

In the Matter Of:

ALAN ELLIOTT, ET AL. vs BARRY TYERMAN, ET AL

20STCV42553

THOMAS MCGUIRE

December 12, 2023



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ALAN ELLIOTT; AMAZING GRACE MOVIE)
LLC; AL'S RECORDS AND TAPES, INC.)

ORIGINAL

Plaintiff,)

vs.)

Case No. 20STCV42553

BARRY TYERMAN, JACKOWAY AUSTEN)
TYERMAN WERTHEIMER MANDELBAUM)
MORRIS BERNSTEIN TRATTNER & KLEIN,)
a Professional Law Corporation and)
DOES 1 through 100, Inclusive,)

Defendant.)

Video Recorded Deposition of Thomas B. McGuire, Jr.

Tuesday, December 12, 2023

10:14 a.m.

Conducted Remotely Via Zoom

Santa Barbara, California

REPORTED BY:
Jorge P. Dominguez,
CSR No. 12523, RPR
JOB NO: 207550

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Also Present:

RYAN WEISS, VIDEOGRAPHER

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3	Documentary deals	98
6	Interoffice memo dated 121 March 14, 1972	
7	Quitclaim agreement	124
8	Email from Tom McGuire to .. 132 Rick Levy, copying Mr. Tyerman	
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10	Verified complaint and a ... 140 request for a restraining order filed by Ms. Franklin against Alan Elliott and his company in August of 2011	
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1 Santa Barbara, California;

2 Tuesday, December 12, 2023,

3 10:14 a.m.

4 --o0o--

5 THE VIDEOGRAPHER: Good morning, everyone. My 10:14
6 name is Ryan Weiss with Discount Deposition. My
7 business address is 22287 Mulholland Highway, Box
8 Number 571, Calabasas, California. I'm an employee of
9 Discount Deposition, LLC. This is case number
10 20STCV42553 in the case of Elliott V. Tyerman for the
11 County of Los Angeles, Central District. Today's date 10:14
12 is December 12th, 2023 and the time is 10:14 a.m.

13 This deposition is video recorded using
14 Zoom. Do all parties stipulate to the use of Zoom as
15 the recording device?

16 MS. GALLAGHER: Yes, Plaintiff does.

17 MR. FRID: Yes, Defense.

18 THE WITNESS: Yes, witness does.

19 THE VIDEOGRAPHER: Great. Will all present
20 state their name and where they're located beginning
21 with the witness.

22 THE WITNESS: My full name is Thomas B. McGuire,
23 Jr. I go by Tom. I'm coming to you live from Santa 10:14
24 Barbara, California.

25 MS. GALLAGHER: Good morning. This is Maryann

1 Gallagher. I represent Mr. Alan Elliott in this case,
2 along with Carl Douglas, who will introduce himself,
3 I'm sure. And I'm coming from Los Angeles,
4 California.

5 MR. DOUGLAS: Good morning. Carl Douglas and
6 Rachel Jacobs. I'm coming from Los Angeles, as well.

7 MR. FRID: Good morning. Sasha Frid and
8 Danielle Novelly representing the Defendants; L.A., 10:15
9 California.

10 MR. ROLFS: Colin Rolfs, also representing the
11 Defendants.

12 THE VIDEOGRAPHER: Are you --

13 MR. ROLFS: L.A., California.

14 THE VIDEOGRAPHER: Are you visible, Mr. -- I 10:16
15 can't remember what your last name was.

16 MS. GALLAGHER: Rolfs.

17 MR. ROLFS: Rolfs, yes.

18 THE VIDEOGRAPHER: We can't see him on the
19 camera. There he is. Hello. All right. I see
20 there's a few more people.

21 MS. GALLAGHER: Danielle Novelly.

22 THE VIDEOGRAPHER: Danielle and Rachel, are you
23 there? Hello. You're on mute.

24 MR. FRID: I've entered her as Danielle.

25 THE VIDEOGRAPHER: Oh, okay. And Rachel Jacobs

1 is covered, too?

10:16

2 MS. GALLAGHER: She's with Mr. Douglas's office.

3 THE VIDEOGRAPHER: Got it. All right. Well, if
4 that's everyone, will the court reporter please swear
5 in the witness.

6 Thomas B. McGuire, Jr.,
7 having been first duly sworn was examined and
8 testified as follows:

9

10 EXAMINATION

11

12 BY MS. GALLAGHER:

13 Q Good morning, Mr. McGuire. I introduced
14 myself before but I'm Maryann Gallagher. How are you
15 doing?

10:16

16 A I'm fine.

17 Q Have you ever had your deposition taken
18 before?

19 A A number of times, yes.

20 Q Okay. So I'm not going to go through all
21 the niceties. You are an attorney as well, correct?

22 A I am.

23 Q Okay. I'm just going to go through your
24 experience, if that's okay with you.

25 A Sure.

1 Q So my understanding is you graduated from
2 UCLA with a Bachelor of Arts in motion picture
3 television, correct?

4 A Yes.

5 Q And then you have a J.D., a Juris
6 Doctorate of Law from the University of California,
7 Berkeley School of Law, correct?

10:17

8 A Yes.

9 Q Outside of law school, you had a practice
10 at Irell & Manella as an associate for about four
11 years, right?

12 A Correct.

13 Q And then you worked at Walt Disney
14 Pictures as senior counsel for two years
15 approximately, correct?

16 A That's correct.

17 Q And then you were at a long firm, Hansen,
18 Jacobson, Teller, Hoberman, Newman, Warren, Richman,
19 Rush & Tyler as a partner in Beverly Hills from 1989
20 to 2001 for 11 years and 11 months?

10:17

21 A That's correct. I think the first year
22 and a half I was an associate.

23 Q What kind of -- can we call them the
24 Hansen firm?

25 A Yeah. They're a boutique entertainment

1 law firm.

2 Q Can you just encapsulate for me generally 10:18
3 what was your work experience? What did you do?

4 A At Hansen?

5 Q Yes, at Hansen.

6 A That's a talent side firm. I represented
7 talent for the period of time that I was there and,
8 yeah, that's what I did.

9 Q So did you negotiate contract for people
10 like movie stars and actresses with -- like motion
11 picture locations? 10:18

12 A Yes. I also assisted in selling and
13 putting together movie packages as well. I was the
14 head of business affairs -- no, sorry. That's the job
15 after this one. Sorry.

16 Q That's okay. So the next one that you 10:19
17 were referring to after Hansen was William Morris
18 which became William Morris Endeavor, correct?

19 A Actually, I worked first for Endeavor and
20 then Endeavor and William Morris merged to form WME,
21 William Morris Endeavor. I was both general counsel
22 and head of business affairs -- 10:19

23 Q And you --

24 A -- until 2014 when WME acquired the sports
25 agencies IMG, at which point I was the head of

1 business affairs for the agency, WME, from then until
2 my retirement.

3 Q So you had approximately 22, almost 23 10:20
4 years, at the William Morris Endeavor agency,
5 correct?

6 A No. I think it was 18 years. I joined
7 them at the -- I joined Endeavor at the end of my time
8 at -- at the Hansen firm -- sorry, I'm a little sick
9 today.

10 And then worked until the end of 2018. 10:20

11 Q So approximately 2001 to 2018, you were
12 head of business affairs for most of that time at
13 William Morris agency, correct?

14 A Yes, until 2014 I was also general counsel
15 of the company.

16 Q And from 2014 until -- when did you leave
17 William Morris as general counsel?

18 A At the end of 2018. I started my next
19 job, which is -- which I'm currently still in at
20 Netflix in January of 2019. 10:21

21 Q And I know you mentioned you're not
22 feeling well and I thank you so much for doing this
23 with us today. But if --

24 A It's okay.

25 Q -- for any reason you feel like you can't

1 go on, just let me know. This isn't here to cause you
2 any harm. We want to make sure you feel as
3 comfortable as possible. Okay?

4 A I'm as comfortable as I can be. I'll make
5 it through.

6 Q I appreciate it. Thank you so much.
7 So when you're at William Morris as head 10:21
8 of business affairs, can you just encapsulate for me
9 what you did there?

10 A Initially, anything from H.R. issues to
11 major deals for the company -- for company's clients.
12 I continued -- I represented Adam Sandler at the
13 Hansen firm and I continued representing him
14 internally at WME for the entire time I was there and 10:22
15 there was a number of other people I became sort of
16 the head business affairs person for -- by people, I
17 mean clients for the agency. So I would get involved
18 in their deals.

19 Many other clients had outside lawyers
20 but -- so but I represented these other people as
21 their sole business affairs representative, primarily
22 film actors and directors. 10:23

23 In addition, I would point package deals
24 where we put together a number of elements that were
25 represented by the agency and be the point person that

1 potential buyers would -- would deal with in
2 attempting to make those deals.

10:23

3 Q In your work at William Morris agency, did
4 you deal with Warner Bros.?

5 A Yes, frequently.

6 Q And the -- we're here about an issue that
7 involves Mr. Barry Tyerman from the Jackoway, Tyerman,
8 Wertheimer, Austen, Mandelbaum, Morris & Klein firm. For
9 purposes of the deposition, we're going to call them
10 the Jackoway firm; is that okay?

10:23

11 A Yes.

12 Q Do you know when you first met
13 Mr. Tyerman?

10:24

14 A Probably early on in my career. He had
15 actually been at one of my law firms earlier. He was
16 at Irell before me and I believe we met relatively
17 early in my career, but I couldn't tell you when.

18 Q Did you come to understand that
19 Mr. Elliott -- Alan Elliott had Mr. Tyerman represent
20 him as an attorney?

10:25

21 A I'm sorry, could you repeat the
22 question.

23 Q Sure. Did you come to learn that Mr. Alan
24 Alan Elliott had Mr. Barry Tyerman represent him as an
25 attorney at some point?

1 A Alan told me that that had been the case.
2 I am unaware of the particulars of that relationship
3 and I don't recall exactly when that relationship was
4 alleged to have happened. I don't know.

10:25

5 Q But you had discussions with Mr. Elliott
6 where he told you at some point in time that he
7 believed that Mr. Tyerman was his attorney?

8 A Yes.

9 Q And are you familiar with the custom and
10 practice of industry where there's not necessarily a
11 written retainer agreement between someone such as
12 Mr. Tyerman and Mr. Elliott?

10:26

13 A Yes.

14 MR. FRID: Objection. No foundation.

15 BY MS. GALLAGHER:

16 Q You can answer. I'm sorry, Mr. McGuire.

17 A Yes, I'm aware of that practice. I've
18 practiced it myself.

19 Q So when you were at William Morris
20 Endeavor, when you were representing certain actresses
21 or actors or putting together deals, you didn't
22 necessarily have to have a written retainer agreement
23 to have an attorney-client relationship, correct?

24 A That gets into attorney-client definition.
25 Arguably, I rendered attorney-client services for the

10:26

1 agency but my relations with agency clients, I believe
2 the law is that there's no privilege because I was the
3 business affairs executive. But if you wish -- that's
4 not my privilege to assert, if you wish to assert a
5 privilege, you'll let me know.

10:27

6 Q No problem. And you became involved in a
7 deal or a few deals that Alan Elliott was attempting
8 to make with regard to a film called "Amazing Grace"
9 that he had edited and put together that -- with
10 regard to Aretha Franklin, correct?

10:27

11 A Yes. Yes.

12 Q Do you know what your first -- or when
13 your first involvement was?

14 A I had a long involvement with this film.
15 I think it stretched out over some eight -- eight
16 years or so. I couldn't tell you exactly when it
17 started but it's probably in the middle of my career
18 at Endeavor and WME.

10:28

19 Q And during your involvement in the Alan
20 Elliott, were you attempting to assist him in
21 marketing the "Amazing Grace" film with Aretha
22 Franklin?

10:28

23 A Yes.

24 Q And during the time that you were
25 assisting Alan Elliott in marketing or selling the

1 "Amazing Grace" film in the market, did Barry Tyerman
2 interfere with that intent to sell the --

10:29

3 MR. FRID: Objection. No foundation, calls for
4 a legal conclusion.

5 THE WITNESS: May I answer the question?

6 BY MS. GALLAGHER:

7 Q Yes.

8 A Barry asserted rights that I disagreed
9 with in connection with the marketing efforts of
10 Mr. Elliott in connection with the picture.

10:29

11 Q And why did you disagree with those
12 rights?

13 A There was a number of -- there were a
14 small number of letters written by Linda Burrow, who
15 was an outside attorney on behalf of Mr. Elliott that
16 I believed summarize those -- my feelings fairly well.
17 I don't recall exactly what's in them but I know you
18 all have seen those letters.

10:30

19 Q Do you know what claimed rights
20 Mr. Tyerman was asserting?

21 A As I said --

22 MR. FRID: Objection. Excuse me. Objection.
23 No foundation. Calls for a legal conclusion.

24 THE WITNESS: As I sit here right now, I can't
25 remember exactly what Barry was asserting. If you

10:30

1 showed me a document, I could probably tell you and
2 I'm sure he probably put these things in some kind of
3 written form.

4 BY MS. GALLAGHER:

5 Q Okay. Yeah, we'll get there. I was just
6 trying to figure out an overall lay of the land.

7 Let's turn to some exhibits. Let's see if
8 these can help you with some of your memory. We're
9 going to go to Exhibit Number 2.

10:31

10 Some of these exhibits you may or may not
11 have seen but they provide some information that I'm
12 going to ask you about when we get to the end, okay?

13 A Okay. I can't see the document right now.
14 There it is.

15 THE VIDEOGRAPHER: Sorry about that. Here you
16 go.

17 (Exhibit 2 was marked
18 for identification.)

19 BY MS. GALLAGHER:

20 Q This is a communication dated May 28, 2008
21 between Barry Tyerman and Jordii@cs.com. This is with
22 regard to "Amazing Grace." It's from Mr. Tyerman
23 saying, "Thanks, Herb. I assume this is being done
24 under the authority of Warners as the owner of the raw
25 footage? Good luck with the work. Barry Tyerman."

10:31

1 Did you become aware that Mr. Tyerman
2 was -- on behalf of Mr. Pollack taking the position
3 that Warners owned the raw footage for "Amazing
4 Grace"?

5 MR. FRID: Objection. No foundation. Calls for
6 speculation as to Mr. Tyerman's state of mind. 10:32

7 THE WITNESS: That's the way I read Barry's
8 email to Herb.

9 BY MS. GALLAGHER:

10 Q If we go down to the next email, which is
11 May 28th, 2008, this refers to the passing of
12 Mr. Pollack. It says, "Barry, I'm sorry to hear about
13 Mr. Pollack. He was quite gracious in speaking to
14 Alan and enthusiastic about the prospect of us 10:32
15 finishing this film. We hope our work will exceed his
16 expectations. Warmest regards, Herb Jordan."

17 Do you know who Herb Jordan is?

18 A I don't recall what he did. I know that
19 he was involved with Alan early, I presume. I don't
20 want to presume. I just don't recall exactly what
21 role he played.

22 Q And is the information that's contained in
23 this letter that Mr. Pollack was quite gracious in 10:33
24 speak to Alan and enthusiastic about Alan and
25 Mr. Jordan finishing the film, is that information

1 that was consistent with information that Alan had
2 given you?

3 MR. FRID: Objection. No foundation.

4 THE WITNESS: That's the way Alan described his
5 conversations with Mr. Pollack.

6 BY MS. GALLAGHER:

7 Q Then this is an email from Barry Tyerman
8 to Herb Jordon and it says, "I literally have the file
9 in front of me and am happy to answer any questions
10 you might have. Unfortunately, the file relates 10:34
11 principally to the deal in 1997 for Mr. Pollack to
12 complete the editing of the material (as opposed to
13 the original shoot). Please let me know how I can
14 help."

15 In your dealings with Mr. Tyerman, was he
16 always representing or claiming that he had some file
17 with regard to Sydney Pollack?

18 A To be honest, I don't recall. I had -- I
19 assumed that he had a file or files, but I don't 10:34
20 recall.

21 Q And this says the file relates to a deal
22 in 1997 for Mr. Pollack to complete the editing of the
23 material. Do you know what that refers to?

24 A No, I don't.

25 Q If we go down a little bit to the next 10:34

1 email, please. It's dated May 7th, 2008. This is,
2 again, between Mr. Jordan and it says, Hi, Jordan,
3 probably best if you contact Barry's office directly.
4 I've copied him on this email and the number is" --
5 and there's the phone number.

6 If you scroll down a little bit more. It
7 says, "Hello, Alan. Donna Ostroff from Sydney
8 Pollack's office has relayed that Mr. Pollack has
9 authorized Barry to release the Amazing Grace legal 10:35
10 file to Alan or to me. I'd like to arrange to stop by
11 the office, or if it's more convenient for Barry, to
12 have the file sent to my office. The project is
13 moving quickly so it would be helpful if we could make
14 arrangements as soon as possible."

15 Do you know if Alan attempted to get this
16 file that Mr. Tyerman claimed with regard to
17 Mr. Pollack from Mr. Tyerman but Mr. Tyerman never
18 gave it over?

19 A I don't recall anything about getting this
20 file. Sorry.

21 Q That's okay. Let's go to the next letter. 10:35

22 If we go down, it says, "Just got the
23 following reply from Barry Tyerman. I have a file on
24 this and have discussed it with Sydney on many
25 occasions over the years. I'm traveling out of the

1 country but will pull my file on my return on Monday.
2 Let you know when I hear from him. We just chatted,
3 talked about Bill going to see Sydney on Wednesday and 10:36
4 needing to see any files Barry might have. She said
5 she would be happy to tell Barry Tyerman that Sydney
6 has given permission to see the files."

7 Again, you still don't know whether or not
8 Mr. Tyerman ever showed you these files, correct?

9 A Oh, I know that he never showed me these
10 files, if that was your question. I did not hear it.
11 He never showed me these files. That's correct.

12 Q Okay. Thank you.

13 If we go down to the next exhibit. This
14 is an email dated July 20th, 2009 from Michael
15 Donaldson. It's to Alan. It's regarding him making
16 the documentary Amazing -- the "Making of the Amazing
17 Grace Album." This basically is from an attorney
18 saying -- if we look at the third paragraph: 10:37

19 "It is my opinion that Ms. Franklin has no
20 viable copyright claim and no viable claim involving
21 any of her personal right such as the right of
22 privacy, false light, defamation, or the right of
23 publicity."

24 Are you aware that an attorney gave Alan
25 this opinion in 2009 with regard to Ms. Franklin?

1 MR. FRID: Objection. Absolutely no foundation,
2 calls for speculation.

3 THE WITNESS: I recall -- I think I might have 10:37
4 set up Alan with Donaldson Califf at the time. And so
5 I remember the existence of this letter. I do not
6 remember until I just read this letter what the letter
7 says.

8 BY MS. GALLAGHER:

9 Q If we go to the next exhibit, please, keep 10:38
10 on going down. So this I know you haven't seen
11 because we got this in discovery, but this is a letter
12 to Barry Hirsch, who was representing Mr. Pollack with
13 regard to Mr. -- a potential deal with Mr. Pollack
14 editing the Aretha Franklin film. 10:38

15 In your negotiations where Mr. Tyerman was
16 alleging that Mr. Elliott -- I'm sorry, that
17 Mr. Pollack had some claim in this film, did
18 Mr. Tyerman ever show you this document?

19 And we can scroll down so you can see
20 it.

21 A No.

22 Q Let's scroll down. If you scroll to page
23 37, Bates stamp 37, so this says under this agreement 10:39
24 that was being proposed to Mr. Pollack, "All results
25 and proceeds of Pollack's services hereunder,

1 (including, but not limited to all literally, dramatic
2 and musical material written, supplied or improvised
3 by Pollack whether or not in writing, all designs and
4 inventions of Pollack, all photographs, drawings,
5 plans, specifications and sound recordings containing
6 all or part of any of the foregoing), shall constitute
7 works prepared by Pollack as an employee of Warner 10:40
8 within the scope of Pollack's employment hereunder,
9 and accordingly, the parties agree that all of the
10 foregoing are and shall be considered, quote, works
11 made for hire, end quote, for Warner; and that Warner
12 is and shall be considered the author thereof for
13 purposes and the owner throughout the world of all of
14 the rights comprised in the copyright thereof, and any
15 and all patents, trademarks and other rights thereto."

16 Did Mr. Tyerman make you aware that in
17 1997 there was a negotiation going on where Warner 10:40
18 Bros. and Mr. Pollack were negotiating a contract
19 where Mr. Pollack was going to be giving work as a
20 work for hire?

21 MR. FRID: Objection. No foundation, no
22 foundation as to this document. Also, I object to
23 this exhibit given the fact that it appears to be a
24 composite of a bunch of different emails from
25 different time frames. I also object to the markings 10:40

1 around this exhibit and, finally, no authentication
2 and speculation. Go ahead.

3 THE WITNESS: Could you repeat the question?

4 BY MS. GALLAGHER:

5 Q Sure. When Mr. Tyerman was trying to
6 insert some claims on behalf of Sydney Pollack when
7 there were negotiations going on by Mr. Elliott to 10:41
8 sell this film, did Mr. Tyerman ever let you know that
9 there was potential agreements between Warner Bros.
10 and Pollack where Pollack had agreed that his work for
11 Warner was work for hire?

12 MR. FRID: Objection. Question is
13 argumentative. The first part of the question is
14 argumentative and false.

15 THE WITNESS: Barry did not so inform me.

16 BY MS. GALLAGHER:

17 Q And wasn't that one of the issues that
18 arose -- if you don't remember, look at the letters,
19 but that was one of the issues that arose was that you 10:41
20 and Ms. Burrows on behalf of Mr. Elliott were saying
21 that Mr. Pollack's work for Warner Bros. was work for
22 hire, correct?

23 MR. FRID: Objection. No foundation.

24 THE WITNESS: I don't recall. I don't recall.

25 BY MS. GALLAGHER:

1 Q Okay. We'll look at it later. I'm just
2 going through these to kind of set the history until
3 we get to your letter.

4 And do you know that Mr. Pollack never
5 disputed this paragraph saying that his work for
6 Warners was going to be work for hire? 10:42

7 MR. FRID: Objection. No foundation.

8 THE WITNESS: I don't know.

9 BY MS. GALLAGHER:

10 Q Okay. Can we scroll down to page 053 of
11 this exhibit, please. And this is part of that same
12 draft deal between Pollack and Warner Bros. and
13 paragraph 12 says, "Ownership. Participant expressly
14 acknowledges that participant has and will have no
15 right, title, or interest," and the participant here
16 is Sydney Pollack. 10:42

17 "Participant expressly acknowledges that
18 participant has and will have no right, title or
19 interest of any kind or character whatsoever in or to
20 the Picture," that being the "Amazing Grace" picture.
21 "and no lien thereof or other rights in or of to the
22 Defined Gross of the Picture and that the same shall
23 be and remain Warner's sole and exclusive property." 10:43

24 Did you know that there was a potential
25 agreement between Warner and Pollack where it set

1 forth specifically that Mr. Pollack would have no
2 right, title or interest of any kind or character or
3 whatever in Aretha Franklin?

4 MR. FRID: Objection. No foundation.

5 Sorry, Mr. McGuire, go ahead, sir.

6 THE WITNESS: I did not know that.

7 BY MS. GALLAGHER:

8 Q And Mr. Tyerman never shared this
9 information with you when he was trying to insert a
10 claim on behalf of the Pollack estate?

10:43

11 MR. FRID: Objection. Argumentative.

12 THE WITNESS: I don't recall him -- I don't
13 recall him making that claim to me, no.

14 BY MS. GALLAGHER:

15 Q In fact, Mr. Tyerman was asserting the
16 exact opposite. He was trying to claim that
17 Mr. Pollack had a right, title, and expert interest in
18 the picture, correct?

19 MR. FRID: Objection. Argumentative.

20 THE WITNESS: He asserted rights. I can't, as I
21 sit here, tell you exactly what rights he asserts.

22 MS. GALLAGHER: If we go down to the next page,
23 it continues on. This is still paragraph 12. It
24 says, "Participants" -- it's the fifth paragraph,
25 fifth sentence down, if you can see, Mr. Videographer,

10:44

1 where it starts at "Participant." I'm sorry. Go up.
2 There we go. Red box. Participant.

3 BY MS. GALLAGHER:

4 Q "Participant shall have no right, title or 10:44
5 interest of any kind or character whatsoever in or to
6 the literary, dramatic or musical material upon which
7 the picture is based or from which it may be adapted;
8 and Warner shall have the sole and exclusive right to
9 utilize, sell, license or otherwise dispose of all or
10 part of its right in such material upon such terms and
11 conditions as it may deem advisable all without
12 consulting or advising Participant and without
13 accounting to Participant in any manner with respect
14 thereto." 10:45

15 Again, the participant here is Sydney
16 Pollack. Did Mr. Tyerman share this information with
17 you and this document with you that this was an
18 agreement that was being negotiated between Warner and
19 Mr. Pollack in 1997?

20 MR. FRID: Objection. No foundation. Also,
21 asked and answered.

22 THE WITNESS: Not that I recall.

23 MS. GALLAGHER: Can you please scroll down, 10:46
24 Mr. Videographer, to -- it says Exhibit 58 on the top
25 right-hand side.

1 BY MS. GALLAGHER:

2 Q Exhibit 58, looks like this is a
3 registration for the "Amazing Grace" film with the
4 authorship for Alan Elliott that was created in 2011.
5 Did you assist Mr. Elliott in obtaining this
6 authorization?

10:46

7 A I don't believe so. I might have, but I
8 don't believe so.

9 Q And you've never seen any similar -- is
10 this a copyright authorization, do you know?

11 MR. FRID: I'm sorry. Can I get the question
12 again? Could you repeat the question?

10:46

13 BY MS. GALLAGHER:

14 Q Is this a copyright authorization or
15 application?

16 MR. FRID: Objection. No foundation. Go ahead.

17 THE WITNESS: I've never seen this document
18 before. I don't know where it comes from. It
19 appears -- so I don't know what this is. It refers to
20 a registration number, but I don't know who generated
21 this or -- and I don't recall assisting Alan in making
22 a copyright filing. That's not routinely what -- the
23 type of service that I did at the agency.

10:47

24 BY MS. GALLAGHER:

25 Q If we go to the next exhibit, which is a

10:48

1 May 5th, 2015, it's an email from Barry Tyerman to
2 Susan Johnson forwarding Amazing Grace links. At the
3 middle of this email is an email from Alan Elliott
4 dated May 5th, 2015 to Barry Tyerman.

10:48

5 It says, "Hey Barry, I reached out to
6 Sydney's girl through Donna (see Rachel's sweet email
7 below.) I'm taking the film to premiere at Telluride.
8 As of now, I'm planning on: Directed by Sydney
9 Pollack. Produced by Sydney Pollack and Alan
10 Elliott."

11 If the girls have any issues or concerns,
12 please have them contact me. I will try to do what
13 they feel is appropriate re credits. And if there's
14 any documentation or anything else that I should know
15 about re: the iteration of the project Sydney and I
16 started on in 2007 or anything from the passed (I'd be
17 very interested in seeing the 1997 file!) please send
18 it over and let's discuss. Hope this finds you well."

10:49

19 So this is May 15 of 2015. It looks like
20 Alan is getting ready to take this film -- the
21 "Amazing Grace" film to Telluride. Were you involved
22 at this point in time with Mr. Elliott and the
23 "Amazing Grace" film?

10:49

24 A Yes.

25 Q And what was your involvement?

1 A I was attempting to assist him in getting
2 the film in at Telluride.

3 Q And the film did schedule to premiere at 10:50
4 Telluride, correct?

5 A Yes, the festival really wanted the film
6 and we were hoping that that would occur.

7 Q And what's the significance of Telluride
8 and a premiere there?

9 A Generally speaking, that is a very good 10:50
10 film distribution spot.

11 Let me say it a little bit better. It's a
12 great place to sell a movie, Telluride, and a lot of
13 movies are sold there.

14 MS. GALLAGHER: Let me go off for one second. I
15 lost my notes on this issue. Can we take a quick
16 five-minute break?

17 MR. FRID: Yeah. We'll be back in a second.

18 MS. GALLAGHER: Thanks. So five minutes.

19 THE VIDEOGRAPHER: The time is 10:52 a.m. We're
20 going off the record. 10:52

21 (Recess taken.)

22 THE VIDEOGRAPHER: The time is 10:58 a.m. We're
23 going on the record.

24 BY MS. GALLAGHER:

25 Q Thank you for coming back, Mr. McGuire.

1 A No problem.

2 Q We're looking at page Tyerman 445, which
3 is an email dated May 5th, 2015 from Mr. Elliott to
4 Mr. Tyerman. When we last left off, it was
5 Mr. Elliott asking Mr. Tyerman if there's any
6 documentation or anything else that I should know 10:59
7 about regarding iteration of the project Sydney and I
8 started in 2007 or anything from the past, I'd be
9 interested to see the 1997 file. Please send it over
10 and let's discuss.

11 Did Mr. Tyerman ever give you any
12 documentation that showed that Mr. Pollack had any
13 rights, copyrights, any type of rights in the "Amazing
14 Grace" film?

15 MR. FRID: Objection. No foundation, calls for
16 speculation, calls for legal conclusion,
17 argumentative.

18 THE WITNESS: I don't believe he ever sent me 11:00
19 any documents, no.

20 BY MS. GALLAGHER:

21 Q Okay. If we go to the next email down,
22 it's April 22, 2015 from Donna Ostroff to Alan Elliott
23 and it attaches an email from Rachel Pollack. And
24 Rachel Pollack is Sydney Pollack's daughter, correct?
25 We're at Bates stamp 446. Do you see that one? 11:00

1 A Yeah.

2 Q Okay. And this says, "From Rachel
3 Pollack, April 22nd, 2015, regarding Amazing Grace
4 links. "I just watched the trailer and will watch the
5 rest when I get home. What a wonderful wonderful
6 thing he has done!!! How awful it had to just sit
7 there. I'm so thankful to him for doing it and I
8 can't wait to see it. Thank you so much, Donna. Much
9 love to you."

10 Did you ever learn from the Pollack girls
11 themselves how excited they were that Alan had made
12 this "Amazing Grace" film? 11:00

13 A I've never spoken to the Pollack girls.

14 Q Did Alan share with you that the Pollack
15 girls were excited that he had been able to make this
16 film?

17 A Yes.

18 Q And did Alan share with you that the
19 Pollack girls supported the "Amazing Grace" film?

20 MR. FRID: Objection. No foundation, vague and
21 ambiguous and argumentative as to supported.

22 THE WITNESS: I don't recall specifically. I
23 recall generally that he had heard from them that they
24 supported it at some -- at some time. I don't know
25 exactly when. 11:01

1 BY MS. GALLAGHER:

2 Q If we go to the next exhibit, which is
3 Exhibit 448, and this is a document that's dated 1972.
4 It's an interoffice memo from Warner Bros.,
5 Incorporated. And it says, "We have agreed to pay to
6 Sanford Productions the sum of \$1,500 for Sydney
7 Pollack's services in producing and directing this
8 project."

11:01

11:02

9 MR. FRID: I'm sorry, Counsel. Counsel, I'm
10 sorry, you said Exhibit 448 and it says Exhibit 64.
11 Could you help me out here?

12 MS. GALLAGHER: I'm looking at Bates stamped --

13 MR. FRID: Okay. Because you said exhibit.
14 Okay. So this is now Exhibit 64?

15 MS. GALLAGHER: It is Bates stamp 448 at the
16 bottom. Tyerman 448.

11:02

17 MR. FRID: Let me just ask you a question. How
18 are you -- is this all going to be Exhibit 2? Are
19 you marking it exhibit --

20 MS. GALLAGHER: This is all Exhibit 2, Mr. Frid.

21 MR. FRID: Okay.

22 BY MS. GALLAGHER:

23 Q So we just read this -- "We've agreed to
24 pay to Sanford Productions the sum of \$1,500 for
25 Sydney Pollack's services in producing and directing

1 this project. We will be billed later for DGA
2 contributions. Please prepare the check and send it
3 to me for transmittal with the appropriate letter."

4 Have you seen this document before?

11:03

5 A I believe I have.

6 Q And here this is attached to an email from
7 Alan Elliott to Barry Tyerman. If we scroll up a
8 little bit and we'll see 447. It says Alan Elliott to
9 Barry Tyerman, July 13, 2015.

10 So this is Mr. Elliott sending this to
11 Mr. Tyerman. Do you know if Mr. Tyerman ever sent
12 anybody any documentation whatsoever that showed
13 anything other than Mr. Sydney Pollack was being paid
14 \$1,500 for his services in producing and directing the
15 project?

11:03

16 A I'm sorry, could you repeat the question?

17 Q Sure. Do you know if anyone -- if
18 Mr. Tyerman ever sent anyone any document that ever
19 said anything other than what we see here that
20 Mr. Pollack was paid \$1,500 for his services in
21 producing and directing the Aretha Franklin project?

11:04

22 A I'm sorry, I don't understand the
23 question.

24 Q Sure. We see this one piece of paper
25 right here, which is a document dated March 14, 1972,

1 which says that Warner Bros. agrees to pay for Sydney
2 Pollack's services for \$1,500 in producing and
3 directing the project and the project refers to the
4 Aretha Franklin filming, correct?

11:04

5 A Yes.

6 Q Did Mr. Tyerman ever produce anything to
7 you at all that said anything other than what we see
8 here that Mr. Pollack was going to be paid \$1,500 for
9 his services in producing and directing the Aretha
10 Franklin project?

11 MR. FRID: Objection. The question is vague.
12 No foundation. Compound.

13 Go ahead, sir.

14 THE WITNESS: Barry asserted rights in the
15 project. I never understood exactly what those rights
16 were from Barry but he did assert rights. So to the
17 extent that your question reaches that issue, he did
18 assert rights that I did not understand or agree with.

11:05

19 BY MS. GALLAGHER:

20 Q And Mr. Tyerman never produced any
21 document that was -- that said anything different than
22 what we see here that Mr. Pollack was being paid
23 \$1,500 for his services in producing and directing the
24 Aretha Franklin project, correct?

25 MR. FRID: Objection. Unintelligible as to any

11:06

1 other document.

2 Go ahead, sir.

3 THE WITNESS: I stand by my prior answer.

4 BY MS. GALLAGHER:

5 Q You never saw an agreement that said that
6 Mr. Pollack had a percentage interest in the Aretha
7 Franklin film, correct?

8 A I never knew that Warners had a document
9 out there that gave him a percentage interest.

10 Q And Mr. Tyerman never showed you anything
11 like that, correct?

12 A I never saw the document that we
13 previously looked at. No, I never saw that document
14 until today.

15 Q The \$1,900 document we just looked at?

16 A You mean the \$1,500 document?

17 Q Yes.

18 A I've seen this \$1,500 document in the
19 past, but no, I was referring to the document where
20 Barry was negotiating with Warner Bros.

21 Q Oh, that's -- that's the 1997 negotiation.

22 A Right.

23 Q Okay. Yeah, you never saw this at all?

24 A Right. But this document I've seen. I
25 couldn't tell you exactly when, but I've seen it.

11:06

11:07

1 Q And in all the discussions and emails and
2 claims that Mr. Tyerman set forth on behalf of 11:07
3 Mr. Pollack, this is the only written document that
4 you ever saw between Warner Bros. that talked about
5 Mr. Pollack's payment for services in producing and
6 directing Aretha Franklin, correct?

7 MR. FRID: Objection. No foundation, calls for
8 speculation, argumentative.

9 THE WITNESS: This is the only document. I
10 believe that to be the case. I couldn't swear to it
11 just because this is now pretty long ago for me, but I 11:07
12 believe that's the case.

13 MS. GALLAGHER: And, Mr. Videographer, can you 11:08
14 scroll down to Exhibit Tyerman 459, please, page 459
15 of Exhibit 2.

16 BY MS. GALLAGHER:

17 Q And Exhibit 2, page 459, is an email dated
18 August 12th, 2015 from Mr. McGuire to Barry Tyerman,
19 cc: Liesl Copland, Subject: Sydney Pollack deal.

20 Who is Lisa Copland? 11:09

21 A She was a partner at WME and this was her
22 bailiwick selling documentaries and independent movies
23 to third-party distributors.

24 Q Do you know how you became involved in
25 this issue of the Aretha Franklin documentary and 11:09

1 Mr. Elliott attempting to sell it?

2 A Yes. Ari Emanuel asked me to be involved
3 and I had -- and then I worked on this movie for felt
4 like eight to nine years with Alan.

5 Q And what's Ari Emanuel's position at WME 11:10
6 or what was it then?

7 A At the time he was co-CEO of WME.

8 Q Was it Mr. Emanuel that asked you to
9 become involved in this issue with Mr. Elliott?

10 A Yes. 11:11

11 Q Do you remember what he told you about
12 that?

13 A No. He said in his typical way probably
14 why don't you call Alan and get into this and that's
15 probably all he ever said to me about it.

16 Q Do you remember what phase Alan was in at
17 the time that you first became involved, what phase of
18 the movie?

19 A Well, he was doing postproduction. He was 11:11
20 doing postproduction on the movie.

21 Q And this is to Barry Tyerman: "Barry, 11:12
22 Let's approach this like we're making a deal.

23 "No. 1. Alan has his memo from Warner
24 Bros. documenting a small payment to, presumably,
25 Sydney's loanout at the time. The shoot was a 2 day

1 shoot. The entire budget was probably about 20K or
2 so, so the payment would be reasonable. Arguably,
3 Warner Bros. controls the rights. That is certainly
4 what the memo looks like."

5 The memo that you're referring to is what
6 we just looked at, which is the page 2, Exhibit 448,
7 the March 14, 1972 memo, correct?

11:12

8 A Yes.

9 Q And your interpretation based on both your
10 legal background and your experience in the industry
11 is that based on that memo, Warner Bros. controlled
12 the rights, correct?

13 MR. FRID: Objection. No foundation, calls for
14 speculation and calls for a legal conclusion, also
15 irrelevant as to his interpretation.

11:12

16 THE WITNESS: I interpreted that memo to be an
17 internal memo that indicated Warner Bros.
18 understanding that they owned all the rights from him
19 as an employee for hire.

20 BY MS. GALLAGHER:

21 Q And from him being Sydney Pollack,
22 correct?

23 A Yeah.

24 Q And that's information that you were
25 giving to Mr. Tyerman to let him know that's your

1 opinion after looking at the memo based on your
2 experience, both in the law and in your work at
3 William Morris agency, correct?

11:13

4 A Yes. Yes.

5 Q It says, "You would argue on behalf of the
6 estate that the memo only documented one aspect of the
7 deal. All of the approvals, et cetera, all of which
8 were equally important to your client, were left to
9 future dealings. There may or may not be
10 documentation to support your argument."

11 And Mr. Tyerman never showed you any
12 documentation that would lead you to believe that
13 there was any information about approvals for future
14 deals, correct?

11:13

15 A Correct.

16 Q It says, "I propose that we both recognize
17 that it is important to the film that the estate
18 supports the film if the film is to be released. That
19 is what I would focus on."

20 When you say it's important to the film,
21 we're talking about the Aretha Franklin film, right,
22 "Amazing Grace"?

23 A Yes.

24 Q The estate would be the estate of Sydney
25 Pollack?

1 A Yes. 11:14

2 Q From what we looked at the emails from
3 Rachel Pollack, Rachel Pollack, who is part of the
4 estate, supported Mr. Elliott working on this film,
5 correct?

6 A At the time she wrote that email, yes.

7 Q Then it says, "So what will it take to get
8 the estate's support? Should be easy because the
9 universe of money is quite limited."

10 What does that refer to?

11 A This is a music documentary. The film was 11:15

12 shot in an imperfect way, but the material was
13 compelling. What that reads to me like is that unless
14 the movie hit the Zeitgeist of the United States and
15 other countries, that it could be a very well received
16 movie but in terms of how much money it would make, I 11:15
17 just -- I didn't think at the time there would be a
18 huge amount of money made on this movie.

19 Q And when you say it was made in an
20 imperfect way, are you referring to the fact that when
21 Mr. -- the film was not synchronized so that when the
22 recording was made with Ms. Franklin singing?

23 A No. I spent the first five years after
24 graduating from UCLA being a rock and roll film 11:15
25 editor. So I have a lot of experience in looking at

1 these types of movies. This movie was not shot
2 brilliantly.

3 It did, however, capture Aretha Franklin
4 at her absolute prime and so those two things are in
5 opposition in terms of the value of the movie. Aretha
6 being in her prime adds value. The shooting of the 11:16
7 film itself detracts some value. Therefore, I didn't
8 think this would be a huge moneymaker.

9 Q Was that something that Alan was working
10 on, was trying to correct the issues with the filming
11 so that it would be a more presentable product?

12 A Yes.

13 Q And that's something he spent a lot of his
14 time during those years concentrating on?

15 A Yes.

16 Q And was one of the issues that the film 11:17
17 wasn't synched properly?

18 A Initially. That took some time. But once
19 that's done, it's all a question of how does it cut
20 together.

21 Q Did your opinion change about the value of 11:17
22 the film in the future, especially with the death of
23 Ms. Franklin?

24 A I thought it could be a film that people
25 would come back to again and again over time, so maybe

1 over time it could have a real value, particularly, in
2 home video and streaming. Although, streaming was not 11:17
3 that big a deal back then. So would it make a
4 fortune? So I was focused on would it make a fortune
5 in theaters. I just -- this is my own personal
6 opinion, that's all it is, and I'd been wrong many
7 times. I didn't think it would be a huge moneymaker 11:18
8 in theaters.

9 Q That's how you felt in 2015, correct?

10 A Yeah. But I knew it was a movie that was
11 important for the record of Ms. Franklin's work and
12 that as such, it would last forever because this was
13 her in her absolute prime.

14 Q Did the death of Ms. Franklin make the 11:19
15 film more valuable?

16 A Hard to say. I mean, obviously, that was
17 a worldwide event, her passing. Having her available 11:19
18 to market the movie would have really helped the
19 movie. So it certainly brought attention to the movie
20 and any attention is good for the distribution of the
21 movie.

22 Q So in this email you're just looking
23 basically at it as a feature film, not necessarily as 11:19
24 a stream film, correct?

25 A Yeah. I was just speaking in terms of how

1 would -- when you release a movie in theaters, then
2 there's the afterlife, pay television, free
3 television, you name it, streaming. At the time
4 DVD's.

5 And so I always thought that the -- this
6 movie would stand the test of time as a record of this 11:20
7 fantastic performance, but I didn't think it would
8 make that much money theatrically. I thought the
9 theatrical would be a fantastic ad for the
10 exploitation by other media.

11 And by making a lot of money, I mean, I
12 saw this movie having a real afterlife in media other
13 than theatrical and I thought the theatrical could
14 potentially catch fire because of its subject and
15 because of the performance but that the -- the less
16 than perfect execution of the production of the film, 11:21
17 not the post but the production, would tamp down the
18 theatrical value on the movie.

19 Q And what you're referring to, the original
20 production of the film, correct?

21 A Yeah.

22 Q That would be the piece done by
23 Mr. Pollack?

24 A Repeat again.

25 Q That would be the part done by

1 Mr. Pollack?

2 A Well, he didn't do it alone. He did it 11:21
3 with a number of cameramen and sound people and the
4 whole thing.

5 Q The original recording at the church?

6 A Yeah, the recording was done by a high-end
7 recording artist from Warner Records.

8 Q So at this time we're just -- where it 11:22
9 says, "the universe of money is quite limited," that
10 refers solely to feature film, not potential streaming
11 at that time?

12 MR. FRID: Objection. Misstates his testimony.

13 Go ahead, sir.

14 THE WITNESS: I think that it doesn't misstate
15 my testimony. My testimony was that the -- if it
16 wasn't clear, then I'll clarify it right now.

17 That the theatrical receipts would be 11:22
18 solid for a documentary, but documentaries don't
19 generally have huge amounts of money and this was not
20 produced in as good a fashion as other movies. But I
21 always thought it would have a long life in media
22 other than a release in theatrical venues. 11:23

23 BY MS. GALLAGHER:

24 Q Then it says, "Alan will share in that
25 fairly with everyone."

1 That was always Alan's position to you,
2 that he was willing to be fair with everybody?

3 A Yeah.

4 Q And then it says, "The material is
5 compelling." That is what you talked about before,
6 the material itself with Ms. Franklin singing and how 11:23
7 amazing this was, that part of it was always unique
8 and compelling, correct?

9 A This material makes you want to stand up
10 and shout. It's fantastic.

11 Q Then, if we look at next one down, which
12 is an email dated August 12, 2015 from Barry Tyerman 11:24
13 to Tom McGuire; Sydney Pollack, "Amazing Grace."

14 Do you see that one, Mr. McGuire?

15 A Yeah. Yeah, it's the email from Barry.

16 Q It says, "I understand from Warners that
17 you are representing Mr. Elliott and this project,
18 which frankly surprises me given the attitude and 11:24
19 disregard for contractual and creative rights he has
20 consistently and routinely exhibited. Contrary to
21 Mr. Elliott's assertion, he has no rights to either
22 the name, likeness, biography or results and proceeds
23 of services of Sydney Pollack or Aretha Franklin among
24 other essential clearances and he is about to step off
25 the deepest, darkest elevator shaft of his life."

1 When you received this email from
2 Mr. Tyerman, this tone of this email that Mr. Elliott 11:25
3 is about to step off the deepest darkest elevator
4 shaft of his life, did you feel that was a threatening
5 tone?

6 A Yes, it is on its face.

7 Q And was that Mr. Tyerman trying to assert
8 or insert himself in between Mr. Elliott and anybody
9 who wanted to potentially purchase this project?

10 MR. FRID: Objection. No foundation, calls for
11 speculation.

12 THE WITNESS: It's Barry being a bully. 11:25

13 BY MS. GALLAGHER:

14 Q And then the next email down is an email
15 date August 17, 2015 from Mr. Tyerman to Tom McGuire, 11:26
16 and it says, "Thanks, Tom. I realize that you may
17 have not have been privy to all of the agreements and
18 other commitments your client has made over the years
19 with respect to this project and then "reconsider." I
20 believe you will ultimately be made aware that the
21 standstill agreement with Ms. Franklin was in fact
22 entered into, among others. It goes without saying
23 that I have the utmost respect for you and WME and I'm
24 sure that you and your agency would not want to be
25 party to violation of these agreements."

1 Did Mr. Tyerman ever represent 11:27
2 Ms. Franklin, to your knowledge?

3 A I don't know. I don't think so, but I
4 don't know. Ms. Franklin was represented by other
5 lawyers and also by ICM.

6 Q And then it says, "As to direct 11:27
7 communications with our clients without debating your
8 ethical analysis, our clients have requested that
9 there be no direct communication and that everything
10 be routed through our offices."

11 Are you aware that Mr. Tyerman was trying
12 to insert himself between Alan and the Pollack girls
13 so Alan couldn't have any communication himself with
14 the Pollack girls?

15 A That's the way I read that paragraph,
16 yes.

17 Q And again, there's nothing wrong with
18 Mr. Elliott speaking to the Pollack girls, correct?

19 MR. FRID: Objection. No foundation, calls for 11:27
20 speculation.

21 THE WITNESS: I don't see anything wrong with
22 it.

23 BY MS. GALLAGHER:

24 Q There's no ethical or lawyer-client
25 relationship between Alan and the Pollack girls,

1 correct?

2 A I'm sorry, say it again.

3 Q Alan's not an attorney, so there's nothing
4 wrong with him speaking himself to the Pollack girls,
5 correct?

6 A No, I don't think so.

7 Q And this is another example of Mr. Tyerman
8 inserting himself in between parties that he thinks
9 might cut him out of the deal, correct?

11:28

10 A I think it's him attempting to insert his
11 presence in between Alan and third parties, yes.

12 Q If we go down to exhibit -- this is an
13 email dated August 17, 2015 from Barry Tyerman to Tom
14 McGuire.

11:29

15 Do you see this one, Mr. McGuire?

16 A Yeah, I'm reading it right now.

17 Q Okay.

18 A Okay.

19 Q And this is Mr. Tyerman saying to you and
20 to Alan Elliott that "Sydney Pollack accepts the
21 suggestion to take Mr. Pollack's name off the film,
22 including for the proposed screenings at Toronto.
23 Please have him cease any further use of Mr. Pollack's
24 name, performance or image and, without limiting the
25 generality of the foregoing, delete any and all visual

11:29

1 or other references to Mr. Pollack in and in
2 connection with the film."

3 That's Mr. Tyerman directive on behalf --
4 or that's what he wanted to happen, is he wanted
5 Mr. Pollack's name to be removed from the film,
6 correct? 11:30

7 A That's correct. Not only his name but he
8 appears in the movie as well.

9 Q If we go down to August 24, 2015 email
10 from Mr. Tyerman to Mr. McGuire, it's August 24 at
11 12:37 p.m. 11:30

12 A Okay.

13 Q I'm sorry, Mr. Tyerman, do you have to
14 leave -- you have to leave at 12 to 1?

15 A I have to leave from 12 to 1, yes.

16 Q I just wanted to make sure I didn't make
17 you late.

18 A I apologize to everyone for that.

19 Q No worries.

20 This is Mr. Tyerman to you regarding
21 "Amazing Grace" and it says, "Tom, just as a reminder,
22 this is the status quo. No rights have been granted
23 to use the name, likeness, performance or biography of
24 Sydney Pollack in connection with this project and
25 Mr. Elliott specifically agreed to take Mr. Pollack's 11:31

1 name off the film, of course, without prejudice to our
2 rights, positions and remedies. Anyone acting
3 inconsistently with this will be held accountable."

4 Was this Mr. Tyerman in your mind
5 threatening that anyone who tried to make any
6 reference to Mr. Pollack would be somehow held
7 accountable?

11:31

8 A That's what it says to me, yes.

9 Q And if we go down to the next one, August
10 24, 2015 at 1:05 p.m., this is again Mr. Tyerman to
11 you, Mr. McGuire, with regard to the "Amazing Grace."

11:32

12 It says -- again, it's repeating
13 Mr. Tyerman's demand that Mr. Pollack's name and
14 likeness be removed from the film, correct?

11:32

15 A I'm sorry, I was reading and I didn't hear
16 you.

17 Q Sorry. The August 24, 2015, 1:05 is again
18 Mr. Tyerman demanding that Mr. Pollack's name and
19 appearance be removed from the film, correct?

20 A It's not only that, there's other things
21 that he says, too. Obviously, it speaks for itself.

22 Q The last sentence says --

23 MS. GALLAGHER: If we scroll down to the second
24 page, please, Mr. Videographer --

11:33

25 BY MS. GALLAGHER:

1 Q -- "Please confirm that this has been
2 implemented and there shall not be any inference in
3 any discussions with any third parties that this is
4 anything but a project not authorized by or on behalf
5 of Mr. Sydney Pollack."

6 That's what Mr. Tyerman was, again, trying
7 to say to you, correct?

8 A It speaks for itself, yes.

9 Q Then we go down again to the next one,
10 August 26, 2015. This is Mr. Tyerman to Mr. McGuire 11:33
11 saying, "No mention of Sydney Pollack," in caps,
12 "ANYWHERE, (including publicity, promotion, etc.) and
13 no use of image."

14 Do you know why Mr. Tyerman was being so
15 insistent about this?

16 A I couldn't tell you.

17 Q Go down the next film -- I'm sorry, the
18 next one says, August 26, 2015. This is your response
19 and it says, "Hi Barry. Alan is pulling the directed
20 by credit to Sydney off of the film. He had planned 11:34
21 to give him a producer credit as well (Produced by
22 Alan Elliott, Sydney Pollack, and Jerry Wexler."

23 "Do you also want Alan to remove the
24 produced by credit?"

25 So Alan was -- Alan Elliott was intending

1 on giving Mr. Pollack credit for directing and
2 producing the film, correct?

3 A Alan wanted to give him credit for both,
4 yes.

5 Q And Mr. Tyerman was the one that was
6 blocking that?

7 A Well, he requested that Alan not, and Alan 11:34
8 agreed, according to this email, that he would pull
9 the director credit. I don't know frankly whether --
10 what the resolution was on the produced by credit.

11 Q And these emails are -- these emails are 11:35
12 being sent as the film is getting ready to be shown at
13 Telluride, correct?

14 A I don't recall if this is Telluride or
15 Toronto. I just don't recall.

16 Q But they were being sent --

17 A It's probably Telluride but to be -- I
18 don't recall exactly when relative to the festivals,
19 so I just don't recall. 11:35

20 MS. GALLAGHER: If we can scroll down,
21 Mr. Videographer, to -- it's an email dated Sunday,
22 September 13th at 2015. Go down a little bit more.
23 Okay. Stop there. Scroll up a little bit.

24 BY MS. GALLAGHER:

25 Q So this is an email dated September 12th,

1 2015 from Barry Tyerman to Mr. McGuire and it says,
2 "Aretha Franklin Documentary, 'Amazing Grace' Hosts
3 Secret Screening for Buyers/Variety."

4 Do you know what this refers to, this 11:36
5 screening for Buyers at Variety?

6 A This is a screening at Toronto, a secret
7 screening at Toronto that Alan did, I recall vaguely,
8 that he had such a screening. And Barry is informing
9 me as he states -- he's informing me what he states. 11:36

10 Q So Alan is trying to market the film to
11 some select buyers like in a smaller --

12 A Yeah, I don't know exactly where he did
13 this but there are screening rooms in Toronto that he
14 could have rented.

15 Q And what Mr. Tyerman says here is "I trust 11:37
16 you would be advising potential buyers that you have
17 no Sydney Pollack rights and in fact that there are
18 pending claims of which everyone should be placed on
19 notice."

20 So at this time with Mr. Tyerman, who is
21 an attorney sending you this email, did you feel that
22 you had an obligation to notify potential buyers of
23 this alleged pending claim that Mr. Tyerman is making?

24 A Well, I wanted the other lawyers who were
25 involved in this to weigh in and -- but this is -- 11:37

1 this is obviously a shot across the bow, and I felt
2 that I had to tell everyone on Alan's team about the
3 content and existence of this email, yes.

4 Q And why did you feel you had to tell
5 everyone on Alan's team about the contents of the
6 email?

7 A Because it was a direct threat or an 11:38
8 indirect threat, I guess, that if we did something,
9 then something else would happen. So if we didn't
10 advise potential buyers, maybe he would make another
11 claim. It was hard to say exactly what the result of
12 our not telling people would be, but it was just
13 another -- yet another threat.

14 Q And when it says from Tyerman here on 11:39
15 September 12th, 2015, "There are pending claims," do
16 you know what Mr. Tyerman is referring to about
17 pending claims?

18 A I couldn't tell you exactly but he had
19 made statements indicating -- over the prior month or
20 two or even longer perhaps that his client had rights
21 and we didn't, we didn't control those rights. We 11:39
22 didn't agree with that, but he had made those
23 threats.

24 Q And those threats by Mr. Tyerman affect
25 the ability to market the film, correct?

1 A Yes.

2 Q And they negatively impact the ability to 11:39
3 market the film, correct?

4 A Well, we had to disclose that there was a
5 potential rights issue. We couldn't close a deal
6 without disclosing that.

7 Q So these threats by Mr. Tyerman that
8 Mr. Pollack had the rights and some pending claims
9 would put a cloud on the title of the film, correct?

10 A Yes.

11 Q And the cloud on the title of the film
12 affects not only the ability to sell it but the value 11:40
13 of the film, the potential value, correct?

14 A Yes.

15 Q And it affects the value of the film in a
16 negative manner, correct?

17 A It affects it negatively, that's
18 correct.

19 Q And it could prevent potential purchasers
20 from putting up money for the film if there's a cloud
21 that they don't want to get involved with or have to
22 deal with, correct?

23 MR. FRID: Objection. Calls for speculation.

24 Go ahead.

25 THE WITNESS: That was the point of Barry's

1 emails, I believe, was to affect the price and cause
2 buyers to go away.

11:40

3 BY MS. GALLAGHER:

4 Q So based your experience both as a lawyer
5 and in your experience at 18 months at Warner Bros.,
6 you felt what Mr. Tyerman was trying to do was
7 interfere with the sell of the film?

8 A He was trying to assert rights that I
9 wasn't at all sure he had. And in doing so, he was
10 affecting the value of the property, that's correct.

11:41

11 Q And if we look at the bottom email, this
12 is an email from Todd Musburger to Barry Tyerman dated
13 September 13, 2015. It says, "Barry, I'm one of the
14 attorneys working with Alan Elliott on the Aretha
15 Franklin concert film project. I have been asked by
16 our group to discuss with you the claim that you are
17 making in reference to your client, the Estate of
18 Sydney Pollack. I know this is not an opportune day
19 to engage you and you might feel that you have fully
20 explained your position several times before, however,
21 I come to you seeking some guidance as to the nature
22 and validity of your claim.

11:41

11:42

23 "I have reviewed the emails you have
24 written to Tom McGuire and Alan Elliott. I know also
25 at your request the Pollack name has been removed from

1 the movie. I studied the Quit Claim Deed from Warner
2 Bros. and the existing paperwork concerning
3 Mr. Pollack's payment for the work he performed on
4 this project. I want to accord you every respect and
5 I feel that there must be something in your possession
6 that we have not seen. It would be of genuine
7 assistance to all of us if you could provide us the 11:42
8 basis for your claim with the documentation you are
9 relying on. I assure you I will give the matter the
10 priority it deserves. As we say on occasion, time is
11 of the essence. Cordially, Todd."

12 Is Todd Musburger one of the people on the
13 team that you mentioned that you had provided that
14 prior email to with the --

15 A Yes.

16 Q -- with Mr. Tyerman saying there were
17 pending claims and everybody should be put on
18 notice?

19 A Yes.

20 Q What does Mr. Todd Musburger do? 11:43

21 A He's a litigator and lawyer in Chicago, I
22 believe.

23 Q And where he says, "I want to accord you
24 every respect and I feel there must be something in
25 your possession we have not seen, it would be of

1 genuine assistance to all of us if you could provide
2 the basis for your claim with the documents you are
3 relying on."

11:44

4 Did Barry Tyerman ever provide any
5 document that showed that Mr. Pollack had any claim in
6 this movie?

7 MR. FRID: Objection. Calls for a legal
8 conclusion, no foundation.

9 THE WITNESS: I did not see any documents that
10 Barry sent either me or anyone else on the Elliott --
11 Elliott side indicating that Barry had rights if he
12 was -- that Sydney retained rights. There may be such
13 documents. I've never seen them.

11:44

14 MS. GALLAGHER: If we could scroll down,
15 Mr. Videographer, down to the March 14, 2016, letter
16 which is part of Exhibit 2.

11:46

17 BY MS. GALLAGHER:

18 Q This is a letter from Linda Burrow. I
19 think you mentioned this earlier when we were talking
20 about the -- explaining the background of how we got
21 to this point. You mentioned that there was a letter
22 from Ms. Burrow setting forth her response to what
23 Mr. Tyerman was claiming, correct?

24 A Yes.

25 Q Did you work with Ms. Burrow on this

1 letter?

2 A I believe I saw it before it went out, 11:47
3 yes.

4 Q Can you -- I'm going to give you some time
5 to read this letter and then I'm going to ask you some
6 questions about it. 11:47

7 A Can you scroll down, please. 11:47

8 Next page, please. 11:49

9 Thank you. I've read this letter.

10 Q I'm going to ask you -- so it says at the
11 beginning that according to the -- at the very top, if
12 we go back up again.

13 To Mr. Tyerman, it says, "We understand
14 that you represent Mr. Pollack's estate, which you
15 believe has claims against the commercial exploitation 11:49
16 of the film. Specifically, based on your email
17 correspondence with Mr. Elliott and his
18 representative, it appears that you are contending
19 that Mr. Pollack's estate may hold a copyright
20 interest in the footage of the film and that the use
21 of Mr. Pollack's name, likeness or biography in
22 connection with the film violates his posthumous right
23 of publicity. The purpose of this letter is to
24 respond to these potential legal claims which, as set
25 forth below, we do not believe to be well founded."

1 You reviewed this letter and you agreed
2 with Ms. Burrow's assessment that Mr. Tyerman's claim
3 on behalf of the Pollack estate were not well founded,
4 correct?

5 A I did not research any of the material
6 referenced in this letter. For example, I did not
7 look at any of the cases. I accepted Ms. Burrow's
8 assertion that these cases stood for the propositions
9 that she says in her letter, but based on that
10 assumption, I agree with her conclusion.

11:50

11 Q It says, "First, any copyright claim
12 Mr. Pollack's estate asserted in the film would almost
13 certainly fail. As you are aware, the film was
14 created under the now repealed Copyright Act of 1909."

11:51

15 Is that your understanding that the
16 Copyright Act of 1909 was repealed?

17 MR. FRID: Objection. No foundation, calls for
18 a legal conclusion.

19 THE WITNESS: I'm not enough of a lawyer to
20 answer that question. I don't know that law well
21 enough. I accept what -- that Linda Burrow is a
22 copyright lawyer and she knows this area of the law,
23 but other than that, I have no independent
24 understanding of whether that's true or not. I would
25 trust Ms. Burrow, though.

11:51

1 BY MS. GALLAGHER:

2 Q It says, "Assuming the film was
3 commissioned by Warner Bros., which appears to have
4 been the case, it would thus likely be considered a
5 work made for hire."

6 Are you familiar with the term work made
7 for hire?

8 A I am but -- yes, I am.

9 Q And you don't -- would you agree with
10 Ms. Burrow's analysis with regard to that as well? 11:52

11 A I did not question what she wrote in this
12 letter -- anything that she wrote in this letter, so
13 yes.

14 Q Did you agree with what she wrote in this
15 letter?

16 MR. FRID: Objection. Asked and answered.

17 THE WITNESS: Did I agree with everything she
18 wrote in this letter? I agree with her analysis, but
19 I don't have an independent -- I did not independently 11:52
20 do the legal research to support that agreement. I
21 trusted her as a lawyer and I believe that she is
22 correct.

23 BY MS. GALLAGHER:

24 Q Sorry.

25 A But I did not do any independent research

1 to confirm that belief.

2 Q Okay. I understand what you're saying.
3 You're saying you didn't actually yourself look at
4 these cases but you relied on Ms. Burrow who -- that's 11:53
5 her expertise, working in this area of copyright,
6 correct?

7 A Yes.

8 Q And after reviewing this letter, you as an 11:54
9 attorney and attorney in the entertainment industry
10 agreed based on Ms. Burrow's analysis of the case and
11 the law that the claims that Mr. Tyerman was making at
12 this point in time were unfounded, correct?

13 MR. FRID: Objection. No foundation, calls for
14 a legal conclusion, calls for speculation, also
15 argumentative. 11:54

16 THE WITNESS: I believe that Ms. Burrow's letter
17 is an accurate statement of the law. I don't know if
18 there were other documents or other bases that
19 Mr. Tyerman might have had that he did not share with
20 anyone. But I agreed with the -- her argument in this
21 subject to what I said previously about not looking at 11:54
22 the -- not making the actual analysis myself.

23 BY MS. GALLAGHER:

24 Q And you and Mr. Musburger were trying to
25 get to the bottom of what Mr. Tyerman claims on behalf

1 of Mr. Pollack were so that you could address them and
2 move forward with marketing your film, correct?

3 A Yes.

4 Q And what you wanted to do was to find out
5 the basis, whatever documentation he had, to prove any 11:55
6 claim by Mr. Pollack so that you would know whether or
7 not this claim that Mr. Tyerman was making in these
8 emails was true or not true, correct?

9 A Yes, we thought that would assist a
10 negotiation between the parties.

11 Q And you and Mr. Musburger were always open 11:55
12 and inviting Mr. Tyerman to provide whatever proof and
13 what other law he was relying on for his alleged claim
14 on behalf of Mr. Pollack, correct?

15 A Mr. Musburger's email to him said it
16 exactly as I would have said it, the one that we read
17 previously.

18 Q Did Mr. Tyerman ever sit down with you and 11:56
19 say, Tom, here's the evidence that I'm relying on,
20 here's the law that I'm relying on to show that I have 11:56
21 a valid argument in my claims I'm making with regard
22 to Mr. Pollack?

23 A Not to my recollection.

24 Q Did Mr. Tyerman continue to assert these
25 vague claims that there were some legal claim on

1 behalf of Mr. Pollack and that he continued to
2 interfere with Mr. Elliott's attempts to sell this
3 film?

4 MR. FRID: Objection. Question is compound. 11:57
5 It's also argumentative.

6 THE WITNESS: Barry continued to send emails.
7 In my recollection, he continued to send emails and
8 make statements consistent with the positions that he
9 had taken, that his client owned rights in the movie
10 that we had not acquired.

11 BY MS. GALLAGHER:

12 Q And these continued claims that 11:58

13 Mr. Tyerman made after Ms. Burrow sent this letter to
14 him in 2016 continued to affect the value of the
15 Aretha Franklin film, correct?

16 MR. FRID: Objection. The question is compound
17 and argumentative and also has no legal foundation.

18 THE WITNESS: All of the claims that Barry made 11:58
19 on this picture had an affect on the monetary value of
20 the picture.

21 BY MS. GALLAGHER:

22 Q And had a negative affect on the monetary
23 value?

24 A Had a negative monetary affect on the
25 picture.

1 Q He didn't stop making these claims after
2 Ms. Burrow sent this letter to him informing him that
3 his claims were not well founded, correct?

4 A I'm sorry, could you repeat the question?

5 Q Thank you. He did not stop making these
6 claims on behalf, allegedly, of Mr. Pollack even after 11:58
7 Ms. Burrow sent this letter on March 14, 2016, telling
8 him his claims were unfounded, correct?

9 A I don't recall if he continued to send
10 emails. I believe he did, but I don't recall exactly
11 what he would have sent after receiving this letter.
12 But I know he did not rescind the positions that he
13 had taken previously.

14 MS. GALLAGHER: We can -- we'll take a break
15 because I don't want to keep you. I know you need to 11:59
16 leave at 12:00. If you're done at 1:00, do you want
17 to come back at 1:15 to give you a little -- do you
18 have to eat something between now and then?

19 THE WITNESS: No, I'm going to eat something
20 during my next meeting. I'll be ready -- 1:05, if
21 that's all right.

22 MS. GALLAGHER: That's fine. Whatever works for
23 you.

24 MR. FRID: Counsel, how much longer do you have?

25 MS. GALLAGHER: Probably about an hour.

1 MR. FRID: Mr. McGuire, you'll have time for my
2 examination as well this afternoon?

3 THE WITNESS: I have until 3:00. 11:59

4 MR. FRID: Okay. Well, I'd like to be able --

5 THE WITNESS: I'm sorry. I've got to leave.
6 Goodbye.

7 MR. FRID: Okay. Go ahead.

8 THE VIDEOGRAPHER: All right. The time is 12:00
9 p.m. We are going off the record.

10 (Lunch recess was taken.) 13:02

11 THE VIDEOGRAPHER: The time is 1:02 p.m. We're 13:02
12 going on the record.

13 BY MS. GALLAGHER:

14 Q Thank you, Mr. McGuire for joining us
15 again. Are you feeling okay?

16 A I'm okay. Thank you.

17 Q So William Morris agency was -- itself
18 was -- were you representing Alan with regard to
19 trying to sell the Aretha Franklin film?

20 A Yes.

21 Q Okay. And you hired Linda Burrows because
22 of the threats and the cloud that Mr. Tyerman had
23 placed on the title, correct? 13:03

24 MR. FRID: Objection. Compound.

25 Go ahead. Go ahead.

1 THE WITNESS: I believe Mr. Elliott hired Linda
2 at my recommendation.

3 BY MS. GALLAGHER:

4 Q Okay. But it was because of these issues
5 that Mr. Tyerman was claiming about the film?

6 A Yes. Yes.

7 Q When we last were looking at the March
8 2016 letter from Ms. Burrows, who made the -- after 13:03
9 looking at the law and the case law, made the
10 determination that Mr. Tyerman's claims that Sydney
11 Pollack had some type of copyright claims that were
12 unfounded, correct, that's where we left off?

13 A The letter speaks for itself.

14 Q And after that letter was written,
15 Mr. Tyerman continued to insert himself and make
16 claims that Sydney Pollack had some type of financial
17 interest in this, correct? 13:04

18 A That's my recollection. I don't have an
19 independent recollection of the timing of all of this
20 but that is my recollection. I, for example, don't
21 know where we were with Lions Gate at this particular
22 moment.

23 MS. GALLAGHER: So if we go -- Mr. Videographer,
24 we're going to scroll down to the very bottom of
25 Exhibit Number 2. And we're going to go up to the 13:05

1 email that's dated May 6th. There we go. These are a
2 little bit of out of order, I apologize. I've been
3 dealing with this struggle. It's driving me crazy.

4 BY MS. GALLAGHER:

5 Q May 6, 2016, it's from Mr. McGuire to
6 Barry Tyerman, and it says, "Still trying to figure
7 out what you want to make a deal work on Aretha. You
8 are the last piece, and although I think we differ on
9 the legalities of it all, there are a lot of people
10 who have worked hard to get this film done. It would
11 be a shame to take a blowtorch to all their work.
12 Let's figure out a deal."

13:06

13 Does this refresh your recollection that
14 these were issues, discussions that you were still
15 having with Tyerman with regard to the Lions Gate
16 proposed deal?

17 A Okay. Is this in Lions Gate? I don't
18 recall.

19 Q I think it's mentioned in here. Tyerman
20 responds, "We will discuss this with the Pollacks and
21 try to suggest something which gives you the rights
22 you are seeking but within the finances as they exist.
23 Barry."

13:06

24 And then you say on May 9, if we go up a
25 little bit more, "If we could get something in the

1 next 24 hour, that would be okay. Aretha is making
2 noises. Everyone else is trying not to lose faith."

3 May 11th, the next one up. It says, "In
4 deference to Aretha (and her apparent desire to clear
5 a path for distribution of this material), subject to
6 working through other appropriate terms and
7 conditions, (approval of the finished program,
8 appropriate approvals of the use of Sydney Pollack's
9 name, photograph, likeness and biographical material),
10 we'd be willing -- we would be prepared to grant the
11 necessary rights for sums payable through a collection
12 account equal to 50% of the gross revenue from
13 licensing and other exploitation of the program, after
14 set aside of the guaranteed Aretha Franklin payment,
15 and after deduction 'off the top' of payment of
16 contingent compensation to Aretha Franklin. This
17 obviously is significantly less than we had originally
18 sought and then what we believe is fair compensation
19 for the Sydney Pollack rights, but we want to 'cut to
20 the chase' as there appears to be a narrow window
21 trying to bring this all together and avoid litigation
22 and project going 'back on the shelf'."

13:06

13:07

23 So this is Mr. Tyerman saying to you they
24 wanted a payment of -- is it 50 percent of the gross
25 revenue from licensing and other exploitation of the

1 program after set asides for Aretha? Is that 50
2 percent of the entire amount? 50 percent of Alan's
3 share? Do you know what that refers to.

13:07

4 A The way I read this -- of course, this
5 speaks for itself, but the way I read this with my
6 experience as an entertainment lawyer is that he wants
7 a collection account set up into which all gross
8 revenues are paid and he wants 50 percent of all such
9 gross revenues after a guaranteed Aretha Franklin
10 payment, which I recall was a million dollars,
11 something like that, and after deduction of any
12 contingent compensation paid to Aretha's estate.

13:08

13 Q And then who would get the other 50
14 percent?

15 A That would be retained by Alan, and as
16 Alan has directed, Alan had made a number of other
17 deals with third parties for pieces of a back end
18 that -- so Alan would end up with very little.

13:08

19 Q And it says that this is significantly
20 less than we had originally sought. Do you remember,
21 was he -- was Tyerman looking for 100 percent
22 before?

23 A I have no idea what he was originally
24 looking for. I don't think he ever said.

25 Q And then at the next one up you go, "Just

1 so that I'm clear, no ability for Alan to recoup any 13:09
2 costs other than costs related to Aretha? No Warner
3 Bros. costs, no costs to complete the film?"

4 So you're asking Mr. --

5 A Yes.

6 Q -- Tyerman -- just saying that Alan
7 doesn't get any of the costs that he puts into there,
8 correct?

9 A Correct, that's what I was asking him
10 about.

11 Q Do you know how much costs Alan had put
12 into the film at this time?

13 A I don't know. It was significant.

14 Q And what's significant to you, millions?

15 A It was millions of dollars but I don't in 13:09
16 fact know.

17 Q That's fine.

18 A I knew at one time. I don't know now.

19 Q If we go up to the next one, May 11th. It
20 says from Tyerman, Wednesday, May 11th, "I think we
21 could agree to carve out a corridor for the mutually
22 approved direct prospective incremental third-party
23 costs of doing whatever technical work would be
24 required to deliver the film to Lions Gate. I think
25 you said that number was approximately \$400,000, which

1 sounds very high from my experience in the documentary 13:10
2 world."

3 This is -- this refers Lions Gate to this
4 deal that was being discussed in this email that it's
5 the Lions Gate deal, correct?

6 A Yeah.

7 Q And Tyerman was insisting that he have 50
8 percent of the Lions Gate profits, correct?

9 A 50 percent less those two permitted
10 deductions, and this email -- the two permitted
11 deductions being the guaranteed payment to Aretha's
12 estate and the contingent compensation payable to 13:10
13 Aretha's estate. And this email was suggesting that
14 maybe he would agree to allowing Alan to deduct
15 another 400 -- or he would discuss at least -- direct
16 out-of-pocket third-party costs less than 400 grand.

17 Q And did this insistence by Tyerman to 13:11
18 having this 50 percent interfere with the ability to
19 close the Lions Gate deal?

20 MR. FRID: Objection. Calls for a legal
21 conclusion.

22 THE WITNESS: Did it impede the Lions Gate?
23 Yes, because --

24 BY MS. GALLAGHER:

25 Q Yes.

1 A -- Alan needed to make some money on this,
2 too, and this was going to severely impact Alan's
3 ability to make money on it. The fact of the
4 threatened litigation was also weighing on Lions Gate
5 as well.

13:11

6 Q And you had to disclose where Tyerman here
7 says, he threatened litigation, you had to disclose
8 that to Lions Gate as well?

9 A We disclosed that.

10 Q And you're under the obligation to
11 disclose it, correct?

12 MR. FRID: Objection. No foundation, calls for
13 a legal conclusion.

14 THE WITNESS: I don't know whether I had a legal
15 obligation to, but that's the way I do my business. I
16 disclose anything material like that.

13:12

17 BY MS. GALLAGHER:

18 Q Anything that can cloud the title or
19 possibly result in litigation, correct?

20 A Yeah.

21 MS. GALLAGHER: Okay. And then if we look at
22 Exhibit Number 4, Mr. Videographer, scroll up a bit.

23 THE VIDEOGRAPHER: Sorry, what was that?

24 MS. GALLAGHER: Exhibit 4, it's a separate
25 exhibit that I emailed you.

13:12

1 THE VIDEOGRAPHER: Oh, I have to download that.
2 I didn't see that come up.

3 BY MS. GALLAGHER:

4 Q Mr. McGuire, is it your custom and
5 practice that when there's threats of this nature made
6 that cloud the title like Mr. Tyerman was making and
7 threats of litigation, you disclose that to every
8 potential buyer, correct?

9 A Yes.

10 Q And you could be liable if something
11 happens and you don't disclose it, correct?

12 A Of course.

13:13

13 MR. FRID: Objection. No foundation, calls for
14 a legal conclusion.

15 THE WITNESS: I don't think I'd personally be
16 liable. I don't think it's a very ethical thing to do
17 but I don't -- aside from that, I don't have an
18 opinion.

19 (Exhibit 4 was marked
20 for identification.)

21 BY MS. GALLAGHER:

22 Q Okay. What we're looking at Exhibit 4 is
23 a June 17, 2016 letter from Ms. Burrows to Mr. Tyerman
24 and it looks like this is after the Lions Gate deal,
25 back and forth, and it says, "This letter follows up

13:14

1 on my March 15, 2016 letter to you and further
2 responds to your various demands to Tom McGuire at WME
3 regarding the documentary film 'Amazing Grace.' In
4 the four months since my letter and despite
5 Mr. McGuire's repeated requests, you have yet to
6 identify any legal or contractual rights held by your
7 client that would in any way be affected by commercial
8 exploitation of the Film."

9 Do you agree with Ms. Burrow's statement 13:14
10 there?

11 MR. FRID: Objection. No foundation, calls for
12 a legal conclusion.

13 THE WITNESS: I agree that he didn't identify
14 any legal or contractual rights.

15 BY MS. GALLAGHER:

16 Q And this had been going on since March of
17 2016. Now it's June of 2016. Would this interfering
18 with your ability to market the film?

19 A Again --

20 MR. FRID: Objection. No foundation. Go
21 ahead.

22 THE WITNESS: I would need to know where we were 13:14
23 on the Lions Gate deal. I don't know if the deal had
24 cratered at this point or not. This was certainly a
25 major, major issue in that deal.

1 BY MS. GALLAGHER:

2 Q It was a major issue in the Lions Gate
3 deal, Mr. Tyerman's claims of potential litigation?

4 A Yes. Yes. They did not want to be in
5 litigation on this picture.

6 Q And then if we go down to the second page, 13:15
7 it says, "Although Mr. Elliott has no obligation to
8 compensate Mr. Pollack's estate whatsoever, he also
9 recognizes that, if Warner Bros. had never engaged
10 Mr. Pollack, the Film never would have been made.
11 Mr. Elliott is therefore prepared to compensate
12 Mr. Pollack's estate either through a lump sum of
13 \$100,000 to be paid from Mr. Elliott's share of any
14 minimum guarantee paid by the Film's distributor or
15 through 5 percent of the Film's net proceeds."

16 Is that an offer that you and Mr. Elliott 13:16
17 and your team had agreed to make to try to stop
18 Mr. Pollack from these claims that were interfering
19 with the ability to get this film out there?

20 A I don't recall the back and forth but by
21 the way Ms. Burrow wrote this letter, I presume that's
22 something we all discussed before she made that
23 offer.

24 Q Were you involved at all with any 13:17
25 negotiations with Concord?

1 A I don't believe so, and I don't know if
2 Liesl Copland was herself. She may have been. I
3 don't know.

4 Q And I'm going to go -- I don't want to
5 consume all of your time, so I'm going to fast forward
6 to when Ms. Aretha Franklin passes away in August of
7 2018. Okay?

13:17

8 A Okay.

9 Q At that point in time was there -- at that
10 point in time was there a renewed interest in this
11 documentary?

12 A I believe so, yes. I don't recall with
13 which distributor, but I believe there was renewed
14 interest, yes.

15 MS. GALLAGHER: And if we can go to -- I think
16 the easiest way to do this, Mr. Videographer, I
17 apologize, we're going to look -- can you search for
18 September 26, 2018?

13:18

19 BY MS. GALLAGHER:

20 Q Do you remember a grant --

21 THE VIDEOGRAPHER: Exhibit 4?

22 MS. GALLAGHER: September 26, 2018.

23 THE VIDEOGRAPHER: Is that within Exhibit 4?

13:19

24 MS. GALLAGHER: I'm sorry. It's within Exhibit
25 2.

1 THE VIDEOGRAPHER: Got it. Okay.

2 I see September 27th, but I don't see a
3 26th.

4 MS. GALLAGHER: It should go -- hold on, let's
5 see. There it is right there. You just had it.
6 Scroll down just a little bit. Next page.

7 BY MS. GALLAGHER:

8 Q So this is an email from Alan Elliott 13:20
9 dated Wednesday, September 26, 2018 to Graham Taylor
10 and Tom McGuire and other people involved. It says,
11 "Hey Graham and Tom. Tom and I chatted tonight and
12 I'd like to get together ASAP to discuss options.
13 Please me know when a good time is."

14 Does this refresh your recollection that
15 in September 26, 2018, Graham Taylor after Aretha
16 Franklin passed away made an offer for \$10 million for
17 the film? 13:21

18 MR. FRID: Objection. No foundation.

19 THE WITNESS: I'm sorry. I lost my video. Let
20 me try to jump back on in a second. Okay. I'm back
21 on.

22 And the question is do I recall -- 13:21

23 BY MS. GALLAGHER:

24 Q Mr. Graham Taylor making an offer of \$10
25 million for the film after Aretha Franklin died?

1 A I know -- I wasn't present when Graham
2 actually made the offer, so I don't know exactly what
3 he said, but I do know that Alan called me excited and
4 said that Graham had just made a \$10 million offer.
5 But I was not present when Graham spoke to Alan
6 directly.

13:22

7 Is that an email directly above the email
8 I'm looking at? Is that an email with that \$10
9 million offer? No. Okay.

13:22

10 Q And if we go down to the next email, which
11 is dated October 30th, 2018, it's from Tyerman to
12 Mr. McGuire regarding the Aretha film. It says, "The
13 proposed arrangement for the acquisition of the Sydney
14 Pollack rights is not acceptable. In consideration,
15 among other things, of Mr. Pollack's directing the
16 original footage and supervising various preproduction
17 activities, including with your client, as well as the
18 as yet unauthorized extensive use of his name and
19 celebrity to promote, market and sell the project, we
20 feel strongly that under no circumstances can the
21 arrangement include fees and contingent participations
22 of no less than those received by Alan Elliott and/or
23 any entities on his behalf.

13:23

24 "I look forward to hearing from you and in
25 the interim reserve all rights, positions and

1 remedies, including, without limitation, claims
2 against any individuals or entities in the chain of
3 promotion, sale, distribution or exploitation of the
4 project for any past or future infringement of our
5 clients rights."

6 So in October 30th, 2018, despite the two 13:24
7 Linda Burrow emails that we looked at, one in March
8 and one in June of 2016, Mr. Tyerman is still trying
9 to make a claim and to interfere with the sale of this
10 project, correct?

11 MR. FRID: Objection. Argumentative, misstates
12 the evidence. No foundation.

13 THE WITNESS: He never responded to Linda's
14 letters.

15 BY MS. GALLAGHER:

16 Q And he never -- 13:24

17 A To the best of my knowledge.

18 Q So he never responded and said, Here's my
19 right. This is why I believe I'm acting in good
20 faith?

21 A That's the extent of my knowledge.
22 Whether he did to someone else, I don't know, but I
23 don't believe he did, at least anyone else in Alan
24 Elliott's universe. He never did to me.

25 Q And he's still continuing two years later

1 in 2018 to assert claims and to try to get 50 percent
2 of the proceeds, correct?

13:25

3 MR. FRID: Objection. Argumentative, improper
4 question, no foundation.

5 Go ahead.

6 THE WITNESS: He's trying to tie the Pollack
7 estate compensation to whatever Alan makes from the
8 picture as well.

9 BY MS. GALLAGHER:

10 Q And you saw that Alan had a quitclaim deed
11 for the rights from Warner Bros., correct?

12 A Yes, I assisted Alan in negotiating
13 that.

13:25

14 Q Pollack -- Pollack and Tyerman never had
15 any such quitclaim for the rights, correct?

16 A I don't know. I don't believe so.

17 Q They never showed you one, correct?

18 A They never showed me one. They told me
19 that they gave me all the documentation that they had
20 internally relating to the documentary. Obviously,
21 they didn't.

13:26

22 Q If we look on October 29th at 2:56, the
23 email below that is an email from Alan to Barry
24 Tyerman with cc to you, and it says, "Tom asked me to
25 send this as he is at the opera and Todd Musburger is"

1 -- I apologize, that's kind of squished, but it says, 13:26
2 "back end:

3 "AE shall pay the Estate Ten Percent of
4 AE's net proceeds from all forms of exploitation of
5 the Film throughout the Territory. Net proceeds shall
6 mean the sum remaining following payments to the third
7 parties and who have a valid prior financial interest
8 in the Film and a full recoupment of the budget."

9 So that's Alan offering to pay the estate
10 10 percent of Alan's percentage after he pays all the
11 other third parties who have a financial interest,
12 correct? 13:27

13 A Yeah.

14 MS. GALLAGHER: And, Mr. Videographer, can you
15 scroll down. I'm going to have you scroll down to an
16 email that starts November 15th, 2018.

17 BY MS. GALLAGHER:

18 Q And do you remember there being a
19 screening of the film for NEON and A24 and Netflix and
20 MGM? 13:29

21 A I have a vague memory of this. I don't --
22 yes, I have a vague memory of this, yes.

23 Q Okay. If --

24 A I remember dealing with Tirrell and Joe
25 Wolf and Joe Boyd on those issues.

1 MS. GALLAGHER: If we scroll down a little bit
2 more, Mr. Videographer, I'll tell you when to stop.
3 There it is.

13:30

4 BY MS. GALLAGHER:

5 Q It says To: Liesl Copland. Subject: Re
6 Lions Gate/Codeblack. Do you know what that refers
7 to?

8 A I don't. This was a -- a division of
9 Lions Gate that released movies. So it is a separate
10 division of Lions Gate, I believe. That's my memory.

13:31

11 Q And it says, "While I have you all, I'm
12 expecting offers in the next 24 hours from NEON, A24,
13 Netflix, MGM/Orion at a minimum."

14 Does that refresh your recollection that
15 that's after a screening that happened in 2018?

16 A Say again?

17 Q Does that refresh your recollection that
18 this was after a screening that happened in 2018 of
19 the film?

13:31

20 A Yes.

21 Q And if we scroll down one more, it's dated
22 November 15, 2018 from Tirrell Whittley to Liesl
23 Copland. And it says, "Liesl, I received a call from
24 Jeff Clanagan of Lions Gate/codeblack last night. He
25 mentioned that they had screened the film yesterday

1 but had several outstanding questions/concerning
2 regarding the overall legal status and clearances with
3 the film. I assured him that the Franklin Family is
4 fully on board and that the injunction is no longer in
5 effect."

13:31

6 So between the time that we last looked in
7 2016 and the passing of Aretha Franklin in 2018, the
8 issues with the Franklin Family had been worked out,
9 correct?

10 A That's what this says. That's consistent
11 with my memory, but I don't know specifically what
12 date that was worked out.

13 Q But this says here the Franklin Family is
14 fully on board and the injunction is no longer in
15 effect; is that correct?

13:32

16 A That's what it says, correct. And that's
17 consistent with my memory. I just don't know exactly
18 when that happened. I presume it happened sometime in
19 November of 2018.

20 Q Okay. Then it says, "We talked about
21 Sydney Pollack's status and that we are respecting the
22 specific request of the estate to remove his name from
23 the project.

24 "Can you and/or Tom McGuire please follow
25 up with Jason Constantine today to help level set

13:32

1 their legal concerns?"

2 So now in November 15 of 2018, Tyerman and
3 his allegations that there are some type of claim are
4 still interfering with the inability to market this
5 film, correct?

6 A Yes.

7 Q Do you recall having a conversation with
8 Jason Constantine about this?

9 A I may have had conversation with his
10 lawyer, his in-house lawyer, but I also may have had
11 conversation with Jason. I simply don't recall.

12 Q But you had to have conversations with
13 potential buyers about Tyerman's claims which were
14 still affecting the ability to sell this film,
15 correct?

13:33

16 A Yes. I'll note for the record that one
17 month later I left WME, so I was no longer part of
18 this.

19 Q Okay. And who is Tirrell Whittley?

20 A He was someone who was a marketing person,
21 a very successful marketing person who was helping
22 Alan sell this project.

13:33

23 MS. GALLAGHER: If we scroll up,
24 Mr. Videographer, to the next emails, please. We went
25 through that one. Keep on going up. Okay. You can

13:34

1 stop there.

2 BY MS. GALLAGHER:

3 Q On this one it says, "I was under the
4 impression that we wanted to re-calibrate and simplify
5 the Waterfall, not that we would do something 13:34
6 separately. I know that WME is talking with ESSENCE
7 as well and it was a discussion that I had with them
8 before reaching out to ESSENCE directly. Basically,
9 they brought the idea of ESSENCE to me and I took the
10 lead based on my relationship. I requested the
11 initial waterfall from WME but it's fine if we want to
12 provide something separate. I would want to
13 respectfully inform WME of that approach. I will call
14 you when I land and we can figure out the best -- next
15 best step here. I'm game for whatever, but would like 13:35
16 to respond quickly to ESSENCE."

17 Do you remember what ESSENCE's interest
18 was or what its involvement was going to be?

19 A I don't. It makes sense. I just -- I
20 have no idea -- no memory of what ESSENCE's
21 relationship was going to be. It might have been as
22 some kind of sponsor.

23 MR. DOUGLAS: Maryann, what's the date and time
24 of that email, please?

25 MS. GALLAGHER: November 15, 2018 at 7:09.

1 MR. DOUGLAS: Thank you. 13:35

2 BY MS. GALLAGHER:

3 Q Okay. This one is from Mr. Joseph Woolf
4 to Tirrell Whittley. Who is Joseph Woolf, W-o-o-l-f?

5 A I don't recall.

6 Q It's dated November 15th, 2018 at 11:03.
7 It says, "Okay. Understood and agreed. As a recap to
8 the group, the question boils down to is (1) do we
9 want to follow WME's approach (three separate tranches
10 2 debts, 1 equity). Do you know what that refers 13:36
11 to?

12 A I don't.

13 Q "Or (2) propose something else. Tirrell,
14 Rob and I had discussed incorporating a
15 marketing/sponsorship roll into the proposal and
16 eliminating the role as lender. This would convert
17 Essence's recoupable loan to a non-recoupable
18 marketing spend and I believe may be easier to
19 negotiate and contract. When we spoke to WME on
20 Sunday, Liesl believed the sponsor value for a film
21 like this would be between \$500,000 to \$1 million. On 13:36
22 the equity side, WME suggested 2.5 million for a 15
23 share or an implied 16.67 million equity value."

24 So for that valuation on the equity side,
25 do you know where that comes from, the 2.5 million for

1 a 15 percent equity share for an implied 16.67 million
2 equity value?

3 A I don't know that. That was -- that
4 discussion was with Liesl, who is very -- more
5 experienced than me and very experienced in this
6 world. And I did not consult with her on that issue. 13:37

7 Q So Liesl Copland would be experienced in
8 valuing the potential value of the Aretha Franklin
9 film, the "Amazing Grace"?

10 A Yes, much better than me.

11 Q And you rely on her in giving you
12 appropriate valuations?

13 A Yeah.

14 Q And how much experience has she had doing
15 this, to your knowledge?

16 MR. FRID: Objection. No foundation. 13:38

17 THE WITNESS: You'd have to ask her. I know she
18 has a lot of experience.

19 BY MS. GALLAGHER:

20 Q And if the -- it's a 50 percent share or
21 an implied \$16.6 million. What would the total equity
22 value be? It would be far above 16.67, correct?

23 A If 2 1/2 percent was 15, you would do the
24 math to get to 100 percent. So I presume that that 13:38
25 math works at 16.67.

1 Q And if we can scroll up to the next email,
2 please.

3 Then, this is from Tirrell Whittley, re
4 Tuesday meeting, November 15th, 2018. It says, "I 13:39
5 didn't get a direct response, but I did learn that our
6 starting sales number is \$10 million. A couple of
7 distributors have contacted me, assuming \$10 million
8 is the base line."

9 Is that consistent with what distributors
10 were offering in November 2018 for "Amazing Grace" to
11 your knowledge?

12 MR. FRID: Objection. No foundation and calls
13 for speculation, also argumentative.

14 THE WITNESS: I was not involved in receiving 13:39
15 those initial offers from distributors. I was
16 involved in negotiating contracts that were -- and
17 negotiating responses, but I was not involved in the
18 initial offers. So I have no idea.

19 BY MS. GALLAGHER:

20 Q Were you involved in negotiating contracts
21 that were in this area of \$10 million baseline? 13:39

22 A On this movie?

23 Q Yes.

24 A I was tangentially involved with the head
25 of Endeavor Content because he spoke -- he and I spoke

1 about his own \$10 million offer. And so I was aware
2 of Graham's interest on behalf of Endeavor Content.

13:40

3 Q So you had personal knowledge that
4 Mr. Graham Taylor wanted to offer \$10 million for the
5 "Amazing Grace" documentary, correct?

6 A Yes. The offer, of course, is subject to
7 all the normal conditions, but he did make a \$10
8 million offer.

9 Q And were the conditions that there had to
10 be clear title?

11 A Yes, that would be one of them.

12 Q And was the Tyerman claim that Mr. Pollack
13 had some rights that he had never provided any
14 evidence of part of the cloud on the title?

13:40

15 A That was the content of my conversation
16 with Graham. He wanted to know what I thought about
17 it.

18 Q So Mr. Graham Taylor wanted to buy the
19 film for \$10 million but he was concerned about the
20 cloud on the title that was put on by Mr. Tyerman's
21 claims and threats of litigation, correct?

22 MR. FRID: Objection. Misstates his testimony,
23 no foundation.

24 THE WITNESS: Graham and I discussed the
25 viability of that -- of the claims and the fact that

13:41

1 the claims existed.

2 BY MS. GALLAGHER:

3 Q And what was discussed in that matter?

4 A I think I'm crossing over into
5 attorney-client privilege. At the time Endeavor
6 Content was owned 100 percent by WME and he was asking
7 my opinion as a lawyer.

8 Q He was asking your opinion as a lawyer 13:42
9 because he was concerned about potential claims that
10 Mr. Tyerman had asserted and potential litigation that
11 Mr. Tyerman had threatened, correct?

12 A Yes.

13 MR. FRID: Objection. Misstates his testimony.
14 Also, no foundation.

15 BY MS. GALLAGHER:

16 Q And your answer?

17 A In my opinion, it does not misstate my
18 testimony. He was asking about what I thought about
19 the claims.

20 Q And so in 2018, this is -- like the 13:42
21 November 2018 time frame, Tyerman's claims and threats
22 of litigation were still interfering with
23 Mr. Elliott's ability to sell this film and recognize
24 its full value, correct?

25 A It was a concern of Graham's that we

1 discussed. 13:42

2 MS. GALLAGHER: And then if we scroll up,
3 Mr. Videographer, to December 6th, 2018. 13:43

4 BY MS. GALLAGHER:

5 Q In addition to discussions with
6 Mr. Taylor, were you also having discussions with any
7 of the other potential buyers at this time in November
8 of 2018?

9 A I frankly don't recall. I might have
10 been. I was getting ready to leave.

11 THE VIDEOGRAPHER: Did you mean scroll down?

12 MS. GALLAGHER: You got it. Keep on going up.
13 This is the letter I'm looking for. Keep on going up. 13:44
14 Up, up.

15 BY MS. GALLAGHER:

16 Q This is a -- you can stop there --
17 December 6th, 2018, letter to Dale Kinsella and it's
18 from Freedman, Boyd, Hollander, Goldberg, Urias &
19 Ward.

20 Was this another law firm -- did WME 13:44
21 assist Mr. Elliott in obtaining another law firm to
22 again address these claims that Mr. Tyerman was
23 making?

24 A You're asking me? I don't recall seeing
25 this letter. I'm sure I did, but I don't recall as I

1 sit here seeing this letter and I have not read it
2 since over three years.

3 Q No worry.

4 A Over five years.

5 Q If you could take a few minutes to read 13:44
6 it. I'll ask you a few questions.

7 THE WITNESS: Can you scroll up, please. Can
8 you scroll up, please. Can you scroll up, please. 13:47

9 Can you scroll up, please. Can you scroll up, please. 13:47

10 Can you scroll up, please. Can you scroll up, please. 13:49

11 Thank you very much. I read the letter.

12 BY MS. GALLAGHER:

13 Q Do you remember reviewing this letter
14 before it was sent?

15 A I don't have a specific memory today. It
16 would -- it makes sense that I would have looked at
17 this before it was sent, but I don't have an
18 independent recollection of having reviewed it.

19 Q And it looks like this letter, which is
20 dated December 6, 2018, references a response to 13:50
21 Mr. Tyerman continuing to make claims that there's
22 some type of claim or interest on behalf of the
23 Pollack's estate, correct?

24 A The letter speaks for itself but I do
25 believe the letter says that, yes.

1 Q And it says here, "You are no doubt aware
2 that we must disclose your letter to the distributors
3 with which we are presently in final negotiations, and
4 will have to consider holding Mr. Tyerman and the
5 Pollack estate responsible if their interventions
6 adversely affect the deal."

13:51

7 Do you know what distributor that refers
8 to?

9 A I would be guessing if I gave you the
10 names of the distributors. At this point, I'm one
11 foot out the door and I -- it wouldn't be -- it
12 wouldn't surprise me if those distributors included
13 the distributors that were on that list that -- in
14 that, I believe, Liesl Copland email, but I in fact
15 don't know. I know obviously one of them had to have
16 been NEON because that was the ultimate distributor of
17 the film.

13:51

18 Q Were you involved in the negotiation with
19 NEON?

20 A I may have been involved in one phone call
21 but other than that, I don't believe I was.

22 Q Did William Morris handle the negotiations
23 with NEON?

13:52

24 A To be honest, I don't know. I do believe
25 Liesl stayed attached to this project, so the answer

1 is yes, although after I left WME, I'm still very
2 friendly with them but I didn't -- I don't have really
3 any -- I didn't have any discussions about this
4 particular issue. I did have various discussions with
5 Alan on completely unrelated issues in the year after
6 it, 2018 until the present.

13:52

7 Q Whoever stepped into your shoes or whoever
8 was involved in negotiating deals with NEON and these
9 other distributors, would have had an ethical duty to
10 disclose Tyerman's claims and Tyerman's expression of
11 litigation, correct?

12 A Yes.

13 MR. FRID: Objection. No foundation, calls for
14 legal conclusion.

15 MS. GALLAGHER: If you scroll down to page --
16 I'm sorry, scroll up. Okay. Stop there. Go down to
17 page 3. Keep on going. Okay. There we go.

13:53

18 BY MS. GALLAGHER:

19 Q So this paragraph says, "During his life
20 and in all his discussions with Warner Bros. and
21 Mr. Elliott, Mr. Pollack never made any claim of right
22 and never requested any participation or further
23 compensation."

13:53

24 Did you ever speak to Sydney Pollack about
25 this or the Aretha Franklin or anything like that?

1 A I never spoken to Mr. Pollack. I would
2 remember because he was a -- I was a big fan of his.

3 Q It says, "Only long after Mr. Pollack's
4 death, long after his conversations with Mr. Elliott,
5 long after Mr. Elliott had spent enormous amounts of
6 time, energy and money on the project, did Mr. Tyerman
7 make a claim on behalf of the estate."

13:54

8 And you understand from the timing of the
9 dealings that you were with that Mr. Tyerman first
10 started making a claim that Mr. Pollack's estate had
11 some claim after Mr. Pollack died, correct?

12 A Yes.

13 Q And again, it says, "If Mr. Tyerman has
14 any document indicating any claim during Mr. Pollack's
15 lifetime, please provide it."

16 So you're still asking for years for
17 Mr. Tyerman to produce any documents indicating any
18 claim during Mr. Pollack's lifetime, correct?

13:54

19 MR. FRID: Objection, that was not --

20 THE WITNESS: I was not -- I was just going to
21 say exactly that. I did not author this agreement --
22 this document.

23 BY MS. GALLAGHER:

24 Q Okay. On behalf of Alan Elliott,
25 Mr. Tyerman is being asked still in 2018, December

1 2018, to provide any document indicating any claim
2 during Mr. Pollack's lifetime, correct?

13:54

3 MR. FRID: Objection. The document speaks for
4 itself.

5 THE WITNESS: My answer is the same. It speaks
6 for itself. It's clear that is the case.

7 BY MS. GALLAGHER:

8 Q And during the entire eight to nine years
9 that you as the head of business affairs at William
10 Morris represented Mr. Elliott in his attempts to
11 market this film, Mr. Tyerman never filed any type of
12 lawsuit or litigation to prove that he had any valid
13 claim, correct?

13:55

14 A He never filed any litigation to my
15 knowledge, and I believe he would have copied me or
16 served the company in some way.

17 Q But he threatened litigation, correct?

18 A Yes.

19 Q And the threat of litigation harms the
20 marketability and value of the film, correct?

21 A Yes.

22 MR. FRID: Objection. Calls for speculation.

13:55

23 BY MS. GALLAGHER:

24 Q During this time frame, the time that
25 we're looking at in 2018, December of 2018, I know you

1 were on your way away from William Morris agency, but
2 in your role in William Morris agency and your later
3 roles at Netflix, did you become aware of this -- I
4 don't know if it was a boom or a high increase in the
5 value of documentaries that were being sold for
6 streaming purposes?

13:56

7 A Certainly. And recently, Taylor Swift
8 just proved that unbelievably well, along with Beyonce
9 and others.

10 Q Were you -- did you have any involvement
11 with like Beyonce or any of those deals?

12 A No. But all you need to do is look at
13 the -- look at the business plan that she had, which
14 was really brilliant.

15 Q If we can look at Exhibit Number 3, I'm
16 going to show you some of the deals that have come out
17 with regard to documentaries and ask you a few
18 questions. Then I will pass my questioning.

13:57

19 (Exhibit 3 was marked
20 for identification.)

21 BY MS. GALLAGHER:

22 Q So this is Carl's favorite, The Beastie
23 Boys documentary. Exhibit 3, this says that "Spike
24 Jonze directed documentary on the Beastie Boys was
25 first acquired by Oscilloscope Laboratories and Apple

1 TV+. It was acquired by them in 2019 for a reported
2 \$20 million.

3 "Here's a breakdown of the distribution 13:57
4 rights:

5 "Limited Theatrical Release. Oscilloscope
6 Laboratories handled the limited theatrical release of
7 the film on April 3, 2020. However, this was later
8 canceled due to the Covid-19 pandemic.

9 "Streaming Rights. Apple TV+ acquired the
10 streaming rights to the film and released it on their
11 platform on April 24, 2020."

12 So this \$20 million figure would be both
13 for a limited theatrical release and streaming rights
14 on Apple, correct?

15 MR. FRID: Objection. No foundation.

16 THE WITNESS: That's correct. 13:58

17 BY MS. GALLAGHER:

18 Q For a documentary on the Beastie Boys,
19 correct?

20 A I'm sorry, I was coughing when you -- I
21 apologize. Could you repeat the question.

22 Q Sure. \$20 million for a documentary about
23 the Beastie Boys, correct?

24 A Yes.

25 Q So based on your experience at William

1 Morris and at Netflix, do you think at this time in
2 the atmosphere that was going on in this time in the
3 2019 that Aretha Franklin would have been able to get
4 the same type of deal, \$20 million for limited
5 theatrical release and streaming rights?

13:59

6 MR. FRID: Objection. No foundation, calls for
7 speculation.

8 THE WITNESS: All these documentaries and
9 concert films are very, very unique and different.
10 However, I do agree that, generally speaking, they are
11 worth more today than they were in 2018.

12 BY MS. GALLAGHER:

13 Q So that would apply to Aretha -- this
14 "Amazing Grace" documentary as well?

13:59

15 A I think so. It's a unique one.
16 Obviously, it's a historical piece more than something
17 that was happening right now, the way Taylor Swift's
18 and Beyonce's documentaries were. So they're really
19 differently animals. And I don't know the Beastie
20 Boy's documentary. I've never seen it.

13:59

21 And Spike Jonze is obviously a well-known
22 documentary filmmaker and has made a number of music
23 videos and is very well known at it.

24 Q When you mentioned about Beyonce, we
25 looked at the next exhibit, please, to Exhibit 3 of

1 002. This talks about Beyonce's deal. You're saying
2 that this was a very unique deal. And it was on
3 Netflix in April of 2019. You weren't involved with
4 this deal at all?

14:00

5 A Not at all. I do features only.

6 Q If we scroll down a little bit. Do you
7 know who at Netflix handled this?

8 A I would be guessing. I don't know if we
9 paid for the production or if we just licensed the
10 picture. My guess is we probably just licensed the
11 picture. So I can guess but it would be a guess.

12 Q And this talks about Beyonce being paid
13 \$20 million for the right to Homecoming, which is part
14 of the \$60 million overall deal for three Netflix
15 products.

14:01

16 So this -- for Beyonce it would be a total
17 of \$60 million in April of 2019, correct?

18 A If this --

19 MR. FRID: Objection. The document speaks for
20 itself.

21 THE WITNESS: If this is correct, that's right
22 but I have no idea if this is correct or not.

23 BY MS. GALLAGHER:

24 Q Well, \$20 million for the rights for --
25 it's a three part thing, so that would be 20

1 million -- so they just paid 20 million for the
2 right?

3 A I have no idea. I'd be speculating. 14:01

4 Q Would Aretha Franklin's reputation in the
5 music industry compare or how would you compare it to
6 Beyonce?

7 MR. FRID: Objection. No foundation, calls for
8 speculation. Improper expert testimony.

9 Go ahead.

10 THE WITNESS: Aretha is an icon in all of the 14:01
11 recording business, not just R&B, not just gospel.

12 Beyonce may or may not be more -- I don't know, a
13 bigger draw, but this gets outside of my expertise. I
14 really can't compare the two other than, of course,
15 Aretha is an icon of great acclaim. 14:02

16 BY MS. GALLAGHER:

17 Q Well, based on your experience, would you
18 have any reason to doubt that Aretha would be able to
19 get the same type of deal as Beyonce?

20 MR. FRID: Objection. No foundation whatsoever,
21 speculation.

22 THE WITNESS: As I testified previously, I think
23 that the quality of the presentation was not as high
24 as one would like in the Aretha film and that would 14:02
25 limit its theatrical receipts.

1 BY MS. GALLAGHER:

2 Q Was the film reviewed as one of the best
3 reviewed films of the year when it was released?

4 A Absolutely. And it was. It's an
5 incredible -- incredible document.

6 Q And when a company purchases a film such 14:03
7 as this, one of the values that goes into valuing the
8 amount that's going to be paid is how much is spent on
9 advertising, correct? 14:03

10 A I'm sorry, say again.

11 Q Sure. When a company is looking to
12 purchase a film, one of the things that they look at
13 is the value of how much they're going to spend on
14 advertising, correct?

15 A Oh, yeah. It's a negotiated point,
16 usually.

17 Q Do you know how much Netflix might spend
18 on advertising an Aretha Franklin documentary, if they
19 had?

20 MR. FRID: Objection. Pure speculation.

21 THE WITNESS: I don't know. Netflix has a 14:04
22 different model for marketing than a theatrical film
23 distributor does. So I don't know.

24 MS. GALLAGHER: Let's go to the next one.
25 That's more Beyonce. We can go down.

1 BY MS. GALLAGHER:

2 Q Okay. This is Billy Idol -- Billy Eilish,
3 sorry. Also 2019, also a deal with Apple for a
4 documentary for \$25 million. 14:04

5 Do you know whether or not in this time
6 frame with what was happening with Black Lives Matter,
7 what's happening with Aretha, with the fact that she
8 was one of the best reviewed film of the year, that
9 she would -- that film would have been able to garner
10 the same type of offers of the 25 million price tag?

11 MR. FRID: Objection. No speculation --
12 calls -- no foundation, calls for speculation.

13 THE WITNESS: I really don't know what drove
14 Apple on this particular deal that is on the screen or 14:05
15 what they would have offered on the Aretha project.

16 BY MS. GALLAGHER:

17 Q Do you know what Netflix -- did Netflix
18 ever make an offer?

19 MR. FRID: Objection. No foundation, calls for
20 speculation.

21 THE WITNESS: I know they discussed it. I'm not
22 sure they made an offer. I just don't know. That's
23 not my area at Netflix.

24 BY MS. GALLAGHER:

25 Q Did you ever have any discussions with 14:06

1 anybody at Warner Bros. about Tyerman's claim about
2 Pollack's alleged rights?

3 A Yes, with two different people.

4 Q Who did you have discussions with?

5 A Steve Spira and Dan Furie, F-u-r-i-e. 14:06

6 Q And what did Mr. Spira say about
7 Mr. Tyerman's claims?

8 A I don't recall. I recall that I talked to
9 him and I recall that I talked to Dan. I was -- I
10 don't know. I don't know what I was -- I don't know
11 what the conversation was. I know I talked to the two
12 of them.

13 Q Do you recall Mr. Furie saying that
14 Mr. Tyerman had no claim on Pollack's behalf? 14:06

15 MR. FRID: Objection. No foundation, calls for
16 speculation, misstates the testimony.

17 THE WITNESS: I just don't recall exactly what I
18 said.

19 By MS. GALLAGHER:

20 Q Was it something along those lines?

21 MR. FRID: Objection. The question was just
22 asked and answered.

23 THE WITNESS: I wish I could remember. I really
24 don't recall what I said. With Mr. Furie there was a
25 number of calls. With Spira, there was only one, I

1 think.

2 BY MS. GALLAGHER:

3 Q Do you remember anything about what
4 Mr. Spira said?

5 A He was supportive of Alan but that's all I 14:07
6 remember.

7 MR. FRID: Counsel, you said you'd give me an
8 hour. We're now --

9 MS. GALLAGHER: You asked me how long I had. I
10 don't give anybody anything.

11 Q If we go to Exhibit Number 2 and the 14:07
12 last --

13 MR. FRID: I mean, that's fine. You know,
14 that's common courtesy but we're going to -- which I
15 don't want to do is bring the witness back. If that's
16 the case, then that's the case. He's got a 3:00
17 cut-out.

18 THE WITNESS: Mr. Frid, I can give you an
19 additional half an hour. I don't want to but I can.

20 MS. GALLAGHER: I can try and finish. If
21 Mr. Frid would stop talking, I can get this done.

22 BY MS. GALLAGHER:

23 Q So let's go to the last email. It's the
24 last email of Exhibit 2. And this is dated Friday, 14:08
25 December 7th, 2018 from Alan Elliott to Tirrell

1 Whittley, cc: Tom McGuire and Liesl Copland. It says,
2 "Tom McGuire wins this week." It says, "Tom just
3 called. As we were about to hang up the phone, he
4 drops this little slice onto the tray.

5 "Dan Furie informed Tom that there is an
6 internal Warner Bros. memo from Sydney Pollack to the
7 studio telling them to give me the film."

8 Do you recall having this conversation
9 with Mr. Elliott where you told him this?

10 A I don't, actually, to be honest. I do
11 remember Dan telling me this now that I read this
12 email.

13 Q You remember Dan Furie telling you that
14 there was an internal Warner Bros. memo from Sydney
15 Pollack to the studio telling them to give Alan the
16 film?

17 A Yeah.

18 Q And you told Alan that, correct?

19 A Oh, yeah.

20 Q Did you ever ask Mr. Furie for a copy of
21 the memo?

22 A Yes. And I was told it was an internal
23 memo only.

24 Q Meaning he wouldn't give it to you?

25 A Correct.

14:09

1 Q Did Mr. Furie also tell that Tyerman had
2 no claim?

3 A Had no -- what?

4 Q Tyerman had no claim?

5 A He didn't speak about Mr. Tyerman.

6 MS. GALLAGHER: Okay. I think there's one other
7 email I have to find, but I'll pass it over to you.

8 Thank you, Mr. McGuire, I appreciate it. 14:09

9 THE WITNESS: You're welcome.

10 THE VIDEOGRAPHER: All right. Sasha, I'll make
11 you the host so you can share documents too.

12 THE WITNESS: Mr. Frid, I have until 3:30, but
13 let me tell my -- I pushed this person back to 3:00
14 now let me push them back to 3:30. 14:10

15 Okay. I'm good till 3:30.

16 MR. FRID: Okay. Ms. Gallagher, are you done?

17 MS. GALLAGHER: There's one email, if you go
18 with your questioning, I might have a quick follow up
19 if I can find this last email. But I don't want to
20 hold everybody up.

21 MR. FRID: So are you done with your
22 examination?

23 MS. GALLAGHER: No. Go ahead, Mr. Frid. I'm
24 letting you go.

25 MR. FRID: All right.

EXAMINATION

BY MR. FRID:

Q Good afternoon, Mr. McGuire.

A Good afternoon.

Q My name is Sasha Frid. I represent
Mr. Tyerman and his law firm in this case.

14:11

Sir, are you aware of any evidence that --
let me ask it differently.

Are you aware of any conversations that
Mr. Tyerman, my client, had with any potential buyer
or distributor for this film?

14:11

MS. GALLAGHER: Objection. Calls for
speculation, argumentative.

THE WITNESS: No, I'm not aware of any
individual conversations between Tyerman and a
distributor.

BY MR. FRID:

Q Are you aware of any conversations that
Mr. Tyerman had with any studio that was interested in
this film?

MS. GALLAGHER: Objection. Calls for
speculation and argumentative.

14:12

THE WITNESS: No, I think that there were -- but
I do think that other people had told me that Barry
had reached out but I was unaware of him ever having

1 reached out and I didn't hear from any distributor
2 that Barry had reached out, but other people told me
3 that he had. I just -- I couldn't believe that Barry
4 would do something like that, so I chose not to
5 believe that.

14:12

6 BY MR. FRID:

7 Q As you sit there today as a deponent, are
8 you aware of any studio distributor purchaser that
9 Mr. Tyerman supposedly reached out with respect to the
10 film?

11 MS. GALLAGHER: Objection. Argumentative, calls
12 for speculation.

13 THE WITNESS: I think I've answered that
14 question in my previous answers.

14:13

15 BY MR. FRID:

16 Q And the answer is no?

17 MS. GALLAGHER: Misstates his testimony.

18 THE WITNESS: I'll stay on my prior testimony.

19 BY MR. FRID:

20 Q Well, my question is a little broader and
21 I'm asking about any studio, any distributor, any
22 potential purchaser of the film, are you aware whether
23 Mr. Tyerman ever contacted any such parties?

24 MS. GALLAGHER: Asked and answered.

25 THE WITNESS: I'm not personally aware, no.

1 BY MR. FRID:

2 Q Are you aware of any writing where
3 Mr. Tyerman wrote a letter to any potential studio,
4 potential purchaser or distributor with respect to
5 this film?

14:13

6 MS. GALLAGHER: Calls for speculation and
7 argumentative.

8 THE WITNESS: I'm not aware of any writing,
9 no.

10 BY MR. FRID:

11 Q Are you aware of any writing where
12 Mr. Tyerman contacted any studio purchaser,
13 distributor to interfere or to threaten litigation
14 with respect to the film?

14:14

15 MS. GALLAGHER: Calls for speculation and
16 argumentative. Asked and answered based on the emails
17 in this case.

18 THE WITNESS: I'm not someone who would know
19 that but -- so no, I'm not aware of any of that.

20 BY MR. FRID:

21 Q What did you do to prepare for this
22 deposition, sir?

23 A I'm sorry?

24 Q What did you do to prepare for this
25 deposition, sir?

1 A I got up, put a nice shirt on and came in
2 front of the camera.

3 Q Did you review any documents in
4 preparation for the deposition?

14:15

5 A No, I did not.

6 Q When was the last time you spoke to
7 Mr. Elliott?

8 A About a month ago, something like that.

9 Q And what did you talk about?

10 A I told him at the beginning of our
11 conversation that we could not discuss anything about
12 this deposition and I think we talked but -- I just
13 don't recall what we talked about. It was unrelated
14 to this deposition or the subject matter of this
15 deposition.

14:15

16 Q Did you speak to any of Mr. Elliott's
17 lawyers?

18 A No.

19 Q Have you ever spoken to any of his lawyers
20 before today?

21 A Of course.

22 Q Have you ever spoken to Mr. Gallagher?

23 MS. GALLAGHER: It's Ms. Gallagher.

24 THE WITNESS: It's Ms. Gallagher. No, I have
25 not. Wait a second. Wait a second. Hold on. Hold

14:15

1 on. I may have -- there may have been an email
2 exchange where she introduced herself or something
3 along those lines, but I've not otherwise spoken to
4 her about anything relating to this litigation.

5 BY MR. FRID:

6 Q Have you ever spoken to Mr. Carl
7 Douglas?

8 A Yes, I have.

9 Q When did you speak to Mr. Douglas?

10 A Three -- two weeks ago, three weeks ago,
11 it was before Thanksgiving.

12 Q And what did you discuss? 14:16

13 A We discussed very, very generally what --
14 what I thought about what happened here and actually
15 now that I -- now I recall, I think Ms. Gallagher was
16 also part of that conversation is my recollection. I
17 could be wrong.

18 MS. GALLAGHER: Just to correct you, it wasn't 14:16
19 me. It was Rachel from his office.

20 THE WITNESS: Okay.

21 MR. FRID: Please don't interrupt.

22 MS. GALLAGHER: I just want to make sure we get
23 correct testimony.

24 BY MR. FRID:

25 Q Mr. McGuire, so about two to three weeks

1 before you spoke for -- to lawyers for Mr. Elliott
2 before you testified today, right?

3 A Yeah.

4 Q Okay. And you talked about what you were
5 going to say today, right?

6 A I said --

7 MS. GALLAGHER: Argumentative and misstates
8 testimony.

9 BY MR. FRID:

10 Q Go ahead.

11 A I'll stand on what I said previously.

14:17

12 Q Give me some details of what you guys
13 discussed.

14 A There really wasn't much in the way of
15 detail. I said it was incredibly -- I said words to
16 the effect of, it was very unfortunate what Barry did
17 in connection with the distribution of this picture.

18 Q Were you referring to the Lions Gate
19 negotiations?

14:17

20 MS. GALLAGHER: Objection. Argumentative.

21 THE WITNESS: I was referring in general to
22 Barry's attitude throughout the process.

23 BY MR. FRID:

24 Q Anything else that you discussed?

25 A Not that I recall, no.

1 Q Let me ask you about WME. What's Endeavor
2 Content?

3 A At the time Endeavor Content was a wholly
4 owned subsidiary of WME. Endeavor Content was a 14:18
5 company that would provide outside financing to WME
6 clients and others, not only WME clients but clients
7 from other agencies and then sold those movies at the
8 open market.

9 Q Does Endeavor Content produce films?

10 A Well, if you're asking as of today in the
11 interim, Endeavor Content has sold 80 percent of its 14:18
12 ownership to a Korean company named CJ Entertainment.
13 CJ Entertainment has just sold 15 percent of its
14 interest to a Japanese company within the last few
15 days.

16 Q Talking about the 2018-2019 film, did
17 Endeavor Content produce films?

18 A Do they produce films? They financed
19 films. They didn't actually go out and send producers 14:19
20 and production personnel to produce movies. They
21 financed them.

22 Q Okay. What's Fifth Season?

23 A That's the new name for Endeavor
24 Content.

25 Q Okay. So that's just a new name?

1 A That's what I just said.

2 Q Okay. You talked about the \$10 million
3 Graham Taylor discussions. Do you recall that
4 testimony?

14:19

5 A Yes, I do.

6 Q Have you ever seen a written offer with
7 respect to this \$10 million?

8 A No, I haven't.

9 Q Was there any draft agreement with respect
10 to this \$10 million offer?

11 A I don't know.

12 Q Have you ever seen a draft agreement with
13 respect to this \$10 million offer?

14 A No.

15 Q You testified that there was a
16 conversation with Graham Taylor where you discussed
17 the film, correct?

14:20

18 A Yes.

19 Q Did Graham Taylor ever tell you that he
20 wasn't going to -- he was going to -- let me strike
21 that. I'm going to start over.

22 Did Graham Taylor ever tell you that he
23 was going to pass on the film because of anything
24 Mr. Tyerman said or did?

25 MS. GALLAGHER: Vague and ambiguous and

1 argumentative, asked and answered.

2 THE WITNESS: I'm going to assert the
3 privilege.

4 BY MR. FRID:

5 Q Okay. Well, I'm not asking you for
6 anything privileged. Are you aware of any evidence or
7 facts that Graham Taylor passed or decided not to make
8 the offer because of anything Mr. Tyerman said or
9 did?

14:20

10 MS. GALLAGHER: Same objection. Asked and
11 answered. Excuse me.

12 THE WITNESS: I don't know. I don't know the
13 particulars of why Mr. Taylor did not go through with
14 his offer. I'm unaware of what those details are.

14:21

15 BY MR. FRID:

16 Q Okay. You were an agent for Endeavor and
17 then William Morris Endeavor for, I believe you said,
18 19 years?

19 A 18 years.

20 Q 18 years. How does either Endeavor or
21 William Morris Endeavor get compensated?

22 A They take a percentage off the top of a
23 deal usually, not always. And there's different
24 compensation schemes for television as opposed to film
25 as opposed to talent deals.

14:21

1 Q So they get paid if the movies gets made
2 or the deal gets made, correct?

3 A If you're speaking about this particular
4 movie?

5 Q Yes.

6 A There was a written fee agreement that I
7 don't believe was signed by Mr. Elliott where we were 14:22
8 going to get a certain percentage. I don't recall
9 what of the film's receipts.

10 Q So it was -- for William Morris Endeavor
11 to get paid, the movie would have to have gotten made,
12 correct?

13 A Well, the movie was made. It would have
14 to get released. That's the distinction.

15 Q Okay. And William Morris Endeavor had an 14:22
16 interest in making sure this film got made, right?

17 MS. GALLAGHER: Argumentative based on his prior
18 testimony.

19 THE WITNESS: It has the same interest it has
20 for all of its clients to have their projects made.

21 BY MR. FRID:

22 Q Do you know what the back end percentage
23 that WME was entitled to if this movie got released?

24 A I don't, actually. I know that it wasn't
25 the full 10 percent, which is customary in the 14:23

1 business, but I just simply don't recall what the
2 percentage was.

3 Q Let me ask you about the different
4 player's share. Liesl Copland, what was her role?

5 A She was the lead agent for selling the
6 movie.

7 Q And what was your role?

8 A I was her counsel and Alan's counsel.

9 Q Were you also acting as an agent?

10 A That's a legal conclusion. You can make
11 the own conclusion yourself. 14:23

12 Q Well, were you acting as Mr. Elliott's
13 agent?

14 A Who? Mr. Elliott's agent?

15 Q Yes.

16 A I was an employee of WME. Of course, I
17 was.

18 Q And who was Mr. Musburger?

19 A He was a lawyer in Chicago.

20 Q And he was a lawyer for Mr. Elliott?

21 A Yes.

22 Q Prior to this film, what kind of
23 interactions have you had with Mr. Tyerman? 14:24

24 A There was a couple. I can't remember
25 exactly who he represented. I know -- I think one of

1 them was Robert Redford, his long-time client. And we
2 were somewhat friendly in the way entertainment
3 lawyers generally are.

4 Q So prior to this film, you had a generally
5 positive interaction with Mr. Tyerman? 14:24

6 MS. GALLAGHER: Vague and ambiguous and
7 argumentative, misstates testimony.

8 THE WITNESS: Yeah, I'd say generally positive,
9 sure. He's a smart guy.

10 BY MR. FRID:

11 Q Prior to this film, did Mr. -- was
12 Mr. Tyerman ever dishonest to you?

13 A I don't know.

14 Q Have you had any reason to believe that
15 prior to this film Mr. Tyerman was dishonest to you?

16 A I don't have any reason to believe it. He
17 might have been but that's sort of part of the 14:25
18 process.

19 Q How long have you known Mr. Elliott for?

20 A My first interaction with him, I believe,
21 was early on in the Aretha Franklin world. So mid
22 2000's.

23 Q And you've known him until the present?

24 A Yeah.

25 Q You consider him your friend? 14:26

1 MS. GALLAGHER: Vague and ambiguous.

2 You can answer.

3 THE WITNESS: No, I consider friends of mine not
4 to be -- not necessarily in the business. He's a
5 business acquaintance and someone I like but he's
6 not -- I wouldn't call him a friend. I've never been
7 to his house. Nor --

8 BY MR. FRID:

9 Q Have you had dinner with him?

10 A No.

11 Q Drinks?

12 A No.

13 Q What was your --

14:26

14 MR. FRID: Maryann, what was your last exhibit,
15 4 or 5?

16 MS. GALLAGHER: 5.

17 MR. FRID: Okay. I'm going to mark as Exhibit
18 6, this is a document that you've seen that
19 Ms. Gallagher showed you.

20 (Exhibit 6 was marked
21 for identification.)

22 BY MR. FRID:

23 Q I'll share my screen. This is the
24 interoffice memo that you looked at that's dated March
25 14th, 1972. Do you remember looking at this document

14:26

1 before?

2 A Yes, I do.

3 Q It references this check or this payment
4 for \$1,500. Do you see that, sir?

5 A Yes.

6 Q Have you ever seen the check that was paid
7 to Sydney Pollack for the \$1,500?

14:27

8 A No.

9 Q Had you ever seen a canceled check?

10 A No.

11 Q Did you ever see any receipts of this
12 payment of \$1,500 that was supposedly made in 1972?

13 A Things were not as tight in 1972 as they
14 are nowadays, so it doesn't surprise me at all that I
15 didn't see a check, canceled check or anything else.

14:27

16 Q So let me just ask you, just listen to my
17 question, and please answer the question that I'm
18 asking.

19 A I thought I did.

20 Q I don't think you did. Just listen to my
21 question, sir. Have you ever seen a receipt for
22 \$1,500 for this supposed payment back from 1972? Yes
23 or no.

24 A Mr. Pollack, I believe, was on an overall
25 deal at Warner Bros. It wouldn't surprise me if this

14:28

1 was an accounting issue where his account was credited
2 and maybe there wasn't even a check. I don't know.
3 So it doesn't surprise me that I've not seen a
4 receipt.

5 Q So you haven't seen one, right?

6 A No.

7 Q Okay. Did you ever see any kind of
8 acknowledgement or writing from anyone saying that
9 we've paid Mr. Pollack 1500 for the work?

10 A You mean aside from this memo?

14:28

11 Q Aside from this memo.

12 A I've seen this memo and that's all I've
13 seen.

14 Q Okay. Let me ask you a question. If
15 Mr. Pollack was not paid the \$1,500 for services, this
16 wouldn't have been a work for hire because he didn't
17 get consideration, right?

18 MS. GALLAGHER: Objection. Assumes facts not in
19 evidence. Misstates the evidence.

20 BY MR. FRID:

21 Q Go ahead, sir.

22 MS. GALLAGHER: Calls for a legal conclusion.

14:29

23 THE WITNESS: I -- personally, I think maybe
24 then Mr. Pollack would have had the right to bring a
25 claim for breach of contract over \$1,500. Like I

1 said, this was probably an accounting issue within
2 Warner's accounting. It's such a small amount of
3 money.

4 BY MR. FRID:

5 Q It wasn't a small amount of money back
6 then in 1972, right?

7 A For Mr. Pollack, it certainly was. He was 14:29
8 a very successful filmmaker from the get-go.

9 MR. FRID: Let's mark as Exhibit 7, the
10 Quitclaim Agreement. You've seen it.

11 (Exhibit 7 was marked for
12 identification.)

13 THE WITNESS: All right.

14 BY MR. FRID:

15 Q All right, you've seen this document 14:30
16 before, you testified about it earlier, right?

17 MS. GALLAGHER: I think it misstates his
18 testimony.

19 THE WITNESS: I have seen this document, I
20 believe, but I did not testify as to this earlier
21 unless this is the one that had the red box around
22 it.

23 BY MR. FRID:

24 Q Okay. It wasn't, but you recall -- let's
25 do it again. I have now marked as Exhibit 7 a

1 document that's referred to here as the Quitclaim
2 Agreement. Have you seen this document before?

3 A Probably.

14:30

4 Q Okay. And you reviewed this document,
5 correct?

6 MS. GALLAGHER: Vague and ambiguous as to time.

7 BY MR. FRID:

8 Q Ever.

9 MS. GALLAGHER: Same objection.

10 THE WITNESS: You know, you're showing me one
11 page of a multi-page document.

12 BY MR. FRID:

13 Q Would you like to see the whole thing?

14 A I'd like to see -- I'd like to be able to
15 see this.

16 Q Okay. There you go. What do you want?
17 You want the next page, what do you want?

14:31

18 MS. GALLAGHER: Is there a signature page or a
19 date?

20 MR. FRID: What do you want, Mr. --

21 THE WITNESS: I recall the 35,000.

22 BY MR. FRID:

23 Q Okay. Okay. Here's the signature page.
24 You wanted the signature page. There you go. Does
25 that refresh your recollection, sir?

1 A Sure. I have not read the document, so I
2 may ask again to read the document, but go ahead.

3 Q Okay. Here's my question. "Assignee" and
4 the assignee here is Mr. Elliott, "represents,
5 warrants and agrees that in connection with the
6 Assignee's use of Material, assignee will obtain all
7 other authorizations, consents and releases and pay
8 all reuse fees and other compensation required by
9 applicable collective bargaining or individual
10 contracts or otherwise required by law."

14:31

11 Do you see that?

12 A Yeah.

13 Q Okay. And then it goes on to say,
14 "Assignee specifically understands that assignee will
15 need to obtain authorization from Aretha Franklin."
16 Right?

14:32

17 MS. GALLAGHER: The document speaks for itself.

18 THE WITNESS: Yeah, it does.

19 BY MR. FRID:

20 Q Okay. You see this, right?

21 A Yeah, I see that. And I see the music
22 synch rights.

23 Q So one of the -- a collective bargaining
24 agreement, is that DGA, is that Directors Art Guild --
25 Director Guild Agreement, is that a collective

14:32

1 bargaining agreement?

2 MS. GALLAGHER: Vague and ambiguous.

3 THE WITNESS: I don't know where you're
4 referring to right now.

5 BY MR. FRID:

6 Q I'm just asking you. Do you know what --

7 A Is the Directors Guild of America a
8 collective bargaining unit in our business? Yes.

9 Q All right. And what the DGA -- what is
10 the DGA? 14:33

11 A It's the guild that governs all of its
12 members relationships with DGA signatory entities.

13 Q Okay. Was this film a DGA project?

14 A I don't know if the DGA had jurisdiction
15 over a two-day documentary shoot of a recording artist
16 performance. I just don't -- I don't recall what the
17 DGA agreement in 1972 said about that. 14:33

18 Q If it was a DGA project, would Mr. Pollack
19 have certain rights under the DGA collective
20 bargaining agreements?

21 MS. GALLAGHER: Vague and ambiguous.

22 THE WITNESS: If you don't know the answer to
23 that question, I'm going to pass on answering it.

24 MS. GALLAGHER: My objection was vague and
25 ambiguous. Calls for a legal conclusion and assumes

1 facts not in evidence.

2 BY MR. FRID:

3 Q I'm just asking you about your years of
4 experience in the entertainment field, if this was a 14:34
5 DGA project, would Mr. Pollack have collective rights
6 or certain rights under the DGA collective bargaining
7 agreements?

8 MS. GALLAGHER: Calls for speculation, vague and
9 ambiguous, assumes facts not in evidence, calls for a
10 legal conclusion.

11 THE WITNESS: I'll answer this. I had a bunch
12 of clients who did music videos back in the early
13 80's, as I did in the late 70's. None of those shoots 14:34
14 were DGA. So I don't know -- I actually don't believe
15 the DGA had jurisdiction on this. So until you show
16 me something differently, I will not answer your
17 question.

18 BY MR. FRID:

19 Q Okay. All right. Let me show you
20 something different. Let's look at the -- let's look
21 at the agreement that we just looked at.

22 MS. GALLAGHER: Are you still on Exhibit Number
23 7, Mr. Frid?

24 MR. FRID: No, we're going to move to Exhibit 14:35
25 Number -- we're going to go back to Exhibit 6, which

1 we just looked at.

2 BY MR. FRID:

3 Q That's the interoffice memo that you just
4 looked -- that you just testified about. Do you
5 recall that, sir?

6 A Yep.

7 Q All right. So there's a reference here
8 that "We will be billed later for DGA contributions,"
9 do you see that, sir?

10 A Yes, I do.

11 Q Does that in fact refresh your
12 recollection that this was in fact a DGA project?

13 MS. GALLAGHER: Vague and ambiguous, calls for
14 speculation based on his testimony as to what this
15 memo represents.

14:36

16 THE WITNESS: I just don't know whether DGA had
17 jurisdiction here.

18 BY MR. FRID:

19 Q There's a specific reference to the DGA
20 contributions here, right?

21 A 99 percent of what Sydney Pollack did in
22 his life was covered by the DGA agreement and it would
23 make sense to me that Jack Freedman would say that
24 don't worry about the DGA contribution. We'll handle
25 that later, without knowing whether this was covered

14:36

1 by the DGA agreement or not. I do not know if it was
2 and I believe that it was not.

3 Q Throughout your negotiations, discussions
4 over numerous years, did you ever obtain or seek to
5 obtain DGA approvals for this project?

6 MS. GALLAGHER: Vague, ambiguous, argumentative
7 and assumes facts not in evidence.

8 THE WITNESS: You had your approvals. I'm not
9 even sure what you're referring to.

14:37

10 BY MR. FRID:

11 Q Did you ever contact the DGA?

12 A Why would I?

13 Q To determine if this is a DGA project.

14 A My guess is I was not in charge of that
15 issue. I don't know what anyone else did. I assume
16 that the -- the studios who were looking at this in
17 terms of distribution would have been the entities
18 figuring that issue out. That was not an issue for
19 the sellers of the movie to figure out, only the
20 distributors.

14:37

21 Q Okay. You personally never tried to
22 figure out if this is a DGA project or not?

23 MS. GALLAGHER: Objection. Calls for
24 speculation and argumentative.

25 THE WITNESS: Consistent with my testimony that

1 I've just given you, it is not an issue for the
2 sellers to figure out. That's an issue for the
3 distributors to figure out because they're the
4 signatories.

14:37

5 BY MR. FRID:

6 Q Okay. Did you -- do you know if
7 Mr. Elliott ever contacted the DGA to obtain
8 clearances?

9 A He might have. I don't know.

10 Q You don't know. Did you ever ask him?

11 A I have no recollection either way.

12 Q During your examination by Ms. Gallagher,
13 there are a lot of emails about you discussing the
14 deal trying to obtain rights with my client,
15 Mr. Tyerman. Do you recall those emails?

14:38

16 A Yes.

17 Q Okay. If it's your testimony, sir, that
18 Mr. Pollack had no rights in this film and Mr. Tyerman
19 was just wrong for asserting Mr. Pollack's rights, why
20 did you bother contacting him and discussing the movie
21 with him at all?

14:39

22 A That's a good question. The answer is
23 that I -- I knew that Mr. Tyerman was a powerful
24 lawyer in the business, that he could make an
25 assertion the way he did without any basis in fact and

1 prevent the movie from being sold. And I had every
2 interest for my client, Alan Elliott, to be able to
3 sell that movie, so I opened myself to speak to
4 Mr. Barry -- to Mr. Tyerman as a way of resolving the
5 issue. That's my way of doing business.

14:39

6 Q Sir, if your testimony is he didn't have a
7 leg to stand on, why don't you just say, Hey, file
8 your lawsuit. We don't need you?

14:39

9 A Because my client was not in a position to
10 defend a lawsuit.

11 Q Okay.

12 A And now looking back, I wish I had just
13 ignored him.

14 Q All right. Let me show you another
15 document. This is 8, Exhibit 8. I'm directing you to
16 the email from you to Rick Levy copying Mr. Tyerman.

14:40

17 (Exhibit 8 was marked
18 for identification.)

19 BY MR. FRID:

20 Q Do you see that, sir?

21 A Yes.

22 Q It says here, "Let's all see what we can
23 do to put together something rational." And you're
24 referring to putting together a deal that involves
25 accounting for Mr. -- for Sydney Pollack's rights,

14:40

1 right?

2 A I'm sorry, I don't understand what you're
3 asking me.

4 Q When you say here, "Let's see what we can
5 do to put together something rational," you're
6 referring to putting together a deal for the film,
7 right?

8 A Yeah, I was probably saying something
9 along the lines of what Barry Tyerman had suggested is
10 irrational and let's try to do something that's
11 rational.

14:41

12 Q And you wanted to include Sydney Pollack's
13 rights as part of putting together this deal, right?

14 MS. GALLAGHER: Vague and ambiguous and
15 argumentative.

16 THE WITNESS: Yeah, I wanted a resolution of a
17 dispute that I believe Barry Tyerman created out of
18 whole cloth.

19 BY MR. FRID:

20 Q But if he created it out of the whole
21 cloth, you certainly didn't say so here, right?

14:41

22 MS. GALLAGHER: Argumentative. It's been said
23 multiple times in other places.

24 BY MR. FRID:

25 Q Go ahead, sir.

1 A I wanted a resolution to the dispute and
2 that's what I was saying to my friend Rick.

3 Q And then copying Mr. Tyerman, right?

4 A Yeah.

5 Q In fact, throughout --

6 A Barry knows the way I felt about this.

7 Q Throughout this entire process, you never
8 wrote to Barry Tyerman and said your claims are made
9 out of whole cloth, right?

14:42

10 MS. GALLAGHER: Argumentative, assumes facts not
11 in evidence.

12 THE WITNESS: Linda Burrow did that for me.

13 BY MR. FRID:

14 Q Did you do it, yes or no, sir?

15 MS. GALLAGHER: Same objection, argumentative.

16 THE WITNESS: Linda Burrow did that for me.

17 BY MR. FRID:

18 Q Did you do it, sir, yes or no?

19 A Indirectly, yes, I did.

20 Q Did you do it directly?

21 MS. GALLAGHER: Argumentative, misstates prior
22 testimony.

23 BY MR. FRID:

24 Q Did you do it directly?

25 A I think we can move on.

1 Q Yes or no?

2 MS. GALLAGHER: Argumentative, asked and
3 answered. Now you're harassing the witness.

14:43

4 THE WITNESS: We can move on.

5 BY MR. FRID:

6 Q Okay. Play this to the jury. All right.

7 MS. GALLAGHER: Hello, jury.

8 BY MR. FRID:

9 Q Let's go to the next -- let me show you
10 another document, sir.

11 I'm going to mark this as Exhibit 9. 9.
12 Okay.

14:43

13 (Exhibit 9 was marked
14 for identification.)

15 BY MR. FRID:

16 Q All right. This is an email from Natalie
17 Rodriguez, Vice President, Associate General Counsel
18 to you, sir, back in December of 2018. Do you see
19 that?

20 A I think it's -- yes, I do.

21 Q Okay. That is your email address,
22 right?

23 A Yes, for another week.

14:44

24 Q Okay. She says here, Ms. Rodriguez says,
25 "Hi, Tom. Attached is the third amendment to the

1 Quitclaim Agreement dated as of December 11th, 2007.
2 As noted in our recent conversation, we've included
3 the condition precedent that authorization from the
4 Estate of Sydney Pollack be obtain."

5 Do you see that, sir.

6 A Yes, I do.

7 Q And let me just go to the attachment, the
8 exhibit. There's a reference to this condition
9 precedent. See that?

14:44

10 A Yes.

11 Q And then it says here, "This amendment is
12 subject to assignee obtaining authorization from the
13 Estate of Sydney Pollack in connection with the
14 project."

15 Do you see that?

16 A Yes.

17 Q All right. Do you recall this
18 conversation that you had with Ms. Rodriguez back in
19 2018?

20 A No.

21 MS. GALLAGHER: Objection. Assumes facts not in
22 evidence.

23 BY MR. FRID:

24 Q You don't remember this conversation that
25 she's referencing?

14:45

1 A I don't. It doesn't surprise me. I've
2 probably got 75 phone calls a day.

3 Q Do you know why Warner Bros. was including
4 a condition precedent to the Quitclaim Agreement that
5 the authorization of the Estate of Sydney Pollack
6 needed to be obtained for this film to be done?

7 A She did not share that with me.

8 Q Did you ask her?

9 A I don't know.

10 Q Isn't it correct that Warner Bros.
11 believed that authorization from the Estate of Sydney
12 Pollack must have been -- needed to be obtained for
13 this film to get done?

14:45

14 MS. GALLAGHER: Objection. Argumentative,
15 assumes facts not in evidence, especially since this
16 is the third Quitclaim Deed that we didn't have any of
17 those from Warner Bros.

18 BY MR. FRID:

19 Q Go ahead, sir.

20 A I have no idea why Warners added this
21 condition.

22 Q Did you consider --

23 A There's a number of different reasons they
24 might have.

25 Q Did you consider this -- this

1 communication in this agreement from Warner Bros. in 14:46
2 making your -- in making your claim that the claims
3 that Mr. Tyerman was asserting on behalf of his client
4 were made out of whole cloth?

5 MS. GALLAGHER: Vague and ambiguous and
6 argumentative.

7 THE WITNESS: The -- so Warners has its own
8 reasons for doing this. I don't know if there was any 14:46
9 other discussions relating to this matter with
10 Mr. Tyerman or any other third party. This showed
11 up -- I do recall feeling that this showed up out of
12 the blue to me. I gather I had a conversation with
13 Ms. Rodriguez about it at the time. And I don't know
14 where it came from. So I have no basis for knowing 14:46
15 why Warner Bros. added this condition.

16 BY MR. FRID:

17 Q We looked at the Quitclaim Agreement a few
18 minutes ago. Do you remember that?

19 A Yes.

20 Q And it specifically stated that
21 Mr. Elliott or his company would need the
22 authorization -- would need to obtain authorization 14:47
23 from Aretha Franklin to do the film, right?

24 A Yes.

25 Q For as long as Ms. Franklin was alive, she

1 never gave that authorization to Mr. Elliott, right?

2 MS. GALLAGHER: Objection. Calls for
3 speculation, misstates the evidence.

4 THE WITNESS: I don't -- I think there was a
5 period of time where she indicated that she would.
6 Then she didn't and then she passed away and then we
7 got permission from the estate. That's my
8 recollection of the way this went. 14:47

9 BY MR. FRID:

10 Q In fact, she sued Mr. -- Mr. Elliott twice
11 to block the release of the film, right?

12 MS. GALLAGHER: Objection. Vague and ambiguous
13 and argumentative as to sued as she filed a lawsuit.
14 Assumes facts not in evidence.

15 THE WITNESS: There was -- there was a hearing
16 in Colorado on the Telluride release of the film where
17 the judge ruled in her favor blocking any distribution
18 of the film. I believe -- I don't know if it reached 14:48
19 only Colorado or it was broader and I was unaware of
20 two litigations. I knew that one because I testified
21 in it.

22 BY MR. FRID:

23 Q Okay. Let me see if I can refresh your
24 recollection, sir. All right. I'm going to mark as
25 Exhibit 10. It's a verified complaint and a request 14:48

1 for a restraining order filed by Ms. Franklin against
2 Alan Elliott and his company in August of 2011.

3 (Exhibit 10 was marked
4 for identification.)

5 BY MR. FRID:

6 Q See that, Sir?

7 A Yes.

8 Q Does that refresh your recollection that a
9 lawsuit was previously filed back in 2011 by
10 Ms. Franklin to block the release of the film?

11 MS. GALLAGHER: Vague and ambiguous and
12 argumentative. Document speaks for itself.

13 THE WITNESS: I don't -- I don't recall this
14 document but obviously it was filed at one point,
15 yes.

16 BY MR. FRID:

17 Q So this suit, see that, page 1, "Suit
18 being filed by musician, Aretha Franklin, to prevent
19 the unauthorized release of her 1972 concert
20 performance." Do you see that?

21 A Yeah.

22 MS. GALLAGHER: What's the date of this? Oh,
23 it's 2011? Okay. Sorry. I didn't see a date.

24 BY MR. FRID:

25 Q Do you know how this -- how this lawsuit

14:49

1 ended?

2 A No, I don't. I don't remember as I sit 14:49
3 here.

4 Q Do you have a recollection that
5 Mr. Elliott entered into a Cease and Desist Agreement
6 with Ms. Franklin in which he agreed that he would not
7 try to release the film --

8 MS. GALLAGHER: Vague and ambiguous.

9 BY MR. FRID:

10 Q -- without her consent?

11 MS. GALLAGHER: Vague and ambiguous and
12 argumentative. Assumes facts not in evidence.

13 THE WITNESS: I recall something to that effect.
14 I don't recall when I learned this, but I recall
15 something to that effect. 14:50

16 BY MR. FRID:

17 Q All right. Let me show you if I can --
18 let me show you a document. I'm going to mark this as
19 Exhibit 11.

20 (Exhibit 11 was marked
21 for identification.)

22 BY MR. FRID:

23 Q All right. This is a Cease and Desist
24 Agreement between Ms. Franklin and Mr. Elliott. 14:50

25 A All right. It's very difficult for me to

1 read, to be honest.

2 Q All right. Let's see if I can blow it up
3 a little.

4 A I don't know if I need to read it. If you
5 need me to read it, of course, I'll be happy to do
6 that.

7 Q I'll just tell you what it says, sir.
8 Sorry. I'm reading from it:

14:51

9 "Al's Records and Tapes and Alan Elliott
10 on behalf of himself, his spouse, heirs, estate, so
11 on, hereby fully agree to immediately cease and desist
12 from commercial exploitation or otherwise
13 of Ms. Franklin's name and likeness in any form or
14 fashion and generally -- in general, but specifically
15 in connection with Aretha Franklin's 1972 concert
16 performance."

17 Do you see that?

18 A Yes.

19 Q And this is dated as of January 12th,
20 2012?

14:51

21 A Right. I recall this was in effect for
22 some period of time and then it no longer was being
23 enforced.

24 Q When was it no longer being enforced?

25 A I couldn't tell you. Sometime in 2012 and

1 2000- and her death. I don't know.

2 Q So do you have any information in which
3 Ms. Franklin changed this agreement or agreed not to 14:52
4 enforce it before she died?

5 MS. GALLAGHER: Vague and ambiguous,
6 argumentative and irrelevant.

7 THE WITNESS: To be honest, I don't recall. It
8 was -- I don't recall.

9 BY MR. FRID:

10 Q Have you ever seen such a document?

11 MS. GALLAGHER: Calls for speculation.

12 THE WITNESS: What document?

13 BY MR. FRID:

14 Q Any document where Ms. Franklin agreed to
15 release the film before she died?

16 A I may have. I don't recall any such 14:52
17 document.

18 Q And is it correct, sir, that without
19 Ms. Franklin's signoff, this film could not have been
20 made, yes?

21 MS. GALLAGHER: Vague and ambiguous and
22 argumentative as to time. Misstates the evidence as
23 to time.

24 BY MR. FRID:

25 Q Go ahead, sir.

1 A This is a technical difference but it
2 could be made without being distributed. So I
3 believe -- because I believe Alan continued working on 14:53
4 the film at his expense for several years and I know
5 he was always in contact with Ms. Franklin's
6 representatives attempting to negotiate a deal that
7 would satisfy her concerns and, ultimately, I believe
8 that happened after she died.

9 Q While she was still living, her consent
10 was necessary for this film to be released for 14:53
11 distribution, right?

12 MS. GALLAGHER: Vague and ambiguous and
13 argumentative. Calls for a legal conclusion.
14 Misstates the evidence.

15 BY MR. FRID:

16 Q Go ahead.

17 A That's what the Warner Bros. Quitclaim
18 said, so I would -- I probably gave him that
19 counsel.

20 Q And no matter what Mr. Tyerman said or
21 did, it wouldn't have mattered because up until
22 Ms. Aretha Franklin died, this film could not have
23 been released without her authorization, right? 14:54

24 MS. GALLAGHER: Vague and ambiguous,
25 argumentative, misstates the evidence and misstates

1 whether or not Tyerman did or said. That's
2 argumentative.

3 THE WITNESS: These were two very separate
4 issues that we were dealing with. One was making sure
5 we had enough money to satisfy Ms. Franklin's needs in
6 this and we reached agreement several times.

7 The other was with respect to the
8 underlying rights to the movie against which
9 Mr. Tyerman asserted claims on behalf of the Estate of
10 Sydney Pollack.

11 BY MR. FRID:

12 Q Listen to my question, sir. Without her
13 authorization, no matter what Mr. Tyerman said or did,
14 this movie could not have been released up until her
15 death, right?

16 MS. GALLAGHER: Vague and ambiguous,
17 argumentative, misstates evidence, assumes facts not
18 in evidence and calls for speculation.

19 THE WITNESS: Part of the -- what I was trying
20 to say by my response was that part of the -- part of
21 the release from Ms. Franklin and then from her estate
22 was making sure we had enough money to satisfy her
23 concerns and that money was being -- and getting into
24 a distribution deal was the source of that money.

25 So to the extent Mr. Tyerman was making

14:55

14:55

1 that difficult, we could not resolve the issues with
2 the estate in a material way because we didn't have
3 money. These were all very linked issues.

14:55

4 BY MR. FRID:

5 Q Ms. Franklin while alive, she never agreed
6 to any certain sum of money to give her authorization
7 to the film, right?

8 MS. GALLAGHER: Vague and ambiguous and
9 argumentative.

10 THE WITNESS: I'm not sure that's correct. I'm
11 not sure that's correct. You'd have to ask Rick Levy,
12 her agent at ICM. I believe there was a deal at one
13 point. Rick is no longer at ICM. He's retired.

14:56

14 BY MR. FRID:

15 Q Okay. And is it correct that Ms. Trellia
16 tried to release the film in Telluride or screen the
17 film in Telluride, right?

18 MS. GALLAGHER: Vague and ambiguous as to
19 time.

20 THE WITNESS: Yes, we tried and we were
21 prevented from doing so.

14:56

22 BY MR. FRID:

23 Q And Ms. Franklin went to court and got an
24 injunction?

25 A Right.

1 MS. GALLAGHER: Vague and ambiguous as to time.

2 BY MR. FRID:

3 Q Correct?

4 A She got an injunction like the day before
5 the release was scheduled.

6 BY MR. FRID:

7 Q And that was in -- and that was in 2015,
8 correct?

9 A I don't recall when it was, to be
10 honest.

11 Q See if I can refresh your recollection. 14:57

12 A Reminder, I have 30 minutes.

13 Q All right. I've marked as Exhibit 12 to
14 this deposition, this is a -- this is an injunction
15 that was filed in September of 2015 by Ms. Franklin.

16 (Exhibit 12 was marked
17 for identification.)

18 BY MR. FRID:

19 Q You see that?

20 A I don't see the date, but I do see -- 14:58

21 Q Here's the date, 2015, you see that?

22 A Yeah, now I do, yes.

23 Q Okay. And do you know how this -- this
24 injunction was re -- was resolved?

25 A I'm not sure what you mean resolved.

1 Q Well, are you aware that Mr. Elliott
2 entered into a stipulated injunction to not show the
3 film ever again?

14:58

4 MS. GALLAGHER: Objection. Argumentative,
5 assumes facts not in evidence. Misstate the document.

6 THE WITNESS: You're going to have to show me
7 the document, if you want.

8 MR. FRID: Be happy to.

9 What's my -- Mr. Court Reporter, what's my next
10 exhibit?

11 THE COURT REPORTER: The next exhibit is Exhibit
12 13.

13 BY MR. FRID:

14 Q Okay. 13. I'm marking as 13, this is an
15 Order on Stipulated Motion for Injunction filed in
16 2015, May -- excuse me, March of 2016.

14:58

17 (Exhibit 13 was marked
18 for identification.)

19 BY MR. FRID:

20 Q And here -- this is your -- this is a
21 court order. "Absent further order of the court or
22 specific written authorization from Ms. Franklin,
23 Defendant, Alan Elliott, his agents, employees and all
24 working in concert with defendant, shall not publicly
25 show, screen, project, display or otherwise release

14:59

1 the film "Amazing Grace."

2 Do you see that?

3 A Yes.

4 Q And as of 2016 per a federal court order,
5 your client couldn't make any deals for the
6 distribution of this film, right?

7 MS. GALLAGHER: Vague and ambiguous and
8 argumentative, misstates the document.

9 THE WITNESS: I think he could make a deal. It
10 wouldn't be of any effect.

11 BY MR. FRID:

12 Q Isn't this why -- isn't this, sir, why the
13 Lions Gate negotiations broke down?

14 MS. GALLAGHER: Argumentative, misstates
15 document and misstates the evidence.

15:00

16 THE WITNESS: The Lions Gate negotiation broke
17 down because of a number of factors.

18 BY MR. FRID:

19 Q And the primary factor was because no deal
20 could have been done with Aretha Franklin, right?

21 MS. GALLAGHER: Objection, argumentative,
22 assumes facts not in evidence that no deal could have
23 been done and misstates the evidence.

24 THE WITNESS: What I recall is that we were
25 concurrently negotiating with her a deal and I believe

15:00

1 Mr. Levy would have access to what the deal terms were
2 at that time. And I believe that we were close to
3 making a deal with Ms. Franklin.

4 BY MR. FRID:

5 Q Here. Let me show you a document. I'm
6 going to mark it as Exhibit 14.

7 (Exhibit 14 was marked
8 for identification.)

9 BY MR. FRID:

10 Q All right. I've just marked as Exhibit 15:01
11 14, it's an email from Wendy Jaffe to Tom McGuire
12 copying Liesl Copland and others. You have the
13 document in front of you, sir?

14 A I do. Again, it's very difficult to read.
15 If you can make it a little bigger, that would be very
16 helpful.

17 Q I'd be happy to. How is that? 15:01

18 A Better.

19 Q All right. Who is Wendy Jaffe?

20 A She was the lawyer on this project.

21 Q She was the lawyer representing Lions
22 Gate?

23 A Correct, as her -- yes.

24 Q This was at -- your counterpart, your
25 opposing side in the negotiations for the film with

1 Lions Gate, right?

2 A She's the person we dealt with, that's
3 correct.

4 Q Primary negotiator, right?

5 A Well, actually, the primary negotiator was 15:01
6 probably Jason Constantine, but he was -- he was --
7 Wendy worked for him.

8 Q Okay. Let me ask my next question. I 15:02
9 don't have a lot of time.

10 I've highlighted some language for you.
11 It says here, "We have consistently maintained from
12 the very beginning that approval of her settlement was
13 a condition to our deal."

14 Do you see that?

15 A Yes.

16 Q Is that a correct statement, sir, that 15:02
17 Ms. Franklin's approval of the settlement with her was
18 a condition of the deal?

19 MS. GALLAGHER: Vague and ambiguous. Misstates
20 testimony and misstates evidence.

21 THE WITNESS: I don't know if it was technically
22 in the first draft. But a chain of title condition
23 would always be part of a deal and so -- yes, I'll
24 agree with this.

25 BY MR. FRID:

1 Q Okay. Let's go to the next page. This is
2 a second paragraph. Our agreement is and has always
3 been subject to the resolution of the COT issues and 15:03
4 related clearances which we only -- we were only just
5 alerted -- which we were only just alerted last
6 Tuesday cannot be obtained until Aretha signs,
7 right?

8 A That's what the document says.

9 Q Is that an accurate statement, sir?

10 MS. GALLAGHER: Vague and ambiguous, calls for
11 speculation. The document speaks for itself.

12 THE WITNESS: All these documents speak for
13 themselves. I'm not going to sit here and interpret a 15:03
14 letter that refers to the documents.

15 BY MR. FRID:

16 Q Is that correct, sir -- you had no problem
17 interpreting when the other side asked you questions.
18 Do you have some kind of an animosity towards my
19 client, sir?

20 A No, I don't.

21 MS. GALLAGHER: Mr. Frid, please calm down.
22 Maybe if you weren't so aggressive and mean.

23 BY MR. FRID:

24 Q Go ahead, sir.

25 A I'm not answering that question. I have a

1 lot of respect for Barry. He's a good lawyer and --

2 Q Let me ask you again, is it a correct, 15:04
3 statement, sir, that any deal with Lions Gate would
4 have to be subject to the resolution of the -- of the
5 chain of title issues and related clearances and no
6 such clearances were obtained because Ms. Franklin
7 didn't sign?

8 MS. GALLAGHER: Vague, ambiguous, compound and
9 argumentative.

10 THE WITNESS: I need more context on this but
11 I'm not going to get it. So I know we were deep in 15:04
12 discussions with Aretha in terms of arriving at a
13 document and a negotiation that she agreed to. So
14 this -- the idea was -- at the time was we were all
15 going to try and have basically a -- a simultaneous
16 signature thing where we signed this and we signed
17 hers at the same time. That was the path we were
18 on. 15:05

19 BY MR. FRID:

20 Q And, sir, you never obtained her
21 signature, right?

22 MS. GALLAGHER: Argumentative, misstates the
23 testimony.

24 THE WITNESS: I actually don't recall. I don't
25 think so, but I don't recall where we ended with her.

1 I don't know precisely where we were. Rick Levy may
2 have a better memory than I do about that.

3 BY MR. FRID:

4 Q So he's the person I should ask,
5 correct?

6 A You can do whatever you want.

7 Q He has more than knowledge than you on
8 this issue, is that correct, sir?

9 MS. GALLAGHER: That's just argumentative.

10 THE WITNESS: He represented her. Of course, he
11 would have more knowledge about that.

12 MR. FRID: Okay.

13 BY MR. FRID:

14 Q There's also a reference to Mr. Pollack.
15 Let me read it. "There's a reference to the film
16 being DGA in the internal WB memo provided as evidence
17 of his agreement but we have never (sic) been told
18 repeatedly that this is not a DGA film."

19 Do you see that, sir?

20 A No. Actually, you misread it. You said,
21 "we have never been told repeatedly that this is not a
22 DGA film." In fact, it reads, "but we have been told
23 repeatedly that this is not a DGA film."

24 Q Okay. And she goes on to say, "If we are
25 to go with the WB memo theory, then we need to make

15:05

15:06

1 this DGA compliant and should be able to reference
2 Pollack as a director."

3 Do you see that?

4 A Yeah.

5 Q Meaning that -- and this is in reference
6 to that WB memo that we previously looked at from
7 1972, correct?

8 MS. GALLAGHER: Calls for speculation,
9 argumentative, assumes facts not in evidence.

15:07

10 THE WITNESS: Yes, I believe that's the memo
11 they're talking about.

12 BY MR. FRID:

13 Q And this is when I asked you previously --

14 A If it is, then I think you would tell
15 me.

16 Q Excuse me, Sir. And this is when I asked
17 you about the DGA reference in that memo, right?

18 MS. GALLAGHER: Argumentative, assumes facts not
19 in evidence, vague and ambiguous as to what memo.

20 THE WITNESS: I assume that it's the same memo.
21 If it isn't, I'm sure you would tell me. But -- yes,
22 I recall our discussion about the DGA issue.

23 BY MR. FRID:

24 Q And, in fact, the fact that there was a
25 reference to the DGA issue and the WB memo from 1972,

15:07

1 was an issue that Lions Gate brought up, correct?

2 MS. GALLAGHER: Objection. Argumentative, asked
3 and answered.

4 THE WITNESS: The document speaks for itself.

5 MS. GALLAGHER: I agree.

6 BY MR. FRID:

7 Q Well, is that correct, sir, that in fact,
8 this was brought up --

9 A I have no recollection of them bringing it
10 up but this document answers your question. 15:07

11 Q In fact, it was brought up, right?

12 A I would refer to prior testimony.

13 MS. GALLAGHER: Objection.

14 BY MR. FRID:

15 Q And, obviously, Lions Gate had a concern
16 about whether this film was DGA compliant or not,
17 right?

18 MS. GALLAGHER: Objection. Argumentative,
19 assumes facts not in evidence, misstates the
20 document.

21 THE WITNESS: I think -- well, yes, this is a 15:08
22 minor, minor matter. If it is a DGA film, then -- and
23 proper DGA documents were not filed, this would be at
24 worse a slap on the pinky. This is not --

25 BY MR. FRID:

1 Q Again, you don't recall ever --

2 A This is not a material issue.

3 Q Sir, you don't recall --

4 MS. GALLAGHER: Sasha, let him answer, please. 15:09

5 BY MR. FRID:

6 Q You don't recall, sir, ever contacting the
7 DGA to determine if this film was DGA compliant,
8 right?

9 MS. GALLAGHER: Asked and answered.

10 THE WITNESS: You can see in this document that

11 Warner Bros. agreed with me that this was a -- not a

12 DGA movie. That's as far as I went with this issue. 15:09

13 20 minutes. 15:09

14 BY MR. FRID:

15 Q Sir, were you aware that Mr. Elliott
16 obtained an E and O policy to indemnify himself and
17 his companies from potential claims being asserted by
18 Mr. Pollack's estate? 15:11

19 A I don't know the nature of the policy. I
20 know he got an E and O policy. I don't know if it was
21 only to address those claims. I don't know if it was
22 part of the regular producer's package to have
23 addressed any E and O type of claims.

24 Q Did you --

25 A I just don't know. You can tell me if I'm

1 right or wrong. I don't know.

2 Q Did you counsel Mr. Elliott to get an E
3 and O policy?

4 A I would counsel that to anyone. You
5 always get an E and O policy as part of a producers
6 package that gives you insurance.

15:11

7 Q Do you have a recollection of the terms of
8 that policy?

9 A No, I don't.

10 Q Have you ever seen it?

11 A Probably not.

12 Q Was the point of the policy to provide
13 protection or coverage in the event Mr. Tyerman filed
14 any kind of a legal claim?

15:11

15 A I feel like you're not showing me
16 something. So if you have a document to show me, you
17 tell -- you can please show it to me.

18 Q Well, Mr. Elliott hasn't produced the
19 policy so I'm just asking you if you have any
20 knowledge of it.

21 A I don't. It wouldn't have been within the
22 purview of what I do.

23 Q All right. He said you don't have a
24 recollection of negotiations with Concord?

25 A No. Maybe -- well, no, I don't think

15:12

1 so.

2 Q Okay. Let me show you a document I'm
3 going to mark it as Exhibit 14 (sic).

4 (Exhibit 15 was marked
5 for identification.)

6 BY MR. FRID:

7 Q So I've marked and put in front of the 15:13
8 witness the Distribution Agreement -- Draft
9 Distribution Agreement between Mr. Elliott and
10 Concord. Do you recall this document?

11 A No.

12 Q Let me show you the reference to the reps 15:13
13 and warranties, sir.

14 All right. So here's a reference in
15 Section 13.1. "There's no litigation, arbitration,
16 claim or investigation, each an adverse proceeding
17 pending a threat with respect to the film or the
18 literary, dramatic or musical material upon which the
19 film is based which is contained herein concerning the
20 physical properties thereof, except solely any claims 15:13
21 of the estate of -- the heirs of Sydney Pollack which
22 grantor represents and warrants are and will be
23 throughout the term covered by a valid and binding
24 customary and errors and omissions policy."

25 Do you see that, sir?

1 A Yes.

2 Q Does that refresh your recollection of the
3 purpose of the E and O policy?

4 MS. GALLAGHER: Argumentative. Assumes facts
5 not in evidence. Misstates the document and misstates
6 the E and O policy which he doesn't have in front of
7 him.

8 THE WITNESS: I've never looked at the E and O
9 policy. I don't know if it's only with respect to the 15:14
10 estate's potential claims and I would recommend to
11 anyone that they get an E and O policy for all claims
12 known and unknown. So I was not involved in the
13 negotiation or in getting that policy in place.

14 And I have no idea what the date of the
15 Concord Agreement is. So I don't know -- even if I
16 was still at WME at the time. You didn't point that 15:14
17 out.

18 And I note that the copy on that was sent
19 to Todd Musburger, not to me, which tells me that I
20 did not negotiate that document.

21 BY MR. FRID:

22 Q If you didn't, you didn't. All right.
23 Let me show you another document. Mr. -- 15:15

24 MR. FRID: Court Reporter, what number am I at?

25 MS. GALLAGHER: 15 is your next number.

1 BY MR. FRID:

2 Q Okay. 15. Let me show you Exhibit 15,
3 sir.

4 (Exhibit 16 was marked
5 for identification.)

6 BY MR. FRID:

7 Q It's an email from you to Daniel Furie,
8 Dan Furie, from March of 2019. Do you see that,
9 sir?

10 A Yes, I do.

11 Q All right. Do you recall this email? Do
12 you want me to read it to you? Do you want to take a
13 moment to read it? 15:15

14 A Let me take a moment to read it, please.

15 Q I'll be happy to blow it up, if you want.

16 A I can see it.

17 Q Great. 15:16

18 A Yep.

19 Q Do you know what this email is in
20 reference to?

21 MS. GALLAGHER: Calls for speculation since it's
22 dated March 12, 2019.

23 BY MR. FRID:

24 Q You wrote it.

25 A As I read this document, this is trying to

1 negotiate the back end -- to renegotiate, actually, 15:16
2 the back end of -- as we're trying to put together the
3 deals to release this movie. So we had Aretha at 1.1.
4 We had his costs for his costs. And I was asking
5 Warner Bros. to look kindly on my request that they
6 cut in after he recoups Aretha and begging that he
7 could also recoup his 2 million because that amount -- 15:17
8 those types of dollars are not meaningful to Warner
9 Bros.

10 Q Okay. Did you get a response to this?

11 A I presume I did. I don't recall what the
12 response was.

13 Q Okay. In the end, you say, "All I can say
14 is please be kind to Alan on this, he has spent a lot
15 of life on this and has burned almost every bridge he
16 has in the universe except the bridge with Ari and his 15:17
17 bridge with WB."

18 When you here, has burned almost every
19 bridge he has in the universe, what are you talking
20 about?

21 A I was exaggerating tremendously. I was
22 basically joking with Dan, who we had an easy
23 arrangement -- easy relationship between us.

24 Q Why would you use the term burned almost
25 every bridge?

1 MS. GALLAGHER: Argumentative and vague and
2 ambiguous.

3 THE WITNESS: I've answered your question, I
4 believe.

5 MS. GALLAGHER: Yeah, asked and answered.

6 BY MR. FRID:

7 Q Do you have an answer for me?

8 MS. GALLAGHER: Asked and answered.

9 THE WITNESS: I believe I've answered your
10 question.

11 BY MR. FRID:

12 Q What is your answer to my question?

13 MS. GALLAGHER: You already asked him.

14 THE WITNESS: Court Reporter read my answer
15 back, please.

16 BY MR. FRID:

17 Q I want to understand what you made a
18 reference to him burning almost every bridge?

19 MS. GALLAGHER: You asked and answered -- he
20 answered that already.

21 THE WITNESS: I'll say it again, essentially.

22 BY MR. FRID:

23 Q Please.

24 A I was joking. We had a very easy rapport,
25 me and Dan Furie. And I was aware that there was a

15:18

1 lot of difficult negotiations and a lot of sweat and 15:18
2 tears had gone into this movie and that's really what
3 I was saying in a joking way.

4 BY MR. FRID:

5 Q Did Warner Bros. ever want to make this
6 film or distribute this film?

7 A No, it's not what Warners does. They
8 don't release movies like this. They never do. They 15:19
9 don't know how to do it, actually.

10 Q You're involved in negotiations with Lions
11 Gate. Other than Lions Gate, what other duty is their
12 third-party purchasers were you involved in
13 negotiations with?

14 A I don't recall. I know I was tangentially
15 at least involved in some of these. As time went on,
16 obviously, passed the end of 2018, I was only involved
17 in as sort of a -- talking to Alan occasionally about 15:19
18 where he's ending up. I had no role at all in
19 negotiating deals. So I know I talked about a couple
20 of others but I don't think it was a material role
21 that I had.

22 For example, NEON, no role. I kept up
23 with Liesl, but I don't know -- to this day, don't
24 know what the deal was. 15:20

25 Q So you would say that your primary

1 involvement was with Lions Gate only, correct?

2 MS. GALLAGHER: Objection. Argumentative and
3 misstates his testimony that he testified here today
4 about the Graham Taylor deal.

5 THE WITNESS: Yeah, I was involved with Graham's
6 deal. I was involved with Lions Gate. Was I involved
7 with Concord, I don't think so. But I may have looked
8 at something. I just -- to be honest, I don't
9 recall.

10 BY MR. FRID:

11 Q Okay.

12 A I may have looked at other documents, but 15:20
13 certainly after December 2018, I didn't look at
14 anything.

15 Q Was there a draft agreement in the Lions
16 Gate deal?

17 A Oh, yeah, we had gone back and forth
18 probably 10 times.

19 Q So there were documents, draft documents,
20 correct?

21 A Yeah.

22 Q Other than Lions Gate, was there any other
23 studio distributor, third-party purchaser where there 15:21
24 were written documents, written draft agreements?

25 MS. GALLAGHER: Calls for speculation.

1 THE WITNESS: It would be speculation on my part
2 because I wasn't involved in them.

3 BY MR. FRID:

4 Q So you don't know?

5 A I'm sorry?

6 MS. GALLAGHER: Objection, misstates his
7 testimony.

8 BY MR. FRID:

9 Q You don't know, correct?

10 A I know there was a deal for NEON. They
11 released the movie. They wouldn't have released the
12 movie without a signed document.

13 Q Sure.

14 A Other than that -- and I don't know what
15 rights NEON had. I don't know if they only had
16 theatrical rights or if they had all rights or if they 15:22
17 licensed those rights out. I have no idea.

18 Q Okay. So other than Lions Gate, which was
19 never consummated and the NEON deal that got
20 happened -- that got done, you're not aware of any
21 other third-party, either studio, purchaser or
22 distributor where there were draft agreements that
23 were created or -- 15:22

24 MS. GALLAGHER: Objection. Argumentative.

25 THE WITNESS: I'm not the right person to ask --

1 I'm not the right person. You should ask people who
2 are involved throughout the negotiation. I was not.
3 You should ask Liesl.

4 BY MR. FRID:

5 Q I'm asking for your -- sir, I'm asking for
6 your knowledge.

7 A I don't have any knowledge other than what
8 I've told you.

9 Q Let me just ask you again. Based on your
10 personal knowledge, other than Lions Gate, draft of
11 agreements in the Lions Gate negotiations and the NEON
12 deal, are you aware of any other third parties with
13 whom Mr. Elliott or his companies ever exchanged draft
14 agreements, you personally?

15:22

15 MS. GALLAGHER: Argumentative, vague and
16 ambiguous, calls for speculation, especially since we
17 haven't received all the documents in this case and he
18 hasn't had a chance to look at any of them.

19 THE WITNESS: I don't know whether Endeavor
20 Content ever sent an email or anything indicating what
21 their interest was in writing. I don't know if any --
22 so other than that, I would say Lions Gate, NEON, I
23 presume there's a written document because there's a
24 distribution deal that was entered into, and I don't
25 know about Endeavor Content.

15:23

1 MR. FRID: Okay.

2 MS. GALLAGHER: Are you done, Sasha?

3 MR. FRID: No. I'm not.

15:23

4 THE WITNESS: All right. What do we do? If you
5 want to ask me more questions, you need to schedule --

6 MR. FRID: I have five minutes. I'll ask you
7 questions for five minute and then I will -- then
8 you'll have to go, but I still have my five minute.

9 THE WITNESS: You make it so easy to be helpful.

10 MS. GALLAGHER: I apologize to you, Mr. McGuire.

11 BY MR. FRID:

12 Q Well, you talked about the marketability
13 of the film. Do you recall that testimony, those
14 questions from Ms. Gallagher?

15:24

15 A Yes.

16 Q Okay. What would you say in your
17 professional opinion accurate comp, a comparable would
18 be for this film?

19 MS. GALLAGHER: Vague and ambiguous as to
20 time.

21 THE WITNESS: This was a unique property. It's
22 irreplaceable. It's as unique a property as there
23 possibly could be. It's a moment in time that is
24 important in R and B and in gospel, and as such, it's
25 one of those how high is up kind of conversations, but

15:24

1 it's -- so it's -- given just the unique stature of
2 Ms. Franklin and the uniquely fantastic recording that 15:25
3 was done, I think it's really too unique to really
4 call almost anything a comp on this one.

5 BY MR. FRID:

6 Q Okay. You testified that the picture
7 quality, you thought, was not -- was not presentable.
8 Do you recall that testimony?

9 A I didn't say it wasn't presentable. I 15:25
10 said it was not ideal.

11 Q Not ideal. What is your -- let me ask you
12 that.

13 How -- because the picture quality wasn't
14 ideal, how do you think that affected the value of the
15 film?

16 MS. GALLAGHER: Vague and ambiguous, calls for
17 speculation.

18 THE WITNESS: Very difficult to figure that out.

19 If you have a full and robust marketing plan, if you
20 have a -- and you do a lot of in place promotion, the 15:26
21 quality of the image is probably less important than
22 the unbelievable quality of the performance itself.

23 So it's really a difficult question to answer and I 15:26
24 really -- I have no answer.

25 BY MR. FRID:

1 Q Ms. Gallagher showed you some emails with
2 Essence. Were you involved in any negotiations with
3 Essence?

4 A No.

5 Q She showed you some emails from Tirrell
6 Whittley. Were you involved in any discussions or
7 negotiations with Tirrell Whittley?

8 A Yes.

9 Q What negotiations were those?

10 A First of all, as to his deal. Second of
11 all, to his contribution to the marketing of the
12 movie.

15:27

13 Q What was his role, sir?

14 A He was -- as I stated in my prior
15 testimony, he was engaged by Mr. Elliott to provide
16 marketing services.

17 Q He wasn't a potential buyer of the film,
18 correct?

19 MS. GALLAGHER: Vague and ambiguous and
20 argumentative.

21 THE WITNESS: Not to my knowledge, no, he
22 wasn't.

23 BY MR. FRID:

24 Q Do you know what company he was associated
25 with?

1 A I think he had his own marketing company. 15:27
2 I think its name was part of his email address, it was
3 Liquid Soul.

4 Q Are you aware that Mr. Elliott is -- filed
5 a lawsuit against NEON?

6 MS. GALLAGHER: Calls for speculation.

7 THE WITNESS: I don't know if he filed it. I
8 know he talked about it. We never spoke about it.

9 BY MR. FRID:

10 Q Have you ever reviewed that lawsuit?

11 A No.

12 Q Are you aware that he's suing NEON in New 15:28
13 York State Court claiming that their conduct lessened
14 the value of the film?

15 MS. GALLAGHER: Vague and ambiguous and
16 misstates the lawsuit. Calls for speculation.

17 THE WITNESS: I'm unaware of the lawsuit. Yeah.

18 BY MR. FRID:

19 Q Why did he tell you he wanted to file a
20 lawsuit against NEON?

21 MS. GALLAGHER: Calls for speculation based on
22 his prior testimony.

23 THE WITNESS: I don't think I testified that he 15:28
24 did talk to me about it. I heard about -- I heard
25 that he had filed one, but I didn't ask him. I don't

1 view it as my role in his life anymore, and I was most
2 assiduously not wanting to get into a long discussion
3 with him about the -- what that lawsuit might be or
4 mean.

5 MR. FRID: All right. Mr. McGuire, I want to be
6 mindful and respectful of your time. I have other
7 questions, but for the sake of getting you going and 15:29
8 out of here, I'm going to stop my questioning. I
9 thank you for your time this afternoon, sir.

10 THE WITNESS: You're welcome, goodbye.

11 MS. GALLAGHER: Mr. McGuire, I do have some
12 short questions. I don't want to hold you a minute
13 longer than we have to. We can -- if we ever needed
14 to, come back another day.

15 THE WITNESS: I've just got somebody waiting for
16 me.

17 MS. GALLAGHER: No worry. I appreciate your
18 time and appreciate you giving us some time and thank
19 you for carving the time out of your schedule for 15:29
20 us.

21 THE WITNESS: Thank you.

22 MR. FRID: Thank you, sir.

23 THE VIDEOGRAPHER: All right. I'm going to
24 claim the host.

25 This concludes the video deposition in

1 this matter. The time is 3:30 p.m.

2 (Conclusion of the proceedings.)

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DECLARATION UNDER PENALTY OF PERJURY

I, Thomas B. McGuire, Jr., do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken December 12, 2023; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this ___ day of _____, 2023, at _____, California.

Thomas B. McGuire, Jr.

DEPOSITION ERRATA SHEET

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Thomas B. McGuire, Jr.

DATED

1 STATE OF CALIFORNIA)
)
2 COUNTY OF LOS ANGELES)
)
3

4 I, Jorge P. Dominguez, CSR 12523, Certified
5 Shorthand Reporter, do hereby certify:

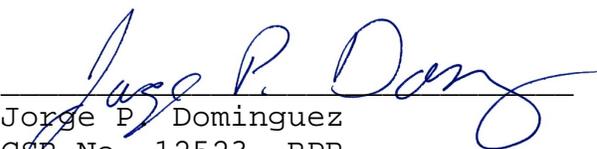
6 That prior to being examined, the witness
7 named in the foregoing deposition was by me duly
8 sworn;

9 That said deposition was taken down by me in
10 shorthand at the time and place therein named and
11 thereafter transcribed under my direction;

12 I further certify that I am neither counsel
13 for, nor related to, any party to said proceedings,
14 not in any way interested in the outcome thereof.

15 I declare under penalty of perjury under the
16 law of the State of California that the foregoing is
17 true and correct.

18
19 Dated: December 19th, 2023

20
21 
22 _____
Jorge P. Dominguez
CSR No. 12523, RPR

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Exhibits	(
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