

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

MARIA, GUILLERMO, RAFAEL  
(ALL) VENEGAS HERNÁNDEZ, et al.  
Plaintiffs,

Vs.

PEER, AND/OR PEER INTERNATIONAL  
CORPORATION, et al.  
Defendants.

CASE No: 01-1215(JAF)

COPYRIGHT INFRINGEMENT,  
AND DAMAGES

Supplement to LAMCO and ACEMLA's Proposed Statement of Facts.

On December 19, 2003, all the parties involved in the captioned case submitted their proposed statements of facts and conclusions of law. Notwithstanding, before the commencement of the Second Phase of the Trial, Plaintiffs, LAMCO and ACEMLA agreed to submit to the Court 10 stipulations of facts. The purpose of the stipulations of fact is well known: to save time and effort to all the parties involved in the litigation and to the Court. If certain important facts are stipulated there is no need to spend further time during trial trying to establish or proving them.

One of such important stipulations agreed by the parties, was the fact that Banco Popular de Puerto Rico paid ACEMLA \$260,432.10 in retroactive performance royalties, covering the 1993-1998 period, for the ACEMLA's entire catalog. Specifically, stipulation No. 2 stated as follow:

2. LAMCO and ACEMLA issued a retroactive license to BPPR on November 6, 1998. This license included a mechanical license for *Genesis* for [the 1993] BPPR Christmas Special's CD and video. The total mechanical and synchronization royalties paid by BPPR to LAMCO was \$16,363.47 [for that song]. The total performance royalties paid to ACEMLA was \$260,432.10, however, **this included *Genesis* and the entire ACEMLA's catalog from the period of 1993-1998.** (Emphasis added).

After the trial was over, Plaintiffs indicated in their findings of facts and conclusions of law that ACEMLA was paid approximately \$45,405.36 in performance royalties by Banco Popular de

Puerto Rico in account of the song "Génesis". That allegation is not only blatantly false, but it contradicts the stipulations of facts agreed by Plaintiffs, LAMCO and ACEMLA before trial.

From 1993 to 1998, Banco Popular only utilized songs owned by LAMCO in three (3) out of its six (6) Christmas' Special:

1. Christmas' Special of 1993: Un Pueblo Que Canta

1. "Génesis" (by Guillermo Venegas Lloveras)
2. "Madrigal" (by Felipe Rosario Goyco a/k/a "Don Felo")
3. "Mi Jaragual" (by Felipe Rosario Goyco a/k/a "Don Felo")
4. "Ojos Chinos" (by Kito Vélez)

2. Christmas' Special of 1994: El Espíritu de Un Pueblo

1. "Dame la Mano Paloma" (by Luis Morales Ramos)
2. "Cortijo Bailables" (by Catalino "Tite" Curet Alonso)
3. "Tiempo Perdido" (by Catalino "Tite" Curet Alonso)
4. "Las Caras Lindas" (by Catalino "Tite" Curet Alonso)

3. Christmas' Special of 1995: Somos Un Pueblo

1. "Un Jibaro Terminao" (by Baltazar Carrero)

4. Christmas' Special of 1996: Al Compas de Un Sentimiento (In Homage to Pedro Flores)

No songs owned by LAMCO or licensed by ACEMLA were utilized.

5. Christmas' Special of 1997: Siempre Piel Canela (In Homage to Bobby Capó)

No songs owned by LAMCO or licensed by ACEMLA were utilized.

6. Christmas' Special of 1998: Romance del Cumbanchero (In Homage to Rafael Hernández)

No songs owned by LAMCO or licensed by ACEMLA were utilized.

The performance royalties paid by Banco Popular for the 1993-1998 period not only covered the songs included in their Christmas' Special, but any song, owned by LAMCO, that Banco Popular may have performed or transmitted in any of its bank branches through out the Island. The license also included any song, owned by LAMCO, that Banco Popular could have re-transmitted from any radio stations signal through any of its branches. The performance rate set by ACEMLA was a minimal monthly fee charged per bank branch. The rate was lightly increase every year from 1993 to 1998. Attachment A of Exhibit 1, included herein, demonstrate the rate applicable and payment allocated for each year from 1993 to 1998. The rate paid by Banco Popular for the year 1999 was equal to the rate paid in 1998. See agreement between Banco Popular and ACEMLA for the year 1999 and beyond, identified as Exhibit 2. Of course, ACEMLA did not know which songs Banco Popular was going to utilize in the 1999 Christmas Specials, and much less the songs that were going to be utilized in the 2000 Christmas Specials, however it was inconsequential in view that the license was not for the Christmas Specials, but for the performance of any song, owned by LAMCO, through the different Banco Popular's branches. On March 30, 1999, Banco Popular paid ACEMLA \$48,548.04 in performance rights for the latter's entire catalog. (See Exhibit No. 3.)

Clearly, the song "Génesis" was only utilized in the Christmas' Special of 1993, Un Pueblo Que Canta, and the retroactive performance license for the 1993-1998 period included ACEMLA's entire catalog, not just nine (9) songs. Furthermore, even though "Génesis" was used in the Banco Popular 1993 Christmas' Special, it was not a popular song frequently broadcasted by radio stations during 1993. In fact, according to Banco Popular, the Christmas Special of 1993, Un Pueblo Que Canta, only sold 10,015 compact dicks; 9, 837 cassettes and 39,002 videos from 1993 up to 1998.

To support their new allegation that ACEMLA was paid close to \$45,405.36 for the

performance of "Génesis", Plaintiffs utilized a letter written by LAMCO's former attorney, Mr. Eugenio Romero, to Banco Popular.<sup>1</sup> (See Exhibit I). The referenced letter was used by Plaintiffs during trial to "refresh" the memory of a witness and was not included as part of the Trial's exhibits.

In such letter, Mr. Romero wrote by mistake:

"The cost for the Execution License are payable to ACEMLA de P.R., Inc., for any other work within the ACEMLA catalogue contained in the production of "Un Pueblo Que Canta" (1993), "Espíritu De Un Pueblo" (1994) and "Somos Un Pueblo" [1995] for the years between and including 1993 and 1998." (Exhibit I, Letter at p.1)

Plaintiff do not realized that the letter also stated:

"We also take this opportunity to affirm the commitment by ACEMLA de P.R., Inc., and/or LAMCO, Inc. towards Banco Popular to, beginning in 1999, renew from year to year, the Execution License for compositions included in its catalogue at a rate to be set by ACEMLA and/or negotiated by the parties." (Exhibit I, Letter at p.2)

It should be noticed that attachments A and B of the letter identified as Exhibit I itemized the payment for performance royalties, and since such payment covered the entire ACEMLA's catalog no specific song was itemized or mentioned. Contrary to the performance royalties, the phono-mechanical and synchronization rights are paid for specific songs. That is the reason why attachment F of the letter specifically stated the number of compact disks (10,015), cassettes (9,837) and video tapes (39,002) sold for the song "Génesis".

Plaintiffs argument seem to suggest that ACEMLA valued the performance of the songs utilized in the Christmas Special equally. That is not the case. If the phono-records and video tapes sold could be somewhat representative of the public performance of the songs, there is no question that "Un Jibaro Termina'o" (Attachment C, 1995 Special, compact disks (32,537), cassettes (32,208)

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<sup>1</sup>See Plaintiffs' Proposed Findings of Facts and Conclusions of Law at ¶¶183 and 345.

and video tapes (62,879)) and "Dame La Mano Paloma" (Attachment G, 1994 Special, compact disks (27,586), cassettes (27,586) and video tapes (70,368)) sold many more pieces than "Génesis", thus they could not possibly be assigned the same performance value.

Consequently, Plaintiffs' argument to simply divide \$260,432.10 between six (6) songs is simply too far fetched.<sup>2</sup> To start with, Banco Popular utilized nine (9) LAMCO songs for the Christmas Specials of 1993, 1994, 1995, and not only six (6) songs as Plaintiffs mistakenly believe. The agreement contained in the letter, did not mention three (3) songs written by Catalino "Tite" Curet Alonso whose phono-mechanical and synchronization rights were paid to LAMCO before the performance agreement was later on reached with ACEMLA on September 2, 1998. The three songs were "Tiempo Perdido", "Cortijo Bailables", and "Las Caras Lindas". (See Exhibit 4). Of course, the additional songs did not change the \$260,432.10 performance royalty payment since such payment already included them in view that the agreement with ACEMLA was for the entire catalog.

The appearing parties are well aware that it is not customary to supplement proposed conclusions of law. However, since Plaintiffs have unilaterally amended the stipulations of facts agreed between the parties, LAMCO and ACEMLA have no alternative but to clarify the Venegas-LAMCO's stipulation no. 2 through this supplement. If Plaintiffs erroneously thought that ACEMLA was paid \$45,405.36 for the performance of "Génesis" it should have not agreed to stipulate the contrary. Otherwise, LAMCO and ACEMLA would have had the chance to introduce the foregoing evidence during trial. Quite frankly, Plaintiffs' new position is another unfounded allegation similar to the house-for-copyright argument desperately presented during the first phase

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<sup>2</sup> It should also be noticed that \$260,432.10 divided by six (6) equals \$43,405.35, and not \$45,405.36 as erroneously calculated by Plaintiffs.

of this trial.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 17<sup>th</sup> day of February 2004.

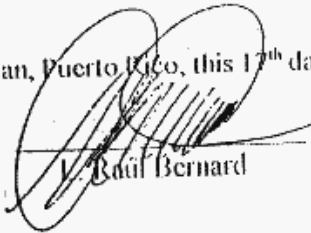
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By: 

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I Luis Raúl Bernard, a/k/a L. Raúl Bernard, of legal age, married, resident of San Juan, Puerto Rico, in my personal character and as president of Latin American Music Co., Inc. ("LAMCO") under the penalty of perjury, attest that the assertions, facts and every thing explained above represent the truth based on my personal knowledge and honest belief, and upon information based on the corporate records of LAMCO and on the examination of the documents and records submitted by the parties in this case.

Signed under the penalty of perjury, in San Juan, Puerto Rico, this 17<sup>th</sup> day of February 2004.

  
L. Raúl Bernard