

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Civil Action No: 07-CVS-5097

WACHOVIA BANK, NATIONAL  
ASSOCIATION and WACHOVIA  
CAPITAL MARKETS, LLC

Plaintiffs,

v.

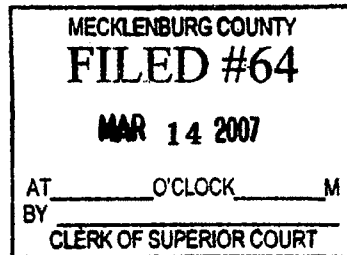
HARBINGER CAPITAL PARTNERS  
MASTER FUND I, LTD. d/b/a  
HARBINGER CAPITAL PARTNERS  
MASTER FUND 1 d/b/a HARBINGER  
CAPITAL PARTNERS MASTER FUND I;  
AURELIUS CAPITAL MASTER, LTD.,  
AURELIUS CAPITAL PARTNERS, LP,  
LATIGO MASTER FUND, LTD.,  
HARBINGER CAPITAL PARTNERS  
OFFSHORE MANAGER, L.L.C.,  
AURELIUS CAPITAL MANAGEMENT,  
LP, AURELIUS CAPITAL GP, LLC,  
LATIGO PARTNERS, L.P., TACONIC  
OPPORTUNITY FUND L.P., SCHULTZE  
MASTER FUND, LTD., UBS WILLOW  
FUND, L.L.C., ARROW DISTRESSED  
SECURITIES FUND, TACONIC  
CAPITAL MANAGEMENT LLC, AND  
BOND STREET CAPITAL LLC,

Defendants.

TEMPORARY RESTRAINING ORDER

AND

NOTICE OF HEARING ON  
PRELIMINARY INJUNCTION MOTION



This cause came on for hearing on March 14, 2007 before the undersigned Superior Court Judge on Plaintiffs' Motion for Temporary Restraining Order (without notice), pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure. Based on the matters of record, the Court makes the following Findings of Fact and enters this Order restraining the Defendants as set forth below.

## FINDINGS OF FACT

1. Wachovia Bank, National Association (“Wachovia”) is a national banking association with its main office and principal place of business located in Charlotte, Mecklenburg County, North Carolina. Wachovia Capital Markets, LLC (“WCM”) is an affiliate of Wachovia and is a limited liability company with its principal place of business in Charlotte, Mecklenburg County, North Carolina.

2. Wachovia made loans of over \$265 million to a company known as Le-Nature’s, Inc. (“Le-Nature’s”) on or about September 1, 2006. WCM syndicated the loans, and Wachovia assigned interests therein to various syndicate members.

3. A secondary market exists for interests in syndicated loans. In some instances, entities becoming members of the syndicate by such assignments have further reassigned their interests in the same manner.

4. An involuntary bankruptcy petition was filed against Le-Nature’s in the United States Bankruptcy Court for the Western District of Pennsylvania on November 1, 2006.

5. It became publicly known within the secondary market for syndicated loans on or before November 2, 2006 that Le-Nature’s had engaged in a massive fraud and provided materially misleading financial information to Plaintiffs, the original members of the syndicate, and other creditors.

6. After news of Le-Nature’s fraud became public, many of the then-current syndicate members sold their interests in the loans by making further assignments thereof.

7. By virtue of direct and indirect reassignments from original members of the syndicate and from their assignees, the defendants Harbinger Capital Partners Master Fund I Ltd., Aurelius Capital Master, Ltd., Aurelius Capital Partners, LP, Taconic Opportunity Fund L.P., Schultze Master Fund, Ltd., UBS Willow Fund, L.L.C., Arrow Distressed Securities Fund,

and Latigo Master Fund, Ltd. (referred to herein as the “Fund Defendants”) became members of the syndicate after November 2, 2006. In other words, the Fund Defendants became members of the syndicate after it became widely known that Le-Nature’s was engaged in fraud and after Le-Nature’s had been placed in bankruptcy proceedings.

8. Typical Supplements by which the Fund Defendants became Lenders are attached to the Harkness Affidavit as Exhibit C. Several of the Fund Defendants acted through various partners or agents in executing the Supplements. As is shown on the signature lines on Exhibit C, the agents included Harbinger Capital Partners Offshore Manager, L.L.C., Aurelius Capital Management, LP, Aurelius Capital GP, LLC, Taconic Capital Management LLC, Bond Street Capital LLC, and Latigo Partners, L.P. (herein the “Agent Defendants”).

9. The Fund Defendants and Agent Defendants (jointly “Defendants”) have taken actions that make it clear they intend to assert and pursue claims against Wachovia, WCM, and/or their agents, employees, officers, directors, or others acting on their behalf (herein jointly referred to as “Agents”) that they believe have been assigned to them directly (or indirectly through intermediate assignments) by other prior members of the syndicate pursuant to the Supplements (and perhaps other similar Supplements) attached to the Harkness Affidavit as Exhibit C.

10. All such Supplements, in addition to assigning an interest in the loans to the Fund Defendants, provide for the assignment of third party claims and causes of action, such as claims against Wachovia and WCM, “to the extent permitted by applicable law.”

11. If and to the extent such Supplements validly assigned to the Fund Defendants claims of other, prior syndicate members against entities such as WCM and Wachovia for failing to find and disclose the fraud of Le-Nature’s in the origination and syndication of the Le-Nature’s loans, then the trading of syndication interests would include the buying and selling of

Personal Tort Claims (as that term is defined in the Conclusions of Law below) for assertion against entities other Le-Nature's.

12. The Fund Defendants have likely executed side agreements in the form attached to the Harkness Affidavit as Exhibit H, to which Wachovia and WCM are not parties, that purport to override the explicit choice of North Carolina in the Supplements by which interests in the Le-Nature's loans have been assigned to them.

13. Wachovia, WCM, and any other Wachovia entities (such as direct and indirect parent and subsidiary entities of Wachovia and WCM) will suffer irreparable injury should Defendants be allowed to assert Personal Tort Claims against any such entity, or against agents or employees of such entities, that arise from or relate in any respect to credit extended by any entity to Le-Nature's.

14. Entry of this Temporary Restraining Order without prior notice to Defendants is necessary and appropriate to prevent irreparable injury to Plaintiffs, as is shown by the Harkness Affidavit, in order to prevent the Defendants from filing a lawsuit or lawsuits in a jurisdiction or jurisdictions that will not respect or apply North Carolina law prohibiting champerty and prohibiting violations of N.C.G.S. §75-1.1 when determining whether any of the Defendants may assert Personal Tort Claims against the Plaintiffs.

15. Defendants will suffer no material, legally cognizable injury from entry of this Temporary Restraining Order, and accordingly a ~~\$1,000~~ Cash Bond will be required from Plaintiffs, which shall be paid to the Clerk forthwith.

### CONCLUSIONS OF LAW

1. Plaintiffs will suffer irreparable injury absent entry of this Temporary Restraining Order without prior notice to Defendants.

2. This Court has the power and legal authority to grant this Temporary Restraining Order.

3. North Carolina law prohibits the assignment of any “Personal Tort Claims,” which include all alleged statutory and common law (i) claims for fraudulent and negligent omissions or misrepresentations, or both, (ii) claims alleging constructive fraud, (iii) negligence claims, (iv) breach of fiduciary duty claims, (v) tortious interference claims, (vi) unfair trade practices claims, (vii) racketeering claims, (viii) conspiracy with respect to or to commit any of the aforelisted claims, or to commit any other wrongful act or omission, and (ix) aiding or abetting with respect to or to commit any of the aforelisted claims, or to commit any other wrongful act or omission. *Horton v. New South Ins. Co.*, 122 N.C. App. 265, 269, 468 S.E.2d 856, 858 (1996); *Charlotte-Mecklenburg Hosp. Authority v. First of Georgia Ins. Co.*, 340 N.C. 88, 91, 455 S.E.2d 655, 657 (1995); *Investors Title Insurance Co. v. Herzig*, 330 N.C. 681, 688, 413 S.E.2d 268, 271 (1992); *Andrews v. Strategic Outsourcing, Inc.* 2006 WL 1967382, \*2 (W.D.N.C. 2006).

4. All of the tort claims that the Defendants might contend have been assigned to them by the Supplements attached to the Harkness Affidavit, or by similar Supplements, or by any other ancillary agreements (such as agreements on the form attached as Exhibit H to the Harkness Affidavit) purporting to assign claims to the Defendants that relate in any respect to credit extended by any entity to Le-Nature’s, are Personal Tort Claims as that term is used herein and in the governing case law.

5. Any purported assignment of unassignable Personal Tort Claims is champertous and violates N.C.G.S. § 75-1.1.

6. The assertion (or attempted or purported assignment, or attempted or purported reassignment) of unassignable Personal Tort Claims against any of Plaintiffs, or their Agents, or against any of Plaintiffs' direct or indirect parent and subsidiary entities, or any Agents of such entities, is champertous and also violates N.C.G.S. § 75-1.1.

7. A North Carolina court will not apply the law of another state, even if parties seek the application of that other state's law by agreement, if the application of the foreign law will or would allow the assignment of unassignable Personal Tort Claims or the assertion of champertous claims in violation of North Carolina common law or N.C.G.S. § 75-1.1.

8. A Cash Bond of ~~\$1,000~~ should be required of Plaintiffs, which may be deposited in cash to the Clerk of Court.

**IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:**


1. Defendants and all of their officers, agents, servants, employees, attorneys, and all persons or entities acting in concert with them (such Defendants and all others being herein referred to as "Enjoined Persons and Entities"), are hereby enjoined from asserting, filing, prosecuting, attempting to assign or re-assign, or otherwise pursuing any Personal Tort Claims against Plaintiffs or any of their Agents (or any of Plaintiffs' direct or indirect parent or subsidiary entities, or any Agents of such entities) that arise from or relate in any respect to credit extended by any entity to Le-Nature's, Inc.

2. The Personal Tort Claims that the Enjoined Persons and Entities are prohibited from asserting, as set forth in the foregoing paragraph, include but are not limited to each and every of the following statutory or common law claims or causes of action, whether under the law of North Carolina or of any other state: (i) claims for fraudulent and negligent omissions or

misrepresentations, or both, (ii) claims alleging constructive fraud, (iii) negligence claims, (iv) breach of fiduciary duty claims, (v) tortious interference claims, (vi) unfair trade practice claims, (vii) racketeering claims, (viii) conspiracy with respect to or to commit any of the aforelisted claims, or to commit any other wrongful act or omission, and (ix) aiding or abetting with respect to or to commit any of the aforelisted claims, or to commit any other wrongful act or omission.

3. Defendants are directed to appear in Courtroom 6310 of the Mecklenburg County Courthouse, Charlotte, North Carolina on March 22, 2007 at 2:30 a.m./pm before the undersigned Judge, and show cause, if there be any, why this Temporary Restraining Order should not be continued as a Preliminary Injunction.

This Order is entered this 14<sup>th</sup> day of March, 2007 at 3:21 PM

  
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Superior Court Judge Presiding