SUING THE BEATLES AND OTHERS: PERILS AND PRECEDENTS OF CELEBRITY LAWSUITS

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Celebrities, with deep pockets and media spotlights, are natural lightning rods for litigation. The Beatles were a prime example of artists suing and being sued. The band's most important legacy, of course, was their music, and influence on cultural and sociological changes. But few celebrities encountered as many legal disputes as did the Beatles.

Many of the legal issues the Beatles faced were forerunners for today's music industry. From early issues with crowd control as Beatlemania took hold in the United Kingdom in 1963 and the United States in 1964, to disputes over merchandising, management, intra-band rights, sound recordings, music publishing, copyright infringement, immigration, taxes and more, the Beatles faced—and continued to face long after they broke up—an array of issues that reflected where the music industry was headed.

My recent book Baby You're a Rich Man: Suing The Beatles for Fun & Profit *(ForeEdge/University Press of New England) takes a close-up, investigative look at some of these concerns, as did a chapter from a prior book I wrote,* They Fought the Law: Rock Music Goes to Court, *that focused on the Beatles' long-running music royalty battle with Capitol-EMI Records. The written materials that follow here are excerpted, revised and updated from that Beatles chapter in* They Fought the Law.

Paul McCartney's December 31, 1970, lawsuit—against his three Beatles mates in the High Court of Justice in London—triggered the formal end to the Beatles' band partnership. It also led to years of bitter feelings, though the former Fab Four's business ties carried on through their Apple Corps). Near the end of the 1970s, however, McCartney, John Lennon, George Harrison and Ringo Starr appeared to be mending some of their interpersonal wounds. At least according to Harrison, "Everybody's sued each other to their heart's content and now we're all good friends."

Even so, the four former band members were busy preparing for another prolonged legal battle, this one against their long-time record labels. On April 30 and May 1, 1979, the Beatles' Apple Records filed complaints in state courts in Los Angeles and New York charging Capitol-EMI with breach of contract for failing to pay the Beatles their full North American record royalties.

The group hired the accounting firm Satin, Tenenbaum, Eichler & Zimmerman to conduct a royalties audit of Capitol's books relating to Beatles product for 1969 through 1979. John Lennon signed the letter retaining the accountants. Satin Tenenbaum reported numerous inconsistencies in the way that Capitol-EMI accounted for Beatles' royalties.

According to Nat Weiss, U.S. business partner and a legal counsel to the Beatles' first full-time manager Brian Epstein, although Epstein "had problems with EMI over what kinds of records to put out, I don't remember any back-royalty complaints in the 1960s." But Capitol's lawyers later acknowledged that the Beatles had complained about royalty escalations as early as 1972. In June 1975, for example, the accounting firm Prager and Fenton concluded that Capitol-EMI underpaid the Beatles $3,206,312 between September 1, 1969—the day the band had signed an amended, improved recording agreement renegotiated for them by their new manager Allen Klein—and the end of 1973.

Under the so-called "buy/sell" agreement that Klein obtained from Capitol-EMI, the U.K.-based EMI gave the Beatles' New York-based Apple Records Inc. the exclusive North American rights to manufacture and distribute Beatles product. Apple simultaneously licensed the U.S. distribution rights to Capitol, which also did the actual

manufacturing work under the agreement with Apple Records. (EMI, however, retained ownership of the copyrights in the Beatles recordings.)

The "buy-sell" arrangement entitled the Beatles to a highly favorable royalty rate of 25 percent if the last two Beatles recordings released before August 31, 1972, achieved minimum record sales of 500,000 units by January 26, 1976, the date the Beatles' recording contract with Capitol-EMI expired. The central issue in the Beatles' royalty suit was whether Capitol-EMI had properly deemed John Lennon's politically charged solo effort *Some Time in New York City,* which sold less than 200,000 copies, as the delivery of a Beatles album. If so, Capitol-EMI could deny the royalties escalation to the Beatles.

The *Some Time* album was released in June 1972. The two previous Beatles solo albums, Lennon's *Imagine* and McCartney's Wings' *Wild Life*, both quickly topped 500,000 in sales. George Harrison's successful *The Concert for Bangla Desh* album was released two weeks after *Wild Life,* but Capitol-EMI and Apple had agreed that the album, a charity project featuring numerous performances by other artists, wouldn't count as a Beatles release for purposes of the buy/sell contract.

That put the Beatles in the position of having to argue that *Some Time* shouldn't qualify as a Beatles album because John Lennon may not have appeared on every track. "There were several Yoko Ono songs on the album," said Joseph Wheelock, Capitol-EMI's lead litigator for Latham & Watkins in Los Angeles.

"That escalation clause was diabolical," Wheelock continued. "I've never faced an issue like it."

The entertainment law firm Loeb and Loeb initially represented the Beatles in the California suit. Cleary Gottlieb Steen & Hamilton, which had handled many legal matters for the band—including John Lennon, George Harrison and Ringo Starr's litigations resulting from their firing of Allen Klein in 1973—served as New York counsel.

SPLIT OVER WHETHER TO SETTLE

As is often the case with such royalty suits, the Beatles may have filed their claims hoping that the record company would respond with a royalties offer. But Capitol-EMI had no reason to hurry the suit along. After all, it was to the company's advantage to maintain the status quo and pay the Beatles the lower royalty rate of 17.5 percent, rather

than 25 percent, for North American sales per the last contract Brian Epstein had negotiated for the band in 1967. According to Wheelock, the parties even agreed in writing that the case should proceed on a slow track.

By 1982, however, the Beatles became frustrated with the progress of their claims. In May of that year, the group decided to replace their New York counsel with the Manhattan firm of what was then known as Gold, Farrell & Marks. The latter firm's senior partner, Leonard Marks, had won a favorable settlement for songwriters Jerry Leiber and Mike Stoller in a royalty dispute with music publisher Hill and Range.

Marks's firm quickly amended the Beatles' complaint to charge that Capitol-EMI's alleged underpayment of royalties amounted to fraud, conversion and breach of fiduciary duty. Then in December 1984, the Beatles won a judgment in a related suit Apple Corps filed in England over royalties owed the group outside North America, for the years 1966 through 1979. The London High Court found no fraudulent concealment but ordered a new accounting of the royalties EMI owed. That accounting resulted in payment of over $4 million to the Beatles.

But friction among the Beatles increased as the New York case sped up. They were split as to whether it would be better to settle the case and take what they could get from Capitol-EMI or to confront the record companies in court. Capitol-EMI had made the Beatles a settlement offer of about $8 million dollars that included an increase in the Beatles' U.S. royalty payments to $1.20 per record.

Paul McCartney wanted to accept Capitol-EMI's offer, but George Harrison, John Lennon's widow Yoko Ono and Ringo Starr were against it. McCartney and his advisers, John and Lee Eastman, thought that a big problem with the Beatles going to trial was that Capitol-EMI held the better hand. The Beatles had been counting on Allen Klein's testimony, but John Eastman believed that Klein would testify instead for Capitol.

John Eastman met with EMI chairman Bhaskar Menon to try to resurrect the record company's settlement offer. But Eastman reported back to Paul and Linda McCartney and Lee Eastman that "Bhaskar killed [the attempt to resurrect the settlement offer] sooooo fast—so politely and so fast. It's just amazing. In fact, I wondered why everyone had gotten together frankly. Bhaskar's just playing very tough right now."

In addition, Harrison, Ono and Starr were unwilling to settle with Capitol-EMI unless their royalty rate was “equalized” with Paul McCartney’s. McCartney had infuriated the others when, after leaving the Columbia record label, he had negotiated a new solo deal with Capitol-EMI in 1985 that included an “override”—an increase for him on the royalties he would receive on Beatles product.

But McCartney didn’t want the override issue to be part of any royalty-suit settlement talks with Capitol-EMI; McCartney feared that the royalty increase on Beatles product he had gotten might be decreased to match what Capitol-EMI might offer Harrison, Ono and Starr. As a compromise, Harrison, Ono and Starr agreed to each give Paul a million dollars to help even up their positions.

RAMPING UP THE STAKES

What the Beatles needed in their fight against Capitol-EMI was a smoking gun. They would find it to some extent in an individual named Leonard Wolin. The Beatles’ investigators had heard that Wolin claimed to have made irregular “back door” purchases of large amounts of records, including Beatles product, from a Capitol pressing plant. Unfortunately, Wolin had died. But Wolin’s family allowed the Beatles’ investigators to sift through his papers, stored in the attic of a Wolin family member’s home. There the investigators found what they had been looking for: copies of Wolin’s canceled checks written out to Capitol Records but deposited into the record company’s employee recreation fund.

Now the Beatles asked the New York court for permission to supplement their royalty claims to include from 1979 to the present. The Beatles also asked for termination of Capitol’s rights to manufacture and distribute Beatles product, and for a transfer of all sound recording rights to the group.

The revised complaint, which asked for $30 million in actual damages and $50 million in punitive damages, alleged that Capitol sold 19 million Beatles records that the label claimed it had scrapped. The Beatles also charged that Capitol had designated an excess number of Beatles albums as free, promotional records given away to wholesalers or used to obtain retail display space for other Capitol artists.

In March 1986, the Beatles’ lawyers deposed Capitol executives who confirmed some of the band’s record-scrapping allegations. Dennis White, Capitol’s executive vice

president of Record Group Services, told Beatles' lawyer Alan Friedman that he knew of several instances in which records designated as scrap had been sold or stolen.

Walter Lee, vice president of marketing for Capitol, admitted that he knew of an incident in the early 1980s in which records that were to be melted into plastic coat hangers had found their way into the hands of John LaMonte, a Philadelphia-area cutout records dealer with ties to organized crime.

Capitol-EMI issued a public statement admitting to an "isolated incident" at its Jacksonville plant but claimed the label had been "completely successful in correcting the situation." The record company also denied it had any dealings with LaMonte.

In July 1986, however, New York Supreme Court Justice Michael Donzin granted the Beatles' motion to serve Capitol-EMI with the revised complaint. Donzin acknowledged in an ominous warning to the record label that "if [the Beatles] claims are proven at trial, there should be no reason for them to be compelled to continue under the contract." *Apple Records Inc. v. Capitol Records Inc.*, 08041/79 (N.Y. Sup. Ct., N.Y. Cty. 1986).

Despite the damning charges, Capitol-EMI won a significant court victory in April 1987, when it convinced Justice Donzin that the Beatles' buy/sell agreement was a "fiction." Turning his earlier ruling on its ear, Donzin granted Capitol-EMI's motion to dismiss most of the Beatles' claims.

The Beatles launched an all-out litigation offensive in response. In July 1987—the group filed a $40 million complaint against Capitol in New York federal court that included allegations over the delay of the release of Beatles compact discs.

Bhaskar Menon blamed the delay on "insufficient manufacturing capacity." Plus, "it wasn't clear on what basis the Beatles' CD royalties would be computed and Capitol wanted that issue resolved before the CDs were released," Daniel Murdock, New York defense counsel, said. The Beatles, on the other hand, accused Capitol of withholding release of the CDs to force a settlement of the parties' disputes. Capitol had only begun to release Beatles CDs in February 1987.

Apple also sued in New York alleging false endorsement over Capitol's licensing of the sound recording of John Lennon's "Revolution" for a Nike sneaker TV commercial. (Nike had obtained the song rights for "Revolution" from Michael Jackson,

who bought the Beatles publishing catalogue from ATV Music for $47.5 million in 1985.) Yoko Ono broke ranks with Apple Corps by issuing a statement supporting the Nike commercial as a way to make Beatles music accessible to a new generation, but in February 1988, Nike decided not to exercise its option to use the "Revolution" sound recording.

In May 1988, however, the New York federal court dismissed the Beatles' CD suit on the ground that England was the proper place to bring the claim. But the same month a New York appellate court decided the Beatles had made sufficient allegations for the fraud and conversion claims in the group's original royalty suit to proceed to trial. *Apple Records Inc. v. Capitol Records Inc.*, 137 A.D.2d 50 (N.Y. App. Div. 1st Dept. 1988).

By this time, the Beatles' case had been significantly bolstered by a deposition the group's lawyers took of a former record distributor named Daniel Gittelman. Gittelman stated in his deposition that for years he received "side benefits" from Capitol in the form of a secret, 8 percent discount, usually as free salable records. Gittelman said that Beatles records amounted to 25 to 30 percent of this product.

A SWEET SETTLEMENT DEAL

Settlement talks between Capitol-EMI and the Beatles soon resumed, lasting for months. When the settlement came in November 1989, it ended all pending legal disputes among the parties. "What I think eventually broke the lawsuit was the CD issue," Joseph Wheelock said. "Everyone wanted the Beatles CDs out."

For the Beatles, the deal couldn't have been sweeter. Between November 1989 and early 1996—soon after the Beatles' official video documentary was first broadcast on ABC and the three *Anthology* CDs of Beatles recording outtakes began to be released—the group reportedly grossed $300 million, far more money than the Beatles earned in all the years before.

EMI appeared to enjoy the settlement benefits, too. For the fiscal year ending March 31, 1996, the record company reported its profits rose 23 percent. What those figures didn't reveal was that EMI had not gotten what it thought it bargained for in the 1989 settlement deal. In 1991, an English High Court ruled that the Beatles could bar the record company from releasing CDs of two Beatles greatest-hits packages known as the

Red and the *Blue* albums. The High Court also decided that the Beatles could prohibit the sale on CD, or in any new sound recording format, of previously released Beatles albums containing more than 12 songs.

The court's ruling meant EMI had to negotiate yet another agreement with Apple. This one, finalized in June 1993, required EMI to buy back its pre-existing rights to sell the two greatest hits packages in exchange for additional royalty payments to the Beatles of a steep $2.26 per CD.

ANOTHER ROUND OF ROYALTY LITIGATION

But a dozen years later, the Beatles would be again be suing Capitol-EMI for alleged underpayment of royalties. In December 2005, Apple Corps and the individual interests of the Beatles again sued the record labels in London and New York courts. This time the Beatles alleged they were owed $55 million in back royalties. The suits followed a Beatles audit of Capitol-EMI covering 1994-1999.

According to the Beatles' U.K. lawyer Nick Valner, the complaints were filed after two years of talks with the record labels left the royalties issues unresolved. Capitol-EMI moved to dismiss the Beatles' fraud and breach-of-fiduciary duty claims. Courts have almost never found a fiduciary relationship in an artist/record company royalty relationship. But the New York Appellate Division's 1988 ruling in the prior Beatles royalty litigation had recognized that Capitol-EMI did have a fiduciary obligation to the music group based on the long-term relationship between the Beatles and Capitol-EMI. Ironically, Capitol-EMI argued in 2006 that "despite the relationship of trust and confidence the parties may have had 25 years ago," there could no longer be a fiduciary relationship because "distrust and contention has permeated" the Beatles and the record labels' dealings in recent years.

The trial court in New York City turned down Capitol-EMI's dismissal motion, noting, "Whether or not the level of contentiousness and distrust was so great as to destroy the fiduciary relationship the parties had is an issue that must await development of the factual record."

But one more time, the parties settled shy of a trial.