

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**THE MARSHALL COUNTY COAL
COMPANY, THE MARION COUNTY
COAL COMPANY, THE
MONONGALIA COUNTY COAL
COMPANY, THE HARRISON
COUNTY COAL COMPANY, THE
OHIO COUNTY COAL COMPANY,
MURRAY ENERGY CORPORATION,
and ROBERT E. MURRAY,**

Plaintiffs,

v.

**JOHN OLIVER, CHARLES WILSON,
PARTIALLY IMPORTANT
PRODUCTIONS, LLC; HOME BOX
OFFICE, INC.; TIME WARNER INC.
and DOES 1 through 10,**

Defendants.

Civil Action No. 5:17-CV-99

Judge John Preston Bailey

Marshall County Circuit Court

Civil Action No.: 17-C-124

Judge Cramer

**MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE PLEAD TO
THE COMPLAINT AND MEMORANDUM IN SUPPORT THEREOF**

NOW COME the Defendants, Home Box Office, Inc.; Time Warner Inc.; and Partially Important Productions, LLC (hereinafter "Movants") by and through their counsel, Robert P. Fitzsimmons and Clayton J. Fitzsimmons and hereby move for a time extension to answer or otherwise plead to the Complaint filed in this action.

As grounds for this Motion, your Movants state and allege as follows:

1. Home Box Office, Inc.; Time Warner Inc.; and Partially Important Productions, LLC were named as defendants, together with two individuals, John Oliver and Charles Wilson and Does 1 through 10, in a lawsuit filed by five (5) corporations and one (1) individual, Robert E. Murray, in the Circuit Court of Marshall County, West Virginia, bearing Civil Action No. 17-

C-124. (Note: The Complaint identifies the individual, Robert E. Murray as a Plaintiff; however, the Civil Case Information Statement does not identify Robert E. Murray as a Plaintiff).

2. Plaintiffs also filed in State Court a Petition for a Temporary Restraining Order (“TRO”).

3. The lawsuit was removed to Federal Court on June 30, 2017 and Plaintiffs filed a Motion to Remand on July 7, 2017.

4. The Complaint contains eighty-nine (89) averments and causes of action for defamation, false light invasion of privacy and intentional infliction of emotional distress.

5. The service records in the Office of the Clerk of the Circuit Court of Marshall County, from which service was requested, indicated that as of July 13, 2017, neither John Oliver nor Charles Wilson have been served. The West Virginia Secretary of State received the Summons and Complaint on June 29, 2017 and Movant, Partially Important Productions, LLC received the Summons and Complaint on July 3, 2017, and Movants, Home Box Office, Inc. and Time Warner Inc. received the Summons and Complaint on July 5, 2017.

6. Movants are presently preparing their Memorandum in Opposition to Plaintiffs’ Motion to Remand which involves arguments relating to fraudulent joinder of plaintiffs in addition to preparing responsive pleadings to the Complaint. Additionally, Movants will be requesting Pro Hac Vice admission of co-counsel.

7. This case has been recently filed and Movants have not sought any extensions of time.

8. Movants’ counsel contacted counsel for Plaintiffs on July 13, 2017 and requested an extension to answer or otherwise plead to the Complaint and the request was denied.

9. Good cause exists for the requested extension in that:

- There are multiple parties involved in this litigation, including both plaintiffs and defendants;
- The Complaint involves First Amendment rights of free speech, as well as defamation, false light invasion of privacy and intentional infliction of emotional distress;
- The Motion to Remand creates issues involving fraudulent joinder of plaintiffs and diversity jurisdiction;
- Two of the named defendants have not been served;
- The responsive pleading, the Motion to Remand, and the TRO each involve distinct legal issues;
- There are no legitimate reasons to not grant a reasonable extension;
- Important rights need to be preserved which requires proper research of laws and facts and which on occasion requires more time than allotted in the Federal Rules of Civil Procedure; and
- Custom and practice in the United States District Court for the Northern District of West Virginia is to accommodate requests for modest extensions in filing responsive pleadings to Complaints.

WHEREFORE, your Movants, Home Box Office, Inc.; Time Warner Inc.; and Partially Important Productions, LLC, request that this Court find “good cause” (pursuant to Federal Rule of Civil Procedure 6(b)) for an extension to answer or otherwise plead to the Complaint and order that Movants be permitted to answer or otherwise plead to the Complaint by August 11,

2017, and for such further relief that the Court deems just and proper. A proposed Order is attached.

Respectfully Submitted,

**PARTIALLY IMPORTANT
PRODUCTIONS, LLC; HOME BOX
OFFICE, INC.; TIME WARNER INC.,
*Defendants,***

By: /s/ Robert P. Fitzsimmons
Robert P. Fitzsimmons, Esq.
W. Va. State Bar I.D. #1212
Clayton J. Fitzsimmons
W. Va. State Bar I.D. #10823
FITSIMMONS LAW FIRM PLLC
1609 Warwood Avenue
Wheeling, WV 26003
Phone: (304) 277-1700
Fax: (304) 277-1705
E-mail: bob@fitzsimmonsfirm.com
clayton@fitzsimmonsfirm.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**THE MARSHALL COUNTY COAL
COMPANY, THE MARION COUNTY
COAL COMPANY, THE
MONONGALIA COUNTY COAL
COMPANY, THE HARRISON
COUNTY COAL COMPANY, THE
OHIO COUNTY COAL COMPANY,
MURRAY ENERGY CORPORATION,
and ROBERT E. MURRAY,**

Plaintiffs,

v.

**JOHN OLIVER, CHARLES WILSON,
PARTIALLY IMPORTANT
PRODUCTIONS, LLC; HOME BOX
OFFICE, INC.; TIME WARNER INC.
and DOES 1 through 10,**

Defendants.

Civil Action No. 5:17-CV-99

Judge John Preston Bailey

Marshall County Circuit Court

Civil Action No.: 17-C-124

Judge Cramer

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2017, a true copy of the foregoing ***MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE PLEAD TO THE COMPLAINT AND MEMORANDUM IN SUPPORT THEREOF*** was electronically filed with the Clerk of this Court using CM/ECF system, who shall provide electronic notice of such filing to the following counsel:

Jeffrey A. Grove Esq.
David L. Delk Esq.
Grove, Holmstrand & Delk, PLLC
44 ½ 15th Street
Wheeling, WV 26003
Counsel for Plaintiffs

Respectfully Submitted,

**PARTIALLY IMPORTANT
PRODUCTIONS, LLC; HOME BOX
OFFICE, INC.; TIME WARNER INC.,
*Defendants,***

By: /s/ Robert P. Fitzsimmons
Robert P. Fitzsimmons, Esq.
W.Va. State Bar I.D. #1212
Clayton J. Fitzsimmons
W.Va. State Bar I.D. #10823
FITSIMMONS LAW FIRM PLLC
1609 Warwood Avenue
Wheeling, WV 26003
Phone: (304) 277-1700
Fax: (304) 277-1705
E-mail: bob@fitzsimmonsfirm.com
clayton@fitzsimmonsfirm.com