

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

WORLD WRESTLING ENTERTAINMENT, INC.,

Plaintiff,

- against -

JAKKS PACIFIC, INC.; JAKKS PACIFIC (H.K.)
LIMITED; ROAD CHAMPS LIMITED; THQ, INC.;
THQ/JAKKS PACIFIC LLC; STANLEY SHENKER
AND ASSOCIATES, INC.; STANLEY SHENKER;
BELL LICENSING, LLC; JAMES BELL; JACK
FRIEDMAN; STEPHEN BERMAN; JOEL
BENNETT; and BRIAN FARRELL,

Defendants.

-----X

:
:
:
: 04 CV 8223 (KMK)
: (ECF CASE)
:
:
: January 28, 2008

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S NOTICE OF MOTION TO
SUPPLEMENT THE RECORD**

Peter N. Flocos (PF 5335)
Kirkpatrick & Lockhart Preston Gates Ellis LLP
599 Lexington Avenue
New York, NY 10022
212.536.3900 (tel)
212.536.3901 (fax)

Jerry S. McDevitt
Curtis B. Krasik
Amy L. Barrette
Kirkpatrick & Lockhart Preston Gates Ellis LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222
412.355.6500 (tel)
412.355.6501 (fax)

Attorneys for Plaintiff, World Wrestling Entertainment, Inc.

Plaintiff World Wrestling Entertainment, Inc. (“WWE”) hereby moves this Court pursuant to Federal Rule of Appellate Procedure 10 to supplement the record with eighteen (18) letters previously sent to the chambers of the Honorable Kenneth M. Karas in connection with this case (those letters are attached to this Memorandum as Exhibit 1).

Throughout the proceedings, the Court both required (pursuant to its individual practices) and encouraged the parties to submit letters and letter-briefs to the Court’s chambers on various procedural and substantive issues in this case. Most of these letters were never sent to the clerk’s office to be docketed, and thus were never made part of the official record for appeal purposes.

Both parties have now filed notices of appeal in this case. WWE believes that the letters attached as Exhibit 1 are material or potentially material to the case’s procedural history and the issues being appealed, and in any event, the letters should be readily available to the Second Circuit in connection with the appeals.

Federal Rule of Appellate Procedure 10(e)(2)(B) provides that

[i]f anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded. . . by the district court before or after the record has been forwarded.

Pursuant to Fed. R. App. P. 10(e), WWE respectfully requests that the Court take the steps necessary to ensure that the letters attached as Exhibit 1 are included in the official record for appeal purposes. Specifically, WWE requests that the Court transmit the letters to the White Plains clerk’s office with an appropriate order directing the clerk to (a) enter the letters on the docket so that they are made part of the official record for appeal purposes, and (b) supplement the record forwarded to the Second Circuit with the letters.

Because the Second Circuit has ordered that the index of the record be filed before February 14, 2008, WWE respectfully requests that this Court instruct the clerk to docket the attached letters and correspondingly supplement the appeal record as soon as possible.

Respectfully submitted,

By: s/ Peter N. Flocos

Peter N. Flocos (PF 5335)
599 Lexington Avenue
KIRKPATRICK & LOCKHART PRESTON
GATES ELLIS LLP
New York, New York 10022
(212) 536-3900 (phone)
(212) 536-3901 (fax)

Jerry S. McDevitt (Pro hac vice)
Curtis B. Krasik (Pro hac vice)
Amy L. Barrette (Pro hac vice)
KIRKPATRICK & LOCKHART PRESTON
GATES ELLIS LLP
535 Smithfield Street
Pittsburgh, Pennsylvania 15222
(412) 355-6500 (phone)
(412) 355-6501 (fax)

Dated: January 28, 2008

Attorneys for Plaintiff, World Wrestling
Entertainment, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PLAINTIFF'S NOTICE OF MOTION TO SUPPLEMENT THE RECORD is being served on all counsel of record via electronic mail service this 28th day of January, 2008.

s/ Peter N. Flocos