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WB wins 'We Are Marshall' ruling

Court rules McG film did not infringe on 'Ashes'

By **DAVE MCNARY**

A federal judge has ruled in favor of Warner Bros. in the copyright infringement case involving the studio's 2006 feature "We Are Marshall" and the 2000 documentary "Ashes to Glory, the Tragedy and Triumph of Marshall Football."

U.S. District Court Judge Gary Allen Feess ruled that the WB pic did not infringe on the doc. He granted summary judgment to Warner Bros. in a ruling Monday in Los Angeles.

Deborah Novak and John Witek, who produced the docu, had accused the studio and others associated with "We Are Marshall" of fraud, copyright infringement and breach of contract.

Feess said he agreed with Warner's contention that the two films are similar only in that both deal with the events surrounding the 1970 plane crash that killed 75 people including 37 football team members.

"Though the two works tell the story of the Nov. 14, 1970, airplane crash, that event, and the events that preceded and followed, are all matters of public record which cannot be copyrighted," the jurist wrote.

Feess also ruled against the breach of contract claim, noting that although Novak and Witek engaged in negotiations with Warner-based Thunder Road on a rights deal, the plaintiffs were unable to reach agreement.

"When the negotiations failed, plaintiffs attempted, without success, to sell the documentary to other production companies, indicating that they clearly understood that they had no agreement with any plaintiff," Feess said. "Plaintiffs cannot now, with the success of 'We Are Marshall' itself an historical fact, revive a claim that they never believed that they had in the first place."