

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF ARIZONA

3 In re:)
4)

5 DEWEY RANCH HOCKEY, LLC CH: 11)

2:09-bk-09488-RTBP)

6 1) CONTINUED HEARING ON MOTION FOR)
7 ORDER CONFIRMING ORDINARY COURSE)
8 BUSINESS PRACTICES AND IMPOSITION OF)
9 THE AUTOMATIC STAY)

10 2) CONTINUED MOTION FOR INTERIM AND)
11 FINAL ORDERS UNDER 11 U.S.C. §§)
12 105(a), 345 AND 363: (a) AUTHORIZING)
13 MAINTENANCE OF EXISTING BANK)
14 ACCOUNTS AND (b) ALLOWING DEBTORS TO)
15 CONTINUE USING EXISTING BUSINESS)
16 FORMS)

17 3) CONTINUED HEARING ON MOTION FOR)
18 INTERIM AND FINAL ORDERS: (a))
19 AUTHORIZING THE DEBTORS TO CONTINUE)
20 TO PAY AND HONOR CERTAIN)
21 PRE-PETITION CLAIMS FOR (i) WAGES,)
22 SALARIES AND OTHER COMPENSATION,)
23 (ii) WITHHOLDINGS AND DEDUCTIONS AND)
24 (iii) REIMBURSABLE EMPLOYEE)
25 EXPENSES; (b) AUTHORIZING THE)
DEBTORS TO CONTINUE TO PAY AND HONOR)
CERTAIN PRE-PETITION CLAIMS RELATED)
TO EMPLOYEE BENEFITS AND (c))
DIRECTING BANKS TO RECEIVE, HONOR)
AND PAY ALL CHECKS AND ELECTRONIC)
PAYMENT REQUESTS RELATED TO THE)
FOREGOING)

4) CONTINUED HEARING ON MOTION FOR)
INTERIM AND FINAL ORDERS (a))
AUTHORIZING BUT NOT DIRECTING THE)
DEBTORS TO REMIT AND PAY CERTAIN)
TAXES AND FEES AND (b) AUTHORIZING)
FINANCIAL INSTITUTIONS TO HONOR ALL)
RELATED CHECKS AND ELECTRONIC)
PAYMENT REQUESTS)

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- 5) CONTINUED HEARING ON EMERGENCY APPLICATION FOR ENTRY OF INTERIM AND FINAL ORDERS UNDER U.S.C. § 327(a) AUTHORIZING THE RETENTION AND EMPLOYMENT OF SQUIRE, SANDERS & DEMPSEY L.L.P. AS ATTORNEYS FOR THE DEBTORS
- 6) CONTINUED HEARING ON MOTION FOR INTERIM AND FINAL ORDERS: (a) AUTHORIZING DEBTORS TO OBTAIN POST PETITION FINANCING; (b) AUTHORIZING USE OF CASH COLLATERAL AND (c) DETERMINING SUFFICIENCY OF ADEQUATE PROTECTION
- 7) STATUS REPORT IN RE: MEDIATION
- 8) HEARING IN RE: PROPOSED BID PROCEDURES
- 9) STATUS REPORT ON LITIGATION WITH CITY OF GLENDALE
- 10) MOTION FOR ORDER AUTHORIZING DEBTORS TO PREPARE, BUT NOT FILE A CONSOLIDATED LIST OF CREDITORS IN LIEU OF INDIVIDUAL MATRICES, MAKE THE CONSOLIDATED LIST AVAILABLE ONLY UPON REQUEST & TO FILE A CONSOLIDATED LIST OF DEBTORS' 40 LARGEST UNSECURED CREDITORS
- 11) APPLICATION TO EMPLOY BRYAN CAVE AS CONFLICTS COUNSEL

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

May 27, 2009
9:04 a.m.

BEFORE THE HONORABLE REDFIELD T. BAUM, Judge



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Proceedings recorded by electronic sound technician, Juanita Pierson-Williams; transcript produced by AVTranz.

1 THE COURT: Be seated, please.

2 THE CLERK: 09-9488 Dewey Ranch Hockey, LLC.

3 MR. SALERNO: Good morning, Your Honor. Thomas
4 Salerno of Squires, Sanders & Dempsey on behalf of debtors.

5 Your Honor, we have filed a proposed agenda for
6 today's hearing. We have an order that we had suggested. If
7 that's okay with the Court, we would just move down that order.

8 THE COURT: All right.

9 MR. SALERNO: Your Honor, the first item on our
10 agenda is a status report on mediation with the NHL regarding
11 the so-called "Al Haig" motion. The Court, at the last
12 hearing, ordered the parties to mediation. The parties spoke
13 with each other as part of that and have arrived at a mutually
14 agreeable interim resolution, and it is -- it was launched with
15 the Court I believe yesterday. It's a stipulated order among
16 the Debtors and National Hockey League authorizing
17 intermanagement of the Debtor's business affairs.

18 As an overview, Your Honor, this acknowledges that
19 the day-to-day ordinary course business decisions would
20 continue to be made by existing senior management. Paragraph 3
21 provides for a point person -- one from the NHL, one from the
22 Debtors' organization -- who would be able to talk with senior
23 management regarding business-type decisions, weekly
24 communications if not more often than weekly communications on
25 these ordinary course business-type matters.

1 With respect to non-ordinary course business-type of
2 operational matters, senior officers, the senior managers of
3 the organization would make recommendations to the point people
4 for both the NHL and the Debtor. If we can agree, that's fine.
5 Remember, the NHL is also at least acting as an interim DIP
6 lender here. If we can't, either side has the right to come
7 into Court to seek resolution if they can't.

8 Paragraphs 5 and 6 of the order, Your Honor, also
9 recognize and protects the attorney-client privilege, which
10 would exist with respect to communications between counsel and
11 the senior officers of the organization. We ran this by Larry
12 Watson of the U.S.T.'s office -- I know he's not here today,
13 but Mr. Cuellar is -- and he did not have a concern with it. I
14 don't know if Mr. Cuellar has a different position on that, but
15 we would ask that the Court enter a stipulated order among the
16 Debtors' and National Hockey League authorizing intermanagement
17 of the Debtor's business affairs.

18 Oh, and with respect to the motion itself, the
19 parties agree that it would essentially ride the calendar, so
20 to speak, and either party, if they wanted to, could ask the
21 Court to take it up and rule on it at a later date. So I hope
22 that parties can now focus on the sale aspects of this, as
23 opposed to the give and take on who's in charge.

24 MR. CLARK: Good morning, Your Honor, Tony Clark with
25 Skadden Arps for the National Hockey League. We are basically

1 in agreement with what Mr. Salerno just related to the Court.
2 We did not, fortunately, have to resort to getting a third-
3 party mediator involved. The parties were able to work this
4 out between themselves.

5 As it occurred, the League proposed and has now
6 reached an agreement with the Moyes Camp to resolve that
7 management control issue for now as embodied in the proposed
8 stipulated order that was filed yesterday. Under that
9 protocol, Your Honor, the League as the League -- which among
10 other things the League is now the DIP lender, but it is the
11 League -- will continue to oversee management as it has been
12 doing in the past -- for the past several months. And if, and
13 only if some specific disputes arise as to particular decisions
14 that the parties can't reach an agreement on, we would come to
15 the Court on a case-by-case basis to get that resolved. And
16 it's contemplated that that process should work, we hope,
17 throughout the remainder of these proceedings, Your Honor.

18 THE COURT: I signed that order last night.

19 MR. CLARK: Thank you very much, Your Honor.

20 MR. SALERNO: Your Honor, the next item on the
21 agenda, the proposed agenda submitted by Debtor are the
22 proposed bid procedures. Yesterday, there were a number of
23 things that were filed with the Court, hopefully none at
24 midnight. A revised bid procedures by the Debtor, revised bid
25 procedures by the NHL, the declaration of Richard Rodier who is

1 the principal of the stalking horse bidder, and revisions to
2 the asset purchase agreement.

3 Revisions to the asset purchase agreement, Your Honor
4 -- there were some typos that were cleaned up, but there are
5 really four material changes. First, it deleted the \$4 million
6 overbid requirement. Second, there is -- yeah, the \$5 million
7 overbid requirement. Second, there is no \$4 million break fee.
8 They simply reserve the right to seek an administrative claim.
9 The third is they specified the location that they wanted to
10 move the team, which is the Copps Coliseum in Hamilton,
11 Ontario. And the fourth is they added the collective
12 bargaining agreement between the NHL and the various teams and
13 the players as a contract that they wanted to have assumed and
14 assigned.

15 In addition, Your Honor, the Debtor filed a notice of
16 submission of ownership transfer application to the NHL, and
17 we've also asked that this particular document be filed under
18 seal. We did provide the Court with a version of it to avoid
19 the issue that we had at the last hearing. And the reason for
20 this is quite simple, Your Honor, this is the NHL's form. It
21 requires personal financial information of Mr. Balsillie and
22 other principals of PSE, including tax returns, things of that
23 nature that are -- that should not really be matters of public
24 record. The NHL, of course, has the complete -- the
25 application.

1 We also intend to file no later than June 1, which is
2 Monday, the relocation transfer application, the NHL's form for
3 relocation of the team. This will be a joint application of
4 the Coyote's and PSE, and of course, Your Honor, these are
5 being submitted to the NHL without prejudice to the arguments
6 and assertions that were raised in the adversary proceeding and
7 are pending. And we would ask the Court also to allow that to
8 be filed under seal as well.

9 On the bid procedures, Your Honor, not surprisingly,
10 there are some material differences. We again took to heart
11 the Court's admonition and increased the font size for the bid
12 procedures that we submitted. One was a clean, and one was a
13 redline. So hopefully those were slightly easier to read.

14 On the Debtor's revised bid procedures, there were
15 six material changes, just to walk through them. Again, it
16 removes the \$4 million break fee, which was a removal in
17 Paragraph 8. It sets hard dates for auction sale hearings,
18 submission of bids, submission of ownership and relocation
19 transfer applications, and it sets deadlines for the NHL
20 decisions on those applications in Paragraphs 4 and 5. It
21 removes the concept of the competing bidder needing to
22 necessarily be a higher bid, because there was this \$5 million
23 minimum overbid. And so Section 4D was removed so parties can,
24 in fact, submit a bid which might not be as high as the
25 existing bid, and it would still be considered a qualified bid.

1 It sets the deadlines and hearing date on the so-called
2 "relocation and other gating issues" which the Court has
3 advised the parties we're going to brief by June 12th, and here
4 on June 22nd. The fifth is it removes a requirement that the
5 Court order on making a finding that PSA -- PSE, if it's the
6 successful bidder, will be subject to terms and conditions no
7 less favorable than those enjoyed by the Maple Leafs. This was
8 a discussion that was had in Court with Ms. Freeman and that's
9 Paragraph 9, Roman F4. And finally, it takes PSE out of the
10 loop regarding the view of -- review of the bids. The way that
11 this was set up, bids would come in, it would be shared with
12 PSE, and the Court had expressed some concern about that, and
13 so that was also removed with respect to the revised bidding
14 schedule.

15 The NHL submitted its own bid procedures and I just
16 wonder if it might be easier -- we got this yesterday afternoon
17 and so we just kind of put a side-by-side comparison. I just
18 think it might be little bit easier -- I've provided copies to
19 Counsel -- with the Court's permission --

20 THE COURT: I'm looking at copies as I sit here.

21 Thank you.

22 Let me ask you kind of a general question, indirectly
23 about the bid procedures, but it seems to me we're kind of, in
24 some sense, ignoring the elephant in the room. You know, we
25 can talk about the Debtors' schedule or the NHL's schedule, but

1 really these -- one of them will be dictated by who wins what I
2 call "the relocation issue." And right now, that's going to
3 get submitted to the Court on June 22nd, which if your schedule
4 is adopted is two days before the auction.

5 Now, I'm skeptical that I'll rule from the bench on
6 that, but even if I do, that would tend to mean that if there
7 was somebody else out there who wanted to bid and be able to
8 relocate the team, they really wouldn't have much time to gear
9 up and do that. And so my sense --- it's really questionable
10 if the Debtors and the NHL, and I guess the proposed bidder. I
11 really think we ought to move up that schedule and resolve what
12 I call the "relocation issue" as soon as we can. I think
13 putting it off is kind of, like I said, ignoring the elephant
14 in the room, and once that's answered, setting a schedule would
15 be almost easy, I think. So am I missing anything in your
16 view?

17 MR. SALERNO: Well, Your Honor, are you suggesting
18 moving the June 12th and June 22nd dates?

19 THE COURT: Oh, yeah.

20 MR. SALERNO: I'm sorry?

21 THE COURT: Oh, yes.

22 MR. SALERNO: Okay.

23 Your Honor, we can certainly accommodate the Court's
24 schedule to the extent that the Court says this is what I want
25 to do, we'll certainly --

1 THE COURT: Well, but let me ask you, I mean, your
2 schedule is predicated, I think, in a simple -- in one sense,
3 that you're going to win and the proposed buyer is going to buy
4 the assets and move them to Canada, and that's going to happen
5 by the end of June, right?

6 MR. SALERNO: Correct, Your Honor.

7 THE COURT: Then, of course, the NHL, to be blunt, is
8 saying, "It ain't going to happen, and so we'll have the
9 auction in August." Right?

10 MR. SALERNO: Well, yeah. And the NHL schedule is --
11 to the extent that this Court rules that it can order the
12 relocation, the NHL schedule doesn't apply. This was assuming
13 the Court rules against the Debtor.

14 THE COURT: Well, that's what I said. I really think
15 -- and it's going to be somewhat unfair to all of you, but I
16 really think we ought to accelerate the briefing on that and
17 submit it as soon as possible and get it resolved, because
18 either you're right or you're not. And if you're not right,
19 then your schedule and all the efforts -- I don't know if they
20 become meaningless, but it seems to me they don't become
21 particularly germane.

22 MR. SALERNO: Well, Your Honor, I would suggest this
23 to the Court: The one thing that bankruptcy courts are
24 particularly adept at is dual tracking things, and with the
25 concessions that were made by PSE, such as not requiring -- not

1 asking that in the bid procedures someone be a higher and
2 better offer, for example, not having that in there; not having
3 a break fee, which in and of itself raises issues on economics,
4 it would seem to me, Your Honor, that we could dual track this.
5 And people could bid on the basis of I'm going to pay \$100 and
6 leave it here, I'm going to pay \$150 and move it depending upon
7 what the Court's ruling is, they could dual track -- we could
8 dual track that.

9 THE COURT: When you say dual track, are you talking
10 about kind of -- to some extent setting both schedules? I
11 mean, until you resolve the relocation issue, it seems like
12 either schedule has a lot of uncertainty.

13 MR. SALERNO: Well, Your Honor, let's play that out.
14 To the extent that the Court were to go with the Debtor's
15 proposed schedule or some modification to this Debtor's
16 proposed schedule, but that kind of concept, and the Court
17 rules on June 22nd, June 23rd, whenever the Court rules that --
18 on the relocation issue and rules against the Debtor on that
19 particular issue, what have we lost at that point? Well, we've
20 lost -- we've incurred some expenses to notice out the sale.
21 There's no doubt about that. But at the same time, I think
22 when you look at the potential universe of people that are
23 going to bid here, there's not six or 10,000 people. There's
24 people -- a number of people are already coming in, and so it
25 seems to me, Your Honor, that in order to keep the viability of

1 a Stalking horse bidder, which is a cash offer for a
2 substantial amount of money, to keep to this with the
3 understanding that if the Court says no on that issue, well
4 we've lost our stalking horse bidder. And at that juncture,
5 Your Honor, I think you may be right, some of the urgency at
6 that point of having a closing by June 30 may not be -- may not
7 be as important.

8 THE COURT: Well, if you lose, who would close on
9 June 30th that we know about today?

10 MR. SALERNO: I'm sorry? Say again, Judge.

11 THE COURT: If you lose -- I want you to, you know,
12 acknowledge that's a possibility --

13 MR. SALERNO: Sure.

14 THE COURT: -- what would happen at the auction on
15 June 24th of your schedule?

16 MR. SALERNO: Well, Your Honor, we would then -- one
17 of two things would happen. If we received any other bids such
18 that there was a bid to leave the team here, and it was for x
19 dollars, whatever it is, at that juncture, we could have an
20 auction, but obviously the APA from the stalking horse bidder
21 would drop out, or they would modify it and say, okay, then you
22 know, maybe I'll do it but it's on these terms, et cetera.

23 So we would do -- so you know, undoubtedly, some of
24 the bids would drop out. Some of the bids might drop out, some
25 might just remodify and just say, okay, I'll rebid under, you

1 know, these terms and conditions. And so under those
2 circumstances, you could still have an auction.

3 If we've received no bids -- let's just take that
4 possibility -- we've received no bids other than the stalking
5 horse bidder, and this Court says no on the relocation issue,
6 well then, Your Honor, you have an auction, but no one will bid
7 assuming that the stalking horse bidder will not modify it's
8 bid, then no one will bid and we are left -- we're kind of back
9 to square one here.

10 THE COURT: Well, let me ask you this way, are the
11 Debtor's opposed to resolving what I call "the relocation
12 issue" sooner rather than later and moving up the current
13 schedule?

14 MR. SALERNO: Your Honor, as long as we have the time
15 to just finish up the brief, which is -- which are in process.
16 I mean, the briefs are in process. You know, if the Court
17 said, rather than the 12th, they'd be due next Friday, for
18 whatever date that is -- I don't have it in front of me --
19 whatever that -- date that is, we will --

20 THE COURT: That's June 5th.

21 MR. SALERNO: June 5th, and --

22 THE COURT: See, in anticipation, I brought the
23 calendar out with me.

24 MR. SALERNO: All right, sir. It's -- the font was
25 so small, I had trouble reading it.

1 MR. ASHWORTH: Here.

2 MR. SALERNO: Thank you.

3 Yeah. I mean, Your Honor, if that's what the Court
4 wanted --

5 (Counsel Confer)

6 MR. SALERNO: And then we had a hearing sometime
7 after that, Your Honor, that -- sure.

8 THE COURT: I mean, again, I get the sense that
9 you've got some resistance to this process, but it seems to me
10 it would be better for everybody, and it might be easier to
11 attract other bidders, potentially.

12 MR. SALERNO: Your Honor, the hesitation that the
13 Court may hear is a couple of things. Number one, these briefs
14 that the Court is going to see are perhaps the single most
15 important briefs in this case --

16 THE COURT: I agree.

17 MR. SALERNO: -- with respect to these issues. And
18 so that is obviously something that we want to make sure it's
19 done correctly. The Courts have seen snippets, if you will, of
20 the arguments in different briefs, but the parties are now
21 truly focused on the issue, the big issue. And so that's the
22 only thing, Your Honor. But again, we would -- we will abide
23 by any schedule that the Court sets.

24 THE COURT: Well, I assume that all of you are
25 bright, aggressive, eager attorneys, and I don't think you've

1 been waiting to work on this issue. I suspect that everybody's
2 already done -- they may not have actually written it, but
3 they've done all of or a lot of their work on "the relocation
4 issue," as I call it. And it just seems to me that resolving
5 that one takes the elephant out of the room and makes
6 scheduling then pretty easy. I mean, if you win, the schedule
7 you want probably makes sense. Although I will share again, I
8 -- the one thing I have concern about that schedule is I think
9 it makes it more challenging for somebody else to come and
10 overbid because of the short time frame. But if that's the
11 path the Debtors want to go, and if the Creditors aren't
12 opposed to that, then the Court is going to have to give that
13 serious consideration.

14 On the other hand, if you lose the relocation issue,
15 then the urgency of doing this by June 24th or the end of June
16 seems to have gone away. And so whether it's the NHL schedule
17 or some modification of it, it still seems to make sense.

18 MR. SALERNO: Uh-huh.

19 Your Honor, there are some other deadlines which are
20 set forth in the revised bid procedures proposed by the
21 debtors, which were because our stalking horse bidder is
22 submitting the ownership transfer application and will be
23 submitting no later than Monday the so-called "relocation
24 issue," there were some deadlines that the NHL give us their
25 decision on that simply because, as a practical matter, we want

1 to know. We may be having a heated agreement. It's unlikely
2 given the NHL's position in this case, but you know, I suppose
3 they could say, yep, that would be fine based upon these
4 documents that were filed. I don't think that's likely, but --
5 and so we did have that -- those deadlines in there as well.

6 So, I hear what the Court's concern is with respect
7 to that. If -- I think the Court's correct. If the Court
8 ruled against the Debtors on this issue, I think you're right.
9 The urgency on the timing on the close is not as --

10 THE COURT: I can almost throw your schedule away,
11 can't I, at that point?

12 MR. SALERNO: Or allow us to move on an ex -- on a
13 different schedule that we would then sit back and talk with
14 the NHL to see if we could come up with something, but true,
15 that is a possibility.

16 So to the extent that the Court wants to expedite it,
17 Your Honor, and I understand the -- I can understand the
18 Court's reasoning for that, if you would just allow us to file
19 briefs by the fifth, and maybe have a --

20 THE COURT: Well, interestingly, that was the target
21 date I was looking at when I read this and thought about all of
22 this.

23 MR. SALERNO: Then great minds must think alike, I
24 suppose.

25 THE COURT: Let me ask you to hold kind of the

1 specific date issues for the moment, and let me hear from the
2 NHL, the bidder, and I suspect the City of Glendale is probably
3 going to be involved in this to some extent also.

4 MR. SALERNO: Thank you, Your Honor.

5 MS. FREEMAN: Your Honor, Susan Freeman for PSE, the
6 bidder. The major concern that I have with moving up the
7 briefing schedule too much, and moving it up is fine, but
8 moving it up too much is that this Court has expressed the view
9 that we really don't have, effectively, a case or controversy,
10 a bona fide dispute until we know whether the NHL turns down
11 the application.

12 THE COURT: Well --

13 MS. FREEMAN: So, we need to get the application in
14 and have them decide.

15 THE COURT: I expressed concern about the fact that
16 they had never been submitted to the NHL, but let's leave it at
17 that. I think the issue is before the Court. The Debtors
18 filed the case, they filed the motion to sell and assign and
19 assume, and so I think the issue is there. And it seems to me,
20 as I've read through the alternative schedules and thought
21 about all this, as I said, it seems to me that the real issue
22 is can the Debtors sell the hockey franchise to your client and
23 then move it to Canada, and can the Court authorize that to be
24 done.

25 MS. FREEMAN: Right.

1 THE COURT: Because if you're right, then to some
2 extent, your schedule makes a lot of sense. I still have the
3 concern about the quickness with which it's happening, but on
4 the other hand, at least to my recollection, other than the NHL
5 and the City of Glendale, and I don't mean to minimize them, no
6 other creditors jumped up and said, "Oh, Judge, don't do that."

7 MS. FREEMAN: Uh-huh.

8 THE COURT: And so, that schedule may make sense if
9 you're right, if you can do the things you say you can do. And
10 so we've got to resolve that issue, in my mind, sooner rather
11 than later.

12 MS. FREEMAN: The biggest concern is that relocation
13 issues are contextual. They --

14 THE COURT: Are what?

15 MS. FREEMAN: They're contextual. They depend upon
16 the facts in determining whether or not there's a bona fide
17 dispute, which is the Debtor as briefed is the basis for saying
18 you can sell free and clear of this. You need to know whether
19 there is a bona fide dispute. And if the Court needs to have a
20 determination by the NHL to know whether there's a bona fide
21 dispute, as opposed to relying upon statements made in the
22 media, then we need to have that determination. Now, the NHL
23 has stated in its filing that it can make a decision within, it
24 says 10 business days. This proposed schedule has 10 days for
25 it to make a decision on the relocation application, and

1 provides that others can bid on the basis of either filing a
2 relocation application or not at the same time, so that the
3 Court would know whether, in any event, whether somebody wants
4 to move to Toronto as opposed to Hamilton.

5 THE COURT: Well, I'm not making a ruling, so --

6 MS. FREEMAN: Uh-huh.

7 THE COURT: -- everybody understand that. But it
8 seems like on this record, the Court can almost infer that at
9 this point in time the NHL is not supporting the Debtor's
10 request to sell and move the franchise to Canada.

11 MS. FREEMAN: Okay. Yeah, if we want to just have a
12 flat out they're going to object no matter what to our
13 application, you know, we'll put our application in. That will
14 be the evidence, and the Court can determine it.

15 THE COURT: I prefer to phrase it a little bit
16 differently. At least as of 9:30 on May 27th --

17 MS. FREEMAN: Uh-huh.

18 THE COURT: -- I haven't heard the NHL, as of today
19 or earlier say, "Great, sell it and move it."

20 MS. FREEMAN: Uh-huh.

21 THE COURT: So I don't hear them consenting to the
22 sale, which is one element under § 363(f). But I think in the
23 big scheme of things, getting that issue resolved sooner rather
24 than later makes sense for everybody. I mean, if it's not
25 going to happen, I assume your client would rather say, you

1 know, if the Judge is going to say no, I would rather know on
2 June 5th than on June 22nd, for example.

3 MS. FREEMAN: Sure. And it's better for all the
4 creditors too, because DIP loans are admin priority, so as long
5 as the DIP loans are going on, they're just eating away at
6 whatever money will go to the creditors. It is important not
7 to drag this out into the summer for that reason as well.

8 But in terms of moving it up to June 5, you know,
9 we'll have our record in with respect to why we believe that
10 our application makes sense. Hamilton is 43 miles from, you
11 know, Toronto, and that's seven miles within the limits, so you
12 know, therefore, it's banned under their rules. You know, we
13 can present all that. But it would need to be on the record --
14 I just want to make sure that it's okay with the Court for not
15 having that ruling. I don't want to come back and say, "Nope,
16 you know, you really don't have a bona fide dispute because the
17 NHL hasn't ruled against you yet." And that's going to be a
18 problem.

19 THE COURT: I'll try and remember to ask the NHL, but
20 -- the City of Glendale, but I think we have a dispute bona
21 fide now. I'm not making a ruling under § 363, but --

22 MS. FREEMAN: Okay. Right.

23 THE COURT: -- I think it's pretty clear from their
24 filings and their statements that there is at least two parties
25 here who are going to oppose the Debtor and your client's

1 request. The City of Glendale and the NHL.

2 MS. FREEMAN: Right.

3 THE COURT: And the sooner we say either you can or
4 you can't, I think it's better for everybody.

5 MS. FREEMAN: That's fine, Your Honor.

6 MR. CLARK: Your Honor, the League's position is as
7 we related it last week. We think that the relocation issue
8 needs to be decided, and needs to be decided sooner rather than
9 later, so we're prepared. And the reason for that, Your Honor,
10 is because this team, right now, right here, is being injured
11 by the uncertainty that has been injected into it through this
12 process. They're not selling tickets. They're not selling
13 sponsorships.

14 THE COURT: Well, but I mean in the big scheme of
15 things, I -- as I thought about this, and I'm sure somebody may
16 stand up and tell me I'm wrong, I think it's better for
17 everybody that we resolve what I call "the relocation issue"
18 sooner rather than later.

19 MR. CLARK: Absolutely, Your Honor. We're willing to
20 do that, to submit the issue on the papers that are already
21 submitted. We're willing to provide further briefs, and if
22 your Honor wants further briefs, and there are particular
23 questions you would like us to focus on, we're happy to do
24 that, and we'll do it on as quick a schedule as Your Honor
25 would -- as Your Honor's schedule would accommodate. We think

1 it needs to be decided. We think it needs to be decided now.

2 THE COURT: Well, tentatively, I'm thinking about
3 making all briefs and declarations due Friday, June 5th, and
4 wiping the calendar clear for Tuesday, June 9th and having oral
5 argument on that issue on the 9th, and then I'll do my best to
6 rule as soon as I can.

7 MR. CLARK: June 5th, simultaneous papers Judge, no
8 replies, and argument on the 9th.

9 THE COURT: I -- like I said, you know, the problem
10 is if we do, you know, briefs, replies, responses, you know,
11 June is gone.

12 MR. CLARK: It takes time.

13 THE COURT: Yeah.

14 MR. CLARK: Right.

15 THE COURT: And so my thought, and you know, if
16 somebody doesn't like this idea, I really want to hear about
17 it, but my present thought is let's get everything filed by
18 June 5th, let's argue June 9th, and I'll rule as soon as I can,
19 because once that decision is made -- I understand the loser
20 can appeal it -- but once that's made, to me, scheduling
21 becomes pretty straight forward.

22 MR. CLARK: I think you're right, Your Honor. Look,
23 I had lots of eloquent remarks to make, but I'm going to make
24 the best remarks I can ever make in the courtroom, I agree with
25 Your Honor.

1 THE COURT: Good response.

2 MR. CLARK: Thank you, Your Honor.

3 MR. BALDIGA: Good morning, Your Honor. William
4 Baldiga, Brown Rudnick for the City of Glendale.

5 Your Honor, we agree that, especially this -- the NHL
6 gating issue should be resolved as soon as it can be. It
7 sounds like that schedule is one that is appropriate. We --
8 the City has filed a proceeding, as you know, for --
9 essentially seeking that if this Debtor chooses to attempt to
10 reject our use agreement, which it has not filed a motion to
11 do, that we would, notwithstanding --

12 THE COURT: Hasn't it kind of -- I don't think it's
13 officially filed that motion, but isn't the sale a motion? An
14 implicit rejection of the contracts with the City of Glendale?

15 MR. BALDIGA: No, because we think -- I mean, there
16 are some --

17 THE COURT: I mean, if I grant those motions and they
18 move, I assume at some point in the process or shortly
19 thereafter, I'm going to see a motion to reject the agreements
20 from the City of Glendale under the bankruptcy law.

21 MR. BALDIGA: I would assume that that's what they
22 have in mind to do at some point, yes. Now, the question then
23 comes in as to the City's issue. We think that the law
24 supports that even if there were, at some point here, a motion
25 to reject, that rejection would be properly denied as not in

1 the best interest of the estate.

2 And we think then, even if rejection were allowed
3 under 365, that the City's right to specific performance is not
4 a dischargeable claim, and that our right to specific
5 performance would survive. We have proposed, as you instructed
6 at the last hearing, to meet and confer. We've done that. We
7 have proposed a scheduling order that would allow our
8 proceeding to come to a trial at what we think is an aggressive
9 but doable schedule. We don't have an agreement on that order.
10 Obviously, the question now comes into play as to how our
11 proceeding dovetails, if at all, with what the Court is now --

12 THE COURT: Well, you know, I've read your complaint
13 the other day, and it seems to me, in a simple sense, the City
14 of Glendale wants to enjoin the Debtors from leaving.

15 MR. BALDIGA: Yes.

16 THE COURT: And that seems to me to go hand-in-hand
17 with what I call "the relocation issue." It's kind of a
18 combination of § 363 and 365, there's probably some antitrust
19 sprinkled in there, and probably a few other things. But from
20 the bankruptcy sense, it's an assignment rejection of sale, and
21 if it's an assignment of sale that is to be approved, as I
22 said, implicit in that is a rejection of the contracts with the
23 City of Glendale. And I'm sure the City of Glendale's briefs,
24 whenever we have them, are going to say, "You can't do it.
25 We've got all these rights and you can't leave."

1 MR. BALDIGA: Yes. Now our showing, Your Honor, is
2 -- will require some determination of fact. We think we do
3 need some discovery to get that done. We have -- we're
4 prepared to take that discovery on a very accelerated basis.

5 THE COURT: Well, let me ask this question.

6 MR. BALDIGA: Yes, sir?

7 THE COURT: Why doesn't the City, like everybody
8 else, file whatever declarations you want in support of your
9 position, and if there's questions of fact, then you know --
10 let me rephrase that. If there's questions of material fact,
11 then maybe we can't resolve this and get it submitted on June
12 9th, but I really think in the big scheme of things it's better
13 for everybody to get this resolved. As I thought about it, I
14 call it, it's the 10,000 pound elephant in the room. You know,
15 we can talk about --

16 MR. BALDIGA: Uh-huh.

17 THE COURT: -- the options schedule and all this, but
18 if the Debtor and the buyer are right, that's one schedule. If
19 they're not, then I think the schedule is entirely different.

20 MR. BALDIGA: I would like, Your Honor, if I could,
21 since we did not expect that we would be put on this same
22 schedule when we walked into the courtroom, perhaps I could
23 just have a minute with my client to --

24 THE COURT: Sure.

25 MR. BALDIGA: -- during a break or for a couple of

1 minutes just to talk about whether or not this is something
2 that we could get done.

3 THE COURT: Let me do this. I want to know if
4 there's anybody else who thinks they have standing and a right
5 to be heard who wants to be heard on this proposed schedule to
6 resolve what I call "the relocation issue," but it's a
7 combination of § 363, 365, antitrust, and probably a few other
8 legal theories that I've forgotten. Anybody else want to be
9 heard?

10 (No verbal response)

11 THE COURT: City, you want a recess to think about
12 this?

13 MR. BALDIGA: If we could, Your Honor. Just for five
14 minutes, that would be fine.

15 THE COURT: All right. We'll take a five-minute
16 recess.

17 (Recess)

18 THE COURT: Be seated, please.

19 MR. BALDIGA: Your Honor, first -- William Baldiga
20 for the City again. First, we very much appreciate and want to
21 say that these are very important issues for the City, so the
22 time to confer -- and I know we took more than the five minutes
23 I asked -- is very much appreciated.

24 Your Honor, we -- given everything that the Court has
25 said, we are prepared to go forward on the same schedule on our

1 issues and make our submissions, which we understand will be on
2 the 5th, and appear for oral argument on the 9th, as well.

3 THE COURT: All right.

4 MR. BALDIGA: Thank you.

5 THE COURT: Anybody else want to be heard regarding
6 the scheduling on what the Court calls the relocation issue?

7 All right. So we're going to vacate the prior
8 schedule and the hearing on, I believe, June 22nd.

9 You all right, Mr. Salerno?

10 MR. SALERNO: That's a matter of opinion, I suppose,
11 Judge.

12 THE COURT: We won't put it to a vote.

13 MR. SALERNO: Thank you. I just --

14 THE COURT: All briefs and declarations are to be
15 filed no later than Friday, June 5th, and I will clear my
16 calendar; we will have oral argument June 9th, starting at 9:00
17 o'clock. There'll be nothing else set that day. And we'll
18 take whatever time to hear from everybody we need to hear from.

19 All declarations in support of anybody's position
20 setting forth any factual premises will be filed by the same
21 time.

22 Now. Since the deadline for filing is Friday and the
23 argument is on Tuesday, I have to ask a practical question.
24 I'm sure some of you will be filing these items late Friday
25 night, as you're wont to do. And so I'm going to have to come

1 up with a way so I can get copies of everything everybody
2 files. And I don't know that I can tell you that right now,
3 but I think what I'm going to want is someplace I can pick
4 those up early Saturday morning.

5 And so in addition to everything you file I'm going
6 to want -- so there's no doubt in anybody's mind -- I want all
7 of each party's materials in one or more three-ring binders.

8 And I want those -- I'm going to tentatively say at
9 9:00 o'clock Saturday morning. I really don't want to open the
10 courthouse Saturday morning, so I'm going to have to think a
11 little bit about how I'm going to physically get those so I can
12 read them over the weekend.

13 Anything else on that point?

14 MR. SALERNO: Yes, Your Honor. Just -- again, the
15 Court's going to hear this on June 9th and then is going to
16 make a ruling as soon as possible, and we recognize that.

17 Your Honor, what we would like to do is set up an
18 electronic data room -- even send tentative dates so people are
19 not simply waiting until the outcome of this to begin whatever
20 process they want to do. That is what we would ask, that the
21 Court set at least tentative deadlines for objections to the
22 sale, auction, and auction date.

23 We can set up an electronic data room no later than
24 Friday. Have NDAs ready to go at -- standard NDA.

25 THE COURT: So anybody who thinks they might want to

1 possibly bid on the team can go there and check that material
2 out?

3 MR. SALERNO: Correct, Your Honor.

4 THE COURT: All right.

5 (Counsel Confer)

6 MR. SALERNO: And again, Your Honor, if we could set
7 a tentative auction date and the auction date could say,
8 subject to, you know, being vacated, et cetera, on further
9 order of the Court, something along those lines, so that we get
10 people who are looking at it and responding, and not simply
11 waiting around until some sort of a ruling comes out from the
12 Court. That's what we think would make sense.

13 THE COURT: You're kind of talking about the last
14 date on your proposed agenda?

15 MR. SALERNO: Yes, Your Honor.

16 THE COURT: Well, I guess my thought would be to
17 consider doing that on Monday, June 22nd.

18 UNIDENTIFIED SPEAKER: That's the auction date.

19 MR. SALERNO: that would be the auction date, Your
20 Honor?

21 THE COURT: That would be the actual auction date
22 under the Debtor's proposed schedule.

23 MR. SALERNO: And that would be here in open Court?

24 THE COURT: Right.

25 (Counsel Confer)

1 MR. CLARK: Your Honor.

2 THE COURT: Mr. Clark.

3 MR. CLARK: Your Honor, I don't see how we could have
4 an auction date set when we don't know when applications are
5 due in and who will be applying, and we don't know that until
6 we have a decision on the relocation, so I think it's
7 unrealistic to put down June 22nd today as an auction date when
8 we're not even going to argue the relocation until the 9th,
9 Your Honor.

10 THE COURT: Well, educate me a little bit, then, on
11 this perspective. I have to kind of look at this both ways.
12 You know, one side wins, one side loses, what's the effect.
13 Well, if the Debtor and the bidder are right, they've pretty
14 much said, you know, our sale is here till about that last full
15 week in June.

16 MR. CLARK: Right.

17 THE COURT: And if it's not approved, we're gone.

18 MR. CLARK: And --

19 THE COURT: I think the Court to factor that in -- if
20 they win, how do we deal with that.

21 MR. CLARK: Your Honor, that is a deadline that Mr.
22 Balsillie has set. It's not a deadline that the Debtors set,
23 or at least not to the extent I've heard about it or anybody
24 else.

25 THE COURT: Well, I mean, hasn't -- I think -- maybe

1 I'm missing something, but I think the Debtors kind of adopted
2 that as its --

3 MR. CLARK: Sure. Of course they did.

4 THE COURT: -- proposed schedule.

5 MR. CLARK: But my point is, Your Honor, that it's a
6 self-inflicted deadline. There is nothing -- the League has
7 indicated, Your Honor, that we are here to fund the operations
8 of this team through an orderly sale process, and we don't
9 think that an orderly sale process can be conducted, a, without
10 a determination on the relocation issue that Your Honor is now
11 teed up for June the 9th, and Your Honor is going to have some
12 time thereafter to think about the issues after you've heard
13 the argument. And b --

14 THE COURT: Well, I don't want to shock you, but I've
15 been thinking about it already, and I actually -- I have
16 Research Book 1 and I'm about to create Research Book 2 on that
17 -- so --

18 MR. CLARK: I think you're going to have 3 and 4 and
19 5 before you're --

20 THE COURT: I'm sure I will.

21 MR. CLARK: -- before you're through. But, Your
22 Honor --

23 THE COURT: Let me make a comment to all of you. I
24 don't want you all to leave until we talk a little bit about
25 the scope of the briefs and the argument for the 9th.

1 MR. CLARK: Yes. We would very much appreciate
2 whatever direction the Court has. Whatever questions Your
3 Honor has we want to address it, we want to answer them.

4 But in terms of -- look, if the Court wants to set a
5 tentative date for something called an auction, I suppose Your
6 Honor obviously has the power to do that. But it really isn't
7 going to mean very much until Your Honor has said yea or nay on
8 the relocation issue.

9 THE COURT: I think that's fair in part, but I guess
10 the difficulty is we have the one bidder. We don't know
11 whether they're going to be able to actually bid until the
12 Court rules after the hearing on the 9th. In fairness to them
13 and their approximately \$210 million offer, I don't think I can
14 just ignore that and say, well, I'm not going to give you an
15 opportunity to make your bid.

16 MR. CLARK: And we wouldn't deny Mr. Balsillie an
17 opportunity to make a bid either, Your Honor. It's simply a
18 bid -- as I say, he set the deadline for that bid. We have not
19 set the deadline for that bid. We have not made any
20 determination whatsoever with respect to Mr. Balsillie's
21 application to become an owner in the League and he hasn't --
22 neither he nor Mr. Moyes have even filed an application yet for
23 relocation and we haven't obviously made any determination on
24 that. So if, as, and when they or others submit those sorts of
25 applications, the League will deal with those in the normal

1 course under their procedures, subject to the Court's ruling on
2 relocation.

3 THE COURT: Let me be blunt. If I understand their
4 position correctly, they're essentially going to say to this
5 Court, Bankruptcy Court, you have the power to order this
6 whether the NHL and the City of Glendale consents or not.

7 MR. CLARK: I am confident they are going to tell you
8 that, Your Honor --

9 THE COURT: Yeah.

10 MR. CLARK: -- and we're going to argue the contrary.

11 THE COURT: And that's really what the 9th is about.

12 MR. CLARK: Yes.

13 THE COURT: But if they're right, then I think I have
14 to set some kind of schedule that accommodates that offer.
15 I'll be candid. It concerns me that it really, I think, puts a
16 lot -- if there's somebody else out there who wants to bid
17 under those conditions, it gives them a narrow window to do
18 that. But --

19 MR. CLARK: Because they don't know what they're
20 bidding on.

21 THE COURT: I -- well, like I said, there's a host of
22 issues there, but there's that old adage that -- if I can say
23 it right, you know, you got the bird in the hand, there's \$210
24 million sitting there subject to a lot of issues. And right
25 now that's the only offer I'm aware of on the table.

1 MR. CLARK: And that bird is fully free to sit on
2 that hand as long as he wants to.

3 Look, we're talking about a man who has represented
4 on the record to this Court that he's worth something north of
5 \$3 billion. If he really wants -- and this is his third time
6 at the well. He tried to buy the Penguins --

7 THE COURT: But -- well, let me --

8 MR. CLARK: -- talked about the Predators --

9 THE COURT: Let me say this to all of you. I think
10 we're at a different setting for this reason. I've read the
11 Scudder -- declaration. I've read everything. It seems to me
12 that the whole situation changed as of May 5th. Until the
13 bankruptcy petition was filed any sale was subject to the
14 contractual agreements, the NHL Constitutions, the procedures
15 and requirements. Now you've got the Debtors and the buyer
16 saying, Judge, you have this power.

17 And I'm not saying I do. We'll figure that out on
18 the 9th. But if I conclude that they're right, then I think I
19 have to accommodate that schedule. There's parts of it I don't
20 like. But I haven't had anybody else -- I haven't had -- and I
21 don't mean to minimize the City or the League -- but if I put
22 you on the side for a moment, no other creditor has stood up
23 and said, Judge, you can't do it this quickly, don't do that.

24 The creditors committee was formed, I know, sometime
25 last week. I would hope they get counsel and take a position.

1 But --

2 MR. CLARK: Your Honor, the other creditors don't
3 need to get up and say any such thing to the Court, because the
4 National Hockey League is providing the funding to see that
5 they all get paid in full, on time, in the normal course of
6 things, through the DIP flow. So there's no --

7 THE COURT: Well, that's the going forward
8 obligation. But I'm talking -- and I don't know -- if the
9 schedules were filed, I haven't read them. So all I know about
10 the debt structure is there are several secured lenders, I
11 believe, for tens of millions of dollars, somewhere in the
12 range of about 50 million -- and I'm going to be off on the
13 numbers so don't anybody lock that one in stone. The League's
14 in there for tens of millions of dollars.

15 I assume there's also some other creditors. There's
16 five or six names on the official creditors committee. I don't
17 know what their debts are, but I assume they're the five or six
18 largest unsecured creditors in this case.

19 And so I think -- just going back to scheduling, I
20 think, in fairness, I've got to -- it probably makes sense to
21 set the auction date. Whether it goes forward or not, we'll
22 see. But I think in fairness to the proposed buyer and anybody
23 else, it's probably going to be helpful to them to know --

24 MR. CLARK: Your Honor --

25 THE COURT: -- this is the day.

1 MR. CLARK: May I make the suggestion?

2 THE COURT: Sure.

3 MR. CLARK: And maybe it's just semantics, but
4 sometimes semantics actually matter to other people who are
5 watching the proceedings, including people who may want to be
6 bidders, who may want to be bidders for the team in Glendale or
7 for the team somewhere else in the world. If we set a
8 tentative or a conditional auction date for August the -- or,
9 for June the 22nd, which is what they're asking for, and make
10 it clear on the record to the world, because the world -- at
11 least the world that's interested in major league hockey --

12 THE COURT: Well, there's a lot of focus on this
13 case.

14 MR. CLARK: -- is listening to us, right. And make
15 it clear to the world that others who may want to bid for these
16 assets, whatever it turns out these assets are that Your Honor
17 is going to say are for sale, will be permitted to do so on a
18 schedule that will allow them to get in and be heard by Your
19 Honor.

20 If we win on the relocation issue -- in other words,
21 what I'm saying is if we win on the relocation issue, Your
22 Honor, then that date, that June 22nd date --

23 THE COURT: Is gone.

24 MR. CLARK: Exactly. And if --

25 THE COURT: Uh-huh.

1 MR. CLARK: -- we don't -- so I guess what we're
2 saying is, if somebody wants to bid on this asset, based on an
3 assumption that I don't think is going to prove out to be
4 right, that is, that the team can be relocated without the
5 League's consent, without any following of the League's rules
6 or processes, that they may have to have a bid in that Your
7 Honor can consider at an auction on June the 22nd. If that's
8 the Court's pleasure.

9 THE COURT: Well, I wish you hadn't used that last
10 phrase, because I -- to a large extent, I have to schedule
11 based on motions and the needs of the parties.

12 MR. CLARK: Let me change that last phrase. If
13 that's Mr. Balsillie's pleasure.

14 THE COURT: Well, and the Debtors. I mean, the
15 Debtors --

16 MR. CLARK: And the Debtors, yes, yes. They --
17 sometimes it's a little hard to tell which is which. But
18 they're all singing from the same page.

19 THE COURT: I think you can say in a simple sense,
20 one is very short of money and the other isn't.

21 MR. CLARK: May I have a moment, Your Honor?

22 THE COURT: Sure.

23 MR. BALDIGA: While he's doing that, Your Honor.

24 If we're talking about a date that is important only
25 if the lease is -- or the use agreement is rejected and the

1 City is denied its right to specific performance, we will have
2 a very large claim in the case. And as the holder of a large
3 claim now and as the holder of a claim that would contingently
4 be much larger, we don't think the 22nd would give highest and
5 best value to this Estate.

6 No one else looking at this situation would ever have
7 dreamed -- and they won't dream until the 9th -- that it would
8 have been possible to come in and leave an arena that was built
9 with a specific use performance clause and free of the NHL
10 Constitution. So to think that there are well-heeled, well-
11 informed parties who, in the space of a week or 10 days, can
12 come in and bid fairly for this team over Mr. Balsillie's bid
13 is unreasonable.

14 THE COURT: Well, I hear you but I think you've got
15 the balancing act. You're in effect saying, Don't set an
16 auction date in June, period. Right?

17 MR. BALDIGA: Correct.

18 THE COURT: And I understand that's the City's
19 position, but I can't -- I've got to balance the interests of
20 everybody here.

21 MR. BALDIGA: And we are now with a hat (sic) of a
22 very large, likely to be the largest unsecured creditor in the
23 case, and we weren't eligible to serve on the committee. We
24 don't know what the committee thinks about this, and the claims
25 on the committee are fairly small. But we will have a very

1 large claim. And for the unsecured creditors, we think moving
2 at that speed, is unlikely to produce the best result for the
3 Estate.

4 THE COURT: Well, I'll turn momentarily to kind of
5 the issues for the 9th. I think one thing that's going to be
6 significant to the Court is, what's the economic impact on
7 everybody of either alternative. If a sale is approved for the
8 200 and I think it's 12 million dollars, what does that for
9 everybody? I don't know what the number of the City of
10 Glendale's going to have, but I assume you're going to tell me
11 sometime between now and June 9th --

12 MR. BALDIGA: Yes.

13 THE COURT: -- Judge, it'll be in the range of X.
14 And, you know, of course where does that fit into the scheme,
15 what does that do to everybody, et cetera, et cetera, et
16 cetera.

17 And I expect to hear that from everybody.

18 MR. BALDIGA: Well, I put it on the board, Your
19 Honor, the other hearing. But that may have been misplaced.

20 THE COURT: Well, you have to bear with me. You
21 know, I'm a really good reader and I retain a lot, but things
22 are happening quickly in this case.

23 MR. BALDIGA: I appreciate that.

24 THE COURT: I may not remember everything you wrote
25 on the board, so.

1 MR. BALDIGA: I may submit it in somewhat different
2 form.

3 THE COURT: That would be helpful.

4 MR. BALDIGA: Okay. Thank you.

5 MR. CLARK: Your Honor, I'm going to try one more
6 time to explain this.

7 The problem with setting a date for an auction of the
8 team based on relocation is that nobody in the world knows
9 whether the team is going to be sold on that basis or not. And
10 so what other bidders -- and frankly, let's call a spade a
11 shovel here. Mr. Balsillie would be very happy to show up on
12 the 22nd and be the only bidder in town.

13 THE COURT: I'm sure he would.

14 MR. CLARK: And I think, Your Honor, that will be the
15 case because no one is going to go through the time, the
16 trouble and the money -- spend the money to do the due
17 diligence, to buy this team -- figure out if they want to buy
18 this team, based on a team relocated to Hamilton, Hong Kong or
19 whatever, if they don't know that there is some reasonable
20 prospect that Your Honor is going to say they can buy the team
21 for that. So we're going to have an auction where no one shows
22 up but this so-called bird in the hand.

23 THE COURT: Well, you know, there's really only one
24 way to find out.

25 MR. CLARK: That's right, Your Honor.

1 THE COURT: Set the date. Get the matter submitted
2 on the 9th and ruled upon. And then, if the date is still
3 viable, see who shows up.

4 MR. CLARK: And -- Your Honor --

5 THE COURT: Now, the League and the City can tell me
6 on the 9th, you can ask for a hearing before the 22nd and say,
7 Okay, Judge, we lost on relocation, that's still a bad date
8 because -- and I'll hear you.

9 But I come back -- you know, if -- my belief, getting
10 things resolved on the 9th, then dictates where the schedule
11 goes in this case.

12 MR. CLARK: Your Honor, if we get to the 9th -- or
13 the decision after the 9th -- and no one else has showed up to
14 bid for this thing on a relocation basis, if the Court makes an
15 indication to the world that Your Honor is going to consider
16 opening the thing up so that people can do due diligence and
17 make a bid on that basis, after Your Honor's made a decision,
18 then I think that's the best I can ask for from the Court.

19 But if we're here to try and maximize value and to
20 get people into the auction, that's the only way it's going to
21 happen, Your Honor. They will not show up if they are being
22 told to spend hundreds of thousands or millions of dollars
23 trying to figure out whether they want to buy something that
24 Your Honor hasn't said they can buy.

25 THE COURT: I don't --

1 MR. CLARK: I appreciate the difficulty Your Honor
2 has been put in, because of this deadline that has been put on
3 you.

4 THE COURT: I do think that it's beneficial to
5 everybody to set the date. And there's a lot that has to
6 happen before we actually conduct the auction on that day. But
7 I think in fairness to Mr. Balsillie and his company and the
8 Debtors, and the creditors, the Court at least to try and make
9 that schedule possible.

10 MR. CLARK: I understand, Your Honor. And just so no
11 one will say I didn't indicate soon enough, I will tell you
12 right now I believe we will be here the day after Your Honor
13 makes a ruling, if Your Honor gets it wrong and decides for
14 them instead of for us --

15 THE COURT: Well, you know, I'm just the first Court.
16 I'm not naive enough to think that whatever ruling I make might
17 not be taken up to the Appellate Court for them to look at.

18 MR. CLARK: We have that. But I expect, Your Honor,
19 we'll be in here making an application to revise the date and
20 change the procedures to allow others to come in and bid for
21 the team on a relocation basis because I don't think there's
22 going to be anybody else here that time.

23 THE COURT: Well, you know, the difficulty right now
24 with that is it's the classic one bidder --

25 MR. CLARK: Exactly.

1 THE COURT: -- problem. When you have one bidder --

2 MR. CLARK: One bidder who's making the --

3 THE COURT: I don't want to say the one bidder gets
4 to make the rules, but he sure has a lot of control. He's the
5 only game in town.

6 MR. CLARK: Your Honor gets to make the rules. Mr.
7 Balsillie doesn't.

8 THE COURT: I get to make the rules, but in any case,
9 whether it's this case or some other case, when there's
10 somebody who's there who says, Judge, I'm going to pay a lot of
11 money to buy this asset and pay a lot of the creditors,
12 bankruptcy courts and bankruptcy judges have to listen to that
13 kind of bidder.

14 MR. CLARK: Your Honor, if -- let's put a hockey team
15 to one side. Let's say --

16 THE COURT: Take the skates off?

17 MR. CLARK: Right. Let's say what you've got as a
18 debtor in here is Tony Clark as an individual. And one of the
19 assets I have is a hundred shares of IBM stock. If I asked
20 Your Honor to let me sell that stock at a 363 auction, and
21 along with it that stock will carry the power to elect the
22 entire board of directors of IBM, even though there's 50
23 gazillion other shares out there, Your Honor would say, You're
24 nuts. You can't sell what you don't have.

25 That's the problem that Mr. Balsillie and Mr. Moyes

1 and the Debtors have put Your Honor and everybody else in the
2 world into by the way they've approached this case.

3 THE COURT: Well --

4 MR. CLARK: It didn't have to be here, it didn't have
5 to be this way, and it doesn't have to be this way.

6 THE COURT: Well, the difficulty for the Court is,
7 here we are.

8 MR. CLARK: And so --

9 THE COURT: I don't know what happened before May
10 5th, other than what I've read in the declarations and the
11 pleadings. Obviously, there's a history here. But what the
12 Court has to deal with is the parties and the motions that are
13 filed, and the Debtor filed a motion to sell and have the
14 auction, and I think at least, in fairness to the Debtor and
15 the potential buyer, have to give them a potential date that
16 we're going to have that hearing.

17 MR. CLARK: I appreciate that, Your Honor, and we
18 feel we're obligated to let the Court know we'll be in asking
19 for that date to be changed if, as and when that becomes
20 necessary.

21 THE COURT: I assume, at least until you tell me
22 differently, that the NHL is going to fight this tooth and nail
23 every step of the way to and including that hearing, if we get
24 there.

25 MR. CLARK: Your Honor, what the NHL is going to do

1 is fight tooth and nail to see to it that the highest and best
2 value for this franchise in this city, in Glendale, Arizona, is
3 achieved through this process. That's what we're going to do,
4 Your Honor. And that's what we obligate -- we are obligated to
5 do for the League, 30 owners. Not one.

6 THE COURT: Understood.

7 MR. CLARK: Thank you, Your Honor.

8 THE COURT: All right, anybody else want to be heard
9 regarding scheduling the auction tentatively for June 22nd?

10 All right. So the auction date is going to be June
11 22nd. Tentatively.

12 MR. SALERNO: Your Honor, the Court had mentioned
13 that it wanted to address the scope of the briefs on the 9th.

14 THE COURT: Well, let's finish your schedule.

15 MR. SALERNO: Okay. I have it here in front of me,
16 Your Honor.

17 THE COURT: I'm looking at Number 4, the June 12th
18 deadline to submit briefs. That's kind of moot now, in light
19 of the new schedule.

20 MR. SALERNO: It is.

21 THE COURT: Okay.

22 MR. SALERNO: It is.

23 THE COURT: Well, let me ask you. You've got several
24 items in here about the deadline for the NHL and/or the Board
25 of Governors to do something. I come back, it seems to me, in

1 a simple sense the Debtor and the proposed buyer are saying,
2 Judge, you can authorize this whether they consent or not.

3 And so I'm not sure I have the power, and even if I
4 do I ought to set that kind of a deadline.

5 MR. SALERNO: Well, Your Honor, bankruptcy and
6 certainly restructurings work best to the extent that we
7 minimize potential disputes. The point of this was, if the NHL
8 says, Yeah, we've got this, we're okay with it, that's one less
9 dispute that we have in the case.

10 THE COURT: Well, but I mean in a simple sense, as
11 unlikely as it may be, I mean, the NHL could withdraw their
12 opposition today, tomorrow. There's a hearing on the auction
13 the 22nd of June, they could withdraw on the morning of the
14 22nd.

15 MR. SALERNO: From your lips to God's ears, I
16 suppose.

17 THE COURT: Well, whatever you want to characterize
18 it as, but.

19 I'm just not sure I have the authority to tell them
20 they have to do this, and even if I do, that I ought to. I
21 mean, if I do that, to some extent I'm rewriting their
22 Constitution for them, which seems somewhat beyond the powers
23 of this Court.

24 MR. SALERNO: Your Honor, one of the issues that we
25 had when we were before you in prior hearings was the Court

1 saying, How do I know that there's a dispute when, you know,
2 the NHL hasn't said no, they haven't said yes, how do we know
3 that there's a dispute?

4 That would certainly --

5 THE COURT: Well, I think you all may have
6 misperceived some of my statements. All I said was, when you
7 look at the antitrust cases you all cited and I read, in at
8 least one of the cases, I believe the Sullivan decision, they
9 reversed the judgment by the Trial Court because the member of
10 the NFL, the Patriots owner, had never asked for permission to
11 do what he was complaining about.

12 And then if you looked at the decisions in the Ninth
13 Circuit, in each of those -- I believe it was the Raiders, but
14 maybe there was one other -- they had gone to the NFL and said,
15 We want to do this, and it had been voted down.

16 And my only point was, you know, the context of what
17 I have in front of me procedurally, that hadn't happened.

18 MR. SALERNO: Understood. And that will have
19 happened by, obviously, June 1, so I understand.

20 THE COURT: Well. So I'm really not right now
21 inclined to set deadlines saying to the NHL, You have to have
22 your Board of Governors and League meetings and meet as
23 directed by this Court, contrary to what your contracts say
24 that you have between your members.

25 MR. SALERNO: That would take Number 6 out, as well.

1 I'm looking at the comparison that I'd given you.

2 What about, Your Honor, deadline to file objections
3 to the sale itself?

4 THE COURT: I think that's reasonable.

5 MR. SALERNO: Obviously, Number 8 is mooted.

6 THE COURT: Right.

7 MR. SALERNO: I'm assuming the auction is at 10:00
8 a.m., the same time that the Court has already reserved on its
9 calendar?

10 THE COURT: 10:00 a.m. is fine.

11 MR. SALERNO: Number 9, Your Honor, based on the
12 Court's prior discussion about not advising -- or, not
13 requiring the NHL to say yea or nay, I guess comes out? And
14 obviously the auction, to the extent it happens the auction and
15 the sale approval would occur at the same time.

16 THE COURT: Let me ask you this question. Let's
17 assume you've won and there's an auction on the 22nd.

18 It may be unlikely in the context of this case, but
19 as you know in other cases, in other auctions, occasionally
20 bidders show up the day of the hearing who have had no prior
21 appearance. And it seems to me that in some manner this
22 schedule and this procedure needs to make sure that it's clear
23 that if somebody wants to show up and bid more than, I think
24 it's 212 million, but whatever the current bid is, the Court
25 will consider letting them do that. Even if they haven't

1 submitted something on this schedule, timely.

2 MR. SALERNO: Obviously, Your Honor, that's the
3 Court's prerogative as to --

4 THE COURT: Well, what I'm concerned about is I want
5 to make sure that that word is out there. What I don't want
6 somebody to do is say, Gee, I would have paid \$250 million but
7 I didn't do something by June 1st or June 12th.

8 MR. SALERNO: And the only issue that the Debtor has
9 with it, Your Honor, and the Court will recall when you were in
10 practice, you have someone show up and just say, Oh, yeah, by
11 the way I want to bid \$250 million. They don't have any
12 earnest money up. It can create this issue of how real are
13 they, and people don't really have the ability to test it.

14 THE COURT: Well. I'm not saying they're going to
15 get to bid. But I'll just tell you a little war story.

16 I went through this deadline, somebody didn't do it,
17 and then a new bidder showed up with a cashier's check for --
18 in this case it would be \$250 million. And of course, one side
19 objected because they hadn't complied with the procedures.

20 And, well, it's a cashier's check from a recognizable
21 bank. What's the issue?

22 I'm not saying that somebody's going to get to bid,
23 but I think they ought to know that that is a possibility and
24 they can ask the Court to let them, and if they can prove that
25 -- their bona fides, they're probably going to get to bid.

1 MR. SALERNO: Suitcases full of cash are always good.

2 THE COURT: So you'll need to, in some manner, get
3 that into these procedures.

4 MR. SALERNO: I understand. Okay.

5 MS. FREEMAN: Do you want some date, though, for bids
6 to be coming in so that people can look at it in advance and
7 see if they're qualified?

8 THE COURT: Well, I think it would be nice to have a
9 deadline, but I think you also have to have the -- what the old
10 lawyer in me calls the "out," that, you know, if some really
11 qualified bidder shows up, I mean if Bill Gates comes in here
12 on the 22nd, I think I'm going to let him bid.

13 MR. SALERNO: Have you seen how Microsoft's stock is
14 doing lately?

15 THE COURT: I don't think we ought to be talking
16 about how anybody's stock is doing lately.

17 MR. SALERNO: Fair enough.

18 Your Honor, what about a deadline for bidding to give
19 people an opportunity to look at it the 19th, which is the
20 Friday before the 22nd. People work through the weekend to
21 review.

22 THE COURT: I don't mind there being a deadline for
23 bids to be submitted, but again there needs to be a qualifier
24 on that --

25 MR. SALERNO: Understand.

1 THE COURT: -- that if somebody shows up, the Court
2 has the power to consider letting them bid, even though they
3 didn't submit by that date. Frankly, it probably ought to be
4 earlier than that date. I mean, if somebody is going to get
5 their act together, it ought to be sometime --

6 MR. SALERNO: How about the 17th, Your Honor, which
7 is -- I think that's what we had on our schedule, after taking
8 out the things that the Court --

9 THE COURT: Anybody else want to be heard on the
10 Debtor's revised schedule for bid procedures?

11 MS. FREEMAN: Just, Your Honor, do you want to
12 address some of the other things that were in there, in the
13 sense of having a black line through the existing APA and
14 coming in with deposits and so forth, so that the Debtor is in
15 the position to evaluate alternative bids? We just -- come in
16 and show us what you have.

17 I'm not saying that you're requiring something,
18 but --

19 THE COURT: Hey --

20 MS. FREEMAN: -- have them present whatever there is
21 and our --

22 THE COURT: Here's the struggle. You know, of
23 course, you're torn between will it be real easy if everybody
24 used the AP as the template and bid off of that, but again, you
25 don't want to close the door on somebody else who is going to

1 come in and say, Look, Judge, I'm just going to pay cash, I
2 don't need --

3 I'll give you analogies. I understand that when
4 Berkshire Hathaway, the Warren Buffett, spend billions of
5 dollars to buy a company, it's about a three-page letter
6 agreement.

7 MS. FREEMAN: But you do need to know things like
8 from the Union's perspective are you assuming the Union
9 contract. I mean, there are a number of issues there that we
10 have worked through, so it might be useful to have that.

11 THE COURT: I agree it would be great if everybody
12 would have used that template. I'm just -- I want to make sure
13 that I'm not foreclosing, because again, your client imposed a
14 very tight schedule here.

15 MS. FREEMAN: Right.

16 THE COURT: I want to leave the door as wide open as
17 possible, if there's anybody else out there who wants to come
18 in and bid on the 22nd, I want that door open for them --

19 MS. FREEMAN: Right. I understand.

20 THE COURT: -- I want them to feel willing and able
21 and invited to come in and bid.

22 MS. FREEMAN: I'm just wondering, for the purposes of
23 the notice that goes out, because as I understand it the
24 Debtors are going to be noticing everybody, there's a
25 possibility you'll be able to relocate, so you know, go do your

1 due diligence and if you want to --

2 THE COURT: How about if we use the APA as the
3 recommended format, but not required, and that the Court has
4 the discretion to allow somebody to bid on some other basis if
5 they want to and it's bona fide.

6 MS. FREEMAN: Sure. That makes sense. And then
7 along with the rest of it, in terms of a down payment in -- so
8 that variable to determine bona fides? And I -- the Debtor
9 needs to be able to know what to put in this -- the notice that
10 goes out, because the notice was proposing, say this.

11 Now, if you want to say this -- do the recommended
12 deposit to the recommended APA --

13 THE COURT: I think that would be --

14 MS. FREEMAN: -- those kinds of things?

15 THE COURT: I don't -- yeah, is there a difference
16 between recommended and suggested?

17 MS. FREEMAN: No, recommended but still with a --

18 THE COURT: Let's call it recommended --

19 MS. FREEMAN: -- the caveat that it doesn't have to
20 be --

21 THE COURT: -- but the Court consider allowing
22 somebody to bid on alternative terms if --

23 MS. FREEMAN: Right.

24 THE COURT: -- it appears appropriate.

25 MS. FREEMAN: And then the Debtor will know what to

1 put in its notice. And I think our proposal -- the proposed
2 schedule did also include you need to attach copies of your
3 application to the NHL, so that again, you would know whether
4 or not they had or had not, and that's something --

5 THE COURT: Well, let me ask you something about
6 that, because --

7 MS. FREEMAN: Uh-huh.

8 THE COURT: -- I think Mr. Salerno delivered about
9 two feet of documents your client had submitted yesterday.

10 I almost wonder -- in fact, I don't wonder. I'm not
11 sure those really should be with the Court.

12 MS. FREEMAN: I think, though, it is --

13 THE COURT: How about a certification that they've
14 submitted what they consider all the appropriate documentation
15 to the NHL?

16 MS. FREEMAN: The -- I think we need a little bit
17 more than that in the sense that the Court's going to be
18 determining relocation based upon that factual record, so --

19 THE COURT: What if I do this?

20 MS. FREEMAN: -- we need to be able to give it to
21 you.

22 THE COURT: How about if we require them to provide
23 copies of everything they've submitted in the NHL at Mr.
24 Ashworth's office and that the Court may allow third parties to
25 inspect those.

1 MS. FREEMAN: To the Debtors? I mean, the Debtors
2 are the ones who are going to need to be evaluating alternative
3 bids, though. And that's not saying me, but from the Debtor's
4 perspective they probably need to see that stuff too.

5 THE COURT: Well, help me out a little bit. What do
6 we do? I'm just going to make this up.

7 If Bill Gates comes in here on the 22nd --

8 MS. FREEMAN: Right.

9 THE COURT: -- and says, Judge, I haven't made an
10 application, I've submitted no papers to the NHL or the Debtor,
11 but I'll outbid everybody for this hockey team, I don't care
12 what the high bid is.

13 It seems to me you say to him, Okay, make your bid.

14 So how do I deal with that?

15 MS. FREEMAN: I understand that. But he's probably
16 going to be saying, But I want to relocate it to Toronto
17 because that's where, you know, most of the population is.

18 THE COURT: Well, let's make it difficult. Let's say
19 he says, I like Phoenix and I want to keep it here in Phoenix.

20 MS. FREEMAN: If he comes in and wants to keep in
21 Phoenix and pay \$250 million, I am sure he'll get it. And we
22 will be outbid, no question.

23 THE COURT: All right, but if he hasn't submitted any
24 of that stuff, the NHL hasn't done any of that --

25 MS. FREEMAN: But I think my point was in terms of

1 the notice that goes out, the notice ought to say that this is
2 part of the recommended --

3 THE COURT: Okay.

4 MS. FREEMAN: -- application.

5 THE COURT: As long as it's recommended and it's
6 clear that somebody can request the Court to waive that
7 requirement.

8 MS. FREEMAN: Right.

9 THE COURT: Okay.

10 MS. FREEMAN: Okay, thank you.

11 MR. CLARK: Your Honor, I'm not sure this is auction
12 procedures or this is briefing on what Your Honor's been
13 calling the relocation issue, but I think it needs to be clear
14 on the record that what we're really going to -- based on the
15 conversation with just that last 20 minutes -- what we're
16 really going to be putting before the Court on June the 9th is
17 whether the NHL's procedures will or will not be honored in
18 this process. Not just relocation --

19 THE COURT: I think that --

20 MR. CLARK: -- but ownership transfer.

21 THE COURT: I think that's generally fair.

22 MR. CLARK: Right. So that people understand, and
23 particularly my friends on that side of the courtroom,
24 understand that they're going to have to explain to Your Honor
25 why not only the relocation procedures, but why the ownership

1 transfer procedures of the NHL ought to be disregarded by the
2 Court under the law.

3 THE COURT: Well, again, if I understand the position
4 of the bidder and the Debtors is, they can -- under the powers
5 of the Bankruptcy Code they can force this through over the
6 objections of the NHL, the City of Glendale, and perhaps
7 others.

8 MR. CLARK: Exactly. So they're going to have to
9 prove to Your Honor, show Your Honor -- among other things --
10 that there's a bona fide dispute as to -- under the antitrust
11 laws as to the enforceability, not only of the relocation
12 rules --

13 THE COURT: Well -- well, I think a bona fide dispute
14 under § 363(f) of the Bankruptcy Code, not necessarily the NHL
15 Constitution.

16 MR. CLARK: Exactly. But the dispute is the
17 antitrust issue, and it's going to be not just on relocation,
18 but it's also going to be on whether or not the League has the
19 power to control who owns a team in the League.

20 THE COURT: Right.

21 MR. CLARK: Thank you, Your Honor.

22 THE COURT: While I've got you, Mr. Clark, do you
23 want me to set some kind of alternative schedule for the NHL's
24 proposed bid procedures, or what do you want me to do with that
25 today?

1 MR. CLARK: Yes, Your Honor. I think that's a fine
2 idea. I think the Court should set, as an alternative
3 schedule, the schedule that we had proposed, which would have -
4 - I forget exactly the dates, but the way it generally works,
5 Your Honor, is that people today can start filing with the
6 League ownership transfer applications pursuant to the modified
7 --

8 THE COURT: If I understand your procedure correctly,
9 in a cryptic sense NHL is going to do the auction, the
10 procedure, and then come back to the Court, I believe on August
11 29th, and ask that it be approved. But most of it's going to
12 be outside the courtroom and not subject to oversight by this
13 Court.

14 MR. CLARK: That's exactly right, Your Honor. What
15 we've proposed is that people can start today putting in
16 application for ownership transfer with the League. They would
17 be allowed to submit those applications up to -- the way the
18 Debtors' chart says, it's says --

19 THE COURT: Well, let me ask you the same question
20 that I asked Ms. Freeman and I think Mr. Salerno.

21 Let's say I adopt your schedule and then, on the
22 29th, you've had your auction and the A Company has been the
23 high bidder and they've qualified and the League's approved
24 them. And Bill Gates walks in.

25 MR. CLARK: I don't think we'll have a problem with

1 Bill Gates, Your Honor. If somebody else walks in who's a --

2 THE COURT: So you're going to have to build in that
3 there's some -- the Court has the power at the hearing -- if it
4 concludes that we have a new bidder who is making a higher bid,
5 the Court can hear that bid and open the bidding back up.

6 MR. CLARK: That wasn't my point, Your Honor. My
7 point was that the League has the power to approve persons who
8 want to become owners of the League and to transfer teams, and
9 if Bill Gates came in and said to the League, You know, I'd
10 like to be the owner at this price and in this place, I think
11 Mr. Betman could get on the phone and talk to the other owners
12 and get some --

13 THE COURT: Well, but --

14 MR. CLARK: -- response very quickly.

15 THE COURT: Well, but my point is then, on
16 potentially August 29, you're going to have to build into your
17 procedures that there is a mechanism that if what I'll call a
18 qualified bidder comes in, the League and the Court may allow
19 them to bid and the bidding may be reopened on that day.

20 MR. CLARK: That's right, Your Honor. It certainly
21 -- it's fine with us to have something in the procedures that
22 say that somebody can come in and make that kind of an
23 application to the Court and to the League at that time, and
24 they may be considered or they may not; it depends on what Your
25 Honor decides to do after -- it depends on a couple of things.

1 It depends on what the League thinks Your Honor
2 should do, and we'll make an argument -- either say let them in
3 or don't let them in, and don't let them in for this reason,
4 whatever, and then Your Honor is going to make the decision
5 and, you know, we'll go with what Your Honor makes, a decision
6 subject obviously to appeal rights and all the rest of it.

7 THE COURT: But I don't think that's in your proposed
8 procedures.

9 MR. CLARK: No.

10 THE COURT: As a rule.

11 MR. CLARK: That was something that came up in Court
12 today, and we certainly don't have an objection to putting in
13 something that says that people who want to come in and make an
14 application for good cause shown to show up and be a bidder at
15 the end of the day can go ahead and do that.

16 Excuse me, Your Honor.

17 (Counsel Confer)

18 MR. BALDIGA: Your Honor, perhaps while they take a
19 minute, just on the City's issue.

20 The -- if this is the process where the Court rules
21 for either the City or the NHL on the 9th or after the 9th, the
22 -- we think the NHL's schedule is somewhat aggressive here.
23 It's almost certainly the case, and it has been the case here,
24 prior to the commencement of the case, that those most serious
25 about buying this team would want to come in and talk to the

1 City about what this arrangement's going to look like over the
2 next 25 years. It's obviously a very important relationship.
3 And again, it's not about concessions, it's just about how is
4 this really going to work with the City.

5 We think this is aggressive. The City, just like the
6 NHL, has a Constitution and governors and a process. We have a
7 city council, and it's hard to tell the elected body, Your
8 Honor, how and exactly when it can do things.

9 We think this may be doable, but it's very aggressive
10 in terms of the City Council --

11 THE COURT: Well --

12 MR. BALDIGA: -- approving whatever would need to be
13 done here.

14 THE COURT: I suppose there's one practical flaw in
15 the entire schedule the NHL's proposed, that asking somebody
16 with this kind of money to come to Arizona on August 29th seems
17 like somewhat of a bad idea, period. But --

18 MR. BALDIGA: So we --

19 THE COURT: What kind of schedule does the City think
20 makes sense?

21 MR. BALDIGA: Well, we think this is at the
22 aggressive end of the reasonable -- I mean, we just can't get
23 any less than this. As a practical matter, Your Honor, we --
24 you do appreciate that the -- if we -- if the Debtor were to
25 win on the 9th, we've eliminated with the Debtor's schedule any

1 bidder who wants to keep the team here. Because as a practical
2 matter, there is just no time for someone to come in and talk
3 to the City about that, so we're eliminating most bidders at
4 that point.

5 THE COURT: Well, that's a little tougher for me to
6 evaluate in this -- at least from what I've read, this
7 franchise has been marketed, it sounds like, fairly extensively
8 in its present location to a number of people, some of whom
9 have apparently at least, I guess you'd kick the ice, not the
10 tires, but whatever you do when you're thinking about buying a
11 hockey team. And so --

12 MR. BALDIGA: No, Your Honor, I mean, that's -- I
13 think that's a misimpression. And the reason is, let's call a
14 spade a spade here. Mr. Moyes is interested in something that
15 gets money to him. That's why we're here.

16 THE COURT: Well.

17 MR. BALDIGA: Mr. Balsillie has put together
18 something that Mr. Moyes hopes would return money to Mr. Moyes.
19 It's a simplistic way of looking at things, but that's why
20 we're here in this forum.

21 That ignores the fact that if this --

22 THE COURT: Well, let me ask you about this because
23 at least as far as I know from everything I've read, which is
24 quite a bit, as of right now nobody else has made a definitive
25 offer to buy this team.

1 MR. BALDIGA: Because Mr. Moyes would not negotiate
2 in good faith with those who would not jump over others to put
3 money in Mr. Moyes's pocket, and it's only through this scheme
4 that would get there.

5 THE COURT: You know, I hear you, but I've read
6 declarations, Emails between people at the NHL and what I call
7 the Moyes Group, about possible buyers, people who've expressed
8 some interest. And so I think it would be a little bit unfair
9 not to just point that out about your comments.

10 But I think we're kind of off topic. I think we got
11 to come back. If you don't like the NHL's schedule, you think
12 it's aggressive, what kind of schedule do you want, bearing in
13 mind that I'm not a big hockey fan but I think the season
14 starts fairly early in October. And if somebody's going to buy
15 this team, I would assume they'd want to have their hands on
16 this team at least weeks in advance of the first time the puck
17 gets dropped on the ice.

18 MR. BALDIGA: Yeah. I don't know whether this
19 results in a closing for the beginning of the season or what
20 the momentous date is. We do think that adding a month to this
21 would be more reasonable than this. But this -- again, if this
22 is -- if there is some compelling reason why it needs to go in
23 this short of a process, given that if we're talking about this
24 schedule, we're looking at the team in Glendale for next year
25 in any event so we don't have any of these other issues, the --

1 we think --

2 THE COURT: Well, one concern that --

3 MR. BALDIGA: -- giving it more time makes more
4 sense.

5 THE COURT: -- if you're right and you win and it's
6 going to be a buyer in Glendale, I assume everybody would be
7 better off with the new owner having the team than the existing
8 structure, which clearly economically is not going well.

9 MR. BALDIGA: That's right.

10 THE COURT: And it seems to me to some extent that
11 counterbalances what you're asserting.

12 Let me make this suggestion to you. You know, August
13 29th is more than three months from today. Why don't I approve
14 this schedule and give the League some time, if you want -- or,
15 I'm sorry, give the City some time. If you want to come back
16 and ask that it be pushed out, I'll hear from you. But I think
17 you ought to do that sooner rather than later. Because I think
18 if there's bidders out there, I think it's helpful to them to
19 know that, okay, it's -- the League has won, it's a sale of the
20 Coyotes participating out of the jobing.com arena, and the
21 auction date is August 29th.

22 I mean, I assume to some extent the City of Glendale
23 is better off with new ownership in there.

24 MR. BALDIGA: We all are.

25 THE COURT: All right.

1 MR. BALDIGA: And we'll do that, Your Honor.

2 THE COURT: All right.

3 MR. BALDIGA: That's a good suggestion. I just
4 wanted to have that --

5 THE COURT: I -- how about this? I'm just going to
6 ask you artificially if the City wants to challenge this
7 schedule, file something by Friday, June 19th, is that fair?

8 MR. BALDIGA: Very much.

9 THE COURT: All right.

10 MR. BALDIGA: Thank you.

11 THE COURT: Anybody else want to be heard regarding
12 the proposed schedule from the National Hockey League?

13 MR. CLARK: Your Honor, just a couple of points of
14 clarification.

15 The dates -- what we have done is said people can
16 start submitting applications right now. All the other dates
17 key off of not when Your Honor hears the relocation issue --
18 the League rules and procedures issue, I'll put it that way.
19 But when Your Honor decides it, so there's a period of 10 days
20 after that decision in which people can apply for ownership
21 transfer and everything goes off of that. So it's -- if August
22 the 9 -- August the 29th may well work as a date on the
23 calendar. It really just depends on the date of Your Honor's
24 decision, that's all I'm saying.

25 And if, because you've --

1 THE COURT: Well, let me ask you this. Have you
2 spent much time in Arizona?

3 MR. CLARK: I've spent some time -- actually, I lived
4 in Arizona many, many years ago, Your Honor.

5 THE COURT: Whereabouts?

6 MR. CLARK: Mesa. My father was in the army. I
7 don't know what they have in the army down there, but that's
8 where we -- I went to kindergarten in Mesa, as a matter of
9 fact.

10 THE COURT: In the army or the Air Force?

11 MR. CLARK: Army.

12 THE COURT: Huh.

13 MR. CLARK: I don't know how we got here.

14 THE COURT: Well. You know, one, as I look at the
15 cal -- August 29th is a Saturday. So that's a bad day for the
16 Court right there.

17 MR. CLARK: It's a bad day. It's also a hot day.

18 THE COURT: Well, I was going to tell you. You know,
19 I'll probably get some grief for saying this, but if that's not
20 the worst month of the year in Arizona, it's awfully close.

21 And so I'm almost going to ask you --

22 MR. CLARK: Go to October, November.

23 THE COURT: Well, again, I assume that you're going
24 to want this done sufficiently in advance of when the season
25 starts, which I think is about the second week in October. And

1 so I'm kind of thinking maybe the week after Labor Day,
2 Tuesday's the 8th, Friday's the 11th. I don't know if we have
3 to lock that date today.

4 MR. CLARK: I think having that range is fine for
5 now, Your Honor.

6 THE COURT: All right.

7 MR. CLARK: I think it's sufficient. The one other
8 thing I wanted to say -- look, Your Honor asked about if
9 somebody shows up at the auction who hasn't showed up before.
10 The League's position would be that anybody who is a, quote,
11 qualified bidder, as the term is defined, which includes having
12 gone through the League's ownership transfer process, can show
13 up and bid. If they have not done that, then we can talk about
14 reopening the process to allow somebody to do that and then
15 come back to Your Honor.

16 THE COURT: Well, I don't need to decide this right
17 now.

18 MR. CLARK: Right.

19 THE COURT: But I'm going to tell you and I want you
20 to communicate this very clearly to your client and the Board
21 of Governors and the League if you have to, I think they're
22 going to have to figure out by telephone or some manner that if
23 somebody shows up -- I mean, I'm just going to use a name
24 that's been out there, that's in the Scudder declaration.
25 Let's assume nobody hears from Mr. Reinstore until the auction

1 day, whenever that is, August 29th or September 8th, whenever
2 it is.

3 But he walks in here on that day and makes the
4 highest bid. I'm going to expect you to get on the phone with
5 Mr. Betman or Mr. Betman to get on the phone with whoever he
6 needs to get on the phone with, and to sign off on that bidder
7 yea or nay, very promptly.

8 MR. CLARK: I understand the message, and the message
9 will be delivered, Your Honor.

10 THE COURT: All right.

11 MR. CLARK: One last point as a factual matter,
12 because I -- because people are listening to this.

13 THE COURT: I know.

14 MR. CLARK: But it is the fact and I think Your Honor
15 has seen some of this in the papers that have been filed, that
16 there is indeed interest by other buyers to buy this team and
17 keep it right here in Arizona, and in fact the Commissioner was
18 on his way to Mr. Moyes's office to tell him exactly that and
19 to deliver a proposal to him to that effect, when he was hit
20 with the surprise bankruptcy filing by Mr. Moyes and Mr.
21 Balsillie .

22 THE COURT: Let's stay on the topic now. We'll save
23 the advocacy for the 9th.

24 MR. CLARK: Thank you, Your Honor.

25 THE COURT: I think it would be helpful to go ahead

1 and tentatively set a date that week in September so you can go
2 ahead and get your proposed order put together and procedures.

3 Thursday, September 10th, for the actual auction?

4 MR. CLARK: I know that works, Your Honor. At least
5 that works for me, which is what's most important in my life.

6 THE COURT: There you go. All right. So we're going
7 to change August -- Saturday, August 29th, to Thursday,
8 September 10th. And I'll let you adjust the other days
9 accordingly, however you and your client deem appropriate.

10 MR. CLARK: Very good. We will, Your Honor. Thank
11 you.

12 THE COURT: And then what I want from both the League
13 and the Debtor is proposed orders lodged for me to look at,
14 submitting those schedules and the procedures.

15 MR. CLARK: Thank you, Your Honor.

16 MR. SALERNO: Your Honor, are we talking about one
17 order or two separate orders? I'm just --

18 THE COURT: I think two separate orders. I think it
19 would be confusing.

20 MR. SALERNO: I agree.

21 THE COURT: All right. So I think we've resolved the
22 bid procedures issues?

23 Let's take up the City of Glendale. We were going to
24 have a status hearing on the adversary the City's filed. Have
25 we pretty much covered that for today, or what do we want to

1 do?

2 MR. CLARK: I think we have, Your Honor.

3 THE COURT: Okay.

4 MR. SALERNO: Your Honor, may I be excused?

5 THE COURT: I'm sorry?

6 MR. SALERNO: May I be excused from the courtroom? I
7 have more able people here that will handle the rest of the --

8 THE COURT: Well, that's been true the whole time,
9 but you've always been here.

10 If you would like to depart, you're excused.

11 MR. SALERNO: Thank you, Your Honor.

12 MR. BALDIGA: The one thing, Your Honor, I think that
13 would be helpful in terms of narrowing the issues, narrowing
14 the volume of paper that you'll receive on the 5th, which I
15 think will be fairly considerable, is to have before then an
16 answer to our complaint. So at least we know --

17 THE COURT: Has the complaint been served?

18 MR. BALDIGA: Yes.

19 THE COURT: When was it served?

20 MR. BALDIGA: I believe -- the day after it was
21 filed, Your Honor. I can't --

22 THE COURT: So it was served on the 20th. Does that
23 make the answer due on the 9th?

24 MR. BALDIGA: I think it does.

25 THE COURT: Mr. Kroop, when can the Debtor file an

1 answer to the City's lawsuit?

2 MR. BRANDON: Your Honor, George Brandon, Squire,
3 Sanders.

4 The problem with ordering an answer, Your Honor, is
5 that the answer would be a motion to dismiss.

6 THE COURT: Well, let me rephrase that. When can the
7 Debtors file a responsive pleading to the complaint?

8 MR. BRANDON: Well, Your Honor, in effect we'll all
9 be filing that response on the 5th, at this moment. And so if
10 we could have time -- either we can call it a motion to dismiss
11 the adversary complaint, but that seems somewhat artificial.
12 And so could we have an extension until after Your Honor rules
13 on the issues that are being heard on the 9th?

14 Other than that we'll have to make a motion to
15 dismiss, which will say the same thing essentially as our brief
16 on the 5th.

17 THE COURT: What's the significance of getting an
18 answer filed before the 9th?

19 MR. BALDIGA: Well, whether it's an answer or a
20 motion to dismiss it's that we have set forth our position in
21 our paper. We'd like to spend our time with our papers in the
22 ten days leading up that we have, on the issues that are in
23 dispute and not those that are not in dispute. And since we've
24 alleged a number of facts it would be good to know -- not the
25 motion to dismiss or not -- what of the facts that we've

1 alleged in our many papers are disputed by the Debtors and
2 which are not.

3 And we think, given that the Debtors have asked --

4 THE COURT: Well, help me out a little bit
5 procedurally. I think I could shorten their time to respond,
6 but I don't think I can take away their right to file a motion
7 to dismiss. And so I think it's fairly probable from what I
8 just heard that you're not going to get an answer filed prior
9 to June 9th. And so help me out a little bit.

10 MR. BALDIGA: Well, actually I think the Court has
11 broader powers than what you've just limited yourself to. I
12 think -- for example, we could file a set of admissions if
13 procedurally that were necessary that would require paragraph
14 by p paragraph for the Debtor to respond as to what facts are
15 in dispute and which they admit.

16 I think there are a number of tools at Your Honor's
17 disposal. But I think it would aid all parties to know which
18 facts are in dispute before the papers are submitted.

19 THE COURT: I think you're right, but here's the
20 procedural problem. We've got kind of two matters. We've got
21 the Debtor's request in its motion to sell, saying I can assume
22 and assign this contract and I can sell it and the buyer can
23 move the franchise to Canada.

24 I don't think, under the adversary rules, unless the
25 Debtors agree, I can order them to file an answer and take away

1 their right to file a motion to dismiss. And I'm really
2 skeptical that I ought to do that kind of -- to be blunt -- off
3 the hip on an oral motion in any event.

4 And so since they have a right to file a motion to
5 dismiss, you're not going to get -- I don't disagree, it would
6 be nice to have, but I don't think you're going to get it. And
7 I don't think I can order them to forego that right.

8 MR. BALDIGA: But you could, Your Honor -- I don't
9 want to quibble with the procedural rights, but we have filed a
10 complaint, we have filed a motion. The Debtors have filed
11 nothing.

12 THE COURT: What motion have you filed?

13 MR. BALDIGA: A motion to restrain the team from
14 moving. In that adversary. We filed a motion for a
15 preliminary injunction and a supporting memorandum of law.

16 THE COURT: Okay.

17 MR. BALDIGA: Our position has been now of record for
18 some time; the Debtor has come in and talked here conceptually
19 about possibly moving to reject; hasn't done that.

20 THE COURT: Well --

21 MR. BALDIGA: Hasn't --

22 THE COURT: But I mean, in fairness, they filed a
23 motion to sell the franchise to -- and I can never remember the
24 name of the actual buying entity, but to the proposed buyer,
25 and that contract says it's going to be an assumption and an

1 assignment of the contracts that give the Phoenix Coyotes the
2 right to be the Phoenix Coyotes, and a sale that allows us to
3 move it to Canada over the objections of the City of Glendale,
4 the National Hockey League, and anybody else.

5 And in that procedural context they haven't
6 officially filed a motion to reject the contracts with the City
7 of Glendale, but to me it's implicit in those motions. There's
8 no doubt in my mind. They're not going to file a motion to
9 assume those agreements, right, with the City of Glendale?

10 MR. BALDIGA: I assume not.

11 THE COURT: Okay.

12 MR. BALDIGA: But it would -- it aids an orderly
13 process before this Court for the -- before our papers are
14 actually filed to know what the Debtor's remedy is that they
15 are seeking. Are they seeking to reject this lease or not? It
16 would be good if they think they have the right to do that.

17 THE COURT: Well, I think I can ask Debtor's counsel.
18 Mr. Kroop. I assume the Debtors intend at some point in the
19 process in their motions to assume, assign and sell, that
20 there's going to be a motion to reject the contracts with the
21 City of Glendale, is that correct?

22 MR. KROOP: You assume correctly. I mean, obviously
23 everything depends on the relocation issue, but based on that,
24 of course. I mean, the Debtor like any Chapter 11 debtor,
25 would have an obligation to deal one way or the other under

1 § 365 with all of its executory contracts.

2 THE COURT: Thank you. So there you go. I mean, the
3 bankruptcy part, they're going to file those motions at some
4 point.

5 MR. BALDIGA: All right. Okay. But again, Your
6 Honor, it's -- if we're trying to have the most orderly
7 process, I mean, federal courts don't issue advisory opinions.
8 What they're asking for you to do on the 9th is to issue an
9 advisory opinion that --

10 THE COURT: No. No.

11 MR. BALDIGA: -- if they come in and choose to --

12 THE COURT: No, they're asking me to grant their
13 motion to assume, assign and sell, and they're going to have to
14 convince me that this Court has the power to do that before I
15 grant that motion.

16 Now --

17 MR. BALDIGA: Okay. We'll go forward on that basis.

18 THE COURT: All right.

19 MR. BRANDON: Your Honor, if I may --

20 THE COURT: Well, let me just say one thing. My
21 classic, you know, you've won at the moment, so all you can do
22 right now is pull defeat out of the jaws of victory. So go
23 ahead.

24 MR. BRANDON: I wasn't intending to do that, Your
25 Honor. I was intending to offer to speak with Mr. Baldiga and

1 his firm about stipulated facts on the Glendale side of this. -

2 -

3 THE COURT: I think that would be a great idea. I
4 mean, let me be candid to all of you.

5 Anything you all can agree to, particularly on facts,
6 is going to make my job a lot easier in making my decision.
7 You know, if you do all what one of my colleagues calls, the
8 dump, and I get 5,000 pages in 22 declarations that are totally
9 contradictory, that's going to be a lot tougher for me to make
10 a ruling.

11 MR. BRANDON: Because our view is these are legal
12 issues, Your Honor, we believe it would be in everybody's
13 interest to have some stipulated facts with the City of
14 Glendale, we'd be happy to work toward that, and I think I
15 saved my victory there but I'm not sure.

16 THE COURT: You're doing okay so far.

17 MR. BRANDON: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. CLARK: Your Honor, on that -- that triggered
20 something.

21 We also have an adversary that was brought by Mr.
22 Moyes. I think an answer is due or a response to the complaint
23 is due, I'm told, on June the 11th. This is all going to be
24 significantly impacted by Your Honor's decision on the matter
25 we're going to argue on June the 9th, so it seems to me it's

1 just as a logistical matter it would make some sense to put off
2 the time to respond to that adversary for maybe 30 days or
3 something.

4 THE COURT: I think it does, but I think you ought to
5 discuss that with opposing counsel before you ask me to order
6 it.

7 MR. BRANDON: Your Honor, we're going to make that
8 real easy because I think we're going to amend that before long
9 and push the time out, and we'll agree to an extension.

10 THE COURT: So right now they have an open extension
11 to respond.

12 MR. CLARK: Thank you.

13 MR. BRANDON: Yes, Your Honor. And the consensus is
14 we're going to do an amendment.

15 MR. CLARK: Thank you. Thank you, Your Honor.

16 THE COURT: There you go. Anything else on the City
17 of Glendale suit for today?

18 MR. BALDIGA: No, Your Honor. Thank you.

19 THE COURT: All right. So I think we're down to
20 first day motions, some of which are going to be continued.

21 MR. KROOP: Before you do, Your Honor, I think others
22 may also wanted to remind you that you were going to delineate
23 some of the issues for the briefing that you wanted, and
24 obviously that's your prerogative when you would like to do
25 that, but I thought I'd jump up and remind you.

1 THE COURT: Well, let's do it now. And this is not
2 meant to be exhaustive and is not meant to preclude anybody
3 from asserting whatever rights they think they have. But it
4 seems to me that to a large extent these are issues governed by
5 § 365 of the Bankruptcy Code and § 363 of the Bankruptcy Code.
6 In particular, 363(f), and 363(f) essentially incorporates
7 particularly -- I'm sorry, 365(f) references back to
8 subsections (b) and (c) of § 365.

9 Now, I don't want a response today but I'm just going
10 to point out that to succeed, the Debtors are going to have to
11 show that they're going to provide adequate assurance of future
12 performance of the League's contract, which seems somewhat
13 inherently challenging in light of the contract with the buyer.
14 And I'll be candid, I've read all the cases that everybody's
15 cited so far, and I don't recall one case that has a factual
16 scenario remotely close to this one.

17 We have several cases involving franchises where the
18 franchisor doesn't like the buyer under the Chapter 11
19 franchisee's rights, but those are I think oil facilities and
20 restaurant facilities that were going to be operated at the
21 same location. As the -- at the existing location.

22 So what I'm going to need to see, Mr. Kroop, from the
23 Debtor is that you can meet the requirements of § 365 and
24 § 363. Because I think in a simple sense, if you can't, the
25 relocation issue is over.

1 And I think it's going to be very important to this
2 Court what the economic effect of the proposed sale is on the
3 creditors of this Estate. Which reminds me, have the schedules
4 and statements been filed?

5 MR. KROOP: They're schedule -- they'll be filed
6 Friday.

7 THE COURT: All right. And so I say that, you have
8 to realize I have yet to have an opportunity and no one else
9 has had the opportunity to read precisely who are the creditors
10 of these Debtors. But it seems to me, notwithstanding all the
11 rhetoric here, one of the key ultimate considerations is, what
12 does this sale do for the creditors?

13 And as I say, I don't mean to limit anybody to
14 anything they want to assert and of course sprinkled over this
15 in some fashion are the antitrust claims of the antitrust law
16 that you all have cited extensively in your briefs today.

17 I think that's the best I can do for you right now.

18 MR. SINGER: Thank you, Your Honor. Kelly Singer,
19 Squire, Sanders, on behalf of the Debtors.

20 The next item on the agenda, Your Honor, are the
21 continued hearings on the first day motions. I think I can get
22 through these pretty quickly. There haven't been many
23 objections filed. I'll go through the ones for which there
24 were no objections to final approval of the first day motions
25 quickly for everybody's benefit.

1 Your Honor, number one on the list is the motion for
2 imposition of the automatic stay and confirming order in the
3 course of business practices. We're seeking final approval of
4 this motion. As the Court will recall, we did enter into a
5 somewhat of a stipulated order with the U.S. Trustee on this,
6 and there have been no objections filed to that order.

7 THE COURT: Anybody opposed to that order being
8 entered as a final order? All right, that motion's granted.
9 You can lodge a form of order.

10 MR. SINGER: Thank you, Your Honor. The second
11 motion is the motion to file the consolidated list of
12 creditors. Again, Your Honor, we did work with the U.S.
13 Trustee on the interim order and inserted language that the
14 U.S. Trustee had proposed, and there was no objection filed to
15 this interim order and we are requesting final approval of it.

16 THE COURT: Anybody opposed to that matter being
17 granted as a final order?

18 That motion's granted. You may submit a form of
19 order.

20 MR. SINGER: Likewise, Your Honor, the motion to
21 approve -- I'm sorry, let me skip the cash management one,
22 because there was an objection to that. I'll move back to it.

23 Your Honor, the motion -- Number 4 on the list, Your
24 Honor, the motion to pay pre-petition wages and salaries.
25 Again, we had worked with the U.S. Trustee on the interim

1 order. There were no objections to that interim order, and
2 we're requesting final approval.

3 THE COURT: Anybody opposed to that motion being
4 granted?

5 Motion's granted. You may submit a form of order.

6 MR. SINGER: Number 5, Your Honor, is the pre-
7 petition tax motion. There were no objections to the interim
8 order entered and we are seeking final approval of that one, as
9 well.

10 THE COURT: Anyone opposed to that order?

11 That motion is granted. You may submit a form of
12 order.

13 MR. SINGER: Your Honor, Number 6 and Number 7 are
14 the motions and interim orders to approve Debtor's counsel and
15 Debtor's conflict counsel for Squire, Sanders And Bryan Cave.
16 There were no objections to final approval of these interim
17 orders.

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

20 That motion is granted, but let's be clear. Although
21 that's considered, quote, a final order, that's something the
22 Court always has discretion to go back and review, and reserves
23 that right.

24 MR. SINGER: Thank you, Your Honor. Number -- going
25 back up to Number 3, the motion to continue the Debtor's cash

1 management system and to use existing business forms, as the
2 Court will recall from the first day hearing, Your Honor, you
3 had requested that we enter into two orders, one with the U.S.
4 Trustee and then also a separate stipulated order with the City
5 of Glendale and the U.S. Trustee. We did do that.

6 There has been one objection filed by Drawbridge, who
7 has -- who's alleged an interest under the lease to certain
8 ticket sale proceeds.

9 Drawbridge did file -- actually they uploaded a
10 proposed order on Friday, and we've circulated a redline of
11 that proposed order to the Trustee and to the City of Glendale,
12 and they are okay with those changes. We are okay with the
13 changes. So what we would submit, Your Honor, is that we
14 upload that order again with everybody's signature on it and we
15 basically enter the interim order on that. It would be a
16 stipulated interim order. And we would seek a continuance of
17 final approval of that interim order for about three weeks.

18 THE COURT: Anybody opposed to that request? All
19 right, that motion is granted on an interim basis. Why don't
20 we just make the continued hearing June 22nd.

21 MR. SINGER: June 22nd?

22 THE COURT: 10:00 o'clock.

23 MR. SINGER: Likewise, Your Honor, going to Number 8
24 on the agenda, this is the motion to approve the Debtor's
25 proposed debtor-in-possession financing with the DIP lender.

1 As the Court will recall at the first day hearing we had
2 somewhat -- not withdrew the motion, but we had continued it
3 because the NHL had stepped up and agreed to provide financing.
4 The Court may have noticed that we did enter into a stipulated
5 order with the NHL that we uploaded on Friday. I don't believe
6 it's been entered yet, but there was both similar objection to
7 -- or by Drawbridge to that order, essentially wanting the same
8 carve-out of ticket sale proceeds that the City had negotiated
9 in that stipulated interim order.

10 I've been able to talk to all the parties to that
11 interim order, and everybody's in agreement that we can go
12 ahead and fit Drawbridge in there. So I would suggest that we
13 upload another stipulated interim order and continue the
14 hearing on that for June 22nd, as well.

15 In the meantime, Your Honor, we are going to be
16 discussing a real DIP with the NHL, and we do hope to have a
17 term sheet and perhaps another motion to approve a different
18 DIP. But we would like to keep the original motion just on
19 calendar.

20 THE COURT: Anybody want to be heard further on that
21 point?

22 All right. So we're going to grant the continued
23 financing on a stipulated order on an interim basis, but we'll
24 continue the hearing to June 22nd at 10:00 o'clock.

25 MR. SINGER: Unless you have any questions, Your

1 Honor, I believe that's all.

2 THE COURT: I think there's two other things that I
3 wanted to address with everybody.

4 The League had filed a motion to strike the Nealy and
5 Wall declarations and ask for an accelerated hearing. Is that
6 now moot?

7 (Counsel Confer)

8 MR. CLARK: Your Honor, I think the revised Nealy
9 declaration is fine. It can stay in the record.

10 I think the Wall declaration probably should be
11 stricken. It's hearsay. Now, every declaration filed with the
12 Court is hearsay, I appreciate that, but this one is hearsay
13 within hearsay, and sometimes triple hearsay, so.

14 THE COURT: I think that's a fair statement, but I'll
15 also note in my reading of all the declarations there was a lot
16 of hearsay in all of them, and so there's a danger if you open
17 up this door -- and all this was in the context of what I call
18 the control issue, which we now have a mediated stipulated
19 order, so my view was that that motion -- if we need to have a
20 hearing on it -- was moot for now.

21 MR. CLARK: You know what, Your Honor? You make a
22 good point there.

23 THE COURT: Thank you.

24 MR. CLARK: I think that that -- you always make good
25 points, Your Honor. I'm the one --

1 THE COURT: Doing good.

2 MR. CLARK: -- who makes bad points sometimes.

3 I think that motion is -- moot is maybe not exactly
4 the word, but that's been put off to another time if, as and
5 when we ever need it.

6 THE COURT: We'll vacate it subject to be reset at
7 the request of movant.

8 MR. CLARK: That would be fine, Your Honor. Thank
9 you.

10 THE COURT: Now, yesterday the Debtors filed a motion
11 for a 2004 examination of -- I'm not exactly sure who at the
12 NHL, but someone at the NHL in New York.

13 MR. CLARK: We would oppose that, Your Honor. We'd
14 like time to respond to those papers. But frankly, I think,
15 given Your Honor's setting of the schedule and describing the
16 issues to be decided on the 9th, I think again that's probably
17 moot as well, because this is not to be an evidentiary hearing
18 on the 9th, it's to be argument as a matter of law on the
19 record. So --

20 THE COURT: Let me ask the Debtors. It's their
21 motion. What do you want me to do with that?

22 MR. BRANDON: Your Honor, George Brandon. We don't
23 think it's moot. It goes to the relocation issue.

24 THE COURT: I didn't say it was moot, but I think you
25 wanted me to have a hearing on it tomorrow. I guess my

1 question is, in terms of scheduling, what are you requesting
2 the Court do?

3 MR. BRANDON: Well, we've requested that Your Honor
4 schedule a hearing at the Court's convenience so that we can
5 obtain this information in the context of the applications that
6 are now going to be -- the papers that are now going to be
7 filed at the end of next week.

8 We thought when we filed that that we'd have another
9 week. So I guess, Your Honor, that's become more urgent rather
10 than less.

11 THE COURT: You know, in a simple sense I kind of
12 view this as almost a discovery dispute. Which under the rules
13 of this District require you all to talk in good faith before I
14 have to deal with it. So why shouldn't I order you, somewhat
15 like the control issue, to talk to each other, and if you can't
16 reach an agreement then let me know and then I'll set a
17 hearing, but until then I don't think I should set a hearing on
18 it.

19 MR. BRANDON: Very well, Your Honor.

20 THE COURT: Ah. Anything else before we adjourn?

21 MR. CLARK: Not from the League, Your Honor.

22 THE COURT: Oh, there is one other thing. I will
23 issue an order before the end of the week of how I want the
24 binders delivered to someplace on Saturday. And so you all
25 watch for that. And then make sure your materials are

1 delivered on time wherever they're directed to be delivered.

2 Thank you.

3 MR. CLARK: Thank you, Your Honor.

4 (Proceedings Concluded at 11:07 a.m.)

5
6 I certify that the foregoing is a correct transcript from
7 the record of proceedings in the above-entitled matter.

8
9 Dated: May 29, 2009



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