

#157

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

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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.  
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C.A. No. 10866

AFFIDAVIT OF  
KEVIN D. SENIE

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

KEVIN D. SENIE, being duly sworn, deposes and  
says:

1. I am Vice President and Treasurer of Time  
Incorporated ("Time"). I participated in the negotiating  
and arranging the financing for Time's acquisition of Warner  
Communications Inc. ("Warner"). I make this affidavit in  
response to the affidavit of Stephen M. Waters, sworn to  
July 10, 1989.

2. Time has made a tender offer to acquire 51% of Warner's outstanding stock in a tender offer at \$70 per share. To finance the tender offer, Time intends to borrow \$8.35 billion from a syndicate of commercial banks, with Manufacturers Hanover Trust Company ("Manufacturers Hanover") and Bankers Trust Company ("Bankers Trust") acting as the lead banks (the "Tender Facility"). At the time of the merger, the Tender Facility will be refinanced and a merger facility will be put in place. Time has not yet decided the form of the merger consideration or the structure of the merger facility.

3. Time received letters from Manufacturers Hanover and Bankers Trust stating that they are highly confident that they can syndicate senior debt facilities aggregating up to \$14 billion. (A copy of their highly confident letters are attached hereto as Exhibits A and B.) In connection with the financing for the second step merger, Shearson Lehman Hutton Holdings Inc. and Merrill Lynch & Co., Inc. have committed to purchase up to \$2 billion of senior subordinated notes. (A copy of the commitment letter is attached hereto as Exhibit B.)

4. The term sheet that Mr. Waters refers to in his affidavit (¶ 3) relates to the Tender Facility. Time determined that it was advantageous to retain its flexibility to fix the structure of the merger transaction,

and as a result we have not prepared a term sheet for the merger facility. Consequently, Time has not yet asked the commercial banks to loan money to the combined entity of Time and Warner.

5. The existing term sheet was prepared to send to the banks to obtain commitments to participate in the syndicate for the Tender Facility which will finance Time's tender offer for Warner. Time sought to obtain sufficient commitments to fund the \$8.35 billion Tender Facility by July 17, the date on which Time's tender offer for Warner is scheduled to expire. Because prompt commitments were desired, we established the terms of the Tender Facility very conservatively, after consultation with the banks, so as to allow the banks to review our proposal easily and quickly and to assure the prompt securing of commitments.

6. In addition, Time has not yet determined the form of the merger consideration and has decided to retain its flexibility to structure the form in the future. We saw no benefits to committing to the structure of the merger transaction at this time. To accommodate the desire of the banks to have some information concerning the parameters of the terms for the merger consideration, while still maintaining Time's flexibility, we agreed with the banks to certain parameters for one financial scenario for the merger, including the two terms that Mr. Waters refers

to--the \$2 billion of subordinated debt and the 25% equity limitation. (See Waters Aff. ¶ 3 and nn. 1, 2.) The merger agreement with Warner contemplated that there would be some equity financing in the merger, and we chose 25% for this scenario. Because the structure of the actual merger may be different, the term sheet for the Tender Facility provides that the financial structure of the merger may be changed with the banks' consent.

7. The banks never said that those terms for the structure of the merger financing were the only terms under which banks would commit to participate in the Tender Facility. Rather, we agreed to state those terms in the term sheet because we were informed by Manufacturers Hanover and Bankers Trust that that combination of subordinated debt and equity financing would be a structure of merger financing with which the banks would be comfortable. By providing a back-end structure that would be comfortable to the banks, we intended that the banks would be able to review our proposal easily and to commit to participate in the Tender Facility promptly, which expectation was more than fulfilled.

8. Although we sought commitments of only \$8.35 billion, we received commitments from 40 banks for a total of \$27.525 billion, more than three times as much as we sought. All 40 of those banks made their decision to

commit to the Tender Facility within the short time period that we requested. Of the 40 banks, 30 committed to lend Time more than \$500 million and 4 committed to lend \$1 billion each.

9. Mr. Waters states that "Time's own bankers--who have complete access to information about Time's financial position--have made the determination that a combined Time-Warner entity will not support additional debt." (Waters Aff. ¶ 5.) At no time have any of the banks participating in the Tender Facility (or, for that matter, any other bank) said or even suggested to me that Time Warner will not support additional debt. Indeed, the fact that Manufacturers Hanover and Bankers Trust stated that they are highly confident that they can arrange senior debt facilities aggregating up to \$14 billion demonstrates the opposite.

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Kevin D. Senie

Sworn to before me this  
day of July, 1989.

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Notary Public