

To: Craig Masterson

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE: HON. RICHARD FIELDS

CASE NO. C-20033724

COURT REPORTER: NONE

DATE: June 1, 2005

JAMES K. CHILTON, JR.; and CHILTON
RANCH AND CATTLE COMPANY, an
Arizona partnership
Plaintiff

vs.

CENTER FOR BIOLOGICAL DIVERSITY,
INC., a New Mexico corporation; MARTIN
TAYLOR; SHANE JIMERFIELD; and AJ
SCHNELLER
Defendant

R U L I N G

UNDER ADVISEMENT RULING: DEFENDANTS' RULE 50 AND RULE 59 MOTIONS:

The Court has considered the authorities raised by the parties in the Motion and responsive pleadings. The Court has considered the arguments of Counsel at the hearing held May 16, 2005. The Court has reviewed and considered supplemental pleadings filed by both parties relative to the jury's award of punitive damages. Finally, the Court has reviewed significant segments of the trial transcripts, including the testimony of Plaintiff's damages witness Webb.

After due consideration and reflection,

Carlene Quiles
Judicial Administrative Assistant

5-26-05

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IT IS ORDERED Defendants' Motion for New Trial and Motion for Judgment as a matter of law are **DENIED**.

Very briefly, this Court will address some of the arguments included in those motions.

As to the contentions relative to the *Noerr-Pennington* doctrine, those arguments were not raised in pretrial motions, at trial, or at the time of the request for judgment as a matter of law during trial.

Even if those arguments had not been waived, as previously stated by the Court, any such privilege was qualified only. Given the jury's finding of actual malice, defendants' contentions in this regard would fail in any event.

As to defendants' contentions concerning the verdict relative to the interference with prospective business interests claim, defendants' argument relative to Chilton Ranch and Cattle Co. overlooks the relationship of the plaintiffs vis a vis each other. Plaintiff James K. Chilton, Jr. is himself, a subset of both plaintiffs in the case.

Certainly the Chilton Ranch and Cattle Co. had a business relationship with the U.S. Forest Service when that entity had to approve the number of Chilton Ranch & Cattle Co. cows that could be grazed on the allotment and the time of year that said grazing was permissible. The cattle were a primary consideration in the U. S. Forest Service's decision whether to renew the grazing permit. The Chilton Ranch & Cattle Co. was the primary entity that the U.S. Forest Service scrutinized in its efforts to monitor the allotment in each year's annual operating documents. The U.S. Forest Service's business relationship wasn't simply with James K. Chilton, Jr. but with both plaintiffs. The "scrutiny" discussed by Webb wasn't aimed only at James K. Chilton, Jr. In fact, defendants' stated goal of "pausing" grazing was most directly aimed at the Cattle Co.

The Court must presume that the jury saw that the damages applied to both plaintiffs. And, the Court reminds the parties that defendants approved a general verdict form after extensive discussion -- that discussion primarily initiated by the Court.

Carlene Quiles
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RULING

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As to the amount of punitive damages awarded, this Court is forced to conclude that its preference for a lower ratio of punitive damages to compensatory damages is insufficient to set aside the determination of the jury that \$500,000 in punitive damages was the appropriate decision. This Court cannot find that the jury's decision was based upon passion or prejudice. The jury was provided with a good deal of information about defendant Center for Biological Diversity's objectives and funding sources as well as its non-profit status. From the Court's prospective, the jury in the instant case was intelligent, attentive to detail, and outwardly thoughtful. Under the circumstances, this Court will not substitute its judgment for that of the jury. Given the denial of defendants' Post-Trial Motions,

IT IS ORDERED that this Court's previous stay will remain in full force and effect for thirty (30) days from this date or until a supersedeas bond, is posted.

cc: **Hon. Richard Fields**
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