

# CLYDE & CO

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June 26, 2017

## Via Email

Mr. Alan Elliott  
Amazing Grace LLC  
1633 N. Stanley Ave.  
Los Angeles, California 90046  
[alanelliott@g.ucla.edu](mailto:alanelliott@g.ucla.edu)

Re: *Amazing Grace, LLC adv. Aretha Franklin*  
Hiscox reference no. 170001444

Dear Alan:

Hiscox has asked this Firm to assist in its evaluation of coverage for the above matter. Accordingly, I was forwarded your request for reconsideration of Hiscox's coverage position set out in your May 12, 2017 email to Laura Comerford at Aon. Along with Hiscox, we have thoroughly evaluated the information that you provided and considered your point of view. Unfortunately, Hiscox is unable to change its original declination of coverage.

Based on our understanding, this matter arises out of the proposed screening of the film *Amazing Grace*, depicting Aretha Franklin's 1972 performance at the New Missionary Baptist Church in Los Angeles. The current complaint, filed by Ms. Franklin in September 2015, alleges that any dissemination of the footage is subject to her approval of the final product and that she has not given approval for the screening of your production. We also understand that you point to a 1968 personal services contract in which Ms. Franklin arguably provides consent.

Your recent email expresses your understanding that Hiscox disclaimed coverage based solely on the lack of disclosure of Ms. Franklin's August 2011 lawsuit. You

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misunderstand Hiscox's position. The declination of coverage is based on the fact that the current claim had already been made before Hiscox ever issued the policy. Specifically, the recent complaint is substantially identical to the August 2011 lawsuit and, in fact, incorporates by reference the allegations in that prior suit. The policy does not cover claims that preexist the policy, whether disclosed or not.

*First*, the policy only covers film and production activities that took place during the policy period. Such activities are typically deemed to have occurred when the film is first disseminated, but where a claim is asserted prior to dissemination, all film and production activities are deemed to have occurred on the date of the first act taken in preparation for dissemination. This is explained in the policy's Section IX. General matters, Date of performance of film and program production activities. Given Ms. Franklin's prior suit, all film and production activities are deemed to have occurred prior to the inception of coverage.

*Second*, the policy excludes any claim arising from an act, error, omission or circumstance alleged in any litigation prior to the inception date of the policy. Please see the policy's Section VI. What we will not pay, paragraph v. Both the current suit and the August 2011 suit are based on the alleged need for, and lack of, Ms. Franklin's consent to show the production. Accordingly, the exclusion applies.

We do acknowledge your contention that Hiscox was aware of the August 2011 lawsuit when it wrote the policy, and we have reviewed the underwriting file, and this issue has been discussed with Mr. Gerdes. While the issue of Ms. Franklin's consent was apparently raised, we have seen no evidence that Hiscox was made aware that Ms. Franklin had actually filed suit. Specifically, you suggest in your email that you emailed Mr. Gerdes links to documents disclosing the existence of the 2011 complaint, but we have not seen those emails in the file. We would be happy to review them if you send them to us.

Moreover, while we take your contention seriously, we must reiterate that the disclosure or non-disclosure of the prior suit is not the dispositive question. Hiscox reserved its rights on that question, but the declination of coverage was based on the fact that Hiscox did not (as no insurance company would) provide insurance for a claim that had already been made. Stated somewhat differently, Hiscox agreed to insure the risk that a claim would be made against you based on the production, it did

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not insure that your arguments were meritorious or that you would win an already existing claim.

We appreciate your point of view on this matter but must respectfully conclude that it does not alter the ultimate operation of the policy. Accordingly, Hiscox is unable to find coverage for this claim and must stand by its original disclaimer. Additionally, as set forth in our prior letter, Hiscox continues to reserve the right to raise additional coverage issues, including but limited to any issues discussed in that previous letter.

If you would like to discuss this letter or any aspect of this claim, please feel free to contact me.

Sincerely,

Clyde & Co US, LLP



Scott F. Bertschi

cc: Maria Clark (by email: [maria.clark@aon.com](mailto:maria.clark@aon.com))  
Tara Bodden (by email: [tara.bodden@hiscox.com](mailto:tara.bodden@hiscox.com))