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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.	Chapter 11 Case No. 2:09-bk-09488-RTBP **SECOND DECLARATION OF ANDREW ZIMBALIST** **Hearing Date: September 10, 2009** **Hearing Time: 9:00 a.m.** **Redacted for Public Filing**
This Filing Applies to: ☒ All Debtors ☐ Specified Debtors	

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Andrew Zimbalist, under penalty of perjury, states as follows:

I. QUALIFICATIONS

1. I am the Robert A. Woods Professor of Economics at Smith College in Northampton, Massachusetts, where I have been teaching since 1974. I have been a visiting professor at Doshisha University in Kyoto, Japan, at the University of Geneva in Switzerland and at Harvard University. I received my B.A. degree from the University of Wisconsin and my M.A. and Ph.D. in economics from Harvard University.

2. I have consulted extensively in the area of sports economics for sports players' associations, for cities, for teams, for companies, for owners and for law firms. I have also served as an expert witness in several sports-related litigations. I have testified numerous times before the U.S. Congress, state legislatures and city councils on sports-related (and other) matters.

3. I have published 18 books and dozens of articles in the areas of sports economics, economic development and comparative economic systems. Since 1990 the principal focus of my research, teaching and professional work has been sports economics. Sports economics is a branch of applied microeconomics that includes the fields of industrial organization, antitrust analysis, labor economics, public finance, urban economics and econometrics. I am a founding member of the *Journal of Sports Economics*, a journal for which I serve on the editorial board, along with several other scholarly journals.

4. For several years, I did a biweekly commentary on the business of sports for NPR's Marketplace and I contribute op-eds frequently on the sports business to leading newspapers and magazines. A full list of my publications, my testimonies in legal proceedings, and my other professional activities is included in my curriculum vitae which appears at the end of this declaration, attached hereto as Exhibit 1.

II. ASSIGNMENT

5. I have been asked by counsel for PSE Sports and Entertainment LP ("PSE") to consider two questions: (1) is there any economic justification for the National Hockey League ("NHL") to reject Hamilton, Ontario as a transfer location; and (2) if the court requires a relocation fee, what would be an economically appropriate transfer fee? My declaration below considers each of these questions in turn.

III. HAMILTON'S ECONOMIC VIABILITY TO SUPPORT AN NHL FRANCHISE

6. Hamilton is the ninth largest city in Canada and is located 42 miles to the southwest of Toronto. It is part of the greater Toronto market, as defined by the NHL. It seems evident that the Toronto/Hamilton area can support another NHL team. Toronto is Canada's most populous city with a 2006 population of 5.1 million; Montreal is a distant second with 3.6 million; Hamilton is ninth with 692,911.[1] The Toronto/Hamilton media market, with roughly 2.6 million television households and 7 million people, is the fifth largest in North America.[2] The area also has the highest number of large businesses in Canada by a considerable margin, with 226 companies with more than 100 employees, compared to 77 such companies in Calgary, 64 in Montreal and 57 in Vancouver.[3] According to the NHL's own estimates, the number of NHL fans in the Toronto/Hamilton area is between 2.5 million and 3.0 million, while the number of NHL fans in the greater New York City area is 1.9 million, and New York City supports three NHL teams.[4]

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[1] These figures come from the 2006 Canada Census and are based on Census Metropolitan Areas or CMAs. *See* 2006 Canada Census Data, excerpts attached hereto as Exhibit 2.

[2] *See* Bonham Group, "Hamilton Hockey Research Analysis" (March 2006) at 18, attached hereto as Exhibit 3.

[3] Viewed differently, Toronto/Hamilton has 243 companies with over $100 million in sales. The next largest Canadian city by this metric is Calgary with 75 such companies, followed by Montreal with 58, Vancouver with 40, Ottawa with 18 and Edmonton with 17. That is, the Toronto/Hamilton market is more than three times the size of the second largest Canadian market by this measure of corporate presence. Alternatively, the Toronto/Hamilton market has 144 companies with more than 1000 employees; Montreal is in second place among Canadian cities with 39 such companies. *See id.* at 30-32.

[4] *Id.* at 22.

7. Overall, according to NHL data, 37.5 percent of the Canadian population is interested in the NHL, while only 8.9 percent of the U.S. population is.[5] Among Canadians, 29 percent report that hockey is their favorite spectator sport (this share is 31 percent for those in the Toronto/Hamilton area), while the second most popular sport is figure skating at 7 percent. In Canada, 8.7 percent of the youth population plays hockey, while only 0.5 percent of the U.S. youth population does so. Further, television ratings in Canada are many times higher than they are in the United States. For instance, game seven of the 2004 Stanley Cup finals between the Calgary Flames and Tampa Bay Lightning received a 4.2 rating on ABC in the United States, while it received a 25.7 rating on CBC in Canada.[6] Indeed, in his deposition, taken on August 21, 2009, NHL Deputy Commissioner William Daly stated: "Hamilton is a great hockey town with passionate fans."[7]

8. Despite the fact that the Toronto Maple Leafs hockey team has not won the Stanley Cup since 1966-67 and that it has finished in the bottom half of the final standings every year since the 2004-05 lockout, the Maple Leafs regularly has the highest or among the highest ticket prices in the NHL, and the team consistently sells out its arena. The Maple Leafs' attendance has exceeded its arena's (Air Canada Center) official hockey capacity every year this century by at least 2.3 percent, and by as much as 3.7 percent. Further, the team reported that it had a waiting list for its season's tickets of nearly 6,000 names, likely constituting a demand for between 12,000 and 18,000 seats.[8] According to Team Marketing Report, in 2008-09, the Maple Leafs had the highest average ticket price

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[5] *Id.* at 21.
[6] *Id.* at 17.
[7] *See* Daly Deposition Transcript ("Daly Depo. Tr.") at 199:21-200:2, excerpts attached hereto as Exhibit 4.
[8] *See* Exhibit 3, Bonham Group at 24. Other sources have reported a waiting list for season's tickets of 2,500. *See* Garry Marr, *Leafs Lift Ticket Prices in Hard Times*, Financial Post, February 25, 2009, at FP1, attached hereto as Exhibit 5. This article reports that, despite the serious economic recession and the team's poor performance on the ice, the Maple Leafs plan to raise ticket prices by 3.5 percent for the 2009-2010 season.

in the NHL at $76.15 (converted to U.S. dollars at the prevailing exchange rate), almost $12 higher than the second highest ticket price (the Montreal Canadiens at $64.26) – and this, despite the fact that the Canadiens had a winning record and made the playoffs, while the Maple Leafs had a losing record and did not make the playoffs. The Maple Leafs' average ticket price was 53.3 percent above the NHL's average of $49.66, according to Team Marketing Report. Given these facts, it is not surprising that, in its annual survey, *Forbes Magazine* estimated the Toronto Maple Leafs to be worth $448 million, the highest in the NHL, based on a yearly operating income of $66.4 million in 2007-08, also highest in the NHL.[9]

9. Hamilton figures impressively in the study of potential expansion sites that was discussed at the February 18, 1997 meeting of the NHL expansion committee. The study showed that of the nine potential sites being studied, Hamilton was in the largest media market.[10] Within a ten-mile radius of the city limits, Hamilton had a larger population than four of the sites being considered, including Nashville and Raleigh, which were subsequently approved as expansion cities. Within a 20-mile radius, Hamilton's population was larger than three expansion cities (now including Columbus), and within a 50-mile radius, Hamilton's population was the largest of any of the potential expansion sites under consideration, being more than 2 million above the second largest city (Houston).[11]

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[9] Operating income is defined by *Forbes* to equal EBITDA (earnings before interest, taxes, depreciation and amortization). The second highest in each category was: operating income, $39.6 million (Canadiens); revenues, $137 million (Canadiens); value, $411 million (New York Rangers). According to *Forbes* estimated franchise values, the Leafs' value increased from $263 million in 2003 to $448 million in 2008, a 70.3 percent increase over five years, or an average annual compounded increase of 11.2 percent. The *Forbes* estimates tend to be uneven, but they are still widely cited and regarded as the best publicly available estimates. I will discuss the *Forbes* valuation of the Maple Leafs below. *See* Table 6, *infra*.

[10] *See* Meeting of the Expansion Committee, February 18, 1997, at NHL000896, attached hereto as Exhibit 6.

[11] *See id.* at NHL000901-NHL000904.

10. The NHL's "Rink Capacity & Ticket Pricing Report" on the 2007-08 season showed that the NHL's six Canadian franchises accounted for 31 percent of the league's ticket revenue; that is, on average, each Canadian team generated more than 150 percent of each U.S. team.[12] A newspaper article reported that the former owner of the Vancouver Canucks commented on this NHL report: "This really makes the case of another team in Canada, whether it's Hamilton, Winnipeg or Quebec City." The same article quoted Paul Kelly, the executive director of the NHL's player association as saying: "I think it would be a huge error not to relocate one of the existing franchises to Hamilton or Winnipeg."[13]

11. Finally, pro formas submitted as part of PSE's transfer application to the NHL estimate first-year revenue at $72.9 million, above the 2008-09 reported revenue of twelve NHL teams and within $5 million of an additional four teams. The pro formas also projected that in the franchise's first five years revenue would grow at an annual rate of 9.2 percent, in part as a result of arena renovations that would be completed by the fourth year.

12. Adding another team in the southern Ontario market will be a boon to its hockey fans. Not only will the fans experience increased choice and a stronger chance of supporting a competitive team, the presence of a second team will create competitive price pressure on the tickets for the Toronto Maple Leafs at the Air Canada arena. It is almost a certainty that, in the presence of competition, ticket prices for Maple Leafs games will be lower than they would otherwise be. However, given the large waiting list for Maple Leafs season's tickets, and the intensified hockey culture that will likely result from a second team in the Toronto-Hamilton market, it seems likely that the Maple Leafs will be

[12] *See* NHL, "Rink Capacity & Ticket Pricing Report", attached hereto as Exhibit 7.

[13] Kelly also stated in reference to Mr. Balsillie: "This is a guy who has a true passion for the game and has vast resources. He built his company from nothing into an $80 billion company. We would be foolhardy not to see his efforts happen." Rick Westhead, "Canadian NHL Teams Mean Money," thestar.com, May 30, 2008, attached hereto as Exhibit 8.

able to continue to sell out its arena.[14] In any event, the Maple Leafs will experience more pressure to put a good team on the ice, and the team has a sufficient revenue and profit cushion to more than absorb any possible drop off in fan demand with the introduction of a new team in Hamilton.

13. Further, when new teams enter an area, new rivalries can be spawned and the sporting culture can be enhanced. Should a second NHL team enter Southern Ontario, the resulting new rivalry between Toronto and Hamilton may increase the demand for top-level professional hockey in the region.[15]

14. It is noteworthy, for instance, that when the New York Giants and the Brooklyn Dodgers left New York City following the 1957 season, attendance at New York Yankee games actually fell by 4.7 percent in 1958, despite the fact that they did not face local competition from the Dodgers and Giants. (Yankees' attendance was 1.5 million in 1957 and 1.43 million in 1958. In 1957, together the Dodgers and Giants drew 1.8 million attendees into Ebbets Field and the Polo Grounds.) The problem was not that the Yankees did not have a good team. They won the American League pennant in both 1957 and 1958, and they had the same superstars in their lineup (Mantle, Berra, Ford, Kubek, etc.) Prior to 1958, fans in New York fed off of each other because of the intense rivalry among the teams. Children on the playgrounds and adults at cocktail parties or at work debated which team was better and whether Mantle, Mays or Snider were better players. The

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[14] In this regard, it is of interest to note how Toronto and Hamilton, each with a team in the Canadian Football League, share the same market. During the five-year period of 2004-08, the average attendance at games of the Hamilton Tiger-Cats was 25,671, while that at Toronto Argonauts games was 29,058. *See* CFL Stadium Attendance, *available at* http://cfl-scrapbook.no-ip.org/CFL-Attendance.php, attached hereto as Exhibit 9.

[15] A 2006 study of the effect of the Chicago Cubs and the Chicago White Sox on each other's attendance supports the conclusion that the two teams do not negatively impact each other's attendance. *See* D. Rascher, "The degree of economic competition between teams: do the White Sox compete with the Cubs for fans?" *North American Society for Sport Management Conference Abstract Book* at 228-29 (vol. 21) (2006), attached hereto as Exhibit 10. A similar conclusion was reached in an econometric study by D. Alexander in 2001. *See* D. Alexander, "Major League Baseball: Monopoly Pricing and Profit-Maximizing Behavior," 2 *Journal of Sports Economics* 341, 341-55 (2001), attached hereto as Exhibit 11.

intensity of baseball fandom in the New York City area was diminished after the Giants' and Dodgers' exodus and the baseball culture in New York City was deflated.

15. This dynamic also appears to obtain in the NHL. When the New York Islanders began play in the 1972-73 NHL season, attendance at New York Rangers home games did not decrease, despite the fact that the team's record stayed steady. Attendance at Rangers' games at Madison Square Garden went from an average of 17,250 per game in 1971-72, to 17,470 in 1972-73. The following year, the Rangers' on ice performance declined as the team won twelve fewer games, and average attendance dipped imperceptibly to 17,224; and, in 1974-75, with a steady on ice record, average attendance rose to 17,760. Ten years later, in 1982-83, a third team was added to the New York City market, the New Jersey Devils. In that year, average attendance at Rangers' games increased slightly from 17,399 to 17,490, even though the team's performance remained steady. The following year, attendance dipped a bit to 17,394, as performance again stabilized; and the next year attendance was stable at 17,401, even as team performance dropped markedly. Meanwhile, attendance at New York Islanders games over this stretch increased steadily from 15,049 in 1981-82 to 15,137, 15,614 and 15,717 in successive years. The coming of the Devils does not appear to have hurt the attendance of either the Rangers or the Islanders.[16] The Anaheim Mighty Ducks joined the NHL for the 1993-94 season. The Los Angeles Kings saw its attendance fall slightly from 15,833 in 1992-93 to 15,677 in 1993-94 – an insignificant decrease considering that the team went from a winning record in 1992-93 to 18 games below .500 in 1993-94. In the lockout-shortened season of 1994-95, the Kings record remained solidly below .500, yet average game attendance stabilized at 15,414. Overall, there is little in the historical attendance record of the NHL to support an expectation that introducing a second or third team into a metropolitan area would hurt the attendance of the existing team(s).

[16] These, of course, were the Islanders strongest years, winning consecutive Stanley Cups.

16. Thus, after examining a variety of evidence, I conclude that Hamilton is a superior economic location to many of the metropolitan areas that currently host an NHL team and that there is no economically justifiable reason for the NHL to reject Hamilton as a host city for a relocated team.

IV. DETERMINING AN ECONOMICALLY REASONABLE RELOCATION (OR TRANSFER) FEE

17. I use two standards to assess what would be an economically appropriate relocation fee – (1) the fee that would be economically proper under the standard set out in the NHL Bylaws and (2) the fee that would be economically proper under the standard set out in *Raiders II*.

A. RELOCATION FEE UNDER THE NHL BYLAWS

18. NHL Bylaw 36.6 reads "Any such consent by the Member Clubs may be made subject to reasonable and appropriate conditions, including payment to the League of a transfer fee to reflect the goodwill developed by the League in the new location, and/or payment of an indemnification fee (or fees) to reflect the goodwill developed by a neighboring member (or members) in the new location." Herein lies a basic difference between the NHL and the NFL in *Raiders II*. In the latter, when the Court of Appeals ruled on the basis for a relocation fee, the NFL had no bylaw that governed the matter. In the instant case, the NHL has a bylaw that explicitly instructs how the transfer fee issue is to be handled. The standard set forth in NHL Bylaw 36.6 asks whether any franchise or the NHL itself made any investments to develop goodwill in the Hamilton market for an NHL team. This standard makes economic sense. It is efficient to prevent some NHL owners from free riding on investments made by the League or other NHL owners in developing goodwill for an NHL team. If this were allowed, then there would be a lower than optimal incentive for some NHL owners to invest.

19. I requested PSE to seek discovery regarding any such investments in developing goodwill for an NHL team in the Hamilton market; no information was provided by the NHL. I therefore infer that there were no specific goodwill investments made by the Maple Leafs, the Sabres or the NHL in the Hamilton market. Indeed, given the testimony of Mr. Daly that there was no viable ownership group for a Hamilton NHL Team in 1997, and that the NHL has not considered expansion to any market since then, it seems likely that neither the Maple Leafs nor the NHL would have attempted to invest in developing goodwill in the Hamilton market for a putative new team.[17]

20. The NHL might argue that Bylaw 36.6 should be construed more broadly. Under such a construction, the standard would ask whether any franchise or the NHL made any investments to generally develop the Hamilton market for hockey. Again, I requested PSE to seek such evidence in discovery, but none was produced by the NHL. If such investments were made on behalf of an existing NHL team in Hamilton, then the return on that investment presumably already accrued or is accruing to that team. The same logic applies to investments by the NHL. If the investment incidentally increased fan interest in hockey in Hamilton, then this investment would have been made in any case and does not need to be compensated. If the investment was made to enhance the Maple Leaf brand, then its purpose was not to develop goodwill for a new NHL hockey team, but rather to increase the demand for Leafs' tickets, broadcasting, sponsorships and merchandise. The Maple Leafs would have benefited from its monopoly status in the greater Toronto market and likely achieved a higher than competitive return on its investment. As a result, there is no economic justification to further compensate the Maple Leafs for their investment.

21. Any broader interpretation of Bylaw 36.6 does not make economic sense. It would not make sense, for instance, for the NHL to argue that the mere existence of an

[17] *See* Daly Depo. Tr. at 36:8-18, 232:20-25.

NHL team in the greater Toronto/Hamilton market engendered goodwill to the benefit of any new team in Hamilton. First, in such a situation, there would be no issue of promoting an efficient level of investment. That is, if the goodwill flowed from the mere existence of an NHL team in the area, and the team made no explicit investments to develop goodwill in the Hamilton market, then the level of investment was not impacted one way or the other. This outcome denotes that there is no need to impose a transfer fee in order to promote an efficient level of investment in the Maple Leafs. Such a fee would only be necessary in the event of free riding that curtailed the return on a prospective investment because the investor could not reap a sufficient return on the investment – thus prompting a lower than optimal investment level. Such a dynamic could not apply in this case. Second, unless the court believes that the NHL or the Maple Leafs is entitled to a monopoly return, then there should be no extra transfer fee to benefit the mere existence of the Maple Leafs. This point becomes apparent when considering the situation between two competitive companies. For instance, if McDonalds had located a restaurant in a Toronto strip mall and helped to cultivate a taste for fast food hamburgers and then Burger King opened up a store in the same mall, McDonalds would not be entitled to charge Burger King for any goodwill it developed at the mall for hamburgers in general.

22. In connection with my work I have also reviewed and considered the Declaration of Andy Baziliauskas dated June 5, 2009, and attached report titled "Report on the Competitive Effects of the Toronto Maple Leafs' Home Territory Veto and NHL Franchise Relocation Restrictions" (Nov. 10, 2005) ("Report"), attached hereto as Exhibit 12. Dr. Baziliauskas has a Ph.D. in economics form the University of Western Ontario and has served as Senior Economist at the Canadian Competition Bureau, and Coordinator of the Bureau's Enforcement Economics Division from 1993 to 1999. He has taught various courses and published articles in the areas of economic and competition policy. I note that Dr. Baziliauskas applies sound economic principles and methodologies to the

study of transfer and indemnification fees and concludes, as I do, that transfer and indemnification fees in the NHL for a team relocating to Hamilton would be based on an intent to reimburse NHL member clubs for investments, if any, in "goodwill" in the city to which the new team is to be relocated. *See* Baziliauskas Decl. ¶ 9 and Report at 37, 43-44. He recounts the history of the NHL's resistance to allowing a team to locate in Hamilton, *see* Report at 45-46, and – consistent with my inability to find any goodwill investments for an NHL team in the Hamilton market – concludes that "it is highly unlikely that the NHL or the Maple Leafs made any investments to increase fan interest in NHL hockey specifically in Hamilton (or anywhere else in the Maple Leafs' home territory)" and that therefore "[a]ny demands for transfer or indemnification fees are therefore unjustified, and are anticompetitive." Report at 47.

23. Nonetheless, to err on the side of caution, I consider the historical use of relocation fees by the NHL under the Bylaws as an indicator of what might be an economically reasonable transfer fee by the league in the event that the Coyotes move to Hamilton under the standards of Bylaw 36.6. The discovery record includes information on how the NHL treated the relocations of the Minnesota North Stars, the Quebec Nordiques, the Winnipeg Jets and the Hartford Whalers – the only four NHL teams to be relocated since 1990. The table below summarizes the evidence.

Table 1

Franchise Relocation Fees Charged by the NHL

Team	Year	Fee
Minnesota North Stars to Dallas	1993	[redacted]
Quebec Nordiques to Denver	1995	[redacted][18]
Winnipeg Jets to Phoenix	1996	[redacted]
Hartford Whalers to Carolina	1997	[redacted][19]

24. The average relocation fee charged for those teams that relocated since 1990 was below [redacted]. *See* Transcript of Deposition of Gary Bettman ("Bettman Depo. Tr.") at 245:25-248:22, 251:21-252:6, 259:24-260:4, excerpts attached hereto as Exhibit 13. The highest fee charged was in 1995 for up to [redacted]. Taking this highest fee and augmenting it at the U.S. rate of inflation (even though there was no such augmentation during the 1990s), yields an expectation of a relocation fee in 2009 of approximately [redacted]. Alternatively, if the 1995 fee were augmented at the average rate of NHL franchise appreciation over the period (*see* Table 3 below), the adjusted relocation fee in 2009 would come to [redacted]. It is my opinion this is the highest possible relocation fee that would be economically reasonable under the standard in the NHL Bylaws.

B. THE *RAIDERS II* STANDARD

25. I've also been asked to consider the question of what would be an appropriate transfer fee if the court were to decide that the NHL's Bylaws and its history

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[18] [redacted] *See* Memorandum, Proposed Sale and Relocation of Quebec Nordiques, June 9, 1995, attached hereto as Exhibit 14.

[19] *See* Exhibit 6 at NHL000831-832.

should not be applied, but rather, that the standard set forth by the Court of Appeals in *Raiders II* should be applied. *See Los Angeles Mem'l Coliseum Comm'n v. National Football League*, 791 F.2d 1356 (9th Cir. 1986). This standard arguably indicates that a relocation payments may be equal to the differential in the expansion value of a franchise in Phoenix and the expansion value of a franchise in Hamilton. To the extent that the latter is greater than the former, under this interpretation of the *Raiders II* standard, there could be a transfer fee paid by the owner of the relocated team to the NHL.[20]

1. Estimated Expansion Franchise Value in Hamilton

26. I begin by considering the value of an expansion franchise in Hamilton. I will consider five different possible methods for estimating the value: (1) augmenting the expansion team values assigned to other NHL teams during the 1990s and early 2000s by various indices; (2) augmenting the expansion team values by the growth factor in NHL franchise values over the last decade; (3) assessing the valuation relationship between a central city and a suburban franchise; (4) applying a revenue multiple; and (5) accounting for discounted future earnings. I then determined a low, moderate, and high value for an NHL expansion franchise in Hamilton using each method. Finally, I averaged each of the five low, moderate, and high values to determine an appropriate range for an NHL expansion franchise in Hamilton. My findings are set forth in Table 8 below.

a. Inflation of Expansion Team Values Assigned to Other NHL Teams During the 1990s and Early 2000s By Various Indices

27. First, I consider the most recent historical franchise expansion fees in the NHL. Fifty million dollars[21] was last charged before the 1993-94 season and $80 million

[20] I don't believe that the standard from *Raiders II* is as clear as one might desire. The 1987 Ruling by the Ninth Circuit in *National Basketball Ass'n v. SDC Basketball Club, Inc.*, 815 F.2d 562 (9th Cir. 1987), related to the San Diego Clippers' relocation to Los Angeles, interpreted the *Raiders II* standard as applying only as an offset against any antitrust damages, not as a standalone principle. However, I have been asked by counsel to apply this standard, and, thus, I have done so.

[21] Unless otherwise noted, all dollar figures refer to U.S. dollars. Where necessary, Canadian dollars are converted to U.S. dollars at 1 Cdn $ = .85 US $.

was last charged before the 2000-01 season. *See* Bettman Depo. Tr. at 260:11-261:19, 264:11-264:21. As a first approximation of what an expansion fee in 2009 would be, I find the current dollar value of the $50 million and $80 million fees by augmenting each at the rate of inflation as measured both by the CPI and GDP deflator and at a standard rate of asset appreciation by the indexes of the Dow Jones Industrials, the S&P 500, and the NASDAQ composite averages. The results are shown in Table 2 below.

Table 2

Expansion Fees Augmented by Various Indices

Year	CPI	GDP Deflator	Index	S&P Index	Nasdaq Index	Average
1993	100.0	100.0	100.0	100.0	100.0	
2000	119.2	113.1	131.5	134.6	174.8	
2008	149.0	138.5	400.7	426.0	925.2	
6/15/2009	149.9	139.3	321.5	275.8	444.0	
1993	$50,000,000	$50,000,000	$50,000,000	$50,000,000	$50,000,000	
2000	$59,600,000	$56,550,000	$65,750,000	$67,300,000	$87,400,000	
2008	$74,500,000	$69,250,000	$200,350,000	$213,000,000	$462,500,000	
6/15/2009	$74,950,000	$69,650,000	$160,750,000	$137,900,000	$222,000,000	**$133,050,000**
2000	$80,000,000	$80,000,000	$80,000,000	$80,000,000	$80,000,000	
2008	$100,000,000	$97,940,000	$243,838,728	$253,126,386	$423,384,615	
6/15/2009	$100,600,000	$98,527,640	$195,638,842	$163,902,439	$203,188,811	**$152,371,546**

As is apparent, because the equity indexes grew more rapidly than inflation over this period, the augmented value of the expansion fees, either from 1993 or from 2000, is higher when using the stock indexes. In the last column, I take an average of the five inflators to represent a best estimate of what, other things being equal, an NHL expansion fee would be in 2009. The adjusted value of the $50 million expansion fee in 1993 runs

from a low of $69.65 million to a high of $222 million, depending on the inflator used, with an average of $133.05 million. The adjusted value of the $80 million expansion fee in 2000 runs from a low of $98.53 million to a high of $203.2 million, with an average of $152.37 million. *The average of the two methods would suggest an expansion fee of $142.71 million in 2009.*

b. Augmentation of Expansion Fees By the 10-Year Growth of the Value of NHL Franchises

28. It is, of course, possible that franchise value in the NHL grew more rapidly over the last decade than the growth of value on the major stock indexes. In Table 3 below, I consider the reported franchise sales in the NHL during 2005-2008 and compare them with franchise sales ten years earlier, during 1995-98. Although these publicly-reported figures may not be precise[22], they give a general sense of the appreciation of NHL franchise values over the period. As the table shows, average prices during 2005-08 are roughly 1.6 times higher than they were ten years earlier. If that multiple is applied to the expansion fee charged just nine years earlier, *it suggests an average expansion franchise value of only $128.7 million in 2009.*

[22] Figures may vary according to the assets included, whether liabilities have been deducted or other aspects of the buy/sell agreement. To be sure, *Forbes Magazine* reported that the sale price for the Anaheim Mighty Ducks in 2005 was $70 million, not $75 million. *See* Team Financial Data, compiled from *Forbes.com*, attached hereto as Exhibit 15. The Anaheim franchise sold one month before the 2005 CBA was reached. I requested PSE to seek the buy/sell agreements from franchise sales since the 1990s or NHL summaries of these agreements as part of the discovery process, but the court did not order this discovery.

Table 3

Ten-Year Growth Factor in Reported Franchise Sales Applied to Expansion Fees [23]

2005	Anaheim Ducks	$75,000,000*	
2006	St. Louis Blues	$150,000,000	
2006	Vancouver Canucks	$150,000,000	
2007	Nashville Predators	$174,000,000	
2007	Tampa Bay Lightning	$206,000,000	
2008	Edmonton Oilers	$200,000,000	
2008	Minnesota Wild	$260,000,000	
	AVG	**$173,571.429**	
1995	Dallas Stars	$84,000,000	
1995	Los Angeles Kings	$113,250,000	
1995	Vancouver Canucks	$80,200,000	
1996	Philadelphia Flyers	$250,000,000	
1997	Atlanta Thrashers	$80,000,000	
1997	Columbus Blue Jackets	$80,000,000	
1997	Minnesota Wild	$80,000,000	
1997	Nashville Predators	$80,000,000	
1997	New York Rangers	$195,000,000	
1998	Edmonton Oilers	$68,800,000	
1998	Buffalo Sabres	$76,000,000	
	AVG	**$107,900,000**	
	Ten-year applied to $80M expansion fee in 2000	**Growth Factor yields**	**1.61** / **$128,690,587 expansion fee in 2009**

[23] Sources: Street & Smith's *Sports Business Resource Guide & Fact Book 2008*, excerpts attached hereto as Exhibit 16; J. Quirk & R. Fort, *Pay Dirt: The Business of Professional Team Sports* 463-478 (1997), attached hereto as Exhibit 17; Nashville Predators, "Discussion Materials Regarding the Acquisition of the Nashville Predators and the Forecheck Holdings Investment Opportunity" (January 2008), attached hereto as Exhibit 18; *Forbes* Team Value reports, various years, attached hereto as Exhibit 15; www.rodneyfort.com/sportsdata/bizframe.htm.

29. It might be noted that the foregoing analysis does not adjust for the likely positive effect on franchise values of the new 2005 Collective Bargaining Agreement ("CBA"), which included the league's first salary cap, as well as it first explicit revenue sharing program. As shown in Table 4 below, if reported franchise sale average values for the five years prior to the CBA are compared to those since the CBA, the growth factor is reduced to 1.26.[24] To be sure, part of this 26 percent growth is attributable to the modest growth in NHL revenue over these years; the rest is likely attributable to the favorable changes in the NHL's economic structure resulting from the 2005 CBA. In any event, applying this lower growth factor would yield yet a lower value for an expansion franchise in 2009.

[24] Estimates from *Forbes* comparing the three seasons pre- and three seasons post-lockout (of 2004-05) reveal an average post-CBA increase in franchise value of 23.2 percent, or slightly below the calculation in the text. This makes sense since the 26 percent estimated includes franchise sales going back to 2000.

Table 4

2005 CBA Growth Factor in Reported Franchise Sales

	Post CBA	
2006	St. Louis Blues	$150,000,000
2006	Vancouver Canucks	$150,000,000
2007	Nashville Predators	$174,000,000
2007	Tampa Bay Lightning	$206,000,000
2008	Edmonton Oilers	$200,000,000
2008	Minnesota Wild	$260,000,000
	Average	**$190,000,000**
	Pre CBA	
2000	Columbus Blue Jackets	$80,000,000
2000	Minnesota Wild	$80,000,000
2000	Colorado Avalanche	$450,000,000
2000	New Jersey Devils	$175,000,000
2000	New York Islanders	$190,000,000
2000	Phoenix Coyotes	$125,000,000
2001	Florida Panthers	$104,700,000
2001	Montreal Canadians	$183,000,000
2002	San Jose Sharks	$80,000,000
2003	Buffalo Sabres	$92,000,000
2003	Ottawa Senators	$100,000,000
2004	Atlanta Thrashers	$250,000,000
2004	New Jersey Devils	$125,000,000
2005	Anaheim Mighty Ducks	$75,000,000
	Average	**$150,692,857**
	CBA Growth Factor	**1.26**

c. Assessment of the Valuation Relationship Between a Central City and a Suburban Franchise

30. Another method which should be considered in valuing NHL expansion franchises is the effect of location; that is, whether the franchise is located in the central city or in suburban areas of the same metropolitan region. In the present case, the Toronto Maple Leafs has a central city location, while the prospective Hamilton franchise would have a suburban location. In Table 5 below, I list estimated franchise values for the central city and suburban teams in New York City and Los Angeles. The last column depicts the relationship or ratio between the value of the central city team and the suburban team within the same metropolitan area. For example, the ratio of 2:1 for New York City represents the mean value of the Rangers during the six-year span from 2002-03 to 2008-09 to the average of the mean value of the Devils and the Islanders over this period. The ratio is 1.36:1 for the Kings and the Ducks. The average of the New York City and Los Angeles ratios is 1.68:1. However, it is likely that the New York City ratio of 2:1 would be more applicable to the prospective relationship between the Toronto Maple Leafs and the Hamilton team, because in the case of the Rangers, the greater relative value of the team is a function of both the team's central city location and the strong brand value that the Rangers' franchise has attained over the years. The Maple Leafs is also a very strong brand in southern Ontario.

Table 5

Estimated Franchise Values[25]

(millions of US Dollars)

	2008-09	2007-08	2006-07	2004-05	2003-04	2002-03	Six-Year Avg	Ratio City/Suburb
NY Rangers	$411	$365	$306	$282	$272	$263	$317	
NJ Devils	$222	$195	$148	$124	$145	$159	$166	2
NY Islanders	$154	$149	$140	$160	$151	$156	$152	
LA Kings	$210	$209	$205	$193	$183	$205	$201	1.36
Anaheim Ducks	$202	$197	$157	$108	$112	$111	$148	
							Average	1.68

31. The different values between a core city and a suburban sports franchise in the same market area is also illustrated by a comparison of recent sale prices of baseball's Los Angeles Dodgers and Anaheim (now Los Angeles) Angels. The Dodgers were sold by the News Corporation to Frank McCourt in 2004 for $371 million, whereas the Angels were sold by Disney to Arte Moreno in 2003 for $184 million. The Dodgers, of course, are the stronger brand, so the sale price ratio of 2.02 represents both the location and brand effects, as would be the case for a Hamilton franchise relative to the Maple Leafs.

32. The Toronto Maple Leafs last sold in 1994 for $102 million, according to *Forbes*. In October 2008, *Forbes* deemed the Maple Leafs as the most valuable NHL franchise at $448 million, $37 million more than the second most valuable New York Rangers, and $114 million more than the third place Montreal Canadiens. *Forbes* based this valuation on its estimate of 2007-08 revenues and operating profits. That season witnessed the Canadian dollar peak in value against the U.S. dollar, rising ultimately to above par. The consequence was a windfall gain for Canadian NHL teams in that year,

[25] These estimates are from *Forbes* for various years. *See* Exhibit 15. They are based on multiples of lagged revenues.

especially as measured in U.S. dollars.[26] It does not appear that *Forbes* adjusted for the revenue sharing contribution that the top teams make to the bottom teams each year under the NHL's new revenue sharing system introduced with the 2005 collective bargaining agreement. *Forbes* then applied a revenue multiple of 2.8 to the Maple Leafs unadjusted revenue estimate. This multiple is above the *Forbes* estimated NHL average revenue multiple of 2.4 for that year. Further, this *Forbes* estimate was made prior to the worldwide financial collapse during the Fall of 2008, and there is evidence that with the drying up of the financial markets, the value of sports franchises has fallen.[27]

33. One way to adjust for these factors would be to apply the average 2.4 multiple to the adjusted Leafs revenue.[28] In the discovery in this case, the NHL made available its HRR reports from recent years. The Maple Leafs' reported revenue (HRR)[29] in 2008-09 was $158.5 million.[30] Like the *Forbes* figure, this number does not appear to adjust for the net contribution of approximately $9 million that the Maple Leafs franchise makes annually to the NHL's revenue sharing plan.[31] If the average NHL multiple of 2.4 were applied to the adjusted revenue of $149.5 million for the Maple Leafs, it would yield

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[26] According to the NHL's HRR statements provided in discovery, the revenue of the Maple Leafs fell by 12.8 percent between 2007-08 and 2008-09. *See* HRR reports, attached hereto as Exhibit 19.

[27] For instance, the initial bids for the Tribune Corporation's Chicago Cubs (along with Wrigley Field, a 25 percent share of the local Comcast RSN and some real estate adjacent to the ballpark) during the summer of 2008 were reported to be in the $1.2 billion neighborhood. The final agreement in August 2009 between the Tribune Corporation and the purchasers, the Ricketts family, was for a reported $845 million.

[28] Even this average NHL revenue multiple assumed by *Forbes* seems high. *Forbes* assumes a 2.5 revenue multiple average for Major League Baseball, a league that is many times more popular than the NHL and, according to Forbes' own estimates, MLB's average team is more than three times as profitable as the NHL's average team.

[29] HRR stands for hockey related revenue and is defined in the 2005 collective bargaining agreement.

[30] This number represents the "initial figure" for 2008-09, as reported by the NHL in its HRR reports and provided in the discovery record in this case. *See* Exhibit 19.

[31] I requested PSE to seek team revenue sharing information in discovery, but the court did not order this. I estimate the Leafs net revenue sharing contribution from the April 2009 prospectus for the sale of the Montreal Canadiens where it lists the actual revenue sharing contribution of the Canadiens as $9.6 million in 2005-06, $7.1 million in 2006-07, $18.4 million in 2007-08 and an estimated $8.5 million in 2008-09. The 2007-08 contribution is inflated due to the unusually high value of the Canadian dollar in that year.

an estimated value of $358.8 million.[32] Applying the 2:1 ratio for the relative valuations of a core city team with a strong brand (the Maple Leafs) to a suburban team without a strong brand (Hamilton) yields an estimated valuation for a prospective Hamilton expansion franchise of $179.4 million.[33]

d. Application of a Revenue Multiple Ratio

34. The revenue multiple ratio is another method to value an expansion franchise in Hamilton and is one of the most common approaches used to estimate the market value of a sports franchise. As a first approximation to apply this method, I turn to the *Forbes* estimates of NHL franchise value in October 2008 and franchise revenue for the 2007-08 season. Again, estimates made prior to financial collapse of the Fall of 2008, if anything, will tend to overstate franchise value in the Fall of 2009. In Table 5 below, I show the latest *Forbes* estimates, adding the league-wide averages and the revenue/value multiples. When the *Forbes* estimates are compared to the revenue figures in the league's HRR reports for 2007-08, after adjusting for the subtraction of direct costs from the latter, the *Forbes* estimate for average revenue is $4.8 million higher than the official NHL figure.[34] This suggests that the *Forbes* valuation estimates, if anything, would be on the high side. Using the estimated league-wide revenue multiple of 2.4, I apply it to the pro forma analysis of a possible Hamilton franchise in 2009-2010 performed for PSE and submitted

[32] *Forbes* applies its multiple to trailing (or previous year's) revenues. I am applying the multiple to current year revenues, which, if anything, will create an upward bias in my valuation estimate relative to that of *Forbes*. Forbes applies a 2.4 multiple for the Canadiens. Although Toronto is in a larger market and reaps more synergies through its ownership of its arena and related teams, these factors should properly be reflected in the Leafs' revenues and not require a higher multiple. In this regard, it is noteworthy that a 2009 report "Canada's Most Valuable Brands" by Brand Finance Canada estimated the value of the Toronto Maple Leafs' brand in 2009 at $83.3 million and that of the Montreal Canadiens at $95.2 million. *See* Report, "Canada's Most Valuable Brands," Brand Finance Canada (Spring 2009) at 22, attached hereto as Exhibit 20.

[33] For the reasons explained, I believe the 2:1 ratio is more representative of the prospective relationship between a Toronto and Hamilton franchise than the 1.68:1 ratio. Nonetheless, if the latter is applied, the implied value for a Hamilton franchise would be $213.6 million.

[34] In 2007-08, the reported average HRR for an NHL team was $77.6 million; this figure was net of $9.2 million in direct costs. Thus, the total revenue for an average NHL team in 2007-08 was $86.8 million. The *Forbes* estimate for average team revenue in that year was $91.6 million. The difference between these figures for total revenue is $4.8 million.

as part of its relocation application to the NHL. This analysis projects first-year revenues at $72.88, and, hence, *a franchise valuation of $174.9 million.*[35] It should be noted that the *Forbes* methodology projects value on the basis of the previous (trailing) year's revenue. Here, I use the forward year revenue, which, if anything, will tend to bias the estimate upward. If the Maple Leaf's high multiple of 2.8 is employed, the valuation for a new Hamilton franchise would be $204.1 million.

[35] This study assumes an exchange rate of 1Cdn$=$.85U.S.$. The exchange rate at the end of August 2009 is closer to .92. At this rate, the franchise valuation would rise to $189.3 million, other things being equal. The exchange rate, of course, is subject to daily fluctuation. As late as March 12, 2009, the Canadian dollar traded as low as $.77.

Table 6

***Forbes* Estimated Revenue and Value, 2007-08**

(millions of US dollars)

		Est Value	1 Yr % Change	Debt/Value	Revenue	Ebitda	Value/Rev
1	Toronto Maple Leafs	448	9	35	160	66.4	2.8
2	New York Rangers	411	12	0	137	30.7	3.0
3	Montreal Canadiens	334	18	72	139	39.6	2.4
4	Detroit Red Wings	303	3	0	110	13.4	2.8
5	Philadelphia Flyers	275	13	24	102	-1.8	2.7
6	Dallas Stars	273	8	73	105	14.2	2.6
7	Boston Bruins	263	8	46	97	-3	2.7
8	Vancouver Canucks	236	12	47	107	19.2	2.2
9	Colorado Avalanche	231	8	21	91	2.3	2.5
10	New Jersey Devils	222	14	113	97	1.9	2.3
11	Minnesota Wild	217	21	52	94	0.7	2.3
12	Los Angeles Kings	210	0	87	91	1.2	2.3
13	Ottawa Senators	207	12	63	96	4.7	2.2
14	Chicago Blackhawks	205	14	0	79	1.4	2.6
15	Calgary Flames	203	24	15	97	7.4	2.1
16	Anaheim Ducks	202	3	17	90	1	2.2
17	Tampa Bay Lightning	200	1	53	84	1.2	2.4
18	Pittsburgh Penguins	195	26	51	87	5.1	2.2
19	San Jose Sharks	179	9	25	85	2.4	2.1
20	Edmonton Oilers	175	11	0	85	11.8	2.1
21	Buffalo Sabres	169	4	30	76	-8.9	2.2
22	Carolina Hurricanes	168	8	54	75	-11.5	2.2
23	Nashville Predators	164	14	49	70	-1.3	2.3
24	Florida Panthers	163	8	49	74	-9.4	2.2
25	St Louis Blues	162	12	74	73	-8.6	2.2
26	Washington Capitals	160	10	43	73	-6.9	2.2
27	Atlanta Thrashers	158	6	44	70	-6.1	2.3
28	Columbus Blue Jackets	157	4	29	71	-7.1	2.2
29	New York Islanders	154	3	65	64	-8.8	2.4
30	Phoenix Coyotes	142	-3	63	68	-9.7	2.1
	Average	219.5	9.7	43.1	91.6	4.7	2.4

e. Application of a Discounted Projected Earnings Analysis

35. Finally, I have considered another method of valuing a franchise in Hamilton based on a "discounted projected earnings" analysis. The essence of this approach is to

discount to a net present value (NPV) the expected future stream of economic returns from an investment. While a discounted projected earnings analysis is a common tool for valuing public companies in production and services, it has a number of disadvantages. These disadvantages are larger when applied to a sports franchise. The standard disadvantages of using the discounted projected earnings method pertain to the difficulty in identifying the proper discount rate and in accurately projecting future income growth. Each element is somewhat subjective and allows for a significant variance in results. When applied to a sports franchise, the problem compounds because the financial bottom line is only a part (and sometimes a small part) of the return reaped by the team owner. For instance, team owners generally (and to widely differing degrees) expect some or all of the following pecuniary and non-pecuniary returns: capital gains on selling the team; tax sheltering; synergies with other companies in the owner's portfolio; better access to financing, to CEOs, and to politicians; ego gratification; power; fame and fun. To accurately assess a team's market value, all of these returns would have to be monetized and then discounted to present value.

36. These issues notwithstanding, for completeness, I include a discounted projected income valuation of a prospective Hamilton NHL franchise. To do this, I use the projected operating income in the pro formas performed for PSE as part of its transfer application to the NHL. The pro formas cover the first five years of a Hamilton franchise. I then assume different annual income growth rates between 3 percent and 7 percent, and project them out to year 30. The selection of an appropriate discount rate is a key step in this method. The discount rate represents the opportunity cost of capital; that is, if one were to invest in a long-run project with a similar risk, instead of the project under consideration, what would be the expected rate of return. According to standard finance theory, in competitive markets investors will invest in a project up to the point where the

expected rate of return is equal to the interest rate (cost of capital). Hence, the weighted average cost of capital is sometimes used as a discount rate.

37. I do not have access to sufficient data on the cost of long-term capital for buying an NHL franchise, so I apply a version of the well-know Capital Asset Pricing Model (CAPM) to estimate an appropriate discount rate. This model starts with the price of risk-free debt – in this case, the best approximation for long-term risk free debt is the interest rate on a thirty-year U.S. Treasury bond. On August 10, 2009, the interest rate on these bonds averaged 4.52 percent. The next step is to find the difference between the average return on equity over the long term (thirty years in this case) and the Treasury bond, and then to multiply this difference by the company's beta (a measurement of the variability of a company's stock relative to an average stock's variability, i.e., the relative risk of investing in a company.) Between July 1979 and July 2009, the average annual rate of growth of the S&P 500 index was 7.83 percent, or 3.31 percent above the 30-year Treasury bond rate. This differential of 3.31 percent is then multiplied by the beta in the typical case to estimate the "equity risk premium."

38. The problem in this case is that the neither the Phoenix Coyotes nor any other NHL hockey team (since a minority share of the Florida Panthers was sold to the public in 1996, subsequently diversified, and then taken private) is publicly held. At present, no other standalone sports franchise in the United States is publicly held.[36] Even if there were standalone, publicly-held sports franchises, there is another problem. Namely, there is a tendency for fans, rather than pure investors or day-traders, to buy stock in their favorite sports team when it is available. This yields a buy and hold pattern, and, other things being equal, should generate a lower than average beta for a sports franchise. The result is that stock performance does not usually reflect the underlying risk of an

[36] The Boston Celtics issued 40 percent of its value in public stock in 1986 for $44.74 million. This share was taken private when the team was sold in 2003. The Orlando Predators went partially public in 1997 through 1999 and the Cleveland Indians took 28.64 percent of the franchise public in 1998 through November of 1999.

investment in a sports franchise, the profitability of which can be highly variable. In sum, it is difficult and problematic to identify a beta for an NHL team. That said, the NHL is financially the frailest of the major team sports leagues in the United States and the experience of the Florida Panthers stock (the price dropped 25 percent in the 15 months after its issuance in 1996, while the S&P 500 increased 38 percent) suggest that investments in NHL franchises are riskier than average. The riskier the investment, the lower the net present value under the CAPM methodology.

39. Nonetheless, to be conservative, I assign a beta of 1 to an investment in the prospective Hamilton franchise, which assumes that an investment in a hockey franchise is no riskier than an investment in an average security. This yields a tentative discount rate of 4.52% + (1) X 3.31% = 7.83%. In the CAPM, it is necessary to add to this number the impact of the small size of the enterprise on risk and any investment specific risks not previously accounted for. A company, such as the Coyotes, with a revenue of below $100 million and a capitalization of some $200 million is well below the average size for companies listed on the New York Stock Exchange. The average capitalization of a company on the S&P 500, for instance, is above $17.7 billion. It is not uncommon to add a risk premium of four points or more to capture the additional risk of investing in small companies.[37] Again, to be conservative, I add 2 percentage points for these remaining factors, yielding a conservatively projected discount rate in the neighborhood of 10 percent. Recognizing the subjective elements involved, however, I use three discount rates (8%, 10%, 12%) to estimate the present value of a Hamilton franchise, as illustrated in Table 7 below.

40. Table 7 discounts the projected future income stream of a prospective Hamilton team, based on the pro formas presented to Mr. Balsillie. Table 7 (estimates are in Canadian dollars) shows that if it is assumed that operating income will grow at 5

[37] *See, e.g.*, Shannon Pratt, *et al.*, Valuing a Business: The Analysis and Appraisal of Closely Held Companies (2000) at 163, excerpts attached hereto as Exhibit 21.

percent annually every year from year 5 through year 30 of the franchise, then at a discount rate of 10% the Hamilton franchise has a net present value of Cdn$107.9 million, or U.S.$91.7 million (at 1Cdn$=.85U.S.$). At lower discount rates and higher growth rates the valuation of the prospective Hamilton franchise rises (up to Cdn$177.6 million, or U.S.$150.9 million); conversely, with higher discount rates and lower growth rates the valuation falls (down to Cdn$70.4 million, or U.S.$59.8 million). Again, this valuation method does not include the indirect pecuniary and non-pecuniary returns from ownership, and, hence, is likely to underestimate the valuation of a professional sports franchise.

Table 7

Value of Hamilton Franchise based on Discounted Projected EBITDA[38]

$000s Cdn

Growth Rate	Discount Rate	NPV	Year 1	2	3	4	5	28	29	30
3%			-$9,080	$640	$2,250	$10,310	$11,150	$22,005	$22,666	$23,346
	8%	117,625								
	10%	90,115								
	12%	70,373								
4%			-$9,080	$640	$2,250	$10,310	$11,150	$27,482	$28,581	$29,724
	8%	129,594								
	10%	98,407								
	12%	76,234								
5%			-$9,080	$640	$2,250	$10,310	$11,150	$34,247	$35,960	$37,758
	8%	143,362								
	10%	107,878								
	12%	82,882								
6%			-$9,080	$640	$2,250	$10,310	$11,150	$42,590	$45,146	$47,854
	8%	159,236								
	10%	118,721								
	12%	90,439								
7%			-$9,080	$640	$2,250	$10,310	$11,150	$52,857	$56,557	$60,516
	8%	177,576								
	10%	131,165								
	12%	99,052								

2. Summary of Results: Value of a Hamilton Franchise

41. To summarize the foregoing analysis, I used a variety of methods to estimate a reasonable market valuation for a franchise in Hamilton, Ontario: inflating the expansion team values assigned in the 1990s and early 2000s by various indices; augmenting the expansion team values by the growth factor in franchise values over the last decade; assessment of the valuation relationship between a central city and suburban franchise; revenue multiple; and, discounted future earnings. From all of these methods, the lowest estimated franchise value is $59.8 million and the highest is $222 million. Table 8 places the estimates from the different valuation methodologies into low, moderate and high

[38] EBITDA stands for earnings before interest, taxes, depreciation and amortization and is a commonly used measure of operating earnings of a company.

categories. The average estimated value for a new Hamilton franchise ranges from **$143.5 million to $183.9 million**.

Table 8

Summary of Valuation Estimates

(millions of U.S. $)

Method	Low	Moderate	High
Inflated exp fee by index	$142.7	$152.4	$222.0
Augmented exp fee by growth factor	$128.7	$128.7	$128.7
City/suburban adjustment	$179.4	$179.4	$213.6
Revenue multiple	$174.9	$174.9	$204.1
NPV	$91.7	$150.9	$150.9
Average	**$143.5**	**$157.3**	**$183.9**

3. The Value of a Phoenix Expansion Opportunity

42. The next step is to compare the value of a Hamilton expansion opportunity to the value of an expansion franchise in Phoenix. The simplest comparison is to apply a revenue multiple to the actual and projected revenue figures for the Phoenix and Hamilton teams. If the 2.4 multiple is applied to the initial revenue figure for the Coyotes for 2008-09 of $52.8 million (including an estimated $13 million in revenue sharing)[39], we arrive at an estimated value of $126.7 million. This estimate does not include the anticipated increase in subsidies from Glendale that would be provided to an owner who kept the team in Glendale. Mr. Reinsdorf's bid was apparently contingent on an additional [redacted].[40] If, based

[39] This is the estimate provided by Mr. Daly in his deposition of August 21, 2009 in this matter. *See* Daly Depo. Tr. at 162:8-163:16.

[40] The Glendale Hockey LLC ("Reinsdorf") Asset Purchase Agreement (APA) also stipulated that he may seek new terms in several of the Coyotes' contracts, including that with Fox Sports. Thus, the expected new revenue flow would have exceeded the [redacted]. *See, e.g.*,

on this subsidy and a reduced revenue sharing transfer, [redacted] is added to the team's revenue, the annual flow grows to [redacted] and applying the 2.4 revenue multiple, we arrive at an estimated valuation of **$162.7 million** for a Phoenix franchise.[41] This is **$12.2 million** below the valuation of a prospective Hamilton franchise based on the projected first-year revenue of $72.9 million, which when the 2.4 multiple is applied, yields a franchise value of **$174.9 million**.

43. Further, the *Raiders II* standard actually calls for a comparison of the investment "opportunity" in the two cities. Many have argued that the opportunity in Phoenix is not realized in Glendale and that downtown Phoenix would be a far superior venue. An August 2009 study by Navigate Marketing, based on a survey of 1533 respondents in the Phoenix DMA (media market as measured by Nielsen), found that 45 percent of all residents preferred a downtown location compared to only 31 percent who preferred Glendale. Similarly, among those self-classifying as Coyotes fans, 44 percent preferred a downtown location, while 31 percent preferred Glendale.[42] Thus, using Glendale in my comparison is also conservative. My estimate of $162.7 million is, of course, above Mr. Reinsdorf's withdrawn bid of $148 million. The NHL pointed to the existence of other bids, however, which did not finally materialize due to the time pressure and other circumstances of the case. In its APA of August 25, 2009, the NHL stated: "The NHL believes that its immediate acquisition and operation of the Team will help stem further erosion of the Team's value, which has already been seriously diminished as the

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Appendix to Asset Purchase Agreement at 3-4, attached hereto as Exhibit 22. If the team's on ice performance improves as its young roster matures, the revenue base would likely increase further.

[41] Interestingly, at his deposition in this case on August 20, 2009, Commissioner Gary Bettman indicated that with new management and an improved lease the Phoenix franchise had good potential. When asked if the potential was strong enough to put the franchise in the top half of NHL teams, Bettman responded: "I wouldn't rule it in, I wouldn't rule it out." *See* Bettman Depo. Tr. at 293:5-294:2. Juxtaposed with the pro formas in PSE's transfer application, which show team revenues near the league mean, this statement suggests that the potential of franchises in Phoenix and Hamilton are very similar. By the *Raiders II* standard, this result is consistent with a relocation fee at or close to zero.

[42] *See* Navigate Marketing, Phoenix Hockey Study, Research Findings for NHL Franchise Support in the Greater Phoenix Area (August 2009) at 5, attached hereto as Exhibit 23.

result of the filing and conduct of the current bankruptcy proceeding by the debtors." I have reviewed the NHL APA, and read the news of the withdrawal of the Reinsdorf bid. Neither event materially alters the conclusions that I have set forth in this report.

44. Under *Raiders II*, using the revenue multiple method, I determined that the difference between the value of an expansion franchise in Hamilton ($174.9 million) and the value of an expansion franchise in Phoenix ($162.7 million) is **$12.2 million.** This estimate under *Raiders II* comports with my analysis of the relocation fee under NHL Bylaw 36.6, above. Under NHL Bylaw 36.6, the average relocation fee charged in the 1990s, then, was below [redacted]. The highest fee charged was in 1995 and was up to [redacted].[43] If the latter is augmented at the U.S. rate of inflation between 1995 and 2009, the resulting fee today would be [redacted]. If the 1995 fee is augmented at the rate of growth of the S&P 500, the fee would be [redacted]. Therefore, I conclude that an economically reasonable fee under the standard set forth NHL Bylaw 36.6 or the *Raiders II* standard is in the [redacted] to [redacted] range.

V. INDEMNIFICATION PAYMENTS

45. Should the court ultimately determine that there will be a transfer fee paid to the NHL, such fee should be the source for indemnification payments, if any, made to the Maple Leafs. If the precedential basis for requiring a transfer fee is the *Raiders II* decision, then, on the same precedential basis, there should be no separate indemnification payments to the Maple Leafs, as the Los Angeles Rams did not receive an additional indemnification payment from the Oakland Raiders. Indeed, the court in *Raiders* recognized that the NFL, in attempting to prevent the Raiders move to Los Angeles, was simply attempting to preserve the monopoly of the Rams in the Los Angeles market. The NHL's own history reaffirms this principle. When the Anaheim Mighty Ducks became an NHL expansion team in 1993-94, the new owners paid the NHL an expansion fee of $50

[43] Commissioner Bettman confirmed in his deposition that [redacted] is the highest relocation fee charged by the NHL since 1993. *See* Bettman Depo. Tr. at 259:24-260:4.

million. Out of this sum, the existing team in the greater Los Angeles/Anaheim market, the Los Angeles Kings, received an indemnity of $25 million.[44] There was no additional indemnity fee.

46. In the record for this case, other than the Anaheim expansion, there was only one other instance where an indemnification fee was paid to a team in or near an existing market. This case was almost thirty years ago and involved relocation of the Colorado Rockies to New Jersey before the 1982-83 season.[45] Mr. Daly described these fees in his deposition.[46] I have also read newspaper reports that reference such fees being paid.[47] To the best of my knowledge, these fees were not determined by the NHL; rather, because at the time the NHL took the position that the existing teams had monopoly veto rights and had to approve any relocation of a team into its market, the Rangers negotiated an indemnity payment from the new team, the New Jersey Devils. Similarly, since the Devils would be encroaching on the broadcasting markets, as delineated by the NHL, of the Flyers and the Islanders, the Devils would have to negotiate indemnity payments with each team. The NHL did not set any of the three indemnification payments.[48]

47. Thus, I see no economic basis for an additional indemnification payment. If such a payment, however, is required, NFL and NHL history suggest that it should be made out of any relocation fee that is set in this matter.

VI. CONCLUDING COMMENTS

48. In the first section of my declaration I considered evidence on the viability of Hamilton, Ontario. I concluded that Hamilton's market is stronger than many in the NHL

[44] This approach and these negotiated sums were confirmed in Mr. Bettman's deposition. *See* Bettman Depo. Tr. at 261:11-262:3.
[45] *See* Daly Depo Tr. at 205:20-206:19.
[46] *See id.*
[47] *See* Lawrie Mifflin, *Rockies are Sold and Moved to Meadowlands*, N.Y. Times, May 28, 1982, at A17; Kathy Blumenstock, *Rockie's Sale, Move Approved*, Washington Post, May 27, 1982, at D1, attached hereto as Exhibit 24.
[48] *See* Daly Depo.Tr. at 204:25-205:19.

and there is no economic justification for the NHL to reject it as a host city of an NHL team.

49. I have used two basic approaches to estimate an economically appropriate relocation fee. The two approaches produce very similar estimates: (a) under the NHL Bylaw, the fee is between [redacted]; and (b) under the *Raiders II* standard, the fee is $12.2 million. Thus, employing either the NHL Bylaw or the presumed *Raiders II* standard, the estimated fee is in the $11 million to $13 million range.

Table 9

Summary of Estimated Economically Appropriate Relocation Fees

	NHL Bylaw 36.6	*Raiders II*
Relocation of the Coyotes to Hamilton	[redacted]	**$12.2 million**

50. The question remains: if the franchise in Hamilton is worth $174.9 million, why is PSE willing to pay $212 million for it? The probable explanation is that Mr. Balsillie expects a consumption value (utility) of roughly $38 million from owning an NHL team in his home town. In any event, if the investment value of the team in Hamilton is under $212 million, there is no net financial gain for PSE from buying a franchise for $212 million and relocating it to Hamilton. The presumed *Raiders II* standard is based on the premise that the owner who is relocating the team is benefiting by moving to a richer market and that this benefit should accrue to the league, which somehow is construed as owning the expansion opportunity. In this case, however, the owner is paying more for the team that its investment value in the new market. The owner is not enriching himself financially from the relocation, because the offered price is based on the total value of the team to PSE in Hamilton.

51. The Coyotes' creditors rather than the league receive the direct benefit from the relocation. But the league benefits indirectly by having a franchise in a stronger market. Not only does the league gain from growing its reputational capital and potentially more efficient travel schedules, but collectively the owners of the other 29 teams will benefit by having to offer less in revenue sharing.

52. In comparing the value of the Phoenix and Hamilton markets, it is also relevant to consider league history. NHL expansion fees have not recognized differences in market size, corporate presence, prospective arena lease, fan avidity or other circumstances. Between the 1991-92 and 1993-94 seasons, the NHL expanded by five teams (San Jose Sharks, Ottawa Senators, Tampa Bay Lightning, Florida Panthers and Anaheim Mighty Ducks); each team paid the same expansion fee of $50 million. Again, between the 1998-99 and 2000-01 seasons, the NHL expanded by four teams (Nashville Predators, Atlanta Thrashers, Columbus Blue Jackets and Minnesota Wild); each team paid the same expansion fee of $80 million. This practice clearly suggests that if the NHL were adding expansion teams in Phoenix, Arizona and Hamilton, Ontario for the 2009-10 season, each team would carry the same expansion price.

53. Thus, given the NHL's history with expansion, relocation and indemnification fees, and given my assessment that PSE is already paying more than the investment value of a team in Hamilton, it does not make economic sense for an indemnity fee to be charged in this matter. However, to the extent that a transfer fee is charged, NHL history and bylaws, as well as the small difference in the value of the Phoenix and Hamilton markets, suggests that the fee should be between [redacted] and [redacted]. A higher fee would not be economically reasonably and may have the effect of precluding the sale, and preventing both the creditors from receiving maximum

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compensation and North American hockey fans from benefiting from competition in southern Ontario.

Executed on August 28, 2009

Andrew Zimbalist

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