

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§
	§ Chapter 11
IHEARTMEDIA, INC., <i>et al.</i> ,	§
	§ Case No. 18-31274 (MI)
Debtors.	§
	§ (Jointly Administered)
	§

**DECLARATION OF ANDREW J. ENTWISTLE IN SUPPORT OF JOINT MOTION
FOR PRELIMINARY SETTLEMENT APPROVAL AND GAMCO ASSET
MANAGEMENT, INC.’S EMERGENCY MOTION FOR RELATED RELIEF**

I, ANDREW J. ENTWISTLE, hereby declare pursuant to 28 U.S.C. § 1746:

1. I am a partner at the law firm of Entwistle & Cappucci LLP. I am admitted to practice law in the State of Texas and before this Court.

2. I represent GAMCO Asset Management, Inc. (“GAMCO”), a party-in-interest to the Debtors’ chapter 11 cases by virtue of GAMCO’s status as a significant minority shareholder of Clear Channel Outdoor Holdings, Inc. (“CCOH”), which is in turn a creditor of Debtor iHeartCommunications, Inc. (“iHC”) by virtue of an outstanding balance on an intercompany revolving promissory note (the “Intercompany Note”) owed by iHC to CCOH.

3. I submit this declaration (the “Declaration”) in support of the contemporaneously-filed:

(i) *GAMCO Asset Management, Inc.’s Emergency Motion for Entry of An Order (I) Directing the Application of Bankruptcy Rules 7023 and 7023.1, (II) Certifying a Class, Designating a Class Representative, and Appointing Class Counsel for Purposes of Settlement, and (III) Granting Related Relief* (the “Class Certification Motion”); and

(ii) *Joint Emergency Motion for Entry of an Order (I) Directing the Application of Bankruptcy Rules 7023 and 7023.1, (II) Preliminarily Approving the Settlement,*

(III) Approving the Retention of Prime Clerk LLC as Notice Administrator, (IV) Approving the Form and Manner of Notice, (V) Scheduling a Fairness Hearing to Consider Final Approval of the Settlement as Part of Confirmation of the Plan, and (VI) Granting Related Relief (the “Joint Motion”).

4. The settlement and mutual release attached to the Joint Motion as Exhibit 1 to Exhibit A (the “Settlement,” and the agreement, the “Settlement Agreement”), if ultimately approved by the Court after notice and a final approval process, will resolve current class action litigation by GAMCO on behalf of itself and other minority shareholders (the “CCOH Minority Shareholders”) of CCOH (the “Delaware Action”) and potential objections by GAMCO on behalf of such shareholders to confirmation of the *Modified Fifth Amended Joint Chapter 11 Plan of Reorganization of iHeartMedia, Inc. and its Debtor Affiliates pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan”) (Docket No. 1632).

5. I participated on behalf of GAMCO in extensive negotiations with the parties to the Joint Motion and Settlement Agreement (the “Parties”). I have knowledge of the facts alleged in the Delaware Action, the facts and representations set forth in the Class Certification Motion and Joint Motion regarding the terms of the Settlement Agreement, and the circumstances that led GAMCO to enter agree to the terms of the Settlement, execute the Settlement Agreement, and seek the relief in the Class Certification Motion and Joint Motion.

6. As will be set forth in more detail in connection with the Parties’ later motion for final approval, the extensive process by which this Settlement was reached demonstrates that it is fair and devoid of any deficiencies. It was agreed upon only after extensive arm’s-length negotiations by experienced counsel and provides extensive benefits to CCOH’s shareholders. The settling parties and their counsel were well informed about the strengths and weaknesses of GAMCO’s claims in the Delaware Litigation and potential confirmation objections and there is no

doubt that the Parties (and the Class) were and will be fairly and adequately represented throughout the course of the Settlement negotiations and approval process.

GAMCO's History as a CCOH Shareholder

7. GAMCO is a long-time shareholder of CCOH. GAMCO currently owns 11% of the outstanding Class A common shares of CCOH and 1.5% of all outstanding common shares overall, making it one of the largest Minority Shareholder of CCOH. Since 2005, Debtor iHC has been the controlling shareholder of CCOH, owning 89.5% of all outstanding shares.

8. In May 2016, GAMCO filed a derivative action on behalf of CCOH ("GAMCO's 2016 Litigation") against many of the same Defendants (as defined below) currently named in the Delaware Action claiming breaches of fiduciary duty for, among other things, failure to effectuate repayment of the Intercompany Note.

9. Following its complaint, GAMCO intervened in the Texas Litigation (as defined in ¶ 266 of the Plan) to protect the interests of CCOH's then-minority shareholders in the dispute to determine, among other things, whether iHC was permitted to transfer shares of CCOH to a subsidiary.

10. In November 2016, the Delaware Court of Chancery dismissed GAMCO's 2016 Litigation, holding that it was barred by a settlement of a prior litigation concerning the Intercompany Note because GAMCO had not alleged new circumstances to take the claims outside the prior settlement and had not alleged that triggers had been reached from the prior settlement that would empower CCOH's independent directors to demand repayment.

11. On October 12, 2017, the Delaware Supreme Court affirmed the dismissal of GAMCO's 2016 Litigation, ruling that "the Court of Chancery properly found that under the pled circumstances, *which included the board acting within the framework established by a forward-*

looking settlement agreement and the company's binding contractual obligations that strictly limited its ability to use repaid funds, the complaint failed to state a claim for breach of fiduciary duty."

GAMCO's Delaware Action

12. On August 27, 2018, GAMCO filed a verified class action complaint (the "Complaint," attached hereto as **Exhibit A**) in the Delaware Court of Chancery on its own behalf and on behalf of the Minority Shareholders. *See GAMCO Asset Mgmt. v. Hendrix, et al.*, C.A. No. 2018-0633-JRS (Del. Ch.).

13. The Delaware Action names as defendants (a) members of the CCOH Board as of November 29, 2017, including Blair Hendrix, Douglas L. Jacobs, Daniel G. Jones, Paul Keglevic, Vincente Piedrahita, Robert W. Pittman, Olivia Sabine, and Dale W. Tremblay (collectively, the "Board Defendants"); (b) members of a committee of independent directors of CCOH (the "Intercompany Note Committee") as of November 8, 2017 (the "Intercompany Note Committee Defendants"); and (c) Bain Capital, LP ("Bain") and Thomas H. Lee Partners, L.P. ("THL," and together with Bain, the "Sponsor Entities," and together with the Intercompany Note Committee Defendants and the Board Defendants, the "Defendants"). *See Complaint* ¶ 30.

14. The Complaint alleges that in November 2017 the Board Defendants and the Intercompany Note Committee Defendants breached fiduciary duties owed to the Class relating to the Intercompany Note. The Complaint alleged that the Defendants breached a fiduciary duty by failing to cause CCOH to demand repayment under the Intercompany Note (and renewing the note when it was set to expire) and simultaneously declare a *pro rata* dividend to CCOH's shareholders. *See id.* ¶¶ 19-30. The Complaint seeks declaratory relief and damages for the Class. *See id.* at 77.

GAMCO's Potential Objections to Plan Confirmation

15. On September 5, 2018, GAMCO filed a limited objection (Docket No. 1406) to Debtors' motion to approve the disclosure statement for the proposed Plan on grounds third-party releases in the Plan would putatively release GAMCO's claims in the Delaware Action. Prior to the Settlement, GAMCO was preparing to file an objection to confirmation of the Plan on the same basis – claims the benefitted CCOH and its shareholders would putatively be released.

16. In addition, GAMCO was preparing to file an objection to confirmation of the Plan on the basis that amount owed to CCOH by iHC on the Intercompany Note is improperly categorized by the Plan as a general unsecured claim, rather than as a priority claim by virtue of the fact that the balance on the Intercompany Note was during the relevant time subject to a constructive trust (in addition to related arguments regarding the treatment of the debt) in favor of CCOH.

The Class Here Meets the Requirements for Certification

17. Here the Class satisfies the four requirements for certification: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See* Fed. R. Civ. P. 23.

18. The Class easily meets the numerosity requirement. "As of November 8, 2017, more than 36.1 million [CCOH] Class A common shares were outstanding and held by individuals and entities unaffiliated with Defendants, and members of the class are believed to exceed 100 and be spread across the U.S." Complaint at ¶ 191. Pursuant to publicly available filings, GAMCO is one of the largest minority shareholders of CCOH but GAMCO holds only approximately 1.5 percent of the more than 50.4 million outstanding Class A common shares as of November 5, 2018. *See* Clear Channel Outdoor Holdings, Inc., Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Form 10-Q) (November 8, 2018); Clear Channel Outdoor

Holdings, Inc., Proxy Statements Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Schedule 14A) (May 17, 2018); *see also* Clear Channel Outdoor Holdings, Inc., Statement of Acquisition of Beneficial Ownership by Individuals (Schedule 13G) (Jan. 18, 2018).

19. The claims brought in the Delaware Action similarly meet the commonality requirement in that common questions of law and fact permeate all of the claims. Such questions include, among others:

- Whether the Intercompany Note Committee Defendants breached a fiduciary duty owed to the Class in November 2017 by failing to demand repayment on the Intercompany Note balance and declare a *pro rata* dividend to CCOH Class A shareholders based on the repayment.
- Whether the Board Defendants breached a fiduciary duty owed to the Class in November 2017 by failing to permit the Intercompany Note to mature and declare a *pro rata* dividend to CCOH Class A shareholders based on the repayment.
- Whether the Board Defendants breached a fiduciary duty owed to the Class in November 2017 by failing to demand repayment on the Intercompany Note balance and declare a *pro rata* dividend to CCOH Class A shareholders based on the repayment.
- Whether the Sponsor Entities breached a fiduciary duty owed to the Class in November 2017 by failing to direct the Board Defendants to let the Intercompany Note mature and declare a *pro rata* dividend to CCOH Class A shareholders based on the repayment.
- Whether the Sponsor Entities aided and abetted an alleged breach of fiduciary duty owed to the Class Members by the Board Defendants by failing to direct the Board Defendants to let the Intercompany Note mature and declare a *pro rata* dividend to CCOH Class A shareholders based on the repayment.

See Complaint ¶¶ 192, 212-223.

20. The claims of GAMCO as Class Representative and the claims of the CCOH Minority Shareholders also meet the typicality requirement. All the claims focus on the following conduct as alleged in the Complaint:

- The Intercompany Note Committee Defendants' failure in November 2017 to demand repayment on the Intercompany Note balance and declare a *pro rata* dividend of the proceeds to CCOH shareholders.
- The decision not to let the Intercompany Note expire by its own terms on December 15, 2017, at which time the outstanding balance and all interest accrued and unpaid would have become due and payable without any additional action by CCOH, and declare a *pro rata* dividend of the proceeds to CCOH shareholders.
- The Board Defendants' failure between November 2017 and the Petition Date to demand repayment on the Intercompany Note and declare a *pro rata* dividend of the proceeds to CCOH shareholders.
- The Sponsor Entities' failure to direct the Board Defendants to permit the Intercompany Note to expire and to declare a *pro rata* dividend of the proceeds to CCOH shareholders.

See Complaint ¶¶ 196-223. GAMCO does not allege that it was singled out in any respect; instead, GAMCO alleges that it and the CCOH Minority Shareholders suffered the same harm as a result of the same course of events.

21. Here GAMCO will adequately represent the Class. GAMCO's interests and those of the CCOH Minority Shareholders are fully aligned. As one of the largest Minority Shareholders, GAMCO stands to benefit as the Settlement provides substantial benefits for CCOH and all minority shareholders of CCOH. Additionally, as evidenced by the substantial benefit that would accrue to the Class Members from the Settlement, GAMCO's chosen counsel is qualified, experienced, and best positioned to continue to represent the interests of all of the Class Members.

Entwistle & Cappucci LLP Is Appropriate Class Counsel

22. Entwistle & Cappucci LLP, GAMCO's choice of counsel in the Delaware Action and in Debtors' chapter 11 cases, is well qualified and experienced in prosecuting complex litigation in State, Federal and Bankruptcy court on behalf of shareholders such as the Class, has

devoted considerable resources to identifying and investigating the claims underlying the Complaint, and remains fully committed to devoting its resources on behalf of the Class.

23. In this regard, Entwistle & Cappucci LLP currently serves as co-lead class counsel representing GAMCO as lead plaintiff on behalf of a worldwide class of investors in *In re Cobalt International Energy, Inc. Securities Litigation*, No. 14-cv-3428 (NFA) (the “Cobalt Action”), a securities action in which the United States District Court for the Southern District of Texas recently preliminarily approved a settlement after more than four years of litigation. *See, e.g., Cobalt Action* [Docket No. 354]. This Court likewise approved the aspect of the settlement involving the estate of debtor Cobalt International Energy, Inc. (*See In re Cobalt International Energy, Inc., et al.*, No. 17-37709 (MI) (Bankr. S.D. Tex.), [Docket No. 1193]).

24. There is no basis for the Court to change its conclusion that GAMCO and Entwistle & Cappucci LLP are adequate to protect the interests of a class of investors.

Dated: December 8, 2018

/s/ Andrew J. Entwistle
Andrew J. Entwistle
Entwistle & Cappucci, LLP