UNITED STATES COURT OF APPEALS

FOR THE

THIRD CIRCUIT

Docket Nos. 97-5317 and 97-5692

NEW JERSEY SPORTS PRODUCTIONS, INC., d/b/a
MAIN EVENTS,

v.

DON KING PRODUCTIONS, INC.; OLIVER McCALL; JIMMY ADAMS;
TIME WARNER ENTERTAINMENT COMPANY, L.P.; NEVADA ATHLETIC
COMMISSION, a division of THE NEVADA DEPARTMENT OF LABOR AND
INDUSTRY; JOHN DOES 1-5,

OLIVER McCALL, Appellant.

CONSOLIDATED APPEALS FROM GRANT OF INJUNCTIONS
PURSUANT TO 28 U.S.C.A. § 2361

United States District Court, District of New Jersey
97-CV-01175

BRIEF OF RESPONDENT TIME WARNER ENTERTAINMENT COMPANY, L.P.

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STATEMENT OF ISSUES FOR CONSIDERATION ON THIS APPEAL

1. Whether the District Court properly exercised its discretion in refusing to abstain from this action under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

2. Whether the District Court properly exercised its discretion by granting interpleader.

3. Whether the District Court properly exercised its discretion in exercising personal jurisdiction over defendant Oliver McCall.

4. Whether the District Court properly exercised its discretion in granting injunctive relief, under the circumstances of the interpleader and given the contractual terms at issue in this case.

5. Whether the District Court properly exercised its discretion in modifying its earlier injunction while that injunction was being appealed.

6. Whether the District Court's Orders dated April 28, 1997 and September 18, 1997 somehow constitute an abuse of discretion exceeding the authority of the District Court to

STATEMENT OF THE CASE

Respondent Time Warner is satisfied with the Statement of the Case set forth in the Brief of Appellant Oliver McCall ("McCall Brief"), except as to the following items that are either absent from or unclear from McCall's Statement of Facts:

Notwithstanding the so-called set-off language in the McCall Brief at 4, regarding the purported authority of the Nevada Athletic Commission ("NAC") over the purse for the subject bout, neither appellant Main Events nor any other party besides McCall and the NAC -- including respondent Time Warner -- were parties to the proceedings before the NAC. Most significantly, that fact means that the Stipulation and Settlement Agreement reached between McCall and the NAC (the "NAC Settlement") was not adopted by Time Warner and in no way bound Time Warner. (McCall Appendix at A-36).

A letter of credit was issued to Appellant Oliver McCall at the insistence of his own personal promoter, respondent Don King Productions, Inc. ("DKP"). (McCall Appendix at A-34, A-82, A-220-225.) The terms of that letter of credit required that McCall *himself* appear at the bank at which the letter of credit was issued. (McCall Appendix at A-53, A-82.) That bank was the Bergen Commercial Bank, located in New Jersey. (*Id.*; A-231-233.)

SUMMARY OF ARGUMENT

The District Court properly exercised its discretion by rejecting appellant's argument for abstention under *Burford v. Sun*

Oil Co., 319 U.S. 315 (1943). The Nevada Athletic Commission does not possess the procedural and substantive mechanisms to enable the quality of "adequate state-court review" to which the District Court might properly abstain under *Burford*. In any event, the negotiations that led up to the NAC Settlement cannot constitute such a "state-court review," sufficient to jettison the ample procedural and substantive safeguards that characterize the processes of the Federal courts.

The District Court's granting of Main Events' application for interpleader was therefore not an abuse of discretion because the essence of an interpleader action requires the existence of two or more adverse claims to the fund at issue. That is present here. The two claims are those of McCall and Time Warner, both of which parties have asserted claims to the *res*. Where an identifiable fund is the subject of interpleader, the fact that multiple liabilities may ultimately be assessed against the interpleading party does not bar interpleader; quite the contrary.

The grant of injunctive relief by the District Court was also an appropriate exercise of discretion, notwithstanding McCall's claim that plaintiff Main Events is barred from seeking such relief under the Official Boxing Contract of the NAC. There is no basis for any legitimate claim that this contract contained a forum selection provision or waiver. In addition, the WBC contract, to which both McCall and Main Events are parties, indicates that

the NAC was never considered by the parties to have sole authority over all disputes arising from this transaction.

The District Court's amendment of its earlier injunction in no way constitutes an abuse of its broad discretion. The Court merely appropriately exercised its discretion to prevent its earlier order from being frustrated or circumvented by McCall, pending the appeal, as provided by the Federal Rules of Civil Procedure. The legitimacy of the District Court's earlier order itself makes plain that Court's power to assure its ability to issue "all writs in aid of its jurisdiction." This includes modification of extant orders to sharpen their clarity for efficiency of enforcement.

Finally, neither of the Orders entered by the District Court was fatally broad. On the contrary, they were carefully crafted to ensure that the claims and rights at stake in this litigation were protected pending final adjudication, and McCall puts forth no plausible argument even suggesting the contrary.

STANDARD OF REVIEW

1. **Abstention:** The standard for review on a Burford abstention application is abuse of discretion. *Riley v. Simmons*, 45 F.3d 770 (3rd Cir. 1982).

2. **Injunctions:** The standard of review on the granting of an injunction is abuse of discretion, whether the trial court

committed an obvious error in applying the law, or made a serious mistake in considering the proofs. *Duraco Products, Inc. v. Joy Plastic Enterprises, Ltd.*, 40 F.3d 1431 (3rd Cir. 1994).

3. **Personal Jurisdiction:** On an appeal of a motion denying dismissal on personal jurisdiction grounds, the Court takes the allegations of the complaint as true, and considers the defense if raised on the basis of affidavits or other competent evidence. *Dayhoff, Inc. v. H.J. Heinz Co.*, 86 F.3d 1287 (3rd Cir. 1996).

ARGUMENT

I. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN REFUSING TO ABSTAIN UNDER *BURFORD*

McCall argues that the District Court should have abstained from adjudication of this litigation on the grounds that the proceedings in the State of Nevada constitute the sort of state administrative proceeding described in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). This argument misapplies *Burford* and its progeny, both in the Supreme Court and in this Court. McCall's misreading of *Burford* would rob all the litigants in this matter of a "timely and adequate" adjudication of the issues in litigation, and would serve none of the policies meant to be served by *Burford* abstention. In short, McCall's argument stands the purpose of *Burford* on its head.

This Court most recently surveyed the state of the law regarding Burford abstention in *Riley v. Simmons*, 45 F.3d 764 (3rd

Cir. 1995), a case ignored by McCall[1]. *Riley* reversed a District Court decision abstaining on *Burford* grounds from the adjudication of a securities fraud claim brought by annuitants against the former directors of an insolvent insurance company. The District Court held that the federal litigation would have a "disruptive effect" on parallel state rehabilitation proceedings. *Id.* at 771.

This Court reversed, holding plainly that:

> [T]he Supreme Court . . . teaches us that *Burford* abstention calls for a two-step analysis. The first question is whether 'timely and adequate state-court review' is available. *Only if a district court determines that such review is available,* should it turn to the other issues and determine if the case before it involves difficult questions of state law impacting on the state's public policy or whether the district court's exercise of jurisdiction would have a disruptive effect on the state's efforts to establish a coherent public policy on a matter of important state concern.

Id. at 771 (emphasis added). Applying the analysis this Court promulgated, the rehabilitation proceedings there did *not* stand in the place of the Section 10b-5 securities claims in the Federal litigation. As this Court said, "there is no possibility of 'timely and adequate state court review' of Plaintiff's Rule 10b-5 claim [in the rehabilitation action], which Congress has chosen to commit exclusively to the federal courts." *Id.* at 773. "*Burford* abstention is inappropriate," wrote the Court, "where a plaintiff asserts 'claims which are broader than, and different from'," the

[1] McCall cited the case solely regarding the standard of review. (McCall Brief at 8.)

state proceeding in question. *Id.* at 774. That holding entirely disposes of McCall's argument.

McCall, by ignoring this Court's most relevant and most recent statement on *Burford* abstention, ignores as well the proper analysis a district court must make before considering whether a state's coherent regulatory plan is purportedly threatened by Federal litigation. But it is plaint that this was precisely the analysis made by the District Court:

> When a court determines that a state action commenced earlier provides an adequate remedy, the proper course is to deny the motion to interplead. . . .
>
> Here, however, the disputed issued are not likely to be resolved by proceedings before the NAC. . . .
>
> It appears unclear . . . that NAC has jurisdiction to resolve disputed claims to the funds at issue. . . . [The relevant Nevada state provision] does not appear to give the NAC authority to resolve conflicting claims over the funds at issue. Further, even if the NAC has jurisdiction to resolve the disputes claims to the fund, it seems manifestly unfair to other interested parties to resolve their competing claims over this substantial sum when they are not parties to the action and have not been afforded the opportunity to participate in settlement negotiations between the NAC and McCall.
>
> The pending NAC proceedings, therefore, cannot be said to provide an "adequate remedy" for all the parties for the simple reason that all the parties before this Court are not before the NAC.

(McCall Appendix at A-48-49). It is self-evidently no abuse of discretion for the District Court to have followed this Court's

direction precisely and to have reached a decision after making all the proper considerations.

McCall simply never addresses this point, arguing instead only that Nevada's "statutes and complementary regulations created a carefully balanced plan. Federal intervention would disrupt the state's efforts to maintain a coherent policy." (McCall Brief at 13.) McCall's argument utterly misses the point. Maintenance of a "coherent policy" does not in and of itself justify *Burford* abstention, as the District Court recognized.

Indeed, the criteria of *Izzo v. Borough of River Edge*, 843 F.2d 765 (3rd Cir. 1988), relied on by McCall, never come into play – unless and until the controlling question of *Riley* is answered: Can the parties get justice in the purported state court proceeding – one that includes only McCall and the NAC, and one that has already produced, in the complete absence of any other party, a purported settlement of the "proceeding"? As to this, McCall is understandably silent, for the correct answer, as discerned by the District Court, is "no."

II. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN GRANTING AN IMPLEADER BECAUSE THERE IS A SINGLE, IDENTIFIABLE FUND AND THERE IS A RISK OF MULTIPLE RECOVERY BY ADVERSE PARTIES ARISING OUT OF A SINGLE SET OF DUTIES AND OBLIGATIONS.

As McCall admits, "the main prerequisite for the maintenance of an action for interpleader is plaintiff's possession of a fund to which there are two or more claimants adverse to each

other." (McCall Brief at 18.) That is satisfied here. Burt from this correct conclusion, McCall erroneously concludes that this requirement is not met if the plaintiff may be held liable to both claimants, citing *Bradley v. Kochenash*, 44 F.3d 166, 168 (2d Cir. 1995). McCall's argument depends upon a profound misreading of *Kochenash* and demonstrates a fundamental misunderstanding of the interpleader device.

In *Kochenash*, both the creditors committee and a shareholder of a public corporation had commenced proceedings against the insiders of a bankrupt corporation. *Id.* at 167. The creditors committee claimed that the insiders had engaged in a fraudulent conveyance of corporate assets, while the shareholder action was a derivative proceeding alleging that shares for the initial public offering had been fraudulently overpriced. *Id.* The insiders filed for interpleader. But unlike here, no identifiable *res* or fund was pleaded in the interpleader motion. Rather, the basis of the interpleader application was that the insiders faced the danger of multiple obligations from multiple claimants. The pleadings were thus manifestly deficient.

The District Court accordingly denied the interpleader, and the Second Circuit affirmed. The Court of Appeals explained that the purpose of interpleader was not simply to avoid multiple liability based on different claims against the same party. "These are not conflicting claims of the right to ownership of an

indentifiable fund or piece of property," wrote the Court of Appeals, continuing,

> [T]hey are claims that each plaintiff violated his respective duties to the two sets of defendants. . . . The conflict resides not in the claims but in the fiduciary positions the individual plaintiffs chose to occupy . . .
>
> * * *
>
> Interpleader is designed to prevent multiple recoveries only where there are not multiple obligations; it is not intended to telescope multiple obligations into one.

Id. at 169.

The contrast to the situation here could not be more complete. Unlike in *Kochenash*, here there is "an identifiable fund or piece of property" here — specifically, the purse for the McCall — Lewis bout. Here the stakeholder does *not* seek to hide behind interpleader to avoid multiple liability to different parties accusing it of fraud; rather, the stakeholder, Main Events, finds itself in the position of fending off competing claims to the stake as a result of circumstances that by all appearances are beyond its control. Thus the fact that Main Events may theoretically end up liable for more than the amount of the stake is not, as in *Kochenash*, a result of "multiple obligations created by the interpleading plaintiffs for their own benefit." *Id.* at 168 (citation omitted).

The District Court here recognized this distinction, giving meaning both to interpleader and to its own ordinary processes:

> What really matters is whether a party fears double liability on what amounts to one obligation. Here, though there are, as DKP points out, two contractual relationships (one between Main Events and McCall, and the other between Time Warner and Main Events), both contractual relationships involve the same transactional set of facts.

(McCall Appendix at A-56.)

McCall's argument in fact means that interpleader would never be available. This is true not only, as the District Court put it, "Because money is a fungible commodity, no claimant on a money stake cares about the origin of the money." (*Id.*) It is also true because in *every* interpleader case, there are different relationships and duties among the stakeholder and the claimants – even if there is only a single operative contract. The stimulus for interpleader, in McCall's view, is the reason to deny it. But when all those relationships are based on the same "single obligation," as the Second Circuit put it, interpleader is the only appropriate remedy. The District Court here appropriately exercised its discretion, and granted interpleader.

This Court should affirm.

III. THE DISTRICT COURT PROPERLY ASSERTED PERSONAL JURISDICTION OVER McCALL.

McCall's brief rehearses the well-known principles governing when the assertion of personal jurisdiction over a non-resident is appropriate. This Court is familiar with the law in this area, and the cases cited by McCall are uncontroversial. No

one doubts that "[T]here are limits to a [c]ourt's jurisdiction over residents of other states." (McCall Brief at 24.) The only question, then, is whether those limits are even remotely approached as to a New Jersey court where:

- The defendant knowingly entered into a contract with a New Jersey party (Main Events) (McCall Appendix at A-219-229);
- The defendant agreed to accept the benefits of a letter of credit established in a bank in New Jersey; and
- The defendant was required, pursuant to his letter of credit agreement, physically to appear in New Jersey to draw on the letter of credit.

The law familiar to students in the early weeks of law school teaches that jurisdiction is proper here.

McCall attempts to throw a smoke screen over these facts. He states that he only signed two contracts related to this bout, and that both provided for Nevada law to apply to the contracts. (McCall Brief at 25.) Of course, even if true (which, as demonstrated below, it is *not*), it is irrelevant.

There is simply no question but that McCall and his representatives sent multiple communications, including an what can only be described as a contract (concluding with the words, "Please acknowledge your agreement with the foregoing by signing in the space below and returning an original to DKP," and including

signature lines and a jurat) to Main Events at its Totowa, New Jersey offices. (McCall Appendix at A-224-225.) Thus the District Court appropriately cited *Lebel v. Everglades Marina, Inc.*, 115 N.J. 317 (1989), where, as here, jurisdiction was found because the out-of-state defendant telephoned the other party to the contract in New Jersey, mailed a contract to the New Jersey buyer for signature in New Jersey, and accepted payment from the New Jersey resident. The facts here are powerfully more substantial than the contacts found sufficient in *Lebel*.

McCall attempts to distinguish *Govan v. Trade Bank & Trust Co.*, 109 N.J. Super. 271, 275 (App. Div. 1970), on the grounds that in *Govan* the defendant physically traveled to New Jersey, and that jurisdiction was not available in any other state. McCall's argument simply makes no sense. It cannot seriously be argued here that either actual physical presence (as opposed to the physical presence agreed to here[2]), or the existence of jurisdiction in another forum — or even both of these things — could possibly defeat a finding of jurisdiction based, as here, on McCall's well-recognized "availments" of the New Jersey forum. McCall does not argue otherwise.

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[2] Admittedly, McCall did express reservation regarding this aspect of the letter of credit arrangement. (McCall Appendix at A-228-229.) But nothing in the record suggests that McCall was unwilling to ultimately accept the use of a New Jersey bank, and indeed he proceeded through to fight night without further expression of dissatisfaction with the use of a New Jersey bank.

Under these facts and the well-settled authorities relied upon by the District Court, the conclusion is inescapable that McCall has purposefully availed himself of the privileges of the forum state. *See*, e.g., *Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n*, 819 F. 2d 434, 438 (3rd Cir. 1987) (maintenance of bank account sufficient minimum contacts). Consequently, the District Court's exercise of personal jurisdiction over McCall was proper and should be affirmed.

IV. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION BY REJECTING McCALL'S CLAIM THAT MAIN EVENTS IS BARRED FROM SEEKING RELIEF UNDER THE TERMS OF THE NAC CONTRACT.

McCall argues it was an abuse of discretion for the District Court to have rejected his argument that Main Events is contractually forbidden by the NAC Official Boxing Contract (the "NAC Contract") entered into by McCall and Main Events. The reason for his argument is less than compelling. All McCall can say about the NAC Contract is that, if McCall engaged in conduct detrimental to boxing, as he manifestly did here, only the NAC had authority regarding the payment of McCall's purse.

McCall does not claim that the NAC contract governs interpleader actions. It does not.

McCall does not claim that the NAC contract governs breach of contract actions. It does not.

McCall does not claim that the NAC contract governs the claims of Time Warner. It does not.

McCall does not claim that the NAC contract governs the adjudication of claims by Main Events against Jimmy Adams, Don King Productions or Time Warner. It does not.

What McCall does say is that this standard-form boxing contract, by which Main Events and McCall agreed that a Nevada boxing match would be governed by the laws and regulations that govern boxing in Nevada, somehow deprives the District Court of the jurisdiction to decide these claims, manifestly proper in that Court. Yet even as McCall makes the remarkably aggressive claim that the United States District Court usurped the putative dominion of this contract, and "divested the NAC of its authority" (McCall Brief at 29), he not surprisingly cites no authority whatever to support that argument.

Similarly, McCall's claim that by entering into the NAC Contract, Main Events "waived" the right to bring this action also is made utterly without a shred of legal authority. There is relevant case law on the topic, uncited by McCall: "Under New Jersey law, a waiver must be knowing and voluntary, and must be manifested by a clear and unequivocal act." *Evcco Leasing Corp. v. Ace Trucking Co.*, 828 F.2d 188, 197 (3rd Cir. 1987). That is not this case.

Not only do the provisions cited by McCall in support of its waiver theory fall far short of the clarity and unequivocation the law requires, but the District Court correctly noted the extent of equivocation on the subject of the forum for litigation of

disputes related to this bout, which, as McCall admits (McCall Brief at 25), was governed not only by the NAC contract but the WBC contract as well:

> In particular, the WBC Contract indicates a desire on the part of the parties to have their disputes resolved by the New Jersey Superior Court. Especially in light of the limited jurisdiction of the NAC, the Court doubts that the parties intended to be bound to submit all their contractual disputes to the NAC.

(McCall Appendix at A-58; citations omitted.)

Far from constituting an abuse of discretion, the District Court's rejection of McCall's claim that the NAC contract contains some sort of choice of forum clause is wholly supported by the absence of legal authority for that claim, and the contrary indications in the factual record.

V. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION BY MODIFYING ITS APRIL 28, 1997 INJUNCTION PENDING THIS APPEAL.

McCall argues that the District Court's modification of its April 28, 1997 injunction on September 18, 1997 was an improper action taken "inconsistent with or in derogation of the appellate court's jurisdiction." (McCall Brief at 30.) In support of this argument, McCall cites five cases, of which only one, *The Coastal Corp. v. Texas Eastern Corp.*, 869 F.2d 817 (5th Cir. 1989), was decided in the last three decades. In *Coastal*, of course, as McCall notes the District Court had actually dissolved the

injunction on appeal, hardly applicable to the situation here, where the order was modified.

The fact is, McCall's argument is wholly misdirected. McCall completely ignores Fed. R. Civ. P. 62(c):

> When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

McCall's omission defies reality for the simple reason that this Rule both addresses and justifies the District Court's actions in modifying its earlier injunctions in the face of McCall's attempts to "skate around" the earlier form of order. In fact, the whole purpose of this Rule is the maintenance of the status quo pending appeal. *See Coastal*, 869 F.2d at 820; *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 578 (5th Cir. 1996) (district court's amending order "more appropriately characterized as a modification — as opposed to a dissolution — of the original injunction, bringing the court's action within the ambit of Rule 62(c)"). McCall's argument is simply wrong.

Exactly what it was the District Court was attempting to cure by its modification would be impossible to say on the record submitted by McCall. For example, McCall does not address those facts in any way, so there is no need to rebut its version of events; the District Court's decision resulting in the modified

order (McCall Appendix at A-61-74) is accordingly unchallenged. It should be affirmed.

VI. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION BY CRAFTING APPROPRIATELY-TAILORED ORDERS.

McCall argues that the District Court's April 18, 1997 and September 18, 1997 Orders of the District Court are impermissibly overbroad, citing only *Hoxworth v. Blinder, Robinson & Co. Inc.*, 980 F.2d 912 (3rd Cir. 1992) for the general proposition that orders may not be "fatally overbroad." McCall's argument is conclusion devoid of facts. He cites no authority for the proposition that a District Court may enjoin parties from filing another action concerning the subject matter of litigation over which it is presiding, his chief complaint with the Orders. In fact, such orders are granted routinely. *See*, e.g., *In re Kaplan*, 104 F.3d 589, 591 (3rd Cir. 1997) (Bankruptcy Court enjoined all named defendant-creditors from proceeding to litigate claims against the non-filing entities affiliated with debtor); *Sassower v. Abrams, et al.*, 833 F.Supp. 253, 262 (S.D.N.Y. 1993) (party permanently enjoined from filing any action in any New York state court against various parties in connection with matters related in any way to the commercial dissolution or the subsequent litigation arising therefrom). *See generally, Carlough v. Amchem Products, Inc.*, 10 F.3d 189 (3rd Cir. 1993) (discussing standards under Anti-Injunction Act and All-Writs Act).

Nor does McCall explain why he believes that a court's mandatory powers are limited to parties named in an action. The fact is, he cannot. The opposite is the law. The Federal Rules of Civil Procedure state that, while an order granting an injunction must be specific and narrow, it is binding on "the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." Fed. R. Civ. P. 65(d).

Furthermore, McCall simply misrepresents the record by stating that it needs the orders amended "to allow the NAC to proceed with their [*sic*] disciplinary proceedings and their [*sic*] obligations under the Nevada statute." (McCall Brief at 31.) What the Orders in fact state, respectively, are as follows:

> IT IS FURTHER ORDERED that all claimants are hereby restrained and enjoined pending further Order of the Court from initiating or making claims in any State Court, or administrative agency, or in any United States District Court, except this Court, affecting the property and res involved in this action in interpleader until further Order of the Court, *except that disciplinary proceedings against Oliver McCall pending before the Nevada Athletic Commission may proceed*; . . .

(McCall Appendix at A-27; emphasis added.)

> [IT IS] FURTHER ORDERED that *this Order shall not bar Oliver McCall or his Counsel from participating in any hearing before the Nevada Athletic Commission for the purpose of determining what, if any, disciplinary action is appropriate against Mr. McCall* so long as that hearing or proceeding in no way affects the *res* involved in this action and so long as

> no Order emanates therefrom purporting to direct any disposition, either interim or final, over the funds at issue in this case . . .

(McCall Appendix at A-60; emphasis added.)

McCall has manifestly made no attempt in his Brief to explain why these provisions do not "allow the NAC to proceed with [its] disciplinary proceedings and [its] obligations under Nevada statute," especially in the face of the plain meaning of the Orders suggesting the exact opposite. Failing this, he has failed to show that the District Court abused its discretion in issuing these reasonably-tailored orders, designed only to preserve the status quo.

CONCLUSION

For the foregoing reasons, Respondent Time Warner Entertainment Company, L.P., respectfully requests that this Court deny the Appeal of Oliver McCall.

Respectfully submitted,

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By: _____
FREDERICK L. WHITMER, ESQ.
A Member of the Firm

Dated: April 6, 1998

CERTIFICATION OF BAR MEMBERSHIP

The undersigned hereby certify that they are members in good standing of the Bar of the United States Court of Appeals for the Third Circuit.

FREDERICK L. WHITMER

RONALD D. COLEMAN

Dated: April 6, 1998

CERTIFICATION OF SERVICE

I hereby certify that on this date I caused two true copies of the Brief Of Respondent Time Warner Entertainment Company, L.P. to be served by regular mail to:

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