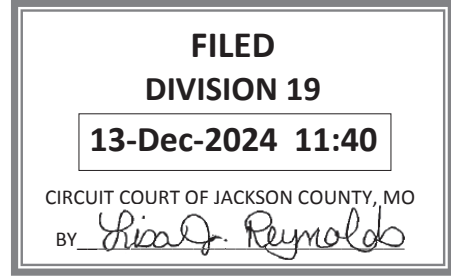


**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY  
PROBATE DIVISION**

JESSIE BENTON, )  
 ANTHONY GUDE, )  
 DARIA LYMAN, and )  
 CYBELE BENTON MCCORMICK, )  
   ) Plaintiffs, )  
   ) )  
 v. ) )  
   ) )  
 UMB BANK, N.A., )  
   ) Defendant. )



Case No. 19P8-PR01534  
 Division 19

**JUDGMENT**

NOW on this 13<sup>th</sup> day of December 2024, the Court takes up for consideration the Petition filed December 17, 2019, by the Plaintiffs. This matter was heard by the Court over seventy-four (74) non-consecutive days of trial beginning February 3, 2023, and concluding July 26, 2023. At the conclusion of the trial, the Court took the matter under advisement pending the submission of proposed orders from the parties. After considering all evidence presented during trial, reading the full trial transcript totaling 14,182 pages, examining all exhibits numbering approximately 3,700, evaluating the testimony from sixty-seven (67) witnesses, reviewing the parties’ proposed orders totaling 338 pages, reviewing the Court’s files containing over 15,000 filings, reviewing all relevant law, and being duly advised in the premises, the Court finds as follows:<sup>1</sup>

**I. PARTIES**

Thomas Hart Benton

1. That Thomas Hart Benton (hereinafter “Benton”) was born in Neosho, Missouri, on April 15, 1889.

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<sup>1</sup> The Court refers to evidence and makes findings throughout this Judgment, but due to the voluminous nature of the information presented and allegations made, the Court is unable to address in this Judgment every argument or disputed fact. All the evidence was considered in reaching the Court’s decision.

2. That Benton is a renowned American painter who is known and celebrated for his work during the Regionalist Movement in American Art, which captured rural American life during the 1920s and 1930s.
3. That Benton's collection includes over 3,500 pieces of art. His most notable pieces include *America Today*, *A Social History of Missouri*, *Persephone*, *Achelous and Hercules*, *The Kentuckian*, *Independence and the Opening of the West*, and *Turn of the Century Joplin*.
4. That Benton's artwork has been exhibited in major art galleries across the United States. Many of his pieces are currently displayed all over the country. He was also commissioned to paint murals for organizations such as the Whitney Museum of American Art, the Chicago World's Fair, the Missouri State Capitol, and the Harry S. Truman Presidential Library and Museum.
5. That in 1922, Benton married Rita Piacenza (hereinafter "Rita"), an Italian immigrant he met while teaching art classes for a neighborhood organization in New York City. Benton and Rita were married for fifty-three (53) years.
6. That Benton and Rita had two children: a son, Thomas Piacenza Benton, (hereinafter "T.P.") born in 1926, and a daughter, Jessie Benton (hereinafter "Jessie"), born in 1939.
7. That T.P. was never married and had no children.
8. That Jessie had three children: Anthony Benton Gude (hereinafter "Anthony"), born in 1963, Daria Lyman (hereinafter "Daria"), born in 1968, and Cybele Benton McCormick (hereinafter "Cybele"), born in 1971.<sup>2</sup>
9. That Benton died on January 19, 1975 in Kansas City, Missouri, where his former home and studio are currently a historic site and museum honoring his legacy.

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<sup>2</sup> Throughout this Judgment, the Court will refer the Plaintiffs by their first names for ease of reference and not out of disrespect.

10. That Rita died eleven (11) weeks later, on April 9, 1975.
11. That at the time of Benton's death, T.P. and Jessie were forty-nine (49) and thirty-six (36) years old, respectively. Jessie's children, Anthony, Daria, and Cybele, were twelve (12), seven (7), and four (4) years old, respectively.
12. That T.P. died in 2010 with no spouse or children, leaving his estate to Jessie. Following his death, his share of the Benton Trust rolled over into Jessie's share.<sup>3</sup>

UMB Bank n.a.

13. That in 1913, City Center Bank was chartered in Missouri by W.T. Kemper and Associates. W.T. Kemper's son, R. Crosby Kemper Sr., later joined his father and purchased an interest in City Center Bank. In 1919, R. Crosby Kemper Sr. became the president of City Center Bank.
14. That in 1934, City Center Bank became City National Bank and Trust Company (hereinafter "City National") by national charter. R. Crosby Kemper Sr.'s son, R. Crosby Kemper, Jr. (hereinafter "Kemper") joined City National in 1950 and became president in 1959.
15. That in 1969, Missouri Bancshares, Inc. was formed as a one-bank holding company. The name was changed to United Missouri Bancshares, Inc., two years later when it became a multi-bank holding company, acquiring many regional banks all renamed "United Missouri Bank".
16. That in 1994, the holding company's name was again changed to UMB Financial Corporation.

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<sup>3</sup> The Benton Trust is further identified and discussed in Section II, *infra*.

17. That UMB Bank, n.a. (hereinafter “UMB”) was, and still remains, the lead bank the UMB Financial Corporation.
18. That in 2000, one of Kemper’s sons, R. Crosby Kemper III, became president of UMB Financial Corporation and UMB Bank, n.a., as well as senior chairman and CEO.
19. That in 2004, another one of Kemper’s sons, Mariner Kemper, was named chairman and CEO of UMB Financial Corporation, and Kemper retired as senior chairman from the company and its board of directors. Currently, Mariner Kemper still serves as CEO of UMB Financial Corporation.
20. That after the death of Benton on January 19, 1975, UMB served in a fiduciary capacity of his assets for over 40 years.

## **II. TESTAMENTARY DOCUMENTS**

23. That prior to their deaths, Benton and Rita executed wills that contained testamentary trusts to provide for the administration of their marital and non-marital assets.
24. That Benton also executed two codicils prior to his death. His Last Will and Testamentary Trust and those two codicils were admitted to the Probate Court of Jackson County, Missouri, on or about March 11, 1975. *See* Case Number 16PRK121725.
25. That Rita executed a codicil prior to her death. Rita’s Last Will and Testamentary Trust and that codicil were admitted to the Probate Court of Jackson County, Missouri on or about June 11, 1975. *See* Case Number 16PRK122092.
26. That the above series of testamentary documents executed by Benton and Rita, in effect, worked in conjunction with each other and simultaneously. These instruments will be collectively referred to as the “Benton Trust.” *See* RSMo. § 456.4-401<sup>4</sup>.

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<sup>4</sup> All statutory references are to the Revised Statutes of Missouri, as updated through 2022, unless otherwise noted.

27. That the Benton Trust named UMB as the executor of the Benton and Rita probate estates. In addition, the Benton Trust named UMB and Lyman Field, Esquire, as co-trustees.<sup>5</sup>
28. That after Benton's death, UMB served as the executor for both Benton and Rita's probate estates. At the conclusion of each estate's administration, any assets remaining in the estate were distributed to the Benton Trust.<sup>6</sup>
29. That on or about May 31, 1979, Benton's probate estate was closed and any and all assets in his probate estate were distributed to the Benton Trust.
30. That on or about June 22, 1979, Rita's probate estate was closed and any and all assets in her probate estate were distributed to the Benton Trust.
31. That the assets distributed to the Benton Trust in 1979 included thousands of works of art created by Benton. These works included paintings, studies, lithographs, sketches and drawings. Cash and multiple pieces of real estate, including two estates on Martha's Vineyard and one farm in Marshall County, Kansas, were also distributed to and included in the Benton Trust.
32. That the Benton Trust provided that, upon the death of the second of Benton and Rita to die, the Benton Trust was to be divided equally between T.P. and Jessie, with each of their shares to be held in trust for their lifetimes.
33. That the Benton Trust directed the trustees of each separate share for T.P. or Jessie to "manage, invest and reinvest the same, collect the income therefrom and during the lifetime of said child . . . pay over to him or her so much or all of the net income of the trust as the Trustees, in their absolute discretion, deem advisable to provide for his or her care, support,

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<sup>5</sup> Lyman Field subsequently died in 1999 and UMB continued to serve as trustee.

<sup>6</sup> Whether or not the assets were properly transferred from the estates to the Benton Trust was an issue, specifically inventorying the artwork, brought up in this case and will be discussed later in this Judgment. See Section XII, *infra*.

maintenance, and comfort; and, subject to the forgoing provisions in favor of my said child as the preferred beneficiary, shall pay over to any one or more or all of his or her descendants living from time to time so much or all of the net income of the trust not paid to my said child as the Trustees, in their absolute discretion, deem advisable to provide for their respective care, support, maintenance, education and comfort.”

34. That the Benton Trust further provided that if in the sole judgment of the Trustee the income from a trust became insufficient to provide adequately for the care, support, maintenance, education and comfort of a child or any of Benton or Rita’s descendants, the trustee may pay from the principal such amounts as the Trustees, in their sole discretion, deemed advisable.
35. That upon T.P.’s death in 2010, his trust share terminated and Jessie and her children became the beneficiaries of the entire Benton Trust.

### **III. TRUST ADMINISTRATION TIMELINE**

36. That UMB and Lyman Field began their service as co-trustees of the Benton Trust in 1979.
37. That upon the death of Lyman Field on March 19, 1999, UMB served as the sole Trustee of the Benton Trust.
38. That on or about February 26, 2021, UMB resigned as trustee, creating a vacancy in the trusteeship of the Benton Trust.
39. That in accordance with the language in the Benton Trust and pursuant to RSMo. § 456.7-704, this Court appointed Fiduciary Trust Company and Nicholas S. Gray as successor co-trustees (hereinafter “Successor Trustees”) of the Benton Trust on or about March 22, 2021.
40. That on or about February 10, 2022, the Successor Trustees were allowed to intervene in this action.

#### IV. PETITION

41. That on or about December 17, 2019, Plaintiffs filed their Petition naming UMB as the sole Defendant (hereinafter “Petition”).
42. That the Plaintiffs included Jessie, Anthony, Daria and Cybele, the beneficiaries of the Benton Trust.
43. That the Petition alleged UMB breached its fiduciary duties as trustee of the Benton Trust as follows:
  - a. By failing to marshal the assets of the Benton Trust;
  - b. By failing to establish a business plan as it related to the sale of the artwork held in the Benton Trust;
  - c. By failing to adequately maintain complete business records;
  - d. By losing artwork;
  - e. By failing to obtain accurate valuations of the artwork;
  - f. By engaging in improper sales;
  - g. By engaging in self-dealing and self-promotion;
  - h. By failing to properly preserve and store the artwork in a safe manner;
  - i. By failing to maximize revenue through promoting, copyrighting, and licensing the artwork; and
  - j. By failing to properly invest the assets of the Benton Trust.
44. That due to these alleged breaches of its fiduciary duties, Plaintiffs sought to have UMB removed as trustee of the Benton Trust.

45. That in addition to UMB's removal as trustee, Plaintiffs sought monetary damages for UMB's alleged breaches its duty of loyalty to the Plaintiffs. The alleged breaches specific to UMB's duty of loyalty include:
- a. Failing to maintain and provide the Plaintiffs with adequate, complete, and accurate annual trust accountings;
  - b. Improperly using its role as trustee of the Benton Trust to obtain financial gain and prominence;
  - c. Failing to notify or obtain permission from the Plaintiffs regarding UMB's use of trust assets for financial gain;
  - d. Failing to compensate the Benton Trust for financial gain received by UMB through its use of trust assets; and
  - e. Entering into inappropriate transactions.
46. That Plaintiffs also sought monetary damages for UMB's alleged breach of its duty to administer the Benton Trust as a prudent person would. The alleged breaches specific to UMB's duty to administer the trust in that manner include:
- a. Failing to maintain and provide the Plaintiffs with adequate, complete, and accurate annual trust accountings;
  - b. Failing to prepare a legally sufficient inventory of all trust assets;
  - c. Failing to protect the copyright interests of assets of the Benton Trust;
  - d. Failing to consider, sell, and maximize the licensing rights of the Benton Trust assets;
  - e. Failing to properly store, preserve, and protect the Benton Trust assets;



- f. Failing to obtain valid appraisals prior to or contemporaneously with the sale of assets held and owned by the Benton Trust in order to determine the fair market value of those assets;
  - g. Failing to test the market prior to the sale of assets held and owned by the Benton Trust, including Benton's artwork;
  - h. Failing to wait a sufficient period of time before selling assets held and owned by the Benton Trust, in order to maximize the value of those assets;
  - i. Failing to obtain a fair market value for assets of the Benton Trust, that were sold by UMB;
  - j. Failing to obtain the highest price possible in selling the assets of the Benton Trust;
  - k. Failing to properly invest assets of the Benton Trust;
  - l. Misplacing or losing assets of the Benton Trust;
  - m. Improperly gifting assets of the Benton Trust;
  - n. Improperly using its role as a trustee of the Benton Trust as an advertising tool for UMB's own financial gain and prominence;
  - o. Failing to notify or obtain the Plaintiffs' permission, as the beneficiaries of the Benton Trust, regarding UMB's use of trust assets for UMB's financial gain;
  - p. Failing to compensate the Benton Trust for UMB's use of trust assets;
  - q. Entering into inappropriate transactions that caused damage to the Benton Trust;  
and
  - r. Failing to marshal all of the assets of the Benton Trust.
47. That Plaintiffs also alleged UMB damaged the Benton Trust by engaging in self-dealing, failing to provide for adequate accounting, failing to maintain adequate and complete

records of the Benton Trust, and failing to adequately protect trust assets in the Benton Trust.

48. That as a result of these alleged breaches, Plaintiffs seek (1) the removal of UMB as trustee of the Benton Trust, (2) monetary amounts necessary to restore the value of the Benton Trust so that it is in a position as it were before the alleged breaches, (3) voidance of all conflicted transactions, (4) reasonable legal fees and expenses and (5) punitive damages.

#### **V. JURISDICTION**

49. That pursuant to RSMo. § 456.2-202 and the terms of the Benton Trust, jurisdiction is proper in this Court.
50. That pursuant to RSMo. § 456.2-204 and the terms of the Benton Trust, venue is appropriate in this Court.

#### **VI. THIS DAY IN HISTORY**

51. That during the more than forty (40) year period UMB served in a fiduciary capacity over Benton's assets, thousands of significant events occurred locally, nationally, and worldwide, that changed the landscape of our society. A brief snapshot of some of these events, and how they compare to the timeline of certain events this case, is as follows:
- a. Microsoft was founded by Bill Gates and Paul Allen on April 4, 1975. This was in the same month and year that Rita passed away.
  - b. The Great Country Club Plaza Flood occurred in Kansas City on September 12, 1977. In 1979, just two years later, the probate estates of Benton and Rita were closed and administration of the Benton Trust began.

- c. The skywalks collapsed at the Hyatt Regency Hotel in Kansas City on July 17, 1981. Shortly afterwards, Sandra Day O'Connor became the first female Supreme Court Justice on September 25, 1981.
- d. The first successful laptop, Osborne 1, was also released in 1981. It weighed twenty-five (25) pounds, had a screen size of approximately five (5) inches, and cost just shy of \$1,800.00.
- e. The first consumer laptop was sold two years later in 1983. That same year, the Missouri Probate Code underwent a major overhaul that included the revision of many of the statutes governing trust and probate law.
- f. On September 1, 1985, the wreckage of the Titanic was discovered.
- g. On January 28, 1986, the Challenger space shuttle exploded. At the end of that same year, on December 31, 1986, Benton's *Persephone* was sold to the Nelson-Atkins Museum for \$2.5 million.
- h. In 1987, waterbeds accounted for twenty-two percent (22%) of all mattress sales.
- i. In the following year, 1988, Anthony celebrated his twenty-fifth (25<sup>th</sup>) birthday and Robert Berdella, the "Kansas City Butcher", was apprehended.
- j. Microsoft Office debuted on October 1, 1990.
- k. A year later, CDs finally outsold cassette tapes, and the World Wide Web was created. That same year, Anthony and Lyman Field met in Switzerland to attend an exhibit of Benton's artwork and discuss the Benton Trust. Also during this year, Anthony and his immediate family moved into the farm homestead located in Kansas that was owned by the Benton Trust.
- l. The first text message was sent in 1992.

- m. On July 5, 1994, Jeff Bezos launched Amazon. This occurred just two months after UMB sold several of Benton's paintings to Barbara Streisand.
  - n. In 1996, Hotmail became the first free email provider. Google subsequently launched on September 4, 1998.
  - o. Kansas City's Union Station reopened to the public in 1999. On April 23<sup>rd</sup> of that year, and just one month after Lyman Field's death, all tobacco billboards in the United States were permanently removed.
  - p. Apple launched its first iPod on October 23, 2001, approximately five (5) months before Shirley Helzberg purchased eight (8) Benton paintings from the Benton Trust.
  - q. Three years later, in 2004, Missouri adopted the Uniform Trust Code.
  - r. Twitter was launched in 2006 and the first iPhone was released in 2007. That same year, Jessie was threatened with a lawsuit by members of her extended family.<sup>7</sup>
  - s. On March 11, 2020, COVID – 19 was declared a pandemic by the World Health Organization. The next year, in 2021, UMB resigned as trustee of the Benton Trust and the Fiduciary Trust Company and Nicholas S. Gray were appointed successor co-trustees.
52. That the world significantly changed around us during the 40-year period the Benton Trust was administered by UMB. The evidence established that, as the world changed, so did the way financial institutions such as UMB conducted their day to day business.

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<sup>7</sup> The extended family of Jessie consisted of multiple families traveling and living together as a commune. Jessie, Anthony, Daria and Cybele at some point in their lives were all members of this extended family.

53. That in addition to how banks operated, the art world changed over that more than 40-year timeframe. More specifically, these changes included how art was sold, managed, and purchased.
54. That the laws relevant to the Plaintiffs' allegations and how those laws apply to financial institutions, copyright interests, trusts, probate, business law, investments, and so forth, also continued to change and evolve during that multiple decade time span.
55. That the norms and practices of the banking industry when Benton passed away in 1975 are very different from how banking business is conducted today.
56. That the way artwork was managed and sold in the art world in 1975 is also very different from how artwork is purchased and sold today.
57. That the evidence established that UMB, as a trustee, stayed within the parameters of the customs and norms of the banking industry, even as those same customs and norms changed and shifted during its over 40-year administration of the Benton Trust.

## **VII. BREACH OF FIDUCIARY DUTY**

### Duties of a Trustee

58. That under Missouri law, UMB owed the beneficiaries of the Benton Trust a myriad of duties.
59. That in determining whether UMB breached its duties to those beneficiaries, the Court first looks to the terms of the trust.

### Trust Terms

60. That, generally, where a grantor "vests sole discretion in a matter in a trustee, and supplies no objective standard by which to evaluate the reasonableness of his conduct, a court must not interfere unless the trustee, in exercising his power, willfully abuses his discretion or

acts arbitrarily, fraudulently, dishonestly, or with an improper motive.” In re Heisserer, 797 S.W.2d 864, 870 (Mo. Ct. App. 1990); *see also* First Nat. Bank of Kansas City v. Hyde, 363 S.W.2d 647, 655 (Mo. 1962); Betty G. Weldon Revocable Trust ex rel. Vivion v. Weldon ex rel. Weldon, 231 S.W.3d 158, 174–75 (Mo. Ct. App. 2007).

61. That the Benton Trust provided sole and absolute discretion to UMB in its role as trustee. The terms “sole and absolute discretion” are used multiple times in the provisions of the Benton Trust discussing the powers and duties of the trustee. These terms are stated clearly and unambiguously throughout those provisions.
62. That in determining the meaning of trust provisions, “the paramount rule of construction is that the settlor’s intent is controlling and such intention must be ascertained primarily from the trust instrument as a whole.” Hyde, 363 S.W.2d at 652; Weldon, 231 S.W.3d at 173. Unambiguous terms in a trust will be given effect, and a court will not attempt to rewrite an unambiguous trust under the guise of construction. Weldon, 231 S.W.3d at 174.
63. That based on the unambiguous terms of the Benton Trust and the parameters established by Missouri law, it is clear and reasonable that Benton wanted UMB to be able to administer the assets of the Benton Trust with the widest possible discretion in making its decisions.
64. That when sole and absolute discretion is allowed under a trust, the Court should not interfere unless the Court finds such decisions or acts of the trustee to be willful, dishonest or fraudulent. O’Riley v. U.S. Bank, N.A., 412 S.W.3d 400, 406 (Mo. Ct. App. 2013).
65. That even though the Benton Trust granted UMB sole and absolute discretion as a trustee, UMB is not exempt from fulfilling certain duties, including the duty of loyalty.

66. That a trustee may have many duties emanating from the fiduciary relationship, “the most fundamental is the duty of loyalty.” Ramsey v. Boatmen’s First Nat. Bank of Kansas City, N.A., 914 S.W.2d 384, 387 (Mo. Ct. App. 1996). “As part of this duty, the trustee is to administer the trust solely in the interest of the beneficiary.” Id. (citing Restatement (Second) of Trusts § 170).
67. That at times throughout its 40-year administration of the Benton Trust, some of these duties were breached by UMB as discussed throughout the decision.
68. That, of important note, the law as it relates to the duties owed to the beneficiaries of the Benton Trust changed over UMB’s 40-year administration of the trust.
69. That the “Prudent Man Rule” was changed to the “Prudent Investor Rule” under the Uniform Prudent Investor Act, and was adopted by Missouri in 1994.
70. That Missouri also adopted its version of the Uniform Trust Code in 2004, known as the Missouri Uniform Trust Code (hereinafter “MUTC”). Prior to the adoption of the MUTC, Missouri Courts were guided by common law as it relates to determining when a breach of fiduciary duty occurred involving a trust.

#### Common Law

71. That in Bakewell v. Mercantile Trust. Co., 319 S.W.2d 600 (Mo. banc 1958), the Missouri Supreme Court made clear that “[a] trustee is a fiduciary of the highest order, who is required meticulously to observe the fiduciary relationship and to perform the obligations of a trustee to the cestui que trust, and he is held to a high standard of conduct with respect to administration of the trust.” Id. at 606 (internal citation omitted); *see also* John R. Boyce Family Trust. v. Snyder, 128 S.W.3d 630, 636 (Mo. Ct. App. 2004) (explaining “[a] trustee is a fiduciary of the highest order and is required to exercise a high standard of conduct and

loyalty in administration of the trust.”). “A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.” Matter of Cupples, 952 S.W.2d 226, 235 (Mo. banc 1997) (quoting Meinhard v. Salmon, 164 N.E. 545, 546 (N.Y. 1928)).

72. That where a trustee fails to do what the trust instrument directs, the burden is on the trustee to show “absence of facts which make for bad faith.” Morrison v. Asher, 361 S.W.2d 844, 850 (Mo. Ct. App. 1962).

### MUTC

73. That under the MUTC, the duty of loyalty was codified and set forth in RSMo. § 456.8-802.
74. That in addition, to the duty of loyalty, the MUTC also codified a trustee’s duty to maintain adequate records (RSMo. § 456.8-810), duty of prudent administration (RSMo. § 456.8-804), duty of impartiality (RSMo. § 456.8-803), duty to enforce and defend claims (RSMo. § 456.8-811), duty to collect, control and protect trust property (RSMo. §§ 456.8-809 and 456.8-812), and duty to keep beneficiaries informed (RSMo. § 456.8-813), all of which are directly applicable to the specific facts of this case.

### Damages

75. That “[t]o prevail on a breach of fiduciary duty, a plaintiff must show: (1) the existence of a fiduciary duty; (2) a breach of that fiduciary duty; (3) causation; and (4) harm.” Robert T. McLean Irrevocable Trust u/a/d Marth 31, 1999 ex rel. McLean v. Ponder, 418 S.W.3d 482, 490 (Mo. Ct. App. 2013).



76. That “[t]he element of harm or damages cannot ‘rest upon guesswork, conjecture, or speculation beyond inferences that can reasonably decide the case[.]’” *Id.* at 496 (quoting Englezos v. Newspress & Gazette Co., 980 S.W.2d 25, 30 (Mo. Ct. App.1998)).
77. That Missouri Courts have consistently held that harm, or damages, caused by the breach is an essential element of a breach of fiduciary duty claim. *See, e.g.,* Costa v. Allen, 274 S.W.3d 461 (Mo. banc 2008); Klemme v. Best, 941 S.W.2d 493, 496 (Mo. banc 1997); Consol. Grain & Barge, Co. v. Hobbs, 397 S.W.3d 467, 476 (Mo. Ct. App. 2013).

### **VIII. PLAINTIFFS’ ENGAGEMENT IN ADMINISTRATION OF BENTON TRUST**

78. That in the early years of the administration of the Benton Trust, the Plaintiffs were not involved or engaged to any degree. Jessie traveled the country with her extended family. The evidence established that Jessie was hard to track during the early years of the Benton Trust’s administration, even with great effort by UMB. Anthony, Daria and Cybele were all minors during that time.
79. That T.P. rarely showed any interest in the administration of the Benton Trust. The evidence established that his involvement and interaction with UMB usually took the form of requesting and receiving distributions from the Benton Trust corpus.
80. That the Plaintiffs’ involvement did change, however, in the early 1990s – to varying degrees. Jessie and Anthony became more heavily involved in many aspects of the administration of the Benton Trust. Not only were they intricately involved, but during the majority of the time beginning in the early 1990s, Plaintiffs had legal counsel and an accountant to provide advice and guidance regarding the Benton Trust.

81. That Plaintiffs, specifically Jessie and Anthony, regularly met and communicated with UMB about sales of the artwork, account statements, portfolio investments, pricing of paintings, and dealers and gallerists to work with, among other topics.
82. That Plaintiffs, specifically Jessie and Anthony, directed and guided multiple trust decisions over the years. These decisions included, but were not limited to, who to loan and sell Benton's artwork to, what price to sell artwork at, and which galleries and dealers UMB should utilize for selling Benton's paintings.
83. That the evidence established that Daria and Cybele were under the belief Jessie had all decision-making power as it related to the Benton Trust and, based on this belief, they did not involve themselves in the administration of the Benton Trust.

#### **IX. PLAINTIFFS' PARTICIPATION IN TRIAL**

84. That this action was initially brought by Jessie, Anthony, Daria and Cybele. The Petition was filed on December 17, 2019.
85. That opening statements for the trial began on February 3, 2023. After two days of opening statements, the evidentiary portion of the trial began.
86. That Anthony was the only plaintiff to attend the opening statements.
87. That Anthony testified on March 8, and March 9, 2023.
88. That other than opening statements and his testimony, Anthony did not attend any additional Court proceedings.
89. That of the seventy-four (74) days of trial, Anthony attended approximately four (4) days.

90. That Jessie's health declined prior to the start of the trial, and she unexpectedly passed away on February 16, 2023.<sup>8</sup>

#### **X. ANTHONY BENTON GUDE**

91. That Anthony is the grandson of Benton and Rita. Anthony's mother is Jessie and his father is David Gude.

92. That Anthony, born in 1963, was approximately 11 years old when Benton and Rita died in 1975. Prior to their deaths, he spent many summers with Benton and Rita. He would regularly assist and observe Benton working on his art and he thoroughly enjoyed watching and helping Rita cook meals for the family.

93. That Anthony grew up with his extended family, living in several locations across the country including, but not limited to, Martha's Vineyard, California, Kansas, and New York.

94. That over the years, Anthony became an exceptional artist like his grandfather. He received training at the School of the Museum of Fine Arts in Boston, Massachusetts. Like Benton, he completed several large murals including a large thirty-two (32) foot mural located in Kansas City's Union Station, two large murals in the Marriott Downtown hotel located at 200 W. 12<sup>th</sup> Street in Kansas City, Missouri, one mural located in the Kansas City Public Library, Downtown Location, and several other large murals located outside of the Kansas City area.

95. That Anthony has also held multiple art exhibitions showcasing his artwork and paintings across the country.

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<sup>8</sup> This Court entered an order on or about February 20, 2023 directing the remaining Plaintiffs to show cause as to why a Rule 52.13(a)(2) guardian ad litem should not be appointed to adequately represent Jessie's interests. On or about February 27, 2023, the remaining Plaintiffs submitted a written response to the Court. After a finding that the remaining Plaintiffs adequately represent Jessie's interests, the Court dismissed the Show Cause Order.

96. That while he was not designated as an expert witness, the evidence clearly established that Anthony is an expert in art, navigating the art world, selling art, purchasing art, storing art, and managing art. Based on his first-hand knowledge of many of the facts of this case, his consistency in his testimony, his demeanor, and his professionalism, the Court gave great weight to Anthony's testimony.
97. That, as discussed above<sup>9</sup>, Anthony was the only Plaintiff to attend the trial and the only Plaintiff to testify.
98. That in the Petition, Anthony, along with the other Plaintiffs, alleged UMB breached many of its fiduciary duties throughout its administration of the Benton Trust. However, Anthony's sworn testimony told a different story.
99. That UMB, in its role as trustee, managed and purchased real estate for the beneficiaries of the Benton Trust. This included the purchase of homes for the beneficiaries, coordinating the remodeling of multiple homes, hiring and managing caretakers for the Benton Trust properties, and upon request, reimbursing the beneficiaries for any and all expenses incurred by the beneficiaries as it related to the real estate.
100. That Anthony testified he had "no complaints at all" with respect to UMB's handling of the real estate owned by the Benton Trust.
101. That as the cash assets in the Benton Trust grew over the years, UMB began making distributions to the beneficiaries.
102. That when asked if he had any criticisms or complaints about the amounts or frequency of the distributions he received as a beneficiary, he stated "I do not."

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<sup>9</sup> See Sections IX and X, *supra*

103. That in the early 1990s, Anthony took on an active role with UMB as it related to the administration of the Benton Trust. At that time, he had settled with his family at the farm homestead in Kansas. Due to the proximity of the farm to UMB, he took on the role of being the spokesperson for the family because Jessie, Daria, and Cybele were living in distant locations – as far as Baja, Mexico – and were difficult to get a hold of or communicate with at times due to those long distances.
104. That Anthony would meet at least annually with UMB staff including Kemper, co-trustee Lyman Field, and the various trust administrators of the Benton Trust.
105. That Anthony believed his expertise in art and the art world would greatly assist UMB's handling of the Benton Trust, and he desired to know more about what was happening with and about the process of managing Benton's paintings.
106. That the evidence established that UMB welcomed Anthony's involvement. He was active in multiple sales of artwork belonging in the Benton Trust. Suggestions Anthony made as to the pricing of artwork, which dealers to use, which gallerists to involve, the commissions to be paid, the exhibition shows to hold, and which trust administrators to work with were all considered by UMB and acted upon.
107. That Anthony testified he had no criticism of the trust administrators in their communications with him and keeping him apprised of the decisions they made on behalf of the Benton Trust.
108. That throughout the course of the trial, multiple specific transactions came under scrutiny and were discussed at length, purporting to show UMB engaged in nefarious actions as it related to assets held by the Benton Trust.

109. That one such transaction was a sale of three (3) paintings held by the Benton Trust to Barbara Streisand. Plaintiffs alleged that Kemper gave Ms. Streisand personal access to the UMB vault to select paintings of her choice and that Kemper sold them to her without appraising them first or negotiating a price. Anthony's testimony directly refuted this claim.
110. That Anthony testified that Jessie and her husband at the time, George Peper, took part in the transaction and had a major say in which paintings were to be shown to Ms. Streisand and what the price of those paintings should be. Anthony further stated that having a high-profile, highly visible person such as Ms. Streisand own a Benton painting would be very good for the market of Benton's art. Anthony testified that a Benton painting in the possession of someone like Ms. Streisand "would facilitate ... greater attention to the possibilities of even more sales or more interest in the art when an artist is being displayed in a prominent home."
111. That another significant allegation in the Petition, which was discussed at length during trial, was the lack of co-trustee approval and/or involvement.
112. That Anthony had both direct and indirect knowledge of Lyman Field's experience as a great lawyer and trusted friend of Benton. Anthony testified and previously communicated to UMB that he believed the co-trustees, UMB and Lyman Field, had done an "excellent job in managing the artwork and cash accounts."
113. That during its administration of the Benton Trust, UMB would place Benton's artwork in exhibitions nationwide and across the globe. One such exhibition occurred at a museum in Lugano, Switzerland. This exhibition featured a large number of Benton's works and was attended by Anthony, Jessie and other members of their extended family.

114. That Anthony testified he had no complaints about the work UMB did as it related to the pieces selected for or the way Benton's artwork was displayed during this exhibition. "None whatsoever," he said.
115. That, as discussed, Anthony is an expert artist himself. He knows the art world, how it works, and how art is sold in the open market. This specific knowledge directly relates to the manner in which UMB sold Benton's artwork.
116. That one issue discussed at length during trial was UMB's failure to obtain appraisals before selling Benton's paintings. Plaintiffs' experts argued strongly that the way in which UMB sold Benton's paintings was in itself a breach. Plaintiffs' experts assert that Benton's art should have been privately appraised either before it was sold or before it was given to a dealer or gallerist to be sold. But Anthony's testimony contradicted these assertions.
117. That Anthony used many of the same gallerists and dealers that UMB utilized for Benton's artwork to sell his own paintings. The evidence established that these dealers and gallerists were the best of the best across the country, if not the world, and that Anthony never obtained an appraisal before selling his own artwork. He relied on the gallerists and dealers to come up with a fair valuation of his paintings. The evidence showed that this practice, which was similarly used by UMB, was the standard, custom, and norm for selling art in the art world.
118. That Plaintiffs' experts also focused on UMB's investment strategies and opined that UMB breached its duty under the "Prudent Man" and "Prudent Investor Rule" by not properly allocating the assets of the Benton Trust.<sup>10</sup> But the evidence established that Anthony believed, and affirmatively stated, that the accounts held by the Benton Trust were "well

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<sup>10</sup> This issue is addressed in more detail in Section XIII, *infra*.

diversified” and the UMB team “were doing good” as it related to the diversification of the Benton Trust portfolio.

119. That another issue raised at trial was how UMB stored Benton’s paintings in their vault. Allegations were made by Plaintiffs’ experts that the vault did not have the requirements in place to properly store Benton’s paintings.
120. That despite those allegations, Anthony testified that several times over the many years of UMB’s administration of the Benton Trust, he had visited and even stored some of his own paintings in the vault at UMB. At no point, past or present, did Anthony express a concern with respect to the adequacy of UMB’s vault for storing his paintings or Benton’s paintings. UMB did not assess any fee or charge Anthony for the storing of his personal paintings in its vault.
121. That while Plaintiffs’ experts disagree, the evidence established that Kemper was an art expert. He was nationally recognized as someone with immense knowledge and expertise in the areas of selling and purchasing artwork. He was considered an expert of experts in the art world.
122. That the Plaintiffs’ allegation that Kemper essentially took control over the Benton Trust and treated the artwork as his own was hotly contested at trial.
123. That Anthony, an expert himself, would at times rely on Kemper’s expertise with respect to his own paintings. Anthony reached out to Kemper on occasion for guidance and insight on selling his paintings, and testified that he would have no objection to selling his artwork directly to Kemper.
124. That the evidence further established that Kemper, along with some of the Benton Trust administrators, went the extra mile for Anthony and assisted significantly in connecting



him with potential buyers for his artwork, increasing his profile as an artist locally and nationally. By way of example, Kemper helped connect Anthony with a local business man that assisted in showcasing Anthony's paintings in one instance. In another, Jan Leonard, who was a UMB trust administrator for the Benton Trust for several years, assisted in connecting Anthony with a museum in Denver to showcase his paintings.

125. That Plaintiff's experts provided significant a lot of evidence to support the notion that UMB failed to monetize the assets of the Benton Trust and that this failure resulted in a loss of millions of dollars the Benton Trust would have otherwise profited. Anthony, who again was the only Plaintiff to testify, strongly disagreed.
126. That Anthony's position was that "it would be demeaning" to mass produce Benton's paintings in a commercial setting. Anthony asserted in his testimony that Benton's paintings were more appropriately placed in museums rather than shopping malls.
127. That while Anthony's testimony directly contradicted most of the allegations contained in the Plaintiffs' Petition, that alone does not relieve or absolve UMB from all of their duties as trustee of the Benton Trust or any dereliction of the same.

## **XI. STATUTE OF LIMITATIONS**

128. That UMB argues that Plaintiffs' claims fail as a matter of law due because they are barred by the statute of limitations.
129. That UMB's argument as it relates to the statute of limitations is that Plaintiffs had one (1) year in which to bring their claims under the Missouri Trust Code.
130. That pursuant to RSMo. § 456.10-1005, a beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the last to occur of the date the beneficiary or a representative of the beneficiary was sent a report that adequately

disclosed the existence of a potential claim for breach of trust and the date the trustee informed the beneficiary of the time allowed for commencing a proceeding with respect to any potential claim adequately disclosed on the report.

131. That a claim is barred if a trustee (1) provided the beneficiary a report of the trust activity in question, and (2) informed the beneficiary of the statute of limitations. The limitations period is retroactive as to apply to trusts created before January 1, 2005. RSMo. § 456.11-1106.1(1); *see also* Brams Trust #2 v. Haydon, 266 S.W.3d 307, 310-11 (Mo. Ct. App. 2008).
132. That based on the evidence presented and the facts established during trial, the one-year statute of limitations under the Missouri Trust Code is not applicable.
133. That in addition to the statute of limitations described by the MUTC, the statute of limitations governed by common law is at play in this case due to the more than 40-year time span of UMB's administration of the Benton Trust.
134. That under common law, the applicable statute of limitations does not begin to run until the trust terminates. Because the Benton Trust has yet to be terminated, this statute of limitations never commenced running on Plaintiffs' claims for UMB's breaches of trust that occurred before 1983. *See* Keeton's Heirs v. Keeton's Adm'r, 20 Mo. 530, 539-40 (Mo. 1855); Simmons v. Friday, 224 S.W.2d 90, 95 (Mo. 1949); In re Ott, 630 S.W.2d 182, 184 (Mo. Ct. App. 1982).
135. That once a trust terminates, courts apply either the ten-year limitations period under RSMo. § 516.110, or the five-year period under RSMo. § 516.120. *See* Senn v. Manchester Bank of St. Louis, 583 S.W.2d 119, 134 (Mo. banc. 1979).

136. That from 1983 until the adoption of the MUTC in January 1, 2025, RSMo. § 456.220<sup>11</sup> governed the statute of limitations in trust actions. This statute “codified the general legal precept that the statute of limitations does not run where a trust exists until the trustee repudiates the trust with notice to the beneficiary.” Honsinger v. UMB Bank, N.A., 2007 WL 4287683, at \*3 (W.D. Mo. Dec. 4, 2007) (internal quotation and citations omitted).
137. That RSMo. § 456.220 provides that the limitations period for any acts that occurred while it was in effect was twenty (22) years after termination of the trust.
138. That neither the common law statute of limitations, nor RSMo. § 456.220 are applicable in our present case.

## **XII. UMB INVENTORY AND VAULT**

139. That Plaintiffs alleged UMB breached its fiduciary duty to the beneficiaries of the Benton Trust by failing to properly inventory Benton’s artwork at the outset of the Benton Trust administration.
140. That contrary to Plaintiffs’ allegation, UMB did inventory the artwork. The process UMB used was to create index cards to identify the artwork. Each index card contained the title and size of the artwork for identification purposes.
141. That Plaintiffs’ own expert testified that the use of index cards to inventory artwork was the custom and practice in the artworld around the time UMB began their role as trustee, and that this practice was followed up and into the early 1990s.
142. That Plaintiffs also alleged UMB breached its fiduciary duty to the beneficiaries by failing to properly store and protect Benton’s artwork.

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<sup>11</sup> This statutory section has since been repealed.

143. That during the administration of the Benton Trust, UMB stored Benton's artwork in its vault.
144. That UMB kept a vault log to identify the individuals entering and exiting the vault.
145. That Plaintiffs alleged UMB's vault was not properly ventilated, that the artwork was stacked in a way that could result in damage, and that measures were not taken by UMB to ensure moisture did not damage the artwork contained in its vault.
146. That these allegations were ultimately not supported by the evidence. And even if Plaintiffs had demonstrated some truth to those allegations, Plaintiffs failed to show in any way that any artwork kept inside the vault was damaged or that the Benton Trust itself suffered damage as a result of UMB storing Benton's artwork in its vault.

### **XIII. BENTON TRUST INVESTMENT PORTFOLIO**

147. That Plaintiffs alleged UMB failed to act as a reasonable corporate trustee with respect to the investment portfolio of the Benton Trust. Specifically, Plaintiffs claimed that UMB did not comply with the normal investment customs and practices and breached its fiduciary duty to the Plaintiffs by maintaining a balanced investment portfolio over the years, with a 50% investment in cash and a 50% investment in stock. By applying the evidence of the case, this Court disagrees.
148. That throughout most of its administration of the Benton Trust, UMB maintained a portfolio that primarily consisted of 50% cash and 50% stocks.
149. That Plaintiffs argued that this 50/50 allocation was a gross departure from the norms and customs of how a reasonable corporate trustee would have invested the funds.

150. That Plaintiffs asserted the stock and cash allocation should have been closer to 80/20 (80% stock and 20% cash) and that UMB's failure to invest prudently by following such allocation resulted in millions of dollars in damages.
151. That the Benton Trust gave sole discretion to UMB to purchase, acquire, and/or retain any and all stocks and bonds, notes and other securities as UMB deemed appropriate. The Benton Trust provided that the investments need not be diversified or be made with a view to a possible increase in value. This language, utilized in the Benton Trust, is clear and unambiguous.
152. That UMB did not willfully abuse its discretion nor did it act arbitrarily, fraudulently, dishonestly, or with an improper motive with respect to maintaining the balanced portfolio with the 50/50 allocation of cash and stocks.
153. That from the time UMB became a trustee of the Benton Trust in 1979 to approximately 1995, UMB was governed by the "Prudent Man Rule". The "Prudent Man Rule" provides that in investing trust funds the trustee is under a duty to the beneficiary, in the absence of trust provisions or a statute otherwise providing, "to make such investments and only such investments as a prudent man would make of his own property having primarily in view the preservation of the estate and the amount and regularity of the income to be derived." O'Riley, 412 S.W.3d at 413 (citing Vest v. Bialson, 293 S.W.2d 369, 379–80 (Mo. 1956) (quoting Restatement (Second) of Trusts § 227(a))); *see also* Hyde, 363 S.W.2d at 654.
154. That beginning in 1996, the "Prudent Man Rule" was changed to the "Prudent Investor Act", providing a new standard for UMB to operate under.
155. That under the "Prudent Investor Act," unless the settlor provides otherwise, "[a] trustee shall invest and manage trust assets as a prudent investor would, by considering the

purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.” RSMo. § 469.902.1 (formerly § 456.902); *see also* Restatement (Third) of Trusts §§ 90 and 90(a). Trust investment decisions “must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.” RSMo. § 469.902.2; *see also* Restatement (Third) of Trusts § 90(a).

156. That “when investing and managing trust assets, a trustee shall consider the following factors as are relevant to the trust or its beneficiaries: (1) [g]eneral economic conditions; (2) [t]he possible effect of inflation or deflation; (3) [t]he expected tax consequences of investment decisions or strategies; (4) [t]he role that each investment or course of action plays within the overall trust portfolio; (5) [t]he expected total return from income and the appreciation of capital; (6) [o]ther resources of the beneficiaries known to the trustee; (7) [n]eeds for liquidity, regularity of income, and preservation or appreciation of capital; (8) [a]n asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and (9) [t]he size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.” O’Riley, 412 S.W.3d at 414 (citing RSMo. § 469.902.3).
157. That while arguing for an investment portfolio with a stock and cash allocation of 80/20, 70/30 or even 60/40, Plaintiffs overlook key facts in determining where such an investment would comply with the “Prudent Man Rule” and/or the “Prudent Investor Act.”
158. That one such key fact is that the Benton Trust assets were mostly comprised of artwork. The evidence established that when dealing with artwork such as Benton’s, the timing of

when a piece of art would ultimately be sold, if ever, was entirely unknown. Not only was the timing of any sale unknown, but the value to potentially be received from any such sale was fluid, not fixed. The expectancy of when artwork was purchased and the price the artwork was purchased for, was not something UMB could regularly rely on for purposes of evaluating the Benton Trust portfolio, and based on this fact, more cash was needed to help support the Benton Trust.

159. That this variable forced UMB to be on the conservative side for purposes of the trust's investment portfolio. If the market for Benton's work dried up, which it did on several occasions throughout its administration of the Benton Trust, then UMB could have been placed in the very precarious position of not having enough cash on hand.
160. That cash on hand was needed to support the real estate in the Benton Trust. Taxes needed to be paid on this real estate each and every year. Multiple times throughout its administration of the Benton Trust, UMB was required to expend trust funds for updates, remodeling projects, maintenance, and repairs to the real estate. The requests for these expenditures were made by the beneficiaries and as expected, would come at varying times.
161. That having sufficient cash on hand was also necessary in order to pay the yearly taxes on the artwork held by the Benton Trust. The evidence established that at times this amount would exceed seven (7) figures.
162. That cash on hand was further needed to support the beneficiaries as they navigated significant events during their lives, including divorces, family moves, financial hardships, and facing threats of litigation. The evidence established that every time these events occurred during UMB's administration, the Benton Trust was able to assist the

beneficiaries in their moment of crisis. This ability is directly attributed to UMB's conservative, 50/50 allocation approach to the trust's investment portfolio.

163. That when comparing UMB's portfolio allocation to other similarly situated financial institutions supervising similar trusts, UMB's portfolio for the Benton Trust was comparable to its peers throughout its 40-year administration of the trust.
164. That by having more cash on hand than what Plaintiffs' proposed, UMB was able to protect the Benton Trust from being unduly exposed to liability or burdened to sell Benton's artwork at a discount in order to pay the bills or meet the needs of its beneficiaries when assistance was requested.
165. That UMB, during its administration of the Benton Trust did not violate the "Prudent Man" or the "Prudent Investor" rules.
166. That the evidence established UMB did not breach its fiduciary duty to the beneficiaries by maintaining a 50/50 portfolio for the Benton Trust.

#### **XIV. DISCLAIMER OF *SELF PORTRAIT WITH RITA***

167. That one of Benton's most profound and stunning paintings is *Self Portrait with Rita*.
168. That while the parties strongly disputed the circumstances surrounding how or why *Self Portrait with Rita* was not in Benton's possession at the time of his death, said painting ended up in the possession of the Smithsonian Institution. Very little is truly known about the surrounding facts of how *Self Portrait with Rita* ended up with at the Smithsonian Institute. The Court can deduce that those facts were a lot clearer to the parties involved almost 50 years ago.
169. That Plaintiffs alleged that UMB abandoned the painting, therefore breaching their fiduciary duty to collect the assets of the Benton Trust.



170. That Plaintiffs further argued UMB breached its duty of loyalty to the Benton Trust by not pursuing litigation and bringing *Self Portrait with Rita* into the Benton Trust.
171. That UMB alleged that Benton gifted the painting, therefore relieving any obligation and circumventing any authority UMB had to take possession of the painting.
172. That the events surrounding the departure of *Self Portrait with Rita* happened over fifty (50) years ago, and the evidence is sparse in identifying exactly what happened. However, sufficient records were admitted at trial from which the Court can infer that Lyman Field, along with UMB, disclaimed or abandoned *Self Portrait with Rita*.
173. That due to this disclaimer, Plaintiffs argued UMB breached their duty of loyalty to the Benton Trust by not pursuing litigation and bringing *Self Portrait with Rita* into the Benton Trust.
174. That the Court finds this disclaimer or abandonment falls squarely under the authority given to UMB and Lyman Field by the Benton Trust and was not a breach of a fiduciary duty.
175. That as stated earlier,<sup>12</sup> the Benton Trust gave the co-trustees absolute and sole discretion as it related to handling trust assets, which gave broad authority to the co-trustees so long as their action was not a willful abuse of discretion or an act that was arbitrary, fraudulent, or dishonest. UMB and Lyman Field did not act in any such way as it relates to the disclaimer or abandonment of *Self Portrait with Rita*.
176. That if UMB had chosen to pursue litigation, that determination likely would have followed a number of questions such as to how successful would they have been, how much money would it have cost the trust, and whether they could have been countersued. Were Rita's

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<sup>12</sup> See Sections II and VII, *supra*.

wishes or statements at the time taken into consideration when asked about the painting? Would the risk be worth the reward? Based on the evidence presented, specifically the evidence regarding Lyman Field's reputation as a lawyer, all of these questions could have been, and likely were, considered, by UMB and Lyman Field in determining whether to pursue an action to reclaim *Self Portrait with Rita*.

177. That any type of decision or action taken by a trustee has a large amount of unknowns and is precisely why grantors give, and Missouri law supports, absolute and sole discretion to trustees so they, in their discretion, can make efficient and critical determinations that come about during the administration of a trust.
178. That in addition to UMB having sole and absolute discretion to disclaim and or abandon *Self Portrait with Rita*, Anthony testified that he supports the fact that Benton has a major painting in the possession of the Smithsonian Institute.

#### **XV. SALE OF PERSEPHONE**

179. That *Persephone* is acknowledged to be Benton's masterpiece and considered the "Benton of all Bentons."
180. That on December 31, 1986, UMB sold *Persephone* in a private sale to the Nelson-Atkins Museum.
181. The sale was for \$2.5 million, far exceeding any amount received for the sale of any of Benton's work prior to that date.
182. The evidence established that at the time of the sale, Kemper and another board of directors member of UMB were also on the Nelson-Atkins Museum board.
183. That, based on this fact, Plaintiffs alleged that in organizing, negotiating and approving the sale of *Persephone* to the museum, Kemper was motivated by serving his personal interests

and not the best interests of the beneficiaries of the Benton Trust. This allegation, however, simply amounts to speculation.

184. That no evidence was submitted to show that Kemper, UMB, or the Nelson-Atkins Museum received any personal or institutional benefit from the sale of *Persephone*.
185. That Plaintiffs alleged Kemper stopped a potential bidding war when *Persephone* was sold. The basis for this allegation were statements made in correspondence from Kemper to the Nelson-Atkins Museum in which he referenced other potential buyers. However, when considering all evidence presented, specifically the testimony of Marc Wilson who was the former director and CEO of the Nelson-Atkins Museum, there were no other purchasers or interested buyers at the time *Persephone* was sold. Kemper's statements were purely puffery.
186. That there is no evidence of bad faith on the part of UMB in the sale of *Persephone*.
187. That Plaintiffs also alleged that UMB should have obtained an appraisal prior to the sale of *Persephone*. However, the evidence established that the custom and practice of selling artwork at the time of *Persephone's* sale did not necessitate an appraisal prior to the sale. Even Anthony acknowledged that an appraisal is not, and was not at the time, a prerequisite to sell artwork.
188. That Plaintiffs further argued that the sale of *Persephone* was a conflicted transaction and, therefore, proof of damage to the Benton Trust is not necessary. As previously noted, the Court will discuss conflicted transactions in more detail herein.<sup>13</sup> However, no competent evidence was introduced to demonstrate that the Benton Trust was harmed by the sale of *Persephone* to the Nelson-Atkins Museum.

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<sup>13</sup> See Section XXI, *infra*.

189. That in fact, Anthony opined to the contrary. Anthony testified that having Benton's artwork displayed in a museum such as the Nelson was a major benefit to the value of Benton's artwork.

#### **XVI. APPRAISALS OF BENTON'S ARTWORK**

190. That a significant portion of the trial involved appraisals of Benton's artwork. The time devoted to this issue was the result of Plaintiffs' allegation that UMB, as trustee of the Benton Trust, sold artwork far below market value.

191. That Plaintiffs' expert was Elizabeth von Habsburg (hereinafter "von Habsburg"), a world-renowned appraiser with significant experience in the art world. Von Habsburg spent considerable time reviewing the majority of Benton's artwork. She is currently the managing director of the Winston Art Group (hereinafter "WAG") and was serving in that role when she was hired by the Plaintiffs to (1) review the sale prices of the artwork sold by UMB as of the dates those individual pieces of work were sold, and (2) to appraise any artwork with a sale price that she found to be too low.

192. That UMB utilized multiple experts to appraise Benton's artwork. These experts included Deborah Spanierman, Cynthia Herbert, Susan McDonough, Betty Krulik, and Regan Upshaw, who are also some of the best and most knowledgeable professionals in their field of artwork appraisal.

193. That UMB's appraisal experts took a different approach from von Habsburg. Rather than a global review of Benton's artworks and their accompanying values, UMB's appraisal experts reviewed Benton's work by each decade to provide a direct comparison to the

“Benton Market” at the specific time artwork was being sold under the authority of the Benton Trust.<sup>14</sup>

194. That through their approach, the Court was able to clearly see how fluctuations in the Benton Market worldwide affected the sales of artwork held in the Benton Trust by UMB. The evidence showed that as time passed and the world changed during UMB’s over 40-year administration of the trust, the market – or “desire” – for Benton’s artwork also changed and fluctuated. Without this analysis of the market conditions at those times Benton’s artwork was sold, the broader context of those sales would be difficult, if not impossible to understand.
195. That the evidence established that WAG, von Habsburg’s company, was hired by the Successor Trustee to transport, inventory, appraise, store, and manage Benton’s artwork. Von Habsburg attempted to distance herself from this transaction and the ongoing work WAG continues to do on behalf of the Successor Trustees of the Benton Trust. However, the evidence did not support any such attempts and the Court is forced to give less weight to von Habsburg’s testimony as it relates to the appraisals she conducted due to the high potential of bias and partiality.
196. That over its more than 40-year administration of the Benton Trust, UMB obtained multiple appraisals of Benton’s artwork.
197. That Plaintiffs vehemently argued that UMB breached its duty of loyalty to the Plaintiffs when Benton’s artwork was sold by UMB without first obtaining an appraisal.
198. That the evidence failed to support Plaintiffs’ position. Experts for both Plaintiffs and UMB established clearly that the purpose of appraising artwork is for insurance and tax

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<sup>14</sup> Testimony from experts of both Plaintiffs and UMB established that the market of an artist, such as the “Benton Market” would fluctuate based on many factors, similar to how stocks in the stock market fluctuate.

reasons. Nearly every expert, regardless of designating party, stated that in the art world, appraisals are not a requirement in selling a piece of art.

199. That in addition to the testimony of these experts, the evidence established that Plaintiffs themselves did not follow the practice their experts argued UMB should have abided by. Jessie owned multiple pieces of artwork, including some of Benton's work. Her testimony established that she did not obtain an appraisal as a prerequisite to the sale. The same applied to Anthony, an expert in art himself. He testified that he did not obtain any appraisals prior to selling any of his own artwork.
200. That the notion that UMB undersold Benton's artwork while serving as trustee of the Benton Trust is ultimately unfounded. The evidence established that UMB's sales of Benton's artwork outperformed the broader Benton Market worldwide and that UMB's practices with respect to appraising and selling Benton's artwork were in keeping with the customs of the time.
201. That based on the evidence presented, UMB did not breach its fiduciary duty to the beneficiaries of the Benton Trust by selling the artwork for too low of a price.
202. That based on the evidence presented, UMB did not breach its fiduciary duty to the beneficiaries of the Benton Trust by not obtaining appraisals before each sale.

#### **XVII. INTERNAL SALE OF ARTWORK**

203. That around March of 2000, UMB sold three lithographs held by the Benton Trust to Richard Jones. At the time of the sale, Richard Jones was a member of UMB's Board of Directors.
204. That the sale of the three lithographs to Richard Jones was a breach of UMB's fiduciary duty to the beneficiaries of the Benton Trust.

205. That through an internal audit, UMB was able to determine that the transaction had occurred and rescinded the sale several months after being made aware of it.
206. That the Plaintiffs' witness who testified as to the facts surrounding the sale, the audit involved with the sale, and the bank employees involved with the audit process, was not credible. He had previously been fired by UMB, then sued UMB after being fired, and subsequently settled that litigation with UMB. These facts, his demeanor at trial, and the additional evidence presented clearly demonstrated this witness's testimony was biased and the Court therefore gave his statements little weight.
207. That even though the sale of the lithographs to Richard Jones was a breach of fiduciary duty, Plaintiffs failed to prove the transaction actually damaged the Benton Trust. The issue was resolved almost immediately and was handled internally with the UMB procedures in existence at the time.
208. That the Plaintiffs argued that because the sale of those lithographs constitutes a conflicted transaction, actual harm need not be found. This Court disagrees. The elements of causation and damage under Missouri law are vital to the success of a cause of action for breach of fiduciary duty.

#### **XVIII. CO-TRUSTEE APPROVAL**

209. That the Benton Trust named Lyman Field, a well-known and respected Kansas City attorney, to serve as co-trustee with UMB.
210. That Lyman Field was also a personal friend of Benton and Rita. Lyman Field is the prominent character in one of Benton's most admired paintings titled *Trial By Jury*.
211. That Lyman Field served in the role of co-trustee of the Benton Trust from the funding of the Trust in 1979 through his death on March 19, 1999.

212. That “where a settlor vests his property in several co-trustees, they all form, as it were, one collective trustee.” Walker v. James, 85 S.W.2d 876, 884 (Mo. 1935) (internal quotation and citations omitted). They must therefore perform their duties together, or jointly, in transactions. Id. “In law there is no such person known as an acting trustee apart from his co-trustees. All who accept the office are acting trustees.” Id.
213. That a co-trustee cannot delegate the administration of a trust to a single trustee. If there are several trustees, each trustee is under the duty to the beneficiary to participate in the administration of the trust and to use reasonable care to prevent his co-trustee from committing a breach of trust or to compel a co-trustee to redress a breach of trust. Id.
214. That throughout his service as co-trustee of the Benton Trust, Lyman Field was active and assisted in the decisions involving of the Benton Trust. The evidence established that Lyman Field had, inter alia, ongoing communications with the beneficiaries, assisted with strategy decisions related to the administration of the Benton Trust, advised on copyright issues, assisted in the handling of royalties due to the Benton Trust and provided insight into the management of the artwork held in the Benton Trust.
215. That Plaintiffs argued the decisions of the co-trustees were supposed to be in writing.
216. That at some point, likely in the 1990’s, UMB has a policy requiring written authorization of all trusts which had co-trustees and were administered by UMB. It is unclear when this policy was implemented, but the evidence established that this policy was rarely followed by the co-trustees of the Benton Trust, if ever, and a direct violation of what appeared to be internal UMB procedures and practices. However, the Benton Trust did not require written documentation of all co-trustee decisions.



217. That the Benton Trust clearly and unambiguously directs how the co-trustees were to perform their duties. There is no requirement in the Benton Trust that any decision made by the co-trustees be in writing.
218. That while UMB may have violated its own internal policy, it did not violate the terms of the Benton Trust as it relates to co-trustee approval.
219. That Plaintiffs' desire to shift the burden to UMB to prove it obtained Lyman Field's approval for all actions while serving as co-trustees. However, the burden is on the Plaintiffs to show lack of such approval.
220. That Plaintiffs failed to present any evidence to establish that UMB and Lyman Field did not act jointly and in agreement at all times they served together as co-trustees.
221. That Plaintiffs failed to present any evidence of any disagreements between UMB and Lyman Field. Instead, the evidence was quite the opposite – that UMB and Lyman Field worked together without discord for the twenty (20) years they served as co-trustees.
222. That Plaintiffs sought to have this Court find that due to the lack of written documentation of the co-trustee approvals, UMB breached its fiduciary duty by not obtaining co-trustee approval for all decisions related to the Benton Trust. But to do so would require the Court to speculate. Little to no evidence was presented to establish that Lyman Field was even aware of UMB's policy for written documentation.
223. That Plaintiffs failed to prove that UMB violated the terms of the Benton Trust by not obtaining co-trustee approval.

#### **XIX. COPYRIGHT**

224. That Benton created over 3,500 pieces of artwork during his lifetime that were distributed to the Benton Trust following his death.

225. That Plaintiffs alleged UMB breached its fiduciary duty by not preserving and protecting the copyright interests the Benton Trust had in these works of art. This Court agrees.
226. That a copyright is an intangible asset which UMB had a duty to protect and preserve on behalf of the beneficiaries of the Benton Trust. Because the copyright was an asset, UMB had a duty to determine, at the outset of its administration of the trust, which pieces of artwork maintained their copyright status after Benton's death in 1975, as well as a duty to research and evaluate the artwork created by Benton and take any action necessary to establish, preserve, and protect the Benton Trust copyright assets. UMB breached this duty.

#### Copyright Law

227. That, like every other aspect of this case, copyright laws have evolved over the years.
228. That under common law, copyright arises from the moment a work is created and continues until the work is either published or registered with the U.S. Copyright office.
229. That in addition to the common law, both the Copyright Act of 1909 and the Copyright Act of 1976 are applicable to this case.
230. That Plaintiffs' copyright expert was John Pelosi. Defendant's expert was Kenneth Crews. Both experts were extremely knowledgeable in the area of copyright law. They disagreed on many of the legalities of copyright, but they did agree on many issues as well.
231. That both Pelosi's and Crews's testimony, along with other corroborating evidence, established that copyright protection is automatic when the work of art is created, and registration is not a requirement for that work to be eligible for copyright protection.
232. That they agreed that Benton likely held copyrights in all the works that he created during his lifetime, including works that were sold, unpublished, published and/or held in

inventory at the time of his death in 1975 – unless those copyrights were specifically granted to a commissioning entity, or if the copyrights in certain works may have fallen into the public domain.

233. That both experts agreed that, with the exception of works for hire, an unpublished work is subject to common-law copyright protection upon creation, and such copyright is held by the artist who created the work.
234. That they agreed that in order to make a determination of whether a protectable copyright interest existed with respect to the Benton Trust's assets, the following factors needed to be considered: (1) whether the work was created by Benton; (2) whether the work was created as a "work made for hire"; (3) whether the work was copyrightable, or eligible for copyright protection; (4) whether the work was published; (5) whether the published copies of the work included a copyright notice; and (6) whether the copyright notice was proper, or sufficient to satisfy the requirements under the law.
235. That Pelosi and Crews further agreed that there were four possible ways, which could have been shown by UMB, that Benton could have been divested of his common-law copyright in each work that he created during his lifetime: (1) if the work was a "work for hire," in which case the copyright would be held at inception by the commissioning party; (2) the work was, with Benton's consent, published without a copyright notice; (3) the copyright expired; or (4) Benton's copyright in the work was transferred to another.

#### Determining the Benton Trust Copyrights

236. That the copyright experts strongly disagreed as to which copyrights the Benton Trust was responsible for.

237. That in applying common and statutory law, any works created by Benton during his lifetime that remained unpublished at the time of his death would generally be protected by copyright for a period of life plus seventy (70) years.
238. That Plaintiffs' method of determining which copyrights UMB had a duty to preserve and protect was to use a blanket approach in the form of a search of all of Benton's artwork that was unpublished. Using this approach, Pelosi came up with approximately 1,900 copyrights that were owned by Benton at the time of his death. However, this approach is seriously flawed.
239. That the biggest flaw in Pelosi's approach is that he used a paralegal at Langdon and Emison, the lead law firm for the Plaintiffs, to conduct that search and determine what work still maintained a copyright after Benton's death.
240. That the evidence established that Langdon and Emison's paralegal who conducted the research had no copyright experience. While the Court is convinced that the paralegal conducting the research used by Pelosi is an intelligent, hardworking, and very competent paralegal, the bias and partiality inherent in having the law firm who represents the Plaintiffs doing the expert's work is too tough to overcome and cannot be ignored. The Court must discredit the research done by Pelosi accordingly, and specifically the method in which he arrived at the 1,900 figure.
241. That the method used by Pelosi likely would have been good in theory. He did not, however, do the required work to verify the accuracy of the results. The research contained several errors when examined closely. These errors included paintings being captured more than once on the list, duplicate titles of the same paintings being included on the list, and even works-for-hire being added to the list.

242. That because Pelosi's approach was critically flawed in determining which specific pieces of Benton's artwork maintained their copyright after his death, the Court is unable to determine which paintings, lithographs, drawings, and/or prints actually had copyrights that UMB should have preserved and protected.
243. That the evidence established a painting-by-painting analysis, as opposed to the blanket approach, would be required in order to determine which works had a copyright interest at the time of Benton's death,
244. That each painting, each piece of artwork, has its own copyright story. A blanket approach would lead to erroneous results.
245. That not all works created by Benton were copyrightable or, in other words, eligible for copyright. The evidence established that in order for a work to be eligible, it must be original and not a mere variation of previous work.
246. That some of Benton's 3,500 pieces of artwork (1) were minor variations of each other, (2) were almost exact duplicates of each other, (3) had the exact same title, and (4) were unfinished sketches and studies, including sketches of other sketches and studies.
247. That these four (4) scenarios all have the ability to disrupt the eligibility of copyright status for some of Benton's artwork.
248. That it would be an impossible task for the Court to examine each piece of artwork created by Benton to determine which ones were eligible for copyright. That task and burden is on the Plaintiffs, and the Plaintiffs failed to meet this burden.
249. That Plaintiffs argued that an assertion of ownership over copyrights by UMB without doing a painting-by-painting analysis, may lead to an objection by another party. They further argue that this prospect would be remote and that hypothetical is too unlikely.

Pelosi used terms such as “generally” and “likely” when stating which paintings maintained their copyright status. However, as will be discussed in more detail below,<sup>15</sup> such terms create the possibility of doubt and damages cannot be assessed to UMB on speculation or guesswork.

#### Works for Hire

250. That Pelosi and Crews strongly disagreed as to which pieces of Benton’s artwork were works made-for-hire.
251. That under the Copyright Act of 1909, a work was deemed a work made-for-hire if it was produced for the artist’s “employer.” If it was, the employer was deemed the legal “author” thereof.
252. That some of Benton’s paintings fall under this category including, but not limited to, *Indiana Murals*, *New School Murals*, *River Club Painting*, *Joplin Mural* and *Louisiana Rice Fields*.
253. That the Court adopts the opinions of Crews as it relates to works made-for-hire, finding that sufficient evidence was presented during trial to establish the copyrights to these specific works of art were not copyright assets of the Benton Trust to be protected and preserved by UMB.

#### Benton’s Knowledge

254. That the evidence established Benton understood and knew how to protect his copyright interests. He copyrighted several of his books. But the evidence established he did not register copyrights for any of his paintings during his lifetime.
255. That Anthony also testified Benton was against using his artwork in commercial settings.

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<sup>15</sup> See Section XXIII, *infra*.

256. That while these factors, (1) Benton's knowledge of copyright and (2) Anthony's position that Benton did not want to copyright his artwork, do not relieve UMB of its duty to protect and preserve the copyright assets of the Benton Trust, these factors will be discussed further below as to whether punitive damages should be assessed to UMB.<sup>16</sup>

## **XX. DUTY TO MONETIZE TRUST ASSETS**

257. That Plaintiffs alleged UMB breached its fiduciary duty to the Benton Trust by failing to monetize trust assets.

258. That Plaintiffs argued that one of the ways UMB could have monetized the Benton Trust assets was to establish a lithograph and print program.

259. That in addition to his paintings, Benton created lithographs and prints during his life. The evidence established that a lithograph, a type of print, is a reproduction of an original artwork created by using stone or a metal plate. A print is the broader term used for reproductions of original artworks and images using various techniques.

260. That Plaintiffs further asserted UMB had a fiduciary duty to create a licensing and merchandising program for selling Benton's lithographs and prints that would be similar to programs used by artists such as Andy Warhol and Norman Rockwell. By failing to comply with this duty, Plaintiffs alleged that UMB's failure to comply with that duty resulted in damages to the Benton Trust in excess of \$100 million dollars. This Court disagrees.

261. That whether a lithograph and print program of Benton's artwork would have been successful is entirely speculative.

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<sup>16</sup> See Section XXIII, *infra*.

262. That Plaintiffs compare Benton, a masterful artist, to some of the greatest artists known in all of history in order to determine the value of a lithograph and print program. In addition, Plaintiffs propose and compare their speculative Benton program, to those of artists that had established and fully operational programs before the artist died. Benton had not established such a program while he was living.
263. That Anthony testified that he does not believe Benton would have wanted such a program.
264. That Plaintiffs failed to consider the costs of implementing such a program. During the trial, Plaintiffs' experts vigorously argued that UMB maintained too much cash on hand in the Benton Trust's portfolio. However, in order to establish and operate a lithograph and print program, UMB would have been required to have a significant cash surplus on hand to meet the not only already existing needs of the beneficiaries, but also to support all of the costs, expenses and expenditures needed to support a lithograph and print program.
265. That Plaintiffs further alleged that UMB breached its fiduciary duty by failing to create a copyright program which could have been used to monetize copyrights on Benton's artwork.
266. That the evidence presented by the Plaintiffs regarding the potential success of a copyright program was just as flawed as the speculative lithograph and print program.
267. That UMB did not breach its fiduciary duty by not establishing programs to monetize the prints, lithographs and copyright interests owned by the Benton Trust.

## **XXI. CONFLICTED TRANSACTIONS**

268. That Plaintiffs alleged that UMB engaged in self-dealing and in other transactions where a clear conflict of interest was present. Plaintiffs accordingly sought to rescind all sales of artwork wherein UMB sold artwork: (1) to insiders, (2) to or through brokers or dealers



that Kemper and/or UMB were also buying and selling artwork to or through, and (3) to UMB's customers.

269. That some of the allegedly conflicted transactions include, but are not limited, to:
- a. The sale of three (3) lithographs to Richard Jones, a UMB employee;
  - b. The sale of *Persephone* to the Nelson-Atkins Museum;
  - c. The sale of eight (8) paintings to Shirley Helzberg, the spouse of member of UMB's Board of Directors;
  - d. The sale of all artwork to or through the art gallery of Hirschl & Adler;
  - e. The sale of all artwork to or through the art gallery of Martha Parrish & Jim Reinish, Inc; and,
  - f. The sale of *Studies of Persephone* to Kemper.
270. That this Court previously discussed the surrounding facts of the sales of the lithographs to Richard Jones and the sale of *Persephone* to the Nelson-Atkins Museum and will not repeat those findings here.<sup>17</sup>
271. That Shirley Helzberg, Kansas City philanthropist, purchased eight (8) paintings from the Benton Trust in 2002.
272. That Shirley Helzberg's spouse, Barnett Helzberg, was a member of the UMB board of directors at the time of the sale. Plaintiffs' experts argue this fact creates a conflict of interest and therefore, was a breach of fiduciary duty.
273. That no evidence was presented to established how this sale actually caused harm to the Benton Trust. In fact, Anthony testified that sales to high profile individuals, such as Shirley Helzberg, was great exposure for the Benton Trust.

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<sup>17</sup> See Sections XV and XVII, *supra*.

274. That Hirschl & Adler and Martha Parrish & Jim Reinish, Inc. are both world renowned galleries. Evidence adduced from both parties established how reputable, successful, and highly regarded these galleries are in the art world.
275. That the evidence established UMB used both Hirschl & Adler and Martha Parrish & Jim Reinish, Inc. to sell many of Benton's pieces held in the Benton Trust.
276. That the evidence also established Kemper used both Hirschl & Adler and Martha Parrish and Jim Reinish, Inc. to sell his own personal artwork.
277. That Plaintiffs, through their experts, argued that an actual or apparent conflict of interest existed because Kemper used the same galleries for his artwork as the Benton Trust did for Benton's artwork.
278. That Plaintiffs further argued that Kemper and/or UMB financially benefitted from these transactions. However, the evidence did not demonstrate such facts.
279. That Plaintiffs provide no competent evidence that Kemper received any type of direct or collateral benefit – financial, reputational, or otherwise – by using the aforementioned galleries.
280. That Plaintiffs provide no competent evidence that UMB received any type of direct or collateral benefit – financial, reputational, or otherwise – by using the aforementioned gallerists.
281. That in addition to the Plaintiffs' failure to prove that the use of these gallerists harmed the Benton Trust, Anthony admitted he used the same galleries for his artwork. He further admitted that he, along with Jessie, recommended to the trust administrators of the Benton Trust that they work with these galleries.

282. That on the surface the sale of *Studies of Persephone* to Kemper appears to be a direct violation of the duty of loyalty UMB owed to the Benton Trust. However, upon closer review of all the facts, the evidence established that Kemper purchased *Studies of Persephone* for another entity and received no benefit from the transaction. In addition, Anthony admitted he would have no issue with selling his own artwork directly to Kemper.
283. That Plaintiffs' experts were adamant that Kemper alone took full control of Benton's valuable paintings and used them as if they were his own. This assertion was based on Kemper's involvement in some sales of the Benton Trust artwork. But when reviewing the evidence in its totality, one of the critical issues Plaintiffs experts overlooked and failed to grasp is that the nature of the act of selling art is an art of itself. Kemper understood this. The galleries and dealers used to sell Benton's artworks understood this. Most importantly, Anthony and Jessie understood this too.
284. That, generally, to increase the value of artwork for a specific artist, the goal was to expose that artist's work in numerous ways. These methods of exposure often included, but were not limited to, exhibitions, consigning and loaning art to galleries and dealers, placing artwork in museums, and having high net-worth individuals own and display the artwork in their homes. Kemper's purchase of *Studies of Persephone* was one such method.
285. That the evidence established by taking this approach and getting the right exposure for the artwork, that exposure would drive up the market for the artist and increase the value of the art. Each sale of art also presented the possibility of another future sale, further increasing the market of the artist. The Plaintiffs' appraisal expert, von Habsburg, testified that the practice in the field was to sell art low to generate initial interest in the artist and the artwork.

286. That the evidence confirmed that creating and establishing relationships was key to success in the art world. The art world is a handshake enterprise, and cultivating and maintaining relationships with the right people and institutions was the way to grow the market for an artist. As a player in the art world, Kemper's role in some of the Benton Trust art sales was critical in building that exposure and the resulting growth of the market for Benton's work.
287. That UMB, as trustee of the Benton Trust, followed this marketing strategy in numerous ways. At one point Kemper even donated \$500,000.00 for a large Benton exhibition known as the Centennial which marked Benton's 100<sup>th</sup> birthday. UMB also placed Benton's artwork in exhibits and museums across the world.
288. That Anthony testified that he approved of UMB's work in this regard.
289. That Plaintiffs' experts' focus on the alleged conflicted transactions without considering how the art world operated, is a fatal error.
290. That Plaintiffs had the burden of demonstrating that these conflicted transactions harmed the Benton Trust. The Plaintiffs did not meet that burden.

## **XXII. LOST ARTWORK**

291. That Plaintiffs alleged UMB lost more than one hundred (100) valuable pieces of Benton's artwork during its administration of the Benton Trust. Such a loss would have constituted millions of dollars in damages to be assessed against UMB and tremendous damage to UMB's reputation as an institution.
292. That Plaintiffs presented no evidence during their case in chief of any credible fact that UMB lost any of Benton's paintings belonging to the Benton Trust

293. That UMB, during its case in chief, admitted that five (5) pieces of artwork were not accounted for. Shortly before the filing of this lawsuit, UMB conducted an extensive review of all artwork contained in the Benton Trust and the transactions associated with each and every piece. At the end of this comprehensive review, UMB was not able to account for five (5) pieces of artwork.
294. That the evidence established that these five (5) pieces of artwork were not paintings, but were likely sketches or studies. They may have been in the possession of Benton's family, placed on loan or consignment with a gallery, or sold and not properly referenced as a completed transaction.
295. That based on the evidence, these five (5) pieces of artwork were collectively valued at \$35,000.00.

### **XXIII. DAMAGES**

#### No Further Inquiry Rule

296. That a major theory of liability, directly tied to damages in this case, is the "No Further Inquiry Rule".
297. That Plaintiffs requested that this Court adopt the "No Further Inquiry Rule".
298. That Plaintiff's expert, Professor Robert Sitkoff, testified at length as to the what the "No Further Inquiry Rule" is and how it is grounded in law.
299. That under the theory of this rule, if a trustee engages in a transaction that involves or is affected by a conflict of interest, no further inquiry is made. Sitkoff testified that good faith and the fairness of the transaction are irrelevant and that no determination needs to be made as to the impact of the trustee's decision.

300. That Professor Sitkoff explained the purpose of the “No Further Inquiry Rule” is to deter unauthorized conflicts or to induce the trustee to seek advance judicial approval or to disclose the material facts to the beneficiaries and obtain their consent, or at least to have the settlor’s advance approval in the terms of the trust.
301. That the “No Further Inquiry Rule” in effect eliminates the last two elements of a breach of fiduciary cause of action – causation and harm – in any conflicted transaction undertaken by the trustee. Under the “No Further Inquiry Rule”, the only relevant defenses would be authorization from the settlor of the trust, beneficiaries consenting after full disclosure, or Court approval of the transaction.
302. That contrary to Sitkoff’s position and after thoroughly researching the law, the Court is unable to find any support for the “No Further Inquiry Rule” in the Missouri Trust Code or Missouri law.
303. That it is well established under Missouri law that in a court tried case, the role and purpose of the trial court is to correctly apply the law already in effect, and not to create new obligations or impose new duties on a trustee.
304. That this Court is not prepared to create new Missouri law and therefore, will not adopt or apply the “No Further Inquiry Rule” in this case.

#### Damage Models of Experts

305. That Plaintiffs provided expert testimony as to the method this Court should utilize to calculate the damages UMB caused the Benton Trust during its tenure as trustee.
306. That the damage models were based on UMB’s alleged breaches, and Plaintiffs asserted that the Court would be able to determine a specific dollar amount to surcharge UMB for the alleged breaches by combining the resulting damage caused by sales of artwork below

market value, monetized copyrights, capital gains, income taxes, hypothetical investment portfolios, hypothetical licensing and merchandising profits, and so forth.

307. That the damage models are defective and distorted in multiple ways. The biggest and most glaring defect is that the experts creating the models relied on the final conclusions of other experts, without individually verifying the accuracy of these conclusions. Plaintiffs' copyright expert used a flawed approach, Plaintiffs'; appraisal expert was biased due to a conflict of interest, and Plaintiffs' experts that opined UMB failed to monetize the assets of the Benton Trust failed to consider the costs involved, therefore overinflating the dollar amounts.
308. That the building blocks to create the damage models presented by the Plaintiffs were not supported by the evidence or Missouri law, and therefore, the models collapse on themselves like a house of cards.
309. That Missouri law is clear. A finding of damages in a breach of fiduciary cause of action cannot be based on guesswork or speculation. *See Robert T. McLean Irrevocable Trust*, 418 S.W.3d at 482, 496.

#### Punitive Damages

310. That the Plaintiffs sought punitive damages for UMB's alleged breaches of duty.
311. That under Missouri law "[p]unitive damages are awarded for the purpose of inflicting punishment for wrongdoing, and as an example and deterrent to similar conduct." *Beggs v. Universal C.I.T. Credit Corp.*, 409 S.W.2d 719, 724 (Mo. 1966). "Unlike compensatory damages, which are awarded to compensate a wronged party, punitive damages are imposed for the purpose of punishment and deterrence." *Poage v. Crane Co.*, 523 S.W.3d 496, 520 (Mo. Ct. App. 2017) (internal quotation and citation omitted). "[P]unitive

damages provides one of the most effective deterrents of future misconduct by a defendant or by others who may be similarly tempted to engage in similar practices.” Id. (internal quotations omitted) (citing Scott v. Blue Springs Ford Sales, Inc., 176 S.W.3d 140, 143 (Mo. banc 2005)).

312. That “to support a claim for . . . punitive damages, the plaintiff must present clear and convincing evidence at trial to support the claim.” Dodson v. Ferrara, 491 S.W.3d 542, 562-563 (Mo. banc 2016).
313. That punitive damages “may be awarded when a defendant’s conduct is outrageous, because of the defendant’s evil motive or reckless indifference to the rights of others.” Jo Ann Howard & Assocs., P.C. v. Cassity, 395 F.Supp.3d 1022, 1187 (E.D. Mo. 2019) (citing Hallmark Cards, Inc. v. Monitor Clipper Partners, LLC, 758 F.3d 1051, 1060 (8th Cir. 2014)).
314. That “there must be some element of outrage to justify punitive damages.” Burnett v. Griffith, 769 S.W.2d 780, 789 (Mo. banc 1989) (internal quotations and citations omitted). Further, punitive damages require a willful, wanton or malicious culpable mental state on the part of the defendant. Id. A plaintiff can establish this requisite culpable mental state “by showing either that the defendant committed an intentional wanton, willful, outrageous act without justification or acted with reckless disregard for the plaintiff’s rights and interests.” Peel v. Credit Acceptance Corp., 408 S.W.3d 191, 209-210 (Mo. Ct. App. 2013) (internal quotation, emphasis, and citation omitted); Burnett, 769 S.W.2d at 787.
315. That Plaintiffs presented insufficient evidence to the Court to clearly and convincingly establish that UMB acted wantonly, willfully or maliciously during its time as trustee of



the Benton Trust. The requirement of a malicious culpable mental state as set forth by Burnett has not been satisfied.

316. That after a thorough review of all of the alleged conflicted transactions discussed herein, none of those transactions satisfy the criteria for an award of punitive damages under Missouri law. Plaintiffs argued that UMB engaged in a pattern and practice of conflicted transactions which could allow for an award of punitive damages, but this Court disagrees. Plaintiffs failed to provide adequate evidence to show that any of the conflicted transactions actually damaged the Benton Trust. Additionally, the Plaintiffs in their own testimony, contradicted their experts in stating that many of the conflicted transactions, including the sale of Benton artwork to the Nelson-Atkins Museum and Shirley Helzberg actually benefited the Benton Trust.
317. That as it relates to preserving and managing the copyrights of the artwork held in the Benton Trust, the Court has previously stated that this was indeed a breach of UMB's fiduciary duty to the Benton Trust. However, this breach was not intentionally inflicted, malicious or willful. Based on the evidence presented, UMB's failure to preserve the copyrights, at most, was negligence on the part of UMB.
318. That punitive damages are not ordinarily recoverable in actions for negligence "because negligence, a mere omission of the duty to exercise care, is the antithesis of willful or intentional conduct." Hoover's Dairy, Inc. v. Mid-America Dairymen, Inc./Special Products, Inc., 700 S.W.2d 426, 435 (Mo. banc 1985) (internal quotations and citations omitted).
319. That the failure to preserve the copyrights of the artwork held by the Benton Trust does not rise to the level of an award of punitive damages.

#### XXIV. CONCLUSION

320. That Benton created thousands of beautiful pieces of artwork to be shared with the world. Millions of people over the years have had the opportunity to view and admire Benton's paintings.
321. That UMB was tasked by Benton to help grow and establish his legacy as a world renowned artist after his death. The evidence established UMB accomplished Benton's wishes and desires.
322. That the evidence clearly and overwhelmingly established that the Plaintiffs were all at some point led to believe that UMB lost millions of dollars' worth of Benton's paintings. During the discovery phase of this litigation, it became apparent to the Plaintiffs that this fact had little to no merit, and they became extremely disinterested in this case. However, the bell had been rung.
323. That after ringing that bell, the Plaintiffs' experts got involved and forced UMB to pull back its curtains and open up its books. During this process, the Plaintiffs' experts were able to find a few instances during UMB's over 40-year administration of the Benton Trust wherein UMB committed acts that on their face appear careless, irresponsible and neglectful.
324. That Plaintiffs' experts highlighted these circumstances in an effort to lay blame on UMB and to show that UMB failed to follow the customs and norms of a reasonable corporate trustee. But in doing so, Plaintiffs' experts failed or otherwise refused to consider that the customs and norms of a reasonable corporate trustee managing priceless art changed over the years. Plaintiffs' experts failed or otherwise refused to consider all of the surrounding facts involved in each of the incidents discussed above.

325. That when considering all evidence and testimony presented, all that remains is five (5) pieces of artwork that UMB, on its own admission, cannot account for.

It is therefore,

**ORDERED, ADJUDGED AND DECREED** that Plaintiffs are entitled to \$35,000.00 for the five (5) pieces of artwork that are unaccounted for. Any and all other relief requested is hereby DENIED.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all parties are to bear their own expenses and attorney fees. Any and all other relief requested is hereby denied.

**SO ORDERED.**

Date: December 13, 2024

  
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Judge