

ALERT

Costs Awardable in Copyright Suits Do Not Include Expert Witness, E-Discovery, or Jury Consulting Expenses

March 5, 2019

On March 4, 2019, a unanimous Supreme Court held that the costs awardable in copyright suits pursuant to 17 U.S.C. § 505 are limited to the six categories of litigation expenses set forth in the general costs statute, 28 U.S.C. §§ 1821 and 1920, which do not include expenses for expert witnesses, e-discovery, and jury consulting. The Ninth Circuit had held that the Copyright Act's cost provision is not limited by the general costs statute.

In reversing the Ninth Circuit, the Supreme Court explained that the general costs statute "create[s] a default rule and establish[es] a clear baseline against which Congress may legislate," and that "[c]onsistent with that default rule," when a federal statute simply refers to "costs," "federal courts are limited to awarding the costs specified in" the general costs statute. Slip Op. at 4. The Court made clear that "[i]f, for particular kinds of cases, Congress wants to authorize awards of expenses beyond the six categories specified in the general costs statute, Congress may do so," but must provide "an explicit statutory instruction to that effect." Slip Op. at 4, 6.

The Court concluded that Section 505 of the Copyright Act does not include such an explicit instruction. Instead, Section 505 provides that a district court in a copyright case "in its discretion may allow the recovery of full costs by or against any party," and, the Supreme Court explained, the term "full costs" simply refers to the general costs statute and does not authorize awards of expenses beyond the six specified categories. Slip Op. at 3-4. The Supreme Court thus reversed a Ninth Circuit ruling that upheld an award of \$12.8 million in litigation expenses for expert witnesses, e-discovery, and jury

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