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17 **UNITED STATES DISTRICT COURT**
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19 **CENTRAL DISTRICT OF CALIFORNIA**

20 TWENTIETH CENTURY FOX FILM
21 CORPORATION,

22 Plaintiff,

23 v.

24 WARNER BROS. ENTERTAINMENT,
25 INC.; WB STUDIO ENTERPRISES, INC.;
26 WARNER BROS. PICTURES and DOES 1
27 - 10,

28 Defendants.

Case No. CV 08-0889 GAF (AJWx)

[Honorable Gary A. Feess]

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO WARNER BROS.'
MOTION *IN LIMINE* TO
PRECLUDE REFERENCE TO
EVIDENCE OF GOLAR'S AND
LEI'S DUTY TO INDEMNIFY
WARNER BROS. (WARNER BROS.
MOTION *IN LIMINE* NO. 5)**

Date: January 7, 2009

Time: 3:30 p.m.

Courtroom: 740 – Roybal Building

Filing Date: February 8, 2008

Trial Date: January 20, 2009

INTRODUCTION

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2 In February 2008, within a matter of days of Fox’s filing of this lawsuit,
3 Warner Bros. brought claims against Golar, Inc. (“Golar,” wholly owned by Lawrence
4 Gordon) and Largo Development Projects, Inc. (“LEI”) seeking to hold them liable for
5 the damages Fox sustains in its claim against Warner Bros. The basis for Warner
6 Bros.’ claim is that Gordon and LEI agreed to indemnify Warner Bros. in the May
7 2006 Option from any breach of their representations that Gordon owned rights in
8 *Watchmen*.

9 The promises allegedly breached by Gordon are the core questions in this
10 case – the representation set forth in the May 2006 Option that Gordon owned rights
11 in *Watchmen*. Warner Bros.’ cynical strategy was to exercise the May 2006 Option,
12 with actual knowledge that Gordon had *not* acquired any rights from Fox under the
13 Turnaround Agreement, but then put Gordon on notice that Warner Bros. would hold
14 him liable under the May 2006 Option for any adverse outcome with Fox. After
15 proceeding full steam with making the *Watchmen* movie, and having thus placed
16 Gordon at risk of enormous damages to Warner Bros. if Fox prevails, Warner Bros.
17 now asks this Court to exclude all evidence that Gordon is “on the hook” to Warner
18 Bros. on the indemnity claim and evidence of Warner Bros.’ strategy of exercising the
19 May 2006 Option, despite knowledge of the Turnaround Agreement, for which it
20 planned to hold Gordon responsible.

21 Warner Bros.’ strategy of pressuring Gordon with the indemnity claim
22 has had real impacts – the Court is aware that Gordon’s counsel, at Warner Bros.’
23 urging, was instructed not to answer any questions at deposition about Fox’s rights
24 under the 1994 Settlement Agreement and Turnaround Agreement. And Gordon,
25 soon after receiving Warner Bros.’ claim, in turn claimed malpractice against Tom
26 Hunter and the Bloom Dekhom law firm, the attorneys representing Gordon at the
27 time of the May 2006 Option who failed to surface the 1994 Settlement Agreement
28 and Turnaround Agreement, and who in May 2006 told Warner Bros. not to worry

1 about Fox's distribution rights under the 1991 Quitclaim. The result of this, of course,
2 is that Hunter and his partners, including Stuart Rosenthal, have become closely allied
3 with Warner Bros. to defeat Fox's claims – both Hunter and Rosenthal were prepared
4 to testify at deposition by Warner Bros.' own counsel. If Fox prevails, Warner Bros.
5 is holding Gordon hostage to indemnify Warner Bros. from Fox's damages, and
6 Gordon is looking to his attorneys to satisfy that damages demand, and thus Gordon's
7 counsel is now ready, willing and able to be spoon fed on how to assist Warner Bros.
8 to defeat Fox's claims.

9 In its Motion *In Limine* to Preclude Reference to Evidence of Golar's and
10 LEI's Duty to Indemnify Warner Bros. (Warner Bros. Motion *In Limine* No. 5) (the
11 "Motion *In Limine*") (Dkt. 194, 194-2), Warner Bros. asks the Court to exclude all
12 evidence of Warner Bros. cynical strategy, even though these indemnity and
13 malpractice claims reveal the substantial bias of the witnesses to protect themselves
14 from Warner Bros.' threatened damages claims, and provide evidence bearing on
15 Warner Bros.' wrongful intent to disrupt Fox's contracts with Gordon. Without this
16 evidence, critical information relevant to understanding the motive of key witnesses
17 and Warner Bros.' own motive will be eliminated.

18 The jury is entitled to understand that Warner Bros. is seeking to hold
19 Gordon responsible for the damages Fox sustains. Indeed, Warner Bros.' position is
20 that it can interfere with Fox's contracts with Gordon, but then hold Gordon himself
21 liable for any adverse result. Fox will show at trial this was part of Warner Bros.
22 "legal strategy" all along in exercising the May 2006 Option – it's strategy was that it
23 had everything to gain by attempting to wrongfully deny Fox's rights in *Watchmen* by
24 interfering with the Turnaround Agreement, because it intended that it's wrongful
25 conduct and any resulting damages would later be placed on Gordon's doorstep, thus
26 also motivating Gordon and his attorneys to step in line with Warner Bros.' defense to
27 the case.

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1 **ARGUMENT**

2 **I. Evidence of Golar and LEI's Indemnification of Warner Bros. Is**
3 **Admissible to Show Bias or Prejudice.**

4 The Ninth Circuit has recently noted that under Fed. R. Evid. 411,
5 "[e]vidence of indemnification is generally inadmissible *but may be used to show*
6 *prejudice or bias of a witness.*" *Philips v. E.I. DuPont de Nemours & Co. (In re*
7 *Hanford Nuclear Reservation Litig.)*, 534 F.3d 986, 1014 (9th Cir. 2008) (emphasis
8 added).

9 Warner Bros. essentially admits that Golar and LEI's indemnification
10 obligation is relevant to the issue of Mr. Gordon's (and his attorneys such as Mr.
11 Hunter's and Mr. Rosenthal's) bias in this matter. Given that they are hardly
12 disinterested in third parties, but rather "on the hook" to cover Warner Bros.'
13 obligations – especially now that Fox has proven its copyright interest – the jury
14 cannot adequately measure the credibility of the witnesses unless it understands that
15 Gordon and his counsel have a tremendous financial incentive to avoid an adverse
16 result for Warner Bros. Allowing these witnesses, especially Mr. Gordon and Mr.
17 Rosenthal, to testify regarding Fox's rights in *Watchmen* and the reasonableness of
18 Warner Bros. rights position, without consideration of the enormous pressure and
19 resulting bias showered on them by Warner Bros., would paint an inaccurate picture
20 and deny the jury proper context.

21 Accordingly, the Court should permit evidence of Golar and LEI's
22 indemnification obligation at trial and Warner Bros.' pointed demands to hold Gordon
23 responsible for Fox's damages. Though Fox disputes that any prejudice would result
24 from such the admission of such evidence, any such issue may be adequately
25 addressed by the issuing of an appropriate jury instruction. *Larez v. Holcomb*, 16 F.3d
26 1513,1518-19 (9th Cir. 1994) (holding that if evidence of indemnification reaches the
27 jury, the court may issue an instruction or admonition to the jury to eliminate any
28 prejudice) (citing *Halladay v. Verschoor*, 381 F.2d 100, 112 (8th Cir. 1967)).

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CONCLUSION

Under Ninth Circuit law, evidence of indemnification is admissible to prove bias or prejudice of a witness. Given that Mr. Gordon and his former attorneys are likely to be critical witnesses for Warner Bros. on the issue of Fox’s rights and Warner Bros.’ faulty clearance of the *Watchmen* chain of title and interference with contract, the issue of their obvious bias – simply put, they stand to lose millions – is of immense probative value. Even assuming that some prejudice might result – and it will not – the Court can simply instruct the jury on the applicable law concerning indemnification agreements. The Court should deny Warner Bros.’ Motion *in Limine* No. 5.

DATED: December 29, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008, I caused a copy of **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO WARNER BROS.' MOTION *IN LIMINE* TO PRECLUDE REFERENCE TO EVIDENCE OF GOLAR'S AND LEI'S DUTY TO INDEMNIFY WARNER BROS. (WARNER BROS. MOTION *IN LIMINE* NO. 5)** to be served upon the following counsel in the manner described below:

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