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In re) CONSOLIDATED PROCEEDING

DISTRIBUTION OF CABLE) NO. 16-CRB-0009-CD

ROYALTY FUNDS) (2014-17)

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UNITED STATES COPYRIGHT ROYALTY JUDGES

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In re) CONSOLIDATED PROCEEDING
DISTRIBUTION OF CABLE) NO. 16-CRB-0009-CD
ROYALTY FUNDS) (2014-17)

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BEFORE: THE HONORABLE DAVID P. SHAW, Chief
THE HONORABLE DAVID R. STRICKLER
THE HONORABLE STEVE RUWE
Copyright Royalty Judges

Library of Congress
Madison Building
101 Independence Avenue, S.E.
Washington, D.C.

January 26, 2023

2:00 p.m.

REMOTE CONFERENCE

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21 Independent Producers Group

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P R O C E E D I N G S

(2:00 p.m. Eastern)

CHIEF JUDGE SHAW: Well, good afternoon, everyone. This is a conference for In Re Distribution of Cable Royalty Funds, Docket No. 16-CRB-0009-CD, (2014-17).

We're on the public record. I don't anticipate going on to the restricted record, but if we do, please let us know.

Let's begin by hearing appearances for the parties. And I am using the same participant list that I used last time we talked. It is alphabetical. And we start out with the Canadian Claimants.

MR. SATTERFIELD: Hello, Your Honor, this is Kendall Satterfield, appearing with my colleague Victor Cosentino.

CHIEF JUDGE SHAW: Very good. Thank you.

And next we have Commercial Television Claimants, National Association of Broadcasters.

MS. CHAKRABARTI: Good afternoon, Your Honor, this is Preetha Chakrabarti on behalf of the Commercial Television Claimants and joined right there by my colleague David Ervin.

MR. ERVIN: Thank you.

CHIEF JUDGE SHAW: Very good. Thank you.

1 And we have the Devotional Claimants.

2 MR. MacLEAN: Good afternoon, Your Honor, I
3 am Matthew MacLean from Pillsbury Winthrop Shaw
4 Pittman. Also from Pillsbury is Michael Warley,
5 Jessica Nyman, and Carolyn Block. And I believe
6 Arnie Lutzker from Lutzker & Lutzker is appearing by
7 telephone.

8 CHIEF JUDGE SHAW: Very well, thank you.

9 And next we have the Joint Sports Claimants.

10 MR. CANTOR: Good afternoon, Your Honor,
11 this is Dan Cantor. And with me are my colleagues
12 Rosemary Szanyi and Michael Kientzle.

13 CHIEF JUDGE SHAW: Thank you. And for the
14 Program Suppliers?

15 MR. OLANIRAN: Good afternoon, Your Honor,
16 my name is Greg Olaniran with Mitchell Silberberg &
17 Knupp. And with me on the video conference are my
18 colleagues Lucy Plovnick and Jake Albertson.

19 CHIEF JUDGE SHAW: Thank you. And finally
20 on my sheet I have the Public Television Claimants.

21 MR. DOVE: Good afternoon, Your Honor. My
22 name is Ron Dove. I'm with Covington & Burling. And
23 with me today is my colleague, Dustin Cho.

24 CHIEF JUDGE SHAW: Very well. Thank you.

25 Anybody I happen to have missed from this

1 sheet? All right.

2 MR. BOYDSTON: Good morning, Your Honor.
3 This is Brian Boydston, counsel for the Independent
4 Producers Group. As I think I have said in the past,
5 we are here on an informal basis. We are not part of
6 the allocation phase, but we are part of the
7 distribution phase. So I am here in just an
8 observatory role only.

9 CHIEF JUDGE SHAW: All right. Very good.

10 MR. BOYDSTON: And I would also point out
11 that, as a result of that, if we go on the restricted
12 record, I will withdraw, because I am not part of
13 that.

14 CHIEF JUDGE SHAW: I appreciate that. Thank
15 you.

16 All right.

17 Well, this was billed as a scheduling
18 conference, and I'm sure you all could probably see
19 that that was going to be necessary as we worked our
20 way through the month of January and you didn't get a
21 firm procedural schedule from us. And then, of
22 course, you can see why.

23 We had a large discovery order come down
24 recently, Order Number 24. There is another
25 discovery order probably on its way soon, but Order

1 Number 24 has quite a lot of things for you to do, at
2 least some of you, but I thought it would be good at
3 this juncture to meet and to discuss scheduling,
4 where we are, and to talk about the hearing. That's
5 really the only purpose I had in mind.

6 I'm looking at the parties, the joint
7 stipulation, the proposed order. They had a lot of
8 procedural dates that they agreed to, and I
9 appreciate that. I don't know if some of these
10 things have been accomplished already or whether we
11 need to talk about a schedule addressing all of them.

12 I'll tell you this, my intention going into
13 the conference today was not to impose deadlines
14 today, but ask you to go back and attempt again to
15 stipulate to a schedule. That would be very helpful.

16 I'm thinking five days, hear back from you
17 in writing, what you would like to see. There will
18 be a prehearing order coming out with a schedule, a
19 lot of information and other things the parties have
20 stipulated to and asked about.

21 There will be an appendix with an order,
22 with a procedural schedule on it. So what you give
23 me five days from now will in some form probably
24 appear in the -- in the prehearing order.

25 I will say one other thing, just so you

1 know. Something that will appear in the order, you
2 may not be prepared for, but I think the parties will
3 welcome it, is that we have decided in this case, in
4 addition to the proposed findings of fact and
5 conclusions of law, which you will absolutely have
6 the opportunity to file, we will also be asking you
7 to brief the topics, the issues in the case.

8 And there will be instructions, you know, in
9 the order. For example, I'll just say informally,
10 this isn't the most important thing upfront, but it
11 is procedurally important, we will be requesting
12 tables of authority, tables of contents, something
13 that's by the way always helpful in your filings,
14 especially the longer ones, but I just want you to
15 know now as you think about revising the schedule,
16 preparing for hearing, that after the hearing there
17 will be initial briefing and proposed findings, as
18 well as reply briefing and proposed findings and
19 conclusions.

20 That is something I hope you will welcome.
21 I know I will look forward to reading briefs and
22 proposed findings.

23 That being said, there's really not a lot of
24 other information to give you upfront. I will say it
25 is unlikely that we would schedule 120 hours. It

1 will probably be something more in the neighborhood
2 of 90 to 100. I say that because when you are doing
3 the schedule, we're talking ultimately in hours, but
4 we're scheduling in terms of trial days. So you're
5 thinking 15, 20, 16 trial days, you know, so I wanted
6 to put it in some context.

7 As I said to you before, I figure even
8 though we might technically be in hearing eight hours
9 or some fraction of that, in reality I tend to think
10 six, six and a half hours of time in the day is
11 usually what's covered. If you see it otherwise from
12 your experience here in this forum, let me know, but
13 that's just something I have observed over the years
14 generally in trials and hearings.

15 So that's really the purpose of the
16 conference, and I'm anxious to provide the parties an
17 opportunity to take the floor. And I think that we
18 might as well stick to the participants list that I
19 have. And I think I have said this before, but if I
20 haven't, when we get into the hearing, if the parties
21 have formed other groups or prefer other order being
22 called on or presenting or whatever, you know, let me
23 know, but right now I am just going alphabetically,
24 so I will begin again with the Canadian Claimants.

25 Anything you would like to add to this

1 conference?

2 MR. SATTERFIELD: Well, I know my colleague,
3 Mr. Cosentino, is involved in the Technology
4 Committee. So I guess, you know, a very important
5 piece of information is do we have an anticipated
6 start date for the hearing, since there is a lot of
7 things to work out with Veritext and on the
8 technology side?

9 CHIEF JUDGE SHAW: Well, and that's
10 precisely the point, which is that I -- you know, we
11 were under the assumption that given the order that
12 you received and so forth that you probably would
13 want to delay the hearing.

14 And I'm very grateful for the fact that I
15 told you upfront that, you know, we wanted to do the
16 hearing as soon as possible. We still do. But we
17 realize with this additional discovery that you may
18 want to delay that, and that would be acceptable to
19 us.

20 MR. SATTERFIELD: Okay.

21 CHIEF JUDGE SHAW: We were anticipating that
22 you might want to delay.

23 MR. SATTERFIELD: Sure. So we, just -- I'm
24 sorry, again, this is Ken Satterfield. So as part of
25 our meeting and proposal for you next week, should we

1 -- should we, again, propose a potential start date?

2 CHIEF JUDGE SHAW: Yes, yes. And that's why
3 I gave you an estimation of total hours too, so you
4 could kind of chart it out. And I don't see a lot of
5 federal holidays on the horizon in the near future.
6 We have some religious holidays that are widely
7 observed that are coming up, but, you know, I don't
8 know where that will all -- what you might propose,
9 but I think we all know February 20th was and still
10 is President's Day.

11 MR. SATTERFIELD: Right.

12 CHIEF JUDGE SHAW: So that will probably be
13 a factor.

14 MR. SATTERFIELD: Well, yes. Thank you very
15 much. I mean, as you can well understand, when you
16 are dealing with a large number of witnesses and they
17 are going to be located in various parts of the
18 country or even the world, you know, there's
19 definitely a lot of planning and coordination going
20 on to make sure, you know, about availability and
21 access to technology and all that.

22 So thank you. I guess that will be a big
23 issue this week for us to discuss.

24 CHIEF JUDGE SHAW: Well, and that's part of
25 the reason we didn't want to impose a date on you at

1 this point, you know, just something the parties will
2 have to talk about. We understand that. If you need
3 more time, let us know, but we were thinking five
4 days is probably about right.

5 MR. SATTERFIELD: All right. I have nothing
6 else.

7 CHIEF JUDGE SHAW: Very well. All right.
8 And, by the way, thanks to everyone for participating
9 in the Technology Committee. That seemed to be very
10 helpful.

11 MR. SATTERFIELD: Yes. Those of us who
12 don't are very grateful.

13 (Laughter.)

14 CHIEF JUDGE SHAW: Right. Well, I'm not on
15 the committee.

16 (Laughter.)

17 CHIEF JUDGE SHAW: I monitor your work
18 closely, and I am appreciative of it. Commercial
19 Television Claimants/NAB.

20 MR. ERVIN: Yes. Good afternoon, Your
21 Honor, Dave Ervin.

22 CHIEF JUDGE SHAW: Yes.

23 MR. ERVIN: Along with Preetha Chakrabarti,
24 whom you were introduced to earlier.

25 So in terms of how we're going to go back

1 together and do some planning, I wanted to ask Your
2 Honor, we had proposed certain levels of agreement,
3 one of those was the order of our case. And I'm
4 thinking as we think about allowing enough time for
5 the motion that was just decided and the motion that
6 will be decided, which I think I am looking virtually
7 at my colleagues here that we're going to do some
8 planning about that, the witness availability was one
9 of the things that went into our proposed order.

10 Would Your Honor be in a position to express
11 any preference on that? Can we use the order that we
12 suggested as our planning for a start date? Because
13 some of that is schedule-based for our witnesses.

14 CHIEF JUDGE SHAW: Well, I don't know if I
15 understand the question completely, but I think I do
16 enough to give you a helpful answer. And if you need
17 more, we can go back and we can consult the other
18 Judges here.

19 But I think that we understand the witness
20 availabilities, you know, are crucial and an issue.
21 And so it might be -- I would certainly be open to
22 having, you know, maybe not the sort of ready-set-go,
23 here are your 18 days total, every single -- you
24 know, we can maybe accommodate some witnesses is what
25 I am saying, if someone is available earlier rather

1 than later.

2 And I don't know what all might be the
3 reality that the different parties are facing, so I'm
4 trying not to enter into your negotiations with each
5 other.

6 But there may be some witnesses that need to
7 be accommodated on certain days in certain orders.
8 And I don't know how they will fit in with the
9 revised schedule, but I think there's a lot of leeway
10 there from us to making sure that people can testify
11 when we can get them. And that's the most important
12 thing is to get a good record. And that comes from
13 the witnesses, and we understand that.

14 So, like I said, you know, as opposed to
15 just sort of not accommodating witnesses and making
16 everybody just go ad seriatim, beginning a certain
17 day and ending in a certain day with nobody out of
18 order and everybody in a series, I think we don't
19 have to do that, if we need to get people to testify
20 and they are only available certain times.

21 MR. ERVIN: Thank you, Your Honor. That's
22 certainly helpful from our perspective. And also
23 thank you also for giving us some direction in terms
24 of the allotted time for trial. I would -- I think
25 others would share my view that that was something of

1 a prerequisite for us to sort of have discussions
2 about, other elements that we're going to try to
3 reach agreement on, so thank you for sharing that
4 with us.

5 CHIEF JUDGE SHAW: Certainly, certainly.
6 Thank you.

7 All right. We are then to the Devotional
8 Claimants.

9 MR. MacLEAN: Thank you, Your Honor, Matthew
10 MacLean.

11 I just had one question. As I don't really
12 have much concern about our ability to reach
13 agreement on a schedule, especially now with the
14 information that you have now provided, but I did
15 want to ask from the Judges' perspective, is there a
16 window or a hard stopping point or something like
17 that that we need to bear in mind as we propose a
18 schedule?

19 CHIEF JUDGE SHAW: Well, that's very
20 tempting for me, because, you know, we're really
21 eating ultimately out of our own time for
22 deliberation and opinion writing, and I would love to
23 do that, but I don't -- I personally, speaking for
24 myself, I don't know of a hard stop. And I think
25 that was the nature of your question.

1 In other words, we don't have another
2 hearing scheduled for March or April or February or
3 something like that. And I think that's the best I
4 can do for you right now, as I understand it.

5 MR. MacLEAN: Thank you. I don't think
6 there is anybody here that is going to want to drag
7 this into April, so I think we're safe there.

8 CHIEF JUDGE SHAW: I think we are too, but,
9 you know, but there is briefing and post-hearing
10 briefing to be considered. And all that cuts into
11 the ultimate time for deliberation as well, so --

12 MR. MacLEAN: Thank you. Nothing further
13 from me.

14 CHIEF JUDGE SHAW: Thank you. All right.
15 Let's hear from the Joint Sports Claimants,
16 please.

17 MR. CANTOR: Yes, good afternoon, Your
18 Honor, Dan Cantor. This has been a very helpful
19 dialogue. I actually don't have any further
20 questions. My questions have been answered with the
21 previous conversation, so thank you.

22 CHIEF JUDGE SHAW: Thank you very much, Mr.
23 Cantor.

24 CHIEF JUDGE SHAW: And the Program
25 Suppliers. I'm sorry, you are muted. Very good.

1 MR. OLANIRAN: Your Honor, it is Greg
2 Olaniran. Thank you for that. And thank you for the
3 guidance you have given us thus far on some of the
4 issues that we actually have been struggling with.

5 I just had a couple of questions to clarify
6 some of the things that you said earlier. Some of
7 the decisions we have to make will hinge on the
8 timing of the decision, the decision on the pending
9 discovery order, which is a motion to compel, and
10 just if there's any way you can give us something
11 much more specific on when we should expect it, it
12 would be helpful, but if you can't, I certainly
13 understand that.

14 And the other question I have is that you
15 mentioned about the briefing. In general, we would,
16 post-hearing, we would do the proposed findings of
17 fact and conclusions of law anyway. And I want to
18 get a better sense of what other -- it appears you
19 mentioned some other additional briefing. I just
20 wanted to be a little bit clearer on that.

21 CHIEF JUDGE SHAW: Sure. This is just
22 standard post-hearing briefing that you have probably
23 done many, many times. This is a prose document with
24 citations, where there will be probably a page limit.
25 I figure we can talk about that more during the

1 hearing, rather than me setting a limitation now.

2 I think either even at the beginning of the
3 hearing, we will probably be in a better position to
4 discuss that; certainly by the end.

5 But there would be a page limitation. And
6 it would be sort of a formal but standard
7 post-hearing brief where you get to explain to us in
8 prose what your arguments are, what you want us to
9 decide in your favor.

10 I usually have in my post-hearing briefing,
11 and I think we will be doing this here as well, an
12 outline, so that the parties can decide what the
13 issues are that you want -- frankly I was going to
14 say you to address -- but it is really what you want
15 us to address. And if you choose to brief on a topic
16 or to not to brief, to waive a brief on that topic,
17 to indicate that.

18 It is very helpful when you have a lot of
19 parties, as we do in this case, and a lot of issues
20 and sub-issues. So that's why we will also talk
21 about page. We don't want to burden you with too
22 many pages. We also don't want to restrict you, so
23 that you can't really tell us your opinion or, you
24 know, make your argument.

25 And, of course, you will hear from us again

1 in closing arguments, which would probably be when we
2 question you a bit, but, you know, so this is really
3 just standard post-hearing briefing and with page
4 limits, tables of contents, tables of authorities,
5 that sort of thing, as an opportunity for you to
6 argue in writing what you want us to do with the
7 things that we discover during the hearing and what
8 you would like to see in our opinion.

9 So I don't think that there's any real
10 surprise about the kind of brief that it would be. I
11 just was under the impression it wasn't usual to do
12 that in these cases, so I wanted you to know now that
13 it would be something that will appear in the
14 procedural schedule, probably with a due date, the
15 same day as the proposed findings of fact and
16 conclusions of law, both initial and reply.

17 MR. OLANIRAN: Thank you.

18 CHIEF JUDGE SHAW: Certainly. Oh, I managed
19 to talk around the first question that you had, but I
20 do remember it. And, no, I can't give you a more
21 specific read on that, but I will say we have turned
22 our attention to it and it is a very high priority
23 for us.

24 MR. OLANIRAN: Thank you.

25 CHIEF JUDGE SHAW: Certainly. Let's see,

1 Public Television Claimants.

2 MR. DOVE: Yes, Your Honor, Ron Dove again.
3 I think we have covered everything that was on my
4 mind. You know, I just represent that we're
5 diligently working to comply with the Court's
6 discovery order, and, you know, to produce documents
7 next Thursday in accordance with the order.

8 But other than that, I think all the
9 questions that I had have been raised.

10 CHIEF JUDGE SHAW: Well, thank you very
11 much.

12 Well, then I have come to the end of my
13 list, but let me just take this opportunity just to
14 check with the other Judges here, if there is
15 anything they would like to add to the discussion at
16 this time.

17 JUDGE RUWE: Not from me. Thanks.

18 CHIEF JUDGE SHAW: Certainly.

19 JUDGE STRICKLER: I have nothing further,
20 Judge Shaw.

21 CHIEF JUDGE SHAW: Thank you very much.

22 All right. Well, I think with that, we can
23 just close this conference. I thank you all very
24 much. We will be getting a lot from you next week in
25 the way of your proposal and I understand that

1 discovery will be produced.

2 Thank you all very much. This conference is
3 closed.

4 (Whereupon, at 2:22 p.m., the conference
5 concluded.)

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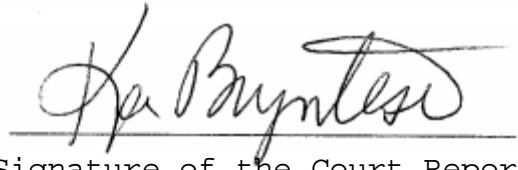
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CERTIFICATE

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I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

1/31/23



Date

Signature of the Court Reporter

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