

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES A. LEGGE,

CASE NO. C96-3913-CAL

LILA WATTS PREZIOSO, DIANE WATTS
LEHMAN, MARCIA WATTS AND RICHARD
WATTS, PLAINTIFFS,

VS.

JOAN WATTS TABERNIK, INDIVIDUALLY
AND AS EXECUTOR OF THE ESTATE
OF MARY JANE WATTS, DECEASED, AND
ANN WATTS,

SAN FRANCISCO, CALIFORNIA, THURSDAY, AUGUST 28, 1997,
1:30 O'CLOCK P.M.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFFS:

CANTERBURY & RAUB, 103 EAST BLITHEDALE, SUITE 1, MILL
VALLEY, CALIFORNIA 94941
BY: DAVID W. RAUB, ESQ.

FOR THE DEFENDANTS:

PHILLIPS & ERLEWINE LLP, ONE EMBARCADERO CENTER, 23rd
FLOOR, SAN FRANCISCO, CALIFORNIA 94111
BY: DAVID M. GIVEN, ESQ.

THE COURT: ALL RIGHT, COUNSEL. COULD YOU MAKE ROOM

FOR THE OTHERS, PLEASE?

THE CLERK: CALLING CIVIL 96-3913, LILA PREZIOSO, ET AL.
VERSUS JOAN TABERNIK, ET AL.

MR. RAUB: DOES THE COURT PERMIT THE PARTIES TO SIT AT
THE TABLE?

THE COURT: SURE. THAT'S FINE.

MR. RAUB: THAT'S GREAT, YOUR HONOR. DAVID RAUB
APPEARING ON BEHALF OF THE PLAINTIFFS.

MR. GIVEN: DAVID GIVEN FOR THE DEFENDANT, YOUR
HONOR. GOOD AFTERNOON.

THE COURT: ALL RIGHT. NOW, WE ARE HERE ON THE
DEFENDANTS' -- I'M SORRY -- THE PARTIES' CROSS MOTIONS
FOR SUMMARY JUDGMENT. I'VE GONE OVER THE MOVING
AND OPPOSING PAPERS, AND I'VE DONE MY BEST TO
TRANSLATE THIS THROUGH ALL THE FAMILY MEMBERS AND
THE VARIOUS TIME PERIODS AND WHAT RIGHTS AND ALL. SO
YOU FOLKS WANT TO ADD ANYTHING, FURTHER EMPHASIZE
ANYTHING?

MR. RAUB: YES, I WOULD, YOUR HONOR.

THE COURT: OKAY.....

THE COURT: COUNSEL, DO YOU WISH A REPLY?

MR. GIVEN: PLEASE. YOUR HONOR.

MR. RAUB: THANK YOU.

MR. GIVEN: AND I'LL BE BRIEF. I THINK WE HAVE SET OUT
OUR POSITION ADEQUATELY IN THE PAPERS. AND THIS IS A
UNIQUE CASE. I THINK WE'RE GOING TO MAKE SOME LAW IN
THIS CASE. I DO WANT TO FOCUS THE COURT ON THE
CATEGORIES OF LITERARY WORKS THAT ARE NOT AT ISSUE
HERE BECAUSE I THINK IT'S IMPORTANT THAT WE DO NOT ERR
ON THAT QUESTION.

THE COURT: WELL, I HAVE DONE MY OWN LIST SO LET ME --

LET ME SEE IF YOU AGREE WITH IT.

MR. GIVEN: OKAY. SURE.

THE COURT: I THINK ALL WORKS THAT WERE COPYRIGHTED AND RENEWED BEFORE MR. WATTS' DEATH ARE NOT AT ISSUE. THOSE PASSED IN 1973 UNDER HIS WILL TO MARY JANE WATTS.

MR. GIVEN: CORRECT. THAT WOULD BE THE PRE-1946.

THE COURT: ALL WORKS COPYRIGHTED AFTER HIS DEATH.

JANUARY 1ST, 1978.

MR. GIVEN: RIGHT.

THE COURT: AS TO MARY JANE WATTS.

MR. GIVEN: RIGHT. THOSE WOULD BE THE POSTHUMUS.

THE COURT: AND THEN, ALL WORKS COPYRIGHTED AFTER JANUARY 1ST, 1978.

MR. GIVEN: ALSO CORRECT BECAUSE THE LAW CHANGED.

THE COURT: ...ARE NOT SUBJECT TO RENEWAL.

MR. GIVEN: CORRECT.

THE COURT: I'M SORRY. ARE NOT AT ISSUE BECAUSE THEY WEREN'T IN THE TIME FRAME WHERE THAT COPYRIGHT RENEWAL STATUTE APPLIES.

MR. GIVEN: THAT'S RIGHT. THE RENEWAL STATUTE WAS ABOLISHED.

THE COURT: THEN, THERE'S A DIFFERENCE BETWEEN YOU AS TO WHETHER THE COPYRIGHT LAWS COVER THE FOREIGN COPYRIGHT.

MR. GIVEN: THAT'S RIGHT. AND THAT'S ON MY LIST, AND THE COURT INDICATED ITS POSITION AT THE FIRST HEARING WE HAD ON THIS MATTER, AND I EXPECT THAT THE COURT IS STILL --

THE COURT: THOSE ARE THE ONES THAT I THINK THAT WE ARE NOT TALKING ABOUT.

MR. GIVEN: YES. OKAY. THERE IS, I GUESS, A DISPUTE ON FOREIGN WORKS. AND I MADE OUR POSITION CLEAR ON IT. THE COURT INDICATED AT OUR LAST HEARING THAT THE COURT WAS INCLINED TO TREAT FOREIGN WORKS DIFFERENTLY THAN DOMESTIC WORKS.

THE COURT: YES.

MR. GIVEN: AND THEN, THE OTHER CATEGORY I HAVE -- AND I JUST WANT TO BE CERTAIN THIS IS CLEAR ON THE RECORD IS UNPUBLISHED WORKS, EVEN WORKS THAT ARE TO DATE UNPUBLISHED, PASSED BY WILL TO MARY JANE WATTS AND BY HER WILL TO HER INTENDED BENEFICIARIES.

NOW, THERE MAY BE SOME --

THE COURT: WELL, I GUESS THAT WOULD NECESSARILY FOLLOW BECAUSE IF THERE'S GOING TO BE ANY COPYRIGHT ON THOSE THINGS I DON'T KNOW IF THERE CAN BE AT THIS TIME ON OR NOT.

MR. GIVEN: RIGHT.

THE COURT: BUT EVEN IF THERE COULD BE THAT WOULD BE AFTER THE APPLICATION OF THAT STATUTE.

MR. GIVEN: CORRECT. BUT I WANT TO MAKE CLEAR THAT IS A CATEGORY, TOO, THAT IS NOT AT ISSUE HERE, AND THE RECORD SHOULD BE CLEAR ON THAT.

AS FAR AS THE BASIS FOR THE PLAINTIFFS' CLAIM, IT LIVES OR DIES ON THE STATUTE AT ISSUE-SECTION 304 (A) COPYRIGHT ACT. AND THE DESYLVA CASE -- AND I'M NOT HERE TODAY TO SAY THAT THE LAW AS THE PLAINTIFFS PROPOSE IS NOT THE LAW OF THE LAND. I HAVE SUGGESTED IN OUR OPPOSITION PAPERS THAT IT'S NOT GOOD LAW. AND THAT THE LAW HAS NOT BEEN THOROUGHLY THOUGHT OUT BY THE COURTS THAT HAVE CONSIDERED IT.

AND I BRIEFED THAT ISSUE, AND I SUGGESTED TO THE COURT A COPY OF REFERENCES THAT THE COURT MIGHT GO TO TO LOOK AT THAT QUESTION.

BUT I WOULD BE FOOLISH TO SAY THAT IT IS NOT THE LAW AT LEAST ON A DE FACTO BASIS. THERE IS AN ISSUE HERE WITH RESPECT TO THE SHARES, ASSUMING THAT THE PLAINTIFFS ARE CORRECT WHAT THE DIVISION AMONG THE PARTIES IN THIS CASE SHOULD BE PURSUANT TO SECTION 304 (A).

AND, AGAIN, THIS IS ONE OF THE UNIQUE ISSUES WE HAVE IN THIS CASE. THIS IS AN UNANSWERED QUESTION. THERE IS NO CASE LAW ON THIS POINT. AND I'VE SUGGESTED TO THE COURT THAT THE FOREMOST AUTHORITY ON THE ISSUE HAS SPOKEN TO IT. I'VE CITED THE SECTION OF NIMMER ON THAT ISSUE.

I'VE ALSO CITED SOME LANGUAGE FROM THE COPYRIGHT REGISTRAR'S REPORT FROM 1960 SUGGESTING THAT STATE LAW SHOULD APPLY AND THERE IS SOME DOVETAILING WITH THE DECISION IN DESYLVA ON THAT POINT.

AND I WOULD URGE THE COURT TO GO BACK AND LOOK AT THAT BECAUSE THAT IS A UNIQUE ISSUE IN THIS CASE. I'M GOING TO SAY JUST A VERY FEW WORDS ABOUT THE AFFIRMATIVE DEFENSES HERE. AND, AGAIN, I THINK THAT WE ARE IN A POSITION WHERE WE HAVE THE POTENTIAL TO MAKE SOME LAW.

THE PLAINTIFFS ARE URGING THAT THIS COURT FOLLOW THE STONE III CASE. AND I CALL IT "THE STONE III CASE. ASSUME THE COURT'S FAMILIAR WITH IT.

THE COURT: YES.

MR. GIVEN: WE SAY THAT STONE III IS BAD LAW AND WE HAVE PLENTY OF SUPPORT FOR THAT PROPOSITION. IT WAS RECOGNIZED BY THE SECOND CIRCUIT RECENTLY IN THE MERCHANT VERSUS LEVY CASE. IT WAS ALSO RECOGNIZED BY THE CONTROLLING COURT HERE, THE NINTH CIRCUIT, IN ZUILL VERSUS SHANAHAN. AND IT'S ALSO SUGGESTED BY COMMENTATORS LIKE NIMMER.

THIS IS A CO-OWNERSHIP CLAIM THAT'S BEING MADE BY THE PLAINTIFFS. AND EVEN THE PLAINTIFFS CONCEDE WITH RESPECT TO THE STATUTE OF LIMITATIONS SECTION 507 OF THE COPYRIGHT ACT THAT IT APPLIES. NO QUESTION ABOUT THAT.

THE ONLY QUESTION IS HOW THAT STATUTE APPLIES. THE

PLAINTIFFS ARE URGING THAT THE COURT FOLLOW THE APPLICATION THAT THE COURT MADE OF THAT STATUTE IN THE STONE CASE.

AND I'VE SUGGESTED THAT THAT PROPOSITION HAS BEEN EXPLICITLY REJECTED BY THE NINTH CIRCUIT. WE SAY THAT SECTION 507 ACTS TO CUT OFF ANY CLAIMS TO CO-OWNERSHIP MADE TO RENEWAL COPYRIGHTS COMING INTO THEIR TERM FROM 1975 TO 1993. THAT'S THE PERIOD THAT IS OUTSIDE THE THREE YEARS BEFORE WHICH PLAINTIFFS MADE THEIR CLAIM HERE.

AND THE FACTUAL PREDICATE FOR THE APPLICATION OF 507 IS IN THE RECORD. AND IT'S UNDISPUTED. THE PLAINTIFFS ALWAYS KNEW OF THEIR STATUS AS PRESUMPTIVE HEIRS OF ALAN WATTS. THERE'S NO DISPUTE ABOUT THAT. AND THAT IS A FUNDAMENTAL DISTINCTION BETWEEN THIS CASE AND THE STONE III CASE.

THERE IS AN ABUNDANT HISTORY IN THE STONE III CASE ABOUT THE STEPS THAT WERE TAKEN BY THE VARIOUS DEFENDANTS IN THAT CASE TO HIDE THE FACT FROM THE PLAINTIFF THAT THE PLAINTIFF WAS A CHILD OF HANK WILLIAMS, SENIOR. THAT'S NOT TRUE HERE.

IT IS ALSO UNDISPUTED IN THIS RECORD THAT THE CLAIM THAT THE PLAINTIFFS ARE MAKING WAS EXPLICITLY REPUDIATED AT EVERY STEP OF THE WAY IN THE LAST 23 YEARS.

ALAN WATTS HAD EXPLICITLY GRANTED ALL OF HIS RIGHTS IN LITERARY WORKS IN QUESTION TO HIS WIDOW AND HEIR AT LAW. THERE WAS A DISTRIBUTION IN THAT ESTATE IN 1982. AND IF YOU LOOK AT THE LITERARY TITLES AND THE CONTRACTS THAT ARE IDENTIFIED AS PART OF THE INVENTORY PURSUANT TO THAT FINAL DISTRIBUTION AT LEAST TWO OF THE TITLES HAD ALREADY COME INTO THEIR RENEWAL TERM AND WERE CLAIMED BY MARY JANE WATTS.

THEN, FROM THE PERIOD OF 1982 TO 1994 ALL OF THE LITERARY WORKS IN QUESTION WERE OWNED AND CONTROLLED BY MARY JANE WATTS. AGAIN, THIS IS UNDISPUTED. AND THIS WAS MADE EXPLICIT TO THE ENTIRE WORLD THROUGH COPYRIGHT RENEWAL REGISTRATIONS THROUGH COPYRIGHT NOTICES THROUGH THE EXCLUSIVE ADMINISTRATION OF THE WORKS THROUGH THE COLLECTION

OF THE ROYALTIES.

EVERYBODY HERE KNEW THAT MARY JANE WATTS WAS CLAIMING ALL RIGHT, TITLE AND INTEREST TO THESE RENEWAL COPYRIGHTS FOR THE LAST 23 YEARS. AND THE PLAINTIFFS CANNOT SAY OTHERWISE. THEN, FINALLY IN 1994, MARY JANE WATTS' WILL, AGAIN, THERE IS AN EXPLICIT GRANT OF RIGHTS IN LITERARY WORKS WHICH INCLUDE THE COPYRIGHTS AT ISSUE HERE.

WITH RESPECT TO THE LACHES DEFENSE -- OH, AND I WANT TO MAKE ONE POINT THAT I THINK IS IMPORTANT, YOUR HONOR, BECAUSE I'M SENSITIVE TO WHAT THE COURT ASKED ME THE LAST TIME WE WERE HERE WHICH IS: "WHERE IS THE PREJUDICE?" AND I'M GOING TO GET TO THAT. I WANTED TO ANSWER THAT IN A SPECIFIC WAY AND WORK DOWN THE LIST.

PREJUDICE DOESN'T MATTER FOR PURPOSES OF THE STATUTE OF LIMITATIONS. THE STATUTE SAYS WHAT IT SAYS. IT SAYS THREE YEARS.

AND THE ONLY ISSUE HERE IS: HOW DO YOU APPLY THAT STATUTE? HOW DOES THE COURT APPLY THE STATUTE TO THE FACTS OF THIS CASE?

THE COURT: I UNDERSTAND. I UNDERSTAND THE PREJUDICE IS APPLICABLE TO ESTOPPEL OR LACHES.

MR. GIVEN: AND LET ME DEAL WITH LACHES. THE COURT DECISION THAT CONTROLS HERE IS JACKSON VERSUS AXTON. THAT IS THE ONE CASE IS THAT ENTIRELY MISSING FROM THE PLAINTIFFS' OPPOSITION TO OUR MOTION FOR SUMMARY JUDGMENT.

THAT CASE SAYS THAT THE PLAINTIFFS HAVE TO EXPLAIN THEIR 23-YEAR DELAY. THEY'VE GOT THE BURDEN OF SHOWING WHY THEY WAITED FOR 23 YEARS.

THEY COME TO THIS COURT AND THEY SAY: "WE DIDN'T KNOW WE HAD A LEGAL CLAIM."

NOW, I LEARNED BEFORE I WENT TO LAW SCHOOL THAT IGNORANCE OF THE LAW IS NEVER AN EXCUSE. AND THAT'S THE ONLY EXCUSE THAT THE PLAINTIFFS HAVE GIVEN IN THIS CASE.

THAT EXCUSE IS NOT ENOUGH.

ACCORDINGLY, PURSUANT TO THE JACKSON CASE, WHERE THE PLAINTIFFS FAILED TO EXPLAIN THEIR DELAY, THE BURDEN IS ONLY TO SHOW VERY LITTLE PREJUDICE, IF ANY AT ALL. THERE IS A PRESUMPTION GRANTED REBUTTAL THAT THERE IS PREJUDICE HERE. AND THERE ARE COURT DECISIONS TO THE EFFECT THAT EVEN WHERE THE PRESUMPTION IS REBUTTED IF THE PLAINTIFFS CANNOT EXPLAIN THEIR 23 YEAR DELAY THEY ARE NOT ENTITLED TO RELIEF.

YOU DO NOT HAVE FACTS BEFORE YOU, YOUR HONOR, THAT ARE THE CLASSIC EXCUSES THAT ARE GIVEN FOR DELAY. THOSE BEING DISABILITY, OBSTRUCTION, ONGOING SETTLEMENT NEGOTIATIONS. THOSE DO NOT EXIST HERE. AND I URGE THE COURT TO GO BACK AND LOOK AT THE STONE III CASE. AND THAT CASE WAS THE FIRST TIME THAT THE SECOND CIRCUIT CONSIDERED THE FACTS IN THE STONE III CASE.

AND IT DEALT SPECIFICALLY WITH THE ISSUE OF LACHES. AND AT PAGE 625 OF 873 F. 2D THE COURT HAS A VERY GOOD STATEMENT OF WHAT THE LAW IS WITH RESPECT TO EXCUSES. NONE OF THOSE EXCUSES HAVE BEEN OFFERED HERE.

AND THE FACT REMAINS WE HAVE 23 YEARS OF HISTORY. AND I WANT TO ADDRESS THE ISSUE OF PREJUDICE, BECAUSE WE SAY THAT THERE WAS ACTUAL PREJUDICE HERE. AND I'VE THOUGHT A LOT IN THE INTERVENING FIVE WEEKS SINCE OUR LAST HEARING ABOUT THIS ISSUE. YOU START FROM THE PROPOSITION THAT 23 YEARS HAVE ELAPSED BETWEEN THE TIME THAT THE PLAINTIFFS COULD HAVE MADE THEIR CLAIM.

REMEMBER, YOUR HONOR, THAT THE PLAINTIFFS ARE HERE TODAY ASKING THE COURT FOR DECLARATORY RELIEF WITH RESPECT TO COPYRIGHTS THAT ARE NOT YET COME INTO THE RENEWAL PERIOD.

SIMILARLY, 23 YEARS AGO THE PLAINTIFFS COULD HAVE COME TO THIS COURT OR ANOTHER FEDERAL COURT AND SAID: "WE WANT A DECLARATION WITH RESPECT TO THESE RENEWAL RIGHTS.

AND THINK OF HOW DIFFERENT THE WORLD MIGHT HAVE

BEEN IF THEY HAD DONE THAT.

THE FIRST THING THAT OCCURS TO ME IS THAT MARY JANE WATTS IS DEAD. AND ON THIS ISSUE OF EXPRESS REPUDIATION, WHAT SHE MIGHT HAVE SAID TO THE PLAINTIFFS, TO MARK WATTS, OR TO DOROTHY WATTS, THE MOTHER OF THE PLAINTIFFS, ON THE SUBJECT OF COPYRIGHTS IS LOST.

HOW SHE MIGHT HAVE HANDLED HER INTER VIVOS GIFTING, AND THERE IS EVIDENCE IN THE RECORD ABOUT MARY JANE WATTS MAKING GIFTS TO RICHARD WATTS, ONE OF THE PLAINTIFFS HERE, AND MARK WATTS DURING HER LIFETIME, HOW THE CHILD SUPPORT ISSUE MIGHT HAVE BEEN HANDLED WITH RESPECT TO LILA WATTS AND DIANE WATTS, TWO OF THE PLAINTIFFS HERE, HOW HER ESTATE PLANNING MIGHT HAVE BEEN HANDLED DIFFERENTLY IF WE HAD KNOWN THAT THE PLAINTIFFS WERE GOING TO MAKE A CLAIM.

AND FINALLY, HOW THE ADMINISTRATION OF ALAN WATTS' ESTATE MIGHT HAVE BEEN HANDLED. WITH RESPECT TO THAT PARTICULAR POINT, I WANT TO DRAW THE COURT'S ATTENTION TO THE FACT THAT WAS MENTIONED BY MR. RAUB THAT JOAN WATTS SPENT SEVEN YEARS AS LITERARY EXECUTRIX OF MR. WATTS' ESTATE. SHE HAD A SEVEN-YEAR INVOLVEMENT IN THESE LITERARY WORKS.

THAT IS A SIGNIFICANT PERIOD OF TIME THAT WAS DEVOTED TO THESE LITERARY WORKS ON THE ASSUMPTION, ON THE UNDERSTANDING, THE BELIEF CLEARLY REASONABLE UNDER THE CIRCUMSTANCES, THAT THESE COPYRIGHTS BELONGED TO MARY JANE WATTS.

EVERYBODY ACTED IN ACCORDANCE WITH THAT BELIEF, PUTTING ASIDE THE ISSUE THAT, AGAIN, MR. RAUB MAKES TO THE COURT THAT NOBODY KNEW ABOUT THESE RENEWAL COPYRIGHTS IN THIS SECTION 304 OF THE COPYRIGHT ACT.

WE ARE ALL CHARGEABLE WITH THAT KNOWLEDGE. EVERY PARTY BEFORE THE COURT TODAY IS CHARGEABLE AS A MATTER OF LAW WITH THAT KNOWLEDGE.

THERE IS INDICATION IN THE RECORD THAT MARY JANE WATTS' FILES WERE DAMAGED IN A FLOOD AND THAT SOME DOCUMENTS MAY HAVE BEEN LOST AND THAT JOAN WATTS TESTIFIED THAT SHE DID NOT HAVE THOSE FILES ANY

LONGER.

WITH RESPECT TO THE LIFESTYLE CHANGES, THERE'S BEEN GREAT LIGHT MADE ON THE OTHER SIDE WITH RESPECT TO SIGNIFICANT LIFESTYLE DECISION THAT WERE MADE ON THE PART --

THE COURT: COUNSEL, I'M GOING TO CUT YOU OFF HERE BECAUSE I DON'T THINK IT'S REALLY IMPORTANT FOR YOU TO ARGUE FURTHER ON THE QUESTION.

MR. GIVEN: SURE. UNDERSTOOD.

THE COURT: ALL RIGHT. ALL RIGHT. WE'RE HERE ON CROSS MOTIONS FOR SUMMARY JUDGMENT. AND I DON'T BELIEVE THAT THERE ARE ACTUALLY ANY FACTUAL ISSUES. INDEED, I THINK THE ONLY POSSIBLE FACTUAL ISSUES ARE ONES THAT PERTAIN TO THE STATUTE OF LIMITATIONS OR TO LACHES. BUT IN REVIEWING THE RECORD I DO NOT BELIEVE THAT THERE IS ANY GENUINE ISSUE OF MATERIAL FACT. SO I BELIEVE DECISIONS, DECISIONS, PLURAL, CAN BE MADE UNDER RULE 56.

NOW, A MAJOR QUESTION HERE IS WHETHER THE RENEWAL COPYRIGHTS -- AND I WILL ADD TO THAT RENEWAL RIGHTS FOR WORKS THAT HAVE BEEN RENEWED -- COULD BE, BY MR. ALAN WATTS, PASSED THROUGH HIS WILL TO MARY JANE WATTS. AND THEN, THROUGH THE WILL OF MARY JANE WATTS TO THE DEFENDANTS HERE. OR WHETHER, INSTEAD, THOSE RIGHTS PASSED TO THE PLAINTIFFS BY VIRTUE OF THE COPYRIGHT LAWS.

NOW, I DO WANT TO REPEAT FOR THE RECORD WHAT I SAID A LITTLE WHILE AGO THAT I THINK SOME CONCLUSIONS ARE CLEAR, THAT WHAT THIS ACTION DOES NOT PERTAIN TO. IT SEEMS TO ME THAT ALL WORKS, THAT IS THE COPYRIGHTS AND THE RENEWALS BEFORE MR. WATTS' DEATH IN 1973 PASSED TO MARY JANE WATTS.

AND THAT ALL WORKS COPYRIGHTED AFTER MR. WATTS' DEATH PASSED TO MARY JANE WATTS. AND TO THE EXTENT THAT THERE ARE UNPUBLISHED WORKS AND I'M AFRAID I DON'T KNOW WHETHER UNPUBLISHED WORKS COULD BE OR COULD NOT BE COPYRIGHTED THIS LATE, BUT TO THE EXTENT THAT THOSE ARE IN EXISTENCE THEY, TOO, PASSED BY VIRTUE OF MR. ALAN WATTS' WILL TO MARY JANE WATTS.

NOW, ALL WORKS THAT ARE -- WERE COPYRIGHTED AFTER JANUARY 1ST OF 1978 AREN'T SUBJECT TO THE RENEWAL CLAUSE OF THE STATUTE. SO THEY ARE NOT GOVERNED BY THE WIDOWS AND CHILDREN'S CLAUSE OF SECTION 304 (A). AND I REAFFIRM MY CONCLUSION THAT I DO NOT BELIEVE THAT THE FOREIGN COPYRIGHTS ARE AFFECTED BY THE U.S. COPYRIGHT LAWS AT ALL.

SO, THEREFORE, AS TO THOSE CATEGORIES OF THINGS THAT I HAVE RECITED THAT THEY ALL PASS UNDER THE WILL OF MARY JANE WATTS TO THE DEFENDANTS JOAN WATTS AND TO ANN WATTS.

NOW, THE TOUGHER ISSUE IS THOSE WORKS THAT WERE COPYRIGHTED WHILE MR. WATTS WAS ALIVE, BUT WERE NOT RENEWED WHILE HE WAS ALIVE.

AND I THINK THOSE FALL INTO TWO CATEGORIES: THOSE THAT WERE RENEWED BY MARY JANE WATTS DURING THE PERIOD OF 1973 THROUGH '94. AND THE SECOND CATEGORY THOSE THAT HAVE NOT BEEN RENEWED YET AT ALL, WHICH APPLY TO AS FAR AS THIS CASE IS CONCERNED I BELIEVE 1994 THROUGH TO THE FUTURE FOR WHATEVER FUTURE COPYRIGHTED RENEWALS THERE MIGHT BE.

MY CONCLUSIONS ON THIS, ARE THESE. FIRST OF ALL, I THINK THAT WHERE IT APPLIES THAT THE STATUTE 17 U.S. CODE SECTION 304 (A) (C) (1) SMALL (2) DOES OVERRIDE THE TERMS OF THE WILL. AND THOSE RIGHTS WOULD BE PER CAPITA RIGHTS. IN FOLLOWING WHAT I BELIEVE IS THE INTENT OF COPYRIGHT STATUTES AND THAT A CONSTRUCTIVE TRUST IS AN APPROPRIATE FORM OF REMEDY. BUT, BUT, ALL OF THAT IS SUBJECT TO TWO DEFENSES, ONE OF WHICH I THINK DOES APPLY HERE.

THE ONE I THINK DOES NOT APPLY IS THE STATUTE OF LIMITATIONS. I THINK THAT THE SECTION 507 (B) DOES NOT APPLY TO RENEWAL RIGHTS AND REALLY ONLY APPLIES TO ROYALTIES. AND I'M BASING THAT ON THE AUTHORITY OF STONE III.

WITH RESPECT TO LACHES, HOWEVER, I BELIEVE THAT LACHES DOES APPLY, AND DOES AFFORD A DEFENSE HERE. FIRST OF ALL, WE HAVE A LONG DELAY. COULD BE AS MUCH AS 23 YEARS, BUT EVEN IF IT'S SHORTER BECAUSE OF THE CONTINUING FAMILY EVENTS HOWEVER, WHATEVER DATE

YOU WANT TO TAKE IS A LONG DELAY.

I DON'T THINK THAT THE PLAINTIFFS CAN SIMPLY SAY: "WELL, WE WERE IGNORANT. THE DEFENDANTS WERE IGNORANT OF THE LAW, AND SO LACHES SHOULD NOT APPLY.

BUT WHAT THEY ARE CONCERNED ABOUT IN THESE DELAY AND PREJUDICE ARGUMENTS ARE KNOWLEDGE OF THE FACTS. AND NOT WHETHER SOMEBODY WENT TO A LAWYER AND PUT THE FACTS TOGETHER WITH THE LAW. THE FACTS HAVE BEEN OUT ON THE TABLE FOR A LENGTHY PERIOD OF TIME.

FRANKLY, I THINK IF WE HAD A LACHES PRINCIPLE THAT ONLY APPLIED TO THE PERIOD OF TIME AFTER ONE WENT TO A LAWYER OR HIMSELF LOOKED AT THE LAW BOOKS AND FOUND OUT THAT HE HAD RIGHTS OR SHE HAD RIGHTS THAT WE REALLY WOULDN'T HAVE ANY LACHES LAW AT ALL.

AND I DON'T THINK IT'S AN ANSWER TO IT THAT WELL, DEFENDANTS WERE JUST AS IGNORANT AS THE PLAINTIFFS. IT'S THE PLAINTIFF THAT IS ASSERTING THE RIGHTS HERE. IT'S THE PLAINTIFF THAT HAS BROUGHT THE LAWSUIT.

I THINK THERE IS PREJUDICE. I THINK THAT THE DEATH OF MARY JANE WATTS AND HER AVAILABILITY AS A WITNESS IS A SIGNIFICANT EVENT.

I THINK THE FACT THAT JOAN WATTS FOR A PERIOD IN FEBRUARY 1975 THROUGH THE END OF 1982 PLAYED AN ACTIVE ROLE IN PROMOTING HER FATHER'S WORKS IS MATERIAL.

I THINK THAT THE ORDER OF PRELIMINARY DISTRIBUTION FROM MARY JANE WATTS' ESTATE IMPACTING THE PERSONAL FINANCIAL DECISIONS OF THE PARTIES HERE IS MATERIAL. AND I THINK MOST IMPORTANT IS THE SETTLEMENT WITH MARK WATTS.

THE DEFENDANTS DID ENTER INTO A SETTLEMENT WITH HIM AND CERTAINLY WOULD NOT HAVE DONE SO HAD THE PLAINTIFFS BEEN ASSERTING THEIR CLAIMS IN A TIMELY FASHION.

SO I THINK THOSE ARE ELEMENTS OF PREJUDICE, AND I THINK LACHES DOES APPLY.

BUT I AGAIN HAVE TO SAY "BUT." BUT I THINK THE LACHES DOES NOT BAR. I THINK WHAT IT DOES BAR IS THE COPYRIGHTS THAT HAVE ALREADY BEEN RENEWED. BUT I DO NOT THINK THAT LACHES BARS THE FUTURE RENEWAL OF COPYRIGHTS. AND THAT IS I DON'T THINK LACHES CAN BAR FUTURE CLAIMS. SO I THINK AS TO THOSE WE STILL HAVE TO LOOK BACK TO THE STATUTE TO SEE WHETHER THE PLAINTIFFS AS WELL AS THE DEFENDANTS HAVE RENEWAL RIGHTS FOR THOSE COPYRIGHTS THAT HAVE YET TO BE RENEWED.

SO BOTTOM LINE MY CONCLUSIONS ARE THESE AS A RESULT: ENTER THE ORDER OF JUDGMENT THAT THOSE COPYRIGHTS THAT HAVE ALREADY BEEN RENEWED ARE OWNED BY THE DEFENDANTS HERE, JOAN WATTS AND ANN WATTS.

THOSE THAT HAVE NOT YET BEEN RENEWED ARE OWNED BY THE DEFENDANTS, THESE TWO DEFENDANTS, AND THE FIVE PLAINTIFFS ON A PER CAPITA BASIS PROVIDED, HOWEVER, THAT MARK WATTS IS APPARENTLY DISPOSED OF HIS RIGHTS.

NOW, IF MARK WATTS HAS TRANSFERRED ALL HIS RIGHTS TO JOAN AND ANN WATTS, THEN THEY PICK UP HIS SHARE OF THE RIGHTS.

BUT I JUST HAVE NOT GOTTEN INTO THE TERMS OF THAT SETTLEMENT AGREEMENT ENOUGH TO BE COMFORTABLE WITH MAKING THAT CONCLUSION. I THINK THAT'S WHAT OCCURRED, BUT IN ANY EVENT AS TO FUTURE RENEWAL RIGHTS THEY ARE OWNED BY THE DEFENDANTS, THE FIVE PLAINTIFFS, ALL ON A PER CAPITA BASIS WITH THE ADDITIONAL PROVISIO THAT MARK WATTS SOLD HIS INTEREST TO JOAN OR ANN WATTS. THEY HAVE MARK WATTS' RIGHTS.

SO I'VE DONE MY BEST TO PULL THIS APART AND TRACE DOWN THROUGH THE FAMILY AND TRACE DOWN THE WORKS AND THE TIME LINES AND THE APPLICABLE TIMES. AND THAT'S WHERE I COME OUT.

SO I WILL ASK THE PARTIES TO PLEASE SUBMIT TO ME A PROPOSED FORM OF ORDER AND PROPOSED FORM OF JUDGMENT.

MR. GIVEN: THANK YOU.

MR. RAUB: YOUR HONOR, MAY I ASK A QUESTION OF

CLARIFICATION? YOUR HONOR, YOU INDICATED THOSE WHICH HAVE ALREADY BEEN RENEWED, BUT AS OF WHAT DATE?

THE COURT: WELL --

MR. RAUB: WE HAD BROUGHT OUR ACTION IN PROBATE COURT SEEKING IN MAY OF 1996. IS IT EVERYTHING THAT WAS RENEWED BEFORE THEN OR BEFORE THIS CASE WAS FILED OR BEFORE TODAY OR --

THE COURT: THOSE RENEWED BY MARY JANE WATTS.

MR. RAUB: BEFORE HER DEATH?

THE COURT: FROM 1973 THROUGH 1994. I THINK THAT'S WHERE I'M COMING --

MR. RAUB: ALL RENEWED BEFORE HER DEATH?

MR. GIVEN: THAT DOESN'T SOUND RIGHT.

THE COURT: IT'S NOT THE SAME THING. IT'S NOT THE SAME THING. THE ONES THAT WERE RENEWED BEFORE ALAN WATTS' DEATH, I THINK, CLEARLY PASS TO MARY JANE WATTS.

MR. RAUB: THAT'S NOT IN DISPUTE.

THE COURT: THAT'S WHERE I WENT THROUGH THE PROCESS FIRST OF TRYING TO DEFINE WHAT WAS NOT IN ISSUE AND GET TO THE TWO THAT I THOUGHT WERE AT ISSUE. LET ME REPEAT WHAT I SAID ABOUT, I THINK, THE TWO THAT ARE IN ISSUE.

MR. RAUB: I THINK I UNDERSTAND.

THE COURT: AND THAT IS THOSE WORKS THAT WERE COPYRIGHTED WHILE MR. WATTS WAS ALIVE BUT WERE NOT RENEWED WHILE HE WAS ALIVE. AND THAT FALLS INTO TWO CATEGORIES, ONE THOSE THAT HAVE NOT YET BEEN RENEWED. AND I'VE EXPRESSED MY OPINION THAT THE CHILDREN ARE ENTITLED TO A PRORATA SHARE, PER CAPITA SHARE, I SHOULD SAY, EXCEPT FOR WHAT RIGHTS MARK WATTS MAY HAVE SOLD THE DEFENDANT.

THE SECOND CATEGORY IS THOSE RENEWED BY MARY JANE WATTS FROM 1973 THROUGH 1994.

MR. RAUB: ALL RIGHT.

THE COURT: OKAY.

MR. RAUB: YOUR HONOR, THE QUESTION IS MARY JANE WATTS DIED IN JANUARY 1994. I'M ASKING THE BALANCE ABOUT ANYTHING THAT MAY HAVE BEEN RENEWED IN THE LATTER PART OF 1994. I ASSUME THAT'S NOT INCLUDED.

THE COURT: I'M SORRY. I WASN'T PICKING ANY PARTICULAR DATE OF HER DEATH. I MEAN, I JUST SAID THAT THOSE RENEWED BY HER, BY MARY JANE WATTS. SO OBVIOUSLY IT ONLY APPLIES UNTIL THE TIME SHE DIES.

MR. RAUB: THANK YOU.

THE COURT: THANK YOU.

MR. GIVEN: WELL, I WANTED -- WE MAY NEED SOME CLARIFICATION ON THIS, YOUR HONOR. BEAR WITH ME.

THE COURT: WELL, NO, I CAN'T DO IT ANYMORE THAN I'VE DONE IT.

MR. GIVEN: OKAY.

THE COURT: NOW, IF IN THE PROCESS OF PULLING THIS APART AND TRYING TO PUT IT BACK TOGETHER AND SEGMENTED BY TIME LINES AND FAMILY LINES --

MR. GIVEN: BELIEVE ME, I CAN APPRECIATE.

THE COURT: AND THAT WHEN YOU SEND ME THE PROPOSED FORM OF ORDER --

MR. GIVEN: WE'LL DEAL WITH IT IN THE PROPOSED FORM OF ORDER.

THE COURT: YOU CAN TELL ME WHAT YOU -- BUT HAVING WORKED MY WAY THROUGH THIS THING I CAN'T PICK UP THESE LITTLE PIECES OF THE JIGSAW PUZZLE VERBALLY HERE.

MR. GIVEN: THANK YOU. AND I APPRECIATE THE COURT'S
INDULGENCE.

(WHEREUPON, THIS HEARING WAS CONCLUDED.)