

NHL lawsuit Against Moyes May be Attempt to Protect "NHL Brand"

Written by Jeff Levine

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Apparently, the National Hockey League is not done firing shots Jerry Moyes. Earlier this month, the NHL filed a lawsuit against the former Phoenix Coyotes owner and several other defendants in New York State Court, seeking over \$60 million in damages. The league is contending that Moyes:

- 1) violated a 2006 promise not to move the Coyotes out of Arizona;
- 2) refused to fund the team's operating expenses, and;
- 3) breached his fiduciary duty to the team by secretly entering into an agreement to sell the Coyotes to Canadian businessman Jim Balsillie, which culminated in the filing of a chapter 11 bankruptcy to achieve the goal without the league's approval.

Specifically, [ABC News reports](#) that the NHL is seeking \$30 million in damages for violating the agreement with the league, \$10 million for "aiding and abetting" violations of the Coyotes' fiduciary duty to the NHL, \$10 million in punitive damages and \$11.6 million to cover amounts that the league paid to Coyotes creditors, including former coach Wayne Gretzky. The NHL bought the team out of bankruptcy and is actively trying to sell the team to a group that will keep the Coyotes in metropolitan Phoenix.

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The league's strongest argument is that it is entitled to damages because Moyes violated his fiduciary duty to the NHL and its Board of Governors by trying to circumvent League bylaws and its constitution. The NHL and its member teams have a right to decide who owns a franchise and where they play. Moyes attempted to circumvent those rights by selling the Coyotes to Balsillie, who was planning on moving the team to Hamilton Ontario, without league approval through bankruptcy. However, it is difficult to place a dollar amount on Moyes' alleged breach of fiduciary duty. Further, even if the NHL prevails in a trial, collectability of the judgment may be a concern due to the down economy significantly affecting the profitability of Moyes' trucking company, Swift Trucking.

So, the question remains, why is the NHL committing itself to costly litigation with no guarantee of recovery just months after spending hundreds of thousands to litigate the Coyotes' bankruptcy?

It is quite possible the NHL is suing Moyes to teach him a lesson. Put another way, the NHL wants to deter others from engaging in action that will damage the NHL's reputation or product. This lawsuit could be a tool designed to discourage rogue owners from engaging in behavior designed to skirt league protocol. However Moyes' conduct was done less to defy the NHL and more to remove himself from a financially untenable situation.

Moyes went against the NHL seemingly out of necessity. Saddled with the immense debt from years of operating losses, Moyes was desperate for financial relief. According to documents made public during the team's six month bankruptcy, the NHL had provided the former owner with a secured line of credit at one point during the 2008 season. That provided temporary relief. However the league eventually terminated that lifeline, which led to Moyes' desperate action of striking a deal with Balsillie, who was known to be a firestorm of controversy within professional hockey due to his prior attempts to purchase financially strapped NHL franchises and then move them to Canada against league wishes. Moyes needed to file bankruptcy because a bankruptcy court judge could sell the team to the highest bidder without NHL consent. Balsillie's \$242.5 million bid was highly overinflated. However, the Canadian billionaire's bid was so immense because the agreement was contingent on the Coyotes moving to Canada, something that the NHL would have never had agreed upon. Therefore, Moyes needed to put the decision in the hands of the bankruptcy court.

There is no telling how much the Coyotes' bankruptcy cost the league in terms of sponsors viewing professional hockey as a credible sport. The bankruptcy was a black eye for the league. Less than five years after hockey became the only US sport to ever lose an entire season due to labor dispute that was based mostly on financial reasons, the NHL was once again thrust into

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the spotlight because of the financial health of its member teams. For months in 2009, the NHL was receiving press for all the wrong reasons. The bankruptcy proved that the lockout has not solved hockey's money problems and that NHL owners still occupy a fragile financial position within professional sports. In addition, the bankruptcy proceedings made many of the NHL's confidential documents public, causing unknown damage.

Although it may have a valid cause of action against Moyes, the league may not achieve a quick victory. The [Phoenix Business Journal reports](#) that its likely Moyes and his attorneys will file a counterclaim against the NHL for rejecting the Moyes-Balsillie sale agreement. Thus, if Moyes follows through and files his claim, both sides will find themselves back in the courtroom for another expensive round of litigation. For the NHL, this cost very-well may be the price it must pay for protecting its brand.

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