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Agency
Amsterdam Court of Appeal
Date of judgment
12-05-2026
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Case number
200.349.631/01
Areas of law
Civil law
Special features
Appeal
Content indication
Liability law. Professional liability of a law firm for advice provided by a tax specialist. Professional error regarding advice on the consequences of residency under US tax law. Compensation for additional tax paid and a fine. Causal link, assessment of damages, standard of comparison, attribution (Art. 6:98 BW), set-off of benefits (Art. 6:100 BW), contributory negligence.
Finding sites
Rechtspraak.nl
NLF 2026/0955 with annotation by Mr. YEJ Geradts
V-N Vandaag 2026/983
NTFR 2026/864 with annotation by Mr. ED Postema
Sdu Nieuws Belastingzaken 2026/605
NDFR Nieuws 2026/793
V-N 2026/27.22 with annotation by Editorial Staff
JA 2026/70 with annotation by Mr. EAL van Emden
RAV 2026/63

Enriched statement

Pronunciation

AMSTERDAM COURT OF APPEAL
Department of Civil and Tax Law, Team I

case number : 200.349.631/01

Amsterdam District Court case/docket number: C/13/715714 / HA ZA 22-277

Judgment of the multi-member civil chamber of 12 May 2026

in the case of

1
[appellant] ,
residing in [place 1] , [place 2] (United States of America),

2. **THE EAGLE BV** ,

established in Almere,

3. the legal entity under foreign law

LA AL THE WAY LLC ,

established in Wilmington, Delaware (United States of America),

4. the legal entity under foreign law

AFTER MIDNIGHT PRODUCTIONS LTD ,

established in Nicosia (Cyprus),

appellants,

lawyer: Mr. RGJ de Haan in Amsterdam,

in return for

the company governed by foreign law

GREENBERG TRAURIG LLP,

established in New York, New York (United States of America),

respondent,

Lawyer: Mr. JC van Nass in Amsterdam.

Appellants are hereinafter referred to individually as [appellant], The Eagle, LATW, and After Midnight; together, these parties are referred to as [appellants]. The appellee is hereinafter referred to as Greenberg Traurig.

1
The case in brief

[Appellant] and his companies were advised on tax matters on behalf of Greenberg Traurig. The District Court established that errors were made in the provision of advice in 2012 and 2013. It was not recognized that [appellant] became a tax resident in the United States (US) effective January 1, 2012, and that consequently, income from a trust established by [appellant] and its subsidiaries was also subject to US taxation. [Appellant] had to pay additional tax and a fine in the US, totaling nearly USD 17 million. In these proceedings, [appellants] claim this amount from Greenberg Traurig by way of damages. The District Court established a professional error on the part of Greenberg Traurig. The costs of the advisors for analyzing the incorrect advice and for determining and mitigating the resulting damages were awarded as damages. The District Court deemed the tax damages ineligible for award. The Court of Appeal reaches a different conclusion and awards the claimed damages on appeal.

2
The proceedings on appeal

[Appellants] appealed by summons dated 25 October 2024 against a judgment of 31 July 2024 of the District Court of Amsterdam, rendered under the aforementioned case/docket number between [appellants] as plaintiffs and, among others, Greenberg Traurig as defendant.

The parties subsequently submitted the following documents:

- statement of grounds for appeal, with exhibits;
- statement of defense, with exhibits.

An oral hearing took place on 3 February 2026. The lawyers explained the case using speaking notes that they submitted. Additional documents were introduced into the proceedings by [appellants].

An official record was drawn up regarding the substantive handling of the case during the hearing. After the handling of the substantive part of the case, the Court decided that the (exploratory) discussion between the parties, aimed at reaching an amicable settlement of the dispute with the assistance of the Court, would take place behind closed doors. A separate official record was drawn up regarding this oral ruling and the reasoning thereof.

After the oral hearing, the case was adjourned for consultation between the parties.

Finally, judgment was requested on the docket of 24 February 2026.

3
Facts

The Court proceeds from the following facts.

3.1.
[appellant] is an internationally known DJ and music producer, with the artist name [name 1].

3.2.
The Eagle was founded in 2000 when [appellant] was still living in the Netherlands. Until 2009, [appellant] conducted his business activities in The Eagle and in its subsidiaries.

3.3.
Greenberg Traurig is an international law firm.

3.4.
[Name 2] (hereinafter: [Name 2]) was a tax advisor and partner at Greenberg Traurig up to and including December 2013, specializing in setting up international tax structures with a focus on the media and entertainment industry. From January 2014 to March 2016, [Name 2] was a partner at Certa Legal advocaten BV (hereinafter: Certa Legal). From March 2016, [Name 2] performed tax advisory services through his own business.

3.5.
[Name 2] was the regular tax advisor to [appellants] from 2008 until January 1, 2019. He was a co-defendant of Greenberg Traurig in the first instance. The proceedings, insofar as they relate to the claims brought against [Name 2], were adjourned in the first instance.

3.6.
Due to the departure of [name 2] from Greenberg Traurig, the contractual relationship between Greenberg Traurig and [appellants] came to an end as of January 1, 2014. [Name 2] continued his work for [appellants], first on behalf of Certa Legal, where he worked from January 2014, and from March 2016 through his own company.

3.7.
Up to and including 2008, [appellant] was liable for tax in the Netherlands on his worldwide income, which he received directly or via The Eagle.

3.8.
On 12 November 2008, [name 2] advised adjusting the 'tax residency' of [appellant] and the structure of his businesses. In short, it was advised that [appellant] move from the Netherlands to the US without becoming a tax resident there, and that legal entities be established in the US, Cyprus, and Guernsey. In the context of his advice regarding tax opportunities in the US, [name 2] sought information from the US-based firm [company] (hereinafter: [company]).

3.9.
The advice of [name 2] has been implemented. [Appellant] emigrated from the Netherlands for tax purposes with retroactive effect as of July 1, 2008. Furthermore, various legal entities were established, namely four companies in the US, a trust under the laws of Guernsey, and a company in Cyprus.

3.9.1.
One of the companies incorporated in the US in 2009 is LATW. [Appellant] became liable for tax in the US on the profits generated in the US companies and all other income he derived from US sources.

3.9.2.
A trust named Safe From Harm Trust (hereinafter: the Trust) was established in Guernsey. The assets of [appellant] were placed in the Trust. [appellant] was both the founder (*settlor*) and the *beneficiary* of the Trust. Fortis Trustees (Guernsey) Limited was appointed as *trustee* . Fortis Trustees (Guernsey) Limited was later replaced by Intertrust Trustees (Guernsey) Limited. Safe From Harm Ltd (hereinafter: SFH Ltd), also established in Guernsey, was established as a subsidiary of the Trust. The economic ownership of intellectual property rights was placed in SFH Ltd.

3.9.3.
The company incorporated in Cyprus in 2009 is After Midnight. After Midnight is a subsidiary of SFH Ltd. After Midnight serves to operate all activities of [appellant] taking place outside the US and to exploit the intellectual property rights. In 2010 and 2011, four more Cypriot subsidiaries of SFH Ltd were incorporated.

3.10.
Emigration from the Netherlands ensured, among other things, that [appellant] was no longer taxable in the Netherlands on his worldwide income. From that moment on, in the Netherlands, [appellant], as a foreign taxpayer, was liable for tax only on Dutch income received by him (in short: income from Dutch sources).

3.11.
U.S. tax law (the *United States Internal Revenue Code of 1986* , hereinafter: IRC) distinguishes between a *grantor trust* and a *non-grantor trust* . In a *grantor trust,* the *grantor* (setr/contributor) holds direct or indirect control over the trust assets. Under the IRC, a grantor trust is considered transparent, and the *grantor* of a *grantor trust* is regarded as the owner of the assets held within the *grantor trust and the recipient of the income and profits enjoyed by the grantor trust* . This means that if that owner/grantor is domestically taxable in the U.S., he is subject to U.S. income tax on the entire income of the *grantor trust* in the U.S. as if he had received that income himself. Certain categories of income (so-called ' *subpart F income* ') received by a subsidiary of the *grantor trust* (which qualify as a *controlled foreign corporation* or *CFC*) are also directly subject to U.S. taxation at the *grantor level* .

A *non-grantor trust* is a trust that is not *a grantor trust* . A *non-grantor trust* is independently taxable, and as a rule, the income of a *non-grantor trust* is not directly subject to U.S. taxation. If the non- *grantor trust* makes a distribution to a beneficiary who is a tax resident in the U.S., that beneficiary will be taxed on that distribution in the U.S. via income tax.

3.12.
Under US tax law, the Trust was to be regarded as a foreign *grantor trust* .

3.13.
To prevent [appellant] from being classified as a tax *resident* of the US – and becoming liable for tax in the US on his worldwide income – he had to limit

the number of days he would be physically in the US to below the limit of the IRC's *Substantial Presence Test* (hereinafter: SPT). The IRC provides that an *alien* – a person who is not a US citizen or permanent resident (*green card* holder) – must be treated as a resident of the US for the purposes of the IRC in a year (and be liable for tax in the US on his worldwide income) if he exceeds the SPT limit in that year. The SPT entails that an *alien* qualifies as a resident in a calendar year if (i) the alien is present in the US for at least 31 days in that year; and (ii) the sum of a) the number of days on which he was present in the US in that year and b) the product of the factor 1/3 and the number of days on which he was present in the US during the preceding year and c) the product of the factor 1/6 and the number of days on which he was present in the US in the year preceding that, is equal to or greater than 183 days.

3.14.
[Appellant] made use of various service providers, including Full Management Support BV, a business service provider in the field of accountancy and administration, based in Breda, and the New York-based booking agency AM Only Inc., which handled [appellant]'s worldwide bookings. These two companies kept track of how many days [appellant] spent in the US per year.

3.15.
From 2009 up to and including 2011, [appellant] remained below the SPT limit.

3.16.
In 2010, correspondence took place regarding a possible exceeding of the SPT limit in 2011. In response to a question from [appellant], [name 2] approached [company] regarding the tax consequences of exceeding the SPT limit. In an email dated 8 November 2010, [name 2] wrote to [company]:

" [appellant] sent me an e-mail in Dutch about the day count in 2011. When he looks at these contracts, he will spend less than 120 days in the US. However, he asked me what would happen if he spent more days than allowed in the US. I would like to answer that [appellant] would be taxed in the US for his worldwide income in 2011 and if we don't do anything about his income from Cyprus and Guernsey, he would be taxed in the US for that income as well. Saying this, we would need to minimize his income from Cyprus and Guernsey to nil.

Please confirm whether my feeling is right and, if so, are we still allowed to deduct royalty payments from Cyprus in the US? Further, I need to know if this would have any consequences in 2012.

If I'm wrong, this means that we must expand [appellant]' touring in Europe for 2011."

3.17.
On November 9, 2010, an employee of [company] replied to [name 2]:

"You are correct, if [appellant] is present in the USA for at least 31 days in the current calendar year and 183 days for the current and two prior calendar years (3 year formula in [appellant] day count schedule), he would be taxed as a resident of the USA. Therefore, his worldwide income would be subject to tax in the USA. There is an exception to the substantial presence test above which is if [appellant] individually has a tax home in a foreign (non USA) country that has a reciprocal tax treaty with the USA and has a closer connection to the foreign country, and was physically present in the USA for less than 183 days during the current tax year.

The fact of whether [appellant] is considered a tax resident of the USA will not affect the ability to deduct the royalty payment but the actual tax benefit will be lost since he will be taxed on his worldwide income in the USA.

Regarding tax year 2012, we would need to look at the number of days [appellant] is present in the USA in 2012 and the preceding 2 calendar years to determine if he would be taxed as a resident of the USA."

3.18.
In response to the message of 9 November 2010, [name 2] asked [company] the following additional question on the same day:

"(…) do you mean that the US tax authorities will disregard the Cyprus structure? and that [appellant] will also be taxed on the income that flows to AMP [After Midnight Productions, hof] from the rest of the world?"

3.19.
The answer to that from the employee of [company] is:

"The USA would tax the income that flows directly to [appellant] (salary etc.) - if AMP is a pass through entity than the net income from company would be taxed by USA. If AMP is the equivalent of a "C Corporation" in the USA whereby the income is retained in the company and the company pays tax based on the net income, than the USA would not tax the company's net income until its distributed to [appellant] .”

3.20.
In an email dated 11 November 2010, [name 2] wrote to [appellant]:

“If you are in the US for more than 123 days in 2011, you will become liable for US tax in 2011, with the consequence that, in addition to your income from LA All the Way, you will also be taxable on the income you receive from Cyprus and Guernsey. Currently, that income is untaxed; soon, it will be taxed at approximately 33%. We can remedy this tax liability by reducing the income you derive from Cyprus and Guernsey to zero. (…) We will, however, have to adjust some agreements. Additionally, this means that you will also have to keep an eye on your US days in 2012, because you carry over approximately 33% of the days from 2011 into 2012. You would therefore start with about 70 days in 2012.”

3.21.
In the year 2012, [appellant] exceeded the SPT day limit. As a result, as of January 1, 2012, he became a tax resident of the US and liable for tax in the US on his worldwide income, including the income of the Trust and the income of its subsidiaries attributed to the Trust (*subpart F*) (hereinafter briefly: the income of the Trust).

3.22.
The US tax returns were filed by [company] on behalf of [appellant] from 2009 through 2017. [Company] was also responsible for the administration of LATW. In the US tax returns filed by [company] on behalf of [appellant] for the years 2012 through 2017, the income of the Trust was not declared.

3.23.
In 2018, [appellant] approached another law firm in the US for tax advice. That firm determined that the Trust qualifies as a *grantor trust* under US tax law and that [appellant] should have included the income of the Trust in his US income tax returns from 2012 onwards.

3.24.
[Appellant] subsequently participated in a voluntary disclosure program in the US called *Streamlined Domestic Offshore Procedures* (SDOP). In execution thereof, [appellant] filed amended tax returns for the years 2016 and 2017 on October 15, 2019. Based on this, [appellant] subsequently paid

USD 10,217,269 in US federal income taxes for the years 2016 and 2017 on the income of the Trust.

3.25.
For the year 2018, [appellant] paid USD 1,212,765 in income tax on the income of the Trust. [Appellant] also paid a fine totaling USD 5,558,918.70 pursuant to the SDOP.

3.26.
No income tax was paid in the US on the Trust's income in the years 2012 through 2015.

3.27.
In January 2019, [appellants] terminated the contractual relationship with [name 2].

3.28.
In 2019, [appellant] was no longer a tax resident of the US. As of 2020, he became a tax resident of the US again. In 2020, [appellant] transferred the assets of the Trust to a US *grantor trust* under the laws of the State of Nevada.

3.29.
The U.S. Public Prosecution Service initiated a criminal investigation, in which [name 2] was identified as a suspect, among others, for organizing tax evasion. In March 2023, [name 2] was arrested in Italy at the request of the U.S. authorities, and in September 2023, he was transferred from Italy to the U.S. for extradition. As part of a so-called *plea deal,* [name 2] pleaded guilty to one of the charges brought against him. On February 13, 2025, the U.S. judge sentenced [name 2] to a prison term of 30 months, less time served in pre-trial detention.

4
Court proceedings

4.1.
In summary, [appellants] claimed before the District Court that it be declared that Greenberg Traurig is in culpable breach of its obligations under the contract for services existing between them.

4.2.
In addition, [appellants] have claimed, insofar as still relevant on appeal, that Greenberg Traurig be ordered to pay the following amounts:

a. USD 10,217,269.00 for income tax paid by [appellant] to the U.S. Internal Revenue Service pursuant to the amended tax returns for the years 2016 and 2017, plus statutory interest thereon from 15 October 2019;

b. USD 1,212,765.00 for income tax paid by [appellant] to the U.S. Internal Revenue Service pursuant to the income of the Trust under his 2018 tax return, plus statutory interest thereon from 15 October 2019;

c. USD 5,558,918.70 for a fine paid by [appellant] to the US Internal Revenue Service, plus statutory interest thereon from 15 October 2019.

4.3.
Furthermore, it was claimed in the first instance that Greenberg Traurig be ordered to pay [appellants] damages, to be determined at a later stage, in respect of the consultancy fees paid by [appellants] for analyzing the incorrect advice and for determining and mitigating the damage resulting therefrom.

4.4.
The court granted the declaratory judgment referred to in 4.1 above and the order for damages, to be determined at a later stage, as stated in 4.3. The claim referred to in 4.2, which sought payment of specific amounts of damages, was rejected by the court. The court's reasoning for this rejection will be addressed below in 6.5 in the assessment. [Appellants], as the parties primarily unsuccessful in the proceedings, were ordered to pay the costs of the proceedings in the first instance.

5
Claim on appeal

5.1.
[Appellants] seek on appeal the annulment of the contested judgment insofar as part of their claims was dismissed therein. They seek that the amounts of damages referred to in 4.2 above be awarded and that the judgment be upheld in all other respects, with an order – enforceable provisionally – for Greenberg Traurig to pay the costs of the proceedings in both instances, plus interest if payment is not made within fourteen days of the ruling.

5.2.
Greenberg Traurig has requested confirmation of the contested judgment, with an order – enforceable provisionally – for [appellants] to pay the costs of the proceedings.

6
Judgement

6.1.
The starting point for the assessment of [appellants]' claim for damages is that a contractual relationship existed between the parties. Dutch law applies to the agreement between [appellants] and Greenberg Traurig. [Name 2] performed tax work for [appellants] on behalf of Greenberg Traurig. A contractor must act as may be expected of a reasonably competent and reasonably acting professional peer.

The court's judgment regarding the alleged professional error/deficiency

6.2.
The court has concluded that, based on the mutual statements and conduct, it must be assumed that [name 2] fulfilled a coordinating role for the global tax affairs of [appellant], without having direct responsibility for US taxes or advising on US tax law. By virtue of his role as *global tax coordinator,* [name 2] was, however, obliged to obtain sufficient and sound information and to seek advice regarding the content of US tax law. According to the court, in 2012 [name 2] ought to have ensured that sound information and advice were available regarding the tax consequences should [appellant] become a US tax resident. This applies in particular to the question of whether and to what extent the Trust would be involved in any potential taxation under US tax law in that event. [name 2] should not have relied on the summary information he received from [company]. [name 2] should have ensured that he received reasoned advice on the aforementioned points from someone with sufficient expertise in the field of US tax law. It has not been established that [name 2] possessed such advice. Consequently, [name 2] did not act in 2012, and thereafter, in accordance with what could reasonably be expected of him as coordinating tax advisor. The consequence of this is that [name 2] failed to realize that exceeding the SPT limit would result in [appellant] becoming a US tax resident as of January 1, 2012, rather than from 2013, and that the Trust's income would be subject to US taxation.

6.3.
The foregoing has led the court to the conclusion that [name 2] did not act in 2012 and 2013 as could be expected of a reasonably acting and reasonably competent coordinating tax advisor. The conduct of [name 2] must be attributed to Greenberg Traurig as the contractor of [appellant]. This means that Greenberg Traurig failed to fulfill the obligations under the contract for services with [appellants], such that the declaratory judgment to that effect has been granted by the court.

The court's judgment regarding the causal link and the claimed damages

6.4.
In answering the question whether tax damage was suffered by [appellants] as a result of the deficiency, the court took as its starting point that the current situation of [appellants] must be compared with the hypothetical situation in which no professional error had been made. In the situation without a professional error, it would have been recognized that [appellant], if he were to exceed the SPT limit in 2012, would become a tax resident of the US and would, in principle, be liable for tax in the US in his private capacity as of January 1, 2012. Consequently, he would be taxed in the US not only on the income that would be distributed to him personally, but also on his entire worldwide income earned or held through the Trust and its subsidiaries.

6.5.
The court answered in the negative the question of whether an alternative was available to [appellant] in the hypothetical situation without professional error, by which taxation of the Trust could have been avoided and which alternative would actually have been utilized. According to the court, it cannot be assumed that [appellant] would have chosen to limit the duration of his presence in the US to below the SPT limit in the hypothetical situation without professional error. That would have had substantial commercial consequences for [appellant]. It has not been made plausible that [appellant], in view of those commercial consequences, would have opted for a limitation on the number of appearances in the US. By remaining below the SPT limit and thereby limiting the number of appearances in the US, [appellant] would have had significantly less income than he actually had in the years 2012 through 2014, during which he could be in the US for an unlimited number of days without tax impediments. According to the court, in order to determine whether net damage has occurred, a comparison of [appellant]'s entire income and asset position over several years would have to be made. According to the court, [appellants] have provided no basis

whatsoever for making such a comparison.
Furthermore, the court concluded that [appellants] have insufficiently substantiated that creating a *closer connection* with a country other than the US was a realistic and legally and fiscally feasible option. The court also deems it implausible that [appellant] would have converted the Trust into a *non-grantor trust* at any point solely to avoid taxation on the Trust's income.

The foregoing has led the court to the conclusion that it cannot be established that [appellant] would have been financially better off on balance in the hypothetical situation without the professional error than in the situation in which he currently finds himself. For that reason, the claim for compensation for tax damage has been rejected. However, the court has granted the claim regarding compensation for the consultancy fees, to be determined later in a damages assessment procedure, relating to the analysis of the incorrect advice and the determination and mitigation of the resulting damage.

Positions of the parties on appeal

6.6.
The appeal of [appellants] is directed, in summary, against the rejection by the District Court of the alleged causal link between the professional negligence of [name 2] and the specific amounts of damages claimed by [appellants].

This damage relates to the amount of income tax subsequently paid in the US pursuant to the voluntary disclosure scheme for the years 2016 through 2018. In addition, [appellants] claim, by way of damages, an amount equal to the penalty paid to the US tax authorities. At first instance, [appellant] still took into account the possibility that tax damage might also arise for other years. It is now assumed that the tax damage remains limited to the years for which an additional amount of tax was paid under the voluntary disclosure scheme. This has led to a partial reduction of [appellants]' claim on appeal.

6.7.
Greenberg Traurig has acquiesced in the court's judgment that [name 2] should have ensured a properly elaborated written advice, instead of relying on [company]'s emails and statements. Greenberg Traurig also acquiesces in the judgment that, as a result, it is in principle liable for the consultancy costs to be determined later. In the event that the grounds of appeal of [appellants] regarding the existence of a causal link with the claimed tax

damages succeed on appeal, Greenberg Traurig has referred to and supplemented a number of defenses from the first instance. These relate to the extent of the damages claimed by [appellants], attribution, set-off of benefits, and contributory negligence.

Causal relationship

6.8.
At first instance, [appellants] took the position that it is [appellant] who suffered the alleged tax damage (see paragraph 5.30 of the contested judgment). It was not argued that The Eagle, LATW, and After Midnight also suffered this damage. The Court therefore finds that there are no grounds for awarding compensation to The Eagle, LATW, and After Midnight. Their appeal fails on that ground.

The following relates solely to the damage allegedly suffered by [appellant].

6.9.
On appeal, the standard by which the District Court assessed whether a causal link exists between the established professional error and the claimed damages has not been challenged. The dispute on appeal concerns the application of that standard in the specific case at hand, including the question (which [appellants] raised in ground 1) whether, on the basis of the so-called reversal rule, the existence of a causal link should be provisionally assumed. Furthermore, essentially, the comparative standard formulated by the District Court is not in dispute, insofar as it relates to the manner in which [name 2], according to the District Court, ought to have behaved in the hypothetical situation without a professional error. To that extent, the Court of Appeal will hereinafter proceed from the same standard and premises as the District Court.

6.10.
For Greenberg Traurig to be liable for the damages claimed by [appellant], a causal link must exist—in the sense of a condicio sine qua non relationship—between the failure to perform the contract for services and the claimed damages. Pursuant to the general rule of Article 150 of the Code of Civil Procedure, the burden of proof regarding the causal link between the professional error and the alleged damages rests on [appellant]. Depending on the circumstances of the case, an exception to this general rule may apply.

6.11.

In the situation without professional error, [name 2] would have obtained sufficient and sound information and advice regarding the consequences for [appellant]'s tax liability if [appellant] were to be classified as a US tax resident. It must be assumed that if [name 2] had ensured sound advice, it would have been recognized that the Trust should be classified as a *grantor trust* . Furthermore, it would then have been recognized that if [appellant] were to exceed the SPT limit in 2012, he would be classified as a US tax resident effective January 1, 2012, and would in principle be subject to US taxation on his worldwide income, including the income of the Trust.

6.12.
Greenberg Traurig's liability in this case rests on the breach of the obligation to provide [appellant] with sufficient information and advice regarding U.S. tax law. This obligation was intended to enable [appellant] to make well-informed decisions with regard to his income and asset position. The information obligation resting on Greenberg Traurig is therefore not intended to protect [appellant] against the risk of U.S. taxation, but to enable [appellant] to make well-informed decisions. The failure to comply with this information obligation created the risk that [appellant] made certain choices which he would not have made if he had been well-informed. There is no room for the application of the reversal rule in such a case, because the requirement that it has been established that Greenberg Traurig acted in violation of a norm aimed at preventing a specific danger regarding the occurrence of damage has not been met (HR 2 February 2007, ECLI:NL:HR:2007:AZ4564). Ground of appeal 1, in which the application of the reversal rule is argued, therefore fails.

6.13.
In answering the question regarding the existence of a causal link between the professional error and the claimed damages, the issue is whether it is plausible that [appellant] would have made different decisions in the hypothetical situation in which he had been well informed and advised regarding US tax law. It must be established what [appellant] would have done in that case and, subsequently, what consequences his choices would have had for his income and asset position.

Alternative scenarios

6.14.
On appeal, [appellants] argue that, in the hypothetical situation without professional error, [name 2] would have advised [appellant] on three options

by which taxation on the Trust could have been avoided. These are scenarios that were also discussed in the first instance. The first proposed scenario is that [appellant] would have prevented being classified as a US tax resident by remaining below the SPT limit from 2012 onwards. The second scenario is that [appellant] would ensure that he stayed in the US for less than 123 days in 2012 and for less than 183 days per year from 2013 onwards. Furthermore, a so-called *closer connection* would be created with another country, such as the United Kingdom, from 2013 onwards. The third scenario outlined by [appellants] is the conversion of the *grantor trust* into a *non-grantor trust* , whereby it would preferably be prevented until 10 February 2014 (five years after the contribution of assets to the Trust) that [appellant] would be classified as a US resident for tax purposes. In the alternative, [appellants] invoke the doctrine of 'loss of opportunity', arguing that the failure to obtain sound tax advice deprived them of a real opportunity to avoid taxation in the US.

SPT limit

6.15.
The premise of the tax structure established in 2008/2009 was that [appellant] would not be a tax resident in any country (see the undisputed finding of the court in the judgment under 5.16). In line with this, a daily count was maintained to prevent [appellant] from exceeding the SPT limit and thereby becoming a tax resident of the US. The SPT limit is calculated based on the current year and the two preceding years. Consequently, the number of days required to remain below the SPT limit can vary from year to year. [appellant] could have avoided becoming a tax resident of the US by being in the US for a maximum of 123 days in 2012 and for a maximum of 121 days in each subsequent year.

6.16.
In the years 2009–2011, the number of days [appellant] spent in the US remained below the SPT limit. In May 2012, [name 2] was informed that, based on the tour program, [appellant] would likely stay in the US for more than 180 days in 2012. At that time, [name 2] should have obtained sufficient and proper information and advice regarding the consequences of any potential exceeding of the SPT limit under US tax law, so that [appellant] could make an informed decision based on that information as to whether or not he wished to exceed the SPT limit.

6.17.

In May 2012, according to [appellants], there was still more than sufficient time to adjust the 2012 tour schedule to remain below the SPT limit. On October 15, 2012, the estimated daily count for 2012 was adjusted from 180 to 155, so that the SPT limit would still be exceeded, but according to [appellants], even then there was still sufficient opportunity to adjust the tour schedule in such a way that the SPT limit was not exceeded that year. Only from November 2012 onwards would already scheduled performances in the US have to be cancelled to avoid exceeding the SPT limit.

6.18.
By way of explanation, [appellants] have put forward, among other things, the following, partly based on detailed travel and tour schedules. In 2012, [appellant] had already been an established name in the world of *electronic dance music* (EDM) for a long time. Every year, he receives more requests for performances than he can handle. Together with his *booking agent* , he selects the performances he wishes to accept. He is completely free and flexible to choose where and when he wishes to perform. From 2012 to 2018, [appellant] had no fixed place of residence. He led a nomadic existence all over the world and lived in airplanes and hotels. An average show was booked approximately two to six months in advance. For a nightclub, the show can sometimes even be booked within a few weeks. For a performance at a festival, the booking can be earlier, about six to nine months in advance. Furthermore, [appellants] have argued that various performances in the US that took place in December 2012 were not booked until October 2012. That is well after May 2012. If the performances in the US on December 5-8, 2012, and December 14-15, 2012, had not been booked, [appellant] could have remained outside the US from November 11, 2012, to December 28, 2012. He would then have been in the US for 121 days in 2012 instead of the actual 152 days. [Appellant] could have reduced the number of days of his stay in the US by a few more days by leaving the US after his performance on December 28, 2012. After all, the performances on December 29, 30, and 31 had not yet been booked in May 2012, but were only confirmed in August, December, and September 2012, respectively. [Appellants] argue that [appellant] could have performed in Asia, Europe, Mexico, or Canada instead of the performances that actually took place in the US in December 2012. A similar income would have been earned through those performances.

6.19.
According to [appellants], in the hypothetical situation without professional error, the tour schedule would have been arranged from 2013 onwards in such a way that the SPT limit would not have been exceeded. [Appellant]

attaches great value to his *residencies* (series contracts with nightclubs) in Las Vegas. He would have scheduled his performances in the most important clubs there, but without exceeding the SPT limit. He had complete freedom to choose dates and could, for example, have scheduled performances in quick succession to avoid spending an unnecessary number of days without performances in the US. To substantiate the manner in which the tour schedule would have been arranged in that case, [appellants] refer to the tour schedule as it was actually followed in the years 2018 and 2019. In both years, [appellant] performed over sixty shows in the US and remained below the SPT limit. The majority of those shows took place in Las Vegas. During these years, between performances in Las Vegas, [appellant] spent a great deal of time in Vancouver (Canada), which is a short travel distance from and in the same time zone as Las Vegas. He also regularly spent time in Mexico, which is accessible from Las Vegas by a relatively short four-hour flight and therefore has a time difference of only two hours.

6.20.
Furthermore, [appellants] have pointed out that a large part of his income is generated outside the US. They have submitted an overview of the highest fees in the years 2012–2019, all of which relate to performances outside the US. Moreover, according to them, significantly less tax needs to be paid on the fees in certain countries than in the US. [Appellants] also point out that [appellant]'s reputation and income do not depend solely on performances and shows. He generates income by releasing music on platforms such as Spotify. He is very popular on Spotify, and releasing a new song can therefore be more lucrative than a performance.

6.21.
During the hearing on appeal, [appellant] emphasized that, from a commercial point of view, there was no reason for him to be present in the US for longer than the days on which he gave performances. Commercial contacts with clubs and show organizers were conducted through [appellant]'s *booking agent* . Requests for performances were received there, and contacts were maintained and agreements made. [appellant] could easily have limited the duration of his stay in the US by choosing to arrive in the US shortly before performances and then travel out of the country again. He did not have a home in the US during the years to which the dispute relates. He did, however, have one in Sweden and on Ibiza. He also regularly spent time there. [appellant] was accustomed to spending the vast majority of the year in hotels all over the world. He was not tied to any country or place. His partner traveled with him and was able to combine this well with her work as a model.

6.22.
Greenberg Traurig's defense entails that, in the hypothetical situation where [appellant] had been properly advised, he would have disregarded [name 2]'s advice to stay below the SPT limit. During those years, [appellant] experienced a spectacular relaunch of his career. It was the *golden window* of American EDM. From 2012 onwards, [appellant] seized the opportunity to maximize his income from performances in the US. He spent more time in the US to perform highly lucrative gigs there. According to Greenberg Traurig, it is not plausible that [appellant] would have acted differently in the situation without professional negligence, or at least would not have been able to do so without very adverse consequences for his income and asset position.

6.23.
The Court considers the following. When [name 2] was informed in May 2012 that [appellant] would likely stay in the US for more than 180 days in 2012 based on the tour program, [name 2] was required to take action. He was required to ensure that [appellant] would be provided with advice regarding the consequences thereof under US tax law. The appellants' contention that it must have been possible for [name 2] to arrive at concrete advice within a few weeks with the assistance of a US tax expert has not been contested. It is plausible that this advice would at least entail that [appellant] should remain below the SPT limit to avoid taxation in the US on the income of the Trust. It must be assumed that, in the context of the advice, it would have been estimated that [appellant] would have to pay approximately USD 4.2 million in additional tax in the US for each fiscal year in which he exceeded the SPT limit.

6.24.
The Court considers it sufficiently plausible that [appellant] would have followed this advice. In the hypothetical situation without professional error, he would have adjusted and arranged the travel and tour schedule in such a way that the duration of his stay in the US would remain below the SPT limit. Consequently, the Court arrives at a different assessment than the District Court. Unlike the District Court, the Court considers the ultimately increased duration of [appellant]'s stay in the US not to be the result of, in short, commercial considerations, but of the – in hindsight – incorrect choices made in the absence of sound tax advice from [name 2]. It is established that Greenberg Traurig did not provide [appellant] with sufficient information and advice to enable him to make well-informed decisions. Based on this, [appellants] have rightly argued that [appellant] relied in 2013 and 2013 on

the fact that the consequences of exceeding the SPT limit would merely have the (relatively limited) effect that the income he personally received would be subject to taxation in the US. In view of the limited amount of additional tax owed in the US, he saw no need to adjust the number of days in the US. Under those circumstances, the fact that [appellant] stayed in the US for more days than the SPT limit does not lead to the conclusion that his physical presence in the US was connected to and necessary for his performances there, the building of strong working relationships in the US, and the building of his career, nor can it be concluded that the situation would not have been different if the professional error were disregarded. The crucial point in the assessment is whether it is sufficiently plausible that, in the hypothetical situation without the professional error, [appellant] would have followed the advice of [name 2] to remain below the SPT limit a few weeks after May 2012. The Court considers it plausible that he would have done so. The design of the tax structure established in 2008/2009 was aimed at limiting taxation because [appellant] was stateless for tax purposes, was not considered a resident in any country, and was taxed on his entire income. That arrangement was specifically intended to avoid tax levies, such as those in the US. It has not been made plausible that, a few weeks after May 2012, there were commercial reasons or other (potential) benefits for [appellant] that would have led him to choose, contrary to the advice of [name 2], to spend time in the US exceeding the SPT limit in the future, with the consequence of an additional tax liability of approximately USD 4.2 million per year. At the hearing before the Court of Appeal, [appellant] stated that—if he had been correctly informed in advance that the consequence of the extra days of stay in the US would be that he would owe USD 4.2 million in additional tax annually—he would have avoided exceeding the SPT limit in order to avoid USD 4,to 'save' 2 million annually. [Appellants] have sufficiently and concretely explained that it was also possible for [appellant] to arrange his travel and tour schedule in such a way that he could perform the important appearances in the US that year, and also in subsequent years, without having to exceed the SPT limit and thus without having to pay a substantial additional amount of tax. The Court considers it plausible that, in the hypothetical situation without professional error, with a carefully arranged travel and tour schedule, [appellant]'s career would have developed in the same manner as was actually the case, without him having to compromise his desire to extensively optimize his income and asset position for tax purposes.

In reaching this judgment, the Court did not rely on the exhibits submitted by [appellants] prior to the oral hearing. Consequently, there is no reason to grant Greenberg Traurig the opportunity to respond to those exhibits by written submission.

6.25.
The foregoing means that it is sufficiently plausible that [appellant] would have made a different choice in the hypothetical situation without professional error than he actually did. In that case, he would have adhered to the SPT limit and would therefore not have owed tax on the income of the Trust. Consequently, a causal link exists between the professional error and the payment of the additional tax and the penalty in the US. Based on this, the other scenarios put forward by [appellants] and the reliance on the doctrine of 'loss of opportunity' do not need to be discussed.

Principles of damage assessment

6.26.
In the context of determining the extent of the damages eligible for compensation, the situation in which [appellant] currently finds himself must be compared with the one in which the travel and tour schedule was arranged without exceeding the SPT limit. To this end, the Court has assumed that, in that hypothetical scenario, [appellant] would have performed the important appearances in the US and his career would have developed in the same manner as was actually the case. This means that [appellant]—as [appellants] argue—would have generated the same income in the situation without professional error as he actually did, but the additional tax paid and the fine in the US would not have been due. Consequently, the Court does not follow Greenberg Traurig's argument that [appellant] would have earned much less in the situation without professional error than he actually did.

Amount of tax damage

6.27.
With regard to the amount of tax damage, [appellants] have argued the following. At the end of 2018, [appellant] received tax advice from another law firm. It then became apparent that [appellant] should have paid tax in the US on the income of the Trust since 2012. That income had not been declared in his US tax returns. Calculated over the fiscal years 2012–2017, this involved an amount of over USD 28 million in unpaid tax, excluding any penalties. Under the voluntary disclosure scheme, [appellant] had amended tax returns filed for the fiscal years 2016 and 2017, pursuant to which an amount of USD 10,217,269 in additional tax was paid for these two years. In addition, a penalty of USD 5,558,918.70 was due for these years. The IRS

accepted 2018 as the third year under the voluntary disclosure program, and for that year, USD 1,212,765 in tax was paid on the Trust's income. [Appellants] argue that [appellant] thus paid a total amount of USD 16,988,952.70 that would not have been due if [name 2] had advised correctly. Specifically, this concerns an additional amount of tax on the Trust's income for the fiscal years 2016, 2017, and 2018, as well as a penalty. [Appellants] argue that by participating in the voluntary disclosure program, the damages were significantly limited. In total, an amount of approximately USD 17 million was paid, whereas the additional tax due for the years 2012-2017 was more than USD 28 million, not to mention penalties of tens of millions of dollars that the IRS could have imposed, according to [appellants].

6.28.
Greenberg Traurig initially disputed that [appellant] had paid an additional amount of tax and a fine in the US. In response, [appellants] submitted various documents in the first instance to substantiate their claims. Proof of payment was also submitted. Greenberg Traurig did not respond to this, so the Court assumes the accuracy of the amounts stated by [appellants].

No benefit set-off

6.29.
Greenberg Traurig argues that, in retrospect, [appellant] paid no tax on his worldwide income for the period 2012-2015 and, to that extent, enjoyed a tax benefit. In the Court's opinion, this reasoning does not hold water. In the situation without professional error, [appellant] would have adhered to the SPT limit and would then not have owed any tax on the Trust's income for the years 2012-2015. In reality, no tax was paid on that income during these years either, so that [appellants]—as they also state—suffered no tax loss during those years. Furthermore, no tax benefit was enjoyed during those years, because neither in the situation with nor without professional error was tax paid, nor would tax have been paid, on the Trust's income. Consequently, Greenberg Traurig's reliance on set-off fails.

Attribution and contributory negligence

6.30.
Greenberg Traurig disputes that the tax damage can be attributed to it, or at least argues that the tax damage should remain at the expense of [appellant] on the grounds of contributory negligence. In the appeal,

Greenberg Traurig maintained and further supplemented the defenses raised in this regard in the first instance.

6.31.
As the first ground for invoking contributory negligence, Greenberg Traurig argues that [appellant] caused the damage himself by failing to adhere to the date of date and thereby became a tax resident of the US. According to Greenberg Traurig, [appellant] deliberately allowed his commercial gain to prevail over the advised tax prudence and accepted the tax consequences thereof in advance (statement of defense, 168).

6.32.
In the Court's judgment, Greenberg Traurig fails to recognize that it is established that [appellant] did not deviate from tax advice regarding the date of the stay, but that it was Greenberg Traurig that failed to provide [appellant] with sound advice regarding the tax consequences of exceeding the SPT limit. Consequently, [appellant] was not enabled to make informed choices regarding the duration of his stay in the US. Under those circumstances, Greenberg Traurig, as the liable party, cannot argue against [appellant], as the injured party, that he failed to mitigate his damages. To that extent, the plea of contributory negligence fails on this ground alone.

6.33.
Furthermore, Greenberg Traurig argues that [appellant] entered into direct contracts for services with both Certa Legal and its legal successor, as well as with [company]. [Company] advised [appellant] on US tax law and handled the tax returns in the US. Greenberg Traurig believes that it can no longer be held responsible for any tax damage after 2013. According to Greenberg Traurig, the reproach to be made against it pales in comparison to the structural shortcomings of [company]. The damage only occurred from 2016 onwards, long after Greenberg Traurig's services had ended in 2013. According to Greenberg Traurig, it is not jointly and severally liable with [company]. In this case, the shortcomings do not lead to the same damage. It concerns annually recurring tax damage that could have been entirely prevented or limited in the interim. Greenberg Traurig's services ended in 2013, so the jointly caused damage could only have occurred in the period 2009-2013.
Even if joint and several liability is assumed, according to Greenberg Traurig, this does not preclude a reduction of its liability. The structural failure of [company] must be attributed to [appellant] as contributory negligence and deducted from Greenberg Traurig’s obligation to pay damages. This is

justified in this case because [company], unlike Greenberg Traurig, fulfilled the obligation resting on [appellant] himself to file correct tax returns.

6.34.
In addition to [appellant], [name 2] also advised [name 3] (known as [name 4]) regarding his tax emigration from the Netherlands. [name 3] had a similar tax structure to [appellant]. After [name 2] had left Greenberg Traurig, he was repeatedly warned, according to Greenberg Traurig, that [name 3] would owe tax in the US on his trust. [name 5] of Greenberg Traurig informed [name 2] in 2014 that [name 3]'s trust qualified as a *grantor trust* . Furthermore, [name 2] was repeatedly pointed out that removing [name 3] as a beneficiary from his trust would not result in that trust and its subsidiaries remaining outside the scope of US taxation. In 2014, [name 2] knew that the income from [name 3]'s trust still had to be included in his tax return for 2013. [Name 2] was aware that this issue affected not only [Name 3], but also [Appellant]. The tax loss could have been prevented. [Appellant] could have reduced his daily count at any time and thereby lost tax residency. The fact that [Name 2] (or at least Certa Legal or his later firm) failed to inform [Appellant] about this means that the damage cannot be attributed to Greenberg Traurig, because Greenberg Traurig's relative share in it is much smaller than the share of Certa Legal and [Name 2]'s later firm. Based on the response she received from [Name 2], [Name 5] was entitled to assume that he had understood the tax consequences of a *grantor trust* and had acted accordingly. That [Name 2] did not do this correctly in hindsight cannot be attributed to Greenberg Traurig, according to Greenberg Traurig.

6.35.
[Appellants] have contested the defense that the tax damage cannot be attributed to Greenberg Traurig, or that it should remain at the expense of [appellant] on the grounds of contributory negligence.

6.36.
The Court considers the following. Greenberg Traurig failed to fulfill its obligations under the contract for services towards [appellant]. Had it properly fulfilled its obligations, [appellant] would have made different choices and would not have had to pay additional tax or a penalty in the US in the years 2016, 2017, and 2018. The failure to perform resulted in tax damage for [appellant] until he himself discovered, with the assistance of another tax advisor, that he had been incorrectly advised and decided to make use of the voluntary disclosure scheme. In the Court’s opinion, the claimed tax damage is so closely related to Greenberg Traurig’s failure to

perform that it can be attributed to Greenberg Traurig as a consequence thereof.

6.37.
If it is assumed, together with Greenberg Traurig, that the tax damage could also be attributed to Certa Legal and/or its legal successor and/or to [company], this does not alter their own liability towards [appellants] and the attribution of the damage to Greenberg Traurig. Greenberg Traurig is then jointly and severally liable alongside the aforementioned third parties, and on that basis, [appellants] may choose whom they wish to hold liable for damages.

6.38.
The fact that Greenberg Traurig allegedly warned [name 2]—and thereby Certa Legal and/or its legal successor as its joint and several co-debtor—about possible taxation in the US, and that those who did not heed the warning, does not lead to a full or partial reduction of Greenberg Traurig's own liability towards [appellant]. Greenberg Traurig cannot invoke the statements made to its jointly and severally liable party against [appellant], as the injured party. Nor do they relieve it of liability. It is equally irrelevant that [name 5] relied on the assumption that [name 2] had heeded her warning and acted accordingly. In hindsight, she relied on [name 2] incorrectly, and Greenberg Traurig cannot invoke this against [appellant].

6.39.
The conclusion is that Greenberg Traurig's defenses fail and the tax damages claimed by [appellant] are awardable.

7
Conclusion, offer of evidence and costs of proceedings

7.1.
The appeal is successful. The contested judgment will be partially set aside. The amounts claimed by [appellant] for tax damages and an amount equal to the fine paid will be awarded. Statutory interest was claimed and is awardable from the date of payment of the additional tax and the fine. The claim for reimbursement of what [appellant] has paid in execution of the contested judgment will be granted.

The appeal fails insofar as it is directed against the dismissal of the claims of The Eagle, LATW, and After Midnight. To that extent, the contested judgment will be affirmed.

7.2.
There is no room for the submission of evidence. The offers of proof do not relate to sufficiently concrete assertions which, if proven, should lead to a different outcome.

7.3.
Greenberg Traurig has been unsuccessful and will therefore be ordered to pay the costs of the proceedings in both instances on the part of [appellant]. These costs are determined as follows:

court proceedings costs

- bailiff's fees € 103.33
- court fee € 5,737.00
- lawyer's fee € 8,714.00 (rate VIII, 2 points)

Total € 14,554.33

costs of appeal proceedings

- bailiff's fees € 112.37
- court fee € 6,803.00
- lawyer's fee € 13,218.00 (rate VIII, 2 points)

Total € 20,133.37

7.4.
Although the appeal by The Eagle, LATW, and After Midnight has been dismissed, this does not result in an order for costs. It is not plausible that this appeal resulted in additional costs for Greenberg Traurig.

Decision

The Court:

sets aside the contested judgment insofar as the claim of [appellant] for payment of amounts for tax damage and an amount equal to a paid fine was dismissed in the operative part thereof under 6.3 and 6.4, and [appellant] was ordered to pay the costs of the proceedings in the first instance;

and to that extent ruling anew:

orders Greenberg Traurig to pay [appellant] USD 10,217,269.00 in income tax paid to the U.S. Internal Revenue Service pursuant to the amended tax returns for the years 2016 and 2017, plus statutory interest thereon from 15 October 2019;

orders Greenberg Traurig to pay USD 1,212,765.00 to [appellant] as income tax paid by [appellant] to the U.S. Internal Revenue Service pursuant to the income of the Trust under his 2018 tax return, plus statutory interest thereon from 15 October 2019;

orders Greenberg Traurig to pay USD 5,558,918.70 to [appellant] as a penalty paid by [appellant] to the US Internal Revenue Service, plus statutory interest thereon from 15 October 2019;

confirms the contested judgment in all other respects;

orders Greenberg Traurig to pay the costs of the proceedings in both instances on the part of [appellant], set at € 14,554.33 for the first instance and at € 20,133.37 on appeal up to now, to be increased by statutory interest, if the order to pay the costs of the proceedings is not complied with within fourteen days after this judgment;

orders Greenberg Traurig to repay what [appellant] . has paid to Greenberg Traurig in execution of the contested judgment, increased by statutory interest from the day of payment until the day of full repayment;

declares the judgments provisionally enforceable;

rejects the more or otherwise advanced.

This judgment was rendered by Judges JW Hoekzema, JF Aalders and JP.R. van den Berg and pronounced in public by the roll judge on 12 May 2026.