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# Hughes Hubbard & Reed

## Firm Wins Appeal for BMI and Spanish Broadcasting System

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**October 19, 2021** – Hughes Hubbard obtained affirmance of an award of attorney fees for Broadcast Music, Inc. (BMI) and Spanish Broadcasting System (SBS) before the U.S. Court of Appeals for the Second Circuit.

On Oct. 5, a three-judge panel of the Second Circuit upheld a lower court's decision to award the Spanish-language broadcaster and the music rights organization \$845,000 in attorney's fees and costs they spent in defending SBS against copyright claims brought by Latin American Music Company (LAMCO) and its affiliate Asociacion de Compositores y Editores de Musica Latinoamericana de Puerto Rico Inc. (ACEMLA). The panel agreed with the June 2020 order, ruling that LAMCO – a music publisher that claims to own the copyrights in works by numerous Puerto Rican and foreign artists – and ACEMLA failed to prove that the award should be adjusted based on their previous attorneys' misconduct.

LAMCO and ACEMLA filed suit in 2013 against SBS, eventually claiming infringement of 13 salsa songs. Miami-based SBS owns and operates 17 radio stations across the country, including the two at issue in the lawsuit: "Mega 97.9" in New York, the nation's top-rated Spanish-language radio station, and "La Zeta" in Puerto Rico. BMI indemnifies SBS for infringement claims based on songs in BMI's repertoire pursuant to SBS' license with BMI. HHR helped SBS obtain summary judgment dismissing seven songs, and the case then proceeded to trial on the other six. The plaintiffs sought \$150,000 for each alleged violation.

In April 2017, then-U.S. District Judge Richard Sullivan dismissed the case after trial, ruling that the plaintiffs "miserably failed" to offer any credible evidence of SBS' alleged infringement. The only evidence plaintiffs presented was the testimony of LAMCO's president, Luis Raul Bernard, which Judge Sullivan rejected as "incredible, self-contradictory, implausible and evasive."

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The Second Circuit panel opined that LAMCO offered no compelling reason to disturb Judge Sullivan's conclusions.

"Plaintiffs' post hoc explanations based largely on evidence that was never properly presented in the district court cannot render their claims objectively reasonable or non-frivolous at the time they filed and litigated," the panel wrote.

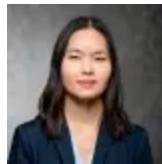
The court also denied LAMCO's attempt to ascribe blame to its former attorneys, crediting Judge Sullivan's findings that LAMCO had a "litigation strategy designed to extract settlements by imposing costs and litigation risks on defendants," and had been forced to pay attorneys' fees by other courts for bringing similar claims, regardless of the attorneys' conduct.

Jim Fitzpatrick, who argued the previous merits appeal to the Second Circuit and assisted in drafting the attorneys' fee briefs, and Grace Ha worked on this case.

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**James C. Fitzpatrick**



**Grace Ha**

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