

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

In the Matter of

THE W.N. CONNELL and MARJORIE
T. CONNELL LIVING TRUST, dated
May 18, 1972.

Electronically Filed
Jul 02 2018 02:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 73837

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA STURMAN, District Court Judge
District Court Case No. P-09-066425-T

APPELLANT'S APPENDIX

VOLUME 5: AAPP 501 through AAPP 625

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INDEX

VOLUME	PAGE NUMBER(S)
1	1-17
1	18-21
1	22-38
1	39-43
1	44-45
1	46-94
1	95-96
1, 2, 3	97-312
3, 4	313-408
4	409-413
4	414-417
4	418-421
4	422-424
4	425-426
4	427-449
4	450-451
4	452-463
4	464
4, 5, 6	465-667
6	668-729
6	730-731
6	732-747
6, 7	748-771
7	772-784
7	785-797
7	798-799
7, 8	800-936
8	937-941
8	942-943

ALPHABETICAL INDEX

VOLUME	DATE	DESCRIPTION	PAGE NUMBER(S)
4	02/01/2017	Accounting and Report of Trust Activity from 2014 to 2015	452-463
4	12/01/2016	Amended Order Re: Eleanor Ahern's Deposition	418-421
1	08/21/2017	Appeal to the Notice of Entry of Order Regarding Motion for Assessment of Damages Against Eleanor Ahern	18-21
1	08/05/2015	Court Minutes	95-96
4	02/08/2017	Court Minutes	464
8	11/09/2016	Court Minutes, Status Check: Settlement	942-943
6, 7	06/03/2015	Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No-Contest Clause; and Surcharge of Eleanor's Trust Income	748-771
1	08/09/2017	Notice of Entry of Order Regarding Motion for Assessment of Damages Against Eleanor Ahern	1-17
4	12/13/2016	Order Granting Motion to Withdraw as Counsel	450-451
7	06/29/2015	Opposition to Motion for Assessment of Damages Against Eleanor Ahern, Enforcement of No-Contest Clause, And Surcharge of Eleanor's Trust Income	772-784
1	04/01/2015	Order Appointing New Temporary Trustee	44-45
8	01/06/2014	Order Denying Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16; Directing Payment of All Oil, Gas, Mineral and Interest Royalties and Rent to Eleanor C.	937-941

		Hartman, Also Known as Eleanor C. Ahern, as Trustee of Trust No. 2 of the W. N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972; and Setting Calendar Call and Hearing	
6	08/02/2017	Order Denying Request for Attorney's Fees and Granting Trustee's Request to Appoint Guardian Ad Litem	730-731
7	09/14/2015	Order Granting Motion to Dismiss Contempt Proceedings	798-799
4	11/03/2016	Order Re: Eleanor Ahern's Deposition	414-417
6	08/08/2017	Order Regarding Motion for Assessment of Damages Against Eleanor Ahern	732-747
4	09/19/2016	Order Regarding Motion for Assessment of Damages; Enforcement of No Contest Clause; and Surcharge of Trust Income	409-413
1	04/20/2015	Order Regarding the Accounting, Breach of Fiduciary Duty and Claims and Award of Attorney Fees	39-43
7, 8	09/27/2013	Petition for Declaratory Judgment regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(E), and NRS 164.033(1)(A)	800-936
6	03/13/2017	Recorder's Transcript Evidentiary Hearing from February 10, 2017	668-729
4, 5, 6	03/10/2017	Recorder's Transcript Evidentiary Hearing from February 9, 2017	465-667
4	12/06/2016	Recorder's Transcript of Proceeding: Motion Marquis Aurbach Coffin's Motion to Adjudicate Attorney's Line... Motion: Motion to Withdraw as Counsel on Order Shortening Time	427-449

4	11/23/2016	Response to Motion to Withdraw	425-426
4	11/07/2016	Second Notice of Taking Video Deposition of Eleanor Ahern	422-424
1	04/16/2015	Summary Judgment	22-38
1	07/31/2015	Supplement to Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No contest Clause; and Surcharge of Eleanor's Trust Income	46-94
3, 4	03/03/2016	Transcript of Proceedings, All Pending Motions; Evidentiary Hearing; Status Check	313-408
1, 2, 3	03/29/2016	Transcript of Proceedings, Evidentiary Hearing: Enforcement of No Contest Clause	97-312
7	08/25/2015	Transcript of Proceedings, Hearing on Eleanor Ahern's Motion to Dismiss Contempt Proceedings	785-797

CHRONOLOGICAL INDEX

VOLUME	DATE	DESCRIPTION	PAGE NUMBER(S)
7, 8	09/27/2013	Petition for Declaratory Judgment regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(E), and NRS 164.033(1)(A)	800-936
8	01/06/2014	Order Denying Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16; Directing Payment of All Oil, Gas, Mineral and Interest Royalties and Rent to Eleanor C. Hartman, Also Known as Eleanor C. Ahern, as Trustee of Trust No. 2 of the W. N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972; and Setting Calendar Call and Hearing	937-941
1	04/01/2015	Order Appointing New Temporary Trustee	44-45
1	04/16/2015	Summary Judgment	22-38
1	04/20/2015	Order Regarding the Accounting, Breach of Fiduciary Duty and Claims and Award of Attorney Fees	39-43
6, 7	06/03/2015	Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No-Contest Clause; and Surcharge of Eleanor's Trust Income	748-771
7	06/29/2015	Opposition to Motion for Assessment of Damages Against Eleanor Ahern, Enforcement of No-Contest Clause, And Surcharge of Eleanor's Trust Income	772-784
1	07/31/2015	Supplement to Motion for Assessment of Damages Against	46-94

		Eleanor Ahern; Enforcement of No contest Clause; and Surcharge of Eleanor's Trust Income	
1	08/05/2015	Court Minutes	95-96
7	08/25/2015	Transcript of Proceedings, Hearing on Eleanor Ahern's Motion to Dismiss Contempt Proceedings	785-797
7	09/14/2015	Order Granting Motion to Dismiss Contempt Proceedings	798-799
3, 4	03/03/2016	Transcript of Proceedings, All Pending Motions; Evidentiary Hearing; Status Check	313-408
1, 2, 3	03/29/2016	Transcript of Proceedings, Evidentiary Hearing: Enforcement of No Contest Clause	97-312
4	09/19/2016	Order Regarding Motion for Assessment of Damages; Enforcement of No Contest Clause; and Surcharge of Trust Income	409-413
4	11/03/2016	Order Re: Eleanor Ahern's Deposition	414-417
4	11/07/2016	Second Notice of Taking Video Deposition of Eleanor Ahern	422-424
8	11/09/2016	Court Minutes, Status Check: Settlement	942-943
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4	12/01/2016	Amended Order Re: Eleanor Ahern's Deposition	418-421
4	12/06/2016	Recorder's Transcript of Proceeding: Motion Marquis Aurbach Coffin's Motion to Adjudicate Attorney's Line... Motion: Motion to Withdraw as Counsel on Order Shortening Time	427-449
4	12/13/2016	Order Granting Motion to Withdraw as Counsel	450-451
4	02/01/2017	Accounting and Report of Trust Activity from 2014 to 2015	452-463
4	02/08/2017	Court Minutes	464

4, 5, 6	03/10/2017	Recorder's Transcript Evidentiary Hearing from February 9, 2017	465-667
6	03/13/2017	Recorder's Transcript Evidentiary Hearing from February 10, 2017	668-729
6	08/02/2017	Order Denying Request for Attorney's Fees and Granting Trustee's Request to Appoint Guardian Ad Litem	730-731
6	08/08/2017	Order Regarding Motion for Assessment of Damages Against Eleanor Ahern	732-747
1	08/09/2017	Notice of Entry of Order Regarding Motion for Assessment of Damages Against Eleanor Ahern	1-17
1	08/21/2017	Appeal to the Notice of Entry of Order Regarding Motion for Assessment of Damages Against Eleanor Ahern	18-21

1 Q And that was just provided, yesterday, to us for the
2 first time, is that correct?

3 A Perhaps Monday.

4 Q Okay.

5 A Monday or Tuesday.

6 Q Okay. Mr. Waid, are you willing to pay for Ms.
7 Ahern's medical needs?

8 A Since this Court authorized the expense of coverage
9 of certain medical expenses, absolutely. I have paid some.
10 I've paid some to Mesa Medical where Mesa Medical contacted
11 me, confirmed an appointment, and said these are the charges.
12 We have paid those expenses.

13 Q What requests have you made, both to Mr. Lenhard
14 before he withdrew and to Ms. Ahern since his withdrawal, in
15 order to pay those expenses?

16 A I have made numerous requests, both in writing and
17 in telephonic conversations with Mr. Lenhard for any
18 information on any medical or other physical need that Ms.
19 Ahern would have. Mr. Lenhard and Ms. Peterson, for that
20 matter, repeatedly indicated that they have not received nor
21 have they provided; hence, they have not been able to provide
22 me with any invoices to pay. But I remain ready, willing, and
23 able to comply with the Court's order. And, in fact, if you
24 will, I -- that's one of the reasons I went to Mesquite as
25 well and attempted to visit with Ms. Ahern, but I was asked to

1 leave.

2 Q Can you tell the Court where we are on the Trust's
3 tax returns, please?

4 A Just last week I filed amended returns for 2013,
5 '14, and '15, and we have a pending now refund request, which
6 will ultimately determine the final allocations and
7 adjustments for the tax accounting. I am hopeful that the IRS
8 will honor their refund requests, but given the complexities
9 and given the large dollar amounts, we are in a statistical
10 probability for either an audit or at least an inquiry as --
11 and request for additional information.

12 So I'm anticipating it may take another three to six
13 months to have the Internal Revenue issues resolved
14 completely.

15 Q Finally, I'd like you to turn to Exhibit 43, please.
16 Mr. Waid, is this the Accounting and Report of Trust Activity
17 from 2013 to 2015 that was filed on February 1, 2017?

18 A Yes.

19 Q Did you have the benefit of information that you
20 desired from Ms. Ahern that you hoped to get through her
21 deposition when you filed this Accounting and Report?

22 A No, I did not.

23 Q Can you tell the Court what weaknesses there were as
24 a result of you not being able to ask Ms. Ahern the questions
25 you would've liked?

1 A I believe the best way to answer that is to describe
2 the trust records that I was able to obtain either from the
3 financial institutions, from her then-counsel, and other
4 sources. It was very difficult to reconcile what the oil and
5 gas companies had paid; difficult to reconcile with what was
6 on deposit with what those companies reported to the IRS, with
7 what was previously reported to the IRS.

8 And also, by comparison, using the other royalty
9 beneficiaries who receive a similar distribution, and
10 ultimately reconciling what trust funds were available and
11 what I recovered. It was simply not easy to match.

12 I engaged the services of Johnson, Chris Wilcox --
13 Johnson, Jacobson, and Wilcox, noted accounting firm in this
14 town and have done a lot of work for the courts. They were
15 incredibly perplexed at the inability to reconcile the
16 information that was provided to us.

17 Q With the information that you had as of February 1,
18 2017, is this the best you could do by way of an Accounting
19 and Report?

20 A Yes, and I'm confident in its accuracy to that
21 extent.

22 MR. MOODY: All right. That's all I have for him at this
23 point, Your Honor.

24 THE COURT: Thank you.

25 MR. POWELL: Your Honor, would you like to take that

1 break now? We're about fifteen minutes, I think, in front of
2 the time you said you needed for the recess. I'm just
3 thinking conceptually it might be easier to have continuous
4 testimony of our sole witness, Mr. Waid. Would it be
5 appropriate to stop now?

6 THE COURT: Well, we really aren't going to be able to
7 come back any earlier than we'd already discussed.
8 Unfortunately, you know, we have to be there at noon. So, I
9 mean, I don't mind breaking now, but we'll be -- we won't be
10 back until 1:30.

11 MR. POWELL: Understood. And that's fine with us if
12 you'd just like to head out early, that's fine with us and --

13 THE COURT: Okay.

14 MR. POWELL: -- we can prepare for -

15 THE COURT: All right. So, Ms. Ahern, what we're talking
16 about here, again, is the fact that I have to be somewhere at
17 noon at the federal building. And so, since Mr. Waid is going
18 to next be questioned by Counsel for Ms. Montoya and Ms.
19 Bouvier, rather than interrupt his testimony for me to leave
20 in 10 or 15 minutes here, we're just going to break now. We
21 will resume at 1:30. So we will be in recess until 1:30.

22 And, Kerry, do we need to set something up for the people
23 to come back and --

24 THE COURT RECORDER: I'll be here, Judge, and let them
25 know.

1 THE COURT: Get it reset up?

2 THE COURT RECORDER: Yes, I'll let them know.

3 THE COURT: All right. So what they're going to do --

4 Kerry will communicate with the IT people to get your computer

5 link back up and running after the lunch break. Because if,

6 because if we're dead for more than 30 minutes it disconnects.

7 So we'll have to reconnect you. We'll do that in order to

8 resume at 1:30. So we'll be in recess until then. Thank you

9 very much.

10 THE WITNESS: Thank you.

11 MS. AHERN: Understood.

12 THE COURT: Thank you.

13 [Recess at 11:17 a.m.]

14 [Resumed at 1:38 p.m.]

15 THE COURT: Video link open, Kerry?

16 THE COURT RECORDER: Yes.

17 THE COURT: Okay. Great.

18 THE COURT RECORDER: Would you like me to turn to it?

19 THE COURT: Yes. Okay. So we'll reopen the video link

20 and we'll be ready to make sure everybody's back on the

21 record.

22 MR. POWELL: Your Honor, the movements -- Movants would

23 like to call --

24 THE COURT: Just a minute.

25 MR. POWELL: Yeah.

1 THE COURT: Okay. Everybody ready to go back on the
2 record? Hello, Ms. Ahern, we're ready to go back on the
3 record if you are?

4 MS. AHERN: Yes, I am.

5 THE COURT: All right. Thank you very much. So the
6 record should reflect that the parties are present with their
7 respective Counsel here in the courtroom and Ms. Ahern is with
8 us via video link. So we're ready then to -- I think we had
9 Mr. Waid on the stand, and Mr. Moody you had completed your
10 examination?

11 MR. MOODY: Yes, Your Honor.

12 THE COURT: All right, fine, thanks. And then we were
13 going -- Mr. Powell, to you next.

14 MR. POWELL: Yes, Your Honor --

15 THE COURT: Okay. Just a moment. Ms. Ahern has a
16 question. Yes, Ms. Ahern?

17 MS. AHERN: May I ask -- may I ask the Court a question?

18 THE COURT: Sure.

19 MS. AHERN: I would ask the Court -- received an
20 accounting from Fred Waid. As a beneficiary, I would like to
21 know if you have received?

22 THE COURT: Yes, that was filed. The first accounting
23 and report -- the Accounting and Report of Trust Activity from
24 2013 to 2015 was filed on February 1st, and it was mailed to
25 you at two different addresses that Mr. Waid referenced.

1 One being, 111 Paradise Parkway and the other one
2 being 400 Paradise Parkway, Unit 111, so both of those
3 addresses. It was sent to both of those on the 1st.

4 MS. AHERN: Judge, I am asking for an accounting from
5 12/31st '16. I would like to know why I have not been
6 provided with an accounting of the money in and the money out
7 for the period of 12/13 2016?

8 THE COURT: Oh.

9 MS. AHERN: Fred has been Acting Trustee for two years.
10 What funds has he expended?

11 THE COURT: Okay. All right. Mr. Moody, we have an
12 accounting and the Report on Trust Activity for the two year
13 period through 2015 -- so through 2016, do we have an update
14 yet or have you closed the books on 2016?

15 MR. MOODY: Your Honor, we have not. We are still -- one
16 of the questions that I asked of Mr. Waid was, where we were
17 on the tax returns. So there are some loose ends we are
18 wrapping up for tax purposes. And then, once that happens,
19 we'll be able to provide the final accounting.

20 THE COURT: Okay. All right. So --

21 MS. AHERN: How long will that take?

22 THE COURT: So the final accounting, is there any -- do
23 you have to wait for the tax returns in order to do the 2016
24 accounting or is there -- going to take any -- possible to get
25 it any sooner? Just -- what are we looking at?

1 MR. MOODY: No, we will need that. We have provided the
2 accounting for the income to the Trust during 2016, but as far
3 as expenditures, what's going to be allowed, that's what we're
4 still waiting on.

5 MR. WAID: And that was provided to Mr. Lenhard.

6 MS. AHERN: I have not had that paperwork, could you
7 please submit it to me? I have not had that paperwork for
8 2016 given to me.

9 THE COURT: Okay. So the 2016 income was reported to Mr.
10 Lenhard. And I would just ask that you mail a copy to Ms.
11 Ahern, because I don't know that Mr. Lenhard has turned his
12 file over yet. Okay. All right.

13 MS. AHERN: I need to let you know that since the
14 middle -- when Lenhard left, I have received no documents.
15 And I'm wondering, would you please get documents to me from
16 the time he left and the preparation of this particular
17 hearing. I have received no documents at all except for the
18 one letter.

19 THE COURT: Okay. Well, as I indicated, the report that
20 the Trustee did in preparation for today's hearing, that was
21 mailed to the two addresses in Mesquite. Mr. Powell, you also
22 did a Brief -- a Pretrial Memorandum for today's hearing, was
23 that served?

24 MR. POWELL: Yes, Your Honor. That was mailed to the
25 same mailing address that Mr. Waid had as the address, and

1 then we also mailed, as well to -- if I'm not mistaken, I
2 think we mailed, also, as well to the other address that Ms.
3 Ahern had put in her correspondence to this Court so.

4 THE COURT: Okay. And so, Ms. Ahern, I think --

5 MS. AHERN: Yes, I have received that. I have received
6 that, but I have received nothing prior from the time of Kirk
7 leaving until those two letters came in. Can I have all the
8 other documents --

9 THE COURT: I don't think anything else was really done.

10 MR. MOODY: So Judge, attached is Exhibit 4 to the
11 Trustee's Exhibit 44, are the return envelopes that we keep
12 getting back from the post office -

13 THE COURT: Uh-huh.

14 MR. MOODY: -- after we've attempted service at the last
15 known address Mr. Lenhard gave.

16 THE COURT: Yeah.

17 MR. MOODY: Now, that Ms. Ahern has provided a new
18 address, everything now that we file, obviously, will - will
19 be served to that address.

20 THE COURT: Okay. So yeah, Ms. Ahern --

21 MS. AHERN: I would appreciate that. Thank you.

22 THE COURT: -- because we had two addresses. One that
23 was the official address provided by Counsel when he withdrew
24 and that was 111 -- no, it was 400 Paradise Parkway, Unit 111.
25 We understand that's not a good address --

1 MS. AHERN: There's no mail dropped there. There is no
2 mail dropped there.

3 THE COURT: Yeah, that's not a good address, so --

4 MS. AHERN: There never has been. He gave an incorrect
5 address.

6 THE COURT: Yeah. And then there's also the 111 Paradise
7 Parkway address, but even mail sent to that address, Mr.
8 Moody, is indicating has been returned.

9 MS. AHERN: That is the same address and it is incorrect.
10 There is no mail drop there --

11 THE COURT: Okay.

12 MS. AHERN: -- for me.

13 THE COURT: Okay. All right. So then -- now that we've
14 got the new address, the four - there, I think there were four
15 items of correspondence that were returned, and I'm sure Mr.
16 Powell will also re-mail now that we have a new address for
17 you. And just for the record, I don't know -- does anybody
18 have anything with that new address on it so we can put it in
19 the record and --

20 MS. AHERN: I'd be happy to provide it.

21 THE COURT: -- we can -- okay.

22 MS. AHERN: 355 West Mesquite Blvd., D30, Mesquite,
23 Nevada 89027.

24 THE COURT: We're going to -- we're going to update the
25 official court records, Ms. Ahern, for the -- to have the

1 mailing address for you, as long as you are representing
2 yourself, as 355 West Mesquite Blvd., D30, 3-0, 8 -- Mesquite,
3 Nevada 89027.

4 So the clerk will update the records for that
5 address, Ms. Clerk?

6 THE CLERK: Yes, ma'am.

7 THE COURT: Okay. We'll update the records to reflect
8 that address.

9 MS. AHERN: Thank you. I very much appreciate that. I
10 do need the income for 2016. Kirk Lenhard never gave that to
11 me.

12 THE COURT: Okay. They'll update and send everything
13 that was returned to them when they tried to mail it to your
14 address. They'll update that and then, also, Mr. Moody, the
15 things that we've agreed that will be provided after this
16 hearing are the Exhibits 1 through 39 that were admitted.
17 We'll provide those.

18 The Court's going to forward to you, because Mr.
19 Waid has agreed the expense will be paid, a DVD, and as soon
20 as it can be prepared, a transcript. Transcripts take a
21 while, so please wait. It'll be a few days before that can be
22 done.

23 So the DVD and the transcript will be forwarded. As
24 Mr. Waid has indicated, they'll be paid for by the Trust. And
25 then --

1 MS. AHERN: I need --

2 THE COURT: And then --

3 MS. AHERN: I need the expenditures. I'm sorry, Judge, I
4 apologize. I had my hand raised.

5 THE COURT: Okay. And then the -- the other thing that
6 we have agreed that will be provided, they're going to re-mail
7 now that we have a new address -- Mr. Moody will re-mail those
8 things he attempted to send to you that were returned. He'll
9 also provide you a copy of the 2016 income. Mr. Waid, having
10 represented that they cannot close the books on 2016 until
11 they know what the tax consequences are, and that will be --
12 it's going to take some time. When -- and there's really no
13 way to estimate. It's the IRS. We don't really have any way
14 of knowing.

15 And then Mr. Barlow -- beg your pardon, Mr. Powell
16 and Mr. Kiefer, you're going to send your stuff as well?
17 Anything you've tried to send to Ms. Ahern, you'll resend it -

18 MR. POWELL: Yeah, I -

19 THE COURT: -- now that you've got the new address?

20 MR. POWELL: Yeah, I believe, Your Honor, if I'm not
21 mistaken, I'm 99.9 percent certain we did mail the --

22 THE COURT: Okay.

23 MR. POWELL: -- Pretrial Memorandum to both addresses
24 that we had.

25 MS. AHERN: Yes, I have received that. Yes, I have.

1 THE COURT: Okay. They have received that. So okay.

2 MS. AHERN: I do -- I do need, Judge. Judge, I hope that
3 you'll allow me to speak.

4 THE COURT: Yes.

5 MS. AHERN: I do need to know what expenditures Fred Waid
6 has done from 4/1/2015, to date -- to this date today. What
7 expenditures has he created and done?

8 THE COURT: Mr. Waid are -- I know that you -- you aren't
9 in a position to do any kind -- I appreciate your inquiry.
10 Here's the problem that we have, because Mr. Waid is acting as
11 a fiduciary. For the Court to order him to do an accounting,
12 that's a term of art for us. And it has a special meaning and
13 he's not in a position to do a formal accounting for you until
14 the accountants can actually close the books. And we can't do
15 that until we know what the tax liability is.

16 However, Mr. Moody, is there some sort of interim
17 report we could provide that would just be -- not an official
18 accounting, because we don't want Mr. Waid to have to make any
19 representations as a fiduciary, because it carries with it
20 certain -- it's got certain requirements, and we are not yet
21 ready to put him on that -- under the obligations he has to.

22 MS. AHERN: I'm just asking for expenditures.

23 THE COURT: So we'll get an updated Report of Income and
24 Expenditures.

25 MR. MOODY: Sure, 30 days?

1 THE COURT: Within - within the next 30 days.

2 MR. MOODY: You bet.

3 THE COURT: Okay.

4 MS. AHERN: Thank you.

5 THE COURT: All right.

6 MR. MOODY: Judge, since this is being recorded, can we
7 ask Ms. Ahern to tilt the camera down so that she can be
8 recorded as --

9 THE COURT: Yeah, we -

10 MR. MOODY: -- as she speaks?

11 THE COURT: It's -- the camera has a gotten a little
12 cattywampus on us here, Ms. Ahern. All we can see is the
13 tippy top of your head. So -

14 MS. AHERN: Of -

15 THE COURT: -- there. Oh, there we go. There we go.
16 Thank you. That - that worked. That's perfect. Thank you so
17 much. We appreciate that.

18 MS. AHERN: I -- I could not see all. I mean, I can
19 barely see you through a haze, because my cataracts are quite
20 bad.

21 THE COURT: Okay. All right.

22 MS. AHERN: So you're hazy. So you can see me, all
23 right, yes?

24 THE COURT: We -- we can now see you now. Yes. This is
25 perfect. So thank you so much, we appreciate that

1 accommodation.

2 At that point, then, I think we've discussed our to
3 do lists that everybody's got, and so I think Mr. Waid was
4 going to retake the stand and Mister - Mr. Powell - Mr.
5 Powell, you were going to do the questioning?

6 MR. POWELL: Yes, Your Honor.

7 THE COURT: All right. So we're ready then for Mr. Waid
8 to retake the stand. Mr. Waid, you remain under oath.

9 MR. POWELL: Your Honor, would it be acceptable to the
10 Court if I just simply ask questions --

11 THE COURT: Certainly.

12 MR. POWELL: -- from a seated position? Thank you, Your
13 Honor.

14 THE COURT: Please do, yeah. Uh-huh.

15 MS. AHERN: Oh, may I ask who the name of the person
16 asking questions?

17 THE COURT: This is Joseph Powell. He's going to be
18 questioning Mr. Waid.

19 MS. AHERN: And who was the person earlier this morning?

20 THE COURT: That was Mr. Moody. Okay. We're ready to
21 begin, Mr. Powell.

22 MR. POWELL: Okay. Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. POWELL:

25 Q Mr. Waid, I'd like to go through some of your

1 testimony to get clarification for myself and also for the
2 Court on some of these issues. But before doing so, I would
3 like to go through some preliminary things to establish your
4 background and experience with the position that you are in.

5 You previously testified to being the Court
6 Appointed Trustee for the Trust, the subject matter trust, the
7 W.N. and Marjorie Connell Trust. Could you please provide for
8 me your post high school -- your secondary, effectively,
9 educational background?

10 A Certainly. I hold a degree from Brigham Young
11 University in American Studies and Economics. I received a
12 law degree from Baylor University in 1997.

13 Q Thank you, Mr. Waid. As to your legal experience,
14 are you currently a licensed attorney in any jurisdiction?

15 A I am in the State of Texas.

16 Q What year did you become barred in the State of
17 Texas?

18 A 1997.

19 Q Could you give me an explanation of any - any and
20 all fiduciary experience that you've acquired through your
21 time?

22 A Certainly. I served as Vice President and Trust
23 Officer of Farmers and Merchants Bank and its holding company
24 Farmers and Merchants Bank Shares. I've served on the board
25 of directors as a corporate secretary, as a trust officer, as

1 a compliance officer for Red Rock Community Bank, for the Bank
2 of Las Vegas, and its affiliates and its holding company.

3 I have served, under appointment, by both this
4 jurisdiction in the state courts. I've also accepted
5 appointments at the federal level. I have been appointed as
6 successor trustee, as initial trustee, as a guardian over
7 estates for the better part of the last 15 years.

8 Q Could you give me an estimate as to how many --
9 approximately how many times you've been appointed and/or
10 served as a trustee?

11 A Someone asked me that question recently and I
12 calculated somewhere near a hundred. Some very small cases,
13 some very large complex matters. Some -- one case could have
14 multiple cases underneath it with respect to lending
15 institutions, but it's been quite a few.

16 Q Would you, based on your background and experience
17 as being a trustee, would you consider yourself to be a -- for
18 lack of a better term -- a professional trustee or fiduciary?

19 A Generally, yes.

20 Q Generally speaking, are you compensated for serving
21 as a trustee?

22 A Yes. I also serve as a receiver, which has similar
23 aspects to it.

24 Q That segues into my next question for you, you
25 indicated you've been a receiver, you've indicated that you

1 have also banking experience. Do you have -- based on those
2 professional experiences -- do you have a special knowledge or
3 ability to track and trace funds? Monies?

4 A I do. Both serving in a corporate officer role over
5 bank compliance, and especially in light of the recent changes
6 in the governmental regulations and the downturn of the
7 economy, I was intimately involved with them. Part of that
8 being responsible for the Patriot Act and tracing funds,
9 accounting for funds, suspicious activity reports, currency
10 transaction reports. Those were part of my responsibility for
11 many years.

12 Q So I would assume that it'd be a logical assumption
13 that you've reviewed numerous accounts over the course of your
14 years of experience?

15 A I have. Generally, I'm appointed or selected or
16 invited by attorneys here in the Las Vegas -- the western
17 region. I handle cases in Salt Lake, Phoenix, Los Angeles,
18 San Francisco, Seattle, by individuals who are looking for
19 someone with a legal background, but also who understands the
20 accounting intricacies and then the banking complexities.
21 I've done work, again, for the SEC and others in relation to
22 finding missing funds or other matters related to that.

23 Q So it's safe to say that you know your way around
24 what you are looking for when you review transactions and
25 transaction reports?

1 A Yes.

2 Q Mr. Waid, in your prior testimony, if I'm not
3 mistaken, you indicated you were appointed by this Court in
4 approximately March of 2015?

5 A That's correct.

6 Q When you first became involved in the case, what was
7 the first action you took?

8 A I provided Marquis and Aurbach information. They
9 interviewed me first or wanted information before the
10 appointment and I believe I provided them my resume and I
11 answered a number of questions for them. Is your question
12 after I was appointed? I apologize.

13 Q Your testimony is kind of what I was after if you --

14 MS. AHERN: Oh, I'm sorry. I have to go to the restroom.
15 Please -- please wait.

16 THE COURT: Okay. We'll take a break. Go off the
17 record.

18 [Recess at 1:56 p.m.]

19 [Resumed at 2:03 p.m.]

20 THE COURT: We're ready to go back on the record then,
21 Kerry.

22 All right. So we'll resume. Ms. Ahern's back. And
23 so Mr. Powell, you were questioning Mr. Waid.

24 BY MR. POWELL:

25 Q Yes, Mr. Waid. I think you paused midsentence in

1 terms of just explaining, I think, your initial discussions
2 with Marquis Aurbach, so if you are -- want to just continue
3 with your statement.

4 A Yes. And then upon my appointment, as I previously
5 testified, I began examining records, interviewing anyone who
6 had any relation to the case, current, prior and otherwise,
7 either for MTC, for Ms. Ahern, prior counsel. I interviewed
8 as many people as I could to marshal the assets and start
9 understanding where the funds were and the reason for the tax
10 matter that was facing the Trust at that time.

11 Q Around this time or as you're -- let me rephrase
12 that. What sort of documentation were you looking at
13 regarding the Trust when you, initially, took over?

14 A I was provided copies of some of the prior
15 pleadings, copy of the accounting that Ms. Ahern had filed and
16 some limited bank records.

17 Q The accounting. Would the accounting that you're
18 referring to be an accounting that was filed by Ms. Ahern, I
19 should say, on behalf of Ms. Ahern, by Marquis Aurbach
20 Coffing?

21 A Yes.

22 Q When you were reviewing -- I'm going to just use an
23 acronym for Marquis Aurbach Coffing so I don't have to repeat.
24 I'll just refer to them as MAC, if that's okay?

25 A Certainly.

1 Q When you reviewed the accounting that was provided
2 to the Court by MAC, did you find any issues with the
3 accounting?

4 A I did. In relation to what Wells Fargo had informed
5 me was on deposit, and I immediately was able to access the
6 prior three months' history, I found significant discrepancies
7 in what was reported and what was actually there.

8 Q Did you alert MAC to these discrepancies that you
9 found?

10 A I did.

11 Q What was MAC's response?

12 A They were very concerned and as -- I committed to
13 them that I would continue to inform them as information was
14 made available to me. And the culmination of that was related
15 to, I believe, the \$500,000 Fidelity Capital matter -- and we
16 had a hearing in the morning. By that afternoon, they had
17 requested to withdraw from the case for ethical reasons.

18 Q So were ethical reasons, to the best of your
19 understanding, the reasons -- the stated grounds for their
20 withdrawal?

21 A That's my understanding, yes.

22 Q I'd like to discuss now the -- your interactions
23 with Wells Fargo. Can you give me an explanation as to how
24 your investigation related to Wells Fargo and their records?
25 The Wells Fargo records, I should say.

1 A Yes. Initially, I was able to gain access, an
2 online basis, to the account histories. However, it was
3 immediately apparent that online information would be limited
4 because there was a marked absence of imaged documents on the
5 online system.

6 And what I mean by that is, when you make a deposit,
7 usually the deposit ticket and the deposit instrument is
8 visible. There were very few records available in an image
9 component, which then led to the purpose of the subpoena to
10 request their back office to provide whatever images and other
11 supporting documentation could be found.

12 Q As to the subpoenas that you issued to Wells Fargo,
13 how far, approximately, back in time were you seeking records
14 from Wells Fargo? Or more -- better yet, what time period
15 were you effectively seeking?

16 A Once we determined that there were issues with 2010,
17 '11, '12, '13, '14 tax returns, we requested information as
18 far back for all of those years. Some was available, some was
19 -- Wells Fargo was simply not able to comply with the
20 subpoenas.

21 Q How many subpoenas, approximately, do you recall
22 being issued?

23 A I think there were three or four specific subpoenas
24 and then there were multiple supplements, multiple requests
25 for extensions from Wells Fargo, and multiple discussions

1 expanding the scope or clarifying the scope given the
2 difficulty they had in finding the information.

3 Q In approximately a rough time frame, when were the,
4 would you say the first subpoena was issued, and when was the
5 last subpoena issued to Wells Fargo?

6 A If memory serves me right, it was April. It was
7 early in the case of 2015 and I believe the last one was
8 sometime in the late-summer early-fall of '15. And in
9 actuality, that subpoena, I believe, is still open because we
10 had requested Wells Fargo if they did, at any point in time,
11 find additional information, they agreed to supplement at any
12 time in the future.

13 Q I want to just clarify some of your previous
14 testimony from earlier. Can you recap for me what divisions
15 of Wells Fargo you dealt with in regard to these subpoenas?

16 A I first started with the private banker who was
17 assigned to the account and when it was clear that his access
18 level for cashier's checks and other related transactions,
19 things that normally would not be posted on the account,
20 required a higher level it was then, I believe, we were
21 relegated to the Phoenix Legal Department in charge of back
22 office productions.

23 And then we went to the Fraud Division because they
24 found -- in my questions, in questions from counsel, in
25 discussions with the bank, there were certain patterns and

1 other matters they felt warranted sending it to the Fraud
2 Division. The Fraud Division then, ultimately, sent the
3 matter to their Senior Legal Division, and so, I dealt with
4 all of those departments.

5 Q What information, if any, did you wind up obtaining
6 as a result of these subpoenas?

7 A We did receive the general bank statements. But the
8 issue at hand was really in the transactional history that Ms.
9 Ahern conducted with the various banks. There were
10 transactions that occurred from branches of Wells Fargo from
11 California to Nevada to Utah, I believe, Texas and multiple
12 branches.

13 The reason the multiple branch became an issue is
14 because she purchased a significant number of cashier's
15 checks. Cashier's checks purchases generally aren't imaged on
16 the individual monthly statements. For instance, if I go into
17 a case I can usually look at a bank statement, look at
18 deposits and instruments and expenditures, and the means and
19 method, whether it be a wire transfer, an ACH transfer or a
20 check that allowed it or caused those expenditures.

21 Much of that information was not to be found on the
22 statements and in the records of Wells Fargo. There were
23 inter-account transfers. There were circumstances, and this
24 is in answer to your question. One of the things Wells Fargo
25 produced was on the back of the check, many of the checks or

1 instruments were not even endorsed. They were simply stamped
2 "credit to customer" which means, the customer was given cash
3 that day.

4 Cash is recorded as a deposit, but there's no image
5 of the actual check. The check is cashed. Wells Fargo cashes
6 the check and obtains it from whoever issued the check, but
7 the check is actually, technically and legally, not deposited
8 into the account. The cash from the check is deposited into
9 the account. It's these series of transactions and their,
10 I'll call it abnormality, and a concern which raised more
11 concerns with Wells Fargo. The deeper we dug, the more
12 questions we asked, the more we tried to put the puzzle pieces
13 together.

14 Q So based on what you are describing, would it be a
15 fair assumption then that Wells Fargo was actively looking at
16 these transaction logs?

17 A They had a number of individuals tasked to this
18 project. Yes.

19 Q Any approximate number of individuals that you were
20 aware of?

21 A I probably dealt with seven or eight different
22 individuals over the course of the process.

23 Q Okay.

24 A And there were probably others behind the scene.
25 Those were just the ones I had direct contact with.

1 Q How long, approximately, did your investigation
2 focus on information, gaining information from Wells Fargo?

3 A Technically it's still ongoing. If there are issues
4 that perhaps the IRS were to challenge in our amended returns,
5 hence, the reason I'm hesitant at this point to produce final
6 accountings is because, we are presenting certain
7 expenditures, certain positions, that if overturned, I would
8 have to amend. Or if the IRS were to request additional
9 information that we don't have, I would go back to Wells
10 Fargo. So we -- the matter regarding the Connell Trust is
11 still an open matter with the bank.

12 Q So given that you issued, you believe, your first
13 subpoena in approximately April of 2015, it's currently
14 February of 2017. We're talking, approximately, an ongoing
15 focus, investigation, however we want to term it, of about 22
16 months so far, into this process?

17 A About. That's correct.

18 Q And the reason this is taking so long is because of
19 the nature of not being able to track deposits and withdrawals
20 and transactions as normal banking practice would entail?

21 A That's correct.

22 Q Your previous testimony you indicated that Wells
23 Fargo's Fraud Department had become involved or has become
24 involved in the matter. To the best of your knowledge, what
25 is the extent of that involvement?

1 A They have not disclosed to me their findings. They
2 just simply indicated that they were reviewing the
3 transactions because they have obligations to report
4 suspicious activities if they deem fit. And those are
5 confidential reports by federal statute, so even if they filed
6 it I wouldn't know about it. So to answer your question, I
7 know they're involved but I can't speak to the particulars.

8 Q You -- I believe you mentioned suspicious
9 activities. What suspicious activities would we be referring
10 to?

11 A Primarily the depositing and the cashier's check.
12 In essence, money would come in and out of this Trust without
13 supporting documentation. And so you -- you -- I say you -- I
14 was required then to go to different branches where the actual
15 transaction occurred and seek an image of any particular
16 cashier's check. We could easily see monies are being
17 withdrawn.

18 Why there wasn't a normal check register for
19 accounting purposes is beyond me -- that was one of the
20 questions I had intended on asking Ms. Ahern in her
21 deposition, because the overall administration -- you can pick
22 your adjective, abnormal, non-businesslike, there's any host.
23 You can characterize it any way you want, but it's certainly
24 outside the norm of generally-accepted accounting principles
25 or generally-accepted business practices where you can see

1 deposits and outflows of money, per their various instruments.
2 In this case, it's a myth in many respects.

3 Q I believe you indicated that banking transactions
4 occurred in California, Nevada, Utah, Texas. I'm not sure if
5 you mentioned one other state.

6 A I believe there were one or two, don't quote me, but
7 perhaps New Mexico.

8 Q The simple question for you is: Do you have any
9 understanding why there would've been banking transactions in,
10 let's say, four to five different jurisdictions, locations?

11 A My understanding is Ms. Ahern has a residence or she
12 was residing for a period of time in southern Utah. She was
13 residing here, was in Mesquite. I think she travelled to
14 Texas for matters involving this Trust. And I don't know the
15 California component. That occurred on the day she was
16 removed as Trustee. So I can't speak to that. It was, again,
17 one of the questions I intended on asking.

18 Q Okay. What occurred on the transaction you
19 mentioned in California on the day she was removed?

20 A There's, I believe, approximately a \$500,000
21 withdrawal from the trust account on the day she was removed.
22 And we were able to trace back to the various branch. It
23 occurred at a, I believe a grocery store. Normal branches
24 close at 5 p.m. This was a late end of day transaction and it
25 was a withdrawal. It was a purchase of a cashier's check.

1 Q Okay. Did your investigation focus on Ms. Ahern's
2 handling of the various trust account or accounts?

3 A That was a secondary, call it motivation or I viewed
4 my responsibility. My first priority was to protect the
5 interest of the beneficiaries and collect and marshal and find
6 the money first, and then ask the questions as to the how. My
7 experience is, find the money first and ask the questions
8 later.

9 Q What would you say you learned from your
10 investigation regarding --

11 A I think I'll just repeat what I said earlier. The
12 practices and administration of the Trust during the time
13 period of which I've reviewed and accounted, I cannot find
14 rhyme or reason as to the methodology, as to the, again,
15 generally-accepted practices. They just simply are not
16 present in this. It should not have been this hard to
17 understand the history and the administration.

18 Q I'm assuming that Ms. Ahern received funds from
19 these various oil companies on behalf of the Trust; is that
20 correct?

21 A There is some question as to how Ms. Ahern received
22 those funds, where, what addresses she was using. I was able
23 to determine some checks were sent to a Sahara Avenue address.
24 Some, I believe she made deposits or there's -- we were able
25 to map certain deposits in different states in Utah. There

1 were other banking institutions that may have had one or two
2 transactions. There was a bank in Texas. There was a Chase
3 Bank. There was Town and Country Bank. So it was - it was
4 difficult to trace them as it remains today.

5 Q During the course of your investigation, did you
6 discover any situations in which direct wires from these
7 various oil companies were deposited into an account for the
8 Trust?

9 A I believe there were some, either ACH or wire
10 transactions, but there were a significant number that still
11 came in paper checks.

12 Q In regard to Ms. Ahern's practices relating to the
13 oil company funds paid to the Trust, have you adopted those
14 practices while you've been serving as Trustee?

15 A No, I have not.

16 Q Why not?

17 A I follow generally-accepted principles and follow
18 standards that are industry-acceptable.

19 Q So based on that testimony, were Ms. Ahern's
20 practices acceptable, generally? Would they generally be
21 regarded as being acceptable practices for a Trustee?

22 A No, they would not.

23 Q Why not?

24 A That opinion is not shared just by me, but the
25 accountants who have reviewed this matter, Wells Fargo

1 officials who have reviewed the matter, all opine that this
2 was woefully mishandled from an accounting perspective.

3 Q I'd like to ask you more about your testimony
4 regarding the discovery of cashier's checks. Do you have any
5 understanding or knowledge that you gained from your
6 investigation as to why trust funds would be in the form of a
7 cashier's check?

8 A Again, that was one of the questions I intended to
9 ask Ms. Ahern relating to, as I put in my report, in the
10 interim report, the significant funds. I believe there's a
11 \$1.2 million check that was withdrawn, in the form of a
12 cashier's check, made payable to the Trust. It was withdrawn
13 in late February. Prior to --

14 MR. MOODY: Can you state the year?

15 THE WITNESS: I'm sorry. Excuse me. February of 2015,
16 approximately \$1.2 million was withdrawn from Wells Fargo
17 Bank, and a cashier's check was made payable for that same
18 \$1.2 million to the Connell Trust. That check was withdrawn.
19 The funds were withdrawn from the bank. Within two weeks, Ms.
20 Ahern verified that those funds were on deposit. Marquis and
21 Aurbach filed their accounting confirming those funds were on
22 deposit.

23 And when I was appointed, I discovered that that was
24 not the case. I later recovered that \$1.2 million cashier's
25 check. So it gives me grave concern as to why \$1.2 million

1 was sitting in a check form, because a cashier's check is just
2 that, it is cash and it can be endorsed, it can be negotiated.
3 It was not protected by insurance.

4 The process for losing a multimillion dollar or a
5 million dollar cashier's check is very onerous, the bond
6 requirements. So I would, I'm trying to be very selective in
7 my adjectives, but I would deem that conduct extremely
8 reckless because I don't know, even to this day, I don't know
9 where that check resided, sat, whether it was held in a bank,
10 whether it was held in a vault or an attorney's office, from
11 late-February when it was withdrawn, until I recovered it in
12 April.

13 BY MR. POWELL:

14 Q How did you -

15 A Very concerning.

16 Q How did you recover that check -

17 A I -

18 Q -- or the equivalent funds?

19 A When I determined that the cashier's check had been
20 issued but had not been cashed, I demanded Marquis and Aurbach
21 recover that, and I believe they did within a few days, and I
22 went to their office and obtained it.

23 Q Mr. Waid, I'd like to now discuss the Accounting and
24 Report of Trust Activity from 2013 to 2015 which was filed on
25 February 1st, 2017.

1 THE WITNESS: Is -- Counsel, is there some background?
2 I'm hearing something.

3 THE COURT: I think that might be on your end, Ms. Ahern.
4 If you want to mute your, is there a way to mute your
5 microphone?

6 [Pause]

7 THE COURT: Okay.

8 THE WITNESS: I don't have the book.

9 MR. POWELL: Yeah, can we -

10 MR. MOODY: I'll take it.

11 MR. POWELL: May I approach, Your Honor.

12 THE COURT: You may, yeah.

13 MR. MOODY: Forty-three.

14 BY MR. POWELL:

15 Q Mr. Waid, in the book that you've just been handed,
16 if you could turn to Tab 43, please.

17 A Forty-three.

18 MR. POWELL: Your Honor, I'd like the record to reflect
19 that Mr. Waid is looking at a copy of the Accounting and
20 Report of Trust Activity from 2013 to 2015, which was filed on
21 February 1st, 2017.

22 BY MR. POWELL:

23 Q Mr. Waid, do you recognize this document in front of
24 you?

25 A I do.

1 Q What is it?

2 A It's my Accounting and Report of Trust Activity from
3 2013 to 2015.

4 Q And what does it contain?

5 A My report to the Court on those activities.

6 Q Who prepared the document?

7 A I did. It was edited by Counsel, but I prepared it.

8 Q Does this accounting provide a summary of the
9 financial information revealed by your investigation?

10 A It does, yes --

11 Q Could you --

12 A -- as exhibit, I believe Exhibit B.

13 Q Could you give me an explanation, further
14 explanation of that?

15 A Certainly.

16 Q Of your summary? I should be more clear.

17 A Because of the lack of records, because of the
18 inability to review these and discuss these and interview Ms.
19 Ahern, under oath, we -- myself and the accounting firm that I
20 engaged, reviewed bank records. We reviewed disbursement
21 records and logs from the oil and gas companies. We looked at
22 what was reported to the IRS. We had subpoenaed IRS records,
23 as well, and culminated to try and match each calendar year.

24 As I previously reported and as I believe I wrote,
25 the Miller family received the identical share of 25 percent

1 of the royalty interest. We were able to compare, after the
2 Millers cooperated and provided their records, and we used
3 that as the baseline.

4 So in 2013, '14, and '15, I used the entire calendar
5 years here because that presents the most accurate picture,
6 because some of the individual transactions we simply could
7 not provide enough basis or enough information to reconcile
8 completely.

9 Q Did you reach any conclusions regarding any amounts
10 withheld from the MTC Trust by Ms. Ahern?

11 A Yes.

12 MR. POWELL: Mr. Waid, hold on for a second.

13 I think, Your Honor, we're hearing the reverb from
14 us because the volume is too high on Ms. Ahern's end. If
15 there's a way she could possibly turn that down.

16 THE COURT: Ms. Ahern, we're getting feedback. We're
17 getting feedback. It sounds like our voices echoing back at
18 us that I think is on your end.

19 MS. AHERN: I'm moving - it was at, at 70 not 100. I'll
20 move it to 60 and see if I can still hear.

21 THE COURT: Okay. Thanks very much. We appreciate that.

22 MS. AHERN: They'll have - they'll have to not talk so
23 fast.

24 THE COURT: Okay.

25 MS. AHERN: Talk slower.

1 THE COURT: Okay, all right. We'll make an effort.

2 Thank you. We appreciate it.

3 [Pause]

4 BY MR. POWELL:

5 Q Sorry, Mr. Waid, if you would continue.

6 A As I indicated, we created a baseline for each year.
7 2013 was particularly challenging because we were able to
8 determine, at some point towards the latter part of 2013, Ms.
9 Ahern instructed Apache Corporation to hold and not distribute
10 certain funds. When Apache issues a dollar in a royalty
11 payment, 50 cents goes to the Connell Cowton [phonetic] Trust,
12 25 percent - 25 cents goes to Miller family, and 25 cents go
13 here to the Connell Trust.

14 In this instance, we found an anomaly of records
15 with the IRS, with Apache, and then what was also reported.
16 Because if you look into 2014, it is approximately \$500,000
17 difference. That difference between the Connell and the
18 Miller Trust was ultimately explained when Apache indicated --
19 we don't know the reasoning why Ms. Ahern stopped the
20 distribution, had them hold those funds. They were all
21 deposited in January. Again, one of the questions --

22 MR. MCODY: January of what year?

23 MR. POWELL: What year?

24 THE WITNESS: I'm sorry, January of 2014. Again, one of
25 the questions I intended on asking Ms. Ahern.

1 THE COURT: Does that make a difference, Mr. Waid, for
2 tax purposes? I mean, the income is earned in the year it's
3 earned, correct?

4 THE WITNESS: Correct. But in this instance, Apache
5 withheld those funds and did not report them to the IRS.

6 THE COURT: Why?

7 THE WITNESS: They were in a suspense category. And I
8 adopted the Court's approach and felt we should initially
9 report it as income because we knew it was earned by the other
10 royalty holders. And so, after consulting -- actually, I
11 believe with an IRS letter ruling on the matter, and trying to
12 understand from Apache what they did and why they did it.
13 They just simply reported, we had the request, we suspended
14 the payment and didn't issue it.

15 THE COURT: Okay.

16 THE WITNESS: But it has been reconciled today.

17 BY MR. POWELL:

18 Q Mr. Waid, for the benefit of the movements [sic] and
19 also the Court, would you please walk us through, year by
20 year, your breakdown and calculations of these figures that
21 our found in your Exhibit E?

22 A Yes. Total trust income for 2013, \$740,015. Sixty-
23 five percent of that income attributable to the MTC Trust in
24 that calendar year should have been either paid or segregated,
25 pursuant to the Court order, was \$481,010. MTC, through

1 January until June of 2013, received \$299,875 leaving a
2 deficiency owed to MTC of \$181,135.

3 Likewise, in 2014, gross royalty income of
4 \$3,120,206. MTC share, 2,028,134 which is consistent, I'll
5 add, with the Court's determinations as reflected in some of
6 its orders, funds that should've been held. There were no
7 disbursements in all of 2014 to the MTC Trust, leaving a
8 deficiency of \$2,028,134. In 2015 --

9 MS. AHERN: Hello. I have my hand raised.

10 THE COURT: Yes, Ms. Ahern. Yes, Ms. Ahern.

11 MS. AHERN: May I please have a copy of what he has just
12 stated. I know, but can it be outlined or can it be given to
13 me like, like what he's talking about right now? I'm, I'm
14 very confused and cannot, cannot understand these figures.

15 THE WITNESS: I think she'll see it in the exhibits when
16 we mail it to her.

17 THE COURT: Yeah, this is, this is what's going to be
18 mailed to you. I don't know, Mr. Moody, was this, this was
19 mailed beforehand and this is one of the matters that came
20 back because of the problem with the address?

21 MR. MOODY: That's correct, Your Honor. This is one of
22 the -- this was included in one of the, well, two of the
23 envelopes that are marked as Exhibit 44 that were returned.

24 THE COURT: Yeah. These are -- this was attempted to be
25 sent. Do you have a fax at your home, Ms. Ahern?

1 MS. AHERN: No, I do not.

2 THE COURT: Okay.

3 MS. AHERN: I do have a fax that -- a mail drop can
4 receive faxes for me. I can give that to you.

5 THE COURT: No. This is another one of those pleadings
6 -- was this under seal, Mr. Moody?

7 MR. MOODY: No, Your Honor.

8 THE COURT: All right.

9 MS. AHERN: I can scan.

10 THE COURT: Oh, scanning. Scanning is another option.
11 Sure. We could scan and email it.

12 THE WITNESS: Do you have an email address, Eleanor?

13 THE COURT: Miss - Ms. Ahern.

14 MS. AHERN: It would be --

15 THE COURT: I think, does Linda have --

16 MS. AHERN: It would be --

17 THE COURT: Ms. Ahern -

18 MS. AHERN: It would be -

19 THE COURT: Ms. Ahern, does Linda have your email
20 address?

21 MS. AHERN: It would be to the checks and mail. You all
22 are breaking up terribly.

23 THE COURT: Okay. Ms. Ahern, does Linda have your email
24 address? She can email this to you.

25 MS. AHERN: Yes, she does.

1 THE COURT: Okay. So we could do that. We'll email it.

2 [Colloquy between Court and Law Clerk]

3 MR. KIEFER: So, Your Honor, to clarify, are we breaking
4 on the questioning, or may we continue?

5 MR. POWELL: May we continue?

6 THE COURT: Yeah, we can continue.

7 BY MR. POWELL:

8 Q Please proceed, Mr. Waid.

9 A Thank you. So there were zero distributions to MTC.
10 There were no distributions in the first quarter of 2015.
11 Upon my appointment and upon the Court's ruling in its March
12 hearing where their 65 percent interest was no longer in a
13 suspended or segregated state, I commenced those distributions
14 once again.

15 So for the Calendar Year 2015, there were gross
16 receipts of \$2,226,779. MTC's 65 percent portion, \$1,447,406.
17 I distributed to them a portion of the funds which had been
18 held and the totals for that year were \$1,914,622.

19 If you go to the final column where it's totaled,
20 for the time period 2013, 2014, 2015, there were royalty
21 income of \$6,087,000. MTC's share of those - of that income
22 is \$3,956,550.

23 Distributions made to MTC totaled \$2,214,497 for a
24 net still due and owing by the Trust of undistributed
25 royalties of \$1,742,053.

1 Q Thank you, Mr. Waid. Going back to the 2015 column,
2 you indicated you took over the Trusteeship of the Trust in
3 approximately April of 2015, correct?

4 A That's correct.

5 Q For the time period of January, February and March,
6 with the understanding that Ms. Ahern was removed. I believe
7 the Court record reflects its approximately March 20th, 20th or
8 26th, do you have a figure as to what the income owing to the
9 Connell Trust for January, February and March of 2015 was?

10 A It's not reflected in my report. My recollection is
11 somewhere between 3 and 400,000. You'll have to correct me if
12 I'm wrong.

13 Q Just to clarify, owed to the MTC Trust?

14 A That's correct.

15 Q Okay. Mr. Waid, do you, do you recall providing me
16 with a figure for that time period January, February and March
17 of 2015? Do you recall providing me a figure of \$372,725.92?

18 A As you state that number, I believe that to be
19 correct.

20 Q So just to make all of this clear. For the period
21 of 2013, the deficiency owing to the MTC Trust was \$181,135,
22 is that correct?

23 A That's correct.

24 Q For the Calendar Year of 2014, the MTC Trust was
25 owed \$2,028,134?

1 A That's correct.

2 Q For the first quarter of 2015 -- representing
3 January, February and March -- the amount owing to the MTC
4 Trust was approximately \$372,725.92?

5 A That is correct.

6 Q Based on my addition, the total for the time period
7 that we just discussed would be \$2,581,994.92; does that sound
8 accurate to you, Mr. Waid?

9 A That is correct. In undistributed royalties or
10 segregated royalties pursuant to the Court order.

11 Q So, Mr. Waid, then when you took over in
12 approximately late-March slash early-April of 2015, is it a
13 fair statement that approximately \$2,581,994.92 should have
14 been sitting in a trust account for the MTC Trust?

15 A Yes.

16 Q And given your testimony that a balance of
17 approximately \$1,742,053 is still owing to the MTC Trust, the
18 difference between the \$2,581,994.92 figure and what is still
19 owing, that was distributed to the MTC Trust beneficiaries,
20 the movements [sic] by you, not Ms. Ahern, correct?

21 A That is correct.

22 Q I'd now like to take you to the time period, again,
23 where you were first appointed as trustee and then had the
24 ability to review the Wells Fargo account, Mr. Waid. This is
25 the time period in which [sneeze heard] the questioning is

1 relating to as, as context. When you became appointed as
2 Trustee of the Connell Trust, you reviewed the balance of the
3 Wells Fargo Trust Account at that time, correct?

4 A I did, yes.

5 Q What was the balance at that time, approximately?

6 A I'm turning in the report to be accurate. It was
7 less than \$10,000 -- 9,000 and some change. \$9,941.55 was the
8 total balance that was in the Wells Fargo account.

9 Q For clarification purposes, could you explain for
10 the record where you are, what you are currently looking at to
11 get that figure?

12 A This is on page 4 of my Interim Trustee Report filed
13 under seal, file stamped July 6th, 2015.

14 Q Thank you, Mr. Waid.

15 MS. AHERN: I'm raising my hand.

16 THE COURT: Yes. Yes?

17 MS. AHERN: Is it possible that I may have a copy of this
18 even though it is sealed?

19 THE COURT: No. No, it should be in the --

20 MS. AHERN: Sorry I --

21 THE COURT: It should be in, in the records that you have
22 from your Counsel. We're not going to send another copy.
23 Without --

24 MS. AHERN: I don't have a counsel.

25 THE COURT: Right. But until we've got a signed

1 Confidentiality Agreement, I can't.

2 MS. AHERN: And I didn't have anything from Curt [sic] --

3 THE COURT: Okay.

4 MS. AHERN: -- for months.

5 THE COURT: But everybody -- everybody who has seen this
6 has signed a Confidentiality Agreement, so until we have a
7 signed Confidentiality Agreement, I'm not going to order they
8 provide it. If, if you come to some accommodation with Mr.
9 Moody after the fact, fine. But I'm not going to order it
10 pending a Confidentiality Agreement.

11 MS. AHERN: What does that mean?

12 THE COURT: It means that everybody who has seen this
13 document has agreed that it will be held in confidence and not
14 disclosed to anyone who has not similarly signed that
15 Confidentiality Agreement as a party, an attorney, or an
16 expert for one of the parties. Other people --

17 MS. AHERN: So I am a party.

18 THE COURT: Right. But you --

19 MS. AHERN: So what do I have to sign to receive a copy?

20 THE COURT: You'll have to talk to Mister -- I have to
21 talk to Mr. Moody, after the fact, and he'll get you the
22 documentation.

23 MS. AHERN: Thank you.

24 THE COURT: You bet. Okay.

25 BY MR. POWELL:

1 Q Mr. Waid, could you give me that figure again that
2 you had just read, for the record?

3 A \$9,941.55.

4 Q So, is it a fair assessment then that an amount
5 significantly short of the two point, \$2,581,994.92 that
6 should have been in the Trust Account, was not there?

7 A Let me answer it this way. When I was provided
8 copies of the Court orders, and I reviewed them prior to going
9 to the bank, I had an expectation, based on information
10 provided to me by Marquis and Aurbach, by your firm, by Mr.
11 Warnick. I anticipated going to the bank and seeing those
12 funds there. So I didn't have an independent assessment or
13 opinion to the matter. I just, I followed what the Court was
14 tracking, and I went to the bank and it was reported to me
15 there was \$9,000 in the account.

16 Q Okay. So more than \$2.5 million was missing --

17 A That is correct.

18 Q -- from the account? Are you aware of any
19 justification for the withholding of approximately \$2.5
20 million from that account?

21 A I have been longing to ask that question for some
22 time.

23 [Colloquy between Court and Counsel]

24 Q Mr. Waid, if you would turn to page 2 of your - of
25 the Accounting and Report of Trust Activity from 2013 to 2015

1 please, page 2.

2 A That's Exhibit 43?

3 Q Yes, Mr. Waid.

4 A Page 2?

5 Q Page 2.

6 A Yes.

7 Q In this Accounting and Report of Trust Activity from
8 2013 to 2015 and you'll see on page 2 you have made a
9 statement that is: "What is clear is that MTC did not receive
10 a single distribution of royalty income from the Trust between
11 June 2013 and April 2015."

12 A That's correct, at line 20.

13 Q Is that what your investigation has concluded?

14 A That is a factual and certain conclusion, yes.

15 Q Thank you, Mr. Waid. Going back to the Trust
16 Account. When you took over as Trustee, was there just one
17 Trust Account?

18 A No, there were three Trust Accounts.

19 Q Have you, and based on your investigation, did you
20 ever discover why there were multiple Trust Accounts?

21 A I have not received an answer or a reasoning why.
22 Sometimes it's common to have an Operating Account, a Holding
23 Account or an Escrow Account for future taxes and insurance
24 and other matters, if it's applicable. So I'm not going to
25 say it's uncommon to have multiple bank accounts for an

1 Operating Trust for a business.

2 Q In your opinion, would that have been applicable
3 here given --

4 A Generally not. If I can be more specific. This
5 Trust is designed as a Pass-Through Trust. So income is to
6 flow in and income is to flow out. Distributions are to flow
7 out. And I would not, under ordinary circumstances, see a
8 need for multiple bank accounts here. It's a passive
9 interest, therefore, it lends itself to limited accounting,
10 limited legal work, limited other aspects. It could be a
11 fairly straightforward administration.

12 Q So just to summarize your belief on this then, there
13 effectively was no real reasoning as to why there should've
14 been more than just one account given the circumstances of
15 this Trust and how it operates?

16 A No.

17 Q Mr. Waid, during your investigation, what did you
18 discover, if anything, regarding Ms. Ahern's communications
19 with the oil companies after her removal?

20 A After her removal and upon Mr. Lenhard's appearance
21 in the case, there was an occasion I received a call from
22 Apache Corporation, after I had provided them with my Court
23 order indicating I was the Successor Trustee and that Ms.
24 Ahern had been removed, that there was an attempt by Ms. Ahern
25 to obtain information and to provide instructions.

1 Apache was somewhat confused. They contacted me. I
2 then contacted Mr. Lenhard to investigate as to why Ms. Ahern
3 would be contacting them, at all. And, thereafter, he assured
4 me that it would not happen again.

5 Q So if I'm understanding your testimony correctly,
6 after Ms. Ahern had been removed by this Court, she still had
7 communications with the oil companies regarding distributions?

8 A I believe there was an attempt to provide
9 instructions or other communication. Apache was concerned
10 because they saw my Court order that that portion of the
11 Disbursement Department, that whom she had contacted. So
12 they, in turn, called me and said, "Why are we receiving
13 instructions from her, what should we do?" I told them to
14 stand down, take no action; I would contact her counsel. I
15 did so. I called Apache back and indicated that they are
16 instructed to follow the Court order and nothing more, and
17 they agreed.

18 Q When you had this discussion that you previously
19 mentioned or discussions with Mr. Lenhard, did he provide any
20 explanation as to why Ms. Ahern --

21 A No, he did not.

22 Q -- had taken this action? During your
23 investigation, did you discover that there were multiple
24 accounts holding trust assets?

25 A As I testified just a few moments ago, we found

1 accounts in Texas; we found accounts in St. George, Utah, and
2 we found accounts here in Las Vegas. US Bank was one of the
3 accounts in addition to the Wells Fargo and Chase.

4 Q Mr. Waid, you just mentioned in your testimony there
5 was multiple accounts. During your investigation, did you
6 find at any time -- let me rephrase that question. Did you
7 find trust funds were segregated, in any way, in these Wells
8 Fargo accounts?

9 A No. If you're asking as outlined by the Court order
10 and specified, no.

11 MS. AHERN: Could you repeat the question, please.

12 MR. POWELL: I can't remember what I --

13 THE COURT: Were the funds held in any kind of segregated
14 account? And Mr. Waid's response was, "No."

15 MS. AHERN: Thank you.

16 BY MR. POWELL:

17 Q Mr. Waid, to your knowledge, was there a Court
18 imposed obligation to segregate the Trust funds?

19 A Legal minds may differ, but my interpretation of the
20 Court order was that, yes, those funds were to be held and
21 segregated, safeguarded. Again, however, you want to describe
22 them. But they should've clearly been earmarked and
23 protected.

24 Q Are you aware of any justification for not having
25 done that, by Ms. Ahern?

1 A No, I am not.

2 MR. POWELL: Your Honor, I'd like to ask the Court to
3 take judicial notice of a conclusion reached by this Court in
4 its order regarding Motion for Assessment of Damages,
5 Enforcement of the No Contest Clause, and Surcharge of Trust
6 Income dated September 13th, 2016, in which this Court
7 concluded that Ms. Ahern, as Trustee, did not comply with the
8 Court order to protect the 65 percent share of the Trust that
9 was to be segregated under the terms of the Trust for the
10 movements [sic], Ms. Montoya and Ms. Bouvier.

11 BY MR. POWELL:

12 Q Mr. Waid, in your previous testimony you indicated
13 attempts to speak with Ms. Ahern about her different
14 transactions involving the Trust account or accounts.

15 A Yes.

16 Q So, would it be a fair statement that you made
17 multiple attempts to discuss these issues with Ms. Ahern?

18 A I believe I can answer that by saying I made
19 multiple attempts, in the initial stages between her
20 representation by Marquis and Aurbach and the time frame that
21 they withdrew from the case, and Mr. Lenhard and Ms. Peterson
22 were appointed, Ms. Ahern and I had a couple of phone
23 conversations.

24 Thereafter, I attempted to work through counsel and
25 we made multiple efforts, as this Court is well-aware, to

1 schedule, reschedule, order, and reorder the deposition. Mr.
2 Lenhard and I had a meeting with Ms. Ahern, once in his law
3 firm to discuss general matters, not account specifics, then
4 we had a follow-up meeting some months later in her home in
5 Mesquite where she resides today.

6 Other than those actions, the most recent, as I
7 indicated in my report, were the well-check that I attempted
8 to perform just a couple of weeks ago.

9 Q If we can just talk about that briefly, Mr. Wade.
10 In your -- in the Accounting and Report of Trust Activity from
11 2013 to 2015, if you would turn to page 3 and let me know when
12 you're there.

13 A I'm there.

14 Q Okay. You will see a statement that you have made
15 that says that on Saturday, January 21st, 2017, the Successor
16 Trustee coordinated and participated with the Mesquite Police
17 Department in a well-check of Ms. Ahern. That remains a
18 correct statement, Mr. Wade?

19 A Yes.

20 Q What was your purpose of visiting Ms. Ahern at
21 that -- on that date?

22 A As I previously indicated, Mr. Lenhard had not heard
23 from her and I was personally concerned. I have ongoing
24 fiduciary responsibilities. There are still funds available
25 in the blocked funds that the Court ordered me to pay for

1 health and other medical issues and well-being matters.

2 And, notwithstanding, my repeated request to Mr.
3 Lenhard and his firm to assist me in that process, they were
4 unable to deliver those. I knew this hearing was pending. I
5 knew Mr. Semenza had not been retained. And so, based on my
6 discussions with Mr. Lenhard, we decided a well-check would be
7 appropriate. I had attempted to phone her to no answer. And
8 I proceeded accordingly.

9 Q So when you made this visit on January 21st of 2017,
10 your intent was to speak to Ms. Ahern face to face?

11 A Yes, for the purposes of discussing what her needs
12 may be, to discuss the upcoming hearing, and that -- given the
13 fact she's not represented by counsel, numerous settlement
14 efforts have been made, failed, and reinstigated [sic] and
15 failed. And I, candidly, wanted to give it one last shot.

16 Q Were you successful in speaking with Ms. Ahern on
17 the date in question, January 21st, 2017?

18 A No, I was not.

19 Q Why not?

20 A I think the best way to describe it is, is when the
21 officer was finally able to get Ms. Ahern to come outside, she
22 demanded that he arrest me for trespassing and asked him to
23 remove me from the property. He then went into the house and
24 spoke with her for a period of time.

25 As I put in my report, he determined that there was

1 food, clothing, shelter, the normal things that occur in a
2 well-check, and indicated that she did not want to speak to
3 me. So the officer left, concluded his report. I provided
4 additional information at his request and I left.

5 Q Okay. And the address of the property that you
6 attempted to speak to Ms. Ahern at was 111 Paradise Parkway,
7 Mesquite, Nevada, zip code of 89027?

8 A That's correct.

9 Q To the best of your understanding, is that where Ms.
10 Ahern currently resides?

11 A Yes.

12 Q Mr. Waid, as part of your accounting and report -- I
13 believe it is Exhibit A. If you could turn there and let me
14 know when you're there.

15 A I'm there.

16 MS. AHERN: Could you repeat the exhibits, please, for
17 me? I did not hear it.

18 THE WITNESS: Exhibit A.

19 MR. POWELL: Exhibit A.

20 MS. AHERN: Exhibit A, apple, A?

21 THE WITNESS: Yes, ma'am.

22 MS. AHERN: Thank you.

23 MR. POWELL: Just to be clear for the record and for Ms.
24 Ahern, we're talking Exhibit A on the Accounting and Report
25 submitted by Mr. Waid, on February 1st, 20 -- 2017.

1 BY MR. POWELL:

2 Q Mr. Wade, as you've included what I believe to be
3 withdrawals from the trust account, I'd like to go through
4 these with you in-depth. And I'd like to just start in the
5 same order that they've been listed. Can you give me, under
6 the category -- let me clarify. You -- on the left-hand side
7 you have a column that says, "Type". Do you see that, Mr.
8 Waid?

9 A Yes.

10 Q You then proceed to have a column that says, "Date".
11 You then have a column that says, "Account". You then have a
12 column that says, "Split". And you, lastly, have a column on
13 the far right that says account -- says, "Amount." Do you see
14 all those, Mr. Waid?

15 A Yes.

16 Q Okay. I'd like to go through each of these by -- or
17 approximately each of these through type.

18 A Yes. These are alphabetical. They were not
19 designated by a type.

20 Q Okay. Mr. Waid, starting with American Express. It
21 looks like there were transactions, withdrawals, or payments
22 from the trust account or accounts -- I'm not sure which -- of
23 \$5,000, \$10,000, and \$10,000. So by my math, that would be
24 \$25,000. With that in mind -- Mr. Waid, did the Trust ever
25 have an American Express account associated with it, based on

1 your investigation?

2 A Yeah. During my tenure as Trustee, I have not found
3 any accounts with American Express. No. In the Trust name.

4 Q So, do you have any understanding as to why there
5 would be payments to American Express totaling \$25,000 --

6 A No.

7 Q -- from the Trust account?

8 A No.

9 MS. AHERN: I'm sorry. I had to cut out the call.

10 THE COURT: All right. Thank you.

11 BY MR. POWELL:

12 Q Under the next category or type, I will say,
13 American Patrols, Mr. Waid, do you see an expense for \$1000?

14 A Yes.

15 Q Can you explain to me, if you know, based on your
16 investigation, what was this charge to the Trust or payment
17 from the Trust to American Patrols?

18 A It remains undetermined.

19 Q Based on your investigation, have you discovered
20 what exactly is American Patrols?

21 A I believe it to be a security company.

22 Q Would there be any asset held by the Trust that
23 would require a security company?

24 A Not here in the State of Nevada, no.

25 Q The next one is Bank of America for \$2,000. Has

1 your investigation revealed any understanding of why there was
2 a payment to Bank of America for \$2,000?

3 A No information was available.

4 Q Does the Trust -- or has the Trust ever had a Bank
5 of America Account that you're aware of?

6 A Not as I determined.

7 Q Barbara Shorts [phonetic], based on your numbers,
8 there are payments of approximately 2300, 3,000, 3,000, and
9 8600. Do you see that, Mr. Waid?

10 A Yes.

11 Q Who is Barbara Shorts? I'm sorry. Let me rephrase
12 that. Did your investigation ever determine -- did you come
13 across the name Barbara Shorts in your investigation?

14 A Yes. And if you go to page 3 of the same report,
15 there is Shorts Consulting. There were two other payments,
16 35,000 and \$31,200. I attempted to contact Barbara Shorts.
17 She's -- we found her on the internet. And she's a marriage
18 and family therapist.

19 Q Any idea as to what a family and marriage therapist
20 would have to do with this Trust?

21 A No, I do not.

22 Q So, just to clarify for the record, Barbara Shorts
23 and Shorts Consulting is, effectively, the same payee?

24 A I believe so, yes.

25 Q Next payment is to Breath of Life Systems for

1 approximately just shy of \$5200. You see that, Mr. Waid?

2 A Yes.

3 Q Based on your investigation, did you ever come
4 across the name Breath of Life Systems?

5 A I believe -- yes.

6 Q What is Breath of Life Systems?

7 A I do not know definitively. I believe it to be a
8 charitable organization of some kind or a religious
9 organization.

10 Q Would either a religious organization or a
11 charitable organization have anything to do with --

12 THE WITNESS: Sorry. There's a runner. It's in the
13 chair. [Runner entered courtroom and exited].

14 BY MR. POWELL:

15 Q Sorry, Mr. Waid. Let me recalibrate here. Would a
16 charitable or religious organization have anything to do with
17 the Trust, to your knowledge?

18 A Pursuant to the terms of the Trust, there are no
19 provisions for charitable donations, even within the
20 discretion of the Trustee, as I read the Trust. It's a
21 Mandatory Distribution Trust. And as such, there's no
22 discretion for any such activity.

23 Q Next one is Brennan Legal Counsel, \$2,000 payment to
24 this entity. Did you invest -- did you -- during your
25 investigation, did you come across the name Brennan Legal

1 Counsel?

2 A Yes. I believe she was former counsel of Ms. Ahern.
3 He or she. I'm not sure. The firm Brennan was counsel to Ms.
4 Ahern at some point.

5 Q Mr. Waid, if you would turn to that last page in
6 your breakdown, if you --

7 MS. AHERN: I'm sorry. I had to shut off the phone. I
8 had to shut off the phone.

9 THE COURT: Thank you.

10 BY MR. POWELL:

11 Q Mr. Waid --

12 A Page 3?

13 Q -- on the last page -- are you on the last page?

14 A Are you on page 3?

15 Q I'm sorry. I don't have it --

16 A Of the exhibit or the narrative?

17 Q Exhibit B. Exhibit B. I'm sorry. Exhibit B of
18 the -- associated with the accounting. The last page. I'm
19 sorry, A, looking at A. Sorry. Page 3, yes. Sorry. I've
20 got different pagination on mine. There is a name, Shauna
21 Brennan, that appears a -- looks like a check for \$5,000.

22 A That's correct.

23 Q Is Shauna Brennan -- if you're aware, based on your
24 investigation, would Shauna Brennan be the same entity as
25 Brennan Legal Counsel?

1 A I believe it to be so. Yes.

2 MS. AHERN: Oh, good God. I'm sorry. I had to shut off
3 the phone, again.

4 THE COURT: Uh-huh. Thank you.

5 MS. AHERN: I'm sorry.

6 BY MR. POWELL:

7 Q Mr. Wald. Now we're going to Burkes Security. It
8 looks like there was a payment via check for \$30,000 --
9 \$30,400. Do you see that?

10 A I do.

11 Q In the course of your investigation, did you come
12 across the name of Burkes Security?

13 A Yes, Burkes Security and Darryl Burkes [phonetic], a
14 few lines down. There's an additional 5,000 paid. I believe
15 them to be the same individual.

16 Q And did your investigation reveal what services were
17 provided by Burkes Security and/or Darryl Burkes?

18 A The best I can determine, based on interviews with
19 bank tellers, other individuals, is that Ms. Ahern had a
20 personal bodyguard, and Mr. Burkes perhaps filled that role.
21 And it was expensed to the Trust. But that is speculation on
22 my part. I was unable to confirm that.

23 Q So just to clarify, as to security, this topic of
24 security, there would be nothing that you're aware of that you
25 discovered in your course of your investigation that would be

1 an asset of the Trust that would require security, correct?

2 A That's correct.

3 Q Turning to the next item, Century Link. There is a
4 \$1000 check.

5 A I believe there's a notation in the -- on that memo
6 line of telephone expense.

7 Q Based on the course of your investigation, would
8 there have been a need for the Trust to have a telephone
9 expense?

10 A No.

11 MS. AHERN: I'm sorry. I can't hear you. Can you
12 repeat?

13 THE WITNESS: I said, "No".

14 MS. AHERN: I -- before, before that, sir.

15 THE COURT: The question, Mr. Powell. Can you repeat the
16 question?

17 MR. POWELL: Sure.

18 BY MR. POWELL:

19 Q Mr. Waid, was there a -- I'm going to paraphrase I
20 guess. Was -- based on your investigation, would there have
21 been a need for the Trust to have a phone expense?

22 A No, there would not.

23 MS. AHERN: So what I think I just heard, because I
24 really don't know -- really don't know. Good heavens. I'm
25 sorry. I don't know why this friend keeps calling me but she

1 does. A thousand dollars in the name of the Trust to have --
2 I don't know what you're talking about and I can't hear it.
3 Can you please explain again, slowly and loudly? But not too
4 loud, I'm having a trouble. I'm sorry.

5 THE WITNESS: There's a line item that was paid to
6 Century Link in the amount of \$1,000. And I responded that I
7 did not feel, in my opinion, it was a either justified or
8 necessary expense for the Trust to have a separate telephone
9 line or account.

10 BY MR. POWELL:

11 Q Mr. Waid, Cyrus or Cirrus Aviation Services, there
12 are expenses of \$23,160.60, and also another expense for 70 --
13 \$7,709.91. Do you see where I'm looking, Mr. Waid?

14 A Yes.

15 Q Under the split column, it claims that it is an
16 airline expense on both of those.

17 A Yes.

18 Q Through the course of your investigation, did you
19 discovery the name of Cyrus or Cirrus Aviation Services?

20 A I did. And then also, if you look at Expert Jet
21 Charter Service, is a number of line items down, in
22 alphabetical order, for \$53,000. I determined that the Trust
23 expended, if you add those three, approximately 80 -- or yeah,
24 just over \$80,000 in private jet charter service. I spoke to
25 the companies and those were, in fact, for private jet charter

1 services.

2 Q Were you able to confirm that those were for Ms.
3 Ahern?

4 A That is correct.

5 Q Mr. Waid, in all the years that you've served as a
6 Trustee, have you ever charged a private charter to fly
7 anywhere?

8 A Not in my capacity as Trustee, no.

9 Q In your opinion, would that be reasonable to fly a
10 charter plane as a Trustee?

11 A Not as it relates to the Connell Trust.

12 Q Okay. Mr. Waid, next item, City of Las Vegas Sewer
13 Services. There is a expense for \$612 under your split
14 column. It states that it is a utilities expense. Do you see
15 where I'm looking?

16 A Yes.

17 Q At this period in time, check being cut, apparently
18 dated 12/31/14, did the Connell Trust own any property in Las
19 Vegas, Nevada?

20 A Not pursuant to my investigation of real property
21 records.

22 Q On the next item, Clark County Assessor, there is a
23 check issued the same date, 12/31/14, for the amount of
24 \$7,000. And on your split column, it says taxes dash
25 property; do you see that, Mr. Waid?

1 A That's correct, yes.

2 Q Based on your prior testimony, around this time
3 period, December of 2014, if I'm understanding you correctly,
4 the Connell Trust did not own any real property in Las Vegas,
5 which would be in Clark County, Nevada?

6 A That is correct.

7 MS. AHERN: I'm sorry. Can you repeat that again? The
8 hearing is very bad at this point.

9 THE COURT: The Trust did not own any property in Las
10 Vegas --

11 MR. POWELL: Or Clark County.

12 THE COURT: -- or Clark County, for which property taxes
13 of \$7,000 would be due.

14 MS. AHERN: Thank you.

15 THE WITNESS: Mr. Powell, for Ms. Ahern's benefit -- I'm
16 certainly not telling you how to handle your questioning, but
17 for her benefit, knowing she'll receive this in advance --

18 THE COURT: It's been emailed to her.

19 MR. MOODY: She's already got it.

20 THE WITNESS: Perhaps -- I'm willing to stipulate to
21 most of your questions, because I believe the answers are all
22 going to be the same and --

23 MR. MOODY: Okay.

24 THE WITNESS: -- we could address any particulars you may
25 have.

1 MR. MOODY: Okay.

2 THE WITNESS: I offer it as a suggestion.

3 MR. POWELL: Yeah. Let me see if I can go faster, Mr.
4 Waid because I do want to get --

5 THE COURT: Yeah. We've been going about two hours and
6 we can take a break. And then you can see what you could do
7 to figure out how to --

8 MR. POWELL: Okay.

9 THE COURT: -- categorize these.

10 MR. POWELL: Sure.

11 THE COURT: So we'll just take a - it's 3:25 now, so
12 we'll come back in 10 minutes.

13 MR. POWELL: Okay.

14 THE WITNESS: Thank you.

15 [Recess at 3:24 p.m.]

16 [Resumed at 3:41 p.m.]

17 THE COURT: All right. So we're going to go -- ready to
18 go back on the record.

19 MR. POWELL: Your Honor, just very briefly.

20 THE COURT: Ms. Ahern - just give me a moment.

21 MR. POWELL: Oh, okay.

22 THE COURT: Are we ready? Okay. So, Ms. Ahern, we're
23 getting a lot of feedback on our end and we think it might be,
24 the sound that we're hearing that's making it difficult for
25 the recording, might be your bird. Do you have a bird?

1 MS. AHERN: Yes. Yes, I have a bird but she's outside.

2 THE COURT: Because we're getting a chirping kind of
3 noise.

4 MS. AHERN: Well, let me go close the front door, maybe
5 you won't be able to hear her.

6 THE COURT: Let's give that a shot. Yeah, thanks.

7 [Pause]

8 MS. AHERN: All right. I hope that's better.

9 THE COURT: Thank you. Yes, yes. And do you have your
10 phone on mute now, maybe, or vibrate or something so that we
11 won't get the phone calls and we'll get through this. We'd
12 appreciate that. Thanks very much.

13 MS. AHERN: Uh-huh.

14 THE COURT: All right. Thank you. Okay. So I believe
15 we were -- Mr. Powell, you were going to take a look at maybe
16 being able to categorize or --

17 MR. POWELL: Yes, Your Honor, and --

18 THE COURT: -- some of the questions.

19 MR. POWELL: -- before we get to that step, I think I
20 missed a step. I'd like to move to admit -- I think the
21 foundation has already been laid.

22 THE COURT: No, that's -- we're still hearing it. We're
23 still, if --

24 MS. AHERN: We're still what?

25 THE COURT: It's a very loud squeaking or chirping kind

1 of a sound. Do you hear it on your end?

2 MS. AHERN: No, I do not.

3 THE COURT: Oh, yeah, it's --

4 MS. AHERN: I do not.

5 THE COURT: It's very loud and it's interfering with our
6 reception on this end. Hmm. Okay.

7 Kerry, maybe you can email the IT guys.

8 COURT RECORDER: I will, Judge.

9 THE COURT: Thank you.

10 MR. POWELL: Your Honor, as I was saying, I think I
11 missed a step. I think the foundation has been laid. The
12 Movants would like to admit what is marked as Exhibit 43 into
13 the record, Your Honor, which is --

14 THE COURT: Well, it's filed.

15 MR. POWELL: Yeah, and that's why I wasn't sure if it, if
16 we need to. I just want to make sure I didn't skip anything
17 that needs to be taken care of. It is a filed document so --

18 THE COURT: All right. So it'll be admitted.

19 MR. POWELL: Okay.

20 BY MR. POWELL:

21 Q Mr. Waid, in an effort to go through your exhibits

22 A, I believe quicker. Going through the rest of these
23 statements, I do want to discuss some of them, the different,
24 what we are calling types.

25 Could you summarize for me, out of all of these, are

1 there any of these that you have determined through your
2 investigation, to be legitimate expenses that should have been
3 paid from the Trust?

4 A Yes. My determination, based on reading the Trust,
5 understanding the nature of the Trust assets, understanding
6 the relationship between the other co-royalty holders as a
7 Passive Trust, my belief is, the only expenses appropriate
8 would be property taxes associated with the ranch itself, the
9 ad valorem and other taxes assessed by the State of Texas on
10 the royalty interest.

11 So real property taxes, a royalty tax, which is
12 related to the real estate and the royalty therein, and
13 insurance payments related to the property itself. Those as a
14 practical are the primary. There are always limited legal and
15 accounting services, as needed. However, I would view those
16 to be fairly di minimis, because although the Trust has its
17 own separate tax ID number, it is a taxpayer.

18 It should zero out the preparation of the return for
19 a Trust even of this size, whether it's a dollar in royalty or
20 a hundred million in royalty, if it passes through, the return
21 is quite simple.

22 It's -- I've done them in a number of other Trusts
23 where it's less than a thousand dollars a year. So, to put
24 that in context, only appropriate expenses are insurance
25 related, legal and accounting where appropriate.

1 Q Thank you, Mr. Waid. Just so we can keep the record
2 very clean on that, could you please point out to me, based on
3 your last statement, what expenses in this list we would be
4 talking about that you would deem to be justifiable under
5 those categories?

6 For example, I see an Upton County Appraisal
7 District charges under your split. Explanation it says,
8 "taxes-property", are we talking --

9 A Yes.

10 Q -- those three payments?

11 A Yes.

12 Q Okay. Just for the record then, would we be talking
13 about \$3,200, \$65,000, and just shy of \$26,000, correct?

14 A Yes.

15 Q Okay. Also, Mr. Waid, I see a payment to the
16 Internal Revenue Service of \$55,000. It says on there --
17 under your split category, it says, "Income Taxes". Did your
18 investigation reveal that this was a payment of taxes for the
19 Trust or payment of taxes for Ms. Ahern, individually, given
20 your testimony that this was a flow through entity?

21 A I can only conclude that it was not applicable to
22 the Trust because the records received from the IRS directly
23 showed no credit to any payment made in the amount of \$55,000
24 to an associated tax liability of the Trust.

25 Not having the benefit of interviewing Ms. Ahern, I

1 can't determine where that \$55,000 was credited to, because
2 the IRS did not release the information on anyone else's
3 account. But there's, there's no link. The money left the
4 Trust, but it wasn't to the Trust benefit.

5 Q So based on your limited knowledge, then, your --
6 would it be fair to say that your conclusion then at that
7 point would be that it -- your belief would be that -- would it
8 --that would have had to have been a payment, or would have
9 been a payment by Ms. Ahern for her personal income taxes from
10 the Trust?

11 A I think it's a reasonable conclusion.

12 Q Thank you, Mr. Waid. Are there any other expenses
13 on here that, again, you believe would be Trust related and
14 appropriate expenses?

15 A Gammett & King or Larry Pruka, there are a few
16 accounting firms that I noticed in the history of payments,
17 but again, the amount should be fairly small and limited in
18 nature.

19 Q Mr. Waid, as to Gammett & King, I see an expense
20 here of \$5,000, a date of payment of February 24th, 2014.
21 Based on your investigation, would this payment have been for
22 the Marquis Aurbach accounting that was submitted to the
23 Court?

24 A I believe that to be correct.

25 Q Okay. Mr. Waid, I'm going to try to expedite this

1 as fast as I can, but I believe that there are a few of these
2 entries that we do require further discussion on, so I beg
3 your pardon and patience with me in going through these
4 quickly.

5 Mr. Waid, on what is your -- on what is page 1,
6 there is a payment to David Mann for \$10,000 occurring on
7 11/14/14. Do you see that, Mr. Waid?

8 A I do.

9 Q Based on your investigation, who is -- did you
10 discover a David Mann involved with the Trust?

11 A Yes.

12 Q Who is David Mann?

13 A He's the same individual as James Mann on the
14 following page. There's a total of \$125,000 there and David
15 Mann \$10,000. I believe it's the Mann Law Firm who received
16 the money, because Mr. Mann confirmed to me he received
17 approximately \$135,000.

18 Q Based on your investigation, was Mr. Mann conducting
19 any business that was beneficial to the Trust?

20 A Not having received the records yet and Judge
21 Johnson's ruling in that matter, I haven't been able to see
22 all of his unredacted billing statements, but my -- what
23 documents I have reviewed, I find no benefit to the Trust. It
24 was primarily litigation based. I can't say that it provided
25 any benefit.

1 Q Would that litigation be -- would that litigation be
2 concerning this current litigation involving the movements
3 [sic] and Ms. Ahern?

4 A Yes. When I -- when I answer your question about a
5 legitimate or appropriate Trust expense, I answer that in
6 terms of business operations and administration of the Trust.

7 When I reference the litigation, I'm referring to
8 disputes amongst beneficiaries or trustees, those issues. I,
9 I segregate those and characterize them as different types of
10 legal expense.

11 Q Okay. Thank you, Mr. Waid. Doug Edwards, a \$10,000
12 payment to him on 1/26/2015.

13 A Unable to determine. There are a lot of Doug
14 Edwards in town. There's an attorney by the name of Edwards.
15 I could not determine any -- with any specificity who this
16 Edwards was.

17 Q Is it your conclusion then that this expense would
18 not have been related to General Trust Administration?

19 A That's correct.

20 Q Okay. Forensic Specialists Limited, a payment of
21 \$9,600 approximately dated 10/27/14. What does your
22 investigation reveal as to who Forensic Specialists Limited
23 is?

24 A I believe that was related to the Will contest and
25 other -- it coincides with Handwriting, LLC for \$5,000 for --

1 yeah, 5,477 and other expenses related to litigation not
2 directly related to the Trust business interests and royalty
3 positions.

4 Q Jason Collins?

5 A Best we can ascertain from interviews with various
6 individuals, that Mr. Collins was a personal assistant or a
7 bodyguard, or performed some measure of service for Ms. Ahern
8 directly.

9 Q Dropping below Mr. Collins, Jeffrey Burr Law Firm,
10 expenses of 50,000, 60,000, and 125,000. What was your
11 investigation reveal about payments to the Jeffrey Burr Law
12 Firm?

13 A Without disclosing attorney-client privilege
14 information, the Burr firm indicated that --

15 MR. MOODY: Then, I would ask you not to reveal anything
16 about what the Burr firm said.

17 THE WITNESS: Okay.

18 BY MR. POWELL:

19 Q I understand your concern, Mr. Waid. Was it a
20 legitimate Trust expense, in your opinion?

21 A No, it was not. And if I can clarify, The Burr Firm
22 did speak to me, but they informed me, at the beginning of the
23 conversation, we will not reveal any attorney-client
24 information. Is it permissible to explain what they did tell
25 me?

1 MR. MOODY: As long as you're confident that they told
2 you information that was not attorney-client privilege I'm
3 satisfied.

4 THE WITNESS: Yes. And their answer, when I questioned
5 the fees and the relationship and the history, was that it was
6 primarily related to this Trust dispute, not to oil and gas
7 interests and other business of the Trust, as I previously
8 characterized the two different types of legal fees.

9 BY MR. POWELL:

10 Q Mr. Waid, were you aware, in your review of this
11 Court's record, were you aware, at any time, that the Court -
12 this Court had prohibited the payment of attorney's fees from
13 the Trust account, that was to be segregated for the MTC Trust
14 beneficiaries?

15 A Yes.

16 MS. AHERN: Could you repeat that question, please?

17 MR. POWELL: Did this Court order at any -- was Mr. Waid
18 aware at any time of this Trust ordering attorney's fees not
19 to be paid from the 65 percent of the Trust to be segregated
20 for the benefit of the MTC Trust beneficiaries? His answer
21 was: Yes, he was aware.

22 MS. AHERN: I apologize. There seems to be a static
23 break so that I can't hear the question. Can you try one more
24 time for me?

25 THE COURT: Maybe if you speak right into the microphone,

1 Mr. Powell.

2 MR. POWELL: The question -- is that too loud?

3 MS. AHERN: No, uh-uh, no.

4 MR. POWELL: Okay. The question I had asked Mr. Waid was
5 whether or not he was aware of any order from this Court
6 prohibiting the use of funds representing the 65 percent that
7 was to be segregated in the Trust account for the benefit of
8 the MTC Trust beneficiaries, and prohibiting the payment of
9 attorney's fees from that Trust account.

10 And Mr. Waid responded: Yes, he was aware of an
11 order from the Court. Understood?

12 THE COURT: You can continue.

13 MR. POWELL: Okay.

14 MS. AHERN: Yes. I think -- I believe, if I played it
15 back, attorney fees -- for any attorney fees not to be paid
16 from this, the Trust 65 percent of -- is that a yes, it could
17 be paid from 65 percent for attorney fees or not? And what
18 attorney fees are you talking about?

19 MR. POWELL: I don't know how to respond, Your Honor.

20 THE COURT: Okay. The fees that we are currently talking
21 about are those paid to the Jeffrey Burr Law Firm. The
22 question was whether there was -- at the time of payment of
23 these fees there was a limitation placed by the Court on
24 payment of any attorney's fees from the 65 percent portion of
25 the Trust, the MTC 65 percent. And the answer to that was:

1 Yes, there was such a limitation.

2 THE WITNESS: I'd like to clarify my answer if I could.

3 MR. POWELL: Yes. Although I was going to ask, Your
4 Honor, may I present Mr. Waid with a document that maybe he
5 can look at to maybe refresh his memory, use that? It's
6 already been provided to the Court. It's already been filed
7 with the Court, so I'm not really offering it as an exhibit,
8 I'm just -- I wanted to discuss it briefly with Mr. Waid, is
9 that -- may I approach, Mr. Waid with that?

10 THE COURT: Certainly.

11 MR. POWELL: Thank you, Your Honor.

12 BY MR. POWELL:

13 Q Mr. Waid, I've just handed you the order granting
14 Petition for Release of Trust Funds for the payment of
15 administrative expenses, insurance premium -- insurance
16 premiums and taxes attributable to Trust property. Do you
17 have that in front of you, Mr. Waid?

18 A Yes.

19 Q As you can see, that document was filed on May --
20 I'm sorry, May 16th of 2014. Mr. Waid, if you could turn to
21 page 3 of that order under the heading, "Order".

22 A Yes.

23 Q For the sake of time, I will read what I'm referring
24 to. Under the heading -- under Section 1 under the Order
25 section states,

1 "During the pendency of this action, the income
2 tax including quarterly estimate -- quarterly tax
3 estimates, ad valorem taxes, property insurance
4 premiums, and the administrative expenses of the
5 Trust, including professional fees for accountants
6 for services rendered on behalf of the Trust, but
7 not including attorney's fees incurred, herein, by
8 Eleanor as Trustee, or otherwise, shall be paid on a
9 pro rata basis.

10 To wit, 35 percent of such expenses shall be
11 paid from the Eleanor's share of the royalties and
12 surface rent by Eleanor, and 65 percent of such
13 expenses shall be paid by Eleanor, as Trustee of the
14 Trust, from the amount held in trust per the order."

15 Mr. Waid, would this -- does this document -- let me
16 rephrase that. Would this be the document that you reviewed
17 to lead you to the conclusion that you had previously stated
18 in your testimony, that you were aware that there was a Court
19 order prohibiting the use of those Trust funds for the payment
20 of Ms. Ahern's attorney's fees?

21 A Yes.

22 Q Okay. I'd like to jump briefly, Mr. Waid, Marquis
23 Aurbach Coffing heading, if you're there.

24 A Are you back on --

25 Q Sorry, I'm back on your Exhibit A of your Accounting

1 and Report. Sorry.

2 A Yes.

3 Q Okay. Do you see that Marquis Aurbach Coffing
4 heading?

5 A I do.

6 Q There were expenses of 15,000, 21,782.28, 21,000,
7 30,000, \$394.22, and then \$75,000.

8 A Yes.

9 Q Just to make clear for the record, these expenses
10 were deemed to be -- did you determine any of these expenses
11 to be reasonable or justifiable, I guess, expenses that were
12 charged to the Trust?

13 A I think the record reflects that I brought this to
14 the Court's attention in probably mid-2015, after my
15 appointment, and we had a discussion about potential
16 disgorgement of fees because of the violation of the Court's
17 order as I saw it. And we effectively tabled that matter, and
18 our focus has been on the unpaid royalties to the MTC Trust.

19 Q Mr. Waid, if you look at the dates of those payments
20 and you compare them to that order that was just read, these
21 payments occurred after that order was entered, correct?

22 A That is correct. And for the most part, for all the
23 other fees that were incurred as reflected in this report as
24 well, many of them.

25 Q So just briefly, to clarify for the record, that

1 would include then the payment of \$125 to James Mann, that was
2 made on 10/24/14?

3 A \$125,000.

4 Q I'm sorry, \$125,000.

5 A Yes.

6 Q That would include the payment to David Mann of
7 \$10,000 made on November 14th, 2014?

8 A Yes.

9 Q Would that then also include payments of \$60,000 and
10 \$125,000 to the Jeffrey Burr Law Firm?

11 A Yes.

12 Q Mr. Waid, if you could just go back briefly, I'll be
13 quick. The order granting Petition for Release that we were
14 just discussing, could you put that back in front of you?

15 A Yes.

16 Q Mr. Waid, do you see that the day of that hearing on
17 the right-hand side of the first page, the date of that
18 hearing was April 22nd, 2014?

19 A Yes.

20 Q In turn, the payment of \$50,000 of legal fees to
21 Jeffrey Burr Law Firm occurring on May 8th, 2014?

22 A Yes.

23 Q So based on the hearing date and when that ruling
24 would have been made, the payment on May 5th would have been
25 after -- would that have been after Ms. Ahern would have been

1 aware that that act was prohibited of paying Trustee's fees
2 from the Trust? I'm sorry, attorney's fees from the Trust, to
3 the best of your --

4 A Not my place to make a judicial determination but,
5 yes, I'll agree that they occurred after the date of the
6 Court's order.

7 Q Let me rephrase that then. If you were acting at
8 that point in time, would you have made that payment?

9 A I would have asked the Court for an order
10 authorizing the payment.

11 Q Moving on, Johnson & Associates payment of \$5,000,
12 \$20,000 and \$50,000.

13 A In 2013, yes.

14 Q Correct. Just to be clear, your determination was
15 that these were not legitimate expenses relating to Trust
16 administration?

17 A I made what I would characterize as an exhaustive
18 effort and commenced legal action to determine Mr. Johnson's
19 involvement and the appropriateness of those fees. Based on
20 my investigation of other counsel, my discussions with Apache
21 and my discussions with Mr. Johnson, for that matter, as to
22 work that was performed for Eleanor individually and the
23 Trust; and he simply refused to cooperate with my requests.

24 Q Okay.

25 A So I can't make a definitive determination.

1 Q If my memory served me correct, you attempted to get
2 Mr. Johnson's records in Texas and ultimately you were
3 blocked, effectively? Mr. Johnson was challenging your right
4 to have those records?

5 A Well, I want to make it very clear for the record
6 that, in my practice, when I'm appointed by courts, I usually
7 leave the attorneys and the accountants in place because they
8 are the most knowledgeable. I attempted, literally, on the
9 first day I was appointed, I invited Mr. Johnson to provide an
10 updated engagement agreement so that I could continue his
11 representation, protect the privileges and keep a continuity;
12 and I didn't want to reinvent the wheel or expend unnecessary
13 fees in starting over with new counsel. He refused.

14 And from that point on, he refused to cooperate and
15 provide me any information, so naturally I was suspect.

16 Q Did Mr. Johnson give you any explanation of why he
17 was refusing? [Background noise louder].

18 A No.

19 Q Kingdom Title Solutions, a payment of \$75,000. In
20 your investigation, what did you - what did you determine
21 Kingdom Title Solutions to be?

22 A They are a title real estate based company. I -- at
23 some point I think it's important for the Court to know, I
24 could have subpoenaed and issued us -- had a subpoena festival
25 and gone after all of these companies for their records. I

1 just ultimately deemed it not prudent with Ms. Ahern not
2 sitting for a deposition where I could ask the questions or I
3 could subpoena them.

4 At this stage of the game, I was running up against
5 a deadline for the filing of amended tax returns, and so, I
6 stopped, and I had to make the best business decision and
7 judgment in my capacity as Trustee. So, I apologize for not
8 being able to answer all of your questions. I made a business
9 decision not to pursue them.

10 Q I understand, Mr. Waid.

11 A I will -- to clarify my answer on that specific,
12 Kingdom Title Solutions has nothing to do with the Connell
13 Trust or its real estate in west Texas.

14 Q Okay. Thank, Your Honor -- thank you, Mr. Waid,
15 that's what I was going to follow up with.

16 Mr. Waid, Lynch, Chappell & Alsup, payments of
17 \$4,000 and \$5,000. What did your investigation reveal about
18 what entity this is or what is - what is this, a business, an
19 entity, a law firm? Do we know?

20 A A law firm. One of the partners, Harper Estes was
21 involved in a mediation of the dispute amongst the
22 beneficiaries. Again, I would characterize that as not an
23 appropriate Trust expense, but a beneficiary expense.

24 Q Okay. Very briefly, Mr. Waid, Margaret Ordella
25 [phonetic]. There's a \$3,500 payment and \$1,700 -- \$1,750

1 payment to Margaret Ordella Living Trust. In your
2 investigation, who is this individual?

3 A We attempted some limited efforts to find out who
4 she is and we discovered nothing.

5 Q Omni Hotels & Resorts, \$7,000 payment and a \$6,500
6 payment. What did your investigation reveal as to what --
7 your split indicates it was a hotel expense. Is that -- is the
8 hotel expense for Ms. Ahern?

9 A It is. The hotel actually cooperated and provided
10 the registry and the logs, and information associated with the
11 various room service and multiple rooms reserved, but no
12 explanation as to why.

13 Apache does not have operational staff in Fort
14 Worth, so I couldn't draw a nexus between the Omni Hotel in
15 Fort Worth and any Trust activity.

16 Q Operative Services \$8,600 and \$6,000 paid -- we have
17 a rent expense. Did the Trust ever rent property?

18 A Ms. Ahern, in her earlier declarations to the Court,
19 indicated that the Trust had rented properties. There's
20 exhibits attached to Ms. Ahern's. I tried to link this
21 property services with Joseph's Properties and others.

22 We took the deposition of the Joseph Properties
23 employee who denied the documents that Ms. Ahern produced in
24 her accounting were authenticated, or authentic or valid in
25 any fashion whatsoever. And I found no office space leased.

1 I did pursue that matter because there were, per
2 Ms. Ahern's testimony, multiple boxes of Trust records and
3 they had to be stored and kept and property leased and space
4 for them. To date, I've never been able to see those records
5 or have access to them.

6 I found a lease property in Spanish Trails on the
7 golf course that apparently matches some of the dollar amounts
8 but, again, I find no Trust benefit or use, or justification
9 for rent expense.

10 Q Thank you, Mr. Waid. Real Estate Services, \$10,000,
11 \$90,000, \$50,000 and \$150,000. What did your investigation
12 reveal as to what this entity is and why those payments would
13 have been made?

14 A Real Estate Services is an entity owned, controlled,
15 created or otherwise associated with a Ms. Nounna. There
16 are -- who uses multiple aliases. Again, I find no
17 information relevant or related to the Trust and its
18 activities.

19 Joseph's Properties and its founder indicated they
20 did some work for Real Estate Services, that it is an entity,
21 it does exist. And candidly, I -- we weren't getting very far
22 with recovering those monies.

23 That's a large enough sum where I felt if, if we
24 could get more information, if we had Ms. Ahern's cooperation,
25 those are funds I would seek to have disgorged because they're

1 not legal or otherwise related. But we were met with
2 continuous closed doors, so I, again, made a business decision
3 just to move on.

4 Q Understood. I'm almost done. I appreciate your
5 patience with me, Mr. Waid.

6 Ryan Charbauer [phonetic], \$10,000 and \$20,000. Who
7 -- what did your investigation reveal as to who Ryan Charbauer
8 is?

9 A Ryan Charbauer -- and I've spoken with him on the
10 phone and his partners. He was an attorney with Anthony &
11 Middlebrook. He now holds his own shingle in his own firm.
12 He's a CPA and an attorney. He also, through counsel,
13 rejected our requests and denied our requests and filed pretty
14 contentious motions opposing our subpoenas, in Texas, to
15 determine.

16 My thought was, if he was advising Eleanor on Trust
17 matters, that I could find what happened to the Trust funds, I
18 could, again, put these puzzle pieces together. He simply
19 refused. I ultimately just recently non-suited those subpoena
20 requests and the Court granted them.

21 Q Tony Dave & Associates, \$5,000. Your investigation
22 revealed what? Is this an entity? Is this a person?

23 A No information.

24 Q W/M Connell Trust payments of \$45,000 and change.
25 One --

1 MS. AHERN: I'm sorry, an airplane went over, could you
2 repeat, please?

3 MR. POWELL: We are discussing the W/M Connell trust
4 entry.

5 BY MR. POWELL:

6 Q There are distributions of \$45,336.10. A
7 distribution of \$1,287,580.85, and a distribution of \$5,000.

8 A \$500,000.

9 Q \$500,000, thank you, Mr. Waid. And what did your
10 investigation reveal as to why these funds were withdrawn?

11 A If you look at the memo line, it indicates these are
12 cashier's checks. Again, I refer to my prior testimony
13 regarding the reckless nature of these. I ultimately was able
14 to recover the \$1,287,000 cashier's check. That's the one
15 that -- it was issued on February 18th. I recovered it in
16 April.

17 The other check which was for \$500,000, if you
18 correlate the date March 23rd, 2015, that was in the same week
19 and time frame in which this Court removed Ms. Ahern as
20 Trustee. That also related to testimony that Ms. Ahern and
21 her counsel provided to the Court relating to Fidelity
22 Capital.

23 The Court ordered, very specifically, upon my oral
24 motion in open court, that Fidelity Capital was not a
25 financial institution and that those funds should be returned.

1 We then went on what I would characterize as a, as a
2 bit of a chase to find the 500,000. I ultimately found it at
3 U.S. Bank. I was able to recover those funds and, again, the
4 record back in April and May of 2015 will reflect my findings
5 and my concerns expressed to the Court.

6 Ultimately, Mr. Lenhard was deeply involved in the
7 \$500,000 matter because he made numerous attempts to find out
8 who the individuals were. The gentleman who was the managing
9 member or the founder of the entity was a -- sometimes lawyer
10 in California, sometimes his bar license was active, sometimes
11 it wasn't. Again, it was another dead end.

12 But the 500,000 as represented in the accounting
13 filed by Ms. Ahern, has yet to, and has never been recovered.

14 Q Okay. And lastly, Mr. Waid --

15 MS. AHERN: [Ms. Ahern's phone buzzing]. Oh, I'm sorry,
16 again.

17 THE COURT: Uh-huh. Thank you.

18 MS. AHERN: I'm sorry. I'm sorry. I shut them off. I'm
19 sorry.

20 BY MR. POWELL:

21 Q Lastly, Mr. Waid, Wells Fargo expenses of 25,000 and
22 \$10,000, you've listed, "Unknown Expense". I'm assuming you
23 haven't been able to decipher what these withdrawals were?

24 A Actually, if you look on the memo line these were, I
25 believe, ACH transactions to a MasterCard. And I found no

1 MasterCard or other open accounts in the name of the Trust.

2 They obviously satisfied a MasterCard account.

3 I believe Ms. Ahern did have a MasterCard account.

4 Some of the records that we were provided did indicate she
5 held an account with them, but certainly not in the name of
6 the Trust.

7 Q Thank you, Mr. Waid. I'm done with that report,
8 your report and accounting. I would like to clarify,
9 however - I'm sorry, I shouldn't make that statement. I'd
10 like to clarify some of your previous testimony in regards to
11 taxes that are still pending for the Trust.

12 Given your previous testimony, you indicated that
13 you had filed an Amended Return for the Trust, is that
14 correct?

15 A Filed amended returns for three years.

16 Q What was the -- what was the need to file amended
17 returns? I'm sorry. Let's go back. What years were those?

18 A For 2013, '14 and '15. The basic summation that I
19 can give is that under Ms. Ahern's Trust Administration, the
20 terms of the Trust were not followed. As a Pass-Through Trust
21 it's vitally important, from an Internal Revenue code
22 perspective, that if you're a Pass-Through Trust, the account
23 needs to be zeroed at the end of the year. Whatever remaining
24 funds are in the account, if you don't either expense them or
25 distribute them, it's taxable income to the trust.

1 Trusts are taxed at the highest level permitted
2 under the current code. There is a 65-day rule safe harbor
3 provision. And my investigation determined that in those
4 years, Ms. Ahern did not properly distribute or expense any
5 funds according to the Court's order. When the Court ordered
6 that the Trust could pay any associated income taxes,
7 quarterly taxes or the rest.

8 In my, call it recalculation, the 65 percent due the
9 MTC Trust should have sat in a segregated account, as if it
10 were distributed. Quarterly income tax payments, exactly
11 consistent with Judge Sturman's order, should have been
12 advanced and distributed to the MTC Trust.

13 But what happened is, on December 31st, 2014, the
14 clock struck 12 and the year 2015 commenced, there were
15 significant funds in the Trust on account, or in cashier's
16 checks, but they weren't characterized as distributed or
17 expensed. That created, upon Gammett & King's analysis, an
18 \$800,000 tax liability that I had to satisfy within the first
19 two weeks of my appointment. And as you can imagine, the
20 first two weeks I had no funds on account to make such
21 payment.

22 I brought that to the Court's attention. So since
23 that time frame, we have endeavored to -- when I say we,
24 myself, the accounting firm -- we have endeavored to recreate,
25 to take the best possible tax positions available. But

1 without Ms. Ahern's cooperation and following general tax
2 principles and accounting principles, I have had to make
3 certain calculations and certain allocations of expenses of
4 distributions. And I was running up against a deadline.

5 I have now filed those returns and I'm waiting for
6 the IRS to either allow those allocations and permit them and
7 refund certain monies, or they will disallow them and there is
8 a potential that I could owe additional funds. It's remote,
9 but until the IRS sends you the final closing letters, I have
10 to reserve; I have to account for those. I know that was a
11 long-winded answer, but I hope it clarified.

12 Q Sure. If I understood you correctly, you have
13 applied, then, for refund from what you have had to pay to the
14 IRS, which I understand was \$800,000 --

15 A That is correct.

16 Q -- effectively very closely after you took position
17 of Trustee?

18 A Yes.

19 Q What, what was the amount that you sought for the
20 refund?

21 A It's just over 400,000. But in proper context that
22 should be zero. Trusts should never have to pay tax at the
23 trust level, which is the highest taxable rate. The structure
24 is in place.

25 Q So if we turn to page 3 of your accounting and

1 report you make a statement, you say, "It is anticipated that
2 the amended tax returns and refunds will be resolved and
3 closed by mid-2017."

4 A Yes.

5 Q Until we get to this point in time, you can't really
6 determine what the full extent of what I'm going to term, the
7 damages to the Trust from a tax perspective, may or may not
8 be; is that correct?

9 A I can reasonably estimate that in the range of 600-
10 to \$1 million dollars of, call it unnecessary tax payments,
11 were made. And if that's a damage to the Trust, yes, because
12 those funds should have been distributed to either Eleanor,
13 her 35 percent lifetime income interest, or to the MTC. And
14 when I give that number that's associated fees and costs with
15 trying to fix this.

16 Q So just, if I'm understanding your testimony
17 correctly, then, Ms. Ahern's actions in regard to the failure
18 to properly pay taxes, has resulted in significant damage to
19 the Trust that was unnecessary; is that a fair statement?

20 A I think it's a fair statement with the qualifier
21 that proper trust administration, following the terms of the
22 Trust itself, as outlined by the Settlers of the Trust,
23 provides structure where there's no federal income tax ever
24 due by the Trust. And I'm in the unfortunate position of now
25 having to become the taxpayer.

1 And, as I've expressed to this Court and to you, and
2 to Ms. Ahern's Counsel, I have grave concerns about the
3 history. I have serious concerns whether or not Internal
4 Revenue Service will accept the positions and the allocations
5 taken. Because the same things that Wells Fargo and the
6 accountants and everyone else looked at, the IRS is now going
7 to look at; hence, my assumption that this will be audited.

8 Q Okay. Mr. Waid, in the course of your
9 investigation, did you uncover any documents, leads or
10 anything that have led you to conclude that Ms. Ahern has used
11 aliases?

12 A Yes.

13 Q During the time that you've served as Trustee, have
14 you ever used an alias?

15 A No.

16 Q Mr. Waid, in that booklet I have provided to you, if
17 you would get in front of you. There is a Brief regarding
18 accounting, fiduciary duties, and trust administration which
19 was filed under seal on March 13, 2015.

20 A Yes.

21 Q Would you let me know when that's in front of you?
22 Okay.

23 A I have it.

24 Q Just a moment, Mr. Waid.

25 MR. POWELL: Your Honor, can we just take about a

1 two-minute recess so I can get -

2 THE COURT: Okay.

3 MR. POWELL: -- organized?

4 THE COURT: How much longer do you need? Because, I
5 don't know if we're -- are we going to be able to finish
6 Mr. Waid, this afternoon?

7 MR. POWELL: Yeah, absolutely. What time do we need to
8 conclude by, Your Honor?

9 THE COURT: About 15 more minutes.

10 MR. POWELL: Okay.

11 THE COURT: [indiscernible], if we can.

12 MS. AHERN: Excuse me, I have to go to the restroom.

13 THE COURT: And we're taking a break. Thank you.

14 [Recess at 4:28 p.m.]

15 [Resumed at 4:33 p.m.]

16 THE COURT: The feedback might be -- because the speakers
17 have to be high for you to hear, there's feedback from your
18 microphone. Is there - there's a - is there a button over --
19 on your screen that allows you to turn down the -- your
20 microphone on your end so --

21 MS. AHERN: Yeah. I went down from 100 to 60.

22 THE COURT: No. That's -- I think that's your -- is that
23 your speaker?

24 MS. AHERN: Yeah.

25 THE COURT: I'm talking about your microphone.

1 MS. AHERN: At 34. Would you speak something?

2 THE COURT: No, we're not talking about the speakers for
3 you to hear, we're talking about the microphone for you to
4 pick up when you speak. That's the problem --

5 MS. AHERN: Oh, I don't know.

6 THE COURT: -- it's on high as well.

7 MS. AHERN: I don't --

8 THE COURT: So --

9 MS. AHERN: -- know about that one.

10 THE COURT: Okay. Yeah. I don't know how to tell you to
11 turn down the microphone. Okay. All right. Well, we'll try
12 to tolerate it for a few more minutes.

13 Mr. Powell, you had a few questions to wrap up with
14 Mr. Waid?

15 MR. POWELL: Yes.

16 BY MR. POWELL:

17 Q Mr. Waid, do you have the accounting document in
18 front of you? It's the Marquis Aurbach, what I will call the
19 accounting that was -- what is titled their brief accounting,
20 fiduciary duties, and trust administration, which was filed on
21 March 13th, 2015?

22 A Yes.

23 Q Okay. Mr. Waid, I didn't provide the entire
24 document. It's approximately, I believe, 270 pages was what
25 it was. But if you will see in that packet, I have produced

1 what is the Declaration of Eleanor C. Ahern, in support of
2 Brief regarding accounting, fiduciary duties, and trust
3 administration. I believe that is -- was Exhibit 5.

4 A Yes.

5 Q Can you go to that document, please?

6 A Yes.

7 Q Okay. Do you have it in front of you now?

8 A I do.

9 Q Okay. Just very briefly, page 3 of 3, if you turn
10 to that, you'll see a Declaration pursuant to NRS 53.045:

11 "I declare under penalty of perjury and the
12 laws of the State of Nevada, that the foregoing is
13 true and correct."

14 Do you see that, Mr. Waid?

15 A Yes.

16 Q Okay. If you'd turn back to page number 1.

17 A Yes.

18 Q In section number 4, Ms. Ahern says: The
19 administrative expenses consist of a bank service charge in
20 the amount of \$165 and payment of support staff in the amount
21 of \$35,500.

22 MS. AHERN: I'm sorry. You all went garbled.

23 BY MR. POWELL:

24 Q Under section 4, Mr. Waid, it says the
25 administrative expenses consist of a bank service charge in

1 the amount of \$165 and payment of support staff in the amount
2 of \$35,500, do you see that, Mr. Waid?

3 A Yes.

4 Q Based on your investigation, did you include -- did
5 you conclude that Ms. Ahern ever had a support staff for the
6 Trust?

7 A Not to my knowledge.

8 Q Statement 5, Mr. Waid, the Trust paid a consulting
9 fee of \$30,000 to Fred Smith of Richardson, Texas, who
10 consults for the Trust regarding management of trust property
11 and how to best take advantage of any available tax savings.
12 In your investigation, did you come across the name Fred
13 Smith?

14 A Yes.

15 Q Who is Fred Smith?

16 A He is - he is an individual who is a certified tax
17 preparer. He is neither a CPA nor an accountant by degree.
18 He goes by different names other than Fred Smith. And my last
19 contact with him was regarding his claim against the Trust or
20 Eleanor for the remaining 25,000 that was not paid to him.
21 And his last known whereabouts, based on his declaration to
22 me, was somewhere in Central America.

23 Q Mr. Waid, under statement 6, the Trust rents office
24 space for my assistance and I maintain the Trust records and
25 perform Trust business. I'm understanding your previous

1 testimony, you've -- you did conclude your investigation to
2 reveal the Trust did not rent office space?

3 A That is correct.

4 Q Mr. Waid, if we go -- statement 10, Mr. Waid, as of
5 January 31st, 2015, the Trust funds are in three separate
6 interest bearing Wells Fargo accounts, an account with
7 Fidelity Capital Inc., and on deposit with Johnston and
8 Associates, being held in their Trust account.

9 Based on your investigation, Mr. Waid, did you
10 conclude that this was a true and correct statement, factual
11 statement?

12 A It is not. Fidelity Capital is not a financial
13 institution, it holds no licensing. And its founder and
14 principal was incredibly invasive -- evasive.

15 Q Did Johnston and Associates hold money in their
16 Trust account?

17 A They did.

18 Q Did they return that to you?

19 A Yes, they did.

20 Q Mr. Waid, if you would turn to page 3, what is under
21 the heading of, "June accounting". There's a statement, the
22 second sentence, beginning: The only difference is that the
23 June accounting contains a consulting fee to Anthony in
24 Middlebrook in the amount of \$20,000. Anthony in Middlebrook
25 is a law firm that consults for the Trust regarding charitable

1 projects and opportunities in which the Trust can invest to
2 best realize the available tax benefits.

3 A I read that, yes.

4 Q Based on your investigation, Mr. Waid, what work did
5 Anthony in Middlebrook do for the Trust?

6 A I was unable to determine that as they refused to
7 cooperate and provide that information, upon my request and
8 upon the subpoenas issued.

9 Q I believe you might have answered this, but I want
10 to ask it in regards to Anthony in Middlebrook. What
11 charitable projects and opportunities would have existed for
12 the Trust in the 65% share?

13 A Under the terms of the Trust, neither the 65 nor the
14 35 were either permitted or authorized to engage in charitable
15 activities.

16 Q Thank you, Mr. Waid. I have a final question for
17 you, Mr. Waid. Questions I should say. Mr. Waid, based on
18 your professional experience, and after this thorough
19 investigation that you've endeavored on and discussed with us
20 today in your testimony, have you reached any conclusions or
21 opinions, for the time period of 2013 through 2015, as to the
22 treatment of Ms. Ahern in regard to the MTC Trust
23 beneficiaries?

24 A I want to make sure I understand your question.
25 With the treatment of whom?

1 Q Ms. Ahern's treatment of the beneficiaries, the
2 movement -- the Movants.

3 A I'll speak of it in terms of -- the treatment was
4 governed and prescribed by this Court's orders. And as I've
5 indicated, and as the facts and the records indicate, that
6 those terms and conditions and orders were simply not
7 followed.

8 Q Would it be a fair characterization that Ms. Ahern's
9 actions in regard to the movements [sic] was reckless, in your
10 opinion?

11 A I believe the adjective to be appropriate.

12 Q How about the adjective inappropriate?

13 A Yes.

14 Q Unjustified?

15 A Yes.

16 Q Fraudulent?

17 A Term of art, legal conclusion, but yes.

18 Q I have no further questions. Thank you, Mr. Waid.

19 THE COURT: Anything else, Mr. Moody?

20 MR. MOODY: Yes. Can I -- with the Court's permission, I
21 do have a few follow-up questions.

22 THE COURT: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. MOODY:

25 Q Mr. Waid, will you turn with me to Exhibit 41 in the

1 Trustee's binder, please?

2 A Yes.

3 Q And if you'll forward through to Exhibit 5, which is
4 the declaration of Eleanor C. Ahern, in support of Brief
5 regarding accounting and fiduciary duties and trust
6 administration.

7 A Yes.

8 Q If you will, turn to page 2 of that Declaration,
9 please.

10 A Yes.

11 Q Let's start with paragraph 9. I'm going to go out
12 of order. The Trust paid me Trustee's fees of \$200,540.03,
13 which is six percent of the total receipts from October 2013
14 through January 2015, you see that?

15 A Yes.

16 Q Can you tell the Court whether you believe it's
17 reasonable for the Trustee of what you have described as a
18 Passive Trust; is that correct?

19 A That is correct.

20 Q To charge fees of six percent of total receipts?

21 A It is not reasonable, no.

22 Q Why?

23 A Because the nature of these assets are such that
24 they do not require daily administration. It is primarily an
25 accounting function. There are, on occasion, lease renewals

1 and other orders that are required by Apache, but they are
2 primarily administrative in duty -- in nature, and the duties
3 associated with them are fairly de minimis.

4 Q And would a six percent fee be a reasonable fee for
5 a Trustee to charge?

6 A Usually, when there are a voluminous amount of
7 beneficiaries, as you find in royalty cases, a six percent fee
8 is somewhat of a standard fee for banks in West Texas and
9 other institutions where they have to handle a significant
10 number of transactions and/or, they assume certain liabilities
11 associated with serving as the Trustee.

12 In this instance, the Settlers of the Trust
13 appointed their own family. And their own family, as
14 beneficiaries, were to serve as Trustees. So I find no
15 justification for that. And for the record, I'm -- as the
16 current Trustee, am certainly not paid in a percentage
17 fashion, nor would I ever support such.

18 Q You anticipated my next question. So let's now move
19 to paragraph 6 of the same page that you're on. Mr. Powell
20 already asked you questions about the office space, which Ms.
21 Ahern claimed to be renting at 17 -- \$1,750 per month. Do you
22 see that?

23 A I do.

24 Q Will you forward to Exhibit 8 of the same document?

25 A Yes.

1 Q And is this an alleged receipt from Joseph's
2 Properties, stating your office rent expense has been \$1,750 a
3 month since the beginning of 2013, it is paid as of the
4 beginning of this month?

5 A Yes.

6 Q Turn back to Exhibit 21 with me. There on the first
7 page this is a, a letter addressed to your attention, correct?

8 A Yes.

9 Q Dated October 1, 2015?

10 A Yes.

11 Q And does this state, from the same person that
12 allegedly wrote the previous letter, that, "Nothing else -
13 filed, copy of rent memo enclosed, nothing else on file, as
14 Ms. Ahern did not rent from us."

15 A That's correct.

16 Q Does that completely contradict the previous letter
17 that was submitted as part of her brief regarding accounting?

18 A You are correct.

19 Q All right. Finally, Mr. Waid, I'd like to ask you
20 about the span of time after which Marquis Aurbach and Coffing
21 withdrew, and before Mr. Lenhard's firm entered an appearance
22 in this case; did you have an opportunity to speak with Ms.
23 Ahern?

24 A I did, yes.

25 Q And did she ever admit to you whether she owed the

1 Trust any money in return?

2 A She did.

3 Q And what did she tell you?

4 A Just before I asked her not to make any admissions
5 to me, she indicated she owed approximately \$800,000 by her
6 calculation.

7 MR. MOODY: Okay. That's all the questions I have.

8 THE COURT: Okay. All right. Thank you, Mr. Waid.

9 Now is that all of Mr. Waid's testimony?

10 MR. POWELL: Yes.

11 THE COURT: Okay, great. So, Mr. Waid, your testimony is
12 complete. Thank you.

13 And then we're going to -- at this point in time,
14 what's the plan? Are we coming back tomorrow? Do we have
15 other witnesses who will be testifying tomorrow?

16 MR. POWELL: No, Your Honor. If the Court would indulge
17 me I'm -- if the Court would like to hear, I'm prepared to
18 make a closing.

19 THE COURT: No, I can't tonight. So what's your
20 preference for making any kind of a closing statement or --

21 MR. POWELL: We could come back tomorrow, Your Honor. I
22 think we have that scheduled, if that would be satisfactory
23 with the Court.

24 THE COURT: Okay.

25 MR. MOODY: Your Honor, I don't plan to make any closing,

1 and I'm happy to be here. With Mr. Waid's testimony being
2 concluded, I would have asked for him to be excused.

3 THE COURT: Okay.

4 MR. MOODY: He has other business tomorrow. So I'll plan
5 to be here but he will not be here with me.

6 THE COURT: Okay. Very well.

7 MR. WAID: Will you start at 9?

8 THE COURT: I think we're scheduled to start at 10.

9 MR. KIEFER: The other option, Your Honor, and it's
10 entirely up to you, we could submit a memorandum that
11 summarizes the relief we're requesting based on the evidence.
12 Either that or an oral, you know, an oral presentation of
13 closing arguments. We're fine with either. We don't want to
14 take up your time -

15 THE COURT: Okay.

16 MR. KIEFER: -- just for a closing argument of 10
17 minutes. If you'd prefer us to submit that memorandum, we
18 could do it that way.

19 THE COURT: Okay. All right. So, Ms. Ahern, the issue
20 that we're trying to work out is that we have completed the
21 testimony, and the question simply remains, the concluding
22 statements of counsel, which will have to be either in writing
23 at a subsequent time or tomorrow. We could do that tomorrow,
24 gives you time to prepare overnight. If you think you'll be
25 ready to do that and don't need time to do something

1 subsequently, you don't need to get a transcript or anything.

2 MR. KIEFER: All right. My apologies.

3 THE COURT: I mean, if you prefer to wait and get a
4 transcript and --

5 MR. KIEFER: No, we're fine to come tomorrow morning,
6 Your Honor. I just didn't know if it, if it would free up
7 your schedule to take us off for tomorrow but --

8 THE COURT: Okay, great.

9 MR. KIEFER: -- we'll come and present that, that's fine.

10 UNIDENTIFIED SPEAKER: Yeah, great.

11 THE COURT: Okay.

12 MR. MOODY: My clients would like to come back tomorrow.

13 THE COURT: Okay.

14 MR. POWELL: Okay. Got it.

15 THE COURT: Okay. All right. So we'll do closings
16 tomorrow at 10 a.m. And, Ms. Ahern, we'll arrange to get you
17 back online like you were today, so you can listen to that
18 tomorrow at 10 a.m.

19 All right. We'll be in recess.

20 MS. AHERN: Thank you.

21 THE COURT: Thank you.

22 MR. KIEFER: Thank, Your Honor.

23 ///

24 ///

25 ///

1 MR. WAID: Thank, Your Honor.

2 MR. MOODY: Thanks, Judge.

3

4 [Proceedings adjourned at 4:48 p.m.]

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19 ATTEST: I do hereby certify that I have truly and correctly
20 transcribed the audiovisual recording of the proceeding in the
above entitled case to the best of my ability.

21

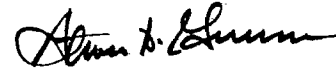
Kerry Esparza

22

23 Kerry Esparza, Court Recorder/Transcriber
24 Eighth District Court, Department XXVI

25

RTRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

In re the Matter of:

CASE NO. P-066425

THE W.N. CONNELL AND
MARJORIE T. CONNELL
LIVING TRUST MAY 18, 1972

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

FRIDAY, FEBRUARY 10, 2017

**RECORDER'S TRANSCRIPT
EVIDENTIARY HEARING**

APPEARANCES:

For Jacqueline Montoya JOSEPH POWELL
& Kathryn Bouvier: DANIEL P. KIEFER
 The Rushforth Firm, PLLC

For the Trustee: TODD L. MOODY
 FREDRICK P. WAID
 Hutchison & Steffen, LLC

RECORDED BY: KERRY ESPARZA



1 FRIDAY, FEBRUARY 10, 2017 AT 10:07 A.M.

2

3 THE COURT: Everybody state appearances for the record.

4 MR. KIEFER: Daniel Kiefer and Joey Powell on behalf of
5 Movants. We also -- the Movants are also in the Court and a
6 few other members of our firm are here, law clerk, and then
7 Mr. Lee is already out there.

8 THE COURT: Okay. Thank you.

9 MR. MOODY: Good morning, Your Honor. Todd Moody, Bar
10 Number 5430, for the Successor and Court-Appointed Trustee
11 Fred Waid, who could not be present today.

12 THE COURT: Understood. Okay. And then we've got Ms.
13 Ahern on the Wi - the audio/visual connection. Thank you, Ms.
14 Ahern.

15 All right. So we're ready to start. I think -- did
16 the Movants have any more witnesses?

17 MR. KIEFER: No, Your Honor. We've essentially rested
18 our case -

19 THE COURT: Okay.

20 MR. KIEFER: -- as it relates to the evidence.

21 THE COURT: Okay.

22 MR. KIEFER: Mr. Moody wanted to take a few moments, if
23 he could.

24 THE COURT: Okay. All right. So Ms. Ahern wishes to be
25 heard. Ms. Ahern, did you have something you wanted to say?

1 MS. AHERN: Yes, I do.

2 THE COURT: Okay.

3 MS. AHERN: I would once again like to ask for Larry
4 Semenza's retainer of \$50,000 to be paid until this Court
5 business is totally finished.

6 THE COURT: Okay.

7 MS. AHERN: I would like the Judge to ask a Temporary
8 Trustee to make it happen.

9 THE COURT: Okay. What --

10 MS. AHERN: I also -- go ahead. I apologize.

11 THE COURT: No. I was going to -- never mind. Finish
12 your request.

13 MS. AHERN: I sent a co-pay of my old glasses to everyone
14 and it said they were about \$680. And I was hoping that since
15 Fred said: If I got him information on the cost, he would
16 authorize that billing. I did send my -- all my bills for my
17 needs, three times, to Brownstein, and Brownstein told me that
18 he gave them to Fred, but now Fred has a bill from my Dr.
19 Malik. I would like the Court to ask Fred to please allow
20 this bill, for my glasses, to be paid.

21 THE COURT: Okay. All right. Well, Ms. Ahern, Mr.
22 Waid's not here this morning so -- and that's the kind of
23 thing that if you -- because the Court has authorized him to
24 act in your best interest for your medical care, so I don't
25 know if he's got those bills or doesn't have those bills. I



1 don't know anything about it --

2 MS. AHERN: Yes.

3 THE COURT: -- and he's not here to explain.

4 MS. AHERN: You do have that.

5 THE COURT: So if you can communicate -

6 MS. AHERN: Everybody in this courtroom has --

7 THE COURT: -- you'll have to -

8 MS. AHERN: -- a copy of my bill.

9 THE COURT: -- you'll have to communicate directly -
10 you're going to have to communicate directly with Mr. Waid
11 about that, because he's got the authority to act. So you'll
12 just need to talk to him. He just doesn't happen to be here
13 at the moment, so I can't ask him.

14 So if you just contact his office, and I'm sure
15 he'll follow up.

16 With respect to Mr. Semenza, that's a different
17 matter. The Court did authorize Mr. Waid to release funds to
18 Mr. Semenza to appear for you at this hearing. Mr. Semenza,
19 himself, came in and said: He did not feel that he had
20 adequate time to prepare and would not be entering an
21 appearance for you at this time.

22 If you want to hire Mr. Semenza, we do have your
23 request. We have authorized Mr. Waid to communicate with him
24 and that was done. I think Mr. Moody indicated that they did
25 contact him about appearing for this hearing. So if the



1 question is a \$50,000 retainer, I just think that Mr. Waid
2 needs to investigate it.

3 I didn't understand it was a \$50,000 retainer. I
4 thought it was authorizing him to appear for this hearing, so
5 just -- Mr. Waid just needs to investigate it, and if he
6 thinks it's appropriate, he can certainly ask the Court for
7 that authority. But, as of right now, we didn't have a
8 request for -- I didn't see a request for a \$50,000 retainer.
9 I don't know if there's --

10 MS. AHERN: Yes. It was in the letter that I sent you,
11 and I sent everybody that letter.

12 THE COURT: I, I knew that it was to appear for the
13 hearing, and that's specifically what Mr. Semenza said. He
14 didn't have enough notice to prepare for the hearing, so if --
15 then it's just a question -- I don't know, Mr. Moody, is the
16 one, I believe, who communicated with Mr. Waid about -- and
17 Mr. Waid about -- with Mr. Semenza.

18 I don't know -- I just thought he was -- I don't
19 know if he was not willing to -- I don't know because that's
20 your communication with him. I don't take part in any of
21 that, so I know that, Mr. Moody, you and Mr. Waid did --

22 MS. AHERN: I need --

23 THE COURT: -- communicate to Mr. Semenza --

24 MS. AHERN: Judge.

25 MR. MOODY: We did, Your Honor.

1 MS. AHERN: Judge, I need -- I need protection. I need

2 --

3 THE COURT: Ms. Ahern, Ms. Ahern, Ms. Ahern. Stop
4 talking now, Ms. Ahern. Mr. Moody's going to address the
5 Court and tell us about his communication with Mr. Semenza, so
6 just listen to Mr. Moody. Thank you.

7 MR. MOODY: Thank you, Your Honor. I believe the Court
8 order came out this last Wednesday --

9 THE COURT: Correct.

10 MR. MOODY: -- about 3:30 in the afternoon. Immediately
11 after receiving that, Mr. Waid and I sat down together, called
12 Mr. Semenza, spoke to him. He was on his way to a doctor's
13 appointment, and we told him that the Court had ordered that
14 funds be released so that he could make an appearance and
15 represent Ms. Ahern at yesterday and today's Evidentiary
16 Hearing.

17 He was a little reluctant at that point. He said
18 I'm going to show up tomorrow. I'm not sure what I'm going to
19 do, and as the Court knows, although he appeared -- although
20 he showed up yesterday, he did not enter an appearance. So, at
21 this point, it's our position that, that no fees are owed to
22 him.

23 Now, one of the things I will do, I will address in
24 my closing argument, if you will, I'm going to talk about
25 what -- how Mr. Waid sees things going forward from this

1 point, because this was an important day for purposes of his
2 role as Trustee, and I want the Court to understand what his
3 desires are with respect to Ms. Ahern, what it is that he
4 would like to do on her behalf.

5 So if you'd like me to begin now, I'm, I'm happy to.

6 THE COURT: Okay. So, so Ms. Ahern, we're going to --
7 we'll hear from Mr. Moody, and we'll see where the request
8 that the Trustee is making, where that might affect your
9 request for \$50,000 for Mr. Semenza. Since Mr. Semenza felt
10 he didn't have enough notice to appear for this hearing, you
11 may still want to retain him, and it may be that we can work
12 something out.

13 So let's listen to what Mr. Moody has to tell us,
14 and we'll circle back around to your request. I've made a
15 note of it here, and we'll follow up on it when we've listened
16 to Counsel.

17 So give us just a minute, and we'll get back to your
18 request.

19 MR. MOODY: All right. Thank you very much, Your Honor.

20 On behalf of the Trustee, Fred Waid, I want to
21 express our appreciation to the Court and to the parties for
22 their patience and courtesies that have been extended to him
23 in this matter.

24 Mr. Waid is keenly aware of his responsibilities and
25 his fiduciary duties to Ms. Ahern, as well as the MTC Trust.

1 He takes no position in the assessment of damages in this
2 matter and will dutifully follow any Court order on any
3 judgment matter.

4 Mr. Waid also wants the Court and the parties to
5 know, especially Ms. Ahern, that he stands ready, willing, and
6 able to serve and meet her needs as directed by previous court
7 orders and any future court orders, as well as what is
8 contained in the Trust document itself.

9 Ms. Ahern needs to understand that, because of Mr.
10 Waid's findings with respect to Trust funds in this case, he
11 is reluctant to release any funds directly to Ms. Ahern for
12 her medical needs; and, therefore, he has requested time and
13 time again that if she has a medical need, if she will simply
14 ask the doctor, the care provider, whomever it is, to write a
15 simple letter and send an invoice to him, he will consider
16 that.

17 He will also work with Medicare. Ms. Ahern has
18 Medicare coverage, and he will work to coordinate benefits on
19 her behalf because it doesn't make a lot of sense, for
20 example, if she has hearing aids that will require \$7500 that
21 if Medicare will pay a good portion of that --

22 THE COURT: They don't --

23 MR. MOODY: -- to pay it directly out of --

24 THE COURT: -- yet.

25 MR. MOODY: -- Trust funds so --



1 THE COURT: They don't pay it.

2 MR. MOODY: -- he wants to be wise and exercise his
3 fiduciary responsibility --

4 THE COURT: I'll tell you right now Medicare does not pay
5 for hearing aids.

6 MR. MOODY: Okay.

7 THE COURT: It doesn't.

8 MR. MOODY: All right. Well, Mr. Waid probably knows
9 that, I didn't.

10 Your Honor, given the -

11 THE COURT: Why?

12 MR. MOODY: -- still open and --

13 THE COURT: It doesn't make any sense, they don't
14 consider it. They don't pay it.

15 MR. MOODY: Yeah. That surprises me. Okay. Well, then
16 in that case we will simply await, you know, anything from an
17 audiologist and, and make that payment directly to the
18 provider.

19 THE COURT: Uh-huh.

20 MR. MOODY: Okay.

21 THE COURT: And that's about what they cost, 5 to 7,000.

22 MR. MOODY: Yeah. Yeah. It doesn't seem unreasonable.

23 THE COURT: Yeah.

24 MR. MOODY: But it will be paid to the provider, not to
25 Ms. Ahern.



1 THE COURT: So the understanding with respect to medical
2 bills is -- Mr. Waid being ready, willing, and able upon the
3 medical provider contacting him with the information. For
4 example, I think there's also mention of cataract surgery.

5 MR. MOODY: Yes.

6 THE COURT: Again, I've had a cataract surgery. I know
7 that's what they cost, so just the medical provider contact
8 Mr. Waid, and anything not covered by Medicare, Trust will
9 cover it?

10 MR. MOODY: Absolutely. And --

11 THE COURT: Got it.

12 MR. MOODY: -- quickly, Your Honor, and --

13 THE COURT: And I don't know what the issue is with
14 Brownstein Hyatt if -- I don't know, so -- but going forward,
15 Ms. Ahern just needs to have the providers contact Mr. Waid
16 directly with their bill, and anything not covered by Medicaid
17 -- Medicare, he's -- the Trust stands ready to provide?

18 MR. MOODY: Yes. Absolutely.

19 THE COURT: Wonderful. Thank you, I appreciate that.

20 MR. MOODY: Finally, Your Honor, given the still open and
21 complex tax issues based on the Trust, it is the beneficiary's
22 affirmative and absolute duty to cooperate with Mr. Waid with
23 respect to information and documentation, but his
24 investigation is over.

25 That investigation, leading up to, you know, this

1 Evidentiary Hearing, for all intents and purposes, is closed.
2 It is Mr. Waid's position that there is no need for him to
3 speak through Counsel. We don't know what benefit going
4 forward. And we're not saying that Ms. Ahern is not entitled
5 to counsel --

6 THE COURT: Uh-huh.

7 MR. MOODY: -- but she needs to feel free to contact him
8 directly, and we hope that she would be willing to receive
9 contact from Mr. Waid directly, at least up until the time
10 that she finds representation.

11 Mr. Waid respectfully asks the Court to monitor, to
12 communicate directly with him and he will -- he plans to meet
13 with her if she's willing, as soon as he returns, next week.
14 But whatever the Court desires he's willing to follow that.

15 And, again, we thank the Court and the parties.

16 THE COURT: Okay. So I mean to the extent that -- after
17 Mr. Waid and Ms. Ahern discuss what her need is for counsel
18 going forward, he'll evaluate whether that is something that
19 he thinks the Trust needs to advance?

20 MR. MOODY: He will. And, Your Honor, I know the way Mr.
21 Waid thinks about these things and the way he operates. If he
22 feels that she will benefit from counsel going forward, we
23 will petition this Court for instructions to do, to do exactly
24 that.

25 THE COURT: Okay. So, Ms. Ahern, what that means is, if

1 you can -- you're not presently represented by counsel.

2 You're representing yourself. It's your right to do so.

3 If you speak directly with Mr. Waid, who could not
4 be here today, but will be available next week. If you speak
5 to Mr. Waid, talk to him about why you think you need your own
6 attorney, if he agrees, he files a -- what's called a Petition
7 for Instructions, meaning he asks the Court to authorize it.
8 We can't just do this verbally. We have to have it in
9 writing. So that's the process you need to follow and we'll
10 proceed accordingly.

11 All right. Then --

12 MR. MOODY: Thank you, Judge.

13 THE COURT: -- at this point in time, do we have closing
14 statements, I believe, from the Movants? This is their -- the
15 proceeding that they had requested.

16 MR. KIEFER: Right.

17 THE COURT: Mr. Kiefer, thank you.

18 MR. KIEFER: Good morning, Your Honor. Thank you.

19 Yesterday's hearing -- it was a long time coming.
20 And with that said, I don't think it revealed anything that
21 everyone in this room or at least everyone participating in
22 that hearing, didn't already know

23 Ms. Ahern deliberately and intentionally ignores
24 this Court's orders for years while stealing more than \$2.5
25 million from trust beneficiaries. Now, on top of that, she's

1 done whatever she could to obstruct Mr. Waid's investigation
2 into her wrongdoing. Now, despite this, Mr. Waid was able to
3 conduct a thorough investigation regarding Trust assets and
4 expenses, and yesterday, Mr. Waid told the Court all about
5 that investigation in great detail.

6 Now, before we jump down in and we look at Mr.
7 Waid's testimony and the evidence presented, let's talk a
8 little bit more about Mr. Waid and who he is and his knowledge
9 base.

10 Mr. Waid's a Professional Trustee. He estimates
11 that he served in that capacity approximately a hundred times.
12 He has an educational background in economics and the law, and
13 he spent years conducting similar financial investigations for
14 financial institutions.

15 So in other words, when it comes to finding out
16 where the money went, he's the guy to talk to --

17 MS. AHERN: I have to go to the restroom. I'll be right
18 back.

19 THE COURT: Pardon?

20 THE CLERK: She's has to go to the restroom.

21 THE COURT: Okay. Give us a minute. Mr. Kiefer, we're
22 going to take a break, brief break.

23 MR. KIEFER: Sure.

24 [Recess at 10:21 a.m.]

25 [Resumed at 10:24 a.m.]

1 THE COURT: Mr. Kiefer, you can resume. Thank you.

2 MR. KIEFER: Okay. So now that we've kind of talked a
3 little bit about who Mr. Waid is and why he has the bonafides
4 to essentially tell us what he did yesterday, let's talk about
5 what he told us.

6 First he explained his accounting. So he presented
7 an accounting from February 1st, 2017, and it was based on his
8 intensive investigation. He told us that, from approximately
9 June, 2013, through April, 2017, Ms. Ahern withheld about \$2.5
10 million from the Trust beneficiaries.

11 Now, while explaining his accounting, Mr. Waid
12 identified a huge number of alleged Trust expenses for which
13 he could find no justification.

14 THE COURT: Wait a minute, Mr. Kiefer.

15 Ms. Ahern? Oh. She -- Ms. Ahern, you need to turn
16 your mic on.

17 MS. AHERN: I'm --

18 THE COURT: We can't hear you.

19 MS. AHERN: He is going so fast, I can't hear his words.

20 THE COURT: Okay. We'll have Mr. --

21 MS. AHERN: Could you slow him down?

22 THE COURT: We'll slow down and speak, very carefully
23 enunciate. Okay, thank you. We'll try that. Thank you, sir.

24 MR. KIEFER: Sure. So during his testimony, Mr. Waid
25 identified a number of expenses that were paid out of the

1 Trust for which he could find no justification, and we
2 discussed those, and I'll just hit the highlights. Tens of
3 thousands of dollars for private jets, tens of thousands of
4 dollars for family therapy sessions, and tens of thousands of
5 dollars for personal security.

6 Next, Mr. Waid told us about Ms. Ahern's clear
7 violations of court orders. For example, he told us that when
8 he took over the Trust account, it had \$9,000 in it. Not only
9 is this a big deal because the money was missing, but there
10 was also no segregation between the accounts and the 65/35
11 split.

12 He also saw huge payments to attorneys, during a
13 period when the Court had instructed Ms. Ahern, specifically,
14 do not pay your attorneys out of any portion of the
15 beneficiary's 65 percent.

16 Then he told us about taxes, an \$800,000 tax
17 liability because Ms. Ahern did not follow the most basic of
18 Trust provisions and used the Trust as a simple Pass-Through.
19 Even now, based on his testimony, it sounds like there's going
20 to be a recovery, at best, of about half of that.

21 Additionally, he told us about a variety of
22 cashier's checks, including one for a whopping amount of \$1.2
23 million that he had to actually personally retrieve.

24 Finally, Mr. Waid went through Ms. Ahern's
25 Declaration, her sworn statement, and pointed out various lies

1 and mistruths that were provided to this Court by Ms. Ahern,
2 including information about an alleged staff for the Trust and
3 rental areas.

4 At each stage of the testimony, Mr. Waid was asked
5 if he knew any legitimate reason Ms. Ahern might have for the
6 actions she took, and his answer was always the same: No,
7 I'm not aware of any legitimate reason. And, in fact, I asked
8 Ms. Ahern, repeatedly, to explain herself and she ignored me.

9 Now, after going over every element of his
10 accounting in his investigation, Mr. Waid was asked point
11 blank if he thought Ms. Ahern's actions were reckless,
12 intentional, deliberate, and even fraudulent, and he answered
13 each inquiry -- was yes.

14 Now, I realize that it's a bit, it's a bit unusual
15 for an Evidentiary Hearing to go one day with one witness and
16 very limited testimony from a broad spectrum of witnesses, but
17 this is a unique case where it wasn't necessary. We had the
18 man who conducted the investigation. We had the man who's now
19 in charge of the Trust. And we had the man who has been
20 attempting for 22, 23, 24 months, to get Ms. Ahern to sit down
21 and talk to him.

22 And on the flip side of that, we have nothing from
23 Ms. Ahern, not because she's been silenced by the parties and
24 Court, but because she refuses to participate in any level.
25 She doesn't want to talk to Mr. Waid about questions about the

1 Trust. She won't release documents. Importantly, when I say
2 won't release documents, she won't instruct third parties to
3 release documents. She won't sit for deposition and she won't
4 cooperate.

5 In short, Ms. Ahern had evidence to refute -- if she
6 had any evidence to refute what we heard yesterday, we would
7 have had it long ago. Her silence is truly damning.

8 Now, it's important to note, Your Honor, that
9 yesterday's hearing, as I stated, it was not anything eye
10 opening for any of the parties involved. We heard things we
11 knew we were going to hear, but it was the day of reckoning.
12 It was the day that we found out to what extent did Ms. Ahern
13 actually hurt the beneficiaries.

14 Because we already knew that she had breached her
15 fiduciary duties based on this Court's orders. We already
16 knew that she had, at some level, committed fraud based on
17 this Court's rulings regarding her accounting and other
18 things.

19 What we needed to know was to quantify and monetize
20 that damage, and that's what we've done, and that's what the
21 evidence presents.

22 Now, so what do we do with this clear and convincing
23 evidence, Your Honor? Well, it's simple, we award
24 compensatory punitive damages. The compensatory damages are
25 straightforward. The Movants believe, based on Mr. Waid's

1 testimony and the accounting that was authenticated, that Ms.
2 Ahern withheld approximately 2.5 million during months --
3 during the time of June 2013, to April 2015.

4 Now, although Mr. Waid returned a portion of that
5 money upon taking over as the Trustee, we believe that
6 compensatory damages in the case should still be set at
7 \$2,581,994.92 because that is the total amount that was
8 withheld and converted with a notation --

9 THE COURT: Well, okay. I see Ms. Ahern's hand, and I
10 also kind of got lost on that math.

11 So, Ms. Ahern, you had a question about that number?

12 MS. AHERN: I - yes, because I don't understand. Again,
13 he's terribly [indiscernible].

14 THE COURT: Okay. All right. So can you restate how you
15 reached that number Mister --

16 MR. KIEFER: Absolutely.

17 THE COURT: -- Kiefer?

18 MR. KIEFER: Sure.

19 THE COURT: Because I kind of lost track of it too.

20 MR. KIEFER: Sure. So there was approximately -- if you
21 look at the accounting, there was approximately \$188,000
22 withheld from the beneficiaries in 2013. In 2014, there was
23 approximately 2,022,000, I believe, withheld. Then, in the
24 first quarter of 2015, there was an additional amount of
25 somewhere in the neighborhood of 5 to \$600,000, and this was

1 in the testimony yesterday. That total amount withheld for
2 all three years -- again, the only full year of withholding
3 was 2014, was \$2,581,994.92. A portion of that has been
4 repaid, but was only repaid after it was stolen by Mr. Waid,
5 the third party, and he repaid 800,000 -- \$839,941.92.

6 THE COURT: Okay. Let me get this straight so we know
7 exactly what we're looking at here. You're referring us to
8 Exhibit Number 43.

9 MR. KIEFER: Correct.

10 THE COURT: That's Mr. Waid's Accounting and Report of
11 Trust Activity --

12 MR. KIEFER: And the sum --

13 THE COURT: -- and specifically you're looking at Exhibit
14 B.

15 MR. KIEFER: Correct.

16 THE COURT: Okay. So Exhibit B tells us this is the --
17 from when the distributions to the 65 percent beneficiaries
18 stopped, until when Mr. Waid took over. So that's 2013, 2014,
19 and 2015, the first quarter of 2015.

20 So the amount -- when you say "repaid" -- I guess
21 that's the thing that I didn't understand -- stand. I -- it
22 seemed to me that Mr. Waid said the net that he had been
23 unable to recover was about 600,000.

24 MR. KIEFER: So the total amount, right now, outstanding
25 that has not been repaid to the beneficiaries is indicated at

1 the last line of the summary. It's approximately 1.7 million,
2 all the way to the right.

3 THE COURT: 1.742?

4 MR. KIEFER: Correct.

5 THE COURT: Okay. And so, that's what I'm kind of
6 missing here --

7 MR. KIEFER: Sure.

8 THE COURT: -- is -- so 65 percent of the Connell income,
9 and this is based -- there's another 25 percent beneficiary of
10 this Trust. And those -- distant family members have
11 cooperated and told Mr. Waid how much they got for the full 25
12 percent.

13 MR. KIEFER: Correct.

14 THE COURT: He then based his analysis on the 65/35 split
15 from the W.N. Connell Trust.

16 MR. KIEFER: Extrapolated from what the Millers received
17 to understand what --

18 THE COURT: The Millers, thanks. That's their name, the
19 Millers.

20 So from what the Millers received as a full 25
21 percent beneficiary, he did his analysis on 65/35 based on
22 their numbers?

23 MR. KIEFER: Well, he --

24 THE COURT: I think he confirmed that with Apache?

25 MR. KIEFER: Correct. And he would have had one step in