

All pleadings in this case **must** be filed in the appropriate separate case. Motions which are not filed in the appropriate case are subject to being summarily denied by the Court.

While the Magistrate Judge realizes that separate filings will pose administrative difficulties for the parties as well as the Court, there is simply no other way to keep track of pleadings in this matter unless they are filed in the separate cases. This problem is brought about by the plaintiffs having filed a massive case and the defendants having requested that the original case be severed. All parties and the Court are thus left with logistical problems.

The defendants' memorandum and discovery plan (Docket Entry No. 396) is **REJECTED** for the following reasons. The plan proposes a bifurcation of liability and damages. While in certain cases this might be an alternative, given the deadlines set by the District Judge in this matter such procedures would simply consume too much time. At some point if this case is to be settled short of trial, these figures must be known, and accordingly, the Magistrate Judge **DECLINES** to bifurcate, much less trifurcate, discovery in this matter.

The proposed Order would have phase one discovery and motions for partial summary judgment continuing through May 31, 2002, and dispositive motions not filed until October 31, 2002, for motions related to damages. This proposal is in direct contravention of the District Judge's Order of August 1, 2001 (Docket Entry No. 374), which provides that all prior orders in this case would apply, which included deadlines for dispositive motions and a trial date of November 4, 2002. Clearly the Magistrate Judge could not approve a case management plan which called for dispositive motions to not even be filed until October 31, 2002, less than a week before the trial is scheduled to start. The parties are reminded that responses to dispositive motions are due at least 90 days prior to the trial date.

It should also be pointed out that the Magistrate Judge and the District Judge have both repeatedly stated that discovery is not stayed in this matter and should proceed. There is no indication that the plaintiffs are making any change of substance in the amended complaints they will be filing in the separate cases. The plaintiffs insist that they have furnished the various defendants simplified discovery requests. These requests need to be responded to by the defendants.

At the telephone conference the defendants raised the issue that the plaintiffs were attempting to trap them by requesting information on what part of the plaintiffs' material was contained in the defendants' material when the plaintiffs were in a much better position to know this than the defendants. The fact that defendants may not have complete knowledge is no reason to delay all answers. If the defendants first responses need to be modified at a later date, they have a duty to do so.

The plaintiffs contend that their request as they have modified it is reasonably straightforward.¹ The plaintiffs further point out that if the defendants wish to ask what plaintiffs have in this matter they may do so, but defendants have not filed such a formal request since this case was filed and the discovery stay was lifted. The Magistrate Judge does not have before him now any requests by the defendants for materials that the defendants have been formally denied. The plaintiffs should give serious consideration to supplying this information upon a proper request. Absent good cause, the Magistrate Judge will be inclined to require its production. The Magistrate Judge will also consider upon appropriate request and for good cause a shortening of response

¹The plaintiffs also contend with some justification that the defendants should know what is in their product.

dates for requests if there appears to be foot-dragging on either side.

If the defendants truly believe that there are fatal defects in the plaintiffs' case, such as the ones cited in Priority Records v. Bridgeport Music, Inc., 1994 WL 389017 (S.D. N.Y. 1994), they can file appropriate motions at any time. No one has to wait to the last minute to file proper motions. A motion can be filed by one defendant to test whether Bridgeport owns the rights they claim. Every defendant does not have to file a complete motion but can adopt the first filed motion by another defendant, if the facts are alleged to be the same.

Likewise, if any of the parties believe alternate dispute resolution could be useful, they may suggest a mediator.

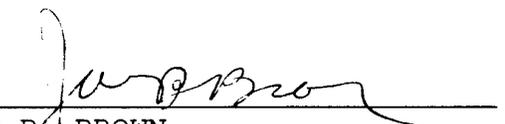
There is no doubt that discovery on both sides in this matter will be voluminous, difficult and burdensome to all parties, as well as to the Court. The procedure will be greatly simplified if all parties will purge from their word processors 90 percent of the boiler plate they use in propounding and answering discovery requests. Straightforward requests in plain English should be answered with straightforward answers in equally plain English. Both sides are warned that the Magistrate Judge will not be inclined to reward any party that attempts to unreasonably

complicate questions or answers or to unnecessarily parse either questions or answers.

The Magistrate Judge will be unavailable for telephone conferences from September 6 through September 22, 2001. Otherwise, in general the Magistrate Judge will be available for telephone conferences. In order not to interfere with other cases and previous settings the parties should, in general, request to set such telephone conferences at 4:30 p.m. or thereafter in the afternoons.

The Magistrate Judge has taped the telephone conference of August 10, 2001, and intends to tape all further telephone conferences in these cases. Copies of any of the tapes may be obtained from the Clerk's Office.

It is so **ORDERED**.



JOE B. BROWN
United States Magistrate Judge