

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. \_\_\_\_\_

AFFIDAVIT OF MELVYN L. CANTOR

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

MELVYN L. CANTOR, being duly sworn, deposes and says:

1. I am an attorney and a member of the firm of Simpson Thacher & Bartlett (a partnership which includes professional corporations), attorneys for Plaintiffs Paramount Communications Inc. ("Paramount") and KDS Acquisition Corp. I am fully familiar with the facts and circumstances set forth herein based upon my own knowledge or from review of documents in the possession of my Firm. I submit this affidavit in support of Plaintiffs' motions for a temporary restraining order, an order granting expedited discovery and scheduling, an order

directing the issuance of a commission to take the depositions of certain non-party witnesses, and an order to appoint a special process server. I also submit this affidavit for the purpose of introducing into the record certain relevant documents contained in Plaintiffs' Appendix of Exhibits in Support of Their Motion for a Temporary Restraining Order and for Expedited Discovery and Scheduling (the "Appendix of Exhibits") submitted herewith.

#### BACKGROUND

2. On June 7, 1989, Plaintiffs commenced a tender offer for all outstanding shares of Time Inc. ("Time"), at an all cash price of \$175 per share (the "Offer"), a \$49 premium over the June 6 closing price of Time common stock. The Offer is currently scheduled to expire on July 5, 1989. A copy of the Offer to Purchase is Exhibit A in the Appendix of Exhibits.

3. Subject to stockholder approval, Time and Warner Communications Inc. ("Warner") have entered into an Agreement and Plan of Merger (the "Warner Merger Agreement") to combine Time and Warner in a stock for stock merger (the "Warner Merger"), to form a new entity, Time Warner. A copy of the Warner Merger Agreement is Exhibit B in the Appendix of Exhibits. Time's 1989 annual meeting at which its stockholders will be asked to approve the Warner Merger is scheduled for June 23, 1989. The Time and Warner Joint Proxy Statement informing Time stockholders of the annual meeting and describing the Warner Merger is Exhibit C in the Appendix of Exhibits.

4. Plaintiffs commenced this action on June 7, 1989, seeking, among other things, an order declaring that an illegal Share Exchange Agreement between Time and Warner (the "Lock-Up Stock Swap") is null and void and temporarily, preliminary and permanently enjoining any steps to implement it.

#### IMPEDIMENTS TO THE OFFER

##### A. The Lock-Up Stock Swap.

5. The Lock-Up Stock Swap was executed as a side agreement to the Warner Merger without stockholder approval. It provides that, upon the mere announcement of a tender offer for Time, a huge block of over seven million shares of newly issued Time stock will be transferred to Warner. The purpose of the Lock-Up Stock Swap is to prevent Time stockholders from receiving superior offers that might compete with the Warner Merger favored by Time management. Copies of the Lock-Up Stock Swap and the First Amendment thereto are Exhibit D in the Appendix of Exhibits.

6. The Offer is a "Trigger Event" that permits either party to initiate the stock swap. Under the terms of the Lock-Up Stock Swap, the exchange of shares will occur on the fifth business day following written notice by either party of its election to issue and transfer the shares. However, because Time and Warner may amend the Lock-Up Stock Swap to eliminate the five day closing period, Plaintiffs require immediate, temporary relief.

B. The Shareholder Rights Plan.

7. For Plaintiffs to acquire Time and Time stockholders to receive the benefits of the Offer, the Board of Directors must redeem certain preferred stock purchase rights (the "Rights") issued pursuant to Time's Shareholder Rights Plan. A copy of Time's Securities and Exchange Commission Form 8-A, filed July 9, 1986, describing Time's Shareholder Rights Plan together with the subsequent amendments thereto, is Exhibit E in the Appendix of Exhibits.

C. Breaches of Fiduciary Duty

8. Plaintiffs anticipate that the Time Directors will breach their fiduciary duties to the Time stockholders by failing to approve the Offer even though the Offer provides far greater value to Time stockholders than the Warner Merger.

REQUESTED INTERIM RELIEF

9. As indicated above, Plaintiffs require temporary and preliminary relief enjoining the illegal Lock-Up Stock Swap. In addition, Plaintiffs' Offer cannot proceed without a preliminary injunction against other unlawful measures by which Defendants can deter or preclude stockholder consideration of Plaintiffs' Offer. Plaintiffs therefore request that the Court schedule a prompt hearing to preliminarily enjoin the Lock-Up Stock Swap and grant Plaintiffs the following additional preliminary relief:

- a) An order declaring that the Offer is not subject to the restrictions of the Delaware Business Combination Statute, 8 Del. C. §203, or, in the alternative, an order requiring the Time Board

of Directors to approve a business combination with Paramount pursuant to the Offer.

b) An order requiring the Time Board of Directors to take all necessary steps to exempt the Offer from the discriminatory voting provisions of Article V of the Time Charter. A copy of Time's Restated Certificate of Incorporation is Exhibit F in the Appendix of Exhibits.

c) An order requiring Time and the Time Board of Directors to redeem the Rights.

d) An order preliminarily enjoining the Defendants, their employees, agents and all persons acting on their behalf or in concert with them from taking any actions with respect to the sale, transfer or disposition of Time stock or assets or entering into any other extraordinary corporate transaction, including purchases of assets until the Offer has been concluded and Plaintiffs have been given a reasonable opportunity to negotiate a purchase of Time.

#### THE PROPOSED DISCOVERY SCHEDULE

10. Discovery in this matter must proceed at a pace consistent with the timetable for Plaintiffs' Offer. The expiration date of the Offer represents the outside date for obtaining all preliminary injunctive relief requested in the Complaint. Accordingly, Plaintiffs have requested an Order directing Defendants to comply, on shortened notice, with Plaintiffs' First Request for Production of Documents. A copy of this discovery notice is Exhibit G in the Appendix

of Exhibits. Plaintiffs' proposed order also seeks permission to take depositions of the Defendants on three days' notice.

11. Plaintiffs also seek limited discovery from certain non-party investment bankers and accountants who advised the Defendants concerning the Warner Merger, the Lock-Up Stock Swap and the Rights Plan. These non-parties will also likely render financial advice to Time and Warner with respect to the Offer. To accomplish this discovery, Plaintiffs have requested an order issuing commissions, in the form submitted herewith, to take the depositions within the State of New York on an expedited basis of non-party witnesses Shearson Lehman Hutton Inc., Lazard Freres & Co., Wasserstein, Perella & Co., and Ernst & Whinney, all of which have their principal offices in New York City. Copies of the subpoenas duces tecum and ad testificandum that Plaintiffs intend to serve on these witnesses are annexed to Plaintiffs' Motion for a Commission, also filed on this date.

12. Since the claims on which Plaintiffs seek expedited discovery concern defensive measures adopted by the Defendants, Defendants and the non-parties that assisted them are thoroughly familiar with the relevant facts. The substantial corporations and sophisticated individuals from whom discovery is sought are currently represented by counsel in connection with the Warner Merger and are capable of responding to Plaintiffs' discovery requests on an expedited basis. To facilitate prompt production of documents and preparation for the preliminary injunction hearing, Plaintiffs have prepared a proposed confidentiality order. The proposed confidentiality order is Exhibit H in the Appendix of Exhibits.

13. Plaintiffs have made no previous application for the relief sought herein.

  
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Melvyn L. Cantor

Sworn to before me this  
6th day of June, 1989

  
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Notary Public

**ANNE GILDE**  
Notary Public, State of N.Y.  
No. 24-010488284  
Qualified in Kings County  
Cert. Filed in N.Y. Co.  
Comm. Expires 2/17/99