



VERDICTSEARCH'S

TOP PA VERDICTS

OF 2010

WOODCOCK WASHBURN RANKS #10 IN TOP PA VERDICTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	DATE
10	Graham v. Haughey	\$18,900,000	Copyright Infringement	U.S. District Court, Eastern District of Pennsylvania	David J. Wolfsohn, Aleksander J. Goranin and John F. Murphy of Woodcock Washburn; Floyd Abrams of Cahill Gordon & Reindel	3/19/2010



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Graham Co. v. Haughey: \$18.9 million

When a jury awarded almost \$18.9 million in a copyright infringement case nearly four years ago, it set the wheels in motion for a legal roller coaster ride that included a new trial with a verdict of less than \$1.7 million, followed by an appeal that led to reinstatement of the first verdict.

Now Chief U.S. District Judge Harvey Bartle III has ruled that the first jury's verdict was not "excessive," as the defense had argued, paving the way for motions from the plaintiff seeking pre-judgment and post-judgment interest that could swell the award to more than \$30 million.

The ruling is a victory for plaintiffs attorneys David J. Wolfsohn, Aleksander J. Goranin and John F. Murphy of Woodcock Washburn.

In the suit, *Graham Co. v. Haughey*, a Philadelphia insurance brokerage firm brought copyright claims against one of its former employees and the brokerage firm he now works for.

Graham claimed that former employee Thomas Haughey took copies of two massive company manuals when he left in 1991 to join USI Holdings Corp., of Briarcliff Manor, N.Y., and that USI Holdings ignored the copyright notices on the books and began using them in its own sales proposals.

At trial, the plaintiffs lawyers set out to show that more than \$31 million in USI's revenue over a 13-year period was connected to sales proposals that included some of Graham's copyrighted content.

In its June 2006 verdict, the jury concluded that both Haughey and USI Holdings had infringed Graham's copyrights and specifically rejected a defense argument that the suit had been filed too late, concluding instead that Graham had no opportunity to discover the violations prior to February 2005, when it filed the suit.

The jury said USI Holdings should pay \$16,562,230 and that Haughey should pay \$2,297,397, for a total verdict of \$18,859,627.

But Bartle set aside the first verdict and ruled that Graham had ignored "storm warnings" that should have alerted it to the possibility of Haughey's infringement, and that the statute of limitations therefore should have confined the plaintiff's claims to just three years instead of the 13 years of alleged infringing conduct considered by the first jury.

In February 2008, a second jury awarded \$1.4 million against USI and \$268,000 against Haughey.

Both sides appealed. Attorney Floyd Abrams of Cahill Gordon & Reindel argued on behalf of USI and Haughey that Bartle never should have applied the discovery rule because the injury rule applies to copyright infringement actions. He also argued that the plaintiff never proved the causal connection between the copyright infringement and the damages awarded to Graham.

Wolfsohn argued that the first jury's verdict ought to be reinstated and that Bartle's only error was to set it aside.

In March 2009, the 3rd U.S. Circuit Court of Appeals sided with Wolfsohn, finding that Bartle erred when he held that Graham was dilatory in bringing suit and that it was limited to damages occurring during the three-year period prior to the filing of the complaint.

The appellate court remanded the case so that Bartle could have the first opportunity to address two key arguments he'd never ruled on – whether the first jury's verdict was "excessive" and whether it had properly distinguished between revenue stemming from infringement and funds that were attributable to other factors.

Abrams urged Bartle to grant a new trial on damages, arguing that the jury's decision to award more than 70 percent of the revenue was excessive.

In the lengthy sales process for complex corporate insurance proposals, Abrams argued, the alleged infringement, even if proven, played only a minor role as compared to the pre-proposal investigation and analysis of the client's business and face-to-face meetings.

But Wolfsohn pointed to testimony from Graham's CEO, William Graham, that the copyrighted manuals were critical components in securing contracts.

Under copyright law, Wolfsohn said, the plaintiff's burden is only to show a nexus between the infringing conduct and the revenue; the burden then shifts to the defense to show that other factors were responsible.

To set aside the jury's verdict, Wolfsohn argued, the defense would have to show that no reasonable jury could have reached the conclusions it did.

Bartle sided with Wolfsohn, finding that the jury's award cannot be considered excessive because "there was ample evidence presented at trial to support the jury's allocation of 70 percent to 75 percent of profits to infringement."

The first jury, Bartle noted, had also "heard compelling evidence from Graham that the defendants willfully destroyed financial documents relevant to this action."

Evidence at trial, Bartle noted, showed that in October 2005, after Graham's suit was filed, "USI shredded between 12 to 20 boxes of financial and accounting documents."

On the basis of that evidence, Bartle said, "the jury was free to infer, for instance, that the infringing material was used by USI and Haughey in more proposals than it actually produced in discovery and was more significant in generating the sale of insurance and commissions than defendants wanted the jury to believe."

Abrams declined to comment on the ruling except to say, "We are studying the ruling and will decide on our response within a few days."

– *The Legal Intelligencer*