

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. TRICARICHI,

Appellant,

v.

PRICEWATERHOUSECOOPERS, LLP,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 86317

District Court Case No.

A-16-735910-B

APPEAL

**From the Eighth Judicial District Court
The Honorable Joanna S. Kishner District Judge**

**MOTION TO ENLARGE THE LENGTH OF OPPOSITION TO
EMERGENCY MOTION TO STAY ENFORCEMENT PENDING
APPEAL WITHOUT BOND**

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Declaration of Counsel in Support of Motion

1. Following a bench trial that resulted in judgment in PwC's favor and against Plaintiff-Appellant Tricarichi, PwC sought its attorneys' fees and costs based on two offers of judgment. The district court granted (in part) the same, awarding PwC approximately \$2.4 million in fees and costs.

2. On October 12, 2023, Tricarichi filed a motion to stay enforcement of that order, seeking the extraordinary relief of a stay without supersedeas bond and without alternate security.

3. The district court denied in part and deferred in part the motion, ordering a judgment debtor exam, supplemental briefing, and a supplemental hearing on the Motion.

4. Following the completion of the judgment debtor exam, the supplemental briefing, and supplemental hearing, the district court orally denied Tricarichi's Motion on February 29, 2024.

5. The underlying briefing was collectively more than 40 pages in length.

6. PwC respectfully requests four (4) additional pages for a total of fourteen (14) pages to adequately address the relevant issues in its Response.

7. PwC's counsel has worked diligently to make the Response as concise as possible but has concluded that a modest enlargement of length is necessary.

8. In accordance with NRAP 32(a)(7)(D), a copy of the Opposition is attached as Exhibit 1.

DATED: March 28, 2024

s/ Kelly H. Dove
Counsel for PricewaterhouseCoopers
LLP

Introduction

Appellee, PwC, respectfully requests leave to enlarge the length limitation of its concurrently-filed Response to Tricarichi's Emergency Motion To Stay Enforcement Pending Appeal Without Bond to allow it the ability to adequately address the relevant issues. Undersigned counsel recognizes that enlargement of page limits is generally disfavored and seeks the modest relief of an additional four pages only after working diligently to make the Response as concise as possible and concluding that four additional pages are necessary.

Argument

Nevada Rule of Appellate Procedure 27(d)(2) provides that the maximum length of a Motion or Response is ten pages. PwC respectfully requests that it be permitted a Response of fourteen pages to enable it to address the issues relevant to Tricarichi's Motion. PwC's request is amply justified.

In brief, the Motion seeks a stay of judgment execution without the security of a bond and without alternate security, which involves a fact-intensive, five-factor analysis. *See Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), as modified (Jan. 25, 2006). This analysis necessarily includes a discussion of evidence concerning Tricarichi's current financial status, his recent dissipation of his assets, as well as an IRS judgment from another case. Indeed, these proceedings before the district court involved two rounds of briefing – the initial motion practice, and then

supplemental briefing and a supplemental hearing following a judgment-debtor examination of Tricarichi.

Even giving these issues very brief treatment and working to make the Response as concise as possible, PwC needs four additional pages to be able to address the relevant issues and evidence.¹

Conclusion

For the reasons explained above, PwC respectfully requests that it be permitted to file a fourteen-page Response to Tricarichi's Emergency Motion.

DATED: March 28, 2024

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove

(Counsel list continued on next page)

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¹ PwC acknowledges that Tricarichi's Motion was within NRAP 27's ten-page limit, but notes that the Motion omits to address four of the five *Nelson* factors, as well as NRAP 8 and NRAP 27(e), nor contains the factual information and evidence PwC believes is critical to adjudicating the Motion.

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On March 28, 2024, I caused to be served a true and correct copy of the foregoing **MOTION TO ENLARGE THE LENGTH OF OPPOSITION TO EMERGENCY MOTION TO STAY ENFORCEMENT PENDING APPEAL WITHOUT BOND** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Maricris Williams
An Employee of SNELL & WILMER L.L.P.

4878-9535-3778

EXHIBIT 1

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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Introduction

While styled as an “emergency,” Tricarichi’s Motion fails to satisfy any of NRAP 27(e)’s requirements, which by itself merits denial. To start, it was not filed at the “earliest possible time.” It should have been filed shortly after February 29, the day the district court orally denied his motion to stay, not three weeks later. *See* NRAP 27(e)(1). Nor does the Motion include the required “NRAP 27(e) Certificate,” or any of the information required under that subsection. On these bases alone, the Court should, as NRAP 27(e)(1) permits, “summarily deny the motion.”

The Motion also fails on the merits, as Tricarichi seeks the extraordinary relief of a stay of execution without a supersedeas bond or any alternate security, but fails to provide any support – be it legal, evidentiary, or otherwise – justifying such relief. Indeed, Tricarichi’s Motion is most notable for what it intentionally omits. First, the near entirety of the Motion is premised on the representation that a purported federal tax lien exists due to the IRS judgment (issued in 2016), and that by virtue of the “tax lien,” Tricarichi cannot dissipate assets; thus, “maintain[ing] the status quo [to] protect the judgment creditor pending an appeal, is fully met.”¹ Tricarichi fails to inform the Court that since 2019, and during a time in which the IRS purportedly had a lien on all his assets and property, Tricarichi transferred and dissipated nearly [REDACTED] in assets – [REDACTED]. As such, the IRS

¹ Tricarichi Motion, at 3:9-11.

judgment has done – and will do – nothing to preserve the status quo pending appeal, and PwC is wholly unprotected without a bond.²

Second, despite his professed concern for the IRS, Tricarichi fails to mention that in the eight years since the IRS obtained its judgment, it has not collected – and Tricarichi has not paid – so much as a dollar in satisfaction of the judgment. In short, Tricarichi now seeks to avoid paying PwC, to PwC’s detriment, while continuing his gross dissipation of assets. Third, while focusing exclusively on the Fifth *Nelson* factor (which as set forth herein, was never intended to be used in the context he proposes), Tricarichi ignores the other four factors and fails to inform that Court that the district court found that every *Nelson* factor favored PwC.

Finally, Tricarichi fails to mention, let alone satisfy, the requirements under NRAP 8 to obtain a stay. This failure is not surprising, as the factors overwhelming weigh in PwC’s favor. As Tricarichi has failed to carry his burden under the *Nelson* factors and NRAP 8, the Court should deny the Motion.

Relevant Factual Background

On February 9, 2023, and following a nine-day bench trial, the district court entered judgment in PwC’s favor and against Tricarichi, holding that substantively, Tricarichi had not provided evidence in support of three elements of his claim, and

² Nor does Tricarichi himself personally believe – despite the repeated position in his briefs to the contrary – [REDACTED]
[REDACTED] Ex. 1, at 158:16-19.

procedurally, holding that his single cause of action was barred by both Nevada and New York’s applicable statutes of limitations.³ PwC subsequently sought its attorneys’ fees and costs based on two offers of judgment, which the district court granted in part, awarding PwC \$2,102,754.39 in attorneys’ fees and \$322,955.91 in costs (“Fees and Costs Order”).⁴ On October 12, 2023, Tricarichi filed a Motion to stay enforcement of the Fees and Costs order, seeking the extraordinary relief of a stay without supersedeas bond and without alternate security.

The district court subsequently denied in part and deferred in part the motion, ordering a judgment debtor exam, supplemental briefing, and a supplemental hearing on the Motion. Following their completion, the district court denied Tricarichi’s Motion on February 29, 2024.⁵ This Court should do the same.

Argument

I. Tricarichi Failed to Satisfy the Requirements for Emergency Relief.

While bringing the motion on a purportedly emergency basis, Tricarichi has not satisfied NRAP 27(e)’s requirements. To start, he has not “filed [the motion] at the earliest possible time,” and thus the Court “may summarily deny the motion.” *See* NRAP 27(e)(1). The district court orally denied Tricarichi’s motion for a stay on February 29, 2024, and the written order was entered on March 13. Yet, Tricarichi

³ Tricarichi Motion, Ex. F.

⁴ Attached hereto as Ex. 2.

⁵ Tricarichi Motion, Ex. A. The written order was entered on March 13, 2024.

waited until three weeks after the district court's ruling and more than a week after the entry of the formal written order to file his motion, which by no measure was the "earliest possible time." Tricarichi did not notify PwC's counsel or the clerk prior to filing. *See id.* Further, Tricarichi only generally argues that "absent an emergency stay ... PwC intends to immediately begin executing on the Fees and Costs Order," but omits the required NRAP 27(e)(3) certificate, specifying, *inter alia*, the particular facts showing the existence and nature of the emergency. For example, he does not indicate what aspects of potential execution on the judgment are imminent, problematic, or irreparable. The Motion should be denied on this basis.

II. Tricarichi Fails to Satisfy the *Nelson* Factors and NRAP 8.

In determining whether to grant a stay pending appeal, this court considers:

(1) whether the object of an appeal will be defeated if the stay is not granted, (2) whether appellant will suffer irreparable or serious injury if the stay is denied, (3) whether respondent will suffer irreparable or serious injury if the stay is granted and (4) whether appellant is likely to prevail on the merits in an appeal.

NRAP 8(c); *see also Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

NRCP 62(d) in turn governs stays of money judgments pending appeal and, in the context of the interpreting decisional law, provides that appellant can obtain a stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment amount, but that courts retain the inherent power to grant a stay in the

absence of a full bond. *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), as modified (Jan. 25, 2006) (“[A] supersedeas bond posted under NRCP 62 should usually be set in an amount that will permit full satisfaction of the judgment. [But a] district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when *unusual circumstances exist and so warrant.*”) (emphasis added). “The purpose of security for a stay pending appeal is to protect the judgment creditor’s ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay.” *See Nelson*, 121 Nev. at 835, 122 P.3d at 1254. As this Court has noted, “where other appropriate, reliable alternatives [to a supersedeas bond] exist ... the focus is properly on *what security* will maintain the status quo and protect the judgment creditor pending an appeal.” *Id.* (emphasis added).

In *Nelson*, the Court adopted five factors from the Seventh Circuit for the Court to consider when analyzing whether to accept alternate security in lieu of a bond and/or waive the bond:

(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant’s ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Id. Because this Court adopted its test from the Seventh Circuit,⁶ decisions from the Seventh Circuit and district courts therein should be treated as persuasive authority.

A. Tricarichi Fails to Satisfy the Fifth *Nelson* Factor (“Fifth Factor”).

As a preliminary matter, Tricarichi spends most of his Motion discussing his purported inability to post a supersedeas bond; however, his ability to post a bond has no part in the analysis.⁷ Rather, the Fifth Factor focuses on whether the bond places other creditors in an insecure position. Similarly, the 62(d) analysis as a whole focuses on the impact to PwC. The impact on Tricarichi has no bearing on whether to grant the Motion.

Relying exclusively on the Fifth Factor, Tricarichi misconstrues the same. The genesis for the Fifth Factor comes from *Olympia Equipment vs. Western Union*, 786 F.2d 794 (7th Cir. 1986), wherein a \$36 million judgment was issued against Western Union. Western Union argued that a traditional bond would force a bankruptcy, and thus, harm its other unsecured creditors. The district court waived the bond but required alternate security, *the value of which more than doubled the*

⁶ Further, undersigned counsel has been unable to locate any Nevada Supreme Court authority analyzing and/or applying the fifth factor (“Fifth Factor”) – which demonstrates the rarity with which a reduction and/or waiver of a bond is granted under this factor.

⁷ Further, as set forth herein, Tricarichi’s purported inability to post a bond is damage of his own making. As of 2019, Tricarichi had a net worth of [REDACTED]. In an undisputable effort to shield assets from the IRS judgment, Tricarichi has dissipated [REDACTED] of assets in the interim.

judgment amount. Id. In affirming the district court’s decision, the Seventh Circuit stated:

But we are reluctant to conclude that a district judge commits an abuse of discretion by refusing to allow a plaintiff to execute a judgment in circumstances where the execution may cause a billion-dollar bankruptcy, *merely because the alternative security to a supersedeas bond that the defendant apparently cannot post provides a slightly inferior protection of the plaintiff's interest.*

Id. Tricarichi’s instant request could not be more different, as he proposes no alternate security, let alone security that would only be “slightly inferior protection” to a supersedeas bond.

Instead, Tricarichi’s request is identical to that in *Leister v. Dovetail*, 2007 WL 9757956 (C.D. Ill., Nov. 13, 2007), where the judgment debtor argued for a stay with no security, citing to *Olympia* and applying the Fifth Factor. The *Leister* court rejected the comparison on identical terms to Tricarichi’s instant request:

The defendants offer no alternative security. Moreover, they argue that they cannot post bond without harming their own financial condition and that of other creditors. *In essence, the defendants seek the court’s blessing to favor themselves and their other creditors over the prevailing plaintiff while the case proceeds on appeal. This court cannot endorse a plan that allows the defendants to continue to pay other creditors and, in doing so, potentially harm the status quo vis a vis the plaintiff.*

Id. (emphasis added).

Moreover, Tricarichi has provided no legal or evidentiary support that the IRS’s position would be insecure. Unlike the unsecured creditors in *Olympia*, the

IRS would not be harmed by a bankruptcy, as the IRS judgment is non-dischargeable. Further, and as the district court correctly concluded when finding the Fifth Factor favored PwC: (1) the IRS already has a judgment earlier in time than PwC and is not insecure; (2) the IRS is not a private creditor, but rather, a bureau of the federal government, and the instant dispute is a matter of state law in a Nevada state court; and (3) Plaintiff has not presented evidence that the IRS: (a) believes it would be somehow impacted by the bond, (b) was put on notice of whether it would be impacted, or (c) couldn't attach any posted bond during the intervening time that this case would be on appeal.⁸ This Court should do the same. *See Milwaukee Ctr. for Indep., Inc. v. Milwaukee Health Care, LLC*, 2019 WL 7584285, at *2 (E.D. Wis. Mar. 12, 2019) (denying a motion for stay and finding that outside of a “short declaration,” the judgment debtor “provide[d] very little evidence to support [the Fifth Factor]”, including failure to “show that he could not obtain the premium or the collateral without putting his creditors in an insecure position,” and failure to submit evidence that he “explored alternatives to a supersedeas bond”).

Further, as admitted under oath, [REDACTED]

[REDACTED]

[REDACTED] In

⁸ *See* Tricarichi Motion, Ex. A.

⁹ Ex. 1, at 45:1-4; 58:3-59:1; 60:9-15.

¹⁰ *Id.*

short, the IRS is letting Tricarichi do as he pleases with his assets.

Tricarichi, however, cannot use the IRS's dormant judgment as a shield, arguing without support that [REDACTED]

[REDACTED] and (2) his assets will be preserved on appeal. No authority requires PwC to wait indefinitely to see if the IRS wishes to execute on its judgment, and as described below, his financial behavior and evaporating net worth unequivocally state otherwise. And if the IRS has not taken steps to collect against Tricarichi in eight years, why should he obtain the benefit of paying neither party, while dissipating assets as he pleases in the interim?¹²

B. The IRS Judgment Has Not Maintained the Status Quo Regarding Tricarichi's Finances.

As *Nelson* holds, and as Tricarichi's Motion repeatedly admits, the primary purpose in requiring a bond or alternate security pending appeal "is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." *See Nelson*, 121 Nev. at 835, 122 P.3d at 1254. As he does now, Tricarichi repeatedly assured the district court that the IRS judgment functions to maintain the status quo, and that maintaining the status quo is "fully met,"¹³ protecting PwC during the pendency of

¹¹ *Id.* at 64:9-13.

¹² Moreover, there is no collection priority. Pretend as he might, Tricarichi is not in bankruptcy.

¹³ Tricarichi Motion, at 3:6-11.

the appeal. That narrative is false. The IRS obtained its judgment in 2016, and Tricarichi exhausted his appellate remedies in 2019. Tricarichi’s sworn testimony and produced financial documents conclusively evidence that [REDACTED]

In 2019, and at the inception of the IRS lien, Tricarichi produced an asset sheet, showing his total assets in the amount of [REDACTED].¹⁴ Four short years later, and during a window in which a purported IRS lien covered all of Tricarichi’s property, he now claims total assets in the amount of \$900,000.¹⁵ The dissipation and/or transfer of more than [REDACTED] is comprised, at least in part, as follows.

Since 2019, Tricarichi has: [REDACTED]

[REDACTED]

¹⁴ “2019 Asset Form,” attached as Ex. 3.

¹⁵ Tricarichi Motion, at 2:7-9. *See also*, “2023 Asset Form,” attached as Ex. 4.

¹⁶ Ex. 1 at 79:24-80:6.

¹⁷ *Id.* at 82:12-18.

¹⁸ *Id.* at 21:1-6; 65:19-23; 66:5-68:5; 158:20-23.

¹⁹ *Id.* at 73:20-74:1; 75:8-10; 75:11-12, 76:1.

²⁰ *Id.* at 27:12-28:5.

²¹ *Id.* at 76:12-15. *See also*, Ex. 3 and 4.

[REDACTED]

[REDACTED] Despite this dissipation, Tricarichi incredibly still maintains that he “is not free to pledge assets for PwC’s sole benefit and to the IRS’s detriment” – yet he is free to [REDACTED]

[REDACTED]

[REDACTED] to whomever he pleases, whenever he pleases – *just not to PwC*, because *that* would be to the IRS’s detriment.

In short, PwC’s judgment is anything but protected without a bond, and the status quo will not be maintained during the pendency of appeal without a bond.

C. The Remaining Four *Nelson* Factors All Favor PwC, which Tricarichi Concedes by Silence.

Tricarichi’s omission of any discussion of four of the five *Nelson* factors is an admission that all favor denial of the Motion, as the district court found.²⁴ Regarding the first factor (the complexity of the collection process), the repeated transfers, sales, failure to recognize community property/debt obligations with his spouse, and

²² Ex. 1, at 148:3-150:15; 151:10-18.

²³ *Id.* at 141-142, 145-146.

²⁴ *See Milwaukee Ctr. for Indep., Inc. v. Milwaukee Health Care, LLC*, 2019 WL 7584285, at *2 (E.D. Wis. Mar. 12, 2019) (analyzing all five factors, and not solely the single factor selected by the judgment debtor).

fraudulently conveying assets to a trust demonstrate that the collection process will be complex.

Regarding the second factor (the amount of time required to obtain a judgment after it is affirmed on appeal), PwC anticipates that the appeal of the judgment will take at least a year from present to resolve. That intervening year would provide Tricarichi with additional time to transfer, sell, gift, and shield his remaining assets from collection. Regarding the third and fourth factors, which both address a situation where the judgment debtor has substantial assets making the bond unnecessary, Tricarichi admits he does not have sufficient assets to meet these factors. In sum, all factors overwhelming favor a denial of Tricarichi's Motion.

D. Tricarichi Fails to Address NRAP 8.

As with NRAP 27(e), Tricarichi fails to address the requirements for a stay under NRAP 8. Specifically, Tricarichi fails to allege, let alone support, that the object of his appeal will be defeated if the stay is not granted and that he will suffer irreparable or serious injury if the stay is denied. In short, his appeal will not be impacted by a denial of his stay motion, nor is anything about enforcing a money judgment irreparable. Because Tricarichi fails to meet the first required two factors under NRAP 8, the Court need not reach the third factor (likelihood of prevailing on the merits of his appeal), which issue will be briefed in the ordinary course. To the extent the Court reaches this factor, a review of the district court's extensive order

confirms that PwC was correctly awarded its attorneys' fees and costs.

Specifically, PwC had an enforceable limitation of liability provision in its engagement agreement that would have limited Tricarichi's recovery to the fees paid to PwC (less than \$50,000). Tricarichi contested the enforceability of the engagement agreement throughout the litigation; however, at the time PwC served its October 2021 offer of judgment (for \$50,000), this Court had issued its September 2021 decision, holding that Tricarichi was bound by the engagement agreement and accompanying terms of engagement, which terms notably contained the foregoing limitation of liability provision. In refusing to acknowledge the inevitable—that if Tricarichi was somehow able to prevail on his substantively deficient and time-barred claim, his damages would be capped at a mere fraction of the cost it would take to pursue this case through trial—Tricarichi unreasonably rejected the offer. Following a two-week bench trial, the district court entered a complete defense judgment, substantively holding that Tricarichi had failed to provide evidence on three elements of his claim, and procedurally holding that Tricarichi's single cause of action was barred by both Nevada's and New York's statutes of limitations. For the myriad of additional, and independent, reasons set forth in the district court's orders and underlying briefing, Tricarichi is not likely to prevail on the merits of his appeal. The Motion should be denied.

Conclusion

At bottom, Tricarichi seeks the extraordinary relief of a stay without bond, with no alternate security, based on a false premise about the IRS judgment which, as Tricarichi's conduct and sworn testimony demonstrate, has not served to preserve his assets nor the status quo. Tricarichi presents no legitimate basis or support to stay execution without supersedeas bond and without alternate security. Accordingly, Tricarichi's Motion should be denied in its entirety.

DATED: March 28, 2024

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove

(Counsel list continued on next page)

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Attorneys for PricewaterhouseCoopers LLP

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On March 28, 2024, I caused to be served a true and correct copy of the foregoing **OPPOSITION TO EMERGENCY MOTION TO STAY ENFORCEMENT PENDING APPEAL WITHOUT BOND** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Maricris Williams
An Employee of SNELL & WILMER L.L.P.

4876-7036-2034

EXHIBIT 1

FILED UNDER SEAL

EXHIBIT 1

EXHIBIT 2

EXHIBIT 2

1 **ORDR**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 MICHAEL A. TRICARICHI, an individual
6
7 Plaintiff,

Case No.: A-16-735910-C

Dept. No.: XXXI

8 vs.

9 PRICEWATERHOUSECOOPERS LLP,
10
11 Defendant.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
PRICEWATERHOUSE COOPERS
LLP'S MOTION FOR ATTORNEYS'
FEES AND COSTS**

and

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF
TRICARICHI'S MOTION TO RETAX
AND SETTLE PWC'S AMENDED
VERIFIED MEMORANDUM OF
COSTS**

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20 **I. FACTUAL BACKGROUND**

21 This matter came on for hearing on May 30, 2023, on Defendant
22 Pricewaterhouse Coopers LLP's Motion For Attorneys' Fees And Costs (DOC
23 427) and Plaintiff Tricarichi's Motion to Retax and Settle PWC's Amended
24 Verified Memorandum of Costs (DOC 414). Present at the hearing was Scott F.
25 Hessel, Esq., and Ariel Clark Johnson, Esq. for Plaintiff Tricarichi; and Bradley
26 Austin, Esq., Patrick G. Byrne, Esq., and Chris Landgraff, Esq., for Defendant
27 Pricewaterhouse Coopers (hereinafter PwC). At the hearing, the parties agreed
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1 to meet among themselves to determine if there could be agreement on
2 outstanding fee and cost issues. The parties also agreed to provide the written
3 positions of the parties post-hearing to the Court. The Court, having reviewed
4 the papers and pleadings on file herein, having heard oral arguments of the
5 parties, and then reviewed the additional information provided by the parties,
6 makes the following ruling:

7 The bench trial commenced on October 31, 2022, and the trial concluded
8 on November 10, 2022. At the trial, Ariel C. Johnson, Esq. of Hutchison &
9 Steffen PLLC appeared for Plaintiff, along with *pro hac vice* counsel Scott F.
10 Hessel, Esq. and Blake Sercye, Esq. of Sperling & Slater, P.C. Patrick G.
11 Byrne, Esq. and Bradley T. Austin, Esq., of Snell & Wilmer LLP, and *pro hac vice*
12 counsel Mark L. Levine, Esq., Christopher D. Landgraff, Esq., and Katharine A.
13 Roin, Esq., of Bartlit Beck, LLP, appeared for Defendant PwC.

14 The trial encompassed approximately nine trial days as well as additional
15 motion hearing days. During the course of the bench trial, four experts were
16 called both in person and via video. At the conclusion of the trial, the Court set
17 forth its ruling in its Findings of Fact and Conclusions of Law.¹ In sum, the Court
18 found in favor of Defendant PwC and that “Plaintiff Tricarichi shall take nothing from
19 his Complaint”² as there was no evidence proving three elements of his claim and
20 due to the single cause of action being barred by both Nevada and New York
21 statute of limitations.³ After the ruling had been entered, and based on stipulations
22 by the parties, Defendant filed its Memorandum of Costs and its Amended
23 Memorandum of Costs as well as a Motion for Attorney Fees and Costs. Plaintiff
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26 ¹ February 9, 2023, Findings of Fact and Conclusions of Law, DOC 416 at ¶100.

27 ² Findings of Fact Conclusions of Law at P. 41, DOC 416, filed February 9, 2023; Notice of Entry
of Order thereof, DOC 420, filed February 22, 2023.

28 ³ Findings of Fact Conclusions of Law, DOC 416 at ¶¶ 115, 130, 132, 137, 148, 161.

1 filed his Motion to Retax and Oppositions to Defendant's Motion. The pleadings
2 were timely filed.

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4 **II. Defendant is Entitled in Part to Reasonable Attorney Fees**
5 **Pursuant to Applicable Law Based on its Second Offer of**
6 **Judgment**

7 "Ultimately, the decision to award attorney fees rests within the district
8 court's discretion, and we review such decisions for an abuse of discretion."
9 *O'Connell v. Wynn*, 134 Nev. 550, 554, 429 P.3d 664, 668 (2018); *Frazier v. Drake*,
10 131 Nev. 632, 641-42; 357 P.3d 365, 372 (2015). Further, as reiterated by the
11 Nevada Appellate Court in *O'Connell v. Wynn*, 134 Nev. 550, 429 P.3d 664
12 (2018), "[a] party may seek attorney fees when allowed by an agreement, rule, or
13 statute. See NRS 18.010 (governing awards of attorney fees); *RTTC Commc'ns,*
14 *LLC v. The Saratoga Flier, Inc.*, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005) (noting
15 that "a court may not award attorney fees absent authority under a specific rule
16 or statute"). Here, Defendant seeks fees, pursuant to Nevada Rules of Civil
17 Procedure 54(d), which provides "[a] claim for attorney fees must be made by
18 motion. The court may decide a post judgment motion for attorney fees despite the
19 existence of a pending appeal from the underlying final judgment." Defendant also
20 seeks fees pursuant to Nevada Rules of Civil Procedure 68(f) which directs that:

21 "If the offeree rejects an offer and fails to obtain a more
22 favorable judgment: ... (B) the offeree must pay the offeror's
23 post-offer costs and expenses, including a reasonable sum to
24 cover any expenses incurred by the offeror for each expert
25 witness whose services were reasonably necessary to prepare
26 for and conduct the trial of the case, applicable interest on the
27 judgment from the time of the offer to the time of entry of the
28 judgment and reasonable attorney fees, if any be allowed,
actually incurred by the offeror from the time of the offer. If the
offeror's attorney is collecting a contingent fee, the amount of
any attorney fees awarded to the party for whom the offer is
made must be deducted from that contingent fee.

1 Defendant made Plaintiff an Offer of Judgment on September 25, 2019, and
2 then made a second Offer of Judgment October 6, 2021.⁴ The parties agree that
3 the 2019 update to the Nevada Rules of Civil Procedure apply to both Offers of
4 Judgment. Neither Offer was accepted by Plaintiff, and the case proceeded to trial
5 in October and November 2022. Following the conclusion of the bench trial, the
6 Court issued its Findings of Fact and Conclusions of Law on February 9, 2023,
7 entering Judgment in favor of Defendant PwC.⁵ The Order continued that “any
8 request for fees and costs shall be handled via separate timely-filed Motion.”⁶ As
9 noted, the Court finds that Defendant has met the timeliness standards to seek
10 reasonable fees pursuant to Nevada Rules of Civil Procedure 54(d) and 68(f).

11 As the fee request was timely, the Court next considers whether Defendant
12 has met the factors necessary pursuant to NRCP 68 and applicable case law
13 including *Beattie v. Thomas*, 99 Nev. 579, 588-89, 688 P.2d 268, 274 (1983) with
14 respect to each of its Offers of Judgment. Pursuant to *Beattie* and its progeny, the
15 Court considers the following factors to determine whether attorneys’ fees are
16 appropriate:

17 (1) whether the plaintiff’s claim was brought in good faith; (2)
18 whether the defendant’s offer of judgment was reasonable and
19 in good faith in both its timing and amount; (3) whether the
20 plaintiff’s decision to reject the offer and proceed to trial was
grossly unreasonable or in bad faith; and (4) whether the fees
sought by the offeror are reasonable and justified in amount.

21 *Beattie v. Thomas*, 99 Nev. 579, 588-89, 688 P.2d 268, 274 (1983).

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26 ⁴ Both Offers of Judgment are provided as Exhibits 1 and 2 in the Appendix of Exhibits to the
Motion for Attorney’s Fees and Costs filed March 15, 2023, with electronic service stamps
reflecting the dates of service (DOC 428). Each Offer of Judgment was for \$50,000.00.

27 ⁵⁵ Findings of Fact, Conclusions of Law, DOC 416 at ¶¶ 115, 130, 132, 137, 148, 161.

28 ⁶ Findings of Fact, Conclusions of Law, DOC 416 at 41:6-7.

1 **A. The Court Finds That Fees Are Not Appropriate Under The**
2 **2019 Offer of Judgment**

3 As there were two Offers of Judgment, the Court addresses each of them in
4 turn. With respect to the 2019 Offer, the Court has to consider what was known
5 about the claims and defenses at the time the offer was made as well as other
6 *Beattie* factors.

7 **1. The Court Finds That the First *Beattie* Factor Weighs**
8 **in Favor of Plaintiff.**

9 First, when considering whether Plaintiff's claim was brought in good faith,
10 the Court sees that at the time of the 2019 offer, while Plaintiff had lost on
11 Summary Judgment on the statute of limitations on the 2003 claim, the 2008 claim
12 was still in the early stages of the litigation from a timing standpoint as it had been
13 newly added to the Complaint.⁷ This factor weighed in favor of it being pursued in
14 good faith by Plaintiff.

15 **2. The Court Finds That the Second *Beattie* Factor**
16 **Weighs in Favor of Defendant.**

17 When analyzing the second factor, the Court looks to whether Defendant's
18 2019 Offer of Judgment was reasonable and in good faith, both in its timing and
19 amount. As to timing, the Court considers that the Offer was made following the
20 Summary Judgment ruling on the 2003 claim.⁸ The 2008 claim was just beginning
21 in the case.⁹ At that time, the limitation of liability issue had not been resolved
22 either.¹⁰ Accordingly, at the time the Offer was made, given the status of the case
23 and what was known by Defendant, the timing component was reasonable.
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26 ⁷ May 30, 2023, Hearing Transcript at 56:6-16.

27 ⁸ May 30, 2023, Hearing Transcript at 56:20-23.

28 ⁹ May 30, 2023, Hearing Transcript at 56:23-24.

¹⁰ May 30, 2023, Hearing Transcript at 56:23-57:2.

1 As to the amount offered of \$50,000.00, the Court also sees that amount as
2 reasonable and in good faith because \$50,000.00 was consistent with the limitation
3 of liability which was an issue that had not yet been resolved.¹¹ Thus, the second
4 factor would weigh in favor of Defendant's offer being both reasonable and in good
5 faith.
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7 **3. The Court Finds That the Third *Beattie* Factor Weighs**
8 **in Favor of Plaintiff.**

9 Next, the Court considers whether Plaintiff's decision to reject the Offer and
10 proceed to trial was grossly unreasonable or in bad faith. Regardless of whether
11 the Court looks at what issues actually went to trial, or could have gone to trial from
12 a September 2019 lens before the statute of limitation issue was decided, or from
13 the lens of considering Summary Judgment had been granted on the 2003 claim,
14 and what the risk then was of the 2008 claim, the Court finds the factor weighs in
15 favor of Plaintiff.¹² At this juncture, there were appeal and writ opportunities
16 available; the 2008 claim was still in its infancy in this case.¹³ The decision to reject
17 the Offer at that time was not grossly unreasonable or in bad faith as there were still
18 other avenues.
19

20 **4. The Court Need Not Reach the Fourth *Beattie* Factor.**

21 Lastly, the Court would consider whether the fees sought by the Offeror are
22 reasonable and justified in amount. Here, though, the Court finds it does not need
23 to address whether the fees sought were reasonable and justified as two of the
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27 ¹¹ May 30, 2023, Hearing Transcript at 56:20-57:2.

28 ¹² May 30, 2023, Hearing Transcript at 57:3-58:25.

¹³ May 30, 2023, Hearing Transcript at 57:3-58:25.

1 three preceding *Beattie* factors weighed in favor of Plaintiff. In sum, the Court finds
2 that fees would *not* be appropriate under the 2019 Offer of Judgment.¹⁴

3 ***B. The Court Finds That Fees Are Appropriate Under the 2021***
4 ***Offer of Judgment***

5 The Court next considers the 2021 Offer of Judgment which was also for
6 \$50,000.00 exclusive of fees, interest, and costs to determine if that Offer meets
7 the requisite criteria to impose fees against Plaintiff.

8 **1. The Court Finds That the First *Beattie* Factor Weighs**
9 **in Favor of Defendant.**

10 The Court first considers whether the Plaintiff's claim was brought in good
11 faith. The Court finds that at the time of the 2021 Offer, there was an existing ruling
12 from the Nevada Supreme Court and the prior the Summary Judgment ruling on
13 the 2003 claim. Further, the parties had the intervening time to flush out the issues
14 that eventually went to trial. Thus, given the posture of the remaining claim, the
15 Court finds that the first factor weighs in favor of Defendant.¹⁵

16 **2. The Court Finds That the Second *Beattie* Factor**
17 **Weighs in Favor of Defendant.**

18 The Court next looks to whether the 2021 Offer was reasonable and in good
19 faith in both its timing and amount. As to amount, the Court considers that there
20 was the issue of the same limitation of liability as with the 2019 Offer; and thus, the
21 \$50,000.00 would still be appropriate in light of the matters still at issue.¹⁶ The
22 Court also evaluated the nature of the claims including that it was uncontested in
23 the case that there was no work done by PwC in the intervening five years between
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27 ¹⁴ May 30, 2023, Hearing Transcript at 59:1-6.

¹⁵ May 30, 2023, Hearing Transcript at 60:3-8.

¹⁶ May 30, 2023, Hearing Transcript at 60:9-17.

1 Plaintiff's 2003 and 2008 issues. The Court also had to look at the fact that Plaintiff
2 was premising his liability claim on potential duties he asserted PWC owed him
3 retrospectively without there being any duty triggered from actual work performed.¹⁷
4 The 2021 Offer also followed the Nevada Supreme Court's ruling in Defendant's
5 favor pertaining to that limitation of liability, along with the prior Summary Judgment
6 on the 2003 claim. In light of the procedural posture and facts, the Court finds that
7 the timing of the 2021 Offer of Judgment was in good faith.¹⁸ The second factor,
8 thus, weighs in favor of Defendant.
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10 **3. The Court Finds That the Third *Beattie* Factor Weighs**
11 **in Favor of Defendant.**

12 Then the Court must consider whether the Plaintiff's decision to reject the
13 Offer and proceed to trial was grossly unreasonable or in bad faith. Here, the Court
14 does find that the rejection of the 2021 Offer was grossly unreasonable. At the time
15 of the 2021 Offer, there was the benefit of knowledge of all of the proceedings in
16 the tax court and other courts up to that point and Plaintiff also had the benefit of
17 the opinions of top tax experts in the field.¹⁹ The Court must also consider if Plaintiff
18 had a reasonable expectation based on the evidence known, whether he would
19 meet his burden would at trial. At the time of the 2021 Offer, Plaintiff was aware of
20 at least three hurdles. First, there was a statute of limitations issue. Second, even
21 if duty, breach, causation, and damages were proven, then Plaintiff would still need
22 to prove a type of retrospective fraud. Third, per the agreement, Plaintiff would also
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17 May 30, 2023, Hearing Transcript at 60:23-61:5.

27 18 May 30, 2023, Hearing Transcript at 60:9-61:6.

28 19 May 30, 2023, Hearing Transcript at 61:7-61:18.

1 need to meet the burden of establishing gross negligence.²⁰ Plaintiff also was
2 pursuing an action premised on the finding of a failure to act retrospectively, with no
3 supporting case law.²¹ For those reasons the Court finds that the third *Beattie* factor
4 was not met as to reasonableness of proceeding to trial and the factor then weighs
5 in favor of Defendant.
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7 The remaining question is whether the fees sought were reasonable and
8 justified.

9 **4. The Fees Sought by the Offeror are reasonable and**
10 **justified in amount, as reduced by the Court.**

11 In light of Defendant meeting its burden on the first three factors, the next
12 step the Court must then determine if “whether the fees sought by the offeror are
13 reasonable and justified in amount.” *Beattie*, 99 Nev. at 588-89, 688 P.2d at 274
14 (1983).

15 In so doing, the Court engages in a multi- step process. First, the Court
16 must determine what method should be used to calculate the fees amount given
17 the multiple methods used by Defendant’s various counsel. Second, the Court
18 must analyze the amount requested utilizing the appropriate method to determine
19 what is the reasonable and necessary amount that Defendant should be awarded
20 and ensure that the amount was actually incurred in accordance with applicable
21 law.
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27 ²⁰ May 30, 2023, Hearing Transcript at 61:19-63:13.

28 ²¹ May 30, 2023, Hearing Transcript at 63:3-63:13.

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1 allow the parties time until late July 2023 to either come to an agreement as to an
2 appropriate fee amount or to propose alternate fee amounts that the Court could
3 consider.

4 **b. The Reasonable Hourly Rate and Reasonable**
5 **Number of Hours for the Work Performed**

6 The second step of the analysis is for the Court to determine what the
7 reasonable hourly rate is for each of the counsel and legal team. The Court then
8 determines what are the reasonable number of hours for each of the individuals
9 for whom fees are sought.

10 Defendant in their Motion for Attorney's Fees seeks \$662,029.40 post-
11 Offer fees for the work of Snell & Wilmer, and \$9,171,309.00 post-Offer fees for
12 the work of Bartlit Beck. Although the Court provided the parties an opportunity
13 to try and seek an agreement on the fee amount, the parties were unable to
14 agree. Instead, each party submitted its own proposed fee amount that is sought
15 the Court to award.

16 Plaintiff initially proposed that Defendant was entitled to \$370,448.50 in
17 fees for work by Snell & Wilmer only, and no fees for Bartlit Beck due to lack of
18 information as to the tasks billed and no detail as to time spent on any given task.
19 Within that proposal, the number of hours billed by Snell & Wilmer of 975.0 was
20 agreed to, but different rates were proposed. In a subsequent letter, Plaintiff then
21 proposed that the Court should award \$555,000.00 in fees for Bartlit Beck, the
22 number was based on a rounded-up calculation of a 1.5 times multiplier of the
23 975.0 hours incurred by Snell & Wilmer at Plaintiff's proposed hourly average
24 rate of \$375.00 per hour.

25 Defendant proposed a total of \$2,284,357.48 in fees, broken down with
26 \$1,857,338.68 sought for Bartlit Beck, using a lodestar calculation at the same
27 rates used for local counsel Snell & Wilmer, and then sought \$427,018.80 for
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1 Snell & Wilmer. The Court must consider the factors articulated in *Brunzell v.*
2 *Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) to assess
3 what a reasonable hourly rate and reasonable number of hours are for the work
4 performed in this case.

5 When determining a fee amount under *Beattie*, the Court also needs to look
6 to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33
7 (1969) which sets forth factors the Court can consider to ascertain a reasonable
8 fee amount. Pursuant to *Brunzell* and its progeny, the Court *inter alia*, considers (1)
9 the **qualities of the advocate**: his ability, his training, education, experience,
10 professional standing and skill; (2) **the character of the work to be done**: its
11 difficulty, its intricacy, its importance, time and skill required, the responsibility
12 imposed and the prominence and character of the parties when they affect the
13 importance of the litigation; (3) **the work actually performed by the lawyer**:
14 the skill, time and attention given to the work; (4) **the result**: whether the
15 attorney was successful and what benefits were derived. *Brunzell v. Golden Gate*
16 *National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (emphasis in original,
17 internal quotation omitted).

18
19 **i. A Reduced Fee Award for Snell & Wilmer is**
20 **Appropriate Under *Brunzell***

21 **a. The Qualities of the Advocate: their**
22 **ability, their training, education,**
23 **experience, professional standing and**
24 **skill.**

25 Defendant set forth the qualities of the advocates, supported by
26 declarations of Counsel. The qualifications of each of the defense counsel were
27 not disputed. Counsel for Snell & Wilmer included Patrick G. Byrne, Esq.;
28 Bradley T. Austin, Esq.; Kelly H. Dove, Esq.; Erin Gettel, Esq.; Gil Kahn, Esq.;

1 Christian P. Ogata, Esq.; and Skylar N. Arakawa-Pamphilon, Esq. Work was
2 also performed by Dawn Davis, Esq.; V.R. Bohman, Esq.; and Michael Paretti,
3 Esq.; however, Defendant did not seek fees of those attorneys.²⁶

4 Patrick G. Byrne, Esq. graduated from law school in 1988, is a partner in
5 the Snell & Wilmer's commercial litigation group, has extensive litigation
6 experience, and billed at \$515.00, \$617.50, \$637.00, \$662.00, and \$695.00.²⁷

7 Bradley T. Austin, Esq. graduated from law school in 2013, is a partner in Snell &
8 Wilmer's commercial litigation group, experienced in complex business, civil, and
9 commercial disputes, and billed at \$280.00, \$380.00, \$410.00, \$426.00, and
10 \$447.00 per hour.²⁸ Kelly H. Dove, Esq. graduated from law school in 2007, is a
11 partner in Snell & Wilmer's commercial litigation group, is experienced in litigation
12 and appellate work, and billed at \$635.00 and \$660.00 per hour.²⁹ Erin Gettel,
13 Esq. graduated law school in 2015 and is an associate in Snell & Wilmer's
14 commercial litigation group and billed at \$385.00 per hour.³⁰ Gil Kahn, Esq.
15 graduated law school in 2016 and is an associate in Snell & Wilmer's commercial
16 litigation group who bills at \$320.00 per hour; however, despite providing a
17 Brunzell analysis for Mr. Kahn, there were no billing entries attributed to him in
18 the provided invoices.³¹ Christian P. Ogata, Esq. graduated from law school in
19 2020 and is an associate in Snell & Wilmer's commercial litigation group and
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22 ²⁶ Declaration of Bradley T. Austin, Esq. in Support of Motion for Attorneys' Fees and Costs (DOC
23 428 BATES 016:18-22.

24 ²⁷ Declaration of Bradley T. Austin, Esq. in Support of Motion for Attorneys' Fees and Costs (DOC
25 428 BATES 014:11-21.

26 ²⁸ Declaration of Bradley T. Austin, Esq. in Support of Motion for Attorneys' Fees and Costs (DOC
27 428 BATES 014:22-015:3.

28 ²⁹ Declaration of Bradley T. Austin, Esq. in Support of Motion for Attorneys' Fees and Costs (DOC
29 428 BATES 015:04-15.

30 ³⁰ Declaration of Bradley T. Austin, Esq. in Support of Motion for Attorneys' Fees and Costs (DOC
31 428 BATES 015:16-22.

32 ³¹ Declaration of Bradley T. Austin, Esq. in Support of Motion for Attorneys' Fees and Costs (DOC
33 428 BATES 015:23-016:2.

1 billed at \$345.00 per hour.³² Skylar N. Arakawa-Pamphilon, Esq. graduated from
2 law school in 2021 and is an associate in Snell & Wilmer's commercial litigation
3 group and billed at \$323.00 per hour.³³ Snell & Wilmer also utilized paralegals
4 that all possessed bachelor's degrees and paralegal certification.³⁴ The Court
5 finds that Defendant's counsel at Snell & Wilmer are experienced and qualified
6 and that the rates are generally customary for this type of specific work for most
7 of the tasks performed.

8 **b. The Character of the Work Performed**

9 Plaintiff, in its Opposition to PwC's Motion for Attorneys' Fees and Costs
10 (DOC 444), challenged the character of the work and work actually performed
11 due to generic descriptions contained in the billing. The Court reviewed the
12 record as to what work was completed after October 6, 2021, the work's intricacy
13 and importance, and time and skill required. The matter involved complex
14 analysis of professional tax services, tax liability and damages. Overall, Defense
15 counsel was effective as demonstrated by the results. The issue is whether
16 some of the work which based on the more general time entries was not as
17 complex could have been done by a person at a lower rate.

18 **c. An Award of Attorney's Fees is**
19 **Reasonable Based on the Work Actually**
20 **Performed**

21 As noted above, Plaintiff, in its Opposition to PwC's Motion for Attorneys'
22 Fees and Costs (DOC 444) challenged the work actually performed. The parties
23 came to an agreement as to the total number of hours billed overall by Snell &
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25 ³² Declaration of Bradley T. Austin, Esq. in Support of Motion for Attorneys' Fees and Costs (DOC
428 BATES 016:3-10.

26 ³³ Declaration of Bradley T. Austin, Esq. in Support of Motion for Attorneys' Fees and Costs (DOC
428 BATES 016:11-17.

27 ³⁴ Declaration of Bradley T. Austin, Esq. in Support of Motion for Attorneys' Fees and Costs (DOC
428 BATES 016:23-26.

1 Wilmer of 975.00 in the correspondence submitted to the Court July 11, 2023.
2 The number agreed upon was comprised of 104.20 hours billed by Patrick G.
3 Byrne, Esq.; 717.90 hours billed by Bradley T. Austin, Esq.; 3.40 hours billed by
4 Kelly H. Dove, Esq.; 9.40 hours billed by Erin Gettel, Esq.; 56.40 hours billed by
5 Christian P. Ogata, Esq.; 5.30 hours billed by Skylar N. Arakawa-Pamphilon,
6 Esq.; 0.50 hours billed by Dawn Davis, Esq.; 53.60 hours billed by Kathy
7 Casford; 1.10 hours billed by Sev Redd; and 23.20 hours billed by Deborah
8 Shuta. Due to the nature of the case and character of the work done, with the
9 agreed-upon number of hours, the Court finds that the rates sought are
10 customary and reasonable in light of this particular case but that some of the
11 work that was not as complex based on the general time entries could have been
12 done by a person with a lower billing rate. Thus, the Court finds it appropriate to
13 grant fees for the work performed by Snell & Wilmer in the amount of
14 \$407,018.80.

15 **d. The Outcome Obtained for Defendant**

16 It is undisputed that Defendant prevailed. In light of the foregoing
17 analysis, the Court finds that the *Brunzell* factors are met. The parties agreed as
18 to the number of hours sought of 975.00. The Court further finds that most of the
19 rates are customary with prevailing rates of other attorneys in Nevada with
20 similar qualifications but the Court had to reduce the total award due to the
21 general time entries which did not demonstrate that the work could have been
22 performed by someone at a lower rate. Based on all of the factors and discretion
23 of the Court, considering the nature of the work performed, the Court finds that
24 the \$407,018.80 of fees sought for Snell & Wilmer is reasonable and appropriate.
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1 experienced litigator and well qualified.³⁵ Christopher D. Landgraff, Esq.
2 graduated from law school in 1994, is partner in Bartlit Beck's Chicago office, and
3 has a wealth of litigation experience.³⁶ Katharine A. Roin, Esq. graduated from
4 law school in 2010, is a partner in Bartlit Beck's Chicago office, and has
5 experience as co-lead counsel in litigation.³⁷ Daniel C. Taylor, Esq. also
6 graduated from law school in 2010, and is partner in Bartlit Beck's Denver office,
7 with experience on multiple trial teams.³⁸ Sundeep K. (Rob) Addy, Esq.
8 graduated law school in 2004, and is partner in Bartlit Beck's Denver office, and
9 has experience in multiple multi-million and billion-dollar cases.³⁹ Alexandra
10 Genord, Esq. graduated from law school in 2020 and is an associate in Bartlit
11 Beck's Chicago office.⁴⁰ Krista Perry, Esq. graduated from law school in 2016
12 and was formerly an associate with Bartlit Beck.⁴¹ Bartlit Beck also utilized
13 paraprofessional and support staff whose qualifications were not detailed.

14 The Court notes that fees were originally requested for Mr. Addy, and
15 pursuant to the correspondence submitted to the Court July 11, 2023, as part of
16 the efforts of the parties to reach an agreeable fee amount, Defendant agreed to
17 remove all fees incurred by Mr. Addy (who initially sought \$388,884.60). In an
18 effort to provide an appropriate lodestar calculation, Defendant also proposed
19 utilizing the same rates as Snell & Wilmer to be consistent with the local market.
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21 ³⁵ Declaration of Mark L. Levine in Support of Motion for Attorneys' Fees and Costs (DOC 429
22 filed under seal BATES 136:6-13).

23 ³⁶ Declaration of Mark L. Levine in Support of Motion for Attorneys' Fees and Costs (DOC 429
24 filed under seal BATES 136:14-19).

25 ³⁷ Declaration of Mark L. Levine in Support of Motion for Attorneys' Fees and Costs (DOC 429
26 filed under seal BATES 136:20-7:2).

27 ³⁸ Declaration of Mark L. Levine in Support of Motion for Attorneys' Fees and Costs (DOC 429
28 filed under seal BATES 137:3-9).

³⁹ Declaration of Mark L. Levine in Support of Motion for Attorneys' Fees and Costs (DOC 429
filed under seal BATES 137:10-16).

⁴⁰ Declaration of Mark L. Levine in Support of Motion for Attorneys' Fees and Costs (DOC 429
filed under seal BATES 137:17-21).

⁴¹ Declaration of Mark L. Levine in Support of Motion for Attorneys' Fees and Costs (DOC 429
filed under seal BATES 137:22-25).

1 The rates proposed by Defendant, as set forth above, were as follows: \$664.76
2 per hour for Mark Levine, Esq., and Christopher Landgraff, Esq.; \$429.95 per
3 hour for Katharine Roin, Esq., and Daniel Taylor, Esq.; \$377.34 per hour for
4 Alexandra Genord, Esq.; and \$251.00 per hour for Lori Barnicke and Kim
5 Solorzano. No *Brunzell* analysis was provided for Barnicke or Solorzano. Based
6 on review of the record, the Court cannot guess as to their qualifications or the
7 basis of how fees were sought for their work. The proposal did not include a rate
8 for Krista Perry, Esq. As articulated above, and in the declarations supporting
9 the Motion, the Court finds Defendant's counsel has met the first *Brunzell* factor
10 other than as specifically stated.

11 **b. The Character of the Work Performed**

12 The Court reviewed the record as to what work was completed after
13 October 6, 2021, the work's intricacy and importance, and time and skill required.
14 The matter involved complex analysis of professional tax services, tax liability
15 and damages. The Court also had to look at what work was done by Snell &
16 Wilmer firm and what work was done by Bartlit Beck. Defense counsel was
17 effective as demonstrated by the results as discussed infra.

18 **c. An Award of Reduced Attorney's Fees is**
19 **Reasonable Based on the Work Actually**
20 **Performed**

21 As noted above, Plaintiff, in its Opposition to PwC's Motion for Attorneys'
22 Fees and Costs, challenged the work actually performed (DOC 444). Plaintiff
23 maintained that due to the flat fee billing, lack of hourly time records, and no
24 tasks identified with the amount of time dedicated to the task provided, no fees
25 should be awarded beyond the amount proposed for Snell & Wilmer fees. The
26 initial records provided did not contain hourly descriptions of the work performed
27 due to the billing structure of the firm. A supplemental declaration and monthly
28

1 descriptions summarizing the work performed were provided as exhibits in
2 support of the correspondence submitted to the Court on July 11, 2023. The
3 Supplemental Declaration of Mr. Levine set forth that internal data reflected
4 4,200 hours during the relevant time frame and an average blended rate of
5 \$700.00 per hour. Additionally, a description was provided for tasks done that
6 month. December 2021 included preparing status reports, reviewing the
7 mandamus decision, preparing for and attending hearings, drafting briefs, and
8 preparing for argument at an upcoming hearing. January 2022 included working
9 on briefs and preparing for and attending an Evidentiary Hearing. February 2022
10 included preparing for Evidentiary Hearing and associated briefing and attending
11 the hearing. March 2022 included drafting briefs, preparing witnesses, and
12 attending an Evidentiary Hearing. April 2022 included drafting proposed Orders,
13 mandamus hearings, preparing Motions and preparing for hearings, as well as
14 communications with various parties. May 2022 included work on the Reply in
15 support of Summary Judgment. June 2022 included preparation and attendance
16 at the summary judgment hearing and planning for pretrial work. July 2022
17 included preparing exhibits, deposition designations, trial preparations, and
18 drafting pretrial memorandum. August 2022 similarly included trial preparation
19 including witness, exhibit, deposition preparation, preparing objections, trial
20 briefs, and other drafts. September 2022 included witness meetings and
21 preparation, and further work on pretrial documents. October 2022 included
22 preparation for trial and attendance at pretrial matters. November 2022 included
23 the trial fees at \$50,000.00 per day for 10 days. December 2022 included
24 preparing Orders from trial and drafting proposed Findings of Fact and
25 Conclusions of Law. A breakdown was also given by each counsel for hours
26 billed in each month.
27
28

1 The Court evaluates the hours billed by the three trial counsel in October
2 and November 2022 when the trial occurred. Mark Levine, Esq. billed 145 hours;
3 Chris Landgraff, Esq. billed 161.90; and Katharine Roin, Esq. billed 184.00. The
4 Court is fully appreciative that counsel is highly qualified and this was a complex
5 matter, but the Court also considers whether all three counsel were required for
6 all tasks at trial. Considering all of these factors, the Court finds it appropriate to
7 reduce the hours for Landgraff to 121.90, for Levine to 130.00, and for Roin to
8 142.00. The Court also considers that Alexandra Genord, Esq. billed 180.48
9 hours in October 2022 and 182.37 hours in November 2022. In light of the hours
10 spent by the trial counsel, the Court does not see a basis for the total amount
11 sought in that time period given that Ms. Genord is an associate, and appears to
12 have come into the case only in October 2022, and in those two months billed
13 over 362 hours. The Court finds it appropriate to reduce the hours to for that
14 time period. The Court also considers that there is a lack of support for work
15 performed by Lori Barnicke and Kim Solorzano and there was no detail as to
16 their qualifications or anything for the Court to analyze based on the pleadings.
17 The Court finds that there is insufficient support in the application to justify the
18 176.25 hours sought by Lori Barnicke and 158.50 hours sought by Kim
19 Solorzano for November 22, 2022. Thus, the Court finds it appropriate to reduce
20 the hours to zero as *Brunzell* and *Beattie* require the Court to evaluate each
21 individual for whom fees are sought and the Court cannot do so based on the
22 lack of information provided.

23 **d. The Outcome Obtained for Defendant**

24 It is undisputed that Defendant prevailed. The Court, thus, finds that it is
25 appropriate to award fees to Bartlit Beck; however, the overall fees do need to be
26 reduced both in amount and in hours and \$1,695,735.59 is appropriate.
27
28

1 In sum, based on the foregoing, the Court awards fees in the amount of
2 \$407,018.80 for Snell & Wilmer and \$1,695,735.59 for Bartlit Beck.

3
4 **III. Defendant's Request for Costs and Plaintiff's Motion to Retax And Costs.**

5 The February 9, 2023, Findings of Fact and Conclusions of Law set forth
6 that that "any request for fees and costs shall be handled via separate timely-filed
7 Motion."⁴² On February 14, 2023, Defendant PwC timely filed a Verified
8 Memorandum of Costs (DOC 417), and Appendix thereto (DOC 418). Then on
9 February 15, 2023, the parties then filed a Stipulation and Order to Extend Time
10 to File Memorandum of Costs and Motion to Retax (DOC 419). Thereafter, on
11 February 24, 2023, Defendant filed an Amended Verified Memorandum of Costs
12 (DOC 422) and Appendix thereto (DOC 423), seeking a total of \$921,833.58 in
13 costs. Plaintiff then filed Tricarichi's Motion to Retax and Settle PWC's Amended
14 Verified Memorandum of Costs (DOC 424). Defendant filed an Opposition to
15 Plaintiff's Motion to Retax Costs (DOC 440) on March 31, 2023. Pursuant to
16 NRS 18.020(3), costs must be awarded to the prevailing party against any
17 adverse party in an action where Plaintiff sought to recover more than \$2,500.00.
18 In this action, Plaintiff was seeking far in excess of that amount. Following
19 conclusion of the bench trial, Judgment was entered in favor of Defendant and
20 Plaintiff was awarded nothing from his Complaint.⁴³ Thus, an award of costs is
21 appropriate here.

22 Additionally, as set forth at the May 30, 2023, hearing, costs sought under
23 NRS 18 pre-date the 2021 Offer of Judgment; and thus, the statute is the basis of
24 the award of costs. As the Court has found that the elements of NRCP 68 were
25

26 ⁴² Findings of Fact Conclusions of Law at P. 41, DOC 416 filed February 9, 2023, Notice of Entry
of Order thereof DOC 420 filed February 22, 2023.

27 ⁴³ Findings of Fact Conclusions of Law at P. 41, DOC 416 filed February 9, 2023, Notice of Entry
of Order thereof DOC 420 filed February 22, 2023.

1 met based on the 2021 Offer of Judgment, NRCP 68 provides an independent
2 basis for costs incurred after the 2021 Offer of Judgment. Although both the NRS
3 and the NRCP provide independent basis for costs post the 2021 Offer, as those
4 amounts are not cumulative, the Court analyzes the total costs that are to be
5 awarded utilizing the statutory framework.⁴⁴

6
7 **A. Defendant Was the Prevailing Party Pursuant to NRS 18 et seq.**

8 **1. Based on the Documentation and**
9 **Applicable Authority, Defendant's Cost**
10 **Request is Reduced.**

11 NRS 18.005 allows recovery of the following amounts:

- 12 (1) Clerks' fees.
- 13 (2) Reporters' fees for depositions, including a reporter's
14 fee for one copy of each deposition.
- 15 (3) Jurors' fees and expenses, together with reasonable
16 compensation of an officer appointed to act in
17 accordance with NRS 16.120.
- 18 (4) Fees for witnesses at trial, pretrial hearings and
19 deposing witnesses, unless the court finds that the
20 witness was called at the instance of the prevailing
21 party without reason or necessity.
- 22 (5) Reasonable fees of not more than five expert
23 witnesses in an amount of not more than \$1,500 for
24 each witness, unless the court allows a larger fee
25 after determining that the circumstances surrounding
26 the expert's testimony were of such necessity as to
27 require the larger fee.
- 28 (6) Reasonable fees of necessary interpreters
- (7) The fee of any sheriff or licensed process server for
the delivery or service of any summons or subpoena
used in the action, unless the court determines that
the service was not necessary.
- (8) Compensation for the official reporter or reporter pro
tempore.
- (9) Reasonable costs for any bond or undertaking
required as part of the action.

44 May 30, 2023 Transcript DOC 448 at 73:15-18.

- (10) Fees of a court baliff or deputy marshal who was required to work overtime.
- (11) Reasonable costs for telecopies.
- (12) Reasonable costs for photocopies.
- (13) Reasonable costs for long distance telephone calls.
- (14) Reasonable costs for postage.
- (15) Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
- (16) Fees charged pursuant to NRS 19.0335.
- (17) Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

Applicable case law provides that any award of costs must be “reasonable, necessary, and actually incurred, and supported by justifying documentation submitted to the Court. *In re Dish Network*, 133 Nev. 438, 452, 401 P.3d 1081, 1093 (2017); *Cadle v. Woods & Erickson, LLP*, 131 Nev. 114, 120-121, 345 P.3d 1049, 1054 (2015); *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998); *Fairway Chevrolet Company v. Kelley*, 484 P.3d 276 (Nev. 2021) (unpublished). As set forth in *Cadle*, sufficient documentation requires more than an itemized memorandum, there must be evidence presented to substantiate the cost requested. 131 Nev. at 120-121, 345 P.3d at 1054-1055 (2015). The Amended Verified Memorandum of Costs (DOC 422) sought the following costs:

a. Reporters’ Fees for Depositions, Hearings, and Trial

Reporters’ fees requested are broken down by the amount sought by each firm representing Defendant and by the type of reporter fees. Defendant seeks \$73,354.31 for reporters’ fees for depositions incurred by the Bartlit Beck firm under NRS 18.005(2). The amount included \$59,221.51 for deposition transcripts and \$15,554.11 for daily transcript fees for the Trial. The Court considers *North Las Vegas Infrastructure Investment and Construction, LLC v.*

1 *City of North Las Vegas*, 139 Nev. Adv. Op. 5, 525 P.3d 836 (2023). There,
2 costs for videotaped depositions were denied because the depositions were not
3 used at trial and there was no explanation of why the videos were necessary.
4 The Court notes that here, Plaintiff challenges, within the reporters' costs for the
5 depositions, optional reporting services such as RealTime, rush fees, and
6 videotaping.

7 Invoices for deposition transcripts were provided for services dated
8 August 3, 2020, for \$750.00, \$443.50, and \$1,382.15 including a \$175.00
9 Realtime Setup Fee and \$239.80 Realtime Over Internet Fee; August 4, 2020,
10 for \$2,481.20 including a \$695.20 Realtime Over Internet fee, and \$665.00
11 including a \$190.00 rush fee; August 11, 2020, for \$1,100.00, \$641.50, and
12 \$2,280.85 including a \$175 Realtime Setup Fee and \$385.00 Realtime Over
13 Internet Fee; August 18, 2020, for \$542.50, \$925.00, and \$1,478.75 including a
14 \$175.00 Realtime Setup Fee and a \$204.60 Realtime Over Internet Fee; August
15 19, 2020, for \$542.50, \$925.00, and \$1,878.10 including a \$175.00 Realtime
16 Setup Fee and \$325.60 Realtime Over Internet fee; September 1, 2020, for
17 \$805.00, \$1,317.40, and \$1,176.75; September 16, 2020, for \$1,450.00,
18 \$839.50, and \$4,064.20 which included a \$175.00 Realtime Setup Fee and a
19 \$576.40 Realtime Over Internet fee; September 17, 2020, for \$685.00 for
20 videography services for the deposition of Mark Boyer, and \$2,683.90 which also
21 included a \$424.60 Realtime Over Internet fee; September 18, 2020, for \$635.00,
22 and \$2,023.50 which included a \$367.40 Realtime Over Internet fee; September
23 22, 2020, for \$610.00 and \$2,233.50 which included a \$446.60 Realtime Over
24 Internet fee; September 25, 2020, for \$790.00, \$1,362.50, and \$3,555.90 which
25 included a \$175.00 Realtime Setup Fee and \$565.40 Realtime Over Internet fee;
26 September 29, 2020, for \$490.00 and \$1,638.90 which included a \$301.40
27 Realtime Over Internet Fee; September 30, 2020, for \$2,750.30 which included a
28

1 \$550.00 Realtime Over Internet fee; October 1, 2020, for \$988.00, \$1,712.50 for
2 videography services for the deposition of Michael Tricarichi, for \$3,665.90,
3 \$780.00 for videography services for the deposition of Kenneth Harris, and for
4 \$2,675.70 which included a \$492.80 Realtime Over Internet fee; October 9,
5 2020, for \$2,050.70 including a \$567.60 Realtime Over Internet fee, and \$780.00
6 for videography services for the deposition of Brian Meighan. Invoices for daily
7 transcript fees for trial are provided dated October 31, 2022, for \$1,830.84;
8 November 2, 2022, for \$1,140.26; November 3, 2022, for \$2,039.62; November
9 4, 2022, for \$1,919.17; November 5, 2022, for \$939.51; November 9, 2022, for
10 \$1,718.42; November 10, 2022, for \$1,862.96 and \$2,682.02, and November 11,
11 2022 for \$1,421.31.

12 While under NRCP 68, the costs pre-dating the 2021 Offer of Judgment
13 would not be recoverable. Here, the deposition costs are allowable under NRS
14 18 and, in general, are supported by adequate documentation as reasonable,
15 necessary, and actually incurred as required under *In re Dish Network, Cadle,*
16 *Berosini, and Fairway*. Based on the invoices provided, \$57,800.20 in deposition
17 transcripts incurred by Bartlit Beck is supported; however, that amount includes a
18 \$190.00 in rush fees, \$7,192.40 in Realtime Fees, and \$3,957.50 in videography
19 services for depositions, which the Court finds would not be appropriate. Nothing
20 is provided by Defendant showing that these extra reporter services were
21 reasonable and necessary to this case. The Court then also considers and finds
22 that the invoices provided support the \$15,554.11 sought for daily transcript fees.
23 Therefore, the Court finds that \$62,014.41 in reporters' and transcript fees
24 incurred by Bartlit Beck is appropriate under NRS 18.

25 Defendant also seeks \$4,894.97 in Reporters' Fees for Hearings incurred
26 by Snell & Wilmer under NRS 18.005(8). Invoices are provided for hearings
27 dated November 16, 2016, for \$270.54 and \$80.00; May 10, 2017, for \$318.53;
28

1 September 24, 2018, for \$169.63 and \$40.00; March 21, 2019, for \$42.07; July 8,
2 2019, for \$144.54 and \$40.00; March 31, 2020, for \$168.63 for an expedited
3 transcript; March 24, 2022, for \$40.00; March 30, 2022, for \$120.00; March 31,
4 2022, for \$1,216.93 and for \$120.00; June 13, 2022, for \$186.31 for an expedited
5 transcript; October 25, 2022, for \$725.16; November 16, 2022, for \$944.38; and
6 December 27, 2022, for \$268.25.

7 While, under NRCP 68, the costs pre-dating 2021 Offer of Judgment
8 would not be recoverable, here the hearing and trial costs are allowable under
9 NRS 18 and are supported by adequate documentation as reasonable,
10 necessary, and actually incurred as required under *In re Dish Network, Cadle,*
11 *Berosini, and Fairway*. Based on the invoices provided, the Court finds that the
12 amount sought for reporters' fees for hearings is supported; however, as noted
13 above, some invoices indicate expedited fees without a basis provided for the
14 rush charge. Therefore, the Court finds it must reduce the amount to account for
15 the rush charges and that \$4,540.03 is appropriate in reporters fees incurred by
16 Snell & Wilmer for hearings.

17 **b. Printing, Copying, and Scanning**

18 Defendant seeks \$5,468.66 for printing, copying, and scanning under NRS
19 18.005(12). Four separate invoices were provided: an October 21, 2019, invoice
20 for \$1,252.46; a July 27, 2020, invoice for \$380.00; an October 20, 2022, invoice
21 for \$2,354.70; and an October 31, 2022, invoice for \$1,481.50. While, under
22 NRCP 68, the costs pre-dating 2021 Offer of Judgment would not be
23 recoverable, here the copying costs are allowable under NRS 18 and are
24 supported by adequate documentation as reasonable, necessary, and actually
25 incurred as required under *In re Dish Network, Cadle, Berosini, and Fairway*.
26 The full \$6,468.66 is, therefore, appropriate.
27
28

1 **c. Travel and Lodging for Hearings and**
2 **Depositions**

3 Defendant seeks \$4,585.60 for travel and lodging costs incurred by Bartlit
4 Beck associated with counsel traveling for hearings and depositions. Defendant
5 seeks the amount under NRS 18.005(15). Invoices were provided for:
6 September 4, 2020, travel by Christopher Landgraff for \$1,339.65; September 4,
7 2020, meals for Christopher Landgraff of \$192.50; September 8, 2020,
8 conference room, beverage service, and internet for \$2,178.36; September 30,
9 2022, travel for Christopher Landgraff for \$464.53; September 30, 2022, air fare
10 for Christopher Landgraff for \$323.18; and September 30, 2022, meals for
11 \$87.38. At the May 30, 2023, hearing the Court set forth that meals would not be
12 appropriate to recover as counsel would have to eat regardless, and that hotel
13 costs and tickets would not be appropriate, acknowledging that while parties
14 have their choice of counsel, those costs are client driven based on their
15 selection of counsel and Plaintiff should not have to bear additional cost for the
16 choice of the Defendant.⁴⁵ After the Court allowed time for the parties to reach an
17 agreement as to fees and costs, per the correspondence submitted to the Court
18 on July 11, 2023, counsel withdrew the request for travel and meal expenses.
19 Thus, the Court need not address the initial travel and lodging and meal request.

20 **d. Pro Hac Vice Admissions**

21 Defendant seeks \$5,000.00 in costs related to Pro Hac Vice Admissions
22 incurred by Bartlit Beck and \$3,700.00 in costs related to Pro Hac Vice
23 Admissions incurred by Snell & Wilmer. Defendant seeks these costs under
24 NRS 18.005(17) as an “other” reasonable and necessary expense. Invoices
25 were provided for Application fees, Pro Hac Vice fees, and Annual Renewal
26 Fees. Plaintiff challenged the cost in its entirety as not authorized under NRS

27

⁴⁵ May 30, 2023, Transcript DOC 448 at 73:19-74:11.
28

1 18.⁴⁶ At the May 30, 2023, hearing the Court stated the cost would not be
2 appropriate as it was counsel's choice to associate pro hac counsel.⁴⁷ After the
3 Court allowed time for the parties to reach an agreement as to fees and costs,
4 per the correspondence submitted to the Court on July 11, 2023, counsel
5 withdrew the request for Pro Hac Vice fees. Thus, the Court need not address
6 the initial Pro Hac Vice fee request.

7 **e. Clerk's Fees**

8 Defendant seeks \$3,386.00 in Clerk's Fees under NRS 18.005(1). The
9 register of actions was provided showing filing fees on July 11, 2016, for
10 \$1,483.00; March 6, 2017, for \$200.00; August 12, 2019, for \$223.00; November
11 13, 2020, for \$200.00; April 28, 2022, for \$200.00; June 13, 2022, for \$40.00;
12 October 24, 2022, for \$120.00; and November 16, 2022, for \$920.00. While
13 under NRCP 68 the fees pre-dating 2021 Offer of Judgment would not be
14 recoverable, here, the Clerk's fees are allowable under NRS 18 and are
15 supported by adequate documentation as reasonable, necessary, and actually
16 incurred as required under *In re Dish Network*, *Cadle*, *Berosini*, and *Fairway*.
17 The full \$3,386.00 sought is, therefore, appropriate.

18 **f. Subpoena Costs**

19 Defendant seeks various costs associated with subpoenas consisting of
20 Clerk's Fees under NRS 18.005(1); Witness fees under NRS 18.005(4); Service
21 of Subpoena under NRS 18.005(7); Messenger Services for Filing/Obtaining
22 Foreign Subpoenas under NRS 18.005(17); for a total of \$2,081.06. Invoices are
23 provided dated February 4, 2020, for \$85.00 to serve a subpoena to Levin &
24 Associates; February 7, 2020, for \$215.00 for filing fees to issue a foreign
25

26 _____
27 ⁴⁶ Plaintiff's Motion to Retax and Settle PWC's Amended Verified Memorandum of Costs DOC
414 at 5:5-18.

28 ⁴⁷ May 30, 2023, Transcript DOC 448 at 75:21-25.

1 subpoena; February 28, 2020, for \$418.50 to serve a subpoena to Carla
2 Tricarichi and Randy Hart; February 28, 2020, for \$172.50 to serve a subpoena
3 to James Tricarichi; February 28, 2020, for \$110.00 for the messenger to the
4 courthouse to serve the out-of-state subpoenas; March 20, 2020, for \$275.00 for
5 a court filing fee on the subpoena to Richard Corn; March 20, 2020, for \$560.00
6 for a court filing fee on the subpoena to Andrew Mason; May 20, 2020, for
7 \$120.00 for a court filing fee on the subpoena for Donald Korb; September 8,
8 2020, for \$84.00 for service of subpoena to Telecom Acquisition Corp.; and June
9 13, 2022, for \$41.06 in court fees. While under NRCP 68 the fees pre-dating
10 2021 Offer of Judgment would not be recoverable, here, the various subpoena
11 costs are allowable under NRS 18 and are supported by adequate
12 documentation as reasonable, necessary, and actually incurred as required
13 under *In re Dish Network, Cadle, Berosini, and Fairway*. The \$2,081.06 sought is
14 therefore appropriate.

15 **g. Mediator Fees and Messenger Fees**

16 Defendant seeks the costs under NRS 18.005(17) as an “other”
17 reasonable and necessary expense for both Mediator Fees and Messenger
18 Fees. The Court addresses both in turn.

19 Defendant seeks \$3,850.00 for Mediation fees. Plaintiff challenged the
20 cost as not authorized under NRS 18.⁴⁸ At the May 30, 2023, hearing, counsel
21 confirmed that the mediation was voluntary.⁴⁹ After the Court allowed time for
22 the parties to reach an agreement as to fees and costs, per the correspondence
23 submitted to the Court on July 11, 2023, counsel withdrew the request for
24 Mediator fees. Thus, the Court need not address the initial Mediator fee request.
25

26 _____
27 ⁴⁸ Plaintiff’s Motion to Retax and Settle PWC’s Amended Verified Memorandum of Costs DOC
414 at 5:5-18.

28 ⁴⁹ May 30, 2023, Transcript DOC 448 at 72:19-73:14.

1 Defendant also seeks \$1,226.00 in Messenger Services costs pursuant to
2 NRS 18.005(17). Receipts were provided for: September 20, 2016, for \$37.00;
3 September 21, 2016, for \$47.00; September 27, 2016, for \$94.00; August 11,
4 2016, for \$35.00; November 8, 2016, for \$25.00; February 8, 2017, for \$62.00;
5 February 10, 2017, for \$25.00; May 17, 2017, for \$21.00; May 15, 2017, for
6 \$35.00; July 26-29, 2019, for \$40.00; September 9-10, 2020, for \$90.00;
7 September 23, 2020, for \$76.50; October 2, 2020, for \$25.00; October 27-31,
8 2022, for \$350.00; March 25-28, 2022, for \$152.50; June 6-10, 2022, for
9 \$111.00. Plaintiff challenged the cost in its entirety as not authorized under NRS
10 18.⁵⁰ The Court finds that messenger fees are appropriate, per the statute, and
11 supported by documentation for the hearings listed above and thus the Court
12 awards \$1,226.00.

13 **h. Expert Witness Fees**

14 Defendant seeks \$814,286.98 in Expert Witness Fees for three experts.
15 The amount sought is broken down as \$84,655.50 for Joseph Leauanae;
16 \$36,584.25 for Arthur Dellinger; and \$693,046.73 for Kenneth Harris. Plaintiff
17 challenged the amount in its entirety. In the alternative, if fees were awarded,
18 Plaintiff argued that costs should capped at \$1,500.00 under NRS 18.005(5).⁵¹ At
19 the May 30, 2023, hearing, the Court set forth that the amount sought needed to
20 be reduced given overlap with the tax court issues, general advice, benefit of
21 video, and what the experts needed to specifically look at and do.⁵² After the
22 Court allowed time for the parties to reach an agreement as to fees and costs,
23

24 _____
25 ⁵⁰ Plaintiff's Motion to Retax and Settle PWC's Amended Verified Memorandum of Costs DOC
414 at 5:5-18.

26 ⁵¹ Plaintiff's Motion to Retax and Settle PWC's Amended Verified Memorandum of Costs DOC
414 at 3:19-5:4. The Motion and all documents were provided to the Court prior to the Nevada
27 Legislature's amendedments to the Statute and thus the prior statutory amount applied. Even
utilizing the current 2023 statute, the Court's analysis would be the same.

28 ⁵² May 30, 2023 Transcript DOC 448 at 74:12-75:20.

1 per the correspondence submitted to the Court July 11, 2023, defense counsel
2 agreed to reduce the fee sought for Harris by 50 percent (50%), to \$346,523.36.
3 Plaintiff's counsel still objected to that reduced amount.

4 In *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Nev. Ct.
5 App. 2015), the Court of Appeals set forth that awarding expert witness fees
6 more than \$1,500.00 per expert requires an analysis of various factors, where
7 "not all of these factors may be pertinent to every request for expert witness fees
8 in excess of \$1,500 per expert under NRS 18.005(5), and thus, the resolution of
9 such requests will necessarily require a case-by-case examination of appropriate
10 factors":

- 12 (1) the importance of the expert's testimony to the party's
13 case;
- 14 (2) the degree to which the expert's opinion aided the trier
15 of fact in deciding the case;
- 16 (3) whether the expert's reports or testimony were
17 repetitive of other expert witnesses;
- 18 (4) the extent and nature of the work performed by the
19 expert;
- 20 (5) whether the expert had to conduct independent
21 investigations or testing;
- 22 (6) the amount of time the expert spent in court, preparing
23 a report, and preparing for trial;
- 24 (7) the expert's area of expertise;
- 25 (8) the expert's education and training;
- 26 (9) the fee actually charged to the party who retained the
27 expert;
- 28 (10) the fees traditionally charged by the expert on related
matters;
- (11) comparable experts' fees charged in similar cases;
and,
- (12) if an expert is retained from outside the area where
the trial is held, the fees and costs that would have
been incurred to hire a comparable expert where the
trial was held.

26 *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Nev. Ct.
27 App. 2015). The Court notes that there was no *Frazier* analysis provided in the

1 Verified Memorandum of Costs (DOC 417), nor the Amended Verified
2 Memorandum of costs (DOC 424) beyond a footnote stating that the experts
3 “have specialized and substantial knowledge in the foregoing field(s),” and that
4 the cost was warranted because each expert “(1) prepared a comprehensive
5 expert report, (2) sat for a deposition, and (3) testified at trial (and as such,
6 incurred the additional time required to sufficiently prepare for both deposition
7 and trial)” with the result being in Defendants’ favor.⁵³ Nevertheless, PwC’s
8 Opposition to Plaintiff’s Motion to Retax Costs (DOC 440) addressed the *Frazier*
9 factors; and thus, the Court analyzes each as set forth below.

10
11 ***i. The Court Finds That Most of the Frazier***
12 ***Factors Presented Are Met As To Expert***
13 ***Joseph Leauanae but Defendant Did Not***
14 ***Provide the Court With All the Required***
Information Pursuant to Frazier and
Other Case Law and Thus, the Amount
Sought Needs to Be Reduced.

15 Defendant seeks \$84,655.50 in expert fees for Joseph Leauanae. Mr.
16 Leauanae is a business appraiser and forensic accountant with over 25 years of
17 experience in financial evaluation and litigation.⁵⁴ Mr. Leauanae is a CPA in
18 Nevada, Utah, and California, and has additional certifications in information
19 technology, financial forensics, and as a fraud examiner.⁵⁵ The nature of the
20 work performed by Mr. Leauanae involved providing an opinion on economic
21 damages of Plaintiff.⁵⁶ Defendant set forth that Mr. Leauanae drafted an expert
22 report, rebuttal report, was deposed, prepared demonstrative exhibits, and
23

24
25 ⁵³ Pricewaterhouse Coopers LLP’s Verified Memorandum of Costs DOC 417 at 3 n.1;
Pricewaterhouse Coopers LLP’s Amended Verified Memorandum of Costs DOC 422 at 3 n.2.

26 ⁵⁴ Pricewaterhouse Cooper LLP’s Opposition to Plaintiff’s Motion to Retax Costs DOC 440 at
21:5-14.

27 ⁵⁵ *Id.*

28 ⁵⁶ Pricewaterhouse Cooper LLP’s Opposition to Plaintiff’s Motion to Retax Costs DOC 440 at
21:17-18.

1 testified at trial.⁵⁷ No further details were provided in the analysis. The reports
2 and testimony were not repetitive as the three experts were opining from three
3 different fields of expertise. Defendant set forth that the independent
4 investigation performed by Mr. Leauanae involved review of documents,
5 pleadings, production, discovery, representations to the IRS, Plaintiff's expert
6 report on damages, and deposition transcripts.⁵⁸ As to the time spent preparing a
7 report, preparing for trial, and in court, Mr. Leauanae spent 317.50 hours at a
8 rate of \$375.00 per hour in 2020 through 2021, and \$415.00 per hour in 2022,
9 and provided invoices as to the time.⁵⁹ Defendant provided nothing to show the
10 fee charged was in accordance with those traditionally charged by the expert in
11 related matters as it instead stated that, "this Court is well positioned to
12 determine the reasonableness of the same based on its vast experience with
13 similar experts in complex civil litigation matters as well as the submitted
14 invoices."⁶⁰ While the Court has addressed numerous experts in a wide variety
15 of settings, *Frazier* and the case law regarding costs in general, see e.g. *In re*
16 *Dish Network*, 133 Nev. 438, 452, 401 P.3d 1081, 1093 (2017); *Cadle v. Woods*
17 *& Erickson, LLP*, 131 Nev. 114, 120-121, 345 P.3d 1049, 1054 (2015); *Bobby*
18 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998);
19 *Fairway Chevrolet Company v. Kelley*, 484 P.3d 276 (Nev. 2021) (unpublished)
20 all set forth that it is the responsibility of the party who is seeking the costs to
21 provide the documentation and explanation necessary for the Court to fully
22 analyze any costs sought. In this case, Defendant has failed to provide any
23

24 ⁵⁷ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
21:20-22:1.

25 ⁵⁸ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
22:21-23.

26 ⁵⁹ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
24:11-15; 25:3-4.

27 ⁶⁰ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
25:9-15.

1 information related to multiple *Frazier* factors. As a result of Defendant's
2 decision to provide the Court only limited information, the Court can only take into
3 account what was provided and reduces the cost allowed for Mr. Leauanae to
4 \$46,655.50.

5
6 ***ii. The Court Finds That the Frazier Factors
Are Met As To Expert Arthur Dellinger***

7 Defendant seeks \$36,584.25 in expert fees for Arthur Dellinger. Mr.
8 Dellinger is a CPA with 53 years of experience with a specialty in tax matters.⁶¹
9 As to the nature of the work performed, Dellinger provided an opinion on whether
10 the standards for disclosures of errors applies to former clients.⁶² Defendant set
11 forth that Mr. Dellinger drafted an expert report, rebuttal report, was deposed,
12 prepared demonstrative exhibits, testified at trial, reviewed standards for tax
13 services, conducted research, and reviewed information on the case provided by
14 counsel.⁶³ The reports and testimony were not repetitive as the three experts
15 were opining from three different fields of expertise. Defendant also sets forth
16 that the independent investigation performed by Mr. Dellinger was that he
17 "extensively reviewed the statements on standards for tax services, conducted
18 research, and reviewed case information provided by counsel".⁶⁴ Unlike Mr.
19 Leauanae, however, Defense counsel did provide support of showing that the
20 expert's testimony was of significant importance to the decision. Specifically,
21 Defendant pointed to the Findings of Fact and Conclusions of Law and stated
22 that it referenced the testimony of Mr. Dellinger on the standard of professional
23

24 ⁶¹ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
20:7-12.

25 ⁶² Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
21:16-17.

26 ⁶³ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
21:20-22:4.

27 ⁶⁴ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
22:19-20.

1 care and Statements on Standards for Tax Services.”⁶⁵ As to the time spent
2 preparing a report, preparing for trial, and in court, Mr. Dellinger spent 72.45
3 hours at a rate of \$500.00 per hour, and provided invoices as to the time.⁶⁶
4 Defendant provided nothing to show the fee charged was in accordance with
5 those traditionally charged by the expert in related matters. Instead, it again set
6 forth that “this Court is well positioned to determine the reasonableness of the
7 same based on its vast experience with similar experts in complex civil litigation
8 matters as well as the submitted invoices.”⁶⁷ Nevertheless, to support that the fee
9 was comparable to what would have been incurred by a local expert, Defendant
10 compared Dellinger’s rate of \$500.00 to Plaintiff’s local expert, Greene’s, rate of
11 \$400.00 who has been practicing for roughly 15 less years than Dellinger.⁶⁸ As a
12 result of the more detailed analysis, the Court finds that there is enough support,
13 pursuant to the case law and given the nature of the instant case, to award
14 Defendant the entirety of the costs sought on behalf of Mr. Dellinger in the
15 amount of \$36,584.25.

16
17 ***iii. The Court Finds That the Frazier Factors***
18 ***and Applicable Case Law Warrant a***
Reduction As to Expert Kenneth Harris

19 Defendant initially sought \$693,046.73 in expert fees for Kenneth Harris,
20 and in the correspondence submitted to the Court wherein the parties sought to
21 reach an agreement as to fees and costs Defendants had agreed to reduce the
22 amount by 50 percent (50%) to \$346,523.36. Mr. Harris has practiced in tax law
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24 ⁶⁵ Pricewaterhouse Cooper LLP’s Opposition to Plaintiff’s Motion to Retax Costs DOC 440 at
25 23:15-16.

26 ⁶⁶ Pricewaterhouse Cooper LLP’s Opposition to Plaintiff’s Motion to Retax Costs DOC 440 at
27 24:6-10; 25:1.

28 ⁶⁷ Pricewaterhouse Cooper LLP’s Opposition to Plaintiff’s Motion to Retax Costs DOC 440 at
29 25:9-15.

⁶⁸ Pricewaterhouse Cooper LLP’s Opposition to Plaintiff’s Motion to Retax Costs DOC 440 at
30 26:7-9.

1 for 35 years, with experience in mergers, acquisitions, spin offs, divestitures, and
2 internal reorganizations.⁶⁹ Mr. Harris also teaches tax law at Northwestern
3 School of Law.⁷⁰ As to the nature of the work performed, Defendant sparsely
4 provided that Mr. Harris gave an opinion as to Defendant's conduct in advising
5 Plaintiff on the transaction.⁷¹ Defendant set forth the same description for all of its
6 experts -- that Mr. Harris drafted an expert report, rebuttal report, was deposed,
7 prepared demonstrative exhibits, and testified at trial.⁷² No further details were
8 included in Defendant's *Frazier* analysis as to this factor. Defendant then
9 addressed that the reports and testimony were not repetitive as the three experts
10 were opining from three different fields of expertise. In support of showing that
11 the expert's testimony was of significant importance to the decision, Defendant
12 pointed to the Findings of Fact and Conclusions of Law referencing the testimony
13 of: "Mr. Harris twelve separate times when: (1) analyzing standard tax industry
14 terms, (2) distinguishing facts between the Westside, Enbridge, and Marshall
15 transactions, (3) interpreting Notice 2008-111, (4) interpreting of the Statements
16 on Standards for Tax Services, (5) and analyzing PwC's confidentiality
17 obligations under applicable standards."⁷³ It is asserted by Defendant that Mr.
18 Harris spent 1,089.90 hours preparing a report, preparing for trial, and in court at
19 a rate of \$775.00 per hour. It did provide invoices as to the time, as noted in the
20 Opposition, and it also contended that Harris also utilized lower billing associates
21 at \$525.00 per hour.⁷⁴ It is not clear to the Court the role of the "billing
22

23 ⁶⁹ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
24 20:13-21:4.

25 ⁷⁰ *Id.*

26 ⁷¹ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
27 21:18-19.

28 ⁷² Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
29 21:20-22:1.

30 ⁷³ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at
31 23:11-14.

32 ⁷⁴ Pricewaterhouse Cooper LLP's Opposition to Plaintiff's Motion to Retax Costs DOC 440 at

1 associates” or how those rates could be justified, pursuant to Nevada law, given
2 the limited billing details provided. Defendant also failed to provide anything to
3 show the fee charged was in accordance with those traditionally charged by the
4 expert in related matters, instead relying on the assertion that “this Court is well
5 positioned to determine the reasonableness of the same based on its vast
6 experience with similar experts in complex civil litigation matters as well as the
7 submitted invoices.”⁷⁵ Next, to support that the fee was comparable to what
8 would have been incurred by a local expert, Defendant compared Harris’ rate of
9 \$775.00, and experience as an attorney since 1985, to its own retained counsel
10 Mr. Byrne’s rate of \$750.00 who has been practicing since 1988.⁷⁶ The
11 comparison provided by Defendant was a rate for an attorney, and while the
12 Court acknowledges Mr. Harris is an attorney, no comparison was provided for
13 what is the appropriate rate for an expert standard who plays a different role than
14 counsel for the party. In short, there was no analysis as what a comparable
15 attorney acting in an expert capacity would charge in Nevada or Clark County.
16 Considering the invoices provided, the fee summary description for Mr. Harris is
17 listed under “Lawyer” and other lawyers at the firm are also listed as billing on the
18 matter. Based on the limited analysis given of the foregoing *Frazier* factors, the
19 Court finds it appropriate to reduce the expert fee sought for Mr. Harris.

20 For example, some of the items in the invoices contain insufficient detail
21 for the Court to consider, appear to be representation work beyond the scope
22 necessary for an expert opinion, appear to be other parties conducting review for
23 the expert, or appear to be duplicative intra-office conferencing with the expert,
24

25
26 24:16-20; 25:5-6.

27 ⁷⁵ Pricewaterhouse Cooper LLP’s Opposition to Plaintiff’s Motion to Retax Costs DOC 440 at
28 25:9-15.

⁷⁶ Pricewaterhouse Cooper LLP’s Opposition to Plaintiff’s Motion to Retax Costs DOC 440 at
26:5-7.

1 as further discussed below. The invoices reflect the billings of Mr. Harris (KLH)
2 and other billing entries are included billed by Andrea M. Despotes (AMD) and
3 Matthew Koenders (KM) yet there is nothing to provide the Court how three
4 attorneys were needed to prepare an expert report particularly when there were
5 other experts that presented opinions that overlapped but were not duplicative.

6 The following entries show billing for intra-office communications and, in
7 some instances, duplicative billing for the same intra-office meeting. On August
8 6, 2019, MK billed \$1,207.50 to conference with KLH as well as to review the
9 complaint, research, and analysis, and did not parse out the amount of time
10 spent conferring with KLH. Then on August 26, 2019, AMD billed \$1,840.00 to
11 review the file, conduct research, and confer with KLH; again, not breaking down
12 the amount of time spent for inter-office conferencing. On August 27, 2019, MK
13 again billed \$1,312.50 to again review the complaint, analysis, and confer with
14 KLH. On August 30, 2019, there are billing entries for KLH for conferencing with
15 MK, as well as a duplicative \$525.00 entry for MK for conferencing with KLH. On
16 September 5, 2019, MK billed \$1,050.00 to review the record and confer with
17 KLH. On September 16, 2019, AMD billed \$2,760.00 for an office conference
18 with KLH and work on research, with no breakdown for the timing as to each. On
19 September 18, 2019, AMD billed \$172.50 for an office conference. On February
20 20, 2020, and February 27, 2020, MK billed \$787.50 and \$2,467.50, respectively,
21 to review record and analysis and confer with KLH; again, with no breakdown of
22 the time spent on intra-office conference. Then on March 21, 2020, and March
23 31, 2020, MK billed \$1,680.00 and \$367.50, respectively, to work on the draft
24 expert report, research, and conference with KLH with no temporal breakdown.
25 On April 8, 2020, and April 12, 2020, AMD billed \$230 and \$57.50, respectively,
26 to conference with KLH. On April 13, 2020, there are billing entries for KLH for
27 conferencing with MK, as well as a duplicative \$787.50 entry for MK for
28

1 conferencing with KLH. Similarly, on April 14, 2020, there are billing entries for
2 KLH conferencing with MK on the report, and a duplicative entry for \$1,470.00
3 MK to conference with KLH and review and revise the draft report, the time is not
4 parsed out for the activities. On April 20, 2020, and April 21, 2020, AMD billed
5 \$115.00 for both entries to conference with KLH. On April 27, 2020, MK billed
6 \$1,207.50 for an entry covering work on a draft report and conferencing with
7 KLH, with no breakdown of the time spent on each task. On May 7, 2020, MK
8 billed \$210.00 to conference with KLH. On June 5, 2020, KLH billed to
9 conference with AMD, and there was a duplicative billing entry by AMD for
10 \$1,207.50 to conference with KLH and work on the rebuttal report, with no
11 breakdown of the time allotted to each activity.

12 Some billed activities appear to be representation work beyond the scope
13 necessary of an expert opinion and the entries do not contain sufficient detail for
14 the Court to fully evaluate the distinction between expert tasks and tasks that
15 would be handled by counsel. For example, on November 16, 2020, KLH billed
16 \$630.000.00 to review a Motion in Limine pertaining to expert testimony, and
17 then on November 19, 2020, billed \$232.50 for “research re: MIL issue.”

18 Additionally, there were billing entries for drafting the expert report and
19 rebuttal report performed by parties that were not expert Mr. Harris. There was
20 no information provided as to the nature or scope of the work, whether this work
21 was duplicative, or what role each person had in the preparation of the report for
22 the Court to assess in its review of the records. On January 24, 2020, AMD
23 billed \$632.50 for a generic entry of “worked on matters re: expert opinion.” On
24 February 4, 2020, AMD billed \$920.00; on February 7, 2020, AMD billed
25 \$805.00; on February 11, 2020, AMD billed \$2,127.50; on February 12, 2020,
26 AMD billed \$1,782.50; on February 14, 2020, AMD billed \$115.00; on February
27 19, 2020, AMD billed \$977.50; on February 21, 2020, AMD billed \$3,220.00; on
28

1 February 25, 2020, AMD billed \$2,300.00; on February 26, 2020, AMD billed
2 \$2,507.50; on February 28, 2020, AMD billed \$2,817.50; all of the foregoing
3 entries were for a generic description of “worked on expert opinion matter.” It is
4 unclear to the Court whether these were part of preparing the opinion or whether
5 they were other actions associated with the file as there is minimal description of
6 the work given.

7 Then, turning to entries where it was apparent the work was pertaining to
8 the report, on March 2, 2020, KLH billed \$4,107.50 and on March 5, 2020, billed
9 \$1,007.50 to research and work on the expert report. On March 6, 2020, KLH
10 billed \$5,580.00 to work on the expert report while MK also billed \$1,942.50 that
11 same day to work on the draft report and research. Similarly, on March 7, 2020,
12 KLH billed \$2,480.00 to work on the expert report and MK also billed \$1,312.50
13 to work on the draft. Thereafter, KLH billed \$1,162.50 for “work on expert report”
14 on March 8, 2020; \$5,037.50 on March 9, 2020; \$5,435.00 on March 10, 2020;
15 \$2,325.00 on March 11, 2020; \$3,100.00 on March 12, 2020; \$3,100.00 on
16 March 13, 2020; \$1,550.00 on March 14, 2020; \$2,945.00 on March 15, 2020;
17 \$4,262.50 on March 16, 2020; \$4,107.50 on March 17, 2020; \$4,262.50 on
18 March 18, 2020; \$4,650.00 on March 19, 2020; \$4,495.00 on March 20, 2020;
19 \$3,875.00 on March 21, 2020; \$3,875.00 on March 22, 2020; \$5,347.50 on
20 March 23, 2020; \$5,192.50 on March 24, 2020; \$3,487.50 on March 25, 2020;
21 \$4,650.00 on March 26, 2020; \$4,650.00 on March 27, 2020; \$5,037.50 on
22 March 28, 2020; \$3,875.00 on March 29, 2020; \$4,650.00 on March 30, 2020;
23 and \$3,487.50 on March 31, 2020. Overlapping many of those same dates, MK
24 billed \$1,680.00 on March 21, 2020, (which was already referenced above for
25 overlapping with intra-office conferencing with KLH); \$1,050.00 on March 22,
26 2020; \$787.50 on March 23, 2020; \$1,470.00 on March 24, 2020; \$1,312.50 on
27 March 27, 2020; \$3,150.00 on March 28, 2020; \$3,937.50 on March 29, 2020;
28

1 \$1,995.00 on March 30, 2020; and \$367.50 on March 31, 2020, (this entry was
2 also accounted for above for the overlapping conference with KLH), all for
3 generic descriptions of "work on draft report."

4 KLH then billed for revisions to the report on April 1, 2020; April 2, 2020;
5 April 11, 2020; and April 20, 2020, in the amounts of \$2,945.00, \$2,092.50,
6 \$1,395.00, and \$1,705.00 respectively. For further work on the expert report,
7 KLH billed \$1,782.50 on April 13, 2020; \$3,022.50 on April 14, 2020; \$1,162.50
8 on April 15, 2020; \$775.00 on April 16, 2020; \$2,712.50 on April 17, 2020;
9 \$3,100.00 on April 19, 2020; \$3,875.00 on April 20, 2020; \$3,642.50 on April 21,
10 2020; \$3,410.00 on April 22, 2020; \$2,712.50 on April 23, 2020; \$4,107.50 on
11 April 24, 2020; \$3,177.50 on April 27, 2020; \$1,550.00 on April 28, 2020; and
12 \$1,937.50 on April 29, 2020. Overlapping many of those same dates, MK billed
13 \$787.50 on April 13, 2020 (addressed above for the entry also covering intra-
14 office conference); \$1,470.00 on April 14, 2020; \$945.00 on April 25, 2020; and
15 \$1,207.50 on April 27, 2020 (addressed above for the entry overlapping intra-
16 office conference as well), all to "work on draft report." AMD also billed \$345.00
17 on April 15, 2020; \$115.00 on April 17, 2020; \$3,392.50 on April 22, 2020;
18 \$2,875.00 on April 23, 2020; \$3,162.50 on April 24, 2020; \$4,772.50 on April 25,
19 2020; \$3,622.50 on April 26, 2020; \$4,657.50 on April 27, 2020; and \$3,277.50
20 on April 28, 2020, for generic entries of "worked on opinion draft."

21 KLH then made further revisions to the report as part of billing blocks,
22 including multiple other activities without distinguishing the time spent specifically
23 on the report for \$2,170.00 on May 13, 2020, and \$1,705.00 on May 15, 2020.
24 KLH billed \$1,937.50 on May 30, 2020; \$2,325.00 on June 1, 2020; \$3,255.00 on
25 June 2, 2020; \$2,170.00 on June 3, 2020; \$3,487.50 on June 5, 2020; \$3,100.00
26 on June 7, 2020; \$3,642.50 on June 8, 2020; \$3,100.00 on June 9, 2020;
27 \$2,712.50 on June 10, 2020; \$3,487.50 on June 11, 2020; \$3,487.50 on June 12,
28

2020; \$3,100.00 on June 13, 2020; \$3,487.50 on June 14, 2020; \$2,712.50 on June 15, 2020; \$1,782.50 on June 16, 2020; \$2,092.50 on June 17, 2020; \$3,875.00 on June 18, 2020; \$3,100.00 on June 19, 2020; and \$1,705.00 on June 24, 2020, to work on his rebuttal report and make revisions thereto. Some of the foregoing entries were also lumped with activities such as reviewing production without breaking down the time spent for the Court to consider. Again, overlapping many of these same dates, there were entries by other persons for work on the expert rebuttal report. There were also billing entries by MK for work on the rebuttal report of \$1,312.50 on June 28, 2020, and \$2,782.50 on June 29, 2020. AMD billed \$575.00 on June 1, 2020; \$2,645.00 on June 2, 2020; \$2,645.00 on June 3, 2020; \$1,207.50 on June 5, 2020; \$2,990.00 on June 9, 2020; \$2,645.00 on June 10, 2020; \$2,875.00 on June 11, 2020; \$3,162.50 on June 12, 2020; \$2,760.00 on June 13, 2020; \$3,392.50 on June 14, 2020; \$172.50 on June 15, 2020; \$690.00 on June 18, 2020; \$1,035.00 on June 19, 2020; \$1,035.00 on June 23, 2020; \$920.00 on June 24, 2020; \$1,610.00 on June 26, 2020; \$632.50 on June 27, 2020; and \$2,472.50 on June 28, 2020. The Court notes that in addition to the foregoing entries that specifically referenced work on the report, and as highlighted above, AMD frequently billed generic entries for “work on expert matter” and it is not clear for the Court to assess the work done and whether it was in preparation of the report or another matter. On July 1, 2020, KLH billed \$1,085.00 to review comments and edits to the rebuttal report; on July 2, 2020, KLH billed \$1,162.50 to revise the rebuttal report; and on July 7, 2020, KLH billed \$1,937.50 to conference with AMD and work on final edits to the rebuttal report for which AMD also billed \$575.00 to work on “expert opinion matters.”

While the Court appreciates that the testimony was important to the Defendant’s case, and it is cited as being an aid to the Court’s decision, it is

1 unclear how the expert report and rebuttal reports alone could be billed at over
2 \$302,400.00, including work by two persons who were not the expert himself,
3 and have that amount be considered “reasonable.” The Court fully considers the
4 nature of the case, the sophisticated parties, and the complex matters involved.
5 The Court also fully considers that due to the nature of the invoices, some of the
6 matters have other activities included in the line item accounting for the total time
7 billed for that entry, but also notes that there are many other generic entries that
8 could have involved billing for work on the report that were unclear, and the
9 foregoing entries were only the ones that it was clear to the Court that the work
10 done pertained to the actual reports.

11 Next, the Court also considers the billing entries pertaining to Mr. Harris’
12 participation in trial. On November 1, 2022, KLH billed \$3,875.00 to review the
13 transcript of the first day of trial and prepare for testimony; AMD also billed
14 \$3,852.50 that day to review the transcript, research tax issues, prepare notes for
15 KLH, and partake in “related expert preparation activities.” On November 2,
16 2022, KLH billed \$5,037.50 to review the transcript of the second day of trial,
17 prepare for testimony, and travel to Las Vegas; AMD also billed \$3,450.00 that
18 day to again review the transcript, research tax issues, prepare notes for KLH,
19 and “related expert preparation activities.” On November 3, 2022, KLH billed
20 \$6,200.00 to attend trial; AMD billed \$3,852.50 to review the transcript, research
21 tax issues, prepare notes for KLH, and “related expert preparation activities.” On
22 November 4, 2022, KLH billed \$5,812.50 to prepare in the morning and then
23 attend trial in the afternoon; AMD billed \$2,530.00 for the same activities
24 articulated in the preceding entries. On November 5, 2022, KLH billed \$6,200.00
25 to prepare for cross examination. On November 6, 2022, KLH billed \$5,425.00 to
26 again prepare for cross examination; AMD billed \$2,587.50 that day for the same
27 activities articulated in the preceding entries. On November 7, 2022, KLH billed
28

1 \$6,975.00 to attend trial and prepare for direct testimony; AMD billed \$3,852.50
2 for the same activities articulated in the preceding entries. On November 8,
3 2022, KLH billed \$6,975.00 to attend trial and prepare for direct testimony. On
4 November 9, 2022, KLH billed \$6,975.00 to attend trial and give direct and cross
5 examination testimony. On November 10, 2022, KLH billed \$3,875.00 to attend
6 trial and give cross examination testimony, as well as billed travel time. Upon
7 review, the Court notes that Mr. Harris testified 4 hours and 44 minutes over two
8 days at the trial, and pursuant to applicable law the Court takes that into account
9 in ascertaining what is the reasonable and necessary cost amount that Plaintiff
10 should be responsible for.

11 In sum, while the Court is appreciative of the extent of Mr. Harris'
12 expertise, based on the limited information provided by Defendant, the
13 requirements of Nevada case law, and the analysis of entries set forth above, the
14 Court finds that costs to be borne by Plaintiff associated with Mr. Harris should
15 be reduced to \$160,000.00

16 As noted above, while Defendant's prevailed on their 2021 Offer of
17 Judgment which would entitle them to costs after said Offer was declined, that
18 amount is subsumed in the NRS 18 analysis. Accordingly, there are no
19 additional costs that the Court need address.
20

21 **ORDER**

22 Having reviewed the papers and pleadings on file herein, including, but
23 not limited to, the pleadings, exhibits and affidavits; having heard oral arguments
24 of the parties, this Court makes the following ruling:

25 IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED, and DECREED
26 that Defendant Pricewaterhouse Coopers LLP's Motion For Attorneys' Fees and
27 Costs (DOC 427) is granted in part and denied in part without prejudice as follows:
28

1 The Court finds it appropriate to award Defendant Attorney's Fees for the
2 work of Snell & Wilmer in the amount of \$407,018.80.

3 The Court finds it appropriate to award Defendant Attorney's Fees for the
4 work of Bartlit Beck in the amount of \$1,695,735.59.

5 The Court further finds it appropriate to award costs, as set forth above
6 pursuant to NRS 18 without being duplicative of NRCP 68 in the amount of
7 \$322,955.91.

8 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiff
9 Tricarichi's Motion To Retax and Settle PwC's Amended Verified Memorandum
10 Of Costs (DOC 414) is granted in part and denied in part without prejudice
11 consistent with the Court's ruling on Defendant Pricewaterhouse Coopers LLP's
12 Motion For Attorneys' Fees And Costs as set forth herein.
13

14 IT IS SO ORDERED.

15 DATED this 25th day of August, 2023.
16

17 Dated this 25th day of August, 2023

18 

19 HON. JOANNA S. KISHNER
20 DISTRICT COURT JUDGE
21 Joanna S. Kishner
22 District Court Judge
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

/s/ Tracy L. Cordoba
TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5	
6 Michael Tricarichi, Plaintiff(s)	CASE NO: A-16-735910-B
7 vs.	DEPT. NO. Department 31
8 PricewaterhouseCoopers LLP,	
9 Defendant(s)	

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/25/2023

15 Brad Austin .	baustin@swlaw.com
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EXHIBIT 3

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EXHIBIT 3

EXHIBIT 4

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