

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

IN RE COMPACT DISC MINIMUM	]	
ADVERTISED PRICE ANTITRUST	]	MDL DOCKET NO. 1361
LITIGATION	]	THIS DOCUMENT RELATES TO:
	]	CIVIL NO. 01-23-P-H

MEMORANDUM DECISION ON MOTION TO REMAND

On October 20, 2000, the MDL panel transferred 41 cases to this Court, one of which was Rosemarie Chacon, et al. v. Universal Music & Video Distribution, Inc., et al., Civ. No. 00-331-P-H, a case originally filed in federal court in the Eastern District of Louisiana. Attorney George Riess of the law firm of Polack, Rosenberg, Endom & Riess, LLP represented the plaintiffs in the case. On November 1, 2000, the cases were consolidated for pretrial purposes in an Order that specifies that any tag-along cases are also subject to the Order. In Re: Compact Disc Minimum Advertised Price Antitrust Litigation, MDL No. 1361 (D. Me. Nov. 1, 2000) (order on practice and procedure).

On November 15, 2000, another Chacon case, docketed in this Court as Civ. No. 01-23-P-H, in which Attorney Riess and the Polack, Rosenberg law firm were named counsel, was conditionally transferred here as a tag-along case.<sup>1</sup> This case had initially been filed in Louisiana state court and removed to federal court. The plaintiffs had moved for a remand back to state court, but the Louisiana federal

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<sup>1</sup> Attorney John Whitney, of Barton, Richardson, Canseco & Whitney LLP, also represents the plaintiffs in both Chacon cases.

court never ruled on the motion. The plaintiffs did not oppose the transfer.

On November 28, 2000, I conducted the first conference in this litigation. Eighteen lawyers attended for private plaintiffs and five state attorney generals' offices were represented. Attorney Riess attended in person, having faxed the Court the day before a letter in which he (1) noted that a motion to remand had been filed in the second Chacon case, and that he would request a hearing on the matter as soon as possible; (2) stated that there was a representation problem in the multidistrict litigation that the lawyers were trying to resolve. (This turned out to be an asserted conflict of interest on the part of two law firms.)

Attorney Riess spoke on more than one occasion at the November 28 conference with the Court. Notwithstanding his letter, never once did he suggest that he was limiting any of his statements to the first Chacon case. The fact that tag-along cases were subject to what happened at that first conference was discussed. Never once did Attorney Riess voice any objection to the filing of a consolidated amended complaint on behalf of all private plaintiffs, a subject that was thoroughly discussed. In fact, objection was made only by the Roy plaintiffs, also a tag-along case that was only conditionally transferred.

Thereafter the stay of the conditional transfer of the second Chacon case was lifted on December 1, 2000, and the transfer became effective when it was filed in this Court on December 6, 2000.<sup>2</sup> Judicial Panel on Multidistrict Litig. Rules

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<sup>2</sup> In his reply to the non-distributor defendants' opposition to the motion to remand, Attorney Riess implies that he could not reassert the motion to remand until this Court received the Chacon case file from the Louisiana federal court, which was not until January 25, 2001. That is simply incorrect; nothing prevented Attorney Riess from pressing the motion earlier or, at a (continued next page)

of P. 1.5 & 7.4(e) (2000). Attorney Riess proceeded to seek to become lead counsel for all the private plaintiffs. On December 22, 2000, a Consolidated Amended Complaint was filed on behalf of all the private plaintiffs except Roy, and replacing all previous complaints. At no point during all these proceedings did Attorney Reiss make any further mention of the unruled-upon motion to remand or make any suggestion that the Consolidated Amended Complaint did not include the matters in which he was counsel. Finally, on January 26, 2001, I appointed lead counsel, but not Attorney Riess or his firm. Thereafter, on January 29, 2001, the filing of a Proposed Joint Agenda for the next conference (to be held on January 31, 2001) alerted me that Attorney Riess apparently viewed the Chacon motion to remand as still pending. Due to the travel difficulties of Attorney Riess, the subject was not taken up on January 31, 2001. On February 5, 2001, Attorney Riess filed a document in this court seeking to renew the motion to remand the second Chacon case and providing additional argument. Thereafter, I permitted retailers who are no longer defendants in the Consolidated Amended Complaint, but who would be defendants in the second Chacon case if I order its remand to Louisiana state court, to file a brief in opposition. Attorney Riess has filed an additional response.

I conclude that the Chacon plaintiffs are estopped from seeking remand in the second case and that the Consolidated Amended Complaint has replaced the two earlier Chacon complaints. From the conference on November 28, 2000,

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minimum, from clearly indicating his continuing opposition to consolidating the second Chacon case into the main proceedings.

through the date of my appointment of lead counsel, their lawyer did not inform the Court that he was wearing two hats: one on behalf of the Chacon plaintiffs in a federal lawsuit already transferred to this Court, where he voiced no opposition to consolidation and in which he wished to become lead class counsel; and a second hat on behalf of the Chacon plaintiffs in a tag-along case removed from Louisiana state court, in which he wished to oppose consolidation, oppose the consolidated amended complaint procedure that was proposed, and seek remand back to state court. The Consolidated Amended Complaint was filed on December 22, 2000, and still Attorney Riess did not voice his objections to consolidation, the Consolidated Amended Complaint, or the dropping of certain retail defendants. Instead, he was still seeking to be appointed lead class counsel. The passing reference to the motion to remand in Attorney Riess' November 27 letter was insufficient to keep that issue alive given his subsequent acquiescence to the consolidated proceedings. Only after I appointed different lead counsel on January 26, 2001, did I learn that Attorney Riess wished the second Chacon case not to be part of the Consolidated Amended Complaint, but instead to be remanded to state court. It is too late. The plaintiffs are estopped by their lawyer's conduct.

The motion to remand is **DENIED**.

**SO ORDERED.**

**DATED THIS 12TH DAY OF MARCH, 2001.**

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**