

# **EXHIBIT 5**

COPY

**Last Will and Testament  
of  
MARJORIE T. CONNELL**

The original of this LAST Will  
located in the office of DAVID A. STIK  
900 Rancho Lane Las Vegas, NV 89101  
702-471-4500

I, MARJORIE T. CONNELL, also known as MARJORIE THRASH CONNELL, a resident of Clark County, Nevada, revoke any prior wills and codicils made by me and declare this to be my Last Will and Testament.

**Article One  
Family Information**

I am unmarried.

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

**Article Two  
Distribution of My Property**

**Section 2.01 Pour-Over to My Living Trust**

All of my probate estate, excluding any property over which I might have a power of appointment, and after payment of expenses and taxes which are paid pursuant to this will, I give to the then acting Trustee of the MTC LIVING TRUST dated December 6, 1995 as restated on January 7, 2008 and executed prior to this will, to be added to the property of that trust. I direct that the Trustee administer the property as provided in the trust agreement and any amendments prior to my death.

**Section 2.02 Alternate Disposition**

If the trust referred to in Section 2.01 is not in effect at my death or if for any other reason the pour-over cannot be accomplished, I specifically and completely incorporate the terms of the trust into this will by reference. In such a situation, I direct my Personal Representative to establish a trust in accordance with the provisions of such trust and give the remainder of my estate, excluding any property over which I might have a power of

appointment, to the Trustee of said trust to be administered as provided in the trust agreement.

### **Article Three**

## **Designation and Succession of Fiduciaries**

#### **Section 3.01 Personal Representative**

I nominate JACQUELINE MARGUERITE MONTOYA as my Personal Representative. If JACQUELINE MARGUERITE MONTOYA fails or ceases to act as my Personal Representative, I nominate KATHRYN ANN BOUVIER as my successor Personal Representative.

### **Article Four**

## **Exercise of Power of Appointment**

#### **Section 4.01 Exercise of Power of Appointment Granted by WILLIAM N. CONNELL**

In the W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972, Article Fifth Trust No. 3 Paragraph B(2) of the Trust, I was granted a testamentary power of appointment. I hereby exercise that power of appointment and appoint the entire principal and the undistributed income in Trust No. 3, if any, on my death to JACQUELINE MONTOYA and KATHRYN ANNE BOUVIER to be distributed in trust in accordance with the provisions of the MTC LIVING TRUST dated December 6, 1995, as restated on January 7, 2008.

### **Article Five**

## **Powers of Fiduciaries**

#### **Section 5.01 Grant**

My Personal Representative may perform every act reasonably necessary to administer my estate and any trust established under my will.

Specifically, my Personal Representative may exercise the following powers: hold, retain, invest, reinvest, sell, and manage real or personal property, including interests in any form of business entity including, but not limited to, limited partnerships and limited liability companies, and policies of life, health and disability insurance; without diversification as to kind, amount or risk of non-productivity and without limitation by statute or rule of law. My Personal Representative may partition, sell, exchange, grant, convey, deliver, assign, transfer, lease, option, mortgage, pledge, abandon, borrow, loan and contract. My Personal Representative may distribute the assets of my estate in cash or kind or partly in each at fair market value on the date of distribution, without requiring pro rata distribution of specific assets and without requiring pro rata allocation of the tax bases of such assets. My Personal Representative may hold in nominee form, continue businesses, carry out agreements and deal with itself, other fiduciaries and business organizations in which my Personal Representative may have an interest. It may establish reserves; release powers, and abandon, settle or contest claims. It may employ attorneys, accountants, custodians of the trust assets, and other agents or assistants as deemed advisable to act with or without discretionary powers and compensate them and pay their expenses from income or principal or both.

#### **Section 5.02 Powers Granted by State Law**

In addition to all of the above powers, my Personal Representative may, without prior authority from any court, exercise all powers conferred by my will or by common law or by the Nevada Revised Statutes or other statute of the State of Nevada or any other jurisdiction whose law applies to my will. My Personal Representative shall have absolute discretion in exercising these powers. Except as specifically limited by my will, these powers shall extend to all property held by my fiduciaries until the actual distribution of the property.

#### **Section 5.03 Distribution Alternatives**

My Personal Representative may make any payments under my will:

Directly to the beneficiary;

In any form allowed by applicable state law for gifts or transfers to minors or persons under disability;

To the beneficiary's guardian, conservator or caregiver for the benefit of the beneficiary; or

By direct payment of the beneficiary's expenses.

A receipt by the recipient for any such distribution, if such distribution is made in a manner consistent with the proper exercise of my fiduciaries' duties hereunder, shall fully discharge my fiduciaries.



## **Article Six**

### **Administrative Provisions**

#### **Section 6.01 Court Proceedings**

If any trust is established under my will that trust shall be administered in a timely and efficient manner consistent with its terms, free of active judicial intervention and without order, approval or other action by any court. It shall be subject only to the jurisdiction of a court being invoked by the trustees or other interested parties or as otherwise provided by law.

#### **Section 6.02 No Bond**

I direct that no fiduciary shall be required to give any bond in any jurisdiction, and if, notwithstanding this direction, any bond is required by any law, statute, or rule of court, no sureties be required.

#### **Section 6.03 Compensation**

Any fiduciary under this instrument shall be entitled to reasonable compensation commensurate with services actually performed and to be reimbursed for expenses properly incurred.

#### **Section 6.04 Ancillary Fiduciary**

In the event ancillary administration shall be required or desired and my domiciliary Personal Representative is unable or unwilling to act as an ancillary fiduciary, my domiciliary Personal Representative shall have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may either be a natural person or a corporation. My domiciliary Personal Representative may delegate to such ancillary fiduciary such powers granted to my original Personal Representative as my Personal Representative may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate shall be paid over to the domiciliary Personal Representative.

## **Article Seven Taxes, Claims and Expenses**

### **Section 7.01 Payment of Death Taxes, Claims and Expenses**

The Trustee of the trust referred to in this will is authorized to pay my funeral and burial expenses, claims against my estate, and expenses of estate administration. Accordingly, I direct my Personal Representative to consult with the Trustee to determine which such expenses and claims should be paid by my personal representative from property passing under my will, and which such expenses and claims should be paid by the trustee from the trust.

I direct my Personal Representative to follow any instructions contained in the MTC LIVING TRUST in making any tax election, including, but not limited to, the allocation of my GST Exemption. I direct that the taxes imposed by reason of my death upon property passing under and outside my will be apportioned and paid in the manner provided in the MTC LIVING TRUST, and I incorporate the tax apportionment provisions of the MTC LIVING TRUST as part of my will.

In no event shall any of such taxes be allocated to or paid from property which is not included in my gross estate for federal estate tax purposes or which qualifies for the federal estate tax charitable deduction.

### **Section 7.02 Tax and Administrative Elections**

My Personal Representative may exercise any available elections under any applicable income, inheritance, estate, succession, or gift tax law. This authority specifically includes the power to select any alternate valuation date for death tax purposes and the power to determine whether any or all of the administration expenses of my estate are to be used as estate tax deductions or as income tax deductions, and no compensating adjustments need be made between income and principal as a result of such determinations unless my Personal Representative shall determine otherwise, in the discretion of my Personal Representative, or unless required by law.

My Personal Representative shall not be liable to any beneficiary of my estate for tax consequences occasioned by reason of the exercise or non-exercise of any such elections or by reason of the allocation and distribution of property in kind in full or partial satisfaction of any beneficiary's interest in my estate.

## Article Eight General Provisions

### Section 8.01    Applicable Law

The validity and construction of my will shall be determined by the laws of Nevada.

### Section 8.02    No Contract to Make Will

I have not entered into any contract, actual or implied, to make a will.

### Section 8.03    Contest Provision

If any beneficiary of this will or any trust created under this will, alone or in conjunction with any other person undertakes or participates in any one or more of the actions listed below, then the right of such beneficiary to take any interest given to such beneficiary under this will or any trust created pursuant to this will shall be determined as it would have been determined had such beneficiary predeceased me without surviving descendants.

Contests by a claim of undue influence, fraud, menace, duress or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) this Will, (b) any trust created under the terms of this Will, (c) any other trust created by me, and any trusts created under those agreements, or (d) any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension or profit sharing plan or insurance policy signed by or created by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document;

Seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify or set aside a Document or any of its provisions;

Files suit on a creditor's claim filed in a probate of my estate, against my trust estate, or any other Document, after rejection or lack of action by the respective fiduciary;

Files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document;

Claims ownership in a court proceeding to any asset held by me in joint tenancy, other than as a surviving joint tenant;

Files a petition to determine domestic partnership property as my cohabitant or as my Spouse;

Files a petition for probate homestead in a probate proceeding of my estate without the prior written consent of the Personal Representative designated in this Will;

Files a petition for family allowance in a probate of my estate without the prior written consent of the Personal Representative designated in this Will;

Files a petition to impose a constructive trust or resulting trust on any assets of my estate, if any; or

Participates in any of the above actions in a manner adverse to my estate, such as conspiring with or assisting any person who takes any of the above actions.

My Personal Representative is hereby authorized to defend, at the expense of my estate, any violation of this paragraph. A "contest" shall include any action described above in an arbitration proceeding and shall not include any action described above solely in a mediation not preceded by a filing of a contest with a court, notwithstanding the foregoing.

This Section shall not apply so as to cause a forfeiture of any distribution otherwise qualifying for the federal estate tax charitable deduction.

#### **Section 8.04 Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural. Words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender, if appropriate.

#### **Section 8.05 Headings and Titles**

The headings and paragraph titles are for reference only.

#### **Section 8.06 Internal Revenue Code, IRC or Code**

References to the Internal Revenue Code, the IRC or the Code shall refer to the Internal Revenue Code of the United States. References to specific sections of the Code shall be to any sections of like or similar import that replace the specific sections as a result of changes to the Internal Revenue Code made after the date of my will.

**Section 8.07 Other Definitions**

Except as otherwise provided in my will, terms shall be as defined in the Nevada Revised Statutes as amended after the date of my will and after my death.

**Section 8.08 Survivorship**

For purposes of this will, any beneficiary shall be deemed to have predeceased me if such beneficiary dies within 90 days after the date of my death.

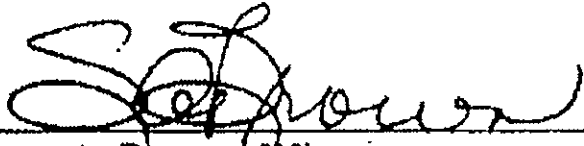
**Section 8.09 Severability**

If any part of this instrument shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

I, MARJORIE T. CONNELL, sign my name to this instrument consisting of 9 pages on January 7, 2008 and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

  
MARJORIE T. CONNELL, Testatrix

Then and there personally appeared the within-named Sharon A. Brown and Josefina C. Jones, who, being duly sworn, depose and say under the penalty of perjury: That they witnessed the execution of the within Will of the within-named Testatrix, MARJORIE T. CONNELL, that the Testatrix subscribed the Will and declared the same to be her Last Will and Testament in their presence; that they thereafter subscribed their names as witnesses in the presence of the Testatrix and in the presence of each other and at the request of the Testatrix; that the Testatrix at the time of the execution of the Will appeared to them to be of full age and of sound mind and memory, and that they make this affidavit at the request of the Testatrix.



Sharon A. Brown, Witness  
900 Rancho Lane  
Las Vegas, NV 89106



Josefina C. Jones, Witness  
900 Rancho Lane  
Las Vegas, NV 89106

# **EXHIBIT 6**

1 **CONS**  
2 SOLOMON DWIGGINS & FREER, LTD.  
3 MARK A. SOLOMON, ESQ.  
4 Nevada State Bar No. 00418  
5 BRIAN K. STEADMAN, ESQ.  
6 Nevada State Bar No. 10771  
7 9060 W. Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: (702) 853-5483  
10 Facsimile: (702) 853-5485  
11 E-mail: [msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)  
12 Email: [bsteadman@sdfnvlaw.com](mailto:bsteadman@sdfnvlaw.com)

13 Attorneys for Eleanor C. Ahern, Petitioner

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 In the Matter of the )  
17 THE W. N. CONNELL AND MARJORIE )  
18 T. CONNELL LIVING TRUST, )  
19 Dated May 18, 1972 )  
20 An Intervivos Irrevocable Trust. )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Case No.  
Department No.  
**Date of Hearing:**  
**Time of Hearing:**

29 **CONSENT TO PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND**  
30 **CONSTRUE AND REFORM TRUST AND WAIVER OF NOTICE**

31 JACQUELINE M. MONTOYA, an interested party in the above-named Trust matter, states  
32 as follows:

- 33 1. I am a contingent income beneficiary of the W. N. CONNELL AND MARJORIE T.  
34 CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust").
- 35 2. I have read the Petition to Assume Jurisdiction Over Trust; Confirm Trustee, and  
36 Construe and Reform Trust (the "Petition") and believe it to be true and correct to the best of my  
37 knowledge.
- 38 3. I hereby consent to the Petition and request that the Court enter an Order approving  
39 the Petition in its entirety.
- 40 4. I hereby waive notice of notice of the hearing on the Petition pursuant to Nevada

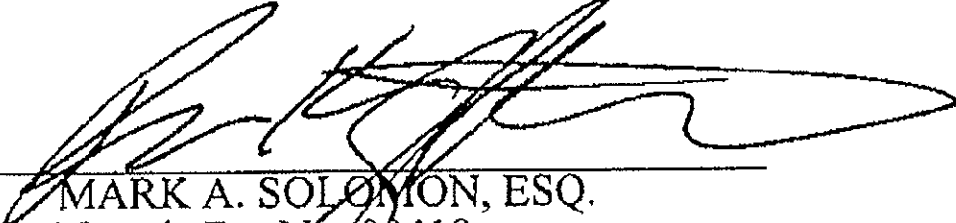


1 Revise Statutes 155.010(4).

2 Dated this 8 day of August, 2009.

3  
4   
5 JACQUELINE M. MONTOYA

6  
7 **SOLOMON DWIGGINS & FREER, LTD.**

8  
9 By:   
10 MARK A. SOLOMON, ESQ.  
11 Nevada Bar No. 00418  
12 BRIAN K. STEADMAN, ESQ.  
Nevada Bar No. 10771  
9060 W. Cheyenne Avenue  
Las Vegas, NV 89129

13 Attorneys for Eleanor C. Ahern, Petitioner

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**EXHIBIT 7**

1 **CONS**  
2 SOLOMON DWIGGINS & FREER, LTD.  
3 MARK A. SOLOMON, ESQ.  
4 Nevada State Bar No. 00418  
5 BRIAN K. STEADMAN, ESQ.  
6 Nevada State Bar No. 10771  
7 9060 W. Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: (702) 853-5483  
10 Facsimile: (702) 853-5485  
11 E-mail: [msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)  
12 Email: [bsteadman@sdfnvlaw.com](mailto:bsteadman@sdfnvlaw.com)

13 Attorneys for Eleanor C. Ahern, Petitioner

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 In the Matter of the	)	Case No.
17 THE W. N. CONNELL AND MARJORIE	)	Department No.
18 T. CONNELL LIVING TRUST,	)	
19 Dated May 18, 1972	)	
20 An Intervivos Irrevocable Trust.	)	<b>Date of Hearing:</b>
	)	<b>Time of Hearing:</b>

21 **CONSENT TO PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND**  
22 **CONSTRUE AND REFORM TRUST AND WAIVER OF NOTICE**

23 KATHRYN A. BOUVIER, an interested party in the above-named Trust matter, states as  
24 follows:

- 25 1. I am a contingent income beneficiary of the W. N. CONNELL AND MARJORIE T.  
26 CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust").
- 27 2. I have read the Petition to Assume Jurisdiction Over Trust; Confirm Trustee, and  
28 Construe and Reform Trust (the "Petition") and believe it to be true and correct to the best of my  
knowledge.
3. I hereby consent to the Petition and request that the Court enter an Order approving  
the Petition in its entirety.
4. I hereby waive notice of notice of the hearing on the Petition pursuant to Nevada

1 Revise Statutes 155.010(4).

2 Dated this 9 day of August, 2009.

3

4

  
KATHRYN A. BOUVIER

5

6

7 **SOLOMON DWIGGINS & FREER, LTD.**

8

9

By: 

MARK A. SOLOMON, ESQ.  
Nevada Bar No. 00418  
BRIAN K. STEADMAN, ESQ.  
Nevada Bar No. 10771  
9060 W. Cheyenne Avenue  
Las Vegas, NV 89129

10

11

12

13 Attorneys for Eleanor C. Ahern, Petitioner

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT B**  
Consent of Jacqueline M. Montoya

1 **CONS**  
2 SOLOMON DWIGGINS & FREER, LTD.  
3 MARK A. SOLOMON, ESQ.  
4 Nevada State Bar No. 00418  
5 BRIAN K. STEADMAN, ESQ.  
6 Nevada State Bar No. 10771  
7 9060 W. Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: (702) 853-5483  
10 Facsimile: (702) 853-5485  
11 E-mail: [msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)  
12 Email: [bsteadman@sdfnvlaw.com](mailto:bsteadman@sdfnvlaw.com)

13 Attorneys for Eleanor C. Ahern, Petitioner

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 In the Matter of the )  
17 THE W. N. CONNELL AND MARJORIE )  
18 T. CONNELL LIVING TRUST, )  
19 Dated May 18, 1972 )  
20 )  
21 An Intervivos Irrevocable Trust. )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Case No.  
Department No.

Date of Hearing:  
Time of Hearing:

29 **CONSENT TO PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND**  
30 **CONSTRUE AND REFORM TRUST AND WAIVER OF NOTICE**

31 JACQUELINE M. MONTOYA, an interested party in the above-named Trust matter, states  
32 as follows:

- 33 1. I am a contingent income beneficiary of the W. N. CONNELL AND MARJORIE T.  
34 CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust").
- 35 2. I have read the Petition to Assume Jurisdiction Over Trust; Confirm Trustee, and  
36 Construe and Reform Trust (the "Petition") and believe it to be true and correct to the best of my  
37 knowledge.
- 38 3. I hereby consent to the Petition and request that the Court enter an Order approving  
39 the Petition in its entirety.
- 40 4. I hereby waive notice of notice of the hearing on the Petition pursuant to Nevada

1 Revise Statutes 155.010(4).

2 Dated this 8 day of August, 2009.

3  
4   
5 JACQUELINE M. MONTOYA

6  
7 **SOLOMON DWIGGINS & FREER, LTD.**

8  
9 By: 

10 MARK A. SOLOMON, ESQ.  
11 Nevada Bar No. 00418  
12 BRIAN K. STEADMAN, ESQ.  
13 Nevada Bar No. 10771  
14 9060 W. Cheyenne Avenue  
15 Las Vegas, NV 89129

16 Attorneys for Eleanor C. Ahern, Petitioner  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT C  
Consent of Kathryn A. Bouvier



1 **CONS**  
 2 SOLOMON DWIGGINS & FREER, LTD.  
 3 MARK A. SOLOMON, ESQ.  
 Nevada State Bar No. 00418  
 4 BRIAN K. STEADMAN, ESQ.  
 Nevada State Bar No. 10771  
 5 9060 W. Cheyenne Avenue  
 Las Vegas, Nevada 89129  
 Telephone: (702) 853-5483  
 Facsimile: (702) 853-5485  
 6 E-mail: [msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)  
 Email: [bsteadman@sdfnvlaw.com](mailto:bsteadman@sdfnvlaw.com)  
 7 Attorneys for Eleanor C. Ahern, Petitioner

8 **DISTRICT COURT**  
 9 **CLARK COUNTY, NEVADA**

In the Matter of the	)	Case No.
	)	Department No.
THE W. N. CONNELL AND MARJORIE	)	
T. CONNELL LIVING TRUST,	)	
Dated May 18, 1972	)	
	)	<b>Date of Hearing:</b>
An Intervivos Irrevocable Trust.	)	<b>Time of Hearing:</b>
	)	

15 **CONSENT TO PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND**  
 16 **CONSTRUE AND REFORM TRUST AND WAIVER OF NOTICE**

17 KATHRYN A. BOUVIER, an interested party in the above-named Trust matter, states as  
 18 follows:

- 19 1. I am a contingent income beneficiary of the W. N. CONNELL AND MARJORIE T.  
 20 CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust").
- 21 2. I have read the Petition to Assume Jurisdiction Over Trust; Confirm Trustee, and  
 22 Construe and Reform Trust (the "Petition") and believe it to be true and correct to the best of my  
 23 knowledge.
- 24 3. I hereby consent to the Petition and request that the Court enter an Order approving  
 25 the Petition in its entirety.
- 26 4. I hereby waive notice of notice of the hearing on the Petition pursuant to Nevada  
 27

1 Revise Statutes 155.010(4).

2 Dated this 9 day of August, 2009.

3

4

  
KATHRYN A. BOUVIER

5

6

7 **SOLOMON DWIGGINS & FREER, LTD.**

8

9 By: 

10

MARK A. SOLOMON, ESQ.  
Nevada Bar No. 00418  
BRIAN K. STEADMAN, ESQ.  
Nevada Bar No. 10771  
9060 W. Cheyenne Avenue  
Las Vegas, NV 89129

11

12

13 Attorneys for Eleanor C. Ahern, Petitioner

14

15

16

17

18

19

20

21

22

23

24

25

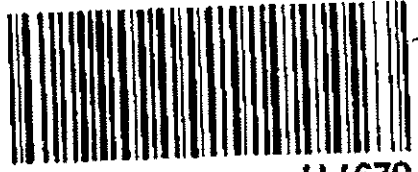
26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT D**  
Notice Of Hearing On Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe  
And Reform Trust and Certificate of Mailing



329717  
P-09-066425-T

FILED

AUG 17 12 38 PM '09

*E. J. ...*  
CLERK OF THE COURT

1 NOTC  
2 MARK A. SOLOMON, ESQ.  
3 Nevada State Bar No. 00418  
4 BRIAN K. STEADMAN, ESQ.  
5 Nevada State Bar No. 10771  
6 SOLOMON DWIGGINS & FREER, LTD.  
7 9060 W. Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: 702.853.5483  
10 Facsimile: 702.853.5485  
11  
12 *Attorneys for ELEANOR C. AHERN, Petitioner*

13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 In the Matter of the ) Case No. : P-09-066425-T  
16 ) PC1 H  
17 THE W. N. CONNELL AND MARJORIE T. )  
18 CONNELL LIVING TRUST, )  
19 Dated May 18, 1972 )  
20 ) Date of Hearing: September 4, 2009  
21 ) Time of Hearing: 9:30 a.m.  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

29 NOTICE OF HEARING ON PETITION TO ASSUME JURISDICTION OVER TRUST;  
30 CONFIRM TRUSTEE; AND CONSTRUE AND REFORM TRUST

31 PLEASE TAKE NOTICE that ELEANOR C. AHERN filed with the court the PETITION TO  
32 ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND CONSTRUE AND REFORM TRUST for  
33 the above-referenced Trust; that a hearing on the Petition has been set for Friday, the 4<sup>th</sup> day of  
34 September, 2009, at the hour of 9:30 A.M., in Department PC1, Family Court, Courtroom 9, of the  
35 above-entitled Court which is located in the Clark County Courthouse, Family Division, 601 North Pecos,  
36 Las Vegas, Nevada 89101, at which time all persons interested in THE W.N. CONNELL AND  
37 MAJORIE T. CONNELL LIVING TRUST dated May 18, 1972, may appear and show cause, if any they  
38 have, why said Petition should not be granted.

MC  
CE23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

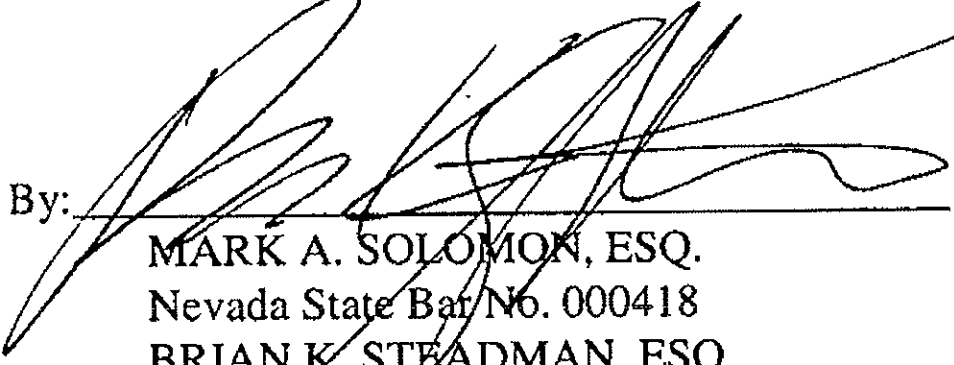
Further details concerning this Petition can be obtained by reviewing the Court file at the Clark County Clerk, Clark County Courthouse, Family Division, or by contacting the Petitioner or the attorney for the Petitioner whose name, address and telephone number is:

SOLOMON DWIGGINS & FREER, LTD.  
MARK A. SOLOMON, ESQ.  
BRIAN K. STEADMAN, ESQ.  
9060 W. Cheyenne Avenue  
Las Vegas, NV 89129

Telephone No. 702.853.5483

DATED this 14 day of August, 2009.

**SOLOMON DWIGGINS & FREER, LTD.**

By: 

MARK A. SOLOMON, ESQ.  
Nevada State Bar No. 000418  
BRIAN K. STEADMAN, ESQ.  
Nevada State Bar No. 10771  
9060 W. Cheyenne Avenue  
Las Vegas, NV 89129  
Telephone: (702) 853-5483  
Facsimile: (702) 853-5485

Attorneys for Petitioner, ELEANOR C. AHERN

FILED

AUG 17 12 30 AM '09

*E. J. ...*  
CLERK OF THE COURT

1 COM  
2 MARK A. SOLOMON, ESQ.  
3 Nevada State Bar No. 00418  
4 BRIAN K. STEADMAN, ESQ.  
5 Nevada State Bar No. 10771  
6 SOLOMON DWIGGINS & FREER, LTD.  
7 9060 W. Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: 702.853.5483  
10 Facsimile: 702.853.5485  
11  
12 *Attorneys for ELEANOR C. AHERN, Petitioner*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 In the Matter of the ) Case No. P-09-066425-T  
12 ) PC1 H  
13 THE W. N. CONNELL AND MARJORIE T. )  
14 CONNELL LIVING TRUST, )  
15 Dated May 18, 1972 )  
16 An Intervivos Irrevocable Trust. ) Date of Hearing: September 4, 2009  
17 ) Time of Hearing: 9:30 a.m.  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

CERTIFICATE OF MAILING

17 I hereby certify that on the 17<sup>th</sup> day of August, 2009, I caused to be served a true and correct copy  
18 of the **PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND CONSTRUE AND**  
19 **REFORM TRUST and NOTICE OF HEARING** for said Petition, by mail using the United States Postal  
20 Service, certified mail, return receipt requested, postage prepaid thereon in a sealed envelope to the  
21 following individuals:  
22

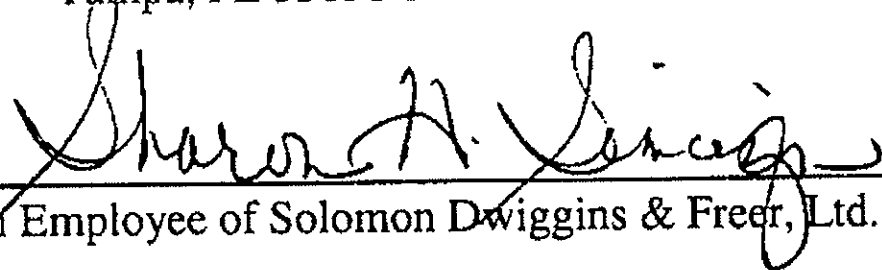
24 Kathryn A. Bouvier  
25 8461 Purple Sage Road  
26 Middleton, ID 83644

Jacqueline M. Montoya  
3385 Maverick Street  
Las Vegas, NV 89108

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Eleanor C. Ahern  
6105 Elton Avenue  
Las Vegas, NV 89107

Shriners Hospitals for Children  
Attn: Legal Department  
P.O. Box 31356  
Tampa, FL 33631-3356

  
An Employee of Solomon Diggins & Freer, Ltd.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT E**  
Order Assuming Jurisdiction Over Trust; Confirm Trustee; And For Construction Of And Reform  
Of Trust Instrument



FILED

2009 SEP -4 P 4: 50

*E. J. ...*  
CLERK OF THE COURT

1 **ORDR**  
2 MARK A. SOLOMON, ESQ.  
3 Nevada State Bar No. 00418  
4 BRIAN K. STEADMAN, ESQ.  
5 Nevada State Bar No. 10771  
6 SOLOMON DWIGGINS & FREER, LTD.  
7 9060 W. Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: 702.853.5483  
10 Facsimile: 702.853.5485

11 *Attorneys for ELEANOR C. AHERN, Petitioner*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 In the Matter of the ) Case No. P-09-066425-T  
15 ) PCI  
16 THE W. N. CONNELL AND MARJORIE T. )  
17 CONNELL LIVING TRUST, )  
18 Dated May 18, 1972 )  
19 ) **Date of Hearing: September 4, 2009**  
20 ) **Time of Hearing: 9:30 a.m.**  
21 An Intervivos Irrevocable Trust. )

22 **ORDER ASSUMING JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND**  
23 **FOR CONSTRUCTION OF AND REFORM OF TRUST INSTRUMENT**

24 The verified Petition of ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL  
25 HARTMAN to assume jurisdiction over THE W. N. CONNELL AND MARJORIE T. CONNELL  
26 LIVING TRUST, dated May 18, 1972 (the "Trust"), and any and all sub-trusts created thereunder, to  
27 confirm ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN as the  
28 Successor Trustee of said trust; and for construction and reform of trust instrument, having come on  
regularly for hearing the 4<sup>th</sup> day of September, 2009; BRIAN K. STEADMAN, ESQ., of the law firm  
SOLOMON DWIGGINS & FREER, LTD. appeared as counsel for the Petitioner; the Court finds that  
due and legal notice of the time and place of hearing of said Petition has been given in the manner

27 **RECEIVED**  
28 required by law; and good cause appearing therefor,  
SEP 04 2009

CLERK OF THE COURT

*u*

1       **IT IS HEREBY ORDERED** that this Court hereby assumes jurisdiction over THE W. N.  
2 CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-  
3 trusts created thereunder, as a proceeding *in rem*;

4       **IT IS HEREBY FURTHER ORDERED** that ELEANOR C. AHERN, f/k/a ELEANOR  
5 MARGUERITE CONNELL HARTMAN be, and hereby is, confirmed and appointed as Successor  
6 Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18,  
7 1972, and any and all sub-trusts created thereunder, with the exception of any trust in which the assets  
8 of Trust No. 3 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May  
9 18, 1972 were appointed by MARJORIE T. CONNELL; and

10       **IT IS HEREBY FURTHER ORDERED** that the dispositive provisions of Trust No. 2 created  
11 under THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972,  
12 are hereby reformed and construed to provide that upon the death of ELEANOR C. AHERN the residue  
13 of Trust No. 2 created under THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST,  
14 dated May 18, 1972, shall be distributed to the heirs of ELEANOR C. AHERN;

15       **IT IS HEREBY FURTHER ORDERED** that it is approved and granted that Sections "E," "F,"  
16 "G," and "H" to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING  
17 TRUST, dated May 18, 1972, is hereby reformed as follows:

18       E.     *Distribution Upon Death of both the Survivor and the Residual Beneficiary.* Upon the  
19 death of both the Survivor and the Residual Beneficiary, the Trustee shall divide the balance  
20 of Trust No. 2 into two equal shares, as follows:

21             1.     One (1) equal share shall be distributed, outright and free of  
22 trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if  
23 she is then living. Subject to Section (F) below, if, as of the date of the Residual  
24 Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said  
25 equal share shall be distributed to JACQUELINE M. MONTOYA's then living  
26 issue, by right of representation. Each share created pursuant to this Section  
27 E(1) of Article Fourth for the benefit of the issue of JACQUELINE M.  
28 MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the

1 benefit of such issue ("Beneficiary") to be held by the Trustee, administered and  
2 further distributed pursuant to Section G of this Article Fourth.

3 2. One (1) equal share shall be distributed, outright and free of  
4 trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is  
5 then living. Subject to Section (F) below, if, as of the date of the Residual  
6 Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal  
7 share shall be distributed to KATHRYN A. BOUVIER's then living issue, by  
8 right of representation. Each share created pursuant to this Section E(2) of  
9 Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be  
10 held as a separate trust ("Beneficiary's Share") for the benefit of such issue  
11 ("Beneficiary") to be held by the Trustee, administered and further distributed  
12 pursuant to Section G of this Article Fourth.

13 3. In the event that both JACQUELINE M. MONTOYA and  
14 KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having  
15 failed to exercise the testamentary power of appointment pursuant to Section (F)  
16 below, then the balance shall be distributed in accordance with Article Eleventh  
17 herein.

18 F. Power of Appointment. In the event that JACQUELINE M. MONTOYA  
19 or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the  
20 death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's  
21 equal share to or in trust for such one or more persons or organizations and in  
22 such manner and proportions as such beneficiary may appoint by her will or  
23 revocable trust making specific reference to this general power of appointment.

24 G. Management of Beneficiary's Shares. Until a Beneficiary has attained  
25 the age of twenty-one (21) years, the Trustee may distribute to or apply for the  
26 benefit of such Beneficiary so much of the income or principal from such  
27 Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion,  
28 is necessary to provide for his or her health, education, maintenance, and  
support. In addition, the Trustee may make the following discretionary  
distributions:

1. Investment in Business. The Trustee may, in the Trustee's sole  
discretion, apply the principal or income of such Beneficiary's Share for the  
purpose of investing in a business or profession operated by, or to be operated  
by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustee's sole  
discretion, apply the income and principal of such Beneficiary's Share for the  
purpose of purchasing one or more residences to be owned by the Beneficiary's  
Share and used and occupied by such Beneficiary and his or her family,  
including a primary residence, seasonal residence or otherwise. In the case of  
any residence owned by the Beneficiary's Share, and in the Trustee's sole

1 | discretion, such Beneficiary may occupy and use such residence without rent or  
2 | any other financial obligation for the payment of the taxes, insurance payments,  
3 | maintenance costs and other expenses required in order to keep such residences  
4 | in proper repair and free of liens.

4 | 3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole  
5 | discretion, may grant such Beneficiary the right to the use, possession and  
6 | enjoyment of all of the tangible personal property held by such Beneficiary's  
7 | Share, without financial obligation for the use of such property.

7 | 4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining  
8 | the age of twenty-one (21), the Trustee shall distribute to him or her, outright  
9 | and free of trust, the remaining principal and accumulated income of that  
10 | Beneficiary's Share. If the Beneficiary has already reached the age of  
11 | twenty-one (21) at the time of the creation of the Beneficiary's Share, then the  
12 | Trustee shall, upon making the division, distribute, outright and free of trust, to  
13 | the Beneficiary the balance of such Beneficiary's Share.

12 | 5. Distribution Upon Death of Beneficiary. If any Beneficiary shall  
13 | die prior to the complete distribution of such Beneficiary's Share, then all of the  
14 | remaining assets in such Beneficiary's Share shall be distributed to or in trust  
15 | for such one or more persons or organizations and in such manner and  
16 | proportions as such Beneficiary may appoint by his or her will or revocable  
17 | trust making specific reference to this general power of appointment. To the  
18 | extent that the Beneficiary does not exercise this general power of appointment,  
19 | the remainder of such Beneficiary's Share shall be distributed to the issue of  
20 | such Beneficiary in equal shares by right of representation and each such share  
21 | shall be held, managed and further distributed by the Trustee as a Beneficiary's  
22 | Share under Section G of Article Fourth. If the Beneficiary shall die failing to  
23 | exercise this general power of appointment without leaving issue, then the  
24 | Beneficiary's Share shall be distributed pro rata to the other Beneficiary's  
25 | Shares then being administered by the Trustee hereunder, and if none, then to  
26 | the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

21 | 6. Distributions to or for the Benefit of Minors or Persons Under  
22 | Disability. Whenever the Trustee is given the power or discretion to make  
23 | distributions to or for the benefit of a minor or other beneficiary under a  
24 | disability, the Trustee, in the Trustee's sole discretion, may make distributions  
25 | to a minor or other person under disability by making distributions to the  
26 | guardian or conservator of his or her estate and/or person, as the Trustee shall  
27 | determine, or to any suitable person with whom he or she resides, or the Trustee  
28 | may apply distributions directly for such beneficiary's benefit, or the Trustee  
29 | may make distributions to any duly established custodian for any minor  
30 | beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to  
31 | Minors Act of any State. Any custodian acting on behalf of a minor beneficiary  
32 | shall have the power to bind the beneficiary with respect to all matters

1 concerning the Trust. The Trustee, in its sole discretion, may also make  
2 distributions directly to a minor if, in the Trustee's judgment, such minor is of  
3 sufficient age and maturity to receive such distribution and spend the money  
4 properly. The previous language of this paragraph 6 notwithstanding, if a  
5 beneficiary is, or would be eligible for need-based government benefits, the  
6 Trustee shall hold the funds for such beneficiary in a "special needs trust" as  
7 that term is understood for need-based government planning. By "special needs  
8 trust" is meant that the Trustee shall have the sole and absolute discretion to  
9 make distributions for the benefit of such beneficiary in a manner that improves  
10 the quality of life for the beneficiary but will not make the beneficiary ineligible  
11 for need-based government benefits. The provisions of the Paragraph 6 are  
12 intended to supplant need-based government benefits, but not to replace them  
13 and all terms of this Paragraph 6 shall be so interpreted for all purposes.

9 H. Maximum Term for Trusts. Notwithstanding any other provision of this  
10 Trust, unless terminated earlier under other provisions of this agreement, each  
11 trust created under this agreement shall terminate upon the expiration of the  
12 longest period that property may be held in trust under this agreement without  
13 violating the applicable rule against perpetuities, or similar applicable rule. At  
14 that time, the remaining trust property shall vest in and be distributed to the  
15 persons entitled to receive distributions of income hereunder.

14 **IT IS HEREBY FURTHER ORDERED** that THE W. N. CONNELL AND MARJORIE T.  
15 CONNELL LIVING TRUST, dated May 18, 1972, is hereby reformed and construed to provide that the  
16 beneficiaries of the Trust shall serve as Successor Trustees upon the death, incapacity, or resignation of  
17 ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN; and

19 **IT IS HEREBY FURTHER ORDERED** that it is approved and granted that Article Twelfth of  
20 THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, is  
21 hereby reformed as follows:

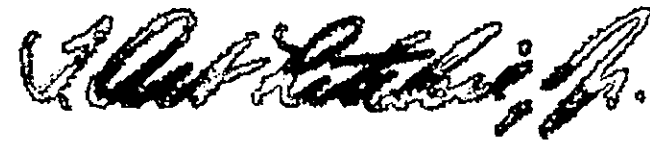
22 Twelfth: Successor Trustee. In the event of the death or incapacity of  
23 either Grantor, the Survivor shall continue to serve as the sole Trustee of all of  
24 the trusts created hereunder. Upon the death or incapacity of the Survivor, the  
25 Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR  
26 MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts  
27 created hereunder, or in the event that she is unable or unwilling to serve in the  
28 said capacity, then the Grantors nominate and appoint JACQUELINE M.  
MONTROYA to serve in the said capacity. In the event that JACQUELINE M.  
MONTROYA is unable or unwilling to act as successor Trustee, then KATHRYN  
A. BOUVIER shall act as successor Trustee. No successor Trustee shall have

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*any responsibility for the acts or omissions of any prior trustees 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.*

*In the event that none of the trustees named in this Article Twelfth are able or willing to serve, then the majority of adult income beneficiaries of the Trust shall select a successor Trustee.*

**DATED** this 4<sup>th</sup> day of September, 2009.



DISTRICT COURT JUDGE



Respectfully submitted,

SOLOMON DWIGGINS & FREER, LTD.

By 

MARK A. SOLOMON, ESQ.  
Nevada State Bar No. 00418  
BRIAN K. STEADMAN, ESQ.  
Nevada State Bar No. 10771  
9060 W. Cheyenne Avenue  
Las Vegas, Nevada 89129

Attorneys for Eleanor C. Ahern, Trustee

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT F  
Notice Of Entry Of Order and Certificate of Mailing

ORIGINAL

FILED

2009 SEP -8 P 3:14

*E. Steadman*  
CLERK OF THE COURT

1 NEOJ  
2 MARK A. SOLOMON, ESQ.  
3 Nevada State Bar No. 00418  
4 BRIAN K. STEADMAN, ESQ.  
5 Nevada State Bar No. 10771  
6 SOLOMON DWIGGINS & FREER, LTD.  
7 9060 W. Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: 702.853.5483  
10 Facsimile: 702.853.5485  
11 E-mail: [msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)  
12 E-mail: [bsteadman@sdfnvlaw.com](mailto:bsteadman@sdfnvlaw.com)  
13 Attorneys for ELEANOR C. AHERN, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

12 In the Matter of the ) Case No. P-09-066425-T  
13 ) PC1  
14 THE W. N. CONNELL AND MARJORIE T. )  
15 CONNELL LIVING TRUST, )  
16 Dated May 18, 1972 )  
17 ) Date of Hearing: September 4, 2009  
18 ) Time of Hearing: 9:30 a.m.  
19 An Intervivos Irrevocable Trust. )  
20 )

NOTICE OF ENTRY OF ORDER

21 PLEASE TAKE NOTICE that an ORDER ASSUMING JURISDICTION OVER TRUST; CONFIRM  
22 TRUSTEE; AND FOR CONSTRUCTION OF AND REFORMATION OF TRUST INSTRUMENT, was entered in  
23 the instant case by this Court on September 4, 2009, a copy of which is attached hereto.

24 DATED this 8<sup>th</sup> day of September, 2009.

25 SOLOMON DWIGGINS & FREER, LTD.

26 By *[Signature]*  
27 MARK A. SOLOMON, ESQ.  
28 Nevada State Bar No. 00418  
BRIAN K. STEADMAN, ESQ.  
Nevada State Bar No. 10771

Attorneys for Eleanor C. Ahern, Trustee

RECEIVED  
SEP 08 2009  
CLERK OF THE COURT



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF MAILING**

I hereby certify that on the 8<sup>th</sup> day of September, 2009, I caused to be served a true and correct copy of the **NOTICE OF ENTRY OF ORDER**, by mail using the United States Postal Service, by first class mail, postage prepaid thereon in a sealed envelope to the following individuals:

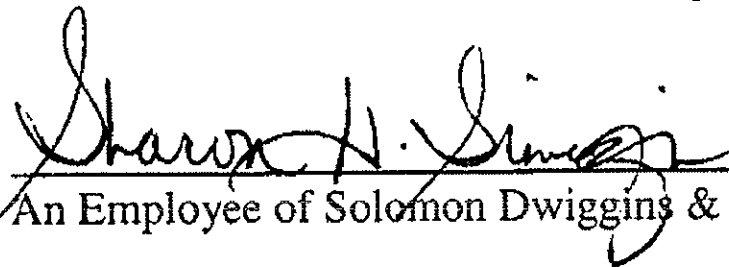
Kathryn A. Bouvier  
8461 Purple Sage Road  
Middleton, ID 83644

Jacqueline M. Montoya  
3385 Maverick Street  
Las Vegas, NV 89108

Eleanor C. Ahern  
6105 Elton Avenue  
Las Vegas, NV 89107

Shriners Hospitals for Children  
Attn: Legal Department  
P.O. Box 31356  
Tampa, FL 33631-3356

via Certified Mail Return Receipt Requested

  
An Employee of Solomon Dwiggin & Freer, Ltd.

1 **ORDER**  
2 MARK A. SOLOMON, ESQ.  
3 Nevada State Bar No. 00418  
4 BRIAN K. STEADMAN, ESQ.  
5 Nevada State Bar No. 10771  
6 SOLOMON DWIGGINS & FREER, LTD.  
7 9060 W. Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: 702.853.5483  
10 Facsimile: 702.853.5485

11 *Attorneys for ELEANOR C. AHERN, Petitioner*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 In the Matter of the ) Case No. P-09-066425-T  
15 ) PC1  
16 THE W. N. CONNELL AND MARJORIE T. )  
17 CONNELL LIVING TRUST, )  
18 Dated May 18, 1972 )  
19 ) **Date of Hearing: September 4, 2009**  
20 An Intervivos Irrevocable Trust. ) **Time of Hearing: 9:30 a.m.**  
21 )

22 **ORDER ASSUMING JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND**  
23 **FOR CONSTRUCTION OF AND REFORM OF TRUST INSTRUMENT**

24 The verified Petition of ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL  
25 HARTMAN to assume jurisdiction over THE W. N. CONNELL AND MARJORIE T. CONNELL  
26 LIVING TRUST, dated May 18, 1972 (the "Trust"), and any and all sub-trusts created thereunder, to  
27 confirm ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN as the  
28 Successor Trustee of said trust; and for construction and reform of trust instrument, having come on  
regularly for hearing the 4<sup>th</sup> day of September, 2009; BRIAN K. STEADMAN, ESQ., of the law firm  
SOLOMON DWIGGINS & FREER, LTD. appeared as counsel for the Petitioner; the Court finds that  
due and legal notice of the time and place of hearing of said Petition has been given in the manner  
required by law; and good cause appearing therefor,

**FILED**

2009 SEP -4 P 4: 50

*E. J. [Signature]*  
CLERK OF THE COURT

1       **IT IS HEREBY ORDERED** that this Court hereby assumes jurisdiction over THE W. N.  
2 CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-  
3 trusts created thereunder, as a proceeding *in rem*;

4       **IT IS HEREBY FURTHER ORDERED** that ELEANOR C. AHERN, f/k/a ELEANOR  
5 MARGUERITE CONNELL HARTMAN be, and hereby is, confirmed and appointed as Successor  
6 Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18,  
7 1972, and any and all sub-trusts created thereunder, with the exception of any trust in which the assets  
8 of Trust No. 3 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May  
9 18, 1972 were appointed by MARJORIE T. CONNELL; and

10       **IT IS HEREBY FURTHER ORDERED** that the dispositive provisions of Trust No. 2 created  
11 under THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972,  
12 are hereby reformed and construed to provide that upon the death of ELEANOR C. AHERN the residue  
13 of Trust No. 2 created under THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST,  
14 dated May 18, 1972, shall be distributed to the heirs of ELEANOR C. AHERN;

15       **IT IS HEREBY FURTHER ORDERED** that it is approved and granted that Sections "E," "F,"  
16 "G," and "H" to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING  
17 TRUST, dated May 18, 1972, is hereby reformed as follows:

18       E.     *Distribution Upon Death of both the Survivor and the Residual Beneficiary.* Upon the  
19 death of both the Survivor and the Residual Beneficiary, the Trustee shall divide the balance  
20 of Trust No. 2 into two equal shares, as follows:

21             1.     *One (1) equal share shall be distributed, outright and free of*  
22 *trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if*  
23 *she is then living. Subject to Section (F) below, if, as of the date of the Residual*  
24 *Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said*  
25 *equal share shall be distributed to JACQUELINE M. MONTOYA's then living*  
26 *issue, by right of representation. Each share created pursuant to this Section*  
27 *E(1) of Article Fourth for the benefit of the issue of JACQUELINE M.*  
28 *MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the*

1 benefit of such issue ("Beneficiary") to be held by the Trustee, administered and  
2 further distributed pursuant to Section G of this Article Fourth.

3 2. One (1) equal share shall be distributed, outright and free of  
4 trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is  
5 then living. Subject to Section (F) below, if, as of the date of the Residual  
6 Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal  
7 share shall be distributed to KATHRYN A. BOUVIER's then living issue, by  
8 right of representation. Each share created pursuant to this Section E(2) of  
9 Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be  
10 held as a separate trust ("Beneficiary's Share") for the benefit of such issue  
11 ("Beneficiary") to be held by the Trustee, administered and further distributed  
12 pursuant to Section G of this Article Fourth.

13 3. In the event that both JACQUELINE M. MONTOYA and  
14 KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having  
15 failed to exercise the testamentary power of appointment pursuant to Section (F)  
16 below, then the balance shall be distributed in accordance with Article Eleventh  
17 herein.

18 F. Power of Appointment. In the event that JACQUELINE M. MONTOYA  
19 or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the  
20 death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's  
21 equal share to or in trust for such one or more persons or organizations and in  
22 such manner and proportions as such beneficiary may appoint by her will or  
23 revocable trust making specific reference to this general power of appointment.

24 G. Management of Beneficiary's Shares. Until a Beneficiary has attained  
25 the age of twenty-one (21) years, the Trustee may distribute to or apply for the  
26 benefit of such Beneficiary so much of the income or principal from such  
27 Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion,  
28 is necessary to provide for his or her health, education, maintenance, and  
support. In addition, the Trustee may make the following discretionary  
distributions:

1. Investment in Business. The Trustee may, in the Trustee's sole  
discretion, apply the principal or income of such Beneficiary's Share for the  
purpose of investing in a business or profession operated by, or to be operated  
by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustee's sole  
discretion, apply the income and principal of such Beneficiary's Share for the  
purpose of purchasing one or more residences to be owned by the Beneficiary's  
Share and used and occupied by such Beneficiary and his or her family,  
including a primary residence, seasonal residence or otherwise. In the case of  
any residence owned by the Beneficiary's Share, and in the Trustee's sole

1 discretion, such Beneficiary may occupy and use such residence without rent or  
2 any other financial obligation for the payment of the taxes, insurance payments,  
3 maintenance costs and other expenses required in order to keep such residences  
in proper repair and free of liens.

4 3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole  
5 discretion, may grant such Beneficiary the right to the use, possession and  
6 enjoyment of all of the tangible personal property held by such Beneficiary's  
Share, without financial obligation for the use of such property.

7 4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining  
8 the age of twenty-one (21), the Trustee shall distribute to him or her, outright  
9 and free of trust, the remaining principal and accumulated income of that  
10 Beneficiary's Share. If the Beneficiary has already reached the age of  
11 twenty-one (21) at the time of the creation of the Beneficiary's Share, then the  
Trustee shall, upon making the division, distribute, outright and free of trust, to  
the Beneficiary the balance of such Beneficiary's Share.

12 5. Distribution Upon Death of Beneficiary. If any Beneficiary shall  
13 die prior to the complete distribution of such Beneficiary's Share, then all of the  
14 remaining assets in such Beneficiary's Share shall be distributed to or in trust  
15 for such one or more persons or organizations and in such manner and  
16 proportions as such Beneficiary may appoint by his or her will or revocable  
17 trust making specific reference to this general power of appointment. To the  
18 extent that the Beneficiary does not exercise this general power of appointment,  
19 the remainder of such Beneficiary's Share shall be distributed to the issue of  
20 such Beneficiary in equal shares by right of representation and each such share  
shall be held, managed and further distributed by the Trustee as a Beneficiary's  
Share under Section G of Article Fourth. If the Beneficiary shall die failing to  
exercise this general power of appointment without leaving issue, then the  
Beneficiary's Share shall be distributed pro rata to the other Beneficiary's  
Shares then being administered by the Trustee hereunder, and if none, then to  
the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

21 6. Distributions to or for the Benefit of Minors or Persons Under  
22 Disability. Whenever the Trustee is given the power or discretion to make  
23 distributions to or for the benefit of a minor or other beneficiary under a  
24 disability, the Trustee, in the Trustee's sole discretion, may make distributions  
25 to a minor or other person under disability by making distributions to the  
26 guardian or conservator of his or her estate and/or person, as the Trustee shall  
27 determine, or to any suitable person with whom he or she resides, or the Trustee  
28 may apply distributions directly for such beneficiary's benefit, or the Trustee  
may make distributions to any duly established custodian for any minor  
beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to  
Minors Act of any State. Any custodian acting on behalf of a minor beneficiary  
shall have the power to bind the beneficiary with respect to all matters

1 concerning the Trust. The Trustee, in its sole discretion, may also make  
2 distributions directly to a minor if, in the Trustee's judgment, such minor is of  
3 sufficient age and maturity to receive such distribution and spend the money  
4 properly. The previous language of this paragraph 6 notwithstanding, if a  
5 beneficiary is, or would be eligible for need-based government benefits, the  
6 Trustee shall hold the funds for such beneficiary in a "special needs trust" as  
7 that term is understood for need-based government planning. By "special needs  
8 trust" is meant that the Trustee shall have the sole and absolute discretion to  
9 make distributions for the benefit of such beneficiary in a manner that improves  
10 the quality of life for the beneficiary but will not make the beneficiary ineligible  
11 for need-based government benefits. The provisions of the Paragraph 6 are  
12 intended to supplant need-based government benefits, but not to replace them  
13 and all terms of this Paragraph 6 shall be so interpreted for all purposes.

14 H. Maximum Term for Trusts. Notwithstanding any other provision of this  
15 Trust, unless terminated earlier under other provisions of this agreement, each  
16 trust created under this agreement shall terminate upon the expiration of the  
17 longest period that property may be held in trust under this agreement without  
18 violating the applicable rule against perpetuities, or similar applicable rule. At  
19 that time, the remaining trust property shall vest in and be distributed to the  
20 persons entitled to receive distributions of income hereunder.

21 **IT IS HEREBY FURTHER ORDERED** that THE W. N. CONNELL AND MARJORIE T.  
22 CONNELL LIVING TRUST, dated May 18, 1972, is hereby reformed and construed to provide that the  
23 beneficiaries of the Trust shall serve as Successor Trustees upon the death, incapacity, or resignation of  
24 ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN; and

25 **IT IS HEREBY FURTHER ORDERED** that it is approved and granted that Article Twelfth of  
26 THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, is  
27 hereby reformed as follows:

28 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 C. AHERN, f/k/a 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 JACQUELINE M.  
MONTROYA to serve in the said capacity. In the event that JACQUELINE M.  
MONTROYA is unable or unwilling to act as successor Trustee, then KATHRYN  
A. BOUVIER shall act as successor Trustee. No successor Trustee shall have

1 any responsibility for the acts or omissions of any prior trustees and no duty to  
2 audit or investigate the accounts or administration of any such trustee, nor,  
3 unless in writing requested so to do by a person having a present or future  
4 beneficial interest under a trust created hereunder, any duty to take action or  
5 obtain redress for breach of trust.

6 In the event that none of the trustees named in this Article Twelfth are  
7 able or willing to serve, then the majority of adult income beneficiaries of the  
8 Trust shall select a successor Trustee.

9 DATED this 4<sup>th</sup> day of September, 2009.

10 ~~T. ARTHUR RICHES JR.~~

11 DISTRICT COURT JUDGE



12 Respectfully submitted,

13 SOLOMON DWIGGINS & FREER, LTD.

14 By 

15 MARK A. SOLOMON, ESQ.

16 Nevada State Bar No. 00418

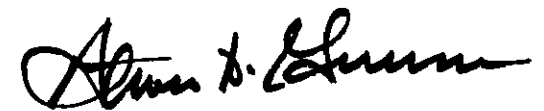
17 BRIAN K. STEADMAN, ESQ.

18 Nevada State Bar No. 10771

19 9060 W. Cheyenne Avenue

20 Las Vegas, Nevada 89129

21 Attorneys for Eleanor C. Ahern, Trustee



CLERK OF THE COURT

**CERT**

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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

10 In the Matter of  
11 THE W. N. CONNELL AND MARJORIE T. CONNELL  
LIVING TRUST,  
12 Dated May 18, 1972

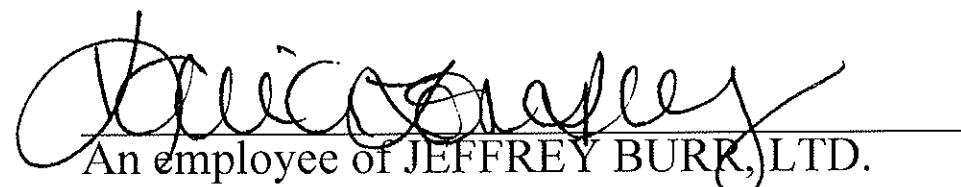
Case No. P-09-066425-T  
Dept. No. XXVI (26)  
Date of Hearing: May 13, 2014  
Time of Hearing: 9:00 a.m.

13  
14 An Inter Vivos Irrevocable Trust.

15 **CERTIFICATE OF MAILING REGARDING OPPOSITION OF ELEANOR C. AHERN TO**  
16 **JACQUELINE M. MONTOYA'S PETITION FOR CONSTRUCTION AND EFFECT OF**  
17 **PROBATE COURT ORDER**

18 I hereby certify that on the 12th day of May, 2014, I did email to Joseph J. Powell, Esquire,  
19 as indicated below, and I did email and deposit in the U.S. Post Office at Las Vegas, Nevada,  
20 postage prepaid, a copy of the above and foregoing Opposition of Eleanor C. Ahern to Jacqueline  
21 M. Montoya's Petition For Construction And Effect Of Probate Court Order to each person as  
22 indicated below, addressed as follows:

23 JOSEPH J. POWELL, Esquire  
The Rushforth Firm. Ltd.  
24 P.O. Box 371655  
Las Vegas, NV 89137-1655  
25 [probate@rushforthfirm.com](mailto:probate@rushforthfirm.com)

26   
27 An employee of JEFFREY BURR, LTD.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Probate -  
Trust/Conservatorships**

**COURT MINUTES**

May 13, 2014

P-09-066425-T

In the Matter of the Trust of:  
The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972

**May 13, 2014**

**9:00 AM**

**All Pending Motions**

**HEARD BY:** Sturman, Gloria

**COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Linda Denman

**COURT RECORDER:** Kerry Esparza

**PARTIES:**

- John Mugan, Attorney for Petitioner Ahern
- Joseph Powell, Attorney for Executrix Montoya
- Michael Lum, Attorney for Petitioner Ahern
- Whitney Warnick, Attorney for Executrix Montoya

<b>JOURNAL ENTRIES</b>
------------------------

**- HEARING ON PETITION FOR CONSTRUCTION AND EFFECT OF PROBATE COURT ORDER . . . . MOTION OF ELEANOR C. AHERN TO CONTINUE MAY 13, 2014 HEARING ON PETITIONER FOR CONSTRUCTIVE AND EFFECT OF PROBATE COURT ORDER OF JACQUELINE M. MONTOYA . . . .** Argument by counsel on the effect of the Probate Commissioner's ruling in P080595-E finding a will contest and the Demand for Jury Trial and whether this case should proceed on the declaratory relief sought. Following argument, COURT STATED ITS FINDINGS that the declaratory motions and the bench trial set on the August trial stack in this case could be mooted depending on the outcome of the will contest. COURT ORDERED Motion to Continue GRANTED; all declaratory motions in both the trust case and the probate case will be continued as status checks; bench trial VACATED and RESET AS STATUS CHECK; and jury trial SET for will contest. COURT FURTHER ORDERED P-09-066425-T and P- -14-080595-E COORDINATED FOR DISCOVERY PURPOSES ONLY.

12/04/2014 AT 11:00AM P-09-066425-T; STATUS CHECK for Petition for Construction and Effect of Probate Court Order . . . . STATUS CHECK for Motion to Dismiss Counterclaims of Eleanor C. Ahern . . . . STATUS CHECK for Petition for Determination of Construction and Interpretation of Language Relating to Trust No. 2 . . . . STATUS CHECK for Bench Trial/Jury Trial Resetting

PRINT DATE:	05/13/2014	Page 1 of 3	Minutes Date: May 13, 2014
-------------	------------	-------------	----------------------------

12/04/2014 AT 11:00AM P-14-080595-E; CALENDAR CALL  
1/12/2015 AT 9:00AM TRIAL STACK

Mr. Mugan to prepare proposed Order; opposing counsel to review as to form and content.

**JACQUELINE M. MONTOYA'S AMENDED NOTICE OF HEARING ON 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 ADDENDUM TO SAID PETITION.** . . . . Argument by counsel as to whether or not the 65% lease income should be paid to beneficiaries of Marjorie T. Connell's Living Trust or continued to be sequestered now that the trial has been moved to the first of next year. Counsel argued resulting repercussions to either party depending on whether Mrs. Connell's will is found to be or not be valid. Following the Court's indication the Court was to allow distribution, counsel then argued about the posting of a bond or other personal security. COURT ORDERED Motion to Compel Distribution GRANTED IN PART; distribution to begin as of this month with the June check; bond or alternate security posted upon motion as parties agree. Upon further argument, COURT STATED NO FINDING was being made on burden of proof or any other issues raised by counsel not set for hearing.

Mr. Powell to prepare proposed Order; Mr. Mugan to review as to form and content.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

*Canceled: May 27, 2014 9:00 AM Petition - HM  
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated  
Denman, Linda  
Sturman, Gloria  
Esparza, Kerry  
RJC Courtroom 03H*

*Canceled: July 17, 2014 11:00 AM  
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated  
Denman, Linda  
Sturman, Gloria  
RJC Courtroom 03H  
Esparza, Kerry*

*Canceled: July 18, 2014 11:00 AM*

*Canceled: August 11, 2014 9:00 AM  
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated  
Denman, Linda*

PRINT DATE:	05/13/2014	Page 2 of 3	Minutes Date:	May 13, 2014
-------------	------------	-------------	---------------	--------------

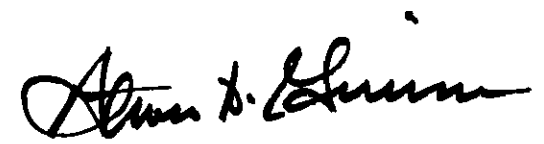
*Sturman, Gloria*  
*RJC Courtroom 03H*  
*Esparza, Kerry*

December 04, 2014 11:00 AM  
Denman, Linda  
Sturman, Gloria  
RJC Courtroom 03H  
Esparza, Kerry

December 04, 2014 11:00 AM Status Check  
Denman, Linda  
Sturman, Gloria  
RJC Courtroom 03H  
Esparza, Kerry

December 04, 2014 11:00 AM Status Check  
Denman, Linda  
Sturman, Gloria  
RJC Courtroom 03H  
Esparza, Kerry

December 04, 2014 11:00 AM Status Check  
Denman, Linda  
Sturman, Gloria  
RJC Courtroom 03H  
Esparza, Kerry



CLERK OF THE COURT

1 **TRAN**

2

3

**EIGHTH JUDICIAL DISTRICT COURT  
CIVIL/CRIMINAL DIVISION  
CLARK COUNTY, NEVADA**

4

5

6

7

IN THE MATTER OF THE TRUST OF )  
W.N. CONNELL AND MARJORIE T. CONNELL ) CASE NO. P-09-066425-T  
LIVING TRUST DATED MAY 18, 1972 )  
 ) DEPT. NO. XXVI  
 )

8

9

10

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

11

TUESDAY, MAY 13, 2014

12

**TRANSCRIPT RE:  
ALL PENDING MOTIONS**

13

14

15 **APPEARANCES:**

16

For Petitioner Eleanor C. Ahern: JOHN R. MUGAN, ESQ.  
MICHAEL D. LUM, ESQ.

17

18

For Executrix Jacqueline M. Montoya: JOSEPH J. POWELL, ESQ.  
WHITNEY B. WARNICK, ESQ.

19

20

**ALSO PRESENT:** JACQUELINE M. MONTOYA  
KATHRYN BOUVIER

21

22

23

24

RECORDED BY: Kerry Esparza, Court Recorder

1 CLARK COUNTY, NEVADA

TUESDAY, MAY 13, 2014

2 PROCEEDINGS

3 (PROCEEDINGS BEGAN AT 11:11:20 A.M.)

4 THE COURT: Okay, so then Connell. Will everybody state their appearances  
5 for the record, please.

6 MR. POWELL: Good morning, Your Honor. Joey Powell appearing on  
7 behalf of Jacqueline Montoya, who is present in the courtroom today, along with her  
8 sister, Kathryn Bouvier.

9 MR. WARNICK: Whitney Warnick also representing the same clients, Your  
10 Honor.

11 MR. MUGAN: John Mugan, Your Honor, appearing for trustee Eleanor  
12 Ahern; 10690.

13 MR. LUM: Michael Lum, Your Honor, Bar No. 12997, on behalf of Ahern.

14 THE COURT: Okay. So we saved you for last because you've got the most,  
15 okay. So have we -- any view of the most efficient way to deal with these, because  
16 we've got several things on. Just so we're clear on the record what the calendar  
17 shows, we have a hearing on petition for construction and effect of a probate court  
18 order; a motion to dismiss the counterclaims of Eleanor Ahern; an amended notice  
19 of hearing on petition to compel trustee to distribute accrued income and future  
20 income received from oil and gas leases. We have a motion to continue this  
21 hearing on the constructive effect of the probate court order. So probably the  
22 motion to continue the motion for construction, and then if we don't do the motion  
23 for construction, move into the motion for construction. The other two I think are  
24 somewhat contained issues. Okay?

1 MR. MUGAN: All right.

2 THE COURT: Motion to continue.

3 MR. MUGAN: Thank you, Your Honor. On the motion to continue, as we set  
4 out in our pleading, finally a probate -- petition for probate of the will was filed in late  
5 March in Nevada here for Marjorie Connell, who died back in 2009, and a hearing  
6 was set on April 18th. My client objected to it. The commissioner declared a formal  
7 will contest, ordered the issuance of citations, and so that action is just starting and  
8 is pending. And it would seem to me that that action has to be disposed of prior  
9 to the petition on construction. Quite frankly, it could have been on the motion to  
10 dismiss the counterclaims, too, but we kind of went back and forth on that, so we  
11 left it out.

12 The cornerstone or one of the cornerstones of their argument in the  
13 declaratory judgment action is that the last will and testament of Marjorie T. Connell  
14 exercised a testamentary power of appointment and appointed Trust No. 3, which  
15 they claim that the disputed interest was owned by, to the M.T.C. Connell Trust.  
16 And that, like I said, is a cornerstone to the petition for declaratory judgment.  
17 That is part of their burden of proof that in fact not only that sixty-five percent was  
18 purportedly in this Trust No. 3, which under the terms of the original trust if the  
19 testamentary power of appointment is not exercised, then it goes to my client,  
20 but they have to prove the validity of that will that supposedly exercised the  
21 testamentary power of appointment and appointed it to the M.T.C. Living Trust,  
22 which -- that's the basis of their action in the petition for declaratory judgment.

23 So I don't believe they can meet their burden of proof by proving  
24 the validity of that will until that will contest is disposed of. And obviously judicial

1 economy, if you look at the two of them, that one has to be disposed of first. I'm  
2 not adverse to clients paying attorney fees, especially my own or Mr. Powell's or  
3 Mr. Warnick's, but I don't want to see my client or any other client pay attorney fees  
4 that they don't need to. And so until the will contest is taken care of, I don't want  
5 my client or their clients to be paying all kinds of fees in the petition for declaratory  
6 judgment which may be rendered moot by the outcome of the will contest.

7 THE COURT: Okay.

8 MR. POWELL: Your Honor, that's the issue in this case in general is  
9 burden of proof, who has the burden of proof. The will -- the presumption is the  
10 will is presumed valid until it's shown not to be valid. It meets all the requirements  
11 necessary under Nevada law. The Restatement Third says a will is validly executed  
12 if it is in writing and it is signed by the testator and by a specified number of attesting  
13 witnesses under procedures provided by applicable law. My will is valid, Mr.  
14 Warnick's will is valid, your will is valid, until it's shown not to be valid. So this  
15 presumption that it's up to us to have -- it's our burden of proof to establish the  
16 will is valid or else it's not valid -- incorrect. That's shifting a burden of proof that  
17 opposing counsel has the obligation to show. That's not our burden of proof.

18 THE COURT: Well, but I think the commissioner in saying -- deferring the  
19 will contest because they've come up with these affidavits of these experts who  
20 say that we don't think that's a valid will, we think it's forged or something -- some  
21 document was forged; it isn't clear which one. In this probate, the will case, is -- the  
22 estate case is 080595, so that's the estate case. The commissioner got -- I mean,  
23 it seems like this is a dual track and the issue is are we going to have mixed results,  
24 because you've got the commissioner over there doing what the commissioner is

1 doing and we still have this issue over here and is there the potential for inconsistent  
2 results, because what happens -- And then what happens if the commissioner holds  
3 a will contest and somebody doesn't like the outcome of the will contest and then  
4 you appeal that? I mean, it just seems to me that we're going about this backwards.

5 MR. POWELL: Your Honor, it's actually in front of you because they've  
6 declared a -- they've requested a jury trial, so that matter is actually before you.

7 THE COURT: So it's not the commissioner's anymore?

8 MR. POWELL: It's not the commissioner's. No, Your Honor. No.

9 THE COURT: You know, none of this stuff counts in my statistics. Probate,  
10 they don't count it. Awesome.

11 MR. POWELL: Free work. You don't get credit for it.

12 THE COURT: I wish you guys would try your cases.

13 MR. POWELL: Yeah.

14 THE COURT: We can't get civil attorneys to try their cases. Okay.

15 MR. POWELL: Your Honor, and I go back to my premise, is, again, and I'll  
16 use the best analogy I know how to. If I execute my will, how is my will not valid?  
17 My will doesn't have to be offered for probate. Neither does yours. There's no  
18 requirement that you offer it for probate. The only requirement in Nevada law is you  
19 lodge the will with the court clerk, the district court clerk. That was done. That was  
20 done, and this is the kicker of this. That was done right after Mrs. Connell passed.  
21 It was in '09 that Mrs. Connell passed. We're now in the year 2014. Ms. Ahern had  
22 absolutely every right as the daughter, if she wanted to contest the validity of that  
23 will, she herself had complete standing to offer that in for admission to probate and  
24 then to file a contest because of it.



1           Now, the other super relevant fact here to this as well, Your Honor, is  
2 that the same day that that will was executed was also the restatement of the M.T.C.  
3 Living Trust. Ms. Ahern received in 2009 a three hundred thousand dollar bequest  
4 under that trust. Talk about inconsistent positions. I think we've got an inconsistent  
5 position here clearly. And the other fact of this matter --

6           THE COURT: But I guess my question is do we need somehow, whether it's  
7 all over here, or it probably should be consolidated so that when we file stuff -- you  
8 file it in the Family Court Odyssey system and they've got the P cases and the E  
9 cases. Everybody's P, and they've got the E cases and the T cases and then you  
10 file them both and it's a mess for us. There is also an A case or arguably should be  
11 an A case here --

12           MR. POWELL: Yeah.

13           THE COURT: -- on that other issue and it just -- so we need to make sure  
14 we're all filing in one document -- in one docket. So it just -- I'm trying to figure out  
15 how we stage this in a way that makes the most sense, because I don't know if --  
16 I understand what Mr. Mugan is saying, but I'm not sure he's -- it's really a stay.  
17 It seems to me that it's more a -- you have to stage this because to the extent that  
18 there's an issue with the will that they have raised, it's a will contest, to the jury trial  
19 -- like I said, we should expect you guys to try your cases. We can accommodate  
20 you getting a jury trial scheduled as soon as you can be ready on that issue  
21 because if the jury says, oh, we really think that that's a forged will, then that throws  
22 this whole thing into turmoil. So -- And what's happening in Texas and all that?

23           MR. POWELL: Well, Your Honor --

24           THE COURT: So it's just all a big mess.

1 MR. POWELL: Well, if I can address --

2 THE COURT: So we need to figure out a way to make this the most efficient  
3 so that we can get this resolved, because the whole point, as I've said a couple  
4 times today, is to get these things resolved so people get their money.

5 MR. POWELL: And that's exactly what we're here to ask you to do, is if  
6 you would like to level this playing field and put back the status quo the way that  
7 this was, and again, going to burden, the thing I think that I can't stress enough  
8 to you is this is not a beneficiary versus trustee dispute. This is beneficiary versus  
9 beneficiary. You just so happen to have one beneficiary who's also wearing the  
10 trustee hat and who has her hands wrapped around the throats of the other  
11 beneficiaries, saying I am choking you off because I am not giving you your  
12 distributions.

13 Now, the thing that bothers me tremendously about this, and you've  
14 seen this today, trustees coming in asking for petition for instructions. That was  
15 an alternative here that Ms. Ahern had and should have utilized to say I believe  
16 in my beneficiary capacity that I have an interest to X amount. Likewise, the other  
17 converse and going by thirty-three years of precedent of a 65/35 distribution of  
18 this oil income, is that that was the precedent, so I need instructions, Your Honor,  
19 as to what I should do here when we have competing claims. That didn't happen.

20 You have a beneficiary who has decided, hey, I can gain a tremendous  
21 amount of leverage here and starve out these other people. And that's what's  
22 happened here. They have not received a distribution. The last distribution was  
23 June of 2013, Your Honor. Now with this will contest, this could go out a year. Who  
24 knows when it's going to go out. Fine. If we want to level the playing field, let them

1 take all the time they need. I suspect, though, we're then going to start going really  
2 quickly if we go back to the status quo and the level playing field, which is fair and  
3 equitable and what needs to be done here. I just have a feeling that some of the  
4 delay issues are suddenly going to go really fast now.

5           So, Your Honor, that's what we're asking for. And if they want to play  
6 this, well, you can't resolve this until then, fine. Again, it's their burden of proof. All  
7 the black and white evidence here suggests for thirty-three years there was a 65/35  
8 distribution. The one key piece of evidence here, Your Honor, is we have a 1980  
9 Texas estate inheritance tax return. Why don't we have the 706? Well, because  
10 it's thirty-four years after the fact of what was done in 1980. If you also read as  
11 well the Texas estate tax return, it says on there: Use the numbers reflected in the  
12 Form 706. Opposing counsel has said you can't produce the 706. You can't show  
13 anything. You can't establish your case. Why exactly would beneficiaries of a trust  
14 who are never trustees, why exactly would they have a copy of the Form 706 in their  
15 possession? That's nonsensical.

16           THE COURT: Well, we're talking here about continuing the petition for  
17 construction specifically because there's a will contest. So I'm trying to figure out  
18 what's the most efficient way to address these things in the proper order. I'm not --  
19 It seems important that this motion needs to be argued, but I guess the question is  
20 does it in fact need to be only after the will contest has been concluded, or can they  
21 -- can all this be done -- can we just get this done?

22           MR. POWELL: It sure can be because the thing is --

23           THE COURT: On a track -- and it may be dual track.

24           MR. POWELL: Yeah.

1 THE COURT: I mean, it may have to be triple track because we have a whole  
2 new issue here on these other claims that technically are A claims.

3 MR. POWELL: Right.

4 THE COURT: So how best, how most efficiently can we do this so that we  
5 don't have inconsistent results? Because if we get all the way through the original  
6 petition that was filed here and we still have the will contest going on, and what  
7 happens if the jury says, oh, that's an invalid will, and the whole thing has like wasted  
8 our time? So how do we make this the most efficient way? And then we'll get to the  
9 other issue, which is making the distributions in the interim, but how do we get to our  
10 most efficient method of resolving these, now that we have -- there's a will contest,  
11 here's our experts who are going to say that there's forgeries here. The jury has got  
12 to hear that. And how do we -- how do we make this the most efficient?

13 I'm not necessarily convinced it's a stay. It seems to me that it needs  
14 to be some sort of a plan for how we can alleviate all of these issues in the most  
15 efficient -- and as Mr. Mugan has pointed out, why are we wasting a lot of money on  
16 some of these issues? Is there some more efficient way to do it? Is it staging this or  
17 is it doing it all at once? How do we do this in the most efficient way so that we don't  
18 have inconsistent results and we reach a satisfactory conclusion so everybody knows  
19 what their rights are and all the issues have been litigated? Because everybody  
20 deserves their chance to have that figured out. How is it most efficient? Mr. Mugan  
21 has technically termed this a stay. I'm not sure a stay is really what he's talking  
22 about. So it might be more of a staging of --

23 MR. MUGAN: If I may --

24 THE COURT: -- of each of these issues.

1 MR. MUGAN: If I may, Your Honor, and I apologize for the language or words  
2 that I selected. In my limited intellect I guess in my mind we have the cart in front of  
3 the horse.

4 THE COURT: And that -- yeah, that's my concern.

5 MR. MUGAN: That's the problem. We have the cart in front of the horse.  
6 And why make this Court go through this --

7 THE COURT: What's the most efficient way to do this?

8 MR. MUGAN: -- and why make all the clients go through this, and if the jury  
9 comes back and says the will is invalid, we're not -- in my humble opinion we're not  
10 thrown into turmoil. This party is over. It's done.

11 THE COURT: What I'm saying, if we go forward with what Mr. -- what's  
12 already on file, we could reach an inconsistent result because the jury --

13 MR. MUGAN: Exactly. That's my concern.

14 THE COURT: And so my question is, do we have to stay it or do we stage it,  
15 or is it, depending on the outcome of the will contest and the whole thing's gone --  
16 I mean, how is it most efficient to reach the results that we -- to go through this thing  
17 in an orderly fashion?

18 MR. MUGAN: Well, from my perspective --

19 THE COURT: And we're really staying the other case pending that review.  
20 Can you go ahead and do whatever you need to do on that so that you're ready,  
21 okay, now it's time for our next phase and, you know, in a couple months we'll just  
22 do that?

23 MR. MUGAN: On the doctrine of judicial economy, attorney fees, costs,  
24 etcetera, it would seem to me that you have to go forward with the will contest case

1 and get a determination on that and then go forward with the petition for declaratory  
2 judgment, because the will contest case can render everything in the petition for  
3 declaratory judgment moot. If we try and do it on dual tracks, we're violating the  
4 doctrine of judicial economy, we're wasting the Court's potential time, and I know the  
5 Court has a lot of things to do, as evidenced this morning. We're wasting attorney  
6 fees, costs, etcetera. We've got three high-powered law firms involved here. And  
7 why we would do that -- like I said, we have the cart in front of the horse. And the  
8 cart in front of the horse is not my client's fault.

9           When this woman died in 2009, Marjorie Connell, her nominated  
10 successor trustee was Mr. Powell's client, Jackie Montoya. She was the successor  
11 trustee of the M.T.C. Living Trust. Why would my client file a will she's going to  
12 contest? Petition -- you know, I mean, why would she do that? What they did  
13 was they waited until 2012, three years after this woman died, to file in the wrong  
14 jurisdiction down in Texas. And as we've stated before, they filed down in Texas  
15 under false representations to the court. They didn't even give my client notice.  
16 And I suspect they were hoping that the time for contesting that will would pass and  
17 then they could proceed with the petition for declaratory judgment. But my client  
18 learned of it and contested it.

19           They now, five years after this woman died, finally bring the petition to  
20 probate the will here in Nevada, which always was the proper jurisdiction and venue.  
21 They don't bring it until the end of March. They specifically in their pleadings request  
22 that it be admitted to probate and have the Court determine that it's a valid will.  
23 That was what their petition asked for. And the Probate Commissioner denied it in  
24 its entirety and said -- declared a will contest and ordered the issuance of citations.

1 I could see a little bit if we didn't have a jury demand, you know,  
2 because you'd be making both decisions. But even then, I think you may be running  
3 up attorney fees and costs, you may be wasting the Court's time. So I think we've  
4 got the cart in front of the horse. We have to change it. We have to put the horse,  
5 the will contest, the issue of the validity of the will, which supposedly exercised the  
6 testamentary power of appointment first, and that's a crucial element to their case;  
7 the second case. And so until we know that result, we're all operating in the blind  
8 and wasting time and money.

9 MR. WARNICK: Your Honor, may I put my two bits in here?

10 THE COURT: Okay.

11 MR. WARNICK: Your Honor, this proceeding started back in September of  
12 last year when we filed a petition to have the Court determine who was entitled to the  
13 income from these Texas oil properties. That's what started this whole proceeding.  
14 At that time opposing counsel and his client never came forward and said, well, hey,  
15 wait a minute, we're entitled to this income because the will of Mrs. Connell was  
16 invalid. They never even raised that issue; never asserted that that was even an  
17 issue in this case. And we didn't know it was going to be an issue until we got later  
18 on in this case and we could see what they were doing. And what they were doing is  
19 raising points here and there to try to delay this thing and try to cause more expense,  
20 try to keep any income from going to our clients and trying to force a situation where  
21 they would starve them out.

22 They're the ones that indicated after this proceeding had been going  
23 for several months that they were going to make a claim that the will was invalid.  
24 We never knew they were going to challenge the will. The will was valid on its face.

1 A copy was sent to their client, Mrs. Ahern. She knew that the power of appointment  
2 had been exercised. She knew exactly what was happening, and she did nothing for  
3 the last five years. Then all of a sudden in 2012 she stops the income going to our  
4 clients. For absolutely no explainable reason she just stops the income going to our  
5 clients. Our clients, one of whom is a trustee of the M.T.C. Trust, had a duty to come  
6 before this Court and say wait a minute, this is not right. Why on earth are you doing  
7 that? Let's get an interpretation then of the trust. If you're going to say that our  
8 clients aren't entitled to sixty-five percent of the income that's been paid for thirty-four  
9 years, if you're going to say just on the basis of your interpretation of something that  
10 happened thirty-four years ago, then let's have the Court make a decision and we'll  
11 decide what happens.

12 So we started with this case and we proceeded along. Your Honor  
13 was ready to have a hearing on this matter last February. What happened at the  
14 last minute? They come in and allege several counterclaims, frivolous counter-  
15 claims to delay this matter and to force it to be carried over. We could see what  
16 was happening each step of the way. We could see that they're probably going to  
17 challenge this will. And so we said we'd better go ahead and submit it to probate  
18 here and make sure we remove that leg so when we got down the road here and  
19 had a trial in this matter, an evidentiary hearing, they wouldn't be using that as an  
20 excuse.

21 Now, I agree, Your Honor, that there is an issue with respect to the will  
22 that has to be resolved, but I respectfully submit that if we're going to do that first we  
23 need to make sure that money is going to our clients like it should be under that trust,  
24 because that was happening for thirty-four years, there's a record of that happening



1 for thirty-four years. They have the burden to challenge that and to overturn that.  
2 And until they can show that there's any semblance of a case that they have, we  
3 respectfully submit that that should continue. We should continue that income so  
4 that each party has the same situation they were in before they stopped the income.  
5 And then if we have to take and deal with the will issue first, we can do that.

6 THE COURT: Now, who's going to be litigating the will contest?

7 MR. WARNICK: Who's going to be litigating it? Mr. Powell and I on one side  
8 and I guess them on the other side.

9 THE COURT: Okay. So I guess my question is, what do you think would  
10 be an appropriate amount of time to litigate the will? Because it's a jury trial, it's  
11 preparing for a jury trial, to litigate the will.

12 MR. WARNICK: We're ready to go.

13 MR. POWELL: We can go today if you want.

14 MR. WARNICK: We're ready to go. We've got the witnesses who saw the  
15 will, who can testify that she signed the will. We've got about ten, eleven witnesses  
16 who know what the intent of the decedent was. They've got a couple of phony  
17 forgery experts that we can deal with pretty easily, but we're ready to go.

18 THE COURT: Well, they have their experts. So --

19 MR. POWELL: A convicted felon, just so you know. And I can produce the  
20 law for you right now and I can also show you where this purported expert has been  
21 discredited on many, many occasions, over-stating qualifications, all these --

22 THE COURT: All right.

23 MR. POWELL: But, Your Honor, just real quickly if I could. And again, this  
24 goes back to --

1 MR. MUGAN: Your Honor, I don't mean to interrupt Mr. Powell --

2 MR. POWELL: No.

3 MR. MUGAN: -- but I'd like the opportunity to respond one at a time.

4 MR. POWELL: Do so after I'm done.

5 MR. MUGAN: Two to one here.

6 THE COURT: Exactly.

7 MR. MUGAN: Mr. Warnick, the only name -- the only pleading his name  
8 appears on is the counterclaims.

9 THE COURT: Right. That's why --

10 MR. MUGAN: Not on this case.

11 THE COURT: That's why I specifically --

12 MR. MUGAN: And we seem to be mixing motions.

13 THE COURT: That's why I specifically asked -- Exactly. That's my concern.  
14 I'm trying to stay focused on the motion to continue. So on the motion to continue,  
15 that's why I asked who's going to litigate the will contest, who's going to be counsel  
16 there. Mr. Warnick indicates he thinks that they'd be ready right away. And I would  
17 just ask you then, Mr. Mugan, when do you think you would be ready on the will  
18 contest, because it's a jury trial. So, I mean, I'm not kidding. We had a bunch of  
19 stuff fall off. A case got stayed in June. We could accommodate you, you know,  
20 the week of June 16th.

21 MR. MUGAN: There's no way that we can be ready there, Your Honor, in a  
22 will contest case. We have witnesses in California. And frankly speaking, based on  
23 the discovery responses we have gotten to date -- we sent out interrogatories and  
24 requests to produce in this case. And for example, they argue how this is irreparable

1 damages, their financial detriment. And so we ask, okay, we know you --

2 THE COURT: I just want to stay focused on the will contest.

3 MR. MUGAN: Okay. Well, I'm just telling you --

4 THE COURT: How much time --

5 MR. MUGAN: -- I think we're going to have an absolute war in this discovery  
6 based on the responses we've gotten. We asked for a copy of Marjorie T. Connell's  
7 706. They say objection; irrelevant. Two days later we get a pleading with  
8 supposedly part of the copy of their 706, even though they just refused to give it  
9 to us because it's irrelevant. You know, and if we're going to play those games,  
10 it's going to take a long time. Long time. There's no way we're going to be ready  
11 in June.

12 MR. POWELL: Your Honor, of course I wouldn't expect them to be ready for  
13 a year, a year and a half; whatever. Again, it goes back to our main point. They are  
14 starving out our clients.

15 THE COURT: Well, we'll deal with that in a minute.

16 MR. POWELL: Okay.

17 THE COURT: We'll deal with that in a minute.

18 MR. POWELL: And that's the issue. But --

19 THE COURT: But we've got a will contest we have to deal with, and I think  
20 that he's raised a valid point, which is you would be buying a problem if the jury were  
21 to come to a different conclusion after we've done all this. It makes perfect sense to  
22 me that we have to deal with the will contest first. How quickly can we deal with the  
23 will contest? How much time do you realistically think you need to do the discovery?  
24 It's a jury trial. So how much time do you realistically think you need to be ready on

1 that issue? We'll get to the other issues here in a minute.

2 MR. POWELL: Again, you already know our response, so I think you're  
3 directing it to Mr. Mugan.

4 THE COURT: You said you're ready. You're ready with your witnesses now.

5 MR. POWELL: Yes.

6 THE COURT: Got it. Okay. But I mean, I don't know if you're going to --  
7 you may not want to take any depositions.

8 MR. POWELL: We don't. We don't. We want to just go.

9 MR. MUGAN: We want to take depositions. Quite frankly, you know --

10 THE COURT: And so this is why it gets -- where he was talking about how  
11 -- because it makes sense to call this a stay or it just makes sense -- if somebody  
12 is going to be deposed, can they please just be deposed once?

13 MR. MUGAN: Right. Yeah, that's fine.

14 THE COURT: On all of the issues.

15 MR. MUGAN: Sure.

16 THE COURT: And, you know, why do you need these people coming back  
17 for -- Okay, well, we're going to talk to you today about this issue. It's a waste of  
18 everybody's time. It's not efficient.

19 MR. MUGAN: Well, my suggestion would have been when we got to that  
20 point is that the parties stipulate on the record that any depositions used in the  
21 first case can be used in the second case.

22 THE COURT: Absolutely. So just, that's why I said, I don't think it's  
23 necessary to call it a stay, that we're going to stay this litigation. So about how  
24 much time do you think you need for discovery? Six months for discovery?

1 MR. MUGAN: I would say a minimum of six months, Your Honor. We're  
2 more than glad to try and push. I am really, really concerned as to what has gone  
3 on in this case so far and the answers and the responses that I just got last Tuesday  
4 to our discovery, which I thought was boilerplate. You know, if we're going to have  
5 to be running to the Discovery Commissioner, you know, every time. We can't even  
6 agree on the language of orders. That's why we finally just submitted competing  
7 orders.

8 THE COURT: Okay.

9 MR. POWELL: That's totally accurate. We can't agree because we can't  
10 even agree with documents and what they say. We can't even agree. If you'll  
11 notice, too, everything is purported. Purported. In their last filing, the purported  
12 attorneys were Mark Solomon and Brian Steadman. Purported. Everything is a  
13 forgery. Everything is this. Your Honor, if I could --

14 THE COURT: All right. So if we can then, if six months is an appropriate  
15 amount of time, do you think you could be ready for trial -- it's a jury trial, I keep  
16 stating that. You know, it's a little different. In January? We've got a stack that  
17 starts January 12th.

18 MR. POWELL: Absolutely.

19 THE COURT: January 12th.

20 MR. POWELL: Whenever we can go, let's go.

21 MR. MUGAN: We will gladly push everything, but again, I want to go on the  
22 record, just like I went on the record the first hearing -- and I'll give Mr. Warnick the  
23 benefit of the doubt because he's a late-comer. The first hearing we were here,  
24 November 12th --

1 MR. POWELL: Talk to the judge.

2 MR. MUGAN: -- November 12th, I specifically advised the Court and co-  
3 counsel that if our motion to dismiss was denied, that we were filing counterclaims.  
4 I said I have to give you the heads up, because that may enter into your thinking.

5 THE COURT: All right.

6 MR. MUGAN: I was trying to disclose that, you know. So I don't want to  
7 get into that again.

8 THE COURT: Okay. So we've got a hearing on the will contest. The  
9 commissioner put it on for May 27th. Do we need that hearing?

10 MR. POWELL: I don't think so.

11 THE COURT: If we're setting our scheduling now --

12 MR. POWELL: No.

13 THE COURT: We can take you off on May 27th?

14 MR. POWELL: Absolutely.

15 THE COURT: We're going to schedule the jury trial for the January 2015  
16 stack. You can do your discovery plan, what you've got. If you need to go to the  
17 Discovery Commissioner, great. If not, just submit what you were -- specifically  
18 because that's a jury trial. That's -- the estate case, P-080595, we'll coordinate  
19 it with this one. But it's a will contest, so it's going on its own track as a jury trial  
20 on that issue. We've taken the hearing on the 27th off. We've dealt with that.

21 I appreciate Mr. Mugan's argument that it would lead to a duplication  
22 of effort to go forward with the other issue first and potentially get an inconsistent  
23 result on the will contest. So it doesn't make any sense. It should be staged. But  
24 I think the discovery should be coordinated in both our 66425 case and the 80595

1 case. So it should all be coordinated. You know, under the local rules there's a  
2 distinction between coordinating and consolidating. You can coordinate things, but  
3 they aren't technically consolidated because -- I should be really clear, the 80595  
4 is a will contest and it is a jury trial. We have to treat that differently.

5 We'll try it separately and we'll try it first, but I think we need to  
6 proceed forward with our preparations. I appreciate the argument that it may lead  
7 to a duplication of efforts, but I just can't see causing any delay because I don't see  
8 why we can't go in the very next stack if you survive the will contest, go right into the  
9 next issue one year after we thought we were going to. So that would just be my  
10 view.

11 MR. POWELL: I guess the clarification I would have is what -- you seem  
12 to be indicating, if I'm not mistaken, and again, please clarify if I'm not interpreting  
13 correctly, but you seem to be indicating that there is a presumption that the will is  
14 not valid until it's declared to be valid.

15 THE COURT: No. Absolutely not.

16 MR. POWELL: Okay. Okay, then --

17 THE COURT: They've got a right to prove their will contest.

18 MR. POWELL: Sure.

19 THE COURT: That's what I'm saying.

20 MR. POWELL: And again, they have the burden of proof, obviously, so --

21 THE COURT: Absolutely.

22 MR. POWELL: Yeah, so --

23 THE COURT: I'm not shifting the burden of proof.

24 MR. POWELL: Yeah. Okay.

1 THE COURT: They've raised the will contest. They've got the right to litigate  
2 that.

3 MR. POWELL: Sure.

4 THE COURT: Because I just can't see in the event that you get inconsistent  
5 results --

6 MR. POWELL: Yeah.

7 THE COURT: -- if you go forward with what we've already got on, you go  
8 forward but you get inconsistent results from a jury -- it's a jury.

9 MR. POWELL: Sure. No, I understand. I understand.

10 THE COURT: They're people who work at Walmart and are willing to take  
11 the time off. I mean, come on, it's a jury.

12 MR. POWELL: Yeah. No, I --

13 THE COURT: It could be an entirely different result.

14 MR. POWELL: Understood. Understood. And that again goes back to our  
15 point, which I'm guessing you want to address now --

16 THE COURT: Yes.

17 MR. POWELL: -- which again is the fairness, the fairness, the fairness and  
18 the fairness.

19 THE COURT: That's the next issue.

20 MR. POWELL: Yes.

21 THE COURT: So we've dealt with that issue. We're going to take the  
22 hearing on the 27th off because we've dealt with all the issues having to do with  
23 getting the jury trial.

24 (The clerk confers with the Court)



1 THE COURT: Correct. That would have to go -- that's on the August 11th,  
2 2014 stack.

3 THE CLERK: And I saw -- (indiscernible) --

4 THE COURT: Is there -- The jury demand I think in the -- because on the --  
5 in the T case, which is the 066425 case -- this is the kind of stuff we get hung up on,  
6 there is apparently a jury demand, and I think that's Mr. Warnick's. You did it?

7 MR. POWELL: No.

8 THE COURT: Or Mr. Muga, you did that. That's on -- I think on the  
9 counterclaim.

10 MR. POWELL: We are -- No. That's been for everything, Your Honor.  
11 That's a problem, too, which -- We'll be filing a written objection.

12 THE COURT: That was always -- it was always a bench trial.

13 MR. POWELL: It is. You're correct.

14 THE COURT: No, I think it's because of the counterclaims, that there's a  
15 jury demand on the counterclaims, which to me --

16 MR. POWELL: They did not distinguish that.

17 THE COURT: -- which to me that always should be -- that's an A case.

18 MR. POWELL: That's an A case.

19 THE COURT: It's like a civil.

20 MR. POWELL: That's an A case.

21 THE COURT: It's like a civil issue.

22 MR. POWELL: Yes, Your Honor.

23 THE COURT: But it was filed as a counterclaim, so that's why I'm saying,  
24 I don't think -- it doesn't sound like the will contest can be ready by August because

1 it's a whole different issue. I understand you feel you're ready to go, but it's a whole  
2 different issue. And if you can't be ready on the will contest by August, when we  
3 already have this thing scheduled, it seems to me that it's all got to be pushed back,  
4 and that's the January date. I don't see any way we can go forward in August.  
5 You can't. Because that's my concern is that you can end up with an inconsistent  
6 verdict. Whatever I were to decide in the bench trial could all end up being mooted  
7 if the jury comes in and says, oh, we don't think it's a valid will.

8 MR. POWELL: I understand. But --

9 THE COURT: And it's a jury.

10 MR. POWELL: No, I totally understand what your logic and your point is and  
11 all that. The thing, again, I would submit is that you have a five year gap between  
12 when the will could have been offered --

13 THE COURT: Right.

14 MR. POWELL: -- by -- again --

15 THE COURT: I understand that.

16 MR. POWELL: -- by the purported contestant if there was a problem. That  
17 was in her possession with a letter from the attorney saying, by the way, there's an  
18 exercise of the power of appointment over Trust No. 3. Yet, there was continuing  
19 to act and there was distributions made that way.

20 THE COURT: Right. I mean, if you have other -- if you have --

21 MR. POWELL: And again, I realize this is something I'll brief for you --

22 THE COURT: Right.

23 MR. POWELL: -- as basically even before the contest --

24 THE COURT: Oh, yeah.

1 MR. POWELL: -- because we have the right, obviously, to file our motions  
2 and all those.

3 THE COURT: Absolutely.

4 MR. POWELL: Yeah.

5 THE COURT: I'm not saying -- I'm not --

6 MR. POWELL: Oh, I --

7 THE COURT: I'm not saying it's about --

8 MR. POWELL: Yeah, yeah. No, I totally understand.

9 THE COURT: I'm not prejudging this outcome at all. Like I said, it's a jury  
10 trial.

11 MR. POWELL: Yeah, yeah, I totally understand. And I mean, again, they  
12 have, like anybody who asks when they come to do estate planning, can anybody  
13 contest this? Unfortunately, yes, because the doors of the court are open to  
14 anybody --

15 THE COURT: Oh, absolutely.

16 MR. POWELL: -- and you can do whatever you want to do. So I get that.  
17 Understood.

18 THE COURT: So we have the bench trial which -- and we have to deal with,  
19 you know, we've got the whole other issue which were going to get to here in a  
20 minute, but the -- that's going to have to be vacated. And so we'll just put it on  
21 for being reset -- (indiscernible). Maybe you're successful, maybe you get the will  
22 contest dismissed. We've got a date and you could have the bench trial.

23 MR. POWELL: Right. And just to clarify --

24 THE COURT: So we'll move it all to that date in January.

1 MR. POWELL: And again, assuming we level the playing field and we  
2 have fairness here. We're okay with they want to take -- take as long as they want.  
3 If they want to play that game, they can do whatever they choose to do. That's fine.  
4 The one thing I do just want to clarify because I think you're confused is they have  
5 requested, despite the fact that you were ready to go, you are the trier of fact for  
6 this petition for declaratory judgment, they have now asked without distinction --  
7 they asked for a jury trial, so they're trying to remove you and they want that matter  
8 decided by a jury as well. Inappropriate because --

9 THE COURT: Well, you know, you can always move to strike a jury demand  
10 if it's not filed timely because it's already scheduled for trial, but the problem that we  
11 have -- what we have is that they've raised these counterclaims which they may be  
12 entitled to a jury trial on because those were not previously on the record.

13 MR. POWELL: And like you said, that's an A case, so yeah, I don't disagree  
14 with that.

15 THE COURT: So that's the issue. So that's where it kind of breaks down for  
16 me is, you know, if it's already been set for trial and it's set for a bench trial and you  
17 afterwards file a demand for a jury, that's untimely --

18 MR. POWELL: Um-hm.

19 THE COURT: -- and you can move to strike the bench trial --

20 MR. POWELL: And we will.

21 THE COURT: I mean, move to -- a jury demand.

22 MR. POWELL: And that's what I just wanted to clarify for you for the record  
23 is we will be submitting a written objection to that.

24 THE COURT: Right.

1 MR. POWELL: But to clarify for your purposes, they are not simply limiting  
2 a request for a jury to the A matters, the counterclaims, they have asked for  
3 basically everything. So I just want to clarify for you --

4 THE COURT: Okay.

5 MR. POWELL: -- that is their current position, which we object to orally,  
6 and I'm going to be filing a written response.

7 THE COURT: And they're entitled to argue why --

8 MR. POWELL: Exactly.

9 THE COURT: -- the whole thing should be.

10 MR. POWELL: Exactly. Exactly.

11 THE COURT: So, it needs to be briefed.

12 MR. POWELL: Again, just clarifying for --

13 THE COURT: It needs to be briefed.

14 MR. POWELL: Yeah. Understood.

15 THE COURT: Understood. Okay, it needs to be briefed.

16 MR. POWELL: Understood.

17 THE COURT: That's all I'm saying.

18 MR. POWELL: Yeah.

19 THE COURT: Then, so it's clear, we'll move the -- we're going to vacate  
20 the March -- the May 27th date hearing. We don't need that because we're setting  
21 the trial now. The will contest -- The hearing on petition for determination of  
22 construction and interpretation of language relating to Trust No. 2. So, I mean --

23 MR. POWELL: That's basically --

24 THE COURT: Do we need that hearing? Because all --

1 MR. POWELL: Well, no. If you're going to -- if you're saying that everything  
2 is getting pushed off, that would be just like the petition for today. That would be  
3 the same thing. So, yeah, I mean, basically you can extend that, the same thing,  
4 if you'd like, because it's the same -- it goes to the same heart of the issue, which  
5 is the declaratory judgment issue.

6 THE COURT: Okay. I guess here's my question, is on what we've got  
7 pending, because we've -- our calendar was a status check in the estate case.

8 MR. POWELL: That's the bench trial. Yeah.

9 THE COURT: That's on May 27th. There's another hearing on May 27th,  
10 though, and that was in this case, the trust case.

11 MR. POWELL: Yeah.

12 THE COURT: So what about that hearing?

13 MR. POWELL: That's the one you just referenced.

14 THE COURT: Right.

15 MR. POWELL: Yeah.

16 THE COURT: Do you want to have that hearing?

17 MR. POWELL: Well, no, because I think we're going to run into the same  
18 issue we just did with today's petition.

19 THE COURT: Okay.

20 MR. POWELL: They're going to do a motion to continue. And so that's what  
21 I'm just saying is it's all related. It's all inter-related to the underlying petition, which  
22 is that, so.

23 THE COURT: Okay. So this -- the hearing -- the petition today and the  
24 petition that was scheduled for the 27th should be continued to -- for what, status

1 check on the same -- at the same time as the jury trial? So you don't lose them  
2 and they don't like fall off and don't ever get resolved. I had people coming in  
3 today saying things never got resolved because they got shipped over here from  
4 the Probate Commissioner. I mean, we have to keep them on the calendar or  
5 master calendar loses them. And we never know that they have not been decided  
6 because there's no way for us to know. So in order to keep this on, the petition,  
7 which would be for construction and effect of the probate court order, that's the  
8 one that's being --

9 MR. POWELL: That was today.

10 THE COURT: That's the one today.

11 MR. POWELL: Yeah.

12 THE COURT: It's being moved. Those are going to be moved then to be  
13 determined at or after the jury trial that we're setting on the will contest. So they  
14 stay on calendar and we can reset them then based on the outcome of the jury  
15 trial, because they may or may not be relevant; may or may not need to be heard.

16 MR. POWELL: I mean, they're relevant to the -- again, to the bench trial  
17 on the underlying petition, the declaratory petition for judgment.

18 THE COURT: Right.

19 MR. POWELL: So that's what they relate to.

20 THE COURT: Okay. And that's the bench trial which is 8/11, which we'll  
21 continue to the same stacked trail, just so we've got -- it needs to be reset. So --  
22 because those issues still are out there and if they fall off -- if they fall off the  
23 calendar, master calendar, if you drop it, it's vacated, you know, the whole thing  
24 has to be re-noticed to get it back on the master calendar. So we need to continue

1 those things.

2 MR. POWELL: Okay.

3 THE COURT: So when are we continuing them to? I just think -- my  
4 suggestion would be we continue all those petitions to the same time as the will  
5 contest and then depending on the outcome of the will contest, they can be set.

6 MR. MUGAN: I would agree, Your Honor. I think they have to be kept on  
7 status check. You know, otherwise they're going to fall through the cracks.

8 THE COURT: Right. So they have to stay on for status check.

9 MR. MUGAN: I think they have to stay on the status check. You know, we  
10 want to save attorney fees and stuff. Even on the counterclaims we're willing to put  
11 those on hold, even though it's kind of a separate and distinct matter, we're willing  
12 to move that, you know, to January also. We're going to coordinate the discovery  
13 anyway. And really, the only thing I think we have is the second petition to  
14 distribute.

15 THE COURT: Right.

16 MR. MUGAN: Just to try and make it easy for the Court and for --

17 THE COURT: Right. And so I don't know, then, Mr. Warnick -- What I hear  
18 Mr. Mugan suggesting is that we would continue your motion. And maybe -- maybe  
19 not necessarily to that date, but maybe to do some discovery --

20 MR. WARNICK: No, I agree, Your Honor. I think if, for instance, we win the  
21 jury trial --

22 THE COURT: Right.

23 MR. WARNICK: -- and we won the other petition, the motion to dismiss is  
24 pretty much taken care of, too. But I agree that they can be continued for economy.



1 THE COURT: Right. So we'll put them on for a status --

2 MR. WARNICK: Although technically they could be dealt with ahead of time --

3 MR. MUGAN: Right.

4 MR. WARNICK: -- because I think they're frivolous claims. But --

5 THE COURT: Right. So that's the thing. I mean, we can -- just so it doesn't  
6 fall off, we can continue it to the time -- all of these are going to be status checks at  
7 the same time as the jury trial on the will contest. So all these status checks -- if you  
8 want to notice one and pull it out and say we would like to have this heard prior to  
9 that, that's always your option. And you -- something tells me you guys are going  
10 to be back, so you can always come back and ask for that.

11 MR. WARNICK: I think it's wise what Your Honor is doing is to set them all  
12 at the same time there so that we then keep it on calendar and don't lose track of it.

13 THE COURT: And if at some point in time you think this is now ripe, I'm  
14 ready to -- I need to file maybe something based on some of the discovery, some  
15 supplemental brief, now you're going to go forward. But if I understand, Mr. Mugan,  
16 your suggestion is that you would not proceed with any discovery on any of those  
17 counterclaim issues at this point in time.

18 MR. MUGAN: Well, what I'm suggesting for the economy of the Court and  
19 co-counsel and myself is that the motion pending today on the counterclaims and  
20 the counterclaims per se, we just move all that to January also because they may  
21 or may not go away.

22 THE COURT: They're continued for a status check. And who knows, they  
23 may listen to your witnesses and say, oh, okay, well, we're satisfied, but we're going  
24 to have to -- (indiscernible).

1 MR. POWELL: Yeah.

2 THE COURT: Who knows?

3 MR. POWELL: Yeah.

4 THE COURT: It's discovery. Things happen in discovery.

5 MR. POWELL: Snow in July I think would be more --

6 THE COURT: Okay. So this is what's left then to go forward today, and  
7 that's what you -- counsel keeps arguing is this unfairness. I mean, it's been many,  
8 many months now that we've had the money being held. We've taken some money  
9 out because -- you know, valid point, when you're holding money over an extended  
10 period of time you're going to have tax issues. And so you need to be able to  
11 accommodate those kinds of things.

12 But, so, what I understand and both Mr. Warnick and Mr. Powell, you  
13 made this argument that if we're doing this, this is a further delay which appears to  
14 have no other purpose but to, you know, place your clients in a position where  
15 they're unable to go forward with their litigation, with their rights.

16 MR. POWELL: Exactly, Your Honor. This is a matter of leverage. It's --

17 THE COURT: So what is your proposal? I mean --

18 MR. POWELL: My proposal is --

19 THE COURT: -- because, you know, we've been holding the money.

20 MR. POWELL: We've been holding the money since 2013.

21 THE COURT: Right.

22 MR. POWELL: Well, actually when the distribution stopped was 2013. We  
23 are proposing that we go back from that point in time when this was unfairly done  
24 and we go back, we distribute sixty-five percent to the M.T.C. Living Trust and in

1 turn the beneficiaries of that trust. And we continue to do so until we're done, which  
2 is the way that this should have always been handled and should have been done  
3 by a trustee, versus a trustee who's also a beneficiary, the only beneficiary gaining  
4 by what's going on here.

5 THE COURT: Now, just so -- for devil advocacy purposes, Mr. Powell --

6 MR. POWELL: Sure.

7 THE COURT: -- hypothetically speaking --

8 MR. POWELL: Sure.

9 THE COURT: -- say the will contest is successful.

10 MR. POWELL: Sure.

11 THE COURT: Got a bunch of Walmart store clerks up there and they say,  
12 yeah, we think that's a forgery. We don't care what the witnesses say --

13 MR. POWELL: Sure.

14 THE COURT: -- we believe the guy with the criminal conviction who's the  
15 document examiner, we believe him, he's very credible. We find this is a forged  
16 document. And what happens?

17 MR. POWELL: Well, I would --

18 THE COURT: I mean, does the trustee clawback the money? I mean, what  
19 do you --

20 MR. POWELL: Let them try if they'd like to. I don't know how to answer your  
21 question other than in a situation like this, how does the trustee who's got --

22 THE COURT: Because what we were trying to do --

23 MR. POWELL: Yes.

24 THE COURT: -- was to hold the money so that whoever was ultimately

1 entitled to it would -- it would be there for them.

2 MR. POWELL: But we're --

3 THE COURT: And I understand that things have changed because we were  
4 going to do it on a much shortened period of time. It was going to be resolved much  
5 sooner.

6 MR. POWELL: Um-hm.

7 THE COURT: This is turning into something much different I think than what  
8 was anticipated by the beneficiaries when they started this. So now that they're  
9 having to go through all this, things have changed.

10 MR. POWELL: Yeah. And I don't know how to -- I'm not sure how to  
11 characterize this other than to say --

12 THE COURT: Unless and until Mrs. -- I'm drawing a blank.

13 MR. POWELL: Ahern is their client.

14 THE COURT: Ahern.

15 MR. POWELL: Right.

16 THE COURT: Until -- unless and until Mrs. Ahern establishes that she's  
17 entitled to one hundred percent --

18 MR. POWELL: Yes.

19 THE COURT: -- they should be receiving --

20 MR. POWELL: Yes.

21 THE COURT: Their share is sixty-five percent?

22 MR. POWELL: Correct. Absolutely. Absolutely.

23 THE COURT: And so to continue to hold the money --

24 MR. POWELL: While Ms. Ahern receives her thirty-five.

1 THE COURT: If it's ultimately determined --

2 MR. POWELL: Yeah.

3 THE COURT: -- that Mrs. Ahern is entitled to that hundred percent, okay,  
4 fine.

5 MR. POWELL: Yeah, exactly.

6 THE COURT: But if it turns out -- and it's not fair to make them wait to say,  
7 oh, no, they are entitled to their share of sixty-five --

8 MR. POWELL: Exactly.

9 THE COURT: -- because that's prejudicing them even though the money  
10 is being held for them.

11 MR. POWELL: Well, the fact is they've been relying -- their lifestyles are  
12 dependent, they rely on this money, just like I rely on my paycheck, you rely on your  
13 paycheck. We budget that in in expectations of how we live our lifestyles. And so  
14 that's exactly what the issue we have here. We have a -- we have thirty-three years  
15 of precedent of 65/35. And I know they're going to argue again, well, this and that.  
16 Well, the fact of the matter is, Your Honor, this continued from 2009 all the way  
17 up until June of '13 in which the trustee abruptly says I'm not paying you anymore.  
18 I'm not going to court to get a petition for instructions. I am unilaterally deciding  
19 that because I am the only one that benefits from this, I'm going to choke you out.

20 THE COURT: And so --

21 MR. POWELL: And you know reading between the lines it's leverage.

22 THE COURT: And so because she didn't do that -- she should have been  
23 required to continue to make the payments.

24 MR. POWELL: Exactly.

1 THE COURT: And so the Court just saying, no, I'm not going to let you take  
2 the hundred percent, you're going to have to hold the sixty-five percent, that's not  
3 adequate?

4 MR. POWELL: Exactly, Your Honor, because, I mean, again, we're talking  
5 June of '13. And the numbers have been submitted to you previously, but we're  
6 not talking inconsequential numbers. We're talking substantial dollars here.

7 The other thing here which is totally absurd is the fact that they're  
8 arguing, well, Ms. Ahern's -- conveniently, Ms. Ahern's thirty-five percent, that's not  
9 in dispute, so we'll just continue to give her what she's been getting all along for  
10 thirty-three years -- thirty-four years now, and, oh, by the way, the opposing side,  
11 oh, no, we'll just hold it for you; we'll just hold it for you. But yet everything is --  
12 Again, we were ready to go on February -- I think it was 17th or 18th. We were  
13 ready for a complete conclusion. And we were here the month prior and you had  
14 indicated at that point because we had asked at that point to compel this --

15 THE COURT: Right. It's going to be done, though.

16 MR. POWELL: -- which was actually filed in December. It was filed  
17 immediately after the initial petition because Mr. Mugan said you can't ask for that,  
18 and Your Honor agreed and said no, you actually have to petition to compel that the  
19 distributions continue, which is what we did. And Your Honor, which I understand  
20 for efficiency purposes, said we're basically a month out, we'll go ahead, but in the  
21 event that this doesn't get resolved, we need to discuss and analyze the fairness  
22 of this. Your point of view at that time was we're so close to trial, the anticipation  
23 is we'll be done. And then on the morning of trial we show up, the courtroom is  
24 packed, as you know, we're ready to go, and then, bang, the counterclaims.

1 THE COURT: All of those people came from Texas.

2 MR. POWELL: The counterclaims. And then now -- and then you indicated,  
3 too, well, I can't put you on another stack for this and that. Now we have the  
4 contest, and that's my point. I just have a sneaky suspicion, real sneaky suspicion  
5 that if you go -- you level the playing field here and you make this fair, I have a  
6 feeling the other side is going to go a lot faster and want actually a final resolution  
7 of this whole thing. Just a sneaky suspicion.

8 But this is game playing, Your Honor. This is tactics; this is leverage.  
9 I like as well, too, that somehow we should be obligated to reveal to the opposing  
10 side in litigation what exactly Jacqueline Montoya and Kathryn Bouvier have in their  
11 finances. What do they have? Gee, that sounds really appropriate in a litigation  
12 matter. Oh, other side, can you please tell me what you have in your bank account  
13 so essentially I know how much more leverage I have against you? That's absurd.

14 And that's what we're asking for. They want to play their tactics and  
15 let's delay it and go all the way down the road. No problem, as long as you do  
16 what's equitable and fair here, and that's level the playing field, because again,  
17 Your Honor, the burden of proof in this whole matter is theirs. Ms. Montoya has  
18 had to be the pursuer of this because she's had a trustee who said I'm turning off  
19 the spigot, just like the person up the river who dams up the water and says you're  
20 not getting any more water, that's the scenario we've got.

21 We had no option but to come to court because the trustee didn't  
22 act reasonably and say, Your Honor, actually I think there is an issue here. In my  
23 beneficial capacity I think I'm actually entitled to one hundred percent. But I need  
24 instructions because actually for the last thirty-three years there's been a 65/35

1 distribution, including four or five years after Mrs. Connell had passed. So,  
2 Your Honor, I need instructions. At that point, again, it would have never been  
3 appropriate for them to say, oh, we're cutting it off cold turkey. No, no, no. There  
4 would have been -- A reasonable trustee would have acted on an order from the  
5 court after hearing it. It wouldn't have said, oh, yeah, that's fine, you just shut off --  
6 you just shut off the income spigot and choke out the other side. It's just not --

7 THE COURT: Okay. Anything else that hasn't already been argued?

8 Okay. Then I'll give it to you, Mr. Mugan.

9 MR. MUGAN: Thank you, Your Honor. It's been a long morning. I don't  
10 know where to start. I can talk for two hours, but I'm not going to. I'm going to try  
11 and simplify this, but I do have to respond to a couple things.

12 They are the ones in their original petition, in their second petition,  
13 talking about they're going to have irreparable harm, financial detriment, if you don't  
14 turn -- don't grant them the money. They put that in issue and that's one of the  
15 three requirements that they have to meet. They have to show irreparable harm  
16 and financial detriment. And so, we know they inherited close to three and a half  
17 million dollars in 2009. We don't know exactly how much. So in discovery this is  
18 an issue. This is an issue of their burden of proof in this hearing right now. And  
19 so in discovery we asked them about that. We don't ask them for leverage. We  
20 asked them to try and show to you this isn't going to cause them irreparable harm.  
21 This isn't going to cause them financial detriment. They inherited three and a half  
22 million dollars in 2009. And what do they do? It's irrelevant, it's immaterial, even  
23 though that's what they're arguing in their petition. That seems to be a contradiction  
24 to me.



1           This status quo I keep hearing about and you keep hearing about, this  
2 thirty-three years. The first twenty-nine years they weren't beneficiaries. They did  
3 not receive a dime. When Marjorie Connell died, what happened? And I cited the  
4 answers -- I set forth the answers in discovery that they did in my pleading and I  
5 hope you read them. What happened? Jacqueline Montoya, who had been -- had  
6 control, had been helping Marjorie, she just continues on. She writes the distribution  
7 checks. She won't give my client access to the money or the payments.

8           THE COURT: Actually, if we can -- we should maybe clarify, Mr. Mugan.  
9 Not being a person familiar with oil and gas revenues, are they paid monthly,  
10 quarterly, annually?

11          MR. MUGAN: I think they're paid quarterly, Your Honor.

12          MS. BOUVIER: No, they're not. It's monthly.

13          THE COURT: Monthly?

14          MS. BOUVIER: Yes, ma'am.

15          MR. MUGAN: Well, my understanding is it depends on the company and  
16 the distributor.

17          MS. BOUVIER: No, it's not, it's monthly.

18          MR. MUGAN: Okay, in this case if it's monthly, they know more about it than  
19 I do.

20          THE COURT: Okay. So I was just curious about how it was being paid out.  
21 I didn't know.

22          MR. MUGAN: Yeah. I've got enough problems being a Nevada lawyer  
23 without being a Texas lawyer.

24          THE COURT: I have no idea how they're paid.

1 MR. MUGAN: Yeah.

2 THE COURT: Okay. So the issue was these monthly royalties.

3 MR. MUGAN: Well, the status quo. The reason they received distributions  
4 after Marjorie Connell died was my client didn't have control, and she didn't have  
5 control because of the wrongful actions of Jackie Montoya. You look at the answers  
6 to interrogatories. She says she continues to make the distribution checks, even  
7 though my client is the successor trustee. She doesn't turn over the records and  
8 documents until my client hires Texas counsel, and then she turns over part of them  
9 in October of 2012, and she turns over supposedly the balance November of last  
10 year. My client is operating in the dark. You know, so this thirty-three, thirty-four  
11 year old business status quo I don't think holds up under looking at the discovery  
12 reports.

13 But I'm going to try and make this as simple as possible and as quick  
14 as possible right now. And I apologize, but I had to respond to those things. We  
15 already had a hearing on a nearly identical -- well, the petition is identical and then  
16 there was an addendum added for this hearing, which basically said, you know,  
17 because of the continuance, etcetera, it's not fair. You look at Nevada case law,  
18 you look at Nevada statutes, you look at Nevada Rules of Civil Procedure, I don't  
19 see grounds stated because a trial gets continued or delayed. And that -- I've been  
20 through this. I gave an affidavit, I set out transcripts. We talked a week before in  
21 the pretrial conference. We talked about the counterclaims. There was no mention  
22 of continuance, etcetera. Everybody knew about that. You know, they knew about  
23 it in November prior to the trial. You know, so this game playing, I'm not going to  
24 go there because both sides can argue that.

1 THE COURT: But Mr. Powell did mention and I do have a recollection of this  
2 that they had previously filed this motion and the court said we're going to have a  
3 hearing in a month; you know, you'll have an answer in thirty days and you'll know  
4 if you're entitled to these funds. So let's just continue to hold the funds and we'll get  
5 a resolution very shortly. And now we're now -- at least we're probably a year away  
6 from that. So that was effective for the Court, was that there was going to be a final  
7 resolution within thirty days, so why rule on the motion to change the status quo  
8 when we were holding the money, it was being held, apparently at some  
9 consternation to the gas companies. But isn't that --

10 MR. MUGAN: But, too --

11 THE COURT: -- it is a change.

12 MR. MUGAN: But the Court --

13 THE COURT: It is a substantial change.

14 MR. MUGAN: But the Court also said, and I cited the transcript where the  
15 Court said we're only talking about money. Money is adequate compensation.  
16 One of the three requirements that they have to meet in order for you to grant their  
17 petition is inadequate compensation. You already ruled at the previous hearing  
18 that we were only talking about money. You even said all we're talking about is oil  
19 revenue, we're not even talking about stock where it fluctuates. We're just talking  
20 about dollars and that's adequate compensation. You stated that on the record.

21 And so now to go back -- and they have to meet all three requirements.  
22 They can't meet two out of the three. And like I said, delay is not a grounds under  
23 the rules. And you've already ruled that that's adequate compensation, and that  
24 means they didn't meet their burden of proof, one of the three requirements, and

1 you can't change that. That's what the law is. And so I don't think you can grant  
2 the petition solely on that; just the fact of that ruling. And that's one of the three  
3 requirements.

4           And the status quo is not a requirement -- the alleged status quo or  
5 purported status quo. You know, that's not really a factor under the law or the case  
6 law or the Rules of Civil Procedure. And he also at that hearing raised the issue  
7 about going way, way back, and you said no, if we go back at all we're only going  
8 to go back to the November 12th order when the money started. We can't  
9 retroactively apply.

10           And you also expressed concern about clawback. What's his  
11 response? If we win, and they've gotten all this money, and we're talking about  
12 a lot of money, and -- well, that's their problem. That's their problem. Let them try.  
13 Really? Really? Aren't my clients entitled ultimately to that money? And you were  
14 going to release it, and if they spend it, well, try and get it back. I don't think that's  
15 fair. I don't think that's right. You know, I just -- to me it's very simple. They have to  
16 meet three requirements. The Court has already ruled that they haven't met one of  
17 the requirements. I don't think they've met the other two requirements, and I'll gladly  
18 go into them if you want to.

19           THE COURT: But what about -- and they've mentioned this, this is a  
20 potential change in circumstances because as the Court specifically said the last  
21 time this came up, it's money -- it's being held; we're going to have a final resolution.  
22 And through no fault of their own they're now not going to have that resolution for  
23 a year.

24           MR. MUGAN: I would respectfully disagree with Your Honor. The delay is

1 their own fault. Frankly, the worst thing that happened was when you continued  
2 the trial. There was no way they could meet their burden of proof. There's no way.  
3 We should have won. We would have won then or we would have won on appeal.  
4 There's no way they could meet their burden of proof because they didn't have a  
5 valid will. And so when it got continued, it was the worst thing that could happen  
6 to us.

7           And what has been all this delay? This woman died in 2009. She  
8 was -- Ms. Montoya was the nominated executor, her personal representative.  
9 She was the successor trustee. She doesn't -- you know, she just takes control  
10 and ignores my client and starts paying her and her sister in the trust. The personal  
11 representative, nominated person is normally the one who petitions the court for the  
12 probate of the will. She could have done it then. She doesn't. She doesn't do it.  
13 And that's critical to their case.

14           And so what happens? When all trouble in Paradise -- I'm sorry, my  
15 oration, I almost swore -- when trouble in Paradise arose in 2012, what does she do  
16 then? Lord, we better prove up this will if we're going to have a dispute about this.  
17 So -- well, let's not file it in Nevada, let's file it in Texas. And we're going to say that  
18 she doesn't have any children, so my client -- so Eleanor doesn't get notice of this,  
19 and hopefully the four months period will go by and there will be no challenge to the  
20 will and we are home free. And of course my client finds out about it and contests  
21 that jurisdiction down there in Texas. And so after the trial is continued, I think  
22 opposing counsel realized we've got to prove the validity of the will here. And the  
23 proper jurisdiction is Nevada and we probably should have brought it in Nevada,  
24 and so now we're going to bring it in Nevada.

1           And so when you say through no fault of their own, I respectfully  
2 disagree. I think this was intentional. She took control of everything, the  
3 distributions, etcetera, as soon as Marjorie died. She wouldn't give my client  
4 access. My client had serious health problems. When they realized there's trouble,  
5 they file it down in Texas and don't give my client notice because they say, well, the  
6 decedent didn't have any children. Well, they know that's false. And hope that the  
7 four month period goes by. And now they realize Nevada is the right jurisdiction and  
8 we've got to prove this, so they file it March 25th of this year. That's not our fault,  
9 you know. And when you say through no fault of their own, I think it's all their fault,  
10 Your Honor. I would respectfully disagree.

11           THE COURT: Okay. So your position is that the funds should continue to  
12 be held as they are being held?

13           MR. MUGAN: Yeah. And this thirty-five percent, it's like, well, she gets  
14 thirty-five percent so we should get sixty-five percent. The thirty-five percent is  
15 undisputed. They've said on the record its undisputed. It could be like -- I mean,  
16 we could be talking, well, she gets -- she's got an investment account, you know,  
17 with Ameritrade and she gets dividends every month. Well, that's not fair; that's  
18 not fair, you know. There's no dispute as to the thirty-five percent.

19           THE COURT: She's already getting that.

20           MR. MUGAN: It just happens to be the oil rights. So we're not comparing  
21 apples to apples here. We really aren't. And what can be more --

22           THE COURT: But Mr. Powell's final argument is that the trustee in making  
23 the decision she was going to stop the distribution of the sixty-five percent did so  
24 unilaterally, did not come to the Court for instructions, simply did so. And as I said

1 at the time, well, we'll just hold the money because we're going to have a  
2 determination hearing. We're not going to be a whole another year beyond that  
3 before we make that determination. So that's I guess Mr. Powell's final point that  
4 that was -- the trustee chose to handle it that way.

5 MR. MUGAN: My -- the --

6 THE COURT: And she has the burden of proof, and why are we harming the  
7 potential beneficiaries? At the time I wasn't going to change the status quo because  
8 we were so close to the trial, but now we're a year away from that, at best.

9 MR. MUGAN: Well, my client is also the potential beneficiary of that.

10 THE COURT: Correct.

11 MR. MUGAN: If she wins, she gets that money. In the interim, she's denied  
12 use of that money. She's -- And what I suspect this is about is maybe fees, attorney  
13 fees and costs. And as you heard at last hearing, my client has voluntarily chosen  
14 to pay attorney fees and costs out of her own pocket. She's not trying to argue,  
15 well, part of this -- I'm the trustee, so part of this is interpreting the terms of the trust  
16 and so the trust should be paying part of my fees.

17 She's -- you know, I mean, and so I have a hard time on this fairness  
18 argument because I don't see what's unfair. If my client wins, she gets the money.  
19 If they win, they get the money. The Court wisely said we're just going to put the  
20 money -- we're going to sequester the money and nobody is going to get it until  
21 this is decided. And they're talking about how they need all this money, and you  
22 rightfully raised the original issue at the last hearing, well, what about clawback?  
23 How are you going to get this back? I guarantee you if you release that money to  
24 them, that money is gone. That's gone. My client would never get it back; never.

1           And what -- you know, you have to look at my client's side, too. She's  
2 being denied access to that money if she wins, just like they are right now. If they  
3 win, they get the money. If she wins, she gets the money. What's unfair about  
4 that? And the other thing which we haven't talked about is a bond. Under the rules,  
5 an bond. We're talking about a lot of money; a lot of money. And at a minimum,  
6 you know, they should be required to post bonds securing that money if my client  
7 wins. And the bond -- they can collect -- we can collect on the bond. I think  
8 personal bonds -- the trouble is personal bonds are very difficult to get.

9           But be that as it may, I sound like I'm arguing against myself, but I  
10 come back, it's very simple to me. They have three requirements, and not one of  
11 them is delay or alleged status quo. They have three legal requirements. And the  
12 Court has already ruled they haven't met one of them. And nothing has changed  
13 that. There's nothing to change that. It's adequate compensation. It's dollars.  
14 Now to reverse that, I think there could be problems. I think it's contradictory.

15           Thank you, Your Honor.

16           THE COURT: Mr. Powell, anything further?

17           MR. POWELL: Your Honor, the one thing -- and again, I'm not going to get  
18 into this, but we clearly are always at separate hearings. Apparently the times that  
19 you're making representations, I'm here but they're not, and I guess apparently vice  
20 versa. But the one thing that troubles me, and again, we've gone back to the well  
21 now again with these personal attacks on Jacqueline Montoya. Jacqueline Montoya  
22 is willing and able right now at your leisure to go under oath. She'd gladly answer  
23 any questions that you would have. Again, continue to assassinate her character,  
24 which is getting a little absurd here. And what I'd like to do just for the record is take



1 a little bit of time to just let you know what Mr. Mugan's client -- again, we're dealing  
2 with all these she said this and this --

3 THE COURT: I don't -- I don't care about any of it. What about the bond?

4 MR. POWELL: Your Honor, we actually tried to get a bond and basically  
5 what we were told is that you would need a court order; there's no chance we're  
6 issuing a bond without a court order. And again, who bears the burden of that cost?  
7 Somebody who's complied with thirty-four years of a 65/35, or do my clients again  
8 bear that burden as well? Again, the fact that they did absolutely nothing here.  
9 You had a trustee unilaterally turn off the income spigot and say come get me.

10 THE COURT: Okay. All right. Well, I think there's been a change --

11 MR. MUGAN: If I may?

12 THE COURT: -- there's been a change of circumstances. However, I do  
13 think Mr. Mugan raises a valid point, which is that if this is granted they're required  
14 to bond for it, because that's been my problem all along is how do you get by that?  
15 I'm not going to grant it back to November or whenever it was when it started being  
16 held, but I would grant it going forward on the basis that the 65/35 split, we'll turn  
17 the income back on. They've got to bond. They've got to post a bond.

18 MR. POWELL: And they would pay for the costs --

19 THE COURT: Yeah. Absolutely.

20 MR. POWELL: -- subject to, again, obviously a damage?

21 THE COURT: Yeah.

22 MR. POWELL: Okay. Your Honor, from what point forward? Because we  
23 asked for this relief in December.

24 THE COURT: I'll grant it from today. So, I mean, I don't know when they

1 pay the May payment. I mean, the May payment for May and it's paid in June, or is  
2 the May payment made in May? I don't know how this stuff is paid. I've got no clue.  
3 Your clients can tell you. I've got no clue.

4 MR. POWELL: It's basically -- it's effectively a delay. There's effectively  
5 a one month delay between when the check is for and what it's for.

6 THE COURT: All right. So if there's a check paid in June for May, then it  
7 should be --

8 MR. POWELL: From May.

9 THE COURT: -- the 65/35 starting -- going forward in May.

10 MR. POWELL: From May. Okay.

11 THE COURT: Right. But you're going to have to have time to get the bond,  
12 and I don't know how much the bond would be. That's the problem I have.

13 MR. POWELL: I don't either. I'm going to need --

14 THE COURT: I don't know how much these checks are.

15 MR. WARNICK: Your Honor, in lieu of a bond, you know, you can always  
16 post a personal -- what do they call that now? I forget the terminology. Instead of  
17 a bond, you can put a personal pledge. When do they use that term? Under a  
18 statute you have that alternative. I can't remember what it is. But bonds are difficult  
19 to get nowadays because you have to have your own bank and the banks don't do  
20 it anymore.

21 THE COURT: You post a personal security, I think is what they call it.

22 MR. WARNICK: Yeah. So maybe we could do that instead because --

23 THE COURT: I don't know what the -- that's a clerk's office thing.

24 MR. MUGAN: No. That's not what the rules say. And plus, if they need this

1 money as bad as they want, you know, that's not going to work. It's not --

2 MR. WARNICK: Sure, it will work.

3 MR. MUGAN: No, it's not going to work.

4 MR. WARNICK: I mean, if they've got the assets --

5 THE COURT: I mean, if there's alternative security, I mean, that's what they  
6 call it, and you need to come in with that and say here's the alternative security  
7 because you have to know that it is in fact adequate.

8 MR. MUGAN: This bond is going to have to constantly be adjusted upward.

9 THE COURT: And that's what my problem is. I don't know how -- we've got  
10 to have some sort of a bond.

11 MR. MUGAN: It's going to have to, every time there's a distribution.

12 THE COURT: And that's -- and how do we know how much that is? So,  
13 you know, we've got -- technically now we've got another six month period from  
14 June to January, or seven months. I have no idea how much it is. Your clients will  
15 maybe have an idea of what approximately it works out to. Unless they -- I have  
16 no idea how much it's supposed to be. I've got no clue.

17 MR. MUGAN: I would suggest --

18 THE COURT: Never dealt with this.

19 MR. MUGAN: I would suggest, Your Honor, you know, if a distribution is  
20 made of course my client receives it. We notify them of what 65 percent of that is.

21 THE COURT: Right.

22 MR. MUGAN: And then they have a certain period of time in which to post  
23 a bond for that amount. And we do not -- we're not required to distribute the money  
24 until that bond is posted, and in the interim it's sequestered just like it's been before

1 and not -- nobody. I think it's real easy.

2 MR. WARNICK: Your Honor, my clients have assets. They could take and  
3 put up this personal to a certain amount and it would not require that monthly  
4 change --

5 THE COURT: Right. Because that --

6 MR. WARNICK: -- because they could do it to a certain amount.

7 THE COURT: It's goofy. But there's -- they're entitled to have a bond  
8 because that's why I keep saying you have this clawback problem. So in the event --

9 MR. POWELL: Well, I guess to clarify with you, though, is you seem to be  
10 implicating that the burden of proof is on my clients to establish that the acts were  
11 wrong, and there seems to be a presumption that the actions of Ms. Ahern were  
12 correct.

13 THE COURT: No.

14 MR. POWELL: And that I think is not -- well, I'm not sure how we otherwise  
15 get there because what we're basically saying is we cut this off, we're holding it, and  
16 you still have to continue to chase them down, and there's this potential clawback  
17 and this and that. But at the end of the day, again, why is it that Ms. Ahern is not  
18 establishing that she had this right, and then it's for us to --

19 THE COURT: Okay. Well, you know -- thank you. Mr. Powell --

20 MR. POWELL: Yeah.

21 THE COURT: -- when you have won it is probably appropriate to sit down  
22 and shut up unless you have something to add.

23 MR. WARNICK: I've got one thing to add, Your Honor. I appreciate what  
24 you're saying. I think we can resolve this. They -- well, I guess my great idea is not

1 going to -- I was going to say they had a continued right to income, but if they win  
2 the case that would stop of course. But I think Mr. Powell's point is true, and that  
3 is that when you go for thirty-four years paying something out --

4 THE COURT: If you have something to add that we haven't already  
5 discussed, I'm happy to hear it, but you've won. So it might be appropriate now to  
6 stop arguing what you've won, and simply how do we deal with the logistics of the  
7 fact that you have won?

8 MR. MUGAN: Your Honor --

9 THE COURT: And like I said, I don't know how this is paid, so it's difficult.  
10 The request has been made that until we get this resolved we have to have some  
11 sort of a bond for security. Mr. Warnick has suggested the statute does provide for  
12 alternate security. That's typically done on a motion. We have something that we  
13 can pledge; fine. Then the Court can rule on it. You won. I think it's silly to say  
14 every month we're going to post another bond, which is what Mr. Mugan suggested,  
15 which is the only way you can do it unless you have some idea of what it's going  
16 to be every year, and I don't know if you can say every year we've got X amount  
17 every month, every year it's X dollars, so we'll just take seven months and here's  
18 how much it is. I don't know if it's that dependable or if it wildly fluctuates depending  
19 on the price of oil. I don't know. This is way beyond my wheelhouse. So --

20 MR. MUGAN: And if I may add -- Pardon me, Your Honor. I'm sorry. If I  
21 may add, my understanding, very little understanding from the Texas lawyers is it's  
22 very hard to predict the income because of the fracking --

23 THE COURT: Yeah. So there's no other way to do it.

24 MR. MUGAN: -- fracking technology.

1 THE COURT: Right. There's no other way to do it than monthly.

2 MR. MUGAN: You know, what's past -- happened in the past is --

3 THE COURT: And that's burdensome, so if there's some sort of adequate  
4 security that they can post as an alternative, they can make a request, we would  
5 like the right to post adequate security. It's allowed under our statutes.

6 MR. MUGAN: Well, if I'm understanding you right, and it's just a point of  
7 clarification, what you're saying is they're going to have to post bond for the  
8 distributions --

9 THE COURT: Or in the alternative --

10 MR. MUGAN: -- but if they think they have --

11 THE COURT: -- propose alternative security.

12 MR. MUGAN: If they think they have alternative personal security, then they  
13 need to file a motion to that effect --

14 THE COURT: Correct.

15 MR. MUGAN: -- and we'll decide it. But until they do that, we're talking about  
16 a bond.

17 THE COURT: And it may just be it's a pain in the neck. And if it's impossible  
18 to figure out and you're going to have to do it every month, it's ridiculous, unless  
19 there is some sort of a way to say we estimate, based on what was last year's  
20 amount, that seven months of this year is X. That would be an alternative.

21 MR. MUGAN: I'm more than glad to talk to the Texas attorneys.

22 THE COURT: And it may be easier than having to come in and pledge  
23 personal assets.

24 MR. MUGAN: Yeah. And I'm more than glad -- and each side has their own

1 Texas attorneys.

2 THE COURT: Great.

3 MR. MUGAN: I'm more than glad to visit with ours and yours and maybe  
4 we can work something out.

5 MR. WARNICK: Your Honor, I don't think that statute requires a separate  
6 motion. I thought that the statute said whenever bond is required, in the alternative  
7 the people who have that obligation can put up their personal pledge. And I mean,  
8 it doesn't seem like it's necessary to file a motion now to do that. I mean, that's  
9 basically what you would approve anyway, I believe. And so we just have to make  
10 sure we can get some pledge that is going to satisfy that situation.

11 THE COURT: But they have the right to contest that it's inadequate security,  
12 so that's why I said it has to be -- it has to be -- it has to be ruled on that this is  
13 adequate.

14 MR. WARNICK: And I think that's the way the statute reads.

15 THE COURT: And that's why I think you probably have to figure out, and  
16 the only thing I can think of is to say last year the total number was X. We've got  
17 however many months until at least the will contest trial; that number of months.

18 MR. WARNICK: That's a good idea.

19 THE COURT: Calculate that to whatever; seven, eight -- eight months,  
20 seven, whatever it would be. Based on what was previous, we believe it's  
21 approximately -- and this is -- and it may be significantly less this year. You know,  
22 I don't know. This seems to me like this is a commodity that fluctuates.

23 MR. WARNICK: But that would be a good idea to clarify the amount and  
24 get some idea. I think you're right, Your Honor.

1 THE COURT: And if you have a proposal, an agreement that the bond will  
2 be X, then that's great. If you can't, then I think -- or we've got adequate security  
3 that satisfies the trustee, then that's fine, too. But I think otherwise they've got the  
4 right to contest the security, that it's inadequate. It has to be ruled on.

5 MR. MUGAN: Yeah, that's my understanding, it's got to be done by motion.

6 THE COURT: I've never done it any other way, just by having somebody  
7 say we propose an alternative to post personal security, and the Court says I think  
8 that's adequate, I'll accept it.

9 MR. MUGAN: If I may, Your Honor. And I was the losing party --

10 THE COURT: Correct.

11 MR. MUGAN: -- and I just want to protect the record.

12 THE COURT: Right.

13 MR. MUGAN: I just want to say I don't believe my client has the burden of  
14 proof. There is nothing --

15 THE COURT: I'm not ruling on that. If anybody's got that idea, I'm not.

16 MR. MUGAN: Well, I mean, we keep saying that and it keeps coming up  
17 in the discussion.

18 THE COURT: It's just I haven't -- I haven't prejudged any of this. I'm just  
19 saying that I think there's a change in circumstances. We're now going to be a  
20 whole another year away. Going forward I think it's appropriate because of the  
21 change in circumstances, which I understand your argument, Mr. Mugan, that it may  
22 be -- it's difficult to say in this case, you know, who had what duty when. But right  
23 now this is being pushed out because now we've got the will contest. And they  
24 didn't file that. Maybe there's a delay because they didn't get the will on file in time,



1 but whatever, it is what it is, and I think there's a change.

2 I'm willing to say going forward pay the distribution. You've requested  
3 that a bond be posted. If the bond is appropriate, they suggest alternate security.  
4 I just think that what we have to do first is have some sort of an understanding of  
5 how many months and what your monthly is and figure out how you're going to deal  
6 with it because it saves them having to put their personal assets, which, you know,  
7 apparently has already been an issue, so.

8 MR. WARNICK: We've got a good -- We know that next January you're  
9 looking at trying the case --

10 THE COURT: Right.

11 MR. WARNICK: -- so we've got a good idea of what the time period is.

12 THE COURT: How many months.

13 MR. WARNICK: We can figure out approximately what the amount is.

14 THE COURT: And maybe it doesn't fluctuate greatly. I don't know. It just  
15 seems to me that oil and gas, the price is constantly going up and down. I think it  
16 fluctuates, but maybe it doesn't. Maybe it's the same thing or roughly within X that  
17 you can make a determination.

18 MR. WARNICK: We can just have a provision if there's some dramatic  
19 change they could come before the Court and say that this isn't right. I mean, that  
20 could be done, too.

21 THE COURT: Yeah. Yeah, and if it's something that you agree with Mr.  
22 Mugan, good luck. But if it's not, then I know we'll see you all back here. So we'll  
23 see you, if not before, in January; but between now and then. And as far as your  
24 discovery plan for that jury trial, are you going to do a discovery plan or are you

1 going to go to the Discovery Commissioner for help drafting that? If you want to  
2 stipulate to a discovery plan, that would be fine. I'm sure she would --

3 MR. MUGAN: Either that or we can just have a Rule 16.1 meeting and, you  
4 know, we can work it out.

5 THE COURT: I'm sure she would be happy to sign whatever plan you come  
6 up with. It's a short time frame, but --

7 MR. MUGAN: But we need to get moving. We need to get moving.

8 THE COURT: -- they don't need a lot.

9 (The clerk confers with the Court)

10 THE COURT: It's continued for a status check at the same time. Everything  
11 is. These other petitions are continued -- all the other petitions, everything is moving  
12 to that date in January because depending on the outcome of it, we go forward with  
13 them. If the trustee wins, we don't go forward with them.

14 MR. MUGAN: Your Honor --

15 (The clerk confers with the Court)

16 MR. MUGAN: Just a point of clarification. Is the -- Are you placing it on the  
17 January stack or are you actually setting a trial date?

18 THE COURT: Yeah, the stack.

19 MR. MUGAN: Okay. It will be on the January stack. What date would that  
20 be?

21 THE COURT: And we'll send you that trial order.

22 MR. MUGAN: Okay. Do you want one of us to prepare the order or do you  
23 want to do this?

24 THE COURT: Well, we'll send you out an order setting the trial. I just don't

1 know -- They're going to, I'm sure, want to do an order with respect to they won  
2 on the distribution. You won on the continuance. So you want to work on some  
3 language that it's continued. The other case isn't necessarily stayed except to the  
4 agreement of the parties that whatever discovery would be applicable to everything,  
5 can be used in everything, and that you're not going to go forward at this point in  
6 time with the counterclaims. You'll hold those in abeyance.

7 MR. MUGAN: The discovery is going to be coordinated.

8 THE COURT: Right.

9 MR. MUGAN: Right.

10 THE COURT: The discovery will have to be coordinated.

11 MR. WARNICK: They're holding up the counterclaims, but the discovery on  
12 everything can go forward?

13 THE COURT: The discovery can go forward.

14 MR. WARNICK: On everything?

15 THE COURT: And it's agreed that if discovery is taken in the will contest,  
16 it's certainly usable in any of the petitions.

17 MR. WARNICK: We just didn't want to have the discovery on those things  
18 postponed after January. We'd like to get everything done up to that point. That's  
19 what I'm just trying to say.

20 MR. MUGAN: I believe I said that I was going to suggest that, that they be  
21 used in either case.

22 THE COURT: Okay. Yeah. Okay.

23 MR. POWELL: Your Honor, and I realize you probably have no appetite for  
24 me even talking anymore about this, but the other component of what we asked for

1 was the applicability of laches. Can I have the opportunity, possibly I guess on  
2 another day, to argue that? I have significant points that I would love for you to  
3 hear regarding evidence --

4 THE COURT: Okay.

5 MR. POWELL: -- and everything else. And even to the extent you'd like,  
6 can we have maybe even an evidentiary hearing just on the laches issue?

7 THE COURT: I just -- Is it in the nature of a motion in limine with respect --  
8 because laches isn't really a motion in limine, it's an evidence issue. So, I mean,  
9 there's -- You want like a preliminary hearing prior to the jury trial?

10 MR. POWELL: Yeah, effectively almost -- I guess like a summary judgment  
11 type of a --

12 THE COURT: Sure, you can notice it.

13 MR. POWELL: Based on a laches argument. Again, because that is  
14 something we've raised. And I really feel as though there's a lot of evidence that  
15 we need time to go through. Which, again, that's why I'm suggesting an evidentiary  
16 hearing.

17 THE COURT: And I guess my question is that --

18 MR. POWELL: Yeah.

19 THE COURT: -- on laches does it affect the will contest, does it affect just  
20 the petitions if we go forward afterwards?

21 MR. POWELL: Well, it would effectively moot the whole case, I would say.

22 THE COURT: All right. So it's more of the nature of a -- it's a summary --  
23 more of summary --

24 MR. POWELL: It's more of a summary judgment, yeah, effectively.

1 THE COURT: So, yeah, sure, notice it up.

2 MR. POWELL: Okay.

3 THE COURT: We'll do it whenever -- (indiscernible).

4 MR. MUGAN: Well, again, to give heads up, if you recall we had a motion to  
5 dismiss originally under 12(b)(5) on claims preclusion, which we thought was -- we  
6 thought was a good motion. Your Honor basically denied that without prejudice and  
7 said she'd take that up at trial. We're going to probably renew our motion for claims  
8 preclusion. Maybe we can do them all at once.

9 THE COURT: Right. I mean, if there are motions that need to be made, and  
10 that's why I said, it's all going to be done at a trial and now we've got this change in  
11 circumstances and we're now a whole year down the road from when we thought  
12 we were going to get these all dealt with. If there are motions that you need to bring  
13 me in the interim, I'm not saying you can't bring motions in the interim. Whatever  
14 motions you decide you have to bring.

15 MR. POWELL: Is it possible that you could pull up the minutes from that  
16 hearing? Because I -- and again, this is this we always hear different things. I could  
17 have sworn that claim preclusion, you dismissed that with prejudice, not without,  
18 and you didn't leave the door open. So I just want --

19 THE COURT: Okay. Sure. If that's --

20 MR. POWELL: Okay.

21 THE COURT: If that's what it is, then you can certainly raise that.

22 MR. POWELL: Okay. Okay, thank you, Your Honor, because if I'm not  
23 mistaken, we have pending orders still on that that, if I'm not mistaken --

24 THE COURT: There is one --

1 MR. POWELL: -- I think I've submitted to opposing counsel.  
2 THE COURT: I think there's one set of pending orders.  
3 MR. POWELL: There's a few, I believe.  
4 THE COURT: I think we've got -- I think --  
5 MR. POWELL: There's one that was sent in this week.  
6 THE COURT: There's one? Is there one?  
7 THE LAW CLERK: That's -- I think the only one that's left.  
8 THE COURT: There's one. There's one left that I've got.  
9 MR. POWELL: I think that was sent in this week -- or last week, excuse me.  
10 But there was back to that January hearing --  
11 THE COURT: Okay. All right.  
12 MR. POWELL: -- again, I think opposing counsel has had sitting on their  
13 proverbial desk since January, so.  
14 THE COURT: Okay. Well, the one -- I've only got one.  
15 MR. POWELL: Yeah, and that's what I'm saying, is we don't have an actual  
16 order on that other than I think your minute order, and that's what I was just clarifying  
17 is I think in your minute order, if I'm not mistaken --  
18 THE COURT: Okay.  
19 MR. POWELL -- and again, I may be mistaken, but I think it was with  
20 prejudice, is what the minute order reads, so.  
21 THE COURT: Okay. Well, you can certainly raise that if you think that's  
22 something -- (indiscernible).  
23 MR. POWELL: Thank you, Your Honor.  
24 THE COURT: And I'll take a look at whatever -- I'm going to CLE seminar

1 next week, so I probably wouldn't get to it for a week.

2 MR. POWELL: Okay. Thank you very much for your time --

3 MR. WARNICK: Thank you, Your Honor.

4 MR. POWELL: -- and for giving us the opportunity to argue.

5 MR. MUGAN: Thank you, Your Honor.

6 THE COURT: All right. And if you won, you do your order.

7 MR. POWELL: Thank you, Your Honor.

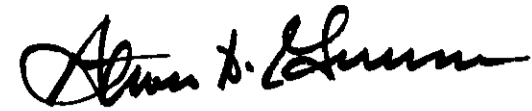
8 (PROCEEDINGS CONCLUDED AT 12:38:30 P.M.)

9 \* \* \* \* \*

10  
11 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
12 audio/video proceedings in the above-entitled case to the best of my ability.

13 

14 Liz Garcia, Transcriber  
15 LGM Transcription Service  
16  
17  
18  
19  
20  
21  
22  
23  
24



CLERK OF THE COURT

1 **ORDER**  
JOSEPH J. POWELL, ESQ.  
2 Nevada Bar No. 008875  
THE RUSHFORTH FIRM, LTD.  
3 9505 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134  
4 Tel: (702) 255-4552  
Fax: (702) 255-4677  
5 [joey@rushforth.net](mailto:joey@rushforth.net)  
*Attorneys for Jaqueline M. Montoya*

6 WHITNEY B. WARNICK, ESQ.  
7 Nevada Bar No. 001573  
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT  
8 801 South Rancho Drive, Suite D-4  
Las Vegas, Nevada 89106  
9 Tel: (702) 384-7111  
Fax: (702) 384-0605  
10 [gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)  
*Attorneys for Kathryn A. Bouvier*

11  
12  
13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**  
15

16  
17 In the Matter of  
THE W. N. CONNELL AND MARJORIE  
18 T. CONNELL LIVING TRUST, Dated  
May 18, 1972,

CASE NO. P-09-066425  
DEPT NO. XXVI (26)

Date of Hearing: May 13, 2014  
Time of Hearing: 9:30a.m.

19  
20 An Inter Vivos Irrevocable Trust.

**ORDER: RE PENDING MOTIONS  
AND SCHEDULING**

21  
22 The following Motions and Petitions came on for hearing before the Court on  
23 May 13, 2014:

24 1. The Motion, filed herein on or about May 6, 2014, of Eleanor C. Ahern  
25 in her capacity as the trustee of the W.N. Connell and Marjorie T. Connell Living  
26 Trust, dated May 18, 1972, to Continue May 13, 2014 Hearing on Petition for  
27 Construction and Effect of Probate Court Order of Jacqueline M. Montoya (hereinafter  
28 referred to as the "Motion to Continue");





1 Determination of Construction and Interpretation of Language Relating to Trust No.  
2 2 (hereinafter referred to as the "Petition for Determination"), all be postponed and  
3 continued until after the hearing and resolution of the pending Will Contest between  
4 the parties in this Court in Case No. P-14-080595-E.

5 Eleanor asserted that the resolution of the pending Will Contest Case could  
6 resolve completely all the other pending actions in this Case, and therefore as a matter  
7 of judicial economy, and to avoid unnecessary litigation expenses, it would be prudent  
8 to postpone and continue the other pending matters in this Case until the Court  
9 rendered its decision in the Will Contest Case. Jacqueline asserted that while it may  
10 be prudent that her other Motion and Petitions pending in this Case be continued until  
11 the resolution of the pending Will Contest Case, the Court should address the relief  
12 requested in her Motion to Compel at this time, in order to provide to Jacqueline and  
13 her sister, Kathryn A. Bouvier (hereinafter "Kathryn"), income they depended upon  
14 from the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (the  
15 "Trust"). The Trust owns income producing real property located in Upton County  
16 Texas, together with oil, mineral, and gas rights related to such real property.  
17 Approximately a 65% share of income from this property had historically been paid or  
18 distributed to Marjorie T. Connell, while she was alive, and then to Jacqueline and  
19 Kathryn, until the dispute over entitlement to the income arose in these proceedings.

20 The Court finds that the pending Will Contest in Case No. P-14-080595-E  
21 should be resolved first before addressing the pending Motion to Dismiss, Petition for  
22 Construction, Petition for Declaratory Relief, and Petition for Determination in these  
23 proceedings. Therefore, the Motion to Continue should be granted with respect to those  
24 matters. However, the Court finds that the Motion to Compel should be addressed at  
25 this hearing on May 13, 2014.

26 Because of a change in circumstances, namely the delay in going forward in  
27 these proceedings in order to first resolve the dispute in the pending Will Contest in  
28 Case No. P-14-080595-E, the Court finds that it is now appropriate that the Motion to

1 Compel should be granted, providing to Jacqueline and Kathryn, as beneficiaries of the  
2 MTC Living Trust, dated December 6, 1995 (the "MTC Trust"), the right to receive the  
3 approximate 65% share of accruing income from the Trust, effective with the month  
4 of May, 2014. However, payment to them of this share of the accruing income should  
5 be conditioned upon their posting a bond or other acceptable security facilitating, if  
6 necessary, the repayment and return of the income distributed to them back to Eleanor  
7 in the event it is determined in these proceedings or in Case No. P-14-080595-E that  
8 Eleanor is entitled to such income. The bond or other security posted should be in the  
9 amount of the anticipated income to be distributed to Jacqueline and Eleanor from  
10 May, 2014, until January, 2015. The amount of anticipated income should be based  
11 upon past income payments received from the Trust to the extent they are actually  
12 indicative of what the anticipated income will be, and any dispute over the amount in  
13 question must be settled by the Court. If the parties can agree on the bond or other  
14 security to be posted, they may submit a Stipulation and Order to the Court for approval  
15 of their arrangement. If they cannot reach an agreement regarding the bond or other  
16 security to be posted, including the terms, the amount and the nature thereof, then  
17 Jacqueline must file a Petition with the Court requesting approval of the bond or other  
18 security proposed; Eleanor may then oppose the same; and, after a hearing thereon, the  
19 Court will determine the matter, including whether or not the bond or other security  
20 proposed is acceptable, the amount required for the bond or other security, and any  
21 other terms desired and appropriate to protect the interests of the parties.

22 The Court further finds that while this proceeding and the Will Contest in Case  
23 No. P-14-080595-E are interrelated, they should not be consolidated. However, any  
24 discovery and evidence gathered in one Case should be usable in the other Case, and  
25 therefore discovery proceedings and efforts of the parties for both Cases should be  
26 coordinated to provide economy in and expeditious handling of these matters.

27 The Court further finds that the trial in this proceeding scheduled on the Court's  
28 hearing Stack beginning August 11, 2014, and the Calendar Call, Pre-Trial Conference

1 and other deadlines relating thereto as previously ordered, should be taken off calendar  
2 at this time pending the resolution of the Will Contest Case. However, although  
3 Motions and Petitions mentioned above relating to this case are also being postponed  
4 and continued pending the resolution of the Will Contest Case, this should not preclude  
5 a party from filing in this proceeding hereafter a motion, petition, or other request for  
6 relief, the granting of which is not dependent upon or would otherwise be resolved by  
7 the Court's decision as to the merits of the parties' positions in the Will Contest Case.

### 8 ORDER

9 Based upon these findings, and good cause appearing:

10 IT IS HEREBY ORDERED as follows:

11 1. The Motion, filed herein on or about May 6, 2014, of Eleanor C. Ahern  
12 in her capacity as the trustee of the W.N. Connell and Marjorie T. Connell Living  
13 Trust, dated May 18, 1972, to Continue May 13, 2014 Hearing on Petition for  
14 Construction and Effect of Probate Court Order of Jacqueline M. Montoya, is granted  
15 as hereinafter further ordered.

16 2. The hearing or other consideration by the Court of Jacqueline's Petition,  
17 filed herein on September 27, 2013, for Declaratory Judgment Regarding Limited  
18 Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(E), and NRS  
19 164.033(1)(A), is hereby continued for a status hearing before the Court on December  
20 4, 2014, at which time its further consideration will be addressed and scheduled as  
21 necessary.

22 3. The hearing or other consideration by the Court of the Motion, filed herein  
23 on March 18, 2014, of Jacqueline M. Montoya, in her capacity as the trustee and a  
24 beneficiary of the MTC Living Trust, dated December 6, 1995, to Dismiss the  
25 Counterclaims of Eleanor C. Ahern, is hereby continued for a status hearing before the  
26 Court on December 4, 2014, at which time its further consideration will be addressed  
27 and scheduled as necessary.

28 4. The hearing or other consideration by the Court of the Petition, filed

1 herein on March 26, 2014, of Jacqueline M. Montoya, in her capacity as the trustee and  
2 a beneficiary of the MTC Living Trust, dated December 6, 1995, for Construction and  
3 Effect of Probate Court Order, is hereby continued for a status hearing before the Court  
4 on December 4, 2014, at which time its further consideration will be addressed and  
5 scheduled as necessary.

6 5. The hearing or other consideration by the Court of the Petition, filed  
7 herein on Marcy 27, 2014, of Jacqueline M. Montoya, in her capacity as the trustee and  
8 a beneficiary of the MTC Living Trust, dated December 6, 1995, for Determination of  
9 Construction and Interpretation of Language Relating to Trust No. 2, is hereby  
10 continued for a status hearing before the Court on December 4, 2014, at which time its  
11 further consideration will be addressed and scheduled as necessary.

12 6. The Petition, which was originally filed herein on December 3, 2013, and  
13 renewed with the filing on March 6, 2014, of Jacqueline M. Montoya, in her capacity  
14 as the trustee and a beneficiary of the MTC Living Trust, dated December 6, 1995, to  
15 Compel Trustee to Distribute Accrued Income and Future Income Received from Oil,  
16 Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of  
17 Laches, is granted in part as follows:

18 a. Beginning with the income paid to the Trust for the month of May,  
19 2014, the approximate 65% share of the income from the Trust's ownership of income  
20 producing real property located in Upton County Texas, together with oil, mineral, and  
21 gas rights related to such real property, which income share had historically been paid  
22 or distributed to Marjorie T. Connell, while she was alive, and then to Jacqueline and  
23 Kathryn, until the dispute over entitlement thereto arose in these proceedings, shall be  
24 paid to Jacqueline as trustee of the MTC Trust for further distribution thereunder in  
25 equal shares to Jacqueline and Kathryn.

26 b. Payment of this approximate 65% share of the income shall be  
27 conditioned upon Jacqueline and Kathryn posting a bond or other acceptable security  
28 facilitating the repayment and return of the income distributed to them back to Eleanor,

1 in the event it is determined in these proceedings or in Case No. P-14-080595-E that  
2 Eleanor is entitled to such income. The bond or other security posted shall be in the  
3 estimated amount of the anticipated income to be distributed to Jacqueline and Eleanor  
4 from May, 2014, until January, 2015. The amount of anticipated income shall be based  
5 upon past income payments received from the Trust to the extent they are actually  
6 indicative of what the anticipated income will be, and any dispute over the amount in  
7 question must be settled by the Court. If the parties can agree on the bond or other  
8 security to be posted, they may submit a Stipulation and Order to the Court for approval  
9 of their arrangement. If they cannot reach an agreement regarding the bond or other  
10 security to be posted, including the terms, the amount and the nature thereof, then  
11 Jacqueline must file a Petition with the Court requesting approval of the bond or other  
12 security proposed; Eleanor may then oppose the same; and, after a hearing thereon, the  
13 Court will determine the matter, including whether or not the bond or other security  
14 proposed is acceptable, the amount required for the bond or other security, and any  
15 other terms desired and appropriate to protect the interests of the parties.

16 7. While this proceeding and the Will Contest in Case No. P-14-080595-E  
17 are interrelated, they shall not be consolidated. However, any discovery and evidence  
18 gathered in one Case shall be usable in the other Case, and therefore discovery  
19 proceedings and efforts of the parties for both Cases shall be coordinated to provide  
20 economy in and expeditious handling of these matters.

21 8. The trial in this proceeding scheduled on the Court's hearing Stack  
22 beginning August 11, 2014, and the Calendar Call, Pre-Trial Conference and other  
23 deadlines relating thereto as previously ordered, are taken off calendar at this time  
24 pending the resolution of the Will Contest Case. However, although the Motions and  
25 Petitions mentioned above relating to this case are also being postponed and continued  
26 pending the resolution of the Will Contest Case, this shall not preclude a party from  
27 filing in this proceeding hereafter a motion, petition, or other request for relief the  
28 granting of which is not dependent upon or would otherwise be resolved by the Court's

1 decision as to the merits of the parties' positions in the Will Contest Case.

2 So ORDERED this 2nd day of July, 2014.

3  
4 DISTRICT COURT JUDGE 

5 Submitted by:

6 ALBRIGHT, STODDARD,  
7 WARNICK & ALBRIGHT

Submitted by:

8 THE RUSHFORTH FIRM, LTD.

9 By: 

10 WHITNEY B. WARNICK, ESQ.  
11 Nevada Bar No. 001573  
12 801 South Rancho Drive, Suite D-4  
13 Las Vegas, Nevada 89106  
14 Tel: (702) 384-7111

By: 

15 JOSEPH J. POWELL, ESQ.  
16 Nevada Bar No. 00875  
17 P.O. Box 371655  
18 Las Vegas, NV 89137-1655  
19 Tel: (702) 255-4552

20 *Attorneys for Jacqueline M. Montoya and Kathryn A. Bouvier*

21 Approved as to form only by:

22 JEFFREY BURR, LTD.

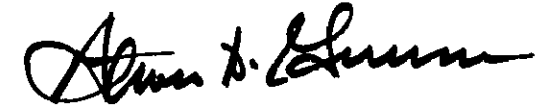
23 By: 

24 JOHN R. MUGAN, ESQ.  
25 Nevada Bar No. 10690  
26 2600 Paseo Verde Parkway, Suite 200  
27 Henderson, Nevada 89074  
28 Tel: (702) 433-4455

*Attorneys for Eleanor Connell Hartman Ahern*

1 **NOEJ**  
 2 G. MARK ALBRIGHT, ESQ.  
 Nevada State Bar No. 001394  
 3 WHITNEY B. WARNICK, ESQ.  
 Nevada State Bar No. 001573  
 4 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT  
 801 South Rancho Drive, Suite D-4  
 Las Vegas, NV 89106  
 5 Tel: (702) 384-7111  
 Fax: (702) 384-0605  
 6 [gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)  
[wbw@albrightstoddard.com](mailto:wbw@albrightstoddard.com)  
 7 *Attorneys for Jacqueline M. Montoya*  
*and Kathryn A. Bouvier*

Electronically Filed  
 07/08/2014 09:07:36 AM



CLERK OF THE COURT

11 **DISTRICT COURT**  
 12 **CLARK COUNTY, NEVADA**

13 In the Matter of the Estate of:  
 14 THE W. N. CONNELL AND MARJORIE T.  
 CONNELL LIVING TRUST, Dated May 18,  
 15 1972,

16 An Inter Vivos Irrevocable Trust

CASE NO. P-09-066425  
 Dept. XXVI (26)


**NOTICE OF ENTRY OF  
 ORDER: RE PENDING MOTIONS AND  
 SCHEDULING**

18 PLEASE TAKE NOTICE that an **ORDER: RE PENDING MOTIONS AND**  
 19 **SCHEDULING** was entered with this Court on July 7, 2014.

20 A copy of said Order is attached hereto.

21 DATED this 7<sup>th</sup> day of July, 2014.

22 ALBRIGHT, STODDARD, WARNICK  
 & ALBRIGHT


23  
 24 By   
 G. MARK ALBRIGHT, ESQ.  
 Nevada Bar No. 001394  
 25 WHITNEY B. WARNICK, ESQ.  
 Nevada Bar No. 001573  
 26 801 South Rancho Drive, Suite D-4  
 Las Vegas, Nevada 89106  
 27 *Attorneys for Jacqueline M. Montoya*



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Albright, Stoddard, Warnick & Albright and that on this 7 day of July, 2014, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER: RE PENDING MOTIONS AND SCHEDULING** upon all counsel of record by electronically serving the document using the Court's electronic filing system, and by placing a true and correct copy thereof, enclosed in a sealed envelope, in the United States Mail at Las Vegas, Nevada, with first class postage thereon prepaid, addressed to the following:

John R. Mugan, Esq. Jeffrey Burr Ltd. Suite 200 2600 Paseo Verde Parkway Henderson, Nevada 89074 Attorneys for Eleanor C. Ahern	Joseph J. Powell, Esq. The Rushforth Law Firm, Ltd. Suite 100 9505 Hillwood Drive Las Vegas, Nevada 89134 Attorneys for Jacqueline M. Montoya and Kathryn A. Bouvier
--	--

  
 An employee of Albright, Stoddard, Warnick & Albright

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CLERK OF THE COURT

1 **ORDER**  
2 JOSEPH J. POWELL, ESQ.  
3 Nevada Bar No. 008875  
4 THE RUSHFORTH FIRM, LTD.  
5 9505 Hillwood Drive, Suite 100  
6 Las Vegas, Nevada 89134  
7 Tel: (702) 255-4552  
8 Fax: (702) 255-4677  
9 [joey@rushforth.net](mailto:joey@rushforth.net)  
10 *Attorneys for Jaqueline M. Montoya*

6 WHITNEY B. WARNICK, ESQ.  
7 Nevada Bar No. 001573  
8 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT  
9 801 South Rancho Drive, Suite D-4  
10 Las Vegas, Nevada 89106  
11 Tel: (702) 384-7111  
12 Fax: (702) 384-0605  
13 [gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)  
14 *Attorneys for Kathryn A. Bouvier*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

17 In the Matter of  
18 THE W. N. CONNELL AND MARJORIE  
19 T. CONNELL LIVING TRUST, Dated  
20 May 18, 1972,

CASE NO. P-09-066425  
DEPT NO. XXVI (26)

Date of Hearing: May 13, 2014  
Time of Hearing: 9:30a.m.

21 An Inter Vivos Irrevocable Trust.

**ORDER: RE PENDING MOTIONS  
AND SCHEDULING**

22 The following Motions and Petitions came on for hearing before the Court on  
23 May 13, 2014:

- 24 1. The Motion, filed herein on or about May 6, 2014, of Eleanor C. Ahern  
25 in her capacity as the trustee of the W.N. Connell and Marjorie T. Connell Living  
26 Trust, dated May 18, 1972, to Continue May 13, 2014 Hearing on Petition for  
27 Construction and Effect of Probate Court Order of Jacqueline M. Montoya (hereinafter  
28 referred to as the "Motion to Continue");



1 Determination of Construction and Interpretation of Language Relating to Trust No.  
2 2 (hereinafter referred to as the "Petition for Determination"), all be postponed and  
3 continued until after the hearing and resolution of the pending Will Contest between  
4 the parties in this Court in Case No. P-14-080595-E.

5 Eleanor asserted that the resolution of the pending Will Contest Case could  
6 resolve completely all the other pending actions in this Case, and therefore as a matter  
7 of judicial economy, and to avoid unnecessary litigation expenses, it would be prudent  
8 to postpone and continue the other pending matters in this Case until the Court  
9 rendered its decision in the Will Contest Case. Jacqueline asserted that while it may  
10 be prudent that her other Motion and Petitions pending in this Case be continued until  
11 the resolution of the pending Will Contest Case, the Court should address the relief  
12 requested in her Motion to Compel at this time, in order to provide to Jacqueline and  
13 her sister, Kathryn A. Bouvier (hereinafter "Kathryn"), income they depended upon  
14 from the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (the  
15 "Trust"). The Trust owns income producing real property located in Upton County  
16 Texas, together with oil, mineral, and gas rights related to such real property.  
17 Approximately a 65% share of income from this property had historically been paid or  
18 distributed to Marjorie T. Connell, while she was alive, and then to Jacqueline and  
19 Kathryn, until the dispute over entitlement to the income arose in these proceedings.

20 The Court finds that the pending Will Contest in Case No. P-14-080595-E  
21 should be resolved first before addressing the pending Motion to Dismiss, Petition for  
22 Construction, Petition for Declaratory Relief, and Petition for Determination in these  
23 proceedings. Therefore, the Motion to Continue should be granted with respect to those  
24 matters. However, the Court finds that the Motion to Compel should be addressed at  
25 this hearing on May 13, 2014.

26 Because of a change in circumstances, namely the delay in going forward in  
27 these proceedings in order to first resolve the dispute in the pending Will Contest in  
28 Case No. P-14-080595-E, the Court finds that it is now appropriate that the Motion to

1 Compel should be granted, providing to Jacqueline and Kathryn, as beneficiaries of the  
2 MTC Living Trust, dated December 6, 1995 (the "MTC Trust"), the right to receive the  
3 approximate 65% share of accruing income from the Trust, effective with the month  
4 of May, 2014. However, payment to them of this share of the accruing income should  
5 be conditioned upon their posting a bond or other acceptable security facilitating, if  
6 necessary, the repayment and return of the income distributed to them back to Eleanor  
7 in the event it is determined in these proceedings or in Case No. P-14-080595-E that  
8 Eleanor is entitled to such income. The bond or other security posted should be in the  
9 amount of the anticipated income to be distributed to Jacqueline and Eleanor from  
10 May, 2014, until January, 2015. The amount of anticipated income should be based  
11 upon past income payments received from the Trust to the extent they are actually  
12 indicative of what the anticipated income will be, and any dispute over the amount in  
13 question must be settled by the Court. If the parties can agree on the bond or other  
14 security to be posted, they may submit a Stipulation and Order to the Court for approval  
15 of their arrangement. If they cannot reach an agreement regarding the bond or other  
16 security to be posted, including the terms, the amount and the nature thereof, then  
17 Jacqueline must file a Petition with the Court requesting approval of the bond or other  
18 security proposed; Eleanor may then oppose the same; and, after a hearing thereon, the  
19 Court will determine the matter, including whether or not the bond or other security  
20 proposed is acceptable, the amount required for the bond or other security, and any  
21 other terms desired and appropriate to protect the interests of the parties.

22 The Court further finds that while this proceeding and the Will Contest in Case  
23 No. P-14-080595-E are interrelated, they should not be consolidated. However, any  
24 discovery and evidence gathered in one Case should be usable in the other Case, and  
25 therefore discovery proceedings and efforts of the parties for both Cases should be  
26 coordinated to provide economy in and expeditious handling of these matters.

27 The Court further finds that the trial in this proceeding scheduled on the Court's  
28 hearing Stack beginning August 11, 2014, and the Calendar Call, Pre-Trial Conference

1 and other deadlines relating thereto as previously ordered, should be taken off calendar  
2 at this time pending the resolution of the Will Contest Case. However, although  
3 Motions and Petitions mentioned above relating to this case are also being postponed  
4 and continued pending the resolution of the Will Contest Case, this should not preclude  
5 a party from filing in this proceeding hereafter a motion, petition, or other request for  
6 relief, the granting of which is not dependent upon or would otherwise be resolved by  
7 the Court's decision as to the merits of the parties' positions in the Will Contest Case.

### 8 ORDER

9 Based upon these findings, and good cause appearing:

10 IT IS HEREBY ORDERED as follows:

- 11 1. The Motion, filed herein on or about May 6, 2014, of Eleanor C. Ahern  
12 in her capacity as the trustee of the W.N. Connell and Marjorie T. Connell Living  
13 Trust, dated May 18, 1972, to Continue May 13, 2014 Hearing on Petition for  
14 Construction and Effect of Probate Court Order of Jacqueline M. Montoya, is granted  
15 as hereinafter further ordered.
- 16 2. The hearing or other consideration by the Court of Jacqueline's Petition,  
17 filed herein on September 27, 2013, for Declaratory Judgment Regarding Limited  
18 Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(E), and NRS  
19 164.033(1)(A), is hereby continued for a status hearing before the Court on December  
20 4, 2014, at which time its further consideration will be addressed and scheduled as  
21 necessary.
- 22 3. The hearing or other consideration by the Court of the Motion, filed herein  
23 on March 18, 2014, of Jacqueline M. Montoya, in her capacity as the trustee and a  
24 beneficiary of the MTC Living Trust, dated December 6, 1995, to Dismiss the  
25 Counterclaims of Eleanor C. Ahern, is hereby continued for a status hearing before the  
26 Court on December 4, 2014, at which time its further consideration will be addressed  
27 and scheduled as necessary.
- 28 4. The hearing or other consideration by the Court of the Petition, filed

1 herein on March 26, 2014, of Jacqueline M. Montoya, in her capacity as the trustee and  
2 a beneficiary of the MTC Living Trust, dated December 6, 1995, for Construction and  
3 Effect of Probate Court Order, is hereby continued for a status hearing before the Court  
4 on December 4, 2014, at which time its further consideration will be addressed and  
5 scheduled as necessary.

6 5. The hearing or other consideration by the Court of the Petition, filed  
7 herein on Marcy 27, 2014, of Jacqueline M. Montoya, in her capacity as the trustee and  
8 a beneficiary of the MTC Living Trust, dated December 6, 1995, for Determination of  
9 Construction and Interpretation of Language Relating to Trust No. 2, is hereby  
10 continued for a status hearing before the Court on December 4, 2014, at which time its  
11 further consideration will be addressed and scheduled as necessary.

12 6. The Petition, which was originally filed herein on December 3, 2013, and  
13 renewed with the filing on March 6, 2014, of Jacqueline M. Montoya, in her capacity  
14 as the trustee and a beneficiary of the MTC Living Trust, dated December 6, 1995, to  
15 Compel Trustee to Distribute Accrued Income and Future Income Received from Oil,  
16 Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of  
17 Laches, is granted in part as follows:

18 a. Beginning with the income paid to the Trust for the month of May,  
19 2014, the approximate 65% share of the income from the Trust's ownership of income  
20 producing real property located in Upton County Texas, together with oil, mineral, and  
21 gas rights related to such real property, which income share had historically been paid  
22 or distributed to Marjorie T. Connell, while she was alive, and then to Jacqueline and  
23 Kathryn, until the dispute over entitlement thereto arose in these proceedings, shall be  
24 paid to Jacqueline as trustee of the MTC Trust for further distribution thereunder in  
25 equal shares to Jacqueline and Kathryn.

26 b. Payment of this approximate 65% share of the income shall be  
27 conditioned upon Jacqueline and Kathryn posting a bond or other acceptable security  
28 facilitating the repayment and return of the income distributed to them back to Eleanor,

1 in the event it is determined in these proceedings or in Case No. P-14-080595-E that  
2 Eleanor is entitled to such income. The bond or other security posted shall be in the  
3 estimated amount of the anticipated income to be distributed to Jacqueline and Eleanor  
4 from May, 2014, until January, 2015. The amount of anticipated income shall be based  
5 upon past income payments received from the Trust to the extent they are actually  
6 indicative of what the anticipated income will be, and any dispute over the amount in  
7 question must be settled by the Court. If the parties can agree on the bond or other  
8 security to be posted, they may submit a Stipulation and Order to the Court for approval  
9 of their arrangement. If they cannot reach an agreement regarding the bond or other  
10 security to be posted, including the terms, the amount and the nature thereof, then  
11 Jacqueline must file a Petition with the Court requesting approval of the bond or other  
12 security proposed; Eleanor may then oppose the same; and, after a hearing thereon, the  
13 Court will determine the matter, including whether or not the bond or other security  
14 proposed is acceptable, the amount required for the bond or other security, and any  
15 other terms desired and appropriate to protect the interests of the parties.

16 7. While this proceeding and the Will Contest in Case No. P-14-080595-E  
17 are interrelated, they shall not be consolidated. However, any discovery and evidence  
18 gathered in one Case shall be usable in the other Case, and therefore discovery  
19 proceedings and efforts of the parties for both Cases shall be coordinated to provide  
20 economy in and expeditious handling of these matters.

21 8. The trial in this proceeding scheduled on the Court's hearing Stack  
22 beginning August 11, 2014, and the Calendar Call, Pre-Trial Conference and other  
23 deadlines relating thereto as previously ordered, are taken off calendar at this time  
24 pending the resolution of the Will Contest Case. However, although the Motions and  
25 Petitions mentioned above relating to this case are also being postponed and continued  
26 pending the resolution of the Will Contest Case, this shall not preclude a party from  
27 filing in this proceeding hereafter a motion, petition, or other request for relief the  
28 granting of which is not dependent upon or would otherwise be resolved by the Court's



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

decision as to the merits of the parties' positions in the Will Contest Case.

So ORDERED this 2<sup>nd</sup> day of July, 2014.

DISTRICT COURT JUDGE 

Submitted by:

ALBRIGHT, STODDARD,  
WARNICK & ALBRIGHT

Submitted by:

THE RUSHFORTH FIRM, LTD.

By: 

WHITNEY B. WARNICK, ESQ.  
Nevada Bar No. 001573  
801 South Rancho Drive, Suite D-4  
Las Vegas, Nevada 89106  
Tel: (702) 384-7111

By: 

JOSEPH J. POWELL, ESQ.  
Nevada Bar No. 00875  
P.O. Box 371655  
Las Vegas, NV 89137-1655  
Tel: (702) 255-4552

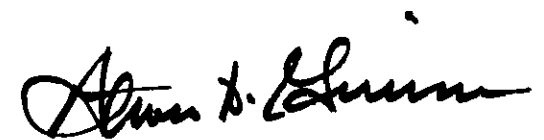
*Attorneys for Jacqueline M. Montoya and Kathryn A. Bouvier*

Approved as to form only by:

JEFFREY BURR, LTD.

By: 

JOHN R. MUGAN, ESQ.  
Nevada Bar No. 10690  
2600 Paseo Verde Parkway, Suite 200  
Henderson, Nevada 89074  
Tel: (702) 433-4455  
*Attorneys for Eleanor Connell Hartman Ahern*



CLERK OF THE COURT

1 **NOAS**  
JOHN R. MUGAN, Esquire  
2 Nevada Bar No. 10690  
[john@jeffreyburr.com](mailto:john@jeffreyburr.com)  
3 MICHAEL D. LUM, Esquire  
Nevada Bar No. 12997  
4 [michael@jeffreyburr.com](mailto:michael@jeffreyburr.com)  
JEFFREY BURR, LTD.  
5 2600 Paseo Verde Parkway, Suite 200  
Henderson, NV 89074  
6 Telephone: (702) 433-4455  
Facsimile: (702) 451-1853  
7 *Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN*

8  
9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 In the Matter of

12 THE W. N. CONNELL AND MARJORIE T. CONNELL  
13 LIVING TRUST,  
14 Dated May 18, 1972

Case No. P-09-066425-T  
Dept. 26

15 An Inter Vivos Irrevocable Trust.

16  
17 **NOTICE OF APPEAL**

18 NOTICE IS HEREBY GIVEN that the above named, ELEANOR C. AHERN, a/k/a  
19 ELEANOR CONNELL HARTMAN AHERN ("ELEANOR"), as Trustee of THE W. N.  
20 CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, by and through  
21 her counsel of record, JOHN R. MUGAN, Esquire, and MICHAEL D. LUM, Esquire, of the law  
22 firm of JEFFREY BURR, LTD., hereby appeals to the Supreme Court of Nevada the Order: Re  
23  
24  
25  
26  
27  
28

1 Pending Motions and Scheduling entered in this action on July 7, 2014.

2 DATED: July 31, 2014.

3 JEFFREY BURR, LTD.

4  
5 By: 

6 JOHN R. MUGAN, ESQUIRE

7 Nevada Bar No. 10690

8 MICHAEL D. LUM, ESQUIRE

9 Nevada Bar No. 12997

2600 Paseo Verde Parkway, Suite 200

Henderson, Nevada 89074

*Attorneys for Trustee ELEANOR CONNELL  
HARTMAN AHERN*

10  
11 **CERTIFICATE OF MAILING AND ELECTRONIC DELIVERY**

12 I hereby certify that on the 31 day of July, 2014, I served a true and correct copy of the  
13 above and foregoing **NOTICE OF APPEAL** upon all counsel of record by electronically serving  
14 the document, to each person as indicated below, and by placing a true and correct copy thereof,  
15 enclosed in a sealed envelope, in the United States Mail at Henderson, Nevada, with first class  
16 postage thereon prepaid, addressed as follows:  
17

18 JOSEPH J. POWELL, Esquire  
19 The Rushforth Firm. Ltd.  
20 P.O. Box 371655  
Las Vegas, NV 89137  
[joey@rushforth.net](mailto:joey@rushforth.net)

21 WHITNEY WARNICK, Esquire  
22 Albright, Stoddard, Warnick and Albright  
23 801 S. Rancho Dr., #D-4  
Las Vegas, NV 89106  
[wbw@albrightstoddard.com](mailto:wbw@albrightstoddard.com)

24  
25  
26   
27 An employee of JEFFREY BURR, LTD.  
28

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: 6782, 68046  
Electronically Filed  
Nov 20 2015 04:10 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

District Court Case No.:  
P-09-066425-T

Appeal from the Eighth Judicial  
District Court, The Honorable Gloria  
Sturman Presiding

**APPELLANT'S APPENDIX**

**(VOLUME 7 OF 17)**

**(PAGES AA 1387 - 1616)**

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*

## INDEX TO APPELLANT'S APPENDIX

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	03/06/14	4	AA 736-748
Affidavit Of Service (Motion For Leave To Amend)	01/13/15	12	AA 2646-2647
Amended Certificate Of Mailing (Motion To Dismiss)	03/20/14	5	AA 1086-1087
Amended Notice Of Appeal	07/29/15	17	AA 3602-3613
Answer Of Trustee Eleanor C. Ahern To Jacqueline M. Montoya's 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) And Counterclaims Against Jacqueline M. Montoya	02/10/14	3	AA 609-627
Brief Regarding Accounting, Fiduciary Duties And Trust Administration Filed Under Seal	03/13/15	14-15	AA 2926-3192
Brief Regarding Pending Issues Filed Under Seal	03/12/15	13	AA 2891-2925
Certificate Of Mailing (Petition For Construction)	03/28/14	5	AA 1149-1150
Certificate Of Mailing (Petition For Declaratory Judgment)	09/27/13	1	AA 205-206
Certificate Of Mailing (Petition For Determination)	03/31/14	5	AA 1151-1152
Certificate Of Mailing (Petition To Assume)	08/17/09	1	AA 62-63
Certificate Of Mailing (Petition To Compel)	12/03/13	2	AA 302-303

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Certificate Of Mailing (Petition To Compel)	03/06/14	4	AA 749-750
Certificate Of Mailing (Response To Objection)	05/08/14	7	AA 1430-1431
Certificate Of Mailing Regarding Opposition Of Eleanor C. Ahern To Jacqueline M. Montoya's Petition For Construction And Effect Of Probate Court Order	05/12/14	7	AA 1533
Court Minutes Hearing Motion to Dismiss 01/14/14	01/14/14	3	AA 579-580
Court Minutes Re All Pending Motions 05/13/14	05/13/14	7	AA 1534-1536
Court Minutes Re Bench Trial	02/18/14	3	AA 672
Court Minutes Re Evidentiary Hearing On Pending Motions 01/30/15	01/30/15	12	AA 2687-2689
Eleanor C. Ahern's (1) Reply In Support Of Eleanor C. Ahern's Motion To Dismiss Petition For Declaratory Judgment For Failure To State Of Claim Upon Which Relief Can Be Granted; (2) Opposition To Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages, And Assessment Of Penalties And For Other Relief; And (3) Reply In Support Of Countermotion For Summary Judgment	01/09/15	11	AA 2362-2540
Errata To Objection Of Trustee Eleanor C. Ahern To Jacqueline M. Montoya's Petition And Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	05/07/14	5	AA 1153-1164

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Motion For Leave To Amend Pleadings Of Jacqueline M. Montoya And Kathryn A. Bouvier For Claims, Defenses, Damages And Assessment Of Penalties, And For Other Relief Against Eleanor Connell Hartman Ahern	01/12/15	12	AA 2635-2645
Motion In Support Of Award Of Attorney's Fees And Costs	04/01/15	16	AA 3276-3406
Motion To Dismiss And Motion To Strike Counterclaims Raised By Eleanor C. Ahern Pursuant To NRCP 15 And NRCP 12(B)	02/14/14	3	AA 667-671
Motion To Dismiss Counterclaims Of Eleanor C. Ahern	03/18/14	5	AA 1058-1085
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)	10/09/14	8	AA 1617-1756
Notice Of Appeal	07/31/14	7	AA 1615-1616
Notice Of Appeal	05/18/15	17	AA 3570-3601
Notice Of Appeal Regarding Order Appoint New Temporary Trustee	04/07/15	16	AA 3411-3417
Notice Of Entry Of Order (Appointing New Temporary Trustee)	04/06/15	16	AA 3407-3410
Notice of Entry of Order and Stipulation and Order to File Under Seal	02/17/15	13	AA 2886-2890
Notice Of Entry Of Order Compelling Eleanor Ahern To Turn Over Trust Records To Acting Successor Trustee	04/24/15	16	AA 3471-3474
Notice Of Entry Of Order Confirming Acting Successor Trustee	04/24/15	16	AA 3475-3478

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Notice Of Entry Of Order On Summary Judgment	04/17/15	16	AA 3435-3454
Notice Of Entry Of Order Regarding The Accounting, Breach Of Fiduciary Duty Claims And Award Of Attorney Fees	04/20/15	16	AA 3464-3470
Notice Of Entry Of Order: Re Pending Motions And Scheduling	07/08/14	7	AA 1605-1614
Notice Of 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)	09/27/13	1	AA 203-204
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	01/03/14	2-3	AA 326-560
Objection Of Trustee Eleanor C. Ahern To Jacqueline M. Montoya's Petition And Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	03/13/14	4-5	AA 751-1057
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)	12/11/13	2	AA 304-325



<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Omnibus Opposition To (1) Petition For Determination Of Construction And Interpretation Of Language Relating To Trust No. 2 And (2) Petition For Construction And Effect Of Probate Court Order; And Countermotion For Summary Judgment	01/02/15	9-11	AA 1850-2361
Opposition Of Eleanor C. Ahern To Jacqueline M. Montoya's Petition For Construction And Effect Of Probate Court Order	05/12/14	7	AA 1432-1532
Opposition Of Eleanor C. Ahern To Motion To Dismiss Counterclaims Of Eleanor C. Ahern	05/07/14	6	AA 1165-1386
Opposition To Eleanor C. Ahern's Motion To Dismiss Petition For Declaratory Judgment For Failure To State A Claim Upon Which Relief Can Be Granted; And, Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages And Assessment Of Penalties, And For Other Relief	12/23/14	8	AA 1757-1849
Opposition To Motion For Leave To Amend Pleadings	01/27/15	12	AA 2673-2686
Opposition To Motion In Support Of Award Of Attorney's Fees And Costs	05/04/15	16	AA 3479-3497
Order Appointing New Temporary Trustee	04/01/15	15	AA 3274-3275
Order Compelling Eleanor Ahern To Turn Over Trust Records To Acting Successor Trustee	04/20/15	16	AA 3460-3461
Order Confirming Acting Successor Trustee	04/20/15	16	AA 3462-3463

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Order Regarding The Accounting, Breach Of Fiduciary Duty Claims And Award Of Attorney Fees	04/20/15	16	AA 3455-3459
Order: Re Pending Motions And Scheduling	07/07/14	7	AA 1597-1604
Petition For Construction And Effect Of Probate Court Order	03/26/14	5	AA 1088-1127
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)	09/27/13	1	AA 64-200
Petition For Determination Of Construction And Interpretation Of Language Relating To Trust No. 2	03/27/14	5	AA 1130-1146
Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust	08/17/09	1	AA 1-61
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	12/03/13	2	AA 277-299
Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	03/06/14	4	AA 713-735
Pre-Trial Memorandum	02/11/14	3	AA 628-666
Recorder's Transcript Motions Hearing 01/14/14	01/24/14	3	AA 581-608
Recorder's Transcript Of Proceedings Civil Bench Trial – Day 1 02/18/14	02/26/14	4	AA 673-712

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Reply In Support Of Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages And Assessment Of Penalties, And For Other Relief; And, Opposition To Eleanor's Countermotion For Summary Of Judgment	01/09/15	12	AA 2541-2588
Reply In Support Of Motion For Award Of Attorney's Fees And Costs And Supplement To Motion In Support Of Award Of Attorney's Fees And Costs	05/08/15	17	AA 3498-3531
Response To Objection Of Eleanor C. Ahern To Jacqueline M. Montoya's Petition And Addendum To Petition To Compel Trustee To Distribute Accrued Income And Future Income From Oil, Gas, And Mineral Leases And Declaration Of The Applicability Of The Doctrine Of Laches	05/08/14	7	AA 1387-1429
Response To 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	01/09/14	3	AA 561-578
Second Supplement To Brief Regarding Pending Issues Filed Under Seal	03/19/15	15	AA 3267-3273
Summary Judgment	04/16/15	16	AA 3418-3434
Supplement To Brief Regarding Accounting, Fiduciary Duties And Trust Administration Filed Under Seal	03/18/15	15	AA 3253-3266
Supplement To Brief Regarding Pending Issues Filed Under Seal	03/18/15	15	AA 3193-3252

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
Supplement To Motion To Amend Pleadings	01/20/15	12	AA 2648-2672
Supplement To Reply In Support Of Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages, And Assessment Of Penalties, And For Other Relief; And, Opposition To Eleanor's Countermotion For Summary Judgment	01/12/15	12	AA 2589-2634
Sur-Reply To Montoya And Bouvier's Reply In Support Of Motion For Award Of Attorneys' Fees And Costs	05/12/15	17	AA 3532-3536
Transcript Of Proceedings 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) 11/12/13	12/06/13	2	AA 207-276
Transcript Of Proceedings Motion For Attorney Fees 05/13/15	06/12/15	17	AA 3537-3569
Transcript Of Proceedings: Hearing 01/30/15	03/02/15	13	AA 2690-2885
Transcript Re: All Pending Motions 05/13/14	05/20/14	7	AA 1537-1596
Verification For Petition For Construction And Effect Of Probate Court Order	03/26/14	5	AA 1128-1129
Verification For 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)	09/27/13	1	AA 201-202
Verification For Petition For Determination Of Construction And Interpretation Of Language Relating To Trust No. 2	03/27/14	5	AA 1147-1148

<b>Description</b>	<b>Date Filed</b>	<b>Vol. No.</b>	<b>Page No.</b>
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	12/03/13	2	AA 300-301

018177\0001\13966625.1

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 7 of 17) (Pages AA 1387-1616)** by using the Court's Electronic Filing System on November 20, 2015, upon the following:

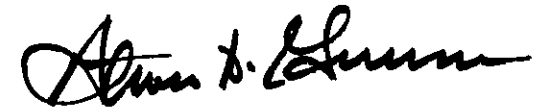
WHITNEY B. WARNICK, ESQ.  
ALBRIGHT, STODDARD,  
WARNICK & ALBRIGHT  
801 South Rancho Drive, Suite D-4  
Las Vegas, NV 89106  
*Attorneys for Kathryn A. Bouvier*

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 Parcels  
an employee of Brownstein Hyatt Farber Schreck, LLP



CLERK OF THE COURT

1 **RSPN**  
2 THE RUSHFORTH FIRM, LTD.  
3 JOSEPH J. POWELL  
4 State Bar No. 8875  
5 P. O. Box 371655  
6 Las Vegas, NV 89137-1655  
7 Telephone (702) 255-4552  
8 fax: (702) 255-4677  
9 e-mail: probate@rushforthfirm.com  
10 Attorneys for Jacqueline M. Montoya

8 **DISTRICT COURT**  
9  
10 **CLARK COUNTY, NEVADA**

11  
12 In re the Matter of the

13 THE W.N. CONNELL and MARJORIE  
14 T. CONNELL LIVING TRUST, dated  
15 May 18, 1972

16 A non-testamentary trust.

Case No.: P-09-066425-T  
**Department XXVI, RJC**

17  
18 **RESPONSE TO OBJECTION OF ELEANOR C. AHERN TO JACQUELINE M. MONTOYA'S**  
19 **PETITION AND ADDENDUM TO PETITION TO COMPEL TRUSTEE TO DISTRIBUTE**  
20 **ACCRUED INCOME AND FUTURE INCOME RECEIVED FROM OIL, GAS, AND MINERAL**  
21 **LEASES AND DECLARATION OF THE APPLICABILITY OF THE DOCTRINE OF LACHES**

22 Date of Hearing: May 13, 2014

23 Time of Hearing: 9:00 a. m.

24 JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and also in her  
25 capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through  
26 her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD.,  
27 hereby files this Response to the "Objection of Eleanor C. Ahern to Jacqueline M. Montoya's  
28 Petition and Addendum to Petition to Compel Trustee to Distribute Accrued Income and



1 Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the  
2 Applicability of the Doctrine of Laches” (“Objection”), which was filed by Eleanor C. Ahern,  
3 by and through her counsel of record, JOHN R. MUGAN, Esq. and MICHAEL D. LUM,  
4 Esq., of JEFFREY BURR, LTD., on March 13, 2014. Jacqueline Responds to the Objection  
5 as follows:  
6

7 **A. SUMMARY OF KEY POINTS**

8 In her continuing effort to distract this Court from her obvious and blatant abuse  
9 of the position of trustee of the Trust, Ms. Ahern once again throws out irrational and  
10 unfounded statements. There is no need to respond to ludicrous positions, so instead  
11 Jacqueline asks that this Court not lose sight of these basic facts:  
12

- 13 • This is a beneficiary versus beneficiary dispute, in which Ms. Ahern has  
14 abused and entirely misused her position as trustee of the Trust to further  
15 her own self interests, without any basis for doing so;
- 16 • The burden to show that a change to 33 years of precedent, the status quo,  
17 is appropriate and belongs to Ms. Ahern, not Jacqueline, as Jacqueline is  
18 not seeking any change to the status quo. Jacqueline has had to pursue  
19 Ms. Ahern because of her wrongful conduct. Ms. Ahern is obligated to  
20 justify her conduct, not the other way around.
- 21 • K-1s are issued to beneficiaries of trusts. Recipients of gifts do not receive  
22 K-1s (Form 1041s). K-1s have been issued by Ms. Ahern to Jacqueline, and  
23 her sister, from 2009 through 2012.
- 24 • If Ms. Ahern wants to assert that the Form 706 allocation is not known  
25 and in controversy, then it is her obligation to produce the Form 706, a  
26 document that as a trustee since 1980 she should be expected to have in  
27 her possession.
- 28 • Following the passing of Marjorie T. Connell, Ms. Ahern had ample  
opportunity and time to vocalize and assert that the MTC Living Trust had  
no rights to the 65% of the Texas real estate and the income from the oil  
and gas rights and she did nothing of the sort.
- Marjorie T. Connell’s ownership of approximately 65% of the Texas real

1 estate and the oil and gas rights related thereto, via the MTC Living Trust,  
2 was expressly stated on the Form 706 filed on behalf of her Estate, which is  
3 a document that is executed under penalties of perjury, thus evidencing  
4 the reality that there was legal ownership by Marjorie T. Connell's estate,  
5 via her trust, as was established through W.N. Connell's Form 706 in 1980,  
6 as reflected on the Texas Inheritance tax return, also filed in 1980.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

***THIS IS A BENEFICIARY VERSUS BENEFICIARY DISPUTE***

A.1 As it cannot be re-emphasized strongly enough, in reality this is not a beneficiary versus trustee dispute. This is a beneficiary versus beneficiary dispute. It just so happens that Ms. Ahern is abusing her position as trustee to gain unfair and uncalled for leverage in her attempt to increase her beneficial interest in the Trust. A fiduciary who had any sense of what her position and duties required would have never taken the action that Ms. Ahern has done. If Ms. Ahern was acting appropriately as a trustee, she would have sought a judicial determination of what her rights were under the trust in accordance with the ample avenues available under NRS Chapter 13. At the very least, a reasonable trustee would have sent out a notice of proposed action under NRS 164.725 to put both Jacqueline and Kathryn Bouvier on notice of the action and change of position that the trustee intended to take. Ms. Ahern did nothing that a reasonable trustee would be obligated and expected to do in a situation such as this that has had such a monumental negative effect on and a massive disruption to the lives of Jacqueline and Kathryn.

***THE BURDEN IS ON MS. AHERN TO SHOW A RIGHT TO CHANGE THE STATUS QUO***

A.2 The burden of proof in this matter to show that it is appropriate to change an existing pattern and status quo that has been in effect for 33 years rests squarely on the shoulders of Ms. Ahern, the person seeking to make a drastic change to the interests of Jacqueline and Kathryn, as beneficiaries of the MTC Living Trust. It is not the other way

1 around, despite Ms. Ahern's empty and false assertions that it is. Ms. Ahern is seeking to  
2 change the precedent and status quo that existed for 29 years following W.N. Conell's  
3 passing, and existed another 4 years after the death of Marjorie Connell. The burden to  
4 show justification and changed circumstances which warranted the decision to accept 35%  
5 of the Texas Property Income for 33 years and then decide that she would now be keeping  
6 100% of such income is for Ms. Ahern to establish, not Jacqueline to disprove. Jacqueline  
7 has been forced to institute the underlying action against Ms. Ahern because of Ms. Ahern's  
8 refusal to act rationally and appropriately as a trustee. It is the obligation of Ms. Ahern to  
9 prove by a preponderance of the evidence that she has acted appropriately and rationally  
10 in light of her actions. Again, the burden of proof in this matter belongs to Ms. Ahern, not  
11 Jacqueline.

12  
13  
14 A.3 To this end, Ms. Ahern has focused a great deal of attention on attempting to  
15 establish elements and hurdles that Jacqueline must overcome to force Ms. Ahern to return  
16 the status quo to the way that it was prior to the abrupt breach of her duties and violation  
17 of the legal rights and interest in the Texas Property belonging to Jacqueline and Kathryn,  
18 via the MTC Living Trust. Despite whatever label is attached to it, the simple fact is that  
19 Jacqueline is demanding that Ms. Ahern comply with her fiduciary obligations under the  
20 Trust, which is within her right to do in front of a court sitting as the probate court and  
21 which has full equitable powers at its disposal to not allow a trustee to cause damage to  
22 beneficiaries that she has a fiduciary obligation to protect and act in the best interests of.  
23  
24

25 ***K-1S ARE NOT ISSUED TO RECIPIENTS OF "GIFTS"***

26  
27 A.4 K-1 Forms, Form 1041, are issued to trust beneficiaries to report the amount  
28 of income that has been distributed from a trust to a beneficiary.

1 *Trusts and estates use Form 1041 to file their tax returns. In some cases, the trust pays the*  
2 *income tax on their earnings rather than passing it through to the beneficiaries. However,*  
3 *some trusts and estates pass income through to the beneficiaries. In this case the*  
4 *beneficiaries receive a K-1 that shows the income that they need to report on their own tax*  
5 *returns. Whenever a beneficiary receives a distribution of income, the trust or estate*  
6 *reports a deduction for the same amount on its 1041. This keeps the trust or estate from*  
*being taxed on this income so that the income is only taxed once. (Source:*  
*<https://turbotax.intuit.com/tax-tools/tax-tips/Small-Business-Taxes/What-is-a-Schedule-K-1-Tax-Form-/INF19204.html>)*

7 *Use Schedule K-1 to report a beneficiary's share of the estate's or trust's income, credits,*  
8 *deductions, etc. on your Form 1040, U.S. Individual Income Tax Return. Keep it for your*  
9 *records. (Source: <http://www.irs.gov/pub/irs-pdf/i1041sk1.pdf>)*  
K-1s are not issued to the recipients of "gifts".

10 A.5 Ms. Ahern has taken the entirely absurd and disingenuous position with this  
11 Court that she allowed Marjorie Connell to receive 65% of the income from the Texas  
12 Property for 29 years and then Jacqueline and Kathryn for the subsequent 4 years following  
13 Marjorie's death, but that they had no legal right to these monies, yet she was not making  
14 gifts to them. As has been previously addressed, this is absurd. Ms. Ahern cannot have it  
15 both ways. Either the receipt of the 65% of the income was monies to which Marjorie, and  
16 then Jacqueline and Kathryn, was legally entitled to or the distributions constituted gifts  
17 for which Ms. Ahern was obligated to file Form 709s every year. If they were gifts, then  
18 WHY HAS MS. AHERN ISSUED K-1S TO JACQUELINE AND KATHYRN ! ? ! ? ! ?.  
19 Furthermore, why exactly for 33 years did these supposed gifts always constitute 65% of the  
20 Texas Property income, which is the same figure reflected on the Texas inheritance tax  
21 return, with the figure being taken from the Form 706 for Mr. Connell? If they were  
22 discretionary gifts with no legal obligation to be made, why were they always in the same  
23 65% proportion of the income?  
24  
25  
26

27 A.6 The K-1s from 2009, 2010, and 2011 issued by Ms. Ahern to Jacqueline and  
28

1 Kathryn are collectively attached hereto as Exhibit "A" and are hereby incorporated by this  
2 reference.

3 ***AS A TRUSTEE OF THE TRUST SINCE 1980, MS. AHERN SHOULD CERTAINLY BE***  
4 ***EXPECTED TO POSSESS A COPY OF THE FORM 706 FOR MR. CONNELL***

5 A.7 Ms. Ahern appears to be chastising Jacqueline for not being able to produce  
6 a copy of the Form 706, the Federal Estate Tax Return, that was filed in 1980 for W.N.  
7 Connell. As has been previously discussed in prior pleadings, Jacqueline has exhausted all  
8 possible avenues to locate a copy of the Form 706 that was filed for Mr. Connell's estate.  
9 Unfortunately, she has had no success in doing so, with such inability based entirely on the  
10 fact that 34 years has passed since that Form 706 was filed.  
11

12 A.8 What is highly ironic and completely disingenuous is that Ms. Ahern is  
13 implying that the 65% allocation of the Texas Property cannot be verified and confirmed,  
14 despite its reflection on the Texas Inheritance Tax Return that was filed using the Form 706  
15 figures, as evident by the face of the Texas Inheritance Tax Return, yet Ms. Ahern, who has  
16 been a trustee of the Trust since May 6, 1980, does not have a copy to produce. Again, Ms.  
17 Ahern is the one making the argument that the status quo is not proper, despite the written  
18 evidence reflecting the allocation of the Texas Property, and that pattern being followed for  
19 33 years, yet Ms. Ahern has the audacity, as the trustee of the Trust, to imply that somehow  
20 it is acceptable that she herself is refuting the allocation on the Form 706, which is a  
21 document that a trustee would be expected to have retained in her administrative  
22 paperwork.  
23  
24  
25

26 ///

27 ///

28

1 **FAILURE OF MS. AHERN TO DISPUTE UNDERSTANDING THAT THE MTC**  
2 **LIVING TRUST HELD OWNERSHIP AND RIGHTS TO 65% OF TEXAS REAL**  
3 **ESTATE AND OIL AND GAS INCOME**

4 A.9 An affidavit from Attorney David Straus dated April 9, 2014 is attached  
5 hereto as Exhibit "B" and is hereby incorporated by this reference.

6 A.10 In Attorney Straus' affidavit, he explains the discussions that he had with  
7 Jacqueline, Kathryn, and Ms. Ahern regarding the need to have the MTC Living Trust's 65%  
8 portion of the Upton County, Texas, together with the oil, gas, and mineral rights related  
9 thereto, re-titled in the name of the MTC Living Trust.

10 A.11 The affidavit of Attorney Straus details Marjorie T. Connell's desire to ensure  
11 that the Texas real estate and oil, gas, and mineral rights were transferred to the MTC  
12 Living Trust, as evidenced by her exercise of her power of appointment over Trust No. 3.  
13 It further reflects, Marjorie T. Connell's mindset and belief that 65% of the Texas property  
14 and the oil, gas, and mineral rights had been allocated to Trust No. 3, which is further  
15 confirmation of the allocation that was reflected on the Texas Inheritance Tax return filed  
16 in 1980.

17 A.12 In his affidavit, Attorney Straus states "*Marjorie always represented to me*  
18 *that a portion of the Texas Property had been allocated to the Survivor's subtrust under*  
19 *the Connell Family Trust, which was known as Trust No. 3, for which she had been*  
20 *granted a power of appointment over the disposition of*". Attorney Straus continued by  
21 saying that "*A reason Marjorie wanted to exercise a new Last Will and Testament in 2008*  
22 *was her desire to exercise her power of appointment over Trust No. 3 to ensure to that all*  
23 *assets that belonged to Trust No. 3, specifically the interest in the Texas Property, would*  
24  
25  
26  
27  
28

1 belong, following her death, to the MTC Living Trust, which Marjorie decided to restate  
2 in its entirety in 2008”.

3 A.13 In his affidavit, Attorney Straus details the discussions that he had with  
4 Jacqueline, Kathryn, and Ms. Ahern in which he informed them of the need to change legal  
5 title to the Texas Property to the MTC Living Trust. At no time during this period did Ms.  
6 Ahern vocalize an objection to Attorney Straus' understanding that the MTC Living Trust  
7 had a legal interest in the Texas Property. Attorney Straus states that “*In my discussions*  
8 *with Eleanor, she did not indicate to me that she felt that the MTC Living Trust did not*  
9 *have a legal interest in the Texas Property*”. Clearly any rational person in Ms. Ahern’s  
10 position would be expected to correct an attorney who is providing advice to them if the  
11 attorney is mistaken about a critical fact or circumstance. As seen by Attorney Straus’  
12 affidavit, Ms. Ahern did not seek to correct Attorney Straus when emphasizing his  
13 recommendation to have the Texas Property title split between Trust No. 2 and the MTC  
14 Living Trust. Again, if Ms. Ahern believed that the MTC Living Trust had no interest in the  
15 Texas Property then it would have been logical and expected that she would have made this  
16 known to Attorney Straus. Ms. Ahern did not and her failure to object speaks volumes  
17 about her knowledge that Trust No. 3 was previously allocated 65% of the Texas property  
18 and thus had a legal interest to it, and in turn belonged to the MTC Living Trust after  
19 Marjorie’s exercise of her power of appointment over Trust No. 3.  
20  
21  
22  
23

24 **MARJORIE T. CONNELL’S FORM 706 REFLECTS HER OWNERSHIP OF**  
25 **NEARLY 65% OF THE TEXAS PROPERTY AND OIL AND GAS RIGHTS**

26 A.14 Marjorie T. Connell’s proportional ownership of the Texas Property, and the  
27 oil and gas rights related thereto, via the MTC Living Trust, was reflected and declared on  
28

1 the Form 706 filed by Jacqueline, as the representative of Marjorie T. Connell's  
2 estate/Trustee of the MTC Living Trust.

3 Attached hereto as Exhibit "C" and hereby incorporated by this reference is  
4 "Schedule A----Real Estate" of the Form 706, which as can clearly be seen reflects Marjorie  
5 T. Connell's assets, via the MTC Living Trust, to include an interest in the Upton County,  
6 Texas property and the oil and gas rights related thereto.

7  
8 Marjorie T. Connell's Form 706 was required to be signed by Jacqueline with the  
9 following declaration:

10  
11 *Under penalties of perjury, I declare that I have examined this return, including*  
12 *accompanying schedules and statements, and to the best of my knowledge and*  
13 *belief, it is true, correct, and complete.*

14 Given the allocation done in 1980 of the Texas Property to Trust No. 3, given  
15 Marjorie T. Connell's exercise of her power of appointment over Trust No. 3, and given the  
16 33 years in which Marjorie T. Connell, then, following her passing, the MTC Living Trust  
17 residuary beneficiaries, Jacqueline and Kathryn, received approximately 65% of the income  
18 generated from the Upton County, Texas Property, all evidence clearly establishes that the  
19 MTC Living Trust is the proper owner of approximately 65% of the Texas Property and the  
20 oil and gas income generated therefrom.

21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //



THE RUSHFORTH FIRM, LTD.  
Telephone: 702-255-4552 / Fax: 702-255-4677  
9505 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134-0514

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**B. CONCLUSION**

The facts and actions of Ms. Ahern speak for themselves. Ms. Ahern has breached multiple duties as a trustee that are owing to Jacqueline and Kathryn and she has completely misused and abused her powers as a trustee. Jacqueline seeks this Court's assistance in ending this abuse and bad faith as logic and sensibility have clearly not registered with Ms. Ahern.

Respectfully submitted,

THE RUSHFORTH FIRM, LTD.



---

JOSEPH J. POWELL  
State Bar No. 8875

**EXHIBIT A**

**EXHIBIT A**

THE RUSHFORTH FIRM, LTD.  
Telephone: 702-255-4552 / Fax: 702-255-4677  
9505 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134-0514

**AFFIDAVIT OF DAVID A. STRAUS**

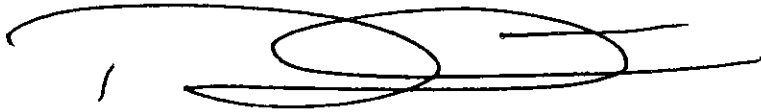
I, DAVID A. STRAUS, ESQ., being first duly sworn, deposes and says:

1. I am an attorney licensed in the State of Nevada, the State of California, and the State of Colorado. I am in good standing in each of these states.
2. I have been licensed to practice law in the State of Nevada since 1991.
3. I reside in Clark County, Nevada.
4. I am employed by and am the sole member of the Law Offices of David A. Straus, LLC.
5. Marjorie T. Connell (“Marjorie”) was a long time estate planning client of mine.
6. I prepared the MTC Living Trust for Marjorie, dated December 6, 1995, and the restatement to the MTC Living Trust, dated January 7, 2008.
7. As Marjorie’s attorney, I spoke with Marjorie on multiple occasions about the real property located in Upton County, Texas and the oil, gas, and mineral rights related to such property (“Texas Property”), all of which was previously deeded to “The W.N. Connell and Marjorie T. Connell Living Trust” (“Connell Family Trust”) by Mr. Connell, Marjorie’s husband.
8. Marjorie always represented to me that a portion of the Texas Property had been allocated to the Survivor’s subtrust under the Connell Family Trust, which was known as Trust No. 3, for which she had been granted a power of appointment over the disposition of.
9. A reason Marjorie wanted to exercise a new Last Will and Testament in 2008 was her desire to exercise her power of appointment over Trust No. 3 to ensure that all of the assets that belonged to Trust No. 3, specifically the interest in the Texas Property, would belong, following her death, to the MTC Living Trust, which Marjorie decided to restate in its entirety in 2008.
10. Following Marjorie’s passing in 2009, I sent a letter dated May 21, 2009, via certified mail, to Eleanor C. Ahern, in her capacity as Trustee of the Connell Family Trust, to advise her of the fact that Marjorie had exercised her power of appointment over Trust No. 3 in favor of

- 1 of the MTC Living Trust. The exercise of the power of appointment over Trust No. 3 was  
2 done in Marjorie's Will dated January 7, 2008 and as such I provided Eleanor with a  
3 certified copy of the Will.
- 4 11. As to the Texas Property, I had multiple conversations with Jacqueline Montoya  
5 ("Jacqueline"), in her capacity as the Trustee of the MTC Living Trust, and in her capacity  
6 as a beneficiary of such Trust, together with Kathryn Bouvier ("Kathryn"), in her capacity  
7 as a beneficiary of the MTC Living Trust, regarding the need, based on Marjorie's exercise  
8 of the power of appointment over Trust No. 3 in favor of the MTC Living Trust, to effectuate  
9 a formal change in title to the Texas Property to the MTC Living Trust.
- 10  
11 12. Based upon my recollection, I believe that Eleanor C. Ahern ("Eleanor") participated in at  
12 least one of these conferences regarding the need to change title to the Texas Property from  
13 the Connell Family Trust to the MTC Living Trust, as to the portion that had been allocated  
14 to Trust No. 3.
- 15  
16 13. I do not recall during any of these conversations was there any objection by any of those  
17 present that Trust No. 3 had not been allocated a portion of the Texas Property when the  
18 estate tax return for Mr. Connell had been prepared following his death.
- 19 14. Although I would not have prepared the documents to legally change title of the share of the  
20 Texas Property from the Connell Family Trust to the MTC Living Trust, not being licensed  
21 in the state of Texas, I had offered my services to assist in finding and working with a Texas  
22 attorney who could accomplish this task.
- 23  
24 15. My offer to assist with the transfer of the Texas Property was respectfully declined by  
25 Jacqueline, Kathryn, and Eleanor. I was informed that they were concerned with the fees  
26 and costs to effectuate the formal transfer of the proportional interest in the Texas Property  
27 to the MTC Living Trust and that their plan was to take care of the transfer in the future as  
28 they did not yet want to spend the legal fees necessary to accomplish this task.

THE RUSHFORTH FIRM, LTD.  
Telephone: 702-255-4552 / Fax: 702-255-4677  
9505 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134-0514

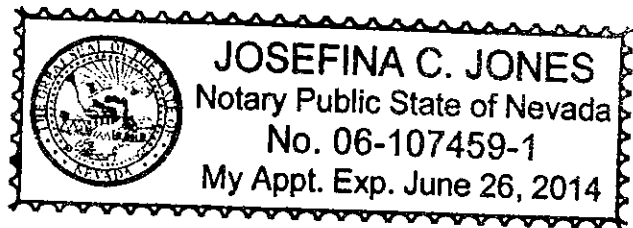
- 1 16. From those meetings in which the Texas Property interest belonging to the MTC Living  
2 Trust was discussed, I was confident that I had adequately done my job of explaining to  
3 them the need to cleanly separate the Texas Property in accordance with the exercise of  
4 Marjorie's power of appointment and in turn for each of the Connell Family Trust and the  
5 MTC Living Trust to each legally hold title to its proportional interest in the Texas Property.  
6  
7 17. In my discussions with Eleanor, she did not indicate to me that she felt that the MTC Living  
8 Trust did not have a legal interest in the Texas Property.  
9  
10 18. At the conclusion of these meetings, in collective sense, it was my impression and  
11 understanding that Jacqueline, Kathryn, and Eleanor had decided that they would forego  
12 the expense of making the legal transfer of the Texas Property and instead were choosing  
13 to divide the income in the same proportional interests belonging to the MTC Living Trust  
14 and Eleanor's interest in the Connell Family Trust.  
15  
16 19. It was my hope that they would take my advice, for both legal and tax purposes, and  
17 effectuate the legal transfer of the Texas Property with a Texas attorney.  
18  
19 20. I am willing and able to testify to all of the statements made herein.  
20  
21 I certify under penalty of perjury that the foregoing is true and correct.



DAVID A. STRAUS, ESQ.

21 SUBSCRIBED AND SWORN TO OR  
22 AFFIRMED by me on April 9, 2014.

23   
24  
25 NOTARY PUBLIC



**EXHIBIT B**

**EXHIBIT B**

Form

1041 U.S. Income Tax Return for Estates and Trusts

2009

Department of the Treasury—Internal Revenue Service

OMB No. 1545-0092

Header section A-G containing entity type, name, address, fiduciary info, and checkboxes for return type and amendments.

Main table with columns for Income, Deductions, and Tax and Payments, containing lines 1 through 29 with numerical values.

COPY

Sign Here section with signature line, date, and EIN of fiduciary.

Paid Preparer's Use Only section with preparer's signature, firm name, address, and contact info.

**Schedule A Charitable Deduction.** Do not complete for a simple trust or a pooled income fund.

1	Amounts paid or permanently set aside for charitable purposes from gross income (see page 25)	1	
2	Tax-exempt income allocable to charitable contributions (see page 25 of the instructions)	2	
3	Subtract line 2 from line 1	3	0
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4	
5	Add lines 3 and 4	5	0
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes (see page 25 of the instructions)	6	
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13	7	0

**Schedule B Income Distribution Deduction**

1	Adjusted total income (see page 26 of the instructions)	1	143,151
2	Adjusted tax-exempt interest	2	
3	Total net gain from Schedule D (Form 1041), line 15, column (1) (see page 26 of the instructions)	3	
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4	
5	Capital gains for the tax year included on Schedule A, line 1 (see page 26 of the instructions)	5	
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6	
7	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	7	143,151
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8	
9	Income required to be distributed currently	9	143,151
10	Other amounts paid, credited, or otherwise required to be distributed	10	
11	Total distributions. Add lines 9 and 10. If greater than line 8, see page 27 of the instructions	11	143,151
12	Enter the amount of tax-exempt income included on line 11	12	
13	Tentative income distribution deduction. Subtract line 12 from line 11	13	143,151
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14	143,151
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18	15	143,151

**Schedule G Tax Computation** (see page 27 of the instructions)

1	Tax:			
	a	Tax on taxable income (see page 27 of the instructions)	1a	
	b	Tax on lump-sum distributions. Attach Form 4972	1b	
	c	Alternative minimum tax (from Schedule I (Form 1041), line 56)	1c	
	d	Total. Add lines 1a through 1c	1d	0
2a	Foreign tax credit. Attach Form 1116	2a		
b	Other nonbusiness credits (attach schedule)	2b		
c	General business credit. Attach Form 3800	2c		
d	Credit for prior year minimum tax. Attach Form 8801	2d		
3	Total credits. Add lines 2a through 2d	3		0
4	Subtract line 3 from line 1d. If zero or less, enter -0-	4		0
5	Recapture taxes. Check if from: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 8611	5		
6	Household employment taxes. Attach Schedule H (Form 1040)	6		
7	Total tax. Add lines 4 through 6. Enter here and on page 1, line 23	7		0

**Other Information**

	Yes	No
1		X
2		X
3		X
4		X
5		X
6		X
7		X
8		X
9		X



**SCHEDULE I  
(Form 1041)**

**Alternative Minimum Tax—Estates and Trusts**

OMB No. 1545-0092

Department of the Treasury  
Internal Revenue Service

▶ Attach to Form 1041. See the separate instructions  
for Schedule I (Form 1041).

**2009**

Name of estate or trust

**WILLIAM AND MARJORIE CONNELL TRUST**

Employer identification number

88-6043010

**Part I Estate's or Trust's Share of Alternative Minimum Taxable Income**

1	Adjusted total income or (loss) (from Form 1041, line 17)	1	143,151
2	Interest	2	
3	Taxes	3	
4	Miscellaneous itemized deductions (from Form 1041, line 15b)	4	
5	Refund of taxes	5	
6	Depletion (difference between regular tax and AMT)	6	
7	Net operating loss deduction. Enter as a positive amount	7	
8	Interest from specified private activity bonds exempt from the regular tax	8	
9	Qualified small business stock (see page 2 of the instructions)	9	
10	Exercise of incentive stock options (excess of AMT income over regular tax income)	10	
11	Other estates and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	11	
12	Electing large partnerships (amount from Schedule K-1 (Form 1085-B), box 6)	12	
13	Disposition of property (difference between AMT and regular tax gain or loss)	13	
14	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	14	
15	Passive activities (difference between AMT and regular tax income or loss)	15	
16	Loss limitations (difference between AMT and regular tax income or loss)	16	
17	Circulation costs (difference between regular tax and AMT)	17	
18	Long-term contracts (difference between AMT and regular tax income)	18	
19	Mining costs (difference between regular tax and AMT)	19	
20	Research and experimental costs (difference between regular tax and AMT)	20	
21	Income from certain installment sales before January 1, 1987	21	
22	Intangible drilling costs preference	22	
23	Other adjustments, including income-based related adjustments	23	
24	Alternative tax net operating loss deduction (See the instructions for the limitation that applies.)	24	
25	Adjusted alternative minimum taxable income. Combine lines 1 through 24.	25	143,151
<i>Note: Complete Part II below before going to line 28.</i>			
26	Income distribution deduction from Part II, line 44.	26	143,151
27	Estate tax deduction (from Form 1041, line 19)	27	
28	Add lines 26 and 27	28	143,151
29	Estate's or trust's share of alternative minimum taxable income. Subtract line 28 from line 25.	29	0

- If line 29 is:
- \$22,500 or less, stop here and enter -0- on Form 1041, Schedule G, line 1c. The estate or trust is not liable for the alternative minimum tax.
  - Over \$22,500, but less than \$165,000, go to line 45.
  - \$165,000 or more, enter the amount from line 29 on line 51 and go to line 52.

**Part II Income Distribution Deduction on a Minimum Tax Basis**

30	Adjusted alternative minimum taxable income (see page 6 of the instructions)	30	143,151
31	Adjusted tax-exempt interest (other than amounts included on line 8)	31	
32	Total net gain from Schedule D (Form 1041), line 15, column (1). If a loss, enter -0-	32	0
33	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes (from Form 1041, Schedule A, line 4)	33	
34	Capital gains paid or permanently set aside for charitable purposes from gross income (see page 6 of the instructions)	34	
35	Capital gains computed on a minimum tax basis included on line 25	35	
36	Capital losses computed on a minimum tax basis included on line 25. Enter as a positive amount	36	
37	Distributable net alternative minimum taxable income (DNAMTI). Combine lines 30 through 36. If zero or less, enter -0-	37	143,151
38	Income required to be distributed currently (from Form 1041, Schedule B, line 9)	38	143,151
39	Other amounts paid, credited, or otherwise required to be distributed (from Form 1041, Schedule B, line 10)	39	
40	Total distributions. Add lines 38 and 39	40	143,151
41	Tax-exempt income included on line 40 (other than amounts included on line 8)	41	
42	Tentative income distribution deduction on a minimum tax basis. Subtract line 41 from line 40.	42	143,151

**Part II Income Distribution Deduction on a Minimum Tax Basis (continued)**

43	Tentative income distribution deduction on a minimum tax basis. Subtract line 31 from line 37. If zero or less, enter -0-	43	143,151
44	Income distribution deduction on a minimum tax basis. Enter the smaller of line 42 or line 43. Enter here and on line 28	44	143,151

**Part III Alternative Minimum Tax**

45	Exemption amount	45	\$22,500	00
46	Enter the amount from line 29	46		
47	Phase-out of exemption amount	47	\$75,000	00
48	Subtract line 47 from line 46. If zero or less, enter -0-	48	0	
49	Multiply line 48 by 25% (.25)	49		0
50	Subtract line 49 from line 46. If zero or less, enter -0-	50		0
51	Subtract line 50 from line 46	51		0
52	Go to Part IV of Schedule I to figure line 52 if the estate or trust has qualified dividends or has a gain on lines 14a and 15 of column (2) of Schedule D (Form 1041) (as refigured for the AMT, if necessary). Otherwise, if line 51 is-- <ul style="list-style-type: none"> <li>• \$175,000 or less, multiply line 51 by 26% (.26).</li> <li>• Over \$175,000, multiply line 51 by 28% (.28) and subtract \$3,500 from the result</li> </ul>	52		0
53	Alternative minimum foreign tax credit (see page 7 of the instructions)	53		
54	Tentative minimum tax. Subtract line 53 from line 52	54		0
55	Enter the tax from Form 1041, Schedule G, line 1a (minus any foreign tax credit from Schedule G, line 2a)	55		0
56	Alternative minimum tax. Subtract line 55 from line 54. If zero or less, enter -0-. Enter here and on Form 1041, Schedule G, line 1c	56		0

**Part IV Line 52 Computation Using Maximum Capital Gains Rates**

Caution: If you did not complete Part V of Schedule D (Form 1041), the Schedule D Tax Worksheet, or the Qualified Dividends Tax Worksheet, see page 8 of the instructions before completing this part.

57	Enter the amount from line 51	57		0
58	Enter the amount from Schedule D (Form 1041), line 22, line 13 of the Schedule D Tax Worksheet, or line 4 of the Qualified Dividends Tax Worksheet, whichever applies (as refigured for the AMT, if necessary)	58		
59	Enter the amount from Schedule D (Form 1041), line 14b, column (2) (as refigured for the AMT, if necessary). If you did not complete Schedule D for the regular tax or the AMT, enter -0-	59		0
60	If you did not complete a Schedule D Tax Worksheet for the regular tax or the AMT, enter the amount from line 58. Otherwise, add lines 58 and 59 and enter the smaller of that result or the amount from line 10 of the Schedule D Tax Worksheet (as refigured for the AMT, if necessary)	60		
61	Enter the smaller of line 57 or line 60	61		0
62	Subtract line 61 from line 57	62		0
63	If line 62 is \$175,000 or less, multiply line 62 by 26% (.26). Otherwise, multiply line 62 by 28% (.28) and subtract \$3,500 from the result	63		0
64	Maximum amount subject to the 0% rate	64	\$2,300	00
65	Enter the amount from line 23 of Schedule D (Form 1041), line 14 of the Schedule D Tax Worksheet, or line 5 of the Qualified Dividends Tax Worksheet on page 27 of the Instructions for Form 1041, whichever applies (as figured for the regular tax). If you did not complete Schedule D or either worksheet for the regular tax, enter -0-	65	143,151	
66	Subtract line 65 from line 64. If zero or less, enter -0-	66		0
67	Enter the smaller of line 57 or line 66	67		0
68	Enter the smaller of line 66 or line 67	68		0
69	Subtract line 68 from line 67	69		0
70	Multiply line 69 by 15% (.15)	70		0
71	If line 59 is zero or blank, skip lines 71 and 72 and go to line 73. Otherwise, go to line 71. Subtract line 67 from line 61	71		0
72	Multiply line 71 by 25% (.25)	72		0
73	Add lines 63, 70, and 72	73		0
74	If line 57 is \$175,000 or less, multiply line 57 by 26% (.26). Otherwise, multiply line 57 by 28% (.28) and subtract \$3,500 from the result	74		0
75	Enter the smaller of line 73 or line 74 here and on line 52	75		0

Final K-1  Amended K-1

**Schedule K-1  
(Form 1041)**

Department of the Treasury  
Internal Revenue Service

**2009**

For calendar year 2009,  
or tax year beginning \_\_\_\_\_, 2009  
and ending \_\_\_\_\_, 20\_\_

**Beneficiary's Share of Income, Deductions,  
Credits, etc.**

▶ See back of form and instructions.

**Part I Information About the Estate or Trust**

**A** Estate's or trust's employer identification number

88-6043010

**B** Estate's or trust's name

WILLIAM AND MARJORIE CONNELL TRUST

**C** Fiduciary's name, address, city, state, and ZIP code

MARJORIE CONNELL TRUSTEE

PO BOX 710

LAS VEGAS

NV

89125

**D**  Check if Form 1041-T was filed and enter the date it was filed

**E**  Check if this is the final Form 1041 for the estate or trust

**Part II Information About the Beneficiary**

**F** Beneficiary's identifying number

**G** Beneficiary's name, address, city, state, and ZIP code

MARJORIE T CONNELL

PO BOX 710

LAS VEGAS, NV 89125

**H**  Domestic beneficiary

Foreign beneficiary

For IRS Use Only

**Part III Beneficiary's Share of Current Year Income,  
Deductions, Credits, and Other Items**

1	Interest Income	11	Final year deductions
2a	Ordinary dividends		
2b	Qualified dividends		
3	Net short-term capital gain		
4a	Net long-term capital gain		
4b	28% rate gain	12	Alternative minimum tax adjustment
4c	Unrecaptured section 1250 gain		
5	Other portfolio and nonbusiness income		
		47,408	
6	Ordinary business income		
7	Net rental real estate income	311	13 Credits and credit recapture
8	Other rental income		
9	Directly apportioned deductions		
			14 Other information
			E 47,408
10	Estate tax deduction		

\*See attached statement for additional information.  
**Note.** A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

Final K-1  Amended K-1

**Schedule K-1  
(Form 1041)**

**2009**

Department of the Treasury  
Internal Revenue Service

For calendar year 2009,  
or tax year beginning \_\_\_\_\_, 2009  
and ending \_\_\_\_\_, 20

**Beneficiary's Share of Income, Deductions,  
Credits, etc.**

▶ See back of form and instructions.

**Part I Information About the Estate or Trust**

**A** Estate's or trust's employer identification number  
88-6043010

**B** Estate's or trust's name  
WILLIAM AND MARJORIE CONNELL TRUST

**C** Fiduciary's name, address, city, state, and ZIP code  
MARJORIE CONNELL TRUSTEE  
PO BOX 710  
LAS VEGAS NV 89125

**D**  Check if Form 1041-T was filed and enter the date it was filed  
\_\_\_\_\_

**E**  Check if this is the final Form 1041 for the estate or trust

**Part II Information About the Beneficiary**

**F** Beneficiary's identifying number  
27-6069543

**G** Beneficiary's name, address, city, state, and ZIP code  
MTC NON-EXEMPT SUBTRUST FBO  
JACQUELINE MARGUERITE MONTOYA  
3385 MAVERICK ST  
LAS VEGAS, NV 89108

**H**  Domestic beneficiary  Foreign beneficiary

**Part III Beneficiary's Share of Current Year Income,  
Deductions, Credits, and Other Items**

<b>1</b>	Interest income	<b>11</b>	Final year deductions
<b>2a</b>	Ordinary dividends		
<b>2b</b>	Qualified dividends		
<b>3</b>	Net short-term capital gain		
<b>4a</b>	Net long-term capital gain		
<b>4b</b>	28% rate gain	<b>12</b>	Alternative minimum tax adjustment
<b>4c</b>	Unrecaptured section 1260 gain		
<b>5</b>	Other portfolio and nonbusiness income		
			47,406
<b>6</b>	Ordinary business income		
<b>7</b>	Net rental real estate income		
			311
<b>8</b>	Other rental income	<b>13</b>	Credits and credit recapture
<b>9</b>	Directly apportioned deductions		
		<b>14</b>	Other information
		<b>E</b>	47,406
<b>10</b>	Estate tax deduction		

\*See attached statement for additional information.  
**Note.** A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

For IRS Use Only

Final K-1  Amended K-1

**Schedule K-1  
(Form 1041)**

Department of the Treasury  
Internal Revenue Service

**2009**

For calendar year 2009,  
or tax year beginning \_\_\_\_\_, 2009  
and ending \_\_\_\_\_, 20\_\_\_\_

**Beneficiary's Share of Income, Deductions,  
Credits, etc.** ▶ See back of form and instructions.

**Part I Information About the Estate or Trust**

**A** Estate's or trust's employer identification number  
88-6043010

**B** Estate's or trust's name  
WILLIAM AND MARJORIE CONNELL TRUST

**C** Fiduciary's name, address, city, state, and ZIP code  
MARJORIE CONNELL TRUSTEE  
PO BOX 710  
LAS VEGAS NV 89125

**D**  Check if Form 1041-T was filed and enter the date it was filed \_\_\_\_\_

**E**  Check if this is the final Form 1041 for the estate or trust

**Part II Information About the Beneficiary**

**F** Beneficiary's identifying number  
27-6083344

**G** Beneficiary's name, address, city, state, and ZIP code  
MTC NON-EXEMPT SUBTRUST FBO KATHRYN ANN BOUVIER  
8461 PURPLE SAGE ROAD  
MIDDLETON, ID 83644

**H**  Domestic beneficiary  Foreign beneficiary

**Part III Beneficiary's Share of Current Year Income,  
Deductions, Credits, and Other Items**

1	Interest income	11	Final year deductions
2a	Ordinary dividends		
2b	Qualified dividends		
3	Net short-term capital gain		
4a	Net long-term capital gain		
4b	28% rate gain	12	Alternative minimum tax adjustment
4c	Unrecaptured section 1250 gain		
5	Other portfolio and nonbusiness income		
6	Ordinary business income		
7	Net rental real estate income		
8	Other rental income	13	Credits and credit recapture
9	Directly apportioned deductions		
		14	Other information
		E	47,407
10	Estate tax deduction		

\*See attached statement for additional information.  
**Note.** A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

For IRS Use Only

**SCHEDULE E  
(Form 1040)**

**Supplemental Income and Loss**

(From rental real estate, royalties, partnerships,  
S corporations, estates, trusts, REMICs, etc.)

OMB No. 1545-0074

**2009**

Attachment  
Sequence No. **13**

Department of the Treasury  
Internal Revenue Service (98)

▶ Attach to Form 1040, 1040NR, or Form 1041.

▶ See Instructions for Schedule E (Form 1040).

Name(s) shown on return

**WILLIAM AND MARJORIE CONNELL TRUST**

Your social security number  
**88-6043010**

**Part I Income or Loss From Rental Real Estate and Royalties**

Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see page E-3). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

**1** List the type and address of each rental real estate property:

<b>A</b>	ROYALTIES OIL WELLS MIDLAND TEXAS
<b>B</b>	LAND LEASE MIDLAND TEXAS
<b>C</b>	

**2** For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:

- 14 days or
- 10% of the total days rented at fair rental value?

(See page E-3)

	Yes	No
<b>A</b>		X
<b>B</b>		X
<b>C</b>		

**Income:**

- 3** Rents received
- 4** Royalties received

**Expenses:**

- 5** Advertising
- 6** Auto and travel (see page E-4)
- 7** Cleaning and maintenance
- 8** Commissions
- 9** Insurance
- 10** Legal and other professional fees
- 11** Management fees
- 12** Mortgage interest paid to banks, etc. (see page E-5)
- 13** Other interest
- 14** Repairs
- 15** Supplies
- 16** Taxes
- 17** Utilities
- 18** Other (list) ▶

- 19** Add lines 5 through 18
- 20** Depreciation expense or depletion (see page E-5)
- 21** Total expenses. Add lines 19 and 20
- 22** Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see page E-5 to find out if you must file Form 6198

- 23** Deductible rental real estate loss. **Caution.** Your rental real estate loss on line 22 may be limited. See page E-5 to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2

- 24** Income. Add positive amounts shown on line 22. Do not include any losses
- 25** Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here
- 26** Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2

	Properties			Totals (Add columns A, B, and C.)
	A	B	C	
<b>3</b>		1,495		<b>3</b> 1,495
<b>4</b>	174,774			<b>4</b> 174,774
<b>5</b>				
<b>6</b>	10,611			
<b>7</b>				
<b>8</b>				
<b>9</b>				
<b>10</b>	1,400	457		
<b>11</b>				
<b>12</b>				
<b>13</b>				<b>12</b> 0
<b>14</b>				
<b>15</b>				
<b>16</b>	20,155	106		
<b>17</b>	389			
<b>18</b>				
<b>19</b>	32,555	563		<b>19</b> 33,118
<b>20</b>				<b>20</b> 0
<b>21</b>	32,555	563		
<b>22</b>	142,219	932		
<b>23</b>				
<b>24</b>				<b>24</b> 143,151
<b>25</b>				<b>25</b> 0
<b>26</b>				<b>26</b> 143,151

For Paperwork Reduction Act Notice, see page E-8 of the Instructions.

Schedule E (Form 1040) 2009

**A** Type of entity (see instr.):

Decedent's estate

Simple trust

Complex trust

Qualified disability trust

ESBT (S portion only)

Grantor type trust

Bankruptcy estate—Ch. 7

Bankruptcy estate—Ch. 11

Pooled income fund

For calendar year 2010 or fiscal year beginning, and ending

Name of estate or trust (if a grantor type trust, see page 15 of the instructions.)

**WILLIAM AND MARJORIE CONNELL TRUST**

Name and title of fiduciary

**MARJORIE CONNELL TRUSTEE**

Number, street, and room or suite no. (if a P.O. box, see page 15 of the instructions.)

**PO BOX 710**

City or town State ZIP code

**LAS VEGAS NV 89125**

**C** Employer identification number

**BB-6043010**

**D** Date entity created

**11/24/1979**

**E** Nonexempt charitable and split-interest trusts, check applicable boxes (see page 16 of the instr.):

Described in section 4947(a)(1)

Not a private foundation

Described in section 4947(a)(2)

**B** Number of Schedules K-1 attached (see instructions) **2**

**F** Check applicable boxes:

Initial return  Final return  Amended return

Change in fiduciary  Change in fiduciary's name  Change in fiduciary's address

**G** Check here if the estate or filing trust made a section 645 election

Income	1	Interest income	1	
	2a	Total ordinary dividends	2a	
	b	Qualified dividends allocable to: (1) Beneficiaries (2) Estate or trust		
	3	Business income or (loss). Attach Schedule C or C-EZ (Form 1040)	3	
	4	Capital gain or (loss). Attach Schedule D (Form 1041)	4	
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	5	526,068
	6	Farm income or (loss). Attach Schedule F (Form 1040)	6	
	7	Ordinary gain or (loss). Attach Form 4797	7	
	8	Other income. List type and amount	8	
9	Total income. Combine lines 1, 2a, and 3 through 8	9	526,068	
Deductions	10	Interest. Check if Form 4952 is attached <input type="checkbox"/>	10	
	11	Taxes	11	
	12	Fiduciary fees	12	
	13	Charitable deduction (from Schedule A, line 7)	13	
	14	Attorney, accountant, and return preparer fees	14	
	15a	Other deductions not subject to the 2% floor (attach schedule)	15a	
	b	Allowable miscellaneous itemized deductions subject to the 2% floor	15b	
	16	Add lines 10 through 15b	16	0
	17	Adjusted total income or (loss). Subtract line 16 from line 9	17	526,068
	18	Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)	18	526,068
	19	Estate tax deduction including certain generation-skipping taxes (attach computation)	19	
20	Exemption	20		
21	Add lines 18 through 20	21	526,068	
Tax and Payments	22	Taxable income. Subtract line 21 from line 17. If a loss, see page 23 of the instructions	22	0
	23	Total tax (from Schedule G, line 7)	23	0
	24	Payments: a 2010 estimated tax payments and amount applied from 2009 return	24a	
	b	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	24b	
	c	Subtract line 24b from line 24a	24c	0
	d	Tax paid with Form 7004 (see page 24 of the instructions)	24d	
	e	Federal income tax withheld. If any is from Form(s) 1099, check <input type="checkbox"/>	24e	
		Other payments: f Form 2439 ; g Form 4136 ; Total	24h	0
	25	Total payments. Add lines 24c through 24e, and 24h	25	0
26	Estimated tax penalty (see page 24 of the instructions)	26		
27	Tax due. If line 25 is smaller than the total of lines 23 and 26, enter amount owed	27	0	
28	Overpayment. If line 25 is larger than the total of lines 23 and 26, enter amount overpaid	28	0	
29	Amount of line 28 to be: a Credited to 2011 estimated tax ; b Refunded	29	0	

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of fiduciary or officer representing fiduciary Date EIN of fiduciary if a financial institution

May the IRS discuss this return with the preparer shown below (see instr.)?  Yes  No

**Paid Preparer's Use Only**

Print/Type preparer's name **FAST TAX COREY HAINA** Date

Firm's name **13917 ARTESIA BLVD** Firm's EIN

Firm's address **CERRITOS, CA 90708** Phone no.

Check  if self-employed PTIN



**Schedule A Charitable Deduction.** Do not complete for a simple trust or a pooled income fund.

Table with 7 rows and 3 columns. Row 1: Amounts paid or permanently set aside for charitable purposes from gross income (see page 25). Row 2: Tax-exempt income allocable to charitable contributions (see page 25 of the instructions). Row 3: Subtract line 2 from line 1. Row 4: Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes. Row 5: Add lines 3 and 4. Row 6: Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes (see page 25 of the instructions). Row 7: Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13.

**Schedule B Income Distribution Deduction**

Table with 15 rows and 3 columns. Row 1: Adjusted total income (see page 25 of the instructions). Row 2: Adjusted tax-exempt interest. Row 3: Total net gain from Schedule D (Form 1041), line 15, column (1) (see page 26 of the instructions). Row 4: Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion). Row 5: Capital gains for the tax year included on Schedule A, line 1 (see page 26 of the instructions). Row 6: Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number. Row 7: Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-. Row 8: If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law. Row 9: Income required to be distributed currently. Row 10: Other amounts paid, credited, or otherwise required to be distributed. Row 11: Total distributions. Add lines 9 and 10. If greater than line 8, see page 26 of the instructions. Row 12: Enter the amount of tax-exempt income included on line 11. Row 13: Tentative income distribution deduction. Subtract line 12 from line 11. Row 14: Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-. Row 15: Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18.

**Schedule G Tax Computation** (see page 27 of the instructions)

Table with 7 rows and 3 columns. Row 1: Tax: a Tax on taxable income (see page 27 of the instructions). b Tax on lump-sum distributions. Attach Form 4972. c Alternative minimum tax (from Schedule I (Form 1041), line 58). d Total. Add lines 1a through 1c. Row 2a: Foreign tax credit. Attach Form 1116. Row 2b: General business credit. Attach Form 3800. Row 2c: Credit for prior year minimum tax. Attach Form 8801. Row 2d: Bond credits. Attach Form 8912. Row 3: Total credits. Add lines 2a through 2d. Row 4: Subtract line 3 from line 1d. If zero or less, enter -0-. Row 5: Recapture taxes. Check if from: Form 4255 or Form 8611. Row 6: Household employment taxes. Attach Schedule H (Form 1040). Row 7: Total tax. Add lines 4 through 6. Enter here and on page 1, line 23.

**Other Information**

Table with 9 rows and 2 columns (Yes/No). Row 1: Did the estate or trust receive tax-exempt income? If "Yes," attach a computation of the allocation of expenses. Enter the amount of tax-exempt interest income and exempt-interest dividends \$ 0. Row 2: Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement? Row 3: At any time during calendar year 2010, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See page 29 of the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country. Row 4: During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See page 29 of the instructions. Row 5: Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If "Yes," see page 29 for required attachment. Row 6: If this is an estate or a complex trust making the section 663(b) election, check here (see page 29). Row 7: To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here (see page 29). Row 8: If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here. Row 9: Are any present or future trust beneficiaries skip persons? See page 29 of the instructions.



**SCHEDULE I  
(Form 1041)**

**Alternative Minimum Tax—Estates and Trusts**

OMB No. 1545-0082

**2010**

Department of the Treasury  
Internal Revenue Service

▶ Attach to Form 1041. See the separate instructions  
for Schedule I (Form 1041).

Name of estate or trust

Employer identification number

**WILLIAM AND MARJORIE CONNELL TRUST**

**88-6043010**

**Part I Estate's or Trust's Share of Alternative Minimum Taxable Income**

1	Adjusted total income or (loss) (from Form 1041, line 17)	1	526,068
2	Interest	2	
3	Taxes	3	
4	Miscellaneous itemized deductions (from Form 1041, line 15b)	4	
5	Refund of taxes	5	
6	Depletion (difference between regular tax and AMT)	6	
7	Net operating loss deduction. Enter as a positive amount	7	
8	Interest from specified private activity bonds exempt from the regular tax	8	
9	Qualified small business stock (see page 2 of the instructions)	9	
10	Exercise of incentive stock options (excess of AMT income over regular tax income)	10	
11	Other estates and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	11	
12	Electing large partnerships (amount from Schedule K-1 (Form 1065-B), box 6)	12	
13	Disposition of property (difference between AMT and regular tax gain or loss)	13	
14	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	14	
15	Passive activities (difference between AMT and regular tax income or loss)	15	
16	Loss limitations (difference between AMT and regular tax income or loss)	16	
17	Circulation costs (difference between regular tax and AMT)	17	
18	Long-term contracts (difference between AMT and regular tax income)	18	
19	Mining costs (difference between regular tax and AMT)	19	
20	Research and experimental costs (difference between regular tax and AMT)	20	
21	Income from certain installment sales before January 1, 1987	21	
22	Intangible drilling costs preference	22	
23	Other adjustments, including income-based related adjustments	23	
24	Alternative tax net operating loss deduction (See the instructions for the limitation that applies.)	24	
25	Adjusted alternative minimum taxable income. Combine lines 1 through 24	25	526,068
<i>Note: Complete Part II below before going to line 26.</i>			
26	Income distribution deduction from Part II, line 44	26	526,068
27	Estate tax deduction (from Form 1041, line 19)	27	
28	Add lines 26 and 27	28	526,068
29	Estate's or trust's share of alternative minimum taxable income. Subtract line 28 from line 25	29	0

If line 29 is:

- \$22,500 or less, stop here and enter -0- on Form 1041, Schedule G, line 1c. The estate or trust is not liable for the alternative minimum tax.
- Over \$22,500, but less than \$165,000, go to line 45.
- \$165,000 or more, enter the amount from line 29 on line 51 and go to line 52.

**Part II Income Distribution Deduction on a Minimum Tax Basis**

30	Adjusted alternative minimum taxable income (see page 6 of the instructions)	30	526,068
31	Adjusted tax-exempt interest (other than amounts included on line 8)	31	
32	Total net gain from Schedule D (Form 1041), line 15, column (1). If a loss, enter -0-	32	0
33	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes (from Form 1041, Schedule A, line 4)	33	
34	Capital gains paid or permanently set aside for charitable purposes from gross income (see page 6 of the instructions)	34	
35	Capital gains computed on a minimum tax basis included on line 25	35	
36	Capital losses computed on a minimum tax basis included on line 25. Enter as a positive amount	36	
37	Distributable net alternative minimum taxable income (DNAMTI). Combine lines 30 through 36. If zero or less, enter -0-	37	526,068
38	Income required to be distributed currently (from Form 1041, Schedule B, line 9)	38	526,068
39	Other amounts paid, credited, or otherwise required to be distributed (from Form 1041, Schedule B, line 10)	39	
40	Total distributions. Add lines 38 and 39	40	526,068
41	Tax-exempt income included on line 40 (other than amounts included on line 8)	41	
42	Tentative income distribution deduction on a minimum tax basis. Subtract line 41 from line 40	42	526,068

For Paperwork Reduction Act Notice, see the instructions for Form 1041.

Schedule I (Form 1041) (2010)

**Part II Income Distribution Deduction on a Minimum Tax Basis (continued)**

43	Tentative income distribution deduction on a minimum tax basis. Subtract line 31 from line 37. If zero or less, enter -0-	43	526,068
44	Income distribution deduction on a minimum tax basis. Enter the smaller of line 42 or line 43. Enter here and on line 26	44	526,068

**Part III Alternative Minimum Tax**

45	Exemption amount	45	\$22,500	00
46	Enter the amount from line 29	46		
47	Phase-out of exemption amount	47	\$75,000	00
48	Subtract line 47 from line 46. If zero or less, enter -0-	48	0	
49	Multiply line 48 by 25% (.25)	49		0
50	Subtract line 49 from line 45. If zero or less, enter -0-	50		0
51	Subtract line 50 from line 46	51		0
52	Go to Part IV of Schedule I to figure line 52 if the estate or trust has qualified dividends or has a gain on lines 14a and 15 of column (2) of Schedule D (Form 1041) (as refigured for the AMT, if necessary). Otherwise, if line 51 is--- * \$175,000 or less, multiply line 51 by 26% (.26). * Over \$175,000, multiply line 51 by 28% (.28) and subtract \$3,500 from the result	52		0
53	Alternative minimum foreign tax credit (see page 7 of the instructions)	53		
54	Tentative minimum tax. Subtract line 53 from line 52	54		0
55	Enter the tax from Form 1041, Schedule G, line 1a (minus any foreign tax credit from Schedule G, line 2a)	55		0
56	Alternative minimum tax. Subtract line 55 from line 54. If zero or less, enter -0-. Enter here and on Form 1041, Schedule G, line 1c	56		0

**Part IV Line 52 Computation Using Maximum Capital Gains Rates**

Caution: If you did not complete Part V of Schedule D (Form 1041), the Schedule D Tax Worksheet, or the Qualified Dividends Tax Worksheet, see page 8 of the instructions before completing this part.

57	Enter the amount from line 51	57		0
58	Enter the amount from Schedule D (Form 1041), line 22, line 13 of the Schedule D Tax Worksheet, or line 4 of the Qualified Dividends Tax Worksheet, whichever applies (as refigured for the AMT, if necessary)	58		
59	Enter the amount from Schedule D (Form 1041), line 14b, column (2) (as refigured for the AMT, if necessary). If you did not complete Schedule D for the regular tax or the AMT, enter -0-	59		0
60	If you did not complete a Schedule D Tax Worksheet for the regular tax or the AMT, enter the amount from line 58. Otherwise, add lines 58 and 59 and enter the smaller of that result or the amount from line 10 of the Schedule D Tax Worksheet (as refigured for the AMT, if necessary)	60		
61	Enter the smaller of line 57 or line 60	61		0
62	Subtract line 61 from line 57	62		0
63	If line 62 is \$175,000 or less, multiply line 62 by 26% (.26). Otherwise, multiply line 62 by 28% (.28) and subtract \$3,500 from the result	63		0
64	Maximum amount subject to the 0% rate	64	\$2,300	00
65	Enter the amount from line 23 of Schedule D (Form 1041), line 14 of the Schedule D Tax Worksheet, or line 5 of the Qualified Dividends Tax Worksheet on page 27 of the instructions for Form 1041, whichever applies (as figured for the regular tax). If you did not complete Schedule D or either worksheet for the regular tax, enter -0-	65	526,068	
66	Subtract line 65 from line 64. If zero or less, enter -0-	66		0
67	Enter the smaller of line 57 or line 58	67		0
68	Enter the smaller of line 66 or line 67	68		0
69	Subtract line 68 from line 67	69		0
70	Multiply line 69 by 15% (.15)	70		0
71	If line 59 is zero or blank, skip lines 71 and 72 and go to line 73. Otherwise, go to line 71. Subtract line 67 from line 61	71		0
72	Multiply line 71 by 25% (.25)	72		0
73	Add lines 63, 70, and 72	73		0
74	If line 57 is \$175,000 or less, multiply line 57 by 26% (.26). Otherwise, multiply line 57 by 28% (.28) and subtract \$3,500 from the result	74		0
75	Enter the smaller of line 73 or line 74 here and on line 52	75		0

**Schedule K-1  
(Form 1041)**

Department of the Treasury  
Internal Revenue Service

**2010**

For calendar year 2010,  
or tax year beginning \_\_\_\_\_, 2010  
and ending \_\_\_\_\_, 20\_\_\_\_

**Beneficiary's Share of Income, Deductions,  
Credits, etc.**

▶ See back of form and instructions.

**Part I Information About the Estate or Trust**

**A** Estate's or trust's employer identification number

88-8043010

**B** Estate's or trust's name

WILLIAM AND MARJORIE CONNELL TRUST

**C** Fiduciary's name, address, city, state, and ZIP code

MARJORIE CONNELL TRUSTEE

PO BOX 710

LAS VEGAS

NV

89125

**D**  Check if Form 1041-T was filed and enter the date it was filed

**E**  Check if this is the final Form 1041 for the estate or trust

**Part II Information About the Beneficiary**

**F** Beneficiary's identifying number

27-6069543

**G** Beneficiary's name, address, city, state, and ZIP code

MTO NON-EXEMPT SUBTRUST FBO JACQUELINE MARGUERITE

3385 MAVERICK ST

LAS VEGAS, NV 89108

**H**  Domestic beneficiary

Foreign beneficiary

For IRS Use Only

**Part III Beneficiary's Share of Current Year Income,  
Deductions, Credits, and Other Items**

1	Interest income	11	Final year deductions
2a	Ordinary dividends		
2b	Qualified dividends		
3	Net short-term capital gain		
4a	Net long-term capital gain		
4b	28% rate gain	12	Alternative minimum tax adjustment
4c	Unrecaptured section 1250 gain		
5	Other portfolio and nonbusiness income		
			262,524
6	Ordinary business income		
7	Net rental real estate income		
			509
8	Other rental income	13	Credits and credit recapture
9	Directly apportioned deductions		
		14	Other Information
		E	262,524
10	Estate tax deduction		

\*See attached statement for additional information.  
Note. A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

Schedule K-1 (Form 1041)

2010

Final K-1 Amended K-1

Department of the Treasury Internal Revenue Service

For calendar year 2010, or tax year beginning and ending 2010

Beneficiary's Share of Income, Deductions, Credits, etc.

See back of form and instructions.

Part I Information About the Estate or Trust

Form fields for Part I: A. Estate's or trust's employer identification number (88-6043010), B. Estate's or trust's name (WILLIAM AND MARJORIE CONNELL TRUST), C. Fiduciary's name, address, city, state, and ZIP code (MARJORIE CONNELL TRUSTEE, PO BOX 710, LAS VEGAS, NV 89125), D. Check if Form 1041-T was filed, E. Check if this is the final Form 1041.

Part II Information About the Beneficiary

Form fields for Part II: F. Beneficiary's identifying number (27-6083344), G. Beneficiary's name, address, city, state, and ZIP code (MTC NON-EXEMPT SUBTRUST FBO KATHRYN ANN BOUVIER, 8461 PURPLE SAGE ROAD, MIDDLETON, ID 83644).

Form field H: Domestic beneficiary (checked) Foreign beneficiary

Part III Beneficiary's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 4 columns: Line number, Description, Amount, and Other information. Rows include Interest income, Ordinary dividends, Qualified dividends, Net short-term capital gain, Net long-term capital gain, 28% rate gain, Unrecaptured section 1250 gain, Other portfolio and nonbusiness income (262,525), Ordinary business income, Net rental real estate income (510), Other rental income, Directly apportioned deductions, Estate tax deduction, and Other information (262,525).

\*See attached statement for additional information. Note. A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

For IRS Use Only

**SCHEDULE E  
(Form 1040)**

**Supplemental Income and Loss**

(From rental real estate, royalties, partnerships,  
S corporations, estates, trusts, REMICs, etc.)

OMB No. 1545-0074

**2010**

Attachment  
Sequence No. **13**

Department of the Treasury  
Internal Revenue Service (99)

▶ Attach to Form 1040, 1040NR, or Form 1041.

▶ See Instructions for Schedule E (Form 1040).

Name(s) shown on return

Your social security number

**WILLIAM AND MARJORIE CONNELL TRUST**

**88-6043010**

**Part I Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see page E-3). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

<b>1</b>	List the type and address of each rental real estate property:	<b>2</b>	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:	Yes	No
<b>A</b>	ROYALTIES OIL WELLS MIDLAND TEXAS		• 14 days or	<b>A</b>	X
<b>B</b>	LAND LEASE MIDLAND TEXAS		• 10% of the total days rented at fair rental value?	<b>B</b>	X
<b>C</b>			(See page E-4)	<b>C</b>	

Income:	Properties			Totals (Add columns A, B, and C.)
	A	B	C	
<b>3</b> Rents received		1,495		<b>3</b> 1,495
<b>4</b> Royalties received	541,499			<b>4</b> 541,499
<b>Expenses:</b>				
<b>5</b> Advertising				
<b>6</b> Auto and travel (see page E-5)				
<b>7</b> Cleaning and maintenance				
<b>8</b> Commissions				
<b>9</b> Insurance				
<b>10</b> Legal and other professional fees	1,655	400		
<b>11</b> Management fees				
<b>12</b> Mortgage interest paid to banks, etc. (see page E-5)				<b>12</b> 0
<b>13</b> Other interest				
<b>14</b> Repairs				
<b>15</b> Supplies				
<b>16</b> Taxes	14,377	76		
<b>17</b> Utilities	418			
<b>18</b> Other (list)				
<b>19</b> Add lines 5 through 18	16,450	476		<b>19</b> 16,926
<b>20</b> Depreciation expense or depletion (see page E-5)				<b>20</b> 0
<b>21</b> Total expenses. Add lines 19 and 20	16,450	476		
<b>22</b> Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see page E-6 to find out if you must file Form 8198	525,049	1,019		
<b>23</b> Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See page E-6 to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	( )	( )	( )	
<b>24</b> Income. Add positive amounts shown on line 22. Do not include any losses				<b>24</b> 526,068
<b>25</b> Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here				<b>25</b> ( 0 )
<b>26</b> Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2				<b>26</b> 526,068

For Paperwork Reduction Act Notice, see your tax return instructions.  
(HFA)

Schedule E (Form 1040) 2010

Name(s) shown on return. Do not enter name and social security number if shown on other side.

Your social security number  
88-6043010

**WILLIAM AND MARJORIE CONNELL TRUST**

**Caution.** The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

**Part II Income or Loss From Partnerships and S Corporations** Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 8198. See page E-1.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see page E-7 before completing this section.  Yes  No

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A			<input type="checkbox"/>		<input type="checkbox"/>
B			<input type="checkbox"/>		<input type="checkbox"/>
C			<input type="checkbox"/>		<input type="checkbox"/>
D			<input type="checkbox"/>		<input type="checkbox"/>

Passive Income and Loss		Nonpassive Income and Loss		
(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A				
B				
C				
D				
29 a Totals				
b Totals				
30	Add columns (g) and (j) of line 29a			30
31	Add columns (f), (h), and (i) of line 29b			31 ( )
32	Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below			32 0

**Part III Income or Loss From Estates and Trusts**

33	(a) Name	(b) Employer identification number
A		
B		

Passive Income and Loss		Nonpassive Income and Loss	
(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A			
B			
34 a Totals			
b Totals			
35	Add columns (d) and (f) of line 34a		35
36	Add columns (c) and (e) of line 34b		36 ( )
37	Total estate and trust income or (loss). Combine lines 35 and 36. Enter the result here and include in the total on line 41 below		37 0

**Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder**

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see page E-8)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b
39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below				39 0

**Part V Summary**

40	Net farm rental income or (loss) from Form 4835. Also, complete line 42 below	40	
41	Total income or (loss). Combine lines 28, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 1B	41	528,068
42	Reconciliation of farming and fishing income. Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code U; and Schedule K-1 (Form 1041), line 14, code F (see page E-8)	42	
43	Reconciliation for real estate professionals. If you were a real estate professional (see page E-2), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

Form **1041** U.S. Income Tax Return for Estates and Trusts

Department of the Treasury—Internal Revenue Service

**2011**

OMB No. 1545-0092

**A** Check all that apply:

- Decedent's estate
- Simple trust
- Complex trust
- Qualified disability trust
- ESBT (S portion only)
- Grantor type trust
- Bankruptcy estate—Ch. 7
- Bankruptcy estate—Ch. 11
- Pooled income fund

For calendar year 2011 or fiscal year beginning \_\_\_\_\_, and ending \_\_\_\_\_

Name of estate or trust (If a grantor type trust, see the instructions.)  
**WILLIAM AND MARJORIE CONNELL TRUST**

Name and title of fiduciary  
**MARJORIE CONNELL TRUSTEE**

Number, street, and room or suite no. (If a P.O. box, see the instructions.)  
**PO BOX 710**

City or town State ZIP code  
**LAS VEGAS NV 89125**

**C** Employer identification number  
**88-6043010**

**D** Date entity created  
**11/24/1979**

**E** Nonexempt charitable and split-interest trusts, check applicable box(es), see instructions.  
 Described in sec. 4947(a)(1). Check here if not a private foundation   
 Described in sec. 4947(a)(2)

**B** Number of Schedules K-1 attached (see instructions) **2**

**F** Check applicable boxes:  
 Initial return  Final return  Amended return  
 Change in fiduciary  Change in fiduciary's name  Change in fiduciary's address

**G** Check here if the estate or filing trust made a section 645 election

<b>Income</b>	<b>1</b> Interest income	<b>1</b>	
	<b>2a</b> Total ordinary dividends	<b>2a</b>	
	<b>b</b> Qualified dividends allocable to: (1) Beneficiaries (2) Estate or trust		
	<b>3</b> Business income or (loss). Attach Schedule C or C-EZ (Form 1040)	<b>3</b>	
	<b>4</b> Capital gain or (loss). Attach Schedule D (Form 1041)	<b>4</b>	
	<b>5</b> Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	<b>5</b>	520,486
	<b>6</b> Farm income or (loss). Attach Schedule F (Form 1040)	<b>6</b>	
	<b>7</b> Ordinary gain or (loss). Attach Form 4797	<b>7</b>	
	<b>8</b> Other income. List type and amount	<b>8</b>	
<b>9</b> Total income. Combine lines 1, 2a, and 3 through 8	<b>9</b>	520,486	
<b>Deductions</b>	<b>10</b> Interest. Check if Form 4952 is attached <input type="checkbox"/>	<b>10</b>	
	<b>11</b> Taxes	<b>11</b>	
	<b>12</b> Fiduciary fees	<b>12</b>	
	<b>13</b> Charitable deduction (from Schedule A, line 7)	<b>13</b>	
	<b>14</b> Attorney, accountant, and return preparer fees	<b>14</b>	
	<b>15a</b> Other deductions not subject to the 2% floor (attach schedule)	<b>15a</b>	
	<b>b</b> Allowable miscellaneous itemized deductions subject to the 2% floor	<b>15b</b>	
	<b>16</b> Add lines 10 through 15b	<b>16</b>	0
	<b>17</b> Adjusted total income or (loss). Subtract line 16 from line 9	<b>17</b>	520,486
	<b>18</b> Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)	<b>18</b>	520,486
	<b>19</b> Estate tax deduction including certain generation-skipping taxes (attach computation)	<b>19</b>	
<b>20</b> Exemption	<b>20</b>		
<b>21</b> Add lines 18 through 20	<b>21</b>	520,486	
<b>Tax and Payments</b>	<b>22</b> Taxable income. Subtract line 21 from line 17. If a loss, see instructions	<b>22</b>	0
	<b>23</b> Total tax (from Schedule G, line 7)	<b>23</b>	0
	<b>24</b> Payments: a 2011 estimated tax payments and amount applied from 2010 return	<b>24a</b>	
	<b>b</b> Estimated tax payments allocated to beneficiaries (from Form 1041-T)	<b>24b</b>	
	<b>c</b> Subtract line 24b from line 24a	<b>24c</b>	0
	<b>d</b> Tax paid with Form 7004 (see instructions)	<b>24d</b>	
	<b>e</b> Federal income tax withheld. If any is from Form(s) 1099, check <input type="checkbox"/>	<b>24e</b>	
	Other payments: <b>f</b> Form 2439 ; <b>g</b> Form 4136 ; Total	<b>24h</b>	0
	<b>25</b> Total payments. Add lines 24c through 24e, and 24h	<b>25</b>	0
<b>26</b> Estimated tax penalty (see instructions)	<b>26</b>		
<b>27</b> Tax due. If line 25 is smaller than the total of lines 23 and 26, enter amount owed	<b>27</b>	0	
<b>28</b> Overpayment. If line 25 is larger than the total of lines 23 and 26, enter amount overpaid	<b>28</b>	0	
<b>29</b> Amount of line 28 to be: a Credited to 2012 estimated tax ; b Refunded	<b>29</b>	0	

**Sign Here** Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of fiduciary or officer representing fiduciary \_\_\_\_\_ Date \_\_\_\_\_ EIN of fiduciary if a financial institution \_\_\_\_\_

May the IRS discuss this return with the preparer shown below (see instr.)?  Yes  No

**Paid Preparer Use Only**

Print/Type preparer's name **7457 TAX** Preparer's signature \_\_\_\_\_ Date \_\_\_\_\_ Check  if self-employed PTIN \_\_\_\_\_

Firm's name **COREY HAINA** Firm's EIN \_\_\_\_\_

Firm's address **13917 ARTESIA BLVD** Phone no. \_\_\_\_\_

**CERRITOS, CA 90703**



**Schedule A Charitable Deduction.** Do not complete for a simple trust or a pooled income fund.

Table with 7 rows and 3 columns. Row 1: Amounts paid or permanently set aside for charitable purposes from gross income (see instructions) | 1 | | |. Row 2: Tax-exempt income allocable to charitable contributions (see instructions) | 2 | | |. Row 3: Subtract line 2 from line 1 | 3 | | 0 |. Row 4: Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes | 4 | | |. Row 5: Add lines 3 and 4 | 5 | | 0 |. Row 6: Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes (see instructions) | 6 | | |. Row 7: Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13 | 7 | | 0 |.

**Schedule B Income Distribution Deduction**

Table with 15 rows and 3 columns. Row 1: Adjusted total income (see instructions) | 1 | 520,486 |. Row 2: Adjusted tax-exempt interest | 2 | | |. Row 3: Total net gain from Schedule D (Form 1041), line 15, column (1) (see instructions) | 3 | | |. Row 4: Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion) | 4 | | |. Row 5: Capital gains for the tax year included on Schedule A, line 1 (see instructions) | 5 | | |. Row 6: Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number | 6 | | |. Row 7: Distributable net income. Combine lines 1 through 6. If zero or less, enter -0- | 7 | 520,486 |. Row 8: If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law | 8 | | |. Row 9: Income required to be distributed currently | 9 | 520,486 |. Row 10: Other amounts paid, credited, or otherwise required to be distributed | 10 | | |. Row 11: Total distributions. Add lines 9 and 10. If greater than line 8, see instructions | 11 | 520,486 |. Row 12: Enter the amount of tax-exempt income included on line 11 | 12 | | |. Row 13: Tentative income distribution deduction. Subtract line 12 from line 11 | 13 | 520,486 |. Row 14: Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0- | 14 | 520,486 |. Row 15: Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18 | 15 | 520,486 |.

**Schedule G Tax Computation (see instructions)**

Table with 7 rows and 3 columns. Row 1: Tax: a Tax on taxable income (see instructions) | 1a | | |. Row 1b: Tax on lump-sum distributions. Attach Form 4972 | 1b | | |. Row 1c: Alternative minimum tax (from Schedule I (Form 1041), line 56) | 1c | | |. Row 1d: Total. Add lines 1a through 1c | 1d | | 0 |. Row 2a: Foreign tax credit. Attach Form 1116 | 2a | | |. Row 2b: General business credit. Attach Form 3800 | 2b | | |. Row 2c: Credit for prior year minimum tax. Attach Form 8801 | 2c | | |. Row 2d: Bond credits. Attach Form 8912 | 2d | | |. Row 3: Total credits. Add lines 2a through 2d | 3 | | 0 |. Row 4: Subtract line 3 from line 1d. If zero or less, enter -0- | 4 | | 0 |. Row 5: Recapture taxes. Check if from:  Form 4255  Form 8611 | 5 | | |. Row 6: Household employment taxes. Attach Schedule H (Form 1040) | 6 | | |. Row 7: Total tax. Add lines 4 through 6. Enter here and on page 1, line 23 | 7 | | 0 |.

**Other Information**

Table with 9 rows and 3 columns. Row 1: Did the estate or trust receive tax-exempt income? If "Yes," attach a computation of the allocation of expenses. Enter the amount of tax-exempt interest income and exempt-interest dividends | 1 | | 0 |. Row 2: Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement? | 2 | | X |. Row 3: At any time during calendar year 2011, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? | 3 | | X |. Row 4: During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the estate or trust may have to file Form 3520. See instructions | 4 | | X |. Row 5: Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If "Yes," see the instructions for required attachment | 5 | | X |. Row 6: If this is an estate or a complex trust making the section 663(b) election, check here (see instructions) | 6 |  | |. Row 7: To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here (see instructions) | 7 |  | |. Row 8: If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here | 8 |  | |. Row 9: Are any present or future trust beneficiaries skip persons? See instructions | 9 | | X |.



**SCHEDULE I  
(Form 1041)**

**Alternative Minimum Tax—Estates and Trusts**

OMB No. 1545-0092

▶ Attach to Form 1041. See the separate instructions for Schedule I (Form 1041).

**2011**

Department of the Treasury  
Internal Revenue Service

Name of estate or trust

Employer identification number

WILLIAM AND MARJORIE CONNELL TRUST

88-6043010

**Part I Estate's or Trust's Share of Alternative Minimum Taxable Income**

1	Adjusted total income or (loss) (from Form 1041, line 17)	1	520,486
2	Interest	2	
3	Taxes	3	
4	Miscellaneous itemized deductions (from Form 1041, line 15b)	4	
5	Refund of taxes	5	( )
6	Depletion (difference between regular tax and AMT)	6	
7	Net operating loss deduction. Enter as a positive amount	7	
8	Interest from specified private activity bonds exempt from the regular tax	8	
9	Qualified small business stock (see instructions)	9	
10	Exercise of incentive stock options (excess of AMT income over regular tax income)	10	
11	Other estates and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	11	
12	Electing large partnerships (amount from Schedule K-1 (Form 1065-B), box 6)	12	
13	Disposition of property (difference between AMT and regular tax gain or loss)	13	
14	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	14	
15	Passive activities (difference between AMT and regular tax income or loss)	15	
16	Loss limitations (difference between AMT and regular tax income or loss)	16	
17	Circulation costs (difference between regular tax and AMT)	17	
18	Long-term contracts (difference between AMT and regular tax income)	18	
19	Mining costs (difference between regular tax and AMT)	19	
20	Research and experimental costs (difference between regular tax and AMT)	20	
21	Income from certain installment sales before January 1, 1987	21	( )
22	Intangible drilling costs preference	22	
23	Other adjustments, including income-based related adjustments	23	
24	Alternative tax net operating loss deduction (See the instructions for the limitation that applies.)	24	( )
25	Adjusted alternative minimum taxable income. Combine lines 1 through 24	25	520,486
<b>Note: Complete Part II below before going to line 26.</b>			
26	Income distribution deduction from Part II, line 44	26	520,486
27	Estate tax deduction (from Form 1041, line 19)	27	
28	Add lines 26 and 27	28	520,486
29	Estate's or trust's share of alternative minimum taxable income. Subtract line 28 from line 25	29	0

If line 29 is:

- \$22,500 or less, stop here and enter -0- on Form 1041, Schedule G, line 1c. The estate or trust is not liable for the alternative minimum tax.
- Over \$22,500, but less than \$165,000, go to line 45.
- \$165,000 or more, enter the amount from line 29 on line 51 and go to line 52.

**Part II Income Distribution Deduction on a Minimum Tax Basis**

30	Adjusted alternative minimum taxable income (see instructions)	30	520,486
31	Adjusted tax-exempt interest (other than amounts included on line 8)	31	
32	Total net gain from Schedule D (Form 1041), line 15, column (1). If a loss, enter -0-	32	0
33	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes (from Form 1041, Schedule A, line 4)	33	
34	Capital gains paid or permanently set aside for charitable purposes from gross income (see instructions)	34	
35	Capital gains computed on a minimum tax basis included on line 25	35	( )
36	Capital losses computed on a minimum tax basis included on line 25. Enter as a positive amount	36	
37	Distributable net alternative minimum taxable income (DNAMTI). Combine lines 30 through 36. If zero or less, enter -0-	37	520,486
38	Income required to be distributed currently (from Form 1041, Schedule B, line 9)	38	520,486
39	Other amounts paid, credited, or otherwise required to be distributed (from Form 1041, Schedule B, line 10)	39	
40	Total distributions. Add lines 38 and 39	40	520,486
41	Tax-exempt income included on line 40 (other than amounts included on line 8)	41	
42	Tentative income distribution deduction on a minimum tax basis. Subtract line 41 from line 40	42	520,486

For Paperwork Reduction Act Notice, see the Instructions for Form 1041.

Schedule I (Form 1041) (2011)

**Part II Income Distribution Deduction on a Minimum Tax Basis (continued)**

43	Tentative income distribution deduction on a minimum tax basis. Subtract line 31 from line 37. If zero or less, enter -0-	43	520,486
44	Income distribution deduction on a minimum tax basis. Enter the smaller of line 42 or line 43. Enter here and on line 26	44	520,486

**Part III Alternative Minimum Tax**

45	Exemption amount	45	\$22,500	00
46	Enter the amount from line 29	46		
47	Phase-out of exemption amount	47	\$75,000	00
48	Subtract line 47 from line 46. If zero or less, enter -0-	48	0	
49	Multiply line 48 by 25% (.25)	49		0
50	Subtract line 49 from line 45. If zero or less, enter -0-	50		0
51	Subtract line 50 from line 46	51		0
52	Go to Part IV of Schedule I to figure line 52 if the estate or trust has qualified dividends or has a gain on lines 14a and 15 of column (2) of Schedule D (Form 1041) (as refigured for the AMT, if necessary). Otherwise, if line 51 is— • \$175,000 or less, multiply line 51 by 26% (.26). • Over \$175,000, multiply line 51 by 28% (.28) and subtract \$3,500 from the result	52		0
53	Alternative minimum foreign tax credit (see instructions)	53		
54	Tentative minimum tax. Subtract line 53 from line 52	54		0
55	Enter the tax from Form 1041, Schedule G, line 1a (minus any foreign tax credit from Schedule G, line 2a)	55		0
56	Alternative minimum tax. Subtract line 55 from line 54. If zero or less, enter -0-. Enter here and on Form 1041, Schedule G, line 1c	56		0

**Part IV Line 52 Computation Using Maximum Capital Gains Rates**

Caution: If you did not complete Part V of Schedule D (Form 1041), the Schedule D Tax Worksheet, or the Qualified Dividends Tax Worksheet, see the instructions before completing this part.

57	Enter the amount from line 51	57		0
58	Enter the amount from Schedule D (Form 1041), line 22, line 13 of the Schedule D Tax Worksheet, or line 4 of the Qualified Dividends Tax Worksheet, whichever applies (as refigured for the AMT, if necessary)	58		
59	Enter the amount from Schedule D (Form 1041), line 14b, column (2) (as refigured for the AMT, if necessary). If you did not complete Schedule D for the regular tax or the AMT, enter -0-	59		0
60	If you did not complete a Schedule D Tax Worksheet for the regular tax or the AMT, enter the amount from line 58. Otherwise, add lines 58 and 59 and enter the smaller of that result or the amount from line 10 of the Schedule D Tax Worksheet (as refigured for the AMT, if necessary)	60		
61	Enter the smaller of line 57 or line 60	61		0
62	Subtract line 61 from line 57	62		0
63	If line 62 is \$175,000 or less, multiply line 62 by 26% (.26). Otherwise, multiply line 62 by 28% (.28) and subtract \$3,500 from the result	63		0
64	Maximum amount subject to the 0% rate	64	\$2,300	00
65	Enter the amount from line 23 of Schedule D (Form 1041), line 14 of the Schedule D Tax Worksheet, or line 5 of the Qualified Dividends Tax Worksheet in the Instructions for Form 1041, whichever applies (as figured for the regular tax). If you did not complete Schedule D or either worksheet for the regular tax, enter -0-	65	520,486	
66	Subtract line 65 from line 64. If zero or less, enter -0-	66		0
67	Enter the smaller of line 57 or line 58	67		0
68	Enter the smaller of line 66 or line 67	68		0
69	Subtract line 68 from line 67	69		0
70	Multiply line 69 by 15% (.15)	70		0
71	If line 59 is zero or blank, skip lines 71 and 72 and go to line 73. Otherwise, go to line 71. Subtract line 67 from line 61	71		0
72	Multiply line 71 by 25% (.25)	72		0
73	Add lines 63, 70, and 72	73		0
74	If line 57 is \$175,000 or less, multiply line 57 by 26% (.26). Otherwise, multiply line 57 by 28% (.28) and subtract \$3,500 from the result	74		0
75	Enter the smaller of line 73 or line 74 here and on line 52	75		0

**Schedule K-1  
(Form 1041)**

**2011**

Department of the Treasury  
Internal Revenue Service

For calendar year 2011,  
or tax year beginning \_\_\_\_\_, 2011  
and ending \_\_\_\_\_, 20\_\_\_\_

**Beneficiary's Share of Income, Deductions,  
Credits, etc.**

▶ See back of form and instructions.

**Part III Beneficiary's Share of Current Year Income,  
Deductions, Credits, and Other Items**

1	Interest income	11	Final year deductions
2a	Ordinary dividends		
2b	Qualified dividends		
3	Net short-term capital gain		
4a	Net long-term capital gain		
4b	28% rate gain	12	Alternative minimum tax adjustment
4c	Unrecaptured section 1250 gain		
5	Other portfolio and nonbusiness income		
		259,736	
6	Ordinary business income		
7	Net rental real estate income		
		507	
8	Other rental income		
9	Directly apportioned deductions		
		13	Credits and credit recapture
		14	Other information
		E	259,736
10	Estate tax deduction		

**Part I Information About the Estate or Trust**

**A** Estate's or trust's employer identification number  
88-6043010

**B** Estate's or trust's name  
WILLIAM AND MARJORIE CONNELL TRUST

**C** Fiduciary's name, address, city, state, and ZIP code  
MARJORIE CONNELL TRUSTEE  
PO BOX 710  
LAS VEGAS NV 89125

**D**  Check if Form 1041-T was filed and enter the date it was filed  
\_\_\_\_\_

**E**  Check if this is the final Form 1041 for the estate or trust

**Part II Information About the Beneficiary**

**F** Beneficiary's identifying number  
27-6069543

**G** Beneficiary's name, address, city, state, and ZIP code  
MTC NON-EXEMPT SUBTRUST FBO JACQUELINE MARGUERITE  
3385 MAVERICK ST  
LAS VEGAS, NV 89108

\*See attached statement for additional information.  
**Note.** A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

For IRS Use Only

**H**  Domestic beneficiary  Foreign beneficiary

**K-1 Statement (Sch K1 (1041))**

---

**Line 14 - Other Information**

E Code E - Net investment income . . . . . E 259,736

---

MTC NON-EXEMPT SUBTRUST FBO JACQUELINE MARGUERITE MONTOYA

27-6069543

---

Schedule K-1 (Form 1041)

2011

Department of the Treasury Internal Revenue Service

For calendar year 2011, or tax year beginning \_\_\_\_\_, 2011 and ending \_\_\_\_\_, 20\_\_\_\_\_

Beneficiary's Share of Income, Deductions, Credits, etc. See back of form and instructions.

Part I Information About the Estate or Trust

A Estate's or trust's employer identification number 88-6043010
B Estate's or trust's name WILLIAM AND MARJORIE CONNELL TRUST
C Fiduciary's name, address, city, state, and ZIP code MARJORIE CONNELL TRUSTEE PO BOX 710 LAS VEGAS NV 89125
D Check if Form 1041-T was filed and enter the date it was filed
E Check if this is the final Form 1041 for the estate or trust

Part II Information About the Beneficiary

F Beneficiary's identifying number 27-6083344
G Beneficiary's name, address, city, state, and ZIP code MTC NON-EXEMPT SUBTRUST FBO KATHRYN A BOUVIER 8461 PURPLE SAGE ROAD MIDDLETON, ID 83644

H [X] Domestic beneficiary [ ] Foreign beneficiary

Part III Beneficiary's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 4 columns: Item number, Description, Amount, and Other information. Rows include Interest income, Ordinary dividends, Qualified dividends, Net short-term capital gain, Net long-term capital gain, 28% rate gain, Unrecaptured section 1250 gain, Other portfolio and nonbusiness income (259,736), Ordinary business income, Net rental real estate income (507), Other rental income, Directly apportioned deductions, Estate tax deduction, Credits and credit recapture, and Other information (259,736).

\*See attached statement for additional information. Note. A statement must be attached showing the beneficiary's share of income and directly apportioned deductions from each business, rental real estate, and other rental activity.

For IRS Use Only

**K-1 Statement (Sch K1 (1041))**

---

**Line 14 - Other Information**

E Code E - Net investment income . . . . . E 259,736

---

MTC NON-EXEMPT SUBTRUST FBO KATHRYN A BOUVIER

27-6083344

**SCHEDULE E  
(Form 1040)**

**Supplemental Income and Loss**

(From rental real estate, royalties, partnerships,  
S corporations, estates, trusts, REMICs, etc.)

OMB No. 1545-0074

**2011**

Attachment  
Sequence No. **13**

Department of the Treasury  
Internal Revenue Service (99)

▶ Attach to Form 1040, 1040NR, or Form 1041. ▶ See separate instructions.

Name(s) shown on return

**WILLIAM AND MARJORIE CONNELL TRUST**

Your social security number

**88-6043010**

- A** Did you make any payments in 2011 that would require you to file Form(s) 1099? (see instructions)  Yes  No  
**B** If "Yes," did you or will you file all required Forms 1099?  Yes  No

**Part I** **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

**Caution.** For each rental property listed on line 1, check the box in the last column only if you owned that property as a member of a qualified joint venture (QJV) reporting income not subject to self-employment tax.

1 Physical address of each property—street, city, state, zip	Type—from list below	2 For each rental real estate property listed, report the number of days rented at fair rental value and days with personal use. See instructions.	Fair Rental Days	Personal Use Days	QJV
			A	B	
<b>A</b> OIL WELLS MIDLAND TEXAS	6				
<b>B</b> MIDLAND TEXAS	5		365		
<b>C</b>					

**Type of Property:**

- 1 Single Family Residence    3 Vacation/Short-Term Rental    5 Land    7 Self-Rental  
 2 Multi-Family Residence    4 Commercial    6 Royalties    8 Other (describe)

Income:		Properties		
		A	B	C
<b>3 a</b> Merchant card and third party payments. For 2011, enter -0-	<b>3a</b>			
<b>3 b</b> Payments not reported to you on line 3a . . . . .	<b>3b</b>	531,601	1,495	
Total not including amounts on line 3a that are not income (see instructions) . . . . .	<b>4</b>	531,601	1,495	
<b>Expenses:</b>				
<b>5</b> Advertising . . . . .	<b>5</b>			
<b>6</b> Auto and travel (see instructions) . . . . .	<b>6</b>			
<b>7</b> Cleaning and maintenance . . . . .	<b>7</b>			
<b>8</b> Commissions . . . . .	<b>8</b>			
<b>9</b> Insurance . . . . .	<b>9</b>			
<b>10</b> Legal and other professional fees . . . . .	<b>10</b>	1,400	400	
<b>11</b> Management fees . . . . .	<b>11</b>			
<b>12</b> Mortgage interest paid to banks, etc. (see instructions) . . . . .	<b>12</b>			
<b>13</b> Other interest . . . . .	<b>13</b>			
<b>14</b> Repairs . . . . .	<b>14</b>			
<b>15</b> Supplies . . . . .	<b>15</b>			
<b>16</b> Taxes . . . . .	<b>16</b>	10,210	81	
<b>17</b> Utilities . . . . .	<b>17</b>	519		
<b>18</b> Depreciation expense or depletion . . . . .	<b>18</b>			
<b>19</b> Other (list) ▶ . . . . .	<b>19</b>			
<b>20</b> Total expenses. Add lines 5 through 19 . . . . .	<b>20</b>	12,129	481	
<b>21</b> Subtract line 20 from line 4. If result is a (loss), see instructions to find out if you must file Form 6198 . . . . .	<b>21</b>	519,472	1,014	
<b>22</b> Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions) . . . . .	<b>22</b>	( )	( )	( )
<b>23 a</b> Total of all amounts reported on line 3a for all rental properties . . . . .	<b>23a</b>	0		
<b>b</b> Total of all amounts reported on line 3a for all royalty properties . . . . .	<b>23b</b>	0		
<b>c</b> Total of all amounts reported on line 4 for all rental properties . . . . .	<b>23c</b>	1,495		
<b>d</b> Total of all amounts reported on line 4 for all royalty properties . . . . .	<b>23d</b>	531,601		
<b>e</b> Total of all amounts reported on line 12 for all properties . . . . .	<b>23e</b>	0		
<b>f</b> Total of all amounts reported on line 18 for all properties . . . . .	<b>23f</b>	0		
<b>g</b> Total of all amounts reported on line 20 for all properties . . . . .	<b>23g</b>	12,610		
<b>24</b> <b>Income.</b> Add positive amounts shown on line 21. Do not include any losses . . . . .	<b>24</b>		520,486	
<b>25</b> <b>Losses.</b> Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here . . . . .	<b>25</b>	( 0 )		
<b>26</b> <b>Total rental real estate and royalty income or (loss).</b> Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2 . . . . .	<b>26</b>		520,486	

For Paperwork Reduction Act Notice, see your tax return instructions.  
(HTA)

Schedule E (Form 1040) 2011

Name(s) shown on return. Do not enter name and social security number if shown on other side.

WILLIAM AND MARJORIE CONNELL TRUST

Your social security number 88-6043010

Caution. The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 6198. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section. [ ] Yes [ ] No

Table with 5 columns: (a) Name, (b) Enter P for partnership; S for S corporation, (c) Check if foreign partnership, (d) Employer identification number, (e) Check if any amount is not at risk. Rows A, B, C, D.

Table with 5 columns: (f) Passive loss allowed, (g) Passive income from Schedule K-1, (h) Nonpassive loss from Schedule K-1, (i) Section 179 expense deduction from Form 4562, (j) Nonpassive income from Schedule K-1. Rows A, B, C, D, 29a Totals, 29b Totals, 30, 31, 32.

Part III Income or Loss From Estates and Trusts

Table with 2 columns: (a) Name, (b) Employer identification number. Rows A, B.

Table with 4 columns: (c) Passive deduction or loss allowed, (d) Passive income from Schedule K-1, (e) Deduction or loss from Schedule K-1, (f) Other income from Schedule K-1. Rows A, B, 34a Totals, 34b Totals, 35, 36, 37.

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder

Table with 5 columns: (a) Name, (b) Employer identification number, (c) Excess inclusion from Schedules Q, line 2c, (d) Taxable income (net loss) from Schedules Q, line 1b, (e) Income from Schedules Q, line 3b. Rows 38, 39.

Part V Summary

Table with 2 columns: Description, Amount. Rows 40, 41 (Total income or loss: 520,486), 42, 43.



---

**EXHIBIT C**

**EXHIBIT C**

Estate of: **MTC LIVING TRUST DATED 12/06/1995 RESTATED 1/7/2008**

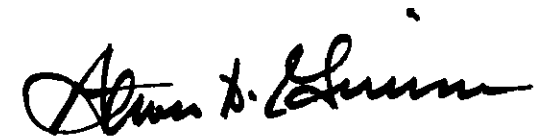
Decedent's Social Security Number  
: :  
: :

**SCHEDULE A—Real Estate**

- For jointly owned property that must be disclosed on Schedule E, see the instructions on the reverse side of Schedule E.
- Real estate that is part of a sole proprietorship should be shown on Schedule F.
- Real estate that is included in the gross estate under section 2035, 2036, 2037, or 2038 should be shown on Schedule G.
- Real estate that is included in the gross estate under section 2041 should be shown on Schedule H.
- If you elect section 2032A valuation, you must complete Schedule A and Schedule A-1.

Item number	Description	Alternate valuation date	Alternate value	Value at date of death
1	HOUSE AND LOT, 1325 STRONG DR LAS VEGAS NV, PARCEL 162-05-601-005.VALUE BASED ON APPRAISAL, COPY ATTACHED OWNED 100%.			150000
2	HOUSE AND LOT, 47 W 100S PANGUITCH UTAH 84759. THE E 1/2 OF LOT 2, BLOCK 43, PLAT B, PANGUITCH TOWN SURVEY. PARCEL 07-0063-0348 (P-348). VALUE BASED ON APPRAISAL, COPY ATTACHED. OWNED 100%.	1/25/2010	125000	148000
3	OIL AND GAS RESERVES, UPTON COUNTY, MIDLAND, TX. 2301 ACRES IN SECTIONS WEST HALF OF 37,38,47 AND 48 OF BLOCK 39,TOWNSHIP 5 SOUTH, T&P RAILROAD SURVEY VALUE BASED ON APPRAISAL, COPY ATTACHED. OWNED 64.5%			461957
4	LAND VALUES, UPTON COUNTY, MIDLAND, TX. 2301 ACRES IN SECTIONS WEST HALF OF 37,38,47 AND 48 OF BLOCK 39,TOWNSHIP 5 SOUTH, T&P RAILROAD SURVEY VALUE BASED ON APPRAISAL, COPY ATTACHED. OWNED 64.5%			148398
Total from continuation schedules or additional sheets attached to this schedule . . .				
<b>TOTAL.</b> (Also enter on Part 5—Recapitulation, page 3, at item 1.) . . . . .			<b>125000</b>	<b>885355</b>

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)  
(See the instructions on the reverse side.)



CLERK OF THE COURT

1 **CERT**  
2 JOSEPH J. POWELL  
3 State Bar No. 8875  
4 THE RUSHFORTH FIRM, LTD.  
5 P. O. Box 371655  
6 Las Vegas, NV 89137-1655  
7 Telephone: (702) 255-4552  
8 fax: (702) 255-4677  
9 e-mail: probate@rushforthfirm.com  
10 Attorneys for Jacqueline M. Montoya

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

11 In the Matter of the Estate

12 of

13 **THE W. N. CONNELL and**  
14 **MARJORIE T. CONNELL LIVING**  
15 **TRUST, dated May 18, 1972,**

16 A non-testamentary trust.

Case No. P-09-066425-T  
**Department XXVI, RJC**

17 **CERTIFICATE OF MAILING**

18 Date of Hearing: May 13, 2014  
19 Time of Hearing: 9:00 a.m.

20 The undersigned, hereby certifies that on May 8, 2014, I sent a copy of the "*Response*  
21 *to Objection of Eleanor C. Ahern to Jacqueline M. Montoya's Petition and Addendum to*  
22 *Petition to Compel Trustee to Distribute Accrued Income and Future Income Received*  
23 *from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of*  
24 *Laches*" that has been filed in this proceeding, to each person named below by first-class  
25 mail, via facsimile and email addressed as follows:  
26  
27  
28

1 Eleanor C. Ahern  
2 c/o John R. Muga, Esq.  
3 Michael D. Lum, Esq.  
4 Jeffrey Burr, Ltd.  
5 2600 Paseo Verde Parkway, Suite 200  
6 Henderson, NV 89074  
7 (702) 451-1853 (**facsimile**)  
8 [john@jeffreymburr.com](mailto:john@jeffreymburr.com)  
9 [michael@jeffreymburr.com](mailto:michael@jeffreymburr.com)

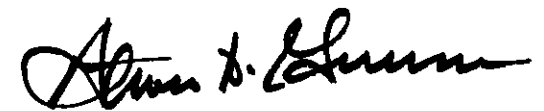
10 The undersigned, hereby certifies that on May 8, 2014, I sent a copy of the "*Response*  
11 *to Objection of Eleanor C. Ahern to Jacqueline M. Montoya's Petition and Addendum to*  
12 *Petition to Compel Trustee to Distribute Accrued Income and Future Income Received*  
13 *from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of*  
14 *Laches*" that has been filed in this proceeding, to each person named below by first-class  
15 mail, addressed as follows:

16 Jacqueline M. Montoya  
17 3385 Maverick Street  
18 Las Vegas, NV 89108

Kathryn A. Bouvier  
4221 A Surf Drive  
Galveston, TX 77554

19 

20 Diane L. DeWalt, an employee of  
21 The Rushforth Firm, Ltd.



CLERK OF THE COURT

**OPPS**

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

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 In the Matter of  
12 THE W. N. CONNELL AND MARJORIE T. CONNELL  
13 LIVING TRUST,  
Dated May 18, 1972

Case No. P-09-066425-T  
Dept. No. XXVI (26)  
Date of Hearing: **May 13, 2014**  
Time of Hearing: **9:00 am**

14  
15 An Inter Vivos Irrevocable Trust.

16 **OPPOSITION OF ELEANOR C. AHERN TO JACQUELINE M. MONTOYA'S PETITION**  
17 **FOR CONSTRUCTION AND EFFECT OF PROBATE COURT ORDER**

18 COMES NOW ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN  
19 ("ELEANOR"), as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING  
20 TRUST dated May 18, 1972 (the "TRUST"), by and through her counsel of record, JOHN R.  
21 MUGAN, Esquire, and MICHAEL D. LUM, Esquire, of the law firm of JEFFREY BURR, LTD.,  
22 and hereby submits this Opposition of Eleanor C. Ahern To Jacqueline M. Montoya's Petition For  
23 Construction And Effect Of Probate Court Order ("OPPOSITION"), and in support thereof states:

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 Lacking the premonition to foresee the consequences of the Petition To Assume  
27 Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust ("2009 PETITION"),  
28 the Consents thereto and the resultant Order, JACQUELINE M. MONTOYA now seeks to have

1 this Court “construe” the Order Assuming Jurisdiction Over Trust; Confirm Trustee; And For  
2 Construction Of And Reform Of Trust Instrument (the ’ORDER”) in a vacuum while completely  
3 ignoring the pleadings upon which the ORDER is based, namely the 2009 PETITION and the  
4 written Consents thereto signed by her and her sister and filed in the 2009 proceeding.  
5 JACQUELINE M. MONTOYA also is attempting to have the Court “construe” the 2009  
6 PETITION, again ignoring the written Consents thereto signed by her and her sister and filed in the  
7 2009 proceeding. JACQUELINE M. MONTOYA is seeking such pleadings be “construed” not  
8 only in a light most favorable to her, but directly contradictory to the language contained therein. In  
9 reality, JACQUELINE M. MONTOYA wants this Court to re-write and re-word the 2009  
10 PETITION and ignore the written Consents thereto that she and her sister, KATHRYN A.  
11 BOUVIER, signed. The reason for such request is self-evident in that the clear language contained  
12 in the 2009 PETITION and Consents is directly contradictory to her theory of recovery herein. To  
13 use a sports analogy, JACQUELINE M. MONTOYA is essentially asking for a “mulligan” or a  
14 “do-over” with respect to the 2009 PETITION, Consents and ORDER. Unfortunately, we are not  
15 playing golf. We are involved in the practice of law and litigation where there are no “mulligans,”  
16 especially when over four (4) years have lapsed since the 2009 PETITION and the Consents were  
17 filed and the ORDER was entered and filed. Furthermore, the language and effect of the 2009  
18 PETITION, Consents and ORDER are all part of the evidentiary hearing to be held herein that the  
19 Court found as necessary back at the November 12, 2013 hearing when opposing counsel argued no  
20 evidentiary hearing was necessary. Thus, this Court should deny JACQUELINE M. MONTOYA’s  
21 Petition For Construction And Effect Of Probate Court Order (“PETITION”) as her PETITION is  
22 untimely by a long stretch.

## 22 II. FACTUAL SUMMARY

23 Subsequent to the death of MARJORIE T. CONNELL, the 2009 PETITION was filed by  
24 MARK A. SOLOMON, Esquire, and BRIAN K. STEADMAN, Esquire, as purported attorneys for  
25 ELEANOR as Petitioner. This is the first case dealing with the W.N. CONNELL AND  
26 MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 (“TRUST”), Trust No. 2, its  
27 assets, the income therefrom, the remainder interest, and the construction and reformation of the  
28 TRUST agreement. The 2009 PETITION was filed with this Court on August 17, 2009. To the

1 best of her recollection, all of ELEANOR's meetings and dealings regarding the 2009 PETITION  
2 were with DAVID A. STRAUS, Esquire, and his client, JACQUELINE M. MONTOYA; all  
3 meetings regarding the 2009 PETITION were at the law office of Mr. STRAUS; the 2009  
4 PETITION was executed by ELEANOR at the law office of Mr. STRAUS, and ELEANOR never  
5 met with Mr. SOLOMON or Mr. STEADMAN, the attorneys listed as her attorney on the 2009  
6 PETITION. In essence, the action was initiated and driven by JACQUELINE M. MONTOYA and  
7 her attorney, and primarily was for the benefit of JACQUELINE M MONTOYA and her sister,  
8 KATHRYN A. BOUVIER. A copy of such 2009 PETITION without exhibits is attached hereto as  
9 **Exhibit A** and by this reference incorporated herein.

10 Paragraphs 18-20, inclusive, of the Petition provide in relevant part as follows:

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

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

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

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

24 Attached as Exhibit 6 to the 2009 PETITION is the Consent To Petition To Assume  
25 Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust And Waiver Of Notice  
26 of JACQUELINE M. MONTOYA dated August 8, 2009 ("CONSENT" or "CONSENTS"). A  
27 copy of such Consent is attached hereto as **Exhibit B** and by this reference incorporated herein.

28 Paragraphs 1-3, inclusive, of the CONSENT provides 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

1 the Petition **in its entirety.**" (emphasis added)

2 KATHRYN A. BOUVIER signed an identical CONSENT, and a copy of such Consent is  
3 attached hereto as **Exhibit C** and by this reference incorporated herein.

4 A hearing on the 2009 PETITION was scheduled before the Probate Commissioner on  
5 September 4, 2009 at 9:30 a.m. Notice of the date, time and place of hearing and a copy of the 2009  
6 PETITION were mailed to ELEANOR, JACQUELINE M. MONTOYA and KATHRYN A.  
7 BOUVIER on August 17, 2009. Copies of the Notice Of Hearing On Petition To Assume  
8 Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust and of the Certificate  
9 Of Mailing are attached hereto as **Exhibit D** and by this reference incorporated herein. The 2009  
10 PETITION came on for hearing before the Probate Commissioner on September 4, 2009, and the  
11 ORDER was entered and filed herein on said date. The ORDER in part construed and reformed the  
12 TRUST to provide that upon the death of ELEANOR, Trust No. 2 and its assets, including the  
13 Upton County, Texas, Oil rights, shall pass equally to her children, JACQUELINE M. MONTOYA  
14 and KATHRYN A. BOUVIER, each of whom shall also have a power of appointment as to their  
15 share of the residue if they would predecease ELEANOR, to-wit:

16 "IT IS HEREBY FURTHER ORDERED that the dispositive provisions of Trust No. 2  
17 created under THE W. N. CONNELLLIVING TRUST, dated May 18, 1972, are hereby  
18 reformed and construed to provide that upon the death of ELEANOR C. AHERN, the  
19 residue of Trust No. 2 created under THE W. N. CONNELL LIVING TRUST, dated May  
20 18, 1972, shall be distributed to the heirs of ELEANOR C. AHERN."

21 "IT IS HEREBY FURTHER ORDERED that it is approved and granted that Sections "E,"  
22 "F," "G," and "H" to Article Fourth of THE W.N. CONNELL AND MARJORIE T.  
23 CONNELL LIVING TRUST dated May 18, 1972, is hereby reformed as follows:

24 E. Distribution Upon Death of both the Survivor [MARJORIE T. CONNELL] and the  
25 Residual Beneficiary [ELEANOR]. Upon the death of both the Survivor [MARJORIE T.  
26 CONNELL] and the Residual Beneficiary [ELEANOR], the Trustee shall divide the balance  
27 of Trust No. 2 into two equal shares, as follows:

28 1. One (1) equal share shall be distributed, outright and free of trust, to the  
Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if she is then living.  
Subject to Section (F ) below if, as the date of the Residual Beneficiary's death,  
JACQUELINE M. MONTOYA is not then living, then said equal share shall be  
distributed to JACQUELINE M. MONTOYA's then living issue, by right of  
representation. Each share created pursuant to this Section E(1) of Article Fourth  
for the benefit of the issue of JACQUELINE M. MONTOYA shall be held as a  
separate trust ("Beneficiary's Share" for the benefit of such issue ("Beneficiary") to



1 *be held by the Trustee, administered and further distributed pursuant to Section G of*  
2 *this Article Fourth.*

3 2. *One (1) equal share shall be distributed, outright and free of trust, to the*  
4 *Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is then living.*  
5 *Subject to Section (F ) below if, as the date of the Residual Beneficiary's death,*  
6 *KATHRYN A. BOUVIER is not then living, then said equal share shall be distributed*  
7 *to KATHRYN A. BOUVIER's then living issue, by right of representation. Each*  
8 *share created pursuant to this Section E(2) of Article Fourth for the benefit of the*  
9 *issue of KATHRYN A. BOUVIER shall be held as a separate trust ("Beneficiary's*  
10 *Share" for the benefit of such issue ("Beneficiary") to be held by the Trustee,*  
11 *administered and further distributed pursuant to Section G of this Article Fourth.*

12 3. *In the event that both JACQUELINE M. MONTOYA and KATHRYN A.*  
13 *BOUVIER predecease the Grantors, leaving no issue, and having failed to exercise*  
14 *the testamentary power of appointment pursuant to Section (F) below, then the*  
15 *balance shall be distributed in accordance with Article Eleventh herein.*

16 F. *Power of Appointment. In the event that JACQUELINE M. MONTOYA or KATHRYN*  
17 *A. BOUVIER predeceases the Residual Beneficiary, upon the death of the Residual*  
18 *Beneficiary, the Trustee shall distributed such beneficiary's equal share to or in trust for*  
19 *such one or more persons or organizations and in such manner and proportions as such*  
20 *beneficiary may appoint by her will or revocable trust making specific reference to this*  
21 *general power of appointment.*

22 A copy of such ORDER is attached hereto as **Exhibit E** and by this reference incorporated  
23 herein.

24 On September 8, 2009, a Notice Of Entry Of Order and Certificate Of Mailing were filed  
25 herein attesting to the mailing of the Notice Of Entry Of Order and Certificate Of Mailing and a  
26 copy of the Order Assuming Jurisdiction Over Trust; Confirm Trustee; And For Construction Of  
27 And Reform Of Trust Instrument to ELEANOR, JACQUELINE M. MONTOYA and to  
28 KATHRYN A. BOUVIER at their last known mailing addresses per Nevada law. A copy of such  
Notice Of Entry Of Order and Certificate Of Mailing is attached hereto as **Exhibit F** and by this  
reference incorporated herein.

A search of the Register of Actions and pleadings herein shows no objection to, motion for  
relief from, request for reconsideration of, or appeal of the ORDER being filed. Notwithstanding  
the fact that there was no objection filed, JACQUELINE M. MONTOYA now seeks to have this  
Court "construe" the ORDER entered by another Judge/Magistrate over four (4) years ago.

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**III. ARGUMENT**

**A. Legal Standard.**

JACQUELINE M. MONTOYA is essentially seeking relief from a prior order or to appeal a prior order; however, the time for doing so has long passed. Rule 60, *RELIEF FROM JUDGMENT OR ORDER*, of the Nevada Rules of Civil Procedure (“NRCP”) states in relevant part:

**(b) Mistakes; Inadvertence; Excusable Neglect Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party** or a party’s legal representative **from a** final judgment, **order**, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. **The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the order was served.** (emphasis added)

Rule 4, *APPEAL—WHEN TAKEN*, of the Nevada Rules of Appellate Procedure states in relevant part:

**(a) Appeals in Civil Cases.**

**(1) Time and Location for Filing a Notice of Appeal.** In a civil case in which an appeal is permitted by law from a district court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the district court clerk. Except as provided in Rule 4(a)(4), a notice of **appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served...** (emphasis added)

Rule 59(e), *NEW TRIALS; AMENDMENT OF JUDGMENTS*, of the NRCP states:

**(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of the judgment.** (emphasis added)

JACQUELINE M. MONTOYA is also essentially again asserting that the allegations contained in the 2009 PETITION and Consents were neither important nor binding, what was

1 important and binding were the Order provisions. The Nevada Rules of Professional Conduct  
2 (“NRPC”) make it abundantly clear that the allegations contained in a pleading are important and  
3 there must be a basis in law and fact for the same, and there is a duty to correct any false statement  
4 of material fact or law.

5 NRPC 3.1, *Meritorious Claims and Contentions*, states in relevant part:

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

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

10 “(a) A lawyer shall not knowingly:

11 (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of  
12 material fact or law previously made to the tribunal by the lawyer;

13 (2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the  
14 lawyer to be directly adverse to the position of the client and not disclosed by opposing  
15 counsel; or

16 (3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a  
17 witness called by the lawyer, has offered material evidence and the lawyer comes to know of  
18 its falsity, the lawyer shall take reasonable remedial measures, including, if necessary,  
19 disclosure to the tribunal.

20 The Nevada Rules of Civil Procedure (“NRC”) also make it abundantly clear that the  
21 allegations contained in a pleading are important and the factual contentions must have evidential  
22 support.

23 NRC 11, *Signing of Pleadings*, states in relevant part:

24 “(b) **Representations to Court.** By presenting to the court (whether by signing, filing,  
25 submitting, or later advocating) a pleading, written motion, or other paper, an attorney or  
26 unrepresented party is certifying that to the best of the person’s knowledge, information, and  
27 belief, formed after an inquiry reasonable under the circumstances,—

28 (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;

1 (3) the allegations and other factual contentions have evidentiary support or, if specifically  
2 so identified, are likely to have evidentiary support after a reasonable opportunity for further  
investigation or discovery; and

3 (4) the denials of factual contentions are warranted on the evidence or, if specifically so  
4 identified, are reasonably based on a lack of information or belief.

5 **(c) Sanctions.** If, after notice and a reasonable opportunity to respond, the court  
6 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.”

7 **B. This Court Should Deny JACQUELINE M. MONTOYA’s PETITION Because It**  
8 **Seeks To Amend The 2009 PETITION, The Consents Thereto, And The ORDER.**

9 In her PETITION, JACQUELINE M. MONTOYA prays for an order from this Court (1)  
10 declaring that the 2009 PETITION “sought only to add provisions clarifying the beneficiaries of  
11 Trust No. 2;” (2) declaring that the 2009 PETITION “did not seek or request that the Court declare  
12 that Eleanor C. Ahern was entitled to 100% of the income of the ‘W.N. Connell and Marjorie T.  
13 Connell Living Trust’, dated May 18, 1972...;” (3) declaring that the ORDER “was only to add  
14 provisions to the ‘W.N. Connell and Marjorie T. Connell Living Trust’, dated May 18, 1972 which  
15 had the affect (sic) of clarifying and solidifying the beneficiaries of Trust No. 2...;” and (4)  
16 declaring that the ORDER “did not address, and in turn had no bearing on, the substantive rights of  
17 Eleanor C. Ahern....” In reality, JACQUELINE M. MONTOYA is seeking to amend the 2009  
PETITION, the CONSENTS thereto, and the ORDER.

18 As noted above, JACQUELINE M. MONTOYA and her sister, KATHRYN A. BOUVIER,  
19 signed CONSENTS to the 2009 PETITION wherein they said (1) “**I am a contingent income**  
20 **beneficiary** of the W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated  
21 May 18, 1972 (the ‘Trust’);” (2) **I have read the Petition** To Assume Jurisdiction Over Trust;  
22 Confirm Trustee; And Construe And Reform Trust (the ‘Petition’) and **believe it to be true and**  
23 **correct** to the best of my knowledge;” and (3) “**I hereby consent to the Petition** and request that  
24 the Court enter an Order approving the Petition **in its entirety**” (emphasis added). And, the 2009  
25 PETITION provides that “[a]s of the death of MARJORIE, **Trust No. 2 owned land and oil and**  
26 **gas shares in reserves and income located in Upton County, Texas (the ‘Oil Assets’)**. The Oil  
27 Assets have not been valued for some time, but are estimated to be **worth approximately**  
28 **\$700,000**” (emphasis added). Upon reviewing the appraisal that formed the basis for the statement

1 that the "Oil Assets" were "estimated to be worth approximately \$700,000," it was discovered that  
2 this \$700,000 value is the value of the entire Upton County, Texas, Oil right property, which is the  
3 subject of this dispute. Accordingly, when JACQUELINE M. MONTOYA and her sister,  
4 KATHRYN A. BOUVIER consented to the 2009 PETITION "in its entirety," they consented to the  
5 fact that all of the Upton County, Texas, Oil rights are owned by Trust No. 2. Notwithstanding this,  
6 JACQUELINE M. MONTOYA now seeks to amend the 2009 PETITION, the CONSENTS, and  
7 the ORDER because the effect of these documents is inconvenient to her in this case.

8 However, the time for amending the 2009 PETITION, the CONSENTS, and the ORDER  
9 has come and gone. Over four (4) years have passed since the ORDER and Notice Of Entry Of  
10 Order and Certificate Of Mailing where filed herein. Four (4) years far exceeds the six (6) months  
11 afforded by NRCP Rule 60 for parties seeking relief from an order. Four (4) years far exceeds the  
12 thirty (30) days afforded by Rule 4 of the Nevada Rules of Appellate Procedure for appealing an  
13 order. And, four (4) years far exceeds the ten (10) days afforded by NRCP 59 to alter or amend a  
14 judgment. Because JACQUELINE M. MONTOYA's time for relief has lapsed in every scenario,  
15 this Court should deny her PETITION.

16 Given the representations made by JACQUELINE M. MONTOYA and her legal counsel in  
17 this case, it is easy to see why JACQUELINE M. MONTOYA believes that the 2009 PETITION,  
18 the CONSENTS, and the ORDER can be easily modified, re-worded, re-written, and amended.  
19 Legal counsel for JACQUELINE M. MONTOYA essentially asserted at the November 12, 2013  
20 hearing that the allegations contained in the 2009 PETITION and Consents were not important nor  
21 binding, what was important and binding were the Order provisions. If one accepted this premise  
22 and carried it to its logical conclusion, one could make any allegations whatsoever in a pleading,  
23 whether true or untrue. For example, one could make numerous false representations to the Court  
24 and they would not be important, only the Order provisions would be important, even though the  
25 Court obviously considers the representations made in the pleading. The Nevada Rules of  
26 Professional Conduct ("NRPC") make it abundantly clear that the allegations contained in a  
27 pleading are important and there must be a basis in law and fact for the same, and there is a duty to  
28 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,

1 unless there is a basis in law and fact for doing so that is not frivolous, which includes a  
2 good faith argument for an extension, modification or reversal of existing law.”

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

4 “(a) A lawyer shall not knowingly:

5 (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of  
6 material fact or law previously made to the tribunal by the lawyer;

7 (2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the  
8 lawyer to be directly adverse to the position of the client and not disclosed by opposing  
9 counsel; or

10 (3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a  
11 witness called by the lawyer, has offered material evidence and the lawyer comes to know of  
12 its falsity, the lawyer shall take reasonable remedial measures, including, if necessary,  
13 disclosure to the tribunal.

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

17 “(b) **Representations to Court.** By presenting to the court (whether by signing, filing,  
18 submitting, or later advocating) a pleading, written motion, or other paper, an attorney or  
19 unrepresented party is certifying that to the best of the person’s knowledge, information, and  
20 belief, formed after an inquiry reasonable under the circumstances,—

21 (1) it is not being presented for any improper purpose, such as to harass or to cause  
22 unnecessary delay or needless increase in the cost of litigation;

23 (2) the claims, defenses, and other legal contentions therein are warranted by existing law or  
24 by a nonfrivolous argument for the extension, modification, or reversal of existing law or the  
25 establishment of new law;

26 (3) the allegations and other factual contentions have evidentiary support or, if specifically  
27 so identified, are likely to have evidentiary support after a reasonable opportunity for further  
28 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.”

Accordingly, the pleadings in a case are essential, especially where one side is asking that an  
Order which is based on a Petition and Consents thereto be ignored in “construing” the Order. Also  
the Petition and Consents are certainly relevant to the pending dispute in that they directly address

1 the crux of the current issue – who is entitled to the rent and royalty income.

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

- 5 1. For this Court to continue the hearing date of JACQUELINE M. MONTOYA's Petition  
6 For Construction And Effect Of Probate Court Order; or
- 7 2. In the alternative, for this Court to deny JACQUELINE M. MONTOYA's Petition For  
8 Construction And Effect Of Probate Court Order; and
- 9 3. For any other relief as this Court deems appropriate.

10 DATED: May 11, 2014.

JEFFREY BURR, LTD.

11  
12 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

17

18

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**INDEX OF EXHIBITS**

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
A	2009 Petition	13
B	Consent of Jacqueline M. Montoya	14
C	Consent of Kathryn A. Bouvier	15
D	Notice Of Hearing On Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust and Certificate of Mailing	16
E	Order Assuming Jurisdiction Over Trust; Confirm Trustee; And For Construction Of And Reform Of Trust Instrument	17
F	Notice Of Entry Of Order and Certificate of Mailing	18



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A  
2009 Petition



8616ZE  
P-09-066425-1

FILED *42* FILED

AUG 17 12 21 AM '09 AUG 17 2009

*[Signature]*  
CLERK OF THE COURT  
*[Signature]*  
CLERK OF THE COURT

1 PET  
2 MARK A. SOLOMON, ESQ.  
3 Nevada State Bar No. 00418  
4 BRIAN K. STEADMAN, ESQ.  
5 Nevada State Bar No. 10771  
6 SOLOMON DWIGGINS & FREER, LTD.  
7 9060 W. Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: 702.853.5483  
10 Facsimile: 702.853.5485

11 Attorneys for ELEANOR C. AHERN, Petitioner

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 In the Matter of the ) Case No. ~~P.09~~ *P.09-066425-T*  
15 ) PCI *H*  
16 THE W. N. CONNELL AND MARJORIE T. )  
17 CONNELL LIVING TRUST, )  
18 Dated May 18, 1972 )  
19 ) Date of Hearing: September 4, 2009  
20 ) Time of Hearing: 9:30 a.m.  
21 An Intervivos Irrevocable Trust. )  
22 )

23 PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE;  
24 AND CONSTRUE AND REFORM TRUST

25 Petitioner, ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN  
26 ("Petitioner"), as successor Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING  
27 TRUST, dated May 18, 1972 (the "Trust"), by and through counsel Mark A. Solomon, Esq., of the law  
28 firm of SOLOMON DWIGGINS & FREER, LTD., hereby respectfully petitions this Court to assume  
jurisdiction over the Trust, to confirm the Petitioner as Trustee of the Trust and any and all sub-trusts  
created under the Trust, to construe the Trust, and for an order reforming the distributions to the  
beneficiaries after the death of the Petitioner and the provisions appointing the successor Trustee.  
Pursuant to Nevada Revised Statutes ("NRS") 153.031(b), (e), and (n), 155.140, 164.050, 164.010, and

1 164.015, Petitioner alleges as follows:

2  
3 **I.**  
4 **PETITION TO ASSUME JURISDICTION OVER TRUST AND CONFIRM THE APPOINTMENT**  
5 **OF PETITIONER AS TRUSTEE**

6 1. W. N. CONNELL and MARJORIE T. CONNELL ("MARJORIE"), husband and wife, as  
7 the grantors ("Grantors") and initial trustees, established the Trust on May 18, 1972, a copy of which is  
8 attached to this Petition as **Exhibit "1."**

9 2. W. N. CONNELL died on November 24, 1979, and was survived by his wife, MARJORIE.  
10 A copy of W. N. CONNELL's death certificate<sup>1</sup> is attached hereto as **Exhibit "2."**

11 3. The Petitioner is W. N. CONNELL's only surviving child. MARJORIE had no children  
12 during her lifetime, but formally adopted the Petitioner.

13 4. Pursuant to Article Twelfth, upon W. N. CONNELL's death, MARJORIE was named as the  
14 successor Trustee. *See*, Trust, Ex. 1, at pg. 13.

15 5. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death,  
16 the Trust was divided between Trust No. 2 and Trust No. 3. MARJORIE served as successor Trustee of  
17 the Trust, including Trust No. 2 and Trust No. 3, until her death.

18 6. On May 6, 1980, the Petitioner was named as Co-Trustee of the Trust, as is indicated in the  
19 Substitution of Trustee, attached hereto as **Exhibit "3."** The Petitioner served as Co-Trustee until the  
20 death of MARJORIE.

21 7. MARJORIE died on May 1, 2009. A copy of MARJORIE's death certificate<sup>2</sup> is attached  
22 hereto as **Exhibit "4."**

23 8. Pursuant to Article Twelfth, upon the death or incapacity of both W. N. CONNELL and  
24

25  
26  
27 <sup>1</sup> The social security number has been redacted.

28 <sup>2</sup> The social security number has been redacted.

1 MARJORIE, the Petitioner is to serve as successor Trustee. See, Trust, Ex. 1, at pg. 13. The Petitioner  
2 is currently serving as sole Trustee of the Trust, including Trust No. 2 and Trust No. 3.

3 9. The Petitioner is currently residing in Clark County, Nevada. The Trust is currently being  
4 administered in Clark County, Nevada.

5 10. Section F of Article Eighth states as follows:

6 F. Applicable Law. This Trust Agreement is executed under the  
7 laws of the State of Nevada and shall in all respects be governed by the laws of  
8 the State of Nevada.

9 11. NRS 164.010(1) and (2) provides in pertinent part as follows:

10 1. Upon the petition of any person appointed as trustee of an express  
11 trust by any instrument other than a will . . . the district court of the county in  
12 which the trustee resides or conducts business, or in which the trust has been  
13 domiciled, shall consider the application to confirm the appointment of the  
14 trustee and specify the manner in which the trustee must qualify. Thereafter the  
15 court has jurisdiction of the trust as a proceeding in rem.

16 2. If the court grants the petition, it may consider at the same time  
17 any petition for instructions filed with the petition for confirmation.

18 12. It is appropriate for this Court to confirm Petitioner as Trustee since the Trust designates her  
19 to serve as successor Trustee upon the death of both W. N. CONNELL and MARJORIE death.

20 13. Further, *in rem* jurisdiction over the Trust is proper since the Trust is domiciled and being  
21 administered in Nevada.

22 14. Therefore, this Court should confirm the appointment of the Petitioner as Trustee of the Trust  
23 and exercise *in rem* jurisdiction over the Trust.

24 **II.**  
**PETITION TO CONSTRUE AND REFORM TRUST**

25 15. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death,  
26 MARJORIE, as the Trustee, allocated to Trust No. 3: (1) MARJORIE's separate interest in the trust  
27 estate; (2) MARJORIE's one-half (1/2) interest in the community property of the trust estate; and (3) an  
28

1 amount of property which qualified for the maximum marital deduction allowed for federal estate tax  
2 purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code ("IRC")  
3 as federal estate tax credits. MARJORIE allocated to Trust No. 2 the balance of the Trust assets. See,  
4 Trust, Ex. 1, at pgs. 2 and 3.  
5

6 16. The division of the Trust into Trust No. 2 and Trust No. 3 is similar to a type of trust  
7 commonly known as an "AB" trust, where upon the death of the first settlor, an amount equal to the  
8 federal estate tax exemption is allocated to a credit shelter type trust with the remaining assets allocated  
9 to a trust for the surviving spouse. In a standard AB trust, the assets allocated to the credit shelter trust  
10 are for the benefit of the deceased spouse's beneficiaries while the remaining assets are for the benefit  
11 of the surviving spouse.  
12

13 17. Indeed, Trust No. 2 was drafted in such a manner as to benefit both the Petitioner and  
14 MARJORIE, who would typically be W. N. CONNELL's beneficiaries. Additionally, Trust No. 3 was  
15 for MARJORIE's benefit during her lifetime, and, more importantly, MARJORIE retained the  
16 testamentary power to appoint the balance of Trust No. 3 to her estate or to any person or persons. See,  
17 Trust, Ex. 1, at pg. 6.<sup>3</sup>  
18

19 18. As of the death of MARJORIE, Trust No. 2 owned land and oil and gas shares in reserves  
20 and income located in Upton County, Texas (the "Oil Assets"). The Oil Assets have not been valued for  
21 some time, but are estimated to be worth approximately \$700,000.  
22

23 19. Pursuant to Article Fourth, which Article governs the administration of Trust No. 2, all  
24 income from the Oil Assets is to be paid to the Petitioner as the "Residual Beneficiary" during her  
25

---

26 <sup>3</sup> MARJORIE exercised this power of appointment prior to her death as indicated in  
27 Article Four of the Last Will and Testament of MARJORIE, dated January 7, 2008. A copy of  
28 MARJORIE's Last Will and Testament is attached hereto as **Exhibit "5."** The beneficiary of the  
exercise of the power of appointment was the MTC Living Trust, which contains provisions for the  
benefit of the Petitioner's issue.

1 lifetime.<sup>4</sup> Such income has been paid to the Petitioner since the creation of Trust No. 2 after W. N.  
2 CONNELL's death.

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

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

8 *See*, Trust, Ex. 1, at pg. 4.

9 21. Although Trust No. 2 provides for a contingent distribution of the income from Trust No. 2  
10 in the event that the Petitioner predeceased MARJORIE, no provision is made as to the final distribution  
11 of Trust No. 2 after the death of the Petitioner, in the event that MARJORIE predeceased the Petitioner.

12 22. Upon assuming jurisdiction of a trust, this Court "has exclusive jurisdiction" over  
13 proceedings to construe the terms of the trust and declare the rights of the parties, including "any  
14 appropriate relief provided for with regards to a testamentary trust in NRS 153.031." *See*, NRS  
15 164.015(1). NRS 153.031 provides, in pertinent part:

16 1. A trustee or beneficiary may petition the court regarding any  
17 aspect of the affairs of the trust, including:

18 (b) Determining the construction of the trust instrument;

19 \*\*\*

20 (e) Ascertaining beneficiaries and determining to whom property is  
21 to pass or be delivered upon final or partial termination of the trust, to the extent  
22 not provided in the trust instrument;

23  
24  
25 <sup>4</sup> Section B of Article Fourth also states that all income received by Trust No. 2, other  
26 than that received from the Oil Assets, is to be paid to MARJORIE. However, as the sole asset of  
27 Trust No. 2 consists of the Oil Assets, this provision is inapplicable. Additionally, Trust No. 2  
28 granted to MARJORIE the power to appoint and/or invade the principal of Trust No. 2 during her  
lifetime. *See*, Trust, Ex. 1, at pg. 5. Petitioner is informed and believes that MARJORIE did not  
exercise her power of appointment nor was the principal invaded for her benefit during her lifetime.

\*\*\*

1  
2 (n) Approving or directing the modification or termination of the trust[.]

3  
4 23. A trust instrument may be reformed to conform with the settlor's intent, which may be  
5 ascertained from the trust instrument as a whole. *See, Sheinkopf v. Bornstein*, 823 N.E.2d 372 (Mass.  
6 2005); *see also, Dassori v. Patterson*, 440 Mass. 1039, 802 N.E.2d 553 (2004) (A trust instrument may  
7 be reformed to conform with the settlor's intent.) The equitable power of the court to modify or reform  
8 a trust extends to situations where trust instrument contains some expression of trustor's intention, but  
9 drafting error renders that expression ambiguous. *See, Ike v. Doolittle*, 61 Cal. App. 4th 51, 70 Cal. Rptr.  
10 2d 887 (4th Dist. 1998) (Recognizing the common law equitable power and the statutory authority of the  
11 court to alter administrative or distributive provisions of trust where necessary to accomplish purpose of  
12 trust).  
13

14 24. On the application of the trustee or one or more beneficiaries, the court possesses and  
15 frequently exercises the power to modify the terms of the trust in order to effectuate the accomplishment  
16 of the purposes of the settlor. *See generally, Bogert on Trusts and Trustees*, §994; Restatement, Third,  
17 Trusts, §62. The court has equitable power to order reformation of a trust; and, once the court acquires  
18 jurisdiction, it is authorized to administer full, complete, and final relief. *See, Schroeder v. Gebhart*, 825  
19 So. 2d 442 (Fla. Dist. Ct. App. 5th Dist. 2002), review denied, 845 So. 2d 892 (Fla. 2003).  
20

21 25. If, due to a mistake, the trust does not contain the terms that were intended by the settlor, the  
22 settlor or other interested party may maintain a suit in equity to have the instrument reformed so that it  
23 will contain the terms that were actually agreed upon or that reflect the settlor's actual intent. *See,*  
24 Restatement, Second, Trusts, §333. *See also, Restatement, Third, Trusts*, §62.  
25

26 26. The Petitioner is informed and believes that the failure to provide for distribution upon  
27 Petitioner's death is an omission due to scrivener error. Indeed, the Trust as a whole appears to be an  
28

1 "AB" type trust whereby each spouse designates the beneficiaries they intend to receive such spouse's  
2 share, but, in the case of the Trust, the final dispositive provisions of Trust No. 2 were omitted.

3 27. Indeed, Article Fourth of the Trust, governing Trust No. 2 makes adequate provision for  
4 numerous other contingencies for the disposition of Trust No. 2, but appears to omit a provision for  
5 alternate disposition in the current situation - where MARJORIE predeceased the Petitioner. *See*, Trust,  
6 Ex. 1, at pgs. 4 and 5.

8 28. The Grantors' intent as to the final disposition of Trust No. 2 after the death of the Petitioner  
9 can be derived from the contingent dispositions of Trust No. 2 and the dispositive terms of Trust No. 3.

10 29. Section B of Article Fourth, governing Trust No. 2, provides that the income from Trust No.  
11 2 is to be distributed to the Petitioner's issue if the Petitioner predeceased MARJORIE. Additionally,  
12 Trust No. 2 provides that, if the Petitioner predeceased MARJORIE leaving no issue, that MARJORIE  
13 be entitled to the income from the Oil Asset. These provisions show the Grantors had an overall  
14 dispositive model for Trust No. 2 in mind, which included not only the Petitioner, but the Petitioner's  
15 issue.  
16

17 30. As outlined in Section D of Article Fifth, governing Trust No. 3, adequate provisions are  
18 made in for Trust No. 3 for the contingency of MARJORIE predeceasing the Petitioner, as follows:  
19

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

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

27 *See*, Trust, Ex. 1, at pg. 6.

28 31. Moreover, Section D of Article Fifth, governing Trust No. 3, provides that, upon the death  
of both W. N. CONNELL and MARJORIE, the balance of Trust No. 3, if not otherwise appointed, is to



1 be distributed to the Petitioner or, if she is not living, then to her heirs. This provision clearly shows the  
2 Grantors' overall intent that the assets be vested in remainder beneficiaries, in particular the Petitioner  
3 and her heirs.

4  
5 32. Bringing together the dispositive provisions of Trust No. 2 and Trust No. 3, the Grantors'  
6 intentions can be derived as follows: that, upon the death of the Petitioner, the balance of Trust No. 2 is  
7 to vest in the Petitioner's heirs.

8 33. Based on the terms of the Trust, the Petitioner requests that this Court: (1) construe the Trust  
9 to provide that it is the intent of W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, to  
10 distribute the residue of Trust No. 2 to ELEANOR C. AHERN's heirs upon her death;<sup>5</sup> and (2) reform  
11 Trust No. 2 in accordance with such intention by adding new Sections "E," "F," "G," and "H" to Article  
12 Fourth as follows:

13  
14 *E. Distribution Upon Death of both the Survivor and the Residual*  
15 *Beneficiary. Upon the death of both the Survivor and the Residual Beneficiary,*  
16 *the Trustee shall divide the balance of Trust No. 2 into two equal shares, as*  
*follows:*

17 1. *One (1) equal share shall be distributed, outright and free of*  
18 *trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if*  
19 *she is then living. Subject to Section (F) below, if, as of the date of the Residual*  
20 *Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said*  
21 *equal share shall be distributed to JACQUELINE M. MONTOYA's then living*  
22 *issue, by right of representation. Each share created pursuant to this Section*  
23 *E(1) of Article Fourth for the benefit of the issue of JACQUELINE M.*  
24 *MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the*  
25 *benefit of such issue ("Beneficiary") to be held by the Trustee, administered and*  
26 *further distributed pursuant to Section G of this Article Fourth.*

27 2. *One (1) equal share shall be distributed, outright and free of*  
28 *trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is*  
*then living. Subject to Section (F) below, if, as of the date of the Residual*  
*Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal*

---

<sup>5</sup> The Petitioner's heirs as of the date of this Petition are her two (2) daughters, JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER.

1 share shall be distributed to KATHRYN A. BOUVIER's then living issue, by  
2 right of representation. Each share created pursuant to this Section E(2) of  
3 Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be  
4 held as a separate trust ("Beneficiary's Share") for the benefit of such issue  
5 ("Beneficiary") to be held by the Trustee, administered and further distributed  
6 pursuant to Section G of this Article Fourth.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
3. In the event that both JACQUELINE M. MONTOYA and  
KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having  
failed to exercise the testamentary power of appointment pursuant to Section (F)  
below, then the balance shall be distributed in accordance with Article Eleventh  
herein.

F. Power of Appointment. In the event that JACQUELINE M. MONTOYA  
or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the  
death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's  
equal share to or in trust for such one or more persons or organizations and in  
such manner and proportions as such beneficiary may appoint by her will or  
revocable trust making specific reference to this general power of appointment.

G. Management of Beneficiary's Shares. Until a Beneficiary has attained  
the age of twenty-one (21) years, the Trustee may distribute to or apply for the  
benefit of such Beneficiary so much of the income or principal from such  
Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion,  
is necessary to provide for his or her health, education, maintenance, and  
support. In addition, the Trustee may make the following discretionary  
distributions:

1. Investment in Business. The Trustee may, in the Trustee's sole  
discretion, apply the principal or income of such Beneficiary's Share for the  
purpose of investing in a business or profession operated by, or to be operated  
by, such Beneficiary and to be owned by the Beneficiary's Share.

2. Acquisition of Residences. The Trustee may, in the Trustee's sole  
discretion, apply the income and principal of such Beneficiary's Share for the  
purpose of purchasing one or more residences to be owned by the Beneficiary's  
Share and used and occupied by such Beneficiary and his or her family,  
including a primary residence, seasonal residence or otherwise. In the case of  
any residence owned by the Beneficiary's Share, and in the Trustee's sole  
discretion, such Beneficiary may occupy and use such residence without rent or  
any other financial obligation for the payment of the taxes, insurance payments,  
maintenance costs and other expenses required in order to keep such residences  
in proper repair and free of liens.

3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole  
discretion, may grant such Beneficiary the right to the use, possession and

1 enjoyment of all of the tangible personal property held by such Beneficiary's  
2 Share, without financial obligation for the use of such property.

3 4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining  
4 the age of twenty-one (21), the Trustee shall distribute to him or her, outright  
5 and free of trust, the remaining principal and accumulated income of that  
6 Beneficiary's Share. If the Beneficiary has already reached the age of  
7 twenty-one (21) at the time of the creation of the Beneficiary's Share, then the  
8 Trustee shall, upon making the division, distribute, outright and free of trust, to  
9 the Beneficiary the balance of such Beneficiary's Share.

10 5. Distribution Upon Death of Beneficiary. If any Beneficiary shall  
11 die prior to the complete distribution of such Beneficiary's Share, then all of the  
12 remaining assets in such Beneficiary's Share shall be distributed to or in trust  
13 for such one or more persons or organizations and in such manner and  
14 proportions as such Beneficiary may appoint by his or her will or revocable  
15 trust making specific reference to this general power of appointment. To the  
16 extent that the Beneficiary does not exercise this general power of appointment,  
17 the remainder of such Beneficiary's Share shall be distributed to the issue of  
18 such Beneficiary in equal shares by right of representation and each such share  
19 shall be held, managed and further distributed by the Trustee as a Beneficiary's  
20 Share under Section G of Article Fourth. If the Beneficiary shall die failing to  
21 exercise this general power of appointment without leaving issue, then the  
22 Beneficiary's Share shall be distributed pro rata to the other Beneficiary's  
23 Shares then being administered by the Trustee hereunder, and if none, then to  
24 the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

25 6. Distributions to or for the Benefit of Minors or Persons Under  
26 Disability. Whenever the Trustee is given the power or discretion to make  
27 distributions to or for the benefit of a minor or other beneficiary under a  
28 disability, the Trustee, in the Trustee's sole discretion, may make distributions  
to a minor or other person under disability by making distributions to the  
guardian or conservator of his or her estate and/or person, as the Trustee shall  
determine, or to any suitable person with whom he or she resides, or the Trustee  
may apply distributions directly for such beneficiary's benefit, or the Trustee  
may make distributions to any duly established custodian for any minor  
beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to  
Minors Act of any State. Any custodian acting on behalf of a minor beneficiary  
shall have the power to bind the beneficiary with respect to all matters  
concerning the Trust. The Trustee, in its sole discretion, may also make  
distributions directly to a minor if, in the Trustee's judgment, such minor is of  
sufficient age and maturity to receive such distribution and spend the money  
properly. The previous language of this paragraph 6 notwithstanding, if a  
beneficiary is, or would be eligible for need-based government benefits, the  
Trustee shall hold the funds for such beneficiary in a "special needs trust" as  
that term is understood for need-based government planning. By "special needs

1 trust" is meant that the Trustee shall have the sole and absolute discretion to  
2 make distributions for the benefit of such beneficiary in a manner that improves  
3 the quality of life for the beneficiary but will not make the beneficiary ineligible  
4 for need-based government benefits. The provisions of the Paragraph 6 are  
intended to supplant need-based government benefits, but not to replace them  
and all terms of this Paragraph 6 shall be so interpreted for all purposes.

5 H. Maximum Term for Trusts. Notwithstanding any other provision of this  
6 Trust, unless terminated earlier under other provisions of this agreement, each  
7 trust created under this agreement shall terminate upon the expiration of the  
8 longest period that property may be held in trust under this agreement without  
9 violating the applicable rule against perpetuities, or similar applicable rule. At  
that time, the remaining trust property shall vest in and be distributed to the  
persons entitled to receive distributions of income hereunder.

10 34. Article Twelfth of the Trust states, in pertinent part, as follows:

11 Twelfth: Successor Trustee. In the event of the death or incapacity of  
12 either Grantor, the Survivor shall continue to serve as the sole Trustee of all of  
13 the trusts created hereunder. Upon the death or incapacity of the Survivor, the  
14 Grantors then nominate and appoint [the Petitioner] as the Trustee of all of the  
15 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.

16 35. In 2008, the FIRST NATIONAL BANK OF NEVADA failed, and is no longer in existence.

17 As outlined in Article Twelfth, W. N. CONNELL and MARJORIE entrusted the beneficiaries (first being  
18 MARJORIE and, upon MARJORIE's death, the Petitioner) of the Trust to act as Trustees.

19 36. The Petitioner requests that, due to the failure of the successor Trustee named by the  
20 Grantors, this Court: (1) construe the Trust to provide that the intent of W. N. CONNELL and  
21 MARJORIE is to appoint the beneficiaries of the Trust to serve as Trustees thereof; and (2) to reform the  
22 Trust in accordance with such intention by modifying Article Twelfth as follows:  
23

24 Twelfth: Successor Trustee. In the event of the death or incapacity of  
25 either Grantor, the Survivor shall continue to serve as the sole Trustee of all of  
26 the trusts created hereunder. Upon the death or incapacity of the Survivor, the  
27 Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR  
28 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 JACQUELINE M.

1 | *MONTOYA to serve in the said capacity. In the event that JACQUELINE M.*  
2 | *MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN*  
3 | *A. BOUVIER shall act as successor Trustee. No successor Trustee shall have*  
4 | *any responsibility for the acts or omissions of any prior trustees and no duty to*  
5 | *audit or investigate the accounts or administration of any such trustee, nor,*  
6 | *unless in writing requested so to do by a person having a present or future*  
7 | *beneficial interest under a trust created hereunder, any duty to take action or*  
8 | *obtain redress for breach of trust.*

9 | *In the event that none of the trustees named in this Article Twelfth are*  
10 | *able or willing to serve, then the majority of adult income beneficiaries of the*  
11 | *Trust shall select a successor Trustee.*

12 | 37. The reformation of the Trust, pursuant to this Petition, will not change the substantive rights  
13 | of the Petitioner during her lifetime. The sole purposes of the reformation are: (1) to clarify the  
14 | dispositive provisions of Trust No. 2 after the death of the Petitioner; and (2) to forestall the requirement  
15 | of petitioning the Court upon the death of the Petitioner to determine the successor Trustee.

16 | 38. The names, ages, residences, and relationships of the persons interested in the Trust, so far  
17 | as known to Petitioner, are as follows:

<u>NAME</u>	<u>AGE</u>	<u>RELATIONSHIP</u>	<u>ADDRESS</u>
ELEANOR C. AHERN	Adult	Residual Beneficiary	6105 Elton Ave Las Vegas, NV 89107
JACQUELINE M. MONTOYA	Adult	Daughter of ELEANOR C. AHERN	3385 Maverick Street Las Vegas, NV 89108
KATHRYN A. BOUVIER	Adult	Daughter of ELEANOR C. AHERN	8461 Purple Sage Road Middleton, ID 83644
SHRINERS HOSPITALS FOR CHILDREN	N/A		Attn: Legal Department P.O. Box 31356 Tampa, FL 33631-3356

18 | 39. JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER have consented in writing  
19 | to the proposed reformation, as outlined in herein, and to this Court entering an order to assume  
20 | jurisdiction over the Trust, the appointment of the Petitioner as the Trustee, and the reformation of the  
21 | Trust as provided in this Petition. Said consents are attached hereto as Exhibits "6" and "7,"

1 | respectively.

2 |       40.     The interests of JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER and their  
3 | respective issue in Trust No. 2 are substantially identical, and JACQUELINE M. MONTOYA and  
4 | KATHRYN A. BOUVIER are able to adequately represent the interests of their respective issue,  
5 | including any minor and unborn issue without the necessity of the appointment of a guardian ad litem.  
6 | See, NRS 155.140 and 164.005.  
7 |

8 |               **WHEREFORE**, Petitioner requests that this Petition be set for hearing, and that after hearing  
9 | the matters of this Petition, this Court find that notice of the time and place of such hearing has been  
10 | given in the manner required by law, and that this Court make and enter its Orders and Decrees pursuant  
11 | to NRS 153.031 (e) and (n), 164.010 and 164.015:  
12 |

13 |       1.       That this Court assume jurisdiction over THE W. N. CONNELL AND MARJORIE T.  
14 | CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, as a  
15 | proceeding *in rem*;

16 |       2.       That ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN be  
17 | confirmed as the Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST,  
18 | dated May 18, 1972, and any and all sub-trusts created thereunder, with the exception of any trust in  
19 | which the assets of Trust No. 3 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING  
20 | TRUST, dated May 18, 1972 were appointed by MARJORIE T. CONNELL;

21 |       3.       That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T.  
22 | CONNELL LIVING TRUST, dated May 18, 1972, to provide that it was the intent of W. N. CONNELL  
23 | and MARJORIE T. CONNELL, as Grantors, to distribute the residue of Trust No. 2 created thereunder  
24 | to ELEANOR C. AHERN's heirs upon her death; and (2) that the Trust is to be reformed in accordance  
25 | with such intent;  
26 |  
27 |  
28 |

1 4. That this Court order the Trust to be reformed to add new Sections "E," "F," "G," and "H"  
2 to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated  
3 May 18, 1972, as follows:  
4

5 *E. Distribution Upon Death of both the Survivor and the Residual*  
6 *Beneficiary. Upon the death of both the Survivor and the Residual Beneficiary,*  
7 *the Trustee shall divide the balance of Trust No. 2 into two equal shares, as*  
8 *follows:*

9 1. *One (1) equal share shall be distributed, outright and free of*  
10 *trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if*  
11 *she is then living. Subject to Section (F) below, if, as of the date of the Residual*  
12 *Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said*  
13 *equal share shall be distributed to JACQUELINE M. MONTOYA's then living*  
14 *issue, by right of representation. Each share created pursuant to this Section*  
15 *E(1) of Article Fourth for the benefit of the issue of JACQUELINE M.*  
16 *MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the*  
17 *benefit of such issue ("Beneficiary") to be held by the Trustee, administered and*  
18 *further distributed pursuant to Section G of this Article Fourth.*

19 2. *One (1) equal share shall be distributed, outright and free of*  
20 *trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is*  
21 *then living. Subject to Section (F) below, if, as of the date of the Residual*  
22 *Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal*  
23 *share shall be distributed to KATHRYN A. BOUVIER's then living issue, by*  
24 *right of representation. Each share created pursuant to this Section E(2) of*  
25 *Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be*  
26 *held as a separate trust ("Beneficiary's Share") for the benefit of such issue*  
27 *("Beneficiary") to be held by the Trustee, administered and further distributed*  
28 *pursuant to Section G of this Article Fourth.*

3. *In the event that both JACQUELINE M. MONTOYA and*  
*KATHRYN A. BOUVIER predecease the Grantors, leaving no issue, and having*  
*failed to exercise the testamentary power of appointment pursuant to Section (F)*  
*below, then the balance shall be distributed in accordance with Article Eleventh*  
*herein.*

*F. Power of Appointment. In the event that JACQUELINE M. MONTOYA*  
*or KATHRYN A. BOUVIER predeceases the Residual Beneficiary, upon the*  
*death of the Residual Beneficiary, the Trustee shall distribute such beneficiary's*  
*equal share to or in trust for such one or more persons or organizations and in*  
*such manner and proportions as such beneficiary may appoint by her will or*  
*revocable trust making specific reference to this general power of appointment.*



1 G. Management of Beneficiary's Shares. Until a Beneficiary has attained  
2 the age of twenty-one (21) years, the Trustee may distribute to or apply for the  
3 benefit of such Beneficiary so much of the income or principal from such  
4 Beneficiary's Share as the Trustee determines, in the Trustee's sole discretion,  
5 is necessary to provide for his or her health, education, maintenance, and  
6 support. In addition, the Trustee may make the following discretionary  
7 distributions:

8 1. Investment in Business. The Trustee may, in the Trustee's sole  
9 discretion, apply the principal or income of such Beneficiary's Share for the  
10 purpose of investing in a business or profession operated by, or to be operated  
11 by, such Beneficiary and to be owned by the Beneficiary's Share.

12 2. Acquisition of Residences. The Trustee may, in the Trustee's sole  
13 discretion, apply the income and principal of such Beneficiary's Share for the  
14 purpose of purchasing one or more residences to be owned by the Beneficiary's  
15 Share and used and occupied by such Beneficiary and his or her family,  
16 including a primary residence, seasonal residence or otherwise. In the case of  
17 any residence owned by the Beneficiary's Share, and in the Trustee's sole  
18 discretion, such Beneficiary may occupy and use such residence without rent or  
19 any other financial obligation for the payment of the taxes, insurance payments,  
20 maintenance costs and other expenses required in order to keep such residences  
21 in proper repair and free of liens.

22 3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole  
23 discretion, may grant such Beneficiary the right to the use, possession and  
24 enjoyment of all of the tangible personal property held by such Beneficiary's  
25 Share, without financial obligation for the use of such property.

26 4. Distribution of Beneficiary's Share. Upon a Beneficiary attaining  
27 the age of twenty-one (21), the Trustee shall distribute to him or her, outright  
28 and free of trust, the remaining principal and accumulated income of that  
Beneficiary's Share. If the Beneficiary has already reached the age of  
twenty-one (21) at the time of the creation of the Beneficiary's Share, then the  
Trustee shall, upon making the division, distribute, outright and free of trust, to  
the Beneficiary the balance of such Beneficiary's Share.

5. Distribution Upon Death of Beneficiary. If any Beneficiary shall  
die prior to the complete distribution of such Beneficiary's Share, then all of the  
remaining assets in such Beneficiary's Share shall be distributed to or in trust  
for such one or more persons or organizations and in such manner and  
proportions as such Beneficiary may appoint by his or her will or revocable  
trust making specific reference to this general power of appointment. To the  
extent that the Beneficiary does not exercise this general power of appointment,  
the remainder of such Beneficiary's Share shall be distributed to the issue of  
such Beneficiary in equal shares by right of representation and each such share



1 shall be held, managed and further distributed by the Trustee as a Beneficiary's  
2 Share under Section G of Article Fourth. If the Beneficiary shall die failing to  
3 exercise this general power of appointment without leaving issue, then the  
4 Beneficiary's Share shall be distributed pro rata to the other Beneficiary's  
5 Shares then being administered by the Trustee hereunder, and if none, then to  
6 the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

6. Distributions to or for the Benefit of Minors or Persons Under  
Disability. Whenever the Trustee is given the power or discretion to make  
distributions to or for the benefit of a minor or other beneficiary under a  
disability, the Trustee, in the Trustee's sole discretion, may make distributions  
to a minor or other person under disability by making distributions to the  
guardian or conservator of his or her estate and/or person, as the Trustee shall  
determine, or to any suitable person with whom he or she resides, or the Trustee  
may apply distributions directly for such beneficiary's benefit, or the Trustee  
may make distributions to any duly established custodian for any minor  
beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to  
Minors Act of any State. Any custodian acting on behalf of a minor beneficiary  
shall have the power to bind the beneficiary with respect to all matters  
concerning the Trust. The Trustee, in its sole discretion, may also make  
distributions directly to a minor if, in the Trustee's judgment, such minor is of  
sufficient age and maturity to receive such distribution and spend the money  
properly. The previous language of this paragraph 6 notwithstanding, if a  
beneficiary is, or would be eligible for need-based government benefits, the  
Trustee shall hold the funds for such beneficiary in a "special needs trust" as  
that term is understood for need-based government planning. By "special needs  
trust" is meant that the Trustee shall have the sole and absolute discretion to  
make distributions for the benefit of such beneficiary in a manner that improves  
the quality of life for the beneficiary but will not make the beneficiary ineligible  
for need-based government benefits. The provisions of the Paragraph 6 are  
intended to supplant need-based government benefits, but not to replace them  
and all terms of this Paragraph 6 shall be so interpreted for all purposes.

H. Maximum Term for Trusts. Notwithstanding any other provision of this  
Trust, unless terminated earlier under other provisions of this agreement, each  
trust created under this agreement shall terminate upon the expiration of the  
longest period that property may be held in trust under this agreement without  
violating the applicable rule against perpetuities, or similar applicable rule. At  
that time, the remaining trust property shall vest in and be distributed to the  
persons entitled to receive distributions of income hereunder.

5. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T.  
CONNELL LIVING TRUST, dated May 18, 1972, 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

1 (2) that the Trust is to be reformed in accordance with such intent;

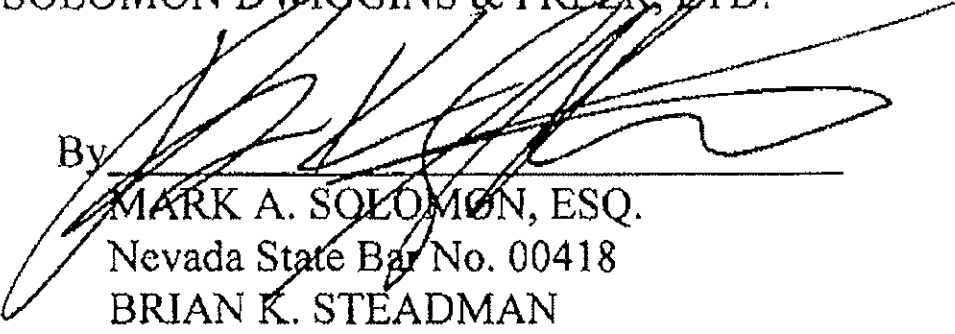
2 6. That this Court order the Trust to be reformed by modifying Article Twelfth of THE W. N.  
3 CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to read as follows:

4 *Twelfth: Successor Trustee. In the event of the death or incapacity of*  
5 *either Grantor, the Survivor shall continue to serve as the sole Trustee of all of*  
6 *the trusts created hereunder. Upon the death or incapacity of the Survivor, the*  
7 *Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR*  
8 *MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts*  
9 *created hereunder, or in the event that she is unable or unwilling to serve in the*  
10 *said capacity, then the Grantors nominate and appoint JACQUELINE M.*  
11 *MONTOYA to serve in the said capacity. In the event that JACQUELINE M.*  
12 *MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN*  
13 *A. BOUVIER shall act as successor Trustee. No successor Trustee shall have*  
14 *any responsibility for the acts or omissions of any prior trustees and no duty to*  
15 *audit or investigate the accounts or administration of any such trustee, nor,*  
16 *unless in writing requested so to do by a person having a present or future*  
17 *beneficial interest under a trust created hereunder, any duty to take action or*  
18 *obtain redress for breach of trust.*

19 *In the event that none of the trustees named in this Article Twelfth are*  
20 *able or willing to serve, then the majority of adult income beneficiaries of the*  
21 *Trust shall select a successor Trustee.*

22 7. For such other and further relief as the Court deems proper.

23 DATED this 14 day of August, 2009.

24 Respectfully submitted,  
25 SOLOMON DWIGGINS & FREER, LTD.  
26  
27 By   
28 MARK A. SOLOMON, ESQ.  
Nevada State Bar No. 00418  
BRIAN K. STEADMAN  
Nevada State Bar No. 10771  
9060 W. Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: 702.853.5483

*Attorneys for Eleanor C. Ahern, Petitioner*

VERIFICATION

1  
2 ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, whose  
3 address is 6105 Elton Ave, Las Vegas, NV 89107, declares under penalties of perjury of the State of  
4 Nevada:

5  
6 That she is the Petitioner who makes the foregoing Petition to Assume Jurisdiction Over Trust;  
7 Confirm Trustee; and Construe and Reform Trust; that she has read said petition and know the contents  
8 thereof, and that the same is true of her own knowledge except for those matters stated on information  
9 and belief, and that as to such matters she believes it to be true.

10 DATED this 3<sup>rd</sup> day of August, 2009.

11  
12 

13 ELEANOR C. AHERN f/k/a ELEANOR MARGUERITE  
14 CONNELL HARTMAN

# **EXHIBIT 1**

1972

TRUST AGREEMENT

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

THIS TRUST AGREEMENT, made this 15<sup>th</sup> 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 declares 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 portion 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



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. Co. Survey.



**EXHIBIT 2**

**CLARK COUNTY HEALTH DISTRICT**

625 Shadow Lane or P.O. Box 4426  
Las Vegas, Nevada 89106

STATE OF NEVADA - DEPARTMENT OF HUMAN RESOURCES  
DIVISION OF HEALTH - SECTION OF VITAL STATISTICS

2673

CERTIFICATE OF DEATH - 1720

STATE FILE NUMBER

DECEASED NAME <b>William R. CONNELL JR.</b>		DATE OF BIRTH <b>November 24, 1979</b>		COUNTY OF DEATH <b>Clark</b>	
CITY, TOWN, OR LOCATION OF DEATH <b>Las Vegas</b>		HOSPITAL OR OTHER INSTITUTION <b>Sunrise Hospital</b>		PLACE OF DEATH <b>Inpatient</b>	
RACE <b>White</b>		ETHNIC ORIGIN <b>Irish-Scottish</b>		DATE OF BIRTH (Mo., Day, Year) <b>March 15, 1898</b>	
STATE OF BIRTH <b>Texas</b>		CITIZENSHIP <b>USA</b>		MARRIAGE STATUS <b>Married</b>	
SOCIAL SECURITY NUMBER <b>530-05-6631</b>		USUAL OCCUPATION <b>Owner Operator (of Vehicle)</b>		INDUSTRY <b>Automobile Dealership</b>	
RESIDENCE - STATE <b>Nevada</b>		COUNTY <b>Clark</b>		CITY, TOWN OR LOCATION <b>Boulder City</b>	
STREET AND NUMBER <b>1505 Cindy Ave.</b>		CITY, TOWN OR LOCATION <b>Boulder City</b>		STATE <b>Nevada</b>	
FATHER'S NAME <b>William R. Connell</b>		MOTHER'S NAME <b>Dora Anders</b>		MARRIAGE ADDRESS <b>1505 Cindy Ave., Boulder City, Nevada 89005</b>	
MARRIAGE ADDRESS <b>1505 Cindy Ave., Boulder City, Nevada 89005</b>		CITY, TOWN OR LOCATION <b>Boulder City</b>		STATE <b>Nevada</b>	
BURIAL OR CREMATION <b>Burial</b>		CEMETERY OR CREMATORIUM <b>Palm Memorial Park</b>		LOCATION <b>Las Vegas, Nevada</b>	
FUNERAL DIRECTOR <b>W. W. [Signature]</b>		FUNERAL HOME ADDRESS <b>3325 N. Main - Las Vegas, Nevada 89101</b>		CITY, TOWN OR LOCATION <b>Las Vegas, Nevada</b>	
DATE OF DEATH <b>11-20-79</b>		HOUR OF DEATH <b>12:42 A.M.</b>		PLACE OF DEATH <b>Home</b>	
NAME AND ADDRESS OF CERTIFYING PHYSICIAN <b>Louis Friedman, M.D., 3196 S. Maryland Pk., Las Vegas, Nevada 89109</b>		DATE RECEIVED BY REGISTRAR <b>NOV 26 1979</b>		COUNTY <b>Clark</b>	
IMMEDIATE CAUSE <b>Sick sinus syndrome</b>		DUE TO OR AS A CONSEQUENCE OF <b>arteriosclerotic heart disease</b>		MANNER OF DEATH <b>EMPHATIC</b>	
MANNER OF DEATH <b>EMPHATIC</b>		OTHER SIGNIFICANT CONDITIONS <b>None</b>		AUTHORITY <b>ISO</b>	
PLACE OF BIRTH <b>Las Vegas, Nevada</b>		DATE OF BIRTH <b>March 15, 1898</b>		HOUR OF BIRTH <b>12:42 A.M.</b>	
PLACE OF DEATH <b>Home</b>		DATE OF DEATH <b>November 24, 1979</b>		HOUR OF DEATH <b>12:42 A.M.</b>	

Nº 142

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Clark County Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

Date Issued: APR 29 1980

# **EXHIBIT 3**



1980

RECORDED

SUBSTITUTION OF TRUSTEE

1 MARJORIE T. CONNELL, surviving Trustee of the W. N.  
 2 CONNELL AND MARJORIE T. CONNELL LIVING TRUST, made and en-  
 3 tered into on May 18, 1972, by and between W. N. CONNELL  
 4 and MARJORIE T. CONNELL, as Grantors, and W. N. CONNELL and  
 5 MARJORIE T. CONNELL, as Trustee, hereby substitutes and  
 6 appoints ELEANOR MARGUERITE CONNELL HARTMAN, daughter of  
 7 W. N. CONNELL, as Co-Trustee of the separate property of  
 8 W. N. CONNELL presently held in the above-entitled Trust.  
 9 This substitution is made pursuant to the terms of said Trust,  
 10 due to the decease of W. N. CONNELL, who passed away Novem-  
 11 ber 24, 1979.

12  
 13 Marjorie T. Connell  
 14 MARJORIE T. CONNELL

15 The undersigned, ELEANOR MARGUERITE CONNELL HARTMAN, also  
 16 known as ELEANOR C. HARTMAN, hereby consents to serve as Co-  
 17 Trustee of the separate property of W. N. CONNELL in the above-  
 18 entitled Trust.

19 Dated this 6<sup>th</sup> day of May, 1980.

20  
 21 Eleanor Marguerite Connell Hartman  
 22 ELEANOR MARGUERITE CONNELL HARTMAN  
Eleanor C. Hartman

23 STATE OF NEVADA )  
 24 COUNTY OF CLARK ) ss

25 On this 6<sup>th</sup> day of May, 1980, before me, the  
 26 undersigned, a Notary Public in and for said County and State,  
 27 duly commissioned and sworn, personally appeared MARJORIE T.  
 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

STATE OF NEVADA )  
                  ) SS  
COUNTY OF CLARK )

On this 6th day of May, 1980, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared ELEANOR MARGUERITE CONNELL HARTMAN, known to me to be the person whose name is subscribed to the within instrument, and who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Gina Di Marco  
NOTARY PUBLIC



Notary Public - State of Nevada  
CLARK COUNTY  
Gina Di Marco  
My Appointment Expires Mar. 7, 1982

TO WHOM IT MAY CONCERN:

The Trust Agreement was recorded in Upton County Texas, on July 18, 1980 in Volume 459, Page 100, in the Deed of Records. The Substitution Trustee document was also recorded in Upton County, Texas on July 18, 1980, Deed of Records, Volume 459, Page 117, and a Certified Copy of the Assignment of Leases recorded in Clark County, Nevada, on July 7, 1980, Book 1249 as Document No. 1208708. Deeds of the Mineral Interest were recorded June 13, 1972, Volume 409, Page 329, of OGL Records and also Deed of Records, Volume 414, Page 9.

CLARK COUNTY HEALTH DISTRICT

625 Shadow Lane R.O. Box 4426

Las Vegas, Nevada 89106

STATE OF NEVADA DEPARTMENT OF HUMAN RESOURCES

DIVISION OF HEALTH - SECTION OF VITAL STATISTICS

CERTIFICATE OF DEATH 1720

2673

STATE FILE NUMBER

LOCAL FILE NUMBER		DATE OF DEATH		COUNTY OF DEATH	
2673		November 24, 1979		Clark	
DECEASED NAME		HOSPITAL OR OTHER INSTITUTION		PLACE OF DEATH	
William M. CONNELL JR.		Sunrise Hospital		Inpatient	
CITY, TOWN, OR LOCATION OF DEATH		DATE OF BIRTH		SEX	
Las Vegas		March 15, 1898		M	
RACE		ETHNIC		MARRIAGE	
White		Irish-Scotch		Marjorie Thresh	
STATE OF BIRTH		CITIZENSHIP		MARRIAGE	
Texas		USA		Marjorie Thresh	
SOCIAL SECURITY NUMBER		USUAL OCCUPATION		MARRIAGE	
530-05-6631		Owner Operator (GROG)		Automobile Dealership	
RESIDENCE - STATE		COUNTY		CITY	
Nevada		Clark		Boulder City	
STREET AND NUMBER		CITY		STATE	
1505 Cindy Ave.		Boulder City		Nevada	
JANITOR		WIFE		MARRIAGE	
William M. CONNELL JR.		Dora Anders		MARRIAGE	
PREDECESSOR NAME (If any)		ADDRESS		CITY	
Marjorie Connell - Wife		1505 Cindy Ave.		Boulder City Nevada 89005	
BURIAL, CREMATION, REINTERMENT, OTHER		CEMETERY OR CREMATION		LOCATION	
Burial		Palm Memorial Park		Las Vegas Neva	
FUNERAL HOME		NAME AND ADDRESS OF FUNERAL HOME		CITY	
Palm Mortuary		1325 N. Main		Las Vegas Nevada 89101	
DATE OF DEATH		HOUR OF DEATH		MARRIAGE	
11-20-79		12:42 A.M.		MARRIAGE	
NAME AND ADDRESS OF CERTIFYING PHYSICIAN, MEDICAL EXAMINER OR CORONER		DATE RECEIVED BY REGISTRAR		MARRIAGE	
Louis Friedman, M.D. 3196 S. Maryland Pky. Las Vegas NV89109		NOV 26 1979		MARRIAGE	
IMMEDIATE CAUSE		MARRIAGE		MARRIAGE	
Sudden Death		MARRIAGE		MARRIAGE	
DOCTOR'S CONCLUSION		MARRIAGE		MARRIAGE	
Acute Myocardial Infarction		MARRIAGE		MARRIAGE	
OTHER CAUSE		MARRIAGE		MARRIAGE	
Emphysema		MARRIAGE		MARRIAGE	
DATE OF INJURY		HOUR OF INJURY		DISORDER HOW INJURY OCCURRED	
PLACE OF INJURY		CITY		STATE	

No 142

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Clark County Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

APR 29 1980

# **EXHIBIT 4**

STATE OF NEVADA — DEPARTMENT OF HUMAN RESOURCES  
DIVISION OF HEALTH — VITAL STATISTICS

CERTIFICATE OF DEATH

2009006369  
STATE FILE NUMBER

TYPE OR  
PRINT IN  
PERMANENT  
BLACK INK

DECEDENT

IF DEATH  
OCCURRED IN  
INSTITUTION  
SEE HANDBOOK  
REGARDING  
COMPLETION OF  
RESIDENCE  
ITEMS

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF  
DEATH

CONDITIONS IF  
ANY WHICH  
GAVE RISE TO  
IMMEDIATE  
CAUSE ->  
STATING THE  
UNDERLYING  
CAUSE LAST

1a. DECEASED-NAME (FIRST,MIDDLE,LAST,SUFFIX) Marjorie T CONNELL		2. DATE OF DEATH (Mo/Day/Year) May 01, 2009		3a. COUNTY OF DEATH Clark	
3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION -Name(if not either, give street and number) Valley Hospital Medical Center		3e. If Hosp or Inst indicate DOA,OP/Emor Rm. Inpatient(Specify) Inpatient	
4. SEX Female		5 RACE White (Specify)		6 Hispanic Origin? Specify No - Non-Hispanic	
7a. AGE-Last birthday (Years) 91		7b. UNDER 1 YEAR MOS DAYS		7c. UNDER 1 DAY HOURS MINS	
8. DATE OF BIRTH (Mo/Day/Yr) March 02, 1918		9a. STATE OF BIRTH (If not U.S.A., name country) Alabama		9b. CITIZEN OF WHAT COUNTRY United States	
10. EDUCATION 14		11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) Widowed		12. SURVIVING SPOUSE (if wife, give maiden name)	
13. SOCIAL SECURITY NUMBER 417-12-1212		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even if Retired) Businesswoman		14b. KIND OF BUSINESS OR INDUSTRY Investments	
15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark		15c. CITY, TOWN OR LOCATION Las Vegas	
15d. STREET AND NUMBER 1325 Strong Drive		15e. INSIDE CITY LIMITS (Specify Yes or No) Yes		Ever in US Armed Forces? No	
16 FATHER - NAME (First Middle Last Suffix) Oscar THRASH			17 MOTHER - NAME (First Middle Last Suffix) Cora BLAKE		
18a. INFORMANT- NAME (Type or Print) Jacqueline MONTOYA		18b. MAILING ADDRESS (Street or R F D No, City or Town, State, Zip) 3385 Maverick Street Las Vegas, Nevada 89108			
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Burial		19b. CEMETERY OR CREMATORY - NAME Palm Downtown Cemetery		19c. LOCATION City or Town State Las Vegas Nevada 89101	
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) BART BURTON SIGNATURE AUTHENTICATED		20b. FUNERAL DIRECTOR LICENSE 50		20c. NAME AND ADDRESS OF FACILITY Palm Mortuary-Downtown 1325 North Main Street Las Vegas NV 89101	
TRADE CALL - NAME AND ADDRESS					
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated (Signature & Title) SIGNATURE AUTHENTICATED CHRISTOPHER CRUZ MD			22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated (Signature & Title)		
21b. DATE SIGNED (Mo/Day/Yr) May 04, 2009		21c. HOUR OF DEATH 08:47		22b. DATE SIGNED (Mo/Day/Yr)	
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)		22c. HOUR OF DEATH		22d. PRONOUNCED DEAD (Mo/Day/Yr)	
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) CHRISTOPHER CRUZ MD 3650 S Decatur Las Vegas, NV 89103				23b. LICENSE NUMBER 10545	
24a. REGISTRAR (Signature) NINETTE HARRINGTON SIGNATURE AUTHENTICATED		24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) May 05, 2009		24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
25 IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c))					
PART I				Interval between onset and death	
(a) Pneumonia					
DUE TO, OR AS A CONSEQUENCE OF				Interval between onset and death	
(b) Sepsis					
DUE TO, OR AS A CONSEQUENCE OF				Interval between onset and death	
(c) Renal failure					
DUE TO, OR AS A CONSEQUENCE OF				Interval between onset and death	
(d) Respiratory failure					
PART II				26 AUTOPSY (Specify Yes or No) No	
				27 WAS CASE REFERRED TO CORONER (Specify Yes or No) No	
28a. ACC, SUICIDE, HOM, UNDET, OR PENDING INVEST (Specify)		28b. DATE OF INJURY (Mo/Day/Yr)		28c. HOUR OF INJURY	
				28d. DESCRIBE HOW INJURY OCCURRED	
28e. INJURY AT WORK (Specify Yes or No)		28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)		28g. LOCATION STREET OR R F D No CITY OR TOWN STATE	

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED SEAL OF THE SOUTHERN NEVADA HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.  
Registrar of Vital Statistics

By:

Date Issued:

MAY 06 2009