

LILLIAN MCMURRY AND THE BLUES CONTRACTS OF TRUMPET RECORDS

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"She may not be at the office, then call 39309, because she mine and I love her, and she always easy to find."

– Sonny Boy Williamson, 309

INTRODUCTION

According to blues legend, Robert Johnson sold his soul to the devil at the crossroads, in exchange for his haunting musical talent. In contrast to this fantastical tale of a contractual relationship, little evidence exists concerning financial and contractual arrangements relating to blues artists of the 1920s and 1930s. Early blues artists of that era were usually paid cash in hand for recording sessions, never signing formal agreements or receiving royalties for the later success of their recordings.¹ Their records were their calling cards, leading to more lucrative paid gigs.

To the extent there has been legal analysis of contractual relationships in the context of the blues, it has mainly focused on a few high-profile cases, most notably the copyright and royalty issues surrounding the estate of Robert Johnson.²

This Article focuses on a later period, the 1950s, and specifically on the contracts of the Jackson, Mississippi-based Trumpet Records with blues artists from 1950 until the record company folded in 1955. I primarily draw on the archival material in the Trumpet Records collection at the Blues Archives of the University of Mississippi. While the analysis does not extend to other contemporary record labels, it provides insight into the challenges faced by small recording companies and the contractual issues that could arise in the business.

¹ 3 RUSSELL SANJEK, *AMERICAN POPULAR MUSIC AND ITS BUSINESS: THE FIRST FOUR HUNDRED YEARS* 64 (1988). Sanjek notes that blues musicians often preferred a flat fee, which was typically between twenty-five to fifty dollars per side, since most records did not sell enough copies to pay back expenses.

² See, e.g., W. John Thomas, *The Devil and Mr. Johnson: A Bluesman's Cultural Legacy at an Intellectual Property Crossroads*, 11 *TEX. REV. ENT. & SPORTS L.* 1 (2009); Olufunmilayo B. Arewa, *Blues Lives: Promise and Perils of Musical Copyright*, 27 *CARDOZO ARTS & ENT. L.J.* 573 (2010).

I argue that the progression in the contracts of Trumpet Records over the years of its existence demonstrates the evolving contractual understanding of a young record label, showing increasing sophistication and an awareness of some of the potential pitfalls of signing artists. The contracts of Trumpet Records, when taken together with the correspondence of the label's head with her artists, also show a commitment to fairness and a level of scrupulousness and honesty not often seen in the industry. The Article also examines the legal dispute between Sherman Johnson and Trumpet Records, which reached the Mississippi Supreme Court. In Appendix A and B, I provide two examples of contracts entered into by Trumpet Records, both relating to that dispute and involving Sherman Johnson, neither of which can be found in the archives. The Article further turns to the subsequent copyright infringement of a number of Trumpet Records recordings by European record labels in the 1970s, which sheds light on the widespread practice of piracy prevalent in relation to older blues recordings.

I. TRUMPET RECORDS AND LILLIAN MCMURRY

Trumpet Records was founded in 1950 in Jackson, Mississippi. It was incorporated as The Diamond Record Company, although the records were issued with the Trumpet logo and name.³ The story of Trumpet Records and its contracts is made all the more fascinating because of its unlikely protagonist—a white, 28-year-old woman by the name of Lillian McMurry, whose husband Willard McMurry owned a furniture store in downtown Jackson, Mississippi, that sold, amongst other things, record players.⁴ With her husband's financial support, Lillian McMurry launched a small record label. Lillian had no previous experience with recording music or running a label, but her intuition led to a number of successful signings, most notably Sonny Boy Williamson.⁵

Lillian McMurry succeeded in running a small independent label and building strong personal relationships with gospel,

³ MARC W. RYAN, *TRUMPET RECORDS: DIAMONDS ON FARISH STREET 19* (2004).

⁴ *Id.* at 3-7.

⁵ *Id.* at 8-9, 24. Sonny Boy Williamson here refers to the harmonica player also known as Sonny Boy Williamson II (real name Aleck or Alex Miller).

rockabilly, country, and blues artists—no small feat in the restrictive, segregated atmosphere of 1950s Mississippi. At both a contractual and a personal level, McMurry did not distinguish between her white and black artists, and her correspondences demonstrate that she operated without concern for segregationist attitudes in Mississippi at the time.⁶ In the recording industry, a world dominated by cutthroat and unscrupulous individuals, McMurry stands out as something of an anomaly, although, as a businesswoman, profitability was of course a key concern for her.

Contracts can become instruments of paternalism. In 1950s Mississippi, they could operate in ways that were hostile to labor mobility, entrenching poor people, particularly African Americans, in exploitative work environments, and marginalizing individual choice. The contracts of Lillian McMurry did not reflect this approach. While there were clauses that required artists to inform the company of their whereabouts, as will be discussed in more detail below, this related more to the itinerant nature of musicians and the lack of reliable technological means to maintain even sporadic contact with them. McMurry's contracts were fair and non-exploitative.

While Trumpet Records only operated from 1950 to 1955, in its recordings it captured a surprising diversity of regional sounds. Although financial success was elusive, and loans to artists often exceeded profits from royalties, at one point in time, according to Lillian McMurry's calculations, Trumpet Records was the fifth largest independent record label in the United States.⁷ From its first blues recording in January 1951⁸ to its last blues recording in November 1954⁹, Trumpet Records captured a cross-section of the blues landscape at the time.

⁶ *Id.* at 116-17 (noting that “[t]he work of DRC as an exemplar of racial equality in the businessplace at mid-century added a further dimension to its hard-won status as a trailblazer in the record industry”).

⁷ *Id.* at 154.

⁸ *Id.* at 168. The first blues recording issued by Trumpet Records was Sonny Boy Williamson's *Eyesight to the Blind*, recorded on January 4, 1951.

⁹ *Id.* at 186. The last blues recording issued by Trumpet Records was Jerry “Boogie” McCain's *Stay Out of Automobiles*, recorded on November 4, 1954.

II. COPYRIGHT LAW IN THE 1950S

To understand the legal environment in which Trumpet Records operated, it is necessary to provide a bit of background on the state of copyright law in relation to sound recordings in the 1950s. To sum it up in one sentence: federal copyright law did not protect sound recordings until 1972; instead, common law copyright applied on a state-by-state basis, making the legal regime surrounding records somewhat nebulous.¹⁰

The 1909 Copyright Act reformed the existing copyright regime in the United States, strengthening protections for copyrights relating to performance and introducing copyright protection for the mechanical reproduction of sound in the form of player piano rolls.¹¹ Sound recordings in the form of records, however, were not contemplated by the Act, which failed to incorporate copyright protection for these recordings, although they had been commercially available and popular since the 1890s. In 1971, the 1909 Copyright Act was amended to extend federal copyright protection to all sound recordings produced after February 15, 1972, but not to recordings made prior to that date.¹² The current legal regime came into force with the 1976 Copyright Act, which was the first complete overhaul of copyright law since the 1909 Copyright Act. The 1976 Copyright Act provides that common law and state statutes will apply to those sound recordings until February 15, 2067.¹³

In practice, what this meant was that in the absence of state statutes governing copyright of sound recordings, common law copyright applied—a very different legal regime than that found in statutory copyright.¹⁴ In Mississippi, there was no state statute governing copyright, and there was little or no guidance on the interpretation of sound recordings under state law, with no appellate or supreme court-level decisions addressing the topic. During this period, copyright for sound recordings was, therefore,

¹⁰ For an excellent and in-depth overview of the copyright of sound recordings pre-1972, see Zvi S. Rosen, *Common-Law Copyright*, U. CIN. L. REV. (forthcoming), <https://ssrn.com/abstract=2834199> [<https://perma.cc/LJ9U-GGKG>].

¹¹ *Id.* at 26, 33-34.

¹² *Id.* at 2.

¹³ 17 U.S.C. § 301(c) (2012).

¹⁴ See, e.g., Rosen, *supra* note 10, at 71-72.

less of an issue for musicians than it would be today, since they were able to obtain copyright in the underlying musical composition. For record labels, however, a clear regime for copyright of sound recordings would have been desirable. It is in this uncertain legal environment governing pre-1972 sound recordings that the contracts of Trumpet Records were written.

III. TRUMPET RECORDS CONTRACTS: BASIC PROVISIONS

With that legal background in mind, let's turn to look at the actual contracts between Trumpet Records and its blues recording artists. Trumpet Records was in the business of producing 78s, not albums, with two songs per record—one on each side. Trumpet Records used the same standard form contracts in signing its artists, whatever their musical style. Most of the provisions were identical from contract to contract, and in this Section I offer a brief enumeration of the key clauses in Trumpet Records' contracts. These contracts were short—not more than fourteen paragraphs—less sophisticated than equivalent modern contracts, and likely less sophisticated than contemporary contracts from larger record labels. Appendix A and B to this paper provide two examples of such a contract, both with the blues artist Sherman Johnson.

All contracts were between Diamond Record Company, as the first party, and the recording artist, as the second party. With all contracts, consideration was specifically enumerated, generally ranging from \$5 to \$20 (approximately \$45 to \$180 in 2017 dollars).¹⁵ The majority of contracts were for a term of one year, with the option for Diamond Record Company to renew for two further one-year terms at the end of the contract.¹⁶ The recording contracts provided that the artist conveyed “exclusive right of recording, transcribing and/or otherwise making sound reproductions of the singing, vocal renditions, sound of musical instruments and any combination thereof produced by [the artist]

¹⁵ All of the currency conversions in this article are based on a purchasing power parity calculation.

¹⁶ See, e.g., Renewed Contract between Diamond Record Company and Sonny Boy Williamson paras. 1, 14 (Jan. 3, 1953) [hereinafter Sonny Boy Williamson 1953 Contract] (on file with the University of Mississippi Library, Archive 5.5).

for a term of one year[.]”¹⁷ This meant that the artist was not permitted to make any recordings for anyone else during the term of the contract, with the contract stipulating that if they breached, Diamond Record Company had a right to an injunction without notice or without impairing rights to damages on account of breach of contract.¹⁸ Diamond Record Company, of course, had a right to designate its successor or to assign the contract.¹⁹

The royalty provision was key, and varied somewhat in terms of the royalties awarded and the recording fee for each record, with generally one rate given for the first 25,000 records, a higher rate for the second 25,000, yet another higher rate for the third 25,000 and the highest rate for all records over 75,000.²⁰ Across all contracts, it was stipulated that the recording fee given to the artist would be deducted from the first accrued royalty payment, and that there would be no royalty paid on records used by Diamond Record Company for promotional or advertising purposes.²¹

The contracts required test records or auditions, from which Diamond Record Company would choose songs to record.²² Once a song was chosen, the parties to the contract were to arrange the recording session without delay.²³ In all of these contracts, Diamond Record Company paid the expenses of recording, including studio rental, engineers and other costs, while the artist was to pay all other expenses, both for himself and for any other musicians, including travel and subsistence.²⁴ Diamond Record Company was to designate the place for the recording.²⁵

Where the recording artists had additional musicians, such as with Elmore James and Willie Love, the contracts stipulated that the artist would “keep and maintain said orchestra with its present personnel and skillful performance for the term of this contract” or that they would employ other people to “maintain the

¹⁷ *Id.* para. 1.

¹⁸ *Id.* para. 5.

¹⁹ *Id.*

²⁰ *Id.* para. 1(a)-(d).

²¹ *Id.* para. 1.

²² *Id.* para. 3.

²³ *Id.* para. 4.

²⁴ *Id.*

²⁵ *Id.*

performances of said orchestra to at least its present level of abilities and quality of performances.”²⁶

Copyright of sound recordings today is at the heart of recording contracts, providing the most valuable rights to the holder. Before 1972 and the inclusion of sound recordings in the copyright regime, however, copyright of compositions was the main right.

The contracts contained provisions on obtaining copyright, licenses and permissions for the recording of non-original musical works.²⁷ These will be discussed in more detail below, as they are among the key provisions that reflect a changing understanding on the part of Trumpet Records as to how these contracts should operate. Regarding original compositions, all musical works written and composed by the artist during the life of the contract and its extensions became property of Diamond Record Company and its assigns and successors forever, with Diamond Record Company having the right to dispose of them as it chose.²⁸ Original compositions copyrighted by the artist before the contract with Diamond Record Company and recorded during the life of the contract were to become the property of Diamond Record Company, with the artist executing assignment of copyright to the label.²⁹ Where recordings were represented as being original compositions and turned out not to be, the artist agreed to indemnify Diamond Record for all “damages, loss or costs” resulting from such misrepresentation.³⁰

Where sheet music was published, the artist was to get a percentage of the net profit, as well as a percentage of the net profit from recordings of the artist’s originals made by other artists, except where the subsequent artists recorded under contract to Diamond Record Company, in which case the original artist received no royalties or profits.³¹ Diamond Record Company

²⁶ Contract between Diamond Record Company and Elmore James para. 1 (Aug. 4, 1951) [hereinafter Elmore James 1951 Contract] (on file with the University of Mississippi Library, Archive 4.6); Contract between Diamond Record Company and Willie Love para. 1 (Apr. 7, 1951) [hereinafter Willie Love 1951 Contract] (on file with the University of Mississippi Library, Archive 4.33).

²⁷ Sonny Boy Williamson 1953 Contract, *supra* note 16, para. 6.

²⁸ *Id.* para. 7.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

retained the right to edit any recordings made by the artist under the contract, as well as the ability to use any, all or none of the recordings made.³² The artist retained the ability to make public appearances, either over the radio or at any public or private event, so long as no recording of the performance was made.³³ As discussed above, since sound recordings were not covered by federal copyright law at the time, the contract does not discuss them in the context of copyright.

Presumably in order to retain leverage over the recording artist, the contract required that the artist deposit all previous recordings made before the contract with Diamond Record Company for safekeeping.³⁴ The contracts also required the artists to keep Diamond Record Company informed by mail, telegraph or otherwise of their location at all times for purposes of communication under the contract.³⁵ As will be discussed below, this provision changed slightly over the years that Trumpet Records was in operation, with a penalty being added for failure to inform.

IV. THE EVOLUTION OF TRUMPET RECORDS CONTRACTS

While as previously mentioned, the contracts entered into by Trumpet Records were form contracts, with uniform provisions across the documents, there are some substantive differences between the early contracts and later contracts of Trumpet Records. This Section highlights some of these changes, and offers suggestions for why such changes may have been implemented.

A. Test Records / Auditions

The early contracts entered into by Trumpet Records required artists to send several test records per month or to give auditions of several songs per month. In Diamond Record Company's January 23, 1951, contract with Luther Huff, for instance, Huff was contractually obliged to send three test records per month during the life of the contract or to give auditions of

³² *Id.* para. 9.

³³ *Id.* para. 11.

³⁴ *Id.* para. 8.

³⁵ *Id.* para. 10.

three songs per month, entirely at Huff's expense.³⁶ By August 4, 1951, the date of Elmore James' contract with Diamond Record Company, the requirement was to send test records every month or give auditions in person every month, already reducing the number of required test records/auditions.³⁷ Later contracts diminished this requirement even further, requiring test records "from time to time during the life of this contract" or to "give auditions in person . . . from time to time[.]"³⁸

The reason for the modification would seem to be the rather onerous burden in the original contract, particularly for the artist, to produce a minimum number of test records/auditions (at the artist's expense) each month, given that the artistic process does not lend itself to that kind of a metric. Three songs per months over twelve months would require an artist to come up with a repertoire of 36 songs per year of the contract, and while the contract did not require that the test records or auditions be of original material, this would seem to be an inefficient means of obtaining material for records. Additionally, the contract stipulated that the test records and auditions were to be made at the expense of the artist, which would seem untenable given the financial position of most of these musicians and the prohibitive costs of either recording on a monthly basis, or traveling to Jackson to audition on a monthly basis.

Interestingly, form recording contracts from 1962 and 1971 both include provisions that require artists to record a minimum number of records over the term of the contract. The 1971 form contract provides for the artist to record no less than two 78 r.p.m. record sides over the term of the contract, which is for one year.³⁹ The 1962 form contract leaves the number of records blank, but

³⁶ Contract between Diamond Record Company and Luther Huff para. 3 (Jan. 23, 1951) [hereinafter Luther Huff 1951 Contract] (on file with the University of Mississippi Library, Archive 4.1).

³⁷ Elmore James 1951 Contract, *supra* note 26, para. 4.

³⁸ *See, e.g.*, Contract between Diamond Record Company and Willie Love para. 3 (Apr. 7, 1952) [hereinafter Willie Love 1952 Contract] (on file with the University of Mississippi Library, Archive 4.36); Contract between Diamond Record Company and Joe Lee Williams para. 3 (Sept. 25, 1951) [hereinafter Joe Lee Williams 1951 Contract] (on file with the University of Mississippi Library, Archive 4.71) (containing a handwritten modification of the form contract on this provision).

³⁹ IRWIN O. SPIEGEL & JAY L. COOPER, RECORD AND MUSIC PUBLISHING FORMS OF AGREEMENT IN CURRENT USE, Form 1.1(14), at 7 (1971).

contains an equivalent clause.⁴⁰ These requirements are clearly less burdensome than the monthly test records required in the original Diamond Record Company contracts.

B. Whereabouts

From the earliest Diamond Record Company contracts to its final contracts, one of the key provisions required artists to keep the record label informed of their whereabouts.⁴¹ In the early contracts, however, there was nothing specified regarding penalties should they fail to do so.⁴² By Diamond Record Company's August 1951 contract with Elmore James, the contracts added a clause to provide that if the artist "fails to report his whereabouts or appear for sessions or other provisions of this contract, the terms of this contract are hereby extended for such period of time as [the artist] has been unavailable."⁴³

The reasons for this provision and its modification are not hard to fathom. In a day before reliable communications, where many of the artists lacked fixed residences, let alone phone numbers, getting in touch might be difficult. For Trumpet Records, artists were signed so as to produce recordings that Trumpet Records could then sell. This would be difficult to accomplish in the absence of the artist in question. With a roster of semi-itinerant musicians to contend with, it was important that Trumpet Records have some means of enforcing this provision—hence the modification that would automatically extend the lifetime of the contract should an artist fail to report his whereabouts as required.

⁴⁰ Averill C. Pasarow, *Some Legal Aspects of the Phonograph Record Industry*, in EIGHTH ANNUAL PROGRAM ON LEGAL ASPECTS OF THE ENTERTAINMENT INDUSTRY: SYLLABUS AND FORMS ON ACQUIRING AND USING MUSIC app. I, para. 2 (Apr. 7, 1962).

⁴¹ See, e.g., Luther Huff 1951 Contract, *supra* note 36, para. 3; Contract between Diamond Record Company and Jerry "Boogie" McCain para. 10 (Nov. 2, 1954) [hereinafter Jerry McCain 1954 Contract] (on file with the University of Mississippi Library, Archive 4.51).

⁴² Luther Huff 1951 Contract, *supra* note 36, para. 3.

⁴³ Elmore James 1951 Contract, *supra* note 26, para. 10. Similarly, Tiny Kennedy's October 22, 1951, contract provided for an extension should he fail to keep Diamond Record Company informed of his whereabouts. See also Contract between Diamond Record Company and Jesse "Tiny" Kennedy, para. 9 (Oct. 22, 1951) [hereinafter Jesse "Tiny" Kennedy 1951 Contract] (on file with the University of Mississippi Library, Archive 4.15).

It is important to note that such a clause would not necessarily have been unusual at the time. A form recording contract from California from 1962 contains a clause providing that if for reasons beyond the recording company's control, the recording artist is unavailable for recording sessions or if the artist fails, refuses or neglects to fulfill his obligations under the contract, the term of the contract "may be deemed extended by a period of time equal to that which elapses" until the artist renders the required services.⁴⁴ In substance, this is very similar to the Trumpet Record contract provision regarding whereabouts, incorporating the contract extension found in the later contract modifications. Even today, most contracts include a clause that requires the parties to provide an address for purposes of notice, with the obligation lying on the party whose address has changed to inform the other party of the change. While a notice clause usually does not include penalties, the clause in the Trumpet Records contracts could be viewed as a variation on notice clauses, reflecting the realities of communication difficulties at the time.

C. Royalties

In its 1951 contract with Luther Huff, Diamond Record Company stipulated that it would pay royalties of 1.5 cents (approximately 14 cents in 2017 dollars) for each record, together with a \$25 (approximately \$230 in 2017 dollars) recording fee for each record (with said recording fee to be deducted from the first accrued royalties).⁴⁵ Willie Love's April 7, 1951, contract also stipulated 1.5 cents per record and a \$35 (approximately \$325 in 2017 dollars) recording fee per record, to be deducted from the first accrued royalties.⁴⁶ Similarly, Elmore James' August 5, 1951, contract provided 1.5 cents per record and a \$35 recording fee per record, to be deducted from the first accrued royalties.⁴⁷ The last blues contract with this royalty payment structure appears to be the September 25, 1951, contract with Big Joe Williams.⁴⁸

⁴⁴ Pasarow, *supra* note 40, app. I, para. 15.

⁴⁵ Luther Huff 1951 Contract, *supra* note 36, para. 2.

⁴⁶ Willie Love 1951 Contract, *supra* note 26, para. 3.

⁴⁷ Elmore James 1951 Contract, *supra* note 26, para. 3.

⁴⁸ Joe Lee Williams 1951 Contract, *supra* note 38, para. 2.

Trumpet Records' position on royalties evolved after this. In a slightly later contract, Tiny Kennedy's October 22, 1951, contract, royalties were 1.5 cents for each of the first 25,000 records and 2 cents (18 cents in 2017 dollars) for each record sold over 25,000.⁴⁹

By 1952, Trumpet Records had achieved what would be its standard royalty formulation: 1.5 cents for each of the first 25,000 records, 2 cents for each of the second 25,000 records, 2.5 cents for each of the third 25,000 records, and 3 cents (28 cents in 2017 dollars) for each of any records sold over 75,000.⁵⁰ Whether this shift was to acknowledge market realities and keep the label competitive or whether it had some other motivation is unclear. In any case, the 1952 model continued to be used by Trumpet Records until it ceased operations.

D. Profit from Sheet Music and Other Recordings

While the earliest contracts did not specify the distribution of profit from the sale of sheet music or from the recording of original songs by other artists, by mid-1951, the contracts were being amended to reflect a distribution, usually of 50% net profit to the artist for sheet music sales and 25% for any net profit arising from the recording of original songs by other artists.⁵¹ The only exception to this in the contracts surveyed was Jerry "Boogie" McCain's August 20, 1953, contract with Diamond Record Company, which provided for 50% gross profit from sheet music and 50% gross profit from recordings by other artists.⁵²

The reason for the amendment is likely due to an oversight in the earlier contracts. Providing for the allocation of profits in

⁴⁹ Jesse "Tiny" Kennedy 1951 Contract, *supra* note 43, para. 2.

⁵⁰ See, e.g., Willie Love 1952 Contract, *supra* note 38, para. 2; Contract between Diamond Record Company and Jesse "Tiny" Kennedy para. 2 (Nov. 11, 1952) (on file with the University of Mississippi Library, Archive 4.16).

⁵¹ Amendment to the Contract between Diamond Record Company and Sonny Boy Williamson para. 1 (May 11, 1951) (on file with the University of Mississippi Library, Archive 5.3); Amendment to the Jan. 23, 1951, Contract between Diamond Record Company and Luther Huff (June 28, 1951) (on file with the University of Mississippi Library, Archive 4.1). See also Willie Love 1951 Contract, *supra* note 26, para. 7; Joe Lee Williams 1951 Contract, *supra* note 38, para. 6; Jesse "Tiny" Kennedy 1951 Contract, *supra* note 43, para. 6.

⁵² Contract between Diamond Record Company and Jerry "Boogie" McCain para. 7 (Aug. 20, 1953) [hereinafter Jerry "Boogie" McCain 1953 Contract] (on file with the University of Mississippi Library, Archive 4.50).

relation to these rights would be an important component to a recording contract, as primary sources for revenues besides the sale of the records themselves. Since, as previously discussed, there was no copyright for sound recording, revenue from sheet music was particularly important.

The amendments relating to profit were paired with an amendment wherein Diamond Record Company agreed not to use other artists to record original works by the artist within one year of the date of a recording by that artist under the contract.⁵³ The artist, however, relinquished any royalties or percentage of net profits from any recordings issued by Diamond Record Company using their original material after that one-year period.⁵⁴

E. Securing Licensing for Non-Original Works

The most unusual provision in the early Diamond Record Company contracts was undoubtedly the requirement that the artist "secure all copyright privileges, licenses and permissions needful, including the payment of any fees or royalties due" for any music that was not an original work of the artist.⁵⁵ In other words, it was the artist's responsibility to get legal permission to record songs by other artists. In the slightly later 1951 iteration of the contracts, the artist further agreed to indemnify Diamond Record Company for any losses incurred due to failure to obtain such permission, with Diamond Record Company being entitled to withhold royalties until evidence was provided that the artist had paid the required fees or royalties due under copyright privileges.⁵⁶

In the April 7, 1952, contract with Willie Love, the provision switched the responsibility to the other party, Diamond Record Company, so that it was their responsibility to secure all

⁵³ Sonny Boy Williamson Amendment, *supra* note 51; Luther Huff Amendment, *supra* note 51.

⁵⁴ *Id.*

⁵⁵ Luther Huff 1951 Contract, *supra* note 36, para. 6; Willie Love 1951 Contract, *supra* note 26, para. 7; *see also* Elmore James 1951 Contract, *supra* note 26, para. 7; Jesse "Tiny" Kennedy 1951 Contract, *supra* note 43, para. 6.

⁵⁶ Luther Huff Amendment, *supra* note 51; Joe Lee Williams 1951 Contract, *supra* note 38, para. 6.

copyrights and licenses, and not Willie Love's.⁵⁷ Later contracts all reflected that arrangement.⁵⁸

It would make very little sense to require artists to obtain the copyright permissions necessary to record works of other artists. The artists that Trumpet Records signed would have lacked legal representation, since for the most part they were local or regional musicians with limited financial means. Many of them had little formal education and most likely scant or no knowledge of copyright. An additional complication arises from the nature of the blues as a fluid medium where musicians borrowed and adapted existing songs and lyrics at will. In such a milieu, rigidly legalistic ideas of copyright would be especially foreign to the musicians.

Requiring artists to obtain permissions would also seem to open up a recording label to considerable potential liability, even where an indemnification clause existed, since it is unlikely that the artist would have the financial resources necessary to address a situation where permissions were not obtained. It is clear that Lillian McMurry came to realize this as reflected in the later contracts of Trumpet Records.

F. Comparison with Contemporary Form Contracts

In comparison with form contracts from 1962 and 1971, which for purposes of this Article are viewed as contemporary (substantive changes in form occurring post-1972 with the inclusion of sound recordings in the copyright regime), the contracts of Trumpet Records show an evolution towards the standard form, while in many areas remaining significantly more simplistic. Form contracts specific to the recording industry examined for purposes of this article came from California. The entertainment industry-specific nature of the California contracts reflects a greater level of sophistication than Trumpet Records' contract. These form contracts were also more comprehensive, encapsulating the range of possibilities that might be applicable to parties looking to use such forms. For example, a 1971 form contract included a clause pertaining to records sold "by way of

⁵⁷ Willie Love 1952 Contract, *supra* note 38, para. 6.

⁵⁸ See, e.g., Sonny Boy Williamson 1953 Contract, *supra* note 16, para. 6; Jerry "Boogie" McCain 1953 Contract, *supra* note 52, para. 6.

club plans or by direct mail order sales or in the form of pre-recorded tapes in any configuration[.]”⁵⁹ The 1962 form contract envisaged royalties to be paid on records sold outside the United States, something Trumpet Records was far from contemplating.⁶⁰

The form contracts are also more precise in providing for recording schedules as well as royalty payment statements. In contrast, the Trumpet Records contracts evolved from providing more standard-form recording requirements, which although onerous, more closely reflect the provision of the form contracts, to vaguer pronouncements requiring artists to provide recordings “from time to time[.]”⁶¹

Taken next to the form contracts, the contracts of Trumpet Records are less polished. Nevertheless, none of the provisions are out of the ordinary, and many of the evolutions indicate a growing awareness of industry standard practices.

V. COPYRIGHT—THE CASE OF SHERMAN JOHNSON

While the copyright provisions of the Trumpet Records contracts did not themselves change substantively throughout the life of the company, they did engender a lawsuit which would reach the Mississippi Supreme Court.⁶² The case in question arose out of a contract between blues musician Sherman “Blues” Johnson and Trumpet Records, and concerned the sale by Johnson of one of his songs to another recording company, whose recording of it became a hit record.⁶³ McMurry had registered the copyright for the song with the U.S. government, and the dispute concerned whether the song, which had been written prior to Johnson entering into a contract with Trumpet Records, rightfully belonged to Johnson or to Trumpet Records.⁶⁴

Although the case related peripherally to sound recordings, it was ultimately a contractual dispute and did not raise questions relating to the interpretation of sound recording copyright under common law in the state of Mississippi. Given Lillian McMurry’s

⁵⁹ SPIEGEL & COOPER, *supra* note 39, Form 1.1(6)(c), at 3.

⁶⁰ Pasarow, *supra* note 40, app. I, para. 3.

⁶¹ See *supra* note 38 and accompanying text.

⁶² *Globe Music Corp. v. Johnson*, 84 So. 2d 509 (Miss. 1956).

⁶³ *Id.* at 510-11.

⁶⁴ *Id.*

care for her artists, this case was also a significant betrayal of her trust which apparently left her dismayed.⁶⁵ It also serves as a reminder that as fair as Lillian McMurry was, Trumpet Records was not a charitable entity, but rather a for-profit corporation. Ultimately, business interests were a primary concern.

In response to the unfavorable outcome of the case for Trumpet Records, Lillian McMurry apparently tore up the original contract.⁶⁶ The Trumpet Records collection at the Blues Archives is in fact missing the contracts for Sherman Johnson. By requesting a copy of the original case documents from the Hinds County Chancery Court, I was able to obtain copies of both the September 1951 and the October 1952 contracts between Sherman Johnson and Diamond Record Company. I have included them both in the appendices to this paper so as to make them more widely available to the interested public.

Signed to a contract with Trumpet Records on September 22, 1951, Johnson initially recorded several songs which were not released.⁶⁷ The contract provided that for original compositions of the artist “during the term of this contract or any extensions thereof . . . [a]ll musical works written and composed and/or arranged by [the artist] shall be and become the property of [Diamond Record Company], its assigns or successors forever,” with Diamond Record Company retaining the right to dispose of the copyright in whatever way they deem appropriate.⁶⁸

The dispute related to a song that Sherman Johnson had composed in 1949 titled “You Said You Loved Me,” which he recorded for Trumpet Records as “Saving My Love For You”.⁶⁹ The song was never released, however as part of its standard procedures, Diamond Record Company registered the copyright of the song with the U.S. government on October 15, 1951, which it then assigned to Globe Music Corporation, the publishing arm of the young record label.⁷⁰

⁶⁵ RYAN, *supra* note 3, at 140-41.

⁶⁶ *Id.* at 141.

⁶⁷ *Globe Music Corp.*, 84 So. 2d at 510. The contract can be found in Appendix A to this Article.

⁶⁸ *Id.* at 510.

⁶⁹ *Id.*

⁷⁰ *Id.* at 510-11

Despite Lillian McMurry deeming his early sessions unsuitable for release, Johnson's contract was extended for another year on October 17, 1952.⁷¹ This contract provided that Diamond Record Company would be given "the exclusive right of recording, transcribing and/or otherwise making sound reproductions of the singing, vocal renditions, . . . produced by himself for a term of only one year[.]"⁷² In other words, Johnson was to refrain from selling his songs to other artists or recording with other labels while under contract.

In December 1952, Trumpet issued its first release of Johnson's music—a 78 with his songs "Sugar Mama" and "Pretty Baby Blues" which did not see commercial success.⁷³ In April 1953, shortly before his second release was due to be issued, Lillian McMurry provided written encouragement to Johnson, noting that "I'm going to give you a swift kick in the pants next time I see you if you don't keep on trying. You are writing some damn good stuff now[.]"⁷⁴ While this release had some regional success, it failed to crack the national market.⁷⁵ Johnson, disappointed about the future prospects of his singing career, began looking around to see if he could sell his songs to other artists.⁷⁶ Lion Publishing Company bought the song "Saving My Love For You" from him and turned it into an R&B chart topper for Johnny Ace in 1954.⁷⁷

In August 1954, Johnson filed a complaint against Globe Music Corporation and Lion Publishing Company, claiming that Diamond Record Company secured the copyright without any legal right, which it assigned to Globe Music Corporation.⁷⁸ After the Johnny Ace version of the song became a hit record, Globe Music Corporation contacted Lion Publishing Company claiming they owned all of the rights to the song, by virtue of the contracts and the fact that they had registered the copyright with the U.S.

⁷¹ *Id.* at 510. The contract can be found in Appendix B to this Article.

⁷² *Id.*

⁷³ RYAN, *supra* note 3, at 140-41.

⁷⁴ *Id.* at 141.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Original Bill of Complaint at 3, *Johnson v. Globe Music Corp.* (Miss. Ch. Ct. Hinds County Aug. 6, 1954).

government.⁷⁹ Lion subsequently withheld royalties from Johnson.⁸⁰ After Lion failed to join in the complaint against Globe Music Corporation, Johnson made them a defendant.⁸¹

The Hinds County Chancery Court issued its opinion in January 1955, holding that since the song was written by Johnson prior to the execution of the original contract, and since Diamond Record Company never published any recordings of that song during the term of the contract, Diamond Record Company had no authority to obtain a copyright for the song under the terms of the contract, noting that “certainly equity and good conscience cannot permit such an injustice.”⁸² Therefore, Globe Music Corporation did not have legal authority to hold the copyright.⁸³ The Chancery Court did not provide an explanation for its reasoning, and the judgment was subsequently appealed by McMurry and Globe Music Corporation.

The Supreme Court, in a short opinion, ruled in favor of Johnson, on the basis that contractual ambiguities must be interpreted in favor of the party which did not draft the agreement—Johnson in this case.⁸⁴ This basic rule of contract law, which can be found in any first year contracts textbook, is designed to prevent more sophisticated parties who draft contracts from taking advantage of those in an unequal bargaining position who might enter into contracts without fully understanding the terms.⁸⁵

The contractual provision in question stated:

As to any original compositions and/or arrangements by Second Party during the term of this contract or any extensions thereof, it is agreed: All musical works written and composed and/or arranged by Second Party shall be and become the property of First Party, its assigns or successors forever, and First Party shall have the right to dispose of

⁷⁹ *Id.* at 3-4.

⁸⁰ *Id.* at 4.

⁸¹ *Id.*

⁸² Opinion of the Court at 3, *Johnson v. Globe Music Corp.*, No. 48,140 (Miss. Ch. Ct. Hinds County Jan. 12, 1955).

⁸³ *Id.*

⁸⁴ *Globe Music Corp. v. Johnson*, 84 So. 2d 509, 511 (Miss. 1956).

⁸⁵ *See, e.g., Joyner v. Adams*, 361 S.E.2d 902, 905-06 (N.C. Ct. App. 1987).

same in whatever manner it deem[s] appropriate, including but not limited to securing copyrights thereto.⁸⁶

Based on this language, had Sherman Johnson written the song during the term of the contract, the song would have become the property of Trumpet Records, as clearly provided for in the contracts.⁸⁷ However, even had Trumpet Records released the recording, the contracts did not grant copyright over a composition created prior to the term of the contract, and the rights to the song would have remained with Sherman Johnson.

While the case arguably demonstrates the naivety of McMurry and her lawyers, as the outcome hinged upon a contractual ambiguity that should have been caught in the drafting process, a form contract from 1971 contains the same clause. The 1971 form contract provides that musical compositions by the artist during the term of the agreement of the contract become property of the recording company.⁸⁸ There is no mention of compositions predating the contract. This is perhaps understandable: what artist would be willing to enter into a contract wherein all of their compositions became the property of the record label, no matter when they were composed? It would be unreasonable to expect such a blanket assignment of rights. In light of this, McMurry's registration of the song's copyright either reflects her own lack of understanding of the agreement (perhaps an innocent mistake in light of the recording Johnson made for Trumpet Records of the song), or shows an uncharacteristically unscrupulous side to her nature. Given her apparent distress over the outcome of the case and her feeling of betrayal, I speculate it was the former.

⁸⁶ Contract between Diamond Record Company and Sherman Johnson para. 7 (Oct. 17, 1952) (see Appendix B).

⁸⁷ Contract between Diamond Record Company and Sherman Johnson para. 6 (Sept. 22, 1951) (see Appendix A); Contract between Diamond Record Company and Sherman Johnson para. 7 (Oct. 17, 1952) (see Appendix B).

⁸⁸ SPIEGEL & COOPER, *supra* note 39, Form 1.1(16), at 7-8.

VI. PIRATING AND THE BLUES

Beyond the routine contractual agreements, Trumpet Records faced some more unusual legal challenges. Some of the most interesting related to the pirating of their original records in the years after the record label ceased operating, and are instructive in understanding widespread copyright infringement practices by foreign and domestic labels.

When we think of copyright infringement in relation to blues artists, it is often the attribution of songs recorded by subsequent artists to the original creator that comes to mind—Robert Johnson, for instance, or the recent lawsuit against Eric Clapton and Warner Music Group for the alleged miscrediting of Clapton’s song “Alberta” to Lead Belly Ledbetter, when in fact it should have been credited to Bo Carter.⁸⁹ These lawsuits may be difficult to win, particularly given the structural and lyrical similarities between many blues songs. This is exemplified by the “floating verses”, which were couplets recycled freely amongst blues singers—an open source oral tradition of lyrics, as it were.⁹⁰ Structurally, the most common blues patterns are 12-bar, 8-bar and 16-bar, following a generally fixed chord progression, which are often repeated across a wide range of blues songs.⁹¹

A less discussed and perhaps more interesting aspect of copyright infringement, however, is that of unauthorized reissues of out-of-print or rare 78s. This type of piracy first arose in the early 1950s in the United States, where records by artists such as Jelly Roll Morton and Billie Holiday were copied and released.⁹² This was later seen in the unauthorized re-issuing of tracks originally recorded by American labels on the part of European record companies. As a smaller, independent label, Trumpet Records was victim of several instances of such practice.

As Lillian McMurry noted in a letter to Jerry “Boogie” McCain: “The people in France, Germany, England and Belgium

⁸⁹ Daniel Kreps, *Eric Clapton Sued by Bluesman’s Estate Over Mistaken ‘Unplugged’ Credit*, *ROLLING STONE* (Oct. 28, 2016), <https://www.rollingstone.com/music/news/eric-clapton-sued-by-bluesmans-estate-over-mistaken-credit-w447291> [<https://perma.cc/VA2C-ST5R>].

⁹⁰ ELIJAH WALD, *THE BLUES: A VERY SHORT INTRODUCTION* 113 (2010).

⁹¹ *Id.* at 4-5.

⁹² BARRY KERNFELD, *POP SONG PIRACY: DISOBEDIENT MUSIC DISTRIBUTION SINCE 1929*, at 133 (2011).

[sic] and other parts of the world are bad about pirating. They beat the record company that recorded the records, the [sic] beat the writers and the artists. Three of mine...No....four of mine have been pirated of songs belonging to me as writer. It's a dirty, lowdown business."⁹³ In 1971, she wrote a cease and desist letter to XX Records in Surrey, England, after they had released a record pirating several Trumpet Record recordings of Big Joe Williams.⁹⁴

The deception of some of those responsible for the copyright infringement ran deep and was not limited to foreign bootleggers. In 1981, Lillian McMurry's nephew was contacted by an individual who claimed that he wanted to record his rock band on his new label.⁹⁵ Through this connection, he met Lillian McMurry who worked out who he was and contacted the FBI. The individual in question, who had gone by the name of Paul Groob was apparently one Aaron Fuchs, known to pirate older blues records and to record these artists without paying them.⁹⁶

In another example documented by Lillian McMurry, a man named Mike Rowe, on the staff of *Blues Unlimited* in Lewisham, London, came to visit Trumpet Records with an associate.⁹⁷ While McMurry did not give him any records, he and his cohort allegedly stole the master recordings of several Trumpet Records works and were pirating them on their own record label.⁹⁸ This record, *Memphis...on down*, contained two Luther Huff songs, which was of note since Rowe had inquired about the whereabouts of Luther Huff upon his visit to Trumpet Records.⁹⁹ McMurry, not knowing where he was, could not tell him.¹⁰⁰ Her claim was for damages

⁹³ Letter from Lillian McMurry to Jerry "Boogie" McCain (Oct. 24, 1980) (on file with the University of Mississippi Library, Archive Jerry McCain 4.60).

⁹⁴ Cease and Desist Letter from Lillian McMurry to XX Records, Surrey, England (Oct. 14, 1971) (on file with the University of Mississippi Library, Archive Joe Lee Williams 4.71).

⁹⁵ Letter from Lillian McMurry to Jerry McCain (Sept. 29, 1981) (on file with the University of Mississippi Library, Archive Jerry McCain 4.60).

⁹⁶ *Id.*

⁹⁷ Document titled "Suit #6" (on file with the University of Mississippi Library, Archive Luther Huff 4.2).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

relating to “‘killing’ the potential sale or lease of the mechanical reproductions.”¹⁰¹

While outright theft of the original master recordings would seem to fall on the extreme end of the piracy spectrum, in other cases the piracy amounted to rereleasing songs based on 78s. As a 1953 Stanford Law Review note identified, the problem of record piracy was in part a product of socioeconomic conflict, whereby “[d]evotees of certain types of music have not been able to obtain sufficient copies of out-of-print records to satisfy their legitimate demands. Reissue of all the old records would solve the problem for the collector, but it is not economically practicable for the record company.”¹⁰² In other words, when older recordings were not reissued because of limited demand, the aficionados of that genre would have no outlet to obtain these songs, making room for bootleggers to reissue rare or older recordings. This was certainly the case with many blues records both in the United States and abroad.

The prevalence of international piracy can be attributed in part to the lack of participation by the United States in the international copyright regime until 1989. A future iteration of this Article will look into these issues of piracy and international copyright in more detail.

VII. LILLIAN MCMURRY AND THE PERSONAL SIDE OF TRUMPET RECORDS

As previously mentioned, Lillian McMurry was not a run-of-the-mill record executive. Her personal connections with the artists contracted by Trumpet Records were clear from her correspondences and are worth discussing in some detail, since they reflect her *modus operandi* in the legal and day-to-day business of the record label. In this Section, I highlight some of her relationships as they relate to the underlying legal obligations. There would have been no Trumpet Records were it not for Lillian McMurry, and the greatest story of the label lies in

¹⁰¹ *Id.*

¹⁰² Note, *Piracy on Records*, 5 STAN. L. REV. 433, 457 (1953). Unfortunately for us, the authorship of the student note is unclear, reflecting the practice at the time of not providing author information for student notes in law reviews.

the personal interactions that took place between her and the artists she signed to her label.

A. Elmore James

Elmore James was a blues guitarist and singer who signed with Trumpet Records in August 1951.¹⁰³ After recording a couple of tracks with Trumpet, including the very successful "Dust My Broom," Elmore James left Mississippi for Chicago while still under contract with Trumpet Records.¹⁰⁴ Prior to leaving, he had broken his contract with McMurry (without her knowledge) and recorded several tracks for the Bihari brothers, who were encroaching on Trumpet Records' artists.¹⁰⁵

When Lillian McMurry informed Elmore James that the option on his contract was being taken up and the contract was renewed, Elmore failed to respond.¹⁰⁶ Lillian McMurry was increasingly frustrated, since Elmore James was in violation of his contractual obligation to notify her of his whereabouts and had failed to appear for recording sessions. In May 1952, she sent him a telegram saying that she knew that other parties were trying to get him to cut records for them, and admonishing him not to "give in or you will be responsible and we will know[.]"¹⁰⁷

In August 1952, Lillian McMurry wrote to Elmore James notifying him that his contract was extended for six months (the period during which he had been unavailable) and that it would be extended "for such additional period of time as you do not appear for recording sessions or any other provisions of this contract."¹⁰⁸

She went on to state:

You have certainly not complied with your contract and wish to say that we are greatly surprised that you have acted in

¹⁰³ Elmore James 1951 Contract, *supra* note 26.

¹⁰⁴ RYAN, *supra* note 3, at 85.

¹⁰⁵ *Id.*

¹⁰⁶ Letter from Lillian McMurry to Elmore James (July 19, 1952) (on file with the University of Mississippi Library, Trumpet Records Archive 4.7).

¹⁰⁷ Telegram from Lillian McMurry to Elmo [sic] James (May 2, 1952) (on file with the University of Mississippi Library, Trumpet Records Archive 4.7).

¹⁰⁸ Letter from Lillian McMurry to Elmore James (Aug. 6, 1952) (on file with the University of Mississippi Library, Trumpet Records Archive 4.7).

such a manner. As you well know, you did not contact us in any way until July 17th[], at which time you called us collect from Chicago stating that you wanted \$30.00 to come home to Canton, Mississippi on July 18th. We, of course, sent you the money and you have not appeared yet.¹⁰⁹

The letter went on to note that notice of the option renewal was sent to James' Canton, MS address meaning that he was prohibited from recording for anyone else.¹¹⁰ "Violation of this clause of your contract is subject to suit for damages[,]” she wrote.¹¹¹ When it came to artists violating their contracts with Diamond Record Company, Lillian McMurry was not to be trifled with.

B. Willie Love

Willie Love was a blues pianist who played in Ike Turner's Clarksdale-based group and who had previously recorded with Trumpet Records as accompanist to Sonny Boy Williamson.¹¹² Trumpet Records had Willie Love under contract from 1951 until his death in 1953. Willie Love died on August 19, 1953, of bronchopneumonia, according to his death certificate.¹¹³ In March 1953, his contract had been extended for not one but two years, to run until April 7, 1955, an indication of his relative success.¹¹⁴

In a letter dated October 18, 1971, to Mrs. Anna King, the mother of Willie Love, Lillian McMurry wrote: "My husband and I are the ones who looked after Willie when he was ill in the Baptist Hospital and Diamond Record Co. paid as loans to you after Willie's death the money to bury him and pay his doctor and hospital bills."¹¹⁵ The letter went on to inquire about the address to give to the company that had bought the performances to

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² RYAN, *supra* note 3, at 40.

¹¹³ Certified Copy of Willie Love Death Certificate (Oct. 18, 1971) (on file with the University of Mississippi Library, Trumpet Records Archive 4.48).

¹¹⁴ Notice of Exercise of Option to Renew Contract (Mar. 19, 1953) (on file with the University of Mississippi Library, Trumpet Records Archive 4.37).

¹¹⁵ Letter from Lillian McMurry to Anna King (Oct. 18, 1971) (on file with the University of Mississippi Library, Trumpet Records Archive 4.38).

ensure that royalties, if any, would be paid to Mrs. Anna King.¹¹⁶ The letter was returned—clearly Mrs. Anna King was either no longer alive or no longer at the residence. A check shows that Diamond Record Company paid \$154.00 for funeral expenses for Willie Love.¹¹⁷

This was not unique to Willie Love's situation. Lillian McMurry provided loans to help her artists and their families, and continued to look after them and to try to ensure that they would receive any royalties due, even after Trumpet Records was no longer in operation.

C. Jerry "Boogie" McCain

Jerry "Boogie" McCain was a blues singer and harmonica player from Gadsden, Alabama.¹¹⁸ He cut his first record for Trumpet Records in 1953, with the songs "East of the Sun" and "Wine-O-Wine".¹¹⁹ He continued his recording career with various labels over the years until his death in 2012.¹²⁰

A pair of letters between Jerry "Boogie" McCain and Lillian McMurry exemplify her no-nonsense attitude towards her recording artists.

On March 9, 1954, Jerry wrote the following to McMurry:

Dear, Ms. Lillian:

I'am Just writing to find out if you know when do you want me to Come to record, So I can be on the ball. I hear them Play East of the Sun every nite on Randy record Program. they crazy about it every where. oh yes what about the

¹¹⁶ *Id.*

¹¹⁷ Cancelled Check and Copy of Invoice from Collins Funeral Home for Funeral of Willie Love, Jr. (reprinted Oct. 13, 1971) (on file with the University of Mississippi Library, Trumpet Records Archive 4.47).

¹¹⁸ Kendra Carter, *Legendary Bluesman Jerry "Boogie" McCain Dies*, GADSDEN TIMES (Mar. 28, 2012), <http://www.gadsdentimes.com/news/20120328/legendary-bluesman-jerry-boogie-mccain-dies> [<https://perma.cc/69RY-2A5J>].

¹¹⁹ *Id.*

¹²⁰ *Id.*

booking agent I want to get on the road. let me know. I remain.¹²¹

Lillian responded on March 16, 1954, stating that:

[Y]ou see now that the record is not being played on it's own merit; it is our promotion. YOU CANNOT MAKE A LIVING ON THE ROAD UNTIL YOU DEFINITELY HAVE A HIT RECORD; you'd starve to death.

Your other two sides you have cut are way below average. You are going to need some better material; a better guitar man will help a lot.¹²²

This straightforward, blunt and critical attitude is evident in other letters from Lillian across the genres of artists that she managed.¹²³

Despite her criticism, Lillian McMurry's commitment to her artists continued long after the record label was defunct. In a letter from McMurry to Jerry dated September 25, 1979, in relation to a new contract mentioned by Jerry now that Globe, the successor to Diamond Record Co. was being sold, she wrote the following:

Ever since talking with you over the phone last week, I've worried about what you told me of the actions and non-actions of that manager, or supposed manager, of yours.

Knowing you don't have monies to go out and hire a high-priced lawyer, let me suggest that you look in the phone yellow pages under Social Service Organizations for:

Alabama Legal Services

¹²¹ Letter from Jerry McCain to Lillian McMurry (Mar. 9, 1954) (on file with the University of Mississippi Library, Trumpet Records Archive 4.57) (all typographic and grammatical errors are in original).

¹²² Letter from Lillian McMurry to Jerry McCain (Mar. 16, 1954) (on file with the University of Mississippi Library, Trumpet Records Archive 4.57).

¹²³ See, e.g., Letter from Lillian McMurry to Joe Almond (Jan. 21, 1954) (criticizing country musician, Joe Almond, for singing too loudly, and suggesting that he "[t]ry singing [his] slow tunes soft, like [his] girl was standing right beside [him], instead of shouting at her across the cow pasture") (on file with the University of Mississippi Library, Trumpet Records Archive 2.5).

I understand there are free legal services furnished for people to whom injustices are done.¹²⁴

McMurry went on to explain to him that his previous manager conned him out of money, providing him with some helpful legal advice:

Jerry, you do not need a lawyer schooled in the music field. All you need is a good litigator in civil law, and one who has determination; sue the manager for enough to scare the pants off him; make him pay if possible and then return every power and any contracts, songs and anything else he acquired by the contracts from you or acquired from anyone else for you as your manager. This case would not be in federal courts but in Chancery or Circuit.¹²⁵

Since there was no legal relationship between Lillian McMurry and McCain at this time, her concern was purely driven by the personal relationship she had developed during McCain's time as recording artist for Trumpet Records.

D. Sonny Boy Williamson

Lillian McMurry's first and arguably most successful blues signing was Sonny Boy Williamson.¹²⁶ His relationship with Trumpet Records began in December 1950 and continued until shortly before the record label dissolved in 1955, when McMurry sold his contract to Buster Williams at the Plastic Products pressing plant in Memphis, Tennessee, in exchange for the cancellation of a large debt relating to the production of records.¹²⁷ Williams subsequently sold the contract to Leonard Chess of Chess Records.¹²⁸ Sonny Boy Williamson was a blues harmonica player, and had some regional fame prior to recording with Trumpet Records from playing on the blues radio show King Biscuit Time, which broadcasted from Helena, Arkansas.¹²⁹ Sonny

¹²⁴ Letter from Lillian McMurray to Jerry McCain (Sept. 25, 1979) (on file with the University of Mississippi Library, Trumpet Records Archive 4.59).

¹²⁵ *Id.*

¹²⁶ RYAN, *supra* note 3, at 24.

¹²⁷ *Id.* at 24, 150.

¹²⁸ *Id.* at 150.

¹²⁹ ROBERT PALMER, *DEEP BLUES* 174, 177-78, 185 (1981).

Boy Williamson's first recordings, however, were with Trumpet Records in 1951, by which point he was over fifty years old.¹³⁰

The voluminous correspondences between Lillian McMurry and Sonny Boy and Mattie (his wife) indicate a close relationship. While perhaps Lillian McMurry had more time for the troubles of Sonny Boy and Mattie because of the importance of the contractual relationship between Sonny Boy and Trumpet Records, the correspondences suggest that the relationship, particularly between Mattie Williamson and Lillian McMurry, went far beyond a contractual one. Lillian McMurry hired Mattie to work at the Record Mart, the furniture/record store she operated, during which time Mattie revealed the struggles that came from being married to the less than reliable Sonny Boy Williamson.¹³¹

In April 1952, Sonny Boy Williamson granted a power of attorney to Mattie Williamson to execute contracts and receive royalties.¹³² Sonny Boy explained the purpose of the power of attorney in a letter he wrote to Lillian McMurry in February 1952 (all typographic and grammatical errors are original):

Helena, Ark

Mrs W.F.McMurry

I am Wrinight you to let you Here from me I wount you to drew up a contract Bewine you and me and mattie that mattie will take car all of m Baszy for me you chack with on all of my Record incouled the one I got to make from this day on. She will come down When you wount to See about it I wount Her to look afted all my Beaszy for me from this day on So you let my Here from you as Soon is you get my letter.

Sonny Boy Williamson¹³³

¹³⁰ *Id.* at 185.

¹³¹ RYAN, *supra* note 3, at 44.

¹³² Power of Attorney between Sonny Boy Williamson and Mattie Williamson (Apr. 21, 1952) (on file with the University of Mississippi Library, Trumpet Records Archive 5.4).

¹³³ Letter from Sonny Boy Williamson to Lillian McMurry (Feb. 5, 1952) (on file with the University of Mississippi Library, Trumpet Records Archive 5.31).

Accompanying Sonny Boy's letter was a letter from Mattie Williamson to Lillian McMurry, which summarized the situation more clearly:

Helena, Ark

Mrs. W. F. McMurry.

I am writing you concerning a Contract or Agreement, for Sonny Boys royalties. I dont know exactly how it should go, but I want it fixed so he cant get any money without my Signature. here is the letter he wrote. but told me to write it over. So you will know what to do about it. let me know at once about it.

Respectfully yours.

Mattie L. Williamson¹³⁴

In response to the request from Sonny Boy and Mattie Williamson, Lillian McMurry used the services of the Jackson-based law firm Chill, Landman & Gordon to prepare the power of attorney.¹³⁵ That Sonny Boy Williamson was not responsible with money is clear from Mattie Williamson's request.

Many of the correspondences that followed between Mattie and Lillian contained medical complaints from Mattie and concerns regarding the whereabouts of Sonny Boy Williamson. She occasionally asked McMurry for advances to help with bills, because as she noted, "that no good man still havent [sic] sent me a dime . . ." ¹³⁶ She also advised her concerning Sonny Boy, in no uncertain terms, that "whatever you do[,] don[']t send him a dime."¹³⁷

In fact, Lillian McMurry appears to have even acted as an intermediary between Mattie and Sonny Boy. In a letter to

¹³⁴ Letter from Mattie Williamson to Lillian McMurry (Feb. 5, 1952) (on file with the University of Mississippi Library, Trumpet Records Archive 5.31) (all typographic and grammatical errors are in original).

¹³⁵ Statement from Chill, Landman & Gordon (May 5, 1952) (on file with the University of Mississippi Library, Trumpet Records Archive 5.31).

¹³⁶ Letter from Mattie Williamson to Lillian McMurry (Nov. 13, 1954) (on file with the University of Mississippi Library, Trumpet Records Archive 5.36).

¹³⁷ Letter from Mattie Williamson to Lillian McMurry (July 19, 1954) (on file with the University of Mississippi Library, Trumpet Records Archive 5.36).

McMurry, Mattie requested that she show him a hospital bill to let him know she had been ill, with a letter to Sonny Boy from Mattie, who she hadn't seen in a while.¹³⁸ In the letter she wrote that she "felt very bad when they were taking me in the hospital and they ask where you was [sic] and I couldnt [sic] tell them. Maybe one day you will act like my husban [sic]."¹³⁹

Lillian McMurry's meticulous record-keeping provides us with one of the most emotional insights into what it must have been like to be married to Sonny Boy Williamson. In an undated letter, Mattie Williamson terminated her power of attorney with Sonny Boy Williamson:

Dear Sonny. I am very Sorry I had to leave you like this but I Just cant stay with you any more. you might think I am dirty. but the things you have done to me I cant ever forgive you for it. now you can have a divorce and also give the power of attorney to anybody you want. I will not expect a dime from you. Im sure you can get Mrs Venia to go along with you. if she is good enough for you to sleep with I am sure she can take care of your business. Now this letter is proof that I will not bother you or your money. look under the mattress and you will find the money I left. I didnt take it all. if you think I will ever bother you or your money, you can have Mrs McMurry to draw up some papers and send them to me and I will sign them.¹⁴⁰

From subsequent royalty payments, it does not appear that the power of attorney was terminated by Sonny Boy Williamson at this juncture.

It is perhaps in the materials pertaining to Sonny Boy Williamson and his contract with Trumpet Records that we can

¹³⁸ Letter from Mattie Williamson to Lillian McMurry, containing letter from Mattie Williamson to Sonny Boy Williamson (Nov. 24, 1954) (on file with the University of Mississippi Library, Trumpet Records Archive 5.36).

¹³⁹ *Id.*

¹⁴⁰ Letter from Mattie Williamson to Sonny Boy Williamson (undated) (on file with the University of Mississippi Library, Trumpet Records Archive 5.31) (all typographic and grammatical errors are in original). The letter was included in the archives on the condition that it remain sealed until Mattie Williamson's death. In researching this paper, I came across the reference and requested that the record be unsealed, since that event had passed. It was by far the most emotional moment of my research, and vividly brought home the struggles that Mattie Williamson faced in her relationship with Sonny Boy Williamson.

best see how Lillian McMurry's actions rose above those of a normal record executive and brought an undoubtedly kinder touch to her business dealings. In the decades after Sonny Boy Williamson's death in May 1965, the correspondences between Lillian McMurry and Mattie Williamson continued, recounting meetings, and continued payment of royalties due to Sonny Boy Williamson. The letters written by Mattie to Lillian that exist indicate genuine mutual affection and a close relationship between her family and the McMurry family.

CONCLUSION

The story of the contracts of Trumpet Records is intertwined with the personal stories of the artists who recorded for the label. In the shadows of these personal stories lurks a darker story about exploitation—the exploitation of musicians by predatory record labels, and the exploitation of the musical output of smaller labels by fly-by-night operations or international labels unconcerned with proper attributions and rights. It also reflects the confusion surrounding copyright, in the absence of federal copyright protection for sound recordings from the era.

Lillian McMurry was an exceptional individual whose adherence to the letter of her contracts and treatment of her artists was unusual. She fought against copyright infringement not only because of the royalties she was losing, but also for the royalties her former artists, many of whom were not financially well off, were due. While it is easy to sympathize with the record collector in search of a rare, un-reissued gem to whom piracy offered the only means to access the music, the position of the artist and the record label, however small and defunct, should not be forgotten.

The contracts of Trumpet Records show the evolution in legal and musical sophistication of a music industry novice who, in a relatively short time, had a significant impact on the musical world of Mississippi, and on blues collectors around the world. Lillian McMurry was a trailblazer in the Mississippi recording industry, and deserves iconic status as a pioneering female record company executive. To her artists, McMurry was more than a businesswoman, providing personal care and attention, and often advancing money to artists in need. To quote Sonny Boy

Williamson's unreleased song about Lillian McMurry, 309, "she may not be at the office, then call 39309, because she mine and I love her, and she always easy to find."

APPENDIX A

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

SHERMAN JOHNSON, COMPLAINANT

V.

GLOBE MUSIC CORPORATION AND
LION PUBLISHING COMPANY, DEFENDANTS

ORIGINAL BILL OF COMPLAINT

NO. **FILED**
AUG 6 - 1954

FRANK T. ECCLES, CLERK

BY *Frank Redford*

Comes now Sherman Johnson and files this his original Bill of Complaint against Globe Music Corporation and Lion Publishing Company, and would show unto the Court the following facts, to-wit:

1. Complainant, Sherman Johnson, is an adult, resident citizen of Lauderdale County, Mississippi. Defendant, Globe Music Corporation, is a Mississippi corporation, domiciled in Jackson, Hinds County, Mississippi; and the defendant, Lion Publishing Company, is a Texas corporation, a non-resident of the State of Mississippi, has never qualified to do business in Mississippi, or appointed a resident agent for process in Mississippi, and whose post office address is Houston, Texas, and whose street address is 2809 Erastus Street, Houston, Texas, and whose President is Don D. Robey.

2. Complainant is a musician and musical composer, and defendants are both engaged in the business of making recordings and other sound reproductions of music.

3. That some time during the month of May 1949 or shortly prior thereto, complainant wrote a song entitled "You Said You Loved Me" sometimes referred to as "Saving My Love For You"; that complainant, although he was the sole author and composer of the words and music to said song, has himself never had said song copyrighted.

4. That two or three weeks prior to September 22, 1951, Plaintiff gave an audition of said song for the Diamond Record Company, Inc., along with several other songs; that prior to the execution of the contract set out in the next paragraph hereafter, between the complainant and the Diamond Record Company, Inc., the predecessor in title of the defendant Globe Music Corporation, the complainant was informed by letter by said Diamond Record Company, Inc., that they wanted several other songs which the complainant had auditioned but did not desire that particular song; that neither the said Diamond Record Company, Inc., nor the defendant, Globe Music Corporation, have ever in fact printed any records of said song for sale or publication in any manner.

5. On September 22, 1951, complainant and said Diamond Record Company, Inc. entered into a contract under which the complainant was to make recordings for the said Diamond Record Company, Inc., and said Diamond Record Company, Inc. was to make records of the same and sell them, paying complainant certain royalties thereon; that a true copy of said contract is attached hereto as Exhibit 1, and by reference made a part hereof; that said contract expired under its terms on September 22, 1952, but that on October 17, 1952, complainant entered into a new contract under which complainant was to make recordings for said Diamond Record Company, Inc. and said Diamond Record Company was to make records of the same and sell them, paying complainant royalties thereon; that a true copy of said contract, executed on October 17, 1952, is attached hereto as Exhibit 2, and by reference made a part hereof; that, although said contract of October 17, 1952, contained therein an option of renewal to the said Diamond Record Company, said Diamond Record Company failed to exercise said option, and said contract expired under its terms on October 17, 1953.

6. On November 30, 1953, after the expiration of both contracts between complainant and said Diamond Record Company, Inc., said Diamond Record Company, Inc. never having recorded said song or given any notice to complainant that they desired to record said song; complainant sold said song to the defendant Lion Publishing Company, Houston, Texas, as he had a right to do.

7. That a true copy of the agreement between this complainant and said defendant Lion Publishing Company is attached hereto as Exhibit 3 to this Bill of Complaint, and by reference made a part hereof.

8. That said defendant Lion Publishing Company recorded said song, using a different musical arrangement; that early in the year 1954, said recording by defendant Lion Musical Company of said song became what is popularly known as a "hit tune" and thousands of copies of said record were sold all over the United States. That by reason of said sales and the contract which complainant had with the defendant Lion Publishing Company, complainant was entitled to a considerable sum as royalties from the sale of said record, the exact amount of which has not yet been determined.

9. That on or about the 15th day of October, 1951, the said Diamond Record Company, Inc., without any legal right whatsoever secured a copyright on said song from the United States government; that sometime thereafter, said Diamond Record Company Inc. executed an assignment of said copyright to Globe Music Corporation; that said Globe Music Corporation had full knowledge of the rights of the complainant to said song and knew, or should have known by the exercise of reasonable diligence, that said Diamond Record Company had no legal right to said song or to copyright said song. That after discovering that said record had become a hit the said defendant Globe Music Corporation contacted said defendant Lion Publishing Company and made a claim against them because of

their recording said song, alleging that by reason of the above two described contracts between complainant and said Diamond Record Company, Inc., they owned all of the rights to said song and a copyright on said song from the United States Government; that by reason of said defendant, Globe Music Corporation's representations to said defendant Lion Publishing Company, said defendant Lion Publishing Company has withheld all royalties on said record due your complainant; that the said defendant, Globe Music Corporation, in fact, has no interest in said song whatsoever, either under said two contracts or for any other reason, but that your complainant and said defendant Lion Publishing Company are, in fact, the sole owners of said song, and the said defendant Diamond Record Company, Inc., had no right to secure a copyright thereon, nor to assign said copyright to the defendant Globe Music Corporation.

10. That the said defendant, Lion Publishing Company has neglected, or refused, to join in this Bill of Complaint as a complainant and therefore complainant makes them a defendant hereto.

WHEREFORE, PREMISES CONSIDERED, your complainant prays that all proper process issue for said defendants Globe Music Corporation and Lion Publishing Company, requiring them to plead, answer or demur to this Original Bill of Complaint on or before the regular September Term of this Court, answer under oath being hereby specifically waived, and that on final hearing hereof your complainant and said defendant Lion Publishing Company, Houston, Texas, will be adjudged to be the sole owners of all rights to said song "You Said You Loved Me" sometimes called "Saving My Love For You"; and that the said defendant Globe Music Corporation be required to execute an assignment of all copyrights and other evidences of ownership of said song to your complainant and said defendant Lion Publishing Company, as their interest appear from said contract attached hereto as Exhibit 3.

Your complainant prays for general relief.


SHERMAN JOHNSON

STATE OF MISSISSIPPI
COUNTY OF LAUDERDALE

Personally appeared before me, the undersigned authority in and for the above county and state, Sherman Johnson who having been first duly sworn, stated on oath that the matters and facts set forth in the above and foregoing Original Bill of Complaint, are true and correct as therein stated.


SHERMAN JOHNSON

Witness my hand and seal, this the 4th day of August,
1954.


NOTARY PUBLIC

My commission expires: 1-21-54

C O N T R A C T

This contract made the 22nd day of September, 1951 between Diamond Record Company, Inc., a Mississippi corporation of Jackson, Mississippi, hereinafter called First Party, and Sherman Johnson, also known as Sherman "Blues" Johnson of 1931-32nd Ave., hereinafter called Second Party,

W I T N E S S E T H:

WHEREAS, Second Party is a musician possessing the ability to sing vocal renditions and play a piano, and known to the general public as Sherman "Blues" Johnson, Second Party is desirous of selling services of himself for recording, transcribing and other sound reproduction purposes to First Party; First Party is desirous of purchasing full and exclusive rights of recording, transcribing and/or otherwise making sound reproductions of the music and performances of Second Party, including instrumental, vocal and/or combinations thereof; and the parties hereto have reached an agreement as in this instrument set forth:

NOW, THEREFORE, it is agreed: That for and in consideration of the sum of One and No/100 Dollars (\$1.00) cash in hand paid by First Party to Second Party, the terms, covenants and conditions of this agreement and other good and valuable considerations, the sufficiency and receipt of all of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Second Party hereby sells, conveys and sets over unto First Party, the exclusive right of recording, transcribing and/or otherwise making sound reproduction of the singing, vocal renditions, sound of musical instruments and any combinations thereof of himself for a period of one year from the date hereof.

2. First Party agrees, subject to all of the other terms and provisions of this contract, to pay Second Party One Cent (01%) as a royalty upon each pressed and finished record made hereunder, which is sold by First Party upon the commercial market in the United States. First Party further agrees to pay Second Party Fifty and No/100 Dollars (\$50.00) recording fee for each record so made at the written request of First Party, and said recording fee shall be deducted from the first accrued royalty upon each recording so made (test discs excluded from the terms of this paragraph). It is distinctly understood and agreed that no royalties shall be paid on pressed and finished records used by First Party for advertisement and promotion purposes, that is to say, sample records furnished to radio stations, disc jockeys, record salesmen and distributors, etc.

3. Second Party agrees to make and send to First Party not less than three test phonograph records in calendar month during the life of this contract, or give auditions of three songs in person for First Party in one or more sessions each calendar month, from which First Party may choose or not recordings to be made under the terms of this contract. The test discs or auditions shall be made entirely at the expense of Second Party, Second Party will also keep First Party informed by mail, telegraph or otherwise, as to the whereabouts of himself and orchestra at all times for all purposes of communication under the terms of this contract.

4. If and as selections for recordings are made by First Party from such test records, First Party shall notify Second Party thereof. Both parties shall then cooperate fully in arranging without undue delay for recording sessions desired by First Party for making recordings of the renditions or performances so selected by First Party for recording. First Party is to pay all expenses of studios, engineers, other technical personnel and incidental expenses of recording sessions for making recordings hereunder; but Second Party is to pay all expenses of himself and any

other musicians and/or vocal singers used by him in attending or performing recording sessions and services required thereat, including travel, subsistence and all other expenses of himself; and Second Party further agrees to comply with all reasonable requests of First Party in making himself available at places where first class recording may be done and at all reasonable times without undue delay.

5. The rights and privileges acquired by First Party from Second Party hereunder are exclusive and Second Party shall not make any recordings, transcriptions and/or sound reproductions of any character for any other person, firm or corporation during the term of this contract, provided, First Party shall have a right to designate any other person, firm or corporation to succeed to all or any part of the rights of First Party hereunder, and provided further, First Party may grant written permission to Second Party to make transcriptions for radio broadcast programs, movies, television or other uses, but shall be under no obligation to do so, and the granting of such permission on one or more occasions shall constitute no waiver whatever of the rights of the First Party hereunder. In the event of the breach of the obligations of this paragraph by Second Party, First Party shall have a right to an injunction in any court of competent jurisdiction without notice and without in any wise impairing its rights to damages on account of such breach.

6. For all purposes of this contract, Second Party, at its own expense, agrees to provide instruments, script and music and on any music not an original creation or arrangement of Second Party, secure all copyright privileges, licenses and permissions needful, including the payment of any fees or royalties therefor, (First Party being entitled to withhold all royalties due Second Party until evidence of the payment of all fees or royalties due under the copyright privileges, licenses and permissions for the month preceding

has been furnished First Party; Second Party agreeing to indemnify First Party for all damages, loss or cost resulting from Second Party's failure to obtain the requisite copyrights, licenses under copyrights, privileges, or permissions and to pay royalties due thereunder or as required by law), provided, however, that Second Party may make test discs or auditions of non-original compositions for First Party without first securing copyright privileges, licenses or permissions as aforesaid. As to any original compositions or arrangements by Second Party (and/or his orchestra) during the term of this contract or any extensions thereof, it is agreed: All musical works written and composed and/or arranged by Second Party shall be and become the property of First Party, its assigns or successors forever, and First Party shall have the right to dispose of same in whatever manner it deems appropriate, including but not limited to securing copyrights thereto. First Party agrees, however, that in the event a net profit is realized from the printing, reprinting and/or publishing of an original composition or arrangement in sheet music form, or from the licensing of others to print, reprint and/or publish said composition and/or arrangement in sheet music form, First Party will pay over to Second Party fifty percent (50%) of such net profit realized. First Party further agrees that in the event net profit is realized from recordings of said originals and/or arrangements by other artists and/or other manufacturers, whether under permissive license agreements or compulsory licenses as provided by law, First Party will pay over to the Second Party twenty-five percent (25%) of such net profit realized. First Party agrees not to use the services (musical talents, whether instrumental or vocal or a combination thereof) of any other artists to make recordings of said originals and/or arrangements within a period of one year from the date that Second Party makes a recording or same under this contract and same said recording of originals

and/or arrangements is sold of the commercial market, provided, however, Second Party shall not be entitled to a royalty or to a percentage of the net profits realized by First Party from recordings made thereafter of said originals and/or arrangements in which First Party uses the services of other artists.

7. Second Party, for the considerations aforesaid, agrees that upon execution and delivery of this contract, he will deposit with First Party for safe keeping during the term of this contract, and to be returned to him upon expiration of this contract and any extensions thereof, all recordings heretofore made by Second Party other than those made under contract or on which publication and sale rights have been sold by Second Party. Second Party represents that all recordings made by him at any time, the publication and sales rights on which are not exclusively owned by him at this time are those listed on the sheet attached hereto marked Exhibit "A" and made a part of this contract.

8. For all purposes hereunder, First Party shall have the right to edit any recording made hereunder and to use all, any part, or none, of such recording, as it sees fit.

9. At any time during the term of this contract or any extension thereof that Second party fails to report his whereabouts or appear for sessions or other provisions of this contract, the terms of this contract are hereby extended for such period of time as Second Party has been unavailable.

10. This agreement shall not impair the rights of Second Party to make public appearances, to sing or render music over the radio or at any private or public events so long as no recording or sound reproduction thereof is made.

11. Second Party hereby represents and covenants that he is not under any contract or obligation affecting any of the matters covered by the terms of this contract, or which would be anyway impair or hinder any of the terms, covenants or provisions of this contract.

12. The term "recording" as used herein means recording sound in any of the ways provided for in this contract, whether upon the ordinary phonograph disc of two sides, electrical transcription upon conventional discs of two sides, wire recording, tape recording, for any other form of recording sound; the term "test disc" as used herein means a record of sound for listening and observation purposes only, not for publication or sale; the term "recording session" means a session for making of any such recording, provided, however, that insofar as obligating the First Party to bear the expense incident to recording sessions, it shall not include a session wherein test discs are recorded; and the term "record" as used herein means any instrument upon which sound has been recorded, including the ordinary phonograph record of two sides, whether made of paper, pastboard, wax, plastic or other material, and whether long playing or short playing, each side of which contains a recording of one or more musical renditions separate and distinct from the opposite side (for illustration, five records would contain recordings of at least ten separate and distinct musical renditions), also tape, wire or other instrumentality whatsoever upon which music has been recorded for playing upon phonograph or other record playing mechanism.

13. For the same consideration hereinabove mentioned, Second Party grants unto First Party an option to renew this agreement for an additional period of one year after the expiration hereof, provided First Party shall mail written notice of its desire to exercise such option to Second Party at his address hereinabove set forth at least fifteen days prior to the expiration of the original one year term hereof.

In witness whereof the parties hereto have signed this contract in duplicate originals, this the 22nd day of September 1951.

Attest:
/s/ Mss. Lillian Shedd McMurry

DIAMOND RECORD COMPANY, INC.
BY: W. L. McMurry /s/
President
FIRST PARTY
Sherman Johnson /s/
SECOND PARTY

APPENDIX B

CONTRACT

This contract made the 17th day of October, 1952, between Diamond Record Company, Inc., a Mississippi Corporation domiciled at Jackson, Mississippi, herein hereinafter, called First Party, and Sherman "Blues" Johnson who was born on the 22 day of July, 1925, and is now 27 years of age and whose post office and street address is 1931 - 32nd Ave. Street, Meridian, Mississippi, hereinafter called SECOND PARTY.

WITNESSETH:

WHEREAS, Second Party is a musician and vocal artist advertised and known to the general public as Sherman "Blues" Johnson and His Clouds of Joy who produces, performs and presents both instrumental and vocal music and combinations thereof; Second Party is desirous of selling the services of himself for recording, transcribing and other sound reproduction purposes to First Party; First Party is desirous of purchasing full and exclusive rights of recording, transcribing and/or otherwise making sound reproductions of the music and performances of Second Party including instrumental, vocal and combination thereof; and the parties hereto have reached an agreement as in this instrument set forth;

NOW, THEREFORE, IT IS AGREED: That for and in consideration of the sum of Ten Dollar (\$10.00) cash in hand paid by First Party to Second Party, the terms, covenants and conditions of this agreement and other good and valuable considerations, the sufficiency and receipt of all of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Second Party hereby sells, conveys and sets over unto the First Party the exclusive right of recording, transcribing and/or otherwise making sound reproductions of the singing, vocal renditions, sound or musical instruments and any combination thereof produced by himself for a term of one only year from the date hereof.
2. First Party agrees, subject to all of the other

terms and provisions of this contract, to pay Second Party royalties on pressed and finished records made hereunder by Second Party and sold upon the commercial market in the United States, as follows:

- (a) A royalty of one and one-half (.015) cents per record on the first 25,000 records sold of each separate record released and identified by number and title.
- (b) A royalty of two (.02) cents per record on the Second 25,000 records sold of each separate record released and identified by number and title.
- (c) A royalty of three (.03) cents per record on all records over 75,000 sold of each separate record released and identified by number and title.
- (d) A royalty of three (.03) cents per record on all records over 75,000 sold of each separate record released and identified by number and title; the maximum royalty due hereunder regardless of the number of records sold of each separate record released and identified by number and title being three (.03) cents per record.

First Party further agrees to pay Second Party Fifty and No/100 Dollars (\$50.00) recording fee for each record so made at the written request of First Party, and said recording fee shall be deducted from the first accrued royalty upon recordings so made (test discs excluded from the terms of this paragraph).

It is distinctly understood and agreed that no royalty shall be paid on pressed and finished records used by First Party for advertisement and promotion purposes, that is to say, sample records furnished to radio stations, discs jockeys, record salesman, and distributors, etc.

First Party shall render statement accompanied by remittance of amount due Second Party on each August 15th covering the six months prior to and ending June 30th each year and on each February 15th covering the six months prior to and ending December 31st each year so long as any royalties are due Second Party under the terms of this contract.

3. Second Party agrees to make and send to First Party

test phonograph records, from time to time during the life of this contract, or give auditions in person for First Party from time to time, but said election (s) shall be at the sole discretion of First Party and First Party may choose or not choose therefrom recordings to be made under the terms of this contract. The test discs or auditions shall be made entirely at the expense of Second Party.

4. If, and as selections for recordings are made by First Party from such test records, First Party shall notify Second Party thereof. Both parties shall then cooperate fully in arranging without undue delay for recording sessions desired by First Party for making recordings of the renditions of performances so selected by First Party for recording. First Party is to pay all expense of studios, engineers, other technical personnel and incidental expense of recording sessions for making recordings hereunder; but Second Party is to pay all expenses of himself and any other musicians and/or vocal singers used by him in attending or performing recording sessions and services required thereat, including travel, subsistence and all other expenses of himself; and Second Party further agrees to comply with all requests of First Party in Making himself available at places where First Party may designate that the recording shall be done and at all times without undue delay. For all purposes of this contract, Second Party, at its own expense, agrees to provide instruments and script, and musicians.

5. The rights and privileges acquired by First Party from Second Party hereunder are exclusive and Second Party shall not make any recordings, transcriptions and/or sound reproductions of any character for any other person, firm or corporation during the term of this contract, provided, First Party shall have a right to designate any other person, firm or corporation to succeed to all or any part of the rights of First

Party hereunder, and provided further, First Party may grant written permission to Second Party to make transcriptions for radio broadcast programs, movies, television or other uses, but shall be under no obligation to do so, and the granting of such permission on one or more occasions shall constitute no waiver whatsoever of the rights of the First Party hereunder. In the event of the breach of the obligations of this paragraph by Second Party, First Party shall have a right to an injunction in any court of competent jurisdiction without notice and without in any wise impairing its rights to damages on account of such breach.

6. On any musical work not an original creation or arrangement of Second Party, First Party agrees to secure all copyright privileges, licenses and permissions needful, including the payment of any fees or royalties to persons, firms or corporations from whom rights are secured. Second Party agrees that he will not make recordings of any non-original compositions or arrangements without the written consent or permission of First Party, however, Second Party may make test discs or auditions of non-original compositions and/or arrangements for First Party without first securing license or the consent or permission of First Party.

7. As to any original compositions and/or arrangements by Second Party during the term of this contract or any extensions thereof, it is agreed: All musical works written and composed and/or arranged by Second Party shall be and become the property of First Party, its assigns or successors forever, and First Party shall have the right to dispose of same in whatever manner it deem appropriate, including but not limited to securing copyrights thereto. Any original compositions by second Party which were copyrighted by second Party before the terms of this contract and recorded for First Party during the term of this contract or any extension thereof shall become the property of First Party and Second Party hereby agrees to execute an assignment

of said copyright to First Party, Second Party agrees and covenants to indemnify First Party for all damages, loss or costs resulting from recordings of a composition or arrangements represented by Second Party to be original compositions and/or arrangements, upon a determination thereafter that said compositions and/or arrangements were not in fact, originals of Second Party, and First Party may withhold royalties due Second Party under the terms of this contract towards the satisfaction of such damages. First Party agrees, however, that in the event a net profit is realized from the printing, reprinting and/or publishing of an original composition or arrangement in sheet music form, or from the licensing of others to print, reprint and/or publish said composition and/or arrangement in sheet music form, First Party will pay over to Second Party fifty per cent (50%) of such net profit realized. First Party further agrees that in the event net profit is realized from recordings of said originals and/or arrangements by other artists and/or other manufacturers, whether under permissive license agreements or compulsory licenses as provided by law, First Party will pay over to Second Party twenty-five per cent (25%) of such net profit realized. First Party agrees not to use the services (musical talents, whether instrumental or vocal or a combination thereof) of any other artists to make recordings of said originals and/or arrangements within a period of one year from the date that Second Party makes a recording of same under this contract and said recording of originals and/or arrangements is sold on the commercial market, provided, however, Second Party shall not be entitled to a royalty or to a percentage of the net profits realized by First Party from recordings made thereafter of said originals and/or arrangements in which First Party uses the services of other artists.

8. Second Party, for the consideration aforesaid,

agrees that upon execution and delivery of this contract, he will deposit with First Party for safe keeping during the term of this contract, and to be returned to him upon expiration of this contract and any extensions thereof, all recordings heretofore made by Second Party aforesaid other than those made under contract or on which publications and sale rights have been sold by Second Party. Second Party represents that all recordings made by him at any time, the publication and sales rights on which are not exclusively owned by him at this time are those listed on the sheet attached hereto marked Exhibit "A" and made a part of this contract.

9. For all purposes hereunder, First Party shall have the right to edit any recording made hereunder and to use all, any part, or none of such recording, as it sees fit.

10. Second Party will keep First Party informed by mail, telegraph or otherwise as to the whereabouts of himself at all times for all purposes of communication under the terms of this contract. At any time during the term of this contract or any extension thereof that Second Party fails to report his whereabouts or appear for sessions or other provisions of this contract, the terms of this contract are hereby extended for such period of time as Second Party has been unavailable.

11. This agreement shall not impair the right of Second Party aforesaid to make public appearances, to sing or render music over the radio or at any private or public event so long as no recording or sound production thereof is made, but First Party is hereby given at its option the exclusive right to book Second Party, in event said option is exercised First Party shall receive for its services as Booking Agent the customary and usual commissions paid for said services.

12. Second Party hereby represents and covenants that he is not under any contract or obligation affecting any of the matters covered by the terms of this contract, or which would in anywise impair or hinder any of the terms, covenants or provisions of this contract.

13. The term "recording" as used herein means

recording sound in any of the ways provided for in this contract, whether upon the ordinary phonograph disc of two sides, electrical transcription upon conventional discs of two sides, wire recording, tape recording, or any form of recording sound; the term "test disc" as used herein, means a record of sound for listening and observation purposes only, not for publication or sale; the term "recording session" means a session for the making of any such recording, provided, however, that insofar as obligating the First Party to bear the expense incident to a recording session, it shall not include a session wherein test discs are recorded; and the term "record" as used herein means any instrument upon which sound has been recorded, including the ordinary phonograph record of two sides, whether made of paper, pasteboard, wax plastic or other material, and whether long playing or short playing, each side of which contains a recording of one or more musical renditions separate and distinct from the opposite side (for illustration, five records would contain recordings of at least ten separate and distinct musical renditions), also tape, wire or other instrumentality whatsoever upon which music has been recorded for playing upon phonograph or other record playing mechanism.

14. For the consideration hereinabove mentioned, Second Party grants unto First Party an option to extend this agreement for two additional one year periods, provided First Party shall mail written notice of its desires to extend said agreement to Second Party at his address hereinabove set forth on or before October 17th 1953 and October 17, 1954, respectively.

In witness whereof the parties hereto have signed this contract in duplicate originals, this the 17th day of October

ATTEST: DIAMOND RECORD COMPANY, INC.
 BY /s/ R. L. McMurry
 PRESIDENT
 FIRST PARTY

/s/ Mrs. Lillian Shedd McMurry
 SECRETARY

/s/ Sherman "Blues" Johnson
 SECOND PARTY

STATE OF _____
COUNTY OF _____

Personally appeared before the undersigned authority
in and for the jurisdiction aforesaid the within named _____
who acknowledged to me that he signed and delivered the foregoing
contract and agreement on the day and year therein mentioned.

Given under my hand and official seal of office, this
the _____ day of _____, 195_____.

Notary Public

MY commission expires:

EXHIBIT "A" TO REPORT

| Name of Record | To whom rights sold |
|----------------------------------|-----------------------------------|
| Sherman Boogie_____ | M. G. M. New York City |
| Blue Lover Blues_____ | M. G. M. New York City |
| Cambler With a Broken Heart_____ | M. G. M. |
| Wake Up Millie_____ | M. G. M. |
| Back Alley Boogie_____ | Nashboro Records, Nashville |
| Nashville After Midnight_____ | Nashboro Records Nashville, Tenn. |
| Lost in Korea_____ | Trumpet Records |
| Sugar Mama_____ | Trumpet Records |
| Hot Fish_____ | Trumpet Records |
| Pretty Babay Blues_____ | Trumpet Records |

Signed for identification this the _____
 day of /s/ Sherman "B" Johnson, 1952.

C
O
P
Y

STANDARD SONGWRITERS CONTRACT

AGREEMENT made this Thirtieth day of November 1953
between LION PUBLISHING COMPANY
(hereinafter called the "Publisher")
and MR. SHERMAN "BLUES" JOHNSON
jointly and/or severally (hereinafter called "Writer(s)");

W I T N E S S E T H:

In consideration of the agreement herein contained and of the sum of One (1.00) Dollar and other good and valuable consideration in hand paid by the Publisher to the Writer(s), receipt of which is hereby acknowledged, the parties agree as follows:

1. The Writer(s) hereby sells, assigns, transfers and delivers to the Publisher, its successors and assigns, a certain heretofore unpublished original musical composition, written and/or composed by the above named writer(s), now entitled:

"YOU SAID YOU LOVED ME" (recorded as) "SAVING MY LOVE FOR YOU"

including the title, words and music, and all copyrights thereof including but not limited to the copyright registration thereof ~~No~~, and all rights, claims and demands in any way relating thereto, and the exclusive right to secure copyright therein throughout the entire world, and to have and to hold the said copyrights and all rights of whatsoever nature now and hereafter thereunder existing and/or existing under any agreements or licenses relating thereto, including any and all renewals of copyrights to which the Writer(s) may be entitled hereafter, and all rights of any and every nature thereunder existing, for and during the full terms of all of said copyrights and all renewals and extensions thereof.

2. The Writer(s) hereby warrants that the said composition is his sole, exclusive and original work, and that he

Exhibit 3

has full right and power to make the within agreement, and that there exist no adverse claims to or in the said composition. The writer(s) hereby further warrants and represents that he is not a member of the American Society of Composers, Authors and Publishers, the Songwriters' Protective Association, or any other society or association which requires as a condition of membership the assignment of any right of any kind in said musical work and that no assignment of any of the rights herein set forth has been directly or indirectly made to Broadcast Music, Inc., or any other person, firm or corporation whatsoever.

3. The writer(s) hereby warrant(s) that the foregoing musical composition has been created by the joint collaboration of the writers named herein and that said composition, including the title, words and music thereof, has been, unless herein otherwise specifically noted, the result of the joint efforts of all the undersigned writers and not by way of any independent or separable activity by any of the writers.

4. In consideration of this agreement, the publisher agrees to pay the writer(s) as follows:

(a) In respect of regular piano copies sold and paid for at wholesale in the United States of America, royalties of three (3) cents per copy;

(b) A royalty of Three (3) cents per copy of dance orchestrations thereof sold and paid for in the United States of America;

(c) A royalty of Fifty (50) per cent of all net earned sums received by the publisher in respect of regular piano copies and/or orchestration thereof sold and paid for in any foreign country by a foreign publisher.

(d) The sum of One Dollar as and when the said composition is published in any folio or composite work or lyric magazine by the publisher or licenses of the publisher. Such

(e) In respect of copies sold and rights licensed or sold in the Dominion of Canada, the royalties to be paid to the writer(s) shall be on the same royalty basis as herein provided for sales or licenses in the United States.

(f) As to "professional material"--Not sold or resold, no royalty shall be payable:

(g) An amount equal to Fifty (50) per cent of all net earned proceeds received and actually retained by the Publisher arising out of (1) the manufacture of parts of instruments serving to mechanically reproduce said composition, or (2) the use of said composition in synchronization with sound motion pictures;

(h) For each record manufactured, sold, and paid for, the publisher agrees to pay the statutory royalty rate of 1/2¢ (one-half cent), per side.

(i) Except as herein expressly provided, no other royalties shall be paid with respect to the said composition.

(j) Notwithstanding any thing contained in this agreement, the Publisher shall deduct ten percent of all net receipts from all licenses issued by it to licenses in the United States and elsewhere, as collection charges for the collection of the proceeds of such licenses, before computing the royalties payable under paragraph 4 of this agreement.

5. It is understood and agreed by and between all the parties hereto that all sums hereunder payable jointly to the Writer(s) shall be paid to and divided amongst them respectively as follows:

| NAME | SHARE |
|-------------------------|-------|
| SHERMAN "BLUES" JOHNSON | 100% |

6. The Publisher shall render the Writer(s), as above, on or before each August 15th covering the six months ending June 30th; and each February 15th covering the six

months ending December 31st, royalty statements accompanied by remittance for any royalties due thereunder.

7. Anything to the contrary notwithstanding, nothing in this agreement contained shall obligate the Publisher to print copies of said composition or shall prevent the Publisher from authorizing publishers, agents and representatives in countries inside and outside of the United States from exercising exclusive publication and all other rights in said foreign countries in said composition on the customary royalty basis; and nothing in this agreement shall prevent the Publisher from authorizing publishers in the United States from exercising exclusive publication rights and other rights in the United States in said composition, provided the Publisher shall pay the Writer(s) the royalties herein stipulated.

8. The Writer(s) may appoint a certified public accountant who shall, upon written request therefore, have access to all records of the publisher during business hours relating to said composition for the purpose of verifying royalty statements hereunder.

9. The Writer(s) hereby consent to such changes, adaptations, dramatizations, transpositions, editing and arrangements of said composition, and the setting of words to the music and of music to the words, and the change of title as the Publisher deems desirable. The Writer(s) hereby waive any and all claims which they have or may have against the publisher and/or its associated, affiliated and subsidiary corporations. The Writer(s) consents to the use of his (their) name and likeness and the title to the said composition on the music, folios, recordings, performances, player rolls and in connection with publicity and advertising concerning the Publisher, its successors, assigns and licenses, and said composition, and

agrees that the use of such name, likeness and title may commence prior to publication and may continue so long as the Publisher shall own and/or exercise any rights in said composition.

10. Written demands and notices other than royalty statements provided for herein shall be sent by registered mail.

11. Any legal action brought by the Publisher against any alleged infringer of said composition shall be initiated and prosecuted at the Publisher's sole expense, and of any recovery made by it as a result thereof, after deduction of the expense of the litigation, a sum equal to thirty-three and one-third (33-1/3) per cent shall be paid to the Writer(s).

(a) If a claim is presented against the Publisher in respect of said composition, and because thereof the Publisher is jeopardized, it shall thereupon serve written notice upon the Writer(s) containing the full details of such claim known to the Publisher and thereafter until the claim has been adjudicated or settled shall hold any moneys coming due the Writer(s) in escrow pending the outcome of such claim or claims. The Publisher shall have the right to settle or otherwise dispose of such claims in any manner as it in its sole discretion may determine. In the event of any recovery against the Publisher, either by way of judgment or settlement, all of the costs, charges, disbursements, attorney fees and the amount of the judgment or settlement, may be deducted by the Publisher from any and all royalties or other payments there-fore or thereafter payable to the Writer(s) by the Publisher or by its associated, affiliated, or subsidiary corporations.

(b) From and after the service of summons in a suit for infringement filed against the Publisher with respect to said composition, any and all payments thereafter coming due the Writer(s) shall be held by the Publisher in trust until the suit has been adjudicated and then be disbursed accordingly, unless the Writer(s) shall elect to file an acceptable bond in the sum of payments, in which event the sums due shall be paid to the Writer(s).

12. "Writer" as used herein shall be deemed to include all authors and composers signing this agreement.

13. The Writer(s), each for himself, hereby irrevocably constitute and appoint the Publisher or any of its officers, directors, or general manager, his (their) attorney and representative, in the name(s) of the Writer(s), or any of them, or in the name of the Publisher, its successors and assigns, to make, sign, execute, acknowledge and deliver any and all instruments which may be desirable or necessary in order to vest in the Publisher, its successors and assigns, any of the rights hereinabove referred to.

14. The Publisher shall have the right to sell, assign, transfer, license or otherwise dispose of any of its rights in whole or in part under this agreement to any person, firm or corporation, but said disposition shall not affect the right of the Writer(s) to the royalties hereinabove set forth.

15. This agreement shall be construed only under the laws of the State of New York. If any part of this agreement shall be invalid or unenforceable, it shall not affect the validity of the balance of this agreement.

16. This agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their respective successors in interest, legal representatives and assigns, and represents the entire understanding between the parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LION PUBLISHING COMPANY

By /s/ Don D. Robey
Don D. Robey, President

Writer/s/ Sherman "Blues" Johnson
Address P. O. Box 808-Meridian, Miss.

