

**Nos. 12-14676-FF & 12-15147-FF
(Consolidated Appeals)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Cambridge University Press,
Oxford University Press, Inc.,
and Sage Publications, Inc.,

Plaintiffs-Appellants,

v.

Mark P. Becker, in his official capacity as
Georgia State University President, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia
D.C. No. 1:08-cv-1425 (Evans, J.)

**RESPONSE TO APPELEES' OBJECTIONS TO
APPELLANTS' BILL OF COSTS**

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

The following trial judges, attorneys, persons, associations of persons, firms, partnerships, and corporations are known to have an interest in the outcome of this case or appeal:

- Ablin, Karyn Kay
- Aistars, Sandra
- Albert, J.L.
- Alford, C. Dean
- Askew, Anthony B., counsel for Appellees
- Association of American Publishers, Inc.
- Banks, W. Wright, Jr., counsel for Appellees
- Bates, Mary Katherine, counsel for Appellees
- Ballard Spahr, LLP, counsel for Appellees
- Becker, Mark P.
- Bernard, Kenneth R., Jr.
- Bishop, James A.
- Bloom, Jonathan, counsel for Appellants

Case Nos. 12-14676-FF & 12-15147-FF
Cambridge University Press, et al. v. Mark P. Becker, et al.

- The Board of Regents of the University System of Georgia
- Bondurant, Mixson & Elmore, LLP, counsel for Appellants
- Cambridge University Press
- Carter, Hugh A., Jr.
- Chapman, Floyd Brantley
- Cleveland, William H.
- Copyright Clearance Center, Inc.
- Cooper, Frederick E.
- Dove, Ronald Gene, Jr.
- Durden, Lori
- Ellis, Larry R.
- Eskow, Lisa R., counsel for Appellants
- Evans, Hon. Orinda D., United States District Judge
- Gentry, Robin L., counsel for Appellees
- Georgia Attorney General's Office
- Georgia State University
- Griffin, Rutledge A., Jr.

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- Harbin, John Weldon, counsel for Appellees
- Hatcher, Robert F.
- Henry, Ronald
- Hooks, George
- Hopkins, C. Thomas, Jr.
- Hurt, Charlene
- Jennings, W. Mansfield, Jr.
- Jolly, James R.
- Joseph, Bruce Gary
- King & Spalding, LLP, counsel for Appellees
- Krugman, Edward B., counsel for Appellants
- Larson, Todd D., counsel for Appellants
- Leebern, Donald M., Jr.
- Lerer, R.O., retired counsel for Appellees
- Lerner, Jack I.
- Levie, Walter Hill, III, counsel for Appellees
- Lynn, Kristen A., counsel for Appellees

Case Nos. 12-14676-FF & 12-15147-FF
Cambridge University Press, et al. v. Mark P. Becker, et al.

- Meunier Carlin & Curfman, LLC, counsel for Appellees
- McIntosh, Scott
- McMillan, Eldridge
- Meloy, Ada
- Miller, Richard William, counsel for Appellees
- Moffit, Natasha Horne, counsel for Appellees
- NeSmith, William, Jr.
- Olens, Samuel S., counsel for Appellees
- Oxford University Press, Inc.
- Oxford University Press, LLC
- Oxford University Press USA
- Palm, Risa
- Patton, Carl. V.
- Pequignot, W. Andrew
- Poitevint, Doreen Stiles
- Potts, Willis J., Jr.
- Pruitt, Neil L., Jr.

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- Quicker, Katrina M., counsel for Appellees
- Rains, John H., IV, counsel for Appellants
- Rasenberger, Mary Eleanor
- Rich, R. Bruce, counsel for Appellants
- Rodwell, Wanda Yancey
- SAGE Publications, Inc.
- Seamans, Nancy
- Schaetzel, Stephen M., counsel for Appellees
- Schultz, Jason Michael
- Singer, Randi W, counsel for Appellants
- Smith, Scott
- State of Georgia
- Steinman, Linda
- Stelling, Kessel, Jr.
- Stoltz, Mitchell
- Tarbutton, Benjamin J., III
- Tenny, Daniel

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- Tonsager, Lindsey Lori
- Tucker, Richard L.
- The Chancellor, Masters and Scholars of the University of Oxford
- Vigil, Allan
- Volkert, Mary Josephine Leddy, counsel for Appellees
- Wade, Rogers
- Walker, Larry
- Wasoff, Lois F.
- Weil Gotshal & Manges LLP, counsel for Appellants
- Whiting-Pack, Denise E., counsel for Appellees
- Wilheit, Philip A., Sr.

BACKGROUND

On October 17, 2014, this Court reversed the district court's entire judgment in this copyright infringement action and also awarded costs to the Plaintiffs-Appellants, three academic publishers ("Plaintiffs"), as the prevailing parties in this appeal. The Court's judgment was accompanied by a standard Eleventh Circuit memorandum to counsel that stated "Pursuant to Fed. R. App. P. 39, costs taxed against appellees." On October 31, 2014, Plaintiffs timely submitted their bill of costs in the amount of \$6,217.05.¹ In accordance with the Federal Rules of Appellate Procedure and this Court's rules, the costs Plaintiffs seek consist entirely of photocopying costs for their appellate briefs and the expanded record excerpts they filed, which were voluminous because of the three-week length of the trial. On November 7, 2014, Plaintiffs petitioned for rehearing en banc, and Appellees filed a petition for panel rehearing which did not ask the panel to reconsider its award of costs to Plaintiffs. On November 14, 2014, Appellees objected to Plaintiffs' bill of costs. Notably, they object not to the calculation of the

¹ The bulk of the costs – \$5,943.00 – is attributable to the cost of reproducing the expanded record excerpts that were required under Circuit Rules the Court has since modified. To comply with the rules then in effect (in January 2013), Plaintiffs were required to prepare thousands of pages of copies.

costs to be charged but rather to the order that costs be awarded to Plaintiffs. Pursuant to Fed. R. App. P. 27(a)(3)(A), Plaintiffs hereby respond to Appellees' objection.

ARGUMENT

The Court should deny Appellees' objection and award Plaintiffs the full costs they incurred to comply with the Court's rules and to prosecute this appeal. First, contrary to Appellees' suggestion, Plaintiffs prevailed in this appeal. All three members of the panel agreed that the judgment of the district court should be reversed and that the district court's award of prevailing party attorneys' fees and expenses to Appellees be vacated. Plaintiffs' petition for rehearing en banc identifies significant legal errors in the panel majority's opinion leading to that conclusion, but it does not challenge the reversal of the district court's judgment. Accordingly, the fact that Plaintiffs have sought en banc review does not justify denying them an award of costs for the success they have achieved so far in this appeal.

Second, Appellees' objection is in reality an untimely (and second) petition for rehearing by the panel. By attacking the October 17, 2014 decision to award costs – but not the amount or calculation of costs – Appellees complain about a decision they should have challenged, if at all,

in their petition for panel rehearing, which they filed without addressing the issue of costs. This Court should not permit Appellees a second, and untimely, bite at the panel-rehearing apple.

Finally, the Court should reject out-of-hand the argument that awarding costs against Appellees is in any way unfair or inequitable because their litigation expenses are being funded by “a state agency with limited financial resources.” Appellees’ Obj. to Bill of Costs at 7. The Court has long recognized that while the decision to award costs is within the Court’s discretion, costs may be taxed against even an indigent who proceeds with an appeal in good faith. *See, e.g., Harris v. Forsyth*, 742 F.2d 1277, 1278-79 (11th Cir. 1984). To set aside an award of properly incurred costs in favor of Appellees, whose present objection was signed by ten attorneys, including partners at three different law firms, would fly in the face of that precedent.

CONCLUSION

Plaintiffs respectfully request that this Court overrule Appellees’ untimely objections to their bill of costs and award Plaintiffs the full costs they have incurred to successfully prosecute this appeal.

Dated: November 24, 2014

s/ John H. Rains IV

John H. Rains IV

rains@bmelaw.com

Georgia Bar No. 556052

CERTIFICATE OF SERVICE

I certify that I have this 24th day of November, 2014 caused a true and correct copy of this **RESPONSE TO APPELEES' OBJECTIONS TO APPELLANTS' BILL OF COSTS** to be served through the Court's electronic filing system on the following counsel of record:

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