IN THE NEWS

Sonny Bono Copyright Term Extension Act is Constitutional, Supreme Court affirms; Court rejects arguments that Congress exceeded its power by extending duration of copyrights 20 years, and argument that Act violates the First Amendment

In a decision that is a significant victory for copyright owners, the Supreme Court has held that Congress did not exceed its power under the Copyright Clause of the Constitution when it passed the Sonny Bono Term Extension Act, nor does that Act violate the First Amendment.

The Sonny Bono Copyright Term Extension Act is the 1998 law that added 20 years to the duration of copyright. As a result of the Act, copyrights to pre-1978 works that would have lasted 75 years from their first publication now last 95 years; and copyrights to 1978 and more recent works whose copyrights would have lasted for the lives of their authors plus 50 years now last for the lives of their authors plus 70 years (ELR 20:6:8).

The Constitutionality of the Act was challenged by Eric Eldred, the creator of a website that features public domain materials, and by other publishers of public domain materials. The challengers were not successful at any stage of the case. It was dismissed by a federal District Court (ELR 21:11:8), and that ruling was affirmed by the Court of Appeals (ELR 23:1:12). Nevertheless, when the Supreme Court agreed to hear the case, it was a matter of significant concern to copyright owners. As things turned out, the Supreme Court saw the issue just the way the lower courts had.

In an opinion by Justice Ruth Bader Ginsburg (writing for a seven-Justice majority), the Court held that the Copyright Clause of the Constitution did not bar Congress from extending the duration of copyrights, even though that Clause gave Congress the power to protect literary and other works only for "limited times." Eldred argued that Congress violated the "limited times" clause by repeatedly extending the duration of copyright protection for works already in existence, as well as for newly-created works.

Justice Ginsburg disagreed, however, explaining that "a page of history is worth a pound of logic." The history she referred to was Congress' long-standing practice - reaching back to the original federal copyright statute - of extending the copyright terms for existing as well as new works, without controversy. Congress also has extended the terms of existing patents, and its power to do that has been specifically upheld by appellate courts.

Justice Ginsburg found that it was rational for

Congress to pass the Bono Act, because five years earlier, the European Union extended its copyrights for an additional 20 years and offered to do likewise for copyrights from the United States (and other nations), provided the U.S. extended its protection for European works by an additional 20 years. "By extending the baseline United States copyright term to life plus 70 years, Congress sought to ensure that American authors would receive the same copyright protection in Europe as their European counterparts," she explained. In addition, the term extension was rational because it gives copyright owners an incentive to restore and distribute their older works.

In rejecting Eldred's First Amendment argument, Justice Ginsburg noted that "The Copyright Clause and First Amendment were adopted close in time. This proximity indicates that, in the Framers' view, copyright's limited monopolies are compatible with free speech principles." What's more, copyright accomodates free speech, the Justice reasoned, because copyright protects only expression, not ideas or facts, and because the Copyright Act even permits the "fair use" of some expression.

Justices Stevens and Breyer dissented.

Eldred v. Ashcroft, U.S. Sup. Ct. No. 01-618 (2003), available at http://www.copyright.gov/pr/eldred.html [ELR 24:8:4]

RIAA agrees with computer and software industries on principles governing their policy activities during 108th Congress; legislation requiring technical protection measures to be built into computers or consumer electronics devices is not to be sought

The RIAA has agreed with representatives of the computer and software industries on a set of principles that will govern their policy activities during the 108th Congress. Among other things, the RIAA has agreed that it will not seek legislation requiring technical protection measures to be built into computers or consumer electronics devices.

The agreed-upon statement of Policy Principles was jointly issued by the RIAA (representing BMG, EMI, Sony Music Entertainment, Universal Music Group, and Warner Music Group), the Business Software Alliance (representing Adobe, Avid, Borland, Intel, Intuit, Macromedia, Microsoft, Network Associates, Novell, PeopleSoft, Symantec and others), and the Computer Systems Policy Project (representing Dell, Intel, Hewlett-Packard, IBM and others).

Significantly, the MPAA is not a party to the agreement, and thus it appears that the movie and music industries have parted company over the best way to deal with the growing problem of unauthorized digital distribution of copyrighted works. Book and magazine publishers have not joined in the agreement either, though they, like record and movie companies, have a significant stake in the outcome of policy debates about how best to deal with unauthorized digital distribution of their works.

This split between the music and movie industries is highlighted by two of the agreement's seven principles. In one, the parties agree that satisfying "consumer expectations" is "critically important" to all three industries - a proposition with which the movie and publishing industries would certainly agree. But then the principle adds that the way in which consumers' expectations are satisfied "is a business decision that should be driven by the dynamics of the marketplace, and should not be legislated or regulated."

Even more pointedly, in a second principle, the RIAA agrees with the computer and software industries that "legislation or regulations mandating how [technological protection measures] should be designed, function and deployed, and what devices must do to respond to them . . . are not practical." While all three industries agree that "[t]echnology can play an important role in providing safeguards against theft and piracy," the agreed-upon principles state that "role of government, if needed at all, should be limited to enforcing compliance with voluntarily developed functional specifications reflecting consensus among affected interests."

If these Policy Principles had been agreed to a year or two earlier - during the 107th Congress - the RIAA would not have supported the Hollings Bill. If that bill - more formally known as the "Consumer Broadband and Digital Television Promotion Bill" - had been enacted (it wasn't), it would have required hardware and software makers to include copy protection technologies in their products, in order to prevent the unauthorized use of copyrighted works.

The Policy Principles are significant today, because the debate over appropriate responses to unauthorized digital distribution has resumed in the 108th Congress. Moreover, the FCC now is conducting an administrative proceeding in which that agency is considering whether to adopt rules that would require manufacturers of television receivers and consumer electronics devices such as digital TV recorders to build copy protection technology into their products (ELR 24:5:4). The Policy Principles mean the RIAA will not urge the FCC to adopt such rules (and may even urge it not to).

The Policy Principles do not ignore the interests the entertainment industry entirely. The computer and software industries have agreed to certain policy principles that are very important to the record industry, as well as to those in the movie and publishing businesses. They have agreed, for example, that "Legislation should not limit the use or effectiveness" of "technical protection measures that limit unauthorized access, copying or redistribution of products. . . ."

This means that the computer and software industries would not support threatened legislation to prohibit the use of anti-circumvention technologies, now permitted and made enforceable by the DMCA. It is less clear whether this principle opposes bills like the newly-introduced H.R. 107 (the first entertainment industry bill of the 108th Congress). This bill would require labeling of copy-protected music CDs and would provide that advertising or sale of "mislabeled" copy-protected CDs is an unfair method of competition and an unfair and deceptive act or practice.

H.R. 107 also would amend the DMCA to permit circumvention of copy-protection technologies for "fair use" and other non-infringing purposes. According to press reports, the bill's sponsor, Representative Rick Boucher, has announced that Intel, a member of two of the organizations that agreed to the new Policy Principles, is a "strong supporter" of the bill and has said that the Policy Principles are "not inconsistent" with "fair use" rights for digital media purchasers.

Technology and Record Company Policy Principles (Jan. 2003), available at http://www.bsa.org/usa/policyres/7_principles.pdf [ELR 24:8:4]

RECENT CASES

Creditors may perfect security interests in unregistered copyrights by filing financing statements under state law, though perfection of security interests in registered copyrights still requires filing in Copyright Office, Ninth Circuit Court of Appeals holds

In a case of enormous significance to entertainment industry lenders and borrowers, the Ninth Circuit Court of Appeals has held that creditors may perfect security interests in unregistered copyrights by filing financing statements under state law.

For more than a decade prior to this decision, it was believed that in order to perfect security interests in copyrights it was necessary to register those copyrights and file security agreements (or copyright mortgages) in the Copyright Office, under the federal Copyright Act. Indeed, two decisions had so held: In re Peregrine Entertainment (ELR 12:5:12) in which movie copyrights given as collateral may have been registered; and In re AEG Acquisitions (ELR 16:3:14) in which movie copyrights given as collateral were not registered.

Now, in a decision by Judge Andrew Kleinfeld, the Court of Appeals has ruled that in order to perfect security interests in registered copyrights, it is still necessary to file security agreements (or copyright mortgages) in the Copyright Office, just as had been held in the Peregrine case. But in a precedent setting portion of the decision, Judge Kleinfeld held that security interests in unregistered copyrights may be perfected by filing financing statements under state law; it is not necessary (as previously thought) to register those copyrights or file financing statements in the Copyright Office.

It matters whether security interests are "perfected," because if a debtor who owns copyrights goes bankrupt, its copyrights - and the proceeds earned from the exploitation of those copyrights - will belong solely to whichever creditor perfected its security interests in those copyrights. This is what makes copyrights valuable collateral for loans. If, however, no creditor has perfected a security interest in the bankrupt debtor's copyrights, then those copyrights (and their proceeds) will benefit all of the bankrupt debtor's unsecured creditors.

The Ninth Circuit's decision arose out of the bankruptcy of a California company that owned copyrights in drawings, technical manuals and software used to make airplane modifications. A bank lent the company money, taking security interests in those copyrights as collateral. The bank filed financing statements with the California Secretary of State under the state Uniform Commercial Code. But the copyrights were not registered with the Copyright Office, and neither the company nor its bank filed security agreements with the Copyright Office either. The bankrupt company's trustee sold the copyrights to another company - thereby setting up a legal battle between the buyer and the bank (and the company to which the bank sold the copyrights) over who owned the copyrights. The bankruptcy court held that the bank (and its buyer) did, and the Ninth Circuit affirmed that ruling.

Judge Kleinfeld's careful and persuasive reasoning will be of interest primarily to bankruptcy lawyers. But his ultimate conclusions are important to entertainment lawyers too, especially those involved in financial transactions on behalf of clients who extend credit and expect to have priority over their debtor's other creditors.

Judge Kleinfeld reasoned that "Since copyright is created every time people set pen to paper, or fingers to keyboard, and affix their thoughts in a tangible medium, writers, artists, computer programmers and web designers would have to have their hands tied down to keep them from creating unregistered copyrights all day every day." Of course, no one - least of all creditors - ever suggested that writers and others should have their hands tied. Instead, the judge explained, if the law required copyrights to be registered in order to be used as collateral for secured loans, then "the last half hour of the day for a [copyright creating] company would be spent preparing and mailing utterly pointless forms to the Copyright Office to register and record security interests."

Judge Kleinfeld concluded that the court's decision (that security interests in unregistered copyrights may be perfected under state law) "'promote[s] the Progress of Science and the useful Arts' by preserving the collateral value of unregistered copyrights. . . ."

Aerocon Engineering, Inc. (the company that bought the copyrights from the bankruptcy trustee) was represented by Jerrold K. Guben of Reinwald O'Connor & Playdon in Honolulu, and Steven N. Kurtz of Greenberg & Bass in Encino. Silicon Valley Bank (the lender) was represented by Shawn M. Christianson of Buchalter Nemer Fields & Younger in San Francisco. Advanced Aerospace LLC (the company to which the bank sold the copyrights) was represented by Craig K.

Welch of Welch & Olrich in Petaluma.

Editor's note: This decision solves what until now had been a conundrum for movie industry lenders: how to perfect a security interest in a movie's copyright before the movie is produced, when production of the movie will be financed by the loan that is made in reliance on the collateral value of the as-yet-to-be-made movie's copyright? That is, a movie doesn't have a copyright until it is produced; yet until now, the movie's copyright was the primary collateral for the loan that made it possible to produce the movie in the first place. Under state law, it is possible - and routine - for lenders to obtain valid security interests in "after acquired" property, that is, in property acquired by the borrower after the loan is made, without the need for further documentation. Now, as a result of this decision, movie lenders may obtain a security interest in the unregistered copyright to a movie script (or whatever other collateral the producer may own), and at the same time in the same document, a security interest in the copyright to the movie that will thereafter be produced.

In re World Auxiliary Power Co., 303 F.3d 1120, 2002 U.S.App.LEXIS 18642 (9th Cir. 2002) [ELR 24:8:6]

Record producer Tony McAnany is not entitled to royalties from Angel Records' sale of album "Chant," federal District Court decides

Grammy-nominated writer-producer Tony McAnany may have played an important role in the creation of Angel Records' best-selling album "Chant" by the Monks of Santo Domingo De Silos. But he isn't entitled to royalties from the album's sales, federal

District Judge Miriam Cedarbaum has decided.

McAnany sued Angel Records for royalties he said were due him on a number of albums, including "Chant." His complaint asserted claims for breach of contract, failure to provide "producer" credits, and unjust enrichment.

Angel acknowledged that it had entered into a written contract with McAnany, employing him as an A & R executive; and Angel acknowledged that the contract required it to pay McAnany royalties on any album for which he was the primary A & R contact when the performers were signed or when the album was recorded. McAnany, however, alleged that he also had an oral agreement with Angel that entitled him to royalties from the sale of albums he produced.

In unpublished rulings, Judge Cederbaum dismissed most of McAnany's claims. The judge dismissed his breach of contract claims seeking producer royalties, on the grounds that his written A & R contract specifically provided that its terms "constitute the entire agreement" between him and Angel and "there is no other contract." She dismissed his claims for A & R royalties on "Chant" on the grounds McAnany did not have any contact with the Monks of Santo Domingo De Silos who actually recorded the masters that became "Chant" 20 years before Angel released the album and 19 years before Angel hired McAnany. The judge also dismissed McAnany's claim for failure to provide "producer" credits.

Only McAnany's "unjust enrichment" claim for producer royalties survived these unpublished rulings. But Judge Cedarbaum finally dismissed even that claim. The "unjust enrichment" claim would not have depended on the existence of a contract. But in two separately submitted declarations, McAnany asserted that the services he rendered as a producer in connection with "Chant" were identical to the services he rendered in connection with that album as an A & R executive.

The judge had already ruled that McAnany's A & R contract did not entitle him to royalties on "Chant." Since the services he said he rendered as "producer" were identical, she ruled he wasn't entitled to royalties as producer, either, and she granted Angel's motion for summary judgment.

McAnany was represented by Stuart E. Abrams of Frankel & Abrams in New York City. Angel Records was represented by Kenneth P. Norwick of Norwick & Schad in New York City.

McAnany v. Angel Records, Inc., 216 F.Supp.2d 335, 2002 U.S.Dist.LEXIS 15702 (S.D.N.Y. 2002) [ELR 24:8:7]

Record company's complaint that composer/producer failed to deliver master recordings, as agreed, was not entirely pre-empted by Copyright Act, California appellate court rules

A record company has won the right to proceed with its lawsuit in California state court against a composer/producer who failed to deliver master recordings, as agreed in a pair of written contracts. At first blush, this seems like an unremarkable result. But the record company, Pars Video, had to go to the California Court of Appeal to get it, because the trial court had dismissed Pars' suit on the grounds that its claims were pre-empted by the federal Copyright Act.

In an opinion by Justice Margaret Grignon, the appellate court agreed that some of Pars' causes of action against composer/producer Farid Zoland were pre-empted. Though alleged as claims for breach of contract, "money had and received," and tortious interference, these claims sought to recover damages for Zoland's alleged violation of reproduction and distribution rights that Zoland had granted to Pars by contract. Reproduction and distribution rights are protected by federal copyright law, and that is why those claims were pre-empted, Justice Grignon explained.

On the other hand, Pars also alleged that Zoland failed to deliver master recordings, and fraudulently misrepresented that he owned rights in those masters. Those claims, Justice Grignon reasoned, do not assert rights protected by copyright. And thus they are not pre-empted, she held.

Pars Video was represented by Thomas N. Cano of Woodland Hills. Farid Zoland was represented by

Steven T. Lowe of Los Angeles.

Kabehie v. Zoland, 125 Cal.Rptr.2d 721, 2002 Cal.App.LEXIS 4705 (Cal.App. 2002) [ELR 24:8:7]

Court denies Michael Jackson's motion to dismiss Copyright and Lanham Act claims alleging that Jackson 5 album "Pre-History: The Lost Steeltown Recordings" actually is a recording by "Ripples and Waves"

Every once in a while, a case alleges fascinating facts, and a recent case against Michael Jackson is one of these. On the other hand, the first legal opinion in that case will not be interesting to those who are not involved, because it turns on purely procedural points, and unusual ones at that.

In 1996, a CD was released titled "The Jackson 5 - Pre-History: The Lost Steeltown Recordings." Michael Jackson was alleged to be among those responsible for releasing this CD, though he denies it. What's interesting is that Steeltown Records and two members of a group called "Ripples and Waves" allege that the Jackson 5 CD actually is an old recording made by "Ripples and Waves" and not by the Jackson 5 at all.

This allegation is made in a copyright infringement and Lanham Act suit filed against Michael Jackson and others in federal court in Indiana. The copyright part of the case looks to be based on the allegation that two members of "Ripples and Waves" are the writers of two of the songs on the Jackson 5 CD. The Lanham Act part of the case looks to be based on a "reverse passing off" claim, based on the release of a "Ripples and Wave" recording purporting to be a Jackson 5 recording.

Michael Jackson sought to have the case dismissed on a number of procedural grounds. But District Judge James Moody has refused to do so.

The judge has ruled that: his court does have personal jurisdiction over Jackson; that it was not necessary for the plaintiffs to attach copies of their copyright registration certificates to their complaint, because alleging that they had registered their copyrights was sufficient; that the copyright and reversing passing off claims were not redundant; and that no amended complaint needs to be filed simply because other members of "Ripples and Waves" who were named in the caption originally no longer are plaintiffs in the case.

The plaintiffs were represented by Norman L. Reed of Reed & Smith, and Gerald W. Roberts of Indiano Vaughan & Roberts, in Indianapolis. Michael Jackson was represented by P. Steven Fardy of

Swanson Martin & Bell in Chicago, and Grover B. Davis of McClure McClure & Kammen in Indianapolis.

Adams v. Jackson, 218 F.Supp.2d 1006, 2002 U.S.Dist.LEXIS 14734 (N.D.Ind. 2002) [ELR 24:8:8]

Record companies stated valid claim for vicarious copyright infringement against sole shareholder and manager of corporation that allegedly made and sold unauthorized CDs, though claims based on unregistered CD copyrights and for conspiracy are dismissed

Wings Digital Corporation manufactures music CDs, apparently on behalf of record companies, as well as others. Wings itself is among the "others" for which it has made CDs, using masters whose copyrights are owned by RIAA member record companies. That is, Wings allegedly made unauthorized CDs, masters and stampers, some of which it sold, without authorization, to buyers that included the RIAA members' own customers.

Capitol Records and other RIAA members have sued Wings and its president and sole shareholder, Maninder Sethi, for copyright infringement and other things. In the apparent belief that an aggressive defense is the best defense, Sethi (though not Wings) responded with a motion to dismiss for failure to state a valid claim. Sethi's motion has been partially - but only partially - successful, and so the case against him will continue.

The record companies' complaint alleged that Sethi conspired with Wings to infringe their copyrights, and that Sethi was vicariously liable for infringements directly committed by Wings.

Federal District Judge Joanna Seybert has held that the record companies stated a valid claim against Sethi for vicarious liability, ruling that the sole shareholder and manager of a corporation may be held vicariously liable for infringements committed by the company. On the other hand, Judge Seybert did dismiss the record companies' conspiracy claim, on the grounds that corporate officers and employees cannot conspire with their own company, as a matter of conspiracy law.

The judge also dismissed claims alleging the infringement of copyrights that had not yet been registered with the Copyright Office, at the time the complaint was filed. Registration is a prerequisite to a copyright infringement lawsuit, Judge Seybert agreed with Sethi. But she dismissed those claims without prejudice; so as soon as those copyrights are registered, the record companies will be permitted to refile the infringement claims that were dismissed.

The judge also upheld the record companies' claims under a New York state statute that makes deceptive business practices unlawful. She held that the record companies have adequately alleged that Wings and Sethi deceived consumers into believing that their unauthorized infringing copies were authentic.

The record companies were represented by Jeffrey P. Weingart of Brown Raysman Millstein Felder & Steiner in New York City, and Matthew Oppenheim of the RIAA in Washington D.C. Sethi was represented by Eugene Neal Kaplan of Kaplan Thomashower & Landau in New York City.

Capitol Records, Inc. v. Wings Digital Corp., 218 F.Supp.2d 280, 2002 U.S.Dist.LEXIS 16068 (E.D.N.Y. 2002) [ELR 24:8:8]

Baltimore Ravens' profits from sales and licenses of its logo - but not from other sources - may be recovered by artist who won copyright infringement verdict that Ravens copied artist's design

The Baltimore Ravens have won at least one battle in the NFL team's on-going lawsuit with amateur artist Frederick Bouchat. Federal District Judge Garbis has granted the Ravens' motion for partial summary judgment on the question of which portions of the team's profits Bouchat may be entitled to recover, as a result of a jury's verdict - affirmed on appeal (ELR 22:10:16, 23:4:19) - that the Ravens' "Flying B" logo was copied from a design submitted by Bouchat.

At the time Bouchat submitted his design, he indicated that if the team used it, he wanted a letter of recognition and an autographed helmet. Since, however, he had to sue the Ravens to get the recognition he desired, he now wants much more. He wants all of the Ravens' profits "attributable to the infringement," as authorized by section 504(b) of the Copyright Act. And he contended that "virtually every category of [the Ravens'] gross receipts . . . includes revenues attributable to the infringement because of the [Ravens'] widespread use of the 'Flying B' . . . logo. . . ."

The Ravens, however, contended that many categories of its revenues are not attributable to their use of the logo, and thus should not be considered in calculating Bouchat's recovery. Judge Garbis has agreed with the team.

The judge ruled that the Ravens' profits "attributable to the infringement" include profits from the team's sale of merchandise bearing the Flying B logo, as well as its profits from licensing others to sell such merchandise, including payments made by sponsors for the right to sell merchandise with Flying B logos.

On the other hand, the judge ruled, the Ravens' revenues from other sources are not "attributable to the infringement" and thus may not be considered in calculating Bouchat's recovery. Revenue sources that are not to be considered include ticket sales, broadcast and media licenses, general business revenues, and payments received from corporate sponsors, even though sponsors are authorized to use of the Flying B logo in their own advertising and to show their affiliations with the Ravens.

Bouchat v. Baltimore Ravens, Inc., 215 F.Supp.2d 611, 2002 U.S.Dist.LEXIS 6966 and 6967 (D.Md. 2002) [ELR 24:8:9]

Pittsburgh Steelers must defend class action lawsuit alleging that some buyers of "stadium builder licenses" were over-charged for assigned seats in Heinz Field, because more expensive seating sections were larger than depicted in diagrams in sales brochure

The Pittsburgh Steelers are going to have to defend themselves, after all, in a class action lawsuit filed by some fans who are unhappy about the locations of their seats in Heinz Field, the Steelers' new stadium. Originally, the Steelers won dismissal of the case, when a Pennsylvania trial court ruled that the fans' complaint failed to state valid claims. However, the Commonwealth Court of Pennsylvania has reversed that ruling and has ordered the Steelers to answer the fans' complaint.

In an opinion by Judge Rochelle Friedman, the

Commonwealth Court has held that the fans stated valid claims against the Steelers for breach of contract and for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

Stadium seating assignments fall under the purview of these state laws, because of the manner in which the Steelers went about selling season tickets. When the team decided it needed a new home to replace Three Rivers Stadium, it financed a portion of the construction of Heinz Field by selling "stadium builder licenses" to its fans. These licenses entitled holders to later buy season tickets, and the licenses cost $250 to $2,700, depending on where in Heinz Field buyers wanted their seats to be. The brochure that offered "stadium builder licenses" for sale included diagrams of Heinz Field, indicating where each section of seats would be located, when construction was completed.

When, however, the stadium was completed and season tickets were sold to holders of stadium builder licenses, some sections were larger than had been shown in the sales brochure. As a result, some fans who paid for seats they thought would be between the 20 yard lines actually were assigned seats closer to the end zones. And other fans were assigned seats higher in the stadium and farther from the field than the diagrams in the sales brochure had indicated. That, at least, is the allegation of the complaint the Commonwealth Court has reinstated.

According to Judge Friedman, the fans' breach of contract claim was not barred by the parol evidence rule (as the trial court had held), because the sales brochure constituted an offer that the fans accepted by making a down payment on the stadium builder licenses, before the Steelers redrew the boundaries of the seating sections.

Judge Friedman also ruled that the licenses amounted to options to buy season tickets, and as such, they could be "services" within the meaning the state's Unfair Trade Practices and Consumer Protection Law.

The fans were represented by W.J. Helzlsouer of Dravosburg. The Steelers were represented by Michael J. Manzo of Pittsburgh. The Sports & Exhibition Authority of Pittsburgh was represented by Mark R. Hornak of Pittsburgh.

Yocca v. Pittsburgh Steelers Sports, Inc., 806 A.2d 936, 2002 Pa.Cmwlth.LEXIS 667 (Pa.Cmwlth. 2002) [ELR 24:8:9]

ESPN did not defame John Montefusco by comparing him to O.J. Simpson in report about criminal proceedings in which former pitcher's ex-wife accused him of sexual and physical violence

John Montefusco has struck out, in his defamation lawsuit against ESPN. The former pitcher for the San Francisco Giants, Atlanta Braves and New York Yankees objected to statements made on ESPN's news show "SportsCenter," during a telecast about the outcome of a criminal case against Montefusco. Montefusco's ex-wife had accused him of sexual and physical violence, and though the jury found him not guilty of eighteen felony counts, it did convict him of assault and criminal trespass.

ESPN's telecast compared the case against Montefusco to that of O.J. Simpson, saying Montefusco was "another ex-athlete accused of domestic violence."

According to Montefusco, this comparison implied that he was guilty of the crimes of which he had been acquitted. In a short opinion by Judge Richard Nygaard (marked "not selected for publication in the Federal Register"), the Court of Appeals disagreed.

The appellate court ruled that none of the statements made during the ESPN telecast was defamatory, because all of the statements related to the criminal charges against Montefusco were factually accurate, including the comparison of his case to Simpson's. Moreover, Judge Nygaard added that ESPN's telecast was protected by New Jersey's "fair report privilege."

Montefusco v. ESPN, Inc., 47 Fed.Appx. 124, 2002 U.S.App.LEXIS 19740 (3rd Cir. 2002) [ELR 24:8:10]

Tito Paul entitled to workers compensation benefits from Washington Redskins for injury suffered after he was traded to Redskins by the Denver Broncos, even though Virginia workers comp law applies only to employment contracts made in Virginia and Paul's NFL contract was signed in Colorado

Tito Paul suffered a disabling injury while playing for the Washington Redskins, and as a result, Paul is entitled to workers compensation benefits from the Redskins and its insurance company. This result seems more obvious than it was. In fact, Paul had to litigate his claim all the way to the Court of Appeals of Virginia, before the outcome was certain.

What made the case more complicated than it seems at first was this. The Redskins are based in Virginia, and Virginia workers compensation law applies only to employment contracts "made" in that state.

Before he was injured, Paul had signed a two-year employment contract with the Denver Broncos, for whom he played for just one year. The Broncos then traded Paul to the Redskins, and since there still was another year to go on his Broncos contract, Paul never signed a new Redskins contract. Instead, Paul's Broncos contract provided that the Broncos could assign Paul to another team; and that was accomplished by a written Trade Agreement between the Broncos and the Redskins. Paul, it seems, never signed anything with the Redskins.

Nevertheless, in an opinion by Judge Rosemarie Annunziata, the Virginia Court of Appeals had no trouble finding that Paul and the Redskins had entered into an employment agreement in Virginia. The Broncos-Redskins Trade Agreement provided that Paul had to pass the Redskins' physical exam - something he did in Virginia. Judge Annunziata reasoned that Paul's employment contract with the Redskins included his passing the team physical - an act that took place in Virginia - and thus his Redskins contract was "made" in that state, thereby giving him the benefits of Virginia workers compensation law.

Paul was represented by Andrew S. Kasmer of Chasen & Boscolo in Greenbelt, Maryland. The Redskins and their insurance company were represented by Samuel L. Hendrix of Baker & Hostetler in Washington, D.C.

Pro-Football, Inc. v. Paul, 569 S.E.2d 66, 2002 Va.App.LEXIS 540 (Va.App. 2002) [ELR 24:8:10]

Steve Garvey fails in bid to recover compensation from fund created by settlement of Player Association collusion lawsuit against Major League Baseball

It looks as though Steve Garvey has struck out in his efforts to be awarded compensation for Major League Baseball's alleged collusion against him, back in the 1980s.

Garvey sought compensation from a $280 million fund that was created by the settlement of a Players Association lawsuit against Major League Baseball (ELR 12:8:21, 12:12:21). But an arbitrator ruled, years ago, that Garvey wasn't entitled to a share, under the standards established for the Player Association's administration of the fund's distribution.

Unsatisfied with the arbitrator's ruling, Garvey filed a lawsuit in federal court, seeking to have the arbitrator's decision set aside. Eventually, Garvey got the ruling he sought, in an opinion by the Ninth Circuit Court of Appeals that characterized the arbitrator's decision as "completely inexplicable," "border[ing] on the irrational," and "bizarre." (ELR 22:1:17).

However, the Players Association appealed that decision to the Supreme Court (because any money awarded to Garvey would have come out of the settlement fund available to other players). And in a Per Curiam opinion rendered without briefing or oral argument, the Supreme Court reversed the Court of Appeals, saying the Ninth Circuit's own decision had been "nothing short of baffling." (ELR 23:3:11).

The case was remanded to the District Court, where Garvey sought an order requiring a new arbitration hearing. But the District Court denied Garvey's motion, and that ruling has been affirmed by the Court of Appeals.

In a short memorandum opinion marked "not selected for publication in the Federal Reporter," the Court of Appeals ruled that the District Court "had no choice but to . . . deny [Garvey's] motion to vacate. The Supreme Court's opinion cannot be read to require the case to be submitted again to arbitration."

Garvey v. Major League Baseball Players Association, 45 Fed.Appx. 703, 2002 U.S.App.LEXIS 18208 (9th Cir. 2002) [ELR 24:8:11]

Appeal from Canadian arbitration award by former Canadian Football League quarterback Matt Dunigan in salary dispute with Birmingham Barracudas is dismissed by Alabama Supreme Court, because Alabama Arbitration Act does not give state courts jurisdiction over out-of-state awards

Birmingham, Alabama, is a long way from Canada. But in 1995, the Birmingham Barracudas were a member of the Canadian Football League. That, apparently, was at least one reason why former Barracuda quarterback Matt Dunigan attempted to appeal, in Alabama state courts, an unsatisfactory arbitration award that was rendered in a salary dispute Dunigan had with the team.

Alabama's state Arbitration Act allows appeals from arbitration awards, but only from arbitration awards made in Alabama. The arbitration between Dunigan and the Barracudas was conducted in Canada, before a Canadian arbitrator, pursuant to agreements between Dunigan and the team, and the team and the Canadian Football League.

Therefore, in a short opinion by Justice Douglas Johnstone, the Alabama Supreme Court ruled that neither it nor the state Circuit Court had subject matter jurisdiction to consider Dunigan's appeal.

Dunigan was represented by Robert E. Cooper of Rives & Peterson in Birmingham. The Birmingham Barracudas were represented by Crawford S. McGivaren Jr. of Cabaniss Johnston Gardner Dumas & O'Neal in Birmingham. And the Canadian Football League was represented by Scott A. Powell of Hare Wynn Newell & Newton in Birmingham.

Editor's note: Justice Johnstone emphasized that Dunigan had relied entirely on the Alabama Arbitration

Act, and not the Federal Arbitration Act. In doing so, the Justice may have been offering Dunigan a bit of free legal advice, because the Federal Arbitration Act expressly gives federal courts jurisdiction to rule on cases involving the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards - an international treaty to which both the United States and Canada are parties. (See, http://arbiter.wipo.int/arbitration/ny-convention/) On the other hand, the Federal Arbitration Act may have narrower grounds for appeal than the Alabama Arbitration Act; and that may be why Dunigan sought to use the Alabama Act first.

Dunigan v. Sports Champions, Inc., 824 So.2d 720, 2001 Ala.LEXIS 474 (Ala. 2001) [ELR 24:8:11]

Former member of university's women's basketball team was not school "employee," and thus could not allege valid claim for discrimination under California Fair Employment Act, state appellate court affirms

Kisha Shephard was an All-American basketball player at Crenshaw High School, and thus highly recruited by many colleges. She chose to attend Loyola Marymount University, because it promised her a four-year scholarship. But for some reason, LMU cut Shephard from its team and terminated her scholarship, in less than half that time.

According to a lawsuit Shephard filed in California state court, LMU cut her from the team and terminated her scholarship because she is African-American, and LMU and its Caucasian coach discriminated against her for that reason. California's

Fair Employment and Housing Act prohibits employers from discriminating against employees on the basis of race. And Shephard's lawsuit alleged (among other claims) that LMU violated that Act. The trial court, disagreed, however, and dismissed Shephard's lawsuit, in response to LMU's motion for summary judgment. In a decision by Justice Paul Turner, the California Court of Appeal has affirmed.

Justice Turner held that student athletes are not "employees" of the colleges and universities they attend. And since they are not, the California Fair Employment and Housing Act does not apply to student athletes. Justice Turner came to this conclusion for several reasons. Among them was the fact that the NCAA Constitution was explicitly incorporated into the financial aid agreement between Shephard and LMU. And the NCAA Constitution provides that financial aid is "not . . . pay."

Moreover, scholarship money is not taxed by the federal or state government. And California's worker's compensation statute specifically excludes student athletes from its coverage. If the court were to accept Shephard's argument that the California Fair Employment and Housing Act applied to her, it would mean that she was an LMU "employee" under that Act, but not an "employee" under the workers compensation or income tax statutes. That would be an "absurd" and "unreasonable" result, Justice Turner reasoned.

Shephard was represented by Steven H. Haney of Haney Buchanan & Patterson. LMU was represented by Harold A. Bridges of Burke Williams & Sorensen.

Shephard v. Loyola Marymount University, 125 Cal.Rptr.2d 829, 2002 Cal.App.LEXIS 4737 (Cal.App. 2002) [ELR 24:8:12]

Appellate court affirms dismissal of gender discrimination lawsuit filed against Miami University by members of disbanded men's soccer, tennis and wrestling teams

Members of what used to be Miami University's men's soccer, tennis and wrestling teams have been defeated, again, in their gender discrimination lawsuit against the school. They alleged that the University's decision to eliminate their teams, but not corresponding women's teams, violated their rights under the equal protection clause and Title IX. But federal District Judge Sandra Beckwith disagreed, and dismissed the lawsuit in response to the University's motion for summary judgment (ELR 24:4:15).

Successful athletes don't give up, simply because they've fallen behind, and the men who sued the University didn't give up either. They appealed, but have done no better.

In an opinion by Judge Alice Batchelder, the Court of Appeals has affirmed the dismissal of the case. Judge Batchelder ruled that the men had "wholly failed to state either an equal protection claim or a claim under Title IX. . . ."

Key to the University's victory was the fact that it eliminated the men's teams in order to comply with Title IX's requirement that schools that receive federal financial assistance - including Miami University - provide equal athletic opportunities for women and men. A Title IX "Policy Interpretation" formally adopted by the Department of Health Education & Welfare permits schools to eliminate men's teams in order to equalize opportunities for women.

"It is anomalous . . . to accomplish equality of opportunity by decreasing rather than increasing opportunities," Judge Batchelder acknowledged, "but in the real world of finite resources," she added, "this approach may be the only way for an educational institution to comply with Title IX while still maintaining the other niceties of its mission, such as its academic offerings."

The men were represented by Robert R. Furnier of Furnier & Thomas in Cincinnati and by Michael E. Rosman of the Center for Individual Rights in Washington D.C. Miami University was represented by James A. Dyer of Sebaly Shillito & Dyer in Dayton.

Miami University Wrestling Club v. Miami University, 302 F.3d 608, 2002 U.S.App.LEXIS 18430 (6th Cir. 2002) [ELR 24:8:12]

Court TV's broadcast of segments of video of Reginald Denny beating was fair use, but Los Angeles News Service's copyright infringement claim against alleged distributor of video should not have been dismissed on summary judgment, appellate court rules

In 1992, an independent news gathering organization known as Los Angeles News Service captured on videotape a tragic moment in history: the beating of Reginald Denny during a riot that was sparked by the acquittal of police officers who had been accused of beating Rodney King. LA News Service makes its living licensing its video to television stations; and it continues to license the Reginald Denny tape today, a full decade after the event.

Not all of those who have distributed or broadcast the tape have done so with a license, however. As a result, LA News Service has filed more than one copyright infringement lawsuit, in an effort to win compensation for those unlicensed uses.

The most recent decision to appear in print came in a case against Court TV and Group W Newsfeed. Court TV used segments of the Reginald Denny video to promote its coverage of the trial of one of those accused of beating Denny, and in a montage for its show "Prime Time Justice." Group W - a video news service now owned by CBS Broadcasting - allegedly distributed the video to its subscribers.

Federal District Judge Florence-Marie Cooper dismissed the case, in response to defense motions for summary judgment. On appeal, LA News Service has salvaged some of the case, but only some.

In an opinion by Judge Diarmuid O'Scannlain, the Court of Appeals has affirmed the dismissal of LA News Service's claims against Court TV. Judge

O'Scannlain held that Court TV's use of segments of the Denny video was a "fair use." (This ruling was quite fact specific. In an earlier decision in another case involving the Denny video, the same court held that an unlicensed use of the Denny video was not a fair use. (ELR 20:7:14))

On the other hand, Judge O'Scannlain has reversed the dismissal of LA News Service's claims against CBS (as Group W's corporate successor). Judge Cooper had dismissed those claims largely because she had concluded that critical pieces of the evidence offered by LA News Service were inadmissible as a matter of evidence law, or by virtue of an agreement LA News Service had previously entered into with Group W in connection with a failed effort to settle the case. While Judge O'Scannlain agreed that some of that evidence was inadmissible, he ruled that the rest of it is admissible, and that the admissible evidence could be sufficient for a jury to find that Group W had infringed LA News Service's copyright.

LA News Service was represented by H. Jay Ford III of Tyre Kamins Katz & Granof in Los Angeles. Court TV and CBS were represented by Frederick F. Mumm of Davis Wright Tremaine in Los Angeles.

Los Angeles News Service v. CBS Broadcasting, Inc., 305 F.3d 924, 2002 U.S.App.LEXIS 18843 (9th Cir. 2002) [ELR 24:8:13]

Interstellar Starship's use of "epix.com" website to promote its performances of "Rocky Horror Picture Show" does not infringe registered "EPIX" trademark of company that makes digital image products, appellate court affirms

Interstellar Starship may continue to use its epix.com website to promote its performances of the "Rocky Horror Picture Show," a federal appeals court has affirmed. In an opinion by Judge Stephen Trott, the Court of Appeals has held that Interstellar's use of "epix.com" to promote "Rocky Horror" showings does not infringe Epix, Inc.'s registered "Epix" trademark - not even under an "initial interest confusion" test. This is so, Judge Trott explained, because Epix makes digital imaging products, and thus there is no likelihood of consumer confusion.

A beta version the epix.com website also appeared to "bally-hoo" Interstellar's digital image consulting services (in addition to its showings of "Rocky Horror Picture Show"). District Judge Robert Jones enjoined Interstellar from doing that, but did not order it to turn over the epix.com domain name to Epix (ELR 23:1:18). The Court of Appeals affirmed that ruling too, saying that although Interstellar infringed Epix's trademark by promoting Interstellar's consulting services, the District Court was not required to give the domain to Epix.

Judge Trott also rejected Epix's argument that Interstellar had violated the Anticybersquatting Consumer Protection Act. That argument hinged on an offer made by Interstellar's lawyer to sell the epix.com domain to Epix for $25,000. Offering to sell a disputed domain is an important indication of cybersquatting, Judge Trott acknowledged. But in this case, the offer was made by Interstellar's lawyer during settlement negotiations, in an attempt to settle what was becoming an expensive case. No other cybersquatting factors were present, and the settlement offer did not by itself make Interstellar a cybersquatter.

Epix was represented by Sheldon L. Epstein in Wilmette, Illinois, Peter E. Heuser of Kolisch Hartwell Dickinson McCormack & Heuser and Lainie F. Block in Portland, Oregon. Interstellar Starship was represented by Michael M. Ratoza of Ratoza Long in Portland, Oregon.

Interstellar Starship Services, Ltd. v. Epix, Inc., 304 F.3d 936, 2002 U.S.App.LEXIS 19632 (9th Cir. 2002) [ELR 24:8:13]

WE: Women's Entertainment wins dismissal of trademark dilution and infringement lawsuit filed against it by We Media

The cable and satellite TV channel known as "WE: Women's Entertainment" has defeated a trademark dilution and infringement lawsuit filed against it by We Media, Inc., a publishing and media company that serves the disabled community.

We Media owns registered trademarks in the words "WE" and "WeMedia" for magazine, online and other services, and has for a number of years. In 2000, the "Romance Classics" cable channel was renamed "WE: Women's Entertainment," and its owner - a company also known as "WE: Women's Entertainment" - attempted to register its name as a trademark. The Patent and Trademark Office declined to do so, however, saying that it was too similar to We Media's marks.

Nevertheless, federal District Judge Victor Marrero has granted a motion for summary judgment filed by WE:Women's Entertainment, and has ordered the case closed. He did so for three reasons.

First, Judge Marrero held that We Media's marks are not sufficiently famous to be eligible for trademark dilution protection.

Second, he ruled that the evidence was insufficient to show that WE: Women's Entertainment willfully infringed We Media's trademarks or knowingly disregarded its rights. And thus, neither damages nor profits would be justified.

Finally, Judge Marrero ruled that We Media hadn't shown it would be entitled even to injunctive relief, because although the evidence showed that confusion between the two company's marks was "possible," the evidence did not show that there was a "probability" of confusion.

We Media was represented by Arthur M. Lieberman of Lieberman & Nowak in New York City. WE: Women's Entertainment was represented by James W. Dabney of Pennie & Edmonds in New York City.

We Media Inc. v. General Electric Co., 218 F.Supp.2d 463, 2002 U.S.Dist.LEXIS 16146 (S.D.N.Y. 2002) [ELR 24:8:14]

Preliminary injunction barring Clear Channel Communications from identifying radio station WTLY-FM as "The Breeze" is upheld; Clear Channel failed to carry burden of proving that Cumulus Media, owner of competing station WBZE-FM, had abandoned its trademark in "The Breeze," appellate court affirms

Clear Channel Communications has been ordered to stop using "The Breeze" to identify its Tallahassee, Florida, radio station WTLY-FM. The order was issued in response to a motion for a preliminary injunction in a trademark infringement lawsuit filed by Cumulus Media which had used "The Breeze" to identify its competing radio station WBZE-FM.

The central issue in the lawsuit was whether Cumulus had abandoned "The Breeze" as a trademark when it changed WBZE-FM's format from "adult contemporary" to "hot contemporary" and began identifying the station as "Star 98."

Clear Channel began using "The Breeze" only after Cumulus switched to "Star 98." When Clear Channel adopted "The Breeze," its announcements said "The Breeze is back," and other things suggesting that Clear Channel's station was somehow related to Cumulus' station.

Even though Cumulus adopted "Star 98" in place of "The Breeze," Cumulus didn't stop using "The Breeze" entirely. That fact gave rise to a dispute about whether Cumulus had abandoned "The Breeze" and thus its trademark rights in the phrase. The District Court found that Clear Channel had not shown that Cumulus had abandoned the mark.

On appeal, Clear Channel argued that the District Court had imposed on it too heavy a burden of proof concerning Cumulus' abandonment of the trademark. But in an opinion by Judge Stanley Marcus, the Court of Appeals held that although Clear Channel had satisfied its burden of providing evidence that Cumulus had abandoned the mark, Cumulus had responded with adequate evidence that it had not.

Cumulus Media was represented by James W. Dabney of Pennie & Edmonds in New York City and Claude R. Walker in Tallahassee. Clear Channel Communications was represented by Sylvia H. Walbolt of Carlton Fields Ward Emmanuel Smith & Cutler in Saint Petersburg.

Cumulus Media, Inc. v. Clear Channel Communications, Inc., 304 F.3d 1167, 2002 U.S.App.LEXIS 18485 (11th Cir. 2002) [ELR 24:8:14]

Hoyts Cinemas wins dismissal of lawsuit filed by wheelchair-bound patrons, because design of Crossgates Mall theater in Albany does not violate Americans with Disabilities Act

Federal District Judge David Hurd has dismissed a lawsuit filed against Hoyts Cinemas by two wheelchair-bound movie patrons who complained that the design of the Hoyts Crossgates Mall theater in Albany, New York, violates the Americans with Disabilities Act.

The theater is an 18-auditorium complex that provides stadium-style and flat-floor seating. But in the smallest auditoriums, some general public seating and all of the wheelchair locations are in the flat-floor areas directly beneath the screens at the very front of the auditoriums.

Susan Meineker and Sybil McPherson are

disabled and wheelchair-bound movie patrons. The wheelchair locations in Crossgates' small auditoriums make it difficult and uncomfortable for them to see the screen. Their lawsuit asserted that the design violates federal Guidelines that require movie theaters to provide disabled movie theater patrons with "lines of sight comparable to those for members of the general public."

In response to Hoyts' motion for summary judgment, Judge Hurd ruled that the Crossgates Mall theater complies with federal Guidelines, because in each small theater, the wheelchair area is "located amongst seating for the general public and affords viewing angles comparable to those afforded to a significant portion of the general public."

Though wheelchair-bound patrons did not have access to the stadium-style seating, the judge ruled that the Guidelines do not require Hoyts to provide wheelchair access to the stadium-style areas for theaters that seat fewer than 300.

Meineker and McPherson were represented by Timothy A. Clune of Disability Advocates, Inc., in Albany. Hoyts Cinemas was represented by Michael J. Malone of King & Spaulding in New York City.

Meineker v. Hoyts Cinemas Corp., 216 F.Supp.2d 14, 2002 U.S.Dist.LEXIS 15140 (N.D.N.Y. 2002) [ELR 24:8:15]

Appellate court affirms ruling, under California anti-SLAPP statute, striking defamation complaint against Los Angeles Times filed by former Counter Intelligence Corps agent who was subject of biography "Test of Courage"

Former Counter Intelligence Corps agent Michel Thomas has struck out a second time, in his effort to sue the Los Angeles Times for defamation. Thomas, whose World War II exploits were the subject of the biography Test of Courage, sued the Times over an article entitled "Larger Than Life," because - according to Thomas - the article implied that he had lied about some of his wartime exploits.

His case didn't get far. Federal District Judge Audrey Collins struck Thomas' complaint, in response to the Times' motion under California's "anti-SLAPP" statute (ELR 24:3:15). "SLAPP" stands for "Strategic

Lawsuit Against Public Participation." The statute is used to quickly dispose of lawsuits that attack free speech.

In a short memorandum opinion marked "not selected for publication in the Federal Reporter" and "may not be cited to or by the courts," the Court of Appeals has affirmed Judge Collins' ruling. To defeat the Times' motion, Thomas had to show that he was likely to prevail. However, the appellate court agreed that he wasn't, for two reasons.

First, he failed to show that the article was defamatory, because it did not accuse him of misstating the truth. Instead, it merely set forth conflicting accounts of historical events, and it invited readers to draw their own conclusions.

Second, Thomas is a public figure because he authorized his Test of Courage biography and solicited press coverage of it. As a consequence, the appellate court explained, his "admittedly extraordinary claims regarding his World War II-era exploits are . . . particularly appropriate material for close examination and fair comment by the press."

Thomas v. Los Angeles Times, 45 Fed.Appx. 801, 2002 U.S.App.LEXIS 18465 (9th Cir. 2002) [ELR 24:8:15]

Military Honor and Decency Act, prohibiting sale of sexually explicit material on military bases, does not violate First Amendment, federal appellate court affirms, in case filed by magazine distributors and soldiers

Once upon a time, military base exchanges sold sexually explicit magazines, along with other merchandise. They don't any more however, because in 1996, Congress passed the Military Honor and Decency Act which bans the sale of sexually explicit material on military property.

The Constitutionality of the Act has been attacked twice, but neither attack has been successful. Most recently, the Ninth Circuit Court of Appeals affirmed a District Court decision denying a motion for a preliminary injunction sought by magazine distributors and military personnel (ELR 21:9:26).

In an opinion by Judge Michael Hawkins, the appellate court ruled that military exchanges are not public fora, that the restrictions imposed by the Act are reasonable and viewpoint neutral, and therefore the Act does not violate the First Amendment.

In so ruling, the Ninth Circuit agreed with the same conclusion reached earlier by the Second Circuit Court of Appeals in a virtually identical case which the Supreme Court declined to review (ELR 20:3:10).

The magazines and military personnel were represented by Gerald H. Goldstein of Goldstein Goldstein & Hilley of San Antonio. The Department of Defense was represented by David O. Buchholz of the United States Department of Justice in Washington, D.C.

PMG International Division v. Rumsfeld, 303 F.3d 1163, 2002 U.S.App.LEXIS 18772 (9th Cir. 2002)

[ELR 24:8:15]

Previously Reported:

Windswept Pacific owns "Mony, Mony" renewal. Windswept Pacific owns the renewal copyright to "Mony, Mony," rather than the successors of songwriter Bo Gentry, a federal court of appeals has affirmed. The appellate court's "Summary Order" was marked "not selected for publication in the Federal Reporter." It simply said that it affirmed the District Court's decision in favor Windswept Pacific "substantially for the reasons stated by the [District] Court in its Orders" - orders that were previously reported at ELR 22:11:21 and 23:4:19. Ackoff-Ortega v. Windswept Pacific Entertainment, 46 Fed.Appx. 663, 2002 U.S.App.LEXIS 20497 (2nd Cir. 2002).

Supreme Court denies cert. The United States Supreme Court has petitions for certiorari in these previously reported cases: Cobb v. Time, Inc., 123 S.Ct. 77, 2002 U.S.LEXIS 6431 (2002) (ELR 24:1:9); Playgirl, Inc. v. Solano, 123 S.Ct. 557, 2002 U.S.LEXIS 8482 (2002) (ELR 24:5:7); and Deseret Book Co. v. Jacobsen, 123 S.Ct. 623, 2002 U.S.LEXIS 9005 (2002) (ELR 24:4:9).
[ELR 24:8:16]

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