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EXHIBIT M
Death Certificate of MARJORIE T. CONNELL

**STATE OF NEVADA — DEPARTMENT OF HUMAN RESOURCES
DIVISION OF HEALTH — VITAL STATISTICS**

CERTIFICATE OF DEATH

2009006369

STATE FILE NUMBER

TYPE OR PRINT IN PERMANENT BLACK INK	1a. DECEASED-NAME (FIRST,MIDDLE, LAST,SUFFIX) Marjorie T CONNELL				2. DATE OF DEATH (Mo/Day/Year) May 01, 2009		3a. COUNTY OF DEATH Clark		
	3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION -Name(if not either, give street and number) Valley Hospital Medical Center		3e. If Hosp. or Inst. indicate DOA,OP/Emer Rm. Inpatient(Specify) Inpatient		4. SEX Female		
	5 RACE White (Specify)		6. Hispanic Origin? Specify No - Non-Hispanic		7a. AGE-Last birthday (Years) 91		7b. UNDER 1 YEAR MOS 		
IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS	9a. STATE OF BIRTH (If not U.S.A., name country) Alabama		9b. CITIZEN OF WHAT COUNTRY United States		10. EDUCATION 14		11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) Widowed		
	13. SOCIAL SECURITY NUMBER 417-12-1212		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even If Retired) Businesswoman		14b. KIND OF BUSINESS OR INDUSTRY Investments		12. SURVIVING SPOUSE (if wife, give maiden name) 		
	15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark		15c. CITY, TOWN OR LOCATION Las Vegas		15d. STREET AND NUMBER 1325 Strong Drive		
PARENTS	16 FATHER - NAME (First Middle Last Suffix) Oscar THRASH				17 MOTHER - NAME (First Middle Last Suffix) Cora BLAKE				
	18a. INFORMANT- NAME (Type or Print) Jacqueline MONTOYA				18b. MAILING ADDRESS (Street or R F D No, City or Town, State, Zip) 3385 Maverick Street Las Vegas, Nevada 89108				
DISPOSITION	19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Burial		19b. CEMETERY OR CREMATORY - NAME Palm Downtown Cemetery		19c. LOCATION City or Town State Las Vegas Nevada 89101				
	20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) BART BURTON SIGNATURE AUTHENTICATED		20b. FUNERAL DIRECTOR LICENSE 50		20c. NAME AND ADDRESS OF FACILITY Palm Mortuary-Downtown 1325 North Main Street Las Vegas NV 89101				
TRADE CALL	TRADE CALL - NAME AND ADDRESS								
CERTIFIER	21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated (Signature & Title) SIGNATURE AUTHENTICATED CHRISTOPHER CRUZ MD				22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated (Signature & Title)				
	21b. DATE SIGNED (Mo/Day/Yr) May 04, 2009		21c. HOUR OF DEATH 08:47		22b. DATE SIGNED (Mo/Day/Yr)		22c. HOUR OF DEATH		
	21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)				22d. PRONOUNCED DEAD (Mo/Day/Yr)		22e. PRONOUNCED DEAD AT (Hour)		
REGISTRAR	23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) CHRISTOPHER CRUZ MD 3650 S Decatur Las Vegas, NV 89103						23b. LICENSE NUMBER 10545		
	24a. REGISTRAR (Signature) NINETTE HARRINGTON SIGNATURE AUTHENTICATED		24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) May 05, 2009		24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>				
CAUSE OF DEATH	25 IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c))								
	PART I								
	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> (a) Pneumonia DUE TO, OR AS A CONSEQUENCE OF (b) Sepsis DUE TO, OR AS A CONSEQUENCE OF (c) Renal failure DUE TO, OR AS A CONSEQUENCE OF (d) Respiratory failure </div> <div style="width: 35%;"> Interval between onset and death Interval between onset and death Interval between onset and death Interval between onset and death </div> </div>								
PART II						26 AUTOPSY (Specify Yes or No) No		27 WAS CASE REFERRED TO CORONER (Specify Yes or No) No	
28a. ACC., SUICIDE, HOM., UNDET. OR PENDING INVEST (Specify)		28b. DATE OF INJURY (Mo/Day/Yr)		28c. HOUR OF INJURY		28d. DESCRIBE HOW INJURY OCCURRED			
28e. INJURY AT WORK (Specify Yes or No)		28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)		28g. LOCATION		STREET OR R F D No CITY OR TOWN STATE			

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

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HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.

Registrar of Vital Statistics

By:

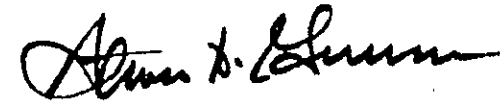
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EXHIBIT N
Transcript of January 14, 2014 Motions Hearing

RTRAN



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

MATTER OF THE TRUST OF W.N.
CONNELL AND MARJORIE T.
CONNELL LIVING TRUST DATED
5/18/72

CASE NO. P-066425

DEPT. XXVI

BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

TUESDAY, JANUARY 14, 2014

**RECORDER'S TRANSCRIPT
MOTIONS HEARING**

APPEARANCES:

For the Plaintiff: Michael D. Lum, Esq.
John R. Mugan, Esq.
JEFFREY BURR, LTD.

For the Respondent: Joseph J. Powell, Esq.
THE RUSHFORTH FIRM, PLLC

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, JANUARY 14, 2014 AT 9:02 A.M.

2 THE COURT: Peter 9066425.

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

5 MR. MUGAN: Good morning, Your Honor. John Mugan on
6 behalf of Eleanor Ahern.

7 MR. LUM: Good morning, Your Honor. Michael Lum bar
8 number 12997 on behalf of Eleanor Ahern.

9 THE COURT: Okay. We have two motions. The first one is
10 a motion to dismiss the debt for relief action and the second
11 one is a hearing to compel distributions. So we'll take the
12 motion to dismiss first.

13 MR. MUGAN: If it pleases the Court, I presume that
14 you've had an opportunity to review the motion. Basically
15 claim preclusion and there's three things that are required.
16 The parties or their privies are the same. The final judgment
17 in the first action is valid. And most importantly the
18 subsequent action is based on the same claims or any part of
19 them that were or could have been brought in the first case.

20 It's undisputed there's two cases involved. A 2009
21 case, which involved the trust, specifically trust number two,
22 reformation construction action. Basically construed the
23 document, said who the residuary beneficiaries are when my
24 client died. And there's no question that the privies and
25 parties are the same as in this action. There's no question

1 that the judgment is valid. There's an order entered. Notice
2 of entry back in 2009. Appeal time et cetera is long past.

3 Probably the most important one is that number
4 three, that the claims could have been brought in the first
5 case. Opposing counsel cited the Tarkanian (phonetic) case as
6 saying that the same claims have to be included in both
7 actions. The Tarkanian case was back in '94. Five Star
8 Capital Crop which we cited a 2008 case changed that. And
9 basically said that it's broadened to include all claims which
10 could have been brought in the first action.

11 And there's no question that the claims -- I mean,
12 we're dealing with the same thing. Trust number -- the trust,
13 trust number two, the rights thereunder. Also I don't think
14 there's any question that we're dealing with the same oil
15 rights. If you look at the pleading in 2009 it refers to the
16 oil assets in trust number two and says that there's an
17 appraisal being done. And it estimates the value at 700,000.

18 As we set out in our pleading Jackie, the
19 Petitioner, did in fact have an appraisal done. It came back
20 at \$716,000 and it was for all of the oil assets not just 35
21 percent of them.

22 And so arguably not only do we have claim preclusion
23 we also have issue preclusion because we're basically dealing
24 with the exact same thing. The rights of the parties under
25 trust number two.

1 And so our belief is that claim preclusion is
2 applicable. And accordingly this action needs to be
3 dismissed. In the alternative we even think issue preclusion
4 is applicable because of what I stated.

5 Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. POWELL: Your Honor, as we discussed the last time
8 the 2009 petition is a reformation petition. It dealt with
9 basically in essence a couple of basically two major issues.
10 That was the succession of who the residuary beneficiaries
11 were of trust number two and then also as well who was going
12 to be the successor trustee of that.

13 If you've read the petition in 2009 and the order
14 that was in 2009, that's the substantive part of what is going
15 on. In fact, the petition even states these issues didn't
16 come up with trust number three; they're only related to trust
17 number two, but we can see what was done in trust number three
18 in terms of final distribution, who would be the trustees. We
19 didn't have that same matching language in trust two. So we
20 need to solve that issue.

21 Arguably was it critical that the 2009 petition was
22 brought? I would say probably not just because you could
23 glean from trust number three what the intent was. It was
24 more of a clarification petition just so there weren't issues
25 down the road. That's what the 2009 petition did.

1 THE COURT: So the fact that at the same time that trust
2 three was being litigated that your clients didn't seek to
3 also litigate the issue with respect to trust number two
4 doesn't preclude them from now doing so?

5 MR. POWELL: Well, correct, exactly. And there were no
6 issues with trust number three. Trust number three was
7 basically what we refer to as the survivor's trust. But
8 because of the timeframe in which it was done it also included
9 essentially marital trust as well. So it was a marital trust
10 along with a survivor's trust. In which Mrs. Connell as the
11 surviving trustor had the ability to freely amend that trust.
12 She also had the ability to do a -- exercise a power of
13 appointment, which she did.

14 And so at the time there was -- the relevance of
15 trust number three was not in question. That had already been
16 in exercise of power of appointment to her individual trust
17 that she setup the MTC living trust.

18 So this petition, this reformation petition was not
19 a declaration of rights in terms of current rights. What it
20 was, was to have clarification at the time that Ms. Ahern
21 passed was the issue here, so that there wasn't any confusion.
22 Her children, my client and her sister were deemed to be the
23 residuary beneficiaries and also as well the successor
24 trustees.

25 So that was the extent of what that petition did.

1 Again, if you look at what the prayer was in that petition, if
2 you look what the accompanying order said, that's what it did.

3 And in their petition and in subsequent petitions as well in
4 their arguments they essentially said that -- really that my
5 client and her sister were behind that petition. Even though
6 Ms. Ahern had her own counsel. Even though the petition was
7 discussed with her own counsel, somehow my clients were behind
8 that.

9 So which again, begs the logical question --

10 THE COURT: So you're contesting that the issue that it
11 seems Mr. Mugan is focused on is the same issues were could
12 have been filed, but it's your position that there -- it
13 wasn't necessarily the same parties, it wasn't necessarily a
14 final judgment as to the issues that are at issue here?

15 MR. POWELL: Correct, correct. It wasn't even an issue
16 at that point because there was a 65/35 split of this income.
17 And again, it continued for nearly four years after the order
18 was entered. Which again begs the question is, if that was
19 the point of what the order was, was this declaration of
20 rights, why exactly is the status quo being followed for an
21 additional four years after that fact?

22 The fact of the matter is it wasn't a declaration of
23 rights as to Ms. Ahern. It wasn't a declaration of rights as
24 to the issue that's now present which is the 65/35 split. It
25 was a clarification as to what would happen at Ms. Ahern's

1 death. And what it was, was that my client and her sister
2 were to be the residuary beneficiaries as basically was
3 gleaned from and was consistent with the way that trust three
4 read. Trust three ultimately wound up being different because
5 it -- exercise the power of appointment so.

6 THE COURT: All right, thank you.

7 MR. POWELL: Yeah.

8 THE COURT: Anything else, Mr. Mugan?

9 MR. MUGAN: Yes, thank you, Your Honor. We're not
10 arguing issue preclusion. Issue preclusion, the claims have
11 to be identical. We're arguing claim preclusion.

12 THE COURT: Right.

13 MR. MUGAN: Which is much, much broader and much more
14 expansive. There doesn't have to be a final judgment on the
15 specific issue in the first case under Nevada law claim
16 preclusion. You don't need a final judgment. Alls [sic] you
17 need is that the claims, or any part of them in the first case
18 -- in the second case, excuse me, could have been brought in
19 the first case. And there's no question it could have been
20 brought in the first case. And this argument about trust
21 number three and trust number two.

22 I believe it's very, very important when you look at
23 the pleadings in the first case they refer to the oil assets.
24 And again, I repeat myself and I apologize. They reference an
25 appraisal being done. And it's in the approximate amount of

1 \$700,000.

2 And it's undisputed that there was an appraisal done
3 by his client in 2009 that included all of the oil rights; not
4 35 percent. So all of the oil rights were included in trust
5 number two. And that's what we were talking about in the
6 first case. And even if we weren't you don't need a final
7 judgment on the issue. Under claim preclusion it's just a
8 claim that could have been brought in the first action. It's
9 very, very broad and expansive the Nevada position under Five
10 Star.

11 Thank you.

12 THE COURT: Okay. I'm not understanding that there
13 shouldn't -- there doesn't have to be a valid final judgment.
14 I think that that is an essential issue. Sit back down, Mr.
15 Powell. You don't get to talk again.

16 MR. POWELL: Sorry.

17 THE COURT: The same parties or their privies are
18 involved in both cases. A valid final judgment has been
19 entered and the subsequent action is based on the same claims
20 or any part of them could have been brought in the first case.
21 That's to me, I don't see that it meets any of those elements.
22 I don't think it's the same parties. We have a judgment on
23 something that's entirely different than what's involved here.

24 I guess you could have litigated at the same time,
25 but it -- not to the extent that I feel that they're precluded

1 from litigating it now. I mean, it was an entirely different
2 and I think somewhat I guess a previous issue that was
3 reasonably litigated when it was litigated. But there's
4 nothing to indicate that you would need to litigate this issue
5 because nobody knew that four years in the future the trustee
6 was going to change how she's making distributions. I mean,
7 nobody could have anticipated that. So how would you litigate
8 it?

9 To me it just doesn't seem that it's an issue that
10 should be precluded from being litigated at this time. So I'm
11 going to deny the motion to dismiss the declaratory relief
12 petition.

13 Then we have the second issue which is the -- this
14 is now your turn, Mr. Powell.

15 MR. POWELL: Okay.

16 THE COURT: Which is the issue of whether distributions
17 should be made.

18 MR. POWELL: Your Honor, as is pointed out, we have a 33
19 year, we're now in year 34, status quo distribution of 65/35.
20 That is going back to the way that the trust was initially
21 allocated between trust two and trust three in approximately
22 1980. That the -- Mr. Connell died I think in December of
23 '79. So returns were done in '80.

24 From '80 on we had a situation where Mrs. Connell as
25 the surviving trustor received 65 percent of this oil gas

1 mineral income. And Ms. Ahern received 35 percent. Also in
2 1980 as well Ms. Ahern became a co-trustee of the trust as
3 well, which is a significant fact. So it was Ms. Ahern and
4 Ms. Connell as trustees. These returns were done. And for 34
5 -- or 29 --

6 THE COURT: Okay.

7 MR. POWELL: Yes?

8 THE COURT: But didn't we already litigate or argue the
9 whole issue of whether there -- we should maintain the status
10 quo, or they should be reinstated? And didn't we already rule
11 on that? And isn't that what we're having the trial for in a
12 month or so?

13 MR. POWELL: I --

14 THE COURT: What's the change? In other words --

15 MR. POWELL: Well --

16 THE COURT: -- why would we change -- six weeks before
17 the trial --

18 MR. POWELL: Sure, I understand.

19 THE COURT: -- why would we change and say no. Now we've
20 got too many distributions here?

21 MR. POWELL: Well --

22 THE COURT: What's the change, or why would I change that
23 previous status quo that you've established?

24 MR. POWELL: Well, one, the issue previous was that we
25 had not petitioned for relief to reinstate that status quo

1 until such time as a final determination was made. So that's
2 one issue. Secondary issue was it was argued that the -- we
3 hadn't made the argument supposedly about laches. We feel
4 like the hearing in six weeks does not need to occur. That
5 the doctrine of laches must apply here.

6 We also have as well, we have a clear declaration
7 from Ms. Ahern that she was aware at the time that supposedly
8 she had these rights but she claims she consulted with an
9 attorney who told her that she had these rights. She then
10 decided that I guess apparently on the advice of the attorney
11 she may not want to actually enforce these rights because she
12 might be better off simply waiting for -- she might be better
13 not upsetting Ms. Connell for fear that she might get
14 disinherited from Ms. Connell's estate plan.

15 In fact, the language that's actually used in her
16 response is that she acquiesced. We believe the doctrine of
17 laches applies here and makes all of this case irrelevant in
18 terms of needing to proceed forward. The doctrine of laches
19 is supposed to prevent somebody from sleeping on their rights.
20 And then in this case 33 years down the road arguing that they
21 have rights, they have enforceable rights and they have
22 justification for doing what they did.

23 THE COURT: So you're not just seeking to have the
24 distributions reinstated in anticipation of the outcome of the
25 ultimate hearing. You're saying there's no need to have that

1 hearing?

2 MR. POWELL: There's no need to have that hearing because
3 the doctrine of laches is applicable here. The Kuni case as
4 -- at which seems to be the landmark case for doctrine of
5 laches, that was a 22 year period of sleeping on one's rights.
6 This is again, we're in year 34 now. This is the first time
7 again that there's been this assertion that no. I always had
8 this hundred percent right to the income, not the 35 percent
9 income that I was taking for 29 years of Ms. Connell's life
10 and then four years subsequent to that.

11 So we believe as we've outlined the doctrine of
12 laches is applicable here and needs to be enforced.

13 Now we don't need to even -- just like a statute of
14 limitations issue, we don't need to get into the substantive
15 arguments because the doctrine of laches has to apply. Even
16 assuming arguendo that she does have this right. She slept on
17 it for 33, 34 year snow. And this is not behavior that should
18 be rewarded. Especially in this court, a court of equity.

19 And again, like I said, we have the Kuni case that
20 spells out. And I'm assuming you've seen the quotes that are
21 in there. They're pretty clear. That when you have an issue
22 like we have here where Ms. Connell's already deceased. So we
23 have a -- we can't also locate the 706 because the IRS hasn't
24 retained a copy. The preparer of the 706 hasn't retained a
25 copy. We have spoliation of evidence.

1 So we are at a severe disadvantage for being able to
2 rebut the assertions that Ms. Ahern is making other than what
3 we've already provided, which is --

4 THE COURT: If there's spoliation of evidence it wouldn't
5 have been by Ms. Ahern. I mean, it's just a lapse of time.
6 It's not something that she --

7 MR. POWELL: Well, Miss -- if -- well, my point is if Ms.
8 Ahern had brought this in a timely manner, and specifically if
9 she had brought this when Ms. Connell had the ability to
10 rebut --

11 THE COURT: Doesn't that get back to this whole point of
12 claim preclusion then? Why didn't we litigate this four years
13 ago?

14 MR. POWELL: Exactly. Why did no -- it wasn't raised
15 four years ago. There was still 65/35 four years ago.

16 THE COURT: Right.

17 MR. POWELL: There was 65/35 up until June. Then the
18 plug is pulled by Ms. Ahern who says, I've always been
19 entitled to a hundred percent of it. I just never told any of
20 you apparently that I felt this way and had these rights.

21 I mean, this is analogous to again, a homeowner who
22 says, you're encroaching on my property by 30 feet. I've
23 known for 30 years but I'm telling you now. Well, too late.

24 THE COURT: You're about to talk me into reconsidering my
25 -- Mr. Mugan's motion. Because what you're saying basically

1 is that we should have known this and it should have all been
2 litigated when Ms. Connell was still alive. And you know, Ms.

3 Ahern didn't tell us and so, you know, it should have been
4 litigated four years ago. You know --

5 MR. POWELL: But I'm not sure how that would be on my
6 client's burden when Ms. Ahern is the trustee and Ms. Ahern is
7 still doing a 65/35 split that whole time.

8 THE COURT: Okay. So it's her fault that it didn't --

9 MR. POWELL: How can my client anticipate --

10 THE COURT: -- we didn't get litigate -- this didn't get
11 litigated nine years ago when maybe I don't know if Ms.
12 Connell was competent to -- I don't know what condition she
13 was in at the end of her life.

14 MR. POWELL: Oh, well, she was still -- but my point
15 being is if you're going to make an argument of saying, you're
16 not entitled to the 65 percent; I was always entitled to it.
17 Why was this not done during Mrs. Connell's lifetime so Ms.
18 Connell could have responded to it? Ms. Connell was a trustee
19 as well.

20 THE COURT: Right.

21 MR. POWELL: Not just a beneficiary. Again, they were --
22 since 1980 they were both co-trustees.

23 THE COURT: Uh-huh.

24 MR. POWELL: So again, Ms. Ahern's point is since day one
25 I was always entitled to a hundred percent of the income. Ms.

1 Connell was never entitled to a red cent. And then following
2 her passing Jacqueline and her sister were never entitled to
3 that.

4 So again, we have a situation where somebody is
5 raising an argument that nobody's aware of existed until June
6 essentially when the --

7 THE COURT: And so she should now be foreclosed from
8 raising it just because while her step -- her I guess adopted
9 mother, step-mother was living she let her have the 65
10 percent.

11 MR. POWELL: Uh-huh, supposedly.

12 THE COURT: Now she should be precluded --

13 MR. POWELL: From arguing that -- right, exactly.

14 THE COURT: -- that she was in fact entitled to that 65
15 percent?

16 MR. POWELL: Exactly, exactly. We have -- again, we have
17 33 years of a 65/35. Only recently do we have the assertion,
18 no. I was always entitled to a hundred percent. The only
19 evidence we have left is a Texas estate tax return which shows
20 a 65/35 allocation.

21 THE COURT: Uh-huh, okay.

22 MR. POWELL: So we -- the spoliation is the fact that we
23 can't offer any testimony from Mrs. Connell, the other co-
24 trustee to say no. This was all done properly. They're
25 trying to basically assert that as was done on the Texas

1 return, which again is the only evidence we have left because
2 the 706 can't be found, that somehow --

3 THE COURT: Well, spoliation really just raises a
4 rebuttal presumption. So it doesn't necessarily mean that
5 judgment would be granted.

6 MR. POWELL: Sure.

7 THE COURT: It just means that at trial --

8 MR. POWELL: Sure.

9 THE COURT: -- you know, if you raise that there's been
10 spoliation that somehow I guess would be attributable --

11 MR. POWELL: Well, and --

12 THE COURT: -- to Ms. Ahern.

13 MR. POWELL: Yeah.

14 THE COURT: And which I'm kind of not seeing that, but
15 you know, it could be. I mean --

16 MR. POWELL: Well --

17 THE COURT: -- it wasn't really briefed. So okay.

18 MR. POWELL: Well, the Kuni case basically says is that a
19 critical factor in determining whether laches should apply is
20 whether there's a disadvantage of basically the injured
21 party --

22 THE COURT: Right.

23 MR. POWELL: -- which would be my client.

24 THE COURT: Sure.

25 MR. POWELL: And we can't offer any rebutting evidence

1 from Mrs. Connell as to what the realities of the situation
2 were. And that's a huge factor in Kuni and also many of the
3 other laches cases that said that if a key witness cannot
4 present their testimony that's a huge factor that has to be
5 considered by the Court --

6 THE COURT: Okay, got it.

7 MR. POWELL: -- because that's the damage so.

8 THE COURT: Mr. Mugan.

9 MR. MUGAN: Thank you, Your Honor. Talk about the
10 injunction. I'll just respectfully remind you that we were
11 here in November. We went through this. You basically issued
12 an order saying that my client as trustee, there was no
13 dispute that she was entitled to 35 percent; she could have
14 that. The 65 percent as trustee she had to hold until this
15 matter was --

16 THE COURT: Right.

17 MR. MUGAN: -- going to be heard in a couple months. And
18 nothing can be more fair than that. You're treating both
19 sides equally. When the final judgment is rendered the
20 money's going to be there whoever wins. And nobody has the
21 use or enjoyment in the interim.

22 Like we said in our objection, it's like trying to
23 argue again the merits of the case and we're not there yet.
24 You found that we have to have an evidentiary hearing. And if
25 you look at the requirements for an injunction they have to

1 prove irreparable harm, compensatory damages are not adequate
2 remedy. And a showing of reasonable probability of success.

3 They haven't shown any of those.

4 And they have to show all three. If they fail on
5 any of them then they're not entitled to an injunction.

6 Basically you've already issued an injunction regarding the 65
7 percent. There's no proof of irreparable harm. We're talking
8 about dollars here.

9 THE COURT: Right.

10 MR. MUGAN: That's adequate compensation. We're not
11 talking about blowing up a building that can't be replaced, or
12 the sale of real estate that's irreplaceable. We're talking
13 about dollars. That's adequate compensation.

14 THE COURT: And since it's not even like an asset that
15 would fluctuate like in the stock market. It's oil lease
16 money. It's --

17 MR. MUGAN: Yeah, it's oil.

18 THE COURT: It's revenue from oil leases.

19 MR. MUGAN: Right.

20 THE COURT: It's cash coming in.

21 MR. MUGAN: And the last thing is the reasonable
22 probability of success. We don't think they've shown that.
23 And we went into great detail as to why.

24 Laches, let's talk about laches. Laches work both
25 ways. If you recall Marjorie died in 2009.

1 THE COURT: Uh-huh.

2 MR. MUGAN: And they're claiming that Marjorie in her
3 last will and testament exercises general power of appointment
4 as to the 65 percent. And it went to a separate and distinct
5 trust called the MTC Living Trust.

6 And they cite 163.385 about not having to, you know,
7 deed it out, not having to divide it. Well, if you look at
8 163.383 that's applicable when you're talking about a trust or
9 trusts created by a single instrument. Once she died we're
10 talking about two separate trusts, two separate documents.
11 One created way back in '72. And now a separate and distinct
12 trust in 2009.

13 So you know, they should have deeded out that at
14 that point, the 65 percent. And it was never done. Also they
15 make in their pleadings they talk in detail about the oil --
16 apache oil and gas leases in 2012 and how Jacqueline was
17 intimately involved in blah, blah, blah. And how she had
18 professionals helping her. And how they had Eleanor, my
19 client as trustee sign all the new leases as the sole lessor
20 as trustee.

21 Well, if they had 65 percent, if MTC Living Trust
22 had 65 percent interest they would -- Jackie as trustee of
23 that trust would have been legally required to sign those
24 leases. And they never did. They only had Eleanor. And that
25 speaks volumes of not only Jackie's belief, but also the

1 professionals that she employed.

2 The division orders. You go back years and years.

3 All of the division orders from Apache and the other oil
4 companies, they don't use the employer ID number, the federal
5 ID number for trust number three. They use trust number two.
6 And again, in 2009 at the latest that should have been
7 changed. And Jackie was intimately involved. And she's the
8 trustee, the sole trustee of MTC Living Trust. And she's also
9 one of the two primary beneficiaries.

10 And so when you talk about laches it works both
11 ways. And Marjorie really is the only one who can say what
12 the deal was. And Marjorie is dead. And it's just as much to
13 our detriment if not more than to theirs.

14 And when you talk about laches and detrimental
15 reliance you have to talk about first offer and acceptance.
16 And there really has been no proof of any offer and
17 acceptance. What detrimental reliance and laches is, is
18 really a substitute for consideration. And we kind of skip
19 over those first two elements and alls we talk about is
20 consideration.

21 Well, even if it's a substitute for consideration
22 we're talking about oil and gas rights and an undivided
23 interest in real estate that cannot be performed within one
24 year.

25 So under the statute of frauds it would have had to

1 be in writing. You're dealing with real estate. And you're
2 dealing with a situation that cannot be performed with one
3 year.

4 So laches works both ways. And you already decided
5 last time that we needed an evidentiary hearing in this
6 matter.

7 THE COURT: Okay.

8 MR. MUGAN: Thank you.

9 THE COURT: Mr. Powell, briefly.

10 MR. POWELL: Your Honor, I -- the crux of this, we're
11 acting again as though somehow this -- that Eleanor just out
12 of the blue decided to give the 65/35. I would point to
13 again, on the Texas estate tax return the only evidence we
14 still have left because of this huge passage of time, is
15 schedule B2. It says specifically the language coming up with
16 the 65/35 split on this return. Marital bequest.

17 As pointed out trust number three was a survivor's
18 trust but it also had the marital trust as well. Back when
19 this trust was created and back when Mr. Connell died there
20 was no thing as -- there was no such thing as the Q Tip trust.

21 So -- and the trust itself says, I want to max out
22 the marital deduction --

23 THE COURT: Okay. When I started out -- when you started
24 Mr. Powell --

25 MR. POWELL: Yeah.

1 THE COURT: -- the question was what's changed; didn't we
2 already argue all of this? And you said well --

3 MR. POWELL: Here's --

4 THE COURT: -- the release issues hadn't been addressed.
5 And to me they all sound like they really were more in support
6 of Mr. Mugan's motion on claim preclusion. That she shouldn't
7 have changed this. Why wasn't it litigated previously? ~~To me~~
8 ~~this is the whole point why we have to have this evidentiary~~
9 hearing is because we don't have any other way. I don't
10 understand how we could possibly do this short of an
11 evidentiary hearing. Because as you said, some of the
12 evidence is gone, the written documentary evidence would be
13 gone.
14 Through nobody -- I'm not saying it's anybody's
15 fault, but it just -- this goes back to '72. This is like 40
16 years old.

17 MR. POWELL: Which -- and that again went to our point of
18 why we think again laches should be applicable here because of
19 the fact that this -- and if I could read you just real
20 quickly --

21 THE COURT: Sure.

22 MR. POWELL: -- the passage directly from Ms. Ahern's
23 response. Which did you have the opportunity to read our --

24 THE COURT: Yeah.

25 MR. POWELL: -- response to their --

1 evidentiary hearing that's coming up in a month. I just
2 didn't see what the change was in circumstances.

3 MR. POWELL: Okay.

4 THE COURT: Now that I understand that you're just --
5 this is an issue you want -- you would have liked me to grant
6 today, but it's just an issue to get as part of the ultimate
7 case it's one of the claims is that she's barred by the
8 doctrine of laches.

9 And now I understand -- that's how I understand it.

10 MR. POWELL: Okay.

11 THE COURT: That's how I view it. And I think it's
12 something that has to be determined at the same time we
13 determine the other issues --

14 MR. POWELL: Understood.

15 THE COURT: -- in the pending evidentiary hearing in
16 February.

17 MR. POWELL: Okay, understood.

18 THE COURT: So denying both petitions. It's without
19 prejudice because if for some reason something develops
20 through the evidentiary hearing that one of the other claims
21 has merit, either that this is precluded or that there's
22 laches then, you know, we can rule on it at that time, but
23 that's when I think it all has to be part of the evidentiary
24 hearing.

25 MR. POWELL: Understood. Thank you, Your Honor.

1 MR. POWELL: The laches issue, okay.

2 THE COURT: -- it's any different from any of the other

3 issues that are going to be --

4 MR. POWELL: Okay.

5 THE COURT: -- determined at the hearing. It's --

6 MR. POWELL: Okay.

7 THE COURT: It's just one of the claims that goes to, is

8 she barred from making this change --

9 MR. POWELL: Okay.

10 THE COURT: -- by the doctrine of laches.

11 MR. POWELL: Okay.

12 THE COURT: I mean, it's now --

13 MR. POWELL: I understand.

14 THE COURT: -- I think it's something that's part of our
15 February trial.

16 MR. POWELL: Okay, okay.

17 THE COURT: So --

18 MR. POWELL: Understood.

19 THE COURT: -- when I say I'm not going to grant it today
20 it's not that I'm saying you --

21 MR. POWELL: Sure.

22 THE COURT: -- aren't entitled to pursue it --

23 MR. POWELL: Sure.

24 THE COURT: -- as a claim. It's just that I can't grant
25 preliminary relief. To me this is part of the whole

1 Her evidence is she's got this Texas estate tax
2 return showing 65/35.

3 THE COURT: Okay. But they can all come in and testify,
4 Mr. Powell.

5 MR. POWELL: Okay.

6 THE COURT: That's -- I think that's what we said back in
7 November is that this is a factual dispute. It's going to
8 require taking the testimony. And in the meantime money's
9 being held. It's just cash. It's not some sort of an estate,
10 or something -- it's being just held. If it's theirs they get
11 the money. If it's not theirs Ms. Ahern gets the money.

12 MR. POWELL: Okay.

13 THE COURT: I'm just not understanding why we can't do
14 this in February when -- as was planned originally.

15 MR. POWELL: It was planned originally --

16 THE COURT: What has changed?

17 MR. POWELL: -- but it was also left that we could
18 petition for any other relief because it was deemed -- it was
19 deemed essentially -- and Mr. Mugan argued that we didn't
20 plead enough of the issues. That we only pled for a
21 declaratory judgment.

22 THE COURT: Right. Well, I just think that at this point
23 in time this is one of the issues that would be appropriately
24 determined at the hearing. And I don't think it's any
25 different --

1 THE COURT: Oh, yeah. I've got it right here.

2 MR. POWELL: okay.

3 THE COURT: Yeah.

4 MR. POWELL: This is the assertion in their words. "When
5 W.N. Connell passed away Marjorie T. Connell as a surviving
6 trustor and trustee of the trust began paying herself 65
7 percent of the Upton County Texas oil right income.

8 THE COURT: Uh-huh.

9 MR. POWELL: Eleanor consulted an attorney and was
10 advised that although Eleanor was entitled to all of the Upton
11 County Texas Oil right income, if she asserted her rights to
12 all the income against Marjorie at the time it would in all
13 likelihood result in Marjorie disinherit Eleanor when
14 Marjorie died.

15 The advice essentially was to take less now so you
16 could inherit all of Marjorie's estate later. Although
17 Eleanor knew that she, Eleanor, was entitled to a hundred
18 percent of the Upton County Texas Oil income. She consented
19 to Marjorie receiving the 65 percent. The advice of the
20 attorney and Eleanor's love and respect for and appreciation
21 of Marjorie T. Connell as her mother led to her acquiescence.

22 How is this not laches if you sleep on your rights,
23 you don't assert anything different? And I'm not sure how my
24 client could have expected anything different than the status
25 quo to remain in effect. How did she know?

1 MR. MUGAN: I'm not trying to be a smart aleck, Your
2 Honor. But I'm just asking if the Court wishes to reconsider
3 its ruling in light of what he said regarding the claim
4 preclusion.

5 THE COURT: I appreciate that, Mr. Mugan. And as I said,
6 you know, he almost talked me into reconsidering it. But now
7 that I understand that he's just raising this issue as a
8 potential claim or theory for determination at the time of
9 trial then I think that's where we'll leave it. We'll
10 consider all these issues at the trial.

11 MR. MUGAN: Thank you, Your Honor.

12 THE COURT: Okay, thanks.

13 [Proceedings Concluded at 9:36 a.m.]

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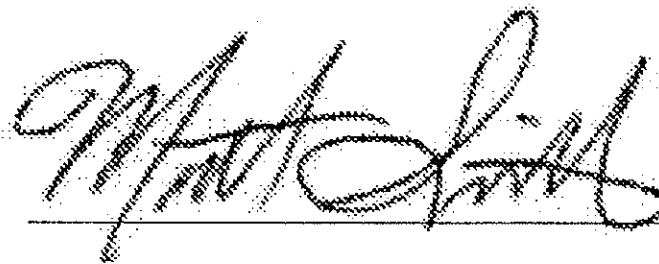
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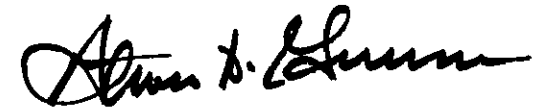
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

A handwritten signature in black ink, appearing to read 'Matthew Smith', is written over a horizontal line.

Matthew Smith

Certified Transcriber



CLERK OF THE COURT

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

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

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

Date of Hearing: January 14, 2015
Time of Hearing: 10:00a.m.

17
18 An Inter Vivos Irrevocable Trust.

19
20 **OPPOSITION TO ELEANOR C. AHERN'S MOTION TO DISMISS**
21 **PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO**
STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED;

AND,

22 **COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M.**
23 **MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR**
DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF
24 **PENALTIES, AND FOR OTHER RELIEF**

25 Kathryn A. Bouvier ("Kathryn") and Jacqueline M. Montoya ("Jacqueline")
26 hereby oppose the MOTION TO DISMISS PETITION FOR DECLARATORY
27 JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT
28 TO NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A) FOR FAILURE TO
STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PER NRCP 12(b)(5)

1 (“Eleanor’s Motion”), filed herein on October 9, 2014, by Eleanor C. Ahern
2 (“Eleanor”); and, they further hereby submit their COUNTERMOTION FOR
3 SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR
4 DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF,
5 stating as follows:

6 It is respectfully submitted that once the Court understands the pertinent facts in
7 this case and applies the law thereto it will be obvious that Eleanor’s Motion is
8 frivolous and a waste of time and expense to the Court and the parties in this case. On
9 the other hand, it is further respectfully submitted that the Countermotion of Jacqueline
10 and Kathryn set forth hereafter has merit and should be granted.

11 PERTINENT BACKGROUND FACTS

12 1. This Trust Case was actually commenced by Eleanor in 2009 with an
13 unopposed Trust Petition (hereinafter referred to as the “2009 Petition”) to obtain a
14 Court order clarifying to whom subtrust benefits would be paid upon her death. A copy
15 of Eleanor’s 2009 Petition is attached as Exhibit “D” to Eleanor’s Motion. The Trust
16 involved was THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING
17 TRUST, dated May 18, 1972 (hereinafter referred to as “Trust No. 1”). The subtrust
18 involved in the 2009 Petition was Trust No. 2, created under the provisions of Trust
19 No. 1.

20 2. The Trust No. 1 provisions created two sub-trusts upon the death of
21 original grantor, W. N. Connell, in 1979 (referred to as Trusts Nos. 2 and 3). Income
22 allocated to Trust No. 2 was payable to Eleanor during her lifetime. Income and assets
23 of Trust No. 3 belonged to Marjorie T. Connell (hereinafter “Marjorie”), one of the
24 original trustors creating the Trusts. However, the Trust No. 2 provisions were not
25 clear as to the designation of the successor beneficiaries entitled to the benefits under
26 Trust No. 2 upon the death of Eleanor. On the other hand, the provisions for the
27 designation of successor beneficiaries to the income and assets of Trust No. 3, after the
28 death of Marjorie, were perfectly clear.

1 3. Therefore, Eleanor, following Marjorie's death, was advised by her former
2 attorneys handling this Trust matter, **and she herself elected**, to petition the Court to
3 make clear that her two daughters, Jacqueline and Kathryn, would inherit her benefits
4 and the assets under Trust No. 2 upon her death. As the 2009 Petition proceedings will
5 clearly demonstrate, the 2009 Petition and court action was a totally uncontested matter
6 dealing only with Trust No. 2. Eleanor was the Petitioner and no other persons
7 intervened in the proceedings.

8 4. On September 4, 2009, pursuant to Eleanor's 2009 Petition, the District
9 Court took jurisdiction over Trust No. 1 (and the sub-trusts created thereunder),
10 approved Eleanor's request for clarification, and ordered that Trust No. 1 and Trust No.
11 2 be reformed and clarified to provide that upon the death of Eleanor, the income rights
12 which she had under Trust No. 2 and the assets therein, would pass to her two
13 daughters, Jacqueline and Kathryn. This was obviously the intent of the original
14 grantors of Trust No. 1, W. N. Connell and Marjorie T. Connell, as had been asserted
15 in Eleanor's 2009 Petition.

16 5. Pursuant to the provisions of Trust No. 1, Trust No. 2, and Trust No. 3, up
17 to the time, and at the time, of Eleanor's initial 2009 Petition in this Trust Case, and the
18 September 4, 2009 Order entered by the Court clarifying entitlement after Eleanor's
19 death, approximately 35% of the income earned by Trust 1, from Texas oil and mineral
20 properties it owned, was being paid to Eleanor as the beneficiary under Trust No. 2.
21 The remaining approximate 65% of the income earned by Trust 1 had been paid to
22 Marjorie as the beneficiary of Trust No. 3 until her death in 2009.

23 6. After Marjorie's death and the entry of the Court's September 4, 2009
24 Order clarifying to whom the income and assets of Trust No. 2 would devolve after
25 Eleanor's death, and for the next four years thereafter, the income of Trust No. 1 was
26 continued to be paid in the same proportions, with approximately 35% going to Eleanor
27 as the income beneficiary under Trust No. 2, and the remaining approximate 65%
28 portion going to Jacqueline and Kathryn as beneficiaries under Trust No. 3. (Marjorie

1 designated Jacqueline and Kathryn as the beneficiaries by naming them as the
2 beneficiaries under her MTC Living Trust, which Trust Marjorie also designated, by
3 a power of appointment granted her under Trust No. 1, as the beneficiary of her
4 interests under Trust No. 3.)

5 7. This consistent allocation of the income continued until approximately
6 June, 2013, when Eleanor suddenly decided that she should receive all of the income
7 from Trust No. 1, and she discontinued any payments to Jacqueline and Kathryn.

8 8. Thus, to reiterate, the division and distribution of income earned by Trust
9 No. 1 (i.e., 35% to the beneficiary of Trust No. 2 and 65% to the beneficiary of Trust
10 No. 3) was recognized, approved, and followed by the Trustees of the Trust and all
11 beneficiaries from the death of original Trustor, W. N. Connell, in 1979, until the
12 summer of 2013, when Eleanor, as Trustee of Trust No. 1, then decided that while she
13 was alive, all of the Trust No. 1 income (the shares payable to both Trust No. 2 and
14 Trust No. 3) should be paid to her. Therefore, she abruptly ceased distributing any of
15 the Trust No. 1 income to Jacqueline and Kathryn beginning in June, 2013.

16 9. Eleanor, as Trustee of Trust No. 1, abruptly ceased paying any income
17 from Trust No. 1 to Jacqueline and Kathryn, as beneficiaries under Trust No. 3, via the
18 MTC Living Trust, in June, 2013, without filing any petition with the Court for
19 instructions to clarify whether her position was correct or not. Neither did she discuss
20 the reasoning or legal basis of her decision with Jacqueline or Kathryn. In suddenly
21 stopping payments to Jacqueline and Kathryn, she went counter to 34 years of history
22 and precedent in how the income of Trust No. 1 was allocated (i.e. 35% to Trust No.
23 2, and 65% to Trust No. 3). Eleanor's conduct left Jacqueline and Kathryn then, in
24 2013, with no other alternative but to seek Court assistance themselves in restoring to
25 them their beneficial income rights under Trust No. 3, via their beneficial interests in
26 the MTC Living Trust.

27 10. As the Court had already taken jurisdiction over Trust No. 1 with the filing
28 of Eleanor's 2009 Petition in this Trust Case, Jacqueline, as Trustee of Marjorie

1 Connell's MTC Living Trust, and on her and Kathryn's behalf as beneficiaries, filed
2 herein on September 27, 2013, the PETITION FOR DECLARATORY JUDGMENT
3 REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS
4 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A) (hereinafter "current Trust
5 Petition"). The purpose of this current Trust Petition, which is now pending before the
6 Court, was to resolve Eleanor's abrupt cessation of payments of income to Jacqueline
7 and Kathryn from Trust No. 1 in June, 2013, and restore to them the income they are
8 entitled to as beneficiaries under Trust No. 3. Jacqueline and Kathryn further believe
9 that Eleanor's actions constitute a breach of her fiduciary duties as Trustee of the Trust,
10 requiring her removal as Trustee and awarding to them the damages they have suffered,
11 as well as damages for her wrongful conduct. Further, they submit that her belated
12 claim to all of the Trust income is contrary to the Trust provisions and triggers the right
13 to have the "no-contest clause" in the Trust applied to cause Eleanor to forfeit all rights
14 to benefits under the Trust. Lastly, they submit that Eleanor's wrongful conduct and
15 the litigation expenses it has caused to Jacqueline and Kathryn also justify the Court
16 awarding them judgment against Eleanor for the attorney's fees and costs they have
17 incurred.

18 11. The purpose of Eleanor's initial uncontested 2009 Petition in these
19 proceedings was simply to have the Court interpret and reform the subtrust (i.e. Trust
20 No. 2) to clarify to whom the income and assets of Trust No. 2 would be distributed
21 after Eleanor's death. At the time of that 2009 Petition, at the time the Order on that
22 Petition was granted in 2009, and for four years thereafter, there was no dispute
23 between Eleanor and Jacqueline and Kathryn as to Trust No. 3's entitlement to 65% of
24 the income from Trust No. 1. In fact, there had never before then been a dispute as to
25 this distribution of income (35%/65%) between Trust No. 2 and Trust No. 3 from the
26 date of W. N. Connell's death in 1979, until Eleanor's abrupt cessation of payments to
27 Jacqueline and Kathryn in June, 2013.

28 12. In addition to the proceedings commenced with the current Trust Petition,

1 and approximately 6 months after the filing of the current Trust Petition to establish
2 that Jacqueline and Kathryn have the right to 65% of the trust income from Trust No.
3 1, Eleanor, in 2014, filed a Will Contest in Case No. P-14-080595-E. Eleanor's
4 purpose in filing the Will Contest is to try to prove that Marjorie's 2008 Will is invalid.
5 If she accomplished that purpose, then it would be her position that the power of
6 appointment that Marjorie exercised in her Will, appointing to her MTC Living Trust
7 (and in turn to Jacqueline and Kathryn as beneficiaries under that Trust) all rights and
8 interests under Trust No. 3 upon her death, is null and void, in which event the benefits
9 under Trust No. 3 passed to her upon Marjorie's death.

10 13. Thus, Eleanor, in her quest to now claim the right to the income from Trust
11 No. 3, has made two separate claims. Her first claim asserted in July, 2013 (by
12 stopping payments to Jacqueline and Kathryn), is under the provisions of Trust No. 1
13 (and subtrusts thereunder) where she asserts that the trust terms in question require that
14 she should be paid the income allocated to Trust No. 3, challenging and seeking to
15 reverse 34 years of trust administration precedent. Her second claim and approach to
16 claim all the income is with her Will Contest. By invalidating Marjorie's Will, she
17 believes Marjorie would then not have successfully exercised her power of
18 appointment granted to her under Trust No. 3, leaving the devolution of Trust No. 3
19 benefits to her upon Marjorie's death, instead of to Marjorie's MTC Living Trust (and
20 Jacqueline and Kathryn as beneficiaries under that Trust).

21 14. Now, Eleanor has filed Eleanor's Motion asserting that Jacqueline's and
22 Kathryn's current Trust Petition should be dismissed for failure to state a claim. More
23 specifically, she asserts that the current Trust Petition is precluded under the legal
24 theory of "claim preclusion". Eleanor asserts that when she filed her 2009 initial
25 Petition in this Trust Case to clarify to whom benefits under Trust No. 2 would devolve
26 upon her death, Jacqueline and Kathryn had a duty, under the legal theory of claim
27 preclusion to assert their claim to income under Trust No. 3. By failing to do so in
28 2009 when Eleanor filed her initial 2009 Petition, Eleanor claims that they have

1 forfeited the right to now file an action claiming their right to the income under Trust
2 No. 3, and challenging Eleanor's efforts in 2013 to cut off their income rights.
3 Eleanor's Motion and assertions therein are preposterous!

4 15. Obviously, when Eleanor filed her initial uncontested 2009 Petition to
5 clarify beneficial rights to Trust No. 2 upon her death, Jacqueline and Kathryn had no
6 "claim" or cause of action to assert with respect to their right to receive the income
7 under Trust No. 3. They had no "claim" because their right to receive the income was
8 recognized, and had been recognized by all persons concerned, including Eleanor, since
9 the death of W. N. Connell in 1979. This right was provided to them under the terms
10 of Trust No. 1 and Trust No. 3, and Marjorie's MTC Living Trust. So, it would not
11 have been possible, when Eleanor filed her initial 2009 Petition, for Jacqueline and
12 Kathryn to have been aware that four years later, in 2013, Eleanor would suddenly do
13 an about face and make a claim to the income under Trust No. 3, ignoring the said
14 Trusts' terms and 34 years of precedent following such terms.

15 16. Prior to Eleanor's abrupt cessation of payments to Jacqueline and Kathryn
16 in 2013, Jacqueline and Kathryn had no reason to suspect or predict that Eleanor would
17 take the highly illogical and unsupportable position that she has the right to the income
18 from Trust No. 3. Eleanor had not made any such claim to the income for 34 years,
19 while not only receiving 35% of the income benefits under Trust No. 2, but also while
20 serving as the Co-Trustee and successor sole Trustee of Trust No. 1, Trust No. 2 and
21 Trust No. 3, tasked with properly administering and distributing the income thereunder.
22 Eleanor's position, in now claiming all of the income, is tantamount to an admission
23 on her part that she did not exercise her fiduciary duties properly as Trustee of the
24 Trusts for 34 years. She is contradicting her own decisions and actions over that 34
25 year period in her current claim to the income allocated to Trust No. 3. Most
26 importantly, it cannot be disputed that Eleanor's sudden change in making her claim
27 to the income in 2013, was not known or predictable by Jacqueline and Kathryn four
28 years earlier in 2009, so as to create in them a duty to make a claim then to the income,

or be precluded therefrom under the legal theory of claim preclusion, as illogically asserted in Eleanor's Motion.

17. Jacqueline's and Kathryn's claim under their current Trust Petition simply is a claim that did not exist in 2009 (since there was no dispute creating a claim at that time). Their claim, or more appropriately their cause of action, only came into existence in the summer of 2013, when Eleanor "out of the clear blue" decided to claim all of the income under Trust No. 3 and cut off their income stream, breaching her duties as Trustee of the Trust. Thus, it is utterly impossible for Jacqueline's and Kathryn's claim to the income under Trust No. 3, as asserted in their current Trust Petition, to be barred under the theory of claim preclusion as asserted in Eleanor's Motion.

18. On the other hand, Eleanor has now asserted and admitted, since the filing of the current Trust Petition, that she has believed that she was entitled to all of the income paid from Trust No. 1 to Trust No. 3 since the death of W. N. Connell in 1979. She has asserted that an attorney (who is now deceased) so advised her at that time, but she never took any action or made anyone else involved aware of her belief. Her excuse for not taking action or revealing her belief regarding her claim to all of this income prior to June, 2013, is that she allegedly did not want to alienate her mother, Marjorie, and have her otherwise disinherit her. She has also asserted in these proceedings (inconsistently) that she wanted to gift the income to Marjorie as a good will gesture. (This last excuse of course does not explain why she also "gifted" under this reasoning the income from Trust No. 3 to Jacqueline and Kathryn for four years after Marjorie's death until July, 2013.) Nonetheless, the fact Eleanor admits allegedly recognizing that she was purportedly entitled to all of the income for the last 34 years, but just did not want to "rock the boat", raises the issue of whether she, **herself**, is precluded from now claiming the right to all of the income from Trust No. 3 under the legal theory of claim preclusion, providing a legal basis to grant Jacqueline's and Kathryn's Countermotion for Summary Judgment on the claims asserted in their current

1 Trust Petition.

2 19. Eleanor, though now claiming that she has allegedly known she
3 purportedly had the right to all of the income for the last 34 years, has not acted
4 consistently with this alleged belief. First, as a beneficiary and second as a Co-Trustee
5 or sole Trustee of Trust No. 1 and its subtrusts, she has approved and allowed 65% of
6 Trust No. 1 income to be paid to the beneficiary of Trust No. 3. This inconsistent
7 behavior, relied upon by Jacqueline and Kathryn, would also preclude Eleanor from
8 making a claim to the income from Trust No. 3 under the legal theory of “waiver”.

9 20. Jacqueline’s and Kathryn’s defenses to Eleanor’s efforts to now claim the
10 income from Trust No. 3 are further supported by the fact that when Marjorie died in
11 2009, Eleanor was provided with a copy of Marjorie’s Will wherein Marjorie had
12 appointed her interests under Trust No. 3 to her MTC Living Trust (and in turn
13 thereunder to Jacqueline and Kathryn). Eleanor never raised any objection or challenge
14 to this Will at that time, or to Marjorie’s said Trust. Rather, Eleanor accepted a
15 \$300,000.00 bequest under the Trust from Marjorie. Further, in her initial 2009
16 Petition in these Trust proceedings, she indicated her recognition and approval of
17 Marjorie’s Will and Trust. This conduct further supports granting Jacqueline’s and
18 Kathryn’s Countermotion for Summary Judgment, based on the assertion of the
19 defenses of laches and waiver against Eleanor in these proceedings.

20 21. In now asserting a right to all of the income from Trust No. 3, and in her
21 Will Contest challenge, Eleanor has waited until key witnesses who could give clear
22 and convincing evidence relating to the claims have died. First, obviously, she has
23 waited until four years after the death of Marjorie before making her claims. The
24 testimony of Marjorie, one of the original grantors of the Trust, would be very
25 persuasive in clarifying what she and W. N. Connell intended under the Trust as to the
26 right to income during the balance of Marjorie’s life.

27 22. While we have lost Marjorie’s testimony due to her death in 2009, it
28 would be highly illogical for Marjorie to have agreed to a Trust agreement wherein all

1 the income earned by the Trust No. 1, both that allocated to Trust No. 2 and that
2 allocated to Trust No. 3, was payable to Eleanor, her and W.N. Connell's daughter,
3 with Marjorie receiving no benefit. The Trust Marjorie and W. N. Connell created, was
4 a typical AB Trust, wherein a portion of the Trust assets went to Marjorie as the
5 survivor, upon W. N. Connell's death, distributed under Trust No. 3, and a portion
6 (income only) would be payable to Eleanor, distributed to her under Trust No. 2. This
7 fact is admitted by Eleanor in her 2009 verified Petition. Nonetheless, not having
8 Marjorie's testimony in these proceedings is highly prejudicial to Jacqueline and
9 Kathryn, because she would have explained: 1) that she was entitled to receive and had
10 received the income under Trust No. 3 from and after the death of her husband, W. N.
11 Connell, 2) that her receipt thereof was exactly what she and W.N. Connell intended,
12 3) that it was due to the proper allocation of assets and interpretation of the provisions
13 of Trust No. 1, Trust No. 2, and Trust No. 3, upon her husband's death and in the filing
14 of his Federal and Texas Estate Tax Returns, and 4) that such allocation was made by
15 the attorneys and accountants assisting the Trustee of the Trusts in fulfilling her duties
16 thereunder.

17 23. Second, the attorneys, accountants and other persons who were intimately
18 involved, following W. N. Connell's death in 1979, in the allocation of assets between
19 Trust No. 2 and Trust No. 3 under the provisions of Trust No. 1, are now also deceased.
20 These professionals were tasked with assisting the Trustee of the Trusts in the proper
21 filing of W. N. Connell's Federal Estate Tax Return and his Texas Estate Tax Return,
22 wherein the allocations of property between Trust No. 2 and Trust No. 3 were made,
23 in accordance with the provisions of Trust No. 1, Trust No. 2 and Trust No. 3. These
24 allocations determined the right to income for the beneficiaries of Trust No. 2 and Trust
25 No. 3. The testimony of these percipient witnesses would be vitally crucial in the
26 present dispute between Eleanor and Jacqueline and Kathryn. But, Eleanor again has
27 waited until they are all deceased before making her claim.

28 24. In addition to witness testimony, documents pertinent to the filing of W.

1 N. Connell's Estate Tax Returns cannot now be located, including the controlling
2 Federal Estate Tax Return. Eleanor's delay in making her claim (first asserted in 2013)
3 has permitted this valuable document to now be misplaced or destroyed. (Eleanor as
4 Trustee of Trust No. 1 and its subtrusts should have kept a copy of the Return, but now
5 alleges she has none.) Fortunately, a signed copy of the Texas Estate Tax Return, and
6 a copy of the closing letter for the Federal Estate Tax Return are still in existence,
7 corroborating Jacqueline's and Kathryn's right to the income under Trust No. 3, and
8 proving that Eleanor is not entitled to such income. See respective Exhibits "A" (Texas
9 Estate Tax Return) and "B" (IRS closing letter) attached hereto, which are incorporated
10 herein by this reference. But, having a copy of the Federal Estate Tax Return would
11 be very material evidence, which has now been lost over the years while Eleanor sat
12 on her claim to the income, waiting for all this evidence to be lost.

13 25. Based upon the foregoing facts, Jacqueline and Kathryn submit:

14 A. That Eleanor's Motion should be denied. The legal theory of claim
15 preclusion is not relevant with respect to their claims under their current Trust Petition,
16 first arising in 2013 when Eleanor cut off their income from Trust No. 3. This is
17 blatantly obvious, and Eleanor's Motion is frivolous and has caused them unnecessary
18 legal expense and harassment in this Case.

19 B. Further, if any claim in this current Trust proceeding is subject to denial
20 under the legal theory of claim preclusion, it is Eleanor's claim (belatedly asserted in
21 2013) to all of the income under Trust No. 3. She has admitted that she allegedly knew
22 she had the claim, that a mistake was allegedly made in the allocations between Trust
23 No. 2 and Trust No. 3 in the filing of W. N. Connell's Estate Tax Returns, but she
24 declined to assert it with her initial 2009 Petition in this Trust proceeding.

25 C. Eleanor's claim to all of the Trust income, first asserted in or around June,
26 2013, is pathetically late. It is inconsistent with her conduct during the prior 34 year
27 period. It is asserted after key witnesses and material documentary evidence are no
28 longer alive or available, thus severely prejudicing and inhibiting Jacqueline and

1 Kathryn in their defense of her claim. Therefore, Eleanor's claim and position in these
2 proceedings should be denied under the Statute of Limitations, and/or under the
3 doctrines of laches and waiver as requested hereafter in Jacqueline's and Kathryn's
4 Countermotion for Summary Judgment.

5 D. Further, Jacqueline and Kathryn have repeatedly requested Eleanor to
6 provide them with an accounting of each of the Trusts, as required under Nevada law,
7 but none has been forthcoming. Eleanor should be penalized for this default and be
8 required to pay the fees and costs incurred by Jacqueline and Kathryn in having to seek
9 the Court's assistance to obtain information regarding the Trust that they are legally
10 entitled to. Further, given the acrimonious dispute between the parties as to the
11 entitlement to income, some restraints and safeguards need to be placed to insure that
12 Jacqueline and Kathryn receive the income in the event they prevail in this matter.
13 Placing all income withheld from them during the last year and one-half, together with
14 all accruing income from the Trust (not otherwise paid to them as herein requested) in
15 a neutral bank account, with no withdrawal allowed without the Court's order, would
16 be a proper step to protect Jacqueline and Kathryn's rights and interests in these
17 proceedings. Jacqueline and Kathryn also believe Eleanor has breached her Trustee
18 duties, not only in withholding the Trust income from them without proper cause, but
19 also in misappropriating their Trust income which she should have been holding
20 pending the Court's decision as to entitlement in these proceedings. Eleanor should
21 be removed as the Trustee of the Trusts due to her improper conduct and obvious
22 conflict of interest with Jacqueline and Kathryn.

23 E. For over one year now, Eleanor has been filing a multitude of frivolous
24 petitions and motions, a frivolous Will Contest, a frivolous appeal to the Nevada
25 Supreme, extensive but unnecessary discovery efforts, and other churning actions in
26 these proceedings and in the Will Contest Case . Her purpose in doing so is obviously
27 to harass and put financial pressure on Jacqueline and Kathryn to settle this case on
28 Eleanor's ridiculously unfair terms. Eleanor has continued to receive income under

1 Trust No. 2 during this period. However, Eleanor has withheld the payment of any
2 income (over \$1,500,000.00) owed to Jacqueline and Kathryn, greatly inhibiting them
3 in not only funding their fees and costs in this litigation, but in meeting their basic
4 living expenses. While the Court recognized this unfairness and ordered in the May 13,
5 2014 hearing that Jacqueline and Kathryn could start receiving the Trust No. 3 income,
6 the Court required that they post a bond first as a condition to receiving the income.
7 Bonds are practically impossible to obtain nowadays, even with a willingness to pay
8 a large premium. Thus, Jacqueline and Kathryn have not benefitted from the Court's
9 decision from the May 13, 2014 hearing. A resolution of this unfair situation needs to
10 be made.

11 Jacqueline and Kathryn request the Court to review again the issue of ordering
12 the resumption of Trust income payments to them. While they have been deprived of
13 over \$1,500,000.00 during the last year, Eleanor has been receiving for her use and
14 benefit her 35% share of the Trust income. If Jacqueline and Kathryn's position in this
15 litigation prevails, Eleanor will likely owe them considerable damages, including not
16 only attorneys fees and damages suffered due to Eleanor's breach of her fiduciary
17 duties, but also the disgorgement by Eleanor of the \$300,000.00 bequest she received
18 under Marjorie's MTC Living Trust. Further, under the "no-contest" clause in Trust
19 No. 1, Eleanor is subject to forfeiture of any further benefits under Trust No. 2 due to
20 her wrongfully challenging the provisions for distribution.

21 In addition, it appears that the income allocated to Trust No. 3, which Eleanor
22 is required to hold and safeguard pending the Court's decision herein as to entitlement,
23 has already been wrongfully depleted by Eleanor, based upon the recent account
24 statement received and information acquired from Eleanor and her counsel. Thus, not
25 only could she have forfeited her right to further income benefits from the Trust, but
26 she also appears to have wrongfully spent monies she was required to hold in the
27 Trust's account pending the outcome of these proceedings. Based on these facts, she
28 would not have the ability to repay Jacqueline and Kathryn all that she would owe

1 them. There is no security posted by Eleanor to pay these potential damages to
2 Jacqueline and Kathryn in these proceedings should they prevail. Thus, Jacqueline and
3 Kathryn are not being treated fairly in the withholding of income from them, while
4 Eleanor continues to receive income to fund her litigation tactics in these proceedings.

5 Accordingly, Jacqueline and Kathryn request that either income payments of
6 their 65% share of trust income resume to them, without their having to post a bond,
7 or that Eleanor's 35% share be withheld from her also, pending the Court's decision
8 in this Case. Eleanor is the wrongdoer in this Case. She, as a trustee with a fiduciary
9 duty, in a most cavalier manner, stopped paying Jacqueline and Kathryn their income
10 shares, without first consulting with them, and most importantly without getting
11 direction from and approval of the Court. A trustee who wishes to reverse 34 years of
12 trust administration practice and decisions, and who wants to make a self-serving claim
13 to all benefits under the Trust, thereby severely damaging other trust beneficiaries,
14 should be punished for acting without first seeking proper court approval and **allowing**
15 **the other beneficiaries due process to protect their interests.** This malicious and
16 inexcusable conduct of Eleanor alone justifies allowing a resumption of Trust payments
17 to Jacqueline and Kathryn, and reimbursement of past payments withheld, pending the
18 Court's decision in these proceedings.

19 LEGAL POINTS AND AUTHORITIES

20 A. CLAIM AND ISSUE PRECLUSION

21 The Nevada Supreme Court in *Five Star Capital Corporation v. Ruby*, 124 Nev.
22 1048, 194 P.3d 709 (2008), enunciated the elements and test required to establish the
23 defenses of claim preclusion and issue preclusion. As the Court noted, much confusion
24 has existed regarding these legal theories, and claim preclusion has often been referred
25 to as "res judicata", and issue preclusion as "collateral estoppel". Eleanor's Motion
26 seeks to have Jacqueline's and Kathryn's current Petition dismissed under the legal
27 theory of claim preclusion.

28 In *Five Star Capital Corporation v. Ruby*, the Court held that to establish claim

1 preclusion it must be shown that:

- 2 1. The parties or their privies are the same;
- 3 2. The final judgment is valid; and
- 4 3. The subsequent action is based on the same claims or any part of them
5 that were or could have been brought in the first case. *Id.* at 713.

6 Applying this test to Eleanor's Motion assertions clearly establishes that Jacqueline's
7 and Kathryn's claim under their current Petition to 65% of the Trust income, first
8 arising in 2013, is not barred under the doctrine of claim preclusion.

9 First, the 2009 initial Petition filed by Eleanor did not involve any other parties
10 disputing the relief she was seeking. There was no contest involved. While Jacqueline
11 and Kathryn benefitted from the Petition, they could only possibly be considered
12 "privies" with Eleanor in the matter. There were no privies with a disputing party, as
13 there was none. Thus, it is questionable that the first element of claim preclusion exists
14 in applying that theory to the claim of Jacqueline and Kathryn against Eleanor four
15 years later.

16 The second element necessary to establish claim preclusion, that of a final
17 judgment, may appear to be present, but in actuality it is probably not even relevant to
18 the claim made by Jacqueline and Kathryn in 2013. The only final decision in 2009
19 said, in essence, that Jacqueline and Kathryn would receive Eleanor's income rights
20 and all assets of Trust No. 2 upon the death of Eleanor. That decision did not touch on
21 or effect Trust No. 3 income rights. A reading of the initial verified Petition filed by
22 Eleanor, attached as Exhibit "D" to Eleanor's Motion, shows throughout the Petition
23 that all that was at issue, was the devolution rights to Trust No. 2 upon Eleanor's death.
24 Further, while no issues were raised with regard to Trust No. 3 in the Petition,
25 consistently throughout the Petition, Eleanor as the Petitioner states and confirms her
26 recognition that Marjorie was the beneficiary of income rights under Trust No. 3, and
27 that Jacqueline and Kathryn succeeded to Marjorie's rights as beneficiaries of Trust No.
28 3 upon Marjorie's death. Thus, in 2009 there was no dispute regarding Jacqueline's and

1 Kathryn's claim to the income from Trust No. 3, which they were forced to assert in
2 2013, after Eleanor cut off their income rights. The only final decision rendered with
3 the 2009 Petition was that Jacqueline and Kathryn would also be the beneficiaries of
4 Eleanor's income and the assets of Trust No. 2 upon Eleanor's death. Jacqueline's and
5 Kathryn's claim to the income from Trust No. 3 is not at all inconsistent with Eleanor's
6 Petition and the Court's decision in 2009, designating them also as the beneficiaries of
7 the income and assets under Trust No. 2, upon Eleanor's death.

8 The third element is the clear and decisive determinant that Eleanor's Motion
9 and assertion of claim preclusion against Jacqueline and Kathryn is frivolous. This
10 element requires that "the subsequent action is based on the same claims or any part of
11 them that were or could have been brought in the first case". *Five Star Capital*
12 *Corporation v. Ruby, supra*, at 713. Obviously, the 2013 claim of Jacqueline and
13 Kathryn, to have restored to them the income payable to Trust No. 3, from which
14 Eleanor had cut them off, was not a claim relating to the issues and matters addressed
15 in Eleanor's 2009 Petition. Eleanor's 2009 Petition dealt only with the request to the
16 Court that Trust No. 1 and Trust No. 2 be reformed and clarified to provide that the
17 benefits of Trust No. 2 devolve to Jacqueline and Kathryn upon Eleanor's death. There
18 was no issue at that time with respect to entitlement to income as the beneficiary of
19 Trust No. 3.

20 In addition, it is patently obvious that Jacqueline and Kathryn "could not have
21 brought" in 2009, with the filing of Eleanor's Petition, the claim they asserted in 2013
22 to have income restored to them. Their 2013 claim did not exist in 2009. Eleanor had
23 not made her belated claim to all of the income from Trust No. 3 until 2013. It would
24 be utterly imbecilic to assert that Jacqueline and Kathryn had some duty to know or
25 predict in 2009 that Eleanor would contradict her own conduct as Trustee of Trust No.
26 1 and its subtrusts and the distribution allocations which had been in place and honored
27 for 34 years, by claiming a right to all of the income in 2013. In her 2009 Petition,
28 Eleanor, herself, makes it clear that she did not claim a right to the income from Trust

1 No. 3., but recognized that such income belonged to Marjorie while alive, and then to
2 Jacqueline and Kathryn. It is mind-boggling for Eleanor to now assert that Jacqueline
3 and Kathryn had any duty to ask the Court in 2009 to confirm the recognized practice
4 of distributing Trust No. 3 income to them, when Eleanor, based upon her 2009
5 Petition, and conduct as the Trustee of Trust No. 1, Trust No. 2, and Trust No. 3 for the
6 prior 30 years, had always displayed agreement with the income distribution allocation
7 to and under Trust No. 3.

8 The Court in *Five Star Capital Corporation v. Ruby* explained why claim
9 preclusion is not a viable defense for Eleanor in the current Petition and Trust Case.
10 The Court noted at page 715 as follows:

11 “As stated in Restatement (Second) of Judgments section 19, comment a, the purposes
12 of claim preclusion are ‘based largely on the ground that **fairness to the defendant**,
13 and sound judicial administration, require that at some point litigation over the
14 particular controversy come to an end’ and that such reasoning may apply ‘even though
the substantive issues have not been tried, especially if the plaintiff has failed to avail
himself of the opportunities to pursue his remedies in the first proceeding’”
(Emphasis added.)

15 Clearly, it would be extremely unjust and unfair to expect Jacqueline and Kathryn, in
16 2009, to have had a “crystal ball” with which they could see in the future that Eleanor
17 would take the action she took in 2013 to cut off their income from the Trust, so as to
18 require them to have asserted a claim in 2009 to the income (even though there was no
19 reason then to assert such claim as no one had opposed or challenged their right to the
20 income for the previous 30 years).

21 On the other hand, Eleanor may be guilty of conduct requiring the application
22 of claim preclusion to defeat her claim to all of the Trust income in 2013, and right to
23 cut off Jacqueline’s and Kathryn’s right to the income. Since Eleanor has readily
24 admitted she thought she had the claim to all of the income for the last 34 years, she
25 alone was aware of this percolating (in her mind only) issue, and she alone could have
26 brought the issue to the Court’s, Jacqueline’s and Kathryn’s attention in 2009, rather
27 than waiting until 2013. While the issues addressed in her 2009 Petition are quite
28 different than the issues now pertinent in the current Petition and Trust proceeding, at

1 least Eleanor was aware of her claim and could have asserted it with her 2009 Petition,
2 if that was necessary to avoid claim preclusion. This is why Jacqueline and Kathryn
3 raised this issue previously in these proceedings.

4 In the recent case of *Williams v. Eighth Judicial District Court of the State of*
5 *Nevada*, 2014 WL 3732892 (Table) (Nev.), the Nevada Supreme Court rejected the
6 petitioners assertion of claim preclusion to defeat the subject claim. In that case it was
7 alleged that Williams' first action related to a violation of a settlement agreement.
8 Since the second case involved further alleged violations of the settlement agreement,
9 the petitioners asserted Williams should have included his second claim in his first
10 case, and failing to do so was then barred under the theory of claim preclusion. The
11 Court, however, noted:

12 "... the claims at issue here are distinct from those in the previous case and could not
13 have been brought in that matter, rendering petitioners' preclusion-based argument
without merit (citing their decision in *Five Star Capital Corporation v. Ruby*)"

14 The claims in the *Williams* case related to the same settlement agreement.
15 However, the claim in the second case was for a violation of the settlement agreement
16 that occurred after the time of the first case. Obviously, therefore, the second claim
17 could not have been brought with the first claim. This situation is comparable to the
18 claims in the current Petition and Trust case involving Eleanor and Jacqueline and
19 Kathryn. There was no way that Jacqueline and Kathryn could have known to raise a
20 claim regarding entitlement to income from Trust No. 3 in 2009 when Eleanor filed her
21 initial Petition to clarify entitlement to the benefits of Trust No. 2 upon her death. As
22 in the *Williams* case, Jacqueline's and Katherine's claim did not arise until 2013, four
23 years after the issues in Eleanor's 2009 Petition had been resolved and finalized.

24 In summary of this point, Jacqueline and Kathryn submit that Eleanor's Motion
25 to Dismiss their claim to income under Trust No. 3 based upon the theory of claim
26 preclusion should be denied. Further, since Eleanor's claim is frivolous and only
27 asserted to harass Jacqueline and Kathryn and cause them additional unnecessary legal
28 expense, they should receive an award of attorneys fees and costs against Eleanor

1 pursuant to NRS 18.010(2)(b).

2 B. COUNTERMOTION FOR SUMMARY JUDGMENT BASED UPON
3 STATUTE OF LIMITATIONS LACHES, WAIVER, AND CLAIM
4 PRECLUSION

5 In considering the granting of a motion for summary judgment, the Court is
6 required to view the evidence in the light most favorable to the party against whom
7 summary judgment is sought, and disputed but unresolved factual allegations of that
8 party must be presumed correct unless clearly proven otherwise. The burden is on the
9 movant to demonstrate that grounds for summary judgment exist. *Pacific Pools*
10 *Constr. Co. v. McClain's Concrete, Inc.*, 101 Nev. 557, 706 P.2d 849 (1985).
11 However, in opposing the motion, the party against whom it is sought must present
12 specific facts rather than general allegations and conclusions to defeat the motion. *Bird*
13 *v. Casa Royale W.*, 97 Nev. 67, 624 P.2d 17 (1981). Further, the purpose for NRCP
14 Rule 56 should be effectuated, when the motion shows no genuine issues of fact
15 remain. The party filing the motion, as clearly stated in the Rule, should be granted the
16 judgment, so as not to be required to continue to waste time and expense litigating
17 where the opposing party's position lacks merit. *Elizabeth E. V. ADT*, 108 Nev. 889,
18 839 P. 2d 1308 (1992).

19 Jacqueline and Kathryn respectfully submit that their current Petition should be
20 summarily granted in that there are no material disputed facts relating to their defenses
21 and rights under the Statute of Limitations, laches, waiver, and claim preclusion against
22 Eleanor for wrongfully cutting off their income and beneficial rights under Trust No.
23 3. Eleanor's derelictions and belated behavior in asserting a claim to the income under
24 Trust No. 3, in light of her inconsistent conduct during the prior 34 years, and the loss
25 of material evidence due to the passage of time, which causes severe prejudice to
26 Jacqueline and Kathryn, clearly support the granting of summary judgment to them at
27 this time.

28 It should be noted that Eleanor has admitted that she was allegedly informed by

1 an attorney after the death of W. N. Connell, over 34 years ago, that she was entitled
2 to the income payable to the beneficiary of Trust No. 3. This attorney is no longer
3 practicing in Nevada and is now deceased. The point is that Eleanor admits she was
4 aware that a mistake had allegedly been made in W.N. Connell's Federal Estate Tax
5 Return and the allocation of Trust asset rights between Trust No. 2 and Trust No. 3 in
6 1979, over 34 years ago. Yet, she did not take any action to make a claim and assert
7 her purported right to the income payable to Trust No. 3 until 2013. This would
8 apparently mean that her claim should be barred by the Statute of Limitations, NRS
9 11.190(3)(d), which bars actions for relief on the ground of mistake unless asserted
10 within 3 years from "discovery by the aggrieved party of the facts constituting the fraud
11 or mistake". If, however, Eleanor's 2013 claim to the income payable to Trust No. 3
12 is not barred by the Statute of Limitations, it certainly should be barred under the
13 equitable theories of laches, waiver and claim preclusion.

14 1. Laches- Applying the legal principles of laches to the facts, as stated
15 above, presents a compelling case for granting summary judgment to Jacqueline and
16 Kathryn under their current Petition. The Nevada Supreme Court in the landmark case
17 of *Cooney v. Pedroli*, 49 Nev. 55, 235 P. 637 (1925), enunciated when it is appropriate
18 to apply the doctrine of laches to defeat a claim. The plaintiff in *Cooney* sought an
19 interest in real property 22 years after the defendant claimed the property, delaying
20 taking any action for that long period of time, notwithstanding the defendant's claims
21 to the property were all open and notorious and consistent with absolute ownership.
22 Also, during the delay, a material witness died preventing the defendant from having
23 the witness's testimony to support his case. The Court in considering the defense of
24 laches held:

25 "If it appears that (the adverse party) ha(s) been deprived of any advantage they
26 might have had if the claim had been seasonably insisted on, or if they be subjected to
27 any hardship that might have been avoided by reasonably prompt proceedings, a court
of equity will not interfere to give relief, but will remain passive (i.e., will apply the
doctrine of laches to defeat the claim).

28 **It is a very material circumstance to be considered in connection with the
lapse of time that death of those who could have explained the transaction has**

1 **intervened before the claim is made.”** *Id.* at 640. (Emphasis added.)

2 More recently, the Court reaffirmed its decision in *Cooney v. Pedroli* in the case
3 of *Public Service Commission v. Sierra Pacific Power Company*, 103 Nev. 187, 734
4 P.2d 1245. In this more recent case, the Court noted that Sierra Pacific knowingly
5 failed to assert its claims for six and one-half years. Having failed to do so, the Court
6 determined its claims were lost under the doctrine of laches. The Court stated at page
7 1251 as follows:

8 “Laches will be invoked when an actual or presumable change of circumstances
9 makes it inequitable to grant relief. (Citation) In *Cooney v. Pedroli*, 49 Nev. 55, 62-63,
10 235 P. 637, 640 (1925), we declared that ‘[w]hen **ever the passage of time has
brought in its train anything that works to the disadvantage of a party and makes
it doubtful if equity can be done, relief will be denied.**’

11 If Sierra had proceeded with diligence to challenge the Commission’s
12 interpretation of the statute or, at the least, had recognized and acted upon the
13 Commission’s relaxed approach to its earlier pronouncement, we are confident that
much of the delay and prejudice could have been avoided or minimized.” (Emphasis
is the Court’s.)

14 Applying the test enunciated in *Cooney v. Pedroli* and reaffirmed in *Public*
15 *Service Commission v. Sierra Pacific Power Company* to the present litigation, it is
16 clear that Eleanor’s blatantly belated claim (made by cutting off income distributions
17 to Jacqueline and Kathryn), first asserted in 2013, must be dismissed under the doctrine
18 of laches. Eleanor admits believing she was entitled to all of the income from Trust
19 No. 3 following the death of W. N. Connell in 1979. She admits she was advised over
20 30 years ago, by an attorney, that a mistake was purportedly made in the allocation of
21 the income between the subtrusts. She asserts in her pleadings filed herein that she
22 refrained from making a claim for two inconsistent reasons. On one hand, she has
23 stated that she did not make a claim because she was afraid it would upset her mother,
24 Marjorie, and would cause Marjorie to disinherit her to some extent in Marjorie’s estate
25 planning. On the other hand, but inconsistently, she asserts she was just being
26 generous and wanted Marjorie to have 65% of the income during her life as a gift from
27 Eleanor. In either case, she admits full awareness for over 34 years of her alleged right
28 to all of the income, and a decision on her part to not reveal her awareness of or assert

1 her purported claim with those interested in and benefitted by the Trust . Thus, the first
2 element for a finding of laches is present, that is, an awareness of a purported right to
3 a claim which the claimant delays making for an inordinate period of time.

4 The allocation of income from Trust No. 1 between Trust No. 2 and Trust No.
5 3, was made according to the terms of Trust No. 1. It involved the filing in 1979,
6 following W. N. Connell's death, of Federal and Texas State Inheritance Tax Returns
7 wherein the maximum marital deduction was claimed through allocating an
8 approximate 65% of the Texas oil properties to Marjorie. This fact is confirmed in
9 Eleanor's own initial verified Petition filed in 2009, attached as Exhibit "D" to her
10 Motion, as noted in Paragraph 15, on pages 3 and 4 thereof. This allocation was made
11 pursuant to the terms of Trust No. 1, as noted in said Petition. This then set the basis
12 and pattern for dividing thereafter the income received by Trust No. 1 between the two
13 sub-trusts as required by Trust No. 1. All of the attorneys and accountants who could
14 give testimony as to their calculations in making the allocation between Trust No. 2
15 and Trust No. 3 are now deceased. Further, no copy of the Federal Estate Tax Return
16 can now be located. And, lastly, and of most importance, Marjorie, one of the two
17 grantors establishing Trust No. 1 and its provisions for allocating its assets, is now
18 deceased. The loss of all this documentary evidence and witness testimony greatly
19 prejudices Jacqueline and Kathryn and inhibits the Court in now adjudicating the
20 issues. Thus, the second and final element for a finding of laches is established, that
21 is, prejudice to those opposing the claim.

22 While the history and precedent set for nearly 34 years, where the income has
23 been allocated between Trust No. 2 and Trust No. 3, provides compelling proof that
24 Eleanor's claim to all of the income is invalid, and the Texas Estate Tax Return and
25 IRS Closing Letter provide further compelling proof thereof, Eleanor's delay in making
26 her claim to all of the income until 2013, after all the percipient witnesses are deceased,
27 and the Federal Estate Tax Return cannot be located, causes severe prejudice to
28 Jacqueline and Kathryn in conclusively establishing their continuing right to 65% of

1 Trust No. 1 income. For all of these reasons, Jacqueline and Kathryn submit valid
2 grounds exist under the doctrine of laches to deny and dismiss Eleanor's opposition to
3 their current Petition and grant them summary judgment thereunder, determining that
4 they are entitled to the all of the 65% share of Trust No. 1 income payable to Trust No.
5 3. It is hard to imagine or conceive of a more appropriate situation for applying the
6 doctrine of laches, precluding Eleanor from now challenging their right to the income.

7 2. Waiver- The doctrine of waiver is similar in some respects to the doctrine
8 of laches. If Eleanor's late action in challenging Jacqueline's and Kathryn's right to
9 the 65% share of Trust No. 1 income paid to Trust No. 3 is not defeated under the
10 doctrine of laches, it should nonetheless fail under the doctrine of waiver. "Waiver
11 requires 'an existing right, a knowledge of its existence, and an actual intention to
12 relinquish it, or conduct so inconsistent with the intent to enforce the right as to induce
13 a reasonable belief that it has been relinquished.'" *McKeeman v. General American*
14 *Life Insurance Company*, 111 Nev. 1042, 899 P.2d 1124, 1128 (1995). Certainly,
15 Eleanor's conduct in delaying her challenge to the alleged income right under Trust No.
16 3 and her other inconsistent actions over the years, show a waiver of her rights to
17 challenge Jacqueline's and Kathryn's right to the income at this time.

18 It must be remembered that Eleanor was not a passive, uninvolved party in the
19 administration of Trust No. 1, Trust No. 2 and Trust No. 3 during the last 34+ years.
20 She has not only been a beneficiary of Trust income under Trust No. 2, she has also
21 served as the Trustee of these Trusts during this period of time and to the present day.
22 In 2009, when Eleanor was preparing to file her initial 2009 Petition in these
23 proceedings, Jacqueline had full time employment earning \$120,000.00 a year.
24 Because of her receipt of the bequest from Marjorie's MTC Living Trust granting to
25 her a portion of the income from Trust No. 3, Jacqueline was then considering
26 resigning from her employment to be a stay-at-home mother for the benefit of her
27 children. She discussed her considerations with Eleanor, asking if Eleanor thought that
28 the income Jacqueline would receive from Trust No. 3 would thereafter be adequate

1 and secure enough for her to give-up her employment. Eleanor assured Jacqueline that
2 it would and, influenced by Eleanor's assurances, Jacqueline decided to leave her
3 lucrative employment position. See Affidavit of Jacqueline Montoya, attached hereto
4 as Exhibit "C" and incorporated herein by this reference, confirming these facts. Thus,
5 Eleanor's sudden about face in claiming the income she said would be payable to
6 Jacqueline causes Jacqueline severe prejudice, threatening her and her family's
7 financial well-being. Kathryn too has made financial decisions based upon reliance of
8 her right to income under Trust No. 3. The loss of such income would obviously also
9 affect her and her family's well-being. See Affidavit of Kathryn Bouvier attached
10 hereto as Exhibit "D" and incorporated herein by this reference.

11 It should further be noted that Eleanor was provided with a copy of Marjorie's
12 Will immediately after Marjorie's death in 2009. She was notified of Marjorie's
13 exercise of her Power of Appointment under the Will, leaving Marjorie's rights and
14 benefits under Trust No. 3 to Marjorie's MTC Living Trust, and in turn to Jacqueline
15 and Kathryn as beneficiaries under the MTC Living Trust. See Affidavit of David
16 Straus, Esq. executed on April 9, 2014, which is attached hereto as Exhibit "E" and
17 incorporated by this reference. Further, in filing her initial 2009 Petition in this Trust
18 Case, Eleanor admitted in a footnote on page 4 the following:

19 "MARJORIE exercised this power of appointment prior to her death as indicated in
20 Article Four of the Last Will and Testament of MARJORIE, dated January 7, 2008. A
21 copy of MARJORIE's Last Will and Testament is **attached hereto as Exhibit "5."** The
beneficiary of the exercise of the power of appointment was the MTC Living Trust,
which contains provisions for the benefit of the Petitioner's issue." (Emphasis added.)

22 Notwithstanding she was fully aware of these facts, Eleanor declined to challenge
23 Marjorie's Will and Trust and readily accepted, herself, a substantial bequest from the
24 MTC Living Trust of \$300,000.00.

25 To reiterate, shortly following Marjorie's death in 2009, Eleanor was aware of
26 her Will, and aware of its effect in exercising a Power of Appointment giving, in
27 essence, Marjorie's interest in Trust No. 3 to Jacqueline and Kathryn. Further, Eleanor
28 accepted a \$300,000 bequest which relied upon the effectiveness of documents

1 Marjorie executed on September 7, 2008, including her Will and the Amendment to her
2 MTC Living Trust, which gave Jacqueline and Kathryn the right to the benefits under
3 Trust No. 3. And lastly, in 2009, when Eleanor filed her initial Petition, Eleanor, under
4 oath, asserted that she recognized that she did not have the right to any of the income
5 from Trust No. 3.

6 All of these facts show clearly that Eleanor was fully aware that Jacqueline and
7 Kathryn were entitled to the 65% share of Trust No. 1 income payable to Trust No. 3,
8 and all of Eleanor's conduct and actions prior to July, 2013 were consistent with this
9 income distribution. Thus, under the elements for a finding of waiver, as quoted above
10 in *McKeeman v. General American Life Insurance Company*, Eleanor clearly waived
11 her right to assert in 2013 any claim to the income from Trust No. 3. All of this history,
12 conduct of Eleanor, and prejudice caused to Jacqueline and Kathryn by Eleanor's
13 inconsistent and abrupt change of position in 2013, claiming then the income from
14 Trust No. 3 after never having asserted such a claim for over 34 years, provides a clear
15 legal basis to deny Eleanor's claim and grant Jacqueline's and Kathryn's
16 Countermotion for Summary Judgment.

17 If this Trust Case were to proceed to trial, Jacqueline and Kathryn are very
18 confident that the Court would rule in their favor on the merits of the dispute. While
19 no copy of the Federal Estate Tax Return can be found evidencing the proper allocation
20 of income earned by Trust No. 1 between Trust No. 2 and Trust No. 3, a copy of the
21 Texas Estate Tax Return filed for the Estate of W.N. Connell has been located. The
22 Texas Return states that it relied upon the division of assets and income set forth in the
23 Federal Estate Tax Return. Specifically, page 4 of the Texas Return, titled as
24 "Schedule C", reflects that a Form 706, the Federal Estate Tax Return, was previously
25 filed and there is a statement on the form which provides as follows:

26 *The following information should be furnished from Form 706, U.S. Estate Tax*
27 *Return, filed or to be filed on behalf of this estate with the Internal Revenue*
28 *Service.*

We also have the IRS Closing Letter for the Federal Estate Tax Return providing

1 information corroborating the Texas Estate Tax Return allocations with the Federal
2 Estate Tax Return. See Exhibit “A” (Texas Estate Tax Return) and Exhibit “B” (IRS
3 Closing Letter) which are attached hereto and incorporated herein by this reference.
4 One can thus clearly understand and recognize that the allocation of assets between
5 Trust No. 2 and Trust No. 3 upon the death of W. N. Connell, resulting in the income
6 rights of Eleanor and Marjorie from Trust No. 1 thereafter, was properly made.

7 The allocation of benefits between Trust No. 2 and Trust No. 3, relied upon the
8 obtaining of the maximum marital deduction for W. N. Connell’s taxable estate. The
9 expert witness Jacqueline and Kathryn have engaged to review the matter, Daniel T.
10 Gerety, CPA, has explained with extensive detail and thorough explanation how the
11 calculations were made in 1980 and has concluded that the allocations between the two
12 sub-trusts were properly arrived at after the death of W.N. Connell. See copy of the
13 Expert Report of Daniel T. Gerety, CPA, dated September 27, 2014, which is attached
14 hereto as Exhibit “D” and hereby incorporated by this reference. Thus, all family
15 members thereafter, up until Eleanor’s unexplainable abrupt change of course in the
16 summer of 2013, recognized the 35%-65% asset and income allocation required under
17 the Trust.

18 However, the cost of this litigation is very damaging to Jacqueline and Kathryn.
19 Where legal grounds exist to now resolve the litigation without the expense of a trial,
20 relief should be granted. Eleanor’s belated claim now to 100% of the income earned
21 by Trust No. 1 should be denied, even without considering the possible merits of her
22 claim, on the legal theories of laches and waiver. Jacqueline and Kathryn have
23 previously indicated to the District Court that they feel Eleanor’s claims and position
24 in this case should be denied based upon laches and waiver. However, the District
25 Court determined that before it would rule on this issue, and other Motions filed in the
26 Trust Case proceedings, it would be time and cost efficient to first resolve the parties’
27 claims in Case No. P-14-080595-E , the Will-Contest Case, also pending before the
28 Court. Eleanor requested that the District Court postpone any further decisions in the

1 Trust Case, pending its decision in the subsequently filed Will-Contest Case.
2 Nonetheless, now that Eleanor has chosen to bring the merits of the current Petition and
3 Trust Case back on before the Court, it would be proper and fair to Jacqueline and
4 Kathryn, that the Court hear and resolve their Countermotion for Summary Judgment.

5 3. Right to Accounting and Verification of Funds- NRS 165.141 requires a
6 Trustee to provide an accounting to a beneficiary upon demand within 60 days
7 thereafter. Jacqueline and Kathryn, through their counsel, have repeatedly requested
8 an accounting from Eleanor during the last six months. None has been received. This
9 is particularly troublesome in that Eleanor should be holding back over \$1,500,000.00
10 in Trust income belonging to Jacqueline and Kathryn. Further, Eleanor has been acting
11 unstable for over one year in disappearing, moving around, and being under the
12 influence of others, whom Jacqueline and Kathryn believe have improper motives in
13 influencing Eleanor's conduct. While patiently waiting to receive an accounting,
14 Jacqueline and Kathryn have also asked simply for bank statements verifying the
15 amount of funds in the Trust's account under Eleanor's control, and the receipts and
16 distributions from the account.

17 Finally, at the Supreme Court Mediation-Settlement Conference held on October
18 14, 2014, Jacqueline and Kathryn were presented with a letter from an accountant
19 verifying what funds were allegedly in the Trust account. However, this verification
20 is very troubling in that it appears several hundred thousand dollars are missing from
21 the funds (income allocated to Trust No. 3) which Eleanor should be holding secure for
22 them in the account. In addition, this alleged verification still does not meet the legal
23 obligations Eleanor has defaulted on in providing an accounting.

24 NRS 165.200 provides:

25 "When a trustee fails to perform any of the duties imposed upon the trustee by this
26 chapter the trustee may be removed, the trustee's compensation may be reduced or
27 forfeited, or other civil penalty inflicted, in the discretion of the court."

28 Jacqueline and Kathryn submit that an appropriate penalty for Eleanor's failure to
provide the accounting is to require her to pay and reimburse to Jacqueline and Kathryn

1 \$5,000.00 for attorney's fees and costs incurred in seeking the accounting, in this
2 Countermotion, and as a penalty for Eleanor's wrongful conduct. Further, Eleanor's
3 accounting dereliction adds to the grounds already existing due to her breach of duty
4 to distribute Trust funds, and she should be removed as the Trustee of Trust No. 1,
5 Trust No. 2, and Trust No. 3.

6 C. COUNTERMOTION FOR DAMAGES AND ASSESSMENT OF PENALTIES
7 AND OTHER RELIEF AGAINST ELEANOR

8 Trust No. 1 contains a "no contest" clause which requires that a beneficiary
9 forfeit his or her entitlements if he or she violates the clause by wrongfully litigating
10 the Trust distribution provisions and rights thereunder. The "no contest" clause found
11 in Article Tenth of the Trust provides for the following:

12 *NON-CONTEST PROVISION. The Grantors specifically desire that these trusts*
13 *created herein be administered and distributed without litigation or dispute of*
14 *any kind. If any beneficiary of these trusts or any other person, whether*
15 *stranger, relatives or heirs, or any legatees or devisees under the Last Will and*
16 *Testament of the Grantors or the successors in interest of any such persons,*
17 *including any person who may be entitled to receive any portion of the Grantors'*
18 *estates under the intestate laws of the State of Nevada, seek or establish to assert*
19 *any claim to the assets of these trusts established herein, or attack, oppose or*
20 *seek to set aside the administration and distribution of the said trusts, or to have*
21 *the same declared null and void or diminished, or to defeat or change any part*
22 *of the provisions of the trust established herein, then in any and all of the above*
23 *mentioned cases and events, such person or persons shall receive One Dollar*
24 *(\$1.00) and no more in lieu of any interest in the assets of the trusts.*

25 A similar "no contest" clause is found in Marjorie's Will and her MTC Living Trust.

26 By her actions in wrongfully stopping payments to Jacqueline and Kathryn from
27 Trust No. 1, and claiming all the income for herself, Eleanor has violated the "no
28 contest" clause in Trust No. 1, and the penalty for such violation should be assessed by
terminating Eleanor's right to any further income as the beneficiary of Trust No. 2.
Pursuant to NRS 163.00195(1), the enforcement of the "no contest" clause found in
Trust No. 1 is mandatory.

By contesting Jacqueline's and Kathryn's right to the income payable to Trust
No. 3, as beneficiaries under Marjorie's Will and her MTC Living Trust, Eleanor has
violated the "no contest" clauses found in those documents. The penalty for such

violations is forfeiture of any benefits otherwise paid or payable to Eleanor under these estate planning documents. As stated above, pursuant to NRS 163.00195(1), the enforcement of the “no contest” clauses found in Marjorie’s Will and the MTC Living Trust are mandatory. Eleanor received a \$300,000.00 bequest under the MTC Living Trust provisions and, in the event her Will Contest challenge is denied, she should be required to disgorge this amount and repay it to the MTC Living Trust.

In addition, as noted above, Eleanor has breached her duties as the Trustee of Trust No. 1, Trust No. 2, and Trust No. 3, in wrongfully depriving Kathryn and Jacqueline of the income benefits they are entitled to receive. This breach of her duties should not only cause her dismissal as the Trustee, but she should also be required to pay to Kathryn and Jacqueline damages caused by her wrongful conduct. NRS 153.031(3)(b) provides for the following:

If the court grants any relief to the petitioner, the court may, in its discretion, order any or all of the following additional relief if the court determines that such additional relief is appropriate to redress or avoid an injustice:

(b) Order the trustee to pay to the petitioner or any other party all reasonable costs incurred by the party to adjudicate the affairs of the trust pursuant to this section, including, without limitation, reasonable attorney’s fees. Except as otherwise provided in NRS 165.139, the trustee may not be held personally liable for the payment of such costs unless the court determines that the trustee was negligent in the performance of or breached his or her fiduciary duties.

Lastly, Eleanor has wrongfully caused Kathryn and Jacqueline to incur substantial attorney’s fees and costs in the Trust and Will Contest litigation in these proceedings. Her conduct has been frivolous and intended to harass Kathryn and Jacqueline, and justifies the award of fees and costs to Kathryn and Jacqueline and against Eleanor under NRS 18.010(b). Further, under NRS 153.031(3)(b), as noted above, and NRS 137.020(3), Jacqueline and Kathryn, as the parties successful in the Trust and Will Contest litigation, are entitled to an award of fees and costs against Eleanor

SUMMARY

Jacqueline and Kathryn request the following relief from the Court at this time:

1 A. That Eleanor's Motion be denied, and that they receive an award of attorney's
2 fees and costs against Eleanor, pursuant to NRS 18.010(2)(b) for having filed her
3 frivolous and harassing Motion.

4 B. That their Countermotion for Summary Judgment be granted for the reasons
5 submitted above, namely that Eleanor's claim to a right of the income under Trust No.
6 3, first asserted by her in 2013 in stopping income payments to Jacqueline and Kathryn,
7 is barred, by the Statute of Limitations, the doctrine of laches, the doctrine of waiver,
8 and/or the doctrine of Claim Preclusion. Under NRCP Rule 56, where no material facts
9 are subject to dispute and the law applied shows the movant is entitled to judgment,
10 summary judgment should be granted to avoid further waste of time and expense to the
11 moving party and the Court. Clearly, this is an appropriate case to grant summary
12 judgment.

13 C. That Eleanor be sanctioned for having failed to provide them with a proper
14 accounting of the Trust, including awarding fees and costs incurred to them, and further
15 penalizing Eleanor. It should be ordered all accruing income received by Trust No. 1
16 for distribution between Trust No. 2 and Trust No. 3, and that presently being held by
17 Eleanor, other than that which the Court allows to be distributed as requested above,
18 be placed in a neutral bank account to not be further released without further Court
19 order. Further, Eleanor should be removed as Trustee of Trust No. 1, Trust No. 2, and
20 Trust No. 3, as she is not capable or fit to handle this important fiduciary duty.

21 D. That the Court reconsider its decision from the May 14, 2014 hearing, and allow
22 Jacqueline and Kathryn to receive the income payable to Trust No. 3 during these
23 proceedings without posting a bond, should these proceedings not be resolved within
24 the next month, just as Eleanor has been entitled to continue receiving her share of the
25 income. In the alternative. Eleanor should be required to post a bond to cover the
26 potential damages, fees and costs she would suffer and owe to Jacqueline and Kathryn,
27 should she not prevail in this case, to secure the payment thereof.

28 E. That it be determined that Eleanor has forfeited her rights and benefits under

Trust No. 1 and Trust No. 2, by wrongfully claiming all income earned by Trust No. 1 and attempting to deprive Kathryn and Jacqueline of their right to income under Trust No. 3.

F. In the event that Marjorie's Will Contest challenge is denied, that it be determined that Eleanor has forfeited her rights and benefits under Marjorie's Will and her MTC Living Trust, and that she be required to disgorge and pay back to the Trust the \$300,000.00 bequest she accepted from the Trust, as a result of her wrongfully claiming that the Will is invalid.

Dated this 23rd day of December, 2014.

ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT

/s/ Whitney Warnick

By:

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

THE RUSHFORTH FIRM

By:

JOSEPH J. POWELL, ESQ.
Nevada Bar No. 008875
9505 Hillwood Drive, #100
Las Vegas, Nevada 89134
Attorneys for Jacqueline M. Montoya

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE RUSHFORTH FIRM, LTD. and that on the 23 day of December, 2014, I placed a true and correct copy of the foregoing **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**

1 **DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF**
2 **PENALTIES, AND FOR OTHER RELIEF**, in the United States Mail, at Las Vegas,
3 Nevada, enclosed in a sealed envelope with first class postage thereon fully prepaid, and
4 addressed to the following:

5 Liane K. Wakayama, Esq.
6 Candice E. Renka, Esq.
7 Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

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

10 
An Employee of The Rushforth Firm, Ltd.

EXHIBIT “A”

INHERITANCE TAX RETURN - NON-RESIDENT

Date Received (Do not write in this space)

Decedent's Name (First, Middle, Maiden, Last) William M. Connell		Date of Death November 24, 1979	T CODE <input checked="" type="checkbox"/> 90100 DEPOSIT CODE <input type="checkbox"/> 110 AMOUNT
Residence (Domicile) at Time of Death (City and State) Boulder City, Nevada		Year in which domicile was established. 1936	
Marital Status: <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Single <input type="checkbox"/> Legally Separated <input type="checkbox"/> Widow/Widower			
If Married, Date of Marriage: June 2, 1942		Number of Children: one	Number of Children Surviving: one
Did the decedent, at any time during life, make any transfer of property within Texas in which any beneficial interest was retained? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Did the decedent, within three years immediately prior to death, make any transfer of property within Texas without an adequate and full consideration? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
Did the decedent die testate? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If "YES" attach copy of will. If "NO" attach an affidavit of heirship.		Were letters testamentary or of administration granted for this estate? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
To whom granted? (Designate "Executor," "Executrix," "Administrator," or "Administratrix")			
NAME	DESIGNATION	ADDRESS (Street & No., City, State, Zip Code)	
Name of Court		Location of Court	
Have ancillary probate proceedings been applied for and granted? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		County in Texas	
Name of ancillary administrator or executor			
Address			

INHERITANCE TAX DUE

PART I Basic inheritance tax (From Schedule B) <div style="border: 1px solid black; padding: 5px; width: 100px; text-align: center;">\$ -00-</div>		PART II Federal credit for state death tax (From Schedule C) <div style="border: 1px solid black; padding: 5px; width: 100px; text-align: center;">\$ 515.00</div>	
TAX DUE (PART I OR PART II, WHICHEVER IS GREATER) <div style="border: 1px solid black; padding: 5px; width: 150px; margin: 0 auto;">\$ 515.00</div>			

I declare that this return and any accompanying statements are true, correct and complete to the best of my knowledge. I understand that this return is subject to the fraudulent report provisions of TEX. TAX. GEN. ANN. art. 1.12 (1959).

Name of Preparer Darrel Knight Assoc., Inc.-PC	Phone (Area Code & No.) 915 695-2370	Name of Executor, Administrator, Heir at Law Marjorie Connell, Executrix	Phone (Area Code & No.) 702 293-5391
Address (Street & No., City, State, Zip Code) 301 S. Pioneer, #102, Abilene, TX 79605		Address (Street & No., City, State, Zip Code) P O Box 710, Las Vegas, Nevada 89101	
sign here <i>Darrel Knight</i>	Date 12-16-80	sign here <i>Marjorie Connell</i>	Date 12-16-80

PLEASE NOTE: RETURN MUST BE SIGNED BY PERSONAL REPRESENTATIVE OF ESTATE AND PERSON PREPARING RETURN. A COPY OF DECEDENT'S WILL OR AFFIDAVIT OF HEIRSHIP MUST BE ATTACHED.

For assistance call Area Code 512 475-3603 or TOLL FREE from anywhere in Texas 1-800-252-5555, Ext. 119, 120 or 121	MAIL TO: BOB BULLOCK COMPTROLLER OF PUBLIC ACCOUNTS INHERITANCE TAX DIVISION CAPITOL STATION AUSTIN, TEXAS 78774 TRF_000001
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SCHEDULE A

PROPERTY SUBJECT TO TEXAS INHERITANCE TAX

Did the decedent at the time of death own an interest in real estate or minerals located within the State of Texas?
☒ Yes ☐ No If "Yes," list below.

Did the decedent at the time of death own an interest in any tangible personal property such as livestock, farm and ranching equipment, grain in storage, growing crops, all equipment used in connection with the drilling and producing of subsurface crude oil, gas or other minerals and any other tangible property having an actual situs in the State of Texas? ☐ Yes ☒ No If "Yes," list below.

All assets listed below must be clearly described and identified. If valuations are based upon appraisals, copies of such appraisals should accompany the return. If a formal appraisal of oil and gas leases and royalties is not made, a five-year payout based on the last twelve months prior to death will be used in determining the value of such mineral interest.

ALTERNATE VALUATION

An election to have the gross estate of the decedent valued as of the alternate date or dates is made by entering a check mark in the box set forth below:

☐ The executor elects to have the gross estate of the decedent valued in accordance with values as of a date or dates subsequent to the decedent's death as authorized under TEX. TAX, GEN. ANN. art. 14.11 (Supp. 1976).

ITEM NO.	DESCRIPTION	SUBSEQUENT VALUATION DATE	ALTERNATE VALUE	VALUE AT DATE OF DEATH
1	2,301 acres, pasture land, out of Block 39, T-5-S, Sections 38,47,48, W $\frac{1}{2}$ 37, Upton County, Texas. Separate property of decedent.		\$	\$ 80,535.
2	Mineral rights, Upton County, Texas, $\frac{1}{2}$ interest in Dora Connell Estate. Separate property of decedent. Valued on a 5-year payout based on payments received 12 months prior to date of death.			32,677.
TOTAL (Also enter under Schedule C, Page 4)			\$	\$ 113,212.

SCHEDULE B

COMPUTATION OF BASIC INHERITANCE TAX

- List all beneficiaries under the will of the decedent (including charitable bequests) or under the laws of intestacy who take any share of the estate. • If beneficiaries do not share the estate equally, attach a copy of the distribution indicating the items and amounts distributed to each beneficiary.
- Attach a copy of the last will and testament or an affidavit of heirship if the decedent died intestate. • If beneficiaries listed on the distribution schedule are not as specified in decedent's will, please explain (predeceased, disclaimed, etc.).

(1) Name and Address of Beneficiary	(2) Relationship of Beneficiary to Decedent	(3) Age of Beneficiary at date of death of Decedent	(4) Value of share of entire net estate wherever located (See Sch. B-3)	(5) Value of share of net Texas estate (See Sch. B-3)	(6) Tax at Texas rates on share of entire net estate (4). (See Tax Rate Schedule)	(7) Ratio of share of Texas net estate to share of entire net estate. (5) divided by (4)	(8) Texas Inheritance Tax (6) multiplied by (7)
Marjorie Connell P. O. Box 710 Boulder City, Nevada 89101	wife	60	\$ 69,704	-0-	\$ 197.04	-0-	\$ -0-
Eleanor M. Connell Hartman P. O. Box 710 Las Vegas, Nevada 89101	daughter	41	12,528	-0-	125.28	-0-	-0-
Robert Hartman P. O. Box 710 Las Vegas, Nevada 89101	son-in-law	43	-0-	-0-	-0-	-0-	-0-
TOTAL TEXAS INHERITANCE TAX-Col. 8 (TO BE CARRIED FORWARD TO PAGE 1, PART I)							\$ -0-

(If more space is needed, insert additional sheets of same size)

SCHEDULE C

Copy

**COMPUTATION OF PROPORTIONATE SHARE OF
FEDERAL CREDIT FOR STATE DEATH TAX**

HAS A FORM 706, U.S. ESTATE TAX RETURN BEEN FILED WITH THE INTERNAL REVENUE SERVICE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
The following information should be furnished from Form 706, U.S. Estate Tax Return, filed or to be filed on behalf of this estate with the Internal Revenue Service. IF FORM 706 WAS NOT FILED, COMPLETE LINES 1 THROUGH 5 AND LINE 12		
1. Value of property subject to Texas Inheritance Tax.	1. \$ 113,212	
2. Total value of all other property:	2. 180,023	
3. Total gross estate (lines 1 plus 2)-(Same as recapitulation p. 3, U.S. Estate Tax Return)		3. 293,235
4. Funeral, administration expenses, debts of decedent, mortgage and liens (Schedules J & K, U.S. Estate Tax Return)	4. 10,936	
5. Total value of net estate wherever located.		5. 282,299
6. Other deductions (Total of Schedules L, M, N and O, U.S. Estate Tax Return)	6. 76,688	
7. Total allowable deductions (Line 4 plus line 6) (Same as Recapitulation, page 3, U.S. Estate Tax Return)		7. 87,624
8. Taxable estate for Federal Estate Tax purposes. (Line 3 minus line 7) (Same as page one U.S. Estate Tax Return, line 3)		8. 205,611
9. Adjustment to compute State Death Tax.	9. 60,000.00	
10. Federal adjusted taxable estate (line 8 minus line 9).		10. 145,611
11. a) Excess of gross estate tax over unified credit. (from line 12, page 1, form 706)	11a 18,596	
b) Maximum Federal Credit for State Death Tax. (Computed on Table C, Form 706)	11b 1,335	
c) Allowable Federal Credit for State Death Tax. (line 11a or 11b, whichever is smaller)		11c 1,335
12. Percentage of Texas gross estate to total gross estate. (line 1 divided by line 3)	12. 38.61%	
13. Portion of Federal Credit for State Death Tax allocated to the State of Texas. (line 11c multiplied by line 12). TO BE CARRIED FORWARD TO PAGE 1, PART II		13. 515 \$

copy

SCHEDULE B-1

William M. Connell Estate
Distribution of Net Estate Wherever Located
Supporting Schedule B-3

Net Taxable Estate Wherever Located \$282,299

Distribution to Marjorie Connell:

Las Vegas rental property (Sch. A, Item 3, Form 706)	\$37,500	
Stock and bonds (Sch. B, Form 706)	52,218	
Cash and First Trust Deeds (Sch. C, Form 706)	74,660	
Insurance proceeds (Sch. D, Form 706)	1,358	
Mobil home, furniture and automobiles (Sch. F, Items 3, 4, 5 and 6, Form 706)	11,250	
Marital bequest, 64.493% of 2,301 acres Upton Co., Texas land (Sch. A, Item 1, Form 706)	51,940	
Marital bequest, 64.493% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	21,074	
Distributive share of allowable deductions	(10,936)	(239,064)

Distribution to Eleanor M. Connell Hartman:

Diamond Shrine Riva (Sch. F, Item 1, Form 706)	2,750	
35.507% of 2,301 acres, Upton Co., Texas land (Sch. A, Item 1, Form 706)	28,595	
35.507% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	<u>11,603</u>	(42,948)

Distribution to Robert Hartman:

Gold Diamond Glycene wristwatch	<u>(287)</u>
---------------------------------	--------------

\$ -0-

Copy

SCHEDULE B-2

William M. Connell Estate
Distribution of Texas Estate
Supporting Schedule B-3

Net Texas Estate \$113,212

Distribution to Marjorie Connell:

Marital bequest, 64.493% of 2,301 acres Upton County land (Sch. A, Item 1)	\$51,940	
Marital bequest, 64.493% of mineral rights, Upton County, Texas (Sch. A, Item 2)	<u>21,074</u>	(73,014)

Distribution to Eleanor M. Connell Hartman:

35.507% of 2,301 acres, Upton County land (Sch. A, Item 1)	28,595	
35.507% of mineral rights, Upton County, Texas (Sch. A, Item 2)	<u>11,603</u>	<u>(40,198)</u>
		<u>\$ -0-</u>

SCHEDULE B-3

**William M. Connell Estate
Determination of Value of Taxable Share
Supporting Schedule B, Columns 4 & 5**

<u>Beneficiary</u>	<u>(a) Value of share of entire net estate, wherever located</u>	<u>(b) % of share received to total of all Class A shares</u>	<u>(c) Exemption</u>	<u>(d) Pro rata share of exemption (b) x (c)</u>	<u>(e) Value of taxable share (a) - (d)</u>
Marjorie Connell	\$239,064	84.68%	\$200,000	\$169,360	\$ 69,704
Eleanor C. Hartman	42,948	15.21%	200,000	30,420	12,528
Robert Hartman	<u>287</u>	<u>.11%</u>	<u>200,000</u>	<u>25,000</u>	<u>-0-</u>
Totals	<u>\$282,299</u>	<u>100.00%</u>	<u>-</u>	<u>-</u>	<u>\$ 82,232</u>

<u>Beneficiary</u>	<u>(a) Value of share of Texas net estate</u>	<u>(b) % of share received to total of all Class A shares</u>	<u>(c) Exemption</u>	<u>(d) Pro rata share of exemption (b) x (c)</u>	<u>(e) Value of taxable share (a) - (d)</u>
Marjorie Connell	\$ 73,014	64.49%	\$200,000	\$128,980	-0-
Eleanor C. Hartman	40,198	35.51%	200,000	71,020	-0-
Robert Hartman	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Totals	<u>\$113,212</u>	<u>100.00%</u>	<u>-</u>	<u>\$200,000</u>	<u>-0-</u>

EXHIBIT “B”

Internal Revenue Service
District Director

jt
Department of the Treasury

Date: OCT 30 1981

Estate of:
William M. Connell
Decedent's Social Security
Number:
530-05-6631
Date of Death:
November 24, 1979
Person to Contact:
L. Peterson
Contact Telephone Number:
784-5262

WILLIAM M. CONNELL ESTATE
MARJORIE CONNELL
1555 CINDY AVE
BOULDER CITY, NV 89005

Estate Tax Closing letter
(This is not a bill for tax due)

Our computation of the Federal Tax liability for the above estate is shown below. It does not include any interest that may be charged. You should keep a copy of this letter as a permanent record because your attorney may need it to close the probate proceedings for the estate. This letter is evidence that the Federal tax return for the estate has either been accepted as filed, or has been accepted after an adjustment that you agreed to.

This is not a formal closing agreement under section 7121 of the Internal Revenue Code. We will not reopen this case, however, unless Revenue Procedure 74-5, reproduced on the back of this letter, applies.

If you have any questions, please contact the person whose name and telephone number are shown above. Thank you for your cooperation.

Sincerely yours,



District Director

Tentative tax	\$ 56,596.00
Less: Aggregate gift taxes payable (for gifts made after 12-31-76)	\$
Unified credit	\$ 38,000.00
Credit for State death taxes	\$ 515.00
Credit for Federal gift taxes (on gifts prior to 1-1-77)	\$
Credit for foreign death taxes	\$
Credit for tax on prior transfers	\$
Total subtractions	\$ 38,515.00
Net estate tax	\$ 18,081.00
Penalties, if any	\$

(over)

P.O. Box 4100, Reno, Nevada 89505
cc: Robert T. Ashworth, P/A

Letter 627(DO) (Rev. 2-78)

TRF 000000

EXHIBIT “C”

AFFIDAVIT OF JACQUELINE M. MONTOYA IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

JACQUELINE M. MONTOYA, being first duly sworn testifies as follows:

1. I am an adult, I have personal knowledge of the matters herein stated, and I am competent to testify to them in a Court of law.
2. I am a daughter of Eleanor Connell Hartman Ahern.
3. I have read the factual assertions made in the foregoing Opposition and Countermotion for Summary Judgment and I state that they are true and correct to the best of my knowledge and information.
4. In 2009, after the death of my Grandmother, Marjorie T. Connell, I was advised that under her Will and MTC Living Trust, I and my sister, Kathryn A. Bouvier, would be the equal beneficiaries of approximately 65% of the income received by the W.N. Connell and Marjorie T. Connell Living Trust, Dated May 18, 1972.
5. At the time I was fully employed working for a prominent employer in Las Vegas, Nevada, Wynn Las Vegas, as the executive director of weddings, and earning a base salary of \$92,000 which together with commissions resulted in total yearly compensation of approximately \$120,000.00.
6. At the time, I was also the mother of two minor children, twin boys, and our family relied upon my employment income and that of my husband for our living needs.
7. With the bequest made to me from the said Trusts, the MTC Living Trust and my contingent interest in Trust No. 2 of the W.N. Connell and Marjorie T. Connell Living Trust following

my mother's passing, I considered resigning from my employment to be able to tend my boys as a full-time mother.

8. Before making a decision to resign my employment, I wanted to make sure that the income derived from the Texas oil rights would be stable and continuing so as not to jeopardize my family's financial needs.
9. I therefore discussed these concerns with my mother, Eleanor. In December of 2009, while sitting at a table in my home, my mother readily confirmed to me that I had nothing to worry about regarding the stability and continuation of the income from the Trust as it was being paid to me. Eleanor looked at me while smiling and said that I should absolutely resign from my employment and that I should stay home to raise my boys.
10. In reliance upon my mother's assurances regarding the Trust income, I discussed the matter with my husband and we agreed it would be a prudent and beneficial step benefitting our family and children for me to resign my employment and be able to spend more time with our children and having more time to spend with them. April 30, 2010 was my last day of employment with Wynn Las Vegas and I have not been employed since such date.
11. The cutting off of my Trust income by my mother in approximately June, 2013 has greatly harmed my family's financial welfare and made the decision to terminate my employment one I would most certainly not have made had I known she would attempt to challenge my right to the income as she did beginning in approximately June, 2013. In addition to the decision to terminate my employment, I have made decisions regarding the purchase of assets, the investment of assets, and the payments of debt obligations, which I would certainly not have made had I known that my mother would attempt to challenge my right to the income as she did beginning in approximately June, 2013.

12. This damage to my family's financial welfare has caused me a tremendous amount of emotional stress.

Dated this 22 day of December, 2014.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true.


JACQUELINE M. MONTOYA

EXHIBIT “D”

AFFIDAVIT OF KATHRYN A. BOUVIER IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

STATE OF TEXAS)
)ss.
COUNTY OF GALVESTON)

KATHRYN A. BOUVIER, being first duly sworn testifies as follows:

1. I am an adult, I have personal knowledge of the matters herein stated, and I am competent to testify to them in a Court of law.
2. I am a daughter of Eleanor Connell Hartman Ahern.
3. I have read the factual assertions made in the foregoing Opposition and Countermotion for Summary Judgment and I state that they are true and correct to the best of my knowledge and information.
4. In 2009, after the death of my Grandmother, Marjorie T. Connell, I was advised that under her Will and MTC Living Trust, I and my sister, Jacqueline M. Montoya, would be the equal beneficiaries of approximately 65% of the income received by the W.N. Connell and Marjorie T. Connell Living Trust, Dated May 18, 1972.
5. In the four years following my receipt of the bequest and share of the income from the Trusts, I and my husband have made financial decisions based upon the assurances from my mother, Eleanor, that the Trust income was secure, stable and would be continuing for us well into the future.
6. In reliance upon my mother's assurances regarding the Trust income, I have made decisions regarding the purchase of assets, business affairs, and other matters, which I would certainly not have made had I known she would attempt to challenge my right to the income as she did beginning in approximately June, 2013.

7. The cutting off of my Trust income by my mother in approximately June, 2013, has greatly harmed my family's financial welfare, in addition to causing a tremendous amount of emotional stress relating to such financial harm.

Dated this 22 day of December, 2014.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true.


KATHRYN A. BOUVIER

EXHIBIT “E”

AFFIDAVIT OF DAVID A. STRAUS

I, DAVID A. STRAUS, ESQ., being first duly sworn, deposes and says:

1. I am an attorney licensed in the State of Nevada, the State of California, and the State of Colorado. I am in good standing in each of these states.
2. I have been licensed to practice law in the State of Nevada since 1991.
3. I reside in Clark County, Nevada.
4. I am employed by and am the sole member of the Law Offices of David A. Straus, LLC.
5. Marjorie T. Connell ("Marjorie") was a long time estate planning client of mine.
6. I prepared the MTC Living Trust for Marjorie, dated December 6, 1995, and the restatement to the MTC Living Trust, dated January 7, 2008.
7. As Marjorie's attorney, I spoke with Marjorie on multiple occasions about the real property located in Upton County, Texas and the oil, gas, and mineral rights related to such property ("Texas Property"), all of which was previously deeded to "The W.N. Connell and Marjorie T. Connell Living Trust" ("Connell Family Trust") by Mr. Connell, Marjorie's husband.
8. Marjorie always represented to me that a portion of the Texas Property had been allocated to the Survivor's subtrust under the Connell Family Trust, which was known as Trust No. 3, for which she had been granted a power of appointment over the disposition of.
9. A reason Marjorie wanted to exercise a new Last Will and Testament in 2008 was her desire to exercise her power of appointment over Trust No. 3 to ensure that all of the assets that belonged to Trust No. 3, specifically the interest in the Texas Property, would belong, following her death, to the MTC Living Trust, which Marjorie decided to restate in its entirety in 2008.
10. Following Marjorie's passing in 2009, I sent a letter dated May 21, 2009, via certified mail, to Eleanor C. Ahern, in her capacity as Trustee of the Connell Family Trust, to advise her of the fact that Marjorie had exercised her power of appointment over Trust No. 3 in favor of

1 of the MTC Living Trust. The exercise of the power of appointment over Trust No. 3 was
2 done in Marjorie's Will dated January 7, 2008 and as such I provided Eleanor with a
3 certified copy of the Will.

4 11. As to the Texas Property, I had multiple conversations with Jacqueline Montoya
5 ("Jacqueline"), in her capacity as the Trustee of the MTC Living Trust, and in her capacity
6 as a beneficiary of such Trust, together with Kathryn Bouvier ("Kathryn"), in her capacity
7 as a beneficiary of the MTC Living Trust, regarding the need, based on Marjorie's exercise
8 of the power of appointment over Trust No. 3 in favor of the MTC Living Trust, to effectuate
9 a formal change in title to the Texas Property to the MTC Living Trust.
10

11 12. Based upon my recollection, I believe that Eleanor C. Ahern ("Eleanor") participated in at
12 least one of these conferences regarding the need to change title to the Texas Property from
13 the Connell Family Trust to the MTC Living Trust, as to the portion that had been allocated
14 to Trust No. 3.
15

16 13. I do not recall during any of these conversations was there any objection by any of those
17 present that Trust No. 3 had not been allocated a portion of the Texas Property when the
18 estate tax return for Mr. Connell had been prepared following his death.

19 14. Although I would not have prepared the documents to legally change title of the share of the
20 Texas Property from the Connell Family Trust to the MTC Living Trust, not being licensed
21 in the state of Texas, I had offered my services to assist in finding and working with a Texas
22 attorney who could accomplish this task.

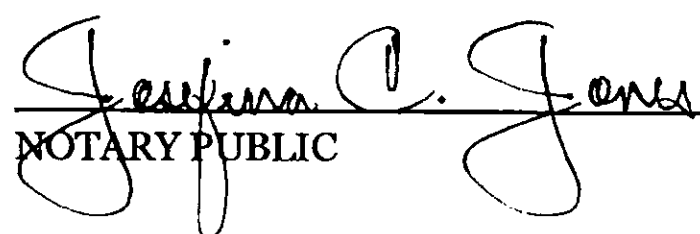
23 15. My offer to assist with the transfer of the Texas Property was respectfully declined by
24 Jacqueline, Kathryn, and Eleanor. I was informed that they were concerned with the fees
25 and costs to effectuate the formal transfer of the proportional interest in the Texas Property
26 to the MTC Living Trust and that their plan was to take care of the transfer in the future as
27 they did not yet want to spend the legal fees necessary to accomplish this task.
28

- 1 16. From those meetings in which the Texas Property interest belonging to the MTC Living
2 Trust was discussed, I was confident that I had adequately done my job of explaining to
3 them the need to cleanly separate the Texas Property in accordance with the exercise of
4 Marjorie's power of appointment and in turn for each of the Connell Family Trust and the
5 MTC Living Trust to each legally hold title to its proportional interest in the Texas Property.
6
7 17. In my discussions with Eleanor, she did not indicate to me that she felt that the MTC Living
8 Trust did not have a legal interest in the Texas Property.
9
10 18. At the conclusion of these meetings, in collective sense, it was my impression and
11 understanding that Jacqueline, Kathryn, and Eleanor had decided that they would forego
12 the expense of making the legal transfer of the Texas Property and instead were choosing
13 to divide the income in the same proportional interests belonging to the MTC Living Trust
14 and Eleanor's interest in the Connell Family Trust.
15
16 19. It was my hope that they would take my advice, for both legal and tax purposes, and
17 effectuate the legal transfer of the Texas Property with a Texas attorney.
18
19 20. I am willing and able to testify to all of the statements made herein.
20
21 I certify under penalty of perjury that the foregoing is true and correct.
22
23
24
25
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27
28



DAVID A. STRAUS, ESQ.

SUBSCRIBED AND SWORN TO OR
AFFIRMED by me on April 9, 2014.



NOTARY PUBLIC

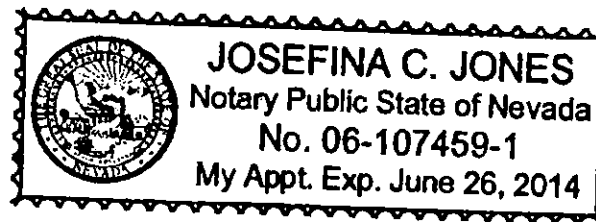


EXHIBIT “F”



6817 S. Eastern Avenue, Suite 101
Las Vegas, Nevada 89119-4684
Phone: 702-933-2213
Fax: 702-933-2214
Website: www.geretycpa.com

September 27, 2014

Joseph Powell
The Rushforth Firm, Ltd.
9505 Hillwood Drive, Suite 100
Las Vegas, NV 89134-0514

Re: W.N. Connell and Marjorie T. Connell Living Trust

Dear Mr. Powell:

You have asked that I provide my professional opinion regarding the allocation of assets of the W.N. Connell and Marjorie T. Connell Living Trust ("Trust") after the death of William M. Connell ("William") and then the death of Marjorie Connell ("Marjorie").

A copy of my credentials is attached as Exhibit 1. Our fees are based on the time required to review the facts, write this letter and respond to any questions. Kirstin Lambrecht has assisted me with the preparation of this letter and the analysis contained herein. Kirstin Lambrecht's billing rate is \$335 an hour and my billing rate is \$480 per hour.

This report is based on the facts and information I am aware of today. I reserve the right to modify this report should other information become available to me.

Summary of Opinion

The Texas Inheritance Tax Return ("Texas Return") I reviewed reconciles and agrees with the IRS closing letter I reviewed. I recomputed the maximum marital deduction to be \$76,691 based on the assets reported on the Texas Return. The Texas Return, Schedule C, Line 6 reported \$76,688 as other deductions which represented the marital deduction. The difference of \$3 between my calculation of the maximum marital deduction and what was taken on the Texas Return is assumed to be rounding.

Per Article Third of the Trust Document, the Trustee was required to fund Trust No. 3 with a fractional interest in William's Separate Property with a value equal to the maximum marital deduction allowed under Federal law at the time of William's death.

The only assets identified as William's separate property on Schedule A of the Trust Document was Texas real estate and Texas mineral rights. In calculating the maximum marital deduction I assumed all other property was community property because William and Marjorie lived in a community property State for most of their lives and all property transferred to the Trust per Schedule A of the Trust Document was community property other than the Texas property. In order for the Trustee to arrive at the same marital deduction as I computed, she must have reported all property as community property on the estate tax return, other than the Texas property; otherwise the estate tax return would have reported a different marital deduction than what I computed.

Article Third of the Trust Document states, "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. Based on the assets held by the estate, it would be mathematically impossible to arrive at the tax due

on the Federal Estate Tax Closing letter without treating all property, except for the Texas Property, as community property and the Texas property as separate property. Thus, all property, other than the Texas property, was characterized as community property as finally established for federal estate tax purposes. Therefore, other than assets which passed outside of the Trust, the only assets that could be used to fund the \$76,688 marital deduction were the Texas property. Also, the marital deduction required to be funded under the Trust Document is \$76,688, as finally established for federal estate tax purposes.

The Trustee's funding of the marital deduction with \$73,014 of Texas property or a 64.493% fractional interest of the Texas property to Trust No. 3 was the only option the Trustee had at the time of funding based on the facts presented to me. There was no other way to fund the marital deduction based on the terms of the Trust.

Documents Reviewed in Order to Come to My Opinion

In order to prepare this report I was given the following information to review:

- The W.N. Connell and Marjorie T. Connell Living Trust Document (Exhibit 4)
- December 2, 1980 letter from Darrel Knight Associates, Inc. – P.C. which provided a valuation of land and royalties
- Internal Revenue Service Estate Tax Closing Letter for the William M. Connell Estate dated October 30, 1981 (Exhibit 5)
- Inheritance Tax Receipt from the Comptroller of Public Accounts State of Texas dated March 30, 1982 for the Estate of William M. Connell
- Texas Inheritance Tax Return – Non-Resident for William M. Connell signed by Marjorie Connell on December 16, 1980 (Exhibit 6)
- Letter to Daniel T. Gerety dated January 27, 2014 from The Rushforth Firm, Ltd. explaining the facts of the case

Analysis of Facts and Basis for Expert Opinion

I have been informed that there is a dispute as to the proper allocation of Texas land, oil, gas and mineral rights ("Texas property") that are titled in the Trust's name. The Trust was formed on May 18, 1972 by William and Marjorie ("Grantors") per the Trust Document. Grantors were Nevada residents at the time the Trust was established per the Trust Document. The Texas property, which was William's separate property, was transferred to the Trust in 1972 (Schedule A of Trust Document). The Texas property received by the Trust remained William's separate property during the Grantors' joint lives per the Trust Document. While both Grantors were living, the Trust was called Trust No. 1.

William died November 24, 1979 per the Texas Inheritance Tax Return and the IRS Estate Tax Closing Letter. Per Article Second C. of the Trust Document, upon William's death Trust No. 1 was to be divided into two separate trusts, Trust No. 2 and Trust No. 3. Trust No. 2 was designed as a "credit shelter trust" and Trust No. 3 was designed as a "marital trust".

Per Article Second C. 2. and 3. and Article Third, Trust No. 3 was to be funded with (a) Marjorie's separate property, (b) Marjorie's one-half (1/2) interest of the community property, (c) Marjorie's community property interest in any life insurance on William payable to the Trust, and (d) enough of a fractional share of William's separate property to equal the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the IRS Code, as a marital deduction, which are not a part of the Trust estate.

Per Article Second C. 4., the remaining portion of the Trust not allocated to Trust No. 3 was to be allocated to Trust No. 2. Per Article Fourth B., all income received by Trust No. 2 from the separate property of William shall be paid to the Residual Beneficiary. Should any real property located in Upton County, Texas, as listed on the original Schedule A, form a part of the corpus of Trust No. 2, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property which forms a part of the corpus of Trust No. 2, equal to all of the income received by Trust No. 2 from the real property located in Upton County, Texas. This additional payment will be noncumulative. All other income received by Trust No. 2 will be paid to Marjorie. Per Article First Eleanor Marguerite Connell Hartman ("Ellie") is the Residual Beneficiary referred to above.

Per Article Fifth A., the income of Trust No. 3 should be paid to Marjorie. Per Article Fifth B., Marjorie had a "General Power of Appointment" of the Principal of Trust No. 3, which gave her the power to appoint the Principal of Trust No. 3 to anyone she saw fit during her lifetime or at death. I have been told Marjorie, via her Will, exercised her power of appointment over Trust No. 3 and allocated it entirely to the MTC Living Trust. I have been told that Marjorie died in 2009 and that Jacqueline Montoya ("Jacqueline") and her sister Kathy are the beneficiaries of MTC Living Trust.

I have been told that a copy of William's Federal Estate Tax Return, Form 706 was unobtainable. However, I reviewed a copy of the IRS Estate Tax Closing Letter for the estate which shows that the tentative federal estate tax was \$56,596, the unified credit was \$38,000, the credit for State death taxes of \$515 and the net federal estate tax was \$18,081. I reviewed a Texas inheritance tax receipt for \$515 which agrees to the State death tax credit reflected on the IRS Estate Tax Closing Letter. I also reviewed a signed copy of the Texas Inheritance Tax Return which reconciles to the IRS Estate Tax Closing Letter and lists all of the assets of the estate.

The Texas return lists the assets includable in William's taxable estate and the values of each asset. Per Schedule A of the Trust Document, William's only separate property was located in Texas. All other property transferred to the Trust listed on Schedule A of the Trust Document was shown as community property. I was told that the Grantors were married for a long period of time and had lived in a community property State for most of their marriage. Therefore, it is my understanding as a CPA and estate planning professional that there would be a presumption that all property would be community property, unless specifically titled otherwise. Under federal tax law, the taxable property listed on William's Texas Inheritance Tax Return should include his one-half of the community property interest and his interest in his separate property. The only Texas property (separate property) listed on the Texas Inheritance Tax Return was 2,301 acres of Texas pasture land valued at \$80,535 and Texas mineral rights valued at \$32,677. The total of William's separate property was \$113,212. All other property listed would be presumed to be William's one-half of the community property.

Per the Trust Document, Article Second C. 3. and Article Third, as summarized previously, only William's separate property may be used to fund Trust No. 3 in order for William's estate to maximize the estate tax marital deduction. Article Third specifically states, "the Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code as a marital deduction which are not a part of this Trust estate. In making the computations and allocations of said property to Trust No. 3 as herein required, the determination and the character and ownership of said property and the value thereof shall be as finally established for federal estate tax purposes."

It appears the Trustee followed the terms of the Trust exactly as written when it allocated 64.493% of the Texas property to Trust No. 3. See Exhibit 2 which shows how the Trust assets should have been allocated between Trust No. 2 and Trust No. 3. Based on my calculations, the maximum marital deduction for William's estate was \$76,691 or 67.741% of the separate property ($76,691 / 113,212$). Per the Texas return the estate took a \$76,688 marital deduction. This is only a \$3 variance from my calculations which is probably rounding. Per the Texas return, only \$73,014 ($51,940 + 21,074$) or 64.493% of the Texas separate property was used to fund the marital deduction. Because the marital deduction taken on the return agrees with my calculations, the only explanation for the difference in the amount of separate property used to fund the marital deduction is that \$3,674 ($76,688 - 73,014$) of assets passed to Marjorie outside of Trust No. 1. This may have been the life insurance of \$1,358 plus possibly a bank account that Marjorie had right of survivorship on.

William's separate property would have been required to be transferred to Trust No. 3 in order to fully fund the allowable marital deduction. The maximum allowable marital deduction under Code Sec. 2056(c) in 1979 was the greater of \$250,000 or 50% of the taxable estate before the marital deduction ("Adjusted Gross Estate"). If the estate consisted of community property, the \$250,000 amount was reduced by the amount of community property net expenses, debt and losses includable in the Adjusted Gross Estate. Expenses, debt and losses are required to be allocated pro-rata between community and non-community property. Thus, the \$250,000 limitation was reduced to \$76,691 ($250,000 - 173,309$) see Exhibit 2. When calculating the 50% limitation the Adjusted Gross Estate had to be reduced by the net community property includable in the estate. Thus, the Adjusted Gross Estate of \$282,299 was reduced to \$108,990 ($282,299 - 173,309$). Therefore, the 50% limitation for William's estate was \$54,495. The greater two limitations, \$76,691 and \$54,495, is \$76,691, which is the maximum marital deduction William's estate was allowed to take. Exhibit 3 is a copy of Code Sec. 2056(c) prior to the amendment of Code Sec. 2056 in 1981 by P.L. 97-34, Sec. 403(a)(1)(A) and (B), which was effective for estates of decedents dying after 12/31/81.

Sincerely,
Gerety & Associates, CPAs



Daniel T. Gerety, CPA
President

Attachments

DANIEL T. GERETY, CPA
GERETY & ASSOCIATES, CPAS

6817 S. Eastern Ave., Suite 101

Las Vegas, Nevada 89119-4684

Telephone (702) 933-2213

Fax (702) 933-2214

dgerety@geretycpa.com

www.geretycpa.com

Daniel T. Gerety is the Owner and President of Gerety & Associates, CPAs. Dan specializes in estate and income tax planning for individuals and businesses including structuring large transactions such as the sale and purchase of a business. Throughout his career he has worked with many closely held businesses in many industries providing tax and business planning for them.

Dan started his accounting career with McGladrey & Pullen, LLP in 1982 and became a tax partner with that firm before he left in 2004 to start his own firm. He was a lead specialist for McGladrey & Pullen, LLP and RSM McGladrey, Inc. in gift and estate tax matters along with income taxation of trusts.

A native of Davenport, Iowa, Dan attended St. Ambrose College in Davenport where he obtained his Bachelor of Arts degree in Accounting and Business Administration. Among his current professional affiliations, he is a member of the American Institute of Certified Public Accountants and the Nevada Society of Certified Public Accountants. He is a past President of the Southern Nevada Estate Planning Council and the Central Illinois Estate Planning Council. He is a past member of the Nevada Society of Certified Public Accountants Taxation Committee. He currently sits on the board of the Las Vegas Chapter of the Nevada CPA Society, the Nevada State College Foundation, where he is chairman of the Planned Giving Committee, and the Grant a Gift Autism Foundation. As a CPA, Dan is allowed to practice before the IRS.

Dan is a consultant to a number of other CPA firms and law firms regarding estate and gift taxation matters, including supporting a number of attorneys as an expert witness in litigation matters regarding trust accounting issues, executive compensation, investment and business matters, and divorce work.

The most recent cases Dan has been an expert in are as follows:

- Mashelle Begovich and Mary Sophia Smith v. Mark S. Chase, Trustee of the Milos Sharkey Begovich Trust. Engaged to review investment and loan activities of Trustee for reasonableness and conslotation regarding malpractice claim.
- Susan Toma vs James Hansen, Dennis Toma Trust, Estate of Dennis Toma et al, Case No. A-13-681931-B. Consultation regarding malpractice claim.
- Crivello Loving Trust, Engaged to prepare a trust accounting.

- W.N. Connell and Marjorie T. Connell Living Trust. Engaged on February 4, 2014 as expert to provide opinion on the allocation and funding of sub-trusts.
- Lawrence A. Lapenta Family Trust. Prepared a trust accounting for the period January 6, 2006 through June 30, 2013, prepared letter of opinion, dated September 19, 2013, regarding reasonable trustee fees for this period and prepared letter of opinion, dated November 23, 2013, regarding reasonable amount to charge for trustee fees going forward.
- Grand Canal Shops II, LLC vs. Riccardo Iavarone. On October 10, 2012 I prepared an expert opinion report to rebut the expert opinion report of Michael L. Rosten dated September 27, 2012 regarding whether Riccardo Iavarone's actions made him the alter ego of Lanciani of Las Vegas, Inc. Deposition was taken March 26, 2013.
- In the Matter of Estate of Harvey Putter and the Harvey Putter Living Trust dated January 16, 2001. Prepared a Trust Accounting for the Period July 2, 2010 through April 30, 2012.
- Aimee Lynn Alterwitz vs. Daryl Alterwitz, et.al. Prepared report to rebut the Expert Report of George C. Swarts, CPA regarding actions taken by management of various closely held real estate developments including the refinancing, mergers, spin-offs and amendments made to various operating agreements of each of the closely held entities. Observed testimony of Mr. Swarts during his deposition and during arbitration. Case settled prior to arbitration ruling.
- Testamentary Trust of George A. Steiner Trust, Case No. P41337 consolidated with P42062. On June 14, 2012 prepared report analyzing the Twenty Third Accounting for the trust for the year ended December 31, 2011. On August 4, 2011, prepared expert report to rebut information contained in Objection to Twenty Second Accounting filed on behalf of Russell Steiner. Report contained analysis of how trustees' decisions affected the income beneficiaries financially, an analysis of what was principal vs. income, and whether the accounting provided to the court was in accordance with the Nevada Revised Statutes. On September 15, 2011 responded to rebuttal of my report. On November 1, 2011 wrote expert report on analysis of how corporate dividends of closely held consolidated group of corporations were classified on a partnership return. On June 14, 2012 wrote expert report of my analysis of the Twenty Third Accounting of the G. A. Steiner Trust. On September 26, 2012 wrote a rebuttal report to the Expert Opinions of Chris Wilcox, Peter K. Ellison and Curtis D. Trader. On October 27, 2013 wrote report regarding the 23rd and 24th Annual Accountings. On January 15, 2014 wrote rebuttal report to the Expert Opinions of Chris Wilcox, Curtis Trader, David Denis, Ronald Gilson, Craig Aronoff, and D. Gordon Smith.
- Steven L Dahl vs. Ronald Henry, Trustee of the Lloyd L. Dahl Testamentary Trust. On September 19, 2011 I prepared draft of expert witness report computing damages incurred by beneficiary from the Trustee's management of trust assets.
- Emil Frei, III vs. Daniel V Goodsell. Clark County District Court. Work entailed calculation of damages pertaining to a malpractice suit on estate planning matters. Deposition taken January 28, 2011 and Testimony given in District Court February 22, 2011
- Trail Gate, LLC and Nikko Capital Corp vs. Lloyd Manning, Kevin Hooks, Trail Gate Lenders, LLC, Catalyst RX, Bormann Development, Inc, DOES 1-10 and Roe

Corporations 1-X, Inclusive. Clark County District Court. Work entailed a rebuttal of other expert and calculation of monies due under development, construction, management and lease contracts. Deposition taken December 7, 2010.

- Reta Leseberg and Mark Leseberg vs. R. Glen Woods, Esq., and Woods Erickson Whitaker Miles & Mauruice. Clark County District Court. Dan's work was to rebut another experts report regarding damages in a conflict of interest suit. His deposition was taken September 22, 2010 and he assisted attorney in deposition of the other expert. Testimony given in District Court December 23, 2010.
- Eric Nelson v. Lynita Nelson divorce case. Clark County Family Court. Meeting with attorneys to help with negotiation of property settlement. Dan testified on October 20, 2010 regarding business and tax risks and values of various ongoing businesses and investments and whether tax attributes could be transferred in an divorce. Prepared expert report on March 21, 2011 regarding tax issues of ownership of LLC holding a Mississippi Casino which rebutted other CPAs report. Prepared expert report on July 5, 2012 regarding the accounting and separate identity of the Eric L. Nelson Nevada Trust. Report was used to counter alter-ego claim. Testified in Family Court on July 18th, July 19th, July 23rd, and August 20, 2012.
- Christian Buck and Anne Buck-Fenn, Christian & Anne Buck LLC v. John Hoffman and Leonard C. Buck. Second Judicial District Court of Nevada in and for the County of Washoe. This case went to trial. Dan's report and testimony in court involved determination of damages due to improper funding and management by the trustee.
- HSK Trust v. Jason Hecker. Clark County Probate Court. Gerety & Associates, CPAs prepared the trust accounting and Dan testified regarding the mismanagement of trust assets by the trustee.
- Christopher W. Chingros and Arthur S. Chingros v. Carolyn A. Chingros. Clark County District Court. Dan wrote a report regarding valuation of a limited partnership distributed and the underfunding of a trust upon death of grantor. Deposition taken June 30, 2010.
- Thomas A. Hantges, USACM Liquidating Trust v. Lucius Blanchard; Lucius Blanchard Children's Irrevocable Trust and Palomino Partners Limited Partnership. Michael W. Carmel, Chapter 11 Trustee for the Estate of Thomas A. Hantges v. Thomas A. Hantges and Trustees of the Hantges Children's Education Trust. USACM liquidating Trust v. Eagle Ranch, LLC; Eagle Ranch Residential, LLC; Willowbrook Residential, LLC, etc. United States Bankruptcy Court, District of Nevada. Expert report covered and reviewed all cash transactions and loans with USA Commercial Mortgage, accounting of loans and payback of loans between related entities, analyzed the set up of the Trust, reasonableness of the Trust's earnings, investment, profits, cash flow and amortization from loans with USA Commercial Mortgage and rebuttal of other expert witness' report.
- Rowell v. Frontier Logistics, LP. Dan helped determine the value of minority partner buyout of several LPs and S-Corps. He consulted with Frontier and attorneys to help arrive at a fair value to offer to buy out a disgruntled partner. He also reviewed many of the filings to give input on case. Case settled through Arbitration by American Arbitration Association in Houston, TX.

- Valeria Saint Clair v. Michael Foresta; dealing with trust and partnership accounting. Case was settled out of court.
- Thomas G. Wiley Trust. Clark County District Court. Dealt with dispute between co-trustees and preparation of proper trust accounting to determine personal vs. trust expenses. The accounting Dan prepared was accepted as part of the settlement agreement.
- Mark Brandenburg, as trustee of the Ghelfi Family Residual Trust v. Daniel E. Rubin, entailed the taxation of the share of profits in a partnership agreement and the allocations and taxation of these interests. Dan testified in the arbitration. Dan's testimony was accepted over the other experts in this case.
- Other cases have included two executive compensation suits. Michael Starr v. MGM Mirage, United States District Court, District of Nevada. Provided declaration of lost benefits. Klem Belt v. Health South, had deposition taken in Albuquerque, NM regarding lost benefits of terminating deferred compensation plan and split-dollar life insurance agreement. There have been a number of estate and trust accounting matters and one divorce case in which the attorneys on both sides relied on Dan's advice to tell them what the tax consequences would be, based on drafts of the property settlement agreements. Another case that went to arbitration was a lawsuit against Bank of America. Dan was Bank of America's expert witness. The case involved trustee matters and the taxation of life insurance.

Dan has been a Special Master to the Court twice. At one time, he was Co-Special Master to the Court with Governor Bob Miller and retired Judge Richardson on the William Perry case in Clark County District Court. He wrote the report that advised the Judge on what should be done with the money that was confiscated until it could be determined who the creditors were. The other case dealt with the valuation of a business and the split up of an estate between its heirs and was held in Clark County Probate Court. Dan evaluated the business valuations that were prepared, and the opinion of another accounting firm that was an expert on the case, and then advised the Judge on how to proceed.

Dan has spoken to numerous groups over the years including twice for the Illinois CPA Society's Real Estate Conference regarding asset protection and how real estate investments should be held. He has also spoken to the Southern Nevada CPA Society regarding estate tax planning. Dan has not authored any articles. Lorman Educational Services may have published one of the presentations that he co-wrote and presented titled Estate Planning in Nevada. Dan wrote the section titled Estate, Gift and GST Tax After the 2001 Tax Act. This talk was presented on February 19, 2002. His most recent presentations have been as follows:

- May 30, 2013, Presented Obama Care Changes Affecting Individuals and Business to clients and centers of influence.
- February 13, 2013, Presented Top Estate Planning Techniques for the National Business Institute.
- October 17, 2012, Federal Estate Tax Return, presented to Northern Nevada Estate Planning Council

- September 13, 2012, Tax Planning for Trust and Estates for the National Business Institute with Serena Baig, Robert L. Bolick, and Heidi C. Freeman.
- March 28, 2012, Part of panel of professionals leading discussion for Collaborative Succession Planning Workshop for Financial Planning Association of Nevada.
- November 8, 2011, Succession Planning for Law Firms, presented to the Las Vegas Association of Legal Administrators.
- June 6, 2011, Trust Administration: Preventing and Litigating Fiduciary Liability, Compliant Trust Taxation and Reporting, presented for NBI: National Business Institute.
- April 21, 2011, appeared on KLAV Radio Family Law & Order Show. Spoke on income tax issues for families and domestic partners.
- February 22, 2011, IRS Guidance on Filing Requirements for Domestic Partners, presented for the Gay & Lesbian Community Center of Southern Nevada.
- November 10, 2009, Choice of Entity, Presented to the Las Vegas Association of Legal Administrators.
- January 22, 2009, Deductibility of Fees Paid to Las Ventanas as Medical Expenses, presented for Las Ventanas, Las Vegas, NV
- October 22, 2008, Accounting for Estates And Trusts in Nevada, Presented for Lorman Educational Service. I covered Income Taxation of Trusts and Estates and Types of Trusts and Estates.
- February 6, 2008, Tax Update including Cover your Assets and Estate Planning Issues affecting Domestic Partners, presented for Because We aRe Different, Las Vegas, NV
- June 12, 2007, Choice of Entity, presented to Las Vegas Association of Legal Administrators.
- December 1, 2005, Cover Your Assets, Las Vegas, NV
- October 27, 2005 Current Year Tax Update, Las Vegas, NV
- July 30, 2004, Advanced Estate Planning and Creditor protection Strategies in Nevada, Presented for Lorman Educational Services with Richard and Steven Oshins, Las Vegas, NV. I presented on To Disclose or Not to Disclose a Sale to a Defective Trust on A Gift Tax Return and Postmortem Planning.
- June 15, 2004 Income Taxation for Trusts and Estates, Presented for RSM McGladrey, Inc Annual Tax Conference, Kansas City, MO
- February 26, 2004, Choice of Entity, Presented to the Society of Financial Service Professionals, Las Vegas, NV
- July 30, 2003, Estate Planning and Creditor protection Strategies in Nevada for Lorman Educational Services with Jeffrey Burr, Richard Oshins and Steven Oshins, Las Vegas, NV. I presented the Charitable Planning section of this seminar.
- July 11, 2002, Cover Your Assets, presented to the CFO Group, Las Vegas, NV
- May 22, 2002, Covering Your Assets, presented for Illinois CPA Society & Foundation 2002 Taxation on Real Estate Workshop, Chicago, IL
- May 05, 2002, Covering Your Assets, presented to Radiology Associates of Nevada, Las Vegas, NV

- February 19, 2002 Estate Planning In Nevada, presented for Lorman Educational Services with Stephen Nicolatus and Scott Swain, Las Vegas, NV
- October 16, 2001, Cover Your Assets, presented for the 28th Annual Illinois CPA Society & Foundation 2001 Real Estate Conference, Chicago, IL
- March 22, 2001, Cover Your Assets, presented to the Green Valley Rotary, Henderson, NV
- February 12, 2001, Cover Your Assets, presented to the Construction Financial Management Association, Las Vegas, NV
- January 30, 2001, Cover Your Assets, presented to the Las Vegas 100, Las Vegas, NV
- September 21, 2000, The Beneficiary controlled Dynasty Trust: Leveraging it with Installment Sales, GRAT Remainder Sales and Opportunity Shifting Strategies, Presented to the Nevada Society of CPA's Las Vegas Chapter with Steven Oshins, Las Vegas, NV
- I may have missed some above and I have presented many more times prior to 2000.

Exhibit 2
William Connell Jr Estate
November 24, 1979
Taxable Estate and Funding of Trust

	Assets Reported on Texas Return			Plus		Funding Allocation	
	50% of Community Prop.	Decedent's Separate Prop.	Taxable Estate	Survivor's 50% of Community	Total Assets	Total Trust 3	Total Trust 2
Las Vegas rental	37,500		37,500	37,500	75,000	37,500	37,500
Stocks and bonds	52,218		52,218	52,218	104,436	52,218	52,218
Cash	74,660		74,660	74,660	149,320	74,660	74,660
Insurance	1,358		1,358	1,358	2,716	1,358	1,358
Mobile home etc.	11,250		11,250	11,250	22,500	11,250	11,250
2301 Acres Upton Co		80,535	80,535	0	80,535	54,553	25,982
Mineral rights Upton		32,677	32,677	0	32,677	22,135	10,542
Diamond shrine riva	2,750		2,750	2,750	5,500	2,750	2,750
Gold wristwatch	287		287	287	574	287	287
Total	180,023	113,212	293,235	180,023	473,258	256,711	216,547
Allocation of expenses	(6,714)	(4,222)	(10,936)			0	(10,936)
Taxable estate before marital	173,309	108,990	282,299			256,711	205,611
Marital ded. for TX sep. prop.			(73,014)				
Marital ded. non-trust assets			(3,674)				
Taxable estate			205,611				
Estate tax on above			56,596				
Unified credit			(38,000)				
State tax credit / Texas Tax due			(515)				(515)
Balance federal estate tax due			18,081				(18,081)
							187,015
Computation of Marital Deduction							
Taxable estate before marital			282,299				
Exemption amount			(147,000)				
Marital deduction needed to zero out tax			135,299				
Maximum marital deduction allowed under Sec. 2056			250,000				
Less community property included in Estate			(173,309)				
Adjusted maximum marital deduction under Sec. 2056			76,691				
Total marital deduction taken on Texas return			(76,688)				
Variance			3				
Bill died 11/24/1979							
Exemption in 1979	147,000	18%	70%				
1979 table	Over	rate					
	0	18%					
	10,000	20%	1,800.00				
	20,000	22%	3,800.00				
	40,000	24%	8,200.00				
	60,000	26%	13,000.00				
	80,000	28%	18,200.00				
	100,000	30%	23,800.00				
	150,000	32%	38,800.00				
	250,000	34%	70,800.00				
	500,000	37%	155,800.00				
	750,000	39%	248,300.00				
	1,000,000	41%	345,800.00				
	1,250,000	43%	448,300.00				
	1,500,000	45%	555,800.00				
	2,000,000	49%	780,800.00				
	2,500,000	53%	1,025,800.00				
	3,000,000	57%	1,290,800.00				
	3,500,000	61%	1,575,800.00				
	4,000,000	65%	1,880,800.00				
	4,500,000	69%	2,205,800.00				
	5,000,000	70%	2,550,800.00				

Exhibit 3
Code Sec. 2056(c) in 1979

Prior to its deletion in 1981, by P.L. 97-34, Sec. 403(a)(1)(A), Code Sec. 2056(c) read as follows:

“(c) Limitation on aggregate of deductions.

“(1) Limitation.

“(A) In general. The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed the greater of—

“(i) \$250,000, or

“(ii) 50 percent of the value of the adjusted gross estate (as defined in paragraph (2)).

“(B) Adjustment for certain gifts to spouse. If a deduction is allowed to the decedent under section 2523 with respect to any gift made to his spouse after December 31, 1976, the limitation provided by subparagraph (A) (determined without regard to this subparagraph) shall be reduced (but not below zero) by the excess (if any) of—

“(i) the aggregate of the deductions allowed to the decedent under section 2523 with respect to gifts made after December 31, 1976, over

“(ii) the aggregate of the deductions which would have been allowable under section 2523 with respect to gifts made after December 31, 1976, if the amount deductible under such section with respect to any gift required to be included in a gift tax return were 50 percent of its value.

For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account.

“(C) Community property adjustment. The \$250,000 amount set forth in subparagraph (A)(i) shall be reduced by the excess (if any) of—

“(i) the amount of the subtraction determined under clauses (i), (ii), and (iii) of paragraph (2)(B), over

“(ii) the excess of the aggregate of the deductions allowed under sections 2053 and 2054 over the amount taken into account with respect to such deductions under clause (iv) of paragraph (2)(B).

“(2) Computation of adjusted gross estate.

“(A) General rule. Except as provided in subparagraph (B) of this paragraph, the adjusted gross estate shall, for purposes of subsection (c)(1), be computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed by sections 2053 and 2054.

“(B) Special rule in cases involving community property. If the decedent and his surviving spouse at any time, held property as community property under the law of any State, or possession of the United States, or of any foreign country, then the adjusted gross estate shall, for purposes of subsection (c)(1), be determined by subtracting from the entire value of the gross estate the sum of—

“(i) the value of property which is at the time of the death of the decedent held as such community property; and

“(ii) the value of property transferred by the decedent during his life, if at the time of such transfer the property was held as such community property; and

“(iii) the amount receivable as insurance under policies on the life of the decedent, to the extent purchased with premiums or other consideration paid out of property held as such community property; and

“(iv) an amount which bears the same ratio to the aggregate of the deductions allowed under sections 2053 and 2054 which the value of the property included in the gross estate, diminished by the amount subtracted under clauses (i), (ii), and (iii) of this subparagraph, bears to the entire value of the gross estate.

For purposes of clauses (i), (ii), and (iii), community property (except property which is considered as community property solely by reason of the provisions of subparagraph (C) of this paragraph) shall be considered as not 'held as such community property' as of any moment of time, if, in case of the death of the decedent at such moment, such property (and not merely one-half thereof) would be or would have been includible in determining the value of his gross estate without regard to the provisions of section 402(b) of the Revenue Act of 1942. The amount to be subtracted under clauses (i), (ii), or (iii) shall not exceed the value of the interest in the property described therein which is included in determining the value of the gross estate.

“(C) Community property—conversion into separate property.

“(i) After December 31, 1941. If after December 31, 1941, property held as such community property (unless considered by reason of subparagraph (B) of this paragraph as not so held) was by the decedent and the surviving spouse converted, by one transaction or a series of transactions, into separate property of the decedent and his spouse (including any form of coownership by them), the separate property so acquired by the decedent and any property acquired at any time by the decedent in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clauses (i), (ii), and (iii) of subparagraph (B), be considered as 'held as such community property.'

“(ii) Limitation. Where the value (at the time of such conversion) of the separate property so acquired by the decedent exceeded the value (at such time) of the separate property so acquired by the decedent's spouse, the rule in clause (i) shall be applied only with respect to the same portion of such separate property of the decedent as the portion which the value (as of such time) of such separate property so acquired by the decedent's spouse is of the value (as of such time) of the separate property so acquired by the decedent.”

Exhibit 4

1972

TRUST AGREEMENT

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

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

W I T N E S S E T H :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Powers of appointment over income and principal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EIGHTH: SPECIAL PROVISIONS.

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

B. Revocation and Amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of any interest in the assets of the trusts.

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

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

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

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

W. N. Connell
W. N. CONNELL

W. N. CONNELL

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

NOTARY PUBLIC - STATE OF NEVADA
CLARK COUNTY
JUNE A. GAVIN
My Commission Expires May 2, 1975

SCHEDULE "A"

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

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

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

1. Lots One (1) and Two (2) in Block Sixteen (16) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.
2. Lot Three (3), Block Six (6), Biltmore Addition to the City of Las Vegas, as shown by map thereof on file in Book 2 of Plats, Page 33, in the Office of the County Recorder of Clark County, Nevada.
3. Lots Fifteen (15) and Sixteen (16) in Block Fifteen (15) in the South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 14, in the Office of the County Recorder of Clark County, Nevada.
4. Lots Twenty-Two (22) and Twenty-Three (23) in Block Eleven (11) of South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 51, in the Office of the County Recorder of Clark County, Nevada.
5. Lots Twenty-four (24) and Twenty-five (25) in Block Eleven (11) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.

The following assets constitute the separate property of

W. N. CONNELL:

1. Real Property:

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

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

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

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

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

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

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

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

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

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

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

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

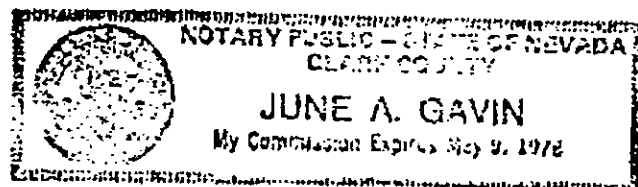
(b) Sections 32, 33, 36, 37, 38, 40, 41, 44, 45, 47 and 48 of Block 39, Township 5 South, T. & P. R. R. Co. Survey.

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

Marjorie T. Connell
MARJORIE T. CONNELL

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

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



Internal Revenue Service
District Director

jt
Department of the Treasury

Date: OCT 30 1981

Estate of:
William M. Connell
Decedent's Social Security
Number:
530-05-6631
Date of Death:
November 24, 1979
Person to Contact:
L. Peterson
Contact Telephone Number:
784-5262

WILLIAM M. CONNELL ESTATE
MARJORIE CONNELL
1505 CINDY AVE
BOULDER CITY, NV 89005

Estate Tax Closing letter
(This is not a bill for tax due)

Our computation of the Federal Tax liability for the above estate is shown below. It does not include any interest that may be charged. You should keep a copy of this letter as a permanent record because your attorney may need it to close the probate proceedings for the estate. This letter is evidence that the Federal tax return for the estate has either been accepted as filed, or has been accepted after an adjustment that you agreed to.

This is not a formal closing agreement under section 7121 of the Internal Revenue Code. We will not reopen this case, however, unless Revenue Procedure 74-5, reproduced on the back of this letter, applies.

If you have any questions, please contact the person whose name and telephone number are shown above. Thank you for your cooperation.

Sincerely yours,

A. F. Swanson

District Director

Tentative tax	\$ 56,596.00
Less: Aggregate gift taxes payable (for gifts made after 12-31-76)	\$
Unified credit	\$ 38,000.00
Credit for State death taxes	\$ 515.00
Credit for Federal gift taxes (on gifts prior to 1-1-77)	\$
Credit for foreign death taxes	\$
Credit for tax on prior transfers	\$
Total subtractions	\$ 38,515.00
Net estate tax	\$ 18,081.00
Penalties, if any	\$

(over)

P.O. Box 4100, Reno, Nevada 89505
cc: Robert T. Ashworth, P/A

Letter 627(DO) (Rev. 2-78)

Exhibit 6

Form 2030-1.02
 State of Public
 Accounts (Rev. 9-78)

BOB BULLOCK
 COMPTROLLER OF PUBLIC ACCOUNTS
 STATE OF TEXAS

Do not write in above space

INHERITANCE TAX RETURN - NON-RESIDENT

Date Received (Do not write in this space)

Decedent's Name (First, Middle, Maiden, Last) William M. Connell		Date of Death November 24, 1979	T CODE <input checked="" type="checkbox"/> 90100 DEPOSIT CODE <input checked="" type="checkbox"/> 110 AMOUNT
Residence (Domicile) at Time of Death (City and State) Boulder City, Nevada		Year in which domicile was established. 1936	
Marital Status: <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Single <input type="checkbox"/> Legally Separated <input type="checkbox"/> Widow/Widower			
If Married, Date of Marriage: June 2, 1942		Number of Children: one	Number of Children Surviving: one
Did the decedent, at any time during life, make any transfer of property within Texas in which any beneficial interest was retained? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Did the decedent, within three years immediately prior to death, make any transfer of property within Texas without an adequate and full consideration? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
Did the decedent die testate? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If "YES" attach copy of will. If "NO" attach an affidavit of heirship.		Were letters testamentary or of administration granted for this estate? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
To whom granted? (Designate "Executor," "Executrix," "Administrator," or "Administratrix")			
NAME		DESIGNATION	ADDRESS (Street & No., City, State, Zip Code)
Name of Court		Location of Court	
Have ancillary probate proceedings been applied for and granted? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		County in Texas	
Name of ancillary administrator or executor			
Address			

INHERITANCE TAX DUE

PART I Basic inheritance tax (From Schedule B) <div style="border: 1px solid black; padding: 5px; width: 100px; text-align: center;">\$ -00-</div>		PART II Federal credit for state death tax (From Schedule C) <div style="border: 1px solid black; padding: 5px; width: 100px; text-align: center;">\$ 515.00</div>	
TAX DUE (PART I OR PART II, WHICHEVER IS GREATER) <div style="border: 1px solid black; padding: 5px; width: 150px; margin: auto; text-align: center;">\$ 515.00</div>			

I declare that this return and any accompanying statements are true, correct and complete to the best of my knowledge. I understand that this return is subject to the fraudulent report provisions of TEX. TAX GEN. ANN. art. 1.12 (1959).

Name of Preparer Darrel Knight Assoc., Inc.-PC	Phone (Area Code & No.) 915 695-2370	Name of Executor, Administrator, Heir at Law Marjorie Connell, Executrix	Phone (Area Code & No.) 702 293-5391
Address (Street & No., City, State, Zip Code) 301 S. Pioneer, #102, Abilene, TX 79605		Address (Street & No., City, State, Zip Code) P O Box 710, Las Vegas, Nevada 89101	
Sign here: <i>Darrel Knight</i>	Date 12-16-80	Sign here: <i>Marjorie Connell</i>	Date 12-16-80

PLEASE NOTE:

RETURN MUST BE SIGNED BY PERSONAL REPRESENTATIVE OF ESTATE AND PERSON PREPARING RETURN A COPY OF DECEDENT'S WILL OR AFFIDAVIT OF HEIRSHIP MUST BE ATTACHED

For assistance call Area Code 512 475-3603 or
 TOLL FREE from anywhere in Texas
 1-800-252-5555, Ext. 119, 120 or 121

MAIL TO: BOB BULLOCK
 COMPTROLLER OF PUBLIC ACCOUNTS
 INHERITANCE TAX DIVISION
 CAPITOL STATION
 AUSTIN, TEXAS 78774

(June, 1975)

STATE OF TEXAS

APPLICATION FOR EXTENSION OF TIME TO FILE INHERITANCE TAX RETURN AND/OR PAY INHERITANCE TAX
(Articles 14.14(C) and/or 14.16(A) and (B) of Title 122A, Chapter 14, Revised Civil Statutes, 1925)

PART I - IDENTIFICATION

Name and Mailing Address of Application Preparer Darrel Knight Associates, Inc. - P.C. 301 South Pioneer, Suite 102 Abilene, Texas 79605	Inheritance Tax Return Due Date August 24, 1980	
	Decedent's County of Residence - or County of Probate Proceedings Clark County	
	Decedent's Social Security Number 530-05-6631	

Decedent's First Name and Middle Initial William N.	Decedent's Last Name Connell, Jr.	Date of Death Nov. 24, 1979
--	--------------------------------------	--------------------------------

PART II - EXTENSION OF TIME TO FILE (Art. 14.14(C))

Extension Date Requested
Feb. 24, 1981

Reasons (state in detail):

The federal estate return is being prepared by a CPA in Nevada. He has not received all the information he needs to complete form 706 at this time. I am unable to complete the Texas return until I receive form 706 from Nevada.

PART III - EXTENSION OF TIME TO PAY (Art. 14.16 (A) and (B))

Extension Date Requested

Reasons (state in detail):

Amount of estimated Inheritance Tax Due

-0-

Amount of Cash Shortage Claimed

BALANCE DUE (Pay with this Application)

-0-

PART IV - SIGNATURE AND VERIFICATION

If prepared by Executor, Administrator or Person in Possession of Property. - Under penalties of Section 37.10, Title 8, Texas Penal Code, I declare that to the best of my knowledge and belief, the statements made herein are true and correct.

(Signature of executor, administrator or person in possession of property)

(Title)

(Date)

If prepared by Someone Other Than Executor, Administrator or Person in Possession of Property. - Under penalties of Section 37.10, Title 8, Texas Penal Code, I declare that to the best of my knowledge and belief, the statements made herein are true and correct, that I am authorized by the executor, administrator or person in possession of property to prepare this application and that I am:

- ☐ A member in good standing of the bar of the highest court of (specify jurisdiction)
- ☒ A certified public accountant duly qualified to practice in (specify jurisdiction) State of Texas
- ☐ A personal representative (as defined in Article 14.00A(f), Taxation-General, Revised Civil Statutes of Texas) other than above.

Explain

(Signature of preparer other than executor, administrator or person in possession of property)

, CPA

8-22-80

(Date)

PART V - NOTICE TO APPLICANT - TO BE COMPLETED BY INHERITANCE TAX DIVISION

1. The Application For Extension of Time to File (Part II) is:

- ☒ Approved until February 24, 1981
- ☐ Not approved because

☐ Other

2. The Application For Extension of Time to Pay (Part III) is:

- ☐ Approved
- ☐ Not approved because

☒ Other not requested

Director

Date August 28, 1980

SCHEDULE A

674

PROPERTY SUBJECT TO TEXAS INHERITANCE TAX

Did the decedent at the time of death own an interest in real estate or minerals located within the State of Texas?
☒ Yes ☐ No If "Yes," list below.

Did the decedent at the time of death own an interest in any tangible personal property such as livestock, farm and ranching equipment, grain in storage, growing crops, all equipment used in connection with the drilling and producing of subsurface crude oil, gas or other minerals and any other tangible property having an actual situs in the State of Texas? ☐ Yes ☒ No If "Yes," list below.

All assets listed below must be clearly described and identified. If valuations are based upon appraisals, copies of such appraisals should accompany the return. If a formal appraisal of oil and gas leases and royalties is not made, a five-year payout based on the last twelve months prior to death will be used in determining the value of such mineral interest.

ALTERNATE VALUATION

An election to have the gross estate of the decedent valued as of the alternate date or dates is made by entering a check mark in the box set forth below:

- ☐ The executor elects to have the gross estate of the decedent valued in accordance with values as of a date or dates subsequent to the decedent's death as authorized under TEX. TAX. GEN. ANN. art. 14.11 (Supp. 1976).

ITEM NO.	DESCRIPTION	SUBSEQUENT VALUATION DATE	ALTERNATE VALUE	VALUE AT DATE OF DEATH
1	2,301 acres, pasture land, out of Block 39, T-5-S, Sections 38,47,48, W $\frac{1}{2}$ 37, Upton County, Texas. Separate property of decedent.		\$	\$ 80,535.
2	Mineral rights, Upton County, Texas, $\frac{1}{2}$ interest in Dora Connell Estate. Separate property of decedent. Valued on a 5-year payout based on payments received 12 months prior to date of death.			32,677.
TOTAL (Also enter under Schedule C, Page 4)			\$	\$ 113,212.

SCHEDULE B

COMPUTATION OF BASIC INHERITANCE TAX

- List all beneficiaries under the will of the decedent (including charitable bequests) or under the laws of intestacy who take any share of the estate.
- If beneficiaries do not share the estate equally, attach a copy of the distribution indicating the items and amounts distributed to each beneficiary.
- Attach a copy of the last will and testament or an affidavit of heirship if the decedent died intestate.
- If beneficiaries listed on the distribution schedule are not as specified in decedent's will, please explain (predeceased, disclaimed, etc.).

(1) Name and Address of Beneficiary	(2) Relationship of Beneficiary to Decedent	(3) Age of Beneficiary at date of Death of Decedent	(4) Value of share of entire net estate wherever located (See Sch.B-3)	(5) Value of share of net Texas estate (See Sch.B-3)	(6) Tax at Texas rates on share of entire net estate (4). (See Tax Rate Schedule)	(7) Ratio of share of Texas net estate to share of entire net estate. (5)divided by(4)	(8) Texas Inheritance Tax (6) multiplied by (7)
Marjorie Connell P. O. Box 710 Boulder City, Nevada 89101	wife	60	\$ 69,704	\$ -0-	\$ 197.04	-0-	\$ -0-
Eleanor M. Connell Hartman P. O. Box 710 Las Vegas, Nevada 89101	daughter	41	12,528	-0-	125.28	-0-	-0-
Robert Hartman P. O. Box 710 Las Vegas, Nevada 89101	son-in-law	43	-0-	-0-	-0-	-0-	-0-
TOTAL TEXAS INHERITANCE TAX-Col. 8 (TO BE CARRIED FORWARD TO PAGE 1, PART I)							\$ -0-

SCHEDULE C

Copy

COMPUTATION OF PROPORTIONATE SHARE OF
FEDERAL CREDIT FOR STATE DEATH TAX

HAS A FORM 706, U.S. ESTATE TAX RETURN BEEN FILED WITH THE INTERNAL REVENUE SERVICE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
The following information should be furnished from Form 706, U.S. Estate Tax Return, filed or to be filed on behalf of this estate with the Internal Revenue Service. IF FORM 706 WAS NOT FILED, COMPLETE LINES 1 THROUGH 5 AND LINE 12		
1. Value of property subject to Texas Inheritance Tax.	1. \$ 113,212	
2. Total value of all other property.	2. 180,023	
3. Total gross estate (lines 1 plus 2)-(Same as recapitulation p. 3, U.S. Estate Tax Return)		3. 293,235
4. Funeral, administration expenses, debts of decedent, mortgage and liens (Schedules J & K, U.S. Estate Tax Return)	4. 10,936	
5. Total value of net estate wherever located.		5. 282,299
6. Other deductions (Total of Schedules L, M, N and O, U.S. Estate Tax Return)	6. 76,688	
7. Total allowable deductions (Line 4 plus line 6) (Same as Recapitulation, page 3, U.S. Estate Tax Return)		7. 87,624
8. Taxable estate for Federal Estate Tax purposes. (Line 3 minus line 7) (Same as page one U.S. Estate Tax Return, line 3)		8. 205,611
9. Adjustment to compute State Death Tax.	9. 60,000.00	
10. Federal adjusted taxable estate (line 8 minus line 9).		10. 145,611
11. a) Excess of gross estate tax over unified credit. (from line 12, page 1, form 706)	11a 18,596	
b) Maximum Federal Credit for State Death Tax. (Computed on Table C, Form 706)	11b 1,335	
c) Allowable Federal Credit for State Death Tax. (line 11a or 11b, whichever is smaller)		11c 1,335
12. Percentage of Texas gross estate to total gross estate. (line 1 divided by line 3)	12. 38.61%	
13. Portion of Federal Credit for State Death Tax allocated to the State of Texas. (line 11c multiplied by line 12). TO BE CARRIED FORWARD TO PAGE 1, PART II		13. 515 \$

Copy

SCHEDULE B-1

William M. Connell Estate
Distribution of Net Estate Wherever Located
Supporting Schedule B-3

Net Taxable Estate Wherever Located \$282,299

Distribution to Marjorie Connell:

Las Vegas rental property (Sch. A, Item 3, Form 706)	\$37,500	
Stock and bonds (Sch. B, Form 706)	52,218	
Cash and First Trust Deeds (Sch. C, Form 706)	74,660	
Insurance proceeds (Sch. D, Form 706)	1,358	
Mobil home, furniture and automobiles (Sch. F, Items 3, 4, 5 and 6, Form 706)	11,250	
Marital bequest, 64.493% of 2,301 acres Upton Co., Texas land (Sch. A, Item 1, Form 706)	51,940	
Marital bequest, 64.493% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	21,074	
Distributive share of allowable deductions	(10,936)	(239,064)

Distribution to Eleanor M. Connell Hartman:

Diamond Shrine Riva (Sch. F, Item 1, Form 706)	2,750	
35.507% of 2,301 acres, Upton Co., Texas land (Sch. A, Item 1, Form 706)	28,595	
35.507% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	<u>11,603</u>	(42,948)

Distribution to Robert Hartman:

Gold Diamond Glycene wristwatch	<u>(287)</u>
---------------------------------	--------------

\$ -0-

Copy

SCHEDULE B-2

William M. Connell Estate
Distribution of Texas Estate
Supporting Schedule B-3

Net Texas Estate \$113,212

Distribution to Marjorie Connell:

Marital bequest, 64.493% of 2,301 acres Upton County land (Sch. A, Item 1)	\$51,940	
Marital bequest, 64.493% of mineral rights, Upton County, Texas (Sch. A, Item 2)	<u>21,074</u>	(73,014)

Distribution to Eleanor M. Connell Hartman:

35.507% of 2,301 acres, Upton County land (Sch. A, Item 1)	28,595	
35.507% of mineral rights, Upton County, Texas (Sch. A, Item 2)	<u>11,603</u>	<u>(40,198)</u>

\$ -0-

SCHEDULE B-3

William M. Connell Estate
Determination of Value of Taxable Share
Supporting Schedule B, Columns 4 & 5

<u>Beneficiary</u>	<u>(a) Value of share of entire net estate wherever located</u>	<u>(b) % of share received to total of all Class A shares</u>	<u>(c) Exemption</u>	<u>(d) Pro rata share of exemption (b) x (c)</u>	<u>(e) Value of taxable share (a) - (d)</u>
Marjorie Connell	\$239,064	84.68%	\$200,000	\$169,360	\$ 69,704
Eleanor C. Hartman	42,948	15.21%	200,000	30,420	12,528
Robert Hartman	<u>287</u>	<u>.11%</u>	<u>200,000</u>	<u>25,000</u>	<u>-0-</u>
Totals	<u>\$282,299</u>	<u>100.00%</u>	<u>-</u>	<u>-</u>	<u>\$ 82,232</u>

<u>Beneficiary</u>	<u>(a) Value of share of Texas net estate</u>	<u>(b) % of share received to total of all Class A shares</u>	<u>(c) Exemption</u>	<u>(d) Pro rata share of exemption (b) x (c)</u>	<u>(e) Value of taxable share (a) - (d)</u>
Marjorie Connell	\$ 73,014	64.49%	\$200,000	\$128,980	-0-
Eleanor C. Hartman	40,198	35.51%	200,000	71,020	-0-
Robert Hartman	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Totals	<u>\$113,212</u>	<u>100.00%</u>	<u>-</u>	<u>\$200,000</u>	<u>-0-</u>

copy

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

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

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

Appellant,

vs.

JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER,

Respondents.

Supreme Court No.: 66231
Consolidated with: 6782, 68046
Electronically Filed
Nov 20 2015 04:12 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

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

APPELLANT'S APPENDIX

(VOLUME 8 OF 17)

(PAGES AA 1617 - 1849)

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*ATTORNEYS FOR APPELLANT
ELEANOR CONNELL HARTMAN AHERN*

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

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

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

Appellant,

vs.

JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER,

Respondents.

Supreme Court No.: 66231

Consolidated with: 67782, 68046

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRAP 25(c) and (d), I caused a true and correct copy of the foregoing **APPELLANT’S APPENDIX (Volume 8 of 17) (Pages AA 1617-1849)** by using the Court’s Electronic Filing System on November 20, 2015, upon the following:

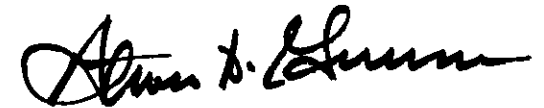
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*Attorneys for Jacqueline M. Montoya
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I hereby certify that on November 20, 2015, I served a copy of this document by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to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

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Las Vegas, NV 89145
Attorneys for Fredrick P. Waid, Court-
appointed Trustee

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



CLERK OF THE COURT

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Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

THE W. N. CONNELL AND MARJORIE T. CONNELL

LIVING TRUST,

Dated May 18, 1972

Case No. P-09-066425-T

Dept. No. XXVI (26)

Date of Hearing: November 26, 2014

Time of Hearing: 9:30 a.m.

An Inter Vivos Irrevocable Trust.

**MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT REGARDING
LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS
153.031(1)(E), AND NRS 164.033(1)(A) FOR FAILURE TO STATE A CLAIM UPON
WHICH RELIEF CAN BE GRANTED PER NRCP 12(b)(5)**

COMES NOW ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, by and through her counsel of record, JOHN R. MUGAN, ESQ., and MICHAEL D. LUM, ESQ., of the law firm of JEFFREY BURR, LTD., and hereby submits this Motion To Dismiss Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS 153.031(1)(E), And NRS 164.033(1) For Failure To State A Claim Upon Which Relief Can Be Granted pursuant to NRCP 12(b)(5). This motion is based upon the pleadings and papers filed before this Honorable Court, the following memorandum of points and authorities, and any oral argument which may be taken at the time of hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

A. STATEMENT OF FACTS

W. N. CONNELL and MARJORIE T. CONNELL were married in approximately 1942. At the time of their marriage, W. N. CONNELL and MARJORIE T. CONNELL were residents of the state of Nevada, a community property state, and W. N. CONNELL had sole and separate property consisting in part of surface real estate located in Upton County, Texas, and the oil, gas and mineral interests on and under such real estate and severed oil, gas and mineral interests in other acreage in Upton County, Texas (the "Upton County, Texas, Oil rights"). Texas was at the time of the marriage, and still is, a community property state also. At the time of the marriage, W. N. CONNELL had one child from a previous marriage, namely ELEANOR C. AHERN, also known as ELEANOR CONNELL HARTMAN AHERN ("ELEANOR"). ELEANOR was born on May 13, 1938, and was approximately four (4) years of age at the time of her father's remarriage. During her years of minority, physical custody of ELEANOR was shared between her father, W. N. CONNELL, and ELEANOR's natural mother, who married Joe Gallowich when ELEANOR was approximately six (6) years of age. Such custody arrangement involved ELEANOR living part of each week with W. N. CONNELL and her stepmother, MARJORIE T. CONNELL, and living part of each week with ELEANOR's natural mother (and stepfather after the remarriage of ELEANOR's natural mother). W. N. CONNELL had no other children, and MARJORIE T. CONNELL had no children. MARJORIE T. CONNELL would eventually adopt ELEANOR after ELEANOR reached majority age. A copy of the Decree Of Adoption is attached hereto as Exhibit "A" and by this reference incorporated herein.

W. N. CONNELL and MARJORIE T. CONNELL as grantors and initial trustees established the W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 (the "TRUST"). A copy of the TRUST agreement including Schedule "A" thereto is attached hereto as

1 Exhibit "B" and by this reference incorporated herein. The sole and separate Upton County, Texas,
2 Oil rights of W. N. CONNELL were conveyed by W. N. CONNELL to himself and MARJORIE T.
3 CONNELL as Trustee (sic) of the TRUST via two Quitclaim Deeds dated June 5, 1972 and
4 recorded June 13, 1972 as Instrument No. 61969 in Volume 409, Page 329 and as Instrument No.
5 61970 in Volume 414, Page 9 of the Deed Records of the County Clerk of Upton County, Texas.
6 Copies of such Deeds are attached hereto as Exhibit "C" and by this reference incorporated herein.

7
8 W. N. CONNELL died on November 24, 1979 and was survived by his spouse, MARJORIE
9 T. CONNELL. ELEANOR was and is the only surviving child of W. N. CONNELL. ELEANOR
10 has two children, JACQUELINE M. MONTROYA and KATHRYN A. BOUVIER.

11 The TRUST agreement provides in part that upon the death of the Grantor whose death shall
12 first occur [W. N. CONNELL], the Trustee shall divide the trust estate into two parts, each part to
13 be administered as a separate trust to be known respectively as "Trust No. 2" and "Trust No. 3". In
14 particular, Article SECOND, *TRUST NO. 1*, Paragraph C, *Death of Either Grantor*, of the TRUST
15 agreement (Exhibit B) in relevant part states:

16
17 "Upon the death of the Grantor whose death shall first occur, the Trustee shall divide the
trust estates, including all property received as a result of the decedent's death, as follows:

18 1. The trust estate and all property received as a result of the decedent's death shall be
19 divided into two parts, each part to be administered as a separate trust to be known
20 respectively as 'Trust No. 2' and 'Trust No. 3'."

21 Subparagraph 4 of said Paragraph C of the TRUST agreement (Exhibit B) describes how
22 Trust No. 2 is to be funded, and states as follows:

23 "The Trustee shall allocate to Trust No. 2 all the remaining portion (sic) of the trust estate
24 not allocated to Trust No. 3, including but not limited to, the Decedent's [W. N. CONNELL]
community property interest, if any, in any life insurance policy on the life of the Decedent
25 [W. N. CONNELL] payable to Trust No. 1."

26 Article *FOURTH, TRUST NO. 2*, Paragraph B, *Income*, of the TRUST agreement (Exhibit
27 B) sets forth how the income of Trust No. 2 was to be paid, and in relevant part states:

1 “All income received by this Trust from the separate property of the Decedent [W. N.
2 CONNELL] shall be paid to the Residual Beneficiary [ELEANOR]. In the event any of the
3 real property located in Upton County, Texas, as listed on the original Schedule “A”
4 attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary
5 [ELEANOR] shall be paid an additional payment from the income received from the
6 Decedent’s [W. N. CONNELL] half of the community property, which forms a part of the
7 corpus of this Trust, equal to all of the income received by this Trust from the real property
8 located in Upton County, Texas.”

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

18 MARJORIE T. CONNELL died on May 1, 2009. She had no surviving spouse, but was
19 survived by her only child, ELEANOR. ELEANOR was adopted by MARJORIE T. CONNELL as
20 noted above-see Exhibit A.

21 **B. PROCEDURAL HISTORY**

22 Subsequent to the death of MARJORIE T. CONNELL, a Petition To Assume Jurisdiction
23 Over Trust; Confirm Trustee; And Construe And Reform Trust (the “PETITION”) was filed by
24 MARK A. SOLOMON, Esquire, and BRIAN K. STEADMAN, Esquire, as purported attorneys for
25 ELEANOR as Petitioner. A copy of such PETITION without exhibits is attached hereto as Exhibit
26 “D” and by this reference incorporated herein. This is the first case dealing with the TRUST, Trust
27 No. 2, its assets, the income therefrom, the remainder interest, and the construction and reformation
28 of the TRUST agreement. The PETITION was filed with this Court on August 17, 2009. To the

1 best of her recollection, all of ELEANOR's meetings and dealings regarding the PETITION were
2 with DAVID A. STRAUS, Esquire, and his client, JACQUELINE M. MONTOYA; all meetings
3 regarding the PETITION were at the law office of Mr. STRAUS; the PETITION was executed by
4 ELEANOR at the law office of Mr. STRAUS, and ELEANOR never met with Mr. SOLOMON or
5 Mr. STEADMAN, the attorneys listed as her attorney on the PETITION. In essence, the action was
6 initiated and driven by JACQUELINE M. MONTOYA and her attorney, and primarily was for the
7 benefit of JACQUELINE M. MONTOYA and her sister, KATHRYN A. BOUVIER. Further
8 evidence of the fact that JACQUELINE M. MONTOYA initiated the 2009 case for her and
9 KATHRYN A. BOUVIER's benefit are the August 4, 2009 letters and enclosed Consents to
10 Reformation sent to them by Mr. STEADMAN, purported attorney for ELEANOR, which are
11 attached hereto as Exhibits "E" and "F", respectively and incorporated herein by this reference. Mr.
12 STEADMAN sent the August 4, 2009 letters to JACQUELINE M. MONTOYA and KATHRYN A.
13 BOUVIER prior to filing the PETITION and stated therein that, "As you are aware, we are in the
14 process of reforming the W.N. Connell and Marjorie T. Connell Living Trust (the 'Trust')." (Emphasis added.)
15 Enclosed with the letters were Consents to Reformation prepared by the law
16 office of Solomon, Dwiggins, & Freer, Ltd., which as Mr. STEADMAN conveyed to
17 JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER in said letter were prepared for the
18 purpose of "outlin[ing] the estate tax implications that may arise in reforming the Trust."
19 (Emphasis added.) Why would Mr. STEADMAN be referencing "we" in these letters and giving
20 legal advice (the estate tax implications of reformation) to JACQUELINE M. MONTOYA and
21 KATHRYN A. BOUVIER if they were not his clients? The answer is he would not.

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

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

1 “19. Pursuant to Article Fourth, which Article governs the administration of Trust No. 2,
2 **all income from the Oil Assets is to be paid to the Petitioner [ELEANOR] as the**
3 **‘Residual Beneficiary’ during her lifetime.**” (Emphasis added.)

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

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

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

15 “1. I am a **contingent income beneficiary** of the W. N. CONNELL AND MARJORIE
16 T. CONNELL LIVING TRUST, dated May 18, 1972 (the ‘Trust’).” (Emphasis added.)

17 “2. **I have read the Petition** To Assume Jurisdiction Over Trust; Confirm Trustee; And
18 Construe And Reform Trust (the ‘Petition’) and **believe it to be true and correct** to the best
19 of my knowledge.” (Emphasis added.)

20 “3. I hereby **consent to the Petition** and request that the Court enter an Order approving
21 the Petition **in its entirety.**” (Emphasis added.)

22 KATHRYN A. BOUVIER signed an identical Consent, and a copy of such Consent is
23 attached hereto as Exhibit “H” and by this reference incorporated herein.

24 A hearing on the PETITION was scheduled before the Probate Commissioner on September
25 4, 2009 at 9:30 a.m. Notice of the date, time and place of hearing and a copy of the PETITION
26 were mailed to ELEANOR, JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER on
27 August 17, 2009. Copies of the Notice Of Hearing On Petition To Assume Jurisdiction Over Trust;
28 Confirm Trustee; And Construe And Reform Trust and of the Certificate Of Mailing are attached

1 hereto as Exhibit "I" and by this reference incorporated herein. The PETITION came on for
2 hearing before the Probate Commissioner on September 4, 2009, and an Order Assuming
3 Jurisdiction Over Trust; Confirm Trustee; And For Construction Of And Reform Of Trust
4 Instrument (the "ORDER") was entered and filed herein on said date. The ORDER in part
5 construed and reformed the TRUST to provide that upon the death of ELEANOR, Trust No. 2 and
6 its assets, including the Upton County, Texas, Oil rights, shall pass equally to her children,
7 JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER, each of whom shall also have a
8 power of appointment as to their share of the residue if they would predecease ELEANOR, to-wit:
9

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

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

18 E. Distribution Upon Death of both the Survivor [MARJORIE T. CONNELL] and the
19 Residual Beneficiary [ELEANOR]. Upon the death of both the Survivor [MARJORIE T.
20 CONNELL] and the Residual Beneficiary [ELEANOR], the Trustee shall divide the balance
21 of Trust No. 2 into two equal shares, as follows:

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

1. One (1) equal share shall be distributed, outright and free of trust, to the
Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is then living.
Subject to Section (F) below if, as the date of the Residual Beneficiary's death,
KATHRYN A. BOUVIER is not then living, then said equal share shall be distributed
to KATHRYN A. BOUVIER's then living issue, by right of representation. Each
share created pursuant to this Section E(2) of Article Fourth for the benefit of the

1 *issue of KATHRYN A. BOUVIER shall be held as a separate trust ("Beneficiary's*
2 *Share" for the benefit of such issue ("Beneficiary") to be held by the Trustee,*
3 *administered and further distributed pursuant to Section G of this Article Fourth.*

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

8 F. Power of Appointment. *In the event that JACQUELINE M. MONTOYA or KATHRYN*
9 *A. BOUVIER predeceases the Residual Beneficiary, upon the death of the Residual*
10 *Beneficiary, the Trustee shall distributed such beneficiary's equal share to or in trust for*
11 *such one or more persons or organizations and in such manner and proportions as such*
12 *beneficiary may appoint by her will or revocable trust making specific reference to this*
13 *general power of appointment.*

14 A copy of such ORDER is attached hereto as Exhibit "J" and by this reference incorporated
15 herein.

16 On September 8, 2009, a Notice Of Entry Of Order and Certificate Of Mailing were filed
17 herein attesting to the mailing of the Notice Of Entry Of Order and Certificate Of Mailing and a
18 copy of the Order Assuming Jurisdiction Over Trust; Confirm Trustee; And For Construction Of
19 And Reform Of Trust Instrument to ELEANOR, JACQUELINE M. MONTOYA and to
20 KATHRYN A. BOUVIER at their last known mailing addresses per Nevada law. A copy of such
21 Notice Of Entry Of Order and Certificate Of Mailing is attached hereto as Exhibit "K" and by this
22 reference incorporated herein.

23 A search of the Register of Actions and pleadings herein shows no objection to, motion for
24 relief from, request for reconsideration of, or appeal of the ORDER being filed.

25 On September 27, 2013, JACQUELINE M. MONTOYA filed her Petition For Declaratory
26 Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS
27 153.031(1)(E), And NRS 164.033(1)(A) herein (the "DECLARATORY JUDGMENT PETITION")
28 with this Court. This is the second case dealing with the TRUST, Trust No. 2, its assets, the income
therefrom, the remainder interest, and the construction and reformation of the TRUST agreement.

1 The DECLARATORY JUDGMENT PETITION seeks in part a determination that her mother,
2 ELEANOR, both individually and as Trustee of the TRUST, "... is only entitled to a 35%
3 proportion of all real property located in Upton County, Texas, including the income generated
4 from gas, oil, and mineral leases relating to such Upton County, Texas real property..." The
5 DECLARATORY JUDGMENT PETITION further seeks in part a determination that
6 JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER or Trusts that they are beneficiaries
7 of are entitled to Sixty-Five Percent (65%) proportion of all real property located in Upton County,
8 Texas, including the income generated from gas, oil, and mineral leases relating to such Upton
9 County, Texas real property.
10

11 On November 12, 2013, ELEANOR filed an initial Motion To Dismiss Petition For
12 Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS
13 153.031(1)(E), And NRS 164.033(1) For Failure To State A Claim Upon Which Relief Can Be
14 Granted Pursuant To NRCP 12(b)(5). Hearing thereon was held on January 14, 2014, and the Court
15 denied the Motion To Dismiss without prejudice and stated that the potential claim or theory was
16 for determination at time of trial. Subsequent to the hearing, KATHRYN A. BOUVIER has retained
17 legal counsel, WHITNEY B. WARNICK, Esquire, and joined in the 2013 PETITION FOR
18 DECLARATORY JUDGMENT.
19

20
21 **C. LEGAL STANDARD**

22 Nevada law provides for dismissal of a claim for relief for failure to state a claim upon
23 which relief can be granted. *See* NRCP 12(b)(5). Specifically, this rule provides the following:

24 **(b) How Presented.** Every defense, in law or fact, to a claim for
25 relief in any pleading, whether a claim, counterclaim, cross-claim, or
26 third-party claim, shall be asserted in the responsive pleading thereto
27 if one is required, *except that the following defenses may at the option*
28 *of the pleader be made by motion:* (1) lack of jurisdiction over the
subject matter, (2) lack of jurisdiction over the person, (3)
insufficiency of process, (4) insufficiency of service of process, (5)

1 failure to state a claim upon which relief can be granted, (6)
2 failure to join a party under Rule 19. A motion making any of these
3 defenses shall be made before pleading if a further pleading is
4 permitted. No defense or objection is waived by being joined with one
5 or more other defenses or objections in a responsive pleading or
6 motion. If a pleading sets forth a claim for relief to which the adverse
7 party is not required to serve a responsive pleading, the adverse party
8 may assert at the trial any defense in law or fact to that claim for
9 relief. If, on a motion asserting the defense numbered (5) to dismiss
10 for failure of the pleading to state a claim upon which relief can be
11 granted, matters outside the pleading are presented to and not
12 excluded by the court, the motion shall be treated as one for summary
13 judgment and disposed of as provided in Rule 56, and all parties shall
14 be given reasonable opportunity to present all material made pertinent
15 to such a motion by Rule 56. (Emphasis added.)

16 In *Edgar v. Wagner*, 101 Nev. 226, 699 P.2d 110 (1985), the Nevada Supreme Court
17 discussed implementation of the Motion to Dismiss standard under NRCP 12(b)(5) in practice, as
18 follows:

19 On review of a motion to dismiss, our task is to determine whether or
20 not the challenged pleading sets forth allegations sufficient to make
21 out the elements of a right to relief. *Crucil v. Carson City*, 95 Nev.
22 583, 600 P.2d 216 (1979); cf. *Stump v. Sparkman*, 435 U.S. 349, 354,
23 98 S.Ct. 1099, 1103, 55 L.Ed.2d 331 (1978). In making this
24 determination, the allegations in the complaint must be taken at "face
25 value," *California Motor Transport Co. v. Trucking Unlimited*, 404
26 U.S. 508, 515, 92 S.Ct. 609, 614, 30 L.Ed.2d 642 (1972), and must be
27 construed favorably in the plaintiff's behalf. The complaint cannot be
28 dismissed for failure to state a claim unless it appears beyond a doubt
that the plaintiff could prove no set of facts which, if accepted by the
trier of fact, would entitle him to relief. *Conley v. Gibson*, 355 U.S.
41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957).

29 When ruling on a Rule 12(b)(5) motion to dismiss, if a district court considers evidence
30 outside the pleadings, the district court must normally convert the 12(b)(5) motion into a Rule 56
31 motion for summary judgment, and must give the non-moving party an opportunity to respond. See
32 NRCP 12(b). However, the court may consider certain materials without converting the motion to
33 dismiss into a motion for summary judgment. See *United States v. Ritchie*, 342 F.3d 903, 908 (9th

1 Cir. 2003) (citing *Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2000)); *Barron v. Reich*, 13 F.3d
2 1370, 1377 (9th Cir. 1994); and 2 James Wm. Moore et al., *Moore's Federal Practice* § 12.34[2]
3 (3d ed.1999). Apart from the pleading itself (the DECLARATORY JUDGMENT PETITION),
4 such materials include documents attached to the DECLARATORY JUDGMENT PETITION,
5 documents incorporated by reference into the DECLARATORY JUDGMENT PETITION, or
6 matters of judicial notice and matters to which there is no dispute as to authenticity. *See id.*

7
8 Further, as matters of public record, there is no dispute as to the authenticity of the prior
9 pleadings filed with this Court in the 2009 case and the fact that the Court may take judicial notice
10 of the same.

11 **D. ARGUMENT**

12 **CLAIM PRECLUSION**

13
14 The legal theory of issue preclusion, sometimes referred to as “collateral estoppel,” and the
15 legal theory of claim preclusion, are often confused. Although somewhat similar, they are
16 substantially different. Claim preclusion, under which a valid and final judgment on a claim
17 precludes a second action on that claim or any part of it, embraces all grounds of recovery that were
18 asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than
19 issue preclusion. *Five Star Capital Corporation v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008).
20 While claim preclusion can apply to all claims that were or could have been raised in the initial
21 case, issue preclusion only applies to issues that were actually and necessarily litigated and on
22 which there was a final decision on the merits. *See Id.* The modern view is that claim preclusion
23 embraces all grounds of recovery that were asserted in a suit, as well as those that could have been
24 asserted in a suit, and thus has a broader reach than collateral estoppel. *University Of Nevada v.*
25 *Tarkanian*, 110 Nev. 581, 879 P.2d 1180, 97 Ed. Law Rep. 927 (1994); *Betterman v. Wells Fargo*
26 *Ag. Credit Corp.*, 802 P.2d 1112 (Colo.Ct.App. 1990); *Matter of Herbert M. Dowsett Trust*, 7
27
28

1 Haw.App. 640, 791 P.2d 398 (Ct. 1990); *Madsen v. Borthick*, 769 P.2d 245, 247 (Utah, 1998).
2 Claim preclusion applies to all grounds of recovery that were or could have been brought in the first
3 case. *Five Star Capital Corporation*, supra. Claim preclusion should apply if: (1) the parties or
4 their privies are the same; (2) the final judgment is valid; and (3) the subsequent action is based on
5 the same claims or any part of them that were or could have been brought in the first case. These
6 three factors, in varying language, are used by the majority of state and federal courts and the test
7 maintains the well-established principle that claim preclusion applies to all grounds of recovery that
8 were or could have been brought in the first case. *See Id.*
9

10 Claim preclusion is clearly applicable as a bar to the 2013 DECLARATORY JUDGMENT
11 PETITION filed by JACQUELINE M. MONTOYA, the second case dealing with the TRUST,
12 Trust No. 2, its assets, the income therefrom, the remainder interest, and the construction and
13 reformation of the TRUST agreement. As noted above, the first case dealing with the TRUST,
14 Trust No. 2, its assets, the income therefrom, the remainder interest, and the construction and
15 reformation of the TRUST agreement was a Petition To Assume Jurisdiction Over Trust; Confirm
16 Trustee; And Construe And Reform Trust that was filed on August 17, 2009.
17

18 The first required factor for claim preclusion to be applicable is that the parties or their
19 privies are the same in both cases. The parties in the 2009 case and in this case are the same. In the
20 2009 case, the Petitioner was ELEANOR and JACQUELINE M. MONTOYA and KATHRYN A.
21 BOUVIER were necessary parties who participated in the same. As noted above, in reality the
22 action was initiated and driven by JACQUELINE M. MONTOYA and her attorney, and primarily
23 was for the benefit of JACQUELINE M MONTOYA and her sister, KATHRYN A. BOUVIER.
24 ELEANOR was confirmed as Trustee of the TRUST in the first case. Not only did JACQUELINE
25 M. MONTOYA receive a copy of the 2009 PETITION and a notice of the hearing thereon, she
26 actively participate in the case by signing a Consent to the PETITION in which she stated that she
27 had read the PETITION, believes it to be true and correct to the best of her knowledge, consents to
28

1 the PETITION, and requests that the Court enter an Order approving the PETITION in its entirety.
2 JACQUELINE M. MONTOYA is the Petitioner in the current 2013 declaratory judgment action,
3 the second case dealing with the TRUST, Trust No. 2, its assets, the income therefrom, the
4 remainder interest, and the construction and reformation of the TRUST agreement, against
5 ELEANOR, individually and as Trustee of the TRUST.

6 KATHRYN A. BOUVIER was also a necessary party to the 2009 PETITION, the first case
7 dealing with the TRUST, Trust No. 2, its assets, the income therefrom, the remainder interest, and
8 the construction and reformation of the TRUST agreement. She not only received a copy of the
9 2009 PETITION and a notice of the hearing thereon, she also actively participated in the first case
10 by signing a Consent to the PETITION in which she stated that she had read the PETITION,
11 believes it to be true and correct to the best of her knowledge, consents to the PETITION, and
12 requests that the Court enter an Order approving the PETITION in its entirety. KATHRYN A.
13 BOUVIER is also a necessary party in the 2013 declaratory judgment action, the second case
14 dealing with the TRUST, Trust No. 2, its assets, the income therefrom, the remainder interest, and
15 the construction and reformation of the TRUST agreement, and a copy of the 2013
16 DECLARATORY JUDGMENT PETITION and a Notice of the Hearing thereon were mailed to
17 KATHRYN A. BOUVIER by Petitioner JACQUELINE M. MONTOYA. A copy of the Certificate
18 Of Mailing is attached hereto as Exhibit "L" and by this reference incorporated herein.

19 Further, KATHRYN A. BOUVIER has now retained legal counsel and joined in the 2013
20 DECLARATORY JUDGMENT PETITION as a party.

21 That JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER were parties to the
22 2009 case and the PETITION filed therein is further supported by the August 4, 2009 letter and
23 enclosed Consents to Reformation (attached hereto as Exhibit "E" and "F") sent by Mr.
24 STEADMAN, ELEANOR's purported attorney, to JACQUELINE M. MONTOYA and
25 KATHRYN A. BOUVIER. As mentioned above, Mr. STEADMAN states in those letters, "As you

1 are aware, we are in the process of reforming the W.N. Connell and Marjorie T. Connell Living
2 Trust (the ‘Trust’). (Emphasis added.) By saying “[a]s you are aware,” Mr. STEADMAN indicates
3 that he or his firm had previously advised JACQUELINE M. MONTOYA and KATHRYN A.
4 BOUVIER of the fact that a petition to reform the TRUST was going to be filed. The introductory
5 phrase “[a]s you are aware” combined with the next word “we” implies that after being advised by
6 Mr. STEADMAN with regard to the PETITION and agreeing that the same should be filed,
7 JACQUELINE M. MONTOYA, KATHRYN A. BOUVIER, and ELEANOR (“we”) agreed to
8 proceed with filing the PETITION. Additionally, by enclosing Consents to Reformation with the
9 August 4, 2009 letter, which “outlin[e] the estate tax implications that may arise in reforming the
10 Trust,” Mr. STEADMAN was giving legal advice to JACQUELINE M. MONTOYA and
11 KATHRYN A. BOUVIER – something an attorney would do only for his clients.
12

13 In light of the foregoing, it is difficult for JACQUELINE M. MONTOYA and KATHRYN
14 A. BOUVIER to argue that they were not in fact parties to the 2009 case and the PETITION filed
15 therein.
16

17 At the January 14, 2014 hearing on ELEANOR’s first Motion To Dismiss Petition For
18 Declaratory Judgment Regarding Limited Interest Of Trust Assets Pursuant To NRS 30.040, NRS
19 153.031(1)(E), And NRS 164.033(1) For Failure To State A Claim Upon Which Relief Can Be
20 Granted Pursuant To NRCP 12(b)(5), this Court said, “I don’t think it’s the same parties.” Hrg.
21 Transcr. 8:22 (January 14, 2014). (Emphasis added.) If notwithstanding the foregoing arguments,
22 which show strong support for JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER
23 being parties to both the instant case at the 2009 case, this Court continues to be of the opinion that
24 the parties are not the same in both cases, JACQUELINE M. MONTOYA, KATHRYN A.
25 BOUVIER, and ELEANOR are certainly in privity with each other.
26

27 Pursuant to the Restatement (Second) of Judgments § 41, which was adopted by the Nevada
28 Supreme Court in *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 321 P.3d 912, 917 (Nev.

1 2014), a person who was represented by (in privity with) a party to an action is bound by a
2 judgment in that action even if such person was not an actual party. The Restatement (Second) of
3 Judgments § 41 states in relevant part:

4 (1) A person who is not a party to an action but who is represented by a party is bound by
5 and entitled to the benefits of a judgment as though he were a party. A person is
6 represented by a party who is:

7 (a) **The trustee of an estate or interest of which the person is a beneficiary;** or

8 ...

9 (b) The executor, administrator, guardian, conservator, or **similar fiduciary manager of an**
10 **interest of which the person is a beneficiary;**

11 ...

12 (2) A person represented by a party to an action is bound by the judgment even though the
13 person himself does not have notice of the action, is not served with process, or is not
14 subject to service of process. (Emphasis added.)

15 Again, although JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER were the
16 drivers of the 2009 case, ELEANOR was shown on the PETITION as the Petitioner and thus was a
17 party. Again, if this Court does not accept the idea that JACQUELINE M. MONTOYA and
18 KATHRYN A. BOUVIER were parties to the 2009 case, it should find that JACQUELINE M.
19 MONTOYA and KATHRYN A. BOUVIER were in privity with ELEANOR – the Petitioner in the
20 2009 proceeding. There is no argument that ELEANOR was not a party to that case as Trustee of
21 the TRUST, which TRUST again was the subject of the 2009 case and PETITION. JACQUELINE
22 M. MONTOYA and KATHRYN A. BOUVIER were made beneficiaries of the TRUST via the
23 2009 case and PETITION and were represented by ELEANOR via the PETITION in that regard.
24 Therefore, § 41 of the Restatement (Second) of Judgments is directly applicable to this case in that
25 ELEANOR, as Trustee of the TRUST, represented JACQUELINE M. MONTOYA and
26 KATHRYN A. BOUVIER, as beneficiaries of the TRUST, in the 2009 case. Consequently, as
27 provided by the Restatement (Second) of Judgments § 41, JACQUELINE M. MONTOYA and
28

1 KATHRYN A. BOUVIER are “bound by the judgment” in the 2009 case.

2 The first factor for claim preclusion to apply is satisfied as the parties or their privies are
3 the same in the 2009 case and the current 2013 case, namely ELEANOR, JACQUELINE M.
4 MONTOYA and KATHRYN A. BOUVIER.

5 The second required factor for claim preclusion to be applicable is that the final judgment in
6 the first case is valid. There is no question of the validity of the judgment in the first case, the 2009
7 case. As noted above, the 2009 Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And
8 Construe And Reform Trust was filed on August 17, 2009; a true and correct copy of the
9 PETITION and Notice Of Hearing thereon was mailed to ELEANOR, JACQUELINE M.
10 MONTOYA and KATHRYN A. BOUVIER at their last known mailing addresses per Nevada law
11 as evidenced by a Certificate Of Mailing and Notice Of Hearing attesting to such mailing filed; on
12 the hearing date of September 4, 2009, an Order Assuming Jurisdiction Over Trust; Confirm
13 Trustee; And For Construction Of And Reform Of Trust Instrument was filed; a Notice Of Entry Of
14 Order and Certificate Of Mailing were filed attesting to the mailing of the Notice Of Entry Of Order
15 and Certificate Of Mailing and a copy of the Order Assuming Jurisdiction Over Trust; Confirm
16 Trustee; And For Construction Of And Reform Of Trust Instrument to ELEANOR, JACQUELINE
17 M. MONTOYA and KATHRYN A. BOUVIER at their last known mailing addresses per Nevada
18 law; and a search of the Register of Actions and pleadings in the first case shows no objection to,
19 motion for relief from, reconsider or appeal of such Order being filed. The time to object to, file a
20 motion for relief from, reconsider or appeal the Order has long past. Accordingly, the second factor
21 for claim preclusion to apply is satisfied as the Order entered in the first case in 2009 is valid.
22
23
24

25 The third and final required factor for claim preclusion to be applicable is that the
26 subsequent action is based on the same claims or any part of them that were or could have been
27 brought in the first case. The first case involved the TRUST, Trust No. 2, its assets, the income
28 therefrom, the remainder interest, and the construction and reformation of the TRUST agreement.

1 In particular, the Court assumed jurisdiction of the TRUST, the Court confirmed the Trustee
2 thereof, and the Court construed and reformed the TRUST agreement in part by declaring that
3 JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER were beneficiaries of Trust No. 2
4 upon the death of their mother, ELEANOR. The second case of 2013 also involves the TRUST,
5 Trust No. 2, its assets, the income therefrom, the remainder interest, and the construction and
6 reformation of the TRUST agreement. There is no question that the claims in the second case could
7 have been brought in the first case.
8

9 Further, the allegations in the 2009 PETITION in the first case were directly on point
10 regarding the dispute contained in the second case. Although this is not necessary for claim
11 preclusion to apply, one can argue that not only could the claim in the 2013 case have been brought
12 in the 2009 case, in fact the dispute raised in the 2013 case, ownership of the Oil assets and the
13 corresponding entitlement to the income therefrom, was addressed in the 2009 PETITION and
14 Consents. The 2009 PETITION specifically states that that: (1) as of the death of MARJORIE,
15 Trust No. 2 owned land and oil and gas shares in reserves and income located in Upton
16 County, Texas (the "Oil Assets"); and (2) pursuant to Article Fourth, which Article governs the
17 administration of Trust No. 2, all income from the Oil Assets is to be paid to ELEANOR as the
18 "Residual Beneficiary" during her lifetime. The Consents of JACQUELINE M. MONTOYA
19 (and KATHRYN A. BOUVIER) filed in the 2009 case specifically state: (1) JACQUELINE M.
20 MONTOYA has read the Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And
21 Construe And Reform Trust and believes it to be true and correct to the best of her knowledge;
22 and (2) JACQUELINE M. MONTOYA consents to the Petition and requests that the Court enter
23 an Order approving the Petition in its entirety. Furthermore and most noteworthy, the Consents
24 contain an affirmative representation by JACQUELINE M. MONTOYA and by KATHRYN A.
25 BOUVIER that she is only a contingent income beneficiary of the TRUST. Now the 2013
26 DECLARATORY JUDGMENT PETITION seeks in part a determination that ELEANOR, both
27
28

1 individually and as Trustee of the TRUST, "... is only entitled to a 35% proportion of all real
2 property located in Upton County, Texas, including the income generated from gas, oil, and
3 mineral leases relating to such Upton County, Texas real property..." The DECLARATORY
4 JUDGMENT PETITION further seeks in part a determination that JACQUELINE M. MONTOYA
5 and KATHRYN A. BOUVIER or Trusts that they are beneficiaries of are entitled to 65%
6 proportion of all real property located in Upton County, Texas, including the income generated
7 from gas, oil, and mineral leases relating to such Upton County, Texas real property. This is
8 completely contrary to and contradictory of the statements and representations contained in the
9 PETITION and the Consents of JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER
10 noted above. For example, how could JACQUELINE M. MONTOYA and KATHRYN A.
11 BOUVIER each only be a contingent income beneficiary and ELEANOR be entitled to all of the
12 income for her life as JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER consented to
13 and affirmatively asserted in the 2009 case, but now both claim ELEANOR is only entitled to
14 Thirty-Five Percent (35%) of the income? It is important to note that the claim of JACQUELINE
15 M. MONTOYA and KATHRYN A. BOUVIER in the 2013 case, that ELEANOR is only entitled to
16 Thirty-Five Percent (35%) of the income and JACQUELINE M. MONTOYA and KATHRYN A.
17 BOUVIER (or a trust of which they are beneficiaries thereof) are entitled to the Sixty-Five Percent
18 (65%) interest in the Oil Assets, is based on their allegation that such right of JACQUELINE M.
19 MONTOYA and KATHRYN A. BOUVIER (or a trust of which they are beneficiaries thereof) is
20 the result of a power of appointment exercised in the Last Will and Testament of MARJORIE T.
21 CONNELL. The date of death of MARJORIE T. CONNELL was May 1, 2009. A copy of the
22 Death Certificate of MARJORIE T. CONNELL is attached hereto as Exhibit "M" and by this
23 reference incorporated herein. The first case was not filed until August 17, 2009, subsequent to the
24 death of MARJORIE T. CONNELL. JACQUELINE M. MONTOYA became the successor trustee
25 of THE MTC LIVING TRUST immediately upon the death of MARJORIE T. CONNELL.
26
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1 Therefore, this claim of JACQUELINE M. MONTOYA, individually and as Trustee of THE MTC
2 LIVING TRUST, and of KATHRYN A. BOUVIER as set forth in the 2013 case was fully vested
3 and in existence at the time of the 2009 case.

4 The third factor for claim preclusion to apply is satisfied as the subsequent 2013 action is
5 based on the same claims that could have been brought in the first case of 2009. Further, not only
6 could the claim in the second case of 2013 have been brought in the first case of 2009, arguably the
7 claim in the 2013 case was brought and addressed in the 2009 case in that the allegations and
8 representations contained in the PETITION and Consents filed in the first case of 2009 directly
9 address the claim to Sixty-Five Percent (65%) of the assets and income of the Trust No. 2 now
10 raised in the 2013 case. Accordingly, the third factor for claim preclusion to apply is satisfied both
11 possible ways.
12

13 Further, at the Motions Hearing on January 14, 2014, counsel for Petitioner JACQUELINE
14 M. MONTOYA, namely MR. POWELL, specifically argued that ELEANOR should have brought
15 her current questions and disputes regarding the TRUST income in the 2009 case. Counsel for
16 Petitioner JACQUELINE M. MONTOYA stated that ELEANOR therefore should now be
17 precluded from asserting any claims in this 2013 case. In doing so, counsel for Petitioner
18 JACQUELINE M. MONTOYA admitted on the record that claim preclusion is applicable.
19 Accordingly, any questions, issues or disputes JACQUELINE M. MONTOYA and KATHRYN M.
20 BOUVIER had about the TRUST also should have been brought in the 2009 case. Counsel for
21 Petitioner JACQUELINE M. MONTOYA cannot on the one hand argue that claim preclusion is not
22 applicable to his client (and KATHRYN M. BOUVIER) regarding a dispute as to who is entitled to
23 the TRUST income under his 2013 case in his resistance to ELEANOR's Motion To Dismiss, and
24 then at the very same hearing argue that claim preclusion, under the guise of "laches", is applicable
25 to ELEANOR regarding her claim as to the TRUST income in the 2013 case. Counsel for
26 Petitioner JACQUELINE M. MONTOYA is correct that claim preclusion is applicable herein;
27
28

1 however, counsel cannot choose which party claim preclusion is applicable to and which party it is
2 not applicable to. Claim preclusion bars the 2013 case, period.

3 The Court acknowledged the claim preclusion argument, that counsel for Petitioner
4 JACQUELINE M. MONTOYA seemed to be arguing in favor of ELEANOR's Motion To Dismiss
5 on the grounds of claim preclusion, and asked why indeed these disputes and questions were not
6 raised in the 2009 case. When confronted by this by the Court, counsel for Petitioner
7 JACQUELINE M. MONTOYA attempted to distinguish his argument as one of laches, not claim
8 preclusion. The Transcript of the January 14, 2014 Motions hearing contains the following
9 dialogue:
10

11 "MR. POWELL: Well, Miss – if – well, my point is *if Ms. Ahern had brought this in a*
12 *timely manner*, and specifically if she had brought this when Ms. Connell had the ability to
13 rebut –

14 THE COURT: *Doesn't that get back to this whole point of claim preclusion then? Why*
15 *didn't we litigate this four years ago?*

16 MR. POWELL: *Exactly.* Why did no – *it wasn't raised four years ago.* There was still
17 65/35 four years ago.

18 THE COURT: Right.

19 MR. POWELL: There was a 65/35 up until June. Then the plug is pulled by Ms. Ahern who
20 says, I've always been entitled to a hundred percent of it. I just never told any of you
21 apparently that I felt this way and had these rights. I mean, this is analogous to again, a
22 homeowner who says, you're encroaching on my property by 30 feet. I've known for 30
23 years but I'm telling you now. *Well, too late.*

24 THE COURT: *You're about to talk me into reconsidering my – Mr. Mugan's motion.*
25 *Because what you're saying basically is that we should have known this and it should*
26 *have all been litigated when Ms. Connell was still alive. And you know, Ms. Ahern didn't*
27 *tell us and so, you know, it should have been litigated four years ago.* You know –

28 MR. POWELL: But I'm not sure how that would be on my client's burden when Ms. Ahern
is the trustee and Ms. Ahern is still doing a 65/35 split that whole time.

THE COURT: Okay. So it's her fault that it didn't –

MR. POWELL: How can my client anticipate –

1 THE COURT: - we didn't get litigate – *this didn't get litigated nine years ago* when maybe
2 I don't know if Ms. Connell was competent to – I don't know what condition she was in at
3 the end of her life.

4 MR. POWELL: Oh, well, she was still – but my point being is *if you're going to make an*
5 *argument of saying, you're not entitled to the 65 percent; I was always entitled to it. Why*
6 *was this not done during Mrs. Connell's lifetime so Ms. Connell could have responded to*
7 *it?* Ms. Connell was a trustee as well.

8 THE COURT: Right.

9 ...

10 THE COURT: Okay. When I started out – when you started Mr. Powell –

11 MR. POWELL: Yeah.

12 THE COURT: - *the question was what's changed; didn't we already argue all of this?*
13 And you said well –

14 MR. POWELL: Here's -

15 THE COURT: - the release issues hadn't been addressed. *And to me they all sound like*
16 *they really were more in support of Mr. Mugan's motion on claim preclusion. That she*
17 *shouldn't have changed this. Why wasn't it litigated previously?* To me this is the whole
18 point why we have to have the evidentiary hearing is because we don't have any other way.
19 I don't understand how we could possibly do this short of an evidentiary hearing. Because
20 as you said, some of the evidence is gone, the written documentary evidence would be gone.
21 Through nobody – I'm not saying it's anybody's fault, but it just – this goes back to '72.
22 This is like 40 years old. (emphasis added)

23 ...

24 THE COURT: So denying both petitions. It's without prejudice because if for some reason
25 something develops through the evidentiary hearing that one of the other claims has merit,
26 that this is precluded or that there's laches then, you know, we can rule on it at that time, but
27 that's when I think it all has to be part of the evidentiary hearing.

28 A copy of this Transcript is attached as Exhibit "N" and incorporated herein by this
reference. See Motions Hearing Transcr. 13:7 – 14:20; 21:23 – 22:16; 26:18 - 26.24 (January 14,
2014).

Regardless of what you call it, laches and/or claim preclusion, as shown by the foregoing

1 discussion at the Motions Hearing, both the Court and counsel for Petitioner JACQUELINE M.
2 MONTOKA acknowledged that the claims brought in this second case of the 2013
3 DECLARATORY JUDGMENT PETITION could have been brought in the 2009 case, which 2009
4 case involved the TRUST, Trust No. 2, its assets, the income therefrom, the remainder interest, and
5 the construction and reformation of the TRUST agreement. As noted above, claim preclusion
6 applies to all grounds of recovery that were or could have been brought in the first case.
7 Therefore, claim preclusion applies, the 2013 DECLARATORY JUDGMENT PETITION is barred,
8 and no evidentiary hearing is needed.
9

10 **D. CONCLUSION**

11 The Petition For Declaratory Judgment Regarding Limited Interest Of Trust Assets pursuant
12 to NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A) should be dismissed for failure to
13 state a claim upon which relief can be granted pursuant to NRCP 12(b)(5) on the grounds of claim
14 preclusion.
15

16 WHEREFORE, ELEANOR C. AHERN, a/k/a ELEANOR CONNELL HARTMAN
17 AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST
18 dated May 18, 1972, respectfully request that this Honorable Court enter an Order granting her
19 Motion to Dismiss Pursuant to NRCP 12(b)(5).

20 DATED: October 9, 2014.

21 JEFFREY BURR, LTD.
22

23 By: 

24 JOHN R. MUGAN, ESQUIRE
Nevada Bar No. 10690

25 MICHAEL D. LUM, ESQUIRE
Nevada Bar No. 12997

26 2600 Paseo Verde Pkwy., Suite 200
Henderson, Nevada 89074

27 Attorneys for Trustee ELEANOR CONNELL
HARTMAN AHERN
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VERIFICATION

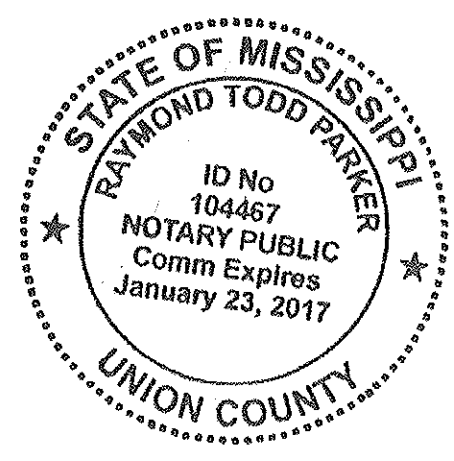
STATE OF MS)
COUNTY OF LEE): ss

ELEANOR CONNELL HARTMAN AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, being first duly sworn, deposes and says: That I am the Movant herein; that I have read the above and foregoing MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PER NRCP 12(b)(5); that the same is true of my own knowledge, except for matters therein stated on information and belief, and as for those matters, I believe it to be true.

Eleanor Connell Hartman Ahern
ELEANOR CONNELL HARTMAN AHERN

SUBSCRIBED and SWORN to before me
this 7 day of October, 2014.

Raymond Todd Parker
NOTARY PUBLIC



CERTIFICATE OF MAILING

I hereby certify that on the 9 day of October, 2014, I did email to JOSEPH J. POWELL, Esquire, as indicated below, and I did email and deposit in the U.S. Post Office at Las Vegas, Nevada, postage prepaid, a copy of the above and foregoing MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PER NRCP 12(b)(5), to each person as indicated below, addressed as follows:

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

Whitney B. Warnick
Albright, Stoddard, Warnick & Albright
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106
wbw@alrightstoddard.com


An employee of JEFFREY BURR, LTD.

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C	Quitclaim Deeds of Grantor W. N. Connell-Upton County, Texas	29
D	Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And Reform Trust of Eleanor Ahern in the matter of the W. N. Connell And Marjorie T. Connell Living Trust dated May 18, 1972 in the District Court of Clark County, Nevada, Case No. P-09-066425-T	30
E	August 4, 2009 Letter From Mr. Brian Steadman, Esq.	31
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Limited Interest Of Trust Assets pursuant to NRS 30.040, NRS
153.031(1)(E), AND NRS 164.033(1)(A)

M

Death Certificate of Marjorie T. Connell

39

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Transcript of January 14, 2014 Motions Hearing

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EXHIBIT A
Decree of Adoption

FILED

NOV 24 9 13 AM '76

CONETTA CONNELL
CLERK
THOMASINE MOORE

EXHIBIT

"A"

CASE NO. 8044

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

In the Matter of the Adoption of
ELEANOR C. HARTMAN,
an Adult

DECREE OF ADOPTION

MARJORIE T. CONNELL and ELEANOR C. HARTMAN having presented their petition for approval of their adoption declaring that ELEANOR C. HARTMAN, an adult, is the child of Petitioner MARJORIE T. CONNELL; and said matter coming on regularly to be heard before the above-entitled Court, there appeared before the Court the Petitioners who were examined by the Court, from which examination it is found that MARJORIE T. CONNELL is the stepmother and is more than twenty years older than ELEANOR C. HARTMAN; that both Petitioners are residents of the County of Clark, State of Nevada; that both Petitioners are married; that the respective spouses of Petitioners have given their consents to the adoption of ELEANOR C. HARTMAN by MARJORIE T. CONNELL;

The Court being satisfied that the best interests of the Petitioners will be promoted by the proposed adoption, hereby grants the Petition and it is therefore

ORDERED, ADJUDGED AND DECREED that the said adoption agreement is approved and that said ELEANOR C. HARTMAN, an adult, do, and she hereby is, declared adopted by Petitioner MARJORIE T. CONNELL, and shall henceforth be regarded and treated in all respects as her child and have all the rights and be

1 subject to all the duties of that relation,

2 DATED this 24 day of November, 1970.

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JOSEPH S. PAVLIKOWSKI
DISTRICT JUDGE

TOY R. GREGORY, JR.,
A Professional Corporation

By TOY R. GREGORY, JR.
Attorney for Petitioners
1828 East Charleston Boulevard
Las Vegas, Nevada

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EXHIBIT B
W. N. Connell And Marjorie T. Connell Living Trust dated May 18, 1972

1972

TRUST AGREEMENT

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

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

W I T N E S S E T H :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Powers of appointment over income and principal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EIGHTH: SPECIAL PROVISIONS.

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

B. Revocation and Amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of any interest in the assets of the trusts.

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

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

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

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

W. N. CONNELL

Marjorie T Connell
MARJORIE T. CONNELL.

W. N. CONNELL

Marjorie T. Connell
MARJORIE T. CONNELL

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

NOTARY PUBLIC - STATE OF Nevada
CLARK COUNTY

JUNE A. GAVIN
My Commission Expires May 1, 1970

SCHEDULE "A"

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

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

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

1. Lots One (1) and Two (2) in Block Sixteen (16) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.
2. Lot Three (3), Block Six (6), Biltmore Addition to the City of Las Vegas, as shown by map thereof on file in Book 2 of Plats, Page 33, in the Office of the County Recorder of Clark County, Nevada.
3. Lots Fifteen (15) and Sixteen (16) in Block Fifteen (15) in the South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 14, in the Office of the County Recorder of Clark County, Nevada.
4. Lots Twenty-Two (22) and Twenty-Three (23) in Block Eleven (11) of South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 51, in the Office of the County Recorder of Clark County, Nevada.
5. Lots Twenty-four (24) and Twenty-five (25) in Block Eleven (11) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.

The following assets constitute the separate property of

W. N. CONNELL:

1. Real Property:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

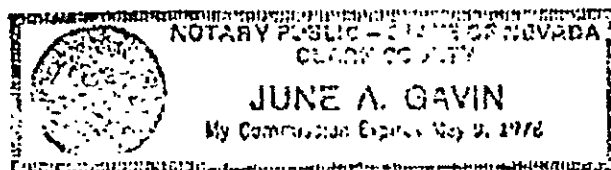
The undersigned Grantors named in the foregoing Trust Agreement hereby certify that they have read said Trust Agreement and that it fully and accurately sets out the terms, trusts and conditions under which the trust estate therein described is to be held, managed and disposed of by the Trustee therein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

W. N. Connell
W. N. CONNELL
Marjorie T. Connell
MARJORIE T. CONNELL

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

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

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



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

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



409/329

SPACE ABOVE THIS LINE FOR RECORDER'S USE

61969

QUITCLAIM DEED

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

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged

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

do hereby

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

~~the real property in the~~ State of TEXAS
~~State of California~~

County of UPTON

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

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

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

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

Dated: June 5, 1972

William N. Connell
William N. Connell

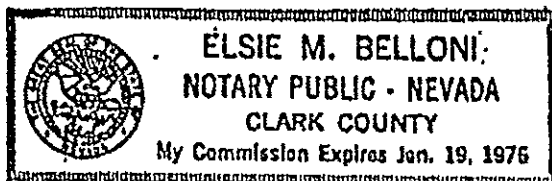
State of Nevada
State of California: }

County of Clark

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

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

Witness my hand and official seal.



(Seal)

Elmer M. Belloni
Notary Public in and for said State.

Title Order No.

Escrow or Loan No.

MAIL TAX

STATEMENTS TO

NAME

ADDRESS

ZIP

DEED-QUITCLAIM-WOLCOTT FORM 790
REV. 3-70

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

FILED FOR RECORD ON THE 13th DAY OF June A.D., 19 72 AT 10:04 O'CLOCK A. M.
DULY RECORDED THIS THE 13th DAY OF June A.D., 19 72 AT 1:00 O'CLOCK P. M.
INSTRUMENT NO. 61969

VOL. 409 PAGE 329 J. OGI RECORDS

BUENA R. COFFEE, COUNTY CLERK
UPTON COUNTY, NEVADA

AA 1665

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

414/9

SPACE ABOVE THIS LINE FOR RECORDER'S USE

61970

QUITCLAIM DEED

DOCUMENTARY TRANSFER TAX none

COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,

OR COMPUTED ON FULL VALUE LESS LIENS AND
ENCUMBRANCES REMAINING AT TIME OF SALE.
W. N. Connell
Signature of Declarant or Agent determining tax. Firm Name

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged

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

does hereby

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

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

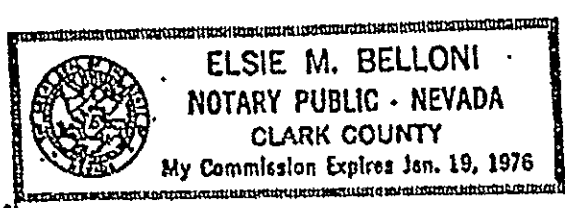
Dated: June 5, 1972

William N. Connell
William N. Connell

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

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

known to me to be the person whose name subscribed to the within instrument and acknowledged that he
executed the same.
Witness my hand and official seal.



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

Title Order No. _____

Escrow or Loan No. _____

MAIL TAX
STATEMENTS TO _____
NAME ADDRESS ZIP

DEED-QUITCLAIM-WOLCOTT Form 790 This standard form covers most real problems in the field indicated. Before you sign, read it all in all blanks.
FILED FOR RECORD ON THE 13th DAY OF June A.D., 1972 AT 10:06 O'CLOCK A.
DULY RECORDED THIS THE 13th DAY OF June A.D., 1972 AT 1:00 O'CLOCK P.
INSTRUMENT NO. 61970
VOL. 414 PAGE 91 INDEX RECORDS
BUENA R. COFFEE, COUNTY CLERK
UPTON COUNTY, TEXAS

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EXHIBIT D

Petition To Assume Jurisdiction Over Trust; Confirm Trustee; And
Construe And Reform Trust of Eleanor Ahern in the matter of the W. N.
Connell And Marjorie T. Connell Living Trust dated May 18, 1972 in the
District Court of Clark County, Nevada, Case No. P-09-066425-T



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[Signature]
CLERK OF THE COURT

[Signature]
CLERK OF THE COURT

PET

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 00418

BRIAN K. STEADMAN, ESQ.

Nevada State Bar No. 10771

SOLOMON DWIGGINS & FREER, LTD.

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Las Vegas, Nevada 89129

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Facsimile: 702.853.5485

Attorneys for ELEANOR C. AHERN, Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the

) Case No. P.09-066425-T

) PC1

THE W. N. CONNELL AND MARJORIE T.

CONNELL LIVING TRUST,

Dated May 18, 1972

An Intervivos Irrevocable Trust.

Date of Hearing: September 4, 2009

Time of Hearing: 9:30 a.m.

PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE;
AND CONSTRUE AND REFORM TRUST

Petitioner, ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN

("Petitioner"), as successor Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING

TRUST, dated May 18, 1972 (the "Trust"), by and through counsel Mark A. Solomon, Esq., of the law

firm of SOLOMON DWIGGINS & FREER, LTD., hereby respectfully petitions this Court to assume

jurisdiction over the Trust, to confirm the Petitioner as Trustee of the Trust and any and all sub-trusts

created under the Trust, to construe the Trust, and for an order reforming the distributions to the

beneficiaries after the death of the Petitioner and the provisions appointing the successor Trustee.

Pursuant to Nevada Revised Statutes ("NRS") 153.031(b), (e), and (n), 155.140, 164.050, 164.010, and

1 164.015, Petitioner alleges as follows:

2 I.
3 PETITION TO ASSUME JURISDICTION OVER TRUST AND CONFIRM THE APPOINTMENT
4 OF PETITIONER AS TRUSTEE

5 1. W. N. CONNELL and MARJORIE T. CONNELL ("MARJORIE"), husband and wife, as
6 the grantors ("Grantors") and initial trustees, established the Trust on May 18, 1972, a copy of which is
7 attached to this Petition as **Exhibit "1."**

8 2. W. N. CONNELL died on November 24, 1979, and was survived by his wife, MARJORIE.
9 A copy of W. N. CONNELL's death certificate¹ is attached hereto as **Exhibit "2."**

10 3. The Petitioner is W. N. CONNELL's only surviving child. MARJORIE had no children
11 during her lifetime, but formally adopted the Petitioner.

12 4. Pursuant to Article Twelfth, upon W. N. CONNELL's death, MARJORIE was named as the
13 successor Trustee. See, Trust, Ex. 1, at pg. 13.

14 5. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death,
15 the Trust was divided between Trust No. 2 and Trust No. 3. MARJORIE served as successor Trustee of
16 the Trust, including Trust No. 2 and Trust No. 3, until her death.

17 6. On May 6, 1980, the Petitioner was named as Co-Trustee of the Trust, as is indicated in the
18 Substitution of Trustee, attached hereto as **Exhibit "3."** The Petitioner served as Co-Trustee until the
19 death of MARJORIE.

20 7. MARJORIE died on May 1, 2009. A copy of MARJORIE's death certificate² is attached
21 hereto as **Exhibit "4."**

22 8. Pursuant to Article Twelfth, upon the death or incapacity of both W. N. CONNELL and
23

24
25
26
27 ¹ The social security number has been redacted.

28 ² The social security number has been redacted.

1 MARJORIE, the Petitioner is to serve as successor Trustee. See, Trust, Ex. 1, at pg. 13. The Petitioner
2 is currently serving as sole Trustee of the Trust, including Trust No. 2 and Trust No. 3.

3 9. The Petitioner is currently residing in Clark County, Nevada. The Trust is currently being
4 administered in Clark County, Nevada.

5 10. Section F of Article Eighth states as follows:

6 F. Applicable Law. This Trust Agreement is executed under the
7 laws of the State of Nevada and shall in all respects be governed by the laws of
8 the State of Nevada.

9 11. NRS 164.010(1) and (2) provides in pertinent part as follows:

10 1. Upon the petition of any person appointed as trustee of an express
11 trust by any instrument other than a will . . . the district court of the county in
12 which the trustee resides or conducts business, or in which the trust has been
13 domiciled, shall consider the application to confirm the appointment of the
14 trustee and specify the manner in which the trustee must qualify. Thereafter the
15 court has jurisdiction of the trust as a proceeding in rem.

16 2. If the court grants the petition, it may consider at the same time
17 any petition for instructions filed with the petition for confirmation.

18 12. It is appropriate for this Court to confirm Petitioner as Trustee since the Trust designates her
19 to serve as successor Trustee upon the death of both W. N. CONNELL and MARJORIE death.

20 13. Further, *in rem* jurisdiction over the Trust is proper since the Trust is domiciled and being
21 administered in Nevada.

22 14. Therefore, this Court should confirm the appointment of the Petitioner as Trustee of the Trust
23 and exercise *in rem* jurisdiction over the Trust.

24 II.

PETITION TO CONSTRUE AND REFORM TRUST

25 15. Pursuant to Section C of Article Second and Article Third, upon W. N. CONNELL's death,
26 MARJORIE, as the Trustee, allocated to Trust No. 3: (1) MARJORIE's separate interest in the trust
27 estate; (2) MARJORIE's one-half (1/2) interest in the community property of the trust estate; and (3) an
28

1 amount of property which qualified for the maximum marital deduction allowed for federal estate tax
2 purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code ("IRC")
3 as federal estate tax credits. MARJORIE allocated to Trust No. 2 the balance of the Trust assets. See,
4 Trust, Ex. 1, at pgs. 2 and 3.

5
6 16. The division of the Trust into Trust No. 2 and Trust No. 3 is similar to a type of trust
7 commonly known as an "AB" trust, where upon the death of the first settlor, an amount equal to the
8 federal estate tax exemption is allocated to a credit shelter type trust with the remaining assets allocated
9 to a trust for the surviving spouse. In a standard AB trust, the assets allocated to the credit shelter trust
10 are for the benefit of the deceased spouse's beneficiaries while the remaining assets are for the benefit
11 of the surviving spouse.
12

13 17. Indeed, Trust No. 2 was drafted in such a manner as to benefit both the Petitioner and
14 MARJORIE, who would typically be W. N. CONNELL's beneficiaries. Additionally, Trust No. 3 was
15 for MARJORIE's benefit during her lifetime, and, more importantly, MARJORIE retained the
16 testamentary power to appoint the balance of Trust No. 3 to her estate or to any person or persons. See,
17 Trust, Ex. 1, at pg. 6.³
18

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

22 19. Pursuant to Article Fourth, which Article governs the administration of Trust No. 2, all
23 income from the Oil Assets is to be paid to the Petitioner as the "Residual Beneficiary" during her
24

25 ³ MARJORIE exercised this power of appointment prior to her death as indicated in
26 Article Four of the Last Will and Testament of MARJORIE, dated January 7, 2008. A copy of
27 MARJORIE's Last Will and Testament is attached hereto as **Exhibit "5."** The beneficiary of the
28 exercise of the power of appointment was the MTC Living Trust, which contains provisions for the
benefit of the Petitioner's issue.

1 lifetime.⁴ Such income has been paid to the Petitioner since the creation of Trust No. 2 after W. N.
2 CONNELL's death.

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

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

8 See, Trust, Ex. 1, at pg. 4.

9 21. Although Trust No. 2 provides for a contingent distribution of the income from Trust No. 2
10 in the event that the Petitioner predeceased MARJORIE, no provision is made as to the final distribution
11 of Trust No. 2 after the death of the Petitioner, in the event that MARJORIE predeceased the Petitioner.

12 22. Upon assuming jurisdiction of a trust, this Court "has exclusive jurisdiction" over
13 proceedings to construe the terms of the trust and declare the rights of the parties, including "any
14 appropriate relief provided for with regards to a testamentary trust in NRS 153.031." See, NRS
15 164.015(1). NRS 153.031 provides, in pertinent part:

16 1. A trustee or beneficiary may petition the court regarding any
17 aspect of the affairs of the trust, including:

18 (b) Determining the construction of the trust instrument;

19 ***

20 (e) Ascertaining beneficiaries and determining to whom property is
21 to pass or be delivered upon final or partial termination of the trust, to the extent
22 not provided in the trust instrument;

23
24
25 ⁴ Section B of Article Fourth also states that all income received by Trust No. 2, other
26 than that received from the Oil Assets, is to be paid to MARJORIE. However, as the sole asset of
27 Trust No. 2 consists of the Oil Assets, this provision is inapplicable. Additionally, Trust No. 2
28 granted to MARJORIE the power to appoint and/or invade the principal of Trust No. 2 during her
lifetime. See, Trust, Ex. 1, at pg. 5. Petitioner is informed and believes that MARJORIE did not
exercise her power of appointment nor was the principal invaded for her benefit during her lifetime.

(n) Approving or directing the modification or termination of the trust[.]

23. A trust instrument may be reformed to conform with the settlor's intent, which may be ascertained from the trust instrument as a whole. *See, Sheinkopf v. Bornstein*, 823 N.E.2d 372 (Mass. 2005); *see also, Dassori v. Patterson*, 440 Mass. 1039, 802 N.E.2d 553 (2004) (A trust instrument may be reformed to conform with the settlor's intent.) The equitable power of the court to modify or reform a trust extends to situations where trust instrument contains some expression of trustor's intention, but drafting error renders that expression ambiguous. *See, Ike v. Doolittle*, 61 Cal. App. 4th 51, 70 Cal. Rptr. 2d 887 (4th Dist. 1998) (Recognizing the common law equitable power and the statutory authority of the court to alter administrative or distributive provisions of trust where necessary to accomplish purpose of trust).

24. On the application of the trustee or one or more beneficiaries, the court possesses and frequently exercises the power to modify the terms of the trust in order to effectuate the accomplishment of the purposes of the settlor. *See generally, Bogert on Trusts and Trustees*, §994; Restatement, Third, Trusts, §62. The court has equitable power to order reformation of a trust; and, once the court acquires jurisdiction, it is authorized to administer full, complete, and final relief. *See, Schroeder v. Gebhart*, 825 So. 2d 442 (Fla. Dist. Ct. App. 5th Dist. 2002), review denied, 845 So. 2d 892 (Fla. 2003).

25. If, due to a mistake, the trust does not contain the terms that were intended by the settlor, the settlor or other interested party may maintain a suit in equity to have the instrument reformed so that it will contain the terms that were actually agreed upon or that reflect the settlor's actual intent. *See, Restatement, Second, Trusts*, §333. *See also, Restatement, Third, Trusts*, §62.

26. The Petitioner is informed and believes that the failure to provide for distribution upon Petitioner's death is an omission due to scrivener error. Indeed, the Trust as a whole appears to be an

1 "AB" type trust whereby each spouse designates the beneficiaries they intend to receive such spouse's
2 share, but, in the case of the Trust, the final dispositive provisions of Trust No. 2 were omitted.

3 27. Indeed, Article Fourth of the Trust, governing Trust No. 2 makes adequate provision for
4 numerous other contingencies for the disposition of Trust No. 2, but appears to omit a provision for
5 alternate disposition in the current situation - where MARJORIE predeceased the Petitioner. See, Trust,
6 Ex. 1, at pgs. 4 and 5.

8 28. The Grantors' intent as to the final disposition of Trust No. 2 after the death of the Petitioner
9 can be derived from the contingent dispositions of Trust No. 2 and the dispositive terms of Trust No. 3.

10 29. Section B of Article Fourth, governing Trust No. 2, provides that the income from Trust No.
11 2 is to be distributed to the Petitioner's issue if the Petitioner predeceased MARJORIE. Additionally,
12 Trust No. 2 provides that, if the Petitioner predeceased MARJORIE leaving no issue, that MARJORIE
13 be entitled to the income from the Oil Asset. These provisions show the Grantors had an overall
14 dispositive model for Trust No. 2 in mind, which included not only the Petitioner, but the Petitioner's
15 issue.
16

17 30. As outlined in Section D of Article Fifth, governing Trust No. 3, adequate provisions are
18 made in for Trust No. 3 for the contingency of MARJORIE predeceasing the Petitioner, as follows:
19

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

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

27 See, Trust, Ex. 1, at pg. 6.

28 31. Moreover, Section D of Article Fifth, governing Trust No. 3, provides that, upon the death
of both W. N. CONNELL and MARJORIE, the balance of Trust No. 3, if not otherwise appointed, is to

1 be distributed to the Petitioner or, if she is not living, then to her heirs. This provision clearly shows the
2 Grantors' overall intent that the assets be vested in remainder beneficiaries, in particular the Petitioner
3 and her heirs.

4 32. Bringing together the dispositive provisions of Trust No. 2 and Trust No. 3, the Grantors'
5 intentions can be derived as follows: that, upon the death of the Petitioner, the balance of Trust No. 2 is
6 to vest in the Petitioner's heirs.

7 33. Based on the terms of the Trust, the Petitioner requests that this Court: (1) construe the Trust
8 to provide that it is the intent of W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, to
9 distribute the residue of Trust No. 2 to ELEANOR C. AHERN's heirs upon her death;⁵ and (2) reform
10 Trust No. 2 in accordance with such intention by adding new Sections "E," "F," "G," and "H" to Article
11 Fourth as follows:
12

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

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

27 2. One (1) equal share shall be distributed, outright and free of
28 trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is
then living. Subject to Section (F) below, if, as of the date of the Residual
Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal

⁵ The Petitioner's heirs as of the date of this Petition are her two (2) daughters,
JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER.

1 share shall be distributed to KATHRYN A. BOUVIER's then living issue, by
2 right of representation. Each share created pursuant to this Section E(2) of
3 Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be
4 held as a separate trust ("Beneficiary's Share") for the benefit of such issue
5 ("Beneficiary") to be held by the Trustee, administered and further distributed
6 pursuant to Section G of this Article Fourth.

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

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

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

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

1 Acquisition of Residences. The Trustee may, in the Trustee's sole
2 discretion, apply the income and principal of such Beneficiary's Share for the
3 purpose of purchasing one or more residences to be owned by the Beneficiary's
4 Share and used and occupied by such Beneficiary and his or her family,
5 including a primary residence, seasonal residence or otherwise. In the case of
6 any residence owned by the Beneficiary's Share, and in the Trustee's sole
7 discretion, such Beneficiary may occupy and use such residence without rent or
8 any other financial obligation for the payment of the taxes, insurance payments,
9 maintenance costs and other expenses required in order to keep such residences
10 in proper repair and free of liens.

11 3. Use of Tangible Trust Assets. The Trustee, in the Trustee's sole
12 discretion, may grant such Beneficiary the right to the use, possession and

1 enjoyment of all of the tangible personal property held by such Beneficiary's
2 Share, without financial obligation for the use of such property.

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

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

25 6. Distributions to or for the Benefit of Minors or Persons Under
26 Disability. Whenever the Trustee is given the power or discretion to make
27 distributions to or for the benefit of a minor or other beneficiary under a
28 disability, the Trustee, in the Trustee's sole discretion, may make distributions
to a minor or other person under disability by making distributions to the
guardian or conservator of his or her estate and/or person, as the Trustee shall
determine, or to any suitable person with whom he or she resides, or the Trustee
may apply distributions directly for such beneficiary's benefit, or the Trustee
may make distributions to any duly established custodian for any minor
beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to
Minors Act of any State. Any custodian acting on behalf of a minor beneficiary
shall have the power to bind the beneficiary with respect to all matters
concerning the Trust. The Trustee, in its sole discretion, may also make
distributions directly to a minor if, in the Trustee's judgment, such minor is of
sufficient age and maturity to receive such distribution and spend the money
properly. The previous language of this paragraph 6 notwithstanding, if a
beneficiary is, or would be eligible for need-based government benefits, the
Trustee shall hold the funds for such beneficiary in a "special needs trust" as
that term is understood for need-based government planning. By "special needs

1 trust" is meant that the Trustee shall have the sole and absolute discretion to
2 make distributions for the benefit of such beneficiary in a manner that improves
3 the quality of life for the beneficiary but will not make the beneficiary ineligible
4 for need-based government benefits. The provisions of the Paragraph 6 are
intended to supplant need-based government benefits, but not to replace them
and all terms of this Paragraph 6 shall be so interpreted for all purposes.

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

10 34. Article Twelfth of the Trust states, in pertinent part, as follows:

11 Twelfth: Successor Trustee. In the event of the death or incapacity of
12 either Grantor, the Survivor shall continue to serve as the sole Trustee of all of
13 the trusts created hereunder. Upon the death or incapacity of the Survivor, the
14 Grantors then nominate and appoint [the Petitioner] as the Trustee of all of the
15 trusts created hereunder, or in the event that she is unable or unwilling to serve
in the said capacity, then the Grantors nominate and appoint the FIRST
NATIONAL BANK OF NEVADA to serve in the said capacity.

16 35. In 2008, the FIRST NATIONAL BANK OF NEVADA failed, and is no longer in existence.
17 As outlined in Article Twelfth, W. N. CONNELL and MARJORIE entrusted the beneficiaries (first being
18 MARJORIE and, upon MARJORIE's death, the Petitioner) of the Trust to act as Trustees.

19 36. The Petitioner requests that, due to the failure of the successor Trustee named by the
20 Grantors, this Court: (1) construe the Trust to provide that the intent of W. N. CONNELL and
21 MARJORIE is to appoint the beneficiaries of the Trust to serve as Trustees thereof; and (2) to reform the
22 Trust in accordance with such intention by modifying Article Twelfth as follows:

23 Twelfth: Successor Trustee. In the event of the death or incapacity of
24 either Grantor, the Survivor shall continue to serve as the sole Trustee of all of
25 the trusts created hereunder. Upon the death or incapacity of the Survivor, the
26 Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR
27 MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts
28 created hereunder, or in the event that she is unable or unwilling to serve in the
said capacity, then the Grantors nominate and appoint JACQUELINE M.

1 *MONTOYA to serve in the said capacity. In the event that JACQUELINE M.*
2 *MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN*
3 *A. BOUVIER shall act as successor Trustee. No successor Trustee shall have*
4 *any responsibility for the acts or omissions of any prior trustees and no duty to*
5 *audit or investigate the accounts or administration of any such trustee, nor,*
6 *unless in writing requested so to do by a person having a present or future*
7 *beneficial interest under a trust created hereunder, any duty to take action or*
8 *obtain redress for breach of trust.*

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

12 37. The reformation of the Trust, pursuant to this Petition, will not change the substantive rights
13 of the Petitioner during her lifetime. The sole purposes of the reformation are: (1) to clarify the
14 dispositive provisions of Trust No. 2 after the death of the Petitioner; and (2) to forestall the requirement
15 of petitioning the Court upon the death of the Petitioner to determine the successor Trustee.

16 38. The names, ages, residences, and relationships of the persons interested in the Trust, so far
17 as known to Petitioner, are as follows:

<u>NAME</u>	<u>AGE</u>	<u>RELATIONSHIP</u>	<u>ADDRESS</u>
ELEANOR C. AHERN	Adult	Residual Beneficiary	6105 Elton Ave Las Vegas, NV 89107
JACQUELINE M. MONTOYA	Adult	Daughter of ELEANOR C. AHERN	3385 Maverick Street Las Vegas, NV 89108
KATHRYN A. BOUVIER	Adult	Daughter of ELEANOR C. AHERN	8461 Purple Sage Road Middleton, ID 83644
SHRINERS HOSPITALS FOR CHILDREN	N/A		Attn: Legal Department P.O. Box 31356 Tampa, FL 33631-3356

24 39. JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER have consented in writing
25 to the proposed reformation, as outlined in herein, and to this Court entering an order to assume
26 jurisdiction over the Trust, the appointment of the Petitioner as the Trustee, and the reformation of the
27 Trust as provided in this Petition. Said consents are attached hereto as Exhibits "6" and "7,"
28

1 respectively.

2 40. The interests of JACQUELINE M. MONTOYA and KATHRYN A. BOUVIER and their
3 respective issue in Trust No. 2 are substantially identical, and JACQUELINE M. MONTOYA and
4 KATHRYN A. BOUVIER are able to adequately represent the interests of their respective issue,
5 including any minor and unborn issue without the necessity of the appointment of a guardian ad litem.
6 See, NRS 155.140 and 164.005.
7

8 **WHEREFORE**, Petitioner requests that this Petition be set for hearing, and that after hearing
9 the matters of this Petition, this Court find that notice of the time and place of such hearing has been
10 given in the manner required by law, and that this Court make and enter its Orders and Decrees pursuant
11 to NRS 153.031 (e) and (n), 164.010 and 164.015:
12

13 1. That this Court assume jurisdiction over THE W. N. CONNELL AND MARJORIE T.
14 CONNELL LIVING TRUST, dated May 18, 1972, and any and all sub-trusts created thereunder, as a
15 proceeding *in rem*;

16 2. That ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN be
17 confirmed as the Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST,
18 dated May 18, 1972, and any and all sub-trusts created thereunder, with the exception of any trust in
19 which the assets of Trust No. 3 of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING
20 TRUST, dated May 18, 1972 were appointed by MARJORIE T. CONNELL;
21

22 3. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T.
23 CONNELL LIVING TRUST, dated May 18, 1972, to provide that it was the intent of W. N. CONNELL
24 and MARJORIE T. CONNELL, as Grantors, to distribute the residue of Trust No. 2 created thereunder
25 to ELEANOR C. AHERN's heirs upon her death; and (2) that the Trust is to be reformed in accordance
26 with such intent;
27
28

1 4. That this Court order the Trust to be reformed to add new Sections "E," "F," "G," and "H"
2 to Article Fourth of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated
3 May 18, 1972, as follows:
4

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

9 1. *One (1) equal share shall be distributed, outright and free of*
10 *trust, to the Residual Beneficiary's daughter, JACQUELINE M. MONTOYA, if*
11 *she is then living. Subject to Section (F) below, if, as of the date of the Residual*
12 *Beneficiary's death, JACQUELINE M. MONTOYA is not then living, then said*
13 *equal share shall be distributed to JACQUELINE M. MONTOYA's then living*
14 *issue, by right of representation. Each share created pursuant to this Section*
15 *E(1) of Article Fourth for the benefit of the issue of JACQUELINE M.*
16 *MONTOYA shall be held as a separate trust ("Beneficiary's Share") for the*
17 *benefit of such issue ("Beneficiary") to be held by the Trustee, administered and*
18 *further distributed pursuant to Section G of this Article Fourth.*

19 2. *One (1) equal share shall be distributed, outright and free of*
20 *trust, to the Residual Beneficiary's daughter, KATHRYN A. BOUVIER, if she is*
21 *then living. Subject to Section (F) below, if, as of the date of the Residual*
22 *Beneficiary's death, KATHRYN A. BOUVIER is not then living, then said equal*
23 *share shall be distributed to KATHRYN A. BOUVIER's then living issue, by*
24 *right of representation. Each share created pursuant to this Section E(2) of*
25 *Article Fourth for the benefit of the issue of KATHRYN A. BOUVIER shall be*
26 *held as a separate trust ("Beneficiary's Share") for the benefit of such issue*
27 *("Beneficiary") to be held by the Trustee, administered and further distributed*
28 *pursuant to Section G of this Article Fourth.*

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

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

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

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

12 2. Acquisition of Residences. The Trustee may, in the Trustee's sole
13 discretion, apply the income and principal of such Beneficiary's Share for the
14 purpose of purchasing one or more residences to be owned by the Beneficiary's
15 Share and used and occupied by such Beneficiary and his or her family,
16 including a primary residence, seasonal residence or otherwise. In the case of
17 any residence owned by the Beneficiary's Share, and in the Trustee's sole
18 discretion, such Beneficiary may occupy and use such residence without rent or
19 any other financial obligation for the payment of the taxes, insurance payments,
20 maintenance costs and other expenses required in order to keep such residences
21 in proper repair and free of liens.

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

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

5. Distribution Upon Death of Beneficiary. If any Beneficiary shall
die prior to the complete distribution of such Beneficiary's Share, then all of the
remaining assets in such Beneficiary's Share shall be distributed to or in trust
for such one or more persons or organizations and in such manner and
proportions as such Beneficiary may appoint by his or her will or revocable
trust making specific reference to this general power of appointment. To the
extent that the Beneficiary does not exercise this general power of appointment,
the remainder of such Beneficiary's Share shall be distributed to the issue of
such Beneficiary in equal shares by right of representation and each such share

1 shall be held, managed and further distributed by the Trustee as a Beneficiary's
2 Share under Section G of Article Fourth. If the Beneficiary shall die failing to
3 exercise this general power of appointment without leaving issue, then the
4 Beneficiary's Share shall be distributed pro rata to the other Beneficiary's
Shares then being administered by the Trustee hereunder, and if none, then to
the Beneficiary's heirs at law under the intestacy laws of the State of Nevada.

5 6. Distributions to or for the Benefit of Minors or Persons Under
6 Disability. Whenever the Trustee is given the power or discretion to make
7 distributions to or for the benefit of a minor or other beneficiary under a
8 disability, the Trustee, in the Trustee's sole discretion, may make distributions
9 to a minor or other person under disability by making distributions to the
10 guardian or conservator of his or her estate and/or person, as the Trustee shall
11 determine, or to any suitable person with whom he or she resides, or the Trustee
12 may apply distributions directly for such beneficiary's benefit, or the Trustee
13 may make distributions to any duly established custodian for any minor
14 beneficiary under the Uniform Gifts to Minors Act or Uniform Transfers to
15 Minors Act of any State. Any custodian acting on behalf of a minor beneficiary
16 shall have the power to bind the beneficiary with respect to all matters
17 concerning the Trust. The Trustee, in its sole discretion, may also make
18 distributions directly to a minor if, in the Trustee's judgment, such minor is of
19 sufficient age and maturity to receive such distribution and spend the money
20 properly. The previous language of this paragraph 6 notwithstanding, if a
21 beneficiary is, or would be eligible for need-based government benefits, the
22 Trustee shall hold the funds for such beneficiary in a "special needs trust" as
23 that term is understood for need-based government planning. By "special needs
24 trust" is meant that the Trustee shall have the sole and absolute discretion to
25 make distributions for the benefit of such beneficiary in a manner that improves
26 the quality of life for the beneficiary but will not make the beneficiary ineligible
27 for need-based government benefits. The provisions of the Paragraph 6 are
28 intended to supplant need-based government benefits, but not to replace them
and all terms of this Paragraph 6 shall be so interpreted for all purposes.

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

5. That this Court enter an order: (1) construing THE W. N. CONNELL AND MARJORIE T.
CONNELL LIVING TRUST, dated May 18, 1972, to provide that the intent of W. N. CONNELL and
MARJORIE T. CONNELL was to appoint the beneficiaries of the Trust to serve as Trustees thereof; and

1 (2) that the Trust is to be reformed in accordance with such intent;

2 6. That this Court order the Trust to be reformed by modifying Article Twelfth of THE W. N.
3 CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972, to read as follows:

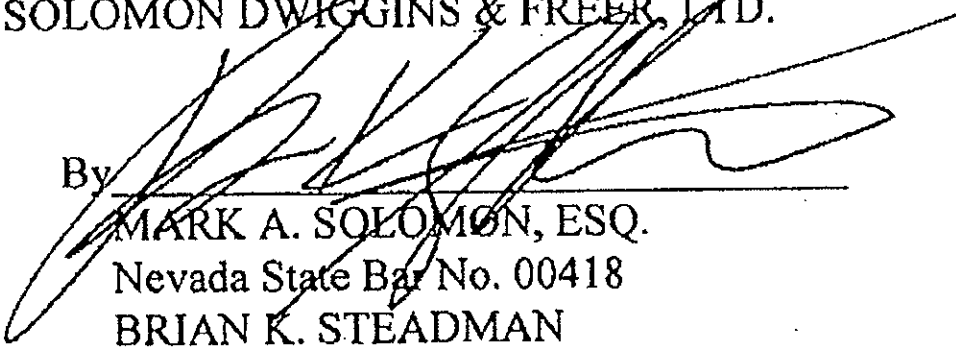
4 *Twelfth: Successor Trustee. In the event of the death or incapacity of*
5 *either Grantor, the Survivor shall continue to serve as the sole Trustee of all of*
6 *the trusts created hereunder. Upon the death or incapacity of the Survivor, the*
7 *Grantors then nominate and appoint ELEANOR C. AHERN, f/k/a ELEANOR*
8 *MARGUERITE CONNELL HARTMAN, as the Trustee of all of the trusts*
9 *created hereunder, or in the event that she is unable or unwilling to serve in the*
10 *said capacity, then the Grantors nominate and appoint JACQUELINE M.*
11 *MONTOYA to serve in the said capacity. In the event that JACQUELINE M.*
12 *MONTOYA is unable or unwilling to act as successor Trustee, then KATHRYN*
13 *A. BOUVIER shall act as successor Trustee. No successor Trustee shall have*
14 *any responsibility for the acts or omissions of any prior trustees and no duty to*
15 *audit or investigate the accounts or administration of any such trustee, nor,*
16 *unless in writing requested so to do by a person having a present or future*
17 *beneficial interest under a trust created hereunder, any duty to take action or*
18 *obtain redress for breach of trust.*

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

22 7. For such other and further relief as the Court deems proper.

23 DATED this 14 day of August, 2009.

24 Respectfully submitted,
25 SOLOMON DWIGGINS & FREER, LTD.

26 By 
27 MARK A. SOLOMON, ESQ.
28 Nevada State Bar No. 00418
BRIAN K. STEADMAN
Nevada State Bar No. 10771
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483

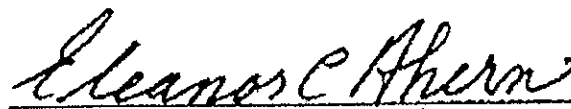
Attorneys for Eleanor C. Ahern, Petitioner

VERIFICATION

ELEANOR C. AHERN, f/k/a ELEANOR MARGUERITE CONNELL HARTMAN, whose address is 6105 Elton Ave, Las Vegas, NV 89107, declares under penalties of perjury of the State of Nevada:

That she is the Petitioner who makes the foregoing Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust; that she has read said petition and know the contents thereof, and that the same is true of her own knowledge except for those matters stated on information and belief, and that as to such matters she believes it to be true.

DATED this 3rd day of August, 2009.



ELEANOR C. AHERN f/k/a ELEANOR MARGUERITE
CONNELL HARTMAN

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EXHIBIT E
August 4, 2009 Letters From Mr. Brian Steadman, Esq.

SOLLOMON DWIGGINS & FREER, LTD.

Attorneys At Law

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Jeffrey A. Morse
Karl L. Stephens

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Brian P. Eagan
Catherine M. Mazzeo
Brian K. Steadman
Robert D. Simpson
Jeffrey P. Luszeck
Ross E. Evans

August 4, 2009

PERSONAL & CONFIDENTIAL
VIA FIRST CLASS MAIL

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

Re: W. N. Connell and Marjorie T. Connell Living Trust

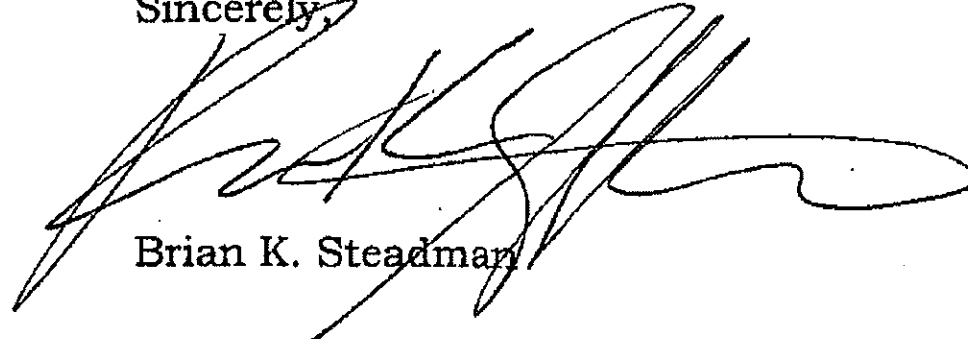
Dear Jackie:

As you are aware, we are in the process of reforming the W. N. Connell and Marjorie T. Connell Living Trust (the "Trust"). As part of this process, enclosed for your review is the Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust (the "Petition") which has been reviewed and signed by your mother, Eleanor Ahern.

Also enclosed for your review are two additional documents, as follows: (1) Consent to Petition to Assume Jurisdiction Over Trust; Confirm Trustee; And Construe and Reform Trust and Waiver of Notice (the "Consent and Waiver"); and (2) Consent to Reformation. The Consent and Waiver simply states that you have read the Petition and consent to the court entering an order approving the same. The Consent to Reformation outlines the estate tax implications that may arise in reforming the Trust. After your review of the Petition, Consent and Waiver, and Consent to Reformation, if everything appears in order, please sign the Consent and Waiver and Consent to Reformation and return the originals to our office.

If you have any questions, please do not hesitate to contact me directly at (702) 589-3510.

Sincerely,



Brian K. Steadman

BKS:dld

Enclosures

SOLLOMON DWIGGINS & FREER, LTD.

Attorneys At Law

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Jeffrey A. Morse
Karl L. Stephens

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

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Brian P. Eagan
Catherine M. Mazzeo
Brian K. Steadman
Robert D. Simpson
Jeffrey P. Luszeck
Ross E. Evans

August 4, 2009

PERSONAL & CONFIDENTIAL
VIA FIRST CLASS MAIL

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

Re: W. N. Connell and Marjorie T. Connell Living Trust

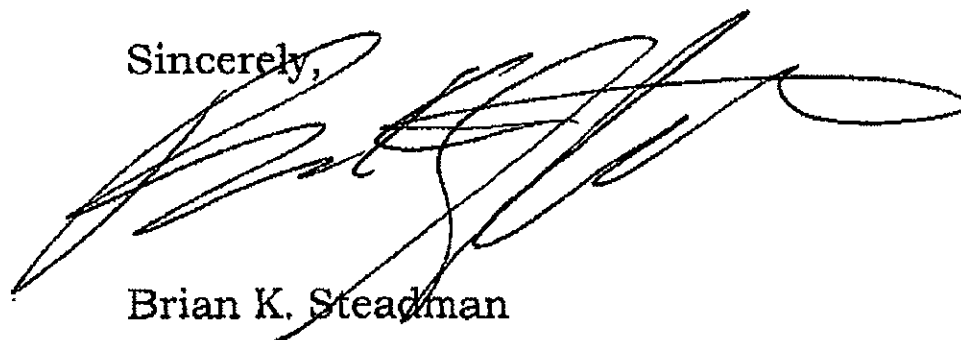
Dear Kathryn:

As you are aware, we are in the process of reforming the W. N. Connell and Marjorie T. Connell Living Trust (the "Trust"). As part of this process, enclosed for your review is the Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust (the "Petition") which has been reviewed and signed by your mother, Eleanor Ahern.

Also enclosed for your review are two additional documents, as follows: (1) Consent to Petition to Assume Jurisdiction Over Trust; Confirm Trustee; And Construe and Reform Trust and Waiver of Notice (the "Consent and Waiver"); and (2) Consent to Reformation. The Consent and Waiver simply states that you have read the Petition and consent to the court entering an order approving the same. The Consent to Reformation outlines the estate tax implications that may arise in reforming the Trust. After your review of the Petition, Consent and Waiver, and Consent to Reformation, if everything appears in order, please sign the Consent and Waiver and Consent to Reformation and return the originals to our office.

If you have any questions, please do not hesitate to contact me directly at (702) 589-3510.

Sincerely,



Brian K. Steadman

BKS:dld

Enclosures

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EXHIBIT F
Consents to Reformation

CONSENT TO REFORMATION

TO: JACQUELINE M. MONTOYA
FROM: SOLOMON, DWIGGINS, & FREER, LTD.
RE: THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST
DATE: August 4, 2009

This Consent to Reformation has been prepared to outline the potential tax implications on some of the changes to the W. N. Connell and Marjorie T. Connell Living Trust (the "Trust") in the event the Petition for Reformation of the Trust is approved of by the Nevada Court.

Purpose of the Reformation

As you know, the Trust omits directions as to the final disposition of Trust No. 2 after Eleanor C. Ahern's death. The Petition for Reformation fixes this omission by providing that one-half (1/2) of the remaining assets are to be distributed outright to you upon Eleanor's death. The Petition for Reformation also gives you an additional power, commonly known as a "testamentary general power of appointment." This power is discussed in more detail below.

Estate and Generation-Skipping Transfer Taxes Upon Eleanor C. Ahern's Death

We have reviewed the Trust and applicable law, and have concluded that under applicable law: (1) upon Eleanor C. Ahern's death, the assets in Trust No. 2 will not be included in Eleanor's estate for federal estate tax purposes; and (2) that no generation-skipping transfer taxes will be due on the assets that pass to you after her death.

Estate Taxes Upon Your Death

The Petition for Reformation gives you two rights that will cause your share of Trust No. 2 to be included in your estate for federal estate tax purposes. Those rights are: (1) outright distribution to you of your share of the assets upon Eleanor's death; and (2) a testamentary general power of appointment giving you the right, effective on your death, to appoint the assets to whomever you choose. These rights may also carry with them state estate and inheritance tax consequences that should be discussed with your estate planning attorney.

Right to Outright Distribution

The reason the Petition for Reformation includes an outright distribution is to give you full control over your share of Trust No. 2 after Eleanor's death (as opposed to limiting your control by keeping your share in the Trust for your lifetime). If Eleanor dies before you, the right to outright distribution of your share will cause your share of Trust No. 2 to be included in your estate for federal estate tax purposes upon your death.

Because the asset will be included in your federal estate upon your death, in the event your total federal estate exceeds the federal estate tax credit (currently \$3.5 million, but is subject to

change), your heirs may be required to pay federal estate taxes. If you have made lifetime gifts using what is commonly known as your "unified credit," the amount of the federal estate tax credit available to you at your death may also be affected. If your total federal estate does not exceed the federal estate tax credit in effect upon your death, and you have not made any lifetime gifts, then no tax will be levied against your estate.

Testamentary General Power of Appointment

In addition to receiving your share of the remainder of Trust No. 2 outright upon Eleanor's death, the Petition for Reformation grants you a "testamentary general power of appointment" over your share of the remaining assets. The purpose of this power is to allow you to direct where you want your share of the remainder of Trust No. 2 to pass if you die before Eleanor. Of course, Eleanor will still be receive all the income from Trust No. 2 until her death, but, after her death, your share will pass to whomever you have directed.

You can exercise this testamentary power of appointment by indicating your intentions in your Will, your revocable trust, or a separate written document signed by you. You should contact the attorney preparing your estate plan to discuss this power, and its implications, in more detail.

In the event that you were to pass away before Eleanor, the testamentary general power of appointment will cause the value of your "remainder interest" (i.e. the present value of a future expectancy) to be included in your estate for federal estate tax purposes. The amount included in your federal estate will not be the full value of your share of Trust No. 2 (since your heirs will not receive your share until Eleanor also passes away) but will be valued at a lower amount.

Because your share of the "remainder interest" in Trust No. 2 will be included in your federal estate upon your death, in the event your total federal estate exceeds the federal estate tax credit (currently \$3.5 million, but is subject to change), then your heirs may be required to pay federal estate taxes. If you have made lifetime gifts using what is commonly known as your "unified credit" the amount of the federal estate tax credit available to you may also be affected. If your total federal estate does not exceed the federal estate tax credit in effect upon your death, and you have not made any lifetime gifts, then no tax will be levied against your estate.

Alternative

An alternative to granting you these rights is to hold your share of the remaining assets after Eleanor's death in the Trust for your benefit, during your lifetime, and then for your children thereafter. The benefit for this alternative is that, under current applicable law, the assets would pass to your children free of federal estate taxes and generation-skipping transfer taxes. The downside, however, is that the assets would have to remain in the Trust, and you would be limited on how much of the assets you could access and control.

We recommend that you review these issues with your estate planning attorney to determine how the rights granted to you in the Petition for Reformation may affect your estate. However, if you have any questions regarding this letter, please feel free to contact me directly.

By signing below, you hereby acknowledge that you have been informed and understand there may be federal and state tax consequences from the rights granted to you under the Petition for Reformation of the Trust as described herein, you hereby acknowledge that you have had the opportunity to discuss these issues with your counsel, and you hereby consent to the filing of the Petition for Reformation containing the rights granted to you, as outlined herein.

Date: Aug. 8, 2009

Jacqueline M. Montoya
JACQUELINE M. MONTOYA

CONSENT TO REFORMATION

TO: KATHRYN A. BOUVIER
FROM: SOLOMON, DWIGGINS, & FREER, LTD.
RE: THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST
DATE: August 4, 2009

This Consent to Reformation has been prepared to outline the potential tax implications on some of the changes to the W. N. Connell and Marjorie T. Connell Living Trust (the "Trust") in the event the Petition for Reformation of the Trust is approved of by the Nevada Court.

Purpose of the Reformation

As you know, the Trust omits directions as to the final disposition of Trust No. 2 after Eleanor C. Ahern's death. The Petition for Reformation fixes this omission by providing that one-half (1/2) of the remaining assets are to be distributed outright to you upon Eleanor's death. The Petition for Reformation also gives you an additional power, commonly known as a "testamentary general power of appointment." This power is discussed in more detail below.

Estate and Generation-Skipping Transfer Taxes Upon Eleanor C. Ahern's Death

We have reviewed the Trust and applicable law, and have concluded that under applicable law: (1) upon Eleanor C. Ahern's death, the assets in Trust No. 2 will not be included in Eleanor's estate for federal estate tax purposes; and (2) that no generation-skipping transfer taxes will be due on the assets that pass to you after her death.

Estate Taxes Upon Your Death

The Petition for Reformation gives you two rights that will cause your share of Trust No. 2 to be included in your estate for federal estate tax purposes. Those rights are: (1) outright distribution to you of your share of the assets upon Eleanor's death; and (2) a testamentary general power of appointment giving you the right, effective on your death, to appoint the assets to whomever you choose. These rights may also carry with them state estate and inheritance tax consequences that should be discussed with your estate planning attorney.

Right to Outright Distribution

The reason the Petition for Reformation includes an outright distribution is to give you full control over your share of Trust No. 2 after Eleanor's death (as opposed to limiting your control by keeping your share in the Trust for your lifetime). If Eleanor dies before you, the right to outright distribution of your share will cause your share of Trust No. 2 to be included in your estate for federal estate tax purposes upon your death.

Because the asset will be included in your federal estate upon your death, in the event your total federal estate exceeds the federal estate tax credit (currently \$3.5 million, but is subject to

change), your heirs may be required to pay federal estate taxes. If you have made lifetime gifts using what is commonly known as your "unified credit," the amount of the federal estate tax credit available to you at your death may also be affected. If your total federal estate does not exceed the federal estate tax credit in effect upon your death, and you have not made any lifetime gifts, then no tax will be levied against your estate.

Testamentary General Power of Appointment

In addition to receiving your share of the remainder of Trust No. 2 outright upon Eleanor's death, the Petition for Reformation grants you a "testamentary general power of appointment" over your share of the remaining assets. The purpose of this power is to allow you to direct where you want your share of the remainder of Trust No. 2 to pass if you die before Eleanor. Of course, Eleanor will still be receive all the income from Trust No. 2 until her death, but, after her death, your share will pass to whomever you have directed.

You can exercise this testamentary power of appointment by indicating your intentions in your Will, your revocable trust, or a separate written document signed by you. You should contact the attorney preparing your estate plan to discuss this power, and its implications, in more detail.

In the event that you were to pass away before Eleanor, the testamentary general power of appointment will cause the value of your "remainder interest" (i.e. the present value of a future expectancy) to be included in your estate for federal estate tax purposes. The amount included in your federal estate will not be the full value of your share of Trust No. 2 (since your heirs will not receive your share until Eleanor also passes away) but will be valued at a lower amount.

Because your share of the "remainder interest" in Trust No. 2 will be included in your federal estate upon your death, in the event your total federal estate exceeds the federal estate tax credit (currently \$3.5 million, but is subject to change), then your heirs may be required to pay federal estate taxes. If you have made lifetime gifts using what is commonly known as your "unified credit" the amount of the federal estate tax credit available to you may also be affected. If your total federal estate does not exceed the federal estate tax credit in effect upon your death, and you have not made any lifetime gifts, then no tax will be levied against your estate.

Alternative

An alternative to granting you these rights is to hold your share of the remaining assets after Eleanor's death in the Trust for your benefit, during your lifetime, and then for your children thereafter. The benefit for this alternative is that, under current applicable law, the assets would pass to your children free of federal estate taxes and generation-skipping transfer taxes. The downside, however, is that the assets would have to remain in the Trust, and you would be limited on how much of the assets you could access and control.

We recommend that you review these issues with your estate planning attorney to determine how the rights granted to you in the Petition for Reformation may affect your estate. However, if you have any questions regarding this letter, please feel free to contact me directly.

By signing below, you hereby acknowledge that you have been informed and understand there may be federal and state tax consequences from the rights granted to you under the Petition for Reformation of the Trust as described herein, you hereby acknowledge that you have had the opportunity to discuss these issues with your counsel, and you hereby consent to the filing of the Petition for Reformation containing the rights granted to you, as outlined herein.

Date: 8/9/09


KATHRYNA. BOUVIER

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EXHIBIT G

Consent and Waiver of Notice of Jacqueline M. Montoya to Petition To
Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And
Reform Trust in the matter of the W. N. Connell And Marjorie T. Connell
Living Trust dated May 18, 1972 in the District Court of Clark County,
Nevada, Case No. P-09-066425-T

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

13 Attorneys for Eleanor C. Ahern, Petitioner

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

16 In the Matter of the

17 THE W. N. CONNELL AND MARJORIE
18 T. CONNELL LIVING TRUST,
19 Dated May 18, 1972

20 An Intervivos Irrevocable Trust.

) Case No.
) Department No.

) Date of Hearing:
) Time of Hearing:

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

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

25 1. I am a contingent income beneficiary of the W. N. CONNELL AND MARJORIE T.
26 CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust").

27 2. I have read the Petition to Assume Jurisdiction Over Trust; Confirm Trustee, and
28 Construe and Reform Trust (the "Petition") and believe it to be true and correct to the best of my
knowledge.

3. I hereby consent to the Petition and request that the Court enter an Order approving
the Petition in its entirety.

4. I hereby waive notice of notice of the hearing on the Petition pursuant to Nevada

1 Revise Statutes 155.010(4).

2 Dated this 8 day of August, 2009.

3
4 
5 JACQUELINE M. MONTOYA

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

8
9 By: 

10 MARK A. SOLOMON, ESQ.

Nevada Bar No. 00418

11 BRIAN K. STEADMAN, ESQ.

Nevada Bar No. 10771

12 9060 W. Cheyenne Avenue

Las Vegas, NV 89129

13 Attorneys for Eleanor C. Ahern, Petitioner

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EXHIBIT H

Consent and Waiver of Notice of Kathryn A. Bouvier to Petition To
Assume Jurisdiction Over Trust; Confirm Trustee; And Construe And
Reform Trust in the matter of the W. N. Connell And Marjorie T. Connell
Living Trust dated May 18, 1972 in the District Court of Clark County,
Nevada, Case No. P-09-066425-T

1 **CONS**
2 SOLOMON DWIGGINS & FREER, LTD.
3 MARK A. SOLOMON, ESQ.
4 Nevada State Bar No. 00418
5 BRIAN K. STEADMAN, ESQ.
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11 E-mail: msolomon@sdfnlaw.com
12 Email: bsteadman@sdfnlaw.com

13 Attorneys for Eleanor C. Ahern, Petitioner

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

16 In the Matter of the

17 THE W. N. CONNELL AND MARJORIE
18 T. CONNELL LIVING TRUST,
19 Dated May 18, 1972

20 An Intervivos Irrevocable Trust.

) Case No.
) Department No.

) Date of Hearing:
) Time of Hearing:

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

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

25 1. I am a contingent income beneficiary of the W. N. CONNELL AND MARJORIE T.
26 CONNELL LIVING TRUST, dated May 18, 1972 (the "Trust").

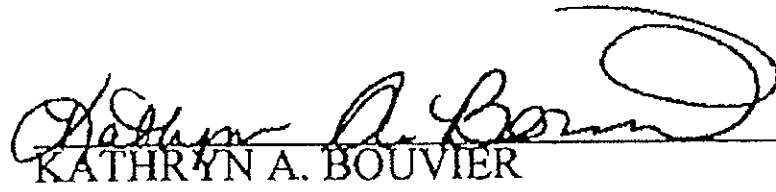
27 2. I have read the Petition to Assume Jurisdiction Over Trust; Confirm Trustee, and
28 Construe and Reform Trust (the "Petition") and believe it to be true and correct to the best of my
knowledge.

3. I hereby consent to the Petition and request that the Court enter an Order approving
the Petition in its entirety.

4. I hereby waive notice of notice of the hearing on the Petition pursuant to Nevada

1 Revise Statutes 155.010(4).

2 Dated this 9 day of August, 2009.

3
4 
KATHRYN A. BOUVIER

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

9 By: 

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

13 Attorneys for Eleanor C. Ahern, Petitioner
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EXHIBIT I

Notice Of Hearing on Petition To Assume Jurisdiction Over Trust;
Confirm Trustee; And Construe And Reform Trust and Certificate Of
Mailing in the matter of the W. N. Connell And Marjorie T. Connell
Living Trust dated May 18, 1972 in the District Court of Clark County,
Nevada, Case No. P-09-066425-T



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E. J. H. H.
CLERK OF THE COURT

1 NOTC

2 MARK A. SOLOMON, ESQ.

3 Nevada State Bar No. 00418

4 BRIAN K. STEADMAN, ESQ.

5 Nevada State Bar No. 10771

6 SOLOMON DWIGGINS & FREER, LTD.

7 9060 W. Cheyenne Avenue

8 Las Vegas, Nevada 89129

9 Telephone: 702.853.5483

10 Facsimile: 702.853.5485

11 Attorneys for ELEANOR C. AHERN, Petitioner

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 In the Matter of the

) Case No. : P-09-066425-T

) PC1 H

15 THE W. N. CONNELL AND MARJORIE T.)

16 CONNELL LIVING TRUST,)

17 Dated May 18, 1972)

) Date of Hearing: September 4, 2009

18 An Intervivos Irrevocable Trust.)

) Time of Hearing: 9:30 a.m.

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

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

MC

CE23

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

4 SOLOMON DWIGGINS & FREER, LTD.
5 MARK A. SOLOMON, ESQ.
6 BRIAN K. STEADMAN, ESQ.
7 9060 W. Cheyenne Avenue
8 Las Vegas, NV 89129

9 Telephone No. 702.853.5483

10 DATED this 14 day of August, 2009.

11 SOLOMON DWIGGINS & FREER, LTD.

12 By: 

13 MARK A. SOLOMON, ESQ.
14 Nevada State Bar No. 000418
15 BRIAN K. STEADMAN, ESQ.
16 Nevada State Bar No. 10771
17 9060 W. Cheyenne Avenue
18 Las Vegas, NV 89129
19 Telephone: (702) 853-5483
20 Facsimile: (702) 853-5485

21 Attorneys for Petitioner, ELEANOR C. AHERN
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E. J. Smith
CLERK OF THE COURT

1 COM

2 MARK A. SOLOMON, ESQ.

3 Nevada State Bar No. 00418

4 BRIAN K. STEADMAN, ESQ.

5 Nevada State Bar No. 10771

6 SOLOMON DWIGGINS & FREER, LTD.

7 9060 W. Cheyenne Avenue

8 Las Vegas, Nevada 89129

9 Telephone: 702.853.5483

10 Facsimile: 702.853.5485

11 Attorneys for ELEANOR C. AHERN, Petitioner

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 In the Matter of the

15 THE W. N. CONNELL AND MARJORIE T.

16 CONNELL LIVING TRUST,

17 Dated May 18, 1972

18 An Intervivos Irrevocable Trust.

) Case No. P-09
) PC1

P-09-066425-T

H

) Date of Hearing: September 4, 2009

) Time of Hearing: 9:30 a.m.

19 CERTIFICATE OF MAILING

20 I hereby certify that on the 17th day of August, 2009, I caused to be served a true and correct copy

21 of the PETITION TO ASSUME JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND CONSTRUE AND

22 REFORM TRUST and NOTICE OF HEARING for said Petition, by mail using the United States Postal

23 Service, certified mail, return receipt requested, postage prepaid thereon in a sealed envelope to the

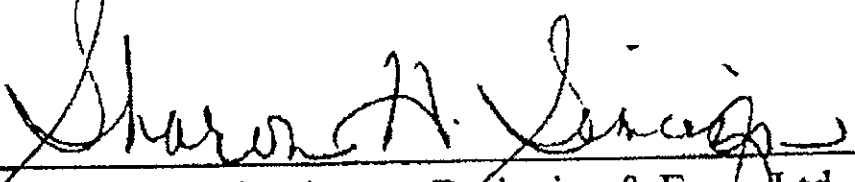
24 following individuals:

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

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

1 Eleanor C. Ahern
2 6105 Elton Avenue
3 Las Vegas, NV 89107
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Shriners Hospitals for Children
Attn: Legal Department
P.O. Box 31356
Tampa, FL 33631-3356


An Employee of Solomon Diggins & Freer, Ltd.

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EXHIBIT J

Order Assuming Jurisdiction Over Trust Confirm Trustee; And For
Construction of And To Reform Of Trust Instrument in the matter of the
W. N. Connell And Marjorie T. Connell Living Trust dated May 18, 1972
in the District Court of Clark County, Nevada, Case No. P-09-066425-T

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2009 SEP -4 P 4: 50

E. J. Smith
CLERK OF THE COURT

1 ORDR

2 MARK A. SOLOMON, ESQ.

3 Nevada State Bar No. 00418

4 BRIAN K. STEADMAN, ESQ.

5 Nevada State Bar No. 10771

6 SOLOMON DWIGGINS & FREER, LTD.

7 9060 W. Cheyenne Avenue

8 Las Vegas, Nevada 89129

9 Telephone: 702.853.5483

10 Facsimile: 702.853.5485

11 Attorneys for ELEANOR C. AHERN, Petitioner

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 In the Matter of the

) Case No. P-09-066425-T

) PC1

15 THE W. N. CONNELL AND MARJORIE T.)

16 CONNELL LIVING TRUST,)

17 Dated May 18, 1972)

) Date of Hearing: September 4, 2009

18 An Intervivos Irrevocable Trust.)

) Time of Hearing: 9:30 a.m.

19 ORDER ASSUMING JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND
20 FOR CONSTRUCTION OF AND REFORM OF TRUST INSTRUMENT

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

29 required by law; and good cause appearing therefor,

30 SEP 04 2009

CLERK OF THE COURT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 DATED this 4th day of September, 2009.

10 

11 DISTRICT COURT JUDGE
12 

13 Respectfully submitted,

14 SOLOMON DWIGGINS & FREER, LTD.

15 By 

16 MARK A. SOLOMON, ESQ.

17 Nevada State Bar No. 00418

18 BRIAN K. STEADMAN, ESQ.

19 Nevada State Bar No. 10771

20 9060 W. Cheyenne Avenue

21 Las Vegas, Nevada 89129

22 Attorneys for Eleanor C. Ahern, Trustee
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EXHIBIT K

Notice of Entry Of Order Assuming Jurisdiction Over Trust Confirm
Trustee; And For Construction of And To Reform Of Trust Instrument in
the matter of the W. N. Connell And Marjorie T. Connell Living Trust
dated May 18, 1972 in the District Court of Clark County, Nevada, Case
No. P-09-066425-T

ORIGINAL

FILED

2009 SEP -8 P 3:14

E. J. [Signature]
CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

NOTICE OF ENTRY OF ORDER

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

21 DATED this 8th day of September, 2009.

22 SOLOMON DWIGGINS & FREER, LTD.

23 By *[Signature]*

24 MARK A. SOLOMON, ESQ.
25 Nevada State Bar No. 00418
26 BRIAN K. STEADMAN, ESQ.
27 Nevada State Bar No. 10771

28 Attorneys for Eleanor C. Ahern, Trustee

RECEIVED
SEP 08 2009
CLERK OF THE COURT

CERTIFICATE OF MAILING

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

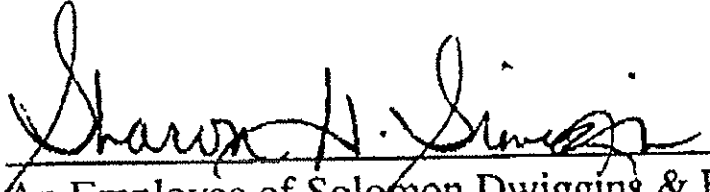
Kathryn A. Bouvier
8461 Purple Sage Road
Middleton, ID 83644

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

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

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

via Certified Mail Return Receipt Requested


An Employee of Solomon Dwiggin & Freer, Ltd.

1 **ORDR**

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3 Nevada State Bar No. 00418

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11 *Attorneys for ELEANOR C. AHERN, Petitioner*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 In the Matter of the

) Case No. P-09-066425-T

) PC1

15 THE W. N. CONNELL AND MARJORIE T.)

16 CONNELL LIVING TRUST,)

17 Dated May 18, 1972)

) Date of Hearing: September 4, 2009

18 An Intervivos Irrevocable Trust.)

) Time of Hearing: 9:30 a.m.

19 **ORDER ASSUMING JURISDICTION OVER TRUST; CONFIRM TRUSTEE; AND**

20 **FOR CONSTRUCTION OF AND REFORM OF TRUST INSTRUMENT**

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

FILED

2009 SEP -4 P 4: 50

E. J. [Signature]
CLERK OF THE COURT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 DATED this 4th day of September, 2009.

10 ~~T. ARTHUR RICHES JR.~~


11 DISTRICT COURT JUDGE

JB

12 Respectfully submitted,

13 SOLOMON DWIGGINS & FREER, LTD.

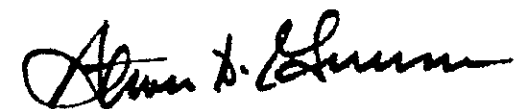
14 By

15 
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17 Nevada State Bar No. 00418
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20 9060 W. Cheyenne Avenue
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22 Attorneys for Eleanor C. Ahern, Trustee
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EXHIBIT L
Certificate of Mailing of Petition For Declaratory Judgment Regarding
Limited Interest Of Trust Assets pursuant to NRS 30.040, NRS
153.031(1)(E), AND NRS 164.033(1)(A)



CLERK OF THE COURT

1 **CERT**
2 JOSEPH J. POWELL
3 State Bar No. 8875
4 THE RUSHFORTH FIRM, LTD.
5 P. O. Box 371655
6 Las Vegas, NV 89137-1655
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10 Attorneys for Jacqueline M. Montoya

DISTRICT COURT

CLARK COUNTY, NEVADA

11 In the Matter of the Estate

12 of

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

16 A non-testamentary trust.

Case No. P-09-066425-T
Department: 26 (Probate)

CERTIFICATE OF MAILING

18 Date of Hearing: October 11, 2013
19 Time of Hearing: 9:30 a.m.

20 I, the undersigned, hereby certify that on September 27, 2013, I sent a copy of the "Petition
21 for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040,
22 NRS 153.031(1)(E), and NRS 164.033(1)(A)" that has been filed in this proceeding, together with
23 a copy of the Notice of Hearing related that petition, to each person named below by first-class mail,
24 addressed as follows:

25 ///

26 ///

27 ///

Certificate of Mailing

THE RUSHFORTH FIRM, LTD.
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9505 Hillwood Drive, Suite 100
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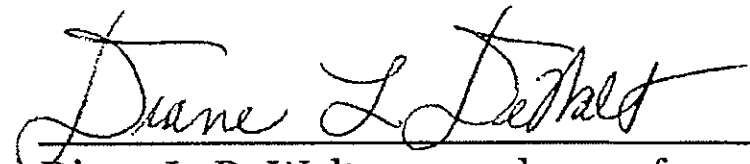
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Diane L. DeWalt, an employee of
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