognize that. But we think that we
15 have an emergency situation.

16 And I think, Your Honor, if the Court had looked at
17 -- and that's my fault for not having given you that, but we
18 will go -- we went through all the people that we had contacted
19 prior to this, so you'll see that there are a number -- I don't
20 remember the exact number -- there were a number of people that
21 were contacted and had done some due diligence, et cetera, with
22 respect to this. This team.

23 THE COURT: All right. Now, on your bid procedures
24 document --

25 MR. SALERNO: Okay, you mean the actual motion, Your

1 Honor, or --?

2 THE COURT: Well, I think this was attached as part
3 of the sale motion, and it's a four-page document entitled Bid
4 Procedures.

5 MR. SALERNO: Okay.

6 THE COURT: Let me say generally when I read it I
7 have the sense that it unfairly inserts, as you call it, the
8 stalking horse bid as kind of being too heavily involved in the
9 bidding procedures.

10 MR. SALERNO: Too heavily involved in what sense,
11 Your Honor? I have the document you're referring to now.

12 THE COURT: Well, if anybody submits a competing bid
13 they've got to immediately send it to Ms. Freeman and her
14 client.

15 I'm not saying they're not entitled to it, but my
16 experience at these auctions is it's very important to try and
17 keep the playing field as level as possible.

18 MR. SALERNO: Uh-huh.

19 THE COURT: And so it seems like almost every
20 paragraph mentions in some manner the proposed buyer
21 represented by Ms. Freeman. And it seems to me that probably
22 ought to be taken out.

23 MR. SALERNO: Understood.

24 THE COURT: That the termination fee or whatever
25 claim might be allowed ought to be taken out, and in my view

1 separate the auction in that right or claim, whatever it might
2 ultimately prove to be.

3 And for example, in paragraph 5 at the actual sale
4 hearing with the proposed buyer receiving cash credit for the
5 termination fee in connection with any subsequent bid, take it
6 out and let's have a level playing field at any auction that's
7 going to be conducted.

8 And so I think there's going to have to be some
9 revision to that document.

10 Now, if I remember correctly there's been no
11 application to appoint the Scudder law firm as counsel for the
12 Debtor, is that correct?

13 MR. SALERNO: No. No, Your Honor. They were not
14 special counsel for the Debtor. They were advising --

15 THE COURT: Well, the reason I raise that is they get
16 a copy of any bid, per paragraph 4. I just don't want there to
17 be any implication that they're somehow counsel for the Debtor
18 until --

19 MR. SALERNO: They're not.

20 THE COURT: -- they've been appointed by the Court.

21 MR. SALERNO: They are not, Your Honor.

22 THE COURT: They're certainly entitled to a copy,
23 but.

24 MR. SALERNO: We can remove that. They were not.
25 They were simply advising the Debtor on -- because of their

1 involvement in shopping the team before.

2 THE COURT: Then, in page 2, paragraph D you've got
3 the Debtor's financial legal advisers determining whether it's
4 a better deal or not.

5 Isn't that the Court's function?

6 MR. SALERNO: Your Honor, it absolutely is. We're
7 talking about for purposes of making a recommendation to the
8 Court because the way -- I mean, we're not, obviously,
9 approving it. It's the Court's function. But to the extent
10 the Court wanted to know all the bids, we're happy to do that.

11 THE COURT: Well, I think you should reword that
12 because it seems to me that somebody who was just reading that,
13 along with the rest of this, might get the sense that you all
14 kind of had some kind of veto --

15 MR. SALERNO: Understood.

16 THE COURT: -- or other power. So I think that
17 should clearly state that you certainly can have input, but
18 that any decision on whether it's a high or better offer will
19 always be made by the Court.

20 MR. SALERNO: Understood.

21 THE COURT: I'm also quite concerned, in paragraph 7,
22 and I guess I'll now make it an editorial comment. I don't
23 know why you all insist upon using small print and narrow
24 spaced. It doesn't comply with the rules.

25 MR. SALERNO: I can blow it up on a big chart.

1 THE COURT: I'm an old guy. My eyes get tired.

2 MR. SALERNO: Understood.

3 THE COURT: But buried in there it says, Subject to
4 terms and conditions no less advantageous than those currently
5 enjoyed by the Toronto Maple Leafs hockey team. Maple Leafs, I
6 guess it is.

7 I don't know why that's in there.

8 MR. SALERNO: It's a term -- it's a specific term,
9 Your Honor, with respect to the asset purchase agreement.

10 THE COURT: Well, you have to bear with me because I
11 don't know squat about whatever deal the Maple Leafs may have,
12 but I'm not sure even this Court has that kind of power. I
13 mean, what if they historically have some special deal with the
14 League, or some of the original teams do.

15 And I'll analogize it to my law firm when I became a
16 partner. You know, the older guys had a lot better deal than
17 the younger guys in the partnership. That's just the way it
18 was.

19 And so I really struggle with why that's in there,
20 and have serious doubts that it should be in there.

21 MR. SALERNO: Okay.

22 THE COURT: And then of course there's what I've been
23 calling the relocation issue, and this presupposes that you
24 have won that issue. And I don't think --

25 MR. SALERNO: Your Honor, I think it presupposes that

1 as -- with respect to any buyer that would come in and say, We
2 want to have it moved, that that's going to have to be
3 determined as part of the sale hearing and sale process.

4 THE COURT: All right. Just make sure that's clearly
5 spelled out.

6 MR. SALERNO: On some of the Court's concerns,
7 obviously I would have to talk with buyer's counsel, that's
8 stalking horse's counsel.

9 THE COURT: Anything else from the Debtor on this
10 issue?

11 MR. SALERNO: No, Your Honor.

12 MR. CLARK: Your Honor, I'm going to be very brief
13 because I think you're already there.

14 There are really two things that we have to -- as a
15 threshold matter we got to figure out here before, I think, an
16 auction can go forward.

17 The first thing is -- well, maybe it's not the first,
18 maybe they're co-equal. But one thing is, we need to know who
19 the auctioneer is. That's the authority question, and we're
20 going to have a mediation about that, we're going to report
21 back to Your Honor next week on that.

22 The second thing -- and this is the relocation
23 question -- you need to know what's for sale at the auction.
24 And that is the relocation issue.

25 Your Honor, I think you are dead right that until

1 that's decided --

2 THE COURT: I hate it when you phrase it that way.

3 MR. CLARK: Actually, it's my four-year-old son --
4 now four-year-old son, four years and a day, who's got me
5 saying that. He keeps telling me, when he really wants a toy,
6 he says, Dad, I want that truck -- and I'm dead serious. So
7 I'm dead serious about this, Your Honor.

8 You need to decide -- the world needs to know how the
9 relocation issue is decided. If that isn't decided before the
10 bids come in, Your Honor is exactly right, it chills the
11 bidding. Because --

12 THE COURT: How does the League want to handle that
13 issue?

14 MR. CLARK: I think we want you to decide that issue
15 and decide that issue, with all due respect, Your Honor, now.
16 In advan- -- in connection with the bidding procedures. And to
17 -- and we're happy to brief it further, argue it further,
18 however Your Honor would like to handle it.

19 But we think that before a notice goes out to the
20 world saying, you know, Come on in and bid, you have to know
21 what that notice is going to say.

22 Are you bidding on a franchise in Glendale, Arizona,
23 or are you bidding on -- and I don't know where this comes
24 from, but some supposed free-floating right to have a National
25 Hockey League team anywhere in the world. Not just Hamilton,

1 Ontario, but gee, who knows? Maybe if we put it in Hong Kong
2 somebody will pay a half a billion dollars for a franchise. I
3 don't know. But people who are going to bid have to know what
4 they're bidding on.

5 And right now, Your Honor, right now, the fact that
6 this proposed stalking horse bid is out there is, I think,
7 indeed chilling the bidding already. Because what happens as a
8 result of the uncertainty that this thing has raised is it
9 caches (sic) the team where it is as it is right now.

10 For example, Your Honor, in the ten days prior to the
11 May 5th filing and the -- first disclosure of this supposed
12 stalking horse bid, the team sold, for the '09 and '10 season
13 -- the team in that ten-day period sold approximately a
14 million-four, a million-five of advance tickets. In the ten
15 days since then, from the 5th to the 15th, about \$20,000 worth
16 of tickets.

17 So somebody who's going to buy this team, they're
18 going to pay more for a team that can sell a million and a half
19 dollars' worth of tickets in ten days than they are for one
20 that's going to sell 20,000, and that all hinges on the
21 relocation issue, Your Honor.

22 So I think we need the Court to make a determination
23 as to whether or not the League's rules, with respect to
24 relocation and ownership of the right to have a franchise in a
25 place are going to be honored in the context of this asset sale

1 or not. And if not, then people are going to have to make a
2 determination as to what they do.

3 So the way I've looked at it is pretty simple, Judge.
4 You can't sell what you don't own. And the Phoenix Glendale
5 Coyotes don't own the right to play hockey in Hamilton,
6 Ontario, or anyplace else other than as a visiting team going
7 up to play the Maple Leafs or whoever.

8 THE COURT: Let me ask you this question. I assume
9 the League is not prepared to submit that issue for decision
10 now. That fair?

11 MR. CLARK: I don't think so, Your Honor. But if the
12 Court needs more input on it we're happy to provide it. But we
13 do need a decision on that issue.

14 THE COURT: Well, how would you propose to submit
15 that issue to the Court for ruling, from the League's
16 perspective.

17 MR. CLARK: Well, Your Honor, I thought we had done
18 it in our opposition to the bidding procedures motion, because
19 what we did was we -- or, what we tried to do was to point out
20 to the Court both what the League's rules and procedures are,
21 and why those rules and procedures are in place and, as a
22 practical matter, what those rules and procedures mean and what
23 they imply.

24 As a -- just as a for instance, Your Honor, we
25 pointed out -- they say, Get this decided, the sale done and

1 decided before the end of June because the League comes out
2 with its schedule sometime in July.

3 Well, the fact of the matter is that schedule doesn't
4 get set overnight. The schedule for the Phoenix Glendale
5 Coyotes is already set for next year. The schedule for the
6 entire League is 55, 60 percent set for next year.

7 If all of a sudden you say, Well, this team's not
8 going to be in Arizona but it's going to be in Ontario or Hong
9 Kong or wherever the heck it's going to be, then somebody's got
10 to go back and figure out how those other 29 teams are going to
11 interface on the ice with the Hong Kong Coyotes or the Hamilton
12 Ontario Coyotes. That doesn't -- that is a logistical
13 nightmare.

14 And that's why the League's rules provide that if you
15 are a team owner, which Mr. Balsillie is not, but if you are a
16 team owner and you think you'd like to move your team, you have
17 to make an application before January 1 of the year preceding
18 the year in which you want to make that move.

19 So as of today, if somebody -- anybody -- the Toronto
20 Maple Leafs. If the Toronto Maple Leafs want to move to
21 Glendale, Arizona, Your Honor, they have to submit an
22 application by January 1 of 2010 to have the pleasure of
23 playing here in the desert in 2011 and 2012. It takes a lot of
24 work to set those schedules up.

25 So as a practical matter, I come back to the same

1 thing. We need to know whether or not the asset being sold
2 here is the one that the Moyes Group bought and paid for and
3 admittedly have lost a lot of money trying to run -- that is, a
4 team in Arizona -- or an asset that I submit belongs to them
5 and 29 other teams, the League, and that's the right to play
6 someplace where the NHL currently doesn't have a franchise,
7 Hamilton, Hong Kong, wherever.

8 So until we have that issue decided, what's going to
9 happen -- what I think is going to happen is if there is an
10 auction procedure that goes forward on the basis of a supposed
11 stalking horse bid by Mr. Balsillie for a team that, as an
12 absolute condition, has to be located in Hamilton, Ontario,
13 people aren't going to be able to come in and compete on an
14 apples-to-apples basis.

15 He's saying he's going to pay \$212 million in Canada.
16 Well, if I've got somebody else who's willing to come in to
17 Glendale and pay \$175 million -- I'm just picking numbers out
18 of the air -- well, 212 is bigger than 175. But Canada is a
19 different place than Arizona. So what are we bidding on?
20 That's the issue, really, Your Honor, that has to be decided.

21 The timing -- I'll acknowledge. The difference
22 between their schedule and ours, it doesn't seem like a huge
23 amount of time. It's a month. But there are things that have
24 to be done to qualify people to become members of the NHL.
25 That takes some time.

1 And certainly if you get to -- if the Court were to
2 hold -- and I strongly argue that you should not -- that yeah,
3 it's the right to buy a team in Hamilton, Ontario, well, then
4 that's going to take a lot longer for us to deal with. Because
5 of the practical problems, Your Honor.

6 So if the Court needs more input from the parties on
7 that issue, that is, whether or not these Debtors have a right
8 to sell an NHL franchise somewhere other than here in Arizona,
9 then we are happy to provide it and we'll provide it on as
10 expeditious a schedule as the Court would like to see it, but
11 we did try, in the papers that we've already filed, to bring
12 that issue to a head before the Court today.

13 Now, Your Honor, I'm happy to talk about some of the
14 other issues but, as I said when I got up here, I think you're
15 already there. There's --

16 THE COURT: Well, let me ask you on that issue, how
17 does the League want to handle it? You want to submit it
18 today?

19 I'm not promising I can rule on it, but I'll look at
20 it.

21 MR. CLARK: May I have just one moment, Your Honor?

22 THE COURT: Pardon?

23 MR. CLARK: May I have just one moment?

24 THE COURT: Sure.

25 (Counsel Confer)

1 MR. CLARK: Your Honor, with respect to the issue of
2 whether any proposed bidder in this auction has to submit to
3 the League's procedures -- if they want to relocate the team,
4 that's something that we think needs to be decided and we're
5 perfectly prepared to have the Court decide that.

6 Now, were the issue to be whether this bidder should
7 be able to have this team and buy this team in Ontario, well,
8 that's not an issue that, frankly, is before the Court, because
9 it's not even been before the League yet. There's been no
10 application by anybody to move any team any place, and that has
11 to happen first.

12 One other thing I did want to tell Your Honor --

13 THE COURT: Well, let me -- you've seen the briefs by
14 the Debtor and the proposed buyer --

15 MR. CLARK: Yes.

16 THE COURT: -- in connection with the motion to sell
17 that say the Court can't.

18 So I don't know if the issue is before the Court to
19 rule on today, but the issue has been placed out there by the
20 Debtor and the proposed buyer.

21 MR. CLARK: Yes. We are prepared to have the Court
22 decide today whether or not a sale can be approved by this
23 Court conditioned on the team being relocated someplace else
24 regardless -- irregardless, as some of us like to say -- of the
25 League's rules. Despite the League's rules. In contravention

1 of or overriding the League's rules.

2 Do the League's rules on relocation apply? Or do
3 they not.

4 THE COURT: All right.

5 MR. CLARK: One thing I did want to mention to Your
6 Honor. You raised the question of whether the League or the
7 extent to which the League is prepared to fund the operations
8 of the Club right now. I think it's already in the record, but
9 I want to make sure the Court's clear about that.

10 The League is fully prepared to fund the operations
11 of this team through the auction process that it is proposing
12 right now. So if it goes from today to, I guess it's mid, late
13 July, and a buyer for this team, yes, we're going to see to it
14 that this team is still around when that happens and we'll fund
15 it to see that that happens, Your Honor.

16 THE COURT: Help me out a little bit, because I've
17 been so focused on the control matter. I'll be very candid and
18 tell you I've spent less time thinking about the bid
19 procedures. Walk me through what the League is proposing.

20 MR. CLARK: Well, Your Honor, I think -- may I --

21 THE COURT: Sure.

22 MR. CLARK: -- defer to Mr. Milmoie, because he's more
23 familiar with that?

24 THE COURT: Yeah.

25 MR. CLARK: But it is attached to our opposition to

1 the bid procedures motion. There is a document.

2 MR. MILMOE: Greg Milmoe, for the record, from
3 Skadden, on behalf of the NHL.

4 Thank you for your indulgence on your one lawyer
5 rule, Your Honor.

6 The bid procedures that the NHL was proposing are
7 generally consistent with what it would do with any transfer of
8 ownership. We do assume in our procedures that there is not a
9 relocation issue being decided. We are assuming in those
10 procedures that that issue has been decided and that there is
11 no relocation sale.

12 But basically we provide, on a similar but somewhat
13 slower schedule, that a bidder would be required to submit a
14 preliminary indication of interest with a term sheet by -- the
15 first date we had proposed was June 1st. That at that same
16 time they would file an application -- and we had -- the app-
17 -- the standard application form for clearance for someone to
18 become a member of the NHL, and it investigates -- it includes
19 investigation of background and --

20 THE COURT: And how would the actual auction be
21 conducted?

22 MR. MILMOE: Your Honor, at the end of all this,
23 fast-forwarding to July 15th -- and there are some interim
24 steps in between -- the League was proposing to have passed
25 upon the bona fides from its perspective of who would be a

1 qualified owner in time to advise the Court of whether it was
2 one or three or six, however many people met the League
3 standards, and then the auction would go forth as I think Your
4 Honor indicated earlier, with the process being decided
5 ultimately in this Court with Your Honor having the benefit of
6 the League's perspective on who would be qualified to be a
7 League participant.

8 THE COURT: So in a simple sense, the League would
9 identify anybody who was a prospective bidder and say, We
10 approve the following group, which may be less than all the
11 candidates.

12 MR. MILMOE: Yes, sir.

13 THE COURT: And then that group, in the League's
14 view, would be entitled to bid at some kind of Court-approved
15 auction to buy the rights.

16 MR. MILMOE: Yes, sir, although in the interests of
17 trying to expedite the process we were proposing that much of
18 that would be happening simultaneously. That the people would
19 be encouraged to get their applications in first. There's a
20 time-consuming aspect to that.

21 And then while that was being happening -- while that
22 was happening, while the background checks were being conducted
23 and so forth, bidders would be identifying some of the things
24 Mr. Salerno mentioned and that -- with which we concur that
25 there needs to be an agreement, there needs to be a focus on

1 the particular contracts being assumed and so forth, and that
2 that would all come together, in our view, by about the end of
3 June. June 29th was our proposed date. And that there would
4 be a time after that within which the League would wrap up its
5 investigation and that the auction would take place about two
6 weeks after that.

7 THE COURT: And that the auction would be an auction,
8 so that if somebody who was not the high bidder showed up that
9 day and said, Judge, here's a check from -- I'm just making up
10 numbers, but -- an additional \$5 million, we're raising our bid
11 by that amount and we believe that now makes it the highest and
12 best bid, that could be then approved as long as they'd been
13 pre-approved by the League.

14 MR. MILMOE: Your Honor, neither their procedures nor
15 ours, I believe, address that fine point.

16 I am -- in general, I would like to think that the
17 auction is over when it's over. On the other hand, I have
18 participated in a number of situations where in fact we come in
19 to Court and have the auction, depending on Your Honor's
20 predilection.

21 One of the reasons they don't like me to talk in
22 Court is I am one of the few human beings to fail to convince a
23 Bankruptcy Court that 500 million was more than 300 million.
24 It was higher, but it wasn't better.

25 THE COURT: I hope that wasn't this courtroom.

1 MR. MILMOE: No, Your Honor. At least not yet.

2 THE COURT: All right.

3 MR. MILMOE: The issue there was approval of an
4 antitrust issue in Brazil, and the extra money didn't overcome
5 the issue.

6 THE COURT: Well, as you've heard I think everybody
7 say that we're talking about insolvent entities whose assets
8 are being sold, given your background I think you understand
9 that the Court is quite concerned that if somebody were to
10 raise their price at the last minute, and had been pre-approved
11 by the League, they ought to be entitled to do that. I -- it
12 should be an auction.

13 MR. CLARK: Yes. That --

14 MR. MILMOE: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. MILMOE: We are, of course, here championing
17 rules. But whatever the rules are, that would be fine.

18 THE COURT: All right. Anything else?

19 MR. MILMOE: Not from me. Thank you, Your Honor.

20 MR. BALDIGA: Your Honor, William Baldiga, Brown
21 Rudnick, for the City of Glendale.

22 Your Honor, there is, you know, another dose of
23 reality to be put on this. We favor the auction process that
24 culminates in some, you know, known process that bidders know,
25 that highest and best will in fact win, whether that's directly

1 supervised this -- by this Court or indirectly supervised
2 through its appointee.

3 There are, Your Honor -- well. There are a lot of
4 realities that come into play here for any buyer. The -- we
5 suggest that there does need to be some real time in between
6 when the Court makes a decision, both as to the NHL issue as to
7 its processes and the City of Glendale's ability to in fact
8 enforce its right of specific performance, because any buyer
9 that is serious here, as has been the case over the last
10 several months, would want to spend some time with the City of
11 Glendale.

12 There is an entire fabric at work here, Your Honor.
13 Any buyer that is seriously considering submitting a highest
14 and best bid would want to understand the accommodations and
15 arrangements with the City as to items such as security,
16 parking, nearby amenities, restaurants and so forth, tying into
17 promotions of other sporting events and other entertainment,
18 scheduling of other events.

19 The City of Glendale's motto, Your Honor, as you
20 know, is "The City's Got Game." I mean, there is -- this city
21 has built around this team, Your Honor, an entire fabric of
22 support, and any buyer that is serious --

23 THE COURT: Well, let me say something to all of you.
24 I've been to a hockey game in the arena -- rephrase that. I've
25 been to hockey games in the arena. And I've been to football

1 games in the Cardinal stadium. So I've been out there. I know
2 generally the layout. I can't tell you where every structure
3 is, but I'm familiar with the physical plants of both.

4 MR. BALDIGA: Thank you, Your Honor. I have to admit
5 not having been to either. But maybe that will change some
6 day.

7 In any event, Your Honor, what I'm suggesting is that
8 this is an expensive investment for any serious buyer, and I
9 think that buyers deserve -- we want buyers to come to the
10 table. We want the most serious buyers to come to the table,
11 and we want them all in this courtroom vying to put the highest
12 and best offer on the table.

13 They need to know that they are bidding on a team
14 that will be in Glendale, and then come and have the
15 discussions that they will want to have with us and that the
16 City will want to have with them. The City is doing this to
17 promote them to submit the highest and best so that they are
18 comfortable and want to be in the City, and the City wants to
19 have them.

20 It's not an exclusion process; it's just the
21 opposite. No one walks into the City with bags of money. They
22 walk into the City wanting to know what the City can do for
23 them in terms of support. Not all financial, but support. And
24 it takes some time to do that.

25 So we would suggest, Your Honor, that the two gating

1 issues be resolved, and then there be some time that bidders
2 formulate their bids. Whether someone's willing to bid X or Y
3 may depend on exactly what they understand, for example, the
4 parking situation to be. We want the bid to be Y. We want it
5 to be the highest and best.

6 I also, Your Honor, want to just comment on the point
7 where the bids here, as I put on the chart earlier, are -- it's
8 necessary that we attract not just the highest, but the best.
9 A bid that results in tens or hundreds of millions of dollars
10 of incremental, unpaid claims in this case is not best, over
11 one that pays out creditors in full or nearly in full.

12 So -- and as we've seen from the arguments here and
13 as we will need to have further hearings on, there are some
14 types of transactions here that -- in which this will be a
15 solvent case, we believe. We think that the result of this
16 case, Your Honor, will be that creditors are in fact paid in
17 full. And --

18 THE COURT: You know, you're the only one who has
19 said that so far.

20 MR. BALDIGA: Well, then I'll be the only one who's
21 right at the end of the day, Your Honor. But we'll bring it
22 back then if I am that fortunate. But that would be a good
23 result.

24 In any event, Your Honor, the Court will be asked to
25 compare at the time not just \$2 compared to \$3, but what is the

1 overall highest and best result for the case for all of those
2 concerned. Including creditors. And what process here will
3 result in fewer unpaid claims in the case.

4 So we do think that the two gating issues need to be
5 completed before bids are submitted, and that there will be --

6 THE COURT: Say that again.

7 MR. BALDIGA: -- time --

8 THE COURT: Say that again, please.

9 MR. BALDIGA: We do think that the two gating issues,
10 whether the team is being sold free of the League inasmuch as
11 that seems to be what the request is, and whether the team is
12 -- can be sold free of its promise to stay in Glendale and in,
13 specifically, the City's ability to enforce specific
14 performance whether or not rejection is even attempted or
15 approved by this Court.

16 With those issues decided, then the serious bidders
17 will come forth and bid on those terms. And that will take a
18 few weeks for them to have the discussions necessary and we
19 just don't think all of that can be done at once, or we're
20 going to lose some very attractive bidders who are otherwise
21 simply confused and discouraged by so many mixed messages.

22 THE COURT: I think you're telling the Court that you
23 want the relocation issue decided and then the auction schedule
24 to follow.

25 MR. BALDIGA: Yes. We can schedule it now --

1 THE COURT: Right.

2 MR. BALDIGA: -- but only the Court knows how
3 realistic it is as to when these decisions would actually be
4 made. I think there -- we just filed our complaint today. I
5 mean, we have some work to do. We're not even close to being
6 able to submit that on the papers, and the Debtors haven't even
7 submitted their papers.

8 THE COURT: All right.

9 MR. BALDIGA: Thank you.

10 MR. ABRAMOWITZ: Your Honor, Steven Abramowitz again.

11 In an abundance of caution I just wanted to make the
12 Court aware. The only, obviously, stalking horse bid before
13 Your Honor is what the Debtors are proposing, which is an all-
14 cash bid north of \$200 million. Our rights as a secured
15 creditor in that context, where we have a principal claim of
16 \$80 million plus interest, et cetera, are relatively clear
17 under the Code.

18 If Your Honor were to be going -- if the result of
19 the ruling were to be we were going to have an auction with
20 respect to keeping the team in Glendale, we might well have a
21 different position.

22 And we just want to make it quite clear that we are
23 preserving all our rights, including our rights to credit bid,
24 including our rights to object to any other aspect of the sale
25 process. It might be that, for example, a reorganization in

1 Glendale is better than a sale in Glendale.

2 And I just want to make it clear that just by being
3 here, in an abundance of caution, that if the way this goes is
4 an auction in Glendale, that we're preserving all our rights
5 and may have to assert them. I don't want my silence to be a
6 consent to just selling to the highest bidder, because that
7 might not be the one that protects all the creditors' rights,
8 including my client's.

9 THE COURT: How quickly are you prepared to have that
10 issue submitted to the Court?

11 MR. ABRAMOWITZ: Regarding the -- which? Regarding
12 the --

13 THE COURT: Kind of, I think there's two issues here.

14 MR. ABRAMOWITZ: Yes.

15 THE COURT: There's what I call the relocation issue.
16 You know, we all know we have the one bid that proposes to move
17 the team. And then there's the issue, does the Court have the
18 power to do that over the objection of the League, the City,
19 and perhaps others. And then there's the question of some kind
20 of an auction procedure after that's decided.

21 And my sense is you probably want to participate --
22 reserve the right to participate in both of those decisions.
23 That's really what I'm asking.

24 MR. ABRAMOWITZ: Correct. Absolutely.

25 THE COURT: And you know, you heard the League say

1 they're prepared to submit it today. So same question to you,
2 are you prepared to have that issue submitted to the Court
3 today?

4 MR. ABRAMOWITZ: On the relocation issue?

5 THE COURT: Yes.

6 MR. ABRAMOWITZ: Yes.

7 THE COURT: Okay. What about the auction issue? At
8 least setting a schedule, but there would be the right to
9 object to the auction.

10 MR. ABRAMOWITZ: Correct, and the right to object to
11 the sale.

12 THE COURT: Yeah.

13 MR. ABRAMOWITZ: To -- and reserving all our rights
14 as secured creditor, including specifically under 363.

15 THE COURT: All right.

16 MR. CLARK: Your Honor, I know Mr. Salerno's -- it's
17 really his turn, but to try and not have to stand up again,
18 this really falls on Mr. -- on the City's comments.

19 THE COURT: You're up there, go ahead.

20 MR. CLARK: I want to make it clear. What the Court
21 -- we think the Court should not do today is to approve or
22 designate Mr. Balsillie or his entity as the stalking horse
23 bidder, because it's going to be too confusing for other
24 bidders for the Coyotes in Arizona to compete for a bid for the
25 team someplace else.

1 I think that's just another way of saying that the
2 issue of the League's right to enforce its rules and procedures
3 on relocation have to be decided first, but were the Court to
4 say, you know, I'm going to decide that issue, you know, in a
5 few days or in a week or something, but for now, you know, Mr.
6 Balsillie is the stalking horse, I think would perhaps create
7 an irreparable harm to the process. So we really have to have
8 that issue, relocation, decided first before anybody's called a
9 stalking horse or anything else.

10 And certainly there shouldn't be any -- and I think
11 you're already there -- but there shouldn't be any breakup fees
12 here for this particular so-called bid.

13 Thank you, Your Honor.

14 MR. WATSON: Your Honor, Larry Watson for the United
15 States Trustee.

16 Your Honor, with regard to the breakup fee we agree
17 with you that we view it as an administrative expense claim
18 that will need to be approved upon a baseness (sic) of
19 reasonableness at the end, something that we've asked for with
20 regard to other cases in this district, including Trend/PFP
21 case. We think that's probably the more appropriate way of
22 dealing with a breakup bid.

23 Your Honor, with regard to putting out the notice
24 procedures on -- or, the notice on the bid procedures, I think
25 that there's probably a way to deal with sophisticated buyers,

1 and I presume we're going to have pretty sophisticated
2 purchasers with regard to anybody that's going to be bidding on
3 any assets, that we probably -- in the event that the Court
4 does approve a bid procedure today, that there be a way that it
5 be boxed and noticed to a degree that the relocation issue has
6 not yet been addressed by the Court, will be addressed by the
7 Court, and the parties need to be aware of that issue as they
8 move forward with regard to doing their due diligence.

9 But predicated upon those comments, Your Honor, we
10 don't have any other issues with the bid procedures.

11 THE COURT: Let me ask you a question, you know.
12 There's an effort to do a lot of things very quickly here.

13 MR. WATSON: Uh-huh.

14 THE COURT: I have some sense, as I've read through
15 all this, that it would be very helpful to, probably, the
16 unsecured creditors and the Court if there were a committee and
17 a committee counsel involved here.

18 MR. WATSON: Yeah.

19 THE COURT: So when do you think we might have a
20 committee formed and --?

21 MR. WATSON: Your Honor, it's a fair question.

22 We received our final solicitation on Friday
23 afternoon. I was out of the office yesterday. We have one
24 party. It's the City of Glendale, and with regard to the arena
25 we need to figure out what kind of entity that is. They've

1 expressed interest of wanting to be on the committee. I have
2 to deal with that issue. I anticipate that I can deal with
3 that by tomorrow, and we'll have a committee formed more than
4 likely no later, Your Honor, than on Thursday. Preferably
5 tomorrow, but that's the goal, is to get that committee formed
6 as soon as possible.

7 THE COURT: Thank you.

8 MR. WATSON: You bet.

9 MR. SALERNO: Your Honor, I assume you're going to
10 ask me the same question you've asked everyone else, which is,
11 you know, could we deem this issue of the ability of this Court
12 to authorize a sale with a transfer, what would deem it
13 submitted.

14 Your Honor, this issue has been briefed. But in
15 order to really hash that out it's really an overlay between
16 antitrust law and bankruptcy law. I mean, it really is.
17 That's the essence of the 363(f) issue.

18 And my only suggestion to the Court would be, as it
19 has been briefed, that the Court set an oral argument on that
20 because we've had people on the phone and people standing up,
21 but it's -- I think that's going to be a large portion of the
22 analysis, and it has to be.

23 It's an area that is foreign to me, as a bankruptcy
24 lawyer, but there are people, both for the NHL and for Squire,
25 Sanders that this is their area of expertise.

1 THE COURT: Well, let me ask you. It seems like in
2 large part that issue is driving the case right now. I mean,
3 if the Debtor and the proposed buyer win on that issue -- I'll
4 be blunt, I'm concerned whether your critical path timeline is
5 really fair to allow for other bids. It's a pretty compressed
6 timeframe. I understand the rationale, but I'm just going to
7 be blunt about that.

8 If you lose, then -- and the League wins, I'm not
9 sure I've heard anybody really say that they oppose to their
10 procedure culminating in some kind of an auction about 30 days
11 later than your proposed auction.

12 Am I missing anything?

13 MR. SALERNO: No, Your Honor. I don't think you are.
14 It is, as you -- the Court said, it's a compressed timeline and
15 there are some important issues which are going to be -- it's
16 going to guide a lot of the bidding.

17 I would have to defer to buyers' counsel or the
18 stalking horse counsel on some of the Court's concerns about
19 timing, et cetera.

20 THE COURT: Well, let me -- I'm sorry, anything else?

21 MR. SALERNO: Yes, Your Honor. The other -- just two
22 other things.

23 First, with respect to the auction sale procedures
24 that the NHL proposes and says, Look, it's just July 15th.
25 What is critically missing from that component, of course, is

1 that any decision, if it were simply up to the NHL on
2 relocation, which means that the NHL's decision-making process,
3 even under its schedule, simply assumes someone here in
4 Glendale, Arizona. That may how it -- that may be how it comes
5 out, Your Honor, but there's nothing in that schedule that
6 suggests that they would even expedite or do what they needed
7 to do with respect to a transfer, and that is likely where
8 we're going to get the most value.

9 And finally, Your Honor, with respect to the City's
10 assertions, we will address that in the adversary proceeding.
11 The City, in the numbers that it's throwing on the board,
12 assumes that its liquidated damage clause is simply allowed in
13 full, and there are certain issues, Your Honor, of capping of
14 claims, as the Court is aware, under the Bankruptcy Code with
15 respect to rejection damages, and so as a result of that it may
16 not be -- whatever their liquidated damage clause is, that may
17 not be the actual number that we have to take into account.

18 That said, Your Honor, we fully agree with the City
19 when it says when you compare bids, at the end of the day it's
20 which returns more to creditors. Absolutely agree with that.
21 Absolutely agree with that.

22 At the same time, we can't leave a stalking horse
23 completely out there because they are the bid that everyone is
24 shooting at. The NHL may or may not have another bid; we don't
25 know because we haven't seen it. But it's -- we do have

1 someone who has come public, you know, become public and made
2 their offer known to the world, and so they do deserve some
3 protection in that regard.

4 THE COURT: What's the Debtor view on how we get what
5 I've been calling the relocation issue, and that's an over-
6 simplification, getting that submitted to the Court?

7 MR. SALERNO: I believe, Your Honor, that the parties
8 had briefed the basic portions of it.

9 MS. FREEMAN: Tom?

10 (Counsel Confer)

11 MR. SALERNO: Oh, I see. You mean once someone is --
12 you're the approved bidder and now do you get --

13 THE COURT: Well, you know, the League's view is that
14 issue ought to be ruled on now. Submit it today, right?

15 MR. SALERNO: That's --

16 THE COURT: Debtor in agreement with that? Submit it
17 today?

18 MR. SALERNO: That's what the League said, correct.

19 THE COURT: Well, what's -- does the Debtor agree to
20 submit that issue today?

21 MR. SALERNO: Well, Your Honor --

22 THE COURT: I'll be candid with all of you. I'm not
23 sure I've got enough before me to really decide it. But I
24 guess what I want to decide from all of you is, how do you want
25 to get that issue submitted. I mean, to some extent Ms.

1 Freeman's client is the base for that issue.

2 But one thing I've become concerned about is, if
3 you're right, then it seems to me that doesn't mean somebody
4 else can't come in and say, Well, Judge, I'll raise the bid
5 dollar-wise, but there's other terms and conditions, and it
6 might be a different location.

7 MR. SALERNO: Uh-huh. Yeah, I think that's right.
8 And I -- and as far as how we raise it, Your Honor, to me the
9 overlay is, again, 363(f), which is the bona fide dispute. You
10 say, Well, how can there be a bona fide dispute if they haven't
11 yet denied someone. And Your Honor, that comes into the issue
12 of prospective relief under the antitrust laws, and so --

13 THE COURT: Well, you may be able --

14 MR. SALERNO: -- that's why I suggest --

15 THE COURT: -- to convince me on that one. But I --

16 MR. SALERNO: I understand.

17 THE COURT: -- I want to be clear about this to you
18 and to Ms. Freeman.

19 Case is filed on May 5th, the contract is signed on
20 May 5th, and here we are, 14 days later, and you're saying,
21 Judge, you have the power under the Bankruptcy Code to do this,
22 and I know you attracted Mr. Schian and his client, let's see,
23 major League baseball Commissioner's Office, the National
24 Football League, and I think the NBA, and I might have missed
25 somebody.

1 MR. SALERNO: I think Pop Warner also.

2 THE COURT: Well, in any event, it appears that this
3 issue has attracted the attention of a lot of folks who seem
4 very concerned about it. And so I just want to make sure
5 everybody is in agreement on how the issue gets submitted and
6 when it gets submitted for the Court to decide.

7 I'll point out to you and Ms. Freeman, you know, 365
8 has the word "may" in it. Doesn't say that you actually have
9 the indiscretion (sic) -- unfettered power to do this. It says
10 you may do it. So --

11 MR. SALERNO: And again, Your Honor --

12 THE COURT: -- you may need to convince me that --
13 how that works in the context of this case.

14 MR. SALERNO: Sure. And again, Your Honor, the issue
15 -- and this was raised in the briefs -- on this issue of
16 adequate protection, because if it's a 363(f) situation or the
17 365 issue, and the NHL says, No, we simply don't consent, the
18 adequate protection is -- as part of the evidentiary hearing we
19 would put on, Your Honor, we would put on evidence of the bona
20 fides, the backing, the financial wherewithal of the buyer.
21 The same things that the NHL attached to their pleadings.

22 THE COURT: I understand, but I also say this to you
23 and Ms. Freeman also, 363(f) talks about a bona fide dispute.

24 MR. SALERNO: Correct, Your Honor.

25 THE COURT: And here we are, May 5 case, a May 5

1 contract, adversary filed I think on May 5, and on May 19th
2 you're assuring me you have a bona fide dispute, but I don't
3 know if you've ever really talked with the NHL about this once
4 -- since the contract's been signed. Certainly in the 600 or
5 700 pages I've read I had the sense there's been no
6 communication. Other than between counsel by their pleadings.

7 MR. SALERNO: Your Honor, I would respectfully
8 disagree in this sense. While this particular asset purchase
9 agreement has not been discussed in that sense, the NHL has
10 made it clear -- and I'm not talking about press releases --
11 the NHL has made it clear that they will not approve a sale
12 which will go -- which will move this team to southern Ontario.
13 They view that as a League opportunity.

14 That is in Exhibit A to the Bettman declaration.
15 They have said, We will not approve that sale. That transfer.

16 MR. CLARK: Your Honor --

17 THE COURT: Well --

18 MR. CLARK: That's --

19 THE COURT: Hang on. Please. One at a time. I'm
20 not going to lose control of you guys. So, the guy at the
21 podium speaks --

22 MR. CLARK: I apologize, Your Honor.

23 THE COURT: -- everybody else sits down. Thank you.

24 You know, maybe I missed it when I read the NHL
25 Constitution. But I think the ultimate decision making is the

1 board of governors, not Mr. Bettman, not the commissioner.

2 He may go to the board meeting and say this is worst
3 idea in the history of mankind but the board, represented by
4 each member of the League's got to either agree with them or
5 disagree. That hasn't happened.

6 And I'll be very blunt again. I have some concerns
7 about how bona fide a dispute is where there's been no
8 communication to the other side saying would you.

9 MR. SALERNO: You know, I hear what the Court is
10 saying, Your Honor --

11 THE COURT: And let me put it -- bottom line it. You
12 know, if you lose that one, I think the sale motion is dead.

13 MR. SALERNO: With respect to the sale it would -- it
14 absolutely would be, Your Honor.

15 THE COURT: Okay. Yeah.

16 MR. SALERNO: There's no doubt about that.

17 THE COURT: Okay.

18 MR. SALERNO: But, Your Honor, we believe that
19 prospective relief and if we -- the Court wants, we could
20 certainly take some expedited discovery on that very issue.
21 Because we don't think the NHL has even been particularly coy
22 about this aspect of it.

23 THE COURT: Well, of course I'm still struggling
24 with -- I keep asking everybody how procedurally, what do we do
25 to get it done and then submit it. And I think on the League

1 has said, "It's yours, Judge, rule on it."

2 So, is the debtor prepared to submit or what does the
3 debtor want to do?

4 MR. SALERNO: Your Honor, what I started by saying is
5 that I would respectfully ask the Court to set an oral argument
6 on this simply because there's going to be an overlay here
7 between anti-trust law and bankruptcy law.

8 What we heard from was a disembodied voice of my
9 partner in Washington, D.C. --

10 THE COURT: Any further --

11 MR. SALERNO: -- we heard a little bit from --

12 THE COURT: -- briefing?

13 MS. FREEMAN: Yes.

14 THE COURT: I think I heard a yes --

15 MR. SALERNO: You could hear him --

16 THE COURT: -- from Ms. Freeman but --

17 MR. SALERNO: Yes.

18 THE COURT: -- I could be wrong.

19 MR. SALERNO: But, Your Honor, I think that's
20 something that we need to not deal with --

21 THE COURT: So, that's a yes --

22 MR. SALERNO: -- kind of in an off-hand --

23 THE COURT: -- from the debtor, we need some more
24 briefing?

25 MR. SALERNO: I'm sorry.

1 THE COURT: Is that a yes from the debtor that they'd
2 like -- the debtors would like to submit another brief or
3 additional briefing?

4 MR. SALERNO: I'd like to submit it with oral
5 argument, Your Honor.

6 THE COURT: Well, but do I get it before the argument
7 so I've had a chance to read it and think about it before you
8 all come in here?

9 MR. SALERNO: Could you -- ten, twenty minutes maybe?
10 And you --

11 THE COURT: Well --

12 MR. SALERNO: Just a thought. Of course, Your Honor.

13 THE COURT: All right.

14 MS. FREEMAN: Good afternoon, again, Your Honor.
15 Susan Freeman for PSE.

16 The trouble with deciding relocation in a vacuum is
17 that it's not an issue that is kind of a vacuum issue. It
18 needs to be decided in the context of who is seeking to move to
19 where.

20 And if one looks at their constitution of the NHL,
21 the constitution just has an outright ban; no franchise shall
22 be granted for home territory within the home territory of a
23 member without their written consent of such member.

24 That's the kind of language that the Ninth Circuit in
25 Raiders, once that is -- doesn't pass muster under anti-trust

1 laws. But when you look at the bylaws, the bylaws do have
2 procedures with guidelines for what it takes to --

3 THE COURT: I thought the Ninth Circuit --

4 MS. FREEMAN: -- consent to a transfer.

5 THE COURT: -- said in one of the cases that
6 relocation restrictions are not per se anti-trust violations.

7 MS. FREEMAN: When they have a number of criteria,
8 then yes, you look at the criteria. And the Ninth Circuit said
9 in the SDC case, you look at how the criteria are actually
10 applied in the case. You have to look at the facts. You have
11 to look at the rules in the context of the facts and see how it
12 comes out. And see whether the rule of reason under the Ninth
13 Circuit's language has been applied.

14 And that's precisely what we think has to happen
15 here. If you look at the bylaws, the bylaws do say that this
16 is not something that only a member can do.

17 Bylaw 35.3, is that any proposed sale or transfer of
18 a membership interest or ownership interest which would also
19 involve the transfer of the club or franchise to a different
20 city, shall be subject to 4.2 of the constitution.

21 THE COURT: Let me ask you this --

22 MS. FREEMAN: But also, to the --

23 THE COURT: -- question.

24 MS. FREEMAN: -- provisions of bylaw 36.

25 THE COURT: I probably ought not let you argue the

1 merits right now.

2 MS. FREEMAN: I'm not trying to. My point, Your
3 Honor, is --

4 THE COURT: Well, I thought it was subtle advocacy
5 but maybe I missed it.

6 MS. FREEMAN: Okay. Okay. My point, Your Honor, is
7 that if you look at the bylaws, they provide that someone who
8 wants to buy the franchise and move it to another location, go
9 through these criteria and presents the application and then
10 the board looks at it and the board makes a determination.

11 And as I read the law that the Court has to apply, it
12 includes an evaluation of that determination. And what we've
13 provided in the sale procedures is that the Court will
14 determine whether consent by the NHL was unreasonably withheld.
15 I mean, we think that we --

16 THE COURT: Well --

17 MS. FREEMAN: -- apply -- comply with all these bylaw
18 provisions in spades. We think that once we turn this in --

19 THE COURT: Nobody's submitted it to the NHL, have
20 they?

21 MS. FREEMAN: That's correct. And the reason is that
22 as you read these procedures, you're supposed to have the
23 agreement. We have the agreement. We submit it. We'll submit
24 it --we can --

25 THE COURT: Well --

1 MS. FREEMAN: -- and then --

2 THE COURT: Well, again, as of 5 o'clock on May 19th,
3 I don't think anybody's passed it to League and said, "Tell us
4 yea or nay."

5 MS. FREEMAN: I know. And we are happy, as we said
6 in our brief, we'll be happy to go ahead and submit that. And
7 part of it was waiting, Your Honor, to see what you were going
8 to do with respect to the sales procedures motion and the
9 control motion.

10 Can we do anything with the application that we have?
11 Is the Court going to just shoot it down all together and say,
12 "Nope, NHL's in control. It can dismiss this case"?

13 If we're going to be able to go forward, which we do
14 think should be done, then we need to submit our application,
15 see if they consent. If they don't consent, we think the
16 consent on its face is going to be unreasonably withheld
17 because, as we say, we comply in spades.

18 THE COURT: How do we get the issue --

19 MS. FREEMAN: And then the support can determine the
20 issue of relocation by PSE to Hamilton is unreasonable or not.

21 THE COURT: How do we get the issue, I like to call
22 it the relocation issue --

23 MS. FREEMAN: Uh-huh.

24 THE COURT: -- but I really think it's broader than
25 that.

1 MS. FREEMAN: It is.

2 THE COURT: How do we get it submitted to the Court
3 for a decision and --

4 MS. FREEMAN: My proposal would be that we go ahead,
5 file our application, not only the application for the sale but
6 the application for transfer.

7 If anybody else wants to file an application for
8 transfer and for sale at the same time, they can do it.
9 Suggest it be done by the end of this month, which I -- the end
10 of next week, get it done -- all the applications in by the end
11 of next week.

12 Give them a couple of weeks to evaluate those. As we
13 say, with respect to PSE's, they've already approved PSE as a
14 buyer once before, there's nothing really new or different with
15 respect to PSE. We're happy to give a black line of the
16 application on that one so that they can see it. Show how the
17 procedures are met. And let them rule.

18 They told us once before in connection with the
19 effort to acquire the creditors, we could make an application
20 in the spring for selling this -- or for acquiring the
21 franchise and having it go forward in the fall. We're doing
22 this in spring, it can be done on fairly short notice.

23 The trouble with the time frame, Your Honor, the
24 biggest trouble with the time frame is, how are you going to
25 operate in Phoenix for another year? If you don't have it

1 determined before the end of June so that we're able to be the
2 ones to make the draft picks and to get ourselves built into
3 this schedule.

4 If instead it has to be operated in Phoenix for
5 another year, you're looking at another 30 or \$40 million worth
6 of losses. It's not worth 212 million if you have to fund
7 40 million of losses. So --

8 THE COURT: Well --

9 MS. FREEMAN: -- it needs to be determined on short
10 order. I would suggest that we could file all the applications
11 by the end of May, i.e. end of next week.

12 Have a couple of weeks to look at them. This
13 proposes right now that there be a June 5th deadline for
14 qualified bidders to designate contracts and debtors to file
15 notice of tier amounts. Frankly, all of the contracts that
16 related to the acquisition of this are already listed except
17 one. And I promised him -- Cross and his co-counsel that I
18 would state this on the record.

19 The union contract was not listed on the acquired
20 contracts and it needs to be. So, before this stocking horse
21 bid goes out, it needs to include the union contract as well.
22 But you could have oral arguments on, you know, the 15th, 16th,
23 17th, have an oral argument in there with respect to it, have
24 briefing with respect to whether this -- I mean, maybe they
25 will consent, in which case, it's a moot point.

1 If they don't consent then we'll argue about whether
2 it's unreasonably withheld. Whether this Court can determine
3 that the kind of objections that they're making are not bona
4 fide objections and there really is a bona fide dispute. Can
5 determine whether they are withholding it on grounds --

6 THE COURT: Well --

7 MS. FREEMAN: -- that are a violation of law and
8 therefore not appropriate under 363.

9 THE COURT: When do you think we could have oral
10 argument on these issues, in your opinion?

11 MS. FREEMAN: Well, my suggestion is, is if you have
12 the briefing in middle of June, you can have the oral argument,
13 you know, ideally in conjunction with the hearing on the sale
14 motion. But if you want to have it first, then have the
15 hearing on the relocation --

16 THE COURT: What am I missing? If we hold that until
17 the sale hearing --

18 MS. FREEMAN: Uh-huh.

19 THE COURT: -- it might not get all potential bidders
20 to come to the auction. If you have it resolved --

21 MS. FREEMAN: Well, if they know that they --

22 THE COURT: -- you've got a better chance --

23 MS. FREEMAN: -- need to submit --

24 THE COURT: -- of everybody --

25 MS. FREEMAN: -- their applications and have them all

1 reviewed by the board of governors in advance, then they will
2 have through, you know, several weeks in June to have them
3 reviewed by the board of governors and you will then know.

4 But it has to be in conjunction with that
5 application. I mean, it is the facts -- the bylaws as applied
6 that are the problem.

7 THE COURT: Well, I think what you're telling me is,
8 you're opposed to separating the auction and resolution of
9 whether your client's offer can be approved by this Court over
10 the objection of the League, the City and possibly others.

11 MS. FREEMAN: I'm happy to have it determined
12 separately but we do have a very compressed time frame and we
13 recognize that. And recognizing that time frame which is
14 compressed because although the NHL has said, "Oh, we'll be
15 happy to fund them through the end of July." They haven't said
16 they're going to fund them with all their losses for the entire
17 next season.

18 THE COURT: Well --

19 MS. FREEMAN: If the NHL is willing to fund them for
20 the entire next season then we've got lots of time. But --

21 THE COURT: Well --

22 MS. FREEMAN: But we don't.

23 THE COURT: -- to some extent I think that begs the
24 issue of -- and there is a big practical issue here --

25 MS. FREEMAN: Uh-huh.

1 THE COURT: -- that I think -- I assume everybody's
2 thinking about, it's not really a legal issue. But, you know,
3 let's assume for whatever reason that you lose?

4 MS. FREEMAN: Uh-huh.

5 THE COURT: Well, okay. Now, you've got the debtors
6 and maybe an auction in late July, maybe there are no bidders
7 in late July.

8 MS. FREEMAN: That's right. Which we think may well
9 be the case.

10 THE COURT: Yeah.

11 MS. FREEMAN: As you can see in the email attached --

12 THE COURT: Where is everybody?

13 MS. FREEMAN: -- to Mr. Bettman's declaration, it's
14 kind of unlikely we're going to find somebody to buy a team
15 that's losing \$40 million.

16 THE COURT: All right. So, tell me -- give me a date
17 that you would be prepared to argue all issues related to
18 relocation under you client's proposed purchase.

19 MS. FREEMAN: If we get all of the applications in by
20 the end of next week, the NHL would need to evaluate those
21 applications, have a two week period in which to do that. And
22 that would -- I don't have -- there's a calendar here. So,
23 have it determined -- have it evaluated by June 12th. You
24 could have on June 15, 16, 17 -- gets briefs in by the 17th.

25 Your Honor could make a determination on the 19th,

1 have oral argument on the 19th and then we could still have the
2 sale hearing on the 23rd.

3 MR. ASHWORTH: May I ask a question? I didn't
4 understand that all the applications, did you mean all the
5 applications --

6 MS. FREEMAN: If --

7 THE COURT: Well --

8 MR. ASHWORTH: -- that you client --

9 THE COURT: Well, remember my question is what was
10 the date for oral argument by Ms. Freeman. So, it's June 19th?

11 MS. FREEMAN: No -- yes, June 19.

12 THE COURT: Okay. And then any further briefing on
13 that issue by what date?

14 MS. FREEMAN: June 17th.

15 THE COURT: Well, now, come on. You know, let me be
16 real blunt here.

17 MS. FREEMAN: Uh-huh.

18 THE COURT: Pleadings started getting filed at 11:45
19 last Wednesday night.

20 MS. FREEMAN: Okay. I understand.

21 THE COURT: Seven hundred pages later, I've read the
22 stuff very carefully on the control motion, including the
23 cases. But I'm not going to let any of you do that to me again
24 on my shift.

25 MS. FREEMAN: Mine was short. If you want to give

1 us, you know, page limits, we will comply.

2 THE COURT: Well, you all might notice, I've granted
3 nobody's motion yet to exceed page limits. I haven't denied
4 them.

5 MS. FREEMAN: Uh-huh.

6 THE COURT: But I haven't granted them either.

7 MS. FREEMAN: You know, I do a lot appellate work in
8 addition --

9 THE COURT: So, let's back up.

10 MS. FREEMAN: -- to doing trial work. So --

11 THE COURT: We'll have all briefing done by -- we'll
12 going have oral argument on Tuesday, June 19th. We'll have all
13 briefing in --

14 MS. FREEMAN: How about by midnight on June 16 so
15 that you will have two full days?

16 THE COURT: So, I'll have all day Monday to read
17 them?

18 MS. FREEMAN: No, no, no. That's --

19 THE COURT: Yeah, how many pages do you think I get?

20 MS. FREEMAN: You will have 17th and 18th.

21 THE COURT: Why shouldn't -- you know, I mean --

22 MS. FREEMAN: Uh-huh.

23 THE COURT: -- why shouldn't you guys have to file
24 everything one week in advance, June 12th?

25 MS. FREEMAN: Oh, it was just to try and give the NHL

1 a full two weeks to evaluate the applications.

2 THE COURT: Well, we're only trying to get --

3 MS. FREEMAN: If we go back on that, then that's
4 fine.

5 THE COURT: And, you know, you all may find that when
6 you submit it, I conclude I can't -- I don't have enough
7 collectively to rule on it.

8 MS. FREEMAN: You know, frankly, Your Honor, we're
9 happy to submit our application, file it in court at the same
10 time we file it -- deliver it --

11 THE COURT: Well --

12 MS. FREEMAN: -- to the NHL. That would be fine.

13 THE COURT: I --

14 MS. FREEMAN: You can see it. Everybody can look at
15 it. We can have the briefing based on that, that's fine.

16 THE COURT: I think for the moment I'm just going to
17 start with any further briefing on all issues related to the
18 proposed sales contract related to relocation and consent, no
19 later than June 12th. And I'm going to assume we're going to
20 have oral argument on June 19th.

21 And where's Mr. Schian? He was sneaking up here.

22 MR. SCHIAN: Thank you, Your Honor. Dale Schian
23 appearing on behalf of the National Football League, the
24 Officer of the Commissioner of Baseball and the National
25 Basketball Association.

1 We've asked to file a statements of position (sic)
2 with respect to that.

3 THE COURT: I was unclear about the motion you filed.
4 You filed your statement of positions, did you want to file
5 something in addition to that?

6 Okay. So, you just wanted those filed and considered
7 by the Court?

8 MR. SCHIAN: That's correct, Your Honor.

9 THE COURT: Okay.

10 MR. SCHIAN: Given the timing, we wanted to get the
11 statements on file as quickly as possible.

12 THE COURT: Okay. So, let's assume that there's
13 going to be a further briefing deadline of June 12th and oral
14 argument on June 19, that okay with your clients?

15 MR. SCHIAN: That is acceptable, Your Honor.

16 THE COURT: And do you anticipate you would be filing
17 some kind of a brief on that?

18 MR. SCHIAN: I have not discussed that with my
19 clients specifically. Because it came on quickly today we
20 wanted to get a statement of position done. To the extent
21 there are particular issues that are of concern to the Court or
22 of concern to my clients, we would ask for permission to join
23 in any briefing or to file a briefing by the same deadline as
24 that afforded other parties as this matter proceeds forward.

25 THE COURT: All right.

1 MR. SCHIAN: Thank you.

2 MS. FREEMAN: Okay. We suggest that we go ahead and
3 file our application in court at the same time so that all
4 parties will be able to see that --

5 THE COURT: And you're certainly --

6 MS. FREEMAN: -- and they can --

7 THE COURT: -- you're certainly free to do that.

8 MS. FREEMAN: -- make a determination. We do need
9 however to have the NHL make its decision. We understand that
10 in the ordinary course, it takes 45 days to look at things and
11 investigate and then it wants to circulate some more. We'll be
12 happy to cooperate to the maximum extent to get whatever
13 additional documents that they want.

14 But we obviously need to have a determination so that
15 the Court will be able to determine whether consent was
16 unreasonably withheld or not.

17 THE COURT: Well, I don't know how this plays in the
18 context of this case.

19 MS. FREEMAN: Uh-huh.

20 THE COURT: But, you know, I looked at a timeline in
21 the Memorial Coliseum case.

22 MS. FREEMAN: Uh-huh.

23 THE COURT: I believe that dispute started in 1978.
24 The first trial was in 1981.

25 MS. FREEMAN: Uh-huh. But that's because --

1 THE COURT: And then there's all the --

2 MS. FREEMAN: -- the Clippers had already moved.

3 They moved --

4 THE COURT: The second trial was in --

5 MS. FREEMAN: -- and that happened.

6 THE COURT: -- 1982.

7 MS. FREEMAN: Uh-huh. I mean --

8 THE COURT: And so, that creates some --

9 MS. FREEMAN: And the --

10 THE COURT: -- concern in the context of this case --

11 MS. FREEMAN: Uh-huh.

12 THE COURT: -- that you all are trying to cram all of
13 that into about 30 plus days.

14 MS. FREEMAN: And --

15 THE COURT: Like I said, I don't know how that plays
16 but it clearly raises issues.

17 MS. FREEMAN: One issue that comes to my mind is the
18 NHL statement that it just can't build a team into a schedule.
19 I mean, in that instance, the team did move and the schedule
20 was adapted to move them from Oakland to Los Angeles. And I
21 understand in the Baltimore Colts case they moved at midnight,
22 you know, from Baltimore to Indianapolis and they got built
23 into the schedule and it did happen.

24 So, it is possible to --

25 THE COURT: It is possible although --

1 MS. FREEMAN: -- be able to go ahead and move forward
2 with this.

3 THE COURT: -- bear in mind that I don't know how
4 many professional football games are played in the regular
5 season in those years. But I think it was 16 or less --

6 MS. FREEMAN: Uh-huh.

7 THE COURT: -- and here you're talking about 80
8 games. And so --

9 MS. FREEMAN: Uh-huh.

10 THE COURT: -- the challenge is much bigger.

11 MS. FREEMAN: Right.

12 THE COURT: But, again, it seems to me these are
13 all --

14 MS. FREEMAN: Well, if the NHL is willing to fund the
15 losses in Glendale for another year, then there can be another
16 year.

17 THE COURT: Well --

18 MS. FREEMAN: But we just can't pay \$212 million for
19 something that we're going to have another 40 million in
20 losses.

21 THE COURT: Well, you -- then you haven't offered it
22 to.

23 MS. FREEMAN: I'm sorry.

24 THE COURT: You have not offered to.

25 MS. FREEMAN: No, we have not. We have made a

1 condition that it be closed in time that we can make the draft
2 choices, decide who's going to be on the team going forward and
3 be able to --

4 THE COURT: I want to be clear --

5 MS. FREEMAN: Uh-huh.

6 THE COURT: -- about this. I am not today approving
7 the proposed timeline and I have serious concerns about it.

8 MS. FREEMAN: I appreciate that.

9 THE COURT: One of which, even if you win everything
10 hands down, is it sufficient time to allow the offer to be
11 marketed to see if anybody's going to raise that bid.

12 MS. FREEMAN: Uh-huh. Well, and in that context, I
13 guess my suggestion is what the debtor has proposed, in the
14 sense of going ahead and saying -- and we can -- there can be
15 additional provisions in the sale procedures that say that the
16 Court is going to determine these issues at this point in time,
17 encourage anyone else who wants to submit an application.

18 Say, if you want to submit a bid to the Court, then
19 you also need to apply to the NHL, need to do it within the
20 next couple of weeks so that you have your applications in.
21 And the NHL is in a position to give its views with respect to
22 whether or not this is an appropriate bid.

23 And likewise with respect to Glendale so that
24 Glendale's in a position of saying, you know, this bid is not
25 as good as another bid because it's going to be taking the

1 games away from Glendale and that has a broader impact on the
2 community.

3 THE COURT: Well --

4 MS. FREEMAN: But the bid procedures can go ahead and
5 be sent out. You know, this is not a team that has not been
6 marketed for a while. This team's actually been marketed for a
7 very long time.

8 THE COURT: Well, it's not. But I have nothing
9 before me --

10 MS. FREEMAN: Correct.

11 THE COURT: -- that tells me that it's been mark --

12 MS. FREEMAN: And that's -- we need that Scudder
13 declaration --

14 THE COURT: -- that it's been marketed in the context
15 of the offer made by your client.

16 MS. FREEMAN: Uh-huh. It has been marketed to try
17 and get the maximum offer. It is difficult to market in the
18 context of the offer by my client because of the League's
19 position, as you've seen in the various things, saying we will
20 never move to Hamilton.

21 THE COURT: Well, but just in terms of timing --

22 MS. FREEMAN: Uh-huh.

23 THE COURT: -- at least at the moment it seems to me
24 the schedule proposed really doesn't allow a fair opportunity
25 for anybody else who wants to commit a bid over your client's

1 bid.

2 MS. FREEMAN: I mean, perhaps counsel for the
3 debtor --

4 MR. SALERNO: Your Honor --

5 MS. FREEMAN: -- could make an offer of proof with
6 respect to the extent of the marketing that has been undertaken
7 thus far.

8 THE COURT: Well, I'll read the Scudder affidavit.

9 MR. SALERNO: Yes.

10 THE COURT: As soon as I get it.

11 MR. SALERNO: Your Honor, and we'll get that to you
12 right away. And it's -- I apologize for not getting that to
13 you. But we will get to the Court immediately.

14 MS. FREEMAN: Okay. With respect to the breakup fee,
15 Your Honor, I think that's the last point for us. Yes, we are
16 willing to go along with the Court's proposal saying that we
17 would have an administrative expense claim that we would be
18 able to submit afterwards.

19 THE COURT: Kind of the O'Brien Environmental
20 approach?

21 MS. FREEMAN: I'm sorry.

22 THE COURT: The O'Brien Environmental, of course I
23 can't remember what circuit decision that was. But it was like
24 a --

25 MS. FREEMAN: I think it was six --

1 THE COURT: -- Sixth or Seventh.

2 MS. FREEMAN: Right. Yes, we would be willing to do
3 that.

4 THE COURT: All right. So, that issue's moot?

5 MS. FREEMAN: But the point would be it's going to
6 cover all of the expenses that we've had thus far, in coming
7 out, negotiating the contract, investigating it --

8 THE COURT: Subject to right to be heard --

9 MS. FREEMAN: -- and determining all that.

10 THE COURT: -- and Court approval. I mean --

11 MS. FREEMAN: Yes. I mean, it's an administrative
12 claim but not just for post-petition services because this was
13 at -- obviously, negotiated at length prepetition. But
14 submitted post-petition for all of the costs that we've
15 incurred in undertaking this.

16 THE COURT: For what it's worth, for the benefit of
17 your client and anybody else who's out there who has a
18 representative here today --

19 MS. FREEMAN: Uh-huh.

20 THE COURT: -- this Court tries to be protective and
21 encouraging of bidders because they're the life of getting
22 creditors paid.

23 MS. FREEMAN: Right. Let me go to one other point
24 though --

25 MR. SALERNO: Your Honor, we have the Scudder

1 affidavit. I just printed it.

2 THE COURT: All right. Hand it up. Thank you.

3 MS. FREEMAN: The Court did inquire about the
4 provision here about conditions -- terms and conditions no less
5 advantageous than those enjoyed by the Toronto Maple Leafs.

6 And the point there is that if we -- that the NHL can impose --

7 THE COURT: Hang on just for second.

8 MS. FREEMAN: Sure.

9 THE COURT: Okay. Go ahead.

10 MS. FREEMAN: The NHL member teams, as you look at
11 these bylaws, can include different terms and conditions that
12 they would want to impose upon a transfer.

13 One of the most important ones, and the reference to
14 the Maple Leafs in particular in our mind, was intended to
15 address broadcasting rights. And if we're going to move up
16 there -- well, we can't televise any of the games then it's not
17 quite as valuable, obviously.

18 So, this was a shorthand to be able to say -- this is
19 not what the Court has to impose, it says if we don't get a
20 consent of the NHL for terms and conditions that are at least
21 that good, then we will go to the Court and take the position
22 or we are able to the Court that the consent was being
23 unreasonably withheld.

24 And they couldn't say, "Oh yes, you can come in but
25 you have to pay \$500 million to the Toronto Maple Leafs for" --

1 THE COURT: Well --

2 MS. FREEMAN: -- "the deprivation of their
3 opportunity to broadcast." It's a shorthanded deal with
4 that --

5 THE COURT: Let me --

6 MS. FREEMAN: -- and so we get at least that or --

7 THE COURT: -- say this about that.

8 MS. FREEMAN: Uh-huh.

9 THE COURT: As written, it causes me a lot of
10 pause --

11 MS. FREEMAN: Uh-huh.

12 THE COURT: -- that this Court has that kind of
13 power. Maybe you're right. Maybe the sale can be approved
14 over the objection from the NHL and over the City of Glendale.

15 MS. FREEMAN: Uh-huh.

16 THE COURT: And maybe you're right and you can
17 relocate to Canada, Ontario. I'm not sure, as I sit here right
18 now that I have the power to enter an order that says and you
19 get the same beneficial rights as somebody who's not a party to
20 this case --

21 MS. FREEMAN: Well --

22 THE COURT: -- and on which the Court has no
23 jurisdiction.

24 MS. FREEMAN: Well frankly, Your Honor, one of the
25 things that is important here because each of the member teams

1 has the opportunity to object too, is that this notice would be
2 served on all of the member teams. So, if any of them want to
3 object, if the Maple Leafs want to object, they could come into
4 this court and object or the NHL can object on their behalf.

5 But, I understand --

6 THE COURT: Well --

7 MS. FREEMAN: -- what the Court is saying. I
8 appreciate that.

9 THE COURT: As written, it's a very broad statement.

10 MS. FREEMAN: Uh-huh.

11 THE COURT: And when I saw it, my initial reaction
12 was that I'm not making a ruling, hmm, does this Court have
13 that kind of power?

14 And if you want that kind of a provision, you're
15 going to have to convince me that I do and how I ought to
16 exercise it.

17 MS. FREEMAN: I appreciate that.

18 THE COURT: And at the moment, I'm a skeptic.

19 MS. FREEMAN: And we will address that. This is not
20 saying that -- what this is saying is holding that, if the NHL
21 and its constituent members don't agree to give us at least
22 that, then the consent will be unreasonably withheld or that
23 the Court can make a transfer free and clear of any such
24 claims, right or obligations.

25 There's not a requirement in here, right now at

1 least, that this Court say, "You've got X broadcast rights."

2 THE COURT: Well, I'm not --

3 MS. FREEMAN: So, we've tried to --

4 THE COURT: -- going to rule on it today.

5 MS. FREEMAN: -- steer that.

6 THE COURT: It's not before me but I thought in
7 fairness I ought to point out to you that when I read it --

8 MS. FREEMAN: I appreciate that.

9 THE COURT: -- I had a tremendous pause about that
10 language.

11 MS. FREEMAN: Okay. So, we can try and address it in
12 terms of more specific language as to what it is rather than --

13 THE COURT: I'll leave that up to --

14 MS. FREEMAN: -- just referring to that.

15 THE COURT: -- your capable hands.

16 MS. FREEMAN: Okay.

17 THE COURT: But I think one thing also I want to
18 mention, again, is that we're at May in Section 365.

19 MS. FREEMAN: Uh-huh.

20 THE COURT: It's not mandatory.

21 MS. FREEMAN: I appreciate that.

22 THE COURT: And so, you better address that with the
23 Court.

24 MS. FREEMAN: Yes.

25 THE COURT: Particularly in the context of what's

1 going on here.

2 MS. FREEMAN: Yes, we'll do so.

3 THE COURT: All right.

4 MS. FREEMAN: And I understand that my client,
5 Mr. Rodier, would like to address the Court if he may because I
6 think I've missed something here. Would that be acceptable?
7 He is a lawyer in Toronto, he is not -- has been -- he's not
8 been admitted for pro hac vice in this case and he has --

9 THE COURT: You know, I'm a little reluctant to do
10 that right now for a lot of reasons. So, I think the only
11 decision I'm going to possibly make right now or shortly is the
12 briefing schedule and oral arguments dates.

13 So, there'll be plenty of time to address concerns in
14 either briefs or at oral argument.

15 MS. FREEMAN: All right. Thank you.

16 MR. CLARK: Your Honor, I resisted the urge to get up
17 and interrupt because --

18 THE COURT: Good job.

19 MR. CLARK: -- I think I might have been able to save
20 us a lot of time on what it is we're going to brief and what
21 we're going to argue about.

22 The League will not approve -- cannot approve an
23 application to relocate this team or any other by July, August,
24 September of this year for the '09 and '10 season; can't
25 happen.

1 THE COURT: Okay.

2 MR. CLARK: Impossible to be done. And so, if the
3 application that they want to submit -- and, you know, it's a
4 free country and if they can pay for a stamp, I guess they can
5 send in whatever they want.

6 THE COURT: Careful.

7 MR. CLARK: Those stamps get very expensive actually
8 and they're getting more expensive.

9 But if they submit an application or if anybody
10 submits an application today or tomorrow for the right to
11 relocate one of the NF -- NHL franchises to a new location for
12 the season that's to start in September or October, whenever
13 the season starts, of this year, will be denied because it has
14 to be denied, Your Honor.

15 The issue that has to be decided, respectfully, is
16 whether the NHL's rules and procedures for transfer of
17 ownership and for relocation of a franchise are or are not to
18 be honored in the context of this case pending before Your
19 Honor.

20 THE COURT: Well --

21 MR. CLARK: That's the issue. And it's --

22 THE COURT: I think I'm pretty close to saying briefs
23 on the 12th of June, oral argument on the 19th.

24 MR. CLARK: We're happy to submit additional briefs.
25 But I didn't want Your Honor to feel like we had been less than

1 open and candid with the Court about what we will do with an
2 application --

3 THE COURT: Well --

4 MR. CLARK: -- to move this fall.

5 THE COURT: I understand that there's going to be a
6 lot of things the parties disagree upon. I'm going to have to
7 rule on some of those.

8 MR. CLARK: Very good.

9 THE COURT: That's my job.

10 MR. CLARK: Thank you very much, Your Honor.

11 THE COURT: Anybody else?

12 All briefs and declarations reference the relocation
13 issue, the Section 365, the Section 363 issues and anything
14 tangentially related to the proposed sale offer submitted by
15 the debtor's motion are due on or before June 12th.

16 Lorraine, can we set an oral argument now or do you
17 and I need to talk and figure out how we're going to do that on
18 the 19th?

19 (Court and Clerk Confer)

20 THE COURT: All right. Oral argument is going to be
21 June 22nd.

22 How much time do you think that's going to take?

23 MR. CLARK: I think a substantial amount of time,
24 Your Honor. Given what's happened today, it seems -- we're
25 talking about oral argument, no evidentiary hearing on that,

1 right?

2 THE COURT: Right.

3 THE CLERK: The 23rd is available.

4 MR. CLARK: I would think that after today --

5 THE CLERK: The 23rd is available.

6 THE COURT: Yeah, but I don't want --

7 MR. CLARK: It'll take the morning or the afternoon
8 to --

9 THE COURT: All right. 10:00, June 22nd.

10 When you all come back on the 27th, I want a proposed
11 schedule from each of you. You don't have to track
12 Mr. Salerno's form but I want deadlines and dates from the
13 League, if there's any change to the debtor, any change by the
14 proposed buyer or anybody else that wants to be heard, the City
15 of Glendale or anybody else. I want to take a look at those
16 and then I'll do my best to get a schedule set to assist with
17 this.

18 Now, I really don't want to do this but I'm going to
19 have to do this. In setting those dates, I'm currently
20 scheduled to leave the country on June 25th and be gone that
21 Thursday and Friday and the following that ends I believe on
22 Friday, July 3rd. So, I'm going to be blunt. When you set
23 your schedule, please don't interfere with those dates.

24 What else?

25 MR. BALDIGA: Your Honor, just to clarify, I think I

1 understand that the briefing schedule and hearing date that you
2 just set on the so-called relocation issue, I believe as to the
3 issue that's now before the Court and was heard today, that's
4 the NHL relocation issue.

5 But I just -- it's not as to the City of Glendale
6 relocation issue. We'll submit to you on the 27th a proposed
7 schedule in that regard as well?

8 THE COURT: On the 27th, next week?

9 MR. BALDIGA: Yes.

10 THE COURT: Okay.

11 MR. BALDIGA: If that's satisfactory to the Court.

12 THE COURT: Your issue is somewhat different than --

13 MR. BALDIGA: It is and I think actually our issue
14 will require the submission of evidence to significant extent.

15 THE COURT: Here's what I want you to do. You and
16 Mr. Salerno or anybody else that's going to be involved in
17 getting that issue resolved, I want you to meet and confer
18 before the 27th. I'll hear from you on the 27th and then we'll
19 try and set a schedule.

20 MR. BALDIGA: That's exactly what we'll do. Thank
21 you.

22 THE COURT: All right.

23 (Court and Clerk Confer)

24 THE COURT: Mr. Salerno.

25 MR. SALERNO: Yes, Your Honor. I understand the

1 parties have been ordered to mediate as soon as possible. And
2 I just wonder whether it makes sense in -- for the Court to
3 just direct us to a mediator so we don't have to spend that
4 time trying to agree to one.

5 THE COURT: Well, you know, I'd love to do that but
6 much -- if you remember with your experience when you pleaded
7 with me to not make you go mediate in a prior case. I think it
8 works a lot better if you all can, you all pick the mediator.

9 But I'm going to be blunt about this and as direct as
10 I can, I want you all to talk about it as soon as possible. I
11 want you to talk about who the mediator's going to be as soon
12 as possible. And if you can, I want you to select a mediator.
13 I really expect you to have that done when I see you by the
14 27th.

15 I would hope you would have the mediator on board.
16 And an accelerated -- found somebody who can do it quickly.
17 Because you guys are either going to mediate this or I'm going
18 to rule on it.

19 MR. SALERNO: Okay. Your Honor, the only other thing
20 on the calendar, I believe is the debtor --

21 Do you need to say something?

22 MR. ASHWORTH: No, I just get up a little.

23 MR. SALERNO: Okay. I thought he was sneaking up on
24 me and it scares me.

25 MR. ASHWORTH: Later.

1 THE COURT: Always got to watch your backside.

2 MR. SALERNO: Always.

3 MR. ASHWORTH: Yeah.

4 MR. SALERNO: Your Honor, the last item on the list
5 was the debtors filed a motion for Rule 2004 examination with
6 respect to the so-called Reinsdorf offer. The NHL had
7 objected, filed an objection to that. We filed a response to
8 that and that was also set for today.

9 Your Honor, we would be happy to keep the Reinsdorf
10 offer under the same confidentiality. For example, their
11 keeping of the Scudder declaration. We have absolutely no
12 issue with that.

13 Nor would we, without further order of the Court,
14 contact the parties in that. But it's really difficult for us
15 to be able to evaluate things when we're not seeing offers or
16 perspective offers that the NHL has apparently negotiated and
17 not shared with us.

18 THE COURT: Let me ask you this question, when I read
19 your materials, I thought it was more expansive of that. Do
20 you just want copies of any offers that have been submitted to
21 the NHL --

22 MR. SALERNO: Yes, Your Honor.

23 THE COURT: -- for the Coyotes and that's it?

24 MR. SALERNO: That would be what we'd want.

25 THE COURT: All right.

1 MR. SALERNO: Offers, letter of intent. I mean that
2 nature.

3 MR. MEDA: I guess it's good evening, Your Honor. I
4 know I don't have a lot of time and so I'm going to be very
5 short.

6 The bottom line here, Judge, is that whatever
7 expression of interest Mr. Reinsdorf has made is irrelevant,
8 unnecessary and potentially harmful to the bankruptcy estate to
9 disclose it at this time.

10 It's simply -- we've spent pretty much the whole
11 afternoon talking about bid procedures and the process. And
12 the Court has indicated that it's going to consider that
13 process and we're going to have deadlines and we're going to
14 have bids submitted and bidders are going to qualify.

15 And it seems to me, Judge, that whatever expression
16 of interest Mr. Reinsdorf has made previously doesn't matter
17 now. We have a process. If Mr. Reinsdorf wants to be a
18 bidder, he'll submit an application and he'll qualify as a
19 bidder. If Mr. Reinsdorf wants to submit a bid, he'll submit
20 that bid. The Court will consider it. But the point is, is
21 that there's now a process for that. And it doesn't make any
22 sense to start disseminating expressions of interest proposals
23 that may or may not have any application today.

24 We would like, contrary to the innuendo that's been
25 hurled out there, the NHL is very interested in encouraging and

1 opening a competitive bid process. And we think that towards
2 that end, all bids should be disclosed at the same time and in
3 the same manner. We don't want to discourage bidders. We
4 don't want a chill bidding. We want to make sure that
5 everything is done above board and in accordance with the
6 process that this Court approves.

7 THE COURT: Thank you.

8 MR. MEDA: Thank you.

9 MR. SALERNO: Your Honor, again, the bankruptcy
10 process has always been an open and transparent process. In
11 the so-called Scudder affidavit declaration they saw every
12 single person that we talked to, the terms that we discussed.
13 It just makes sense for all of us to be playing with all of the
14 information and we will keep it confidential.

15 We are not intending to contact people. We are not
16 intending -- we just need to know what the waterfront is. If
17 Mr. Reinsdorf has different provisions in his expression of
18 interest than were offered other people, we just need to know.

19 THE COURT: Well, help me out a little bit. I mean,
20 the term expression of interest I think almost -- he doesn't
21 matter.

22 You know offers and letter of intent are one thing.
23 But beyond that I'm not sure why it matters. So, why does it?

24 MR. SALERNO: Well, fair enough, Your Honor. That's
25 fair enough.

1 And then what happens is, I just wonder who makes the
2 determination? Is this an expression of interest or a letter
3 of intent? When we get into that sort of analysis and
4 something gets held back; no, this wasn't really a letter of
5 intent, it was more of an expression of interest.

6 THE COURT: Well, let's cut to the big question here.
7 Let's assume for the moment that there's going to be some kind
8 of an auction that ends up at the courthouse. Why do you need
9 this stuff?

10 MR. SALERNO: Well, Your Honor, when we are being
11 told in the press, which I know how you feel about that, that
12 there are these --

13 THE COURT: Well, you know --

14 MR. SALERNO: -- offers out there, we need to see
15 what the landscape is.

16 THE COURT: I'm trying think of how I can say this
17 diplomatically but I'm not sure there's a way to say it --

18 MR. SALERNO: Don't mention the press anymore. You
19 have a lot of the press in the courtroom, of course. So --

20 THE COURT: I understand that. And, you know, let's
21 be clear, they have a vital role to play in this and they've
22 played it historically.

23 But, as I've said before, when you all attach a
24 newspaper article and want to use that to support some legal
25 argument, it's not evidence. It really isn't very helpful to

1 the Court. And I'll be candid with all of you, unlike your
2 briefs and your declarations, I may skim them but I don't read
3 them word for word.

4 MR. SALERNO: Understood.

5 THE COURT: So, what somebody says out there is what
6 they say out there. But it's what people do here in the
7 courtroom that really matters.

8 And so, if there's going to be a court approved
9 auction and the bidders are either going to come in or they
10 aren't, why do you need to know any of this?

11 MR. SALERNO: Well, Your Honor, and I guess I would
12 answer a question with a question which I'm sure you're not
13 going to like but --

14 THE COURT: Well, see the advantage, I don't have to
15 answer your question.

16 MR. SALERNO: That's absolutely true. You wear the
17 robe.

18 THE COURT: The difference is, is you don't have to
19 answer mine but I may hold it against you.

20 MR. SALERNO: That's exactly right.

21 What is the state's secret here? I don't understand
22 what the state secret is from the NHL. The NHL filed a brief
23 and they said in their discretion they will release when they
24 think it's appropriate to release it. I just don't see what
25 the state secret is here, Your Honor.

1 THE COURT: Well, I guess it's this question. If
2 there's going to -- let's assume for the moment or purpose of
3 the context of this motion, on some day, I guess before the
4 summer's over, there's going to be an auction here at the
5 courthouse. Either we're going to have bidders or we aren't.

6 So, why does it matter whether somebody inquired at
7 the NFL, submitted a letter of intent or even submitted a
8 detail offer which they didn't accept?

9 MR. SALERNO: Well, I'm sure the NHL couldn't
10 necessarily have accepted it. But, Your Honor, at the end of
11 the day, if it's an offer, why wouldn't they turn it over to us
12 and let us evaluate it? By way of example, if the Reinsdorf --
13 I'll call it an offer because I don't know what it is. But if
14 that's a good viable offer, we might very well say, let's make
15 that our stocking horse. I mean, it doesn't have to be --

16 THE COURT: Well --

17 MR. SALERNO: -- it's the NHL --

18 THE COURT: -- help me out a little bit.

19 MR. SALERNO: -- is negotiating for our assets.

20 THE COURT: I think, even with the proxy and
21 accepting everything the NHL says, the Moyes Group still owns
22 these entities. Now they're Chapter 11 debtors.

23 If Mr. Reinsdorf or anybody else wants to buy them,
24 I'm pretty sure he could find you and he could find Mr. Moyes
25 and make an offer.

1 MALE VOICE: Right, fuckin' A (sic).

2 (Simultaneous Conversation)

3 THE COURT: Who's speaking? I'm sorry, who was
4 speaking? All right. Let me just tell this to all of you on
5 the phone, if there's any more idle chatter, we're just going
6 to disconnect you.

7 MR. SALERNO: Well, Your Honor, I hear the Court's
8 concern. Again, we think to keep it a level playing field, it
9 would be important for the debtor to have that information.

10 THE COURT: Well, I mean, what would you do with it?
11 Help educate me a little bit. And bear in mind, you know, you
12 just handed me, oh, I'm going to guess about a quarter to a
13 half-inch of paper that I'll try and read tonight.

14 So, I haven't read that.

15 MR. SALERNO: Right.

16 THE COURT: I don't know what it says. But assuming
17 I were to grant your motion, what are you going to do?

18 MR. SALERNO: Well, Your Honor, for example, if the
19 Reinsdorf proposal, we'll call it that because we don't know
20 what it is one way or the other. If -- to the extent that in
21 that there are concessions which are being made by the City of
22 Glendale, maybe those concessions would be available to other
23 prospective bidders as well. It would just be helpful to have
24 that information to know what the City of Glendale, for
25 example, agreed to with Mr. Reinsdorf.

1 I don't think I've ever seen a case where we've had
2 this much state secrecy around and expression of interest or an
3 offer. Again, we're not trying to chase anybody away, far from
4 it. We'd like to bring into the tent.

5 THE COURT: Well, I think anybody -- it's hard for me
6 believe that with all the media coverage, that there's anybody
7 who might have some remote interest in buying these entities,
8 wouldn't know how to find you and Mr. Moyes if they wanted to
9 make an offer.

10 And, you know, I don't think you can analogize this
11 case to any other case. I guess we've been here 15 days. You
12 walked in with a \$212 million to sell. And you've managed to
13 attract the ire of the National Hockey League, the Commissioner
14 of Major League Baseball, the NFL and the NBA.

15 And I can remember one case, I think you were
16 involved in this case where the first three speakers were, if I
17 remember correctly, the bishop, the governor and the mayor.

18 MR. SALERNO: I recall that.

19 THE COURT: And you might be able to say that maybe
20 that's comparable. But other than those two, I don't, in 20
21 years, think we've got anything else to say it's even in the
22 same area code is an over statement.

23 MR. SALERNO: I do have a way of drawing a crowd, I
24 suppose.

25 THE COURT: That's your opinion.

