

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION




In the Matter of )  
POLYGRAM HOLDING, INC., )  
a corporation, )  
DECCA MUSIC GROUP LIMITED, )  
a corporation, )  
UMG RECORDINGS, INC., )  
a corporation, )  
and )  
UNIVERSAL MUSIC & VIDEO )  
DISTRIBUTION CORP., )  
a corporation, )  
----- )

Docket No. 9298

**COMPLAINT COUNSEL'S MOTION TO ADMIT  
INTO EVIDENCE DESIGNATED TESTIMONY  
FROM THE DEPOSITION OF CHRISTOPHER ROBERTS**

Complaint Counsel hereby moves the Court, pursuant to Commission Rule of Practice 3.43(b), to admit into evidence certain testimony designated from the deposition of Christopher Roberts.

Respectfully submitted,

  
Geoffrey M. Green  
John Roberti  
Melissa Westman-Cherry  
Complaint Counsel

Dated: February 28, 2002

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_____	)	

**MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S  
MOTION TO ADMIT INTO EVIDENCE DESIGNATED  
TESTIMONY FROM THE DEPOSITION OF CHRISTOPHER ROBERTS**

As pointed out in this Court's Order Denying Motion For Summary Judgment dated February 6, 2002, a central dispute between the parties "is whether the [Three Tenors] moratorium was agreed to as part of the joint venture agreement, and was essential and necessary to it, or whether it was a separate agreement." Slip op. at 6. One of the few deponents in this case who was present at the formation of and actually approved the decision to enter into the joint venture is Christopher Roberts, President of Universal Classics & Jazz (and in 1997-98, President of PolyGram Classics & Jazz). Consistent with Complaint Counsel's allegations, Mr. Roberts did not himself consider a restriction on price competition to be necessary to the formation of the PolyGram/Warner joint venture (Roberts Dep. 50:25-53:6):

**Q. Was it necessary to the formation of the joint venture between PolyGram and Warner that PolyGram and Warner agree that there would be no discounting of older Three Tenors' albums during the Launch Period.**

**MR. PHILLIPS: Objection, vague, calls for a legal conclusion.**

**A. I am not aware of that.**

Mr. Roberts goes on to explain that he does not recall considering price and advertising restraints at the time that he evaluated and approved the 1998 Three Tenors project. One would expect that the necessary pre-conditions for approving the Three Tenors transaction would be recalled by Mr. Roberts, given that the Three Tenors project is the largest he has ever authorized (Tab 2 (Roberts Tr. 167:14-17)), and given his intimate involvement in the planning for the Three Tenors moratorium (discussed below).

Complaint Counsel contends that Mr. Roberts' disavowals of any knowledge regarding whether the Three Tenors moratorium was necessary or efficient undermine Respondents' efficiency defenses. How can the Court conclude that these restraints were necessary when the "father" of the Three Tenors moratorium withholds his endorsement? Specifically, Mr. Roberts' testimony supports a finding that there is:

- no factual basis for the contention that the moratorium was necessary to the formation of the PolyGram/Warner collaboration;
- no factual basis for the contention that the moratorium was necessary for the efficient operation of the collaboration;
- no factual basis for the contention that the moratorium was necessary for the financial success of the collaboration; and
- no factual basis for the contention that the moratorium had an effect on advertising expenditures in support of the 1998 Three Tenors album.

It follows that Mr. Roberts' testimony is relevant and reliable, and ought to be admitted in evidence.<sup>1</sup>

Complaint Counsel has designated the relevant portions of the Roberts deposition transcript for admission in evidence.<sup>2</sup> Respondents have interposed various objections. The underlying theme is that Mr. Roberts is not qualified to disavow or negate PolyGram's efficiency arguments. The objections are without merit. As detailed below, Mr. Roberts was a key player in the development and negotiation of the Three Tenors moratorium. Further, he was designated by Respondents to testify regarding the asserted efficiency defenses. Now Respondents are obligated to live with his testimony.

### **BACKGROUND**

The Complaint in this action alleges that during 1998, competitors PolyGram and Warner agreed to fix prices and forgo advertising (the "Three Tenors moratorium"). Respondents' Answer avers, in the Third and Fourth Additional Defenses, that the moratorium was necessary to the formation and or efficient operation of a joint venture.<sup>3</sup>

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<sup>1</sup> Commission Rule of Practice 3.43(b), 16 C.F.R. § 3.43(b) provides that "[r]elevant, material, and reliable evidence shall be admitted" into the record of the Commission's Part III proceedings.

<sup>2</sup> The portions of Mr. Robert's transcript that have been designated by Complaint Counsel are attached in the Appendix at Tab 1.

<sup>3</sup>

#### **Third Additional Defense**

The restrictions on the pricing and promotion of the 1990 and 1994 Albums discussed by representatives of Warner Music Group, Decca Records, and PolyGram Records in developing their marketing plans for the 1998 Three Tenors Album, if implemented, were or would have been reasonably related to and reasonably necessary for the formation and/or efficient operation of a pro-competitive joint venture, and were or would have been legitimate and not anticompetitive, and thus would not and did not constitute a violation of 15 U.S.C. § 45 or any other provision of law within the jurisdiction of the

On September 13, 2001, Complaint Counsel served a deposition subpoena upon Respondents, pursuant to Rule 3.33(c),<sup>4</sup> requiring Respondents to designate representatives to testify on their behalf concerning the factual basis for Additional Defense 3 and Additional Defense 4. Christopher Roberts was one of the individuals designated by Respondents to address the efficiency defenses.<sup>5</sup>

One may suppose that at the time Mr. Roberts seemed a natural candidate to describe and defend Respondents' actions with regard to the moratorium. In 1998, Mr. Roberts was President of PolyGram Classics & Jazz. According to one witness, he initiated the idea of the Three Tenors moratorium.<sup>6</sup> Company documents indicate that: (i) in April 1998, Mr. Roberts instructed a mid-level manager at PolyGram (Paul Saintilan) "to ensure [Warner] complies with the moratorium we're imposing on the previous two [Three Tenors] albums";<sup>7</sup> (ii) in June 1998, Mr. Roberts passed on to PolyGram's U.S. representative Rand Hoffman a complaint that

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Commission.

#### **Fourth Additional Defense**

The restrictions on the pricing and promotion of the 1990 and 1994 Albums discussed by representatives of Warner Music Group and PolyGram Music Group in developing their marketing plans for the 1998 Three Tenors Album, if implemented, were or would have been a legitimate and procompetitive effort, *inter alia*, to prevent free riding and opportunistic behavior and to protect the parties' investment in the venture, and were or would have allowed for far more competition than any other reasonable alternative measure for addressing these concerns, and thus would not and did not constitute a violation of 15 U.S.C. § 45 or any other provision of law within the jurisdiction of the Commission.

<sup>4</sup> 16 C.F.R. 33(c). This rule is the Commission's analogue to Rule 30(b)(6) of the Federal Rules of Civil Procedure.

<sup>5</sup> See Tab 2 (Roberts Tr. 4:15-21).

<sup>6</sup> See Tab 3 (Saintilan Tr. at 41-42).

<sup>7</sup> See Tab 4 (JX 34).

Warner's prices for the 1990 Three Tenors album were being heavily discounted, in order that Mr. Hoffman could make a complaint to Warner regarding its "violation" of the moratorium agreement;<sup>8</sup> (iii) on June 12, 1998, Mr. Roberts instructed his subordinates that, because of distrust between PolyGram and Warner, the Three Tenors moratorium would likely fall apart;<sup>9</sup> and (vi) in July 1998, Mr. Roberts received several e-mail messages from Paul Saintilan reporting on Mr. Saintilan's successful efforts to resurrect and reaffirm the Three Tenors moratorium.<sup>10</sup>

In short, if there were any factual basis for Respondents' contention that the moratorium was necessary to the formation and operation of the joint venture, Mr. Roberts would certainly know about it. It is for this reason that Mr. Roberts' testimony is so damning. At deposition, Mr. Roberts was asked directly whether the moratorium was necessary as averred in Respondents' Answer. His replies were occasionally evasive; at times, he professed not to know whether the moratorium was necessary or efficient. But what shines through is that Mr. Roberts does not and did not view the moratorium as necessary to achieve a legitimate business justification. Overall, Mr. Roberts' testimony supports the conclusion that the moratorium was not necessary, had no legitimate business justification, and had no effect on advertising expenditures in support of the 1998 album. (*See e.g.* Roberts Tr. 50:25-53:15; 55:1-6; 144:2-147:10) Thus, the testimony undercuts the arguments proffered by Respondents' experts.

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<sup>8</sup> See Tab 5 (JX 64); Tab 6 (JX 66).

<sup>9</sup> See Tab 6 (JX 66); Tab 3 (Saintilan Tr. 134:20-135:13).

<sup>10</sup> See Tab 7 (JX 74); Tab 8 (JX 3); Tab 9 (JX 4).

Respondents interjected numerous objections during Mr. Roberts' deposition and now attempt to use those objections to exclude this highly relevant testimony from the record in this matter. For the reasons stated below, these objections are without merit and should be denied.

### **ARGUMENT**

Respondents advance four basic objections to the questions Complaint Counsel posed to Mr. Roberts in the designated portions of the transcript: 1) That Complaint Counsel's questions lacked a proper foundation; 2) That Complaint Counsel asked Mr. Roberts to "speculate;" 3) That the form of the question was improper, and; 4) That certain questions were "asked and answered." Each set of objections are discussed below.

#### **1) Complaint counsel's questions had a proper foundation.**

Respondents object to numerous questions on the ground that Complaint Counsel had not laid a proper foundation. A typical example of a question that Respondents objected to as lacking a proper foundation reads as follows:

Would discounting of the 1994 album by Warner in the United States have affected advertising expenditures for Three Tenors III?

(Roberts Tr. 145:8-10). (That Mr. Roberts, speaking for himself and Respondents, did not know the answer to this question certainly undercuts Respondents' claim that the moratorium was necessary to address a concern that older Three Tenors albums would "free ride" on advertising expenditures in support of the new Three Tenors album.)

To the contrary, Complaint Counsel laid a proper foundation for each question posed to Mr. Roberts. That foundation was laid in three ways: Complaint Counsel established that Mr. Roberts was an experienced music executive; Complaint Counsel established that Mr. Roberts was the executive who was directly involved in planning the Three Tenors moratorium; and Mr.

Roberts had been designated by Respondents to testify about the two affirmative defenses that were the subject of the questioning.

First, Mr. Roberts is currently President of Universal Classics & Jazz. He is also chairman of the Universal Classics Group. In those capacities, he has responsibility over “anything connected to classical or jazz music in the various countries around the world” as well as “functional” and “operational responsibility over the U.S. classical business.” This was established by questioning early in the deposition. (See Tab 2 (Roberts Tr. 5:21-6:14); (Roberts Tr. 7:10-23)) Moreover, Mr. Roberts was directly involved in the 1998 Three Tenors project. This was also clearly established early in the deposition. (See e.g. Tab 2 (Roberts Tr. 11:19-15:11))

In addition, Respondents themselves designated Mr. Roberts to testify about the asserted efficiency defenses per Rule 3.33(c). As the designated party representative pursuant to Rule 3.33(c), Mr. Roberts had an obligation to testify to the *corporation's* knowledge of the two affirmative defenses. And, under that rule, Respondents were obligated to prepare the witness to answer questions about the two affirmative defenses. Given that Respondents designated this Rule 3.33(c) witness, they cannot now claim that a foundation had not been laid for asking Mr. Roberts questions relating to the designated topics.

Rule 3.33(c) states that:

A party may name as the deponent a public or private corporation, partnership, association, government agency other than the Federal Trade Commission, or any bureau or regional office to the Federal Trade Commission, and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. . . . The persons so designated shall testify as to matters known or reasonably available to the organization.



Rule 3.33(c) is similar to Rule 30(b)(6) of the Federal Rules of Civil Procedure.<sup>11</sup> Under this rule, parties such as Respondents who designate a deponent - as Respondents have designated Mr. Roberts - have an obligation to prepare that deponent so that he can give complete and knowledgeable answers on the subject matter at hand. *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989) (company designating a 30(b)(6) witness must "prepare them so that they may give complete, knowledgeable and binding answers on behalf of the corporation."); *Nevada Power Co. v. Monsanto Co.*, 891 F.Supp.1406, 1418 (D.Nev. 1995) ("In producing representatives for a Rule 30(b)(6) deposition, a corporation must prepare them to give 'complete, knowledgeable and binding answers.'" citing *Marker*); *S.E.C. v. Morelli*, 143 F.R.D. 42, 45 (S.D.N.Y. 1992) (In designating witnesses for a Rule 30(b)(6) deposition, a corporation must "prepare those persons in order that they can answer fully, completely, unequivocally, the questions posed."); *F.D.I.C. v. Butcher*, 116 F.R.D. 196, 199 (E.D.Tenn. 1986) (same); *United Technologies Motor Systems, Inc. v. Borg-Warner Automotive, Inc.* 50 U.S.P.Q. 2d 1060, 1061 (E.D.Mich. 1998) (corporation obligated to produce "adequately prepared designee to testify as to matters known or reasonably available to the corporation.")

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<sup>11</sup> Rule 30(b)(6) states:

A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or government agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth for each person designated, the matters on which the person will testify. . . . The persons so designated shall testify as to matters known or reasonably available to the organization.

Given Respondents' obligation to prepare Mr. Roberts to testify about the affirmative defenses, they can hardly be heard to complain that Complaint Counsel did not establish a foundation for propounding questions about the alleged defenses.

**2) The questions did not ask Mr. Roberts to speculate.**

The most common source of objections in the designated portions of Mr. Roberts' transcript deal with whether he could be asked his recollection of, or his current ability to apply, his business judgment. For instance, Mr. Roberts was asked:

Is it necessary to the financial success of the Three Tenors III project that Warner and PolyGram agree that neither firm will sell the older Three Tenors' album at a mid price during the Launch Period?

(Roberts Tr. 52:11-14)<sup>12</sup>

This question is entirely proper and simply asks the witness to recite the factual information concerning the relationship between the formation of the joint venture and the challenged restraint. However, Respondents objected that the question called for an expert opinion and for speculation. (Roberts Tr. 52:11-16)<sup>13</sup> On another occasion, Complaint Counsel asked:

Can you think of anything that ought to be done when you're bringing out an album by an artist and that artist has catalog items controlled by a competitor?

(Roberts Tr. 94:5-7) Respondents objected to this question on the grounds that it was an "incomplete hypothetical." (*Id.* lines 8-9).

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<sup>12</sup> The "Launch Period" was defined during the deposition as "a period of time that goes from August 1, 1998 to October 15, 1998." (See Tab 2 (Roberts Tr. 50:2-6))

<sup>13</sup> On a previous, similar, question, Respondents objected on the grounds that the question called for "a legal conclusion." (Roberts Tr. 50:25-51:5)

These objections display a serious misunderstanding of evidence law. Even if these questions can be construed as asking the witness for his opinion, the Federal Rules of Evidence specifically allow opinion testimony by witnesses such as Mr. Roberts. Rule 701 *Opinion*

*Testimony by Lay Witness*, states:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical or other specialized knowledge within the scope of Rule 702.

Under this rule, "courts admit opinion testimony from lay witnesses based not only on their own observations and personal perceptions . . . but also on the witness's experience and specialized knowledge obtained in his or her vocation."<sup>14</sup> Thus, business executives are routinely permitted to testify about their opinions on subjects that involve their participation in the day-to-day affairs of their business. See e.g., *Lighting Lube, Inc. v. Witco Corp.* 4 F.3d 1153, 1175 (3d Cir. 1993) (owner gave his lay opinion as to damages based on his "knowledge and participation in the day-to-day affairs of his business"); *Burlington N. R.R. Co. v. Nebraska*, 802 F.2d 994, 1004-05 (8<sup>th</sup> Cir. 1986) ("Personal knowledge or perception acquired through review of records prepared in the ordinary course of business, or perceptions based on industry experience, is a sufficient foundation for lay opinion testimony."); *Union Pac. Resources v. Chesapeake Energy Corp.*, 236 F. 3d 684, 692-93 (Fed. Cir. 2001) (court allowed lay witnesses to testify on whether description

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<sup>14</sup> 4 Jack B. Weinstein & Margaret A. Berger, *Weinstein's Federal Evidence*, § 701.03[1] (Matthew Bender 2001)

of particular patent for oil drilling enabled patent claims because they were testifying based on their extensive experience in the field.).<sup>15</sup>

As these questions ask for Mr. Robert's lay opinion on matters that he is more than qualified to answer, Respondents' objections must be denied.

**3) The form of the questions posed to Mr. Roberts were appropriate.**

Respondents made a panoply of objections to the form of the question. However, in each instance the witness was able to understand the question and give an appropriate answer. On numerous occasions, Respondents objected that a question was vague. A typical example of a vagueness objection was the one interposed following this question:

Would it be necessary to the efficient operation of the joint venture between Warner and PolyGram that the parties reach an understanding with regard to the pricing of older Three Tenors' albums during the Launch Period?

(Roberts Tr. 51:22-52-1)

These vagueness objections must be rejected. A question is impermissibly vague when the witness is unable to understand what information is being elicited.<sup>16</sup> Mr. Roberts' response ("Again, I don't recall that.") indicates that he understood the question, but does not recall that the moratorium was necessary. Moreover, the witness had been specifically instructed at the

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<sup>15</sup> Note that *Union Pacific* was decided after Rule 701 was amended in 2000 to add clause (c) that lay testimony not be "based on scientific, technical or other specialized knowledge within the scope of Rule 702." That amendment does not change the analysis that business executives can testify about matters based on their knowledge acquired by virtue of their position in a business or working in a particular industry. 4 Jack B. Weinstein & Margaret A. Berger, *Weinstein's Federal Evidence*, § 701App.03[3] (Matthew Bender 2001).

<sup>16</sup> 2 Fred Lane, *Lane's Goldstien Tr. Tech.*, § 13.43 *Objections - Confusing, Vague or Unintelligible* ("A witness is entitled to have questions posed in a manner which is understandable to him.")

outset of the deposition that if he did not understand the question he could ask that it be rephrased:

If at any point I ask you a question that you don't understand, please indicate that you didn't understand it and I will endeavor to clarify. Is that okay?

To which the witness responded, "Okay." (See Tab 2 (Roberts Tr. 5:1-9))

Similarly, Respondents objected to this question on the ground that it was compound:

Did it matter to you what the price was of Three Tenors I during the Launch Period?

(Roberts Tr. 68:3-5) Again, the question is proper, as it is only asking the witness to give information about a single subject.<sup>17</sup>

Respondents also objected to the following questions on the grounds that they were "argumentative" and that they mischaracterized the witness's testimony:

Q. During 1998, was it important to PolyGram that Atlantic agree not to sell the Three Tenors II album at mid price level during the period following the initial release of Three Tenors III?

MR. PHILLIPS: Objection, lacks foundation, it's vague.

A. I'm not aware of that position.

Q. So it wasn't important to PolyGram one way or another; is that right?

MR. PHILLIPS: Argumentative, mischaracterizes the witness' testimony.

Q. Is that correct, that it wasn't important one way or another to PolyGram?

MR. PHILLIPS: Argumentative, mischaracterizes the witness' testimony, lacks foundation.

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<sup>17</sup> 2 Fred Lane, *Lane's Goldstien Tr. Tech.*, § 13.46 *Objections - Compound Questions* ("Counsel should ask one question at a time to avoid confusing the witness. A compound question is one that asks more than one question and does not request the witness to respond to each individual question specifically.")

(Roberts Tr. 48:9-23) Both objections must fail. A question is argumentative when counsel “quarrel[s] with a witness as to his testimony on some previous occasion.”<sup>18</sup> Statements are deemed to be mischaracterizing only where they constitute a “distortion of evidence by counsel.”<sup>19</sup> Here, Complaint counsel is merely trying to create an unambiguous record by getting the witness to give answers that are clearer than his prior answers.

**4) The questions were not “asked and answered.”**

Finally, Respondents objected to a series of questions on the ground that they had been “asked and answered.” The first such instance is as follows:

Q. I'm going to ask you your opinion on some issues recognizing that you don't have a specific recollection of what happened in 1998 as reflected in the response to earlier questions, but if drawing upon your experience in the industry you have an opinion on these issues, I would like you to share it with me. Would discounting of the 1994 Three Tenors album by Warner in the United States have affected the success of the Three Tenors' joint venture?

MR. PHILLIPS: Objection, asked and answered, lacks foundation, calls for an expert opinion, calls for speculation.

(Roberts Tr. 144:2-13) A review of the record will disclose that this question had not been asked previously. Complaint Counsel had asked Mr. Roberts for the factual information underlying the decision to agree not to discount (*see* Roberts Tr. 50:25-51:3) and now the question is properly asking for his lay opinion based on his experience in the industry. That Mr. Roberts, speaking for himself and Respondents, professes to have no opinion on whether discounting of older Three

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<sup>18</sup> 2 Fred Lane, *Lane's Goldstien Tr. Tech.*, § 13.45 *Objections - Argumentative Questions* (citing an example where counsel badgers a witness about an inconsistent statement made the previous day during cross examination)

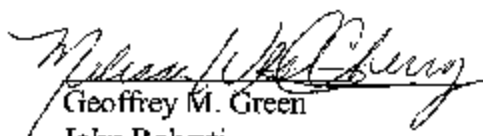
<sup>19</sup> 2 Fred Lane, *Lane's Goldstien Tr. Tech.*, § 13.63 *Improper Characterization*; § 13.64 *Misstatement and Distortion*.

Tenors albums would have affected the success of the Three Tenors joint venture undercuts Respondents' efficiency claims. In any event, questions are properly objected to on the grounds of "asked and answered" if they draw "unfair emphasis" to the testimony or if they cause "embarrassment" or constitute "harassment" of a witness.<sup>20</sup> No such impropriety is present here.

### CONCLUSION

The fact that Mr. Roberts could not corroborate the affirmative defenses offered by Respondents make his testimony highly relevant. For the reasons stated above, Respondents' objections should be denied and the designated portions of the Roberts deposition should be admitted into evidence in this proceeding.

Respectfully submitted,



Geoffrey M. Green  
John Roberti  
Melissa Westman-Cherry  
Complaint Counsel

Dated: February 28, 2002

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<sup>20</sup> 2 Fred Lane, *Lane's Goldstien Tr. Tech.*, § 13.109 *Questions Asked and Answered* (Such questions are also impermissible if they waste the court's time.)

## CERTIFICATE OF SERVICE

I, Melissa Westman-Cherry, hereby certify that on February 28, 2002, I caused a copy of the following documents:

- (1) Complaint Counsel's motion to admit into evidence designated testimony from the deposition of Christopher Roberts;
- (2) Memorandum in support of Complaint Counsel's motion to admit into evidence designated testimony from the deposition of Christopher Roberts; and
- (3) Proposed Order granting Complaint Counsel's motion to admit into evidence designated testimony from the deposition of Christopher Roberts.

to be served upon the persons listed below:

The Honorable James P. Timony  
Chief Administrative Law Judge  
The Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580 (served by hand)

Glenn D. Pomerantz  
Bradley S. Phillips  
Stephen E. Morrissey  
Munger Toiles & Olson LLP  
355 South Grand Avenue  
35<sup>th</sup> Floor  
Los Angeles, Ca 90071  
Fax: (213) 687-3702  
*Counsel for Respondents* (served by facsimile and by Federal Express)

  
Melissa Westman-Cherry





## APPENDIX

<b>Designation</b>	<b>Tab</b>
Vol. I	
48:9-49:14	A
50:25-53:15	B
53:23-54:7	C
55:1-6	D
67:19-68:10	E
68:19-25	F
73:11-23	G
87:6-11	H
94:5-13	I
Vol. II	
140:14-141:2	J
141:11-20	K
142:2-17	L
143:20-144:1	M
144:2-147:10	N

**TAB A**

48:9-49:14:

9 Q. During 1998, was it important to PolyGram that  
10 Atlantic agree not to sell the Three Tenors II album at  
11 mid price level during the period following the initial  
12 release of Three Tenors III?

13 MR. PHILLIPS: Objection, lacks foundation,  
14 it's vague.

15 A. I'm not aware of that position.

16 Q. So it wasn't important to PolyGram one way or  
17 another; is that right?

18 MR. PHILLIPS: 'Argumentative, mischaracterizes  
19 the witness' testimony.

20 Q. Is that correct, that it wasn't important one  
21 way or another to PolyGram?

22 MR. PHILLIPS: Argumentative, mischaracterizes  
23 the witness' testimony, lacks foundation.

24 Q. You could answer.

25 A. Restate the original question, please.

1           MR. GREEN:     Why don't we read it back, because  
2 if I state it again, we're going to be distracted  
3 again.

4           (The requested portion was read.)

5           MR. PHILLIPS:   And the answer, please.

6           (The requested portion was read.)

7           Q.   If you could respond to that question, is that  
8 correct, that begins is that correct?

9           A.   I'm not aware of that position.

10          Q.   Did you have responsibility for securing the  
11 success of the 1998 Three Tenors project?

12          MR. PHILLIPS:   Objection, vague.

13          A.   No, I wouldn't say I had responsibility for  
14 securing.

**TAB B**

25 Q. Was it necessary to the formation of the joint

51

1 venture between PolyGram and Warner that PolyGram and  
2 Warner agree that there would be no discounting of older  
3 Three Tenors' albums during the Launch Period?

4 MR. PHILLIPS: Objection, vague, calls for a  
5 legal conclusion?

6 A. I am not aware of that.

7 Q. It wasn't necessary, was it?

8 MR. PHILLIPS: Objection, argumentative.

9 A. I am not aware that it wasn't necessary or that  
10 it had been discussed.

11 Q. You didn't consider it necessary, is that right?

12 A. I don't recall what I considered it --

13 Q. And --

14 A. -- if I considered it.

15 Q. Was it necessary to the formation of the  
16 Warner/PolyGram joint venture that the parties reach an  
17 agreement with regard to the advertising of older Three  
18 Tenors' albums?

19 MR. PHILLIPS: Objection, vague, calls for a  
20 legal conclusion.

21 A. I don't recall if that was necessary.

22 Q. Would it be necessary to the efficient operation  
23 of the joint venture between Warner and PolyGram that  
24 the parties reach an understanding with regard to the  
25 pricing of older Three Tenors' albums during the Launch

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1 Period?

2 MR. PHILLIPS: Objection, vague.

3 A. Again, I don't recall that.

4 Q. Well, could the joint venture operate  
5 efficiently without an agreement between the two parties  
6 with regard to the pricing of older Three Tenors  
7 products?

8 MR. PHILLIPS: Objection, vague, calls for  
9 expert opinion.

10 A. I wouldn't know.

11 Q. Is it necessary to the financial success of the  
12 Three Tenors III project that Warner and PolyGram agree  
13 that neither firm will sell the older Three Tenors'  
14 album at a mid price during the Launch Period?

15 MR. PHILLIPS: Objection, vague, calls for  
16 expert opinion, speculation.

17 A. Yes, I don't know.

18 Q. And do you know whether it was necessary to the  
19 efficient operation of the joint venture that the



20 parties agree to forego certain types of advertising for  
21 older Three Tenors' products for the Launch Period?

22 MR. PHILLIPS: Vague, calls for expert  
23 opinion.

24 A: I don't know.

25 Q. What would be the effect upon the Three Tenors

53

1 III project be if during the Launch Period Warner was  
2 selling the Three Tenors II product at a mid price  
3 level?

4 MR. PHILLIPS: You mean what would the effect  
5 have been if they had been?

6 MR. GREEN: Right.

7 MR. PHILLIPS: Calls for speculation. You  
8 could answer the question.

9 A. I don't know what the effect would have been.

10 Q. And what would have been the effect on the Three  
11 Tenors III project if during the Launch Period PolyGram  
12 had been selling Three Tenors I at a midpoint price  
13 level?

14 MR. PHILLIPS: Calls for speculation.

15 A. Again, I don't know.

**TAB C**

53:23-54:7:

23           Q.   Okay, and what would have been the effect on the  
24   Three Tenors III project if during the Launch Period  
25   PolyGram had been aggressively advertising Three Tenors

54

1    I?

2           MR. PHILLIPS:    Calls for speculation.

3           A.   I hate to ask you to repeat that question, but  
4    could you repeat it?

5           MR. GREEN:    I think we better read it back.

6           (The requested portion was read.)

7           A.   I don't know.

**TAB D**

55:1-6:

1           Q.   And would the amount of money spent by PolyGram  
2   advertising and promoting Three Tenors III have been any  
3   different if during the Launch Period Three Tenors I and  
4   Three Tenors II were available at a mid price point?

5           MR. PHILLIPS:    Calls for speculation.

6           A.   I don't know.

**TAB E**

67:19-68:10:

19 Q. During 1998, did you want the Three Tenors I  
20 album to be priced at full price?

21 MR. PHILLIPS: I'm sorry, it's compound.

22 A. I don't recall exactly what I might have thought  
23 regarding that subject at that time.

24 Q. During the Launch Period, did you care what the  
25 price was of Three Tenors I?

68

1 MR. PHILLIPS: Objection, vague.

2 A. I don't know what you mean by "care."

3 Q. Did it matter to you what the price was of Three  
4 Tenors I during the Launch Period?

5 MR. PHILLIPS: Vague and compound.

6 A. No, I don't recall.

7 Q. Were you concerned about the success of Three  
8 Tenors III?

9 MR. PHILLIPS: Objection, vague.

10 A. Generally speaking, yes.

**TAB F**



**68:19-25:**

19 Q. Were you concerned about marketing strategy?

20 MR. PHILLIPS: Objection, vague.

21 A. I couldn't say generally speaking about  
22 marketing strategy.

23 Q. Were you concerned about advertising strategy?

24 MR. PHILLIPS: Same objection, vague.

25 A. I don't recall.

**TAB G**

73:11-23:

11 Q. In your view, was the marketing campaign for  
12 Three Tenors III effective?

13 MR. PHILLIPS: Vague.

14 A. Yes, I couldn't -- I don't know.

15 Q. In your opinion, was there anything done with  
16 regard to the marketing of Three Tenors III that should  
17 have been done better?

18 MR. PHILLIPS: Objection, vague, lacks  
19 foundation.

20 A. Yes, I couldn't speculate on that.

21 Q. Anything that in your view should have been done  
22 differently?

23 A. Not that I recall.

**TAB H**

87:6-11:

6 Q. Would that be a wise thing to do, to build into  
7 the marketing plan specific things that would address  
8 the problem of cannibalization?

9 MR. PHILLIPS: Objection, vague, calls for  
10 speculation.

11 A. I'm not sure.

**TAB I**

94:5-13:

5 Q. Can you think of anything that ought to be done  
6 when you're bringing out an album by an artist and that  
7 artist has catalog items controlled by a competitor?

8 MR. PHILLIPS: Objection, calls for  
9 speculation and incomplete hypothetical.

10 A. Yes, I couldn't speculate, no.

11 Q. Can you think of anything that ought to be done?

12 MR. PHILLIPS: Same objection.

13 A. No, not at this time.

**TAB J**



140:14-141:2:

14 Q. Again, I'm going to read you a statement, you  
15 tell me whether you believe it to be true, false or  
16 don't know.

17 In 1998 PolyGram was concerned that discounting  
18 of the 1994 Three Tenors album by Warner could undermine  
19 the success of the Three Tenors' joint venture.

20 MR. PHILLIPS: Objection, vague, lacks  
21 foundation, call for speculation.

22 A. I would be speculating.

23 Q. Do you know that to be true, false or do you not  
24 know?

25 MR. PHILLIPS: Same objection, lacks

141

1 foundation, call for speculation.

2 A. I do not know.

**TAB K**

141:11-20:

11 Q. In 1998 PolyGram was concerned that Warner's  
12 operating companies might promote the 1994 Three Tenors  
13 album during the Launch Period.

14 MR. PHILLIPS: Lacks foundation, calls for  
15 speculation.

16 Q. Do you know that to be true, false or you do not  
17 know?

18 MR. PHILLIPS: Same objection, lacks  
19 foundation, calls for speculation.

20 A. I do not know.

**TAB L**

142:2-17:

2           Q.   In 1998 PolyGram was concerned that the  
3 promotion of the 1994 Three Tenors album by Warner could  
4 undermine the success of the Three Tenors joint  
5 venture.

6           I'll read it again because I made a mistake.

7           In 1998 PolyGram was concerned that the  
8 promotion of the 1994 Three Tenors album by Warner could  
9 undermine the success of the Three Tenors' joint  
10 venture.

11           MR. PHILLIPS:   Lacks foundation, calls for  
12 speculation.

13           A.   I don't recall that that was a concern.

14           Q.   Do you recall that being a concern at anytime?

15           MR. PHILLIPS:   Lacks foundation, call for  
16 speculation.

17           A.   I don't know.

**TAB M**

143:20-144:1:

20 Q. In 1997, had Chris Roberts anticipated  
21 discounting and promotion of the 1994 Three Tenors album  
22 during the Launch Period, then he would not have  
23 supported PolyGram's entering into the Three Tenors'  
24 joint venture.

25 MR. PHILLIPS: Calls for speculation.

144

1 A. I don't recall that, no.

**TAB N**



144:2-147:10:

2 Q. I'm going to ask you your opinion on some issues  
3 recognizing that you don't have a specific recollection  
4 of what happened in 1998 as reflected in the response to  
5 earlier questions, but if drawing upon your experience  
6 in the industry you have an opinion on these issues, I  
7 would like you to share it with me.

8 Would discounting of the 1994 Three Tenors album  
9 by Warner in the United States have affected the success  
10 of the Three Tenors' joint venture?

11 MR. PHILLIPS: Objection, asked and answered,  
12 lacks foundation, calls for an expert opinion, calls for  
13 speculation.

14 A. No, I wouldn't know that specifically.

15 Q. You don't have an opinion on that subject?

16 A. No.

17 Q. Would promotion of the 1994 Three Tenors album  
18 by Warner in the United States have affected the success  
19 of the Three Tenors' joint venture?

20 MR. PHILLIPS: Same objections.

21 A. Promotion of the 1994 Three Tenors album by  
22 Warner have affected the joint venture of Three Tenors  
23 III, I don't know.

24 Q. Would promotion of the 1994 album by Warner have  
25 affected the number of units that were sold of Three

1 Tenors III?

2 MR. PHILLIPS: Same objections.

3 A. I really couldn't say.

4 Q. And would discounting of the 1994 album have  
5 affected the number of units sold of Three Tenors III?

6 MR. PHILLIPS: Same objections.

7 A. I really couldn't say.

8 Q. Would discounting of the 1994 album by Warner in  
9 the United States have affected advertising expenditures  
10 for Three Tenors III?

11 MR. PHILLIPS: Same objections, calls for  
12 speculation.

13 A. I'm sorry, could you repeat that last question?

14 MR. GREEN: Read it back, please.

15 (The requested portion was read.)

16 MR. PHILLIPS: Same objections, calls for  
17 speculation, lacks foundation.

18 A. I really don't know.

19 Q. Would promotion of the 1994 album by Warner in  
20 the United States have affected advertising expenditures  
21 for Three Tenors III?

22 MR. PHILLIPS: Same objections.

23 A. I really don't know.

24 Q. Do you know whether discounting by PolyGram of  
25 the 1990 album would have affected sales of Three Tenors

146

1 III in the United States?

2 MR. PHILLIPS: Same objections.

3 A. I'm sorry, I wouldn't know that.

4 Q. Do you know whether promotion of the 1990 album  
5 by PolyGram in the United States would have affected  
6 advertising expenditures for Three Tenors III during  
7 1998?

8 MR. PHILLIPS: Same objections.

9 A. I don't know.

10 Q. Do you know whether advertising and promotion of  
11 older Three Tenors' albums during 1998 would have  
12 affected the profits accruing to the joint venture?

13 MR. PHILLIPS: Same objections.

14 A. I don't know.

15 Q. Do you know whether the advertising and  
16 discounting of older Three Tenors' albums during 1998  
17 would have had any affect upon the joint venture?

18 MR. PHILLIPS: Same objections.

19 A. I don't know.

20 Q. Do you know whether the advertising and  
21 discounting of older Three Tenors' albums in the United

22 States during 1998 would have benefited consumers?

23 MR. PHILLIPS: Same objections, it's vague.

24 A. I don't know.

25 Q. Do you know whether the advertising and

147

1 discounting of older Three Tenors' albums in the United

2 States during 1998 would have harmed consumers?

3 MR. PHILLIPS: Same objections, it's vague.

4 A. I don't know.

5 Q. Do you know whether the advertising and

6 promotion of older Three Tenors' albums in the United

7 States during 1998 would have enhanced competition?

8 MR. PHILLIPS: Same objections, vague, lacks

9 foundation, call for speculation, expert opinion.

10 A. I don't know.



**In The Matter Of:**

*POLYGRAM HOLDING, INC., ET AL.*  
*MATTER NO. DO9298*

---

*CHRISTOPHER JAMES ROBERTS*  
*October 31, 2001*

---

*For The Record, Inc.*  
*Court Reporting and Litigation Support*  
*603 Post Office Road*  
*Suite 309*  
*Waldorf, MD USA 20602*  
*(301) 870-8025 FAX: (301) 870-8333*

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**Word Index included with this Min-U-Script®**

[1] INDEX

[2] WITNESSES: EXAMINATION

[3] Christopher James Roberts 5

[4]

[5] EXHIBITS FOR ID DESCRIPTION

[6] No. 12 4 Document bearing Bates stamp

[7] UMG 004144 through UMG 004154.

[8] No. 13 4 Document bearing Bates stamp

[9] UMG 000539 through UMG 000550.

[10] No. 14 57 Document bearing Bates stamp

[11] UMG 000151.

[12] No. 15 61 Document bearing Bates stamp

[13] UMG 000375.

[14] No. 16 63 Document bearing Bates stamp

[15] UMG 000203 through UMG 000208.

[16] No. 17 108 Document bearing Bates stamp

[17] UMG 001714 through UMG 001727.

[18]

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[25]

[1] APPEARANCES:

[2]

[3] ON BEHALF OF THE FEDERAL TRADE COMMISSION:

[4]

[5] GEOFFREY M. GREEN, ESQ.

[6] 611 Street & Pennsylvania Avenue, N.W.

[7] Washington, D.C. 20540

[8] 202-326-3775

[9]

[10] ON BEHALF OF THE RESPONDENTS:

[11]

[12] BRADLEY S. PHILLIPS, FSC.

[13] Munger, Tolles & Olson, LLP

[14] 355 South Grand Avenue, 35th Floor

[15] Los Angeles, California 90071 1580

[16] 213-003-9202

[17]

[18]

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[25]

PROCEEDINGS

[1] FEDERAL TRADE COMMISSION

[2]

[3] In the Matter of: )

[4] POLYGRAM HOLDING, INC., )

[5] a corporation, )

[6] DECCA MUSIC GROUP LIMITED, )

[7] a corporation, )

[8] UMG RECORDINGS, INC., )

[9] a corporation, ) Docket No. 9298

[10] and )

[11] UNIVERSAL MUSIC & VIDEO )

[12] DISTRIBUTION CORP., )

[13] a corporation. )

[14]

[15]

[16]

[17] Wednesday, October 31, 2001

[18] 425 Lexington Avenue

[19] New York, New York

[20]

[21] The above-entitled matter came on for

[22] deposition pursuant to notice at 2:14 p.m.

[23]

[24]

[25]

[1]

[2]

[3] CHRISTOPHER JAMES ROBERTS, having

[4] first been duly sworn by a Notary Public of the State of

[5] New York, was examined and testified as follows:

[6] MR. GREEN: Please mark these.

[7] (Document bearing Bates stamp UMG 004144

[8] through UMG 004154 was marked as PolyGram

[9] Holding Exhibit-12 for identification; 10-31-01,

[10] P.W.)

[11] (Document bearing Bates stamp UMG 000539

[12] through UMG 000550 was marked as PolyGram

[13] Holding Exhibit-13 for identification; 10-31-01,

[14] P.W.)

[15] MR. GREEN: Before starting with the

[16] questioning, I would like to put the following on the

[17] record, that Mr. Roberts is one of the designated

[18] witnesses, one of the witnesses designated by

[19] respondents to address the third and fourth additional

[20] defenses; is that right.

[21] MR. PHILLIPS: Yes, that's right.

[22] MR. GREEN: Mr. Roberts, my name is Geoffrey

[23] Green. I'm a lawyer for The Federal Trade Commission.

[24] I will be asking you series of questions today and

[25] tomorrow.

Page 5

(1) If at any point you don't hear me, indicate that  
(2) you didn't hear me and I will repeat it. If at any  
(3) point I ask you a question that you don't understand,  
(4) please indicate that you didn't understand it and I will  
(5) endeavor to clarify. Is that okay?

(6) **THE WITNESS:** Umm-huh.

(7) **MR. GREEN:** You have to respond yes or no so  
(8) that we'll have a clear record.

(9) **THE WITNESS:** Okay.

(10) **EXAMINATION BY**

(11) **MR. GREEN:**

(12) **Q:** Where do you reside, Mr. Roberts?

(13) **A:** New York City.

(14) **Q:** Do you have any post college education?

(15) **A:** Yes.

(16) **Q:** What degrees do you have?

(17) **A:** No post — well, I have graduate school study  
(18) but no graduate degrees.

(19) **Q:** In what areas is your graduate?

(20) **A:** Musicology.

(21) **Q:** Are you employed currently?

(22) **A:** Yes.

(23) **Q:** By what company are you employed?

(24) **A:** Universal Music.

(25) **Q:** What is your position with Universal?

Page 6

(1) **A:** President Universal Classics and Jazz  
(2) International.

(3) **Q:** Do you have hold any other positions?

(4) **A:** Well, I suppose there are — I have two titles,  
(5) one is chairman of the Universal Classics Group, and the  
(6) other is what I just indicated.

(7) **Q:** Do you hold the position of president of Decca  
(8) U.S.?

(9) **A:** I'm not certain about that, to be very honest.  
(10) Decca U.S. falls under the jurisdiction of the Universal  
(11) Classics Group, but I'm not completely familiar with  
(12) what might be in my contract. It could be, I'm not  
(13) certain of that, that there is a third title  
(14) designation.

(15) **Q:** The first title was president of Universal  
(16) Classics and Jazz International?

(17) **A:** Correct.

(18) **Q:** And is that a division of a different  
(19) corporation?

(20) **A:** No. It's a division of Universal Music Group.

(21) **Q:** The corporation is Universal Music Group?

(22) **A:** Yes.

(23) **Q:** And Universal Classics, is that a division of  
(24) Universal Music Group also?

(25) **A:** Correct, yes.

Page 7

(1) **Q:** Does Universal Music Group also go by the name  
(2) UMG, Inc. or is that a different corporation?

(3) **A:** I'm not certain of that.

(4) **Q:** Could you describe the business of Universal  
(5) Classics and Jazz International?

(6) **A:** It takes basically two forms in my area of  
(7) responsibility, one is direct responsibility over the  
(8) labels, and they are Decca and its sister labels,  
(9) Philips Classics and the second label is Deutsche  
(10) Grammophon. In addition to that, I'm responsible,  
(11) outside the United States, for the sales and promotion  
(12) and marketing activities of jazz, and I have  
(13) collectively around the world responsibility over the —  
(14) not the day-to-day operation but the functional  
(15) responsibility for anything connected to classical or  
(16) jazz music in the various countries around the world.

(17) **Q:** You indicated earlier that you're chairman of  
(18) Universal Classics.

(19) Do you have responsibilities in that capacity  
(20) different from what you've just described?

(21) **A:** Yes. I would not have only functional but I  
(22) would have operational responsibility over the U.S.  
(23) classical business.

(24) **Q:** Who do you report to?

(25) **A:** Jorgen Larson who is chairman of Universal Music

Page 8

(1) International. I'm not sure if it's chairman or not,  
(2) but he's the number one executive in Universal Music  
(3) International.

(4) **Q:** How long have you held the positions that you've  
(5) just been discussing?

(6) **A:** I've held — well, if we go back to before there  
(7) was a Universal, I had the title —

(8) **MR. PHILLIPS:** You mean before the merger?

(9) **A:** Before the merger, sorry. Before the merger I  
(10) was at the title of president PolyGram Classics and  
(11) Jazz.

(12) **Q:** During what time period were you president of  
(13) PolyGram Classics and Jazz?

(14) **A:** I was worldwide president from January 1996, and  
(15) prior to that I was president of PolyGram Classics and  
(16) Jazz U.S. from January 1994. Before that, if you want  
(17) to know before that.

(18) **Q:** Sure.

(19) **A:** I was responsible for international marketing  
(20) for PolyGram from 1989 until January 1994.

(21) **Q:** During the term that you were president at  
(22) PolyGram Classics and Jazz, who did you report to?

(23) **A:** A number of people. In 1994 I reported to Alain  
(24) Levy. In 1996, when I was initially made worldwide  
(25) president of PolyGram Classics and Jazz, I was reporting



1) to Alain Levy, and I'm not sure when, but sometime after  
2) that I reported to Roger Ames.  
3) Q: What was Mr. Ames' title during the time you  
4) reported to him?  
5) A: I believe it was president of PolyGram Music.  
6) Q: During 1998, was PolyGram Classics and Jazz a  
7) division of PolyGram Records, Inc.?  
8) A: Correct.  
9) Q: Describe, please, briefly the business of  
10) PolyGram Classics and Jazz.  
11) A: It was the same as I described for Universal  
12) with one exception, I was not — under PolyGram. I was  
13) responsible for all activities associated with the Verve  
14) label, the jazz label, which has not been the case since  
15) the merger and is not the case clearly today.  
16) Q: Do you know what company owned PolyGram Records,  
17) Inc. during 1998?  
18) A: Philips Electronics.  
19) Q: During 1998, how many people reported to you?  
20) A: Is this before the merger or after the merger?  
21) Q: The merger was January of '99. I'll say before  
22) the merger, please.  
23) A: I could only tell you approximately. Will that  
24) do?  
25) Q: That will do.

1) does that mean it was —  
2) A: As opposed to a joint venture.  
3) Q: Was it a direct or indirect subsidiary of  
4) PolyGram N.V.?  
5) MR. PHILLIPS: Calls for a legal conclusion.  
6) Q: Do you know?  
7) A: I don't know that.  
8) Q: Let me show you a document that's been marked  
9) PolyGramHoldingNumber 12.PolyGramHoldingNumbe  
10) is a multi-page document. First page is Bates stamped  
11) UMG 0004144. The last page is not clearly marked, but  
12) it is UMG 004154.  
13) Let me direct your attention to the first page  
14) of the document. Is this a memo that you wrote to Alain  
15) Levy on July 12, 1996?  
16) A: Yes, it is.  
17) Q: What is A&R?  
18) A: Artists in record recording.  
19) Q: What does it mean that the Three Tenors need  
20) little A&R?  
21) A: It means that input from the record company is  
22) not required, that in this particular case the context  
23) is that they feel quite secure in the nature of their  
24) performance and the material that they had previously  
25) performed, and so the record company intervening with

1) A: Can I ask you a question or you a question? I  
2) mean, I don't know, what's the definition of reporting  
3) here? I mean, if it's the number of people under whom  
4) my division —  
5) Q: People reporting directly to you.  
6) A: Specific direct reports, okay. It would have  
7) been about 15.  
8) Q: During 1998, did Roger Lewis report directly to  
9) you?  
10) A: Yes.  
11) Q: And was Mr. Lewis the president of Decca Record  
12) Company at that time?  
13) A: Yes, he was.  
14) Q: Did Mr. Paul Saintilan report to you?  
15) A: No, he did not.  
16) Q: At this time, was Decca Record Company  
17) affiliated with PolyGram Classics and Jazz?  
18) A: Yes, it was.  
19) Q: What was the nature of that relationship?  
20) A: Well, it was a wholly-owned label within the  
21) PolyGram family. We had worldwide rights to all Decca  
22) assets, and it was, as I said, one of the labels that I  
23) had direct responsibility over in my position as  
24) president of Classics and Jazz.  
25) Q: When you said that it was a wholly-owned label,

1) specific ideas was something that they didn't feel that  
2) they required.  
3) Q: At this time, meaning July 1996, did you believe  
4) it was a problem that the Three Tenors felt they needed  
5) little A&R?  
6) A: Yes, I was concerned about that.  
7) Q: Why were you concerned?  
8) A: Because I felt that in — were we to make a  
9) recording with them, that we needed to have something  
10) about that recording which was distinctive and  
11) interesting.  
12) Q: Why was it important that it be distinctive and  
13) interesting?  
14) A: So that it would be appealing to those people  
15) who had either attended Three Tenors' concerts or had  
16) bought previous Three Tenors' recordings.  
17) Q: Did you believe at that time that input from the  
18) A&R group was necessary in order to make the project  
19) interesting and distinctive?  
20) MR. PHILLIPS: Objection, vague and compound.  
21) You could answer. You could always answer if I don't  
22) tell you not to, even if I object.  
23) MR. GREEN: Could you read back the question,  
24) please?  
25) (The requested portion was read.)

(1) A: I think the issue wasn't so much that I think  
(2) the material needed to be interesting and distinctive.  
(3) That wouldn't necessarily have to come from an A&R  
(4) source.  
(5) Q: When you refer to the material, do you mean the  
(6) selection of repertoire?  
(7) A: Yes.  
(8) Q: What did you want in terms of repertoire for the  
(9) third concert?  
(10) A: Something that was different from what had  
(11) preceded it or that was compelling or topical.  
(12) Q: Ultimately, did the album that was delivered to  
(13) you by Mr. Rudas meet those standards?  
(14) A: It's very hard for me to answer that question.  
(15) It depends on how one defines standards. If you define  
(16) them on a commercial basis, no. If you define it on a  
(17) technical basis, perhaps.  
(18) Q: Well, my question is, did it meet the objectives  
(19) that you had in mind when you contemplated the project  
(20) in 1996?  
(21) MR. PHILLIPS: Objection, compound.  
(22) A: I don't know. I can't answer that. I don't  
(23) know how to answer that.  
(24) Q: Do you think that the repertoire in the 1998  
(25) album is distinctive and unique?

(1) MR. PHILLIPS: Objection, compound, vague.  
(2) You could answer, if you understand the question.  
(3) A: I don't, I mean, to me, it's the same  
(4) question. No, I don't know how to answer that.  
(5) Q: When you reviewed the master that was delivered  
(6) to PolyGram, were you satisfied with the master?  
(7) MR. PHILLIPS: Objection, vague.  
(8) A: I don't really — I don't recall at that  
(9) particular moment when it was delivered exactly what my  
(10) feelings were.  
(11) Q: Who is Roland Kommerell, K-O-M-M-E-R-E-L-L?  
(12) A: Roland Kommerell was the previous president of  
(13) the Decca Record Company Limited prior to Roger Lewis.  
(14) Q: When did Mr. Kommerell leave Decca?  
(15) A: I don't recall exactly. It could have been  
(16) sometime in 1996 to early '97. It might have been '97  
(17) to '98. I'm not entirely certain.  
(18) Q: In July 1996, did Mr. Kommerell report to you?  
(19) A: Yes, he did.  
(20) Q: In July of 1996, did you believe that in order  
(21) for the 1998 project to be successful it had to be a  
(22) unique audio experience?  
(23) MR. PHILLIPS: Objection, vague.  
(24) A: I think — I thought I might have answered that  
(25) already, but I think what I had said was that it needed

(1) to be compelling, topical.  
(2) Q: Was the 1998 Three Tenors album compelling and  
(3) topical?  
(4) A: Topical, yes. It took place in Paris.  
(5) Q: Was it compelling?  
(6) A: And that's where the World Cup was taking  
(7) place. Compelling, I can't really answer that. As I  
(8) said before, separating the result of the album from  
(9) what my mind set might have been at this time is hard  
(10) for me to recall exactly what my thoughts were at the  
(11) time that you're referring to.  
(12) Q: So can you answer this question yes or no, was  
(13) the Three Tenors III album what you had envisioned when  
(14) you contracted for this project?  
(15) MR. PHILLIPS: Objection, vague.  
(16) Q: If you could answer, please do.  
(17) A: I can't. I mean, as I said before, it's hard  
(18) for me to give you the clarity you're looking for.  
(19) Q: Is the problem you don't recall your mind set  
(20) back in '96, '97?  
(21) A: Yes.  
(22) Q: Is there anything different that could have been  
(23) done with regard to the 1998 concert to make it more  
(24) distinctive or more compelling?  
(25) MR. PHILLIPS: Calls for speculation.

(1) A: That would only be speculation.  
(2) Q: Well, you're a long-time music company  
(3) executive, you have some basis to answer the questions,  
(4) so I would appreciate it if you did.  
(5) A: If it had been a studio recording, if material  
(6) had been different, substantially different from what it  
(7) had been on the previous albums, concept.  
(8) Q: What does "concept" mean?  
(9) A: Well, a studio recording is a different concept  
(10) to a live recording.  
(11) Q: You think a studio recording would have been  
(12) more compelling?  
(13) A: I remember — I do remember feeling that way at  
(14) that time, yes.  
(15) Q: And you believe that had the material been more  
(16) different from the previous albums, it would have been a  
(17) more compelling album; is that right?  
(18) A: I believe I felt that way, yes.  
(19) Q: You felt that way when?  
(20) A: At this time, the time frame that you're  
(21) referring to.  
(22) Q: Is that how you feel now, that had the material  
(23) been substantially different it would have been a more  
(24) compelling album.  
(25) A: I'm not really sure, to be honest with you, how

1) MR. GREEN: Why don't we read it back, because  
2) if I state it again, we're going to be distracted  
3) again.  
4) (The requested portion was read.)  
5) MR. PHILLIPS: And the answer, please.  
6) (The requested portion was read.)  
7) Q: If you could respond to that question, is that  
8) correct, that begins is that correct?  
9) A: I'm not aware of that position.  
10) Q: Did you have responsibility for securing the  
11) success of the 1998 Three Tenors project?  
12) MR. PHILLIPS: Objection, vague.  
13) A: No, I wouldn't say I had responsibility for  
14) securing.  
15) Q: Were you among those who were responsible for  
16) promoting the success of that project?  
17) MR. PHILLIPS: Objection, vague.  
18) A: I'm responsible for having co-signed the  
19) document.  
20) Q: What document is that?  
21) A: The contract to do Three Tenors III.  
22) Q: At the time you signed that contract, did you  
23) have any understanding with regard to what Warner's  
24) marketing practices were going to be with regard to  
25) Three Tenors II?

1) venture between PolyGram and Warner that PolyGram and  
2) Warner agree that there would be no discounting of older  
3) Three Tenors' albums during the Launch Period?  
4) MR. PHILLIPS: Objection, vague, calls for a  
5) legal conclusion?  
6) A: I am not aware of that.  
7) Q: It wasn't necessary, was it?  
8) MR. PHILLIPS: Objection, argumentative.  
9) A: I am not aware that it wasn't necessary or that  
10) it had been discussed.  
11) Q: You didn't consider it necessary; is that right?  
12) A: I don't recall what I considered it --  
13) Q: And --  
14) A: -- if I considered it.  
15) Q: Was it necessary to the formation of the  
16) Warner/PolyGram joint venture that the parties reach an  
17) agreement with regard to the advertising of older Three  
18) Tenors' albums?  
19) MR. PHILLIPS: Objection, vague, calls for a  
20) legal conclusion.  
21) A: I don't recall if that was necessary.  
22) Q: Would it be necessary to the efficient operation  
23) of the joint venture between Warner and PolyGram that  
24) the parties reach an understanding with regard to the  
25) pricing of older Three Tenors' albums during the Launch

1) A: Not that I recall, no.  
2) Q: I'm interested in a period of time that goes  
3) from August 1, 1998 to October 15, 1998, and rather than  
4) repeating that over and over again, I'm going to call  
5) that the Launch Period, okay?  
6) A: Okay.  
7) Q: We'll call it the Launch, capital L, Period,  
8) capital P. Will that be clear?  
9) A: Yes.  
10) Q: Referring now to the contract between Warner and  
11) PolyGram, at the time that you approved that contract,  
12) did you have the expectation that Warner would not be  
13) selling Three Tenors II at a mid price during the Launch  
14) Period?  
15) A: I don't recall that I had that expectation.  
16) Q: Did you have any expectation at the time you  
17) approved that contract with regard to how Warner would  
18) be advertising Three Tenors II during the Launch Period?  
19) A: No, I'm not aware of that, I'm not aware of  
20) their -- I don't remember exactly what you said, but  
21) their position relative to advertising --  
22) Q: Did you have any expectation as to what they  
23) were going to do?  
24) A: I don't recall if I had any expectation.  
25) Q: Was it necessary to the formation of the joint

1) Period?  
2) MR. PHILLIPS: Objection, vague.  
3) A: Again, I don't recall that.  
4) Q: Well, could the joint venture operate  
5) efficiently without an agreement between the two parties  
6) with regard to the pricing of older Three Tenors  
7) products?  
8) MR. PHILLIPS: Objection, vague, calls for  
9) expert opinion.  
10) A: I wouldn't know.  
11) Q: Is it necessary to the financial success of the  
12) Three Tenors III project that Warner and PolyGram agree  
13) that neither firm will sell the older Three Tenors'  
14) album at a mid price during the Launch Period?  
15) MR. PHILLIPS: Objection, vague, calls for  
16) expert opinion, speculation.  
17) A: Yes, I don't know.  
18) Q: And do you know whether it was necessary to the  
19) efficient operation of the joint venture that the  
20) parties agree to forego certain types of advertising for  
21) older Three Tenors' products for the Launch Period?  
22) MR. PHILLIPS: Vague, calls for expert  
23) opinion.  
24) A: I don't know.  
25) Q: What would be the effect upon the Three Tenors

**In The Matter Of:**

*POLYGRAM HOLDING, INC., ET AL.  
MATTER NO. DO9298*

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*CHRISTOPHER JAMES ROBERTS  
Vol. 2, November 1, 2001*

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*For The Record, Inc.  
Court Reporting and Litigation Support  
603 Post Office Road  
Suite 309  
Waldorf, MD USA 20602  
(301) 870-8025 FAX: (301) 870-8333*

Original File 11101ROB.ASC, 83 Pages  
Min-U-Script® File ID: 1873300591

**Word Index included with this Min-U-Script®**

Page 164

(1) memo from Rand Hoffman to Approvers. First page is  
(2) Bates stamped UMG 001342 with the date on the cover memo  
(3) as November 20, 1997. The last page is Bates stamped  
(4) UMG 001356.  
(5) Q: Do you recognize this document, Mr. Roberts?  
(6) A: I recognize it as a contract, yes.  
(7) Q: Have you ever heard of the term approval memo?  
(8) A: Yes, I have.  
(9) Q: Is this an approval memo?  
(10) A: I believe it is, yes.  
(11) Q: What's the function of an approval memo within  
(12) PolyGram?  
(13) A: Function of an approval memo would have been  
(14) before moving on into any agreement, it would require  
(15) approval from any number of people depending upon the  
(16) scope of the deal.  
(17) Q: It correct that the Three Tenors III deal  
(18) required the approval of yourself?  
(19) A: I couldn't say it required the approval of  
(20) myself. It certainly required the approval of my boss  
(21) or bosses.  
(22) Q: Who did it require the approval of?  
(23) A: It would have required at least the approval of  
(24) Alain Levy.  
(25) Q: Did it require the approval of Roger Ames?

Page 165

(1) A: I'm not certain of that.  
(2) Q: Are there some record deals that can be approved  
(3) at levels lower than Mr. Levy?  
(4) A: Yes.  
(5) Q: Why did a deal require Mr. Levy's approval?  
(6) A: I couldn't say specifically, beyond, as I said,  
(7) the scope of the financial expenditures.  
(8) Q: So I'm sure I understand, did this deal require  
(9) Mr. Levy's approval because the financial investment was  
(10) so large?  
(11) A: That's my recollection, yes.  
(12) Q: Do you recall that the joint venture partners,  
(13) PolyGram and Warner, committed to pay an advance of \$18  
(14) million to Mr. Rudas?  
(15) MR. PHILLIPS: Vague.  
(16) A: I don't recall that specifically.  
(17) Q: What do you recall about the size of the advance  
(18) on this project?  
(19) A: I recall that it was very large.  
(20) Q: And why don't you take a minute and read  
(21) paragraph A and see if that refreshes your recollection  
(22) as to the size of the advance, down at the bottom.  
(23) MR. PHILLIPS: Paragraph A under "artist  
(24) deal"?  
(25) MR. GREEN: Yes, on the first page.

Page 166

(1) A: Yes. That --  
(2) Q: Does that refresh your recollection?  
(3) A: It refreshes my recollection.  
(4) Q: Do you now recall what the size of the advance  
(5) was on the Three Tenors III deal?  
(6) MR. PHILLIPS: Object to the form of the  
(7) question as argumentative and misleading.  
(8) A: I recall observing this number as to be within  
(9) my general recollection of what the audio advance was,  
(10) yes.  
(11) Q: This number being \$11,000,000?  
(12) A: Yes.  
(13) Q: Do you recall how that number was determined?  
(14) A: No, I do not recall that.  
(15) Q: Were you involved in negotiations with Mr. Rudas  
(16) in connection with the Three Tenors III transaction?  
(17) A: I don't recall that I was in direct negotiations  
(18) with Mr. Rudas.  
(19) Q: Did you have any role in the negotiations for  
(20) the Three Tenors III transaction?  
(21) MR. PHILLIPS: Overbroad and vague.  
(22) A: I could not say.  
(23) Q: You don't recall whether you had a role?  
(24) A: I don't recall whether I had a role as to the  
(25) negotiations.

Page 167

(1) Q: Did you have a role with regard to the analysis  
(2) of whether PolyGram should enter into the joint venture  
(3) agreement?  
(4) A: Yes.  
(5) Q: What was your role?  
(6) A: My role would have been to assess whether it was  
(7) a deal worth doing, what the risks might be, what the  
(8) upsides might be.  
(9) Q: What was your assessment?  
(10) A: I don't recall specifically what my assessment  
(11) might have been other than the fact that I signed the  
(12) deal memo or the approval memo.  
(13) Q: Do you recall what risks you identified?  
(14) A: It's a large amount of money for an album deal.  
(15) Q: Is this the largest album deal that you've  
(16) approved?  
(17) A: Yes, it is.  
(18) Q: What did you identify as the upsides of this  
(19) transaction?  
(20) A: Upsides would have been solidifying our  
(21) relationship with the Three Tenors, with Luciano  
(22) Pavarotti specifically. Up sides would have been that  
(23) it might sell, up sides might be that we could have an  
(24) ongoing relationship with the Three Tenors, potentially,



**In The Matter Of:**

*POLYGRAM HOLDING, INC., ET AL.*  
*MATTER NO. DO9298*

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*PAUL SAINTILAN*  
*November 6, 2001*

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*For The Record, Inc.*  
*Court Reporting and Litigation Support*  
*603 Post Office Road*  
*Suite 309*  
*Waldorf, MD USA 20602*  
*(301) 870-8025 FAX: (301) 870-8333*

*Original File 11106SALASC, 230 Pages*  
*Min-U-Script® File ID: 1119998590*

**Word Index included with this Min-U-Script®**

101 Q: What is your understanding as to the Three  
102 Tenors moratorium?  
103 MR. MORRISSEY: Vague as to time.  
104 THE WITNESS: That it would provide a window  
105 for the 1998 album to be promoted, to be consumed in an  
106 uncluttered way, to ensure there was no confusion and  
107 clutter in the market; that we had a clear, simple  
108 proposition that we were putting before the market.

109 BY MR. GREEN:

110 Q: Do you know who initiated the idea of the  
111 Three Tenors moratorium?  
112 A: My recollection was that Chris Roberts  
113 initially expressed concern to me that operating  
114 companies could aggressively promote a 1990 album in a  
115 way detrimental to the success of the 1998 album.  
116 Q: What did Mr. Roberts want you to do?  
117 A: He suggested discussing the possibility of  
118 creating a window, which I subsequently did with  
119 operating companies.  
120 Q: Did you discuss that with PolyGram operating  
121 companies?  
122 A: Yes.  
123 Q: When was this conversation with Mr. Roberts?  
124 A: Late January.  
125 Q: Late January '98?

110 A: Yes. My recollection is that Chris raised  
111 that as an issue of concern to him and belief that it  
112 was an issue we needed to address subsequently.  
113 Q: Do you recall what was said by Mr. Roberts?  
114 A: That we should investigate how one dealt with  
115 this issue properly, in a way that allowed the initial  
116 album to be sold and the opportunities around the event  
117 for maximizing sales of the old album to be maintained,  
118 but not at the expense of sabotaging a new, major  
119 project for the company.  
120 Q: What you just described, Mr. Roberts said that  
121 to the whole group; is that right?  
122 A: I believe that general concern was expressed  
123 at that meeting.  
124 Q: Did anyone else express a view on this subject  
125 at the meeting?  
126 A: I don't recall.  
127 Q: Anything said by anyone at this meeting?  
128 A: I don't recall.  
129 Q: You referenced a second conversation with  
130 Chris Roberts.  
131 A: Yes.  
132 Q: Do you recall when that was?  
133 A: It was around the same time.  
134 Q: Where did that conversation take place?

135 A: Yes.  
136 Q: When did you have conversations with the  
137 operating companies?  
138 A: I would have had one or two phone  
139 conversations around that time. I recall two  
140 conversations with Chris Roberts on this topic at around  
141 that time, late January. One was in a meeting, which  
142 was a joint venture meeting between Warner and PolyGram.  
143 One was a private conversation. I can't recollect which  
144 came first.  
145 Q: Let's focus first on the joint venture  
146 meeting.  
147 A: Yes.  
148 Q: You don't recall when that was; is that right?  
149 A: Late January.  
150 Q: Who attended the meeting?  
151 A: It would have been — my recollection is that  
152 Chris Roberts, Roger Lewis, and myself, and Rand Hoffman  
153 would have been there for PolyGram, and that Pat Creed,  
154 Margo Scott, Vicky Germaise, and Tony O'Brien would  
155 probably have been there for Warner.  
156 Q: Where was this meeting?  
157 A: I believe it was in New York.  
158 Q: Was it Mr. Roberts who initially raised the  
159 issue of marketing of older Three Tenors albums?

135 A: Either London or New York.  
136 Q: Was anyone else present besides you and  
137 Mr. Roberts?  
138 A: Possibly Roger Lewis, but I can't be definite.  
139 Q: Tell me what you recall about that  
140 conversation.  
141 A: He simply reiterated the same concern.  
142 Q: Did he indicate specifically how he wanted the  
143 issue addressed?  
144 A: I don't recall precisely at that time what  
145 exact instructions I was given. I know that he gave it  
146 to me as an issue to examine and to look into.  
147 Q: Did Mr. Roberts indicate concern about  
148 PolyGram op-cos marketing of 3T1?  
149 A: Yes.  
150 Q: Did he, Mr. Roberts, indicate concern about  
151 the Warner withdrawal.  
152 Did Mr. Roberts indicate concern about the  
153 marketing of Three Tenors Two by the Warner op-cos?  
154 A: No.  
155 Q: At any point did Mr. Roberts indicate to you  
156 concern about the marketing of Three Tenors Two?  
157 A: Absolutely not. At that point the main  
158 concern was a concern purely that our own company — the  
159 behavior of our op-cos within our own company would



Page 133

1 Q: Do you recall any conversation regarding this  
2 letter?  
3 A: I don't recall.  
4 (Saintilan Exhibit Number 8 was marked for  
5 identification.)  
6 BY MR. GREEN:  
7 Q: Saintilan Exhibit 8 is a portion out of an  
8 e-mail dated June 15th, 1998. The top message is from  
9 Roger Lewis to Paul Saintilan and perhaps others and  
10 Bates stamp number LIMG 000161.  
11 Did you review this document in preparation  
12 for your deposition today?  
13 A: Very, very briefly.  
14 Q: The bottom message is yours; is that right?  
15 A: Correct.  
16 Q: The top reply is from Roger Lewis; is that  
17 right?  
18 A: Yes.  
19 Q: Who is Mr. Stefansen, S-T-E-F-A-N-S-E-N?  
20 A: He was a Decca op-co marketing executive.  
21 Q: Have you had an opportunity to read this or  
22 should we give you a minute?  
23 A: It would be great if you could allow me to  
24 read it.  
25 Q: Have you now read what we marked as Saintilan

Page 134

1 Exhibit 8?  
2 A: Yes, I have.  
3 Q: In June 1998, did Mr. Stefansen send Chris  
4 Roberts a note complaining about Warner's prices on 3T2?  
5 A: Yes, I believe so.  
6 Q: How did you become aware of that?  
7 A: I don't recall.  
8 Q: Did you discuss the note with Rand Hoffman on  
9 June 15?  
10 A: I don't recall.  
11 Q: Do you recall discussing Mr. Stefansen's note  
12 with Chris Roberts?  
13 A: I don't recall.  
14 Q: Do you recall the events described in  
15 Exhibit 8?  
16 A: Very vaguely.  
17 Q: Do you recall Roberts asking Hoffman to  
18 retract the June 10 letter?  
19 A: Very vaguely.  
20 Q: On June 15th, 1998, did you ask Chris Roberts  
21 what to do about price discounting on Three Tenors One?  
22 A: Yes.  
23 Q: What was Mr. Roberts' response?  
24 A: That the issue of compliance, of trying to get  
25 compliance from operating companies on both sides of the

Page 135

1 joint venture was going to be highly problematic and  
2 that trying to — the message that I think I drew from  
3 this was that there was, through the promoting of the  
4 3T1 and 3T2 around the event, that we couldn't guarantee  
5 — we couldn't guarantee that there was going to be  
6 compliance; we couldn't guarantee that the operating  
7 companies on either side of the fence were going to fall  
8 in a line.  
9 So, therefore, through distrust it would fall  
10 away on its own accord. So irrespective of what  
11 directives you might issue or what policing we might  
12 attempt, that this was a major issue and it wasn't going  
13 to go away.  
14 Q: Was Decca International unable to control the  
15 prices charged by the PolyGram operating companies for  
16 3T1?  
17 A: It technically could ask for a price band,  
18 like full price to be observed. The issues here, I  
19 believe, were around the mutual distrust between Warner  
20 and PolyGram about coming to any sort of understanding;  
21 and that as soon as — as soon as Decca operating  
22 companies started to market the recording, the 3T1  
23 recording around the event, that Warner operating  
24 companies would interpret this as a breaker or they  
25 would lose their confidence.

Page 136

1 So they would engage in the competitive  
2 activity and then our Decca people, seeing Warner  
3 complain, would then lose the confidence of Warner  
4 through a mutual distrust created around the 3T1 and 3T2  
5 around the time of the event; that there wasn't going to  
6 be the observance of a window.  
7 Q: What did Roberts want you to do in connection  
8 with this problem?  
9 A: I don't recall specifically. It says here,  
10 "Chris said once we've opened Pandora's box, there isn't  
11 going to be much trust between the companies on this  
12 issue, and so he thought it relatively pointless to ask  
13 Atlantic to fall in line with our July the 24th date."  
14 Q: Did Roberts want you to get in contact with  
15 the operating companies?  
16 A: I don't recall specifically.  
17 Q: You write, quote, "Better to let it fall apart  
18 naturally on a territory by territory basis with us  
19 failing to police any retaliation," close quote.  
20 Do you see that?  
21 A: Yes.  
22 Q: What does it mean for the motatorium to fall  
23 apart?  
24 A: It means that we would recognize that it was a  
25 leap of faith to believe that any agreement between a



From: Paul Saintilan  
To: ClancyP  
Date: 21 April 1998 2:03pm  
Subject: THREE TENORS TV ADVERTISING

Dear Pat,

One major problem we're encountering in talking up the Three Tenors numbers is that some territories are saying they aren't able to TV advertise the album because they won't be receiving a TV break.

I'll do what I can to talk up the numbers, but for maximum effect we really need a commandment from up high saying (to MDs as well as label managers): "Though shalt TV advertise the Three Tenors album".

One other point, Chris has asked me to ensure Atlantic complies with the moratorium we're imposing on the previous two albums. I can ask for copies of internal directives, but do you have any recommendations on how we can ensure they don't just bullshit us?

Thanks,

Paul

---

CC: RobertsCh, LewisRO, CaveilDer

UMG 001504



# PolyGram

Rand Hoffman  
Senior Vice President,  
Business Affairs

June 11, 1998

Via Fax (212) 405-5620

Margo Scott  
Vice President, Business & Legal Affairs  
Atlantic Recording Company  
1290 Avenue of the Americas  
New York, New York 10104

Re: The Three Tenors

Dear Margo:

As we discussed, our Danish affiliate contacted me because at the same time we are soliciting the 1998 Three Tenors album, the local Warners affiliate is selling the 1994 Three Tenors album at a price approximately two pounds less. In that market this is apparently a very low price, and our people feel it discredits our price for the new album and has a real effect on sales. I am told that if this is happening in Denmark it is most likely happening in the rest of Europe.

This clearly violates the general understanding PolyGram and Atlantic reached about not promoting or selling the 1990 and 1994 albums in a manner that would negatively affect sales of the 1998 album. I understand the difficulty of communicating a consistent policy on a worldwide basis, but I must ask that you contact whomever is necessary in the Warner International organization so that this practice and others like it stop immediately.

Thank you for your cooperation.

Very truly yours,



Rand Hoffman

RH:lp

cc: Chris Roberts  
Roger Lewis  
Rick Dobbis  
Tony O'Brien

PolyGram Holding, Inc.  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019

Telephone: (212) 333-8522  
Fax: (212) 333-8158

REC'D ON: 12 JUN 1998

FILE:

COPY TO: ~~Scott~~

ALSA

Paul S

JX 64



**From:** Roger Lewis  
**To:** LonBordHouse.DECCA02/CavellDec, Greene), Sanb an  
**Date:** 15 June 1998 2:18pm  
**Subject:** atlantic/ rand hoffman -Reply

Paul,  
I agree.  
No notes but please make one on one calls to the key players beginning with Bert.  
R.

>>> Paul Santilon 12/June:1998 04:50pm >>>

An interesting development:

Kjeld Steffensen in Denmark sent Chris Roberts a note, taking exception to the fact that Warners were heavily price discounting the 1994 album, which was affecting his 3 betors sell-in, and also complaining that Warners are advising retail that the 1994 album will be price discounted through until Xmas (as they have also done in the Netherlands, and so one presumes, throughout Europe).

Chris forwarded this note through to Rand Hoffman, who raised this at the highest levels of Atlantic and Warners asking them immediately to stop it. I saw the memo today and told Rand that he should be aware that we were doing the same thing at the moment, which would cease on July 24. He conference-called Chris in, and we felt we had no alternative but to go back to Atlantic and retract everything (which naturally Rand is monumentally pissed off about).

I asked what we do about price discounting through to Xmas, and Chris said once we've opened Pandora's box, there isn't going to be much trust between the companies on this issue, and so he thought it relatively pointless to ask Atlantic to fall in line with our July 24 date.

On this basis I think we should advise Bert Cloeckart that the moratorium will almost certainly fall apart between the two companies, and we should not police it within PolyGram. Is everyone OK with this? I'm reluctant to send an official note throughout the company, as it deliberately contradicts the earlier rationale we gave, and is completely inconsistent with a fax I actually sent to Atlantic saying that we vigorously police a window from "late July" through to "when the Christmas campaigns hit the shops". Better to let it fall apart naturally on a territory by territory basis with us failing to police any retaliation. That's my preferred option anyway.

R





**From:** Paul Sainbrian --  
**To:** RobertsCh, ClabbyP, Kleinman, LewisRO, CavellDec, et al.  
**Date:** 10 July 1998 10:56am  
**Subject:** THREE TENORS MORATORIUM

Two weeks ago Tony O'Brien at Atlantic advised that they were extremely keen to re-enforce the moratorium on promotion of the 1990 and 1994 albums from August 1 to November 15. This is for two reasons: (i) they genuinely believe price competition and advertising of the previous albums will damage sales of the new release; (ii) they contractually require Tibor Rudas' approval to price discount the 1994 album, and he hasn't given them his consent.

Tony phoned me this morning to say that Atlantic have finally received agreement from Ramon Lopez at Warners, that he is prepared to enforce a moratorium throughout Warners. They want to finalise the precise nature of the agreement, and Tony wanted a fax this morning outlining how we should proceed. Please find attached this fax, which says (for example) that they will need to contact Bert to discuss pricing issues. Furthermore, we both accept that if the moratorium is to be re-enforced from August 1, at this late stage (mid July) there may be some spillover and late compliance.

If you have any input to make on the joint agreement between the companies, now is the time to make your opinion known.

Regards,

Paul

# The Decca Record Company Limited

Number of pages: 3

## Fax

347-353 Chiswick I  
London W4 4HS

Telephone - 44 (0)181 747 81  
Direct Line - 44 (0)181 747  
Fax - 44 (0)181 894 28

Date 10th July, 199

To: TONY O'BRIEN  
Atlantic Records  
GUEST IN YOUR HOTEL  
Fx No: 00 331 53 67 6666

From: PAUL SAINTILAN

**URGENT  
PRIVATE & CONFIDENTIAL  
PLEASE PASS IMMEDIATELY TO THE ADDRESSEE**

Dear Tony,

re: **THREE TENORS MORATORIUM ON 1990 & 1994 ALBUMS**

As discussed, we fully support a moratorium on the above albums which we strongly believe will be to our mutual benefit. The dates we are prepared to commit to are from August 1 to November 15 (subject to the qualification in italics below).

This moratorium would constitute the following:

### **1. Advertising and promotion**

The original 1990 album would not be advertised or promoted during this period. We have already omitted the 1990 album from all advertising and point of sale materials centrally originated for the new album.

### **2. Pricing**

The original 1990 album would be sold at the top classical price point that it has historically traded at in each market. Because of the complexity of international pricing, one reference 'European' price would be insufficient to ensure any agreement between our operating companies, a price will have to be determined for each market. To give an example of the issues, I attach the price harmonisation for the new album.

Cont.....

The key contact at PolyGram to discuss pricing issues is Bert Cloeckert who will be in St James Square in London on Monday (0171) 747 4000 (he's away today). His Brussels office number is 00322 775 8140, and his mobile is 32 7542 0907.

As discussed before, PolyGram operating companies have already been advised of the above moratorium, however we have informally allowed it to collapse at a local level to allow a response to Warners pricing. When we have a clear undertaking from Warners that the above agreement will be adhered to, we will re-enforce things from our side.

*However, given the lateness of the agreement (mid July advice for a directive effective August 1), we anticipate that there will be some spillage into August to honour trading commitments made to retailers. In this instance we would be completely transparent about these problems, tabling where issues exist and advising why compliance is difficult and when it would take effect.*

The basis of this agreement is one of reciprocity, and if we receive co-operation and transparency from Warners we will fully reciprocate.

So in summary, once a pricing agreement has been made, and we have clear evidence that Warners will enforce the moratorium, then we will re-enforce the agreement on our side.

See you tonight.

All the best.

PAUL SAINTILAN



**From:** Pau Santilan --  
**To:** RobertsCh,HeffranR,CiancyP,LewisRO,darbyshire,Qc...  
**Date:** 13 July 1998 8:11pm  
**Subject:** THREE TENORS MORATORIUM

Tony O'Brien advised today that Ramon Lopez has issued the directive through Warners that they will observe the moratorium from August 1 through to October 15. The exceptions will be in markets where four weeks notice of a price change is required. Lopez does not want to make any sort of detailed agreement with us as this may constitute anti-competitive behaviour, and instead believes that they should police us, and we should police them. The prices should be 'normal' and not subject to any special discounts or promotion.

I will draft a note to the OpCos, which (given the confusion that has surrounded this issue) I suggest we give careful consideration.

Regards,

Paul

**CC:** greene, gone, Canada01.GWTOR:1.TonerL



**From:** Paul Saintilan --  
**To:** RobertsCh,ClancyP,Keinman,darbyshire,HoffmanR,Jo...  
**Date:** 14 July 1998 1:00pm  
**Subject:** THREE TENORS MORATORIUM - DRAFT

Please find attached a draft memo to operating companies worldwide on the 3 tenors moratorium. I would appreciate any advice on the note or the distribution list.

I contacted a friend who is head of Warner Classics in the UK, who confirmed the directive had been issued through Warners. He read the directive over the phone and it complied perfectly with our Atlantic agreement. Given this, we really need to get this note out tomorrow morning latest, so all comments gratefully received (I'll be out of the office now for the rest of the day)

Thanks,

Paul

**CC:** Gore,TonerL

re: **3 TENORS 1990 ALBUM AND VIDEO - 430 433 -2/ 071 123-3  
PROMOTION & PRICING**

On April 29 Decca advised European Classical MDs and Commercial/Sales Directors that from August 1 a moratorium would be placed on advertising, promotion and price discounting of the original Three Tenors album. PolyGram and Atlantic Records have made a massive investment in the 1998 Three Tenors in Paris concert, and both labels agreed that enforcing a window would protect this investment from price competition/promotion between the 1990 Decca album and the 1994 Warners album. Furthermore, it is in Warners interests to comply with the agreement as they are contractually restricted from price discounting the 1994 album.

As evidence began to emerge that Warners were failing to implement the moratorium we began to relax our approach, and let markets react competitively. However Ramon Lopez, the Chairman and CEO of Warner Music International issued a directive on July 13, that there should be no price discounting, advertising or promotion of the 1994 Warners Three Tenors album from August 1 until October 15. The only permitted exceptions to this will be where legal obligations to retailers exist (such as four weeks notice of a price increase).

We now seek to re-enforce the moratorium on PolyGram's side, from August 1 to October 15, on a worldwide, not simply European basis. The moratorium prohibits price discounting, advertising and promotion of the 1990 album and video during this period. The only permitted exceptions are the legal obligations to retailers mentioned above.

Should you find any evidence of Warners failing to comply with this agreement after August 1, please contact me providing as much evidence as possible.

**PAUL SAINTILAN**  
Senior Marketing Director, Decca



**From:** Bert Cloeckaert --  
**To:** Lon@andHouse.DECCAC2(Saintian, CavellDec, greene,...  
**Date:** 14 July 1998 1:37pm  
**Subject:** THREE TENORS MORATORIUM - DRAFT -Redy

O.K. to me  
Please copy Rick Donbis, since his counterpart at Warner's is involved  
It might be wise to put in everybody's attention that obviously all prod's have to revert to full price as of the 1st of August as was planned in bally, because once and a while these things get forgotten  
I assume somebody looked into the legal aspect of this memo

Kind regards

Bert

>>> Paul Sanblan : 4/July/1998 02:00pm >>>

Please find attached a draft memo to operating companies worldwide on the 3 tenors moratorium. I would appreciate any advice on the note or the distribution list.

I contacted a friend who is head of Warner Classics in the UK, who confirmed the directive had been issued through Warners. He read the directive over the phone and it complied perfectly with our Atlantic agreement. Given this, we really need to get this note out tomorrow morning latest, so all comments gratefully received (I'll be out of the office now for the rest of the day).

Thanks,

Paul

**CC:** Canada01.GW@UR11(TonerL), NEWYORK01.GW@NY17(Gore),...