#167

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PARAMOUNT COMMUNICATIONS INC. and KDS ACQUISITION CORP., Plaintiffs, -against- TIME INCORPORATED, TW SUB INC., JAMES F. BERE, HENRY C. GOODRICH, CLIFFORD J. GRUM, MATINA S. HORNER, DAVID T. KEARNS, GERALD M. LEVIN, J. RICHARD MUNRO, N. J. NICHOLAS, JR., DONALD S. PERKINS, CLIFTON R. WHARTON, MICHAEL D. DINGMAN, EDWARD S. FINKELSTEIN, HENRY LUCE III, JASON D. McMANUS, JOHN R. OPEL and WARNER COMMUNICATIONS INC., Defendants.	C.A. No. 10866 AFFIDAVIT OF JAMES F. BERE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JAMES F. BERE, being duly sworn, deposes and says:

1. I am the Chairman and Chief Executive Officer of Borg-Warner Corporation, the President of Borg-Warner Automotive, Inc., and a director of Time Incorporated ("Time"). I make this affidavit in response to the Motion for a Preliminary Injunction filed by Plaintiffs Paramount Communications Inc. and KDS Acquisition Inc. (collectively referred to as "Paramount").

2. I received a bachelor's degree and a master's degree in business administration from Northwestern University in 1946 and 1950, respectively. I joined Borg-Warner Corporation ("Borg-Warner") in 1961 as the president and general manager of the Borg & Beck division. I was promoted to group vice president in 1964. In 1966, I became executive vice president in charge of all automotive operations. I was appointed President and Chief Operating Officer of Borg-Warner in 1968; Chief Executive Officer in 1972; and Chairman and Chief Executive Officer in 1975.

3. I also serve on the Board of Directors of Abbott Laboratories, American Information Technologies Corp., K Mart Corp., Temple-Inland, Inc. and Tribune Co. I am chairman of the Chicago Museum of Science and Industry, a trustee of the University of Chicago and the Fuller Theological Seminary in Pasadena, California, and an advisory council member of Northwestern University's Kellogg Graduate School of Management. I am also a member of the Advisory Council of the U.S.-Japan Business Council, a director of the Chicago Council on Foreign Relations, and a member of the Business Council and the Business Roundtable.

<u>Time's Business Strategy</u>

4. Time has, over the last several years, developed a business strategy of expanding its participation in

motion picture production. Various alternatives to this strategy had previously been considered and rejected, including expanding operations in print communications by acquiring or entering some form of business combination with a book or newspaper publisher or entering broadcasting by combining with one of the major broadcast networks.

5. One of the principal reasons the strategy of expanding into motion picture production was developed was concern over the availability of video product, what I refer to as "software", for presentation on Time's wholly-owned subsidiary Home Box Office Inc. ("HBO") and its 82 percent owned subsidiary American Television and Communications Corporation ("ATC"). Time was concerned that it would constantly be negotiating for the software that HBO and ATC needed for survival and believed that HBO had made some deals that appeared in hindsight to be very expensive. Time was concerned that if it ultimately did not have a movie producer, it conceivably could be put in the position where it would have to pay an inordinate amount for such product and be non-competitive.

6. I was in favor of and impressed by this business strategy. I was concerned because this strategy represented a considerable change for Time which previously was a company focused on print communications. I believe that Time's management had thoroughly thought through the

strategy. It was a pro-active strategy designed to anticipate the changing realities of the business world.

7. In November 1982, Time entered a joint venture with an affiliate of Columbia Pictures Industries, Inc. and CBS to form a new studio, Tri-Star Pictures, to produce feature length motion pictures and other entertainment products as a step towards effectuating its strategy.

Initial Discussions Concerning Warner

8. In the spring of 1987, Time began to discuss a potential joint venture with Warner Communications Inc. ("Warner") as a means of further effectuating its business strategy. The possibility of a joint venture that would operate HBO, Warner Bros. studio and the cable companies owned by Time and Warner was discussed. Eventually, those discussions evolved into consideration of a full scale merger.

9. In June of 1988, Mr. Munro sent me a copy of a strategic report that had been prepared by a group of Time's operating personnel. That report confirmed the view of Time's senior management that the company needed to expand into motion picture production.

10. Shortly after I received that report, Mr. Munro and Mr. Nicholas came to Chicago to meet with me and my fellow director Don Perkins. Mr. Munro and Mr. Nicholas stated that they wanted to be sure that on a

one-on-one or small group basis there could be full discussion of Time's business strategy so that they could see if there was consensus among the directors on that strategy. I had encouraged Mr. Munro and Mr. Nicholas to hold such meetings because I believed that the Board should reach a consensus on what it was trying to accomplish before implementing the strategy.

11. The first part of this meeting was to review again the ongoing discussion of the overall business strategy. We then discussed in general terms the desirability of a business combination with Warner. Mr. Perkins and I stated that we believed Time management should be the successor management at a combined company, but we also wanted to obtain a structure that would optimize the talents of both companies. There were a number of reasons why I believed Time management should be the successor management. The primary reason was that I wanted to be sure that the tradition of separating editorial functions from Time's other business operations, the "separation of church and state", was preserved. That tradition is important in attracting and keeping journalists and editors. I believe that the tradition increases the value of Time's magazine properties and thus redounds to the benefit of shareholders. I also wanted Time management to be the successor management

because I have a high level of confidence in the abilities of Mr. Munro and Mr. Nicholas.

12. At the July 1988 Board meeting, Time's management again reviewed the company's strategic goals. The primary debate at that meeting, in my judgment, was the advisability of expansion into motion picture production. I believed that was the appropriate strategy for Time to pursue and, although no vote was taken, I believe my fellow directors concurred in that view.

13. At the July 1988 meeting, the Board also reviewed the benefits of a business combination with various companies that might fulfill Time's strategic goal, including Warner and Paramount. I concluded, and I believe my fellow directors concurred, that Warner appeared to be the most logical candidate.

14. The directors also discussed, at the July 1988 meeting, the need to ensure that Time management would not be submerged after a business combination with Warner so that the tradition of editorial independence could be preserved. Several directors expressed the view that satisfactory resolution of the issue of management succession was absolutely necessary to Board approval of a combination with Warner. Obviously, management succession was not the reason the Board was interested in the deal, rather it was one of the elements necessary to make the deal work.

15. Throughout the remainder of 1988 and early 1989, the Board was continually advised of the status of discussions with Warner. In early 1989, the discussions became more focused, and Time and Warner began to resolve many outstanding issues.

The Original Merger Agreement

16. On March 3, 1989, the Board voted to approve a Merger Agreement in which Warner shares would be exchanged for Time shares at an exchange ratio of 0.465 (the "Original Merger Agreement").

17. I did not and do not view the Original Merger Agreement as a sale of Time. The Board was implementing a long-term strategy that the directors were convinced was in the best interest of Time's shareholders. If I had thought that approval of the Original Merger Agreement obligated the Board to seek to maximize short-term value, I would not have voted for it.

Compensation Considerations

18. I am Chairman of the Board's compensation committee. I am very concerned about the general levels of executive compensation in this country. I think there's too wide a disparity between what top executives are making and what other people within the company earn. An ongoing concern of directors is to be sure that the company pays

adequate wages so it can attract good people, consistent with stockholder interests.

19. My initial reaction to Mr. Ross' compensation was that it was an inordinate amount in relationship to that of other Time officers. The level of Mr. Ross' compensation and of the salary levels of others involved in the entertainment industry was basically a cultural shock to the Board. However, upon analysis, one could make a case that Mr. Ross' compensation has increased with the success of Warner and thus was linked to shareholder value. This gave me comfort since I believed in linking executive compensation to stockholder value.

20. I ultimately decided to approve Time's adoption of Mr. Ross' contract because, in my opinion, that was a very small price to pay for honoring Warner's commitments to Mr. Ross in order to implement a strategy that I believed in very strongly. Mr. Ross is obviously a very talented person. If he could do for Time's shareholders what he apparently did for Warner's, we would be getting a great bargain. Mr. Ross' compensation would not increase as a result of the Original Merger Agreement.

21. I was very concerned about the effect of Mr. Ross' contract on Time personnel, particularly Mr. Munro and Mr. Nicholas. Therefore, the Compensation Committee did make some adjustments to Mr. Munro's and Mr. Nicholas'

employment contracts. However, those adjustments were very modest in relationship to Mr. Ross' compensation packages. Mr. Munro's and Mr. Nicholas' compensation packages are consistent with those of executives at companies comparable in size to Time and Warner combined.

22. The duration of Mr. Munro's and Mr. Nicholas' employment agreements was designed to provide them direct equality in the new management team. I voted in favor of long-term agreements for Mr. Munro and Mr. Nicholas because I believed those provisions would make it clear that the Board expected Time management ultimately to succeed to control of the combined company.

23. Mr. Temple did express strong views about the employment agreements for Mr. Ross, Mr. Nicholas and Mr. Munro. Mr. Temple simply does not like the entertainment business and, as a consequence, he thinks those in that business are paid too much and that they are also eroding the whole society through what they choose to produce. Mr. Temple has expressed these views on an ongoing basis over the last few years, and he expressed them again when the Board discussed Mr. Ross', Mr. Munro's and Mr. Nicholas' employment agreements.

24. Mr. Temple also stated that he believed that certain aspects of the compensation packages for Mr. Munro and Mr. Nicholas were excessive. He just does not believe

in paying executives the high salaries that are generally paid today. I have great respect for Mr. Temple, but I disagree with his general views about executive compensation. I believe if companies do not pay their executives well, they will not get the talent needed to run their business operations.

25. However, after voicing his objections, Mr. Temple voted to approve the employment agreements for Mr. Munro, Mr. Nicholas and to accept the compensation level for Mr. Ross.

<u>Pooling</u>

26. The Original Merger Agreement contemplated obtaining pooling-of-interests accounting treatment. I preferred pooling at the time the agreement was adopted. However, I believed that the merger should proceed even if pooling were not approved, or was otherwise unavailable.

27. Management's position has always been that Time should proceed with a transaction with Warner even if pooling accounting could not be used. Mr. Nicholas expressed this view to me in the summer of 1988 when he and Mr. Munro came to Chicago to discuss Time's business strategy and a possible combination with Warner.

28. Mr. Nicholas explained even in 1988 that he believes the financial community will value Time, after a combination with Warner, on a cash flow rather than earnings

per share basis. Therefore, purchase accounting, which would decrease earnings by resulting in amortization of goodwill, should not reduce the value placed on the company in the financial markets. Time's financial advisors also expressed this view.

Claimed Defensive Motives

29. The Original Merger Agreement was not motivated by defensive considerations. Under no circumstances would I ever recommend or vote in favor of a merger transaction predicated solely or primarily on defensive considerations, without giving overriding weight to stockholder interests.

30. On the other hand, it would be foolish to claim that I was oblivious to the possibility that an unsolicited bid for Time might occur. I believe that, given today's economic climate, that possibility is constantly in the background when any corporate decision is made.

31. I believe that the combined company may be more difficult to buy because of its size, but the size of the company certainly does not preclude or even significantly deter an acquisition. I can recall when people believed a $4 billion company was too large for a hostile acquisition and that certainly proved to be untrue.

32. I did not vote in favor of the Original Merger Agreement to entrench Time's management. I have no desire

to entrench Mr. Munro, Mr. Nicholas or Mr. Levin in their positions. I wanted Time management to be the successor management because I wanted to preserve the Time culture and its tradition of editorial independence. I do not believe that the Original Merger Agreement assures Mr. Munro, Mr. Nicholas or Mr. Levin of their positions. They will not be able to retain their jobs if they do not satisfactorily perform.

33. I did not vote in favor of the Original Merger Agreement to entrench myself. I believe the notion that I would do so is absurd. I am very busy and serve on several other Boards. I could also, if I so desired, serve on many more Boards. I serve on Time's Board by choice, and I simply have no need or desire to entrench myself.

34. The Share Exchange Agreement was designed to make it a little more difficult for anyone to interfere with the Original Merger Agreement. It was also designed to be a first step toward concluding the whole transaction.

35. To the extent the Share Exchange Agreement can be considered defensive, it was defensive of the Original Merger Agreement, not of Time and Warner standing alone. The only possible defensive effect the Share Exchange Agreement could have is that it could potentially increase slightly the price an acquiror would have to pay to take over either company because more shares would be outstanding

-- that perceived effect was thought to make the merger more difficult to interrupt.

The Paramount Offers

36. Paramount announced an offer to purchase Time's shares for $175 on June 6, 1989. At meetings held on June 8, 11, 15 and 16, the Board decided to reject Paramount's offer and to amend the terms of the merger agreement with Warner.

37. We did not feel it necessary to negotiate the Paramount bids because they were determined to be inadequate. The long term benefits from the Warner combination far outweighed those of the Paramount bids. More importantly, Time simply was not for sale and we had no desire to give any appearance that we were negotiating to sell it. Furthermore, we had been informed by Time's financial advisors a number of times that if we wanted to sell Time, they could secure much more attractive offers through a formal auction.

38. The Board decided to revise the merger agreement because it was concerned that, under the circumstances, the requisite shareholder approval might not be obtained due to factors other than informed shareholder choice. My purpose in voting to approve those revisions, and I believe my colleagues' purpose, was to proceed with the previously determined strategic course.

39. Before deciding to proceed with a combination with Warner, the Board again considered the possible benefits of a combination with Paramount and concluded, as it had before, that Warner was a better choice. I continue to believe that a combination with Warner represents a better opportunity for building Time shareholders' value than a combination with Paramount. I believe Paramount's claim that it represents as good a fit as Warner is based on the assumption that its financial services subsidiary, Associates, is sold. That of course is not fact; it's a hope on their part. But, even if you assume that Associates is sold, Time and Warner combined will have a higher cash flow than Time and Paramount would. In addition, Paramount does not present the opportunities for international expansion that the Warner transaction clearly does.

40. I am entirely comfortable with the financial terms of the revised agreement with Warner. I am always concerned about debt, but I have experience in managing a company with high levels of debt. At Borg-Warner, I went from a company that never had more than a 20 percent debt-equity ratio to one with a ratio of about 100 percent, and the company survived. I recognize that the Time-Warner combination would have a high debt level and that it would not be as comfortable to manage as a company with a balance sheet with low debt. However, I would never have voted in

favor of the revised agreement unless I believed the company could handle the debt level and be very successful. When I voted for the original transaction, I was aware we might end up in a transaction like the present one if someone made a hostile offer for Time or Warner.

41. I am absolutely confident that the new transaction with Warner will enhance shareholder value in the long-term.

42. Our tender offer for Warner was not conditioned on cable approvals because there was simply no need for such a condition. By the time we announced our offer for Warner, we already had the vast majority of the approvals necessary, and there was no reason to recycle them. The tender offer was merely a change in the means by which we would combine with Warner; because the approvals were given on the assumption of a Time-Warner combination, we believed the previously obtained approvals would remain valid.

43. The terms of Mr. Munro's and Mr. Nicholas' employment contracts were not altered in connection with the revised agreement. Mr. Ross' contract also remains essentially the same -- the consequences change somewhat because of the likely effects of the revised agreement. For example, Mr. Ross' bonus is tied to the company's earnings. In the next few years, Time will likely have negative

earnings because of the interest expense it will incur. Thus, Mr. Ross will have no guaranteed bonus. In addition, the stock options and other stock based compensation arrangements held by Warner employees, including Mr. Ross, will be cashed out at the tender offer price of $70 per share rather than the previously estimated price of about $55 per share. That is a function of a change in the price of Warner shares.

44. My motivation in voting for the new transaction was to implement the overall strategy that had been developed years earlier. I had no desire to lock-up Time or to impede Paramount's takeover effort. In fact, I do not think there is such a thing as locking up companies today. I believe that's a myth. The fact that at the moment Paramount says it does not want to take over the combined company does not mean that the Board's decision to adhere to its previous determination to combine with Warner is a lock-up.

45. I voted to reject Paramount's first $175 offer and its second $200 offer. I list below the primary reasons for my views with respect to those offers.

46. I believe the prices are inadequate by all relevant measures, particularly given the likely delay and corresponding reduction in the present value of the offer price.

47. In addition, I do not believe Time should now be sold. The Board has always had the option of selling available. Obviously, one of the strategic options always available is to sell. In my opinion, Time should continue to pursue the long run strategy it had determined was its best option before the Paramount offers were announced.

James F. Bere

Sworn to before me this
day of July, 1989

Notary Public