



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JAMES BOCOCCO, VENTURI)
ANDERSONI, LLC, JOHN N. KYLE)
II, KRISTINA C. BRUNI, PAUL)
DESTEFANIS, PAULA ABERLE,)
MICHAEL DAGEN, ENTRUST)
FREEDOM/YVONNE WOOD,)
EQUITY TRUST/J.M. HUISINGA,)
IRWIN PODHAJSER, JAMES)
GALLAGHER, JONATHAN)
HEISTEIN, LINDA KLINK,)
MICHAEL L. ROBERTS, PAVAN)
ANAND, PHYLLIS COHEN,)
RONALD R. TILLER, TYLER)
WOOD, STEPHEN CLAASSEN,)
MICHAEL TANIELIAN, FRANK)
NEVES, JOHN D. ROEHRS, STAN V.)
SMITH ON BEHALF OF THE STAN)
V. SMITH TRUST DATED APRIL 30,)
1993, ROBERT A. BEAN, RICHARD)
CAREY, AND ALLEN WHITMORE,)

Plaintiffs,)

v.)

HC2 HOLDINGS, INC., HC2)
BROADCASTING HOLDINGS INC.,)
HC2 BROADCASTING INC.,)
CONTINENTAL GENERAL)
INSURANCE COMPANY, PHILLIP)
A. FALCONE, MICHAEL J. SENA,)
WAYNE BARR, JR., LES LEVI,)
PAUL K. VOIGT, AND IVAN P.)
MINKOV,)

Defendants.)

C.A. No. 2021-0224-PAF

**AMENDED VERIFIED COMPLAINT
FOR MONETARY AND EQUITABLE RELIEF**

The above-captioned plaintiffs (“Plaintiffs”), by and through their undersigned counsel, hereby file this complaint, derivatively and directly, against defendants, HC2 Holdings, Inc. (“HC2 Holdings”), HC2 Broadcasting Holdings Inc. (“HC2 Broadcasting”), HC2 Broadcasting Inc. (“HC2 Inc.”), Continental General Insurance Corporation (“Continental”), Phillip A. Falcone, Michael J. Sena, Wayne Barr, Jr., Les Levi, Paul K. Voigt, and Ivan P. Minkov, (collectively, “Defendants”) and allege as follows:

NATURE OF THE ACTION

1. This action is brought by certain minority shareholders of DTV America Corporation (“DTV America”), for themselves and on behalf of DTV America, together with certain holders of options of DTV America stock (the “Option Holders”), against a conglomerate of overlapping entities and their interlocking directors and officers. Plaintiffs assert claims for breaches of fiduciary duty, aiding and abetting in breaches of fiduciary duty, civil conspiracy, and tortious interference with contract and prospective economic advantage, for which Plaintiffs seek direct and derivative monetary and equitable relief necessitated by Defendants’ tripart scheme to (i) acquire majority control of DTV America, (ii) exploit that control by looting DTV America’s assets, (iii) force DTV America into unfavorable agreements that negatively impact DTV America’s financial position, and (iv)

ultimately acquire the remaining ownership of DTV America from the minority shareholders at a deep discount (the “Scheme”).

2. Upon HC2 Holdings’ acquisition of majority control of DTV America, it became one of the nation’s largest Low-Power TV station operators.

3. If HC2 Holdings, through its subsidiaries, had been willing to pay fair value to acquire 100% of DTV America, it could have carved-up and spread the enterprise value, assets, and business opportunities among its other broadcasting subsidiaries. That would have allowed the value of the enterprise to stay under the roof of HC2 Holdings, which is the ultimate parent company, but it would have also required HC2 Holdings to pay the unaffiliated minority shareholders of DTV America compensation at a fair value for their shares.

4. Instead, Defendants acquired 51% of DTV America stock so that they could ultimately acquire the remaining stock from the minority shareholders and thereafter were able to pay a significantly discounted price for the remaining shares after they had the opportunity and power to systematically deprive DTV America of its value and assets transferring them to HC2 Holding’s wholly owned subsidiaries.

5. But for Defendants’ misconduct, absence of good faith and fair dealing, disabling conflicts and multiple, ongoing violations of their fiduciary duties, Defendant’s Scheme could not have been perpetrated and the resulting damages to

DTV America, its minority shareholders, and its Option Holders would have never occurred.

PARTIES

6. Defendant HC2 Holdings is a Delaware Corporation. HC2 Holdings is a publicly traded company and the ultimate parent company of DTV America and a web of numerous other intersecting companies. HC2 Holdings describes itself on its website as a diversified holding company, which seeks opportunities to acquire and grow businesses that can generate long-term sustainable free cash flow and attractive returns in order to maximize value for all stakeholders. It has a diverse array of operating subsidiaries across multiple reportable segments.

7. Defendant HC2 Broadcasting is a Delaware corporation. Established in October 2017. HC2 Broadcasting is the broadcasting subsidiary of HC2 Holdings. As of January 4, 2021, HC2 Broadcasting operates 229 broadcast television stations. In addition, HC2 Broadcasting has approximately 210 silent licenses and construction permits. The total HC2 Broadcasting footprint, including construction permits, covers approximately 130 U.S. markets, including 34 of the top 35 markets across the United States and Puerto Rico.

8. Defendant HC2 Inc. is a Delaware corporation and a wholly owned subsidiary of HC2 Broadcasting and HC2 Holdings. HC2 Inc. owns 43% of the shares of DTV America stock. HC2 Inc. serves as non-operating entity formed

solely for the purpose of holding legal title to the 43% of the shares of DTV America acquired in November 2017.

9. Defendant Continental is a Texas corporation. Continental owns roughly 8% of DTV America stock. Continental is a wholly owned subsidiary of HC2 Holdings.

10. Defendant Phillip A. Falcone (“Falcone”) served as the chairman of the board of directors, President, and Chief Executive Officer of HC2 Holdings from May 2014 until April 2020. Falcone was the President and member of the board of directors of HC2 Broadcasting from October 2017 until May 2020, as well as a director and officer of DTV America.

11. Defendant Michael J. Sena (“Sena”) has served as the Chief Financial Officer of HC2 Holdings since June 2015. Sena also is an executive officer and member of the board of directors of HC2 Broadcasting from its inception in October 2017. Sena is a director of DTV America and a former Chief Financial Officer.

12. Defendant Les Levi (“Levi”) was the Chief Operating Officer of DTV America from December 2017 through April 2018. In November 2017, Levi became a member of DTV America’s board of directors. In May 2020, Levi became the Managing Director of Business Strategy of DTV America.

13. Defendant Ivan P. Minkov (“Minkov”) has been DTV America’s Chief Financial Officer since 2018. Minkov has also served as an executive officer of HC2

Broadcasting since 2018 and a member of the board of directors of HC2 Broadcasting since its inception in October 2017. Upon information and belief, Minkov has also served as the Chief Financial Officer of two affiliates of HC2 Holdings: HC2 Network Inc. and HC2 Station Group, Inc., since years 2017 and 2018, respectively.

14. Defendant Paul K. Voigt (“Voigt”) was HC2 Holdings’ Senior Managing Director, Investments between October 2014 and May 2018. According to HC2 Holdings’ SEC filings, Voight was also a “director and/or officer of several of HC2’s subsidiaries.” In addition, Voight is or was a director of DBM, Global, Inc. – an entity which, on information and belief, is controlled by HC2 Holdings.

15. Defendant Wayne Barr, Jr. (“Barr”) has served as a member of the board of directors of HC2 Holdings since 2014 and as the CEO since June 2020. Since February 2021, Barr has also served as Chief Executive Officer of HC2 Broadcasting and a member of its board of directors. Upon information and belief, since 2017, Barr has held the position of President of HC2 Network Inc. and, since 2018, he also served as the President of two other HC2 Holdings affiliates: HC2 Station Group, Inc. and HC2 Lptv Holdings, Inc.

16. In November 2017, when the HC2 Holdings, HC2 Broadcasting, Continental, and HC2 Inc. (together the “HC2 Entities”) acquired majority control of DTV America, DTV America owned more than 50 operating stations, primarily

in various top 100 designated market areas including Orlando, Tampa, Jacksonville, Fort Myers, Minneapolis, Detroit, and St. Louis.

17. Since November 2017, Falcone, Levi, Sena, Barr, and Minkov (collectively the “D&O Defendants”) have all, at one time, served as either a director, officer or both of DTV America. Levi and Sena have served (and continue) to serve as executive officers and members of DTV America’s board of directors. Minkov has served as its Chief Financial Officer since April 2018. Starting in November 2017, Falcone served as DTV America’s Chairman of the Board, President, and Chief Executive Officer.

18. At the inception of the Scheme, the D&O Defendants had roles as either executive officers and directors of DTV America and served as either a director or officer at one or both of the HC2 Entities. Assisting the D&O Defendants Voigt was an executive officer and/or directors of HC2 Holdings.

19. Derivative Plaintiff James Bocoock is currently a stockholder of DTV America and has been a stockholder continuously throughout the pertinent period pertaining to this action.

20. Derivative Plaintiff Venturi Andersoni, LLC is currently a stockholder of DTV America and has been a stockholder continuously throughout the pertinent period pertaining to this action.

21. Certain Plaintiffs are minority shareholders of DTV America and were shareholders of DTV America prior to June 2017 (“Minority Shareholders”). The names of each shareholder plaintiff are set forth on Exhibit 1 hereto.

22. Option Holder Plaintiffs, Kyle, Bruni, DeStefanis, Dagen, Podhajser, Aberle, Bean, and Boccock are stock option holders of DTV America stock.

JURISDICTION

23. This Court may exercise subject matter jurisdiction over this matter pursuant to 10 *Del C.* §§ 341-342.

24. Defendants are subject to service of process and personal jurisdiction in this case pursuant to 10 *Del. C.* § 3111, 10 *Del. C.* § 3114, and 10 *Del. C.* § 3104 as the means of service of process for the civil conspiracy theory of personal jurisdiction, specifically in connection with the direct claim for tortious interference.

FACTUAL BACKGROUND

The Scheme

25. In 2015, HC2 Holdings commenced, through its wholly owned subsidiaries, the acquisition of DTV America common stock.

26. By June 2017, HC2 Holdings, through its alter ego and wholly owned subsidiary Continental, had acquired approximately 8% of the outstanding common stock of DTV America.

27. In June 2017, HC2 Holdings caused HC2 Inc. to enter into an agreement with certain shareholders of DTV America to purchase their shares. This purchase agreement amounted to the sale of about 43% of the outstanding common stock of DTV America, and, then together with, the 8% then controlled by HC2 Holdings, made HC2 Holdings (through its wholly owned subsidiaries) the 51% majority owner.

28. As stated in a HC2 Holdings press release of June 27, 2017, “HC2 Holdings, Inc. (“HC2”) ... announced today that a subsidiary of HC2 Holdings has agreed to enter into a series of transactions that ... will result in HC2 and its subsidiaries owning over 50% of shares of common stock of DTV America Corporation.”

29. In June 2017, the future looked bright for DTV America, as the D&O Defendants represented, in writing, to new employees, to wit:

(i) [DTV America] is engaged in the business of owning and acquiring low power television (LPTV) broadcast licenses and construction permits (CPs) across the US to build a wireless distribution platform covering select DMAs; (ii) [DTV America] currently owns and operates 52 LPTV stations and intends to launch more than 50 new broadcast LPTV stations in the US over the next 12 month using LPTV licenses and CPs in its portfolio; and (iii) [DTV America] is also engaged in the development of technology to optimize the use of broadcast TV spectrum and the distribution of video content over its LPTV broadcast distribution platform...

30. In November 2017, HC2 Broadcasting (through its wholly owned non-operational acquisition entity, HC2 Inc.) closed on the purchase of the approximate

43% of additional outstanding shares under the purchase agreement entered in June 2017.

31. Falcone was the leader of HC2 Holdings and the confederacy behind the scheme, namely Falcone, Levi, Sena, Minkov, Barr, and Voigt (sometimes collectively, the “Conspirators”).

32. Beginning in 2016, Falcone and Voigt met with DTV America officials and shareholders repeatedly until the signing of the purchase agreement in June of 2017. It was primarily their responsibility in dealing with DTV America officers to paint the rosy picture of DTV America under HC2 Holding’s wing. During that time, the Conspirators were provided access to DTV America’s business plan, including, among things, immediate, near term LPTV broadcast station purchase opportunities around the country. From June 2017 to November 2017, the Conspirators had continuous access to newly identified LPTV station purchase opportunities.

33. Between June 2017 and November 2017, the Conspirators, aided and abetted by HC2 Entities, prompted HC2 Holdings (through its wholly owned subsidiaries) to purchase a number of the LPTV broadcast stations that were identified in DTV America’s business plan.

34. Between June 2017 and December 2020, more than 100 LPTV stations that were identified by DTV America (prior to November 2017) as its acquisition

candidates were purchased by HC2 Holdings through subsidiaries other than DTV America. There was no contrary voice at DTV America to speak up against co-opting of the business opportunities of DTV America because, from November 2017 to date, DTV America board of directors and executive officers were completely comprised of all or some subset of the Conspirators. All the members of the board of directors of DTV America were also members of the Conspirators.

HC2 Entities Steal DTV America's Corporate Opportunities

35. On October 19, 2017, DTV America signed a Letter of Intent with Tran Star, LLC ("Tran Star") for DTV America to acquire WFWC-CD Station Group ("WFWC-CD") for \$225, 000.

36. On February 8, 2018, HC2 Station Group, Inc. ("HC2 Station Group) filed an assignment for WFWC-CD with the FCC.

37. On April 6, 2018, the FCC approved the sale of WFWC-CD to HC2 Station Group.

38. On information and belief HC2 Holdings chief legal officer, Paul Ferraro, is listed as the contact email address for the FCC filing.

39. In October 2017, DTV America negotiates a deal to purchase Frank Digital Broadcasting's LPTV stations for \$65,000. However, on April 15, 2018, HC2 Station Group filed an application with the FCC to purchase these licenses for itself for \$65,000.

40. In 2016 and 2017, DTV America identified Azteca America as a potential acquisition target in the aforementioned business plan presented to the HC2 Entities. In November 2017, HC2 Entities acquired Azteca America for themselves.

41. However, the HC2 Entities now utilizes DTV America stations to broadcast Azteca America programming. The Conspirators forced DTV America into an arrangement in which DTV America recognizes advertising revenue sold by Azteca America sales representatives in return for carriage on the DTV America stations. According to its financial statements, DTV America only received \$18,000 dollars from this agreement in 2019.

42. Instead of allowing DTV America to take advantage of this corporate opportunity, the HC2 Entities usurped the opportunity and instead forced DTV America to carry its content at a reduced profit. Evidently, DTV America was in the best position to take advantage of the Azteca America opportunity considering it is DTV America's stations that now run Aztec America programming.

HC2 Holdings Transferred Control of DTV Entities

43. In addition to stealing the business opportunities of DTV America, the Conspirators caused DTV America to transfer the control of certain LPTV broadcasting station licenses to other wholly owned subsidiaries of HC2 Entities without paying any value – let alone fair market value – for those licenses. Since obtaining this “control,” HC2 Entities have subsequently sold a portion of licenses

to third parties resulting in direct or indirect profit to HC2 Entities and providing little or no consideration to DTV America.

44. Since 2017, over 70 licenses or construction permits were transferred from DTV America ownership and placed in the name of HC2 Station Group, Inc (“HC2 Station”) or another HC2 Entity. Some of the licenses that were wrongfully transferred to HC2 Station are as follows: K33KX-D (Abilene, TX); KEOT-LD (Abilene, TX); WFDY-LD (Albany, GA); WDRJ-LD, Albany, GA; WCEG-LD (Albany, GA); KMZB-LD (Amarillo, TX); W234DV-D (Athens, GA); WMEL-LD (Augusta, GA); KUMJ-LD (Beaumont, TX); KJYK-LD (Beaumont, TX); KIWG-LD (Boise, ID); KFAK-LD (Boise, ID); KPSW-LD (Boise, ID); W32ED-D (Canton, OH); W20DW-D (Clarksdale, MS); W34ER-D (Clarksdale, MS); W33DU-D (Columbus, GA); K25NT-D (El Dorado, AR); K30NH-D (El Dorado, AR); W14EH-D (Greensville, MS); W19EF-D (Greensville, MS); W22EO-D (Greensville, MS); W24EJ-D (Greensville, MS); W36EV-D (Greensville, MS); W40DN-D (Greensville, MS); W44DR-D (Greensville, MS); K17LV-D (Paragould, AR); KELZ-LD (Pasco, WA); K04RR-D (Sioux Falls, SD); K06QJ-D (Sioux Falls, SD); KAOM-LD (Sweetwater, TX); W25ED-D (Albany, GA); W29DY-D (Augusta, GA); W43CX-D (Augusta, GA); WDDZ-LD (Augusta, GA); WJEA-LD (Augusta, GA); W41DW-D (Augusta, GA); K24KY-D (Cape Girardeau, MO); K25NS-D (Cape Girardeau, MO); K26ME-D (Cape Girardeau, MO); KQJB-LD

(Carson City, NV); K38OO-D (Jefferson City, MO); K38OX-D (Keokuk, IA); K47OD-D (Monroe, LA); W36EU-D (Mount Vernon, IL); W20DX-D (Panama City, FL); K29KW-D (Fort Smith, AR); K32LM-D (Redding, CA).

45. Since the instigation of this litigation, HC2 Entities have begun covering their tracks. They have filed numerous “Administrative Updates” with the FCC that have reverted the HC2 Entities (or its subsidiaries) “ownership” or control back to DTV America.

46. In addition to their regulatory sophistry, HC2 Entities have begun rapidly selling DTV America owned license sometimes even comingling DTV America assets with those of HC2 Entities as exhibited below.

DTV America Licenses are Sold for the Benefit of HC2 Entities

47. On November 11, 2019, DTV America sold two stations W26DT-D and WCGZ-LD to Lowcountry 24 Media (“Lowcountry”), LLC for ***two dollars***.

48. This transaction was used as an incentive to Lowcountry to delay the sale of a full power station to HC2 Entities. Exhibit 5 of the FCC application for this sale provides:

A COPY OF THE ASSET PURCHASE AGREEMENT DATED SEPTEMBER 6, 2019, BETWEEN DTV AMERICA AND LOWCOUNTRY 34, MEDIA, LLC IS ATTACHED. ADDITIONAL CONSIDERATION FOR THE TRANSACTION IS THE EXTENSION OF TIME GRANTED BY LOW COUNTRY 34 MEDIA, LCC TO DTV AMERICA CORPORATION IN A RELATED

TRANSACTION BETWEEN THE PARTIES (SEE FCC
FILE NO. BALCT – 20190520AAU).

49. The above-mentioned FCC File No. BALCT-20190520AAU is a reference to an asset purchase agreement that took place on May 23, 2019 between HC2 Holdings and Lowcountry for the sale of Lowcountry’s full powered TV station WSCG in Savannah, GA to HC2 Holdings for \$2.6 million.

50. On June 19, 2020, Lowcountry sold W26DT-D to Marquee Broadcasting for \$200,000.

51. In September 2020, Lowcountry sold WCGZ-LD, along with two other licenses, for over \$350,000 to Gray Television Licensee, LLC.

52. The Conspirators, at the behest of the HC2 Entities, sold DTV America licenses worth hundreds of thousands of dollars to Lowcountry for next to nothing in a bid to gain additional time to execute a deal that would greatly benefit the HC2 Entities.

***HC2 Broadcasting Holdings Claims
Ownership of DTV America Licenses to Profit from Sale***

53. On March 12, 2021, mere days before this action was initially commenced, DTV America and HC2 Broadcasting entered into an asset purchase agreement with Gray Media Group, Inc (the “Gray Sale”). Both DTV America and HC2 Broadcasting are listed collectively as the “Seller” of ten licenses. While the asset purchase agreement did not identify which entity owned which assets, six of

the licenses sold were listed as to be DTV America's licenses.¹ While four licenses were initially claimed as licenses of HC2 Broadcasting Holdings. All of these were previously improperly transferred from DTV America to HC2 Entities control for no consideration.

54. The asset purchase agreement calls for the purchase price to be transferred in accordance with wire instructions sent by the Seller. The purchase price does not assign individual value for each license, but instead puts the total value of all ten licenses at \$475,000.

55. On information and belief, the proceeds from this sale went directly to the HC2 Entities, and DTV America received no consideration for its licenses.

56. Following the filing of this litigation, HC2 Broadcasting attempted to cover its tracks regarding the Gray Sale. On April 16, 2021, not even a month following the filing of the initial complaint, HC2 Broadcasting sent a letter to the FCC, on HC2 Broadcasting Holdings letterhead. The letter claimed there had been a "technical issue" in the licensing and management system platform which incorrectly listed the assignor of four licenses as "HC2 Broadcasting, Inc. instead of its affiliated entity DTV America Corporation." The four licenses at issue are

¹ The licenses belonging to DTV America are as follows: W33DH-D, Eau Claire, WI (FIN: 184506); W23EF-D, Tallahassee, FL (FIN: 183593); K31PR-D, Tyler, TX (FIN: 182595); WDDY-LD, Jackson, TN (FIN: 185331); WHJK-LD, Jackson, TN (FIN: 185366); W31EV-D, Wausau, WI (FIN 184339).

KMZB-LD, Amarillo, TX (Facility No: 183926); W20DW-D, Clarksdale, MS (Facility ID: 488792); K24NY-D, Paragould, AR (Facility No: 188802); W14ER-D, Eau Claire, WI (Facility ID: 185705). These were the only licenses in the Gray Sale that were attributable to HC2 Broadcasting at the time.

57. HC2 Broadcasting Holdings owned none of the licenses listed in the asset purchase agreement, but were still listed as a seller and received consideration.

58. HC2 Broadcasting Holdings only corrected this “mistake” after the date of the asset purchase agreement and after the filing of this lawsuit.

HC2 Entities Sell DTV America Licenses as their Own

59. On March 17, 2021, HC2 Broadcasting Holdings entered into an asset purchase agreement with TV-49, Inc. to sell six licenses for \$145,333. DTV America originally owned and was named licensee of four of the six licenses HC2 Broadcasting Holdings sold.²

60. The Conspirators and HC2 Entities improperly transferred control of these licenses to HC2 Broadcasting.

² The licenses belonging to DTV America, but sold by HC2 Broadcasting Holdings are as follow: WZDS-LD, Evansville, Indiana (FCC Facility: 188624); W30EM-D, Orlando, Florida (FCC Facility: 187644); W32EQ-D, Birmingham, Alabama (FCC Facility: 188699); K2000-D Sacramento, California (FCC Facility: 182084).

61. This transaction was signed by Levi as the Chief Operating Officer for HC2 Broadcasting. DTV America was not mentioned anywhere in the asset purchase agreement.

***DTV America's Financial Statements
Show Further Conflicted Transactions with HC2 Entities***

62. HC2 Entities – with the help of the Conspirators – are also currently using DTV America to prop up HC2 Holdings' financial position while also diluting the Minority Shareholders.

63. On information and belief, HC2 Holdings maintains its control of DTV America through a large minority position and then the remainder of proxy voting agreements to allow the HC2 Entities to have a controlling majority.

64. On information and belief, HC2 Holdings does not include DTV America in its consolidated financial statements, allowing the Conspirators to enter DTV America into agreements with the HC2 Entities that force DTV America to incur large amounts of debt owed to HC2 Holdings and improperly and unfairly share expenses with HC2 Holdings.

65. By keeping control of DTV America, but off its books, HC2 Entities have been able to enter into a "right to use" agreement (the "Right to Use Agreement") with DTV for over \$12,880,000. This Right to Use Agreement adds over \$12 million in long-term debt payable to HC2 Entities.

66. In addition to the Right to Use Agreement, according to the 2019 DTV America financial statements, DTV America has entered into an “Expense Sharing Agreement” with the HC2 Entities. This has allowed the HC2 Entities to push down expenses to DTV America.

67. DTV America’s operating expenses have increased from \$7.5 million to \$12.3 million from 2017 to 2019 and DTV America’s total liabilities have increased from \$12.8 million to \$30.2 million over the same period with only an approximate \$100,000 increase in gross revenues.

68. This significant increase in liability is directly related to the HC2 Entities pushing down expenses to DTV America and recording a receivable from DTV America on their own books in order to limit the losses on HC2 Holdings financial statements.

69. The Conspirators, at the behest of HC2 Entities, entered DTV America into incredibly costly agreements with HC2 Entities or their subsidiaries in order to provide a financial benefit for HC2 Entities. These conflicted transactions are not only devaluing and financially injuring DTV America, but the Minority Shareholders have had no input or transparency as to these transactions.

70. Additionally, the Conspirators are diluting the Minority Stockholders, by paying out large sums of share-based compensation disproportionate to DTV America’s profits or revenue. In 2019 and 2018, DTV America paid \$1,602,879 and

\$628,000, respectively, in Share-Based compensation. For context, DTV America's revenue has stayed between \$4.7 million and \$4.8 million from 2017 through 2019. However, DTV America's yearly net loss has gone from roughly -\$1.2 million in 2017 to -\$3.5 million in 2018, and to -\$6.9 million in 2019.

71. In addition to a drastic increase in share-based compensation, there has been an increase in General and Administrative Operating Expenses directly linked to the HC2 Entities. In 2017, DTV America spent roughly \$755,000 in "Other G&A" expenses. According to the DTV America's financial statements, in 2018, DTV America and HC2 Holdings entered into an expense sharing agreement (the "Expense Sharing Agreement").

72. Since entering into the Expense Sharing Agreement, DTV America's "Other G&A" expense has risen drastically amounting to roughly \$3,095,000 in 2018 and \$5,390,000 in 2019.

HC2 Entities Misappropriates DTV America Technology

73. The Conspirators also stripped DTV America of valuable technology and intellectual property. Long before the Conspirators arrived on the scene, DTV America developed internally a proprietary system called "DTV Cast." DTV Cast, the platform for which was DTV America's own proprietary hardware and software, enabled TV programming from a central "hub" to any connected TV station in the US. DTV Cast was recognized in the broadcast television industry as the most

advanced TV program distribution system in existence since it allows for the connectivity to the “hub” without the need for multiple and extremely expensive satellite dishes. The DTV Cast system provides for a low cost of operation, flexibility in maintenance, remote monitoring, remote operations, and the ability to scale to hundreds of TV stations.

74. HC2 Entities, under the direction of the Conspirators, rebranded DTV Cast as “Central Cast” and appropriated it for HC2 Broadcasting as if DTV Cast was an asset of HC2 Broadcasting. The Conspirators caused HC2 Entities to co-opt that technology and intellectual property without paying any value or consideration for that asset.

75. Misappropriating the DTV Cast Technology and using it as its “hub” for an economically feasible, fully integrated network of LPTV stations located anywhere in the United States made it possible for the HC2 Entities to go on a \$150,000,000 acquisition spree to purchase stations, starting in November 2017. Many of the acquisitions were originally identified by DTV America. Yet, none of those acquisitions were made for the benefit of DTV America. In fact, DTV America did not acquire one company or subsidiary following the November 2017 takeover by the HC2 Entities.

HC2 Entities Usurped FCC Repackaging in Conflicted Markets

76. From time-to-time the Federal Communications Commission (the “FCC”) undertakes what it calls a “repacking” process. “Repacking” involves reorganizing television stations in the broadcast television bands so the stations remaining on the air after the incentive auction occupy a smaller portion of the Ultra High Frequency (UHF) band, thereby freeing up a portion of that band for new wireless services use. The process includes the following steps: Full Power/Class A stations receive a confidential letter from the FCC with their new station channel assignment and assigned transition phase in the repacking plan. The FCC releases the list of all stations to be repacked and their assigned channels.

77. After the Conspirators took control in November of 2017, they took the best open and available channels that were repacked by the FCC from DTV America and diverted those stations to other wholly owned subsidiaries of HC2 Holdings.

78. With the first two parts of the Scheme completed (gain control, loot DTV America and deprive it of its going concern value), the third and final step of the Scheme has now been put in play by the Conspirators – *i.e.*, make offers to Minority Shareholders to purchase their shares at a deep discount. This commenced in November 2020.

Valuable DTV America Assets are Wasted in Furtherance of the Scheme

79. The Conspirators have allowed DTV America's assets – not reassigned or assumed by the HC2 entities – go to waste.

80. In 2019, the Conspirators wrote off nearly \$2 million dollars for the Impairment of FCC Licenses. In 2017 and 2018, DTV America only wrote off \$319,557 and \$176,119, respectively.

81. Since 2017, over 115 of DTV America's licenses and construction permits have expired and are worthless.

82. Additionally, 62 Construction permits are set to expire in July 2021 which has prompted the Conspirators to engage in the large-scale selling of DTV America assets at severely depressed prices to various other broadcasters including Lowcountry.

The Minority Shareholder Plaintiffs

83. All minority shareholder Plaintiffs were shareholders of DTV America and prior to June 2017 and remain shareholders today having no information or power to protect themselves from the economic consequences of the Scheme.

84. On information and belief, the Conspirators and DTV America have not held an annual shareholders' meeting since HC2 acquired a majority position in 2017.

85. DTV America's shares are not liquid, as there is a very limited number of potential purchasers for the sale of these shares. Thus, absent redress from this Court, the Minority Shareholders will be stuck with illiquid and seriously devalued shares; just as the Conspirators intended.

The Stock Option Holders of DTV America

86. The Option Holder Plaintiffs were granted their options under a DTV America stock option plan (the "Option Agreement"). (A copy of the stock option plan is attached as Exhibit 2.)

87. If the per dollar value of the shares is less than the strike price, the shares will be worth less than what the option holder pays for the shares and the options would commonly be known to be "out of the money."

88. Unless the stock options will at some point be worth more than the Strike Price, the options are essentially worthless.

89. As it pertains to the Option Holders, the second part of the Scheme had the same intent and purpose as it did with respect to the Minority Shareholders – with one distinction. With respect to out of the money stock options with no chance whatsoever of ever being in the money, the stock options are rendered valueless and there is no need for the Conspirators to even have to offer pennies on the dollar to buy out those options.

DEMAND FUTILITY

90. The derivative plaintiffs will adequately and fairly represent the interest of the unaffiliated minority stockholders of DTV America and vindicating DTV America's rights.

91. The derivative plaintiffs have continuously held DTV America stock at all times pertinent to the derivative claims averred in this action and the derivative plaintiffs remain shareholders of record of DTV America.

92. The derivative plaintiffs have not made a pre-suit demand on DTV America's board of directors (the "DTV Board") to assert the derivative claims averred herein because there is reasonable doubt that a majority of the DTV Board is or has ever been at any pertinent time capable of making an independent and disinterested decision to commence and prosecute the derivative claims asserted in this action because such a demand would have been futile and is therefore excused.

93. The DTV Board consists of (i) Wayne Barr, Jr., (ii) Michael J. Sena, (iii) Les Levi, and (iv) Ivan P. Minkov.

94. The members of the DTV Board suffer from disabling conflicts because they are, or were during the period of alleged misconduct pertinent to the derivative claims, directors and/or officers of HC2 Holdings (and, other HC2 affiliates), whose actions as the controlling stockholder of DTV America constitute multiple breaches of fiduciary duty to the unaffiliated Minority Shareholders of DTV America.

95. Sena has served as the Chief Financial Officer of HC2 Holdings since June 2015. Sena also is an executive officer and member of the board of directors of HC2 Broadcasting, since its inception in October 2017. Upon information and belief, since 2017, Sena has been a director of HC2 Network Inc., an affiliate of HC2 Holdings, and since 2018, he has also served as a director of two other affiliates of HC2 Holdings: HC2 Station Group and HC2 Lptv Holdings, Inc.

96. Barr has served as a member of the board of directors of HC2 Holdings since 2014 and as the CEO since June 2020. Since February 2021, Barr has also served as Chief Executive Officer of HC2 Broadcasting and a member of its board of directors. Upon information and belief, since 2017, Barr has held the position of President of HC2 Network Inc. and, since 2018, he also served as the President of two other HC2 Holdings affiliates: HC2 Station Group, Inc. and HC2 Lptv Holdings, Inc.

97. Voigt was HC2 Holdings' Senior Managing Director, Investments between October 2014 and May 2018. According to HC2 Holdings' SEC filings, Voigt was also a "director and/or officer of several of HC2's subsidiaries." In addition, Voigt is or was a director of DBM, Global, Inc. – an entity which, on information and belief, is controlled by HC2 Holdings.

98. Minkov has served as a Vice President and the Chief Financial Officer of HC2 Broadcasting since 2018 and a member of the board of directors of HC2

Broadcasting since its inception in October 2017. Upon information and belief, Minkov has also served as the Chief Financial Officer of two affiliates of HC2 Holdings: HC2 Network Inc. and HC2 Station Group, Inc., since years 2017 and 2018, respectively.

99. Falcone served as the chairman of the board of directors, President, and Chief Executive Officer of HC2 Holdings from May 2014 until April 2020. Falcone was the President and member of the board of directors of HC2 Broadcasting from October 2017 until May 2020, as well as a director and officer of DTV America.

100. Levi was at all times pertinent a close business associate of Falcone's, and he has served as an officer of HC2 Broadcasting Holdings Inc. since 2017, while also having served as Chief Operating Officer of two affiliates of HC2 Holdings: HC2 Network Inc. (up to 2017) and HC2 Station Group, Inc. (up to 2018).

101. As particularized herein, and at all times pertinent hereto, the members of the DTV America Board were interested and lacked independence due to their interconnected relationship with and overriding allegiance to the HC2 Holdings and its web of intersecting affiliates, rendering the DTV America Board incapable of making an impartial decision as to any derivative claims asserted in this action, and thereby excusing any pre-suit demand relating such claims.

COUNT I

BREACH OF FIDUCIARY DUTY OF LOYALTY TO DTV AMERICA

(Minority Shareholders on Behalf of DTV America Against D&O Defendants)

102. Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

103. D&O Defendants Falcone, Sena, Levi, and Minkov served as directors and officers of DTV America during the time of the Scheme. Sena, Levi, and Minkov remain directors or officers today. Throughout the Scheme, the D&O Defendants also were officers, directors of or affiliated with either HC2 Holdings or HC2 Broadcasting.

104. As directors and officers, the D&O Defendants owed fiduciary duties to DTV America.

105. While directors and officers, the D&O Defendants used their authority to transfer valuable assets from DTV America to the HC2 Entities and their affiliates, including but not limited to state of the art intellectual property, the lucratively “repackaged” broadcasting channels, the LPTV licenses, and the network programming relationships.

106. Further, the D&O Defendants and HC2 Entities sold DTV America licenses for the direct and indirect financial benefit of HC2 Entities which HC2 Entities are currently in the process of covering up.

107. As directors and officers of DTV America, the D&O Defendants failed to adequately bid or attempt to pursue lucrative business opportunities, previously identified in DTV America's business plan, but instead improperly passed those opportunities over to the HC2 Entities and their subsidiaries.

108. At all pertinent times, DTV America is/was financially able to exploit for itself each of the opportunities at issue—or at least had it not been for Defendants' looting of DTV's America's assets.

109. All such opportunities are within DTV America's line of business.

110. DTV America has a legitimate interest and expectancy in each opportunity that the D&O Defendants usurped for the benefit of the HC2 Entities;

111. By usurping opportunities that rightfully belong to DTV America for the benefit of the HC2 Entities, the D&O Defendants breached their fiduciary duty of loyalty to the Minority Shareholders.

112. D&O Defendants further breached their fiduciary duties by selling DTV America's assets in exchange for grossly inadequate compensation for the sole benefit of the HC2 Entities and the detriment of DTV America.

113. As a result of the foregoing, Minority Shareholders, on behalf of DTV America are entitled to a derivative award of damages against the D&O Defendants in an amount to be determined at trial but not less than \$30 million.

COUNT II

BREACH OF FIDUCIARY DUTY OF LOYALTY OWED DIRECTLY TO THE MINORITY SHAREHOLDERS

(Minority Shareholders Against the HC2 Entities)

114. Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

115. At all pertinent times, HC2 Holdings through its wholly owned subsidiaries, Continental and HC2 Inc., together, own 51% of DTV America's stock and, therefore, HC2 Holdings constitutes a de facto Majority Shareholder.

116. Additionally, HC2 Holdings has proxy agreements with certain interested minority shareholders, allowing them at all times to maintain a controlling majority.

117. As Majority Shareholder of DTV America, the HC2 Entities owe a fiduciary duty of loyalty to the Minority Shareholders.

118. Defendants exploited HC2 Holding's position as controlling shareholder to steal numerous business opportunities that rightfully belonged to DTV America.

119. DTV America was financially able to exploit such opportunities for itself.

120. The Majority Shareholder's breaches of its fiduciary duty of loyalty has proximately caused substantial and ongoing economic harm to the Minority

Shareholders.

121. As a result of the foregoing, Minority Shareholders are entitled direct relief in the form of a damages award against the Majority Shareholder in an amount to be determined at trial.

COUNT III

BREACH OF FIDUCIARY DUTY OF LOYALTY OWED TO MINORITY SHAREHOLDERS

(Minority Shareholders Against the D&O Defendants)

122. Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

123. By virtue of their positions as executive officers and directors of DTV America, D&O Defendants owed fiduciary duty of loyalty to the Minority Shareholders of DTV America.

124. D&O Defendants repeatedly breached their fiduciary duty of loyalty to the Minority Shareholders by virtue of the Scheme, causing them substantial, ongoing economic harm.

125. As a result of the foregoing, the Minority Shareholder are entitled to direct relief in the form of a damages award against D&O Defendants in an amount to be determined at trial.

COUNT IV

BREACH OF FIDUCIARY DUTY AND CORPORATE WASTE

(All Plaintiffs against D&O Defendants)

126. Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

127. D&O Defendant's sale of numerous licenses valued at over hundred thousand dollars for next to nothing amounts to the squandering or giving away of corporate assets for the benefit of HC2 Entities.

128. D&O Defendant's allowed a large portion of DTV America's licenses to HC2 Entities for no value.

129. Further, D&O Defendant's has allowed or will allow over 70 licenses and construction permits – that they chose not to transfer to HC2 Entities – to expire or be sold at fire sale prices.

130. The transactions at issue were so bereft of consideration to DTV America that they amount to corporate waste resulting in substantial economic harm to DTV America.

131. As a result of the foregoing, Plaintiffs are entitled to derivative relief in the form of a damages award against Defendants in an amount to be determined at trial.

COUNT V

CIVIL CONSPIRACY

(All Plaintiffs Against All Defendants)

132. Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

133. To the extent any members of the Conspirators were not part of that group from its inception, each one of them at a point in time that they became a member engaged in overt acts in furtherance of the conspiratorial Scheme all of which were willful violations of their fiduciary duties.

134. As a result of the conspiracy, the Minority Shareholders have suffered economic injury in terms of substantial devaluation of their stock holdings.

135. As a result of the foregoing, Plaintiffs are entitled to direct relief in the form of a damages award against Defendants, including Voigt, in an amount to be determined at trial.

COUNT VI

**AIDING AND ABETTING
THE BREACH OF FIDUCIARY DUTIES**

**(Minority Shareholders, on Behalf of
Themselves and DTV America, Against the HC2 Entities)**

136. Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

137. D&O Defendants, as directors and officers of DTV America, owed a fiduciary duty of loyalty to DTV America and the Minority Shareholders.

138. D&O Defendants breached the fiduciary duty of loyalty to DTV America by diverting business opportunities that rightfully belonged to DTV America to HC2 Entities and their affiliates.

139. The HC2 Entities knowingly participated by substantially assisting or abetting in the Scheme and the actions of the D&O Defendants that constituted a breach of their fiduciary duties.

140. The HC2 Entities and D&O Defendants, together, knowingly entered into agreements between DTV America and the HC2 Entities that would inundate DTV America with debt and expenses for the purpose of adding positive line items to HC2 Holdings consolidated financials. These agreements heavily devalued DTV America's financial position and the value of the minority shareholder's stock and the potential value of the option holder's underlying share value.

141. None of the actions taken by the Conspirators in the second part of the Scheme (carving up the enterprise value of DTV America and re-distributing same among the other wholly owned subsidiaries that HC2 Holdings owned) could have been accomplished without the participation of the HC2 Entities.

142. The HC2 Entities' actions aided and abetted the Scheme and breach of the D&O Defendants' fiduciary duties, resulting in damages to the Minority

Shareholders.

143. As a result of the foregoing, Minority Shareholders, on behalf of themselves and DTV America, are entitled to a damages award against Defendants in an amount to be determined at trial.

COUNT VII

TORTIOUS INTERFERANCE WITH PROSPECTIVE CONTRACT, BUSINESS RELATIONS AND/OR ECONOMIC ADVANTAGES AGAINST OPTION HOLDERS

(Option Holders Against All Defendants)

144. The Option Holders, Plaintiffs Kyle, Bruni, DeStefanis, Dagen, Bean, Podhajser, Obrero, Aberle, and Boccock incorporate the preceding paragraphs as if set forth fully herein.

145. Each of the Option Holders entered into an Option Agreement with DTV America captioned “DTV America Corporation Stock Option Award Agreement under 2016 Omnibus Incentive Plan.” The Option Agreements are valid and enforceable contracts.

146. Defendants knew of the Option Agreement and the Option Holder’s ability to become stockholders and/or financially benefit from the Option Agreement.

147. Defendants intentionally and improperly interfered with the Option Holders’ prospective contractual interests relating to the Options, causing the Option

Holders pecuniary loss while profiting from the asset and opportunity transfers to the HC2 Entities.

148. Defendants intentionally and improperly interfered with the Option Holders' interests and expectations relating to the Options.

149. Defendants' intentional and improper interference proximately caused the Option Holders pecuniary loss.

150. As a result of the foregoing, Option Holders are entitled to an award of damages against defendants Falcone, Sena, Barr, Levi, Voigt, Minkov, HC2 Holdings and HC2 Broadcasting in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants as follows:

- a) Awarding compensatory and other damages, including consequential, and rescissory damages, as referenced in the aforementioned counts;
- b) Awarding restitutionary relief, including without limitation, disgorgement of all ill-gotten gains;
- c) Imposing a constructive trust over all wrongfully acquired property and resulting profits;
- d) Issuing a permanent mandatory injunction compelling Defendants to restore all misappropriated assets and profits to DTV America;

- e) Issuing a permanent injunction prohibiting Defendants from further misappropriating DTV America's corporate opportunities and property;
- f) Ordering the D&O Defendants to furnish an accounting as to the disposition of and profits relating to the transactions underlying the fiduciary claims alleged herein, including without limitation, and all usurped opportunities, misappropriated property, and any other breaches of fiduciary duties.
- g) Awarding the costs and expenses of this action, including attorney's fees;
- h) Awarding pre- and post-judgment interest at the applicable statutory rate(s); and
- i) Awarding all such other relief as this Court deems just and proper.

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Wilmington, Delaware