

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

In the Matter of )  
 )  
Distribution of 2000, 2001, 2002 ) Docket No. 2008-2 CRB CD  
And 2003 Cable Royalty Funds ) 2000-2003 (Phase II) (Remand)  
\_\_\_\_\_)

**INDEPENDENT PRODUCERS GROUP'S REPLY IN SUPPORT OF  
MOTION FOR ADMONITION AND SANCTIONS AGAINST  
THE SETTLING DEVOTIONAL CLAIMANTS**

Worldwide Subsidy Group LLC (a Texas limited liability company) dba  
Independent Producers Group ("IPG") hereby submits its *Reply In Support of  
Motion for Admonition and Sanctions Against the Settling Devotional Claimants.*

**A. "FORGETTING" ABOUT PRIOR FILINGS IS NOT A DEFENSE  
TO GROSS NEGLIGENCE, BUT EVIDENCE OF SUCH NEGLIGENCE.**

SDC desires that a different set of rules apply to the SDC than to all other parties. SDC offers a few explanations for its neglect. First, SDC counsel explains that it allowed the error in its expert witness' testimony to be filed because SDC counsel "forgot" that IPG had made a particular filing.<sup>1</sup> SDC Opp. at 1. Next the SDC claim that the eCRB docket at some unidentified point in time failed to reflect

---

<sup>1</sup> The SDC fail to clarify just how many of the five-person SDC legal counsel team "forgot" about IPG's prior filing.

IPG's *Notice of Revised Claim to 2001 Cable Royalties (Devotional)*, filed on May 12, 2017. Conveniently, no evidence of this statement is presented by SDC counsel, much less any evidence that the SDC actually relied on the eCRB docket to determine whether IPG had previously filed a notice of revised claim.

Regardless, the SDC does not dispute that it was served with IPG's *Notice of Revised Claim to 2001 Cable Royalties (Devotional)*, and the CRB stamped it as "received" on May 12, 2017 (see **Exhibit A**), so why the CRB's recordation of the pleading is significant is unclear.

Regardless of the foregoing, the SDC asserts that it "repeatedly" reviewed Mr. Sanders' testimony, and despite such multiple passes (no doubt by each of the five counsel that the SDC typically bring to SDC proceedings), no one discerned the error of Mr. Sanders' statement. Quite simply, the SDC assertion is incredulous, but if accurate, only serves to demonstrate the extraordinary level of neglect and, dare say it, willingness of the SDC to "say anything". The SDC twists this neglect, the truth of which was in the *immediate* knowledge of multiple SDC counsel, as being less culpable than when the undersigned counsel merely suspected that *certain* figures overstated the percentage of royalties owed to IPG, the truth of which was *not* in the immediate knowledge of the undersigned *nor even capable of determination*. Indeed, the SDC ask for nothing more than for a different set of rules to apply to SDC counsel.

No doubt, mistakes naturally occur. Nonetheless, admonition is appropriate when such mistakes could have been avoided and rise to the level of gross negligence. Although the SDC may hope otherwise, no apology by the SDC diminishes the SDC's neglect that could have been easily avoided. Further, while the SDC coyly point the finger *at the Judges* for soliciting a motion for sanctions against IPG and the undersigned counsel in the consolidated 1999-2009 satellite/2004-2009 cable proceeding, that point is irrelevant when acts of greater culpability are revealed. It is further irrelevant because the SDC actually did file a *Motion for Sanctions Against IPG and Its Counsel*. Obviously, the SDC had no obligation to file a motion for sanctions against IPG and its counsel, but elected to do so, and ascribed to the position that sanctions were appropriate in light of IPG counsel's mere *suspicion* that *certain* figures were overstated. To be certain, "what is good for the goose, is good for the gander", a concept that the SDC are bound to accept.

Dismissing the significance of its neglect, the SDC challenge that Multigroup Claimants incurred no prejudice because Multigroup Claimants had not yet served discovery on the SDC regarding the misstatements appearing in the SDC's written rebuttal statement. According to the Judges, however, "[p]rejudice is a measure of the equitable decision before the Judges, not the legal standards they apply". Docket no. 2012-6 CRB CD 2004-2009, Docket no. 2012-7 CRB CD

1999-2009, *Order on IPG Motion to File Amended Written Direct Statement* (Jan. 10, 2017). As such, “prejudice” simply goes toward the weight of the remedy applied, not toward the issue of whether a remedy should be applied.

While the existence or non-existence of prejudice might be a compelling argument, the SDC is in no position to observe the inner communications between Multigroup Claimants and its counsel. Specifically, the SDC did not observe the multiple communications that occurred as a result of the misstatement, the effort made by the undersigned and his staff to confirm Multigroup Claimants’ prior filing of the *Notice of Revised Claim to 2001 Cable Royalties (Devotional)* (excising the value of 2001 programming by Salem Baptist Church and Jack Van Impe Ministries), and the drafting of discovery no less onerous than that which was drafted by the SDC in the consolidated 1999-2009 satellite/2004-2009 cable proceeding.<sup>2</sup>

Finally, the SDC attempt to distinguish its neglect from the actions of the undersigned, for which the SDC sought the imposition of sanctions. Such attempt is wholly disingenuous. According to the SDC, sanctions were not sought for IPG

---

<sup>2</sup> In the consolidated proceeding, in order to address IPG’s *Amended Written Direct Statement*, the SDC simply asked for all documents and electronic information related to both IPG’s *Written Direct Statement* and *Amended Written Direct Statement*, i.e., the submission of one additional written discovery request. The SDC’s public acknowledgment of its error in this proceeding obviated Multigroup Claimants’ discovery addressing the SDC witness’ misstatement, which was to be served imminently.

counsel's failure to recognize an error in the IPG expert's opinion, but "for filing a report without conducting any reasonable review or inquiry". SDC Opp. at 4. The SDC, however, never respond to the facts expressly raised in IPG's opposition to the SDC's *Motion for Sanctions* in the consolidated proceeding, as well as in its moving brief here:

"[T]he declarations submitted in the proceeding by IPG personnel, IPG counsel, and its expert witness (Dr. Cowan), universally confirmed that IPG and its counsel reasonably relied on the representations of Dr. Cowan, acted diligently when IPG merely suspected (but could not confirm) that errors existed with *certain* presented figures in Dr. Cowan's initial report, had no means of discerning the accuracy of Dr. Cowan's calculations, and that Dr. Cowan adamantly maintained and communicated to IPG counsel (and the Judges) that his report corrections were not methodological in nature."

Multigroup Claimants' motion at 3. Such unrefuted facts demonstrate that the SDC's claim that it was not seeking sanction for a mere failure to recognize an error in the expert witness' calculations, is nothing more than "lip service". In fact, the SDC argued that IPG's revelation of such facts only demonstrated IPG's "unrepentant" nature. To be certain, if the SDC can characterize as "unrepentant" IPG's inability to know or confirm its expert's error (see SDC *Motion for Sanctions against IPG and Its Counsel*), how should the Judges characterize the SDC's explanation that its error was due to the "forgetfulness" of multiple SDC counsel, and a suggested CRB docketing omission? If the Judges are going to

admonish IPG's counsel, admonition of the SDC's counsel is not only warranted, but equity and fair play requires it.

### CONCLUSION

On the foregoing grounds, IPG moves that the Judges admonish SDC counsel in no less harsh a manner than IPG's counsel was admonished in the Judges' *Order on IPG Motion for Leave to File Amended Written Direct Statement* (January 10, 2017), Docket No. 2012-6 CRB CD 2004-2009 (Phase II) and Docket No. 2012-7 CRB SD 1999-2009 (Phase II).

Second, IPG moves that the Judges render a ruling on SDC's written rebuttal statement that is no less onerous than any sanctions levied against IPG (if any) in the consolidated 1999-2009 satellite and 2004-2009 cable proceedings.

DATED: January 31, 2018

\_\_\_\_\_/s/\_\_\_\_\_  
Brian D. Boydston, Esq.  
PICK & BOYDSTON, LLP  
10786 Le Conte Ave.  
Los Angeles, California 90024  
Telephone: (213)624-1996  
Facsimile: (213)624-9073  
Email: brianb@ix.netcom.com

Attorneys for Independent Producers  
Group

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of January 2018, a copy of the foregoing was sent by electronic mail to the parties listed on the attached Service List.

\_\_\_\_\_/s\_\_\_\_\_  
Brian D. Boydston

### **SETTLING DEVOTIONAL CLAIMANTS:**

Matthew MacLean  
Michael Warley  
Jessica Nyman  
Pillsbury, Winthrop, et al.  
1200 17<sup>th</sup> Street N.W.  
Washington, D.C. 20036

# Certificate of Service

I hereby certify that on Wednesday, January 31, 2018 I provided a true and correct copy of the INDEPENDENT PRODUCERS GROUP'S REPLY IN SUPPORT OF MOTION FOR ADMONITION AND SANCTIONS AGAINST THE SETTLING DEVOTIONAL CLAIMANTS to the following:

Settling Devotional Claimants (SDC), represented by Michael A Warley served via Electronic Service at michael.warley@pillsburylaw.com

Signed: /s/ Brian D Boydston