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**NOTE REGARDING COMMERCIAL AGREEMENTS**

**by Nicholas Rohlfing, consulting attorney to LMDA**

with Brian Quirt and Scott Horstein, co-editors, LMDA Sample Contracts

As part of my transactional entertainment law practice I have occasion to work with certain clients in the theatrical community who work on commercial productions—be it on- or off-Broadway, and in well-known and less well-known developmental and regional theaters—and who are not covered under any union’s collective bargaining agreement. As such, the contract terms for these clients can be all over the map. These agreements are in the “wild west” of theatrical contracts. One such group of “pioneers,” forming its new path in the commercial arena, is dramaturgs and literary managers. (Another group, which has been receiving some public attention of late, is associate choreographers and directors.)

As the role of the dramaturg has increased in importance to a play’s commercial development, so too has the dramaturg’s need to seek reasonable and fair contract terms in the commercial theater context. LMDA has done well, in my opinion, in providing guidance for literary managers and dramaturgs to negotiate their contracts in various contexts. Given the relative simplicity in some circumstances (often in non-profit settings) where a dramaturg is contracted, the DIY approach via LMDA’s Sample Contracts seems reasonable and cost-effective.

However, as I have worked recently with producers and general managers to establish a vocabulary to discuss, and productively negotiate, the agreement terms for dramaturgs and literary managers, the underdeveloped landscape of related commercial agreements has become apparent to me. In the commercial production context, the negotiated terms can potentially be very complex, including dense and intricate clauses covering royalties and royalty pools, subsidiary rights participation and income, rights of first refusal, termination, warranties and representations, indemnification, as well as a lot of other seemingly “boilerplate” language that could have unexpected negative consequences if not carefully reviewed and modified under the parties’ particular circumstances. As such, it is advisable to seek representation with experience in negotiating these sorts of agreements.

This evolution of commercial dramaturgy work is, of course, a good thing. But, any time there is a change in “the way things have been done” for decades, there is a period of adjustment that can at times be painful as the new normal is taking shape. This is the current situation in the commercial theater context for dramaturgs who are looking to negotiate fair and reasonable terms with producers. Given the potential complexity in the commercial realm, dramaturgs and literary managers should consider seeking representation to negotiate these agreements.

**Nicholas Rohlfing** is a transactional entertainment attorney who has practiced law for more than a decade. He represents a wide variety of clients in the areas of theater, film, television, music and new media. Nicholas began his career as a child actor at sixteen and after leaving his home state of Florida he spent ten years as an actor and director in New York City. He graduated *summa cum laude* with honors from the University of the South in Sewanee, Tennessee, is a member of *Phi Beta Kappa,*and received his J.D. in the music-rich town of Athens, Georgia, at the University of Georgia School of Law.  Nicholas has two teenaged sons and is married to actress Heidi Blickenstaff.

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