

DATE February 17, 1981

TO _____

OFFICE _____

FROM _____

OFFICE _____

CI CRI CMP



MEMO

SUBJECT: APPLE (N.Y.) CHRONOLOGICAL LISTING OF CLAIMS

The following material has been prepared at your direction:

CHRONOLOGICAL RECEIPT OF CLAIMS FROM APPLE:

1. Claims about Capitol presented to EMI - Not to Capitol

Dec. 1, 1970 - Verbal complaint to Len Wood (EMI) (Exh. A, Pg.3)

Dec. 4, 1970 - Copy of Apple's claim received from
EMI - (Exh. A, Pages 4-7)

Dec. 14, 1970- Capitol acknowledged via telephone to
Apple that it had received some schedules
from EMI concerning Capitol and asked when
such schedules would be sent to Capitol
(Exh. A, Page 8)

2. Above claims and schedules handed to Capitol (Menon):

Aug. 16, 1971 (approximately) - Klein handed claim and
schedules to Menon in New York (Exh. B, Pgs.2-7)

Sept. 8, 1971- Klein inquires via telephone when reply
will be received (Exh. B, Pg. 8)

Sept.23, 1971- Capitol's reply to Apple re claims sent to
Apple by Menon with cover letter 9/24/71
(Exh. B, Pgs 10-13)

Oct. 21 & 22, 1971 - Capitol Apple meeting in New York to
discuss Capitol's Sept. 23 reply. (Not
successful in settling claims) (Exh. B, Pg.14)

3. Chaum & Klein discuss settlement in London:

Dec. 1971 - (Exhibit C)

4. Apple and Capitol reach settlement agreement in Feb. 1973
which was never signed due (probably?) to Klein's exit from
Apple as of Feb. 28, 1973. (Settlement letters not attached.)

5. Prager & Fenton Audit (U.S.):

January 1976 - Date of Prager & Fenton audit cover letter -
no day shown (Exh. D, Pgs. 1-3)

Feb. 2, 1976 - Capitol acknowledges receipt of audit
(Exh. D, Pg. 4)

Jun.15, 1976 - Capitol response to audit (Exh. D, Pg. 5)

Jun.15, 1976 - Capitol counterclaim for non-delivery
(default) (Exh. D, Pg. 6)

6. Prager & Fenton Audit (Canada):

Apr. 8, 1977 - Date of cover letter (Exh. E, Pgs 1 & 2)
(Could find no record of date received.)

SIGNED: _____

DATE February 17, 1981
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OFFICE _____ CI CRI CMP
SUBJECT: APPLE (N.Y.) CHRONOLOGICAL LISTING OF CLAIMS



MEMO

Page 2

6. Prager & Fenton Audit (Canada) (Continued)

June 24, 1977 - Apple's claim updated by Burdick to include Canada (Exh. E, Pgs 3-6)

(Although Capitol analyzed the claims, I find no response to Apple re the Canadian audit.)

7. Satin-Tenenbaum, etc. - Audit:

Jan. 27, 1981 - Received by Capitol although audit letter is dated June 25, 1980 (Exh. F)

8. Miscellaneous Settlement Attempts:

In addition to the original Feb. 1973 settlement offers to Apple, there were several subsequent offers. I have not detailed these in this memo.

SIGNED: _____

APPLE CLAIMS AGAINST CAPITOL
REPORTED TO EMI - NOT TO CAPITOL
12-1-70 Thru 1-26-71

EXHIBIT A
PAGE 1 OF 17

CONTENTS

- ✓ 12-1-70 Memo - Gortikov to Iannucci (cc: Carp, Burdick, Chaum, Tillinghast)
Wood first reported rumor of Apple claims.
- ✓ 12-4-70 Wood letter to Read and Stanford (cc: Gortikov)
Contained schedules from Apple setting forth claims.
(Copies given to Carp, Chaum, Iannucci, Tillinghast)
-
- 12-9-70 Carp memo to Tillinghast, Chaum and Burdick to get together
and review Wood's letter.
-
- ✓ 12-14-70 Burdick memo to Chaum and Tillinghast (cc: Gortikov, Carp)
Reporting results of their meeting and steps to be taken.
-
- 12-14-70 Burdick memo to J. Cavanaugh (cc: Carp, Chaum, Hawe, Isaacson,
Khoury, Rozett, Tillinghast)
Requesting review of Apple claims and comments.
- 12-14-70 Burdick memo to Isaacson (cc: Cavanaugh, Chaum, Hawe, Tillinghast)
Confirmed verbal instruction to obtain detail of deviation
from standard and certifications of scrapping.
- 12-18-70 Chaum memo to Iannucci (cc: Tillinghast)
His opinion of claims.
- 12-28-70 Tillinghast memo to Iannucci (cc: Carp, Chaum, Burdick)
His opinion of claims.
- 12-29-70 Isaacson memo to Burdick (cc: Cavanaugh, Chaum, Khoury,
Tillinghast)
Accounting comments re claims.
- 12-30-70 Burdick memo to Hawe (cc: Carp, Cavanaugh, Chaum, Tillinghast, etc.)
Instruction on obtaining scrapping certification for
Apple product.
-
- ✓ 12-30-70 Burdick memo to Gortikov (no copies)
Updating Gortikov on the subject.
- ✓ 1-4-71 Gortikov letter to Stanford (cc: Iannucci, Burdick, Carp)
Advising Stanford of our opinion of claims.

- 1-4-71 Burdick memo to Isaacson (cc: Gortikov, Cavanaugh, Chaum, Iannucci, Khoury, Tillinghast, Carp, Rozett)
Advising Accounting not to contact Apple about claims.
- 1-4-71 Iannucci memo to Burdick (cc: Carp, Chaum, Gortikov, Rozett, Tillinghast)
Suggesting no further action be taken at this time.
- 1-4-71 Carp memo to Burdick (cc: Gortikov, Iannucci, Rozett, Chaum, Tillinghast)
Offering Payson Wolff's assistance in construction of defenses against Klein's alleged claims.
-
- ✓ 1-26-71 Burdick memo to Chaum and Tillinghast (cc: Gortikov, Carp)
A composite of opinion of claims from Chaum, Tillinghast and Isaacson together with Burdick's opinions.

DATE December 1, 1970

TO OFFICE CI CRI CRDC ADI

FROM OFFICE CI CRI CRDC ADI



SUBJECT:

Len Wood telephoned me from New York to state the following results of his confrontation of Allen Klein, from which Len walked away because of the attitude of Klein:

1. As counterpart of EMI's using the inclusion of Ringo Starr as rationale for the album, being considered a "Beatles" album, Klein says that the inclusion of ~~Phil Spector and Borman~~ *Phil Spector and Borman* Apple artists, negates the Capitol/EMI right to release the album as intended.

- 2. Capitol has been breaking various portions of its agreements with Apple.
- 3. Klein intends to institute an audit of Capitol beginning the period September 1, 1969.
- 4. Capitol scrapped without authorization 750,000 Apple albums.

- 5. Capitol is not consulting with Apple in respect to clearances on press advertising, despite contractual obligations.
- 6. Capitol is contractually obligated to get approval for any cover art on Apple product; yet, Capitol printed 200,000 tape covers using an illustration different from the album without authorization.

* * *

Klein stated that Apple and the Beatles are willing to sign an agreement recognizing any recorded product containing a Beatle performance automatically as a "Beatle" album; provided Capitol and EMI negotiate a new royalty basis with escalations beginning right now to the higher levels previously agreed to for a later point in time.

4th December, 1970.

RE: CAPITOL/ALLEN KLEIN

Klein told me, whilst I was in New York, that he proposes to audit Capitol's books, as from 1st September, 1969, in respect of amounts payable to Apple for BEATLE and non-BEATLE Apple product.

He contends that Capitol are transgressing the written Agreement in several material particulars.

He said that Capitol had already been notified of his intentions.

I mentioned this to Stan during one of my several telephone talks. He takes the view that Capitol may have made some mistakes, but not of the magnitude Klein indicates.

When I saw Klein again on Wednesday - my last day - any detailed conversation became impossible because of the presence the whole time of JOHN LENNON and YOKO ONO.

Nevertheless, I did say I wanted specific examples of Capitol's alleged errors and Klein produced some schedules before I left.

He said that these schedules - copies are attached - would be mailed to Capitol straight away.

You will, I am sure, appreciate the significance of his contention, on the schedules, that Capitol have taken credit for items - quite substantial amounts - that Klein says they are not entitled to take credit for.

/Continued:

DEC 7 1970

- 2 -

His reason for saying this - there is no written Agreement and Capitol and E.M.I. will only recognise an agreement as an Agreement when it is written - and apparently not even then if it suits them not to do so.

An attitude of mind that was not unforeseen, certainly not so far as I am concerned.

Apple

APPLE RECORDS INC.
SCHEDULE OF MONIES DUE FROM CAPITAL
RE: BEATLES PRODUCT

	<u>Per Apple</u>	<u>Per Capitol</u>	<u>Balance Due</u>
A) Ampex Tape	\$ 118,849.80	\$ 105,118.79	\$ 13,731.01
B) Canadian Sales	472,596.56	422,069.39	50,527.17
C) Mexican Sales	88,512.86	30,817.39	57,695.47
D) Scrapped Records			715,961.77
L) Promotional Records			395,837.19
F) Interest (thru 7/31/70)			<u>189,089.19</u>
Total Due Apple Records			<u>1,422,841.80</u>

- A) Copy Sales - Capitol's computation was computed incorrectly. The correct rate should be 17½% of 100% of retail list price, indicated in the Buy-Sell Agreement, Article 11, Section 13.

For the period 9/1/69 through 6/30/70, Capitol's figure was \$105,118.79 as opposed to our figure of \$118,849.80 leaving a balance due Apple Records of \$13,731.01.

- B) Canadian Royalties - Capitol has computed the Canadian royalties on their proposed agreement. I have computed the royalties on a straight artist royalty basis without any copyright differential.

For the period 9/1/69 through 6/30/70, Capitol's figure was \$422,069.39 as opposed to our figure of \$472,596.56 leaving a balance due Apple Records of \$50,527.17.

- C) Mexican Sales - Capitol's Mexican royalties amounted to \$30,817.39. Using the same basis as used in Canadian royalties, our figure is \$88,512.86 leaving a balance due Apple Records of \$57,695.47.

- D) Scrapped Sales - Capitol's monthly reporting indicates considerable scrapplings. We have not received a detailed certificate evidencing such destruction as provided for in Article 11, Section 12 and accordingly we have billed Capitol for the aforementioned scrapped sales.

- E) Promotional Sales - Article III, Section 8B provides for Apple to sell to distributors, at a discount, records for distribution free of charge or at special low prices to disk jockeys, radio stations, record reviewers, the trade press and other similar customary recipients. The quantity of records so distributed seems inordinately high, therefore we are billing Capitol for these records.

- F) Interest (thru 7/31/70) - Conversations were held by Messrs Klein and Ianucci at which time it was agreed that Capitol would pay to Apple interest on the outstanding balance due. Accordingly a schedule has been prepared whereby interest has been accrued at a rate of 5% per annum based upon the outstanding balance at the end of each month.



DATE December 14, 1970
TO _____
OFFICE _____ CI CRI CRDC ADI
FROM _____
OFFICE _____ CI CRI CRDC ADI
SUBJECT: KLEIN/BEATLES/APPLE CARP MEMO, DEC. 9 RE WOOD MEMO, DEC. 4

As a result of our meeting of this morning on the above subject, I have done the following as agreed upon in this meeting:

1. I called Joel Silver and told him that we had received a copy of some statements which Len Wood said Allen Klein had given him and that Klein had stated "would be mailed to Capitol straight away." I described the schedules to him and told him I could not find to whom they had been sent at Capitol. He was aware of the schedules and replied that they had just been prepared recently and had as yet not been sent to anyone at Capitol. He did not volunteer that they would be, however, nor did I ask him point blank to send them.

I told him I was planning to give them to the Accounting Department to check out the arithmetic and asked him if it were all right if they got in touch with Salinsky about how the figures were constructed. He said it was quite all right since Salinsky was aware of the figures. That concluded the conversation. At no time was there any discussion of interpretation of contracts or agreements in our conversation. It was purely a discussion of what rates were multiplied by what units to get what figures. We did not attempt to answer any specific questions since he did not have the statements in front of him.

2. After reporting the conversation in 1, above, to Mr. Chaum, it was decided that I should send the statements to Accounting for them to attempt to reconcile both Apple's figures and their figures. I suggested that I would tell Accounting they could call Mr. Salinsky and ask some questions. Mr. Chaum said not to do this and to inform Accounting specifically not to call anyone at Apple but to figure out all they could without calling Apple and then inform Messrs. Chaum, Tillinghast and myself of the things they could not answer. A copy of this memo is attached.



DATE December 30, 1970

TO: _____

OFFICE _____ CI CRI CRDC ADI

FROM: _____

OFFICE _____ CI CRI CRDC ADI

SUBJECT: _____

KLEIN'S CLAIMS AGAINST CAPITOL REPORTED TO LEN WOOD

Bill Stanford's letter to you of 8 December, 1970 attaching the schedules that Klein gave to Len Wood were merely duplicates of the ones attached to your copy of Len Wood's letter of 4 December, 1970 to Read and Stanford.

You gave copies of Len Wood's 4 December letter to Burdick, Chaum, and Iannucci and I gave copies to Carp and Tillinghast. Mr. Carp wrote a memo December 9 requesting Tillinghast, Chaum and Burdick to hold a meeting on the Len Wood letter and the attached schedules. Such a meeting was held and as a result of the meeting I was directed to write Jim Cavanaugh requesting him to see what he could do to reconcile Klein's claims with our figures. This decision was covered in my memo of December 14 to Chaum and Tillinghast with copies to you and Carp. Cavanaugh has had his people working on this and I have followed through continually. They expect to have a memo to me today or tomorrow.

Mr. Iannucci requested Chaum to comment on the claims. This is covered in Mr. Chaum's memo of December 18 to Mr. Iannucci, copy of which is attached. (Incidentally, except for the first item, the Ampex agreement, I wrote the memo for Chaum.) Mr. Chaum asked Mr. Tillinghast to give Mr. Iannucci his legal opinions on all items. This is covered in Mr. Tillinghast's memo of December 28 to Mr. Iannucci.

As soon as I receive a reply from Accounting, Mr. Chaum, Mr. Tillinghast and I will decide on the next step.

To save you time poring through the papers, I will be glad to give you a verbal summary if you wish.

January 4, 1971

Mr. J. G. Stanford
E M I Limited
P. O. Box 1.E.S.
London, W. 1

Dear Bill:

Recently you forwarded me a "schedule of moneys due from Capitol Records," as submitted by Allen Klein to Len Wood and later to you. Presumably, the amounts on the schedule represented many and various failures on the part of Capitol to render adequate and timely payments to Apple in satisfaction of our obligations under the Beatles contract and the non-Beatles Apple contract. I passed on these schedules to our financial and legal people for comment. In this letter to you, I merely paraphrase the key conclusions that I extracted from the reports rendered. Ultimately, Mr. Iannucci will respond in whatever detail and whatever form is appropriate to the situation, after full counsel has been given him by legal and financial people. Any official response to Apple ultimately will come from Sal Iannucci.

First, you must realize that these claims never have been made to Capitol by Apple. Instead, the channel observed by Allen Klein was to transmit this summary of these complaints to Len Wood--a completely inappropriate choice in my judgment. Despite the fact that these claims have not been

JAN 5 1971

Mr. J. G. Stanford . . Page 2 . . January 4, 1971

made of Capitol, I have no intention of asking Allen Klein to communicate them to me. I also strongly request that neither you nor Len Wood ask him to do so. In short, if Allen Klein has any claims to make of Capitol, he should communicate to Capitol his complaints so that they can be properly responded to and expeditiously handled by those people best qualified to do so. We all here are unanimous in our conviction that it would be completely ill-advised for us now to run to Allen Klein to ask "What do you mean by this?"

Several of the statements and claims in the summary are impossible for us to understand and to respond to intelligently. For example, Klein lists a "marketing fee" of \$361,558. In parentheses he shows "no agreement." None of us have the slightest idea what he is talking about and certainly there is no contractual basis for a charge to us of a marketing fee for any purpose we can recognize.

Among the significant claims are those for scrapping. Under this heading, we must differentiate between the scrapping of Beatles records and the scrapping of non-Beatle/Apple records. As to the Beatles records, Capitol has the right to scrap such records without asking Klein. However, the language of the contract states that we must "certify" all scrapping. The contract, however, does not say when such certification should be made. It is to our discredit that no scrapping certifications have ever been sent to Allen Klein since the new contract was undertaken, yet we have proceeded with our right to scrap. This is being corrected in two ways. First, certificates for prior scrapping will be sent to Klein; second, in the future, scrapping certificates will be sent on a monthly basis. In

Mr. J. G. Stanford . . Page 3 . . January 4, 1971

principle, we owe Klein nothing for the scrapping of Beatle records, providing we send certificates attesting to such scrapping. In his summary, Klein lists a charge of \$715,000 for Beatle scrapping. What he is doing here is seeking the "full spread" of payment on these records as if they had not been scrapped. We do not actually know his charging basis, but we do know that there would be no charges due him once scrapping certificates have been supplied.

As to scrapping non-Beatle product, Capitol has no authority under the new contract to scrap without the okay of Apple. Most non-Beatle Apple product that should be scrapped has not yet been scrapped. Unfortunately, however, at the distribution center level, despite specific instructions to the contrary, product of this category returned from customers does in fact get scrapped from time to time despite our lack of authority to do so. Also, Klein never positively responds to our request for permission to scrap. Underlying this entire issue, of course, is the very fact that Klein has never signed that contract which in fact gives him the right to control this scrapping. Therefore, who is right? Klein states a charge in this category to us of \$665,000, and we do not know how he arrives at this figure, but presumably again he is trying to charge the "full spread" of the difference between product that is made and product that has been sold.

Klein also shows a promotional record charge of around \$395,000 on Beatle product. Here, contrary to any precedent or industry practice, he wants full royalty and license payments on product that is used for promotional purposes. Yet, in our agreement, we have the right to use product for promotional purposes without paying either royalty or license. However, Klein apparently is taking the position that we are giving away too much

Mr. J. G. Stanford . . Page 4 . . January 4, 1971

product for promotional purposes, and he is "compromising" by charging us for the whole bag.

Klein states that we owe approximately \$100,000 in behalf of Canada and Mexico payments. This is his own fault. He specifically previously told us not to pay him these earnings because he did not want the money to go to Switzerland. We have sent four requests for disposition of the money, which we stand ready and willing to pay, yet we receive no disposition instructions. Also, Klein is angling for us to pay U.S. dollars--or at the American royalty rate of 58 American cents, for example. Instead, we intend to pay the appropriate Canadian or Mexican equivalent. Even the Canadian amount will be somewhat reduced by excise tax. The portion of the Beate contract that relates to conversion from American cents to foreign currency was never yet signed by Allen Klein.

* * *

There is no further purpose in my providing detail on the smaller items. Those ultimately will be appropriately explained when appropriate claims are made of us. In the meantime, I think it is most important here for me to reaffirm to you and to all others concerned some rather specific considerations of which we should all be aware. These represent a consensus of our convictions here in appraising the strategy being employed these days by Allen Klein:

1. Klein traditionally attempts to "divide and conquer." He does this within the Capitol organization itself. He is also attempting to do this by driving wedges between Capitol and ENI and by playing one against the other.

Mr. J. G. Stanford . . Page 5 . . January 4, 1971


2. He reserves most of his aggressive approaches and practices for Capitol and uses his "good guy" approach and image in his interface with EMI.

3. Because his greatest single source of sales is the United States and because the greatest single source of personal income and retained income for Allen Klein is the United States, he intends to maximize the yield from his Capitol dealings. A way of aiding his accomplishment of this objective is to minimize the money penalty on EMI and EMI foreign associates. This tactic, conceivably, puts you all "in his camp."

4. He never signs a document he can avoid signing.

5. He deliberately and consistently and repetitively refuses to give decisions and respond to requests for definitive action on matters involving money. By delay and confusion, he obviously hopes to maximize the yield. He also banks on the passage of time to create confusion, error, and thus an environment for "settlement" rather than formalized determination of obligations.

6. He does not act in good faith. Originally, for example, we condescended to Apple being designated as a "manufacturer" to permit the Beatles to enjoy taxation advantages and to maximize United States retention of earnings. This was the sole objective of the changed relationship. Now, Klein consistently is utilizing this "manufacturer" designation to box out Capitol from its original rightful role as Beatles licensee. We are relegated to a pure and routine "distributor." He has notified all trade papers to deal with him



Mr. J. G. Stanford . . Page 6 . . January 4, 1971

and not us. He has notified the Recording Industry Association of America to validate all gold record awards with him, not with Capitol. He refuses to allow even the words "distributed by Capitol" to appear on packaging line advertising. In short, he has distorted a benefit granted by us far beyond its original intent.

7. He is now creating a proliferation of channels through which he can "deal" with Capitol. These now include Len Wood, Bill Stanford, as well as a variety of Capitol executives. This is no good. We must get back to a system where Capitol business is done on a direct basis and Capitol problems are solved by Capitol in a forthright ethical and businesslike manner.

8. All of this adds up to a deliberate strategy on Allen Klein's part to create problems and disputes that will lead to new negotiations and greater dollar yields to his own organization and to the Beatles. Disputes invite negotiations which invite settlements which invite money gains.

* * *

Therefore, I urge you and Len Wood to initiate no response to Allen Klein on the money claims which he submitted to you in his schedule. If he questions you on this, I suggest that you advise him to send Capitol a copy of the claim, which Capitol has never received, so that Capitol can respond intelligently to his money complaints. I also urge that any future inquiries or questions directed to you by Klein in respect to Capitol matters be referred directly by Klein to Sal Iannucci rather than to an EMI representative.

Mr. J. G. Stanford . . Page 7 . . January 4, 1971

Incidentally, I have attempted in several calls to reach Allen Klein per your recommendation, in respect to the proposed meeting between him and me. He still remains on vacation, and I have registered my call with his office. He did not return the call to me on December 30, as he originally stated to you that he would.

We will talk further when we next meet and I will keep you apprised of any developments. I have enclosed an extra copy of this letter should you choose to send it to Len Wood. Best regards.

Sincerely,

Capitol
MEMO

DATE January 26, 1971
TO _____
OFFICE CI CRI CRDC TRC ADI
FROM _____
OFFICE CI CRI CRDC ADI

SUBJECT: KLEIN'S REPORTED CLAIMS THRU LEN WOOD AGAINST CAPITOL FOR
APPLE PRODUCT (BEATLE AND NON BEATLE)

As a result of our meeting in December, each of you prepared a memo setting forth your opinion of the claims forwarded to us by Len Wood. We also asked Accounting to try and reconcile the claims with our books. I have reassembled the three memos (Chaum, Tillinghast, Isaacson) by subject matter for easier reference, copies of which are attached.

You will recall Apple and/or Klein have never presented us with a copy of the claims. A decision was made by Messrs. Gortikov and Iannucci not to ask for or query Klein or Apple about the claims at this time. In my opinion the claims are typically Klein-style and will be used by him in his never-ending negotiations.

Attached is my opinion of each claim.

APPLE CLAIMS PRESENTED TO CAPITOL
AUGUST 1971

RESPONSES & MEETING OF OCTOBER 1971

CONTENTS

Apple Claims

- ✓ 8-23-71 Memo Tillinghast to Burdick, Carp, Chaum, etc.
Distributes Apple's claims which were handed to Menon in Aug.

Capitol's Response

- ✓ 8-24-71 Burdick memo to Menon, Carp, Chaum, Tillinghast, etc.
Draft of Reply to Beate portion of claims
-
- 8-25-71 Burdick memo to Menon, Carp, Chaum, Tillinghast, etc.
Draft of reply to non-Beate portion of claims
- 8-26-71 Tillinghast memo to Burdick, Carp, Chaum
Assigns responsibility for determining certain things
- 9-1-71 Burdick to Willms (cc: Carp, Chaum, Tillinghast, etc.)
Request for % of promotion & % of returns
-
- ✓ 9-8-71 Burdick to Menon, Carp, Chaum, Tillinghast, etc.
Report of telephone conversation with Klein
-
- 9-15-71 Burdick to Menon, Carp, Chaum, Tillinghast
Revised draft of response to Apple claims
-
- ✓ 9-23-71 Burdick to Apple (Attn: Joel Silver) (cc: Menon, Carp, Chaum, Tillinghast)
States Capitol's position in regard to Apple's claims
-
- ✓ 9-24-71 Menon to Klein (cc: Burdick, Carp, Chaum, Tillinghast, etc.)
Sends Klein copy of Burdick 9/23/71 letter

October Meeting

- ✓ 10-11-71 Burdick to Carp, Chaum, Tillinghast, Menon, etc.
Notice of meeting to be held in N.Y. on Oct. 21 & 22
-
- 10-25-71 Burdick to Menon, Carp, Chaum, Tillinghast, etc.
Burdick's report of 10/21 & 22 meeting
- 10-27-71 Tillinghast notes of meeting
- 10-28-71 Burdick to Carp (Chaum, Tillinghast)
Interface of 9/13/71 Capitol letter & Apple's position taken at meeting
- 11-1-71 Carp to Menon, Burdick, Chaum, Tillinghast, etc.
Carp's comments re meeting
-
- ✓ 2-8-72 Burdick to Carp (Menon, Chaum, Tillinghast)
Summary of Apple claims
-
- 3-14-72 Summary of claims updated
- 3-14-72 Burdick to Wood (cc: Menon, Carp, Chaum, Tillinghast)
Informs EMI of Oct. meeting & subsequent action

DATE August 23, 1971
TO DISTRIBUTION
OFFICE _____ CI CRI ADI
OFFICE _____ CI CRI ADI
SUBJECT: _____



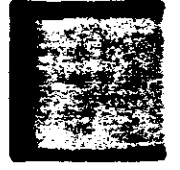
MEMO

_____ wishes to have a meeting concerning this memo as soon as possible. He asks that everyone give it careful study for purposes of coming up with our response to Apple's contentions for such meeting. _____ is expected to be back in the office on Wednesday.

Enclosure

SIGNED: _____

FORM 1669S C
REV. 14 2/71



SCHEDULE OF OPEN ITEMS ON BEATLE PRODUCT

- A) Canadian Royalties -- These Canadian Royalties have been computed on a proposed agreement by Capitol which uses the copyright differential. The total royalty for the period 9/1/69 through 3/31/71 amounted to \$740,095.01 which has been remitted to England.

Using the same royalty as the U.S. agreement, without any excess copyright, our figure comes to \$801,198.15. This leaves a balance due Apple of \$61,103.14.

Capitol also uses a lower conversion rate of .925 for the period 9/1/69 - 3/31/70. We feel that the rate of .967 should have been used since that was the rate when the money was paid.

Another point regarding Canadian sales is that Capitol never receives payments from its Canadian subsidiary. Therefore, we feel that no Canadian conversion rate should be used since there has been no transfer of Canadian dollars to Capitol U.S., who pays the money over to England.

- B) Mexican Royalties -- Capitol's Mexican royalty for the period 9/1/69 - 12/31/70 amounted to \$44,944.81. This figure has been paid to Apple Corps. Using the same basis as Canadian royalties, our figure came to \$125,452.97. This leaves a balance due Apple of \$80,508.16.

The artist rates used by Capitol are considerably lower than the American artist rates.

We have also been paid for the quarter ended 3/31/71 in the amount of \$12,038.21. I have not computed our figure based on the same royalty as used in the U.S. I am waiting for additional information from Capitol.

Capitol has also deducted \$12,266.67 for Federal Income Tax of 49% and sales tax of 3%. I have asked Capitol for additional documentation to substantiate this deduction since it has never appeared before.

SCHEDULE OF OPEN ITEMS ON BEATLE PRODUCTPage 2

- C) Ampex Royalties -- Capitol's computation of Ampex royalties amounted to \$105,118.79 for the period 9/1/69 through June 30, 1970. This computation was based on an incorrect royalty. The correct rate should be 17½% of 100% of retail list price indicated in the Buy-Sell agreement, Article II, Section 13.

Our figure using the above percentage equals \$118,849.80, leaving a balance due Apple Records of \$13,731.01. We have not received subsequent accounting.

- D) Scrapped Sales -- Capitol's monthly reporting indicates considerable scrappings. However, we have not received detailed certificates evidencing such destruction as provided for in Article II, Section 12 of the Buy-Sell Agreement.
- E) Promotional Sales -- Article III, Section 8B of the Buy-Sell Agreement provides for Apple to sell to distributors, at a discount, records for distribution free of charge or at special low prices to disc jockies, radio stations, record reviewers, the trade press and other similar customer recipients. The quantity of records distributed seems inordinately high, therefore, we are billing Capitol for these records.
- F) Interest (thru 7/31/70) -- Conversations were held by Messrs. Klein and Ianucci, at which time it was agreed that Capitol would pay to Apple interest on the outstanding balances due. Accordingly, a schedule was prepared whereby interest has been accrued at a rate of 5% per annum based upon the outstanding balance at the end of each month.
- G) Price Adjustment @ 3/31/71 -- Capitol has increased their retail sales price on all \$4.98 albums by \$1.00. This adjustment should be reflected on the physical inventory at 3/31/71 and on subsequent sales. However, we feel that returns on all \$4.98 albums should be billed at the \$4.98 price and not the increased price.

SCHEDULE OF OPEN ITEMS ON BEATLE PRODUCTPage 3

- H) Advertising-Beatle Trade Ads -- Apple has paid \$24,050.58 for Beatle Trade Ads. This amount is due from Capitol.
- I) John Lennon/Plastic/Ono Band -- Capitol has charged Apple \$7,853.67 for plastic lamination on SW-3372. There is nothing in the agreement to substantiate this charge. We have also been billed \$2,221.14 on 1830 (Power To The People) for plant charges.
- J) Inventory Variation -- Apple has not received physical inventories for April 30th, 1970 or April 30th, 1971.

APPLE RECORDS INC.
 SCHEDULE OF MONIES DUE FROM CAPITOL
 RE: BEATLES PRODUCT

	<u>Per Apple</u>	<u>Per Capitol</u>	<u>Balance Due</u>
A) Canadian Sales 3/31/71	\$ 801,198.15	\$ 740,095.01	\$ 61,103.14
B) Mexican Sales 12/31/70	125,452.97	44,944.81	80,508.16
C) Ampex Tape 6/30/70	118,849.80	105,118.79	13,731.01
D) Scrapped Records 9/30/70			715,961.77
E) Promotional Records 9/30/70			395,837.19
F) Interest (thru 7/31/70)			189,089.19
G) Advertising (Beatle Trade Ads)			24,050.58
H) John Lennon/Plastic Ono Band Credit			<u>(501,960.91)</u>
			\$ 978,320.13

Capitol
A Capitol Industries Company

MEMO

DATE August 24, 1971
TO _____
OFFICE _____ CI CRI ADI
FROM _____
OFFICE _____ CI CRI ADI
SUBJECT: DRAFT OF LETTER TO APPLE RE APPLE CLAIMS

All on distribution received a copy of a memo from Mr. Tillinghast dated August 23, 1971 in regard to claims by Apple presented to Mr. Menon in New York last week. Mr. Menon had requested that we give the claims careful study and then have a meeting as soon as possible.

As a starting basis, I have drafted a very rough, unpolished letter to Joel Silver, as if I were going to answer the claims. This draft should be of help to you who are new to this problem in understanding the problem.

You will note the draft has been prepared so that you may make comments or ask questions in the wide margin provided for that purpose.

We can decide at a later date if a written reply is to be made, who should make the reply, and the points to be covered or omitted.

I am enclosing the Beatle Product portion herewith. As soon as I have completed the non-Beatle portion I will send it to you.

SIGNATURE

TO: DISTRIBUTION

September 8, 1971

Klein called me at approximately 3:15 PM 9-8-71. The conversation went something like this:

Klein: How are you coming along with reviewing the schedules I gave Menon?

Burdick: Fine. I think Mr. Menon will be ready to talk to you about them soon.

Klein: When are we going to have a meeting and resolve the differences?

Burdick: I think Mr. Menon said it would probably be about the week after next. Shall I ask him?

Klein: Yes. Is he going to give me something in writing so we can go over it beforehand? That would be fair since we gave you our position ahead of time.

Burdick: I don't know. Shall I ask him?

Klein: No. Our position is right since we are simply going by what Capitol signed in the contract. When are we going to get the physical inventories?

Burdick: I think very soon now.

Klein: You know I'm correct about the payment on inventories. That's why I insisted it be in the contract. I wouldn't have signed the contract otherwise, but I don't really want Capitol to pay me all it owes me for inventories. I told them (Menon? Wood?) I'd drop the whole matter if they give me the higher royalty rate right now since I've delivered ten albums.

Burdick: (I cleverly avoided commenting on the above remarks.)

Klein: I called Clive Davis and he said Columbia's inventory shortages ran about 5%. Do you know how much Apple's are running?

Burdick: No.

Klein: Well, I know they're running 3% to 5%.

Burdick: That seems reasonable to me.

Klein: It's entirely too much because of the volume.

Burdick: (no comment)

Klein: Did you understand all of the questions we brought up?

Burdick: I think so. I assume when you spoke of Marketing Fee on Apple non-Beatle, you were referring to the difference between the inter-company price and the price we agreed upon for the new Apple contract.

Klein: Yes, but we never finalized the new contract. We have no new agreement.

Burdick: If you mean we are operating under the original contract, then the profit sharing agreement would apply.

Klein: Yes, we are operating under the signed contract. But the profit sharing agreement does not apply. The original contract was actually three contracts and the management contract which covered the profit sharing went out when I took over the management of Apple. It purposely didn't have any term, and I could terminate it at any time.

Burdick: (I didn't know what to say, so I didn't comment.)

Klein: Are you going to pay me for the trade ads?

Burdick: I assume this will be covered in Mr. Menon's reply.

Klein: Mr. Meggs is being nicer to Mr. Nuccio now.

Burdick: That's good.

Klein: How is Mr. Carp feeling these days?

Burdick: What do you mean?

Klein: Is he in a secure position?

Burdick: It sure seems like it to me.

September 23, 1971

Apple Records, Inc.
1700 Broadway
New York, New York 10019

Attention: Mr. Joel Silver

Dear Joel:

I must say I was greatly surprised to see much of the content of the schedules of what you call "open items" on Beatle and non-Beatle product which Allen handed to Bhaskar several weeks ago in New York.

I say "surprised" since Capitol and Apple have been operating under the Beatle product agreement since 9-1-69, and the non-Beatle agreement since 10-1-69 (2 years!) and this is the first time Apple has presented such a schedule to Capitol.

You and I have, of course, discussed a few of the matters on the phone and I thought I had given you the answers. On other matters, I am not quite certain just what is being questioned. Therefore, I thought I would write you to confirm Capitol's position on some items and to ask you for clarification of Apple's position on others.

Let's discuss the schedules in regard to Beatle product first. The following are the items listed, although I have changed the listing order for convenience into dollar importance.

Apple Records, Inc. . . Page 2 . . September 23, 1971

Re: Beatle Product

D) Scrapped Records, 9/30/70	\$ 715,961.77
E) Promotional Records, 9/30/70	395,837.19
F) Interest (7/31/70)	189,089.19
B) Mexican Sales, 12/31/70	80,508.16
A) Canadian Sales, 3/31/71	61,103.14
G) Advertising (Beatle Trade Ads)	24,050.58
C) Ampex Tape, 6/30/70	13,731.01
Sub-Total	<u>\$1,480,281.04</u>
H) John Lennon/Plastic Ono Band Credit	<u>(501,960.91)</u>
Total	<u>\$ 978,320.13</u>

Before discussing individual items, it may be helpful to remind ourselves of certain basic principles in the agreements since these naturally affect the answers.

The principles agreed upon for the new Beatle contract of 9-1-69 were contained in a memorandum agreement dated 8-8-69 which was signed by Allen Klein for the Beatles and Stanley Gortikov for Capitol. This agreement makes the following points quite clear:

- 1) The Beatle agreement is a "royalty" agreement. The word "royalty" is used throughout that memorandum. However, as a courtesy to Apple and at its request, Capitol was willing to cast the contract in the "form" of a "buy-sell" agreement as stated in the closing sentence of that memorandum:

"The parties will attempt to adopt a buy-sell agreement, subject to approval of EMI and necessary government authorities."

(That the contract was viewed by both Capitol and Apple as a "royalty" agreement notwithstanding the form is further emphasized by the letter of September 12, 1969, initialed by Allen Klein, which conditioned the effectiveness of the September 1, 1969 contract on the Bank of England

Capitol Industries, Inc. 1750 North Vine Street, Hollywood, California 90028, (213) 462-6252

*Sp
C*

September 24, 1971

PERSONAL & PRIVATE

Allen Klein, Esq.
Apple Records, Inc.
1700 Broadway
New York, New York 10019

My dear Allen:

Enclosed herewith is a copy of our "rejoinder" to your "agenda". Obviously, the text is not anywhere near as effective (or pungent!) as it could have been had we been able to seek your personal assistance in drafting it. But all the sentiments expressed are very genuinely felt.

I have only two further sentiments to express, neither of which are explicitly contained in the enclosure: firstly, do please give peace a chance; secondly, how else do we sleep at night?

Yours ever,



MEMO

DATE October 11, 1971
TO _____
OFFICE _____ CI CRI ADI
FROM _____
OFFICE _____ CI CRI ADI
SUBJECT: APPLE MEETING IN NEW YORK WITH KLEIN

This will confirm our conversations of this morning that Messrs. Berdick, Carp, Chaux and Tillinghast are to meet with Allen Klein in his office in New York on Thursday morning, October 21, and probably on Friday, the 22nd also.

The purpose of the meeting is to discuss any matters mentioned in my letter to Joel Silver in regard to their schedules of claims. We are not to discuss the marketing proposals that Klein previously made since Mr. Maggs will not be able to attend the meeting as he will be in Europe with Mr. Mennon. Should Klein bring the matter up we will merely say that a meeting will be arranged with Mr. Maggs upon his return. I know that both Klein and Silver plan to attend the meeting and I assume Seider will also attend.

Will each of you arrange for your own transportation and hotel reservations.

SIGNED: _____



MEMO

DATE February 3, 1972
 TO _____
 OFFICE _____ CI CRI ADI
 FROM _____
 OFFICE _____ CI CRI ADI
 SUBJECT: **ALLEN KLEIN**

1. On December 15, 1971 (at 2:00 in the morning) during our Bangla Dosh negotiations in London, Klein had a handwritten note which was prepared initially for the purpose of attaching it to one of the proposed exhibits to the Bangla Dosh agreement relating to shrinkage of the Bangla Dosh inventory.* The side letter relating to shrinkage was not signed nor was any reference to shrinkage included in the Bangla Dosh documents.

2. During the course of the negotiations, Klein permitted me to see his notes and I copied the following information:

a. There are four items that Klein desires to have finally resolved. They are:

(1) All operational problems to be mutually resolved [the expression "operational problems" in the past has apparently meant to Klein the day to day marketing, inventory, promotion and advertising problems].

*Response
S.M. Little
OK
4-16-71*

(2) Finalization of the Apple California/Capitol contract relating to non-Beatle Apple product.

(3) An increase in the Beatle product royalty of 20% effective September 1, 1971.

*24.1 % actual
difference*

(4) Payment by Capitol of all unauthorized deductions taken in the various accountings.

b. In return for a mutual resolution of the four outstanding problems, Klein would:

(1) waive Apple's claim for unauthorized scrap;

(2) waive Apple's claim for shrinkage;

(3) waive Apple's claim for a marketing fee;

(4) waive Apple's claim for excess promotional records;

(5) waive Apple's claim for interest; and

SIGNED:

FEB 4 1972



MEMO

DATE February 3, 1972

TO _____

OFFICE _____ CI CRI ADI

FROM _____

OFFICE _____ CI CRI ADI

SUBJECT: **ALLEN KLEIN**

(6) waive Apple's claim for higher royalties on future John Lennon/Plastic Ono product.

*At that time Klein indicated his agreement to 3% shrinkage as a reasonable quantity. It is my recollection that we attempted to verify the acceptability of 3% by phone with Burdick at that time. By copy of this memo, I am asking Burdick to advise me whether, based on our experience to date, 3% would be acceptable.

*see P/B
memo to
Dowd 2-7-72*

SIGNED: _____



MEMO

DATE February 8, 1972
 TO _____
 OFFICE _____ CI CRI ADI
 FROM _____
 OFFICE _____ CI CRI ADI
 SUBJECT:

SUMMARY OF APPLE CLAIMS

REF: CHAUM MEMO TO YOU 2-3-72 RE "ALLEN KLEIN"

I have resummarized (on the attached schedule) Apple's claims of August 1971 to separate out the items specifically mentioned in paragraph 2.b. of Mr. Chaum's memo of February 3, 1972 on the subject "Allen Klein". I have shown as a reference the page number in my interface document of 10-28-71 where each item is discussed pro and con.

It should be noted that many of the items had never been given a dollar value by Apple, but merely mentioned by Apple in their claims.

You asked me what items I thought Klein might be referring to in paragraph 2.a.(4) of Chaum's memo which states "Payment by Capitol of all unauthorized deductions taken in the various accountings."

We have taken the following "deductions" to which he has objected:

Deviations from Standard Cost	\$305,116.53
10% of Standard Cost	125,330.30
Misc. Payments by Capitol	46,027.70
Freight	No dollar value given
Sub-Total	<u>\$476,474.53</u>

He has also asked for additional payments on:

Mexican Sales	\$ 80,508.16
Canadian Sales	61,103.14
Ampex Sales	13,731.01
Record Club	No dollar value given
Price Increase to Customers	No dollar value given
Price Adjustment 3/31/71	No dollar value given
Group Total	<u>155,342.31</u>
Total	<u>\$631,816.84</u>

In regard to paragraph 2.a.(3), "An increase in the Beetle product royalty of 20% effective Sept. 1, 1971", note the "20%". The actual increase in the schedules attached to the contract amount to 24.1%.

I have covered the footnote on shrinkage in a separate memo on that subject dated 2-7-72.

SIGNED: _____

SUMMARY OF APPLE CLAIMS OF AUGUST 1971
Regrouped By Reference No. - Chaum Memo 2-3-72

Ref. &
 Explanation
 10-28-71 Me
 Page

Chaum
 Memo
 Ref. #

No.* Beatle No.* Non-Beatle Total

2.b.1	Scrap	1	\$ 715,961.77	1	\$ 782,340.78	\$1,498,302.55	3/18
b.2	Shrinkage	11	ND		ND	ND	14/-
b.3	Marketing Fee	2	NA		768,400.15	768,400.15	-/19
b.4	Promotional Records	2	395,837.19		NM	395,837.19	4/-
b.5	Interest	3	189,089.19		NA	189,089.19	5/-
	Sub-Total (b.1-5)		\$1,300,888.15		\$1,550,740.93	\$2,851,629.08	
b.6(?)	Plastic Ono Band	6	(501,960.91)		1,800,983.39	1,299,022.48	11/23
	Sub-Total (b.1-6)		\$ 798,927.24		\$3,351,724.32	\$4,150,651.56	
	Mexican Sales	5	80,508.16		ND	80,508.16	8/25
	Canadian Sales	4	61,103.14		ND	61,103.14	6/25
	Advertising (Trade Ads)	6	24,050.58		NA	24,050.58	9/-
	Price Adjustment 3/31/71	9	ND		ND	ND	12/30
	Plastic Ono Deviation Charges	10	ND		NA	ND	13/-
	Ampex Sales	7	13,731.01		ND	13,731.01	10/29
	Amount Due Per Capitol	7	NA		(49,070.33)	(49,070.33)	-/24
	Deviation from Std. Cost	3	NA		305,116.53	305,116.53	-/20
	10% of Std. Cost	4	NA		125,330.30	125,330.30	-/21
	Misc. Payments By Capitol	5	NA		46,027.70	46,027.70	-/22
	Freight	11	NA		ND	ND	-/28
	Record Club	10	NM		ND	ND	-/27
	Price Increase to Customers	14	NM		ND	ND	-/31
	Give Peace a Chance #1809	9	NA		ND	ND	-/26
	Sub-Total		\$ 179,392.89		\$ 427,404.20	\$ 606,797.09	
	Total Claims		\$ 978,320.13		\$3,779,128.52	\$4,757,448.65	1/16
	Less Paid Since Claim Date	6	(24,050.58)			(24,050.58)	
	Adj. Total		\$ 954,269.55		\$3,779,128.52	\$4,733,398.07	

*Item No. used in our reply to Apple of 9-13-71.

Abreviations:

NA - Not Applicable

ND - No Dollar Amount Given in Apple Claims

NM - Not Mentioned in Apple Claims

REGISTERED POST

Capitol Records, Inc.,
P.O. Box 2391,
Hollywood,
California, 90028,
U.S.A.

January 1976.

Attention the Secretary

Dear Sirs,

You will be aware that an examination and audit of Capitol's books and records has been made pursuant to Article V.4 of the Agreement dated 1st September 1969 between Apple Records, Inc., ("Apple"), Capitol Records, Inc., ("Capitol") and Capitol Records Distributing Corporation ("Distributor") regarding Beatle recordings by Messrs. Prager & Fenton, certified public accountants, who have now completed their report.

A copy of their Report dated 31st October 1975 is enclosed with this letter.

You will note that there are a number of matters referred to in Messrs. Prager & Fenton's report as apparent breaches or violations of the Agreement and we therefore give you notice in this letter of the breaches or violations of the Agreement referred to in the report and request you to remedy all such breaches within fourteen days of the date of this letter.

We also notify you that for the purposes of Article V.4. we object to statements and accountings rendered under the Agreement by reason of the matters outlined in the enclosed report.

We also hereby notify you for the purposes of Article V.3. that all notices provided by the Agreement to be served on Apple should be sent to Apple Corps Limited at 29 St. James's Street, London, S.W.1. marked for the attention of Mr. N.S. Aspinall with a copy to B.V. Grakal, Esq., c/o Schwartzman and Greenberg, 9777 Wilshire Boulevard, Suite 1018, Beverly Hills, California, 90212, U.S.A.

The report of Messrs. Prager & Fenton refers to a number of explanations which were requested by Messrs. Prager & Fenton on our behalf and have still not been supplied. We hereby formally request these explanations within the said period of fourteen days.

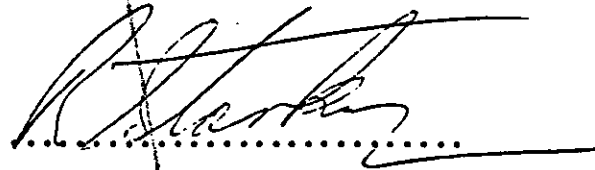
The very considerable sum of US\$3,206,312.18 is shown to be due to the undersigned and we hereby formally request payment of this amount immediately while reserving our rights in respect of any further sums subsequently shown to be due and interest thereon.

You will appreciate that Messrs. Prager & Fenton's audit report is in respect of the period ending 31st December 1973. We would like to make it clear that our rights in respect of the periods thereafter are expressly reserved.

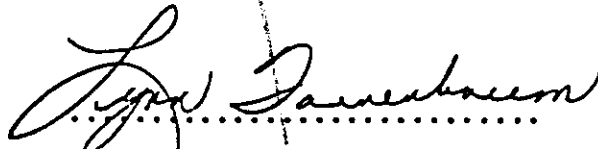
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We look forward to hearing from you in detail.

Yours faithfully,

A handwritten signature in cursive, appearing to read "R. J. Clarke", written over a horizontal dotted line.

For and on behalf of
APPLE CORPS LIMITED

A handwritten signature in cursive, appearing to read "Lynn Sawentbaum", written over a horizontal dotted line.

For and on behalf of
APPLE RECORDS, INC.

c.c. Capitol Records Distributing
Corp. ("Distributor"),
1750 North Vine Street,
Hollywood,
California 90028,
U.S.A.

PRAGER AND FENTON
CERTIFIED PUBLIC ACCOUNTANTS
NEW YORK · LOS ANGELES · LONDON

JOSEPH FENTON, C. P. A.
LEONARD SPITALNIK, C. P. A.
LEO STRAUSS, JR., C. P. A.
ABRAHAM KAHANER, C. P. A.
ROBERT MARGOLIES, C. P. A.
ROBERT SANDHAN, C. P. A.

6363 SUNSET BOULEVARD
LOS ANGELES, CALIFORNIA 90028
(213) 462-6037

October 31, 1975

The Directors of Apple Corps Ltd.
54 St. James's Street
London SW1A 1JT, England

Gentlemen:

Pursuant to our engagement, we have examined the books and records
of

CAPITOL RECORDS, INC.
(hereafter referred to as Capitol)

for purposes of determining areas of underreporting, if any, and their
extent with respect to accountings rendered to

APPLE RECORDS, INC. (A NEW YORK CORPORATION)
(hereafter referred to as Appie)

for the manufacture and distribution in the United States of America
(domestic) of recordings derived from masters of

"THE BEATLES"

This report is, in all respects, identical to the one dated June
16, 1975 except that, in accordance with instructions contained in
letters from Barry E. Nichols dated July 31, 1975, August 20, 1975, and
October 9, 1975, we have revised the distribution of adjustments and
made the necessary changes in the text and schedules of the report to
accommodate these instructions.

February
2nd
1976

Apple Records, Inc., a New York corporation
C/O Apple Corps. Limited
29 St. James Street
London SW1, England

Attention: Mr. N.S. Aspinall

Gentlemen:

We have your letter of January, 1976 together with audit claim.

The claim is being analyzed and we will write you again with our response.

We are unaware of any breaches or violations on Capitol's part of the agreement between you and Capitol dated September 1, 1969 to which you allude in the third paragraph of your letter.

Any matters in the audit claim which appear to require additional explanations by Capitol will be dealt with in due course.

Very truly yours,

June
15th
1976

RETURN RECEIPT REQUESTED

Apple Records, Inc.
C/O Apple Corps Limited
29-30 St. James Street
London SW1 1HB, England

Attention: Mr. N.S. Aspinall

Gentlemen:

In reply to your letter of January, 1976 and the audit claim of Prager & Fenton dated October 31, 1975 enclosed therewith, set forth below are the responses of Capitol Records, Inc. to the points raised in said audit.

Part or all of certain claims appear to be barred by the statute of limitations. Accordingly even where Capitol acknowledges the correctness of a claim, it is not always possible to determine the amount actually due.

1. Schedule 1 - Price Escalation:

The argument that appears to be made by the auditors in the first full paragraph on page 8 is that paragraph 6(a) requires Apple to deliver two new albums each year and that since two albums were delivered in the period 9/1/71 through 8/1/72 that Capitol could not elect to take an additional non-Beatle Master in partial satisfaction of the requirements of Section 6.

The answer to this is simple. The album "Sometime in New York City" was not a "non-Beatle Master". Section 5 of Article I defines Beatles Masters as ". . . those masters which feature the performances of all the Beatles who are then performing as the Beatles or masters which EMI has accepted for release as recordings of the Beatles and to which Apple acquired manufacturing rights."

EMI accepted and released "Sometime in New York City" under the 1967 recording agreement as a recording of the Beatles and Apple acquired manufacturing rights to

.June
15th
1976

Apple Records, Inc.
C/O Apple Corps Limited
29-30 St. James Street
London SW1 1HB, England

Attention: Mr. N.S. Aspinall

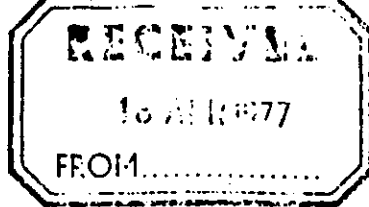
Gentlemen:

Contemporaneously herewith Capitol is responding to the audit claim submitted by you in January of 1976.

Under Sections 6 and 7 of Article II of the agreement of September 1, 1969, Capitol has a claim for non-delivery of two pick-up albums which claim is in the sum of \$560,000.00.

Capitol will expect that any payment due pursuant to the aforesaid audit would be applied against this claim and the balance remitted to Capitol.

Very truly yours,



PRAGER AND FENTON
CERTIFIED PUBLIC ACCOUNTANTS
NEW YORK • LOS ANGELES • LONDON

6363 SUNSET BOULEVARD
LOS ANGELES, CALIFORNIA 90028
19131 462-6037

JOSEPH FENTON, C.P.A.
CONRAD SPITALNIK, C.P.A.
MORTON STRAUSS, JR., C.P.A.
ABRAHAM KAMNER, C.P.A.
ROBERT MAROOLIES, C.P.A.
ROBERT SANDMAN, C.P.A.
MARTIN GOLDBERG, C.P.A., A.C.A. (U.K.)
ALVIN HANDWERKER, C.P.A.

April 8, 1977

The Directors of Apple Corps. Ltd.
29/30 St. James's Street
London SW1 1HB, England

Gentlemen:

Pursuant to our engagement, we have examined the books and records
of

CAPITOL RECORDS - EMI OF CANADA LIMITED
(hereafter referred to as Capitol)

and its predecessor company, for purposes of determining areas of under-
reportings, if any, and their extent with respect to accountings rendered
to

APPLE RECORDS, INC. (A NEW YORK CORPORATION)
(hereafter referred to as Apple)

for the distribution in Canada of recordings derived from masters of
"THE BEATLES"

Our examination covered the period from September 1, 1969 to December
31, 1974.

The amount due as set forth below and in the attached schedules,
totals \$768,738.12, exclusive of interest.

Our examination was made in light of the Agreement dated September 1,
1969 (and the related Addendum No. 1) between Apple Records, Inc., a New

APPLE RECORDS, INC.

RE: CAPITOL RECORDS - EMI OF CANADA LIMITED

SUMMARY OF ADJUSTMENTS

SEPTEMBER 1, 1969 TO DECEMBER 31, 1974

Schedule 1	-	Adjustment for SVBB 3392	\$ (7,724.15)
Schedule 2	-	Extension Error	1,982.60
Schedule 3	-	Underreported Sales	18,207.86
Schedule 4	-	Returns at Higher Rates	29,593.56
Schedule 5	-	Free Goods	99,943.13
Schedule 6	-	Deleted Merchandise	9,401.69
Schedule 7	-	Royalty Base Price Adjustment	102,707.08
Schedule 8	-	Sales Tax Allocation	24,630.00
Schedule 9	-	Royalty Rate Escalation	366,641.24
Schedule 10	-	Unaccounted Product	143,355.11
Text	-	Interest	<u>Not Determined</u>
TOTAL (1)			<u>\$788,738.12</u>

(1) In U.S. Dollars - See attached analysis for distribution of adjustments

DATE June 24, 1977

TO _____

OFFICE _____

CI CRI CMP

(M _____

OFFICE _____

CI CRI CMP

SUBJECT:

APPLE (N.Y.) BEATLE AUDIT

EXHIBIT E
PAGE 3 OF 6

Capitol
A CAPITAL INDUSTRIES LTD. COMPANY

MEMO

Attached are supplements for the Black Books "Apple New York and Calif. Beatle and non-Beatle Claims, etc." to cover the Beatles' Canadian Audit. (We have not received a Canadian non-Beatle audit.)

1. The Beatle Summary page of 6/20/77 should be replaced by the attached 6/24/77 copy which has been expanded to include the Canadian audit.
2. The new tab and attachments "5. P&F Canadian Audit, April 1977" should be inserted in the book in the Beatle section just after tab 4.

SIGNED: _____

APPLE RECORDS, INC. (N.Y.) (BEATLE)
COMPARISON OF CLAIMS, SETTLEMENT AGREEMENT
AND APPLE AUDIT

Canadian Audit Claim
(No response as of 6/24/77)
Probable Capitol
Response

Description	Apple Claims		Settlement Letters Feb. 3 & 27 1973	U.S. Audit Claims & Responses		P & F Audit Claim Thru 12-31-74	Canadian Audit Claim	
	Original Per Klein Claim To L.G. Wood 12/1/70	Per Klein AT 1/31/72		P&F Audit Claims Thru 12/31/73	Response of Capitol 6/15/76		Capitol Response 12/31/74	Not Valid
A \$ 13,731.01	\$ 26,009.83			Sch. 9	\$ 7,279.02			
B 50,527.17	80,508.16			Sch. 6	30,182.63			
C 57,695.47				Mentioned				
D 715,961.77				Sch. 1	1,745,533.75			
E 395,837.19				Sch. 2	(189,675.82)			
F 189,089.19				Sch. 3	613,844.17			
\$1,422,841.80				Sch. 4	163,638.72			
Record Club				Sch. 6	3,800.00			
Additional				Sch. 10	3,922.65			
Canadian Copyrights				Sch. 11	3,781.11			
Conversion Rate (Can.)				Sch. 12	45,198.67			
Misc. Charges				Sch. 15	2,432.08			
Total Priced Out				Questioned	-			
Less Already Paid				Questioned	-			
Total Priced Out				Questioned	-			
Other Agreements:				Stated	-			
Constitutes Settlement of				No Comment	-			
All Disputes				No Comment	-			
Acknowledges Lennon as EMI Artist				No Comment	-			
Accelerated Rates				No Comment	-			
Default Claim				No Comment	-			
Switch of Yoko Roy. fr NY to Ca.				No Comment	-			
Someone in NY City				No Comment	-			
Returns at Higher Rates				No Comment	-			
Inv. Adj. at 9/1/69				No Comment	-			
Record Club Sales at Buy Sell				No Comment	-			
Amplex Rate Adj.				No Comment	-			
Unreported Amplex Sales				No Comment	-			
Amplex Rate Adj.				No Comment	-			
Interest Charge #1842				No Comment	-			
Special Accounting for #1842				No Comment	-			
Charges to Apple for Prom. Records				No Comment	-			
Report Sales Unauthorized				No Comment	-			
Amplex Accounting				No Comment	-			
13-14 A Vexco Not Examined				No Comment	-			
Unaccounted Production				No Comment	-			
Royalty Base Price Adjustment				No Comment	-			
Free Goods				No Comment	-			
Sales Tax Allocation				No Comment	-			
Under-reported Sales				No Comment	-			
Unrelated MUSE.				No Comment	-			
Translation Error				No Comment	-			
Total Priced Out	\$1,422,841.80	\$135,810.74	\$32,718.65		\$3,206,312.18			

Note A: Klein stated to Len Wood that "Apple and Beatles are willing to recognize any recorded performance containing a Beatle performance automatically as a "Beatle" album, provided Capitol and EMI negotiate a new royalty basis immediately at the escalated rates. (except for two pick-up albums).

Note B: Klein demanded accelerated royalty rates from 9/1/71 to 3/31/77 which we estimated to be \$556,000. (This was one year earlier than the acceleration provision provided for.)

Note C: Capitol agrees to accelerated royalty rates from 3/1/73 on

APPLE RECORDS, INC. (N.Y.) (BEATLE)
COMPARISON OF CLAIMS, SETTLEMENT AGREEMENT
AND APPLE AUDIT

	Apple Claims		Settlement Letters Feb. 3 & 27 1973	Audit Claims & Responses			
	Original Per Klein Claim To L.G.Wood 12/1/70	Per Klein At 1/31/72		P&F Audit Claims Thru 12/31/73		Capitol Response of 6/15/76	
				Sch. 9 Sch. 6	\$ 7,279.02 30,182.63	Part X	Part
Ampex Tape	\$ 13,731.01	\$ 26,009.83					
Canadian Sales	B 50,527.17						
Mexican Sales	C 57,695.47	80,508.16	\$ 9,599.29				
Scrapped Records	D 715,961.77		Apple Waives	Mentioned		X	
Promotional Records	E 395,837.19		Apple Waives	Acceleration	629,078.26	X	
Interest (to 7/31/70)	F 189,089.19						
Total Priced Out	\$1,422,841.80						
Record Club			3,243.05Pd.	Sch. 7	9,479.49	Part	Part
Additional			1,943.87				
Canadian Copyrights		9,679.84	9,679.84Pd.				
Conversion Rate (Can.)		21,541.11	23,103.69				
Misc. Charges		(1,928.20)	(1,928.20)				
Total Priced Out		\$135,810.74	(12,922.89)				
Less Already Paid			\$32,718.65				
Total Priced Out							
Other Agreements:							
Constitutes Settlement of							
All Disputes			X				
Acknowledges Lennon as EMI Artist	Note A		X				
Accelerated Rates	Note A	Note B	Note C	Sch. 1	1,743,533.75	X	\$560,000
Default Claim			Cap.Waives	Rts.			
Switch of Yoko Roy. fr NY to Ca.			(77,552.86)				
Sometime in NY City				Sch. 2	(189,675.82)	X	
Returns at Higher Rates				Sch. 3	613,844.17	X	
Inv. Adj. at 9/1/69				Sch. 4	163,638.72	X	
Record Club Sales at Buy Sell				Sch. 8	778,638.72	X	
Ampex Rate Adj.				Acceleration	3,800.86	X	
Unreported Ampex Sales				Sch. 10	5,922.65	Part	Part
Ampex Rate Adj.				Sch. 11	3,781.11	X	
Incorrect Charge #1842				Sch. 12	45,198.67	X	
Special Accounting for #1842				Sch. 15	2,432.08	X	
Charges to Apple for Prom. Records				Questioned	-	No Comment	
Export Sales Unauthorized				Questioned	-	No Comment	
Ampex Accountings				Questioned	-	No Comment	
Canada & Mexico Not Examined				Stated	-	No Comment	
Price Out	\$1,422,841.80	\$135,810.74	\$32,718.65		\$3,206,312.18		
	Plus Accelerated Rates Retro to 9/1/71	Plus Accelerated Rates Retro to 9/1/71	Plus Accelerated Rates Retro to 3/1/73 Except 2 Pickups				

Note A: Klein stated to Len Wood that "Apple and Beatles are willing to recognize any recorded performance containing a Beatle performance automatically as a "Beatle" album, provided Capitol and EMI negotiate a new royalty basis immediately at the escalated rates.
 Note B: Klein demanded accelerated royalty rates from 9/1/71 to 3/31/72, which we estimated to be \$556,000. (This was one year earlier than the acceleration provision provided for.)
 Note C: Capitol agrees to accelerated royalty rates from 3/1/73 on (except for two pick-up albums).

COST OF ACCELERATED RATES

	Plus 3403 & 3404	<u>Total</u>
9/1/72 to 3/1/73 \$ 213,155.68	\$ -	\$ 213,155.68
3/1/73 to 5/31/77 <u>3,163,392.60</u>	<u>1,191,919.00</u>	<u>4,355,311.60</u>
<u>\$3,376,548.28</u>	<u>\$1,191,919.00</u>	<u>\$4,568,467.28</u>

Capitol's Claim for Default* \$ 560,000.00

Capitol's Claim for Storage for Apple (Calif.)** \$Not Determined

* See separate response to audit letter of 6/15/76 (Apple N.Y.)

** See separate response to audit letter of 6/15/76 (Apple Calif.)

LATHAM & WATKINS

ATTORNEYS AT LAW

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 485-1234

ORANGE COUNTY OFFICE

660 NEWPORT CENTER DRIVE, SUITE 1400
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (714) 752-9100

WASHINGTON OFFICE

1333 NEW HAMPSHIRE AVE., N. W., SUITE 1200
WASHINGTON, D. C. 20036
TELEPHONE (202) 828-4400

PAUL R. WATKINS (1899-1973)
DANA LATHAM (1898-1974)

CABLE ADDRESS LATHWAT
TWX 910 321-3733
TELECOPIER (213) 680-2098

January 27, 1981

RECEIVED

JAN 27 1981

BY MESSENGER

Capitol Industries, Inc.
1750 N. Vine Street
Hollywood, California 90028

Re: Apple Records, Inc., et al.
v. Capitol Records, Inc., et al.

Dear Bob:

Enclosed is a copy of a letter dated January 15, 1981 addressed to me to which is attached a copy of an earlier letter to Bhaskar Menon. I am also sending along with this letter the box of materials to which reference is made in the January 15th letter.

A brief glance at the audit materials makes it clear that someone there at Capitol, perhaps Hal Posner, should review these materials carefully (and soon) so that we can discuss the course of action which should be taken by Capitol. At some point, it would be advisable for us to get together and discuss the results of the enclosed audit; however, at this point I think it would make more sense to have our discussion after the financial review rather than before.

After you have had an opportunity to consider this material, I would appreciate your giving me a call so that I can get back to Mr. Gerber of Loeb and Loeb and at least give him some idea of what is happening at our end.

Very truly yours,

JOSEPH P. LOEB (1883-1974)
EDWIN J. LOEB (1888-1970)

WRITER'S DIRECT DIAL NUMBER:

629-0451

LAW OFFICES OF
LOEB AND LOEB
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ONE WILSHIRE BUILDING
SIXTEENTH FLOOR
WILSHIRE BOULEVARD AT GRAND AVENUE
LOS ANGELES, CALIFORNIA 90017
(213) 629-0200
(213) 278-7351

EXHIBIT F
PAGE 2 OF 4

CENTURY CITY OFFICE
10100 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067
(213) 552-7700

NEWPORT BEACH OFFICE
500 NEWPORT CENTER DRIVE
NEWPORT BEACH, CALIFORNIA 92660
(714) 759-1272

January 15, 1981

Alan Halkett, Esq.
Latham & Watkins
555 S. Flower Street
46th Floor
Los Angeles, California 90071

Re: Apple Records, Inc. et al.
v. Capitol Records, Inc. et al.

Dear Alan:

Enclosed for your clients' review are copies of the following audit materials delivered to Mr. Menon in London on January 6, 1981:

1. Investigation into EMI Limited on Behalf of Apple Corps. Ltd., Volumes 1 and 2;
2. The Beatles Examination of Capitol Records, Inc. and Capitol Records-EMI of Canada, Ltd. for Apple Records, Inc. (a New York Corporation) and Apple Corps., Ltd., Volumes 1 to 4;
3. Mr. Aspinall's letter transmitting items 1 and 2 to Mr. Menon.

We look forward to your clients' prompt response to the enclosed.

Sincerely,

David A. Gerber
for Loeb and Loeb

DAG:fmr
Enclosures

15 Jan
Murphy
F/11

27-81 MM

EMI Music Ltd.
30 Gloucester Place,
London, W.1.

January 6, 1981

Dear Bhaskar,

Audit reports analysing the value of the claims set forth in our various actions have been in preparation since your settlement offer lapsed on November 15, 1979. In the hope of resolving Apple's claims short of reactivating the actions I am submitting herewith copies of two such reports for your review. Please note that one of these reports requires supplementation as additional information from certain territories is obtained and the further audit reports in this connection will be submitted to you when completed.

You should also note that the audit report on Apple California governing non Beatles records released for North American distribution is not yet available. I will transmit a copy of the Apple California report to you as soon as it has been prepared.

The enclosed audit reports cover the period ending June 30, 1979. Even with this cut-off the reports disclose substantial claims beyond those that were the subject of our settlement discussions in 1979.

In view of the results of the audits, the terms of your settlement offer that lapsed in November 1979 are unacceptable. We are nevertheless quite willing to reinstitute settlement discussions with you based on the enclosed and the further reports which will follow. The enclosed audit reports are sent to you at this stage so that you may have ample opportunity to consider them with a view to your submitting written proposals within a short time of your receiving the further reports.

Please note that Apple reserves all claims respecting those territories for which final audit reports have not yet been completed.

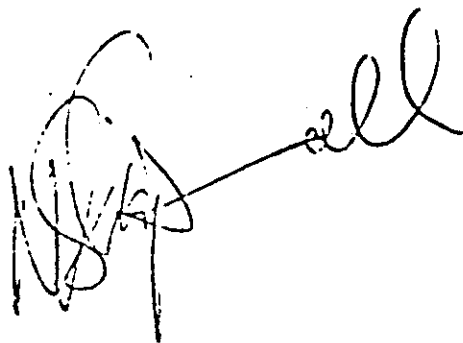
Continued/...

January 6, 1981

The enclosed audit reports as well as this transmittal letter are submitted for settlement purposes only and shall not be deemed to bind Apple to any substantive positions, whether factual or legal, should the actions be reactivated. For your convenience I have arranged for copies of this letter and the audit reports to be delivered to your office in Los Angeles.

I look forward to your prompt response.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Neil S. Aspinall", with a long horizontal line extending from the end of the signature.

Neil S. Aspinall