

Case No. 66231; 67782; 68046

In the Supreme Court of Nevada

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

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

Appellant,

vs.

JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER,

Respondents.

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Clerk of Supreme Court

RESPONDENTS' APPENDIX

(VOLUME 1 OF 1)

(PAGES RA 0001-RA0224)

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CLERK OF THE COURT

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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 In re the Matter of the

14 **THE W.N. CONNELL and MARJORIE**

15 **T. CONNELL LIVING TRUST, dated**

16 **May 18, 1972**

17 A non-testamentary trust.

Case No.: P-09-066425-T

Department: 26 (Probate)

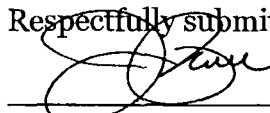
18 **JACQUELINE MONTOYA'S TRIAL MEMORANDUM PURSUANT TO E.D.C.R. 7.27**

19 Date of Hearing: February 18, 2014

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

21 JACQUELINE MONTOYA, by and through her counsel of record, Joseph J. Powell,
22 Esq., of the law firm of The Rushforth Firm, Ltd., hereby files this Trial Memorandum. This
23 Trial Memorandum is filed pursuant to Eighth Judicial District Rule ("EDCR") 7.27 and is
24 based upon the pleadings and papers on file in this case and the Memorandum of Points
25 and Authorities submitted herewith.

26 Respectfully submitted by:



27 Joseph J. Powell
28 State Bar. No. 8875

February 12, 2014

Date

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MEMORANDUM OF POINTS AND AUTHORITY

A. REFERENCES

A.1 The following references shall at times be used herein:

(a) "Jacqueline" shall refer to Jacqueline M. Montoya, also known as Jacqueline Marguerite Montoya;

(b) "Kathryn" shall refer to Kathryn A. Bouvier, also known as Kathryn Ann Bouvier;

(c) "Ms. Ahern" shall refer to Eleanor C. Ahern, also known as Eleanor Marguerite Connell Hartman;

(d) "Marjorie" shall refer to Marjorie T. Connell, also known as Marjorie Thrash Connell;

(e) "W.N." shall refer to William M. Connell;

(f) "Texas Property" shall refer to the real property located in Upton County, Texas together with the oil, gas, and mineral rights related to such real property.

(g) The "Trust" shall refer to "THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST", dated May 18, 1972.

(h) "Trust No. 2" shall refer to the subtrust created under the terms of "THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST", dated May 18, 1972, due to the death of first grantor to die, W.N. Connell.

(i) "Trust No. 3" shall refer to the subtrust created under the terms of "THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST", dated May 18, 1972, due to the death of first grantor to die, W.N. Connell.

B. DOCUMENTS REFERENCED HEREIN

B.1 The following references shall at times be used herein to refer to specific documents:

(a) The "Trust" shall refer to "THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST", dated May 18, 1972. Petitioner's Proposed Exhibit 1/Joint Exhibit 1, Bates Numbers JOINT_1-17 (Respondent's assigned Bates numbers).

(b) The "MTC Living Trust" shall refer to the "MTC Living Trust" which was established by Marjorie T. Connell on December 6, 1995, and subsequently restated in its entirety on January 7, 2008. Petitioner's Proposed Exhibit 8/Joint Exhibit 2, Bates Numbers JOINT_20-93 (Respondent's assigned Bates numbers).

(c) The "Petition to Assume Jurisdiction and Reform Trust" shall refer to the "Petition to Assume Jurisdiction Over Trust; Confirm Trustee, and Construe and Reform Trust" which was filed on August 17, 2009 on behalf of Ms. Ahern by the law firm of Solomon Dwiggin & Freer, Ltd. Petitioner's Proposed Exhibit 11/Joint Exhibit 3, Bates Numbers JOINT_126-143 (Respondent's assigned Bates numbers).

(d) The "Texas Return" shall refer to the state of Texas "Inheritance Tax Return----Non-Resident" dated December 16, 1980, which was executed by tax preparer, Darrell Knight of Darrell Knight Assoc. Inc.-PC, of Abilene, Texas, and Marjorie T. Connell, in her capacity as executrix of the Estate of Mr. Connell, for W.N. Connell's estate. Petitioner's Proposed Exhibit 2, Bates Numbers TRF_000001-000007.

(e) The "Substitution of Attorney" shall refer to the notarized document executed by both Marjorie T. Connell and Ms. Ahern on May 6, 1980 referring to

1 "THE W.N. CONNELL and MARJORIE T. CONNELL LIVING TRUST", dated May
2 18, 1972. Petitioner's Proposed Exhibit 3, Bates Numbers TRF_000008-000009.

3 (f) The "declaration of assets" prepared for estate planning purposes for
4 Ms. Ahern shall refer to the handwritten document which does not contain a precise
5 date but makes reference to Ms. Ahern's age as 45 and the ages of children as 18 and
6 14. Petitioner's Proposed Exhibit 6, Bates Number TRF_000012.

7
8 (g) The "answer" of Robert Hartman shall refer to the "Answer" filed on
9 October 7, 1982 by Robert S. Hartman, Jr., through the law firm of Dickerson, Miles,
10 Pico & Mitchell. Petitioner's Proposed Exhibit 7, Bates Numbers TRF_000013-
11 000019.

12
13 (h) The "Will" of Marjorie T. Connell shall refer to the "Last Will and
14 Testament of Marjorie T. Connell" dated January 7, 2008. Petitioner's Proposed
15 Exhibit 9, Bates Numbers TRF_000020-000028.

16
17 (i) The "K-1" for Jacqueline Montoya shall refer to the "Schedule K-1"
18 (Form 1041) which was issued by the "William and Majorie Connell Trust" (Estate
19 or Trust's Name Section) to "MTC Non-Exempt Subtrust FBO Jacqueline
20 Marguer[ite Montoya]" (Beneficiary's name, address, city, state, and ZIP code
21 Section). Petitioner's Proposed Exhibit 17, Bates Numbers TRF_000041-000042.

22
23 (j) The "K-1" for Kathryn Bouvier shall refer to the "Schedule K-1" (Form
24 1041) which was issued by the "William and Majorie Connell Trust" (Estate or
25 Trust's Name Section) to "MTC Non-Exempt Subtrust FBO Kathryn A. Bouvier"
26 (Beneficiary's name, address, city, state, and ZIP code Section). Petitioner's
27 Proposed Exhibit 18, Bates Numbers TRF_000043-000044.
28

1 (k) The "K-1" for Ms. Ahern shall refer to the "Schedule K-1" (Form 1041)
2 which was issued by the "William and Majorie Connell Trust" (Estate or Trust's
3 Name Section) to "Eleanor C. Ahern Foundation" (Beneficiary's name, address, city,
4 state, and ZIP code Section). Petitioner's Proposed Exhibit 19, Bates Numbers
5 TRF_000045-000046.
6

7 (l) The "Objection" of Ms. Ahern shall refer to the "Objection of Trustee
8 Eleanor C. Ahern to Jacqueline M. Montoya's Petition to Compel Trustee to
9 Distribute Accrued Income and Future Income Received From Oil, Gas, and
10 Minerals and Declaration of the Applicability of the Doctrine of Laches" dated
11 January 3, 2014. Petitioner's Proposed Exhibit 22, Bates Numbers TRF_000050-
12 000091.
13

14 C. WITNESS

15 Jacqueline intends to call the following witness as her sole witness and as an
16 expert witness:
17

18 Daniel T. Gerety, CPA
19 Gerety & Associates CPAs
20 6817 S. Eastern Avenue, Suite 101
Las Vegas, Nevada 89119

21 Mr. Gerety's testimony will relate to the allocation of the Texas Property that was
22 done in 1980 as reflected on the Texas Return between Subtrust No. 2 and Subtrust No.
23 3 in accordance with the terms of the Trust and the discretion of the trustee.
24

25 D. INTRODUCTION

26 This dispute is actually very simple and straightforward. Jacqueline, in her capacity
27 as the Trustee of the MTC Living Trust and as a beneficiary of the MTC Living Trust, asks
28 that this Court make the declaratory determination that the 65% of the Texas Property and

1 the income generated from it belongs to the MTC Living Trust. The basis for this request
2 is grounded in facts that cannot be controverted by Ms. Ahern. These are black and white
3 facts that do not truly require any further evidence or explanation as they stand on their
4 own. These facts are as follows:

5
6 (a) In 1980, an allocation for estate tax purposes was made which resulted
7 in Trust No. 2 receiving approximately 35% of the Texas Property and Trust No. 3
8 receiving the other 65% of the Texas Property;

9
10 (b) Since W.N. Connell's death until approximately July of 2013, spanning
11 approximately 33 years, Ms. Ahern has received 35% of the income generated by the
12 Texas Property and Marjorie received the other 65% of the income generated by the
13 Texas Property until her death in 2009, at which time the 65% of the income was
14 then received by Jacqueline and Kathryn in their capacities as beneficiaries of the
15 MTC Living Trust;

16
17 (c) Contrary to the incorrect assertion of Ms. Ahern, the Trust does not
18 prescribe, nor mandate, that Trust No. 2 was required to receive 100% of the Texas
19 Property. In reality, the Trust dictates and requires that the marital deduction be
20 maximized to the fullest extent possible above all else, which was done in 1980
21 through the allocation of assets that was done for purposes of estate tax.

22 23 **E. UNDISPUTED MATERIAL FACTS**

24 E.1 On May 18, 1972, W.N. Connell and Marjorie T. Connell established "The
25 W.N. Connell and Marjorie T. Connell Living Trust" (the "Trust").

26 E.2 W.N. Connell and Marjorie T. Connell transferred various assets to the Trust,
27 to be held and governed under the terms of the Trust. Some of the included assets that were
28 transferred to the Trust was undeveloped real estate acreage located in Upton County,

1 Texas, together with oil, gas, and mineral rights and leases derived from such property. It
2 was declared on Schedule "A" to the Trust that the Upton County, Texas property, including
3 the oil, gas, and mineral rights and leases were to be deemed the separate property of W.N.
4 Connell.
5

6 E.3 W.N. Connell died on November 24, 1979. Mr. Connell died as a resident of
7 Boulder City, Nevada.

8 E.4 On May 6, 1980, Marjorie Connell and Ms. Ahern executed a document titled
9 "Substitution of Trustee", which added Ms. Ahern as a co-trustee with Marjorie of the
10 "separate property of W.N. Connell presently held in the above-entitled Trust".
11

12 E.5 On December 16, 1980, a state of Texas "Inheritance Tax Return----Non-
13 Resident" was executed by the tax preparer, Darrell Knight of Darrell Knight Assoc. Inc.-PC,
14 out of Abilene, Texas, and Mrs. Connell, in her capacity as executrix of the Estate of Mr.
15 Connell, for Mr. Connell.
16

17 E.6 In the schedules attached to the Texas Return, there is reference to land in
18 Upton County, Texas and also mineral rights on that same land being split in a proration
19 close to 65%/35% (the precise split was 64.493% and 35.507%), with the schedules
20 reflecting "ownership" by Marjorie of the larger amount and "ownership" by Ms. Ahern of
21 the smaller amount. The interest of Marjorie is her interest as a beneficiary of Trust No. 3,
22 while the interest of Ms. Ahern is her interest as a beneficiary of Trust No. 2.
23

24 E.7 A Federal Estate Tax Return, Form 706, was also prepared and filed in 1980
25 for Mr. Connell as well. A copy of the Form 706 was not located due to the passage of time
26 since it was originally filed.
27

28 E.8 Marjorie died on May 1, 2009. Marjorie died as a resident of Clark County,
Nevada.

1 E.9 Prior to her death, on December 6, 1995, Marjorie established the "MTC
2 Living Trust", which was subsequently restated in its entirety on January 7, 2008.
3 Additionally, as part of her updated estate plan, Marjorie also executed her Last Will and
4 Testament.
5

6 E.10 In the Last Will and Testament of Marjorie T. Connell, which was executed
7 by Marjorie on January 7, 2008, Marjorie exercised her power of appointment over Trust
8 No. 3 of the Trust, a subtrust. Specifically, under section 4.1 of her Will, which was titled
9 "Exercise of Power of Appointment Granted by William N. Connell", Marjorie declared the
10 following:
11

12 *In the W.N. Connell and Marjorie T. Connell Living Trust dated May 18,*
13 *1972, Article Fifth Trust No. 3 Paragraph B(2) of the Trust, I was granted*
14 *a testamentary power of appointment. I hereby exercise that power of*
15 *appointment and appoint the entire principal and the undistributed income*
16 *in Trust No. 3, if any, on my death to JACQUELINE MONTOYA and*
17 *KATHRYN ANNE BOUVIER to be distributed in trust in accordance with*
18 *the provisions of the MTC LIVING TRUST dated December 6, 1995, as*
19 *restated on January 7, 2008.*

20 E.11 From the time of W.N.'s passing and up until the date of her death, Marjorie
21 was receiving approximately 65% of the income generated by the various Texas real estate
22 related oil, gas, and mineral rights' leases from the time of W.N.'s death. Therefore, she had
23 been receiving distributions from these income sources for approximately 29 years.
24

25 E.12 Following Majorie's passing, Jacqueline and Kathryn, in their capacity as
26 beneficiaries of the MTC Living Trust, and in compliance with the exercise of Marjorie's
27 power of appointment over Trust No. 3, received the approximately 65% of the income
28 generated by the various Texas real estate related oil, gas, and mineral rights' leases that
had been previously distributed to Marjorie. The receipt of this income by Jacqueline and
Kathryn lasted from the time of Marjorie's passing until approximately July of 2013, with

1 distribution in June of 2013 being less than the 65% that has been distributed for the
2 previous 33 years. The income distributions were abruptly cut off by Ms. Ahern in her
3 capacity as the sole trustee of the Trust.

4 F. CLAIMS FOR RELIEF

6 DIVISION OF TRUST PROPERTY

7 F.1 Upon the death of W.N. Connell, the Trust instrument stated that the corpus
8 was to be split into two separate trusts, known as Trust No. 2 and Trust No. 3. The split of
9 the Trust estate was to be done in a manner that would maximize the marital tax exemption
10 in order to reduce the Trust's tax liability upon the death of W.N. and in turn to defer as
11 much applicable tax until the death of Marjorie, as the surviving grantor. The Trust does
12 not contain any mandate or otherwise require that Trust No. 2 was to receive 100% of the
13 Texas Property. Further, nothing in the Trust actually requires that Trust No. 2 receive any
14 of the Texas Property. The Trust was to be split so that the available federal estate tax
15 exemptions could be maximized. After calculations by tax professionals, the appropriate
16 split of the Texas Property, for federal estate tax purposes was determined to be a near
17 35%/65% allocation of the Texas Property between Trust No. 2 and Trust No. 3
18 respectively.
19
20
21

22 F.2 The following are the relevant Trust provisions declaring how the Trust was
23 to be split:

24 (a) Article SECOND, Paragraph (C)(3) states:

25 *The Trustee shall allocate to Trust No. 3 from the Decedent's separate property an*
26 *amount as determined in Article THIRD hereof.*
27
28

(b) Article THIRD of the Trust specifies that the split of the Decedent's separate property is to be done to maximize the marital exemptions. It provides, in pertinent part, as follows:

The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes.... [Emphasis added].

(c) Article SECOND, Paragraph (C)(4) provides that Trust No.2 is only allocated the remaining portion of the Trust that was not allocated to Trust No. 3. It provides, in pertinent part, as follows:

The Trustee shall allocate to Trust No. 2 all the remaining protion (sic) of the trust estate not allocated to Trust No. 3....

F.3 Ms. Ahern claims that she is entitled to 100% of the Texas Property income by citing to Article FOURTH, Paragraph (B), which states, in pertinent part, that, "All income received by this Trust from the separate property of the Decedent shall be paid to the Residual Beneficiary." However, Ms. Ahern mistakenly interprets the term "all income" to mean that she is entitled to all income from all property of "the Trust." However, this Article FOURTH of the Trust specifically states that it only deals with, and refers to, the property that is actually distributed to Trust No. 2. Article FOURTH states as follows:

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

F.4 While Article FOURTH, Paragraph (B) does indicate that all income is to be distributed to the Residual Beneficiary, Article FOURTH is clear in its application to only Trust No. 2 and the property allocated thereto. The term "all income" under a provision that relates solely to Trust No. 2 cannot govern the income to property allocated to Trust No. 3.

1 Trust No. 3 is governed by its own provisions contained in Article FIFTH, which also states
2 that "all of the net income" is to be distributed to the beneficiary of Trust No. 3.

3 F.5 The term "all income" in both of Article FOURTH and FIFTH applies only to
4 the respective trust governed by such Article. In other words, all income as provided for in
5 Article FOURTH refers to all income generated by Trust No. 2 and the allocated property
6 to Trust No. 2, while all income as provided for in Article FIFTH refers to all income
7 generated by Trust No. 3 and the allocated property to Trust No. 3. Therefore, this farce
8 that all of the income from all of the Decedent's separate property belongs to Trust No. 2
9 and should be distributed to Ms. Ahern is in direct contradiction of the actual provisions
10 of the Trust.
11

12 F.6 Trust No. 3 is a trust intended to qualify for the marital deduction under
13 Internal Revenue Code § 2056(b)(5), which requires that Trust No. 3 pay all of its income
14 to the surviving spouse. Ms. Ahern's assertion that all of the income from the Texas
15 property had to be paid to her cannot be true to the extent the Texas property is allocated
16 to Trust No. 3, and, as is discussed in subsection C.8, below, an allocation of the Texas
17 property to Trust No. 2 was not mandatory.
18

19 F.7 The correct application of the term "all income" in Article FOURTH is that
20 Ms. Ahern is entitled to 100% of the income generated by the proportionate interest of
21 Trust No. 2 in the Texas Property. In other words, if 10% of the Texas Property was
22 allocated to Trust No. 2, then Ms. Ahern would be entitled to all of the income generated
23 by a 10% share of the Texas Property (i.e. 10% of the income). Likewise if Trust No. 2 was
24 allocated 70% of the Texas Property, then Ms. Ahern would be entitled to all of the income
25 generated by a 70% share of the Texas Property (i.e. 70% of the income). In the present
26 case, as evidenced by the schedules attached to the Texas estate tax return, Trust No. 2 was
27
28

1 allocated approximately 35% of the Texas Property, and Ms. Ahern is therefore entitled to
2 all of the income generated by the 35% share of the Texas Property. This is the very reason
3 why Ms. Ahern has been receiving 35% of the income for the past 34 years.

4
5 F.8 Ms. Ahern's position is that she is entitled to 100% of the income
6 generated from the Texas Property because Trust No. 2 was required, by the terms found
7 under the trust instrument, to receive all of W.N.'s separate property that he transferred to
8 the Trust, which included the Texas Property. As shown above, the terms of the Trust do
9 not require anything of the sort.

10
11 F.9 Based on her misinterpretation of the trust language, Ms. Ahern has asserted
12 that she has always been entitled to 100% of the income generated from the Texas Property.
13 Therefore, her position is that because of this purported entitlement, Marjorie was never
14 entitled to receive the 65% of the Texas Property income that she received for 29 years
15 following the death of her husband, W.N. Therefore, Ms. Ahern claims that she allowed
16 65% of the Texas Property income to be distributed to Marjorie out of love and
17 appreciation.

18
19 F.10 In her "Objection of Trustee Eleanor C. Ahern to Jacqueline M. Montoya's
20 Petition to Compel Trustee to Distribute Accrued Income and Future Income Received
21 From Oil, Gas, and Minerals and Declaration of the Applicability of the Doctrine of Laches"
22 ("Objection"), Ms. Ahern made the following assertion:

23
24 *When W.N. CONNELL passed away, MARJORIE T. CONNELL, as the*
25 *surviving Trustor and Trustee of the TRUST, began paying herself sixty-five*
26 *percent (65%) of the Upton County, Texas Oil right income. ELEANOR*
27 ***consulted an attorney** and was advised that although ELEANOR was*
28 *entitled to all of the Upton County, Texas, Oil right income, if she asserted*
her rights to all of the income against MARJORIE at that time it would in
all likelihood result in MARJORIE disinherit ELEANOR when
MARJORIE died. The advice essentially was to take less now so you could
inherit all of MARJORIE's estate later. Although ELEANOR knew that she

(ELEANOR) was entitled to one hundred (100%) of the Upton County, Texas, oil income, she consented to MARJORIE receiving the sixty-five percent (65%). The advice of the attorney and ELEANOR's love and respect for, and appreciation of, MARJORIE T. CONNELL, as her mother, lead to **her acquiescence**. (Emphasis added) (Pages 24 and 25 of Objection)

F.11 By Ms. Ahern allowing such a distribution to occur, if indeed Trust No. 2 was entitled to 100% of the Texas Property, which there is absolutely no basis for, Ms. Ahern would either have been gifting such income to Marjorie and would be required to file a Form 709 each year, or else she would be irrevocably disclaiming a portion of her interest and allowing it to pass to Marjorie, which would in turn result in Ms. Ahern breaching her fiduciary duties as a trustee.

F.12 Also, assuming *arguendo* that Ms. Ahern was entitled to 100% of the Texas Property, if Ms. Ahern claims that she did not disclaim a 65% income interest in favor of Marjorie, then she must be treated as giving a gift of such income to Marjorie. The following information taken from www.irs.gov confirms that allowing the income to pass to Marjorie would be a gift, if Ms. Ahern was actually entitled to 100% of the Texas Property.

The gift tax is a tax on the transfer of property by one individual to another while receiving nothing, or less than full value, in return. The tax applies whether the donor intends the transfer to be a gift or not.

The gift tax applies to the transfer by gift of any property. You make a gift if you give property (including money), or the use of or income from property, without expecting to receive something of at least equal value in return. If you sell something at less than its full value or if you make an interest-free or reduced-interest loan, you may be making a gift.

F.13 Whether or not Ms. Ahern understood the law is irrelevant in determining whether her actions constituted a gift. Ms. Ahern has given the use of income without expecting to receive something of equal value in return and thus, has given a gift. As such,

1 Ms. Ahern has failed to file the required Form 709 for 33 years and has a tremendous gift
2 tax obligation that is due and owing to the IRS.

3 F.14 Also, if Ms. Ahern was entitled to 100% of the income, then she is also
4 obligated to pay 100% of the income tax. Pursuant to Internal Revenue Code ("IRC")
5 61(a)(15) and the ruling by the U.S. Supreme Court in *Helvering v. Horst*, 311 U.S. 112
6 (1940), a transfer of income without transferring the underlying asset results in an income
7 tax liability to the transferor.
8

9 F.15 Such tax implications do not apply because Trust No. 2 never was entitled to
10 100% of the Texas Property. The allocation was not improperly done, and this explains why
11 a Form 709 for any year has never been completed and why Marjorie has always paid the
12 income tax on 65% of the income from the Texas Property and following her death, the
13 MTC Living Trust has paid the income tax on the distributions that it has received. Simply
14 put, Ms. Ahern received the 35% to which she was entitled, and Marjorie received the 65%
15 to which she was entitled, and each was responsible for the payments of taxes on their own
16 income.
17

18 F.16 Finally, if Trust No. 2 had been entitled to 100% of the Texas Property as
19 claimed by Ms. Ahern, then, in her capacity as a trustee of the Trust, she breached her
20 fiduciary duties by not correcting the incorrect distributions of the Texas Property income
21 and putting all interested parties on notice of the error.
22

23 F.17 In Article FOURTH, Paragraph B, the Trust states that the income of Trust
24 No. 2 is to be paid to Jacqueline and Kathryn if Ms. Ahern predeceases Marjorie. Ms. Ahern
25 had a fiduciary duty to protect Jacqueline and Kathryn as remainder beneficiaries. As
26 Jacqueline and Kathryn would be entitled to all of the property of Trust No. 2 if Ms. Ahern
27 predeceased Marjorie, Ms. Ahern had an obligation to ensure that all property allocated to
28

Trust No. 2 was being distributed to Trust No. 2. If Ms. Ahern failed to take such action and had predeceased Marjorie, then 65% of the income that would then belong to Jacqueline and Kathryn would still be distributed to Marjorie, and Jacqueline and Kathryn would be losing out on hundreds of thousands of dollars each year as income beneficiaries of Trust No. 2 until Marjorie's death, never knowing of the purported error in the allocation. The fact that Ms. Ahern failed to take the necessary action to fulfill her fiduciary duties indicates that Trust No. 2 never owned 100% of the Texas Property.

LACK OF DEED FOR TRUST NO. 3

F.18 From the time of W.N.'s death in 1979, the Texas Property has been generating income, which has been paid to the beneficiaries of Trust No. 2 and Trust No. 3. However, the Texas property has never been re-titled to reflect the 35%/65% split between the two subtrusts. The deed still shows that the property is owned by the parent Trust. Ms. Ahern attempts to suggest that because a formal deed was not executed in favor of Trust No. 3, it therefore has never had any interest in the Texas Property. This suggestion is entirely incorrect and is another direct contradiction to the terms of the Trust.

F.19 The Trust does not require that a deed actually be prepared to establish the interest in Trust No. 3. Paragraph K of Article SEVENTH provides as follows:

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

Therefore, the power afforded to the trustees of the Trust under NRS 163.385 was in effect.

F.20 NRS 163.385, titled "Acquisition and holding of property of two or more trusts undivided" states:

1. *A fiduciary may:*

1 (a) Acquire, receive, hold and retain the principal of several trusts created
2 by a single instrument undivided until division becomes necessary in order
3 to make distributions.

4 (b) Hold, manage, invest, reinvest and account for the several shares or
5 parts of shares by appropriate entries in the fiduciary's books of account,
6 and allocate to each share or part of share its proportionate part of all
7 receipts and expenses.

8 2. The provisions of this section shall not defer the vesting in possession of
9 any share or part of share of the estate or trust.

10 F.21 Pursuant to NRS 163.385, the trustees were not required to prepare a deed
11 to separate the interests in the Texas Property between Trust No. 2 and Trust No. 3. This
12 express authorization permits the trustees to simply separate and track the allocations of
13 the receipts and expenses of the two trusts instead of formally dividing the interest in the
14 Texas Property and executing separate deeds. This is what has happened for the 33, now 34,
15 years following the Decedent's death. In fact, even as recent as 2011, the Trust issued a
16 separate K-1 for the following interests each with its own Tax ID number: (1) MTC non-
17 exempt subtrust FBO Jacqueline Marguerite Montoya for a 32.5% interest in the income
18 from the Texas Property; (2) MTC non-exempt subtrust FBO Kathryn A. Bouvier for a
19 32.5% interest in the income from the Texas Property; and (3) Eleanor C. Ahern Foundation
20 for a 35% interest in the income from the Texas Property.

21 F.22 Therefore, the fact that the Texas Property was not legally divided upon the
22 splitting of the Trust, triggered by W.N.'s death, is entirely inconsequential because there
23 is no requirement that the Texas Property actually be legally divided, and instead specific
24 permission is granted to leave it undivided. If Ms. Ahern believed that a valid reason existed
25 for the Texas Property to actually be deeded to the proper sub-trust or trusts at the time the
26 Trust split, then Ms. Ahern herself, as a co-trustee, had an obligation to carry out such
27 transaction in order to fulfill her fiduciary duties.
28

1 F.23 Ms. Ahern took no such action, but instead permitted the Texas Property to
2 remain undivided and followed the 35%/65% split as had been determined by the tax
3 professionals who calculated the proper allocation in 1980 after W.N.'s death. If Ms. Ahern
4 did not allocate the Texas Property by a formal deed, then she has either breached her
5 fiduciary duties, or else she was following the terms of the Trust by permitting the 35%/65%
6 split to be implemented on the books of the Trust instead of an actual division as permitted
7 under NRS 163.385.
8

9 F.24 The history and evidence of the present case indicates that an actual division
10 or formal deed was never done because the 35%/65% split could be properly carried out
11 by leaving the Texas Property undivided and making entries on the Trust's books of
12 account. The calculations by the tax professionals after W.N.'s death determined that the
13 35%/65% split was the proper allocation to Trust No. 2 and Trust No. 3 respectively. The
14 actual distributions of the income generated from the Texas Property for 33 years following
15 the Decedent's death has followed the 35%/65% split.
16

17 F.25 Ms. Ahern herself even acknowledged that she, through Trust No. 2, only had
18 a 35% interest in the Texas Property, leaving the remaining 65% to belong to Trust No. 3.
19 In a declaration of assets completed for her personal estate planning attorney, Steven Scow,
20 as it relates to Ms. Ahern's interest it was declared that:
21

22 *U/D 35% int in 2,300 acres near Midland Texas. Stepmother, who adopted Ellie*
23 *@ age 35, owns 65% under Trust she and Ellie's father established.*
24

25 Also, in Ms. Ahern's 1982 divorce proceeding, it was common knowledge that Ms. Ahern's
26 interest in the Texas Property was only 35%. The following is an excerpt from an answer
27 filed by Ms. Ahern's ex-husband, Robert Hartman, Jr., to a pleading filed by Ms. Ahern.
28

1 *Admits the allegations of Paragraph IV(12), that ... the Plaintiff has separate*
2 *account at Nevada State Bank in her name from which she receives 35% of a trust*
3 *created by her deceased father...*

4 By her own admission, Ms. Ahern only had a 35% interest while Trust No. 3 retained the
5 other 65% in the Texas Property. These declarations were made only a few years after the
6 split of the Trust, while the facts and reasons for the split would have been fresh on her
7 mind.

8 F.26 In addition to NRS 163.385 not requiring a formal division of the Texas
9 Property, a deed was not required because the Trust expressly declares that the allocation
10 between the subtrusts as was done for federal estate tax purposes is controlling. Article
11 THIRD provides in pertinent part:
12

13 *In making the computations and **allocations** of the said property to Trust*
14 *No. 3 as herein required, the determination of the character and*
15 ***ownership** of the said property and the value thereof shall be as finally*
16 *established for federal estate tax purposes. [Emphasis added].*

17 Unfortunately, a final copy of the Form 706 cannot be located, and the IRS has indicated
18 that it has not retained a copy. The Texas estate tax return, which applied the same numbers
19 from the Form 706, can be used to show the allocation between the two subtrusts. Both the
20 Federal and Texas returns were accepted by the respective taxing agencies, and the figures
21 contained therein were honored by the Ms. Ahern, as trustee, for 33 years because, as the
22 Trust states, the split for federal tax purposes is controlling. Therefore, the lack of a formal
23 deed was not required and is immaterial.

24 F.27 Further, if Ms. Ahern continues to insist that the lack of a deed is material,
25 then applying the same logic, Trust No. 2 would also have no interest in the Texas Property
26 because Trust No.2 has also never been deeded any interest in the Texas Property. If this
27 is the case, then Ms. Ahern as the Trustee has been breaching her fiduciary duties by
28

1 improperly distributing Trust income to improper beneficiaries. However, this claim is not
2 being raised by Jacqueline at this time because Jacqueline understands that, as stated
3 above, the Texas Property may be held undivided by the two subtrusts pursuant to NRS
4 163.385. Jacqueline simply raises this issue to show the faulty logic Ms Ahern is attempting
5 to use to defend her position.
6

7 F.28 The simple truth is that upon the death of W.N., tax professionals calculated
8 the appropriate split to maximize the marital tax exemptions. The tax professionals
9 determined that an allocation of 35%/65% of the Texas Property to Trust No. 2 and Trust
10 No. 3 respectively was proper to accomplish the Trust's tax objectives. This split was
11 reported on the Federal and Texas State tax returns, and was followed by Ms. Ahern herself,
12 as a trustee, for 33 years following the death of the Decedent. The trustees followed this
13 split because this was the correct allocation in accordance with the terms of the Trust. The
14 Texas Property was not formally deeded to either Trust No. 2 or Trust No. 3 because the
15 Trust permitted Trust property to be held undivided pursuant to NRS 163.385.
16

17 F.29 Lastly, when Jacqueline, in her capacity as the trustee of the MTC Living
18 Trust, recently instituted a proceeding in Texas to have the Texas Property legally titled in
19 the name of the MTC Living Trust as to the 65% interest, Ms. Ahern attempted to block
20 such action.
21
22

23 **CONSENT TO 2009 PETITION**

24 F.30 Ms. Ahern has attempted to persuade this Court that the "Petition to Assume
25 Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust" ("Reformation
26 Petition"), which was filed on August 17, 2009, was much more encompassing than it
27 actually was. Ms. Ahern has suggested Jacqueline and Kathryn have disclaimed all rights
28

1 and interests in the Texas Property through the execution of a consent to the Reformation
2 Petition. This argument fails because the Reformation Petition and consents have no
3 relation to Trust No. 3, and the 65% in question in the present case.

4
5 F.31 The purpose of the Reformation Petition was to add clarity to the provisions
6 of Trust No. 2. Trust No. 3, by the admission in the Reformation Petition, had no flaws
7 regarding its succession and ultimate distribution, and it was only Trust No. 2 that was
8 inadequately drafted in the event that Ms. Ahern survived Marjorie. Paragraph 28 from the
9 Reformation Petition provides as follows:
10

11 *Indeed, Article Fourth of the Trust, governing Trust No. 2 makes adequate*
12 *provision for numerous other contingencies for the disposition of Trust No. 2, but*
13 *appears to omit a provision for alternate disposition in the current situation-*
where MARJORIE predeceased the Petitioner.

14 As seen, the intent of the Reformation Petition was only to clarify the succession and
15 disposition of the assets of Trust No. 2 upon the demise of Ms. Ahern. As such, the scope
16 of what was being accomplished through this Reformation Petition was only dealing with
17 Trust No. 2, not the Trust as a whole.

18
19 F.32 By Ms. Ahern's own admission, the consents only dealt with Trust No. 2 and
20 its administration. As laid out above, Trust No. 2 was allocated 35% of the Texas Property
21 while Trust No. 3 was allocated the other 65%. Because the Reformation Petition only
22 concerned Trust No. 2, the consents only concerned Trust No. 2 and its 35%. A consent on
23 one matter and property interest cannot be applied to a wholly separate matter and
24 property interest. The consent simply is irrelevant for any action regarding Trust No. 3, as
25 is the situation in the present case.
26

27 F.33 Examination of the Reformation Petition and consents reveals that neither
28 had another relation to Trust No. 3 and the 65% interest that was owned by Trust No. 3.

1 Paragraph 18 of the Reformation Petition stated, in relevant part, that "*As of the death of*
2 *MARJORIE, Trust No. 2 owned land and oil and gas shares in reserves and income*
3 *located in Upton County, Texas . . .*". The language in Paragraph 18 does not state that
4 Trust No. 2 owned 100% of the Texas Property, it indicates that Trust No. 2 owns at least
5 some of the Texas Property. This fact is not in dispute. Trust No. 2 did own some of the
6 Texas Property, a 35% interest. This is the reason Ms. Ahern has received 35% of the income
7 from the Texas Property since the death of the Decedent.
8

9 F.34 Paragraph 19 of the Reformation Petition stated, in relevant part:
10

11 *Pursuant to Article Fourth, which Article governs the administration of Trust No.*
12 *2, all income from the Oil Assets is to be paid to the Petitioner as the Residual*
13 *Beneficiary during her lifetime.*

14 Taken in the proper context, this too is an accurate statement because this statement
15 concerns only Trust No. 2. Jacqueline does not dispute that Ms. Ahern is entitled to all of
16 the income generated by Trust No. 2's interest in the Texas Property. There is no language
17 entitling Ms. Ahern to 100% of all of the income from both subtrusts No. 2 and No. 3. The
18 reference is clearly to only Trust No. 2.

19 F.35 Ms. Ahern points to the language in the consents indicating that Jacqueline
20 and Kathryn are contingent remainder beneficiaries. Ms. Ahern argues that this language
21 proves that Jacqueline and Kathryn have no interest in the Texas Property. But, as
22 explained, the Reformation Petition and consents concern only Trust No. 2. In the context
23 of Trust No. 2, classifying Jacqueline and Kathryn as contingent remainder beneficiaries
24 is not an inaccurate statement. Article FOURTH, Paragraph B of the Trust states:
25

26 *In the event the Residual Beneficiary predeceases the Survivor, the Residual*
27 *Beneficiary's rights to receive income hereunder shall be paid to or for the benefit*
28 *of her living children and the issue of any deceased child by right of representation*
...

1 F.36 However, it is inaccurate to classify Jacqueline and Kathryn as contingent
2 remainder beneficiaries of Trust No. 3. It is inappropriate to misconstrue the consent and
3 try to apply it to Trust No. 3. The consents, and the statements contained therein, have no
4 relevance to or effect on Trust No. 3. To make something more out of this statement is
5 simply a desperate attempt to mislead this Court and divert this Court's attention from the
6 fact that Trust No. 3 was allocated 65% of the Texas Property. Yet, despite these realities,
7 Ms. Ahern has recently unilaterally decided to retain 100% of all of the income from the
8 Texas Property despite a 33 year history of proper trust administration regarding the
9 allocation of income from the Texas Property. This conduct is inappropriate and a breach
10 of her fiduciary duties as a trustee, and should not be tolerated by this Court.
11
12

13 LACHES 14

15 F.37 The proper allocation of the Texas Property between Trust No. 2 and Trust
16 No. 3 is a 35%/65% split, which was done almost 34 years ago. However, even assuming
17 *arguendo* that Trust No. 2 was entitled to 100% of the Texas Property, the doctrine of
18 laches prevents Ms. Ahern from asserting such a claim at this point, almost 34 years after
19 the split of the Trust. Ms. Ahern had legal consultations, received legal advice, and
20 understood her perceived legal rights, but still chose to take no action to enforce her
21 supposed rights and instead allowed the 35%/65% distribution pattern to remain in effect
22 for over 33 years. Ms. Ahern has unquestionably slept on her supposed rights and the
23 doctrine of laches must be applied.
24
25

26 F.38 The doctrine of laches applies when an unreasonable delay in the enforcement
27 of one's legal rights has occurred which is not justifiable under the circumstances. The law
28

1 does not permit a person to sleep on their legal rights. “*The doctrine of laches is founded*
2 *on the equitable maxims of ‘He who seeks equity must do equity,’ and ‘Equity aids the*
3 *vigilant.’” Grimes v. Carroll, 217 Ark. 210, 213, 229 S.W.2d 668, 670 (1950). The doctrine*
4 *of laches is “received with favor, because its proper application works out justice and*
5 *equity, and often bars the holder of a mere technical right, which he has abandoned for*
6 *years...” Id. at, 214 and 671.*

7
8 F.39 The Nevada Supreme Court has weighed in on the issue of when the doctrine
9 of laches is appropriate to apply, and recognized that:
10

11 *Any circumstances tending to obscure the truth of the matter, as the loss of*
12 *witnesses through efflux of time, may prompt a court of equity to apply the*
13 *doctrine of laches. In fact, if it appears that the adverse party has lost any*
14 *advantage he might have retained if the claim had been asserted with reasonable*
15 *promptness, or exposed to any injury through inexcusable delay, a court of equity*
16 *will not interfere to give relief to the dilatory claimant.” Miller v. Walser, 42 Nev.*
17 *497, 181 P. 437, 444 (1919).*

18 F.40 In *Cooney v. Pedroli*, 49 Nev. 55, 235 P. 637, 638 (1925), the Nevada Supreme
19 Court addressed an issue similar to the one in the present case and found that the doctrine
20 of laches applied. In *Cooney*, the plaintiffs asserted that they were entitled to a declaration
21 of interest in real property 22 years after the relevant death. Because the plaintiffs' delayed
22 the enforcement of their purported rights for 22 years, and the defendant's acts were all
23 open and notorious and consistent with absolute ownership, together with the death of the
24 material witness, the Nevada Supreme Court concluded that it must accept and apply the
25 doctrine of laches. In reaching this conclusion, the Nevada Supreme Court ruled:

26 *[I]f it appears that [the adverse party] ha[s] been deprived of any advantage they*
27 *might have had if the claim had been seasonably insisted on, or if they be subjected*
28 *to any hardship that might have been avoided by reasonably prompt proceedings,*
a court of equity will not interfere to give relief, but will remain passive. Cooney
v. Pedroli, 49 Nev. 55, 235 P. 637, 640 (1925).

1 F.41 To sleep on one's rights for 33 years, as Ms. Ahern has done, is not
2 appropriate and should not be rewarded. Even if it is assumed that Ms. Ahern is correct
3 and that she should have been receiving all 100% of the income from the Texas Property,
4 she was obligated to make this assertion long ago. As a co-trustee who was aware of the
5 details of the trust administration, she had the opportunity, ability, and obligation to assert
6 this claim when there would have been no prejudicial damage to adverse parties. Ms. Ahern
7 acknowledges that she knew of her supposed rights at the time the Trust was split, but
8 decided to do nothing.
9

10
11 F.42 As referenced above, in her "Objection of Trustee Eleanor C. Ahern to
12 Jacqueline M. Motoya's Petition to Compel Trustee to Distribute Accrued Income and
13 Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the
14 Application of the Applicability of the Doctrine of Laches," Ms. Ahern states as follows:
15

16 *When W.N. CONNELL passed away, MARJORIE T. CONNELL, as the surviving*
17 *Trustor and Trustee of the TRUST, began paying herself sixty-five percent (65%)*
18 *of the Upton County, Texas Oil right income. ELEANOR consulted an attorney*
19 *and was advised that although ELEANOR was entitled to all of the Upton County,*
20 *Texas, Oil right income, if she asserted her rights to all of the income against*
21 *MARJORIE at that time it would in all likelihood result in MARJORIE dis inheriting*
22 *ELEANOR when MARJORIE died. The advice essentially was to take less now so*
23 *you could inherit all of MARJORIE's estate later. Although ELEANOR knew that*
24 *she (ELEANOR) was entitled to one hundred (100%) of the Upton County, Texas,*
25 *oil income, she consented to MARJORIE receiving the sixty-five percent (65%). The*
26 *advice of the attorney and ELEANOR's love and respect for, and appreciation of,*
27 *MARJORIE T. CONNELL, as her mother, lead to **her acquiescence**. (Emphasis*
28 *added) (Pages 24 and 25 of Objection).*

24 F.43 Ms. Ahern's conduct is precisely the type of conduct to which the doctrine of
25 laches is intended to apply. For, 33 years, Ms. Ahern took no action to enforce her supposed
26 rights in the Texas Property and instead followed the 65%/35% distribution which she
27 supposedly was informed by an attorney was wrong and against her legal rights. Ms. Ahern
28

1 had a legal consultation, received legal advice, and understood her perceived legal rights,
2 but still she chose to do nothing to enforce those purported rights.

3 F.44 Ms. Ahern has unquestionably slept on her rights for an unreasonable amount
4 of time. Ms. Ahern has attempted to have her cake and it eat too. As she stated, she desired
5 to inherit Marjorie's estate, and therefore chose not to rock the proverbial boat. By her own
6 admission, Ms. Ahern gambled with her supposed rights, and in so doing also risked the
7 rights of Jacqueline and Kathryn if she predeceased Marjorie, as discussed above, that failed
8 to pay out as she anticipated and hoped. Assuming *arguendo* that Ms. Ahern did in fact
9 sacrifice any legal rights in receiving all of the Texas Property income, she must now live
10 with the consequences, and this Court should not bail her out 34 years after the fact.

11 F.45 In addition to the length of the delay, other major factors that courts consider
12 in determining the application of the doctrine of laches include: (1) the substantial harm
13 that has occurred to the party that has relied on the status quo and the assumption that it
14 would continue; and (2) the inability of the damaged party to defend itself against the
15 allegations due to the death of the material witness.

16 F.46 Jacqueline and Kathryn have justifiably anticipated the continued
17 distributions of 65% of the income from the Texas Property. Before passing away, Marjorie
18 had the same justifiable anticipation. Marjorie arranged her affairs so that upon her death,
19 this same income would belong to Jacqueline and Kathryn. As in *Cooney*, all of Marjorie's,
20 Jacqueline's, and Kathryn's claims to 65% of the Texas Property have been open and
21 notorious and were followed by Ms. Ahern for approximately 34 years.

22 F.47 Marjorie is the most material witness to this matter due to the allegations of
23 Ms. Ahern. Due to the Marjorie's death, Jacqueline and Kathryn are at a severe
24 disadvantage because they are not able to present the testimony of Marjorie, which could
25
26
27
28

1 describe in detail the steps that were taken to ensure that the allocation of the assets in the
2 Trust were properly done between Trust No. 2 and Trust No. 3 in 1980.

3 F.48 Along this same line, if Marjorie had known that after her death, Ms. Ahern
4 would be seeking to change 33 years of precedent, Marjorie could have sought a judicial
5 declaration prior to her death to ensure that this problem was settled at a time when she
6 could have presented her evidence and testimony. Furthermore, if Marjorie had intended
7 for Ms. Ahern to be the beneficiary to 100% of the Texas Property income, she could have
8 simply failed to exercise her power of appointment and by the terms of the Trust, Ms. Ahern
9 would have inherited Marjorie's 65% interest. Instead, as detailed in the Petition for
10 Declaratory Judgment, Marjorie did exercise the power of appointment so Jacqueline and
11 Kathryn would effectively step into her shoes and receive 65% of the Texas Property
12 income.
13

14
15 F.49 Ms. Ahern has claimed that Marjorie's death actually works to the
16 disadvantage of Ms. Ahern. Such an argument is false. Ms. Ahern, as a co-trustee with
17 Marjorie, had the opportunity and obligation to "correct" any improper allocation or
18 distributions. Ms. Ahern was aware of this split from the time Trust No. 2 and Trust No. 3
19 were allocated their respective interests. Ms. Ahern could have easily brought a claim
20 during the 29 years that income from the Texas Property was paid to Marjorie during her
21 life. If Ms. Ahern is disadvantaged in any way because of the death of Marjorie, Ms. Ahern
22 has no one to blame but herself for her failure to take timely action. 29 years is more than
23 sufficient time to bring a claim to correct improper distributions. This is a textbook example
24 of the doctrine of laches.
25
26

27 F.50 Unlike Ms. Ahern, Jacqueline had no interest, right, or obligation to interfere
28 with the Trust while Marjorie was still living; Jacqueline and Kathryn only became

1 beneficiaries of the 65% interest after the death of Marjorie. The parties prejudiced by the
2 death of Marjorie are Jacqueline and Kathryn, in their capacities as beneficiaries of the MTC
3 Living Trust.

4
5 F.51 Because Ms. Ahern has waited 33 years to assert a claim to 100% ownership,
6 Jacqueline and Kathryn cannot properly rebut the claims of Ms. Ahern via the testimony
7 of Marjorie, which would be substantial testimony to discredit and rebut any assertions of
8 Ms. Ahern. Additionally, the Texas accountant who prepared the state estate tax return is
9 deceased and as such is obviously no longer capable of providing testimony to combat the
10 assertion of mistake and/or error. Likewise, the Form 706, which the Trust states makes
11 the final determination on the Trust allocations, cannot be located because the IRS does not
12 keep returns dating that far back.

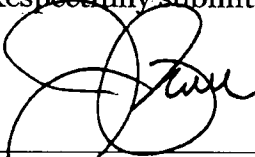
13
14 F.52 Had Ms. Ahern brought her claim within a reasonable amount of time, the
15 testimony of Marjorie, the testimony of the Texas accountant, and the Form 706 would have
16 all been available in order to conclusively rebut Ms. Ahern's claims. It would be improper
17 to permit Ms. Ahern to point to the fact that these pieces of evidence cannot be provided to
18 support Jacqueline's claims, when it is due to Ms. Ahern's unreasonable delay that the
19 evidence is no longer available. If there are unclean hands anywhere in this matter it, it is
20 the hands of Ms. Ahern in delaying this action until the above-described evidence has been
21 lost. Her unjustified delay has caused the spoliation/loss of evidence, and therefore the
22 doctrine of laches must be applied.

23 G. CONCLUSION

24
25
26 Jacqueline seeks a declaratory judgment from this Court that Ms. Ahern, in her
27 capacity as beneficiary of the Trust, is entitled to only a 35% proportion of the income
28 generated by the Texas Property, with the remaining 65% proportion of the Texas Property

1 belonging to the MTC Living Trust, together with retroactive income payments representing
2 65% of the income generated from the Texas Property from June of 2013 through the
3 present. In addition, Jacqueline seeks a ruling from this Court which holds Ms. Ahern, in
4 her capacity as trustee of the Trust, personally responsible for all the damages, fees, and
5 costs that she has triggered by her refusal to distribute the 65% of the income from the
6 Texas Property to the MTC Living Trust.
7

8
9 Respectfully submitted:

10 
11

12 _____
13 Joseph J. Powell
14 State Bar. No. 8875
15
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February 12, 2014

Date


CLERK OF THE COURT

1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 IN THE MATTER OF THE TRUST OF: }

7 THE W.N. CONNELL AND MARJORIE }
8 T. CONNELL LIVING TRUST DATED }
9 MAY 18, 1972 }

CASE NO. P-066425

DEPT. XXVI

10
11
12 BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

13
14 FRIDAY, JANUARY 30, 2015

15 **TRANSCRIPT OF PROCEEDINGS:**
16 **HEARING**

17 APPEARANCES:

18 For Petitioners

19 Jacqueline Montoya:

20 Kathryn Bouvier:

WHITNEY B. WARNICK, ESQ

JOSEPH J. POWELL, ESQ.

21 For Eleanor Ahern:

LIANE K. WAKAYAMA, ESQ.

22 CANDICE E. RENKA, ESQ.

23
24 RECORDED BY: KERRY ESPARZA, COURT RECORDER

25 TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

1 FRIDAY, JANUARY 30, 2015 AT 10:09 A.M.

2
3 LAW CLERK: Court is now in session. The Honorable Judge Sturman
4 presiding. You may be seated.

5 THE COURT: Okay. All right. We'll let Counsel state their appearances
6 for the record.

7 MS. WAKAYAMA: Good morning, Your Honor. Liane Wakayama and
8 Candice Renka appearing on behalf of Eleanor Ahern.

9 THE COURT: Thank you.

10 MR. WARNICK: Whitney Warnick and Joey Powell appearing on behalf of
11 Kathryn Bouvier and Jacqueline Montoya.

12 THE COURT: Okay. All right.

13 MR. WARNICK: Ms. Montoya's also present, Your Honor.

14 THE COURT: All right. Yeah.

15 [Colloquy between the Court and the Clerk]

16 THE COURT: Counsel, if you could -- or do you want to just have them
17 approach?

18 THE CLERK: Yeah. That'd be great.

19 THE COURT: Counsel, if you could approach. The Clerk has prepared an
20 index -- we appreciate the effort Counsel did make to try to outline what was
21 happening today, but it didn't really address the Court's concern, which is, we
22 have a lot of stuff in our docket that it does not appear to be addressed. So we
23 need to make sure that we have everything that's in the Court's docket has a
24 resolution. You can share them. And that, so the Clerk can properly record in
25 the minutes everything that's been resolved.

1 So, the order that we have them in is the order that we have
2 organized all the pleadings in, because these are -- this is how they're linked in
3 JAVS. So -- I mean, Odyssey. So we have to make sure that we've got an
4 outcome on everything, otherwise we have fugitive pleadings and it -- that
5 doesn't work.

6 So, the first pleading is the Jacqueline and Kathryn's Petition for
7 Declaratory Judgment Regarding Limited Interest of Trust Assets. We have
8 three pleadings that are related to that, as far as I can tell. The -- there's a
9 Motion to Dismiss the Petition, there's an Objection to the Motion to Dismiss
10 the Petition, then there is -- there's Ahern's Motion to Dismiss the Petition for
11 Declaratory Judgment. It's almost the same, but it's slightly different -- start in
12 October.

13 Then we have Ms. Bouvier's Opposition to Ahern's Motion to
14 Dismiss the Countermotion, Ahern's Reply and Support of Her Motion to
15 Dismiss, and Ahern's Answer to the Petition for Declaratory Judgment, Assets,
16 and Counterclaims filed 2/10/14. We need something that can track in
17 Odyssey that every one of these things has been resolved.

18 Next issue we've got is, Ms. Ahern's Answer and Counterclaim
19 Against Jacqueline Montoya. Pleadings related to that are Montoya's Motion to
20 Dismiss Counterclaims of Eleanor Ahern filed 3/18; Montoya's Motion to
21 Dismiss and Motion to Strike Counterclaims filed 2/14; Ahern's Opposition to
22 the Motion to Dismiss the Counterclaims was May 7th. Everything was stayed
23 at that point in time, May 13th. Everything was stayed for the Will contest. So
24 that all needs to be resolved, now that the Will contest has been abandoned.

25 Paragraph 3, we have Jacqueline and Kathryn's Motion for

1 Summary Judgment on the Petition for Declaratory Judgment or Damages and
2 Assessment of Penalties and Further Relief, Ms. Ahern's Opposition to the
3 Countermotion for Summary Judgment, the Reply in Support of the
4 Countermotion for Summary Judgment, and then their Reply in Support of the
5 Countermotion. It gets really complicated.

6 Number 4, Petition for Determination of Construction and
7 Interpretation of Language Relating to Trust No. 2. And we have an Omnibus
8 Opposition filed January 2nd. Then we have Ms. Montoya's Petition for
9 Construction and the Effect of Probate Court Order filed March 26th, 2014; Ms.
10 Ahern's Motion to continue that, her Opposition to Petition for Construction of
11 the Order, and an Omnibus Opposition again, filed February -- January 2nd,
12 2015.

13 Then we have -- two more things. We have Ahern's Opposition --
14 Omnibus Opposition, Countermotion for Summary Judgment filed on January
15 2nd, 2015, Opposition from Jacqueline and Kathryn, January 9th, 2015; Ms.
16 Ahern's Reply in Support of the Countermotion and a Supplement to the
17 Opposition, and Opposition to the Countermotion. That all needs to be
18 resolved.

19 And then, the final thing is this Motion for Leave to Amend the
20 Pleadings filed by Jacqueline and Kathryn and for All Claims, Defenses,
21 Damages, and Assessment of Penalties, and Other Relief against Eleanor
22 Connell Hartman Ahern, and a Supplement to that Motion and an Opposition,
23 filed just two days ago.

24 So, that's everything that we've got here. All the pleadings. Do
25 we have the big -- yeah, we have the big binders. Yeah. So that's everything

1 that the Court has. And we just need to work our way through this and make
2 sure that the Clerk can have minutes that track some sort of resolution of
3 everything. So, this is how it's organized and linked in Odyssey, so that's how
4 we need to have them resolved.

5 MS. WAKAYAMA: And, Your Honor, we are trying -- Co-Counsel -- or
6 excuse me, Counsel and -- was trying to work out some sort of organization to
7 make it a little bit more simple for everybody involved here. And we did come
8 to an agreement that a majority of these petitions and counter-petitions and
9 oppositions and replies, are all subsumed in the two competing Countermotions
10 for Summary Judgment.

11 THE COURT: Okay. Well --

12 MS. WAKAYAMA: Except --

13 THE COURT: -- that is a problem, because unless we have something
14 that says a motion has been resolved, it remains on our docket as a fugitive
15 document that's never been resolved. And, you know, assuming this thing
16 were appealed -- hopefully it won't be, but, assuming it were, the Supreme
17 Court would say it's not ready to go. It's not final because we have undecided
18 motions pending so --

19 MR. WARNICK: I think we can stipulate --

20 THE COURT: -- that's my problem.

21 MR. WARNICK: -- to that effect, Your Honor, that we --

22 THE COURT: Okay.

23 MR. WARNICK: We do stipulate that they are resolved then, so that
24 would take -- and be on the record to resolve that issue. And we would
25 stipulate that, as Mrs. Wakayama has said, that basically the countermotions

1 we have filed, for summary judgment, include all of these prior matters. And
2 once those are resolved, that would be satisfactory and we would stipulate that
3 the matters beforehand, that you've noted here, have been resolved in that
4 process. And I think that maybe would clear it up on any issues on appeal, as
5 far as making sure that all matters were taken care of.

6 THE COURT: Okay.

7 MS. WAKAYAMA: And we agree that, Your Honor, except for, of
8 course, there are two separate briefings that are not subsumed with the
9 Countermotions for Summary Judgment. And that's the recent Motion to
10 Amend Request which is separate and apart. And then, also the --

11 MS. RENKA: Well, the Motion to Dismiss our -- Eleanor's Motion to
12 Dismiss based on Claim Preclusion is also briefed in the Omnibus Briefs, but it's
13 something that might be -- make more sense to argue separately.

14 MR. WARNICK: Well, that was filed way back in 2013. It was
15 reiterated. We did the same thing. So, if they want to break things down in
16 that manner and take them piecemeal, we can, but that is certainly subsumed in
17 the Countermotions for Summary Judgment. Certainly, I --

18 MS. WAKAYAMA: Sure.

19 MR. WARNICK: -- you know, if we need to take and focus in on
20 something, we don't mind looking at the particular motions that were filed prior
21 to that time to help the Court in resolving the Countermotions for Summary
22 Judgment, but those issues were all subsumed and included in the Motions for
23 Summary Judgment, we understand.

24 MS. RENKA: That's correct, Your Honor, except for the Motion to
25 Amend, is the only one that's completely separate.

1 THE COURT: Okay. The first issue here is the Petition filed by Kathryn
2 and Jacqueline for Declaratory Judgment Regarding Limited Interest of Trust
3 Assets. That is, if I understand the -- because there was a -- an opposition --
4 there was a Motion to Dismiss and an Opposition to the Motion to Dismiss. So,
5 that would be mooted and part of the two Countermotions for Summary
6 Judgment.

7 MR. WARNICK: Yeah.

8 THE COURT: Okay.

9 MR. WARNICK: In essence, that initial Petition is the main request for
10 relief in this case that was filed. That's the initial Petition seeking the major
11 issue to be resolved by the Court, which is in --

12 THE COURT: Right. But the Motion to Dismiss and the Objection to the
13 Motion to Dismiss would not have a separate order inter elim. There would not
14 be a -- they would be subsumed and they are supplanted by --

15 MR. WARNICK: Yes, Your Honor.

16 THE COURT: -- the subsequent Countermotions for Summary Judgment.

17 MS. RENKA: Yes, Your Honor.

18 MR. WARNICK: Correct.

19 THE COURT: Okay. So that the --

20 THE CLERK: So just on a Motion to Dismiss?

21 THE COURT: Yeah, the Petition's there, that's what starts the whole
22 litigation. But, it's the Motion to Dismiss and the Objection thereto, are
23 withdrawn and considered to be subsumed in the -- by the Countermotions for
24 Summary Judgment that were later filed.

25 MR. WARNICK: Yes, Your Honor. But to the extent issues come up in

1 arguing the Motions for Summary Judgment it might be helpful, if we have to,
2 to go back and look at some of the pleadings and briefing that were contained
3 in those documents to help the Court, if necessary. It may not be necessary,
4 but that will be my only comment, and maybe they have the same position on
5 it.

6 THE COURT: All right. So assuming that's -- I -- that's an order that the
7 Clerk can enter so that it is clear, if anybody looks at this record later and say:
8 Why is this fugitive document out here; a Motion to Dismiss that never got
9 decided? It's mooted. So it won't be, specifically -- separately addressed
10 unless there are issues in there that the parties need to refer to for the briefs, or
11 something that's briefed there, but it won't be decided separately. Agreed?

12 MS. WAKAYAMA: I think that's fine, Your Honor.

13 THE COURT: Okay, so that's Number 1. Okay. Number 2. Now we
14 have Ms. Ahern's Answer to the Petition for Declaratory Judgment, Assets, and
15 Counterclaims. This -- these are the claims of Intentional Interference with
16 Contractual Relations, Enforcement of a No-Contest Provision. There's a
17 Motion to Dismiss that and a Motion to Strike the Counterclaims. And then
18 another motion filed -- that was filed on February 14th. And then on -- on
19 March 18th, Ms. Montoya filed a Motion to Dismiss the Counterclaims. And this
20 is on Statutes of Limitations, Laches, Waiver of Claim, and Claim Preclusion.

21 MR. WARNICK: Your Honor, actual -- in actuality, on that second matter,
22 there was also additional motions filed by Mr. Powell to Summarily Resolve the
23 Case on Interpreting the Language of the Trust, and that's not listed there I
24 don't believe, is it?

25 MR. POWELL: I think it's behind.

1 MR. WARNICK: It's behind it?

2 THE CLERK: It's 4 and 5.

3 MR. POWELL: Yeah, it's in number 4 and --

4 MR. WARNICK: Okay.

5 MR. POWELL: -- number 5.

6 MR. WARNICK: It's in 4 and 5.

7 MR. POWELL: Yes.

8 MR. WARNICK: I beg your pardon, Your Honor. Okay.

9 THE COURT: Oh, this is -- again, this is how they're linked in the Court's
10 docket, so we need to --

11 MR. POWELL: And it makes perfect sense because, I mean, the
12 grouping's -- how it's done here --

13 THE COURT: Yeah.

14 MR. POWELL: -- is very logical.

15 THE COURT: Okay. So, do we need to address, separately, or are all of
16 these issues -- Statutes of Limitations, Laches, Waiver of Claim, Claim
17 Preclusion -- because the only things that -- at one point in time, I had dismissed
18 the Motion to Dismiss on Claim Preclusion. And I had also -- I denied, rather.
19 And also denied referring this matter back to the Probate Commissioner so --

20 MS. RENKA: All subsumed.

21 THE COURT: -- those are the only parts that have been resolved. So the
22 rest of this -- these two Motions to Dismiss are still out there. As to the
23 counter --

24 MR. POWELL: Right.

25 THE COURT: As to the Answer and Petition for Declaratory Relief --

1 MR. POWELL: Right.

2 THE COURT: -- on the Assets and Counterclaims.

3 MR. POWELL: Right, yeah, that's it.

4 MR. WARNICK: We would believe those were subsumed in the --

5 THE COURT: Okay.

6 MR. WARNICK: -- Countermotions for Summary Judgment.

7 THE COURT: All right. So to the extent they haven't already been denied
8 because there were a couple of subparts, but the two Motions to Dismiss on
9 that are subsumed into the Motions for Summary Judgment. This is Ms.
10 Ahern's Answer and Her Counterclaim remains -- remains an issue to be
11 determined, right? By this Motion for Summary Judgment?

12 MS. RENKA: Yes --

13 MS. WAKAYAMA: Yes, Your Honor.

14 THE COURT: Okay. All right. All right. So those two pleadings will be --
15 we can record, have been fully resolved because -- and/or will be resolved by
16 the summary judgments. Okay, great now.

17 We're going to move onto Number 3. And this is Jacqueline
18 Montoya's Petition to Compel the Trustee to Distribute Accrued Income and
19 Future Income Received from Oil, Gas, and Mineral Leases, and for Declaration
20 of the Applicability of the Doctrine of Laches filed March 6th, 2014. So, again,
21 the Petition is a claim that stands, but all these motions that were filed with
22 response to it -- Eleanor has filed an Objection to the Petition. Again, our
23 argument being laches -- an Errata to the Objection, and then, there's a
24 Response to that Objection and a Reply. So that one was fully briefed.

25 MS. RENKA: Your Honor, I'm sorry. For clarification, are you on Number

1 3 --

2 THE CLERK: That's --

3 MS. RENKA: -- the girls' countermotion?

4 MR. WARNICK: That's what I was wondering too.

5 THE COURT: No, it's not.

6 THE CLERK: More claim, yeah, it's the one that --

7 MS. RENKA: Oh, the lists have different numbering.

8 THE CLERK: A little bit more.

9 MR. WARNICK: Oh, I didn't get a copy of that. Did you get an extra
10 copy of it?

11 [Colloquy between Counsel and the Clerk]

12 [Colloquy between Counsel]

13 MR. WARNICK: I guess, Your Honor, we weren't looking at this. We
14 were looking at the --

15 MS. WAKAYAMA: The table.

16 MR. WARNICK: -- the table, yeah. So.

17 MS. RENKA: But the first two were lining up, but the third one, they
18 differ.

19 MR. WARNICK: Yeah.

20 THE CLERK: Is that -- can I have that one back?

21 MS. RENKA: Sure.

22 MS. WAKAYAMA: Sure.

23 MR. WARNICK: I have it --

24 THE COURT: We may have given you the wrong ones.

25 MS. RENKA: We've been looking at this one, which is different from this

1 one.

2 THE CLERK: This is my copy.

3 MS. RENKA: Oh, okay. Thank you.

4 THE COURT: They all have --

5 THE CLERK: So this --

6 MS. WAKAYAMA: Yeah.

7 THE CLERK: This is just --

8 THE COURT: Right.

9 THE CLERK: This is what -- the stack. I'm sorry.

10 THE COURT: Okay.

11 MR. WARNICK: That's the one we've got.

12 THE CLERK: I couldn't find it in my pile.

13 MS. RENKA: That's the one we've been looking at.

14 THE COURT: Right.

15 MR. WARNICK: That's the same one we've been going off.

16 THE COURT: Right.

17 MS. RENKA: Yeah.

18 THE COURT: Okay. Great. Okay.

19 THE CLERK: So three is where it gets all -- because I added that one.

20 THE COURT: Okay.

21 THE CLERK: Because I think it's still outstanding.

22 THE COURT: Yeah. Okay. The -- yeah, so we --

23 MS. RENKA: One and two were the same and correct, Your Honor.

24 THE COURT: Right.

25 MS. RENKA: Yeah.

1 THE COURT: So we've got one here that is -- we think's still out there
2 and may not have been addressed. Okay. Well, moving on then on this chart
3 here, the Countermotion for Summary Judgment on the Petition for Declaratory
4 Judgment, this is the one that's going to be argued today.

5 MS. WAKAYAMA: Yes, Your Honor.

6 THE COURT: Okay. All right. Number 4 is this Petition for Determination
7 and Construction and Interpretation of Language Relating to Trust No. 2, and an
8 Omnibus Opposition. So, is that part of the -- is that separate, or is that part of
9 this countermotion?

10 MR. WARNICK: Part of the countermotion.

11 MS. WAKAYAMA: Part of the Request for Summary Judgment. They're
12 subsumed just like 1 and 2.

13 THE COURT: So that -- so the Petition's there and the Omnibus
14 Opposition addresses the Petition, but --

15 MS. WAKAYAMA: Of --

16 THE COURT: -- that's because of the -- because of the -- it's in the
17 countermotion. Okay. Okay. Moving on. Now we've got Number 5, which is
18 a Petition for Construction and Effect of the Court's Probate Order filed -- Mr.
19 Powell filed that on March 26th. There is a Motion to Continue that and that's
20 when we state everything to do the Will contest.

21 MR. POWELL: Yes. Correct.

22 THE COURT: So, technically -- you know, I don't know if you can really
23 -- I guess that was the response to that Motion to Continue was, essentially,
24 instead it was stayed, and the Will contest proceeded.

25 Then we have Ahern's Opposition to Petition for Construction. And

1 then we have this -- it seems to be addressed in this Omnibus Opposition which
2 was just filed --

3 MS. RENKA: Yeah.

4 THE COURT: -- so.

5 MS. RENKA: That's correct, Your Honor.

6 MR. WARNICK: Those are all subsumed in the counter --

7 THE COURT: Okay, subsumed.

8 MR. WARNICK: -- motions.

9 THE COURT: All right. So the Clerk can record that as well. Although,
10 again, any -- the petitions all stand. It's these Motions to Dismiss that is our
11 problem. We just need to make sure it's clear what we've done with the
12 motions that got filed. And then we're going have to address, at the end, how
13 each of the petitions was addressed. But at least we can -- if there -- if
14 everything's subsumed into the countermotions then, hopefully, all the petitions
15 are addressed, and we can have something that addresses all the petitions, so
16 we'll get to that later.

17 Okay. Number 6, then, is the Omnibus Opposition, Countermotion
18 for Summary Judgment filed January 2, and all the related briefs to that one.
19 So that's the one that is to be argued today. So 3 and 6 are the two that are
20 to be argued today. And then we have this issue of, depending on the
21 outcome, the Motion for Leave to Amend --

22 MS. RENKA: Actually, Your Honor --

23 THE COURT: -- but that's kind of --

24 MS. RENKA: -- the Motion for Leave to Amend, I think, would have an
25 effect on the Countermotions for Summary Judgment because, technically, if

1 Your Honor didn't grant the Motion to Amend and granted the relief requested
2 in the Opposition to the Motion to Amend, several of the affirmative defenses
3 and claims, purportedly alleged in this amended pleading, would not be before
4 the Court to be heard in the Summary Judgment Brief.

5 MR. WARNICK: The only problem I have with that, Your Honor, is
6 they've not filed any motion objecting to the pleadings; they've not asserted
7 anything formally. They've just suggested in briefing, in their countermotions,
8 that we didn't plead all of the defenses and claims that we were making in our
9 countermotion filed on December 23rd. But they hadn't filed anything, formally,
10 to say they're objecting it; they don't won't the Court to hear those matters.
11 We believe all those matters were before the Court and all of the pleadings
12 you've gone over here.

13 And we, we understood that on December 23rd -- we filed our
14 countermotion, and that was filed in response to the Court's direction on
15 December 4th, when we had a calendar call. And the issue was raised --

16 THE COURT: Uh-huh.

17 MR. WARNICK: -- that there's so many things going on in this Trust
18 case, it's been so disjointed, we want to make sure that everybody knows
19 what's before the Court.

20 So you directed that, by December 24th, everybody should file a
21 pleading which set forth all of the claims for relief that they were asking for and
22 all the defenses, and you set a deadline to do that on December 24th. That's
23 what motivated our Countermotion for Summary Judgment. In that
24 Countermotion for Summary Judgment we rehearsed all of the different
25 pleadings and --

1 THE COURT: Uh-huh.

2 MR. WARNICK: -- and claims that we had filed and asserted before that
3 time, as well as our defenses. And we thought we had complied and we were
4 ready to go to have those matters heard.

5 They then, at that last late file pleading in January -- on the January
6 10th, which we didn't think they even had a right to file -- that's when they first
7 made a suggestion: Well, we don't believe that you've included, in all of your
8 prior pleadings, those claims for relief of defenses that you asserted in your
9 Motion for Summary Judgment on December 23rd. That's what motivated us
10 then to say: Well, if you're going to say that, then as a precautionary matter,
11 we want to move to make sure that those matters are before the Court --

12 THE COURT: Uh-huh.

13 MR. WARNICK: -- and that's what motivated our Motion to Amend the
14 Pleadings. We believe that we properly and -- presented -- and it's before the
15 Court, all those defenses and claims for relief that are alleged in our Motion for
16 Summary Judgment.

17 THE COURT: Okay. All right.

18 MR. WARNICK: But as a safety measure, we just filed a Motion to
19 Amend to make sure that they weren't left out.

20 THE COURT: Got it. So it's -- I think that we need to get to that in -- in
21 its own time. I don't -- I think that that's -- may or may not be relevant at the
22 end of the day.

23 MR. WARNICK: Okay.

24 THE COURT: So speaking of the end of the day --

25 MS. RENKA: Your Honor, just for the record that, it's our position that

1 these issues are briefed and addressed in our Opposition to the Motion to
2 Amend. And procedurally, just to avoid further confusion in the Court's record,
3 again, we think that affirmative defenses and claims have been waived by not
4 being timely and properly pled in response to the counterclaim that was filed
5 way back in February of last year.

6 And so, if we are -- we do not, by any way, want to consent to
7 trying or hearing those affirmative defenses, or any of the claims that are
8 allegedly pled in this new proposed pleading, which the Motion to Amend was
9 initially filed two days before summary judgment last time. We are not, in any
10 way, consenting to trying those affirmative defenses or claims, and we would
11 request that that motion be heard first before the summary judgment.

12 THE COURT: Okay. Well, but the problem that I have is everything was
13 stayed in May.

14 MS. RENKA: But this is a brand new Motion to Amend that was just filed
15 two days before the last hearing when --

16 THE COURT: Okay. I'm going to start over again. My concern about
17 your argument that they haven't properly pled these things is, everything was
18 stayed in May, except for the Will contest, so they were stayed from doing
19 anything on any other part of the case but the Will contest, since May. Only
20 when we found out in December that the Will contest was being abandoned
21 could we go forward on any of these other issues --

22 MS. RENKA: Correct, Your Honor --

23 THE COURT: -- so.

24 MS. RENKA: -- but there's an order on file that their -- their response to
25 Eleanor's counterclaims was due March 20th --

1 THE COURT: Uh-huh.

2 MS. RENKA: -- before May, and it was never filed and no affirmative
3 defenses were ever filed.

4 MR. WARNICK: Your Honor, that -- that -- she's referred to a stipulation
5 when we came -- when I came on the case --

6 THE COURT: Uh-huh.

7 MR. WARNICK: -- and we were -- made sure we had time to file our
8 motions to summarily dismiss --

9 THE COURT: Right.

10 MR. WARNICK: -- and to summarily decide the case.

11 THE COURT: Right.

12 MR. WARNICK: Under our rules, because that matter was continued in --

13 THE COURT: Right.

14 MR. WARNICK: -- May, everything was stayed.

15 THE COURT: And then everything was stayed.

16 MR. WARNICK: And so --

17 THE COURT: There was a Motion to Dismiss filed and then everything
18 was stayed.

19 MS. RENKA: Yes. There was a Motion to Dismiss and then a Stipulation
20 to file a Response to the Counterclaim by March 20th and it was never filed.

21 MR. WARNICK: No --

22 THE COURT: Right.

23 MR. WARNICK: -- just the opposite.

24 THE COURT: Right.

25 MR. WARNICK: Just the opposite.

1 THE COURT: Correct, that's my understanding.

2 MR. WARNICK: Yeah.

3 THE COURT: That there was a Motion to Dismiss filed. There were
4 going to be additional pleadings, but then we got this Motion to Continue and
5 the -- well, a Motion to Continue which, technically, I guess I granted, but I did
6 it in the form of staying everything else, but the Will contest, let that go
7 forward. So nothing else was or could have been filed because there was
8 Motion to Dismiss pending that never got decided. That's why I said at the
9 very beginning, there's a Motion to Dismiss out there that was never decided.

10 MR. WARNICK: And then we understood at that --

11 THE COURT: Never ruled on it.

12 MR. WARNICK: -- at that calendar call on December 4th, when Counsel,
13 being new Counsel on the case said: There's so many things that have been
14 pleaded in this case --

15 THE COURT: Uh-huh.

16 MR. WARNICK: -- we don't know what's going to be heard then, in this
17 Trust dispute matter that's going to go forward. That's when Your Honor said:
18 File something before December 24th summarizing and reiterating all the claims
19 for relief and the defenses that you've alleged, that you're asserting, so that
20 when this comes before the Court for hearing in January, everybody knows
21 where we're at and what we're doing. And that's what we did.

22 THE COURT: Yeah. It's --

23 MR. WARNICK: And we think that was in response to Rule 12 that says:
24 The Court can set a time, then, for further responses and that's --

25 THE COURT: Right.

1 MR. WARNICK: -- what we thought we did.

2 THE COURT: There's a Motion to Dismiss filed and it was never decided
3 because -- and that's why I said: We've got all these motions out there that are
4 fugitive documents, they were never ruled on.

5 MR. WARNICK: Correct.

6 THE COURT: And it's one thing to say it's all subsumed into these
7 countermotions, but that has consequences in doing it that way --

8 MS. RENKA: Understood, Your Honor.

9 THE COURT: -- so.

10 MS. RENKA: We just would like to preserve, on the record --

11 THE COURT: Sure.

12 MS. RENKA: -- that we're not in any way consenting to the affirmative
13 defenses or the claims that we allege were not timely or properly pled.

14 THE COURT: Understood. Yeah. Okay. All right.

15 So, at this point, then, we have the countermotion. And I would
16 assume that we're going to start with -- and I guess my question is: Does it
17 make more sense to -- and this is like a scheduling question because I don't
18 think we're going to do this in an hour or an hour and a half. The -- we have
19 the two competing countermotions, and does it make more sense to address
20 Petitioner's Countermotion, the Opposition to the Countermotion, and then, do
21 Eleanor's Countermotion and the girls' Opposition to the Countermotion? Or do
22 you want -- does it all get argued as one big thing because it's, technically, it's
23 two completely separate motions.

24 MR. WARNICK: I would recommend we hear them together because
25 they're both Motions for Summary Judgment to summarily resolve the case.

1 And I believe in our argument we can present all the issues more easily -- and
2 easily understood in one consolidated manner.

3 THE COURT: Uh-huh.

4 MR. WARNICK: And then the Court can see, basically, both motions and
5 all the requests for relief therein.

6 MS. WAKAYAMA: And, Your Honor, we're prepared to do that same
7 thing today.

8 THE COURT: Okay. Okay. Then my one last question then is, with
9 respect to scheduling. How long have you --

10 MS. WAKAYAMA: Well, Your Honor --

11 THE COURT: -- do this thing.

12 MS. WAKAYAMA: -- we actually have a PowerPoint for ours --

13 THE COURT: Uh-huh.

14 MS. WAKAYAMA: -- which I'm going to be handling that aspect. And
15 then any of the legal arguments, the nuisances, Ms. Renka's going to be
16 handling as well. So whatever Your Honor's preference is --

17 THE COURT: Uh-huh.

18 MS. WAKAYAMA: -- on who goes first, we're open to it.

19 THE COURT: And do you have a hard copy of the PowerPoint that we
20 can make as a Court's Exhibit because --

21 MS. WAKAYAMA: I can get one.

22 THE COURT: -- there's a -- it's a criminal case, but they indicate,
23 basically, that any time we have a PowerPoint, we need to have a copy of it for
24 the record in the event of an appeal, so.

25 MS. WAKAYAMA: We will make sure that you have that --

1 THE COURT: Okay.

2 MS. WAKAYAMA: -- by the end of the day, Your Honor.

3 THE COURT: Okay. Thanks. So, I guess my question then is, about
4 how long do you think it's going to take? We have some scheduling issues
5 with respect to staff and having to bring somebody in to cover for Ms. Esparza
6 who's got -- not going to be here this afternoon.

7 MR. WARNICK: I believe I can present an initial argument within an hour
8 --

9 THE COURT: Uh-huh.

10 MR. WARNICK: -- and go over --

11 THE COURT: Okay.

12 MR. WARNICK: -- all the points that I think are before the Court for
13 resolution.

14 THE COURT: Okay. All right. I'm assuming you'd need a similar amount
15 of time.

16 MS. WAKAYAMA: Yes, Your Honor.

17 THE COURT: Okay. All right.

18 MR. POWELL: And, Your Honor, just for our presentation to try to assist
19 you because, again, there's so many pieces of evidence --

20 THE COURT: Right.

21 MR. POWELL: -- we put together a booklet that's --

22 THE COURT: Okay.

23 MR. POWELL: -- got those. And so if that's --

24 THE COURT: Okay.

25 MR. POWELL: -- easier for you to refer to, we've got it all kind of tabbed

1 with --

2 THE COURT: Okay.

3 MR. POWELL: -- with that so.

4 THE COURT: All right. Okay. Thanks very much. Then, if we're ready
5 to start now that we've got all the logistical details worked out, we're ready to
6 start. And I think that if we've got any other issues to resolve before we start
7 with the actual hearing of the parties. Okay. All right. Well then, okay. Mr.
8 Warnick.

9 MR. WARNICK: Thank you, Your Honor. If I could -- thank you, thank
10 you very much. If I could maybe bring forth this bulletin board here too, to
11 help, that might give us some assistance in how we address matters. [Easel
12 brought before Court by Counsel Warnick]. Is that clear enough for Your Honor
13 to see?

14 THE COURT: Yeah.

15 MR. WARNICK: Counsel?

16 MS. WAKAYAMA: Yes.

17 MS. RENKA: Yes.

18 MR. WARNICK: Your Honor, this dispute, basically, is over entitlement to
19 income from Texas oil property owned by a Trust. The parties are disputing as
20 to who has the right to the income being generated from the Texas oil property,
21 which is quite significant income. Basically, we have two different positions
22 why we think we're entitled to Summary Judgment at this time. The first
23 position is based upon Strictly Equitable Principles. In our initial Petition that
24 was filed, after we learned that -- and I'm going to refer to Mrs. Ahern as
25 Eleanor, not out of any disrespect, and to our clients as Kathy and Jacque, just

1 for convenience and facilitation. That's how we've addressed them in the
2 briefs too so that makes it clearer.

3 What happened is, is in June of 2013, Eleanor, serving as the sole
4 Trustee of the Trust, abruptly cut off the Texas oil property income that had
5 been distributed prior to that time to Jacque and Kathy, 65 percent of that oil
6 property income. And prior to Jacque and Kathy receiving that 65 percent,
7 Marjorie Connell, one of the Trustors of the original Trust, had received that 65
8 percent income for 30 years.

9 So a period 34 years, that income had been paid based upon an
10 allocation made in the Trust upon the death of Mr. Connell back in 1979. In
11 June of 2013, Eleanor, as Trustee, abused her position as Trustee and simply
12 cut off the income distribution to Jacque and Kathy. Efforts were made to
13 resolve that amicably and try to get the case resolved that way. In that
14 process, we learned that Eleanor was now making a claim to 100 percent of all
15 of the income from the Texas oil property under the Trust. This was the first
16 time anybody had ever heard her make such a claim.

17 Therefore, because it was a serious financial burden and problem to
18 our clients, they were cut off from thousands of dollars of income that they had
19 been counting on each month. And Eleanor refused to make any changes and
20 was going to continue as Trustee, denying them that income. That required the
21 filing of Initial Petition in this case and asking the Court to declare who, in fact,
22 was entitled to that Trust income. Whether Eleanor was entitled to 100
23 percent of it or whether she was only entitled to 35 percent and the 65 percent
24 really belonged to our clients, Jacque and Kathy.

25 In our Initial Petition, we mentioned that if Eleanor was making a

1 claim to 100 percent of that income, it was a belated claim 34 years too late
2 and that it violated equitable principles and would be defeated on that case
3 alone. In our Initial Petition, we mentioned that she had breached her duties
4 and that we wanted compensatory damages for all damages that were caused
5 by her actions, including attorney's fees and costs. We mentioned in that Initial
6 Petition that those damages would be further elaborated on with further
7 petitions that we filed.

8 So our initial claim is that Eleanor, back in 1979, claims that when
9 there was an allocation of Trust income under the William Connell and Marjorie
10 Connell Trust, she claims that there was a mistake made at that time of that
11 allocation. And instead of her only being entitled to 35 percent of the income,
12 she should have been entitled to 100 percent of the income.

13 Nevertheless, even though she admits and clearly states that she
14 was told that she had the right to 100 percent of the income, she never made
15 any objection, never told anybody that that was her position, never made any
16 waves, never filed any actions. She just consented to the distribution of the
17 income and the allocation, which had been made back in 1979 when Mr.
18 Connell died, in the Trust distributions as required under the Trust agreement.

19 So our position is, is that, without even looking at the merits of this
20 case, Eleanor has forfeited any right to even make a demand to any more
21 income than the 35 percent which she has been receiving for 34 years. She
22 didn't have the right, 34 years later, when she had never made a claim before,
23 had not told anybody about her claim, to then all the sudden say: Hey, I'm
24 going to take and try to reverse history of 34 years, when parties have been
25 receiving income, paying the income taxes on that, making decisions, living

1 their life with the understanding that that allocation that had been done in 1979
2 and 1980, was correct.

3 So we submit, initially, that on equitable grounds, without even
4 looking at the merits of the case, without going back to 1979 and seeing if
5 there was a correct allocation made or not, we submit that Eleanor's claim must
6 be denied at this time, under the Doctrines of Statute of Limitations, Laches,
7 and Waiver.

8 Under the Doctrine of Statute of Limitations, if a party is aware of a
9 mistake that has been made, they have three years, under our Statute of
10 Limitations, to bring an action to correct that mistake, or they're deemed to
11 have waived and forfeited the right to do that. And you cited the section of
12 Nevada Revised Statutes that provides for that requirement.

13 If, for some reason, it's not resolved under the Statute of
14 Limitations then, clearly, by waiting 34 years to ever assert a claim, during
15 which time parties have relied upon what was going on and the allocation that
16 was made 34 years ago and has been followed for 34 years, and they planned
17 their lives and made decisions and financially made decisions affecting them
18 seriously, a person can't come in after 34 years and say: Well, I want to go
19 back and revisit this thing that happened 34 years ago now.

20 Under the Doctrine of Laches -- and you cited the *Cooney* Decision.
21 It states that a person cannot come before the Court in good faith and receive
22 any relief from the Court when they are filing a belated claim. It says: It is a
23 very material circumstance to be considered in connection with the lapse of
24 time that death of those who could have explained the transaction has
25 intervened before the claim is made.

1 Well, in this case, the original Trustor, Marjorie Connell, who set up
2 the Trust; the Trust which divided and allocated the income, she's the person
3 who was the Successor Trustee when her husband died in 1979. She's the
4 person who had a duty to make the allocation under the Trust, under the Trust
5 which we'll go into in a little more detail.

6 But under the Trust it states, explicitly, how that allocation is
7 supposed to be made. It's tied into the Federal Estate Taxes that are to be
8 filed, and the attempt to maximize the marital deduction under Federal Estate
9 Taxes. Marjorie did all that. She knows what happened. The accountants and
10 attorneys who supported her and helped her in those proceedings know what
11 happened and they know it was done properly, but the problem is, they're all
12 dead now; they're all dead.

13 THE COURT: I do have a question about what happened in 1979. Was
14 the Title to the Texas property in the name of the Trust or in the name of Mr.
15 Connell, individually? It looked to me like it was in the Trust and then it's
16 reported to Texas as part of his estate. It wouldn't have been part of his
17 estate, it was in Trust.

18 MR. WARNICK: No, when Mr. Connell --

19 THE COURT: It doesn't make any sense.

20 MR. WARNICK: -- and Mrs. Connell set the Trust up in 1972, he
21 transferred the Texas oil property into the Trust as his --

22 THE COURT: Right.

23 MR. WARNICK: -- separate property into the Trust.

24 THE COURT: Right.

25 MR. WARNICK: They put community property into the Trust, and he put

1 another chunk of his separate property, that was located here in Clark County,
2 into the Trust. That Texas oil property -- all this -- the other property has since
3 been gone. But the Texas oil property has always remained titled in the name
4 of the Trust, and even today, it remains titled as it was way back in 1972,
5 titled in the name of the Trust.

6 THE COURT: Well, that's why I got confused when I read the Texas
7 Estate Tax Return, that it talked about it as Mr. Connell's property and how
8 they were apportioning Mr. Connell's property. It wasn't Mr. Connell's
9 property, it was the Trust's property, so why was it recorded that way; it
10 doesn't make any sense.

11 MR. WARNICK: Well, you have to understand -- and maybe we -- we can
12 turn to the initial document, the Trust document. That'd be Item Number 1 that
13 we provided to you in the book there.

14 THE COURT: Uh-huh.

15 MR. WARNICK: If you turn to the, let's see, turn to the third page of that
16 document.

17 THE COURT: Uh-huh.

18 MR. WARNICK: Beginning with paragraphs 1, 2, 3, 4, 5, and 6, it states
19 how the property in the Trust was to be allocated between two Sub-Trusts.
20 They call it Sub-Trust 2 and Sub-Trust 3. Sub-Trust 2 was for the benefit of
21 Eleanor. She was to receive an income from the Sub-Trust 2 assets during the
22 balance of her life. We believe that was 35 percent of the Texas oil property.
23 Sub-Trust 3 was for the benefit of Marjorie, the surviving Trustor. She was to
24 get all of her community property, all of her separate property, and then if you
25 see in Paragraph 3 there on page 3, it says: The Trustee shall allocate to Trust

1 3, from the decedent's separate property, an amount as determined in Article
2 3rd hereof.

3 At that particular time, at the death of Mr. Connell in 1979, the
4 only separate property that he had in the Trust, that needed to be allocated
5 pursuant to this Paragraph 3, was the Texas oil property. And so, in Paragraph
6 3 there it says: A portion of that Texas oil property has to be allocated to
7 Marjorie's Trust, Sub-Trust No. 3 --

8 THE COURT: Uh-huh.

9 MR. WARNICK: -- according to the provisions of Article 3rd. So you get
10 down to Article Third and in Article Third it says: Some of that separate
11 property needs to be allocated to Trust Number Three: Equal to the maximum
12 marital deduction allowed for Federal Estate tax purposes.

13 So the Federal Estate Tax Return doesn't transfer property, of
14 course, all it does is indicate to the IRS who has the right to the property --

15 THE COURT: Uh-huh.

16 MR. WARNICK: -- so that the IRS knows that Federal Estate Taxes are
17 properly, you know, figured out and paid, and it's been done properly. So, if
18 you note on that Texas Estate Tax Return, which I think is -- let's see which
19 one it is. It is Number 8. So if you go to Item 8 --

20 THE COURT: Uh-huh.

21 MR. WARNICK: -- this is the Texas Estate Tax Return, but if you look at
22 that return and if you read Mr. Gerety's, our expert's report, he states that the
23 Texas Estate Tax Return mirrors the 706 Federal Estate Tax Return that was
24 filed; and it states that on the return itself. And you could turn over to the 4th
25 page of that Schedule C on that return, it points out there that everything that's

1 on this return is taken from the 706 Federal Estate Tax Return.

2 And then, if you turn to the next page and the following two pages,
3 you can see, as you pointed out, what portions of that Texas oil property was
4 allocated to Marjorie and what portion was allocated to Eleanor. Now, we
5 know that that was not a transfer of that property, because the property
6 remained owned by the main Trust.

7 THE COURT: Okay. I just want to make clear on that, because it didn't
8 make any sense to me that we would have seen a deed transferring everything
9 into the Trust and yet, they were talking about his property as if it was his -- as
10 part of his estate. It wouldn't have been part of his estate.

11 MR. WARNICK: No.

12 THE COURT: It was Trust property.

13 MR. WARNICK: Never a part of his estate, it was always in this Trust.

14 THE COURT: Okay. I just want to make clear that there was no estate.

15 MR. WARNICK: You're correct.

16 THE COURT: Okay.

17 MR. WARNICK: You're correct. But the importance of this is, is that
18 under the Trust provisions that we just looked at, it states that the portion of
19 that Texas oil property, which is to go into Trust Number 3, is equal to and is
20 the amount that is allocated under the estate tax returns. And that's where you
21 get almost 65 percent being allocated to Marjorie and a little over 35 percent
22 being allocated to Eleanor. We've rounded those off to 65 and 35 in all of our
23 discussions, but the actual amount is really 64.493 going to Marjorie and
24 35.507 going to Eleanor.

25 So the Trust states: You take some of that Texas oil separate

1 property and you allocate it to Trust Number 3, and the amount that you
2 allocate to Trust Number 3 is equal to the amount necessary to maximize the
3 marital tax deduction under the Federal Estate Tax Returns. And if you read Mr.
4 Gerety's expert report, he shows exactly that that's what they did. They took
5 approximately \$76,000 of Mr. Connell's separate property that was in the
6 Trust, they allocated that to Marjorie Connell so that she received that as her
7 property, and therefore, it qualified for the maximum marital deduction under
8 the Federal Estate Tax Return.

9 Now, it's important to note that we've also attached the closing
10 letter for the 706 return, the Federal Return, in which they approved the tax
11 returns that were filed. They provided the numbers on that closing letter, which
12 correspond exactly to the Federal -- to the Texas Estate Tax Return. So we
13 know that both returns have the same information on them. We know that
14 they are consistent, and we know that based upon those tax returns,
15 approximately 65 percent of the Texas oil property had to be and was allocated
16 to Marjorie, under the Trust, and under the Federal Estate Tax Returns that
17 were filed.

18 Now, Eleanor has no basis for challenges. She can't challenge this
19 because it's black and white, indisputable. The only thing she has alleged to try
20 to challenge this is, she said: Well, the accountants who did this allocation
21 were doing some clever tax maneuvering in order to recognize her generosity
22 towards Marjorie. She says: Even though she didn't tell anybody and she
23 didn't object to this allocation, she, in her own mind, understood that it wasn't
24 right, but she didn't want to do anything about it because she wanted to be
25 really nice and really generous to her mother and just let her get that 65

1 percent, even though in -- in Eleanor's own mind she didn't think that was right.
2 But she wanted to be a nice person, and so that's what she did.

3 And so, her explanation of why the tax accountants did that, is that
4 they were recognizing her generosity to her mother. They were doing some
5 clever tax maneuvering. That's another way of saying they committed tax
6 fraud, they cheated the Federal Government, they got more of a deduction, and
7 paid less taxes on that tax return than they should have done, under the law.
8 That's the equivalent of what they are really saying.

9 And we know that that can happen and it wasn't going to happen,
10 because when you file your Federal Estate Tax Returns, the IRS looks and you
11 attach a copy of the Trust, the allocation instrument that says who gets what.
12 And they review that to make sure that they are getting their proper taxes paid
13 from that estate.

14 THE COURT: Uh-huh.

15 MR. WARNICK: And they sent a closing letter saying everything was
16 done properly and the allocation was done properly and they recognized it.
17 And, I mean, Eleanor really has no way to object to this allocation that was
18 made under the Trust, it was clearly made appropriately. It was the only thing
19 they could do and it set the dye -- it set the pattern, then, thereafter, by which
20 income is going to be distributed from the Texas oil property.

21 Now, they did not deed the Texas oil property to either Eleanor's
22 Sub-Trust No. 2 and Marjorie's Sub-Trust No. 3, and they didn't have to. Under
23 Trust Administration, you don't have to take the assets out of the main Trust,
24 you can continue to administer them under the main Trust and just recognize
25 the allocations that are to be made under the Trust -- under the administration

1 of the Trust, which is what they did. And it was wisely done because it was
2 the most convenient way to do that.

3 If they had done an allocation way back then, it would have
4 required two separate entities dealing with these oil companies, and Marjorie
5 didn't have any idea what was going on with those oil companies and -- I mean,
6 not Marjorie, but Eleanor, didn't have any idea on how to even handle that. So
7 Marjorie continued to handle all of these matters herself and it went on that
8 way for 34 years -- well, excuse me, it went on that way for 30 years until
9 Marjorie died in 2009.

10 And then in 2009 what happened is, Marjorie, under her Will, in
11 essence, bequeathed her 65 percent interest in Trust Number 3 to her MTC
12 Trust and to Jacque and Kathy, our clients, so that they continued to receive
13 the 65 percent and had the rights to the 65 percent under Trust Number 3.
14 Eleanor recognized that, didn't object to that, continued on with that for
15 another four years until she got into a dispute with her daughters. They
16 became alienated against each other, and we can go into all of those disputes in
17 a little bit, but that's kind of the general history of what happened in this case.

18 And that's why we have alleged that regardless of whether or not a
19 mistake was made back in 1979, and the allocation of assets between Sub-
20 Trust Number 2 and Sub-Trust Number 3 -- regardless of the merits of her
21 objection to that -- she can't come into the Court 34 years later after she's
22 consented to that, allow that to happen, people have relied upon it, and
23 witnesses that are very valuable who can testify as to whether or not that was
24 done properly and how it was done, have died.

25 In her earlier briefing she said she didn't object to it, initially,

1 because she didn't want to rock the boat and have Marjorie mad at her, so she
2 refrained from making any objection and any claim way back in 1979 and 1980
3 because she was afraid. She said that Marjorie would be upset with her and
4 maybe disinherit her in Marjorie's own estate plan.

5 Since new Counsel had come on the case, their theory in that
6 regard has morphed and changed, and that's how they've come up with the
7 theory now that: No, no, Eleanor was perfectly happy and she was just being
8 generous, and she was thrilled to have the opportunity to give her mother the
9 65 percent of the income for 30 years and then give it to Jacque and Kathryn
10 for another four years, because she thought that that was a nice thing to do.

11 Marjorie, when she died, had an estate worth nearly four million
12 dollars. Jacque and Kathryn received that estate, basically, through Marjorie's
13 estate. Neither of them had any need for financial assistance from Eleanor,
14 nevertheless, that's Eleanor's reasoning and rational for why she never objected
15 to the allocation that was made back in 1979, and allowed that to happen.

16 We believe that -- it's so clear, under the *Cooney* case, and under
17 the case I've cited with regard to the Waiver, and under the Statute of
18 Limitations even, if you take Marjorie's reasoning -- I mean, Eleanor's reasoning
19 that she knew about it but she didn't do anything about it. All of those
20 equitable principles operate to say that Marjorie has forfeited any right to even
21 come before the Court now and to claim a hundred percent of that income.
22 She has to follow and accept what was done 34 years ago and what was
23 followed for 34 years, in the allocation of those assets under the Trust.

24 So that's why we say, our first round for Granting Summary
25 Judgment in this case, is on Equitable Principles that Marjorie -- I mean, Eleanor

1 has forfeited her rights to even make a claim, and we don't even have to get to
2 the merits of the claim because of that. But if you turn to the merits of the
3 case -- I've gone over the paragraphs in the Trust but I'd like to back up just for
4 a second. Maybe I can outline this a little easier on the board here.

5 So we start off in 1972 with the Trust. Into this Trust Ellen --
6 Marjorie and William Connell put basically three types of property. They put
7 their community property, they put the Texas oil property, and they put a chunk
8 of Clark County separate property into the Trust. So this property here and this
9 property here were Mr. Connell's separate property, these two here. In 1975 --
10 oops. In 1975, this separate property was deeded by Marjorie and Mr. Connell,
11 as Trustees of the Trust to Eleanor, and it's no longer part of the Trust.

12 So, at that time, the only separate property that Mr. Connell had
13 put into the Trust was the Texas oil property. Then in 1979, Mr. Connell dies,
14 and at that time there has to then be an allocation, under the Trust, between
15 Sub-Trust Number 2 and Sub-Trust Number 3. And we've gone over those
16 provisions in the Trust just a few minutes ago, as stated, that a portion of Mr.
17 Connell's separate property, and the only portion remaining was the Texas oil
18 property, had to be allocated to Trust Number 3 in order to get the maximum
19 marital deduction.

20 So, we've gone over the tax return to show exactly how they did
21 that and how they were able save about \$40,000 in Federal Estate Taxes by
22 allocating to Marjorie, under Trust Number 3, approximately 65 percent of that
23 oil Trust property. That left 35 percent, approximately, remaining in Trust
24 Number 2, and Eleanor was entitled to the income from that property then, for
25 the balance of her life.

1 And then we go on now for a period of 30 years until Eleanor --
2 until Marjorie dies. During that 34 year period these are things that happened.
3 Under the Trust -- if you look at that third page that I've referenced -- if you
4 look at that and sub-paragraph 6, you can see where it says that Marjorie and
5 Mr. Connell, when they set up the Trust, said that after his death it was their
6 intention that Eleanor would serve as a Co-Trustee with Marjorie, over all of the
7 separate property that remained in the Trust. So that's how Eleanor came on
8 board, initially, as a Co-Trustee to serve with -- that's how Eleanor came on
9 board to serve with Marjorie, thereafter, as a Co-Trustee.

10 What that meant was -- and what happened is, is right after -- and
11 we've got the appointment. I think it's either in here or it's attached to one of
12 the other pleadings. Well, we've got the actual appointment where Marjorie
13 was appointed -- where Marjorie appointed Eleanor as the -- it's Number 26.
14 That's where Marjorie, under the Trust, appointed Eleanor as a Co-Trustee over
15 the separate property in the Trust, with her, in the Trust Administration.
16 Thereafter -- and we've attached as Documents Numbers 13, I think is the
17 various documents, we've attached some samples.

18 Thereafter, Marjorie, following exactly the Trust requirements, being
19 a faithful Trustee, she sent letters to all these oil companies who dealt with this
20 property, drilled wells on it, and paid income to the Trust. She sent letters to
21 them saying: Mr. Connell has died and now, under the Trust, myself and
22 Eleanor Hartman, Mrs. Eleanor Ahern now, are the Co-Trustees. Here is a copy
23 of the appointment of Eleanor as a Co-Trustee, here is a copy of the Trust.
24 From now on, when you send us any type of leases or division orders relating to
25 the oil properties that need to be signed by the beneficiaries, put them in the

1 name of Eleanor and Marjorie to sign as Co-Trustees, and so, that's what
2 happened.

3 And thereafter, even though Eleanor really had no involvement in
4 this administration and had no inkling of really of how it happened or how it
5 occurred, as far as dealing with the oil companies, Marjorie was faithful in
6 always sending to Eleanor, any documents that needed to be signed by both of
7 them as Co-Trustees. And they continue to do that until Marjorie died in 2009.
8 That's in 2009.

9 Interestingly enough, during this same period of time in 1983,
10 Eleanor went through a divorce, and we've attached the affidavit of her former
11 husband, Mr. Hartman, as Item Number 8 -- 18, excuse me. And in that, Mr.
12 Hartman mentions that in her divorce she told the Divorce Court -- she told Mr.
13 Hartman and his attorney, that the only right to income that she had was a right
14 to 35 percent of the income from the Texas oil properties.

15 And the Divorce Court and all of the parties relied upon her
16 representations in deciding how to divide the property between them -- they'd
17 been married for about 20 years, and in deciding the support obligations that
18 Mr. Hartman had to Eleanor. And as Mr. Hartman put in his affidavit: If Eleanor
19 had been entitled to more than 35-45 percent of the income and had denied
20 that and misrepresented that to the Divorce Court, that was a fraud on the
21 Court, but she didn't. She admitted that all she was entitled to was 35 percent
22 of the income.

23 Then a few years later, and we've attached this is as Item 25,
24 Eleanor goes to her own attorneys for estate planning, Mr. Steven Scow. And
25 in the intake statement that she gave to him stating what her properties were

1 so that he could help her properly prepare a Trust and estate planning
2 documents, she again admitted she's only entitled to 35 percent. Now, if
3 anybody's going to be honest and straightforward and say exactly what they
4 own they're certainly going to do that in the planning for their own estate, so
5 that the decisions can be made properly by the attorney helping that person
6 make out an estate plan. But, again, she only recognized that she was entitled
7 to 35 percent of the Trust income from the Trust.

8 We also have statements by Marjorie in 2006 that we've attached
9 as Documents Number -- it would be 4 -- 11 and 12. And in those documents,
10 Eleanor herself -- and we think this was in conjunction with the -- I mean,
11 Marjorie herself. We think this was in conjunction with Eleanor applying for a
12 loan or something or financing, but Marjorie herself puts in those documents:
13 To whom it may concern. Eleanor received the right to 35 percent of the Trust
14 income during her life and she's going to continue receiving that and that's
15 what she's entitled to.

16 So we know that during this whole 30 years that Marjorie
17 administered the Trust as a Co-Trustee, with Eleanor, over the separate
18 property in the Trust. We know that during that whole time, Marjorie knew that
19 she was entitled to 65 percent. Marjorie knew that Eleanor was only entitled to
20 35 percent, and Eleanor even admitted she was only entitled to 35 percent.
21 Then we get down to 2009. In 2009, Eleanor dies. After she dies -- not
22 Eleanor, excuse me, Marjorie dies. I keep getting Marjorie and Eleanor mixed
23 up. I hope I'm not mixing up the Court in that process. But Marjorie dies in
24 2009

25 After her death, Marjorie's Estate Planning Attorney, David Straus

1 -- and we've attached his affidavit as Number 22 in the documents. He has a
2 meeting with Eleanor, with Kathryn, and with Jacqueline. And in that meeting
3 he says: Okay, fine, Eleanor has died, but she left a Will -- a 2008 Will in which
4 she appointed her right to the 65 percent, under Trust Number 3, to her Trust
5 and in turn, to Jacque and Kathy. And he says: So from now on, the 65
6 percent which had been going to Marjorie, will be paid to Jacque and Kathryn.

7 Eleanor was in that meeting. She fully agreed and acquiesced with
8 that, never objected to it, never said: No, wait a minute, I'm entitled to 100
9 percent of that income. She never said that. She never made any inclination
10 that she had any such claim. Further, as a result, when Marjorie's 706 tax
11 return was filed with the Federal Government they included, in Marjorie's estate
12 her interest in the 65 percent, rightfully included that in her estate. And
13 approximately \$140,000 extra in taxes had to be paid because of the inclusion
14 of that 65 percent interest in Marjorie's estate. No objection from Eleanor. No
15 objection from anyone else.

16 Everybody relied upon what had been going on for 34 years and had
17 been recognized -- what Eleanor had recognized and her conduct, all reflected a
18 complete agreement with a correct allocation of that income back in 1979.
19 Well, at the same time that they had that meeting and discussed this with Mr.
20 Straus, Mr. Straus said: You know, now that Marjorie's dead, the original
21 Trustor, it might be a good idea to take this Texas oil property and deed it now,
22 35 percent to Trust Number 2 and 65 percent to Trust Number 3.

23 But Eleanor, Jacque, and Kathy all agreed: No, we don't want to
24 do that now, let's keep handling the matters that -- the way they've been
25 handled before under the Trust Administration, keep title to that Texas oil

1 property in the main Trust, and we'll just continue to recognize the allocation of
2 rights that were made back in 1979, in accordance with the Trust provisions.
3 There was a good reason for them to do that. One, it would have cost money
4 for them to do this allocation. Two, if they had done this allocation, it would
5 have created two separate entities then who had to deal with the oil
6 companies, both Marjorie and Jacque and Kathy, on the other hand.

7 And that would double the expense, double the hassles that they
8 had dealing with these oil companies, negotiating with them, hiring attorneys
9 and accountants, and it would double the cost of that Trust Administration.
10 So, I think wisely so, because they were all on the same page. There was no
11 claim by Marjorie, or by Eleanor to any more than 35 percent. They wisely just
12 agreed to leave the Texas oil property, still titled in the main Trust and continue
13 receiving the allocations of income as they had been done for the last 30 years.

14 The other thing is, is that Eleanor really had never been involved
15 with dealing with these oil companies. All she had done through that 30-year
16 period, when Marjorie was alive -- all she had done was sign leases and
17 divisions orders when Marjorie sent them to her, as a Co-Trustee to sign. So
18 she was perfectly happy and Marjorie died in 2009. Eleanor was perfectly
19 happy to have Jacque continue handling those responsibilities, which she had
20 been doing for ten years, assisting Marjorie before she died.

21 Eleanor was perfectly happy to continue receiving her 35 percent of
22 the income, without having to do anything other than sign documents as they
23 came in, as a Trustee. So, as we mentioned, this goes on for another three to
24 four years. And then, approximately in 2012, Eleanor has made a new circle of
25 friends. She's come under the influence of people who basically took over her

1 financial affairs, they organized a foundation for her, and we believe that they
2 took over her bank accounts and have been handling her money and doing
3 everything of that nature. She basically looks up on these people as her
4 spiritual leaders she has said. And so, in 2012, these people started alienating
5 Marjorie -- I mean, Eleanor, from Jacque and from Kathryn, her daughters.

6 Before that time they had a good relationship. Eleanor would go to
7 dinner, at least weekly, at Jacque's house, had great associations with her
8 grandchildren, and they had a -- just a typically great family arrangement and
9 environment. However, in 2012, Eleanor some -- somehow started becoming
10 aloof and not associating with the family. She didn't start coming -- she didn't
11 keep coming to the weekly dinners and things that they had. She wouldn't
12 communicate well with them. She became more formal and aloof and distant
13 from them. This really shocked Jacque and Kathy who are her daughters, and
14 rightfully, they became quite concerned.

15 And they learned from certain bank officers that people were
16 coming in and trying to withdraw money from Eleanor's account. At one time a
17 \$50,000 withdrawal, which the bank refused. And so, Jacque contacted the
18 Elder Abuse Agency, Clark County, Nevada, and asked them to investigate
19 what was going on with her mother because she was no longer communicating
20 with them, and they felt that she was under the influence of some people who
21 were taking advantage of her. The elder abuse people, Mrs. Lewis, went and
22 visited with Eleanor.

23 And Eleanor, who's a very -- she's a very attractive woman, and
24 she's a very -- really, she speaks very well and she doesn't give any impression
25 of being incompetent or unable to handle her affairs. She simply denied to that

1 investigator that there was any Elder Abuse or Undue Influence being entered
2 upon her, and that she was perfectly happy with the situation. So that,
3 basically, was all that Jacque and Kathy could do. They tried to get some
4 investigation, but this Mrs. Lewis, all she did was go talk to Eleanor. From our
5 understanding, she never did any investigation on her own -- maybe she didn't
6 have the right to do -- of how Eleanor's bank accounts were being handled or
7 who was over them, and so forth. But that whole incident upset Eleanor.

8 She resented Jacque and Kathy from trying to get involved in her
9 life. Jacque and Kathy did it with the best intentions because they thought
10 their mother was being manipulated and improperly influenced and exploited.
11 And, as a matter fact, this wasn't the first time that their mother had fallen into
12 that type of a situation. She had kind of a history of that, so it wasn't
13 something that they were unexpected in their lives. But they were greatly
14 shocked because she had stopped communicating with them and wouldn't see
15 them and just totally was alienated from her.

16 So after that incident, Eleanor, who had allowed Jacque to manage
17 the Trust, manage the dealings with the oil companies, manage the income
18 coming in and dividing it 35/65, Eleanor just abruptly dismissed Jacque from
19 that responsibility. Jacque didn't have any right to do that other than as a
20 power of attorney that had been given to her by Marjorie and Eleanor.

21 And she had faithfully performed those duties up until this time that
22 Eleanor decided to just dismiss Jacque from that and she says: I'm going to
23 take over the Trust Administration; I'm going to handle all of this. And she
24 went off with her post advisors and hired the people that she wanted to hire in
25 order to handle this -- dealings with the Texas oil properties.

1 Well, this really upset Jacque and Kathy because they were not --
2 they weren't only concerned about their mother's personal welfare and what
3 was going on, now she was doing things that indicated they might have a
4 problem with the Trust Administration. At that time they didn't have any
5 inkling that she was going to claim a hundred percent of the income. They
6 were just concerned that she was taking over the Trust Administration and had
7 told Jacque she could no longer get involved or do anything.

8 And so what they did -- what Jacque did is, she went to Texas and
9 she filed at -- with the Texas attorneys recommendation, she filed a probate
10 action in Texas, believing from what her Texas attorneys told her, that they
11 could affect this division of assets now between -- the Texas oil property
12 between Trust Number 2 and Trust Number 3.

13 And they could create the deeds, and they could then take and put
14 all of the interest of Trust Number 3 outside, and Trust Number 2 outside, and
15 Jacque and Kathy would take and handle their Trust Number 3. And Eleanor
16 could do what she wanted to with her Trust Number 2. So they filed that
17 Petition in Texas with the intent to do that.

18 When Eleanor got word of that she objected. She said: Look, this
19 Texas oil property is not in Eleanor -- in Marjorie's estate, so you can't handle
20 this as a probate matter, it has to be handled as a Trust matter. And you have
21 to handle it in the state where the Trust has jurisdiction and that is in the state
22 of Nevada, because Eleanor lived in Nevada, Marjorie lived in Nevada, and so
23 the matter had to be resolved in Nevada.

24 And so that Texas probate action went nowhere. It was filed, in
25 good faith, by Jacqueline because she said: Okay, mom, if you're going to live

1 your own life, and have your own advisors, and not be part of the family
2 anymore, do what you want, fine. We'd like to take our interest and go our
3 way then and make sure it's managed properly and you can do what you want
4 with yours. But that never occurred because Eleanor objected to doing that in
5 the Texas action.

6 Shortly after that, in June of 2013, is when Eleanor then -- and we
7 believe it was through the advice and counsel of those close advisors that she
8 had who are really more interested in feathering their pockets than really in
9 doing what's best for her. Nevertheless, we believe that through their
10 influence, they told her to just stop the income payments of 65 percent to
11 Jacque and to Kathryn.

12 She didn't come into this Court like she had back in 2009 on
13 another matter and ask the Court to interpret and tell her what was proper as
14 Trustee, to do. She just abused her appointment as Trustee and her position as
15 Trustee, and simply just kept all the income coming in and refused to distribute
16 it to Jacque and Kathy.

17 And that situation has continued from June of 2013 to the present
18 date, and it's caused tremendous financial hardship and loss upon Jacque and
19 Kathryn. And as the Court knows -- and we believe the Court has made the
20 best efforts it can to resolve this matter. But the first time that you tried to
21 resolve this and set it for hearing was back in 2014, in February. A trial was
22 set in this matter to resolve that issue and to get that resolved because it was
23 urgent.

24 At that time, Eleanor comes in and says: No, I want to file some
25 other claims and assert some different things. And because they had to be

1 considered all in the same action, that matter had to be continued till August
2 when the Evidentiary Hearing was set. And as the Court just noted earlier, that
3 hearing in August was continued because Eleanor filed her Will contest and
4 asserted that that should be resolved before the Trust dispute. And so, the
5 Court continued all of the Trust disputes after May, until the resolution of the
6 Will contest.

7 But, each one of those steps, we believe, have been efforts by
8 Eleanor just to delay the initial and most critical determination, and that is, that
9 she is not entitled to a claim to 100 percent of the income. And we're here
10 today and we believe that they've -- trying to -- still trying to delay this matter
11 by arguing that we have not, in our pleadings, asserted all of these claims.
12 We've asserted in our claims, a right to 65 percent of the income and that
13 Eleanor doesn't have a right to 100 percent of the income.

14 We've asserted in our claims that Eleanor breached the duties as
15 Trustee and should be removed and that under the Trust provisions, Jacque
16 should be put in place. We've asserted that Eleanor should be responsible for
17 all of the damages she's caused by her wrongful conduct in breaching her
18 Trustee duties in cutting off the income to Jacque and Kathryn, including award
19 of all the attorney's fees and costs that Jacque and Kathryn have incurred.

20 And lastly, we've asserted that under this 1972 Trust, Eleanor has
21 violated the no-contest provisions in that Trust, which state that if somebody
22 improperly contests the provisions and the distributions, they forfeit whatever
23 interest they had in that Trust. And so, we're asking the Court to enforce that
24 no-contest provision. And effective June 13th -- or June of 2013, any income
25 coming into that Trust that would have normally been distributed to Eleanor,

1 should now be disgorged and distributed to Jacque and Kathryn as the residual
2 beneficiaries under the Trust.

3 So that's their Claims for Relief that we're asking. Their assertion
4 that we haven't pled our Affirmative Defenses on the Laches is clearly without
5 merit. You can go back and go over all these pleadings. You can see that even
6 before they filed their Answer. A motion was filed to dismiss the claim on the
7 grounds of Laches. And in that motion it was mentioned, Detrimental Reliance.
8 And then in March of 2014, we again filed Motions to Dismiss where we
9 asserted Statute of Limitations. We said that the no-contest clause should be
10 enforced against Eleanor, and we asserted the Equitable Defense of Laches.

11 So they've all been discussed and all been on the table during all of
12 these proceedings, but they were put on hold, in May, when the Court
13 continued all the Trust matters until after the resolution of the Will contest. In
14 the interim, though, efforts were still made to try resolve matters. As the Court
15 may recall, Eleanor appealed -- appealed one of the portions of the May order
16 from the May hearing. She appealed the Court's effort to try to fairly allocate
17 income to Jacque and Kathryn, on the condition that they post a bond, even
18 though that didn't hurt Eleanor in any way because it -- they would have to
19 have posted a bond in order to get that income, which they have been unable to
20 do.

21 But even though that wouldn't have hurt Eleanor, she still appealed
22 that decision to the Supreme Court saying: The Court did not have proper
23 grounds to issue that order. And so, we have a matter on appeal right now
24 with the Supreme Court on that particular issue. We believe that was just filed
25 as a delay tactic. There's really no merit in the whole claim that's been filed to

1 the Supreme Court.

2 But what happened, that's interesting in that situation is that, when
3 we were called to meet with the Settlement Judge, Mr. Saint-Aubin, the parties
4 agreed to have him not only mediate and settle the matter on appeal, they
5 agreed that Judge Saint-Aubin could try to settle all of the Trust dispute
6 matters and the Will contest, and have a global settlement of everything.

7 And so, the parties met with Mr. Saint-Aubin on October 15th. In
8 those meetings, we discussed all of these claims that we had just reiterated
9 that we were making against Eleanor. We put on the table what risks she was
10 taking by not trying to settle this case. And Eleanor did the same thing from
11 her regard. And all of the Claims for Relief and the Affirmative Defenses that
12 we are now alleging, and we reiterated in our December 23rd Countermotion for
13 Summary Judgment were all discussed, in detail, during those negotiations.

14 And as the Court is aware, on October 22nd, we thought we had
15 reached a global settlement. And it was even dictated to a court reporter by
16 the attorneys. And in that dictated settlement it covered all of the issues that
17 we've talked about. Eleanor's not having the right -- or what right she had to
18 income, her removal as Trustee, the enforcement of the no-contest clause was
19 discussed, and the -- who's going to pay attorney's fees. All of those things
20 were said out in the global settlement, which we thought had been reached on
21 October 22nd.

22 Well, as we know what happened there, Eleanor fired her prior
23 attorneys who had negotiated that with Jacque and Kathryn's attorneys. She
24 hired, initially, another attorney and kept him for about a month and then they
25 parted ways, and eventually she's ended up with her current Counsel. And she

1 then, in that process, said that she didn't agree with the global settlement. And
2 therefore, the Court determined that it couldn't be enforced.

3 The important thing though is, all during this time, both from the
4 beginning of the case to that Global Settlement Negotiations, all of the Claims
5 for Relief that we have asserted and all of the defenses that we have asserted,
6 were fully aired and discussed and talked about with the parties. And they
7 knew what the risks were in going forward with this case in either settling or
8 not settling.

9 That's why we were taken back and quite surprised when in the --
10 their pleading on January 10th -- 9th or 10th, when they first raised the issue:
11 You fellows haven't pleaded on behalf of your clients all of your Affirmative
12 Defenses and all your Claims for Relief. We thought, that's baloney. We
13 pleaded it all during this whole case. I think part of the problem is, is when you
14 look at the chart that was prepared by the Court and you look at the actual
15 docket sheet from the Court, you don't see anywhere on that docket sheet a
16 document entitled claim -- Complaint.

17 And the reason is, is because we're in Trust and Estates and we're
18 in the Probate Court. And in the Probate Court you make a Claim for Relief
19 normally by filing a petition or a motion. And the opposing party then files a
20 response, or an opposition, or objection. That's typically how matters come
21 before the Probate Court and the -- in Trust matters as well as estate matters
22 for resolution. And that's how this matter has proceeded from the beginning
23 down to the present.

24 And in process of all that, we have asserted and have pled, and
25 have informed, clearly, opposing Counsel, of all of the Claims for Relief that we

1 have been asserting. And those are all on the table and they shouldn't be
2 continued or considered late as Counsel has said, because they weren't put
3 back in the initial pleading. Although, if you go back to that initial pleading, it
4 clearly says that: Eleanor's claim should also be denied on Equitable Principles.
5 And it says that: We're not only entitled to 65 percent of income, but Eleanor
6 should pay and compensate us for all of the damages caused by her conduct.

7 So, even in that initial pleading there's sufficient information
8 provided to Eleanor that what she had done was going to have consequences
9 and she would have to be responsible for those consequences. One other thing
10 I should point out, Your Honor. We don't believe that there's any way that
11 they can challenge this allocation of assets between Trust Number 2 and Trust
12 Number. 3.

13 If you read the Trust and you follow the Trust provisions, you see
14 what happened with the estate tax returns, you see why they were done; you
15 see why the interests were allocated between Trust Number 2 and Trust
16 Number 3. We don't believe there's any way that that can be realistically
17 challenged -- factually challenged by Eleanor.

18 But, in addition to that, the Court should realize that all during the
19 30 years while Marjorie was alive and additional four years after, until Eleanor
20 made the objection in June of 2013 and claimed 100 percent of all the income,
21 all during those prior years, 35 percent of the income was claimed by Eleanor
22 on her tax returns and paid taxes on that. And 65 percent of the income was
23 claimed by Marjorie and then by Jacque and Kathy and paid on their income tax
24 returns.

25 If Eleanor's claiming that there was a mistake made back in 1979 in

1 the allocation of those assets and that she really believed she was entitled to
2 100 percent, she's allowed filing with the Internal Revenue Service and claiming
3 of income which has been fraudulent. Not only that, if she's entitled to 100
4 percent of the income, not only she -- should she have paid taxes on 100
5 percent of the income, she should have paid gift taxes on giving 65 percent to
6 Marjorie all during that time, and then 65 percent to Jacque and Kathryn during
7 that time.

8 It's just -- when you start adding up all the consequences of -- of
9 Eleanor's claims, then they just make absolutely no sense. They're frivolous.
10 And really what's happened here is, Eleanor's come under the influence of
11 people who don't understand Trust law, don't understand what happened in
12 this case, have jumped to conclusions, and have alienated her from her family.
13 And in the process of all that, they drummed up and concocted this theory that
14 she's now asserting as the claim to the income.

15 But we respectfully submit that that should be denied under
16 equitable grounds without even going to any type of a -- the consideration of
17 the merits. But if you look at the merits of the case, we are entitled to
18 judgment on the merits also. And so, we really think that the claim is frivolous
19 and that's why the non-enforcement, I mean, the no-contest claim -- provision
20 under the Trust should also be enforced.

21 And Eleanor should be required to forfeit any further benefits under
22 the Trust effective June 13th. She should be removed as Trustee. Jacque
23 should be appointed, she's capable and qualified. Eleanor's not even qualified,
24 yet, to serve as the Trustee. She engages people who don't handle things
25 properly and that alone is the grounds to dismiss her. But her Breach of the

1 Trust and failing to pay the income is another reason to remove her.

2 And we should get all the attorney's fees and costs and damages
3 caused by her conduct. And we think that there's no question that the
4 allocation of income and assets between Trust Number 2 and 3 is a black and
5 white clear matter.

6 THE COURT: Well, Mr. Warnick, one thing to ask is that you mentioned
7 the Texas Court eventually said: Well, we can't do this reformation of the Trust
8 and divide it into these two separate -- separate Trusts. Is that something that
9 you are seeking to have done? Is to have --

10 MR. WARNICK: Said what now? What? I --

11 THE COURT: That -- what Ms. Montoya was trying to do in Texas was
12 to have the Trust property split --

13 MR. WARNICK: Correct.

14 THE COURT: -- and that Eleanor could just go and do what she wanted
15 and they take their --

16 MR. WARNICK: Correct.

17 THE COURT: -- and be separated, but Texas said we can't do that. Is
18 that something that you're seeking?

19 MR. WARNICK: No.

20 THE COURT: Okay.

21 MR. WARNICK: Well, we're -- we're seeking to have Eleanor's interest
22 completely forfeited.

23 THE COURT: Okay.

24 MR. WARNICK: That would give a hundred percent interest to Jacque,
25 and there would be no reason then to do any allocation, that would remain with

1 the main Trust. But if, for some reason, Eleanor's rights to income is not
2 forfeited and the Court determine not to enforce that no-enforcement clause
3 and she was entitled to continue receiving 35 percent, at that particular time,
4 we would want Jacque to be the Trustee of the Trust and Eleanor can continue
5 to receive the 35 percent. But with Jacque as the Trustee, we know that
6 things will be handled properly and there won't be any problems down the road.

7 And finally, I guess if Eleanor insisted and it came out that way, we
8 could do a separation of the assets and do a deeding of the Trust assets to
9 each one. But the problem where that would not be feasible or reasonable from
10 an economic standpoint and an administrative standpoint is, is if you did that
11 you'd have two entities dealing with these Trust companies, double the
12 attorney's fees, double the account fees, double the hassle of signing leases
13 and everything.

14 And if somebody is responsible handling these Trust duties, that
15 doesn't have to be done and you save a lot of money for the Trust and for all
16 the beneficiaries. It would really benefit Eleanor. She would benefit from that
17 type of an arrangement too.

18 THE COURT: Well, I understand. Okay. Thank you.

19 MR. WARNICK: Thank you.

20 THE COURT: All right. All that pretty accurately predicted exactly an
21 hour, so, thank you, Mr. Warnick.

22 MR. WARNICK: Thank you.

23 MS. WAKAYAMA: Can we put our Power Point on the screen, please?
24 Thank you.

25 Perfect. Thank you very much.

1 Your Honor, we are here today to resolve this issue and we believe
2 that the evidence supports a finding that Trust Number 2 always owned a
3 hundred percent of the oil assets, based on the Equitable Principles and the
4 merits, just like Mr. Warnick has discussed. Now, at the time, the Connell
5 Family Trust was formed in 1972, Mr. Connell owned oil assets as his sole and
6 separate property. This is accurately reflected on Schedule A of the Trust, right
7 here, listing the property as his sole and separate property.

8 Now, maintaining the oil rights as his sole and separate property
9 was very important to keep this asset in the Connell family. In fact, Jacqueline
10 Montoya, and I will be consistent with using first names as well, Your Honor,
11 testified in her deposition that the oil assets were purchased by Mr. Connell's
12 mother, with the goal that this asset remained in the family. To answer your
13 prior question to Counsel, in June of 1972, Mr. Connell deeded all of his oil
14 assets via these quit claim deeds, to the Connell Family Trust. That's Exhibit 5
15 to our Omnibus Opposition. They've never been deeded out to this day.

16 When Mr. Connell passed away November 24th, 1979, he was
17 survived by his wife, Marjorie and his only child Eleanor Ahern, who was 41
18 years old at the time. And importantly, when this Trust was formed, Article
19 First specified that it was created to benefit Mr. and Mrs. Connell, as well as
20 Eleanor, who is defined as the residual beneficiary. In other words, the Trust
21 agreement's not just created for Mr. and Mrs. Connell's benefit, but for Mr.
22 Connell's sole child.

23 To further ensure that Eleanor was the beneficiary of his assets,
24 Marjorie adopted her in 1976 when Eleanor was 38 years old, and upon Mr.
25 Connell's insistence. So Mr. Connell wanted to make sure that his only child

1 would be treated in all respects as Marjorie's daughter, invested with all the
2 rights, including inheritance rights. This can only be viewed as part of his
3 overall estate plan.

4 Now, additional protections were also put in place by Mr. Connell.
5 As reflected in the Trust Agreement, we know that it was supposed to be split
6 into Trust Number 2 and Trust Number 3, upon his death. And we know that
7 Article Fourth governed Trust Number 2. Specifically, Section B specified that:
8 All income received from the separate property of the decedent shall be paid to
9 the residual beneficiary, Eleanor.

10 Trust Number 2 is also the only place where the Upton County oil
11 rights are specifically mentioned, reflecting that the intent was to create an
12 heirloom asset. And it's undisputed that Eleanor, his only child, is the sole
13 beneficiary under this Trust. Immediately below, Mr. Connell also went on to
14 specify that all of these oil rights were to flow to his blood lines, prior to even
15 going to Marjorie, as survivor. Unlike Trust Number 2, Trust Number 3, there's
16 no mention at all of these oil assets, none. This was Marjorie's survivor Trust.

17 And as another layer of protection, Mr. Connell further appointed
18 Eleanor as Co-Trustee of his separate property. Now, Jacqueline and Kathryn,
19 despite what their Counsel's saying after their depositions, both testify -- both
20 testified and admitted that their mother was only ever appointed as Trustee
21 over Trust Number 2. This is an admission made by the clients.

22 And if you take their argument, if 65 percent of the oil rights
23 actually transfer to Trust Number 3, this 65 percent would not retain Mr.
24 Connell's sole and separate property, it would change to Marjorie's separate
25 property. This is basic characterization.

1 Eleanor had no authority over Trust Number 3. We just need to
2 even look at the substitution of Trustee. It specifically states that Eleanor is
3 only appointed as Co-Trustee over the separate property of W.N. Connell. This
4 is legacy planning at its best, Your Honor, and it's for Eleanor's benefit. Even
5 Jacqueline's own Counsel, Layne Rushforth, recognizes in the Article attached
6 as Exhibit 34: The division of a Trust is frequently tax motivated, but it can
7 also be required because of a desire to preserve assets for specific beneficiaries,
8 such as children of a deceased Settlor, which would be Mr. Connell in this case,
9 and/or a desire to protect assets against the claims of predators in the impact of
10 divorce and remarriage.

11 The Trust Agreement confirms that Mr. Connell was concerned
12 about preserving the oil rights as an heirloom asset for his only child. He was
13 planning for the possibility of Marjorie remarrying, other children that she could
14 adopt in the future, or even a divorce. This was his control from the grave.
15 And the Nevada Supreme Court has historically construed Trust in a manner
16 affecting his parent intent of the Settlor. That's the *Hammond* Decision.

17 Such a construction, in this case, would require effectuating the
18 legacy planning where Trust Number 2 would own all of the oil rights and
19 Eleanor would be its sole income beneficiary for her lifetime. Now, upon Mr.
20 Connell's death, there's a specific direction on which assets are to be funded
21 into Trust Number 3. Article Second, Section C2: These assets were
22 Marjorie's separate property, non-existent, she didn't have any, at least not
23 funded into this Trust. Marjorie's one-half interest in the community property
24 and Marjorie's community property interest in any life insurance policy.

25 So, what does that mean? That means the assets not automatically

1 allocated to Trust Number 3 would include Mr. Connell's separate property, his
2 one-half of community property, and his one-half community property in any life
3 insurance policy. Even in Article Fourth of the Trust -- and this is important.
4 He makes a matching directive that his daughter shall be paid an additional
5 payment from income received from his community property, equal to all the
6 Texas income oil rights. This is the only reference in the Sub-Trust to Mr.
7 Connell's community property, which is important to show whether Marjorie
8 honored his intent.

9 And that brings us to Dan Gerety's Expert Report relied upon by
10 Jacqueline and Kathryn. Exhibit 2 to this report is a spreadsheet prepared by
11 Mr. Gerety showing how the Trust assets, in his opinion, should have been
12 allocated between Trust Number 2 and Trust Number 3. This spreadsheet alone
13 confirms why summary judgment has to be denied in favor of Jacqueline and
14 Kathryn and entered in favor of Eleanor, and here's why.

15 On the far, left-hand column, Mr. Gerety lists the assets recorded
16 on the Texas return showing Mr. Connell's value of his 50 percent of the
17 community property. He values this at \$180,023. So, after expenses, Mr.
18 Gerety says the taxable estate before marital is \$173,309. You move to the
19 next column. This is where Mr. Connell's separate property is listed and we
20 know these values to be reflective of the oil assets. So this brings the total
21 taxable estate to \$293,235 less expenses, so we're looking at the figure of
22 \$282,299.

23 The next column reflects the value of Marjorie's 50 percent share of
24 the community property, which is going to be the same as Mr. Connell's. So
25 then, the total value of the assets is \$473,258. Now, recall that the total

1 taxable estate for Mr. Connell, Mr. Gerety says was \$282,299. Well, this is
2 the same figure, Your Honor, that he uses to compute the marital deduction.
3 Well, the exemption amount for that year was 147,000, so he subtracts that.
4 We get a total of then, \$135,299, which he labels as the marital deduction
5 needed to zero out the tax.

6 Well, in 1979, the maximum marital tax deduction was \$250,000.
7 Because Article Third of the Trust Agreement only specified that Mr. Connell's
8 separate property was to be used to take advantage of this marital tax
9 deduction; the total value of Mr. Connell's 50 percent share in the community
10 property is deducted. What does this mean? This means all of Mr. Connell's
11 community property should have been funded into Trust Number 2, and it
12 should have gone to Eleanor's sole benefit. This never happened.

13 Going down his computations, then, based on taking out the
14 community property interest. He says: All right, well this is the total marital
15 deduction taken on the Texas Tax Return, he's like three dollars off. So he
16 computes that the marital tax deduction should be \$73,014, which is
17 equivalent of the 65 percent allocation of the oil assets that he put under Trust
18 Number 3. It's that \$54,000 figure plus the \$22,000.

19 After you subtract the non-Trust assets, which is the approximate
20 value of the jewelry, the total taxable estate for Mr. Connell is \$205,611. Mr.
21 Gerety allocates all of this to Trust Number 2, every penny to Trust Number 2.
22 So then the estate tax, based on that amount, would be around \$56,000. You
23 take the unified credit minus that 38,000, you minus the tax estate credit of
24 \$515. So now he calculates that the tax due would be \$18,081. Again, Mr.
25 Gerety funded everything into Trust Number 2, including allocating all of the tax

1 to Trust Number 2.

2 So, you have \$187,015 in his estate that would be Eleanor's total
3 inheritance. Again, this never happened. Instead, Marjorie took all of his
4 community property, all of it, which directly conflicts the terms of the Trust
5 Agreement. And despite their own expert's report, Jacqueline and Kathryn
6 want to believe and want this Court to believe, that Eleanor was only entitled to
7 35,000 -- sorry. \$36,524 -- 35 percent of the oil assets. Does this make any
8 sense? Of course it doesn't, because whatever happened in the estate tax
9 world, did not happen in the real world.

10 Because Marjorie received the lion share of the Trust, it goes hand
11 in hand. That's why, for years later, they treated the oil assets as an asset
12 solely owned by Trust Number 2, because this is what Mr. Connell wanted.
13 This was consistent with his intent and this is what Eleanor always understood.

14 Here's an important part of Estate Planning as well, Your Honor.
15 This explains why your formal deed, transferring any portion of the oil assets to
16 Trust Number 3, does not exist. Any assets that were not specifically selected
17 for allocation to Trust Number 3, guess what, they're automatically left in Trust
18 No. Two once Mr. Connell died.

19 So stated another way: The Family Connell Trust was automatically
20 designated as Trust Number 2 since it was funded with everything, not moved
21 into Trust Number 3. So contradicting their expert again, Jacqueline and
22 Kathryn also urged this Court to ignore the entire Legacy Planning and find that
23 Marjorie owned a hundred percent of all the oil assets and gave Eleanor the
24 right to receive 35 percent. That would mean that nothing was funded into
25 Trust Number 2 and Marjorie allocated a hundred percent of the oil assets to

1 herself.

2 Well, which is it? A support for summary judgment, they provide to
3 this Court three letters: Exhibits A through C. Exhibit A is a handwritten letter
4 where it states: Bill owned all the Texas assets. He gave them all to me when
5 he died. I, later gave Ellie 35 percent of the minerals and ranch.

6 Exhibit B is a letter dated July 2nd, 2004: To Whom It May
7 Concern. We don't even know if this letter went to anybody. But it states:
8 My daughter was given, by me, 35 percent of a quarter or 14,000 mineral acres
9 of oil royalties and 35 percent ownership in 2,301 acres located in Rankin
10 County, Texas near Midland, Texas.

11 Although this letter references tax papers, they've never been
12 produced, just like the income tax returns that were referenced by Mr. Warnick
13 about how the income was recorded by Marjorie and Eleanor. Exhibit C is a
14 letter state -- dated four days later, July 6th, 2004, where Marjorie again states
15 that: 35 percent of the undivided oil, gas, and other mineral royalty interest,
16 and 35 percent of the land surface was given to Eleanor by Marjorie after the
17 death of her father.

18 Well, Your Honor, Jacqueline has testified that Marjorie's health
19 was failing at this time and she was becoming more and more dependent on her
20 because she was assisting her with the oil rights. These letters are nothing but
21 self-serving. But, be that as it may, Jacqueline and Kathryn's position is that
22 Marjorie was left a hundred percent of all of the assets, everything, and Eleanor
23 was left nothing by her father. This would render the entire Trust Agreement
24 meaningless as well as the adoption.

25 Now, not only is the position inconsistent, but we go back to the

1 35/65 split as a result of the marital tax deduction. And that's based on a
2 faulty premise, Your Honor, because throughout their briefing, and even Mr.
3 Warnick said it. The only separate property Mr. Connell owned at the time of
4 his death was the Texas oil property. That's what he said. The expert, Dan
5 Gerety, based his entire opinion on the oil assets that could be used to fund this
6 marital deduction or the Texas property, because this was the only asset
7 identified as Mr. Connell's separate property on Schedule A, that's what he
8 says.

9 Well, Schedule A shows that Mr. Connell also owned, as his sole
10 and separate property, the real property located in Clark County, Nevada. The
11 importance is that this legal description matches the one in the deed, the 1994
12 Deed showing title is vested in Mr. Connell's name as a sole and separate
13 property. The deed provided by opposing Counsel, when they moved for
14 summary judgment, and we saw it for the first time, shows that only Section 8
15 -- 28, excuse me, was deeded to Eleanor.

16 Where's Section 29? That was not deeded. That was not deeded
17 to Eleanor. So the Texas property may not have been the only separate
18 property that could have been used to fund this marital tax deduction. Now, to
19 support a finding that Trust Number 3 owned 65 percent of the oil assets.
20 We've seen Jacqueline and Kathryn paying their half on this Texas Inheritance
21 Tax Return. But there is nothing in the Trust Agreement, Your Honor that
22 shows that Mr. Connell instructed that Marjorie was to receive a hundred
23 percent of his community property.

24 There's also nowhere in the Trust Agreement where Mr. Connell
25 made a specific marital bequest to Marjorie of 65 percent of the oil assets. And

1 there was never a formal transfer of title that was ever completed to Marjorie
2 personally. There's no mention of Trust Number 2, Trust Number 3, which
3 Your Honor made a very good point about that. This Texas Tax Return is under
4 Mr. Connell's estate in his individual name. Where's any mention of Trust
5 Number 2 and Trust Number 3, how things are supposed to be divided?

6 Indeed, the Form 706 that was supposedly referenced and relied
7 upon in preparing this Texas Tax Return, has never been disclosed in this
8 litigation and can't be. Why? Because according to Jacqueline, the IRS can't
9 find it. They can't locate it. So, the only explanation for this can be creative
10 tax maneuvering. We understand that their position is, is that this somehow
11 amounts to tax fraud. But there's no legal -- they cite no legal authority for this
12 effect, or show that somehow this tax return does not reflect what can be done
13 in the tax world versus the real world.

14 During her deposition, Kathryn herself acknowledged that she
15 expects her CPA to find every flipping deduction she can get so that I don't
16 have to pay 40 percent, anything within the limit of the law. So, what makes
17 this Texas Inheritance Tax Return any different? In fact, the overwhelming,
18 undisputed evidence shows that's exactly what happened based on Marjorie's
19 own actions, spanning over two decades in the real world, including taking all
20 of Eleanor's share of the community property.

21 Shortly after Mr. Connell's death, Marjorie wrote to the oil
22 companies, returning division orders and instructing amended division orders to
23 be issued. Within both of these 1980 letters, Marjorie enclosed excerpts of the
24 Family Trust Agreement and had Eleanor sign as Co-Trustee. Now, remember
25 Jacqueline and Kathryn have admitted, in their depositions, that Eleanor was

1 only appointed as Co-Trustee over Trust Number 2 and never served over Trust
2 Number 3.

3 On top of that, nowhere in these letters does Marjorie tell the oil
4 companies that Eleanor's only authorized to sign for 65 percent -- or excuse me,
5 that Eleanor's only authorized to sign for 35 percent and Marjorie, 65 percent.
6 Instead, the instruction couldn't be clearer: Anything related to the oil rights
7 must be signed by the Co-Trustees, and the Co-Trusteeship was only in place
8 for Trust Number 2.

9 Not only did Marjorie recognize that Eleanor had the authority over
10 these rights, but so did the oil companies. This is a letter dated February 10th,
11 1981 from Phillips Petroleum Company, writing to Marjorie, stating that their
12 Legal Department has examined the Trust Agreements. And it is their opinion,
13 the future disbursement of proceeds of this Trust may be set out -- may be
14 made -- set out on the attached instruments, and if these instruments meet with
15 your approval, please secure the necessary execution by yourself and Eleanor as
16 Trustees.

17 There's no indication, in their legal opinion, that Eleanor's only
18 authorized to sign for 35 percent and Marjorie only 65 percent. The Legal
19 Department is requiring Eleanor's signature for all of the oil assets. And almost
20 five years later, Marjorie and Eleanor continue to notify the oil companies,
21 instructing them, this time Marathon Petroleum Company in 1985 that W.N.
22 Connell has passed away. And due to the change in ownership, Eleanor's
23 appointed as Co-Trustee, which the substitution of Counsel said -- or
24 substitution of Trustee said, only of his separate property.

25 So we fast forward to 1986 when Halco Petroleum, Inc. sends a

1 letter requesting that: Since the oil rights are owned by a Trust, we must have
2 a Tax ID Number. Halco wants the Tax ID Number for the owner. So separate
3 Tax ID Numbers are obtained for Trust Number 2 and Trust Number 3. The Tax
4 ID for Trust Number 2 ended in 7338. The Tax ID Number for Trust Number 3
5 ended in 3010. This is the -- probably the last time you're going to see the
6 Trust -- the Tax ID Number for Trust Number 3, because despite having
7 separate numbers, Marjorie only ever identified the owner of the oil assets as
8 Trust Number 2.

9 This is her handwritten letter to Graham Royalty in 1989, where she
10 requests that the oil company correct their records and she states: Again, I will
11 remind you royalty checks and correspondences should be to Marjorie T.
12 Connell, Trustee, and Eleanor C. Hartman, Co-Trustee. Our Trust number for
13 Tax ID purposes is the one ending in 7338, Trust Number 2's.

14 Trust Number 3's Tax ID Number is never referenced. A split in
15 ownership is never referenced. So when the oil companies needed to know
16 who the owner was, Marjorie, without any reservation, repeatedly identified the
17 Tax ID Number for Trust Number 2. This alone defeats their request for
18 summary judgment.

19 And in fact, Your Honor, from May 1989 to June 2006, every
20 division order ever issued by an oil company was signed by the owners,
21 Marjorie and Eleanor as Co-Trustees of Trust Number 2. And in every single
22 division order -- there's 44 attached to our omnibus as Exhibit 19 -- the Tax ID
23 Number referenced for the owner of the oil assets was always Trust Number
24 2's.

25 As testified by Jeffrey Johnston, a fact not in dispute, within a

1 division order, the oil companies identify the owners of their respective
2 ownership interest who had received the proceeds from the sale of oil and gas
3 production attributable to the mineral and royalty interest. In addition, the
4 division orders would customarily contain representations and/or warranties by
5 the actual owners for the benefit of the company dispersing oil and gas
6 revenues.

7 Yet, Jacqueline and Kathryn argue that there's no rhyme or reason
8 for giving the Tax ID Number of Trust Number 2 to the oil companies when the
9 division orders needed to be signed and submitted, or when the leases needed
10 to be executed to close a deal. They want the Court to focus on a single Texas
11 Inheritance Tax Return prepared without Eleanor's knowledge or approval in
12 1980, and ignore the administration of the oil assets spanning for over two
13 decades.

14 The Texas Inheritance Tax Return could not and did not change the
15 dispositive provisions of the Trust. Again, what happened in the tax world to
16 create the biggest tax savings does not negate and transpired in the real world
17 for 26 years later. Just look at what happened to Mr. Connell's community
18 property. Saying there is no rhyme or reason doesn't cut it, Your Honor. And it
19 certainly doesn't create a genuine issue of material fact to defeat summary
20 judgment in Eleanor's favor.

21 Jacqueline and Kathryn cannot escape or get around the fact that
22 Trust Number 2 was always identified as a hundred percent of the oil -- owner
23 of the oil rights. They cannot get around the fact that Marjorie herself is
24 notifying the oil companies that Eleanor needs to sign off on all this. She's only
25 the Trustee of Trust Number 2. The only evidence that they offer is an affidavit

1 by Corey Haina, an accountant that was hired some time in 1999; a decade
2 after Trust Number 2 had already been identified as the owner.

3 Well, Mr. Haina -- Haina was not a Trustee of the Trust. He didn't
4 counsel or advice Marjorie or Eleanor in the administration of the oil assets, and
5 he has no personal knowledge about why or how Eleanor and Marjorie decided
6 to identify the owner. In fact, this Court shouldn't even consider his affidavit
7 because it's inadmissible hearsay, with no exceptions. He's talking about his
8 conversations with Marjorie.

9 The Court must only look at Marjorie's own documented actions.
10 Jacqueline identified these handwritten records as prepared Marjorie as cover
11 pages to her ledger where she would note all the oil income. The only Tax ID
12 Number every identified by Marjorie is that of Trust Number 2's, 1994, it's
13 identified three times. 1995, it's identified twice. In 1999, it's again listed
14 twice. Not once does Marjorie re-reference Trust Number 3's Tax ID Number or
15 split in ownership, not once.

16 So everything done administratively confirms that Trust Number 2's
17 the owner and for over two decades, Your Honor, this was the reality, and
18 Eleanor had -- never had to assert any rights to the oil assets because she
19 always understood that Trust Number 2 owned the entire heirloom asset, to
20 which she was a sole income beneficiary. She doesn't have to make a claim,
21 they're hers, they're hers. And that's exactly what Marjorie herself, the oil
22 companies, and everyone else involved, for decades, led Eleanor to believe.

23 Now when Marjorie passes away in 2009, Attorney David Straus
24 apparently acknowledged the importance of making sure the title to the oil
25 assets was formally transferred. If, indeed, Marjorie had exercised her power of

1 appointment under Trust Number 3 and Trust Number 3 somehow owned 65
2 percent. Here's his testimony as to the Texas property, and I'm summarizing: I
3 had multiple conversations with Jacqueline and Kathryn to effectuate a formal
4 change in title to the Texas property to the MTC Living Trust.

5 So despite having Attorney Straus advise of the importance of the
6 formal transfer of title, they never followed his advice. They say it was to save
7 legal costs, it's in their depositions, Your Honor. By this time they had already
8 paid him approximately \$75,000, and he was just telling them to do a formal
9 deed.

10 Indeed, this Court made a specific finding of fact in an order entered
11 on January 6th, 2014, that legal Title of Record to such, Upton County, Texas
12 real estate, and oil, gas, mineral, and interest rights as vested in Eleanor C.
13 Hartman as Trustee of the Family Trust. The fact the title remains vested and
14 the Family Connell Trust is very significant, Your Honor, because it is Eleanor's
15 position that she would have never agreed to a formal transfer of title to the oil
16 assets, to the MTC Living Trust, since Trust Number 2 is the rightful owner of
17 this heirloom asset.

18 Well, what else happened in 2009 after Marjorie's death? Your
19 Honor has seen this Petition before, filed August 17th, 2009, but maybe not in
20 this time sequence. After decades of Marjorie treating the oil income as Trust
21 Number 2's asset, so within this Petition, and knowing the history leading up to
22 this point, certain facts are stated. As of the death of Marjorie, Trust Number 2
23 owned land and oil and gas shares in reserves and income located in Upton
24 County, Texas defined as the oil assets.

25 The oil assets have not been valued for some time but are estimated

1 to be worth approximately \$700,000. Your Honor, as testified by Jacqueline,
2 the approximate \$700,000 was the full value of the oil, not just 35 percent.
3 There is no mention anywhere in this paragraph, or for that matter the entire
4 Petition, that Trust Number 3 owned any part of the oil assets. The Petition
5 also states that, pursuant to Article Fourth, which Article governs the
6 administration of Trust Number 2: All income from the oil assets is to be paid
7 to the Petitioner during her lifetime. Well, that's Eleanor.

8 Again, there's no mention that 65 percent of the income should be
9 paid to Jacqueline or Kathryn or under the MTC Living Trust. There's also a
10 footnote, number 4 that states: Section B of Article Fourth also states that all
11 income received on Trust Number 2, other than that received from the oil assets
12 is to be paid to Marjorie. However, as a sole asset of Trust Number 2 consists
13 of the oil assets, this provision is inapplicable.

14 So footnote 4 is therefore acknowledging that Eleanor is the sole
15 income beneficiary under Trust Number 2 and that Trust No. 2 never owned
16 any of Mr. Connell's community property, even though it was supposed to.
17 Well, Jacqueline and Kathryn received a copy of this Petition before it was filed.
18 They both reviewed it, they both signed consents and waivers filed with this
19 Court acknowledging that they are only contingent income beneficiaries under
20 the Family Connell Trust and that they have read the entire Petition and believe
21 all of the facts to be true and correct to the best of their knowledge.

22 They also signed Consents to Reformation after the Solomon Law
23 Firm advised them of the potential tax implications that may result from their
24 reformation. Neither one took any steps, Your Honor, to clarify the documents
25 they signed and filed with this Court that there is a 65/35 split in ownership. I

1 don't know what that arrow is, Your Honor, sorry.

2 Both Jacqueline and Kathryn -- so, by this time you have over 29
3 years of Marjorie instructing the oil companies to deal with Eleanor as Co-
4 Trustee of Trust Number 2. You have every division order that is issued signed
5 by Marjorie and Eleanor, and identifying Trust Number 2 as the owner by its Tax
6 ID Number. You have all royalty payments paid under Trust Number 2's Tax ID
7 Number. You have title to the Texas property that remains vested in the family
8 Trust even after Marjorie Connell's death. And now you have her daughters
9 consenting to the fact that Trust Number 2 owns all of the oil assets and their
10 mother is 100 percent beneficiary.

11 So, given all of this evidence and the course of conduct of not only
12 Marjorie, but her own daughters, Eleanor always understood that Trust Number
13 2 was the sole owner of the oil rights and she was entitled to all of it, separate
14 and apart from her generosity. Even three years later, Your Honor, in 2012,
15 Eleanor's understanding is further confirmed by Jacqueline. In the Spring of
16 2012, Jacqueline's negotiating new leases and Surface Use Agreements with
17 the Apache Corporation. When the deal is ready to be finalized and signed,
18 who does Jacqueline look to? Her mother, Eleanor Ahern.

19 This is almost three years after Marjorie's passed away. Then she
20 acknowledges that Eleanor's the only authorized signer. And in fact, she brings
21 a notary public to her house to witness her signature. When addendums need
22 to be signed, Jacqueline again looks to her mom, Eleanor, to sign them. And
23 the Apache Corporation recognizes, acknowledges that Eleanor's the only
24 authorized signer.

25 So, once again, Eleanor perceives her daughter's actions as

1 affirming, that Trust Number 2 owns a hundred percent of the oil rights. In
2 fact, there's additional confirmation because in January of 2013, James Walton
3 notifies Eleanor [sneeze heard]. He noticed Jacqueline signed a lease, which is,
4 I quote: Obviously incorrect, and that Eleanor must sign as the only authorized
5 signer of the oil assets. So there is nothing that transpires since her father's
6 passing in 1979 that would give Eleanor any reason to doubt that Trust Number
7 2 is the sole owner of the oil assets and she its beneficiary.

8 So, in April of 2012, Eleanor's relationship with her daughters starts
9 to deteriorate. Why? During this time she broke her leg and her daughter
10 Kathryn was nowhere to be found, not one phone call or visit to see how she
11 was doing, a fact admitted by Kathryn in her deposition. So Eleanor feels
12 completely abandoned by Kathryn. As for Jacqueline, Eleanor felt betrayed by
13 her and started to distrust her intentions. Why? Well, Jacqueline admits in her
14 deposition that she reported to Nevada's Elder Protective Services that Eleanor
15 was being financially exploited.

16 Jacqueline calls EPS on July 6th, 2012 as noted in their report, the
17 same day that she was at Eleanor's house with her twin boys. As soon as
18 Jacqueline leaves her mother's house, who shows up? EPS, to try to conduct
19 an unannounced investigation. This timing's not a coincidence. On June -- on
20 July 9th, 2012, Eleanor travels to the EPS office, participates in an interview,
21 she justifies her actions and a social worker concludes: Was the allegation of
22 exploitation unsubstantiated? No.

23 These are professionals. These are experts in this type of area.
24 And this social worker says: No, no exploitation. EPS closes the case, finding
25 that given their reasons that it's -- it's closed. There's no reason to do this.

1 And they notify the RP, which we know is Jacqueline. This was an
2 embarrassing situation for Eleanor, Your Honor, a woman whose dignity means
3 any -- everything to her, as anybody else in this courtroom. In fact, Jacqueline
4 admitted in her deposition that -- and I quote this: I'm sure she was
5 embarrassed and I'm sure she was uncomfortable.

6 Well, it doesn't stop. As testified by Jacqueline, she happens to go
7 to her mom's house the next day, on July 26th, 2012, where she calls 9-1-1
8 and has an officer come to her home. What could be another humiliating and
9 embarrassing experience for Eleanor, but Eleanor was not home at the time
10 when Jacqueline and a police officer are in her home, unannounced and
11 uninvited. And Eleanor had her friend call Jacqueline to let her know that she
12 was okay and she didn't want to talk to her. This same month, Jacqueline and
13 Kathryn retained Texas attorneys to probate Marjorie's Will in Texas.

14 Now, Your Honor, there was never any mention of doing a split
15 between Trust Number 3 and Trust Number 2. To be clear -- and the
16 application is Exhibit 3 to Eleanor's Reply: The purpose of the application was
17 to lay claim to the oil assets and have Jacqueline and Kathryn recognized as the
18 current income beneficiaries. Within the application, it states that to the
19 applicant's knowledge this would be Jacqueline -- no child was ever born to or
20 adopted by Marjorie.

21 So, not only does the Court think that Eleanor doesn't even exist,
22 but the application reads as if Marjorie owned a hundred percent of the oil
23 assets, to which Jacqueline and Kathryn inherited. At this time -- during this
24 time, with EPS, police officers coming to her home -- and at a time that
25 Jacqueline and Kathryn did this behind their mother's back, Eleanor's still being

1 generous to her daughters.

2 But almost a year later, Eleanor stumbles upon this Texas Probate
3 and discovers what her daughters have done. She moves to intervene in the
4 Texas Probate and set aside the order. This is an important fact. Jacqueline
5 and Kathryn knew that their mother was upset, as anybody would be. And
6 they knew that this was a blatant falsehood. But, to this day, they have done
7 nothing to correct the record, nothing in Texas to tell the Court that Marjorie
8 did, in fact, have an adopted child, Eleanor.

9 So, Your Honor, this was the last straw. Around this time, Eleanor
10 also discovered that Jacqueline had spent \$80,000 in one month's time. A fact
11 that Jacqueline has not disputed. So, disgusted with her daughter's conduct,
12 Eleanor cut them off and ended her generosity of allowing her daughter's to
13 receive 65 percent of the oil income. And Jacqueline and Kathryn sued their
14 mother in September of 2013.

15 In four short years, Kathryn and Jacqueline have admitted that they
16 have received 65 percent of the 1.7 million dollars in lease proceeds paid as a
17 result of the Apache deal. They have also admitted that they have each
18 received approximately 200, \$260,000 each year in 2010, 2011, 2012, and
19 part of 2009 and 2013. This was the direct result of their mother's generosity.
20 It does not include the millions they receive from Marjorie's estate, which was
21 confirmed today by Mr. Warnick, was close to 3.7 million dollars.

22 Eleanor's daughters, Your Honor, have repeatedly claimed financial
23 hardship to this Court to garner sympathy. The truth is, Kathryn testified that
24 she used some of the oil income to start a small ice cream business that is –
25 and I quote: Pretty successful.

1 Jacqueline retired when she was 44 years old and her husband has
2 retired as well. Neither one has come out of retirement to compensate for this
3 so-called financial hardship, instead, they grasp at straws and they try to get
4 family members, friends, and even Corey Haina to convince this Court to ignore
5 the decades of, Marjorie herself, treating the oil assets as exclusively owned by
6 Trust Number 2. They have dragged their mother through litigation in hopes
7 that this Court will endorse their greed.

8 There is zero evidence, before this Court, that Eleanor is unduly
9 influenced, zero. This argument has already been shut down by Elder Protective
10 Services.

11 THE COURT: Well, but don't we have new evidence of that? Because
12 didn't Ms. Ahern say that the reason she backed out of the settlement
13 agreement was because Suzanne told her to?

14 MS. WAKAYAMA: No, Your Honor, that's not --

15 THE COURT: Yeah, that's --

16 MS. WAKAYAMA: -- that was what -- that was their allegation, and they
17 were using the Complaint filed by David Mann, which I will tell this Court and
18 Judge Thompson, on Wednesday, ordered that the entire case to be sealed. I
19 also spoke to Bar Counsel, Phil Pattee, the same day, and he informed me that
20 the Bar Complaint -- not only has a case been opened, but an official file has
21 been opened. I should be getting a letter from Mr. Pattee next week regarding
22 David Mann's actions. And according to Mr. Pattee, the entire case is going
23 directly to the disciplinary screening panel, but those are their allegations.

24 This Court should know why Eleanor has fought her daughters for
25 so long. As testified by Eleanor, either Jacqueline or Kathryn have been

1 involved in her life for quite some time, and both seem only interested in her
2 money. Both of her daughters have betrayed her trust and have engaged in
3 deceitful acts, such as causing to suspend the oil income for a period of time in
4 pursuit of lining their own pockets.

5 Through their litigious acts, Jacqueline and Kathryn have caused her
6 to lose significant amount of her personal savings in hopes that they continue to
7 enjoy a luxurious life built on her father's legacy. Her daughters, she thinks, are
8 ungrateful of the generosity she's bestowed upon them, through the years, and
9 it is disheartening to her that they both exemplify entitlement to wealth and
10 take for granted the privileged life they have lived for so long.

11 So, by continuing to defend against the instant litigation, she hopes
12 to teach her daughters an important lesson, to value family over money. We
13 therefore ask this Court to enter summary judgment in favor of Eleanor, finding
14 that Trust Number 2 always owned a hundred percent of the oil assets, and
15 Eleanor its only current income beneficiary. Her daughters will just have to be
16 patient, Your Honor, and wait until she passes, provided that this Court does
17 not enforce the no-contest clause against them.

18 And for the nuances of the legal argument, Your Honor, I -- I'll turn
19 it over to Ms. Renka.

20 THE COURT: Okay.

21 MR. WARNICK: Your Honor, it's kind of interesting that, you know, two
22 Counsel are arguing for the same party, that's kind of unusual. I mean, Mr.
23 Powell and I represent different clients --

24 THE COURT: Uh-huh.

25 MR. WARNICK: -- but I'm not sure why they -- what we just heard for

1 the last hour wasn't sufficient argument and we're ready to respond, but it's
2 just unusual that two attorneys are standing up and arguing for the same client.

3 MS. WAKAYAMA: Your Honor, the --

4 THE COURT: Yes.

5 MS. WAKAYAMA: -- reason why I brought it up in the beginning is
6 because, as you know, I have a full morning with you on Monday morning again
7 for the Morton Rovner matter, and so, in order to be able to be fully prepared
8 and address all issues, I personally could not do everything on my own.

9 THE COURT: Okay.

10 MS. RENKA: Thank you --

11 THE COURT: You can proceed.

12 MS. RENKA: -- Your Honor.

13 THE COURT: Uh-huh.

14 MS. RENKA: And just to briefly recap, for the legal basis, of all the
15 evidence and facts that Ms. Wakayama just went over, there's a couple reasons
16 why the Court should enter summary judgment in favor of Eleanor. One, to
17 effectuate W.N. Connell's -- we'll call him William -- William's intent, as set
18 forth in the Trust, because extrinsic evidence put forth by Jacqueline and
19 Kathryn is inadmissible to contradict the terms of the Trust, and because title to
20 the oil assets has never been transferred to Trust Number 3 or the MTC Trust.

21 We've already seen how the intent of William is set forth clearly in
22 the plain language of the Trust, Article Fourth, which governs Trust Number 2.
23 Specifically addresses the oil assets and calls them out, where no such
24 reference is made in Trust Number 3. And we also saw how William insisted
25 that Marjorie adopt Eleanor to make sure that Eleanor could not be cut out of

1 this heirloom asset, the oil rights. So the language of the Trust and the
2 extrinsic evidence of the adoption all coincide with William's intent to make
3 sure that the oil assets would provide for Eleanor during her life.

4 Now we have several pieces of extrinsic evidence that Jacqueline
5 and Kathryn have focused on, but most importantly, as mentioned, the Texas
6 Estate Tax Return. But at -- even as mentioned by Mr. Warnick, a tax return
7 does not establish or change legal ownership to an asset. It contradicts the
8 terms of the Trust, it's irrelevant as to ownership, and how does the -- how the
9 oil assets were -- and the receipt of those assets were treated for tax purposes,
10 simply does not establish ownership.

11 As far as the form 706 that has never been produced, this Court
12 should not be relying on that, it's never been produced. And when a party tries
13 to offer a piece of evidence or testimony about a piece of evidence that's never
14 been produced, it can raise an adverse presumption or an adverse inference. In
15 other words, it has to be presumed that this has never been produced and
16 therefore it would be adverse to the proponent.

17 THE COURT: Well, you have to control.

18 MS. RENKA: Well, sure.

19 THE COURT: You have to have control of it and what's --

20 MS. RENKA: But, interestingly, we have testimony from Jacqueline that
21 the IRS said they couldn't find the form 706, but that supposed written
22 communication from the IRS, has also never been produced in this litigation.

23 THE COURT: Okay.

24 MS. RENKA: And in the --

25 THE COURT: Well, what about the fact that -- I don't think it's disputed

1 that Ms. Connell represented in her divorce -- well, not Miss Connell. Ms.
2 Ahern represented, in her divorce proceedings from Mr. Hartman, that she's
3 only entitled to 35 percent?

4 MS. RENKA: Well, we have a couple --

5 THE COURT: I mean, hasn't every representation she's ever made been
6 that she's entitled to 35 percent?

7 MS. RENKA: Actually, Your Honor, there's a couple problems with that.
8 First of all, obviously, it's hearsay. We have Ms. Ahern's ex-husband saying
9 that at some point Eleanor told him that she was only entitled to 35 percent.

10 THE COURT: Well, it's public record because it was a divorce.

11 MS. RENKA: But you're talking about the declaration from Mr. Ahern.

12 THE COURT: Right, but he specifically references public record.

13 MS. RENKA: Sure, but we have no public records of Eleanor asserting
14 that in a pleading anywhere.

15 THE COURT: But can't I take judicial notice of it, it's the Court's records?

16 MS. RENKA: I have never seen a pleading where Eleanor asserted that in
17 her divorce.

18 THE COURT: But it's public record. It's in the Court's records.

19 MS. RENKA: But we're -- we've never seen a pleading where she --

20 THE COURT: Okay. I'll look it up for you, I will.

21 MS. RENKA: -- actually asserted that.

22 THE COURT: Keep going

23 MS. RENKA: And if the -- if the Court is referring to Mr. Ahern's answer
24 in the divorce proceedings, we don't think that that answer states that Eleanor
25 only owned 35 percent. And to any extent that he is saying that now in his

1 affidavit – perhaps Eleanor was reporting what she was actually receiving every
2 year, which would have been 35 percent, because she was sharing 65 percent
3 with Marjorie. So, if we're looking at support obligations, it would be what she
4 was actually receiving, not necessarily what she legally owned.

5 And in the face of the one Texas Tax Return and the Federal Tax
6 Return, which has never been produced, we have decades and decades of
7 history with the division orders, Marjorie's letters, Marjorie's handwritten
8 bookkeeping, and Jacqueline and Kathryn's consents, all confirming that
9 Eleanor, as Co-Trustee of Trust Number 2, that Trust Number 2 owned all of
10 the oil assets.

11 And as mentioned, there has never been any evidence that title was
12 ever transferred to Trust Number 3 or the MTC Trust. Now, it is true that
13 administratively you could have property being divided up within Trust Number
14 1, 2, and 3; however the MTC Trust is a completely separate Trust. And
15 property rights would have to be transferred by a written deed that would go to
16 the MTC Trust. It could not be just done administratively, and this has never
17 been done.

18 Also, very recently in the Reply -- the Supplement to the Reply in
19 this Summary Judgment Briefing, Jacqueline and Kathryn have just started
20 arguing that Eleanor must have also been a Co-Trustee under Trust Number 3.
21 But, as discussed, even if 65 percent of the oil assets were transferred to Trust
22 Number 3, which we are not conceding, they would not have been, any longer,
23 separate property over which Eleanor would have had any rights. They would
24 have been converted to the property of Marjorie. So that argument simply fails
25 as a matter of law.

1 So, for these reasons, Your Honor, we ask that Summary Judgment
2 be entered in Eleanor's favor, not in Jacqueline and Kathryn's. And I'll now
3 address the basis for Summary Judgment that Jacqueline and Kathryn have
4 asserted. First of all, we reserve our right to discuss further, if Your Honor
5 wishes to do so, our opposition to the Motion to Amend. It is our position that
6 the only operative pleading in this case is the first Petition of Petition for
7 Declaratory Relief.

8 In that Petition, the only single claim for relief asserted or asked for
9 in the prayer is Declaratory Judgment that Eleanor owns 35 -- is entitled to 35
10 percent of the oil assets and Jacqueline and Kathryn, 65. There's no operative
11 pleading before this Court that asserts any Affirmative Defenses against
12 Eleanor's Counterclaim, or any other claims other than that Declaratory Relief.
13 And this brings us to kind of a fundamental, I think, misunderstanding --
14 mischaracterization of the positions of the parties in this litigation.

15 The First Petition for Declaratory Relief was filed as the initiating
16 pleading, as we discussed earlier for this litigation. So, Jacqueline and Kathryn
17 filed a petition asking for a determination of ownership. Everything that Eleanor
18 has done since then, has been in response to that. Eleanor never filed a Petition
19 asking this Court to declare that she owned a hundred percent, she asserted
20 that as a defense to Jacqueline and Kathryn's Petition. So, Eleanor did not all
21 of the sudden pop-up and ask the Court to determine she was a hundred
22 percent. She never had to raise it before because there had never been
23 anything filed that she had to defend against.

24 But now that Jacqueline and Kathryn are saying they're entitled to
25 65 percent, now she has to assert: No, I've always been entitled to a hundred

1 percent. Eleanor filed her counterclaims -- her Answer and Counterclaims in
2 February of last year, not long after the first petition was filed in this case. So
3 there can't possibly be a Statute of Limitations issued because the petition
4 raising the issue of ownership, was filed in this case. And only months later,
5 Eleanor files an Answer and Counterclaim.

6 As far as Eleanor -- Eleanor has two claims --

7 THE COURT: Sorry.

8 MS. RENKA: -- two affirmative claims in this case: Potential Interference
9 with Contractual Relations and Enforcement of the No-contest Clause.

10 THE COURT: I don't understand your Statute of Limitations argument.

11 MS. RENKA: Okay. Eleanor's claim for ownership --

12 THE COURT: Uh-huh.

13 MS. RENKA: -- that Trust Number 2 has always owned a hundred
14 percent, was only raised because she had to raise it as a defense to the Petition
15 filed by Jacqueline and Kathryn. So Jacqueline and Kathryn's Petition, in this
16 litigation, was filed and Eleanor asserts her ownership as a defense a couple
17 months later in her Answer and Counterclaim.

18 THE COURT: So, it's your position that at no time prior to that would she
19 have been on notice that there was any allegation that she only was entitled to
20 35 percent? So all the letters that were produced here that say: I gave my
21 daughter 35 percent, my daughter's entitled to 35 percent -- any of those kinds
22 -- that would not be sufficient to put her on notice that her stepmother was
23 claiming that she actually owned the 65 percent?

24 MS. RENKA: Yes, Your Honor, because so far what we have is three
25 letters from Marjorie that are much later, in the early 2000's. There's no

1 evidence that Eleanor ever saw those letters. And we – two of the letters say:
2 To Whom It May Concern. We don't even know where the letters went. At all
3 times, Eleanor thought that Trust Number 2 owned a hundred percent. She
4 was sharing 65 percent with her mom and she was taking 35 percent of the
5 income.

6 She had no reason, until the Probate was filed in Texas, and then
7 shortly thereafter, this litigation again, to pop-up and ask the Court to declare
8 something she always thought was through and true, and she didn't think
9 anyone was challenging. So that Texas Probate, which was very close in time
10 to the beginning of this litigation was when she realized that this might be an
11 issue. So she --

12 THE COURT: And not in 2009 when they consulted with Counsel who
13 said: You really ought to deed this property?

14 MS. RENKA: Eleanor has never said that she was in a meeting where
15 anyone was saying that she should be deeding part of her interests to anyone.

16 THE COURT: Okay. So Mr. Straus' affidavit is untrue?

17 MS. RENKA: Eleanor is saying that she was never in a meeting where
18 anyone was discussing about her transferring her rights, and this was confirmed
19 --

20 THE COURT: Okay.

21 MS. RENKA: -- in 2009 when the consents were signed to the Petition
22 that said Trust Number 2 owned the oil assets and Eleanor was the sole, 100
23 percent, income beneficiary, and Jacqueline and Kathryn were only contingent
24 beneficiaries. So, for all the decades leading up to this, Eleanor has no reason
25 to have any doubt -- she has no reason to think anyone is challenging Trust

1 Number 2's ownership until the probate of the Will in Texas that was done
2 behind her back --

3 THE COURT: Okay. So on May 21st, 2009, when Mr. Straus writes a
4 letter to Eleanor saying: Pursuant to Article 4.01 of the Last Will and
5 Testament of Marjorie, she leaves the entire part of Trust Number 3 to
6 Jacqueline and Kathryn, and that wouldn't have put her on notice of well,
7 what's in Trust Number 3?

8 MS. RENKA: Eleanor never had any reason to think that any of the oil
9 assets were in Trust Number 3, ever. So she never would have thought that
10 Marjorie would have had any power of appointment over the assets because
11 they were never in Trust Number 3, and Marjorie only had a power of
12 appointment over Trust Number 3.

13 THE COURT: Uh-huh.

14 MS. RENKA: And Eleanor's reasoning for that is decades of dealing with
15 the oil companies and signing as Co-Trustee of Trust Number 2 with Marjorie
16 and only ever using Trust Number 2's Tax ID Number to identify where the oil
17 assets were being paid to. Nothing happened to raise Eleanor's suspicion that
18 somebody was going to challenge Trust Number 2's ownership until the probate
19 in Texas, which was done behind her back and she didn't know until a year
20 later, and the Petition that was filed in this case where her daughters were
21 saying they were entitled to 65 percent.

22 So, as soon as that happens, she files her Answer and
23 Counterclaims. And her response is: I own a hundred percent, that's a defense
24 -- that's her defense. Her claims are for Intentional Interference with Contract.
25 That's when Jacqueline interfered and the oil company stopped paying the

1 royalties, and some of them, still, have not removed those suspensions. Texas
2 Counsel is still working on that. And the other affirm -- the other affirmative
3 claim that Eleanor alleged is the Enforcement of the No-contest Clause against
4 Jacqueline and Kathryn.

5 So, Statute of Limitations, the Intentional Interference with Contract
6 is three years. Well, Eleanor filed her Answer and Counterclaim a couple
7 months after the Petition was filed in this case, which is also a couple months
8 after she found out about the Texas Probate. And the No-Contest Clause, same
9 thing. She raised it within a couple months of learning of these allegations
10 contrary to Trust Number 2 owning a hundred percent.

11 For the same reason, Laches doesn't bar her claims. She filed an
12 Answer and Counterclaim. There's been no Waiver, by Eleanor, of any claims.
13 There's been no sitting on her rights. There's been no delay. Part of the
14 arguments of Jacqueline and Kathryn is that Claim Preclusion would bar
15 Eleanor's claims, because she should have brought them in the 2009 action,
16 but that makes no logical sense.

17 The 2009 action confirmed everything Eleanor understood, which
18 was, Trust Number 2 owned a hundred percent. She was the sole income
19 beneficiary for her life, and her daughters were contingent beneficiaries, just as
20 they confirmed in their consents. Now there's also arguments by Jacqueline
21 and Kathryn that sever that. The Court should take several actions against
22 Eleanor because of supposed violations and improper conduct.

23 One that they talk about is an accounting. It's our position, going
24 back to the State that we think the pleadings are in in this case. There's never
25 been a claim alleged for an accounting, and even if there had been, there's

1 never been a written demand, as required by statute, served on Eleanor for an
2 accounting. And because Jacqueline and Kathryn are only contingent
3 beneficiaries, Eleanor would be under no obligation to provide it unless served
4 with a proper demand pursuant to statute.

5 Moreover, in October 2014, at the time of the settlement
6 discussions, Eleanor provided, essentially, an accounting summarizing the
7 amount of money that was being held in the Trust's account pursuant to this
8 Court's order. And it states that 65 percent of the oil assets for the time period
9 that Eleanor was required to hold them, under this Court's order, would be
10 about a million dollars, and there was about 1.3 million dollars in the account.

11 So she provides -- she was never properly demanded to provide an
12 accounting. She provided an accounting and Jacqueline and Kathryn never
13 objected within 120 days of receiving this, which under NRS 165.137 means
14 that it was accepted. So, there's absolutely no violations by Eleanor as far as
15 any accounting.

16 Another request for relief by Jacqueline and Kathryn is for attorney
17 fees as sanctions for filing the Motion to Dismiss. The Motion to Dismiss, at
18 issue, was earlier denied by this Court without prejudice and is now before this
19 Court again. But given the facts and the law, everything that's been discussed
20 today, there's no reason to believe that Eleanor's claims are frivolous or without
21 a good faith basis, that warrant attorney's fees under NRS 18.010.

22 Jacqueline and Kathryn also seek enforcement of the No-Contest
23 Clause against Eleanor. And in their pleadings say: Not only under Trust
24 Number 1 or 2, but under the MTC Trust. Now, first of all, Eleanor was never a
25 beneficiary or a Trustee of the MTC Trust, that was a separate -- or beneficiary

1 under the MTC Trust. There was a separate Trust set up by Marjorie, so the
2 No-Contest Clause on that Trust wouldn't apply to Eleanor. As for the Trust at
3 issue in this case, the No-Contest Clause does not apply. By the terms of the
4 No-Contest Clause here, it only applies when someone attacks, opposes, or
5 seeks to defeat a term of the Trust.

6 Here, Eleanor has raised the terms of the Trust as a defense to
7 establish her ownership. She's trying to confirm the plain language of the
8 Trust. She's trying to enforce the Trust. Also, Eleanor is doing this in good
9 faith and in defense of the claims that have been raised by her daughters in this
10 litigation, so it would not be appropriate to enforce a No-Contest Clause against
11 Eleanor.

12 THE COURT: What's the basis for enforcing it against her daughters
13 then?

14 MS. RENKA: Because under the plain terms of the Trust, Trust Number 2
15 was always the 100 percent owner of the oil assets. Eleanor has always been
16 the sole income beneficiary of the oil assets for her life, and Jacqueline and
17 Kathryn are only residual beneficiaries, as they confirmed in their consents in
18 2009. Now they have initiated this litigation via their first Petition, to be
19 declared, contrary to the terms of the Trust, as entitled to 65 percent of the oil
20 assets. That's trying to contradict the terms of the Trust. That is when a No-
21 Contest Clause should be enforced.

22 THE COURT: But there were multiple trusts and there were two Settlers,
23 so there's a conflict if we follow your logic. There's a conflict between the
24 original Trust and the MTC Living Trust. Clearly, Marjorie believed something
25 that your argument is is just wrong. As a matter of law she -- Marjorie was just

1 wrong; she didn't have the right to 65 percent. So the No-Contest Clause says
2 that you're not supposed to try to assert any claim to assets or attack, oppose,
3 or seek to set aside the administration, distribution, have the same declared null
4 and void, defeat or change any part of the provisions of the Trust established
5 herein.

6 But, clearly, Marjorie -- and you -- it's your argument she's just
7 wrong about this. She believed she owned 65 percent of these assets and she
8 had the right to dispose of them under her own Trust.

9 MS. RENKA: Yes, Your Honor, and --

10 THE COURT: And that's what the -- her successor, Ms. Montoya, who
11 has the -- was appointed, is trying to enforce. Remember there's two -- there's
12 two settlors, there's not just one, there's two, and Marjorie had rights too. I
13 understood your argument that she was wrong about what her rights were, but
14 she had rights.

15 MS. RENKA: What was problematic with that, Your Honor, is in 2009 we
16 have Jacqueline and Kathryn signing consents that agree with Eleanor's position
17 that Trust Number 2 owned the oil assets.

18 THE COURT: Uh-huh.

19 MS. RENKA: Eleanor was the only income beneficiary for her life and
20 they were contingent beneficiaries, which by definition, would mean that after
21 Eleanor passes, then they receive their interest. So when you have them
22 confirming that and then filing a Probate action in Texas, trying to say that
23 Eleanor didn't even exist, we have actions contrary --

24 THE COURT: Well --

25 MS. RENKA: -- to the terms of the Trust.

1 THE COURT: -- you know, I got to tell you, I find that just wacky,
2 because the Petition starts out with: Jacqueline Montoya, a granddaughter of --
3 how could she have granddaughters, there were no children. I mean, it doesn't
4 make any sense, it's just bad drafting.

5 MS. RENKA: It could be, Your Honor, but there's been no efforts to ever
6 correct it. And it also states --

7 THE COURT: Okay.

8 MS. RENKA: -- in there that -- it states that as --

9 THE COURT: I mean, is there anything that says Ms. Montoya ever
10 signed anything saying: My grandmother had no children? I mean, it's, it's an
11 impossibility.

12 MS. RENKA: We're just telling you what was filed, Your Honor. And
13 why would you have a statement in a filing to the Court that says: Marjorie
14 never adopted, had no adopted children when, obviously, Marjorie -- when,
15 obviously, Eleanor was adopted.

16 THE COURT: She obviously did because she had a granddaughter.

17 MS. RENKA: But you're putting this before the Court --

18 THE COURT: It doesn't -- it doesn't make any sense.

19 MS. RENKA: But they still never corrected it.

20 THE COURT: Okay.

21 MS. RENKA: So if it was really just an honest mistake, why not correct it
22 or dismiss proceeding?

23 THE COURT: Okay.

24 MS. RENKA: And then you have here the 2009 consents confirming
25 everything that Eleanor's always understood. And then, a couple years later

1 they're filing a petition in this case.

2 THE COURT: Okay.

3 MS. RENKA: So in our interpretation, taking those actions, is trying to go
4 against the plain terms of the Trust and what had been done for decades earlier,
5 which would trigger the No-Contest Clause. Also, Jacqueline and Kathryn, in
6 some of their claims for relief in the briefing, at issue today, have asked this
7 Court to reconsider its July order. They have asked -- well, we know that
8 Jacqueline and Kathryn haven't posted a bond as was required. We know that
9 that order or at least parts of it is on appeal right now.

10 THE COURT: Uh-huh.

11 MS. RENKA: But yet, they have requested that this Court reconsider this
12 order, require the funds to be released to Jacqueline and Kathryn without a
13 bond, and to now require Eleanor to post a bond. Your Honor, the
14 reconsideration was never briefed. There's no legal authority as to why this
15 Court would be able to reconsider that order today. We submit that there's no
16 memorandum of points and authorities on that issue and therefore, it should be
17 deemed not-meritorious under EDCR 2.20. There's nothing before this Court
18 that warrants reconsideration of that order at this time.

19 Jacqueline and Kathryn have also asked this Court to find that
20 Eleanor has forfeited all of her rights under the Trust and to disgorge her of
21 anything that she might receive under the Trust. Again, there's no law, no legal
22 authority for awarding this extreme sanction. And Eleanor, again, has asserted
23 her ownership of these rights as a defense to the claims made by Jacqueline
24 and Kathryn. There would be no basis to eliminate Eleanor's interest under the
25 Trust that have even been discussed in all of this briefing, except for the No-

1 Contest clause, which we've just discussed, Your Honor.

2 So, for these reasons, we would ask that the Court deny all of the
3 relief Jacqueline and Kathryn are seeking and enter Summary Judgment in favor
4 of Eleanor. And I did want to correct one misstatement that I think I said in the
5 heat of the moment. I think I said that Eleanor was not a beneficiary of the
6 MTC Trust, she was. She was never a Trustee, so I just wanted to clarify.

7 THE COURT: All right. All right. It's now a quarter till 1:00. So, is this
8 an appropriate time to take a break?

9 MS. WAKAYAMA: Yes, Your Honor.

10 MR. WARNICK: That'd be fine, Your Honor.

11 MS. RENKA: Fine with us.

12 THE COURT: Okay. So we'll take a break until what, 2?

13 [Colloquy between the Court and the Clerk]

14 THE COURT: Two p.m.

15 MR. WARNICK: Thank you, Your Honor.

16 MR. POWELL: Thank you, Your Honor.

17 THE COURT: Thanks very much. Appreciate it. We'll be back.

18 [Pause in proceedings at 12:44 p.m.]

19 [Proceedings resumed at 2:02 p.m.]

20 THE COURT: We're going to go back on the record in Connell. And I
21 think that we had finished with Mrs. Ahern's Response to Counter-motion, so
22 now we need to have final replies so.

23 MR. WARNICK: Response. Right.

24 THE COURT: Yeah.

25 THE MARSHAL: Counsel, I'm sorry, did you want this back up?

1 MR. WARNICK: That'd be nice, I'd appreciate that, yeah. My artwork is
2 not going to be memorialized for very long but --

3 Your Honor, we've covered an awful lot of stuff on both sides --

4 THE COURT: Uh-huh.

5 MR. WARNICK: -- but I'd like to go back, initially, and start with the
6 Trust again. There's been allegations made that this was some type of a
7 Special Heirloom Trust to track and control the Texas oil property so it only
8 want to Mr. Connell's blood relatives and not to Marjorie. That's the allegations
9 I believe they've made and the assertions they've made regarding that Trust.

10 Well, let's look at the Trust terms to see if that is in fact a -- really
11 an Heirloom Trust. If you turn to the Trust terms, you can see that Marjorie, as
12 the Survivor Trustee, had full authority under the Trust, under the general
13 Trustee powers, to sell any property. That's starting on page 4 as you go into
14 the Trustee powers. She could have sold the property at any time. Under the
15 provisions for Trust Number 2 on page 5, in subparagraph 2, she had the Power
16 of Invasion.

17 Marjorie had the Power of Invasion to not only keep the assets that
18 were given to her in Trust Number 3, but she had the Power of Invasion to use
19 any of the assets that were in Trust Number 2 for the benefit of herself, of
20 Eleanor, or the grandchildren. So we've got two provisions already that show
21 this was not an Heirloom Trust where Mr. Connell was trying to protect and
22 make sure that those Texas oil properties could never be disposed of or used by
23 Eleanor in the course of the Trust Administration.

24 If you go back to the 2009 Petition that was filed and we've
25 discussed, right at the beginning of that 2009 Petition, Eleanor and her own

1 attorneys state that this 1972 Trust was an A-B Trust created for tax purposes,
2 to avoid the State taxes upon the death of the first Trustor to die and the
3 second Trustor to die. That was what they identified this Trust as. This theory
4 of Heirloom Trust didn't come up until the last two months with Eleanor's new
5 Counsel.

6 If you go back over all the pleadings in this case on Eleanor's prior
7 attorneys, never once did they mention something along an Heirloom Trust
8 saying that this was some special type of a Trust. And the facts show that it
9 just clearly wasn't a Special Heirloom Trust. We don't doubt that the Texas oil
10 property was valuable. We don't doubt that that was a concern that Marjorie
11 and Eleanor and their descendants benefit. But to try to exclude Marjorie of
12 ever having a right to any of that property by calling this an Heirloom Trust,
13 makes absolutely no sense and it's not supported by the Trust provisions
14 themselves.

15 It's not supported by Eleanor's own assertions, way back in 2009,
16 as to what the purpose of the Trust was. And so, that brings us to the point,
17 what was the purpose of the Trust? It was to avoid Federal Estate taxes, that's
18 the primary reason for an A-B Trust. Did that happen? Yes, it happened. We
19 can see it from the Texas return, that approximately \$40,000 in Federal Estate
20 taxes were avoided as a result of following the Trust provisions and transferring
21 a portion of the Texas oil property, Mr. Connell's separate property, over to
22 Trust Number 3.

23 They did exactly what they were required to do, what they were
24 asked to do, and what the purpose of that Trust was, which was to avoid
25 Federal Estate taxes. And most importantly, under the Trust, when you turn to

1 that third section beginning on page 3, it says: In making the computations and
2 allocations of the said property to Trust Number 3 as herein required -- and the
3 only separate property in the Trust, at that time, was this property -- the Texas
4 oil property.

5 And it says: When you make that allocation to Trust Number 3:
6 The determination of the character and ownership of the said property and the
7 value thereof shall be as finally established for Federal Estate tax purposes.
8 Now we know there wasn't a deed separating the property, that wasn't
9 necessary. The Trust itself is an entity that is administered and the allocations
10 that are made under that Trust become final, and must be done according to
11 the Trust terms.

12 And there is absolutely no argument that they can make to counter
13 the fact that when William Connell died in 1979, Marjorie, who was probably
14 not sophisticated in any of this tax stuff and anything, she had to hire an
15 accountant and attorneys to properly interpret the Trust, to properly follow the
16 tax rules and to do what they did. And that's how we come about with 35
17 percent being assigned to Trust Number 2 and 65 percent going to Trust
18 Number 3.

19 There's just no way they can get about it by trying to argue that
20 there's some special reasoning in this Trust that was to preclude that. How
21 could the satisfy the terms that you have to, under Section 3, on page 3 -- you
22 have to transfer a portion of his separate property to Marjorie in order to
23 maximize the marital tax deduction, and that's exactly what happened.

24 The only argument they made is, while they looked at Mr. Gerety's
25 tax report -- his expert report and tried to pick it apart and show that something

1 was done wrong with respect to the allocation of community property under the
2 Trust. They didn't say what was done wrong. They didn't point out the
3 community property wasn't allocated property. The tax return only says that
4 there is community property, and if there's community property, you have to
5 allocate one-half of that value towards the marital tax deduction to decrease it,
6 and that's what Mr. Gerety says they did. And that reduced it down to an
7 amount of \$76,000 that still needed to be maximized. And that's how they
8 maximized it using the Texas oil property.

9 It just seems ridiculous that at this point in time, 34 years later,
10 they want the Court to go back there and try to say something was done
11 improperly in the filing of the Texas Estate Tax Return and a Federal 706
12 Return. They want to say that the experts, the people who have fiduciary
13 duties defrauds the IRS, did something that was not right.

14 We know that when you file your Texas – or your Federal Estate
15 Tax Returns, you attach copies of your Trust. The Federal Government, the IRS
16 looks over those things. They're not going to let somebody escape paying
17 taxes if they can rightfully collect those taxes. And so, the whole procedure
18 was confirmed and approved and validated by the IRS, by those experts that did
19 it at the time, and there's just absolutely no way that Eleanor can legitimately
20 make an argument that that wasn't done properly or it shouldn't have been
21 done.

22 But we then come to the next step, if it wasn't done properly and
23 she claims that she knew about it right from the get-go. She claims her own
24 attorney told her: Hey, you're supposed to get all the income. He probably just
25 read that one sentence in the Trust where it says that all of the income from

1 the Texas oil properties in the Trust goes to Trust Number 2, which refer to the
2 35 percent that was in there. But he probably read that section and told her:
3 Well, it looks here that maybe you are entitled to all of the income from the
4 Texas oil properties.

5 And he didn't read the rest of the Trust, didn't understand how the
6 allocations had to be made under the Federal Tax Return and Estate Tax
7 Returns and so forth. But, whatever the reason is for her saying that she knew
8 back in 1979 that this hadn't been done properly, there is no excuse -- there is
9 no defense for her not having to suffer the consequences of the Statute of
10 Limitations, which says you have to take and correct something within three
11 years of knowing that a mistake has been made or you waive the right to
12 correct it.

13 Now another thing that has to be brought forward here -- we're not
14 just talking about Eleanor and what's in her best interest or what her interests
15 are, she's a Co-Trustee at this time, then. She was appointed -- as I pointed
16 out in my opening argument. She was appointed as a Co-Trustee over all of the
17 separate property in the Trust, which means she was over the property in Trust
18 Number 2 and in Trust Number 3. She had a fiduciary duty, all during those
19 years, to make sure that allocations were made properly, because she's not the
20 only beneficiary under Trust Number 2.

21 THE COURT: Oh.

22 MR. WARNICK: There's other beneficiaries there. So she didn't have the
23 right to just say: Yeah, I'm going to be generous in my own mind, not tell
24 anyone else about it, but I'm going to just sit on this claim and not rock the
25 boat or make any -- anybody upset; I'm just going to let this be a gift to my

1 mother for the 30 years that she lived. She didn't have the right to do that, as
2 a Trustee even. And then, when you add to that, the fact that tax returns are
3 filed and people claim to the IRS: This is the income I was entitled to and I
4 received during this year and you file tax returns on it, and then she claims:
5 Well, no, I was just being generous.

6 And the only explanation her Counsel had for it was: Well, that
7 seems okay, we haven't cited any Federal Tax Laws that say you can't do that.
8 Do we have to cite law that says the IRS does not allow you reallocate your
9 income willy-nilly, whenever you want to, to avoid paying taxes? I would think
10 that that's something we can take judicial notice of and we don't have to argue
11 that point, but that's exactly what Eleanor did.

12 If she's telling the truth and she really believed she was entitled to
13 that income for a period of 34 years, she allocated and gave to people who
14 weren't entitled to the income and knew they were filing their tax returns on it,
15 knew there was a defrauding of the IRS, and she participated in that for 34
16 years without any legal right to do so.

17 And when you add on top of that, the giving of that property to
18 people who weren't entitled to it, under the law, under the Trust, is a gift. And
19 so she would also -- had to file gift tax returns. Think about from 2009 to
20 2013 when she even admits that Jacque and Kathy got over a million dollars
21 from her generosity in letting them keep the 65 percent interest. That's a huge
22 gift tax, a huge gift tax liability that has been totally ignored by Eleanor, if
23 indeed she's telling the truth, that she really thought she was entitled to that 65
24 percent of the income.

25 But if you look at the Trust to --

1 THE COURT: One thing I didn't see -- as I said I want to talk to Counsel
2 here a second. I -- I agree with you there are -- there were two Settlers, two
3 trust -- and multiple Trustees, multiple Beneficiaries. And we have to keep in
4 mind what Marjorie thought she was doing. And so I guess my question is,
5 when Marjorie passed, what happened then? How is it reported then?

6 MR. WARNICK: Well, when Marjorie passed --

7 THE COURT: I didn't see that.

8 MR. WARNICK: Yeah. It's clearly, Marjorie thought she had 65 percent
9 of the Texas oil property under Trust Number 3 when she passed, otherwise
10 that wouldn't have been put into her Federal 706 Estate Tax Return and they
11 would have paid -- they would have not paid the extra \$140,000 that they had
12 to pay because that was included in her estate when she died in 2009. That's
13 a clear indication and a clear knowledge that El -- that Marjorie knew she was
14 entitled and owned that 65 percent interest, and it wasn't being given to her as
15 any gift by Eleanor. So that's what happened in 2009.

16 Now, they have tried to dance around the fact that Mr. Straus
17 maybe didn't talk with Eleanor at the time of Marjorie's death, but Mr. Straus
18 states very clearly in his affidavit that he talked with Eleanor, with Jacque, and
19 with -- Eleanor, Jacque, and Kathy, all three of them, and explained to them
20 that Marjorie had been receiving 65 percent of the oil income. She was entitled
21 to it. She had appointed that and transferred that 65 percent interest to Jacque
22 and Kathy, and they would be receiving that income thereafter, and Eleanor
23 was perfectly fine with that. She accepted that, she didn't object to that, and
24 she agreed to that. So all of those things you take into consideration.

25 The contradictory actions and the conduct of -- of Eleanor all during

1 the years, which contradict, completely, the claim she made in 2013 to 100
2 percent of the income. She can't get out of the fact in her divorce that she
3 represented to the Divorce Court, she only had 35 percent income entitlement.
4 That would have changed what happened under her divorce situation and --

5 THE COURT: Do you know if that was here or elsewhere? Because I
6 can't find it.

7 MR. WARNICK: Do we have what, Your Honor?

8 THE COURT: Do you know if that was in Clark County? I couldn't find
9 it.

10 MR. WARNICK: We have a copy of the Answer that was filed. I think
11 they had a copy too. It was Mr. Hartman's Answer to the Divorce Complaint
12 where he said my wife has an income right to 35 percent of income from Texas
13 oil properties. And then in his affidavit he points out that that's what was
14 represented to the Court, that's what's represented to the attorneys handling
15 and dealing with the parties and negotiating, and that's what was used in the
16 settlement of the divorce action.

17 THE COURT: Yeah.

18 MR. POWELL: Some are 19, Your Honor, in your booklet if you're
19 curious.

20 THE COURT: 19?

21 MR. POWELL: Yeah.

22 THE COURT: Thank you.

23 MR. POWELL: It's got a case number --

24 THE COURT: Okay.

25 MR. POWELL: -- on the top of that pleading.

1 MR. WARNICK: So --

2 THE COURT: Okay, so it does represent that it is Clark County -- just to
3 make clear for the record that this is a public record for Clark County. They did
4 divorce -- they had different numbering back then. I didn't -- this is before I
5 even moved here.

6 MR. WARNICK: You can't pull it up on the screen though?

7 THE COURT: Yeah. So it's -- it was filed with Clark County, D48069.

8 MR. WARNICK: Right.

9 THE COURT: Okay.

10 MR. WARNICK: And then you go three years after that and you have
11 Eleanor going into her own attorney, doing her own estate planning, where she
12 would certainly be totally honest with her own attorney to make sure he knew
13 what all of her assets were so he could advise her properly. And therein, she
14 says clearly: My mother is entitled to 65 percent and I get 35 percent from this
15 Texas oil property.

16 So it's really hard to understand how Eleanor can expect anyone to
17 believe that she didn't understand that she only has 35 percent interest in that
18 oil property, up until 2013, when she came under the influence of her close
19 advisors -- those people whom she thought were giving her guidance from --
20 from God is what she's told one of the people. And they convinced her now
21 that she could, you know, make an assertion and a claim to all of the income
22 and so she did. And so, they've now created all these theories that they're
23 bringing up, which have morphed and changed over the course of this litigation,
24 to try to justify and show why they think she can prove that she was entitled to
25 all of the income.

1 One of the things that really misrepresented, we believe, is the fact
2 that Trust Number 2 was always entitled to the income from the Texas oil
3 property. There's nothing in any writing saying that. They point to the Texas
4 division orders as some evidence that that was the case. And all they project
5 on their screen, on the PowerPoint presentation, was a copy of the signature
6 page for those Texas oil division orders. They didn't project the attached listed
7 -- listing of all the owners of those -- the oil property that that company was
8 concerned with, in which it did not list Trust Number 2 as being the owner of
9 that property, but it listed the Connell -- either the Connell 1972 Trust or
10 Marjorie and Eleanor as Co-Trustees.

11 And we know, without any question of the doubt, that these Texas
12 oil companies know that the owner of that Texas oil property is the 1972 Trust,
13 so they have a record of that. It's on record in the Upton County Recorder's
14 Office, and there's nothing showing how any of that property has been
15 allocated under the Trust, because it wasn't done.

16 The allocation was made within the Trust and it's effective for that
17 purpose and it's binding upon the beneficiaries, but it wasn't done in the real
18 property records of Upton County. And so, for Eleanor's Counsel to assert that
19 it's clear that Trust Number 2 owned the Texas oil property, is just without any
20 basis.

21 So why did they put, in 1989 -- beginning in 1989, they pointed out
22 until about 2006, on certain oil division orders and leases, why do they just list
23 the EIN number of Trust Number 2? Frankly, we have the explanation from Mr.
24 Haina who explained that that was just done for convenience purposes that had
25 no binding effect or no legal effect on who was entitled to the income, and that

1 when that income came in it was always distributed 35 percent to Eleanor, 65
2 percent to Marjorie, and that's how the K-1s were issued and that's how the
3 tax returns were filed.

4 But we believe this is what happened with respect to that EIN
5 number. They've attached two statements -- or two letters from the IRS saying
6 what the EIN numbers were for the two Trusts, for Trust Number 2 and Trust
7 Number 3. Those are dated 2013. So we do not know when an EIN number
8 was ever acquired for Trust Number 3. All we know is, is that, beginning in
9 about 1989, Marjorie and Eleanor were asked to stop putting their own personal
10 social security numbers next to the signatures and to put an EIN number for an
11 entity, because it was a Trust that owned the Texas oil property.

12 So they selected an EIN number that they had, which was possibly
13 the EIN number that was then assigned to Trust Number 2. We don't know
14 what happened there, Marjorie's not here to help us, to testify. Eleanor waited
15 till she died to make her claims, and so, that's one of the reasons we're saying
16 to the Doctrine of Laches, Eleanor can't come in now and try to change history
17 by making these allegations that are just insinuations from the records but are
18 not proof of anything. But she's trying to use that as some proof that Trust
19 Number 2 always owned the Texas oil property.

20 But, we believe that they were using the EIN number that was
21 eventually assigned to Trust Number 2, and they kept using that because it was
22 convenient for them to do that. As a factual matter, I think we can assume
23 that the Court can take judicial notice. When the IRS tries to track income to
24 see if income has been properly accounted for, they would start off with the
25 Texas oil company and say: Okay, fine, you generate a lot of income from your

1 leasing and your drilling of this Texas oil property. What happened to that
2 income? You don't show a Texas oil company in all of your tax returns.

3 The Texas oil company says: Well, no, of course not, because we
4 sent some of this income to the beneficiaries who own this property. And
5 here's -- we sent this chunk to the Connell Trust under this EIN number. And
6 so what does it -- the IRS do then? They go to Mrs. Connell, Marjorie, and they
7 check with her and say: You don't show, under this Trust, that you claimed
8 on income taxes this year that you paid the income that this Texas oil company
9 says they sent to you.

10 And Marjorie says: Well, of course not, because this Trust wasn't
11 entitled to that income and never earned that income. This income just came in
12 and it was allocated then between myself, between Eleanor. Here are the K-1s,
13 this shows how the income is allocated, and this is how it's accounted for to
14 the IRS. The IRS checks the records and it checks out perfectly. It traces the
15 income through to Marjorie and Eleanor and that's the end of the question.
16 That is the binding proof of who owns the oil rights -- the Texas oil rights.

17 The insinuations they're trying to draw from the signing of those
18 division orders from 1989 and after, have no relevance to really proving how
19 the -- the Texas oil property rights were allocated under the Trust. The Texas
20 oil companies don't really have any care in getting involved in any Trust dispute
21 or determining who's entitled to it after it's -- you know, given to the Trust.

22 The other thing that should be pointed out is that they admitted that
23 from the time, excuse me, that Mr. Connell died until at least 1989, Eleanor and
24 Marjorie were using their own social security numbers on those Texas oil
25 division orders. So if that's the case, what does that mean? Does that mean

1 that they claim personal ownership over that Texas oil property? Of course not.
2 They were simply providing the Texas oil companies with some tax number at
3 their request. But the real determining proof as to who was entitled to that
4 income is borne out in the tax returns that are filed and the K-1s that are
5 issued, and those were issued 35 percent to Eleanor and 65 percent to
6 Marjorie.

7 So you've asked what happened in 2009 after --

8 THE COURT: Uh-huh.

9 MR. WARNICK: -- after Marjorie died? Okay. I've explained how they
10 had a meeting with Mr. Straus and how he explained to them, all three of them:
11 This is what's going to happen, this is what happened to them in the past. The
12 only asset that was transferred by Marjorie, in her Will, to Jacque and Kathryn
13 that was left in Trust Number 3, was the Texas oil property, 65 percent
14 interest. There's no other assets transferred under that power of appointment.

15 So we know that Marjorie knew that she owned that 65 percent
16 interest, Mr. Straus knew that she owned it. They included it in her Federal
17 Estate Tax Return and we know that Eleanor never indicated any objection or
18 any contrary information was given that she owned really all that interest --

19 THE COURT: And is --

20 MR. WARNICK: -- and it should have been included.

21 THE COURT: Is that -- is there an exhibit that references the -- what they
22 did with respect to Marjorie's --

23 MR. WARNICK: With the --

24 THE COURT: -- upon Marjorie's death? The settlement?

25 MR. WARNICK: Let's see it's number --

1 MR. POWELL: Your Honor, are you -- about the 706?

2 THE COURT: Yeah, uh-huh.

3 MR. POWELL: There is -- yes, Your Honor, there is a page --

4 MR. WARNICK: Yeah. Seven, item 7.

5 THE COURT: Okay, so --

6 MR. POWELL: Item 7, Your Honor. I actually have as well -- I have an
7 entire copy of the return if you'd like to see it.

8 THE COURT: Okay.

9 MR. POWELL: It's a document that we've already disputed with -- in
10 front of Commissioner Bulla and Commissioner Bulla ruled, we did not have to
11 produce it. It goes in part to what exactly Jacque and Kathryn would have
12 received.

13 THE COURT: Uh-huh.

14 MR. POWELL: If you'd like to review a complete copy of that, I have one
15 to present to you if you'd like it.

16 THE COURT: Okay, thanks.

17 MS. RENKA: We would like to review a complete copy as well.

18 THE COURT: Yeah.

19 MR. POWELL: Your Honor, that's not going to be possible because
20 Commissioner Bulla already ruled, we didn't have to produce it. So this would
21 be essentially in camera to you.

22 THE COURT: Right. I just want to make clear on the record that we have
23 an exhibit that corresponds to what Mr. Warnick is arguing that --

24 MR. WARNICK: And we have attached that page.

25 THE COURT: -- that this was, in fact, how Marjorie in her -- upon her

1 passing --

2 MR. WARNICK: We would --

3 THE COURT: -- how this was reported to the IRS.

4 MR. WARNICK: You can see that, that Exhibit 7 includes that Texas oil
5 property on that portion of that page of the 706 tax return that was filed. And
6 as Mr. Powell says: We can show you the whole tax return if Your Honor
7 would like to see it.

8 So you have the fact that you include all of the 65 percent in
9 Marjorie's Estate and on her Federal Estate Tax Return. You have the fact that
10 there was the meeting with Mr. Straus. He explained to Eleanor, Jacque, and
11 Kathy how that 65 percent interest passed to them and how it was going to
12 continue then paying to them 65 percent of the income.

13 After that you also have the fact that Eleanor asked Jacque to
14 continue administering the Trust since she had done it for two -- 10 years
15 before that, with Marjorie, and she knew everything that was happening and
16 Eleanor was happy to sit back and let that 35 percent income come into her
17 without any indication or objection that she was entitled to more than 35
18 percent.

19 That brings us up to the 2009 Petition, which they're trying to
20 assert, indicates that Eleanor knew she was entitled to all of the income from
21 the Texas oil property, and Jacque and Kathryn consented to that by signing
22 that Petition or consenting to that Petition. What they failed to do -- what
23 number is that Petition? It's Number 2?

24 MR. POWELL: Number 2.

25 THE COURT: Okay.

1 MR. WARNICK: If you look at the number -- Exhibit Number 2, which is
2 the Petition. Eleanor's attorneys have only cited a portion -- a paragraph -- 18 --
3 they cite all of their 18, but only a portion of paragraph 19. That this is -- that
4 this is the -- the rationale that they give. They say, okay, you look at paragraph
5 18, it says: At the death of Marjorie, Trust Number 2 owned land and oil and
6 gas shares in reserves, and income located at Upton County, Texas. That's
7 true, Trust Number 2 owned 35 percent of that Texas oil property.

8 They then go on to argue that because there's a value of \$700,000
9 given to those oil assets that that's an admission that that was all of the oil
10 assets and not just the 35 percent, and that's just their interpretation. That
11 doesn't necessarily follow, at all, because that's approximately what those oil
12 assets were valued at, but here's the key. You go on to paragraph 19, it says:
13 Pursuant to Article Fourth, which article governs the administration of Trust
14 Number 2, all income from the oil assets is to be paid to the Petitioner as the
15 Residual Beneficiary, during her lifetime; and they stop there.

16 But if you read the next sentence, it puts in context what oil
17 property is being talked about. It says: Such income has been paid to the
18 Petitioner since the creation of Trust Number 2 after W. Connell's death. What
19 income was paid to Eleanor during all of the years following W.N. Connell's
20 death? Only 35 percent of the income was ever paid to her, annually, up to
21 that time. That puts it in context, and they always leave that sentence out,
22 because they know that that sentence puts in context what was being done in
23 that 2009 Petition and what those representations meant as to ownership of
24 the oil rights. And you --

25 THE COURT: And the reason it's significant is that as a Residual

1 Beneficiary, she didn't have to wait for her mother to die to start receiving
2 income, she would receive income upon the death of whichever was the first to
3 die. That Eleanor would begin receiving her share, immediately, upon the death
4 of one or the other of her parents.

5 MR. WARNICK: Right.

6 THE COURT: She was not having to wait for the death of both parents
7 before she began receiving her Trust --

8 MR. WARNICK: That's correct.

9 THE COURT: -- income.

10 MR. WARNICK: And then, you should also remember, as I pointed out on
11 this chart, excuse me, Your Honor, [cough heard], boy, I had -- getting over the
12 flu and -- or then I'll start coughing like I'm going to die, but I won't die, it's just
13 a --

14 THE COURT: Just don't spread it all around.

15 MR. WARNICK: I'm not -- I'm not spreading germs, I believe, anymore.

16 In 1975, the only other separate property of Mr. Connell that was
17 put into the Trust -- the Clark County property, was all given to Eleanor by
18 Marjorie and Mr. Connell.

19 THE COURT: Yeah.

20 MR. WARNICK: That's a gift that has to be taken into consideration in
21 what they were doing and what they felt was nice and proper for Marjorie.
22 Now, Counsel have asserted that all of his Clark County property didn't go to
23 Eleanor, because they looked at the deed and they can see that there's a
24 description as to water rights on the -- in -- coming from Section 29 that wasn't
25 included in the deed description. Oh, excuse me. But if you read the deed

1 which we've attached to our -- I'm sorry. [Drinks water]. There we go.

2 If you read the deed that's attached to our papers showing how this
3 property was given to Eleanor, it clearly describes all of the real property that
4 was in the Trust, went to Eleanor in 1975. They didn't include the description
5 of the water rights. Under Nevada law, you don't have to do that. There's a
6 presumption on the deed when you transfer the real property, the water rights
7 go along with it, but that's the only thing that wasn't added to the deed that
8 was given to Eleanor.

9 So we know, 100 percent certain, that the only property left in the
10 1972 Trust, when Mr. Connell died, was the Texas oil property. We know that
11 that property had to be allocated to Eleanor under Trust Number 3. We know
12 this wasn't some type of an Heirloom Trust that would prevent that. You have
13 to remember too that, Mr. Connell wasn't the only Trustor of this Trust. He
14 and his wife had been married, when he died, for 37 years. The report is they
15 had a great, loving marriage; no one disagrees with that.

16 To say that he was just thinking about his daughter and not thinking
17 about Marjorie, doesn't make any sense. They didn't even really know who
18 was going to survive between the two of them. It was pretty obvious that Mr.
19 Connell would die first. But the bottom line is, to try to argue that this was
20 some Heirloom Trust that would only protect Eleanor in getting the Texas oil
21 property just is not supported by any of the provisions in the Trust or the facts.

22 The other thing you have to remember is, when they made this
23 Trust out of 1972, whatever the intention was at that time, there was seven
24 years went by before the Trust was then to be interpreted and enforced. And
25 during that time they gave this big chunk of property for \$55,000, which would

1 be worth probably four or five hundred thousand dollars today, to Marjorie,
2 leaving only the Texas --

3 THE COURT: To Eleanor.

4 MR. POWELL: Eleanor.

5 MR. WARNICK: Eleanor, I'm sorry. Leaving only the Texas oil property in
6 the Trust. So how could these accountants and these professionals who had to
7 take and interpret the Trust, file the Texas Estate Tax Return, file the 706 for
8 the Federal Government, how could they do anything else but what they did in
9 allocating 65 percent to Eleanor and 35 percent -- I mean, 65 percent to
10 Marjorie and 35 percent to Eleanor? They couldn't have done anything else.

11 They couldn't do anything with the community property because
12 that had already been used to already reduce the marital tax reduction as much
13 as it could, and to have another 79,000 -- or 76,000 that they could still use,
14 so they took the Texas oil property as directed in the Trust. And as directed in
15 the Trust, that allocation becomes the affected allocation of rights out of Trust
16 Number 2 and Trust Number 3, thereafter.

17 So we just -- we just think it's crystal clear that there's no other
18 conclusion that can be drawn than that's what happened. Maybe there'd be
19 some argument if for the next 34 years they didn't follow that allocation, but
20 they followed that allocation for the next 34 years. They filed documents, they
21 took actions in divorces, in estate planning, all representing that that was the
22 correct allocation and that's the way it was done.

23 And we believe, 100 percent, that it was done properly and there
24 was nothing done wrong. Certainly nothing done intentionally wrong in the
25 filing of the estate tax returns and the allocation of the property between Trust

1 Number 2 and Trust Number 3. The only thing that Eleanor has brought up
2 now to try and challenge that is this interpretation of the Texas division orders
3 from 1989 to 2006 where they only put on there the EIN number for Trust
4 Number 2.

5 But if you would read the complete division orders, which are
6 attached to our moving papers and their moving papers, you can see in the
7 exhibits attached to each of those division orders and the leases, they don't say
8 that the property's owned by Trust Number 2. They say the property is owned
9 either by the W.N. Connell 1972 Trust or by Marjorie and Eleanor as Co-
10 Trustees, never saying Trust Number 2. That's just the inference they want to
11 draw from those division orders.

12 It'd be nice to have Marjorie here to testify and say: Baloney, that's
13 not true, but Marjorie's not here because Eleanor has waited until after she's
14 deceased in order to assert her claim; and that's why she's guilty of laches and
15 shouldn't be even countenanced and allowed to even assert a claim and go to
16 the merits in this case.

17 Just a couple of things they brought up that I should comment on.
18 They tried to insinuate that the adoption by Marjorie of Eleanor somehow tied
19 into this heirloom planning. Well, Your Honor knows that for an adult adoption
20 there's only two people that need to consent to that adoption. Mr. Connell had
21 nothing to do in consenting or allowing that adoption. It had to be Eleanor and
22 Marjorie who agreed to that adoption.

23 And why would Eleanor -- why would Marjorie do that? Because
24 she loved Eleanor. But she also loved Eleanor's children, Jacque and Kathy. So
25 that adoption clearly tied her close to Jacque and Kathy. And all through the

1 years, we know that she expressed great love for Jacque and Kathy. Okay,
2 let's see here.

3 They brought up that supposedly Jacque and Kathryn admitted in
4 their depositions that Eleanor was only the Trustee over Trust Number 2 and
5 they cited one little paragraph or one little sentence from, I think, Jacque's
6 deposition, to try to prove that. Neither of those depositions have been
7 reviewed -- been reviewed by Kathryn or Jacque. They have the right to review
8 them and make any corrections that are necessary, but I recall the questioning
9 in those depositions and I recall that Mr. Powell and I -- and I think it would
10 show in the depositions, objected time and again to them trying to get Eleanor
11 or her trying to get Jacque or Kathy to interpret the Trust.

12 They kept saying: Look, we're not attorneys. We don't know what
13 the Trust provisions mean. We don't know how this all comes about. And we
14 objected to that. They finally, in questioning, we think tricked her into saying
15 that, you know, Trust Number 2 owned all the oil property, or that Eleanor was
16 only Trustee over Trust Number 2. But we don't have to even worry about
17 what Jacque and Kathryn might have thought. They weren't the ones that
18 created the Trust, they weren't the ones that did the allocations. All they did
19 was inherit, from Marjorie, what they thought they were entitled to.

20 What we need to do is go back and look at the Trust provisions and
21 look at what happened. And if you look at the appointment of Eleanor as a Co-
22 Trustee, it clearly says: Over all of the separate property. It doesn't say over
23 the separate property in Trust Number 2, it says all of the separate property.
24 And that's why she and Marjorie, over the years, always signed the oil division
25 orders and the leases as Co-Trustees. They had the appointment, they had the

1 Trust, and they had the deed to the property all recorded. And the Texas oil
2 companies knew that's who they were dealing with.

3 They made some insinuation that Mr. Connell, in setting up the
4 Trust, was concerned about Marjorie's remarrying. Well, she was 60 years old
5 at the time he died, so I doubt that that was really a big concern that he had.
6 And they had a happy, pleasant marriage.

7 They criticized our expert report and tried to knock holes in it, in
8 trying to figure out how to deal with the Texas Estate Tax Return that we've
9 submitted that clearly shows how the allocation was made binding on the
10 Trust. They haven't offered anyone from their own side to give a different
11 interpretation or state how things happened. All the evidence before the Court
12 is, is that was done properly, it was done by experts who had a fiduciary duty.

13 And to insinuate that they would commit a tax fraud or violating the
14 Trust terms, simply to try to represent Marjorie's alleged -- I mean, Eleanor's
15 alleged generosity to Marjorie, which they didn't have any idea about because
16 Eleanor admits in her moving papers she had nothing to do with the preparation
17 of these returns; it just doesn't make sense when you try to put the whole thing
18 together and see if there's any line of logic and her reasoning there.

19 And I go back again to the annual tax returns that are -- have been
20 filed for 34 years and the lack any tax -- gift tax returns that have been filed.
21 Counsel seems to feel that that's not a big deal. Counsel seems to feel that,
22 you know, you can do that, that the IRS is not going to be upset about that.
23 Well, I wonder what an IRS agent would feel if they were in this courtroom and
24 heard Eleanor's explanation of what she allegedly did over 34 years in
25 reallocating income without having any legal authority to do that, which ended

1 up defrauding the IRS in the process.

2 They used Mr. Johnston's affidavit, the Texas attorney. He's one
3 of those fellows that got involved with these people who are the close advisors
4 for Marjorie. And he's given his opinion that those division orders somehow
5 equate to ownership of Trust Number 2. In the first place, he's not an expert.
6 They never submitted him as an expert, he's not been qualified as an expert,
7 and therefore, he shouldn't even be testifying as to any of those issues.

8 But, again, I think we pretty well explained how the Tax ID Number
9 came about and it doesn't prove anything. The thing that is the proof is, who
10 really received the income and who claimed it, and who showed it on the
11 income tax returns? And then, you go back to the allocation made in 1979
12 which supports all that. That's the proof as to who's entitled to the interest
13 under Trust Number 2 and Trust Number 3.

14 A little bit on that 2009 Petition. I mentioned there, reading in the
15 paragraph, which puts into context what Texas oil property rights were being
16 referred to, and it clearly wasn't a 60 -- I mean, a hundred percent interest, it
17 was only a 35 percent interest because it referenced that Eleanor received all
18 the income, over the years, from that interest. But Your Honor has to also
19 remember that in 2009, Eleanor -- Marjorie had died. They had this meeting
20 with Mr. Straus, they filed the 706, Jacque and Kathy are getting their 65
21 percent of the income like they're supposed to, and they're trying to assert that
22 then, Jacque and Kathy would sign some consents that said that they weren't
23 entitled to that, that they didn't think they had that.

24 The only purpose for that 2009 Petition is -- has been previously
25 argued, was to correct a lacking under Trust Number 2 as to who would be

1 designated as the beneficiary of the assets under Trust Number 2 when Eleanor
2 died. That, plus designating a new successor Trustee, because the First Bank
3 of Nevada was no longer in effect -- those were the two reasons why they filed
4 a 2009 Petition.

5 That 2009 Petition really has nothing to do with the dispute that's
6 before the Court at this time. It's simply a red herring argument that they've
7 recognized -- or raised in an attempt to take and extract some language out of
8 context to try to show that Marjorie -- or that Eleanor felt that she had all of
9 the right to the income.

10 And when you read it through and you read what happened and you
11 read the consents, which clearly say that they only apply to reforming the Trust
12 that deal with Trust Number 2 and to name a Trustee, you can see that by
13 signing those consents they never were saying that they agreed that Eleanor
14 was entitled to 100 percent of the income. That would have been totally
15 illogical, contrary to everything that had happened at -- up to that point in time
16 after Marjorie's death.

17 They've tried to assert that they're not the person making the claim
18 and subject to the Statute of Limitations and Laches, that they -- that Eleanor
19 knew all along that she was entitled to all of the income but was just being
20 generous, and that we're the ones that started this problem by filing this
21 Petition. How dare us -- how dare we file this Petition to try to recover the 65
22 percent of income that should belong to our clients. What choice did we have?

23 Did Eleanor come before this Court and file a petition saying: Hey,
24 I'm trusting this Trust that I'm a beneficiary to, I don't want to violate my
25 Trustee duties, I don't want to be unfair, I want to give people due process.

1 Court, please look at this Trust and determine if I'm entitled to a hundred
2 percent of the income or not. Did they do that? No. Eleanor just cut off the
3 income and by doing so, she's the one that started this whole dispute.

4 She's the one that made the claim in that process and she should
5 be precluded, now, from asserting that claim under Equitable Principles,
6 because 34 years went by before she even did anything. She claims she knew
7 all along she was entitled to it. Valuable witnesses and evidence has been lost
8 over the years because of her lateness in trying to file the claim.

9 And that's exactly why, under *Cooney*, it says: That claim should
10 be denied, it should not even been heard on the merits because it's clearly
11 forfeited and it would be -- excuse me -- wrong to even consider the claim.
12 Then again, we think, if you look at the merits of the claim, we don't believe
13 they have any basis for anything they're arguing.

14 Just a little bit on the counterclaims that Eleanor asserted under the
15 no-contest, and which we have asserted. She's arguing that Eleanor should not
16 be bound by the No-Contest Clause because she felt she had -- was entitled to
17 the income all along, and it was only in 2013 that -- when somebody objected
18 to her to taking all the income, that this whole thing started. Well, that's just a
19 semantical way of trying to dance around what was really happening.

20 She really filed a frivolous -- took frivolous action. She breached
21 the duties as a Trustee when she just cut that income off. She didn't even try
22 to give due process to our clients and take it before the Court, first, and get
23 instructions from the Court, she just reacted to her close advisors and they did
24 what they did, and she's been sitting on that now for a year and half taking in
25 all of the income. She argued that after that, because we filed this Petition and

1 we contacted the Texas oil companies and said: Hey, put a hold on the
2 distribution of income until we can get this resolved.

3 She's arguing that's tortious interference with the contract, but we
4 had no choice because the Texas oil companies weren't dividing that income
5 between Trust Number 2 and Trust Number 3. They would just send all the
6 income to Marjorie and then she had control over it and could spend it. And so
7 the only way we can try to --

8 MR. POWELL: Eleanor.

9 MR. WARNICK: -- I mean, to Eleanor, excuse me, spend, I'm sorry. And
10 the only way we could try to control that situation and keep a status quo was
11 to ask the oil companies to stop paying any income until the Court had a
12 chance to resolve this case. So we feel that that claim is totally frivolous too.

13 As far as the accounting goes, we know that Counsel have not
14 been on the case very long, but I have writings with Eleanor's prior Counsel
15 where they agreed that they were going to give to us an accounting and they
16 agreed that the letter that was given from Mr. King was just a temporary stop
17 gap measure that was given to us at the settlement negotiations with Mr.
18 Judge Saint-Aubin.

19 They agreed that the accounting was going to be forthcoming and
20 that that letter was not satisfactory to satisfy their accounting requirement. I
21 know there's no formal Petition filed with the Court for that accounting but we
22 did submit, in writing, to Eleanor's Counsel and they agreed, before they were
23 dismissed, that they were going to be providing that accounting and that their
24 accountant was working on the accounting.

25 So when it comes down to the end, if you try to summarize

1 Eleanor's claims, she's saying that everyone else in this case is lying, everyone
2 else is wrong. All the tax accountants and attorneys who handled Mr.
3 Connell's estate and prepared the tax returns and interpret the Trust, they all
4 did that wrong. And she's asserting that Marjorie then, during the years, was
5 not entitled to the income, even though Marjorie clearly said she was and knew
6 she was.

7 She's asserting that, notwithstanding, what she said in the Divorce
8 Decree and in her Estate Planning to her attorney, notwithstanding, she said she
9 was only entitled to 35 percent, that doesn't make any difference. We just
10 ignore that. And she's asserting that Jacque and Kathy are not telling the truth
11 when they say that that 2009 Petition had nothing to do with any declaration
12 that Marjorie -- or Eleanor was entitled to all the income. It just is ridiculous,
13 Your Honor, and that's why we've asserted, from the very beginning, that all of
14 her claims are frivolous.

15 She has no legal basis, no right. It's frivolous under equitable
16 procedures and it's frivolous in that she doesn't have any legal authority to
17 show why she would be entitled to anything more than 35 percent. That's why
18 we feel certain that that no enforce -- that No-Contest Clause should be
19 enforced under the Trust. She got confused there a little bit -- her Counsel did,
20 when we said, in one of our documents, that we were looking at the No-
21 Contest Clause under the MTC Trust and the 1972 Trust.

22 Well, at that time, the Will contest was still pending. And under
23 Marjorie's Will and their MTC Trust, there was also a No-Contest Clause and
24 she, Eleanor, was -- had the threat that she was going to be also penalized
25 under those documents for challenging Marjorie's Will.

1 THE COURT: But the statute changed in 2011, was it? And codified No-
2 Contest Clause, prior to that it was common law. So, how would we interpret
3 this? Because we've got the Trust itself written in '72, Dad dies in '79, Mom
4 dies in 2009.

5 MR. WARNICK: Good – good point, Your Honor. I've read those cases
6 though and I really think that, I think that the statute pretty well codified the
7 recent cases before that which granted the exceptions for good faith efforts to
8 interpret Trusts.

9 THE COURT: Uh-huh.

10 MR. WARNICK: Good faith efforts to seek one's rights, and we recognize
11 that that's the case. I mean, if anything, in this case, Jacque and Kathy who'd
12 been receiving income for four years and the grandmother had been receiving
13 the same income for 30 years; they certainly had a right to wonder why Eleanor
14 thought she had the right to just, you know, cut off their income and claim a
15 hundred percent. We don't believe that Eleanor had a legitimate claim to that
16 hundred percent in what she did.

17 We think she reacted to her counselors, those people around her.
18 She can't show any legal basis other than this heirloom theory that she came
19 up with, which has holes in it and can't be supported, and she can't prove that
20 there's any other property that could be used to fund Trust Number 3. She
21 can't really challenge the tax returns that were filed and claim that they were
22 just bogus and that the people weren't doing their job, and that they committed
23 tax fraud.

24 And so, we think that her claims are frivolous and that she has to
25 bear the consequences of that No-Contest Clause, along with paying for all the

1 attorney's fees that have been incurred, and she should be removed as Trustee,
2 and Jacque is the next person appointed under the Trust. She's done that for a
3 long time. She knows how to do it. She'd be the most efficient. Kathryn
4 would prefer to have her on as Trustee now too, and that would be the best
5 way to proceed in future administration of the Trust.

6 THE COURT: Thank you.

7 MR. WARNICK: If you have any other questions on anything that I might
8 be able to clarify, Your Honor. I know there's been so much covered, I'd be
9 happy to question or, you know, comment on anything.

10 THE COURT: If I could hear from Eleanor's attorneys and we may have a
11 discussion at the end here.

12 MR. WARNICK: Thank you.

13 THE COURT: Okay. Ms. Renka.

14 MR. POWELL: Your Honor, just before -- I pulled up the 706 now, the full
15 copy.

16 THE COURT: Okay.

17 MR. POWELL: I don't know if that's something you want to see in its
18 entirety or not.

19 THE COURT: Well, at this point, I appreciate you having it available. And
20 at this point, I don't know if we need it or not but --

21 MR. POWELL: Okay.

22 THE COURT: -- we'll see what Ms. Renka has to say.

23 MR. POWELL: Okay. Okay.

24 MR. POWELL: Thank you.

25 MS. RENKA: Thank you, Your Honor. I think it's important to remember

1 that, essentially, we are here on Summary Judgment, and so, the most
2 important thing for the Court to consider is the admissible evidence before the
3 Court and not the opinions or speculation of Counsel as to what might have
4 happened, or why things might have happened. So, I'm just going to highlight
5 a couple pieces of evidence that we've been talking about.

6 First, I wanted to start off with the Answer in the Divorce
7 Proceedings that I think Your Honor was asking me about before, and I don't
8 think I was on the same page with, Your Honor, so I'd like to revisit that issue.
9 It is Exhibit 19 in the Exhibit Book provided by Jacqueline and Kathryn's
10 Counsel. And it is the answer of Mr. Hartman. This is not a pleading filed by
11 Eleanor. And on page 3, paragraph K, it states: Admits the allegations of
12 paragraph 4-12, that the Defendant has checking and savings accounts at First
13 Interstate Bank with no balances, therein.

14 So what that is, is Mr. Hartman admitting that he has accounts at
15 First Interstate Bank with no balances in them. Then there's a semi-colon and it
16 says: However, the Plaintiff, which would be Eleanor, has a separate account
17 at Nevada State Bank in her name, from which she receives 35 percent of a
18 Trust created by her deceased father, from which she derived over \$35,000 in
19 1980.

20 So first, this is not a statement of Eleanor, this is statement of Mr.
21 Hartman in his Answer. And Eleanor was receiving 35 percent of the income
22 because she was giving 65 percent to Marjorie, not because she didn't own a
23 hundred percent of the income. So I wanted to talk about that Answer.

24 We keep hearing from opposing Counsel that there was no other
25 separate property that could have possibly funded the marital tax deduction.

1 We walked Your Honor through the deeds and showed that nobody knows
2 what happened to the other parcel of property, Section 29, in Clark County that
3 was designated in the Trust, as William Connell's separate property. So to say,
4 definitively, that there was no other separate property, cannot be stated
5 accurately, given the evidence before this Court at this time.

6 MR. WARNICK: Your Honor, do you want us to just look at that right
7 now and then see if --

8 THE COURT: I've got it right here. Yeah, it's --

9 MR. WARNICK: Because I think that's totally wrong statement.

10 THE COURT: Okay.

11 MR. WARNICK: I think it's just a misrepresentation.

12 THE COURT: Thank you. It's Exhibit 16, so I've got them.

13 MS. RENKA: So what we're talking about is that there's, essentially,
14 three paragraphs in the legal description, and if you look at the bottom two, one
15 talks about a parcel of property that's in what's referred to Section 28 --

16 THE COURT: Uh-huh.

17 MS. RENKA: -- which is a way to refer to parcels of property. And --

18 MR. WARNICK: Where you looking at now? Okay, I see. Okay, fine.

19 MS. RENKA: And the second paragraph refers to a completely separate
20 piece of property in Section 29. Now we know that Section 28 was deeded
21 out to Eleanor, out of the Trust, to Eleanor -- no dispute there. That's all we
22 know. There's no evidence that Section 29 was ever transferred anywhere.
23 There's nothing before this Court on that issue.

24 MR. WARNICK: I'm not following this. Are we looking at Exhibit A of
25 the Trust to see what's in Exhibit A? Is that what you're referring to?

1 THE COURT: We're looking at -- that's Exhibit A.
2 MR. WARNICK: Yeah, Exhibit A. The Trust doesn't include that 29 in it.
3 MS. RENKA: Yes, it does.
4 THE COURT: Yeah, it does. Yeah, I've got it here.
5 MS. RENKA: Okay. Thank you, Your Honor, just wanted to clarify that.
6 MR. WARNICK: I'm sorry.
7 MS. RENKA: And there's a highlighted Exhibit A, which has the same
8 exact legal description with Section 28 and Section 29.
9 THE COURT: Right, and that corresponds to the deeds that transferred a
10 portion -- or some or all of it to -- in Exhibit 16.
11 MS. RENKA: Right. Exhibit 16 shows Section 28 going to Eleanor --
12 THE COURT: Uh-huh.
13 MS. RENKA: -- but we don't ever know what happened to --
14 THE COURT: Okay.
15 MS. RENKA: -- Section 29. Okay.
16 MR. WARNICK: I'm sorry, Your Honor, I'm just trying to following you.
17 What -- where are they getting Section 29 from in the Trust?
18 THE COURT: Okay. It's right here on the -- on page 2 of Schedule A.
19 MS. RENKA: Yes.
20 THE COURT: The -- there's a portion of -- the exhibit -- the description of
21 real property starts on page 1 --
22 MR. WARNICK: Right.
23 THE COURT: -- and carries over onto page 2, and then, second paragraph
24 on page 2 is: Together with a -- an undivided 1/30th interest, water flowing,
25 blah, blah, blah is -- and for the certain artesian well located on --

1 MR. WARNICK: Right, I'm reading that.
2 THE COURT: -- Section 29. It's not --
3 MR. WARNICK: That's --
4 THE COURT: -- Section 29.
5 MR. WARNICK: -- that's water.
6 THE COURT: It's the well.
7 MR. WARNICK: That's a water -- and I --
8 THE COURT: It's a well.
9 MR. WARNICK: -- as I pointed out in my argument, the water goes with
10 the deed so --
11 THE COURT: Right.
12 MR. WARNICK: -- when they did the deeds later on, they didn't include
13 that --
14 THE COURT: Right, it's --
15 MR. WARNICK: -- but that includes the water
16 THE COURT: -- a well. It's not Section 29 itself, it's a well.
17 MR. WARNICK: So -- but that is --
18 THE COURT: Very common. That people will have wells on -- in real
19 properties and the well is -- they have a right to a well on a neighboring piece of
20 property --
21 MR. WARNICK: But when you transfer --
22 THE COURT: -- it's very common.
23 MR. WARNICK: -- property under Nevada Law, if you transfer the real
24 property, the water rights that go with it --
25 THE COURT: I know.

1 MR. WARNICK: -- are transferred.

2 THE COURT: Yeah.

3 MR. WARNICK: So I don't understand --

4 MS. RENKA: However, in the paragraph that discusses Section 28, it is a
5 completely separate parcel of property from a separate parcel property that is
6 contained in Section 29. They are completely separate pieces of real property,
7 with separate rights attendant to each one. I think Your Honor's following me
8 so I'm going to move on.

9 THE COURT: Uh-huh. Yeah

10 MR. WARNICK: I'm sorry, just one --

11 MS. RENKA: Thank you.

12 MR. WARNICK: -- just one thing. If you look at the bottom there --

13 THE COURT: Mr. --

14 MR. WARNICK: -- you see the deed?

15 THE COURT: Mr. Warnick, please, no.

16 MR. WARNICK: I'm sorry, okay.

17 MS. RENKA: Next, we talked for a minute about the power invasion on
18 page 5 of the Trust document, in paragraph 2, where it references that the
19 Trustee has the Power of Invasion. And we just wanted to note that on page 3
20 in paragraph 6, Eleanor is -- it's also said that Eleanor will be referred to as
21 Trustee as well as Marjorie. So as we've been saying, when it comes to the oil
22 assets, Mr. Connell wanted to make sure that Eleanor had control over those
23 assets at -- as well, by being a Co-Trustee, so that Marjorie could not act on her
24 own without Eleanor, in relation to the oil assets.

25 We've also heard some talk about Eleanor breaching her fiduciary

1 duties as Trustee of Trust Number 2, but we have no evidence in front of this
2 Court to support summary judgment that Eleanor has breached her fiduciary
3 duties. Eleanor has always maintained that Trust Number 2 owned a hundred
4 percent of the assets -- of the oil assets. And it's Eleanor's responsibility to
5 safeguard those assets, not just for herself, not just for Jacqueline and Kathryn,
6 but for their children as well.

7 So Eleanor's trying to enforce the terms of the Trust here is not a
8 breach of her fiduciary duties. We have no evidence that she's breached her
9 fiduciary duties. In fact, kind of tying into the accounting issue, Exhibit 6 to
10 Eleanor's Reply in the Summary Judgment Briefing is a copy of the letter from
11 Gamett and King's CPA's, to Eleanor, attaching a document from Wells Fargo
12 explaining that Eleanor's holding, pursuant to this Court's order, 65 percent of
13 all the oil assets.

14 The second paragraph of the -- of this letter summarizes it:
15 Attached to this letter is a letter from Wells Fargo Bank indicating that there's
16 \$1,306,649.72 in Trust bank accounts as of October 14th, 2014. This amount
17 exceeds the 65 percent of oil, gas, mineral, and interest royalties, and surface
18 rents required to be held in the Trust Accounts, according the Court Order filed
19 January 6th, 2014.

20 The amount that would represent 65 percent of 1,602,044 --
21 602,442 dollars and 33 cents is \$1,041,587.51. So, essentially, Eleanor's
22 holding, pursuant to this Court's Order, more than the 65 percent of the oil
23 assets since the Court issued that order.

24 So, what we have is evidence that Eleanor's doing exactly as this
25 Court ordered. She is enforcing the terms of the Trust and she is acting as a

1 fiduciary as a Trustee, and she has not breached any of those duties.

2 We have attached, to our briefing as Exhibit 19, of the Omnibus
3 Opposition, the division orders. And I know Jacqueline and Kathryn would like
4 this Court to ignore them, but oil companies need a representation --
5 representations and warranties as to who owns the oil rights so that they
6 properly disperse it, so that they are not embroiled in a lawsuit about dispersing
7 significant proceeds to the wrong people.

8 So the fact that numerous oil companies, over decades, sent these
9 division orders and required Marjorie and Eleanor to sign as Co-Trustees,
10 indicates that they always recognized that Trust Number 2 was the only owner
11 because Eleanor was only ever a Trustee of Trust Number 2. There is no
12 evidence, not one single piece of paper that shows that Eleanor ever even
13 attempted to act as a Trustee, under Trust Number 3, because Trust Number 3
14 was Marjorie's Survivor's Trust. Anything that was transferred into Trust
15 Number 3 was Marjorie's. Eleanor had no power or authority over it. Eleanor
16 was never appointed as a Trustee of Trust Number 3.

17 And those division orders show that the oil companies Eleanor and
18 Marjorie always acted for, for all those years, in accordance with Eleanor's
19 understanding that Trust Number 2 owned a hundred percent of the assets.
20 And we also have Marjorie's letters and Marjorie's handwritten bookkeeping
21 acknowledging Trust Number 2 as the owner, and using only Trust Number 2's
22 EIN number.

23 Now it's interesting that Jacqueline and Kathryn want to base their
24 case on two tax returns: Marjorie's 706, which we have not had an
25 opportunity to review the whole document, we have one page, and the Texas

1 Inheritance Tax Return. They base their case on those tax documents, but yet
2 ask this Court to disregard the fact that Eleanor and Marjorie, for decades, used
3 the EIN number for Trust Number 2 in relation to the oil assets, every single
4 time, on every single division order.

5 And when they -- before the Trust had the EIN numbers issued, a
6 separate one for Number 2 and a separate one for Number 3, Eleanor and
7 Marjorie were signing as Co-Trustees using both of their individual social
8 security numbers, again, consistent with the fact that they were acting as Co-
9 Trustees of Trust Number 2. It's important to note that we have not one single
10 document in this whole entire case where Eleanor says: I was only ever entitled
11 to 35 percent.

12 THE COURT: We don't have anything that ever says she's only entitled
13 to 100 percent either though, do we?

14 MS. RENKA: But we do. We not only have --

15 THE COURT: Where?

16 MS. RENKA: -- the plain language of the Trust --

17 THE COURT: No, no, no, no, no.

18 MS. RENKA: -- we have decades of division orders.

19 THE COURT: No.

20 MS. RENKA: We have Marjorie's letters telling the oil companies you
21 have to do this, Co-Trustees, Trust Number 2, and always using Trust Number
22 2's EIN number, always.

23 THE COURT: That doesn't answer my question. Where do we have
24 anything that ever says that: My mother's not entitled to 65 percent, I'm
25 giving this to her out of the goodness of my heart, it's all my money, it's not

1 her money; I'm taking 35 percent but I'm entitled hundred percent. There's --
2 that's nowhere.

3 MS. RENKA: That's nowhere, but there's nowhere where Eleanor says
4 she only ever owned 35 percent either.

5 THE COURT: Okay.

6 MS. RENKA: And again, Eleanor's understanding that Trust Number 2
7 owned all the oil assets, is consistent with the terms of the Trust, the intent of
8 her father, and decades of paperwork, Marjorie's handwritten paperwork,
9 division orders from the oil companies. This didn't just come out of nowhere.

10 There's a couple other pieces of evidence that wouldn't be
11 admissible or justify summary judgment in this case. When we look at Mr.
12 Straus' declaration, he's advising that if oil assets are going to be -- or are
13 property of Trust Number 3, there needs to be a deed. There was never a
14 deed. And to say that after spending \$75,000 on attorney's fees and they
15 didn't want to incur the expense of drafting a deed and recording it, just does
16 not make any sense.

17 We have this, what is supposedly an intake sheet for Eleanor's
18 Estate Planning. There is no declaration or anything else authenticating this,
19 and again, 35 percent. Eleanor was receiving 35 percent, but that doesn't
20 mean that Eleanor or Trust Number 2 didn't own a hundred percent. But she
21 was receiving at that time, 35 percent. That would be a true statement. It's
22 not inconsistent with Eleanor's position.

23 And again, we keep hearing Counsel's opinion that Eleanor is under
24 undue influence and consulting with bad people and talking to God. There's no
25 evidence anywhere in here that Eleanor ever said she was advised by God. And

1 we have an EPS social worker saying that there's no Undue Influence. Eleanor
2 is completely with it, very intelligent, and capable of managing, not only her
3 personal finances, but the finances of the Trust.

4 And as I mentioned, when it comes to the 706 of the MTC Trust,
5 we have never seen the complete document. We have one page. And it's our
6 understanding that on a Schedule A, in a form like this, this would actually be a
7 reporting of individually owned assets, which wouldn't make any sense because
8 even if Marjorie was entitled to 65 percent it would be through the Trust and
9 not individually. But before any opinions were to be drawn or summary
10 judgment granted, we would at least request the opportunity to inspect and
11 analyze the entire 706, and not just one page of it.

12 We talked about the -- the 2009 Petition that was filed in this case.
13 In the last sentence that Mr. Warnick pointed out doesn't change anything
14 about Eleanor's point about this Petition. The Petition still states that Trust
15 Number 2 owns the oil assets and that Eleanor is entitled to 100 percent as the
16 sole income beneficiary. And the consents state that Jacqueline and Kathryn
17 are contingent beneficiaries. I don't think that we can ignore that. They're
18 contingent beneficiaries. They're not income beneficiaries. They are not
19 entitled to receive anything right now. And --

20 THE COURT: That's what we talked about when we talked about the
21 significance that -- in the Trust itself, that it makes it very clear that Eleanor is
22 to begin receiving income, immediately. She doesn't have to wait for the death
23 of her mother, she's an income beneficiary.

24 MS. RENKA: Correct, Your Honor. And we also wanted to point out that
25 in paragraph 18, where it states that the value of the oil assets is 700,000 --

1 and Counsel was arguing that this Petition's only referring to Eleanor's 35
2 percent, but we actually have evidence to the contrary of that because --

3 THE COURT: The 706.

4 MS. RENKA: -- Jacqueline testified in her deposition that that was the
5 value of a hundred percent of the oil rights.

6 THE COURT: Yeah, I think so. I think that's consistent with the page we
7 have from the 706 as well. Yeah. That exhibit. They value that at 461,957
8 and 148,398, so that's --

9 MS. RENKA: Approximately.

10 THE COURT: The 600, about right.

11 MS. RENKA: Well, I'd just like to read a couple lines from the deposition
12 into the record, Your Honor. This is Jacqueline's deposition and we're at page
13 171. At the bottom of 170, Jacqueline's being questioned about the Petition,
14 the paragraph where it states the \$700,000. If you go to the top of 171:

15 "Question: And what is the 700,000 reflective of?

16 Answer: It was the oil itself, not the land value.

17 Question: Would it be the hundred percent of the oil itself?

18 Answer: Probably close. I think it was 719,000, if you need an exact
19 answer."

20 So to argue that a Petition was only asserting that we're only
21 discussing Eleanor's quote, unquote, 35 percent, is simply not supported by the
22 evidence.

23 We've also heard a lot of tax return -- a lot of talk about tax returns
24 for years and years and K-1s. The only tax returns we have here are the Texas
25 Inheritance Return, one page of Marjorie's 706, or the MTC Trust 706, and a lot

1 of talk about a missing Federal 706 for Mr. Connell that was never produced.
2 So, there's no evidence before this Court about any K-1s or any tax returns for
3 Marjorie or Eleanor, other than those two that we've been talking about.

4 Also, we talked a bit about a statement from Mr. Johnston, the
5 Texas attorney, from his declaration. And he stated that the division orders are
6 reflective of ownership because oil companies basically require representations
7 and warranties about ownership. And now, Counsel wants to say that he
8 doesn't know anything about this and he's not a trustworthy source. Well, first
9 of all, he's an attorney that practices in this area in Texas, so he has
10 knowledge.

11 And second of all, Jacqueline must think that he's trustworthy and
12 knowledgeable, because she utilized his services in putting together the 2012
13 Apache deal and negotiating the leases involved therein. We talked a little bit
14 about the accounting again against -- there's statutory requirements as to how
15 contingent beneficiaries can request an accounting. We have no evidence that
16 such a request was ever made. And we have no evidence that Jacqueline and
17 Kathryn objected to the accounting that was given by Gamett and King in
18 October 2014.

19 And certainly not providing anything in addition to that letter
20 without a formal request is not a breach of fiduciary duties by Eleanor. Again,
21 as far as a No-Contest Clause, Eleanor is enforcing -- attempting to enforce
22 Trust Number 2's ownership of the oil assets under the Trust. She is not
23 attempting to contradict the Trust. And part of the relief that's being requested
24 for Eleanor, supposedly breaching her fiduciary duties, is to appoint Jacqueline
25 as the Trustee. But this is in direct contravention to what Mr. Connell wanted.

1 He specifically made sure that Eleanor was always a Trustee over those oil
2 assets. And so, to remove that right from her now, when she's the sole income
3 beneficiary for her life, directly contradicts the terms of the Trust and Mr.
4 Connell's intent.

5 And again, there's no evidence of delay. Eleanor did not prepare,
6 review, or approve the tax return that was filed when Mr. Connell passed. The
7 first time Eleanor knew that her daughters were going to contest Trust Number
8 2's 100 percent ownership was, number one, when behind her back they filed a
9 Probate of Marjorie's Will in Texas. And number two, they filed a petition in
10 this case for Declaratory Relief that they are entitled to 65 percent.

11 Within a couple months, Eleanor had, on file, her Answer and her
12 Counterclaims. She did not waive any rights, she did not sit on any rights,
13 she's certainly not guilty of Laches or anything else.

14 And it's important to remember that even after everything that
15 we've discussed today there's a couple things that are undisputed. It's
16 undisputed that Eleanor was only ever the Trustee under Trust Number 2,
17 because there's no evidence to the contrary. It's undisputed that for decades
18 the division orders were signed by Marjorie and Eleanor and Trust Number 2's
19 EIN was used.

20 So, when you look at the volumes of the evidence, as opposed to
21 what's missing or what might be out there, Eleanor's entitled to summary
22 judgment. Alternately [sic], alternatively, if Your Honor is not inclined to enter
23 summary judgment on the entire case, of all of Eleanor's claims, we would
24 request that Your Honor make findings of undisputed fact that we laid out -- we
25 laid out 12 enumerated, specific, factual findings on page 16 of Eleanor's Reply

1 in the Summary Judgment briefing. And we would ask that Your Honor, at the
2 very least, enter those findings.

3 THE COURT: I should probably ask you a couple things that I had asked
4 Mr. Warnick and give you a chance to be heard on them as well. I think we --
5 we've kind of talked about the No-Contest Clause, but again, since I specifically
6 asked, you know, this is kind of weird, because it covers this really long period
7 of time here. Statutorily we've only had the statute on No-Contest Clause, I
8 think it's since like October 2011. But we have this -- I think 2009 would be
9 the very last date so, given that, common law would apply, not the statute,
10 correct?

11 MS. RENKA: Honestly, Your Honor, if Your Honor -- if that was important
12 to Your Honor's decision, I'd probably like the opportunity to brief that --

13 THE COURT: Okay.

14 MS. RENKA: -- but I would say --

15 THE COURT: All right.

16 MS. RENKA: -- that Eleanor's claim to enforce the No-Contest Clause
17 would arise when the challenge to the Trust, that would give rise to the No-
18 Contest Clause occurred, and I would say that happened very close in time,
19 September 2013 when the Texas Probate was filed and --

20 THE COURT: Okay.

21 MS. RENKA: -- when the Petition for Declaratory Relief was filed in this
22 case.

23 THE COURT: Okay. All right. And then the -- the other thing I ask when
24 Mr. Warnick was talking about this -- the Texas action and the -- maybe it was
25 intended to cause this permanent split into the -- into the two Trusts. And that

1 was my question to him was: Well, is that what ought to happen here. Is this
2 -- assuming the Court determines that, you know, Eleanor's only entitled to 35
3 percent, Marjorie had the other 65 percent and she passed it to -- through her
4 Trust and Will to her granddaughters -- they get 65 percent, Trust 2 and Trust
5 3. Is this -- is that an appropriate resolution here, because maybe they just
6 really should not have to rely on each other.

7 MS. RENKA: I want to make sure I'm understanding Your Honor's
8 question so I give the right answer. If Your Honor was to decide that Marjorie
9 was entitled to 65 percent and she exercised her power of appointment --

10 THE COURT: Right.

11 MS. RENKA: -- and it then went to the MTC Trust --

12 THE COURT: Correct.

13 MS. RENKA: Okay. So then, what's the rest of the question?

14 THE COURT: That -- is it appropriate to actually do an official split into
15 two separate Trusts, 2 and 3, and to each of them has -- can have their own
16 Trustee, because Marjorie appointed her granddaughter under her Trust as her
17 Trustee for her Trust, and then, very clearly, Eleanor was -- has always been a
18 Trustee under her -- the parent's original Trust. So the two -- the number -- the
19 Trust No. 2.

20 So nothing ever indicates that she was ever intended to be a
21 Trustee of Trust Number 3 so, is that an appropriate thing to do, is just to split
22 it and say: Go in peace?

23 MS. RENKA: Well, obviously, Your Honor, we wouldn't agree with that
24 outcome --

25 THE COURT: Right.

1 MS. RENKA: -- but I think that the Trustee -- separate Trustee -- I see it
2 being problematic because --

3 THE COURT: Uh-huh.

4 MS. RENKA: -- of the original Trust Agreement. It seems that Mr.
5 Connell's intent was always to ensure that Eleanor had a say in what happens
6 to those oil rights. And so, I think to remove her from control over a majority of
7 those oil rights, would contradict the intent of the Trust Agreement. So it's
8 problematic in that sense.

9 THE COURT: I see. Okay. All right. Thanks.

10 MS. RENKA: Thank you, Your Honor.

11 THE COURT: All right. Well, then, I think we've got everything fully
12 addressed here. So I think we just have to go through and discuss here. As we
13 previously indicated, the Petitions that are on record are the Jacqueline and
14 Kathryn Petition for Declaratory Judgment Regarding Limited Interest of Trust
15 Assets and the -- there is an Answer to that from Ms. Ahern and a
16 Counterclaim.

17 Then there is a -- all the other briefing under those two -- the
18 Petition and the Answer and Counterclaim, have been subsumed into these two
19 motions. The -- and so to the extent that there were any motions out there
20 that were noticed that don't have an order in them, the Clerk can just indicate
21 that, that was mooted by subsequent action and a filing of these motions for
22 summary judgment.

23 So then we get down to the -- next Petition we have is the one that
24 was filed on March 6th, 2014. That's Jacqueline's Petition to Compel the
25 Trustee to Distribute Accrued Income and Future Income Received from Oil,

1 Gas, and Mineral Leases, and a Declaration of the Applicability of the Doctrine
2 of Laches. I mean, it's always been on the record. I don't know why you guys
3 say it hasn't been on the record, it's pretty clear.

4 Then the final are these cross-motions for summary judgment,
5 omnibus opposition, all those kinds of things so.

6 [Colloquy between Court and Court Clerk]

7 THE COURT: The Petition to Release Trust -- Trust funds for the payment
8 of administrative expenses, insurance premiums --

9 THE CLERK: No.

10 THE COURT: -- that one was --

11 THE CLERK: It's granted.

12 THE COURT: It was granted.

13 [Colloquy between Court and Court Clerk]

14 THE COURT: Right, yeah, that petition still stands. That is -- the Petition
15 for Determination of and Construction and Interpretation of Language related to
16 Trust Number 2 is, I believe --

17 MS. WAKAYAMA: Subsumed.

18 THE COURT: -- subsumed into these Motions for Summary Judgment,
19 but that Petition was filed and would remain standing. It's just that the -- it
20 was -- there was nothing ever done in opposition to it until we got the Omnibus
21 Opposition. And then we have the -- I think Ms. Montoya's Petition for
22 Construction and Effect of the Probate Court Order. That one's been dealt with
23 because that was where everything got stayed, is that correct?

24 MS. WAKAYAMA: Your Honor, that one's actually subsumed as well.

25 MR. WARNICK: Agreed.

1 THE COURT: Okay. All right. So then we've got the Motion for
2 Summary Judgment and the Countermotion for Summary Judgment.

3 MS. RENKA: And the Motion To Amend.

4 THE COURT: Three and six.

5 So, I'll tell you what I -- what, for me -- even if I were to assume
6 that Mrs. Ahern's interpretation of this language is correct, I still have a big
7 problem with the fact that she let 34 years go by and I don't -- this record is
8 replete with the fact that she had notice, and she let this go on, operating on
9 the assumption that she had 35 percent.

10 And nowhere in here does it tell us that I have 35 percent until my
11 mother dies and then I have a hundred percent, it's just -- she had 35 percent
12 that's real -- very clear. And the reason why I kept asking is, isn't Marjorie -- I
13 understand that this was her husband's separate property when they wrote this
14 original Trust in 1972. But she still -- one of the Trustors, Settlers, whatever
15 you want to call it, and a Trustee, and a Beneficiary. And she operated for 30
16 years after her husband died on the assumption that she owned 65 percent of
17 this.

18 Everything indicates that that was her understanding, that she took
19 her own estate planning based on that. That she believed that 65 percent of
20 this came to her under this Trust, because the only way you could do this
21 Trust, which was intended to minimize taxes, was to put the separate property
22 into the Trust for her. And they'd already given every other piece of separate
23 property to Eleanor, all their -- other Clark County land. In fact, it's in the -- it's
24 in a Divorce Answer that, you know, some of the -- they were living on
25 property that they'd gotten from Eleanor's parents.

1 I mean it's just -- it just seems really clear to me that Mr. and Mrs.
2 Connell had listed, in Schedule A, a bunch of property but it changed. By the
3 time Mr. Connell died, in 1979, that list had changed because they had
4 conveyed substantial of his separate property to his daughter, his right to do,
5 his property -- nothing you can say about it. And they deeded it. It was their
6 right to change whatever property they had, in their Trust, as their needs and
7 lifestyle permitted or required. No problem, it happens all the time.

8 So, just because there was separate property in the original Trust,
9 does not mean that Mr. Connell intended only the oil and gas property to go to
10 his daughter, because by the time he died he knew that's all he had left in the
11 Trust, was his oil and gas property. I mean, very clearly -- I mean, this -- these
12 people were really sophisticated about this and really knowledgeable and
13 understood the value of this income-producing asset that they had and, you
14 know, technically valued pretty low.

15 I mean, you know, for estate and tax purposes it's really nifty that
16 you can value these at a couple hundred thousand dollars when, clearly, it was
17 producing income long before even Mr. Connell's death, that was substantially
18 more, because \$35,000 is -- a year, is still a pretty good amount for Mrs.
19 Connell for her 35 percent -- I mean, Mrs. Ahern for her 35 percent. I mean,
20 pretty clearly this was producing a pretty substantial amount of money, you
21 know, at least another hundred -- probably another hundred thousand dollars for
22 the parents.

23 So, I mean, I just -- they knew what they had and they understood
24 it, and I understand the argument that he wanted this Texas oil and gas
25 property to only go to his daughter, he didn't want his wife to somehow lose it

1 through a subsequent marriage or divorce, but she couldn't, because by the
2 very terms of the Trust, she couldn't do anything with it other than leave it to a
3 family member. I mean, that's pretty clear. I just, you know, I don't buy this
4 argument that the only thing that was ever going to -- Mr. Connell ever wanted
5 to see happen was for this be Eleanor's. I mean, he wanted it for his family.

6 And I understand that he did not want his wife, if she survived him,
7 to go out and marry somebody else and run off and Will this property away to
8 some, you know, boy-toy, for lack of a better term, but that wasn't going to
9 happen. He tied it up pretty well. I mean, this is -- you know, considering, this
10 is -- this is 30, 40 years old. This is pretty sophisticated stuff. I found this
11 really interesting that they had so carefully crafted this -- way, a long time ago,
12 to take full advantage of the power to protect against taxes, the power to
13 protect against some third-party stranger to the family coming in and getting
14 control over this.

15 I mean, this was always intended to benefit Mr. Connell's family
16 and I think it does. And -- so the problem I have is that, even if I were to
17 assume that Mrs. Ahern believed and that's her testimony, she believed it was
18 100 percent hers. I don't think that is supported, in any way, by the rest of the
19 evidence. And particularly, the biggest thing for me is that, after 30 years of
20 this 65/35 split, that when her mother writes a Trust and says: I'm giving my
21 65 percent to my granddaughters, that she didn't raise a stink. She didn't, and
22 she would have. And so that's the very last date.

23 I mean, even if she thought earlier she should've been getting more,
24 at some point in time maybe she originally thought she -- her mother should be
25 protected and she should be supporting her mother. But, if, at some point in

1 time she felt like it was unfair, she could have come in and raised this problem
2 and she never did. Right up until four years after her mother's death. It just
3 doesn't make any sense.

4 The -- I think that the interpretation that has been put forward by
5 her daughters makes perfect sense. The problem is: Should they have retitled
6 this land? I understand that it's these oil and gas leases and that it causes all
7 sorts of headaches with the companies who are paying a lot of money for these
8 oil and gas leases. And I can understand that there may be reasons why you
9 don't really want to do a formal division and Will and title this property, you
10 know, use deeds to convey it into these different Trusts.

11 I mean, oil and gas is way over my head, but I have to believe that
12 those guys are terribly sophisticated and can figure out a way to make it
13 happen if they needed to. So that's -- that's I guess my problem, is that, I think
14 the daughters' interpretation is consistent with the Trust. And more
15 importantly, the fact that Marjorie, another Beneficiary and another Settlor of
16 this Trust, relied and acted in accordance with that for 30 years.

17 But, more importantly, even if I believe that Eleanor thought she
18 was entitled to a hundred percent, she never, ever, ever, ever raised it over the
19 course of more -- after her mother died, never raised it. It's just -- it's just
20 inconceivable that if she really thought there was a problem here, that she
21 didn't do something to protect her rights, earlier. And so, I would have to say
22 that based on that she had waived any argument.

23 However, I got to say: This is where we get down -- that's why I
24 kept asking: Should we split this into two Trusts? How would we look at this
25 No-Contest Clause? There is, very clearly, a No-Contest Clause. I mean -- and

1 it's a good one. It's good as any that are written now under the statute. I
2 mean, it's a good No-Contest Clause. But my problem with this situation is,
3 this got so muddled up that I can't say anybody was challenging this Will or this
4 Trust, or Marjorie's Trust. The thing just got so messed up that I think you had
5 to come to Court and try to figure it out, unless you could work it out and
6 negotiate it yourselves. Amicably, you were going to have to come to Court.

7 And I don't see that anybody, in filing this action, filing the
8 counterclaims, anybody on either side violated the No-Contest Clause because it
9 is so confusing. And it's been so long that it makes it incredibly difficult to try
10 to prove because we don't have all those records from 1979 when -- I think
11 they called him Bill -- Bill Connell passed away, or anybody around who can
12 testify about that; it'd be great if we did. But, all of the people who have any
13 knowledge from way back when, are gone.

14 And I just think that everybody had a belief based on -- we're going
15 to assume that Ms. Ahern had a hundred percent belief that she was entitled to
16 hundred percent. That's fine, that's her belief. I think it was wrong but that
17 was her belief. And that the daughters thought their grandmother knew what
18 she had and she left it to them, and they acted in reliance on what their
19 grandmother told them she had. I think everybody was acting in good faith. I
20 just -- that's why I wanted to know -- I mean, are you viewing this as under the
21 statute or under common law?

22 I just think that this -- there's nothing else you could do here. I
23 mean, sad to say and I -- it's unfortunate that it has devolved into a very bitter
24 [sic], very bitter litigation and very hard feelings on everybody's side here, but --
25 I mean, it was just that combination of no action taken for 34 years, meaning,

1 it's incredibly difficult to go back and trace and figure out what anybody
2 wanted to do.

3 But the thing I have to say is important to me is the fact that this
4 was a separate property Trust going into fund the separate property portion for
5 his wife, and that's what she relied on for 35 years. She was also a Settlor of
6 this Trust. She was a Beneficiary of this Trust. She relied on that. She acted
7 on that. That's pretty significant to me because it's not just him. She also had
8 rights, and she clearly exercised those rights. And if her daughter thought: I'm
9 going to just leave this until Mom's gone, I'm not going to fight with my Mom,
10 then she should have raised it when her Mom died and she didn't.

11 The Petition, the way it was raised, that's not what it's about. It's
12 about making sure that Mom can't, you know, will away her 35 percent. This
13 -- very clearly, this stays with this family, which is -- wow. It's a real blessing
14 that their grandmother -- great -- great-grandmother, a very wise lady, in buying
15 this dirt in Texas -- smart woman.

16 Anyway. So that's, I guess, my concern is -- so when I get right
17 down to it that's my -- I guess my question is, when we get -- I can't see that
18 there was a breach of the No-Contest Clause. I struggle with whether there's a
19 breach of fiduciary duty, because I think as Ms. Renka pointed out, she's been
20 sequestering the money. So -- and she came in, as I said, I believe, in good
21 faith, to try to figure out: Am I right? Am I entitled to hundred percent? Or
22 was my mother right in assuming she had 65 percent? I can't say that's a
23 breach of fiduciary duty with stopping payment of her daughters without
24 coming in and asking for permission ahead of time? It's always better to ask
25 for permission than forgiveness, but that's what she chose to do.

1 Does that mean she breached her fiduciary duty because she didn't
2 come into the Court first? I -- you know, I'm just -- I'm struggling with that. I
3 just don't know what other evidence there would be of any kind of a Breach of
4 Fiduciary Duty. I truly believe -- I truly believe that everybody would be better
5 off if you split this into two and went their separate ways, but that's just me.

6 But I have a hard time saying I think that that was a Breach of
7 Fiduciary Duty. I just -- I can't see saying that she should be removed. I mean,
8 there's nothing that indicates that she's not fully able. I think the lady who
9 came out from Elder Protective Services said she understands exactly what
10 she's got and knows what she's dealing with. Now she -- as a fiduciary, she's
11 got -- owes duties to her daughters to manage it carefully.

12 And maybe -- I don't know, maybe it wouldn't be in her -- in
13 everybody's best interest to leave her in place. I mean, she's dealing with -- I
14 don't know. That's the thing, I just don't know what this is producing now
15 with the price of gas going down, if it's as much. I would have to guess it's
16 gone way down, but it was a lot of money every year, several hundred
17 thousand dollars.

18 MR. WARNICK: Do you want us to brief that issue, Your Honor? On the
19 removal of her as a Trustee? Do you want us to brief that and -- because I
20 think we can bring up some points and they can bring up some points. We had
21 -- in that settlement that failed, one of the things we had agreed to was appoint
22 a neutral party as Trustee.

23 MR. POWELL: Neutral, exactly.

24 THE COURT: And, you know, maybe that's in everybody's interest as
25 well, just to avoid any further bad -- because there may be a reason you don't

1 want to do the two -- the Trust 2 and Trust No. 3 thing. There may be a
2 reason. Like I said, that oil and gas stuff is way over my head and I would
3 never presume to tell those guys how it's best to deal with oil companies. You
4 got to rely on the people who deal with oil companies for that. That's -- that is
5 such a specialty. I would never, ever impose my view -- I think everybody
6 would benefit from having two separate Trusts, but I -- it's -- this is unique.

7 MS. WAKAYAMA: And, Your Honor, just --

8 THE COURT: This is unique. If this was like a stock fund, who cares?
9 But it's not, it's oil and gas revenues and those are their own thing.

10 MS. WAKAYAMA: Your Honor, just for the record, Ms. Ahern obviously
11 relies on professionals to help her in --

12 THE COURT: Right.

13 MS. WAKAYAMA: -- not only this process, but also the management and
14 administration of the oil assets, and Jeff Johnston and Stan Crawford who
15 apparently do this for a majority of their practice --

16 THE COURT: Uh-huh.

17 MS. WAKAYAMA: -- do oversee and assist her with it, just like they did
18 when the Apache deal closed. So it's not like Mrs. Ahern is just doing this
19 willy-nilly.

20 THE COURT: Right.

21 MS. WAKAYAMA: And she does have the help of a professional who is
22 skilled in this area.

23 THE COURT: Right.

24 MR. WARNICK: I think if I could make a recommendation, let the parties
25 resolve this. Either say: You have to separate these out, deed the properties

1 out to Trust 2 and Trust 3 and go your separate ways, unless you want to
2 avoid the cost of doing that and can work together, fine. But, we frankly feel,
3 there will be serious problems down the road.

4 THE COURT: Yeah, my -- my concern -- I don't -- I truly -- I don't see this
5 as a cost issue, Mr. Warnick; it's not a cost issue. It's -- it really is this problem
6 of -- because at some point in time it's all coming back together.

7 MR. WARNICK: That's the problem too.

8 THE COURT: And hopefully, Ms. Ahern lives as long as her Mom did. I
9 know it's not her biological mom, but her mom lived to 90 --

10 MR. WARNICK: But --

11 THE COURT: -- so hopefully Ms. Ahern's got 20 more years.

12 MR. WARNICK: But Mrs. Ahern has admitted in her own paperwork and
13 her own declaration that she's 76 years old, she has serious health problems,
14 she's been in the hospital.

15 THE COURT: Uh-huh.

16 MR. WARNICK: And Your Honor knows that she's under the influence of
17 people what -- we do not feel are in her best --

18 THE COURT: Okay.

19 MR. WARNICK: -- interest and taking advantage of her.

20 THE COURT: Well --

21 MR. WARNICK: And we would ask that if nothing else then, we separate
22 the interests out.

23 THE COURT: And that's why I said, Mr. Warnick, I think that the Petition
24 that filed -- was filed by Mr. Solomon, 2009, and the -- I got to tell you, this is
25 -- Mr. Connell's a sharp guy. He -- this is a really good Trust for effectuating

1 this idea that this stays in the family; that this is an income-producing asset
2 that will protect my family into perpetuity, or as long there's oil and gas and we
3 need it. But, you know, so I -- I'm less concerned about that. I mean, it's
4 really just a -- you know, is it a burden on her?

5 I don't think it's the cost. It really is this issue of dealing with the
6 specific nature. Like I said, if we were talking about somebody had income
7 producing stocks in a big account at Charles Schwab, that'd be easy to do.
8 This is oil and gas revenues, and it is a creature unto itself, and I think you
9 would have to talk to a professional to see, you know, is that in everybody's
10 best interest? It really might not be, because at some point in time, like I said,
11 it would all come back together.

12 MS. WAKAYAMA: And just for the record, Your Honor, it's very
13 important to Mrs. Ahern that at the very least she remains in control as the
14 Trustee, obviously with the aid of professionals that are already in place. And
15 that system is already in place --

16 THE COURT: Uh-huh.

17 MS. WAKAYAMA: -- in dealing with the oil companies and everything
18 else that flows from the administration. They have not alleged anything that
19 has been proven today for Breach of Fiduciary Duty. There's no reason to
20 remove her.

21 And in fact, keeping her in as Trustee would be consistent with Mr.
22 Connell's intent; that's what he wanted during her lifetime. They cannot point
23 to any provision in the Trust that says otherwise.

24 THE COURT: Right, and that's -- that's the thing, because like I said:
25 Marjorie appointed her granddaughters, so that's the thing. Do you have Co-

1 Trustees because there are Co-Trustees during Marjorie's life? Do you continue
2 with Co-Trustees? Do you appoint some Third-Party to work with them? I
3 mean, that's really the issue for me. And it's really less a matter of truly a
4 breach of duty as just a, with all due respect, I don't think this is going to work
5 and --

6 MR. WARNICK: I -- there's one thing we haven't pointed out, Your
7 Honor. We didn't really focus in on a lot of the things that had been done, but I
8 think if we called our clients, they would point out that during the time that
9 Eleanor's been as Trustee, she has been late in doing things, she hasn't
10 followed through on things. She's jeopardized some of the interest under the
11 Trust. The costs of administration have escalated, tremendously, with the
12 people that she's hired around her to do things, unnecessarily.

13 THE COURT: Uh-huh.

14 MR. WARNICK: It's a simple thing to administer. Money comes in, you
15 split it 35/65, and Eleanor's hired all these people and she's paying a lot of
16 money under the Trust and she's incurring a lot of expenses.

17 THE COURT: Uh-huh.

18 MR. WARNICK: We would ask that --

19 THE COURT: Yeah, because I'm not -- like I said --

20 MR. WARNICK: -- we separate them out into --

21 THE COURT: That's why I said: None of this has really been briefed and

22 --

23 MR. WARNICK: Right.

24 THE COURT: -- I don't really know what any of these issues are. I mean,
25 it just seems to me that the logistics of it -- if you can't split it into two

1 separate Trusts and just let them deal with their own, which would be the
2 easiest thing, I -- because I just can't say that I know of any grounds to remove
3 her, or at least from her own 35 percent. And that's my problem here is --

4 MS. WAKAYAMA: Your Honor, what --

5 MR. WARNICK: You mean when a Trustee -- instead of coming to the
6 Court, deals for herself, takes all of the income. She wasn't taking and setting
7 --

8 THE COURT: Uh-huh.

9 MR. WARNICK: -- aside any income, initially. For two months she took
10 all of the income and hasn't accounted for it --

11 THE COURT: Uh-huh.

12 MR. WARNICK: -- and just dealt for her own self-interest, ignored the
13 interest of two other people under the Trust -- that that's not a serious breach
14 of Trustee duties to act in that way? I mean, if it's pretty serious.

15 THE COURT: I say it's always better --

16 MS. WAKAYAMA: Your Honor, there's no evidence --

17 THE COURT: -- to ask for permission than forgiveness.

18 MS. WAKAYAMA: There's no evidence, at all, to substantiate what Mr.
19 Warnick is accusing --

20 THE COURT: Okay, great.

21 MS. WAKAYAMA: -- Ms. Ahern of. In fact, the Gamett and King letter
22 shows differently. There is more than --

23 THE COURT: Yeah.

24 MS. WAKAYAMA: -- 65 percent.

25 THE COURT: And that's why I said I --

1 MR. WARNICK: That's not correct, Your Honor, the --

2 THE COURT: Oh, okay.

3 MS. WAKAYAMA: But regardless --

4 MR. WARNICK: -- the Gamett and King letter --

5 MS. WAKAYAMA: -- what I would suggest --

6 MR. WARNICK: -- only date from 11 November, on.

7 THE COURT: Okay.

8 MR. WARNICK: It doesn't account for the months before the Court got
9 involved, and we can show that.

10 THE COURT: All right.

11 MS. WAKAYAMA: Your --

12 MR. WARNICK: And there's a big gap in the -- in the accounting.

13 THE COURT: Okay, thanks.

14 MS. WAKAYAMA: Your Honor, what I would suggest --

15 THE COURT: Uh-huh.

16 MS. WAKAYAMA: -- just because I would like to consult with my clients
17 --

18 THE COURT: Sure.

19 MS. WAKAYAMA: -- on this, is that maybe the Court hold a status check
20 on the issue of solely just the Trustee.

21 THE COURT: Yeah. And that's -- I think that's -- and perhaps there's a
22 way to work it out. I -- as I said, I -- I don't see anything based on what we did
23 here, just with this Motion for Summary Judgment that, to me, shows Breach
24 of Fiduciary Duty. Yes, it is always better to ask for permission than
25 forgiveness but, as I've said: I'm going to take, as uncontroverted, her belief

1 she had a hundred percent. It's totally inconsistent with everything in the case,
2 but if it's her belief, it's her belief.

3 That's why I said: I just can't see enforcing this No-Contest
4 Clause, and that makes it difficult for me to get to Breach of Fiduciary Duty,
5 because it requires something.

6 MR. WARNICK: But you --

7 THE COURT: And I think she --

8 MR. WARNICK: -- you recognize there's going to be conflicts.

9 THE COURT: If she has a good faith belief that she's entitled to a
10 hundred percent, even if she's getting bad advice from people who surround
11 her, she has a belief. And, you know, is that really a Breach of Fiduciary Duty?
12 I mean, unless she went out and just spent all the money. We don't know that.
13 Yeah.

14 MR. POWELL: Your Honor, I just -- maybe I can --

15 THE COURT: Mr. Powell.

16 MR. POWELL: -- get the issues combined here. I've always pointed out
17 from the inception of my involvement -- and I was, with all due respect to
18 everybody else in the room --

19 THE COURT: The only person who's still standing.

20 MR. POWELL: I -- I'm -- yeah, I'm the last man standing.

21 THE COURT: Exactly.

22 MR. POWELL: I get a medal on the way out the door. This has always
23 been a beneficiary versus beneficiary dispute.

24 THE COURT: Uh-huh.

25 MR. POWELL: We just so happen to have Ms. Ahern as a Beneficiary, but

1 also the person which I analogized before as the one upstream --

2 THE COURT: Uh-huh.

3 MR. POWELL: -- that can dam the water. So the issues, I think, are
4 being a little bit mixed, or at least I'm perceiving them to be mixed, is what Ms.
5 Ahern did as a Trustee, that wouldn't affect the No-Contest Clause.

6 THE COURT: Right.

7 MR. POWELL: What Ms. Ahern did as a Beneficiary, that would affect a
8 No-Contest Clause.

9 THE COURT: No, she did -- what --

10 MR. POWELL: Two separate issues.

11 THE COURT: Right.

12 MR. POWELL: Because to make a declaration, and again, this is what Mr.
13 Warnick was pointing out. And this -- I believe and we tried the transcript, day
14 one, since I was first in front of you, I said: Your Honor, you would expect any
15 Trustee, if there's a question -- and there was clearly a question, because there
16 was mediation in Texas.

17 THE COURT: Uh-huh.

18 MR. POWELL: Jacque had asked in April of 2012 --

19 THE COURT: I remember all that.

20 MR. POWELL: -- Mother, let's split this off, let's split this off. Please do
21 this, please do this now. So the issue coming back, again, is that you know
22 there's an issue, and as a Trustee, even though you are also a Beneficiary, you
23 have a fiduciary obligation to come to Your Honor and say --

24 THE COURT: Uh-huh.

25 MR. POWELL: -- there's an issue, there's a dispute --

1 THE COURT: Well, I'm sure --

2 MR. POWELL: -- before you as Trustee --

3 THE COURT: Uh-huh.

4 MR. POWELL: -- unilaterally say: Okay, I'm cutting off all the income and
5 now I'm taking all of the income --

6 THE COURT: Right.

7 MR. POWELL: -- and that's -- this is the accounting issue that we have is
8 that --

9 THE COURT: And that's going to get to their argument about the 2009
10 Petition that started this whole thing. I don't think the 2009 Petition did what
11 they argue it did.

12 MR. POWELL: It -- and --

13 THE COURT: But Ms. Ahern's argument is: I went in in 2009 and I
14 petitioned, and my daughters consented, and it was very clear I got a hundred
15 percent. I don't think that's clear at all from that Petition.

16 MR. POWELL: Well, and I --

17 THE COURT: I don't think that was -- the Court never ordered that --

18 MR. POWELL: And I --

19 THE COURT: -- so.

20 MR. POWELL: -- would say every evidence says otherwise.

21 THE COURT: Right.

22 MR. POWELL: And you'd --

23 THE COURT: Right.

24 MR. POWELL: You'd have to show me, or any would have to show me
25 where in the order it says that. And likewise in that order --

1 THE COURT: Okay.

2 MR. POWELL: -- where is there any declaration --

3 THE COURT: Right.

4 MR. POWELL: -- that the Court is accepting any of these representations

5 --

6 THE COURT: Exactly.

7 MR. POWELL: -- even being --

8 THE COURT: And that's what I said.

9 MR. POWELL: -- true?

10 THE COURT: There was never --

11 MR. POWELL: Exactly.

12 THE COURT: There was never an order.

13 MR. POWELL: Exactly.

14 THE COURT: There was never an order, but she did make a Petition in
15 2009. So if her argument is: I believed I had a hundred percent, it was always
16 my belief. I filed my Petition in 2009, believing I had a hundred percent.
17 Nobody -- she didn't tell the Court.

18 MR. POWELL: Right.

19 THE COURT: The Court never ordered that.

20 MR. POWELL: Right.

21 THE COURT: But if she believes that -- that's my problem. See, that's
22 my problem.

23 MR. POWELL: Yeah, no, I understand. It's --

24 THE COURT: So.

25 MR. POWELL: -- and I know I, obviously, I don't want to rehash the

1 issues.

2 THE COURT: Right.

3 MR. POWELL: I'm just trying to frame kind of where we're at now --

4 THE COURT: Right.

5 MR. POWELL: -- which is -- which is just that -- seeking that -- seeking
6 the enforcement of the No-Contest Clause is as a beneficiary --

7 THE COURT: Right.

8 MR. POWELL: -- not for actions done --

9 THE COURT: You know --

10 MR. POWELL: -- it --

11 THE COURT: I agree.

12 MR. POWELL: Exactly.

13 THE COURT: I agree. I under -- I understand and that's --

14 MR. POWELL: So -- and just to go to the other points of -- I'm in full
15 agreement with you, issues like this don't get better, so --

16 THE COURT: Right.

17 MR. POWELL: I -- as I see it there's two options: We split it off,
18 officially, between 2 and 3, or we take 3 and that goes completely to the MTC
19 Living Trust.

20 THE COURT: Right. And that's why I said --

21 MR. POWELL: Those are those two options and that's that clean
22 separation and split.

23 THE COURT: And that's why I said: I would never order that unless we
24 had a professional that both -- professionals that both sides trust and rely on
25 who would say: That's in your best interest, let's do it --

1 MR. POWELL: Uh-huh.

2 THE COURT: -- because I'm not convinced it is.

3 MR. POWELL: Uh-huh.

4 THE COURT: Because, like I said, this isn't a stock fund at Charles

5 Schwab that we can split into 65/35 real easily.

6 MR. POWELL: Yeah, exactly.

7 THE COURT: It doesn't work that way --

8 MR. POWELL: Yeah.

9 THE COURT: -- it just doesn't.

10 MR. POWELL: Right.

11 MR. WARNICK: Do --

12 THE COURT: And --

13 MR. WARNICK: Do you want us to get that for advice?

14 THE COURT: I would never, ever presume to think I knew anything about

15 oil and gas law, I just wouldn't.

16 MR. POWELL: Right.

17 THE COURT: So, I just think that you have to know that that will work.

18 MR. POWELL: Yeah.

19 THE COURT: And I -- to me it makes the most sense. I don't know that

20 it'll work.

21 MS. WAKAYAMA: And, Your Honor, that's why I proposed doing a

22 status check because --

23 THE COURT: Right.

24 MS. WAKAYAMA: -- I don't know that either. And so, I would like to --

25 THE COURT: I think you need time.

1 MS. WAKAYAMA: -- consult with the experts to see what exactly, you
2 know, is entailed in managing the oil rights and administration and everything
3 else, so then that way this Court can make an informed decision on who best is
4 suited to serve as Trustee.

5 THE COURT: And there really are three options: It's -- have one person
6 as a Trustee for everybody --

7 MR. WARNICK: Uh-huh.

8 THE COURT: -- just the way it is now, 65/35, just one person, split it --

9 MR. WARNICK: Uh-huh.

10 THE COURT: -- or have Co-Trustees. And I would never presume to tell
11 the parties, you know, what the best solution is, because until we know if this
12 -- what effect is this going to have on these oil and gas revenues? It's such a
13 unique income-producing asset -- totally unique. That, you know, you have to
14 know first if -- how these oil and gas companies -- and, you know, hopefully at
15 this point now, whoever's been holding money will release it if they have.

16 I think at this point in time we can also get an order that says: As
17 of now, the funds that had been held need to be distributed.

18 MR. POWELL: Plus we need, again, going back to when they stopped.
19 That's the other issue is: Ms. Ahern took a hundred percent when she cut off
20 Jacqueline and Kathy and that was never properly hers.

21 THE COURT: Okay.

22 MR. POWELL: So we need --

23 THE COURT: All right.

24 MR. POWELL: -- that going all the way back in time.

25 THE COURT: Yeah, we can address that too.

1 MR. POWELL: Yeah.

2 THE COURT: I mean, but for me, right now, that -- we know what's been
3 held because we've got a letter saying this has been held --

4 MR. POWELL: Sure.

5 THE COURT: -- so let's make the division --

6 MR. POWELL: I agree.

7 THE COURT: -- and --

8 MR. POWELL: I agree.

9 THE COURT: -- distribute those funds. Let's notify whoever we have to
10 notify --

11 MR. POWELL: Yeah.

12 THE COURT: -- that there's been a determination. But you still are going
13 to -- even for that go -- talking -- going to the oil companies, you're still going to
14 probably have to have no -- talk to these oil and gas attorneys and see what do
15 they really need in going to these -- in going to these oil companies. Because if
16 you come back to them and say: Now we're splitting it, you know, that's just
17 going to blow everything up again. These guys are real touchy. Very clearly
18 they have issues, and you can appreciate why. This is a really big deal in Texas
19 and --

20 MR. POWELL: Your Honor, just to point one thing out because it -- you --
21 and you would never be expected to have the context of this full picture, but
22 the actual dirt and the oil rights, it's actually more of a family affair with Ms. --
23 Mr. Connell's family anyway --

24 THE COURT: Yeah, yeah.

25 MR. POWELL: -- so --

1 THE COURT: Very clearly, yeah.

2 MR. POWELL: -- so the division -- just for your context, the division of
3 everything, even though it sounds like it would be hard to do, it's actually being
4 done within the family members already, because they usually, collectively
5 negotiate --

6 THE COURT: Uh-huh.

7 MR. POWELL: -- leases and stuff --

8 THE COURT: Right.

9 MR. POWELL: -- because it's the same dirt.

10 THE COURT: Okay, yeah, Counsel gave me --

11 MR. POWELL: It's just -- it's cutting the properties.

12 THE COURT: Counsel gave me the big map that shows --

13 MR. POWELL: Yeah.

14 THE COURT: -- all the locations.

15 MR. POWELL: Right.

16 THE COURT: Very clearly this was like an old ranch --

17 MR. POWELL: Right.

18 THE COURT: -- in Texas.

19 MR. POWELL: You got it.

20 THE COURT: I assumed there were other Connell family members that --

21 MR. POWELL: You got it. Exactly.

22 THE COURT: -- and the --

23 MR. POWELL: So just --

24 THE COURT: Like I said: I just think grandma was -- great grandmother
25 was --

1 MR. POWELL: Yeah.

2 THE COURT: -- pretty smart lady --

3 MR. POWELL: So that issue is --

4 THE COURT: -- to make sure it stayed in the family --

5 MR. POWELL: -- doable though.

6 THE COURT: -- it's great.

7 MR. POWELL: That issue is doable in terms of the complete segregation

8 because --

9 THE COURT: And it may be.

10 MR. POWELL: -- the family all does it so.

11 THE COURT: And it may be -- this may be way easier than I'm making it

12 --

13 MR. POWELL: Right.

14 THE COURT: -- sound, but it's just that it's this oil and gas stuff that I

15 don't want to --

16 MS. WAKAYAMA: Your Honor, and I think --

17 MR. POWELL: Understand.

18 MS. WAKAYAMA: -- we just have not -- we should have an opportunity

19 to inform this Court.

20 THE COURT: Yeah, absolutely. So I think that we need -- you need to

21 research all those issues.

22 MR. POWELL: Okay.

23 THE COURT: I don't know how long that would take, maybe 30 days,

24 then we have a hearing.

25 MR. POWELL: Okay.

1 THE COURT: A couple weeks after that.

2 MS. WAKAYAMA: I would appreciate 30 days, Your Honor.

3 THE COURT: So we'd be going out about 45 days. So, I don't know
4 who's going to work on an order for this --

5 MR. WARNICK: I'll work on it, Your Honor.

6 THE COURT: -- but we'll discuss that in just a minute here.

7 THE CLERK: Are we doing this on a special day again or --

8 THE COURT: Do you think you're going to need more than just a -- when
9 you say a status check, Ms. Wakayama, are you thinking just a regular probate
10 day? Or are you thinking you'd want to come in and -- would it take
11 testimony?

12 MS. WAKAYAMA: Well, here's the --

13 MR. WARNICK: I think we could -- we could submit affidavits and have it
14 done in 15 minutes, I would think.

15 MR. POWELL: I would hope, yeah.

16 MS. WAKAYAMA: Your Honor, I was actually thinking to get whatever
17 opinion --

18 THE COURT: Uh-huh.

19 MS. WAKAYAMA: -- and a very detailed opinion from the Texas
20 attorneys to inform this Court. Just kind of like an advisory role on what it
21 entails to manage and administer the oil assets. And then I was just going to
22 file it in a status report to the Court before the status check. And, of course, in
23 the meantime I'll provide it with -- to Counsel and we can try to work out what
24 best --

25 MR. WARNICK: That's fine.

1 THE COURT: We haven't talk about any of that --

2 MS. WAKAYAMA: -- how best to proceed.

3 THE COURT: -- but do you guys want that under seal?

4 MR. WARNICK: That'd be fine, I think, don't you? I think that's fine,
5 we'd get a chance to explain it too and --

6 MR. POWELL: Absolute.

7 THE COURT: -- but would you want it -- I mean, do you want to make
8 this public, do you?

9 MR. POWELL: I don't have a problem with that.

10 THE COURT: Do you want it public? I would think you would not want it
11 public.

12 MS. WAKAYAMA: You know what, I would prefer it under seal just
13 because --

14 THE COURT: Yeah.

15 MS. WAKAYAMA: -- I don't know what they're going to put into the
16 report.

17 THE COURT: Yeah, I mean, because who knows. The people in Texas,
18 they might not appreciate having -- this is -- since this is multiple families,
19 having all this aired in Court here, I don't know.

20 MR. POWELL: They actually share the information freely --

21 THE COURT: Okay.

22 MR. POWELL: -- amongst each other so I -- I don't --

23 THE COURT: Okay, so --

24 MR. POWELL: -- don't --

25 THE COURT: -- if the request is made that we would seal it, you know,

1 we will.

2 MR. POWELL: Okay, that's fine.

3 THE COURT: Because I just -- it's just -- for this kind of an asset, I just

4 don't know that you want --

5 MR. POWELL: Oh, I understand.

6 THE COURT: -- the public knowing.

7 MR. POWELL: Basically, what it is, is -- like I said is: Collectively, when

8 they do the negotiations you have all the groups in the families --

9 THE COURT: Right.

10 MR. POWELL: -- basically going, these companies are offering this --

11 THE COURT: Right.

12 MR. POWELL: -- and then you have --

13 THE COURT: Who's got the best deal?

14 MR. POWELL: -- obviously personal negotiations --

15 THE COURT: And Apache won.

16 MR. POWELL: -- but it's all --

17 THE COURT: Yay.

18 MR. POWELL: Yeah.

19 THE COURT: So, I --

20 MR. POWELL: Exactly.

21 THE COURT: But that's what I'm saying. It's just, if for some reason --

22 MR. POWELL: Sure.

23 THE COURT: -- it's deemed that this --

24 MR. POWELL: If it's --

25 THE COURT: -- really isn't --

1 MR. POWELL: Yeah.

2 THE COURT: -- the kind of stuff you want made public --

3 MR. POWELL: Yeah.

4 THE COURT: -- then, if you would just indicate that to the Court. But --
5 and that has be shared with Counsel. So, for right now, my finding is: I would
6 grant Jacqueline and Kathryn's Motion for Summary Judgment, with respect to
7 their Petition. I do believe that the 65/35, either on the merits of the way the
8 Trust is written or just through 34 years of acquiescence, that's the division.
9 And so, that means I'm denying Eleanor's.

10 I am refusing to enforce the No-Contest Clause. I think there was a
11 good faith -- this was -- this was very clearly a confused mess, and I think
12 everybody had a good faith belief in their position, but it's Court and one side
13 has to win. So, I can't say that this was attempting -- this wasn't somebody
14 trying to do their sister out of money that Dad wanted to leave them. That's
15 what No-Contest Clauses are. That -- now this is very clearly -- what did this
16 mean 30 -- 5 years ago? And, you know, we had to do it this way, so there's
17 no other way to do it.

18 I'm going to reserve the issue of: What do we do about a Trustee?
19 I -- I'm not convinced there's been a Breach of Fiduciary Duty, but I'm willing --
20 I do believe that this is probably something that we have to make a
21 determination, first, as to what's in everybody's best interest with respect to:
22 Is it possible just to do this by segregating assets? Can a Trustee do this? Do
23 we need a different Trustee? Do we need to split it? All those issues have to
24 be addressed and we have to really talk about that as it -- that's its own
25 separate thing. So, I'm reserving on the Breach of Fiduciary Duty and the

1 whole issue of moving the Trustee.

2 At this point -- at this point, right now, I think -- I can't -- I don't
3 have enough information to rule on that issue, so that's what we're reserving.
4 And it may be something that's just as simple as just to work out amongst the
5 parties based on this. I do think though, at this point in time, that the funds
6 that have been reserved, need to be released.

7 MR. WARNICK: Your Honor, there was also an issue we've asked --

8 THE COURT: And any future -- and any future sums would be --

9 MR. POWELL: But going back to when they -- when it stopped being 65
10 percent, which is -- we don't have the accounting. That's the other problem is,
11 we don't have an accounting going back to what the official numbers were in
12 June of 2013.

13 THE COURT: Right.

14 MR. POWELL: So would --

15 THE COURT: Okay.

16 MR. POWELL: -- your order is, is from 2013 -- whenever it stopped being
17 65 percent --

18 THE COURT: Yeah.

19 MR. POWELL: -- to the present, that all needs to be made up.

20 THE COURT: Correct.

21 MR. POWELL: Good.

22 THE COURT: And --

23 MR. WARNICK: Your Honor, there's one other issue that we asked for
24 attorney's fees under the statute.

25 THE COURT: Uh-huh.

1 MR. WARNICK: Under the Trust Statute, it says that we're entitled to
2 attorney's fees in the Trust matter if the Trustee's been deemed to not have the
3 authority to do what she did.

4 THE COURT: Right. And again, because as I've said: I've not ruled yet
5 on Breach of Fiduciary Duty. I think that's also premature because, as I said:
6 The problem I have here is, I just think everybody -- everybody was so
7 entrenched in their view and it was just so complicated that I just think that,
8 you know, I have a hard time -- see.

9 MR. WARNICK: So is that just then being held until we file something
10 further, or are you making a decision now, Your Honor? That you're not going
11 to --

12 THE COURT: No. I -- you know, I'm going to reserve the issue of
13 attorney's fees because I'm not convinced that that's what we have here --

14 MR. WARNICK: Okay.

15 THE COURT: -- a situation in which there is a wrongful act. As I said,
16 kind of flippantly: Better to ask for permission than forgiveness and she didn't.
17 But, you know, does that rise to that level where attorney's fees would be
18 warranted? I just -- I don't know. So I kind of -- I would kind of like to see this
19 whole issue of that Breach of Fiduciary Duty, and more importantly, just
20 removal of the Trustee.

21 It just -- it seems like that should be a really simple thing to do, but
22 it's just -- it's not. It's pretty -- it's tough, because as has been pointed out --
23 Ms. Renka said many times and she's correct. Very clearly, Mr. Connell wanted
24 his daughter to have control over her money.

25 MR. POWELL: Your Honor, one other point to clarify, because these are

1 kind of issues that get debated, after the fact, and then we kick ourselves for
2 saying why didn't we --

3 THE COURT: Uh-huh.

4 MR. POWELL: -- raise this issue when we were in front of you to get a
5 clear ruling on this. There is a belief that -- going back to 2012, that Ms. Ahern
6 had used, from the Trust proceeds, money for her own attorneys, basically in
7 fight against Jacqueline and Kathy. So we'd also, again, anything that is being
8 used for Ms. Ahern's personal gain in a dispute, in litigation, which essentially
9 this has been going on that long with attorneys involved, should not be charged
10 and taken out of Jacque and Kathy's 65 percent. That's why, again, it comes
11 down to an accounting.

12 So, I understand that, until everybody sees the accounting,
13 including you, we can't make these determinations --

14 THE COURT: Right.

15 MR. POWELL: -- but I just want to put that on the record --

16 THE COURT: I understand.

17 MR. POWELL: -- that there is a belief that there was approximately
18 \$96,000 --

19 THE COURT: Okay.

20 MR. POWELL: -- which, again, you don't -- a beneficiary is not -- is
21 having to pay money out of their own pocket to have themselves fought in
22 situations --

23 THE COURT: Which would really just be -- it would just be an accounting
24 issue as far as --

25 MR. POWELL: Correct.

1 THE COURT: -- leveling who --
2 MR. POWELL: Correct.
3 THE COURT: -- pays what for what.
4 MR. POWELL: And we just want to make sure, again, that that's --
5 THE COURT: That you're not waiving it.
6 MR. POWELL: -- preserved for the record that --
7 THE COURT: Okay.
8 MR. POWELL: -- you have that right to make that to the extent, again,
9 because, obviously, that's an issue.
10 THE COURT: Okay. Ms. Wakayama, do you have more one more --
11 anything to say with --
12 MS. WAKAYAMA: No, the only thing I wanted to say, but Mr. Powell
13 clarified, is that right now, before this Court today, that's the belief and there's
14 no evidence in front of you on that issue.
15 THE COURT: Yeah, we don't -- we just don't have it. So we're reserving
16 those issues of attorney's fees. I don't want this to hold up disbursing the
17 money though, Mr. Powell.
18 MR. POWELL: Is that -- what -- yeah, can we have --
19 THE COURT: And that's my --
20 MR. POWELL: How quickly --
21 THE COURT: -- my concern.
22 MR. POWELL: -- are you going to force them to release that? Because
23 apparently it's in an account, so this should happen ASAP.
24 MS. RENKA: We'd like to have a written order to do that.
25 THE COURT: Exactly. Yeah, and --

1 MR. POWELL: I understand.

2 THE COURT: -- she's got the right to appeal it, so it's 30 days after entry
3 of the order.

4 MR. POWELL: Understood. Okay.

5 MR. WARNICK: We'll prepare it and run it by --

6 THE COURT: So --

7 MR. POWELL: But what would be a reasonable time to include in the
8 order for payment of those fees? Or a distribution, I should say, I'm sorry.

9 THE COURT: But that's my -- that was my point was, they need a
10 written order.

11 MR. POWELL: Yeah.

12 THE COURT: And they get 30 days to appeal. So it would have to be 31
13 days --

14 MR. POWELL: Correct.

15 THE COURT: -- after notice of entry.

16 MR. POWELL: 31 days? Okay.

17 THE COURT: Yeah.

18 MR. WARNICK: And if they appealed, Your Honor, they'd have to post a
19 bond to try to stop that distribution?

20 THE COURT: There you go.

21 MR. WARNICK: There I go, thank you.

22 THE COURT: So, I just want to make sure we've got everything taken
23 care of, that the Clerk is satisfied she's got something she can put with respect
24 to every one of these motions that was out there. So -- because I had one just
25 come back where the Court was like: Oh well that -- there's a motion out there

1 that was never ruled on.

2 MR. POWELL: Right.

3 THE COURT: And so, this means -- even in a probate matter, never ruled
4 on.

5 MR. WARNICK: I'll try to cover that in the order that we prepare too --

6 THE COURT: Okay.

7 MR. WARNICK: -- to maybe protect from that type of a thing too, maybe
8 that might help too.

9 [Colloquy between the Court and the Clerk]

10 THE COURT: Yeah, so --

11 MR. POWELL: The other thing to clarify, Your Honor --

12 THE COURT: -- we'll just make sure the Clerk -- give the Clerk just a
13 minute here to makes sure she's --

14 MR. POWELL: Okay.

15 THE COURT: -- comfortable that she has addressed in her minute order --

16 [Colloquy between Court and Court Clerk]

17 THE COURT: Number 3 was --

18 [Colloquy between Court and Court Clerk]

19 THE COURT: Right, okay, yeah, okay, this is a good point. The Petition
20 to Compel a Trustee to Distribute Accrued Income and Future Income Received
21 from Oil, Gas, And Mineral Leases and Declaration of the Applicability of the
22 Doctrine of Laches was originally -- I denied that.

23 MR. POWELL: Without prejudice. Yeah.

24 THE COURT: Yeah, denied.

25 MR. POWELL: Yeah.

1 THE COURT: We're going to sequester these funds.

2 MR. POWELL: Yeah.

3 THE COURT: But you're not going to -- she's not going to be compelled
4 to distribute them.

5 MR. POWELL: Right.

6 THE COURT: So what I'm saying today is, that was renewed --

7 MR. POWELL: Uh-huh.

8 THE COURT: -- and the order today is that yes, those funds that have
9 been sequestered, plus whatever accounting needs to be done for the period
10 that's not on the actual accountant's paperwork --

11 MR. POWELL: Right.

12 THE COURT: -- we need that figured out and those funds need to be
13 distributed 31 days after notice of entry of this order, that's when that would
14 be due.

15 MR. POWELL: And just to clarify --

16 THE COURT: So just make sure that the Clerk's satisfied she's got
17 something that she can put in there on this, because like I said: I don't know,
18 I'm hoping this doesn't get appealed. If it does, though, I mean, you just want
19 to make sure that you can go up there with a clean record.

20 MR. POWELL: Right, exactly, and --

21 THE COURT: So we -- she needs to make sure she's got everything in
22 order.

23 THE CLERK: And the counterclaims were denied?

24 THE COURT: Yeah, and the counter --

25 THE CLERK: And the Answer?

1 THE COURT: And the --

2 THE CLERK: Because I know you denied her Summary Judgment.

3 THE COURT: The Counterclaims have been denied. Ms. Ahern's
4 Counterclaims were denied. And I don't know that we have to address the
5 Motion to Amend.

6 MS. WAKAYAMA: That's -- that was going to be my question, Your
7 Honor --

8 THE COURT: Yeah.

9 MS. WAKAYAMA: -- with the Motion to Amend and we would -- it's our
10 position that it needs to be addressed, at least at some ruling --

11 THE COURT: Okay.

12 MS. WAKAYAMA: -- encompassed in all of this.

13 THE COURT: Okay.

14 MS. WAKAYAMA: And because their relief was granted, in part, and
15 denied, in part, based on the claims that we've said were untimely, it's our
16 understanding that the Court has granted their Leave to Amend.

17 THE COURT: Well --

18 MR. POWELL: I would clarify because, Your Honor, the original Petition is
19 on the merits, the second Petition was dealing with Laches.

20 THE COURT: Exactly.

21 MR. POWELL: You've ruled in --

22 THE COURT: That's --

23 MR. POWELL: -- both ways so.

24 THE COURT: That's what I think I just said is that --

25 MR. POWELL: Yeah, I think -- exactly. I think that's exactly what you're

1 --

2 THE COURT: The March 14th Petition specifically raised Laches and then

3 --

4 MR. POWELL: That it was filed originally -- yeah, it was filed originally --

5 THE COURT: You didn't get everything --

6 MR. POWELL: -- December 3rd, dismissal, without prejudice --

7 THE COURT: Right.

8 MR. POWELL: -- and then re-brought on March --

9 THE COURT: March 14th or --

10 MR. POWELL: Exactly -- whatever that was.

11 THE COURT: -- whatever day that was 9 --

12 MR. POWELL: Yes.

13 THE COURT: -- in 2014?

14 MS. RENKA: But, Your Honor, I --

15 THE COURT: And then we didn't really get fully to the merits of all that
16 because everything then got stayed in May.

17 MS. RENKA: But we would just request, Your Honor, whichever way
18 you're ruling, that we have a ruling --

19 THE COURT: Right.

20 MS. RENKA: -- on the Motion to Amend because it's our position that not
21 only were claims waived, but Affirmative Defenses. And we -- if -- if this ends
22 up on appeal --

23 THE COURT: Uh-huh.

24 MS. RENKA: -- it's crucial that we have a clear order on that issue.

25 THE COURT: Okay. So my position with respect to the Motion to

1 Amend is that as Mr. Warnick, I believe said, in the beginning -- the reason he
2 filed that was because there was a challenge to whether those claims had ever
3 been made?

4 MR. WARNICK: Uh-huh.

5 THE COURT: And I thought they were. I thought that was the point of
6 the -- I want to make sure I got the right date. The -- is it the March 14th?

7 [Colloquy between the Court and the Clerk]

8 THE COURT: Oh beg your pardon, I had the wrong date, 3/6/2014.
9 That, to me, that Petition that was filed by Jacqueline raised these issues and
10 there's an addendum to it. I thought -- I thought that this whole issue that to
11 me is kind of the crux of the whole thing, which is 34 years --

12 MR. POWELL: Yeah.

13 THE COURT: -- was pretty well laid out in -- originally. And I don't know
14 that there's -- if there's -- to the extent there's anything raised in -- Counsel,
15 you guys can address -- in the Motion for Leave to Amend that was just filed on
16 January 12th. If there are any -- if you feel that I've made any rulings based on
17 a theory that wasn't included in there but that you put in your Motion to Amend
18 that you feel needs to be granted, we can address that. I just didn't think that I
19 got to anything, other than what I viewed as having already been on the record.
20 And that, you know, I -- that's kind of a problem.

21 MR. POWELL: This --

22 THE COURT: When we stayed it, it just all sort of -- we're in limbo and --

23 MR. POWELL: The first document was exactly that is, it was -- it was a
24 declaration of rights, and as part of that it says that even if -- maybe, you could
25 read that Petition right now, that original Petition filed in -- what was it?

1 MR. WARNICK: September.

2 MR. POWELL: September, I think. It said right in there is: Even if, even
3 if something was done wrong this still would be precluded after 34 years under
4 Equitable Principles.

5 THE COURT: Uh-huh.

6 MR. POWELL: I mean it's -- and then I filed for laches, because basically
7 Mr. Mugan was in here saying this, that and everything else and --

8 THE COURT: Uh-huh.

9 MR. POWELL: -- he has as your -- as you like to do, is basically say:
10 Here, you know, if you want an opportunity to respond, go ahead, here you go
11 so.

12 THE COURT: Uh-huh.

13 MS. RENKA: Procedurally here's the concern, Your Honor --

14 THE COURT: Uh-huh.

15 MS. RENKA: -- there was never a Reply filed to the Counterclaim. And a
16 Reply and Affirmative Defenses, mandatory under the Rules of Procedure, have
17 to be timely filed in response to a Counterclaim. It's our position that
18 Affirmative Defenses were waived, the response, which is a Reply to the
19 Counterclaim was waived, and that all of the purported Claims for Relief, which
20 include Laches, Waiver, Breach of Fiduciary Duty, and a laundry list of things
21 that were included in the slated, proposed, amended pleading, were not
22 properly pled in this case.

23 So, procedurally for us, it's important because it ties into what
24 claims have been properly alleged and --

25 THE COURT: Okay.

1 MS. RENKA: -- what Affirmative Defenses have been waived.

2 MR. POWELL: Then, Your Honor, if we're going to get into this then I
3 think we need to break out the original Petition then.

4 THE COURT: Okay.

5 MR. POWELL: I -- right in there say, specifically, equitable -- the other
6 thing too that troubles me is --

7 THE COURT: Here you go.

8 MR. POWELL: Is that the original Petition?

9 THE COURT: Yeah.

10 MR. POWELL: Okay.

11 MS. RENKA: But we're talking about a --

12 THE COURT: September 27th, 2013.

13 MS. RENKA: We're also talking about --

14 MR. POWELL: Thank you.

15 MS. RENKA: We're talking two separate pleadings.

16 THE COURT: Right.

17 MS. RENKA: We're saying --

18 THE COURT: And there were -- there's your Counterclaim. So I'm
19 looking for -- I've got the Motion to Dismiss the Counterclaim but I'm looking
20 for where's the Counterclaim itself. I don't think I got that printed.

21 MS. RENKA: It may be --

22 MR. WARNICK: Remember, Your Honor, the time to respond to their
23 Answer and Counterclaims had been stayed in May because --

24 THE COURT: Right, but Ms. Renka's point is that, procedurally if I'm
25 denying the counterclaims, they were never answered. And certain of the basis

1 for denying the counterclaim should have been raised as affirmative defenses to
2 the counterclaim.

3 MS. RENKA: Exactly, Your Honor.

4 THE COURT: So I don't know if I've got it printed here. Counterclaims
5 so.

6 MR. WARNICK: No, we did assert that, that in our Motion to Dismiss the
7 Counterclaim, so it would be in there.

8 [Colloquy between Court and Court Clerk]

9 [Colloquy between Counsel]

10 THE COURT: So the Answer of Ms. Ahern -- her Motion to Dismiss had
11 been denied. We're going to have a hearing on February 14th or whatever day it
12 was. It was like February 14th, something like that. So -- and then on the 10th
13 she filed an Answer and a Petition for Declaratory Judgment regarding Limited
14 Interest of the Trust Assets and Counterclaims Against Jacqueline Montoya.
15 And those counterclaims were Intentional Interference with Contractual
16 Relations, Enforcement of the No-Contest Provision. I ruled on that one.

17 MS. RENKA: And that's it.

18 THE COURT: And that's it.

19 MS. RENKA: So our position is that a Reply to a Counterclaim is a
20 mandatory pleading under the Nevada Rules of Civil Procedure --

21 THE COURT: Uh-huh.

22 MS. RENKA: -- and Affirmative Defenses must be pled. Now, I will not
23 dispute the fact that these general issues have been raised in motions, but there
24 was never a mandatory responsive pleading filed; therefore, it's our position
25 that there was no Answer, so to say, to Eleanor's Counterclaims. And there

1 were no Affirmative Defenses pled, which includes all the Affirmative Defenses
2 that are being ruled on today like Statute of Limitations --

3 THE COURT: Okay.

4 MS. RENKA: -- Laches, Waiver, Res Judicata, and all of these other
5 issues that were raised in the pleadings, are Affirmative Defenses that were
6 never properly pled.

7 THE COURT: Okay. Okay. Up to the point where the stay was put in
8 place, and that was May 13th?

9 MR. WARNICK: Yes.

10 MS. RENKA: But the time had already run by this Court's order.

11 MR. WARNICK: Okay. How could the time run when we filed a Motion --

12 MS. RENKA: Because there was an order --

13 MR. WARNICK: -- to Dismiss that state's the answer time?

14 THE COURT: There was the -- yeah, then there was --

15 MR. POWELL: Exactly.

16 THE COURT: -- a Motion to Dismiss --

17 MS. RENKA: But after the Motion to Dismiss was filed -- and I admit this
18 is quirky -- after the Motion to Dismiss was filed, there was a stipulation and
19 order entered by this Court that a responsive pleading to the counterclaim was
20 due March 20th, 2014.

21 MR. WARNICK: Nah, I've never see that stipulation; I don't know what
22 she's talking about.

23 THE COURT: Yeah --

24 MS. RENKA: It's on the record, it's in this Court's pleadings.

25 MR. WARNICK: Can you show it to me, Counsel? I'd like to see what it

1 says.

2 THE COURT: March, I think 14th.

3 MR. WARNICK: And even if that was the case, the filing of our Motion to
4 Dismiss is a response.

5 MR. POWELL: That's a response, Your Honor.

6 THE COURT: Correct, yeah.

7 MR. POWELL: That was why trial got continued is because we addressed
8 the counterclaims to start off. And I said: You can't have these counterclaims,
9 you filed these late. You said: No, we really need to do them. You told Mr.
10 Mugan what you felt of what he did last minute. And then, that's when Mr.
11 Warnick got involved a few days later.

12 THE COURT: Right.

13 MR. POWELL: Because I represented to you on the record at that --

14 THE COURT: Okay.

15 MR. POWELL: -- at trial is I -- I'm not a civil guy, I don't do this --

16 THE COURT: Right.

17 MR. POWELL: -- so.

18 THE COURT: Stipulation and Order to Extend Time to Reply or Otherwise
19 -- to Reply or Otherwise Plead.

20 MS. RENKA: Yes.

21 THE COURT: And so they otherwise pled, they did a Motion to Dismiss.

22 MS. RENKA: But they did a Motion to Dismiss as --

23 THE COURT: The Motion to Dismiss was never addressed, it was stayed.

24 MS. RENKA: But the Stipulation and Order the answer by March 20th,
25 was entered after the Motion to Dismiss was filed.

1 THE COURT: No. No, it was not. No, it was not. March 11th was the
2 Stipulation and Order to Extend Time to Reply or Otherwise Plead to the
3 Counterclaims. And the --

4 MR. WARNICK: March 18th.

5 THE COURT: -- Motion to Dismiss was the 18th, I believe.

6 MR. WARNICK: Yeah, and I remember that stipulation now --

7 THE COURT: Yeah.

8 MR. WARNICK: -- because I had just come --

9 MS. RENKA: All right.

10 MR. WARNICK: -- into the case. I wanted to make sure that we --

11 THE COURT: Uh-huh, yeah.

12 MR. WARNICK: -- did -- let the time run for responding to their Answer
13 and Counterclaim --

14 THE COURT: Yeah. And I don't think we ever ruled on it.

15 MR. WARNICK: -- and so I asked them to stipulate to it, to make sure we
16 had time to file our Motion to Dismiss.

17 THE COURT: And then I don't think that that was ever ruled on because
18 we stayed.

19 MR. POWELL: It wasn't, exactly, it was stayed.

20 THE COURT: And so that's kind of where we ended up in this procedural
21 --

22 MR. WARNICK: Correct.

23 THE COURT: -- no man's land.

24 MS. RENKA: So, we still don't have anything that was a required Reply
25 on Affirmative Defenses, asserting Affirmative Defenses against Eleanor's

1 Counterclaims?

2 THE COURT: And that's why I -- that's why I said: I needed to make
3 sure that we were addressing everything that had already been filed because
4 something that had already been filed was a Motion to Dismiss those
5 Counterclaims. That was never ruled on.

6 So if we're subsuming the Motion to Dismiss into this -- into what
7 we've got here, essentially, we're ruling on the counterclaims. Because I said
8 that I was, basically, I was going to deny the counterclaims, because
9 enforcement of the No-Contest Provision I said, I think that -- whether we go
10 with the statute or common law I just -- I think that -- I think everybody had a
11 good faith belief and were acting in accordance with their good faith belief.

12 The Intentional Interference with Contractual Relations, you know,
13 I didn't address that one, specifically, but I guess we could.

14 MS. RENKA: So I guess my position is, Your Honor, is that the Motion to
15 Amend that was filed on the eve of the last hearing --

16 THE COURT: Uh-huh, right.

17 MS. RENKA: -- and our opposition thereto, is still hanging out there.

18 THE COURT: Right. And that's why I said: We need to wait until the
19 end -- this is all done before we got to that, because I didn't think we were
20 going to need to get to that. I don't think we need to get to that because, as I
21 said, I viewed the -- this is belt and suspenders on the part of Counsel for Ms.
22 Montoya and Ms. Bouvier. I believe they raised this issue, this Laches and/or
23 Statute of Limitations, it's kind of -- it's both. For me it's really more of the
24 Laches issue, but I suppose the Statute of Limitations would also apply because
25 I --

1 MR. POWELL: I could cite it too right now in that original Petition.

2 MS. RENKA: So is it moot? I'm just --

3 MR. POWELL: I found where I brought this issue up, you know --

4 MS. RENKA: We're just --

5 MR. POWELL: -- so --

6 THE COURT: Right.

7 MS. RENKA: We're just trying -- I'm sorry, I'm not trying to hash the
8 merits in front of Your Honor.

9 THE COURT: Thank you.

10 MS. RENKA: I'm just trying to get a clear ruling for our understanding, so
11 is the Motion to Amend in our opposition, thereto, moot and we're just using --

12 THE COURT: Right.

13 MS. RENKA: -- all the pleadings that were of record before and --

14 THE COURT: Correct.

15 MS. RENKA: -- new, proposed amended pleading is annulled?

16 THE COURT: Right, because if I'd denied --

17 MS. RENKA: Okay.

18 THE COURT: -- all the Summary Judgments Motions and we were just --

19 MS. RENKA: Okay.

20 THE COURT: -- going to forward, then we'd need it --

21 MS. RENKA: Perfect.

22 THE COURT: -- but --

23 MS. RENKA: Thank you, Your Honor. I just wanted to be clear for the
24 record.

25 THE COURT: Okay, and I just -- so this is for the record: I'm going to

1 Deny Without Prejudice, this Intentional Interference with Contractual Relations
2 issue.

3 MR. WARNICK: What was that?

4 MR. POWELL: Sorry?

5 THE COURT: I said: I'm going to Deny, Without Prejudice, Intentional
6 Interference with Contractual Relations. I'm absolutely denying the --

7 MR. WARNICK: No --

8 THE COURT: -- Counterclaim on no-contest. I'm -- that -- but the
9 Counterclaim on Intentional Interference with Contractual Relations -- we never
10 got there. We never did any discovery on it. It wasn't really fully briefed. It's
11 been mentioned several times, but I don't think it's ever been fully briefed. And
12 we have this whole problem that they've been holding a bunch of money so.

13 MR. WARNICK: We did fully brief that in our Motion to Dismiss.

14 MR. POWELL: Right.

15 MR. WARNICK: We went into great detail to show that that wasn't a
16 Tortious Interference, that it was done properly, that's the only thing that we
17 were left to do; had no choice but to protect ourselves that way.

18 THE COURT: Okay.

19 MR. WARNICK: I understand what Your Honor's saying but, I'll put it in
20 an order that you -- you've -- letting that just not be --

21 THE COURT: That one's -- that one's without prejudice.

22 MR. WARNICK: Okay. I got it.

23 THE COURT: Because I just feel like we -- we didn't really allow any
24 discovery and that that one was really not actively pursued.

25 MR. WARNICK: Very good.

1 THE COURT: Because we were, instead, focusing on the Will contest so.

2 MS. WAKAYAMA: And Your Honor we'll work with Counsel --

3 THE COURT: Uh-huh.

4 MS. WAKAYAMA: -- on an order to submit to the Court. And I'm sorry,
5 I may have missed it, it's been a long day. Was there a date that was given for
6 the status check hearing, at all, for --

7 THE COURT: Yes. So we'll need to get that for you.

8 MS. WAKAYAMA: Okay.

9 THE COURT: So 30 days you can file whatever reports and supplemental
10 briefs you need to file in anticipation of talking about really, logistically, what do
11 we do with respect to a Trustee, with respect to splitting the Trust? I mean,
12 what's in everybody's best interest? What works, because of the unique nature
13 of the asset?

14 MS. WAKAYAMA: And, Your Honor, do we have a preliminary ruling
15 from you that under Supreme Court Rule 3, if Counsel determines that it is
16 appropriate to file under seal, then we can do that?

17 THE COURT: Correct.

18 MS. WAKAYAMA: Thank you.

19 THE COURT: Because I, you know, I understand that this is a big family
20 and they all share this information, but I don't know if they want it on file in, in
21 Nevada. They may have issues.

22 MR. WARNICK: So we're just going to seal the record. That's fine.

23 MR. POWELL: That's fine.

24 THE COURT: If they request it. I mean, if --

25 MR. POWELL: If they -- that's what they're getting at so, cool with us.

1 THE CLERK: I have to have --
2 MR. POWELL: We're good with that even now , stipulating.
3 THE COURT: So we would -- we need an order.
4 THE CLERK: Order.
5 THE COURT: You send over an order --
6 THE CLERK: -- because I don't think they will.
7 MS. WAKAYAMA: Right, I understand, I know the process.
8 THE COURT: Right.
9 THE CLERK: Okay.
10 MS. WAKAYAMA: I'll send over an order.
11 THE COURT: So send it over.
12 MS. WAKAYAMA: Thank you.
13 THE COURT: I -- still talk further with -- I --
14 MR. POWELL: We're stipulating right now , on record, that we're good --
15 THE COURT: -- I'll --
16 MR. POWELL: -- with it being under seal.
17 THE COURT: I'll grant that if it's needed. If you decide --
18 MR. POWELL: Okay.
19 THE COURT: -- it's not worth the hassle then, fine.
20 MR. POWELL: Yeah.
21 THE CLERK: Okay. So did we decide if they could do this during Probate
22 THE COURT: Right, do you --
23 THE CLERK: Or they wanted their own time again?
24 THE CLERK: -- think you could do this on a calendar?
25 MS. WAKAYAMA: You know , just because of the nature of the

1 confidentiality of it, I would request this Court to do a separate setting, so that
2 way there's not a galley behind us listening to --

3 THE COURT: Uh-huh.

4 THE CLERK: Okay.

5 MS. WAKAYAMA: -- stuff that's filed under seal.

6 THE CLERK: That week, at 45 days, would put us about March 16th
7 through 20th.

8 MS. WAKAYAMA: Uh-huh.

9 THE CLERK: I think March -- wasn't it 16th that we did -- what?

10 THE COURT: Poire.

11 THE CLERK: Poire's.

12 MS. WAKAYAMA: Uh-huh.

13 THE CLERK: And then Bernard's coming on Wednesday because it's a
14 non-probate day, but we still have Friday open --

15 MS. WAKAYAMA: Yeah.

16 THE CLERK: -- at 9 a.m, would that be --

17 MR. WARNICK: 03/16?

18 THE COURT: No, Friday, March 20th.

19 MR. WARNICK: March 20th, okay.

20 THE COURT: That's our week to set evidentiary hearings and probates.

21 MR. WARNICK: So we file on March 20th. We have 30 days within
22 which to file our papers on those issues you've mentioned and then --

23 THE COURT: Right.

24 MR. WARNICK: -- on March 20th we'll have a hearing.

25 THE COURT: March 20th, yeah, uh-huh.

1 MR. POWELL: What time?

2 THE CLERK: At what time? 10:00?

3 THE COURT: Ten, we'll do 10:00.

4 MR. POWELL: Okay.

5 THE COURT: Uh-huh.

6 MR. WARNICK: Thank you, Your Honor.

7 THE COURT: And that -- since that's, you know, further into that week
8 than we had thought to be, you know, if you need a few more days just send
9 over a stipulation and we can give you a few more days. But we would
10 probably -- we would need everything by --

11 THE CLERK: And this is just coming back on the --

12 THE COURT: -- instead of Monday, by Friday.

13 THE CLERK: -- removing the Trustee and Attorney's Fees?

14 THE COURT: Moving Trustee, Attorney's Fees, and this issue of should
15 the Trust have -- what do we do with the Trust? Is it appropriate --

16 THE CLERK: Oh, okay.

17 THE COURT: -- to split it?

18 MS. WAKAYAMA: And Your Honor, I do have copies of the PowerPoint

19 --

20 THE COURT: Okay, great.

21 MS. WAKAYAMA: -- for the record.

22 THE COURT: I appreciate that.

23 MR. POWELL: Your Honor, on the accounting that we need, which again
24 is going to determine how much were Jacque and Kathy are owed --

25 MS. WAKAYAMA: May I approach?

1 [Counsel Wakayama handed Clerk a document]

2 MR. POWELL: -- going back in time to when they got cut off and --

3 MS. WAKAYAMA: Thank you.

4 LAW CLERK: Awesome.

5 MR. POWELL: -- not only that, but being able to -- being able to look at

6 what the numbers are, what is their timeframe to produce that accounting to us

7 because they -- as you know with accountings we always -- takes forever in

8 some of these and they keep coming back, so, can we have a deadline?

9 THE COURT: Well, you got an account -- you got an accounting from

10 October?

11 MS. RENKA: October.

12 MS. WAKAYAMA: October 2014.

13 THE COURT: So you're really look --

14 MR. POWELL: That's just the money that's being held but that --

15 THE COURT: You're looking --

16 MR. POWELL: -- that shows us nothing. That's --

17 THE COURT: You're looking back --

18 MR. POWELL: -- our argument.

19 MR. WARNICK: That's was only one bank account for the Trust.

20 MR. POWELL: It's --

21 MR. WARNICK: We don't know if that was a complete accounting.

22 THE COURT: Okay.

23 MR. WARNICK: We don't have any idea.

24 THE COURT: But it sounds like it's kind of partially done.

25 MR. WARNICK: Well, I --

1 MR. POWELL: That's what we kept being told is: It's done --

2 THE COURT: Yeah.

3 MR. POWELL: -- you're going to get this any time now --

4 THE COURT: Right, so --

5 MR. POWELL: -- and we're sitting back here --

6 THE COURT: -- hopefully --

7 MR. POWELL: -- going --

8 THE COURT: -- it wouldn't take that much longer to add those few
9 months which --

10 MS. WAKAYAMA: Your Honor --

11 THE COURT: -- before the filing of the lawsuit.

12 MR. WARNICK: How about 30 days --

13 MR. POWELL: How about we put this on the same --

14 MR. WARNICK: 30 days.

15 MR. POWELL: -- status check?

16 THE COURT: Okay.

17 MS. WAKAYAMA: Yeah.

18 MR. POWELL: Yeah, give us 30 -- 30 days. If they need more time then
19 --

20 THE COURT: Okay.

21 MR. POWELL: -- we would --

22 THE COURT: So it'd be on the same status check to check to see what
23 that is.

24 MS. WAKAYAMA: Yes, Your Honor, because I -- we were not involved
25 with the accounting --

1 THE COURT: Yeah.

2 MS. WAKAYAMA: -- so we need to figure out what's going on.

3 THE COURT: Okay.

4 MS. WAKAYAMA: And for the record, we still don't even have the full
5 complete file from previous Counsel, David Mann so --

6 THE COURT: Okay.

7 MS. WAKAYAMA: -- it's an issue.

8 MR. POWELL: We've been -- we've been told, previously, it was Sean
9 King that would be preparing the accounting and having it to us shortly, so
10 unless --

11 THE COURT: Okay.

12 MR. POWELL: -- Mr. King's been replaced, Mr. King's had -- I mean,
13 there's ample time there so we're --

14 THE COURT: Okay.

15 MR. POWELL: -- again, waiting for them.

16 THE COURT: All right. So I think that it can be on the same calendar.

17 MR. POWELL: Okay.

18 MR. WARNICK: Thank you, Your Honor.

19 THE COURT: So that's probably then a good thing to give you your own
20 setting, 10:00 a.m. And hopefully we can address all these issues at that time.

21 MR. POWELL: One issue, Your Honor.

22 THE COURT: So -- and by the way, should we, I guess then, Mr. Powell,
23 just because it's kind of all in one nice handy little place here --

24 MR. POWELL: Uh-huh.

25 THE COURT: -- do we want to make your exhibits a Court Exhibit?

1 MR. POWELL: Sure.

2 THE COURT: Because you've --

3 MR. POWELL: Absolutely.

4 THE COURT: -- they're all in the record but just --

5 MR. POWELL: Absolutely.

6 THE COURT: -- because you've exerted them forth.

7 MR. POWELL: Absolutely.

8 MS. WAKAYAMA: We did.

9 MS. RENKA: We did, and so the --

10 THE COURT: So --

11 MS. RENKA: -- PowerPoint and the exhibits will both be --

12 MR. POWELL: Yeah.

13 THE COURT: Court Exhibits.

14 MR. POWELL: Yes.

15 MS. RENKA: Part of the record -- the clerk -- okay.

16 THE COURT: So they'll be in the record, that way if it does go up it's all

17 in there in one easy place to get to. Because that's what we were referring to

18 throughout the --

19 MR. POWELL: Right.

20 THE COURT: -- argument today was where things were in that book.

21 MR. POWELL: One last issue because this is going to come back and --

22 THE COURT: Uh-huh.

23 MR. POWELL: -- bite me in the rear-end if I don't put this on the record

24 and get your determination on this.

25 THE COURT: Okay.

1 MR. POWELL: Because it's also as well -- it's not included in that whole
2 -- in this full list. My argument was always that, again, I filed that original
3 Petition back in September.

4 THE COURT: Correct.

5 MR. POWELL: A responsive pleading to that was filed but it was called a
6 Motion to Refer Matter to Probate Commissioner.

7 THE COURT: Uh-huh.

8 MR. POWELL: That argued the merits of exactly what we were seeking.
9 I'd like the Court to go on record and say: That was a responsive pleading to
10 that Petition, the original Petition.

11 THE COURT: All right.

12 MR. POWELL: Because I don't want that left out in the air that
13 somehow: Oh, we never responded, initially. That was a responsive pleading,
14 Your Honor. It goes through merits of the case. It's not simply as it's titled is:
15 Oh, kick this to the Probate Commissioner. It goes through arguments --

16 THE COURT: Yeah.

17 MS. RENKA: It's a motion though.

18 MR. POWELL: It's a responsive pleading to that original Petition, Your
19 Honor --

20 MS. RENKA: It's still a motion and not a pleading --

21 MR. POWELL: I'd like you to put that on the record.

22 MS. RENKA: -- under the rules.

23
24 THE COURT: It's a Motion to Dismiss and a Motion to Strike
25 Counterclaims, and it is linked in Odyssey.

1 MR. POWELL: No, no.

2 THE COURT: It isn't?

3 MR. POWELL: This is -- this is one --

4 THE COURT: Yeah, it is, it is.

5 MR. POWELL: It's -- is this the one titled: Motion to Refer to Probate
6 Commissioner?

7 THE COURT: Yeah.

8 MR. POWELL: Oh, okay, sorry.

9 THE COURT: Yeah, and --

10 MR. POWELL: When was that filed? Is that October something? Early
11 October, right?

12 THE CLERK: I think I just wrote that was denied.

13 THE COURT: Oh, yeah, it was denied.

14 MR. POWELL: It was denied. Exactly.

15 THE COURT: It was denied on February 14th, but I don't know --

16 MR. POWELL: Right.

17 THE COURT: -- what day it was filed. I don't have what date it was
18 filed.

19 MR. POWELL: Right.

20 [Colloquy between the Court and the Clerk]

21 THE COURT: So it -- the -- to the extent that it was a Motion to Refer to
22 Probate Commissioner and a Motion to Dismiss Claim Preclusion. I mean --

23 MR. POWELL: It --

24 THE COURT: -- Claim Preclusion was in there. I mean, then these things
25 were always, always raised.

1 MR. POWELL: It -- exactly. That's my point is, that was a responsive
2 pleading, so I don't want any argument on the record -- or anything reflecting in
3 the record, again, that that somehow was not a responsive pleading.

4 THE COURT: Yeah.

5 MR. POWELL: That was a responsive pleading.

6 THE COURT: I -- unfortunately I've already turned my computer off.

7 MS. RENKA: Your Honor, a Rule 12 --

8 THE COURT: I don't know what date it was filed.

9 MS. RENKA: A Rule 12 Motion, that was not a responsive pleading. It's
10 a motion and we briefed that in our opposition to the Motion to Amend.

11 THE COURT: Uh-huh.

12 MS. RENKA: Under the Rules of Civil Procedure you have an Answer or a
13 Reply to a Counterclaim, that's it. That's the only way to respond to an
14 affirmative pleading.

15 MR. POWELL: So how, exactly, do I respond and prepare for trial if
16 somebody doesn't give me any objections or anything --

17 THE COURT: If it --

18 MR. POWELL: -- until one week prior to trial?

19 THE COURT: Right. And that was the problem I have --

20 MR. POWELL: That's crazy.

21 THE COURT: -- is that, I think that at the very latest that Mr. Mugan,
22 when he came in with his Answer and Counterclaims, that's when it was -- it's
23 been addressed.

24 MR. POWELL: Exactly.

25 THE COURT: It -- on -- was that the 10th? Yeah, February 10th.

1 MR. POWELL: Yeah.

2 THE COURT: So, yes, there was, previously, a Motion to Dismiss.

3 Whether you want to consider as having been -- I think Ms. Renka's right --

4 MS. RENKA: It was --

5 THE COURT: -- it was a motion.

6 MR. POWELL: But it --

7 THE COURT: I think your Petition was answered because that's --

8 MR. POWELL: That's my point, it was answered within that, exactly.

9 THE COURT: It was answered -- I --

10 MR. POWELL: Well, I --

11 THE COURT: -- at the minimum it was answered when Ms. Ahern
12 answered the Petition for Declaratory Judgment and made her Counterclaim on
13 February 10th, that blew everything up.

14 MR. POWELL: Okay. Well, just so we're clear though is, I filed my
15 original Petition.

16 THE COURT: Correct.

17 MR. POWELL: They filed this. I came back in December with my Petition
18 for Laches and my Petition to Compel.

19 THE COURT: Uh-huh.

20 MR. POWELL: That preceded then, their answer, so if we're --

21 THE COURT: Right.

22 MR. POWELL: -- going to play the game, because what -- here's -- I'll lay
23 forth what my argument is, is if they are setting this up for -- they didn't plead,
24 they didn't ask for these things, they -- they didn't file anything until after the
25 answer. That's not true, I did. I filed my original Petition, I filed my -- and

1 again, if we want to go on the record of where I raised the issue of Laches and
2 Equitable Principles, in that original Petition on page 11, D-12 --

3 THE COURT: Uh-huh, yeah, it's in there.

4 MR. POWELL: -- I said: Even in the off chance that the allocation was
5 not done with complete precision, it is simply too late to question and rehash
6 the issue --

7 THE COURT: Uh-huh.

8 MR. POWELL: -- as returns have been filed and accepted --

9 THE COURT: Yeah.

10 MR. POWELL: -- and rights have become vested under --

11 THE COURT: It's been -- it's been --

12 MR. POWELL: -- numerous --

13 THE COURT: -- it's been there since day --

14 MR. POWELL: -- Equitable Principles.

15 THE COURT: It's been there since day one.

16 MR. POWELL: Exactly.

17 THE COURT: This might be what you're talking about. Declaration of
18 Jacqueline and Kathryn -- okay. Ahern's Motion to Dismiss Petition for
19 Declaratory Judgment Regarding Limited Interest of Trust Assets of Her Failure
20 to State a Claim upon which Relief can be Granted, filed November 26th, 2013.

21 MS. RENKA: He's trying to say --

22 MR. POWELL: I believe so.

23 MS. RENKA: -- Your Honor, that pleadings --

24 THE COURT: Right.

25 MS. RENKA: -- motions filed after Eleanor's Answer and Counterclaim are

1 somehow a responsive pleading and we will not concede that issue.

2 THE COURT: Oh no, absolutely not, you know, I was --

3 MS. RENKA: Thank you.

4 THE COURT: -- correct. There is actually an Answer and a Counterclaim,
5 and that was actually filed on February 10th.

6 MR. POWELL: So then, again, it -- just so we're clear on the record then,
7 I've pled Laches in the --

8 THE COURT: Yes.

9 MR. POWELL: -- original --

10 THE COURT: Yes.

11 MR. POWELL: -- in the original Petition.

12 THE COURT: Yes, yes, absolutely.

13 MR. POWELL: And again -- and you are awarding on -- not only on the
14 merits of that original Petition.

15 THE COURT: Uh-huh.

16 MR. POWELL: You're also awarding on the Merits of Laches.

17 THE COURT: Correct, yeah.

18 MR. POWELL: Yes.

19 THE COURT: Yeah. But either -- under either theory --

20 MR. POWELL: Okay, perfect. That's all --

21 THE COURT: -- the 65/35 has to --

22 MR. POWELL: -- I just need for -- I need for the recording in the record,
23 so perfect.

24 THE COURT: Yeah, the 65/35 is -- it's based on, really, I think the
25 original Trust --

1 MR. POWELL: Yeah.

2 THE COURT: -- I think was properly done

3 MR. POWELL: Perfect.

4 THE COURT: And then, because they transfer it already, all the other

5 separate property and --

6 MR. POWELL: Yeah.

7 THE COURT: -- these people knew what they had.

8 MR. POWELL: Yeah.

9 THE COURT: I mean they were really --

10 MR. POWELL: Yeah.

11 THE COURT: -- informed.

12 MR. POWELL: I -- just again, I want to make that just clear for the record

13 because --

14 THE COURT: Yeah.

15 MR. POWELL: -- so we don't have any --

16 THE COURT: Okay.

17 MR. POWELL: -- thing about what --

18 THE COURT: Great.

19 MR. POWELL: -- you said or didn't say, that's all --

20 THE COURT: Okay.

21 MR. POWELL: -- I'm after. Thank you.

22 THE COURT: Excellent. Ms. Renka, you're still standing up, so anything

23 left?

24 MR. WARNICK: Thank you.

25 MS. RENKA: No, Your Honor.

1 THE COURT: Oh, awesome.

2 MR. WARNICK: Thank you.

3 THE COURT: Thank you.

4 MR. POWELL: Thank you, Your Honor.

5 THE COURT: Very interesting, Ladies and Gentlemen.

6 MR. WARNICK: Thank you.

7 THE COURT: Sorry I kept you here all afternoon since you've got to be
8 back on Monday.

9 MR. POWELL: No. Thank you for giving us the time to – to argue all
10 day, appreciate it.

11 THE COURT: Okay. Well, we'll see you back on Monday then.

12 MR. POWELL: Okay.

13 MS. WAKAYAMA: Thank you.

14 THE COURT: Okay.

15

16 [Proceedings concluded at 4:27 p.m.]

17

18

19

20 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
recording in the above-entitled case.

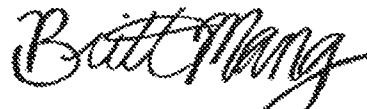
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Brittany Mangelson
Independent Transcriber