

**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)
)	

**SUPPLEMENTAL DECLARATION OF ANDREW J. ENTWISTLE IN FURTHER
SUPPORT OF 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**

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 (“Entwistle & Cappucci”), counsel for GAMCO Asset Management, Inc. (“GAMCO”) in these chapter 11 cases and in the Delaware Action.¹ I am admitted to practice law in the State of Texas and before this Court.

2. I respectfully submit this supplemental declaration in further support of *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”) (Docket No. 2144).

3. As set forth below and in GAMCO’s supplement memorandum of law (“GAMCO’s MOL”) in support of the Class Certification Motion (and associated Joint Motion with the Debtors),

¹ Capitalized terms not defined herein have the same meanings as set forth in the Class Certification Motion or the prior declaration of Andrew J. Entwistle in support of the Class Certification and Joint Motion (Docket No. 2144 pp. 24-31).

the Settlement, which is the result of complex arms'-length negotiations over more than ten weeks, resolves (i) GAMCO's potential objection to the confirmation of the Plan based on, among other things, the theory that CCOH's proof of claim arising from the \$1.031 billion Intercompany Note balance should be a priority claim rather than a general unsecured claim based on a constructive trust created in favor of CCOH; (ii) GAMCO's Delaware Action alleging claims against the Board Defendants, Intercompany Note Defendants, and Sponsor Entities related to the misconduct by iHC that created the constructive trust; and (iii) all claims (other than that Wilmington Savings Fund Society's objection ("WSFB") (Docket No. 2020)) that CCOH's Intercompany Note claim should be offset by certain pre- and post-petition liabilities to iHC potentially totaling more than \$500 million.

4. Also as set forth below and in GAMCO's MOL, GAMCO and its counsel, Entwistle & Cappucci have: (i) been litigating issues against Defendants and iHC on behalf of CCOH Minority Shareholders related to the Intercompany Note and intercompany agreements between CCOH and iHC (the "Intercompany Agreements") since 2016, such that GAMCO and Entwistle & Cappucci are appropriate to serve as Class Representative and Class Counsel, respectively, for purposes of the Settlement; (ii) vigorously negotiated the Settlement; and (iii) presented a fulsome record to support a conclusion that the Settlement is in the best interest of CCOH Minority Shareholders and is thus appropriate for preliminary approval.

GAMCO's Three-Year Effort to Protect CCOH and CCOH Minority Shareholders

5. GAMCO is a long-time CCOH Minority Shareholder. GAMCO has held at least 5.5 percent of CCOH's Class A common stock since 2009. As of CCOH's May 17, 2018 proxy statement, GAMCO was the largest CCOH Minority Shareholder – owning more than 5.3 million shares of Class A common stock comprising 11 percent of such stock and 1.5 percent of all

outstanding CCOH stock. GAMCO remains one of the largest CCOH Minority Shareholders.

6. As a substantial CCOH Minority Shareholder, GAMCO, through its counsel Entwistle & Cappucci, has engaged in ongoing activities since late 2015 in an effort to compensate CCOH and CCOH Minority Shareholders and/or protect them from the deleterious effects of the Intercompany Agreements and attendant Intercompany Note reflecting the balance on the daily sweep of CCOH cash to iHC.

7. In December 2015, GAMCO retained Entwistle & Cappucci to investigate the circumstances of an announced notes offering by a CCOH subsidiary and special cash dividend (90 percent of which would be paid to iHC) to determine whether iHC was causing CCOH to incur approximately \$98.4 million in unnecessary interest expenses primarily for the purpose of funneling cash to iHC. GAMCO directed Entwistle & Cappucci to send a demand to CCOH's board in accordance with Section 220 of the Delaware General Corporation Law seeking documents regarding the transactions. GAMCO's December 29, 2015 Section 220 demand is attached hereto as Exhibit A.

8. In January 2016, GAMCO's investigation expanded to include circumstances surrounding certain asset sales by CCOH in strategic markets, the revenue from which was used in part to fund another special dividend to provide much-needed liquidity to iHC and which was contrary to CCOH's previously-announced strategy to seek acquisitions and other growth opportunities.

9. In March 2016, as part of GAMCO's ongoing investigation and efforts on behalf of CCOH and CCOH Minority Shareholders, GAMCO intervened in the Texas Litigation commenced by iHC challenging notices of default from the Term Loan/PNG Group claiming iHC's transfer of 100,000,000 shares of CCOH Class B common stock to a subsidiary violated certain indenture

covenants and accelerated iHC's debt. GAMCO directed Entwistle & Cappucci lawyers to attend the trial in District Court in Bexar County and provide daily updated on the proceedings and potential effect from the outcome on CCOH Minority Shareholders.

10. In May 2016, following months of investigation, Entwistle & Cappucci filed GAMCO's 2016 Litigation alleging, among other things, breaches of fiduciary duty by many of the same Defendants in the Delaware Litigation for: (i) failure to seek an exit from the Intercompany Agreements; (ii) failure to effectuate repayment of the Intercompany Note; and (ii) approving the notes offering and asset sales to funnel liquidity to iHC to the detriment of CCOH.

11. In November 2016, the Delaware Court of Chancery dismissed GAMCO's 2016 Litigation on grounds GAMCO had: (i) putatively not alleged changed financial circumstances at iHC that took GAMCO's 2016 Litigation outside a 2013 settlement and release of similar derivative claims on behalf of CCOH; (ii) that liquidity triggers established in the prior settlement had been reached that would empower CCOH's independent directors to demand repayment; or (iii) facts that took the notes offering and asset sales outside the board's business judgment.

12. On February 3, 2017, GAMCO appealed the dismissal to the Delaware Supreme Court.

13. On April 5, 2017, GAMCO made a new demand to CCOH's board seeking documents sufficient to determine whether the board had breached its fiduciary duty to CCOH by, among other things, approving the sale of certain additional assets in Australia, Indiana and Ohio. GAMCO was concerned that the Board was again causing CCOH to sell assets solely to provide liquidity to iHC. CCOH refused to produce any documents in response to this demand while GAMCO's appeal was pending. GAMCO's April 5, 2017 Section 220 demand is attached hereto as Exhibit B.

14. On October 12, 2017, the Delaware Supreme Court affirmed. The court declined to “reach the question of whether the board’s failure to demand repayment of the revolving note was barred by the prior settlement” because “the Court of Chancery properly found that under the pled circumstances, which included the board acting within the framework established by [the 2013 settlement] 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.”

15. As a result of the Delaware Chancery and Delaware Supreme Court decisions, GAMCO directed Entwistle & Cappucci to continue to closely monitor any public statements by CCOH concerning the liquidity triggers that would empower the Intercompany Note Committee, the status of the Intercompany Note balance and its planned maturity on December 15, 2017, and iHC’s deteriorating financial condition and well-publicized ongoing refinancing negotiations with its largest creditors.

16. On November 8, 2017, iHeartMedia, Inc. acknowledged in a public filing that there was “substantial doubt” as to iHC’s “ability to continue as a going concern for a period of 12 months following November 8, 2017.” On the same day, CCOH announced that for the first time that a liquidity trigger had been reached on the Intercompany Note balance under the 2013 settlement that gave the Intercompany Note Committee the right pursuant to the terms of the 2013 settlement to make demand on the Intercompany Note, a trigger that had not been reached during the pendency of GAMCO’s 2016 Litigation.

17. On November 21, 2017, GAMCO made a new demand to the CCOH board seeking documents sufficient to determine whether: (i) the Intercompany Note Committee breached its fiduciary duty to CCOH and CCOH Minority shareholders by failing to demand repayment on the note now the liquidity trigger from the 2013 settlement had been reached; (ii) the board was

contemplating extending the maturity date on the Revolving Note despite the fact that iHC was in negotiations with creditors that included a potential pre-packed bankruptcy. CCOH refused to produce any documents in response to this demand, asserting that the fact the Intercompany Note Committee could have demanded a repayment did not mean that it was a breach of fiduciary duty not to do so. GAMCO's November 21, 2017 Section 220 demand is attached hereto as Exhibit C.

18. On December 1, 2017, CCOH announced that it had agreed with iHC to amend the Intercompany Note, which was set to expire and become due and payable on December 15, 2017, to extend its maturity to May 15, 2019.

19. As a result of these announcements on November 8, 2017 and December 1, 2017, Entwistle & Cappucci began evaluating the potential for a new class action in Delaware Chancery Court on behalf of CCOH Minority Shareholders, who would have benefitted had the Independent Note Committee exercised its right to demand repayment and declare a dividend, had CCOH's board let the Intercompany Note expire and declare a dividend, or had iHC and/or the Sponsor Entities not discouraged them from doing so.

20. On March 15, 2018, the Debtors initiated the instant chapter 11 cases and a potential renewed action against iHC became barred by the automatic stay. GAMCO directed Entwistle & Cappucci to monitor the Debtors' chapter 11 cases, including in particular the then-undisclosed treatment of the Intercompany Note balance under the proposed Plan.

21. On May 8, 2018, Entwistle & Cappucci sent a letter on behalf of GAMCO to Wilkie Farr & Gallagher LLP, counsel for the special committee created by CCOH's board to negotiate with the Debtors and make recommendations to CCOH's board in connection with Debtors' chapter 11 cases (the "Special Committee"). Angelo, Gordon & Co. ("Angelo Gordon") and its affiliates, which at that time owned 968,472 (1.9%) of the Class A common stock, joined the letter, which

explained to the Special Committee that it was in furtherance of both investors' ongoing effort – commenced by GAMCO in December 2015 – to protect the interests of CCOH and CCOH Minority Shareholders in the face of the onerous Intercompany Agreements. GAMCO's and Angelo Gordon's May 8, 2018 letter to the Special Committee is attached hereto as Exhibit D.

22. The letter further pointed out that Debtors' chapter 11 cases presented a crucial opportunity for CCOH to realize autonomy from iHC. To that end, GAMCO and Angelo Gordon demanded that the Special Committee negotiate with Debtors and their other creditors for no less than:

- (1) 100% recovery by CCOH on the Revolving Note balance, followed immediately by declaration by the Board of a *pro rata* dividend to CCOH shareholders;
- (2) Full separation and autonomy from the post-reorganization Debtors, including but not limited to cancelation of the Intercompany Agreements and Revolving Note; and
- (3) Post-separation protections for existing minority shareholders of CCOH against future domination by the creditor-group who will receive 100% of Debtors' ownership interests in CCOH as distributions under the Plan, and will thereby own 89.5% of CCOH.

23. The letter then proceeded to outline the steps taken by GAMCO to protect CCOH and CCOH Minority Shareholders and stated that GAMCO and Angelo Gordon reserved their rights to: (i) initiate a class action against the Intercompany Note Committee and Board on behalf of CCOH Minority Shareholders for any shortfall in recovery on the Intercompany Note; and (ii) object as a parties-in-interest to any Plan that does not provide for repayment to the Company in full.

24. On May 22, 2018, Entwistle & Cappucci filed a notice of appearance and request for all pleadings and notices (Docket No. 789) at the direction of GAMCO.

25. Based on the Intercompany Note balance trigger in November 2017 and December 2017 extension of the maturity date of the Intercompany Note, as well as the continued uncertainty as to the treatment of the Intercompany Note balance under the proposed Plan, on August 27, 2018,

GAMCO directed Entwistle & Cappucci to file direct claims on behalf of CCOH Minority Shareholders in the Delaware Action alleging that Defendants breached fiduciary duties by failing to cause CCOH to demand repayment under the Intercompany Note when the trigger was reached and agreeing with iHC to extend maturity on the note when it was set to expire after it iHC had publically stated just two weeks earlier that there was “substantial doubt” as to its ability to continue as a “going concern.”

26. On September 12, 2018, Debtors filed their *Fourth Amended Joint Chapter 11 Plan of Reorganization of iHeartMedia, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (Docket No. 1441) and their amended disclosure statement (Docket No. 1445). These filings revealed for the first time that CCOH’s \$1.031 billion claim against iHC would be “allowed, without offset, recoupment, reductions, or deduction of any kind,” but would be impaired and receive a distribution at the same 14.44 percentage rate as general unsecured claims.

27. Notably, while the fourth amendment to the Plan indicated that CCOH’s claim would be allowed “without offsets” or other reductions, such proposed treatment by the Debtors did obviously not prevent other creditors – including the unsecured creditors committee – from objecting to the amount of CCOH’s claim or its treatment alongside unsecured creditors. Indeed, WSFB is currently pursuing just such an objection (Docket No. 2060).

28. The fourth amendment to the Plan also included third-party releases that Debtors intended would bar GAMCO from continuing to prosecute its claims against the Board Defendants, Independent Note Committee Defendants, and Sponsor Entities in the Delaware Action.

29. On September 5, 2018, GAMCO filed its 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 without commensurate direct or indirect consideration to CCOH Minority Shareholders.

30. GAMCO's disclosure statement objection did not include arguments it intended to make in a subsequent objection to confirmation based on the theory that the amount owed to CCOH by iHC on the Intercompany Note is improperly categorized by the Plan as a general unsecured claim, rather than properly treating it as a priority claim by virtue of the fact that iHC's insolvency and breaches of fiduciary duty and/or fraud in connection with the Intercompany Note created a constructive trust (in addition to other arguments regarding the treatment of the debt) in favor of CCOH.

31. All told, by the time of its disclosure statement objection in September 2018, GAMCO, through its counsel Entwistle & Cappucci, had been engaged in ongoing activities for almost three years in an effort to compensate CCOH and CCOH Minority Shareholders and/or protect them from the deleterious effects of the Intercompany Agreements and attendant Intercompany Note.

The Arms'-Length Settlement Negotiations

32. In the days preceding the disclosure statement hearing on September 13, 2018, and with more urgency thereafter, Debtors' counsel suggested to Entwistle & Cappucci on behalf of GAMCO's that the parties explore a global resolution in connection with confirmation of the Plan that would resolve GAMCO's anticipated objection at confirmation to the treatment of CCOH's proof of claim arising from the Intercompany Note and the third-party releases as well as the Delaware Action on behalf of CCOH Minority Shareholders based on the Intercompany Note.

33. Following the disclosure statement hearing, discussions and negotiations on such a resolution proceeded in earnest. From mid-September to the end of November, counsel for Debtors,

CCOH, the unsecured creditors committee, GAMCO, and Defendants in the Delaware Action engaged in extensive and complicated arms'-length negotiations involving proposals, cross-proposals, and concessions from each constituency.

34. During these negotiations, Entwistle & Cappucci, on behalf of GAMCO, engaged in discussions and presentations with counsel concerning: (i) the orderly termination of the Intercompany Agreements; (ii) Debtor and creditor arguments that CCOH's claim based on the Intercompany Note should be offset by as much as \$500 million in unpaid pre-petition royalties to iHC and approximately \$130 million in post-petition royalties and transfer costs on intellectual property necessary for CCOH's business valued on iHC's books for \$89 million; and (iii) GAMCO's argument that CCOH's claim should be treated as a priority claim based on a constructive trust.

35. Following the disclosure statement hearing, discussions and negotiations toward such a resolution proceeded in earnest. From mid-September to the end of November, counsel for Debtors, CCOH and GAMCO engaged in extensive and complicated arms'-length negotiations inv. During negotiations, Entwistle & Cappucci, on behalf of GAMCO, engaged in myriad discussions with counsel for Debtors and CCOH concerning: (i) the orderly termination of the Intercompany Agreements; (ii) Debtor and creditor arguments that CCOH's claim based on the Intercompany Note should be offset by as much as \$500 million in unpaid pre-petition royalties to iHC and approximately \$130 million in post-petition royalties and transfer costs on intellectual property necessary for CCOH's business valued on iHC's books for \$89 million; and (iii) GAMCO's argument that CCOH's claim should be treated as a priority claim based on a constructive trust.

36. (i) Debtor and creditor arguments that CCOH's claim based on the Intercompany Note should be offset by as much as \$500 million in unpaid pre-petition royalties to iHC and approximately \$130 million in post-petition royalties and transfer costs on intellectual property

necessary for CCOH's business valued on iHC's books for \$89 million; and (ii) GAMCO's argument that CCOH's claim should be treated as a priority claim based on a constructive trust (i) unresolved claims by the Unsecured Creditors Committee and others that CCOH's claim based on the Intercompany Note should be offset by as much as \$500 million in unpaid pre-petition royalties to iHC and as more than \$100 million in post-petition royalties and transfer fees on intellectual property necessary for CCOH's business.

37. Through the negotiation process, the settling parties and the counsel became well informed about the strengths and weaknesses of: (i) GAMCO's anticipated objection to the improper treatment of the CCOH claim under the Plan based on, among other things, a constructive trust theory; (ii) CCOH's claims in the Delaware Litigation; (iii) credit arguments that CCOH's claim should be subordinated and/or offset by hundreds of millions in pre- and post-petition liabilities to iHC; and (iv) CCOH's anticipated liquidity as a stand-alone company in the coming years.

38. A full, orderly and effective separation of CCOH from iHC was always a paramount goal of all of GAMCO's litigation and related efforts. And, while separation of CCOH was generally contemplated by the original Plan, the actual and comprehensive details of the separation were only resolved as part of the Settlement among GAMCO, CCOH, Debtors, and certain creditor constituencies. Of great concern to GAMCO was assuring the termination of the cash sweep (which, pursuant to an order of the Court, continues during the pendency of the chapter 11 cases). This is because the legacy Master Agreement between CCOH and iHC has no termination provision and the Corporate Services Agreement ("CSA") only gives CCOH the option (but not the obligation) of terminating the CSA on 6-months' notice after iHC's voting rights drops below 50 percent (the "Triggering Event").

39. Leaving aside whether the operation of the Plan gives rise to the type of transfer of ownership required by the CSA to create a Triggering Event, it is clear that the senior lenders will control both “new” iHC and CCOH following the effective date with relatively equal ownership percentages in each. Thus, whether CCOH would terminate the CSA following the effective date (and subject the company to the 6-month notice period) was far from assured.

40. As a result, a vital part of GAMCO’s negotiations through counsel centered around assuring termination of the cash sweep, assuring the orderly transition of corporate services, assuring an appropriate termination of the intellectual property licensing agreement, and assuring CCOH’s post-separation liquidity. Toward that end, Entwistle & Cappucci requested and received several presentations from Debtors concerning CCOH’s liquidity and based upon those presentations obtained various liquidity-related concessions, along with the assurance that CCOH will receive its bankruptcy distribution without setoff or reduction, and termination of the cash sweep assuring – for the first time – that CCOH will be able to use its own cash for the benefit of its all its shareholders, including CCOH Minority Shareholders, going forward.

The Settlement’s Benefits to CCOH and iHC

41. Based on the content of the negotiations, GAMCO and Entwistle & Cappucci’s recognition that the Delaware Chancery Court’s dismissal of the GAMCO’s 2016 Litigation and Delaware Supreme Court’s affirmance present challenges to the Delaware Action, and the uncertainty of its anticipated confirmation objections, GAMCO made the informed decision to enter into the Settlement that provides the following benefits directly to CCOH and indirectly to CCOH Minority Shareholders:

- (a) Complete separation of CCOH from iHC within a time-frame dictated by CCOH, including immediate termination of all existing Intercompany Agreements along with providing for a new short-term Transition Services Agreement (the “TSA”) that allows CCOH time to create internal infrastructure but the flexibility to cancel the TSA on 30 days’ notice to iHC;

- (b) A bankruptcy distribution of approximately \$150 million, without any subordination, offset, reduction or cross-claims based on pre-petition liabilities or otherwise to iHC, including waivers by Debtors and the Unsecured Creditors Committee of all claims (not including the WSFB objection) that:
 - (i) the CCOH proof of claim should be subordinated to the claims of general unsecured creditors; and
 - (ii) the CCOH proof of claim should be offset by years of pre-petition unpaid royalties by CCOH on intellectual property owned by iHC, totaling approximately \$500 million;
- (c) Waiver of any unpaid post-petition royalties on the intellectual property totaling approximately \$30 million – including waiving any claim for set-off of that amount against the post-petition cash sweep balance – resulting in the return to CCOH of approximately \$8 million in post-petition cash and avoidance of a \$22 million contractual claim against CCOH;
- (d) Waiver of any post-December 31, 2018 royalties through the effective date of the Plan, expected to be approximately \$10 million;
- (e) Waiver of any claim or setoff against CCOH for the post-separation transfer of certain intellectual property (including the Clear Channel Outdoor name and trademarks), valued on iHC's books at \$89 million; and
- (f) A \$170 million credit line from iHC to CCOH for a duration of three years at Prime, which will help close an anticipated liquidity gap at CCOH and save CCOH approximately \$40 million in interest costs over the life of the loan.

42. In all, the Settlement assures the orderly separation of CCOH, the net payment of approximately \$160 million to CCOH, waiver of approximately \$630 million in royalty-related payments, \$40 million in interest savings, and assures CCOH liquidity on a going forward basis.

43. In addition, in order to provide added operating liquidity and preserve the possibility of future conversion of CCOH to a REIT, it was agreed that CCOH will issue approximately \$40 million in non-convertible, non-voting, preferred stock and use the proceeds for operating costs.

44. The Settlement also provides that the Debtors will pay \$5 million to Entwistle & Cappucci in exchange for waiver of all fees and litigation expenses that would otherwise be payable by any party or from the proceeds of the approximately \$830 million in benefit created by the

Settlement. Notably, while GAMCO and Entwistle & Cappucci notified Debtors of their intent to seek attorneys' fees and costs from the Debtors' estates if a settlement could be reached, the final amount of such fees and costs was only negotiated after material agreement to the substantive terms of the Settlement.

Dated: December 13, 2018

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