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Counsel to the Debtors-In-Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re

DEWEY RANCH HOCKEY, LLC,

COYOTES HOLDINGS, LLC,

COYOTES HOCKEY, LLC, and

ARENA MANAGEMENT GROUP, LLC,

Debtors.

Case No. 2:09-bk-09488
(Jointly Administered)

Chapter 11

**NOTICE OF FILING NHL
RELOCATION APPLICATION UNDER
SEAL**

This Filing Applies to:

- All Debtors
 Specified Debtors

PLEASE TAKE NOTICE that DEWEY RANCH HOCKEY, LLC (“**Dewey**”), COYOTES HOLDINGS, LLC (“**Coyotes Holdings**”), COYOTES HOCKEY, LLC (“**Coyotes Hockey**”), and ARENA MANAGEMENT GROUP, LLC (“**Arena Management**”, and together with Dewey, Coyotes Holdings, and Coyotes Hockey, the “**Debtors**”), debtors-in-possession in the above-captioned Chapter 11 cases (these “**Cases**”), file this Notice of submission of the application for transfer of the Phoenix Coyotes to Hamilton, Ontario (the “**Relocation Application**”) under seal.

PLEASE TAKE FURTHER NOTICE that PSE Sports & Entertainment, L.P. (“**PSE Sports**”) and Coyotes Hockey submitted the Relocation Application to the National Hockey League (the “**NHL**”) on June 1, 2009. A cover letter and the non-confidential text of the Relocation Application are attached to this Notice as Exhibit “A.” The appendices and attachments to the Relocation Application are confidential and filed under seal.

PLEASE TAKE FURTHER NOTICE that the Debtors file this Notice in accordance with the “Order Authorizing The Debtors To File NHL Transfer And Relocation Applications Under Seal” entered by the Court on May 27, 2009 [Docket No. 211]. Furthermore, the submission of the Relocation Application and any supplements to such application is without prejudice to the assertions made by Coyotes Hockey as set forth in Adversary Proceeding No. 2:09-ap-494-RTB.

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PLEASE TAKE FURTHER NOTICE that parties wishing to view pleadings and documents filed in these Cases (with the exception of those pleadings and documents filed under seal) may access the Debtors' web-site at <http://www.bmcgroup.com/phoenixcoyotes>. If you are a registered PACER user, pleadings may be obtained electronically at www.azb.uscourts.gov. Should you have any additional questions or concerns, please contact BMC Group, Inc., the Debtors' proposed claims, noticing and solicitation agent, toll-free at 888-909-0100.

Dated this 1st day of June, 2009.

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: /s/ Thomas J. Salerno

Thomas J. Salerno

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Counsel to the Debtors-In-Possession

EXHIBIT A

June 1, 2009

National Hockey League
1251 Avenue of the Americas
New York, NY 10020

Attention: Mr. Gary Bettman
Mr. David Zimmerman

Re: James Balsillie – Relocation Application

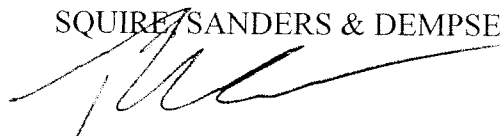
Dear Messrs Bettman and Zimmerman:

This firm is counsel to Coyotes Hockey, LLC (“Coyotes”). Pursuant to National Hockey League Constitution 4.2 and By-Law 36.5, Coyotes hereby submits the enclosed Application for Transfer of the Franchise Location of the Phoenix Coyotes to Hamilton, Ontario (“Application”) in conjunction with the sale of the Club to PSE Sports & Entertainment, LP (“PSE”). This Application is made jointly with PSE pursuant to NHL By-Laws 35.3 and 36.7, and submitted in accordance with the sale procedures contemplated by the Asset Purchase Agreement between Coyotes and PSE and ordered by the United States Bankruptcy Court. Moreover, this Application is made without prejudice to the claims and assertions made in pending Adversary No. 2:09-ap-494-RTBP.

Coyotes and PSE believe this Application meets all requirements of the NHL Constitution and By-Law 36.5. We have not been provided with any form or format to follow. If the NHL requests additional information, please inform us as soon as possible.

Very truly yours,

SQUIRE SANDERS & DEMPSEY L.L.P.



Thomas J. Salerno
Partner

TJS/kah
Enclosures

PHOENIX/483925.1

National Hockey League

Constitution Section 4.2

By-Law Section 36.5

Application for Transfer of Franchise Location

Coyotes Hockey, LLC and PSE Sports & Entertainment, LP

On behalf of Coyotes Hockey, LLC ("Coyotes") and PSE Sports and Entertainment LP ("PSE"), the attached application is submitted to the Commissioner of the National Hockey League to seek the League's consent to transfer the Phoenix Coyotes Club (the "Club") from the City of Glendale, AZ to the City of Hamilton, ON.

The following information is presented to address sequentially each of the considerations contained in NHL By-Law 36.5. This *Transfer of Franchise Location* application is submitted in conjunction with the application pertaining to the *Transfer of Membership or Ownership Interest in Franchise* as provided for in By-Law Section 35 as previously delivered and supplemented under separate cover.

Coyotes and PSE strongly believe that consent to this transfer should be given based upon the reasons cited below and substantiated in the attached.

In terms of the Club's performance and results in Glendale, AZ:

1. There is overwhelming evidence that the Club is not financially viable in its present location. Furthermore, based upon all available information, there is no indication that the Club could become financially viable there, either under its present ownership or under new ownership.
2. Since inception the Club has recorded cumulative EBITDA losses in excess of \$316 million.
3. The Club in its present location has been unable to generate a significant fan base.
 - a. Historic support for hockey is weak in the Phoenix/Glendale market area as demonstrated by low attendance, declining season ticket sales, and low broadcast ratings.
 - b. Hockey's weakness in Phoenix/Glendale is further demonstrated by a lack of interest in attending a game live, with the Club ranking 5th in attendance interest in that market behind the NFL, MLB, NBA, and NCAA Football.
4. Management of the Club has attempted to restructure its operations in an effort to increase revenues, decrease costs to reduce operating losses, and bring a greater probability of financial sustainability. Even with the most optimistic of planning assumptions (including aggressive ticket sales increase when average prices are nearly

doubling) within a severely challenged economy the five-year horizon in Glendale projects further losses of over \$40 million.

5. The owner of the Club, Jerry Moyes, is a long time resident of Glendale and an involved and community-minded citizen. As the managing member and CEO of the Club, for the past year he has been seeking additional investors or a buyer to address his responsibilities towards all creditors of the business and parties in interest. Moyes engaged an experienced adviser and retained Citibank's Private Banking Group to help sell the Club. These efforts have been unsuccessful as no one has expressed an interest or presented an offer of any magnitude that would pay most of the creditors and keep the Club in Phoenix/Glendale.
6. Despite good efforts and intentions by many parties, the Club is not, never has been and never will be financially viable, consistently supported by fans, and a leading professional sports team in Arizona.

In terms of the Club's prospective results and performance in Hamilton, ON, Coyotes and PSE are fully confident that the Club will thrive:

1. Based upon population, demographics, and the result of quantitative research conducted in May 2009, the support for an NHL team in Hamilton will be strong and substantial. Hamilton and the surrounding area have 1.4 million people and favourable demographics to support a team. The median after-tax income of Hamilton Area Residents is 14% above the Ontario average and is a key indicator of residents' ability to spend for sports events and merchandise.
2. The high interest in NHL hockey in the Hamilton area has been shown to translate into sales in the past, and this leading indicator can reasonably be expected to be repeated. While the Hamilton and surrounding area, by itself, is a large enough hockey market to viably sustain an NHL franchise, this specific market area is situated in Southwestern Ontario, a market area of more than 7 million where hockey is deeply entrenched and widely supported.
3. The Club will play its home games in Copps Coliseum. A complete renovation plan has been prepared by Stadium Consultants International (SCI), of Toronto, a subsidiary of BBB Architects. The renovation plans will expand capacity to 18,026 with 20 new "bunker suites", 50 mid-level private suites and 4 group suites. The fully renovated arena will comply with the design requirements set out in the NHL's Facility Standards.
4. The operating terms outlined in the signed option agreement with the City of Hamilton for the lease of an updated COPPS Coliseum are favourable. This provides a 20 year agreement including 4 successive 3-year renewal periods at the option of PSE to increase the leasing period to 32 years. The Management Agreement grants PSE the exclusive right to operate and manage the Copps Coliseum and the related theatre, convention centre and parking facilities with entitlement to revenues generated through these facilities.
5. The owner of PSE is Jim Balsillie. Mr. Balsillie is a very successful businessman, philanthropist, community leader, and passionate hockey fan. He has been recognized throughout North America and internationally as a visionary entrepreneur, influential CEO, and competent business leader. His roots in Southwestern Ontario are deep and his community contributions exemplary. Under Mr. Balsillie's direction, PSE has

represented, to the extent that it would even be required, its willingness and ability to sustain losses during the initial years of operation. Further details supporting Mr. Balsillie's financial support is included in the application pertaining to the *Transfer of Membership or Ownership Interest in Franchise*.

In terms of any impact the proposed transfer would have on the League in general:

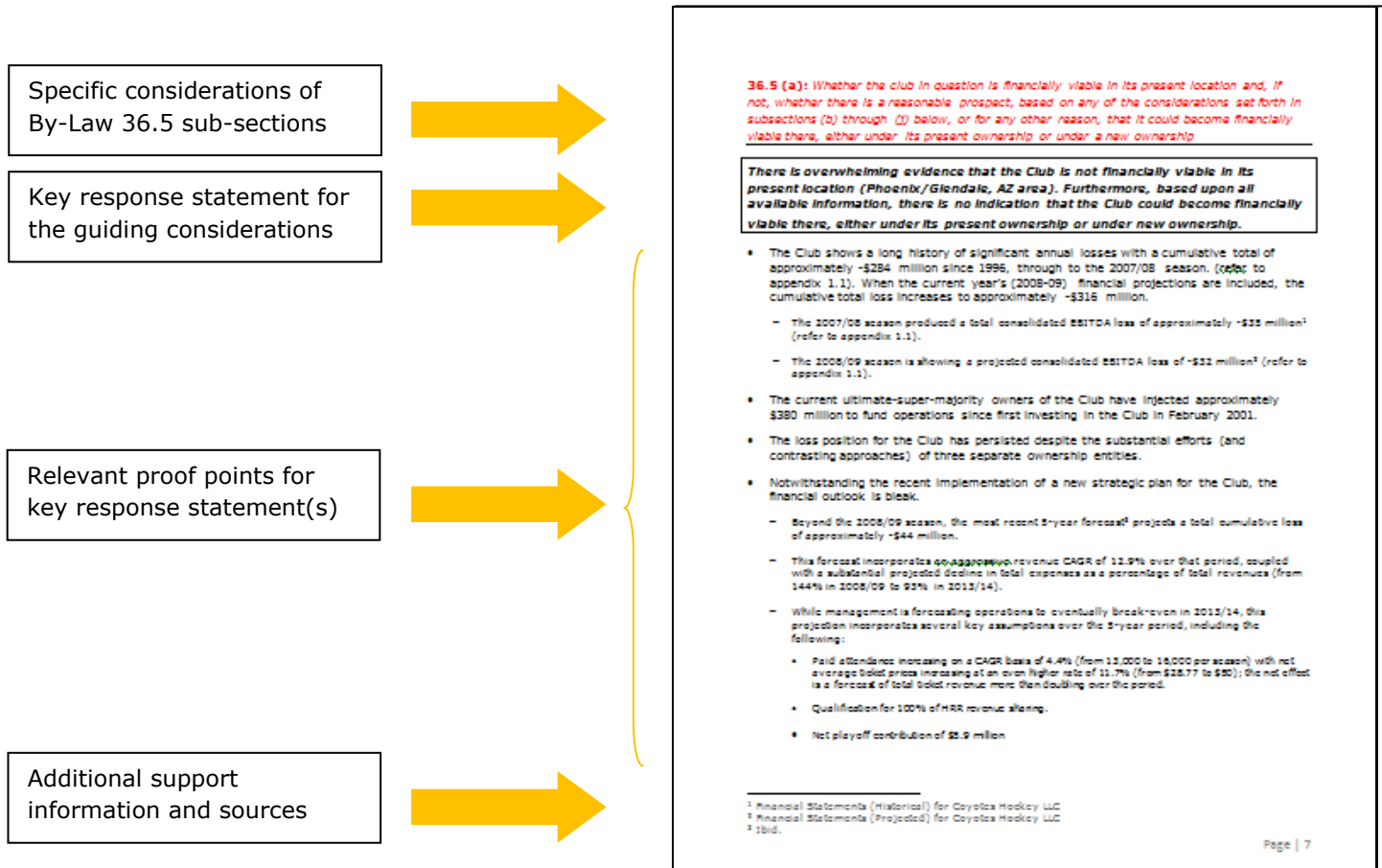
1. From research completed in May 2009, the movement of the Club to Hamilton is unlikely to damage the image of the league. Indeed, a strong majority (66%) of the Hamilton Area Residents would hold the league in higher regard based on the prospect of relocating the Club to Hamilton, with an additional 31% whose regard would remain unchanged.
2. In Phoenix/Glendale, results from the same research indicate residents are divided in terms of how relocating the Club will impact their opinion of the NHL. Nearly 40% say a potential move will not change their opinion of the NHL. However, approximately half would hold the league in lower regard. The impact of these fans on the overall image of the NHL should be viewed within the context of the historical fact that there are insufficient Phoenix/Glendale fans who have materially supported the team to a degree of profitability.
3. The departure of the Club from the Phoenix metropolitan area will leave a major U.S. market without an NHL franchise. However, after 13 years, the Phoenix area has failed to become a major U.S. hockey market. In addition, the proposed transfer would not adversely affect traditional rivalries between the Club in its present location and other Clubs, as discussed below. The NFL is widely considered to be the most successful league in North American sports. Yet, it does not have a franchise in Los Angeles, the second largest market in the U.S. If the NFL can operate successfully without a franchise in Los Angeles, so too can the NHL succeed and thrive without a franchise in Phoenix.
4. It appears that a Club in Hamilton is likely to have a positive effect on attendance when playing as the visiting team in the home arena of other Member Clubs. Assuming the Club in Hamilton would compete within the Northwest Division of the Western Conference, it is highly likely the Club would draw more fans when playing as the visiting team. The Hamilton Club would play as a visiting team no fewer than 18 times in other Canadian cities (Calgary, Edmonton, and Vancouver), helping to support the traditionally strong gates that are generated when two Canadian teams play each other.
5. It is our understanding that the proposed transfer, if approved, would not affect any contract or agreement in effect between the Club and any public or private party, except to the extent such contracts are rejected through the Club's pending bankruptcy proceeding. Equally, transfer would not expose the League to liability to any third party for breach of contract, interference with contractual relations, or for any other cause.

Also well known and documented are the challenging economic times all consumers and businesses are facing, professional sports teams and leagues included. The North American economy continues to be weak and is not expected to improve until 2010. A report published by TD Economics has downgraded the U.S., Canadian and global economic outlook for 2009 and 2010 due to slow progress in improving global financial conditions and a significant broadening in economic weakness across the global stage.

Therefore in summary, within this overall environment it would clearly be in the best interest of the League and its member clubs to transfer the Phoenix Coyotes Club from Glendale, Arizona to Hamilton, Ontario for the 2009/2010 season.

With this submission, Coyotes and PSE respectfully request consent to the transfer.

Guide To Reading The Application For Transfer Of Franchise Location: Considerations Pursuant To By-Law Section 36.5



- Additional support information (including financial statements, supplementary research and documents, research interview schedule, etc.) can be found in the appendix section at the back of this document.

CONSIDERATIONS
For Transfer of
Phoenix Coyotes Club
To Hamilton, ON

PURSUANT TO:

BY-LAW SECTION 36.5

36.5 (a): *Whether the club in question is financially viable in its present location and, if not, whether there is a reasonable prospect, based on any of the considerations set forth in subsections (b) through (j) below, or for any other reason, that it could become financially viable there, either under its present ownership or under a new ownership*

There is overwhelming evidence that the Club is not financially viable in its present location (Phoenix/Glendale, AZ area). Furthermore, based upon all available information, there is no indication that the Club could become financially viable there, either under its present ownership or under new ownership.

- The Club shows a long history of significant annual losses with a cumulative total of approximately -\$284 million since 1996, through to the 2007/08 season. (refer to appendix 1.1). When the current year's (2008-09) financial projections are included, the cumulative total loss increases to approximately -\$316 million.
 - The 2007/08 season produced a total consolidated EBITDA loss of approximately -\$35 million¹ (refer to appendix 1.1).
 - The 2008/09 season is showing a projected consolidated EBITDA loss of -\$32 million² (refer to appendix 1.1).
- The current ultimate-super-majority owners of the Club have injected approximately \$380 million to fund operations since first investing in the Club in February 2001 (refer to appendix 3.6).
- The loss position for the Club has persisted despite the substantial efforts (and contrasting approaches) of three separate ownership entities.
- Notwithstanding the recent implementation of a new strategic plan for the Club, the financial outlook is bleak.
 - Beyond the 2008/09 season, the most recent 5-year forecast³ projects a total cumulative loss of approximately -\$44 million.
 - This forecast incorporates an aggressive revenue CAGR of 12.9% over that period, coupled with a substantial projected decline in total expenses as a percentage of total revenues (from 144% in 2008/09 to 93% in 2013/14).
 - While management is forecasting operations to eventually break-even in 2013/14, this projection incorporates several key assumptions over the 5-year period, including the following:
 - Paid attendance increasing on a CAGR basis of 4.4% (from 13,000 to 16,000 per season) with net average ticket prices increasing at an even higher rate of 11.7% (from \$28.77 to \$50); the net effect is a forecast of total ticket revenue more than doubling over the period.
 - Qualification for 100% of HRR revenue sharing.
 - Net playoff contribution of \$5.9 million

¹ Financial Statements (Historical) for Coyotes Hockey LLC

² Financial Statements (Projected) for Coyotes Hockey LLC

³ Ibid.

36.5 (b): *The extent to which the fans have historically supported the Club in its present location.*

Since the Coyotes' first season (1996-97), the Club has been unable to generate a significant fan base.

- In terms of fan support at the gate, espn.com statistics⁴ reveal that for the 2008-2009 season, the Club ranked 28th out of the 30 NHL teams in announced home game gate attendance.
- Apart from espn.com's announced attendance ranking, data from the Club's internal records reveals substantial and persistently high gate (actual turnstile) "drop count" rates.
 - For the current 2008/09 season drop counts of 21% or 2,911 to an "actual attendance" average of 10,943 (61% of 17,799 capacity).
 - Since its inception, the Club has experienced a cumulative drop count rate of 17.5% representing more than 1.25 million non-redeemed tickets for which a total of approximately \$4 million in Arena Recovery and parking fees (\$3.65/ticket issued in the current year) have been paid.
 - Since the 2005/06 season, this drop count rate has increased to more than 20% on average, which indicates a decreasing interest in live attendance regardless of the total tickets issued.

Table 1: Coyotes Ticket Analysis⁵

	2008/2009	2007/2008	2006/2007	2005/2006	Cumulative Average since 96/97
Announced Average Gate	14,866	14,818	14,988	15,570	14,824
Actual Turnstile - Drop count	10,943	11,267	11,271	11,917	12,068
Variance	3,923	3,551	3,717	3,653	2,756
Variance %	26.4%	24.0%	24.8%	23.5%	18.6%
Actual Tickets Distributed	13,854	13,884	14,538	14,470	14,628
Actual Turnstile - Drop count	10,943	11,267	11,271	11,917	12,068
Variance	2,911	2,617	3,267	2,553	2,560
Variance %	21.0%	18.8%	22.5%	17.6%	17.5%
Total Paid Tickets	13,075	11,817	12,640	11,340	12,109
Actual Turnstile - Drop count	10,943	11,267	11,271	11,917	12,068
Variance	2,132	550	1,369	-577	41
Variance %	16.3%	4.7%	10.8%	-5.1%	0%

- Fan support in Phoenix/Glendale has been challenging to achieve even with average ticket prices that in 2008/09 were almost 25% lower than the NHL average.⁶

⁴ NHL Attendance – 2009. ESPN. Retrieved May 27, 2009, from <http://sports.espn.go.com/nhl/attendance?year=2009>.

⁵ Coyotes Historical Ticket Data. Retrieved from Coyotes Holdings, LLC's Internal Documents.

⁶ Coyotes Holdings, LLC. Internal Documents.

- Over the past 4 seasons, the Club has only been able to announce 25 sell-outs, representing only 15% of these 164 home games. According to internal documents, in only one of these announced 25 sell-outs (games #24, season 11) did the actual tickets sold equal or surpass the arena's capacity. Additionally, in not one of these 25 announced sell-outs did the actual drop count/turnstile attendance actually achieve arena capacity. (refer to appendix 3.4)

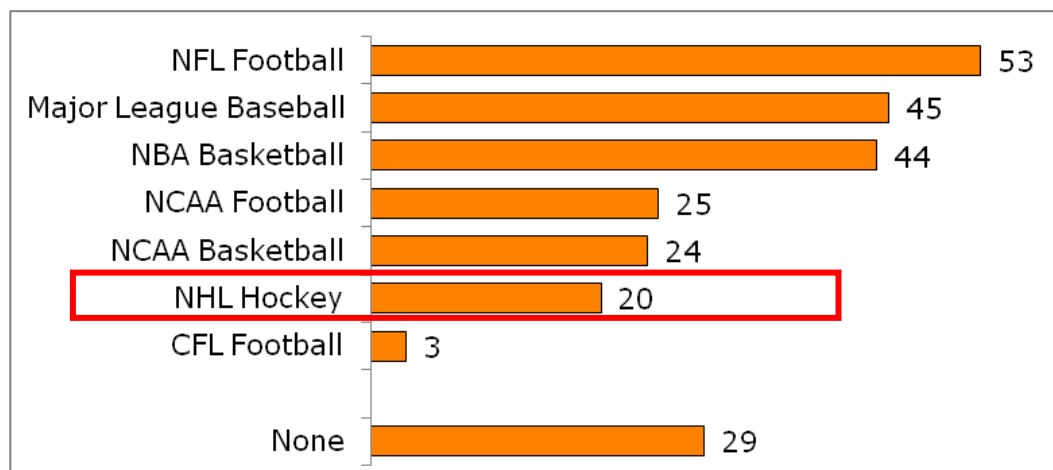
Sales of season tickets are traditionally a key indicator of the most avid fan support for a sports franchise. For the past 4 years (seasons 10 through 13), the Club averaged only 5,450 season tickets sold, slightly less than 30% of capacity.

- Since a recent high watermark in Glendale of 6,246 season tickets sold in 2006/07 (35% of capacity), sales have dropped to less than 5,600. (refer to appendix 3.4). Before moving to its present arena, from the club's inaugural season in 1996/97 season ticket sales declined for 8 straight seasons to a pre-lockout level of 4,132.
- A typical NHL club targets season tickets sales of 80% of venue capacity⁷.
- To approach this objective in Phoenix/Glendale would require an almost tripling of season tickets sales. As at the end of May 2009, season ticket renewals are at 50% well below the League average currently reported at 80%.

Historic support for hockey in Phoenix/Glendale is weak.

- NHL Hockey is weak and significantly underdeveloped compared to other professional sports among the big four leagues in the Phoenix area and ranks below NCAA Football and Basketball in terms of general interest among area residents.

Figure 1: Professional Sports Followed on a Regular Basis by Phoenix Area Residents (%)⁸



Q9. The following is a list of professional sports. Which of the following sports do you follow (e.g. watch games, keep track of related media, talk to friends) on a regular basis? Check all that apply; Q12. We now want to ask you specifically about hockey. Thinking about the regular hockey season, how many NHL games do you...

⁷ Grange, M. (2009, May 30). Coyotes' move would jeopardize Sabres' ticket base [Electronic Version]. Globe and Mail. Retrieved May 31, 2009, from <http://www.theglobeandmail.com/sports/sports/article1161488/>

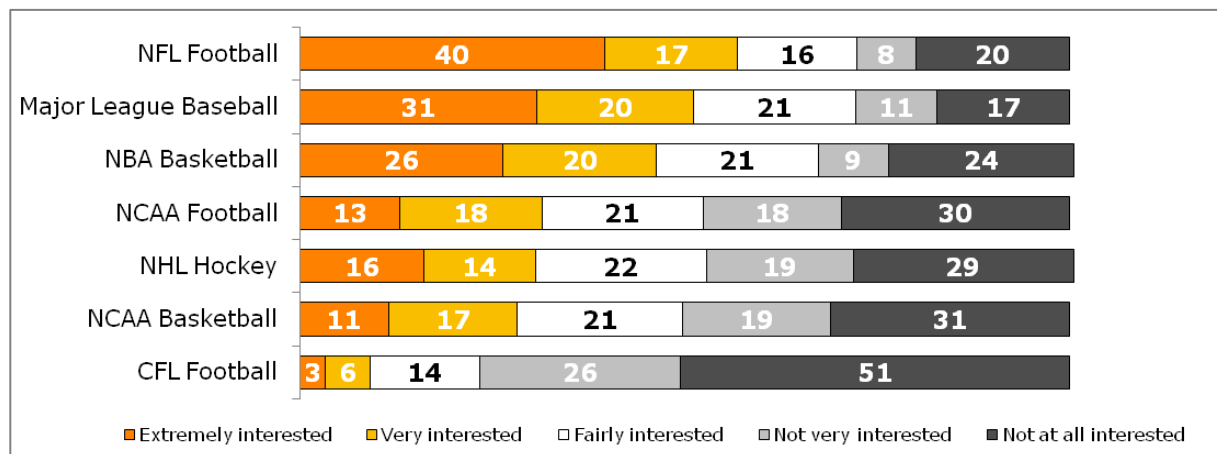
⁸ Hotspex, Inc. (May 27, 2009). Fan perspectives and intentions to moving an NHL team; Hamilton and Phoenix

- After 13 seasons of play, fully 60% of greater Phoenix area residents claim to not watch any NHL games during regular season months; an additional 19% can be classified as light viewers (average 1-2 games per month).
- The Coyotes (29%) trail behind the Phoenix Suns (54%), Arizona Cardinals (53%) and Arizona Diamondbacks (53%) in terms of overall appeal.
- From the perspective of television broadcast ratings, “only five teams posted smaller ratings than the Coyotes’ 0.40 averaging rating last season. And only two other teams posted smaller audiences than the 7,000-household average that watched each Coyotes game.”⁹
 - “Hockey ratings generally are lower than those for other sports in a market. But ratings for the Suns and Diamondbacks are 10 times that, while the NFC champion Cardinals in 2008 had a 16.9 rating, or viewership in nearly 305,000 homes.”¹⁰

Hockey’s weakness in Phoenix/Glendale is further demonstrated by the lack of interest in attending a live game.

- Versus all major league sports, the NHL scores the lowest in live game attendance interest scores.

Figure 2: Phoenix Area Residents’ Interest in Attending a Live Game (%)¹¹



Q11. The following is a list of professional sports. Please indicate how interested you are in attending a live game / event / tournament for each of the sports listed below; Q35. Below is a list of sport teams based in Arizona. Looking at the teams below, please rate them in terms of overall appeal using a 10-point scale where 10 means “you like this team a lot” and 1 means “you don’t like this team at all.”

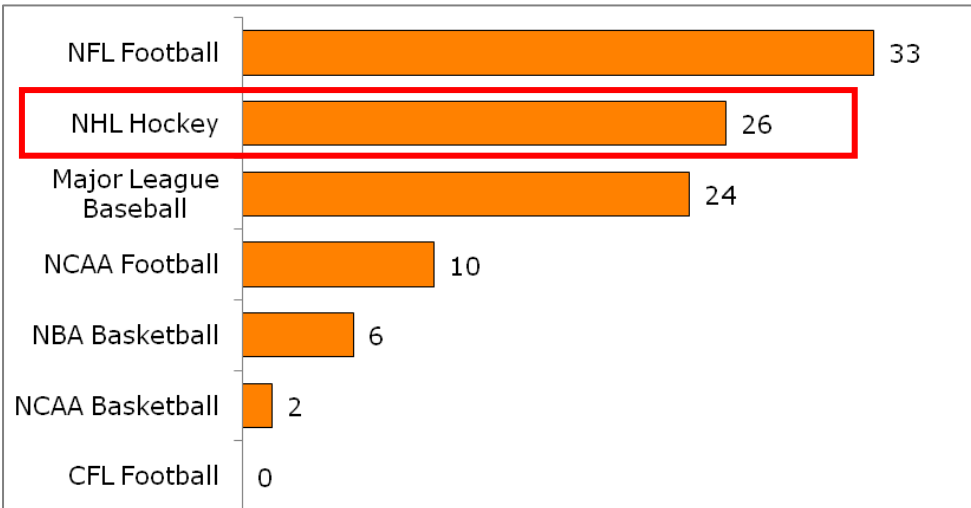
⁹ Ourand, J. (May 11, 2009). Lack of RSN deal simplifies picture if team does move. *Sports Business Journal*, 26. Retrieved May 30, 2009, from <http://www.sportsbusinessjournal.com>

¹⁰ Harris, C. (May 18, 2009). Can Phoenix ever be a hockey town? *The Arizona Republic*. Retrieved May 30, 2009 from <http://www.azcentral.com>

¹¹ Hotsplex, Inc. (May 27, 2009). Fan perspectives and intentions to moving an NHL team; Hamilton and Phoenix

Even among the Phoenix area's very small base (9%) of its most engaged NHL fans, hockey is still unable to surpass NFL Football as the preferred sport of choice among the major professional leagues serving the area

Figure 3: Sport of Choice Among the Most Engaged Phoenix Area NHL Fans (%)¹²



Q10. And looking at the sports below, how would rate them in terms of overall preference to you personally? Please rank the sports below from 1 to 7 where 1 is your favorite sport, 2 is your second favorite sport, and so on until you rank all 7 sports.

¹² Hotspex, Inc. (May 27, 2009). Fan perspectives and intentions to moving an NHL team; Hamilton and Phoenix

36.5 (c): *The extent to which the Club has historically operated profitably or at a loss in its present location.*

In its present location, the Club has never turned a profit, with a 13 year history of substantial losses, underpinned by insufficient attendance revenues.

- As outlined in the discussion of by-law 36.5(a), since moving to the Phoenix area in 1996, the Club has never posted a profit and incurred cumulative consolidated EBIDTA losses of approximately -\$316 million.
- This consistently unprofitable result can be traced to several key fundamental issues, including:
 - The inability of the Club to attract a consistent fan base in Phoenix/Glendale, resulting in attendance that is significantly below league averages and well behind smaller cities such as Pittsburgh and Buffalo.
 - Substantial and persistently high attendance “drop count” rates, including the current 2008/09 season results of 21% or 2,911 tickets.
 - Based on the 2008 Team Marketing¹³ for the NHL, the average Coyotes ticket price was \$37.45 for the 2008/09 season, \$12.21 below the NHL average; as a consequence, Club ticket revenues over the past three years have comprised just over 40% of total franchise revenues, compared to the League norm of roughly 50%.
 - An unfavourable arena lease arrangement (including an arena recovery fee of \$3.65 per ticket distributed), resulting in an approximately \$20 million loss item over the past 3 years (refer to appendix 2.0).
 - A saturated and extremely competitive market for discretionary spending on the sports entertainment dollar including:
 - All four major league professional sports leagues.
 - NCAA D1 Arizona State University with well supported college football, baseball and basketball programs
 - One-half of all Major League Baseball spring training in March.
 - Two NASCAR races that attract over 100,000 people each April and November.
 - The PGA's FBR Open typically held in February is the Tour’s most-attended event every year.

¹³ (October 2008) ISM Media. Team Marketing Report.

36.5 (d): *Whether the present owner of the Club has made a good faith effort to find prospective purchasers who are prepared to continue operating the Club in its present location and/or has engaged in good faith negotiations with such prospective purchasers.*

Despite a lack of success, there is a clear indication that the present owner of the Club has made a good faith effort to find prospective purchasers prepared to operate the Club in its present location.

- Over the past year, the owner (Jerry Moyes) has engaged an experienced adviser to prepare and distribute a Confidential Information Memorandum, who met with numerous interested parties, and thereafter retained Citibank's Private Banking Group to help sell the team.¹⁴
- These efforts have been unsuccessful, as no one has expressed an interest or presented an offer of any magnitude that would pay most of the creditors and keep the Club in Phoenix/Glendale.
- Any party interested in owning the Club in Glendale requires a substantial subsidy from the City to offset losses from managing the arena and payments to the City for rent, maintenance, and parking. The City has failed to take the actions necessary to approve the needed subsidy, and the City Manager has stated that the \$20 million annual subsidy sought by at least one purchaser would require a vote of the people and would not be possible.¹⁵

¹⁴ Coyotes, LLC. Internal Documents

¹⁵ Earl Scudder Report of Conversation with Ed Beasley, City Manager of Glendale

36.5 (e): *Whether there is any prospective purchaser of the Club and franchise who is prepared to continue operating the Club in its present location and, if so, whether any such prospective purchaser is willing and able, if necessary, to sustain losses during at least the initial years of its operation there.*

There have been no prospective purchasers of the Club who have represented to ownership a willingness and ability to purchase the Club, continue to operate the Club in Glendale and sustain initial years' operating losses without a substantial subsidy from the City of Glendale, which appears difficult to obtain, as noted hereafter. Refer to the Declaration of Earl Scudder in the Coyotes Bankruptcy filing for details of the efforts undertaken.

- Expressions of interest have been reported to include:
 - Sports Properties Acquisition Corp. – a New York investment firm reported to have been working with Jerry Reinsdorf (Chicago) to buy the Phoenix Coyotes and continue to operate the team in its present location¹⁶
 - A reported interest by a group headed by Coyotes minority owner John Breslow to purchase the team from Jerry Moyes and keep it in Glendale.¹⁷
 - This has not been substantiated except that Breslow is reported to have delivered to the NHL a proposal by an unidentified buyer who proposed to pay \$120 million including \$30 million to remain in escrow to cover losses.
 - Although the Coyotes have received some expressions of interest, despite repeated efforts and contacts, no other parties have actually come through with a written offer, let alone a letter of intent or escrow deposit.
 - The auction process in the Bankruptcy Court will elicit any concrete bids for the Club that any other parties may be willing to make.

¹⁶ McGran, K. (2009, May 28). Judge puts Coyotes on fast track for sale [Electronic Version]. *Toronto Star*. Retrieved May 30, 2009, from <http://www.thestar.com/sports/article/641687>

¹⁷ McGran, K. (2009, May 21). Minority Partner shows interest in Coyotes [Electronic Version]. *Toronto Star*. Retrieved May 30, 2009, from <http://www.thestar.com/article/637351>

36.5 (f): *The extent to which the Club might be operated in its present location in a more prudent, efficient, and/or cost-effective manner than it has been in the past.*

There is no evidence whatsoever (over successive ownership groups) to indicate the Club's operations could be managed in a significantly more efficient and effective manner in Glendale to the extent that it would have a material impact on future financial viability.

- The Coyotes management team has recently undertaken substantial efforts to operate the organization in a more efficient and cost-effective manner than in the past. As outlined in a recently implemented strategic plan (2007/08)¹⁸, management has instituted significant cost-reduction measures.
 - Player salaries, the Club's single largest expense category, have already received significant recent focus. As part of the new player strategy implemented by management, player salaries decreased 5.3% in the 2007/08 season, during which the Coyotes' payroll ranked the fourth lowest in the league (and would be expected to be among the lowest going forward). Coupled with this, the Coyotes achieved a respectable payroll Efficiency Ranking (US\$/Point) of 8th in the NHL in the 2007/08 season.
 - Hockey Department Overhead Expenses (refer to appendix 1.1), the next most significant hockey-related expense area, saw a 42.5% reduction in coaching, equipment, and administrative expenses in 2007/08. Furthermore, as a percentage of total revenues, these expenses are projected to decline in the coming years, from 17% in 2008/09 to 10% by 2013/14.
 - In sum, due in large part to these efficiency and cost reduction measures, expenses are only expected to increase a total of 16% over the next five years, while supporting a projected revenue increase of 80%.
- In summary, even though these measures are being projected to have a significant and enduring effect on the cost base [as outlined in our discussion of By-Law 36.5(a)], their overall impact to the projected bottom-line financials continue to be overwhelmed by fundamental attendance and revenue challenges.

¹⁸ Coyotes LLC. Internal Documents.

36.5 (g): *The extent to which there is a reasonable prospect that significant additional revenues may become available to the Club within a reasonable time in its present location, either from the sale of media rights or from other sources.*

There is no reasonable prospect of further incremental revenue upside in Glendale. As outlined in by-law 36.5(a), despite substantial loss projections, the current five-year financial forecast, which only breaks even in 2013/14, already incorporates significant (12.9% CAGR) revenue growth rates for the Club.

- The typical key sources of significant additional revenues are either already being depended upon or have been negatively impacted by current circumstances (refer to appendix 1.2):
 - Stadium naming rights → Coyotes rights deal with Jobing.com not set to expire until 2016
 - Local media rights → negotiations¹⁹ with Fox Sports Arizona, currently a Coyotes creditor, have broken off
 - Ticket revenue → aggressive ticket sales growth and pricing assumptions have already been incorporated into the forecast
 - NHL revenue sharing → the Coyotes' full revenue sharing entitlement from the League (absent of any performance threshold claw-backs) has already been assumed for the 2009/10 season and beyond, providing additional revenues of \$15 and 18 million per annum
 - Suite sales → associated revenues already forecasted to almost double over the 5-year strategic plan
 - Sponsorship → associated revenues already forecasted to increase by 85% over the 5-year strategic plan
 - Playoff revenues → have already been built into the forecast commencing 2010/11
 - Concessions and merchandising → associated revenues already forecasted to almost double over the 5-year strategic plan
- Furthermore, the current economic malaise in the Phoenix area (with population growth reported to have slowed to its lowest rate in at least 35 years) exacerbates the revenue challenges faced by the franchise.
 - According to RealtyTrac, some 41,382 homes—or one in every 40—in the Phoenix metropolitan area went into foreclosure in the first quarter of the year, the ninth highest rate in the country.²⁰
 - Arizona's unemployment rate dropped from 7.8% in March to 7.7% in April, which is the first month-to-month drop in two years.²¹

¹⁹ Ourand, J. (2009, May 11). Lack of RSN deal simplifies picture if team does move [Electronic Version]. *Sports Business Journal*. Retrieved May 30, 2009, from <http://www.sportsbusinessjournal.com/article/62461>

²⁰ Goldman, R. (2009, May 19). As home prices fall, Phoenix housing market rises from Ashes. *Abcnews.com*. Retrieved May 30, 2009, from <http://abcnews.go.com/Business/Story?id=7619908&page=1>

²¹ Beard, B. (2009, May 22). Arizona's job loss rate fell in April [Electronic Version]. *The Arizona Republic*. Retrieved May 30, 2009 from <http://www.azcentral.com/business/articles/2009/05/21/20090521biz-jobs0521online.html>

36.5 (h): *The extent to which local government authorities in the present location are prepared to reduce the operating costs of the Club, either by granting tax relief or otherwise.*

Under the current circumstances and economic realities, it would appear highly unlikely that government authorities in Glendale are presently prepared to grant tax relief or other significant concessions to materially reduce the operating costs for the Club. Indeed, 72% of respondents to a survey preferred to allow the Phoenix Coyotes to move out of state, rather than have the City of Glendale give the team \$3 to \$15 million annually in local taxpayer subsidies.

- The City of Glendale has already committed significant resources to benefit the Club.
 - According to its financial reports²², the City of Glendale owes approximately \$157.7 million for construction costs from the Jobing.com Arena, with annual debt service on the arena of \$9.7M in 2008/09. When the \$4 million owed for the \$95 million parking garages the city built next to the arena is included, Glendale's total payments this year to bondholders for the Arena is nearly \$15 million.
- The City of Glendale is currently under significant budget pressures.
 - The City's budget reports²³ indicate that the City will fall far short of its revenue projections for this year. Sales tax revenues are down 12.7%, while total city revenue is expected to decline nearly 12.5% from 2008 to 2010. The City is currently implementing programs to cut expenditures by 10%, while still trying to maintain its services related to public safety.
- Furthermore, it appears that the Coyotes receive limited support by citizens with respect to government subsidies and bailouts.
 - In a recent survey²⁴ conducted by the Arizona chapter of Americans for Prosperity (a taxpayer watchdog group committed to fiscal discipline and low taxes), Phoenix taxpayers rejected the \$100 million City North subsidy, and Glendale taxpayers rejected a possible bailout of the Phoenix Coyotes. 81% of Phoenix respondents expressed the opinion that the City North subsidy was an illegal gift of taxpayer money.
 - The survey mentioned above also concluded that in Glendale, 72% of respondents preferred to allow the Phoenix Coyotes to move out of state, rather than have the City of Glendale give the team \$3 to \$15 million annually in local taxpayer subsidies.
- The City of Glendale has also committed to other sports ventures including a new headquarters and practice facility for USA Basketball and new spring training homes for the Chicago White Sox and Los Angeles Dodgers that are, according to local media reports, under severe financial pressures. This will strain any ability to further assist the Club.

²² Beasley, E. (2009, March). City Manager's Budget Message, pp.276. City of Glendale.

²³ Beasley, E. (2009, March 13). Budget Memorandum: FY10 City Manager's Recommended Operating Budget.

²⁴ Americans for Prosperity. (March 5, 2009). Independent survey conducted in the City of Glendale.

- Even if the City of Glendale were to contemplate granting additional subsidies, there is a potential legal issue involving Arizona's Gift Clause.
 - Article IX, §7²⁵ of the Arizona Constitution states that "Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state." Any additional concession provided by the City to the Club would be subject to analysis under the Gift Clause and may be considered unconstitutional by the Arizona courts.

²⁵ Arizona Constitution [Electronic Version]. Retrieved May 30, 2009 from <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/const/9/7.htm>

36.5 (i): *The extent to which the operating costs of the Club in its present location might be reduced through the willingness of the applicable arena authority to reduce the rent charged to the Club or otherwise to reduce the Club's costs or increase its revenues, and/or through the willingness of other suppliers to reduce their charges for goods or services provided to the Club.*

Given the City of Glendale owns the Jobing.com Arena, any significant concessions will be governed by the same considerations as detailed in by-law 36.5 (h). While negotiations have been initiated to significantly impact the terms of the agreement, these discussions are currently on hold.

- Notwithstanding the foregoing, the Coyotes are currently negotiating with the City for significant concessions to the AMULA.²⁶
 - The proposed concessions would include an elimination of a \$2.70 per ticket parking fee from the City (which the Coyotes would now retain), providing approximately \$2.5 million in additional revenue beginning in the 2009-10 season. Also being sought is an elimination of rent payments to the City, which would result in annual savings of \$512,496. In addition, the City would pay Arena Management an annual \$2 million management fee and cover the first \$8 million in losses and all capital renewal and replacement contributions.
 - Should these concessions be granted, Coyotes management projects that losses would be reduced by up to \$15 million annually.

Operating expenses (hockey and business) tied to the Club's vendors and suppliers represent approximately 22% of total Club expenditures. Significant cost reductions across the entire organization have already been affected. Further reductions in operating expenses would not be material (refer to appendix 1.3).

²⁶ Coyotes LLC. Internal Documents.

36.5 (j): *The adequacy of the arena in which the Club plays its home games and the willingness of the applicable arena authority to remedy any deficiencies in the arena.*

Jobing.com Arena itself is an excellent facility for the Club to play its NHL games. Its only apparent deficiencies are tied to its location within the Phoenix Metropolitan Area and its insufficient available office space for management and administration.

- The venue's location in the West Valley is less viable than a more readily accessible location in the East Valley or in downtown Phoenix. Fans coming from downtown Phoenix to attend a weeknight game can expect a 20-25 mile one way commute that may take 45 minutes in congested traffic. For the fans that commute from the East Valley, the traffic has become a major obstacle for regular attendance given that a one-way commute can take up to 90 minutes.²⁷
- The arena was originally designed without adequate offices for the team's management and employees. This shortcoming has necessitated the Club to lease supplemental office facilities at a cost of more than \$1 million per year.²⁸

²⁷ Blueshirtbanter.com. (2009, May 10). The Phoenix Coyotes need a bailout, or they may just bail. *Blueshirtbanter.com*. Retrieved May 30, 2009, from <http://www.blueshirtbanter.com/2009/5/10/870789/the-phoenix-coyotes-need-a-bailout>

²⁸ Salerno, T. J., Brandon, G., Pupkin, B. A., Gordon, C. H. (May 7, 2009). Coyotes Complaint Against the NHL to the United States Bankruptcy Court, District of Arizona, pp.15. Retrieved May 30, 2009 from <http://media.thestar.topscms.com/acrobat/1f/6a/546dd99c490293f520da11d85203.pdf>

36.5 (k): *Whether there will be a suitable arena available in which the Club can play its home games in the proposed new location.*

Yes, Copps Coliseum is a suitable NHL standard arena in Hamilton, ON in which the Club can play its home games.

- BBB Architects (BBB) and its subsidiary group, Stadium Consultants International (SCI), of Toronto, have been retained to lead the Copps Coliseum Renovation Project (refer to appendix 4.4).
- SCI and BBB have expressed in writing their confidence that a fully renovated Copps Coliseum will comply with the design requirements set out in the NHL's Facility Standards.
- The renovation plans will expand capacity to 18,026 with 20 new "bunker suites", 50 mid-level private suites and 4 group suites.
- When completed, the BBB Renovation Plan will transform Copps Coliseum into a first class professional sports and entertainment facility which will in turn promote a first class experience for visitors through the redesign and transformation of the building. Highlights of a full renovation include:

Main Entrance Lobby

- Atrium Style Lobby with feature stair, escalators and elevators to all levels.
- Major Ticketing area within the main lobby.
- New Street Level Retail Store.

Public Concourses

- New Main Concourse with new finishes throughout and direct access to the lower seating bowl.
- Club Lounge with direct access to the Club Seating Section in the lower seating bowl.
- Public Washroom facilities with ratios above building code requirements.
- Food & Beverage and Bar amenities throughout concourse areas.
- New Upper Concourse to exclusively serve the upper seating bowl.

Seating Bowl

- New comfortable upholstered stadium seats with sightlines comparable with Industry standards.
- Accessible seating positions to meet code requirements.
- New "state of the art" centre hung Video/Score Board.

Media

- New and renovated media areas for T.V., radio, written press and camera locations will meet NHL requirements.

Hospitality Areas

- A total of 74 suites including 20 New “Bunker Suites” located at Event Level, with prime seats in first 6 rows “between the bluelines”.
- New “Platinum” Restaurant located at Event Level.
- New Suite Level Restaurant for with view of the on-ice action.
- New Group Sales/Party Deck incorporated into upper seating bowl.

Back of House

- New ‘Home’ NHL Hockey Club Locker Room and related Team facilities.
- New ‘Visitor’ NHL Hockey Club Locker Room.
- Reorganized Operations, Loading, Storage areas to be consistent with professional league building requirements.
- Reorganized and renovated Food & Beverage Operations, Prep, Storage and Service areas to be consistent with professional league building hospitality/service requirements.

Technical

- New Mechanical/HVAC/Dehumidification system to meet NHL Facility standards for temperature and humidity.
- Increased Electrical Capacity to meet industry norms.
- New Ice Rink Slab, Ice Plant and Dasher Board system to meet NHL requirements for superior ice quality.
- Increased Event Lighting levels to meet Professional Sports and TV Broadcast lighting requirements.
- New ‘latest technology’ Sound System.
- Built in 1985 as a potential arena for an NHL franchise, Copps Coliseum currently operates as the home arena for the Hamilton Bulldogs of the American Hockey League.
- Copps Coliseum has successfully hosted a number of major sporting events^{29,30} including:
 - The World Junior Hockey Championships
 - Canada Cup ice hockey tournament
 - The Memorial Cup
 - NHL exhibition games during the lockout in the 90s
 - NBA Toronto Raptors basketball games during the 90s

²⁹ Copps Coliseum Website. Retrieved May 30, 2009, from <http://www.hecfi.on.ca/coppscoliseum/sports.html>

³⁰ Wikipedia, Retrieved May 28, 2009, from http://en.wikipedia.org/wiki/Copps_Coliseum

36.5 (l): *The extent to which it appears likely, based on the population, demographics, and interest in hockey in the area of the proposed new location, or based on any other relevant facts, that support for a franchise there will be sufficient to make the franchise financially viable in the proposed new location on a continuing basis.*

Based upon population, demographics, and the result of quantitative research conducted in May 2009, the support for an NHL team in Hamilton will be strong and substantial.

- Hamilton and the surrounding area have a large number of residents.
 - Hamilton and the surrounding area* have 1.4 million people and favourable demographics to support a team. The median after-tax income of Hamilton Area Residents is 14% above the Ontario average and is a key indicator of residents’ ability to spend against sport events and merchandise.
 - Table 1 illustrates a Potential Fan Attendance Score (PFA) of 60%--the percentage of Hamilton Area residents who would definitely or probably attend a Coyotes game. Such a strong PFA indicates a high level of marketing and promotional efficiency. This efficiency can be leveraged to drive fan interest and excitement for a professional sports team that ultimately translates into revenues.
 - Knowing this large a percentage of residents would attend a game indicates that gate receipts and related concessionary and merchandise sales will be healthy.
- The table below outlines that the interest in professional hockey in Hamilton is strong; 58% of the Hamilton Area residents state overwhelmingly that NHL Hockey is their favourite sport amongst professional sports and key NCAA sports.

Table 2: Likelihood to attend a hockey game should the Phoenix Coyotes relocate to Hamilton (%)³¹

	Hamilton
Will definitely attend	33
Will probably attend	27
May or may not attend	19
Will probably not attend	7
Will definitely not attend	14

Q: All things considered, should the Phoenix Coyotes relocate to Hamilton for the upcoming NHL season, how likely would you be to attend a game? [ASKED OF HAMILTON AREA RESIDENTS]

Table 3: Favorite sport (%)³²

	Hamilton
NHL Hockey	58
Major League Baseball	14
NFL Football	11
CFL Football	8
NBA Basketball	5
NCAA Football	2
NCAA Basketball	2

Q: And looking at the sports below, how would rate them in terms of overall preference to you personally? Please rank the sports below from 1 to 7 where 1 is your favorite sport, 2 is your second favorite sport, and so on until you rank all 7 sports. [ASKED OF THOSE WHO FOLLOW ANY PROFESSIONAL SPORT]

* Hamilton and the surrounding area includes: Hamilton, Burlington, Oakville, Niagara-on-the-Lake, St. Catharines, Waterloo, Kitchener and Guelph. Also referred to as Hamilton Area Residents

³¹ Hotspex, Inc. (May 27, 2009). Fan perspectives and intentions to moving an NHL team; Hamilton and Phoenix
³² Ibid.

Active Intenders are defined as the percent of the population in each city that stated they would "definitely" or "probably" attend a Coyote's hockey game in their respective city. Over 60% of Hamilton Area Residents have stated they would attend.

Table 4: Hamilton Area Population and Demographics³³

	Hamilton Area Residents									Active Intenders
	St. Catharines	Oakville	Waterloo	Kitchener	Hamilton	Burlington	Niagara-on-the-Lake	Guelph	Total/Avg	
Population	131,989	165,613	97,475	204,668	504,559	164,415	14,587	114,943	1,398,249	840,348
Male	63,035	80,305	48,090	100,753	245,690	78,985	7,122	55,940	679,920	
Female	68,954	85,308	49,385	103,915	258,869	85,430	7,465	59,003	718,329	
Median Age	41.7	38.4	35.4	36.6	39.6	40.3	49.1	36.4	39.7	
Median Income	\$63,126	\$101,675	\$84,545	\$68,437	\$55,312	\$86,174	\$68,071	\$74,927	\$75,283	
Median After-tax Income	\$54,565	\$82,988	\$70,892	\$58,493	\$73,363	\$71,739	\$63,842	\$63,495	\$67,422	
College, CGEP or non university degree or diploma	20,970	23,730	12,620	31,505	79,525	29,415	2,660	15,860	216,285	

The high interest in NHL hockey in the Hamilton area has shown to translate into sales in the past and this leading indicator is expected to repeat itself.

- In June 2007, when an NHL hockey team was last thought to come to Hamilton, Ticketmaster³⁴ (refer to appendix 4.2) was able to sell \$11.1M in tickets in just 12 days.
- Today, a website and social network community, focused on supporting the transfer of the Phoenix Coyotes to Hamilton, already has several corporate sponsors including Labatt's and Home Hardware and approximately 134,000 individual members.

While the Hamilton and surrounding area, by itself, is a large enough hockey market to viably sustain an NHL franchise, this specific market area is situated in Southwestern Ontario where hockey is deeply entrenched and widely supported.

- According to Statistics Canada census data, Southwestern Ontario has a population base of greater than 7 million.
- As an urban region in North America, Southwestern Ontario ranks 4th behind New York City, Los Angeles, and Chicago.

³³ Statistics Canada. (2006). 2006 Community Profiles.

³⁴ Ticketmaster 'Sales by Day'. (2009, May 20).

The management and operating terms detailed in the signed option agreement with the City of Hamilton for the lease of an updated Copps Coliseum are favourable.

- Successful and profitable management of a professional sports team is consistently linked to a favourable venue lease agreement.
- PSE has secured favourable terms for the lease of Copps Coliseum including:
 - A 20 year agreement including 4 successive 3-year renewal periods at the option of PSE to increase the leasing period to 32 years. The rent payable by PSE is also favorable, as shown in the attachment.
 - The Management Agreement grants PSE the exclusive right to operate and manage the Copps Coliseum and the related theatre, convention centre and parking facilities.
 - Entitlement to revenues generated from all of the facilities, including all advertising revenues.
 - Entitlement to naming rights and to marquee advertising rights outside the building.

The Mayor of Hamilton has written to the NHL's Board of Governors "expressing the City's unequivocal enthusiasm for, and commitment to, bringing an NHL franchise" to the City.³⁵ (refer to appendix 4.3)

³⁵ Eisenberger, F. (2009, May 25). Letter to the National Hockey League Board of Governors.

36.5 (m): *The extent to which the owners of the Club are willing and able, if necessary, to sustain losses during at least the initial years of its operations in the proposed new location.*

The proposed new owners of the Club are willing and able to sustain losses in the proposed new location.

- A sworn declaration in the Coyotes bankruptcy case³⁶ states that “PSE, the prospective owner, is willing and able to sustain losses during the initial years of operation.”
- For further details, refer to the application submission pursuant to By-Law section 35 Transfer Of Membership Or Ownership Interest In Franchise.

³⁶ Salerno, T. J., Brandon, G., Pupkin, B. A., Gordon, C. H. (May 7, 2009). Coyotes Complaint Against the NHL to the United States Bankruptcy Court, District of Arizona, pp.15. Retrieved May 30, 2009 from <http://media.thestar.topscms.com/acrobat/1f/6a/546dd99c490293f520da11d85203.pdf>

36.5 (n): *The extent to which consent to the proposed transfer is likely to damage the image of the League as a major sports league, be a disincentive to participation in the League, or otherwise to have an adverse effect on the League's ability to market and promote the League hockey in the United States and/or Canada.*

Movement of the Phoenix Coyotes to Hamilton is unlikely to damage the image of the league.

- A strong majority of the Hamilton Area Residents would hold the league in higher regard based on the prospect of relocating the Phoenix Coyotes to Hamilton.
 - In total, 66% of people in the Hamilton and surrounding area would hold the league in higher regard for allowing the move while the opinions of an additional 31% would remain unchanged.
 - Phoenix area residents are divided in terms of how relocating the Coyotes will impact their opinion of the NHL.
 - Nearly 40% say a potential move will not change their opinion of the NHL. However, approximately half would hold the league in lower regard.
 - The impact of these fans on the overall image of the NHL should be viewed within the context of the historical fact that Phoenix fans have not materially supported the team to a degree of profitability.

Table 5: Change in opinion of the NHL should Coyotes relocate to Hamilton (%)³⁷

	Phoenix	Hamilton
I would hold the NHL in higher regard than I currently do	8	66
I would hold the NHL in lower regard than I currently do	54	4
A potential move would not change my opinion of the NHL	38	31

Q: As you may or may not know, the Phoenix Coyotes could potentially relocate to Hamilton, Ontario, Canada. Should the team move, to what extent would your opinion of the NHL change? [ASKED OF THOSE WHO TYPICALLY WATCH OR LISTEN TO AT LEAST 1 NHL HOCKEY GAME IN A TYPICAL MONTH]

³⁷ Hotspex, Inc. (May 27, 2009). Fan perspectives and intentions to moving an NHL team; Hamilton and Phoenix

36.5 (o): *The extent to which the proposed transfer would adversely affect the traditional rivalries that have been established between the Club in its present location and other Member Clubs.*

The proposed transfer would not adversely affect traditional rivalries between the Club in its present location and other clubs.

- "The NHL moved to regional divisions and conferences to promote rivalries and take advantage of the excitement generated by local teams playing more often."³⁸ However, evidence would suggest (from the Club's inability to generate a strong fan base or meaningful broadcast ratings) that the 32 games against divisional opponents and the other 40 games against their remaining Western Conference opponents have never achieved this objective.
- "The most important external effect of a franchise transfer is the reduced away attendance for the moving franchise, which is called the "rivalry" effect. Because the costs of a sporting event are largely fixed, even a small drop in attendance can significantly reduce profits."³⁹ Since the 2001-02 season, the Phoenix Coyotes have consistently ranked 19th or below (out of a total of 30 teams in the League) with respect to both home and away attendance. During the last two seasons (2007-08, 2008-09), the Club's ranking has slipped to 29th out of 30⁴⁰. Therefore, it can be concluded that the team has reduced profits for the majority of opposing franchises by being a poor draw. Conversely, the proposed transfer of the Club would alleviate declines in profit for opposing franchises.
- Since the 2001/02 season, the Club has cumulatively ranked 26th in attendance as an away team.

³⁸ Paul, Rodney J. (2003, April). Variations in NHL Attendance, the impact of violence, scoring and regional rivalries – Discrimination and the NHL. *The American Journal of Economics and Sociology*. Retrieved May 30, 2009 from http://findarticles.com/p/articles/mi_m0254/is_2_62/ai_100202310/pg_4/

³⁹ Carlton, Dennis W. (2004, February). The Control of Externalities in Sports Leagues: An Analysis of the Restrictions in the National Hockey League. *The Journal of Political Economy*, 112,1, pp.272.

⁴⁰ Historical NHL attendance data sourced from espn.com. Retrieved May 30, 2009, from <http://sports.espn.go.com/nhl/attendance?year=2009>

36.5 (p): *The extent to which consent to the proposed transfer would result in the absence of a League franchise in a major market.*

The departure of the Club from the Phoenix metropolitan area will leave a major U.S. market without an NHL franchise; however, after 13 years, Phoenix has failed to become a major U.S. hockey market.

- Although the Phoenix area is categorized as major market, it is not a major NHL and/or hockey market as substantiated by the lack of adequate and sustainable fan interest over the last thirteen years.
- It was reported as far back as 2004 that the Phoenix metropolitan area is one of the most overextended markets in the nation in terms of its economic ability to support professional sport teams.⁴¹ The study estimated that Phoenix area residents would need, at that point in time, another \$68 billion in total personal income (TPI)* to comfortably support all 4 major professional sports teams in the Phoenix metropolitan area.
- An examination of National Football League reveals that the second-largest U.S. city, Los Angeles, has been without an NFL franchise since 1995. Conversely, the NFL's franchise in Green Bay, Wisconsin, (population 300,000) is highly successful due to a loyal fan base and community-minded ownership similar to the proposed transfer to Hamilton, Ontario. This proves that if the most dominant sports league does not have a franchise in a major market and can be successful, then the NHL does not need one either.⁴²

* TPI is the sum of all money earned by all residents of an area in a given year. It was concluded at the time that the insufficient TPI was a reliable sign that Phoenix's teams should expect continued volatility in attendance and revenues

⁴¹ Thomas, Scott G. (2004, October 4). Economic clout makes L.A sports team choice. *American City Business Journal*. Retrieved May 30, 2009, from http://www.bizjournals.com/edit_special/3.html?t=printable

⁴² Francis, D. (2009, May 12). NHL: Get Down to Business [Electronic Version]. *The Financial Post*. Retrieved May 30, 2009 from <http://www.financialpost.com/opinion/columnists/story.html?id=8cda76b4-5a9d-4d83-8f4b-ca31d6eba0f3>

36.5 (q): *The extent to which it appears likely that, if the proposed transfer is approved, the Club would draw more or fewer fans when playing as the visiting team in the home arenas of other Member Clubs.*

It appears that a Club in Hamilton is likely to have a positive effect on attendance when playing as the visiting team in the home arena of other Member Clubs. For the 2008/09 season, the Coyote's road attendance ranked 19th out of 30 teams with an announced attendance average of 17,316.

- By comparison, a Hamilton NHL franchise is likely to be representative to franchises in Buffalo, Columbus and Nashville. Considerations for this comparison were given to the similarities between the cities metropolitan market size, longevity as an NHL franchise, supporting only one major sports league franchise.
- The table below appears to demonstrate a reasonable likelihood that a club in Hamilton would draw more fans when playing as a visiting team than the Coyotes did as a visiting team from Phoenix:

Table 6: Comparison of Key Facts of Selected NHL Franchises⁴³

	Metropolitan Market	Metropolitan Market Size	Franchise Longevity in the NHL	# of Other Major League Sport Franchises in Market	U.S. Franchise vs. Canadian Franchise	2008-2009 League Road Attendance Ranking	2008-2009 Road Attendance Average
Phoenix	Phoenix Metropolitan Area	4,281,899	12 years	3	U.S.	19	17,316
Buffalo	Buffalo-Niagara Falls Metro Area	1,170,111	38 years	1 (Buffalo Bills)	U.S.	13 th	17,531
Columbus	Columbus Metro Area	1,754,337	8 years	0	U.S.	10 th	17,583
Nashville	Nashville Metro Area	1,521,437	10 years	0	U.S.	9 th	17,584

- In addition, assuming the Club in Hamilton would compete within the Northwest Division of the Western Conference [refer to assumption contained in 36.5 (r)], it is highly likely the club would draw more fans when playing as the visiting team. The Hamilton Club would play as a visiting team no fewer than 18 times in other Canadian cities (Calgary, Edmonton, and Vancouver), helping to support traditionally strong gates when 2 Canadian teams play against each other.

⁴³ Data sourced from NHL.com; Wikipedia; ESPN.com. Retrieved May 30, 2009.

36.5 (r): *The extent to which the proposed transfer would present particular disadvantages for the operation of the League, such as travel or scheduling difficulties or a need for divisional realignment.*

The proposed transfer would present significant advantages to the operation of the League, despite some potential initial difficulties.

Assumption: *Hamilton to be realigned into the Northwest Division, and the Colorado Avalanche is to shift to the Pacific Division in place of the Phoenix Coyotes.*

- The realignment of the Colorado Avalanche into the Pacific Division will result in shorter travel times between the teams.
 - Shorter travel times between the teams in the Pacific Division will also result in decreased travel expenses for all parties involved (team members, staff, media personnel, League personnel (e.g. referees), etc.), thereby benefiting the overall operation of the League.
 - Although travel distance between Western Canadian cities (Edmonton, Calgary, Vancouver) and Hamilton is greater than the distance between Denver and the aforementioned Western Canadian cities, the potential Canadian rivalries can lead to a combination of increased attendance, higher broadcast viewership, and other such advantages that will ultimately benefit the league.
- As noted in the correspondence from Thomas W. Gowan dated June 19, 2007, “By-Law 36.1(b) specifically allows for applications later than January 1 of the prior year if a majority of the member Clubs consents to a later filing date.” This means that the League should be prepared to deal with re-scheduling the NHL games, and therefore, the transfer to Hamilton should not pose significant scheduling difficulties (or at least not insurmountable difficulties) upon the League.⁴⁴

⁴⁴ United States Bankruptcy Court District of Arizona. (2009, May 26). Notice of Filing Second Declaration of Richard Rodier and Amendments to APA.

36.5 (s): *The extent to which the Club has, directly or indirectly, received public financial support in its present location by virtue of any publicly financed arena, special tax treatment, or any other form of public financial support.*

The City of Glendale has built an arena for the use of the hockey club and other entertainment events.

- According to its financial reports⁴⁵, the City of Glendale owes approximately \$157.7 million for construction costs from the Jobing.com Arena, with annual debt service on the arena of \$9.7M in 2008/09. When the \$4 million owed for the \$95 million parking garages the city built next to the arena is included, Glendale's total payments this year to bondholders for the Arena is nearly \$15 million.

⁴⁵ Beasley, E. (2009, March). City Manager's Budget Message, pp.276. City of Glendale.

36.5 (t): *The extent to which the proposed transfer, if approved, would affect any contract or agreement in effect between the Club and any public or private party.*

It is our understanding that the proposed transfer, if approved, would not affect any contract or agreement in effect between the Club and any public or private party, except to the extent such contracts are rejected through the Club's pending bankruptcy proceeding.

- If relocated, the Club would have no need for and would reject contracts and agreements specific to its play in Jobing.com Arena.
- The contracts and agreements to be rejected would include, without limitation, any and all agreements and contracts with the City of Glendale, including (again without limitation) the Arena Management Use and Lease Agreement, and the Catering and Concession Agreement with Aramark Sports and Entertainment Services, Inc.
- Any contract rejections and the resulting ability of contract parties to recover losses from the proceeds of selling the team will be addressed in the U.S. Bankruptcy Court.

36.5 (u): *The extent to which League consent to the proposed transfer might expose the League to liability to any third party for breach of contract, interference with contractual relations, or for any other cause.*

At this time, it is our understanding that approval of this transfer would not expose the League to liability to any third party for breach of contract, interference with contractual relations, or for any other cause.

- The transfer will be decided by the U.S. Bankruptcy Court, and affected parties will have an opportunity to present their arguments, claims and rights to damages in that court providing additional protection for the League. The Coyotes and PSE are not aware of any League promises to guaranty any Coyotes obligations.

36.5 (v): *The extent to which the ownership or management of the Club has contributed to any circumstance which might otherwise demonstrate a need to transfer the Club to a new location.*

It is our understanding the ownership or management of the Club has not contributed to any circumstance which might otherwise demonstrate a need to transfer the Club to a new location.

- As summarized in a Letter to the Editor of the Arizona Republic submitted by Jerry Moyes on May 15, 2009, ownership and management have been proactive, responsible, and prudent in their attempts to support the Club in Glendale. (refer to appendix 4.5)

36.5 (w): *The extent to which the Club has engaged in good faith negotiations with representatives to the community in which it is presently located concerning terms and conditions under which the Club would continue to operate in that location.*

There are clear indications that the present owner has made significant and good faith attempts to build a viable business capable of remaining in Glendale.

- Further to the more than \$200 million in invested capital to support and build the Coyotes in Glendale, the Club has worked diligently with the community to negotiate the most favourable conditions under which the Club could be operated.
 - “Unfortunately, the arena leases and agreements were constructed so that, in some ways, they subsidized the development of Westgate. This may have made economic sense when both entities were combined, but on a stand-alone basis, these agreements did not pencil out economically. Let me stress that all who have objectively looked at this issue recognize that our financial problems result primarily from the structure of our agreements and not the management of the team. Even a winning team would not stop us from losing money unless we received some concessions.” (refer to appendix 4.5)

36.5 (x): *Any other considerations relevant to whether it would be in the best interest of the League to consent to the proposed transfer.*

There are other important considerations in the best interest of the League to support the consent of the proposed transfer.

- The North American economy continues to be weak and is not looking to improve until 2010.
 - A report published by TD Economics has downgraded the U.S., Canadian and global economic outlook for 2009 and 2010 due to slow progress in improving global financial conditions and a significant broadening in economic weakness across the global stage. Chief Economist Don Drummond noted that “the near-term weakness appears more pronounced, with tentacles reaching across the globe”.
 - “A recession in the U.S. economy is now expected to extend to the third quarter, resulting in a contraction of 3.1% for 2009 as a whole. Canada, as an unfortunate bystander, will see real GDP growth contract by 2.4%.”⁴⁶
 - According to RealtyTrac, some 41,382 homes—or one in every 40—in the Phoenix metropolitan area went into foreclosure in the first quarter of the year, the ninth highest rate in the country.⁴⁷
 - Arizona's unemployment rate dropped from 7.8% in March to 7.7% in April, which is the first month-to-month drop in two years.⁴⁸
- As illustrated in sections 36.5 (a) through (j) despite good efforts and intentions by many parties, there is overwhelming evidence that the Phoenix Coyotes franchise is not, never has been and never will be financially viable, consistently supported by fans, and the leading professional sports team in Arizona.
- The Club has consistently participated in the NHL’s Player Compensation Cost Redistribution System (the “PCCRS”) since the program was introduced as part of the League’s Collective Bargaining Agreement.
- The transfer of franchises from one market to another has historically occurred in all major professional sports leagues in North America. In the National Hockey League, since 1976, a total of 8 franchises have been transferred and half of these transfers have occurred since 1993. (refer to appendix 5.1)
- As demonstrated in sections 36.5 (k), through (m) there is compelling evidence to project that a Hamilton-based NHL franchise, the seventh such franchise in Canada, would not only succeed but indeed thrive. This evidence is supported through:
 - A strong, large and avid base of hockey fans in Hamilton as befits a Canadian community wed to its national first game of choice.

⁴⁶ TD Bank Financial Group. (2009, March 12). TD Quarterly Economic Forecast. *TD Economics*. Retrieved May 30, 2009, from <http://www.td.com/economics/qef/qefmar09.pdf>

⁴⁷ Goldman, R. (2009, May 19). As home prices fall, Phoenix housing market rises from Ashes. *Abcnews.com*. Retrieved May 30, 2009, from <http://abcnews.go.com/Business/Story?id=7619908&page=1>

⁴⁸ Beard, B.(2009, May 22). Arizona’s job loss rate fell in April [Electronic Version]. *The Arizona Republic*. Retrieved May 30, 2009 from <http://www.azcentral.com/business/articles/2009/05/21/20090521biz-jobs0521online.html>

- A first class sports and entertainment venue which will comply with design requirements set out in the NHL's Facility Standards.
 - A new owner with the vision, commitment, passion, and resources (financial and otherwise) to ensure sustainable and profitable operations in Hamilton.
- In consenting to this proposed transfer, the NHL will be acting in its own best interest by:
 - Replacing a chronically underperforming franchise that has been and is projected to remain a net negative financial contributor to the League and a perennial recipient of PCCRS revenue sharing with...
 - A prospectively vibrant, avidly supported, and financially vital member club that given market size and demographics is most likely to become a top 15 revenue producing club and a net positive financial contributor to the League.
- Within this overall environment it would clearly be in the best interest of the League and its member clubs to transfer the Phoenix Coyotes from Glendale, Arizona to Hamilton, Ontario for the 2009/2010 season.