



In re Dewey Ranch Hockey

Ryan Gauthier*

TABLE OF CONTENTS

I.	SUMMARY.....	182
II.	LEAD-UP TO BANKRUPTCY FILING.....	182
	A. History of the Phoenix Coyotes	182
	B. Descent into Bankruptcy.....	185
	C. History of Jim Balsillie with the NHL.....	186
III.	POSITIONS OF THE PARTIES.....	187
IV.	FIRST DECISION.....	189
	A. Relocation of the Coyotes over the Objections of Glendale and the NHL.....	190
	B. The Antitrust Claims.....	191
	C. Other Issues	192
V.	MEANWHILE... ..	192
VI.	SECOND DECISION.....	194
	A. Balsillie's Bid	194
	B. The NHL's Bid	195
VII.	ANALYSIS	196
	A. League Rules Deserve Deference.....	197
	B. Do NHL Rules on Franchise Relocation, and Specifically on Exclusive Territorial Rights, Violate Antitrust Law?.....	198
	C. Owners Cannot Use Bankruptcy Law to Circumvent League Rules	202
VIII.	WHAT NOW?.....	202

* J.D. Candidate, Harvard Law School, Class of 2010. I would like to thank Ashwin Krishnan and Nnamdi Okike for their insightful questions and suggestions, Jeremy Campbell and Annie Smith for their help in editing, Peter Gall, Q.C. for his support and guidance, and Professors Peter Carfagna and Paul Weiler for their inspiration.

A. NHL Searches for a New Owner.....	202
B. Is Phoenix a Viable Market?	204
IX. CONCLUSION.....	206

I. SUMMARY

On November 3, 2009, the Phoenix Coyotes were transferred to the ownership of the National Hockey League (“NHL”). This marked the end of six months of bankruptcy proceedings, and the beginning of the process of finding an owner for the troubled franchise. However, the case was not a simple sale of a troubled asset where the highest bid wins. In fact, the highest bid did not win. This is because of the many concerns that the court had to contend with in effectuating the sale of the Coyotes.

This Comment will examine some of those concerns. First, the summary will set out a bit of the history of the Coyotes franchise and the events leading up to the bankruptcy proceedings. This will be followed by a summary of the two written court decisions. Finally, the summary will posit what this case may mean for other sports franchises.

II. LEAD-UP TO BANKRUPTCY FILING

A. History of the Phoenix Coyotes

The story of the Phoenix Coyotes closely tracks the evolution of the NHL from a six-team league centered in Southeastern Canada and the Northeastern United States in 1967 to its current 30-team national alignment.

The Coyotes began their life as the Winnipeg Jets in 1972.¹ They were a founding member of the World Hockey Association (“WHA”), a league that would compete with the NHL for seven seasons. The Jets gained immediate notoriety by signing NHL superstar Bobby Hull for \$1,000,000 (all monetary values in US\$) over five seasons, an unheard of sum at the time.² After winning several Avco Cups (the WHA Championship), the Jets were one of four teams to merge into the NHL after the WHA folded in 1979.³

¹ Omnibus Statement of Facts in Support of Chapter 11 Petitions and First Day Motions at 2, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkcty.D.Ariz. 2009) (2:09-bk-09488-RTBP) [hereinafter Omnibus Statement of Facts]. Access to the veritable mountain of court filings may be made via BMC Group, Dewey Ranch Hockey, LLC, <http://www.bmcgroup.com/restructuring/docket.aspx?ClientID=204> (last visited Apr. 14, 2010).

² BRUCE DOWBIGGIN, *MONEY PLAYERS: THE AMAZING RISE AND FALL OF BOB GOODENOW AND THE NHL PLAYERS ASSOCIATION* 53 (2006).

³ Omnibus Statement of Facts at 2, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkcty.D.Ariz. 2009) (2:09-bk-09488-RTBP). The four teams that joined the NHL from the WHA were the Winnipeg Jets, the Hartford Whalers, the Québec Nordiques and the Edmonton Oilers. Interestingly, of these four WHA teams that joined the NHL, only the Edmonton Oilers have not relocated. However, the Oilers avoided relocation only by following a strong and

In the mid-1990s, the NHL was in the midst of a makeover that would see thirteen teams brought to life through expansion or relocation between 1991 and 2000. Eleven of these teams would be below the 40th parallel, and nine below the Mason-Dixon Line, in an effort to bring NHL hockey to large or expanding, but generally “non-traditional” markets.⁴ The Jets, hobbled by a small arena and small fanbase,⁵ were moved to Phoenix and re-named the Coyotes after being bought by a group headed by Steven Gluckstern and Richard Burke.⁶ In 2001, the team was sold to Steve Ellman and Wayne Gretzky who brought Jerry Moyes, the founder of Swift Transportation, a national trucking company, on board as an investor.⁷

The Coyotes initially began play in America West Arena (now U.S. Airways Center), also home to the Phoenix Suns, in downtown Phoenix in 1996. However, the arena was built specifically for basketball and was not conducive to viewing hockey games.⁸ A new arena was eventually built in nearby Glendale, to become the lynchpin of a new neighborhood, Westgate City, headed up by Ellman and Moyes.⁹ The city of Glendale contributed \$183 million of the \$220 million required to build the new arena, predominantly funding the project through \$155 million in municipal

ultimately successful effort by a consortium of businessmen to buy the franchise. *See* DOUGLAS HUNTER, *THE GLORY BARONS: THE SAGA OF THE EDMONTON OILERS* 297–333 (1999).

⁴ The expansion teams were: the San Jose Sharks (1991); the Ottawa Senators and Tampa Bay Lightning (1992); the Florida Panthers and Anaheim Ducks (1993); the Nashville Predators (1998); the Atlanta Thrashers (1999); and the Columbus Blue Jackets and Minnesota Wild (2000). The teams that relocated were the Dallas Stars (moved from Bloomington, Minnesota in 1993), Colorado Avalanche (moved from Québec City, Québec in 1995) the Phoenix Coyotes (moved from Winnipeg, Manitoba in 1996), and the Carolina Hurricanes (moved from Hartford, Connecticut in 1997). To put this in geographical perspective, only the Ottawa Senators and Minnesota Wild are located north of the 40th parallel. In 1990, only four teams were south of the 40th parallel: Los Angeles, Washington, St. Louis and Philadelphia. Thus the amount of teams below this line rose from 19% of the league (4/21 teams) to a full 50% of the league (15/30 teams). *See* Hunter, *supra* note 3 at 53–63.

⁵ As of 2001, the population of Winnipeg was 619,544, fully half of the entire population of 1.12 million in Manitoba. In contrast, the population of Phoenix in 2001 was 1.32 million. Winnipeg and Manitoba population figures were found at, STATISTICS CANADA, 2001 COMMUNITY PROFILES, Feb. 1, 2007, *available at*: <http://www12.statcan.ca/english/profil01/CP01/Details/Page.cfm?Lang=E&Geo1=CSD&Code1=4611040&Geo2=PR&Code2=46&Data=Count&SearchText=Winnipeg&SearchType=Begins&SearchPR=01&B1=All&Custom=>. Phoenix population figures were found at, U.S. CENSUS BUREAU, AMERICAN FACTFINDER: ARIZONA, *available at* http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=04000US04&-_box_head_nbr=GCT-PH1&-ds_name=DEC_2000_SF1_U&-format=ST-7.

⁶ Omnibus Statement of Facts at 3, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

⁷ *Id.*

⁸ *Id.* *See also* *America West Addresses Hockey Sight Lines*, AMUSEMENT BUSINESS, Nov. 17, 1997, at 12.

⁹ City of Glendale’s Supplemental Objection to the Debtor’s Sale Motion at 1, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkcty.D.Ariz. 2009) (2:09-bk-09488-RTBP) [hereinafter Glendale Supplemental Objection].

bond offerings.¹⁰ However, the results of the project have been “a catastrophe”, as described by Forbes:

The plans to expand the NHL to the southwest and ignite economic growth in Glendale, Arizona by meshing a new multi-purpose arena with 6.5 million square feet of new real estate development has been a catastrophe. Under the leadership of Steven Ellman, Jerry Moyes and Wayne Gretzky, the Coyotes have been a dysfunctional and under-capitalized hockey franchise that Gretzky, the team boss, has been unable to get a grip on. Westgate City, in part tied to the success of people showing up for hockey games, has been a bust. As a result of their consistent losses on and off the ice the Coyotes have struggled to draw fans to Jobing.com Arena since the building opened in December 2003. If it were not for the huge fee the team would have to pay as stipulated by their lease if they were to move, it would make sense for the Coyotes to bolt Phoenix.¹¹

As a condition of the financing, the Coyotes were locked into a thirty-year lease that carries an early-termination penalty of over \$700 million.¹²

The lease contains a non-relocation covenant that states as follows:

Except as expressly provided otherwise in this Agreement and subject to Section 9.6, the Team covenants and agrees with the City that the Team shall play all Home Games at the Arena Facility and shall not play any Home Games at any other location, from and after the Home Game Obligation Effective Date [September 2003] and continuing until (i) the last day of the 30th Full Hockey Season after the Home Game Obligation Effective Date...¹³

There is also a provision for a “Team Use Covenant Default”, which states that there will be a default if:

¹⁰ *See id.* at 7.

¹¹ *NHL Team Valuations 2008: Phoenix Coyotes*, FORBES.COM, Oct. 29, 2008, http://www.forbes.com/lists/2008/31/nhl08_Phoenix-Coyotes_315126.html.

¹² Craig Harris and Carrie Watters, *Coyotes File for Bankruptcy; Move to Canada Next?*, USATODAY.COM, May 6, 2009, http://www.usatoday.com/sports/hockey/nhl/coyotes/2009-05-05-Balsillie-offer-to-buy-phoenix-coyotes_N.htm.

¹³ Arena Management, Use and Lease Agreement, art. 9.5, *reprinted in* Objection of the City of Glendale, Arizona to Motion of the Debtors for Entry of an order (A) Authorizing Conduct of an Auction of Coyotes Hockey, LLC’s Assets; (B) Establishing Procedures to be Employed in Connection With the Sale Including Approval of Termination Fee; and (C) Approving Form and Conditional Cure Notice and Solicitation Notice, exhibit A at 71, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkcty.D.Ariz. 2009) (2:09-bk-09488-RTBP) [hereinafter *Arena Lease*].

[T]he Team enters into any contract of agreement which purports to obligate the Team to play any Home Game at any location other than the Arena Facility during the Agreement Term...

Except as permitted by the provisions of this Agreement, the Team notifies the NHL of the Team's intent, or requests the NHL's permission, to play any Home Game at any location other than the Arena Facility during the Agreement Term...

Except as permitted by the provisions of this Agreement, the Team takes any action that constitutes an anticipatory breach of this Section 9.5.¹⁴

Finally, the agreement allows the City/Arena to obtain specific performance in case of a breach, and only upon the failure of obtaining specific performance are damages to be awarded.¹⁵

B. *Descent into Bankruptcy*

In 2006, three years after beginning play in Glendale, Ellman, Moyes and the NHL entered into a consent agreement. Moyes obtained control of the Coyotes, with Gretzky as an investor, while Ellman gained control of the local real estate development.¹⁶ At the time, the Coyotes had about \$65 million in debt.¹⁷ By 2008, the Moyes group had advanced \$380 million to operate the Coyotes, while the Coyotes had lost approximately \$73 million in three seasons.¹⁸ In the summer of 2008, the NHL began advancing funds to maintain the operation of the Coyotes.¹⁹ At this time, Forbes valued the Phoenix Coyotes at \$142 million; lowest in the NHL, and \$12 million lower than the 29th-ranked New York Islanders.²⁰ The Coyotes also had the second-lowest revenue in the NHL, ahead of only the Islanders.²¹

¹⁴ *Id.* at 72.

¹⁵ *Id.* art. 14.7.1 at 97.

¹⁶ Glendale Supplemental Objection at 1, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

¹⁷ *Ellman, Moyes to Split Coyotes Holdings*, ESPN.COM, Apr. 13, 2006, <http://sports.espn.go.com/espn/wire?section=nhl&id=2407170>.

¹⁸ Declaration of Michael Nealy at 13, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP).

¹⁹ Declaration of William L. Daly at 11, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkcty.D.Ariz. 2009) (2:09-bk-09488-RTBP) [hereinafter Daly Declaration].

²⁰ *NHL Team Valuations 2008*, FORBES.COM, Oct. 29, 2008, http://www.forbes.com/lists/2008/31/nhl08_NHL-Team-Valuations_Rank.html.

²¹ *Id.* As of 2009, the Coyotes are still the lowest-valued team in the NHL, at \$138-million. However, their revenue remains ahead of the New York Islanders' revenue. *NHL Team Valuations 2009*, FORBES.COM, Nov. 11, 2009, http://www.forbes.com/lists/2009/31/hockey-values-09_NHL-Team-Valuations_Rank.html. The Islanders, in their defense, play in the

On May 5, 2009, the Coyotes filed for bankruptcy.²² The plan was to have Jim Balsillie, co-CEO of Research in Motion (the developers of the BlackBerry), purchase the team out of bankruptcy.²³ The team would be purchased for \$212.5 million, on two conditions:

- 1) that the sale was completed by June 29, 2009; and;
- 2) that the team be moved to Hamilton, Ontario over any NHL objections, and regardless of the current lease with the arena in Glendale, Arizona, which is for a term of over thirty years (or twenty remaining years) and was signed as a condition of the city funding much of the current area for the team.²⁴

C. History of Jim Balsillie with the NHL

Jim Balsillie and the NHL have dealt with each other in the past. Balsillie was initially seen as a preferred suitor for the Pittsburgh Penguins, and almost purchased the Nashville Predators.²⁵ In 2006, Balsillie attempted to purchase the Pittsburgh Penguins for \$175 million.²⁶ However, Balsillie dropped the bid shortly after the NHL imposed twenty-four last-minute conditions on the purchase.²⁷ The next year, he attempted to purchase the Nashville Predators. However, before the \$238 million purchase was completed, Ticketmaster began taking deposits for “Hamilton

second-oldest arena in the NHL, a condition that current owner Charles Wang is desperately trying to ameliorate. Wang is currently in the midst of gaining local approval for “The Lighthouse Project”, a venture that would renovate Nassau Coliseum and the community surrounding it creating a largely residential community. The Lighthouse Development Group, The Lighthouse at Long Island, FAQ, <http://www.lighthouseli.com/about/faq> (last visited Jan. 23, 2010).

²² Omnibus Statement of Facts at 2, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

²³ Motion of the Debtors for An Order Under Sections 105(a), 363, and 365 of the Bankruptcy Code (i) Authorizing Coyotes Hockey, LLC’s Sale of Substantially All of Its Assets, Free and Clear of Liens, Claims, and Encumbrances, Subject to Higher and Better Offers, and (ii) Approving An Asset Purchase Agreement at 4, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP) [hereinafter Motion for Sale of Coyotes].

²⁴*Id.* at 11–12.

²⁵ Daly Declaration, at 16, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP).

²⁶ *Balsillie Has Agreement to Buy Predators*, CBC SPORTS, May 24, 2007, <http://www.cbc.ca/sports/hockey/story/2007/05/23/balsillie-predators.html>.

²⁷ Some of these conditions included the ability of the NHL to take over the franchise at any time, and a restriction on relocation of the franchise for any reason until 2013. *Balsillie Balked at Last-Minute Conditions*, NATIONAL POST, Dec. 20, 2006, <http://www.canada.com/nationalpost/news/story.html?pid=c66338bf-4285-49b5-b383-d9831115dcb6>.

Predators” season tickets.²⁸ The owner of the Predators, Craig Leipold, ended up selling the team to California businessman William “Boots” Del Biaggio for only \$190 million.²⁹

The denial of the purchase of the Predators was examined by the Canadian Competition Bureau. In 2008, the Bureau released its findings that the NHL did not violate antitrust policies for either transfers of ownership or for relocation of franchises. Additionally, the Bureau found that “the NHL had a legitimate interest in ensuring that the Predators Franchise is successful in Nashville and that any prospective purchaser continued, at least for the near term, to attempt to succeed in Nashville.”³⁰ While the Bureau examined the antitrust concerns under section 79 of the *Canadian Competition Act*,³¹ the Bureau also applied antitrust law regarding franchise relocation used by American courts.³²

III. POSITIONS OF THE PARTIES

Throughout the case, there were literally hundreds of filings made to the court, setting out a myriad of concerns, some of which were not dealt with in the final disposition by the court.³³ However, based on the decision of the court, the positions can be narrowed down to the Moyes/Balsillie faction taking the position that any restrictions on his potential for ownership would violate §§365 and 363 of the federal Bankruptcy Code (“Code”), while the NHL asserted the primacy of league rules.³⁴

²⁸ *Predators to Hamilton Talk Premature: Bettman*, CBC SPORTS, June 20, 2007, <http://www.cbc.ca/sports/hockey/story/2007/06/20/bettman-predators-hamilton-nhl.html>.

²⁹ *Balsillie’s Bid to Buy the Predators Nixed: Report*, CBC SPORTS, June 28, 2007, www.cbc.ca/sports/hockey/story/2007/06/28/balsille-predators.html. On September 8, 2009, Del Biaggio was sentenced to eight years in federal prison for fraud in connection with his purchase of the Nashville Predators. *Predators Part-Owner Del Biaggio Sentenced to Eight Years in Prison*, CBS SPORTS, Sept. 8, 2009, <http://www.cbssports.com/nhl/story/12175616>.

³⁰ COMPETITION BUREAU CANADA, COMPETITION BUREAU CONCLUDES EXAMINATION INTO NATIONAL HOCKEY LEAGUE FRANCHISE OWNERSHIP TRANSFER AND RELOCATION POLICIES: TECHNICAL BACKGROUNDER, Mar. 31, 2008, *available at* <http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02640.html>.

³¹ R.S.C., ch. C-34 (1985).

³² *Id.*

³³ An example of a contested issue was the NHL’s claim that they owned the Coyotes based upon financial advances made to the team. *See* May 19 Declaration of Gary B. Bettman at 1, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP). Another contested issue was over the payment of \$4 million in “break-up” fees if PSE was not the successful bidder. *See* Limited Objection of the National Hockey League to Motion of the Debtors for Entry of an Order (A) Authorizing Conduct of an Auction of Coyotes Hockey, LLC’s Assets; (B) Establishing Procedures to be Employed in Connection with the Sale Including Approval of Termination Fee; and (C) Approving Form of Order and Manner of Notice of Conditional Cure Notice and Solicitation Notice at 16–17, 406 B.R. 30 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP) [hereinafter NHL Limited Objection].

³⁴ *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrtcy.D.Ariz. 2009).

Section 365 of the Code authorizes the assumption and assignment of an executory contract “notwithstanding a provision in an executory contract...or in applicable law, that prohibits, restricts, or conditions the assignment of such contract.”³⁵ In other words, if an existing agreement somehow prevents the assignment of the assets, it could be struck down. An obvious example of this would be a non-assignment clause.³⁶ Moyes/Balsillie claimed that the Glendale lease³⁷ and the NHL’s likely rejection of transfer of the Coyotes to Hamilton³⁸ were restrictions, or conditions that prohibited the assignment of the ownership of the Coyotes. The NHL countered with the assertion that even if Balsillie was awarded the Coyotes, he would still be bound by all of the conditions in the NHL Constitution and By-Laws as a result of his membership in the League, not just those that were convenient to him.³⁹

Section 363 of the Code allows for a sale free and clear of interests where “applicable nonbankruptcy law permits sale of such property free and clear of such interests” and when such an interest is in “bona fide dispute.”⁴⁰ It is under this section that Moyes/Balsillie argued that antitrust law was applicable nonbankruptcy law, and that the interest affected was his ability to relocate the team upon purchase.⁴¹ Moyes/Balsillie claimed that any restrictions against relocation should be lifted. To meet the second prong of the §363 requirement, it was claimed that since the NHL asserted that the regulations were valid, and that Moyes/Balsillie claimed that there was an antitrust violation, there was a “bona fide dispute”. The NHL countered that these “consent rights”, such as relocation or use of NHL intellectual property rights, were not the type of rights contemplated by §363, and in any event, were not in “bona fide dispute”.⁴²

In response, the City of Glendale argued that even with a liquidated damages provision, the court could order specific performance and force the Coyotes to play in Glendale, even if Balsillie was to own the team as set out in Art. 14.7.1 of the lease.⁴³ In support of this contention, Glendale relied on the bankruptcy proceedings of the

³⁵ 11 U.S.C. § 365(f) (2006).

³⁶ *In re Dewey Ranch Hockey*, 406 B.R. 30, 36 (Bkrcty.D.Ariz. 2009).

³⁷ Debtors’ Reply to Objection of the City of Glendale to Motion of Debtors for Authorization to Conduct an Auction of the Coyotes Hockey, LLC’s Assets at 4–5, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

³⁸ Motion for Sale of Coyotes at 18–19, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

³⁹ *See* NHL Limited Objection at 6–7, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP) (noting that rights and obligations of sports teams are “inextricably interrelated,” making league consent invaluable to transfer of a team franchise).

⁴⁰ 11 U.S.C. §363(e) (2006).

⁴¹ Motion for Sale of Coyotes at 16–22, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

⁴² NHL Limited Objection at 9–13, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

⁴³ City of Glendale’s Supplemental Objection to the Debtor’s Sale Motion 7, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

Pittsburgh Penguins, where the bankruptcy court held that the Public Auditorium Authority of Pittsburgh was entitled to enjoin the Penguins to not relocate, after holding that the lease gave Pittsburgh the right to liquidated damages for breach only in the event that injunctive relief was not available.⁴⁴ However, Glendale's involvement was not entirely to its benefit as it had been sued by third parties over taxpayer subsidies in any new lease.⁴⁵

IV. FIRST DECISION

On June 15, 2009, the Federal Bankruptcy Court of Arizona published its first decision of *In re Dewey Ranch Hockey*.⁴⁶ This decision denied the initial attempt by Balsillie to buy the team out of bankruptcy and dismissed many of the claims that the NHL rules could be overridden to effectuate the sale and relocation of the Coyotes to Hamilton, Ontario.

The court acknowledged that this was a novel case, combining elements of bankruptcy, antitrust, and commercial law. In denying the motion to purchase the team out of bankruptcy in accordance with the conditions set forth by Balsillie, the court broke the competing claims down into four components. First, and most importantly for this case, the court held that the Coyotes could not relocate under §365 of the Bankruptcy Code because they could not break their arena lease with the city of Glendale. Second, and of most interest to observers, the court denied the claim that the NHL rules regarding relocation were a violation of antitrust laws. Third, in determining whether or not specific performance of the lease should be granted, the court examined the amount of harm that the Coyotes leaving Glendale would cause in comparison to the benefit that such a move would produce for creditors. Finally, the court examined the claims put forth by the other major league sports, Major League Baseball, the National Basketball Association, and the National Football Association, that the relocation of a franchise through bankruptcy proceedings would “undermine or disrupt” the leagues.⁴⁷

⁴⁴ *Id.* at 27, citing Public Auditorium Auth. v. HBRM, L.L.C. (*In re Pittsburgh Sports Associates Holding Co.*), No. 98-28174-BM, 1999 Bankr. LEXIS 1870 (Bank. W.D. Pa., March 25, 1999).

⁴⁵ As a result of the ongoing re-negotiation of the lease, Glendale has been sued by the Goldwater Institute to force the city to disclose various records. *See, e.g.*, Application for Order to Show Cause, Goldwater Institute v. City of Glendale, No. CV2009-020757 (Ariz. June 26, 2009). The Institute has initiated this suit so that it can potentially bring a suit against Glendale, where it would allege a violation of Arizona's Constitution Gift Clause as a result of granting taxpayer subsidies in the new lease. *Goldwater Institute v. City of Glendale*, GOLDWATER INSTITUTE <http://www.goldwaterinstitute.org/case/3200> (last visited Jan. 23, 2010).

⁴⁶ 406 B.R. 30 (Bkrcty.D.Ariz. 2009).

⁴⁷ Statement of Position of the National Football League at 2, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP). *See also* Statement of Position of the Office of the Commissioner of Baseball at 2, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP); Statement of Position of the National Basketball

A. Relocation of the Coyotes over the Objections of Glendale and the NHL

Under §365 of the Bankruptcy Code, Moyes/Balsillie claimed that the NHL's likely unwillingness to accept Balsillie as an owner, and unlikely acceptance of his request for relocation, were restrictions on the assignment of the interests in the Coyotes.⁴⁸ However, the condition imposed by the NHL was that the Coyotes play all of their home games in Glendale.⁴⁹ The court found that this did not constitute a prohibition that prevented the assignment of the assets.⁵⁰

The court further noted that since the NHL had approved Balsillie as a potential owner of a NHL franchise in 2006, he would likely be approved again, barring any material change in his circumstance, and absent a request from him to relocate a team as a condition of purchase.⁵¹ This is because the NHL is required to deal in good faith with potential franchise owners under *Los Angeles Memorial Coliseum Comm'n v. NFL (Raiders I)*.⁵² The NHL ended up making a decision on Balsillie's application for ownership, a point that will be discussed later.

The major strike against the sale to Balsillie was the requirement under §365 of an "adequate assurance of future performance" under any existing contracts.⁵³ The court stressed that when one assumed contracts, they assumed both the benefits and the burdens.⁵⁴ Therefore, it seems that the Coyotes would be forced to either play out the rest of the lease, or to indemnify Glendale for breaking the lease, an amount that would be about \$700 million under the lease agreement.

Finally, Moyes/Balsillie had requested that if the court found for Balsillie's purchase of the Coyotes, that it order the NHL to allow the team to relocate to Hamilton. This order was asked to be made regardless of the lease with Glendale, and the NHL's opposition to the move based on its interests in Southern Ontario as a market. The court noted that there were "some reported decisions allowing franchises to be relocated short distances within the area of their existing business...." but that none had ever been of the magnitude asked for here, and that:

The assertion here is akin to a purchaser of a bankrupt franchise in a remote location asserting that it can be relocated far from its original agreed site to a highly valuable location, for example to New York City's Times Square, because the contractual geographic

Association at 2, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP).

⁴⁸ Motion for Sale of Coyotes at 17–18, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP).

⁴⁹ *In re Dewey Ranch Hockey*, 406 B.R. at 37.

⁵⁰ *Id.*

⁵¹ *Id.* at 36.

⁵² 726 F.2d 1381 (9th Cir. 1984).

⁵³ *In re Dewey Ranch Hockey*, 406 B.R. at 37.

⁵⁴ *Id.*

requirement/limitation is a restriction, prohibition or condition precluding assignment.⁵⁵

In other words, Balsillie would still be able to purchase the team, and the team would be able to operate, and presumably attempt to be profitable, but he would be unable to move the team out of the Phoenix area.

B. *The Antitrust Claims*

As stated above, §363 of the Code allows for a sale free and clear of interests where “applicable nonbankruptcy law permits sale of such property free and clear of such interests” and when such an interest is in “bona fide dispute.”⁵⁶ In this instance, Moyes/Balsillie argued that antitrust law was applicable nonbankruptcy law, and that the interest affected was his ability to relocate the team upon purchase. Moyes/Balsillie claimed that any restrictions against relocation should be lifted. To meet the second prong of the §363 requirement, they argued that since the NHL asserted that the regulations were valid, and they claimed there was an antitrust violation, a “bona fide dispute” existed.

The court disagreed, and found that there was no such bona fide dispute. Citing *National Basketball Ass’n. v. SDC Basketball Club, Inc.*,⁵⁷ along with *L.A. Memorial Coliseum v. NFL (Raiders II)*,⁵⁸ it upheld the notion that territorial restrictions are not in-and-of themselves a violation of antitrust laws.⁵⁹ Antitrust claims, especially those involving franchise relocation, are fact-driven.⁶⁰ Therefore, to demonstrate that there is a bona fide dispute, there must be a factual basis for the dispute, not simply disputes on points of law. There was no dispute on a factual matter in this case, as there had been no denial of relocation.⁶¹ No petition for relocation was filed until the court strongly hinted that an application should be made to the NHL.⁶² Since there was no denial of an application for relocation, there is no dispute on a point of fact, and on this basis, the court rejected the §363 claim.

⁵⁵ *Id.*

⁵⁶ *Id.* at 38; 11 U.S.C. §363(e) (2006).

⁵⁷ 815 F.2d 562 (9th Cir. 1987).

⁵⁸ 791 F.2d 1356 (9th Cir. 1986).

⁵⁹ *In re Dewey Ranch Hockey*, 406 B.R. at 39 (“Third, the mere existence of terms and conditions for franchise relocations cannot violate antitrust law.”).

⁶⁰ *Id.* (citing *American Ad Management Inc. v. GTE Corp.*, 92 F.3d 781, 788 (9th Cir. 1996)).

⁶¹ *Id.*

⁶² See David Shoalts & David Naylor, *Balsillie Gets Boost as Judge Sets Aside Ownership Issue, Targets Hamilton Move*, GLOBE AND MAIL, May 20, 2009, at A1. See also Carrie Watters, *Judge Rejects Sale of Phoenix Coyotes to Canadian Billionaire*, ARIZONA REPUBLIC, Jun. 16, 2009, <http://www.azcentral.com/sports/coyotes/articles/2009/06/15/20090615coyotesnosale.html>.

C. Other Issues

The court briefly addressed two further issues. First, it quickly dispensed with the claim by the city of Glendale that relocation should be blocked because the sale and relocation of the team would harm the city more than it would benefit the creditors. Having made a decision on the §365 claim not to grant the sale of the team, the court concluded that it did not need to decide this issue.⁶³ However the court demonstrated its ambivalence towards Glendale's claim by pointing out the obvious benefit to the creditors.⁶⁴

Finally, the court addressed claims by MLB, the NBA and the NFL that the sudden movement of teams via bankruptcy courts, circumventing league rules, would greatly harm the leagues as markets would become unstable and the product would suffer. The court dispensed of these claims by responding that the movement of the Seattle Pilots in 1970, and the Baltimore Colts and San Diego Clippers in 1984, all unapproved by their leagues at the time, did not cause material damage to the leagues.⁶⁵

V. MEANWHILE...

Following the initial hearing on May 19, Balsillie filed applications for ownership and relocation of the Phoenix Coyotes.⁶⁶ On July 29, 2009, the NHL Board of Governors decided on three bids for the Coyotes:⁶⁷ the bid by Jim Balsillie, the bid by Jerry Reinsdorf, and a bid from Ice Edge Holdings, a group of businessmen who were considering having the Coyotes play at least five "home" games each year in a Canadian city, likely one of Winnipeg, Halifax, or Saskatoon, in order to increase revenues.⁶⁸

Before discussing Balsillie's bid, it bears repeating what the court had said scant weeks before. Since, in 2006, the NHL had approved Balsillie, and his holding company PSE Sports and Entertainment, to be an owner of an NHL franchise,

⁶³ *In re Dewey Ranch Hockey*, 406 B.R. at 41–42.

⁶⁴ *Id.* at 42.

⁶⁵ *Id.*

⁶⁶ Debtors' Notice of Submission of NHL Transfer Application of PSE Sports & Entertainment, L.P. and Motion to File NHL Transfer and Relocation Applications Under Seal, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP); Notice of Filing NHL Relocation Application Under Seal, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

⁶⁷ Declaration of Craig Leipold at 2, *In re Dewey Ranch Hockey*, 414 B.R. 577 (Bkrcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

⁶⁸ *Deadline Passes With One Bid, Letter of Intent to Buy Coyotes*, SPORTS BUSINESS DAILY, July 27, 2009, available at <http://www.sportsbusinessdaily.com/article/132022>. Ice Edge, as of this writing, is still looking to play several "home" games in Saskatoon, which is a condition of signing a long-term lease with Glendale that is supported by the city. Mike Sunnucks, *New Phoenix Coyotes Owners Commit to Long-term Lease*, PHOENIX BUSINESS JOURNAL, Jan. 18, 2010, available at <http://www.bizjournals.com/phoenix/stories/2010/01/18/daily13.html>.

“[a]bsent some showing by the NHL that there have been material changes in PSE’s circumstances since 2006, it appears to the court that the NHL can not object or withhold its consent to PSE becoming the controlling owner of the Phoenix Coyotes.”⁶⁹ The Board of Governors deemed that there had been material changes, and unanimously rejected the application for ownership by Balsillie.⁷⁰ In rejecting Balsillie’s bid, the NHL stated that “[t]he NHL Board of Governors has unanimously voted that Mr. Balsillie is not qualified as a matter of character and integrity to be the owner of an NHL team.”⁷¹ Balsillie shot back in a court filing by stating: “Indeed, the NHL’s recent history is rife with owners who have engaged in criminal and fraudulent behavior that is vastly more severe than *any* allegation levied against Mr. Balsillie,”⁷² and proceeded to document claims made against Jerry Reinsdorf, William “Boots” Del Biaggio III, former Los Angeles Kings owner Bruce McNall, and current Ottawa Senators owner Eugene Melnyk.⁷³ This earned a sharp public reprisal from Melnyk and the NHL.⁷⁴

⁶⁹ *In re Dewey Ranch Hockey*, 406 B.R. at 36.

⁷⁰ Motion of the National Hockey League for a Determination that Debtor’s NHL Membership Rights May Not Be Transferred to PSE or an Affiliate Thereof at 6, *In re Dewey Ranch Hockey*, 414 B.R. 577 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP). Twenty-six teams voted against Balsillie, one team was absent, and three teams abstained. *Id.* The three abstaining teams appear to be Toronto, Buffalo, and Pittsburgh. David Shoalts, *Judge’s decision May Put Owners at Risk; Court Ruling that Coyotes Owner’s Loans Were Equity in Franchise Would Have big Implications for Pro Sports*, GLOBE AND MAIL, Sept. 4, 2009, at S5.

⁷¹ Mark Sutcliffe, *Canada Needs More Entrepreneurs Like Jim Balsillie*, THE VANCOUVER SUN, Aug. 15, 2009, available at <http://www.vancouver.sun.com/sports/Canada+needs+more+entrepreneurs+like+Balsillie/1896973/story.html>. See also, Motion of the National Hockey League for a Determination that Debtor’s NHL Membership Rights May Not Be Transferred to PSE or an Affiliate Thereof, *In re Dewey Ranch Hockey*, 414 B.R. 577 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP). The NHL Bylaws, Section 35, require that an owner be “willing to commit sufficient financial resources to provide for the financial stability of the franchise” and that they be of “good character and integrity.” NHL BYLAWS, Section 35.1.

⁷² Motion for the Determination That the Debtors’ Interests May Be Transferred to PSE Notwithstanding the NHL’s Refusal to Consent (Redacted Version for Public Filing) at 27–28, *In re Dewey Ranch Hockey*, 414 B.R. 577 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP). For example, there were concerns with the purchase of the Predators and the actions Balsillie took, such as setting up season ticket sales for the Predators in Hamilton, using the Predators’ logo, which appeared to have the “purpose and effect of destabilizing the Predators.” Declaration of Craig Leipold at 5, *In Re Dewey Ranch Hockey*, 414 B.R. 577 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP).

⁷³ Motion for the Determination That the Debtors’ Interests May Be Transferred to PSE Notwithstanding the NHL’s Refusal to Consent (Redacted Version for Public Filing) at 27–30, *In re Dewey Ranch Hockey*, 414 B.R. 577 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP). Balsillie pointed out Reinsdorf’s role in the MLB collusion suits in the 1980s, Del Biaggio’s fraudulent behavior in obtaining loans, McNall’s fraud convictions, and Melnyk’s settlement of an alleged Canadian Securities Act violation.

⁷⁴ The statements issued by Eugene Melnyk and the NHL can be viewed at *Eugene Melnyk Responds to Offside Remarks by Jim Balsillie*, PRS NEWSWIRE, Aug. 20, 2009,

The Board decided to accept Reinsdorf's bid after calling the Ice Edge Holdings bid "incomplete".⁷⁵ Unfortunately for the NHL, Reinsdorf backed out of the process in late August, leading the NHL to submit its own bid for the Coyotes.⁷⁶ The bid from Ice Edge Holdings was dropped a couple of weeks later.⁷⁷ As a result, Balsillie emerged as the only bona fide bidder. On September 7, 2009, Balsillie increased his bid from \$212.5 million to \$242.5 million.⁷⁸

VI. SECOND DECISION

On September 30, 2009, the Federal Bankruptcy Court of Arizona came down with its decision on the actual bids for the Coyotes.⁷⁹ The court rejected both Balsillie's new bid as well as the NHL's bid.⁸⁰ Although Balsillie's bid was rejected outright, the NHL was allowed to re-submit its bid, so long as it made several modifications.⁸¹

A. Balsillie's Bid

Recalling that §363 of the Code permits a sale free and clear of any interest if "such interest is in bona fide dispute", Moyes/Balsillie argued that a dispute over the applicability of NHL rules should not bar the sale to him. The court acknowledged that such disputes are normally settled monetarily, and that this could be done here.⁸²

Unfortunately for Moyes/Balsillie, the court found that the NHL has many non-economic interests, which precluded monetary damages, and also precluded Balsillie's bid from succeeding.⁸³ The non-economic interests of the NHL were found to be: the right to admit only new members who meet its written requirements; the right to control where its members play their home hockey games; and the right to a relocation fee when a member relocates. These are interests that cannot necessarily be assessed monetarily, and the court was concerned that during likely litigation over antitrust complaints, if the team was allowed to move to Hamilton, and the NHL

<http://www.prnewswire.com/news-releases/eugene-melnyk-responds-to-offside-remarks-by-jim-balsillie-62276087.html>.

⁷⁵ Don McGowan, *Ice Edge Encouraged by NHL Decision*, THE STAR PHOENIX (Saskatoon, Saskatchewan), July 30, 2009, at B1.

⁷⁶ Carrie Watters, *Reinsdorf Drops Coyotes Bid as NHL Seeks to Buy Team*, THE ARIZONA REPUBLIC, Aug. 26, 2009, <http://www.azcentral.com/sports/coyotes/articles/2009/08/25/20090825nhlcoyotes.html>.

⁷⁷ Kevin McGran, *Ice Edge Drops out of Running*, TORONTO STAR, Sept. 8, 2009, <http://www.thestar.com/Hockey/article/692682>.

⁷⁸ Joe Warmington, *Balsillie Increases Offer for Coyotes*, TORONTO SUN, Sept. 7, 2009, available at <http://www.torontosun.com/sports/hockey/2009/09/07/10782071-sun.html>.

⁷⁹ *In re Dewey Ranch Hockey*, 414 B.R. 577 (Bkrtcy.D.Ariz. 2009).

⁸⁰ *Id.* at 579.

⁸¹ *Id.* 592–93.

⁸² *Id.* at 591.

⁸³ *Id.*

prevailed, there would be irreparable damage.⁸⁴ In other words, the court noted, “[s]uch an ultimate outcome is apropos to the old adages about closing the barn door after the horse is long gone and how do you un-ring the bell. The obvious refrain to the first adage is, ‘it’s too late’, and to the second, ‘you can’t’.”⁸⁵

The court ultimately found that allowing purchase and relocation of the Coyotes to Hamilton would not sufficiently protect the NHL’s interests.⁸⁶ Invoking the language in §363(e) that it “shall prohibit or condition” the proposed sale “as is necessary to provide adequate protection of such interest”,⁸⁷ the court found that it had to deny Balsillie’s bid.⁸⁸

B. *The NHL’s Bid*

Although the court rejected Balsillie’s bid, the court also found the NHL’s bid to be lacking.⁸⁹ Although the NHL’s bid covered all of the secured creditors, it did not cover the unsecured creditors, primarily Jerry Moyes.⁹⁰ Although a buyer in bankruptcy may choose to pay some trade creditors in full over others, this is generally due to commercial factors and to build good will. In this case, however, the court was concerned that the structure of the NHL bid was simply to get a measure of revenge on Moyes for the fiasco.⁹¹

Since this was an easily curable defect, the court denied the NHL’s bid without prejudice, and the NHL was allowed to re-submit its bid.⁹² The NHL did so, and re-submitted a bid that was valued at \$128.4 million.⁹³ The bid covered all of the secured creditors, and granted \$11.6 million to unsecured creditors, namely Jerry Moyes and Wayne Gretzky.⁹⁴ Both Moyes and the court signed off on the sale,⁹⁵ and as of this writing, the NHL is the owner of the least-valuable franchise in the league.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 591–92.

⁸⁷ 11 U.S.C. § 363(e) (2006).

⁸⁸ *In re Dewey Ranch Hockey*, 414 B.R. at 592.

⁸⁹ *Id.* at 592–93.

⁹⁰ *Id.* at 592.

⁹¹ *See id.* at 593.

⁹² *Id.*

⁹³ Stipulated Order Approving Amended and Clarified Bid at 5, *In re Dewey Ranch Hockey*, 414 B.R. 577 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP).

⁹⁴ *Id.* at 6. At the time of the bankruptcy filing, Wayne Gretzky was the coach of the Coyotes. However, he was absent from the team’s training camp, and eventually quit as coach. *See* Damien Cox and Kevin McGran, *Gretzky Quits as Phoenix Coyotes’ Coach*, TORONTO STAR, Sept. 24, 2009, <http://www.thestar.com/article/700375>.

⁹⁵ Stipulated Order Approving Amended and Clarified Bid, *In re Dewey Ranch Hockey*, 414 B.R. 577 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP).

VII. ANALYSIS

The remaining question, now that the court has decided the fate of the Coyotes, is whether or not there can be a lesson learned from the messy battle. At the outset, many commentators felt that the case would be determined under the *Raiders I* framework.⁹⁶ However, that was clearly not the case. The task here is to disentangle the meaning of the two decisions made by the bankruptcy court.

Raiders I is not the final word in franchise relocation. In fact, it's not even the first word. To go from where Balsillie was in May of 2009 to having a team in Hamilton, three steps need to be completed. First, an owner must own a franchise. The owner must then be a member of a league (these two steps usually go hand-in-hand, but not always). Finally, the owner must be able to move the franchise, with or without league consent. In the words of NHL Commissioner Gary Bettman: "The two most important issues for any sports league are: who's an owner, who's a partner in the league, and where franchises are located."⁹⁷

In regards to the first two steps, a league does not have to grant a franchise if league conditions are not fulfilled.⁹⁸ However, even if a prospective league member already owns a franchise, they require the approval of the league to join play, as demonstrated in *Levin v. NBA*⁹⁹ and *Mid-South Grizzlies v. NFL*.¹⁰⁰ Only then, once there is a franchise owner and they are a league member, can the *Raiders I* analysis can be applied.

The outcome of the case here, however, simply reinforced the position that leagues have the power to prefer purchasers of franchises and who may be a league member, even in a bankruptcy scenario. This case also arguably further weakens the effect of the *Raiders I* case. In the end, owners and potential owners are unable to use bankruptcy law as an end-run around league rules, as they were given a great amount of deference by the bankruptcy court here.

⁹⁶ See Kevin McGran, *Phoenix Coyotes Mess Heads to Court*, THE TORONTO STAR, June 8, 2009, available at <http://www.thestar.com/sports/hockey/article/647063>.

⁹⁷ Eric Duhatschek, *Bettman Extends Olive Branch in Coyotes Debacle; NHL Commissioner Paints Rosy Picture of League's Financial Health, Pushes for Stricter Drug Testing of Players*, GLOBE AND MAIL, June 1, 2009, at S4.

⁹⁸ See *Seattle Totems Hockey Club v. Nat'l Hockey League*, 783 F.2d 1347 (9th Cir. 1986). In *Seattle Totems*, a Western Hockey League team was granted a conditional franchise by the NHL. As a result, they did not seek a World Hockey Association franchise. The NHL rejected the team as it failed to fulfill the conditions precedent to being awarded a franchise. The court rejected all claims, including antitrust claims. See also *Fishman v. Estate of Wirtz*, 807 F.2d 520, 544 (7th Cir. 1986) (finding an antitrust violation in the refusal to grant a lease of a sports arena to an unsuccessful bidder, but finding the NBA's rejection of the prospective owner to not be a violation).

⁹⁹ 385 F.Supp. 149 (S.D.N.Y. 1974).

¹⁰⁰ 720 F.2d 772 (3d Cir. 1983).

A. League Rules Deserve Deference

In *Levin v. NBA*,¹⁰¹ a group of businessmen attempted to purchase the Boston Celtics. However, the group was rejected as potential owners by the league. The official reason given by the NBA was a violation of the “conflict of interest provision.”¹⁰² The “true” reason, as asserted by the potential owners, was that the members of the league were wary of their friendship with the ownership of the Seattle SuperSonics, as the owners of the SuperSonics were not on good terms with many owners. The plaintiffs filed an antitrust action against the NBA. The court summarily dismissed the action, stating that there was no prevention of *competition* with the NBA, just from joining them in their business.¹⁰³

A similar outcome was reached in *Mid-South Grizzlies v. NFL*.¹⁰⁴ Former members of the World Football League wanted to have their team begin play in Memphis, Tennessee, which was far outside the territory of any other team. They were denied by the NFL, and claimed that the motivation for their rejection was “to punish them for having attempted in the past to compete with the NFL in the World Football League...”¹⁰⁵ The court found that the NFL’s decision was actually *pro-competitive*, since the team could compete with the NFL in another league, and upheld the district court’s summary dismissal of the case.¹⁰⁶

Therefore, it seems that leagues can prevent an owner from joining their league for almost any reason, seemingly irrespective of the perceived legitimacy. *Levin* and *Mid-South Grizzlies* seem to be tacitly reaffirmed by the bankruptcy court, as the court was unwilling to force the NHL to accept Balsillie as an owner. The NHL claimed that Balsillie was unfit due to his previous dealings with the Pittsburgh Penguins and Nashville Predators, and Balsillie claimed that the reason was simply personal animus on behalf of the NHL Commissioner. However, the reasons are irrelevant, as the NHL does not have to admit anyone it does not want to.

As a result of *Levin* and this case, it is clear that leagues can choose their owners. While this seems to be an obvious statement in a normal purchase, in a situation such as bankruptcy, the league preference for an owner that was not Balsillie appeared to place a large enough roadblock in front of Balsillie that any other owner who had put up enough money to cover the secured creditors would have likely been acceptable to the court. Thus, it behooves potential franchise owners to be on good terms with the leagues to which they are applying.

Importantly, if the potential owner is not admitted to the league, whether or not they own a team, any discussion of the *Raiders I* line of relocation cases is moot.

¹⁰¹ 385 F. Supp. 149.

¹⁰² *Id.* at 151.

¹⁰³ *Id.* at 153.

¹⁰⁴ 720 F.2d 772.

¹⁰⁵ *Id.* at 786.

¹⁰⁶ *Id.*

B. *Do NHL Rules on Franchise Relocation, and Specifically on Exclusive Territorial Rights, Violate Antitrust Law?*

The court found that Balsillie could not purchase the Coyotes, which effectively disposed of the case. Since Balsillie could not purchase the franchise, nor become a member of the NHL, the court did not need to directly address whether or not the current NHL rules and practices regarding franchise relocation violate antitrust law. This section will discuss the possibility of a violation.

The Sherman Act, §1 provides that “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.”¹⁰⁷ In order to demonstrate a violation of the Sherman Act, it must be shown that there is a “combination”, as opposed to a single entity; and that the restraint challenged must be “unreasonable.”¹⁰⁸ Courts have generally held sports leagues to be multiple independent entities.¹⁰⁹ While in some cases a sports league may be seen as a single entity, this is generally reserved for cases where the league is acting in regards to other, external actors.¹¹⁰

Following the finding of a “combination,” the court must then examine the restraint on trade. The court can use either a *per se* analysis, or a “rule of reason” analysis. The *per se* rule is appropriate only when the challenged practice is “entirely void of redeeming competitive rationales.”¹¹¹ However, courts have generally held the “rule of reason” analysis to be appropriate for sports leagues.¹¹² Under a rule of reason, it must be shown that there is a significant anti-competitive effect within a relevant market. If the plaintiff makes that showing, the defendant is then required to demonstrate that the pro-competitive effect of the restraint justifies the anti-competitive injuries. If that is shown, then “the burden shifts back to the plaintiff to show that any legitimate objectives can be achieved in a substantially less restrictive manner.”¹¹³

The relevant market is a somewhat unclear concept. In *San Francisco Seals v. NHL*, the court stated that the market for NHL teams was “the production of professional hockey games before live audiences, and that the relevant geographical

¹⁰⁷ 15 U.S.C. §1 (2004).

¹⁰⁸ Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 98 (1984).

¹⁰⁹ See L.A. Mem’l Coliseum Comm’n v. Nat’l Football League, 726 F.2d 1381 (9th Cir. 1984); Nat’l Hockey League v. Plymouth Whalers, 419 F.3d 462 (6th Cir. 2005).

¹¹⁰ American Needle Inc. v. Nat’l Football League, 538 F.3d 736 (7th Cir. 2008) (finding that the NFL is a single-entity for the purposes of licensing intellectual property), *cert. granted*, 77 U.S.L.W. 3326 (U.S. June 29, 2009) (No. 08-661).

¹¹¹ Law v. Nat’l Collegiate Athletic Ass’n, 134 F.3d 1010, 1016 (10th Cir. 1998).

¹¹² Nat’l Hockey League Players’ Ass’n v. Plymouth Whalers Hockey Club, 325 F.3d 712, 719 (6th Cir. 2003) (quoting *Law*, 134 F.3d at 1019) (“courts consistently have analyzed challenged conduct under the rule of reason when dealing with an industry in which some horizontal restraints are necessary for the availability of a product’ such as sports leagues.”).

¹¹³ Nat’l Hockey League v. Plymouth Whalers, 419 F.3d at 469.

market is the United States and Canada.”¹¹⁴ However, the court in *San Francisco Seals* went on to state that NHL teams are “in fact, all members of a single unit competing as such with other similar professional leagues.”¹¹⁵ The Seventh Circuit in *American Needle* has recently stated that the NFL “competes with other forms of entertainment for an audience of finite (if extremely large) size.”¹¹⁶ Therefore, the relevant market could be one of competition across all forms of professional sports and entertainment, and not just professional hockey leagues.¹¹⁷

In regards to competition, NHL teams can only function as a source of economic power when collectively producing NHL hockey games.¹¹⁸ Therefore, while teams are independent entities, they are not economic competitors in a traditional sense, but need to cooperate to ensure their economic survival.¹¹⁹ In fact, the court further stated that:

Plaintiff, of course, wishes to participate in this market, but not in competition with the defendants. It expects to maintain its league membership and enjoy all of the exclusive territorial benefits which the National Hockey League affords. As a member team, it will continue cooperating with the defendants in pursuit of its main purpose, i.e., producing sporting events of uniformly high quality appropriately scheduled as to both time and location so as to assure all members of the league the best financial return. In this respect, the plaintiff and defendants are acting together as one single business

¹¹⁴ 379 F. Supp. 966, 969 (C.D. Cal. 1974).

¹¹⁵ *Id.*

¹¹⁶ 538 F.3d at 743.

¹¹⁷ See, S.M. Oliva, *Coyote Ugly II: The Wrath of Antitrust*, MISES ECONOMIC BLOG, May 8, 2009, <http://blog.mises.org/archives/009924.asp> (“In Washington, where the Capitals have long been the poor stepchild to football’s Redskins, Mike Kardish, an attorney in Gainesville, Va. dumped his Redskins tickets two seasons ago and began attending more Capitals games. ‘It’s just more fun to watch,’ he says, comparing Mr. Ovechkin to longtime Redskins linebacker LaVar Arrington for his bruising hits and speed. Mr. Ovechkin, he says, ‘he’s why people go.’” (internal citation omitted)).

¹¹⁸ *American Needle*, 538 F.3d at 743 (“Certainly the NFL teams can function only as one source of economic power when collectively producing NFL football. Asserting that a single football team could produce a football game is less of a legal argument than it is a Zen riddle: Who wins when a football team plays itself?”); *Bd. of Regents*, 468 U.S. at 101 (“[Some] activities can only be carried out jointly. Perhaps the leading example is league sports. When a league of professional lacrosse teams is formed, it would be pointless to declare their cooperation illegal on the ground that there are no other professional lacrosse teams.” (quoting ROBERT BORK, *THE ANTITRUST PARADOX* 278 (1978))); *Chi. Prof'l Sports Ltd. v. Nat'l Basketball Ass'n.*, 95 F.3d 593, 599 (7th Cir. 1996) (“[T]he NBA has no existence independent of sports. It makes professional basketball; only it can make ‘NBA Basketball’ games....”).

¹¹⁹ *San Francisco Seals*, 379 F.Supp. at 969–70.

enterprise, competing against other similarly organized professional leagues.¹²⁰

There is no reason to believe that the antitrust rules would have been applied any differently in the case of the Phoenix Coyotes attempt to move to Hamilton in 2009 than it was applied to the San Francisco Seals attempt to move to Vancouver in 1974.

It was believed by many that the thrust of the challenge against the NHL would be that restrictions on relocation of the Coyotes would have a significant anti-competitive effect, relying on *Raiders I*.¹²¹ In that case, the Ninth Circuit Court of Appeals upheld a jury verdict that the NFL rule requiring three-quarters approval of team owners to relocate a franchise (regardless of whether or not it was into another team's exclusive territory) was an unlawful restraint of trade under the Sherman Act, §1. However, the majority in the case stated that restrictions may be able to withstand antitrust scrutiny with that proviso that, "[a]n express recognition and consideration of those objective factors espoused by the NFL as important, such as population, economic projections, facilities, regional balance, etc., would be well advised."¹²² The court seemed concerned about the personal animosity against Al Davis, the owner of the Raiders, and the possibility that the rule was not connected to its purpose. However, only four years later, the Ninth Circuit said that:

Collectively, the *Raiders* opinions held that rule of reason analysis governed a professional sports league's efforts to restrict franchise movement. More narrowly, however, *Raiders I* merely held that a reasonable jury could have found that the NFL's application of its franchise movement rule was an unreasonable restraint of trade....The Clippers' and the Coliseum's efforts to characterize *Raiders I* as presenting guidelines for franchise movement rules are thus unavailing. Neither the jury's verdict in *Raiders*, nor the court's affirmance of that verdict, held that a franchise movement rule, in and of itself, was invalid under the antitrust laws.¹²³

Therefore, so long as the NHL rules are rationally connected to its goals of franchise stability, etc., then it is likely that they will withstand a rule of reason analysis. This argument will be helped by the decision by the Canadian Competition Bureau on March 31, 2008, that:

[P]roperly circumscribed restrictions on the relocation of sports franchises imposed by the NHL and other professional sports

¹²⁰ *Id.* at 969.

¹²¹ L.A. Mem'l Coliseum Comm'n v. NFL, 726 F.2d 1381 (9th Cir. 1984).

¹²² *Id.* at 1397.

¹²³ NBA v. San Diego Clippers Basketball Club, 815 F.2d 562, 567 (9th Cir. 1987) (reversing and remanding summary judgment granted by a district court that stated that the NBA could not impose a charge upon the Clippers for the unilateral usurpation of the "franchise opportunity" in the Los Angeles area).

leagues serve legitimate interests, such as preserving rivalries between teams, attracting a broader audience, providing new franchises with an opportunity to succeed and encouraging investment in sports facilities and related infrastructure by local municipalities.¹²⁴

Yet, in this case, there appears to be an unreasonable restriction on relocation under the NHL Constitution Article 4.3:

No other member of the League shall be permitted to play games (except regularly scheduled League games with the home club) in the home territory of a member without the latter member's consent. No franchise shall be granted for a home territory within the home territory of a member, without the written consent of such member.¹²⁵

This appears to be a veto, and depending on how it is construed, may be unreasonable under *Raiders I*. It is strange, to say the least, that the Canadian Competition Bureau did not comment on this, and neither did the Arizona bankruptcy court. The court merely commented that provisions on relocation are not a *per se* violation of antitrust law.¹²⁶ It is possible that under a rule of reason analysis that this rule in and of itself might be held unreasonable. However, it is not beyond the capability of a court to sever this provision from the rest of the NHL Constitution while keeping the remainder of the relocation provisions intact.

However, there are two potential problems with any antitrust argument. First, Balsillie was not a current owner, unlike Al Davis, and would have had to overcome *Levin* to get to *Raiders*. Second, leagues have adapted since *Raiders*. In *Raiders*, the main concern of the court was the rejection of relocation simply based on animus toward Al Davis.¹²⁷ It suggested the inclusion of objective criteria for the future.¹²⁸ Here, it is likely that there was animus against Balsillie; however, the relocation of the franchise (as well as the ownership) was determined on a set of pre-existing criteria that was largely fact-based. Despite this potential team veto, it was difficult for

¹²⁴ CANADIAN COMPETITION BUREAU, COMPETITION BUREAU CONCLUDES EXAMINATION INTO NATIONAL HOCKEY LEAGUE FRANCHISE OWNERSHIP TRANSFER AND RELOCATION POLICIES (Mar. 31, 2008), available at <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02640.html>.

¹²⁵ CONSTITUTION OF THE NATIONAL HOCKEY LEAGUE, art. 4.3.

¹²⁶ *In re Dewey Ranch Hockey*, 406 B.R. 30, 39 (Bkrcty.D.Ariz. 2009).

¹²⁷ L.A. Mem'l Coliseum, 726 F.2d at 1398.

¹²⁸ *See id.* at 1397 (“To withstand antitrust scrutiny, restrictions on team movement should be more closely tailored to serve the needs inherent in producing the NFL ‘product’ and competing with other forms of entertainment. An express recognition and consideration of those objective factors espoused by the NFL as important, such as population, economic projections, facilities, regional balance, etc., would be well advised. . . . Some sort of procedural mechanism to ensure consideration of all the above factors may also be necessary, including an opportunity for the team proposing the move to present its case.”).

Balsillie to argue that the same animus towards him exists as did towards Al Davis in the *Raiders* cases.

C. Owners Cannot Use Bankruptcy Law to Circumvent League Rules

The thrust of the previous two sections is that bankruptcy law cannot be used as a method of circumventing league rules regarding ownership and relocation. However, this may not have been a model case to test this assertion. First, there was a high liquidated damages provision in the lease with the City of Glendale. Balsillie may have not been willing to pay the several-hundred million dollars in liquidated damages required by the lease. If he had been willing to do so, the lease would not have been a hurdle to his relocation requests. However, the lease was certainly a factor in the court's decision.

Second, Balsillie's inability to make a timely application for ownership and relocation before attempting litigation may have hindered his chances at a successful outcome. The court was less than pleased that Balsillie requested relocation *before* filing for ownership and relocation with the NHL.¹²⁹ Also, the NHL has adapted to a post-*Raiders* world in regards to franchise relocation by requiring a very thorough application for ownership and relocation.¹³⁰ This new process uses some objective factors, such as financial impacts, in addition to more subjective factors, such as "character" issues.¹³¹ However, the NHL may have simply been lucky that *Levin* applied before *Raiders I* and *San Diego Clippers* came into play.

VIII. WHAT NOW?

A. NHL Searches for a New Owner

The NHL is currently searching for an owner for the Phoenix Coyotes. The likely purchaser is Ice Edge Holdings.¹³² However, the group has recently come

¹²⁹ Shoalts & Naylor, *supra* note 62 (stating that Judge Baum "chided the Phoenix lawyer who represented Mr. Balsillie in court, Susan Freeman, for not making a formal application to the NHL to move the team").

¹³⁰ The franchise ownership application can be found in Daly Declaration, app. II, Exhibit O, *In re Dewey Ranch Hockey*, 406 B.R. 30 (Bkrtcy.D.Ariz. 2009) (2:09-bk-09488-RTBP). The relocation rules are in the NHL BYLAWS, Section 36.

¹³¹ The NHL Bylaws put forth the following considerations, amongst others, in contemplating relocation: whether the franchise is financially viable in its current location, historical fan support and profit, whether there are owners who would be willing to operate the club in its present location, the adequacy of the arena, whether there are ways to cut costs, whether the league's credibility would be damaged, whether or not a major market would be deprived of a major league franchise, the potential for liability as a result of relocation, and the interests of the NHL. NHL BYLAWS, Section 36.5.

¹³² *Canada Still Part of Potential Coyotes Buyer's Plans*, THE WALL STREET JOURNAL, Dec. 14, 2009, <http://blogs.wsj.com/bankruptcy/2009/12/14/canada-still-part-of-potential-coyotes-buyers-plans/>. However, as of February 27, 2010, the deal does not appear to be completed.

across some potential problems with financing.¹³³ Whether or not Ice Edge is successful in purchasing the Coyotes, and even if their plan to play some home games in Canada comes to fruition, they or any other potential owner will need to be willing to sustain significant losses for the short term. This may be with NHL support in some form or another, and it is possible that the NHL will allow the team to relocate in the near future.

The NHL, however, is not keen on having teams relocate. Following the relocation of the Québec Nordiques and the Winnipeg Jets, the NHL instituted the Canadian Assistance Plan in an effort to combat the low Canadian dollar.¹³⁴ This, plus assistance to other teams with ownership and financial difficulties demonstrates an unwillingness on behalf of the NHL to have teams relocate if at all possible. In addition, the NHL would not want to leave the thirteenth-largest metropolitan statistical area in the United States without a team.¹³⁵

However, with losses predicted to be \$40–50 million for the 2009–10 season,¹³⁶ which is almost an entire team's payroll, it may be in the NHL's best interest to relocate. Although possibilities for relocation include Oklahoma City, Kansas City, and Seattle, it is unknown whether or not these cities will be willing or able to support an NHL team. While Québec City is working to obtain government funding to build a new arena,¹³⁷ Québec City likely does not have the financial base to support an NHL team.¹³⁸ Thus, it appears for now, that the team will remain in Phoenix.

¹³³ David Shoalts, *Banks Give Ice Edge the Cold Shoulder*, THE GLOBE AND MAIL, Mar. 12, 2010, at S3.

¹³⁴ *Leaving Arizona, NHL Assistance Plan for Canadian Teams OK'd*, SPORTS BUSINESS DAILY, Dec. 9, 1998, available at <http://www.sportsbusinessdaily.com/article/28923>.

¹³⁵ Glendale Supplemental Objection, *supra* note 9, at 9.

¹³⁶ Sunnucks, *supra* note 68; *New Phoenix Coyotes Owners Commit to Long-term Lease*, PHOENIX BUSINESS JOURNAL, Jan. 18, 2010, available at <http://www.bizjournals.com/phoenix/stories/2010/01/18/daily13.html>; Paul Waldie, *Red Ink Flowing at Record Rate*, THE GLOBE AND MAIL, Nov. 20, 2009, at S2.

¹³⁷ *Flaberty Tells Québec City to Reassess NHL-Sized Arena*, NATIONAL POST, Dec. 11, 2009, available at <http://www.nationalpost.com/sports/story.html?id=2331132> (Québec City has asked for \$175 million from the federal and provincial governments, and has offered \$50 million in municipal funding for the proposed \$400 million arena).

¹³⁸ See, e.g., James Mirtle, *The Reality of a Return to Québec City*, FROM THE RINK, Oct. 12, 2009, <http://www.fromtherink.com/2009/10/12/1081818/the-reality-of-a-return-to-quebec>; Ken Campbell, *NHL Back in Québec City? Think Again*, THE HOCKEY NEWS, Oct. 12, 2010, <http://www.thehockeynews.com/articles/28507-Campbells-Cuts-NHL-back-in-Quebec-City-Think-again.html>. See also, Ashok Parmar, *Is the NHL Returning to Québec City?*, INSIDE HOCKEY, Oct. 11, 2009, <http://www.insidehockey.com/columns/4567> (“Unfortunately, many of the concerns that existed when Québec City lost the Nordiques in 1995 also remain concerns today. Passion is rarely a problem when discussing Canadian markets, but sometimes economics is the problem. Québec City does not have the corporate opportunities of some bigger Canadian cities like Toronto Montreal, and Vancouver, so this could pose a bit of an issue. Those corporate dollars could go a long way in selling luxury boxes and contributing sponsorships for your franchise.”) The former co-owner of the Québec Nordiques, Marcel Aubut, “spent years looking for government subsidies, support for a new

B. *Is Phoenix a Viable Market?*

It has become obvious that the Coyotes will remain in deep financial trouble if something does not change soon. To many observers, it seems obvious that hockey in the desert is a failure. At first blush, some might feel that the NHL is fighting a losing battle, and that denying an owner with large financial resources who wanted to relocate that franchise to a potentially more viable market is a large mistake.

To make matters worse, Phoenix is not the only team in financial trouble. The Dallas Stars appear to be heading to bankruptcy court as well, after owner Tom Hicks defaulted on a series of loans;¹³⁹ the Atlanta Thrashers are embroiled in litigation between the owners;¹⁴⁰ the New York Islanders are facing immense hurdles in obtaining the land to build a new arena;¹⁴¹ and the Columbus Blue Jackets¹⁴² and Tampa Bay Lightning¹⁴³ are having financial problems. These are very serious concerns for the NHL in its post-lockout era, an era that was designed to make teams more viable on and off the ice by restricting player salaries to 54%–57% of league revenues.¹⁴⁴ While the financial troubles of the other teams does not bode well for the Coyotes, and may lead other owners to question the support of one team at the expense of others, it demonstrates that there may be other problems aside from just location.

arena and the corporate dollars to fill enough luxury boxes to keep the team in Quebec.” However, Aubut mentioned in 2002: “There is no pocket in this city or province deep enough.” John Branch, *From Quebec, With Love/Avalanche Built on the Nordique Track*, COLORADO SPRINGS GAZETTE, Dec. 9, 2002, available at http://findarticles.com/p/articles/mi_qn4191/is_20021009/ai_n10011159/?tag=content;col1.

¹³⁹ Daniel Kaplan, *Hicks Creditors Look to NHL*, DALLAS BUSINESS JOURNAL, Aug. 17, 2009, <http://www.bizjournals.com/dallas/stories/2009/08/17/daily3.html>.

¹⁴⁰ See Jeff Schultz, *Bettman: Onus on Thrashers’ Owners*, ATLANTA J.-CONST., Feb. 8, 2010, at 1C; Sekou Smith, *Spirit Back to Business ‘As Usual’; Belkin Status Unchanged After Judge’s Ruling on Hawks-Thrashers Group*, ATLANTA J.-CONST., Aug. 19, 2009, at 1C.

¹⁴¹ See The Lighthouse Development Group, *supra* note 21; Stu Hackel, *Wang: Lighthouse Project Still On*, N.Y. TIMES, Oct. 15, 2009, available at <http://slapshot.blogs.nytimes.com/2009/10/15/wang-lighthouse-project-still-on/>.

¹⁴² Post-lockout, the range of yearly losses for the Columbus Blue Jackets are as follows: \$12.9–\$16.6 million in 2006, \$5.5–\$9.9 million in 2007, \$12.0–\$16.5 million in 2008, and \$12.0–\$15.0 million in 2009. STEPHEN A. BUSER, REPORT ON THE BLUE JACKETS 9 (2009).

¹⁴³ It was reported in January 2010 that the NHL had granted the Lightning an advance payment on their revenue-sharing, which is similar to what happened in Phoenix preceding the bankruptcy filing. David Shoalts, *Lightning Hit Another Rough Patch*, THE GLOBE AND MAIL, available at <http://www.theglobeandmail.com/sports/lightning-hit-another-rough-patch/article1439224/>.

¹⁴⁴ COLLECTIVE BARGAINING AGREEMENT BETWEEN NATIONAL HOCKEY LEAGUE AND NATIONAL HOCKEY LEAGUE PLAYERS’ ASSOCIATION, Art. 50.4(b) (2005).

Secondly, it is possible for franchises to come back from the brink of bankruptcy and survive, and even thrive. As recently as 2003, the Ottawa Senators and Buffalo Sabres were bankrupt, and both currently appear to be financially stable.¹⁴⁵

For critics, the argument comes back to location, location, location. There are many that clamor for the relocation of the Coyotes based on the simple fact that Phoenix is a desert environment, long before the Coyotes declared bankruptcy.¹⁴⁶ Yet, it must also be kept in mind that as of 2000, the Vancouver Canucks (14,642), Calgary Flames (15,322) and the Edmonton Oilers (15,802) were drawing fewer fans than the Nashville Predators (16,600).¹⁴⁷ Therefore, one cannot simply write off a team that has played poorly during its infancy, and say that the location is not viable. Yet, although some say that Phoenix simply needs to start winning,¹⁴⁸ others say there is no hope.¹⁴⁹

¹⁴⁵ John Kreiser, *On Thin Ice: The Recent Bankruptcies of the Senators and Sabres Demonstrate that the NHL Needs More Than a Zamboni to Smooth Over Its Rough Spots*, HOCKEY DIGEST, April 2003, available at http://findarticles.com/p/articles/mi_m0FCM/is_6_31/ai_98565878/. Although Ottawa and Buffalo posted operating losses over the 2008–09 season of \$3.8 and \$5.2 million respectively, this has not necessarily been cause for alarm. *NHL Team Valuations 2009*, *supra* note 211. See also, June 9 Declaration of Gary B. Bettman at 12–13, *Dewey Ranch Hockey*, 406 B.R. 30 (Bkcty.D.Ariz. 2009) (2:09-bk-09488-RTBP).

¹⁴⁶ See, e.g., Jeff Z. Klein & Lew Serviss, *Enthusiasm Cools for Hockey's Foray Into the South*, N.Y. TIMES, Feb. 10, 2008, at 8 (quoting former Los Angeles Kings player Marcel Dionne: “We missed the boat 20 years, 25 years ago...Keep on trying all you want...It ain't [sic] happening.”); Editorial, *A Smaller NHL*, NATIONAL POST, June 9, 2008, at A16 (“Hockey does not play well in these hot-weather locations. Except for the California clubs and Tampa Bay—which count on plenty of ex-pat and vacationing Canadians to fill seats—sunbelt NHL teams are largely a bust. The league should consider pulling most of these franchises.”). One can also find many, many examples on various internet message boards of individuals claiming that hockey cannot, and will not, work in Phoenix, or any other Southern U.S. market.

¹⁴⁷ Jason Brough, *Looking Back, Almost Every Team has Struggled with Attendance*, ORLAND KURTENBLOG, May 20, 2009, <http://communities.canada.com/theprovince/blogs/kurtenblog/archive/2009/05/20/looking-back-almost-every-nhl-team-has-struggled-with-attendance.aspx>. At the end of the 2008–09 season, all three teams were filling their arenas to capacity, while the Predators were filling their arena to 87.7% capacity, for a total of 15,010 fans per game. NHL Attendance Report 2010, ESPN.com, http://espn.go.com/nhl/attendance/_/year/2009. As of the 2009–10 season, the Predators are barely making it past the 14,000 average attendance mark, the minimum required for revenue-sharing. John Glennon, *Predators to Top 14,000 Average Attendance; Season Ticket Prices Rising*, THE TENNESSEAN, Mar. 23, 2010, available at <http://blogs.tennessean.com/predators/2010/03/23/preds-will-top-14000-average-ticket-prices-rising/>.

¹⁴⁸ Paola Boivin, *Only Winners Survive Here*, THE ARIZONA REPUBLIC, May 18, 2009, available at <http://www.azcentral.com/sports/coyotes/articles/2009/05/18/20090518boivin0519.html>.

¹⁴⁹ Craig Harris, *Can Phoenix Ever Be a Hockey Town?*, THE ARIZONA REPUBLIC, May 18, 2009, available at <http://www.azcentral.com/sports/coyotes/articles/2009/05/18/20090518biz-coyotes0518.html>.

IX. CONCLUSION

It is not often that a case in federal bankruptcy court can garner so much attention. While the bankruptcy of the Phoenix Coyotes may not have the impact of *Raiders I*, or the upcoming decision in *American Needle*, it does settle some questions raised regarding franchise relocation and further erodes the supposed strength of *Raiders I*.

Going forward, unless leagues are set to expand, potential franchise owners need to be in good favor with the powers-that-be. Potential owners would do well to remember that a professional league is a partnership, and that it is difficult for a court to force a partnership to accept a member that it does not want. This is being demonstrated in the NHL by a \$61.6 million lawsuit launched by the league against Moyes months after the conclusion of the sale of the Coyotes to the NHL.¹⁵⁰ Although the fight to keep the Coyotes in Phoenix may be only a temporary reprieve for the team before eventual relocation, it was a battle the NHL was required to fight to maintain the integrity of its ownership process.

¹⁵⁰ The NHL is suing Moyes in New York State Supreme Court, seeking damages for \$61.6 million, which includes the costs of filing the case in bankruptcy court, operating losses sustained by the Coyotes in the 2009–10 season, money for other creditors, and other damages. David Shoalts, *At Least the On-Ice Product is Worth Watching*, THE GLOBE AND MAIL, Mar. 10, 2010, at S1.