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Industry Wins Major Case on Talent Compensation

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The ANA-AAAA Joint Policy Committee (JPC) has won a major victory in a court case involving talent compensation. On December 8th, the U.S. District Court for the Central District of California rejected an attempt by the Screen Actors Guild (SAG) to overturn an important arbitration award. That award held that disputes on allocations in celebrity contracts must be resolved by arbitration under the collective bargaining agreement and not under threats of litigation under the ERISA laws. This court decision will have a very significant impact on the bottom-line talent compensation costs for many marketers.

Background

In June, an arbitrator ruled that disputed Pension and Health allocations for covered vs. non-covered acting services in television commercials must be resolved via mandatory bargaining between employers and SAG. This decision ended a 30-year practice by the SAG Pension & Health Fund Trustees of unilaterally setting allocations and then threatening federal ERISA litigation if advertisers disagreed with the amounts subject to the 14.8 percent P&H payment required by the SAG Commercials Contract.

SAG filed a lawsuit in federal court in California to vacate the arbitration award. The court rejected that effort and confirmed the arbitration award.

The issue arises when an actor is employed to provide services in both broadcast and non-broadcast media. An example is a celebrity endorsement contract, where compensation must be allocated between acting services covered by the SAG contract and other non-covered services, such as print advertising and public appearances. The ANA-AAAA Joint Policy Committee on Broadcast Talent Relations (JPC) filed for arbitration against SAG to clarify the duty of SAG, not the P&H trustees, to bargain over what proportion of total compensation is pensionable and to clarify that it cannot be unilaterally mandated by the Trustees.

The arbitrator ruled in June that allocations in such contracts must be determined on a case by case basis without minimums or other guidelines unilaterally determined by the SAG Trustees. If there are to be any guidelines, according to the arbitrator, they must be bargained for between

SAG and the JPC. Furthermore, if SAG and an individual advertiser cannot agree on an appropriate allocation, the impasse must be resolved through arbitration in accordance with the SAG Commercials Contract, not via a lawsuit brought by the Trustees under federal ERISA laws.

As the arbitrator noted, federal litigation has been inappropriately and unfairly used by the Trustees as a sword of Damocles over the heads of advertisers. Many millions of dollars are paid into the P&H fund by advertisers. They will now have the ability to determine and resolve allocations in a fair, reasonable basis without threat of litigation or arbitrary guidelines imposed by the Fund Trustees.

If you have any questions about this matter, please contact the JPC's Lead Negotiator, Douglas Wood at Reed Smith, LLP, tel: (212) 549-0377, fax: 212 521 5450, or email: dwood@reedsmith.com.