

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KEVIN BALL, et al .)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:00CV00867
)	Judge Gladys Kessler
AMC ENTERTAINMENT, INC. and LOEWS CINEPLEX ENTERTAINMENT CORPORATION,)	
)	
Defendants.)	
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**COALITION FOR MOVIE CAPTIONING
COMMENTS AND OPPOSITION
TO THE PROPOSED SETTLEMENT AGREEMENT
AND NOTICE OF INTENTION TO APPEAR AT FAIRNESS HEARING**

Introduction

The Coalition for Movie Captioning (CMC) participated as *amicus curiae* (friend of the court) in this case to provide the Court with the experience of the major national organizations representing deaf and hard of hearing people.

CMC evolved from an earlier organization, Movie Access Coalition, established in 1996. A consortium of the major national organizations of deaf or hard of hearing people, CMC addresses the theater access needs of 28 million deaf, hard of hearing, late-deafened and deaf-blind consumers. CMC’s goal is for all first-run movies to be accessible to people with hearing loss. The charter members of CMC are the Alexander Graham Bell Association for the Deaf and Hard of Hearing, the American Society for Deaf Children, the Association of Late-Deafened Adults, the Cochlear Implant Association, Inc., the Deaf and Hard of Hearing Consumer Advocacy Network, Deaf Seniors of America, the League

for the Hard of Hearing, the National Association of the Deaf, Self Help for Hard of Hearing People, Inc., and Telecommunications for the Deaf, Inc.¹

Although individuals differ in their personal preferences for methods of making soundtracks accessible through captioning, the members of the deaf and hard of hearing community are united in asserting that movies can and should be accessible now. The community is also united in asserting that movie theaters are subject to the Americans with Disabilities Act (ADA) and that technologies and formats now exist and are in use to make soundtracks accessible through captioning. The ADA mandates auxiliary aids and services, including captioning, to provide access to services offered by places of public accommodation, including movie theaters. Deaf and hard of hearing people want to see and enjoy the next blockbuster movie along with their families, friends, and neighbors in their local movie theaters. The technology is here and the time is now.

Proposed Settlement Agreement

According to the standards outlined in the Joint Motion for Preliminary Approval of Settlement, Notification of Class, and Schedule for Fairness Hearing (Joint Motion), this Court is being asked to determine whether the Proposed Settlement Agreement (PSA) is “fair, reasonable, and adequate under the circumstances and whether the interests of the class as a whole are being served if the litigation is resolved by settlement rather than pursued.” Joint Motion at 9 (citations omitted). Factors considered are:

- (a) whether the settlement is the result of arm’s length negotiations;
- (b) the terms of the settlement in relation to the strength of plaintiffs’ case;
- (c) the stage of the litigation proceedings at the time of settlement;
- (d) the reaction of the class; and
- (e) the opinion of experienced counsel.

Id.

¹ For more information about CMC, see http://www.nvrc.org/coalition_for_movie_captioning.htm.

To date, AMC/Loews has installed one system to display captioned movies on one screen in one theater in the Class Area (in Springfield, Virginia). One could say that, to the extent that any other AMC/Loews theater in the Class Area becomes equipped with captioning equipment and/or shows movies with captions, movies will be more accessible to people who are deaf.

To the extent the PSA may result in increased accessibility to first-run movies in AMC/Loews theaters, CMC supports the PSA. However, CMC support is not without reservations.

To assist the Court in making its determination, CMC provides these comments and opposition to parts of the PSA.²

Comments and Opposition

1. CMC opposes locking in rear window captioning (RWC) or any other captioning system as the exclusive system for all existing AMC/Loews theaters in the Class Area. CMC, in its Statement of Expectations,³ supports having a variety of captioning systems available to consumers and flexibility to include future systems as better long-term solutions develop and become available, thus offering advanced technology and providing flexibility for movie theaters while maximizing accessibility options for movie theater patrons.

² CMC members joining in these comments and opposition are the Association of Late-Deafened Adults, the Deaf and Hard of Hearing Consumer Advocacy Network, the League for the Hard of Hearing, the National Association of the Deaf, Self Help for Hard of Hearing People, Inc., and Telecommunications for the Deaf, Inc.

³ See “Position Paper and Statement of Expectations: Access for Moviegoers Who are Deaf, Hard of Hearing or Late-Deafened” (adopted by CMC 1/16/2001) at <http://www.nad.org/infocenter/newsroom/othernews/CMCpositionpaper.html#position>.

CMC urges the Court not to let the dynamic and developing nature of captioning technology distract from the current availability of several commercially viable and cost-effective captioning formats. There is no need to wait for the appearance of some perfect or universal method of access. Similarly, there is no need to “lock in” the captioning system for any movie theater chain.

2. Mention of “alternative” (other than RWC) captioning systems appears only in Section 2.10 of the PSA and only with respect to “new theater builds.”

Captioning systems other than RWC have been developed and are available now.⁴ Other captioning systems are also being researched and developed.

Section 2.10 of the PSA requires the parties to identify an alternative captioning system “acceptable” to plaintiffs and AMC/Loews, and then modify this agreement to permit installation of such equipment in new builds. This provision seems unnecessarily burdensome.

CMC believes that plaintiffs’ class already agrees to the provision of captioning systems other than RWC in existing theaters and in new builds. In lieu of the proposed Section 2.10, CMC proposes that AMC/Loews will consult with and give primary consideration to the preference expressed by class members residing in the respective county/city in the selection of the captioning system for the new build.

⁴ For example, open captioned films are distributed through InsightCinema. On-demand screen captions are now available to movie theaters through a system developed by Digital Theater Systems (DTS) and known as DTS-CSS® Cinema Subtitling System. DTS-CSS® captions only show on the movie screen when the movie projectionist activates the captions. All other showings of the movie are unaffected. The movie studio provides the caption data on a CD-ROM disk. It is projected from a small, separate projector and is visible to the entire audience. No special captioned movie print is needed; the theater uses the same movie print it regularly displays.

3. CMC notes that some parts of the Class Area in which members of plaintiffs' class reside do not appear to have any AMC or Loews theaters. No AMC/Loews theaters appear to exist in Howard County or Anne Arundel County, MD; City of Falls Church or City of Fairfax, VA; or Loudoun County, VA. Access through captions for these class members must await new AMC/Loews theaters in their jurisdictions. Until then, those class members must travel to AMC/Loews theaters that show movies with captions in other jurisdictions.
4. CMC requests that "new theater builds" (defined as "opens for the first time after the settlement is approved by the court") include existing theaters or theater structures acquired by AMC/Loews.
5. CMC objects to the lack of an "opt out" provision for members of plaintiffs' class who object to, or oppose, this PSA. CMC would prefer the opportunity for class members to "opt out" and preserve their individual rights under the ADA with respect to AMC/Loews in the future.
6. CMC requests the Court to recognize that deaf individuals who do not currently reside in the Metropolitan Washington, D.C. area (i.e., deaf individuals who relocate to the Class Area, or who are born or become deaf after the Court grants Final Approval) are not and will not be class members subject to the provisions of the PSA.
7. The PSA calls for AMC/Loews to install 12 RWC systems in the Class Area over a period of two years. By sometime in 2006, AMC/Loews will have the ability to show movies with captions at 50% of AMC/Loews theaters, but only on 5% of their screens. Although the PSA provides for a captioning system for one screen

in each new theater build, this will not have any significant impact on the percentage of screens or captioned movie showings for the foreseeable future. Essentially, all the PSA requires is the ability to show captioned movies on roughly 5% of AMC/Loews screens, forever.

CMC opposes these provisions. CMC's goal is for all first-run movies to be accessible to people with hearing loss. As such, CMC supports phasing in increased accessibility through captioning over time until all first-run movies are accessible to people with hearing loss. CMC proposes that the phased-in increases for captioned television programming over the course of eight years be used as a model for phasing in the ability to show captioned movies.

8. CMC proposes an additional provision to ensure that AMC/Loews will exercise due diligence to maintain and keep in proper working order all captioning related equipment.
9. The PSA envisions that the RWC systems installed over the next two years will be recycled indefinitely. Instead, replacement of equipment should be expected, perhaps in accordance with the manufacturer's estimated life expectancy for the equipment or equipment depreciation schedules.
10. CMC believes that all first-run movies can and should be accessible to people with hearing loss. If the PSA is approved, the 12 locations identified for AMC/Loews theaters showing captioned movies are divided equally (four each) between DC, Maryland, and Virginia. Although this has the appearance of fairness, geographic and socioeconomic distribution can be improved. Under the PSA, two of the four locations in DC are along the Wisconsin Avenue corridor,

one in Georgetown, and the fourth at Union Station. All of the locations in Maryland are west of I-95.

11. Under the PSA, equipment to show captions is to be installed in a mid-size auditorium. These mid-size auditoriums show less popular movies. The most popular movies may be shown in a mid-size auditorium sometime after their appearance in large auditoriums. Deaf people will be expected to wait until the most popular movies become less popular and are shown in a mid-size auditorium, but there is some expectation that placement of captioning systems in a mid-size auditorium will result in more captioned movie showings overall.

Again, CMC believes that all first-run movies can and should be accessible to people with hearing loss. Captioning equipment that is portable increases flexibility and maximizes the number of possible captioned movie showings. As such, AMC/Loews should install captioning equipment in a manner that makes it portable so it can be and will be relocated to other screens/auditoriums in the (same) theater to maximize the number of accessible showings of a captioned movie.

12. Under the PSA, theaters equipped with RWC are to have seat reflector screens limited to an average of 10 per system installed. CMC opposes this provision. Seat reflector screens are the least expensive component of the entire RWC system. AMC/Loews should not be excused because they provide some arbitrary minimum number of the captioning system component that individual patrons must use to access the captions. Instead, AMC/Loews should be required to use best efforts to meet actual demand for that component of the captioning system

(i.e., RWC seat reflector screen, or any other captioning system's individual access components). Actual demand may be some number more than the minimum of 10.

13. CMC proposes the following in lieu of Section 2.11 in the PSA:

AMC/Loews will exercise due diligence and make best efforts to obtain first-run movies that have captioning encoded or integrated with the film itself for display in their theaters. AMC/Loews will make best efforts to schedule those caption-encoded or integrated movies for display in auditoriums that are equipped to display those captions. AMC/Loews will display the captions and will provide reflector screens or other devices necessary for patrons to view those captions on request.

14. If the substitute provision for Section 2.11 (Item 13, above) is not adopted, CMC opposes Section 2.11 and provides the following comments:

Section 2.11 in the PSA talks about the cost of obtaining captioning disks and suggests that these disks may be available now at no charge. If there is a charge for the captioning disk in the future, Section 2.11 permits AMC/Loews to avoid obtaining captioned disks by requiring a conference of the parties to reach a "mutually acceptable solution" before going back to Court. This arrangement is unnecessarily burdensome on all parties. If there is a charge for captioning disks in the future, AMC/Loews should be required to obtain them within the limits established by the undue burden standard under the ADA.

15. The question of what amount constitutes an "undue burden" under the ADA for AMC/Loews has never been answered. Considering the \$260,000 being paid by

AMC/Loews for plaintiffs' attorney fees and costs, plus the amounts expended by AMC/Loews for its own attorney fees and costs, it is unlikely that the cost for the captioning systems proposed under the PSA was or is an undue burden. Instead, AMC/Loews and plaintiffs would both have been better served if AMC/Loews had self-initiated a program to increase accessibility over time.

16. Announcements about captioned movie showings should be as readily available to the public as all announcements about movie showings. Advertising should not be relegated to becoming a responsibility of grassroots organizations or other entities. The usual mainstream marketing efforts in newspapers (i.e., display ads, movie directories), on television, on Internet sites (i.e., AMC, Loews, Moviefone, Fandango), and at the theater (i.e., posted on the movie schedule), must include the "oc" or "cc" symbol designating a captioned movie showing. Information available by phone or over the radio must include notification that the movie will be shown with captions.
17. CMC proposes an additional provision to require AMC/Loews to instruct, train, and supervise its employees with respect to captions, captioning system(s), operation of captioning systems and equipment, handling customer inquiries and requests, assisting customers, etc.
18. CMC requests the Court to appoint CMC as a Master to provide independent oversight and to report to the Court as to the status and compliance with the Settlement Agreement and Consent Decree. CMC can provide the Court with recommendations of individual CMC representatives who are prepared to serve in this capacity. Prior to any such appointment, the cost (i.e., estimated number of

hours per year, rate per hour, expenses) and source of funding for this purpose (AMC/Loews and/or the Court) must be determined.

Notice of Intention to Appear at Fairness Hearing

CMC intends to appear and make a statement at the Fairness Hearing on April 1, 2004. CMC will designate a representative for that purpose and inform the Court accordingly prior to the Fairness Hearing.

/s/

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