

# Supreme Court Limits Recovery of Translation Costs for Prevailing Party

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Modern commercial transactions often cross international borders and can involve many different cultures and languages. The evidence developed in litigation often reflects the international character of commercial life, as discovery can produce hundreds or even thousands of pages of documents in languages other than English. Properly preparing a case requires incurring the often prohibitive expense of translating those documents. A question has lingered as to whether these expenses are "costs" that a prevailing party can recover under **28 U. S. C. § 1920**.

The **Supreme Court** has now answered that question in the negative, holding that even a prevailing party must pay for its own translation of non-English documents. In *Taniguchi v. Kan Pacific Saipan*, the Supreme Court held that Congress did not intend to include translation expenses as a recoverable cost under 28 U.S.C. § 1920. That statute includes expenses for "interpreters" as one of the costs that prevailing plaintiffs may seek from their opposing party. That language has previously been construed as allowing parties to recover the cost of having oral testimony interpreted in court or at a deposition. Justice Alito's opinion reasoned, however, that there was a difference between the "translation" of written words and the "interpretation" of oral testimony. Relying on dictionary definitions of these words, the Court could not find support for reading the word "interpreter" to include translation of written documents. While some dictionary definitions could be stretched that far, the Court could not find a consensus in any sources that would support allowing costs for translations under the term "interpretation." As the Court explained, "any definition of a word that is absent from many dictionaries and is deemed obsolete in others is hardly a common or ordinary meaning. Based on our survey of the relevant dictionaries, we conclude that the ordinary or common meaning of 'interpreter' does not include those who translate writings. Instead, we find that an interpreter is normally understood as one who translates orally from one language to another."

Unless Congress intervenes to modify the costs statute, this construction of the statutory language means that even prevailing parties will be forced to bear their own expenses incurred in translating documents.

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