

EXHIBIT I

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION

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5 -----x

6 GOOD MORNING TO YOU PRODUCTIONS CORP.,
7 et al.,

8 Plaintiffs,

9 vs.

10 WARNER/CHAPPELL MUSIC INC., et al.,
11 Defendants.

12 -----x

13 Lead Case No. CV 13-04460-GHK (MRWx)

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16 V O L U M E I I
17 CONTINUED VIDEOTAPED DEPOSITION
18 OF RICHARD REIMER
19 New York, New York
20 Monday, July 21, 2014
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24 Reported by: David Henry

25 JOB 82467

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July 21, 2014

4:30 p.m.

Continued Videotaped Deposition of
RICHARD REIMER, held at the offices of
Paul Weiss Rifkind Wharton & Garrison,
LLP, 1285 Avenue of the Americas, New
York, New York, pursuant to Notice,
before David Henry, a Certified Court
Reporter and Notary Public of the State
of New York.

1 A P P E A R A N C E S :

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WOLF HALDENSTEIN ADLER FREEMAN

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Attorneys for Plaintiffs

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270 Madison Avenue

New York, New York 10016

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BY: MARK RIFKIN, ESQ.

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MUNGER TOLLES & OLSON

Attorneys for Defendants

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355 South Grand Avenue

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BY: MELINDA EADES LEMOINE, ESQ.

(Present by teleconference)

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11

PAUL, WEISS, RIFKIND, WHARTON

& GARRISON

12

Attorneys for ASCAP and the Witness

1285 Avenue of the Americas

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New York, New York 10019

BY: DARREN JOHNSON, ESQ.

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ALSO PRESENT:

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LEM LATTIMER, Videographer

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1 THE VIDEOGRAPHER: This is the
2 tape number one of the videotaped
3 deposition of Richard Reimer in the
4 matter of Good Morning To You
5 Productions versus Warner/Chappell
6 Music. We are now going on the
7 record. The time is 4:33 p.m. Will
8 counsel please state their appearances
9 for the record.

10 MR. RIFKIN: Mark Rifkin on
11 behalf of the plaintiffs.

12 MS. LEMOINE: Melinda LeMoine on
13 behalf of Warner/Chappell.

14 MR. JOHNSON: Darren Johnson,
15 Paul Weiss Rifkind Wharton & Garrison
16 on behalf of ASCAP.

17 R I C H A R D R E I M E R,
18 having first been duly sworn, was examined
19 and testified as follows:

20 CONTINUED EXAMINATION BY MR. RIFKIN:

21 Q. Mr. Reimer, good afternoon.

22 A. Good afternoon.

23 Q. I have some follow-up questions
24 from your deposition which was taken on
25 July 11, 2014.

1 about blanket licenses. So let me try to
2 repeat the question for you and then we'll
3 follow up to clarify.

4 Since you have worked at ASCAP,
5 has any ASCAP member had the right to
6 instruct ASCAP how much to charge for the
7 blanket licenses?

8 A. And by blanket license I assume
9 you mean a license to perform all of the
10 works in the ASCAP repertory, is that
11 correct?

12 Q. Correct.

13 A. I don't think that one could
14 characterize the relationship between ASCAP
15 and its members as giving the member the
16 right to instruct ASCAP.

17 Q. Now, you said in answering that
18 question earlier that ASCAP sometimes
19 receives instruction from individual
20 members to license individual works. Did I
21 understand that correctly?

22 A. I said that that is a
23 possibility.

24 Q. Are you aware of any instance
25 when ASCAP has ever been instructed to

1 A. I don't know what you mean by
2 worked on.

3 Q. Have you collaborated with any of
4 the members to compose music, ASCAP? In
5 other words has ASCAP collaborated with any
6 of its members to compose new music?

7 MR. JOHNSON: Objection,
8 foundation.

9 A. Again, that has no meaning to me.
10 I don't know how ASCAP as an entity would
11 work with members to create music.

12 Q. I'm asking you if you are aware
13 of any instance when ASCAP has collaborated
14 with any of its members to compose new
15 music. If you are, great; if not, then you
16 can say no.

17 MS. LeMOINE: Objection. Asked
18 and answered.

19 A. Mr. Rifkin, ASCAP is an
20 organization. It's not a composer. That's
21 the best way I can answer that question.

22 Q. Has ASCAP or anyone at ASCAP
23 collaborated with any of its members or any
24 individual composers who are employed by
25 any of its members to create new music?

1 MR. JOHNSON: Objection, asked
2 and answered.

3 MS. LeMOINE: Join.

4 A. Anyone at ASCAP is a very broad
5 statement or description. ASCAP has a
6 board of directors. The board of directors
7 is 12 writers and 12 publishers. I venture
8 to guess that many or all of the writers
9 who are currently members of the board of
10 directors or have been in the past have
11 collaborated with others in creating new
12 music.

13 Q. And when they have done so in
14 those instances, are you aware of them
15 having done so in their official capacity
16 on behalf of ASCAP?

17 A. I doubt that they were doing it
18 as an ASCAP officer or director.

19 Q. Okay, thank you. Since you have
20 worked at ASCAP, has ASCAP helped any of
21 its members register copyrights in new
22 music?

23 A. Again, if I understand the
24 question correctly, to the extent that one
25 significant aspect of ASCAP's operation is

1 from members as to how to properly go about
2 registering their works with the copyright
3 office.

4 Q. Are you aware of any instance
5 when that has happened during the 43 years
6 you've worked for ASCAP?

7 A. I certainly am aware. I can't
8 give you specifics, but I know that that's
9 one of the functions performed by the staff
10 members of the two departments I've
11 identified.

12 Q. You're not able to identify a
13 single instance when someone at ASCAP has
14 helped one of ASCAP's members to register a
15 copyright with the copyright office?

16 MS. LeMOINE: Objection, asked
17 and answered.

18 A. If by identify you mean a
19 specific instance in which a specific
20 member sought help for registering a
21 specific work, the answer is no.

22 Q. Okay. You did prepare for
23 today's resumed deposition, correct?

24 A. By reading the questions that
25 were agreed upon, yes, that's correct.

1 question when you read it, you didn't do
2 any additional research to inform yourself
3 of information pertinent to the question.

4 MR. JOHNSON: Objection to
5 form.

6 A. Correct.

7 Q. Okay. Since you have worked at
8 ASCAP, has ASCAP helped any of its
9 publisher members acquire new music?

10 A. Well, without restating one of
11 the prior answers I gave, let me just say
12 that I do view the industry events that I
13 described as opportunities for publishers
14 to acquire music. In other words if for
15 example there were a workshop and publisher
16 representatives were attending the workshop
17 as well as composers or songwriters, I
18 assume that one of the outcomes would be
19 that the publishers, one of the publishers
20 would acquire new music.

21 Q. Are you aware of any instance
22 during the time you've worked at ASCAP when
23 anyone from ASCAP working on ASCAP's behalf
24 has identified new music to a publisher
25 member of ASCAP?

1 A. Again, with reference back to my
2 earlier answers, I am certainly aware that
3 that has occurred. I don't have any
4 specifics for you. In fact it is one of
5 the functions of the membership staff to
6 facilitate the -- not only the creation of
7 new music to the extent that they
8 participate in the kinds of events that
9 I've described, but also in their
10 relationship between songwriters and
11 composers on the one hand and music
12 publishers on the other.

13 Q. But you're not able to identify
14 any instance in which ASCAP has identified
15 new music for a publisher?

16 MR. JOHNSON: Objection.

17 MS. LeMOINE: Objection, asked
18 and answered.

19 A. Again, the same answer that I've
20 given previously, I did not specifically
21 conduct any research to come up with a
22 specific example for you.

23 Q. Are you aware of any instance
24 when ASCAP has acquired new music on behalf
25 of a publisher?

1 A. ASCAP does not acquire music.

2 Q. Okay. Have you acquired new
3 music on behalf of, and by you I mean has
4 ASCAP -- let me rephrase the whole
5 question.

6 During the time you have worked
7 at ASCAP, are you aware of any instance
8 when ASCAP has acquired any new music on
9 behalf of any publisher member?

10 THE WITNESS: Would you reread
11 the question.

12 (The pending question was read.)

13 A. Again, my immediately prior
14 answer stands. ASCAP does not acquire
15 music.

16 Q. Okay. Since you have worked at
17 ASCAP, has ASCAP provided quality control
18 services to any of its members?

19 A. If you would explain to me what
20 you mean when you use the phrase quality
21 control.

22 Q. Well, using it in its broadest
23 possible sense, for example, are you aware
24 of any instance when ASCAP has instructed
25 any of its members on changes to the music

1 that its members create or publish?

2 A. I'm aware of no instance when
3 ASCAP would have advised anyone to change
4 music.

5 Q. And I don't mean to imply that
6 there would be such an instance. I'm
7 asking you if you are aware any instance.
8 So in another sense has ASCAP provided any
9 proof-reading service or any other service
10 to publisher members, for example
11 suggesting that some of the music is
12 published with typographical errors or any
13 other kind of printing error for the
14 publisher members of ASCAP?

15 A. Well, again, this is an instance
16 where I'm certain that some staff members
17 at ASCAP have done precisely what you've
18 suggested. I'm not aware of the specifics,
19 however.

20 Q. And when they have done that,
21 have they done that in their official
22 capacity on behalf of ASCAP?

23 A. I would assume in some instances
24 certainly, yes.

25 Q. But you're not able to identify

1 any instance in which that has happened as
2 you sit here today, correct?

3 A. That is certainly not an area
4 that I would have had direct involvement in
5 and so therefore I have no specific
6 examples for you.

7 Q. Since you have worked at ASCAP,
8 has ASCAP provided any design services to
9 any of its individual members?

10 A. Again, would you give me an
11 example of what you mean by design
12 services.

13 Q. For example illustrations that
14 accompany CD's, or back in the old days
15 albums, that sort of thing, cover artwork,
16 anything like that?

17 A. I can't conceive of ASCAP being
18 involved in cover artwork.

19 Q. Okay. Or liner notes or anything
20 like that back in the day when those things
21 were issued, are you aware of any instance
22 when ASCAP has provided any design service
23 to any of its individual members on liner
24 notes or anything accompanying the --

25 A. As far as design services are

1 concerned as you've defined them, I am
2 aware of no such instances.

3 Q. Okay. Or in any broader sense,
4 are you aware of ASCAP providing any design
5 services to any of its members?

6 A. Again, your use of the phrase
7 design services leads me to answer that I
8 am not aware of any such circumstances.

9 Q. Okay. During the time you've
10 work at ASCAP, has ASCAP provided any, what
11 we call artist and repertoire services to
12 any of its individual members, A&R
13 services?

14 A. If your use of the phrase as I
15 understand it, A&R or artist and repertory
16 refers to recordings, the answer is ASCAP
17 is not involved at all in recording rights,
18 and so therefore I think the answer is no.

19 Q. Okay. And since you have worked
20 at ASCAP, has ASCAP licensed individual
21 works of any ASCAP members?

22 A. ASCAP licenses all of the works
23 of its members except in the circumstance
24 that I've described previously.

25 Q. And during the 43 years that

1 A. Yes, I am.

2 Q. Have you ever done that for the
3 song Happy Birthday To You?

4 A. I have not.

5 Q. And has ASCAP ever done that for
6 the song Happy Birthday To You?

7 A. Mr. Rifkin, over the course of
8 more than the 43 years that I've been at
9 ASCAP, ASCAP has brought literally
10 thousands of infringement actions. I don't
11 know whether Happy Birthday was among them.

12 Q. You said that ASCAP is interested
13 in the validity of copyrights in its
14 repertory, correct?

15 A. Correct.

16 Q. What did ASCAP do to determine
17 the validity of the copyright to Happy
18 Birthday To You?

19 A. I don't know that ASCAP has done
20 anything.

21 Q. When you say that ASCAP is
22 interested in the validity of its
23 copyrights, what did you mean by that?

24 A. I thought I gave a fairly
25 complete answer. Could we read it back?

1 ASCAP would make such a determination. I
2 don't think ASCAP would make that
3 determination.

4 MR. JOHNSON: Can I just --
5 before you go on, I've been trying to
6 give you a little bit of latitude, but
7 I think you're veering very close to
8 going beyond the scope that we agreed
9 to and beyond the scope of the cross
10 that Ms. LeMoine asked. So just with
11 that caution, please go ahead.

12 MR. RIFKIN: I'm trying to
13 clarify some of the questions that
14 Ms. LeMoine asked and some of the
15 answers that Mr. Reimer gave, but
16 thank you. I'll keep that in mind.

17 Q. Mr. Reimer, if two members of
18 ASCAP dispute the validity of a copyright,
19 member A says it's my copyright, member B
20 says no, no, no, it's my copyright, how do
21 you pick which member to side with?

22 MR. JOHNSON: Can you just
23 identify, which specific question or
24 answer are you trying to clarify with
25 that question?

1 MR. RIFKIN: ASCAP's role in
2 having some, to use Mr. Reimer's
3 words, interest in the validity of the
4 copyrights.

5 Q. I'm just curious how in the
6 instance of two competing members with
7 competing claims to the same copyright, how
8 ASCAP would resolve that.

9 A. ASCAP would not resolve that.

10 Q. Why not?

11 A. I think the very reason is
12 implied by your question. It's a dispute
13 between two members. Let the members
14 resolve it or let a court resolve it.

15 Q. Are you aware of any instance
16 when ASCAP has either prosecuted or
17 defended a copyright infringement action to
18 determine the validity of a disputed
19 copyright?

20 A. No, I am not aware of any such
21 action.

22 Q. Are you aware of any instance
23 when ASCAP has been joined as a party in
24 any such litigation where there's been a
25 dispute over the validity of a copyright?

1 A. I am aware that ASCAP has been a
2 party to such litigation only to the extent
3 of its obligation to one or the other of
4 the disputants to pay royalties based on
5 public performances of those works.

6 Q. Pursuant to the blanket license,
7 correct?

8 A. That's correct.

9 Q. And you said that ASCAP engages
10 in privileged communications with its
11 members regarding the validity of
12 copyrights. Do you recall saying that?

13 A. I think what I said was that I
14 was virtually certain that such
15 communications had occurred.

16 Q. And you understand that if ASCAP
17 had engaged in such communications, you
18 would be obligated to maintain the
19 privileged nature of those communications?

20 A. Correct.

21 Q. And you regard yourself as a
22 reasonably cautious attorney, correct?

23 MR. JOHNSON: Objection to
24 form. Reasonably cautious in what
25 sense?

1 Q. In the sense that you would abide
2 by your professional obligation to maintain
3 the confidence of such a privileged
4 communication, if there was one, correct?

5 A. Yes, and particularly if a member
6 had the same view.

7 Q. And in this case, and I mean the
8 case that brings us here today, the Good
9 Morning to All Productions case, you
10 knowingly produced the 1979 letter from
11 Mrs. Sengstack to Mr. Korman, correct?

12 A. That's correct, but I did so, as
13 you well know from the letter that I wrote
14 to you on May 22nd, inadvertently.

15 Q. Well, when you say inadvertently,
16 did you mistakenly include that in the
17 group in the sense that you meant to
18 exclude it but somehow through a copying
19 error it was included in the group?

20 A. When I said inadvertently, I
21 meant it is the privilege as far as I'm
22 concerned of the member to claim, and
23 having been so advised, if the member
24 viewed it as a privileged communication,
25 that it should not have been produced.

1 Q. So if you sent an e-mail to me,
2 you would have sent an e-mail to
3 Warner/Chappell?

4 A. I believe so.

5 Q. And until you and I spoke about
6 withdrawing the confidentiality designation
7 to those documents, Warner/Chappell had not
8 informed you that Warner/Chappell claimed a
9 privilege in those documents, is that
10 correct?

11 A. I believe so.

12 Q. So did you regard the documents
13 as privileged when you produced them to me?

14 A. I frankly don't recall. I don't
15 think I made that determination.

16 Q. You recall telling me in advance
17 of producing the documents to me on May 9th
18 that you were including a detailed analysis
19 of the ownership history of the copyright?

20 A. I don't recall the exact words of
21 our discussion.

22 Q. But you recall telling me that in
23 substance before you produced the documents
24 to me on May 9, 2014, correct?

25 A. That's correct.

1 copyright is invalid?

2 A. If you're talking about a single
3 copyright, I don't know the answer to that.
4 Certainly we can't license on behalf of
5 members if the members don't have the
6 rights.

7 Q. Are you able to identify for me
8 any instance in which ASCAP has appeared in
9 any judicial proceeding to defend the
10 validity of any copyright on behalf of any
11 member during the entire period of your
12 employment at ASCAP?

13 MR. JOHNSON: Objection, asked
14 and answered.

15 A. I can't conceive of any reason
16 why ASCAP would appear in a proceeding to
17 defend a copyright. It's the rights of the
18 members that are at stake.

19 MR. RIFKIN: I have nothing
20 further.

21 MS. LeMOINE: I don't have
22 anything further.

23 MR. RIFKIN: Thank you,
24 Mr. Reimer.

25 (Time noted: 5:18 p.m.)

A C K N O W L E D G M E N T

STATE OF NEW YORK)

: ss

COUNTY OF)

I, RICHARD REIMER, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of July 21, 2014; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

RICHARD REIMER

Signed and subscribed to before me, this _____ day of _____, 2014.

Notary Public, State of New York

C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, DAVID HENRY, a Notary Public within
and for the State of New York, do hereby
certify:

That RICHARD REIMER, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition
is a true record of the testimony given by
such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 21st day of July, 2014.

DAVID HENRY

1 I N D E X

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3 CONTINUED EXAMINATION BY 46

4 MR. RIFKIN

5 EXAMINATION BY MS. LeMOINE 67

6 EXAMINATION BY MR. RIFKIN 70

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