

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF NEW YORK

BLUEWATERS COMMUNICATIONS
HOLDINGS, LLC,

Plaintiff,

v.

BERNARD ECCLESTONE; CVC CAPITAL
PARTNERS LTD.; ALPHA PREMA UK LTD.;
ALPHA TOPCO LTD.; DELTA TOPCO LTD.;
GERHARD GRIBKOWSKY; AND BAYERISCHE
LANDESBANK ANSTALT DES
ÖFFENTLICHEN RECHTS

Defendants.

COMPLAINT

Index No.

Plaintiff Bluewaters Communications Holdings, LLC (together with its predecessors, “Bluewaters”), by its undersigned attorneys, alleges the following against Bernard Ecclestone (“Ecclestone”), CVC Capital Partners, Ltd. (“CVC”), Alpha Prema UK Ltd. (“Alpha Prema”), Alpha Topco Ltd. (“Alpha Topco”), Delta Topco Limited (“Delta Topco”), Gerhard Gribkowsky (“Gribkowsky”), and Bayerische Landesbank Anstalt des öffentlichen Rechts (“BayernLB”):

INTRODUCTION AND NATURE OF THE ACTION

1. This case arises out of a \$44 million bribe paid by defendant Ecclestone to defendant Gribkowsky using money supplied by defendants CVC and BayernLB. Gribkowsky was prosecuted and convicted of taking the bribe and is now serving an eight-and-a-half year prison sentence. Ecclestone orchestrated and paid the bribe to preserve his status as head of an automobile-racing empire known as “Formula 1.” Plaintiff was the high bidder for the purchase of Formula 1, but Ecclestone bribed

Gribkowsky—using CVC’s and BayernLB’s money—to steer the sale of Formula 1 to CVC for CVC’s and Ecclestone’s benefit. Plaintiff has been damaged in an amount exceeding \$650 million.

2. Formula 1 racing is one of the most popular spectator sports in the world, and Ecclestone has stood atop it for decades. The tabloid press refer to him as “F-1 Supremo.”

3. In December 2004, Ecclestone lost legal control of Formula 1 to a Bank Group, after a hard-fought legal battle in England and Switzerland. The Bank Group had acquired 75% of the shares of the then top-level holding company controlling Formula 1, Speed Investments Limited (“Speed Investments”), by foreclosing on shares that had been posted as collateral for a loan they made. (An Ecclestone family trust retained the remaining 25%.) The members of the Bank Group were J.P. Morgan Chase Bank (“J.P. Morgan”), Lehman Commercial Paper (“Lehman”), and defendant BayernLB, a government-owned German bank.

4. At about that time, two members of the Bank Group—Lehman Brothers and J.P. Morgan—raised the topic of Formula 1 with Plaintiff’s representative John Gregg, and encouraged him to buy the Bank Group’s shares of Speed Investments, which together constituted a controlling interest in Formula 1. Gregg, acting through Bluewaters, secured one billion dollars (\$1,000,000,000.00) in financing for the transaction from two New York private equity firms, Apollo Global Management (“Apollo”) and King Street Capital Management (“King Street”). Bluewaters’ agreements provided that it would receive a “carried interest”—that is, a pre-determined share of dividends and capital gains.

5. With the support of Lehman and J.P. Morgan, Bluewaters negotiated extensively with the third member of the bank group, BayernLB, including its senior representative, Gribkowsky, to acquire control of Formula 1.

6. In a letter dated April 21, 2005, BayernLB stated in writing that it had “carefully considered” an early offer from Bluewaters and that if Bluewaters were to meet eleven specified conditions BayernLB would then “proceed with our decision making process.” Lengthy discussions and exchanges ensued, including subsequent offers by Bluewaters.

7. On November 15, 2005, Bluewaters submitted a written offer to BayernLB offering to purchase the Bank Group’s shares of Speed Investments for one billion dollars (\$1,000,000,000.00). The offer contained evidence of Bluewaters’ financing commitments, and it was submitted under cover of a letter to Gribkowsky stating that “Bluewater is prepared to pay 10 percent more in cash consideration or other forms of equally valued securities above any genuine bona-fide offer put forward by any other accredited buyer.”

8. Ten days later—on Thanksgiving day—defendant CVC announced that it had bought BayernLB’s shares of Speed Investments and that it was keeping Ecclestone on to run Formula 1.

9. As an integral part of CVC’s acquisition of Formula 1, BayernLB paid a \$65 million “fee” to Ecclestone with CVC’s money earmarked for that purpose. It is not possible to understand what legitimate services Ecclestone could have provided to justify this huge “finder’s fee,” in his role as a director and the top executive officer of the operating entities of the Formula 1 enterprise. Ecclestone was bound as a director by a

fiduciary duty to act in the best interests of his shareholders and to do everything possible to maximize the price that all shareholders received for their shares. Instead, Ecclestone manipulated the sale by using cash given to him by BayernLB and CVC to bribe Gribkowsky. In exchange, Gribkowsky made sure that BayernLB (which owned the largest block of the Bank Group's stock) sold the company for a lesser amount to CVC. Ecclestone did this because CVC would allow him to continue to run Formula 1. The "fee" is even more difficult to understand as legitimate since Ecclestone immediately (and secretly) used the money to bribe Gribkowsky to steer the deal to CVC instead of to Bluewaters. On the very day of the announcement, Ecclestone began creating sham corporations to channel the bribe to Gribkowsky. Ecclestone, Gribkowsky, and CVC kept this corrupt payment a deep secret for many years. Bluewaters did not know about the bribe at the time it was paid.

10. Bluewaters did know that the Bank Group had a shareholders' agreement, under which the sale of shares of Speed Investments by any member would trigger the others' right of first refusal. Gregg told J.P. Morgan and Lehman that Bluewaters was willing to buy their shares of Speed Investments. If that had happened Bluewaters would have come to exercise the right of first refusal over the BayernLB ownership shares in Speed Investments. This could have triggered a bidding contest for the shares. But (on information and belief) CVC, Ecclestone, and Gribkowsky had already planned to thwart that possibility: they had structured a deal to avoid triggering any first refusal rights over BayernLB's shares. They did this by forming defendant Alpha Prema as a holding company for Speed Investments and having BayernLB "contribute" its shares to Alpha Prema and then "redeem" them for cash. Based on this restructuring, Gribkowsky

told J.P. Morgan and Lehman that if they sold their shares to Bluewaters, BayernLB would sue them for interfering with its CVC deal.

11. After the announcement, Gregg telephoned members of BayernLB's board of directors in an effort to reiterate Bluewaters' written offer to beat any accredited buyer's price by ten percent (10%). One would have thought that a government-owned bank that was selling collateral on which it had foreclosed would be interested in *maximizing* the price it received for the collateral (here, shares of Speed Investments) as required by law. But BayernLB's board members did not return Gregg's calls. (BayernLB has now sued those board members for breach of their fiduciary duties during the era of the Gribkowsky scandal.)

12. After losing the deal, Gregg had conversations with Ecclestone and, later, with CVC's Donald Mackenzie ("Mackenzie"), about the deal. Both hid the fact of the bribe. It was not until after Gribkowsky was arrested and prosecuted for taking the bribe that Gregg discovered the real reason why Bluewaters had lost the deal.

13. In the intervening years, Formula 1 has been an incredible success for CVC. For its initial investment of approximately \$1.6 Billion (which, on information and belief included the special "fee" with which Ecclestone bribed Gribkowsky, as well as the Bank Group's 75% and Ecclestone's 25% of Formula 1 shares), CVC has withdrawn over \$2 billion in dividends, sold a portion of the Formula 1 business for an additional \$2.1 billion, and is now planning an IPO reportedly worth another \$2.5 billion. In September 2012, CVC valued its remaining stake in Formula 1 at 4.7 times its initial investment; Formula 1 is currently valued at \$10 billion.

14. Bluewaters now seeks damages for tortious interference with prospective economic advantage, fraudulent concealment, and unjust enrichment. Plaintiff also seeks an award of compensatory damages and punitive damages from defendants for their participation in a criminal conspiracy to rig the bidding process in the sale of Formula 1.

PARTIES

15. Plaintiff Bluewaters Communications Holdings LLC, the successor-by-operation-of-law to Bluewaters Communications Holdings Ltd. (together, “Bluewaters”), is a limited liability company organized under the laws of New York. Bluewaters’ representative, John Gregg, was known to and trusted by individuals at J.P. Morgan and Lehman through his involvement in earlier successful transactions.

16. On information and belief, defendant Bernard Ecclestone (“Ecclestone”) is an individual domiciled in England. Ecclestone is a former used-car salesman who has dominated Formula 1 for decades. He was the chief executive officer and a director of the Formula 1 operating companies and, at times relevant to this case, of the top-level holding company of the Formula 1 business. His *de facto* control of Formula 1 is so complete that he is known to readers of the tabloid press simply as “F-1 Supremo.” His personal fortune is reported to exceed \$2 billion. Ecclestone travels around the world organizing and supervising Formula 1 races. In that capacity, he has visited New York repeatedly to develop an annual New York Formula 1 race event, meeting with Mayor Mike Bloomberg and considering possible locations on Staten Island and in Weehawken, New Jersey.

17. On information and belief, defendant CVC Capital Partners Limited (“CVC”) is a private limited company organized under the laws of England. CVC is a large private equity and investment advisory firm. According to its website (www.cvc.com), CVC manages capital on behalf of some 300 institutional, governmental, and private investors worldwide, having “secured commitments of US\$50 billion from our investors.” It uses those funds “to acquire controlling or significant minority interests in European, Asian and North American companies.” CVC maintains an office at 712 Fifth Avenue in New York City. This office is used by CVC to transact business in New York and to maintain a continuous and systematic presence in New York through employees and members of CVC’s “U.S. Advisory Board.” According to CVC’s own website, “Funds advised by CVC have completed four acquisitions in the US since the establishment of CVC’s New York office in 2007. These transactions have totaled approximately \$10 billion of enterprise value and \$2.5 billion of equity capital invested.”

18. On information and belief, defendant Gerhard Gribkowsky (“Gribkowsky”) is an individual currently incarcerated in Stadelheim Prison in Munich, Germany. Gribkowsky was the officer of BayernLB principally responsible for the disposition of BayernLB’s shares of Speed Investments. He was convicted in June 2012 of accepting a bribe from Ecclestone in connection with the transactions at issue in this case. He is currently serving an eight-and-a-half year prison term for his crime.

19. On information and belief, defendant Alpha Prema UK Ltd. (“Alpha Prema”) is a private limited company organized under the laws of England and Wales. Alpha Prema was created by defendants CVC, Gribkowsky, Ecclestone, and BayernLB

to hold shares of Formula 1. At formation, Gribkowsky was Chairman of Alpha Prema, and Ecclestone and CVC designees were members of the board.

20. On information and belief, defendant Alpha Topco Ltd. (“Alpha Topco”) is a private limited company organized under the laws of the Bailiwick of Jersey. Alpha Topco, which indirectly owns shares of Speed Investments, was created by defendants in 2006 in furtherance of their conspiracy. Gribkowsky, Ecclestone, and CVC designees all joined its board upon formation.

21. On information and belief, defendant Delta Topco Limited (“Delta Topco”) is a private limited company organized under the laws of the Bailiwick of Jersey. Delta Topco, which indirectly owns shares of Speed Investments, was created by defendants in 2006 in furtherance of their conspiracy. Gribkowsky, Ecclestone, and CVC designees all joined its board upon formation.

22. On information and belief, defendant Bayerische Landesbank (“BayernLB”) is a banking organization organized under the laws of the Federal State of Bavaria and owned (through a subsidiary) by the Federal State of Bavaria as majority shareholder and the “Sparkassenverband Bayern,” a corporate entity under public law, as minority shareholder. BayernLB was the largest shareholder of Formula 1 prior to the sale of its interests to CVC. BayernLB has an office in New York City at 560 Lexington Avenue from which it transacts business in New York and maintains a continuous and systematic presence in New York.

FACTS

The Battle For Control of Formula 1

23. The Formula 1 racing circuit is one of the oldest automobile racing organizations, with the first races dating back to the 1890s. It is the world's most popular motorsport, and its races are some of the most widely viewed sporting events worldwide. Annually, millions of fans pack racing circuits to watch Formula 1 race cars compete in Europe, Asia, North America, South America, and the Middle East.

24. Ecclestone seized control of Formula 1 in the 1970s by outmaneuvering his competitors for control over a variety of rights and services associated with the Formula 1 racing circuit, including television broadcasting rights, marketing rights, logistics and concessions, and "concorde" agreements among the teams that compete in the Formula 1 races.

25. In late 2001, a German investor named Leo Kirch acquired 75% of the shares of Speed Investments, which in turn controls the Formula 1 business and its various affiliates. Kirch financed the acquisition by pledging the shares to secure a loan from a consortium of banks—J.P. Morgan, Lehman, and BayernLB (the "Bank Group").

26. In 2002, Kirch defaulted on his loan obligations, and the Bank Group foreclosed on the shares.

27. From 2003 to December 2004, the Bank Group and Ecclestone were embroiled in litigation over control of Speed Investments and its Formula 1 subsidiaries. The Bank Group found itself in the unlikely position of being majority shareholder but lacking control over the Formula 1 operating companies. The Bank Group claimed Ecclestone improperly and illegitimately wrested control of Formula 1 Holdings and its

subsidiaries Formula 1 Administration and Formula 1 Management through opportunistic and unenforceable maneuvers. Ecclestone had tried to maintain control of the boards of directors of the relevant corporations through a series of improper shareholder agreements. Late in 2004, the courts rejected Ecclestone's shenanigans and confirmed that the Bank Group owned the right to appoint the boards of Speed Investments and its subsidiaries. Ecclestone was losing his grip on Formula 1. According to a January 2005 article in the Economist, Ecclestone "said that retirement would kill him."

The Bank Group Approaches and Negotiates With Bluewaters

28. At around this time, J.P. Morgan and Lehman approached Gregg to explore whether he would be interested in a transaction involving the Bank Group's shares of Speed Investments—shares acquired following Kirch's default on his loan obligations to the Bank Group. Individuals at J.P. Morgan and Lehman knew Gregg through historic banking relationships and prior transactions.

29. Acting for Bluewaters, Gregg invested significant time and money in retaining counsel and conducting due diligence to understand the Formula 1 business. Bluewaters executed a non-disclosure agreement with BayernLB. Gregg also met with team owners, race promoters, potential competitors to Formula 1, and even local host-government representatives. He learned that Formula 1 was one of the world's largest spectator sports, with each event broadcast to over 200 countries around the world, attracting an average of 336 million television viewers and close to 200,000 spectators. He concluded that Formula 1 was an unmatched global marketing platform which multinational companies had come to rely on for promoting their brands on a worldwide

basis, helping sponsors and advertisers promote their brands in fast-growing emerging markets, such as Turkey, Brazil, and China.

30. Bluewaters then secured \$1 billion in funding commitments for Bluewaters' purchase of a controlling interest in Formula 1 from two leading private equity firms in New York—Apollo (\$500 million) and King Street (\$500 million). Securing this financing took substantial efforts. Several New York-based law firms were involved, including DLA Piper for Bluewaters. Apollo (which was to be the lead investor) retained the New York law firm of Wachtell, Lipton, Rosen & Katz. King Street also had New York counsel from the law firm now known as WilmerHale.

31. Bluewaters conducted further due diligence on Formula 1, scrutinizing the company's value and assets.

32. From March through October 2005, Gregg was in regular contact with members of the Bank Group, including attending meetings in New York City, and speaking by telephone and corresponding with representatives of Bank Group members in New York City. In addition, Plaintiff's investor group and their lawyers were located in New York City. At BayernLB—the government-owned bank—Gregg also communicated regularly with defendant Gribkowsky as well as Harald Gloeckl (“Gloeckl”) and Alexandra Irrgang (“Irrgang”). BayernLB had the largest share and was the only member of the Bank Group that did not have a previous relationship with Gregg. Gribkowsky, acting for BayernLB, instructed Bluewaters to deal exclusively with BayernLB and not to communicate directly with other members of the Bank Group.

33. On April 13, 2005, Bluewaters sent BayernLB a letter conditionally offering to purchase BayernLB's 46.65% equity interest in Formula 1. Gloeckl and

Irrgang responded for BayernLB on April 21, 2005 with a list of specific demands in order to proceed with consideration of Bluewaters' proposal, including evidence of available funds, payment of the purchase price into escrow upon signature of a purchase agreement, waiver by J.P. Morgan and Lehman of "their rights of first refusal," regulatory consents, a no-post-closing due diligence condition, and—ironically—a representation that Bluewaters "is purchasing on its own account, and is not . . . connected with, among others, Ecclestone . . . or any person or trust connected with [him]." The April 21 letter made clear that the transaction would be subject to the approval of BayernLB's management board and that the proposed "terms and conditions" were "subject to contract and not legally binding." In other words, the April 21 letter was not itself a binding purchase and sale agreement—merely a solicitation of an offer and a concomitant commitment by BayernLB to "proceed with our decision making process."

34. In May and June of 2005, BayernLB, Bluewaters, Apollo, and King Street and their respective counsel worked to finalize an agreement for the sale of BayernLB's shares of Formula 1 to Bluewaters. There were extensive negotiations fine-tuning the proposed deal. (Again, these negotiations repeatedly included individuals located in New York City.) Attorneys for BayernLB, Apollo, King Street, and Bluewaters exchanged comments on draft agreements, participated in conference calls detailing outstanding issues, and exchanged memoranda identifying any remaining areas to be finalized. It appeared that BayernLB and Bluewaters were moving toward finalizing their agreement, which would have resulted in Bluewaters becoming the new owner of Formula 1.

35. On June 29, 2005, Bluewaters sent Gribkowsky, Gloeckl, and Irrgang a letter enclosing a revised version of the proposed agreement for the sale of the Bank Group's equity interest in Formula 1. The proposal reflected changes requested by BayernLB during extensive prior negotiations. In order to provide the sellers with evidence of Bluewaters' financial ability to purchase Formula 1, Bluewaters attached to the letter copies of its funding agreements with Apollo and King Street.

36. Throughout this period, Gregg maintained regular communications with representatives of the Bank Group members, including Gribkowsky, Gloeckl, and Irrgang at BayernLB. Gregg also spoke with Ecclestone, the head of the target Formula 1 business, on multiple occasions to discuss purchasing a controlling interest in Formula 1. These discussions included at least one interim offer to BayernLB. Gregg disclosed that Bluewaters' financing would come from Apollo and King Street.

37. Ecclestone expressed his desire to maintain control over Formula 1, but Gregg provided no commitment to him in that regard. Indeed, Ecclestone expressed familiarity with Apollo. Ecclestone said to Gregg that Apollo had a reputation of being "tough money." In effect, this was an admission by Ecclestone that he was concerned about Apollo controlling Formula 1.

Bluewaters' Unbeatable Offer

38. On October 4, 2005, Gregg e-mailed Gribkowsky proposing to pay a purchase price of \$1 billion for the Bank Group's shares of Formula 1. Gregg further stated in that email that Bluewaters was prepared to pay ten percent more in cash consideration or other forms of equally valued securities above any genuine bona-fide

offer put forward by any other competing buyer to acquire Formula 1. Gregg received no response from BayernLB.

39. He wrote again on November 15, 2005, stating that following “our numerous discussions and meetings over the last nine months, we remain committed to finding a path forward to acquire Formula 1. In the spirit of completing a transaction quickly I have attached an executed offer by Bluewaters, to acquire the share capital and other interests . . . held by [BayernLB affiliates] and the other shareholders in Speed Investments Limited.” He reiterated Bluewaters’ offer to pay ten percent more in cash above any offer from an accredited buyer. Again, Gregg received no response.

CVC Buys Formula 1

40. On November 25, 2005, CVC and BayernLB issued a press release announcing BayernLB’s agreement to sell its interest in Formula 1 to CVC for a reported \$831 million. Consistent with Bluewaters’ prior affirmation to beat any other credible offer by ten percent, the sellers would have obtained more for their interests in Formula 1 had they completed their transaction with Bluewaters. BayernLB’s failure to maximize its price is particularly inexplicable as it was a government-owned bank.

41. As noted in BayernLB’s April 21 letter, the members of the Bank Group had a shareholders’ agreement that gave the members rights of first refusal should any member decide to sell its shares to an outside party. After learning of BayernLB’s deal with CVC, Bluewaters—still keenly interested in obtaining Formula 1—also approached J.P. Morgan and Lehman and expressed an interest in purchasing their Speed Investments shares. Had this proceeded, it would have triggered a BayernLB right of first refusal over such potential sale of the J.P. Morgan/Lehman shares, and conversely

given J.P. Morgan/Lehman a right of first refusal over CVC's potential purchase of BayernLB's shares in Speed Investments, all leading to a bidding contest. Such a contest would have been good for the Bank Group because it could have increased the price of the Speed Investment shares. But J.P. Morgan and Lehman told Bluewaters that CVC and BayernLB had structured their transaction around the right of first refusal. On information and belief, BayernLB even threatened to sue J.P. Morgan and Lehman if they took any steps to sell to Bluewaters, on the ground that such a sale would interfere with the BayernLB-CVC deal. Because of BayernLB's threats, Bluewaters was unable to purchase an interest in Formula 1 through these two other owners.

42. As soon as Gregg learned of BayernLB's plan to sell its shares of Formula 1 to CVC, Gregg tried to contact the members of BayernLB's board of directors that he could identify. He left messages identifying Bluewaters as willing to pay ten percent more than any other bona fide purchaser including CVC. No member of BayernLB's board responded to Gregg's messages.

43. On December 2, 2005, J.P. Morgan agreed to sell its shares of Speed Investments for \$210,000,000. On December 16, 2005, Lehman agreed to sell its shares for \$209,250,000.

44. On January 9, 2006, CVC closed on the acquisition of BayernLB's shares of Formula 1 for \$831 million. CVC also paid \$445 million to acquire shares owned by an Ecclestone family trust called "Bambino."

45. There had been no previous indication to Bluewaters by Ecclestone or any member of the Bank Group that there was any opposition to Bluewaters' acquisition of

Formula 1 or that any other parties, including CVC, had been conducting due diligence or negotiating with BayernLB over the possible acquisition of Formula 1.

46. Gregg also approached Ecclestone to find out what happened. Ecclestone did not disclose the bribe. Instead, he said that “the Germans” liked CVC better.

47. Sometime later, in Verbier Switzerland, Gregg met CVC’s Donald Mackenzie, who was responsible for the Speed Investments acquisition. Mackenzie did not disclose the bribe either. He did say, however, that CVC had been aware of Bluewaters’ interest in Formula 1 and was concerned that Bluewaters would win the deal.

The Bribe Is Revealed

48. In January 2011, German prosecutors announced the arrest of Gribkowsky for taking a \$44 million bribe from Ecclestone to steer the sale of the Formula 1 business to CVC. Gribkowsky had been the Chief Risk Officer of BayernLB and was principally responsible for managing the sale of BayernLB’s controlling stake in Formula 1. Through press reports on the ensuing trial of Gribkowsky, Bluewaters became aware for the first time that the reason it lost the Formula 1 deal was due to bribery and corruption among defendants. Bluewaters did not, and could not, have discovered this bribery and corruption prior to Gribkowsky’s arrest because defendants had carefully and continuously concealed the bribery scheme from Bluewaters.

49. Reports in the financial press indicated a link between the bribe and the Formula 1 business. For example, the Financial Times reported that Gribkowsky set up a company called “GG Consulting,” which proffered “Formula One consulting contracts” in an attempt to avoid prosecution.

50. In November 2011, Ecclestone testified in Gribkowsky's criminal trial and admitted that he did make a secret \$44 million payment to Gribkowsky. The payment was channeled to Gribkowsky's "consulting" company, GG Consulting, which was established on November 25, 2005—the very same day that CVC acquired a controlling stake in Formula 1.

51. Of the \$831 million that CVC paid to acquire Formula 1, only \$765 million ultimately made its way to BayernLB. The rest was paid to Ecclestone, to the Ecclestone family trust, and to Gribkowsky.

52. In June 2012, in a Munich courtroom before judge Peter Noll, Gribkowsky admitted accepting the bribe from Ecclestone. Judge Noll sentenced Gribkowsky to serve eight-and-a-half years in prison, stating: "In this process we assume the driving force was Mr. Ecclestone" and that Ecclestone "brought the accused into breaking the law and not the other way around." The prosecutor at Gribkowsky's trial commented that Ecclestone's "life's work" in Formula 1 could have been in jeopardy had CVC not purchased BayernLB's shares.

Knowledge of CVC and BayernLB

53. Numerous red flags demonstrate that CVC knew or was willfully blind to the bribe. First, CVC, through BayernLB, supplied the money to Ecclestone and his family trust. Companies in compliance with their anti-corruption obligations routinely track large payments of cash to individuals to prevent the use of corporate funds to pay for bribes. With its sophisticated counsel and ostensible compliance programs, CVC had, and continues to have, an obligation to ensure that its employees do not fund bribes to anyone in connection with CVC business. By any standard, a company is culpable for

high level complicity in bribery, including bribery through intermediaries. Senior company officers are simply forbidden to turn a blind eye to such illicit activity.

54. Second, public explanations that Ecclestone was receiving a multi-million dollar cash “finder’s fee” simply do not add up. Private equity firms and government-owned banks generally do not pay money to people to whom they are under no obligation to pay it—particularly directors and officers of target companies, which would be construed as a material and significant conflict or worse. While they may agree to incentivize management going forward with stock options, stock grants, or even cash incentives for performance, no incentive is accomplished by paying management of a target cash in advance. For this reason, it is virtually unheard of for a private equity firm to pay a cash “finder’s fee” (or any other kind of cash fee) to existing management of a target company upon acquiring that company.

55. Third, the “finder’s fee” is particularly suspicious because Ecclestone had a fiduciary duty to Speed Investments and its subsidiaries. Paying him a “fee” strongly suggests that he was being paid *not* to act in the corporate best interests of his existing employer.

56. Fourth, CVC rushed to purchase the Formula 1 business. CVC knew that Bluewaters was pursuing an acquisition, and this knowledge further supports the inference that CVC either knew or turned a blind eye to the *real* reason for the “fee.”

57. Fifth, CVC demanded and received *from Ecclestone* some sort of indemnity. Ecclestone has been quoted in the press as saying this indemnity was to insure CVC that “all the books were straight and there was nothing wrong.” Why would CVC need an indemnity from management of a company it was acquiring that “all the

books were straight and there was nothing wrong”? This strongly suggests a consciousness of culpability on the part of CVC.

58. Like CVC, BayernLB knew that Ecclestone was paying a bribe to Gribkowsky. Most obviously, Gribkowsky himself was a senior officer of BayernLB. Gribkowsky was far from the only person at BayernLB with whom Bluewaters dealt. Others included Gloeckl and Irrgang. Irrgang, who worked with Gribkowsky on BayernLB’s team overseeing the Formula 1 sale, testified during Gribkowsky’s trial in Munich that Gribkowsky sought two extra payments for Ecclestone as a “surprise and at the last minute” during the sale of BayernLB’s shares of Formula 1 to CVC. Gribkowsky told BayernLB’s management board that a failure to agree to the payments might be a deal breaker.

59. There is also no plausible explanation for the Board’s failure to respond to Gregg’s calls or his offer to pay ten percent more for Formula 1 than anyone else. In another matter, BayernLB recently accused the senior most board members from that era of being “grossly negligent in fulfilling their responsibilities to monitor the former Board of Management.”

60. BayernLB’s failure to exercise management oversight over Gribkowsky on the Formula 1 transaction is consistent with its admitted gross negligence in failing to supervise Gribkowsky during this time period. This gross negligence permitted Gribkowsky to dominate the Formula 1 sale process without adequate supervision or the controls necessary to ensure that BayernLB obtained the highest price for its shares and dealt with all bidders honestly and in compliance with applicable anti-corruption laws.

Facts Concerning Conspiracy and Equitable Estoppel

61. Bluewaters specifically realleges and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if set forth herein at length.

62. The overt and intentional acts and agreements among defendants described above reflect a common scheme or plan to commit tortious interference with prospective economic advantage, bribery, and fraudulent concealment. Each of the defendants intentionally participated in the furtherance of this plan, and as a result, Bluewaters was injured.

63. Ecclestone bribed Gribkowsky so that he could maintain his position at Formula 1. Gribkowsky, an officer and director of Bayern LB, acting out of greed, accepted the bribe. Ecclestone moved the money to Gribkowsky through sham corporations designed to conceal the bribe. CVC and BayernLB knew or willfully blinded themselves to the fact that Ecclestone was paying a bribe to Gribkowsky and fraudulently concealed the unlawful payment. CVC knew it stood to earn a fortune by acquiring Formula 1 and was a knowing participant in the conspiracy. Defendants Alpha Prema, Alpha Topco, and Delta Topco are co-conspirators created in furtherance of the conspiracy to circumvent the right of first refusal agreement among the Bank Group. These, among other acts, constitute overt acts in furtherance of the conspiracy.

64. In short, defendants intentionally agreed to—and knowingly and actively participated in—a scheme to interfere with Bluewaters' offer to purchase Formula 1 and fraudulently conceal the unlawful agreement, and as a result, Bluewaters was injured.

65. A conspiracy of silence continued after the CVC deal was announced. CVC's Mackenzie specifically discussed the deal with Bluewaters' Gregg. Mackenzie told Gregg that they were worried about Bluewaters as a competitor. But Mackenzie's statements to Gregg were materially incomplete and therefore misleading because he did not disclose the bribe.

66. Gribkowsky and Ecclestone also purposefully took extensive steps to hide the bribe, creating sham corporations and a fake charitable foundation with which to channel the money.

67. Ecclestone himself was specifically asked by Gregg why the deal did not go to Bluewaters. Ecclestone answered, but his answer was materially incomplete and therefore misleading because he did not disclose the bribe. Even after Gribkowsky went on trial—and to this day—Ecclestone has prevaricated to the press and the courts about the reasons for the bribe and has repeatedly and dishonestly said that CVC was the high bidder and indeed the only bidder. Those statements have been bald-faced lies.

68. Bluewaters reasonably relied on the misrepresentations of Ecclestone and Mackenzie. Bluewaters was induced by fraud, misrepresentation, and deception to refrain from filing a timely action. Had Bluewaters been told the truth, it would have sued to protect its interests. The lies of Ecclestone and Mackenzie—coupled with the secret machinations of Ecclestone and Gribkowsky—made it impossible for Bluewaters to learn any facts which would have led it to discover the truth until after Gribkowsky's arrest in January 2011. Bluewaters' reliance on these misrepresentations was reasonable under the circumstances.

69. As a result of defendants' active steps in support of their conspiracy to conceal the bribe—which took place and continued after the accrual of Bluewaters' claims—all applicable statutes of limitations affecting Plaintiff's claims were tolled, and defendants are thereby estopped from asserting any defenses based on the statute of limitations.

Bluewaters' Injury

70. Buying Formula 1 has turned out fabulously well for CVC. According to recent press reports, Formula 1 generated CVC's biggest return from a single investment in the past year, and CVC has marked up the value of its current remaining Formula 1 stake to 4.7 times its initial investment. Those returns rightfully belong to Bluewaters and its financial backers.

71. Bluewaters invested significant time and money in preparing its bid for Formula 1, including incurring expenses related to retaining counsel and conducting due diligence to understand the Formula 1 business.

72. Bluewaters' financing agreements with Apollo and King Street would have provided Bluewaters with immediate acquisition and success fees of more than \$18 million had Bluewaters successfully acquired a controlling interest in Formula 1.

73. Moreover, those agreements provided that following the successful acquisition of a stake in Formula 1, Bluewaters would receive a "carried interest"—that is, a percentage of any gain realized by Apollo or King Street at certain defined realization events, such as issuance of dividends or the sale of shares.

74. During the time since CVC acquired the Bank Group's shares of Formula 1, there have been a number of events that would have constituted realization events under Bluewaters' agreements with Apollo and King Street.

- In 2007, CVC extracted a \$1 billion dividend.
- In 2012, CVC extracted a second \$1 billion dividend.
- In May and June 2012, CVC sold shares of Formula for \$2.1 billion to BlackRock Inc. and two other investors.
- CVC is currently planning a \$2.5 billion IPO.

75. Bluewaters' carried interest would have provided it with a total of over \$650 million upon these realization events.

FIRST CAUSE OF ACTION: FRAUDULENT CONCEALMENT
(Against All Defendants)

76. Bluewaters specifically realleges and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if set forth herein at length.

77. Defendants engaged in a conspiracy in which they used a corrupt and illegal bribe, and kept the bribe secret, to the severe detriment of Bluewaters. Ecclestone was motivated by a thirst for power. He wanted desperately to remain "F-1 Supremo." It was all he cared about. Gribkowsky and CVC were motivated by pure, simple greed. They placed money above integrity and honesty. Ecclestone's, Gribkowsky's and CVC's actions are imputed to Alpha Prema, Alpha Topco, Delta Topco, and BayernLB, because a corporate entity acts only through its officers and directors. Moreover, Alpha Prema, Alpha Topco, and Delta Topco were formed by the co-conspirators and used by them to carry out the fraud and to keep it secret.

78. In furtherance of the conspiracy, Gribkowsky and Ecclestone lied to Bluewaters' Gregg and concealed from Bluewaters material facts—namely that they had agreed that Ecclestone would pay Gribkowsky a multimillion dollar bribe to help steer the sale of Formula 1 to CVC.

79. Defendants had peculiar and superior knowledge of the bribe rendering the bidding process inherently unfair. Bluewaters was unable to discern that defendants were involved in the bribery scheme through reasonable intelligence or diligence until the bribe was revealed after Gribkowsky's arrest in January 2011. Defendants were aware that Bluewaters did not know of the bribe.

80. Bluewaters reasonably and justifiably relied on defendants' superior knowledge and half-truths. Had defendants disclosed the bribe, Bluewaters would have taken action to protect its interests.

81. As a consequence of this conspiracy and defendants' conduct in furtherance of it, Bluewaters has suffered substantial damages in an amount to be proved at trial but exceeding \$650 million.

SECOND CAUSE OF ACTION: TORTIOUS INTERFERENCE
(Against All Defendants)

82. Bluewaters specifically realleges and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if set forth herein at length.

83. Defendants Gribkowsky, Ecclestone, CVC, Alpha Prema, Alpha Topco, and Delta Topco were aware of Bluewaters' business relationship with the Bank Group and intentionally interfered with Bluewaters' purchase of the Bank Group's ownership interest in Formula 1 through dishonest, unfair, and improper means. In addition,

defendant BayernLB was aware of Bluewaters' business relationship with J.P. Morgan and Lehman and interfered with Bluewaters' purchase of the shares of J.P. Morgan and Lehman through improper means.

84. These defendants conspired to, and did, interfere with the present and prospective economic advantage of Bluewaters. These defendants tortiously interfered with the proposed contractual arrangements between Bluewaters and members of the Bank Group including J.P. Morgan and Lehman, as well as BayernLB.

85. Defendants conspired to, and did, use wrongful means to achieve their interference, namely a \$44 million bribe of a senior officer of BayernLB.

86. As a consequence of this conspiracy and defendants' conduct in furtherance of it, Bluewaters has suffered substantial damages in an amount to be proved at trial but exceeding \$650 million.

THIRD CAUSE OF ACTION: UNJUST ENRICHMENT:
(Against CVC, Alpha Prema, Alpha Topco, Delta Topco, Ecclestone, and Gribkowsky)

87. Bluewaters specifically realleges and incorporates herein by reference each and every allegation contained in the foregoing paragraphs as if set forth herein at length.

88. CVC, Alpha Prema, Alpha Topco, Delta Topco, Ecclestone, and Gribkowsky were unjustly enriched at Bluewaters' expense and it is against equity and good conscience to permit them to retain the fruits of their fraudulent and unlawful conduct.

89. While Bluewaters was actively negotiating with Gribkowsky to purchase BayernLB's shares of Speed Investments, defendants conspired to engage in a fraudulent scheme to bribe Gribkowsky to steer the Formula 1 sale to CVC.

90. Each of CVC, Alpha Prema, Alpha Topco, and Delta Topco extracted billions of dollars from Formula 1 that do not rightfully belong to them. CVC, Alpha Prema, Alpha Topco, and Delta Topco have profited enormously from CVC's wrongful acquisition of Formula 1, which is currently valued at \$10 billion. Ecclestone was unjustly enriched by receiving an improper "finder's fee." Gribkowsky was unjustly enriched by accepting an improper bribe. CVC, Alpha Prema, Alpha Topco, Delta Topco, Ecclestone, and Gribkowsky must disgorge the profits rightfully belonging to Bluewaters.

PRAYER FOR RELIEF

WHEREFORE, Bluewaters demands judgment against defendants, jointly, severally and individually,

- A. Awarding compensatory damages in an amount to be determined at trial, but in an amount not less than \$650 million.
- B. Awarding punitive damages for defendants' criminal conduct.
- C. Awarding attorneys' fees and costs; and
- D. Granting any such other and further relief as is deemed just and proper by the Court.

Dated: November 16, 2012

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