Writers Guild Looks To Erase Talent Agencies' Antitrust Suit

By Matthew Perlman

Law360 (October 15, 2019, 6:57 PM EDT) -- The union representing film and television writers has asked a California federal court to toss claims from major Hollywood talent agencies in a dispute over fee structures, arguing that its activity is exempt from the antitrust laws.

The Writers Guild of America on Friday filed a motion to dismiss the consolidated complaint from three agencies alleging the union is orchestrating an illegal group boycott by refusing to let its members work with agents that haven’t signed on to a new code of conduct that bars the use of so-called packaging fees.

The guild said it is “black letter labor law” that when a union delegates its authority to represent members in contract negotiations, it is allowed to impose standards, and that the agencies had abided by the standards it imposed for decades.

“The agencies provide no reason to set aside canonical labor law here,” the motion said. “Instead, the agencies dispute the ‘necessity’ of the code’s standards and improperly invite this court to second-guess the guilds’ decision.”

At the heart of the dispute is a ban on packaging fees, which an agent can receive from a Hollywood studio for packaging a pool of talent needed for a project, rather than taking a cut of the individual earnings of their clients. The WGA contends the fees create a conflict of interest for the agents, who may be more concerned with earning a higher payout for themselves than negotiating better rates for the writers.

The union’s ban on the fees, along with a rule prohibiting agents from owning or affiliating with production studios, went into force in April and the guild required its members to stop working with agents that haven’t signed on. It also filed a lawsuit in state court that it later dropped accusing several major agencies of breaching their fiduciary duty to the writers and asking for packaging fees to be deemed illegal.

William Morris Endeavor Entertainment, Creative Artists Agency and United Talent Agents responded with separate suits against the WGA in June alleging the union has instituted an illegal group boycott by having its members refuse to work with their agents. The cases were consolidated in September, along with counterclaims from the WGA accusing the agencies of colluding to institute the packaging fee model and to preserve it, along with other allegations.

The guild argued in its motion to dismiss Friday that its practice of requiring agents to adhere to the packaging fee ban is “quintessential labor union” activity that is entitled to a statutory exemption from the antitrust laws. The motion said courts have repeatedly recognized a union’s ability to adopt conditions that apply to agents that represent their members, pointing to the Supreme Court’s 1981 decision in H. A. Artists & Assocs. Inc. v. Actors’ Equity Assn.

In that case, the justices found that a union representing stage actors was able to regulate agents who represent its members. The motion also pointed to cases involving agents and unions for musicians and basketball players where the labor exemption was found to apply.
“The result must be the same here,” the motion said.

The Hollywood agencies contend that a labor exemption should not apply in their case because the WGA has worked with nonmembers to implement the boycott, including by inducing producers, managers and attorneys to participate. But the WGA said in its motion Friday that those allegations lack merit.

The high court’s H. A. Artists decision addressed the issue, the WGA said, finding that a union’s delegation of authority to nonmembers does not constitute a combination with a nonlabor group.

“Because franchised agents were exercising delegated authority from the union, they were considered a ‘labor group’ for statutory exemption purposes,” the motion said. “This holding applies to agents, managers or lawyers who represent guild members.”

The motion also argued that a nonstatutory exemption would also apply to the activity, which allows unions to work with nonlabor groups in certain circumstances. The agencies haven’t alleged the guild implemented the code at the behest of an outside group, or that it’s intended to aid any of the agencies’ competitors, the WGA said.

The motion also hit back against claims from two of the agencies that the guild is violating the Labor Management Relations Act through the provision preventing agencies from affiliating with production companies. In order for those claims to stick, the WGA said, the agencies would have to be neutral third parties to the dispute.

A representative for the WGA declined to comment Tuesday. Representatives for the agencies did not immediately respond to requests for comment.

The WGA is represented by Stephen P. Berzon, Stacey Leyton, P. Casey Pitts and Rebecca C. Lee of Altshuler Berzon LLP, Anthony R. Segall and Juhyung Harold Lee of Rothner Segall & Greenstone and W. Stephen Cannon and Ethan E. Litwin of Constantine Cannon LLP.

William Morris Endeavor is represented by Jeffrey L. Kessler, David L. Greenspan, Isabelle Mercier-Dalphond, Diana Hughes Leiden and Shawn R. Obi of Winston & Strawn LLP.

The CAA is represented by Richard B. Kendall, Patrick J. Somers and Nicholas F. Daum of Kendall Brill & Kelly LLP.

The UTA is represented by Steven A. Marenberg, Victor Jih and Stephen M. Payne of Irell & Manella LLP and Adam Levin, Jeremy Mittman and Jean Pierre Nogues of Mitchell Silberberg & Knupp LLP.

The case is William Morris Endeavor Entertainment LLC et al. v. Writers Guild of America West Inc. et al., case number 2:19-cv-05465, in the U.S. District Court for the Central District of California.

--Additional reporting by Mike LaSusa and Braden Campbell. Editing by Bruce Goldman.