

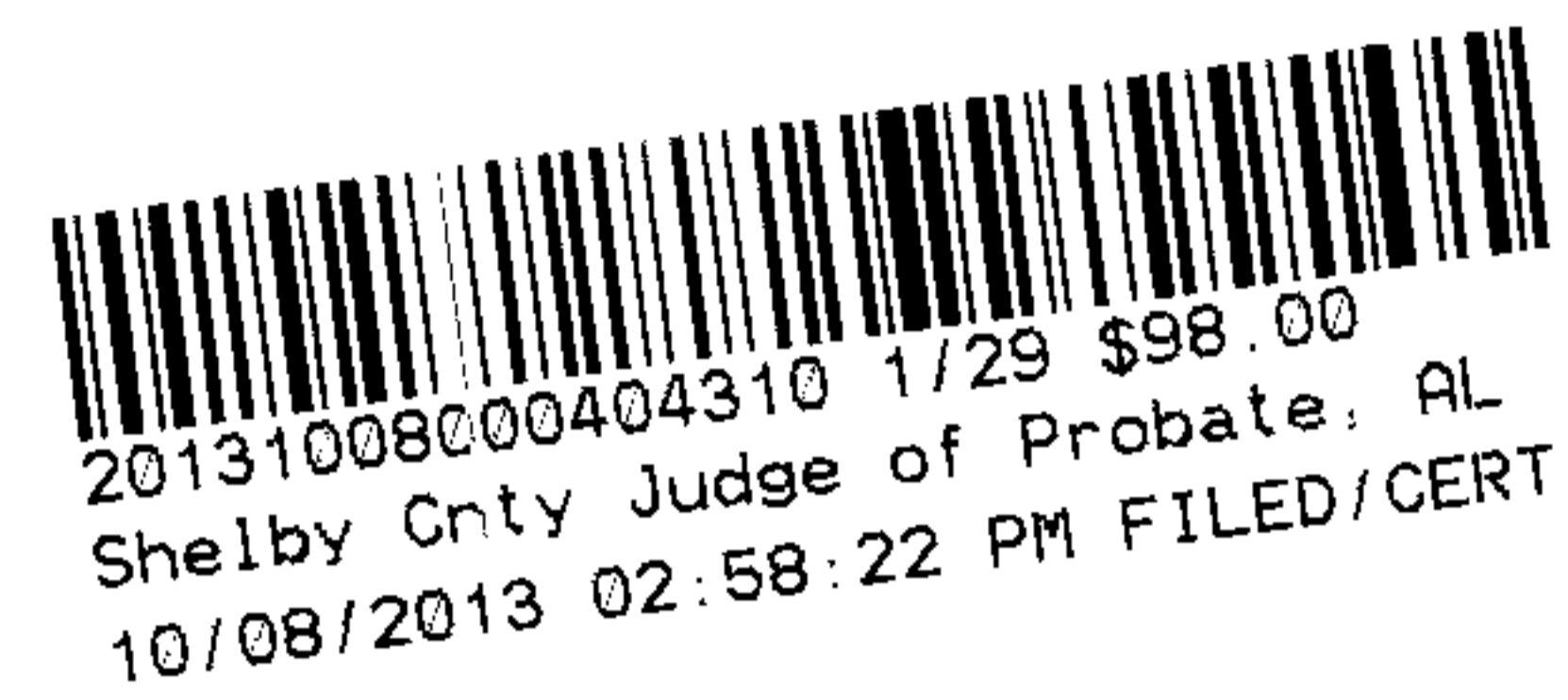
**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

**WESTERN STEEL INC,
CASHION WILLIAM B,
Plaintiffs,**

V.

**CASHION FRANKIE, TRUSTEE OF,
HAYDEN ANGELA RAE, TRUSTEE
OF,
HAYDEN STEVEN MARK,
CASHION FRANKIE ET AL,
Defendants.**

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) **Case No.:** CV-2012-000209.00



FINAL JUDGMENT

The trial on the remaining claims in this action came to be heard on July 1-2, 2013. The Complaint seeks an order declaring void numerous actions taken by Defendants Steven Mark Hayden and Angela Rae Hayden, in her individual capacity and as purported trustee of the “William B. Cashion Trust,” a Nevada spendthrift trust. The Complaint further seeks permanent injunctive relief prohibiting the Defendants from taking any action with respect to Plaintiff William Cashion’s assets or Plaintiff Western Steel, Inc., and seeks compensatory damages, punitive damages, and attorneys’ fees for the Defendants’ breach of fiduciary duty, conspiracy and conversion.

At the trial, Plaintiffs and Defendants each had the opportunity to present arguments and evidence. The Court heard testimony from Plaintiff Cashion, Defendant Mark Hayden, Defendant Angela Rae Hayden, Gene Calhoun (former president of Western Steel), Fred Campbell (vice president of Western Steel at the time of the events giving rise to this matter and the current president of Western Steel), and Elizabeth Brickfield, Esq. (Nevada counsel for William Cashion). Plaintiffs also offered into evidence numerous exhibits, which were provided to the Court in both an electronic version and in paper format; these exhibits were all deemed authenticated and admissible pursuant to this Court's Scheduling Order given that the Defendants failed to raise any objection thereto before trial. Defendants called no witnesses of their own and presented no evidence other than through cross examination of Plaintiffs' witnesses.

To a significant extent, this Order is based on the Court's opportunity to observe the witnesses as they testified and to make credibility determinations. Resolutions of disputed fact are based on such observations and credibility determinations. In testifying, for example, plaintiff Cashion was clear and convincing. He was calm throughout and demonstrated a lucid recollection of the events at issue, down to minor details. He made for a most believable witness. By contrast, defendant Mark Hayden was alternatively evasive, disingenuous, and combative (as he was during a prior proceeding in this action), leading the Court to discount his testimony significantly. Similarly, defendant Angela Hayden was nervous, jittery and distracted throughout her testimony. She also made for a witness unworthy of much belief.

After considering the evidence and reviewing the applicable law, the Court finds as follows:

I. Findings of Fact

Plaintiff Cashion went into business for himself in 1954, founding Western Iron Works. Cashion has been in business continually since then. In the ensuing six decades, Cashion grew Western Iron Works into a profitable business, eventually merging it into another business he founded, Plaintiff Western Steel, Inc., and expanded into other businesses as well. Cashion has been the sole owner of Western Steel and Western Iron Works since 1976.

Before the actions of the Defendants that gave rise to this action, Cashion was the undisputed sole shareholder and sole director of Western Steel, Inc.; the undisputed owner of stock constituting a controlling interest in Merchants Commercial Bank, a commercial bank chartered in the U.S. Virgin Islands; the undisputed owner of 95% of the membership interests of Western Properties, LLC; the undisputed owner of a controlling interest in 10:16 Mining Company, Inc.; and was the owner of significant other business interests and personal assets.

On January 29, 2007, in the midst of divorce proceedings from his former wife, Jeanell Cashion, William Cashion executed a general, durable power of attorney (the "POA"). The POA designated Defendant Mark Hayden, who is Cashion's nephew, as Cashion's agent and attorney-in-fact. Until the events of 2011 and 2012 giving rise to this action, Mark Hayden did not take any action as Cashion's agent under the POA.

Unbeknownst to Cashion, on July 28, 2011, Mark Hayden drafted and executed the "William B Cashion Nevada Spendthrift Trust" (the "William B. Cashion Trust"). On August 1, 2011, again unbeknownst to Cashion, Mark Hayden executed a second trust, the "William B Cashion Family Nevada Spendthrift Trust" (the "Cashion Family Trust"). Collectively these have been referred to as the "Nevada Trusts" in the course of this proceeding. The Nevada Trusts are identical except for their names. Mark Hayden was

the grantor and the initial trustee of both Nevada Trusts. Although Hayden never formally resigned as a trustee of the William B. Cashion Trust, he designated his own wife, Angela Hayden, as a trustee of the William B. Cashion Trust on or about December 13, 2011.

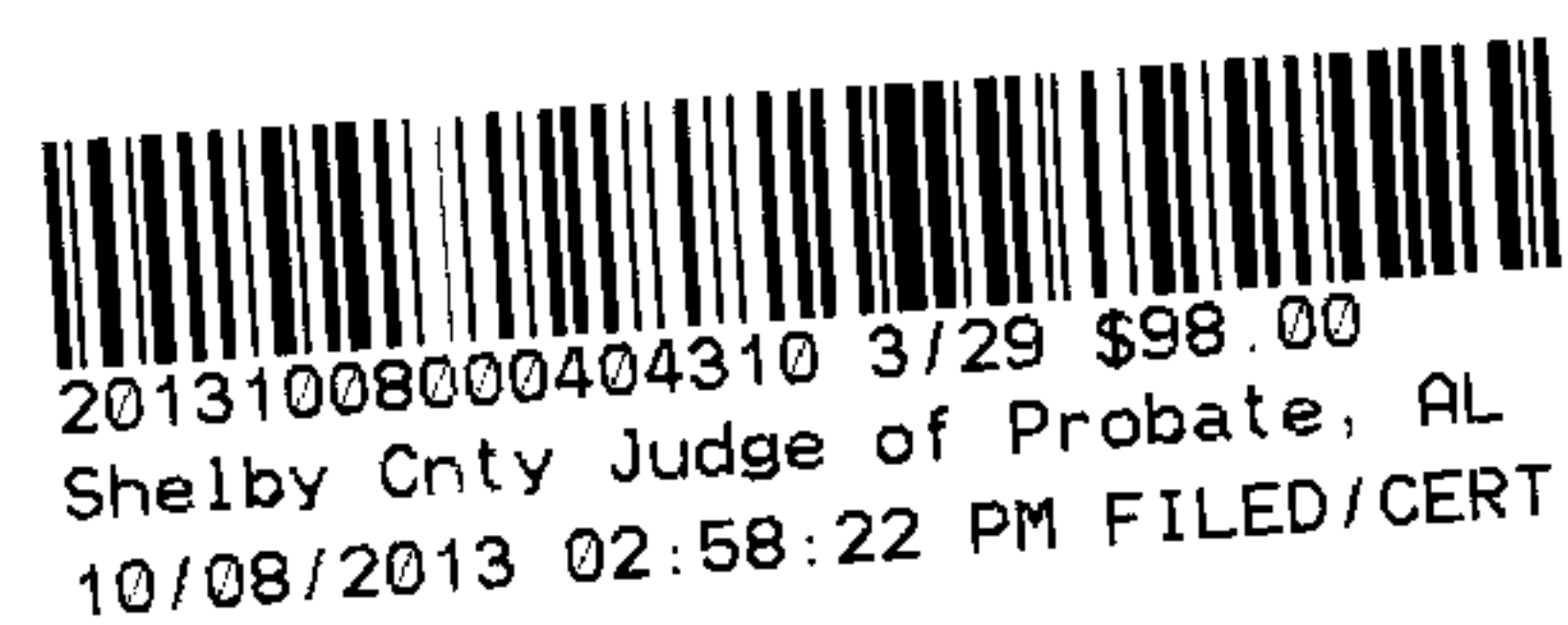
Mark Hayden remains the trustee of the Cashion Family Trust and the “trust protector” of both Nevada Trusts. As the grantor and as so-called trust protector, Hayden retained and/or conferred upon himself the exclusive power to revoke, alter, amend or terminate the trusts, to remove a trustee and appoint a successor trustee, and to determine trustee compensation. Hayden also provided in the trusts that if he ever resigned as trustee, he would be released from any liability for his actions as trustee. Hayden purported to transfer twenty ounces of silver to each Nevada Trust to establish a trust corpus.

Each trust instrument identifies William Cashion as the “initial sole beneficiary.” Other than boilerplate “QSST” provisions, however, Hayden failed to include any provisions directing the trustee as to when, how or under what circumstances income or principal could be distributed to Cashion. The QSST provisions simply require that all income of an S-Corp. (for example, Western Steel) be distributed to the beneficiary. There is no other provision that permits distribution of income or principal to Cashion, either “in the sole and absolute discretion of the trustee” or for the support, maintenance or health of the purported sole beneficiary. In other words, other than requiring the trustee to distribute S-Corp. income to Cashion, there is no provision permitting distribution of trust income and principal to Cashion.

Mark Hayden did not inform Cashion that he was establishing the Nevada Trusts, nor did he provide a copy of either trust instrument to Cashion until after Cashion filed the Complaint in this matter. Cashion never instructed Hayden to create the trusts for his benefit. Mark Hayden never informed Cashion that he intended to transfer any of Cashion’s assets to any trust or that he intended to use any trust as a vehicle to control Cashion’s assets.

After establishing the Nevada Trusts, and acting without Cashion’s knowledge or consent, Mark Hayden then used his agency under Cashion’s 2007 POA to attempt to transfer *all* of Cashion’s assets -- including his business interests, all of his real property, personal property, furniture, household items, and even the pencils on his desk -- to the Nevada Trusts. From October 27, 2011 through February 7, 2012, Mark Hayden and Angela Hayden (along with Cashion’s now-former wife, Frankie Cashion), executed numerous documents by which Mark Hayden and the other Defendants attempted to transfer all of Cashion’s assets to the Nevada Trusts. These documents include the following:

- On October 27, 2011, Mark Hayden executed an instrument titled “Assignment Separate from Stock Certificate,” in which he stated that Cashion transferred 550 shares of common stock of Merchants Commercial Bank to the William B. Cashion Trust.



- On October 27, 2011, Mark Hayden executed an instrument titled "Transfer of Property from William B. Cashion to William B. Cashion Trust," in which he stated that a Compromise Settlement "was reached" between Cashion and the William B. Cashion Trust, and that Cashion transferred all of his rights and interest in Western Steel, Inc., Merchants Commercial Bank, Western Properties, LLC, and other properties in Shelby and Jefferson Counties to the William B. Cashion Trust.
- On December 13, 2011, Mark Hayden filed a complaint in the District Court of Clark County, Nevada, under Cashion's name, against the William B. Cashion Trust. Until the filing of the Nevada complaint, Mark Hayden had been the sole trustee of the trust. Upon filing the complaint, he appointed his own wife, Angela Hayden, as trustee. According to Mark Hayden, the purpose of the Nevada lawsuit was to "establish" the "Compromise Settlement" that had been referenced first in the October 27, 2011 Transfer of Property instrument.
- On December 15, 2011 - two days after initiating the Nevada proceeding without Cashion's knowledge or consent - Mark Hayden executed a "Release of All Claims" by which he tried to release himself and his wife, Angela Hayden, from any liability for any and all actions related to the Nevada Trusts.
- On or about December 29, 2011, Mark Hayden and Angela Hayden collusively entered into the "Compromise Settlement" that had been referred to as having been reached on October 27, 2011. Mark Hayden purported to act as Cashion's agent, and Angela Hayden purported to act as trustee of the William B. Cashion Trust. The Compromise Settlement purports to bind Cashion to an agreement to transfer all of his assets to the William B. Cashion Trust, except for his interest in Western Properties, LLC and 10:16 Mining Co., which would be transferred or assigned to the Cashion Family Trust under the Compromise Settlement.
- On December 30, 2011, Mark Hayden executed an instrument purporting to be an "Irrevocable Proxy of Merchants Commercial Bank," by which he attempted to designate Angela Hayden as proxy for Cashion's Merchants Commercial Bank stock, "with full and complete discretionary power to use all William B. Cashion's stock rights and interest in Merchants Commercial Bank."
- On December 30, 2011, Mark Hayden executed an instrument purporting to be an "Action Without Meeting" on behalf of Cashion as sole shareholder of Western Steel, Inc. The instrument purports, among other things, (i) to give Mark Hayden irrevocable proxy to vote the stock of Western Steel, Inc., (ii) to replace Cashion as sole director with Mark Hayden as sole director, (iii) to "resolve" that the "Compromise Settlement" is accepted and shall not be interfered with by Western Steel or its employees, and (iv) to "adopt" the Compromise Settlement as the "policy" of Western Steel.
- On December 30, 2011, Mark Hayden executed an instrument purporting to be an "Irrevocable Proxy of Western Steel" by which Hayden attempted to transfer all of Cashion's rights in Western Steel stock to Mark Hayden individually. Mark Hayden testified that the intent of the instrument was to confer, irrevocably, Cashion's rights to vote Western Steel stock to Mark Hayden as Cashion's agent.
- On January 3, 2012, Mark Hayden, as Cashion's agent, Frankie S. Cashion, Cashion's then-wife, and Angela Rae Hayden, as trustee of the William B. Cashion Trust, executed a "Post Nuptial Agreement." The Defendants attempted to revoke and invalidate a prior Prenuptial Agreement that was executed by Cashion and Defendant Frankie Cashion on October 22, 2008 (prior to their November 25, 2008 marriage), and replace it with the new "Postnuptial Agreement." The provisions of the Post Nuptial Agreement are addressed in more detail herein.

- On January 6, 2012, Mark Hayden executed an instrument titled "Transfer of Western Steel Inc. From William B. Cashion to William B. Cashion Trust," which he then recorded in the Probate Court of Jefferson County, Alabama. The instrument purported to transfer all of Cashion's right and interest in Western Steel, Inc. to the William B. Cashion Trust. The instrument also stated that Cashion would pay "millions" in damages to the William B. Cashion Trust if Cashion took any action that interfered with the transfer of Western Steel to the trust, and that Cashion would pay all of Hayden's and the trust's costs in litigation if Cashion challenged the transfer of Western Steel to the trust.
- On January 22, 2012, the Defendants held a meeting of the "stockholders of Western Steel, Inc." which was memorialized in an instrument titled "MEETING OF STOCKHOLDERS of Western Steel INC." Mark Hayden purported to act under the authority of the 2007 POA, and Angela Hayden and Frankie Cashion purported to act as trustees of the "William B. Cashion Nevada Spendthrift Trust." The Defendants "resolved unanimously" that the corporation would record the trust as its sole shareholder, that the officers of Western Steel were required to comply with the "Compromise Settlement," that the corporate officers were to communicate solely with Mark Hayden, and that Defendant Frankie Cashion was elected to serve as secretary of Western Steel Inc., with authorization to transfer all stock of Western Steel Inc.
- On January 22, 2012, the Defendants executed a "Certificate of Stock of Western Steel Incorporated" purporting to designate the William B. Cashion Trust as sole owner of Western Steel.
- On January 22, 2012, Mark Hayden executed an instrument purporting to be an "Assignment of Stock" by which Cashion purportedly assigned all of his stock in Western Steel, Inc. to the William B. Cashion Trust.
- On January 26, 2012, Mark Hayden executed a "Deed of Conveyance of Property of William Cashion," which he then had recorded in the Probate Court of Jefferson County, Alabama. The deed purported to transfer Cashion's right and interest in two parcels of real estate in Bessemer, Alabama to the "William B. Cashion Nevada Spendthrift Trust."
- On or about January 22 or January 26, 2012, Mark Hayden executed an "Assignment of Property" by which Hayden purported to transfer all of Cashion's personal property, documents and records, equipment, internet files, emails, and including "all papers pencils desk chair" located at Western Steel to the William B. Cashion Trust.
- On January 26, 2012, Defendant Frankie Cashion, as "Secretary" of Western Steel, and Gene G. Calhoun, acting pursuant to Mark Hayden's instructions, executed an instrument purporting to be a second "Certificate of Stock of Western Steel Incorporated." This stock certificate purports to certify that 13,515 shares of Western Steel are owned by the William B. Cashion Trust.
- On January 27, 2012, Mark Hayden executed a "Release of All Legal Claims" by which Cashion purported to release Gene G. Calhoun, then the president of Western Steel, from any liability of any kind.
- On January 29, 2012, the Defendants executed an instrument titled "Certified Resolutions of Western Steel, Inc." stating that Cashion had no interest in Western Steel, Inc., that Cashion may be removed from the premises of Western Steel at their direction, that Cashion's name was to be removed from all Western Steel accounts, and that only the president of Western Steel and Defendant Frankie Cashion shall have authority over bank accounts and funds of Western Steel.



- On January 29, 2012, Mark Hayden executed an instrument titled "Certificate of Western Steel, Inc." stating, among other things, that Steven Mark Hayden, his wife, Angela Rae Hayden, and Frankie S. Cashion, are the Directors of Western Steel.
- On January 31, 2012, the Defendants executed an untitled document which purports to be "resolutions" of Western Steel. Among other things, the instrument purports to appoint Mark Hayden as president of Western Steel, replacing Gene G. Calhoun; permits Mark Hayden and Frankie Cashion to remove Cashion from the premises of Western Steel; and states that Cashion has no rights to stock, records, assets, property, financial funds or bank accounts of Western Steel.
- On February 7, 2012, the Defendants executed new "Bylaws of Western Steel Inc." Among other things, the instrument purports to give Mark Hayden, as president of Western Steel, and Frankie Cashion, as "secretary" of Western Steel, the right to control all litigation of Western Steel, all records of Western Steel, and all banking of Western Steel.

It is undisputed that each of these instruments was executed without Cashion's knowledge or consent. More importantly, it is undisputed that Mark Hayden, even though he was Cashion's agent, knowingly and purposely *concealed* these instruments from Cashion—indeed, he concealed his entire plan from Cashion—until he believed that Cashion could not stop him. It is undisputed that during the relevant time period in 2011 and 2012, Mark Hayden and Cashion spoke on the telephone or in person almost daily, yet Hayden never revealed any of his actions as Cashion's supposed agent. It is also undisputed that Cashion never instructed Mark Hayden to transfer any of his assets to the Nevada Trusts, that he never instructed Hayden to execute any of the documents that Hayden executed related to Cashion's assets, and that he did not want any of his assets to be transferred out of his name. In sum, over a period of approximately six months, Mark Hayden conceived of and executed a scheme, in conjunction with his wife to steal Cashion's assets and to place himself in a position to completely control Cashion's affairs.

Cashion's undisputed testimony is that on the evening of Friday, January 27, 2012, he was informed by Fred Campbell, then the Vice President of Western Steel, that employees had seen Mark Hayden enter the premises of Western Steel after working hours and remove numerous documents from the premises. These documents and records included corporate records of Western Steel, including its stock book, and numerous other personal files of Cashion. Upon being informed of Mark Hayden's presence at the Western Steel office, Cashion immediately called Hayden to confront him about the incident. Cashion testified that Mark Hayden refused to disclose either his location or what he had just done, and then hung up on Cashion. Cashion testified that Mark Hayden did not answer numerous calls from him during the next couple of days. Cashion further testified that he was subsequently informed by Frankie Cashion that Mark Hayden had agreed to meet with him on Monday, January 30, 2012, at a Ruby Tuesday's restaurant in Bessemer, Alabama.

Over the weekend of January 27-29, 2012, during the same time period that he avoided

contact with his principal, Hayden executed at least two new documents, referenced herein, by which he attempted to solidify his control of Western Steel.

On Monday, January 30, 2012, Mark Hayden met with Cashion at Ruby Tuesday's restaurant in Bessemer, Alabama. There, Hayden announced that Cashion no longer owned Western Steel. Cashion refused to acknowledge Mark Hayden's actions and demanded the return of the documents and records that Hayden had taken from the Western Steel office. Mark Hayden refused to return the records and insisted that Western Steel was now owned by a trust, i.e., the William B. Cashion Trust.

At some point during the conversation, Frankie Cashion arrived and attempted to convince Cashion to succumb to Mark Hayden's plan to assume control of Cashion's assets. Cashion became very upset when informed of Mark Hayden's attempt to take control of Western Steel and upon realizing that his own wife was part of Hayden's scheme. Cashion left the restaurant and returned home, only to find that Frankie Cashion had changed the locks on his house and had summoned Tuscaloosa County Sheriff's deputies to the premises. Cashion was permitted to take from his home an armful of clothing and personal items, and he was forced to spend the next several nights alone in a motel room in Bessemer, Alabama. By February 8, 2012, Cashion secured a permanent residence in Pleasant Grove, Alabama.

On January 31, 2012, after meeting with his attorneys, Cashion hand-delivered to Mark Hayden an instrument revoking the 2007 POA. Cashion's undisputed testimony is that upon receiving the revocation, Mark Hayden threw it on the ground. Within an hour, Mark Hayden emailed Cashion, alleging that the revocation was improper and that Cashion was delusional, not of sound mind, and did not have capacity to revoke the power of attorney. Mark Hayden then threatened to post the contents of his email on the Facebook social network website "so that the world will know your state of mind."

On the following day, a bizarre incident occurred in which Frankie Cashion, with Mark Hayden's knowledge and approval, placed a call to 911 emergency services, to claim that William Cashion was on the premises of Western Steel, with a gun, and was holding people at gunpoint. William Cashion was not, in fact, on the premises of Western Steel at the time that Frankie Cashion made the 911 call. Frankie Cashion and Mark Hayden were at Western Steel, however. Frankie Cashion was ultimately arrested by the Jefferson County Sheriff and charged with falsely reporting an incident and obstructing governmental operations. Fred Campbell, who was present at Western Steel at the time of the incident, testified that Mark Hayden was disruptive, was disrespectful to the law enforcement officers called to the scene, and caused Western Steel to be effectively shut down for a period of several hours because of the fabricated threat.

Mark Hayden also sought to prevent Cashion from challenging Hayden's control over Cashion's affairs and assets by threatening Cashion's attorneys. Mark Hayden threatened



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in emails to sue Cashion's attorney, Gerald Colvin, for malpractice, threatened to file a complaint against him with the Alabama state bar, and threatened to add him as a defendant in the sham Nevada lawsuit, if Colvin assisted Cashion in challenging the validity of the Compromise Settlement. Mark Hayden also threatened in emails to sue Cashion's attorney, Tony G. Miller, and his law firm, Maynard, Cooper & Gale, if Miller or his firm provided legal assistance to Cashion.

Although all of Mark Hayden's secret actions as Cashion's agent are egregious, the Nevada lawsuit and the attempted entry of the "Compromise Settlement" warrant detailed discussion. Mark Hayden drafted and filed the lawsuit in Nevada and styled it "*William B. Cashion v. William B. Cashion Trust*." The complaint is identified as a "Complaint for Negligence." Hayden never informed Cashion that he had filed a lawsuit on his "behalf" in Nevada, a state with which Cashion had no connection whatsoever. Within days of filing the lawsuit, Hayden and his wife, Angela Hayden, conspired to enter into the "Compromise Settlement" of the Nevada lawsuit. The Compromise Settlement, drafted by Mark Hayden and executed by Mark Hayden and Angela Hayden, provided, among other things, the following:

1. that Cashion "agreed" that he was easily defrauded, gullible and should not have control over his own property;
2. that Cashion agreed to transfer all of his property and assets of any kind whatsoever to the "William B. Cashion Nevada Spendthrift Trust" and/or the "William B. Cashion Family Nevada Spendthrift Trust" controlled by Hayden;
3. that Cashion would not revoke the 2007 power of attorney and would maintain Hayden as his agent;
4. that Cashion would not communicate with the employees, directors or shareholders of his companies, including Western Steel and Merchants Commercial Bank, or even with the bank at which he held his own personal accounts;
5. that Cashion completely released the Haydens and held them harmless for all of their actions;
6. that if Cashion ever attempted to question or interfere with Hayden's actions or with the trusts, Hayden would be entitled to place Cashion in an inpatient psychiatric center in the State of Nevada, for a period of not less than 28 days, at Cashion's expense; and
7. that Cashion would pay all the "trust's" attorney's fees and all of the Haydens' attorney's fees, up front, if Cashion ever attempted to challenge their actions or the validity of the Compromise Settlement.

By his own admission, Hayden instigated the Nevada lawsuit as a pretext to enter into the "Compromise Settlement" on Cashion's "behalf." Hayden described the lawsuit and entering into the Compromise Settlement as "almost a rubber stamp."

The Court also finds the January 3, 2012 "Post Nuptial Agreement" to be an egregious



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example of Mark Hayden's unauthorized meddling in Cashion's most personal affairs. As with all of the other documents in question in this matter, Mark Hayden, as Cashion's agent, Angela Hayden, as trustee of the William B. Cashion Trust, and Frankie Cashion (Cashion's now former wife) executed and implemented the Post Nuptial Agreement without Cashion's knowledge or consent. The Post Nuptial Agreement purported to invalidate a November 2008 Prenuptial Agreement between Cashion and Frankie that limited Cashion's obligations to Frankie in the event of a divorce or his death. In the Post Nuptial Agreement executed secretly by Mark Hayden, Angela Hayden and Frankie Cashion:

1. Frankie was entitled to the first \$150,000 of income from the William B. Cashion Trust (which purported to hold substantially all of Cashion's assets) for the rest of her life, regardless of whether she is married to Cashion, regardless of whether she initiated divorce proceedings or not, and regardless of whether Cashion is alive;
2. all additional income of the William B. Cashion Trust was to be placed in a joint account in the name of Cashion and Frankie, with Frankie's approval required before Cashion could access a single dollar of the income;
3. the Post Nuptial Agreement mandates that upon William's or Frankie's death the remaining balance of the joint account would pass 20% to Frankie and 20% to each of William's children; in other words, because Frankie controlled the joint account, she could accumulate the income for herself to receive upon William's death.
4. the joint account is Frankie's to control regardless of status of the marriage of Cashion and Frankie;
5. Frankie would continue to receive her "salary" from Western Steel of roughly \$35,000 per year for the remainder of her life; again, conferring upon her a benefit not found in the Prenuptial Agreement, and again to Cashion's detriment;
6. Angela Hayden and Frankie Cashion were explicitly entitled to receive compensation for acting as trustees;
7. "Cashion" agreed to cooperate fully with Compromise Settlement in Nevada and agreed that it is fair and reasonable in all respects.
8. "Cashion" agreed to give all policies of life insurance on him over to Frankie and the trust.
9. Cashion derives no benefit whatsoever from the Post Nuptial Agreement-no protection if Frankie files for divorce, no guaranteed right to use the income from the trust.

Mark Hayden testified that he engineered the Post Nuptial Agreement because he was afraid that Frankie Cashion would sue him or the William B. Cashion Trust. In short, Mark Hayden acknowledged that he signed away all of Cashion's rights under the validly executed 2008 Prenuptial Agreement in order to shield Hayden himself, and his own wife, from liability if Frankie Cashion sued them.

By his own admission, Mark Hayden kept all of the above-described actions-his entire plan, each and every action taken under the power of attorney or as a purported “director” of Western Steel-a secret from Cashion until the evening of January 30, 2012, when, at Ruby Tuesday’s, he presented his takeover of Cashion’s assets and affairs as a *fait accompli*.

The only reasonable inference that can be drawn is that Hayden kept all of his actions secret from Cashion because he knew that Cashion would try to stop him once he was made aware of Hayden’s plan-which is exactly what Cashion did. The day after learning of Hayden’s machinations, Cashion revoked the 2007 POA. By February 8, 2012, Cashion had secured from this Court a Temporary Restraining Order to prevent Hayden from taking any further action with respect to his property and affairs.

Mark Hayden testified that he concocted this plan to assume control of all of Cashion’s assets because from 2009 through 2011 Cashion invested millions of dollars in a “fraudulent” investment, 10:16 Mining Company, and was therefore, *ipso facto*, no longer capable of handling his own affairs. 10:16 Mining Company is a gold-mining company located in Clanton, Alabama, and is the subject of a separate lawsuit pending in the Circuit Court of Elmore County. The issue of whether 10:16 Mining Company was a “fraudulent” investment is not before this Court, but it is undisputed that 10:16 Mining has not been a profitable investment. Cashion has testified that he invested over \$6 million dollars in 10:16 Mining Company, that he also now owns the land (the surface rights) of the mining site, and that he has seen virtually no return on his investment. Cashion also testified that he now regards 10:16 Mining Company as an unsuccessful investment from that standpoint. Cashion further testified that over the course of over six decades of being in business for himself, not all of his various business ventures have been successful, but more have been than have not.

II. Conclusions of Law

A. *Plaintiffs’ Breach of Fiduciary Duty Claim*

The crux of this matter is whether Mark Hayden violated his fiduciary duties to William Cashion by using his authority under the 2007 POA to transfer all of Cashion’s assets to the Nevada Trusts that he controlled, thereby placing himself in charge of Cashion’s assets and business affairs. A power of attorney creates a fiduciary relationship between an attorney-in-fact and his principal. *Smith v. Wachovia Bank*, 33 So.3d 1191, 1197 (Ala. 2009). As a fiduciary, an attorney-in-fact owes a duty to his principal to act at all times and in all ways in the principal’s sole interest and consistently with the principal’s wishes insofar as those can be known. *See* Restatement (Third) of Agency §1.01, §2.01; *see also Dudley v. Colonial Lumber Co.*, 137 So. 429, 431 (Ala. 1931).

The Supreme Court of Alabama has recently provided a succinct overview of Alabama

law governing powers of attorney:

Alabama case law has historically viewed the execution of a power of attorney as creating an agency relationship.

‘A power of attorney is defined as “[a]n instrument in writing whereby one person, as principal, appoints another as his agent and confers authority to perform certain specified acts or kinds of acts on behalf of [a] principal. An instrument authorizing another to act as one’s agent.... The agent is attorney in fact....” *Black’s Law Dictionary* 1171 (6th ed. 1990). When one accepts the agency, she implicitly covenants to use the powers conferred upon her for the sole benefit of the party conferring such power, *consistent with the purposes of the agency relationship*. See, *Dudley v. Colonial Lumber Co.*, 223 Ala. 533, 137 So. 429 (1931). Therefore, when one accepts the power of attorney, she impliedly covenants to use the powers bestowed upon her for the sole benefit of the one conferring that power on her, consistent with the purposes of the agency relationship represented by the power of attorney. Powers of attorney will be strictly construed, restricting the powers to those expressly granted and those incidental powers that are necessary to effectuate the expressed powers. *Hall v. Cosby*, 288 Ala. 191, 258 So. 2d 897 (1972). The principal-agency relationship is fiduciary in nature and imposes upon the agent a duty of loyalty, good faith, and fair dealing. See, *Williams v. Williams*, 497 So. 2d 481 (Ala. [1986]); *Lauderdale v. Peace Baptist Church of Birmingham*, 246 Ala. 178, 19 So. 2d 538 (1944).

‘An agent sustains a position of trust toward his principal and in all transactions affecting the subject of the agency, the law dictates that he must act in the utmost good faith and must make known to his principal each and all material facts within his knowledge which in any way affect the transaction and subject matter of his agency.

‘The law sedulously regards this principle and acts of an agent which tend to violate this fiduciary obligation are prima facie voidable ... and are considered, in law, as “frauds upon confidence bestowed.”

‘[*Myers*] v. *Ellison*, 249 Ala. 367, 369, 31 So.2d 353, 355 (1947). (Citations omitted.) (Emphasis added.) An agent is not permitted to occupy a position that would allow her to profit as a result of that agency relationship. *Lauderdale v. Peace Baptist Church of Birmingham*, *supra*.

‘*Sevigny v. New South Fed. Savs. & Loan Ass’n*, 586 So.2d [884], 886-87 [(Ala. 1991)].’

Harrelson v. Harrelson, 7 So. 3d 1004, 1009-10 (Ala. Civ. App. 2008). See also *Barron v. Scroggins*, 910 So. 2d 780, 786 (Ala. Civ. App. 2005); *Olanrewaju v. Bankers Ins. Co.*, 688 So. 2d 820, 822 (Ala. Civ. App. 1996); *Williams v. Williams*, 497 So. 2d 481, 483 (Ala. 1986); 3 *Am. Jur. 2d Agency* § 205 (2009) (“An agent is a fiduciary with respect to the matters within the scope of the agency.”).

Smith, 39 So.3d at 1195-96 (emphasis added).

As *Smith* makes abundantly clear, an attorney-in-fact occupies a position of trust. As a fiduciary, Mark Hayden owed Cashion duties of loyalty, of good faith, and of fair dealing. In turn, these duties led to corollary obligations to keep Cashion informed of his actions

as agent, to act only in conformity with Cashion's known wishes, and to refrain from using use the agency relationship to engage in self-dealing. On this last point, the Supreme Court in *Smith* made clear that "[a]n agent is not permitted to occupy a position that would allow [the agent] to profit as a result of that agency relationship." *Id.* at 1196.

Mark Hayden's actions, described above, clearly violate his duties. He intentionally used his authority to secretly deprive Cashion of substantially all of his assets. In furtherance of this scheme, Mark Hayden set up the Nevada Trusts, numerous deeds, assignments, proxies, releases, conveyances, a sham lawsuit in Nevada and "Compromise Settlement," a sham "Post Nuptial Agreement" with Cashion's wife, and other instruments on Cashion's "behalf" that were contrary to Cashion's known desires and intent, and to Cashion's express detriment. Mark Hayden placed himself and his own wife in positions to profit from Cashion's assets, and Hayden placed himself in a position of absolute and complete authority and control over Cashion's property and affairs. Mark Hayden attempted to bind Cashion to unconscionably punitive release and indemnification provisions in the event Cashion were ever to attempt to challenge any of Hayden's actions. Mark Hayden executed multiple instruments purporting to release, indemnify and hold harmless himself and his own wife from any liability for his actions as Cashion's attorney-in-fact or from their actions in assuming control of Cashion's assets. Far from exhibiting loyalty to Cashion, Mark Hayden instead represented to Cashion's family, to Cashion's business associates, and to Cashion's employees that Cashion was delusional and not competent to handle his own affairs.

Having breached his duties repeatedly, Hayden compounded his wrongs by covering up his actions until he thought himself impervious to Cashion. Activities undertaken in secret are anathema to the most basic concept of a fiduciary. Hayden had an affirmative duty to inform Cashion of his actions: to "make known to his principal each and all material facts within his knowledge which in any way affect the transaction and subject matter of his agency." *Smith* at 1196, quoting *Myers v. Ellison*, 31 So.2d 353, 355 (1947). This duty to inform is not peculiar to Alabama law, nor is it confined to particular circumstances. Rather, it is integral to the very notion of agency. See Rest. (3rd) of Agency § 8.01: "An agent has a duty to use reasonable effort to provide the principal with facts that the agent knows, has reason to know, or should know when (1) subject to any manifestation by the principal, the agent knows or has reason to know that the principal would wish to have the facts or the facts that are material to the agent's duties to the principal; and (2) the facts can be provided to the principal without violating a superior duty owed by the agent to another person."

Hayden was ultimately forced to reveal his plot only after Cashion learned from Western Steel employees that Hayden had been in Cashion's office, removing documents and personal files under cover of darkness. Had that not occurred, Hayden could have easily moved to set salaries, bonuses, stock dividends and other compensation for himself and his wife as officers and directors of Western Steel. Similarly, Mark Hayden reserved for



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himself the ability to amend the trusts that he created, or the ability to revoke the trusts entirely, i.e., he could easily have provided compensation provisions for himself as trustee, trust protector, or the like, and could easily have inserted himself or his family members as additional beneficiaries.

Hayden contends that the 2007 POA gave him the broadest possible authority to act with respect to Cashion's assets, including, evidently, the power to assume complete control of Cashion's assets without Cashion's knowledge or consent. The Court finds this argument to be without merit. The provisions of the 2007 power of attorney are broad, but such powers are always subject to the control, and to the known wishes, desires and intent, of the principal. Citing earlier precedent, the *Smith* Court states that "powers of attorney will be strictly construed, restricting the powers to those expressly granted and those incidental powers that are necessary to effectuate the expressed powers." *Smith* at 1196, citing *Hall v. Cosby*, 258 So. 2d 897 (Ala. 1972). In this regard, the general grant of authority that is common in powers of attorney has been held in Alabama to be subordinate to the specifically enumerated powers. *See, e.g., Harrelson v. Harrelson*, 7 So.3d 1004, 1008-1010 (Ala. Civ. App. 2008).

The 2007 power of attorney does not give Mark Hayden the authority to transfer all of Cashion's property to a trust, particularly to a trust that, by design, is intended to prevent Cashion from exercising any dominion, control or enjoyment over his own property. The power of attorney does permit the agent to invest or reinvest his property in, among other things, "interests in trusts, investment trusts, whether of the open and/or closed fund types, and participations in common, collective or pooled trust funds or annuity contracts. . . ." on behalf of the principal. This investment provision has been wrongly construed by Mark Hayden to grant him authority to transfer all of Cashion's property to the Nevada Trusts. Secretly transferring everything the principal owns to a trust controlled by the agent is not, by any reasonable interpretation, an "investment" of the principal's property in an "interest in trusts," as there is no expectation of a return on the investment.

Similarly, the power of attorney does not permit Hayden to act for Cashion with respect to his marital affairs, as Hayden did in drafting and executing the Post Nuptial Agreement. Nor is there any part of the enumerated powers that reasonably could be construed to permit Hayden to have Cashion committed to inpatient psychiatric treatment in Nevada for questioning Hayden's actions.

Finally, the 2007 POA explicitly forbids Mark Hayden from exercising the power of attorney in his own favor, but Hayden nevertheless executed multiple release, indemnification and hold harmless documents in favor of himself and his own wife, executed documents requiring Cashion to pay Hayden and his wife damages if Cashion ever challenged their actions, executed a document expressly providing for Angela Hayden, his own wife, to be compensated from Cashion's assets for serving as trustee of the William B. Cashion Trust, and executed documents appointing himself as president of

Western Steel and himself and his wife as directors of Western Steel.

There is also ample evidence that the William B. Cashion Trust and the Cashion Family Trust are not in the best interests of William Cashion, particularly given that these trusts are controlled by the Haydens, who have demonstrated a complete disregard for Cashion's known desires and wishes. In spite of Mark Hayden's insistence that neither he nor Angela Hayden have profited from their actions, not only did they use the Nevada Trusts in an attempt to deprive Cashion of enjoyment and control of his own assets, they have effectively set the table for themselves to profit from Cashion's assets for years to come. Mark Hayden insists that this Court and Cashion should simply trust in his good intentions. In view of the contempt and disdain for Cashion that Mark Hayden demonstrated in his emails and websites, to say nothing of his pattern and practice of concealing his actions from Cashion, as well as the fact that he has unquestionably attempted to place himself in an unassailable position of control over Cashion's assets, the Court does not find credible Mark Hayden's testimony as to his own intentions.

More importantly, while the Haydens claim that the Nevada Trusts are nominally for Cashion's sole benefit, a review of the Haydens' actions refute their assurances. The Nevada lawsuit and the resulting Compromise Settlement are manifestly not in Cashion's sole or best interests. It can scarcely be disputed that the Nevada lawsuit was a sham by any definition. Mark Hayden admitted that he acted as trustee of the William B. Cashion Trust from the day he created it until the day he filed his lawsuit in Nevada on December 13, 2012. This means that Mark Hayden, as Cashion's agent, was suing the William B. Cashion Trust for actions or inactions that must, by necessity, have occurred while Mark Hayden himself was the sole trustee and trust protector of the William B. Cashion Trust. There cannot have been any other actor or party involved than Mark Hayden. Mark Hayden admitted that the Nevada lawsuit had no intrinsic merit but was a mere pretext and subterfuge to give all of his covert actions the imprimatur of court approval. There was no real justiciable controversy between the "parties" to the lawsuit, and the entire matter was a fraud upon the Nevada court undertaken in Cashion's name.


The resulting Compromise Settlement is unconscionable in every respect: it gives the Haydens complete control over all of Cashion's assets, it incorporates numerous punitive and poison pill provisions expressly designed to prevent Cashion from challenging the Haydens' actions or their control over his assets, it prohibits Cashion from revoking the 2007 POA, it restricts Cashion's ability even to communicate with his business associates or employees, and it fully releases the Haydens for their actions. In short, Mark Hayden, with Angela Hayden's knowing assistance, conspired to prevent Cashion, as the alleged "sole beneficiary" of the trust and as the principal of the 2007 power of attorney, from ever challenging his actions as agent under the POA, or his or Angela's actions as trustee or trust protector of the trust. Such an action is manifestly self-serving and not in Cashion's interest.



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Similarly, on January 6, 2012, fresh on the heels of the Compromise Settlement, Mark Hayden, as Cashion's agent, and Angela Hayden, as trustee of William B. Cashion Trust, executed the so-called "Transfer of Western Steel Inc. from William B Cashion to William B Cashion Trust," agreeing between themselves that Cashion would pay "millions" in damages to the William B. Cashion Trust if Cashion took any action that interfered with the transfer of Western Steel to the trust, and that Cashion would pay all of the Haydens' and the trust's costs in litigation if Cashion challenged the transfer of Western Steel to the trust.

The Haydens also made the William B. Cashion Trust a party to the January 3, 2012 "Post Nuptial Agreement" that attempted to invalidate Cashion's November 2008 Prenuptial Agreement with his now-former wife, Frankie Cashion, replacing it with measures that conferred no benefit whatsoever to William Cashion.


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B. Plaintiffs' Civil Conspiracy Claim

The Plaintiffs have also alleged that the Defendants conspired to deprive Cashion of his assets and to wrongfully assume ownership and control of Western Steel. In *Ex parte Reindel*, 963 So.2d 614, 621 n. 11 (Ala. 2007), the Alabama Supreme Court stated:

'Alabama recognizes [civil conspiracy] as a substantive tort.' *Purcell Co. v. Spriggs Enters., Inc.*, 431 So. 2d 515, 522 (Ala. 1983). 'In essence, civil conspiracy is a combination of two or more persons to do: (a) something that is unlawful; [or] (b) something that is lawful by unlawful means.' *Id.*; see also *Eidson v. Olin Corp.*, 527 So. 2d 1283, 1285 (Ala. 1988). 'In a conspiracy, the acts of coconspirators are attributable to each other.' *Williams v. Aetna Fin. Co.*, 83 Ohio St. 3d 464, 476, 700 N.E.2d 859, 868 (1998).

With respect to the actions of Angela Hayden described herein, the Court finds that she knowingly and intentionally participated in Mark Hayden's plan to steal all of William Cashion's assets and seize control of his business affairs, and joined in Mark Hayden's plan to keep everything hidden from Cashion. Angela Hayden placed herself in a position to profit from Cashion's assets by assuming roles as trustee of the Nevada Trusts and/or as a director or officer of Western Steel, despite her admission that she had no prior experience as a trustee or as an officer or director of a corporation. Angela Hayden also explicitly provided in the Post Nuptial Agreement that she was entitled to be compensated for her services as a trustee of the William B. Cashion Trust, thereby placing herself in a position to profit from Cashion's assets. Accordingly, she knowingly conspired with Mark Hayden in his multiple breaches of fiduciary duty.

C. Plaintiffs' Conversion Claim

The Plaintiffs have also alleged that Defendants wrongfully converted property of the Plaintiffs by removing records and documents from the premises of Western Steel and wrongfully maintaining possession of those records and documents.

Under *Ala. Code* § 6-5-260, "[t]he owner of personalty is entitled to possession thereof. Any unlawful deprivation or interference with such possession is a tort for which an action lies." *Ala. Code* § 6-5-261 provides that "[m]ere possession of a chattel, if without title or wrongfully, will give a right of action for any interference therewith, except as against the trust owner or the person wrongfully deprived of possession."

It is undisputed that at least once, on January 27, 2012, Defendant Mark Hayden entered the offices of Western Steel, after working hours, and removed unspecified documents from the premises. It is undisputed that he did so without authorization from Cashion,

and that he attempted to conceal his actions from Cashion. There has been no evidence presented that he did so with permission from any employee of Western Steel. Cashion's testimony that Mark Hayden initially refused to admit that he had taken the records when confronted also shows that Hayden knew that his actions were against Cashion's wishes.

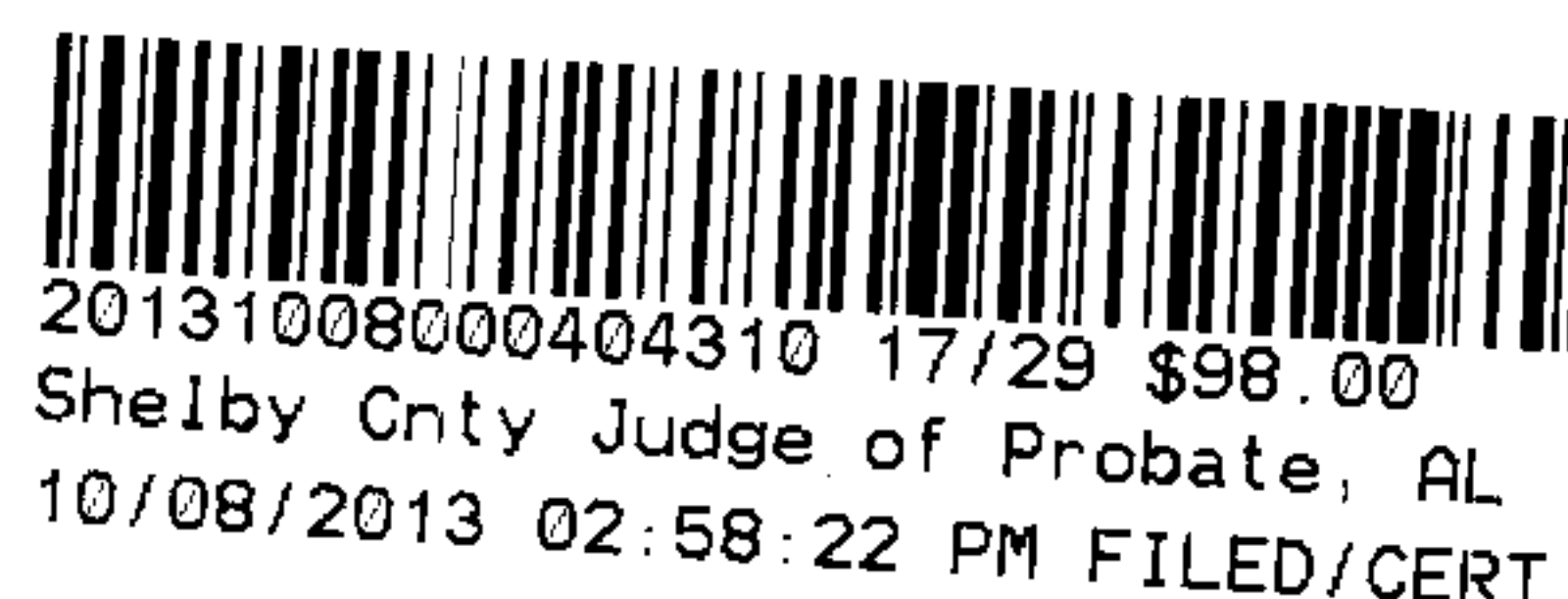
D. Defenses Raised by Defendants

Mark Hayden's stated reasons for undertaking his scheme are, to put it mildly, unpersuasive. The seed of Hayden's actions appears to be his claimed disagreement with Cashion's investing in 10:16 Mining Company in 2010 and 2011. Disagreement with a principal's actions does not, however, give an agent the authority to disregard the principal's known wishes or to act contrary to the principal's interests. It is the principal, not the agent, who controls the relationship, and it is the principal's wishes that are paramount, not those of the agent.

Cashion himself testified that over the course of his long and successful career as a self-made businessman, he has made some bad investments. Although the issue of Cashion's competency, as a legal matter, is not before this Court, the Court notes that Cashion testified ably and credibly as to his business history, the nature and extent of his assets and interests, and his explicit desires and wishes to retain control over his own assets. A bad investment is not evidence that the investor is "delusional" or "psychotic," as Mark Hayden has claimed. It appears to have upset Hayden that Cashion did not take Hayden's advice, but instead took the advice of others and made his own decisions.

If Mark Hayden genuinely believed that Cashion lacked the capacity to manage his own affairs, as Hayden contends, then there were proper avenues available for Hayden to address his concerns-avenues that would have afforded Cashion notice of Hayden's intentions and an opportunity to defend himself. These would include bringing a conservatorship, guardianship or other protective proceeding under the Alabama Uniform Guardianship and Protective Proceedings Act, codified at *Ala. Code* § 26-2A-1 *et seq.* There is no evidence that Mark Hayden even contemplated employing such legal proceedings; instead, he intentionally took matters into his own hands and concealed his actions as Cashion's attorney-in-fact from Cashion himself. The Court concludes that the Haydens' expressed "concerns" are not real but are instead simply a clumsy, contrived excuse to cover their real motive of seizing control of Cashion's business interests.

The Defendants' protestations that they did not receive any remuneration are irrelevant to whether Mark Hayden violated his fiduciary duties. Mark Hayden purportedly made himself and his wife directors of Western Steel on January 29, 2012. He appointed himself "president" of Western Steel on or about January 31, 2012, reaffirming his appointment in his new "By Laws" of February 7, 2012. Only because Cashion took action soon after being made aware of the Haydens' scheme, and obtained a temporary



restraining order on February 8, 2012 (later converted on March 30, 2012 into a preliminary injunction), were the Haydens effectively prevented from further carrying out their scheme. In short, only the Plaintiffs' quick action prevented the Defendants from benefitting from their scheme. The Defendants therefore cannot claim with a straight face that they did not profit from their actions.

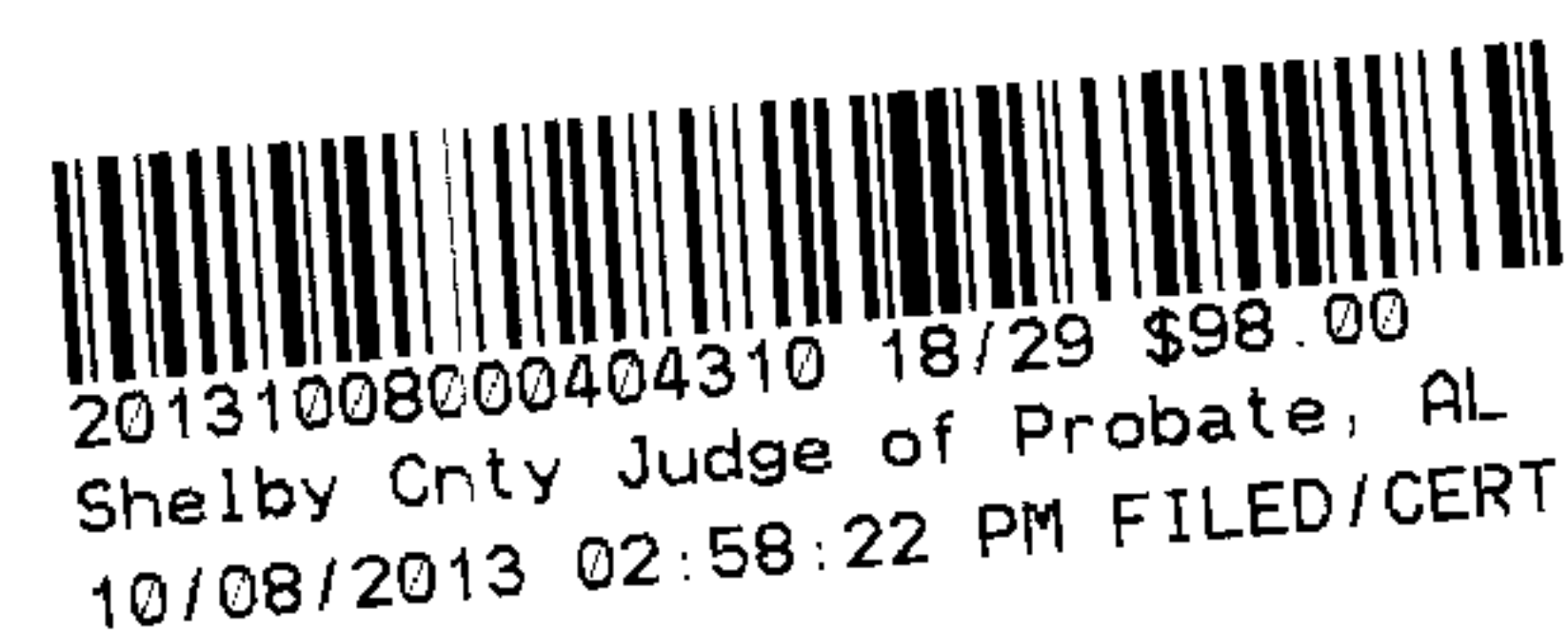
The Defendants' contention that the value of Cashion's assets has not been diminished as a result of their actions is a similar red herring. To the extent that the value of Cashion's assets has not suffered, it is so in spite of, not because of, the Defendants' actions, and it is a direct result of the TRO and injunction obtained by Cashion, which prevented the Defendants from exercising further dominion and control over Cashion's assets. Indeed, Cashion's unrefuted testimony is that Western Steel would have suffered greatly under the control of the Haydens, had they been permitted to follow through on their efforts to keep Cashion from running Western Steel.

Such actions do not demonstrate any desire to look after Cashion's best interests; they show only that the Haydens, and Mark Hayden in particular, intended to exercise complete control over Cashion's assets and render themselves unaccountable to the very person whose interests they claimed to protect.

Finally, the Haydens contend that Cashion cannot be the owner of Western Steel because he has not produced a stock certificate in his name, while, in contrast, the William B. Cashion Trust has produced a stock certificate showing that it is the sole owner of Western Steel. The Court again finds this argument to be without any merit. It is undisputed that Cashion owned all of the outstanding shares of Western Steel before the Haydens' plot, as evidenced by documents executed by the Defendants reciting that Cashion was the sole owner of all outstanding shares of Western Steel, Inc. prior to their attempted takeover. Since Cashion's ownership of Western Steel is the very source from which the William B. Cashion Trust claims to derive its ownership, the Court cannot comprehend how the Defendants now claim that Cashion did not own Western Steel.

Similarly unconvincing is the Defendants' claim that Cashion's inability to produce a stock certificate evidencing his ownership is proof that he does not own Western Steel. The record shows that Mark Hayden took possession and control of Cashion's files and Western Steel's corporate records for a period of time, without Cashion's knowledge or consent. The record also shows that the former president of Western Steel, Gene G. Calhoun, testified that he believes that he has seen a stock certificate evidencing William B. Cashion as the sole owner of Western Steel, in the record books that the Defendants removed from the Western Steel office without Cashion's permission. In short, the Court finds that the Defendants' fixation on Cashion's supposed lack of a stock certificate to be but another effort to obscure the real issues in this case.

E. Findings of Fact, Conclusion of Law and Relief Granted in Prior Orders



The Court notes that it made findings of fact and conclusions of law, and granted certain relief to the Plaintiffs, in its Order of March 12, 2013, finding Defendants Mark Hayden and Angela Hayden in contempt of court, and in its Order of May 22, 2013, finding Mark Hayden in further contempt of court. The Court will not restate those findings of fact or conclusions of law herein, but adopts and incorporates them herein by reference particularly with regard to certain relief granted, namely, awarding attorneys' fees to the Plaintiffs for Defendants' sanctionable conduct, which was carried over and which will be addressed herein.

III. Plaintiffs' Relief

Based on the above findings of fact and conclusions of law, this Court finds that Plaintiffs are entitled to the following remedies:

A. Declaratory and Equitable Relief Voiding Mark Hayden's Actions as Agent and All Subsequent Actions of the Defendants Resulting from Hayden's Actions

For the reasons set forth herein, all of Mark Hayden's actions as Cashion's agent under the January 29, 2007 power of attorney are hereby DECLARED to be *void ab initio*. See *Smith v. Wachovia*, 33 So.3d 1191, 1196 (Ala. 2009); *Lamb v. Scott*, 643 So.2d 972, 974 (Ala. 1994). Equity requires that Hayden's actions be undone in order to put Cashion, insofar as possible, into the position that he enjoyed before Hayden's secret schemes and machinations. Because Hayden undertook all of his actions surreptitiously and without Cashion's consent, and because his actions violated Hayden's fiduciary duties, Cashion is entitled to relief undoing the harm that Hayden has done. Accordingly, *all* of Mark Hayden's actions as Cashion's agent-including each and every instrument or document executed by Mark Hayden as Cashion's agent described herein and in previous orders of this Court, including but not limited to the transfers to the Nevada Trusts, deeds, conveyances, releases, agreements, and the like-are hereby declared to be void and of no effect. The Court also voids and renders ineffective any other action taken or instrument executed by Mark Hayden as Cashion's attorney-in-fact under the 2007 POA, regardless of whether such action has been specifically referred to herein.

The Court further DECLARES that Plaintiff William B. Cashion remains the sole owner of all outstanding shares of stock in Western Steel, Inc.; that William B. Cashion remains the owner of all shares of stock in Merchants Commercial Bank issued in his name; that William B. Cashion remains the sole owner and rightful holder of all interests in Western Properties, LLC that the Defendants may have, at any time, attempted to assign, transfer or convey; and that William B. Cashion remains the sole and rightful owner of any and all other assets or property, whether real or personal, tangible or intangible, that the Defendants may have, at any time, attempted to assign, transfer or convey under the

ostensible authority of the POA. The Court further voids any deed, assignment, proxy, agreement, or any other document by which any Defendant may have at any time attempted to assign, transfer or appoint any right of interest of William B. Cashion to any trust or other entity or individual. The Court DECLARES that the purported Compromise Settlement of December 29, 2011, between Mark Hayden, as agent for William B. Cashion, and Angela Rae Hayden, as trustee of the William B. Cashion Trust, is a fraudulent sham that is void and of no effect.

Because the attempted transfers by the Haydens to the Nevada Trusts are held to be void and ineffective, all subsequent actions undertaken by them following from, or occurring as a result of, the voided transfers, including any action by any of them as a purported trustee or trust protector, with respect to Cashion's assets, and any action by any of the Haydens as purported directors or officers of Western Steel, are likewise DECLARED to be void and of no effect. This includes those actions and instruments referenced specifically herein, and any actions done or instruments executed, known or unknown, by which any of the Defendants attempted to assert any ownership of or control over Cashion's assets or Western Steel, whether as a trustee or trust protector of the William B. Cashion Trust or the Cashion Family Trust, or as a purported officer or director or owner of Western Steel or in any other capacity.

B. Compensatory Damages for Breach of Fiduciary Duty and Civil Conspiracy

The Plaintiffs seek compensatory damages for Mark Hayden's repeated breaches of his fiduciary duties. The Court finds that Defendant Mark Hayden knowingly and willfully breached his fiduciary duties as Cashion's agent under the 2007 POA in egregious fashion and in numerous ways, as set forth herein. Mark Hayden, assisted by Angela Hayden, used the 2007 POA and the contrived Nevada trusts to attempt to gain control of all of Cashion's assets, without Cashion's knowledge and against his wishes. They also attempted to prevent Cashion from challenging their control, and attempted to deprive Cashion of full enjoyment of his own assets. Defendant Mark Hayden is found liable to Plaintiff Cashion for his intentional wrongs.

The Court also finds Defendants Mark Hayden and Angela Hayden liable for civil conspiracy to breach the fiduciary duties owed to Cashion. As set forth herein, Angela Hayden and Mark Hayden agreed and acted together to attempt to transfer all of Cashion's assets to the William B. Cashion Trust and/or the Cashion Family Trust, and then took steps to assume control of Western Steel as directors thereof, with Mark Hayden attempting to make himself the president of Western Steel. Angela Hayden undertook to act as the purported trustee of the William B. Cashion Trust and signed numerous documents that purport to effectuate a transfer of ownership and control of Western Steel. Angela Hayden executed the Compromise Settlement as trustee of the William B. Cashion, seeking to bind William B. Cashion to numerous punitive and

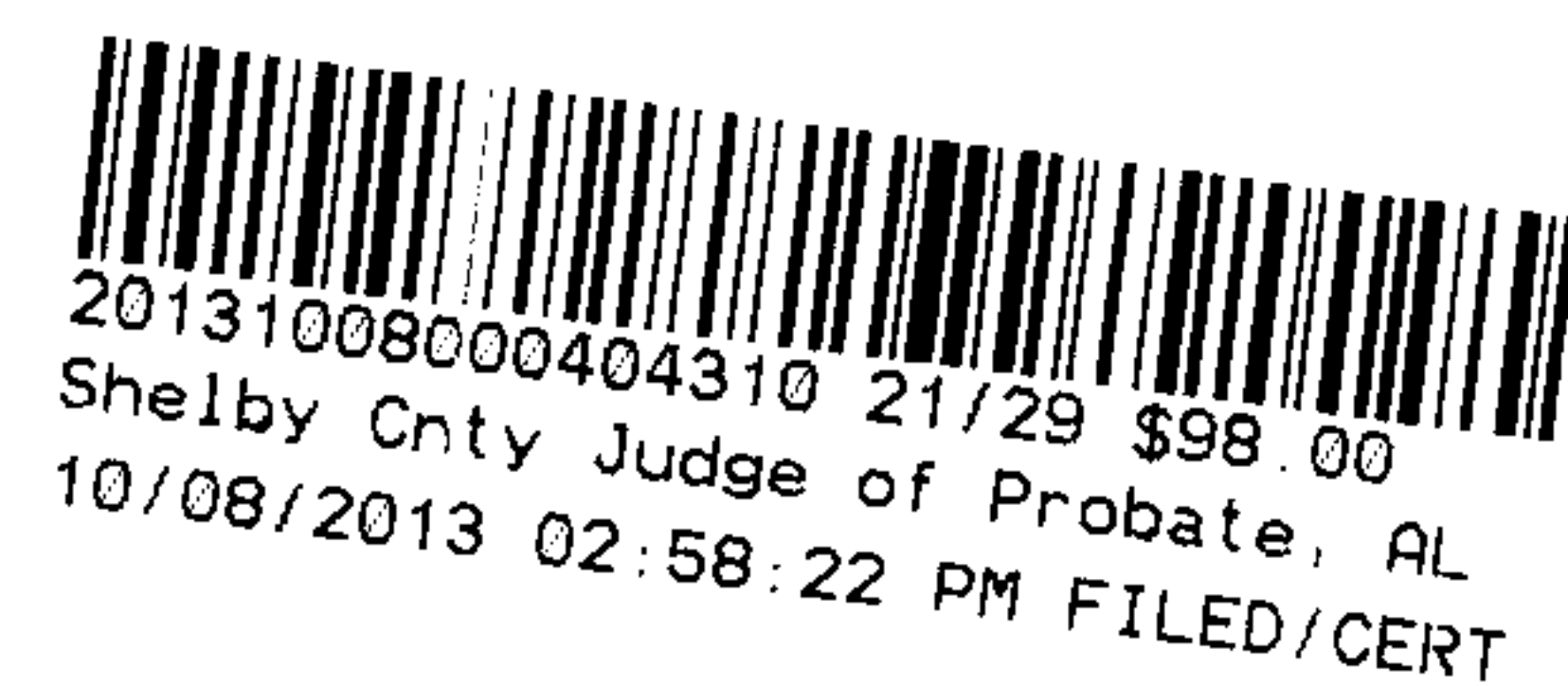
unconscionable provisions set forth therein. As such, Defendants Mark Hayden and Angela Hayden are jointly responsible for the payment of all damages to Plaintiff Cashion awarded herein.

Plaintiffs also seek damages for conversion. While the evidence presented at trial shows that Defendant Mark Hayden wrongfully exercised dominion and withheld possession of Cashion's and Western Steel's property, the evidence is not clear as to what particular documents and other effects were taken and whether they are still in the possession of the Haydens. This uncertainty prevents the Court from awarding compensatory damages to the Plaintiffs under their conversion count.

At trial, the Defendants claimed that damages for mental anguish would be improper because Plaintiffs failed to specially request mental anguish damages in their complaint. In making this claim, the Defendants ignore the law prevailing on this point. Alabama law does not require mental anguish damages to be specially pled. Mental anguish damages may be awarded where "injury to property is committed under circumstances of insult or contumely." *Reinhardt Motors, Inc. v. Boston*, 516 So.2d 509, 511 (Ala. 1986), citing *B.F. Goodrich Co. v. Hughes*, 194 So. 842 (Ala. 1940); Marsh, *Alabama Law of Damages*, §36:6 (6th ed. 2012). Further, the Alabama Supreme Court has recognized that "where the wrong is willful rather than negligent, recovery may be had for the ordinary, natural, and proximate consequences though they consist of shame, humiliation, and mental anguish." *Holcombe v. Whitaker*, 318 So.2d 289, 293 (Ala. 1975). It is hard to imagine a better example of "injury to property . . . committed under circumstances of insult or contumely" than what has been presented here.

Because "mental anguish and emotional distress are not items for which a precise amount of damages can be assessed, '[t]here is no fixed standard for determining the amount of compensatory damages a [fact finder] may award for mental anguish.'" *Acceptance Ins. Co. v. Brown*, 832 So. 2d 1, 22 (Ala. 2001), quoting *Delchamps, Inc. v. Bryant*, 738 So.2d 824, 837 (Ala. 1999). "[A] plaintiff is only required to present *some evidence* of mental anguish, and once the plaintiff has done so, the question of damages for mental anguish is for the [fact finder]." *Id.* at 389. Evidence that a plaintiff experienced mental anguish includes evidence of "anxiety, embarrassment, anger, fear, frustration, disappointment, worry, annoyance, and inconvenience." *Horton Homes, Inc. v. Brooks*, 832 So.2d 44, 52-53 (Ala. 2001), citing *Volkswagen of America, Inc. v. Dillard*, 579 So.2d 1301, 1307 (Ala. 1991).

There is substantial evidence presented here that plaintiff William Cashion has suffered mental anguish as a direct result of the Defendants' intentional wrongs. The Court finds that Cashion is entitled to mental anguish damages in the amount of \$50,000.00, against Defendants Mark Hayden and Angela Hayden, jointly and severally.



C. Punitive Damages

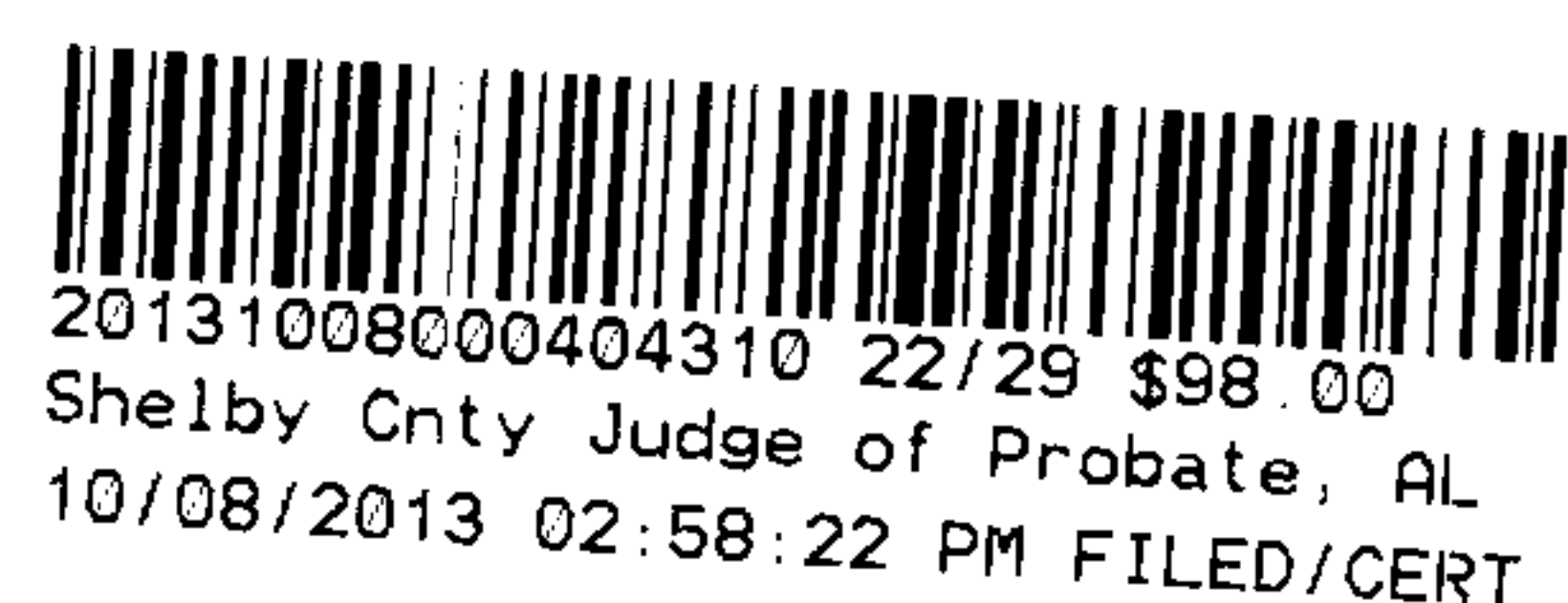
The Plaintiffs seek punitive damages for the numerous breaches of Mark Hayden's fiduciary duty. "Punitive damages may be awarded when the actions complained of are willfully or wantonly committed in disregard of the rights of others. The issue of whether defendant's conduct was committed willfully, wantonly, or intentionally is a question for the [fact-finder] on the issue of punitive damages, and prior or subsequent acts may be considered for the purpose of determining the defendant's intent." *IMAC Energy, Inc. v. Tittle*, 590 So.2d 163, 169 (Ala. 1991).

The Court finds that Plaintiff Cashion is due to be awarded punitive damages for Mark Hayden's intentional breaches of fiduciary duty, and for the participation of Mark Hayden and Angela Hayden in their knowing conspiracy to perpetrate such breaches. Defendants allege they were merely looking out for Cashion's best interest when they attempted a secret, hostile takeover of his assets. As reflected in the prior orders entered in this action, the Defendants have continued in their pattern of wanton and intentional disregard for Cashion's best interests. Defendants have also shown a pattern and practice of doing whatever they wanted to do without regard to the consequences.

To effectuate their scheme, Defendants coerced Gene Calhoun into executing documents falsely evidencing their control over and ownership of Western Steel, and then attempted to use that bad faith action to assert that they are the rightful owners of Western Steel. Defendants drafted at least 32 separate documents attempting to effectuate the removal of Cashion's assets from his own control, and executed numerous documents attempting to release themselves from any liability for doing so. Defendants executed numerous documents attempting to isolate Cashion from contact with his own employees and business associates, and attempting to humiliate Cashion. Defendants forced onto Cashion numerous punitive measures designed to cow Cashion into submission to their absolute and complete control over his affairs. Defendants willfully sought to remove Cashion's assets from his control without Cashion's knowledge. Even after this litigation commenced, Defendants made unauthorized filings with the Secretary of State in direct violation of the Preliminary Injunction Order.

Punitive damages are available for conversion where clear and convincing evidence shows that the conversion was done with knowing violation of the owner's rights or was accompanied by willfulness, insult, malice, or other aggravating circumstances. Plaintiffs presented clear and convincing evidence that Mark Hayden came under a cover of darkness and willfully removed items from Cashion's office that Mark Hayden knew rightfully belonged to Cashion and Western Steel, including Western Steel's stock certificates, and did not notify Cashion that he had taken his personal records until days after Cashion had been alerted to Mark Hayden's invasion.

These actions support the award of punitive damages against Defendants Mark Hayden



and Angela Hayden, jointly and severally, in the amount of \$100,000.00.

D. Attorneys' Fees

Plaintiffs have requested attorneys' fees incurred in prosecuting this action. Attorneys' fees are a kind of equitable relief and are due to be awarded to Plaintiffs under two separate bases: the Alabama Litigation Accountability Act ("ALAA") and the equitable exception to the American Rule regarding the award of attorneys' fees pursuant to the holding of *Reynolds v. First Alabama Bank of Montgomery*, 471 So.2d 1238, 1242-43 (Ala. 1977), and its progeny.

The ALAA, *Ala. Code* § 12-19-270, *et seq.* provides for attorneys' fees to be awarded against a party who asserts frivolous actions or defenses. *See McArdle v. Bromfield*, 540 So. 2d 91, 93 (Ala. Civ. App. 1989) (explaining that § 12-19-270 "allow[s] the courts of this state to maintain control over proceedings conducted before them" and holding that attorneys' fees are appropriate for a motion filed without substantial justification.) The statute provides:

(a) Except as otherwise provided in this article, in any civil action commenced or appealed in any court of record in this state, the court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorneys' fees and costs against any attorney or party, or both, who has brought a civil action, or asserted a claim therein, *or interposed a defense*, that a court determines to be without substantial justification, in whole or part.

Ala. Code § 12-19-272 (emphasis added). The statute defines "without substantial justification" as:

(1) Without substantial justification. The phrase "without substantial justification", when used with reference to any action, claim, defense or appeal, including without limitation any motion, means that such action, claim, defense or appeal (including any motion) is frivolous, groundless in fact or in law, *or vexatious, or interposed for any improper purpose, including without limitation, to cause unnecessary delay or needless increase in the cost of litigation, as determined by the court.*

Ala. Code § 12-19-271 (emphasis added).

Furthermore, Alabama courts have awarded attorneys' fees where, as here, the adverse party acted willfully and in bad faith. *See Reynolds*, 471 So. 2d at 1242-43 (Ala. 1977) (attorneys' fees award appropriate against trustee and recognizing attorneys' fees may be awarded where "fraud, willful negligence or malice has been practiced"); *King Development and Realty, Inc. v. Eslami*, 964 So.2d 51, 57-59 (Ala. Civ. App. 2007) (affirming award of attorneys' fees where party acted in bad faith and maliciously); *Hall v. American Indemnity Group*, 681 So. 2d 220, 223 (Ala. Civ. App. 1996) (affirming award of attorneys' fees against party for bad faith, fraud, and failure to disclose facts

adverse to his claims); *McArdle v. Bromfield*, 540 So. 2d 91 (Ala. Civ. App. 1989) (affirming award of attorneys' fees against plaintiff who entered a settlement agreement and later brought claims without substantial justification and caused unnecessary delay and needless increase in costs of litigation); *N. Assur. Co. of Am. v. Bayside Marine Const., Inc.*, 2009 WL 151023 (S.D. Ala. Jan. 21, 2009) (recognizing that *Reynolds*, *Eslami*, and other cases provide an "equity exception" to the general rule against attorneys' fees where the complaint includes allegations of fraud, willful negligence, or malice); *see also Ex parte Carpenter*, 510 So.2d 549 (Ala. 1987) (reaffirming that the existence of a common fund is not a prerequisite to an award of attorneys' fees); *Reynolds*, 471 So.2d at 1244 (discussing that "ample authority" exists to support a justification of shifting litigation costs from a beneficiary to a trustee).

The Court in making its findings of fact hereinabove has set out numerous actions that constitute intentional, fraudulent and bad faith conduct on the part of Mark Hayden and Angela Hayden in their efforts to steal away Cashion's assets. The Plaintiffs have also presented evidence of the Defendants' numerous unmeritorious defenses and motions purely for purposes of causing unnecessary delay and increasing litigation costs. The Court nevertheless determines that defendants Mark and Angela Hayden are liable for fees and expenses incurred in connection with only the two prior orders finding them in contempt. The findings are specifically as follows:

1. On February 1, 2013, the Plaintiffs filed a motion seeking to hold Mark Hayden and Angela Hayden in contempt for repeated violations of the Preliminary Injunction order previously entered. That motion resulted in an order entered on March 12, 2013, finding the Haydens in contempt. In connection with proceedings related thereto, the plaintiffs have claimed fees and expenses of \$45,509.61 for the Maynard Cooper firm and of \$10,250.00 for work done by attorney Gerald Colvin. Defendants Mark Hayden and Angela Hayden are properly liable for such fees and expenses.

2. On April 29, 2013, the Plaintiffs filed a motion seeking to hold Mark Hayden in further contempt for intimidation of a witness. That motion resulted in an order entered on May 22, 2013, finding Mark Hayden in contempt for wrongfully attempting to intimidate a witness. In connection with proceedings related thereto, the Plaintiffs incurred fees and expenses from the Maynard Cooper firm of \$16,403.40. Defendant Mark Hayden is properly liable for that amount.

This conclusion comes after due consideration of the reasonableness of such fees and expenses, as required by *Peebles v. Miley*, 439 So.2d 137, 140-43 (Ala. 1983), and its progeny. The Court has considered the affidavits and invoices submitted by the Plaintiffs' attorneys and the affidavit of Plaintiffs' expert on attorneys' fees, Alfred Smith. The Court finds that the fees requested by Plaintiffs' attorneys are reasonable based on the time Plaintiffs spent to pursue their clients' interests and to remedy Defendants' actions. The Plaintiffs' attorneys have set hourly rates that are in line with

the fees customarily charged in their localities for similar services. Plaintiffs' counsel have achieved favorable results for their clients in a timely fashion, despite Defendants' repeated attempts to prevent them from doing so.

Just as important, however, is the singular truth that the Plaintiffs were forced to incur such fees and expense as a direct result of wrongdoing intentionally committed by these Defendants during the course of this litigation. Culpable of such intentional wrongs, the Defendants may not now be heard to complain about the amounts so awarded.

E. Injunctive Relief

To be entitled to a permanent injunction, Plaintiffs must demonstrate: (1) success on the merits, (2) a substantial threat of irreparable injury if the injunction is not granted, (3) that the threatened injury to the plaintiff outweighs the harm the injunction may cause the defendant, and (4) that granting the injunction will not disserve the public interest. *Classroomdirect.com, LLC v. Draphix, LLC*, 992 So.2d 692, 702 (Ala. 2008), citing *Clark Constr. Co. v. Pena*, 930 F. Supp. 1470 (M.D. Ala. 1996). Based on the evidence presented at trial, the Court finds that Plaintiffs are entitled to permanent injunctive relief. The Plaintiffs have succeeded on the merits of this case. The Defendants have demonstrated that little will stop them from attempting to acquire control of Cashion's assets or harassing Plaintiffs, even this Court's March 30, 2012 Preliminary Injunction. This risk far outweighs any harm a permanent injunction may cause Defendants and will not disserve the public interest. *The Defendants are warned that any violations of the below-described injunctive relief will result in severe sanctions.*

JUDGMENT

In accordance with the above findings and conclusions, and in addition to the declaratory relief described above, the following is ORDERED:

1. JUDGMENT in the amount of \$ 205,759.61 is hereby entered in favor of Plaintiff William B. Cashion and against Defendants Steven Mark Hayden and Angela Rae Hayden, who shall be jointly and severally liable therefor;
2. In addition with the judgment described in paragraph 1 above, JUDGMENT in the amount of \$16,403.40 is further entered in favor of Plaintiff William B. Cashion and against defendant Steven Mark Hayden, for which execution may issue;
3. Defendants Steven Mark Hayden and Angela Rae Hayden, and any trust or entity formed, established or controlled by them or their agents, are permanently enjoined from the following:

(A) The Defendants are hereby permanently restrained and enjoined from taking any action whatsoever with respect to the assets, property, affairs, interests or estate of William B. Cashion, including his stock and interests in Western Steel, Western Properties, LLC, Merchants Commercial Bank, USVI, and 10:16 Mining Corporation. In furtherance and not in limitation of the foregoing, the Defendants are not to take any action whatsoever in an attempt to transfer any asset, property or interest of William B. Cashion to any individual, entity or trust, including the William B. Cashion Nevada Spendthrift Trust dated July 28, 2011 and the William B. Cashion Family Nevada Spendthrift Trust dated August 1, 2011. In effect, Defendants are to cease all actions that in any way relate to William B. Cashion's assets, interests and rights.


(B). The Defendants are further prohibited and permanently enjoined from establishing, forming or attempting to establish or form any trust, corporation, partnership, limited liability company or other entity to control any asset or property, whether real, personal or mixed, tangible or intangible, owned by William B. Cashion, or any property or asset of Western Steel, Inc.

(C). The Defendants are permanently enjoined from attempting to act in any purported fiduciary capacity whatsoever with respect to William B. Cashion or his assets, property, affairs, interests or estate, including but not limited to acting or seeking to act as a guardian, conservator, curator, custodian, administrator, executor, personal representative, trustee, trust protector, nominee, proxy, attorney-in-fact or agent for William B. Cashion.

(D). The Defendants are enjoined from hereafter taking any of the following actions:

(i). Any and all actions by Steven Mark Hayden as purported attorney-in fact under the January 29, 2007 power of attorney, which is declared to be void and of no effect;

(ii). Any and all actions which in any way interfere with the business of Western Steel, including, without limitation, (a) any action under the alleged authority as an "officer" or "director" of Western Steel; (b) any action involving Western Steel bank accounts, including freezing the bank accounts used by Western Steel and its affiliates or otherwise limiting or attempting to limit access of Plaintiff Cashion or other duly authorized officers of Western Steel to those bank accounts; (c) retention of, possession, or control of Western Steel's corporate books, records, stock certificates or any other corporate documents and property; (d) contacts with employees of Western Steel and entering onto the Western Steel premises; and (e) authorizing any corporate actions by Western Steel;


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(iii). Any and all actions involving the stock of Western Steel, including, without limitation, the transfer of Western Steel stock from William B. Cashion to any individual, entity or trust, including the William B. Cashion Nevada Spendthrift Trust dated July 28, 2011 and the William B. Cashion Family Nevada Spendthrift Trust dated August 1, 2011;

(iv). Any and all actions involving the stock of Merchants Commercial Bank of the United States Virgin Islands ("Merchants Commercial"), including, without limitation, the transfer stock of Merchants Commercial Bank from William B. Cashion to any individual, entity or trust, including the William B. Cashion Nevada Spendthrift Trust dated July 28, 2011 and the William B. Cashion Family Nevada Spendthrift Trust dated August 1, 2011, as well as any communication with any other shareholder, director, officer or employee of Merchants Commercial Bank;

(v). Any and all actions involving Western Properties, LLC, including the transfer of Western Properties, LLC interests owned by William B. Cashion and transfer of assets owned by Western Properties, LLC from Cashion to any individual, entity or trust, including the William B. Cashion Nevada Spendthrift Trust dated July 28, 2011 and the William B. Cashion Family Nevada Spendthrift Trust dated August 1, 2011;

(vi). Any and all actions involving 10:16 Mining Corporation ("10:16 Mining"), including the transfer of 10:16 Mining stock owned by William B. Cashion and the 10:16 Mining assets from Cashion to any individual, entity or trust, including the William B. Cashion Nevada Spendthrift Trust dated July 28, 2011 and the William B. Cashion Family Nevada Spendthrift Trust dated August 1, 2011, as well as any communication with any other shareholder, director, officer or employee of 10:16 Mining; and

(vii). The transfer or attempted transfer of *any* of William B. Cashion's other assets, property, whether real, personal or mixed, tangible or intangible, or interests, whatsoever, to any individual, entity or trust including, without limitation, the William B. Cashion Nevada Spendthrift Trust dated July 28, 2011 and the William B. Cashion Family Nevada Spendthrift Trust dated August 1, 2011.

(E). Defendants are permanently enjoined and prohibited from entering onto the premises of Plaintiff Western Steel, Inc. Further, Defendants are permanently enjoined and prohibited from presenting themselves as the "owners," "officers," or "directors" of Western Steel, are enjoined from representing to any party that any person or entity other than William B. Cashion is the rightful owner of Western Steel, are enjoined from conducting any business whatsoever on behalf of Western Steel,



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and are enjoined and prohibited from in any way impeding or disrupting the business of Western Steel.


(F). It was earlier ordered that the Defendants were to deliver any and all Western Steel property and property of William B. Cashion, which Defendants had in their possession, including, but not limited to, books, records, stock certificates and any other corporate documents to the Court. To the extent that the Defendants have not complied with that order, they are under a continuing order to forthwith deliver all property of the Plaintiffs in their possession or control to counsel for the Plaintiffs.

(G). The Defendants are enjoined and prohibited from pursuing any cause of action against William B. Cashion, Merchants Commercial Bank, Western Steel, Western Properties, LLC, 10:16 Mining, or any of Mr. Cashion's other assets, property or interests, that in any way attempts to assert or claim, directly or indirectly, that any action taken by Mark Hayden under the January 29, 2007 power of attorney was valid, or that attempts to assert that any asset, property or interest of William B. Cashion is owned or controlled by any Defendant or by either of the Nevada Trusts.

4. Any claim of the Plaintiffs not specifically addressed herein is hereby dismissed with prejudice. This action concludes this litigation, with costs taxed to defendants Steven Mark Hayden and Angela Rae Hayden.

DONE this 20th day of August, 2013.

/s/ ROBERT S. VANCE
CIRCUIT JUDGE


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I, **Anne-Marie Adams**, Clerk of the Circuit Court, of **Jefferson County**, do hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears of record in said Court.

WITNESS my hand and the seal of said Court,

this **OCT 08 2013**

the _____ day of _____, 20____

Anne-Marie Adams

Clerk