Exhibit "A"

From: Montoya, Jacquie [**mailto:Jacqueline.Montoya@wynnlasvegas.com**]
Sent: Tuesday, July 28, 2009 11:25 AM
To: David Straus
Cc: Kathy and Mike Bouvier
Subject: Thoughts on Brian's Petition

Hi David,

After reviewing Brian's petition last night, I had a couple of thoughts that I wanted to run by you. First, Kathy's legal name is Kathryn not Katherine. Can you have him update it?

Also, page 16 seems to communicate that my mom will oversee both trusts which I know Nanna did not want. I thought the goal was to make sure that the 1979 Trust was clear so that my mom could not give away her 1/3 interest to anyone other than my sister and I.

Please advise when you have time.

Regards,
Jacquie

jacqueline montoya I executive director of weddings

wynn I encore

p. 702.770.7400 I f. 702.770.1574

3131 las vegas blvd. south I las vegas I nv 89109

jacqueline.montoya@wynnlasvegas.com I toll free 888.320.7115

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Exhibit “B”

From: Brian K. Steadman [**mailto:bsteadman@sdfnvlaw.com**]
Sent: Monday, August 03, 2009 4:21 PM
To: Montoya, Jacquie
Cc: David Straus; Debra L. Denithorne; Mark Solomon
Subject: Petition for Reformation

Jacquie,

I met with your mother this afternoon to review the Petition for Reformation. She was very pleasant, and we had a great conversation. She signed the Petition, and thus we can move to the next stage – obtaining both your and Kathryn's signatures on consents to the Petition.

I am sending out a letter to both you and your sister which contains the Petition and two consent forms. Once you receive them, please review the information, and, if everything appears in order, sign the same and return it to our office. Once we have received your consent forms, we will file the Petition with the court.

Sincerely,

Brian K. Steadman, Esq.
Solomon Dwiggins & Freer, Ltd.
Cheyenne West Professional Center
9060 W. Cheyenne Avenue
Las Vegas, NV 89129
Direct Dial: 702.589.3510
Telephone: 702.853.5483
Facsimile: 702.853.5485
Email: **bsteadman@sdfnvlaw.com**
Web: **www.sdfnvlaw.com**

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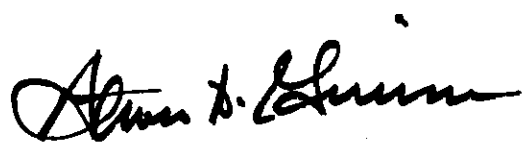

CLERK OF THE COURT

OBJ

JOHN R. MUGAN, Esquire
Nevada Bar No. 10690
john@jeffreyburr.com
MICHAEL D. LUM, Esquire
Nevada Bar No. 12997
michael@jeffreyburr.com
JEFFREY BURR, LTD.
2600 Paseo Verde Parkway, Suite 200
Henderson, NV 89074
Telephone: (702) 433-4455
Facsimile: (702) 451-1853
Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972 An Inter Vivos Irrevocable Trust.	Case No. P-09-066425-T Dept. No. XXVI (26) Date of Hearing: January 14, 2014 Time of Hearing:

OBJECTION OF TRUSTEE ELEANOR C. AHERN TO JACQUELINE M. MONTOYA'S PETITION TO COMPEL TRUSTEE TO DISTRIBUTE ACCRUED INCOME AND FUTURE INCOME RECEIVED FROM OIL, GAS, AND MINERAL LEASES AND DECLARATION OF THE APPLICABILITY OF THE DOCTRINE OF LACHES

COMES NOW ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, by and through her counsel of record, JOHN R. MUGAN, Esquire, and MICHAEL D. LUM, Esquire, of the law firm of JEFFREY BURR, LTD., and hereby submits this Objection to Jacqueline M. Montoya's Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches, and in support thereof states:

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The current dispute was initiated by Petitioner JACQUELINE M. MONTOYA (the "Petitioner"), who filed her Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E), And NRS 164.033(1)(A) herein on September 27, 2013 (the "DECLARATORY JUDGMENT PETITION "). This is actually the second proceeding regarding the W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 (the "TRUST") as in 2009 this Court assumed jurisdiction of the TRUST and construed and reformed the TRUST, in particular the provisions regarding Trust No. 2. The 2013 DECLARATORY JUDGMENT PETITION is a dispute over ownership of sixty-five percent (65%) of the oil, gas and mineral interests on and under certain real estate and severed oil, gas and mineral interest in other acreage all located in Upton County, Texas (the "royalties and rent" or the "Upton County, Texas, Oil rights"). However, there is no dispute that ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN ("ELEANOR"), is the lifetime beneficiary of the remaining thirty-five percent (35%) interest in the royalties and rent. Petitioner JACQUELINE M. MONTOYA claims that she and her sister, KATHRYN A. BOUVIER, as beneficiaries of THE MTC LIVING TRUST dated December 6, 1995 and restated on January 7, 2008 ("THE MTC LIVING TRUST"), are entitled to such sixty-five percent (65%) interest in the royalties and rent. ELEANOR claims that although Petitioner JACQUELINE M. MONTOYA and her sister are entitled to such sixty-five percent (65%) interest in the royalties and rent upon the demise of ELEANOR, during her lifetime ELEANOR is entitled to the income from such disputed sixty-five percent (65%) interest in the royalties and rent.

Unfortunately, this is a family dispute spanning three (3) generations. Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER are the only children of

ELEANOR. ELEANOR was born on May 13, 1938, and is seventy-five (75) years of age. ELEANOR was the only child of W. N. CONNELL. It is undisputed that all of the oil, gas and mineral interests on and under certain real estate and severed oil, gas and mineral interest in other acreage all located in Upton County, Texas, were originally the sole and separate property of W. N. CONNELL, who divorced ELEANOR's mother when ELEANOR was very young. W. N. CONNELL married MARJORIE T. CONNELL when ELEANOR was approximately four (4) years of age. MARJORIE T. CONNELL was the second wife of W. N. CONNELL and initially the stepmother of ELEANOR. During her years of minority, physical custody of ELEANOR was shared between her father, W. N. CONNELL, and ELEANOR's natural mother. Such custody arrangement involved ELEANOR living part of each week with W. N. CONNELL and her stepmother, MARJORIE T. CONNELL, and living part of each week with ELEANOR's natural mother (and stepfather after the remarriage of ELEANOR's natural mother). ELEANOR developed a very close relationship with MARJORIE T. CONNELL, and in fact MARJORIE T. CONNELL adopted ELEANOR when ELEANOR was an adult. ELEANOR has always considered MARJORIE her mother, and ELEANOR had a great amount of love, affection and parental respect for MARJORIE. MARJORIE T. CONNELL had no children other than ELEANOR.

W.N. CONNELL and MARJORIE T. CONNELL as grantors and initial trustees established the W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 (the "TRUST"). A copy of the TRUST agreement including Schedule "A" thereto is attached hereto as Exhibit "A" and by this reference incorporated herein. The sole and separate Upton County, Texas, Oil rights of W.N. CONNELL were conveyed by W.N. CONNELL to himself and MARJORIE T. CONNELL as Trustee (sic) of the TRUST via two Quitclaim Deeds dated June 5, 1972 and recorded June 13, 1972 as Instrument No. 61969 in Volume 409, Page 329 and as Instrument No. 61970 in Volume 414, Page 9 of the Deed Records of the County Clerk of Upton County, Texas. Copies of such Deeds are attached hereto as Exhibit "B" and by this reference incorporated herein.

This was legally necessary in order to have the Upton County, Texas, Oil rights an asset of the TRUST. Otherwise, the Upton County, Texas, Oil rights, would have remained an asset of W. N. CONNELL individually, and would have been controlled by the terms of his Last Will And Testament upon his demise as opposed to being controlled by the terms of the TRUST.

W.N. CONNELL died on November 24, 1979 and was survived by his spouse, MARJORIE T. CONNELL. The TRUST agreement provides in part that upon the death of the Grantor whose death shall first occur [W. N. CONNELL], the Trustee shall divide the trust estate into two parts, each part to be administered as a separate trust to be known respectively as "Trust No. 2" and "Trust No. 3". Petitioner JACQUELINE M. MONTOYA claims that the disputed sixty-five percent (65%) interest in the royalties and rent was allocated to Trust No. 3 after the death of W. N. CONNELL, that MARJORIE T. CONNELL had a general power of appointment over the assets of Trust No. 3, and that MARJORIE T. CONNELL exercised that general power of appointment in her Last Will And Testament by appointing Trust No. 3 to THE MTC LIVING TRUST when she died on May 1, 2009 a resident of Clark County, Nevada. The MTC TRUST consists of an exempt sub-trust and a nonexempt sub-trust, both sub-trusts consisting of one equal share for Petitioner JACQUELINE M. MONTOYA and one equal share for KATHRYN A. BOUVIER. Accordingly, Petitioner JACQUELINE M. MONTOYA and her sister, KATHRYN A. BOUVIER, are equal beneficiaries of THE MTC LIVING TRUST. Petitioner JACQUELINE M. MONTOYA became the sole successor trustee of THE MTC LIVING TRUST immediately upon the death of MARJORIE T. CONNELL. A copy of THE MTC LIVING TRUST is attached hereto as Exhibit "C" and by this reference incorporated herein.

There has been one preliminary hearing that occurred on November 12, 2013 regarding Petitioner JACQUELINE M. MONTOYA's 2013 DECLARATORY JUDGMENT PETITION. In essence, an injunction was issued by the Court at the November 12, 2013 hearing as evidenced by the Order Denying Motion To Refer Contested Probate Matter To Master-Probate Commissioner

Per EDCR 4.16; Directing Payment Of All Oil, Gas, Mineral And Interest Royalties And Rent To Eleanor C. Hartman, Also Known As Eleanor C. Ahern, As Trustee Of Trust No. 2 Of The W.N. Connell And Marjorie T. Connell Living Trust Dated May 18, 1972; And Setting Calendar Call And Hearing recently entered and filed herein (the "Order"). The Order provides in part that the royalties and rent income from the disputed sixty-five percent (65%) shall be held in the TRUST by ELEANOR as Trustee of the TRUST until final resolution of this matter. In particular, such Order stated in relevant part:

> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ELEANOR C. AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas, mineral and interest royalties and surface rent and the remaining sixty-five percent (65%) of such oil, gas, mineral and interest royalties and surface rent shall be held in the Trust by ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee, until final resolution of this matter."

A copy of the Order is attached hereto as Exhibit "D" and by this reference incorporated herein.

Now Petitioner JACQUELINE M. MONTOYA has immediately returned to Court by filing her Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches (the "PETITION") on December 4, 2013. The PETITION asks for an affirmative injunction directing that the disputed sixty-five percent (65%) of the oil, gas, mineral and interest royalties and surface rent paid in the future <u>not</u> be held in the TRUST pending the resolution of this dispute per the Court Order but be <u>distributed</u> to Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER or THE MTC LIVING TRUST of which they are the sole beneficiaries of and of which Trust Petitioner JACQUELINE M. MONTOYA is the sole trustee of. Petitioner JACQUELINE M. MONTOYA has also even requested in her PETITION that the injunction should be retroactively applied to payments made in June of 2013 and thereafter. This would nullify the previous injunction

issued by this Court.

II. ARGUMENT

A. Petitioner Has Failed To Satisfy The Requirements For Injunctive Relief.

An examination of the requirements for an injunction and an application of the facts herein to such requirements clearly show such further injunctive relief requested by Petitioner JACQUELINE M. MONTOYA should be denied.

Requirements For An Injunction.

Generally speaking, in Nevada, as in most states, there are three, minimum requirements to be satisfied by the Petitioner JACQUELINE M. MONTOYA before an injunction is issued by a Court. "A preliminary injunction is available [only] upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy." *Sobel v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986) citing *Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 780, 587 P.2d 1329, 1330. There also is an additional requirement, namely the giving of security by the Petitioner JACQUELINE M. MONTOYA for the payment of costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. NRCP 65(c).

The first three (3) requirements can be summarized as follows:

1) Proof that irreparable harm will result if an injunction is not issued;
2) Compensatory damages is not an adequate remedy for such irreparable harm, and
3) Showing of reasonable probability of success in the action by the party seeking the injunction.

An examination of each of these requirements in the context of this matter shows that Petitioner JACQUELINE M. MONTOYA has failed to meet any of the requirements. It should be noted that the failure of Petitioner JACQUELINE M. MONTOYA to meet even one of these requirements necessitates the denial of the PETITION.

1. No proof by Petitioner that irreparable harm will result if an injunction is not issued.

Petitioner JACQUELINE M. MONTOYA makes no allegation as to she and her sister suffering immediate and irreparable injury, loss or damage if an additional, affirmative injunction is not issued now. Numerous times in her pleading Petitioner JACQUELINE M. MONTOYA alleges that the additional injunctive relief is necessary in order to return to the alleged "[s]tatus quo." Petitioner JACQUELINE M. MONTOYA cites no legal authority for such proposition. This is understandable in that there is no legal authority in support of such proposition. The alleged "status quo" is not the standard; the standard is the three (3) requirements set out above including a showing of immediate and irreparable injury, loss or damage to the Petitioner JACQUELINE M. MONTOYA if the injunction is not issued. Petitioner JACQUELINE M. MONTOYA alleges that an injunction is necessary to "[p]revent further, severe, financial damages …" However, Petitioner JACQUELINE M. MONTOYA does not set forth what these specific damages are, the necessity for distribution of the disputed funds at this time, and what immediate and irreparable injury, loss or damage she and her sister will suffer if the disputed funds are not distributed at this time. Accordingly, Petitioner JACQUELINE M. MONTOYA has failed in her burden of proof.

It is important to note that Petitioner JACQUELINE M. MONTOYA and her sister received a significant inheritance upon the death of MARJORIE T. CONNELL, who died on May 9, 2009. Following the death of MARJORIE T. CONNELL, Petitioner JACQUELINE M. MONTOYA, KATHRYN A. BOUVIER and ELEANOR met with DAVID A. STRAUS, Esquire. Mr. STRAUS informed them that Petitioner JACQUELINE M. MONTOYA and her sister, KATHRYN A. BOUVIER, would be receiving a bequest of approximately Three Million Five Hundred Thousand Dollars ($3,500,000) from MARJORIE T. CONNELL via THE MTC LIVING TRUST. As noted above, THE MTC LIVING TRUST consists of an exempt sub-trust and a nonexempt sub-trust, both sub-trusts consisting of one equal share for Petitioner JACQUELINE M. MONTOYA and one equal share for KATHRYN A. BOUVIER. Petitioner JACQUELINE M. MONTOYA became the

sole successor trustee of THE MTC LIVING TRUST immediately upon the death of MARJORIE T. CONNELL. *See* Article Three, Section 3.02(a) of THE MTC LIVING TRUST attached hereto as Exhibit "C". As such sole successor trustee, Petitioner JACQUELINE M. MONTOYA may distribute as much of the income and principal of the shares of the sub-trusts to herself and to KATHRYN A. BOUVIER as Petitioner JACQUELINE M. MONTOYA, in her absolute and sole discretion, deems necessary or advisable for her own or KATHRYN A. BOUVIER's health, education, maintenance and support. *See* Article Eight, Section 8.02(a) and Article Nine, Section 9.02(a) of THE MTC LIVING TRUST attached hereto as Exhibit "C".

Also in Paragraph D.24 of her 2013 DECLARATORY JUDGMENT PETITION, Petitioner JACQUELINE M. MONTOYA states as follows:

> "As stated above, a significant increase in value derived from the leases, and one in particular, occurred in 2012. In this time frame, a very lucrative lease was entered into with Apache Corporation covering part of the property in Upton County, Texas. The total bonus of this lease totaled in the millions, and Ms. Ahern, Jacqueline and Kathryn together received a total of $1.7 million. This bonus was divided in the usual 65%/35% ratio."

According to this allegation of Petitioner JACQUELINE M. MONTOYA, THE MTC LIVING TRUST in 2012 would have received the sum of One Million One Hundred Five Thousand Dollars ($1,105,000.00) with Petitioner JACQUELINE M. MONTOYA's share of THE MTC TRUST thereby increasing in the amount of Five Hundred Fifty-two Thousand Five Hundred Dollars ($552,500.00) and KATHRYN A. BOUVIER's share of THE MTC TRUST also increasing Five Hundred Fifty-two Thousand Five Hundred Dollars ($552,500.00). Accordingly, Petitioner JACQUELINE M. MONTOYA and her sister as equal beneficiaries of THE MTC LIVING TRUST would have inherited the total, combined sum of Four Million Six Hundred and Five Thousand Dollars ($4,605,000.00) since 2009 (Three Million Five Hundred Thousand Dollars ($3,500,000.00) upon the death of MARJORIE T. CONNELL in 2009 and One Million One Hundred Five Thousand Dollars ($1,105,000.00) lease bonus in 2012). Petitioner JACQUELINE M.

MONTOYA's share and her sister's share as equal beneficiaries of THE MTC LIVING TRUST would be Two Million Three Hundred Two Thousand Five Hundred Dollars ($2,302,500.00) each. Frankly speaking, one is hard pressed to accept the proposition that Petitioner JACQUELINE M. MONTOYA and her sister will suffer immediate and irreparable injury, loss or damage if the disputed portion of the royalties and rent remains in the TRUST until this matter is heard on or after February 18, 2014, a matter of a few months, in light of their receipt of approximately Two Million Three Hundred Two Thousand Five Hundred Dollars ($2,302,500.00) each in the last several years after the death of MARJORIE T. CONNELL, including the amount of Five Hundred Fifty-two Thousand Five Hundred Dollars ($552,500.00) each in 2012.

Further, this same argument by Petitioner JACQUELINE M. MONTOYA for an injunction could be made by ELEANOR in a similar fashion. If ELEANOR is successful in this matter, she will have been wrongfully denied the use and enjoyment of the disputed royalties and rent and suffered "[s]evere financial damages." However, the Court has wisely treated the two (2) sides who claim the disputed portion of the royalties and rent exactly the same, namely such disputed monies will be held in the TRUST and preserved until final resolution of this dispute, at which time the successful party is assured that the funds will be there to claim. In the interim, neither side will have the opportunity to dispose of the disputed funds and potentially deny the successful party of receipt of the same.

2. Compensatory damages is an adequate remedy.

Even if one presumes that Petitioner JACQUELINE M. MONTOYA will suffer irreparable harm if an injunction is not issued, Petitioner JACQUELINE M. MONTOYA has also failed to meet her burden of proof that there exists no adequate legal remedy for such irreparable harm. Here, the dispute is over compensatory damages, namely dollars representing the income from the disputed portion of the royalties and rent. There exists an adequate remedy at law in the form of compensatory damages, to-wit compensation in dollars. This is not a dispute involving a unique

and particular asset such as the sale of certain real estate that cannot be duplicated or replaced, or a proposed action that cannot be reversed such as the implosion of a building. Not only is there an adequate remedy at law in the form of compensatory damages in the form of dollars, the disputed royalties and rent is even being held in the TRUST per Court Order until this matter is resolved. *See* copy of Order attached hereto as Exhibit "D". Accordingly, if Petitioner JACQUELINE M. MONTOYA prevails, ELEANOR as Trustee of the TRUST will simply distribute such disputed royalties and rent to Petitioner JACQUELINE M. MONTOYA as recompense. Thus, not only is the legal remedy of compensatory damages adequate in this case, the parties are already assured the disputed monies will be there for the successful party.

3. No showing by Petitioner of reasonable probability of success in the action.

The Upton County, Texas, Oil Rights Were Never Allocated To Trust No. 3

Petitioner JACQUELINE M. MONTOYA claims that the disputed sixty-five percent (65%) interest in the oil, gas and mineral interests on and under certain real estate and severed oil, gas and mineral interest in other acreage all located in Upton County, Texas, was allocated to Trust No. 3 after the death of W. N. CONNELL. It is undisputed that at the time of the death of W. N. CONNELL, the total interest to the royalties and rent was vested in the W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972. Proper allocation of this disputed sixty-five percent (65%) interest would be accomplished by the execution of a deed by the successor trustee conveying such interest to Trust No. 3, and would be done usually no later than nine (9) to twelve (12) months following the death of W. N. CONNELL. Mr. CONNELL died on November 24, 1979. MARJORIE T. CONNELL was the successor trustee of the W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST. *See* Article TWELFTH, SUCCESSOR TRUSTEE, of the TRUST agreement attached hereto as Exhibit "A". MARJORIE T. CONNELL would be personally aware of the necessity to convey such disputed sixty-five percent (65%) interest via deed as it was necessary for W. N. CONNELL to convey his total interest in the

royalties and rent via deed to herself and W. N. CONNELL as trustees of the W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 when he and MARJORIE T. CONNELL established such TRUST. *See* copies of deeds attached hereto as Exhibit "B". As noted above, this was legally necessary in order for the Upton County, Texas, Oil rights to become assets of the TRUST. MARJORIE T. CONNELL also had legal representation to assist her after the death of her husband, and presumably such legal counsel would have advised her of the necessity to allocate the disputed sixty-five percent (65%) interest to Trust No. 3 via deed if such interest was in fact to be allocated to Trust No. 3. However, it is undisputed that legal title to such disputed sixty-five percent (65%) interest was never allocated to Trust No. 3 via a deed executed by MARJORIE T. CONNELL as successor trustee of the TRUST.

MARJORIE T. CONNELL as successor trustee of the TRUST also had certain fiduciary duties. This would include the duty of a trustee to comply with the terms of the trust as is "[n]ecessary or appropriate to accomplish a purpose of the trust." *NRS 163.023*. Section 84 of the Restatement (Third) of Trusts indicates in part "[i]t is ordinarily the duty of the trustee: to earmark the trust property as property of the trust; to keep the trust property separate from the trustee's own property; and to keep the trust property separate from property held by the trustee upon other trusts." If in fact the disputed sixty-five percent (65%) interest was to be allocated to Trust No. 3 as alleged by Petitioner JACQUELINE M. MONTOYA, MARJORIE T. CONNELL as successor trustee was legally required to convey such interest via deed to the trustee of Trust No. 3 and keep it separate from the assets of Trust No. 2. It speaks volumes that MARJORIE T. CONNELL did not do so, and of course she is not here today to explain why this was not done by her. It is evident that MARJORIE understood that it was the intent of W. N. CONNELL that his only child, ELEANOR, be entitled to the income from his sole and separate property consisting of all of the Upton County, Texas, Oil rights during ELEANOR's lifetime as expressed in the TRUST agreement, and the Upton County, Texas, Oil rights were accordingly treated as an asset of Trust No. 2 and never

deeded to Trust No. 3.

Petitioner JACQUELINE M. MONTOYA's arguments in her 2013 DECLARATORY JUDGMENT PETITION filed herein on September 27, 2013 can be boiled down to this: the Texas Inheritance Tax Return filed in 1980 following the death of W.N. CONNELL effectively allocated sixty-five percent (65%) of the royalties and rent to Trust No. 3, and in the alternative, even if this allocation did not occur, Petitioner JACQUELINE M. MONTOYA should still be entitled to the sixty-five percent (65%) of the royalties and rent because ELEANOR has failed to timely assert her rights to one hundred percent (100%) of the royalties and rent. The bottom line is, however, that as noted above, there has never been any allocation of the sixty-five percent (65%) interest to Trust No. 3 and legal title to such interest has never been vested in Trust No. 3. Therefore, as further explained below, ELEANOR was never obliged to assert any right to one hundred percent (100%) of the royalties and rent as the interest was allocated to Trust No. 2 per the terms of the TRUST.

The only document produced by Petitioner JACQUELINE M. MONTOYA that tends to show any semblance of an allocation is the 1980 Texas Inheritance Tax Return purportedly filed on behalf of the W.N. CONNELL Estate. *See* Exhibit "D" to Petitioner JACQUELINE M. MONTOYA's 2013 DECLARATORY JUDGMENT PETITION filed herein on September 27, 2013. Upon closer review, however, nowhere in the document can a distribution be linked to Trust No. 3 and in fact there are no references whatsoever to Trust No. 3 contained in the document. When referring to the alleged distribution that Petitioner JACQUELINE M. MONTOYA relies on to claim the disputed interest in the royalties and rent, the Texas Inheritance Tax Return states that the distributions were to "Marjorie Connell" and to "Eleanor M. Connell Hartman". This is obviously incorrect and contrary to any possible construction of the terms of the TRUST. Accordingly, the document upon which Petitioner JACQUELINE M. MONTOYA bases her claim is materially false on its face. In any event, based on this description to "Marjorie Connell" and to "Eleanor M. Connell Hartman", it takes quite the leap to deduce that sixty-five percent (65%) of the

Upton County, Texas, Oil rights were allocated to Trust No. 3. Clearly this is inaccurate as no such distribution was ever made and there has been no allegation in any proceeding that this was in fact the case. Relying on the purported Texas Inheritance Tax Return would lead to the conclusion that the Upton County, Texas, Oil rights are not held in trust at all; rather these rights were distributed to ELEANOR and MARJORIE T. CONNELL individually. This is contrary to Petitioner JACQUELINE M. MONTOYA's own stated position as set forth in her pleadings and the records of the oil companies as set out below.

Also it should be noted that the purported Texas Inheritance Tax Return does not even contain a "FILED" stamp thereon in proof of filing. *See* Exhibit "D" to Petitioner JACQUELINE M. MONTOYA's 2013 DECLARATORY JUDGMENT PETITION filed herein on September 27, 2013.

Also the alleged check as proof of payment of the Texas inheritance tax in compliance with the return is not even endorsed or stamped for payment. *See* Exhibit "D" to Petitioner JACQUELINE M. MONTOYA's 2013 DECLARATORY JUDGMENT PETITION filed herein on September 27, 2013.

Further, Petitioner JACQUELINE M. MONTOYA has failed to produce a Texas Inheritance Tax Clearance or a Texas Inheritance Tax Closing Letter showing that Texas accepted such purported Texas Inheritance Tax Return. For all of these reasons, the Texas Inheritance Tax Return cannot be given credence in support of Petitioner JACQUELINE M. MONTOYA's allocation argument.

Also Article Third, Marital Deduction, of the TRUST agreement states in part:

> "In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and ownership of the said property and the value thereof **shall be as finally established for federal estate tax purposes**." (emphasis added)

Petitioner JACQUELINE M. MONTOYA has failed to produce a copy of the Form 706, the

federal estate tax return, filed on behalf of the W. N. CONNELL Estate and the TRUST in support of her DECLARATORY JUDGMENT PETITION filed herein on September 27, 2013, and has stated that she is unable to obtain a copy. Petitioner JACQUELINE M. MONTOYA has also failed to produce an Estate Tax Closing Letter from the IRS showing that the Form 706 was accepted by the IRS. This is a failure of Petitioner JACQUELINE M. MONTOYA to carry her burden of proof regarding Petitioner JACQUELINE M. MONTOYA's 2013 DECLARATORY JUDGMENT PETITION.

Furthermore, the purported Texas Inheritance Tax Return is incorrect on its face as it fails to take into consideration the legal effect of Article *FOURTH, TRUST NO. 2*, Paragraph B, *Income*, of the TRUST agreement, which states:

> "All income received by this Trust from the separate property of the Decedent [W. N. CONNELL] shall be paid to the Residual Beneficiary [ELEANOR]. In the event any of the real property located in Upton County, Texas, as listed on the original Schedule "A" attached hereto, forms a part of the corpus of this Trust, **the Residual Beneficiary [ELEANOR] shall be paid an additional payment from the income received from the Decedent's [W. N. CONNELL] half of the community property, which forms a part of the corpus of this Trust, equal to all of the income received by this Trust from the real property located in Upton County, Texas.**" (emphasis added)

Schedule "A" attached to the TRUST agreement sets out the detailed legal descriptions of the Upton County, Texas, real property as the "[s]eparate property of W. N. CONNELL." *See* Schedule "A" of the TRUST agreement attached hereto as Exhibit "A". It is obvious that the intent of Decedent W. N. CONNELL was that his only child, ELEANOR, should have the right to receive an amount equal to all of the income generated from the Upton County, Texas, Oil rights as long as ELEANOR lived. This makes perfect sense from an estate-planning point of view in that the Upton County, Texas, Oil rights were the sole and separate property of W. N. CONNELL that he brought into his second marriage with MARJORIE T. CONNELL, ELEANOR was his only child, and ELEANOR was his child from a previous marriage.

If no allocation was made to Trust No. 3, then pursuant to Subparagraph 4 of Paragraph C of the TRUST agreement (*see* Exhibit "A" attached hereto), **"[t]he Trustee shall allocate to Trust No. 2 all the remaining protion (sic) of the trust estate not allocated to Trust No. 3…**" (emphasis added). And Article FOURTH, *TRUST NO. 2*, Paragraph B, *Income*, of the TRUST agreement (*see* Exhibit "A" attached hereto) sets forth that, "**[a]ll income received by this Trust from the separate property of the Decedent [W.N. CONNELL] shall be paid to the Residual Beneficiary [ELEANOR]**." (emphasis added). Because no allocation of the Upton County, Texas, Oil rights was ever made to Trust No. 3, by default these rights were allocated to Trust No. 2 and ELEANOR is the sole beneficiary of the income paid from these rights, as they were W.N. CONNELL's separate property.

Also Petitioner JACQUELINE M. MONTOYA claims that there was an exercise of a testamentary power of appointment of Trust No. 3 to THE MTC LIVING TRUST under the terms of the Last Will and Testament of MARJORIE T. CONNELL when she died on May 1, 2009. Article FIFTH, *TRUST NO. 3*, Paragraph B, Powers of appointment over income and principal, of the TRUST agreement grants a lifetime general power of appointment (not exercised) and a testamentary general power of appointment over Trust No. 3 to the Survivor [MARJORIE T. CONNELL], and in relevant part states:

> "2. Upon the death of the Survivor, he or she shall have the absolute power to appoint the entire principal and the undistributed income, if any, of the estate of Trust No. 3, or any part thereof, to his or her estate or to any person or persons. Such power of appointment shall be exercised only by a provision in the Last Will of the Survivor expressly exercising such power."

Even if for discussion purposes MARJORIE T. CONNELL did exercise her testamentary power of appointment of Trust No. 3 to THE MTC LIVING TRUST pursuant to her Last Will And Testament, there had never been an allocation of the sixty-five percent (65%) interest in the Upton County, Texas, Oil rights to Trust No. 3 back in 1980. Such disputed interest was not an asset of Trust No. 3 so the purported exercise of the testamentary power of appointment of Trust No. 3 to

THE MTC LIVING TRUST pursuant to her Last Will And Testament of MARJORIE T. CONNELL had no effect on such disputed interest. More importantly, upon MARJORIE T. CONNELL's death in 2009, the sixty-five percent (65%) interest in the Upton County, Texas, Oil rights should have been distributed to Petitioner JACQUELINE M. MONTOYA as sole successor trustee of THE MTC LIVING TRUST. However, this was never done and Petitioner JACQUELINE M. MONTOYA did not insist that it be done. Why? The answer is that it was not considered an asset of Trust No. 3, but was considered an asset of Trust No. 2, which is completely consistent with the actions of Petitioner JACQUELINE M. MONTOYA and her sister and the documents they signed in the 2009 proceeding shortly after the death of MARJORIE T. CONNELL as set out below. Accordingly, the disputed royalties and rent interest was not only never allocated to Trust No. 3 when W. N. CONNELL died in 1979, it was never allocated to THE MTC LIVING TRUST in 2009 when MARJORIE T. CONNELL died.

Petitioner JACQUELINE M. MONTOYA Fails To Assert A Claim To 65% Of the Upton County, Texas, Oil Rights

In April of 2012, approximately thirty-two years (32) years after the date the purported Texas Inheritance Tax Return was filed and the date of the supposed allocation to Trust No. 3, and approximately three (3) years after MARJORIE T. CONNELL's death and the purported exercise of her power of appointment over Trust No. 3 to THE MTC LIVING TRUST, two (2) new Oil and Gas Lease contracts with Apache Corporation were executed. Copies of these Oil and Gas Lease contracts are attached hereto as Exhibit "E" and by this reference incorporated herein. During this time, ELEANOR was ill and was unable to attend the negotiations and as a result, Petitioner JACQUELINE M. MONTOYA was primarily involved in negotiating these new Oil and Gas Lease contracts. Paragraph D.20 of Petitioner JACQUELINE M. MONTOYA's 2013 DECLARATORY JUDGMENT PETITION states in part:

"In recent times, Jacqueline, with the assistance of other professionals, has put in a

> tremendous amount of time and energy in negotiating new leases for the Texas properties, which, as noted above, was a task that had been previously done by Marjorie. Once the terms of a new lease, or the renewal of a previous lease, had been agreed upon and reviewed by professionals specializing in the field, Jacqueline gave Ms. Ahern the original documents so Ms. Ahern would sign them in the presence of a notary, and return the originals and copies to Jacqueline."

As stated by Petitioner JACQUELINE M. MONTOYA, after the Oil and Gas Lease contracts were formulated and reviewed by professionals, Petitioner JACQUELINE M. MONTOYA presented the same to ELEANOR for her approval and signature. ELEANOR signed both Oil and Gas Lease contracts "**individually and as Trustee of the W.N. Connell and Marjorie T. Connell Living Trust under Trust Agreement dated May 18, 1972**" and as **sole lessor** (emphasis added). If in fact, as alleged by Petitioner JACQUELINE M. MONTOYA, THE MTC LIVING TRUST was the owner of the disputed sixty-five percent (65%) interest through an implied allocation in 1980 and the exercise of a testamentary power of appointment to THE MTC LIVING TRUST under the terms of the Last Will and Testament of MARJORIE T. CONNELL when she died on May 1, 2009, Petitioner JACQUELINE M. MONTOYA should have also signed the new Oil and Gas Lease contracts as Trustee of THE MTC LIVING TRUST. In fact, if there had been an allocation of the Upton County, Texas, Oil rights to Trust No. 3, Petitioner JACQUELINE M. MONTOYA would have been legally required to also sign the Oil and Gas Lease contracts in her capacity as the sole Successor Trustee of THE MTC LIVING TRUST. But, she did not do so. Instead, she had her mother (ELEANOR) sign the Apache Corporation Oil and Gas Lease contracts executed in 2012 as Trustee of the TRUST and sole lessor. Apparently Petitioner JACQUELINE M. MONTOYA and the "[p]rofessionals specializing in the field" who reviewed the matter and advised Petitioner JACQUELINE M. MONTOYA believed that ELEANOR individually and as Trustee of the TRUST was the sole person to sign the leases or renewals, and not Petitioner JACQUELINE M. MONTOYA as trustee of THE MTC LIVING TRUST. This is because all of

the Oil rights were in 2012, and are, assets of Trust No. 2. Given Petitioner JACQUELINE M. MONTOYA's extensive involvement in the negotiation of these lease contracts, the claims that JACQUELINE M. MONTOYA now asserts, over one (1) year later are directly contradictory to her actions regarding the leases and renewal, and are tantamount to fraud.

The Manner In Which The TRUST Received Its Royalty Payments Attendant To The Upton County, Texas, Oil Rights Is Further Proof That There Was Never An Allocation Of Such Rights To Trust No. 3

Upon reviewing the Division Orders provided by the various oil lessees relating to the Upton County, Texas, Oil rights, from approximately 1986 through the present, the oil companies have remitted payment of the royalties to the tax identification number for Trust No. 2. The tax identification number for Trust No. 2 was provided to the oil companies by MARJORIE T. CONNELL and ELEANOR. Trust No. 3 had a separate tax identification number that was never furnished to, nor used by, the oil companies for such royalty payments. Notably, this has been the practice since the death of W.N. CONNELL and even after the death of MARJORIE T. CONNELL. And as discussed above, Petitioner JACQUELINE M. MONTOYA was extensively involved in dealing with the Upton County, Texas, Oil rights, including dealing with the accountant, Corey Haina, in accounting for the Upton County, Texas, Oil right income. Therefore, she was fully aware that the royalty income from such rights was paid, in full, to Trust No. 2. Again, if an allocation was made to Trust No. 3 in 1980, then MARJORIE T. CONNELL would have certainly sought to have the income payments applied correctly back then. And even if MARJORIE T. CONNELL did not take such action in 1980 or during the next twenty-nine (29) years preceding her death, Petitioner JACQUELINE M. MONTOYA should have sought to change the payment of the Upton County, Texas, Oil right income in 2009, when MARJORIE T. CONNELL passed away and the Probate Court obtained jurisdiction over the TRUST, and in 2012 when the Apache Corporation Oil and Lease contracts were negotiated. Petitioner JACQUELINE M. MONTOYA failed to do so.

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2009 TRUST Proceeding

Subsequent to the death of MARJORIE T. CONNELL, a Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust (the "2009 PETITION") was filed by MARK A. SOLOMON, Esquire, and BRIAN K. STEADMAN, Esquire, as purported attorneys for ELEANOR as Petitioner. This is the first case dealing with the TRUST, Trust No. 2, its assets, the income therefrom, the remainder interest, and the construction and reformation of the TRUST agreement, in particular the terms and provision of Trust No. 2. The 2009 PETITION was filed with this Court on August 17, 2009. In essence, the action was initiated and driven by Petitioner JACQUELINE M. MONTOYA and her attorney, DAVID A. STRAUS, Esquire, and primarily was for the benefit of JACQUELINE M. MONTOYA and her sister, KATHRYN A. BOUVIER. A copy of such 2009 PETITION without exhibits is attached hereto as Exhibit "F" and by this reference incorporated herein. In particular, the Court assumed jurisdiction of the TRUST, the Court confirmed the Trustee thereof, and the Court construed and reformed the TRUST agreement in part by declaring that Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER were beneficiaries of Trust No. 2 upon the death of their mother, ELEANOR. The second, current case, the 2013 DECLARATORY JUDGMENT PETITION, also involves the TRUST, Trust No. 2, its assets, the income therefrom, the remainder interest, and the construction and reformation of the TRUST agreement.

Paragraphs 18-20, inclusive, of the 2009 PETITION provide in relevant part as follows:

"18. As of the death of MARJORIE, **Trust No. 2 owned land and oil and gas shares in reserves and income located in Upton County, Texas (the 'Oil Assets')**. The Oil Assets have not been valued for some time, but are estimated to be worth approximately $700,000." (emphasis added)

"19. Pursuant to Article Fourth, which Article governs the administration of Trust No. 2, **all income from the Oil Assets is to be paid to the Petitioner [ELEANOR] as the 'Residual Beneficiary' during her lifetime**." (emphasis added)

"20. Section B of Article Fourth, governing Trust No. 2, provides as follows:

B. Income.... In the Event that the [Petitioner] (ELEANOR) predeceases [MARJORIE], the [Petitioner's] right to receive income hereunder shall be paid to or for the benefit of her living children and the issue of any deceased child by right of representation; or in the event she dies without leaving issue, her income rights hereunder shall become those of [MARJORIE]."

Attached as Exhibit 6 to the 2009 PETITION is the Consent To Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust And Waiver Of Notice of JACQUELINE M. MONTOYA dated August 8, 2009. A copy of such Consent is attached hereto as Exhibit "G" and by this reference incorporated herein. Paragraphs 1-3, inclusive, of the Consent provide in relevant part as follows:

"1. I am a **contingent income beneficiary** of the W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 (the 'Trust')." (emphasis added)

"2. **I have read the Petition** To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust (the 'Petition') and **believe it to be true and correct** to the best of my knowledge." (emphasis added)

"3. I hereby **consent to the Petition** and request that the Court enter an Order approving the Petition **in its entirety**." (emphasis added)

The allegations in the 2009 PETITION in the first case were directly on point regarding the dispute contained in the second case. In fact the dispute raised in the 2013 DECLARATORY JUDGMENT PETITION case, ownership of the Oil assets and the corresponding entitlement to the income therefrom, was addressed in the 2009 PETITION and Consents. The 2009 PETITION specifically states that: (1) as of the death of MARJORIE, **Trust No. 2 owned land and oil and gas shares in reserves and income located in Upton County, Texas (the "Oil Assets")**; and (2) pursuant to Article Fourth, which Article governs the administration of Trust No. 2, **all income from the Oil Assets is to be paid to ELEANOR as the "Residual Beneficiary" during her lifetime**. The Consents of JACQUELINE M. MONTOYA (and KATHRYN A. BOUVIER) filed in the 2009 case specifically state: (1) **JACQUELINE M. MONTOYA has read the Petition** To

Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust **and believes it to be true and correct to the best of her knowledge**; and (2) **JACQUELINE M. MONTOYA consents to the Petition** and requests that the Court enter an Order **approving the Petition in its entirety**. Furthermore and most noteworthy, the Consents contain an affirmative representation by JACQULINE M. MONTOYA (and KATHRYN A. BOUVIER) that she **is only a contingent income beneficiary** of the TRUST. Now the 2013 DECLARATORY JUDGMENT PETITION seeks in part a determination that ELEANOR, both individually and as Trustee of the TRUST, "**[i]s only entitled to a 35% proportion of all real property located in Upton County, Texas, including the income generated from gas, oil, and mineral leases relating to such Upton County, Texas real property**..." The 2013 DECLARATORY JUDGMENT PETITION further seeks in part a determination that Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER (or a Trust that they are beneficiaries of) are entitled to **65% proportion** of all real property located in Upton County, Texas, including the income generated from gas, oil, and mineral leases relating to such Upton County, Texas real property. This is completely contrary to and contradictory of the statements and representations contained in the 2009 PETITION and the Consents of Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER. For example, how could Petitioner JACQUELINE M. MONTOYA only be a **contingent** income beneficiary and ELEANOR be entitled to all of the income for her life as Petitioner JACQUELINE M. MONTOYA consented to and affirmatively asserted in the 2009 PETITION, but now in the 2013 DECLARATORY JUDGMENT PETITION claim ELEANOR is only entitled to 35% of the income? It is important to note that the claim of Petitioner JACQUELINE M. MONTOYA in the 2013 DECLARATORY JUDGMENT PETITION, that ELEANOR is only entitled to 35% of the income and Petitioner JACQUELINE M. MONTOYA and her sister (or a trust of which they are beneficiaries thereof) are entitled to the 65% interest in the Oil Assets, is based on her allegation that such right of Petitioner JACQUELINE M. MONTOYA and her sister (or a trust of which they

are beneficiaries thereof) is the result of a power of appointment exercised in the Last Will and Testament of MARJORIE T. CONNELL. The date of death of MARJORIE T. CONNELL was May 1, 2009. A copy of the Death Certificate of MARJORIE T. CONNELL is attached hereto as Exhibit "H" and by this reference incorporated herein. The first case (2009 PETITION) was not filed until August 17, 2009, subsequent to the death of MARJORIE T. CONNELL. Petitioner JACQUELINE M. MONTOYA became the successor trustee of THE MTC LIVING TRUST immediately upon the death of MARJORIE T. CONNELL. Therefore, this claim of Petitioner JACQUELINE M. MONTOYA, individually and as Trustee of THE MTC LIVING TRUST, as set forth in the 2013 case was fully vested and in existence at the time of the 2009 case.

Also as noted above, Paragraph 18 of the 2009 PETITION stated:

"18. As of the death of MARJORIE, Trust No. 2 owned land and oil and gas shares in reserves and income located in Upton County, Texas (the 'Oil Assets'). **The Oil Assets have not been valued for some time, but are estimated to be worth approximately $700,000**."

In fact Petitioner JACQUELINE M. MONTOYA had an appraisal done of such "oil assets" in 2009. This appraisal included all of the Texas oil rights, not just a thirty-five percent (35%) interest. The appraisal set a valuation of $716,190.00.

Legal counsel essentially asserted at the November 12, 2013 hearing that the allegations contained in the 2009 PETITION were not important nor binding, what was important and binding were the Order provisions. If one accepted this premise and carried it to its logical conclusion, one could make any allegations whatsoever in a pleading, whether true or untrue. For example, one could make numerous false representations to the Court and they would not be important, only the Order provisions would be important, even though the Court obviously considers the representations made in the pleading. The Nevada Rules of Professional Conduct ("NRPC") make it abundantly clear that the allegations contained in a pleading are important and there must be a basis in law and fact for the same, and there is a duty to correct any false statement of material fact

or law. NRPC 3.1, *Meritorious Claims and Contentions*, states in relevant part:

> "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

NRPC 3.3, *Candor Toward the Tribunal*, states in relevant part:

> "(a) A lawyer shall not knowingly:
> (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
> (2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
> (3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

The Nevada Rules of Civil Procedure ("NRCP") also make it abundantly clear that the allegations contained in a pleading are important and the factual contentions must have evidential support. NRCP 11, *Signing of Pleadings*, states in relevant part:

> "**(b) Representations to Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
> **(c) Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation."

Alleged Course of Dealing -Gifts

Petitioner JACQUELINE M. MONTOYA repeatedly emphasizes that since the death of W. N. CONNELL, there has always been a 65%/35% split of the income from the Upton County, Texas, Oil rights, with 65% going to MARJORIE T. CONNELL until her death in 2009 and thereafter 65% going to Petitioner JACQUELINE M. MONTOYA and her sister or THE MTC LIVING TRUST until recently with no explanation for the change by ELEANOR.

As explained above, W.N. CONNELL, ELEANOR's natural father, divorced from ELEANOR's natural mother when ELEANOR was very young. Divorce at that time was unusual and carried a stigma, and ELEANOR carried that stigma as the child of divorced parents. And when ELEANOR was only four (4) years old, W.N. CONNELL remarried – marrying MARJORIE T. CONNELL. ELEANOR yearned very much for the "traditional" family that typified the mid-twentieth century. Accordingly, ELEANOR treated MARJORIE T. CONNELL as her biological mother, and paid the same respect that she would otherwise pay to her natural mother. MARJORIE split time between her natural father and natural mother, and in the process became very close to MARJORIE. When MARJORIE T. CONNELL adopted ELEANOR, ELEANOR was elated. ELEANOR was eternally grateful to MARJORIE T. CONNELL, and always referred to her as "Mother."

When W.N. CONNELL passed away, MARJORIE T. CONNELL, as the surviving Trustor and Trustee of the TRUST, began paying herself sixty-five percent (65%) of the Upton County, Texas, Oil right income. ELEANOR consulted an attorney and was advised that although ELEANOR was entitled to all of the Upton County, Texas, Oil right income, if she asserted her rights to all of the income against MARJORIE at that time it would in all likelihood result in MARJORIE disinheriting ELEANOR when MARJORIE died. The advice essentially was to take less now so you could inherit all of MARJORIE's estate later. Although ELEANOR knew that she (ELEANOR) was entitled to one hundred percent (100%) of the Upton County, Texas, oil income,

she consented to MARJORIE receiving the sixty-five percent (65%). The advice of the attorney and ELEANOR's love and respect for, and appreciation of, MARJORIE T. CONNELL as her mother, lead to her acquiescence. Not to mention, ELEANOR was married to John Ahern, the founder of Ahern Rentals, and therefore did not need the money. Instead, ELEANOR found great joy and pride in the fact that her mother, MARJORIE T. CONNELL, was well taken care of after the death of ELEANOR's father due in large part to ELEANOR. However, this allowance was in the sole and absolute discretion of ELEANOR, and was subject to unilateral change or revocation in the future on ELEANOR's part due to her legal right to all of the income during her lifetime.

Also the arrangement was that since MARJORIE was in fact receiving sixty-five percent (65%) of the income, MARJORIE would pay the income tax attributable to the income she received or her share would be charged the same, which was done. ELEANOR accordingly did not file any gift tax returns since if the monies had been considered a gift, MARJORIE would not have been paying the tax thereon. The TRUST tax returns also reflected this arrangement. This made perfect estate planning sense in that the federal estate tax equivalent exemption and gift tax exclusion amount in 1979, the year of death of W. N. CONNELL, was only $147,333.00, and ELEANOR's exemption would have been exhausted in very little time if treated as gifts.

As noted above, when MARJORIE T. CONNELL passed away, Petitioner JACQUELINE M. MONTOYA, KATHRYN A. BOUVIER and ELEANOR met with Mr. STRAUS, who informed them that Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER would be receiving a bequest of approximately Three Million Five Hundred Thousand Dollars ($3,500,000) from MARJORIE T. CONNELL via THE MTC LIVING TRUST, and ELEANOR would be receiving a bequest of Three Hundred Thousand Dollars ($300,000). Upon hearing this news, ELEANOR was surprised, given the fact that her mother (MARJORIE T. CONNELL) had always expressed her sentiment that grandchildren should not inherit ahead of their parents. Rather, it was MARJORIE T. CONNELL's view that grandchildren should inherit from their parents who should

inherit from their parents. (Curiously, MARJORIE T. CONNELL's Last Will and Testament and the MTC TRUST were restated on January 7, 2008, the year prior to MARJORIE T. CONNELL's death, by Mr. STRAUS, the attorney who would later represent Petitioner JACQUELINE M. MONTOYA in the reformation of the TRUST in 2009.) Nonetheless, ELEANOR had no need for a larger share of MARJORIE T. CONNELL's estate, and although suspicious, ELEANOR was content with her daughters, Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER, receiving the lion's share of her mother's trust and estate.

ELEANOR, who had grown accustom to receiving only thirty-five percent (35%) of the Upton County, Texas, Oil right income, allowed her two daughters, Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER, to receive the income from the sixty-five percent (65%) interest that MARJORIE T. CONNELL had been receiving. This allowance was again in the sole and absolute discretion of ELEANOR, and was subject to unilateral change or revocation in the future on ELEANOR's part. ELEANOR did not need the money and she took joy and pride in helping her daughters and making their lives, and the lives of her grandchildren, better.

ELEANOR and her daughters also continued the practice of the income tax on such monies being paid by the actual recipient or charged against her share or THE MTC LIVING TRUST.

Only after noticing various improprieties on Petitioner JACQUELINE M. MONTOYA's part did ELEANOR begin to question the wisdom of allowing her daughters to receive part of the income. By way of background, in or around the year 2000, ELEANOR moved to Idaho. During this time, ELEANOR encouraged Petitioner JACQUELINE M. MONTOYA to take a more active role in the management of the Upton County, Texas, Oil rights as a result of ELEANOR's out of state move and MARJORIE T. CONNELL's falling ill. However, ELEANOR still retained all of her rights as Trustee of the TRUST and as income beneficiary of the Texas oil rights. ELEANOR returned from Idaho approximately seven (7) years later.

Beginning in or around 2010, however, ELEANOR began noticing peculiarities. Around

that time, ELEANOR discovered that her bank accounts had been closed and reopened. And when ELEANOR went to the bank to re-sign her signature cards, she discovered that Petitioner JACQUELINE M. MONTOYA was a signer on all of her accounts.

Then in approximately late 2012, ELEANOR discovered that the bank account for the TRUST had been closed at the end of 1999 by Petitioner JACQUELINE M. MONTOYA. This account was established by MARJORIE T. CONNELL and ELEANOR to receive the royalty payments from the Upton County, Texas, Oil rights. In its place, ELEANOR discovered that Petitioner JACQUELINE M. MONTOYA had opened an account on which JACQUELINE M. MONTOYA was listed as the Customer. ELEANOR never consented to the closing of the TRUST bank account or opening of this new account. Upon looking into this matter further and hiring a handwriting expert, ELEANOR discovered that Petitioner JACQUELINE M. MONTOYA forged, or caused to be forged, ELEANOR's signature on the signature card for this account. A copy of the Report of the handwriting expert is attached hereto as Exhibit "I" and by this reference incorporated herein. In particular, see Exhibit Q1 attached to such Report.

Also during this time, ELEANOR was inadvertently given one of Petitioner JACQUELINE M. MONTOYA's bank statements, which revealed that Petitioner JACQUELINE M. MONTOYA had spent approximately Eighty Thousand Dollars ($80,000) in one month. ELEANOR was shocked, and realized that allowing her daughters income from the Upton County, Texas, Oil rights was probably doing more harm than good. ELEANOR concluded that by taking all of the income that she was rightfully entitled to, she could control the use of the same for the ultimate benefit of her daughters and grandchildren during ELEANOR's lifetime and upon her death any accumulated income. ELEANOR further concluded that to do so would be in the long-term best interests of her daughters and her grandchildren. In approximately June of 2013, ELEANOR did so. ELEANOR had the unquestioned right to do so as the allowance of any income to her daughters was in the sole and absolute discretion of ELEANOR, and was subject to unilateral change or revocation in the

future on ELEANOR's part.

It is a sad commentary that part of the Order in the 2009 case construed and reformed the TRUST to provide that Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER are the residuary beneficiaries of Trust No. 2 when ELEANOR dies. Apparently Petitioner JACQUELINE M. MONTOYA, and possibly KATHRYN A. BOUVIER, cannot wait until their seventy-five (75) year old mother, ELEANOR, dies before they enjoy the assets and spend the income therefrom to the current detriment of their own mother. This is particularly shocking in light of the large inheritance Petitioner JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER each received upon the death of ELEANOR's mother, MARJORIE T. CONNELL, in 2009, which inheritance would normally go to ELEANOR as MARJORIE's only child.

In summary, for all of the above reasons, Petitioner JACQUELINE M. MONTOYA has failed to show a reasonable probability of success in the action, and her Petition should be denied.

4. Unclean Hands.

There is an additional reason why Petitioner JACQUELINE M. MONTOYA's Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches filed on December 4, 2013 must be denied, namely the legal doctrine of unclean hands. This doctrine requires that one seeking an equitable remedy such as Petitioner JACQUELINE M. MONTOYA is seeking herein must have "clean hands." This is certainly not the case here.

Demand Letters of Texas Legal Counsel of Petitioner JACQUELINE M. MONTOYA

As noted and discussed at length during the November 12, 2013 hearing in this matter, Texas legal counsel for Petitioner JACQUELINE M. MONTOYA sent a demand letter to the surface tenant and the oil companies informing them of this Nevada case and demanding that not only the disputed sixty-five percent (65%) of royalties and rent be withheld, but all of the royalties and rent be withheld including the thirty-five percent (35%) to which there is no dispute that

ELEANOR is entitled to. Petitioner JACQUELINE M. MONTOYA's Nevada legal counsel attempted to classify these letters as mere notice letters, not demand letters, at the November 12, 2013 hearing. An examination of these letters reveals without question these were demand letters, not notice letters. All of the demand letters are dated September 30, 2013, only three (3) days after Petitioner JACQUELINE M. MONTOYA filed her 2013 DECLARATORY JUDGMENT PETITION herein. They are all from Sean Guerrero, attorney at law, of the Stubbeman, McRae, Sealy, Laughlin & Browder, Inc. Law Firm of Midland, Texas. Mr. Guerrero identifies himself as writing on behalf of his client, Petitioner JACQUELINE M. MONTOYA, in the letters. The demand letters are identical in content except for the name of the addressee, and state as follows:

> "**I write on behalf of our client, Jacqueline M. Montoya**, individually and in her capacity as trustee of the MCT (sic) Living Trust, Plaintiff in *Cause No. P-09-066425-T; In the Matter of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972*. The lawsuit referenced concerns oil and gas royalty and interest payments in the W. N. Connell and Marjorie T. Connell Living Trust, Eleanor Ahern, Trustee. I enclose a copy of the filed petition and confirmation of filing for your reference. We will follow up with a file-marked copy of the petition once we have received it.
>
> Due to the dispute regarding the distribution of payments, a portion of which had been made by your company, **we request that [Apache Corporation] [Plains Marketing, L.P.] [Drag A Cattle Company] hold in suspense *all* payment to the W. N. Connell and Marjorie T. Connell Living Trust until this lawsuit has been resolved**. **We request that you take action immediately so that no further payments are distributed until this suit is resolved**. Please let me know if you have any question. We appreciate your cooperation and look forward to working with you."

Copies of the letters are attached hereto as Exhibit "J" and by this reference incorporated herein. As noted above, these are demand letters, not notice letters. These letters are outrageous. They were intended by Petitioner JACQUELINE M. MONTOYA to unnecessarily harm ELEANOR by preventing her from receiving her undisputed thirty-five percent (35%) of the royalties and rent. This action on the part of Petitioner JACQUELINE M. MONTOYA gives rise to actions against her by ELEANOR for intentional interference with contractual relations, punitive

damages, and enforcement of the no contest clause. This outrageous action on the part of Petitioner JACQUELINE M. MONTOYA constitutes unclean hands.

Closing of Trust Bank Account and Forged Signatures on Replacement Account

As noted above, ELEANOR discovered that the bank account for the TRUST had been closed. This account was established by MARJORIE T. CONNELL and ELEANOR to receive the royalty payments from the Upton County, Texas, Oil rights. In its place, ELEANOR discovered that Petitioner JACQUELINE M. MONTOYA had opened an account on which Petitioner JACQUELINE M. MONTOYA was the Customer. ELEANOR never consented to the closing of the TRUST account or the opening of this account. Upon looking into this matter further and hiring a handwriting expert, ELEANOR discovered that Petitioner JACQUELINE M. MONTOYA forged, or caused to be forged, ELEANOR's signature for this account. *See* copy of the Report attached hereto as Exhibit "I". This also constitutes 'unclean hands" on the part of Petitioner JACQUELINE M. MONTOYA.

Texas Probate of the Marjorie T. Connell Estate

MARJORIE T. CONNELL died on May 1, 2009 a resident of Clark County, Nevada. On July 12, 2012, Petitioner JACQUELINE M. MONTOYA as Applicant filed an Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration (the "TEXAS APPLICATION") in the Estate Of MARJORIE T. CONNELL, Deceased, in the County Court of Upton County, Texas, No. 1207-U1836-PRO. A copy of such TEXAS APPLICATION is attached hereto as "K" and by this reference incorporated herein. Petitioner JACQUELINE M. MONTOYA's Nevada legal counsel attempted to classify this proceeding as a necessary ancillary administration because of the Upton County, Texas, Oil rights at the November 12, 2013 hearing. It is undisputed that at the time of her death, the Upton County, Texas, Oil rights were not titled in the name of MARJORIE T. CONNELL but were titled in the name of the TRUST. Accordingly, no ancillary Texas probate administration of the MARJORIE T. CONNELL Estate was necessary.

However, Petitioner JACQUELINE M. MONTOYA claims that MARJORIE T. CONNELL exercised a testamentary power of appointment in her Last Will And Testament appointing Trust No. 3 to THE MTC LIVING TRUST, of which Petitioner JACQUELINE M. MONTOYA is the sole Trustee and of which Petitioner JACQUELINE M. MONTOYA and her sister are the sole beneficiaries. The Texas probate proceeding was in fact an effort by Petitioner JACQUELINE M. MONTOYA to have the Last Will And Testament admitted to probate and the time pass for challenging the validity of the terms of the Will, all unbeknownst to ELEANOR. This is evidenced by the fact that the TEXAS APPLICATION of Petitioner JACQUELINE M. MONTOYA contains several falsehoods, including but not limited to the following:

> "3. **Decedent** [MARJORIE T. CONNELL] **owned oil, gas and mineral interests located in Upton County, Texas**, of a probable value in excess of $100,000.00."
>
> "5. To Applicant's [JACQUELINE M. MONTOYA] knowledge, Decedent was married one time only, such marriage being to W. N. Connell, who predeceased her. She was not divorced after the making of her Will. **No child was ever** born to or **adopted by the Decedent** [MARJORIE T. CONNELL]."

Applicant-Petitioner JACQUELINE M. MONTOYA has personal knowledge of, and has known for years, that her mother, ELEANOR, was the adopted child of Decedent MARJORIE T. CONNELL. A copy of the Decree of Adoption is attached hereto as Exhibit "L" and by this reference incorporated herein. In fact Petitioner JACQUELINE M. MONTOYA in Paragraph 1 of the Application states she [JACQUELINE M. MONTOYA] "[is] a granddaughter of the Decedent ..." The only way that Petitioner JACQUELINE M. MONTOYA could be the granddaughter of Decedent MARJORIE T. CONNNELL is if ELEANOR is the child of the Decedent MARJORIE T. CONNELL.

Petitioner JACQUELINE M. MONTOYA also references THE MTC LIVING TRUST dated December 6, 1995 as restated on January 7, 2008 in Paragraphs 11, 12 and 13 of the TEXAS APPLICATION. In particular, JACQUELINE M. MONTOYA states in relevant part in Paragraph

13 of the TEXAS APPLICATION as follows:

"JACQUELINE M. MONTOYA is the current trustee of THE MTC LIVING TRUST, and Kathryn Anne Bouvier is the successor trustee."

Article Two, *Family Information*, of THE MTC LIVING TRUST dated December 6, 1995 as restated on January 7, 2008 states as follows:

"**I have one child ELEANOR C. HARTMAN AHERN, born on May 13, 1938**." (emphasis added)

See copy of THE MTC LIVING TRUST attached hereto as Exhibit "C." Petitioner JACQUELINE M. MONTOYA as Trustee of THE MTC LIVING TRUST obviously knows the terms and provisions of THE MTC LIVING TRUST, including the fact that ELEANOR is the child of Decedent MARJORIE T. CONNELL as stated and set forth therein. It is self-evident that this blatantly false allegation that no child was ever adopted by Decedent MARJORIE T. CONNELL contained in her TEXAS APPLICATION was an attempt by Petitioner JACQUELINE M. MONTOYA to avoid having to give ELEANOR notice of the Texas MARJORIE T. CONNELL Estate proceedings and an opportunity to object to the Last Will And Testament of MARJORIE T. CONNELL under which the testamentary power of appointment of Trust No. 3 to THE MTC LIVING TRUST was purportedly exercised, all as part of the plan of Petitioner JACQUELINE M. MONTOYA to deprive ELEANOR of sixty-five percent (65%) of the income from the Upton County, Texas Oil interests to the benefit of Petitioner JACQUELINE M. MONTOYA and her sister. Again, this action on the part of Petitioner JACQUELINE M. MONTOYA constitutes unclean hands.

In fact, when ELEANOR did learn after the fact of the Texas MARJORIE T. CONNELL Estate proceedings, she did object by filing a Petition In Intervention And Motion To Set Aside "Order Probating Foreign Will And Appointing Independent Administrator" and a Supplemental Motion To Dismiss For Lack Of Jurisdiction, copies of which Petition and Supplemental Motion are

attached hereto as Exhibit "M" and Exhibit "N", respectively, and by this reference incorporated herein. The hearing on such Petition and Motion has been postponed indefinitely as an expert witness scheduled to testify at the hearing has been hospitalized and is currently unable to testify in the proceeding.

The timing of the filing of the Texas probate proceeding is also telling. MARJORIE T. CONNELL died on May 1, 2009. There was no type of probate proceeding initiated until July 12, 2012, over three (3) years after the date of death. And this was a completely unnecessary proceeding based on the falsehood that MARJORIE T. CONNELL individually "[o]wned oil, gas and mineral interests located in Upton County, Texas." Again, it is undisputed that MARJORIE T. CONNELL individually owned no such interests. Why would Petitioner JACQUELINE M. MONTOYA wait until 2012? Perhaps it was the fact that ELEANOR discovered in 2012 that the bank account for the TRUST established by MARJORIE T. CONNELL had been closed by Petitioner JACQUELINE M. MONTOYA and in its place Petitioner JACQUELINE M. MONTOYA had opened an account on which Petitioner JACQUELINE M. MONTOYA was listed as the Customer. As noted above, ELEANOR never consented to the closing of the TRUST bank account or the opening of this new account, and upon looking into this matter further and hiring a handwriting expert,, ELEANOR discovered that JACQUELINE M. MONTOYA forged, or caused to be forged, ELEANOR's signature for this account. *See* copy of the Report attached hereto as Exhibit "I".

Legal counsel of Petitioner JACQUELINE M. MONTOYA has attempted to explain away the above falsehoods as mere mistakes on the part of Texas legal counsel for Petitioner JACQUELINE M. MONTOYA that such Texas legal counsel immediately apologized for. However, upon information and belief, to date the falsehoods contained in such Texas pleadings have not been corrected as a matter of record by Petitioner JACQUELINE M. MONTOYA's Texas legal counsel.

Rule 65(c) of the Nevada Rules of Civil Procedure

Finally, according to Rule 65(c) of the Nevada Rules of Civil Procedure, Petitioner JACQUELINE M. MONTOYA must provide a bond in order to obtain a preliminary injunction. In particular, NRCP 65(c) states:

> "**(c) Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof."

Nowhere in her pleadings does Petitioner JACQUELINE M. MONTOYA mention the provision of a bond. A bond is especially important in this case where it is possible, in all likelihood, that any distribution to Petitioner JACQUELINE M. MONTOYA and her sister will be spent and become irrecoverable. Given her statements in her PETITION that she detrimentally relied on ELEANOR's purported promise to pay her sixty-five percent (65%) of the Upton County, Texas, Oil right income and her changed spending habits, it is very likely that Petitioner JACQUELINE M. MONTOYA has somehow spent her entire inheritance from MARJORIE T. CONNELL of approximately Two Million Three Hundred Two Thousand Five Hundred Dollars ($2,302,500.00) in only four (4) years. This inheritance included the 2012 lease bonus of one (1) year ago in the amount of Five Hundred Fifty-two Thousand Five Hundred Dollars ($552,500.00) to Petitioner JACQUELINE M. MONTOYA. These excessive spending habits will likely result in the immediate consumption of any distribution made to Petitioner JACQUELINE M. MONTOYA; therefore, a bond in a significant amount is necessary for the payment of costs and damages as may be incurred or suffered by ELEANOR in the event she is successful in the pending lawsuit. Without a significant bond being required, there is very little, if any, chance of ELEANOR being able to "clawback" the funds distributed to Petitioner JACQUELINE M. MONTOYA and her sister during the pendency of this action.

Detrimental Reliance/Promissory Estoppel

Petitioner JACQULINE M. MONTOYA claims, in her PETITION, to have detrimentally relied on ELEANOR's purported "promise" to pay Petitioner JACQUELINE M. MONTOYA approximately one-third (1/3rd) of the income from the Upton County, Texas, Oil rights. Petitioner JACQUELINE M. MONTOYA claims to have quit her job, a job in which she was earning "over $100,000 annually," and "drastically altered [her] economic habits" in reliance on ELEANOR's supposed promise. ELEANOR categorically denies that she ever promised to pay Petitioner JACQUELINE M. MONTOYA (or her sister) approximately one-third (1/3rd) of the income from the Upton County, Texas, Oil rights in perpetuity or that she discussed with Petitioner JACQUELINE M. MONTOYA her quitting her job.

"The doctrine of promissory estoppel, which embraces the concept of detrimental reliance, is intended as a substitute for consideration, and not as a substitute for an agreement between the parties." *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421 (1989) (citing *Kruse v. Bank of America*, 202 Cal.App.3d 38, 248 Cal.Rptr. 217 (1988). "Accordingly, the first prerequisite of the agreement is a promise." *Id.* (citing *Irwin Concrete, Inc. v. Sun Coast Properties, Inc.*, 33 Wash.App. 190, 653, 653 P.2d 1331, 1337 (1982). Under section 90 of the Second Restatement of Contracts, [a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

Detrimental reliance and promissory estoppel are contract related terms used only to overcome the lack of a valid contract for want of consideration, but consideration is only one element of contract formation. For a valid contract, there must also be a promise or an offer and acceptance. In her Petition, JACQUELINE M. MONTOYA states, "[w]hen the income from the leases started to increase dramatically over the recent years, Jacqueline specifically asked Ms. Ahern if she thought the oil, gas, and mineral income would continue to remain at high levels. Ms.

Ahern assured her it would and specifically encouraged Jacqueline to quit her job and become a stay-at-home mother for her boys. To her detriment, Jacqueline relied on Ms. Ahern's representations and quit her job." Even for the sake of argument, if this could be construed as an offer and acceptance, the statute of frauds would surely prevent enforcement of this purported "agreement." The statute of frauds requires certain contracts to be in writing and these contracts include those for a conveyance of an interest in land (See NRS 111.210(1)) and those that cannot be performed within one year (See NRS 111.220(1)). Accordingly, payment of the royalties and rent to Petitioner JACQUELINE M. MONTOYA, KATHRYN A. BOUVIER and/or the MTC TRUST in perpetuity would violate the statute of frauds. Note, JACQUELINE M. MONTOYA's representation of ELEANOR's so-called "promise", as quoted above, is unlikely to be considered a promise or offer in any event. Within this quote, there is no communication on the part of ELEANOR of an offer and there were no definite and/or certain terms.

Petitioner JACQUELINE M. MONTOYA also argues that she should be entitled to a sixty-five percent (65%) distribution of the royalties and rent because this has been the "course of performance." Essentially, Petitioner JACQUELINE M. MONTOYA contends that the course of dealing has created a contractual obligation on the part of ELEANOR. However, this position is contrary to the law governing contracts. Quite simply "[c]ourse of dealing does not create a contract." *Keith Equip. Co. v. Casa Grande Cotton Fin. Co.*, 928 P.2d 683, 686 (Ariz. App. 2d Div. 1996).

Additionally, Petitioner JACQUELINE M. MONTOYA fails to point out that she and her sister, KATHRYN A. BOUVIER, as equal beneficiaries of THE MTC LIVING TRUST have inherited the total, combined sum of Four Million Six Hundred and Five Thousand Dollars ($4,605,000.00) since 2009 (Three Million Five Hundred Thousand Dollars ($3,500,000.00) upon the death of MARJORIE T. CONNELL in 2009 and One Million One Hundred Five Thousand Dollars ($1,105,000.00) lease bonus in 2012). Petitioner JACQUELINE M. MONTOYA's share

and her sister's share as equal beneficiaries of THE MTC LIVING TRUST would be Two Million Three Hundred Two Thousand Five Hundred Dollars ($2,302,500.00) each. Thus, it is hard to believe that they have suffered any detriment.

Because Petitioner JACQUELINE M. MONTOYA has failed to show that she will suffer irreparable harm if an injunction is not issued, has failed to show that compensatory damages is an inadequate remedy, has failed to show that she enjoys a reasonable probability of success on the merits, has failed to discuss the provision of a bond, has unclean hands, and detrimental reliance is not applicable herein, this Court should deny her Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases, which Petition in reality is a request for a preliminary injunction.

B. The Doctrine Of Laches Is Inapplicable Against ELEANOR And Instead Should Be Enforced Against JACQUELINE M. MONTOYA.

"Laches is an equitable doctrine invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable." *Building & Constr. Trades v. Public Works*, 108 Nev. 605, 610-11, 836 P.2d 633,636-37 (1992). "Laches is more than a mere delay in seeking to enforce one's rights; it is a delay that works to the disadvantage of another." *Carson City v. Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997) *citing Home Savings v. Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989). "The condition of the party asserting laches must become so changed that the party cannot be restored to its former state." *Id.*, 779 P.2d at 86.

In her PETITION, JACQUELINE M. MONTOYA asserts that even if "there was an error in the allocation," "[Ms. Ahern] was obligated to make this assertion approximately 33 years ago." This argument misses the point. There was no allocation and ELEANOR is entitled to all of the Upton County, Texas Oil right income and therefore, there was no "assertion" for her to make. To the contrary, because there was no allocation and because ELEANOR is entitled to all of the Upton

County, Texas, Oil right income, it was MARJORIE T. CONNELL and thereafter JACQUELINE M. MONTOYA who were required to assert a right to sixty-five percent (65%) of the Upton County, Texas, Oil right income.

Following the death of W.N. CONNELL and the alleged allocation of sixty-five percent (65%) of the Upton County, Texas, Oil rights to Trust No. 3, MARJORIE T. CONNELL was a Trustee of the TRUST; therefore, she was aware that there had been no deed or other document of conveyance created and/or recorded to transfer sixty-five percent (65%) of the Upton County, Texas, Oil rights to Trust No. 3. Furthermore, until her death, MARJORIE T. CONNELL acquiesced to the oil companies paying all of the Upton County, Texas, Oil right income to Trust No. 2, and never made a claim to reallocate such payments so that sixty-five percent (65%) would be remitted to Trust No. 3.

Moreover, despite her knowledge of there being two trusts and her belief that she, as Trustee of the MTC TRUST, was entitled to sixty-five percent (65%) of the Upton County, Texas, Oil rights, JACQUELINE M. MONTOYA failed to assert a timely claim to such rights. It is clear from the 2009 PETITION and Consent of Petitioner JACQUELINE M. MONTOYA that Petitioner JACQUELINE M. MONTOYA was aware that there are two trusts, to-wit: Trust No. 2 and Trust No. 3. Despite this, however, JACQUELINE M. MONTOYA failed to bring a claim back in 2009 to the disputed interest when the Probate Court took jurisdiction over the TRUST and reformed the same.

Again, in April 2012, Petitioner JACQUELINE M. MONTOYA negotiated new Oil and Gas Lease contracts with Apache Corporation relative to the Upton County, Texas, Oil rights and never made a claim to the Upton County, Texas, Oil rights. In fact, once these Oil and Gas Lease contracts were prepared, JACQUELINE M. MONTOYA presented the same to ELEANOR for her approval and signature. ELEANOR signed both Oil and Gas Lease contracts "[**i]ndividually and as Trustee of the W.N. Connell and Marjorie T. Connell Living Trust under Trust Agreement**

dated May 18, 1972" (emphasis added) and as sole lessor. Because these Oil and Gas Lease contracts were executed approximately three (3) years after MARJORIE T. CONNELL's death and the exercise of her power of appointment over Trust No. 3, JACQUELINE M. MONTOYA would have been *required* to sign the Oil and Gas Lease contracts as sole Successor Trustee of the MTC TRUST and co-lessor (assuming there had been an allocation of sixty-five percent (65%) of the Upton County, Texas, Oil rights to Trust No. 3). This never happened and JACQUELINE M. MONTOYA failed to make a claim to such rights in 2012.

Now, approximately thirty-four (34) years after the death of W.N. CONNELL and nearly four (4) years after the death of MARJORIE T. CONNELL, JACQUELINE M. MONTOYA seeks to change the manner in which title is held to the Upton County, Texas, Oil rights. Given JACQUELINE M. MONTOYA's extensive involvement with the Upton County, Texas, Oil rights dating back before MARJORIE T. CONNELL's death, JACQUELINE M. MONTOYA could have and should have brought her claim much earlier – specifically, before MARJORIE T. CONNELL's death and thereafter in the 2009 case.

As Petitioner JACQUELINE M. MONTOYA aptly points out in her PETITION, MARJORIE T. CONNELL was a material witness, as she was the surviving Trustor and a Co-Trustee; however, she is now deceased. If MARJORIE T. CONNELL was available, she could testify to the fact that there was never an allocation of the Upton County, Texas, Oil rights to Trust No. 3, and this was done intentionally to preserve W.N. CONNELL's sole and separate property for his only daughter (ELEANOR). However, because Petitioner JACQUELINE M. MONTOYA delayed the assertion of her claim for so long, ELEANOR is now disadvantaged. The only person alive who could have testified in ELEANOR's favor is now gone.

For these reasons, this Court should apply the doctrine of laches against Petitioner JACQUELINE M. MONTOYA for she has delayed the assertion of her claim for much too long, not to mention that Petitioner JACQUELINE M. MONTOYA has made contradictory and

inconsistent allegations in her Consent to the 2009 PETITION and her 2013 DECLARATORY JUDGMENT PETITION. And as a result, ELEANOR is greatly disadvantaged in her ability to defend such claim.

III. CONCLUSION

In summary, this Court should deny JACQUELINE M. MONTOYA's request for a preliminary injunction because she has failed to carry her burden of satisfying the standard for a preliminary injunction. Petitioner JACQUELINE M. MONTOYA has failed to show that irreparable harm will result if an injunction is not issued; Petitioner JACQUELINE M. MONTOYA has failed to show that compensatory damages are not an adequate remedy even if there was such irreparable harm; Petitioner JACQUELINE M. MONTOYA has failed to show reasonable probability of success in the action, and Petitioner JACQUELINE M. MONTOYA has unclean hands. Also, Petitioner JACQUELINE M. MONTOYA has failed to justify the lack of necessity for a bond, which Rule 65(c) of the Nevada Rules of Civil Procedure requires for preliminary injunctions. In particular, Petitioner JACQUELINE M. MONTOYA is unable to prove that there was ever an allocation of sixty-five percent (65%) of the Upton County, Texas, Oil rights to Trust No. 3. This can be proved by simply providing a deed or other document of conveyance; however, JACQUELINE M. MONTOYA is unable to do so. Furthermore, detrimental reliance-promissory estoppel is not applicable in this case. Also this Court should apply the doctrine of laches against Petitioner JACQUELINE M. MONTOYA as a result of her undue delay in asserting her claim to sixty-five percent (65%) of the Upton County, Texas, Oil rights, not to mention that Petitioner JACQUELINE M. MONTOYA has made contradictory and inconsistent allegations in her Consent to the 2009 PETITION and her 2013 DECLARATORY JUDGMENT PETITION.

WHEREFORE, ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, prays as follows:

1. For this Court to deny Petitioner JACQUELINE M. MONTOYA's Petition To Compel Trustee To Distribute Accrued Income And Future Income Received From Oil, Gas, And Mineral Leases, which Petition in reality is a request for preliminary injunction;
2. For this Court to deny Petitioner JACQUELINE M. MONTOYA's request to apply the doctrine of laches against ELEANOR;
3. For this Court to apply the doctrine of laches against Petitioner JACQUELINE M. MONTOYA, and
4. For any other relief as this Court deems appropriate.

DATED: January 3, 2014.

JEFFREY BURR, LTD.

By: _____
JOHN R. MUGAN, ESQUIRE
Nevada Bar No. 10690
MICHAEL D. LUM, ESQUIRE
Nevada Bar No. 12997
2600 Paseo Verde Parkway, Suite 200
Henderson, Nevada 89074
Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

VERIFICATION

STATE OF NEVADA)
): ss
COUNTY OFCLARK)

ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, being first duly sworn, deposes and says: That I am the Defendant herein; that I have read the above and foregoing Objection to Jacqueline M. Montoya's Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e) and NRS 164.033(1)(a),; that the same is true of my own knowledge, except for matters therein stated on information and belief, and as for those matters, I believe it to be true.

State of Nevada
County of Clark

Eleanor Connell Hartman Ahern
ELEANOR CONNELL HARTMAN AHERN

SUBSCRIBED and SWORN to before me

this 25th day of December, 2013, by Eleanor Connell Hartman Ahern

NOTARY PUBLIC

DENNIS HANSON
Notary Public State of Nevada
No. 00-60668-1
My appt. exp. March 1, 2016

CERTIFICATE OF MAILING

I hereby certify that on the 3 day of January, 2014, I did email to JOSEPH J. POWELL, Esquire, as indicated below, and I did email and deposit in the U.S. Post Office at Las Vegas, Nevada, postage prepaid, a copy of the above and foregoing Objection to Jacqueline M. Montoya's Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e) and NRS 164.033(1)(a),, to each person as indicated below, addressed as follows:

Joseph J. Powell
The Rushforth Firm. Ltd.
P.O. Box 371655
Las Vegas, NV 89137-1655
probate@rushforthfirm.com

An employee of JEFFREY BURR, LTD.

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EXHIBIT A
W. N. Connell And Marjorie T. Connell Living Trust

1972

TRUST AGREEMENT

("The W. N. Connell and Marjorie T. Connell Living Trust")

THIS TRUST AGREEMENT, made this 18th day of May, 1972, by W. N. CONNELL and MARJORIE T. CONNELL, husband and wife, (hereinafter sometimes referred to as the "Grantors", when reference is made to them in their capacity as creators of this Trust and the transferrors of the principal properties thereof), and W. N. CONNELL and MARJORIE T. CONNELL, of Las Vegas, Nevada, (hereinafter sometimes referred to as the "Trustee" when reference is made to them in their capacity as the Trustee or fiduciary hereunder), and by this instrument revoke the previous revocable living trust made by us on the 1st day of Dec., 1971:

W I T N E S S E T H :

WHEREAS, the Grantors desire by this Trust Agreement to establish a revocable trust for the uses and purposes hereinafter set forth, to make provision for the care and management of certain of their present properties and for the ultimate disposition of the trust properties;

NOW, THEREFORE, the Grantors hereby give, grant, transfer, set over and deliver as the original trust estate, IN TRUST, unto the Trustee, who hereby declare that they have received from the Grantors all of the property listed on Schedule "A" (which schedule is attached hereto and made a part of this Trust Agreement), TO HAVE AND TO HOLD THE SAME IN TRUST, and to manage, invest and reinvest the same and any additions that may from time to time be made thereto, subject to the hereinafter provided trusts and the terms and conditions, powers and agreements, relating thereto.

Additional property may be added to the trust estate, at any time and from time to time, by the Grantors, or either of them, or by any person or persons, by inter vivos act or testamentary transfer, or by insurance contract or trust designation.

The property comprising the original trust estate during the joint lives of the Grantors shall retain its character as their community property or separate property, as designated on the attached Schedule "A". Property subsequently received by the Trustee during the joint lives of the Grantors shall be listed on an appropriate schedule annexed hereto and shall have the separate or community character ascribed thereto on such schedule.

FIRST: NAME AND BENEFICIARIES OF TRUST. The trusts created hereby shall be for the use and benefit of the Grantors and for ELEANOR MARGUERITE CONNELL HARTMAN, the daughter of W. N. CONNELL by a prior marriage, and for her issue as hereinafter provided. ELEANOR MARGUERITE CONNELL HARTMAN shall hereinafter be designated as the "Residual Beneficiary".

This trust shall be known and identified as the "W. N. Connell and Marjorie T. Connell Living Trust", and, for purposes of convenience, shall hereinafter be referred to as Trust No. 1.

SECOND: TRUST NO. 1. The Trustee shall hold, manage, invest and reinvest the trust estate and shall collect the income thereof and dispose of the net income and principal as follows:

A. Income. The Trustee shall pay equally to the Grantors, during their joint lives, all community net income of the trust estate and shall pay to each Grantor all separate net income from his or her respective share of the trust estate. Such income shall be paid to the Grantors unless the Trustee receives written notice from the Grantors that all income shall not be distributed but shall be accumulated by the Trustee and invested and reinvested as herein provided.

B. Principal. During the joint lives of the Grantors, the Trustee shall pay over and distribute to a Grantor such part or all of the principal of his or her separate property and his or her share of the community property placed in this initial trust by that Grantor as he or she shall demand in a writing directed to the Trustee.

C. Death of Either Grantor. Upon the death of the Grantor whose death shall first occur, the Trustee shall divide the trust estate, including all property received as a result of the decedent's death, as follows:

1. The trust estate and all property received as a result of the decedent's death shall be divided into two parts, each part to be administered as a separate trust to be known respectively as "Trust No. 2" and "Trust No. 3". Reference hereafter to the "Decedent" shall refer to either of the Grantors whose death shall first occur and reference to the "Survivor" shall refer to the other Grantor.

2. The Trustee shall allocate to Trust No. 3 (a) the Survivor's separate property interest in the trust estate; (b) the Survivor's one-half (1/2) interest in the community property of the trust estate, less a proportionate part of all amounts properly chargeable against all community property; and (c) the Survivor's community property interest in any policy of insurance on the life of the Decedent owned by the Grantors as community property and made payable to Trust No. 1.

3. The Trustee shall allocate to Trust No. 3, from the Decedent's separate property an amount as determined in Article THIRD hereof.

4. The Trustee shall allocate to Trust No. 2, all the remaining protion of the trust estate not allocated to Trust No. 3, including, but not limited to, the Decedent's community property interest, if any, in any life insurance policy on the life of the Decedent payable to Trust No. 1.

5. In the event that property is received by the Trustee, by inter vivos or testamentary transfer and directions are contained in the instrument of transfer for allocation to or between Trust No. 2 or Trust No. 3, then the Trustee shall make allocation in accordance with such directions, anything to the contrary herein notwithstanding.

6. It is the intention of the parties, that ELEANOR MARGUERITE CONNELL HARTMAN shall be a Co-trustee of the Decedent's separate property in trust in this Trust to the extent the term "Trustee", as hereinafter used, shall apply to her.

THIRD: MARITAL DEDUCTION. The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code as a Marital Deduction which are not a part of this trust estate. In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and ownership of the said property and the value thereof shall be as finally established for federal estate tax

purposes. This distribution is being made without regard to death taxes payable by reason of the Decedent's death, which taxes shall be paid from Trust No. 2 only.

FOURTH: TRUST NO. 2. The Trustee shall hold, manage, invest and reinvest the estate of Trust No. 2 and shall collect the income thereof and dispose of the net income and principal as follows:

A. Death of Decedent. Upon the death of the Decedent, the Trustee shall pay from the income or principal of this trust, the death taxes, probate and legal expenses, and the expenses of the last illness and funeral of the Decedent, provided, however, that no funds received by the Trustee as proceeds from a retirement plan qualified under the Internal Revenue Code shall be available for these purposes unless there are no other assets in the Survivor's estate, in which event funds from a qualified plan can be used, but only to the extent of these actual expenses.

B. Income. All income received by this Trust from the separate property of the Decedent shall be paid to the Residual Beneficiary. In the event any of the real property located in Upton County, Texas, as listed on the original Schedule "A" attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of this Trust, equal to all of the income received by this Trust from the real property located in Upton County, Texas. However, the provisions relating to the additional payment, shall be noncumulative, and in any calendar year in which the income received from the said community property is not sufficient to make full payment hereunder, the Trustee is directed to pay only the income which has been received by this Trust during that year, and not to carry forward any deficiency in payment to the next calendar year's income.

In the event the Residual Beneficiary predeceases the Survivor, the Residual Beneficiary's rights to receive income hereunder shall be paid to or for the benefit of her living children and the issue of any deceased child by right of representation; or in the event she dies without living issue, her income rights hereunder shall become those of the Survivor.

All other income received by this Trust shall be distributed to the Survivor.

All payments as provided in this Section shall be made at frequent intervals, but at least semi-annually.

C. Principal. The Trustee shall pay over and distribute the principal of the estate of Trust No. 2 as follows:

1. Power to make gifts. The Survivor shall have the discretionary power during his or her lifetime to direct the Trustee to pay over and distribute trust principal of the separate property in trust from the Decedent's Trust to or for the benefit of the Residual Beneficiary or any of her living issue; such power may be exercised by delivering to the Trustee a writing duly executed and acknowledged, wherein he or she specifies the amount of principal that should be paid over and distributed to the particular issue and in what proportions such principal shall be paid over and distributed. It is the Grantors' intent hereby to convey upon the Survivor a sprinkling power; said power is limited, however, to appointments made to and among the Residual Beneficiary or her living issue.

2. Power of invasion. If, in the opinion of the Trustee, the income from all sources of which the Trustee has knowledge shall not be sufficient to support, maintain, educate and provide for the Survivor or Residual Beneficiary or any issue of the Residual Beneficiary in their accustomed manner of living, or in the event of any emergency befalling these said parties, such as illness, accident or other distress, the Trustee is authorized to use and expend such part of the trust principal of Decedent's separate property in trust, as the Trustee may deem necessary or desirable to meet such needs or emergencies. The decision of the Trustee as to what shall constitute an emergency or the necessity or desirability of encroachment upon principal shall be conclusive upon all parties and the Trustee shall be relieved and exonerated hereunder if the Trustee acts in good faith in making such determination.

3. Sale of real property from Decedent's separate property. The Survivor is directed that in the event any additional money is needed for payment of funeral, last illness or other costs to settle any claims made against Decedent's estate, or in the event that the sale of Decedent's separate property is contemplated at any time, only the separate property of Decedent situated in Las Vegas, Clark County, Nevada, shall be sold to satisfy this obligation.

4. Sale of real property. In the event that any real property which is listed on Schedule "A" attached hereto as the Decedent's separate property, and, is a part of the corpus of Trust No. 2 is sold, the Grantors direct the Trustee to distribute the net proceeds from such sale, less any applicable income tax due because of such sale, to the Residual Beneficiary, free of trust. In the event the Residual Beneficiary is not living at the time of the said sale, the proceeds therefrom shall remain in this Trust, and shall be subject to all of the provisions as herein contained.

D. Definition of real property. The term "real property" as used in this Article FOURTH shall not include the mineral, oil and gas interests in Upton County, Texas, if the same are separately listed on Schedule "A" hereto.

FIFTH: TRUST NO. 3. The Trustee shall hold, manage, invest and reinvest the estate of Trust No. 3 and shall collect the income thereof and dispose of the net income and principal as follows:

A. Income. The Trustee shall pay to the Survivor during his or her lifetime all of the net income of the Survivor's trust estate in convenient, regular installments, but not less frequently than quarter-annually.

B. Powers of appointment over income and principal.

1. During his or her lifetime, the Survivor shall have the power to appoint all or any part of the principal and undistributed income, if any, of the estate of Trust No. 3 to himself or herself, or to any person or persons. Such power of appointment shall be exercisable in all events, but only by the Survivor's submitting to the Trustee written instructions expressly exercising such power.

2. Upon the death of the Survivor, he or she shall have the absolute power to appoint the entire principal and the undistributed income, if any, of the estate of Trust No. 3, or any part thereof, to his or her estate or to any person or persons. Such power of appointment shall be exercised only by a provision in the Last Will of the Survivor expressly exercising such power. Unless within ninety (90) days after the death of the Survivor the Trustee has actual notice of the existence of a Will exercising such power, it shall be deemed for all purposes hereunder that such power was not exercised.

C. Revocation and Amendments. The Survivor shall have the power to revoke, amend or terminate Trust No. 3 herein provided by delivering such amendments or revocation in writing to the Trustee provided that the Trustee's duties and liabilities cannot be increased without the Trustee's consent.

D. Death of Survivor. Upon the death of the Survivor, the Trustee shall distribute the trust estate in accordance with and to the extent provided by the Survivor's exercise of his or her power of appointment.

If and to the extent that the Survivor shall fail to effectively exercise the foregoing power of appointment, the principal and undistributed income of Trust No. 3 shall, upon his or her death, be distributed to the Residual Beneficiary, or to the heirs of her body if she is not then living.

SIXTH: SPENDTHRIFT PROVISION. Each and every beneficiary under the Living Trust and the various estates created hereunder is hereby restrained from and shall be without right, power or authority to sell, transfer, assign, pledge, mortgage, hypothecate, alienate, anticipate, bequeath or devise, or in any manner affect or impair his, her or their beneficial right, title, interest, claim and estate in and to either the income or principal of any claim created hereunder, or to any part thereof, during the entire term of said trusts; nor shall the right, title, interest, or estate of any beneficiary be subject to any right, claim, demand, lien or judgment of any creditor of any such beneficiary, nor be subject nor liable to any process of law or equity, but all of the income and principal, except as otherwise provided in this Trust Agreement shall by the Trustee be payable and deliverable to or for the benefit of only the before named and designated beneficiaries, at the times hereinbefore set out, and receipt by such beneficiaries shall relieve the Trustee from responsibility for such good faith distributions.

SEVENTH: POWERS OF TRUSTEE. To carry out the purposes of any trust created under this instrument and subject to any limitations stated elsewhere in this Trust Agreement, the Trustee is vested with the following powers with respect to the trust estate and any part of it, in addition to those powers now or hereafter conferred by law:

A. To continue to hold any property, including any shares of the Trustee's own stock and to operate at the risk of the trust estate any business that the Trustee receives or acquires under the trust as long as the Trustee deems advisable.

B. To manage, control, grant options on, sell, (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair trust property.

C. To lease trust property for terms within or beyond the term of the trust and for any purpose, including

exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

D. To borrow money and to encumber or hypothecate trust property by mortgage, deed of trust, pledge, or otherwise; to borrow money on behalf of one trust from any other trust created hereunder to guarantee any loan made during the lifetime of the Grantors.

E. To carry, at the expense of the trust, insurance of such kinds and in such amounts as the Trustee deems advisable to protect the trust estate and the Trustee against any hazard.

F. To commence or defend such litigation with respect to the trust or any property of the trust estate as the Trustee may deem advisable at the expense of the trust.

G. To compromise or otherwise adjust any claims or litigation against or in favor of the trust.

H. To invest and reinvest the trust estate in every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, stocks, preferred or common, shares of investment trusts, investment companies, and mutual funds and mortgage participations, which men of prudence, discretion and intelligence acquire for their own account, and to invest in any common trust fund administered by the Trustee and to lend money of one trust to any other trust created hereunder.

I. With respect to securities held in the trust, to have all the rights, powers and privileges of an owner, including, but not by way of limitation, the power to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, liquidations, sales and leases and incident to such participation to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscriptions or conversion rights.

J. Except as otherwise specifically provided in this instrument, the determination of all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses thereon shall be governed by the provisions of the Nevada Principal and Income Law and shall be determined by the Trustee in the Trustee's discretion; provided, however, that all capital gain distributions from mutual funds should be allocated to principal.

K. All of the trust powers set forth in Nevada Revised Statutes 163.265 to 163.410 inclusive, are hereby incorporated into this Trust Agreement.

EIGHTH: SPECIAL PROVISIONS.

A. Use of Home. The Trustee shall allow the Survivor to occupy and use until his or her death the home (or any interest therein) used by either or both Grantors as a principal residence at the time of the Decedent's death. The Trustee shall, at the discretion of the Survivor, sell such home, and if the Survivor so directs, purchase and/or build another comparable residence to be used as a home for the Survivor, and so on from time to time. The Survivor shall not be required to pay any rent for the use of such home.

B. Revocation and Amendment.

1. (Except as provided in paragraph 2 of this clause):

(a) This Trust Agreement, and the trusts evidenced thereby, may be revoked at any time during the joint lives of the Grantors by either of the Grantors delivering written notice of revocation to the Trustee and to the other Grantor.

(b) This Trust Agreement, and the trusts evidenced thereby, may be amended at any time and from time to time during the joint lives of the Grantors by the joint action of both Grantors delivering such amendment or amendments in writing to the Trustee provided that the Trustee's duties and liabilities cannot be increased without the Trustee's consent.

(c) From and after the death of the Decedent, this Trust Agreement may not be revoked, altered or amended, except as provided in relation to Trust No. 3.

(d) Upon any revocation of this Trust Agreement, during the Grantors' joint lives, the Trustee shall return to each Grantor his or her half of the community assets and to each Grantor his or her separate property, as indicated on Schedule "A".

2. In the event that any insurance on the life of either Grantor, owned by the other Grantor as his or her separate property, is payable to the Trustee or Trustees of any trust hereunder, then this Trust Agreement and the trusts evidenced thereby may be amended or revoked, insofar as they relate to such insurance, only by the Grantor who is owner of such insurance. The insured Grantor shall have no right to revoke or amend to that extent. This paragraph shall be construed as limiting the rights of the insured-Grantor and not as expanding the rights of the owner-Grantor.

C. Simultaneous Death. If there be no sufficient evidence that the Grantors died otherwise than simultaneously, then for purposes of this Trust Agreement, it shall be conclusively presumed for all purposes of administration and tax effect of this Trust Agreement that the Decedent shall be the Husband and the Survivor shall be the Wife.

D. Limitation of Trust Powers. Administrative control and all other powers relating to the various trust estates created hereunder, shall be exercised by the Trustee in a fiduciary capacity and solely for the benefit of the Survivor and the other beneficiaries as herein provided. Neither the Trustee, the Grantors, nor any other person, shall be permitted to purchase, exchange, reacquire or otherwise deal with or dispose of the principal of any of the various trust estates or the income therefrom, for less than an adequate and full consideration in money or money's worth; nor shall any person borrow the principal or income of the trust estates, directly or indirectly, without adequate interest in any case or without adequate security therefor.

E. Compensation of Trustee. The Trustee or successor Trustee, as herein provided, shall receive reasonable compensation for ordinary services performed hereunder. Reasonable compensation shall be based upon the then prevailing rates charged for similar services in the locality where the same are performed by other fiduciaries engaged in the trust business or acting as trustees.

F. Applicable Law. This Trust Agreement is executed under the laws of the State of Nevada and shall in all respects be governed by the laws of the State of Nevada; provided, however, the Trustee shall have the discretion, exercisable at any later time and from time to time, to administer Trust No. 1 pursuant to the laws of any jurisdiction in which the Trustee may be domiciled, by executing and acknowledging a written instrument to that effect and attaching the same to this Trust Agreement, and, if the Trustee so exercises the Trustee's discretion, as above provided, the various trust estates shall be governed by the laws of the other state or jurisdiction in which Trust No. 1 is then being administered.

G. Invalid Provisions. In the event any clause, provision or provisions of this Trust Agreement and the Living Trust created hereunder prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions, shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as legally possible. If any provision contained in this Trust Agreement shall otherwise violate the rules against perpetuities now or hereafter in effect in the State of Nevada or in any state by which this Living Trust may subsequently be governed, that portion of the Trust so effected shall be administered as herein provided until the termination of the maximum period authorized by law, at which time and forthwith, such part of the said trust estate so

affected shall be distributed in fee simple to the beneficiary or beneficiaries in the proportions in which they are then entitled to enjoy the benefits so terminated.

H. Incompetency of Beneficiary. During any period in which any beneficiary under this Trust Agreement is judicially declared incompetent, or in the opinion of the Trustee is unable to care for himself, the Trustee shall pay over or use for the benefit of said incompetent beneficiary any part or all of the net income or principal from his or her share of the trust estate, in such manner as the Trustee shall deem necessary or desirable for said beneficiary's support, maintenance and medical care.

I. Claimants. The Grantors have, except as otherwise expressly provided in this Trust Agreement, intentionally and with full knowledge declined to provide for any and all of their heirs or other persons who may claim an interest in their respective estates or in these trusts.

J. Headings. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Agreement.

K. Copies. This Trust Agreement may be executed in any number of copies and each shall constitute an original of one and the same instrument.

L. Construction. Whenever it shall be necessary to interpret this trust, the masculine, feminine and neuter personal pronouns may be construed interchangeably, and the singular shall include the plural and the plural the singular.

NINTH: LIFE INSURANCE POLICIES. With respect to any policies of life insurance under which the Trustee is designated as beneficiary, the Trustee shall deal with such policies as required by the following trust provisions, in addition to the general trust provisions hereinbefore and hereinafter set forth:

A. Custody of Insurance Policies. The Trustee shall have the custody of any policy of life insurance under which the Trustee is designated as beneficiary. However, the owner shall have the right to possession of said policy or policies upon written request to the Trustee.

B. Payment of Premiums. The Trustee shall be under no obligation to pay the premium of any policy or policies of insurance, nor to make certain that such premiums are paid by the Grantors or others, nor to notify any persons of the non-payment of such premiums; and, the Trustee shall be under no responsibility or liability of any kind in case such premiums are not paid.

C. Collection of Policy Proceeds. Upon the death of the insured under such policy or policies, the Trustee shall collect all proceeds due thereon and the Trustee shall make all reasonable efforts to carry out the provisions of this Trust Agreement, including the maintenance of or defense of any action or suit; provided, however, the Trustee shall be under no duty to maintain or enter into any litigation unless the expenses thereof, including counsel fees and costs, have been advanced or guaranteed in an amount and in a manner which is reasonably satisfactory. The Trustee may repay any advances made by the Trustee or reimburse itself for any such fees and costs expended in reasonable attempts for collection of such proceeds out of the principal or income of the trust.

D. Purchase of Assets. The Trustee is hereby authorized and empowered to apply any part or the whole amount of any insurance proceeds collected hereunder to purchase assets from the insured's estate which may be offered for sale by the legal representative of the insured's estate at a price equal to the value of such assets as fixed by competent authority for purposes of determining the liability of the insured's estate for death taxes or at such other price as may be agreed upon by the personal representative of the insured's estate.

TENTH: NON-CONTEST PROVISION. The Grantors specifically desire that these trusts created herein be administered and distributed without litigation or dispute of any kind. If any beneficiary of these trusts or any other person, whether stranger, relatives or heirs, or any legatees or devisees under the Last Will and Testament of the Grantors or the successors in interest of any such persons, including any person who may be entitled to receive any portion of the Grantors' estates under the intestate laws of the State of Nevada, seek or establish to assert any claim to the assets of these trusts established herein, or attack, oppose or seek to set aside the administration and distribution of the said trusts, or to have the same declared null and void or diminished, or to defeat or change any part of the provisions of the trust established herein, then in any and all of the above mentioned cases and events, such person or persons shall receive One Dollar ($1.00) and no more in lieu

of any interest in the assets of the trusts.

ELEVENTH: DEATH OF ALL BENEFICIARIES. In the event the Residual Beneficiary shall predecease the Grantors without living issue or children of any deceased child, then the Grantors direct that all of the income and principal of any trusts created hereunder shall be distributed to the Shriners Hospitals for Crippled Children upon the death of the Survivor.

TWELFTH: SUCCESSOR TRUSTEE. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR MARGUERITE CONNELL HARTMAN as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint the FIRST NATIONAL BANK OF NEVADA to serve in the said capacity. No successor trustee shall have any responsibility for the acts or omissions of any prior trustee and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.

THIRTEENTH: ACKNOWLEDGEMENT, REPORTS, INSPECTION OF RECORDS. The Trustee hereby acknowledges receipt of and accepts the property and the estate of Trust No. 1 created hereunder on the terms and conditions stated and agrees to care for, manage and control the same in accordance with the directions herein specified, and to furnish to each beneficiary having income paid, distributed, credited or accumulated for his or her benefit, annually and more often if requested so to do, a statement showing

the condition of the trust property, the character and amounts of the investments and liabilities, and the receipts, expenses and disbursements since the last previous statement. The books of account of the Trustee in connection with the investments shall at all times be open to the reasonable inspection of the living beneficiaries or their duly qualified representatives, and such person or persons as they may designate for that purpose.

THIS TRUST AGREEMENT is accepted and executed by the Grantors and Trustee in the State of Nevada on the day and year first above written.

GRANTORS:

W. N. CONNELL

MARJORIE T. CONNELL

TRUSTEE:

W. N. CONNELL

MARJORIE T. CONNELL

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

On May 18th, 1972, personally appeared before me, a Notary Public, W. N. CONNELL and MARJORIE T. CONNELL, who declared to me that they executed the foregoing Trust Agreement.

June A. Gavin
Notary Public in and for said County and State

NOTARY PUBLIC - STATE OF NEVADA
CLARK COUNTY
JUNE A. GAVIN
My Commission expires May 4, 1976

SCHEDULE "A"

("The W. N. Connell and Marjorie T. Connell Living Trust")

All of the Grantors' rights, title and interest in the following assets are hereby transferred to the Trustee as part of this trust estate and will be administered and distributed in accordance with the terms of the foregoing Trust Agreement.

The following real property interests constitute the community property of the Grantors:

1. Lots One (1) and Two (2) in Block Sixteen (16) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.

2. Lot Three (3), Block Six (6), Biltmore Addition to the City of Las Vegas, as shown by map thereof on file in Book 2 of Plats, Page 33, in the Office of the County Recorder of Clark County, Nevada.

3. Lots Fifteen (15) and Sixteen (16) in Block Fifteen (15) in the South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 14, in the Office of the County Recorder of Clark County, Nevada.

4. Lots Twenty-Two (22) and Twenty-Three (23) in Block Eleven (11) of South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 51, in the Office of the County Recorder of Clark County, Nevada.

5. Lots Twenty-four (24) and Twenty-five (25) in Block Eleven (11) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.

The following assets constitute the separate property of

W. N. CONNELL:

1. Real Property:

(a) That portion of the North Half (N 1/2) of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 28, Township 20 South, Range 61 East, M.D.B.&M., described as follows:

Beginning at the point of intersection of the East Line of the Northwest Quarter (NW 1/4) of

the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) of said Section 28, said Township and Range, (hereinafter called Line 1) with the South boundary of Clark Avenue produced Westerly as the same is now established (hereinafter called Line 2); thence South along said Line 1 a distance of 378 feet; thence North 89° 36' West and parallel to said Line 2 a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning-

Together with an undivided 1/30th interest of, in and to all water flowing or otherwise produced from that certain artesian well located in the North Half of the South Half of the Southeast Quarter of Section 29, Township 20 South, Range 61 East, M.D.B.&M, known as the New Russell Well. Together with an undivided 1/30th interest in and to that certain pipe line connected to and running from said well Easterly to a point 100 feet West from said Line 1 above described; together with an easement for said pipe line in common with all the other owners of said pipe line along a strip of ground three feet in width, the center line of which is located approximately 150 feet South of and running parallel with said Line 2, and which strip extends from said well to a point 100 feet West from said Line 1; together with the right to enter thereon for the purpose of repairing, replacing and renewing said pipe line.

Reference: Deed # 180405, Book 35, pages 159 and 160.

(b) The West 1/2 of Section 37, all of Sections 38, 47 and 48 in Block 39, Township 5 South, T. & P. R.R. Co. Survey in Upton County, Texas.

2. Oil, gas and mineral rights on and under the following described real property in Upton County, Texas.

(a) Sections 31 and 42 of Block 38, Township 5 South, T. & P. R.R. Co. Survey.

(b) Sections 32, 33, 36, 37, 38, 40, 41, 44, 45, 47 and 48 of Block 39, Township 5 South, T. & P. R.R. Co. Survey.

(c) Sections 36 and 37 of Block 40, Township 5 South, T. & P. R.R. Co. Survey.

3. The oil, gas and mineral leases on the following described real property in Upton County, Texas.

(a) Sections 31 and 42 of Block 38, Township 5 South, T. & P. R.R. Co. Survey.

(b) Sections 32, 33, 36, 37, 38, 40, 41, 44, 45, 47 and 48 of Block 39, Township 5 South, T. & P. R. R. Co. Survey.

(c) Sections 36 and 37 of Block 40, Township 5 South, T. & P. R.R. Co. Survey.

The undersigned Grantors named in the foregoing Trust Agreement hereby certify that they have read said Trust Agreement and that it fully and accurately sets out the terms, trusts and conditions under which the trust estate therein described is to be held, managed and disposed of by the Trustee therein named; and, that they hereby approve, ratify and confirm the said Trust Agreement.

W. N. CONNELL

MARJORIE T. CONNELL

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

On May 18 1972, personally appeared before me, a Notary Public, W. N. CONNELL and MARJORIE T. CONNELL, who acknowledged to me that they executed the foregoing Trust Agreement.

Notary Public in and for said County and State

NOTARY PUBLIC - STATE OF NEVADA
CLARK COUNTY
JUNE A. GAVIN
My Commission Expires May 9, 1976

EXHIBIT B

Quitclaim Deeds of Grantor W. N. Connell-Upton County, Texas

Name W. N. Connell
Street Address 727 So. 3rd Street
City & State Las Vegas, Nev. 89101

EXHIBIT "B"

409/329

SPACE ABOVE THIS LINE FOR RECORDER'S USE

61969

QUITCLAIM DEED

DOCUMENTARY TRANSFER TAX $ None
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.
W N Connell
Signature of Declarant or Agent determining tax. Firm Name

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged

WILLIAM N. CONNELL, also known as W. N. CONNELL

do hereby

REMISE, RELEASE AND FOREVER QUITCLAIM to W. N. CONNELL and MARJORIE T. CONNELL, as TRUSTEE All of his rights and title to the Oil, Gas and Minerals interest on and under the following described property

the real property in the State of TEXAS County of UPTON

SUBJECT TO: "The W. N. CONNELL and MARJORIE T. CONNELL LIVING TRUST" dated May 18, 1972.

(a) Sections 31 and 42 of Block 38, Township 5 South, T. P. RR. Co. Survey

(b) Sections 32, 33, 36, 37, 38, 40, 41, 44, 45, 47 and 48 of Block 39, Township 5 South, T. & P. R.R. Co. Survey.

(c) Sections 36 and 37 of Block 40, Township 5 South, T. & P. RR. Co. Survey.

Dated: June 5, 1972

William N. Connell
William N. Connell

State of California, } ss
County of Clark

On June 5, 1972 before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM N. CONNELL

known to me to be the person whose name subscribed to the within instrument and acknowledged that he executed the same.

Witness my hand and official seal.

ELSIE M. BELLONI
NOTARY PUBLIC - NEVADA
CLARK COUNTY
My Commission Expires Jan. 19, 1976

(Seal) Elsie M. Belloni
Notary Public in and for said State.

Title Order No. Escrow or Loan No.

MAIL TAX
STATEMENTS TO
NAME ADDRESS ZIP

DEED—QUITCLAIM—WOLCOTTS FORM 790 REV. 2-70

This standard form covers most usual problems in the field indicated. Before you sign, read it, fill in all blanks, and make changes proper to your transaction. Consult a lawyer if you doubt the form's fitness for your purpose.

FILED FOR RECORD ON THE 13th DAY OF June A.D., 19 72 AT 10:04 O'CLOCK A. M
DULY RECORDED THIS THE 15th DAY OF June A.D., 19 72 AT 1:00 O'CLOCK P. M
INSTRUMENT NO. 61969
VOL. 409 PAGE 329 OFFICIAL RECORDS
BUENA R. COFFEE, COUNTY CLERK
UPTON COUNTY, TEXAS

Name W. N. Connell
Street Address 727 So. 3rd Street
City & State Las Vegas, Nevada 89101

414/9

SPACE ABOVE THIS LINE FOR RECORDER'S USE

61970

QUITCLAIM DEED

DOCUMENTARY TRANSFER TAX $ None
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.
W N Connell
Signature of Declarant or Agent determining tax, Firm Name

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged

WILLIAM N. CONNELL, also known as W. N. CONNELL

does hereby

REMISE, RELEASE AND FOREVER QUITCLAIM to W. N. CONNELL and MARJORIE T. CONNELL, as TRUSTEE. SUBJECT TO: "The W. N. Connell and Marjorie T. Connell Living Trust" dated May 18, 1972 with complete powers of disposition of the real estate herein described

The real property in the ~~State of California~~ described as: State of Texas County of Upton

The West 1/2 of Section 37, all of Sections 38, 47 and 48 in Block 39, Township 5 South, T. & P. R.R. Co. Survey in Upton County, Texas.

Dated: June 5, 1972

William N Connell
William N. Connell

State of ~~California~~ Nevada,
County of Clark } ss

On June 5, 1972 before me, the undersigned, a Notary Public in and for said State, personally appeared: WILLIAM N. CONNELL

known to me to be the person whose name subscribed to the within instrument and acknowledged that he executed the same.

Witness my hand and official seal.

ELSIE M. BELLONI
NOTARY PUBLIC - NEVADA
CLARK COUNTY
My Commission Expires Jan. 19, 1976

(Seal) Elsie M. Belloni
Notary Public in and for said State.

Title Order No. Escrow or Loan No.

MAIL TAX
STATEMENTS TO
NAME ADDRESS ZIP

DEED-QUITCLAIM-WOLCOTT'S FORM 799 This standard form covers most usual problems in the field indicated. Before you sign, read it, fill in all blanks.

FILED FOR RECORD ON THE 13th DAY OF June A.D., 1972 AT 10:06 O'CLOCK A.
DULY RECORDED THIS THE 13th DAY OF June A.D., 1972 AT 1:00 O'CLOCK P.
INSTRUMENT NO. 61970
VOL. 414 PAGE 91 DEED RECORDS
BUENA R. COFFEE, COUNTY CLERK
UPTON COUNTY, TEXAS B.R.C.

EXHIBIT C

MTC Living Trust dated December 6, 1995 as restated on January 7, 2008

THE MTC LIVING TRUST
DATED DECEMBER 6, 1995

Restatement dated January 7, 2008

LAW OFFICES
LAW OFFICES OF DAVID A. STRAUS
A PROFESSIONAL CORPORATION
900 RANCHO LANE
LAS VEGAS, NEVADA 89106
(702) 474-4500

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The MTC LIVING TRUST
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The MTC LIVING TRUST

Article One
Establishing My Trust

On December 6, 1995, I established the MTC LIVING TRUST, wherein I reserved the right to amend the trust agreement, in whole or in part in Article Four, Section 1(d). On this day, January 7, 2008, I now exercise my power to amend that agreement, in its entirety, so that after amendment, the MTC LIVING TRUST states as follows:

The parties to this restated agreement are MARJORIE T. CONNELL, also known as MARJORIE THRASH CONNELL, (the "Trustmaker") and MARJORIE T. CONNELL (my "Trustee").

Section 1.01 Identifying My Trust

My trust may be referred to as "MARJORIE T. CONNELL, Sole Trustee, or her successors in trust under the MTC LIVING TRUST dated December 6, 1995, and any amendments thereto."

For the purpose of transferring property to my trust, or identifying my trust in any beneficiary or pay-on-death designation, any description referring to my trust shall be effective if it reasonably identifies my trust and indicates that the trust property is held in a fiduciary capacity.

Section 1.02 Reliance by Third Parties on Affidavit or Certification of Trust

From time to time, third parties may require documentation to verify the existence of this agreement, or particular provisions of it, such as the name or names of my Trustee or the powers held by my Trustee. To protect the confidentiality of this agreement, my Trustee may use an affidavit or a certification of trust that identifies my Trustee and sets forth the authority of my Trustee to transact business on behalf of my trust. The affidavit or certification may include pertinent pages from this agreement, such as title or signature pages.

A third party may rely upon an affidavit or certification of trust that is signed by my Trustee with respect to the representations contained in the affidavit or certification of trust. A third party relying upon an affidavit or certification of trust shall be exonerated from any liability for actions the third party takes or fails to take in reliance upon the representations contained in the affidavit or certification of trust. A third party dealing with my Trustee shall not be required to inquire into the terms of this agreement or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.

Section 1.03 Transferring Property to My Trust

Any person or entity may transfer property of any kind, nature and description to my trust in any manner authorized by law.

(a) Funding of My Trust

By execution of this agreement, I transfer, convey and assign to my Trustee and my Trustee accepts and agrees to hold, the property described in Schedule A, annexed hereto, together with all my right, title and interest in and to all of my property that may by law be held in trust and that may, by this assignment, be transferred to my trust. In addition, any assets already in the name of my trust shall be controlled by this agreement. This assignment shall include, without limitation, all real and personal, tangible and intangible property, located in the United States, whether separate or community, whether acquired before or after the execution of this agreement except for the following assets that are expressly not transferred to my trust by this assignment:

Life insurance policies, unless the ownership of a policy is transferred to my trust by a separate instrument that specifically refers to such policy;

Corporate and self-employed ("Keogh") pension, profit sharing and stock bonus plans;

Qualified retirement plans;

Commercial annuities;

Any property, the transfer of which would result in the immediate recognition of income subject to income or other taxes or the transfer of which would result in the loss of a homestead exemption or violate a restriction on transfer agreement.

(b) Acceptance by My Trustee

By execution of this agreement, my Trustee accepts and agrees to hold the trust property described on Schedule A, along with all other property initially transferred to it by virtue of subsection (a). All property transferred to my trust after the date of this agreement must be acceptable to my Trustee. My Trustee may refuse to accept any property. My Trustee shall hold, administer and dispose of all trust property accepted by my Trustee for my benefit and the benefit of my beneficiaries in accordance with the terms of this agreement.

Section 1.04 Powers Reserved by Me as Trustmaker

During my lifetime, I shall retain the powers set forth in this Section in addition to any powers that I reserve in other provisions of this agreement.

(a) Action on Behalf of My Trust

During any period that I am serving as a Trustee of my trust, I may act for and conduct business on behalf of my trust without the consent of any other Trustee.

(b) Amendment, Restatement or Revocation

I have the absolute right, at any time and from time to time, to amend, restate, or revoke any term or provision of this agreement in whole or in part. Any amendment, restatement, or revocation must be in a written instrument signed by me.

(c) Addition or Removal of Trust Property

I have the absolute right, at any time and from time to time, to add to the trust property and to remove any property from my trust.

(d) Control of Income and Principal Distributions

I have the absolute right to control the distribution of income and principal from my trust. My Trustee shall distribute to me, or to such persons or entities as I may direct, as much of the net income and principal of the trust property as I deem advisable. My Trustee may distribute trust income and principal to me or for my unrestricted use and benefit, even to the exhaustion of all trust property. Any undistributed income shall be added to the principal of my trust.

(e) Approval of Investment Decisions

I reserve the absolute right to review and change my Trustee's investment decisions; however, my Trustee shall not be required to seek my approval before making investment decisions.

Section 1.05 Grantor Trust Status

By reserving the broad rights and powers set forth in Section 1.04 of this Article, I intend to qualify my trust as a "Grantor Trust" under Sections 671 to 677 of the Internal Revenue Code so that, for federal income tax purposes, I will be treated as the owner during my lifetime of all the assets held in my trust as though I held them in my individual capacity.

During any period that my trust is a Grantor Trust, the taxpayer identification number of my trust shall be my social security number, in accordance with Treasury Regulation Section 301.6109-1(a)(2).

Article Two
Family Information

I am unmarried.

I have one child ELEANOR C. HARTMAN AHERN, born on May 13, 1938.

I have also made provision for the following individuals in this agreement:

Name	Relationship
JACQUELINE MARGUERITE MONTOYA	Granddaughter
KATHRYN ANN BOUVIER	Granddaughter

Article Three
Trustee Succession Provisions

Section 3.01 Resignation of a Trustee

A Trustee may resign by giving notice to me. If I am deceased, a resigning Trustee shall give notice to the income beneficiaries of the trust and to any other Trustee then serving.

Section 3.02 Trustee Succession During My Lifetime

During my lifetime, this Section shall govern the removal and replacement of my Trustees.

(a) Removal and Replacement by Me

I may remove any Trustee with or without cause at any time. If a Trustee is removed, resigns or cannot continue to serve for any reason, I may serve as sole Trustee, appoint a Trustee to serve with me or appoint a successor Trustee.

(b) During My Incapacity

During any time that I am incapacitated, the following, in the order named, shall replace any then serving Trustee:

First, JACQUELINE MARGUERITE MONTOYA; and then

Second, KATHRYN ANN BOUVIER

If I am incapacitated, a Trustee may be removed only for cause, which removal must be approved by a court of competent jurisdiction upon the petition of an interested party.

All appointments, removals and revocations shall be by signed written instrument.

Notice of removal shall be delivered to the Trustee being removed and shall be effective in accordance with the provisions of the notice.

Notice of appointment shall be delivered to and accepted by the successor Trustee and shall become effective at that time. A copy of the notice shall be attached to this agreement.

Section 3.03 Trustee Succession After My Death

After my death, this Section shall govern the removal and replacement of my Trustees.

(a) Successor Trustee

Upon my death, the following, in the order named, shall serve as my successor Trustee, replacing any then serving Trustee:

First, JACQUELINE MARGUERITE MONTOYA; and then

Second, KATHRYN ANN BOUVIER

(b) Trustees of the Separate Trusts

The primary beneficiary of a separate trust created under this agreement may, upon attaining the age of 21, appoint himself or herself as a Cotrustee of his or her separate trust to serve with the then serving successor Trustee. Upon attaining the age of 25, the primary beneficiary may serve as sole trustee.

At any time a beneficiary is serving as a Trustee of his or her trust before attaining the age of 25, there must be at least one other Trustee serving with the beneficiary. If a Trustee vacancy occurs and no designated successor Trustee is available to serve, the vacancy shall be filled as provided in subsection (d) of this Section.

If the interest of a beneficiary will be merged into a life estate or an estate for years because the beneficiary is serving as sole Trustee, the beneficiary shall appoint a Cotrustee to avoid such merger. Similarly, if the interest of a beneficiary becomes, or is likely to become, subject to the claims of any creditor or to legal process as a result of serving as sole Trustee the beneficiary shall appoint an Independent Trustee to serve as Cotrustee.

(c) Removal of a Trustee

A Trustee may be removed only for cause, which removal must be approved by a court of competent jurisdiction upon the petition of any beneficiary.

In no event shall the court petitioned to approve the removal of a Trustee acquire any jurisdiction over the trust except to the extent necessary to approve or disapprove removal of a Trustee.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

(d) Default of Designation

If the office of Trustee of a trust created under this agreement is vacant and no designated successor Trustee is able and willing to act as Trustee, the primary beneficiary of the trust shall appoint an individual or corporate fiduciary as successor Trustee.

Any beneficiary may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy remaining unfilled after a period of 30 days. By making such appointment, the court shall not thereby acquire any jurisdiction over the trust, except to the extent necessary for making the appointment.

If a beneficiary is a minor or is incapacitated, the parent or legal representative of the beneficiary may act on behalf of the beneficiary.

Section 3.04 Notice of Removal and Appointment

Notice of removal shall be in writing and shall be delivered to the Trustee being removed, along with any other Trustees then serving. The notice of removal shall be effective in accordance with its provisions.

Notice of appointment shall be in writing and shall be delivered to the successor Trustee and any other Trustees then serving. The appointment shall become effective at the time of acceptance by the successor Trustee. A copy of the notice shall be attached to this agreement.

Section 3.05 Appointment of a Cotrustee

Any individual Trustee may appoint an individual or a corporate fiduciary as a Cotrustee. A Cotrustee so named shall serve only as long as the Trustee who appointed such Cotrustee serves (or, if such Cotrustee was named by more than one Trustee acting together, by the last to serve of such Trustees), and such Cotrustee shall not become a successor Trustee upon the death, resignation, or incapacity of the Trustee who appointed such Cotrustee, unless so appointed under the terms of this agreement. Although such Cotrustee may exercise all the powers of the appointing Trustee, the combined powers of such Cotrustee and the appointing Trustee shall not exceed the powers of the appointing Trustee alone. The Trustee appointing a Cotrustee may revoke the appointment at any time with or without cause.

Section 3.06 Corporate Fiduciaries

Any corporate fiduciary serving under this agreement as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal and state law and that is not related or subordinate to any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

Such corporate fiduciary shall:

Have a combined capital and surplus of at least Five Million Dollars; or

Maintain in force a policy of insurance with policy limits of not less than Five Million Dollars covering the errors and omissions of my Trustee with a solvent insurance carrier licensed to do business in the state in which my Trustee has its corporate headquarters.

Section 3.07 Incapacity of a Trustee

If any individual Trustee becomes incapacitated, it shall not be necessary for the incapacitated Trustee to resign as Trustee. For Trustees other than me, a written declaration of incapacity by the Cotrustee, if any, or, if none, by the party designated to succeed the incapacitated Trustee, if made in good faith and if supported by a written opinion of incapacity by a physician who has examined the incapacitated Trustee, will terminate the trusteeship.

Section 3.08 Appointment of Independent Special Trustee

If for any reason the Trustee of any trust created under this agreement is unwilling or unable to act with respect to any trust property or any provision of this agreement, the Trustee shall appoint, in writing, a corporate fiduciary or an individual to serve as an Independent Special Trustee as to such property or with respect to such provision. The Independent Special Trustee appointed shall not be related or subordinate to any beneficiary of the trust within the meaning of Section 672(c) of the Internal Revenue Code.

An Independent Special Trustee shall exercise all fiduciary powers granted by this agreement unless expressly limited elsewhere in this agreement or by the Trustee in the instrument appointing the Independent Special Trustee. An Independent Special Trustee may resign at any time by delivering written notice of resignation to the Trustee. Notice of resignation shall be effective in accordance with the terms of the notice.

Section 3.09 Rights and Obligations of Successor Trustees

Each successor Trustee serving under this agreement, whether corporate or individual, shall have all of the title, rights, powers and privileges granted to the initial Trustee named under this agreement. In addition, each successor Trustee shall be subject to all of the restrictions imposed upon, as well as all obligations and duties, both discretionary and ministerial, given to the initial Trustee named under this agreement.

Article Four
Administration of My Trust During My Incapacity

Section 4.01 Definition of My Incapacity

I shall be considered incapacitated during any time that, because of age, illness, mental disorders, dependence on prescription medications or other substances, or any other cause, I am unable to effectively manage my property or financial affairs.

Section 4.02 Determination of My Incapacity

For purposes of this agreement, I am incapacitated if I am determined to be so under any one of the following subsections.

(a) Determination by Physicians

I shall be deemed incapacitated if in the opinion of two licensed physicians my then existing circumstances fall within the definition of incapacity as provided in Section 4.01.

I shall be deemed restored to capacity if my personal or attending physician signs a written opinion that I can manage my property and financial affairs.

(b) Court Determination

I shall be deemed incapacitated if a court of competent jurisdiction determines that I am legally incapacitated, incompetent, or otherwise unable to effectively manage my property or financial affairs.

(c) Detention or Disappearance

I shall be deemed incapacitated if I cannot effectively manage my property or financial affairs due to my unexplained disappearance or absence for more than 30 days, or if I am detained under duress. My disappearance, absence, or detention under duress may be established by an affidavit of my Trustee, or, if no Trustee is serving under this agreement, by the affidavit of any beneficiary under this agreement. The affidavit shall describe the circumstances of my disappearance, absence, or detention under duress. A third party dealing with my Trustee in good faith may always rely on the representations contained in the affidavit.

Section 4.03 Trust Distributions During My Incapacity

During any period of time that I am incapacitated, my Trustee shall administer my trust and distribute its net income and principal as provided in this Section.

(a) Distributions for My Benefit

My Trustee shall regularly and conscientiously make appropriate distributions of trust income and principal for my general welfare and

comfort under the circumstances existing at the time such distributions are made.

Distributions under this subsection shall include payments for any of my enforceable legal obligations. My Trustee may also make distributions for the payment of insurance premiums for insurance policies owned by me or by my trust, including but not limited to, life, medical, disability, property and casualty, errors and omissions and long-term health care insurance policies.

My Trustee is authorized to honor pledges and continue to make gifts to charitable organizations that I have regularly supported in the amounts I have customarily given.

The examples included in this subsection are for purposes of illustration only and are not intended to limit the authority of my Trustee to make distributions for my benefit that my Trustee determines to be appropriate.

(b) Manner of Making Distributions

My Trustee may make distributions for my benefit in any one or more of the following ways:

To me, but only to the extent I am able to manage such distributions;

To other persons and entities for my use and benefit;

To my agent or attorney-in-fact authorized to act for me under a legally valid durable power of attorney executed by me prior to my incapacity;

To my guardian or conservator who has assumed responsibility for me under any court order, decree or judgment issued by a court of competent jurisdiction.

(c) Distributions for the Benefit of Persons Dependent on Me

My Trustee also may distribute as much of the net income and principal as my Trustee deems necessary for the health, education, maintenance or support of persons that my Trustee determines to be dependent on me for support.

(d) Guidance for My Trustee Regarding Distributions

In making distributions under subsections (a) and (c), my Trustee shall give consideration first to my needs, and then to the needs of those persons dependent on me.

When making distributions under subsections (a) and (c), I request, but do not require, that my Trustee, in its sole and absolute discretion, consider other income and resources available to the beneficiaries. My Trustee

may make unequal distributions, distributions to some but not all beneficiaries or no distributions.

A distribution made to a beneficiary under this Section shall not be considered an advance and shall not be charged against the share of the beneficiary that may be distributable under any other provision of this agreement.

Section 4.04 Appointment of the Trustmaker's "HIPAA" "Personal Representative"

a. Provisions of the Act Regarding Personal Representatives.

Pursuant to 45 CFR 164.502(g)(1), promulgated under the Health Insurance Portability and Accountability Act of 1996 (the Act), any entity covered by the Act must treat the Personal Representative of an individual as follows:

> "(g)(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter." (emphasis supplied) (Neither of paragraphs (g)(3) nor (g)(5) apply in this situation.)

b. Appointment of the Trustmaker's Personal Representative.

For purposes of this Section and the Act, the serving Trustee, or Co-Trustees, if more than one Trustee is serving, of my Trust shall be the Trustmaker's appointed "Personal Representative." As such, the Personal Representative appointed under this Section shall have the same rights as the Trustmaker, whether the Trustmaker is or is not considered disabled pursuant to any standard contained in this agreement or otherwise.

c. Covered Entities Under the Act.

A covered entity includes, but is not limited to, the physician, health care professionals, dentists, a health plan, hospital, laboratory, pharmacy, insurance company, the Medical Information Bureau, Inc., other health care clearinghouses or persons or entities requiring compliance with the Act before releasing protected health care information.

d. Coordination with an Agent or Attorney in Fact under any Health Care Power of Attorney

For the purpose of accessing any health care information covered by the Act, both the Personal Representative appointed under this Section, and the Health Care Agent appointed under my Health Care Power of Attorney shall be

considered as "Personal Representatives" under the Act, and either may request health care information covered by the Act.

e. Legal Action to Enforce the Terms of this Section

My Trustee is specifically empowered to take any and all legal action necessary to enforce the intent of this Section as regards accessing the Trustmaker's health care information in compliance with the Act. My Trustee is specifically empowered to seek a recovery of any legal fees and costs incurred as a result of any legal action taken hereunder, or for any damages caused by a covered entity's failure to comply with the Act.

Section 4.05 Special Disability Instructions for MARJORIE T. CONNELL.

I have led an independent life. And through the course of my life I have managed to set aside some savings and assets of value. I am mindful of the fact that nursing home care is very costly and that, even at the rates currently in effect, the costs can be in the neighborhood of $60,000.00 per year. I request my disability Trustee to investigate the resources and services available through Visiting Nurses Association, Home Hospice Health Care, Meals on Wheels, part-time private nursing care, or any and all other then-available services which might provide for in-home care.

I request that my disability Trustee, make every reasonable effort to see to it that I am taken care of in my own home, at least or in the home of members of my family or loved ones, and not placed in a long-term convalescent health care facility, nursing home, or any similar facility. In my own home I find convenience, comfortable surroundings, and I can maintain my own privacy and my own dignity.

In the event that family members or others are so kind as to care for me under circumstances where that care is necessary to prevent me from being institutionalized in a nursing home, I direct my disability Trustee to pay to them upon their written request, fair compensation for their abilities, talent, and time dedicated on my behalf. I further request that whenever possible, in my Trustee discretion, my disability Trustee would see to it that one or more family members or others may, if they wish, occupy my home together with me, without payment or rent, so that I may receive care in my home to the extent that is medically and physically possible.

I wish to remain in my personal residence unless I am in a coma. I request my Trustee to pay the operating expenses of maintaining my residence, including normal domestic help.

I direct my Trustee to consult with my Health Care Representative regarding the cost of my medical care, and to pay all expenses incurred as a result of the decisions made by my Trustee and Health Care Representative. The decision as to whether to reimburse my Health Care Representative for expenses incurred in fulfilling the duties of the Health Care Representative position shall be in the sole and absolute discretion of my Trustee.

I further specifically prohibit my Trustee from expending any trust funds for medical treatment considered "extraordinary" or "heroic" by my Health Care Representative. The decision as to whether treatment shall be considered "extraordinary" or "heroic" shall be

in the sole and absolute discretion of my Health Care Representative contained in my Health Care Power of Attorney, or appointment of Health Care Representative.

If it should become necessary to sell my residence or for any other reason to dispose of some or all of my tangible personal property from my living quarters, my Trustee shall store or safeguard such tangible personal property (and pay all costs thereof) or, alternatively, transfer custody and possession, but not title, for such storage or safekeeping to the persons named as recipients of such property pursuant to this trust.

I wish to remain mentally and physically active as long as possible. I direct my Trustee to provide opportunities for me to engage in social, recreational, and sports activities, including travel, as my health permits. Such decisions shall be made in consultation with my Health Care Representative. I further direct my Trustee to provide me with books, tapes, and similar materials consistent with my interests.

It is my desire to provide for the presence and involvement of religious clergy or spiritual leaders in my care, provide them access to me at all times, maintain my memberships in religion or spiritual organizations, and enhance my opportunities to derive comfort and spiritual satisfaction from such activities, including religious books, tapes and other materials.

I further direct my Trustee, in cooperation with my Health Care Representative, to provide for companionship for me consistent with my needs and preferences. I consider such continuing interaction to be essential.

Finally, I authorize my Trustee to make advance arrangements for me in accordance with the memorial instructions I have left in my Living Trust Portfolio if I have not previously made such advance arrangements myself. If I have left no memorial instructions, I authorize my Trustee, in consultation with my Health Care Representative, to make advance arrangements considered necessary or appropriate.

Article Five
Administration of My Trust
Upon My Death

Section 5.01 My Trust Shall Become Irrevocable

Upon my death, my trust shall become irrevocable and my social security number may no longer be used to identify my trust. My Trustee shall apply for a separate taxpayer identification number for my trust.

Section 5.02 Administrative Trust

After my death and prior to the distribution of trust property as provided in the subsequent Articles of this agreement, my trust shall be an administrative trust but may continue to be known as the MTC LIVING TRUST. My administrative trust shall exist for a reasonable period of time necessary to complete the administrative tasks set forth in this Article.

Section 5.03 Payment of My Expenses and Taxes

My Trustee is authorized but not directed to pay from the administrative trust:

Expenses of my last illness, funeral and burial or cremation, including expenses of memorials and memorial services;

Legally enforceable claims against me or my estate;

Expenses of administering my trust and my estate; and

Court ordered allowances for those dependent upon me.

These authorized payments are discretionary with my Trustee. My Trustee may make decisions on these payments without regard to any limitation on payment of such expenses imposed by law and may make payments without obtaining the approval of any court. No third party may enforce any claim or right to payment against my trust by virtue of this discretionary authority. My Trustee shall not pay any administrative expenses from assets passing to an organization that qualifies for the federal estate tax charitable deduction or to a split-interest charitable trust.

My Trustee shall pay death taxes out of the principal of the trust property as provided in Section 5.05. If, however, a probate estate is opened within six months from the date of my death, my Personal Representative shall pay claims, expenses and death taxes from my probate estate to the extent that the cash and readily marketable assets included in my probate estate are sufficient to pay such items unless my Trustee has already paid them.

Section 5.04 Restrictions on Certain Payments from Qualified Retirement Plans

The "designation date" shall mean September 30 of the calendar year following the calendar year in which my death occurs, or such other date as shall be established by Treasury Regulations or other tax law authority as the final date for determining whether

this trust meets the requirements for treatment of the trust's oldest beneficiary as if he or she had been named directly as beneficiary of any qualified retirement plan payable to this trust.

Notwithstanding any other provision of this agreement or state law to the contrary, my Trustee may not, on or after the "designation date", distribute to or for the benefit of my estate, any charity or any other non-individual beneficiary any qualified retirement benefit payable to a trust created under this agreement. It is my intent that all such qualified retirement benefits held by or payable to this trust on or after the designation date be distributed to or held for only individual beneficiaries, within the meaning of Section 401(a)(9) of the Internal Revenue Code.

Accordingly I direct that qualified retirement benefits not be used or applied on or after the designation date for payment of my debts, taxes, expenses of administration or other claims against my estate or for payment of estate, inheritance or similar transfer taxes due on account of my death (other than those directly attributable to and the legal obligation of a particular Qualified Retirement Plan). This Section shall not apply to any bequest or expense that is specifically directed to be funded with qualified retirement benefits.

Section 5.05 Payment of Death Taxes

For the purposes of this Article, the term "death taxes" shall refer to any taxes imposed by reason of my death by federal, state or local authorities, including but not limited to estate, inheritance, gift, and direct-skip generation-skipping transfer taxes. For purposes of this Section, death taxes shall not include any additional estate tax imposed by Section 2031(c)(5)(C), Section 2032A(c) or Section 2057(f) of the Internal Revenue Code or any other comparable recapture tax imposed by any taxing authority. Nor shall death taxes include any generation-skipping transfer tax, other than a direct skip generation-skipping transfer tax.

Except as otherwise provided in this Section or elsewhere in this agreement, my Trustee shall provide for payment of all death taxes from the administrative trust without apportionment. My Trustee shall not seek contribution toward or recovery of any such payments from any individual.

(a) Protection of Exempt Property

In no event shall death taxes be allocated to or paid from any assets that are not included in my gross estate for federal estate tax purposes.

(b) Protection of the Charitable Deduction

No death taxes shall be allocated to or paid from any assets passing to an organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless my Trustee has first used all other assets available to my Trustee to pay the taxes.

(c) Property Passing Outside of My Trust

Death taxes imposed with respect to property included in my gross estate for death tax purposes but passing outside of my trust shall be apportioned

among the persons and entities benefited in the proportion that the taxable value of the property or interest bears to the total taxable value of all property and interests included in my gross estate for death tax purposes. The values to be used for the apportionment shall be the values as finally determined under federal, state or local law as the case may be.

Section 5.06 No Apportionment Between Current and Future Interests

No interest in income and no estate for years or for life or other temporary interest in any property or trust are subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder are chargeable against the corpus of the property or trust subject to the temporary interest and remainder.

Section 5.07 Coordination with My Personal Representative

The following provisions are intended to help facilitate the coordination between my Personal Representative, if any, and my Trustee. These provisions apply even if my Personal Representative and my Trustee are the same person or entity.

(a) Reliance on My Personal Representative

My Trustee may rely upon the written request of my Personal Representative for payments authorized under this Article and the amounts included in such payments without computing the sums involved. If a payment is made under this Article to my Personal Representative, my Trustee shall not have any duty to inquire into the application of the payment.

(b) Receipt of Probate Property

My Trustee may accept or decline any distributions of property tendered to my Trustee by my Personal Representative. As to property deemed acceptable by my Trustee, my Trustee may accept the property without audit and without obligation to review the records of my Personal Representative.

(c) Purchase of Assets from and Loans to My Probate Estate

My Trustee is authorized to purchase and retain, as an investment for my trust estate, any property that forms a part of my probate estate. My Trustee may make loans, with or without security, to my probate estate. My Trustee shall not be liable for any loss suffered by my trust as a result of the exercise of the powers granted to my Trustee in this subsection.

(d) Discretionary Distributions to My Personal Representative

My Trustee is authorized to distribute to my probate estate, as a beneficiary of this trust, cash or other trust property, including accrued

income, to whatever extent my Trustee determines it to be in the best interests of the beneficiaries of my trust.

Section 5.08 Authority to Make Tax Elections

Following my death, I authorize my Trustee to make tax elections as provided in this Section. If, however, a Personal Representative is appointed for my probate estate and as my Personal Representative is the recipient of specific statutorily delegated authority relative to any tax election, the discretionary authority granted my Trustee relative to the tax election shall be subordinate to the statutorily delegated authority.

(a) Tax Elections

My Trustee's authority to make tax elections shall include, but shall not be limited to, the right to choose the alternate valuation date, the right to elect whether to take administration expenses as estate tax deductions or income tax deductions, the right to allocate my unused generation-skipping exemption to all or any portion of the trust property, the right to make special use valuation elections, and the right to defer payment of all or any portion of any taxes.

My Trustee may elect to treat my administrative trust as part of my estate for federal or state income tax purposes or both.

My Trustee may elect to have trust property qualify for the "family owned business deduction" authorized under Section 2057 of the Internal Revenue Code. My Trustee may enter into any agreement on behalf of my trust that is necessary to validly make such election under the Internal Revenue Code.

My Trustee may make equitable adjustments between income and principal on account of any tax elections made by my Trustee.

(b) Allocation of GST Exemption

My Trustee may elect to allocate or not allocate any portion of the available GST exemption under Section 2631 of the Internal Revenue Code, or a counterpart exemption under any applicable state law, to any property of which I am the transferor or deemed transferor for generation-skipping transfer tax purposes, including any property transferred by me during my life as to which I did not make an allocation prior to death. The exercise of such discretion shall be based on the transfers, gift tax returns and other information known to my Trustee, with no requirement that allocations benefit the various transferees or beneficiaries equally, proportionally, or in any other particular manner.

(c) Qualified Conservation Easements

My Trustee may create a qualified conservation easement, as defined in Section 2031(c)(8)(A) of the Internal Revenue Code in any land held by my trust and make the necessary election provided by Section 2031(c)(6).

Section 5.09 Payment of Charitable Bequests

I instruct my Trustee to satisfy all of my charitable gifts and bequests, to the extent possible, from property that constitutes income in respect of a decedent.

Article Six
Specific Distributions and Disposition of Tangible Personal Property

Section 6.01 Specific Distribution to LINDA VARGAS

As soon as practicable after my death, my Trustee shall distribute $10,000 to LINDA VARGAS.

If LINDA VARGAS should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.02 Specific Distribution to SALLY ROSE

As soon as practicable after my death, my Trustee shall distribute $5,000 to SALLY ROSE.

If SALLY ROSE should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.03 Specific Distribution to GREAT GRANDCHILDREN

As soon as practicable after my death, my Trustee shall allocate my JP Morgan Bond held through Wells Fargo Account Number W68560920, if in existence at my death, to be divided into as many shares as shall be necessary to create one equal share for each child of JACQUELINE MARGUERITE MONTOYA and KATHRYN ANN BOUVIER to be held in a separate trust for the benefit of each one of them to be administered as provided in this Section.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

My Trustee shall administer the amount set aside for each Beneficiary as follows:

(a) Distributions of Income and Principal

My Trustee may distribute to a Beneficiary as much of the income and principal of their trust as my Trustee determines is necessary or advisable for their health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of a Beneficiary

If a Beneficiary should die after the establishment of their trust, but before the complete distribution of their trust, my Trustee shall distribute the remaining trust property under the Articles that follow.

Section 6.04 Specific Distribution to ELEANOR C. HARTMAN AHERN

As soon as practicable after my death, my Trustee shall allocate the sum of $300,000 to be held in a separate trust for the benefit of ELEANOR C. HARTMAN AHERN to be administered as provided in this Section.

If ELEANOR C. HARTMAN AHERN should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

My Trustee shall administer the amount set aside for ELEANOR C. HARTMAN AHERN as follows:

(a) Distributions of Income and Principal

My Trustee may distribute to ELEANOR C. HARTMAN AHERN as much of the income and principal of her trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of ELEANOR C. HARTMAN AHERN

If ELEANOR C. HARTMAN AHERN should die after the establishment of her trust, but before the complete distribution of her trust, my Trustee shall distribute the remaining trust property to the descendants of ELEANOR C. HARTMAN AHERN, *per stirpes*, in separate trusts.

If ELEANOR C. HARTMAN AHERN has no descendants, my Trustee shall distribute the balance of the trust property under the Articles that follow.

Section 6.05 Specific Distribution to SHEILA HATHORN WHITE

As soon as practicable after my death, my Trustee shall distribute the real property located at 1325 Strong Drive, Las Vegas, Nevada 89102 to SHEILA HATHORN WHITE.

If SHEILA HATHORN WHITE should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.06 Distribution of Tangible Personal Property by Memorandum

I reserve the right to make dispositions of items of tangible personal property by a signed written memorandum executed after I sign this agreement that refers to my trust and lists items of tangible personal property and designates the beneficiary of each item. If I execute a memorandum, the memorandum is to be incorporated by reference into this agreement to the extent permitted by law.

I direct that upon my death, my Trustee distribute the items of tangible personal property listed in the memorandum, together with any insurance policies covering such property and claims under such policies, as provided in the memorandum. Should I leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, the memorandum with the most recent date shall control as to those items that are in conflict.

If the memorandum with the most recent date conflicts with a provision of this agreement as to the specific distribution of any item of tangible personal property, the provisions of the memorandum with the most recent date shall control as to those items that are in conflict.

If the memorandum can not legally be incorporated by reference, the memorandum shall then be treated as an amendment to my trust and I request that my Trustee follow my wishes and distribute the items of tangible personal property listed in the memorandum according to its terms.

Section 6.07 Distribution of Remaining Tangible Personal Property

My Trustee shall distribute any tangible personal property not disposed of by a written memorandum under the Articles that follow.

Section 6.08 Definition of Tangible Personal Property

For purposes of this Article, my tangible personal property shall include but not be limited to my household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia.

My tangible personal property shall not include any property that my Trustee, in its sole and absolute discretion, determines to be part of any business or business interest owned by me or my trust.

If my Trustee receives property to be distributed under this Article from my probate estate or in any other manner after my death, my Trustee shall distribute the property, free of trust, in accordance with this Article. The fact that an item of tangible personal property was not received by my trust until after my death shall not affect the validity of the gift. If property to be distributed under this Article is not part of the trust property upon my death and is not subsequently transferred to my Trustee from my probate estate or in any other manner after my death, then the specific distribution of property made in this Article shall be considered null and void, without any legal or binding effect.

Section 6.09 Encumbrances and Incidental Expenses of Tangible Personal Property

My Trustee shall distribute property under this Article subject to any liens, security interests or other encumbrances on the property.

My Trustee shall pay, as an administration expense, the reasonable expenses of storing, insuring, packing, transporting and otherwise caring for my tangible personal property until each item of property is actually delivered to the appropriate beneficiary.

Section 6.10 Residuary Distribution

Any tangible personal property not distributed under this or prior Articles of this agreement shall be distributed as provided in the Articles that follow.

Article Seven
Creation of Trust Shares Upon My Death

Section 7.01 Division of My Trust

My Trustee shall divide the remaining trust property into Exempt and Nonexempt Shares. My Trustee shall allocate a fraction (the "Exempt Fraction") of the remaining trust property to the Exempt Share as defined in subsection (a). The balance of the trust property shall be allocated to the Nonexempt Share.

My Trustee shall administer the Exempt Share as provided in Article Eight. My Trustee shall administer the Nonexempt Share as provided in Article Nine.

(a) Computation of the Exempt Fraction

The numerator of the Exempt Fraction is equal to the amount, if any, of my available GST Exemption, as defined in Section 15.05(c), and the denominator is the aggregate value, for federal estate tax purposes, of the remaining trust property.

(b) Satisfaction of the Exempt Fraction

My Trustee shall have complete authority and discretion to allocate property to the Exempt Share in satisfaction of the Exempt Fraction in cash or in kind, or partly in cash and partly in kind, or in undivided interests in property.

In making the computations necessary to determine the Exempt Fraction, my Trustee shall use those values as finally determined for federal estate tax purposes. Once determined the Exempt Fraction shall be fixed and shall not vary with changes in the value of the trust property subsequent to the valuation date used for federal estate tax purposes. However, since the Exempt Fraction is not intended to be a gift of a specified dollar amount or pecuniary in nature, my Trustee shall apply the fraction to the assets at their actual value on the effective date or dates of distribution so that the actual value of the fractional share resulting from the application of the Exempt Fraction will include fluctuations in the value of the trust property.

If the numerator of such fraction is zero, no property shall be allocated to the Exempt Share. If the numerator of the fraction is equal to or greater than the denominator, all the remaining trust property shall be allocated to the Exempt Share.

(c) Allocation of GST Exemption

I recommend, but do not require, that my Personal Representative or my Trustee will allocate my available GST Exemption to the Exempt Share.

Article Eight
My Exempt Property

My Trustee shall administer and distribute my remaining exempt trust property (not distributed under prior Articles of this agreement) under the terms of this Article.

Section 8.01 Division of My Exempt Property

My Trustee shall divide my exempt property into shares as follows:

Name	Share
JACQUELINE MARGUERITE MONTOYA	1/2
KATHRYN ANN BOUVIER	1/2

My Trustee shall administer the exempt share of each beneficiary in an exempt trust as provided in the Sections that follow.

Section 8.02 Distribution of the Exempt Share for JACQUELINE MARGUERITE MONTOYA

My Trustee shall hold and administer the exempt share set aside for JACQUELINE MARGUERITE MONTOYA in a separate trust under the provisions of this Section.

(a) Distributions of Income and Principal

My Trustee may distribute to JACQUELINE MARGUERITE MONTOYA as much of the income and principal of her exempt trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distributions on the Death of JACQUELINE MARGUERITE MONTOYA

If JACQUELINE MARGUERITE MONTOYA should die after the establishment of her exempt trust, but before the complete distribution of her exempt trust, my Trustee shall distribute the remaining trust property to her descendants, *per stirpes*, in separate trusts. If she has no living descendants, my Trustee shall distribute the balance of the trust property to KATHRYN ANN BOUVIER in a separate trust. The trust is to be held and administered under the same provisions as JACQUELINE MARGUERITE MONTOYA's exempt trust.

(c) Distribution if JACQUELINE MARGUERITE MONTOYA is Deceased

If JACQUELINE MARGUERITE MONTOYA should die before the establishment of her exempt trust, my Trustee shall distribute the JACQUELINE MARGUERITE MONTOYA's share to the descendants of JACQUELINE MARGUERITE MONTOYA, *per stirpes*, in separate

trusts. My Trustee shall administer the trusts under the same provisions as JACQUELINE MARGUERITE MONTOYA's exempt trust.

If she has no living descendants, my Trustee shall distribute JACQUELINE MARGUERITE MONTOYA's share to KATHRYN ANN BOUVIER in a separate trust. The trust is to be held and administered under the same provisions as JACQUELINE MARGUERITE MONTOYA's exempt trust.

Section 8.03 Distribution of the Exempt Share for KATHRYN ANN BOUVIER

My Trustee shall hold and administer the exempt share set aside for KATHRYN ANN BOUVIER in a separate trust under the provisions of this Section.

(a) Distributions of Income and Principal

My Trustee may distribute to KATHRYN ANN BOUVIER as much of the income and principal of her exempt trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distributions on the Death of KATHRYN ANN BOUVIER

If KATHRYN ANN BOUVIER should die after the establishment of her exempt trust, but before the complete distribution of her exempt trust, my Trustee shall distribute the remaining trust property to her descendants, *per stirpes*, in separate trusts. If she has no living descendants, my Trustee shall distribute the balance of the trust property to JACQUELINE MARGUERITE MONTOYA in a separate trust. The trust is to be held and administered under the same provisions as KATHRYN ANN BOUVIER's exempt trust.

(c) Distribution if KATHRYN ANN BOUVIER is Deceased

If KATHRYN ANN BOUVIER should die before the establishment of her exempt trust, my Trustee shall distribute the KATHRYN ANN BOUVIER's share to the descendants of KATHRYN ANN BOUVIER, *per stirpes*, in separate trusts. My Trustee shall administer the trusts under the same provisions as KATHRYN ANN BOUVIER's exempt trust.

If she has no living descendants, my Trustee shall distribute KATHRYN ANN BOUVIER's share to JACQUELINE MARGUERITE MONTOYA in a separate trust. The trust is to be held and administered under the same provisions as KATHRYN ANN BOUVIER's exempt trust.

Article Nine
My Nonexempt Property

My Trustee shall administer and distribute my remaining nonexempt trust property (not distributed under prior Articles of this agreement) under the terms of this Article.

Section 9.01 Division of My Nonexempt Trust Property

My Trustee shall divide my nonexempt into shares as follows:

Name	Share
JACQUELINE MARGUERITE MONTOYA	1/2
KATHRYN ANN BOUVIER	1/2

My Trustee shall administer the share of each beneficiary as provided in the Sections that follow.

Section 9.02 Distribution of the Share for JACQUELINE MARGUERITE MONTOYA

My Trustee shall administer the nonexempt share set aside for JACQUELINE MARGUERITE MONTOYA in trust as provided in this Section.

(a) Distributions of Income and Principal

My Trustee may distribute to JACQUELINE MARGUERITE MONTOYA as much of the income and principal of her nonexempt trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of JACQUELINE MARGUERITE MONTOYA

Subject to the provisions of the next paragraph, JACQUELINE MARGUERITE MONTOYA shall have the unlimited and unrestricted testamentary general power to appoint any property remaining in her nonexempt trust at her death among her Descendants and the creditors of JACQUELINE MARGUERITE MONTOYA's estate.

JACQUELINE MARGUERITE MONTOYA may not exercise this power of appointment to appoint to her estate, her creditors, or the creditors of her estate from the limited share of her nonexempt trust. For purposes of this power of appointment, the "limited share" of JACQUELINE MARGUERITE MONTOYA's nonexempt trust is that portion of her nonexempt trust that has an inclusion ratio for generation-skipping transfer tax purposes of zero or which, in the absence of the exercise of the power of appointment, would not constitute a taxable generation-skipping transfer at her death. If the generation-skipping tax does not then apply,

the limited share shall be JACQUELINE MARGUERITE MONTOYA's entire nonexempt trust.

Insofar as any part of JACQUELINE MARGUERITE MONTOYA's nonexempt trust shall not be effectively appointed, my Trustee shall distribute the remaining unappointed *per stirpes* in trusts to the descendants of JACQUELINE MARGUERITE MONTOYA. If JACQUELINE MARGUERITE MONTOYA has no living descendants, my Trustee shall distribute the balance of the trust property to KATHRYN ANN BOUVIER in a separate trust. The trust is to be held and administered under the same provisions as JACQUELINE MARGUERITE MONTOYA's nonexempt trust.

(c) Distribution if JACQUELINE MARGUERITE MONTOYA is Deceased

If JACQUELINE MARGUERITE MONTOYA should die before the establishment of her trust, my Trustee shall distribute JACQUELINE MARGUERITE MONTOYA's share *per stirpes* in trusts to the descendants of JACQUELINE MARGUERITE MONTOYA. My Trustee shall administer the trusts under the same provisions as JACQUELINE MARGUERITE MONTOYA's nonexempt trust.

If JACQUELINE MARGUERITE MONTOYA has no living descendants, my Trustee shall distribute JACQUELINE MARGUERITE MONTOYA's share to KATHRYN ANN BOUVIER in a separate trust. The trust is to be held and administered under the same provisions as JACQUELINE MARGUERITE MONTOYA's nonexempt trust.

Section 9.03 Distribution of the Share for KATHRYN ANN BOUVIER

My Trustee shall administer the nonexempt share set aside for KATHRYN ANN BOUVIER in trust as provided in this Section.

(a) Distributions of Income and Principal

My Trustee may distribute to KATHRYN ANN BOUVIER as much of the income and principal of her nonexempt trust as my Trustee determines is necessary or advisable for her health, education, maintenance and support.

Any undistributed net income shall be accumulated and added to principal.

(b) Distribution Upon the Death of KATHRYN ANN BOUVIER

Subject to the provisions of the next paragraph, KATHRYN ANN BOUVIER shall have the unlimited and unrestricted testamentary general power to appoint any property remaining in her nonexempt trust at her death among her Descendants and the creditors of KATHRYN ANN BOUVIER's estate.

KATHRYN ANN BOUVIER may not exercise this power of appointment to appoint to her estate, her creditors, or the creditors of her estate from the limited share of her nonexempt trust. For purposes of this power of appointment, the "limited share" of KATHRYN ANN BOUVIER's nonexempt trust is that portion of her nonexempt trust that has an inclusion ratio for generation-skipping transfer tax purposes of zero or which, in the absence of the exercise of the power of appointment, would not constitute a taxable generation-skipping transfer at her death. If the generation-skipping tax does not then apply, the limited share shall be KATHRYN ANN BOUVIER's entire nonexempt trust.

Insofar as any part of KATHRYN ANN BOUVIER's nonexempt trust shall not be effectively appointed, my Trustee shall distribute the remaining unappointed *per stirpes* in trusts to the descendants of KATHRYN ANN BOUVIER. If KATHRYN ANN BOUVIER has no living descendants, my Trustee shall distribute the balance of the trust property to JACQUELINE MARGUERITE MONTOYA in a separate trust. The trust is to be held and administered under the same provisions as KATHRYN ANN BOUVIER's nonexempt trust.

(c) Distribution if KATHRYN ANN BOUVIER is Deceased

If KATHRYN ANN BOUVIER should die before the establishment of her trust, my Trustee shall distribute KATHRYN ANN BOUVIER's share *per stirpes* in trusts to the descendants of KATHRYN ANN BOUVIER. My Trustee shall administer the trusts under the same provisions as KATHRYN ANN BOUVIER's nonexempt trust.

If KATHRYN ANN BOUVIER has no living descendants, my Trustee shall distribute KATHRYN ANN BOUVIER's share to JACQUELINE MARGUERITE MONTOYA in a separate trust. The trust is to be held and administered under the same provisions as KATHRYN ANN BOUVIER's nonexempt trust.

Article Ten
Remote Contingent Distribution

If, at any time, there is no person or entity qualified to receive final distribution of my trust estate or any part of it, then my Trustee shall distribute the portion of my trust estate with respect to which the failure of qualified recipients has occurred to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Nevada then in effect.

Article Eleven
Administration of Trusts for Underage and Incapacitated Beneficiaries

Section 11.01 Distributions for Underage and Incapacitated Beneficiaries

If under another provision of this agreement any part of the trust property is directed to be distributed outright, or if a distribution is required to be made, to a person when that person has not yet attained the age of 21 years, or at a time when that person is incapacitated and in the opinion of my Trustee is unable to manage the distribution properly, my Trustee may distribute or retain the trust property in any one or more of the following methods described in Section 11.02.

Notwithstanding the preceding paragraph, if under another provision of this agreement any part of the trust property becomes distributable outright, or if a distribution is required to be made, to a person when that person is receiving or applying for needs-based government benefits, my Trustee shall distribute or retain the trust property as described in Section 11.03.

I request, but do not require, that before making a distribution to a beneficiary, my Trustee, to the extent that it is both reasonable and possible, consider the ability the beneficiary demonstrated in managing prior distributions of trust property.

Section 11.02 Methods of Distribution

My Trustee may distribute or retain trust property in any one or more of the following methods for the benefit of any beneficiary subject to the provisions of this Section:

(a) Distribution to Beneficiary

My Trustee may distribute trust property directly to the beneficiary.

(b) Distribution to Guardian or Conservator or Family Member

My Trustee may distribute trust property to the beneficiary's guardian, conservator, parent or a family member or other person who has assumed the responsibility of caring for the beneficiary.

(c) Distribution to Custodian

My Trustee may distribute trust property to any person or entity, including my Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act, or similar statute.

(d) Distribution to Other Persons or Entities

My Trustee may distribute trust property to other persons and entities for the use and benefit of the beneficiary.

(e) Distribution to Agent under Durable Power of Attorney

My Trustee may distribute trust property to an agent or attorney-in-fact authorized to act for the beneficiary under a legally valid durable power of attorney executed by the beneficiary prior to the incapacity.

(f) Retention in Trust

My Trustee may retain trust property in a separate trust for the benefit of the beneficiary until the beneficiary attains 21 years of age or, in the opinion of my Trustee, is no longer incapacitated (as the case may be).

My Trustee shall distribute as much of the net income and principal of any trust created under this subsection that my Trustee deems necessary or advisable for the health, education, maintenance and support of the beneficiary for whom the trust was created. My Trustee shall accumulate any undistributed net income and add such income to principal.

When the beneficiary for whom a trust is created under this subsection attains 21 years of age or is no longer incapacitated (as the case may be), the beneficiary may withdraw from the trust at any time or times any portion or all of the accumulated trust income and principal.

The beneficiary for whom a trust is created under this subsection shall have the testamentary general power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at his or her death among one or more persons or entities, including the creditors of the beneficiary's estate. The beneficiary shall have the sole and exclusive right to exercise this general power of appointment.

I intend that this testamentary power of appointment be a general power of appointment as defined in Section 2041 of the Internal Revenue Code.

If the beneficiary fails to validly exercise this testamentary general power of appointment, my Trustee shall distribute the balance of his or her trust property to the then living descendants of the beneficiary, *per stirpes*.

If the beneficiary has no then living descendants, my Trustee shall distribute the beneficiary's remaining trust property *per stirpes* to the living descendants of the beneficiary's nearest lineal ancestor who was my descendant or if no such descendant is then living, to my then living descendants, *per stirpes*.

If I have no then living descendants, my Trustee shall distribute the remaining trust property as provided in Article Ten.

Section 11.03 Special Needs Trust

My Trustee shall distribute or retain trust property as follows for the benefit of any beneficiary who is subject to the provisions of this Section:

(a) Distributions for Special Needs

My Trustee, in its sole, absolute, and unreviewable discretion, may distribute discretionary amounts of net income and principal for special needs of the beneficiary not otherwise provided by governmental financial assistance and benefits, or by the providers of services.

"Special needs" refers to the requisites for maintaining the good health, safety, and welfare when, in the discretion of my Trustee, such requisites are not being provided by any public agency, office, or department of any state or of the United States.

"Special needs" shall also include, but not be limited to, medical and dental expenses, annual independent checkups, clothing and equipment, programs of training, education, treatment and rehabilitation, private residential care, transportation (including vehicle purchases), maintenance, insurance, and essential dietary needs. "Special needs" may include spending money; additional food; clothing; electronic equipment such as radio, recording and playback, television and computer equipment; camping; vacations; athletic contests; movies; trips; and money to purchase appropriate gifts for relatives and friends.

My Trustee shall have no obligation to expend trust assets for such needs, but if my Trustee, in its sole, absolute and unreviewable discretion, decides to expend trust assets, under no circumstances should any amounts be paid to, or reimbursed to, the federal government, any state, or any governmental agency for any purpose, including for the care, support, and maintenance of the beneficiary.

(b) Objective to Promote Independence of the Beneficiary

While actions are in my Trustee's sole, absolute and unreviewable discretion, all parties to this trust agreement should be mindful that it is my wish that the beneficiary live as independently, productively, and happily as possible.

(c) Trust Assets not to be Considered Available Resource to the Beneficiary

The intent of the provisions of this Section 11.03 is to supplement any benefits received, or for which the beneficiary may be eligible, through or from various governmental assistance programs and not to supplant any such benefits. All actions of my Trustee shall be directed toward carrying out this intent and the discretion granted my Trustee under this agreement to carry out this intent is absolute.

For purposes of determining the beneficiary's eligibility for any such benefits, no part of the principal or undistributed income of the trust estate shall be considered available to the beneficiary for public benefit purposes. The beneficiary shall not be considered to have access to principal or income of the trust, and he or she has no ownership, right, authority, or power to convert any asset into cash for his or her own use.

My Trustee shall hold, administer, and distribute all property allocated to this trust for the exclusive benefit of the beneficiary during his or her lifetime. All distributions from this trust share are in the sole, absolute, and unreviewable discretion of my Trustee, and the beneficiary is legally restricted from demanding trust assets for his or her support and maintenance.

In the event my Trustee is requested to release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services that any government agency is authorized to provide, or in the event my Trustee is requested to petition a court or any other administrative agency for the release of trust principal or income for this purpose, my Trustee is authorized to deny such request and is authorized in its discretion to take whatever administrative or judicial steps may be necessary to continue the beneficiary's eligibility for benefits, including obtaining legal advice about the beneficiary's specific entitlement to public benefits and obtaining instructions from a court of competent jurisdiction ruling that neither the trust corpus nor the trust income is available to the beneficiary for eligibility purposes. Any expenses of my Trustee in this regard, including reasonable attorneys' fees, shall be a proper charge to the trust estate.

(d) Distribution Guidelines

My Trustee shall be responsible for determining what discretionary distributions shall be made from this trust. My Trustee may distribute discretionary amounts of income and principal to or for the benefit of the beneficiary for those special needs not otherwise provided by governmental financial assistance and benefits, or by the providers of services. Any undistributed income shall be added to principal. In making distributions, my Trustee:

Shall consider any other known income or resources of the beneficiary that are reasonably available;

Shall take into consideration all entitlement benefits from any government agency, such as Social Security disability payments, Medicare, Medicaid (or any state Medicaid program equivalent), Supplemental Security Income (SSI), In-Home Support Service (IHSS) and any other special purpose benefits for which the beneficiary is eligible;

Shall take into consideration resource and income limitations of any such assistance program;

Shall make expenditures so that the beneficiary's standard of living will be comfortable and enjoyable;

Shall not be obligated to or compelled to make specific payments;

Shall not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by such governmental agency and reimbursement is required by the state; and

Shall not be liable for any loss of benefits.

(e) No Seeking of Order to Distribute

For purposes of determining the beneficiary's state Medicaid program equivalent eligibility, no part of the principal or undistributed income of the trust estate shall be considered available to the beneficiary. My Trustee shall deny any request by the beneficiary to (1) release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or (2) petition a court or any other administrative agency for the release of trust principal or income for this purpose. My Trustee may, in its sole, absolute and unreviewable discretion, take necessary administrative or legal steps to protect the beneficiary's state Medicaid program equivalent eligibility, including obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to the beneficiary for purposes of determining state Medicaid program equivalent eligibility. Expenses for this purpose, including reasonable attorneys' fees, will be a proper charge to the trust estate.

(f) Indemnification of Trustee When Acting in Good Faith

My Trustee shall be indemnified from the trust property for any loss or reduction of public benefits sustained by the beneficiary as a result of my Trustee exercising, in good faith, the authority granted to my Trustee under this Section.

(g) Termination and Distribution of the Special Needs Trust

If my Trustee, in its sole, absolute and unreviewable discretion, determines that the beneficiary is no longer dependent on others and is able to provide independent support, my Trustee shall distribute or retain the remaining property according to the other provisions of this trust agreement as though the provisions of this Section 11.03 had not been effective.

If the other provisions of this trust agreement do not provide for the distribution or retention of the remaining property, then my Trustee shall distribute the remaining property to the beneficiary outright, free of trust.

"Independent support" shall be satisfied at such time as the beneficiary has been gainfully employed for thirty-three (33) months of a thirty-six (36) month period immediately preceding the decision to terminate the trust share.

The terms "gainful employment" and "gainfully employed" shall be construed to mean such full-time employment that produces sufficient net income to enable the beneficiary to contribute not less than 100 percent of the funds (exclusive of other sources of revenue) that are necessary to provide for the independent care, support, maintenance, and education of the beneficiary. My Trustee, in its sole, absolute and unreviewable discretion, shall determine whether or not the beneficiary has satisfied the condition of gainful employment.

(h) Distribution Upon the Death of the Beneficiary

Upon the death of the beneficiary, my Trustee shall distribute or retain the remaining property according to the other provisions of this trust agreement as though the provisions of this Section 11.03 had not been effective. If the other provisions of this trust agreement provide for the beneficiary's share to be held in trust, then those provisions shall be interpreted as though the beneficiary died after the establishment of such trust.

If the other provisions of this trust agreement do not provide for the distribution or retention of the remaining property, then the beneficiary shall have the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at his or her death among one or more persons or entities. However, the beneficiary may not exercise this limited power of appointment to appoint to himself or herself, his or her estate, his or her creditors or the creditors of his or her estate.

I intend that this be a limited power of appointment and not a general power of appointment as defined in Section 2041 of the Internal Revenue Code.

Insofar as any part of the beneficiary's trust shall not be effectively appointed, my Trustee shall distribute the remaining unappointed balance *per stirpes* to the descendants of the beneficiary. If the beneficiary has no living descendants, my Trustee shall distribute the balance of the trust property *per stirpes* to my descendants.

If I have no living descendants, my Trustee shall distribute the balance of the trust property as provided in Article Ten.

Section 11.04 Application of Article

Any decision made by my Trustee under this Article shall be final, controlling and binding upon all beneficiaries subject to the provisions of this Article.

The provisions of this Article shall not apply to distributions to me.

Further, the provisions of this Article shall not apply to distributions that are required to be made to a beneficiary pursuant to the provisions of Section 12.01.

Article Twelve
Retirement Plans and Life Insurance Policies

The provisions of this Article apply to qualified retirement plans and insurance policies owned by or made payable to my trust.

Section 12.01 Retirement Plans

Notwithstanding any other provision of this agreement to the contrary, the provisions of this Section apply to qualified retirement plans.

(a) Rights of My Trustee

Subject to the provisions below pertaining to distributions from qualified retirement plans, my Trustee may exercise the right to determine the manner and timing of payments (by lump sum or otherwise) of qualified retirement plan benefits that are permitted under qualified retirement plans and are consistent with the federal income tax rules regarding required minimum distributions under Section 401(a)(9) of the Internal Revenue Code.

My Trustee may make a qualified disclaimer of any qualified retirement benefits or non-qualified annuity benefits payable to my trust.

My Trustee shall not be liable to any beneficiary for the death benefit election selected or for any decision regarding the disclaimer of any qualified retirement benefits payable to my trust.

(b) Distributions from Qualified Retirement Plans to Trusts

Unless specifically stated otherwise, each year, beginning with the year of my death, if any trust created under this agreement becomes the beneficiary of death benefits under any qualified retirement plan, my Trustee shall withdraw from the trust's share of the plan, in each year, the required minimum distribution required under Section 401(a)(9) of the Internal Revenue Code. My Trustee may withdraw such additional amounts from the trust's share of the plan as my Trustee deems advisable; but, only if the dispositive terms of the trust authorize my Trustee to immediately distribute the withdrawn amount as provided below. My Trustee shall immediately distribute all amounts withdrawn to:

My descendants, *per stirpes*, who are beneficiaries of such trust; and

If no descendant of mine is a beneficiary of the trust, then to the income beneficiaries of such trust in equal shares.

Amounts required to be withdrawn and distributed under this Section shall, to the extent they are withdrawn and distributed, reduce mandatory distribution amounts under other provisions of this agreement that otherwise require distribution of all of the income of the trust.

The purpose of this Section is to insure that the life expectancy of the beneficiaries of the trust may be used to calculate the minimum distributions required by the Internal Revenue Code. This Section shall be interpreted consistent with my intent despite any direction to the contrary in this agreement.

(c) Minimum Required Distribution

In administering my trust, the minimum required distribution for any year shall be, for each qualified retirement plan, the greater of (1) the value of the qualified retirement plan determined as of the preceding year-end, divided by the applicable distribution period; and (2) the amount that my Trustee shall be required to withdraw under the laws then applicable to the trust to avoid penalty.

If I die before my required beginning date with respect to a qualified retirement plan, the applicable distribution period means the life expectancy of the beneficiary. If I die on or after my required beginning date with respect to a qualified retirement plan, the applicable distribution period means the life expectancy of the beneficiary, or (if longer) my remaining life expectancy.

Notwithstanding the foregoing, if I die on or after my required beginning date with respect to a qualified retirement plan, the minimum required distribution for the year of my death shall mean (a) the amount that was required to be distributed to me with respect to the qualified retirement plan during the year, minus (b) amounts actually distributed to me with respect to the qualified retirement plan during the year.

"Life expectancy," "required beginning date" and other similar terms used in this subsection, shall be determined in accordance with Section 401(a)(9) of the Internal Revenue Code.

Section 12.02 Life Insurance Policies

The following provisions apply to life insurance policies owned by or made payable to my trust.

(a) Provisions During My Life

During my life, I reserve all of the rights, powers, privileges, and options, with respect to any insurance policy, annuity or any other third-party beneficiary contract owned by or made payable to my trust, including, but not limited to, the right to designate and change beneficiaries, the right to borrow money, the right to surrender the policy, the right to receive any payments as owner, and the right to make any available elections.

My Trustee shall have no duty to exercise, or refrain from exercising, any rights, powers, privileges or options with respect to any insurance policy, annuity contract or other third-party beneficiary contract. My Trustee shall have no obligation to pay premiums or other contractual amounts that may be payable under any such policy.

(b) Provisions After My Death

After my death, my Trustee may make all appropriate elections with respect to such policies and may collect all sums made payable to my trust or my Trustee under all such policies or contracts.

My Trustee may exercise any settlement options or other options or rights that may be available under the terms of any policy or contract. My Trustee shall not be liable to any beneficiary on account of any election made by my Trustee with respect to any policy or contract.

Section 12.03 Limitation on Liability of Payor

Persons or entities dealing in good faith with my Trustee shall not be required to see to the proper application of proceeds delivered to my Trustee, or to inquire into any provision of this agreement.

A receipt signed by my Trustee for any proceeds or benefits paid shall be a sufficient discharge to the person or entity making the payment.

Section 12.04 Collection Efforts

My Trustee shall make reasonable efforts to collect the proceeds of all life insurance policies and qualified retirement benefits payable to my trust.

My Trustee may commence legal or administrative proceedings to collect the proceeds of any life insurance policy or qualified retirement benefits to which the trust is entitled; provided, however, that my Trustee need not commence any such proceedings until my Trustee is indemnified to its satisfaction for any expenses and liabilities it may incur in connection with the proceeding.

My Trustee may settle or compromise any and all claims with respect to the collection of any life insurance proceeds or qualified retirement benefits to which my trust may be entitled. A settlement made by my Trustee shall be binding on all beneficiaries.

Section 12.05 No Obligation to Purchase or Maintain Benefits

Nothing in this agreement shall impose any obligation, legal or otherwise, on me or on my Trustee to purchase, invest, or maintain any qualified retirement plan or life insurance policy.

Article Thirteen
Trust Administration

Section 13.01 Distributions to Beneficiaries

Whenever this agreement authorizes or directs a Trustee to make a distribution of net income or principal to a beneficiary, the Trustee may apply for the benefit of the beneficiary any property that otherwise could be distributed directly to the beneficiary. The Trustee shall have no responsibility to inquire into the beneficiary's ultimate disposition of the distributed property unless specifically directed otherwise by this agreement.

The Trustee may make distributions in cash or in kind, or partly in each, in proportions and at values determined by the Trustee. The Trustee may allocate undivided interests in specific assets to a beneficiary or trust in any proportion or manner that the Trustee determines, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

The Trustee may make these determinations without regard to the income tax attributes of the property and without the consent of any beneficiary.

Section 13.02 No Court Proceedings

This trust shall be administered expeditiously, consistent with the provisions of this agreement, free of judicial intervention, and without order, approval or action of any court. The trust shall be subject to the jurisdiction of a court only if my Trustee or another interested party institutes a legal proceeding. A proceeding to seek instructions or a court determination shall be initiated in the court having original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or a court determination shall not subject this trust to the continuing jurisdiction of the court.

Section 13.03 No Bond

My Trustee shall not be required to furnish any bond for the faithful performance of my Trustee's duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the beneficiaries. No surety shall be required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

Section 13.04 Exoneration of My Trustee

No successor Trustee is obligated to examine the accounts, records or actions of any previous Trustee or of the Personal Representative of my estate. No successor Trustee shall be in any way or manner responsible for any act or omission to act on the part of any previous Trustee or the Personal Representative of my estate.

Unless a Trustee has received notice of removal, the Trustee shall not be liable to me or to any beneficiary for the consequences of any action taken by the Trustee that would have been, but for the prior removal of the Trustee, a proper exercise by the Trustee of the authority granted to the Trustee under this agreement.

Any Trustee may request and obtain from the beneficiaries or from their legal representatives, agreements in writing releasing the Trustee from any liability that may have arisen from the Trustee's acts or omissions to act and indemnifying the Trustee from liability for the acts or omissions. An agreement described in this paragraph, if acquired from all the living beneficiaries of the trust or from their legal representatives, shall be conclusive and binding upon all parties, born or unborn, who may have, or may in the future acquire, an interest in the trust.

The Trustee may require a refunding agreement before making any distribution or allocation of trust income or principal and may withhold distribution or allocation pending determination or release of a tax lien or other lien. This refunding agreement provision shall not apply to any distribution that qualifies for the federal estate tax charitable deduction.

Section 13.05 Trustee Compensation

An individual serving as Trustee, other than me, shall be entitled to fair and reasonable compensation for the services rendered as a fiduciary. A corporate fiduciary serving as Trustee shall be compensated by agreement with an individual Trustee or, in the absence of an individual Trustee or in the absence of an agreement, in accordance with the corporate fiduciary's published schedule of fees in effect at the time the services are rendered.

A Trustee may charge additional fees for services it provides that are not comprised within its duties as Trustee such as fees for legal services, tax return preparation and corporate finance or investment banking services.

In addition to receiving compensation, a Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out its duties under this agreement.

Section 13.06 Employment of Professionals

My Trustee may appoint, employ and remove, at any time and from time to time, investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, expert advisers, agents, and employees to advise or assist the Trustee in the performance of its duties. My Trustee may act upon the recommendations of the persons or entities employed with or without independent investigation.

My Trustee may reasonably compensate an individual or entity employed to assist or advise my Trustee regardless of whether the person or entity shall be a Trustee of a trust established under this agreement or a corporate affiliate of a Trustee and regardless of whether the entity shall be one in which a Trustee of a trust created under this agreement is a partner, member, stockholder, officer, director or corporate affiliate or has any other interest.

My Trustee may pay the usual compensation for services contracted for under this Section out of principal or income of the trust as my Trustee may deem advisable. My Trustee may pay compensation to an individual or entity employed to assist or advise my Trustee without diminution of or charging the same against the compensation to which the Trustee is entitled under this agreement. Any Trustee who shall be a partner, stockholder, officer, director or corporate affiliate in any entity employed to assist or

advise my Trustee shall nonetheless receive the Trustee's share of the compensation paid to the entity.

Section 13.07 Exercise of Testamentary Power of Appointment

A testamentary power of appointment granted under this agreement may be exercised by valid will, revocable living trust, or any other written instrument that specifically refers to this power of appointment. The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the holder of the power designates. The holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

My Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this agreement has not been exercised by the beneficiary if my Trustee has no knowledge of the existence of a valid will, revocable living trust, or any other written instrument exercising the power within 3 months after the beneficiary's death.

Section 13.08 Determination of Principal and Income

My Trustee may determine in a fair, equitable and practical manner how all Trustee's fees, disbursements, receipts, and wasting assets shall be credited, charged, and apportioned between principal and income. My Trustee may allocate capital gain to income rather than principal.

My Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and for the equalization of payments to or for the beneficiaries. My Trustee may select appropriate accounting periods with regard to the trust property.

Notwithstanding the foregoing or Nevada law to the contrary, my Trustee shall treat distributions from any qualified retirement accounts to any trust established under this agreement in any given year as income to the extent the distribution represents income generated or treated as generated by any qualified retirement account for that year.

In addition, my Trustee shall treat annuity and other periodic payments to any trust established under this agreement in any given year as income to the extent the distribution represents income generated and treated as generated by any qualified retirement plan for that year; if income information is not available then my Trustee shall apportion the annuity and other periodic payments between principal and income in a fair, equitable and practical manner in accordance with the guidelines set forth in this Section. "Annuity and other periodic payments" refers to distributions made to my Trustee over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments and includes payments made in money or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, an individual retirement annuity, a pension, profit-sharing plan, stock-bonus plan, stock ownership plan or similar arrangement.

1. To the extent an annuity or other periodic payment is characterized as interest, dividend or other item of income or an annuity or other periodic payment is made in lieu of interest, dividend or other item of income; my Trustee shall allocate the payment to income. My Trustee shall allocate to principal the balance of the annuity or other periodic payment as well as any other payment received in the same accounting period that is not characterized as interest, dividend or other item of income.

2. To the extent annuity and other periodic payments are made and no part of the payments are characterized as interest, dividend or other item of income, my Trustee shall use the present value of the annuity and other periodic payments as finally determined for federal estate tax purposes and the Section 7520 rate of the Internal Revenue Code used to determine the value for federal estate tax purposes to prepare an annuitization table to allocate the payments between income and principal.

3. In the event that the amount of annuity and other periodic payments change because of changes in the investment markets or other changes, my Trustee shall allocate the change in the amount of the payments between income and principal in a fair, equitable and practical manner.

If, to obtain an estate tax marital deduction for a trust established under this agreement, my Trustee must allocate more of a payment to income than provided for by this section, my Trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

Section 13.09 Trust Accounting

Upon the written request of a beneficiary, my Trustee shall render an accounting at least annually to the income beneficiaries of the trust during the accounting period that includes the date of the written request. The accounting shall include the receipts, disbursements, and distributions occurring during the accounting period and a balance sheet of the trust property if no tax return is filed, or may consist just of the tax return for the accounting period if a tax return is filed for the trust.

In the absence of fraud or manifest error, the assent by all income beneficiaries to an accounting of an Independent Trustee shall make the matters disclosed in the accounting binding and conclusive upon all persons, both those in existence on the date of this agreement and those to be born in the future who have, or will in the future have, a vested or contingent interest in the trust property. In the case of a minor or incapacitated beneficiary, that beneficiary's natural guardian or legal representative shall give the assent required under this Section.

The failure of any person to object to any accounting by giving written notice to my Trustee within 60 days of the person's receipt of a copy of the accounting shall be deemed to be an assent by such person.

The trust's financial records and documentation shall be available at reasonable times and upon reasonable notice for inspection by trust beneficiaries and their representatives. My Trustee shall not be required to furnish trust information regarding my trust to any

individual, corporation, or other entity that is not a beneficiary or the representative of a beneficiary, and is not requesting the information pursuant to a valid court order.

Section 13.10 Action of Trustees; Disclaimer

Unless otherwise provided in this agreement, whenever I am serving as Trustee, I may make all decisions and exercise all powers and discretions granted to my Trustee under this agreement without the consent of any other Trustee.

When I am not serving as a Trustee, if two Trustees are eligible to act with respect to a given matter, the concurrence of both shall be required for action to be taken; if more than two Trustees are eligible to act with respect to a given matter, the concurrence of a majority of my Trustees shall be required for action to be taken.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. A Trustee shall be absolved from personal liability by registering its dissent or abstention in the records of the trust. After doing so, the dissenting Trustee shall then act with my other Trustees in any way necessary or appropriate to effectuate the decision of the majority.

Notwithstanding any provision of this agreement to the contrary, any Trustee may disclaim or release, in whole or in part, by an instrument in writing, any power it holds as Trustee, irrevocably or for any period of time that the Trustee may specify. The Trustee may make the relinquishment of a power personal to the Trustee or may relinquish the power for all subsequent Trustees.

Section 13.11 Delegation of Trustee Authority; Power of Attorney

Subject to the limitations set forth in Section 14.23, any Trustee may, by an instrument in writing, delegate to any other Trustee the right to exercise any power (including a discretionary power) granted my Trustee in this agreement. During the time a delegation under this Section is in effect, the Trustee to whom the delegation was made may exercise the power to the same extent as if the delegating Trustee had personally joined in the exercise of the power. The delegating Trustee may revoke the delegation at any time by giving written notice of revocation to the Trustee to whom the power was delegated.

My Trustee may execute and deliver a revocable or irrevocable power of attorney granting any individual or entity the power to transact any and all business on behalf of my trust or any other trust created under this agreement. The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that my Trustee is entitled to exercise under this agreement.

Section 13.12 Additions to Separate Trusts

If upon my death, or upon the termination of any trust created under this agreement, a final distribution is to be made to a person who is or is named as the primary beneficiary of another trust created or provided for under this agreement, and there is no specific indication whether the distribution is to be made in trust or outright, free of trust, my Trustee shall make the distribution to the second trust instead of distributing the property to the beneficiary outright. For purposes of administration, my Trustee shall treat the distribution as though it had been an original part of the second trust.

Section 13.13 Authority to Merge or Sever Trusts

My Trustee may merge and consolidate a trust created under this agreement with any other trust, if the two trusts contain substantially the same terms for the same beneficiaries and at least one Trustee in common.

My Trustee may administer the merged and consolidated trust as a single trust or unit. If, however, a merger or consolidation does not appear feasible, my Trustee may consolidate the assets of the trusts for purposes of investment and trust administration while retaining separate records and accounts for each respective trust.

My Trustee may sever any trust on a fractional basis into two or more separate and identical trusts or may segregate a specific amount or asset from the trust property by allocation to a separate account or trust. The separate trusts may be funded on a non *pro rata* basis provided that funding is based on the total fair market value of the assets on the date of funding. Income earned on a segregated amount or specific asset after the segregation passes with the amount or asset segregated. My Trustee shall hold and administer each separate trust upon terms and conditions substantially identical to those of the trust from which it was severed.

Subject to the terms of the trust, my Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections, and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective; however, the effective date of severance may be retroactive to a date before the date on which my Trustee exercises the power.

Section 13.14 Authority to Terminate Trusts

If, at any time, my Trustee, other than an Interested Trustee, in its sole and absolute discretion, determines that a trust created under this agreement is no longer economical or is otherwise inadvisable to administer as a trust, or if my Trustee, other than an Interested Trustee, deems it to be in the best interest of my beneficiaries, my Trustee, without further responsibility, may terminate the trust and distribute the trust property, including any undistributed net income, in the following order of priority:

To me, if I am then living;

To the beneficiaries then entitled to mandatory distributions of net income of the trust and in the same proportions; and

If none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of net income of the trust, in such amounts and shares as my Trustee, other than an Interested Trustee, may determine.

Section 13.15 Discretionary Distribution to Fully Utilize Basis Increase Upon Death of Beneficiary

This Section shall apply during any time there is no federal estate tax in effect and Section 1022 of the Internal Revenue Code is in effect.

If I have given my Trustee the authority to make distributions of principal to the beneficiary of a trust, my Trustee, other than an Interested Trustee, may, from time to time, distribute to the beneficiary as much of the principal of the trust as such Trustee may determine is advisable so that upon the death of the beneficiary the estate of the beneficiary will have sufficient appreciated assets to fully utilize the aggregate basis increase allowed under Section 1022.

Before making a distribution of property under this Section, I request, but do not require that the Trustee determine whether there is a good reason to retain the property in trust such as whether or not the asset may be sold in the near future, the need for creditor protection by the beneficiary, protection of the beneficiary from failed marriages and protection of the asset for future generations. My Trustee shall not be liable to any beneficiary for the exercising or failing to exercise its discretion to make a distribution under this Section.

Section 13.16 Merger of Corporate Fiduciary

If any corporate fiduciary acting as my Trustee under this agreement is merged with or transfers substantially all of its trust assets to another corporation or if a corporate fiduciary changes its name, the successor shall automatically succeed to the trusteeship as if originally named a Trustee. No document of acceptance of trusteeship shall be required.

Section 13.17 Beneficiary's Status

Until a Trustee receives notice of the incapacity, birth, marriage, death or other event upon which a beneficiary's right to receive payments may depend, the Trustee shall not be liable for acting or failing to act with respect to the event or for disbursements made in good faith to persons whose interest may have been affected by such event. Unless otherwise provided in this agreement, the parent or legal representative may act on behalf of a beneficiary who is a minor or is incapacitated.

A Trustee may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. A Trustee shall have no independent duty to investigate the status of any beneficiary and shall not incur any liability for failure to do so.

Section 13.18 Discharge of Third Persons

Persons dealing in good faith with my Trustee shall not be required to see to the proper application of money paid or property delivered to my Trustee, or to inquire into the authority of my Trustee as to any transaction. The receipt from my Trustee for any money or property paid, transferred or delivered to my Trustee shall be a sufficient discharge to the person or persons paying, transferring or delivering the money or property from all liability in connection with its application.

Section 13.19 Certificate by Trustee

A written statement of my Trustee may always be relied upon by, and shall always be conclusive evidence in favor of, any transfer agent or any other person dealing in good faith with my Trustee in reliance upon the statement.

Section 13.20 Funeral and Other Expenses of Beneficiary

Upon the death of an income beneficiary, my Trustee may pay the funeral expenses, burial or cremation expenses, enforceable debts and other expenses incurred due to the death of the beneficiary from trust property. This Section shall only apply to the extent the income beneficiary has not exercised any testamentary power of appointment granted to him or her under this agreement.

My Trustee may rely upon any request by the Personal Representative or members of the family of the deceased beneficiary for payment without verifying the validity or the amounts and without being required to see to the application of the amounts so paid. My Trustee may make decisions under this Section without regard to any limitation on payment of expenses imposed by statute or rule of court and may be made without obtaining the approval of any court having jurisdiction over the administration of the deceased beneficiary's estate.

Section 13.21 Generation-Skipping Transfer Tax Provisions

Notwithstanding any other provision of this agreement to the contrary, if a trust created under this agreement would be partially exempt from generation-skipping transfer tax after the intended allocation of GST exemption as defined in Section 2631 of the Internal Revenue Code to the trust then:

(a) Division into Exempt and Nonexempt Trusts

My Trustee may divide the property of the trust into two separate trusts so that the allocation of GST exemption can be made to a trust that will be entirely exempt from generation-skipping transfer tax (the "exempt trust"). The exempt trust shall consist of the largest fractional share of the total trust assets that will permit the exempt trust to be entirely exempt from generation-skipping transfer tax. The "nonexempt trust" shall consist of the balance of the total trust assets. For purposes of computing the fractional share, asset values as finally determined for federal estate tax purposes shall be used. The fraction shall be applied to the assets at their actual value on the effective date or dates of distribution so that the actual value of the fractional share resulting from the application of such fraction will include fluctuations in the value of the trust property.

(b) Administration of the Trusts

The trusts created under this Section shall have the same terms as the original trust. To the extent possible, distributions to a non-skip person as defined by Section 2613 of the Internal Revenue Code shall be made from a nonexempt trust and distributions to a skip person as defined by Section 2613 shall be made from an exempt trust.

My Trustee shall administer each exempt and nonexempt trust as a separate and independent trust.

Any exempt or nonexempt trust established under this agreement may be referred to by the name designated by my Trustee.

If an exempt trust and a nonexempt trust are further divided under the terms of this agreement, my Trustee may allocate property from the exempt trust first to the trust from which a generation skipping transfer is more likely to occur.

(c) My Intent; Trust Additions

My intent is to minimize the application of the generation-skipping transfer tax to the trust property but not to affect the total amount of trust property to which any beneficiary may be entitled under this agreement. This agreement shall be so construed and interpreted to give effect to this intent.

If at any time any property that has an inclusion ratio greater than zero for generation-skipping transfer tax purposes would be added to a trust with property that has an inclusion ratio of zero, then my Trustee shall instead hold such property in a separate trust on the same terms and conditions as the original trust.

(d) Independent Trustee May Confer Testamentary Power of Appointment

My Trustee, excluding any Interested Trustee, may during the lifetime of the beneficiary of the trust, grant the beneficiary a testamentary power to appoint all or part of such beneficiary's trust or trust share to the creditors of the beneficiary's estate. The Trustee granting the power of appointment may require, as a condition for the beneficiary's exercise of such power, that the beneficiary obtain the consent of such Trustee. Any testamentary power of appointment granted by the Trustee shall be in writing and may be revoked at any time during the lifetime of the beneficiary to whom the power was given. I suggest, but do not require, that my Trustee exercise this authority to subject trust property to estate tax instead of the generation-skipping transfer tax when it appears that it may reduce overall taxes.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

IN THE MATTER OF: THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, DATED MAY 18, 1972,	Supreme Court No.: 66231 Consolidated with: 67782, 68046
ELEANOR C. AHERN A/K/A ELEANOR CONNELL HARTMAN AHERN, Appellant, vs. JACQUELINE M. MONTOYA; AND KATHRYN A. BOUVIER, Respondents.	District Court Case No.: P-09-066425-T Appeal from the Eighth Judicial District Court, The Honorable Gloria Sturman Presiding

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APPELLANT'S APPENDIX

(VOLUME 2 OF 17)

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KIRK B. LENHARD, ESQ., Nevada Bar No. 001437
TAMMY BEATTY PETERSON, ESQ., Nevada Bar No. 005218
BENJAMIN K. REITZ, ESQ., Nevada Bar No. 13233
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106
Telephone: 702.382.2101
Facsimile: 702.382.8135

ATTORNEYS FOR APPELLANT
ELEANOR CONNELL HARTMAN AHERN

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

IN THE MATTER OF: THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, DATED MAY 18, 1972, ELEANOR C. AHERN A/K/A ELEANOR CONNELL HARTMAN AHERN, Appellant, vs. JACQUELINE M. MONTOYA; AND KATHRYN A. BOUVIER, Respondents.	Supreme Court No.: 66231 Consolidated with: 67782, 68046 District Court Case No.: P-09-066425-T Appeal from the Eighth Judicial District Court, The Honorable Gloria Sturman Presiding

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRAP 25(c) and (d), I caused a true and correct copy of the foregoing **APPELLANT'S APPENDIX (Volume 2 of 17) (Pages AA 207-441)** by using the Court's Electronic Filing System on November 20, 2015, upon the following:

WHITNEY B. WARNICK, ESQ.
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106
Attorneys for Kathryn A. Bouvier

JOSEPH J. POWELL, ESQ.
THE RUSHFORTH FIRM, LTD.
P.O. Box 371655
Las Vegas, NV 89137-1655
Attorneys for Jacqueline M. Montoya and Kathryn A. Bouvier

I hereby certify that on November 20, 2015, I served a copy of this document by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to the following:

MICHAEL K. WALL, ESQ.
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Fredrick P. Waid, Court-appointed Trustee

/s/ Erin Parcells
an employee of Brownstein Hyatt Farber Schreck, LLP

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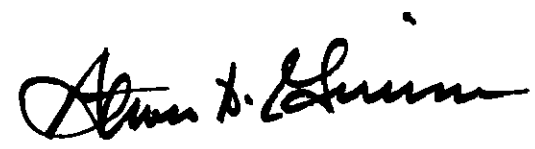


CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

In the matter of the Trust of: The W.N. Connell and Marjorie T. Connell Living Trust, dated May 18,1972	CASE NO. P-09-066425 DEPT. NO. XXVI **Transcript of Proceedings**

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

HEARING ON PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A)

TUESDAY, NOVEMBER 12, 2013

APPEARANCES:

For the Petitioner, Eleanor Ahern:	JOHN MUGAN, ESQ. MICHAEL LUM, ESQ.
For Jaqueline Montoya:	JOSEPH POWELL, ESQ.

RECORDED BY:	KERRY ESPARZA, COURT RECORDER
TRANSCRIBED BY:	KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

TUESDAY, NOVEMBER 12, 2013 9:54 A.M.

THE COURT: Connell Living Trust, P066425. All right. Will everybody make their appearances?

MR. MUGAN: Good morning, Your Honor, John Mugan, 10690, for Eleanor Connell Ahern.

MR. LUM: Good morning, Your Honor, Michael Lum, bar number 12997, co-counsel with Mr. Mugan.

MR. POWELL: Good morning, Your Honor, Joey Powell appearing on behalf of Jacqueline Montoya.

THE COURT: Okay. All right. So this is a petition for declaratory judgment regarding limited interest of the trust assets and then there was -- I'm not sure if it was technically noticed for today, but we see on here that there is something filed with respect to referring this back to the Commissioner, but I didn't know if it was opposed, I didn't know if there was anything else filed on that one because --

MR. POWELL: Yeah, we filed --

THE COURT: -- that was kind of confusing.

MR. POWELL: -- a response to that.

MR. MUGAN: I believe there -- I believe you filed a response Thursday and then we filed a reply yesterday in a moment of brilliance. I didn't realize yesterday was Veteran's Day when we got it Thursday and we filed it

electronically yesterday. I don't know if our runner put one in your drop box or not.

THE COURT: Yeah and it hasn't shown up yet in --

MR. MUGAN: I --that's my fault. I apologize. I --

THE COURT: Oh I see, yeah.

MR. MUGAN: Our office was open yesterday --

THE COURT: Right.

MR. MUGAN: -- and it didn't dawn on me that it was Veteran's Day.

THE COURT: Yeah, exactly. Exactly. I remember those days. Now that I'm a government employee, it's a little different.

So, with respect to that issue of referring it back to the Commissioner --

MR. MUGAN: I -- if I may, Your Honor? I think --

THE COURT: If it's --

MR. MUGAN: You know, I think it's a relatively simple issue. I think it needs to be handled first before we start getting into the substantive issues. We didn't address the substantive issues because we filed this motion and, quite frankly, after this motion, we're going to be filing a motion to dismiss on issue preclusion and some other facts, but on this motion, and looking at it, I think the saving grace is twofold.

Number one, I don't see any *Landreth* II problems. I don't think we need a super judge. So I don't think we have *Landreth* problems and I think the issue is solely in your discretion. I mean, you can do whatever you want.

Our whole point is -- and I practiced law back in the Midwest for 33 years and then came out here because all of our children and grandchildren are here and I've practiced here for 7 years and I never quite understood how Probate Court worked even though I appear there all the time and this luckily has hopefully clarified some of it.

If you look at the law -- the Rule 4.16 of the local rules, it basically says that you, as Probate Judge, may hear whatever contested matters you select and you also may refer any contested matters on the probate calendar to a Master appointed by you for hearing and report. And Nevada Rule of Civil Procedure 53 always gives the Court, you know, the power to appoint a Master in any case.

And then, granted it's not a rule, it's a proposed rule on the new rules that have been redone and proposed and they're a long way from being adopted, but Rule 4.08 basically is a rule of the longstanding practice in Probate Court. If the Probate Commissioner hears something and you don't request that it go to the Probate Judge, then you live with the Probate Commissioner otherwise you're going to be doing forum shopping or the minute you get a bad

ruling, you want the Probate Judge and I know that's not the rule, but that's the practice as I understand it.

And in this situation, back in 2009, exact same case, case number, exact same trust, there was a petition brought in part to construe and reform the trust. Sat down for a hearing, and notice given, hearing date comes, an order entered, notice of entry sent out, and that was it and part of the order construed and reformed the trust.

Now we have 2013, one of the interested parties comes back and basically says that her mother is only entitled to 35 percent of the income from certain assets and we believe that even though we have no problem with you as a Judge, I've appeared before you a number of times, we believe that the Probate Commissioner is the one that's most familiar with it, has construed this and reformed it previously. We think it should go before him, that he should keep it. It would be just easier and simpler.

In the response Mr. Powell said it's not a -- it was not a contested matter. We searched and searched in Nevada law, there is no definition of a contested matter. I note -- like I said previously, this was all done on notice, etcetera, etcetera. The order wasn't stipulated to. There was another interested party: Shriners Hospital, and they were sent notice of the hearing. They were sent notice of the notice of entry. They never

stipulated. They never consented. There's an email attached to Mr. Powell's response, Exhibit A, where the attorney, Mr. Steadman, says that there is an interested party, Shriners, they have the right to object, etcetera, etcetera. They got notice of the hearing and also the notice of the entry.

So we believe it was a contested matter that was handled by the Probate Commissioner and now we're coming back four years later, same case, same trust, and we're asking for a declare -- a declaration that my client's only entitled to 35 percent of the income and we believe that there is a substantive and direct connection between the two matters and if you look at the pleadings in the 2009 case, you look at the consent of the party in this case, Mr. Powell's client, there are allegations and consents that basically say trust number two has these assets and our client is a lifetime beneficiary.

And so, there is a direct connection, direct connection, and we believe that there may be issues of reforming and construing the trust because we believe if you look at the trust language and the facts and circumstances, it was obviously the intent of the decedent, W. N. Connell, that my client, his only child, be entitled to income from these Texas assets which were his sole and separate property that he brought into the marriage and he

wanted to make sure that she receive the income for as long as she lived and any alleged power of appointment that Mr. Powell's client is claiming that the second wife had was specifically subject to that life estate.

So I think there's reformation issues. There's construction issues. Like I said, you know, regardless of how you rule, we're going to be filing a motion to dismiss on issue preclusion, etcetera, but we believe that since the Probate Commissioner handled it previously, the longstanding practice, regardless of the proposed rules, you as Probate Judge, have the right at any time to refer the matter to a Master including the Probate Commissioner.

We just think under the circumstances it would be better if the Probate Commissioner handled it because he's familiar. I know you've got plenty of things to do. If you want the case, that's fine, too. We don't have any problem with it; we just think under this circumstance it would be better if the Probate Commissioner handled it.

THE COURT: Okay. So, I guess just trying to figure out procedurally where we are here, that motion is technically not on calendar. I guess it's been fully briefed although the only thing that shows up in Odyssey is the motion which, you know, we didn't see noticed. It didn't show up at least on our calendar from Master Calendar and an errata and I don't -- didn't see an

opposition or a reply. So, just, you know, for the record, I don't know -- Mr. Powell, do you want to be heard on the issue of whether this is really appropriately before this Court --

MR. POWELL: Yeah and --

THE COURT: -- and why you -- I guess, because -- it's here because you requested that it be here. So, --

MR. POWELL: Yeah. In terms of the motion, their motion, you know, it's up to you. We've already briefed it. We've filed our response. Even though it had the heading of motion to reference back, it had substantive arguments. So I took it as though that was an objection to our petition. It was basically pleading in the alternative of here's our argument that we -- you know, we don't want -- we want this to go back to the Commissioner to hear these arguments.

THE COURT: And so then that really I guess gets us really to the issue here which is --

MR. POWELL: Yeah.

THE COURT: -- and I think that's what Mr. Mugan was --

MR. POWELL: Yeah.

THE COURT: -- referencing that in 2009, a certain action was taken, --

MR. POWELL: Yeah.

THE COURT: -- and now in 2013 there was a petition for declaratory relief.

MR. POWELL: Yeah.

THE COURT: So --

MR. POWELL: We have that petition because 33 years of precedent and status quo is now being changed and that's the issue before us is there's -- there was -- again, 33 years of a 65/35 split of the income from oil, gas, and mineral rights in Texas and suddenly in basically June/July, Ms. Ahern decides: No, I'm entitled to 100 percent. That 65/35 that I've been living with for 33 years, I don't want to abide by that anymore. No logic, no reason, nothing, just I'm keeping 100 percent now. Okay? Well, that changes the status quo and --

THE COURT: Okay. So the issue is -- because I think kind of the argument they were arguing here is that if --

MR. POWELL: Yeah.

THE COURT: -- you're going to oppose this order reforming the trust back in 2009, --

MR. POWELL: Yeah.

THE COURT: -- the process should have been followed in 2009 to do that; there was no such process. But the point is she didn't do anything until 2013.

MR. POWELL: Well, no, actually the 2009 had no

effect on the 65/35 split.

THE COURT: Okay.

MR. POWELL: That -- the whole point of what '09 did was to add provisions and that was the key. It added provisions to the trust to basically say: These are the remainder beneficiaries after Ms. Ahern's death which wasn't first spelled out. It was easily inferred that it would go to her issue, it was just spelled out because it wasn't addressed. So that was the point of the reformation was to say we need to -- we should probably just handle this now so that there's no issues that arise later.

THE COURT: So -- and so there's nothing that happened in 2009 that would have prompted any kind of an appeal? You're not like --

MR. POWELL: No.

THE COURT: -- it's not like [indiscernible] --

MR. POWELL: There was nothing wrong with it.

THE COURT: -- to do a late appeal of that earlier --

MR. POWELL: Exactly. None of that is being appealed at all and that's why a consent was signed to say: We're fine with it, spelling out the fact that my sister and I are the remainder beneficiaries of trust number two. No problem.

I mean, that -- it basically was to their benefit

to have that go into effect because basically it's spelled out.

Not -- again, it was -- if you read the trust, the language clearly inferred that that was the normal way that it would go, it just -- it didn't expressly state it and that was the issue of the reformation.

THE COURT: If there -- Mr. Mugan's point that traditionally if a matter starts out with the Probate Commissioner, it stays with the Probate Commissioner unless you think some sort of -- you know, he has no authority to hear a jury trial for example. So that's -- it's got to come up here. And the way it's always been handled, as he pointed out, you know, it hasn't ever been really clear how we're going to handle probate. It's just sort of been grafted on as a --

MR. POWELL: Yeah.

THE COURT: -- you know, to a highbred of what part of District Court it was going to be and no real clear rule.

So I guess the point is what you're seeking now is instead of filing a new action, there's -- you don't file a new action, it stays under the old action, --

MR. POWELL: Yeah.

THE COURT: -- which -- like probate cases never close.

MR. POWELL: Right.

THE COURT: They are never --

MR. POWELL: Not --

THE COURT: -- over.

MR. POWELL: -- in a trust situation unless you affirmatively --

THE COURT: Right.

MR. POWELL: -- request that jurisdiction be taken off and then, in that case, you've got to get jurisdiction back. But, absent that, yeah, it just continues forever until --

THE COURT: We've got a case from --

MR. POWELL: -- somebody --

THE COURT: -- 1972.

MR. POWELL: Yeah.

THE COURT: So, I mean, --

MR. POWELL: Yeah.

THE COURT: -- I -- it -- they just never end.

MR. POWELL: They never end unless you do something affirmative --

THE COURT: Right.

MR. POWELL: -- to get rid of jurisdiction.

THE COURT: Right. So you had to file under the old case number because that jurisdiction --

MR. POWELL: That --

THE COURT: The Court's got jurisdiction there. So fine.

MR. POWELL: Jurisdiction still exists. Yep.

THE COURT: Okay.

MR. POWELL: Yep.

THE COURT: So, now it gets to the next point -- which is who is really the most appropriate person to hear the case?

MR. POWELL: Right and --

THE COURT: I mean, because that really seemed like that was --

MR. POWELL: -- basically it's not a knock on Commissioner Yamashita, it's really a situation of it's an urgent, pressing matter that we get a determination now and it's something that we feel that you're clearly capable of handling. There's not -- there's no special expertise which, you know, obviously you have -- you can do as you choose, but there's no special expertise that's required that Commissioner Yamashita would bring to this that you otherwise don't possess.

So, really, it's a matter of efficiency and urgency because we need an order, not just a report and recommendation, as soon as possible because we've got big money at stake here, we have reliance on these

distributions, and as Mr. Goodsell pointed out with his case, it's a situation that you can be a war of attrition because these monies are being choked off that they have been relying on, my client and her sister, basically for the last four years when they stepped into the shoes then of their grandmother, Marjorie, who had for the previous 29 years been receiving 65 percent of oil, mineral, and gas income.

So, --

THE COURT: Okay. So that --

MR. POWELL: -- the whole point is --

THE COURT: The question is --

MR. POWELL: Yeah.

THE COURT: -- you know, is this -- I can't think of any other way to frame it and I don't know if Mr. Mugan necessarily accused you of this, but is this forum shopping? Because that's what I want to make real clear.

MR. POWELL: Yeah.

THE COURT: You're not seeking to --

MR. POWELL: Not -- no.

THE COURT: -- reform anything that Commissioner Yamashita has previously done?

MR. POWELL: No.

THE COURT: It's just a question: Who is more perfect to hear this? So what are you looking for because

--

MR. POWELL: We're looking for --

THE COURT: -- if you're looking for it to be decided on just, you know, the pleadings or is this something where you need some discovery and an evidentiary hearing?

MR. POWELL: I think we're good with the pleadings because --

THE COURT: Because it's a petition for declaratory relief.

MR. POWELL: I think we're good with the pleadings. We can't -- we -- there's nothing further that I can submit to you in terms of testimony or anything else other than to -- and I don't think this is being contested and if it is, then I'm super surprised because we have tax returns all the way up through 2012 showing a 65/35 split. It's been that way for the last 33 years; only over the summer has this now changed. So, the issue is pretty black and white there.

The other thing is on the one tax return we have which we can't locate the Form 706. The IRS has been asked. They don't have a copy of it. It was prepared here. The preparer doesn't have a copy of it and, I mean, how can you really expect it? It was a -- from '79/'80. So, I mean, that's going back a long time to try to get

form way back before we had electronic -- saving documents through electronic means. So, we just don't have it.

But going back to that return that was filed, it shows a 65/35 split. That's the way, again, it's gone since 1980 when Mr. Mugan's client became a co-trustee of the trust. So we've got the precedent. There's nothing more than we can declare.

THE COURT: What was going on in Texas? That was another point where I wasn't quite clear if --

MR. POWELL: There was a -- oh --

THE COURT: -- there was maybe a -- and, like I said, I don't want to accuse anybody of forum shopping, --

MR. POWELL: Sure. Sure.

THE COURT: -- but it seemed like there was a concern about that that might be some forum shopping.

MR. POWELL: Yeah, I don't know if you could call it forum shopping. The issue there was the fact that there -- it was Texas property and it's --

THE COURT: Right.

MR. POWELL: -- related to Texas real estate.

THE COURT: Right.

MR. POWELL: So I think that was the issue there is covering all bases because I -- it's basically a situation where, again, you have 33 years of the status quo and then all of a sudden the plug is pulled and then the

question is: Wait a second, how do we put the plug back in? And so, that was part of it was basically I think just simply getting a declaratory ruling there on the issue.

There's -- the accusations, you know, -- and it upsets me when there's not full disclosure given. There was a mistake made in the Texas filings and immediately upon the Texas attorney realizing the mistake, it was -- there was a phone call made, it was corrected.

So it's a half-truth to say: Well, you tried -- in bad faith, you tried to avert this and done this. Nobody has ever made any assertion that Ms. Ahern is not the adopted daughter of Marjorie Connell, not -- that's not even an issue. They spent time briefing the issue somehow trying to establish that. It's not a -- it's a nonissue.

The Texas return -- the Texas filing was simply a mistake. Texas counsel didn't realize it. Upon being notified he made a mistake called opposing counsel and said I made a mistake. You know, your client is clearly this. That was my error as the drafting attorney and that's it. It wasn't in bad faith. Nobody is looking to hoodwink anybody or do anything like that.

The situation that we have here is we need an order and so --

THE COURT: Well but I guess my question --

MR. POWELL: -- going back to --

THE COURT: -- is it you're --

MR. POWELL: Yeah.

THE COURT: -- trying to get a different order here from --

MR. POWELL: No.

THE COURT: -- what you're getting out of Texas --

MR. POWELL: No.

THE COURT: -- because what is the Texas --

MR. POWELL: Yeah.

THE COURT: -- going to be asked to do?

MR. POWELL: Yeah. No, I'm glad to kind of bring you up to speed on that.

Basically, the Texas proceeding has essentially been simply stayed. Ms. Ahern has Texas counsel. They had a mediation there. It was unsuccessful. The last report I got is basically Texas is just kicking the can down basically saying: No, really, Nevada should probably be deciding this because that's where the trust has jurisdiction.

So, my understanding is that whole proceeding is just simply stayed pending this outcome.

THE COURT: Okay. So, I guess then what are you looking for? Are you looking --

MR. POWELL: We're looking for a declaratory --

THE COURT: I guess --

MR. POWELL: Yeah.

THE COURT: -- my question is: What's the procedure that you think would be followed and who is more appropriately, I guess, set up to hear that? If it's a matter of having a hearing and putting this evidence on, because, I mean, when you're seeking declaratory relief, it seems to me that -- I mean, you can get a declaratory judgment basically on the pleadings, but I think that they've got -- you know, their initial response was: We think this has to go back to the Commissioner because there is -- this has already been determined and I understand your position is that that order didn't really determine anything that effects --

MR. POWELL: Yeah.

THE COURT: -- this issue that you've got going on right now, --

MR. POWELL: Yeah.

THE COURT: -- but they've indicated that their next step is they want to file a motion to dismiss this because they think that it does. So, --

MR. POWELL: Which I think is something --

THE COURT: -- logistically, what's the schedule?

MR. POWELL: Which I think is something that you can basically handle right now just by looking at the pleading that the petition that was filed, nowhere in that

petition is there any declaration of basically asking for -- them, in their prayer, asking for declaration that Ms. Ahern has 100 percent interest in that income. It's solely a reformation petition saying: We want to add provisions so that it's clear who the remainder beneficiaries of trust number two are and that's another key function.

The whole thing was -- this was -- and it gets a little confusing because they use the term trust one, trust two, trust three. Trust one was essentially just when both of the settlers were living, they refer to that as trust one, basically an undivided trust. Then at the first death, which was Mr. Connell, they did a division of the trust number two, trust number three. Trust number three was the survivor's trust along with a marital trust because back at that time there was no such thing as what we do now with the martial trust as being the third sub trust. So, it basically -- whatever was determined to me the marital monies for purposes of tax deferment went into the survivor's trust. Trust number two was essentially the decedent's trust.

So, when they were reforming the trust, the provisions that they were adding to were dealing with trust number two. That's another issue as well and what they did is basically -- and, again, I'm not saying anything that's not in the pleadings and then in the accompanying order.

All they sought was to act -- basically what I would say clarification provisions saying: At the death of Ms. Ahern that Jacqueline Montoya and her sister, Kathryn, would be the residuary beneficiaries of that trust. It also basically prescribed the way that that trust would be administered for Jacqueline and Kathryn, and then it also prescribed as well that -- who would be the successor trustees of trust number two upon Ms. Ahern's death.

Currently Ms. Ahern is the only trustee of trust number two. So, that's what that '09 petition did. It had nothing to do with a declaration of rights saying: Ms. Ahern now owns 100 percent of the income. My client and her sister would have never agreed to that. That wasn't even remotely in the mindset of why they would agree to that. It wasn't even -- it wasn't being asked.

And so, in my response to their motion, again, relying entirely on a consent? You're consenting to the prayer. The prayer is the substance of the petition. Any other facts that get thrown in are irrelevant. You're -- again, the substance of the petition is the prayer. We all know that. The only thing that can be in the order is what's asked for in the relief, in the prayer.

So, they had no reason to object to that. That's why they signed consents. Yeah, fine, add in the clarifying language. We want it. It's not detrimental to

them.

And to the assertion, again, that contested, we're on two different wavelengths then in terms of what contested means because the whole point of the approved list in Probate Court is there is not an objection filed, therefore -- meaning there is no contest to what's being asked for and the fact that you have to give notice and a notice of a hearing, well, you have to do that for every petition, and the fact that you don't necessarily secure consents from anybody, that doesn't defer it from being put on the approved list, which this was. There was no oral argument at this hearing. It was -- the order got rubber stamped. So, that's --

THE COURT: Well I --

MR. POWELL: -- my point is this is not a --

THE COURT: But I guess the --

MR. POWELL: -- contested matter.

THE COURT: -- point, as I understood it, the point that was being made about shouldn't this be heard by the Commissioner is isn't he the more perfect person to make that determination of when I entered that order in 2009 granting this reforming of the trust it was or was not addressing an ultimate issue here and I understand your point that you don't want to go through that process and then have to object to that report and recommendation and

then come up here, but it seems like that's kind of the suggested method --

MR. POWELL: Well, --

THE COURT: -- that Mr. Mugan is --

MR. POWELL: Yeah, and I'm not sure why.

THE COURT: -- seeking.

MR. POWELL: I don't really understand. They are two separate things. It's apples and oranges what's going on here and so I don't think there's any need to clarify because the order itself doesn't reference any declaration. If you read the order, it doesn't reference any declaration about: Oh Ms. Ahern is 100 percent -- has 100 percent interest in these oil, mineral, and gas rights. It doesn't say that. The only thing it says -- and that's, again, if the Commissioner looks at the order, there's --

THE COURT: And certainly it --

MR. POWELL: -- nothing you can ever infer from that.

THE COURT: -- would seem that if she had thought that it did, she would have taken that action in 2009.

MR. POWELL: Exactly. Exactly.

MR. MUGAN: Your Honor, if it --

THE COURT: That's a good point. Thanks.

MR. MUGAN: I don't mean to interrupt Mr. Powell, but --

MR. POWELL: But so --

MR. MUGAN: This is a really important issue, really important.

THE COURT: Okay.

MR. MUGAN: And you look at the petition that was filed in 2009 and here's what it says in part:

> Trust number two owned land and oil and gas shares in reserve and income located in Upton County, excuse me, Texas.

That's what we're talking about in this declaration, petition today, and paragraph 19 of that petition in 2009 says:

> Pursuant to Article 4th, and they're referring to Article 4th of the Trust Agreement, which article governs the administration of trust number two, all income from the oil assets is to be paid to the petitioner, and the petitioner is my client, as the residual beneficiary during her lifetime.

I agree it's black and white. It's already been decided and that was stated in the 2009 petition and Mr. Powell and his clients say: Doesn't have anything to do with it. Doesn't have anything to do with it. It's got everything to do with it.

And you look at their consent that his client signed, she not only consents to it, she makes an

affirmative statement and says:

I am a contingent income beneficiary of the trust. I have read the petition and believe it to be true and correct to the best of my knowledge. I hereby consent to the petition and request that the Court enter an order approving the petition in its entirety.

I don't know how the two of them aren't related. That's what we're arguing about in his declaratory petition. My client's not entitled to all of the income. The order that was entered in 2009, it's based on the petition with affirmative allegations which his client consented to and she even admits she's the contingent income beneficiary.

So, how you can say they're completely separate and distinct and how this shouldn't be handled by the Probate Commissioner, at least the motion to dismiss since he's the one who handled the previous matter, I -- in my limited intellect, I don't see it. I think they're intricately -- there's a substantive, intricate relationship between that action and what was done and pled in there and what they're asking for now.

And, you know, I don't want to get into substantive matters because basically we're just asking for a motion here. We really didn't address the substantive matters --

THE COURT: Well but see [indiscernible] me. The motion that you filed isn't technically on my calendar today.

MR. MUGAN: Right. Right. And I think he said that it was all right and we can go ahead with it unless I misunderstood him.

MR. POWELL: No, let's do it. Let's do it. It's fine. I briefed it. I'm --

THE COURT: Okay.

MR. POWELL: -- fine with it. So let's go.

THE COURT: Okay. But I haven't seen your brief.

MR. POWELL: My response?

THE COURT: Yeah. Haven't seen it.

MR. POWELL: Okay.

THE COURT: So, you know, that's my problem is that --

MR. POWELL: Yeah.

THE COURT: -- we've got this fugitive motion out there that was filed and not calendared, but if the parties feel that it's appropriate to address it, then I guess we can address it and -- because then I think we get down then to the next point which is it sounds to me that even if this Court keeps jurisdiction, that Mr. Mugan wishes to file his motion to dismiss, that -- and it seems to me that the declaratory judgment action then -- it's kind of a

countermotion almost to it that you're seeking -- your petitioner seeks declaratory judgment and their opposition is: No, we oppose that and our countermotion is that there is -- there's already been a ruling on this essentially by the Commissioner, despite the fact that she didn't act on it for four years, there's a ruling from the Commissioner in 2009 that governs this, that she's acting under the authority of. So, this should have already been decided.

MR. POWELL: Which I would have no problem with except let's read the order.

THE COURT: Right. Okay.

MR. POWELL: The order doesn't correct any of that.

THE COURT: I'm not --

MR. POWELL: Yeah.

THE COURT: I don't really want to get to the merits, but I'm trying to figure out the procedure what we are trying --

MR. POWELL: Yeah.

THE COURT: -- to do here today.

MR. MUGAN: Excuse me, Your Honor, but maybe the answer is to kick it out two weeks, give the Court an opportunity to read the pleadings and then we come back and try and answer whatever questions you have. If that -- if that's agreeable to Mr. Powell and you, I'm willing to do

whatever the Court wants to do.

THE COURT: Okay. Well because see -- and I agree that with the -- the first thing to be decided is who's going to hear it. Is this something that's more appropriate for this Court to hear? Is it more appropriate for this to be referred to the Commissioner to hear and then seek this -- you know, appeal any report and recommendations?

Mr. Powell's clients are -- you know, position is: We want this to go faster. We don't want the additional built-in delay of getting a report and recommendation and then doing an appeal on that.

MR. POWELL: Yes.

THE COURT: We want this all decided now. We think the Court can hear all of it. Both the question of was this in fact previously ruled on by the Commissioner, that's -- basically, that's the opposition to the petition of declaratory relief is: No, you can't have this ruling that you're seeking because it's already ruled on by the Commissioner and you've lost it or you consented to the action that she's taking now, whatever the opposition is. It sort of seems to me that procedurally that's where we are with it that --

MR. MUGAN: Well, yeah, I didn't intend to do that. What I intended to do is take it one step at a time.

I think the first question is who is this matter going to be heard by: Your Honor or the Probate Commissioner? And so that's the issue that I was trying to get decided and then whoever it is going to be, whether it's you or Commissioner Yamashita, then we're going to file our motion to dismiss based on issue preclusion.

I think the first step is to decide whether this Court or the Probate Commissioner is going to handle this matter and then the next step is for me to either file the motion to dismiss or an opposition.

THE COURT: Okay. All right. Well, so then if you're prepared to have this unfiled motion -- or unnoticed motion ruled on now, I appreciate the point, Mr. Mugan, that practice has been that if the Commissioner hears something, then it's going to -- he's going to continue the hearing. You know, whether he actually took action on this, he signed an order on something that was unopposed and consented to. I think ultimately whatever he would rule on issue preclusion would be appealed up here anyway. The request has been made by these petitioners that we skip that step and just come here. So I'll grant the petitioner's request and I'll hear the -- I'll keep jurisdiction over this and we'll keep this motion here. So, respectfully, deny the motion to remand back to the Commissioner.

Now we have this question of this petition for declaratory relief --

MR. MUGAN: If I may --

THE COURT: Yeah.

MR. MUGAN: Pardon me, Your Honor, if I may say one thing?

THE COURT: Okay.

MR. MUGAN: I just want to clarify the record. If part of your ruling is based on the fact that it was on the approved list and rubber stamped, I don't think there's ever been any showing of that. In fact, I don't think that was an allegation in his response on that. This, today, is the first time I've heard that. So, I just --

MR. POWELL: It was --

MR. MUGAN: -- want to clarify the record.

MR. POWELL: It was addressed. I can't say with 100 percent certainty because I haven't located a transcript of that, but I can say with nearly 99.99 percent certainty it would have been on the approved list and there would not have been additional oral argument and that implication is addressed in my response. So it's not the first time I'm raising it here.

MR. MUGAN: I just wanted the record to reflect that, Your Honor.

THE COURT: It's likely that it wasn't because

there's no minutes.

THE CLERK: There are minutes. If you go ahead and click on it, it's just it is so old, it didn't locate it.

THE COURT: I didn't see minutes.

THE CLERK: Here's the -- you're clicking too far.

THE COURT: Oh.

THE CLERK: They just didn't go over because --

THE CLERK: Yeah, it says: Matter being on the approved list there being no objection.

MR. POWELL: Yeah.

THE COURT: So it was on the approved list.

MR. POWELL: It was on the approved list, yeah.

THE COURT: Okay.

MR. MUGAN: Very good.

THE COURT: All right. So, anyway I don't see any reason to send it back to him and then -- because the request is of the petitioner's that it be heard here and we skip that step. Okay, fine.

So having -- moving on then, I think though, Mr. Powell, that the point is, and I don't know, Mr. Mugan, what -- I appreciate your position being that we have to take this step by step. First you have to see, you know, our -- we have the right to oppose this and our opposition is going to be that this has already been decided. So

however you want to present that because the -- otherwise it's a petition for declaratory relief which is you need to oppose it or file some -- whatever -- and I guess my question is: Do you view this as something that requires -- that can all be done on affidavits because it's strictly a legal issue? Do you need testimony?

MR. MUGAN: No, I think it's going to need testimony if we -- you know, if we get to that point. I really think there's going to need to be some evidence. There's two sides --

THE COURT: Okay.

MR. MUGAN: -- to every story and you need to hear her side of the story.

THE COURT: Okay.

MR. MUGAN: My client's side.

THE COURT: All right. So, is it something that requires any kind of -- is it more like a preliminary matter like an injunction hearing where you don't need discovery first or are you going to need discovery? This is just what --

MR. MUGAN: Oh I --

THE COURT: -- I'm trying to just figure out is how we schedule this and set this up procedurally to go forward.

MR. MUGAN: I think we're going to need some

discovery.

THE COURT: Okay. Mr. Powell.

MR. POWELL: No. I don't need any. I mean, it -- Mr. Mugan was just saying a moment ago that it's black and white, it's already been decided, and now we're saying it's not. So, --

THE COURT: Right.

MR. POWELL: -- I think --

THE COURT: So I guess the --

MR. POWELL: We don't need discovery on our end. There's nothing more we can offer to establish that 33 years of precedent has been established. There's nothing more that we can go by.

If that's what we're intending to raise that issue that it was done improperly back then, I don't know what more we can go to than saying that this is the way that it's been done and, really, at the basis of what we're asking for is if they want to now dispute that 65/35, let - - what we would ask is put -- let's go back to the status quo and then we'll haggle it out from there, but it's not fair to have my clients, my client choked off from receiving what they've been -- what she's been getting for the last four years, her grandmother has been getting for the previous 29 years and that's the issue.

I'm not sure how the delay benefits anybody. To

me, this is something you want declared now. Both sides apparently feel it's black and white. So let's go. I mean, again, there's nothing more we can offer than what we've already established. I can give -- we can provide tax returns. Those are just pleadings. There's no testimony that can be offered in that regard.

It's precedent. It's been 33 years of this split. If that's -- if that issue -- I don't think that issue is in dispute. If the issue in dispute is: Well, it shouldn't have been that way, okay, fine. Then that's up to them now to change what's been, but you can't just, again, pull the plug and then go: No, I'm not putting it back in. It doesn't work that way and --

THE COURT: Okay. So you're seeking some sort of --

MR. MUGAN: Your Honor, --

MR. POWELL: That's why I'm seeking the declaratory --

THE COURT: -- preliminary --

MR. POWELL: -- judgment is so that we can go back to the trustee -- trustee, again, not beneficiary, the trustee and say: This must be honored. It's a 65/35 split. What --

THE COURT: Okay.

MR. MUGAN: The --

THE COURT: So you're looking for a preliminary relief which is to maintain the status quo --

MR. POWELL: Exactly.

THE COURT: -- pending a determination on the underlying issue?

MR. POWELL: Exactly. Exactly.

THE COURT: Okay. Got it. Thanks.

MR. MUGAN: Your Honor, it's black and white I think in my motion to dismiss, that issue preclusion. That's what I mean when it's black and white. If they get over that hurdle, then I think there's evidentiary issues.

You know, he keeps talking about urgency and returning to the status quo, his client -- and if you look at their petition, they state that my client is entitled to at least 35 percent, at least 35 percent -- no argument about that.

MR. POWELL: No argument about that.

MR. MUGAN: No argument.

MR. POWELL: Nope. No.

THE COURT: Yeah.

MR. MUGAN: Her Texas attorney sends a letter to all of the oil companies --

THE COURT: When you say her in Texas, you mean the petitioners?

MR. MUGAN: She had -- the petitioner. Not Mr.

Powell, but her Texas attorney sends a letter to all of the oil companies paying the royalties, encloses copies of the petition up here, and doesn't say: There's 65 percent in dispute, we want you to hold the 65 percent. No. The letter says: There's a dispute, we want you to hold it all. You know, even though there's no dispute about my client getting 35 percent, we want you to hold it all. And what did the oil companies do? They hold until we show them the petition and try and convince them and the biggest one is Apache, the one who really pays the money and we haven't convinced them yet that they should release the 35 percent.

So this urgency and return to the status quo, it's a little fuzzy, a little fuzzy because they claim they want it but yet they tie us up.

MR. POWELL: Let's go back to 65/35 and we're done.

MR. MUGAN: No.

MR. POWELL: And then we can go --

MR. MUGAN: That's not going to happen because it's --

MR. POWELL: Oh, so give us our money but you keep yours.

THE COURT: One at a time.

MR. POWELL: Okay.

THE COURT: So, Mr. Mugan, I guess my problem -- I guess it's -- I'm just trying to understand --

MR. MUGAN: Right.

THE COURT: -- procedurally how we're going to go forward. The petition for declaratory relief doesn't seek an emergency finding. It is emergency relief saying, you know, at least maintain the status quo pending a resolution.

MR. MUGAN: No.

THE COURT: But it sounds to me like that might be a perfectly reasonable option to order -- enter a preliminary order saying: Let's maintain the status quo and we'll make a determination as to who is correct.

MR. MUGAN: Well, I think if you want to go that -- down that line, down that path, and there's no argument that my client's entitled to 35 percent. There's a dispute over the 65 percent and whose it's going to go to. The oil company holds 65 percent until the dispute is determined. That would seem to be more logical to me than to kind of make a predetermination and then say: Well, we're going to give them 65 percent.

There's reasons for what happened in the past, the 33 years, and I'll be glad to get into them if you want me to but then we're starting to get into substantive issues and stuff, but there's reasons, there's explanations,

there's reasons why it changed. There's Nevada statutes that we can cite, etcetera, but I don't want to get into the substantive issues.

But addressing your point, what's in dispute is the 65 percent. If anything, I would think you just hold that -- hold the 65 percent and that doesn't go to anybody --

THE COURT: Well, here's my question and this is why I asked earlier, is there some forum shopping going on here because what's happening in Texas? Is this Texas attorney just takes it on himself to send an order -- to send around a petition that hasn't even got an order attached to it and oil companies act on that?

MR. POWELL: There's an obligation because they don't want to payout to anybody anytime there's a dispute and that's the whole thing is -- it's -- if they don't, there's issues there with them not having notified that there's a dispute as to these.

The oil companies, like anything else, it's almost kind of like an interpleader. They want to be informed: Wait a second. Okay. There's disputes here, you better notify us.

And I -- if -- and I could be mistaken and so please don't hold me to this, but I believe there's some boiler plate in there -- in these contracts that are

voluminous basically saying if there's any other claims going on here, you better notify us immediately. That's my understanding of the way it's done. I'm not a Texas authority. I don't know --

THE COURT: I don't think any of us would hold ourselves out to be authority for --

MR. POWELL: Yeah, and the whole --

THE COURT: -- Texas oil and gas law.

MR. POWELL: -- oil and gas -- and, I mean, that's really almost a Texas-based --

THE COURT: Yeah.

MR. POWELL: I mean, that's -- Texas is oil country.

THE COURT: It is its own thing.

MR. POWELL: Yeah. It's its own entity.

So the -- it's not an issue of simply retaliating or anything like that. It's basically giving notice to this third party to say: I'm putting you on notice, you know, and basically there's a dispute. We have a dispute here from the way it was being originally anticipated and going.

So, I mean, --

MR. MUGAN: I've been through those leases and I've been through those addendums and they're about that thick and, again, don't hold me to it, but I sure don't

remember any provision like that and this attorney is representing Ms. Montoya down there in Texas and I presume he wouldn't be doing anything without her direction and consent.

THE COURT: Okay. But here's my question is procedurally, how do we go forward? If there's been some action taken, and it sounds to me like Texas Court doesn't -- Probate Court doesn't want to take jurisdiction over this, they will honor any order entered if that's what the point is. Then the question is: At this point in time, is there any proper order? Because is what they're -- is what the oil and gas companies are doing in reaction to this premature? There has been no finding that anybody is entitled to any of this money other than I think it says pretty clearly that everybody agrees that 35 percent goes to Eleanor. Nobody disputes the 35 percent to Eleanor.

So, Mr. Powell's suggestion is let's just go back to the status quo and I understand, Mr. Mugan, your opposition to that is the undisputed portions should be distributed but if you distribute the disputed portion, there's no way for your client to get it back if ultimately it's determined it is hers.

MR. MUGAN: Well, I don't think that was requested.

THE COURT: Okay.

MR. MUGAN: You know, I think we're going way beyond what we were here today for, number one.

Number two, Texas --

THE COURT: What we are here today for technically is an unopposed motion for declaratory relief.

MR. MUGAN: Well, I am appearing personally to oppose it.

THE COURT: Okay.

MR. MUGAN: Texas has not turned down jurisdiction, Your Honor.

THE COURT: Okay.

MR. MUGAN: What happened was that petition was filed. My client was never given any notice of it. The will was admitted to probate and the -- Ms. Montoya was appointed personal representative down there.

THE COURT: Why would the will be admitted to probate in Texas? I mean, nobody lived in Texas, did they?

MR. POWELL: I think those rights -- dealing with the rights --

THE COURT: Right, but nobody lived in Texas?

MR. MUGAN: I don't understand that either, Your Honor.

MR. POWELL: Well it was just --

MR. MUGAN: Died a Nevada --

MR. POWELL: It was --

MR. MUGAN: -- resident.

MR. POWELL: Yeah.

THE COURT: I was going to say she's a Nevada resident.

MR. POWELL: I -- yeah, I think it's like anything else. It's an ancillary proceeding dealing with property rights or something there. You know, obviously, same thing here, if somebody owns a house -- mineral rights in Las Vegas or water rights, I guess would be more appropriate out here --

MR. MUGAN: But property rights were owned by the trust. There's no dispute about that. You know, why you would go to Texas and then have a false or incorrect allegation in there and get yourself appointed down there and try and get the will admitted to probate down there without noticing my client and the will is the document that they claim exercised this power of appointment where my client, you know, doesn't get all the rights -- all of the money and as soon as my client finds out about it, they file a -- they intervene and file a motion basically to set it aside, etcetera, and the matter was scheduled for hearing and, as I understand it, an expert witness was supposed to testify, had serious health problems, is hospitalized, and so they continued the hearing indefinitely until the expert witness who is hopefully

available to testify. Texas has never said -- turned down jurisdiction; has never said we'll do whatever Nevada tells. That is just not correct.

MR. POWELL: Well, one is a probate matter and one is not a probate matter. The trust matter is this matter; the probate matter for Marjorie Connell is a Texas matter. I don't think there's -- I think it's clear they are two separate things. So I'm not sure -- I am not even sure what the relevance of Texas as opposed to what we're asking for here even comes into play.

THE COURT: But see this is my problem, I'm not -- I'm trying to figure out what exactly it is you're asking for this Court to do and what the best process is --

MR. POWELL: Yeah.

THE COURT: -- to get to a hearing on that.

MR. POWELL: We're asking for the status quo to go back which was the whole point of the declaratory judgment was to say: It's 65/35 like it's been --

THE COURT: Well --

MR. POWELL: -- for 33 years.

THE COURT: But it didn't say status quo, it said we want --

MR. POWELL: Well, not in those terms, but, I mean, we asked for the declaration that it's 65 percent interest, 35 percent interest. So, --

THE COURT: Okay.

MR. POWELL: Yeah, I mean, I'm kind of just informalizing the relief, but if you see what we're praying for it's the declaration that it's the 35/65 split.

THE COURT: But I -- but that to me, the declaratory relief is seeking a conclusive and permanent determination of that --

MR. POWELL: Right.

THE COURT: -- as opposed to maintaining the status quo which is a little bit different --

MR. POWELL: Right.

THE COURT: -- which is that pending the outcome of these various motions, we're going to --

MR. POWELL: Yeah.

THE COURT: -- return to that.

MR. POWELL: And I -- and the only thing I can offer is I guess, you know, we pray in general, too, for any other relief the Court may grant and so, to me, it goes hand-in-hand with -- you know, basically, the whole point is to get the determination done with and that sets the record straight.

There has been no declaration despite what Mr. Mugan says. Show me any order, order -- I want to see the order that says that Ms. Ahern is entitled to 100 percent. There was just simply statements in a petition as to that.

There's no prayer seeking to confirm that. And, again, as Your Honor recognizes, if that was what -- if that was the point of what you were going for and you then continued four years of distributions and some of which were $500,000 plus, where's the gift tax returns? Were those gifts? If you had your declaration, those must be gifts. You don't have --

THE COURT: Well but -- that -- and that gets us to the how procedurally do we get there --

MR. POWELL: Yeah.

THE COURT: -- because I'm trying to figure out what -- how this thing should go forward.

MR. POWELL: Yeah.

THE COURT: I mean, it -- are you just looking for right now a temporary determination to let the oil and gas companies in Texas know the Court's assuming jurisdiction over this, we're going to have a hearing to determine who's ultimately entitled to this money, until then, continue with the distributions as you were previously making them, 35 percent to Eleanor, 65 percent to the granddaughters, and we'll let you know once we've determined --

MR. POWELL: That there's an ultimate --

THE COURT: -- who in fact is entitled permanently --

MR. POWELL: That's fine.

THE COURT: -- to this money?

MR. POWELL: That's fine with us.

THE COURT: Because --

MR. POWELL: Yeah.

THE COURT: -- it may be that it's 100 percent, it may be that it remains 65/35.

MR. POWELL: Right.

THE COURT: We don't know yet. That remains to be determined.

MR. POWELL: And what I will tell you, though, is when Ms. Ahern decided I'm entitled to 100 percent, she was taking 100 percent. That's the issue is it was previously taking 35 percent, 65 percent going to Jacqueline and her sister, then the plug was pulled, and then from essentially June, she --

THE COURT: You see, I'm not understanding the logistics of this. Is it the --

MR. POWELL: Okay.

THE COURT: -- oil and gas companies that you notify to stop this or is it a trustee that gets notified?

MR. POWELL: Well, that's the whole thing. The petition is based on a declaratory ruling that the trustee must then honor.

Again, we have this weird situation where we've had 65/35 for 33 years including the last four and then all

of a sudden, the trustee determines: No, -- the trustee and the beneficiary being the same person --

THE COURT: Okay.

MR. POWELL: -- no, I'm entitled to 100 percent, I'm not giving you that 65 anymore. I've turned off the spigot. It's done. You're not getting it.

So that puts my client in the precarious position of: Under what authority are you acting with that?

THE COURT: That's --

MR. POWELL: Yeah.

THE COURT: There you go. That's my question is -- -

MR. POWELL: Yeah.

THE COURT: -- how do we ultimately get to that question?

MR. POWELL: Yeah.

THE COURT: It seems to me that that's an evidentiary hearing.

MR. POWELL: I guess. I mean, --

MR. MUGAN: I agree.

MR. POWELL: I -- the thing is we can go into an evidentiary hearing, I'm -- your question though is, you know, basically are you -- do you need discovery? Do you need any more evidence? There's nothing --

THE COURT: Well --

MR. POWELL: -- more we can offer other than what we've -- what we already have.

THE COURT: Okay. Thank you.

MR. POWELL: Tax returns, and all that, yeah.

THE COURT: So then, Mr. Mugan, I understand that the procedurally you have a motion you want to file, but as to the status quo, you're -- let's just say we'll be returning to the status quo. Your position is, at most, the undisputed portions should be distributed and I don't understand if it's the oil and gas companies that aren't honoring it or if it's your client as the role of trustee.

MR. MUGAN: Yeah. And I apologize if I haven't made myself clear.

Number one, I'm opposed to returning to the alleged status quo.

THE COURT: Right.

MR. MUGAN: There was no request for that. There was a request for a final determination. He can certainly file and request a temporary order, injunction, whatever, you know, but that was never prayed for and I think we're going beyond the bounds of the pleadings, number one.

Number two, if the Court in its discretion thinks there should be some type of order entered at this point in time, the 65 percent should not go to his clients because that's in dispute. The 65 percent should just be held or

tied up or put in trusts or whatever until there's a final determination and my client, there's no dispute that she's entitled to the 35 percent.

And my understanding is that the companies are the ones, you know, who -- they're the ones who issue the checks, etcetera. They're the ones that have to be notified, not the trustee.

THE COURT: Okay. Well, here's my concern here is that I have before me this petition and yes, it does -- I viewed it as seeking an ultimate ruling. I don't think we're at the point where we can make an ultimate ruling, however, you know, the concern I have is that these Courts in Texas are taking action based on just getting a letter from an attorney that -- and there's -- I have this whole question of whether the Texas Court is doing anything with respect to this, but my point is that who would be ordered to -- is it an order saying: Resume your distributions, the trustee's ordered to impound the 65 percent and not make any distributions of the 65 percent, she's entitled to her 35 percent as the beneficiary?

Because the whole point is I understand your concern is that if the granddaughters aren't entitled to it, how do you claw it back, but if it's -- but their concern is: Wait a minute, we don't want to go back to the -- to her getting 100 percent because we think 65 percent

of that is ours and how do we claw it back?

MR. POWELL: How about a bond?

THE COURT: Pardon?

MR. POWELL: How about a bond? I mean, if the assertion is essentially we can't give it to you because we think you're going to go and take it and then we can't ever get it back from you, how about a bond? I mean, that seems to me to be --

THE COURT: Well -- and so that's, I guess, a point is at some point in time is this something that can be ruled on in this point in time or do we need to have a separate motion on it? It seems to me that I can go forward and say that it's undisputed that 35 percent of this money should be going to Eleanor and she is that beneficiary, but to the extent that the -- my concern is just that there's oil and companies that are out there who are responding to letters from attorneys. I've never seen any company respond to a letter from an attorney.

MR. POWELL: Yes.

THE COURT: I'm shocked that they did, but apparently oil and gas law in Texas is unique --

MR. POWELL: Yeah.

THE COURT: -- and they actually are responsive to claims for their --

MR. MUGAN: Well, --

THE COURT: -- oil rights because they don't want to end up paying them twice.

MR. POWELL: Right.

THE COURT: So if there's some direction to say: Go ahead and make the distributions to the trustee and the trustee is directed because I -- she is a Nevada resident and we certainly have jurisdiction over her. The trustee, in her capacity as trustee of this trust, is directed that she can distribute the undisputed portion of the funds to herself but the 65 percent needs to be held until further order and then --

MR. POWELL: I --

THE COURT: -- we have to figure out how we're going to go about getting to how we determine who's got the --

MR. POWELL: And --

THE COURT: -- entitlement to that 65 percent? What's --

MR. POWELL: -- I guess -- yeah.

THE COURT: -- the process?

MR. POWELL: You direct us because I think that's where it's ultimately going to come down to is how we do this. If you want me to come back and seek an injunction, I -- what I was trying to do with this declaratory ruling is skip all the steps, go right to the heart of the issue,

and set forth to you we've had 33 years of precedent --

THE COURT: I understand but --

MR. POWELL: That's only changed --

THE COURT: I don't know that we can do --

MR. POWELL: Yeah.

THE COURT: I appreciate the interest in the judicial economy, --

MR. POWELL: Yeah.

THE COURT: -- however, I'm not sure we can get there --

MR. POWELL: Okay.

THE COURT: -- in one big leap because I do think that it requires steps --

MR. POWELL: Yeah.

THE COURT: -- and it's because I've got these other parties involved here and --

MR. POWELL: Yeah.

THE COURT: -- I -- this Court -- if you're saying: Will this Court today enter an order directing these oil and gas companies in Texas to resume their distributions, which I guess means it goes to the trustee and the trustee has been ordered to do the 65/35? Yeah, I have no problem in saying: Oil and gas companies in Texas, go ahead, we've taken this under consideration. We will deal with this at the trust level. It's not a problem for

you, oil and gas company. Pay your royalties the way you're supposed to be, make those distributions. I'm going to direct the trustee what to do because I control that trustee.

MR. POWELL: Yeah. And I don't have a problem with that. That's --

THE COURT: Okay.

MR. POWELL: -- totally fine.

THE COURT: And my ruling to that trustee is you're entitled to 35 percent and nobody says you're not.

MR. POWELL: Yeah. The only thing I would ask though just to keep fairness is for the last distributions that have gone back, I think starting in June, it was less than 65/35, is require the trustee -- again, if we're keeping it all fair here is to go back, put that money back in that same 65 percent category that's in dispute. She can have 35 percent of June, July, August, September, October. Take the 35, but that other 65, put that back in the pot, too.

THE COURT: You know, I have no idea how much money this is involved here --

MR. POWELL: It's a lot.

MR. MUGAN: That --

THE COURT: No, but my point is, --

MR. POWELL: Yeah.

THE COURT: -- I don't know how much -- at what point did these oil and gas companies stop distributing any money. All I'm saying is my only point of what I want to do here is to tell these oil and gas companies stop responding to letters from attorneys. An

MR. MUGAN: Your Honor, --

THE COURT: -- attorney can't tell an oil and gas company what to do.

MR. POWELL: Sure.

THE COURT: Make your distributions. The trustee is going to do the following.

MR. MUGAN: But, Your Honor, we've gotten several of them straightened out. Basically -- my client, of course, has Texas counsel, too, and we've gotten several of them straightened out. Apache just happened, just happened. I think the letter was dated November or October 29th or something and we're just getting it straightened out with them.

Again, I think we're going way past what was asked here and, you know, if you want to do it on a separate motion, that's fine. In the interim, we may get the spigot turned back on. You know, I mean, we just keep moving down the road, you know, and kind of making predeterminations that I just don't think are proper.

THE COURT: What's wrong with what I suggested

that we go to -- we tell these oil and gas companies that you don't have to honor this letter from this attorney, start making distributions to this trustee, the trustee is directed she has to in her role as a beneficiary is entitled to 35 percent. She's got to hold 65 percent. What's wrong with that?

MR. MUGAN: There's nothing wrong with it except that it does prejudice my client. It wasn't -- he never asked for that in his petition. He had the right to ask for that, for a temporary injunction, a restraining order, etcetera. It was never requested. I mean, all of a sudden we have to address it right now and I, you know, that's fine. That's fine. But I just -- again, I think we're going down the road in making some predeterminations that were never requested, you know, and it's just, you know, return to the status quo, well then go back three months, go back --

THE COURT: I never said I was willing to go back --

MR. MUGAN: I know, but that's where we're going. We're just going --

THE COURT: I appreciate that. I never said I'm willing to go back any period of time. All I'm saying is that as of today's date when I have what's before me what technically is an unopposed motion for declaratory relief

that my only -- the only thing I'm willing to do is to say to these Texas oil and gas companies, whoever they may be, you do not have to honor that letter from counsel. I am telling you that 35 percent of this is the undisputed property of this beneficiary, pay your distributions to the trust, and I'm ordering the trustee to hold 65 percent of it, to not make a distribution as to 65 percent of it.

MR. MUGAN: That's fine.

THE COURT: And then we -- we're going to set this out for a hearing at some point in the future because I think, as you've said, your opposition -- your first thing is we have this opposition that it shouldn't even be -- that there's nothing to be heard because it's already been ruled on. You've got your right to do the motion to dismiss. Mr. Powell's got the right to oppose it and then we wanted to get there much faster than this, but procedurally I just think you can't. I think you have to follow the procedural steps. So we have to follow the procedural steps.

I think ultimately this petition for declaratory relief may not be whether it requires a lot of discovery, but I think that there's still going to have to be documents produced and you need to come in for a hearing. So we need to probably put it out 60 or 90 days and have a hearing. And, in the interim, if you've got a motion to

file, you can file your motion and we can rule on that, but I think it's got to be out at least 60 days for the hearing on the declaratory relief and I think that there needs to be testimony.

MR. POWELL: And would that be -- that would be a final determination at that point? That won't just be --

THE COURT: That's the petition for --

MR. POWELL: Okay. That will be hearing the petition on the merits?

THE COURT: On the merits.

MR. POWELL: Okay.

THE COURT: Right.

MR. MUGAN: Yeah. I -- 60 days, to me, is a little short especially with the holiday season.

THE COURT: Okay.

MR. MUGAN: You know, I think we should be out at least 90 days.

THE COURT: Okay.

MR. MUGAN: We are going to have to do some discovery. You know, we have people down in Texas, etcetera. So I would ask at least 90 days.

THE COURT: All right.

MR. POWELL: Just to clarify for the Court, too, though, this was already -- this was filed in September. So there's already been almost a month and a half here to

do a lot of fact gathering and fact finding.

THE COURT: Yeah, and that's --

MR. POWELL: So to just -- and, again, it -- and I don't have a problem with what you're --

THE COURT: Well --

MR. POWELL: -- saying is --

THE COURT: -- I think Mr. Mugan was only recently retained though because I think there was this whole problem about --

MR. POWELL: No, he was retained --

THE COURT: October.

MR. POWELL: -- pretty quickly on. In fact, I even gave him a continuance --

THE COURT: In October?

MR. POWELL: Yeah. And so, I -- you know, again, we have the whole thing of who is really being choked off here and, again, there's not a problem with what you were suggesting which is go back to oil and gas say: 65/35, keep it coming; 65 stays in trust until the determination, 35 goes out to Ms. Ahern. That's not a problem.

The only thing I would suggest though is, again, my clients, who rely on this for their living expenses, this is -- my client, just so you're aware, and this will be raised further, my client quit her job on reliance --

THE COURT: Okay.

MR. POWELL: -- on this. So, it's a situation where -- and, again, I just want to be forthcoming so -- to which sets up my next question which is in the meantime, is there -- is it problematic for me, and, again, I don't want to do anything that upsets you, can I come in for injunctive relief to have the 65 continue to flow with something like a bond?

THE COURT: That would be -- yeah, that's a different issue.

MR. POWELL: Okay.

THE COURT: That's a different issue and --

MR. POWELL: Because that's -- I'll tell you right now, I'm going to come back in as soon as possible then on that --

THE COURT: Okay.

MR. POWELL: -- just -- yeah.

THE COURT: That's what I'm saying is I'm not going to rule on anything other than --

MR. POWELL: Sure.

THE COURT: -- I just want the oil --

MR. POWELL: Understood.

THE COURT: -- and gas companies to start sending the money to the trust --

MR. POWELL: Understood.

THE COURT: -- and the trust can deal with it in

accordance --

MR. POWELL: Understood. Yeah. Understood.

THE COURT: It can be held and I have --

MR. POWELL: Yeah.

THE COURT: -- no reason that it wouldn't be.

MR. POWELL: Okay.

THE COURT: So that's my only -- the only thing I'm prepared to do today is --

MR. POWELL: Okay.

THE COURT: -- I'm denying the request to remand this back to the Commissioner. I --

MR. POWELL: Okay.

THE COURT: -- think it's ultimately going to have to be heard here anyway.

MR. POWELL: Okay.

THE COURT: Step number two, set this out. Let's go 90 days.

MR. POWELL: Okay.

THE COURT: And that gives everybody time to file these interim motions that they wish to feel.

MR. POWELL: Okay.

THE COURT: Mr. Mugan's going to want to file his motion to dismiss this thing in its entirety.

MR. POWELL: Sure.

THE COURT: Your clients may wish to seek some

distributions.

MR. POWELL: Yes.

THE COURT: I just -- my only point right now is just if these oil and gas companies are holding onto this money for no reason other than an attorney sent them a demand letter which I just find --

MR. POWELL: I don't think it was a demand letter.

THE COURT: -- mind boggling.

MR. POWELL: I think it was just -- I don't think it was a demand letter, I think it was just a notification letter of just so you are aware, this is what's pending.

THE COURT: Okay.

MR. POWELL: And from what I understand, that's the way it's done there. I don't think there's --

THE COURT: Like I said, --

MR. POWELL: I don't --

THE COURT: -- maybe. I don't think any of us presumes to represent --

MR. POWELL: Yeah. Out here, I know it's a shock --

THE COURT: -- to know anything about --

MR. POWELL: -- that you can send a letter to anybody and they'll do anything. So --

MR. MUGAN: I can read the letter to you and it's a demand letter.

MR. POWELL: Okay.

THE COURT: Yeah. Okay. So here's my point. At this juncture, this is the procedure and I don't know what it would take in an order that would satisfy these oil and gas companies that they can begin distributions. It may be all it needs to say is the Court is assuming jurisdiction for this petition for declaratory relief. It appears undisputed that the 35 percent -- so that the Court makes a finding that as to the 35 percent, Ms. Ahern's entitled to that. The 65 percent should be held by the trust.

Hopefully that will satisfy the oil and gas companies that they're off the hook and that it's going to be litigation involving the trust and it doesn't involve the oil and gas companies.

MR. MUGAN: Maybe the best thing would be for Mr. Powell and I, you know, to contact our respective co-Texas counsel and they can -- they know more about oil and gas companies than I think both of us would ever know and make sure that that's the way to do it and that the oil companies will do what they're told that way and then we'll just prepare an order for you.

THE COURT: Right because --

MR. POWELL: Yeah.

THE COURT: -- if Mr. Powell wants to see his clients get some money in the interim, there's no point in

asking for that if the oil and gas companies aren't sending it.

MR. POWELL: Right.

THE COURT: So we need the oil and gas companies to send the money.

MR. POWELL: Yeah. And that makes --

THE COURT: So --

MR. POWELL: -- logical sense. We'll figure out what they need to do that but then we're, just for the record, we're preserving that we will have you sign an order to that effect basically saying you're hereby demanded to continue the 65 -- well, pay 100 percent of the proceeds, 65 must be held by the trustee and --

THE COURT: Correct.

MR. POWELL: -- 35 to Ms. Ahern.

THE COURT: Correct.

MR. POWELL: So, yeah.

THE COURT: But the -- it's strictly an issue as -

-

MR. POWELL: Sure.

THE COURT: -- as under the trust, shouldn't -- that these third parties don't need to be involved in it any further. It's litigation with the trust. This Court's got the jurisdiction. This Court will make that finding and, you know, proceed accordingly.

MR. MUGAN: And --

THE COURT: And that's -- if we put it out 90 days, you can file your respective motions and we can maybe get all this stuff resolved in the interim, but at the earliest the declaratory relief would be heard would be, you know, 90 days in the future which would be -- and we might need to --

MR. MUGAN: Maybe a status check, I don't know.

THE COURT: I was going to say we might need to put it actually on a stack to actually give you like a date for an evidentiary hearing, but -- so it would probably be better to let you know what our stack looks like in February. Would it be February?

THE CLERK: Yeah, February 17th. We have one med-mal that starts on the 10th.

THE COURT: Okay.

THE CLERK: That was before we changed our --

THE COURT: Okay. So February 17th is --

THE CLERK: We have a preferential --

THE COURT: -- probate.

THE CLERK: -- [indiscernible].

THE COURT: Okay. So it will be a status check to give you a hearing date for your --

MR. POWELL: On the 17th will be a status check?

THE COURT: Correct, for your actual --

MR. POWELL: Okay.

THE COURT: It's not going to be the actual evidentiary hearing, but we'll hopefully have enough information that we can give you a date that day.

MR. POWELL: Okay.

MR. MUGAN: I just --

THE CLERK: The 17th in our department is on calendar call --

THE COURT: What's calendar call?

THE CLERK: The 24th of January. That's the trial stack [indiscernible].

MR. MUGAN: I --

THE COURT: Okay. So -- okay. I guess it might be -- yeah, we might be better off then seeing you at the calendar calls for that stack which is Friday, the 24th, and we'll be able to tell you if there's any time on that stack that we can go because we do have one med-mal and one --

MR. MUGAN: That's February 24th, Your Honor?

THE COURT: No, January 24th.

MR. POWELL: January.

THE COURT: And it's the calendar calls that correspond to that stack that starts February --

THE CLERK: 17th through March 14th.

THE COURT: Yeah.

MR. MUGAN: And by way of full disclosure, Your

Honor, and I don't know if it will affect the thinking at all, and we can deal with it later if we have to, if in fact this ends up going to an evidentiary hearing and our motion to dismiss is not successful, there are going to be some counterclaims made by my client in this matter --

THE COURT: Okay.

MR. MUGAN: -- that are --

THE COURT: And I think --

MR. MUGAN: -- going to involve some things.

THE COURT: -- at that point in time, on the 24th if it's not going to be ready to go, if we ruled on all those other motions in the interim, then it may or may not be ready to go. It's a calendar call just to see if we can get you on that stack, but I -- because until we actually see what the pleadings are, you know, who knows. I just want to make sure that we've got this calendar and the declaratory relief petition is calendared. If it has to be continued, it has to be continued, but we've got a date for it which will be on that stack, that February 17th and I think the first day of that stack might be a holiday. So, you know, just keeping in mind that --

MR. POWELL: Okay.

THE COURT: -- if the first day of the stack is a holiday, then it won't go -- obviously it won't go -- just like yesterday was a holiday for us, the -- you know,

that's just the first day. It doesn't necessarily mean it can go on that day because of the holiday and whatever else we can figure out with respect to anybody who has a preference on it.

MR. POWELL: Okay. What time is your calendar on the 24th?

THE COURT: On January 24th?

MR. POWELL: Yeah.

THE CLERK: The calendar calls are --

THE COURT: 9 a.m.?

THE CLERK: No. They're late. I'll have to get that to him.

MR. MUGAN: Aren't they at 11?

THE COURT: That's right.

THE CLERK: 11 is [indiscernible].

THE COURT: Yeah. They're 11 because we have them after regular motions.

MR. POWELL: 11.

MR. MUGAN: Yeah, I was thinking it was 11 but I might be wrong.

THE CLERK: It's 11.

THE COURT: Okay. Sorry about that. 11 a.m.

MR. POWELL: 11 a.m.

And, Judge, just lastly, I know you want to move on with your day, but just for the record again, we have in

-- our declaratory judgment petition asked for the fees, costs, and damages. So we just wanted to preserve that that we have requested it --

THE COURT: Right.

MR. POWELL: -- and everything related. So, --

THE COURT: Yeah, exactly. That's why I said I'm not making any rulings on any other request for relief.

MR. POWELL: Sure.

THE COURT: The petition itself is set to be heard on that --

MR. POWELL: Yeah.

THE COURT: -- date. This is just a preliminary ruling --

MR. POWELL: Yeah.

THE COURT: -- and the only reason is I'm just concerned about, you know, these -- a foreign state that they're somehow holding up -- I mean, the whole thing's moot if they're not going to distribute any money.

MR. POWELL: Right. And just, again, foreshadow, we will be coming back in shortly --

THE COURT: Sure.

MR. POWELL: -- on a petition, too.

THE COURT: I'll expect to see that and I'll expect to see the motion to dismiss in its entirety.

MR. POWELL: Yep. Exactly.

THE COURT: Okay. Without prejudice, I'm not making any findings or any rulings --

MR. POWELL: Right.

THE COURT: -- on anything. It's all going to be argued unfortunately [indiscernible] the interest and let's get right to the point, but I don't see any way to do it other than a set time.

MR. POWELL: Okay.

THE COURT: Okay. So --

MR. MUGAN: Thank you, Your Honor.

THE COURT: -- all right.

MR. POWELL: Thank you, Your Honor.

THE COURT: Thanks.

MR. POWELL: Appreciate the time.

PROCEEDING CONCLUDED AT 11:04 A.M.

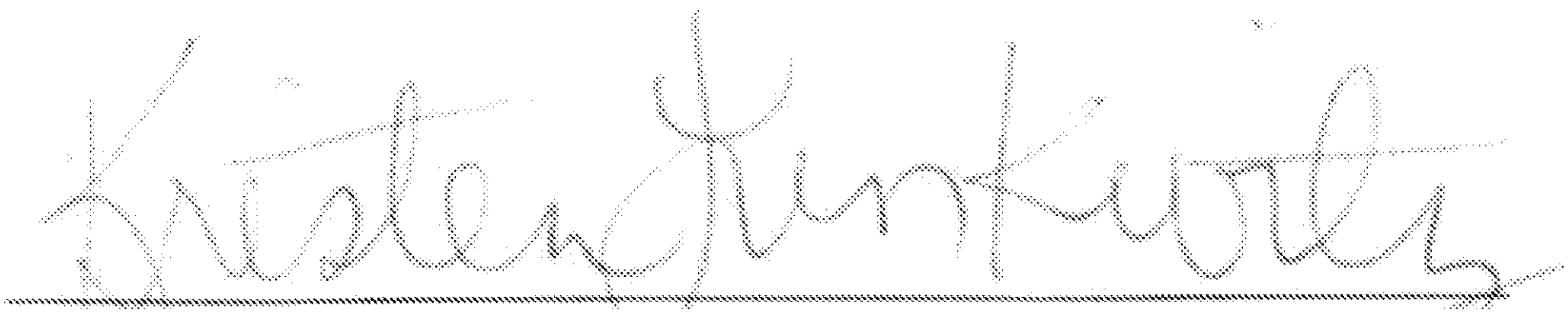
* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



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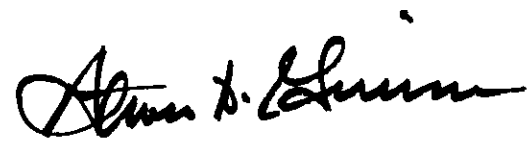

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PETN
THE RUSHFORTH FIRM, LTD.
JOSEPH J. POWELL
State Bar No. 8875
P. O. Box 371655
Las Vegas, NV 89137-1655
Telephone (702) 255-4552
fax: (702) 255-4677
e-mail: probate@rushforthfirm.com
Attorneys for Jacqueline M. Montoya

THE RUSHFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

DISTRICT COURT

CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972

A non-testamentary trust.

Case No.: P-09-066425-T
Department: 26 (Probate)

PETITION TO COMPEL TRUSTEE TO DISTRIBUTE ACCRUED INCOME AND FUTURE INCOME RECEIVED FROM OIL, GAS, AND MINERAL LEASES AND DECLARATION OF THE APPLICABILITY OF THE DOCTRINE OF LACHES

Date of Hearing: December 17, 2013
Time of Hearing: 9:00 a. m.

JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and also in her capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby files this Petition in which she respectfully seeks that this Court compel ELEANOR C. AHERN, also known as Eleanor Marguerite Connell Hartman, in her capacity as the trustee of "The W.N. Connell and Marjorie T. Connell Living Trust" ("Trust"), dated May

18, 1972, to distribute 65% of all income generated from gas, oil, and mineral leases, which were received by the Trust from June 2013 through the present, and the same percentage of all future income until further order of this Court to Jacqueline, as trustee of the MTC Living Trust. Additionally, Jacqueline hereby requests that this Court declare that the doctrine of laches, among other equitable remedies, requires that the status quo remain unaffected and prevent Ms. Ahern from making any claim of rights affecting the 65%/35% status quo when such claims could have and should have been raised 33 years ago.

A. OVERVIEW

Jacqueline has filed a "Petition for Declaratory Judgment regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e), and NRS 164.033(1)(a)" ("Petition for Declaratory Judgment"). The Petition for Declaratory Judgment is currently scheduled for an evidentiary hearing which will occur no sooner than February 17, 2014.

Because of the length of time before the hearing, it is imperative that Ms. Ahern, as Trustee of the Trust, be compelled to make distributions of 65% of all income received from oil, gas, and mineral rights leases to Jacqueline, as the trustee of the MTC Living Trust, from this point forward. This is necessary in order to return to the status quo until a determination is made on the Petition for Declaratory Judgment, and to prevent any further damage than has already been caused by Ms. Ahern. Further, Ms. Ahern should be required to make the same distributions to Jacqueline from June, July, August, September, October, and November of 2013.

Ms. Ahern has breached multiple duties in her capacity as trustee, including the duty of loyalty to not act for one's self interest, as well as the duty to follow the express terms of the Trust. However, Jacqueline believes that the hearing in February, 2014 is not necessary

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as this matter can be determined immediately by rightfully barring any changes in the legal rights of Jacqueline and her sister, as beneficiaries of the MTC Living Trust through the application of equitable remedies, including the doctrine of laches. The Clark County, Nevada probate court is a court of equity and this matter requires that equitable remedies be instituted immediately to prevent further, severe financial damage to the innocent parties that are being affected by Ms. Ahern's breaches.

B. INJUNCTIVE RELIEF

B.1 Jacqueline believed that this matter would have been resolved by this Court on November 12, 2013 after reviewing the evidence and hearing the arguments regarding her Petition for Declaratory Judgment. However, a final determination was not made at that hearing, and will not be made until February 17, 2013 at the earliest. Jacqueline and her sister, KATHRYN A. BOUVIER ("Kathryn"), have already incurred substantial financial damage because of the actions of Ms. Ahern. Waiting until February, if not longer, will only increase the damages of Ms. Ahern's actions. Jacqueline and Kathryn have already been harmed because since June, 2013, they have not received the income distributions that they have been rightfully receiving on a regular basis for approximately the last 4 years.

B.2 Injunctive relief is premised on the concept that during the pendency of litigation, or some other conditions necessitating a delay, an innocent party should not be harmed by the actions of the defendant, especially when the actions of the defendant are based solely for their own self interest and without justification.

B.3 In the case of a trust matter, it is imperative that a trustee not take action without forewarning that injures a beneficiary, and in turn does not allow the beneficiary to prevent the harm prior to the action being taken. This is especially true when a

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beneficiary has grown accustomed to regular distributions in accordance with their rights under the terms of the trust instrument

B.4 A trustee has multiple options under Nevada law that can be taken to prevent surprise, and in turn harm, to a beneficiary when the trustee intends to take action that significantly changes the status of a beneficial interest, such as unilaterally declaring that a beneficiary has no further interest in a trust, as has occurred here.

B.5 After 33 years of a 65%/35% split of income from gas, oil, and mineral royalties, the last 4 years of which involved Jacqueline and Kathryn, Ms. Ahern, as trustee, could have sent Jacqueline and Kathryn a notice of proposed action pursuant to NRS 164.725 in which she explained that she believed that she, in her individual capacity as a beneficiary of the Trust, was entitled to all 100% of the income proceeds and in turn provided such explanation and evidence which led her to this conclusion. Jacqueline and Kathryn could then have had ample opportunity to express their opposition to this determination and Ms. Ahern could have sought court intervention on the matter, or, in the alternative, could have dropped the issue entirely.

B.6 Another option for Ms. Ahern, in her capacity as trustee, could have been to bring a petition pursuant to NRS 153.031 and ask the court to ratify her action as being justifiable and appropriate. However, Ms. Ahern took neither of these actions, and without warning, simply "pulled the plug" on the required income distributions to the MTC Living Trust, which she had no right nor justification to do.

B.7 The baseless argument, which Ms. Ahern heavily focused on in her "Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16" ("Motion"), that somehow this declaration of rights was sought in 2009 via the "Petition to

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Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust" ("Reformation Petition") and consented to by Jacqueline and Kathryn, has been well addressed and responded to in Jacqueline's Response to Ms. Ahern's Motion.

B.8 As stated in oral argument for the Petition for Declaratory Judgment, if Ms. Ahern had truly believed that Jacqueline and Kathryn were consenting to allowing her, in her capacity as trustee of the Trust, to change the distribution from 65%/35% split, and that this was what Commissioner Yamashita had determined, then it makes absolutely no sense that she did not make the change immediately following the entry of that Order instead of waiting nearly 4 years before taking such action. In the meantime, over a couple million dollars has been distributed to Jacqueline and Kathryn via the MTC Trust, for which they have paid taxes. Furthermore, if Ms. Ahern is going to make this ridiculous argument that she had the right, but was not enforcing it, then the distributions that were received by Jacqueline and Kathryn would have most certainly constituted gifts from Ms. Ahern, in her capacity as a beneficiary of Trust No. 2, to them, for which she would have been required to file Form 709 gift tax returns.

B.9 Ms. Ahern can only have it one way or the other. Either the distributions to Jacqueline and Kathryn were proper distributions to which they were entitled through their beneficial interest in the MTC Trust, or they were gifts which had to be reported to the IRS via Form 709 on a yearly basis, and which would have had the effect of significantly reducing her federal estate tax exemption.

B.10 As will be discussed further herein, 33 years of precedent dictates that the status quo of a 65%/35% split must be kept in tact, even if there was an error committed 33 years ago, which is certainly not being conceded.

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B.11 The fact of the matter is that the correctness of the allocation between the subtrusts must be presumed correct as this was the allocation reported on the federal estate tax return. Furthermore, without question, the trust instrument is explicit in declaring that the marital deduction should be maximized to reduce estate tax at the first death, which was done. As such, the obligation and burden to show that the status quo is not proper rests on Ms. Ahern, not on Jacqueline and Kathryn. This is why it is infuriating that Ms. Ahern decided to unilaterally change the status quo without warning and first getting the Court to declare her ability to do so. Again, Ms. Ahern, in her capacity as trustee, has breached her duty of loyalty as she has taken an unjustifiable action that benefits solely herself.

B.12 As stated, for Ms. Ahern to believe that it is somehow up to Jacqueline and Kathryn to establish their entitlement to 65% of the income proceeds from the oil, gas, and mineral rights leases is entirely incorrect and faulty. The presumption is that the status quo is proper and must continue. Ms. Ahern can seek to change the status quo through the proper avenues afforded to her under Nevada trust law, even though each of these avenues should be shut off immediately based on equitable principles, as discussed below. To date, she has not followed any proper administrative procedures and this Court must compel her to return to the status quo and order her to distribute 65% of the proceeds dating back to June of 2013 without any further delay.

C. LACHES AND DETRIMENTAL RELIANCE

C.1 To date there has been no explanation as to what evidence or authority Ms. Ahern intends to rely on to attempt to prove that she is entitled to 100% interest of the Trust. As has been established, the meritless argument that Commissioner Yamashita

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made a declaratory ruling as to Ms. Ahern being entitled to 100% of the income and/or that Jacqueline and Kathryn consented to relinquish millions of dollars in future income has been shown to be totally unfounded and absurd.

C.2 Therefore, assuming that Ms. Ahern will attempt to actually produce an argument that has evidentiary support behind it, the only educated guess as to what is likely to be forthcoming is that somehow the 65%/35% split done in 1980 was not properly done and that for the past 33 years, Ms. Ahern should have been receiving 100% of the income as the beneficiary of Trust No. 2 and not just the 35%.

C.3 As discussed in the Petition for Declaratory Judgment, and as was addressed in the Response to Ms. Ahern's Motion, there is nothing to suggest that any error occurred as Marjorie had retained professionals to assist her in her capacity as trustee. Further, Ms. Ahern, as a co-trustee of the Trust, had every ability, opportunity, and, most importantly an obligation to voice an objection to such allocation if she felt that it was incorrectly done in 1980. Instead, 33 years have now come and gone with a 65%/35% split. There has been absolutely no evidence that this split was improperly done, as evidenced by a Federal Estate Tax Return (Form 706), as reflected in the Texas Inheritance Tax Return that has already been accepted for Mr. Connell's estate, as well as a closing letter from the IRS rendered a very long time ago for Mr. Connell's estate.

C.4 Despite the lack of a shred of evidence to suggest that any error did occur, assuming *arguendo* that an error did actually occur in 1980 when the 65%/35% split began, Ms. Ahern's arguments must still fail. Equitable remedies will prevent Ms. Ahern's claim, as it is now simply too late for Ms. Ahern to make such assertions at this point. The concepts of both laches and estoppel are both firmly in effect some 33 years after the fact.

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Additionally, detrimental reliance is also applicable, which will be discussed shortly.

C.5 Simply put, the doctrine of laches should apply when an unreasonable delay in the enforcement of one's rights has occurred which is not justifiable under the circumstances. The doctrine of laches is eloquently explained in the following passages taken from the *Grimes v. Carroll* decision, a 1950 Supreme Court of Arkansas opinion (217 Ark. 210)(1950):

> *Laches in a general sense is the neglect, for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. More specifically, it is inexcusable delay in asserting a right; an unexcused delay in asserting rights during a period of time in which adverse rights have been acquired under circumstances that make it inequitable to displace such adverse rights for the benefit of those who are bound by the delay; such delay in enforcing one's rights as works disadvantage to another; such neglect to assert a right as, taken in conjunction, with lapse of time more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity; an implied waiver arising from knowledge of existing conditions and an acquiescence in them; acquiescence in the assertion of adverse rights and undue delay on complainant's part in asserting his own, to the prejudice of the adverse party.' 30 C.J.S., Equity, § 112, page 520.*
>
> *The doctrine of laches is founded on the equitable maxims of 'He who seeks equity must do equity,' and 'Equity aids the vigilant.' Hence, while there is a great variety of cases in which the equitable doctrine is invoked, each case must depend upon its own particular circumstances and courts of equity have always discouraged laches and delay without cause. It is well settled, however, that he who, without adequate excuse, delays asserting his rights until the proofs, respecting the transaction out of which he claims his rights arose, are so uncertain and obscure that it is difficult for the court to determine the matter, has no right to relief.*
>
> *Judge Brewer, who afterwards became an Associate Jutice of the Supreme Court of the United States, said while on the circuit: 'No doctrine is so wholesome, when wisely administered, as that of laches. It prevents the resurrection of stale titles, and forbids the spying out from the records of ancient and abandoned rights. It requires of every owner that he take care of his property, and of every claimant that he make known his claims. It gives to the actual and longer possessor security, and induces and justifies him in all efforts to improve and make valuable the property he holds. It is*

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> *a doctrine received with favor, because its proper application works out justice and equity, and often bars the holder of a mere technical right, which he has abandoned for years, from enforcing it when its enforcement will work large injury to many.* (217 Ark. 210, 213-214)

C.6 To sleep on one's rights for 33 years, as Ms. Ahern would have done, if assuming *arguendo* that she is able to conclusively prove that there was an error in the allocation, is simply not appropriate and should not be rewarded. Again, even if we are to assume that Ms. Ahern is correct that she should have been receiving all 100% of the income from the oil, gas, and mineral leases, she was obligated to make this assertion approximately 33 years ago, or thereabouts, when she had every opportunity and ability to do so when there would have been no damage to adverse parties.

C.7 The Supreme Court of Georgia has barred claims akin to Ms. Ahern's on several analogous situations. Additionally, approximately 88 years ago, the Supreme Court of Nevada has already heard a claim that is analogous to Ms. Ahern's claim and applied the doctrine of laches, in what appears to be the landmark decision in Nevada on the application of laches. The Georgia cases will be discussed first, followed by the Nevada case.

C.8 In *Stone v. Williams* (458 S.E.2d 343 (1995)), 35 years after a transfer/purchase of real property, and well after a death of the titled property owner, who would be the most material witness, a claim was made that the heirs of the property owner do not rightfully own the real property because the money for the purchase of the property was given to the decedent and included a side agreement. The Supreme Court of Georgia declared that the doctrine of laches was applicable to bar the claim because: 1) the extreme delay of the plaintiff in asserting his rights; and 2) the death of the material witness. That

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Court stated the following:

> *Courts of equity may "interpose an equitable bar whenever, from the lapse of time and laches of the complainant, it would be inequitable to allow a party to enforce his legal rights." O.C.G.A. § 9-3-3. It would be inequitable to allow Stone to prevail in this case because she waited thirty-five years to claim a resulting trust even though Mr. Williams's legal ownership of the property was easily discoverable by the slightest diligence. See Hillis v. Clark, 222 Ga. 604, 150 S.E.2d 922 (1966). Of course, laches does not arise from delay alone. To prevail on a plea of laches, prejudice, too, must be shown. Clover Realty Co. v. J.L. Todd Auction Co., 240 Ga. 124, 126(4), 239 S.E.2d 682 (1977). Mrs. Williams demonstrated that she is prejudiced by Stone's delay because Mr. Williams's death rendered ascertainment of the truth difficult, if not impossible. OCGA § 23-1-25.* (458 S.E. 2d 343)

C.9 In *Cagle v. Cagle* (586 S.E.2d 665 (2003)), the administratrix of her father's estate sought to impose a constructive trust on a farm and another parcel titled in the name of her uncle 36 years after the farm was conveyed by her father to her uncle and three years after her father's death.

C.10 In referring back to its prior decision in *Stone v. Williams,* the Supreme Court of Georgia came to the following conclusion:

> *The present complaint was brought in April 2002, thirty-six years after the conveyance of the farm property, and three years after Charles' death. In Stone v. Williams, supra, under very similar circumstances, we upheld the grant of summary judgment on the basis that laches barred a claim for a resulting trust where the claimant waited 35 years to assert her claim, and the defending party was prejudiced due to the death of essential witnesses in that period. Likewise, in the case now before the Court, there was an inordinate delay in bringing suit during which key evidence has been lost. It follows that the claim was barred by laches, and that summary judgment was properly granted on that ground.*
>
> *Based on the foregoing, it is unnecessary for us to address the merits of the claim.* (586 S.E.2d 665, 667)

C.11 In *Cooney v. Pedroli* (235 P. 637 (1925)), the plaintiffs asserted that they were entitled to a declaration of interest in real property some 22 years after the relevant death.

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Because the plaintiffs' delayed the enforcement of their purported rights for 22 years, together with the death of the material witness who could not provide testimony and evidence to contradict the plaintiffs' claims, the Nevada Supreme Court concluded that it must accept and apply the doctrine of laches. The following passages from the Nevada Supreme Court decision, although lengthy, are truly necessary to review so as to fully understand the context of the Court's thought process and logic in applying the doctrine of laches:

> *The doctrine of laches has been universally accepted in courts of equity. In an early English case Lord Camden declared:*
>
> *"A court of equity, which is never active in relief against conscience, or public convenience, has always refused its aid to stale demands, where the party has slept upon his right, and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; when these are wanting the court is passive and does nothing. Laches and neglect are always discountenanced, and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this court." Smith v. Clay (2 Ambler's Reports, 645; 3 Browne's Reports, p. 639 in note).*
>
> *The principle thus announced that mere lapse of time may constitute laches has not been recognized generally by modern courts of equity as embracing the only element of that defense. It appears from the cases, with few exceptions, that, while lapse of time is one of the elements, another and very important one is that the delay has worked some disadvantage to the one who interposes the defense of laches. A concise and accurate statement of the doctrine of laches, and one which has been often quoted with approval, was made in Chase v. Chase, 20 R. I. 202, 37 A. 804, in which the court said:*
>
> *"Laches, in legal significance, is not mere delay, but delay that works a disadvantage to another. So long as parties are in the same condition, it matters little whether one presses a right promptly or slowly, within limits allowed by law; but when, knowing his rights, he takes no steps to enforce them until the condition of the other party has, in good faith, become so changed that he cannot be restored to his former state, if the right be then enforced, delay becomes inequitable and operates as an estoppel against the assertion of the right. The disadvantage may come from loss of evidence, change of title, intervention of equities and other causes, but when a court sees negligence on one side and injury therefrom on the other, it is a ground for denial of relief."*

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It would be difficult, if not impossible, to state the various circumstances which in conjunction with the lapse of time may constitute laches. Every case must depend upon its own circumstances. Whenever the passage of time has brought in its train anything that works to the disadvantage of a party and makes it doubtful if equity can be done, relief will be denied.

"Several conditions may combine to render a claim or demand stale in equity. If by the laches and delay of the complainant it has become doubtful whether the adverse parties can command the evidence necessary to a fair presentation of the case on their part, as, for instance, where parties interested and the witnesses have died in the interim, or if it appears that they have been deprived of any advantage they might have had if the claim had been seasonably insisted on, or if they be subjected to any hardship that might have been avoided by reasonably prompt proceedings, a court of equity will not interfere to give relief, but will remain passive; and this, although the full time may not have elapsed which would be required to bar a remedy at law." 10 R. C. L. p. 400.

Considering the defense of laches in Miller v. Walser, 42 Nev. 497, 518, 181 P. 437, 444, this court said:

"Any circumstances tending to obscure the truth of the matter, as the loss of witnesses through efflux of time, may prompt a court of equity to apply the doctrine of laches. In fact, if it appears that the adverse party has lost any advantage he might have retained if the claim had been asserted with reasonable promptness, or exposed to any injury through inexcusable delay, a court of equity will not interfere to give relief to the dilatory claimant. Every case must depend upon its own peculiar circumstances."

It is a very material circumstance to be considered in connection with the lapse of time that death of those who could have explained the transaction has intervened before the claim is made. Hinchman v. Kelley, 54 F. 63, 4 C. C. A. 189; Rives v. Morris et al., 108 Ala. 527, 18 So. 743; Taylor v. Slater, 21 R. I. 104, 41 A. 1001; Kleinclaus v. Dutard, 147 Cal. 245, 81 P. 516; Pomeroy's Eq. Rem. p. 44. In the last work cited the author says:

"It is settled in this state by the two California cases last cited that the defense of laches may be raised by demurrer, the defense being in substance, as said in one of the cases, that the bill does not show equity, or, in the language of our statute, that the complaint does not state facts sufficient to constitute a cause of action."

An examination of the complaint in view of these principles clearly reveals its lack of equity. The complaint shows a great lapse of time, 22 years, from the creation of the alleged trust. During all of this time Charles Pedroli was in possession of the property openly and notoriously exercising dominion over it as though it were his sole and separate property. He managed, controlled, and disposed of it, and

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acquired and invested the profits from it in his own name. From the profits he acquired other property to the extent that at the time of his death the original property belonging to the estate of his father had been increased in amount from 400 acres of land and 100 head of stock cattle, and 20 tons of hay, to 880 acres; 300 head of cattle, 75 head of calves, 200 tons of hay. In addition thereto he acquired 15 bonds of the Lovelock Drainage District; 12 shares of the stock of the Bank of Italy, San Francisco, California; Liberty bonds of the par value of $3,600; a promissory note with accrued interest thereon; and a life insurance policy on the life of the deceased for the sum of $5,000 payable to his estate as the beneficiary thereof, and cash in the amount of $12,000.

Beyond the bare statement in the complaint that Charles Pedroli was the trustee of his brother and sister, and that he at all times admitted and recognized their right, there is nothing in the complaint to support the claimed trust relation. All of his acts alleged have a contrary significance. He did everything in his own name and managed the property and the increase as if it were his own. No act of recognition is alleged. He invested the profits in other property and took the same in his own name without consulting the respondents. During the entire period of 22 years he paid nothing to the respondents. He rendered no account of his management of the property to them, nor was any accounting demanded of him by either of them. No reason is alleged in the complaint for respondents' long delay in making any claim to the property or asserting any interest as to Charles Pedroli's management of their share of it or desire to enjoy any of the profits from it, except that Charles Pedroli was more competent to manage it for the best interests of himself and them, and that he was honest and upright in all his business affairs, and that they believed he would account fully and honestly as to his management and control and disposition of the property to respondents at any time they made a demand on him.

It seems incredible, however, that in all of these years and when the property was being managed profitably by Charles Pedroli that respondents should have no desire to share in any portion of the profits. Any fraud on the part of Charles Pedroli is entirely negatived by the complaint. All of his acts were open and notorious and consistent with the absolute ownership. These facts, together with the prolonged silence of the respondents during the lifetime of Charles Pedroli concerning their alleged interest in the property, present a case of grave doubt as to the existence of the trust claimed. His death places his administratrix at a disadvantage so obvious as to call for the application of the doctrine of laches against the respondents, who have slept on their alleged rights for a period of 22 years. Even if the trust relation were admitted the futility of entering on an investigation after such a lapse of time when the trustee is dead, to determine equitably what portion belonged to his estate and what portion belonged to respondents, is apparent. A court of equity would be unable, under the circumstances, to do justice to the parties. The injustice, if any, must fall upon the negligent.

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As said in Kleinclaus v. Dutard, supra:

"The circumstances of this case are such as to make it apparent that a court could not hope to do justice between these parties, were the trust relation clearly shown, and this constitutes another ground for the application of the doctrine of laches, for the difficulty is due entirely to the inexcusable delay."

The facts in the Dutard Case are strikingly parallel to the case at bar. It was held that the merits of a claim of the existence of an express trust under which a son carried on his father's business for the benefit of the family would not be considered after an unexplained lapse of 35 years, when the son was dead, and where the son had conducted the business during the period without recognizing the interest of the alleged beneficiaries, or rendering an account or paying any money to them, except in the support of his mother, and by his personal efforts and diligence had accumulated a large fortune from the small capital invested in the business by his father, and it would be impossible for the court to do justice between the parties, even if the claim should be established. A demurrer on the ground of laches was sustained. The complaint in the instant case shows a stronger case for the application of the defense of laches than the Dutard Case. (235 P. 637, 639-641)

C.12 In addition to the length of the delay, major factors the courts considered in determining whether the doctrine of laches should or should not be invoked are: 1) the substantial harm that has occurred to the party, or parties, that have relied on the status quo and the assumption that it would remain in tact; and 2) the inability of the damaged party to defend itself against the allegations due to the death of the material witness.

C.13 Here, both Jacqueline and Kathryn have been relying on receiving and justifiably anticipated that they would continue to receive 65% of the proceeds generated by the royalty income for the remainder of their lives. Each has molded their spending habits based on this anticipation. Before passing away, Marjorie Connell had the same justifiable reliance to the income. Majorie arranged her affairs so that upon her death, this same income belonged to Jacqueline and Kathryn. Consistent with the facts of the above quoted opinions, it was "open and notorious" that Marjorie was claiming entitlement of and actually receiving 65% of the income, as confirmed by the tax returns that were filed.

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Similarly, the receipt by Jacqueline and Kathryn of 65% of the income for the last 4 years has also been "open and notorious".

C.14 Therefore, in short, Jacqueline and Kathryn have justifiably formed a substantial economic reliance on the income proceeds that they have been receiving since 2009, in the exact same manner that Marjorie had been receiving income distributions for the previous 29 years.

C.15 Again, the death of the most material witness was clearly a substantial factor in the Georgia and Nevada Supreme Court decisions, and should be given the utmost priority in the present case. Due to the death of Marjorie, the most material witness in this matter, Jacqueline and Kathryn are at a severe and substantial disadvantage because they are not able to present any evidence and testimony from Marjorie that could describe and detail the steps that were taken to ensure that the allocation of the assets in the Trust were properly done between Trust No. 2 and Trust No. 3 in 1980.

C.16 Along this same line, if Marjorie had known Ms. Ahern would be seeking to change 29 years of precedent following her death, and more accurately an additional 4 more years after that, she could have sought a judicial declaration prior to her death to ensure that this problem was settled at a time when she could have presented her evidence and testimony. Furthermore, if Marjorie had intended for Ms. Ahern to become the sole 100% beneficiary of the income generated from the leases, she would have failed to exercise the power of appointment that was granted to her under Trust No. 3. Instead, as detailed in the Petition for Declaratory Judgment, Marjorie did exercise the power of appointment with the thought and desire that Jacqueline and Kathryn would effectively step into her shoes and receive 65% of the generated income.

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C.17 The only potentially rationally based claim of Ms Ahern is that the allocation was improperly done in 1980. Because Ms. Ahern has waited 33 years to assert a claim to 100% ownership, Jacqueline and Kathryn cannot properly rebut the claims of Ms. Ahern via the testimony of Marjorie Connell, which would be substantial testimony to discredit and rebut any assertions of Ms. Ahern.

C.18 Additionally, due to this extreme, and unreasonable, passage of time, the Texas accountant who prepared the state estate tax return is no longer capable of providing testimony to combat the assertion of mistake and/or error. Likewise, the Form 706 cannot be located because too much time has lapsed and IRS does not keep returns dating that far back. This unjustified delay has caused the spoilation/loss of evidence that would otherwise be highly relevant to counter Ms. Ahern's claims, which is exactly why the doctrine of laches must apply. Having said this, the existing evidence that does remain is the fact that for the last 33 years, tax returns have been filed showing Ms. Ahern receiving 35% of the income, with the other 65% belonging to Marjorie Connell/the MTC Living Trust, and upon her passing solely to the MTC Living Trust.

C.19 There is no justifiable reason as to why Ms. Ahern waited for 33 years to try to attack what was done in 1980, especially given the fact that she was a co-trustee of the Trust since 1980 and had access to all records of the Trust. Claiming ignorance cannot work here as she was a co-trustee since the beginning of this relevant time period. This is why statute of limitations are created and other equitable concepts that force one to act expediently if they feel that their rights are being infringed upon.

C.20 This situation can be closely analogized to real estate situations in which a dwelling or other improvement has been placed on a portion of land that was not rightfully

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owned by the builder/developer who encroached on another's property. The facts of this case are different as there is no evidence to suggest that the allocation of the assets between trust No. 2 and trust No. 3 were done inappropriately. However, the point remains the same. One cannot sleep on their rights indefinitely when such delay then adversely impacts others who have come to rely on the status quo since there has been no attempt to expeditiously change it.

C.21 The concept of adverse possession and related real property concepts do not allow someone to change perceived ownership rights substantially after the fact. In the case of adverse possession under Nevada law, one has 5 years in which to enforce their ownership rights or those rights are lost. Trying to change boundary rights after 33 years is simply not permitted.

C.22 As stated, both Jacqueline and Kathryn have reasonably relied on receiving monthly distributions of the income generated from the leases, which has been substantial in recent years, generally averaging in the range of $30,000 each per month or $360,000 each on an annual basis.

C.23 As to Jacqueline, until recently, she has held a high ranking job for the past 20 years with Wynn Resorts in Las Vegas. Her compensation for such position resulted in her regularly earning over $100,000 annually.

C.24 Jacqueline is the mother of twin sons who are ten years old. When the income from the leases started to increase dramatically over the recent years, Jacqueline specifically asked Ms. Ahern if she thought the oil, gas, and mineral income would continue to remain at high levels. Ms. Ahern assured her it would and specifically encouraged Jacqueline to quit her job and become a stay-at-home mother for her boys. To her

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detriment, Jacqueline relied on Ms. Ahern's representations and quit her job. Now, Ms. Ahern has taken the position that all the money from the Texas leases belongs entirely to her, reversing a course of performance adopted and followed for 33 years, which as stated above, has caused both Jacqueline and Kathryn to drastically alter their economic habits and the manner in which they live their lives.

C.25 There was absolutely no indication that could have reasonably led Jacqueline, to believe that Ms. Ahern would take the unwarranted and unjustifiable position that she now has. This again is why it is not appropriate for Ms. Ahern, in her capacity as trustee, to have abruptly decided to retain all 100% of the income proceeds with no previous warning, thus requiring Jacqueline to seek this necessary relief.

C.26 Jacqueline and Kathryn have both reasonably believed that the status quo would remain in effect for their benefit. As stated, even assuming *arguendo* that Ms. Ahern can establish that she was rightfully entitled to 100% of the proceeds from the leases, she has caused far too much damage to both Jacqueline and Kathryn by creating the expectation of continued distributions, to now be allowed to receive 100% of the funds.

C.27 No Nevada court would allow a land owner to make the claim that a neighbor has encroached on their property 33 years after the fact, with such possession being open and notorious, or allow a plaintiff to claim ownership in real property or other personal property belonging to another 33 years after the transfer. Similarly, this Court must refuse to hear any argument from Ms. Ahern that she is entitled to receive to 100% of the income due to a faulty allocation done in 1980, which, again, as a trustee she had every ability to correct at the time. Ms. Ahern has inexcusably waited for far too long to take action, and to allow her to act now would render statutes of limitation worthless and principles of

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9505 Hillwood Drive, Suite 100
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equity toothless.

C.28 So that there is absolutely no confusion, as addressed in the Response to Ms. Ahern's Motion, there is no merit whatsoever to Ms. Ahern's assertion that Commissioner Yamashita was asked in 2009 to make a declaration as to the rights of Ms. Ahern in the income proceeds nor was there any willing consent by Jacqueline or Kathryn to suddenly agree to relinquish the 65% income interest that they had inherited from Mrs. Connell. To this end, an e-mail from Jacqueline to Attorney David Strauss establishing her mindset is attached hereto as Exhibit "A" and is hereby incorporated by this reference.

C.29 In her e-mail to Attorney Strauss dated July 28, 2009, Jacqueline stated, in relevant part, the following in reference to the effect of the Reformation Petition:

> *Also, page 16 seems to communicate that my mom will oversee both trusts which I know Nanna did not want. I thought the goal was to make sure that the 1979 Trust was clear so that my mom could not give away her 1/3 interest to anyone other than my sister and I.*

C.30 At no time has Jacqueline, nor Kathryn, ever been agreeable to relinquishing their interest in 65% of the income that belonged to them through the estate planning done by their grandmother. It cannot be stressed enough that what was done in 2009 did not ask Commissioner Yamashita to make a ruling that changed the 65%/35% split, nor did it have any bearing on changing the split. This discussion is found in Jacqueline's Reply to Ms. Ahern's Motion.

D. DAMAGES

The unwarranted actions of Ms. Ahern, have caused Jacqueline and Kathryn to incur substantial attorney's fees and costs in bringing this Petition, the Petition for Declaratory Judgment, and the Reply to Ms. Ahern's Motion, as well as the resulting court appearances.

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As such, Jacqueline, for herself personally and on behalf of Kathryn, hereby requests that this Court hold Ms. Ahern personally responsible for all of the damages that she has triggered by her unjustifiable and unwarranted actions. This request is made based on the provisions of NRS 153.031(3)(b), via NRS 164.005. However, the final amount of damages is not yet calculable and will be discussed and set forth in an additional related petition that will be filed hereafter. Therefore, for the sake of clarity, the request for damages is hereby made and preserved, but this topic will be addressed in great detail in a related petition.

E. PRAYER

JACQUELINE M. MONTOYA hereby prays for an Order of this Court:

E.1 Compelling ELEANOR C. AHERN, also known as Eleanor Marguerite Connell Hartman, in her capacity as the trustee of "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, to distribute 65% of all income derived from real property located in Upton County, Texas, specifically the income generated from gas, oil, and mineral leases relating to such Upton County, Texas real property from this point forward and including a distribution representing 65% of all income received related to such interests from June, July, August, September, October, and November of 2013 that has already been received to Jacqueline in her capacity as the trustee of "MTC Living Trust", dated December 6, 1995; and

E.2 Declaring that the doctrines of laches, estoppel and detrimental reliance prevent ELEANOR C. AHERN, also known as also known as Eleanor Marguerite Connell Hartman, in her individual capacity as a beneficiary of "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, from claiming any interest in the income proceeds and land rights related to the Upton County, Texas property greater than 35%.

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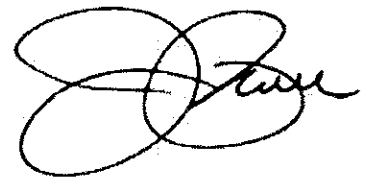
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

E.3 Awarding legal costs, attorneys fees, and damages against Ms. Ahern, personally, in her capacity as Trustee of "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972.

E.4 Granting such other and further relief as the Court shall deem appropriate.

Respectfully submitted,

THE RUSHFORTH FIRM, LTD.



JOSEPH J. POWELL
State Bar No. 8875

THE RUSHFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

EXHIBIT A

EXHIBIT A

From: Montoya, Jacquie [**mailto:Jacqueline.Montoya@wynnlasvegas.com**]
Sent: Tuesday, July 28, 2009 11:25 AM
To: David Straus
Cc: Kathy and Mike Bouvier
Subject: Thoughts on Brian's Petition

Hi David,

After reviewing Brian's petition last night, I had a couple of thoughts that I wanted to run by you. First, Kathy's legal name is Kathryn not Katherine. Can you have him update it?

Also, page 16 seems to communicate that my mom will oversee both trusts which I know Nanna did not want. I thought the goal was to make sure that the 1979 Trust was clear so that my mom could not give away her 1/3 interest to anyone other than my sister and I.

Please advise when you have time.

Regards,
Jacquie

jacqueline montoya I executive director of weddings

wynn I encore

p. 702.770.7400 I f. 702.770.1574

3131 las vegas blvd. south I las vegas I nv 89109

jacqueline.montoya@wynnlasvegas.com I toll free 888.320.7115

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CLERK OF THE COURT

VERF
THE RUSHFORTH FIRM, LTD.
JOSEPH J. POWELL
State Bar No. 8875
P. O. Box 371655
Las Vegas, NV 89137-1655
Telephone (702) 255-4552
fax: (702) 255-4677
e-mail: probate@rushforthfirm.com
Attorneys for Jacqueline M. Montoya

DISTRICT COURT

CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972

A non-testamentary trust.

Case No.: P-09-066425-T
Department: 26 (Probate)

VERIFICATION FOR PETITION TO COMPEL TRUSTEE TO DISTRIBUTE ACCRUED INCOME AND FUTURE INCOME RECEIVED FROM OIL, GAS, AND MINERAL LEASES AND DECLARATION OF THE APPLICABILITY OF THE DOCTRINE OF LACHES

Date of Hearing: December 17, 2013
Time of Hearing: 9:00 A.M.

I, the undersigned, under penalties of perjury, hereby declare that:

1. I hereby submit the foregoing "Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches."

//

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2. I know the contents of the Petition, which I know to be true of my own knowledge, except as to those matters stated on information and belief, which I believe to be true.

JACQUELINE M. MONTOYA

THE KUSHFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

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CERT
JOSEPH J. POWELL
State Bar No. 8875
THE RUSHFORTH FIRM, LTD.
P. O. Box 371655
Las Vegas, NV 89137-1655
Telephone: (702) 255-4552
fax: (702) 255-4677
e-mail: probate@rushforthfirm.com
Attorneys for Jacqueline M. Montoya

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate

of

THE W. N. CONNELL and **MARJORIE T. CONNELL LIVING TRUST**, dated May 18, 1972,

A non-testamentary trust.

Case No. P-09-066425-T
Department: 26 (Probate)

CERTIFICATE OF MAILING

Date of Hearing: December 17, 2013
Time of Hearing: 9:00 a.m.

I, the undersigned, hereby certify that on December 3, 2013, I sent a copy of the "Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches" that has been filed in this proceeding, together with a copy of the Notice of Hearing related that petition, to each person named below by first-class mail, addressed as follows:

/ / /

/ / /

/ / /

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Telephone: 702-255-4552 / Fax: 702-255-4677
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

Eleanor C. Ahern
c/o John R. Mugan, Esq.
Jeffrey Burr, Ltd.
2600 Paseo Verde Parkway, Suite 200
Henderson, NV 89074

Jacqueline M. Montoya
3385 Maverick Street
Las Vegas, NV 89108

Kathryn A. Bouvier
4221 A Surf Drive
Galveston, TX 77554

Diane L. DeWalt

Diane L. DeWalt, an employee of
The Rushforth Firm, Ltd.

THE RUSHFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

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OBJ
THE RUSHFORTH FIRM, LTD.
JOSEPH J. POWELL
State Bar No. 8875
P. O. Box 371655
Las Vegas, NV 89137-1655
Telephone (702) 255-4552
fax: (702) 255-4677
e-mail: probate@rushforthfirm.com
Attorneys for Jacqueline M. Montoya

DISTRICT COURT

CLARK COUNTY, NEVADA

In re the Matter of the

THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972

A non-testamentary trust.

Case No.: P-09-066425-T
Department XXVI, RJC
Before Honorable Judge Gloria Sturman

OBJECTION TO MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(E), AND NRS 164.033(1)(A) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PER NRCP 12(B)(5)

Date of Hearing: January 14, 2013
Time of Hearing: 9:00 a. m.

JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and also in her capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby respectfully Objects to the "Motion to Dismiss Petition for Declaratory Judgment

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9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(e), and NRS 164.033(1)(a) for Failure to State a Claim Upon Which Relief Can Be Granted Per NRCP 12(b)(5)" ("Motion to Dismiss"), which has been filed by ELEANOR C. AHERN, also known as Eleanor Marguerite Connell Hartman, in her capacity as the trustee of "The W.N. Connell and Marjorie T. Connell Living Trust" ("Trust"), dated May 18, 1972, by and through her counsel of record, JEFFREY L. BURR, Esq. and JOHN R. MUGAN, Esq. of the law firm of JEFFREY BURR, LTD., on November 26, 2013. Jacqueline respectfully responds to the Motion as follows:

A. OVERVIEW

Sadly, Ms. Ahern's Motion to Dismiss is full of red herrings and nonsensical arguments that have no basis in reality, and is clearly intended to divert the attention of this Court from the real issue at hand. Ms. Ahern has discussed multiple points that are not in dispute, and it is therefore necessary to list the following items that are not an issue of the present case to serve as reference for this Objection:

1. Jacqueline, nor her sister, Kathryn, has never once claimed any entitlement to a red cent from Trust No. 2 of the Trust.

2. Ms. Ahern is entitled to all income from Trust No. 2 of the Trust.

3. Trust No. 2 rightfully owns Texas real estate and, in turn, the income generated from oil, gas, and mineral rights leases related to such Texas real estate. However, Trust No. 2 only owns a ***portion*** of the Texas real estate that was originally held in Trust No. 1, and therefore is only entitled to a ***proportional*** share of the income generated. Trust No. 2 is only entitled to the income generated from the portion that is actually owned by Trust No. 2.

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4. Trust No. 3 was only relevant until the death of Marjorie Connell, at which point her interest in Trust No. 3 belonged entirely to her personal trust, The MTC Living Trust, by operation of her power of appointment.

5. Ms. Ahern has no authority over Trust No. 3, nor any interest in Trust No. 3.

B. THE TRUST LANGUAGE SPEAKS FOR ITSELF IN REFUTING MS. AHERN'S FALSE ASSERTIONS

B.1 In her Motion to Dismiss, Ms. Ahern states that she "*should have received the right to receive an amount equal to all income generated from the Upton County, Texas, Oil rights as long as ELEANOR lived*". Ms. Ahern further states that "*This makes perfect sense from an estate-planning point of view in that the Upton County, Texas Oil rights were the sole and separate property of W.N. CONNELL that he brought into his second marriage with MARJORIE T. CONNELL, ...*"

B.2 Although both of these statements are entirely incorrect, and a complete misconstruction of the actual terms of the Trust, the bigger question is why did Ms. Ahern allow 29 years to pass, marking the approximate period of time that expired between Ms. Ahern becoming a beneficiary of Trust No. 2 following her father's passing and the time of Mrs. Connell's passing, without asserting that she was being shortchanged? If Ms. Ahern truly believed this, then why did she, as a trustee of the Trust repeatedly distribute 35% of the income from the oil rights to herself, and 65% to Mrs. Connell? Additionally, why did Ms. Ahern declare on her divorce paperwork that she was entitled to 35% of the oil income while Mrs. Connell was entitled to 65%?

B.3 There is nothing in the trust instrument which states that Ms. Ahern was to receive 100% of the income from all of the oil, gas, and mineral leases related to the Texas

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property. Furthermore, nothing in the trust required Trust No. 2 to actually receive any of the Texas property or income generated therefrom. The stated purpose of the Trust's division was to maximize the marital deduction, and in turn minimize estate taxes due upon the death of Mr. Connell, the pre-deceased spouse.

B.4 Section Third of the Trust, titled Marital Deduction, unequivocally provides, in pertinent part, that:

> *The Trustee shall allocate to Trust No. 3 from the Decedent's* ***separate property*** *the fractional share of the said assets which is equal to the* ***maximum*** *marital deduction allowed for federal estate tax purposes* . . . . . [Emphasis added].

Therefore, this farce that all of the Decedent's separate property was to belong to Trust No. 2 is absurdly raised by Ms. Ahern as it is in direct contrast to the actual terms of the Trust instrument.

B.5 Furthermore, the notion of all income from the oil, gas, and mineral monies belonging only to Ms. Ahern as the "residual beneficiary" of Trust No. 2 is further dispelled by additional language found in the Trust.

B.6 The relevant portion of Trust No. 2 provides for the following:

> *All income received by this Trust from the separate property of the Decedent shall be paid to the Residual Beneficiary.* ***In the event any*** *of the real property located in Upton County, Texas, as listed on the original Schedule "A" attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of* ***this Trust****, equal to all of the income* ***received by this Trust*** *from the real property located in Upton County, Texas.* [Emphasis added]

This provision clearly states that "IF" any of the Texas Property constitutes part of Trust No. 2, then the intent is for Ms. Ahern, the residual beneficiary of Trust No. 2, to receive that portion of the income generated by the Texas Property in proportion to the interest of Trust

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No. 2 in the Texas Property. And, of Trust No. 2's interest in the portion of income generated by the Texas Property, Ms. Ahern is entitled to 100% of such income. In other words, if 10% of the Texas Property was allocated to Trust No. 2, then Trust No. 2, and in turn Ms. Ahern, would be entitled to the entire 10% of the total income generated by the Texas property. Likewise if Trust No. 2 was allocated 70% of the Texas Property, then Trust No. 2, and in turn Ms. Ahern, would have been entitled to the entire 70% of the income. In this case, Trust No. 2 was allocated 35% of the Texas Property, which is why Ms. Ahern has been receiving 35% of the income.

B.7 As can be seen, any assertion that this clause would ever result in Ms. Ahern getting all 100% of the income generated by the Texas Property when Trust No. 2 was only allocated approximately 35% of the Texas Property and accompanying oil, gas, and mineral rights in 1980, is in direct contradiction to the plain meaning of the language used. Ms. Ahern would only be entitled to 100% of the income if Trust No. 2 received 100% of the Texas Property, and accompanying rights, which did not happen. Ms. Ahern has no reasonable claim that she is entitled to 100% of the income.

B.8 Both of these provisions, the mandate to maximize the marital deduction and the language for Ms. Ahern to receive income in the same proportion that was held by Trust No. 2, dispel the bogus proposition asserted by Ms. Ahern in her statement that "*It is obvious that the intent of Decedent W. N. CONNELL was that his only child, ELEANOR, should have the right to receive an amount equal to all of income generated from the Upton County, Texas Oil rights as long as ELEANOR lived.*"

B.9 It is not disputed that Mr. Connell wanted Ms. Ahern to benefit to some degree from Trust No. 2 following his death, should he be the pre-deceased spouse. But,

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to assert that Mr. Connell's intent was to have all income from the Texas Property distributed to her is directly contradicted by the express language of the trust instrument. There was no requirement that all of Mr. Connell's separate property was to belong to Trust No. 2.

B.10 It is highly disingenuous that a position like this is taken by Ms. Ahern when the only relevant evidence is directly opposite to what she is claiming. To make this assertion is to squarely contest the Trust and what she was provided for under the terms of the Trust.

B.11 As noted in the other pleadings that Jacqueline has filed, if Ms. Ahern believed that errors were being committed in the administration of the Trust, she can point the finger squarely at herself as she was the trustee in the position to correct it. Her failure to act is her own fault, assuming that any errors were even in fact committed. However, Jacqueline vehemently denies that any errors were committed since both Ms. Ahern and Mrs. Connell were working with professionals from the time of Mr. Connell's death to the time of Mrs. Connell's death. If things weren't being done properly, there is no reason why the professionals that were involved would not have brought this to the attention of both of the co-trustees.

C. THE 2009 REFORMATION PETITION DID NOT CHANGE THE STATUS QUO OF 35% AND 65% DISTRIBUTIONS

C.1 Ms. Ahern has attempted to persuade this Court that the "Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust" ("Reformation Petition"), which was filed on August 17, 2009, was much more encompassing than it was ever intended to be in the hope that she can bamboozle this Court to accept the ludicrous

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9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

position that somehow Jacqueline and her sister, willingly gave up their interest, via the MTC Living Trust, in 65% of the income generated from the Texas Property. This charade is premised on trying to bootstrap an argument by taking statements out of context and intentionally spinning statements made in the Petition to support an unsupportable position.

C.2 In her Motion to Dismiss, Ms. Ahern wants to mislead this Court into thinking that the Reformation Petition should be res judicata on the challenge of Ms. Ahern on her current actions of refusing to distribute 65% of the income from the oil, gas, and mineral proceeds. Her argument is based on the position that this Court made a determination, which was supposedly consented to by Jacqueline and her sister, that Ms. Ahern was entitled to 100% of the all income received from the Trust, combining both Trust No. 2 and Trust No. 3. This argument is unsupported and illogical on many levels.

C.3 Interestingly enough, Ms. Ahern is asserting that the Reformation Petition was "*initiated and driven by JACQUELINE M. MONTOYA and her attorney, and primarily was for the benefit of JACQUELINE M. MONTOYA and her sister, KATHRYN A. BOUVIER.*" Taking this assertion at its face value, the question must be asked, what would possibly be the logic for Jacqueline and Kathryn to initiate a petition that would result in them giving up a 65% interest in the income proceeds that their grandmother had been receiving for the previous 29 years, and to which they were now entitled to receive? In connecting the dots in the Motion to Dismiss, Ms. Ahern is essentially asking this Court to believe that Jacqueline and her sister were the puppeteers in an action that would result in them willingly giving up millions of dollars of income in exchange for nothing. Why exactly would any sane person want that to occur? Ms. Ahern certainly has not presented

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9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

a justifiable reason. This is because Jacqueline and her sister never intended, nor did they ever, give up the 65% interest.

C.4 Furthermore, if Jacqueline and her sister did hypothetically want to give up this 65% and the ensuing millions of dollars in income, then why exactly would they want to continue to receive 65% of the income for the next four years after the Reformation Petition, and why did Ms. Ahern allow 65% of the income to go to her daughters for the next four years instead of retaining all 100% immediately? Certainly the intent would be to have the Order giving up 65% of the income take effect immediately. There is no logic to what Ms. Ahern is asserting.

C.5 Furthermore, it is simply false. An e-mail from Jacqueline dated July 28, 2009 clearly establishes her mindset as to the interests of Trust No. 2 and Trust No. 3. A copy of that e-mail is attached hereto as Exhibit "A" and is hereby incorporated by this reference. In the e-mail, Jacqueline references Ms. Ahern's interest in the Trust as being her "*1/3 interest*", which is close, and a "shorthand" reference, to the approximate 35% interest in the Texas Property and income generated from the Texas Property that belongs to Trust No. 2 and has since the 1980 allocation.

C.6 As to the insinuation that Ms. Ahern had no contact with the drafting attorney of the Reformation Petition and did not discuss it with him, this too is inaccurate. An e-mail from Brian Steadman, Esq. to Jacqueline dated August 3, 2009 is attached hereto as Exhibit "B" and is hereby incorporated by this reference. In his e-mail, Attorney Steadman states, in pertinent part, the following:

> *I met with your mother this afternoon to review the Petition for Reformation. She was very pleasant, and we had a great conversation. She signed the Petition, ...*

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C.7 This flawed logic is why Ms. Ahern wants to pick apart statements made in the Reformation Petition and the consents signed by Jacqueline and Kathryn.

C.8 Paragraph 18 of the Reformation Petition stated, in relevant part, that "*As of the death of MARJORIE, Trust No. 2 owned land and oil and gas shares in reserves and income located in Upton County, Texas . . . .*". This fact is not in dispute. Trust No. 2 did own a *portion* of the Texas land and the oil, gas, and mineral rights from it, as was shown on the Texas estate tax return, a reflection of the Form 706. A *portion* of the Texas property belonged to Trust No. 2, *not all* of it. In fact, it "owned", through allocation, approximately 35% of it, which is why Ms. Ahern received 35% of the oil, gas, and mineral monies from the death of Mr. Connell onward.

C.9 In looking closely at the language used in the Paragraph 18, it does not state that the Trust No. 2 owned all of it, it merely says it "owned land and oil and gas shares". This is a correct statement. As such, there was and is currently no reason for Jacqueline, nor Kathryn, to dispute the validity of the statement. What Jacqueline and Katheryn do dispute is the idea that the statement in Paragraph 18 insinuates that Trust No. 2 owns 100% of the Texas land that was originally owned by the Trust. This is absolutely incorrect.

C.10 If a statement was made that a person owned land in Clark County, Nevada, that would never rationally be interpreted to mean that the person owned all of the land comprising Clark County, Nevada.

C.11 Paragraph 19 of the Reformation Petition stated, in relevant part, that "*all income from the Oil Assets is to be paid to the Petitioner as the Residual Beneficiary during her lifetime*". Taken in the proper context, this is a completely accurate statement. It is beyond dispute that as to the interest held by/allocated to Trust No. 2 in the Texas

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Property and the income related thereto, Ms. Ahern is entitled to 100% of that. Again, she was entitled to 100% of 35% of the income. As to the proper context, it is actually set forth in the preceding language in paragraph 19, which states "*Pursuant to Article Fourth, which Article governs the administration of Trust No. 2*".

C.12 Therefore, there is nothing that can be rationally inferred from the statement found in paragraph 19 that is stating that Ms. Ahern is entitled to 100% of all of the income attributable to both subtrusts No. 2 and No. 3. The clear reference is only to Trust No. 2. As such, there was no reason why Jacqueline and Kathryn would not agree that this was a factually correct statement.

C.13 What cannot be overemphasized is the fact that the purpose of the Reformation Petition was to add clarity to the provisions of Trust No. 2. Trust No. 3, by the admission in the Reformation Petition, had no flaws regarding its succession and ultimate distribution, and it was only Trust No. 2 that was inadequately drafted in the event that Ms. Ahern survived Mrs. Connell.

C.14 Paragraph 28 from the Reformation Petition provides for the following:

> *Indeed, Article Fourth of the Trust, governing Trust No.2 makes adequate provision for numerous other contingencies for the disposition of Trust No.2, but appears to omit a provision for alternate disposition in the current situation· where MARJORIE predeceased the Petitioner. See, Trust, 7 Ex. 1, at pgs. 4 and 5.*

C.15 Paragraph 29 from the Reformation Petition provides for the following:

> *The Grantors' intent as to the final disposition of Trust No.2 after the death of the Petitioner can be derived from the contingent dispositions of Trust No.2 and the dispositive terms of Trust No.3.*

C.16 As seen, the intent of the Reformation Petition was only to clarify the succession and disposition of the assets of Trust No. 2 upon the demise of Ms. Ahern. As

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such, the scope of what was being accomplished through this Reformation Petition was only dealing with Trust No. 2, not the Trust as whole, which would include Trust No. 3. As mentioned, this was because there was no ambiguity as to how Trust No. 3 was to be distributed. Furthermore, upon Mrs. Connell exercising her power of appointment over Trust No. 3 and appointing it to her own trust, the MTC Living Trust, there cannot be any argument that this Reformation had any bearing on Trust No. 3. It is preposterous for Ms. Ahern to attempt to turn the wording in the Reformation Petition, and the consents of Jacqueline and Kathryn, as to what it sought to accomplish, into something more than it really was.

C.17 Therefore, for Ms. Ahern to point to Jacqueline's and Kathryn's agreement and suggest that they were merely contingent income beneficiaries of the Trust is completely accurate and in line with the express wording in Trust No. 2, which stated, in relevant part, under Section Fourth, paragraph B, that:

> *In the event the Residual Beneficiary predeceases the Survivor, the Residual Beneficiary's rights to receive income hereunder shall be paid to or for the benefit of her living children and the issue of any deceased child by right of representation* . . .

C.18 Because the consent simply pertained to Trust No. 2, classifying Jacqueline and Kathryn as contingent income beneficiaries of Trust No. 2, is not an inaccurate statement. However, it is inaccurate to classify Jacqueline and Kathryn as contingent income beneficiaries of the Trust, including Trust No. 3 because the Reformation Petition had no effect on Trust No. 3, which was already subject to the MTC Living Trust through the exercise of the power of appointment.. To make something more out of the statement in the Consent is simply a desperate attempt to mislead this Court and divert this Court's

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attention from the fact that Trust No. 3 was allocated 65% of the Texas Property in 1980, and that Mrs. Connell appointed the assets of Trust No. 3 to the MTC Living Trust, effective at her death. Yet, despite these realties, Ms. Ahern has unilaterally decided, 33 years after the fact, to take 65% more of the income than which she is actually entitled to. This conduct is despicable and reprehensible and must be stopped, and in turn punished by this Court.

C.19 Jacqueline would be remiss if she did not take a moment to address the absurdity of the notion that the Reformation Petition had the effect of triggering determinations from this Court which went beyond the scope of the prayer of the Reformation Petition.

C.20 Apparently, Ms. Ahern is unaware of the fact that a petition cannot ask for and exceed the scope of what its prayer requests. The notice of a petition would be incomplete and the notice process irrelevant if one could have determinations made on issues that are not asked to be ruled upon. The prayer in a petition is what the petitioner is asking the Court to make a determination regarding. Any background information is, at the end of day, simply window dressing as the heart of the petition is the prayer and what the petitioner seeks the court to order.

C.21 The prayer in the Reformation Petition asks only for the Court to approve the following requests, which are being synopsized:

1. The Court assume jurisdiction over the Trust (for the obvious purpose of allowing the Court to be able to then hear and consider the requested relief);

2. The Court confirm Ms. Ahern as the Trustee of the Trust;

3. The Court confirm that it was the intent of W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, to distribute the residue of Trust No.2 created thereunder

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to ELEANOR C. AHERN's heirs upon her death and that the Trust be reformed in accordance with such intent;

4. That the Court order the Trust to be reformed to add new Sections "E," "F," "G," and "H" to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST;

5. That the Court construe THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST to provide that the intent of W. N. CONNELL and MARJORIE T. CONNELL was to appoint the beneficiaries of the Trust to serve as Trustees thereof; and (2) that the Trust is to be reformed in accordance with such intent; and

6. The Court allow a modification to Article Twelve (the section dealing with the appointment of successor trustees).

C.22 As established, nowhere in the Reformation Petition is there any request that this Court declare that Ms. Ahern is entitled to 100% of all income derived from the oil, gas, and mineral monies related to the Texas Property.

C.23 Furthermore, the Reformation Petition was approved without oral argument since it was placed on the "approved list" in accordance with rule 4.14 of the Eighth Judicial District Court Rules.

C.24 The Order for the Reformation Petition, dated September 4, 2009, grants the relief prayed for, as detailed above, and makes no other declarations or findings, other than that proper notice of the hearing was given. The prayer portion of the Reformation Petition was essentially "cut and pasted" to create the Order.

D. RESPONSE TO ASSERTION OF CLAIM PRECLUSION

D.1 Keeping with the trend of the other illogical and red herring diversions that

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Ms. Ahern has attempted to present, Ms. Ahern chooses to raise claim preclusion as yet another tactic to take the spotlight off of her inappropriate actions.

D.2 The issues raised and sought to be remedied by Jacqueline are not contrary or contradictory in relation to the 2009 Reformation Petition. As explained above, the Reformation Petition was an entirely separate issue from this and had no bearing on changing the status quo as to the distribution of the oil income, which is precisely why Ms. Ahern continued to respect the 35%/65% split of that income for the 4 years after the Reformation Order was granted.

D.3 It appears that Ms. Ahern completely misunderstands the concept, and applicability, of claim preclusion.

D.4 As the Nevada Supreme Court has already stated, "*Claim preclusion applies when a second suit is brought against the same party on the same claim.*" Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1053, 194 P.3d 709, 712 (2008).

D.5 As addressed above, the Reformation Petition was not based on a claim brought by Jacqueline. Despite Ms. Ahern's assertion that the Reformation Petition was "driven" by Jacqueline and Kathryn, the fact remains that Ms. Ahern was the petitioner and the counsel who prepared the Reformation Petition was her counsel, having all duties to her. Furthermore, there was nothing adverse about the Reformation Petition. It was brought to clear up and add clarity to the provisions of Trust No. 2 only as to how administration would occur upon the passing of Ms. Ahern. It was also consented to by Jacqueline and Kathryn. There was no adversarial nature to the Reformation Petition.

D.6 Prior to Ms. Ahern taking the unjustified actions that she did in failing to distribute 65% of the oil income, there had been no previous claim brought by either Ms.

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Ahern, nor Mrs. Connell, nor Jacqueline and Kathryn, that asserted that No.2 owned more or less than 35% of the land in Texas, and in turn the profits generated from such land. If a claim has never been brought before, then it most certainly can't be brought "again." Because it is not now being brought "again," claim preclusion is not applicable here.

D.7 It is well known that the purpose of claim preclusion and barring additional claims that could have been brought previously is to prevent a party who has already sued and lost from bring the exact same suit and adding an additional claim or two to circumvent claim preclusion by having "different" claims. This is clearly not the case here. There has been no litigation, nor was the 2009 Reformation Petition ruling issued on the merits, as the Supreme Court of Nevada requires according to the *Tarkanian* case cited by Ms. Ahern.

D.8 In *University of Nevada v. Tarkanian*, 879 P.2d 1180 (1994), the Nevada Supreme Court issued the following declaration:

> *Generally, the doctrine of res judicata precludes parties or those in privity with them from relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction. Horvath v. Gladstone, 97 Nev. 594, 597, 637 P.2d 531, 533 (1981); Gilbert v. Warren, 95 Nev. 296, 594 P.2d 696 (1979). The doctrine is intended to prevent multiple litigation causing vexation and expense to the parties and wasted judicial resources by precluding parties from relitigating issues they could have raised in a prior action concerning the same controversy. Hulsey v. Koehler, 218 Cal.App.3d 1150, 267 Cal.Rptr. 523, 526 (Ct.App.1990). For res judicata to apply, three pertinent elements must be present:* ***(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final****; and (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation. Horvath, 97 Nev. at 597, 637 P.2d at 531.* [**Emphasis Added**]
>
> 879 P.2d 1180, 1191

D.9 As noted above, this Reformation Petition was not contentious and cannot be properly classified as litigation. As shown by the prayer in the Reformation Petition, the purpose was to add clarity to Trust No. 2 that was not found under the trust instrument.

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Such intention was ascertainable by reviewing the provisions of Trust No. 3 and other provisions found in the Trust. Furthermore, there was no dispute as to whether or not the status quo split of 35%/65% should continue. It was not even raised as being an issue because it was not an issue at that time, as no breach of the Trust had occurred yet. This is only an issue now, 33 years after the division of Trust property, and 4 years after the Reformation Petition was brought.

D.10 The claims and redress that Jacqueline is now forced to bring were not required to be brought in 2009 because the 35%/65% was not in dispute or being questioned. Not until approximately June of 2013 has this issue become a full blown dispute with the need for court intervention between Jacqueline and Ms. Ahern. As far as Jacqueline and Kathryn are aware, there was no breach by Ms. Ahern, and there were no problems with the distributions, at the time of the Reformation Petition.

D.11 The 2009 Reformation Petition has never addressed the issue of changing the status quo. An assertion of claim preclusion here is entirely inappropriate and way off point. Again, yet another desperate attempt to divert this Court's attention from the unjustified damage that Ms. Ahern has caused here.

D.12 If this rationale of claim preclusion is successful, then there would be nothing to prevent a trustee/beneficiary from simply filing a petition to confirm a simple amendment or other action regarding a trust, then later breaching the trust and stealing the funds while being protected from any lawsuit based on claim preclusion, which would not allow the suit because a court has already issued an order regarding the trust.

E. DAMAGES

E.1 The unwarranted actions of Ms. Ahern, have caused Jacqueline and Kathryn

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9505 Hillwood Drive, Suite 100
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to incur substantial attorney's fees and costs in bringing this Objection, the "Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches", the "Petition for Declaratory Judgment regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e), and NRS 164.033(1)(a)", and the "Response to Motion to Refer Contested Probate Matter to Master-Probate Commissioner per EDCR 4.16", as well as the resulting court appearances. As such, Jacqueline, for herself personally and on behalf of Kathryn, hereby requests that this Court hold Ms. Ahern personally responsible for all of the damages that she has triggered by her unjustifiable and unwarranted actions.

E.2 This request for damages is requested pursuant to the provisions of NRS 153.031(3)(b), via NRS 164.005. However, the final amount of damages is not yet calculable and will be discussed and set forth in an additional related petition that will be filed hereafter. Therefore, for the sake of clarity, the request for damages is hereby made and preserved, but this topic will be addressed in great detail in a related petition.

F. Conclusion

JACQUELINE M. MONTOYA hereby prays that this Court dismiss and deny Ms. Ahern's "Motion to Dismiss Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(e), and NRS 164.033(1)(a) for Failure to State a Claim Upon Which Relief Can Be Granted Per NRCP 12(b)(5)" in its entirety and in turn hear and grant the relief sought in the "Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches" and the "Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets pursuant to NRS 30.040,

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Telephone: 702-255-4552 / Fax: 702-255-4677
9505 Hillwood Drive, Suite 100
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NRS 153.031(1)(E), and NRS 164.033(1)(A)" in its entirety.

Respectfully submitted,

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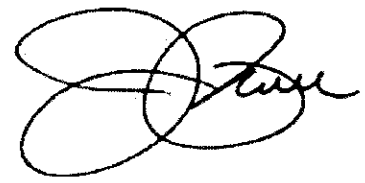

JOSEPH J. POWELL
State Bar No. 8875

THE RUSHFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514