LAMCO and ACEMLA's Legal Theory.

I. BACKGROUND.

Plaintiffs will request the Court to find the instant party liable for copyright infringement for all the songs that are not in their renewal term. The LAMCO party (heretofore "LAMCO" includes LAMCO, ACEMLA de PR, Raúl Bernard, Lucy Chávez and José Lacomba Colón) on the other hand asserts that it did not commit any infringement with regard to any of the songs authored by Guillermo Venegas Lloveras.

LAMCO's position was that Lucy Chávez owned 50% of all of her late husband's compositions through the local statutes dealing with the community property fund, independently of whether such songs have reached their renewal term or not. Guillermo Venegas Llovera's testament dealt with the third of free disposition (tercio de libre disposición) that has nothing to do with Mrs. Chávez's share of the marital assets. Clearly, the testament does not even mention anything about the music or about the copyrights of the deceased.

Furthermore, before the Arecibo Superior Court's decision (Case No. CAC 97-0421) was notified on October 20, 2000, LAMCO had already stopped licensing Guillermo Venegas Llovera's compositions. Actually, the last time LAMCO licensed any songs penned by Guillermo Venegas Lloveras was around October or November 1998, and was a license for "Génesis". However, LAMCO was convinced that Lucy Chávez was entitled to 50% of the copyrights for songs in their renewal term, and plaintiffs are precluded from seeking damages, for copyright infringement, based on "Génesis" or other renewal songs, against the LAMCO party.

Any monies that LAMCO was paid by the recording company known as Sonolux for the song "Desde Que Te Marchaste" and "No Me Digas Cobarde" were reimbursed to the latter in view of the existing double claims between the Venegas siblings and LAMCO. Such royalties have been held in escrow by Sony/Sonolux until ownership is resolved by this Court.

In the past, the Venegas siblings have also complained that LAMCO did not withdraw its registrations from the Copyright Office, after the Arecibo Superior Court issued its decision. However, the final decision of the Arecibo Superior Court (Case No. CAC 97- 0421) was issued on September 8, 2000, and notified on October 20, 2000, and the instant party knew that in spite of such decision, the widow still retained certain rights. What the Venegas siblings do not understand is that LAMCO could have not withdrawn from the Copyright Office any of the registered songs after this litigation was over, in view that all of those songs could have been in their renewal term.

Notably, all of the songs that were registered by LAMCO, about 80 songs, were previously distributed through phono-records by different recording companies, which means that it is more likely than not that each of those songs could have been published before 1978. If that were the case, the widow was entitled to 20% or 50% of those copyrights. At any rate, LAMCO had to wait for the end of the discovery process and the end of this litigation to identify all of the songs that might have been published or registered before 1978, thus susceptible to enter their renewal term after the death of the composer in 1993.

It is worth mentioning, that the parties to this action are still not sure which songs are in their renewal term. For example, there are about ten (10) songs of Guillermo

Venegas Lloveras that are claimed by a publisher known as Unichappel Music, Inc.[1] However, all of LAMCO's attempts to communicate with that publisher went unanswered, which, according to LAMCO's experience, it is the standard operating procedure of those multinational publishers: they simply force composers and small publishers to lengthy trials to win by attrition.(See Exhibit 1, Letter from LAMCO's counsel to Unichappel Music, Inc.). Due to that uncertainty, the Venegas siblings and the LAMCO party have stipulated that any renewal song that may be discovered in the future will be shared between the widow and the siblings depending on this Court's final decision on that novel issue.

In addition to the songs that may have reached their renewal term, the composer, himself, assigned eleven (11) songs to LAMCO through an agreement between ACEMLA and SPACEM, a defunct Puerto Rican authors' society. [2] Guillermo Venegas Lloveras was a founding member of SPACEM. The agreement authorized ACEMLA to include the SPACEM's works into its licenses for a term of five years. However, by virtue of such agreement, the composers who had not previously assigned their songs to a music publisher would assign their specific songs to LAMCO so that the latter could have standing to sue on behalf of the authors in order to protect the copyrights. (See exhibit 2 and 3, correspondence between Raúl Bernard, LAMCO's President, and Juán Santana, SPACEM's General Secretary). Not all of the composers assigned their songs to

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[1]The songs are: 1) "Tierra de Puerto Rico", 2) "Sigue Lloviendo", 3) "Sabes Tu Que Es Querer", 4) "Noche de Guajataca, 5) "La Tonadita", 6) "Cómo Está La Vida", 7) "Aventurera", 8) "Amor Diferente", 9) "Alejate" and 10)"Sabes Que Me Voy".

[2] The SPACEM songs were: 1) "Desde Que Te Marchaste", 2) "Sigue Lloviendo", 3) "No Me Digas Cobarde", 4) "Bahía", 5) "Amor de Una Noche", 6) "Soledad", 7) "Carabalí", 8) "Manos Blancas", 9) "Reclamo", 10) "Corazón" and 11) "Nos Conocimos".

LAMCO. However, Guillermo Venegas Lloveras specifically assigned 11 songs to LAMCO. The referenced agreement was discussed verbally, and subsequently ratified and signed by the composer (See Exhibit 4, List of songs signed GVL).[3]

Eventually, SPACEM was dissolved but its members' compositions remained represented by ACEMLA and by its other competing performing right societies. LAMCO, a music publisher, retained ownership over the songs that were specifically assigned to it by some of the composers. By virtue of the foregoing, LAMCO owns the following songs authored by Guillermo Venegas Lloveras in addition to the songs that have and will enter their renewal term: 1) "Desde Que Te Marchaste", 2) "Sigue Lloviendo", 3) "No Me Digas Cobarde", 4) "Bahía", 5) "Amor de Una Noche", 6) "Soledad", 7) "Carabalí", 8) "Manos Blancas", 9) "Reclamo", 10) "Corazón" and 11) "Nos Conocimos".

It should be clarified that the eleven (11) SPACEM songs were not reviewed in the first phase of the trial, nor in any trial for that matter. The first phase of the trial

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[3] In Eden v. Florelee, 697 F.2d 27, 36 (2nd Cir. 1982) the court explained that:

> "[A]n informal grant of an exclusive license seemingly must fail in light of the statute of frauds provision of the new Act, which states that an exclusive license 'is not valid unless an instrument of conveyance, or a **note** or memorandum of the transfer, is in **writing** and **signed** by the owner of the rights conveyed. . . .' *17 U.S.C. § 204*(a) (Supp. IV 1980). However, since the purpose of the provision is to protect copyright holders from persons mistakenly or fraudulently claiming oral licenses, the '**note** or memorandum of the transfer' need not be made at the time when the license is initiated; **the requirement is satisfied by the copyright owner's later execution of a writing which confirms the agreement**.(Emphasis added) See Dan-Dee Imports, Inc. v. Well-Made Toy Mfg. Corp., 524 F. Supp. 615, 618-19 (E.D.N.Y. 1981);[**19] 3 M. Nimmer, supra, § 10.03[A], at 10-34 (1982); cf. Khan v. Leo Feist, Inc., 165 F.2d 188, 191-92 (2d Cir. 1947) (A. Hand, J.) (applying British law)."

involved only songs in their Renewal Term and the Arecibo case involved songs that had not been previously assigned by Guillermo Venegas Lloveras to any publisher so were part of his patrimony and transferable by will. The SPACEM and Peer songs were not ever reviewed in the Arecibo case nor in the first phase of this Trial.

Mrs. Lucy Chávez had a responsibility to protect her husband estate's copyright not only as a widow, but as an executrix of the estate. That is exactly what she did by assigning her share of the copyrights to LAMCO. Actually, LAMCO as an assignee had a responsibility to register the copyrights in addition to license and promote the music. The appearing parties have been in business for close to 25 years and are in better position to administer the copyrights that any of the Guillermo Venegas' heirs. In fact, the songs of Guillermo Venegas Lloveras commenced to generate thousands of dollars in royalty payments after being licensed by LAMCO. As an example, in 1998 the Venegas siblings unilaterally licensed the song "Génesis" utilized in a television add developed by Sprint for only $8,000.00. LAMCO would have obtained approximately $25,000.00 for the same commercial. In addition, all the royalties produced by "Desde Que Te Marchaste" arise from an agreement that LAMCO diligently executed with Sonolux.

II. ARGUMENT.

1. The Authorization of a Possibility to Perform is not Copyright Infringement:

The aforementioned explanation means that plaintiffs only cause of action against LAMCO and ACEMLA would be the alleged ACEMLA authorization to five radio stations for the **possibility of performing** Guillermo Venegas Lloveras' works to which the widow holds no rights or that were not assigned to LAMCO by the composer.

Plaintiffs, however, have not demonstrated that any of the songs that are not part of the renewal term or assigned works have been performed by any of the radio stations that acquired ACEMLA's blanket performance license. "In order to show copyright infringement, a plaintiff must establish five elements: (1) the originality and authorship of the works involved, (2) compliance with the formalities of federal copyright law, (3) rightful proprietorship of the copyrights at issue, (4) **that the copyrighted works were performed publicly for profit**, and (5) a lack of authorization by the owner or the owner's representative for the alleged infringer to publicly perform the works."(Emphasis added) Hulex Music v. Santy, 698 F. Supp. 1024, 1029 (D.N.H. 1988). Plaintiffs have not complied with each of the five aforementioned requirements. See also Merrill v. County Stores, Inc., 669 F. Supp. 1164, 1168 (D.N.H. 1987). Concrete Machinery Co. v. Classic Lawn Ornaments, Inc., 843 F.2d 600, 605 (1st Cir. 1988)(To prevail on a claim of copyright infringement a party is required to show two elements: (1) ownership of a valid copyright and (2) **copying or reproduction of the protected work by the alleged infringer**.)

Since plaintiffs have failed to identify any performance of any specific song owned or claimed to be solely owned by the Venegas siblings they can not possibly claim that ACEMLA has authorized or licensed any specific performance. All that plaintiffs could allege is that ACEMLA authorized the **possibility of performing** any of the Guillermo Venegas Lloveras' composition. A "possibility" is simply not enough. There has to be an actual real performance to prove infringement. In a nut shell, plaintiff are claiming that ACEMLA authorized five (5) radio stations to play the songs of Guillermo Venegas, but that they do not know if the radio stations ever performed them

or not. It is evident that plaintiffs, one more time, are placing the cart before the horse !!! See Danjaq, S.A. v. MGM/UA Communications, *Co.*, 773 F. Supp. 194, 201-202 (C.D. Ca. 1991), aff'd, 979 F.2d 772 (9th Cir. 1992), and 3 Nimmer on Copyright at § 12.04(A)

The identification of the specific performance is an indispensable requirement in view that the radio stations do not have the whole universe of music in their archives. Accordingly, it would not even be a possibility to perform a composition affixed to a phono-record that is not in the possession of the broadcaster. Since it has not been established that ACEMLA licensed any specific song, it could not be deemed to have utilized or authorized the works owned by the Venegas siblings. See, Repp v. Webber, 914 F. Supp. 80 (S.D.N.Y. 1996); CMAX/Cleveland, Inc. v. UCR, Inc., 804 F. Supp. 337,351,357 (M.D. Ga. 1992); and Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 435 n. 17 (1984).

Plaintiffs copyright infringement claim cannot possibly stand. For instance, plaintiffs brings their claim under a **"Pau"** or an unpublished registration of copyright. While an unpublished musical work could certainly be infringed through a public performance interpretation, for example a concert, an "unpublished" musical work in a phono record which has not been released to the market is not capable of been infringed by a radio station, particularly if the song is not available in compact disk format. To have the possibility of been infringed such recording must be first available within the marketplace, become very popular and be available for performance to a radio station. Musical works even when published, must be very popular for a radio station to obtain air play Moreover, the approximately 80 musical works diligently registered by LAMCO were found in six or seven very old vinyl phono records. Of these works, only "Génesis"

and "Desde Que Te Marchastes" had achieved some popularity in past years and could have been performed in radio stations.

Based on the above, it is impossible to determine if ACEMLA has committed copyright infringements or has violated a copyright owner's exclusive rights as set forth in § 106. To wit, the right to 1) reproduce, 2) prepare derivative works, 3) distribute, 4) perform and 5) display the copyrighted work or expression. Furthermore, because plaintiffs, the Venegas siblings, do not own an extensive catalog nor has ever licensed the performance of Guillermo Venegas Lloveras' musical catalog they will not be able to even prove "a potential for harm to the market for or the value of the copyrighted work. 3 M. Nimmer, Copyright § 13.05[E][4][c], p. 13-84 (1983)." Sony Corporation of America et al. v. Universal City Studios, Inc., et al. 464 U.S. 417, 482 (1984), much less to prove actual damages.

No radio broadcaster has ever raised an issue over a possible conflicting transfers of rights between ACEMLA and the Venegas siblings, therefore, there is no feasible way that ACEMLA has ever tampered with the market for the works owned by plaintiffs or that ACEMLA has caused any actual damages to any of the Venegas siblings. More over, the only known radio station that has raised an issue of conflicting transfers of rights involving Guillermo Venegas Lloveras' compositions, has only included in the controversy the Venegas siblings and BMI, not ACEMLA de PR.

All that plaintiffs could allege is that ACEMLA authorized the **possibility of performing** songs that were not in their renewal terms or that, as part of its license, ACEMLA included a brochure listing the name of Guillermo Venegas Lloveras accompanied by the title of the song "Desde Que Te Marchaste". (See Exhibit 5,

Brochure). That, by itself, does not constitute infringement of copyright; first, because ACEMLA indeed is entitled to represent certain songs of Guillermo Venegas Lloveras that may not in their renewal term, specifically, "Desde Que Te Marchaste", and second, because "[a]s a statutory matter, 17 U. S. C. § 101 does not afford protection from copying to a collection of facts that are selected, coordinated, and arranged in a way that utterly lacks originality." Feist Publications, Inc. v. Rural Telephone Service Co.,Inc. 499 U.S. 340, 363 (1991). Moreover, "Titles are not subject to copyright protection. Any casual check of the ASCAP or BMI indexes or of the Copyright Office records will reveal numerous instances of title duplications." Krasilovsky, William M. and Shemel, Sydney, This Business of Music, p. 377-78 (Billboardsbooks, An Imprint of Watson-Guptill Publications, 7th Edition, New York, N.Y.) 1995.

It is quite apparent that ACEMLA has not exploited nor interfered with plaintiffs' market of non-renewal songs; plaintiffs have not been impeded by ACEMLA from collecting performing right royalties for their non-renewal songs; defendants have not made any profits from the non-renewal compositions nor from any work that were not specifically assigned to LAMCO by Guillermo Venegas Lloveras; ACEMLA has not ever asked for royalties to any broadcasters in reference to any specific non-renewal song authored by the late composer; and that Section 101 does not afford copyright protection to a list of song titles or authors.

2. Even If the Authorization of The Possibility To Perform Were To Be Found Copyright Infringement, The Violation Is So Trivial That the *De Minimis* Doctrine Applies.

Any possible conceptual copyright infringement that could arise from authorizing the possibility of performance of any non-renewed songs could not survive the *de minimis* theorem. "The legal maxim '*de minimis non curat lex*' (sometimes rendered, 'the law does not concern itself with trifles') insulates from liability those who cause insignificant violations of the rights of others.... First, *de minimis* in the copyright context can mean what it means in most legal contexts: a technical violation of a right so trivial that the law will not impose legal consequences." Faith Ringgold v. Black Entertainment Television, Inc., 126 F.3d 70, 74 (2nd Cir. 1997).

Finally, the inclusion of the name of Guillermo Venegas Lloveras in ACEMLA's license bears nothing in the sale or negotiations of its blanket license. First, 84 titles is a small fraction of ACEMLA's catalog. Second, and more importantly, the fees charged for a blanket license have no relationship to the amount or quality of titles in a music catalog:

> "Founded in 1914, ASCAP shares revenues equally between writers and publishers. It collects on the basis of a general license to stations for its entire catalog, **with the fee founded not on extent or use of music but on gross receipts of the station less some adjustments**, such as agency commissions and wire charges. Its basic rate amounts to somewhat under 2 percent of the adjusted gross receipts of stations. In distributing revenues to members, ASCAP pays an equal amount to publishers as a group and to writers as a group after an actual overhead deduction." Krasilovsky at p. 193 .

The above is exactly the market criteria used by ACEMLA in the blanket licensing of its catalog. Had the radio stations been authorized to perform only the songs that have entered their renewal terms or assigned by Guillermo Venegas Lloveras to LAMCO, **the price of the performance license would have remained exactly the same**. The Honorable Court is reminded that a blanket performance license includes the whole music catalog of a performance right society. **More over, many of the songs in**

controversy have been licensed through ASCAP and BMI, thus could not have been licensed through ACEMLA.

The two (2) most popular songs authored by Guillermo Venegas Lloveras were "Génesis" and "Desde Que Te Marchaste". It is really impossible to know how many times those songs has been performed in the three (3) or five (5) radio stations licensed by ACEMLA from 1999 to 2003, however, they certainly were not the most popular songs in the instant parties' catalog. Plaintiffs have failed to demonstrate that such songs were ever played by the radio stations that acquired ACEMLA's blanket performance license.

ACEMLA currently licenses only 3 radio stations. Some of those radio stations have not even paid royalties, but have accumulated a debt. However, most radio stations have declined to accept ACEMLA's licenses because they claim that they already have licenses from ASCAP and BMI.

In sum, even though Lucy Chávez, thus LAMCO, have been found not to be the owners of many songs of Guillermo Venegas Lloveras it does not mean that they are guilty of infringements with regard to said songs. All the licenses issued were under a good faith assignment from Lucy Chávez's, the widow, to LAMCO. Actually, Mrs.Lucy Chávez, will be the only known widow by LAMCO that will not be entitled to a share of all of her deceased husband's copyrights. All of the other widows in Puerto Rico are currently sharing their late husbands' copyrights with the late composers' siblings.

3. Defendant José Lacomba Colón Was Just One of LAMCO and ACEMLA's Employee.

In regard to José Lacomba, he was just one of LAMCO and ACEMLA's employees who took the assignment to Lucy Chávez. He has no knowledge of copyright law or any law for that matter. He was simply an employee who did what he was told by the corporation. Mr. Lacomba did not control the company nor its operation nor he had decision power in the administration of the copyrights. LAMCO proposes that, at most, plaintiffs may have an action of vicarious liability against the company, however, no actionable cause of action exists against José Lacomba.

4. The Rights of the Widow over her late husband's compositions is a novel issue that have never been reviewed by the local courts nor by the Puerto Rico Federal District.

This issue has been briefed extensively in the first phase of the trial and in LAMCO's motion for reconsideration and reply to Plaintiffs' opposition for reconsideration. However, in order for the Court to fully understand the appearing parties position, the legal background needs to be clearly established. LAMCO and Lucy Chavez have explained that "[f]irst, Guillermo Venegas Lloveras' testament did not mention anything about music (the word was not even included in the will), and second, the Puerto Rico state laws which determine division between the widow and the children for purposes of **intestate** succession are in direct conflict with Section 203. Under Puerto Rico common law the widow is not entitled to share in the late husband's copyrights, however under Section 203 of the Copyright Act she will own 50% of the copyright once the termination right has been exercised after 35 years have passed since any particular assignment was executed by her late husband. Of course, under §304(c) such termination would apply after 56 years from the date the copyright was secured." LAMCO's reply to GVL opposition to motion for reconsideration at p. 4.

Through the times the Copyright Act has sustained various amendments in favor of the family (widow and children), particularly those related to the renewal and termination rights under Section 304. The renewal rights statutes "[r]ead in conjunction with the language and purpose of Section 304(c) -- a provision in which references to the author are always followed by the terms 'widow' and 'children' -- this legislative history offers no support for the elevation of the [mistress]' interests over the termination rights of [the author]'s family. Larry Spier, Inc. v. Bourne Company, 953 F.2d 774, 779 (2nd Cir. 1992) Furthermore, "[w]ith the new property right created by Section 304(c) comes an increased power on the part of the family to recapture that right." Id at 779. "As amicus The Songwriters Guild points out, the old 1909 Copyright Act's Section 28 attempted to protect the author's family by having the renewal rights simply revert back to the widow and children notwithstanding an assignment by the author of the copyright itself. Id. "The Register of Copyrights always understood this provision as operating to change the usual rules, under State laws, of succession to a deceased person's property. For example, it gives the right to obtain a renewal copyright to a deceased author's widow and children, even if the author purports to leave his rights to others in his will." Id

There is no doubt that Congress intended to benefit the family after the author's death, and that by family Congress was referring to the widow and the children. Accordingly, LAMCO has asserted that "[i]t is not logical that the widows are entitled to share in the renewal and termination rights independently of the existence of a will, but they will not be able to share the copyrights of other possible musical works which were not previously assigned by the composer to a publisher or any other third party. As Nimmer would put it, this predicament would 'produce a lack of uniformity in dealing

with copyright interests which would prove confusing to both purchasers and sellers of copyrighted materials, and might even lead to a form of domicile "shopping". Nimmer On Copyright, Vol. 3 §9.04[A][1] (See Exhibit 1)." LAMCO's reply to GVL opposition to motion for reconsideration at p. 5.

Under the foregoing legal scenario, that has never been analyzed, by the Puerto Rico courts, whether local or federal, is that LAMCO, the widow and the Venegas' siblings had to operate. Notably, the Venegas siblings licensed by themselves an advertising utilizing "Genesis" without counting with the widow. Thus, it is undisputed that Lucy Chavez and the Venegas siblings acted in good faith when both parties continued licensing Guillermo Venegas Lloveras' songs thinking that each of their legal theories was the correct one.

5. The LAMCO Party Offered To Relinquish All Its Rights In Favor of The Venegas Siblings in 2001, But The Offer Was Rejected.

There is one important fact that this Court must be made aware of. The litigation against the LAMCO party could have been terminated almost two (2) years ago. Some time around December of 2001, Lucy Chávez developed a nervous break down. As a consequence, the LAMCO and ACEMLA de PR corporations considered to relinquish all of their rights, **including the renewal songs**, in favor of the Venegas siblings. In their *Opposition To Request To Strike Answers of Lucy Chávez*.(¶ 4) (Dkt. No. 22, 12/26/01), the instant party stated: "Codefendants wish also to inform the Court that they are willing to settle the case and transfer to the Venegas children all the music composed by Guillermo Venegas Lloveras. The appearing parties believe that she eventually prevail if this case continue its course, however Mrs. Lucy Chávez is getting emotionally drained,

and from an economical point of view this litigation may end up costing more to her that the financial return that she may earn by licensing the musical works at bar."

In spite of such generous offer, the Venegas siblings decided to continue the litigation against the LAMCO party making the widow, LAMCO and ACEMLA waste more money and effort. Notably, about one month and a half ago, and after this Court decided that the composers' widows have renewal rights, independently of local testamentary provisions, plaintiffs offered to settle the case, but only with Lucy Chávez. who is no longer the legal owner of the copyrights. The Venegas siblings declined to settle with LAMCO, ACEMLA de PR, Raúl Bernard and José Lacomba. **Plaintiffs' settlement "offer" was for Lucy to relinquish all of her beneficial rights over the renewal copyrights**.

III CONCLUSION:

The LAMCO party proposes that plaintiffs have not an actionable cause of action for copyright infringement. At most, they may have a right to an accounting of royalties for the song "Génesis" which is a renewal song and was licensed by LAMCO and ACEMLA in 1998 through a retroactive agreement reached with Banco Popular, covering the 1993-1998 period. Of course, the appearing parties also have a right to an accounting of the Venegas siblings licensing of an advertisement to Sprint. The authorization to the possibility of performance falls squarely within the *de minimis* doctrine, specially when LAMCO and ACEMLA have rights over all of the renewed songs, and the inclusion of the non-renewed songs had not nor will change the price of ACEMLA's blanket license.

Furthermore, LAMCO has not collected any royalties since 1998 from the song "Génesis" which is a renewal song or for any non-renewal song. It is also worth pointing out that the issue of whether the widows have rights over her late husband's copyrights was a novel issue never considered by the local courts nor by the United States District Court for the District of Puerto Rico. In addition, LAMCO has always asserted rights over the song "Desde Que Te Marchaste", a non-renewal song, pursuant to a verbal agreement directly with the composer that later was ratified by him. **Finally, and probably most important, the appearing parties had to wait for the termination of this litigation and probably a future one against Unichappel Music, Inc. to determine all the songs that have or will enter into their renewal term**.

Plaintiffs have not interacted with any of the radio stations that have been licensed by ACEMLA de PR, thus their market for non-renewal songs could have not possibly being affected by LAMCO's ownership claims.

In view of the foregoing, the appearing parties respectfully request the Court to deny the Venegas siblings claims for copyright infringement against Lucy Chávez, LAMCO and ACEMLA.

III. STIPULATED FACTS

A. Stipulated Facts Between Plaintiffs and LAMCO Parties

1. Defendants ACEMLA and Bernard issued five 5 blanket performance licenses to five (5) radio stations. The licenses would have allowed the radio stations to perform any of the songs owned by LAMCO. However, the ACEMLA's performance blanket license does not specifically mention any song, instead a brochure list of composers affiliated to ACEMLA was provided to the various broadcasters. ACEMLA currently licenses only 3 radio stations. ACEMLA was paid approximately a total $117,261.17 from 1998 to 2002 for these licenses, which is within the applicable statute of limitations.

2. LAMCO and ACEMLA issued a retroactive license to BPPR on November 6, 1998. This license included a mechanical license for *Genesis* for BPPR Christmas Special's CD and video. The total mechanical and synchronization royalties paid by BPPR to LAMCO was $16,363.47. The total performance royalties paid to ACEMLA de PR was $260,432.10, however, this included *Genesis* and the entire ACEMLA's catalog, for the 1993-1998 period.

3. LAMCO issued a mechanical license to Sonolux for the song "Desde Que te Marchaste" and "No Me Digas Cobarde", which was terminated on or about July 23, 1998 due to the Venegas siblings double claims. Sonolux paid a total of $67,912.92 to LAMCO for this license, however, these monies subsequently were reimbursed to Sony/Sonolux. Specifically, Sonolux deducted the same sum from other royalties due and payable to LAMCO.

4. The Venegas siblings licensed a television advertisement for Sprint in 1998 utilizing the song "Genesisis" . Sprint paid a total of _____ to the Venegas siblings for this license.

5. LAMCO registered the following songs which are not in their renewal term:

(1) *Desde Que Te Marchaste, (LAMCO's Registration PA 948-669, 3/19/99)*
(2) *Sigue Lloviendo, (Unichappel Music, Inc.also claims ownership)*
(3) *No Me Digas Cobarde, (LAMCO's Registration PA 835-281, 1/8/97)*
(4) *Bahía (LAMCO's Registration PA 946-618,3/19/99)*
(5) *Amor de Una Noche (LAMCO's Registration PA 946-618,3/19/99)*
(6) *Soledad (LAMCO's Registration PA 946-618,3/19/99)*
(7) *Carabalí (LAMCO's Registration PA 946-618,3/19/99)*
(8) *Manos Blancas (LAMCO's Registration PA 946-618,3/19/99)*
(9) *Reclamo (LAMCO's Registration PA 946-618,3/19/99)*
(10) *Corazón, and*
(11) *Nos Conocimos. (LAMCO's Registration PA 835-281, 1/8/97)*

LAMCO's claim of ownership depends upon a document signed by GVL during his lifetime.

6. Plaintiffs have a copyright registration no. PAU 2-506-884. This registration includes all of the above songs claimed by LAMCO. In addition, it includes 186 songs not in their original term. LAMCO has registered 84???? songs under the following copyright registration nos…..

7.Lucy Chávez assigned all her copyrights to LAMCO on October 16, 1996.

8. Lucy Chávez initiated an action in the local courts on October 20, 1997, requesting declaratory judgment as to the proper division of the inheritance of her late husband, Guillermo Venegas Lloveras.

9. The decision of the Arecibo Superior Court (Case No. CAC 97-0421) was issued on September 8, 2000, and notified on October 20, 2000.

10. Plaintiffs claim against Lucy Chávez, LAMCO, ACEMLA, Raúl Benard and José Lacomba was brought on February 21, 2001 under Civ. No. 01-1215(JAF).

11. The United States District Court for the District of Puerto Rico's Opinion and Order granting renewal rights to the widows for their late husbands' copyrights was issued on June 20, 2003. (Dkt. No. 50).

B. Facts Stipulated by All Parties

IV. Disputed Facts

V. Exhibits

Parties will provide a list along with exhibits at trial.

VI. Depositions

VII. Points of Law

LAMCO and ACEMLA Defendants' Points of Law:

1. Whether any alleged act of the LAMCO and ACEMLA Defendants constitute an infringement of any of the Guillermo Venegas Lloveras' Songs.

2. Whether any act by the LAMCO and ACEMLA Defendants, if deemed an infringement of copyright, constitutes willful copyright infringement.

3. Whether LAMCO owns eleven (11) songs transferred by Guillermo Venegas Lloveras when he was a member of SPACEM.

X. Witnesses

LAMCO and ACEMLA will call:

1. Raul Bernard to testify on all actions involving LAMCO and ACEMLA.

2. Juán Santana to testify on the agreement between Guillermo Venegas Lloveras, SPACEM and LAMCO in regard to the eleven (11) SPACEM songs.