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*Office of the  
State Labor Commissioner*

October 30, 1998

Mr. Leonard Hill  
Leonard Hill Films  
4500 Wilshire Blvd.  
Los Angeles, CA 90010

RE: General Materials and Packages Agreement

Dear Mr. Hill:

This letter is written in response to the draft petition I received from you. You seek a change in policy whereby the Labor Commissioner would eliminate the "packaging agreement" exemption from state regulation pursuant to the Talent Agencies Act (Labor Code §§ 1700-1700.47).

After exhaustive review of all pertinent materials, including legislative history, the various Guild Agreements, administrative regulations, applicable Labor Code sections, and historical administrative construction, I conclude that I lack jurisdiction with respect to "Packaging Agreements." The appropriate forum for any change would be the legislature.

As you know, the Division of Labor Standards Enforcement pursuant to the Talent Agencies Act (hereinafter Act) regulates talent agents. The Act defines "talent agent" as "a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists." L.C. § 1700.4

The Legislature determined the act of "procuring employment" for artists was an occupation necessitating regulatory oversight and statutory protection. When determining the Division's responsibility under the Act, the Division first must interpret the statute to effectuate legislative intent. The legislature clearly focused on the act of "procuring employment" and required this activity to be closely regulated. To "procure" as defined by Webster's Collegiate Dictionary 10<sup>th</sup> ed. 1996 pg. 930 means: "to get possession of:

Attachment "A"

obtain by particular care and effort." In giving this provision a reasonable and common sense interpretation, the Division does not view a packaging agreement as procuring employment. A "package agreement" or "package program" as the term is customarily understood in the television and motion picture industries is more analogous to selling an idea or a concept. In packaging agreements, the requisite obtaining or getting possession elements are not present. The concept of packaging is a "pitch" that must be sold prior to any procurement of employment. After the idea is sold, and once the artist begins work under the signed package agreement, only then would jurisdiction of the Labor Commissioner commence.

In 1982 the Legislature created the California Entertainment Commission (hereinafter "Commission") to study the laws and practices of California relating to licensing of agents and representatives of artists in the entertainment industry. The Commission was required to analyze the Act in great detail and submit its report to the Legislature and the Governor no later than January 1, 1986. After more than two years of study the report noted "the Act is a sound and workable statute and the recommendations contained in this report will, if enacted by the California Legislature, make that Act a model statute of its kind in the United States." (Report at p. 4) The Legislature adopted all of the Commission's recommendations, and the Governor signed them into law.

The Commission had ample opportunity to change the long standing policy of the Labor Commissioner with regard to "packaging agreements." The Commission, including former Labor Commissioner C. Robert Simpson, could have recommended to the Legislature that materials and packaging was a conflict of interest as it relates to employment of artists, and as such the Labor Commissioner should change its policy as to having jurisdiction and therefore regulate this activity. Had the Commission felt that changing the Labor Commissioner's policy would further effectuate the protections of the Act, there was certainly a forum to do so. However, there was no such discussion. The Commission's silence can only be interpreted as an approval of the Labor Commissioner's long standing policy of lack of jurisdiction.

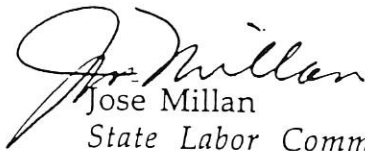
Furthermore, it appears that artists benefit from package agreements. Upon analyzing the various Guild Agreements, including, SAG, AFTRA, DGA, and the WGA, I have also concluded that there is ample protection for the artists contained in the guild provisions with respect to package programs. For example, the Screen Actors Guild, section V (A)(7) provides that when an agent represents both an owner or producer of a "package program" and an artist rendering services in that program, the agent is precluded from receiving commissions from the artist. Additionally, the dual representation

shall not affect the artists compensation in any manner. Indeed all of the Guild Regulations provide similar provisions.

When ascertaining whether a change in policy would benefit the protected class, the Division of Labor Standards Enforcement has historically given great weight to past consistent administrative construction. As you are aware from the June 22, 1959, letter included in your petition, the Labor Commissioner has historically held that packaging "contains nothing with respect to the employment of an artist for the rendering of his personal service..." At this point there has been no material provided that would serve to undermine the long standing policy of the Labor Commissioner.

It must be stated that this determination is made considering only the materials mentioned above. Should you have any questions, viewpoints, or additional materials that I have not considered, please do not hesitate to contact me directly. I hope I have adequately answered your Draft Petition for a change in policy.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jose Millan". The signature is fluid and cursive, with the first name "Jose" and last name "Millan" clearly distinguishable.

Jose Millan  
State Labor Commissioner

cc: John Duncan, Director, Department of Industrial Relations  
Patti Archuletta, California Film Commission

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

June 22, 1959

File No. '59 IAc. A 24  
E 233-T

Gang, Tyre, Rudin & Brown, Attorneys  
6400 Sunset Blvd.  
Hollywood 28, California

Re: William Morris Agency, Inc.  
General Materials and Packages

Gentlemen:

This will acknowledge receipt of your two letters of June 12 and June 17 and of the contract form included with the first letter.

Although in the past it has been the practice of this office to approve this type of contract form insofar as it is within the jurisdiction of this office, the practice has been examined and it has been determined that since this type of contract form does not require the approval of the Labor Commissioner that no such approval should be attached. The decision that this form is not such as requires the approval of the Labor Commissioner is based upon the fact that this type of contract is concerned exclusively with "creative property or package show" and contains nothing with respect to the employment of an artist for the rendering of his personal services or for the advising and counseling of artists in their professional careers.

We have taken the liberty of retaining for our files one copy of your contract form as evidence of the type of document which has been reviewed and found NOT to require the approval of the Labor Commissioner.

Very Truly Yours,

Sigmund Arywitz  
State Labor Commissioner

By

Mrs. Effie Sparling, Deputy

cc: William Morris Agency

Governor of California  
MARGARET R. O'GRADY  
Director of Department  
SIGMUND ARYWITZ  
Chief of Division and  
Labor Commissioner



STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR LAW ENFORCEMENT

STATE BUILDING ANNEX  
455 GOLDEN GATE AVENUE  
SAN FRANCISCO 2, CALIFORNIA  
UNderhill 1-8700

ADDRESS REPLY TO:  
Division of Labor Law Enforcement  
P. O. Box 603  
San Francisco 1

May 12, 1964

IN REPLY REFER TO:

Mr. Michael H. Franklin  
Executive Director  
Western Guild of America, West, Inc.  
8955 Beverly Boulevard  
Los Angeles 48, California

Dear Mr. Franklin:

On April 29, you wrote to me relative to the practice of artists' managers selling "package deals", for which they receive as compensation a percentage of the gross receipts of the presentation. You complained in your letter that the individual artist was disadvantaged by this practice, and indicated your feeling that the conditions you describe should be a matter of concern to this Division.

At a meeting in our Los Angeles office on May 8, attended by representatives of the Writers Guild and the Screen Actors' Guild, the Directors' Guild of America, whom you invited to be present, and the Division of Labor Law Enforcement, we explored the substance of your letter further, and it was agreed that this office would survey the situation to determine whether any of the labor laws applicable to the operation of artists' managers were being violated, and if so, what corrective measures would be appropriate.

Since that meeting, I have had an opportunity to review the provisions of the California Labor Code and the California Administrative Code relative to the licensing and regulation of artists' managers, as well as the basic agreements between the three talent guilds and the Artists' Managers Guild.

I find that there is no provision in the laws for which this Division has enforcement responsibility which covers the promotion or sales of package shows, or receipts by the artist manager of a percentage of the profits of such shows. The import of Labor Code Section 1700.39 which states, "No artists' manager shall divide fees with an employer, an agent, or other employee of an employer", is interpreted to prohibit the artists' manager from sharing his

Mr. Michael H. Franklin  
May 19, 1964


Page No. 2

fee; the language does not lend itself to a construction of the reverse, a prohibition of the artists' manager from obtaining a fee from the employer.

I have also examined Rider W, which is an attachment to the contract between the individual writer and the individual artists' manager, which was approved as to form by this office on April 13, 1962, and approved as to form and content by the Writers Guild of America. I find that Paragraph 5, of Rider W, which appears on Page 11 of your printed Basic Agreement with the artists' managers, makes specific provisions for a situation where the artists' manager is engaged in the sale of a package show and his commission is computed in relation to the gross sales price of the programs. This paragraph contains both protective and remedial language, which taken in conjunction with the arbitration provisions of your agreement and the provisions of Labor Code Section 1700.45 could obviate any oppressive practices against an artist.

A violation of Paragraph 5 would be arbitrable under provisions of Paragraph 3 of your Basic Agreement and thus come within the purview of this Division's statutory powers, just as would any case of improper representation of his client by any artists' manager. Should you have any complaint at any time on matters coming under our jurisdiction, please bring it to our attention.

Very truly yours,

  
Sigmond Arywitz  
State Labor Commissioner

cc Mr. John Dales  
Screen Actors Guild  
Mr. Joe Youngerman  
Directors Guild of America  
Mr. Adrian McCalman  
Artists Managers Guild



# The Packaging Game

by J.A. Clement

Your running mates can make you famous

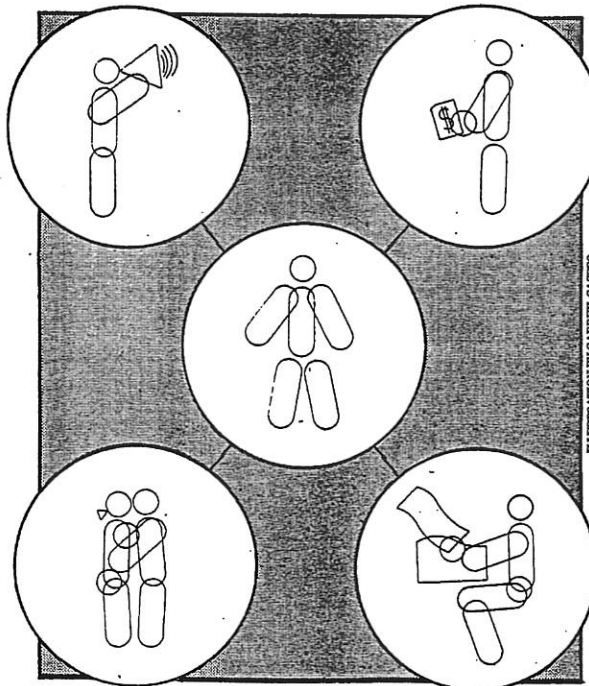


ILLUSTRATION BY GABRIEL CANO

Ordinary agents sell movie scripts; superagents package them.

This in a nutshell is the essence of today's packaging game. There's a world of difference between selling and packaging. One is a time-hallowed, slightly stuffy procedure that's as old as show business. The other is a fast-track entrepreneurial crapshoot inherited from the days of the Hollywood studio czars. The new breed of packagers—superagents in Hollywood parlance—are perhaps the prime movers-and-shakers in today's entertainment industry.

There are not many of them. At the highest level, probably not more than eight or 10 on both coasts. Agents like Sam Cohn at ICM in New York; Marty Bauer at William Morris in New York; Sue Mengers at ICM in Los Angeles; and Stan Kamen and John Ptak, William Morris West Coast big guns.

The art of packaging, as practiced by these adepts, consists of bringing together a script, a star (or stars), a director, and a producer in such a way that a movie irresistibly results.

In essence, it's not much different from what the Darryl Zanucks, the L.B. Mayers, or the Adolph Zukors used to do during Hollywood's golden age. In this sense, today's agent/packagers are the true heirs of the old studio bosses. Those moguls packaged movies. So do modern superagents. The only difference is that they're employed by different outfits.

And the power of some of today's agents approaches that of old-time studio heads. The proof of the pudding is the fact that agents can—and do—job-hop between agencies and Hollywood boardrooms. Take David Begelman, for instance. He was CMA's top packager in the early 70's. (CMA, for those who don't remember, was one of the parents of ICM.) Then he defected to Columbia Pictures to become head of motion picture production. Now he has switched to M-G-M, holding the same post.

Agents picked up the packaging reins from the studios when the downfall of the contract system set hoards of stars, directors, and writers free from the dictatorial confines of the studios. With all

of this talent no longer tied down, studios lost much of their ability—indeed, their desire—to put together film packages.

But *someone* had to assemble movies—come up with the essential brew of writers, directors, and actors that was necessary if films were ever to find their way onto the screen. The job fell more and more to the agents, for the simple and cogent reason that the agents had the inside track with the "talent."

"Access to talent is the name of the game," says Marty Bauer, William Morris' top East Coast packager. "A movie is put together by whomever has access to the stars, the writers, the directors. And it's usually big agencies that have that access."

The role of the studios—the "majors"—in today's movie making is relatively passive. In the words of one packager: "The studios are merely receptacles—receptacles for movies made by other people." What do the studios do, then? They provide financing for already assembled packages, and they distribute the finished product.

True, studios still do buy properties—scripts, novels, treatments, original screenplays—but in most cases they prefer not to get too deeply involved in the development stages of a film. They'd rather see a proposal in more advanced form, preferably a full-blown package on which they can bestow a simple yes or no. Studios like to know exactly what they're plunking down their money for, and every studio producer will tell you that a star/director/writer combination is a much more attractive investment than a "naked" unpackaged script.

The basis of every package is a Story. (Story with a capital S, to indicate the reverence Hollywood holds for this item.) The story can be in the form of a screenplay, a treatment, or an adaptation from a novel or a play. It has become orthodoxy in the entertainment business that a good story is the basic element of every successful movie. More than anything else these days, studios are looking for good stories: widely appealing subjects, interesting plots, sympathetic characters.

But in spite of the bedrock importance of the script, a package is rarely sold to a studio on the basis of a screenplay alone. A "bankable" star or director usually has to be committed to the project before a studio will agree to finance a picture. A big name on the marquee is money in the bank to producers, and in view of the fact that studios regularly shell out \$10 to \$15 million for a single movie, such concern is understandable. The script itself rarely offers this type of built-in insurance; it's not a proven quality, like a box-office star. Robert Redford's name on a picture will sell tickets; Bob Fosse's name will sell tickets; but John Q. Screenwriter's won't. Occasionally one of the rare "name" screenwriters (Paddy Chayefsky, William Goldman, or Robert Towne, for instance) will find himself the prime attraction in a film package, but it still doesn't happen often. However, the climate is changing daily. More and more screenwriters are the box-office draws.

Agents say that a successful package usually contains one particular element that stands out, that catches the studio's eye and results in a sale.

"My job as an agent," say one packager, "is to make sure that each package I put together has that one magic element—usually a star or prominent director—that will whet a studio's appetite and make the production chief say, 'OK, I want to make this picture.'"

A good agent will tailor the package to highlight whichever element is likely to prove the prime selling point. If a script contains a juicy central role, for instance, he'll go after a big star to play it; the star will be the centerpiece of the package. (Think of *Kramer vs. Kramer*, *Norma Rae*, or *Simon*.) If on the other hand, it's an ensemble piece, then a strong director will be the crucial element. (*Breaking Away* or *Happy Birthday, Gemini*, among the current crop.)

In the case of *Simon*, for instance, it was the presence of a star—Alan Arkin—that sold the package. Marshall Brickman was the writer/director, and while his screenwriting credentials were impeccable (as Woody Allen's frequent

co-scenarist), he had never directed a picture before. Paramount, for whom the script was originally written, was nervous about that. Then, Orion Pictures told Brickman's agent at William Morris that Orion would make the movie on condition that a star could be found for the leading role. Brickman's agent got Arkin interested, and the deal was made.

With *Happy Birthday, Gemini*, it was not a star but a director that was crucial to the selling of the completed package. *Gemini* contains a baker's dozen roles, most of them of relatively equal prominence. There is no plum role that stands out above the rest, and there are no stars in the film. (Madeline Kahn, although a talented actress, is not considered a bankable star in the financial sense.) The packaging of *Gemini* began when a William Morris television agent asked several producers to see the Albert Innaurato play, which was then playing Off Broadway in New York. Several of them liked the play and thought there might be a movie in it. The idea was then put on the desk of the Morris agency's top New York film packager, whose job it was to put the property together with a suitable director who would be attractive to a major studio. Richard Benner, who had made a name for himself with *Outrageous*, the low-budget Canadian *succes de scandale*, was his eventual choice. On the basis of Benner's involvement, United Artists agreed to get involved. The Morris agency then assembled the rest of the cast and delivered the finished package to UA.

One New York agent estimates that only in about 10 percent of the cases is the screenplay—or, the screenwriter—the decisive factor in selling a package to a studio. By contrast, perhaps 50 percent of all packages ride on the name of the star. In the remaining 40 percent or so, it's the director who tips the scales.

This is, of course, a generalization. Some studio production chiefs, particularly younger ones, claim that they are not unduly influenced by stars and directors ("The day of the \$3 million star is going fast," they say), but give more weight to the story or the script. Kathrin Seitz, for instance: she's the East Coast VP for CBS's new feature film division. She says her first concern in every case is a strong story. In any package, she tends to evaluate the writer (or the property) first, the producer second, the director third, and the star (or stars) fourth and last. "Story is everything nowadays," she says. "You can't sell a package on a star's name alone. You can put the biggest box-office star together with the hottest director, and you'll still end up with a bomb if you don't have a good story to start with."

Every package develops differently. Each one has a life of its own. Sometimes it's not the agent who initiates the package, but the studio. If, for instance, a studio has an undeveloped property on its shelves—say, a bestselling novel to which the studio owns the rights—the producer may take the item to an agent and say, in effect: "Here, see what you can do with this." It then becomes the agent's job to build a package around the property. The completed ensemble—with a director, a cast, and a screenwriter—is then tossed back into the studio's lap for actual production.

Producers develop a pretty good sense of which agent to go to for packag-

ing. Basically, the producer will approach whichever agent represents the particular talent demanded by the story. "If, say, I have a script that sounds right for [director] Peter Yates," says Kathrin Seitz, "then I'll go to Sam Cohn at ICM. Or, if the script has a starring role for a woman, I'll go to whomever has the particular actress I want."

The growth of the big agencies—octopuses like ICM and William Morris, with literary, motion picture, television, music, and theatre arms—can give rise to some fairly convoluted deals. The literary department of the Morris agency recently sold the screen rights to Gay Talese's controversial *Thy Neighbor's Wife* to United Artists for \$2.5 million. United Artists is currently looking for a director for the film version. A screenwriter will be assigned to the property after the director is hired. It is completely possible that UA might find itself turning full circle and coming back to the Morris agency—the film department this time—for a director, a screenwriter, or indeed for an entire package.

Many, if not most, agent/packagees like to start building a package even before the screenplay is completed. A director, especially, is often brought in to keep an eye on the writing and to work hand-in-hand with the writer, the object being to produce a camera-ready script by the time the package is submitted to the studio. Marty Bauer says, "The director's contribution to a developing script can be crucial. Film is a collaborative medium, and the earlier the collaboration begins, the better."

The director's contribution is most important on "concept" films, i.e., movies in which the subject matter and the story are the most important elements. (*The China Syndrome* is an example. So is *An Unmarried Woman*.) The direction will usually be the major element in defining the film's viewpoint and giving the film its overall flavor. This is opposed, say, to a comedy, where the writer's contribution—the script, the jokes, the actual words—is often of much greater importance. In general, packagees like to assign a director to a concept film as early as possible, usually before the script is completed and occasionally even before a writer is hired.

With new or inexperienced writers, packagees are unanimous in their advice: get a good director, and bring him in early to supervise the writing of the entire script. An experienced director can tell whether a particular scene or bit of business, as written, will work on the screen. If there's a potential trouble spot, he/she should be able to put a finger on it. By providing a running commentary on exactly what the camera can and cannot do, the experienced director can keep a fledgling writer out of hot water.

Not all directors will consent to work with screenwriters. A few are so notoriously disruptive, or intolerant, or demanding that a producer wouldn't dream of letting them near a writer. Needless to say, these directors don't often find themselves involved in packages. One prominent East Coast packageer says, wryly: "I can think of at least ten bankable directors who shouldn't be involved in the development of material. I won't tell you who they are, though. If I did, none of them would ever speak to me again."

In such cases, adjustments must be made. If the director can't or won't work with the writer, often the producer will. A sensitive producer can take up much of the slack left by a temperamental director. And contrary to popular opinion, there are sensitive producers. Many of the younger studio producers, in particular, have come up through story departments or have had previous experience in publishing houses. As a group, they tend to have good editorial sense combined with instinctive "camera smarts." And they all proclaim the necessity of working closely with their writers. These are executives such as Sherry Lansing (president of 20th Century-Fox Productions) and Kathrin Seitz, to name two of the most prominent.

Seitz, for instance, says she varies her approach on each script with which she becomes involved. In most packages, she likes to have a director involved

from the beginning. "But not always," she says. "Some stories are so dependent on the writer's individual talent or vision that another person's involvement in the script would probably be a bad idea. Bringing in a director too soon might only dilute the quality of the script." A case of too many cooks spoiling the broth. In these (admittedly rare) cases, she prefers to give her writers free rein until the script is in final form. She admits she'll go to great lengths to protect her writers when she feels it's necessary. "Not every property should be packaged early in the game. Comedy is the most sensitive area. It's so dependent on the author's particular gift, his brand of humor. I have a script in development now, for instance—a romantic comedy. My instinct tells me the writers should get the script in final form before we try to package it or bring in a director. It has to develop at its own pace. I'm being very patient—it's the only way to handle

this particular property."

The current consensus among agents is that the business of packaging is about to take a big leap upward, as cable and subscription TV networks proliferate and videodisks come onto the market. An explosion in demand for film packages will be the inevitable result as studios and independent producers scramble for product.

If packagees have one universal complaint, it's the difficulty in finding enough good scripts to satisfy the demand of the market. There just aren't enough workable screenplays and properties to go around, and every packageer spends literally hours a day reading, trying to mine every last bit of potential out of the scripts that cross his desk.

"We're starved, and I mean starved, for good basic material," says Marty Bauer. "Any writer who can turn out a good commercial script is sitting on a gold mine."

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