UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re: Literary Works in Electronic Databases Copyright Litigation

No. 05-5943-cv

DECLARATION IN SUPPORT OF MOTION TO STRIKE

Charles D. Chalmers, do declare:

1. I am counsel for the appellants.

2. In from October 2005 to March 2006 I engaged in extensive communications with Michael Boni, representing all plaintiffs, and Charles Sims, representing all defendants, regarding the content of the Appendix. They never said anything to me about presenting post-judgment information about class member claims to this Court.

3. Attached as Exhibit A are the portions of the Combined Reply of Appellants which are meaningless when read against the corrected briefs of the appellees.

4. Attached as Exhibit B, which is sequentially paged for reference in the Memorandum, are true copies of correspondence (letters and emails) with counsel for appellees, and a letter from counsel for plaintiffs-appellees to the Clerk of the Court.

5. After I wrote to the Clerk urging that appellees corrected brief not be filed, I was called by Julius Crockwell, the deputy clerk responsible for this case, and told his supervisor had decided to file the briefs and that my remedy was to file a motion to strike. He said the reason was the Clerk's office did not think it should be responsible for determining what is a true "correction."

6. Before I learned that the factual statements in the appellees' briefs were wrong I proposed a stipulation to strike them. That is shown in Exhibit B, p. … I was concerned that the Court would actually think the issues were moot, even though I thought, and appellants argued in the Reply, that the figure demonstrated the error of the parties "certainty" that the C Reduction would not occur. But I dropped the proposal after I learned that the factual statements were an understatement of the filed claims, and the value of the claims by named plaintiffs. This information is very important to the appellants' position.

Executed at Fairfax, CA on August 1, 2006. I declare under penalty of perjury under the law of the United States that the foregoing is true and correct.

Charles D. Chalmers

Portions of Appellants' Combined Reply Brief Rendered Meaningless or Confusing By "Corrected" Briefs of the Appellees

Page 1, Intro.

In an attempt to avoid the implication of the C Reduction, they describe evidence outside the record. Even if it is considered, it confirms that they could not have had a reasonable belief that the C Reduction could never happen.

Page 7

III. Objection to Evidence Outside the Record.

The parties rely on evidence regarding actual claims filings. PB13 n7, 35 n12, 37 n15; DB21. Objectors object to this information as outside the record. Fed. R. App. Pro. 10. Objectors would stipulate to expanding the record with information about the claims if it were sufficiently complete and verified. No request was made by the appellees.

Page 7

Being told that six of them filed only C claims comes as a dramatic shock, suggesting there was always the potential for adequate representation for the owners of unregistered copyrights.

Page 8

A. The Claims Confirm the Conflict of Interest.

....
The value of their registered copyright claims creates the conflict under this settlement.

Page 8-9.

There are 20 named plaintiffs. Defendants suggest that less than all filed claims. ("All of the twenty plaintiffs who submitted any claims ...") DB21. Therefore, 20, or less, of the plaintiffs submitted 1,355 A claims, 115 B claims and 3,698 C claims. The value shows an actual conflict, not a potential or speculative one. The

A claims are worth between $875 to $1500 each, depending on how many of each plaintiff's articles were published by the same publisher. (A345, ¶ 4.a.) Using $1200 per claim as a middle number, the 1,355 A claims are worth $1,626,000. Since six plaintiffs filed only C claims (DB21), that $1.6 million is going to 14, or less, of the named plaintiffs. That's 15% of all filed claims. The total of all plaintiffs' C claims is $184,900. Clearly, those 14 plaintiffs are much more interested in their A claims than their C claims.

Page 9.

The C Reduction creates the conflict. Examining two alternate claim reduction schemes shows it. To demonstrate, assume that total claims are $13.8, exceeding the $11.8 cap by $2 million. Also assume that 75% of total claim value are C claims, as a rough estimate based on 99% of the claims being unregistered. That makes C claims $10.35 million. Applying the C Reduction would reduce the C claims by $2 million, or 19%. ($2m divided by $10.35m) That's a $35,150 reduction of the plaintiffs' C claims. (19% x $185,000) Alternatively, applying a prorata reduction among A, B and C claims (it is prorata between A and B) the $2 million excess would require a 14.5% reduction of all claims. ($2m divided by $13.8m) That's a $232,000 reduction of the plaintiffs' A claims. (14.5% x $1.6m) For each of the 14 plaintiffs the difference is a $16,570 reduction under a straight prorata reduction, versus a $1,758 reduction under the C Reduction. This analysis doesn't change much if you assumed only 50% of the claim value was for C claims. In that event a 28% reduction of C claims is required. ($2m divided by $6.9m), That's $2,590 for each plaintiff under the C Reduction, versus the $16,570 under a straight prorata reduction. Those 14 plaintiffs will clearly risk the C Reduction to protect their A and B claims.

Page 10

Defendants say it would be "absurd" to question adequacy in light of actual claims of $10.76 million. PB13 n7. The hyperbole can not conceal that class representatives lacked any reasonable basis for certainty that the C Reduction would not occur. "[T]he risk is exceedingly remote." (A490) "[N]o basis in reality." (A611) "As a factual matter there is no chance …" (A1446) [I]t appears inconceivable …" (A1571)

Page 14

Objectors described how the Category C compensation structure was likely to limit defendants' liability by reducing, and suppressing, the value of C claims. AB35.

This is the point that respondents do not address. It has actually occurred, since the claims at $10.7 million leave $1.1 million that the defendants do not have to pay.

Page 15

First, the parties advise us that six named plaintiffs filed only Category C claims, suggesting that notwithstanding the allegations they did not have registered claims. Presumably they, or some of them, were candidates for that representation.

Page 26

It offered the possibility for, and we are told has achieved the reality of, reducing defendants' payout in the settlement. The class representatives, at least 14 of them, had little motivation to resist the defendants.

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Charles D. Chalmers
cchalmers@classobjector.com

June 20, 2006

By Email
Charles S. Sims – csims@proskauer.com
Michael J. Boni - mboni@kohnswift.com
Gary S. Fergus – GFergus@fergusleg al.com

Re: *In re Literary Works in Electronic Databases Copyright* Litigation, 05-5943-cv

Dear Counsel:

Some of my clients (at least 5) have received letters from the Claims Administrator stating that their claim(s) are defective in some respect. They are given approximately 30 days to provide a correction. Please advise at the earliest possible time whether the claims of class members who have been sent, or will be sent, these notices are included in the term "prima facie valid claims" as used in the plaintiffs' brief. This request is urgent. If you can not respond immediately please reply today to indicate when your answer can be expected.

Sincerely,

Charles D. Chalmers

cc: All other counsel of record, by email

Main Identity

From: "Michael J. Boni" <mboni@kohnswift.com>
To: "Charles Chalmers" <cchalmers@allegiancelit.com>
Cc: "Robin Bierstedt" <robin_bierstedt@timeinc.com>; "Raymond Castello" <castello@fr.com>; "Chuck Sims" <csims@proskauer.com>; "Michael S. Denniston" <mdenniston@bradleyarant.com>; "Kenneth A. Richieri" <richierk@nytimes.com>; "Juli Marshall" <juli.marshall@lw.com>; "Jim Hallowell" <jhallowell@gibsondunn.com>; "Gary Fergus" <gfergus@fergusiegal.com>; "James F. Rittinger" <Jrittinger@SSBB.com>; "Jack Weiss" <jmweiss@gibsondunn.com>; "Ian C. Ballon" <ballon@gtlaw.com>; "Hank Gutman" <hgutman@stblaw.com>; "Gary Fergus" <gfergus@fergusiegal.com>; "Dodson, Paulette R." <PDodson@tribune.com>; "Diane S. Rice" <drice@hosielaw.com>; "Chuck Sims" <csims@proskauer.com>; "A. J. De Bartolomeo" <ajd@girardgibbs.com>; "Christopher Graham" <cgraham@levettrockwood.com>; "Tony Lee" <aklee@aklee.net>
Sent: Wednesday, June 21, 2006 11:59 AM
Subject: RE: In re Literary Works, Letter attached

Charles:

As to your two letters of yesterday, Mr. Sims is out of the country until next week, and we will respond when he returns.

Michael J. Boni
KOHN, SWIFT & GRAF, P.C.
One South Broad Street, Suite 2100
Philadelphia, PA 19107
215-238-1700
215-238-1968 (fax)
mboni@kohnswift.com

From: Charles Chalmers [mailto:cchalmers@allegiancelit.com]
Sent: Tuesday, June 20, 2006 3:17 PM
To: Gary Fergus; Michael J. Boni; Chuck Sims
Cc: Robin Bierstedt; Raymond Castello; Michael S. Denniston; Michael J. Boni; Kenneth A. Richieri; Juli Marshall; Jim Hallowell; James F. Rittinger; Jack Weiss; Ian C. Ballon; Hank Gutman; Gary Fergus; Dodson, Paulette R.; Diane S. Rice; Chuck Sims; A. J. De Bartolomeo; Christopher Graham; Tony Lee
Subject: In re Literary Works, Letter attached
Importance: High

CHARLES D. CHALMERS
ATTORNEY
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Fairfax, CA 94930
Tel 415 860-8134
Fax 801 382-2469

Charles D. Chalmers
cchalmers@classobjector.com

June 21, 2006

By Email
Charles S. Sims – csims@proskauer.com
Michael J. Boni - mboni@kohnswift.com
Gary S. Fergus – GFergus@fergusleqal.com

Re: *In re Literary Works in Electronic Databases Copyright* Litigation, 05-5943-cv

Dear Counsel:

I request that you stipulate to strike the portions of the plaintiffs' and defendants' briefs that refer to me as a professional objector, and those portions of the briefs which state any information not in the record about the filed claims, or make any assertions or arguments based on such information. While the final decision has not been made, if you do not agree, or respond, it is likely that we will file a motion to strike.

Sincerely,

Charles D. Chalmers

cc: All other counsel of record, by email

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June 28, 2006

BY EMAIL

Charles D. Chalmers
769 Central Blvd., Suite 148
Fairfax, CA 94930
cchalmers@classobjector.com

Re: *In re Literary Works in Electronic Databases Copyright Litigation*, 05-5943-cv (2d Cir.)

Dear Charles:

On behalf of the defendants, I am responding to your emails of June 20 (two) and June 21.

First, with respect to your comment that the Claims Administrator's letter reflects an inaccurate statement of the criteria for category A claim eligibility, we agree, but have been advised by the Claims Administrator that the error was textual only, and did not result in any deficiency letters being sent. No otherwise valid Category A claims have been rejected or diminished by reason of a registration on or after January 1, 2003.

Second, on reflection, we are agreeable to eliminating portions of the briefs which state information not in the record about the filed claims or make arguments and assertions based on such information. Attached please find the three affected pages, showing on pages 16, 21, and 25 (in brackets) the portions we've identified as based on information not in the record about the filed claims. We will shortly submit a new set of briefs, with those few sentences eliminated. We intended to identify all the passages fitting that category; if there are others you believe we've missed, please advise.

Very truly yours,

Charles S. Sims

cc: Michael Boni, Esq.

Main Identity

From: "Michael J. Boni" <mboni@kohnswift.com>
To: <cchalmers@classobjector.com>
Cc: "Kaye, Stephen" <SKaye@proskauer.com>; "Sims, Charles" <CSims@proskauer.com>; "A.J. De Bartolomeo" <AJD@girardgibbs.com>; <drice@hosielaw.com>; "Gary S. Fergus" <gfergus@fergusiegal.com>
Sent: Wednesday, June 28, 2006 11:10 AM
Subject: RE: In re Literary Works

Charles:

Plaintiffs-appellees join defendants-appellees' letter response to you earlier today, and we intend to take the same course of action as defendants-appellees.

Sincerely,

Michael J. Boni
KOHN, SWIFT & GRAF, P.C.
One South Broad Street, Suite 2100
Philadelphia, PA 19107
215-238-1700
215-238-1968 (fax)
mboni@kohnswift.com

From: Sims, Charles [mailto:CSims@proskauer.com]
Sent: Wednesday, June 28, 2006 12:20 PM
To: cchalmers@classobjector.com
Cc: Michael J. Boni; Kaye, Stephen
Subject: In re Literary Works

Please see attached letter.

<<NY SCAN.pdf>>

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Charles D. Chalmers
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June 29, 2006

By Email
Charles S. Sims – csims@proskauer.com
Michael J. Boni - mboni@kohnswift.com
Gary S. Fergus – GFergus@fergusleqal.com

Re: *In re Literary Works in Electronic Databases Copyright* Litigation, 05-5943-cv

Dear Counsel:

I will pursue the stipulation next week. Below I note additional parts of the Defendants' brief that need to be stricken, and the places where plaintiffs need to propose their strikes. In the mean time, please respond to my first letter of June 20th. As I read the settlement administration memorandum, the Administrator's initial review of the claims counted claims for registered works submitted without documentation as C claims. If that methodology resulted in the figures that you stated we have a problem beyond simply striking improper material from a brief.

If the figures that you disclosed are based on the memorandum, it is likely that the C Reduction has in fact been triggered. I know of numerous registration documentation notices that will result in proof of registration. I believe that you have an obligation to present correct information to the class and the Court to avoid a miscarriage of justice in a case where the Court has a particular duty, as do class counsel, to protect the class.

Defendants
The two lines, beginning with "Second" at the bottom of page 21; In ftnt 4, the "we are advised …"phrase; Ftnt 5, the "all of which …" phrase.
Plaintiffs
Page 13, and ftnt 7; ftnt 12; ftnt 15.

Sincerely,

Charles D. Chalmers

cc: All other counsel of record, by email

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June 30, 2006

BY EMAIL
Charles D. Chalmers
769 Central Blvd., Suite 148
Fairfax, CA 94930
cchalmers@classobjector.com

Re: *In re Literary Works in Electronic Databases Copyright Litigation*, 05-5943-cv (2d Cir.)

Dear Charles:

With respect to your identification of additional phrases in the defendants' brief based on post-record information, we agree (with the immaterial exception that in the paragraph commencing at the bottom of page 21, we will retain the phrase "Second, at the threshold" and then eliminate through the word "because").

The balance of your letter addresses a query that concerns "plaintiffs' brief" and is therefore addressed to plaintiffs, not defendants. However, it is worth pointing out that the claims administration process is not nearly sufficiently advanced to draw any reliable conclusions whatever about whether, a you put it, "the C Reduction has in fact been triggered," or even whether that "is likely." Claims have not even been passed to the defendants and publishers for review, and we are some months from that happening, since the work required by the Claims Administration Memorandum is very far from completion.

Very truly yours,

/s/

Charles S. Sims

cc: Michael Boni, Esq.

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Charles D. Chalmers
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June 30, 2006

By Email
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Michael J. Boni - mboni@kohnswift.com
Gary S. Fergus – GFergus@ferguslegal.com

Re: *In re Literary Works in Electronic Databases Copyright* Litigation, 05-5943-cv

Dear Counsel:

I have Chuck Sims' letter of this morning. While the number itself is not in Defendants' brief, the following statement implies it: "It would be absurd to reverse class certification on this ground, since the claim period expired last September and the submitted claims as reported by the claims administrator make plain that there will no C reduction whatever, even if every claim asserted were valid."

Although the question is not directly answered, I take Chuck Sims' statement, in the context of no direct answer to the question, as an admission that the value in the Plaintiffs' brief counted the registered claims that did not include documentation as C claims. That makes the various statements in the briefs of far greater concern that just presenting information that is outside the record. I will endevear to avoid the possibility that any judge or their law clerk assumes that a stipulation is simply based on your acknowledgement that citing information outside the record is not appropriate. I want them to know that the number is, or may be, wrong and that the real information carries the possibility that the C Reduction will be triggered.

I must have the truth immediately. I hope to receive from you both a clear explanation of the true facts today. I will not further delay any action that appears appropriate under the circumstances.

Sincerely,

Charles D. Chalmers

cc: All other counsel of record, by email

6-30-06

Dear Charles:

Prior to the filing of plaintiffs-appellees' brief, the parties asked the claims administrator to calculate the aggregate potential value of the claims, i.e., before those claims are sent to the defense group for its scrutiny under the terms of the Claims Administration Memorandum. Contrary to our clear instructions, and unbeknownst to us, the claims administrator provided us with a value that excluded claims that were the subject of a deficiency or ineligibility letter. That included reducing to Category C Subject Works that were claimed as registered works but lacked documentation and/or a registration number. We learned of this only after the June 16, 2006 deficiency letters went out. (A subsequent letter has since gone out that clarifies the claimants' registration documentation obligations. *See* www.copyrightclassaction.com.)

When we learned what the claims administrator had done, we decided we would have to strike those portions of our brief that reflected the inaccurate data, and that is what we intend to do. Contrary to the suggestion in your June 29 letter, we would never consider withholding correct information, and have every intention of informing the Court of the reasons for our filing a modified brief.

At this point, we have insufficient data to conclude that the $18 million cap will be reached, and will not know this until after the claims have been examined by the defense group. It may well be that the prima facie claims with the deficiencies put back in will raise the number over $18 million, and even if that is the case, the number may yet go down after the defense group examines the claims. It goes without saying that whatever information we have that pertains to the issues before the Court, we will provide the Court with such information.

Sincerely,

Michael J. Boni

Main Identity

From: "Michael J. Boni" <mboni@kohnswift.com>
To: "Charles Chalmers" <cchalmers@allegiancelit.com>
Cc: "Robin Bierstedt" <robin_bierstedt@timeinc.com>; "Raymond Castello" <castello@fr.com>; "Gary Fergus" <gfergus@ferguslegal.com>; "Michael S. Denniston" <mdenniston@bradleyarant.com>; "Kenneth A. Richieri" <richierk@nytimes.com>; "Chuck Sims" <csims@proskauer.com>; "Juli Marshall" <juli.marshall@lw.com>; "Jim Hallowell" <jhallowell@gibsondunn.com>; "James F. Rittinger" <Jrittinger@SSBB.com>; "Jack Weiss" <jmweiss@gibsondunn.com>; "Ian C. Ballon" <ballon@gtlaw.com>; "Hank Gutman" <hgutman@stblaw.com>; "Gary Fergus" <gfergus@ferguslegal.com>; "Dodson, Paulette R." <PDodson@tribune.com>; "Diane S. Rice" <drice@hosielaw.com>; "Chuck Sims" <csims@proskauer.com>; "A. J. De Bartolomeo" <ajd@girardgibbs.com>; "Christopher Graham" <cgraham@levettrockwood.com>; "Tony Lee" <aklee@aklee.net>
Sent: Friday, June 30, 2006 9:37 AM
Subject: RE: In re Literary Works , Letter attached

Dear Charles:

Prior to the filing of plaintiffs-appellees' brief, the parties asked the claims administrator to calculate the aggregate potential value of the claims, i.e., before those claims are sent to the defense group for its scrutiny under the terms of the Claims Administration Memorandum. Contrary to our clear instructions, and unbeknownst to us, the claims administrator provided us with a value that excluded claims that were the subject of a deficiency or ineligibility letter. That included reducing to Category C Subject Works that were claimed as registered works but lacked documentation and/or a registration number. We learned of this only after the June 16, 2006 deficiency letters went out. (A subsequent letter has since gone out that clarifies the claimants' registration documentation obligations. *See* www.copyrightclassaction.com.)

When we learned what the claims administrator had done, we decided we would have to strike those portions of our brief that reflected the inaccurate data, and that is what we intend to do. Contrary to the suggestion in your June 29 letter, we would never consider withholding correct information, and have every intention of informing the Court of the reasons for our filing a modified brief.

At this point, we have insufficient data to conclude that the $18 million cap will be reached, and will not know this until after the claims have been examined by the defense group. It may well be that the prima facie claims with the deficiencies put back in will raise the number over $18 million, and even if that is the case, the number may yet go down after the defense group examines the claims. It goes without saying that whatever information we have that pertains to the issues before the Court, we will provide the Court with such information.

Sincerely,

Michael J. Boni
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July 6, 2006

BY HAND
Roseann B. MacKechnie, Clerk
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Court House
40 Foley Square
New York, New York 10007

Re: Corrected brief for Defendants-Appellees in *In re Literary Works in Electronic Databases Copyright Litigation*, 05-5943-cv

Dear Ms. MacKechnie:

Enclosed, in advance of the due date, please find the original and ten copies of a corrected brief for defendants-appellees ("defendants") in this matter. Defendants previously filed their brief ahead of time on May 25, 2006.

Six sentences (and parts of four other sentences) in defendants' previously submitted brief were based on information that we and plaintiffs' counsel believed to be reliable at the time. The information was post-judgment information provided by the official class action Claims Administrator, and the brief expressly identified it as such. We considered it appropriate to use the information in our briefs because we believed it would be useful to the Court in evaluating certain arguments of appellants. However, we have recently ascertained that we can no longer consider the post-judgment information reliable, and we therefore file this corrected brief.

The sentences and phrases struck from the previously-submitted brief have been discussed with counsel for the appellant, Charles Chalmers (as well as counsel for the plaintiffs-appellees). We believe that we have eliminated from the brief all post-judgment information about filed claims, as well as any assertions or arguments based on such information.[1]

We apologize for any inconvenience, and regret having to submit this superseding brief.

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[1] The struck passages were on pages 16, 21, 24, and 25. The brief and its arguments are otherwise unchanged. We have retained the page-endings in the original brief, so those four pages are each somewhat shortened (but the remaining pages are identical to those previously filed).

Very truly yours,

Charles S. Sims

cc: Charles Chalmers, Counsel for Appellants
Counsel for Plaintiffs-Appellees
Counsel for Defendants-Appellees

KOHN, SWIFT & GRAF, P.C.

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1914-1999

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MERLE A. WOLFSON
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July 7, 2006

Via Federal Express

Roseann B. MacKechnie, Clerk
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Corrected Brief For Plaintiffs-Appellees in *In re Literary Works in Electronic Databases Copyright Litigation*, 05-5943-cv

Dear Ms. MacKechnie:

Plaintiffs-Appellees hereby file the enclosed Corrected Brief For Plaintiffs-Appellees, which replaces and supersedes the brief that was filed on May 25, 2006. The enclosed brief deletes from the May 25 brief (1) the sentence on pp. 12-13, (2) sixteen words in the last full sentence on p. 22, (3) three words in the sentence on pp. 22-23, (4) the parenthetical clause in the middle of p. 37, and (5) footnotes 7, 12 and 15. The reason for our striking such language is as follows.

Prior to the May 25 filing, the parties asked the Claims Administrator to calculate the aggregate potential value of the claims, in order to determine whether two of the appellants' arguments may be moot. Appellants argue that (1) it is unfair for the settlement to reduce the amount of certain class members' awards before others (with weaker claims) in the event the aggregate claims value exceeds the $18 million settlement cap; and (2) the named plaintiffs, who registered some of their works with the U.S. Copyright Office, are inadequate representatives of class members who did not register any of their works. The information the Claims Administrator provided to us indicated that the $18 million cap would not be reached, and that the named plaintiffs actually submitted far more claims for unregistered works than registered works. That is why we included that information in the brief filed on May 25, 2006.

However, contrary to our clear instructions, and unbeknownst to us, the Claims Administrator provided us with a value that excluded claims that were the subject of deficient but potentially curable claims. We learned of this only after June 16, 2006, when the Claims Administrator mailed out deficiency letters to claimants. As a result, we are striking the language that pertains to the information we received from the Claims Administrator after the record was closed.

At this point, we have insufficient data to determine whether the $18 million cap will be reached, and will not know this until after the claims have been examined by the defense group pursuant to the terms of the settlement, sometime in the Fall of 2006. It may be that the prima facie claims with the deficiencies put back in will raise the number over $18 million; even if that were the case, the number might thereafter fall below $18 million after the August 31, 2006 deadline for claimants to respond to the deficiency letters, and after the defense group examines the claims.

We are available to answer any questions the Court may have, and we apologize for any inconvenience caused by our having to file a corrected brief.

Sincerely yours,

Michael J. Boni

MJB/yr
Enclosures

cc: Charles Chalmers, Counsel for Appellants (w/encl.)
Counsel for Plaintiffs-Appellees (w/encl.)
Counsel for Defendants-Appellees (w/encl.)

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Charles D. Chalmers
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July 11, 2006

By Email
Charles S. Sims – csims@proskauer.com
Michael J. Boni - mboni@kohnswift.com

Re: *In re Literary Works in Electronic Databases Copyright* Litigation, 05-5943-cv

Dear Counsel:

I would like to have clear description of how the presentation of the erroneous information about claims value occurred. Your statements are cryptic. I am requesting a detailed explanation. The following questions indicate the types of information I would like to have.

1. What is the explanation from the Administrator for its failure to provide the calculation that you explicitly requested?
2. Have you received the reports called for by the claims memorandum?
3. Assuming that you have, it seems the number presented in the last report, covering all filed claims, would be very similar to the one you reported believing that it was a different calculation. Didn't anyone notice the similarity, and if not, why not?
4. Why didn't you tell me about the problem when I first raised the question, instead of waiting more than a week and providing it only when I threatened a motion.

I would also like to have a similar clear, detailed explanation of about how the claims figures you each (Sims and De Bartolomeo declarations) presented about interim claims were developed. Chuck Sims letter to me begs the question by referring to the Administrator. Mr. Boni has not provided me any answer. Again, these questions indicate the type of information I would like to know.

1. Were you receiving the Memorandum reports at that time, and were they being prepared as specified in the Memo?
2. Did you ask the Administrator for a different report, similar to what you describe for use in your appeal briefs?

I request that you obtain, if you have not already, the report from the Administrator that you thought you had for the appeal briefs, and provide it to me.

I am investigating the possibility of motions to the Court of Appeals regarding these matters. My analysis is not complete, but I envision the possibility of a motion to make your descriptions of what has occurred part of the record on appeal, and a motion for sanctions. I believe that the information I am requesting, or your refusal to provide it, will be relevant to such motions.

Sincerely,

Charles D. Chalmers

cc: All other counsel of record, by email

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July 14, 2006

VIA ELECTRONIC MAIL

Charles D. Chalmers, Esquire
20 Sunnyside Avenue
Suite A#199
Mill Valley, CA 94941-1928

Re: ***In re Literary Works in Electronic Databases Copyright Litigation***
No. 05-5943-cv

Dear Charles:

Appellees unintentionally included some incorrect information in their briefs and we have now promptly corrected it. Without any basis for doing so, you now wish to undertake your own investigation of how incorrect information came to be included in the briefs, in the apparent hope that you will find some basis for further objection to the settlement. The questions in your letter of July 11 amount to a request for collateral discovery in the Court of Appeals, and we are unaware of any rule that permits such a practice. Your inquiries are no more than an unauthorized fishing expedition and we decline to respond to them.

We dispute that any statements we made to you or the Court are cryptic, or that we have been in any way less than forthright. To the contrary, appellees' descriptions of the claims data were openly based upon information presented by the claims administrator, and were presented in complete good faith. As soon as we became aware (through no intervention of yours) that the information provided by the claims administrator was not reliable, we diligently took steps to correct the brief and inform the Court of Appeals. Your suspicions of foul play are groundless.

Counsel for defendants-appellees join in this letter.

Very truly yours,

Michael J. Boni

MJB/yr
cc: Counsel for appellees

21603_1

CERTIFICATE OF SERVICE

I, Charles D. Chalmers, do declare:

I am over the age of eighteen and not a party to this action. On August 1, 2006, I served the Motion to Strike Corrected Brief of Plaintiffs-Appellees and Corrected Brief of Defendants-Appellees by U.S. mail, addressed as below, to Charles S. Sims and Michael J. Boni. A pdf copy of the motion was sent to each of below listed at the email address shown.

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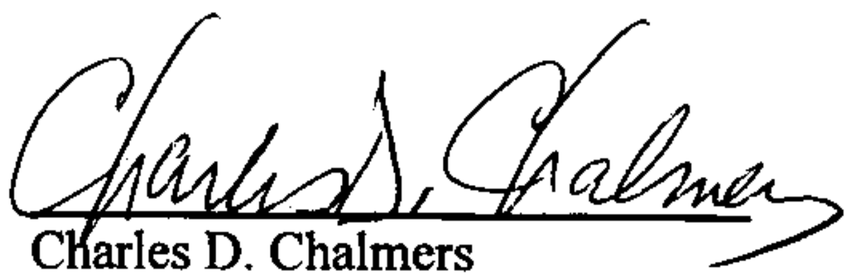
I declare under penalty of perjury under the law of the United States that the foregoing is true and correct. Executed at Fairfax, CA on August 1, 2006.



Charles D. Chalmers