

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 6: AAPP 626 through AAPP 750

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1 between, because as I understand it, the Millers received 25
2 percent as does the Connell Trust. So when you say 65/35,
3 you're splitting up 65/35 of the 25.

4 THE COURT: Correct. Okay.

5 MR. KIEFER: Does that make sense?

6 THE COURT: So that's where we got our number. That's
7 how we -- that's the basis upon which we understand the total
8 amount that should have been coming in to the -- the total
9 amount coming into the --

10 MR. KIEFER: Correct.

11 THE COURT: -- W.N. Connell Marjorie Connell Trust.

12 Okay. Got it.

13 So that's how he did his breakdown, so that when he
14 says that: Over the same period of time the Millers and the
15 Connell Trust -- there's about \$90,000 difference in what the
16 two Trusts apparently received.

17 So 65 percent of the Connell income, over that
18 period of time was -- the 20 -- of the total amount, was
19 \$3,956,550. That's how much should have been going into the
20 60 -- 65 percent share of this Trust?

21 MR. KIEFER: Correct, Your Honor.

22 THE COURT: And the amount they actually received -- and
23 by that -- is this \$2,214,497, is that how much Mr. Waid has
24 recovered?

25 MR. KIEFER: That's how much has actually been

1 distributed to the MTC Trust.

2 THE COURT: When you say "distributed to the Trust", what
3 does that mean?

4 MR. KIEFER: Meaning the 65 percent has been allocated
5 and given away.

6 THE COURT: By you say -- when you say "given away",
7 given away to whom?

8 MR. KIEFER: The MTC Trust to distribute to its
9 beneficiaries.

10 THE COURT: And has that been done?

11 MR. KIEFER: Yes, it has.

12 THE COURT: I'm sorry. And I think Ms. Ahern and I are
13 both having trouble following this math.

14 So, Ms. Ahern, you've got your hand up?

15 MR. KIEFER: And I think I can --

16 MS. AHERN: I'm having a terrible time following it
17 because his voice drops and when he gets to the last ten
18 words, and I can't hear.

19 THE COURT: Okay. All right, Miss --

20 MS. AHERN: I just can't hear.

21 THE COURT: Okay. So we're going to try to work our way
22 through this. We'll try to speak louder and --

23 MS. AHERN: Your Honor, he goes fast.

24 THE COURT: Okay.

25 MS. AHERN: He goes too fast and I can't catch it.

1 THE COURT: All right. All right. We're going to speak
2 slowly and loudly.

3 Okay. So the 65 percent of Connell income over that
4 entire period of time, roughly 27 -- 2013, 2014, and, and the
5 first quarter of 2015. The 65 percent amount should have been
6 \$3,956,550. That's how much should have come in to the 65
7 percent portion and been segregated that's -- according to
8 Court's Order.

9 What has been recovered and distributed is
10 \$2,214,497. That leaves us with \$1,742,053.

11 MR. KIEFER: Correct.

12 THE COURT: Okay. So where does \$1,742,000 go? I mean
13 was it never recovered by Mr. Waid?

14 MR. KIEFER: Yeah. That's all the expenses that we went
15 through yesterday. He --

16 THE COURT: Oh, okay.

17 MR. KIEFER: He --

18 THE COURT: So some of the -- so -- because it was a
19 little unclear yesterday because Mr. Waid talked about how
20 much money was still not recovered. That I understood to be
21 about \$600,000. That's just disappeared. It's just money
22 that he can't find where it went --

23 MR. KIEFER: Right.

24 THE COURT: -- at all.

25 MR. KIEFER: And to the --

1 THE COURT: And the balance of it is money that it's --
2 the position was improperly expensed to the Trust should not
3 have been Trust expenses?

4 MR. KIEFER: Yes. That's exactly --

5 THE COURT: Do we know what the exact -- how much is how
6 much?

7 MR. KIEFER: Well, the --

8 THE COURT: Because there's two categories.

9 MR. KIEFER: The simplest way to look at it, Your Honor,
10 is to --

11 THE COURT: Uh-huh.

12 MR. KIEFER: -- simply look at what was left in the
13 account.

14 THE COURT: Uh-huh.

15 MR. KIEFER: He hasn't -- he hasn't -- the account was
16 left with 9,000 approximate dollars.

17 THE COURT: Right.

18 MR. KIEFER: And so, he just reverse engineered this.
19 Instead of looking at what she spent and what she did --

20 THE COURT: Uh-huh.

21 MR. KIEFER: -- and he couldn't justify any of her
22 expenses, he had to look at what was the total -- [Ms. Ahern
23 waiving hand up and down].

24 THE COURT: Ms. Ahern, you have to stop. When I am
25 asking Counsel a question, Counsel has to answer my question

1 before he can get to your question, so just wait.

2 MS. AHERN: I have no question. There's a lawnmower
3 outside and I can't hear a word he's saying. Can we take a
4 five-minute break?

5 THE COURT: Okay. We'll take a break. Give us a break.
6 All right. We'll go off the record here for a minute. Okay.

7 [Recess at 10:37 a.m.]

8 [Resumed at 10:40 a.m.]

9 THE COURT: Let us know when the noise -- the background
10 noise has stopped.

11 MS. AHERN: The noise stopped. Thank you, I appreciate
12 that.

13 THE COURT: Can you hear now?

14 MS. AHERN: Yes, I can hear --

15 THE COURT: Okay, so --

16 MS. AHERN: -- very nicely.

17 MR. KIEFER: All right, so Mr. Kiefer, do you remember
18 where we were, I forgot?

19 MR. KIEFER: I think the ball was in my court --

20 THE COURT: Uh-huh.

21 MR. KIEFER: -- to try and explain how the 1.742 -- \$1.7
22 million number was obtained.

23 THE COURT: Okay. I just want to make sure that I
24 understand, though that a portion -- for example, the \$1.2
25 million cashier checks, several of these items that Mr. Waid

1 talked about were recovered, and the net that's left, the
2 1,742,000, that includes the money that is just gone. He has
3 -- there's an amount of money, I seem to recall it being over
4 \$600,000 that he cannot figure out where it went. There's no
5 record of where this money, that everything indicates was
6 received, there's just no record that tells us where it went.

7 MR. KIEFER: And that's an element of the 1.7 --

8 THE COURT: And the rest of it is those funds that Mr.
9 Waid identified as just having been -- these were not proper
10 use of Trust funds.

11 MR. KIEFER: And most importantly, they had been spent.
12 He just --

13 THE COURT: Correct. Yeah, they're unrecoverable.

14 MR. KIEFER: Exactly. So --

15 THE COURT: Correct.

16 MR. KIEFER: -- when he took over -- his testimony
17 yesterday was, when he took over in April of 2015, the
18 segregated 65 percent account should have contained
19 \$2,581,994, it didn't. It contained somewhere in the 9,000
20 range.

21 What he's been doing is -- now, I'm sure you're
22 wondering, what's the difference between that number and the
23 1.7 million, and that's the fact that he has been able to
24 recover some funds and return them to the MTC Trust. So he --

25 THE COURT: Now, did he ever do anything about figuring

1 out what happened to the 35 percent? Because there would have
2 been roughly, what, \$2 million over that period of time that
3 was Mrs. Connell's to do with as she pleased. Did he take --
4 did he look at anything about her 35 percent?

5 MR. KIEFER: I, I just couldn't speak to that, I - I
6 don't know.

7 THE COURT: I mean try to figure out where maybe some of
8 this \$600,000 got into her 35 percent?

9 MR. KIEFER: My understanding is that he looked at all
10 aspects, because really, the total income for the Trust would
11 have been over those three years, the 6 million.

12 THE COURT: Right.

13 MR. KIEFER: Whether or not he has specific knowledge of
14 what she did with her approximate 2 million, I don't want to
15 speak out of turn.

16 THE COURT: Okay. I just - I just didn't know. Okay.

17 MR. KIEFER: So with that said, did you want to discuss
18 the chart more or did you want me to close up?

19 THE COURT: Oh, no. No. So I understand now this chart.
20 And then the other thing that we had talked about I -- well, I
21 think that Mr. Powell talked to -- that I flagged, but Mr.
22 Powell talked to Mr. Waid about, was - okay. In his report --
23 this is --

24 MR. KIEFER: And I apologize, Mr. Waid's report?

25 THE COURT: Mr. Waid's Report. Uh-huh. Yeah. His 2015

1 Report on Page 10. You may not have this in front of you.

2 But that's where I -- that's where I got the \$600,000 number --

3 MR. KIEFER: Uh-huh.

4 THE COURT: -- as what I understand is Miss, is what he
5 termed "estimated shortfall" due by Ms. Ahern, was
6 \$664,132.05. So that's the money that it seems like it just
7 disappeared.

8 MR. KIEFER: I believe that's correct, Your Honor.

9 THE COURT: So he -- and the third element of what's just
10 gone or has been spent is this, the fact that we had to
11 overpay taxes because we -- there should -- these taxes
12 shouldn't have to have been paid if the Trust had been
13 properly managed, and so, that was about an \$800,000 tax
14 liability that a portion may ultimately be recovered?

15 MR. KIEFER: Correct. And if it does, it would certainly
16 go to satisfy any judgment that we get. What -- we wouldn't
17 -- we wouldn't ever be arguing that recovery of those funds
18 wouldn't satisfy the judgment separately. Anything he gets
19 that could be then paid --

20 THE COURT: Right.

21 MR. KIEFER: -- to our client --

22 THE COURT: Okay.

23 MR. KIEFER: -- would be a satisfaction of that.

24 And I think the other confusing thing too, Your
25 Honor, is that the 2015 column, unfortunately, is not broken

1 down by quarter, and Mr. Waid took over for the last three
2 quarters of 2015 --

3 THE COURT: Correct.

4 MR. KIEFER: -- and so that's what kind of creates the
5 confusion there.

6 THE COURT: Okay. Thank you. Yeah. And then there was
7 like this whole long list. I think that's Exhibit A to Mr.
8 Waid's Report for this - for the one that he just filed,
9 Exhibit 43.

10 MR. KIEFER: Uh-huh.

11 THE COURT: The Accounting Report of Trust Activity that
12 was just filed on February 1st. I don't know, is this an
13 Excel spreadsheet or something?

14 MR. KIEFER: I think it is, I think it's -

15 THE COURT: Yeah.

16 MR. KIEFER: -- converted to Word or something.

17 THE COURT: Yeah, Exhibit A. Did anybody do the math --

18 MR. KIEFER: Well, here's how he got --

19 THE COURT: -- because it doesn't total.

20 MR. KIEFER: And I totally get that.

21 THE COURT: What's the total of this?

22 MR. KIEFER: He reverse engineered it.

23 THE COURT: Okay.

24 MR. KIEFER: Because what he did was, he went to the
25 Millers to figure out what they got, used that to figure out

1 what the Connelly's [phonetic] got, and then used that to
2 figure out what the MTC Trust should have gotten.

3 THE COURT: Uh-huh.

4 MR. KIEFER: He tried then to reconcile the number -- the
5 3.9 million that they should have received -- or sorry, the
6 2.5 million that should have been left over with what was
7 spent. The problem is that, because Ms. Ahern wasn't
8 cooperating, giving him information, all we know is what
9 should have been received.

10 We don't necessarily -- where it went -- know where
11 it went, and that's what a part of what he was explaining. He
12 says: Look, a portion of it went to all these lavish expenses
13 outlined in call -- in A. A portion of it went to paying this
14 tax liability, and a portion of it no one knows, because that
15 comes into the cashier's checks issue. We just don't know.

16 So he couldn't -- it had to be reverse engineered,
17 which makes sense, because in most fraud cases, you're dealing
18 with circumstantial evidence instead of direct admissions.
19 And so he had to figure out what should have been paid and
20 work it backwards, because he wasn't able to track everything
21 that was paid, if that kind of helps.

22 THE COURT: No. But okay.

23 MR. KIEFER: Well, if I may? The summary of what he said
24 was: From June 2013, to April 2015, the MTC Trust should have
25 received 2.5 million 81,000 dollars, and it should have been

1 sitting in a sweet little account when he took over.

2 THE COURT: Uh-huh.

3 MR. KIEFER: It wasn't.

4 THE COURT: Uh-huh.

5 MR. KIEFER: There was \$9,000. He's been able to figure
6 out where some of that money went and recover some of it, and
7 the money he did recover, he gave to the MTC Trust, but the
8 rest of it is gone.

9 So it -- in my mind it's less important to know
10 where it went, because if we want to know where it went, we're
11 all ears, Ms. Ahern could have told us, but we know what we
12 should have received --

13 THE COURT: Uh-huh.

14 MR. KIEFER: -- and what we didn't, and that's how we
15 based our damages amount.

16 THE COURT: Okay.

17 MR. KIEFER: And so, the outstanding balance still owed
18 is the 1.742 million.

19 THE COURT: Okay.

20 MR. KIEFER: And the reason that I've mentioned so many
21 times the 2.5 million is because that was the amount that was
22 stolen.

23 And so, Your Honor, that -- we ask -- we understand
24 that a portion of the 2.5 million has been satisfied leaving
25 an outstanding balance of \$1,742,053. That's the outstanding

1 amount owed on the compensatory damages.

2 Now, punitive damages. We created a little
3 confusion in our Brief and we apologize for that. We kind of
4 interchanged the idea of treble and punitive.

5 Treble is just a separate form of punitive damages.
6 We're asking for punitive damages under NRS 42.005. Now, as
7 you know, Your Honor, that's allowed when the party acts in
8 malice, oppression, or fraud, and the Court has the discretion
9 to award punitive damages. And they're often awarded when
10 doing so will properly punish the wrongdoer while deterring
11 others from similar conduct.

12 Now, Ms. Ahern's actions in this case, they speak
13 for themselves. I think we're aware. Your Honor has
14 articulated numerous times some of the mistakes that have been
15 made, and if I say so, some of the fraud that's been
16 committed.

17 THE COURT: Okay. We're going to take a moment here.

18 Ms. Ahern, you had a question?

19 MS. AHERN: He's once again talking too fast and dropping
20 his voice.

21 THE COURT: Okay. All right. We'll try to remember to
22 keep up our voices and speak very slowly. It's not easy for
23 some of us.

24 MR. KIEFER: I apologize.

25 THE COURT: I feel your pain.

1 MR. KIEFER: So, in this case, we believe, not only
2 through yesterday's Evidentiary Hearing, but through other
3 evidentiary hearings that have been held, and through this
4 Court's orders; it has already been demonstrated that Ms.
5 Ahern acted with recklessness, malice, and with fraud.

6 What we're asking, is that she be held accountable
7 for that. She's unrepentant. She doesn't care that she lied,
8 cheated, and stole, nor does she care that she has continually
9 flouted this Court's orders. This Court has told her to do
10 things on numerous occasions and she simply ignores them.

11 Now, what we'd like the Court to remember is that
12 Nevada is a Trust-Friendly State. We are constantly adding
13 new fiduciaries to the fold. We need to know, and they need
14 to know, the level of diligence that is expected of a Trustee,
15 and Ms. Ahern can serve as an example of what not to do, but
16 only if the Court makes an example of her.

17 And that's why we're asking, Your Honor, for
18 punitive damages three times the compensatory amount. And
19 when I say three times, I'm referencing the amount stolen of
20 2.5 million.

21 THE COURT: Uh-huh.

22 MR. KIEFER: And so, with that, I will state as clearly
23 as I can, the requested relief that I've written down.

24 THE COURT: Okay.

25 MR. KIEFER: The Movants ask that they be awarded

1 compensatory damages in the amount of 2.581 -- \$2,581,994.92
2 and punitive damages pursuant to NRS 42.005 in the amount of
3 \$7,745,994.76, for a total award of 10,327,979.68. Of course
4 the judgment can reflect a satisfaction of \$839,941.92 from
5 the compensatory damages for the funds provided to the Movants
6 by the Successor Trustee.

7 And that is what we're requesting, Your Honor.
8 We're also requesting that applicable prejudgment interest be
9 added and, of course, when the time is right, we will bring
10 our Petition or Motion for Attorney's Fees and Costs.

11 We believe that the evidence and the facts of this
12 case support such an award, especially in light of Ms. Ahern's
13 continued misconduct and her willingness to repeatedly violate
14 Court Order and shun her nose at this entire process.

15 Thank you.

16 THE COURT: Okay. If I could ask you some questions
17 about these numbers? This is where, for me, some of the cat -
18 - this is why I wanted to know how Mr. Waid categorized
19 certain things.

20 MR. KIEFER: Sure.

21 THE COURT: For me, the thing that has been most
22 troubling is that after being told to segregate the 65 percent
23 and to hold it pending the Supreme Court decision that was
24 finally received on January 26th, 2017; that decision
25 confirmed that, in fact, the Court was correct in stating that

1 Marjorie's wishes that the 65 percent go to her daughter --
2 her granddaughters, was interfered with and that that was a
3 breach of fiduciary duty on the part of Ms. Ahern.

4 And so, she is -- she's obligated to pay damages for
5 the fact that she, without asking for -- petition for
6 direction from this Court -- Petition for Instructions, just
7 stopped making that payment of the 65 percent. So that's one
8 part of it.

9 The second part of it is that, then she did certain
10 things with the 65 percent that she shouldn't have done,
11 particularly this flurry right at the end where she was about
12 to be removed or had been removed, and there are all these
13 weird financial transactions of moving money around.

14 Now, we know how much Mr. Waid ultimately recovered.
15 The problem is, I don't know that he -- I'm having a hard time
16 understanding when he recovered funds how -- if some of the
17 funds he recovered -- because he got the check for \$1.2
18 million, for example -- was some of that part of the 35
19 percent, and the other part 65 percent?

20 And then if -- because -- and the reason why this
21 matters -- it doesn't matter to the ultimate amount that was
22 owing to the MTC trust -- I don't have any problem with his
23 calculations there. My problem is for figuring out damages.

24 So, he recovered a fairly substantial sum of money
25 on behalf of the total Trust because he's acting for



1 everybody, not just for Ms. Ahern, but also -- not just for
2 the 65 percent beneficiaries, he's acting for the entire
3 Trust. And he recovered a huge amount of money that had been
4 moved around to various financial institutions, some of which
5 were not actually financial institutions, but seemed to be
6 fronts for some sort of scheme.

7 So that's the problem that I have here is in
8 figuring out -- when you say the net amount that was owed that
9 should have been segregated for the MTC Trust, the 65 percent
10 is \$2,581,994. I get that math. I understand that in its
11 entirety.

12 I'm not understanding how we went from the amount
13 that Mr. Waid recovered to repaying the Trust beneficiaries
14 839,000. Now, I understand that a big chunk of what Mr. Waid
15 recovered had to be sent to the IRS, and that's where we're
16 hoping that some of the \$800,000 that went to the IRS, and
17 that we might get a refund back for the Trust, may be 50
18 percent -- may be 400,000 will come back into the Trust, so
19 that leaves us with some \$400,000 that went to the IRS that
20 shouldn't have, if the Trust had been properly managed.

21 So some of this I understand is just gone. And then
22 was the balance of it - it just - I mean, it's just sitting
23 over there in the IRS and it can't be accounted for in this.

24 Did some of it go with the 35 percent of what Mr.
25 Waid recovered?



1 MR. KIEFER: Well, and I think the important part to
2 remember is that during this -- the last three quarters of
3 2015, because Mr. Waid was then managing the Trust. He was
4 getting new income that was coming in and that shows the
5 income that was distributed. And anything he was --

6 THE COURT: And so that's a problem for me, because I
7 need to make sure that when we do this accounting that we are
8 not giving credit to having recovered funds for the 65 percent
9 beneficiaries that were, in fact, not from recovering what was
10 lost or misused or misspent during Ms. Ahern's era, but is new
11 money coming in. I mean, we all know there's been a problem
12 with certain people using new money that comes into Trust
13 accounts to pay --

14 MR. KIEFER: Sure.

15 THE COURT: Now, we won't do that. We want to make very
16 clear that we are segregating what happened in the past --

17 MR. KIEFER: Uh-huh.

18 THE COURT: -- from the new money coming in. And I know
19 Mr. Waid probably did this, he just didn't get into it, but --
20 so I'm assuming that there's been new money coming into the
21 Trust account that he's not even talking to us about.

22 MR. KIEFER: Correct.

23 THE COURT: He is merely doing this -- the reports we
24 have are retrospective. This is what happened, as best he can
25 figure out, during those months from 2013 to first quarter

1 2015. He went back and recalculated all that and tried to
2 rebuild it and tried to figure out what should have been
3 there, what could he trace, where did it go that was probably
4 improper, and I - and what's just missing?

5 MR. KIEFER: And -- exactly. And I think his testimony
6 in that regard is clear, because what he's saying is: Take
7 out - take out of the consideration what they've been getting
8 in 2016 and what they're getting going forward.

9 THE COURT: Right. Exactly. He -- that's - that's --

10 MR. KIEFER: What they're still owed --

11 THE COURT: -- the future --

12 MR. KIEFER: -- for '13, '14, and '15 is 1.7 million.

13 THE COURT: Okay. So 1.7 million is still owed.

14 The report that we have that's Exhibit A --

15 MR. KIEFER: Uh-huh.

16 THE COURT: -- to Mr. Waid's testimony for today -- for
17 this hearing, his spreadsheet -- these are all the -- and this
18 is - this is not inclusive because there's \$600,000 he just
19 can't trace because of lack of cooperation, because of lack of
20 records. It's just gone, and we don't know what happened to
21 \$600,000.

22 MR. KIEFER: Correct.

23 THE COURT: To the best that he can figure out, a chunk
24 of money that he recovered had to go to pay the IRS, because
25 there was a huge tax liability, huge tax liability, that

1 should never have been incurred.

2 And then the rest of this -- and that's not on
3 here -- the rest of this is what he was able to reestablish
4 through records he could gather. Against everybody's efforts
5 to obstruct him, he was able to reconstruct this much on
6 behalf of -- of the beneficiaries as to where money went
7 during that 2013, '14, and '15 time period?

8 MR. KIEFER: Correct.

9 THE COURT: Okay. Got it. He doesn't total this up and
10 tell us how much he was about to reconstruct --

11 MR. KIEFER: And here's why. Because even if Exhibit A
12 was not submitted as part of this accounting --

13 THE COURT: Right.

14 MR. KIEFER: -- his ultimate conclusion of what is still
15 owed would stand. Whether or not he can find where that
16 missing 1.7 million is is not relevant. She's had the
17 opportunity to come in and tell him this was a legitimate
18 expense --

19 THE COURT: Okay. Now I'm going to tell you why I think
20 this is relevant, because I understand that the total amount
21 that remains owed -- that -- \$2.5 million was -- should have
22 been kept for the 65 percent and it's gone.

23 A portion of that was used for improper expenses
24 over a period of time, and this is the thing I'm trying to
25 figure out is, is the issue with the entire \$2.5 million or is

1 the issue with just that? Because some of it, we know, was
2 just spent for things that it's just bad trustee practice.
3 You don't pay out of the Trust for your personal therapy, for
4 your private jet, for -- you know, as nice a dog as Captain is
5 or was, you don't pay for Captain out of our Trust, those
6 kinds of things.

7 So is that fraudulent? Is that in -- willful? We
8 don't have any testimony of that. We don't. We don't because
9 Ms. Ahern wouldn't cooperate and give a deposition, so we
10 don't know if this is just -- she's -- was really bad at this
11 job and kept really poor records and the Trustee -- her
12 Successor Trustee cannot figure out what happened, and there
13 is no intent to defraud here or -- because, clearly, a portion
14 of this money is just gone, and it was gone in violation of an
15 order saying: Hold the money in a trust account and don't
16 touch it, it's just gone.

17 So in trying to figure out how much of this is
18 appropriately segregated into, "The Court finds this much was
19 intentional, willful, and absolutely punitive damages are
20 warranted on this part. Oh, but over here on this other side
21 this is just bad Trustee practice. The Trustee's been
22 removed. The Supreme Court upheld removing the trustee
23 because the Trustee was doing things badly, and that's just
24 damages. They're absolutely entitled to those damages.
25 They're --



1 MR. KIEFER: I think I totally get it now --

2 THE COURT: -- totally entitled to those damages. I
3 don't question their --

4 MR. KIEFER: But it's whether or not those specific
5 damages result in an effect for punitive damages

6 THE COURT: Correct.

7 MR. KIEFER: And my argument to that would be simple, and
8 it may be over simplistic, so I apologize.

9 She's had ample opportunity to explain every expense
10 and has chosen not to. I believe that a negative inference is
11 appropriate --

12 THE COURT: Uh-huh.

13 MR. KIEFER: -- for all of her bad behavior that cannot
14 be explained.

15 Mr. Waid, himself, believes that the actions were
16 fraudulent. She's had every opportunity to come in and speak
17 to that issue and has not participated once. Fraud is one of
18 the most difficult things to prove with direct evidence. It's
19 generally proven through circumstantial evidence.

20 We heard an expert talk to us about his experience
21 in investigating financial fraud. He reached the ultimate
22 conclusion that it was. My position would be that all of it
23 may serve as a hook for punitive damages because the negative
24 inference can apply to all of it simply due to her refusal to
25 even answer his most basic questions and instruct attorney's



1 offices to turn over unredacted or even redacted billing
2 statements.

3 THE COURT: Okay. So we have in Nevada an evidentiary
4 presumption found in *Bass-Davis v. Davis*, 122 Nev. 442, 134,
5 P.3d, 103. It's a 2006 decision. And it sets up for us two
6 different presumptions.

7 The first presumption being:

8 "Where relevant evidence which would properly
9 be a part of this litigation is within the control
10 of one party whose interest it would naturally be to
11 produce it, and they fail to do so without a
12 satisfactory explanation, the jury or the finder of
13 fact in this case may draw an inference that such
14 evidence would have been unfavorable to that party.

15 An inference means a logical and reasonable
16 conclusion of a fact not presented by direct
17 evidence but which, by process of logic and reason,
18 the fact finder may conclude exists from the
19 established fact."

20 There's a second evidentiary presumption which is:

21 "That where there has been willful suppression,
22 the law creates a rebuttable presumption that the
23 evidence would be adverse to the person or company
24 suppressing it. Willful suppression means the
25 willful or intentional spoliation of evidence and



1 requires the intent to harm another party through
2 its destruction and not simply the intent to destroy
3 the evidence.

4 When a party seeking the presumption's benefit
5 has demonstrated that the evidence was destroyed
6 with intent to harm another party, the presumption
7 that the evidence was adverse applies, and the
8 burden of proof shifts to the party who destroyed
9 the evidence to rebut the presumption.

10 The destroying party must then prove, by a
11 preponderance of the evidence, that the destroyed
12 evidence was not unfavorable. If not rebutted, the
13 jury or finder of fact is required to presume that
14 the evidence was adverse to destroying party."

15 And it's your position that your clients are
16 entitled to a rebuttal presumption here because there was a
17 willful suppression of evidence?

18 MR. KIEFER: Exactly. And I'll give you an example.

19 THE COURT: Okay. We're going to take a question from
20 Ms. Ahern here, and then you can give me your example. So if
21 you'll just hold that thought for one moment.

22 Ms. Ahern, you had a question?

23 MS. AHERN: [No verbal response].

24 THE COURT: Oh, I'm sorry, again. We need your
25 microphone turned on. I'm sorry. We can't hear you. We

1 can't hear. We've lost - we've lost your audio. Okay. I
2 think you're saying you can't hear me. I -- have we lost the
3 audio? We've lost her audio. I can't tell if we lost our
4 audio on her end. Kerry can --

5 THE CLERK: Judge, it's just a matter of she hits her
6 little mute button --

7 THE COURT: Okay.

8 COURT RECORDER: -- she can -

9 MR. MOODY: I think she --

10 THE COURT: You need to unmute us --

11 MR. POWELL: Your Honor, I think, if I'm not mistaken,
12 reading her lips, I think she's saying, "I can't see you is
13 what I believe she's saying with her lips."

14 THE COURT: Uh-huh.

15 COURT RECORDER: Judge, do you want me to email the Court
16 Help Desk?

17 MR. MOODY: I cannot see you is what she's --

18 THE COURT: Okay.

19 MR. MOODY: -- mouthing.

20 COURT RECORDER: Okay. I'll email.

21 THE COURT: Okay. Give us a minute. We can't hear you,
22 so you need to unmute on your end. Can you hear us?

23 MR. POWELL: I cannot.

24 THE COURT: I can't talk? We've lost -- we're having
25 some issues. Give us a minute.

1 MR. KIEFER: Would you like to go off the record --

2 THE COURT: Yeah. We're going to go off the record.

3 Hold on. I'll see. I can't tell.

4 [Recess taken at 11:05 a.m.]

5 [Resumed at 11:17 a.m.]

6 THE COURT: Okay. Ms. Ahern, do you have your audio and
7 video back? You can see us?

8 MS. AHERN: Yup, I have it back.

9 THE COURT: Okay. Great. So we've taken advantage of
10 the break. We're all back. We're ready to go again.

11 Okay. So, thank you.

12 MS. AHERN: So am I.

13 THE COURT: Did you have a question?

14 MS. AHERN: Thank you.

15 THE COURT: Okay. Well, then we're ready to resume? All
16 right. Thanks.

17 MS. AHERN: I had asked for the regulation but she will
18 get it to me.

19 THE COURT: She's emailing it to you. Yes.

20 MS. AHERN: Yes. She will.

21 THE COURT: Linda should have emailed it to you. Okay.

22 MS. AHERN: I don't want to go searching because I don't
23 want to get out of where I am.

24 THE COURT: Okay. No, no problem, but she -- you should
25 have it when you're done, because Linda will have emailed it

1 to you.

2 MS. AHERN: All right.

3 THE COURT: Okay. Thanks.

4 MS. AHERN: Thank you.

5 THE COURT: Uh-huh.

6 MR. KIEFER: I was in the process of, I believe, giving
7 an example or two of the behavior that I believe allows the
8 more severe inference.

9 The first example I would cite, Your Honor, is the
10 subpoenas to the various counsel. So Fred -- Mr. Waid sent
11 out these subpoenas to various attorneys based on these
12 immense amount of monies that were given as retainers to the
13 attorneys, and all Ms. Ahern would have had to do -- and it
14 would have been to her financial advantage to do so to
15 demonstrate that they were Trust expenses, was instruct those
16 attorneys to comply with the subpoenas. And not only did she
17 not, she actively sought against it.

18 The other example I would give, Your Honor, is the
19 consistent use of cashier's checks. As we heard in the
20 testimony, the most difficult part of tracking the funds was
21 that Mr. Waid's testimony clarified that Ms. Ahern was
22 receiving the funds directly from the oil company and then not
23 depositing the checks, but making them out to cash and then
24 converting them to cashier's checks. That is also indicative.

25 That's badger fraud, in a sense, because she was

1 instructed specifically by the Court to segregate funds in an
2 account and not touch them, and she wasn't even allowing them
3 to flow into the account, but instead, creating cashier's
4 checks. And, in fact, if I'm understanding Mr. Waid's
5 testimony correctly from the other day, the 1.2 million was
6 after the order saying, "Don't touch it," and after she was
7 replaced she went and got a \$1.2 million cashier's check.

8 So I think all of those things together, along with
9 her failure to provide any information whatsoever allow the
10 negative inference that Your Honor has discussed from 122 Nev.
11 442.

12 THE COURT: Okay. Thanks.

13 All right. And, again, for my purposes, in my
14 analysis of what's under the statute rises to the level of
15 punitive damages versus what is just what the Supreme Court
16 has already said appropriately -- the Trustee was
17 appropriately removed and owes the money back. I mean they
18 endorse that in the decision that came out on January 26th.
19 Absolutely.

20 So I guess that's the concern. It says here that
21 "Eleanor should not benefit from her own failure to perform
22 her duties as a Trustee." And that's kind of the basic
23 principle that they are affirming the decision to remove her
24 on.

25 It's -- and it states that:

1 "Unilaterally ceasing distribution to
2 Respondents, to the beneficiaries, without seeking
3 court instructions, and when she advocated as a
4 Trustee for a Trust interpretation favoring herself
5 as a beneficiary, attorney's fees were warranted,
6 and indicating that the Trustee may not advocate for
7 either side in dispute between beneficiaries" I

8 I mean all these things -- they confirmed that these
9 were inappropriate, you know, failures as a Trustee.

10 So I guess the kind of the problem that I have here
11 is that it seems to me that some of these expenses that Mr.
12 Waid has exhaustively tried to reconstruct -- and he has told
13 us he's done. There is nothing more that he can do given the
14 refusal to cooperate to try to reconstruct and figure out
15 where the missing \$600,064 is, it's just gone, and nobody
16 knows where that went.

17 Of some of the funds that he's able to identify,
18 there's like, 800,000 that we know went to the IRS, and we
19 just don't know if it's recoverable or not. The rest is a
20 lengthy spreadsheet that appears in Exhibit A and some of
21 these, it appears to me, would be violations of the Court
22 orders, but some of them are just, as was pointed out earlier,
23 just bad Trustee practice which is why she was appropriately
24 removed and, you know, she -- money has to be clawed back.

25 So that's my problem in saying this rises to the

1 level of punitive damages on the whole amount. I will tell
2 you with all respect for your argument, I'm just not prepared
3 to go there. For one thing, it's difficult for me to say that
4 we need to award punitive damages on a treble amount when we
5 don't yet know that it's final, and this is what Mr. Waid told
6 us and Ms. Ahern's question the other day of: Where's the
7 final accounting? Where's the 2016 accounting?

8 He doesn't know yet what the final numbers are
9 because we have this tax liability that is being contested
10 that ultimately some portion, we hope, through, you know, good
11 accounting and advocacy, can be recovered for the Trust. So
12 to award punitive damages on something we don't know how much
13 that's going to be, it may not be the final damage amount --

14 MR. KIEFER: Well, and I can --

15 THE COURT: -- I'm kind of troubled by that.

16 MR. KIEFER: I think I can clarify that, as well. The
17 \$800,000 tax liability was not paid by Ms. Ahern. It was
18 incurred by Ms. Ahern and paid by Mr. Waid.

19 THE COURT: Okay. So that's not part of the --

20 MR. KIEFER: Correct.

21 THE COURT: -- money that he recovered and paid out?

22 I thought he paid that tax liability upon clawing
23 back, like, the \$1.2 million. He paid the \$800,000 --

24 MR. KIEFER: Correct. But what I'm saying is is that we
25 can't give Ms. Ahern the benefit of saying, "Oh, well, there

1 was 2 point - there's supposed to be \$2.5 million in the
2 account, but there wasn't. You spent 800,000 of it on taxes,
3 she didn't. She didn't spend any money on taxes, Mr. Waid
4 did. She used it for something else, and he went and got it
5 back. So we can't give her the benefit of saying, "Well, I
6 understand you paid a -- she didn't pay a tax liability, she
7 incurred it, he paid it. She paid it to someone else and he
8 went and got it back.

9 THE COURT: Okay. I'm not -- think -- I'm not sure we're
10 following -- we're on the same track here.

11 MR. KIEFER: Sure.

12 THE COURT: The total amount and I don't dispute this,
13 and his math, I believe, is 100-percent correct. And he has
14 done everything he can to reconstruct this. And it's very
15 clear how much money should have been in the Trust account,
16 \$2.5 million. No question.

17 And my point is that we've been able to - if I have
18 to look at which portions of that \$2.5 million warrant the
19 imposition of punitive damages. With all due respect, I'm not
20 convinced the entire amount does.

21 MR. KIEFER: I understand that. And I understand --

22 THE COURT: And one of the things that troubles me is
23 that out of that \$2.58 million, a portion of that is these
24 taxes that he had to -- when he recovered money -- when he
25 recovered that check for \$1.2 million, I'm sure he would have

1 liked to have just distributed it to the other beneficiaries.
2 He couldn't. He had to pay \$800,000 in income tax out of it.
3 See what I'm saying?

4 MR. KIEFER: I do except --

5 THE COURT: So, you know, that's money that, because of
6 bad Trustee practices, the Trust incurred. But I'm not -- I
7 don't necessarily see that that was willful, that she meant to
8 cause tax liability to the other beneficiaries. That's how
9 I'm analyzing this.

10 MR. KIEFER: And I --

11 THE COURT: I don't think we're on the same page on that.

12 MR. KIEFER: And so here's the issue with the taxes, Your
13 Honor. If I understand you correctly, what you're saying is,
14 "At the time that Mr. Waid took over there should have been
15 \$2.5 million in the bank account."

16 THE COURT: Right. That's the damages, totally.
17 Understood that.

18 MR. KIEFER: You're uncomfortable issuing punitive
19 damages on all 2.5 because she --

20 THE COURT: Right.

21 MR. KIEFER: -- had legitimate reasons taking any of it
22 out.

23 THE COURT: No. No.

24 MR. KIEFER: If she's not the one --

25 THE COURT: Not a legitimate reason. If I'm just saying

1 that some of it was not because of some intentional or willful
2 act, quite honestly, I do not see that her activity -- some of
3 these things she violated Court orders, for example, paying
4 attorneys. I have a problem with that.

5 But the fact that because she was just moving this
6 money around in a frantic and illogical fashion and ended up
7 holding funds that she shouldn't have held, so -- and how much
8 of this was because we told her you got to hold money in a
9 trust account that resulted in this tax liability that nobody
10 thought about? That's what's not been explained to me.

11 Is that tax liability her fault, or is it because
12 she was told to hold money in a Trust account pending the
13 outcome of an appeal that didn't happen for two more years?

14 MR. KIEFER: And I totally understand that, but it
15 wouldn't change the fact that \$2.5 million wasn't sitting in
16 the account. There's nothing about that tax liability that
17 changes that she willfully took all that money out, and if she
18 had wanted to explain why she had a \$1.2 million cashier's
19 check, she's had adequate opportunity. That would be my
20 point, Your Honor.

21 THE COURT: Okay. All right. Because exemplary and
22 punitive damages under NRS 42.005 - 001, it talks about the
23 conscious disregard, fraud, malice, or oppression and the
24 standards for that. The 42.005 provides that a -- in an
25 action for Breach of an Obligation not arising from a

1 contract, where it is proven by clear and convincing evidence
2 that the defendant has been guilty of oppression, fraud, or
3 malice, express or implied, the Plaintiff, in addition to
4 compensatory damages, may recover damages for the sake of
5 example and by way of punishing the defendant, except as
6 otherwise provided in this section by specific statute and
7 award of exemplary or punitive damages made pursuant to this
8 section may not exceed if it's -- if you recover less than a
9 hundred thousand dollars, then three times that, \$300,000 or
10 three times the amount of compensatory damages if more than a
11 hundred thousand dollars.

12 So, because this obligation was imposed as a
13 fiduciary and not the -- by the terms of the Trust itself,
14 there is a violation that subjects, I believe, Ms. Ahern to
15 some amount of punitive damages. I -- what I'm telling you
16 is, I am not convinced it's the entire 2.5 million.

17 MR. KIEFER: Understood.

18 THE COURT: I'm not under -- and I understand that there
19 -- to a certain extent there -- we have no choice but to
20 impose either the adverse inference or the rebuttal of
21 presumption, because this evidence and the opportunity to
22 explain these things was in Ms. Ahern's hands and she chose
23 not to go -- not to participate, not to provide the
24 information that might have exonerated and explained her -
25 self; I understand that.

1 But some of these things, it seems to me, that there
2 was \$2.5 million that wasn't there. I understand that, but a
3 large portion of it was found -- traced by Mr. Waid. He was
4 able to find it. He was able to claw it back, all except for
5 600,000 that is just simply gone. There is no explanation for
6 where it went. He can't explain through, apparently -- if I'm
7 understanding Exhibit A, this is not the missing \$600,000.
8 The \$600,000 just can't be accounted for.

9 One explanation for what happened to the balance of
10 the 2.5, like the other 1.9 million, is that, some of it was
11 misspent on these items, improper, Trustee shouldn't have done
12 it. And some of it is a tax liability of \$800,000 that had to
13 be paid. That's what I heard him say, "Make up the \$2.5
14 million." If I misunderstood him, please explain it.

15 MR. KIEFER: So the \$2.5 million, if it had been sitting
16 in a segregated account -- it's my understanding of Mr. Waid's
17 testimony, that if it had been sitting in a segregated account
18 for the MTC Trust and was there, it would have simply passed
19 through and not incurred a liability at all.

20 THE COURT: Correct. Uh-huh.

21 MR. KIEFER: The very fact --

22 MR. KIEFER: -- that it was gone is what created the
23 liability --

24 THE COURT: Uh-huh.

25 MR. KIEFER: -- so that can't possibly work to her favor

1 that by taking the money she -- the only reason the liability
2 was there, is that she disrupted the flow of the money through
3 the Trust.

4 THE COURT: But here's my, my problem. I'm not -- I
5 didn't hear him say, "If we had segregated the funds according
6 to Court order -- my problem is, I don't know if it would have
7 -- if by imposing the order saying segregate these funds, we
8 led to the Trust incurring tax liabilities. No expert has
9 come in and told me that, and that's a problem I have --

10 MR. KIEFER: Okay.

11 THE COURT: -- is, we told her hold these funds. And
12 that's my concern, and we don't know how much of that fact
13 that the Trust has incurred \$800,000 is because of this
14 litigation and the hold that was placed on the money --

15 MR. KIEFER: Sure.

16 THE COURT: -- because of the litigation.

17 MR. KIEFER: And I think we can find some common ground,
18 and perhaps it's in the cashier's check.

19 THE COURT: Uh-huh.

20 MR. KIEFER: When you get a cashier's check it is -- it's
21 a -- it's bare paper. You can take it and do anything you
22 want with it. After knowing that she wasn't allowed to touch
23 the money, she had a \$1.2 million cashier's check in her
24 possession. The fact that we got it back doesn't change what
25 her intent was when she took it, and I would argue that that

1 in and of itself is evidence --

2 THE COURT: Uh-huh.

3 MR. KIEFER: -- of fraud --

4 THE COURT: Uh-huh.

5 MR. KIEFER: -- and I would ask that the punitive damages
6 be based on an award of 1.2 million.

7 THE COURT: Okay. Okay. Thank you.

8 MR. KIEFER: Thank you.

9 THE COURT: I appreciate that.

10 MR. MOODY: Your Honor, can I -- I just feel like I need
11 to point --

12 THE COURT: Thanks, Mr. Moody.

13 MR. MOODY: -- just straighten one thing out.

14 THE COURT: Okay. Yeah.

15 MR. MOODY: If you'll remember Mr. Waid's testimony from
16 yesterday --

17 THE COURT: Yeah.

18 MR. MOODY: -- he said that at the end of one year,
19 rather than running the Trust down to zero, which would have
20 almost eliminated any tax liability, that Ms. Ahern carried
21 over a balance into the next year.

22 THE COURT: Uh-huh. Yeah. Okay.

23 MR. MOODY: That is where that enormous tax liability
24 came from because those funds were not properly distributed.

25 THE COURT: Was that the 2013?

1 MR. MOODY: It -- they were held from -- let me just say
2 that the \$800,000 tax liability was for 2014 and 2014 only.

3 THE COURT: Uh-huh.

4 MR. MOODY: There remain outstanding tax liabilities from
5 2011, 2012, and 2013, which adds to the complexity of all
6 this. But I can state, based on Mr. Waid's representations
7 and testimony yesterday, that the tax liability that was
8 incurred was because those funds -- not just because they
9 weren't properly segregated, but because they were held over
10 and, therefore, that Trust did incur a liability that it
11 should not have.

12 THE COURT: Thank you. All right.

13 The Court will award damages as follows:
14 Compensatory damages in the amount of \$2,581,994. This is the
15 amount that the Trust was harmed by Ms. Ahern's action and
16 that need to be recovered.

17 A portion of that has been recovered and paid, and
18 as I understand, the amount that Mr. Waid has paid back to the
19 65 percent beneficiaries is \$839,941; am I correct in that?
20 And that should be deducted from the 2.5?

21 MR. KIEFER: I apologize, Your Honor. Could you say that
22 number one more time?

23 THE COURT: That amount has been satisfied, \$839,941.

24 MR. KIEFER: And 92 cents. Correct, Your Honor.

25 THE COURT: And 92 cents --

1 MR. KIEFER: Yep.

2 THE COURT: -- has been satisfied of that amount?

3 MR. KIEFER: Correct, Your Honor.

4 THE COURT: However, certain actions appear to warrant
5 punitive damages, additional damages intended to punish and
6 discourage this kind of conduct. Because that's the thing
7 that has concerned me and it's concerned me since 2015 when
8 Ms. Ahern was removed, that there was this flurry of activity,
9 which appears intended at hiding the money.

10 And it's difficult to understand how much of the 2.5
11 million, because Ms. Ahern has refused to cooperate in this
12 inquiry and has obstructed it, and adverse inference should be
13 imposed on her. And the belief of the Court is that, if
14 discovery had been had into these matters it would have been
15 adverse to Ms. Ahern.

16 And the problem that I have here, is that, because
17 we were in litigation some of these funds had to be held, some
18 of them had to be segregated. So I am reluctant to impose
19 punitive damages on the entire \$2.5 million because I don't
20 know yet how much the final tax liability is going to be. I
21 don't know how much of that might have been influenced by the
22 litigation hold, so I'm reluctant to impose punitive damages
23 on the entire \$2.5 million.

24 However, Mr. Kiefer did point out a very interesting
25 fact and something that was really disturbing to Mr. Waid as a

1 Trustee, is holding funds in the form of a cashier's check,
2 totally improper. No Trustee should ever do that, very bad
3 practice. Needs to be discouraged, and clearly appears to
4 have been intended to defraud the Trust.

5 The fact that Mr. Waid was able to recover that
6 money is something for which we can be thankful, but which
7 does not excuse the fact that it never should have been done
8 in the first place. That appears, to me, to have been
9 undertaken with conscious disregard of the rights of the
10 remainder beneficiaries, appears to have been fraudulent.

11 While it may not have been, and that's a very high
12 standard to meet, because of the lack of evidence Mrs. Ahern
13 has been -- refused to cooperate or provide -- we have to
14 infer that it would have been adverse to her, and so that
15 fraud would have been proven. It appears to have been done
16 with malice, intentional malice, and oppression. Again, we
17 have no evidence would disabuse the Court of this belief,
18 because Mrs. Ahern has refused to cooperate in this inquiry.

19 So I am going to award punitive damages pursuant to
20 NRS 42.005 on a portion of the total damages. That would be
21 on the \$1,200 that was held in the cashier's check, which
22 appears to have been intentionally withdrawn on the day of or
23 the day after Ms. Ahern was removed as Trustee, and in an
24 attempt to hide the money. So I'll award punitive damages on
25 the 1,200,000 in the form of treble damages for \$3,600 --

1 3,600,000 in punitive damages.

2 Further, I believe that the remainder beneficiaries
3 are entitled to their attorney's fees and costs for this
4 hearing, so we'll entertain whatever you've had to do to
5 prepare from when we entered the decision, not for the appeal
6 itself. I don't think that's appropriate, but for whatever
7 discovery efforts you've had to cooperate in and work with Mr.
8 Waid and the hearings leading up to today's hearing.

9 I'll entertain a Motion for Fees and Costs for
10 everything unrelated to the appeal. If you were seeking
11 damages for the -- attorney's fees for the appeal, that'd be
12 -- there's a separate procedure to look for attorney's fees
13 for the appeal. This is just for what's gone on separate from
14 the appeal getting us up to today.

15 And the issue, as you've known we've got, not only
16 Marquis Aurbach's Attorney's Fees Request, but also Mr.
17 Lenhard's Attorney's Fees Request. And as I told you the
18 other day, I believe these attorney's fees request do attach
19 to something. They attach to the beneficial interest. I do
20 recall something that Ms. Ahern said in her - in her letter to
21 the Court, which is that she was her father's only child, and
22 that he wanted her to have something, and that was her 35
23 percent.

24 We've not discussed it today, but I did not hear you
25 request that she be disinherited. I would not go there. Her

1 father had intended her to have the 35 percent. I hope at
2 some point in time these oil and gas revenues pay off hugely
3 and she's able to satisfy this judgment and start collecting
4 the money that her father intended her to have. And if she
5 had not, I believe, been led astray by people who did not have
6 her best interests at heart, this would never have happened.

7 If she had just left everything in place the way her
8 parents wanted it, we wouldn't be here today, but bad people
9 -- I think one time Mr. Waid described them as grifters. Bad
10 people have interfered and taken her money, and I'm sorry for
11 that, but it doesn't change my view that in doing so she
12 abused the Trust that was placed in her by her parents. They
13 wanted her to be the Trustee of this Trust.

14 She abused that position to the detriment of her
15 daughters, and that's not what her parents intended. Her
16 parents wanted her to have 35 percent for her life, and I hope
17 that at some point in time she can resume receiving that
18 entire amount.

19 But until she's paid off this judgment, she remains
20 under Mr. Waid's Trusteeship, and we will deal with her needs
21 as we have discussed previously. The Trustee and his best
22 interests for her health and welfare can request the Court
23 distribute money.

24 But other than that, we've got to pay this back, and
25 this will take priority over the attorney's fees of her

1 Marquis Aurbach and Mr. Lenhard, who are also entitled to be
2 paid; but they do not have a priority in payment. And however
3 Mr. Waid can figure out how to pay these poor people back for
4 all the time they invested in trying to help her, I don't
5 know. I leave that to Mr. Waid in his discretion as a
6 professional Trustee. The Court has full faith in his
7 abilities.

8 So, Ms. Waid -- Ms. Ahern, I sincerely, as I said,
9 hope at some point in time your parents' wishes can be carried
10 out again, but I truly do believe, and I know you don't see
11 it, but I believe you've been led astray by people who do not
12 have your interests at heart and who have caused you to harm
13 not only your family but yourself, and I'm sorry for that, but
14 your parents placed a very great trust in you and you abused
15 it.

16 That's my ruling. Thank you.

17 MR. POWELL: Thank you, Your Honor.

18 MR. MOODY: Thank you, Your Honor.

19 THE COURT: We'll be in recess.

20 [Proceedings adjourned at 11:42 a.m.]

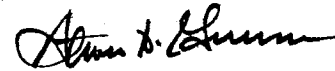
21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audiovisual recording of the proceeding in the
above entitled case to the best of my ability.

23 

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



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

1 between, because as I understand it, the Millers received 25
2 percent as does the Connell Trust. So when you say 65/35,
3 you're splitting up 65/35 of the 25.

4 THE COURT: Correct. Okay.

5 MR. KIEFER: Does that make sense?

6 THE COURT: So that's where we got our number. That's
7 how we -- that's the basis upon which we understand the total
8 amount that should have been coming in to the -- the total
9 amount coming into the --

10 MR. KIEFER: Correct.

11 THE COURT: -- W.N. Connell Marjorie Connell Trust.
12 Okay. Got it.

13 So that's how he did his breakdown, so that when he
14 says that: Over the same period of time the Millers and the
15 Connell Trust -- there's about \$90,000 difference in what the
16 two Trusts apparently received.

17 So 65 percent of the Connell income, over that
18 period of time was -- the 20 -- of the total amount, was
19 \$3,956,550. That's how much should have been going into the
20 60 -- 65 percent share of this Trust?

21 MR. KIEFER: Correct, Your Honor.

22 THE COURT: And the amount they actually received -- and
23 by that -- is this \$2,214,497, is that how much Mr. Waid has
24 recovered?

25 MR. KIEFER: That's how much has actually been

1 distributed to the MTC Trust.

2 THE COURT: When you say "distributed to the Trust", what
3 does that mean?

4 MR. KIEFER: Meaning the 65 percent has been allocated
5 and given away.

6 THE COURT: By you say -- when you say "given away",
7 given away to whom?

8 MR. KIEFER: The MTC Trust to distribute to its
9 beneficiaries.

10 THE COURT: And has that been done?

11 MR. KIEFER: Yes, it has.

12 THE COURT: I'm sorry. And I think Ms. Ahern and I are
13 both having trouble following this math.

14 So, Ms. Ahern, you've got your hand up?

15 MR. KIEFER: And I think I can --

16 MS. AHERN: I'm having a terrible time following it
17 because his voice drops and when he gets to the last ten
18 words, and I can't hear.

19 THE COURT: Okay. All right, Miss --

20 MS. AHERN: I just can't hear.

21 THE COURT: Okay. So we're going to try to work our way
22 through this. We'll try to speak louder and --

23 MS. AHERN: Your Honor, he goes fast.

24 THE COURT: Okay.

25 MS. AHERN: He goes too fast and I can't catch it.

1 THE COURT: All right. All right. We're going to speak
2 slowly and loudly.

3 Okay. So the 65 percent of Connell income over that
4 entire period of time, roughly 27 -- 2013, 2014, and, and the
5 first quarter of 2015. The 65 percent amount should have been
6 \$3,956,550. That's how much should have come in to the 65
7 percent portion and been segregated that's -- according to
8 Court's Order.

9 What has been recovered and distributed is
10 \$2,214,497. That leaves us with \$1,742,053.

11 MR. KIEFER: Correct.

12 THE COURT: Okay. So where does \$1,742,000 go? I mean
13 was it never recovered by Mr. Waid?

14 MR. KIEFER: Yeah. That's all the expenses that we went
15 through yesterday. He --

16 THE COURT: Oh, okay.

17 MR. KIEFER: He --

18 THE COURT: So some of the -- so -- because it was a
19 little unclear yesterday because Mr. Waid talked about how
20 much money was still not recovered. That I understood to be
21 about \$600,000. That's just disappeared. It's just money
22 that he can't find where it went --

23 MR. KIEFER: Right.

24 THE COURT: -- at all.

25 MR. KIEFER: And to the --

1 THE COURT: And the balance of it is money that it's --
2 the position was improperly expensed to the Trust should not
3 have been Trust expenses?

4 MR. KIEFER: Yes. That's exactly --

5 THE COURT: Do we know what the exact -- how much is how
6 much?

7 MR. KIEFER: Well, the --

8 THE COURT: Because there's two categories.

9 MR. KIEFER: The simplest way to look at it, Your Honor,
10 is to --

11 THE COURT: Uh-huh.

12 MR. KIEFER: -- simply look at what was left in the
13 account.

14 THE COURT: Uh-huh.

15 MR. KIEFER: He hasn't - he hasn't -- the account was
16 left with 9,000 approximate dollars.

17 THE COURT: Right.

18 MR. KIEFER: And so, he just reverse engineered this.
19 Instead of looking at what she spent and what she did -

20 THE COURT: Uh-huh.

21 MR. KIEFER: -- and he couldn't justify any of her
22 expenses, he had to look at what was the total -- [Ms. Ahern
23 waiving hand up and down].

24 THE COURT: Ms. Ahern, you have to stop. When I am
25 asking Counsel a question, Counsel has to answer my question

1 before he can get to your question, so just wait.

2 MS. AHERN: I have no question. There's a lawnmower
3 outside and I can't hear a word he's saying. Can we take a
4 five-minute break?

5 THE COURT: Okay. We'll take a break. Give us a break.
6 All right. We'll go off the record here for a minute. Okay.

7 [Recess at 10:37 a.m.]

8 [Resumed at 10:40 a.m.]

9 THE COURT: Let us know when the noise -- the background
10 noise has stopped.

11 MS. AHERN: The noise stopped. Thank you, I appreciate
12 that.

13 THE COURT: Can you hear now?

14 MS. AHERN: Yes, I can hear --

15 THE COURT: Okay, so --

16 MS. AHERN: -- very nicely.

17 MR. KIEFER: All right, so Mr. Kiefer, do you remember
18 where we were, I forgot?

19 MR. KIEFER: I think the ball was in my court --

20 THE COURT: Uh-huh.

21 MR. KIEFER: -- to try and explain how the 1.742 -- \$1.7
22 million number was obtained.

23 THE COURT: Okay. I just want to make sure that I
24 understand, though that a portion -- for example, the \$1.2
25 million cashier checks, several of these items that Mr. Waid

1 talked about were recovered, and the net that's left, the
2 1,742,000, that includes the money that is just gone. He has
3 -- there's an amount of money, I seem to recall it being over
4 \$600,000 that he cannot figure out where it went. There's no
5 record of where this money, that everything indicates was
6 received, there's just no record that tells us where it went.

7 MR. KIEFER: And that's an element of the 1.7 --

8 THE COURT: And the rest of it is those funds that Mr.
9 Waid identified as just having been -- these were not proper
10 use of Trust funds.

11 MR. KIEFER: And most importantly, they had been spent.
12 He just --

13 THE COURT: Correct. Yeah, they're unrecoverable.

14 MR. KIEFER: Exactly. So --

15 THE COURT: Correct.

16 MR. KIEFER: -- when he took over -- his testimony
17 yesterday was, when he took over in April of 2015, the
18 segregated 65 percent account should have contained
19 \$2,581,994, it didn't. It contained somewhere in the 9,000
20 range.

21 What he's been doing is -- now, I'm sure you're
22 wondering, what's the difference between that number and the
23 1.7 million, and that's the fact that he has been able to
24 recover some funds and return them to the MTC Trust. So he --

25 THE COURT: Now, did he ever do anything about figuring

1 out what happened to the 35 percent? Because there would have
2 been roughly, what, \$2 million over that period of time that
3 was Mrs. Connell's to do with as she pleased. Did he take --
4 did he look at anything about her 35 percent?

5 MR. KIEFER: I, I just couldn't speak to that, I - I
6 don't know.

7 THE COURT: I mean try to figure out where maybe some of
8 this \$600,000 got into her 35 percent?

9 MR. KIEFER: My understanding is that he looked at all
10 aspects, because really, the total income for the Trust would
11 have been over those three years, the 6 million.

12 THE COURT: Right.

13 MR. KIEFER: Whether or not he has specific knowledge of
14 what she did with her approximate 2 million, I don't want to
15 speak out of turn.

16 THE COURT: Okay. I just - I just didn't know. Okay.

17 MR. KIEFER: So with that said, did you want to discuss
18 the chart more or did you want me to close up?

19 THE COURT: Oh, no. No. So I understand now this chart.
20 And then the other thing that we had talked about I -- well, I
21 think that Mr. Powell talked to -- that I flagged, but Mr.
22 Powell talked to Mr. Waid about, was - okay. In his report --
23 this is --

24 MR. KIEFER: And I apologize, Mr. Waid's report?

25 THE COURT: Mr. Waid's Report. Uh-huh. Yeah. His 2015

1 Report on Page 10. You may not have this in front of you.

2 But that's where I -- that's where I got the \$600,000 number --

3 MR. KIEFER: Uh-huh.

4 THE COURT: -- as what I understand is Miss, is what he
5 termed "estimated shortfall" due by Ms. Ahern, was
6 \$664,132.05. So that's the money that it seems like it just
7 disappeared.

8 MR. KIEFER: I believe that's correct, Your Honor.

9 THE COURT: So he -- and the third element of what's just
10 gone or has been spent is this, the fact that we had to
11 overpay taxes because we -- there should -- these taxes
12 shouldn't have to have been paid if the Trust had been
13 properly managed, and so, that was about an \$800,000 tax
14 liability that a portion may ultimately be recovered?

15 MR. KIEFER: Correct. And if it does, it would certainly
16 go to satisfy any judgment that we get. What -- we wouldn't
17 -- we wouldn't ever be arguing that recovery of those funds
18 wouldn't satisfy the judgment separately. Anything he gets
19 that could be then paid --

20 THE COURT: Right.

21 MR. KIEFER: -- to our client --

22 THE COURT: Okay.

23 MR. KIEFER: -- would be a satisfaction of that.

24 And I think the other confusing thing too, Your
25 Honor, is that the 2015 column, unfortunately, is not broken

1 down by quarter, and Mr. Waid took over for the last three
2 quarters of 2015 --

3 THE COURT: Correct.

4 MR. KIEFER: -- and so that's what kind of creates the
5 confusion there.

6 THE COURT: Okay. Thank you. Yeah. And then there was
7 like this whole long list. I think that's Exhibit A to Mr.
8 Waid's Report for this - for the one that he just filed,
9 Exhibit 43.

10 MR. KIEFER: Uh-huh.

11 THE COURT: The Accounting Report of Trust Activity that
12 was just filed on February 1st. I don't know, is this an
13 Excel spreadsheet or something?

14 MR. KIEFER: I think it is, I think it's -

15 THE COURT: Yeah.

16 MR. KIEFER: -- converted to Word or something.

17 THE COURT: Yeah, Exhibit A. Did anybody do the math --

18 MR. KIEFER: Well, here's how he got --

19 THE COURT: -- because it doesn't total.

20 MR. KIEFER: And I totally get that.

21 THE COURT: What's the total of this?

22 MR. KIEFER: He reverse engineered it.

23 THE COURT: Okay.

24 MR. KIEFER: Because what he did was, he went to the
25 Millers to figure out what they got, used that to figure out

1 what the Connelly's [phonetic] got, and then used that to
2 figure out what the MTC Trust should have gotten.

3 THE COURT: Uh-huh.

4 MR. KIEFER: He tried then to reconcile the number -- the
5 3.9 million that they should have received -- or sorry, the
6 2.5 million that should have been left over with what was
7 spent. The problem is that, because Ms. Ahern wasn't
8 cooperating, giving him information, all we know is what
9 should have been received.

10 We don't necessarily -- where it went -- know where
11 it went, and that's what a part of what he was explaining. He
12 says: Look, a portion of it went to all these lavish expenses
13 outlined in call -- in A. A portion of it went to paying this
14 tax liability, and a portion of it no one knows, because that
15 comes into the cashier's checks issue. We just don't know.

16 So he couldn't -- it had to be reverse engineered,
17 which makes sense, because in most fraud cases, you're dealing
18 with circumstantial evidence instead of direct admissions.
19 And so he had to figure out what should have been paid and
20 work it backwards, because he wasn't able to track everything
21 that was paid, if that kind of helps.

22 THE COURT: No. But okay.

23 MR. KIEFER: Well, if I may? The summary of what he said
24 was: From June 2013, to April 2015, the MTC Trust should have
25 received 2.5 million 81,000 dollars, and it should have been

1 sitting in a sweet little account when he took over.

2 THE COURT: Uh-huh.

3 MR. KIEFER: It wasn't.

4 THE COURT: Uh-huh.

5 MR. KIEFER: There was \$9,000. He's been able to figure
6 out where some of that money went and recover some of it, and
7 the money he did recover, he gave to the MTC Trust, but the
8 rest of it is gone.

9 So it -- in my mind it's less important to know
10 where it went, because if we want to know where it went, we're
11 all ears, Ms. Ahern could have told us, but we know what we
12 should have received --

13 THE COURT: Uh-huh.

14 MR. KIEFER: -- and what we didn't, and that's how we
15 based our damages amount.

16 THE COURT: Okay.

17 MR. KIEFER: And so, the outstanding balance still owed
18 is the 1.742 million.

19 THE COURT: Okay.

20 MR. KIEFER: And the reason that I've mentioned so many
21 times the 2.5 million is because that was the amount that was
22 stolen.

23 And so, Your Honor, that -- we ask -- we understand
24 that a portion of the 2.5 million has been satisfied leaving
25 an outstanding balance of \$1,742,053. That's the outstanding

1 amount owed on the compensatory damages.

2 Now, punitive damages. We created a little
3 confusion in our Brief and we apologize for that. We kind of
4 interchanged the idea of treble and punitive.

5 Treble is just a separate form of punitive damages.
6 We're asking for punitive damages under NRS 42.005. Now, as
7 you know, Your Honor, that's allowed when the party acts in
8 malice, oppression, or fraud, and the Court has the discretion
9 to award punitive damages. And they're often awarded when
10 doing so will properly punish the wrongdoer while deterring
11 others from similar conduct.

12 Now, Ms. Ahern's actions in this case, they speak
13 for themselves. I think we're aware. Your Honor has
14 articulated numerous times some of the mistakes that have been
15 made, and if I say so, some of the fraud that's been
16 committed.

17 THE COURT: Okay. We're going to take a moment here.

18 Ms. Ahern, you had a question?

19 MS. AHERN: He's once again talking too fast and dropping
20 his voice.

21 THE COURT: Okay. All right. We'll try to remember to
22 keep up our voices and speak very slowly. It's not easy for
23 some of us.

24 MR. KIEFER: I apologize.

25 THE COURT: I feel your pain.

1 MR. KIEFER: So, in this case, we believe, not only
2 through yesterday's Evidentiary Hearing, but through other
3 evidentiary hearings that have been held, and through this
4 Court's orders; it has already been demonstrated that Ms.
5 Ahern acted with recklessness, malice, and with fraud.

6 What we're asking, is that she be held accountable
7 for that. She's unrepentant. She doesn't care that she lied,
8 cheated, and stole, nor does she care that she has continually
9 flouted this Court's orders. This Court has told her to do
10 things on numerous occasions and she simply ignores them.

11 Now, what we'd like the Court to remember is that
12 Nevada is a Trust-Friendly State. We are constantly adding
13 new fiduciaries to the fold. We need to know, and they need
14 to know, the level of diligence that is expected of a Trustee,
15 and Ms. Ahern can serve as an example of what not to do, but
16 only if the Court makes an example of her.

17 And that's why we're asking, Your Honor, for
18 punitive damages three times the compensatory amount. And
19 when I say three times, I'm referencing the amount stolen of
20 2.5 million.

21 THE COURT: Uh-huh.

22 MR. KIEFER: And so, with that, I will state as clearly
23 as I can, the requested relief that I've written down.

24 THE COURT: Okay.

25 MR. KIEFER: The Movants ask that they be awarded

1 compensatory damages in the amount of 2.581 -- \$2,581,994.92
2 and punitive damages pursuant to NRS 42.005 in the amount of
3 \$7,745,994.76, for a total award of 10,327,979.68. Of course
4 the judgment can reflect a satisfaction of \$839,941.92 from
5 the compensatory damages for the funds provided to the Movants
6 by the Successor Trustee.

7 And that is what we're requesting, Your Honor.
8 We're also requesting that applicable prejudgment interest be
9 added and, of course, when the time is right, we will bring
10 our Petition or Motion for Attorney's Fees and Costs.

11 We believe that the evidence and the facts of this
12 case support such an award, especially in light of Ms. Ahern's
13 continued misconduct and her willingness to repeatedly violate
14 Court Order and shun her nose at this entire process.

15 Thank you.

16 THE COURT: Okay. If I could ask you some questions
17 about these numbers? This is where, for me, some of the cat -
18 - this is why I wanted to know how Mr. Waid categorized
19 certain things.

20 MR. KIEFER: Sure.

21 THE COURT: For me, the thing that has been most
22 troubling is that after being told to segregate the 65 percent
23 and to hold it pending the Supreme Court decision that was
24 finally received on January 26th, 2017; that decision
25 confirmed that, in fact, the Court was correct in stating that

1 Marjorie's wishes that the 65 percent go to her daughter --
2 her granddaughters, was interfered with and that that was a
3 breach of fiduciary duty on the part of Ms. Ahern.

4 And so, she is -- she's obligated to pay damages for
5 the fact that she, without asking for -- petition for
6 direction from this Court -- Petition for Instructions, just
7 stopped making that payment of the 65 percent. So that's one
8 part of it.

9 The second part of it is that, then she did certain
10 things with the 65 percent that she shouldn't have done,
11 particularly this flurry right at the end where she was about
12 to be removed or had been removed, and there are all these
13 weird financial transactions of moving money around.

14 Now, we know how much Mr. Waid ultimately recovered.
15 The problem is, I don't know that he -- I'm having a hard time
16 understanding when he recovered funds how -- if some of the
17 funds he recovered -- because he got the check for \$1.2
18 million, for example -- was some of that part of the 35
19 percent, and the other part 65 percent?

20 And then if -- because -- and the reason why this
21 matters -- it doesn't matter to the ultimate amount that was
22 owing to the MTC trust -- I don't have any problem with his
23 calculations there. My problem is for figuring out damages.

24 So, he recovered a fairly substantial sum of money
25 on behalf of the total Trust because he's acting for

1 everybody, not just for Ms. Ahern, but also -- not just for
2 the 65 percent beneficiaries, he's acting for the entire
3 Trust. And he recovered a huge amount of money that had been
4 moved around to various financial institutions, some of which
5 were not actually financial institutions, but seemed to be
6 fronts for some sort of scheme.

7 So that's the problem that I have here is in
8 figuring out -- when you say the net amount that was owed that
9 should have been segregated for the MTC Trust, the 65 percent
10 is \$2,581,994. I get that math. I understand that in its
11 entirety.

12 I'm not understanding how we went from the amount
13 that Mr. Waid recovered to repaying the Trust beneficiaries
14 839,000. Now, I understand that a big chunk of what Mr. Waid
15 recovered had to be sent to the IRS, and that's where we're
16 hoping that some of the \$800,000 that went to the IRS, and
17 that we might get a refund back for the Trust, may be 50
18 percent -- may be 400,000 will come back into the Trust, so
19 that leaves us with some \$400,000 that went to the IRS that
20 shouldn't have, if the Trust had been properly managed.

21 So some of this I understand is just gone. And then
22 was the balance of it - it just - I mean, it's just sitting
23 over there in the IRS and it can't be accounted for in this.

24 Did some of it go with the 35 percent of what Mr.
25 Waid recovered?

1 MR. KIEFER: Well, and I think the important part to
2 remember is that during this -- the last three quarters of
3 2015, because Mr. Waid was then managing the Trust. He was
4 getting new income that was coming in and that shows the
5 income that was distributed. And anything he was --

6 THE COURT: And so that's a problem for me, because I
7 need to make sure that when we do this accounting that we are
8 not giving credit to having recovered funds for the 65 percent
9 beneficiaries that were, in fact, not from recovering what was
10 lost or misused or misspent during Ms. Ahern's era, but is new
11 money coming in. I mean, we all know there's been a problem
12 with certain people using new money that comes into Trust
13 accounts to pay --

14 MR. KIEFER: Sure.

15 THE COURT: Now, we won't do that. We want to make very
16 clear that we are segregating what happened in the past --

17 MR. KIEFER: Uh-huh.

18 THE COURT: -- from the new money coming in. And I know
19 Mr. Waid probably did this, he just didn't get into it, but --
20 so I'm assuming that there's been new money coming into the
21 Trust account that he's not even talking to us about.

22 MR. KIEFER: Correct.

23 THE COURT: He is merely doing this -- the reports we
24 have are retrospective. This is what happened, as best he can
25 figure out, during those months from 2013 to first quarter

1 2015. He went back and recalculated all that and tried to
2 rebuild it and tried to figure out what should have been
3 there, what could he trace, where did it go that was probably
4 improper, and I - and what's just missing?

5 MR. KIEFER: And -- exactly. And I think his testimony
6 in that regard is clear, because what he's saying is: Take
7 out - take out of the consideration what they've been getting
8 in 2016 and what they're getting going forward.

9 THE COURT: Right. Exactly. He -- that's - that's --

10 MR. KIEFER: What they're still owed --

11 THE COURT: -- the future --

12 MR. KIEFER: -- for '13, '14, and '15 is 1.7 million.

13 THE COURT: Okay. So 1.7 million is still owed.

14 The report that we have that's Exhibit A --

15 MR. KIEFER: Uh-huh.

16 THE COURT: -- to Mr. Waid's testimony for today -- for
17 this hearing, his spreadsheet -- these are all the -- and this
18 is - this is not inclusive because there's \$600,000 he just
19 can't trace because of lack of cooperation, because of lack of
20 records. It's just gone, and we don't know what happened to
21 \$600,000.

22 MR. KIEFER: Correct.

23 THE COURT: To the best that he can figure out, a chunk
24 of money that he recovered had to go to pay the IRS, because
25 there was a huge tax liability, huge tax liability, that

1 should never have been incurred.

2 And then the rest of this -- and that's not on
3 here -- the rest of this is what he was able to reestablish
4 through records he could gather. Against everybody's efforts
5 to obstruct him, he was able to reconstruct this much on
6 behalf of -- of the beneficiaries as to where money went
7 during that 2013, '14, and '15 time period?

8 MR. KIEFER: Correct.

9 THE COURT: Okay. Got it. He doesn't total this up and
10 tell us how much he was about to reconstruct --

11 MR. KIEFER: And here's why. Because even if Exhibit A
12 was not submitted as part of this accounting --

13 THE COURT: Right.

14 MR. KIEFER: -- his ultimate conclusion of what is still
15 owed would stand. Whether or not he can find where that
16 missing 1.7 million is is not relevant. She's had the
17 opportunity to come in and tell him this was a legitimate
18 expense --

19 THE COURT: Okay. Now I'm going to tell you why I think
20 this is relevant, because I understand that the total amount
21 that remains owed -- that -- \$2.5 million was -- should have
22 been kept for the 65 percent and it's gone.

23 A portion of that was used for improper expenses
24 over a period of time, and this is the thing I'm trying to
25 figure out is, is the issue with the entire \$2.5 million or is

1 the issue with just that? Because some of it, we know, was
2 just spent for things that it's just bad trustee practice.
3 You don't pay out of the Trust for your personal therapy, for
4 your private jet, for -- you know, as nice a dog as Captain is
5 or was, you don't pay for Captain out of our Trust, those
6 kinds of things.

7 So is that fraudulent? Is that in -- willful? We
8 don't have any testimony of that. We don't. We don't because
9 Ms. Ahern wouldn't cooperate and give a deposition, so we
10 don't know if this is just -- she's -- was really bad at this
11 job and kept really poor records and the Trustee -- her
12 Successor Trustee cannot figure out what happened, and there
13 is no intent to defraud here or - because, clearly, a portion
14 of this money is just gone, and it was gone in violation of an
15 order saying: Hold the money in a trust account and don't
16 touch it, it's just gone.

17 So in trying to figure out how much of this is
18 appropriately segregated into, "The Court finds this much was
19 intentional, willful, and absolutely punitive damages are
20 warranted on this part. Oh, but over here on this other side
21 this is just bad Trustee practice. The Trustee's been
22 removed. The Supreme Court upheld removing the trustee
23 because the Trustee was doing things badly, and that's just
24 damages. They're absolutely entitled to those damages.
25 They're --

1 MR. KIEFER: I think I totally get it now --

2 THE COURT: -- totally entitled to those damages. I
3 don't question their --

4 MR. KIEFER: But it's whether or not those specific
5 damages result in an effect for punitive damages

6 THE COURT: Correct.

7 MR. KIEFER: And my argument to that would be simple, and
8 it may be over simplistic, so I apologize.

9 She's had ample opportunity to explain every expense
10 and has chosen not to. I believe that a negative inference is
11 appropriate --

12 THE COURT: Uh-huh.

13 MR. KIEFER: --- for all of her bad behavior that cannot
14 be explained.

15 Mr. Waid, himself, believes that the actions were
16 fraudulent. She's had every opportunity to come in and speak
17 to that issue and has not participated once. Fraud is one of
18 the most difficult things to prove with direct evidence. It's
19 generally proven through circumstantial evidence.

20 We heard an expert talk to us about his experience
21 in investigating financial fraud. He reached the ultimate
22 conclusion that it was. My position would be that all of it
23 may serve as a hook for punitive damages because the negative
24 inference can apply to all of it simply due to her refusal to
25 even answer his most basic questions and instruct attorney's

1 offices to turn over unredacted or even redacted billing
2 statements.

3 THE COURT: Okay. So we have in Nevada an evidentiary
4 presumption found in *Bass-Davis v. Davis*, 122 Nev. 442, 134,
5 P.3d, 103. It's a 2006 decision. And it sets up for us two
6 different presumptions.

7 The first presumption being:

8 "Where relevant evidence which would properly
9 be a part of this litigation is within the control
10 of one party whose interest it would naturally be to
11 produce it, and they fail to do so without a
12 satisfactory explanation, the jury or the finder of
13 fact in this case may draw an inference that such
14 evidence would have been unfavorable to that party.

15 An inference means a logical and reasonable
16 conclusion of a fact not presented by direct
17 evidence but which, by process of logic and reason,
18 the fact finder may conclude exists from the
19 established fact."

20 There's a second evidentiary presumption which is:

21 "That where there has been willful suppression,
22 the law creates a rebuttable presumption that the
23 evidence would be adverse to the person or company
24 suppressing it. Willful suppression means the
25 willful or intentional spoliation of evidence and

1 requires the intent to harm another party through
2 its destruction and not simply the intent to destroy
3 the evidence.

4 When a party seeking the presumption's benefit
5 has demonstrated that the evidence was destroyed
6 with intent to harm another party, the presumption
7 that the evidence was adverse applies, and the
8 burden of proof shifts to the party who destroyed
9 the evidence to rebut the presumption.

10 The destroying party must then prove, by a
11 preponderance of the evidence, that the destroyed
12 evidence was not unfavorable. If not rebutted, the
13 jury or finder of fact is required to presume that
14 the evidence was adverse to destroying party."

15 And it's your position that your clients are
16 entitled to a rebuttal presumption here because there was a
17 willful suppression of evidence?

18 MR. KIEFER: Exactly. And I'll give you an example.

19 THE COURT: Okay. We're going to take a question from
20 Ms. Ahern here, and then you can give me your example. So if
21 you'll just hold that thought for one moment.

22 Ms. Ahern, you had a question?

23 MS. AHERN: [No verbal response].

24 THE COURT: Oh, I'm sorry, again. We need your
25 microphone turned on. I'm sorry. We can't hear you. We

1 can't hear. We've lost - we've lost your audio. Okay. I
2 think you're saying you can't hear me. I -- have we lost the
3 audio? We've lost her audio. I can't tell if we lost our
4 audio on her end. Kerry can --

5 THE CLERK: Judge, it's just a matter of she hits her
6 little mute button --

7 THE COURT: Okay.

8 COURT RECORDER: -- she can -

9 MR. MOODY: I think she --

10 THE COURT: You need to unmute us --

11 MR. POWELL: Your Honor, I think, if I'm not mistaken,
12 reading her lips, I think she's saying, "I can't see you is
13 what I believe she's saying with her lips."

14 THE COURT: Uh-huh.

15 COURT RECORDER: Judge, do you want me to email the Court
16 Help Desk?

17 MR. MOODY: I cannot see you is what she's --

18 THE COURT: Okay.

19 MR. MOODY: -- mouthing.

20 COURT RECORDER: Okay. I'll email.

21 THE COURT: Okay. Give us a minute. We can't hear you,
22 so you need to unmute on your end. Can you hear us?

23 MR. POWELL: I cannot.

24 THE COURT: I can't talk? We've lost -- we're having
25 some issues. Give us a minute.

1 MR. KIEFER: Would you like to go off the record --

2 THE COURT: Yeah. We're going to go off the record.

3 Hold on. I'll see. I can't tell.

4 [Recess taken at 11:05 a.m.]

5 [Resumed at 11:17 a.m.]

6 THE COURT: Okay. Ms. Ahern, do you have your audio and
7 video back? You can see us?

8 MS. AHERN: Yup, I have it back.

9 THE COURT: Okay. Great. So we've taken advantage of
10 the break. We're all back. We're ready to go again.

11 Okay. So, thank you.

12 MS. AHERN: So am I.

13 THE COURT: Did you have a question?

14 MS. AHERN: Thank you.

15 THE COURT: Okay. Well, then we're ready to resume? All
16 right. Thanks.

17 MS. AHERN: I had asked for the regulation but she will
18 get it to me.

19 THE COURT: She's emailing it to you. Yes.

20 MS. AHERN: Yes. She will.

21 THE COURT: Linda should have emailed it to you. Okay.

22 MS. AHERN: I don't want to go searching because I don't
23 want to get out of where I am.

24 THE COURT: Okay. No, no problem, but she -- you should
25 have it when you're done, because Linda will have emailed it

1 to you.

2 MS. AHERN: All right.

3 THE COURT: Okay. Thanks.

4 MS. AHERN: Thank you.

5 THE COURT: Uh-huh.

6 MR. KIEFER: I was in the process of, I believe, giving
7 an example or two of the behavior that I believe allows the
8 more severe inference.

9 The first example I would cite, Your Honor, is the
10 subpoenas to the various counsel. So Fred -- Mr. Waid sent
11 out these subpoenas to various attorneys based on these
12 immense amount of monies that were given as retainers to the
13 attorneys, and all Ms. Ahern would have had to do -- and it
14 would have been to her financial advantage to do so to
15 demonstrate that they were Trust expenses, was instruct those
16 attorneys to comply with the subpoenas. And not only did she
17 not, she actively sought against it.

18 The other example I would give, Your Honor, is the
19 consistent use of cashier's checks. As we heard in the
20 testimony, the most difficult part of tracking the funds was
21 that Mr. Waid's testimony clarified that Ms. Ahern was
22 receiving the funds directly from the oil company and then not
23 depositing the checks, but making them out to cash and then
24 converting them to cashier's checks. That is also indicative.

25 That's badger fraud, in a sense, because she was

1 instructed specifically by the Court to segregate funds in an
2 account and not touch them, and she wasn't even allowing them
3 to flow into the account, but instead, creating cashier's
4 checks. And, in fact, if I'm understanding Mr. Waid's
5 testimony correctly from the other day, the 1.2 million was
6 after the order saying, "Don't touch it," and after she was
7 replaced she went and got a \$1.2 million cashier's check.

8 So I think all of those things together, along with
9 her failure to provide any information whatsoever allow the
10 negative inference that Your Honor has discussed from 122 Nev.
11 442.

12 THE COURT: Okay. Thanks.

13 All right. And, again, for my purposes, in my
14 analysis of what's under the statute rises to the level of
15 punitive damages versus what is just what the Supreme Court
16 has already said appropriately -- the Trustee was
17 appropriately removed and owes the money back. I mean they
18 endorse that in the decision that came out on January 26th.
19 Absolutely.

20 So I guess that's the concern. It says here that
21 "Eleanor should not benefit from her own failure to perform
22 her duties as a Trustee." And that's kind of the basic
23 principle that they are affirming the decision to remove her
24 on.

25 It's -- and it states that:

1 "Unilaterally ceasing distribution to
2 Respondents, to the beneficiaries, without seeking
3 court instructions, and when she advocated as a
4 Trustee for a Trust interpretation favoring herself
5 as a beneficiary, attorney's fees were warranted,
6 and indicating that the Trustee may not advocate for
7 either side in dispute between beneficiaries" I

8 I mean all these things -- they confirmed that these
9 were inappropriate, you know, failures as a Trustee.

10 So I guess the kind of the problem that I have here
11 is that it seems to me that some of these expenses that Mr.
12 Waid has exhaustively tried to reconstruct -- and he has told
13 us he's done. There is nothing more that he can do given the
14 refusal to cooperate to try to reconstruct and figure out
15 where the missing \$600,064 is, it's just gone, and nobody
16 knows where that went.

17 Of some of the funds that he's able to identify,
18 there's like, 800,000 that we know went to the IRS, and we
19 just don't know if it's recoverable or not. The rest is a
20 lengthy spreadsheet that appears in Exhibit A and some of
21 these, it appears to me, would be violations of the Court
22 orders, but some of them are just, as was pointed out earlier,
23 just bad Trustee practice which is why she was appropriately
24 removed and, you know, she -- money has to be clawed back.

25 So that's my problem in saying this rises to the

1 level of punitive damages on the whole amount. I will tell
2 you with all respect for your argument, I'm just not prepared
3 to go there. For one thing, it's difficult for me to say that
4 we need to award punitive damages on a treble amount when we
5 don't yet know that it's final, and this is what Mr. Waid told
6 us and Ms. Ahern's question the other day of: Where's the
7 final accounting? Where's the 2016 accounting?

8 He doesn't know yet what the final numbers are
9 because we have this tax liability that is being contested
10 that ultimately some portion, we hope, through, you know, good
11 accounting and advocacy, can be recovered for the Trust. So
12 to award punitive damages on something we don't know how much
13 that's going to be, it may not be the final damage amount --

14 MR. KIEFER: Well, and I can --

15 THE COURT: -- I'm kind of troubled by that.

16 MR. KIEFER: I think I can clarify that, as well. The
17 \$800,000 tax liability was not paid by Ms. Ahern. It was
18 incurred by Ms. Ahern and paid by Mr. Waid.

19 THE COURT: Okay. So that's not part of the --

20 MR. KIEFER: Correct.

21 THE COURT: -- money that he recovered and paid out?

22 I thought he paid that tax liability upon clawing
23 back, like, the \$1.2 million. He paid the \$800,000 --

24 MR. KIEFER: Correct. But what I'm saying is is that we
25 can't give Ms. Ahern the benefit of saying, "Oh, well, there

1 was 2 point - there's supposed to be \$2.5 million in the
2 account, but there wasn't. You spent 800,000 of it on taxes,
3 she didn't. She didn't spend any money on taxes, Mr. Waid
4 did. She used it for something else, and he went and got it
5 back. So we can't give her the benefit of saying, "Well, I
6 understand you paid a -- she didn't pay a tax liability, she
7 incurred it, he paid it. She paid it to someone else and he
8 went and got it back.

9 THE COURT: Okay. I'm not -- think -- I'm not sure we're
10 following -- we're on the same track here.

11 MR. KIEFER: Sure.

12 THE COURT: The total amount and I don't dispute this,
13 and his math, I believe, is 100-percent correct. And he has
14 done everything he can to reconstruct this. And it's very
15 clear how much money should have been in the Trust account,
16 \$2.5 million. No question.

17 And my point is that we've been able to - if I have
18 to look at which portions of that \$2.5 million warrant the
19 imposition of punitive damages. With all due respect, I'm not
20 convinced the entire amount does.

21 MR. KIEFER: I understand that. And I understand --

22 THE COURT: And one of the things that troubles me is
23 that out of that \$2.58 million, a portion of that is these
24 taxes that he had to -- when he recovered money -- when he
25 recovered that check for \$1.2 million, I'm sure he would have

1 liked to have just distributed it to the other beneficiaries.
2 He couldn't. He had to pay \$800,000 in income tax out of it.
3 See what I'm saying?

4 MR. KIEFER: I do except --

5 THE COURT: So, you know, that's money that, because of
6 bad Trustee practices, the Trust incurred. But I'm not -- I
7 don't necessarily see that that was willful, that she meant to
8 cause tax liability to the other beneficiaries. That's how
9 I'm analyzing this.

10 MR. KIEFER: And I --

11 THE COURT: I don't think we're on the same page on that.

12 MR. KIEFER: And so here's the issue with the taxes, Your
13 Honor. If I understand you correctly, what you're saying is,
14 "At the time that Mr. Waid took over there should have been
15 \$2.5 million in the bank account."

16 THE COURT: Right. That's the damages, totally.
17 Understood that.

18 MR. KIEFER: You're uncomfortable issuing punitive
19 damages on all 2.5 because she --

20 THE COURT: Right.

21 MR. KIEFER: -- had legitimate reasons taking any of it
22 out.

23 THE COURT: No. No.

24 MR. KIEFER: If she's not the one --

25 THE COURT: Not a legitimate reason. If I'm just saying

1 that some of it was not because of some intentional or willful
2 act, quite honestly, I do not see that her activity -- some of
3 these things she violated Court orders, for example, paying
4 attorneys. I have a problem with that.

5 But the fact that because she was just moving this
6 money around in a frantic and illogical fashion and ended up
7 holding funds that she shouldn't have held, so -- and how much
8 of this was because we told her you got to hold money in a
9 trust account that resulted in this tax liability that nobody
10 thought about? That's what's not been explained to me.

11 Is that tax liability her fault, or is it because
12 she was told to hold money in a Trust account pending the
13 outcome of an appeal that didn't happen for two more years?

14 MR. KIEFER: And I totally understand that, but it
15 wouldn't change the fact that \$2.5 million wasn't sitting in
16 the account. There's nothing about that tax liability that
17 changes that she willfully took all that money out, and if she
18 had wanted to explain why she had a \$1.2 million cashier's
19 check, she's had adequate opportunity. That would be my
20 point, Your Honor.

21 THE COURT: Okay. All right. Because exemplary and
22 punitive damages under NRS 42.005 - 001, it talks about the
23 conscious disregard, fraud, malice, or oppression and the
24 standards for that. The 42.005 provides that a -- in an
25 action for Breach of an Obligation not arising from a

1 contract, where it is proven by clear and convincing evidence
2 that the defendant has been guilty of oppression, fraud, or
3 malice, express or implied, the Plaintiff, in addition to
4 compensatory damages, may recover damages for the sake of
5 example and by way of punishing the defendant, except as
6 otherwise provided in this section by specific statute and
7 award of exemplary or punitive damages made pursuant to this
8 section may not exceed if it's -- if you recover less than a
9 hundred thousand dollars, then three times that, \$300,000 or
10 three times the amount of compensatory damages if more than a
11 hundred thousand dollars.

12 So, because this obligation was imposed as a
13 fiduciary and not the -- by the terms of the Trust itself,--
14 there is a violation that subjects, I believe, Ms. Ahern to
15 some amount of punitive damages. I -- what I'm telling you
16 is, I am not convinced it's the entire 2.5 million.

17 MR. KIEFER: Understood.

18 THE COURT: I'm not under -- and I understand that there
19 -- to a certain extent there -- we have no choice but to
20 impose either the adverse inference or the rebuttal of
21 presumption, because this evidence and the opportunity to
22 explain these things was in Ms. Ahern's hands and she chose
23 not to go -- not to participate, not to provide the
24 information that might have exonerated and explained her -
25 self; I understand that.

1 But some of these things, it seems to me, that there
2 was \$2.5 million that wasn't there. I understand that, but a
3 large portion of it was found -- traced by Mr. Waid. He was
4 able to find it. He was able to claw it back, all except for
5 600,000 that is just simply gone. There is no explanation for
6 where it went. He can't explain through, apparently -- if I'm
7 understanding Exhibit A, this is not the missing \$600,000.
8 The \$600,000 just can't be accounted for.

9 One explanation for what happened to the balance of
10 the 2.5, like the other 1.9 million, is that, some of it was
11 misspent on these items, improper, Trustee shouldn't have done
12 it. And some of it is a tax liability of \$800,000 that had to
13 be paid. That's what I heard him say, "Make up the \$2.5
14 million." If I misunderstood him, please explain it.

15 MR. KIEFER: So the \$2.5 million, if it had been sitting
16 in a segregated account -- it's my understanding of Mr. Waid's
17 testimony, that if it had been sitting in a segregated account
18 for the MTC Trust and was there, it would have simply passed
19 through and not incurred a liability at all.

20 THE COURT: Correct. Uh-huh.

21 MR. KIEFER: The very fact --

22 MR. KIEFER: -- that it was gone is what created the
23 liability --

24 THE COURT: Uh-huh.

25 MR. KIEFER: -- so that can't possibly work to her favor



1 that by taking the money she -- the only reason the liability
2 was there, is that she disrupted the flow of the money through
3 the Trust.

4 THE COURT: But here's my, my problem. I'm not -- I
5 didn't hear him say, "If we had segregated the funds according
6 to Court order -- my problem is, I don't know if it would have
7 -- if by imposing the order saying segregate these funds, we
8 led to the Trust incurring tax liabilities. No expert has
9 come in and told me that, and that's a problem I have --

10 MR. KIEFER: Okay.

11 THE COURT: -- is, we told her hold these funds. And
12 that's my concern, and we don't know how much of that fact
13 that the Trust has incurred \$800,000 is because of this
14 litigation and the hold that was placed on the money --

15 MR. KIEFER: Sure.

16 THE COURT: -- because of the litigation.

17 MR. KIEFER: And I think we can find some common ground,
18 and perhaps it's in the cashier's check.

19 THE COURT: Uh-huh.

20 MR. KIEFER: When you get a cashier's check it is -- it's
21 a -- it's bare paper. You can take it and do anything you
22 want with it. After knowing that she wasn't allowed to touch
23 the money, she had a \$1.2 million cashier's check in her
24 possession. The fact that we got it back doesn't change what
25 her intent was when she took it, and I would argue that that

1 in and of itself is evidence --

2 THE COURT: Uh-huh.

3 MR. KIEFER: -- of fraud --

4 THE COURT: Uh-huh.

5 MR. KIEFER: -- and I would ask that the punitive damages
6 be based on an award of 1.2 million.

7 THE COURT: Okay. Okay. Thank you.

8 MR. KIEFER: Thank you.

9 THE COURT: I appreciate that.

10 MR. MOODY: Your Honor, can I -- I just feel like I need
11 to point --

12 THE COURT: Thanks, Mr. Moody.

13 MR. MOODY: -- just straighten one thing out.

14 THE COURT: Okay. Yeah.

15 MR. MOODY: If you'll remember Mr. Waid's testimony from
16 yesterday --

17 THE COURT: Yeah.

18 MR. MOODY: -- he said that at the end of one year,
19 rather than running the Trust down to zero, which would have
20 almost eliminated any tax liability, that Ms. Ahern carried
21 over a balance into the next year.

22 THE COURT: Uh-huh. Yeah. Okay.

23 MR. MOODY: That is where that enormous tax liability
24 came from because those funds were not properly distributed.

25 THE COURT: Was that the 2013?



1 MR. MOODY: It -- they were held from -- let me just say
2 that the \$800,000 tax liability was for 2014 and 2014 only.

3 THE COURT: Uh-huh.

4 MR. MOODY: There remain outstanding tax liabilities from
5 2011, 2012, and 2013, which adds to the complexity of all
6 this. But I can state, based on Mr. Waid's representations
7 and testimony yesterday, that the tax liability that was
8 incurred was because those funds -- not just because they
9 weren't properly segregated, but because they were held over
10 and, therefore, that Trust did incur a liability that it
11 should not have.

12 THE COURT: Thank you. All right.

13 The Court will award damages as follows:
14 Compensatory damages in the amount of \$2,581,994. This is the
15 amount that the Trust was harmed by Ms. Ahern's action and
16 that need to be recovered.

17 A portion of that has been recovered and paid, and
18 as I understand, the amount that Mr. Waid has paid back to the
19 65 percent beneficiaries is \$839,941; am I correct in that?
20 And that should be deducted from the 2.5?

21 MR. KIEFER: I apologize, Your Honor. Could you say that
22 number one more time?

23 THE COURT: That amount has been satisfied, \$839,941.

24 MR. KIEFER: And 92 cents. Correct, Your Honor.

25 THE COURT: And 92 cents --

1 MR. KIEFER: Yep.

2 THE COURT: -- has been satisfied of that amount?

3 MR. KIEFER: Correct, Your Honor.

4 THE COURT: However, certain actions appear to warrant
5 punitive damages, additional damages intended to punish and
6 discourage this kind of conduct. Because that's the thing
7 that has concerned me and it's concerned me since 2015 when
8 Ms. Ahern was removed, that there was this flurry of activity,
9 which appears intended at hiding the money.

10 And it's difficult to understand how much of the 2.5
11 million, because Ms. Ahern has refused to cooperate in this
12 inquiry and has obstructed it, and adverse inference should be
13 imposed on her. And the belief of the Court is that, if
14 discovery had been had into these matters it would have been
15 adverse to Ms. Ahern.

16 And the problem that I have here, is that, because
17 we were in litigation some of these funds had to be held, some
18 of them had to be segregated. So I am reluctant to impose
19 punitive damages on the entire \$2.5 million because I don't
20 know yet how much the final tax liability is going to be. I
21 don't know how much of that might have been influenced by the
22 litigation hold, so I'm reluctant to impose punitive damages
23 on the entire \$2.5 million.

24 However, Mr. Kiefer did point out a very interesting
25 fact and something that was really disturbing to Mr. Waid as a

1 Trustee, is holding funds in the form of a cashier's check,
2 totally improper. No Trustee should ever do that, very bad
3 practice. Needs to be discouraged, and clearly appears to
4 have been intended to defraud the Trust.

5 The fact that Mr. Waid was able to recover that
6 money is something for which we can be thankful, but which
7 does not excuse the fact that it never should have been done
8 in the first place. That appears, to me, to have been
9 undertaken with conscious disregard of the rights of the
10 remainder beneficiaries, appears to have been fraudulent.

11 While it may not have been, and that's a very high
12 standard to meet, because of the lack of evidence Mrs. Ahern
13 has been -- refused to cooperate or provide -- we have to
14 infer that it would have been adverse to her, and so that
15 fraud would have been proven. It appears to have been done
16 with malice, intentional malice, and oppression. Again, we
17 have no evidence would disabuse the Court of this belief,
18 because Mrs. Ahern has refused to cooperate in this inquiry.

19 So I am going to award punitive damages pursuant to
20 NRS 42.005 on a portion of the total damages. That would be
21 on the \$1,200 that was held in the cashier's check, which
22 appears to have been intentionally withdrawn on the day of or
23 the day after Ms. Ahern was removed as Trustee, and in an
24 attempt to hide the money. So I'll award punitive damages on
25 the 1,200,000 in the form of treble damages for \$3,600 --

1 3,600,000 in punitive damages.

2 Further, I believe that the remainder beneficiaries
3 are entitled to their attorney's fees and costs for this
4 hearing, so we'll entertain whatever you've had to do to
5 prepare from when we entered the decision, not for the appeal
6 itself. I don't think that's appropriate, but for whatever
7 discovery efforts you've had to cooperate in and work with Mr.
8 Waid and the hearings leading up to today's hearing.

9 I'll entertain a Motion for Fees and Costs for
10 everything unrelated to the appeal. If you were seeking
11 damages for the -- attorney's fees for the appeal, that'd be
12 -- there's a separate procedure to look for attorney's fees
13 for the appeal. This is just for what's gone on separate from
14 the appeal getting us up to today.

15 And the issue, as you've known we've got, not only
16 Marquis Aurbach's Attorney's Fees Request, but also Mr.
17 Lenhard's Attorney's Fees Request. And as I told you the
18 other day, I believe these attorney's fees request do attach
19 to something. They attach to the beneficial interest. I do
20 recall something that Ms. Ahern said in her - in her letter to
21 the Court, which is that she was her father's only child, and
22 that he wanted her to have something, and that was her 35
23 percent.

24 We've not discussed it today, but I did not hear you
25 request that she be disinherited. I would not go there. Her

1 father had intended her to have the 35 percent. I hope at
2 some point in time these oil and gas revenues pay off hugely
3 and she's able to satisfy this judgment and start collecting
4 the money that her father intended her to have. And if she
5 had not, I believe, been led astray by people who did not have
6 her best interests at heart, this would never have happened.

7 If she had just left everything in place the way her
8 parents wanted it, we wouldn't be here today, but bad people
9 -- I think one time Mr. Waid described them as grifters. Bad
10 people have interfered and taken her money, and I'm sorry for
11 that, but it doesn't change my view that in doing so she
12 abused the Trust that was placed in her by her parents. They
13 wanted her to be the Trustee of this Trust.

14 She abused that position to the detriment of her
15 daughters, and that's not what her parents intended. Her
16 parents wanted her to have 35 percent for her life, and I hope
17 that at some point in time she can resume receiving that
18 entire amount.

19 But until she's paid off this judgment, she remains
20 under Mr. Waid's Trusteeship, and we will deal with her needs
21 as we have discussed previously. The Trustee and his best
22 interests for her health and welfare can request the Court
23 distribute money.

24 But other than that, we've got to pay this back, and
25 this will take priority over the attorney's fees of her

1 Marquis Aurbach and Mr. Lenhard, who are also entitled to be
2 paid; but they do not have a priority in payment. And however
3 Mr. Waid can figure out how to pay these poor people back for
4 all the time they invested in trying to help her, I don't
5 know. I leave that to Mr. Waid in his discretion as a
6 professional Trustee. The Court has full faith in his
7 abilities.

8 So, Ms. Waid -- Ms. Ahern, I sincerely, as I said,
9 hope at some point in time your parents' wishes can be carried
10 out again, but I truly do believe, and I know you don't see
11 it, but I believe you've been led astray by people who do not
12 have your interests at heart and who have caused you to harm
13 not only your family but yourself, and I'm sorry for that, but
14 your parents placed a very great trust in you and you abused
15 it.

16 That's my ruling. Thank you.

17 MR. POWELL: Thank you, Your Honor.

18 MR. MOODY: Thank you, Your Honor.

19 THE COURT: We'll be in recess.

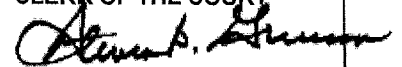
20 [Proceedings adjourned at 11:42 a.m.]

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

23 

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





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11 *Attorneys for Fredrick P. Waid,*
12 *Court-appointed Trustee*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 In the matter of

Case No.: P-09-066425-T
Dept. 26

16 THE W.N. CONNELL AND MARJORIE T.
17 CONNELL LIVING TRUST DATED May
18 18, 1972, an Inter Vivos Irrevocable Trust.

19 **ORDER DENYING REQUEST FOR ATTORNEY'S FEES AND GRANTING**
20 **TRUSTEE'S REQUEST TO APPOINT GUARDIAN AD LITEM**

21 Date of Hearing: 08/02/17
22 Time of Hearing: 11:00 a.m.

23 Eleanor Ahern filed a motion on July 10, 2017 requesting Fredrick P. Waid, court-
24 appointed acting Successor Trustee ("Trustee") of The W.N. Connell and Marjorie T. Connell
25 Living Trust, dated May 18, 1972 ("Trust"), to release trust funds to pay \$100,000 to Larry
26 Semenze, Esq. as her legal counsel. The Trustee filed his response to the motion on July 20,
27 2017 and counter-moved for the appointment of a guardian ad litem, for permission to pursue a
28 return of property action, and for an order relating to IRS matters.

Having considered the motion and counter-motions,

THE COURT FINDS that Eleanor Ahern was not able to articulate sufficient reasons
why she requires an attorney at this point in the litigation, or why it would cost \$100,000 to
retain counsel.

///

HUTCHISON & STEFFEN

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THE COURT FURTHER FINDS that it is in Eleanor Ahern's best interest to have a guardian ad litem appointed.

Having considered the same and good cause appearing,

IT IS HEREBY ORDERED that Eleanor Ahern's motion for an order requiring the Trustee to release \$100,000 to Larry Semenze, Esq., is denied without prejudice.

IT IS FURTHER ORDERED that the Trustee's motion to appoint a guardian ad litem is granted, and Kristin K. Woods of St. George, Utah is appointed as temporary guardian ad litem.

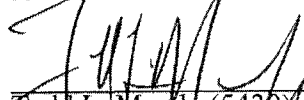
IT IS FURTHER ORDERED that the Trustee's request to pursue a return of property action against Suzanne Nounna is stayed pending a recommendation from the guardian ad litem.

Dated this 2nd day of August, 2017.

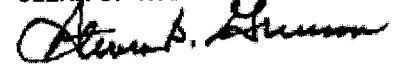

District Court Judge

Submitted by:

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Attorneys for Fredrick P. Waid



1 **ORDER**

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9 Attorneys for Jacqueline M. Montoya
10 and Kathryn A. Bouvier ("Movants")

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 In the Matter of

14 THE W.N. CONNELL and MARJORIE T.
15 CONNELL LIVING TRUST, dated May 18,
16 1972,

Case No. P-09-066425-T
Department: 26 (Probate)

17 A non-testamentary trust.

18 Date of Hearing: February 9 -10, 2017

19 **ORDER REGARDING MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR AHERN**

20 **A. PROCEDURAL BACKGROUND/OVERVIEW**

21 A.1 A "Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No
22 Contest Clause; and Surcharge of Eleanor's Trust Income" ("the Motion") was filed on behalf of
23 Jacqueline M. Montoya and Kathryn A. Bouvier ("Movants" or "Ms. Montoya and Ms. Bouvier")
24 on June 3, 2015, and a Supplement to the Motion was filed on July 31, 2015. Ms. Montoya is the
25 currently serving trustee of the MTC Living Trust, dated December 6, 1995, and subsequently
26 restated in its entirety on October 3, 2000 ("MTC Trust"), and is also a beneficiary of the MTC
27 Trust, while Ms. Bouvier is a beneficiary of the MTC Trust.

28 A.2 An opposition to the Motion was filed on behalf of Eleanor Connell Hartman Ahern

1 ("Ms. Ahern") on June 29, 2015, and a "Motion to Strike Supplement to Motion for Assessment of
2 Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's
3 Trust Income" was filed on August 3, 2015.

4 A.3 An evidentiary hearing was held on February 22, 2016 and continued on March 3,
5 2016. On February 22, 2016 legal arguments were presented by all parties, and the testimony of
6 two witnesses, Fredrick Waid and Jacqueline Montoya, was offered, and on March 3, 2016 closing
7 arguments were made.
8

9 (a) Jacqueline M. Montoya and Kathryn A. Bouvier were jointly represented by
10 attorneys Layne T. Rushforth, Joseph J. Powell, and Daniel P. Kiefer of The Rushforth Firm,
11 Ltd.;

12 (b) Eleanor Connell Hartman Ahern ("Ms. Ahern") was represented by Tamara
13 Beatty Peterson, Esq. and Kirk B. Lenhard, Esq., of Brownstein Hyatt Farber Schreck, LLP;
14 and
15

16 (c) Fredrick P. Waid ("Mr. Waid"), in his capacity as the acting trustee of THE
17 W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 ("the
18 Trust"), was represented by Todd L. Moody and Russel J. Geist of Hutchison & Steffen,
19 I.L.C.

20 A.4 The result of the evidentiary hearing on February 22, 2016 and March 3, 2016 was
21 the issuance of the "Order Regarding Motion for Assessment of Damages; Enforcement of No
22 Contest Clause; and Surcharge of Trust Income", dated September 13, 2016 ("Order Regarding
23 Motion for Damages").

24 A.5 The Order Regarding Motion for Damages included the following findings:

- 25 1. Ms. Ahern, as Trustee, did not comply with the Court order to protect
26 the 65% share of the Trust that was to be segregated under the terms of the
27 Trust for the Movants, Ms. Montoya and Ms. Bouvier.
28

1 3. *Ms. Ahern's failure to comply with the Court's Order to protect the*
2 *Movants' 65% share, however, resulted in a misapplication of the Trust*
3 *income, which deprived the Movants of funds owed to them under the terms*
4 *of the Trust. Ms. Ahern's misapplication of Trust funds warrants a*
5 *surchage against Ms. Ahern's 35% share of the Trust, to be paid to*
6 *Movants, in a total amount to be determined at a future hearing to be set*
7 *by this Court.*

8
9 4. *Additional briefing and argument is needed on the issues of punitive*
10 *and treble damages. It is expected that the additional briefing on such*
11 *damages, and the hearing on the total amount owed to Movants, will be*
12 *scheduled after the Successor Trustee, Fredrick P. Waid ("Mr. Waid")*
13 *finalizes his accounting for the Court.*

14
15 6. *In further violation of this Court's Orders, Ms. Ahern removed some*
16 *funds from Trust accounts before turning those accounts over to the*
17 *Successor Trustee, Mr. Waid. Some funds have since been turned over to*
18 *the Successor Trustee, however, until such time as Mr. Waid can provide*
19 *an Accounting the Court cannot rule on Ms. Ahern potential liability. The*
20 *exact amount of any damages resulting from these serious breaches of*
21 *fiduciary duty will be determined at a later evidentiary hearing.*

22 8. *Movant's seek punitive damages, which requires a finding of willful*
23 *and malicious conduct. In the alternative, Movants seek treble damages*
24 *for breach of fiduciary duty. Ms. Ahern's conduct was shocking and needs*
25 *to be dealt with a serious fashion, but the final decision on whether punitive*
26 *and/or treble damages should be awarded in addition to restitution will be*
27 *made at the evidentiary hearing to be scheduled after Mr. Waid concludes*
28

discovery and prepares his report and accounting to the Court.

A.6 In the "Order" section of the Order Regarding Motion for Damages, it was stated that:

IT IS FURTHER ORDER ADJUDGED AND DECREED that Mr. Waid shall prepare a report and a trustee's account, and upon completion, a hearing on the amounts owed by Ms. Ahern, including any punitive and treble damages, shall be conducted, unless the parties stipulate otherwise.

A.7 In compliance with this Court's Order Regarding Motion for Damages, on February 1, 2017, Mr. Waid filed his "Accounting and Report of Trust Activity from 2013 to 2015" ("Accounting and Report").

A.8 As it relates to his calculation of the amounts owed to the MTC Trust from Ms. Ahern, Mr. Waid made the following declarations and conclusions in his Accounting and Report:

Since the Appointment of the Successor Trustee in April 2015, this Court has issued numerous orders requiring Ms. Ahern to produce records, comply with deposition notices and cooperate with the Successor Trustee's efforts to prepare an accounting for time periods when she served as Trustee. In response to the Court's orders Ms. Ahern has produced, through her various counsel, only limited records primarily consisting of forwarded mail. She did not appear for any scheduled or ordered depositions notwithstanding the findings of the Court regarding fraud and other misconduct pursuant to hearings on the Motion to Enforce the Trust's No Contest Clause.

Due to her failure to appear and cooperate as ordered, a significant portion of the transactional history that occurred during Ms. Ahern's tenure as trustee cannot be reconciled or explained. As such, and pursuant to Generally Accepted Accounting Principles (GAAP), the Successor Trustee is unable to this provide the

1 Court with definitive information or explain as to the greatly expanded Trust
2 expenditures, either in dollars spent or to whom those dollars were paid, during
3 the accounting period and Ms. Ahern's tenure as Trustee. [Pages 1- 2 of
4 Accounting and Report]

5 *****
6

7 Again, due to Ms. Ahern's failure to answer questions under oath, the
8 rationale and basis for the expenditures remain unanswered and unclear. What
9 is clear is that MTC did not receive a single distribution of royalty income from the
10 Trust between June 2013 and April 2015. [Page 2 of Accounting and Report]

11 *****
12

13 A significant number of expenses that were authorized by Ms. Ahern appear
14 to have provided no benefit to the Trust and cannot be deemed appropriate,
15 deductible business expenses as defined and permitted by the Internal Revenue
16 Code. [Page 2 of Accounting and Report]

17 *****
18

19 After reviewing available records from the Internal Revenue Service,
20 various banks, oil and gas producers, common royalty recipients (i.e., the Miller
21 family, which shares an equivalent 25% royalty interest as the Trust) and partial
22 reconciliations completed by the accounting firm of Gamm et & King CP As, the
23 Successor Trustee prepared the chart attached as Exhibit B, which sets forth the
24 best available basis for calculation of royalties not paid to the MTC Trust, as
25 required by the terms of the Trust and as determined by this Court's previous
26 findings and orders.

27 MTC should have received royalty payments of \$481,010 for 2013,
28 \$2,028,134 for 2014 and \$1,447,406 for 2015, totaling \$3,956,550. MTC received

1 for the three (3) year period a total of \$2,214,497, with \$1,914,622 of the amount
2 being paid after Ms. Ahern was removed as Trustee. The total undistributed
3 royalties for the period is \$1,742,053. [Page 2 - 3 of Accounting and Report]

4 A.9 On February 7, 2017, the Movants filed their Pre-Trial Memorandum, which set forth
5 the amount of damages that the Movants were seeking to be awarded by the Court in light of Mr.
6 Waid's computations and calculations as found in his Accounting and Report.

7
8 A.10 On or about February 8, 2017, Ms. Ahern submitted an *ex parte* request, via
9 correspondence faxed to the Court, to have funds released by Mr. Waid from the Trust for the
10 payment of her representation by Mr. Lawrence Semenza at the evidentiary hearing.

11 A.11 In response to Ms. Ahern's *ex parte* request for an order releasing funds, pursuant
12 to a minute order issued on February 8, 2017, the Court granted Ms. Ahern's request for the release
13 of funds directly to Attorney Semenza "for his reasonable attorney's fees incurred for his
14 representation of Ms. Ahern at the February 9th and 10th evidentiary hearing".

15 A.12 Prior to the start of the evidentiary hearing, Attorney Semenza indicated that he
16 would be unable to represent Ms. Ahern under the circumstances and would have to respectfully
17 decline to accept the representation despite the minute order issued by the Court¹.

18
19 A.13 Subsequent to Attorney Semenza making his decision, Ms. Ahern was informed by
20 the Court of the situation and the fact that the evidentiary would proceed as scheduled. Ms. Ahern
21 replied that because she would not be represented by counsel, she indicated that she was declining

22
23
24 ¹ MR. SEMENZA: I have not made an appearance, and I certainly cannot make an appearance under the
25 terms that have been specified in the Court's order. Ms. Ahern, as you indicated last time, Your Honor,
26 needs counsel, and apparently she does not have sufficient funds with which to engage counsel, whether
27 it's me or someone else. And to me, for me to enter an appearance today and for tomorrow, assuming
28 that the hearing were to continue that and then I don't know whether I would have to move the Court
to withdraw since I ---in for a pound, in for a penny, whatever. I cannot do that. It would be malpractice
for me to step into this for a hearing this morning, Your Honor, and I cannot do so.

THE COURT: Okay. So you're respectfully declining to appear.

MR. SEMENZA: I am, Your Honor.

1 to speak².

2 A.14 After making such declaration, Ms. Ahern then made an oral request for the
3 evidentiary hearing to be continued which the Court promptly denied³.

4 A.15 At the evidentiary hearing commencing on February 9th, appearances and
5 representations were as follows:

6 (a) The Movants were jointly represented by attorneys Joseph J. Powell and
7 Daniel P. Kiefer of The Rushforth Firm, Ltd.;

8 (b) Ms. Ahern appeared *pro se*; and

9 (c) Mr. Waid, in his capacity as the acting trustee of the Trust, was represented
10 by Todd L. Moody of Hutchison & Steffen, LLC.

11 A.16 The sole witness to provide testimony at the evidentiary hearing was Mr. Waid.

12 A.17 The issues to be determined at the evidentiary hearing were the determination of the
13 compensatory damages owing to the Movants, via their beneficial interests in the MTC Trust, from
14 Ms. Ahern and a determination as to whether exemplary damages would be awarded to the
15 Movants based on Ms. Ahern's conduct and if appropriate the amount of such exemplary damages
16 that was appropriate.

17
18
19 **B. FINDINGS REGARDING COMPENSATORY DAMAGES**

20 The Court makes the following findings and rulings in relation to compensatory damages:

21 B.1 Mr. Waid testified regarding the conclusions found in his Accounting and Report.
22 As such, the Accounting and Report is accepted by the Court in its entirety and the findings and
23 determinations therein relating to figures withheld from the MTC Trust beneficiaries, the Movants,
24

25
26 ² MS. AHERN: Since I am not represented by counsel, I will not be speaking.

27 THE COURT: Okay. That's understood.

28 ³ MS. AHERN: I would like a continuance.

THE COURT: That's denied.

1 by Ms. Ahern, are deemed accurate.

2 B.2 Specifically, between June of 2013 and the end of 2015 that the Movants, through
3 distributions required to be given to the MTC Trust, were entitled to the sum of \$3,956,550.

4 B.3 Further, for the period of June of 2013 through March 31, 2015, the Movants were
5 entitled to the sum of \$2,581,994.92.

6 B.4 Additionally, Mr. Waid made equitable adjustments of income, pursuant to guidance
7 from the Court, after he became trustee in early April of 2015, thus reducing the amount owed to
8 the Movants. As a result, the amount owed to Movants, through the MTC Trust, for the time period
9 of June of 2013 through March 31, 2015, is \$1,742,053.

10 B.5 Ms. Ahern offered no evidence to refute Mr. Waid's Accounting and Report nor his
11 testimony regarding his thorough investigation and subsequent reporting of the findings regarding
12 the same.

13 C. FINDINGS REGARDING EXEMPLARY DAMAGES

14 The Court makes the following findings and rulings in relation to exemplary damages:

15 C.1 The Movants have asked for this Court to award exemplary damages against Ms.
16 Ahern based on her inappropriate conduct in this matter.

17 C.2 Based on all evidence received and reviewed at the various evidentiary hearings,
18 including testimony of Mr. Waid, the Court finds that the imposition of punitive damages against
19 Ms. Ahern based on her conduct are warranted.

20 C.3 Specifically, Ms. Ahern intentionally and fraudulently breached her fiduciary duties
21 to the MTC Trust, and the Movants, as beneficiaries of the MTC Trust, and committed tortious acts
22 in converting and embezzling Trust funds. Accordingly, the Court finds that Ms. Ahern acted with
23 oppression, fraud, and malice.

24 C.4 Punitive damages are reserved for bad actors who deserve to be punished. See
25 *Coughlin v. Hilton Hotels Corp.*, 879 F.Supp. 1047 (D. Nev. 1995) ("punitive damages are not
26
27
28

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1 designed to compensate the victim of a tortious act but rather to punish and deter oppressive,
2 fraudulent or malicious conduct"). Ms. Ahern's actions deserve to be punished and rise to the level
3 of her having acted with oppression, fraud, and malice.

4 C.5 This Court has the authority to award punitive damages "in an action for the breach
5 of an obligation not arising from contract, where it is proven by clear and convincing evidence
6 that the defendant has been guilty of oppression, fraud, or malice." See NRS 42.005(1).

7 C.6 Once shown, a petitioner, "in addition to the compensatory damages, may recover
8 damages for the sake of example and by way of punishing the defendant an amount equal to
9 three times the amount of compensatory damages awarded to [Petitioner] if the amount of
10 compensatory damages is \$100,000 or more." *Id.*

11 C.7 The evidence presented at the various evidentiary hearings conclusively established
12 that Ms. Ahern willfully and intentionally deceived this Court, and the Movants, by claiming, in a
13 sworn declaration signed under oath, all funds that she was ordered (by the Court) to keep in trust
14 during the pendency of the dispute were "intact and are presently being held in trust."
15

16 C.8 This Court previously held in its "Order Regarding Motion for Damages," that "the
17 account [Ms. Ahern] filed, under penalty of perjury on March 13, 2015, titled "Brief Regarding
18 Accounting Fiduciary Duties, and Trust Administration" was incomplete and intentionally
19 inaccurate."
20

21 C.9 In that same order, this Court determined that "Ms. Ahern, as Trustee, did not
22 comply with the Court order to protect the 65% share of the Trust that was to be segregated under
23 the terms of the Trust for the Movants, Ms. Montoya and Ms. Bouvier."
24

25 C.10 Based on the evidence presented to this Court (i.e. the testimony of Mr. Waid at the
26 hearings occurring on February 22, 2016 and February 9, 2017, together with the exhibits admitted
27 at the same hearings, which include reports made by Mr. Waid), the Court finds that there is clear
28 and convincing evidence that Ms. Ahern committed fraud, oppression, and malice.

1 C.11 The following factual findings support the Court's findings of fraud, oppression, and
2 malice;

- 3 1. Ms. Ahern filed, under penalty of perjury, an intentionally inaccurate
4 accounting with the Court;
- 5 2. Ms. Ahern failed to keep funds which were in dispute---i.e. the income
6 attributable to the MTC Trust's 65% share (the "Segregated Funds:")---
7 segregated despite Court order to do so (the "Segregation Order");
- 8 3. Ms. Ahern represented to the Court, under penalty of perjury, that she was
9 complying with the Court's Segregation Order while she continuously (and
10 secretly) removed large portions of the Segregated Funds from the Trust
11 accounts;
- 12 4. Ms. Ahern claimed, under penalty of perjury, that \$500,000 of the
13 Segregated Funds were on deposit with Fidelity Capital Inc. The evidence
14 and testimony in this matter demonstrate that this representation was and
15 is false. There was never \$500,000 on deposit with Fidelity Capital Inc.;
- 16 5. Ms. Ahern claimed, under penalty of perjury, that she rented office space for
17 the Trust from Joseph's Properties at a cost of \$1,750 per month pursuant
18 to an alleged lease. The evidence and testimony in this matter demonstrate
19 that this representation was and is false, and that Ms. Ahern never rented
20 office space from Joseph's Properties;
- 21 6. While the Segregation Order was in place, Ms. Ahern paid \$300,000 of
22 Segregated Funds to Real Estate Services, a entity operated by Suzanne
23 Nounna. Suzanne Nounna has no beneficial interest in the Trust or the MTC
24 Trust;
- 25 7. Ms. Ahern withdrew a substantial amount of Segregated Funds from Trust
26
27
28

1 accounts slightly before, on the day of, and shortly after her removal as
2 trustee. Ms. Ahern made such withdrawals by use of cashier's checks. Mr.
3 Waid testified that Ms. Ahern's use of cashier's checks was "severely
4 reckless" and "troubling" because of such negotiable instrument's status as
5 unprotected, uninsured, bearer paper;

6
7 8. Despite the Segregation Order, Ms. Ahern used Segregated Funds to pay
8 hundreds of thousands of dollars in personal expenses;

9 9. On, or around, February 18, 2015, Ms. Ahern removed \$1,287,580.85 of
10 Segregated Funds held in a Wells Fargo Trust account by use of a cashier's
11 check (the "February 2015 Cashier's Check").

12 10. After her removal as trustee of the Trust, Ms. Ahern attempted an "all cash"
13 withdrawal of \$100,000 from the Segregated Funds; and the Movant's
14 share.

15
16 C.12 The Court and Mr. Waid provided Ms. Ahern ample opportunity to explain her
17 actions described above and provide appropriate documentation to demonstrate any legitimate
18 purpose for such actions. Ms. Ahern remained silent on these issues and failed to provide any
19 financial documentation relevant to the above issues. More specifically, Ms. Ahern refused to
20 cooperate with Mr. Waid's investigation into Trust assets that went missing during her tenure as
21 trustee, and has willfully and intentionally obstructed and impeded the same.

22
23 C.13 The Court has no choice but to impose an adverse inference against Ms. Ahern
24 pursuant to the standard set for by the Nevada Supreme Court in *Bass-Davis v. Davis*, 122 Nev.
25 442, 134 P.3d 103 (2006). Accordingly, the Court finds that any information and documentation
26 which Ms. Ahern could have provided in relation to Mr. Waid's inquiry would have been adverse
27 to her legal position. *See id.* at 451-52, 109.

28 C.14 In the absence of any evidence to the contrary, the Court finds that pursuant to NRS

1 47.250(1) Ms. Ahern's unlawful acts of violating the Segregation Order by removing Segregated
2 Funds "was done with an unlawful intent." Similarly, the Court must also find that pursuant to
3 NRS 47.250(2) Ms. Ahern intended the "ordinary consequences" of her "voluntary acts" of
4 repeatedly removing and withdrawing monies from the Segregated Funds---i.e. that she intended
5 to disregard and violate the Segregation Order.
6

7 C.15 Based on the above, the Court hereby finds that Ms. Ahern's actions in relation to
8 the Movants and the Segregated Funds were undertaken with an conscious disregard of the rights
9 of the Movants and were clearly fraudulent.

10 C.16 Of the above described actions, the Court finds Ms. Ahern's actions in relation to the
11 February 2015 Cashier's Check to be especially troubling and egregious. Although the funds
12 associated with the February 2015 Cashier's Check were eventually recovered through diligent
13 efforts of Mr. Waid, Ms. Ahern's use of this check was nonetheless reprehensible. Mr. Waid
14 testified that such behavior was disturbing. The Court believes that such willful behavior and
15 disregard of the Segregation Order needs to be discouraged, and clearly appears to have been
16 intended to defraud the Trust and the Movants.
17

18 C.17 Having considered the totality of Ms. Ahern's wrongful acts, the adverse inference
19 imposed against Ms. Ahern in accordance with *Bass-Davis v. Davis*, and the un rebutted
20 presumptions set forth at NRS 47.250(1) and (2), the Court believes that the imposition of punitive
21 damages in this matter is appropriate pursuant to NRS 42.005.

22 C.18 As the Court finds Ms. Ahern's actions in relations to the February 2015 Cashier's
23 Check to be the most egregious and reprehensible of Ms. Ahern's conduct, the Court shall treble the
24 amount of funds removed through the February 2015 Cashier's Check (\$1,287,580.85) and award
25 such as a punitive damage in favor of the Movants and against Ms. Ahern. Accordingly, the Court
26 intends to award punitive damages against Ms. Ahern in the amount of ~~\$3,862,742.55~~ (3 X
27 ~~\$1,287,580.85~~) ^{\$3,862,742.55}
28 ^{\$1,287,580.85} ^{\$3,600,000}

1 C.19 The Court finds that the punitive damage award described above should be paid
2 from and/or offset against Ms. Ahern's share of the Trust.

3 C.20 Given the anticipated compensatory damage award of \$2,581,994.92, which would
4 allow a possible punitive damages award in the amount of \$7,745,984.76, the anticipated punitive
5 damage award described above is well within the statutory bounds set forth in NRS 42.005(1)(a).
6

7 C.21 In accordance with, and in supplement to, the Order Regarding Motion for Damages,
8 the Court finds that Ms. Ahern's share of the Trust shall remain in complete and entire suspension
9 until all damages awarded herein (both compensatory and punitive damage awards), which shall
10 include all relevant interest, fees, and costs, have been fully satisfied. Accordingly, the Movants
11 shall receive all Trust income, with Mr. Waid calculating the relevant portion of Trust income which
12 would otherwise be attributable to Ms. Ahern's 35% share, until such time as Ms. Ahern's debts and
13 liabilities outlined herein are fully satisfied. The determination of whether Ms. Ahern's liabilities
14 to the Movants has been fully satisfied by her 35% share of the Trust shall be made by Mr. Waid in
15 his capacity as successor trustee of the Trust, *except Ms. Ahern's GAIL may petition the Court for distributions*
16 *necessary for Ms. Ahern's health, maintenance*

17 **D. FINDINGS REGARDING AWARD OF ATTORNEY'S FEES AND COSTS** *Self care*

18 The Court makes the following findings and rulings in relation to the Movants'
19 request for an award of attorney's fees and costs:

20 D.1 An award of attorney's fees and costs is appropriate pursuant to NRS 153.031(3)(b)
21 because:

- 22 1. The Movants' successfully moved the Court for relief "compelling redress of
23 a breach of the trust" pursuant to NRS 153.031(1)(m); and
24 2. An award of fees and costs in this matter is necessary to "avoid an injustice"
25 pursuant to NRS 153.031(3) because the Movants' relevant fees and costs are
26 a direct and proximate result of Ms. Ahern's misconduct.
27

28 D.2 The Court shall entertain a motion for fees from the Movants which shall detail the

1 reasonableness of the requested fees in accordance with the *Brunzell* factors; and

2 D.3 As the Court does not believe that the Movants' are entitled to an award of their fees
3 and costs associated with the recently completed appeal in this matter, the motion for fees shall not
4 include a request for such fees and costs.

5 **E. JUDGMENT AGAINST ELEANOR CONNELL HARTMAN AHERN**

6
7 E.1 Based on the above findings and rulings, the Court hereby ENTERS JUDGMENT
8 FOR COMPENSATORY DAMAGES in favor of the MTC TRUST (of which JACQUELINE M.
9 MONTOYA and KATHRYN A. BOUVIER are beneficiaries) and against ELEANOR CONNELL
10 HARTMAN AHERN as follows:

- 11 1. Compensatory damages in the amount of \$2,581,994.92;
- 12 2. A partial satisfaction of the above award shall be provided to ELEANOR
13 CONNELL HARTMAN AHERN in the amount of \$809,841.92 based on
14 payments made by Mr. Waid in his role as successor trustee of the Trust to
15 the MTC TRUST; accordingly, the current outstanding balance of the
16 compensatory damages awarded above is \$1,742,053;
- 17 3. In accordance with NRS 17.130(2) and NRS 99.040(1), pre-judgment and
18 post-judgment interest shall accrue against this compensatory damage
19 award ^{at the statutory rate} until fully satisfied;
- 20 4. In light of Mr. Waid's unique knowledge of the partial satisfaction described
21 above, as well as his role as successor trustee, Mr. Waid shall determine and
22 calculate the amount of relevant judgment interest associated with this
23 compensatory damage award;
- 24 5. Ms. Ahern's share of the Trust shall remain in complete and entire
25 suspension until all compensatory damages awarded herein have been fully
26 satisfied; ^{except for distributions allowed by the}
27 ^{court upon petition by Ms Aherns C.A.}
28 ^{for her healthy maintenance & welfare.}

6. The MTC Trust shall receive all net Trust income, with Mr. Waid calculating the relevant portion of the Trust income which would otherwise be attributable to ELEANOR CONNELL HARTMAN AHERN's 35% share, until such time as this is fully satisfied; and

7. The determination of whether ELEANOR CONNELL HARTMAN AHERN's liability related to this compensatory damage award has been fully satisfied shall be made by Mr. Waid in his capacity as successor trustee of the Trust.

E.2 Based on the above findings and rulings, the Court hereby ENTERS JUDGMENT FOR PUNITIVE DAMAGES in favor of the MTC TRUST (of which JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER are beneficiaries) and against ELEANOR CONNELL HARTMAN AHERN as follows:

1. Exemplary damages in the amount of ^{600,000} ~~\$3,862,742.55~~;
2. In accordance with NRS 17.130(2) and NRS 99.040(1), pre-judgment and post-judgment interest shall accrue against this exemplary damage award ^{at the statutory rate} until fully satisfied;
3. In light of Mr. Waid's unique role as successor trustee, Mr. Waid shall determine and calculate the amount of relevant judgment interest associated with this exemplary damage award;
4. Ms. Ahern's share of the Trust shall remain in complete and entire suspension until all compensatory damages awarded herein have been fully satisfied; ^{save & except for allowed distributions upon petition of Ms. Ahern's GA's}
5. The MTC Trust shall receive all Trust income, with Mr. Waid calculating the relevant portion of Trust income which would otherwise be attributable to ELEANOR CONNELL HARTMAN AHERN's 35% share, until such time as this is fully satisfied; and

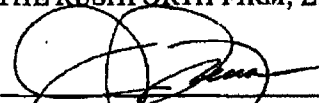
THE RUSHFORTH FIRM, LTD.
Telephone: 702-252-4552 / Fax 702-255-4677
PO Box 371655
Las Vegas, Nevada 89137-1655

1 6. The determination of whether ELEANOR CONNELL HARTMAN AHERN's
2 liability related to this exemplary damage award has been fully satisfied shall
3 be made by Mr. Waid in his capacity as successor trustee of the Trust.
4

5
6 
7 DISTRICT COURT JUDGE

August 4, 2017
Date

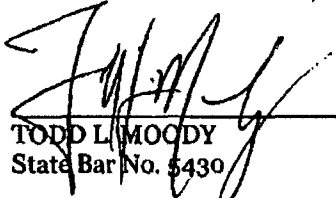
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9 THE RUSHFORTH FIRM, LTD.

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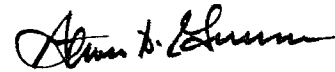
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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of
 THE W. N. CONNELL AND MARJORIE
 T. CONNELL LIVING TRUST, Dated
 May 18, 1972,

CASE NO. P-09-066425-T

DEPT NO. XXVI (26)

Date of Hearing: ~~June~~ July 22, 2015
 Time of Hearing: 9:00am

An Inter Vivos Irrevocable Trust.

**MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR
 AHERN; ENFORCEMENT OF NO-CONTEST CLAUSE; AND
 SURCHARGE OF ELEANOR'S TRUST INCOME**

Jacqueline M. Montoya ("Jacqueline") and Kathryn A. Bouvier ("Kathryn"), by
 and through their undersigned counsel, submit the following Motion for Assessment
 of Damages against Eleanor Ahern; Enforcement of No-Contest Clause; and, Surcharge
 of Eleanor's Trust Income.

This Motion is based upon the Affidavits and Points and Authorities submitted
 herewith, the pleadings and documents filed in this proceeding, and the argument of

1 counsel at the hearing to consider this Motion.

2 DATED this 3rd day of June, 2015.

3
4 ALBRIGHT, STODDARD, WARNICK &
5 ALBRIGHT

6 By 

7 WHITNEY B. WARNICK, ESQ.
8 Nevada Bar No. 001573
9 801 S. Rancho Drive, Suite D-4
10 Las Vegas, Nevada 89016
11 Attorneys for Kathryn A. Bouvier

12 THE RUSHEORTH FIRM, LTD.

13 By 

14 JOSEPH T. POWELL, ESQ.
15 Nevada Bar No. 008875
16 9505 Hillwood Drive, Suite 100
17 Las Vegas, Nevada 89134
18 Attorneys for Jaqueline M. Montoya

19 NOTICE OF MOTION

20 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
21 undersigned will bring the foregoing MOTION FOR ASSESSMENT OF
22 DAMAGES AGAINST ELEANOR AHERN; ENFORCEMENT OF NO
23 CONTEST CLAUSE; AND SURCHARGE OF ELEANOR'S TRUST, on for
24 hearing before the above entitled Court on the 22 day of July, 2015, at
25 the hour of 9:00 o'clock am on said date, or as soon thereafter as counsel can be
26 heard.

27 DATED this 3rd day of June, 2015

28 ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT

By 

WHITNEY B. WARNICK, ESQ.
Nevada Bar No. 001573
801 S. Rancho Drive, Suite D-4
Las Vegas, Nevada 89016
Attorneys for Kathryn A. Bouvier

OVERVIEW

When Jacqueline, as trustee of the MTC Living Trust, filed her initial Petition in this proceeding to recover the 65% share of trust income she and her sister, Kathryn, were entitled to receive from The W. N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (the "Trust"), she and Kathryn were not aware of the extensive damages that Eleanor Connell Hartman Ahern ("Eleanor") would be causing them to incur. Now that nearly two years have elapsed since the filing of the Petition, the damages that Eleanor has caused to them far exceed the loss of their use and benefit of their 65% share of Trust income. In addition to the loss of interest they could have earned on the 65% share, as well as other financial losses and detriment they suffered due to being deprived of the income in meeting their living needs, they now are faced with a loss of most of the actual funds making up their 65% share, due to Eleanor's tortious and criminal conversion thereof. It is also apparent that the total amount due them as their 65% share has been mis-reported by Eleanor and she has failed to account for all Trust income and properly resolve the tax liability relating thereto with the IRS. Added to this is the extensive litigation fees and costs Eleanor forced Jacqueline and Kathryn to incur due to her filing and asserting frivolous claims and positions in this proceeding, including appealing several Court decisions to the Nevada Supreme Court without a justifiable basis for her appeals. All this has been done by Eleanor, while acting as trustee of the Trust for most of the time period in question, in an attempt to cower and force Jacqueline and Kathryn to either accept unfair settlement terms dictated by Eleanor, or face financial ruin due to the cost of continual litigation.

The Court has helped to rectify some of the damages Jacqueline and Kathryn have suffered due to Eleanor's wrongful conduct, in the Court's Summary Judgment rendered herein on April 16, 2015, in its Order entered on April 20, 2015, determining Eleanor breached her duties and should therefor be removed as trustee of the Trust, and in awarding them judgment against Eleanor for attorney's fees they have incurred in these proceedings. However, Eleanor's defiant and contemptuous behavior is still