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

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

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

### JUGMENT

Pursuant to NRCP Rule 56, the Court finds that the pleadings and other 16 documents filed herein, together with the affidavits and documentary evidence 17 presented, show there is no genuine issue as to any material fact and that Jacqueline 18 and Kathryn are entitled to judgment against Eleanor as a matter of law in these 19 proceedings. Therefore, and based upon the foregoing findings, good cause exists to 20now render judgment against Eleanor, in favor of Jacqueline and Kathryn, as follows: 21 A. Jacqueline's and Kathryn's Countermotion for Summary Judgment is 22 granted in part as hereinafter provided. The Court hereby declares, adjudges and 23 determines that the allocation of interests in the Texas oil property between subtrust 2 24 and subtrust 3, under the W.N. Connell and Marjorie T. Connell Living Trust, dated 25 May 18, 1972, was properly made under the Trust provisions, with subtrust 2 receiving 26 a 35.507% interest in the Texas oil property and subtrust 3 receiving a 64.493% 27interest in the Texas oil property. 28

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

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C. Eleanor's Countermotion for Summary Judgment is hereby denied.

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

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

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

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

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

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

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

The parties shall each sign a Stipulation and Order for Dismissal of the H. 24 Appeal presently pending in Nevada Supreme Court Case No. 66231, filed by Eleanor, 25 appealing a portion of the Court's Order in these proceedings entered on July 7, 2014. 26 The Court retains jurisdiction over the Trust pending the finalization and I. 27 resolution of the remaining issues mentioned above, to be addressed hereafter at the 28

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hearing scheduled on March 20, 2015, at 10:00a.m. Until that date, Eleanor shall continue to exercise and fulfill her duties as Trustee of the Trust, and the parties shall 2 all cooperate, in the best interest of the Trust and its beneficiaries, in any dealings with 3 the oil companies affecting the Texas oil property. A, SO ORDERED AND ADJUDGED this /5 day of Bebruary, 2015. S

COURT JUDGE

Submitted by: 8

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Submitted by: ALBRIGHT, STODDARD, THE RUSHFORTH FIRM, LTD. WARNICK & ALBRIGHT By: Βv WHITNEY B. WARNICK, ESO. JOSEPHT. POWELL, ESO. Nevada Bar No. 001573 Nevada-Bar No. 00875 801 South Rancho Drive, Suite D-4 P.O. Box 371655 Las Vegas, NV 89137-1655 Las Vegas, Nevada 89106 Tel: (702) 384-7111 Tel: (702) 255-4552 Attorneys for Kathryn A. Bouvier Attorneys for Jacqueline M. Montova Approved by: MARQUIS AURBACH COFFING By: LIANE K. WAKAYAMA, ESO. Nevada Bar No. 11313 CANDICE E. RENKA, ESQ. Nevada Bar No. 11447 10001 Park Run Drive Las Vegas, NV 89145 Tel: (702-382-0711 Attorneys for Eleanor Connell Hartman Ahern

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CLERK OF THE COURT

1 Marquis Aurbach Coffing Dale A. Hayes, Esq. 2 Nevada Bar No. 3430 Liane K. Wakayama, Esq. 3 Nevada Bar No. 11313 Candice E. Renka, Esq. Nevada Bar No. 11447 4 10001 Park Run Drive 5 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 6 Facsimile: (702) 382-5816 dhayes@maclaw.com 7 lwakayama@maclaw.com crenka@maclaw.com

Attorneys for Eleanor Connell Hartman 8 Ahern, as Trustee 9

#### **DISTRICT COURT**

#### CLARK COUNTY, NEVADA

In the Matter of

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

Case No.: Dept. No.:

P-09-066425-T 26

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

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

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

Page 1 of 5

MARQUIS AURBACH COFFING 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816 10

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

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

### UNDISPUTED FACTS The Accounting

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

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

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

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

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

MARQUIS AURBACH COFFING 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

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	1	8. The \$500,000 on deposit with Fidelity Capital Inc. ("Fidelity Capital") is not a
	2	prudent investment. NRS 164.640 et seg.
	3	9. Aside from the \$218,760.17 Trustee fees, the \$37,000 distribution and the
	4	\$500,000 on deposit with Fidelity Capital, the Accounting is approved.
	5	Cutting Off the 65% Income
	6	10. As Trustee of the Trust, Eleanor owed fiduciary duties to Jacqueline and Kathryn
	7	as beneficiaries of the Trust.
	8 9	11. In June 2013, Eleanor cut off the 65% income stream of the net oil revenue in her capacity as Trustee of the Trust, $\omega$ : then the trust seeking fastra drive from
	10	CONCLUSIONS OF LAW
	11	12. Pursuant to Nev. R. Civ. P. 56(b), "[a] party against whom a claim, counterclaim,
COFFING 5 2-5816	12	or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or
<b>:OFF</b>	13	without supporting affidavits for a summary judgment in the party's favor as to all or any part
ACH COF In Drive da 89145 (702) 382-5816	14	thereof." "The judgment sought shall be rendered forthwith if the pleadings show that there
UKBACH C Park Run Drive gas, Nevada 89145 1 FAX: (702) 382	15	is no genuine issue as to any material fact that the moving party is entitled to judgment as a
AUF 001 Pa Vegas, 0711 F	16	matter of law." NRCP 56(c). The burden for demonstrating the absence of a genuine issue of
UIS 1( 1( 1( 1( 1( 1) 1( 1) 1( 1( 1( 1) 1( 1( 1( 1( 1( 1( 1) 1( 1( 1( 1( 1( 1( 1( 1( 1( 1( 1( 1( 1(	17	material fact lies with the moving party, and the material lodged by the moving party must be
MAKQU	18	viewed in the light most favorable to the non-moving party. Hoopes v. Hammargren, 102 Nev.
W	19	425, 429, 725 P.2d 238, 241 (1986). It is well settled in Nevada that the party opposing
	20	summary judgment is entitled to all favorable inferences from the pleadings and documentary
	21	evidence. See Mullis v. Nev. Nat'l Bank, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982). The non-
	22	moving party, however, "must, by affidavit or otherwise, set forth specific facts demonstrating
	23	the existence of a genuine issue for trial or have summary judgment entered against him."
	24	Bulbman, Inc. v. Nev. Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).
	25	13. To prevail on a breach of fiduciary duty claim in Nevada, Jacqueline and Kathryn
	26	bear the burden of showing that: (1) Eleanor owed them a fiduciary duty; (2) Eleanor breached
	27	that duty; and (3) Jacqueline and Kathyrn sustained damages as a proximate cause of the breach.
	28	See Mosier v. S. Cal. Physicians Ins. Exch., 74 Cal.Rptr.2d 550, 565 (Cal. Ct. App. 1998).

MARQUIS AURBACH COFFING

Page 3 of 5

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

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

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

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

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

2. Jacqueline and Kathryn's claim for breach of fiduciary duty against Eleanor, as Trustee of the Trust, is DENIED as it relates to the Accounting band on the Materian available to the Court on March 20, 2015 3. Summary judgment on Jacqueline and Kathryn's claim for breach of fiduciary

duty against Eleanor, as Trustee of the Trust, is GRANTED as it relates to Eleanor cutting of their 65% distributions of the oil income in June 2013;

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

JUDGE

Submitted by:

Dale A

MARQUIS AURBACH COFFING

lsa.

Attorneys for Eleanor Connell Hartman

Havés

Nevada Bar No. 3430 Liane K. Wakayama, Esq.,

Nevada Bar No. 11313 Candice E. Renka, Esq.,

Nevada Bar No. 11447 10001 Park Run Drive

Ahern, as Trustee

Las Vegas, Nevada 89145

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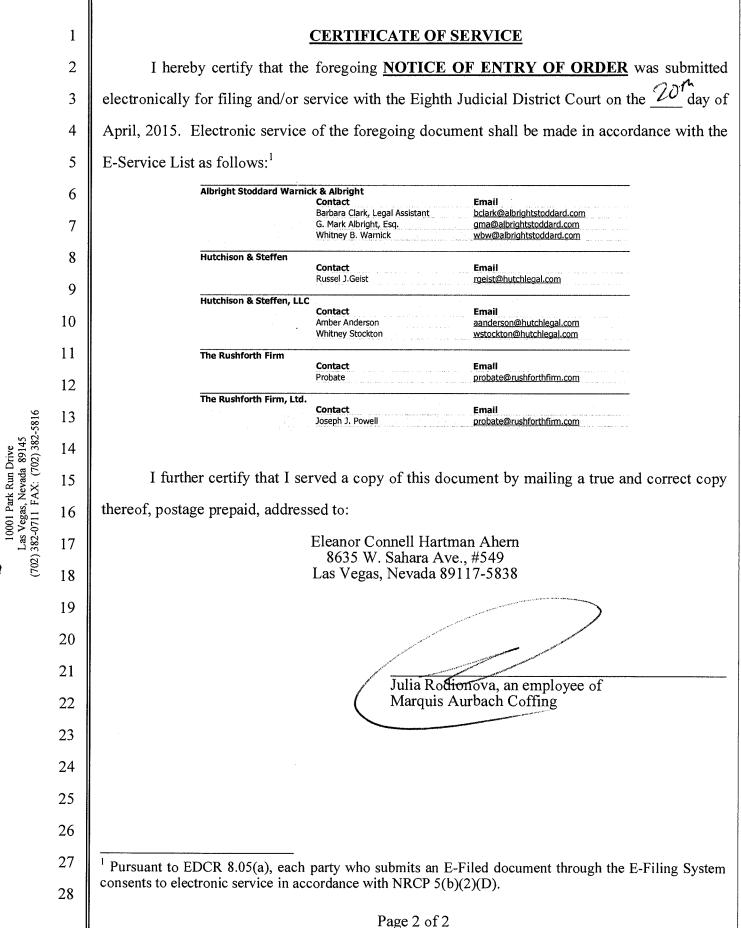
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**Marquis Aurbach Coffing** 1 Dale A. Hayes, Esq. tun x. St Nevada Bar No. 3430 2 Liane K. Wakayama, Esq. CLERK OF THE COURT 3 Nevada Bar No. 11313 Candice E. Renka, Esq. 4 Nevada Bar No. 11447 10001 Park Run Drive 5 Las Vegas, Nevada 89145 Telephone: (702) 382-0711 6 Facsimile: (702) 382-5816 dhayes@maclaw.com 7 lwakayama@maclaw.com crenka@maclaw.com 8 Attorneys for Eleanor Connell Hartman Ahern 9 **DISTRICT COURT** 10 **CLARK COUNTY, NEVADA** In the Matter of 11 Case No.: P-09-066425-T Dept. No.: 26 12 THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST DATED May 18, 13 1972, An Inter Vivos Irrevocable Trust. 14 **NOTICE OF ENTRY OF ORDER** 15 Please take notice that an Order Regarding the Accounting, Breach of Fiduciary Duty 16 Claims and Award of Attorney Fees was entered in the above-captioned matter on the 20<sup>th</sup> day of 17 April, 2015, a copy of which is attached hereto. 18 Dated this of April, 2015. 19 20 MARQUIS AURBACH COFFING 21 ON KA 22 B Dale A. Hayes, Esq. 23 Nevada Bar No. 3430 Liane K. Wakayama, Esq. 24 Nevada Bar No. 11313 Candice E. Renka, Esq. 25 Nevada Bar No. 11447 10001 Park Run Drive 26 Las Vegas, Nevada 89145 Attorneys for Eleanor Connell Hartman Ahern 27 28 Page 1 of 2 MAC: 2496360 1 4/20/2015 4:40 PM

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2 Nevada Bar No. 3430 Liane K. Wakayama, Esq. 3 Nevada Bar No. 11313 Candice E. Renka, Esq. 4 Nevada Bar No. 11447 10001 Park Run Drive Las Vegas, Nevada 89145 Telephone: (702) 382-0711 5 6 Facsimile: (702) 382-5816 dhayes@maclaw.com 7 lwakayama@maclaw.com crenka@maclaw.com 8 Attorneys for Eleanor Connell Hartman Ahern, as Trustee

Marquis Aurbach Coffing

Dale A. Hayes, Esq.

#### **DISTRICT COURT**

#### **CLARK COUNTY, NEVADA**

In the Matter of

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THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST DATED May 18, 1972, An Inter Vivos Irrevocable Trust. Case No.: P-09-066425-T Dept. No.: 26

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

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

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

Page 1 of 5

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MARQUIS AURBACH COFFING 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816 1. At a hearing held on January 30, 2015, the Court ordered that Eleanor Connell Hartman Ahern, as Trustee of The W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972 (the "Trust"), to produce an Accounting. The Court further ordered the parties to submit simultaneous briefing on the removal of Eleanor as trustee, an award of attorney fees and the best way for the Trust's administration to continue.

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

#### UNDISPUTED FACTS The Accounting

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

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

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

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

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

Page 2 of 5

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8. The \$500,000 on deposit with Fidelity Capital Inc. ("Fidelity Capital") is not a prudent investment. NRS 164. 640 et say.

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

#### **Cutting Off the 65% Income**

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

11. In June 2013, Eleanor cut off the 65% income stream of the net oil revenue in her capacity as Trustee of the Trust, w: thout first seeking Instruction from Comt. the second

### **CONCLUSIONS OF LAW**

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

25 To prevail on a breach of fiduciary duty claim in Nevada, Jacqueline and Kathryn 13. bear the burden of showing that: (1) Eleanor owed them a fiduciary duty; (2) Eleanor breached 26 that duty; and (3) Jacqueline and Kathyrn sustained damages as a proximate cause of the breach. 27 28

See Mosier v. S. Cal. Physicians Ins. Exch., 74 Cal.Rptr.2d 550, 565 (Cal. Ct. App. 1998).

Page 3 of 5

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

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

16. Based on Eleanor breaching her fiduciary duties, the Court will award Jacqueline and Kathryn their attorney fees and costs pursuant to NRS 153,031(3)(b). The Court reserves for a later date the exact amount of attorney fees and costs to be awarded.

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

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

2. Jacqueline and Kathryn's claim for breach of fiduciary duty against Eleanor, as Trustee of the Trust, is DENIED as it relates to the Accounting best on the Moranda 3. Summary judgment on Jacqueline and Kathryn's claim for breach of fiduciary

duty against Eleanor, as Trustee of the Trust, is GRANTED as it relates to Eleanor cutting of

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their 65% distributions of the oil income in June 2013; 111 111 Page 4 of 5 MAC:207-002 2488333\_1 4/13/2015 1:20 PM

Jacqueline and Kathryn shall submit an Application for their award of attorney 1 4. 2 fees and costs pursuant to NRS 153.031(3)(b), which shall include a proper analysis of the 3 factors set forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455 P.2d 31 (1969) as well as their redacted billing statements. The deadlines for the briefing schedule shall comply with 4 5 E.D.C.R. 2.20. The hearing on the Application shall be set for May 13, 2015 at 9:00 a.m. IT IS SO ORDERED this/ / day of April, 2015. 6

JUDGE

MARQUIS AURBACH COFFING

10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

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Submitted by:

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MARQUIS AURBACH COFFING

Hay

Nevada Bar No. 3430 Liane K. Wakayama, Esq.,

Nevada Bar No. 11313 Candice E. Renka, Esq.,

Nevada Bar No. 11447 10001 Park Run Drive

Ahern, as Trustee

Las Vegas, Nevada 89145

Attorneys for Eleanor Connell Hartman

Page 5 of 5

MAC:207-002 2488333 1 4/13/2015 1:20 PM

# DISTRICT COURT CLARK COUNTY, NEVADA

Probate - Trust/Conservatorships	COURT MINU	TES September 04, 2009
	ter of the Trust of Connell and Mar	: orie T. Connell Living Trust, dtd May 18, 1972
September 04, 9:30 AM 2009	Hearing	
HEARD BY: Yamashita, Wesley	У	COURTROOM: Courtroom 09
COURT CLERK: Melissa Swini	n	
PARTIES:		
David Mann, Other, not present	]	Pro Se
Eleanor Ahern, Petitioner, not pr	resent l	Kirk Lenhard, Attorney, not present
Fredrick Waid, Trustee, not pres		
Jacqueline Montoya, Other, Pers	onal J	oseph Powell, Attorney, not present
Representative, not present		
Kathryn Bouvier, Other, not pres		Whitney Warnick, Attorney, not pre <del>s</del> ent
Parties Receiving Notice, Other,	-	
The W.N. Connell and Marjorie		
Living Trust, dtd May 18, 1972, T present	Irust, not	
	IOURNAI	L'ENTRIES

- Matter being on the Approved List and there being no objection, COMMISSIONER RECOMMENDED, Petition GRANTED.

### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: December 13, 2013 9:30 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Courtroom 09 Yamashita, Wesley

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

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Canceled: December 04, 2014 11:00 AM

Canceled: December 04, 2014 10:30 AM

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Canceled: February 11, 2015 9:00 AM Motion

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### P-09-066425-T

Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

June 22, 2015 1:30 PM Evidentiary Hearing Esparza, Kerry Denman, Linda Sturman, Gloria RJC Courtroom 03H

PRINT DATE: 05/20/2015	Page 3 of 79	Minutes Date:	September 04, 2009
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# DISTRICT COURT CLARK COUNTY, NEVADA

Probate -	CC	URT MINU	UTES October 11, 2013				
Trust/Conservators	hips						
Р-09-066425-Т	In the Matter o The W.N. Con		of: rjorie T. Connell Living Trust, dtd May 18, 1972				
October 11, 2013	9:30 AM	Petition					
HEARD BY: Yam	ashita, Wesley		COURTROOM: Courtroom 09				
COURT CLERK:	COURT CLERK: Carol Foley						
PARTIES:							
David Mann, Othe	r, not present		Pro Se				
Eleanor Ahern, Pet	itioner, not preser	nt	Kirk Lenhard, Attorney, not present				
Fredrick Waid, Tru	stee, not present						
Jacqueline Montoy			Joseph Powell, Attorney, present				
Representative, not	1						
Kathryn Bouvier, Other, not present       Whitney Warnick, Attorney, not present							
Parties Receiving N	-						
The W.N. Connell a	,						
Living Trust, dtd N	iay 10, 1972, Trus	ι, ποι					
present							

# JOURNAL ENTRIES

- 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)

John Mugan, Esq. present on behalf of Eleanor Connell Ahern.

Mr. Mugan advised he was recently retained and Mr. Powell agreed to give him additional time to file a responsive pleading. Mr. Powell asked Court to refer matter to Judge Sturman. Following discussion, COMMISSIONER RECOMMENDED, matter referred to Judge Sturman and CONTINUED to 11/12/13 at 9:00 a.m.

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### **INTERIM CONDITIONS:**

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# DISTRICT COURT CLARK COUNTY, NEVADA

Probate - CO Trust/Conservatorships	URT MINUTES	November 12, 2013
P-09-066425-T In the Matter of The W.N. Conn		T. Connell Living Trust, dtd May 18, 1972
November 12, 9:00 AM 2013	Petition	
HEARD BY: Sturman, Gloria		COURTROOM: RJC Courtroom 03H
COURT CLERK: Linda Denman		
PARTIES:		
David Mann, Other, not present	Pro S	e
Eleanor Ahern, Petitioner, not present	t Kirk	Lenhard, Attorney, not present
Fredrick Waid, Trustee, not present		
Jacqueline Montoya, Other, Personal	Josep	h Powell, Attorney, present
Representative, not present	-	
Kathryn Bouvier, Other, not present	Whit	ney Warnick, Attorney, not present
Parties Receiving Notice, Other, not p	resent	
The W.N. Connell and Marjorie T. Co	nnell	
Living Trust, dtd May 18, 1972, Trust,	not	
present		

## JOURNAL ENTRIES

- Argument by counsel on PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS. 30.040, NRS 153.031(1)(E), and NRS 164.033(1)(A). Colloquy on petitioner's unnoticed MOTION TO REFER CONTESTED PROBATE MATTER TO MASTER-PROBATE COMMISSIONER PER EDCR 4.16. Court and Counsel agreed to consider petitioner's Motion as an opposition to the Petition. Mr. Mugan argued that the granddaughters, Jacqueline Montoya, trustee of the MTC Living Trust, and Kathryn Bouvier, were attempting to reform and reconstruct the prior confirmation of the trust by changing the terms of the allocation of the oil and gas proceeds between the parties. Mr. Powell argued that the percentage allocation has been the same for the past 33 years and he urged the Court to issue a declaratory judgment either stating that the granddaughters 65% and the petitioner's 35% was accurate or to at least go back to the status quo until the situation can be brought before the Court because his clients PRINT DATE: 05/20/2015 September 04, 2009 Page 7 of 79 Minutes Date:

rely upon the proceeds for their income. Counsel stated that an attorney in Texas informed the oil and gas companies that there is a dispute as to the terms of the pay-out and they have ceased distribution of any proceeds into the Trust at all according to either common practice or Texas law.

Following further argument, COURT STATED ITS FINDINGS that the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972, is under this Court's jurisdiction. COURT ORDERED all proceeds from the Texas oil and gas leases are to be resumed immediately and deposited with the trust; the trustee and beneficiary, Eleanor C. Ahern, is entitled to receive her undisputed 35% share; the 65% disputed portion is to be held in the Trust until this Court makes a determination as to its proper distribution. COURT FURTHER ORDERED matter SET for EVIDENTIARY HEARING on the February trial stack and understands that Mr. Powell is reserving his petition for fees, costs, and damages.

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

CALENDAR CALL: 1/24/2014 at 11:00AM TRIAL STACK: 2/18/2014 AT 9:00AM

## **INTERIM CONDITIONS:**

### **FUTURE HEARINGS:**

Canceled: December 13, 2013 9:30 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Courtroom 09 Yamashita, Wesley

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

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

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#### P-09-066425-T

Esparza, Kerry

Canceled: August 22, 2014 1:30 PM Motion to Compel Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Lunsford, Amy Courtroom 24 Beecroft, Chris A, Jr.

Canceled: December 04, 2014 11:00 AM

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Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

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P-09-066425-T

June 22, 2015 1:30 PM Evidentiary Hearing Esparza, Kerry Denman, Linda Sturman, Gloria RJC Courtroom 03H

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PRINT DATE:	05/20/2015	Page 10 of 79	Minutes Date:	September 04, 2009

# DISTRICT COURT CLARK COUNTY, NEVADA

Probate -	COU	<b>IRT MINUTES</b>	January 14, 2014
Trust/Conservators	nips		
Р-09-066425-Т	In the Matter of The W.N. Conne		T. Connell Living Trust, dtd May 18, 1972
January 14, 2014	9:00 AM	All Pending M	otions
HEARD BY: Sturr	nan, Gloria		COURTROOM: RJC Courtroom 03H
COURT CLERK: I	Linda Denman		
PARTIES:			
David Mann, Other	r, not present	Pro S	e
Eleanor Ahern, Peti	itioner, not present	Kirk	Lenhard, Attorney, not present
Fredrick Waid, Tru	stee, not present		
Jacqueline Montoya	a, Other, Personal	Josep	h Powell, Attorney, present
Representative, not	present		
Kathryn Bouvier, C	her, not present	Whit	ney Warnick, Attorney, not present
Parties Receiving N	-		
The W.N. Connell a	,		
Living Trust, dtd M	lay 18, 1972, Trust, 1	not	
present			

## JOURNAL ENTRIES

- HEARING ON 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) . . . . Argument by counsel as to claims preclusion and whether the elements had been met since the matter was brought before the Court in 2009 on a reformation and clarification as to the beneficiaries in the event of petitioner's death. COURT STATED ITS FINDINGS that the elements for claim preclusion have not been met since there is no way to anticipate that four years later the trustee would change the distribution for those issues to have been raised in 2009. COURT ORDERED Motion to Dismiss DENIED.

HEARING ON PETITION TO COMPEL TRUSTEE TO DISTRIBUTE ACCRUED INCOME ANDFUTURE INCOME RECEIVED FROM OIL, GAS, AND MINERAL LEASES AND DECLARATIONPRINT DATE:05/20/2015Page 11 of 79Minutes Date:September 04, 2009

### P-09-066425-T

OF THE APPLICABILITY OF THE DOCTRINE OF LACHES ..... Counsel argued the Court's previous ruling that granted Trustee Ahern the 35% income from the Texas oil and gas leases and the 65% income in dispute to be held until a hearing could be held, the effect of spoliation and Doctrine of Laches on Trustee Ahern's change of distribution, and irreparable harm/success on the merits as to all parties. Upon inquiry of the Court as to bringing this petition now, Mr. Powell stated he felt the issues raised could be dealt with today which would make the upcoming evidentiary hearing unnecessary. COURT STATED ITS FINDINGS that sworn testimony needed to be heard since the facts of distribution from the original trust are in dispute and to decide if Laches is applicable. COURT ORDERED Petition to Compel DENIED WITHOUT PREJUDICE.

### **INTERIM CONDITIONS:**

### **FUTURE HEARINGS:**

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

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

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## DISTRICT COURT CLARK COUNTY, NEVADA

Probate - 0	COURT MINUTES	January 24, 2014
Trust/Conservatorships		- -
	r of the Trust of: onnell and Marjorie	T. Connell Living Trust, dtd May 18, 1972
January 24, 2014 11:00 AM		
HEARD BY: Sturman, Gloria		COURTROOM: RJC Courtroom 03H
COURT CLERK: Linda Denman		
PARTIES:		
David Mann, Other, not present	Pro S	e
Eleanor Ahern, Petitioner, not present		Lenhard, Attorney, not present
Fredrick Waid, Trustee, not preser	nt	
Jacqueline Montoya, Other, Personal		h Powell, Attorney, present
Representative, not present		
Kathryn Bouvier, Other, not present		ney Warnick, Attorney, not present
Parties Receiving Notice, Other, no	-	
The W.N. Connell and Marjorie T.		
Living Trust, dtd May 18, 1972, Tr	ust, not	
present		

## JOURNAL ENTRIES

- At CALENDAR CALL, counsel announced ready to proceed. Mr. Mugan advised the Court of one potential problem dealing with the Texas probate matter. He stated the matter was stayed due to the health problems of the expert witness, a witness he also intended use, and didn't know the effect of the stay on this case but wanted to bring the Court's attention to this problem. Mr. Powell disagreed saying the Will doesn't need to be probated and this is another delaying tactic against his clients who have not been receiving any distribution since the stay was imposed. Court stated the bench trial will proceed unless and until a motion is filed requesting a continuance.

 Bench Trial Dates:

 Tuesday,
 2.18.14 at 9:00AM

 Wednesday,
 2.19.14 at 1:30PM

 Thursday,
 2.20.14 at 9:00AM

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 September 04, 2009

### P-09-066425-T

Friday, 2.21.14 at 1:30PM

Pre-Trial Conference: Wednesday, 2.12.14 at 11:00AM

### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

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#### P-09-066425-T

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# DISTRICT COURT CLARK COUNTY, NEVADA

Probate -	COU	JRT MINUTES	February 12, 2014
Trust/Conservators	hips		-
Р-09-066425-Т	In the Matter of The W.N. Conne		Г. Connell Living Trust, dtd May 18, 1972
February 12, 2014	11:00 AM	Pre Trial Confe	rence
HEARD BY: Stur	man, Gloria		COURTROOM: RJC Courtroom 03H
COURT CLERK:	Linda Denman		
PARTIES:			
David Mann, Othe	r, not present	Pro Se	Ĵ
Eleanor Ahern, Pet	itioner, not present	Kirk L	Lenhard, Attorney, not present
Fredrick Waid, Tru	stee, not present		
Jacqueline Montoya, Other, Personal			h Powell, Attorney, present
Representative, not	t present		
Kathryn Bouvier, C	*		ney Warnick, Attorney, not present
6	Jotice, Other, not pi		
	and Marjorie T. Cor		
Living Trust, dtd N	1ay 18, 1972, Trust,	not	
present			

## JOURNAL ENTRIES

- At PRE TRIAL CONFERENCE, counsel appeared and announced they were ready for trial. Counsel agreed to start the trial at 10:00am to accommodate the plaintiff's first witness. Trial exhibits, trial briefs, and findings of fact were submitted along with electronic versions for the Court's use. Mr. Powell mentioned he was putting together a printed power point presentation and would make sure opposing counsel was provided a copy before trial. Mr. Mugan also listed a few accommodations that would be needed from the Court due to his client's health and Court was happy to oblige.

## **INTERIM CONDITIONS:**

PRINT DATE:	05/20/2015	Page 17 of 79	Minutes Date:	September 04, 2009
		I uge 17 of 7		

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Canceled: February 11, 2015 9:00 AM Motion

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### P-09-066425-T

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Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

June 22, 2015 1:30 PM Evidentiary Hearing Esparza, Kerry Denman, Linda Sturman, Gloria RJC Courtroom 03H

PRINT DATE:	05/20/2015	Page 19 of 79	Minutes Date:	September 04, 2009
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# DISTRICT COURT CLARK COUNTY, NEVADA

Probate - COURT MIN		IUTES February 18, 2014
Trust/Conservators	nips	
P-09-066425-T In the Matter of the Trust The W.N. Connell and Ma		of: arjorie T. Connell Living Trust, dtd May 18, 1972
February 18, 2014	10:00 AM	
HEARD BY: Sturman, Gloria		COURTROOM: RJC Courtroom 03H
COURT CLERK: Linda Denman		
PARTIES:		
David Mann, Other, not present		Pro Se
Eleanor Ahern, Petitioner, present		John Mugan, Attorney, present
Fredrick Waid, Trustee, not present		
Jacqueline Montoya, Other, present		Joseph Powell, Attorney, present
Kathryn Bouvier, Other, not present		Whitney Warnick, Attorney, not present
Parties Receiving N	otice, Other, not present	
The W.N. Connell a	nd Marjorie T. Connell	
Living Trust, dtd M	lay 18, 1972, Trust, not	
present		

## JOURNAL ENTRIES

- BENCH TRIAL - DAY

Mr. Powell raised concerns about the counter-claims included in Respondent's Answer filed last week, specifically the no-contest clause and the tortious interference with a contract and asked that they be dismissed for lack of notice. Colloquy as to whether the trial could proceed on the petition or whether all issues had to be litigated at one time. Following the discussion, COURT STATES ITS FINDINGS that the counter-claims are valid affirmative defenses arising from the same occurrence. Counsel requested a break to discuss options with their clients.

Court resumed and counsel stated they were in agreement to continue the trial and a new trial date was given for the August stack. Court mentioned they might also want to bifurcate the tort issue if Discovery could not be completed. Mr. Powell requested fees and costs for preparing for today's trial and Court directed him to prepare an Affidavit. He also requested the matter be returned to status

	<b>_</b>	1		
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quo in which the trust was distributed 65/35 for the last 33 years. Court requested the request be put in writing. Court returned all exhibits to counsel and stated an amended trial order would be sent.

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

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

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

Canceled: July 18, 2014 11:00 AM

Canceled: August 11, 2014 9:00 AM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Sturman, Gloria RJC Courtroom 03H Esparza, Kerry

Canceled: August 22, 2014 1:30 PM Motion to Compel Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Lunsford, Amy Courtroom 24 Beecroft, Chris A, Jr.

Canceled: December 04, 2014 11:00 AM

Canceled: December 04, 2014 10:30 AM

Canceled: December 04, 2014 11:00 AM Status Check

Canceled: December 04, 2014 10:30 AM Status Check

Canceled: December 04, 2014 11:00 AM Status Check

Canceled: December 04, 2014 10:30 AM Status Check

Page 21 of 79 Minutes Date:

Canceled: December 04, 2014 11:00 AM Status Check

Canceled: December 04, 2014 10:30 AM Status Check

Canceled: December 10, 2014 10:00 AM Motion to Enforce

Canceled: December 12, 2014 9:30 AM Hearing - HM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Courtroom 09 Foley, Carol Yamashita, Wesley

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

*Canceled: April 17, 2015 11:00 AM Reason: Vacated* 

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

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Probate -	CO	URT MINU	JTES April 22, 2014
Trust/Conservators	hips		*
Р-09-066425-Т	In the Matter of The W.N. Conr		of: rjorie T. Connell Living Trust, dtd May 18, 1972
April 22, 2014	9:00 AM	Petition	
HEARD BY: Stur	man, Gloria		COURTROOM: RJC Courtroom 03H
COURT CLERK:	Linda Denman		
PARTIES:			
David Mann, Othe	r, not present		Pro Se
Eleanor Ahern, Pet	titioner, not presen	t	Kirk Lenhard, Attorney, not present
Fredrick Waid, Tru	istee, not present		
Jacqueline Montoy	a, Other, Personal		Joseph Powell, Attorney, present
Representative, no	t present		
Kathryn Bouvier, C	Other, not present		Whitney Warnick, Attorney, not present
Parties Receiving N	Notice, Other, not p	present	
The W.N. Connell	and Marjorie T. Co	nnell	
Living Trust, dtd N	/lay 18, 1972, Trust	, not	
present			

# JOURNAL ENTRIES

- Discussion by counsel on PETITION FOR RELEASE OF TRUST FUNDS FOR THE PAYMENT OF ADMINISTRATIVE EXPENSES, INSURANCE PREMIUMS AND TAXES ATTRIBUTABLE TO TRUST PROPERTY on Mr. Mugan's statement that the objections raised involved misunderstandings as to the petition's intent. He explained that Ms. Ahern had paid the October Ad Valorem taxes out of her share since the 65% was temporarily blocked pending trial and this Petition was to reimburse her now that the trial has been delayed. Also, the Petition is not requesting attorney fees and accounting fees are not being assessed against work done on behalf of Ms. Ahern personally. Mr. Powell agreed Ms. Montoya had no objections with the clarification presented by Mr. Mugan as long as there was full transparency for the administrative expenses. Counsel also discussed the selection of Gamett & King) as the accounting firm for the Trust and there was no objection.

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

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PRINT	DATE:	05/20/2015	Page 23 of 79	Minutes Date:	September 04, 2009

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Sturman, Gloria Esparza, Kerry RJC Courtroom 03H Canceled: July 17, 2014 11:00 AM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Sturman, Gloria RJC Courtroom 03H Esparza, Kerry Knight, Marwanda Canceled: July 18, 2014 11:00 AM Canceled: August 11, 2014 9:00 AM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Sturman, Gloria RJC Courtroom 03H Esparza, Kerry Canceled: August 22, 2014 1:30 PM Motion to Compel Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Lunsford, Amy Courtroom 24 Beecroft, Chris A, Jr. Canceled: December 04, 2014 11:00 AM Canceled: December 04, 2014 10:30 AM Canceled: December 04, 2014 11:00 AM Status Check Canceled: December 04, 2014 10:30 AM Status Check Canceled: December 04, 2014 11:00 AM Status Check Canceled: December 04, 2014 10:30 AM Status Check Canceled: December 04, 2014 11:00 AM Status Check Canceled: December 04, 2014 10:30 AM Status Check Canceled: December 10, 2014 10:00 AM Motion to Enforce

Canceled: May 27, 2014 9:00 AM Petition - HM

PRINT DATE:	05/20/	/2015
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Page 24 of 79 Minutes Date:

Canceled: December 12, 2014 9:30 AM Hearing - HM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Courtroom 09 Foley, Carol Yamashita, Wesley

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

*Canceled: April 17, 2015 11:00 AM Reason: Vacated* 

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

PRINT DATE:	05/20/2015	Page 25 of 79	Minutes Date:	September 04, 2009
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Probate -	COU	JRT MINUTES	May 13, 2014	
Trust/Conservators	hips			
Р-09-066425-Т	In the Matter of The W.N. Conne		Connell Living Trust, dtd May 18, 1972	
May 13, 2014	9:00 AM	All Pending Motion	ns	
HEARD BY: Stur	man, Gloria	CO	OURTROOM: RJC Courtroom 03H	
COURT CLERK:	Linda Denman			
PARTIES:				
David Mann, Other	r, not present	Pro Se		
Eleanor Ahern, Pet	itioner, not present	Kirk Lenh	hard, Attorney, not present	
Fredrick Waid, Tru	stee, not present			
Jacqueline Montoya	a, Other, Personal	Joseph Po	owell, Attorney, present	
Representative, not	present			
Kathryn Bouvier, C	Other, not present	Whitney V	Warnick, Attorney, not present	
Parties Receiving N	lotice, Other, not pi	resent		
The W.N. Connell a	and Marjorie T. Cor	nnell		
Living Trust, dtd M	1ay 18, 1972, Trust,	not		
present				

# JOURNAL ENTRIES

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

PRINT DATE:05/20/2015Page 26 of 79Minutes Date:September 04, 2009

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

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

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

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

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

### **INTERIM CONDITIONS:**

### **FUTURE HEARINGS:**

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

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

PRINT DATE:	05/20/2015	Page 27 of 79	Minutes Date:	September 04, 2009
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Knight, Marwanda

Canceled: July 18, 2014 11:00 AM

Canceled: August 11, 2014 9:00 AM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Sturman, Gloria RJC Courtroom 03H Esparza, Kerry

Canceled: August 22, 2014 1:30 PM Motion to Compel Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Lunsford, Amy Courtroom 24 Beecroft, Chris A, Jr.

Canceled: December 04, 2014 11:00 AM

Canceled: December 04, 2014 10:30 AM

Canceled: December 04, 2014 11:00 AM Status Check

Canceled: December 04, 2014 10:30 AM Status Check

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Canceled: December 10, 2014 10:00 AM Motion to Enforce

Canceled: December 12, 2014 9:30 AM Hearing - HM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Courtroom 09 Foley, Carol Yamashita, Wesley

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

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*Canceled: April 17, 2015 11:00 AM Reason: Vacated* 

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

PRINT DATE:         05/20/2015         Page 29 of 79         Minutes Date:         9	NT DATE:	05/20/2015	Page 29 of 79	Minutes Date:	September 04, 2009
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Probate - Trust/Conservatorships	COURT MINUTES	September 03, 2014
P-09-066425-T In the Mat	ter of the Trust of: Connell and Marjorie T	<sup>-</sup> . Connell Living Trust, dtd May 18, 1972
September 03, 9:00 AM 2014		
HEARD BY: Bulla, Bonnie		COURTROOM: RJC Level 5 Hearing Room
COURT CLERK: Jennifer Lott		
PARTIES:		
David Mann, Other, not present	Pro Se	
Eleanor Ahern, Petitioner, not pr Fredrick Waid, Trustee, not pres		enhard, Attorney, not present
Jacqueline Montoya, Other, Pers Representative, not present	onal Josepl	n Powell, Attorney, present
Kathryn Bouvier, Other, not pres	sent Whitr	ey Warnick, Attorney, not present
Parties Receiving Notice, Other, The W.N. Connell and Marjorie Living Trust, dtd May 18, 1972, 7 present	not present T. Connell	

# JOURNAL ENTRIES

- If counsel are requesting an accounting of the Trust, they need to ask Judge Sturman. However, Commissioner does not believe counsel are there yet. Colloquy re: whether or not 65/35 split should have been inherited by the Granddaughters.

COMMISSIONER RECOMMENDED, as the Motion was presented today, it is DENIED WITHOUT PREJUDICE as this motion is premature; alternative relief discussed re: what should be turned over. Colloquy re: Form 706 estate tax return was produced but redacted. Arguments by counsel. Colloquy re: status of relationship of the parties. If Ms. Ahern wants to make a Motion an accounting at a later time, Commissioner will revisit the issue; however, it is highly unlikely that Commissioner would ever order production of financial documents, or distribution of the Trust that didn't involve

	*			
PRINT DATE:	05/20/2015	Page 30 of 79	Minutes Date:	September 04, 2009

65/35 split.

Commissioner advised Mr. Lum to check what you have, and discuss information with Mr. Powell. Commissioner highly RECOMMENDED Ms. Ahern turn over information on the 35 percent so everyone knows what was reported from the oil leases.

COMMISSIONER RECOMMENDED, the Motion cannot be brought back to Commissioner's attention until the District Court Judge orders an accounting of the MTC Living Trust (include Caveat in Recommendation).

Mr. Powell to prepare the Report and Recommendations, and Mr. Lum to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Powell to appear at status check hearing to report on the Report and Recommendations.

10/10/14 11:00 a.m. Status Check: Compliance

## **INTERIM CONDITIONS:**

### **FUTURE HEARINGS:**

Canceled: December 04, 2014 11:00 AM

Canceled: December 04, 2014 10:30 AM

Canceled: December 04, 2014 11:00 AM Status Check

Canceled: December 04, 2014 10:30 AM Status Check

Canceled: December 04, 2014 11:00 AM Status Check

Canceled: December 04, 2014 10:30 AM Status Check

Canceled: December 04, 2014 11:00 AM Status Check

Canceled: December 04, 2014 10:30 AM Status Check

Canceled: December 10, 2014 10:00 AM Motion to Enforce

Canceled: December 12, 2014 9:30 AM Hearing - HM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Courtroom 09 Foley, Carol Yamashita, Wesley

*Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated* 

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Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

Probate -		RT MINUTES	Octob	per 10, 2014	
Trust/Conservatorships	<u>s</u>				
	In the Matter of t The W.N. Connel		Г. Connell Living T	'rust, dtd May 18, 1972	
October 10, 2014 11	:00 AM	Status Check			
HEARD BY: Bulla, Bo	onnie		COURTROOM:	RJC Level 5 Hearing Room	
COURT CLERK: Alar	n Castle				
PARTIES:					
David Mann, Other, no	ot present	Pro Se	e		
Eleanor Ahern, Petition Fredrick Waid, Trustee	ner, not present	Kirk l	Lenhard, Attorney,	not present	
Jacqueline Montoya, O	1	Iosep	Joseph Powell, Attorney, not present		
Representative, not pre		<b>5</b> 1	, , ,	1	
Kathryn Bouvier, Other, not present			ney Warnick, Attor	ney, not present	
Parties Receiving Notic	-			5 1	
The W.N. Connell and	Marjorie T. Con	nell			
Living Trust, dtd May	18, 1972, Trust, r	not			
present					

### JOURNAL ENTRIES

- COMMISSIONER RECOMMENDED, Mr. Powell to make \$100.00 CONTRIBUTION for Failing to Appear before the Discovery Commissioner; payment DUE to Clark County Pro Bono project (Legal Aid Center) 30 DAYS after Court signs the recommendation. Mr. Powell having failed to appear before the Discovery Commissioner and not having submitted a proper Report and Recommendations from the 9/03/14 hearing timely, COMMISSIONER RECOMMENDED, report is DUE Within ten (10) Days from this date. Counsel to submit proper DCRR by next status date or it will result in PROGRESSIVE SANCTIONS. FURTHER, Mr. Powell to make additional \$100.00 CONTRIBUTION for his failure to provide a proper, timely Report and Recommendations. Contributions are due to Legal Aid Center of Southern Nevada (Pro Bono Project) thirty (30) DAYS after Court signs the recommendation, a proof of \$200.00 payment must be submitted to the Discovery Commissioner. Status check set.

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11/14/14 11:00 a.m. Status Check: Compliance/Progressive Sanctions

CLERK'S NOTE: The above minute order has been distributed to: Joseph Powell, Esq. (The Rushforth Firm. Ltd.), P.O. Box 371655, Las Vegas, NV 89137; joey@rushforth.net. ac/10/20/14.

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

*Canceled: December 04, 2014 11:00 AM Canceled: December 04, 2014 10:30 AM* 

Canceled: December 04, 2014 11:00 AM Status Check

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Canceled: December 04, 2014 10:30 AM Status Check

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Canceled: December 04, 2014 10:30 AM Status Check

Canceled: December 10, 2014 10:00 AM Motion to Enforce

Canceled: December 12, 2014 9:30 AM Hearing - HM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Courtroom 09 Foley, Carol Yamashita, Wesley

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie

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Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

Probate - Trust/Conservatorshi		URT MINUTES	Nove	mber 14, 2014	
Р-09-066425-Т	In the Matter of The W.N. Conne		Г. Connell Living T	'rust, dtd May 18, 1972	
November 14, 2014	11:00 AM	Status Check			
HEARD BY: Bulla,	Bonnie		COURTROOM:	RJC Level 5 Hearing Room	
COURT CLERK: Je	nnifer Lott				
PARTIES:					
David Mann, Other,	not present	Pro Se	e		
Eleanor Ahern, Petit Fredrick Waid, Trus	-	Kirk I	Lenhard, Attorney,	not present	
Jacqueline Montoya, Other, Personal			Joseph Powell, Attorney, present		
Representative, not p	present	-	-	-	
Kathryn Bouvier, Other, not present			Whitney Warnick, Attorney, not present		
Parties Receiving No	-				
The W.N. Connell ar	,				
Living Trust, dtd Ma	ay 18, 1972, Trust, 1	not			
present					
		IOURNAL ENT	TRIFS		

- Commissioner read both letters. Mr. Powell stated Mr. Lum is no longer involved.

COMMISSIONER RECOMMENDED, matter CONTINUED; as soon as possible, Mr. Powell to prepare the Report and Recommendation from Sept. 3, 2014; counsel is relieved from obtaining Mr. Lum's signature.

Mr. Powell to prepare the Report and Recommendations, and submit it directly to Commissioner. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Powell to appear at status check hearing to report on the Report and Recommendations.

rage 50.0179   rage 50.0179   vinitutes Date.   September 04, 20	PRINT DATE:	05/20/2015	Page 36 of 79	Minutes Date:	September 04, 2009
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#### 12/19/14 11:00 a.m. Status Check: Compliance

CLERK'S NOTE: Ms. Exley, Law Clerk to David Mann, appeared after court, and Commissioner provided the outcome.

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: December 04, 2014 11:00 AM

Canceled: December 04, 2014 10:30 AM

Canceled: December 04, 2014 11:00 AM Status Check

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Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM

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Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

PRINT DATE:	05/20/2015	Page 38 of 79	Minutes Date:	September 04, 2009
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Probate -	COU	JRT MINUT	E <b>S</b> Dece	ember 04, 2014
Trust/Conservatorsh	ips			
Р-09-066425-Т	In the Matter of The W.N. Conne		rie T. Connell Living	Trust, dtd May 18, 1972
December 04, 2014	10:30 AM	Motion		
HEARD BY: Sturm	an, Gloria		COURTROOM:	RJC Courtroom 03H
COURT CLERK: L	inda Denman			
PARTIES:				
David Mann, Other,	not present	Pı	o Se	
Eleanor Ahern, Petit	ioner, not present	K	rk Lenhard, Attorney	, not present
Fredrick Waid, Trus	tee, not present		-	-
Jacqueline Montoya,	Other, Personal	Jo	seph Powell, Attorne	y, present
Representative, not j	present			
Kathryn Bouvier, Ot	her, not present	W	hitney Warnick, Atto	rney, present
Parties Receiving No	otice, Other, not pr	resent		
The W.N. Connell an	nd Marjorie T. Cor	nnell		
Living Trust, dtd Ma	ay 18, 1972, Trust,	not		
present				

### JOURNAL ENTRIES

- PETITION FOR DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF LANGUAGE RELATING TO TRUST NO. 2 . . . . MOTION TO DISMISS COUNTERCLAIMS OF ELEANOR C. AHERN . . . . PETITION FOR CONSTRUCTION AND EFFECT OF PROBATE COURT ORDER . . . . STATUS CHECK: SETTLEMENT/TRIAL SETTING

COURT ORDERED all motions CONTINUED.

CONTINUED TO 1/14/2015 AT 10:00AM

### **INTERIM CONDITIONS:**

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#### **FUTURE HEARINGS:**

Canceled: December 04, 2014 11:00 AM

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Canceled: December 10, 2014 10:00 AM Motion to Enforce

Canceled: December 12, 2014 9:30 AM Hearing - HM Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Courtroom 09 Foley, Carol Yamashita, Wesley

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

June 22, 2015 1:30 PM Evidentiary Hearing Esparza, Kerry Denman, Linda Sturman, Gloria RJC Courtroom 03H

Page 40 of 79 Minutes Date:

Р-09-066425-Т

Probate -	COURT	Γ MINUTES	December 12, 2014		
Trust/Conservatorsh	ips				
Р-09-066425-Т	In the Matter of the The W.N. Connell a		Living Trust, dtd May 18, 1972		
December 12, 2014	9:30 AM He	earing - HM			
HEARD BY: Yama	ashita, Wesley	COURTR	OOM: Courtroom 09		
COURT CLERK: C	arol Foley				
PARTIES:					
David Mann, Other,	not present	Pro Se			
Eleanor Ahern, Petitioner, not present		Kirk Lenhard, A	ttorney, not pre <del>s</del> ent		
Fredrick Waid, Trus	tee, not present				
Jacqueline Montoya, Other, Personal		Joseph Powell, A	Joseph Powell, Attorney, not present		
Representative, not present					
Kathryn Bouvier, Other, not present Whitney Warnick, Attorney, not present			k, Attorney, not present		
Parties Receiving Notice, Other, not present					
The W.N. Connell and Marjorie T. Connell					
Living Trust, dtd Ma	ay 18, 1972, Trust, not	t			
present					

# JOURNAL ENTRIES

- Prior to the time set for hearing, COMMISSIONER RECOMMENDED, matter taken OFF CALENDAR.

# **INTERIM CONDITIONS:**

### **FUTURE HEARINGS:**

Canceled: December 12, 2014 9:30 AM Hearing - HM

PRINT DATE: 05/20/2015 Page 42 of 79 Minut	tes Date: September 04, 2009
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Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Courtroom 09 Foley, Carol Yamashita, Wesley

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

PRINT DATE:	05/20/2015	Page 43 of 79	Minutes Date:	September 04, 2009
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Probate -	COU	RT MINUTES	December 17, 2014		
Trust/Conservatorsh	nips				
Р-09-066425-Т	In the Matter of t The W.N. Conne		onnell Living Trust, dtd May 18, 1972		
December 17, 2014	9:00 AM	Motion to Enforce			
HEARD BY: Sturn	nan, Gloria	CO	URTROOM: RJC Courtroom 03H		
COURT CLERK: 1	Linda Denman				
PARTIES:					
David Mann, Other	, not present	Pro Se			
Eleanor Ahern, Petitioner, not present		Kirk Lenh	nard, Attorney, not present		
Fredrick Waid, Trustee, not present					
Jacqueline Montoya, Other, Personal		Joseph Po	Joseph Powell, Attorney, present		
Representative, not present					
5 1			Warnick, Attorney, present		
Parties Receiving Notice, Other, not present					
The W.N. Connell a	,				
Living Trust, dtd M	lay 18, 1972, Trust, 1	not			
present					

# JOURNAL ENTRIES

# - MOTION TO ENFORCE SETTLEMENT AGREEMENT

Mr. Warnick explained the events leading up to Oct. 22, which included a Nevada Supreme Court (NSC) settlement conference that did not resolve the dispute but counsel left agreeing to continue to try and resolve the issues. The arbitrator held off reporting to the NSC in hope the parties could reach a resolution. On Oct. 22, all parties and their counsel met at attorney Jeffrey Burr's offices to take Jacqueline Montoya's deposition. Instead, they began to settle the matter and caucused back and forth with the family members, who were in separate offices, and with all the attorneys. Finally, at the end of the day, the parties reached a settlement agreement and the terms were put on the record by the court reporter. The NSC arbitrator was notified and submitted a report showing the matter settled. However, six (6) days later, Ms. Ahern fired her counsel and refused to accept the settlement. Counsel requested the Court enforce the settlement.

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Ms. Renka argued the settlement was a conversation among attorneys and was not reduced to writing, was not signed by Ms. Ahern, and was not entered into the Court's record. Additionally, Ms. Ahern was not in the room when the terms were read into the record and the agreement is deficient in resolving back payments, delayed payments, Texas attorney's fees, and there are no provisions for handling Federal taxes. Ms. Renka concluded there was clearly no meeting of the minds and asked the Court to deny the Motion to Enforce. Upon the Court's questioning as to counsel's reliance on attorneys ability to negotiate with and bind their clients, Ms. Renka advised that there is a rebuttal presumption and Ms. Ahern's is that she never agreed to vacate Jacqueline Montoya's deposition; she was never able to visit with her Texas Advisors; and she did not know the current cost of gas and the tax consequences.

COURT FINDS the fact that Ms. Ahern was not present in the room when the terms were being announced and did not verbally agree to the settlement. The Court did express concern that Ms. Ahern does not realize the full implications should the case not go her way; for example, she may be required to pay attorney fees for her daughters and all costs. Further, the advice she is receiving from her Texas counsel regarding oil and gas law may not be in her best interest as to Nevada's probate law. COURT ORDERED Motion to Enforce DENIED.

Ms. Renka to prepare proposed Order; opposing counsel to review as to form and content.

### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

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Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

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Probate - CO Trust/Conservatorships	URT MINUTES	December 19, 2014		
P-09-066425-T In the Matter of The W.N. Conn		T. Connell Living Trust, dtd May 18, 1972		
December 19, 2014 11:00 AM	Status Check			
HEARD BY: Bulla, Bonnie		COURTROOM: RJC Level 5 Hearing Room		
COURT CLERK: Alan Castle				
PARTIES:				
David Mann, Other, not present	Pro S	e		
Eleanor Ahern, Petitioner, not present Fredrick Waid, Trustee, not present	t Kirk	Lenhard, Attorney, not present		
Jacqueline Montoya, Other, Personal Representative, not present		Joseph Powell, Attorney, present		
Kathryn Bouvier, Other, not present	Whit	Whitney Warnick, Attorney, not present		
Parties Receiving Notice, Other, not p				
The W.N. Connell and Marjorie T. Co				
Living Trust, dtd May 18, 1972, Trust,	not			
present				

### JOURNAL ENTRIES

- Colloquy. Discovery Commissioner Finds the Respondent's counsel will prepare the Report and Recommendations regarding the 9/03/14 hearing; Discovery Commissioner agrees that only current counsel need sign off on that report and recommendation and that all prior counsel are relieved from that obligation. Discovery Commissioner directed Mr. Powell to submit a cover letter with the Recommendations explaining the same. Status check set.

Ms. Wakayama advised the Court of difficulty in obtaining file from prior counsel. Counsel indicated Mr. Mann has not responded to transfer of file. Ms. Wakayama requested to file an emergency motion to compel Mr. Mann to produce the file to counsel. The Discovery Commissioner notes there is not sufficient time to hear the motion before the upcoming dispositive motions are due. Colloquy regarding actions taken by counsel and possibility of setting a phone conference. Counsel PRINT DATE: 05/20/2015 Page 47 of 79 Minutes Date: September 04, 2009

indicated she has contacted the State Bar. Colloquy regarding motion to enforce settlement. Discovery Commissioner directed Ms. Wakayama to see if counsel could get a phone conference set up for next week.

1/09/15 11:00 a.m. Status Check: Compliance

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

1 age to 0 7	PRINT DATE:	05/20/2015	Page 48 of 79	Minutes Date:	September 04, 2009
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Probate -	COURT MINUTES	Janua	ary 09, 2015
Trust/Conservatorships			
	ter of the Trust of: Connell and Marjorie 1	Г. Connell Living Т	Frust, dtd May 18, 1972
January 09, 2015 11:00 AM			
HEARD BY: Bulla, Bonnie		COURTROOM:	RJC Level 5 Hearing Room
COURT CLERK: Jennifer Lott			
PARTIES:			
David Mann, Other, not present	Pro Se	e	
Eleanor Ahern, Petitioner, not pr Fredrick Waid, Trustee, not pres		Lenhard, Attorney,	not present
Jacqueline Montoya, Other, Personal Representative, not present		Joseph Powell, Attorney, not present	
Kathryn Bouvier, Other, not present		Whitney Warnick, Attorney, not present	
Parties Receiving Notice, Other,	2		
The W.N. Connell and Marjorie			
Living Trust, dtd May 18, 1972, T	Frust, not		
present			

### JOURNAL ENTRIES

- Report and Recommendation was returned to counsel Dec. 2, 2014. Mr. Powell will resubmit Report and Rec. shortly. Colloquy re: the change in counsel. No Trial date.

COMMISSIONER RECOMMENDED, matter CONTINUED; Mr. Powell to prepare the Report and Recommendations. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Powell to appear at status check hearing to report on the Report and Recommendations.

### 2/20/15 11:00 a.m. Status Check: Compliance

PRINT DATE: 05	5/20/2015	Page 49 of 79	Minutes Date:	September 04, 2009
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#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

	PRINT DATE:	05/20/2015	Page 50 of 79	Minutes Date:	September 04, 2009
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Probate -	COU	<b>RT MINUTES</b>	January 14, 2015
Trust/Conservatorsh	nips		- <u> </u>
Р-09-066425-Т	In the Matter of t The W.N. Conne		T. Connell Living Trust, dtd May 18, 1972
January 14, 2015	9:00 AM	All Pending M	lotions
HEARD BY: Sturn	nan, Gloria		COURTROOM: RJC Courtroom 03H
COURT CLERK: I	Linda Denman		
PARTIES:			
David Mann, Other	, not present	Pro S	Se
Eleanor Ahern, Peti	-	Kirk	Lenhard, Attorney, not present
Fredrick Waid, Trus	stee, not present		
Jacqueline Montoya	n, Other, Personal	Josep	ph Powell, Attorney, present
Representative, not	present		
Kathryn Bouvier, O	ther, not present	Whit	tney Warnick, Attorney, present
Parties Receiving N	otice, Other, not pr	esent	
The W.N. Connell a	nd Marjorie T. Con	nell	
Living Trust, dtd M	lay 18, 1972, Trust, 1	not	
present			

# JOURNAL ENTRIES

- MOTION FOR LEAVE TO AMEND PLEADINGS OF JACQUELINE M. MONTOYA AND KATHRYN A. BOUVIER FOR CLAIMS, DEFENSES, DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF AGAINST ELEANOR CONNELL HARTMAN AHERN

OPPOSITION & COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT OF PETITION FOR DECLARATION JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES AND FOR OTHER RELIEF

STATUS CHECK: PETITION FOR DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF LANGUAGE RELATING TO TRUST NO. 2

STATUS CHECK: MOTION TO DISMISS COUNTERCLAIMS OF ELEANOR C. AHERN

PRINT DATE:	05/20/2015	Page 51 of 79	Minutes Date:	September 04, 2009

# STATUS CHECK: PETITION FOR CONSTRUCTION AND EFFECT OF PROBATE COURT ORDER

Counsel confirmed that the Will contest in companion case P-080595-E. In the Matter of Marjorie Connell, Deceased has been dismissed with prejudice by stipulation and order and that case can be closed. COURT SO ORDERED.

As to the matters scheduled for today, Court and counsel agreed to reserve a special date for hearing all matters that were stayed in this case while the Will contest was pending. Parties expressed some confusion over what the Court was to hear today and the Court stated that courtesy copies had not been delivered on all pleadings. Counsel agreed to prepare an itemized list and to contact the law clerk to make sure all pleadings were available. Mr. Powell discussed certain pleadings that were dismissed with prejudice to be renewed later that he would like the Court to reconsider. Court requested he renotice and encourage the parties to work together to make sure that all matters were before the Court. COURT ORDERED hearing date SET.

## CONTINUED TO 1/30/2015 AT 10:00AM

## **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

June 22, 2015 1:30 PM Evidentiary Hearing Esparza, Kerry

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Denman, Linda Sturman, Gloria RJC Courtroom 03H

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# DISTRICT COURT CLARK COUNTY, NEVADA

Probate -	CO	URT MINUTI	<b>S</b> January 16, 2015
Trust/Conservators	hips		
Р-09-066425-Т	In the Matter of The W.N. Conn		ie T. Connell Living Trust, dtd May 18, 1972
January 16, 2015	9:30 AM	Motion - HN	1
HEARD BY: Yam	ashita, Wesley		COURTROOM: Courtroom 09
COURT CLERK:	Carol Foley		
PARTIES:			
David Mann, Othe	r, not present	Pre	) Se
Eleanor Ahern, Pet	itioner, not present	t Ki	k Lenhard, Attorney, not present
Fredrick Waid, Tru	stee, not present		
Jacqueline Montoy	a, Other, Personal	Jos	eph Powell, Attorney, not present
Representative, not	t present		
Kathryn Bouvier, C	Other, not present	W	nitney Warnick, Attorney, not present
Parties Receiving N	Jotice, Other, not p	resent	
The W.N. Connell	and Marjorie T. Co	nnell	
Living Trust, dtd M	1ay 18, 1972, Trust,	not	
present			

# JOURNAL ENTRIES

- Prior to the time set for hearing, COMMISSIONER RECOMMENDED, matter taken OFF CALENDAR.

### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry

F	PRINT DATE:	05/20/2015	Page 54 of 79	Minutes Date:	September 04, 2009
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RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

*Canceled: April 17, 2015 11:00 AM Reason: Vacated* 

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

PRINT DATE: 05/20/2015 Page 55 of 79 Minutes Date:	Г DATE:	05/20/2015	Page 55 of 79	Minutes Date:	September 04, 2009
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Probate -	COURT MINUTI	E <b>S</b> January 30, 2015
Trust/Conservatorships		
	e Matter of the Trust of: V.N. Connell and Marjor	rie T. Connell Living Trust, dtd May 18, 1972
January 30, 2015 10:00 A	M	
HEARD BY: Sturman, Glo	oria	COURTROOM: RJC Courtroom 03H
COURT CLERK: Linda De	enman	
PARTIES:		
David Mann, Other, not pre	esent Pr	o Se
Eleanor Ahern, Petitioner, r		rk Lenhard, Attorney, not present
Fredrick Waid, Trustee, not	r present	
Jacqueline Montoya, Other,	Personal Jos	seph Powell, Attorney, present
Representative, present		
Kathryn Bouvier, Other, no	t present W	hitney Warnick, Attorney, present
Parties Receiving Notice, O	ther, not present	
The W.N. Connell and Mar	jorie T. Connell	
Living Trust, dtd May 18, 1	972, Trust, not	
present		

# JOURNAL ENTRIES

# - EVIDENTIARY HEARING ON PENDING MOTIONS

Court and counsel discussed the outstanding Petitions and Motions that were stayed when the Will contest in the related probate case was set. Counsel agreed that certain responsive pleadings are subsumed in Countermotions for Summary Judgment and will be designated as moot. Counsel argued their respective positions. Ms. Wakayama showed a power point presentation during opening statements; a hard copy of which has been marked as Court Exhibit 1. Mr. Warnick and Mr. Powell prepared a notebook of all relevant information and that will be designed Court Exhibit 2.

COURT STATED ITS FINDINGS the record is replete with the fact that Eleanor received approximately 35% of the Texas oil and gas leases and Marjorie received approximately 65% for 30 years. Additionally, for four years following Marjorie's death, Eleanor continued to receive

 5	<u> </u>			
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# P-09-066425-T

approximately 35% of the asset and Marjorie's heirs received her share. Eleanor did not assert any claim or right, and there is no mention in the record, that upon Marjorie's death she would receive 100% of the income from that asset. W.C.'s separate property changed between the initiation of the Trust and his death 7 years later and some property was conveyed directly to Eleanor. Additionally, the Trust terms that refer to separate property do not mean only the Texas oil and gas leases--that was the only separate property he had at the time of his death; all other separate property having been previously conveyed to Eleanor. Additionally, tax records do not support Eleanor s position as the percentage claimed by Marjorie was not reported as a gift. Court further notes that W.C. prepared a sound Trust document that kept this valuable income producing asset in his family, protected from taxes, and third party outsiders.

COURT ORDERED Opposition to Eleanor C. Ahern's Motion to Dismiss Petition for Declaratory Judgment for Failure to State a Claim Upon Which Relief Can Be Granted; and, Countermotion of Kathryn A. Bouvier and Jacqueline M. Montoya for Summary Judgment on Petition for Declaratory Judgment, for Damages and Assessment of Penalties, and for Other Relief GRANTED. Subsumed in this motion are the original Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets filed 9/27/13; Petition for Construction and Effect of Probate Court Order, filed 3/26/14; Petition for Determination of Construction and Interpretation of Language Relating to Trust No. 2, filed 3/27/14, and Petition to Compel Trustee to Distribute Accrued Income and Future Income Received From Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches, which will all be resulted as Granted. As to the claims asserted in Jacqueline and Kathryn's Motion for Summary, COURT FURTHER ORDERED Breach of Fiduciary Duty claim DENIED; Removal of Eleanor as Trustee RESERVED RULING for further briefing; and request for attorney's fees RESERVED RULING as this request is premature.

COURT FURTHER ORDERED Eleanor Ahern's Answer to Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets and for Failure to State a Claim Upon Which Relief Can Be Granted and Counterclaims Against Jacqueline M. Montoya DENIED. Specifically, COURT FINDS neither side violated the No-Contest provisions as the Court was the property entity to deal with the complicated good faith disputes. COURT FURTHER FINDS Intentional Interference claim DENIED WITHOUT PREJUDICE. Additionally, Motion to Dismiss and Motion to Strike Counterclaims Raised by Eleanor C. Ahern Pursuant to NRCP 15 and NRCP 12(B) and Motion to Dismiss Counterclaims of Eleanor C. Ahern GRANTED.

COURT FURTHER ORDERED Eleanor's Omnibus Opposition to 1) Petition for Determination of Construction and Interest of Language Relating to Trust No. 2, and 2) Petition for Construction and Effect of Probate Court Order; and Countermotion for Summary Judgment, filed 1/2/15, DENIED. As a result of the rulings on the above-referenced Motions, Petitions, and Countermotions, COURT ORDERED oil and gas revenues held pending the resolution of this matter RELEASED and DISTRIBUTED to Jacqueline and Kathryn thirty (31) days after Notice of Entry of Order.

COURT FURTHER ORDERED Motion for Leave to Amend Pleadings of Jacqueline M. Montoya and Kathryn A. Bouvier for Claims, Defenses, Damages, and Assessment of Penalties, and for Other Relief

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Against Eleanor Connell Hartman Ahern MOOT. Ms. Renka raised an objection to the claims raised by Jacqueline and Kathryn stating they were not raised in the original Petition and never properly asserted in a mandatory responsive pleading. They never answered nor raised any affirmative defenses within the time allowed. Mr. Powell argued the claims were raised in various motions and petitions. COURT OVERRULED the objection, finding the stay imposed while the Will contest was underway left some responsive pleadings pending but the parties' agreement to subsume responsive motions renders this objection moot.

Court and counsel discussed the possibility of filing the final Order under seal in order to protect any confidential financial information. Both parties agreed they would abide by NSC Rule 3 and submit an Order.

COURT ORDERED hearing SET; further issues to finalize are accounting of the money from the time disbursements ceased to when the money was ordered held; removal of Eleanor as trustee; attorney fees; and the best way for the Trust to continue. Parties can submit briefs on the respective issues.

3/20/2015 AT 10:00AM HEARING

# **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: February 11, 2015 9:00 AM Motion Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated Denman, Linda Judge Sturman, Probate Esparza, Kerry RJC Courtroom 03H Sturman, Gloria

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

June 22, 2015 1:30 PM Evidentiary Hearing

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P-09-066425-T

Esparza, Kerry Denman, Linda Sturman, Gloria RJC Courtroom 03H

Probate - Trust/Conservators		OURT MINUTES	Febru	ary 18, 2015
	nps			
Р-09-066425-Т		of the Trust of: nell and Marjorie	e T. Connell Living T	Frust, dtd May 18, 1972
February 18, 2015	9:30 AM	Motion		
HEARD BY: Bulla	ı, Bonnie		COURTROOM:	RJC Level 5 Hearing Room
COURT CLERK: ]	ennifer Lott			
PARTIES:				
David Mann, Other	, not present	Pro	Se	
Eleanor Ahern, Pet	•	nt Kirk	Lenhard, Attorney,	not present
Fredrick Waid, Tru	-		· ·	1
Jacqueline Montoya	-	l Jose	ph Powell, Attorney	, not present
Representative, not				, I
Kathryn Bouvier, C	-	Whi	tney Warnick, Attor	nev, not present
Parties Receiving N	-		, ,	<i>,</i> ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
The W.N. Connell a		*		
Living Trust, dtd M	,			
present	<i>.</i> ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,			
L				
		JOURNAL EN	ITRIES	

- David Mann, Esquire, present.

Argument by Ms. Wakayama; statements in Reply should be stricken, and confidential information must be sealed and preserved. No objection by Mr. Mann as issue will be worked out at the State Bar level. Commissioner advised counsel bring a proper Motion to Strike Portions of Pleading to Judge Sturman as Commissioner does not have enough information to do so today.

Commissioner advised counsel Summary Judgment was entered, the Will contest was Dismissed byStipulation, and the issue is Moot.Ms. Wakayama stated a Hearing is set before Judge SturmanMarch 20th on Breach of Fiduciary Duty, and the other side requested Attorney Fees.Argument byMr. Mann.Commissioner advised counsel a request can be made to Judge Sturman not to rule onPRINT DATE:05/20/2015Page 60 of 79Minutes Date:September 04, 2009

#### P-09-066425-T

Motion pending resolution of issues before the State Bar.

COMMISSIONER RECOMMENDED, motion is DENIED WITHOUT PREJUDICE.

Mr. Mann to prepare the Report and Recommendations, and Ms. Wakayama to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Mann to appear at status check hearing to report on the Report and Recommendations.

3/20/15 11:00 a.m. Status Check: Compliance

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: February 20, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

*Canceled: April 17, 2015 11:00 AM Reason: Vacated* 

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

PRINT DATE:	05/20/2015	Page 61 of 79	Minutes Date:	September 04, 2009
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Probate -	COU	JRT MINUT	<b>TES</b> March 20, 2015
Trust/Conservators	nips		
Р-09-066425-Т	In the Matter of The W.N. Conn		orie T. Connell Living Trust, dtd May 18, 1972
March 20, 2015	10:00 AM	Hearing	
HEARD BY: Sturr	nan, Gloria		COURTROOM: RJC Courtroom 03H
COURT CLERK: 1	Linda Denman		
PARTIES:			
David Mann, Other	r, not present	F	ro Se
Eleanor Ahern, Peti Fredrick Waid, Tru	-	E K	Kirk Lenhard, Attorney, not present
Jacqueline Montoya	-	Je	oseph Powell, Attorney, present
Representative, pre			
Kathryn Bouvier, C	-		Vhitney Warnick, Attorney, present
Parties Receiving N	-		
The W.N. Connell a	,		
Living Trust, dtd M	lay 18, 1972, Trust,	not	
present			

# JOURNAL ENTRIES

## - PROBATE HEARING

Court clarified the items to be discussed and resolve at today's hearing include finalizing accounting from time disbursements stopped to date when Court ordered money held; request to remove Eleanor Ahern as Trustee; request for attorney fees, and the future structure of the trust.

As to the accounting, Counsel argued the scope of the Court's prior Order granting payment of Administrative Expenses, Insurance Premiums, and taxes paid on a pro rata basis. Mr. Warnick argued the 6% trustee fees were excessive, the overhead expenses were unnecessary, the deposit with Capital Fidelity Investment questionable, money deposited in Eleanor's personal Texas attorney's trust fund comingled, and money invested in a California firm for a foundation self-serving. Ms. Wakayama defended the accounting saying Ms. Ahern was personally involved in several

2	0 /	0 1	2	
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## P-09-066425-T

transactions in Texas that resulted in \$3.6 million for the Trust. It is an acceptable practice to reimburse a trustee for such costs as travel, computers, time, etc., and 6% is a common charge. The overhead charge includes office space for her and advisors who have been assisting her with tax problems and investment opportunities, and that she acted in good faith in assessing these reasonable expenses.

As to Eleanor's removal as trustee, Counsel argued whether she breached her fiduciary duties. Mr. Powell argued that Eleanor's actions in stopping beneficiary distributions without Court approval was self-dealing and she should have recused herself as Trustee and let a third-party neutral act while she sought to have herself named as the sole beneficiary. Ms. Wakayama pointed out that Eleanor had been co-trustee of Marjorie's trust since 1980 and the objectors were designated contingent beneficiaries. She simply asserted her rights to take the entire income. Following the Court's Order, Eleanor has made sure that \$2 million is being held and once this situation is resolved the money will be distributed as ordered. She concluded that Eleanor has only taken her 35% of the income and the balance less 65% expenses is being held.

As to the future of the trust, Counsel stated they agreed that splitting the trust would cause unnecessary administrative expenses and could possible jeopardize dealings with oil companies.

As to attorney fees, Ms. Wakayma argued counsel did not analyze their request against the Brunzell standards.

As to the administrative fees in the accounting, COURT STATED ITS FINDINGS that while Eleanor may be entitled to be paid for her time, the amount she accounts for as her fee is excessive and unreasonable, being more in line with a corporate trustee, and that also charging overhead for staff and office space is not appropriate. Additionally, COURT FINDS that Capital Fidelity Investments does not satisfy the standards of the Uniform Prudent Investors Act. Finally, the Court also finds the \$37,000 payment was already accounted for and should be credited to the 65% trust. COURT ORDERED accounting expenses AMENDED AND REDUCED by \$218,000 for administrative expenses and \$24,000 for double billing. COURT FURTHER ORDERED the \$500,000 investment in Capital Fidelity withdrawn and immediately placed in a more appropriate, federally insured vehicle.

As to the removal of Eleanor as Trustee for breach of fiduciary duties, COURT FINDS a breach of fiduciary duties to the 65% trust beneficiaries since she acted without Court permission in stopping distribution without proper notice or Court approval. COURT ORDERED Eleanor Ahern REMOVED as Trustee as to the 65% trust.

As to the future of the trust, COURT STATED ITS FINDINGS that ultimately the only resolution may be to split the trust and allow each party to manage their own money; however for the present, the trust needs to remain whole through this litigation. COURT ORDERED Eleanor Ahern TEMPORARILY REMOVED as Trustee over the 35% Trust; Court will APPOINT an independent third party as trustee over the entire trust. Counsel discussed either Premier Trust or Fred Waid and they will each provide the Court with their client's choice by Tuesday, March 24, 2015.

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As to attorney fees, COURT ORDERED request GRANTED; counsel to file appropriate motion with redacted billing statements in ten (10) days including an analysis of the Brunzell factors; opposition due ten (10) days following; reply due five (5) days following. COURT FURTHER ORDERED hearing SET.

Mr. Warnick to prepare proposed Order; Ms. Wakayama to review as to form and content.

5/13/2015 at 9:00AM MOTION FOR ATTORNEY FEES AND COSTS

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

*Canceled: April 17, 2015 11:00 AM Reason: Vacated* 

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

Probate -	COURT MINUTES	March 20, 2015	
Trust/Conservatorships			
	ter of the Trust of: Connell and Marjorie T. Co	onnell Living Trust, dtd May 18, 1972	
March 20, 2015 11:00 AM			
HEARD BY: Bulla, Bonnie	CO	URTROOM: RJC Level 5 Hearing Room	
COURT CLERK: Jennifer Lott			
PARTIES:			
David Mann, Other, not present	Pro Se		
Eleanor Ahern, Petitioner, not pr Fredrick Waid, Trustee, not prese		ard, Attorney, not present	
Jacqueline Montoya, Other, Perso		well, Attorney, not present	
Representative, not present Kathryn Bouvier, Other, not pres	5	Warnick, Attorney, not present	
Parties Receiving Notice, Other,	-		
The W.N. Connell and Marjorie			
Living Trust, dtd May 18, 1972, T present	'rust, not		
	JOURNAL ENTRIE	ES	

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- Dale Hayes, Esquire, and David Mann, Esquire, present.

Report and Recommendation was submitted, returned to counsel, and Mr. Mann will resubmit it shortly.

COMMISSIONER RECOMMENDED, matter CONTINUED; Mr. Mann to prepare the Report and Recommendations. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Mann to appear at status check hearing to report on the Report and Recommendations.

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4/17/15 11:00 a.m. Status Check: Compliance

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

*Canceled: April 17, 2015 11:00 AM Reason: Vacated* 

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

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Probate -	COURT MINUT	ES March 26, 2015			
Trust/Conservatorships					
	Matter of the Trust of N. Connell and Marje	orie T. Connell Living Trust, dtd May 18, 1972			
March 26, 2015 11:00 AM	1 Telephonio	Hearing			
HEARD BY: Sturman, Glori	ia	COURTROOM: RJC Courtroom 03H			
COURT CLERK: Linda Den	iman				
PARTIES:					
David Mann, Other, not pres	ent P	ro Se			
Eleanor Ahern, Petitioner, no	ot present k	irk Lenhard, Attorney, not present			
Fredrick Waid, Trustee, not p	1				
Jacqueline Montoya, Other, F		seph Powell, Attorney, present			
Representative, not present					
Kathryn Bouvier, Other, not	present V	hitney Warnick, Attorney, present			
Parties Receiving Notice, Oth	•	· · · · · · · · · · · · · · · · · · ·			
The W.N. Connell and Marjo	-				
Living Trust, dtd May 18, 197					
present	_,				
r					

# JOURNAL ENTRIES

## - TELEPHONE CONFERENCE

Also present Dale Hayes, Esq. for Petitioner and Jeff Johnston, Esq., Texas counsel for Petitioner. Ms. Wakayama requested the Court's guidance on whether or not Mr. Johnston could proceed with negotiations regarding PSA's, Pioneer Easement, and Apache lease since the Court was going to assign a third party neutral as trustee while the matter is in litigation. She expressed concern that opposing counsel was reluctant to stipulate to the confidentiality aspect. Mr. Johnston advised that Texas law vests title to the property in the trustee. The leases in question are due for renewal the first part of April and he expressed concern that a new trustee would not be in place when the agreements needed to be executed.

COURT STATED Mr. Johnston's competency in representing the trust in these negotiations was notPRINT DATE:05/20/2015Page 67 of 79Minutes Date:September 04, 2009

in question and appreciated the hard work he was doing on behalf of this family. COURT ORDERED Frederick Waid APPOINTED as trustee. As to the problems the parties raised, the COURT FURTHER ORDERED beneficiaries Montoya and Bouvier be kept informed of all negotiations; that Montoya and Bouvier be cautioned they cannot discuss or convey in any way confidential information told to them by their attorney to other family members; and that Mr. Johnston is to proceed in his negotiations and work with Mr. Waid once he is in place. Court clarified that if any agreements need to be signed prior to Mr. Waid's placement, whoever is so authorized at the time may sign.

Mr. Warnick to prepare Order appointing Frederick Waid as Trustee. Ms. Wakayama to prepare proposed Order regarding this hearing and/or the confidential agreement as discussed.

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

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Probate -	COURT MINUTE	S April 14, 2015			
Trust/Conservatorships		-			
	latter of the Trust of: N. Connell and Marjori	e T. Connell Living Trust, dtd May 18, 1972			
April 14, 2015 9:00 AM					
HEARD BY: Sturman, Glori	a	COURTROOM: RJC Courtroom 03H			
COURT CLERK: Linda Den	man				
PARTIES:					
David Mann, Other, not prese	ent Pro	Se			
Eleanor Ahern, Petitioner, not	present Kir	k Lenhard, Attorney, not present			
Fredrick Waid, Trustee, prese	nt				
Jacqueline Montoya, Other, P	ersonal Jose	eph Powell, Attorney, present			
Representative, not present					
Kathryn Bouvier, Other, not p		itney Warnick, Attorney, present			
Parties Receiving Notice, Othe	-				
The W.N. Connell and Marjorie T. Connell					
Living Trust, dtd May 18, 197	2, Trust, not				
present					

# JOURNAL ENTRIES

# - TRUSTEE ELEANOR CONNELL-HARTMAN-AHERN'S MOTION TO STAY PENDING APPEAL ON OST

After the Court clarified its previous ruling that the newly appointed third-party trustee has full discretion to handle pending agreements in any way he believes best suits the trust, Ms. Renka withdrew her Motion to Stay. Mr. Waid advised he has discovered Ms. Ahern has deposited trust funds into a bank account with the assumption she will be given a line of credit to post a supersedeas bond. He asked the Court to issue an Order to Show Cause if all the monies he has traced thus far are not immediately returned to the trust. Ms. Renka advised she only learned of this situation prior to today's hearing.

Following discussion by counsel, COURT STATED ITS FINDINGS that Eleanor Ahern, as formerPRINT DATE:05/20/2015Page 69 of 79Minutes Date:September 04, 2009

trustee of the W. N. Connell and Marjorie T. Connell Living Trust, has not acted in good faith in complying with the Court's previous orders. Particularly, Ms. Ahern has not turned over all trust funds to the trustee, Fred Waid, and has not shown good faith in her representations to her counsel. COURT ORDERED former trustee, Eleanor Ahern, by close of business, Friday 17, 2015 to turn over all trust funds to trustee Fred Waid. FURTHER COURT ORDERED Ms. Ahern is to agree to a time within the next two weeks to be deposed by the trustee, as well as anyone she has designated as her power of attorney. Additionally, Ms. Ahern is to bring all records, accounts, and any other relevant material with her to the deposition. COURT FURTHER ORDERED an Order to Show Cause Hearing SET; if needed, in the event all trust funds are not given to the trustee by the Friday deadline.

Ms. Renka to prepare proposed Order withdrawing her motion; Mr. Moody to prepare proposed Order to Show Cause.

4/22/2015 at 10:30am ORDER TO SHOW CAUSE Why Eleanor Ahern Should Not Be Held in Contempt of Court for Failing to Following Court's Orders.

## **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: April 17, 2015 11:00 AM Reason: Vacated

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

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Probate - Trust/Conserva		IRT MINUTES	April 14, 2015
P-09-066425-T	In the Matter of The W.N. Conne		. Connell Living Trust, dtd May 18, 1972
April 14, 2015	4:30 PM	Telephonic Hea	ring
HEARD BY:	Sturman, Gloria; Judge S Probate	Sturman,	COURTROOM:
COURT CLER	K: Linda Denman		
PARTIES:			
David Mann,	Other, not present	Pro Se	
	n, Petitioner, not present	Kirk L	enhard, Attorney, not pre <del>s</del> ent
Fredrick Waid	l, Trustee, present		
Jacqueline Montoya, Other, Personal			Powell, Attorney, present
Representativ	e, not present		
Kathryn Bouv	ier, Other, not present	Whitne	ey Warnick, Attorney, present
	ing Notice, Other, not pr		
	nell and Marjorie T. Con		
0	dtd May 18, 1972, Trust, 1	not	
present			

# JOURNAL ENTRIES

# - EMERGENCY TELEPHONIC CONFERENCE

Ms. Wakayama notified the Court of Marquis, Aurbach's decision to immediately withdraw as counsel for Eleanor Ahern. After reading the local rules, Court stated they needed to make a written motion and include all last known contact information for Ms. Ahern. Upon request of counsel, COURT ORDERED a time would be set aside for a hearing on their motion as long as their motion was delivered, signed and filed allowing one judicial day of notice. Mr. Waid also inquired as to whether he could try and contact Ms. Ahern directly and the Court advised he is her trustee as well and he can speak with her directly. Upon inquiry of Mr. Waid as to the trust file, Ms. Wakayama advised Mr. Mann was still holding the file but she would relay to him that instead of turning over the file to Ms. Ahern, he needed to give it to Mr. Waid.

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4/20/2015 at 10:00am MARQUIS AURBACH'S MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR ELEANOR AHERN (Time set aside).

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

*Canceled: April 17, 2015 11:00 AM Reason: Vacated* 

Bulla, Bonnie Lott, Jennifer RJC Level 5 Hearing Room

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

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Probate -	COU	JRT MINUTES	5 April 20, 2015	
Trust/Conservator	ships		•	
Р-09-066425-Т	In the Matter of The W.N. Conn		e T. Connell Living Trust, dtd May 18, 1972	
April 20, 2015	10:00 AM	Motion for Wi	<b>'ithdrawal</b>	
HEARD BY: Stu	rman, Gloria		COURTROOM: RJC Courtroom 03H	
COURT CLERK:	Shelly Landwehr			
PARTIES:				
David Mann, Oth	er, not present	Pro S	Se	
Eleanor Ahern, Pe	etitioner, not present	: Kirk	< Lenhard, Attorney, not present	
Fredrick Waid, Tr	ustee, not present			
Jacqueline Monto	ya, Other, Personal	Josej	eph Powell, Attorney, present	
Representative, pr	resent			
Kathryn Bouvier,	Other, not present	Whi	itney Warnick, Attorney, present	
Parties Receiving	Notice, Other, not p	resent		
The W.N. Connell	and Marjorie T. Co	nnell		
Living Trust, dtd	May 18, 1972, Trust,	not		
present				

# JOURNAL ENTRIES

Renka, Candice F. Attorney for Petitioner Eleanor Ahern Hayes, Dale present for Petitioner Eleanor Ahern Waid, Fredrick Trustee
Warnick, Whitney B. Attorney for Kathryn Bouvier Guist, Russell Attorney for Trustee
Powell, Joseph J Attorney for Jacqueline Montoya Montoya, Jacqueline

Ms. Wakayama stated the law firm is everyday learning more and more information from the newly appointed trustee that was never known before and every day the law firm is placed into the most uncomfortable of circumstances and can no longer ethically represent Mrs. Ahern s interests and can no longer present evidence to this Court that it has no way of determining its accuracy. Ms.

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## P-09-066425-T

Wakayama invoked counsels rights and stated they are honoring their duty under Rule 1.16(a) to immediately withdraw as counsel.

Court noted received a written opposition from Mr. Waid and inquired of the other parties. Mr. Powell stated he did not have a position.

Mr. Guist argued regarding EDCR 7.40(c) and Rule 1.16 (b)(1) and stated there are deadlines forthcoming, and Mrs. Has a show cause hearing on 4/22/15 regarding the unreturned funds to the Trust. Lastly, this Court ordered a deposition of Mrs. Ahern to be taken by 4/28, regarding the Trust funds. Mr. Guist stated he is prepared to take the deposition and stated his concern if Mrs. Ahern is left without counsel, she might act against her own best interests if she were to be deposed and if she were to appear at the show cause hearing, unrepresented. Mr. Guist further argued any delay in the upcoming deadlines would be adverse to the other beneficiaries of the Trust. Mr. Guist stated now is not the right time and argued there should be a substitution of counsel in place and argued for denial of the motion, pending substitution.

Court stated Marquis Aurbach Coffing s position is, their withdrawal is mandatory under the rules and inquired regarding the Court s options. Mr. Guist the motion did not need to be denied permanently and in the interim of substitution of counsel, Marquis Aurbach Coffing could facilitate the deposition without compromising what they believe to be representations to the Court. As to appearing for the hearing, although there would be some advocacy there, that advocacy would not necessitate making any representations that are false and haven t already been aware of. Lastly, Mr. Guist stated there is a possibility that funds from the Trust were possibly used to pay a retainer to Marquis Aurbach Coffing and there is a concern about not being able to investigate that.

Ms. Wakayama argued their ethical obligations trump any local rule. Further, Ms. Wakayama stated it does not believe this Court is in a position to force this law firm to continue to represent Mrs. Ahern and put the law firm in a position where it may be violating the ethical rules so that Mr. Waid can do his investigation. Ms. Wakayama stated Mrs. Ahern cannot be adequately defended due to the complete breakdown in communication and stated the law firm has done what they can to get Mrs. Ahern substitute counsel, and Mrs. Ahern has recently met with counsel. As for certain fees paid to the firm, Ms. Wakayama stated, again, that is brand new information and it is the law firm s position that they are a bona fide purchaser and had no knowledge of the source of this income.

Following further arguments of counsel regarding records for the Trust. Representations by Mr. Waid. Ms. Renka raised concerns regarding a former trustee appealing decisions of this Court and a new successor trustee appointed and the serious potential conflict as well as the concerns with jurisdictional issues. Mr. Guist argued this Court has jurisdiction over the Trust and all its records and over Mrs. Ahern as the former trustee and to compel her to turn over those records.

## COURT ORDERED, Motion to Withdraw GRANTED.

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#### P-09-066425-T

COURT FURTHER SIGNED in OPEN COURT, Order Confirming Successor Trustee and Order Compelling Eleanor Ahern To Turn Over Trust Records To Acting Successor Trustee, SIGNED in OPEN COURT. COURT FURTHER ORDERED, with respect to any documents being held in the file Marquis Aurbach Coffing they are to be turned over in the form of any documents that should be in the possession of the trustee and any documents that counsel feels has an attorney/client privilege, should be noted in a privileged index.

Mr. Waid requested to be present via Court Call for the Order to Show Cause hearing, and requested the hearing be conducted under seal. COURT SO ORDERED.

#### **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

Canceled: April 20, 2015 10:00 AM Motion for Withdrawal

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Probate - C	COURT MINUTES	April 22, 2015
Trust/Conservatorships		<b>x</b>
	r of the Trust of: onnell and Marjoric	e T. Connell Living Trust, dtd May 18, 1972
April 22, 2015 10:30 AM	Order to Show	v Cause
HEARD BY: Sturman, Gloria		COURTROOM: RJC Courtroom 03H
COURT CLERK: Linda Denman		
PARTIES:		
David Mann, Other, not present	Pro	Se
Eleanor Ahern, Petitioner, present	Pro	Se
Fredrick Waid, Trustee, present		
Jacqueline Montoya, Other, Person	al Jose	ph Powell, Attorney, present
Representative, present		
Kathryn Bouvier, Other, not preser	nt Wh	tney Warnick, Attorney, present
Parties Receiving Notice, Other, no	ot present	
The W.N. Connell and Marjorie T.	Connell	
Living Trust, dtd May 18, 1972, Tru	ust, not	
present		

# JOURNAL ENTRIES

# - ORDER TO SHOW CAUSE WHY ELEANOR AHERN SHOULD NOT BE HELD IN CONTEMPT OF COURT

Mr. Moody advised the Court that the former trustee, Eleanor Ahern, failed to deliver to the successor trustee the trust information and assets this Court ordered. He added Mr. Waid discovered she has given power of attorney to two individuals described as her spiritual advisors. Additionally, the money vested in Fidelity Capital was not returned to the trust and the Texas attorney handling the Trust's interests will not cooperate with Mr. Waid. In an effort to preserve the assets, the successor trustee is proposing a Guardian Ad Litem be appointed over Eleanor's estate. Mr. Waid stated that his investigation of the Texas attorney is ongoing but he has uncovered some potential problems with respect to the recent agreements entered into for leases and attorney fees.

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Ms. Patterson explained her firm was retained yesterday to represent Mr. Ahern and she is authorized to release information Mr. Waid requests. Additionally, without a written motion to appoint a guardian ad litem, she requested the Court defer any further argument on that request. As to the Order to Show Cause and any possible criminal sanctions against Ms. Ahern, Ms. Patterson clarified that, since the contempt did not occur in the Court's presence, an affidavit is required and the matter heard by a different district court judge. She concluded that she intends to work with the trustee and counsel to resolve all concerns. Court acknowledged Ms. Patterson's understanding and explained the defiance their client has exhibited in her reaction to orders. The purpose of this hearing was to impress on Ms. Ahern the serious consequences of her oppositional behavior. The Court also stated that the consequences imposed come from the Court and not from her daughters or the successor trustee. COURT ORDERED oral motion for appointment of guardian ad litem DENIED; any such request needs to be put in writing with an Affidavit. Ms. Patterson and Mr. Waid agreed to meet on Friday, April 24 to go over the missing trust information and assets. If the meeting is not successfully resolved to Mr. Waid's satisfaction, he can pursue other avenues no earlier than May 4, 2015. Mr. Powell also stated that the beneficiaries are also retaining their rights to pursue action against Ms. Ahern if necessary.

## **INTERIM CONDITIONS:**

#### **FUTURE HEARINGS:**

PRINT DATE: (	05/20/2015	Page 77 of 79	Minutes Date:	September 04, 2009
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Probate -	COU	JRT MINUTES	May 13, 2015		
Trust/Conservators	hips				
Р-09-066425-Т	In the Matter of The W.N. Conne		nnell Living Trust, dtd May 18, 1972		
May 13, 2015	9:00 AM	Motion for Attorney	7 Fees		
HEARD BY: Stur	nan, Gloria	COU	URTROOM: RJC Courtroom 03H		
COURT CLERK: 1	Linda Denman				
PARTIES:					
David Mann, Other	r, not present	Pro Se			
Eleanor Ahern, Pet	itioner, not present	Kirk Lenha	ard, Attorney, not present		
Fredrick Waid, Tru	stee, present				
Jacqueline Montoya		Joseph Pov	well, Attorney, present		
Representative, pre					
Kathryn Bouvier, Other, not presentWhitney Warnick, Attorney, present					
Parties Receiving Notice, Other, not present					
The W.N. Connell and Marjorie T. Connell					
Living Trust, dtd M	lay 18, 1972, Trust,	not			
present					

# JOURNAL ENTRIES

## - MOTION FOR ATTORNEY FEES

Court directed counsel to the recently published decision regarding costs and stated they must submit a memorandum of costs with attached receipts showing costs were reasonable, necessary, and actually incurred. COURT ORDERED attorney fees for Joey Powell GRANTED in the amount of \$229,186, less costs; and attorney fees for Whitney Warnick in the amount of \$127,633.70, less costs. As to the contempt of court claim against Ms. Ahern, COURT ORDERED hearing SET.

6/22/2015 AT 1:30pm EVIDENTIARY HEARING: CONTEMPT OF COURT

## **INTERIM CONDITIONS:**

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# **FUTURE HEARINGS:**

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Connell Srest P-066425 EXHIBITS

CASE NO. P-0106425

	Date Offered	Objection	Date Admitted
#1-Power Point DEMO #2-Index + Notebook of Pertinent Doc's	1-3-82-1	5	
#2 - Onday + Notebook of Pastingat Dop's	1-20-1	5	
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U:\COURT CLERK\FORMS-Court Clerk\Exhibits\Exhibit List.doc5/23/2011

# **Certification of Copy**

# State of Nevada County of Clark SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF POSTING BOND; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; SUMMARY JUDGMENT; NOTICE OF ENTRY OF SUMMARY JUDGMENT; ORDER REGARDING THE ACCOUNTING, BREACH OF FIDUCIARY DUTY CLAIMS AND AWARD OF ATTORNEY FEES; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

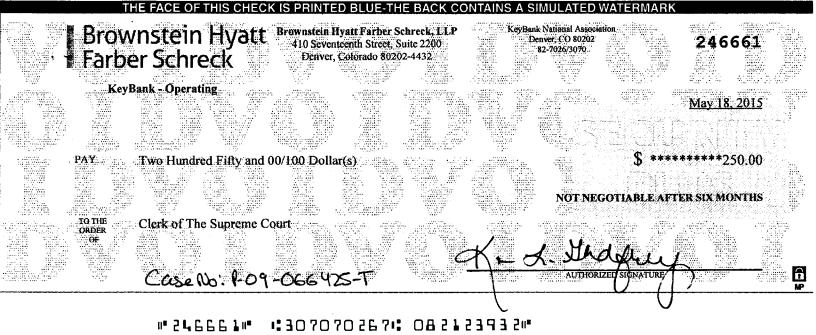
In the Matter of the Trust of:

THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST DATED MAY 18, 1972, Case No: P066425

Dept No: FAMILY DOMESTIC

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 20 day of May 2015. OF THE Steven D. Grierson, Clerk of the Court DISTRICT Heather Ungermann, Deputy Clerk

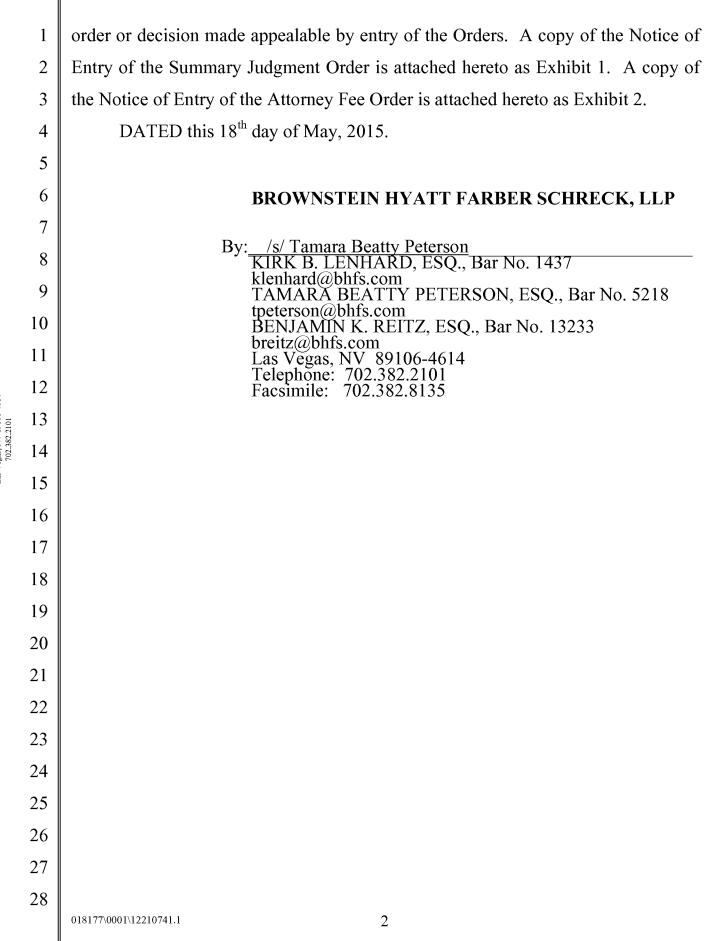


Electronically Filed 05/18/2015 03:00:36 PM

1 NOAS KIRK B. LENHARD, ESO., Bar No. 1437 2 klenhard@bhfs.com CLERK OF THE COURT TAMARA BEATTY PETERSON, ESQ., Bar No. 5218 3 tpeterson@bhfs.com BENJAMIN K. REITZ, ESQ., Bar No. 13233 **Electronically Filed** 4 breitz@bhfs.com May 21 2015 02:09 p.m. BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106-4614 5 Tracie K. Lindeman Clerk of Supreme Court 6 Telephone: 702.382.2101 Facsimile: 702.382.8135 7 Attorneys for Eleanor Connell Hartman Ahern 8 **DISTRICT COURT** 9 **CLARK COUNTY, NEVADA** 10CASE NO.: P-09-066425-T In the Matter of THE W.N. 11 CONNELL AND MARJORIE T. CONNELL LIVING TRUST DEPT. NO.: XXVI 12 DATED May 18, 1972, An Inter Vivos Irrevocable Trust 13 **NOTICE OF APPEAL** 14 15 16

Notice is hereby given that Eleanor C. Ahern, a/k/a Eleanor Connell Hartman 18 Ahern ("Ms. Ahern"), as beneficiary and as trustee of The W.N. Connell and 19 Marjorie T. Connell Living Trust dated May 18, 1972 (the "Trust"), by and through 20her counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, 21 hereby respectfully appeals to the Supreme Court of Nevada from this Court's 22 Summary Judgment order which was filed on April 16, 2015, and entered on April 23 17, 2015 (the "Summary Judgment Order"), and from this Court's Order Regarding 24 The Accounting, Breach of Fiduciary Duty Claims and Award of Attorneys' Fees 25 filed and entered on April 20, 2015 (the "Attorney Fee Order") (collectively, the 26 Summary Judgment Order and Attorney Fee Order are hereinafter referred to as the 27 "Orders"), as well as orders, rulings or decisions relating thereto, and any other 28 018177\0001\12210741.1

17



BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106-4614 702.382.2101

1	CERTIFICATE OF SERVICE				
2 3	I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber				
3 4	Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2,				
5	and NEFCR 9, I caused a true and correct copy of the foregoing NOTICE OF				
6	APPEAL to be submitted electronically for filing and service with the Eighth				
	Judicial District Court via the Court's Electronic Filing System on the 18th day of				
	May, 2015, to the following:				
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26					
26 27					
27 28					
20	018177\0001\12210741.1 3				

BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106-4614 702.382.2101

# **EXHIBIT 1**

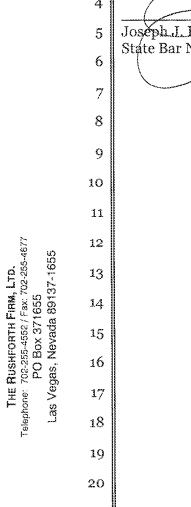
# **EXHIBIT 1**

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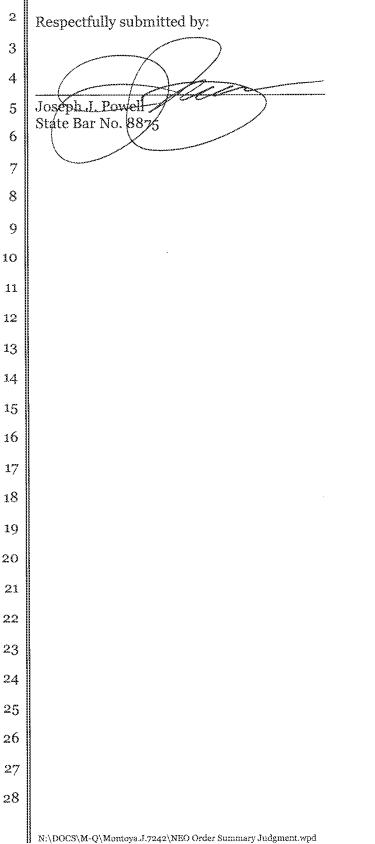
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2	JOSEPH J. POWELL	CLERK OF THE COURT
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12	gma@albrightstoddard.com Attorneys for Kathryn A. Bouvier	
13		
14	1.71 C.1.10 1	CT COURT
15		
16	CLARK COU	NTY, NEVADA
17	In the Matter of the	
18		
19	THE W. N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated	
20	May 18, 1972,	Case No. P-09-066425-T
21	A non-testamentary trust.	Department XXVI, RJC
22		
23		F ENTRY OF MARY JUDGMENT
24	NOTICE IS HEREBY GIVEN THAT:	
25	The "Order On Summary Judgment" w	as entered April 15, 2015 and filed
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April 16, 2015 in the above entitled matter, a copy of which is attached hereto.

<u>4/17/15</u> Date

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1	Certificate of Mailing			
2	I, the undersigned, hereby certify that on <u>April 17, 2015</u> , I mailed a copy of the			
3	"Notice of Entry of Order On Summary Judgment" that has been filed in this proceeding,			
4	to each person named below by first-class mail, addressed as foll	to each person named below by first-class mail, addressed as follows:		
5	Dela A Horros Ecc. Albright Sto	ddard Warnick & Albright		
6	Liane K. Wakayama, Esq. 801 South R	ancho Drive, Suite D-4		
7	10001 Park Run Drive Attorney for	r Kathryn A. Bouvier		
8 9	Attorneys for Eleanor Connell Harman Ahern			
10	Cardaoxina na naorito) a			
11	3385 Maverick Street Las Vegas, NV 89108			
12	1/			
13	K.e	& Merde		
14	An employee	of,		
15		FORTH FIRM, LTD.		
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THE RUSHFORTH FIRM, LTD. Telephone: 702-255-4562 / Fax: 702-255-4677 PO Box 371655 Las Vegas, Nevada 89137-1655

Electronically Filed 04/16/2015 02:21:09 PM JUDG 1 JOSEPH J. POWELL, ESQ. Neyada Bar No. 008875 CLERK OF THE COURT 2 THE RUSHFORTH FIRM, LTD. 9505 Hillwood Drive, Suite 100 Las Vegas, Nevada 89134 Tel: (702) 255-4552 Fax: (702) 255-4677 3 4 joey@rushforth.net 5 Attorneys for Jacqueline M. Montoya 6 WHITNEY B. WARNICK, ESO. Nevada Bar No. 001573 7 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT 801 South Rancho Drive, Suite D-4 8 Las Vegas, Nevada 89106 Tel: (702) 384-7111 9 Fax: (702) 384-0605 gma@albrightstoddard.com 10 Attorneys for Kathryn A. Bouvier 11 DISTRICT COURT 12 CLARK COUNTY, NEVADA 13 CASE NO. P-09-066425 In the Matter of 14 THE W. N. CONNELL AND MARJORIE DEPT NO. XXVI (26) T. CONNELL LIVING TRUST, Dated 15 May 18, 1972, Date of Hearing: January 30, 2015 Time of Hearing: 10:00a.m. 16 17 An Inter Vivos Irrevocable Trust. 18 SUMMARY JUDGMENT 19 The current proceedings were commenced with the filing on September 27. 20 2013, of a PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED 21INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E). 22 AND NRS 164.033(1)(A). This Petition was filed by Jacqueline M. Montoya 23 ("Jacqueline") as Trustee of the MTC Living Trust, and on her behalf and that of 24 Kathryn A. Bouvier ("Kathryn"), her sister, as beneficiaries under the MTC Living 25 Trust. During these proceedings several other Petitions, Motions, and Pleadings have 26 been filed by the parties, including those summarized in the chart attached hereto as 27Exhibit "A". 28

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On December 23, 2014, Jacqueline and Kathryn filed an OPPOSITION TO 1 ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY 2 JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN 3 BE GRANTED; AND, COUNTERMOTION OF KATHRYN A. BOUVIER AND 4 JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR 5 DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF 6 PENALTIES. Thereafter, on January 2, 2015, Eleanor Connell Hartman Ahem 7 ("Eleanor") filed an OMNIBUS OPPOSITION TO (1) PETITION FOR 8 DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF 9 LANGUAGE RELATING TO TRUST NO. 2, AND (2) PETITION FOR 10CONSTRUCTION EFFECT OF PROBATE COURT ORDER: 11 AND COUNTERMOTION FOR SUMMARY JUDGMENT. The parties agreed at the 12 hearing on January 30, 2015, that their above-denominated Countermotions for 13 Summary Judgment, and the claims and defenses asserted therein, subsumed all of the 14 prior Petitions, Motions and Pleadings, and their defenses and claims asserted therein. 15 as well as those briefed and discussed in the further replies, oppositions and 16 supplements to their Countermotions, as listed on the chart attached hereto as Exhibit 17 "A" (other than Jacqueline's and Kathryn's Motion for Leave to Amend Pleadings filed 18 herein on January 12, 2015). Therefore, it was agreed, and the Court recognized, that 19 the parties' claims and defenses in these proceedings could be resolved summarily by 2.0the Court in its adjudication of the parties' said Countermotions for Summary 21Judgment. 22

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

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

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obtain a Court order clarifying to whom subtrust benefits would be paid upon her 1 death. The Court assumed jurisdiction over the Trust, recognizing that Eleanor, as 2 Trustee, was a Nevada resident, and the Trust provisions provided that it would be 3 administered pursuant to Nevada law. The unopposed Petition was consented to by 4 Jacqueline and Kathryn as contingent beneficiaries of subtrust No. 2 under the Trust. 5 and the Court approved the Petition by Order filed herein on September 4, 2009. 6 Pursuant to the Order, the Trust was reformed to provide that Jacqueline and Kathryn 7 were designated as the beneficiaries under subtrust No. 2 upon the death of Eleanor, 8 which had not theretofore been clearly delineated in the Trust provisions. In addition, 0 Jacqueline was designated as the successor Trustee under the Trust upon the death or 10 removal of Eleanor as the Trustee. 11

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

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

A S W A JIBRICHT - STODDARD - WARNELK - ALBRICHT A 7800758400544 CONVENTION: lifetime, at her election, to receive the assets outright free of trust. She was also given
 the option of appointing the benefits under subtrust 3 in her Will to whomever she
 desired. If she failed to remove the assets from subtrust 3 during her lifetime, or to
 appoint them under her will, the benefits and assets under subtrust 3 would have
 devolved by default to Eleanor.

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

"<u>THIRD</u>: <u>MARITAL DEDUCTION</u>. The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes . . . In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and ownership of the said property and the value thereof shall be as finally established for federal estate tax purposes."

5. Federal and Texas Estate Tax Returns were filed for William's estate 15 16 following his death. At the time of these proceedings, a copy of the Federal Estate Tax Return could not be located, even the IRS no longer maintaining a copy thereof. 17 However, a copy of William's Texas Estate Tax Return, and a copy of the Closing 18 Letter for his Federal Estate Tax Return were available. The Texas Estate Tax Return 19 basically duplicated the information provided on the Federal Estate Tax Return, thereby 20providing how William's estate was allocated and distributed on the Federal Estate Tax 21 Return. Daniel T. Gerety, CPA, an expert witness for Jacqueline and Kathryn, also 22 verified in his Report that the Texas Estate Tax Return used the property allocations 23 made on the Federal Estate Tax Return, and that the two Returns were consistent. 24

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

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

Upon William's death, Manorie became the sole acting Trustee for the 7. 5 main Trust, and the subtrusts thereunder. Pursuant to Article SECOND, Section C.6 6 of the Trust, and shortly after William's death in 1980, Eleanor was appointed by 7 Mariorie to be the co-trustee with her over William's separate property remaining in 8 the Trust; that is, over the Texas oil property which had been allocated between 0 subtrust 2 and subtrust 3. A copy of Eleanor's appointment as co-trustee, along with 10a copy of the Trust, was recorded with the Upton County Texas Recorder's Office. 11

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

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

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

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

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

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

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

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

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

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

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16. To summarize, no evidence was produced by Eleanor of any claim or Ì assertion being made by her to anyone else to a right to more than 35% of the Texas oil 2 property income from the time of William's death until June, 2013, when she first 3 asserted her claim to 100% of the income by cutting off income distributions to 4 Jacqueline and Kathryn. Further, Marjorie never communicated or acknowledged to 5 anyone else that she was not entitled to 65% of the Texas oil property income, always 6 acting consistently with owning a right to the income under the Trust allocation of the 7Texas oil property made following William's death in 1979. 8

17. As purported evidence supporting her claim to 100% of the Trust income 9 from the Texas oil property, Eleanor presented copies of Division Orders and Leases 10 between the oil companies and the Trust relating to the Texas oil property. From the 11 time that Eleanor was made co-trustee with Marjorie over William's separate property 12 owned by the Trust until approximately 1989, it appears that in signing the Division 13 Orders and Leases with the oil companies, Marjorie and Eleanor provided their 14 personal Social Security Numbers as a tax identification number when such a number 15 was requested by the oil companies. However, apparently after it was brought to their 16 attention by an oil company that the Trust was the owner of the Texas oil property and 17 not themselves personally, and the oil company requested and recommended that a tax 18 identification number for a Trust be provided, in approximately 1989, Marjorie and 19 Eleanor started providing a tax identification number to the oil companies which had 20been assigned by the IRS to subtrust 2. They never provided the tax identification 21 number which had been assigned by the IRS to subtrust 3. However, the Court was not 22 provided with any dates on when subtrust 2 and subtrust 3 were first assigned tax 23 identification numbers. 24

18. Nevertheless, and notwithstanding a tax identification number for subtrust
2 was the only tax identification number apparently given to the oil companies from
and after 1989, in the actual allocation of income received from the Texas oil property,
and in the issuance of K-1's and the filing of their Federal Income Tax Returns,

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

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

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

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

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Countermotions and briefs, and from the argument of counsel at the hearing, the Court ] finds that Eleanor's interest in the Texas oil property income, as the beneficiary under 2 subtrust 2 of the Trust, is limited to a 35% share, and her claim to all of the income is 3 not supported in any way by the facts in this case. The remaining 65% share belongs 4 to subtrust 3 and Jacqueline and Kathryn, equally, as the beneficiaries under the MTC 5 Living Trust, as bequeathed and appointed to them by Marjorie in her Will. While title 6 to the Texas oil property remains titled in the main Trust, in the event a division of the 7 title now needs to be made between the two subtrusts, such division should be made 8 as recognized in the Trust administration, with the filing of William's Estate Tax 0 Returns, and the allocation between the subtrusts resulting therefrom, with a 35% 10interest being deeded to subtrust 2, and a 65% interest being deeded to subtrust 3 (and 11 thereafter said 65% interest being deeded o the MTC Living Trust, with Jaqueline and 12 Kathryn as equal beneficiaries, should that be their request). Accordingly, Jacqueline's 13 and Kathryn's Countermotion for Summary Judgment regarding ownership of the 14 Texas oil property should be granted; and, Eleanor's Countermotion for Summary 15 Judgment should be denied. 16

While the Court finds that Jacqueline's and Kathryn's claim to 65% of the 22.17 Texas oil property and income is supported by the facts and merits of the case, and that 18 Eleanor's claim to more than 35% is not supported by the facts and merits of the case, 19 regardless of the merits of Eleanor's position, her claim to more than 35% of the 20income from the Texas oil property cannot be supported or allowed for equitable 21reasons because she has been guilty of laches in asserting her claim. Her assertion of 22 a claim to 100% of the income in June, 2013, makes no sense after failing in anyway 23 to assert a claim to more that 35% of the income prior to that time. During 24 approximately 34 years, from the death of William and her admitted awareness of the 25 allocation of the Texas oil property under the Trust provisions, until her first assertion 26of a claim to more than 35% of the income in June, 2013, Eleanor never filed a claim 27 in any court, or otherwise asserted a claim or right to more than 35% of the income. 28

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

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

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

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

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

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Nevertheless, if Eleanor believes she has a valid claim still against Jacqueline for
wrongful interference with contract, as asserted in her Answer and Counterclaim, she
is free to reassert the same.

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

27.There still remains the issues and concerns of who will serve hereafter as 12 the Trustee of the Trust, and whether or not the interests of subtrust 2 and subtrust 3 13 in the Texas oil property should now be formally split and allocated with deeds from 14 the main Trust to the subtrusts, so the parties can go their separate ways in dealing with 15 their interests in the Texas oil properties, subject to the terms of the Trust with respect 16 to subtrust 2. Clearly, under the Trust provisions, the beneficiaries under subtrust 3 are 17 granted the right to remove their interest in the Texas oil property out of the main Trust 18 and subtrust 3, to be owned independently by the MTC Living Trust and Jacqueline 19 and Kathryn as beneficiaries thereunder. However, the Court is directing the parties 2021 to submit to the Court, on or before March 2, 2015, information regarding the feasibility and effect of now splitting the Texas oil property between subtrust 2 and 22 subtrust 3 (or the MTC Living Trust), and whether or not such division of interests 23 could adversely affect the value and future ownership of the interests hereafter. The 24 Court will set a hearing to consider this issue on March 20, 2015, at 10:00a.m. 25

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

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

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

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

## <u>JUGMENT</u>

Pursuant to NRCP Rule 56, the Court finds that the pleadings and other 16 documents filed herein, together with the affidavits and documentary evidence 17 presented, show there is no genuine issue as to any material fact and that Jacqueline 18 and Kathryn are entitled to judgment against Eleanor as a matter of law in these 19 proceedings. Therefore, and based upon the foregoing findings, good cause exists to 20now render judgment against Eleanor, in favor of Jacqueline and Kathryn, as follows: 21 Jacqueline's and Kathryn's Countermotion for Summary Judgment is A. 22 granted in part as hereinafter provided. The Court hereby declares, adjudges and 23 determines that the allocation of interests in the Texas oil property between subtrust 2 24 and subtrust 3, under the W.N. Connell and Marjorie T. Connell Living Trust, dated 25 May 18, 1972, was properly made under the Trust provisions, with subtrust 2 receiving 26a 35.507% interest in the Texas oil property and subtrust 3 receiving a 64.493% 27 interest in the Texas oil property. 28

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

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Eleanor's Countermotion for Summary Judgment is hereby denied. С.

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

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

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

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

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

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LAW OFFICES

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

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

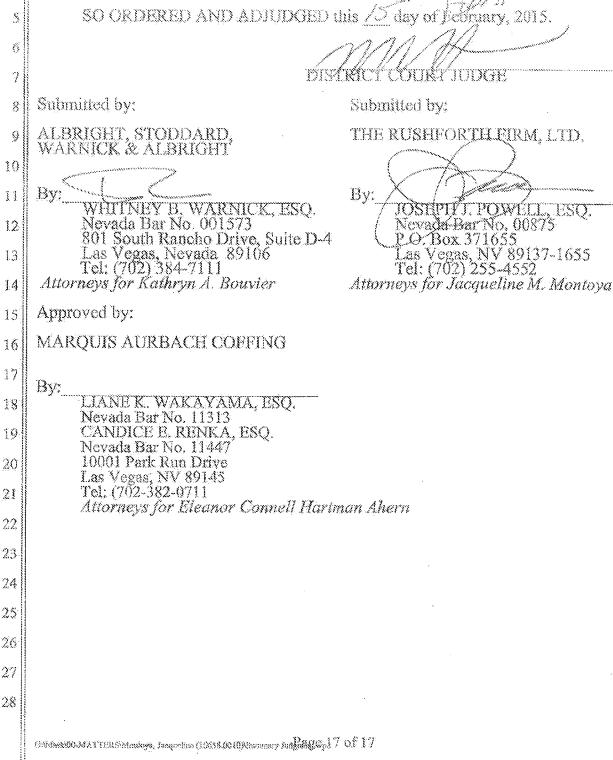
H. The parties shall each sign a Stipulation and Order for Dismissal of the
Appeal presently pending in Nevada Supreme Court Case No. 66231, filed by Eleanor,
appealing a portion of the Court's Order in these proceedings entered on July 7, 2014.
I. The Court retains jurisdiction over the Trust pending the finalization and
resolution of the remaining issues mentioned above, to be addressed hereafter at the

hearing scheduled on March 20, 2015, at 10:00a.m. Until that date, Eleanor shall
continue to exercise and fulfill her duties as Trustee of the Trust, and the parties shall
all cooperate, in the best interest of the Trust and its beneficiaries, in any dealings with
the oil companies affecting the Texas oil property.
SO ORDERED AND ADJUDGED this // day of Jebruary, 2015.

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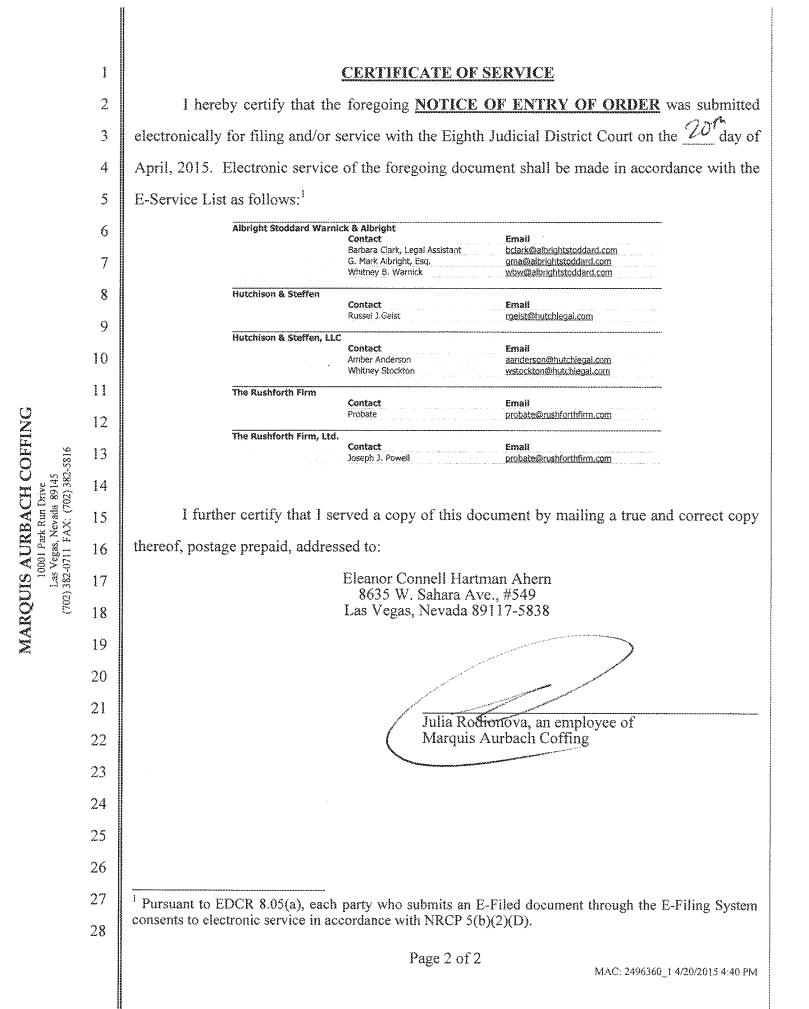
# **EXHIBIT 2**

## **EXHIBIT 2**

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1	Marquis Aurbach Coffing			
2	Dale A. Hayes, Esq. Nevada Bar No. 3430		Alin S. Shum	
3	Liane K. Wakayama, Esq. Nevada Bar No. 11313		CLERK OF THE COURT	
4	Candice E. Renka, Esq. Nevada Bar No. 11447			
5	10001 Park Run Drive Las Vegas, Nevada 89145			
6	Telephone: (702) 382-0711 Facsimile: (702) 382-5816			
7	dhayes@maclaw.com lwakayama@maclaw.com			
8	crenka@maclaw.com Attorneys for Eleanor Connell Hartman Ahern			
9	DISTRICT	COURT		
10	CLARK COUN	TY, NEVADA		
11	In the Matter of	Case No.:	P-09-066425-T	
12	THE W.N. CONNELL AND MARJORIE T.	Dept. No.:	26	
13	CONNELL LIVING TRUST DATED May 18, 1972, An Inter Vivos Irrevocable Trust.			
14	NOTICE OF ENI	l DV AF ADNF	D	
15	NOTICE OF ENTRY OF ORDER			
16	Please take notice that an Order Regarding the Accounting, Breach of Fiduciary Duty Claims and Award of Attorney Fees was entered in the above-captioned matter on the 20 <sup>th</sup> day of April, 2015, a copy of which is attached hereto. Dated this 20 day of April, 2015.			
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19	Dated ting <u>Ju</u> day of April, 2015.			
20	MAI	RQUIS AURBA	ACH COFFING	
21		$\Lambda$ .	0	
22	By <sub>ī</sub>	JAN LL Date A. Hayes, I	L CLARA	
23		Vevada Bar No. Jiane K. Wakay	3430	
24	Ì	Nevada Bar No. Candice E. Renk	11313	
25	ſ	Vevada Bar No. 0001 Park Run	11447	
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CLERK OF THE COURT

Dale A. Hayes, Esq. 2 Nevada Bar No. 3430 Liane K. Wakayama, Esq. 3 Nevada Bar No. 11313 Candice E. Renka, Esq. 4 Nevada Bar No. 11447 10001 Park Run Drive Las Vegas, Nevada 89145 Telephone: (702) 382-0711 5 6 Facsimile: (702) 382-5816 dhayes@maclaw.com 7 lwakayama@maclaw.com crenka@maclaw.com 8 Attorneys for Eleanor Connell Hartman Ahern, as Trustee

Marquis Aurbach Coffing

### DISTRICT COURT

#### CLARK COUNTY, NEVADA

In the Matter of

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THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST DATED May 18, 1972, An Inter Vivos Irrevocable Trust. Case No.: P-09-066425-T Dept. No.: 26

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

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

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

Page 1 of 5

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

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

#### UNDISPUTED FACTS The Accounting

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

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

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

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

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

Page 2 of 5

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8. The \$500,000 on deposit with Fidelity Capital Inc. ("Fidelity Capital") is not a prudent investment. NRS 164. 640 st. say.

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

#### Cutting Off the 65% Income

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

11. In June 2013, Eleanor cut off the 65% income stream of the net oil revenue in her capacity as Trustee of the Trust, w: + how + free seeking Instruction for Com+

### CONCLUSIONS OF LAW

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

25 To prevail on a breach of fiduciary duty claim in Nevada, Jacqueline and Kathryn 13. bear the burden of showing that: (1) Eleanor owed them a fiduciary duty; (2) Eleanor breached 26 that duty; and (3) Jacqueline and Kathyrn sustained damages as a proximate cause of the breach. 27 28

See Mosier v. S. Cal. Physicians Ins. Exch., 74 Cal.Rptr.2d 550, 565 (Cal. Ct. App. 1998).

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

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

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

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

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

17 2, Jacqueline and Kathryn's claim for breach of fiduciary duty against Eleanor, as Trustee of the Trust, is DENIED as it relates to the Accounting band on the more more than 18 3. Summary judgment on Jacqueline and Kathryn's claim for breach of fiduciary

duty against Eleanor, as Trustee of the Trust, is GRANTED as it relates to Eleanor cutting of

19 20 21 their 65% distributions of the oil income in June 2013; 22 23 24 111 25 262728111

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

JUDGE

Submitted by:

Dale A

MARQUIS AURBACH COFFING

Hayé

Nevada Bar Ny, 3430 Liane K. Wakayama, Esq.,

Nevada Bar No. 11313 Candice E. Renka, Esq.,

Nevada Bar No. 11447 10001 Park Run Drive

Ahem, as Trustee

Las Vegas, Nevada 89145

Attorneys for Eleanor Connell Hartman

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Page 5 of 5

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1 ASTA KIRK B. LENHARD, ESO., Bar No. 1437 2 klenhard@bhfs.com **CLERK OF THE COURT** TAMARA BEATTY PETERSON, ESQ., Bar No. 5218 3 tpeterson@bhfs.com BENJAMIN K. REITZ, ESQ., Bar No. 13233 4 breitz@bhfs.com BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106-4614 Telephone: 702.382.2101 5 6 Facsimile: 702.382.8135 7 Attorneys for Eleanor Connell Hartman Ahern 8 **DISTRICT COURT** 9 **CLARK COUNTY, NEVADA** 10In the Matter of THE W.N. CASE NO.: P-09-066425-T 11 CONNELL AND MARJORIE T. CONNELL LIVING TRUST DEPT. NO.: XXVI 12 DATED May 18, 1972, An Inter Vivos Irrevocable Trust **CASE APPEAL STATEMENT** 13 14 15 16 17In accordance with Nevada Rule of Appellate Procedure 3(f)(1) and (3), 18 Eleanor C. Ahern, a/k/a Eleanor Connell Hartman Ahern ("Ms. Ahern"), as 19 beneficiary and as Trustee, by and through her counsel of record, the law firm of 20 Brownstein Hyatt Farber Schreck, LLP, hereby submits this Case Appeal 21 22 Statement: (1)Name of appellant filing this Case Appeal Statement: 23 Eleanor C. Ahern, a/k/a Eleanor Connell Hartman Ahern 24 (2)Identify the judge issuing the decision, judgment or order appealed 25 26 from: Eighth Judicial District Court Judge Gloria Sturman. 27 28 018177\0001\12210792.1

1	(3)	Identify each appellant and the name and address of counsel for each
2	appellant:	
3		Eleanor Connell Hartman Ahern
4		Kirk B. Lenhard, Esq. Nevada Bar No. 1437
5		Tamara Beatty Peterson, Esq. Nevada Bar No. 5218
6		Benjamin K. Reitz, Esq. Nevada Bar No. 13233
7		klenhard@bhfs.com tpeterson@bhfs.com breitz@bhfs.com
8		BROWNSTEIN HVATT FARBER SCHRECK II P
9		100 North City Parkway, Suite 1600 Las Vegas, Nevada 89106 Telephone: (702) 382.2101 Facsimile: (702) 382.8135
10		Telephone: (702) 382.2101 Facsimile: (702) 382.8135
11		
12	(4)	Identify each respondent and the name and address of appellate
13	counsel, if I	known:
14		Ingunaling M. Montova
15		Jacqueline M. Montoya
16		Joseph J. Powell, Esq. Nevada Bar No. 8875
17		THE RUSHFORTH FIRM, LTD. P.O. Box 371655
18		Las Vegas, NV 89137-1655 probate@rushforthfirm.com
19		joey@rushforth.net Telephone: (702) 255-4552 Fax: (702) 255-4677
20		Fax: (702) 255-4077
21		Kathryn A. Bouvier
22		Whitney B. Warnick, Esq. Nevada Bar No. 1573
23		ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
24		Las Vegas, NV 89106
25		ALBRIGHT, STODDARD, WARNICK & ALBRIGHT 801 South Rancho Drive, Suite D-4 Las Vegas, NV 89106 wbw@albrightstoddard.com Telephone: (702) 384-7111 Fax: (702) 384-0605
26		Fax: (702) 384-0605
27	///	
28	///	
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BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Sune 1600 Las Vegas, NV 89106-4614 702.382.2101

- 1 (5)Indicate whether any attorney identified above in response to question 2 3 or 4 is not licensed to practice law in Nevada:
  - Not applicable.

(6)Indicate whether appellant was represented by appointed or retained counsel in the District Court:

Appellant, Ms. Ahern, was represented by retained counsel in the District Court proceedings.

Indicate whether appellant is represented by appointed or retained (7)counsel on appeal:

Appellant, Ms. Ahern, is represented by retained counsel on appeal.

(8)Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the District Court order granting such leave:

Not applicable.

Indicate the date the proceedings commenced in the District Court: (9)

The trust proceedings commenced on August 17, 2009, from the Petition to Assume Jurisdiction of Trust, Confirm Trustee, and Construe and Reform Trust.

17 Respondent, Jacqueline M. Montoya, filed her Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, 18 NRS 153.031(1)(E), and NRS 164.033(1)(A), which is the subject of this appeal, on 19 20 September 27, 2013.

21 (10) Provide a brief description of the nature of the action and result in the 22 district court, including the type of judgment or order being appealed and the relief 23 granted by the district court:

In the underlying action, Ms. Montoya and Ms. Bouvier (the "Sisters") 24 sought a declaration regarding the correct interpretation of certain Trust<sup>1</sup> provisions 25 26 as to entitlement to income from Texas oil properties. The orders being appealed

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<sup>&</sup>lt;sup>1</sup> The term "Trust" herein refers to The W.N. Connell and Marjorie T. Connell Living 28 Trust dated May 18, 1972. 018177\0001\12210792.1

1 from are the District Court's Summary Judgment order which was filed on April 16, 2 2015, and entered on April 17, 2015 (the "Summary Judgment Order"), and from 3 the District Court's Order Regarding The Accounting, Breach of Fiduciary Duty 4 Claims and Award of Attorneys' Fees filed and entered on April 20, 2015 (the 5 "Attorney Fee Order") (collectively, the Summary Judgment Order and Attorney 6 Fee Order are hereinafter referred to as the "Orders"). The District Court adopted 7 the Sisters' interpretation of the Trust documents, finding the Sisters are entitled to 65% of the income from the Texas oil properties while Ms. Ahern is entitled to 8 35%. The Court also found that Ms. Ahern, who was both the trustee and a 9 10 beneficiary of the Trust, had breached her fiduciary duty as trustee, and therefore is personally liable for all of the Sisters' attorneys' fees and costs in this matter. 11

(11) Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

This case is currently on appeal in two related matters:

• <u>First Appeal</u>: In the Matter of: The W.N. Connell and Marjorie T. Connell Living Trust, Dated May 18, 1972, Supreme Court Case No. 66231.

 <u>Second Appeal</u>: In the Matter of: The W.N. Connell and Marjorie T. Connell Living Trust, Dated May 18, 1972, Supreme Court Case No. 67782.
 (12) Indicate whether the appeal involves child custody or visitation: No.

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BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Packway, Suite 1600 Las Vegas, NV 89106-4614 702-382-20101

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	1	(13) In civil cases, indicate whether the appeal involves the possibility of
	2	settlement:
	$\frac{2}{3}$	
		Presently, this appeal does not involve the possibility of settlement. DATED this 18 <sup>th</sup> day of May, 2015.
	4	DATED uns 18 day of Way, 2013.
	5 6	BROWNSTEIN HYATT FARBER SCHRECK, LLP
	7	Dry /a/ Tamara Daatty Dataraan
	8	KIRK B. LENHARD, ESQ., Bar No. 1437
	9	By: /s/ Tamara Beatty Peterson KIRK B. LENHARD, ESQ., Bar No. 1437 klenhard@bhfs.com TAMARA BEATTY PETERSON, ESQ., Bar No. 5218 tpeterson@bhfs.com BENJAMIN K. REITZ, ESQ., Bar No. 13233 breitz@bhfs.com Las Vegas, NV 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135
BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106-4614 702.382.2101	10	BENJAMIN K. REITZ, ESQ., Bar No. 13233 breitz@bhfs.com
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	1	<b>CERTIFICATE OF SERVICE</b>			
<ul> <li>I HEREBY CERTIFY that I am an employee of Brownstein Hyatt F</li> <li>Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order</li> </ul>					
					and NEFCR 9, I caused a true and correct copy of the foregoing CASE A
	6	STATEMENT to be submitted electronically for filing and service with the Eighth			
	Judicial District Court via the Court's Electronic Filing System on the 18th day of				
	7 8	May, 2015, to the following:			
	9	TODD L. MOODY, ESQ.JOSEPH J. POWELL, ESQ.tmoody@hutchlegal.comprobate@rushforthfirm.com			
	10	RUSSEL J. GEIST, ESQ. THE RUSHFORTH FIRM, LTD.			
	11	rgeist@hutchlegal.com HUTCHISON & STEFFEN, LLC 10080 West Alta Drive, Suite 200 P.O. Box 371655 Las Vegas, NV 89137-1655 Attorneys for Jacqueline M. Montoya			
	12	Las Vegas, NV 89145 Attorneys for Fredrick P. Waid, Court-appointed Trustee			
	13	Court-appointed Trustee			
	14	WHITNEY B. WARNICK, ESQ. wbw@albrightstoddard.com			
	15	ALBRIGHT, STODDARD, WARNICK & ALBRIGHT			
	16	801 South Rancho Drive, Suite D-4 Las Vegas, NV 89106			
	17	Attorneys for Kathryn A. Bouvier /s/ Erin Parcells			
	18	an employee of Brownstein Hyatt Farber Schreck, LLP			
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BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North Ciry Parkway, Suite 1600 Las Vegas, NV 89106-4614 702.382.2101

Electronically Filed 05/19/2015 04:13:30 PM

1 NOTC KIRK B. LENHARD, ESQ., Bar No. 1437 klenhard@bhfs.com 2 **CLERK OF THE COURT** TAMARĂ BEATTY PETERSON, ESQ., Bar No. 5218 3 tpeterson@bhfs.com BENJAMIN K. REITZ, ESQ., Bar No. 13233 4 breitz@bhfs.com BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106-4614 Telephone: 702.382.2101 5 6 Facsimile: 702.382.8135 7 Attornevs for Eleanor Connell Hartman Ahern 8 **DISTRICT COURT** 9 **CLARK COUNTY, NEVADA** 10 In the Matter of THE W.N. CASE NO.: P-09-066425-T 11 CONNELL AND MARJORIE T. CONNELL LIVING TRUST DEPT. NO.: XXVI 12 DATED May 18, 1972, An Inter Vivos Irrevocable Trust **NOTICE OF POSTING BOND** 13 14 15 16 17In accordance with Nevada Rule of Appellate Procedure 7, Eleanor C. Ahern, 18 a/k/a Eleanor Connell Hartman Ahern, as beneficiary and as trustee of The W.N. 19 Connell and Marjorie T. Connell Living Trust dated May 18, 1972 (the "Trust"), by 20 and through her counsel of record, the law firm of Brownstein Hyatt Farber 21 Schreck, LLP, hereby gives notice that a bond will be posted in the amount of \$500 22 /// 23 /// 24 /// 25 ///

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BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106-4614 702.382.2101

	1	with this Court on May 10, 2015, as accurity pursuant to the Notice of Appeal
	1	with this Court on May 19, 2015, as security pursuant to the Notice of Appeal
	2	entered in this matter.
	3	DATED this 19th of May, 2015.
	4	BROWNSTEIN HYATT FARBER SCHRECK, LLP
	5	DROWINGTEIN IITATT FARDER SCHRECK, EEI
	6	By: /s/ Tamara Beatty Peterson
	7	By: /s/ Tamara Beatty Peterson KIRK B. LENHARD, ESQ., Bar No. 1437 klenhard@bhfs.com TAMARA BEATTY PETERSON, ESQ., Bar No. 5218
	8	tpeterson@bhfs.com BENJAMIN K. REITZ, ESQ., Bar No. 13233
	9	BENJAMIN K. REITZ, ESQ., Bar No. 13233 breitz@bhfs.com
LLP	10	breitz@bhfs.com Las Vegas, NV 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135
BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106-4614 702.382.2101	11	Facsimile: 702.382.8135
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1	CERTIFICATE OF SERVICE		
2	I HERERY CERTIEV that I am an employee of Brownstein Hyatt Earber		
3	I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber		
4	Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2,		
5	and NEFCR 9, I caused a true and correct copy of the foregoing NOTICE OF		
6	<b>POSTING BOND</b> to be submitted electronically for filing and service with the Eichth Indiaial District Court and the Court's Electronical Elling Sectors on the 10th		
7	Eighth Judicial District Court via the Court's Electronic Filing System on the 19th		
8	day of May, 2015, to the following:		
9	TODD L. MOODY, ESQ.JOSEPH J. POWELL, ESQ.tmoody@hutchlegal.comprobate@rushforthfirm.comRUSSEL J. GEIST, ESQ.THE RUSHFORTH FIRM, LTD.		
10	rgeist(a)hutchlegal.com P.O. Box 3/1655		
11	HUTCHISON & STEFFEN, LLC 10080 West Alta Drive, Suite 200 Attorneys for Jacqueline M. Montova		
12	Las Vegas, NV 89145 Attorneys for Fredrick P. Waid, Court-appointed Trustee		
13	Court-appointed Trustee		
14	WHITNEY B. WARNICK, ESQ. wbw@albrightstoddard.com		
15	ALBRIGHT, STODDARD, WARNICK & ALBRIGHT		
16	801 South Rancho Drive, Suite D-4 Las Vegas, NV 89106		
17	Attorneys for Kathryn A. Bouvier /s/ Erin Parcells		
18	an employee of Brownstein Hyatt Farber Schreck, LLP		
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## OFFICIAL RECEIPT District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Receipt No. 2015-52449-CCCLK

Payor	
Brownstein Hyatt Farber Schred	:k

Description

Transaction Date 05/19/2015

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On Behalf Of Ahern, Eleanor C P-09-066425-T In the Matter of the Trust of: The W.N Registry and Trust Account-Probate	I. Connell and Marjorie T. Con	nell Living Trust, dtd May 18, 1972	
Probate Trus	t Deposit		500.00
SUBTOTAL			500.00
		PAYMENT TOTAL	500.00
		Check (Ref #24665) Tendered Total Tendered Change	500.00 500.00 0.00
05/19/2015 12:52 PM	Cashier Station AIKO	Audit 35092873	
	OFFICIAL REC	EIPT	

## FAMILY DOMESTIC CASE SUMMARY CASE NO. P-09-066425-T

	CASE I	NU. P-09-000423	5-1	
	of the Trust of: nell and Marjorie T. Connell Living Trus 72	\$ \$ Ca \$ C1 \$	Judicial Of Hearing Ma File Ise Number His ross-Reference	aster: Yamashita, Wesley d on: 08/17/2009 story: Case P066425 nber:
	СА	ASE INFORMATION		
<b>Related Cases</b> P-14-080595-E (	(Companion Case)			Probate - Trust/Conservatorships Individual Trustee
			Case Flags:	Appealed to the Nevada Supreme Court
DATE	C	ASE ASSIGNMENT		
	CourtFamilyDate Assigned12/03/2Judicial OfficerJudge	066425-T 7 Domestic 2012 Sturman, Probate shita, Wesley		
	PA	RTY INFORMATION		
Petitioner	Ahern, Eleanor C			<i>Lead Attorneys</i> <b>Lenhard, Kirk B</b> <i>Retainea</i> 7027342220(W
Trustee	Waid, Fredrick			
Trust	The W.N. Connell and Marjorie T.	Connell Living Tru	st, dtd May 18	, 1972
Other	Bouvier, Kathryn A			Warnick, Whitney Bruck Retained 702-384-7111(W
	Montoya, Jacqueline M			<b>Powell, Joseph</b> <i>Retainea</i> 702-255-4552(W
	<b>Parties Receiving Notice</b>			
Personal Representative	Montoya, Jacqueline M			<b>Powell, Joseph</b> <i>Retainea</i> 702-255-4552(W
DATE	FUENTS &	ORDERS OF THE C		INDEX

DATE	<b>E</b> VENTS & <b>O</b> RDERS OF THE <b>C</b> OURT	INDEX
08/17/2009	Petition to Assume Jurisdiction of Trust	
	Filed by: Petitioner Ahern, Eleanor C	
	* Confirm Trustee; and Construe and Reform Trust	
08/17/2009	Notice of Hearing	
	Filed by: Petitioner Ahern, Eleanor C	
08/17/2009	Certificate of Mailing	

## FAMILY DOMESTIC

## CASE SUMMARY CASE NO. P-09-066425-T

	CASE NO. P-09-066425-T
	Filed by: Petitioner Ahern, Eleanor C For: Other Parties Receiving Notice <i>PETITION TO ASSUME</i>
09/04/2009	Hearing (9:30 AM) (Judicial Officer: Yamashita, Wesley) Events: 08/17/2009 Notice of Hearing Hrg on Pet to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust
09/04/2009	Order Filed by: Petitioner Ahern, Eleanor C Assuming Jurisdiction over Trust; Confirm Trustee; and for Construction of an Reform of Trust instrument
09/08/2009	Notice of Entry of Order Filed by: Petitioner Ahern, Eleanor C
09/27/2013	Petition Filed by: Other Montoya, Jacqueline M Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 163.031(1)(E), and NRS 164.033(1)(A)
09/27/2013	Verification Filed by: Other Montoya, Jacqueline M Verification for Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(E), and NRS 164.033(1)(A)
09/27/2013	Notice of Hearing Filed by: Other Montoya, Jacqueline M Notice of Hearing on Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(E), and NRS 164.033(1)(A)
09/27/2013	Certificate of Mailing Filed by: Other Parties Receiving Notice <i>Certificate of Mailing</i>
10/11/2013	<ul> <li>Petition (9:30 AM) (Judicial Officer: Sturman, Gloria)</li> <li>10/11/2013, 11/12/2013</li> <li>Events: 09/27/2013 Notice of Hearing</li> <li>Hearing on Petition for Declaratory judgment Regarding Limited Interest of Trust Assets</li> <li>Pursuant to NRS. 30.040, NRS 153.031(1)(E), and NRS 164.033(1)(A)</li> </ul>
11/04/2013	Motion Filed by: Petitioner Ahern, Eleanor C Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16
11/07/2013	Response Filed by: Other Montoya, Jacqueline M Response to Motion to Refer Contested Probate Matter to Master-Probate Commissioner per EDCR 4.16
11/08/2013	Receipt of Copy Filed by: Other Montoya, Jacqueline M Receipt of Copy
11/08/2013	E Errata

## FAMILY DOMESTIC

## CASE SUMMARY CASE NO. P-09-066425-T

	CASE NO. 1-09-000423-1
	Filed by: Other Montoya, Jacqueline M Errata to Response to Motion to Refer Contested Probate Matter to Master-Probate Commissioner per EDCR 4.16
11/11/2013	Reply Filed by: Petitioner Ahern, Eleanor C Reply of Eleanor C. Ahern to Response of Jacqueline M. Montoya to Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16
11/18/2013	Order Order Setting Bench Trial
11/26/2013	Motion Filed by: Petitioner Ahern, Eleanor C 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)
12/03/2013	Petition Filed by: Other Montoya, Jacqueline M Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches
12/03/2013	Verification Filed by: Other Montoya, Jacqueline M Verification for Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches
12/03/2013	Certificate of Mailing Filed by: Other Montoya, Jacqueline M <i>Certificate of Mailing</i>
12/04/2013	Notice of Hearing Filed by: Other Montoya, Jacqueline M Notice of Hearing on Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches
12/04/2013	Certificate of Mailing Filed by: Other Montoya, Jacqueline M <i>Certificate of Mailing</i>
12/04/2013	Notice Notice of Resetting Hearing
12/06/2013	Recorders Transcript of Hearing Transcript of Proceedings
12/11/2013	Objection     Filed by: Other Montoya, Jacqueline M     Objection to Motion to Dismiss Petition for Declaratory Judgment Regarding Limited Interest     of Trust Assets Pursuant to NRS 30.040, NRS 153.031(E), and NRS 164.033(1)(A) for Failure     to State a Claim Upon Which Relief Can Be Granted Per NRCP 12(B)(5)
12/11/2013	

## FAMILY DOMESTIC

## CASE SUMMARY CASE NO. P-09-066425-T

	Certificate of Mailing Filed by: Other Montoya, Jacqueline M <i>Certificate of Mailing</i>
12/13/2013	CANCELED Motion (9:30 AM) Vacated Hearing on 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)
01/03/2014	Objection Filed by: Petitioner Ahern, Eleanor C Objection of Trustee Eleanor C. Ahern to Jacqueline M. Montoya's Petition to Compet Trustee to Distribute Accured Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches
01/06/2014	Connell and Marjorie T. Connell Living Trust dated May 18, 1972; and Setting Calendar Call and Hearing
01/09/2014	Response Filed by: Other Montoya, Jacqueline M Response to Objection of Trustee Eleanor C. Ahern to Jacqueline M. Montoya's Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Minerals and Declaration of the Applicability of the Doctrine of Laches
01/14/2014	Motion (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 11/26/2013 Motion Hearing on 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)
01/14/2014	<b>Petition - HM</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 12/04/2013 Notice of Hearing Hearing on Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches
01/14/2014	All Pending Motions (9:00 AM) (Judicial Officer: Sturman, Gloria)
01/14/2014	Receipt of Copy Filed by: Other Montoya, Jacqueline M <i>Receipt of Copy</i>
01/24/2014	Calendar Call (11:00 AM) (Judicial Officer: Sturman, Gloria)
01/24/2014	Recorders Transcript of Hearing Party: Petitioner Ahern, Eleanor C Recorder's Transcript Motions Hearing Tuesday January 14 2014
01/27/2014	Notice of Taking Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Taking Videotaped Deposition of Curtis Baggett

# CASE SUMMARY CASE NO. P-09-066425-T

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01/27/2014	Notice of Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Taking Videotaped Deposition of Stanley E. Crawford, Jr.
01/27/2014	Notice of Taking Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Taking Videotaped Deposition of J. Randall Turner
02/04/2014	Recorders Transcript of Hearing Party: Petitioner Ahern, Eleanor C <i>Recorder's Transcript of Proceeding: All Pending Motions &amp; Calendar Call, Friday, January</i> 24, 2014
02/04/2014	Amended Notice Filed by: Petitioner Ahern, Eleanor C Amended Notice of Taking Videotaped Deposition of Curtis Baggett
02/05/2014	Notice of Vacating Deposition Filed by: Petitioner Ahern, Eleanor C <i>Notice of Vacating Deposition of Stanley E. Crawford, Jr.</i>
02/06/2014	Notice of Vacating Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Vacating Deposition of J. Randall Turner
02/07/2014	Notice of Vacating Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Vacating Deposition of Curtis Baggett
02/10/2014	Answer - Other Domestic/Guardianship/Probate Filed by: Petitioner Ahern, Eleanor C Answer of Trustee Eleanor C. Ahern to Jacqueline M. Montoya's Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1) (e), and NRS 164.033(1)(a) and Counterclaims Against Jacqueline M. Montoya
02/11/2014	Pre-trial Memorandum Filed by: Petitioner Ahern, Eleanor C Pre-Trial Memorandum
02/11/2014	Trial Subpoena Filed by: Petitioner Ahern, Eleanor C <i>Trial Subpoena</i>
02/11/2014	Acceptance of Service Filed by: Other Montoya, Jacqueline M Acceptance of Service
02/12/2014	Pre-trial Memorandum Filed by: Other Montoya, Jacqueline M Jacqueline Montoya's Trial Memorandum Pursuant to E.D.C.R. 7.27
02/12/2014	Pre Trial Conference (11:00 AM) (Judicial Officer: Sturman, Gloria)

	CASE NO. 1-07-000423-1
02/14/2014	Motion Filed by: Other Montoya, Jacqueline M Motion to Dismiss and Motion to Strike Counterclaims Raised by Eleanor C. Ahern Pursuant to NRCP 16 and NRCP 12(B)
02/18/2014	Bench Trial (10:00 AM) (Judicial Officer: Sturman, Gloria)
02/20/2014	Demand for Jury Trial Filed by: Petitioner Ahern, Eleanor C Demand for Jury Trial
02/21/2014	Order Setting Civil Non-Jury Trial Order Resetting Bench Trial
02/26/2014	Recorders Transcript of Hearing Party: Petitioner Ahern, Eleanor C <i>RECORDER'S TRANSCRIPT OF PROCEEDING: CIVIL BENCH TRIAL DAY 1 TUESDAY,</i> <i>FEBRUARY 18, 2014</i>
03/06/2014	Petition Filed by: Other Montoya, Jacqueline M Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches and Addendum to said Petition
03/06/2014	Addendum Filed by: Other Montoya, Jacqueline M Addendum to Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches
03/06/2014	Certificate of Mailing Filed by: Petitioner Ahern, Eleanor C <i>Certificate of Mailing</i>
03/11/2014	Stipulation and Order Filed by: Other Montoya, Jacqueline M Stipulation and Order to Extend Time to Reply or Otherwise Plead to Counterclaims Asserted by Ele4anor C. Ahern
03/12/2014	Notice of Entry of Order Filed by: Other Montoya, Jacqueline M Notice of Entry of Stipulation and Order to Extend Time to Reply or Otherwise Plead to Counterclaims Asserted by Eleanor C. Ahern
03/13/2014	Certificate of Mailing Filed by: Other Montoya, Jacqueline M <i>Certificate of Mailing</i>
03/13/2014	Objection Filed by: Petitioner Ahern, Eleanor C Objection of Trustee Eleanor C. Ahern to Jacqueline M. Montoya's Petition and Addendum to Petition to Compel Trustee to Distribute Accured Income and Future Income Recieved from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches

	CASE NO. P-09-066425-1
03/13/2014	Affidavit of Mailing Filed by: Petitioner Ahern, Eleanor C <i>Affidavit of Mailing</i>
03/13/2014	Recorders Transcript of Hearing Party: Petitioner Ahern, Eleanor C RECORDER'S TRANSCRIPT PRETRIAL CONFERENCE WEDNESDAY, FEBRUARY 12, 2014
03/14/2014	Certificate of Mailing Filed by: Petitioner Ahern, Eleanor C <i>Certificate of Mailing</i>
03/18/2014	Motion to Dismiss Filed by: Other Montoya, Jacqueline M Motion to Dismiss Counterclaims of Eleanor C. Ahern
03/20/2014	Amended Certificate of Mailing Party: Other Montoya, Jacqueline M Amended Certificate of Mailing
03/20/2014	Certificate of Mailing Filed by: Other Montoya, Jacqueline M <i>Certificate of Mailing</i>
03/20/2014	Amended Notice Filed by: Other Montoya, Jacqueline M Amended Notice of Hearing on Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches and Addendum to Said Petition
03/25/2014	Ex Parte Application Filed by: Other Montoya, Jacqueline M <i>Ex Parte Application for Order Shortening Time</i>
03/26/2014	Petition Filed by: Other Montoya, Jacqueline M Petition for Construction and Effect of Probate Court Order
03/26/2014	Verification Filed by: Other Montoya, Jacqueline M Verification for Petition for Construction and Effect of Probate Court Order
03/26/2014	Notice of Hearing Filed by: Other Montoya, Jacqueline M Notice of Hearing on Petition for Construction and Effect of Probate Court Order
03/26/2014	Notice of Entry Filed by: Other Montoya, Jacqueline M Notice of Entry of Ex Parte Application for Order Shortening Time
03/27/2014	Petition Filed by: Other Montoya, Jacqueline M Petition for Determination of Construction and Interpretation of Language Relating to Trust

	No. 2
03/27/2014	Verification Filed by: Other Montoya, Jacqueline M Verification for Petition for Determination of Construction and Interpretation of Language Relating to Trust No. 2
03/27/2014	Notice of Hearing Filed by: Other Montoya, Jacqueline M Notice of Hearing on Petition for Determination of Construction and Interpretation of Language Relating to Trust No. 2
03/28/2014	Certificate of Mailing Filed by: Other Montoya, Jacqueline M <i>Certificate of Mailing</i>
03/31/2014	Certificate of Mailing Filed by: Other Montoya, Jacqueline M <i>Certificate of Mailing</i>
04/10/2014	Ex Parte Petition Filed by: Petitioner Ahern, Eleanor C Ex Parte Petition for Order Shortening Time Regarding Petition for Release of Trust Funds for the Payment of Administrative Expenses, Insurance Premiums and Taxes Attributable to Trust Property
04/10/2014	Petition Filed by: Petitioner Ahern, Eleanor C Petition for Release of Trust Funds for the Payment of Administrative Expenses, Insurance Premiums and Taxes Attributable to Trust Property
04/10/2014	Order Shortening Time Filed by: Petitioner Ahern, Eleanor C Order Shortening Time Regarding Petition for Release of Trust Funds for the Payment of Administrative Expenses, Insurance Premiums and Taxes Attributable to Trust Property
04/10/2014	Certificate of Mailing Filed by: Petitioner Ahem, Eleanor C Certificate of Mailing Regarding Petition for Release of Trust Funds for the Payment of Administrative Expenses, Insurance Premiums and Taxes Attributable to Trust Property
04/18/2014	Objection Filed by: Other Montoya, Jacqueline M Objection, in Part, to Petition for Release of Trust Funds for the Payment of Administrative Expenses, Insurance Premiums and Taxes Attributable to Trust Property
04/22/2014	<b>Petition</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 04/10/2014 Order Shortening Time Hearing on Petition for Release of Trust Funds for the Payment of Administrative Expenses, Insurance Premiums and Taxes Attributable to Trust Property
04/28/2014	Recorders Transcript of Hearing Party: Trust The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972 RECORDER'S TRANSCRIPT OF PROCEEDINGS: PETITION TUESDAY, APRIL 22, 2014
05/07/2014	

	CASE 110, 1-07-000423-1
	Errata Filed by: Petitioner Ahern, Eleanor C Errata to Objection to Trustee Eleanor C. Ahern to Jacqueline M. Montoya's Petition and Addendum to Petition to Compel Trustee to Distribute Accured Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches
05/07/2014	Opposition Filed by: Petitioner Ahern, Eleanor C Opposition of Eleanor C. Ahern to Motion to Dismiss Counterclaims of Eleanor C. Ahern
05/08/2014	Ex Parte Petition Filed by: Petitioner Ahem, Eleanor C Ex Parte Petition for Order Shortening Time Regarding Motion to Continue Jacqueline M. Montoya's Petition for Construction and Effect of Probate Court Order
05/08/2014	Order Shortening Time Filed by: Petitioner Ahern, Eleanor C Order Shortening Time Regarding Motion to Continue Jacqueline M. Montoya's Petition for Construction and Effect of Probate Court Order
05/08/2014	Motion Filed by: Petitioner Ahem, Eleanor C Motion of Eleanor C. Ahern to Continue May 13, 2014 Hearing on Petition for Construction and Effect of Probate Court Order of Jacqueline M. Montoya
05/08/2014	Certificate of Mailing Filed by: Petitioner Ahem, Eleanor C Certificate of Mailing Regarding Motion of Eleanor C. Ahern to Continue May 13, 2014 Hearing on Petition for Construction and Effect of Probate Court Order of Jacqueline M. Montoya
05/08/2014	Certificate of Mailing Filed by: Other Montoya, Jacqueline M <i>Certificate of Mailing</i>
05/08/2014	Response Filed by: Other Montoya, Jacqueline M Response to Objection of Eleanor C. Ahern to Jacqueline M. Montoya's Petition and Addendum to Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches
05/12/2014	Opposition Filed by: Petitioner Ahern, Eleanor C Opposition of Eleanor C. Ahern to Jacqueline M. Montoya's Petition for Construction and Effect of Probate Court Order
05/12/2014	Certificate of Mailing Filed by: Petitioner Ahern, Eleanor C Certificate of Mailing Regarding Opposition of Eleanor C. Ahern to Jacqueline M. Montoya's Petition for Contruction of Effect of Probate Court Order
05/12/2014	Reply Filed by: Petitioner Ahern, Eleanor C Reply to Trustee Eleanor C. Ahern to Response of Jacqueline M. Montoya to Objection of

	CASE NO. P-09-066425-T
	Trustee Eleanor c. Ahern to Jacqueline M. Montoya's Petiton and Addendum to Petition to Compel Trustee to Distribute Accured Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches
05/13/2014	Motion (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 03/18/2014 Motion to Dismiss
	Motion to Dimiss Counterclaims of Eleanor C. Ahern
05/13/2014	Motion (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 03/20/2014 Amended Notice Jacqueline M. Montoya's Amended Notice of Hearing on Petition to Compel Trustee to Distribute Accrued Income and Future Income Received From Oil, Gas, and Mineral Leases
	and Declaration of the Applicability of the Doctrine of Laches and Addendum to Said Petition
05/13/2014	Hearing (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 03/26/2014 Notice of Hearing Hearing on Petition for Construction and Effect of Probate Court Order
05/13/2014	<b>Motion</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 05/08/2014 Order Shortening Time Motion of Eleanor c. Ahern to Continue May 13, 2014 Hearing on Petition for Constructive and Effect of Probate Court Order of Jacqueline M. Montoya
05/13/2014	All Pending Motions (9:00 AM) (Judicial Officer: Sturman, Gloria)
05/16/2014	Order Filed by: Petitioner Ahem, Eleanor C Order Granting Petition for Release of Trust Funds for the Payment of Administrative Expenses, Insurane Premiums and Taxes Attributable to Trust Property
05/19/2014	Notice of Entry of Order Filed by: Petitioner Ahern, Eleanor C <i>Notice of Entry of Order</i>
05/20/2014	Recorders Transcript of Hearing Party: Petitioner Ahern, Eleanor C <i>Transcript RE: All Pending Motions</i>
05/27/2014	CANCELED Petition - HM (9:00 AM) (Judicial Officer: Sturman, Gloria) Vacated Hearing on Petition for Determination of Construction and Interpretation of Language Relating to Trust No. 2
06/09/2014	Notice Filed by: Other Bouvier, Kathryn A Notice of Appearance
07/07/2014	Order Filed by: Other Bouvier, Kathryn A Order: Re Pending Motions and Scheduling
07/07/2014	Order Filed by: Petitioner Ahern, Eleanor C Order: Re Pending Motions and Scheduling
07/08/2014	Notice of Entry of Order Filed by: Other Montoya, Jacqueline M

	Notice of Entry of Order: Re Pending Motions and Scheduling
07/17/2014	Motion to Compel Filed by: Petitioner Ahern, Eleanor C Motion to Compel Responses to Eleanor C. Ahern's First Set of Interrogatories and First Request for Production of Documents to Jacqueline M. Montoya
07/17/2014	Certificate of Mailing Filed by: Petitioner Ahern, Eleanor C <i>Certificate of Mailing</i>
07/17/2014	CANCELED Calendar Call (11:00 AM) (Judicial Officer: Sturman, Gloria) Vacated
07/22/2014	Subpoena Duces Tecum Filed by: Petitioner Ahern, Eleanor C Subpoena Duces Tecum for Business Records
07/31/2014	Case Appeal Statement Filed by: Petitioner Ahern, Eleanor C <i>Case Appeal Statement</i>
07/31/2014	Notice of Appeal Filed by: Petitioner Ahern, Eleanor C <i>Notice of Appeal</i>
08/07/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Subpoena Duces Tecum to the Custodian of Records for Medicare
08/07/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Subpoena Duces Tecum to the Custodian of Records for University Medical Center
08/07/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Subpoena Duces Tecum to the Custodian of Records for Christopher S. Cruz, M.D.
08/07/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Subpoena Duces Tecum to the Custodian of Records for David A. Straus, Esquire
08/07/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Subpoena Duces Tecum to the Custodian of Records for Corey Haina
08/11/2014	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Sturman, Gloria) Vacated
08/12/2014	Affidavit of Service Filed by: Petitioner Ahern, Eleanor C Affidavit of Service: Custodian of Records for University Medical Center
08/13/2014	Affidavit of Service Filed by: Petitioner Ahern, Eleanor C

## FAMILY DOMESTIC CASE SUMMARY CASE NO. P-09-066425-T

	Affidavit of Service
08/13/2014	Affidavit of Service Filed by: Petitioner Ahern, Eleanor C <i>Affidavit of Service</i>
08/14/2014	Subpoena Duces Tecum Filed by: Petitioner Ahern, Eleanor C Subpoena Duces Tecum for Business Records
08/14/2014	Subpoena Duces Tecum Filed by: Petitioner Ahern, Eleanor C Subpoena Duces Tecum for Business Records
08/14/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Subpoena Duces Tecum to the Custodian of Records for Kindred Hospital Las Vegas
08/19/2014	Clerk of the Courts Notice of Change of Hearing Clerk of the Courts Notice of Change of Hearing - Family
08/19/2014	Response Filed by: Other Montoya, Jacqueline M Jacqueline M. Montoya's Response to Eleanor C. Ahern's Motion to Compel Responses to Eleanor C. Ahern's First Set of Interrogatories and First Request for Production of Documents to Jacqueline M. Montoya
08/19/2014	Certificate of Mailing Filed by: Other Montoya, Jacqueline M <i>Certificate of Mailing</i>
08/22/2014	CANCELED Motion to Compel (1:30 PM) (Judicial Officer: Beecroft, Chris A, Jr.) Vacated Motion to Compel Responses to Eleanor C. Ahern's First Set of Interrogatories and First Request for Production of Documents to Jacqueline M. Montoya
08/29/2014	Reply Filed by: Petitioner Ahern, Eleanor C Reply of Eleanor C. Ahern to Jacqueline M. Montoya's Response to Eleanor C. Ahern's Motion to Compel Responses to Eleanor C Ahern's First Set of Interrogatories and First Request for Production of Documents to Jacqueline M. Montoya
08/29/2014	Reply Filed by: Petitioner Ahern, Eleanor C Reply of Eleanor C. Ahern to Jacqueline M. Montoya's Response to Eleanor C. Ahern's Motion to Compel Responses to Eleanor C Ahern's First Set of Interrogatories and First Request for Production of Documents to Jacqueline M. Montoya
09/03/2014	<b>Motion to Compel</b> (9:00 AM) (Judicial Officer: Bulla, Bonnie) Events: 07/17/2014 Motion to Compel Motion to Compel Responses to Eleanor C. Ahern's First Set of Interrogatories and First Request for Production of Documents to Jacqueline M. Montoya
09/10/2014	Stipulation and Order Filed by: Petitioner Ahern, Eleanor C Stipulation and Oder for Release of Medicial Information

09/11/2014	Subpoena Duces Tecum Filed by: Petitioner Ahern, Eleanor C Subpoena Duces Tecum for Business Records
09/11/2014	Notice of Entry of Order Filed by: Petitioner Ahern, Eleanor C Notice of Entry of Order Re: Stipulation and Order for Release of Medical Information
09/15/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Suboena Duces Tecum to the Custodian of Records for Complex Care Hospital
09/15/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Subpoena Duces Tecum to the Custodian of Records for MountainView Hospital
09/15/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Subpoena Duces Tecum to the Custodian of Records for Sunrise Hospital and Medical Center
09/15/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Subpoena Duces Tecum to the Custodian of Records for Torrey Pines Rehabilitation Center
09/19/2014	Transcript of Proceedings Motion to Compel, Wednesday, September 3, 2014
09/19/2014	Transcript of Proceedings September 3, 2014
09/26/2014	Notice of Taking Deposition Filed by: Petitioner Ahern, Eleanor C <i>Notice of Taking Deposition</i>
09/26/2014	Notice Filed by: Other Montoya, Jacqueline M <i>Notice of Deposition</i>
09/26/2014	Notice of Taking Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Taking Deposition-Kathryn Bouvier
10/03/2014	Notice of Taking Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Taking Deposition- David A. Straus
10/03/2014	Notice of Taking Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Taking Deposition-Josefina C. Jones
10/09/2014	

### FAMILY DOMESTIC CASE SUMMARY CASE NO. P-09-066425-T

	Motion to Dismiss Filed by: Petitioner Ahem, Eleanor C 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)
10/10/2014	Status Check (11:00 AM) (Judicial Officer: Bulla, Bonnie)
10/13/2014	Stipulation and Order Filed by: Petitioner Ahern, Eleanor C Stipulation and Order for Release of Medicial Information
10/15/2014	Notice of Entry of Order Filed by: Petitioner Ahern, Eleanor C Notice of Entry of Order Re: Stipulation and Order for Release of Medicial Information
10/16/2014	Notice of Taking Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Taking Deposition
10/21/2014	Subpoena Filed by: Petitioner Ahern, Eleanor C Subpoena to Sharon Brown
10/21/2014	Subpoena Filed by: Petitioner Ahern, Eleanor C Subpoena to David A. Straus, Esq.
10/21/2014	Subpoena Filed by: Petitioner Ahern, Eleanor C Subpoena to Josefina C. Jones
10/24/2014	Notice of Vacating Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Vacating Deposition
10/24/2014	Notice of Vacating Deposition Filed by: Petitioner Ahern, Eleanor C <i>Notice of Vacating Deposition</i>
10/24/2014	Notice of Vacating Deposition Filed by: Petitioner Ahern, Eleanor C Notice of Vacating Deposition
11/03/2014	Substitution of Attorney Filed by: Petitioner Ahern, Eleanor C Substitution of Attorney
11/10/2014	Motion to Enforce Filed by: Other Bouvier, Kathryn A Motion to Enforce Settlement Agreement
11/12/2014	Notice of Hearing Filed by: Other Bouvier, Kathryn A

CASE NO. P-09-066425-T		
	Renotice of Hearing on Motion to Enforce Settlement Agreement	
11/14/2014	Status Check (11:00 AM) (Judicial Officer: Bulla, Bonnie) Status Check: Compliance / Sanctions	
11/24/2014	Motion Filed by: Petitioner Ahern, Eleanor C Motion to Withdraw as Attorney for Eleanor Ahern	
11/24/2014	Notice of Hearing Filed by: Petitioner Ahern, Eleanor C <i>Notice of Hearing</i>	
11/25/2014	Motion to Continue Filed by: Petitioner Ahern, Eleanor C Motion to Continue Hearing and Briefing Schedule and to Stay All Pending Matters on Order Shortening Time	
11/25/2014	Certificate of Mailing Filed by: Petitioner Ahern, Eleanor C <i>Certificate of Mailing</i>	
11/26/2014	Opposition Filed by: Other Bouvier, Kathryn A Opposition to Eleanor Ahern's Motion to Continue Hearing and Briefing Schedule and to Stay All Pending Matters on Order Shortening Time	
11/26/2014	Substitution of Attorney Filed by: Petitioner Ahern, Eleanor C Substitution of Attorneys	
11/26/2014	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Entry of Order Shortening Time and Notice of Hearing	
12/01/2014	Discovery Commissioners Report and Recommendations Discovery Commissioners Report and Recommendations	
12/03/2014	Reply Filed by: Petitioner Ahern, Eleanor C Reply in Support of Motion to Continue Hearing and Briefing Schedule and to Stay All Pending Matters on Order Shortening Time	
12/04/2014	Motion (10:30 AM) (Judicial Officer: Sturman, Gloria) Events: 11/25/2014 Motion to Continue All Pending Motion	
12/11/2014	Opposition           Filed by: Petitioner Ahern, Eleanor C           Opposition to Motion to Enforce Settlement Agreement	
12/11/2014	Recorders Transcript of Hearing Party: Petitioner Ahern, Eleanor C Recorder's Transcript of Proceeding: All Pending Motions Thursday December 4, 2014	

# CASE SUMMARY CASE NO. P-09-066425-T

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12/12/2014	Errata Filed by: Petitioner Ahem, Eleanor C Errata to Opposition to Motion to Enforce Settlement Agreement
12/12/2014	Hearing - HM (9:30 AM) (Hearing Master: Yamashita, Wesley) Events: 11/24/2014 Motion Motion to Withdraw as Atty for Eleanor Ahern
12/12/2014	CANCELED Hearing - HM (9:30 AM) Vacated Notice of Hearing
12/15/2014	Reply Filed by: Other Bouvier, Kathryn A <i>Reply in Support of Motion to Enforce Settlement Agreement</i>
12/17/2014	<b>Motion to Enforce</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 11/10/2014 Motion to Enforce Settlement Agreement [10AM]
12/17/2014	Order Filed by: Petitioner Ahern, Eleanor C Order Granting in Part Motion to Continue Hearing and Briefing Schedule and to Stay All Pending Matters
12/19/2014	Status Check (11:00 AM) (Judicial Officer: Bulla, Bonnie) Status Check: Compliance
12/19/2014	Notice of Entry of Order Filed by: Petitioner Ahem, Eleanor C Notice of Entry of Order
12/23/2014	Motion to Compel Filed by: Petitioner Ahern, Eleanor C <i>Emergency Motion to Compel David L. Mann, Esq. to Turn Over Documents</i>
12/23/2014	Opposition and Countermotion Filed by: Other Bouvier, Kathryn A Opposition to Eleanor C. Ahern's Motion to Dismiss Petition for Declaratory Judgment for Failure to State a Claim upon which Relief can be Granted; and Countermotion of Kathryn A Bouvier and Jacqueline M. Montoya for Summary Judgment on Petition for Declaratory Judgment, for Damages and Assessment of Penalties, and for other Relief
12/24/2014	Recorders Transcript of Hearing RECORDER'S TRANSCRIPT OF PROCEEDING: MOTION TO ENFORCE: SETTLEMENT AGREEMENT WEDNESDAY, DECEMBER 17, 2014
12/24/2014	Notice of Hearing Filed by: Petitioner Ahem, Eleanor C <i>Notice of Hearing</i>
12/29/2014	Motion Filed by: Other Mann, David L, ESQ Attorney David L. Mann ESQ motion to Quash Supoenas and For A Protective Order

### FAMILY DOMESTIC CASE SUMMARY CASE NO. P-09-066425-T

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12/31/2014	Motion Filed by: Petitioner Ahern, Eleanor C Motion to Exceed Page Limit
01/02/2015	Motion for Summary Judgment Filed by: Petitioner Ahem, Eleanor C Omnibus Opposition to Petition for Determination of Construction and Interpretation of Language Relating to Trust No 2, and Petition for Construction and Effect of Probate Court Order; and Countermotion for Summary Judgment
01/08/2015	Order Filed by: Petitioner Ahern, Eleanor C Order Granting Motion to Exceed Page Limit
01/09/2015	Reply Filed by: Other Bouvier, Kathryn A Reply in Support of Countermotion of Kathryn A. Bouvier and Jacqueline M. Montoya for Summary Judgment on Petition for Declaratory Judgment, for Damages, and Assessment of Penalties, and for Other Relief; And Opposition to Eleanor's Countermotion for Summary Judgment
01/09/2015	Reply Filed by: Petitioner Ahern, Eleanor C Eleanor C. Ahern's (1) Reply in Support of Eleanor C. Ahern's Motion to Dismiss Petition for Declaratory Judgment for Failure to State a Claim Upon Which Relief Can Be Granted; (2) Opposition to Countermotion of Kathryn A. Bouvier and Jacqueline M. Montoya for Summary Judgment on Petition for Declaratory Judgment, For Damages and Assessment of Penalties, and for Other Relief; and (3) Reply in Support of Countermotion for Summary Judgment
01/09/2015	Status Check: Compliance (11:00 AM) (Judicial Officer: Bulla, Bonnie)
01/09/2015	Motion Filed by: Petitioner Ahern, Eleanor C Motion to Exceed Page Limit
01/09/2015	Notice of Entry of Order Filed by: Petitioner Ahern, Eleanor C Notice of Entry of Order
01/12/2015	Supplement Filed by: Other Montoya, Jacqueline M Supplement to Reply in Support of Countermotion of Kathryn A. Bouvier and Jacqueline M. Montoya for Summary Judgment on Petition for Declaratory Judgment, for Damages and Assessment of Penalties, and for Other Relief; and Opposition to Eleanor's Countermotion for Summary Judgment
01/12/2015	Motion Filed by: Other Bouvier, Kathryn A Motion for Leave to Amend Pleadings of Jacqueline M. Montoya and Kathryn A. Bouvier for Claims, Defenses, Damages and Assessment of Penalties, and for Other Relief Against Eleanou Connell Hartman Ahern
01/12/2015	Ex Parte Application Filed by: Other Bouvier, Kathryn A <i>Kathryn A. Bouvier and Jacqueline M. Montoya's Ex Parte Application for an Order</i>

	Shortening Time
01/13/2015	Opposition Filed by: Other Mann, David L, ESQ David L. Mann ESQs Opposition to Emergency Motion to compel David L.Mann EQS to turn over Documents and Opposition to Order Shortening Time
01/13/2015	Certificate of Mailing Filed by: Petitioner Ahern, Eleanor C <i>Certificate of Mailing</i>
01/13/2015	Affidavit of Service Filed by: Other Montoya, Jacqueline M Party 2: Petitioner Ahem, Eleanor C
01/14/2015	Status Check: Settlement/Trial Setting (9:00 AM) (Judicial Officer: Sturman, Gloria) 10:00AM SESSION
01/14/2015	<b>Status Check</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) Petition for Determination of Construction and Interpretation of Lanuage Relating to Trust No. 2 (10:00AM)
01/14/2015	Status Check (9:00 AM) (Judicial Officer: Sturman, Gloria) Motion to Dismiss Counterclaims of Eleanor C. Ahern (10:00AM)
01/14/2015	<b>Status Check</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) Petition for Construction and Effect of Probate Court Order (10:00AM)
01/14/2015	<b>Opposition &amp; Countermotion</b> (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 12/23/2014 Opposition and Countermotion Opposition & Countermotion of Kathryn A. Bouvier and Jacqueline M. Montoya for Summary Judgment of Petition for Declaration Judgment, for Damages and Assessment of Penalties, and for other Relief
01/14/2015	Motion (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 01/12/2015 Motion Motion for Leave to Amend Pleadings of Jacqueline M. Montoya and Kathryn A Bouvier for Claims, Defenses, Damages and Assessment of Penalties, and for Other Relief Against Eleanor Connell Hartman Ahern
01/14/2015	All Pending Motions (9:00 AM) (Judicial Officer: Sturman, Gloria)
01/15/2015	Re-Notice Filed by: Petitioner Ahern, Eleanor C <i>Re-Notice of Motion</i>
01/16/2015	Amended Notice Filed by: Petitioner Ahem, Eleanor C <i>Amended Notice of Hearing</i>
01/16/2015	<b>Motion - HM</b> (9:30 AM) (Hearing Master: Yamashita, Wesley) Attorney David L. Mann ESQ Motion to Quash Supoenas and For A Protective Orde
01/16/2015	Order Filed by: Petitioner Ahern, Eleanor C Order Granting Motion to Exceed Page Limit

01/20/2015	Notice of Entry of Order Filed by: Petitioner Ahern, Eleanor C Notice of Entry of Order
01/20/2015	Supplement Filed by: Other Bouvier, Kathryn A Supplement to Motion to Amend Pleadings
01/22/2015	Receipt of Copy Filed by: Petitioner Ahern, Eleanor C <i>Receipt of Copy</i>
01/26/2015	Opposition to Motion Filed by: Petitioner Ahern, Eleanor C Opposition to Attorney David L. Mann, Esq.'s Motion to Quash Subpoenas and for a Protective Order
01/26/2015	Re-Notice Filed by: Petitioner Ahern, Eleanor C <i>Re-Notice of Motion</i>
01/27/2015	Errata Filed by: Petitioner Ahern, Eleanor C Errata to Opposition to Attorney David L. Mann, Esq.'s Motion to Quash Subpoena and for a Protective Order
01/27/2015	Opposition Filed by: Petitioner Ahern, Eleanor C Opposition to Motion to Amend Pleadings
01/28/2015	Certificate of Mailing Filed by: Petitioner Ahern, Eleanor C <i>Certificate of Mailing</i>
01/30/2015	<b>Hearing</b> (10:00 AM) (Judicial Officer: Sturman, Gloria) Events: 01/12/2015 Motion
02/11/2015	Reply to Opposition Filed by: Other Mann, David L, ESQ Reply to Opposition to Attorney David L. Mann ESQs Motion to Quash Subpoenas and For a Protective Order
02/11/2015	Reply Filed by: Petitioner Ahern, Eleanor C Reply in Support of Emergency Motion to Compel David L. Mann, Esq. to Turn Over Documents
02/11/2015	CANCELED Motion (9:00 AM) (Judicial Officer: Judge Sturman, Probate) Vacated Emergency Motion to Compel David Mann Esq to turn over Documents
02/13/2015	Stipulation and Order Filed by: Petitioner Ahern, Eleanor C Stipulation and Order to File Under Seal

	CASE NO. P-09-066425-1
02/17/2015	Notice of Entry of Order Filed by: Petitioner Ahem, Eleanor C Notice of Entry of Order
02/17/2015	Discovery Commissioners Report and Recommendations Filed by: Other Montoya, Jacqueline M Discovery Commissioner's Report and Recommendations
02/18/2015	<b>Motion</b> (9:30 AM) (Judicial Officer: Bulla, Bonnie) Events: 01/15/2015 Re-Notice Eleanor Connell Hartman Ahern, as Trustee and Individually Motion to Compel David Mann ESQ. to Turn over Documents
02/18/2015	Notice of Entry of Order Filed by: Other Montoya, Jacqueline M Notice of Entry of Discovery Commissioner's Report and Recommendations
03/02/2015	Notice of Entry of Order Filed by: Other Bouvier, Kathryn A Notice of Entry of Order Denying Motion to Enforce Settlement Agreement
03/02/2015	Recorders Transcript of Hearing Transcripts of Proceedings: Hearing FRIDAY, JANUARY 30, 2015
03/02/2015	Order Denying Filed by: Other Montoya, Jacqueline M Order Denying Motion to Enforce Settlement Agreement
03/06/2015	Motion Filed by: Other Mann, David L, ESQ David L Mann, Esq's Motion For Rule 11 Sanctions
03/06/2015	Receipt of Copy Filed by: Other Mann, David L, ESQ <i>Receipt of Copy</i>
03/12/2015	Filed Under Seal Filed by: Other Montoya, Jacqueline M <i>Brief Regarding Pending Issues</i>
03/13/2015	Filed Under Seal Filed by: Trust The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972 Brief Regarding Accounting, Fiduciary Duties, And Trust Adminastration
03/16/2015	Notice Filed by: Petitioner Ahern, Eleanor C <i>Notice to Vacate Hearing</i>
03/18/2015	Filed Under Seal Filed by: Other Bouvier, Kathryn A Supplement to Brief Regarding Pending Issues
03/18/2015	Filed Under Seal Filed by: Petitioner Ahern, Eleanor C

	Filed Under Seal - Supplement to Brief Regarding Accounting, Fiduciary Duties, and Trust Administration
03/19/2015	Filed Under Seal Filed by: Other Bouvier, Kathryn A Filed Under Seal - Second Supplement to Brief Regarding Pending Issues
03/20/2015	Hearing (10:00 AM) (Judicial Officer: Sturman, Gloria)
03/20/2015	Status Check: Compliance (11:00 AM) (Judicial Officer: Bulla, Bonnie)
03/25/2015	Motion (9:00 AM) (Judicial Officer: Judge Sturman, Probate) Events: 03/06/2015 Motion David L Mann, Esq's Motion For Rule 11 Sanctions
03/26/2015	<b>Telephonic Hearing</b> (11:00 AM) (Judicial Officer: Sturman, Gloria)
03/27/2015	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Supplemental Exhibits Provided at March 20, 2015 Hearing
03/31/2015	Recorders Transcript of Hearing TRANSCRIPT OF PROCEEDINGS HEARING FRIDAY, MARCH 20, 2015
04/01/2015	Motion Filed by: Other Montoya, Jacqueline M Motion in Support of Award of Attorney's Fees and Costs
04/01/2015	Order Filed by: Other Montoya, Jacqueline M Order Appointing New Temporary Trustee
04/03/2015	Filed Under Seal Filed by: Other Parties Receiving Notice <i>E-Mail</i>
04/06/2015	Notice of Entry of Order Filed by: Petitioner Ahern, Eleanor C Notice of Entry of Order
04/07/2015	Notice of Appeal Filed by: Petitioner Ahern, Eleanor C Notice of Appeal
04/07/2015	Case Appeal Statement Filed by: Petitioner Ahern, Eleanor C Case Appeal Statement
04/09/2015	Motion to Stay Filed by: Petitioner Ahern, Eleanor C Motion for Stay Pending Appeal on Order Shortening Time
04/10/2015	Recorders Transcript of Hearing

	TRANSCRIPT OF PROCEEDINGS TELEPHONIC HEARINGS THURSDAY, MARCH 26, 2015
04/10/2015	Receipt of Copy Filed by: Petitioner Ahern, Eleanor C <i>Receipt of Copy of the Motion for Stay Pending Appeal on Order Shortening Time</i>
04/13/2015	Opposition Filed by: Other Montoya, Jacqueline M Opposition to Eleanor Connell Hartman Ahern's Motion for Stay Pending Appeal
04/13/2015	Reply Filed by: Trustee Waid, Fredrick Reply to Motion for Stay Pending Appeal on Order Shortening Time
04/13/2015	Notice Filed by: Petitioner Ahern, Eleanor C Notice of Compliance Regarding \$500,000 Deposit
04/14/2015	Notice of Withdrawal Filed by: Petitioner Ahern, Eleanor C Notice of Withdrawal of Motion for Stay Pending Appeal on Order Shortening Time
04/14/2015	Notice of Withdrawal Filed by: Petitioner Ahern, Eleanor C Notice of Withdrawal of Notice of Compliance Regarding \$500,000 Deposit
04/14/2015	Notice of Entry of Order Filed by: Other Bouvier, Kathryn A Notice of Entry of Order from March 26 2015
04/14/2015	Order Filed by: Other Montoya, Jacqueline M ORDER
04/14/2015	Motion For Stay (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 04/09/2015 Motion to Stay Trustee Eleanor Connell-Hartman-Ahern's Motion for Stay Pending Appeal on Order Shortening Time
04/14/2015	<b>Telephonic Hearing</b> (4:30 PM) (Judicial Officer: Judge Sturman, Probate)
04/15/2015	Motion Filed by: Petitioner Ahern, Eleanor C Marquis Aurbach Coffing's Motion to Withdraw as Counsel of Record on Order Shortening Time
04/15/2015	Notice of Taking Deposition Filed by: Trustee Waid, Fredrick <i>Notice of Taking Deposition</i>
04/15/2015	Notice of Hearing Filed by: Petitioner Ahern, Eleanor C Notice of Hearing on Order to Show Cause

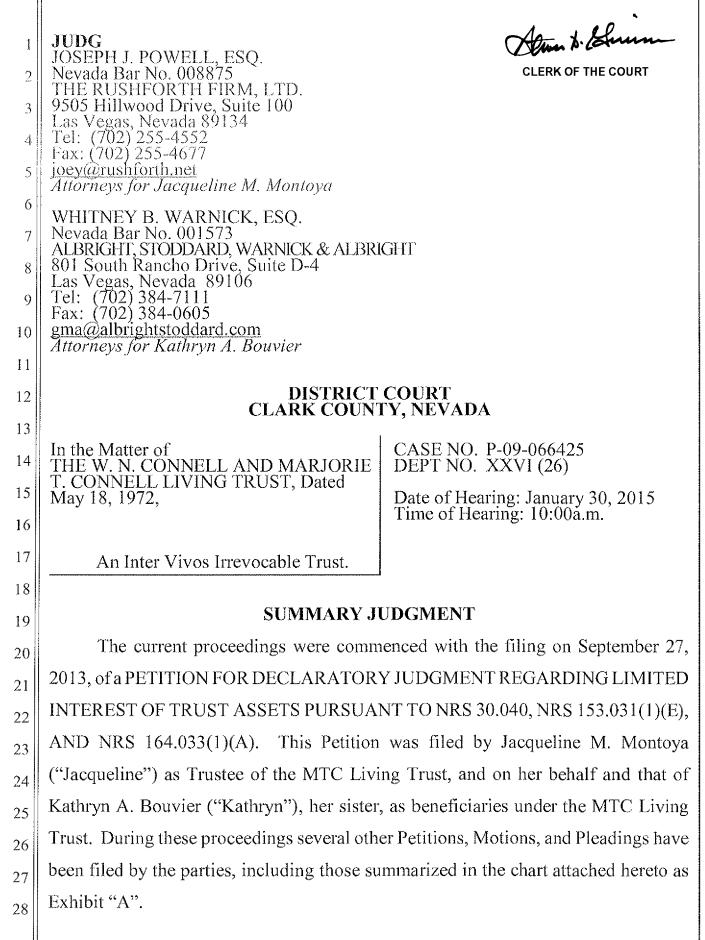
04/16/2015	Notice of Entry of Order Filed by: Trustee Waid, Fredrick Notice of Entry of Order to Show Cause
04/16/2015	Order Filed by: Trustee Waid, Fredrick Order to Show Cause
04/16/2015	Judgment Filed by: Other Montoya, Jacqueline M Summary Judgment
04/17/2015	Receipt of Copy Filed by: Other Montoya, Jacqueline M RECEIPT OF COPY OF THE NOTICE OF ENTRY OF ORDER ON SUMMARY JUDGMENT
04/17/2015	Depiction Filed by: Trustee Waid, Fredrick Objection to Marquis Aurbach Coffing's Motion to Withdraw as Counsel of Record on Order Shortening Time
04/17/2015	Notice of Entry of Order Filed by: Other Montoya, Jacqueline M Notice of Entry of Order on Summary Judgment
04/20/2015	Order Confirming Filed by: Trustee Waid, Fredrick Order Confirming Acting Successor Trustee
04/20/2015	Order Filed by: Trustee Waid, Fredrick Order Compelling Eleanor Ahern to Turn Over Trust Records to Acting Successor Trustee
04/20/2015	Notice of Entry of Order Filed by: Trust The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972 <i>Notice of Entry of Order</i>
04/20/2015	Notice of Entry of Order Filed by: Petitioner Ahem, Eleanor C <i>Notice of Entry of Order</i>
04/20/2015	Motion for Withdrawal (10:00 AM) (Judicial Officer: Sturman, Gloria) Events: 04/15/2015 Motion Marquis Aurbach Coffing's Motion to Withdraw as Counsel of Record on Order Shortening Time
04/20/2015	Order Filed by: Petitioner Ahem, Eleanor C Order Regarding The Accounting, Breach of Fiduciary Duty Claims and Award of Attorney Fees
04/20/2015	Order Filed by: Petitioner Ahern, Eleanor C

	Order Granting Marquis Aurbach Coffing's Motion to Withdraw as Counsel of Record on Order Shortening Time
04/21/2015	Subpoena Duces Tecum Filed by: Trustee Waid, Fredrick Subpoena - Civil Duces Tecum
04/22/2015	Order to Show Cause (10:30 AM) (Judicial Officer: Sturman, Gloria) Events: 04/15/2015 Notice of Hearing
04/23/2015	Discovery Commissioners Report and Recommendations Filed by: Petitioner Ahern, Eleanor C Discovery Commissioners Report and Recommendations
04/24/2015	Notice of Entry Filed by: Trustee Waid, Fredrick Notice of Entry of Order Compelling Eleanor Ahern to turn over Trust Records to Acting Successor Trustee
04/24/2015	Notice of Entry Filed by: Trustee Waid, Fredrick Notice of Entry of Order Confirming Acting Successor Trustee
04/27/2015	Recorders Transcript of Hearing Transcript of Proceedigs Trustee Eleanor Connell-Hartman-Ahern's Motion for Stay Pending Appeal on Order Shortening Time April 14, 2015
04/29/2015	Notice of Entry of Order Filed by: Petitioner Ahern, Eleanor C Notice of Entry of Discovery Commissioners Report and Recommendations
05/04/2015	Opposition to Motion Filed by: Petitioner Ahern, Eleanor C Opposition to Motion in Support of Award of Attorney's Fees and Costs
05/06/2015	Affidavit Filed by: Trustee Waid, Fredrick <i>Affidavit of Fredrick P. Waid, Trustee</i>
05/08/2015	Reply Filed by: Other Montoya, Jacqueline M Reply in Support of Motion for Award of Attorney's Fees and Costs and Supplement to Motion in Support of Award of Attorney's Fees and Costs
05/12/2015	Reply Filed by: Petitioner Ahern, Eleanor C Sur-Reply to Montoya And Bouvier's Reply in Support of Motion for Award of Attorneys' Fees and Costs
05/13/2015	Motion for Attorney Fees (9:00 AM) (Judicial Officer: Sturman, Gloria)
05/18/2015	Notice of Appeal Filed by: Petitioner Ahern, Eleanor C <i>Notice of Appeal</i>

## FAMILY DOMESTIC CASE SUMMARY CASE NO. P-09-066425-T

	CASE NO. 1-09-000425-1	
05/18/2015	Case Appeal Statement Filed by: Petitioner Ahern, Eleanor C <i>Case Appeal Statement</i>	
05/18/2015	Notice of Vacating Deposition Filed by: Trustee Waid, Fredrick <i>Notice of Vacating Deposition</i>	
05/19/2015	Notice Filed by: Petitioner Ahern, Eleanor C <i>Notice of Posting Bond</i>	
06/22/2015	<b>Evidentiary Hearing</b> (1:30 PM) (Judicial Officer: Sturman, Gloria) <i>Evidentiary Hearing: Contempt of Court</i>	
DATE	FINANCIAL INFORMATION	
	Attorney Steadman, Brian K, ESQ Total Charges Total Payments and Credits Balance Due as of 5/20/2015	150.00 150.00 <b>0.00</b>
	Other Mann, David L, ESQ Total Charges Total Payments and Credits Balance Due as of 5/20/2015	223.00 223.00 <b>0.00</b>
	Other Montoya, Jacqueline M Total Charges Total Payments and Credits Balance Due as of 5/20/2015	423.00 423.00 <b>0.00</b>
	Petitioner Ahern, Eleanor C Total Charges Total Payments and Credits Balance Due as of 5/20/2015	854.00 854.00 <b>0.00</b>
	<b>Trust</b> The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972 Total Charges Total Payments and Credits <b>Balance Due as of 5/20/2015</b>	3.50 3.50 <b>0.00</b>

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On December 23, 2014, Jacqueline and Kathryn filed an OPPOSITION TO 1 ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY 2 JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN 3 BE GRANTED; AND, COUNTERMOTION OF KATHRYN A. BOUVIER AND 4 JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR 5 DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF 6 PENALTIES. Thereafter, on January 2, 2015, Eleanor Connell Hartman Ahern 7 ("Eleanor") filed an OMNIBUS OPPOSITION TO (1) PETITION FOR 8 DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF 9 LANGUAGE RELATING TO TRUST NO. 2, AND (2) PETITION FOR 10CONSTRUCTION EFFECT OF PROBATE COURT ORDER: AND 11 COUNTERMOTION FOR SUMMARY JUDGMENT. The parties agreed at the 12 hearing on January 30, 2015, that their above-denominated Countermotions for 13 Summary Judgment, and the claims and defenses asserted therein, subsumed all of the 14 prior Petitions, Motions and Pleadings, and their defenses and claims asserted therein, 15 as well as those briefed and discussed in the further replies, oppositions and 16 supplements to their Countermotions, as listed on the chart attached hereto as Exhibit 17"A" (other than Jacqueline's and Kathryn's Motion for Leave to Amend Pleadings filed 18 herein on January 12, 2015). Therefore, it was agreed, and the Court recognized, that 19 the parties' claims and defenses in these proceedings could be resolved summarily by 20the Court in its adjudication of the parties' said Countermotions for Summary 21 Judgment. 22

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

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

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

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

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

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

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

"<u>THIRD</u>: <u>MARITAL DEDUCTION</u>. The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes . . . In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and ownership of the said property and the value thereof shall be as finally established for federal estate tax purposes."

5. Federal and Texas Estate Tax Returns were filed for William's estate 15 following his death. At the time of these proceedings, a copy of the Federal Estate Tax 16 Return could not be located, even the IRS no longer maintaining a copy thereof. 17 However, a copy of William's Texas Estate Tax Return, and a copy of the Closing 18 Letter for his Federal Estate Tax Return were available. The Texas Estate Tax Return 19 basically duplicated the information provided on the Federal Estate Tax Return, thereby 20providing how William's estate was allocated and distributed on the Federal Estate Tax 21 Return. Daniel T. Gerety, CPA, an expert witness for Jacqueline and Kathryn, also 22 verified in his Report that the Texas Estate Tax Return used the property allocations 23 made on the Federal Estate Tax Return, and that the two Returns were consistent. 24

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

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

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

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

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

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

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

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

From the time of Marjorie's death until approximately June, 2013, the 12. 15 income from the Texas oil property was allocated with Eleanor continuing to receive 16 a 35% share, and Jacqueline and Kathryn receiving the remaining 65% share. In June, 172013, Eleanor as the sole acting Trustee of the Trust, stopped further income 18 distributions to Jacqueline and Kathryn, asserting at that time that she was entitled to 19 100% of the income from the Texas oil property. This led to the filing by Jacqueline 20on September 27, 2013, of the PETITION FOR DECLARATORY JUDGMENT 21REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 22 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A). 23

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

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

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

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

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To summarize, no evidence was produced by Eleanor of any claim or 16. 1 assertion being made by her to anyone else to a right to more than 35% of the Texas oil 2 property income from the time of William's death until June, 2013, when she first 3 asserted her claim to 100% of the income by cutting off income distributions to 4 Jacqueline and Kathryn. Further, Marjorie never communicated or acknowledged to 5 anyone else that she was not entitled to 65% of the Texas oil property income, always 6 acting consistently with owning a right to the income under the Trust allocation of the 7 Texas oil property made following William's death in 1979. 8

As purported evidence supporting her claim to 100% of the Trust income 17. 9 from the Texas oil property, Eleanor presented copies of Division Orders and Leases 10 between the oil companies and the Trust relating to the Texas oil property. From the 11 time that Eleanor was made co-trustee with Marjorie over William's separate property 12 owned by the Trust until approximately 1989, it appears that in signing the Division 13 Orders and Leases with the oil companies, Marjorie and Eleanor provided their 14 personal Social Security Numbers as a tax identification number when such a number 15 was requested by the oil companies. However, apparently after it was brought to their 16 attention by an oil company that the Trust was the owner of the Texas oil property and 17 not themselves personally, and the oil company requested and recommended that a tax 18 identification number for a Trust be provided, in approximately 1989, Marjorie and 19 Eleanor started providing a tax identification number to the oil companies which had 20been assigned by the IRS to subtrust 2. They never provided the tax identification 21 number which had been assigned by the IRS to subtrust 3. However, the Court was not 22 provided with any dates on when subtrust 2 and subtrust 3 were first assigned tax 23 identification numbers. 24

18. Nevertheless, and notwithstanding a tax identification number for subtrust
2 was the only tax identification number apparently given to the oil companies from
and after 1989, in the actual allocation of income received from the Texas oil property,
and in the issuance of K-1's and the filing of their Federal Income Tax Returns,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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disqualified from serving, the Court also is directing the parties to provide a brief in 1 support of their positions, filed on or before March 2, 2015, with the issue to then be 2 addressed by the Court at the hearing on March 20, 2015. 3 4

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

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

## **JUGMENT**

Pursuant to NRCP Rule 56, the Court finds that the pleadings and other 16 documents filed herein, together with the affidavits and documentary evidence 17presented, show there is no genuine issue as to any material fact and that Jacqueline 18 and Kathryn are entitled to judgment against Eleanor as a matter of law in these 19 proceedings. Therefore, and based upon the foregoing findings, good cause exists to 20now render judgment against Eleanor, in favor of Jacqueline and Kathryn, as follows: 21 Jacqueline's and Kathryn's Countermotion for Summary Judgment is Α. 22 granted in part as hereinafter provided. The Court hereby declares, adjudges and 23 determines that the allocation of interests in the Texas oil property between subtrust 2 24 and subtrust 3, under the W.N. Connell and Marjorie T. Connell Living Trust, dated 25 May 18, 1972, was properly made under the Trust provisions, with subtrust 2 receiving 26 a 35.507% interest in the Texas oil property and subtrust 3 receiving a 64.493% 27 interest in the Texas oil property. 28

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

С. Eleanor's Countermotion for Summary Judgment is hereby denied.

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

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

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

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

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

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

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

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

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

A S W AAlberght - Stoddard - Warnick - Alberght  $_{\rm Law offices}$  hearing scheduled on March 20, 2015, at 10:00a.m. Until that date, Eleanor shall continue to exercise and fulfill her duties as Trustee of the Trust, and the parties shall all cooperate, in the best interest of the Trust and its beneficiaries, in any dealings with the oil companies affecting the Texas oil property.

SO ORDERED AND ADJUDGED this 1/2 day of permary, 2015.

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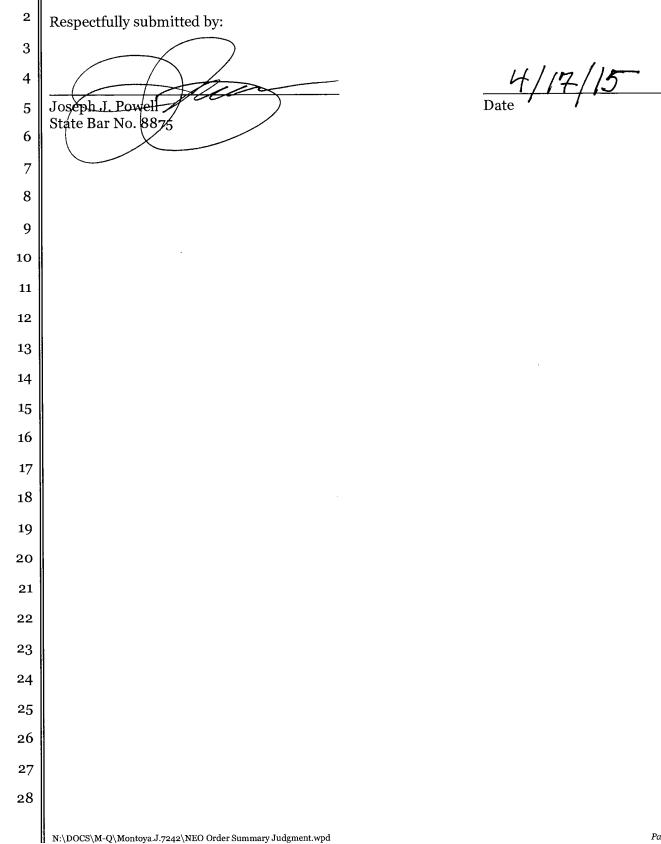
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14	DISTRI	CT COURT	
15			
16	CLARK COU	NTY, NEVADA	
17	In the Matter of the		
18			
19	THE W. N. CONNELL and MARJORIE T. CONNELL LIVING TRUST, dated		
20	May 18, 1972,		
21	A non-testamentary trust.	Case No. P-09-066425-T <b>Department XXVI, RJC</b>	
22			
23	NOTICE OF ENTRY OF Order on summary judgment		
	Order on sum		
24	<b>Order on sum</b> NOTICE IS HEREBY GIVEN THAT:		
24 25	NOTICE IS HEREBY GIVEN THAT:	MARY JUDGMENT	
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25	NOTICE IS HEREBY GIVEN THAT:	MARY JUDGMENT	
25 26	NOTICE IS HEREBY GIVEN THAT:	MARY JUDGMENT	

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Page 1



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## April 16, 2015 in the above entitled matter, a copy of which is attached hereto. 1

1	Certificate of Mailing	
2	I, the undersigned, hereby certify that on <u>April 17, 2015</u> , I mailed a copy of the	<b>j</b>
3	"Notice of Entry of Order On Summary Judgment" that has been filed in this proceeding,	
4	to each person named below by first-class mail, addressed as follows:	
5	Dale A. Hayes, Esq. Albright Stoddard Warnick & Albright	
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7	Marquis Aurbach CoffingLas Vegas, Nevada 8910610001 Park Run DriveAttorney for Kathryn A. Bouvier	
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14	An employee of,	-
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**ТНЕ RUSHFORTH FIRM, LTD.** Telephone: 702-255-4552 / Fax: 702-255-4677 PO Box 371655 Las Vegas, Nevada 89137-1655

**Electronically Filed** 04/16/2015 02:21:09 PM JUDG 1 JOSEPH J. POWELL, ESQ. Nevada Bar No. 008875 CLERK OF THE COURT 2 THE RUSHFORTH FIRM, LTD. 9505 Hillwood Drive, Suite 100 Las Vegas, Nevada 89134 Tel: (702) 255-4552 Fax: (702) 255-4677 3 4 joey@rushforth.net 5 Attorneys for Jacqueline M. Montoya 6 WHITNEY B. WARNICK, ESO. Nevada Bar No. 001573 7 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT 801 South Rancho Drive, Suite D-4 8 Las Vegas, Nevada 89106 Tel: (702) 384-7111 9 Fax: (702) 384-0605 gma@albrightstoddard.com 10 Attorneys för Kathryn A. Bouvier 11 **DISTRICT COURT** 12 CLARK COUNTY, NEVADA 13 CASE NO. P-09-066425 In the Matter of 14 THE W. N. CONNELL AND MARJORIE DEPT NO. XXVI (26) T. CONNELL LIVING TRUST, Dated 15 May 18, 1972, Date of Hearing: January 30, 2015 Time of Hearing: 10:00a.m. 16 17 An Inter Vivos Irrevocable Trust. 18 SUMMARY JUDGMENT 19 The current proceedings were commenced with the filing on September 27. 20 2013, of a PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED 21 INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), 22 AND NRS 164.033(1)(A). This Petition was filed by Jacqueline M. Montoya 23 ("Jacqueline") as Trustee of the MTC Living Trust, and on her behalf and that of 24 Kathryn A. Bouvier ("Kathryn"), her sister, as beneficiaries under the MTC Living 25 Trust. During these proceedings several other Petitions, Motions, and Pleadings have 26 been filed by the parties, including those summarized in the chart attached hereto as 27 Exhibit "A". 28

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On December 23, 2014, Jacqueline and Kathryn filed an OPPOSITION TO 1 ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY 2 JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN 3 BE GRANTED; AND, COUNTERMOTION OF KATHRYN A. BOUVIER AND 4 JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR 5 DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF 6 PENALTIES. Thereafter, on January 2, 2015, Eleanor Connell Hartman Ahern 7 ("Eleanor") filed an OMNIBUS OPPOSITION TO (1) PETITION FOR 8 DETERMINATION OF CONSTRUCTION AND INTERPRETATION OF 9 LANGUAGE RELATING TO TRUST NO. 2, AND (2) PETITION FOR 10CONSTRUCTION EFFECT OF PROBATE COURT ORDER; AND 11 COUNTERMOTION FOR SUMMARY JUDGMENT. The parties agreed at the 12 hearing on January 30, 2015, that their above-denominated Countermotions for 13 Summary Judgment, and the claims and defenses asserted therein, subsumed all of the 14 prior Petitions, Motions and Pleadings, and their defenses and claims asserted therein. 15 as well as those briefed and discussed in the further replies, oppositions and 16 17 supplements to their Countermotions, as listed on the chart attached hereto as Exhibit "A" (other than Jacqueline's and Kathryn's Motion for Leave to Amend Pleadings filed 18 herein on January 12, 2015). Therefore, it was agreed, and the Court recognized, that 19 the parties' claims and defenses in these proceedings could be resolved summarily by 2.0the Court in its adjudication of the parties' said Countermotions for Summary 21 Judgment. 22

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

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

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

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

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

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

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

"THIRD: MARITAL DEDUCTION. The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes . . . In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and ownership of the said property and the value thereof shall be as finally established for federal estate tax purposes."

5. Federal and Texas Estate Tax Returns were filed for William's estate 15 16 following his death. At the time of these proceedings, a copy of the Federal Estate Tax Return could not be located, even the IRS no longer maintaining a copy thereof. 17 However, a copy of William's Texas Estate Tax Return, and a copy of the Closing 18 Letter for his Federal Estate Tax Return were available. The Texas Estate Tax Return 19 basically duplicated the information provided on the Federal Estate Tax Return, thereby 2021 providing how William's estate was allocated and distributed on the Federal Estate Tax Return. Daniel T. Gerety, CPA, an expert witness for Jacqueline and Kathryn, also 22 verified in his Report that the Texas Estate Tax Return used the property allocations 23 made on the Federal Estate Tax Return, and that the two Returns were consistent. 24

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

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

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

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

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

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

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

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

From the time of Marjorie's death until approximately June, 2013, the 12. 15 income from the Texas oil property was allocated with Eleanor continuing to receive 16 a 35% share, and Jacqueline and Kathryn receiving the remaining 65% share. In June, 17 2013, Eleanor as the sole acting Trustee of the Trust, stopped further income 18 distributions to Jacqueline and Kathryn, asserting at that time that she was entitled to 19 100% of the income from the Texas oil property. This led to the filing by Jacqueline 2021 on September 27, 2013, of the PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 22 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A). 23

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

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

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

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

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16. To summarize, no evidence was produced by Eleanor of any claim or ] assertion being made by her to anyone else to a right to more than 35% of the Texas oil 2 property income from the time of William's death until June, 2013, when she first 3 asserted her claim to 100% of the income by cutting off income distributions to 4 Jacqueline and Kathryn. Further, Marjorie never communicated or acknowledged to 5 anyone else that she was not entitled to 65% of the Texas oil property income, always 6 acting consistently with owning a right to the income under the Trust allocation of the 7 Texas oil property made following William's death in 1979. 8

17. As purported evidence supporting her claim to 100% of the Trust income 9 from the Texas oil property, Eleanor presented copies of Division Orders and Leases 10between the oil companies and the Trust relating to the Texas oil property. From the 11 time that Eleanor was made co-trustee with Marjorie over William's separate property 12 owned by the Trust until approximately 1989, it appears that in signing the Division 13 Orders and Leases with the oil companies, Marjorie and Eleanor provided their 14 personal Social Security Numbers as a tax identification number when such a number 15 was requested by the oil companies. However, apparently after it was brought to their 16 attention by an oil company that the Trust was the owner of the Texas oil property and 17 not themselves personally, and the oil company requested and recommended that a tax 18 identification number for a Trust be provided, in approximately 1989, Marjorie and 19 Eleanor started providing a tax identification number to the oil companies which had 20been assigned by the IRS to subtrust 2. They never provided the tax identification 21 number which had been assigned by the IRS to subtrust 3. However, the Court was not 22 provided with any dates on when subtrust 2 and subtrust 3 were first assigned tax 23identification numbers. 24

18. Nevertheless, and notwithstanding a tax identification number for subtrust
2 was the only tax identification number apparently given to the oil companies from
and after 1989, in the actual allocation of income received from the Texas oil property,
and in the issuance of K-1's and the filing of their Federal Income Tax Returns,

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

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

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

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

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

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

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

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

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

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

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

A S W AApply Stoddard - Warnick - Albricht (A W 017)(CK) that the issues would be resolved with its decision herein on the Countermotions.
Nevertheless, if Eleanor believes she has a valid claim still against Jacqueline for
wrongful interference with contract, as asserted in her Answer and Counterclaim, she
is free to reassert the same.

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

27.There still remains the issues and concerns of who will serve hereafter as 12 the Trustee of the Trust, and whether or not the interests of subtrust 2 and subtrust 3 13 in the Texas oil property should now be formally split and allocated with deeds from 14 the main Trust to the subtrusts, so the parties can go their separate ways in dealing with 15 their interests in the Texas oil properties, subject to the terms of the Trust with respect 16 to subtrust 2. Clearly, under the Trust provisions, the beneficiaries under subtrust 3 are 17 granted the right to remove their interest in the Texas oil property out of the main Trust 18 and subtrust 3, to be owned independently by the MTC Living Trust and Jacqueline 19 and Kathryn as beneficiaries thereunder. However, the Court is directing the parties 2021 to submit to the Court, on or before March 2, 2015, information regarding the feasibility and effect of now splitting the Texas oil property between subtrust 2 and 22 subtrust 3 (or the MTC Living Trust), and whether or not such division of interests 23 could adversely affect the value and future ownership of the interests hereafter. The 24 Court will set a hearing to consider this issue on March 20, 2015, at 10:00a.m. 25

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

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