

**Milton H. Greene Archives, Inc. v. Julien's Auction House LLC, Nos. SEP 01 2009
07-55614, 08-55052, 08-55268**

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WARDLAW, Circuit Judge, dissenting:

I respectfully dissent from paragraph 17 of the majority's memorandum disposition. While the district court was aware of the factors to be weighed in exercising its discretion to award attorneys' fees under the Copyright Act, I have a "definite and firm conviction that the district court committed a clear error of judgment" in its application of those factors. *Smith v. Jackson*, 84 F.3d 1213, 1221 (9th Cir. 1996). Milton H. Green Archives ("Archives") "won" a judgment amounting to approximately 1% of its damages request. The district court described this nominal victory as being "virtually negligible" and a "bust." It said that "Plaintiff is entitled to be deemed the prevailing party, but cannot claim to be victorious." The district court was highly critical of the Archives' attorneys' "transparently bogus" and "misguided" work. It found the attorneys' fee submissions to be, literally, incredible. Given these and the other findings of the district court (e.g., "flagrant greed," "systematically engag[ing] in conduct that caused the case to be blown out of proportion," "embarrassing sloppiness," "mis-cit[ing] the law," and incorrectly characterizing the district court's own order), the award of approximately \$340,000 in attorneys' fees is inexplicable. Under these

circumstances, the attorneys should have received nothing at all, and certainly not an amount in fees that was worth *ten times* their client's recovery.