



September 16, 2015

Via Email

Mr. Alan Elliot
Amazing Grace LLC
1633 N. Stanley Ave.
Los Angeles, California 90046

alanelliott@g.ucla.edu

**Re: *Amazing Grace, LLC adv. Aretha Franklin*
 Hiscox Reference number 170001444**

Dear Alan:

Thank you for providing notice to Hiscox of the lawsuit by Aretha Franklin against the Telluride Film Festival, seeking to enjoin the screening of the film *Amazing Grace*. As you may recall, we have recorded this matter under policy no. US UUA 2700815.15 and have assigned it reference number 102045168. We understand that Ms. Franklin has since amended her complaint to drop the Film Festival as a defendant, but joined you personally.

We have carefully reviewed the allegations of the amended complaint, along with the information we have gathered from you, your broker, and those at Hiscox involved in the underwriting of your policy. Based on this information, we are regrettably constrained to conclude that there is no coverage under the Hiscox/Amazing Grace policy for Ms. Franklin's claims against you. Specifically, because Ms. Franklin had filed suit against you regarding this matter in 2011, several years before the policy was issued, the policy does not afford cover. We outline the bases for our conclusion below and note that it is based on the information we have received to date.

Hiscox values its customers and wants to ensure that it is making decisions based on all available information. If, however, you believe that Hiscox's position overlooks or misstates any facts, please let me know. We would be pleased to discuss further any of the points with you and will consider whatever additional information you may provide.

Our understanding of the matter

This matter arises out of Ms. Franklin's contention that you need her consent to publicly screen the film footage of her 1972 concert at the New Missionary Baptist Church in Los Angeles. While the film was shot with her express permission, the agreement allegedly requires her approval of the final product prior to public display. She further asserts that your rights, obtained through a quitclaim agreement from Warner Brothers, are limited by that original agreement. We understand that you contend, in response, that Ms. Franklin gave her consent by way of a 1968 recording contract between Ms. Franklin and Atlantic Records.

On September 4, 2015, Ms. Franklin filed suit against the Telluride Film Festival seeking to stop the screening of the film. She successfully obtained a temporary restraining order and, since, amended the complaint to assert claims against you. The complaint now includes claims for declaratory and injunctive relief, as well as claims for damages based on an alleged violation of Ms. Franklin's publicity rights, the quitclaim contract between you and Warner Brothers, and the federal anti-bootlegging act. This complaint also attaches a complaint Ms. Franklin filed against you in August 2011 in federal court in California. The 2011 complaint is very similar to the current suit. Indeed, the amended complaint expressly incorporates

by reference the allegations of the 2011 complaint.

Hiscox was unaware of the existence of the 2011 complaint when it wrote the policy. We acknowledge that you raised the issue of Ms. Franklin's consent (and lack thereof) with Hiscox during the policy's underwriting. But during these discussions, Hiscox was not advised that Ms. Franklin had actually gone so far as to file suit seeking to enjoin the film's release. To be sure that the lawsuit was not disclosed prior to issuing the policy, we carefully reviewed the application you submitted to Hiscox. The application regrettably denies in response to question 27. that any claim—"whether successful or not"—had been made against you. We also acknowledge that your discovery of the 1968 recording contract post-dated the 2011 complaint and that the contract provides a new defense to Ms. Franklin's claim. We are constrained to note, however, that this does not negate the fact that Ms. Franklin had, in fact, sued you on this very issue.

The Policy

Hiscox issued Video, Film & Television Producers Policy No. US UUA 2700815.15 to Amazing Grace LLC for a policy period of July 21, 2015 to July 21, 2018. For covered claims, the policy provides a \$3 million limit of liability for each claim, subject to a \$5 million aggregate limit and a \$25,000 per claim retention.

Coverage Evaluation

As an initial matter, the scope of coverage includes only those claims made after the policy's inception, but not claims made before the policy inception. The scope of coverage is set out in Section II. What has to go wrong. That provision applies to a claim, such as a claim for publicity rights violations, that results from film and production activities that occurred during the policy period. The policy period here did not begin until July 21, 2015. In the typical situation—where the film was not disseminated before the policy period began and a claim was not made before the policy period—all film and production activities are deemed to have been performed on the first date of dissemination, pursuant to Section IX. General matters, Date of performance of film and production activities. But here, a claim was made in August 2011—prior to dissemination. In this situation, the relevant film and production activities are deemed to have been performed on the date of the first act in preparation for dissemination. Thus, in this situation, the film and production activities are deemed to have occurred prior to the policy period and are not covered.

Additionally, we must respectfully note that even if the claim fell within the initial scope of coverage, the policy expressly excludes claims based on prior lawsuits. Exclusion v. of Section VI. What we will not pay, states that the policy does not cover "any act, error, omission, fact, circumstance, situation, transaction, event or decision that is underlying or alleged in any prior and/or pending litigation ... or claim as of the inception date stated in the Declarations." Ms. Franklin's recent complaint is based on the same circumstances and decisions as the August 2011 complaint—the decision to screen the film without Ms. Franklin's authorization. Thus, because the August 2011 complaint was filed prior to the inception date, the current complaint is not covered.

Please understand that these provisions are not mere technicalities. Instead, they go to the essence of the insurance contract. Insurance is intended to protect against fortuitous events and claims. When Hiscox issued the policy, it understood the risk that Ms. Franklin might assert a claim. Hiscox did not know, however, that Ms. Franklin had already filed suit in August 2011 and had succeeded in halting the film's release, and that the risk had become an actuality.

The application process is designed to vet these issues. As noted above, the Hiscox application—at question 27—expressly asked whether any claims had been made and, if so, asked for the details of that claim. The application you signed denies any such claim. Had you advised Hiscox of the August 2011 complaint, Hiscox either would not have issued the policy or, at the very least, would have amended the

Mr. Alan Elliot
September 16, 2015
Page 3 of 3

terms to exclude a claim by Ms. Franklin. We appreciate that you believed, in your judgment, that the 1968 recording contract defeated Ms. Franklin's claims, but that was a judgment that Hiscox must be permitted to make on its own, with full knowledge of all of the facts. Further, please understand that the policy provides a defense to even meritless claims. Thus, Hiscox would not have written coverage for this matter even if it ultimately agreed with your assessment of the 1968 recording contract.

We must also advise you that, under certain circumstances, misstatements or omissions in the application process can provide an independent defense to coverage or even justify the rescission of the policy, as if it had never been issued. While Hiscox does not currently rely on these remedies, given the underlying facts, Hiscox must respectfully reserve its rights to raise this issue at a later date, if necessary.

Conclusion

For the reasons explained above, Hiscox must respectfully disclaim coverage. What that means is that Hiscox will not retain or pay for counsel to defend you in the recent complaint and it will not pay for a judgment or settlement resolving that suit. As an accommodation, however, Hiscox will pay for reasonable fees and expenses incurred by defense counsel for you or the Telluride Film Festival during the period of our coverage investigation, to the extent such fees and expenses exceed the \$25,000 retention. Please submit those invoices for our review. Any fees and expenses incurred by counsel after today's date, however, will be solely your responsibility.

In addition to the provisions identified above, other provisions may limit or eliminate coverage for this claim. Given the dispositive nature of the issues discussed, we did not believe that a recitation of all potentially applicable issues was necessary. Please understand, however, that our reliance on certain issues is not a waiver of any other issues that may exist. Instead, Hiscox must reserve its rights to raise policy provisions and issues not identified above.

Hiscox strives to take fair and reasonable positions based on a common understanding of all of the facts. If you disagree with Hiscox's position, please do let us know the basis of your disagreement. We will be happy to consider any additional information you may have and revise our position if warranted. Although we encourage you to discuss any questions or concerns you may have with us, California insurance regulations require us to inform you that if you believe that an insurance claim has been wrongfully denied or rejected, in whole or in part, you may have the matter reviewed by the California Department of Insurance at the following address: California Department of Insurance Claims Service Bureau, 300 South Spring Street, Los Angeles, CA 90014, 1-800-927-4357.

As always, please feel free to call me should you wish to discuss any aspect of this matter.

Kind regards,



Tara D. Bodden, Esq.
Senior Vice President, Claims
Media & Technology Division

cc: Stephen Carroll (by email: stephen.carroll@aon.com)
Joanne Richardson