

2008 CI 04864
CAUSE NO. _____

FILED
DISTRICT CLERK
BEXAR COUNTY, TEXAS
08 MAR 26 PM 4:56
IN THE DISTRICT COURT
DEPUTY

CLEAR CHANNEL COMMUNICATIONS, §
INC.; and CC MEDIA HOLDINGS, INC., §

Plaintiffs, §

v. §

CITIGROUP GLOBAL MARKETS, INC.; §
CITICORP USA, INC.; CITICORP §
NORTH AMERICA, INC.; MORGAN §
STANLEY SENIOR FUNDING, INC.; §
CREDIT SUISSE SECURITIES USA, LLC; §
RBS SECURITIES CORPORATION; §
WACHOVIA INVESTMENT HOLDINGS, §
LLC; WACHOVIA CAPITAL MARKETS, §
LLC; and DEUTSCHE BANK §
SECURITIES INC., §

Defendants. §

BY _____

225th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFF'S VERIFIED PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION;
REQUEST FOR EXPEDITED DISCOVERY; AND
REQUEST FOR EXPEDITED TRIAL**

This lawsuit stems from Defendants' tortious interference with Plaintiffs' contract which, if allowed to continue and succeed, could result in immeasurable damages exceeding the parties' agreement for **\$26 billion**.

Plaintiff Clear Channel Communications, Inc. ("Clear Channel") and CC Media Holdings, Inc. ("CC Media") have entered into a \$26 billion definitive Agreement And Plan Of Merger (the "Merger Agreement"). As a result of the Merger Agreement, which **must close no later than June 12, 2008**, Plaintiff CC Media will become the owner of Clear Channel and Clear Channel's shareholders will receive **\$19.5 billion**. The opportunity to acquire Clear Channel is uniquely valuable and irreplaceable. Clear Channel is a leading U.S. media company that owns

over 900 radio stations. In that, alone, it is an asset that cannot be replaced. In addition, a Clear Channel subsidiary is the largest outdoor advertising firm in the country. Clear Channel is also one of the most prominent companies in San Antonio, Texas. In short, Clear Channel is a one-of-a-kind company and CC Media has every right to close its acquisition of Clear Channel. Similarly, Clear Channel and its shareholders have every right to receive **\$19.5 billion** in payment for the company.

Before the Merger Agreement was ever executed and before Clear Channel accepted CC Media's bid, Defendants and their affiliates signed a definitive debt commitment letter, later superseded by a May 17, 2007 debt commitment letter (the "Commitment Letter"). By their execution of the Commitment Letter, Defendants agreed to provide debt funding for CC Media's purchase of Clear Channel. That commitment was contained in the Commitment Letter, all conditions of which have been satisfied – or would have been satisfied but for Defendants' wrongful interference with the Merger Agreement. Yet – for reasons of their own – Defendants have tortiously interfered with Plaintiffs' Merger Agreement, most recently, by refusing to execute necessary documents in an overt effort to "run out the clock" and cause Plaintiffs' Merger Agreement to collapse.

Defendants have made clear that they are determined, by any means possible, to destroy the Merger and thus avoid their obligation to fund CC Media's acquisition as they are required to do. Defendants' have refused to honor their obligations not because of any wrongful conduct by, or change in circumstances pertaining to, Clear Channel or CC Media. Instead, though they have not even an arguable right or privilege permitting them to do so, Defendants have responded to *their own* market conditions by fabricating false reasons to refuse to proceed with the transaction – all in an effort to deprive Plaintiffs of their vested contractual rights under the Merger Agreement which Defendants know **must close by June 12, 2008**. Unless the Court stops them,

Defendants will succeed, by their unlawful conduct and willful breach, in reallocating to the Plaintiffs and Purchasers the market risk the Defendants expressly agreed in the Commitment Letter to assume.

Clear Channel and CC Media will be irreparably injured if Defendants are not immediately enjoined from tortiously interfering in their Merger Agreement, and will be equally – and irreparably – injured if Defendants are permitted to continue to refuse to proceed with the closing in good faith, as they are required to do. Accordingly, Clear Channel and CC Media have no choice but to file this Verified Petition in which they seek the following, emergency relief:

- An immediate Temporary Restraining Order and Temporary Injunction:
 - prohibiting Defendants from interfering further in the Merger Agreement between Clear Channel and CC Media;
 - extending the termination date of the Commitment Letter until such time as the Merger Agreement has closed or Clear Channel and CC Media have elected – in good faith and for their own reasons – to terminate it themselves;
 - prohibiting Defendants from destroying, removing, or secreting documents and records related to the issues underlying the claims, assertions, and causes of action set forth in this lawsuit; and
- An order setting an expedited discovery schedule and establishing an expedited trial setting of May 12, 2008, so as to ensure that Plaintiffs may try their case to a jury *before* their Merger Agreement expires.

Entry of injunctive relief is the only way to preserve the last, non-belligerent status quo between the parties. That *status quo ante*, in which both the Merger Agreement and the Commitment Letter were in effect and moving to final closing, is in imminent danger of being

irreparably destroyed by Defendants' malicious, tortious interference. Injunctive relief is the only adequate remedy to preserve those agreements, intact, until such time as the Court can hold an expedited trial on Plaintiffs' claims of tortious interference. In the absence of injunctive relief, both Clear Channel and CC Media will be irreparably injured in a manner for which there is no adequate remedy at law. A transaction of this magnitude is wholly unique: neither comparable financing nor an alternative buyer is readily located or substituted if this opportunity is destroyed by Defendants' willful, vicious, and unjustified efforts to destroy the Merger Agreement. Nor will CC Media ever be able to locate any other company with similar, unique assets – in the form of hundreds of exclusive federal broadcast licenses and outdoor advertising permits – if the Merger Agreement fails.

For these reasons, and those stated in greater detail below, Plaintiffs request that the Court act immediately to protect their rights through the entry of a TRO and Temporary Injunction, and that it thereafter provide them with an expedited trial setting in which their claims may be heard by a jury. In support of their right to proceed with their Merger Agreement, unmolested by Defendants, Plaintiffs plead as follows:

DISCOVERY PLAN

Plaintiffs intend that this matter proceed as a Level 3 matter, with an expedited discovery control plan by Court order.

NO FEDERAL QUESTION AND EXCLUSIVE STATE COURT JURISDICTION

This action arises solely under state law. Plaintiffs have invoked no federal claims or law of any kind. Plaintiffs expressly disclaim all potential federal claims. Furthermore, the parties to this action are not of diverse citizenship, and no other basis of federal jurisdiction exists. Accordingly, the action is not removable on any basis.

PERSONAL JURISDICTION AND VENUE

As set out in greater detail below, this Court has both general and specific personal jurisdiction over each of the Defendants. This Court has general personal jurisdiction because Defendants have continuous and systematic contacts with Texas through regularly conducted business and transactions in Texas; maintaining offices in, financing transactions in, and making their financial services available in Texas. In addition, this Court has specific personal jurisdiction because Defendants have committed deliberate tortious acts in Texas and directed at a Texas company, from which Plaintiffs' claims arise.

Venue is proper in Bexar County because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in San Antonio, Bexar County, Texas. Specifically, Defendants tortiously interfered with a contract involving a Texas corporation with its principal place of business in Bexar County, Texas, and, in doing so, caused injury – in Texas – to both Plaintiffs.

THE PARTIES

1. Plaintiff Clear Channel Communications, Inc. is a Texas corporation with its principal place of business in San Antonio, Texas.

2. Plaintiff CC Media is a Delaware corporation with its principal place of business in New York. Pursuant to the Agreement And Plan Of Merger that has been approved by Clear Channel's shareholders, Plaintiff CC Media has a contractual right to acquire Clear Channel no later than June 12, 2008.

3. Defendant Citigroup Global Markets Inc. is a New York corporation with its principal office located at 388 Greenwich Street, New York, New York 10013. Citigroup Global Markets Inc. can be served with process by serving its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

4. Defendant Citicorp USA, Inc. is a Delaware corporation with its principal office located at 450 Mamaroneck Avenue, Harrison, New York 10528. Citicorp USA, Inc. can be served with process by serving its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

5. Defendant Citicorp North America, Inc. is a Delaware corporation with its principal office located at 399 Park Avenue, New York, New York 10043. Citicorp North America, Inc. can be served with process by serving its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

6. Defendant Morgan Stanley Senior Funding, Inc. is a Delaware corporation with its principal office located at 1585 Broadway, New York, New York 10036. Morgan Stanley Senior Funding, Inc. may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code because it is a nonresident who is required by statute to designate or maintain a resident agent or engages in business in this state, but has not designated or maintained a resident agent for service of process; or it is a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process, and this proceeding arises out of the Defendant's conduct or business done in this state.

7. Defendant Credit Suisse Securities (USA) LLC is a Delaware limited liability company with its principal office located at 11 Madison Avenue, New York, New York 10010. Credit Suisse Securities (USA) LLC can be served with process by serving its registered agent, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

8. Defendant RBS Securities Corporation is a Delaware corporation with its principal office located at 101 Park Avenue, New York, New York 10178. RBS Securities

Corporation can be served with process by serving its registered agent, National Registered Agents, Inc., 16055 Space Center, Suite 235, Houston, Texas 77062.

9. Defendant Wachovia Investment Holdings, LLC is a Delaware limited liability company with its principal office located at 301 South College Street, Charlotte, North Carolina 28288. Wachovia Investment Holdings, LLC can be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service pursuant to Section 17.044 of the Texas Civil Practice and Remedies Code because it is a nonresident who is required by statute to designate or maintain a resident agent or engages in business in this state, but has not designated or maintained a resident agent for service of process; or it is a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process, and this proceeding arises out of the Defendant's conduct or business done in this state.

10. Defendant Wachovia Capital Markets, LLC is a Delaware limited liability company with its principal office located at 301 South College Street, Charlotte, North Carolina 28288. Wachovia Capital Markets, LLC can be served with process by serving its registered agent, Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

11. Defendant Deutsche Bank Securities Inc. is a Delaware corporation with its principal office located at 60 Wall Street, New York, New York 10005. Deutsche Bank Securities Inc. can be served with process by serving its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

FACTUAL BACKGROUND

PLAINTIFFS AND THE PURCHASERS REACH AN AGREEMENT

12. Clear Channel, a Texas corporation based in San Antonio, owns or operates through subsidiaries more than 900 radio stations and 800,000 outdoor advertising displays. Clear Channel employs more than 20,000 employees and has interests in other radio broadcasting entities.

13. On November 16, 2006, Clear Channel announced a proposed merger (the “Merger”) that would provide \$18.6 billion in cash to its shareholders and constitute one of the largest leveraged buyouts in the history of this nation.¹ A very competitive auction process preceded the Clear Channel announcement. Some of the largest private equity funds in the world competed for the opportunity to participate in a merger agreement with Clear Channel. A critical factor in the process from Clear Channel’s perspective was the terms and certainty of financing. In fact, Clear Channel required that bidders submit binding financing commitment letters as a part of the overall bid package. Clear Channel engaged advisors to review and assess the relative strength of the financing commitments.

14. The Agreement And Plan Of Merger dated November 16, 2006² between Clear Channel and the Purchasers³ set forth the terms and conditions of the anticipated Merger, and was accompanied by Defendants’ binding commitment to finance the Merger. That commitment

¹ Two amendments to the Merger Agreement resulted in a higher per-share price to shareholders, and other options in lieu of a cash payout under certain terms and conditions.

² Later amended by the parties as of April 18, 2007 and May 17, 2007.

³ As used in this Petition, the term “Purchasers” refers to BT Triple Crown Merger Co., Inc.; B Triple Crown Finco, LLC, and T Triple Crown Finco, LLC, all parties to the Merger Agreement.

was contained in the Commitment Letter, all conditions of which have been satisfied – or would have been satisfied but for Defendants’ wrongful interference in the Merger Agreement.

15. On May 17, 2007, the Purchasers and BT Triple Crown Capital Holdings III, Inc. (now known as CC Media Holdings, Inc.) entered into an amended Agreement And Plan Of Merger (the “Merger Agreement”), which provides for the merger of Mergerco, an entity established exclusively for purposes of the Merger,⁴ with and into Clear Channel.⁵ The Merger Agreement was, again, accompanied and supported by Defendants’ unequivocal commitment to finance the Merger.⁶

16. Following the execution of the Merger Agreement, Clear Channel put forth enormous effort and expense in procuring its shareholders’ approval of the proposed transaction, which was finally achieved on September 25, 2007. Clear Channel also expended substantial effort to obtain regulatory approval of the proposed Merger. Untold manpower and money has been devoted to these efforts.

17. Plaintiffs’ and the Purchasers’ willingness and ability to enter into the Merger Agreement and pursue consummation of the Merger was dependent upon the Defendant Banks’ timely commitment to fund the transaction, and the Defendants clearly understood and agreed that the consummation of the Merger was dependent on their fulfillment of their obligation to fund the corresponding loans. Defendants also understood that their concrete commitment, which was more robust and definitive than that provided by any other bidder, was a key reason

⁴ Mergerco was established by Bain Capital Partners, LLC and Thomas H. Lee Partners, L.P. and certain of their affiliates (collectively, the “Sponsors”).

⁵ According to the terms of the Merger Agreement, Mergerco will cease to exist upon consummation of the Merger and Clear Channel will continue as the surviving entity and a wholly-owned subsidiary of CC Media.

⁶ Additionally, the Defendants were well aware of the terms of the Merger Agreement, just as Plaintiffs were well aware of the Defendants’ commitment to fund the transaction.

why Plaintiff Clear Channel selected Plaintiff CC Media as its buyer. In short, Defendants actually knew about the Merger, about Plaintiffs' Merger Agreement, just as they knew that the certainty of available financing was integral to the overall negotiations and consummation of Plaintiffs' contract. Without this type of funding commitment, large commercial transactions would be virtually impossible to orchestrate, because the parties' expectations and corresponding negotiations and agreement depend, in large part, upon the lenders' solid commitment to any given project.

DEFENDANTS COMMIT TO FUND THE MERGER TRANSACTION

18. Many entities eager to participate in the nationally publicized proposed Merger, including Defendants, competed vigorously for the grand opportunity to participate as lenders in the transaction.⁷ Ultimately, Defendants were awarded the contract because their Commitment Letter was so definitive and left nothing to chance concerning whether the funding would be available to close the transaction. Defendants, understanding the risks and desiring the rewards of doing so, executed a binding commitment to fund the Merger on or about November 16, 2006, and again on May 17, 2007. Through the Commitment Letter, Defendants collectively pledged more than \$22 billion through various types of credit facilities for purposes of the Merger transaction. The Commitment Letter constitutes a valid, binding, and enforceable agreement. It remains in effect today, and Defendants have no just reason for refusing to perform – or for their intentional interference in the closing of the Merger Agreement.

19. Executed by highly sophisticated and internationally renowned financial entities, the Commitment Letter guarantees essential, long-term financing for the Merger. It is not subject to Defendants' withdrawal. Among other things, in exchange for their commitment

⁷ The transaction was given the code name Project Triple Crown.

Defendants are *guaranteed* over **\$360 million** in fees over the life of their financing commitments.

20. Defendants are highly sophisticated financial institutions. They make money, at least in part, from the fact that interest rates and market conditions can, and do, vary – sometimes in dramatic fashion. When they signed the Commitment Letter, therefore, Defendants knew that market conditions can, and certainly *will*, change over time. That is precisely why, among other things, they negotiated a *floating interest rate*, that is a fixed increment *above* the prevailing London InterBank Offering Rate (LIBOR). This floating interest rate was designed to, and does, protect Defendants against variations in the prevailing market interest rates. The floating rate commitment, and other provisions of the Commitment Letter, ensure that every Defendant will have a positive return, relative to the market, for every day the loans are in effect. In short, the Commitment Letter is a document that is designed to, and does, assure Defendants a substantial return to the market. It is not, therefore, subject to *additional, non-contractual* adjustments or dismissals to accommodate market conditions and/or Defendants' whim.

21. Defendants and Plaintiffs also specifically negotiated the allocation of risk in the event that market conditions changed. *Critically, Defendants did not negotiate an option to refuse to finance the transaction if market conditions made it difficult to syndicate the debt.* The terms negotiated by these astute entities included the Defendants' unambiguous and unequivocal assumption of any risk associated with market conditions, including any potential deterioration of the credit markets.⁸

⁸ The Banks' commitment is subject only to very specific conditions, expressly stating that:

Notwithstanding anything in this Commitment Letter, the Fee Letter, the Credit Facilities Documentation or any other letter agreement or other undertaking concerning the financing of the transactions contemplated hereby to the contrary, the only conditions to availability of the Credit Facilities on the