

NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT

No.: 08 CVS 22632

IRVING EHRENHAUS, On Behalf Of Himself And  
All Others Similarly Situated,

Plaintiff,

(CLASS ACTION)

v.

JOHN D. BAKER, II, PETER C. BROWNING,  
JOHN T. CASTEEN, III, JERRY GITT, WILLIAM  
H. GOODWIN, JR., MARYELLEN C.  
HERRINGER, ROBERT A. INGRAM, DONALD  
M. JAMES, MACKEY J. MCDONALD, JOSEPH  
NEUBAUER, TIMOTHY D. PROCTOR, ERNEST  
S. RADY, VAN L. RICHEY, RUTH G. SHAW,  
LANTY L. SMITH, G. KENNEDY THOMPSON,  
DONA DAVIS YOUNG, WACHOVIA  
CORPORATION, and WELLS FARGO &  
COMPANY,

Defendants.

**MOTION FOR EXPEDITED DISCOVERY AND  
SCHEDULING HEARING ON MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff moves for entry of the attached Order directing expedited discovery in the above action and scheduling a hearing on their application for a preliminary injunction. The grounds for this motion are as follows:

1. Plaintiff is a shareholder of Wachovia Corporation (“Wachovia” or the “Company”) and has been a shareholder of Wachovia since prior to the conduct complained of in the complaint. Plaintiff commenced this action on October 8, 2008.

2. Plaintiff brings his action as a class action on behalf of himself and all other public shareholders of Wachovia in connection with an unlawful scheme and plan to enable Wells Fargo & Company (“Wells Fargo”) to acquire Wachovia for grossly inadequate consideration and in breach of the individual defendants’ fiduciary duties (the “Merger”). Specifically, on October 3, 2008, Wachovia announced that Wachovia’s Board of Directors (the “Board”) had approved a definitive agreement (the “Merger Agreement”) to be acquired by Wells Fargo, in a Merger for approximately \$15.1 billion in equity value, under the terms of which Wachovia’s public stockholders will receive 0.1991 shares of Wells Fargo common stock in exchange for each share of Wachovia common stock that they own, valued at approximately \$7 per share of Wachovia common stock. Pursuant to the Merger, it is expected that Wachovia’s current senior managers, will be offered the opportunity to continue as the Surviving Corporation’s leadership following its close.

3. In addition to the Merger Agreement, the Board also agreed to a “Share Exchange” under which Wachovia is issuing Wells Fargo preferred stock that votes as a single class with Wachovia’s common stock representing 39.9 percent of Wachovia’s voting power. The Share Exchange requires, as a condition to closing, only that there be no injunction in place blocking the Share Exchange and that the Company give its shareholders ten days notice of the Share Exchange. Thus, the Share Exchange could close in as little as ten days. The Share Exchange is an impermissible abrogation of the duties of the Wachovia directors and a coercive condition impeding the free exercise of the Wachovia shareholders’ right to vote on the merger.

4. Defendants John D. Baker, II, Peter C. Browning, John T. Casteen, III, Jerry Gitt, William H. Goodwin, Jr., Maryellen C. Herringer, Robert A. Ingram, Donald M. James, Mackey J. McDonald, Joseph Neubauer, Timothy D. Proctor, Ernest S. Rady, Van L. Richey, Ruth G. Shaw,

Lanty L. Smith, G. Kennedy Thompson, and Dona Davis Young (collectively the “Individual Defendants”), as officers and/or directors of the Company, owe fiduciary duties of good faith, loyalty, fair dealing, due care, and candor to plaintiffs and the other public stockholders of the Company (except the Defendants herein and any person, firm, trust, corporation, or other entity related to, or affiliated with, any of the Defendants) and their successors in interest, who are or will be threatened with injury arising from Defendants’ actions as more fully described herein (the “Class”).

5. Plaintiff contends, among other things, that Wells Fargo is attempting to acquire Wachovia for inadequate consideration, achieved through an unfair process.

6. In violation of their fiduciary duties, the Board has impermissibly circumvented the voting process and rendered the vote on the Merger essentially redundant, thereby coercing Wachovia’s shareholders to accept the Merger. The unaffiliated Wachovia shareholders have been effectively disenfranchised, in that over 40% of the vote will almost certainly go in favor of the Merger (since Wachovia has issued or will issue before the Merger vote preferred shares that provide Wells Fargo with 39.9% of the vote, combined with the fact that the directors and officers of Wachovia hold 2.48% of the Company’s common stock) and there appears to be no protection for those unaffiliated shareholders, such as a requirement that a majority of the unaffiliated shareholders vote in favor of the Merger. Prior to the Bailout, the Board may have believed that the Merger would be the best possible transaction for Wachovia’s unaffiliated shareholders, but, under the current structure, and considering the lessening of exigent circumstances as a result of the Bailout, and considering the Board’s continuing fiduciary duties, unless the Share Exchange is enjoined, any shareholder vote would be robbed of its effectiveness by the impermissible ceding of effective voting

control that has predetermined the outcome of the Merger vote without regard to its merits.

7. Additionally, by contracting to issue preferred shares carrying 39.9% of the Wachovia shareholder vote to Wells Fargo, the Individual Defendants have, for all practical purposes, precluded any competing bid from being accepted by the Company without the consent of Wells Fargo, including any possible topping bid by Citigroup.

8. The 0.1991 shares of Wells Fargo common stock in exchange for each share of Wachovia common stock, valued at approximately \$7 per share of Wachovia common stock, to be provided to Class members pursuant to the Merger is unfair and inadequate because, among other things:

(a) the \$7 per share valuation of Wachovia common stock actually offers a \$3 per share discount to the Company's closing price of \$10 per share on September 26, 2008, which was prior to the initial failure in the U.S. House of Representatives on September 29, 2008 of the Bailout, as first proposed, that caused a severe and likely exaggerated sector-wide downturn in financial stock trading prices;

(b) the U.S. Senate and House of Representatives, on the second vote, did pass into law the \$700 billion Bailout on October 3, 2008, under which the federal government will purchase illiquid assets of companies such as Wachovia; thus, the Bailout should make Wachovia much more valuable in that its most poorly performing assets will likely be purchased by the government and its other remaining valuable assets, most notably its \$339 billion in Wachovia deposits and its network of more than 3,300 branches throughout the country, would solidify Wells Fargo (or any other potential acquirer) as being in the top tier of U.S. retail banking; and

(c) further, as reported in BusinessWeek on October 6, 2008, in an article entitled

*Wachovia: A Split May Boost the Banking Industry* concerning the Merger and Citigroup's TRO, "Wachovia CEO Robert Steel has argued to Wall Street [that] only one-quarter of the bank's loan portfolio consists of the troubled mortgages made in its Golden West subsidiary. Excluding those mortgages—admittedly, no small feat—and a smaller portfolio of troubled construction loans, the majority of Wachovia's portfolio consists of old-fashioned consumer loans to customers with whom the bank has generally had a long relationship."

9. Plaintiff asserts that by reason of the foregoing, Defendants have violated, and will continue to violate (unless the Merger is enjoined) their fiduciary duties owed to the public shareholders of Wachovia by acting to put the interests of themselves and Wells Fargo ahead of those of Wachovia's public shareholders, they have acted against the best interests of the Class, and have otherwise failed to take appropriate steps to protect the interests of the Class.

10. Pursuant to North Carolina Rule of Civil Procedure 34(b), the "court may allow a shorter or longer time" to respond to discovery requests.

11. As the North Carolina Superior Court stated in First Union Corp. v. Suntrust Banks, Inc., 2001 WL 1885686, \*9 (N.C. Super. 2001), "North Carolina courts have frequently looked to Delaware for guidance because of the special expertise and body of case law developed in the Delaware Chancery Court and the Delaware Supreme Court." Thus, due to the absence of reported North Carolina law on the topic at issue, plaintiff urges the Court to follow Delaware law in this case, pursuant to which, where, as here, plaintiff has articulated a sufficiently colorable claim and has shown a sufficient possibility of threatened irreparable harm, those courts have recognized the propriety of expedited proceedings. See Marie Raymond Revocable Trust, et al. v. MAT Five LLC, et al., 2008 WL 2673341 (Del. Ch. Jun. 26, 2008); In re SunGard Data Sys., Inc. S'holders Litig.,

2005 WL 1653975 (Del. Ch. July 8, 2005); Giammargo v. Snapple Beverage Co., 1994 WL 672698, \*2 (Del. Ch. 1994).

12. In applying these standards, the Delaware Court of Chancery “traditionally has acted with a certain solicitude for plaintiffs” and “has followed the practice of erring on the side of more [expedited] hearings rather than fewer.” Giammargo, 1994 WL 672698, at \*2. As a result, “[a] party’s request to schedule an application for a preliminary injunction, and to expedite the discovery related thereto, is normally routinely granted. Exceptions to that norm are rare.” In re Int’l Jensen, Inc. Shareholders Litig., 1996 WL 422345, at \*1 (Del. Ch. 1996). The Delaware Supreme Court has observed that “Delaware courts are always receptive to expediting any type of litigation in the interests of affording justice to the parties.” Box v. Box, Del. Supr., 697 A.2d 395, 399 (1997).

13. The Share Exchange will abrogate the Company’s public shareholders’ right to make a non-coerced vote on the Merger, by substituting the judgment of the Board and Wells Fargo for that of the public shareholders on the Merger’s desirability. Unless the Court hears plaintiff’s application on an expedited basis, Wachovia’s stockholders will irreparably and irretrievably lose their opportunity to (1) make a non-coerced decision as to how to vote with respect to the Merger; and (2) to receive fair consideration for their shares.

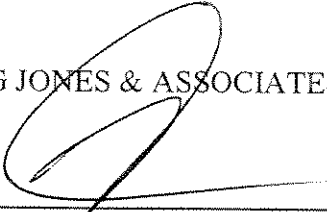
14. According to the Share Exchange agreement, the Share Exchange could close in as little as ten days. In the absence of prompt injunctive relief from this Court, Wachovia’s public stockholders will suffer immediate, irreparable harm. Thus, plaintiff must undertake and complete discovery in connection with his application for injunctive relief, and briefing, argument and decision thereon must take place in an extremely short period (perhaps less than ten days). Accordingly, expedited discovery is essential.

15. This threat of irreparable harm justifies expedited discovery with a hearing on plaintiff's Motion for a Preliminary Injunction, prior to the end of October 2008, or prior to such time as defendants represent to the Court that the Share Exchange will close.

WHEREFORE, plaintiff respectfully requests that the Court enter the accompanying Order expediting discovery proceedings and scheduling a hearing on plaintiff's Motion for Preliminary Injunction.

Dated: October 14, 2008

GREG JONES & ASSOCIATES, P.A.

By:   
\_\_\_\_\_  
Greg Jones, Esq.  
3015 Market Street  
Wilmington NC 28403  
(910) 251-2240  
(910) 251-1520 fax

*Attorneys for Plaintiff*

OF COUNSEL:

WOLF POPPER LLP  
Robert M. Kornreich, Esq.  
Carl L. Stine, Esq.  
Anthony Green, Esq.  
845 Third Avenue  
New York, New York 10022  
(212) 759-4600

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DONA DAVIS YOUNG, WACHOVIA  
CORPORATION, and WELLS FARGO &  
COMPANY,

Defendants.

**[PROPOSED] ORDER REGARDING PLAINTIFFS'  
MOTION FOR EXPEDITED PROCEEDINGS**

THE COURT, having considered Plaintiffs' Motion for Expedited Proceedings and any  
opposition thereto;

**IT IS HEREBY ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008, as follows:

1. Plaintiffs' Motion for Expedited Proceedings is **GRANTED**;
2. The hearing on Plaintiffs' Motion for Preliminary Injunction shall be held on  
\_\_\_\_\_, 2008 commencing at \_\_\_\_\_m.
3. The parties shall confer and submit a proposed order regarding the schedule for  
briefing on Plaintiffs' Motion for Preliminary Injunction.

\_\_\_\_\_  
Hon. \_\_\_\_\_



**CERTIFICATE OF SERVICE**

This is to certify that the undersigned counsel has this day served the *Motion and Proposed Order for Expedited Discovery and Scheduling Hearing on Motion for Preliminary Injunction* in the referenced case upon the below-named individuals and/or corporations by depositing a copy of document, postage pre-paid, in the United State Mail, addressed to:

**Wells Fargo & Company  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603**

**Dona Davis Young  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603**

**Wachovia Corporation  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603**

**G. Kennedy Thompson  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603**

**Lanty L. Smith  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603**

**Ruth G. Shaw  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603**

Van L. Richey  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

Joseph Neubauer  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

Ernest S. Rady  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

Timothy D. Proctor  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

Mackey J. McDonald  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

Donald M. James  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

Robert A. Ingram  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

MaryEllen C. Herringer  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

William H. Goodwin, Jr.  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

**Jerry Gitt**  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

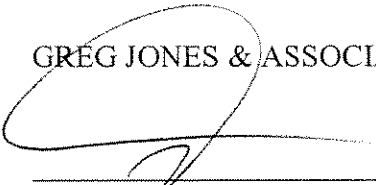
**John T. Casteen, III**  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

**John D. Baker, II**  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

**Peter C. Browning**  
c/o Corporation Service Company  
327 Hillsborough Street  
Raleigh, NC 27603

This the 15 day of October, 2008.

GREG JONES & ASSOCIATES, P.A.



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**Gregory L. Jones**  
NC State Bar No.: 13001  
3015 Market Street  
Wilmington, NC 28403  
(910) 251-2240  
*Attorney for Plaintiff*