



Axanar Settlement Talks Fizzle, Seeking Summary Judgment

Axanar Surrogate Reveals Defense Plans to File Motion

By  Carlos Pedraza

See also: [Motions for Summary Judgment](#)

UPDATED Axanar and the studios suing it for infringing on Star Trek's copyrights were unable to reach a settlement before the November 16 cut-off for submitting motions for [summary judgment](#).

It became clear the defense planned to submit such a motion, which asks a judge to rule on the case on the merits, avoiding a time and expense of a jury trial.

That news came from the Fan Film Factor blog, written by Axanar surrogate Jonathan Lane, in which he revealed the defense would seek summary judgment from federal [Judge R. Gary Klausner](#).¹⁾

A settlement didn't appear imminent after a federal magistrate failed to file minutes from a November 14 settlement conference call that was to have taken place. That raised questions about whether the meeting even happened, and if was related to the deadline for filing motions.

The call two days before the deadline would have been the fourth court-mandated settlement conference between lawyers for Axanar producer [Alec Peters](#) and Star Trek's owners, [CBS](#) and [Paramount Pictures](#).

Table of Contents

- [Attending the Meetings](#)
- [Non-Negotiable Point](#)
 - [Filing for Summary Judgment](#)
- [Was Close to Settlement](#)
- [Settlement Conference](#)
 - [Earlier Discovery Motions](#)
 - [Earlier Settlement Efforts](#)
- [Terms of the Order](#)
 - [Private, Informal Conversations](#)
 - [Settlement Conference Statements](#)
 - [Prior Settlement Efforts](#)
 - [Damages](#)

After the first meeting, Peters appeared to make non-negotiable a demand that eventual settlement terms had to offer him the opportunity to satisfy donors by producing some form of *Axanar*.

Attending the Meetings

Federal magistrate Judge Charles Eick led a face-to-face meeting between plaintiffs CBS and Paramount, defendant Alec Peters, and their respective attorneys on October 31.²⁾



CBS and Paramount's lead attorney **Jonathan Zavín** attended the settlement conference November 10, his first time participating.

The follow-up November 4 conference call included only Eick and the attorneys for both sides in off-the-record conversations³⁾ intended to find some way to avoid taking the case through the time and expense of a trial currently scheduled to begin January 31, 2017.

Lead plaintiffs' attorney **Jonathan Zavín** of **Loeb & Loeb** was present for the November 10 call — his first attendance in the court-mandated settlement negotiations, joined by Loeb attorney David Grossman, who has authored most of the motions for CBS and Paramount in the case. **Erin Ranahan** represented Axanar.⁴⁾

Non-Negotiable Point

In his statement after the first conference call, Peters said negotiations would continue but had appeared to make little headway on his non-negotiable point, and that he remained prepared to go to trial:



Axanar producer **Alec Peters**.

Axanar Productions remains in negotiations to achieve a settlement with plaintiffs (CBS Studios and Paramount Pictures Corporation).

As we've stated from the beginning of this legal odyssey, we are willing to addresses the concerns plaintiffs raised with regard to the production of our Star Trek fan film **as long as we are allowed to make sure the story of Garth of Izar, the Battle of Axanar and the Four Years' War can be told in a way that meets the expectations set for thousands of fans and donors** through our crowdfunding

campaigns and award-winning, proof-of-concept production, *Prelude to Axanar*.

In the event we are not able to reach a negotiated accommodation with the plaintiffs, **we are prepared to pursue our fair use argument through the courts** in an attempt to clearly identify what we can and cannot do when we resume production of *Axanar*.⁵⁾

Filing for Summary Judgment

If the two sides proved unable to reach a resolution, observers aren't likely to know about it until some other court filing. The next deadline in the case is November 16, by which date motions, particularly for [summary judgment](#), are due. Such a motion would have the judge rule on the case short of going to trial.

Was Close to Settlement

Peters reported after the first meeting that the two sides "are close" to a settlement but cautioned Axanar fans to "manage their expectations.". He posted the following on Facebook:



Alec Peters > Axanar Fan Group OK all, just got home from the Court mandated settlement mediation. We did not reach a settlement but we are close. We will know by week's end, as the attorneys have a call with Judge Eick Friday. Everyone needs to manage their expectations. A settlement means neither side gets exactly what they want.⁶⁾

Eick issued the order October 17. This settlement conference was the means of [alternative dispute resolution](#) elected by all the parties to the [suit](#) in response to a [court order](#) in March.

Settlement Conference

In May, federal district [Klausner](#) directed both sides to work with Eick to explore resolving the case before moving to trial. The conference was meant to create space for informal discussions between the attorneys, parties, applicable insurance companies and the settlement judge, about any aspect of the lawsuit bearing on its settlement value.



DOWNLOAD magistrate Judge Eick's [order \(PDF\)](#) for the settlement conference, minutes for the [first meeting \(PDF\)](#), and the [first \(PDF\)](#) and [second \(PDF\)](#) follow-up conference calls that he oversaw.

Earlier Discovery Motions

Eick had earlier ruled on two discovery-related motions: one which granted the defense some but not all the [documents they sought](#) from the studios, and another which granted the plaintiffs new depositions and broader access to Axanar's financials after a trove of Peters' [undisclosed emails](#) were uncovered.

Earlier Settlement Efforts

Since the lawsuit was filed 10 months prior, [CBS](#) and [Paramount](#) representatives had met repeatedly with Peters and his attorneys to discuss possible settlement but those efforts appeared to [prove fruitless](#). The October 31 conference would mark the first time they met with a judge facilitating the meeting.

CASE STATUS **January 20, 2017** Axanar [settles](#) its copyright infringement lawsuit, admitting it overreached; both sides file for dismissal of the case in U.S. District Court. || **January 9** Judge holds final pre-trial conference with attorneys for both sides to set final terms for trial — also a last-ditch effort at settlement || **January 4** Judge throws out Axanar's fair use defense || *Up-to-the-minute news and views on* **Twitter** [@AxaMonitor](#)

Terms of the Order

Eick's order for the face-to-face meeting required:

- Both sides to have representatives with the legal authority to agree to a settlement without having to consult with a superior.
- Both sides to have the authority to agree to a monetary settlement to be proposed by the magistrate judge.
- Authorized representatives for the plaintiffs and defendants to accompany their attorneys to the conference.
- Attorneys for both sides to have explored the parameters of settlement with their clients well in advance of the settlement conference.

It is not known if the follow-up conference calls required similarly authorized individuals to be present.



LAWSUIT PRIMER Get an overview of the copyright lawsuit, including a timeline of the case, as well as downloadable pleadings made by the plaintiffs, CBS and Paramount, and defendants Alec Peters and Axanar Productions Inc. » [Lawsuit Primer](#)

Private, Informal Conversations

Interestingly, the settlement order gives notice that the magistrate judge has the discretion to privately converse off the record with each of the plaintiffs, defendants or their attorneys.

Settlement Conference Statements

Eick also directed the parties to submit five-page settlement conference statements by October 24; they were not obligated to share their statements with opposing counsel. The statements are supposed to recite the two sides' positions on issues about the facts of the case, applicable law and possible damages.


Prior Settlement Efforts

The statements also had to include the history of the parties' settlement negotiations to date, including:

- Details about specific demands and offers.
- Fully itemized damages.

The studios had so far not specified the basis on which they want to calculate damages against Axanar. Under copyright law, plaintiffs can opt for either actual damages caused by the alleged infringement or statutory damages of \$150,000 per instance of infringement.

Damages

The issue of calculating damages was a central part of the defense's discovery motion, and the reason behind Axanar attorney [Erin Ranahan](#)'s request for a half-century's worth of the studios' [financial records](#) regarding Star Trek. Eick [narrowed](#) that request to only the past seven years. 

Keywords

[parties](#), [lawsuit](#), [plaintiffs](#), [defendants](#)

¹⁾

["Confirmed: Axanar Defense Team Will File a Motion for Summary Judgment Later Today," Fan Film Factor](#) blog, Jonathan Lane, 11/16/16.

²⁾

Civil Minutes, Settlement Conference, Charles F. Eick, United States Magistrate Judge, 10/31/16.

³⁾

Civil Minutes, Settlement Conference Call, Charles F. Eick, United States Magistrate Judge, 11/4/16.

⁴⁾

Civil Minutes, Settlement Conference Call, Charles F. Eick, United States Magistrate Judge, 11/10/16.

⁵⁾

["Breaking - No News, No Settlement Yet in Axanar Lawsuit," Fan Film Factor](#) blog, 11/4/16.

⁶⁾

[Alec Peters post to Axanar Fan Group on Facebook](#), 10/31/16.

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