

Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

In the Matter of)	
)	Docket No. 2012-6 CRB CD 2004-2009
)	(Phase II)
Distribution of the 2004, 2005, 2006, 2007,)	
2008, and 2009 Cable Royalty Funds)	

In the Matter of)	
)	Docket No. 2012-7 CRB SD 1999-2009
)	(Phase II)
Distribution of the 1999-2009 Satellite)	
Royalty Funds)	

JOINT MPAA AND SDC PROPOSAL REGARDING HEARING LENGTH

Pursuant to the Copyright Royalty Judges' ("Judges") *Order Rescheduling Hearing*, dated September 28, 2017, MPAA-represented Program Suppliers ("MPAA"), Settling Devotional Claimants ("SDC"), and Independent Producers Group ("IPG") (collectively, the "Phase II Parties") met and conferred over electronic mail between November 29, 2017 and December 11, 2017 regarding the length of the upcoming evidentiary hearing for this proceeding, which is currently scheduled to begin on April 9, 2018. As a result of the Phase II Parties' meet and confer correspondence, MPAA and SDC agreed, and hereby propose, that the Judges schedule four days, April 9-12, 2018, for the evidentiary hearing in the captioned matter.

On December 8, 2017, IPG informed MPAA and SDC that it had filed a lawsuit in the U.S. District Court for the District of Columbia, *Worldwide Subsidy Group, LLC v. Hayes*, Civil Docket No. 1:17-cv-02643 ("*WSG v. Hayes*"), seeking to reverse the Judges' rulings in their March 13, 2015 *Memorandum Opinion And Ruling On Validity And Categorization Of Claims* in this proceeding. See Exhibit A (Plovnick Decl.) at ¶ 3, and Exhibit 1. IPG informed MPAA

and SDC that it “does not believe that an estimate for the evidentiary hearing can be made,” and instead sought their consent for a stipulation to stay this proceeding pending the outcome of *WSG v. Hayes*. *See id.* MPAA and SDC did not consent to a stay of this proceeding pending the outcome of *WSG v. Hayes*, informing IPG that the case is improperly brought, lacks jurisdiction, and has no merit. *See id.* IPG declined to join MPAA and SDC’s joint proposal to the Judges regarding the length of the evidentiary hearing in this proceeding, however, IPG authorized MPAA and SDC to inform the Judges that IPG has no objection to MPAA and SDC’s proposal regarding the length of the evidentiary hearing should IPG’s efforts to seek a stay of the proceeding prove unsuccessful. *See id.*

A Proposed Order adopting MPAA and SDC’s proposal regarding the length of the evidentiary hearing in this proceeding is being filed concurrently herewith.

Respectfully submitted,

MPAA-REPRESENTED PROGRAM SUPPLIERS

/s/ Gregory O. Olaniran

Gregory O. Olaniran (DC Bar No. 455784)

goo@msk.com

Lucy Holmes Plovnick (DC Bar No. 488752)

lh@msk.com

Alesha M. Dominique (DC Bar No. 990311)

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MITCHELL SILBERBERG & KNUPP LLP

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Counsel for the MPAA-Represented Program Suppliers

SETTLING DEVOTIONAL CLAIMANTS

/s/ Matthew J. MacLean

Clifford M. Harrington (D.C. Bar No. 218107)

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Matthew J. MacLean (D.C. Bar No. 479257)

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Jessica T. Nyman (D.C. Bar No. 1030613)

jessica.nyman@pillsburylaw.com

PILLSBURY WINTHROP SHAW PITTMAN LLP

1200 Seventeenth Street, NW

Washington, D.C. 20036-3006

Telephone: (202) 663-8000

Facsimile: (202) 663-8007

Counsel for the Settling Devotional Claimants

Dated: December 15, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2017, a copy of the foregoing pleading was provided to the party listed below, either electronically via the Copyright Royalty Judges' eCRB electronic filing system, or by Federal Express overnight mail.

Brian D. Boydston
PICK & BOYDSTON LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

/s/ Lucy Holmes Plovnick
Lucy Holmes Plovnick

EXHIBIT A

**Before the
EIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of

Distribution of the 2004, 2005, 2006 2007, 2008 and 2009 Cable Royalty Funds

**Docket No. 2012-6 CRB CD 2004-2009
(Phase II)**

In the Matter of

Distribution of the 1999-2009 Satellite Royalty Funds

**Docket No. 2012-7 CRB SD 1999-2009
(Phase II)**

DECLARATION OF LUCY HOLMES PLOVNICK

I, Lucy Holmes Plovnick, declare:

1. I am over 18 years of age and an attorney at law duly licensed to practice law in Rhode Island, Massachusetts, and the District of Columbia. I am a partner in the law firm of Mitchell Silberberg & Knupp LLC, attorneys of record for Motion Picture Association of America, Inc. (“MPAA”) and other program suppliers who have agreed to representation by MPAA in the captioned proceedings.

2. I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.

3. Attached hereto as Exhibit 1 is a true and correct copy of email correspondence between myself, Matthew J. MacLean, counsel for the Settling Devotional Claimants (“SDC”), and Brian Boydston, counsel for Independent Producers Group (“IPG”), (dated November 29, December 4, 8, and 11, 2017).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15th day of December, 2017, at Washington, D.C.

Lucy Holmes Plovnick
Lucy Holmes Plovnick

EXHIBIT 1

Plovnick, Lucy

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Monday, December 11, 2017 4:45 PM
To: Plovnick, Lucy; 'MacLean,Matthew J.'; 'arnie@lutzker.com' (arnie@lutzker.com)
Cc: Olaniran, Greg; Dominique, Alesha; Nyman,Jessica T.; Warley,Michael A.
Subject: RE: Meet and Confer Regarding Length of the 2004-2009 Cable and 1999-2009 Satellite Phase II Hearing

Lucy and Matt,

We believe that the District Court action has merit and is properly brought, and for that reason believe that scheduling is moot. However, we do not disagree with the schedule you have proposed if our efforts to stay proceedings does not succeed, and you may represent the same to the CRB.

Brian

-----Original Message-----

From: "Plovnick, Lucy"
Sent: Dec 11, 2017 12:18 PM
To: "'MacLean, Matthew J.'", "Brian D. Boydston, Esq.", "'arnie@lutzker.com' (arnie@lutzker.com)'"
Cc: "Olaniran, Greg", "Dominique, Alesha", "Nyman, Jessica T.", "Warley, Michael A."
Subject: RE: Meet and Confer Regarding Length of the 2004-2009 Cable and 1999-2009 Satellite Phase II Hearing

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Brian,

MPAA also does not consent to a stipulation to stay either the consolidated 2004-2009 Cable and 1999-2009 Satellite Phase II Proceeding (Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II)) or the 2010-13 Cable and Satellite Proceedings (Docket Nos. 14-0010 CD 2010-2013 and 14-0011 SD 2010-2013). We do not believe IPG's DC District Court action against the Librarian and the CRB has any merit.

Matt—thank you for SDC's consent to the Joint Proposal regarding the length of the Phase II hearing. We will modify the pleading to indicate that IPG does not join it.

Lucy



Lucy Holmes Plovnick | Partner, through her professional corporation

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From: MacLean, Matthew J. [mailto:matthew.maclean@pillsburylaw.com]
Sent: Monday, December 11, 2017 2:59 PM
To: Brian D. Boydston, Esq.; Plovnick, Lucy; 'arnie@lutzker.com' (arnie@lutzker.com)'

Cc: Olaniran, Greg; Dominique, Alesha; Nyman, Jessica T.; Warley, Michael A.

Subject: RE: Meet and Confer Regarding Length of the 2004-2009 Cable and 1999-2009 Satellite Phase II Hearing

Brian,

The SDC will not consent to a stipulation to stay on the basis set forth below.

Also, I feel compelled to bring to your attention that 17 U.S.C. § 803(d) vests judicial review of decisions of the Copyright Royalty Judges in the D.C. Circuit. It is very well settled that the district court lacks jurisdiction where Congress has provided for a statutory review scheme as the exclusive means for judicial review. See *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994); *Jarkesy v. SEC*, 803 F.3d 9 (D.C. Cir. 2015). Every challenge raised in your complaint can be raised before the D.C. Circuit after a final determination has been issued. Indeed, IPG has already stated its intent to appeal the very rulings challenged in your APA complaint, so I fail to see what your complaint in the district court is supposed to accomplish, other than delay. I urge you to consider whether IPG's invocation of the district court's jurisdiction is "warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11. At any rate, we do not believe a stay is appropriate under these circumstances.

Lucy - The SDC will consent to your suggested Joint Proposal, modified to reflect that IPG does not join it.

Matt

From: Brian D. Boydston, Esq. [<mailto:brianb@ix.netcom.com>]

Sent: Friday, December 8, 2017 5:21 PM

To: Plovnick, Lucy <lh@msk.com>; MacLean, Matthew J. <matthew.maclea@pillsburylaw.com>;

"arnie@lutzker.com" (<arnie@lutzker.com>) <arnie@lutzker.com>

Cc: Olaniran, Greg <goo@msk.com>; Dominique, Alesha <amd@msk.com>; Nyman, Jessica T.

<jessica.nyman@pillsburylaw.com>; Warley, Michael A. <michael.warley@pillsburylaw.com>

Subject: RE: Meet and Confer Regarding Length of the 2004-2009 Cable and 1999-2009 Satellite Phase II Hearing

Dear Counsel,

Under the circumstances described below, at this time, Worldwide Subsidy Group does not believe that an estimate for the evidentiary hearing can be made.

As you may know by now, Worldwide Subsidy Group today has filed a complaint against the Librarian of Congress in US District Court for the District of Columbia pursuant to the Administrative Procedures Act with regard to the Copyright Royalty Board's rulings in the consolidated 2004-2009 Cable and 1999-2009 Satellite proceedings, CRB Docket Nos. 2012-6 and 2012-7. A pdf version of that complaint is attached hereto.

Because that action seeks to reverse the CRB's rulings in the consolidated proceedings with regard to the "discovery sanction" which eliminated WSG's regarding Benny Hinn Ministries, Creflo Dollar Ministries and Kenneth Copeland Ministries, and its ruling striking 42 WSG's claims for 2008 Satellite royalties and the denial of WSG's "presumption of validity" as to its claims, WSG proposes that the parties to Docket Nos. 2012-6 and 2012-7 stipulate to seek a stay of those proceedings pending resolution of Worldwide Subsidy Group v. Hayden.

In addition, WSG proposes that the parties hereto stipulate to seek a stay of proceedings in CRB Docket Nos. 14-0010 CD 2010-2013 and 14-0011 SD 2010-2013 on the grounds that a ruling in Worldwide Subsidy Group v. Hayden may have a precedential effect on the CRB ruling in those proceedings with regard to Multigroup Claimants' "presumption of validity" therein, since the basis upon which the CRB denied Multigroup Claimants' "presumption of validity" in those proceedings in its October 23, 2017 order was that Multigroup Claimants was attempting to evade the CRB's order denying WSG's "presumption of validity" in Docket Nos. 2012-6 and 2012-7 (see pages 7-11 of the 10/23/17 order).

Please let me know whether or not your clients will agree to enter into such stipulations. If not, WSG and Multigroup Claimants intend to submit motions to the CRB seeking such stays. Because deadlines in each of those proceedings are very soon, we intend to file such motions with the CRB Monday evening (December 11, 2017), if your clients do not agree to enter into such stipulations, and seek a temporary restraining order proximate to a preliminary injunction from the District Court if those proceedings are not stayed.

If you wish to discuss this matter please feel free to give me a call at our office (213-624-1996), or my cel phone (213-446-0970).

Thank you for your attention.

Brian Boydston
Pick & Boydston, LLP
Counsel for Worldwide Subsidy Group and Multigroup Claimants

-----Original Message-----

From: "Plovnick, Lucy"

Sent: Dec 8, 2017 11:59 AM

To: "MacLean, Matthew J." , "Brian D. Boydston (brianb@ix.netcom.com)" , "'arnie@lutzker.com' (arnie@lutzker.com)"

Cc: "Olaniran, Greg" , "Dominique, Alesha" , "Nyman, Jessica T." , "Warley, Michael A."

Subject: RE: Meet and Confer Regarding Length of the 2004-2009 Cable and 1999-2009 Satellite Phase II Hearing

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Matt, Brian, and Arnie,

I am following up on this meet and confer request once again.

As discussed earlier in this email chain, the Judges have ordered the Phase II Parties to meet and confer with one another regarding the length of the upcoming evidentiary hearing for 2004-2009 Cable and 1999-2009 Satellite (Phase II), and on or before December 15, 2017, submit an agreed statement regarding the length of the hearing to the Judges. MPAA and SDC have both agreed that four days (April 9-12, 2018) are sufficient for the Phase II evidentiary hearing, but we have not yet heard back from IPG regarding whether it agrees with this proposal. Brian, please respond and let us know whether IPG is also in agreement.

In an effort to comply with the Judges' order, I have prepared a draft Joint Proposal pleading regarding the hearing length and a Proposed Order, which we can file with the Judges on December 15th if all parties are in agreement. SDC and IPG, please let us know your thoughts on the draft pleading and proposed order.

Thanks,
Lucy



Lucy Holmes Plovnick | Partner, through her professional corporation

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From: Plovnick, Lucy
Sent: Monday, December 04, 2017 2:49 PM
To: 'MacLean, Matthew J.'; 'Brian D. Boydston (brianb@ix.netcom.com)'; 'arnie@lutzker.com' (arnie@lutzker.com)'
Cc: Olaniran, Greg; Dominique, Alesha; 'Nyman, Jessica T.'; 'Warley, Michael A.'
Subject: RE: Meet and Confer Regarding Length of the 2004-2009 Cable and 1999-2009 Satellite Phase II Hearing

Following up on this, since we have not yet heard back from IPG. Brian, is IPG OK with the parties proposing that the Judges schedule 4 days for the 2004-2009 Cable and 1999-2009 Satellite (Phase II) hearing?



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From: Plovnick, Lucy
Sent: Wednesday, November 29, 2017 5:37 PM
To: 'MacLean, Matthew J.'; 'Brian D. Boydston (brianb@ix.netcom.com)'; 'arnie@lutzker.com' (arnie@lutzker.com)'
Cc: Olaniran, Greg; Dominique, Alesha; Nyman, Jessica T.; Warley, Michael A.
Subject: RE: Meet and Confer Regarding Length of the 2004-2009 Cable and 1999-2009 Satellite Phase II Hearing

Thanks Matt. MPAA has no objection to SDC submitting Ms. Berlin's testimony on the papers.



Lucy Holmes Plovnick | Partner, through her professional corporation

T: 202.355.7918 | lh@msk.com

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From: MacLean, Matthew J. [<mailto:matthew.maclean@pillsburylaw.com>]
Sent: Wednesday, November 29, 2017 5:23 PM
To: Plovnick, Lucy; Brian D. Boydston (brianb@ix.netcom.com); 'arnie@lutzker.com' (arnie@lutzker.com)
Cc: Olaniran, Greg; Dominique, Alesha; Nyman, Jessica T.; Warley, Michael A.
Subject: RE: Meet and Confer Regarding Length of the 2004-2009 Cable and 1999-2009 Satellite Phase II Hearing

Thanks, Lucy. The SDC agree with your proposal. Also, the SDC are prepared to submit the testimony of Toby Berlin on the papers, if acceptable to all parties, which would bring the total witnesses down to 6, assuming there are no new witnesses in rebuttal.

Matthew J. MacLean | Partner

Pillsbury Winthrop Shaw Pittman LLP

1200 Seventeenth Street NW | Washington, DC 20036-3006

t 202.663.8183

matthew.macleane@pillsburylaw.com | website bio

From: Plovnick, Lucy [lhp@msk.com]

Sent: Wednesday, November 29, 2017 4:57 PM

To: Brian D. Boydston (brianb@ix.netcom.com); MacLean, Matthew J.; 'arnie@lutzker.com' (arnie@lutzker.com)

Cc: Olaniran, Greg; Dominique, Alesha; Nyman, Jessica T.; Warley, Michael A.

Subject: Meet and Confer Regarding Length of the 2004-2009 Cable and 1999-2009 Satellite Phase II Hearing

Brian, Matt, and Arnie,

The Judges' September 28th Order Rescheduling Hearing (copy attached) requires the parties anticipating appearing at the 2004-2009 Cable and 1999-2009 Satellite Phase II hearing "to confer regarding the length of the hearing, including the number and identity of anticipated witnesses, and to provide the Judges, on or before **December 15, 2017**, an agreed statement regarding the length of the hearing." We wanted to reach out to IPG and SDC to meet and confer as the Judges have directed, and hopefully come to an agreement regarding the length of the Phase II hearing so that we can prepare a joint proposal to submit to the Judges before the December 15th deadline.

The last time the Judges had a Phase II methodology hearing for this case they scheduled five days for hearings (for ten witnesses total that were appearing live). This time around it looks like (from looking at the parties' respective Written Direct Statements) there will be fewer witnesses who will need to testify live than there were at the previous hearing in this case. Accordingly, MPAA proposes that the parties jointly ask the Judges to schedule **4 days** for the 2004-2009 Cable and 1999-2009 Satellite Phase II hearing (**April 9-12, 2018**).

Please let us know if this proposal is acceptable to IPG and SDC. If so, MPAA will volunteer to draft a joint pleading we can file with the Judges and circulate it to IPG and SDC for approval.

Best,
Lucy



Lucy Holmes Plovnick | Partner, through her professional corporation

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</ZZZ![endif]--><>

Certificate of Service

I hereby certify that on Friday, December 15, 2017 I provided a true and correct copy of the Joint MPAA and SDC Proposal Regarding Hearing Length to the following:

Devotional Claimants, represented by Arnold P Lutzker served via Electronic Service at arnie@lutzker.com

Independent Producers Group (IPG), represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Signed: /s/ Lucy H Plovnick