

748 F.2d 602, \*, 1984 U.S. App. LEXIS 15990, \*\*;  
1984-2 Trade Cas. (CCH) P66,311; 40 Fed. R. Serv. 2d (Callaghan) 954

National Independent Theatre Exhibitors, Inc. (NITE) is a trade association of independent movie theatre exhibitors who own and operate some five thousand screens in the continental United States. They formed NITE to protect and promote their interests. James Thomas Patterson, Sr., an independent theatre owner-operator, is NITE's president and a member of its board of directors.

In the early 1970's Independent theatres found themselves in a serious financial crisis. Faced with growing competition [\*\*3] from large circuit exhibitors, shrinking attendance, and rising film rentals, they found it difficult to obtain top quality films for exhibition. In 1976, NITE decided that the solution for this problem was to increase the supply of quality films to the independent distributors. A greater variety of movies, NITE assumed, would foster more vigorous price competition by all distributors, resulting in lower film rentals, and would permit the independent theatres to offer movies to their patrons that were not being shown by most of their competitors. In addition, the lower admission prices and greater variety would increase public interest in going to the movies. NITE concluded that the major film producers lacked the economic incentive to cure the supply problem it perceived and that it should enter the production and distribution market. NITE lacked the financial resources to take this step, however.

In an effort to raise the capital that would be necessary to finance the production of high quality films, NITE's board of directors, in April 1977, created a "Film Fund," to which its members could make donations, and gave Patterson the job of soliciting their contributions. He, in [\*\*4] turn, devised the following plan. NITE's member theatres would show several minutes of on-screen advertising before each feature film and contribute revenues generated by this advertising to the Film Fund. A board of advisors, chosen by the participating independent theatre owners, would select the movies the Fund would finance. The Film Fund would then contract with independent motion picture companies to produce the movies. The NITE members who participated in this voluntary screen advertising program would receive a discount on the rental of these movies in return for their contributions to the Fund. *Daily Variety*, a leading trade newspaper, reported on the NITE Film Fund in a front-page story on April 26, 1977. The story related strong interest in the program from film producers and exhibitors alike.

[\*605] In June 1977, NITE entered into a four-year contract with Cinemavision, Inc., a company engaged in the selling of on-screen theatre advertising, for the sale of advertising space on NITE's members' movie screens. The contract provided that at least fifty percent of the net revenues Cinemavision collected from its advertisers for the participating theatres would [\*\*5] be paid directly to the Film Fund. The contract required NITE to use its best efforts to solicit exhibitors to participate in the screen advertising program. NITE anticipated that its Film Fund would generate \$42 million from the program over the four-year contract period.

NITE's board of directors decided that the Film Fund should be organized as a separate legal entity and persuaded Patterson to incorporate Screen Advertising Film Fund Corporation (SAFFCO). SAFFCO in turn contracted with NITE and Cinemavision to administer the program. The contract provided that SAFFCO would receive the theatre contributions generated by the on-screen advertising and would retain two percent of these contributions as a profit margin to pay Patterson a salary. Cinemavision eventually

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