

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS DEFENDANTS

Wells Fargo & Co. Citigroup, Inc.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) ATTORNEYS (IF KNOWN)
Friedman Kaplan Seiler & Adelman LLP Gregory P. Joseph Law Offices
1633 Broadway, New York, NY, 10019 485 Lexington Avenue, 30th Floor
(212) 833-1100 New York, NY 10017
(212) 407-1211

OCT 14 2008

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. 1331. Plaintiff seeks relief under the Emergency Economic Stabilization Act of 2008.

Has this or a similar case been previously filed in SDNY at any time? No Yes Judge Previously Assigned Judge Kaplan

If yes, was this case Vol. Invol. Dismissed. No Yes If yes, give date & Case No.

(PLACE AN [x] IN ONE BOX ONLY) NATURE OF SUIT

Table with columns: TORTS, ACTIONS UNDER STATUTES, LABOR, IMMIGRATION, FEDERAL TAX SUITS, SOCIAL SECURITY, PROPERTY RIGHTS, OTHER STATUTES. Includes categories like CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FEDERAL TAX SUITS, SOCIAL SECURITY, PROPERTY RIGHTS, OTHER STATUTES.

Handwritten circle around 'OTHER STATUTES' section, specifically around items 430-470.

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ OTHER JUDGE Kaplan DOCKET NUMBER 08 Civ. 8503

Check YES only if demanded in complaint JURY DEMAND: YES NO NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

Handwritten number: 0605430

Handwritten circled numbers: 08 Civ. 8666, 08 Civ. 8668

Statement of Related Cases

This action is related to *Wachovia Corp. v. Citigroup, Inc.*, 08 Civ. 8503 (LAK), *Citigroup, Inc. v. Wachovia Corp.*, 08 Civ. 8666-UA, and *Citigroup, Inc. v. Wachovia Corp.*, 08 Civ. 8668-UA because these actions all arise out of or relate to the same letter agreement between Citigroup, Inc. and Wachovia Corporation and the same merger agreement between Wachovia and Wells Fargo, Inc., and because these actions raise common issues concerning Section 126 of the Emergency Economic Stabilization Act of 2008.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WELLS FARGO & CO., :
: 08 CIV. _____
Plaintiff, :
v. :
CITIGROUP, INC., :
Defendant. :
-----X

8716

COMPLAINT

FILED
U.S. DISTRICT COURT
2008 OCT 14 AM 9:38
S.D. OF N.Y.

Plaintiff Wells Fargo & Company ("Wells Fargo"), by its undersigned counsel, states for its Complaint, with knowledge of its own acts and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. Wells Fargo seeks a declaratory judgment and injunctive relief under Section 126(c) of the Emergency Economic Stabilization Act of 2008 ("EESA"). Wells Fargo seeks a judgment declaring that a letter agreement between Wachovia Corporation ("Wachovia") and Citigroup, Inc. ("Citigroup") dated September 29, 2008, is unenforceable to the extent it purported to prohibit Wachovia from considering and entering into a merger agreement with Wells Fargo on or around October 3, 2008. Second, Wells Fargo seeks injunctive relief enjoining Citigroup from pursuing claims for liability against Wells Fargo that are premised upon the enforceability of the foregoing letter agreement.

THE PARTIES

2. Plaintiff Wells Fargo is a Delaware corporation with its principal place of business in San Francisco, California.

3. Defendant Citigroup, Inc. is a Delaware corporation with its principal place of business in New York, New York.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because the action arises under the Emergency Economic Stabilization Act (the "EESA") signed into federal law on October 3, 2008.

5. The acts and transactions constituting the violations alleged herein occurred in the Southern District of New York and elsewhere. Citigroup transacts business within this District. Accordingly, this Court has personal jurisdiction over Citigroup, and venue is proper under 28 U.S.C. § 1391(b).

FACTUAL BACKGROUND

6. During the early morning hours of Monday, September 29, 2008, Wachovia and Citigroup pursued a non-binding proposal denominated an "agreement in principle" that contemplated the acquisition by Citigroup of certain Wachovia operations for approximately \$2.1 billion in consideration to Wachovia, or \$1 per Wachovia share (the "Citigroup Transaction").

7. Acting pursuant to its authority under Section 13 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1832, the FDIC invoked the "systemic risk" provision of the FDIA, and committed to use federal government funds to limit

Citigroup's losses on Wachovia's \$312 billion loan portfolio to \$42 billion if the Citigroup Transaction was consummated.

8. Also on September 29, 2008, Citigroup entered into a Letter Agreement with Wachovia which purports, among other things, to prevent Wachovia from considering or entering into another agreement that would result in the acquisition of more than 15% of the equity or assets of Wachovia, even if such proposal is superior to the Citigroup Transaction, prior to October 6, 2008 (the "Letter Agreement"). The Letter Agreement is attached as Exhibit A and incorporated by reference herein. By its terms, the Letter Agreement expired at 12:00 a.m. on Monday, October 6, 2008.

9. Between September 29 and October 2, 2008, Wachovia worked on the potential agreement with Citigroup. There were many substantial issues, and no definitive agreement was reached.

10. On October 2, 2008, Wells Fargo unilaterally made a proposal to enter into a stock-for-stock merger with Wachovia (the "Wells Fargo Proposal"). The Wells Fargo Proposal contemplated an acquisition of all of Wachovia for consideration totaling \$15 billion, or approximately \$7 per Wachovia share. During the night of October 2-3, the Wachovia board considered and approved the Wells Fargo Proposal. In the early morning of October 3, Wachovia and Wells Fargo entered into a definitive merger agreement (the "Wells Fargo Transaction"), which was announced prior to the opening of the markets that day.

11. Citigroup publicly announced that Wells Fargo interfered with its Letter Agreement with Wachovia, and asserted that the Wells Fargo Transaction was improper, unenforceable, and prohibited by the Letter Agreement.

12. On October 9, 2008, Citigroup issued a press release announcing that it would not seek to enjoin the Wells Fargo Transaction, but would vigorously pursue what it characterized as “strong” legal claims seeking damages of \$60 billion from Wachovia for breaching the Letter Agreement, and from Wells Fargo for tortiously interfering with the Letter Agreement.

13. According to a press report also dated October 9, 2008, “[s]ources inside Citigroup told CNBC that that bank believes Wells Fargo will have to settle claims of tortious interference of contract that Citigroup has made against it before any merger between Wells Fargo and Wachovia can take place.”

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

14. Wells Fargo incorporates herein by reference and realleges the allegations of each of the preceding paragraphs.

15. Section 126(c) of the Emergency Economic Stabilization Act of 2008 ("EESA") amends section 13(c) of the Federal Deposit Insurance Act by adding at the end the following new paragraph:

UNENFORCEABILITY OF CERTAIN AGREEMENTS -
No provision contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly

- (1) affects, restricts, or limits the ability of any person to offer or acquire,
 - (2) prohibits any person from offering to acquire or acquiring, or
 - (3) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,
- all or part of any insured depository institution, including any liabilities, assets, or interest therein, in connection with

any transaction in which the [FDIC] exercises its authority under section 11 or 13, shall be enforceable against or impose any liability on such person, as such enforcement or liability shall be contrary to public policy.

16. One of the purposes of the EESA is to protect the interests of the "taxpayers of the United States" as well as shareholders and creditors of the affected companies.

17. As alleged above, Citigroup contends that Wells Fargo tortiously interfered with the Letter Agreement because that Agreement restricts Wachovia Board of Directors from considering, negotiating, or accepting proposals for merger or acquisition -- such as the Wells Fargo Transaction -- even if such proposals are more advantageous to Wachovia's shareholders, and the taxpayers of the United States, than the Citigroup Transaction.

18. The Letter Agreement was existing at the time of enactment of the EESA and purports to prevent or limit other offers to acquire Wachovia (including the Wells Fargo Transaction), even where such offers are more beneficial to Wachovia and to taxpayers. As such, the Letter Agreement is "contrary to public policy" and not enforceable under the EESA.

19. Because the Letter Agreement is not enforceable under the EESA, Wells Fargo cannot be liable for tortious interference with the Letter Agreement.

SECOND CLAIM FOR RELIEF

(Injunction Against Citigroup)

20. Wells Fargo incorporates herein by reference and realleges the allegations of each of the preceding paragraphs.

21. As alleged above, the Letter Agreement is "contrary to public policy" and unenforceable under the EESA, and, as a result, Wells Fargo cannot be liable for tortious interference with the Letter Agreement.

22. It appears that a purpose of Citigroup's pursuit of tortious interference claims against Wells Fargo is to cause investors to believe, incorrectly, that Citigroup's claims for damages will affect the closing of the Wells Fargo Transaction. Wells Fargo has no adequate remedy at law to address such conduct by Citigroup.

WHEREFORE, Wells Fargo requests that this Court enter judgment:

- (a) Declaring that the Letter Agreement is void as to public policy to the extent it is deemed to interfere with the Wells Fargo Transaction;
- (b) Declaring that, because the Letter Agreement is not enforceable under the EESA, Wells Fargo cannot be liable for tortious interference with the Letter Agreement;
- (c) Enjoining Citigroup from pursuing claims for liability against Wells Fargo that are premised upon the enforceability of the Letter Agreement; and
- (d) Awarding Wells Fargo such other damages, attorneys' fees, costs and other relief as may be just and proper.

Dated: October 14, 2008

FRIEDMAN, KAPLAN, SEILER & ADELMAN,
LLP



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1633 Broadway
New York, New York 10019
(212) 833-1100

Attorneys for Wells Fargo & Company

EXHIBIT A

Citigroup Inc.

September 29, 2008

Wachovia Corporation

Ladies and Gentlemen:

Citigroup Inc. ("Citigroup") and Wachovia Corporation ("Wachovia") are party to that non-binding term sheet dated September 29, 2008 (the "Term Sheet") setting forth the terms and conditions of a proposed transaction between them (the "Transaction"). Citigroup and Wachovia will continue to proceed to negotiate definitive agreements (the "Definitive Documentation") relating to the Transaction in form and substance satisfactory to each of them with a view to executing such Definitive Documentation prior to October 6, 2008 (the "Exclusivity Termination Date").

In consideration of the foregoing and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Wachovia hereby agrees that, during the period commencing on the date hereof and ending on Exclusivity Termination Date, Wachovia shall not, and shall not permit any of its subsidiaries or any of its or their respective officers, directors, employees, investment bankers, attorneys, accountants, consultants or other agents or advisors ("Representatives") to, directly or indirectly, (i) solicit, initiate or take any action to facilitate or encourage the submission of any Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to Wachovia or any of its subsidiaries, assets or businesses or afford access to the business, properties, assets, books or records of Wachovia or any of its subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any third party that is seeking to make, or has made, an Acquisition Proposal, (iii) grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of Wachovia or (iv) enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement or other similar instrument relating to an Acquisition Proposal. As of the date hereof, Wachovia will, and will cause its Representatives to, terminate any discussions or negotiations with respect to any Acquisition Proposal.

"Acquisition Proposal" means, other than the Transaction, any offer, proposal or inquiry relating to, or any third party indication of interest in, (i) any acquisition or purchase, direct or indirect, of 15% or more of the consolidated assets of Wachovia, or over 15% of any class of equity or voting securities of Wachovia or any of its subsidiaries whose assets, taken as a whole, constitute more than 15% of the consolidated assets of Wachovia, (ii) any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in such third party's beneficially owning 15% or more of any

class of equity or voting securities of Wachovia or any of its subsidiaries whose assets, taken as a whole, constitute more than 15% of the consolidated assets of Wachovia, (iii) a merger, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving Wachovia or any of its subsidiaries whose assets, individually or in the aggregate, constitute more than 15% of the consolidated assets of Wachovia or (iv) any other transaction the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the Transaction or that could reasonably be expected to dilute materially the benefits to Citigroup of the Transaction.

The parties agree that in the event of any breach of this letter agreement, the parties would be irreparably harmed and could not be made whole by monetary damages. Each party accordingly agrees (i) not to assert by way of defense or otherwise that a remedy at law would be adequate and (ii) that the remedy of specific performance of this letter agreement is appropriate in any action in court, in addition to any other remedy to which such party may be entitled.

This agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any state or federal court sitting in New York City, Borough of Manhattan, over any suit, action or proceeding arising out of or relating to this letter agreement. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereby agree that a final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon you and may be enforced in any other courts to whose jurisdiction the parties are or may be subject by suit upon such judgment.

This letter agreement may be executed in counterparts, either one of which need not contain the signature of more than one party, but both such counterparts taken together will constitute one and the same agreement.

If the foregoing accurately summarizes our understanding, we request that you approve this letter agreement and evidence such approval by causing a copy of this letter agreement to be executed and returned to the undersigned.

Very truly yours,

CITIGROUP INC.

By: *Gary L. Crittenden*
Name: GARY L. CRITTENDEN
Title: CFO

Agreed and accepted:

WACHOVIA CORPORATION

By: _____
Name:
Title:

Citigroup Inc.

September 29, 2008

Wachovia Corporation

Ladies and Gentlemen:

JCS
October 6, 2008

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This letter agreement may be executed in counterparts, either one of which need not contain the signature of more than one party, but both such counterparts taken together will constitute one and the same agreement.

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Very truly yours,

CITIGROUP INC.

By: _____
Name:
Title:

Agreed and accepted:

WACHOVIA CORPORATION

By:  _____
Name:
Title:

