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# [***In re TFT-LCD Flat Panel Antitrust Litig.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=)

United States Court of Appeals for the Ninth Circuit

December 11, 2015, Argued and Submitted, San Francisco, California; January 7, 2016, Filed

No. 13-17408, No. 13-17618, No. 14-16144

**Reporter**

637 Fed. Appx. 981 \*; 2016 U.S. App. LEXIS 519 \*\*; 2016-1 Trade Reg. Rep. (CCH) P79,450

In re: TFT-LCD (FLAT PANEL) ***ANTITRUST*** LITIGATION, BEST BUY CO., INC.; et al., Plaintiffs - Appellees, v. HANNSTAR DISPLAY CORPORATION, Defendant - Appellant.In re: TFT-LCD (FLAT PANEL) ***ANTITRUST*** LITIGATION, BEST BUY CO., INC.; et al., Plaintiffs - Appellants, v. HANNSTAR DISPLAY CORPORATION, Defendant - Appellee. In re: TFT-LCD, (Flat Panel) ***Antitrust*** Litigation, BEST BUY CO., INC.; et al. Plaintiffs - Appellants, v. HANNSTAR DISPLAY CORPORATION, Defendant - Appellee.

**Notice:** PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Prior History:** **[\*\*1]**Appeals from the United States District Court for the Northern District of California. D.C. Nos. 3:10-cv-04572-SI, 3:07-md-01827-SI. Susan Illston, Senior District Judge, Presiding.

[*Best Buy v. AU Optronics Corp. (In re TFT-LCD* ***Antitrust*** *Litig.), 2013 U.S. Dist. LEXIS 168561 (N.D. Cal., Nov. 20, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:59XN-DFN1-JCNB-D001-00000-00&context=)

**Disposition:** AFFIRMED.

**Core Terms**

district court, commerce, ***antitrust***, damages, import

**Case Summary**

**Overview**

HOLDINGS: [1]-Because a special verdict included a finding that a company's foreign conduct had a direct, substantial, and reasonably foreseeable effect on import commerce under [*15 U.S.C.S. § 6a(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKH1-NRF4-40MY-00000-00&context=), which substantial evidence supported, the company was not entitled to judgment as a matter of law; [2]-Any error in failing to apportion injury and damages between a parent corporation and its subsidiaries was harmless; [3]-[*Minn. Stat. § 325D.57*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DCP-CCJ1-DYB7-W3SG-00000-00&context=) authorized a pass-through defense to an indirect purchaser claim; [4]-Reducing an award of attorney's fees under [*15 U.S.C.S. § 15*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTP1-NRF4-44B7-00000-00&context=) based on limited results at trial was not an abuse of discretion; [5]-Because [*§ 325D.57*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DCP-CCJ1-DYB7-W3SG-00000-00&context=) did not create a substantive entitlement to expert witness fees as an element of ***antitrust*** damages but was a state procedural cost provision trumped by federal procedural law, the federal limit on fees under [*28 U.S.C.S. § 1821*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GHV1-NRF4-452T-00000-00&context=) applied.

**Outcome**

Orders affirmed.

**LexisNexis® Headnotes**

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Trials > Judgment as Matter of Law > Postverdict Judgment

Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

[***HN1***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=LNHNREFclscc1)[] **Standards of Review, De Novo Review**



An appellate court reviews de novo a district court's denial of judgment as a matter of law. The appellate court reviews the verdict for substantial evidence, which is evidence adequate to support the jury's conclusion, even if it is also possible to draw a contrary conclusion.

***Antitrust*** & Trade Law > International Aspects > Foreign Trade ***Antitrust*** Improvements Act

[***HN2***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=LNHNREFclscc2)[] **International Aspects, Foreign Trade Antitrust Improvements Act**



The Foreign Trade ***Antitrust*** Improvements Act of 1982, [*15 U.S.C.S. § 6a*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKH1-NRF4-40MY-00000-00&context=), lays down a general rule placing all nonimport activity involving foreign commerce outside the Sherman Act's reach. It permits the Sherman Act to reach conduct with a direct, substantial, and reasonably foreseeable effect on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations. [*§ 6a(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKH1-NRF4-40MY-00000-00&context=).

***Antitrust*** & Trade Law > ... > Private Actions > Purchasers > Indirect Purchasers

***Antitrust*** & Trade Law > ***Regulated*** Practices > Private Actions > State ***Regulation***

[***HN3***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=LNHNREFclscc3)[] **Purchasers, Indirect Purchasers**



The Minnesota ***Antitrust*** Law authorizes the court in any subsequent action to take any steps necessary to avoid duplicative recovery against a defendant. [*Minn. Stat. § 325D.57*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DCP-CCJ1-DYB7-W3SG-00000-00&context=). The Minnesota Supreme Court has construed this provision to restore Minnesota ***antitrust*** law to its previous contours, which made available a pass-through defense to indirect purchaser claims.

***Antitrust*** & Trade Law > ... > Private Actions > Costs & Attorney Fees > Clayton Act

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

[***HN4***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=LNHNREFclscc4)[] **Costs & Attorney Fees, Clayton Act**



Limited results at trial is a permissible basis on which to reduce an award of fees under [*15 U.S.C.S. § 15*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTP1-NRF4-44B7-00000-00&context=). The award is therefore reviewed for abuse of discretion.

***Antitrust*** & Trade Law > ... > Private Actions > Costs & Attorney Fees > State ***Regulation***

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > Erie Doctrine

Civil Procedure > ... > Costs > Costs Recoverable > Witnesses

[***HN5***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=LNHNREFclscc5)[] **Costs & Attorney Fees, State Regulation**



The statutory title and equivocal case law do not contain an express indication that [*Minn. Stat. § 325D.57*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DCP-CCJ1-DYB7-W3SG-00000-00&context=) creates a substantive entitlement to expert witness fees as an element of damages under Minnesota law. Rather, [*§ 325D.57*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DCP-CCJ1-DYB7-W3SG-00000-00&context=) is a state procedural expert witness cost provision, and so it is trumped by federal procedural law.

**Counsel:** For BEST BUY CO., INC., BEST BUY PURCHASING, LLC, BEST BUY ENTERPRISE SERVICE, INC., BEST BUY STORES, L.P., MAGNOLIA HI-FI, INC., BESTBUY.COM, LLC, Plaintiffs - Appellees (13-7408, 13-17618, 14-16144): Roman M. Silberfeld, Bernice Conn, Esquire, Attorney, Michael A. Geibelson, Attorney, Robins, Kaplan, Miller & Ciresi L.L.P., Los Angeles, CA; Katherine Susan Barrett Wiik, Attorney, Lisa L. Beane, Attorney, Eric John Magnuson, Robins Kaplan LLP, Minneapolis, MN; David Martinez, Attorney, Robins Kaplan LLP, Los Angeles, CA.

For HANNSTAR DISPLAY CORPORATION, Defendant - Appellant (13-7408): Belinda S. Lee, Aaron Tuen Fai Chiu, Attorney, Daniel Murray Wall, Esquire, Attorney, Latham & Watkins LLP, San Francisco, CA; J. Scott Ballenger, Latham & Watkins LLP, Washington, DC; Yi-Chin Ho, Attorney, Latham Ȇ Watkins LLP, Los Angeles, CA.

For HANNSTAR DISPLAY CORPORATION, Defendant - Appellee (13-17618): Yi-Chin Ho, Attorney, Latham & Watkins LLP, Los Angeles, CA; Belinda S. Lee, Daniel Murray Wall, Esquire,**[\*\*2]** Attorney, Aaron Tuen Fai Chiu, Attorney, Latham & Watkins LLP, San Francisco, CA; J. Scott Ballenger, Latham & Watkins LLP, Washington, DC.

For HANNSTAR DISPLAY CORPORATION, Defendant - Appellee (14-16144): J. Scott Ballenger, Latham & Watkins LLP, Washington, DC; Aaron Tuen Fai Chiu, Attorney, Belinda S. Lee, Daniel Murray Wall, Esquire, Attorney, Latham & Watkins LLP, San Francisco, CA; Yi-Chin Ho, Attorney, Latham & Watkins LLP, Los Angeles, CA.

**Judges:** Before: GRABER and WARDLAW, Circuit Judges, and MÁRQUEZ,[[1]](#footnote-0)\*\* District Judge.

**Opinion**

**[\*983]** MEMORANDUM[[2]](#footnote-1)\*

After a six-week trial, a jury found HannStar Display Corp. ("HannStar") liable to Best Buy Co., Inc. and several of its subsidiaries (collectively, "Best Buy") for ***antitrust*** violations under federal and Minnesota law, and awarded damages, fees, and costs.[[3]](#footnote-2)1 HannStar appeals the district court's denial of its post-trial motion for judgment as a matter of law. Best Buy cross-appeals the district court's partial **[\*984]** summary judgment allowing HannStar**[\*\*3]** to present a pass-through defense to its indirect purchaser claim under Minnesota law. Best Buy also appeals the district court's order awarding attorney's fees and costs. We affirm in all respects.

1. HannStar contends the special verdict did not set forth factual findings that would bring HannStar's foreign conduct within the reach of American ***antitrust*** law, and even if it did, these findings are not supported by substantial evidence. We disagree. [***HN1***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=clscc1)[] We review de novo the district court's denial of judgment as a matter of law. [*Harper v. City of Los Angeles, 533 F.3d 1010, 1021 (9th Cir. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4T0F-CXJ0-TX4N-G01X-00000-00&context=). We review the verdict for substantial evidence, which is "evidence adequate to support the jury's conclusion, even if it is also possible to draw a contrary conclusion." *Id.* (internal quotation marks omitted).



[***HN2***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=clscc2)[] The Foreign Trade ***Antitrust*** Improvements Act of 1982 ("FTAIA"), [*15 U.S.C. § 6a*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKH1-NRF4-40MY-00000-00&context=), "lays down a general rule placing *all* (nonimport) activity involving foreign commerce outside the Sherman Act's reach." [*F. Hoffmann-La Roche Ltd. v. Empagran S.A., 542 U.S. 155, 162, 124 S. Ct. 2359, 159 L. Ed. 2d 226 (2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CM8-9WB0-004B-Y00G-00000-00&context=). It permits the Sherman Act to reach conduct with a "direct, substantial, and reasonably foreseeable effect" on "trade or commerce which is not trade or commerce with foreign nations,**[\*\*4]** or on import trade or import commerce with foreign nations." [*15 U.S.C. § 6a(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKH1-NRF4-40MY-00000-00&context=).



We read the special verdict form completed by the jury to include a finding that HannStar's foreign conduct had a direct, substantial, and reasonably foreseeable effect on import commerce.[[4]](#footnote-3)2 The jury found that HannStar participated in a conspiracy involving "TFT-LCD panels and/or finished products . . . imported into the United States," and that this conspiracy "produced substantial intended effects in the United States."[[5]](#footnote-4)3 The jury necessarily found that this conduct had a "direct" effect when it awarded damages based on special verdict questions 8 and 9 and the corresponding instructions, which allowed it to compensate Best Buy for only that injury that was "a direct result or likely consequence of the conduct that you have found to be unlawful." The jury's findings were supported by substantial evidence, including the testimony of Best Buy executive Wendy Fritz and economic expert Douglas Bernheim, and the plea agreements and supporting documents from the prior criminal proceedings against HannStar and its co-conspirators. Thus, the district court did not err in denying HannStar's motion for judgment as a matter of law.

2. HannStar also argues that the judgment should be set aside because the Best Buy entities did not present individualized evidence of ***antitrust*** injury-in-fact. Although the trial evidence of injury and damages did not distinguish between the parent corporation and its subsidiaries, any error attributable to the failure to apportion injury and damages was harmless. The ***antitrust*** injury experienced by the subsidiaries was necessarily experienced **[\*985]** by the parent, and the apportionment of injury among the plaintiffs**[\*\*6]** did not affect the amount or availability of relief. The district court did not err in denying HannStar's motion for judgment as a matter of law on this ground. *See* [*Fed. R. Civ. P. 61*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2421-6N19-F16H-00000-00&context=); *see also* [*28 U.S.C. § 2111*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR71-NRF4-40S6-00000-00&context=).

3. The district court did not err in permitting HannStar to assert a pass-through defense to Best Buy's indirect purchaser claim under Minnesota law. [***HN3***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=clscc3)[] The Minnesota ***Antitrust*** Law authorizes the court "[i]n any subsequent action" to "take any steps necessary to avoid duplicative recovery against a defendant." [*Minn. Stat. § 325D.57*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DCP-CCJ1-DYB7-W3SG-00000-00&context=). The Minnesota Supreme Court has construed this provision to "restore Minnesota ***antitrust*** law to its pre-[*Illinois Brick [Co. v. Illinois, 431 U.S. 720, 97 S. Ct. 2061, 52 L. Ed. 2d 707 (1977)]*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9DJ0-003B-S1WY-00000-00&context=) contours," which made available a pass-through defense to indirect purchaser claims. [*Lorix v. Crompton Corp., 736 N.W.2d 619, 634 (Minn. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4PBK-C940-TXFT-M30W-00000-00&context=) (citing [*Alaska v. Standard Oil Co. of Cal. (In re W. Liquid Asphalt Cases), 487 F.2d 191, 194-95, 200 (9th Cir. 1973))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-YYS0-0039-X42K-00000-00&context=). The Minnesota cases on which Best Buy relies are distinguishable, as they concerned standing rather than the measure of damages. Under the circumstances presented, the district court properly permitted HannStar to assert a pass-through defense. Without it, there would have been a significant risk of duplicative recovery among Best Buy and other downstream indirect purchasers that sued or could sue HannStar.



4. The district court did not improperly consider Best Buy's prior settlements with HannStar's**[\*\*7]** co-conspirators in awarding attorney's fees to Best Buy under [*15 U.S.C. § 15*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTP1-NRF4-44B7-00000-00&context=). The record makes clear that the district court, which adopted the analysis and calculations of the special master, reduced Best Buy's requested attorney's fees by approximately 80% based on the limited results Best Buy obtained at trial. [***HN4***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=clscc4)[] This is a permissible basis on which to reduce an award of fees under [*15 U.S.C. § 15*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTP1-NRF4-44B7-00000-00&context=). [*Twentieth Century Fox Film Corp. v. Goldwyn, 328 F.2d 190, 221 (9th Cir. 1964)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2300-0039-Y4GK-00000-00&context=). The award is therefore reviewed for abuse of discretion. [*Azizian v. Federated Dep't Stores, Inc., 499 F.3d 950, 955 (9th Cir. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4PGS-83W0-TXFX-D1W7-00000-00&context=). Because Best Buy sought nearly $800 million in damages from HannStar, but the jury awarded it only $7.47 million before trebling and offset, the district court did not abuse its discretion in reducing the award of attorney's fees.



5. The district court correctly ruled that Best Buy could recover no more than the federal limit of $40 per day per witness in expert witness fees. *See* [*28 U.S.C. § 1821*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GHV1-NRF4-452T-00000-00&context=). [***HN5***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTW-DDK1-F04K-V1DH-00000-00&context=&link=clscc5)[] The statutory title and equivocal case law advanced by Best Buy do not contain an "express indication" that [*Minnesota Statutes section 325D.57*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DCP-CCJ1-DYB7-W3SG-00000-00&context=) creates a substantive entitlement to expert witness fees as an element of damages under Minnesota law. [*Clausen v. M/V New Carissa, 339 F.3d 1049, 1065-66 (9th Cir. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:498W-8VD0-0038-X45F-00000-00&context=). Rather, [*section 325D.57*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DCP-CCJ1-DYB7-W3SG-00000-00&context=) is a state procedural "expert witness cost provision[]," and so it is trumped by federal procedural law in this action. [*Clausen, 339 F.3d at 1064-65*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:498W-8VD0-0038-X45F-00000-00&context=) (citing [*Aceves v. Allstate Ins. Co., 68 F.3d 1160, 1168 (9th Cir. 1995))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BD40-001T-D0KK-00000-00&context=). Therefore, the district court**[\*\*8]** did not err in adopting the special master's recommended award of expert fees, which applied the federal limit set forth by [*28 U.S.C. § 1821*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GHV1-NRF4-452T-00000-00&context=). *See* [*Clausen, 339 F.3d at 1064-65*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:498W-8VD0-0038-X45F-00000-00&context=).



**AFFIRMED**.

**End of Document**

1. \*\*The Honorable Rosemary Márquez, District Judge for the U.S. District Court for the District of Arizona, sitting by designation. [↑](#footnote-ref-0)
2. \*This disposition is not appropriate for publication and is not precedent except as provided by [*9th Cir. R. 36-3*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8KYR-5452-D6RV-H4P6-00000-00&context=). [↑](#footnote-ref-1)
3. 1We consolidate Appeals No. 13-17408, 13-17618, and 14-16144 for purposes of disposition. [↑](#footnote-ref-2)
4. 2**[\*\*5]**Thus, it is not necessary to reach Best Buy's arguments that the judgment may be affirmed on the alternative grounds that HannStar's conduct satisfied the import commerce exclusion to the FTAIA, or that the FTAIA does not apply to claims under Minnesota law. [↑](#footnote-ref-3)
5. 3Although the jury also found that the conspiracy did not involve conduct with a "direct, substantial and reasonably foreseeable effect on trade or commerce in the United States," this does not speak to the jury's findings regarding effects on import commerce. In light of the jury instructions, the most natural understanding of "in the United States" is "wholly within the United States," i.e., in nonimport domestic commerce. [↑](#footnote-ref-4)