

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

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

APPELLANT'S APPENDIX

(VOLUME 17 OF 17)

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

IN THE MATTER OF: THE W.N.
CONNELL AND MARJORIE T.
CONNELL LIVING TRUST, DATED
MAY 18, 1972,

ELEANOR C. AHERN A/K/A
ELEANOR CONNELL HARTMAN
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vs.

JACQUELINE M. MONTOYA; AND
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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 17 of 17) (Pages AA 3498-3613)** by using the Court's Electronic Filing System on November 20, 2015, upon the following:

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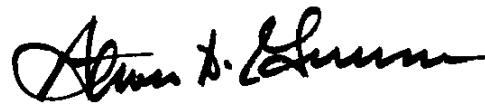
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Date of Hearing: May 13, 2015
Time of Hearing: 9:00a.m.

An Inter Vivos Irrevocable Trust.

**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**

Jacqueline M. Montoya ("Jacqueline") and Kathryn A. Bouvier ("Kathryn"), by and through their undersigned counsel, submit the following Reply in support of their Motion for an award of attorney's fees and costs and in response to the Opposition filed herein by Eleanor Connell Hartman Ahern ("Eleanor"). Additionally, Jacqueline and Kathryn further Supplement their Motion in Support of Award of Attorney's Fees and Costs.

A. ELEANOR HAS NOT ACTED IN GOOD FAITH AND MUST BE HELD

1 ACCOUNTABLE FOR HER ACTIONS BOTH AS A TRUSTEE AND AS A TRUST
2 BENEFICIARY

3 Eleanor in her Opposition asserts that she should not be held accountable for the
4 fees and costs Jacqueline and Kathryn were required to incur in defending against and
5 resolving Eleanor's claim to 100% of the Trust income, first asserted in or around June,
6 2013. However, the consequences of her actions as Trustee include the expenses
7 Jacqueline and Kathryn were required to incur in resolving her frivolous claim to all
8 of the Trust income. Further, while Eleanor may initially be given the benefit of the
9 doubt as to whether or not her claim, as a Trust beneficiary, to all of the Trust income
10 was made in good faith, the facts eventually determined by the Court show she did not
11 have a logical, sincere or truthful basis for claiming more than a 35% share of the
12 income. With the big picture now fully revealed to the Court, it is respectfully
13 submitted that Eleanor's actions, both as a Trustee, and as a Trust beneficiary, cannot
14 be excused or considered to have been taken in good faith. Her initial breach of her
15 duties as a Trustee caused the full range of fees and costs Jacqueline and Kathryn were
16 required to incur through the present date in these proceedings. Eleanor must be held
17 accountable for these damages she has caused.

18 On September 27, 2013, these proceedings were commenced with the filing on
19 behalf of Jacqueline and Kathryn of a Petition for Declaratory Judgment. Specifically,
20 the Court was requested in this Petition to hold Eleanor accountable for all of the
21 damages caused by her unreasonable conduct in cutting off income distributions to
22 Jacqueline and Kathryn. During the ensuing several months, several other Petitions
23 and Motions were filed by Jacqueline and Kathryn seeking a recovery of their share of
24 the Trust's Texas oil property income, an accounting from Eleanor, removal of Eleanor
25 as the Trustee, and other relief.

26 The Court, in denying her claims to all of the Trust's Texas oil property income,
27 initially concluded that Eleanor, personally, may have been acting in good faith in her
28 initial belief that she had a greater claim to the Texas oil property income than the 35%

1 share she had been receiving for 34 years since the death of W. N. Connell in 1979.
2 However, that does not mean she thereafter acted reasonably, or that she should not be
3 held responsible for all the damages she has caused to Jacqueline and Katherine in this
4 litigation. Her initial possible good faith belief that she might have been entitled to a
5 greater share of the income could not be justified once she received proper legal
6 counsel. The Court has noted that it felt she had highly qualified legal counsel with the
7 four different law firms she has engaged and dismissed in these proceedings. **She**
8 **simply was not willing to follow their advice. Her possible initial good faith belief,**
9 **transformed into a stubborn, spiteful campaign against her own daughters for**
10 **which we now know there was no legal or equitable justification.** No highly
11 qualified legal counsel, familiar with the principle of “laches”, would have encouraged
12 Eleanor to engage in this long and costly litigation she forced upon her daughters.
13 Further, with the additional information which has now been coming out with the
14 investigation by the new Trustee, Fredrick P. Waid, it is clear that Eleanor’s breaches
15 of her fiduciary duties are not limited to her simply making a bad decision to cut off
16 Jacqueline’s and Kathryn’s income distributions without first seeking proper Court
17 direction. Rather, we now know that she misrepresented to the Court that she was
18 retaining and protecting Jacqueline’s and Kathryn’s 65% share of the income in Trust,
19 when in fact she misappropriated and was spending and using a good portion of the
20 income for her own personal desires and benefit (which misappropriations her own
21 prior legal counsel claim they were not aware of, causing them to move to withdraw
22 as her attorneys). Thus, we now have a situation where the Trust cannot pay to
23 Jacqueline and Kathryn their 65% of the income wrongfully withheld and
24 misappropriated by Eleanor during the last one and one-half years.

25 Eleanor also filed a bogus Accounting with the Court wherein she fabricated
26 Trust expenses and made numerous misrepresentations to try to cover up her misdeeds.
27 Through wrongful conduct and actions on her part during this litigation, greatly
28 increasing the litigation costs to Jacqueline and Kathryn, Eleanor has spitefully tried

1 to prevent her daughters from receiving the income to which they are entitled. This has
2 caused great prejudice to them, not only in the litigation costs incurred to combat
3 Eleanor's wrongful frivolous and harassing actions, but also in the handling of their
4 personal finances and the meeting of their living expenses. They have been required
5 to borrow and scrape out the financial means needed to stay afloat while Eleanor has
6 frivolously sought every means she could to make their lives miserable, and to squeeze
7 the financial where-with-all from them to protect and litigate their interests through
8 repeated delays and frivolous, deceitful claims and actions in these proceedings.

9 In the initial Petition filed, the Court was asked to hold Eleanor responsible for
10 all of the damages her wrongful conduct was causing to Jacqueline and Kathryn. These
11 damages include the attorney's fees and costs they were required to incur. Thus, their
12 request for an award and reimbursement to them of the fees and costs they have
13 incurred is not only merited under NRS 153.031(3)b), but also under NRS 18.010(2)(b)
14 **and** as an element of damages suffered as a result of Eleanor's wrongful conduct.
15 Eleanor's conduct has been frivolous and vexatious. She must bear the consequences
16 of her actions.

17 It is respectfully submitted that the Court was being overly generous and kind
18 to Eleanor in initially finding that she had some good faith basis, as a Trust beneficiary
19 only, to feel she was entitled to more Trust income. Eleanor early on had to have been
20 advised and had to realize the weakness of her claim and position, but chose to ignore
21 the advice of her qualified counsel in these proceedings. Rather, she and her "close
22 personal advisors" concocted and chose instead a devious plan to create a lot of
23 litigation expense and delay, hoping to causing Jacqueline and Kathryn to incur more
24 litigation expense than they could bear and in that process gain a victory Eleanor was
25 not entitled to under the merits of the case. Eleanor has gone through four different law
26 firms who have represented and counseled her. Certainly, somewhere along the way,
27 one or more of these law firms advised Eleanor that making a claim to all of the Trust
28 income (regardless of the purported sincerity of her claim) 34 years after the

1 entitlement to the income was determined following the death of W. N. Connell, and
2 after a precedent of 34 years during which she made no claim to the income, did not
3 portend well for her likelihood of success in this litigation. It was pointed out in the
4 initial Petition and subsequent Motions and Petitions filed by Jacqueline and Kathryn,
5 **that regardless of the merits of Eleanor's claim to all of the income, her claim was**
6 **precluded under the equitable doctrine of laches.** The Court so determined this in
7 granting Summary Judgment to Jacqueline and Kathryn at the hearing on January 30,
8 2015.

9 On the merits of the case, the Court also held that Eleanor could not demonstrate
10 how the division of interests between subtrust 2 (the subtrust paying Eleanor her share
11 of the income) and subtrust 3 (under which Jacqueline and Kathryn derive their share
12 of the income) could have been made any differently than how the division was made
13 in conjunction with the filing of W. N. Connell's Federal Estate Tax Return (which
14 resulted in her only being entitled to 35% of the Trust income). Clearly, there was no
15 separate property of W. N. Connell remaining in the Trust at the time of his death, other
16 than the Texas oil property. A portion of the Texas oil property pursuant to the explicit
17 Trust provisions had to be allocated to subtrust 3. **Most importantly, Eleanor also**
18 **knew this since she had received title in 1975 to the only other parcel of W. N.**
19 **Connell's real property that had been titled in the Trust.** After 34 years of
20 recognizing this allocation of property, not only in the distributions made, but also in
21 the tax liability assumed, claimed and paid by the parties to the IRS, Eleanor's 2013
22 belated assertion that she believed she was entitled to more than 35% of the Trust
23 income is at best, highly illogical. When you add the fact that she also admitted in her
24 divorce from Mr. Hartman and to her estate planning attorney in the 1980's that she
25 only had a right to 35% of the Trust income, her later claim in 2013 to all of the Trust
26 income in 2013 **could not have been made in good faith.** She had come under the
27 influence of personal advisors who (along with her) tried to concoct a theory to allow
28 her to misappropriate more income than she was entitled to receive from the Trust.

1 While hindsight is better than foresight, it is respectfully submitted that with the
2 information the Court now has, Eleanor cannot be given the benefit of the doubt any
3 longer as to her motivations in causing this litigation and the damages Jacqueline and
4 Kathryn have suffered. Clearly, she is a spiteful, selfish and dishonest person who
5 must be held responsible for her conduct and decisions.

6 Her actions as a Trustee, in which she has clearly breached her fiduciary duties
7 in many ways, cannot be separated from her personal interests and intent in these
8 proceedings. As requested in the initial Petition, Eleanor must be held responsible for
9 all the damages she has caused to Jacqueline and Kathryn by her wrongful conduct,
10 including her frivolous and vexatious litigation in these proceedings. Eleanor's
11 counsel's assertion that a portion of Jacqueline's and Kathryn's fee request should be
12 denied, because it includes time spent in litigating over the merits of Eleanor's claim
13 as a beneficiary to all of the Trust income, should not shield Eleanor from being held
14 totally responsible for all of the litigation costs and damages she has caused to
15 Jacqueline and Kathryn. In the final analysis, it is clear that Eleanor has not acted in
16 good faith as a Trustee, nor as a Trust beneficiary. Thus, under NRS 153.031(3)b)
17 proper authority exists to assess her with all the fees and costs Jacqueline and Kathryn
18 have incurred in these proceedings. When you add to these grounds the fact that
19 Eleanor's claims and conduct were frivolous, vexatious and harassing, grounds exist
20 to assess her with all the fees and costs under NRS 18.010(2)(b). And lastly, simply
21 as an element of damages caused by her conduct, including but not limited to her
22 breaches of duties as a Trustee, as plead and requested in Jacqueline's and Kathryn's
23 initial Petition, she should be held accountable for all the fees and costs Jacqueline and
24 Kathryn have incurred.

25 B. THE MOTION PROVIDES ALL THE INFORMATION NEEDED
26 UNDER THE PROPER LEGAL TEST, AND THE FEES AND COSTS REQUESTED
27 ARE REASONABLE

28 Eleanor has asserted that Jacqueline's and Kathryn's Motion for an award of fees

1 and costs does not meet the requirements for awarding fees under *Shuette v. Beazer*
2 *Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548 (2005), and *Brunzell v.*
3 *Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). No specifics are
4 provided for this assertion, which is obviously unsupportable. The assertion is clearly
5 wrong since the Motion provides in great detail the information required under these
6 Nevada Supreme Court decisions. One cannot help but realize the extensive and
7 complicated legal services rendered by Jacqueline's and Kathryn's counsel when
8 Exhibit "B" (a copy of the Court's docket sheet) is examined. A detailed and extensive
9 time record is provided by counsel. Clearly, the hourly rates charged by counsel are
10 reasonable for the expertise involved and the complicated legal issues addressed. It is
11 respectfully submitted that if Eleanor's own counsel's fees and costs incurred were
12 compared, both the rates charged by Jacqueline's and Kathryn's attorneys, as well as
13 the total amounts incurred, would show that the services rendered them and their
14 request now for an award of fees and costs are most reasonable.

15 Eleanor misinterprets or tries to confuse the time records provided by
16 Jacqueline's and Kathryn's counsel, asserting it was not reasonable for Jacqueline's
17 attorney to spend nearly double the time spent by Kathryn's attorney in the
18 proceedings. Eleanor's new counsel, in making this criticism, apparently do not realize
19 that Jacqueline's attorney was involved in the proceedings from the beginning and
20 Kathryn's counsel came on board approximately eight months later, which explains
21 clearly the reason Jacqueline's attorney has billed for more services.

22 Eleanor asserts there has been double billing due to the award granted Jacqueline
23 and Kathryn in the Will Contest proceeding, where they received an attorney's fee
24 award of \$75,000.00. However, the affidavits and billing statements provided by
25 counsel with the Motion for award of fees in this Trust matter have clearly shown that
26 they deleted the time spent on the Will Contest case, and explicitly explain that the
27 services rendered and claimed in the Trust matter are not repetitive with the Will
28 Contest case. Eleanor's assertion that an effort is being made to recover twice expenses

1 for fees and costs incurred in the Will Contest is flatly denied. A fair reading of the
2 Motion, Affidavits and Exhibits provided show that the attorney's fees and costs
3 Jacqueline and Kathryn incurred in the Will Contest are not included with their Motion
4 for fees and costs in this Trust matter. To assert otherwise is an effort to confuse the
5 Court.

6 Further, while Jacqueline and Kathryn have each had their own attorneys
7 representing them, concerted efforts have been made by these attorneys to coordinate
8 their efforts and avoid unnecessary duplication of services. The Petitions, Motions and
9 briefs filed have been joined in by both counsel rather than each filing his own separate
10 pleadings and briefs. Argument and questioning at hearings were generally handled
11 by one of the attorneys. While part of Eleanor's counsel's mis-assertions and factually
12 incorrect arguments may be excused due to the fact they are the fourth law firm
13 representing Eleanor and are not familiar with what has transpired in these proceedings,
14 such does not excuse Eleanor from bearing full responsibility for her conduct and
15 misstatements.

16 It should further be noted that the fees and costs which Jacqueline and Kathryn
17 incurred, as set forth in their Motion, do not include nearly one hundred thousand more
18 fees and costs they incurred with Texas attorneys trying to mediate and resolve the
19 dispute with Eleanor, even before the filing of the Petition in this proceeding.
20 Jacqueline's and Kathryn's damages far exceed \$500,000.00 when all of the legal and
21 logistical expenses they incurred are taken into account, simply to try to rectify the
22 unreasonable conduct of Eleanor based upon frivolous grounds. They made an effort
23 to give Eleanor much more than she deserved in Trust income and benefits by
24 attempting to settle the case with Eleanor in October, 2014. After giving Eleanor in the
25 proposed settlement much more than she was legally entitled to receive, Eleanor
26 spitefully and irrationally rejected the settlement negotiated by her own attorneys. This
27 threw the proceedings back into more heated litigation solely due to Eleanor's personal
28 choices. The Court warned Eleanor last December, when the Court had to reject the

1 parties' settlement agreement due to Eleanor's refusal to acknowledge it, that Eleanor
2 was going down a treacherous path and could very well end up owing much more to
3 Jacqueline and Kathryn once the Court made its final decision in the dispute. The
4 Court's warning was clearly prophetic and Eleanor must now bear fully the
5 consequences of her wrongful and inexcusable conduct.

6 C. SUPPLEMENTAL REQUEST FOR AWARD OF FEES AND COSTS PAID TO
7 TEXAS COUNSEL

8 In addition to the attorney's fees and costs of the Nevada lawyers that have been
9 addressed in the "Motion in Support of Award of Attorney's Fees and Costs,"
10 Jacqueline and Kathryn also incurred substantial attorney's fees and costs in pursuing
11 this matter prior to the litigation initiated in this Court with their attorneys in Texas,
12 Mary Lou Cassidy, Esq. and Sean Guerrero, Esq. of Stubbeman, McRae, Sealy,
13 Laughlin & Browder, Inc. Through March 20, 2015, the attorney's fees and costs for
14 the work prepared by Texas counsel directly attributable to this matter total \$87,879.91.

15 As previously mentioned, in the initial "Petition for Declaratory Judgment
16 Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS
17 153.031(1)(E), and NRS 164.033(1)(a), in Section E, titled "Damages", Jacqueline, on
18 her behalf and also on behalf Kathryn, asked that they recover judgment against
19 Eleanor for **all damages** incurred due to Eleanor's breach and bad conduct. While
20 Jacqueline and Kathryn are entitled to an award of fees pursuant to Nevada law,
21 Jacqueline and Kathryn firmly believe that the expenses incurred for Texas counsel are
22 also further justified as a matter of damages suffered due to Eleanor's breach of her
23 Trustee's duties and bad faith, frivolous, and vexatious conduct. Jacqueline and
24 Kathryn incurred these fees and costs as a proximate, direct result of Eleanor's actions
25 in an effort to immediately rectify the breach of her Trustee's duties.

26 As noted in the Affidavit of Attorney Guerrero, dated May 6, 2015, which is
27 attached hereto as Exhibit "C" and is hereby incorporated by this reference, Attorney
28 Cassidy is an experienced practitioner in the area of Trust and Estate law, and such

1 expertise was required to deal with the complicated issues in this case. As expressed
2 in his Affidavit, Attorney Guerrero is an experienced litigator. Notwithstanding the
3 expertise and years of experience of Attorney Cassidy and Attorney Guerrero, it is
4 believed that their respective hourly rates are reasonable and fall within the median,
5 acceptable rates charged by other attorneys of in Midland, Texas who have similar
6 expertise and stature in dealing with similar issues.

7 Efforts have been made between the Nevada counsel and Texas counsel to not
8 duplicate work for their clients when such would not be required to present their
9 pleadings and argument to the Court. The Affidavit from Attorney Guerrero certainly
10 confirms that the services and costs reflected in the respective billing statement
11 attached to the Affidavit were necessary and appropriate for the proper representation
12 of Jacqueline and Kathryn in this proceeding.

13 It is therefore requested that the Court now enter an order awarding to Jacqueline
14 and Kathryn the sum of \$82,349.23 (calculated by totaling the legal fees payable to
15 Stubbeman law firm directly related to this matter (\$84,861.25), adding in the costs to
16 Stubbeman law firm (\$3,018.66), then deducting the legal fees previously requested in
17 the "Motion in Support of Award of Attorney's Fees and Costs" that was filed on April
18 1, 2015 (\$4,260.00) and then also deducting the transportation costs previously
19 requested in the "Motion in Support of Award of Attorney's Fees and Costs" that was
20 filed on April 1, 2015 (\$1,270.68)) as and for attorney's fees and costs in addition to
21 the \$417,855.56 requested in the "Motion in Support of Award of Attorney's Fees and
22 Costs," for a total of \$500,204.79 that they have been required to incur herein as a
23 result of Eleanor's breach of her duties as Trustee in these proceedings.


24 D. CONCLUSION

25 It is therefore requested that the Court now enter an order awarding to Jacqueline
26 the Kathryn the sum of \$417,855.56 as and for attorney's fees and costs they have been
27 required to incur herein as a result of Eleanor's breach of her duties as Trustee and
28 assertion of her disallowed claims in these proceedings, and to award reimbursement


1 to them also of the fees and costs they incurred with Texas counsel, \$82,349.23,
2 totaling \$500,204.79, through March 20, 2015. To avoid any possible confusion on
3 the part of Eleanor, Jacqueline and Kathryn intend to seek a further award of attorney's
4 fees and costs that they have incurred from March 20, 2015 onward, in addition to all
5 damages that they have incurred.

6
7 DATED this 8th day of May, 2015.

8
9 ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT

10
11 By 
12 WHITNEY B. WARNICK, ESQ.
13 Nevada Bar No. 001573
801 S. Rancho Drive, Suite D-4
Las Vegas, Nevada 89016
Attorneys for Kathryn A. Bouvier

14 THE RUSHFORTH FIRM, LTD.

15
16 By 
17 JOSEPH J. POWELL, ESQ.
18 Nevada Bar No. 008875
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134
Attorneys for Jaqueline M. Montoya

19
20
21
22 **CERTIFICATE OF SERVICE**

23 I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK
24 & ALBRIGHT and that on the 8 day of May, 2015, I placed a true and correct copy of
25 the foregoing **REPLY IN SUPPORT OF MOTION FOR AWARD OF**
26 **ATTORNEY'S FEES AND COSTS AND SUPPLEMENT TO MOTION IN**
27 **SUPPORT OF AWARD OF ATTORNEY'S FEES AND COSTS** in the United States
28 Mail, at Las Vegas, Nevada, enclosed in a sealed envelope with first class postage thereon fully

prepaid, and addressed to the following:

Kirk B. Lenard, Esq.
Tamara Beatty Peterson, Esq.
Brownstein Hyatt Farber Schreck

100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

(On the same date, I also served a true and correct copy of each of the foregoing documents upon all counsel of record by electronically serving the same using the Court's electronic filing system.)

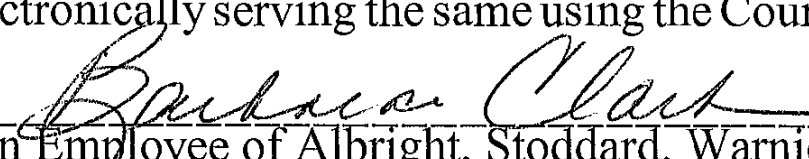

An Employee of Albright, Stoddard, Warnick & Albright

EXHIBIT “C”

AFFIDAVIT IN SUPPORT OF ATTORNEY'S FEES

Before me this day came Sean Guerrero, who on his oath recited the following:

“My name is Sean Guerrero. I am a licensed attorney in Midland, Midland County, Texas, affiliated with the law firm of Stubbeman, McRae, Sealy, Laughlin & Browder, Inc. I have been licensed to practice in Texas since 2001 and I am also licensed to practice in the State of New Mexico since 2005. I am a shareholder with the firm and head of the litigation section.

I have personal knowledge of the facts set forth below and I am competent to testify regarding these facts and statements. I declare that all statements made herein are of my own knowledge and true, and those made on information and belief are believed to be true.

I have attached as “Exhibit A” a true and correct itemization of fees and costs incurred in this matter as it related to our law firm. This description of time contains the amount of time expended as measured in tenths of an hour, a brief description of work performed, and the charges of the work performed.


My billing rate for this matter has been \$300 per hour. This billing rate is consistent with reasonable rates charged in Midland County, Texas. Through April 30, I spent a total of 109.10 hours working on this matter, which equates to a total of \$32,730.00 for her services.

Mary Lou Cassidy, a probate and estate planning attorney who is of counsel with our firm, has over 35 years of experience in the practice of law. Ms. Cassidy is licensed to practice in the State of Texas. Her billable rate is \$250.00 per hour, and Ms. Cassidy spent a total of 194.15 hours working on this matter, which equates to a total of \$48,537.50 for her services.

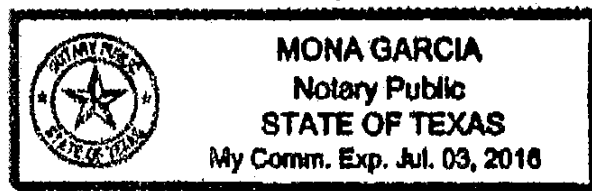
Melinda Hardwicke, a certified paralegal, also assisted in the legal services provided to our clients in this matter. Ms. Hardwicke's billable rate is \$125.00 per hour, and she spent a total of 28.75 hours working on this matter. This equates to a total of \$3,593.75 for her services.

As a result, Ms. Montoya has incurred a total of \$84,861.25 in legal fees payable to Stubbeman law firm which are directly attributable to this matter. This affidavit is being submitted in conjunction with the Rushforth Firm Ltd.'s request that the Court award our client, Ms. Montoya attorney's fees and costs that she has incurred and require the same to be paid and reimbursed to her by Eleanor Connell Hartman Ahern.”

Further affiant saith not.


Sean Guerrero

Subscribed and sworn to before me on May 6, 2015, by Sean Guerrero.





Notary Public, State of Texas

EXHIBIT “A”

INVOICE
STUBBEMAN, McRAE, SEALY, LAUGHLIN & BROWDER, INC.
ATTORNEYS AT LAW
550 WEST TEXAS AVENUE, SUITE 800
MIDLAND, TEXAS 79701

(432) 682-1616

TAX I.D. NO: 75-1766865

Jacquie Montoya
3385 Maverick Street
Las Vegas, NV 89108

May 4, 2015
Client: 004985
Matter: 000001

For Professional Services Rendered Through March 16, 2015

SERVICES

Date	Description of Services	Person	Hours	Amount
06/04/2012	Conference with Ryan Latham on Connell Trust interpretation.	MLC	0.50	\$125.00
06/05/2012	Further discussion with Ryan Latham on Connell Trust.	MLC	0.25	\$62.50
06/06/2012	Conference with Ryan Latham, Melinda Hardwick and Jacquie Montoya on details of trust.	MLC	1.00	\$250.00
07/02/2012	Conference with Ryan Latham on Upton County mineral interest; second conference with Ryan Latham, Melinda Hardwick and client, Jacquie Montoya.	MLC	2.00	\$500.00
07/02/2012	Conference with Ryan Latham and Mary Lou Cassidy re trusts and title issues re Upton County minerals; conference telephone call with Ryan, Mary Lou and Jacquie Montoya.	MCH	1.50	\$187.50
07/03/2012	Further conference with Ryan Latham; telephone conference call with client, Ryan Latham and Melinda Hardwick on trust issues; review of documents, preparation of letter to Mrs. Ahern; evening conference with client.	MLC	3.50	\$875.00
07/03/2012	Telephone conference call with Jacquie Montoya, Mary Lou Cassidy and Ryan Latham.	MCH	1.00	\$125.00

07/05/2012	Attention to July 4th email from Eleanor Ahern to Jacquie Montoya about "Beverly Hills" lawyer and "criminal acts"; review of letter about return of checks and related emails concerning closing the account.	MLC	2.25	\$562.50
07/06/2012	Review of emails on account closing; conferences with Ryan Latham and Jacquie Montoya; review of file documents.	MLC	1.25	\$312.50
07/09/2012	Review of files; conference call with Las Vegas attorney on possible competency issues; later call to client.	MLC	1.25	\$312.50
07/10/2012	Attempted call to Mary Robbins; review of letter from Beverly Hills attorney; conference with Ryan Latham; conference with Jacquie and Kathy.	MLC	2.25	\$562.50
07/11/2012	Attention to Upton County probate questions; conference with Upton County Judge, Bill Eyler, about probate in county or district court; review of letter from Beverly Hills attorney; conference with Jim Walton; conference with client and her sister.	MLC	2.00	\$500.00
07/11/2012	Prepare application to probate foreign will; notice of intent to take deposition of witness; interrogatories to witness; citation on notice; call to Upton County for fees; transmittal letter to Upton County Clerk; conferences with Mary Lou Cassidy.	MCH	2.50	\$312.50
07/12/2012	Review Application for Probate; instruction to Ryan Latham for filing in Upton County; conference with Ryan and Judge Eyler; emails to client on Upton County issue; prepare draft of letter to Martin Perel in response to his letter; send draft to client.	MLC	4.75	\$1,187.50
07/12/2012	Continued work on probate documents and finalize for filing; email to Joy Jones re deposition on written questions; conference with Mary Lou Cassidy; telephone call with Judge Eyler.	MCH	1.75	\$218.75
07/13/2012	Conference on revision to letter to California attorney Perel; revise again; send to client; attention to attachments for letter.	MLC	1.50	\$375.00
07/13/2012	Prepare resident agent appointment; revise consent of Kathryn Bouvier.	MCH	0.35	\$43.75
07/16/2012	Conference with Upton County Clerk; attention to IRS 706 return.	MLC	0.10	\$25.00
07/16/2012	Prepare Form 4506 to request copy of estate tax return; transmittal letter; conference with Mary Lou Cassidy re filing and deposition issues.	MCH	1.00	\$125.00
07/17/2012	Final revisions on letter; send out.	MLC	0.50	\$125.00
07/17/2012	Conference with Mary Lou Cassidy re transfer of file to district court and matters relating to preparation for hearing.	MCH	0.25	\$31.25
07/18/2012	Attention to Upton County matters; conference call about deposition with Joy Jones, witness to Marjorie Connell will.	MLC	0.75	\$187.50

07/18/2012	Email Form 4506 to Jacquie Montoya to request copy of W.N. Connell estate tax return; telephone call to Upton County Clerk to obtain District Court case number assigned to probate; letter to Cathy Carson, 112th District Court Coordinator requesting setting of hearing; conference with Mary Lou Cassidy; conference call with Mary Lou Cassidy and Joy Jones re deposition; revise distribution provisions of will and trust.	MCH	1.75	\$218.75
07/19/2012	Attention to setting deposition for Joy Jones; prepare statement of notary for deposition; email to Joy Jones re date and instructions for deposition; email Resident Agent Appointment and Consent to Jacquie Montoya.	MCH	3.25	\$406.25
07/20/2012	Telephone call to Joy Jones to confirm deposition setting; email notary statement to Joy.	MCH	0.15	\$18.75
07/23/2012	Prepare Order and Oath; preparation for probate hearing.	MCH	1.50	\$187.50
07/24/2012	Review and respond to letter proposed by Jacquie.	MLC	0.10	\$25.00
07/24/2012	Prepare proof of probate.	MCH	0.50	\$62.50
07/25/2012	Review of proposed family letter to mom from Jacquie.	MLC	0.50	\$125.00
07/26/2012	Conference with Melinda Hardwick on Upton hearing questions.	MLC	0.25	\$62.50
07/26/2012	Email Oath and Form 4506 to Jacquie Montoya; conference with Mary Lou Cassidy re hearing.	MCH	0.50	\$62.50
07/30/2012	Conferences with court reporter re finalizing deposition of witness to Will; letter to IRS submitting Form 4506 to obtain tax return.	MCH	0.60	\$75.00
07/31/2012	Telephone calls to court coordinator and District Clerk to confirm time for hearing; email correspondence to Mary Lou Cassidy and Jacquie Montoya.	MCH	0.35	\$43.75
08/01/2012	Telephone conference with client on P.O. Box and letters to mom; review of Upton County pleading.	MLC	0.75	\$187.50
08/01/2012	Conference with Mary Lou Cassidy; revise pleadings for hearing; email revised oath to Jacquie Montoya.	MCH	0.40	\$50.00
08/02/2012	Draft letter to Mary Robbins.	MLC	1.50	\$375.00
08/03/2012	Review proposed revisions in the letter to Mary Robbins.	MLC	0.50	\$125.00
08/06/2012	Final revisions on the letter; fax and mail to Mary Robbins; prepare for probate hearing.	MLC	1.50	\$375.00
08/06/2012	Preparation for probate hearing; conference with Mary Lou Cassidy.	MCH	0.50	\$62.50
08/07/2012	Travel to and from Rankin, Texas; attend probate hearing; conference with client on check instructions.	MLC	3.00	\$750.00
08/08/2012	Conference with client on probate and check issues.	MLC	0.50	\$125.00

08/09/2012	Conference on checks; review letter from Shauna Brennan; discuss with client.	MLC	1.25	\$312.50
08/13/2012	Work on letter to Shauna Brennan; review faxed letter.	MLC	2.00	\$500.00
08/14/2012	Further work on Brennan response and forwarding of documents.	MLC	2.00	\$500.00
08/14/2012	Attention to filing Oath of Independent Administrator.	MCH	0.25	\$31.25
08/15/2012	Complete email to Shauna Brennan; conference with client arranging conference call.	MLC	1.00	\$250.00
08/16/2012	Conference with Corey Haina (CPA); telephone conference with Shauna Brennan; conference with Jacquie Montoya.	MLC	1.00	\$250.00
08/28/2012	Schedule conference with Shauna Brennan; conference with client.	MLC	1.25	\$312.50
08/29/2012	Conference with Shauna Brennan; conference with Jacquie and Kathy; lengthy email to Shauna Brennan.	MLC	4.00	\$1,000.00
09/04/2012	Review of correspondence from Shauna Brennan; email to client.	MLC	0.25	\$62.50
09/05/2012	Forward oil company information to Shauna Brennan.	MLC	0.10	\$25.00
09/05/2012	Telephone conference with client on response to Brennan letter; correspondence to Shauna Brennan on various matters.	MLC	1.50	\$375.00
09/10/2012	Attention to certified checks.	MLC	0.10	\$25.00
09/11/2012	Conference on Brennan letter of September 10 and checks; letter to Shauna Brennan about Wells Fargo statements; attention to certified checks.	MLC	1.75	\$437.50
09/12/2012	Extensive emails on certified checks, bank statements and establish MTC account.	MLC	0.50	\$125.00
09/13/2012	Conferences on check, new trust account, property taxes; Apache division order questions; email to Shauna Brennan on Apache division order.	MLC	2.50	\$625.00
09/14/2012	Conference with client; email correspondence with Sauna Brennan on Apache division order.	MLC	1.50	\$375.00
09/17/2012	Letter to Shauna Brennan on Apache division order.	MLC	0.50	\$125.00
09/18/2012	Conference with client; work on draft proposals for settlement.	MLC	2.00	\$500.00
09/19/2012	Conference with client; email to Shauna Brennan; further conferences on settlement; further work on draft proposals.	MLC	1.50	\$375.00
09/20/2012	Conference with Jim Walton about possible call from Ellie Ahern and related subjects, including details of Apache lease negotiations; conference on accounting.	MLC	1.00	\$250.00
09/21/2012	Review letter from Shauna Brennan; email to and telephone conference with client.	MLC	1.00	\$250.00
09/24/2012	Review email on Apache matters; draft response to email; send to client; attention to email about taxes.	MLC	2.50	\$625.00

09/25/2012	Questions from client; review of lengthy email from client in response to Brennan; revise draft to Brennan.	MLC	2.00	\$500.00
09/26/2012	Further revision of response to Brennan; send to client for review; final revisions and email to Brennan; further work on settlement, versions 1 and 2.	MLC	5.00	\$1,250.00
09/27/2012	Further work on settlement options; preparation of deed draft; extensive conferences with client; conference with Ryan Latham on description of Upton County properties; conferences with Melinda Hardwick on preparation of proposed deed.	MLC	5.00	\$1,250.00
09/27/2012	Prepare Special Warranty Deed for allocation of trust properties between Eleanor Ahern, Trustee of the 1972 Connell Trust, and Jacquie Montoya, as Trustee of the MTC Living Trust.	MCH	0.75	\$93.75
10/02/2012	Review new email and emails to clients; response to Shauna Brennan.	MLC	1.00	\$250.00
10/03/2012	Conferences on 706 refusal by IRS.	MLC	0.25	\$62.50
10/08/2012	Email to Shauna Brennan concerning questions re their proposal and distribution of checks; conversations regarding email problems.	MLC	0.50	\$125.00
10/10/2012	Review email of October 9th from Shauna Brennan; attention to Jacquie Montoya's email with oil & gas payments, Wells Fargo tax ID and oil production records from 2005; correspondence and conference with client about response to Brennan letter; prepare email to Shauna Brennan, send to Jacquie for review; revisions to Brennan email as directed by client; send final email to Shauna Brennan.	MLC	2.50	\$625.00
10/11/2012	Conference with Jacquie Montoya and Melinda Hardwick concerning ad valorem taxes in Upton County.	MLC	0.10	\$25.00
10/15/2012	Review letter from Jacquie to her mother and email to client.	MLC	0.10	\$25.00
10/18/2012	Message from client; email to Shauna Brennan.	MLC	0.25	\$62.50
10/19/2012	Review of response from Shauna Brennan; respond to Shauna Brennan and assistant Domonique Jackson re differences; conferences with client on Brennan correspondence and new attorney bill from Jeff Johnston conveyed to client by cousin Cal Chaney; attention to newly faxed email from Shauna Brennan.	MLC	1.00	\$250.00
10/22/2012	Email on late delivery of check and other delay questions.	MLC	0.75	\$187.50
10/23/2012	Emails to and from Shauna Brennan on arrival of checks and delivery details; review of tax documents from Upton County; email to Shauna Brennan.	MLC	1.75	\$437.50
10/24/2012	Emails with client about transfer of documents.	MLC	0.50	\$125.00

10/25/2012	Conference with client about death of father-in-law; attention to details of exchange of documents and delivery of check.	MLC	1.00	\$250.00
10/30/2012	Attempted call to Harper Estes.	MLC	0.10	\$25.00
10/31/2012	Conference with Harper Estes; conference with client.	MLC	1.00	\$250.00
10/04/2012	Conference with Mary Lou Cassidy re rejected letter requesting U. S. Estate Tax return for W. N. Connell; find date when initial return actually filed.	MCH	0.25	\$31.25
10/05/2012	Conference with Mary Lou Cassidy; call to IRS Office in Ogden, Utah concerning rejection of request for copy of estate tax return.	MCH	0.25	\$31.25
10/09/2012	Call to IRS re copy of estate tax return for W. N. Connell, Jr.	MCH	0.10	\$12.50
10/11/2012	Call to Upton County to obtain duplicate of property tax statement; conference with Mary Lou Cassidy.	MCH	0.20	\$25.00
11/01/2012	Correspondence with Shauna Brennan on wire transfer.	MLC	0.10	\$25.00
11/01/2012	Conference with Mary Lou Cassidy re request for estate tax return from IRS.	MCH	0.25	\$31.25
11/02/2012	Call to IRS re copy of estate tax return.	MCH	0.10	\$12.50
11/06/2012	Conference on Jeff Johnston legal fees; review email.	MLC	0.50	\$125.00
11/06/2012	Follow up letter to IRS re request for estate tax return.	MCH	1.00	\$125.00
11/07/2012	Review of new documents from David Straus.	MLC	0.25	\$62.50
11/07/2012	Continued work on IRS request letter; conference with Mary Lou Cassidy; review email and attachments from David Strauss re Connell estates.	MCH	1.00	\$125.00
11/08/2012	Continued work on request for estate tax return; prepare new request and letter for Jacquie Montoya to send directly to IRS; assemble attachments to meet form requirements.	MCH	2.00	\$250.00
11/09/2012	Revisions to IRS request letter; scan and email.	MCH	0.25	\$31.25
11/12/2012	Conference with Harper Estes on settlement; email to clients; work on letter to Shauna Brennan on runs, bank statements and billings; email to clients.	MLC	2.00	\$500.00
11/13/2012	Review of correspondence from client; further work on letter to Shauna Brennan; send letter; second email to Brennan on Johnston bill and cousin's email.	MLC	2.75	\$687.50
11/15/2012	Review new email from Shauna Brennan; respond to email.	MLC	1.00	\$250.00
11/16/2012	Conference with Harper Estes on settlement proposal and money issues; email to client.	MLC	0.75	\$187.50
11/20/2012	Wire transfer email to Shauna Brennan.	MLC	0.50	\$125.00

11/28/2012	Preparation of "hot headed" letter (not sent) to Shauna Brennan about missing transfers; respond to her letter; check on tax in Upton County.	MLC	1.50	\$375.00
11/29/2012	Call to Upton County Appraisal District office to confirm payment of property taxes; obtain copies of tax statements from authorized website showing payment in full; conference with Mary Lou Cassidy.	MCH	1.25	\$156.25
12/03/2012	Review emails from weekend.	MLC	0.10	\$25.00
12/06/2012	Review of email documents from Domonique Jackson.	MLC	0.25	\$62.50
12/07/2012	Review email from Harper Estes on counter-offer for settlement; forward to client with brief email; brief telephone call to Harper Estes to schedule future meeting on settlement.	MLC	0.50	\$125.00
12/10/2012	Telephone conference with client re counter-offer from Harper Estes/Shana Brennan, and our proposed response.	MLC	1.00	\$250.00
12/11/2012	Review of email from Jacquie Montoya re settlement offer.	MLC	0.10	\$25.00
12/18/2012	Review of emails.	MLC	0.10	\$25.00
12/19/2012	Office conference with Harper Estes and Austin Ramsey; conference with Jacquie Montoya.	MLC	1.50	\$375.00
12/26/2012	Review Apache amendment; forward to Shauna Brennan.	MLC	0.25	\$62.50
01/09/2013	Forward Apache amendment received by client to Shauna Brennan.	MLC	0.10	\$25.00
01/16/2013	Email to Shauna Brennan; review email response from Shauna; forward response to client.	MLC	0.25	\$62.50
02/13/2013	Review email from client; email to Harper Estes re status of settlement negotiations; review of response from harper Estes; forward to client.	MLC	0.50	\$125.00
02/21/2013	Office conference with Harper Estes and Austin Ramsey; sent settlement offer to client.	MLC	2.00	\$500.00
02/28/2013	Email correspondence concerning finding Connell abstracts in firm warehouse.	MLC	0.25	\$62.50
03/18/2013	Email correspondence on taxes and related matters.	MLC	0.25	\$62.50
03/19/2013	Review letter from Mozelle and Bob Miller addressed to Stubbeman, McRae on abstracts.	MLC	0.10	\$25.00
04/02/2013	Review email from Shauna Brennan on income taxes; forward to client.	MLC	0.10	\$25.00
04/03/2013	Review email from Jacquie Montoya on tax email from Shauna Brennan; emails to Harper Estes on client's response to Shauna Brennan's email.	MLC	0.75	\$187.50
04/05/2013	Review of email correspondence with Jacquie Montoya on tax matter.	MLC	0.25	\$62.50
04/08/2013	Review numerous emails and attachments sent by client over the weekend; forward client's CPA email to Harper Estes.	MLC	0.50	\$125.00

04/15/2013	Conferences with clients; review of email from Shauna Brennan and K-1's, income tax and trust tax returns; lengthy email to Brennan; email to client to review; final conference with client; review of long email from client.	MLC	2.00	\$500.00
04/16/2013	Attention to email correspondence from Shauna Brennan; review emails from client.	MLC	0.50	\$125.00
04/18/2013	Review email correspondence from Shauna Brennan; telephone conference with Jacquie and Kathy.	MLC	1.00	\$250.00
04/19/2013	Review emails from Shauna Brennan; conference with Jacquie Montoya; review of further emails from client; email correspondence with Jacquie concerning Apache agreement.	MLC	1.10	\$275.00
04/22/2013	Telephone conference with Harper Estes on settlement and tax matters; email to client.	MLC	0.75	\$187.50
04/24/2013	Review lengthy email with attachments from client regarding her review of tax documents furnished by Mrs. Ahern; telephone conference with Jacquie Montoya concerning tax matters and final settlement issues.	MLC	0.75	\$187.50
04/25/2013	Review April 24th email from Jacquie Montoya.	MLC	0.50	\$125.00
04/29/2013	Review email from Shauna Brennan; email correspondence with client, including original receipt of documents delivered to Shauna Brennan's office on October 25, 2012.	MLC	1.50	\$375.00
05/03/2013	Preparation of letter to Shauna Brennan regarding delivery of documents in October 2012 and receipt, and also offer to give piano to Mrs Ahern; forward draft to client to review.	MLC	0.75	\$187.50
05/06/2013	Revise letter to Shauna Brennan and email to her.	MLC	0.25	\$62.50
05/17/2013	Attention to draft letter to Shauna Brennan on tax return issues; telephone conference with Jacquie Montoya; further work on letter to Brennan.	MLC	2.00	\$500.00
05/17/2013	Attention to IRS request for copy of estate tax return; email to Jacquie Montoya.	MCH	0.25	\$31.25
05/19/2013	Work on draft letter to Shauna Brennan.	MLC	2.00	\$500.00
05/20/2013	Further work on letter to Shauna Brennan; forward draft to client for review.	MLC	0.50	\$125.00
05/21/2013	Email correspondence with Jacquie Montoya concerning draft of letter to Shauna Brennan and request for Cory Haina's comments.	MLC	0.10	\$25.00
05/22/2013	Conference call with Jacquie Montoya concerning tax letter to Shauna Brennan and variations.	MLC	1.00	\$250.00
05/23/2013	Email correspondence with client on tax matters.	MLC	1.50	\$375.00
05/24/2013	Further email correspondence with Jacquie Montoya; review of response from Carol Reinert on question concerning taxability of pipeline easement payments.	MLC	0.50	\$125.00
05/29/2013	Email correspondence with Jacquie Montoya concerning letter to Shauna Brennan on tax matters.	MLC	0.10	\$25.00

06/02/2013	Work on draft response to bad trust tax return; conferences with Jacquie Montoya.	MLC	2.00	\$500.00
06/03/2013	Email correspondence with Jacquie Montoya concerning draft response to bad income tax return.	MLC	0.50	\$125.00
06/04/2013	Work on exhibits to tax return protest letter.	MLC	2.00	\$500.00
06/05/2013	Further work on letter concerning bad tax return and coordinate with exhibits; forward to client for review.	MLC	2.00	\$500.00
06/07/2013	Review email revisions from Jacquie Montoya on draft of tax letter; finalize letter, attach exhibits, and send to Shauna Brennan via Federal Express; email copy to Jacquie.	MLC	1.00	\$250.00
06/11/2013	Conference with Jacquie Montoya on late June checks; email to Shauna Brennan inquiring when checks will be received.	MLC	0.25	\$62.50
06/12/2013	Question from Jacquie Montoya on designation of "gift" on June check received from Ellie Ahern.	MLC	0.10	\$25.00
07/10/2013	Email correspondence with Jacquie Montoya on lack of July check and other matters.	MLC	0.10	\$25.00
07/12/2013	Review of Jacquie Montoya emails; conference with Austen Ramsey of Lynch concerning missing checks; conference with Jacquie and Kathy; demand email on oil and gas payment; begin second letter.	MLC	0.50	\$125.00
07/15/2013	Research Nevada Trust Law for removal procedure of trustees on Westlaw and State website; email to Mary Lou Cassidy.	JWD	2.30	\$402.50
07/15/2013	Review email from Jordan Davis on research on Nevada trust law; attention to Upton County court action; email to Shauna Brennan about missing checks for June runs; email from Austen Ramsey concerning dismissal of Lynch Chappel as counsel for Ellie Ahern.	MLC	1.00	\$250.00
07/16/2013	Conference with Mary Lou Cassidy; review Petition in Intervention of Eleanor Ahern, Trustee; consider jurisdiction and venue issues.	JRP	1.80	\$540.00
07/16/2013	Conference with Jeff Johnston; conference with Melinda Hardwick on documents needed; conference with Janet Pritchett on Upton County Petition in Intervention and related matters; draft lengthy letter to Jeff Johnston on points of contention between parties, and background on Connell history, including income tax concerns; forward to Jacquie Montoya for review.	MLC	4.00	\$1,000.00
07/16/2013	Check Upton County County Appraisal District website for 2013 property values; conference with Mary Lou Cassidy.	MCH	0.25	\$31.25
07/17/2013	Conferences with Mary Lou Cassidy and Sean Guerrero; review documents and consider claims; conference call with Mary Lou, Sean, Jacquie Montoya and Kathy Bouvier.	JRP	3.20	\$960.00
07/17/2013	Email with Mary Lou Cassidy on research project.	JWD	0.60	\$105.00

07/17/2013	Conference with Sean Guerrero and Janet Pritchett; conference call with Sean, Janet, Jacquie Montoya and Kathy Bouvier; further work on letter to Jeff Johnston; email to client.	MLC	4.25	\$1,062.50
07/17/2013	Office conference with Mary Lou Cassidy and Janet Pritchett on potential litigation; review materials for same; attend conference call with Mary Lou, Janet and client; conference with Ryan Latham.	SMG	3.80	\$1,140.00
07/18/2013	Review and revise draft of letter to Jeff Johnston.	JRP	0.20	\$60.00
07/18/2013	Major revisions to Jeff Johnston letter; finalize letter, assemble exhibits to include with letter; email final draft to Jacquie Montoya for review; arrange for personal delivery of letter to Jeff Johnston on July 19th.	MLC	5.00	\$1,250.00
07/18/2013	Conference with Mary Lou Cassidy; assist in assembling documents.	MCH	0.25	\$31.25
07/19/2013	Conferences with Ryan Latham and Sean Guerrero.	JRP	0.70	\$210.00
07/19/2013	Review correspondence from Mary Lou on response to Jeff Johnston; review correspondence from Mr. Johnston regarding same.	SMG	0.50	\$150.00
08/05/2013	Review letter from Jeff Johnston dated July 19, 2013; conference with Sean Guerrero on Jeff Johnston letter and update on status.	MLC	0.30	\$75.00
08/05/2013	Communicate with Mary Lou on Johnston letter and status of suit.	SMG	0.30	\$90.00
08/06/2013	Review letter from Stanley Crawford to court requesting hearing.	SMG	0.30	\$90.00
08/12/2013	Attention to email from client; conference with Sean Guerrero on litigation strategy; conference with Jacquie Montoya concerning possibility of mediation and setting meeting with Jeff Johnston and his litigation partner, Stanley Crawford; review Jacquie's email to accountant on old tax returns.	MLC	0.75	\$187.50
08/12/2013	Review correspondence from Jacquie Montoya about potential mediation and strategy; conference with Mary Lou on same.	SMG	0.50	\$150.00
08/13/2013	Review email from Jacquie Montoya on settlement parameters; prepare for July 14th meeting with Jeff Johnston and Stanley Crawford.	MLC	0.50	\$125.00
08/13/2013	Review correspondence from Jacquie Montoya on parameter of mediation talks; work on same.	SMG	1.20	\$360.00
08/14/2013	Conference with Sean Guerrero, Jeff Johnston and Stanley Crawford on mediation; conference call with Sean and Jacquie Montoya on outcome of meeting; email to Jacquie on mediation scheduling and Jeff Johnston's response to our request for amended tax return..	MLC	3.00	\$750.00

08/14/2013	Meeting with Jeff Johnston and Stanley Crawford to discuss settlement options and mediation; communicate with Jacquie Montoya on potential for mediation; work with Mr. Crawford on scheduling of mediation.	SMG	3.20	\$960.00
08/15/2013	Attention to scheduling mediation; emails to Jacquie Montoya on attempts to schedule; email to Kristi Elsom seeking referral to Nevada trust attorney.	MLC	0.50	\$125.00
08/15/2013	Continue work on mediation scheduling; telephone conference with David Lindemood on potential dates; communicate with Stanley Crawford on availability of his client.	SMG	1.60	\$480.00
08/16/2013	Review correspondence from Jacquie Montoya about Nevada attorney and litigation; work on mediation; review trust documents and reformation.	SMG	2.30	\$690.00
08/19/2013	Send correspondence to Stanley Crawford about mediation and hearing date; communicate with Jacquie Montoya on Nevada counsel and mediation; work on mediation.	SMG	1.40	\$420.00
08/20/2013	Email correspondence with Jacquie Montoya on thoughts concerning possible mediation results and details on travel plans for trip to Midland.	MLC	0.25	\$62.50
08/20/2013	Review correspondence from Jacquie Montoya on trip booking and expectations for mediation.	SMG	0.40	\$120.00
08/22/2013	Work on document review.	SMG	0.70	\$210.00
08/23/2013	Review documents sent by Jacquie Montoya on trust, conference with Mary Lou Cassidy about production of same.	SMG	1.40	\$420.00
08/25/2013	Review of submitted materials shipped to Midland by Jacquie Montoya.	MLC	1.00	\$250.00
08/26/2013	Review of files; conference with Sean Guerrero about format of Position Statement and related matters; dictate first draft of Position Statement.	MLC	4.50	\$1,125.00
08/26/2013	Office conference with Mary Lou Cassidy on mediation and applicable documents; review same; communicate with David Lindemood about position statement.	SMG	1.20	\$360.00
08/27/2013	Continue work on Position Statement; review Jacquie Montoya's email to attorney Goldsmith; lengthy telephone conference with Jacquie Montoya on upcoming mediation and supporting documents.	MLC	4.75	\$1,187.50
08/27/2013	Review correspondence and documents from Jacquie Montoya.	SMG	0.40	\$120.00
08/28/2013	Conferences with Mary Lou Cassidy on Jeff Johnston's positions and concerning draft Position Statement for mediation; review and suggest revisions for draft Position Statement for mediation.	JRP	0.70	\$210.00
08/28/2013	Further revisions to Position Statement; telephone conference with Jacquie Montoya; forward Position Statement to client.	MLC	2.00	\$500.00
08/28/2013	Review factual summary from Mary Lou Cassidy.	SMG	0.40	\$120.00

08/29/2013	Revisions to Position Statement; preparation of Legal Position and Exhibit List; conference with Sean Guerrero on Legal Position; revisions of Position Statement and Legal Position; address question on sharing 2009 engineering valuation of properties; review Texas taxes spreadsheets; correspondence to Jeff Johnston and delivery of plastic boxes with client documents to his office.	MLC	3.75	\$937.50
08/29/2013	Work on mediation preparation.	SMG	0.50	\$150.00
08/30/2013	Finish final revisions to Position Statement, Legal Position and Exhibits; gather exhibits; email final mediation documents to client.	MLC	2.00	\$500.00
08/30/2013	Review mediation Position Statement; deliver statement and documents to David Lindemood; conference with Mary Lou Cassidy and Jacquie Montoya about mediation; email communication with Jacquie Montoya about mediation location; review tax information provided by Jacquie Montoya.	SMG	1.80	\$540.00
09/02/2013	Prepare for mediation, including organizing file.	MLC	1.00	\$250.00
09/03/2013	Review mediation materials; attend mediation.	SMG	10.30	\$3,090.00
09/03/2013	Attend mediation.	MLC	10.00	\$2,500.00
09/04/2013	Conference with Sean Guerrero about Nevada litigation and canceling of Upton County hearing.	MLC	0.25	\$62.50
09/04/2013	Telephone conference with Stanley Crawford re: hearing postponement, settlement discussions, extended conference call with Joey Powell, conference with Mary Lou Cassidy.	SMG	0.80	\$240.00
09/05/2013	Review correspondence from Joe Neal re: request of Stanley Crawford for appraisal records, telephone conference with Joe Neal regarding same, communicate with Nevada attorney regarding petition.	SMG	0.60	\$180.00
09/09/2013	Review emails on taxes; conference with Sean Guerrero on release of tax information.	MLC	0.25	\$62.50
09/09/2013	Prepare email correspondence to Corey Haina about demand for all accounting information from Eleanor Ahern, conference with Mary Lou Cassidy regarding accounting and tax records.	SMG	0.50	\$150.00
09/12/2013	Review correspondence from Corey Haina and Jacquie Montoya about Ellie Ahern's threats to sue accountant.	SMG	0.40	\$120.00
09/16/2013	Review emails regarding Ellie Ahern's voice mails and threats to accountant, her foundation questions, communicate with attorney Powell regarding factual details and mediation position paper ..	SMG	1.80	\$540.00
09/17/2013	Emails on plans for suspense.	MLC	0.25	\$62.50
09/17/2013	Communicate with Jacquie Montoya and Joey Powell regarding mediation statement paper, review correspondence regarding suspense and payment information, begin work on same.	SMG	1.30	\$390.00

09/18/2013	Review draft Petition from Las Vegas attorney; note revision points; begin letter to Joey Powell; participate in conference call with Jacquie Montoya, Sean Guerrero and Joey Powell.	MLC	2.00	\$500.00
09/18/2013	Review draft of Nevada petition, work on comments to petition, review correspondence from Jacquie Montoya about petition, participate in conference call, work on suspense letters to oil and gas producers and purchasers.	SMG	2.30	\$690.00
09/19/2013	Prepare for telephone conference with Joey Powell, Nevada attorney; conference with with Joey, Sean Guerrero, and Jacquie Montoya concerning strategy in litigation against Ellie Ahern.	MLC	1.50	\$375.00
09/19/2013	Work on edits to draft of petition, conference with Mary Lou Cassidy regarding changes to petition, questions for Joey Powell, participate in extended conference call with Jacquie Montoya, Joey Powell and Mary Lou Cassidy, work on revisions, review tax records and IRS correspondence submitted by Jacquie Montoya.	SMG	4.60	\$1,380.00
09/20/2013	Conference with Sean Guerrero on suspense letters and IRS matters; lengthy email to Joey Powell on Texas Inheritance Tax procedures and revisions to his petition; second email to Powell on oil and gas terminology.	MLC	4.25	\$1,062.50
09/20/2013	Review correspondence regarding tax code and oil and gas, review correspondence from Jacquie Montoya and Joey Powell, review petition draft and work on suspense of royalty payments.	SMG	2.80	\$840.00
09/20/2013	Email IRS notice relating to Wm. Connell estate tax return to Mary Lou Cassidy.	MCH	0.25	\$31.25
09/23/2013	Communicate with Stanley Crawford regarding rescheduled hearing on October 8.	SMG	0.30	\$90.00
09/24/2013	Telephone conference with attorney Crawford regarding settlement talks, communicate with Jacquie Montoya regarding same, work on response.	SMG	1.40	\$420.00
09/25/2013	Email with Jacquie Montoya; telephone conference with Sean Guerrero and Jacquie Montoya concerning response to Johnston telephone call; work on letter to opposing counsel.	MLC	1.50	\$375.00
09/25/2013	Work on correspondence to opposing counsel with settlement demand, conference with Mary Lou Cassidy and Jacquie Montoya regarding same, work on revisions to same.	SMG	1.50	\$450.00
09/26/2013	Review revised petition.	MLC	0.50	\$125.00
09/26/2013	Review latest version of petition, work on comments to same.	SMG	1.30	\$390.00
09/27/2013	Communicate with Mary Lou Cassidy and Jacquie Montoya regarding filing of suit and suspense letters to oil companies, work on same, review confirmation from Joey Powell.	SMG	1.40	\$420.00

09/30/2013	Conference with Melinda Hardwick on suspense procedure; review of suspense letters; revise letters to conform to Melinda's addresses and owner numbers.	MLC	1.25	\$312.50
09/30/2013	Work on finalizing letters to oil companies regarding suspense of royalty payments, work on sending same.	SMG	2.80	\$840.00
09/30/2013	Conference with Mary Lou Cassidy; confirm mailing addresses of oil companies purchasing Upton County production; obtain phone and fax numbers for notification of suit.	MCH	1.75	\$218.75
10/01/2013	Email correspondence on service of process in Nevada.	MLC	0.10	\$25.00
10/01/2013	Communicate with Joey Powell regarding service question, conference with Mary Lou Cassidy regarding service and hearing.	SMG	0.60	\$180.00
10/02/2013	Communicate with Joey Powell regarding service of suit, questions regarding Nevada litigation.	SMG	0.30	\$90.00
10/09/2013	Review correspondence from attorney Powell regarding mandatory hearing on October 11, communicate with attorney Powell regarding same.	SMG	0.40	\$120.00
10/10/2013	Communicate with Apache land department regarding their suspense of funds, work on confirmation letter regarding same, communicate with Jacquie Montoya regarding Apache suspense, review petition for declaratory trust and send same to Apache.	SMG	2.40	\$720.00
10/11/2013	Review lengthy email report from Joey Powell.	MLC	0.50	\$125.00
10/11/2013	Review correspondence from Joey Powell regarding results of hearing; conversation with opposing counsel regarding merits of suit.	SMG	0.40	\$120.00
10/14/2013	Review trust documents and correspondence from Jacquie Montoya.	SMG	0.30	\$90.00
10/15/2013	Email correspondence with Carol Reinert, CPA, about possible affidavit on Texas Inheritance Tax procedures.	MLC	0.10	\$25.00
10/16/2013	Review tax information from Jacquie Montoya.	SMG	0.30	\$90.00
10/18/2013	Review correspondence from Jacquie Montoya regarding consequences of success at Nevada hearing.	SMG	0.30	\$90.00
10/24/2013	Review correspondence from Joey Powell regarding the procedure of probate court in Nevada.	SMG	0.30	\$90.00
11/4/2013	Review correspondence from Attorney Crawford regarding delay of hearing on intervenor's Motion.	SMG	0.20	\$60.00
11/5/2013	Review lengthy email from Joey Powell regarding objection filed by opposing counsel, review motion regarding objection.	SMG	0.60	\$180.00
11/6/2013	Review of new pleading; conference with Sean Guerrero.	MLC	0.50	\$125.00

11/6/2013	Review email from Jacquie Montoya regarding comments to objection motion, statements of payments from oil companies in 2012 and 2013, communicate with Plains Marketing representative regarding suspension of royalty payments.	SMG	0.60	\$180.00
11/7/2013	Review of response pleading by Joey Powell; call to Powell about typo and needed amendment.	MLC	0.75	\$187.50
11/7/2013	Communicate with Joey Powell regarding comments to response brief, communicate with Plains Marketing employee regarding request for information on suspense of funds, review revised response brief.	SMG	1.60	\$480.00
11/12/2013	Review correspondence from Jacquie Montoya regarding hearing results	SMG	0.30	\$90.00
11/13/2013	Email correspondence to Joey Powell on Texas Natural Resources Code suspense.	MLC	0.75	\$187.50
11/13/2013	Research case law regarding Natural Resources Code 91.402.	NCM	0.75	\$168.75
11/14/2013	Conference with Sean Guerrero and Joey Powell on suspense strategies.	MLC	1.00	\$250.00
11/14/2013	Communicate with Apache Attorney Taylor regarding reasons for suspense, research and work on response, communicate with Mary Lou Cassidy and Attorney Powell on extended conference call regarding suspense issues, plan for Nevada litigation, work on same.	SMG	3.60	\$1,080.00
11/25/2013	Review petition to compel status quo from Joey Powell, review opposing counsel's proposed order.	SMG	0.50	\$150.00
11/26/2013	Review of submitted materials; telephone conference with Las Vegas attorney on most recent pleading draft.	MLC	0.50	\$125.00
11/26/2013	Telephone conference with Mary Lou Cassidy and Joey Powell regarding laches motion, review motion to dismiss from opposing Nevada counsel.	SMG	0.80	\$240.00
10/15/2013	Office conference with Mary Lou Cassidy regarding latest developments, plan for accounting expert.	SMG	0.40	\$120.00
1/9/2014	Review response brief from Joey Powell, communicate with Mr. Powell and Jacquie Montoya.	SMG	0.50	\$150.00
1/28/2014	Extended conference with Joey Powell regarding upcoming depositions, trial setting, review materials supplied by Mr. Powell regarding depositions and expert report.	SMG	1.60	\$480.00
1/29/2014	Preparation of Affidavit concerning Upton County probate.	MLC	0.50	\$125.00
1/29/2014	Review materials provided by Joey Powell regarding handwriting expert, request for stipulation to report, communicate with Joey Powell regarding same.	SMG	0.50	\$150.00

1/30/2014	Communicate with Joey Powell and Jacquie Montoya regarding plan for February 18 hearing, review Affidavit of Mary Lou Cassidy regarding filing of suit.	SMG	0.60	\$180.00
1/31/2014	Review of email correspondence on need for copy of Texas Inheritance Tax Return.	MLC	0.25	\$62.50
1/31/2014	Communicate with Joey Powell regarding Texas tax records, work on same.	SMG	0.60	\$180.00
2/4/2014	Conference with Melinda Hardwick on comptroller; telephone conference on Inheritance Tax Return.	MLC	0.50	\$125.00
2/4/2014	Communicate with Joey Powell regarding documents from Texas comptroller's office, plan for hearing evidence, work on same, review materials from comptroller's office in response to open records request.	SMG	1.20	\$360.00
2/4/2014	Telephone call and letter to Texas Comptroller's office re copy of Texas Inheritance Tax Return for W. M. Connell.	MCH	0.50	\$62.50
2/5/2014	Emails to Joey Powell on oil and gas procedures in Texas.	MLC	0.50	\$125.00
2/6/2014	Review affidavit from Mary Lou Cassidy, communicate with Joey Powell regarding same.	SMG	0.60	\$180.00
2/7/2014	Communicate with Joey Powell regarding hearing preparation and cancelled depositions.	SMG	0.30	\$90.00
2/10/2014	Work on documents for hearing with Joey Powell.	SMG	1.00	\$300.00
2/12/2014	Communicate with Joey Powell regarding Affidavit, conference with Mary Lou Cassidy regarding affidavit and hearing.	SMG	1.40	\$420.00
2/13/2014	Communicate with Jacquie Montoya regarding hearing and CPA opinion, review same.	SMG	0.40	\$120.00
2/14/2014	Work on hearing preparation, communicate with Joey Powell regarding same.	SMG	2.30	\$690.00
2/17/2014	Travel to Las Vegas, review materials for hearing.	SMG	3.60	\$1,080.00
2/18/2014	Attend hearing with Clients and Joey Powell, communicate with Apache counsel regarding suspended payments, work on same, review correspondence from Joey Powell regarding strategy thoughts.	SMG	4.60	\$1,380.00
2/19/2014	Return travel from Las Vegas, work on Texas O&G suspense issues.	SMG	3.70	\$1,110.00
2/20/2014	Review correspondence from Jacquie Montoya regarding Jim Walton, work on suspense issues and communicate with Las Vegas counsel regarding same.	SMG	1.40	\$420.00
2/21/2014	Communicate with Joey Powell regarding Texas action status, work on evidence regarding same, communicate with Attorney Albrecht regarding Natural Resources Code information, work on same.	SMG	2.20	\$660.00

2/24/2014	Review email from Jacquie Montoya, telephone conference with Mark Albrecht regarding tortious interference claims, work on same.	SMG	1.30	\$390.00
2/25/2014	Work on research regarding rights of suspense of royalty payments, communicate with Joey Powell regarding plan for upcoming hearing and Motion for Attorneys Fees.	SMG	1.00	\$300.00
2/27/2014	Review Motion to Dismiss from Attorney Albrecht, work on affidavit for same.	SMG	1.20	\$360.00
3/3/2014	Work on Affidavit for Motion to Dismiss.	SMG	0.80	\$240.00
3/4/2014	Work on Affidavit for Motion to Dismiss, communicate with Mark Albrecht regarding same.	SMG	0.10	\$30.00
3/5/2014	Work with Mark Albrecht on changes to subpoena, revise and finalize.	SMG	0.40	\$120.00
3/6/2014	Sign affidavit, send same to Mark Albrecht.	SMG	0.30	\$90.00
3/10/2014	Review petition for will validation, correspondence from Joey Powell regarding same.	SMG	0.40	\$120.00
3/14/2014	Work on changes to affidavit requested by Attorney Albrecht.	SMG	0.00	\$0.00
4/1/2014	Communicate with Joey Powell regarding status of Nevada litigation.	SMG	0.30	\$90.00
4/9/2014	Communicate with Joey Powell, Jacquie Montoya and representative from DCP Midstream regarding suspense of royalty payments to trust.	SMG	0.50	\$150.00
5/20/2014	Review correspondence from Jacquie Montoya regarding dismissal of Texas suit, communicate with Mary Lou Cassidy regarding same.	SMG	0.40	\$120.00
3/13/2015	Conference with Jackie Montoya, review materials sent.	SMG	1.30	\$390.00
3/16/2015	Review documents and materials provided by Jacquie Montoya, research cited cases, work on opinion letter in response to Johnston March 11 letter, telephone conference with Jacquie Montoya regarding changes to same, revise and finalize.	SMG	4.70	\$1,410.00

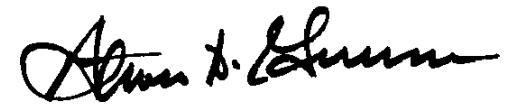
Total Professional Services	342.25	\$87,517.50
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PERSON RECAP

Person	Hours	Rate	Amount
SMG Sean M. Guerrero	109.10	\$300.00	\$32,730.00
JRP Janet R. Pritchett	6.60	\$300.00	\$1,980.00
MLC Mary Lou Cassidy	194.15	\$250.00	\$48,537.50
NCM Natalie C. Madden	0.75	\$225.00	\$168.75
JWD Jordan W. Davis	2.90	\$175.00	\$507.50
MCH Melinda C. Hardwick	28.75	\$125.00	\$3,593.75

DISBURSEMENTS

Date	Description of Disbursements	Amount
07/11/2012	Upton County Clerk - Probate fee and citation fee	\$237.00
07/11/2012	Upton County Clerk - Probate fee and citation fee	\$55.00
07/12/2012	Mileage to Rankin to file documents	\$61.05
07/17/2012	Certified Mail	\$6.60
07/31/2012	U. S. Treasury- Copying Expense- Copy of tax return	\$57.00
08/07/2012	Mileage to Rankin to attend Probate Hearing	\$61.05
08/09/2012	Permian DepoTexas LLC - Deposition of written questions of Josefina C. Jones	\$140.00
08/14/2012	Upton County Clerk - Letters of Independent Administration	\$14.00
08/21/2012	Federal Express to Kathy Bouvier in Middleton ID	\$31.20
08/21/2012	Federal Express to Jacquie Montoya in Las Vegas NV	\$26.03
05/20/2013	U. S. Treasury - Copy fee	\$57.00
08/30/2013	Brockett & McNeel L P - Mediation fee	\$1,000.00
10/18/2013	Texas Secretary of State - search fee	\$2.05
2/17/2014	Air fare to Las Vegas	\$627.50
2/17/2014	Lodging in Las Vegas	\$551.56
2/17/2014	Taxi expense	\$91.62
	Total Disbursements	\$3,018.66
	Total Services	\$87,517.50
	Total Disbursements	\$3,018.66
	Total This Statement	\$90,536.16



CLERK OF THE COURT

RPLY
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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of THE W.N.
CONNELL AND MARJORIE T.
CONNELL LIVING TRUST
DATED May 18, 1972, An Inter
Vivos Irrevocable Trust

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

**SUR-REPLY TO MONTOYA AND
BOUVIER'S REPLY IN SUPPORT OF
MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS**

Date of Hearing: May 13, 2015

Time of Hearing: 9:00 a.m.

Kathryn Bouvier and Jacqueline Montoya (collectively, the "Sisters") improperly request approximately \$83,000.00 in additional attorneys' fees that were not included in their original Motion for Award of Attorneys' Fees and Costs (the "Motion"). The Sisters also submit new legal theories in support of attorneys' fees under NRS 18.010(b), which were not discussed in the original Motion. Ms. Ahern, by and through her counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, submits this Sur-Reply in objection to the Sisters' improper requests and supplements.

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I.
DISCUSSION

In July of 2012, without providing notice to Ms. Ahern, Ms. Montoya filed an application to probate the will of Marjorie Connell ("Marjorie") as a foreign will in Upton County, Texas. In addition to failing to provide notice, the application contained false statements, including that Marjorie had no children when Marjorie had adopted Ms. Ahern decades earlier. Now, in this case filed fourteen months later on September 27, 2013, the Sisters expect to recover attorneys' fees and costs incurred for services of attorneys in Upton County in that separate matter and for other services unrelated to this matter. Based on the billing records, only a fraction¹ of the services in Texas occurred after the filing of the petition in this Court, and many of the services related to land deals, probate proceedings, and taxes in Upton County, not to this proceeding. Indeed, the Sisters request reimbursement for fees paid to Texas counsel "even before the filing of the Petition in this proceeding," for work done to "mediate" a dispute with Ms. Ahern. (Reply at p. 8:18-19.)

As a preliminary matter, the Sisters had two chances previously to bring these fees before the Court, in their original request for attorneys' fees and in this Motion in support of attorneys' fees. They failed to do so. Pursuant to Nevada District Court Rule 13.2, the Court may construe this failure as an admission that the request is not meritorious or as a waiver of said request.

More importantly, and in addition to raising untimely and improper issues in their Reply brief, the Sisters provide no legal support for their assertion that fees incurred prior to the start of this litigation and/or in an attempt to simply mediate their issues (or probate a will in Texas) may give rise to an award of attorneys' fees in this action. The Sisters bring their present Motion under NRS 153.031(3)(b). (See Mot. at p. 3:4-6.) The statute states clearly that the Court may award "all

¹ Only \$19,440.00 was billed to Texas counsel after September 27, 2013, and many of the services identified in the billing statement were not in furtherance of the parties' adjudication before this Court.

1 reasonable costs incurred by the party to adjudicate the affairs of the trust pursuant
2 to this section." NRS 153.031(3)(b). Collateral fees incurred by the Sisters in an
3 attempt to probate a will in Texas or to mediate issues prior to the filing of this
4 action simply do not fall within the statute. (*See Reply at p. 8:18-19.*) The Sisters
5 provide no support for an expansion of the statute to include fees that are not
6 incurred as part of this adjudication. Indeed, precedence dictates that courts should
7 exercise restraint when awarding costs and fees pursuant to a statute, in light of the
8 fact that statutes permitting recovery are in derogation of the common law and must
9 be strictly construed. *See Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560,
10 566 (1993).

11 A review of the billing statements demonstrate that the work completed by
12 Texas counsel was not completed as part of the dispute before this Court. For
13 example, on July 11 and 12, 2012, Texas counsel "[p]repare[d] [an] application to
14 probate foreign will" and prepared to file said application in Upton County, Texas.
15 Numerous other entries pertain to tax preparation, letters sent to and conferences
16 held with various people with no specified purpose, and the will probate. While the
17 Court may be able to determine for itself whether fees incurred by Nevada counsel
18 for work presented to this Court in the course of this adjudication were reasonable,
19 the Court simply has not been provided with sufficient information to determine
20 whether the Texas fees are reasonable or even proper, including, for example, fees
21 for a "[c]onference with Jacquie Montoya and Melinda Hardwick concerning ad
22 valorem taxes in Upton County," "[e]mail correspondence with client on tax
23 matters," or "[c]onferences with Ryan Latham and Sean Guerrero" for some
24 unstated purpose. (*See Texas Counsel Billing Statement, Oct. 15, 2012, May 23,*
25 *2013, and Jul 19, 2013.*) In fact, reason suggests, as does a plain reading of the
26 "adjudication" requirement under NRS 153.031(3)(b), that an award of such fees is
27 improper. Accordingly, the Court should not consider any additional, unsupported
28 fees requested by the Sisters at this late hour.

1 In addition to the new request for additional fees, the Sisters also assert in
2 their Reply new legal grounds for an award for fees against Ms. Ahern personally,
3 under NRS 18.010(b) and, presumably, as sanctions under NRCP 11. When the
4 Sisters requested fees under NRS 18.010(b) in their prior motion for fees filed on
5 December 23, 2014, the Court rejected the request, finding that the parties in this
6 dispute had pursued their claims in good faith and that such claims were not
7 frivolous. The Sisters' attempt in the Reply to have the Court reconsider the issue is
8 untimely and improper.

9
10 **II.**
CONCLUSION

11 The Court has already found that the parties disputed in good faith the
12 interpretation of entitlements under the trust documents. The Sisters' request in
13 their Reply brief for reconsideration of that finding is untimely and improper and
14 should be rejected. The Court should recognize Ms. Ahern's dual role in this
15 litigation and that, in her role as beneficiary, she is not the intended wrongdoer
16 under NRS 153.031(3)(b). Her prior breach of duty was not cause of the fees
17 incurred in this good faith, positional disagreement between the beneficiaries and
18 should not give rise to a shift of attorneys' fees to her personally. Finally, the
19 untimely, \$83,000 fee request in the Sisters' Reply was improper and unsupported
20 by facts or law, and should be rejected.

21 DATED this 12th of May, 2015.

22
23 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

24 By: /s/ Tamara Beatty Peterson

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CERTIFICATE OF SERVICE

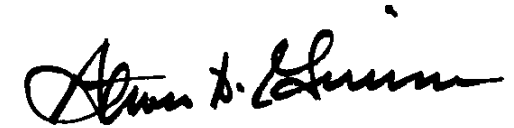
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **SUR-REPLY TO MONTOYA AND BOUVIER'S REPLY IN SUPPORT OF MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 12th day of May, 2015, to the following:

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER OF THE TRUST OF:
THE W.N. CONNELL AND MARJORIE
T. CONNELL LIVING TRUST, DATED
MAY 18, 1972

CASE NO. P-09-066425-T
DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE
WEDNESDAY, MAY 13, 2015

TRANSCRIPT OF PROCEEDINGS
MOTION FOR ATTORNEY FEES

APPEARANCES:

For Fredrick Waid:

RUSSELL GEIST, ESQ.
FREDERICK WAID, ESQ.

For Eleanor Ahern:

KIRK LENHARD, ESQ.
TAMMY PETERSON, ESQ.

For Kathryn Bouvier:

WHITNEY B. WARNICK, ESQ.

For Jacqueline Montoya:

JOSEPH J. POWELL, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

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Wednesday, May 13, 2015 at 10:12 a.m.

THE COURT: You're trapped, Mr. -- Mr. Lenhard, you're trapped.

MR. LENHARD: Maybe I'll just stay here.

THE COURT: See the back -- we can -- you're tall enough we can see you.

MR. LENHARD: Well I'd jump over the chairs, but I wouldn't be very totally appropriate. Excuse me. Excuse me guys.

MR. POWELL: Yeah.

THE COURT: Okay, will everybody state appearances for the record?

MR. WARNICK: Whitney Warnick on behalf of Kathryn Bouvier. Joey Powell's here on behalf of Jacqueline Montoya. Mrs. Montoya's present.

MR. GEIST: Russell Geist on behalf of Fred Waid, court-appointed trustee. Mr. Waid is also present.

THE COURT: Thank you.

MS. PETERSON: Tammy Peterson and Kirk Lenhard on behalf of the former trustee, Eleanor Ahern.

THE COURT: Okay. All right, this is a motion for attorney's fees and costs. I would just start out by saying that subsequent to ordering that the parties could seek reimbursement of costs, the Nevada Supreme Court came out with a decision, 131 Nevada Advance Opinion 15, *Cadle*, C-a-d-l-e, *Company versus Woods & Erickson, LLP* --

MR. LENHARD: Can you repeat that, Judge? I'm sorry, we're trying to get the cite.

THE COURT: *Cadle*, C-a-d-l-e, Caydle (phonetic), Caddle (phonetic), Caydle --

1 MR. LENHARD: Okay.

2 THE COURT: -- *Company versus Woods & Erickson, LLP*, 131 Nevada
3 Advance Opinion 15, which is in part a -- the last couple of pages of this case
4 address costs and specifically -- I think this was Judge -- Justice Gibbons -- no, it's
5 Justice Cherry. Costs must be reasonable, necessary and actually incurred. We
6 will reverse a District Court decision awarding costs if the District Court has abused
7 its discretion in so determining.

8 So we require now, under this, essentially a finding like medical bills,
9 reasonable, necessary and actually incurred. It's like the same standard. Costs
10 must be reasonable, necessary and actually incurred. So that's the level of proof
11 we need now for costs. Just an FYI so to the extent that there's a request for costs
12 here, we need some more supporting documentation for it because that's -- we got
13 to go to that level.

14 So we continue the costs for, you know, more evidence on costs. The
15 attorney's fees are a different issue, so -- I think we need actual -- a copy of every
16 single invoice. I mean, an affidavit telling us why you had to incur it, right down to
17 the -- right down to the photocopies. They go into a great deal of discussion about
18 photocopies in this decision, about needing to know that you really needed to make
19 that photocopy. You should read it.

20 MR. WARNICK: That's really interesting, Your Honor, but --

21 THE COURT: Yeah.

22 MR. WARNICK: -- there hasn't been any challenge as to the cost portion --

23 THE COURT: I know, but I can't award them because I'll be overturned.

24 MR. WARNICK: If it's appealed. That's correct.

25 THE COURT: Yes.

1 MR. WARNICK: But I'm sure that Supreme Court -- well I shouldn't say -- I'll
2 read that case I guess. It doesn't seem like they would be questioning costs such
3 as court filing fees and things of that nature --

4 THE COURT: Right, but we need some sort of like a memorandum of costs
5 or something that documents them.

6 MR. WARNICK: Because in both of my detailed billing statements and Mr.
7 Powell's detailed billing statements we've separately detailed all the costs.

8 THE COURT: I know.

9 MR. WARNICK: They've been spelled out. So Your Honor would like to
10 have just a little bit better verification of these costs where necessary for some
11 discretionary type of cost maybe, but for court expense we don't need to provide
12 some type of a -- of an -- I mean a receipt for that I don't believe.

13 THE COURT: I would suggest you read this decision.

14 MR. WARNICK: Okay. So at the present you want us now to --

15 THE COURT: It's really new. People don't know about it. It's --

16 MR. WARNICK: It's very interesting.

17 THE COURT: Yeah.

18 MR. WARNICK: I know it's not your fault, Your Honor, but --

19 THE COURT: No.

20 MR. WARNICK: -- it seems like the Court is creating --

21 THE COURT: They've become very concerned about costs and attorney's
22 fees.

23 MR. WARNICK: And it seems like they're making requirements that will end
24 up costing more to prove than the actual costs that were incurred.

25 THE COURT: Yeah. Exactly.

1 MR. WARNICK: So it's a very interesting -- we end up with our system here,
2 but I understand your position. So we should now just discuss the attorney's fees --

3 THE COURT: Yeah, we're just going to discuss attorney's fees for the
4 moment, please.

5 MR. WARNICK: Okay. As Your Court -- Your Honor will recall, the
6 entitlement to attorney's fees has already been determined by the Court. The Court
7 has determined that we're entitled to attorney's fees. We've previously submitted
8 the bases for that and that would be under Chapter 153, also under NRS Chapter
9 18, and we've also argued that the attorney's fees in this case are a matter of
10 damages that our clients have incurred. In the initial petition that we filed, we
11 specifically stated that a matter and an element of the damages in this case that
12 we're seeking would be the attorney's fees that have been incurred by our clients in
13 order to protect themselves in this litigation.

14 So there's been a determination that we're entitled to the fees. The
15 question now is we're here under the *Brunzell* factors to see if we can substantiate
16 the amount of fees that we're entitled to have so the Court has that information to
17 make that determination.

18 We respectfully submit that we have submitted more than adequate
19 information under *Brunzell*. We've provided very detailed billing statements for the
20 time that we spent. There's been no question and no challenge of any of those
21 time entries with respect to my fees and Mr. Powell's fees --

22 THE COURT: I think there are a couple issues. One is that there was
23 actually a settlement of the will contest and specifically \$75,000 was paid in
24 connection with the will contest and I know you make representation you just each
25 deducted a certain amount that adds up to \$75,000, but their position is that that's

1 not all the fees that were actually attributable to the will contest --

2 MR. WARNICK: Well --

3 THE COURT: -- and -- yeah, and also then the --

4 MR. WARNICK: -- they can argue that, but we've explicitly shown how we've
5 deducted whatever fees we feel were attributable to the will contest and they're not
6 included in our present application. I mean they can go back and argue that, you
7 know --

8 THE COURT: Okay, so your position is you've deducted all fees that would
9 have been related to the will contest --

10 MR. WARNICK: Absolutely, Your Honor. We made it very clear --

11 THE COURT: -- because very clearly they settled that and they said we will
12 not seek attorney's fees for the will contest when they settled with Mrs. Ahern.

13 MR. WARNICK: So that was all resolved and we're not trying to get double --

14 THE COURT: Okay.

15 MR. WARNICK: -- recovery here by any means and we've explained it very
16 clearly and our billing statements show that.

17 The other suggestion they made with respect to double billing is that
18 Mr. Powell and myself should have had more coordination, if you wish, or
19 something in our presentation, and I think, Your Honor, you've been through this
20 whole thing, you know that for the most part any brief and any pleadings that we've
21 been (sic) filed have been joined in by both Mr. Powell and myself. We haven't
22 both submitted separate pleadings and things. We've tried to conserve and not
23 duplicate efforts. I think we've done a good job in doing that.

24 Also under the *Brunzell* factors we've provided a good summary of all
25 the extensive litigation that's gone on in this case. And I respectfully submit that

1 this litigation hasn't been motivated by our clients, but all during these proceedings
2 it's been motivated by Eleanor and her efforts to cause expense and cause
3 financial bleeding to our clients to the point where they would just finally yield and
4 give us in this case.

5 As Your Honor may recall, at the initial filing of the petition in this case
6 and shortly thereafter, Mr. Powell asked the Court to dismiss Eleanor's claims
7 under the doctrine of laches. She was warned early very on (sic) that her claims --
8 regardless of any merits she might have delusionally felt she had to claim all of the
9 income, she was warned early on that she was -- had forfeited that right and she
10 didn't have any right to make that claim. And yet when this case came before the
11 Court in February in an effort to resolve it summarily and quickly, Eleanor asked for
12 more time. She said she wanted to file counterclaims, she wanted to file other
13 matters, and so the Court granted her wishes and continued the case until the
14 summer of last year.

15 THE COURT: That was not her wish. I mean everybody was here ready to
16 go forward. She had just filed these counterclaims the --

17 MR. WARNICK: Correct.

18 THE COURT: - like --

19 MR. WARNICK: And then in the summer we were ready to resolve the
20 case --

21 THE COURT: -- the day before.

22 MR. WARNICK: -- and she says well wait a minute, let's hold this case up
23 because I want to resolve the will contest case first. And so we had delayed again
24 and then because this -- it was costing so much to our clients, she really almost
25 succeeded in her efforts to bleed them dry because of settlement negotiations that

1 went on in October where she succeeded -- her attorney succeeded in actually
2 negotiating a settlement that was very favorable to her; granted her much more
3 than she was legally entitled to, granted her relief from fees and other things.

4 And what did she do? She rejected that and again she caused delay
5 and more expense in this case and Your Honor warned her at that time that hey,
6 you might be getting yourself into very serious trouble by doing this.

7 And Your Honor has pointed out that all during this proceeding she's
8 had top notch legal counsel representing her but she has been unwilling to listen
9 and follow their advice. We're certain that from the very beginning of this case her
10 qualified and top notch counsel told her your claims are likely not admissible or
11 considered because under the doctrine of laches you just have not submitted them
12 timely. We believe she early on knew that that was the case in this matter and that
13 she has litigated in this case and caused all these expenses frivolously, vexatiously
14 and in an effort to harass our clients into trying to force them into a settlement that
15 she wanted even though she was not entitled to the same under the merits of the
16 case or under the doctrine of laches.

17 So I believe, Your Honor, that we've submitted a good basis for all the
18 fees that we've requested. Mr. Powell and I have requested \$417,000 in fees and
19 costs, most of those being for fees. I -- and we've provided detailed billing
20 statements to justify that. Our hourly rate is well within the median charged,
21 probably below the median charged by attorneys now. We have extensive
22 expertise and experience in this area of trust law and this litigation, and so we've
23 met all the *Brunzell* factors and of course the last factor is that we were successful
24 in the case.

25 When the Court now has the big picture of what really took place in this

1 case, it's evident that Eleanor has done several things. First of all, she's breached
2 her duties as trustee under duties of loyalty to our clients in the way that she went
3 forward in this case and tried to make claim to her hundred percent of the income.
4 Secondly, now we know she has converted -- and that's potentially a criminal crime.
5 She's converted admittedly her own self to the Trustee, Mr. Waid, over \$800,000 of
6 trust monies and we believe it's even more than that once the final accounting
7 comes out and we determine all of the income that she should have reported for the
8 years that she was serving as trustee.

9 And she's misrepresented to the Court, blatantly misrepresented facts
10 to the Court. She's disobeyed court orders. She's in breach and violated the order
11 to show cause as Mr. Waid pointed out in his affidavit recently filed.

12 So all during these proceedings she's engaged in frivolous, vexatious,
13 harassing litigation without any reasonable basis to believe that she could have any
14 success in this case. She knew from the very beginning that the doctrine of laches
15 would prevent her from even presenting any merits of her belief and we showed
16 clearly that the merits of the case -- she had no facts to justify how she could argue
17 that the determination for the division of the income under the trust was made
18 incorrectly at the time that Mr. Connell died.

19 So we have to conclude, Your Honor, that during this litigation she has
20 litigated frivolously and vexatiously and she hasn't litigated in good faith. If she had
21 some delusional belief way back before she started this that she had some right to
22 all of the income, so be it. But her conduct during the previous 34 years didn't
23 evidence that.

24 In her divorce from her former husband, Mr. Hartman, as the Court
25 may recall, she admitted she was only entitled to 35 percent of the income. In her

1 estate planning with her own attorney she admitted she was only entitled to 35
2 percent of the income, and when Mrs. Marjorie Connell died in 2009, she admitted
3 and acknowledged that the 65 percent share of the income that our clients have
4 really belonged to them and was included in Ms. Connell's own probate estate
5 taxes -- federal estate taxes that were paid.

6 So even though she claimed she had this delusional belief at one time
7 that she was entitled to a hundred percent of all the income, the facts show that that
8 must have been something that she just developed in 2012 because certainly
9 wasn't borne out during the 34 prior years and certainly even if she had that
10 delusional belief at the initial starting of this litigation, she learned very quickly that
11 she had no basis for that belief in fact and in law and in equity. And therefore, all
12 the litigation that she's engaged in, in this case has been vexatious, harassing and
13 frivolous and it's caused our clients a considerable amount of fees and costs that
14 they should be reimbursed for now in order to make them -- it won't make them
15 whole, but it'll certainly help to satisfy some of the damages that they have cost.

16 Now they've --

17 THE COURT: So is Mr. Powell going to address his fees separately and
18 then who's going to address the Texas fees?

19 MR. WARNICK: The Texas fees they've objected to because they weren't
20 incurred specifically in this litigation. And we understand their argument in that
21 case --

22 THE COURT: Well they also weren't in the initial petition. They were in the
23 reply.

24 MR. WARNICK: But under the theory of special damages which we did
25 allege in our original petition, these are damages that our clients have suffered by

1 Eleanor's conduct and what she did and the decision she made. And we've asked
2 in our initial petition that any damages that we have suffered as a result of her
3 conduct should be awarded and the Supreme Court -- Nevada Supreme Court has
4 said that we are entitled to claim special damages -- attorney's fees as special
5 damages in appropriate cases.

6 So we submit that the Texas fees of about \$82,000 and costs should
7 be included with our 417, 000 which we provided very clear justification for which
8 would bring the total up to about \$500,204.79. If you compare this amount with
9 what Eleanor herself has incurred during all of this litigation, I would respectfully
10 submit that that's probably one-half to one-third of what she has incurred during all
11 of this litigation which clearly points out the reasonableness of what we're asking for
12 now as reimbursement, Your Honor. Thank you.

13 THE COURT: Okay. Mr. Powell, were you going to separately address your
14 fees? They did raise a couple of challenges just to the rate and I think the --

15 MR. POWELL: I --

16 THE COURT: -- the fact that you did more work but you were involved --

17 MR. POWELL: I was involved in from --

18 THE COURT: -- many months before.

19 MR. POWELL: Yeah, I was involved from day one, Your Honor. As Mr.
20 Warnick has pointed out, he and I have worked hand in hand on this case to ensure
21 that we were not having a situation where the right hand didn't know what the left
22 hand was doing. Mr. Warnick has always represented Ms. Bouvier in this matter
23 and I've always represented Ms. Montoya in this matter. Ms. Montoya has done
24 this from a different position because she was also the trustee of the MTC living
25 trust which is the beneficiary of the 65 percent.

1 So, you know, the allegations that they've raised -- I don't know how to
2 address the allegations. If they want to attack my billable rate because I'm in my
3 twelfth year and supposedly I'm billing too high, I don't have a rebuttal for that other
4 than I know what counsel of similar experience in firms that I feel are similar firms
5 are billing.

6 And they pointed out, and I don't know what the point of it was, that Mr.
7 Warnick bills at a lower rate than I do. I can't address that. The only thing I can
8 raise is let's look at the way that professional sports work, let's look at the way that
9 entertainment works. With no disrespect to any attorney that has more experience
10 than I do, I feel like I'm on par with many attorneys. Many attorneys have more
11 experience than I do. The number of years doesn't necessarily make you a better
12 or worse attorney.

13 So I don't know what the backhanded slap effectively that that was,
14 was intended to be other than it appeared to me to be some sort of a criticism. I
15 don't know how I can respond to that. It is what it is. I am billed at a certain rate by
16 my firm. Clients accept that, clients reject that. I don't know what to say.

17 THE COURT: Okay.

18 MR. POWELL: I've never had a problem in probate court with any of my fees
19 at that rate being accepted --

20 THE COURT: So the rate's been approved by the commissioner
21 previously --

22 MR. POWELL: It's never once on -- not on one occasion in -- and again this
23 is my twelfth year. Not on one occasion has the probate court --

24 THE COURT: I think there may be a little bit confusion --

25 MR. POWELL: -- ever rejected my fee.

1 THE COURT: -- because you referenced the fact that your fee went up
2 midway through the -- but you remained at the same rate --

3 MR. POWELL: Correct, Your Honor.

4 THE COURT: -- in this case.

5 MR. POWELL: My billable rate at this point is \$375 an hour.

6 THE COURT: Right.

7 MR. POWELL: I have still charged the same rate, \$350 --

8 THE COURT: Through the whole litigation.

9 MR. POWELL: -- from the start of this litigation --

10 THE COURT: Okay.

11 MR. POWELL: -- which was September of '13 --

12 THE COURT: Got it. Okay. Thanks.

13 MR. POWELL: -- forward.

14 THE COURT: Okay.

15 MR. POWELL: Thank you, Your Honor.

16 THE COURT: All right.

17 MS. PETERSON: Thank you, Your Honor. I don't want to disagree with
18 everything counsel said because they did call us top notch lawyers I think
19 somewhere in there --

20 THE COURT: Absolutely.

21 MS. PETERSON: -- so --

22 THE COURT: I have a question about the first -- this is a motion for
23 attorney's fees which is just to the prevailing party and that's kind of my trouble with
24 Texas litigation. I'm not saying I don't think they may not have a damage claim for
25 the Texas fees. I'm just not sure this is the right motion for it. That was --

1 MS. PETERSON: Well, in -- and I think that's -- I think that's right, Your
2 Honor. I actually think that the motion itself --

3 THE COURT: Because I don't think you seek them under rule -- this is a
4 Chapter 18 motion for just attorney's fees and costs the prevailing party.

5 MS. PETERSON: Well it's actually the -- the order that you allowed before
6 was for the breach of fiduciary duty --

7 THE COURT: Right.

8 MS. PETERSON: -- and that was the distinction, so it's that statute that
9 allows fees for the breach of the fiduciary duty and -- and so yes, the first out of the
10 box concern we had was the Texas fees. Number one, that was a will contest in
11 Texas that most of those fees were incurred before this litigation even started so,
12 you know --

13 THE COURT: And I'm a little confused about the will contest. When the will
14 contest was settled, was it that one or was it the one here that was like at the
15 Supreme Court? I just got a little confused about that settlement for the will
16 contest --

17 MR. POWELL: Did you want us to address the --

18 MS. PETERSON: The \$75,000 --

19 THE COURT: Well, you can do it in --

20 MS. PETERSON: -- stipulation --

21 THE COURT: Right.

22 MS. PETERSON: -- was actually that will -- that contest where the --

23 THE COURT: The one here.

24 MS. PETERSON: -- we attached it to our opposition, that stipulation was
25 here in Clark County, Nevada, and so that was a stipulation that Eleanor herself

1 would be paid a collective total sum of \$75,000 in an exchange that the two -- Ms.
2 Montoya and Ms. Bouvier would waive any and all rights they would have to seek
3 the recovery of any additional legal expenses incurred in relation to the will contest.

4 So we have a couple issues here, Your Honor. We have this Texas
5 proceeding is completely unrelated to anything here. Then we have this -- these
6 fees in this case that I think what they're trying to say is that everything is somehow
7 related to the breach of fiduciary duty. Well that is really belied by the record. In
8 fact, the order on summary judgment did say it was a good faith dispute about the
9 interpretation of the trust that started this case. So if there are later on issues of
10 breach of fiduciary duty which the Court found, those particular fees need to be
11 parsed out in this request.

12 I have to say it was very difficult for us to look through the fee request
13 with an eye towards the *Brunzell* factors and just a couple things that I still am not
14 sure I understand. There's a -- the affidavit of Mr. Warnick had two different
15 numbers in his affidavit --

16 THE COURT: Yeah.

17 MS. PETERSON: -- so I'm not sure that -- that was very confusing. It said --
18 one number said that the number of fees that were incurred was 127,000.

19 THE COURT: Correct.

20 MS. PETERSON: The other paragraph said actually no, the total number of
21 fees that were incurred were 155,000. That internal inconsistency is really not a
22 good record for the Court.

23 The other problem is the bills that were attached -- from March 2014
24 on, they're all duplicated, the same entry, the same time value, and it says that he
25 was doing work for Ms. Bouvier and Ms. Montoya and I think what he was trying to

1 say is well since the work was being done for both of them, then we were dividing it,
2 but the problem is there then we have the issue of the duplication of services from
3 the Powell affidavit and we have no explanation of how that all worked.

4 So our difficulty here is we simply didn't see that we had enough to
5 truly evaluate the fees that were being requested. I think Your Honor needs to
6 have more information before it in terms of what is allocated to the actual breach of
7 fiduciary duty and more of a record in terms of what fees were reasonable and
8 necessary towards that breach. I would suggest that if you're going to ask for
9 additional proof on costs which I think -- based on what you said about the recent
10 Supreme Court case, I think you should, then I would suggest that you may want to
11 ask for some additional information on these fees as well because there's simply
12 not enough for you to award right now.

13 THE COURT: Okay. Well so I just -- I think that your point about the fact
14 that the Court did say there's a good faith -- she had a good faith belief that there
15 was -- that her interpretation of the trust was correct. However, what she did
16 inappropriately was just act on that without seeking Court approval. She just cut
17 the daughters off without seeking Court approval when they'd already been
18 receiving the money for several years. So that really kind of goes more to the will --
19 to the no contest clause that, you know, she isn't necessarily deprived of her own
20 rights under the trust by what she did because she thought she was doing the right
21 thing, but she did it wrongly and in a role as a trustee, so therefore that's a breach
22 of fiduciary duty.

23 So I'm not sure that that necessarily means that they wouldn't be able
24 to recover their fees because that act kind of triggered this whole thing, the -- she
25 was their trustee and she cut off the funds without any kind of approval, so I really

1 think that the terminology in there that, you know, she believed in good faith that
2 she was interpreting this correctly was really just intended to -- that nobody was
3 trying to cut of her off under the no contest clause. That was never -- it wasn't
4 sought by her daughters. Nobody claimed that she didn't really believe this.

5 So the no contest clause would not operate to deprive her of her rights,
6 but it did -- nevertheless since she was in the capacity as a trustee, did trigger this
7 litigation and so everything that flows from her act, you know, it seems to me -- and
8 she was warned more than once that she's taken dangerous path here if it was
9 ultimately determined, you know, that she wasn't going to be successful in her
10 interpretation so that's kind of my problem with that is that I do think that it's related.

11 I have a concern about the Texas fees. I understand Mr. Warnick's
12 argument that it's all part of their damages, but that predates her cutting them off.
13 So that -- that's really for me the thing that I look at as what controls or what
14 triggers when they're entitled to start getting their attorney's fees. She cut them off
15 and they had to start this odyssey.

16 So I think it all relates to that act, so I think they're entitled to attorney's
17 fees based on that. I just can't see the Texas fees coming into that request. They
18 -- and I guess the only other concern I had was if there was some view that some of
19 what they were doing here -- and I wasn't clear if that was really a concern. Some
20 of what they were doing -- not just the will contest, but some of what they were
21 doing would have been what they would have been doing anyway just as
22 beneficiaries under the trust if they needed and particularly Ms. Montoya who had
23 the role as, you know, as the -- her grandmother's successor trustee; that some of
24 this would have been just normal duties that they would have incurred anyway and I
25 just didn't see with anybody parsed out that.

1 I mean is it's -- I guess it's your position that it was all litigation, that it
2 was none of it was advising them in their -- I guess the problem is with this Texas
3 stuff that with their oil and gas attorneys down in Texas; some interactions that we
4 had to -- you know, what were necessary with the oil and gas guys.

5 So I guess those were just some of the concerns that I had. But I did --
6 we did note the sort of some confusion about how -- exactly how much Albright
7 Stoddard were seeking and then I -- Mr. Geist, you had a --

8 MR. GEIST: If I may --

9 THE COURT: -- wish to be heard?

10 MR. GEIST: -- just a brief reply, Your Honor. It's not our fight on the legal
11 fees obviously --

12 THE COURT: Right.

13 MR. GEIST: -- as trustee of the trust -- court appointed. But we would ask
14 that the Court would possibly reserve an allocation of attorney's fees or an order
15 requiring payment by Ms. Ahern, if the Court's so inclined, till after Mr. Waid has
16 completed his investigation and he can report back to the Court on what he has
17 found about the trust administration and assets thereof and try and gather and
18 recoup -- recover those.

19 Just to give you a flavor of why that is, Mr. Waid was recently down in
20 Midland, Texas, to try and get some of those documents that were addressed at the
21 last hearing before Your Honor. We're still finding that Ms. Ahern and counsel in
22 Texas, Mr. Johnston, continues to be uncooperative in turning over those records
23 that were ordered to be due -- to be turned over on April 20th. We provided
24 counsel for Ms. Ahern an authorization that we had shown in court.

25 THE COURT: Right.

1 MR. GEIST: Very simple, just you know, authorizing Mr. Johnston to do so.
2 We have received back a signed authorization that has been revised with what we
3 feel are inappropriate exclusions of what can be turned over.

4 We've also received requests that such documents be filtered through
5 Ms. Ahern's current counsel rather than turned over directly to the Trustee. We feel
6 that's just inappropriate and it continues to be the same pattern of what we've seen
7 and what we heard happened before. We just would like to, you know, remind all
8 parties that Mr. Waid's duties are not just investigative of what happened, but
9 also --

10 THE COURT: Sure.

11 MR. GEIST: -- prospective as Trustee --

12 THE COURT: Absolutely. He is Trustee for all of them. He's got to do
13 what's in all of their best interest and certainly, you know, this is an issue. I guess
14 the issue is though -- were you saying that because you believe that the fees would
15 be paid out of the trust? I understood what they were asking was that Mrs. Ahern
16 personally pay these fees.

17 MR. WARNICK: We coordinated this with Mr. Waid. I think his concern is, is
18 that in an effort to try to recover from Mrs. Ahern what is owed both to the trust and
19 to us, that we want to coordinate that and work together on it. I think that's what
20 he's pointing out. I don't think he's asking that the Court delay a determination of
21 the fees that we're entitled to --

22 MR. GEIST: Correct.

23 MR. WARNICK: -- just that the Court ask that we coordinate that to make
24 sure that we're working together as trustees and recovering -- because ultimately
25 whatever is recovered by Mr. Waid will come to our clients for the monies they're

1 owed --

2 THE COURT: Right.

3 MR. WARNICK: -- and so there's really not a conflict there --

4 THE COURT: But you're looking for this award to be against Mrs. Ahern
5 individually.

6 MR. WARNICK: Correct.

7 MR. GEIST: Right.

8 MR. WARNICK: We cannot --

9 THE COURT: Not against the trust.

10 MR. GEIST: Correct.

11 MR. WARNICK: Well --

12 THE COURT: I mean --

13 MR. WARNICK: And I could just address the --

14 THE COURT: -- she's -- that -- the --

15 MR. WARNICK: -- the concern they had about --

16 THE COURT: She gets her money from the trust, but --

17 MR. POWELL: Correct.

18 MR. WARNICK: The concern they had about my billing both Ms. Bouvier
19 and Ms. Montoya equal amounts, even though I'm representing Ms. Bouvier, Mr.
20 Powell has been representing Ms. Montoya, we agreed and the clients agreed that
21 they would each pay one-half of the overall fees and so --

22 THE COURT: I understand.

23 MR. WARNICK: -- we simply broke down the billing statements in that
24 manner to comply with our fee agreement. There's not been any double billing or
25 efforts to duplicate billing, and I still submit that all of that fees is reasonable. My

1 total fees and costs came to \$127,000. Compared with what I've seen billed in
2 numerous cases --

3 THE COURT: I understand. Well so I think that -- I have no problem with, as
4 I said, the fees themselves because I do think that even though, you know, we --
5 just to make it very clear that the finding that Mrs. Ahern had a good faith belief in
6 her interpretation of the trust means only that she should not be -- that the no
7 contest clause wouldn't operate to deprive her of any rights of her own.

8 Her action in unilaterally -- as trustee unilaterally cutting off her two
9 daughters when they had been receiving funds for a period of time triggered this
10 litigation. I can't say that it triggered anything having to do in Texas so I won't
11 consider the Texas fees, but with respect to the fees charged by both the firms --
12 Mr. Powell I think initiated this back in like September or October I think was the
13 first time we saw him. We were going to do a trial right away in February. That's
14 when Mr. Ahern (sic) came in. The whole thing blew up. I mean we had every one
15 of those attorneys from Texas sitting in this courtroom waiting to testify and the
16 whole thing fell apart.

17 So I'm -- the Court's well aware of the nature of this litigation and the
18 work performed by both parties. Sometimes there would be one petition,
19 sometimes they would jointly file a petition. Sometimes they both would take
20 positions on things and they would file separate responses, so I know that there --
21 how the work was being done. Clearly the result was, you know, what we had
22 cautioned all along. You know, the downside of this litigation was -- the ultimate
23 outcome was well advised to Mrs. Ahern throughout this course that she took.

24 So, you know, with respect to the respective billing fees, as has been
25 indicated, they've been approved previously in Clark County. I think that they're

1 reasonable fees to be charged by the respective firms. Mr. Warnick has just been
2 told he doesn't charge enough is all, so -- I'm going to approve the attorney's fees.

3 We do have a problem with the math, however, Mr. Warnick. As has
4 been pointed out by Ms. Peterson, it's -- there are two different numbers. The
5 127,633.70 was what was specifically requested. I don't know if that --

6 MR. WARNICK: That was the total amount including the will contest, and so
7 I subtracted from the --

8 THE COURT: No. No. No, because what you actually requested was more
9 -- was 155, so the affidavit has two different numbers in it and that's the problem
10 that we have is figuring exactly what you're asking to be awarded to your firm. I
11 think -- let me see where's this page?

12 MR. WARNICK: Let's see here.

13 THE COURT: One hundred sixty-six thirty-three seventy was the total
14 amount that your fee -- your firm billed. I don't know if that's inclusive of costs.
15 Minus 33,000 which was the will contest. Incurred a net amount of 127,633.70.

16 MR. WARNICK: Oh, I think I see what you're -- there was 160 in one part
17 and 157 in another point? I think that's -- is that what you're referring to?

18 MR. POWELL: It's there --

19 MR. WARNICK: Yeah.

20 MR. POWELL: -- and there.

21 MR. WARNICK: The thing -- if you look that -- that 155 is the fees and 5,000
22 is the cost and that's how you get to the 160,000.

23 THE COURT: Okay.

24 MS. PETERSON: Your Honor --

25 MR. POWELL: And then 127 --

1 MR. WARNICK: One twenty --

2 MR. POWELL: -- is the total deducting the 33 for the will context.

3 MR. WARNICK: Right.

4 THE COURT: Right.

5 MS. PETERSON: I'm not sure about that number though because the
6 invoices subtotal all the costs all the way through --

7 THE COURT: Yeah.

8 MS. PETERSON: -- so it does seem that the total includes costs so if --

9 THE COURT: Right.

10 MS. PETERSON: -- you're trying to back those out then --

11 THE COURT: Yeah, so we -- as I said, well I -- yeah, I think there's -- they're
12 entitled to costs, it's just that I don't have sufficient --

13 MR. WARNICK: Well we understand that 5,000 is in question because that's
14 the costs --

15 THE COURT: Right.

16 MR. WARNICK: -- and we're not --

17 THE COURT: So --

18 MR. WARNICK: -- had (sic) that right now but that's --

19 THE COURT: -- we -- but we back out any costs and award the net figure of
20 the one -- see, 127,633.70 less costs is what would be awarded.

21 MR. WARNICK: Correct.

22 THE COURT: Okay. So we -- I'm not saying you're not getting your costs,
23 I'm simply saying that under this new case, we have to have -- we have to do a
24 different way of doing costs going forward.

25 So the 127,633.70 would be awarded. With respect to Mr. Powell's

1 fees, 290,221.86, he was involved in this thing almost a year longer, so not
2 unreasonable. So I'll award those -- that amount of costs as to Mrs. Ahern.

3 MS. PETERSON: And that will also --

4 THE COURT: What's the language that we're going to put in there?

5 MS. PETERSON: And just to be clear though, Your Honor, that would also
6 be minus the cost --

7 THE COURT: Oh, thank you.

8 MS. PETERSON: -- whatever that number is.

9 THE COURT: Yeah, we'd have to back out the costs. I'm not saying they're
10 not awarded costs, simply we need a different level of proof for costs now. What's
11 the language that you want with respect to this is not like payable immediately, this
12 is --

13 MR. WARNICK: I think what the Trustee would like is in the order will you
14 put in there that in pursuing Mrs. Ahern for recovery of these fees, we will
15 coordinate with the Trustee to not duplicate collection efforts and such a nature to
16 make sure that there's not a duplication of efforts? I don't know what else
17 because --

18 THE COURT: Whatever language you're going to put in there to effectuate
19 what Mr. Waid's concerned about because --

20 MR. WARNICK: I'm sorry, I --

21 THE COURT: I just -- I didn't know if that was his concern was just the
22 duplication of effort or what we were --

23 MR. GEIST: Well part --

24 THE COURT: -- trying to avoid with that --

25 MR. GEIST: -- part of the issue is, Your Honor, again, we don't have all of

1 the records of --

2 THE COURT: Right.

3 MR. GEIST: -- what has happened, what commingling may have taken
4 place --

5 THE COURT: Right.

6 MR. GEIST: -- that we believe may have taken -- and so it has been brought
7 up before by Ms. Ahern's attorneys that if there is a judgment against her for
8 attorney's fees, that could be --

9 THE COURT: Yeah.

10 MR. GEIST: -- satisfied out of any future distributions on her share. Well --

11 THE COURT: Yeah.

12 MR. GEIST: -- she may not have future distributions for a number of, you
13 know, periods because of --

14 THE COURT: Yeah.

15 MR. GEIST: -- what has happened on other issues.

16 THE COURT: Yeah. Yeah.

17 MR. GEIST: So --

18 THE COURT: Okay.

19 MR. GEIST: -- until we can come --

20 MR. LENHARD: Aren't we getting ahead of ourselves here just a little bit?

21 THE COURT: Yeah --

22 MR. LENHARD: Seems like we're rendering --

23 MR. GEIST: Well but that --

24 MR. LENHARD: -- a judgment --

25 MR. GEIST: But --

1 MR. LENHARD: -- prior to a hearing on it.

2 THE COURT: Right, so --

3 MR. LENHARD: You know, I keep hearing wonderful numbers out here --

4 THE COURT: Right.

5 MR. LENHARD: -- and we're making assumption Mr. -- Ms. Ahern won't

6 receive any money for an extended period of time.

7 THE COURT: Right.

8 MR. LENHARD: I think we're way ahead of ourselves.

9 THE COURT: So that's what I'm saying is we've got this award, but I -- as I

10 understood what the -- the Trustee was concerned that if they had this judgment for

11 attorney's fees, that they, in acting on trying to collect it, would interfere in his

12 obligation to gather all the money for everybody's benefit. I mean it's all going into

13 one pocket I guess eventually, but --

14 MR. POWELL: Well that's --

15 THE COURT: -- you know, that's the problem that he's facing is that he's

16 working to recover money for everybody.

17 MR. LENHARD: Don't they need to work that out among themselves?

18 THE COURT: Yes, I -- that's my question is --

19 MR. WARNICK: And that's what I was suggesting, Your Honor.

20 THE COURT: -- you're not going to put --

21 MR. LENHARD: Yeah.

22 THE COURT: -- anything in the order. Okay, fine.

23 MR. WARNICK: That's what I was suggesting. I think --

24 THE COURT: Okay --

25 MR. LENHARD: And obviously any order should be --

1 THE COURT: Okay.

2 MR. LENHARD: -- run by us --

3 THE COURT: Absolutely.

4 MR. LENHARD: -- correct?

5 THE COURT: Absolutely. And then finally one final thing is I -- counsel, I'm
6 sure you've seen Mr. Waid's affidavit? This is the issue that Ms. Peterson raised at
7 our previous hearing that if you're seeking contempt of a court order outside the
8 presence of the court, there's a statutory process that has to go forward. We have
9 to have that affidavit to trigger it. We didn't have that affidavit at the last hearing.
10 Now I need to do an order based on the affidavit so we probably need another
11 hearing so that if we're going to --

12 MR. LENHARD: I think that's true.

13 THE COURT: -- if we're going to refer this to Judge Gonzalez as the -- not
14 only the backup probate judge but also the supervising -- the -- what is she called,
15 presiding judge of the civil division, she's the one who would have to find somebody
16 to hear that. And so we need -- now that we've got the affidavit, Mr. Waid being
17 reluctant and we understand feeling awkward in his position as a trustee for
18 everybody in having to do that affidavit, but we need that affidavit if we're going to
19 proceed and -- so we had to have it.

20 MR. LENHARD: Well --

21 THE COURT: We've got it now and we -- but we need a hearing.

22 MR. LENHARD: Well we obviously do because we have some problems --

23 THE COURT: And that's not the hearing on the contempt, it's just a
24 hearing --

25 MR. LENHARD: Hearing to --

1 THE COURT: -- saying --

2 MR. LENHARD: -- determine if you're going to --

3 THE COURT: -- I find they're sufficient to refer it.

4 MR. LENHARD: And at that hearing we'll have an opportunity to present --

5 THE COURT: Yeah.

6 MR. LENHARD: -- what we've done --

7 THE COURT: Exactly.

8 MR. LENHARD: -- to attempt to satisfy Mr. Waid, I assume.

9 THE COURT: Exactly.

10 MR. LENHARD: All right.

11 THE COURT: So we need a hearing on that and -- that first week of June.

12 [Colloquy between the Court and the Clerk]

13 THE COURT: How much time do you think you need, Mr. Lenhard and Mr.
14 Waid? I -- because we could put this on, on June 10th, but rather than put it on --

15 MR. LENHARD: I -- Judge, I hate to say this, I'm out of the country the 10th
16 through the 14th.

17 THE COURT: Okay.

18 MR. LENHARD: Can do it the 9th, the 8th.

19 [Colloquy between the Court and the Clerk]

20 MR. LENHARD: Or the 16th is fine.

21 MR. WARNICK: You're talking about June?

22 MR. LENHARD: Yeah, she's talking June.

23 THE COURT: Yeah, because we're all the way into the -- we -- next time I'd
24 be available would be like the week of the 22nd.

25 [Colloquy between the Court and the Clerk]

1 THE COURT: And the only other time then is going before that --

2 [Colloquy between the Court and the Clerk]

3 MR. GEIST: Mr. Waid is not available the week after Memorial Day.

4 THE COURT: Pardon?

5 MR. GEIST: Mr. Waid is not available the week after --

6 THE COURT: Okay.

7 MR. GEIST: Oh, the week of Memorial Day, sorry.

8 THE COURT: Yeah.

9 MR. GEIST: But the week after?

10 THE COURT: So we wouldn't be available that -- so it's not the week of the
11 -- the week of the 25th is out.

12 Mr. Lenhard, the week of the -- I'm in the wrong place. Yeah, then
13 we're looking really at like the 22nd of June is probably the first day.

14 MR. LENHARD: That gives us time to try to keep working with Mr. Waid --

15 THE COURT: Okay.

16 MR. LENHARD: -- whether successfully or unsuccessfully.

17 THE COURT: Okay. So the -- on the 22nd -- 22nd, 23rd or 24th in the
18 afternoon.

19 MS. PETERSON: Your Honor, I'm in Denver on the 24th. Could we do the
20 22nd or the 23rd?

21 THE COURT: Gentlemen?

22 MR. LENHARD: Or you're stuck with me without her, which is never --

23 THE COURT: Yeah.

24 MR. LENHARD: -- a good thing.

25 MR. POWELL: Are we talking May or June?

1 MS. PETERSON: June.
2 THE COURT: June.
3 MR. WARNICK: June 22nd is it?
4 THE CLERK: That's a Monday.
5 MR. WARNICK: At what time?
6 THE COURT: June 22nd or June 23rd.
7 MR. POWELL: I can do either.
8 THE COURT: Okay. All right.
9 MR. LENHARD: Thank you, Judge.
10 MR. POWELL: Well --
11 THE COURT: Which is preferred, Monday or Tuesday?
12 MS. PETERSON: The 22nd, Monday.
13 THE COURT: Monday. Okay. Okay, June -- okay, so just, you know, take a
14 look at the contempt statute. We have to follow that statute. We've now got -- the
15 affidavit is what triggers it. I have to have a hearing based on the affidavit saying I
16 have enough information to refer it for a contempt hearing. Then Judge Gonzalez
17 takes that order and she finds somebody to do the contempt hearing.
18 MR. GEIST: Your Honor, in the interim are we --
19 THE COURT: It's complicated.
20 MR. GEIST: -- able to depose --
21 THE COURT: That's what Mr. Lenhard said is that their goal would be to
22 continue to work with you and who knows, maybe the whole thing's resolved by
23 then.
24 MR. GEIST: Hopefully.
25 THE COURT: Yeah.

1 MR. GEIST: In the interim are we able to depose Ms. Ahern, get her on the
2 record --

3 THE COURT: Talk to Mr. Lenhard and see what you want to do. We're
4 giving you, you know, the afternoon to see whatever you're going to put on.

5 MR. LENHARD: Thank you, Judge.

6 THE COURT: And I'm sure that Mr. Lenhard will work with you to see what
7 you can do in the interim.

8 THE CLERK: 1:30?

9 THE COURT: Mr. Powell.

10 MR. POWELL: I have an issue that I think is -- it's a huge issue to our
11 clients, it's a huge issue to me too at this point. Based on Mr. Waid's affidavit,
12 there's minimally \$500,000 missing from that 2.660 which would be -- represent our
13 clients' share of the 65 percent. Ms. Ahern has also made a declaration to Mr.
14 Waid of owing over \$800,000 of owing the trust. How is Ms. Ahern at this point
15 owing money to the trust who -- how is her counsel getting paid, because if that's
16 with our clients' funds, that's absurd.

17 MR. LENHARD: You know what? I keep hearing this.

18 MR. POWELL: Where is the money?

19 MR. LENHARD: If they have a motion they want to file where we --

20 THE COURT: Right.

21 MR. LENHARD: -- got our money, file the motion and we will explain where
22 we got the money.

23 THE COURT: Right. Okay.

24 MR. LENHARD: This is not before the Court --

25 THE COURT: Correct.

1 MR. LENHARD: -- properly and I object.

2 THE COURT: I think that's probably true. We have all these issues. If you
3 got -- want to get something on calendar, by that time we've got a hearing date, so
4 whatever you want to get on calendar for that day we'll do.

5 MR. POWELL: So throw the kitchen sink basically on the 22nd --

6 MR. LENHARD: If you think it's appropriate to do a motion, you can certainly
7 do a motion.

8 MR. POWELL: Okay.

9 MR. WARNICK: Be helpful if they would voluntarily provide that information
10 save the --

11 MS. PETERSON: Oh please.

12 MR. LENHARD: Come on.

13 THE COURT: Yeah. Yeah -- okay.

14 MR. WARNICK: -- to save the cost --

15 THE COURT: We'll see you guys.

16 MR. WARNICK: -- of the motion and --

17 THE COURT: No, we'll see you guys back here then in June.

18 MR. WARNICK: Okay.

19 THE COURT: Good luck in the interim. Find all the money and it's all moot.

20 ...

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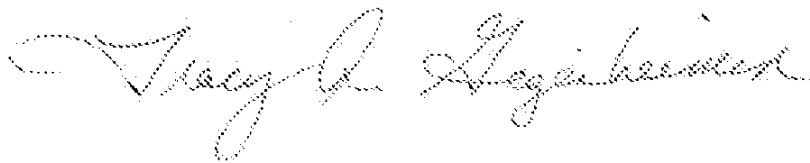
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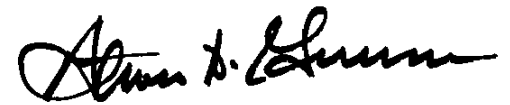
THE CLERK: 1:30, right?
MR. GEIST: Thank you, Your Honor.
THE COURT: 1:30. Thank you.

[Proceedings concluded at 10:55 a.m.]

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



Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber



CLERK OF THE COURT

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13 *Attorneys for Eleanor Connell Hartman Ahern*

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

16 In the Matter of THE W.N.
17 CONNELL AND MARJORIE T.
18 CONNELL LIVING TRUST
19 DATED May 18, 1972, An Inter
20 Vivos Irrevocable Trust

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

NOTICE OF APPEAL

21 Notice is hereby given that Eleanor C. Ahern, a/k/a Eleanor Connell Hartman
22 Ahern ("Ms. Ahern"), as beneficiary and as trustee of The W.N. Connell and
23 Marjorie T. Connell Living Trust dated May 18, 1972 (the "Trust"), by and through
24 her counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP,
25 hereby respectfully appeals to the Supreme Court of Nevada from this Court's
26 *Summary Judgment* order which was filed on April 16, 2015, and entered on April
27 17, 2015 (the "Summary Judgment Order"), and from this Court's *Order Regarding*
28 *The Accounting, Breach of Fiduciary Duty Claims and Award of Attorneys' Fees*
filed and entered on April 20, 2015 (the "Attorney Fee Order") (collectively, the
Summary Judgment Order and Attorney Fee Order are hereinafter referred to as the
"Orders"), as well as orders, rulings or decisions relating thereto, and any other

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1 order or decision made appealable by entry of the Orders. A copy of the Notice of
2 Entry of the Summary Judgment Order is attached hereto as Exhibit 1. A copy of
3 the Notice of Entry of the Attorney Fee Order is attached hereto as Exhibit 2.

4 DATED this 18th day of May, 2015.

6 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

7 By: /s/ Tamara Beatty Peterson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 18th day of May, 2015, to the following:

TODD L. MOODY, ESQ.
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HUTCHISON & STEFFEN, LLC
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*Attorneys for Fredrick P. Waid,
Court-appointed Trustee*

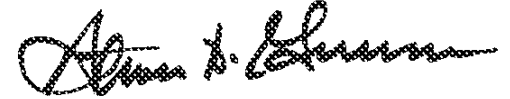
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Attorneys for Jacqueline M. Montoya

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

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

1 **NEOJ**
2 JOSEPH J. POWELL
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18 gma@albrightstoddard.com
19 Attorneys for Kathryn A. Bouvier

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

17 In the Matter of the

18 **THE W. N. CONNELL and MARJORIE**
19 **T. CONNELL LIVING TRUST**, dated
20 May 18, 1972,

21 A non-testamentary trust.

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

22 **NOTICE OF ENTRY OF**
23 **ORDER ON SUMMARY JUDGMENT**

24 NOTICE IS HEREBY GIVEN THAT:

25 The "Order On Summary Judgment" was entered April 15, 2015 and filed
26
27
28

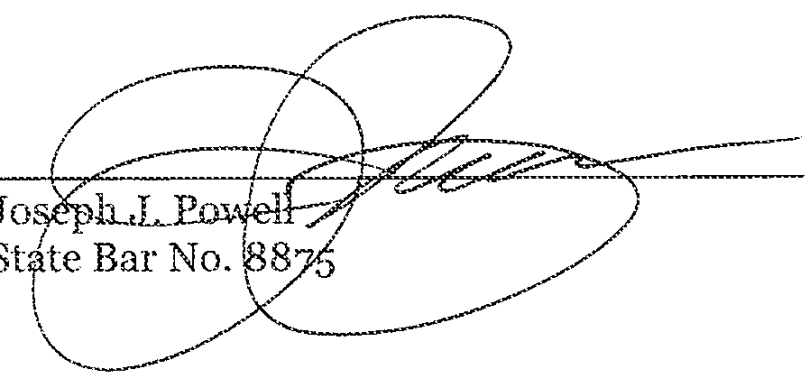
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April 16, 2015 in the above entitled matter, a copy of which is attached hereto.

Respectfully submitted by:


Joseph L. Powell
State Bar No. 8875

Date

4/17/15

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Certificate of Mailing

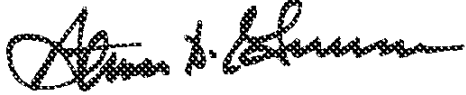
I, the undersigned, hereby certify that on April 17, 2015, I mailed a copy of the
"Notice of Entry of Order On Summary Judgment" that has been filed in this proceeding,
to each person named below by first-class mail, addressed as follows:

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Attorney for Kathryn A. Bouvier

Jacqueline M. Montoya
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Las Vegas, NV 89108


An employee of,
THE RUSHFORTH FIRM, LTD.



CLERK OF THE COURT

1 JUDGE

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Attorneys for Kathryn A. Bouvier

11
12 DISTRICT COURT
CLARK COUNTY, NEVADA

13 In the Matter of

14 THE W. N. CONNELL AND MARJORIE

15 T. CONNELL LIVING TRUST, Dated

16 May 18, 1972,

CASE NO. P-09-066425

DEPT NO. XXVI (26)

Date of Hearing: January 30, 2015

Time of Hearing: 10:00a.m.

17 An Inter Vivos Irrevocable Trust.

18
19 SUMMARY JUDGMENT

20 The current proceedings were commenced with the filing on September 27,
21 2013, of a PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED
22 INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E),
23 AND NRS 164.033(1)(A). This Petition was filed by Jacqueline M. Montoya
24 ("Jacqueline") as Trustee of the MTC Living Trust, and on her behalf and that of
25 Kathryn A. Bouvier ("Kathryn"), her sister, as beneficiaries under the MTC Living
26 Trust. During these proceedings several other Petitions, Motions, and Pleadings have
27 been filed by the parties, including those summarized in the chart attached hereto as
28 Exhibit "A".

On December 23, 2014, Jacqueline and Kathryn filed an 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. Thereafter, on January 2, 2015, Eleanor Connell Hartman Ahern ("Eleanor") filed an OMNIBUS OPPOSITION TO (1) PETITION FOR DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF LANGUAGE RELATING TO TRUST NO. 2, AND (2) PETITION FOR CONSTRUCTION EFFECT OF PROBATE COURT ORDER; AND COUNTERMOTION FOR SUMMARY JUDGMENT. The parties agreed at the hearing on January 30, 2015, that their above-denominated Countermotions for Summary Judgment, and the claims and defenses asserted therein, subsumed all of the prior Petitions, Motions and Pleadings, and their defenses and claims asserted therein, as well as those briefed and discussed in the further replies, oppositions and supplements to their Countermotions, ~~as listed on the chart attached hereto as Exhibit "A"~~ (other than Jacqueline's and Kathryn's Motion for Leave to Amend Pleadings filed herein on January 12, 2015). Therefore, it was agreed, and the Court recognized, that the parties' claims and defenses in these proceedings could be resolved summarily by the Court in its adjudication of the parties' said Countermotions for Summary Judgment.

After reviewing the Countermotions for Summary Judgment, and the presentation of argument for and rebuttal against the Countermotions by the parties, the Court finds as follows:

1. A proceeding involving the subject Trust was initially commenced in 2009 by Eleanor, as Trustee of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (herein referred to as the "Trust"), with an unopposed Petition to

1 obtain a Court order clarifying to whom subtrust benefits would be paid upon her
2 death. The Court assumed jurisdiction over the Trust, recognizing that Eleanor, as
3 Trustee, was a Nevada resident, and the Trust provisions provided that it would be
4 administered pursuant to Nevada law. The unopposed Petition was consented to by
5 Jacqueline and Kathryn as contingent beneficiaries of subtrust No. 2 under the Trust,
6 and the Court approved the Petition by Order filed herein on September 4, 2009.
7 Pursuant to the Order, the Trust was reformed to provide that Jacqueline and Kathryn
8 were designated as the beneficiaries under subtrust No. 2 upon the death of Eleanor,
9 which had not theretofore been clearly delineated in the Trust provisions. In addition,
10 Jacqueline was designated as the successor Trustee under the Trust upon the death or
11 removal of Eleanor as the Trustee.

12 2. When the Trust was created in 1972, community property of W.N. Connell
13 ("William") and Marjorie T. Connell ("Marjorie"), along with two parcels of William's
14 separate real property, were transferred to the Trust. One parcel of William's separate
15 property was located in Clark County, Nevada. The other parcel consisted of a parcel
16 of real property and oil, gas and mineral rights relating thereto, located in Upton
17 County, Texas (hereinafter "Texas oil property"). In 1975, William and Marjorie, as
18 Trustees, deeded the Clark County, Nevada, separate property from their Trust to
19 Eleanor, personally, it having a ^{declared} value at the time, based upon the transfer tax paid, of
20 approximately \$55,000.00.

21 3. The dispute in these Trust proceedings relates to the ownership of and
22 entitlement to income from the Texas oil property. At the time of William's death on
23 November 24, 1979, the Texas oil property was the only remaining separate property
24 of William which had been titled in the Trust. The Trust provisions created two
25 subtrusts upon the death of William in 1979 (referred to in the Trust as Trust No. 2 and
26 Trust No. 3, and hereinafter referred to as "subtrust 2" and "subtrust 3"). Income
27 allocated to subtrust 2 was payable to Eleanor during her lifetime. Marjorie was the
28 beneficiary of the income and assets under subtrust 3, including the right during her

lifetime, at her election, to receive the assets outright free of trust. She was also given the option of appointing the benefits under subtrust 3 in her Will to whomever she desired. If she failed to remove the assets from subtrust 3 during her lifetime, or to appoint them under her will, the benefits and assets under subtrust 3 would have devolved by default to Eleanor.

4. Under the Trust provisions, Article SECOND, Section C.3, subtrust 3 was to be funded with Marjorie's separate property, her share of the community property, and a portion of William's separate property. The portion of William's separate property to be allocated to subtrust 3 is determined by the provisions in Article THIRD of the Trust. These provisions state:

"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 . . . 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."

5. Federal and Texas Estate Tax Returns were filed for William's estate following his death. At the time of these proceedings, a copy of the Federal Estate Tax Return could not be located, even the IRS no longer maintaining a copy thereof. However, a copy of William's Texas Estate Tax Return, and a copy of the Closing Letter for his Federal Estate Tax Return were available. The Texas Estate Tax Return basically duplicated the information provided on the Federal Estate Tax Return, thereby providing how William's estate was allocated and distributed on the Federal Estate Tax Return. Daniel T. Gerety, CPA, an expert witness for Jacqueline and Kathryn, also verified in his Report that the Texas Estate Tax Return used the property allocations made on the Federal Estate Tax Return, and that the two Returns were consistent.

6. Under these two Estate Tax Returns, a 64.493% interest in the Texas oil property was allocated to Marjorie, the beneficiary under subtrust 3, and the remaining 35.507% interest in the Texas oil property was allocated to Eleanor, the beneficiary under subtrust 2. Further, as provided under Article THIRD, quoted above, this

1 allocation of interests in the Texas oil property determined the allocation of interests
2 in that property between subtrust 2 and subtrust 3 under the Trust. For purposes of
3 convenience, the interests in the Texas oil property are rounded to 65% and 35%. The
4 title to the Texas oil property has remained in the main Trust to the present day.

5 7. Upon William's death, Marjorie became the sole acting Trustee for the
6 main Trust, and the subtrusts thereunder. Pursuant to Article SECOND, Section C.6
7 of the Trust, and shortly after William's death in 1980, Eleanor was appointed by
8 Marjorie to be the co-trustee with her over William's separate property remaining in
9 the Trust; that is, over the Texas oil property which had been allocated between
10 subtrust 2 and subtrust 3. A copy of Eleanor's appointment as co-trustee, along with
11 a copy of the Trust, was recorded with the Upton County Texas Recorder's Office.

12 8. Thereafter, Marjorie sent letters to the oil companies with whom the Trust
13 had leases, advising them of William's death and that she and Eleanor were co-trustees
14 over the Texas oil property owned by the Trust. She directed that all further documents
15 which needed to be signed with the oil companies thereafter recognize the need for her
16 and Eleanor's signature.

17 9. From the time of William's death and the allocation of interests in the
18 Texas oil property between subtrust 2 and subtrust 3, until Marjorie's death on May 1,
19 2009, Eleanor was paid 35% of the Texas oil property income and Marjorie was paid
20 the remaining 65% of the income. Each was allocated a K-1 showing her receipt of her
21 share of the income, and each included the income in her annual Federal Income Tax
22 Returns.

23 10. Prior to her death, on January 7, 2008, Marjorie executed her last Will
24 and Testament, wherein she exercised her Power of Appointment over the assets and
25 benefits under subtrust 3, appointing them to Jacqueline and Kathryn as beneficiaries
26 under her MTC Living Trust. Following Marjorie's death, Eleanor, Jacqueline and
27 Kathryn met with David Strauss, Esq, Marjorie's estate planning attorney. Mr. Strauss
28 had previously provided Eleanor with a copy of Marjorie's Will containing the exercise

1 of her Power of Appointment over subtrust 3. In their meeting, he discussed with them
2 Marjorie's exercise of the Power of Appointment transferring to Jacqueline and
3 Kathryn the rights and interests of Marjorie under subtrust 3 of the Trust, thereby
4 entitling Jacqueline and Kathryn to receive the approximate 65% share of income being
5 generated by the Texas oil property going forward.

6 11. No one expressed any objection to what Mr. Strauss had advised them.
7 Thereafter, in the filing of Marjorie's Federal Estate Tax Return, the value of the 65%
8 interest in the Texas oil property allocated to Marjorie under the Trust was included
9 within her Federal taxable estate and Estate Tax Return, increasing the value of her
10 estate to a taxable estate, requiring the payment of over \$140,000.00 in Federal Estate
11 taxes. Most of Marjorie's estate at the time of her death, through her MTC Living
12 Trust, went to Jacqueline and Kathryn in equal shares. However, in addition to several
13 smaller bequests to friends, Marjorie also bequeathed to Eleanor, through the MTC
14 Living Trust, the sum of \$300,000.00.

15 12. From the time of Marjorie's death until approximately June, 2013, the
16 income from the Texas oil property was allocated with Eleanor continuing to receive
17 a 35% share, and Jacqueline and Kathryn receiving the remaining 65% share. In June,
18 2013, Eleanor as the sole acting Trustee of the Trust, stopped further income
19 distributions to Jacqueline and Kathryn, asserting at that time that she was entitled to
20 100% of the income from the Texas oil property. This led to the filing by Jacqueline
21 on September 27, 2013, of the PETITION FOR DECLARATORY JUDGMENT
22 REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS
23 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A).

24 13. Prior to asserting her right to 100% of the income from the Texas oil
25 property in June, 2013, and the cutting off of any further income distributions from the
26 Trust to Jacqueline and Kathryn, Eleanor had never asserted a claim or right to more
27 than 35% of the Texas oil property income as the lifetime beneficiary to income under
28 subtrust 2. However, in her pleadings and documents filed in these proceedings, she

1 claims she was aware of an alleged mistake made in the allocation of the Texas oil
2 property between subtrust 2 and subtrust 3 shortly after the death of William in 1979.
3 However, rather than assert a claim to all of the income, or otherwise make a claim or
4 start a legal action, Eleanor testified that she decided to do nothing. At one point in
5 these proceedings she testified in her pleadings and documents filed that her inaction
6 was motivated by a fear that it would upset Marjorie if she made a claim to more than
7 a 35% interest. She also testified in these proceedings that her inaction was due to the
8 fact she was happy to allow Marjorie to have 65% of the Texas oil property income,
9 feeling she was being generous and helping to support her mother. She asserted the
10 same motivation of generosity as the basis for her allowing Jacqueline and Kathryn to
11 continue receiving a 65% share of the Texas oil property income following the death
12 of Marjorie in 2009, and until her stoppage of income distributions to them in June,
13 2013.

14 14. However, in 1983, as testified to by Robert Hartman in his affidavit, in the
15 course of Eleanor's divorce proceeding from him, her right to only 35% of the Texas
16 oil property income was asserted and relied upon by the Court in its division of
17 property and determination of his support rights and obligations to Eleanor and their
18 two children. Then, a few years later, as shown on an estate planning intake sheet,
19 when Eleanor met with her own estate planning attorney, she advised him that she was
20 only entitled to 35% of the Texas oil property income, and that Marjorie was the owner
21 of the remaining 65% interest.

22 15. Although Eleanor claims she was being generous in giving to Marjorie
23 65% of the Texas oil property income during the balance of Marjorie's life following
24 the death of William in 1979, Marjorie's communications and conduct supported her
25 belief that she owned the rights to 65% of the Texas oil property income as the
26 beneficiary under subtrust 3. This is confirmed in several memoranda/letters prepared
27 by Marjorie, and in the inclusion of the 65% interest in her taxable estate at the time
28 of her death.

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1 Eleanor's share of the income was always a 35% share and Marjorie, while she was
2 alive, always received the remaining 65% share. Following Marjorie's death, the 65%
3 share went to Jacqueline and Kathryn until the cessation of distributions by Eleanor in
4 June, 2013.

5 19. Eleanor also asserted that the Trust was a special Trust created to retain
6 the Texas oil property for the benefit of only William and his blood descendants.
7 However, since at the time of William's death, the only separate property of his that
8 remained in the Trust was the Texas oil property, pursuant to the Trust provisions, a
9 portion of that property had to be allocated to subtrust 3 in order to obtain the
10 maximum Marital Deduction for Federal Estate Tax savings. In following the Trust
11 provisions, the Texas oil property could not all be allocated to subtrust 2. Further,
12 whatever William's intent may have been when he and Marjorie first created the Trust
13 in 1972, by their deeding the Clark County, Nevada, separate property to Eleanor in
14 1975, William knew that the only remaining separate property of his in the Trust at the
15 time of his death would be the Texas oil property.

16 20. Lastly, in support of her position, Eleanor asserted that Jacqueline and
17 Kathryn acknowledged that she owned rights to all of the income from the Texas oil
18 property by their consents to and verifications of the 2009 Petition Eleanor filed to
19 clarify ownership of subtrust 2 upon her death. Eleanor asserted that in this Petition
20 there are statements averring that she owned the rights to all of the Texas oil property
21 income. However, the Petition's language can also be read as asserting that Eleanor's
22 right to income from the Texas oil property only refers to her 35% interest. More
23 significantly, the 2009 Petition was not filed to clarify rights to the Texas oil property
24 income. Rather, it was a consentient Petition with the purpose only of clarifying
25 entitlement to the benefits of subtrust 2 upon Eleanor's death, and to designate a
26 successor Trustee for the Trust upon her death.

27 21. Based upon the foregoing undisputed facts presented to the Court with the
28 Affidavits and documentary evidence submitted by the parties with their

1 Countermotions and briefs, and from the argument of counsel at the hearing, the Court
2 finds that Eleanor's interest in the Texas oil property income, as the beneficiary under
3 subtrust 2 of the Trust, is limited to a 35% share, and her claim to all of the income is
4 not supported in any way by the facts in this case. The remaining 65% share belongs
5 to subtrust 3 and Jacqueline and Kathryn, equally, as the beneficiaries under the MTC
6 Living Trust, as bequeathed and appointed to them by Marjorie in her Will. While title
7 to the Texas oil property remains titled in the main Trust, in the event a division of the
8 title now needs to be made between the two subtrusts, such division should be made
9 as recognized in the Trust administration, with the filing of William's Estate Tax
10 Returns, and the allocation between the subtrusts resulting therefrom, with a 35%
11 interest being deeded to subtrust 2, and a 65% interest being deeded to subtrust 3 (and
12 thereafter said 65% interest being deeded to the MTC Living Trust, with Jacqueline and
13 Kathryn as equal beneficiaries, should that be their request). Accordingly, Jacqueline's
14 and Kathryn's Countermotion for Summary Judgment regarding ownership of the
15 Texas oil property should be granted; and, Eleanor's Countermotion for Summary
16 Judgment should be denied.

17 22. While the Court finds that Jacqueline's and Kathryn's claim to 65% of the
18 Texas oil property and income is supported by the facts and merits of the case, and that
19 Eleanor's claim to more than 35% is not supported by the facts and merits of the case,
20 regardless of the merits of Eleanor's position, her claim to more than 35% of the
21 income from the Texas oil property cannot be supported or allowed for equitable
22 reasons because she has been guilty of laches in asserting her claim. Her assertion of
23 a claim to 100% of the income in June, 2013, makes no sense after failing in anyway
24 to assert a claim to more than 35% of the income prior to that time. During
25 approximately 34 years, from the death of William and her admitted awareness of the
26 allocation of the Texas oil property under the Trust provisions, until her first assertion
27 of a claim to more than 35% of the income in June, 2013, Eleanor never filed a claim
28 in any court, or otherwise asserted a claim or right to more than 35% of the income.

1 During this time, material documentary evidence, such as William's Federal Estate Tax
2 Return has been lost. During this time key witnesses, such as the accountant and other
3 professionals who prepared and filed William's Estate Tax Returns, as well as Marjorie
4 herself, have died. During this time period Jacqueline and Kathryn, and Marjorie while
5 she was living, made decisions affecting their personal and financial well-being in
6 reliance upon Eleanor's acceptance of the Texas oil property allocation under the Trust,
7 based upon her conduct and failure to make any challenge of the allocation. Eleanor's
8 claim to all of the income first asserted in approximately June, 2013, is made far too
9 late and has caused prejudice to Jacqueline and Kathryn because of the loss of evidence
10 and testimony of key witnesses, clearly requiring a rejection of Eleanor's position and
11 claim in these proceedings under the equitable doctrine of laches.

12 23. Concern was expressed by Jacqueline and Kathryn to Eleanor, through
13 counsel, during 2014 as to the status of funds Eleanor was required to hold in trust on
14 their behalf should the Court rule in their favor in these proceedings. An accounting
15 was requested from Eleanor's former counsel, and they were in the process of preparing
16 the same when Eleanor dismissed her former counsel and engaged new counsel.
17 *is ordered to provide by March 2, 2015, as*
~~Eleanor needs to follow through with the providing of this accounting for the Texas oil~~
18 property income, including the providing of information to Jacqueline and Kathryn
19 showing the total income received, expenses incurred, and distributions made of the
20 income from the beginning of 2012 to the present. Any income which should have
21 been distributed to Jacqueline and Kathryn during this time period, shall be accounted
22 for and reimbursed to them by Eleanor within 30 days from the date this judgment is
23 entered.

24 24. As noted in the chart attached hereto as Exhibit "A", Jacqueline and
25 Kathryn filed a Motion for Leave to Amend Pleadings, which was set for hearing on
26 January 30, 2015. As noted in this Motion and the Supplement thereto, they filed their
27 Motion out of an abundance of caution in that Eleanor in her briefing in support of her
28 Countermotion indicated that she did not feel Jacqueline and Kathryn had properly

1 pleaded all of their claims for relief and defenses for consideration by the Court at the
2 scheduled hearing. While Jacqueline and Kathryn disagreed with Eleanor's pleading
3 concerns, the pleadings and hearings in these proceedings had become disjointed in that
4 a companion Will Contest case, filed with this Court by Eleanor in Case No. P-14-
5 080595-E, intervened to suspend and continue the Trust matters until after the Will
6 Contest case was resolved. The Will Contest was resolved with a Stipulation for
7 Dismissal in early January, 2015. Further, Eleanor has been represented by three
8 different sets of attorney's in these proceedings. Her current attorneys only
9 commencing representation in late November, 2014, and they were not initially familiar
10 with the prior proceedings in this case and the effect of the Will Contest case
11 intervention. In any event, the Court finds that the initial pleadings filed on behalf of
12 Jacqueline and Kathryn in these proceedings properly plead the claims for relief and
13 the defense that the Court has relied upon in granting Judgment to them in these
14 proceedings. Eleanor clearly had notice of the pleadings and in fact the parties
15 negotiated over all of the claims for relief and the affirmative defenses alleged by
16 Jacqueline and Kathryn in concerted settlement negotiations in October, 2014, and such
17 claims and defenses were contained in the several Petitions and Motions filed during
18 the proceedings. In particular the defense of laches was mentioned in the context of
19 equitable defenses mentioned in the initial pleading, and was the subject of a Motion
20 to Dismiss and resolve the case summarily both in late 2013 and in early 2014.
21 Accordingly, the Court finds that there is no reason to file an Amended Pleading in
22 these proceedings and Jacqueline and Kathryn's Motion seeking permission to file the
23 same is considered moot and resolved.

24 25. There are still some claims and issues that the Court is not resolving at this
25 time. Eleanor filed a counterclaim for wrongful interference with contract with her
26 Answer and Counterclaim filed herein on February 10, 2014. The Court finds that this
27 Counterclaim should be dismissed without prejudice at this time, since the issues
28 therein were not addressed by the Court in the January 30, 2015, hearing, but it seems

1 that the issues would be resolved with its decision herein on the Countermotions.
2 Nevertheless, if Eleanor believes she has a valid claim still against Jacqueline for
3 wrongful interference with contract, as asserted in her Answer and Counterclaim, she
4 is free to reassert the same.

5 26. Each of the parties asserted a claim against the other in these proceedings
6 seeking to have the Court enforce the no-contest clause contained in the Trust against
7 the other party. The Court finds that the positions of each of the parties, seeking the
8 correct interpretation of the Trust provisions as to entitlement to the Texas oil property,
9 were not asserted in bad faith, and that therefore good cause to impose the no-contest
10 penalties does not exist and such claims are denied with respect to both parties, Eleanor
11 on the one hand, and Jacqueline and Kathryn on the other hand.

12 27. There still remains the issues and concerns of who will serve hereafter as
13 the Trustee of the Trust, and whether or not the interests of subtrust 2 and subtrust 3
14 in the Texas oil property should now be formally split and allocated with deeds from
15 the main Trust to the subtrusts, so the parties can go their separate ways in dealing with
16 their interests in the Texas oil properties, subject to the terms of the Trust with respect
17 to subtrust 2. Clearly, under the Trust provisions, the beneficiaries under subtrust 3 are
18 granted the right to remove their interest in the Texas oil property out of the main Trust
19 and subtrust 3, to be owned independently by the MTC Living Trust and Jacqueline
20 and Kathryn as beneficiaries thereunder. However, the Court is directing the parties
21 to submit to the Court, on or before March 2, 2015, information regarding the
22 feasibility and effect of now splitting the Texas oil property between subtrust 2 and
23 subtrust 3 (or the MTC Living Trust), and whether or not such division of interests
24 could adversely affect the value and future ownership of the interests hereafter. The
25 Court will set a hearing to consider this issue on March 20, 2015, at 10:00a.m.

26 28. With respect to whether or not Eleanor should be able to continue serving
27 as Trustee, to address both Jacqueline's and Kathryn's position that she should be
28 removed for breach of her duties as Trustee, and Eleanor's position that she is not

1 disqualified from serving, the Court also is directing the parties to provide a brief in
2 support of their positions, filed on or before March 2, 2015, with the issue to then be
3 addressed by the Court at the hearing on March 20, 2015.

4 29. Lastly, with respect to the claim Jacqueline and Kathryn have made for an
5 award of attorney's fees against Eleanor, the Court is directing that the parties file with
6 their briefs due on or before March 2, 2015, their argument and basis for their positions
7 on the award of attorney's fees and costs against Eleanor for the Court to then resolve
8 at the hearing on March 20, 2015.

9 30. In addition to the matters addressed at the hearing on January 30, 2015,
10 there is a pending appeal to the Nevada Supreme Court, assigned Case No. 66231, filed
11 by Eleanor, appealing a portion of the Court's Order in these proceedings entered on
12 July 7, 2014. With the resolution of issues in this case as herein provided, the matter
13 on appeal is now rendered moot. Therefore, the parties should submit a stipulation to
14 the Nevada Supreme Court dismissing that appeal.

15 JUGMENT

16 Pursuant to NRCP Rule 56, the Court finds that the pleadings and other
17 documents filed herein, together with the affidavits and documentary evidence
18 presented, show there is no genuine issue as to any material fact and that Jacqueline
19 and Kathryn are entitled to judgment against Eleanor as a matter of law in these
20 proceedings. Therefore, and based upon the foregoing findings, good cause exists to
21 now render judgment against Eleanor, in favor of Jacqueline and Kathryn, as follows:

22 A. Jacqueline's and Kathryn's Countermotion for Summary Judgment is
23 granted in part as hereinafter provided. The Court hereby declares, adjudges and
24 determines that the allocation of interests in the Texas oil property between subtrust 2
25 and subtrust 3, under the W.N. Connell and Marjorie T. Connell Living Trust, dated
26 May 18, 1972, was properly made under the Trust provisions, with subtrust 2 receiving
27 a 35.507% interest in the Texas oil property and subtrust 3 receiving a 64.493%
28 interest in the Texas oil property.

1 B. The Court adjudges and determines that even if the allocation of the Texas
2 oil property made following the death of William in 1979, in conjunction with the
3 filing of his Federal and Texas Estate Tax Returns, was not properly or accurately made
4 between the two subtrusts, Eleanor's claim and effort to now challenge the allocation
5 and assert an interest greater than 35.507% in the Texas oil property being in subtrust
6 2, is too late and barred under the doctrine of laches, thereby making the actual division
7 made final and binding upon her.

8 C. Eleanor's Counter-motion for Summary Judgment is hereby denied.

9 D. On or before March 2, 2015, Eleanor shall provide to Jacqueline and
10 Kathryn an accounting of the Texas oil property income received by the Trust from
11 January 1, 2012, through the entry of this Summary Judgment, showing the total
12 income received, expenses incurred, and any distributions made of the income. Within
13 30 days following the entry of this Summary Judgment, Eleanor shall reimburse and
14 pay to Jacqueline and Kathryn any portion of their 65% share of the Texas oil property
15 income which was not distributed to them during this period of time. From and after
16 the entry of this Summary Judgment, 35% of the Texas oil property income shall be
17 distributed to Eleanor as beneficiary under subtrust 2, and 65% of the income shall be
18 distributed equally between Jacqueline and Kathryn as beneficiaries under subtrust 3
19 and the MTC Living Trust.

20 E. Eleanor's Counterclaim for wrongful interference with contract asserted
21 with her Answer and Counterclaim filed herein on February 10, 2014, is hereby
22 dismissed without prejudice.

23 F. The Court adjudges and determines that the positions of each of the
24 parties, seeking the correct interpretation of the Trust provisions as to entitlement to
25 the Texas oil property, were not asserted in bad faith, and that therefore good cause to
26 impose the no-contest penalties does not exist and such claims, both Eleanor's claim
27 on the one hand, and Jacqueline's and Kathryn's claim on the other hand, are denied
28 with prejudice.

1 G. Each of the parties is directed to file further briefing on the following
2 issues with the Court on or before March 2, 2015, which issues and matters will be
3 resolved by the Court at the next hearing in these proceedings, hereby set on March 20,
4 2015, at 10:00a.m.:

5 1) In the event there is no formal splitting of the Texas oil property between
6 subtrust 2 and subtrust 3 at this time, is there cause to remove Eleanor as Trustee and
7 appoint Jacqueline as the successor Trustee of the Trust and the subtrusts thereunder?
8 If cause does not exist for Eleanor's removal, would it still be better to appoint a
9 neutral successor Trustee?

10 2) Should the interests of subtrust 2 and subtrust 3 in the Texas oil property
11 now be formally split and allocated with deeds from the main Trust to the subtrusts, so
12 the parties can go their separate ways in dealing with their interests in the Texas oil
13 properties, subject to the terms of the Trust with respect to subtrust 2? The Court wants
14 the parties to provide recommendations from qualified persons knowledgeable with
15 respect to the Texas oil and mineral rights and the potential harm or benefit that could
16 result in a splitting of the interests between the parties, and whether or not such
17 division of interests could adversely affect the value and future ownership of the
18 interests hereafter.

19 3) Lastly, with respect to the claim Jacqueline and Kathryn have made for an
20 award of attorney's fees against Eleanor, the Court directs the parties to provide their
21 argument and basis for their positions on the award of attorney's fees and costs against
22 Eleanor in briefing filed on or before March 2, 2015, for the Court to then resolve at
23 the scheduled hearing on March 20, 2015.

24 H. The parties shall each sign a Stipulation and Order for Dismissal of the
25 Appeal presently pending in Nevada Supreme Court Case No. 66231, filed by Eleanor,
26 appealing a portion of the Court's Order in these proceedings entered on July 7, 2014.

27 I. The Court retains jurisdiction over the Trust pending the finalization and
28 resolution of the remaining issues mentioned above, to be addressed hereafter at the

ASWA

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

LAW OFFICES
A PROFESSIONAL CORPORATION

1 hearing scheduled on March 20, 2015, at 10:00a.m. Until that date, Eleanor shall
2 continue to exercise and fulfill her duties as Trustee of the Trust, and the parties shall
3 all cooperate, in the best interest of the Trust and its beneficiaries, in any dealings with
4 the oil companies affecting the Texas oil property.

5 SO ORDERED AND ADJUDGED this 15th day of April, 2015.

6
7 
DISTRICT COURT JUDGE

8 Submitted by:

9 ALBRIGHT, STODDARD,
10 WARNICK & ALBRIGHT

11 By: 

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14 *Attorneys for Kathryn A. Bouvier*

15 Approved by:

16 MARQUIS AURBACH COFFING

17 By:

18 LIANE K. WAKAYAMA, ESQ.

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20 Nevada Bar No. 11447
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21 *Attorneys for Eleanor Connell Hartman Ahern*

Submitted by:

THE RUSHFORTH FIRM, LTD.

By: 

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24 *Attorneys for Jacqueline M. Montoya*

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

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Attorneys for Eleanor Connell Hartman Ahern

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

Case No.: P-09-066425-T

Dept. No.: 26

THE W.N. CONNELL AND MARJORIE T.
CONNELL LIVING TRUST DATED May 18,
1972, An Inter Vivos Irrevocable Trust.

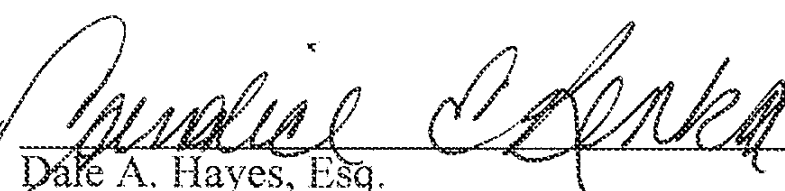
NOTICE OF ENTRY OF ORDER

Please take notice that an Order Regarding the Accounting, Breach of Fiduciary Duty Claims and Award of Attorney Fees was entered in the above-captioned matter on the 20th day of April, 2015, a copy of which is attached hereto.

Dated this 20 day of April, 2015.

MARQUIS AURBACH COFFING

By



Dale A. Hayes, Esq.

Nevada Bar No. 3430

Liane K. Wakayama, Esq.

Nevada Bar No. 11313

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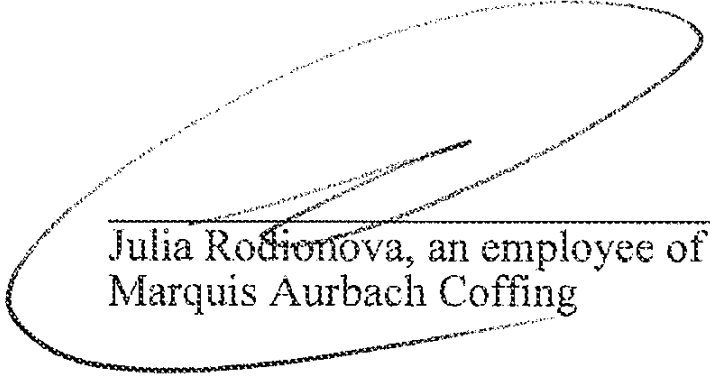
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 20th day of April, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

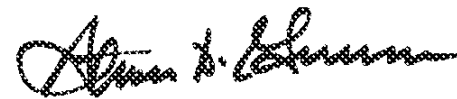
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Probate	probate@rushforthfirm.com	
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The Rushforth Firm, Ltd.		
Contact	Email	
Joseph J. Powell	probate@rushforthfirm.com	

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Eleanor Connell Hartman Ahern
8635 W. Sahara Ave., #549
Las Vegas, Nevada 89117-5838


Julia Rodionova, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



CLERK OF THE COURT

1 Marquis Aurbach Coffing
2 Dale A. Hayes, Esq.
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14 crenka@maclaw.com
15 Attorneys for Eleanor Connell Hartman
16 Ahern, as Trustee

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

THE W.N. CONNELL AND MARJORIE T.
CONNELL LIVING TRUST DATED May 18,
1972, An Inter Vivos Irrevocable Trust.

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

Date of Hearing: March 20, 2015
Time of Hearing: 10:00 a.m.

**ORDER REGARDING THE ACCOUNTING, BREACH OF FIDUCIARY DUTY
CLAIMS AND AWARD OF ATTORNEY FEES**

17 This matter, having come before the Honorable Gloria Sturman on March 20, 2015, 2015
18 for summary judgment, Whitney B. Warnick, Esq. of the law firm Albright Stoddard, Warnick &
19 Albright appearing on behalf of Kathryn A. Bouvier, Joseph J. Powell, Esq. of the Rushforth
20 Firm, Ltd. appearing on behalf of Jacqueline M. Montoya, and Dale A. Hayes, Esq. and Liane K.
21 Wakayama, Esq. of the law firm Marquis Aurbach Coffing appearing on behalf of Eleanor
22 Connell Hartman Ahern, as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust
23 dated May 18, 1972, the Court having considered the Brief Regarding Pending Issues; the Brief
24 Regarding Accounting, Fiduciary Duties, and Trust Administration; the Supplement to Brief
25 Regarding Pending Issues; the Supplement to Brief Regarding Accounting, Fiduciary Duties, and
26 Trust Administration; the Second Supplement to Brief Regarding Pending Issues, and the
27 underlying papers and pleadings, as well as the oral arguments of counsel, and good cause
28 appearing therefore, the Court FINDS and ORDERS as follows:

1 1. At a hearing held on January 30, 2015, the Court ordered that Eleanor Connell
2 Hartman Ahern, as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust dated
3 May 18, 1972 (the "Trust"), to produce an Accounting. The Court further ordered the parties to
4 submit simultaneous briefing on the removal of Eleanor as trustee, an award of attorney fees and
5 the best way for the Trust's administration to continue.

6 2. The Court set a hearing on the remaining issues to be held on March 20, 2015.

7 **UNDISPUTED FACTS**
8 **The Accounting**

9 3. On March 13, 2015, Eleanor filed a Brief regarding the Accounting, fiduciary
10 duties and trust administration ("Eleanor's Brief").

11 4. Attached to Eleanor's Brief was an Accounting prepared by Certified Public
12 Accountants, Gamett and King, for the time period of June 2013 through January 2015 (the
13 "Accounting").

14 5. All expenses identified in the Accounting except for the \$218,760.17 in Trustee
15 fees are approved. The Court finds the Trustee fees unreasonable and not supported in any way.
16 The Court further finds that it is improper for a Trustee to charge a 6% fee plus overhead
17 expenses for staff and office space. The Court therefore finds that the easiest solution is to back
18 out the Trustee's Fee from the Accounting as an unapproved expense; however, Eleanor may be
19 entitled to compensation for her time in serving as Trustee.

20 6. The \$37,000 distribution to Jacqueline and Kathryn in June 2013 was for income
21 earned and received by the Trust prior to June 2013. The Court therefore finds that the \$37,000
22 distribution should not be included in the Accounting as a credit to the 65% share that is to be
23 held in trust for the benefit of Jacqueline and Kathryn.

24 7. Based on removing the \$218,760.17 in Trustee fees and not crediting the \$37,000
25 distribution, the Court finds that a total of \$2,163,758.88 shall be held in trust for the benefit of
26 Jacqueline and Kathryn, which represents their 65% share of the total net income received by the
27 Trust from June 1, 2013 through January 31, 2015.

1 8. The \$500,000 on deposit with Fidelity Capital Inc. ("Fidelity Capital") is not a
2 prudent investment. *NRS 164.640 et seq.*

3 9. Aside from the \$218,760.17 Trustee fees, the \$37,000 distribution and the
4 \$500,000 on deposit with Fidelity Capital, the Accounting is approved.

5 Cutting Off the 65% Income

6 10. As Trustee of the Trust, Eleanor owed fiduciary duties to Jacqueline and Kathryn
7 as beneficiaries of the Trust.

8 11. In June 2013, Eleanor cut off the 65% income stream of the net oil revenue in her
9 capacity as Trustee of the Trust, *without first seeking instruction from*
10 *the Court.*

11 CONCLUSIONS OF LAW

12 12. Pursuant to Nev. R. Civ. P. 56(b), "[a] party against whom a claim, counterclaim,
13 or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or
14 without supporting affidavits for a summary judgment in the party's favor as to all or any part
15 thereof." "The judgment sought shall be rendered forthwith if the pleadings . . . show that there
16 is no genuine issue as to any material fact that the moving party is entitled to judgment as a
17 matter of law." NRCP 56(c). The burden for demonstrating the absence of a genuine issue of
18 material fact lies with the moving party, and the material lodged by the moving party must be
19 viewed in the light most favorable to the non-moving party. Hoopess v. Hammargren, 102 Nev.
20 425, 429, 725 P.2d 238, 241 (1986). It is well settled in Nevada that the party opposing
21 summary judgment is entitled to all favorable inferences from the pleadings and documentary
22 evidence. See Mullis v. Nev. Nat'l Bank, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982). The non-
23 moving party, however, "must, by affidavit or otherwise, set forth specific facts demonstrating
24 the existence of a genuine issue for trial or have summary judgment entered against him."
Bulbman, Inc. v. Nev. Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

25 13. To prevail on a breach of fiduciary duty claim in Nevada, Jacqueline and Kathryn
26 bear the burden of showing that: (1) Eleanor owed them a fiduciary duty; (2) Eleanor breached
27 that duty; and (3) Jacqueline and Kathryn sustained damages as a proximate cause of the breach.
28 See Mosier v. S. Cal. Physicians Ins. Exch., 74 Cal.Rptr.2d 550, 565 (Cal. Ct. App. 1998).

1 14. The Court concludes as a matter of law that Eleanor did not breach any fiduciary
2 duties as it relates to the Accounting.

3 15. The Court concludes as a matter of law that Eleanor breached her fiduciary duties
4 owed to Jacqueline and Kathryn by failing to retain a third-party trustee and petition the Court to
5 allow the 65% income stream to Jacqueline and Kathryn to be cut off. As a result of Eleanor's
6 breach of fiduciary duties, Eleanor shall be removed as Trustee only over the 65% share of the
7 Upton County, Texas oil assets. Eleanor shall remain as Trustee over her 35% share of the
8 Upton County, Texas oil assets; however, a temporary successor Trustee shall be appointed over
9 the entire Trust until this litigation is finally resolved.

10 16. Based on Eleanor breaching her fiduciary duties, the Court will award Jacqueline
11 and Kathryn their attorney fees and costs pursuant to NRS 153.031(3)(b). The Court reserves for
12 a later date the exact amount of attorney fees and costs to be awarded.

13 BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND
14 DECREED that:

15 1. The \$500,000 currently on deposit with Fidelity Capital shall be deposited into an
16 FDIC insured bank account;

17 2. Jacqueline and Kathryn's claim for breach of fiduciary duty against Eleanor, as
18 Trustee of the Trust, is DENIED as it relates to the Accounting *based on the information*
available to the Court on March 20, 2015;


19 3. Summary judgment on Jacqueline and Kathryn's claim for breach of fiduciary
20 duty against Eleanor, as Trustee of the Trust, is GRANTED as it relates to Eleanor cutting of
21 their 65% distributions of the oil income in June 2013;

22
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24 ///

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4. Jacqueline and Kathryn shall submit an Application for their award of attorney fees and costs pursuant to NRS 153.031(3)(b), which shall include a proper analysis of the factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969) as well as their redacted billing statements. The deadlines for the briefing schedule shall comply with E.D.C.R. 2.20. The hearing on the Application shall be set for May 13, 2015 at 9:00 a.m.

IT IS SO ORDERED this 7 day of April, 2015.

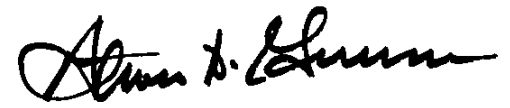

DISTRICT COURT JUDGE

Submitted by:

MARQUIS AURBACH COFFING

By *Dale A. Hayes*
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13 *Attorneys for Eleanor Connell Hartman Ahern*

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

16 In the Matter of THE W.N.
17 CONNELL AND MARJORIE T.
18 CONNELL LIVING TRUST
19 DATED May 18, 1972, An Inter
20 Vivos Irrevocable Trust

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

AMENDED NOTICE OF APPEAL

21 Eleanor C. Ahern, a/k/a Eleanor Connell Hartman Ahern ("Ms. Ahern"), as
22 beneficiary and as trustee of The W.N. Connell and Marjorie T. Connell Living
23 Trust dated May 18, 1972 (the "Trust"), by and through her counsel of record, the
24 law firm of Brownstein Hyatt Farber Schreck, LLP, hereby amends the Notice of
25 Appeal filed May 18, 2015, which has been designated by the Nevada Supreme
26 Court as Case Number 68046 ("Notice of Appeal"). The Notice of Appeal is
27 hereby amended to include this Court's *Judgment and Order Approving Award of*
28 *Attorney's Fees* ("Order Approving Fees") which was filed on June 23, 2015, and
entered on June 30, 2015, as well as orders, rulings or decisions relating thereto.
The Order Approving Fees clarified the amount of attorneys' fees awarded pursuant
to this Court's *Order Regarding The Accounting, Breach of Fiduciary Duty Claims*

018177\0001\12499942.1

1 *and Award of Attorneys' Fees* filed and entered on April 20, 2015, which is in part
2 the subject of the original appeal hereby amended. A copy of the Notice of Entry of
3 the Order Approving Fees is attached hereto as Exhibit 1.

4 DATED this 29th day of July, 2015.

5
6 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

7
8 By: /s/ Tamara Beatty Peterson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **AMENDED NOTICE OF APPEAL** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 29th day of July, 2015, to the following:

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*Attorneys for Fredrick P. Waid,
Court-appointed Trustee*

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

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

EXHIBIT 1

EXHIBIT 1

1 **NOEJ**

2 G. MARK ALBRIGHT, ESQ.

3 Nevada State Bar No. 001394

4 WHITNEY B. WARNICK, ESQ.

5 Nevada State Bar No. 001573

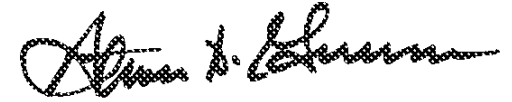
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9 Tel: (702) 384-7111

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11 gma@albrightstoddard.com12 wbw@albrightstoddard.com13 *Attorneys for Jacqueline M. Montoya*14 *and Kathryn A. Bouvier*Electronically Filed
06/30/2015 10:29:54 AM

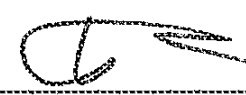
CLERK OF THE COURT

11 **DISTRICT COURT**12 **CLARK COUNTY, NEVADA**13 In the Matter of the Estate of:
14 THE W. N. CONNELL AND MARJORIE T.
15 CONNELL LIVING TRUST, Dated May 18,
16 1972,

17 An Inter Vivos Irrevocable Trust

CASE NO. P-09-066425
Dept. XXVI (26)**NOTICE OF ENTRY OF JUDGMENT
AND ORDER APPROVING AWARD OF
ATTORNEY'S FEES**18 PLEASE TAKE NOTICE that an **JUDGMENT AND ORDER APPROVING AWARD**
19 **OF ATTORNEY'S FEES** was entered with this Court on June 23, 2015.

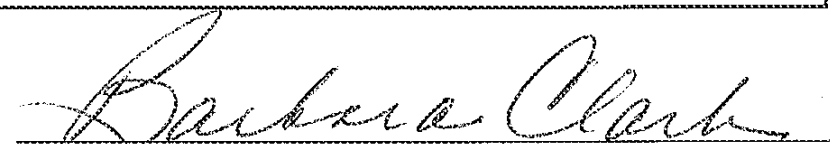
20 A copy of said Order is attached hereto.

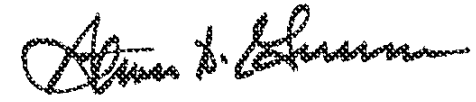
21 DATED this 29 day of June, 2015.22 ALBRIGHT, STODDARD, WARNICK
23 & ALBRIGHT24 By 
25 WHITNEY B. WARNICK, ESQ.
26 Nevada Bar No. 001573
27 801 South Rancho Drive, Suite D-4
28 Las Vegas, Nevada 89106
Attorneys for Kathryn A. Bouvier

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Albright, Stoddard, Warnick & Albright and that on this 30 day of June, 2015, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT AND ORDER APPROVING AWARD OF ATTORNEY'S FEES** upon all counsel of record by electronically serving the document using the Court's electronic filing system, as follows:

Kirk B. Lenhard, Esq. Tamara Beatty Peterson, Esq. Brownstein Hyatt Farber Schreck, LLP 100 North City Parkway, Suite 1600 Las Vegas, Nevada 89106 Attorneys for Eleanor Connell Hartman Ahern	Joseph J. Powell, Esq. The Rushforth Law Firm, Ltd. Suite 100 9505 Hillwood Drive Las Vegas, Nevada 89134 Attorneys for Jacqueline M. Montoya Bouvier
Russel J. Geist, Esq. Hutchison & Steffen, LLC 10080 West Alta Drive, Suite 200 Las Vegas, Nevada 89145 Attorneys for Trustee, Fredrick P. Waid	


An employee of Albright, Stoddard, Warnick
& Albright



CLERK OF THE COURT

1 JUDGE

2 JOSEPH J. POWELL, ESQ.

3 Nevada Bar No. 008875

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19 *Attorneys for Kathryn A. Bouvier*

20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

22 In the Matter of

23 THE W. N. CONNELL AND MARJORIE T.

24 CONNELL LIVING TRUST, Dated May 18,
25 1972,

CASE NO. P-09-066425

DEPT NO. XXVI (26)

Date of Hearing: May 13, 2015

Time of Hearing: 9:00a.m.

26 An Inter Vivos Irrevocable Trust.

27 JUDGMENT AND ORDER APPROVING AWARD OF ATTORNEY'S FEES

28 The MOTION IN SUPPORT OF AWARD OF ATTORNEY'S FEES AND COSTS filed herein by Movants, Jacqueline M. Montoya and Kathryn A. Bouvier, having come on for hearing before the Honorable Gloria Sturman on May 13, 2015; Movants being represented by their counsel, Whitney B. Warnick, Esq., of the law firm Albright, Stoddard, Warnick & Albright, and Joseph J. Powell, Esq., of The Rushforth Firm, Ltd.; Eleanor Connell Hartman Ahern, being represented by her counsel, Kirk B. Lenard, Esq., and Tamara Beatty Peterson, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP; and, the Trustee, Fredrick P. Waid, being present and represented by his counsel, Russel J. Geist, Esq., of the law firm of Hutchison & Steffen, LLC; the Court having reviewed the Motion filed and the Opposition thereto, and having heard oral argument from counsel, and being fully advised in the matter, the Court finds and Orders as follows:

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 The Court finds that Movants' Motion provides the information for evaluating an award of
2 attorney's fees under *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).
3 These factors are: 1) the advocate's professional qualities; 2) the nature of the litigation; 3) the work
4 performed; and, 4) the result.

5 The Court finds that all of the fees requested by Movants' Nevada counsel, including the sum
6 of \$122,260.00 incurred by Kathryn A. Bouvier ("Kathryn"), and the sum of \$269,733.80 incurred
7 by Jacqueline M. Montoya ("Jacqueline"), were incurred as a result of the breach by Eleanor Connell
8 Hartman Ahern ("Eleanor") of her duties as Trustee of the W. N. Connell and Marjorie T. Connell
9 Living Trust Dated May 18, 1972 ("Trust"); and, therefore, pursuant to NRS 153.031(3)(b), Eleanor
10 is personally liable to Kathryn and Jacqueline to reimburse to them the fees they incurred and judgment
11 should be entered against Eleanor and in favor of Kathryn and Jacqueline for that purpose. These fee
12 amounts are for services rendered to Kathryn and Jacqueline by their counsel through March 20, 2015,
13 and they are not precluded from seeking an additional award of fees for legal services rendered on their
14 behalf in these proceedings after that date.

15 The Court finds that the reimbursement of costs to Kathryn and Jacqueline sought in their
16 Motion, including the amount of \$5,373.70 sought by Kathryn, and the amount of \$20,488.05 sought
17 by Jacqueline, should not be awarded at this time, until further proof and corroboration thereof is
18 provided to the Court, consistent with the guidelines provided by the Nevada Supreme Court in the
19 case of *Cadle Company v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015).

20 The Court further finds that reimbursement to Kathryn and Jacqueline of fees and costs they
21 incurred with Texas counsel, prior to the commencement of these proceedings, as requested in their
22 Motion, totaling \$82,349.23, cannot be awarded to them under NRS 153.031(3)(b), because said fees
23 and costs were not incurred in these proceedings, or as a direct consequence of Eleanor's breach of her
24 fiduciary duties.

25 Therefore, based upon these findings and good cause appearing:

26 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

27 1. Judgment is hereby entered against Eleanor Connell Hartman Ahern and in favor of
28 Kathryn A. Bouvier, for attorney's fees she incurred through March 20, 2015, in the amount of

1 \$122,260.00, together with interest accruing on said principal amount at the legal rate of interest in
2 Nevada, from the date of the entry of this Judgment until paid in full.

3 2. Judgment is hereby entered against Eleanor Connell Hartman Ahern and in favor of
4 Jacqueline M. Montoya, for attorney's fees she incurred through March 20, 2015, in the amount of
5 \$269,733.80, together with interest accruing on said principal amount at the legal rate of interest in
6 Nevada, from the date of the entry of this Judgment until paid in full.

7 3. Kathryn's and Jacqueline's requests for an award of costs incurred, including the
8 amount of \$5,373.70 sought by Kathryn, and the amount of \$20,488.05 sought by Jacqueline, are
9 denied at this time without prejudice. If they reapply for an award of costs incurred herein, they must
10 provide further proof and corroboration thereof to the Court, consistent with the guidelines provided
11 by the Nevada Supreme Court in the case of *Cadle Company v. Woods & Erickson, LLP*, 131 Nev.
12 Adv. Op. 15, 345 P.3d 1049 (2015).

13 4. Kathryn's and Jacqueline's request for an award of fees and costs incurred by their

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LAW OFFICES
A PROFESSIONAL CORPORATION

1 Texas counsel, prior to the commencement of these proceedings, totaling the sum of \$82,349.23, is
2 hereby denied.

3 IT IS SO ADJUDGED AND ORDERED this 4th ^{June} day of May, 2015.

4
5 
DISTRICT COURT JUDGE

Submitted by:

6 ALBRIGHT, STODDARD, WARNICK
7 & ALBRIGHT

THE RUSHFORTH FIRM, LTD

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By 

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11 Approved by:

12 BROWNSTEIN HYATT FARBER
13 SCHRECK, LLP

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14 By 

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LAW OFFICE
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1 Texas counsel, prior to the commencement of these proceedings, totaling the sum of \$82,349.23, is
2 hereby denied.

3 IT IS SO ADJUDGED AND ORDERED this _____ day of May, 2015.

4
5 Submitted by:

6 ALBRIGHT, STODDARD, WARNICK
7 & ALBRIGHT

8 By _____
9 WHITNEY B. WARNICK, ESQ.
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18 Hartman Ahern

DISTRICT COURT JUDGE

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HUTCHISON & STEFFEN, LLC

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Fredrick P. Wald

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LAW OFFICES
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1 Texas counsel, prior to the commencement of these proceedings, totaling the sum of \$82,349.23, is
2 hereby denied.

3 IT IS SO ADJUDGED AND ORDERED this _____ day of May, 2015.

4
5 
DISTRICT COURT JUDGE

Submitted by:

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7 & ALBRIGHT

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