

Management had engaged in "self-dealing, deceptions, dishonesty and lack of professionalism in dealing with Mr. Hall [and] willful violations of the [Talent Agencies] Act". Id. at p. 45.

[ELR 15:9:3]

**Revising the "Jump Ship" Clause . . . Revisited:
"Superstar Insurance" Question Lingers**

by William I. Hochberg

Last month's Legal Affairs article focused on two newly-enacted statutes dealing with the circumstances under which California courts may issue injunctions to prevent the breach of personal services contracts. [Revising the "Jump Ship" Clause: How California Legislators and the Music Industry Raised the Ante for Record

Companies Seeking Injunctions Against Defecting Artists. (ELR 15:8:3)] The statutes in question are Section 3423 of the California Civil Code and Section 526 of the California Code of Civil Procedure.

Due to a debate over the meaning of a portion of those statutes, there is disagreement about the amounts that should appear in the "Clause B `Superstar Insurance'" table that accompanied last month's article, for Contract Years 4 through 7. (The table appears at ELR 15:8:6.)

The debate arises from an ambiguity in the language of Civil Code section 3423(e)(2)(B) (and parallel language in C.C.P. section 526(b)(5)(B)(ii)) which states, in pertinent part, that an artist may be enjoined by a company which did not meet annual contractual payment requirements if the company makes a lump sum payment which is "at least 10 times the applicable aggregate minimum amount specified in clauses (I) and (II) of subparagraph (A) through and including the contract year during

which the injunctive relief is sought." (Emphasis added.) This reference to a "minimum" amount specified in clauses (I) "and" (II) is ambiguous, because "minimum compensation" is expressed exclusively in clause (I) which deals with contractual guarantees. Clause (II) deals with contingent royalties, not minimum amounts. Moreover, the sums referred to in clause (II) are expressly described as "over and above the minimum contractual compensation" stated in clause (I).

Therefore, some readers view Civil Code section 3423(e)(2)(B) (and C.C.P. section 526(b)(5)(B)(ii)) to be internally inconsistent because it appears to include those sums stated in clause (II) within the tenfold calculation of the clause (I) "minimum"; and these readers interpret the section as requiring a tenfold payment of the minimum amounts specified in clause (I) only. However, others interpret the statute as including both clauses (I) and (II) within the tenfold calculation.

Here is the language of amended California Civil Code section 3423:

An injunction may not be granted:. . .

(e) To prevent the breach of a contract the performance of which would not be specifically enforced, other than a contract in writing for the rendition of personal services from one to another where the promised service is of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and where the compensation for the personal services is as follows:

(1) As to contracts entered into on or before December 31, 1993, the minimum compensation provided in the contract for the personal services shall be at the rate of six thousand dollars (\$6,000) per annum.

(2) As to contracts entered into on or after January 1, 1994, the criteria of subparagraph (A) OR (B), as follows, are satisfied:

(A) The compensation is as follows:

(I) The minimum compensation provided in the contract shall be at the rate of nine thousand dollars (\$9,000) per annum for the first year of the contract, twelve thousand dollars (\$12,000) per annum for the second year of the contract, and fifteen thousand dollars (\$15,000) per annum for the third to seventh years, inclusive, of the contract.

(II) In addition, after the third year of the contract, there shall actually have been paid for the services through and including the contract year during which the injunctive relief is sought, over and above the minimum contractual compensation specified in clause (I), the amount of fifteen thousand dollars (\$15,000) per annum during the fourth and fifth years of the contract,

and thirty thousand dollars (\$30,000) per annum during the sixth and seventh years of the contract. As a condition to petitioning for an injunction, amounts payable under this clause may be paid at any time prior to seeking injunctive relief.

(B) The aggregate compensation actually received for the services provided under a contract that does not meet the criteria of subparagraph (A), is at least 10 times the applicable aggregate minimum amount specified in clauses (I) and (II) of subparagraph (A) through and including the contract year during which the injunctive relief is sought. As a condition to petitioning for an injunction, amounts payable under this subparagraph may be paid at any time prior to seeking injunctive relief.

(3) Compensation paid in any contract year in excess of the minimums specified in subparagraphs (A)

and (B) of paragraph (2) shall apply to reduce the compensation otherwise required to be paid under those provisions in any subsequent contract years. . . .

The "Clause B `Superstar Insurance'" table that was published last month reflected tenfold calculations that took into account only the "minimum compensation" specified in clause (I). The following table reflects tenfold calculations that take into account the "minimum compensation" specified in clause (I) plus the contingent royalties specified in clause (II).

Clause B "Superstar Insurance"

Contract Year	Ten-fold Lump Sum	Prior year(s) Aggregate	Total Sum to be paid for injunction
1	\$ 90,000 PLUS	0 =	\$ 90,000
2	\$120,000 PLUS	\$ 90,000 =	\$ 210,000
3	\$150,000 PLUS	\$ 210,000 =	\$ 360,000
4	\$300,000 PLUS	\$ 360,000 =	\$ 660,000
5	\$300,000 PLUS	\$ 660,000 =	\$ 960,000
6	\$450,000 PLUS	\$ 960,000 =	\$1,410,000
7	\$450,000 PLUS	\$1,410,000 =	\$1,860,000

[ELR 15:9:7]
