

In the Supreme Court of Nevada

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

JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER,

Appellants,

vs.

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

Respondent.

Supreme Court Case No. 69737

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District Court Case No. K. Lindeman
P-09-066425-T Clerk of Supreme Court

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

EMERGENCY MOTION UNDER NRAP 27(E)

Action Necessary Before February 24, 2016¹

Pursuant to NRAP 8 and NRCP 27(e), Appellants, Jacqueline M. Montoya and Kathryn A. Bouvier, hereby move this Honorable Court for an emergency stay of the January 5, 2016 Order Instructing Trustee to Advance Funds issued by the Eighth Judicial District Court, Department 26, the Honorable Judge Gloria J. Sturman.

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¹ As more fully explained below, the order which the appellants seek to stay may be enforced at any time. For simplicity's sake, appellants selected a date that is fourteen days from the date of this filing.

This motion is supported by the memorandum of points and authorities below, the attached NRAP 27(e) Certificate of Daniel P. Kiefer, and documents and filings attached hereto as exhibits.

Respectfully submitted this 11th day of February 2016.

THE RUSHFORTH FIRM, LTD.

By: 

JOSEPH J. POWELL

State Bar No. 8875

DANIEL P. KIEFER

State Bar No. 12419

P. O. Box 371655

Las Vegas, NV 89137-1655

Telephone (702) 255-4552

fax: (702) 255-4677

e-mail: probate@rushforthfirm.com

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The district court recently ordered the trust, which Eleanor Ahern robbed, to foot the bill for her living expenses and legal representation. To justify its ruling, the court points to Ms. Ahern's right to receive 35% of trust income during her life, but ignores the more than \$2.5 million in outstanding judgements issued against Ms. Ahern (and owed to the trust) in the very same matter. In other words, the court ordered the trust to pay Ms. Ahern despite her legal obligation to reimburse the trust's defrauded beneficiaries a *minimum* of \$2.5 million.

Admittedly, the court's logic *might* hold water if Ms. Ahern's allocated portion of trust funds exceeded her present liabilities, but it does not. In fact, Ms. Ahern is currently only entitled to distributions in the amount of \$624,128.20, more than \$1.875 million short of the \$2.5 million she owes. Simply stated, the court

ignored a trustee's well established right to offset *all* of Ms. Ahern's future distributions against her current liabilities created by the judgments. More importantly, however, the court has inappropriately compelled a judgment creditor to extend an unsecured loan to its very own judgment debtor.

Significantly, Ms. Ahern is not likely to receive enough regularly scheduled distributions in her lifetime to extinguish her liabilities. In essence, the contemplated advances are inappropriate court-ordered gifts. And, forcing a party to relinquish its property with no hope of recovery is the very definition of irreparable harm. Accordingly, a stay of enforcement for the distribution order must be issued.

II. RELEVANT BACKGROUND

The Underlying Dispute

1. This matter arises out of a dispute between Eleanor Ahern, as former trustee (the "Former Trustee") of the W.N. Connell and Marjorie T. Connell Living Trust, Dated May 18, 1972 (the "Trust"), and Jacqueline M. Montoya and Kathryn A. Bouvier, beneficiaries of the Trust assets (the "Beneficiaries"). *See* Summary Judgment entered by the district court on April 16, 2015 (the "MSJ Order")² at p. 1, a true and accurate copy of which is attached hereto as **Exhibit 1**.

2. The Beneficiaries commenced an action against the Former Trustee on September 27, 2013, which sought declaratory relief regarding the appropriate allocation of Trust assets between the Beneficiaries and the Former Trustee, as a separate beneficiary of the Trust. *See id.* at p. 2-4. Among other things, the Beneficiaries alleged that the Former Trustee was inappropriately withholding Trust distributions from them in June 2013. *See id.* at p. 6, ¶ 12.

² An appeal of the MSJ Order is currently part of a consolidated case which is identified by the following case numbers: 66321, 67782, and 68046 (the "Consolidated Appeal").

Appointment of the Interim Trustee and Declaratory Relief

3. On April 1, 2015, the district court issued its Order Appointing New Temporary Trustee (the “Order Removing Former Trustee”).³ The Order Removing Former Trustee relieved the Former Trustee of her position as trustee of the Trust and appointed Fredrick P. Waid as her interim replacement (“Interim Trustee”). *See* Order Removing Former Trustee, a true and accurate copy of which is attached hereto as **Exhibit 2**. The Interim Trustee continues to serve as trustee at this time.

4. On April 16, 2015, the district court entered its MSJ Order, which provided declaratory relief regarding proper allocation/split of Trust income. *id.* at p. 14, ¶ A. Specifically, the MSJ Order declared that the proper allocation between the Beneficiaries and the Former Trustee is 65/35,⁴ respectively. *See id.*

5. The MSJ Order also required the Former Trustee to “provide to [the Beneficiaries] an accounting of the [applicable Trust income] received by the Trust from January 1, 2012, through entry of [the MSJ Order].” *Id.* at p. 15, ¶ D. It further ordered the Former Trustee to “reimburse and pay to [the Beneficiaries] any portion of their 65% share of [applicable Trust income] which was not distributed to them during this period of time.” *Id.*

The Former Trustee Is a Judgment Debtor

6. On April 20, 2015, the district court entered an Order Regarding the Accounting, Breach of Fiduciary Duty Claims and Award of Attorneys [*sic*] Fees (the “Accounting Order”), which clarified several items first addressed in the MSJ Order. A true and accurate copy of the Accounting Order is attached hereto as **Exhibit 3**.

³ The Order Removing Former Trustee has also been appealed as part of the Consolidated Appeal.

⁴ The MSJ Order provides that the precise allocation is 64.493%/35.507%. These numbers are rounded to 65/35 for convenience.

7. First, the Accounting Order explained that the Former Trustee had “cut off [the] 65% income stream” from the Trust to the Beneficiaries in June 2013. *See id.* at p. 3, ¶ 11. Second, this Accounting Order adopted the information provided in the Former Trustee’s March 13, 2015 accounting, which demonstrated that the Former Trustee owes the Beneficiaries a *minimum* of \$2,163,758.88⁵ for her failure to distribute Trust income between June 1, 2013 and January 31, 2015. *See id.* at p. 2, ¶ 7.

8. The Accounting Order also granted the Beneficiaries’ request for summary judgment on the claim of breach of fiduciary duty (*See id.* at p. 4, ¶ 3), while commanding the Former Trustee to return \$500,000 in Trust assets on deposit with Fidelity Capital (“Fidelity Funds”) so that they could be placed into an insured (FDIC) bank account for the benefit of the Trust. *See id.* at ¶ 1. The Former Trustee has never returned the Fidelity Funds.

9. On June 23, 2015, the district court entered its Judgment and Order Approving Award of Attorneys’ Fees (“Judgment for Attorneys’ Fees”), which awards the Beneficiaries a judgment in the total amount of \$391,993.80,⁶ with interest accruing at the legal rate from the date of entry. *See* Judgment for Attorneys’ Fees at p. 2-3, ¶¶ 1-2, a true and accurate copy of which is attached hereto as **Exhibit 4**.

⁵ This is the number provided by the Former Trustee in her March 13, 2015 accounting. The Beneficiaries anticipate that the Interim Trustee’s investigation will reveal a much larger deficiency. The Interim Trustee’s investigation is not yet complete.

⁶ The Judgment for Attorneys’ Fees provides separate awards of attorneys’ fees to each of the Beneficiaries. The award to Kathryn Bouvier totals \$122,260 and the award to Jacqueline Montoya totals \$269,733.80. For the sake of convenience, these awards have been combined to one value (\$391,993.80) herein.

10. As a result of the Accounting Order and Judgment for Attorneys' Fees, the Former Trustee is a judgment debtor to the Beneficiaries, owing a minimum of \$2,555,752.68.⁷

The Motion to Distribute and Distribution Order

11. Despite being a judgment debtor in the minimum amount of \$2.5 million, and having never returned the Fidelity Funds, the Former Trustee filed her Motion for Distribution of Trust Income in Accordance with the Court's Summary Judgment Dated April 16, 2015 on Order Shortening Time ("Motion for Distribution") seeking monthly distributions for living expenses and legal representation. A true and accurate copy of the Motion for Distribution is attached hereto as **Exhibit 5**.

12. The Motion for Distribution contends that the Former Trustee is now destitute. In support of this contention, the motion contains a rudimentary exhibit titled "Living Expenses," which states that the Former Trustee has over \$10,000 in monthly expenses (not including legal fees and costs). Critically, the Motion for Distribution is not verified, nor does it contain a declaration from the Former Trustee. *See generally, id.*

13. Despite the objections of the Beneficiaries and Interim Trustee, the district court entered an Order Instructing Trustee to Advance Funds (the "Distribution Order") on January 5, 2016. A true and accurate copy of the Distribution Order is attached hereto as **Exhibit 6**.

14. Specifically, the Distribution Order requires the Interim Trustee to "advance" the following funds to the Former Trustee:

- a. \$5,000/month for "living expenses";
- b. \$10,000/month for "ongoing attorney's fees."

⁷ This amount was calculated by adding the \$2,163,758.88 awarded in the Accounting Order to the \$391,993.80 provided in the Judgment for Attorneys' Fees.

Oddly, the Distribution Order also requires a \$30,000 “advance” to be paid directly to Brownstein Hyatt Farber Schreck, LLP for “past attorney’s fees.” *Id.* at p. 2, ¶¶ 1-3.

The District Court’s Denial of the Motion for Reconsideration

15. On January 20, 2016, the Beneficiaries filed their Motion for Reconsideration on Order Shortening Time (the “Motion for Reconsideration”). A true and accurate copy of the Motion for Reconsideration is attached hereto as **Exhibit 7.**

16. The Motion for Reconsideration requested the following relief:

Above all else, [the Beneficiaries] request that this Court either *abandon or, at a minimum, temporarily suspend* its [Distribution] Order until it has the opportunity to devote sufficient, additional time to further investigate the facts before it, via an evidentiary hearing, so that it may fully analyze and in turn digest said facts. Additionally, this Court must require [the Former Trustee] to submit substantiated, verifiable evidence before reaching its determination, which is something that has not yet even occurred.

Id. at p. 4, ll. 15-21 (emphasis added).

17. On January 26, 2016, the Interim Trustee filed his Response to Motion for Reconsideration on Order Shortening Time (the “Interim Trustee’s Response”) which supported the Beneficiaries request to postpone enforcement of the Distribution Order until such time as certain issues could be fully resolved. *See* Interim Trustee’s Response, a true and accurate copy of which is attached hereto as **Exhibit 8.**

18. Among other things, the Interim Trustee’s Response reminded the district court of:

- a. the outstanding unpaid Judgment for Attorneys’ Fees for \$391,993.80;

- b. an estimated minimum liability of \$2,297,181.12⁸ owed by the Former Trustee to the Beneficiaries for withheld distributions;
- c. the anticipated tax liability and penalties to be assessed against the Trust for 2012, 2013, and 2015, and which will total a minimum estimated amount of \$547,000 to be paid from Trust Assets;
- d. the uncertainty of future trust income that may be used to offset the Former Trustee's outstanding debt (more than \$2.5 million) to the Beneficiaries (let alone to pay off the additional "advances" required under the Distribution Order); and
- e. the Former Trustee's ability to employ the law firm of Smith & Shapiro as counsel in a related case (i.e. she cannot possibly be destitute if she can pay her other attorneys).

Id. at p. 2-3, ¶¶ 2, 4, 6-8.

19. The Interim Trustee's Response further clarified that the current balance of Trust assets allocated to the Former Trustee's Trust (i.e. 35%) total just \$624, 128.20. *See Id.* at p. 4, ll. 4-5.

20. Based on the information above, the Former Trustee is not entitled to a distribution of any Trust assets, and, in fact, owes the Trust (more specifically, the Beneficiaries) approximately \$2,478,624.48. *See* chart below:

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⁸ The Beneficiaries acknowledge that this number exceeds the \$2,163,758.88 outlined in the Accounting Order. However, it should be noted that the Accounting Order—which is based on the Former Trustee's own calculations and figures—sets the *floor* value for wrongfully withheld trust distributions, *not the ceiling*. It is very likely that the Former Trustee's liability far exceeds even the Interim Trustee's updated estimate of \$2,297,181.12.

Accounting Order judgment	\$2,163,758.88
Judgment for Attorneys' Fees	<u>\$391,993.80</u>
Total minimum owed to trust	\$2,555,752.68
Anticipated IRS Liability attributed to Ms. Ahern	<u>\$547,000</u>
Total owed to trust	\$3,102,752.68
Available Distributions to Ms. Ahern	<u>\$624,128.20</u>
<u>Total owed to trust less available distributions</u>	\$2,478,624.48

The District Court's Flawed Logic

21. The district court ignored the issues presented on reconsideration and affirmed the Distribution Order. *See* Transcript of January 27, 2016 hearing on Motion for Reconsideration (the "Transcript"), a true and accurate copy of which is attached hereto as **Exhibit 9**.

22. While upholding the Distribution Order, the district court offered the additional clarification, as follows:

- a. the "critical" nature of the proceedings (i.e. the Former Trustee may be disinherited from the Trust for her wrongful conduct) dictates that the Former Trustee have legal counsel, even if such counsel must be paid with funds from the Trust. *See* Transcript at p. 39, ll. 3-24;
- b. the court was "overruling" the Interim Trustee's discretion to withhold advances on future distributions; *See id.* at p. 36, ll. 4-12;
- c. the Former Trustee has a right to distributions by virtue of the 35% allocation. *See id.* at p. 38, ll. 2-3 ("until she doesn't have the right to the 35 percent anymore, she still has a right to the 35 percent."); and
- d. the unverified nature of the Motion to Distribute was inconsequential. *See id.* at p. 38, ll. 13-20.

23. The district court further instructed that the advances contemplated in the Distribution Order must be made without delay:

All right. So, the parties are going to deal with that, hopefully in the next week or so, *so that we can get the funds distributed as soon as possible* because we certainly have no later than March 6th with which to deal with this problem. So, okay. So, that was denied.

...

My position *has always been pay her the money*. That was always my position.

Id. at p. 31, ll. 14-19; p. 36 ll. 8-14 (emphasis added).

24. Unable to obtain appropriate relief in the district court, the Beneficiaries were left with no choice but to appeal the Distribution Order and seek a stay of enforcement from this Honorable Court.

III. NRAP 27(E) CERTIFICATE

A. Contact Information for All Parties.

There are no unrepresented parties in this matter. The contact information for the parties' respective counsel is provided below.

HUTCHISON & STEFFEN, LLC

Michael K. Wall, Esq.

Todd L. Moody, Esq.

10080 West Alta Drive, Suite 200

Las Vegas, Nevada 89145

(702) 385-2500

Attorneys for Fredrick P. Waid,

Interim Trustee

BROWNSTEIN HYATT FARBER SCHRECK, LLP

Kirk B. Lenhard, Esq.

Tamara Beatty Peterson, Esq.

100 North City Parkway, Suite 1600

Las Vegas, Nevada 89106

(702) 382-2101

Attorneys for Eleanor Connell Hartman Ahern,

Former Trustee

B. Facts Demonstrating the Existence and Nature of Emergency.

At the hearing on the Motion for Reconsideration, the district court explained that the advances contemplated by the Distribution Order should begin “*as soon as possible*,” after the Interim Trustee resolves the remaining tax issues, “*hopefully in the next week or so*.” Exhibit 9 at p. 31, ll. 14-19 (emphasis added). The hearing took place on January 27, 2016, approximately two weeks ago.

Amidst growing pressure from the Former Trustee’s legal counsel—who have every incentive to force immediate distribution because of the \$30,000 earmarked for payment directly to their firm—and a justifiable fear of being held in contempt, the Interim Trustee is likely to authorize immediate payment of the advances identified in the Distribution Order. Accordingly, an emergency exists which requires the immediate attention of this Court.

C. Notice of Motion to Opposing Counsel.

Prior to this filing, undersigned counsel emailed the attorneys for the Former Trustee and the Interim Trustee, explaining the nature of the relief requested herein, while providing an un-filed copy of the present motion. Undersigned counsel further explained the emergency nature of the relief requested and truncated timeline associated with the same.

D. Moving the District Court for a Stay Would Be Futile.

The Motion for Reconsideration specifically requested that the district court “either abandon or, at a minimum, *temporarily suspend* its [Distribution] Order” pending further investigation of the relevant facts. Exhibit 7 at p. 4, ll. 15-21 (emphasis added). The district court denied the Motion for Reconsideration while stating: “My position has always been pay her the money. That was always my position.” Exhibit 9 at p. 36 ll. 8-14 (emphasis added). In short, the district court

has no intention of changing or delaying its ruling, making additional requests to that court futile.

Certification

I certify that the information provided in this NRAP 27(e) Certificate is true and accurate to the best of my knowledge.

Dated this 11th day of February 2016.



DANIEL P. KIEFER

*Attorney for Appellants and Movants,
Jacqueline M. Montoya and Kathryn A.
Bouvier*

IV. LEGAL ARGUMENT

A. A Stay of the Distribution Order Is Necessary.

This Court considers the following factors when analyzing a request for stay:

(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

NRAP 8(c); *see also Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). As detailed below, all of these factors weigh in favor of staying enforcement of the Distribution Order pending the outcome of the present appeal.

1. The Object of the Appeal Will Be Rendered Moot If a Stay Is Not Granted.

The Former Trustee claims insolvency and intends to spend the advances as they are received (on a monthly basis for “living expenses” and “legal fees”).

Without a stay, a victory on appeal will be meaningless as: (1) the advances will be gone, (2) recovery unlikely, and (3) the outstanding liability of the Former Trustee will be significantly increased. In short, pursuing this appeal without a stay is pointless.

2. The Beneficiaries Will Experience Irreparable Harm If a Stay Is Not Granted.

Generally, irreparable harm consists of injury for which compensatory damage is an inadequate remedy *See Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720, 722 (2015). This is commonly referred to as the monetary loss rule. Importantly, however, courts consistently recognize an exception to the monetary loss rule when it can be shown there is a low probability of satisfying a future judgment,⁹ or where the future judgment debtor is, or will shortly become, insolvent.¹⁰ Stated another way, monetary loss can be irreparable harm if a judgment

⁹ *Art-Metal-USA, Inc. v. Solomon*, 473 F.Supp. 1 (D.D.C. 1978) (concluding that irretrievable monetary loss is properly considered in determining irreparable injury factor for purposes of entitlement to a preliminary injunction); (determining that a party will suffer irreparable harm, for purposes of a preliminary injunction analysis, if the other party becomes insolvent or loses its business); *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186 (3rd Cir. 1990) (explaining that the possibility of unsatisfied money judgment may constitute irreparable injury for purposes of granting preliminary injunction); *Sterling Commercial Credit--Michigan, LLC v. Phoenix Indus. LLC*, 762 F.Supp.2d 8 (D.D.C. 2011) (holding that under some circumstances, economic harm may qualify as irreparable, warranting preliminary injunction, where a plaintiff's alleged damages are unrecoverable).

¹⁰ *Champion v. Sessions*, 1 Nev. 478 (1865) ("if the injury is likely to be irreparable, or if the defendant be insolvent, equity will always interpose its power to protect a person from a threatened injury."); *Builder's World, Inc. v. Marvin Lumber & Cedar, Inc.*, 482 F.Supp.2d 1065 (E.D. Wis. 2007) (determining that a party will suffer irreparable harm, for purposes of a preliminary injunction analysis, if the other party becomes insolvent or loses its business); *Hamlyn v. Rock Island County Metropolitan Mass Transit Dist.*, 960 F.Supp. 160 (C.D. Ill. 1997) (holding that an exception to the monetary loss rule occurs when the party will likely be insolvent

would be ineffectual in making the aggrieved party whole. This is the exact scenario presented here.

The Former Trustee sought the Distribution Order based on her alleged inability to pay her bills—i.e. she claims she is broke. *See* Exhibit 5, p. 5 ll. 4-5 (alleging that the Former Trustee is “dependent on the Trust income for her livelihood.”). Consequently, any contention that she could satisfy a future judgment requiring repayment of the advances is illogical. In short, the Former Trustee is an insolvent judgment debtor. Allowing her to increase her debt, while simultaneously decreasing the Beneficiaries only source of security (the \$624K), will only cause irreparable harm.

3. The Former Trustee’s Interest Will Be Protected.

The Interim Trustee is currently holding 35% of the Trust assets in a segregated account. *See* Exhibit 8, p. 4, ll. 4-5 (stating that 35% of the Trust’s current income totals \$624,128.20 and explaining: “These funds are on deposit in a segregated trust account at Wells Fargo Bank.”). Should the Former Trustee prevail on this appeal, her distributions will be waiting for her in a protected bank account. It is hard to imagine a better source of security to protect the Former Trustee’s interests than cash in the bank.

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prior to final judgment); *Pharaoh Oil & Gas, Inc. v. Ranchero Esperanza, Ltd.*, 343 S.W.3d 875 (Tex. App. 2011) (explaining that for purposes of a temporary mandatory injunction, an injury is an “irreparable injury” if the defendant is insolvent).

4. The Beneficiaries Are Likely to Succeed on this Appeal.

a. The Court Erred by Not Allowing the Interim Trustee to Offset the Former Trustee's Significant Debt.

The law of trusts is clear:

A trustee who has a duty to pay or distribute property to a beneficiary *should be able to set off against the sum due [for] . . . a liability of the beneficiary* to the trustee in his representative capacity, [or] a debt due from the beneficiary to another beneficiary because of a breach of duty toward the latter.

George Gleason Bogert et al., LAW OF TRUSTS AND TRUSTEES § 814 (3rd ed. Rev. 2008) (internal citations omitted); *see also In re Hunt*, 477 B.R. 812 (Bankr. D. Kan. 2012) (holding that a trustee who has a duty to pay or distribute property to a trust beneficiary should be able to set off against the sum due a liability of the beneficiary to the trustee in his representative capacity); *In re Ryan's Estate*, 37 N.Y.S.2d 8 (N.Y. Surg. Ct. 1942) (determining that indebtedness of a life beneficiary of trust to the trust estate for rental of real property belonging to the trust estate constituted a proper set off against income which had accrued for the life beneficiary under the trust).

The Former Trustee's minimum liability to the Trust (and the Beneficiaries) has been set by order of the court (\$2,163,758.88 provided in the Accounting Order and \$391,993.80 set forth in the Judgment for Attorneys' Fees). The law of setoff requires that the Interim Trustee be allowed to offset the Former Trustee's accrued distributions (the \$624K currently being held), as well as any future distributions, against her present liabilities created by the Accounting Order and Judgment for Attorneys' Fees (as well as any applicable tax liabilities). In other words, until the Former Trustee's accrued distributions exceed her liabilities, she is not entitled to a single penny—regardless of the 65/35 allocation outlined in the MSJ Order. The

district court's refusal to recognize the Interim Trustee's right to setoff constitutes reversible error.

b. The District Court Erred by Granting the Distribution Order Based on an Unverified Petition.

Nevada probate law requires that parties to a trust dispute file petitions, instead of motions. See NRS 164.033 (titled "Petitions concerning conveyance, transfer, or delivery of property of trust . . ."). Although this may seem like a distinction without a difference, it is not. NRS 132.270 defines a "petition" as a "verified written request to the court for an order." NRS 132.360 defines a "verification" as a "declaration that a statement is true, made under oath or affirmation under penalty of perjury for false statement." This means that applications/motions/petitions regarding trust distributions must be affirmed and verified under penalty of perjury.

The purpose of requiring a verified petition is to ensure that orders are not obtained on unverified, unsubstantiated information provided in the absence of the penalty of perjury. See *Amiri v. Thropp*, 608 N.E.2d 824 (Ohio Ct. App. 1992) ("The purpose of verification of a pleading is to prevent groundless complaints or defenses."); *Pinkerton v. Reagan*, 244 S.W.2d 961 (Ark. 1952) (the "purpose in requiring verification is to prevent a judgment from being taken on an unverified pleading alone, without any evidence being introduced."); *Smith v. King*, 716 N.E.2d 963 (Ind. Ct. App. 1999) ("The essential purpose of a verification is that the statements be made under penalty of perjury.")

The core argument set forth in the Motion for Distribution (and by counsel at oral argument) is the Former Trustee's alleged indigence—i.e. her inability to pay her current living expenses and legal bills. Yet, the Former Trustee never verified any of the facts and numbers set forth in the motion. When questioned regarding this issue, the district court explained that the unverified nature of the Motion to

Distribute was “inconsequential.” See Exhibit 9 at p. 38, ll. 13-20. If such is true, the added requirement of verification found in NRS 132.270 is meaningless, which cannot be the case. See *In re Steven Daniel P.*, 129 Nev. Adv. Op. 73, 309 P.3d 1041 (2013) (explaining that courts must not employ a statutory interpretation that renders language meaningless). The district court’s issuance of the Distribution Order on unverified contentions constitutes reversible error.

c. The Distribution Order Will Be Rendered Moot Upon a Ruling on the Motion to Disinherit.

The district court erred by failing to rule on a previously filed dispositive motion that would have rendered the Motion to Distribute moot. See NRCP 56(c).¹¹ On June 3, 2015, the Beneficiaries filed a Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No-Contest Clause; and Surcharge of Eleanor’s Trust Income (the “Motion to Disinherit”), which asked that the Former Trustee be disinherited under the Trust’s no-contest clause based on her breach of fiduciary duty and wrongful distributions to herself. A true and accurate copy of the Motion to Disinherit is attached hereto as **Exhibit 10**.

i. The Motion to Disinherit is a dispositive motion for summary judgment.¹²

Specifically, the Motion to Disinherit seeks enforcement of a no-contest clause which prohibits any beneficiary under the Trust (including the Former Trustee) from “[opposing] or [setting] aside the administration and distribution of

¹¹ Which requires that the court judgment “shall be *rendered forthwith* if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (emphasis added).

¹² Although not titled a motion for summary judgment, it is still a dispositive motion seeking judgment as a matter of law based on clear set of unrefuted facts (the district court’s own findings).

said trusts.” *Id.* at p. 8. If a violation is found, the offender is left with a meager \$1 interest in the Trust. *Id.*

The Accounting Order confirms the Former Trustee’s breach of fiduciary duty. *See id.* at p. 4, ¶ 3. The MSJ Order requires that the Former Trustee “reimburse and pay to [the Beneficiaries] any portion of their 65% share of [applicable Trust income] which was not distributed to them” for the relevant time period (*See* Exhibit 1 at p. 15, ¶ D)—the minimum value of which is set by the Accounting Order at \$2,163,758.88. *See* Exhibit 3 at p. 2, ¶ 7. Critically, the district court already adjudicated and determined that the Former Trustee wrongfully distributed Trust assets and breached her fiduciary duty. All that remains, is the legal determination that these acts constitute “opposing” or “setting aside” Trust administration and/or distributions.

ii. The district court failed to “render forthwith” judgment on the Motion to Disinherit.

Despite the Motion to Disinherit presenting a straightforward question of law (i.e. whether the Former Trustee’s bad acts violate the no-contest clause), the district court has continually postponed its ruling, and, in fact, is now requiring an evidentiary hearing. Because the district court failed to “render forthwith” a judgment on this straightforward legal issue—an issue that disposes of all other issues, including any claim to the advances under the Distribution Order—it violated NRCP 56(c), thus, committing reversible error.

d. The Distribution Order Constitutes an Erroneous Award of Attorneys’ Fees.

The Distribution Order requires payment of \$30,000 in “past attorneys’ fees,” as well as continuing monthly payments of \$10,000 for “ongoing attorneys’ fees.” Exhibit 6, at p. 2, ¶¶ 1-3. Considering the immense deficit owed by the Former Trustee to the Beneficiaries, these payments constitute an invalid award of attorneys’ fees.

In Nevada, a district court may only award attorney fees if authorized by a statute, rule or contract. *Davis v. Beling*, 128 Nev. Adv. Op. 278 P.3d 501, 515 (2012) (quotations omitted). If an award is made, the amount must be calculated in light of the factors outlined in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). *See Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139, 1143 (2015) (quotations omitted). Importantly, for an award of damages to withstand an appeal, the award must be supported by substantial evidence. *Id.* (citing *Uniroyal Goodrich Tire Co. v. Meyer*, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995))

Neither the Motion for Distribution nor the Distribution Order identify any contract, rule, statute, or previous order of the court which would give rise to a right of attorneys' fees. However, even if such a legal hook did exist (which it does not), the award of attorneys' fees is still erroneous as the Former Trustee has not provided a single invoice or bill which would demonstrate the reasonableness of the amount sought. Furthermore, the Distribution Order is void of any mention of any of the *Brunzell* factors. In short, the legal fees awarded in the Distribution Order are an unsupportable farce.

e. The Distribution Order Improperly Usurps the Trustee's Statutorily Protected Discretion.

The payments required under the Distribution Order are "advances." An "advance payment" is a "payment made in anticipation of a contingent or fixed *future liability or obligation*." BLACK LAW DICTIONARY (10th ed. 2014) (emphasis added). Plainly stated, an "advance" is a loan in anticipation of future earnings. Nothing in the Trust document requires the Interim Trustee to make advances on future distributions (i.e. the advances are not required distributions). Accordingly, the Interim Trustee has discretion to withhold such advances, and has elected to exercise this discretion. *See* NRS 163.4185(1) ("A distribution may be classified as: (c) [a] discretionary interest if the trustee has discretion to determine whether a

distribution should be made, when a distribution should be made and the amount of the distribution.”); *see also* Exhibit 8.

Despite the appropriate exercise of the Interim Trustee’s discretion, the district court insists that the advances be made. *See* Exhibit 9 at p. 36, ll. 4-12 (the court has acknowledged that the Distribution Order “overrules” the Interim Trustee’s discretion to withhold advances on future distributions). Importantly, NRS 163.419(1) prohibits a court from overruling a trustee’s discretion absent a finding of wrongful conduct: “A court may review a trustee’s exercise of discretion concerning a discretionary interest *only if* the trustee acts dishonestly, with bad faith or willful misconduct.”¹³ (emphasis added).

The district court has made no finding of dishonesty, improper motive, or failure to act on the part of the Interim Trustee. Absent such a finding, the court had no authority to contradict the Interim Trustee’s election. Consequently, by issuing the Distribution Order the district court violated NRS 163.419(1) and committed reversible error.

f. There Is No Constitutional Right to Counsel in a Civil Matter.

The district court has made clear that its Distribution Order is justified because civil litigants (like the Former Trustee) are entitled to legal representation when the nature of the proceedings is “critical” and relates to an established property right. *See* Exhibit 9 at p. 39, ll. 3-24. The district court’s belief is misguided, as Nevada law provides no support for such a proposition.

To this point, this court recently concluded that an order finding a former husband in contempt for nonpayment of child support, and which directed that the former husband serve 25 days in jail with early release upon payment of \$10,000 in

¹³ Prior to October 1, 2015, this provision read as follows: “acts dishonestly, with improper motive or fails to act.”

arrears, was civil, and not criminal, in nature, and thus, did not implicate a constitutional right to counsel. *See Rodriguez v. Eighth Jud. Dist. Ct.*, 120 Nev. 798, 805, 102 P.3d 41, 46 (2004). To state the obvious, the potential loss of trust distributions pales in comparison to nearly four-week incarceration encountered in *Rodriguez*. The Former Trustee has no right to counsel in this matter—and she certainly has no right to force the Beneficiaries she robbed to foot the bill for her past and future legal fees.

B. No Bond Should Be Required.

As a general rule, an appellant may obtain a stay pending appeal by posting a supersedeas bond. However, a “more flexible and modern approach” allows for a stay based on alternative forms of security. *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005). In *Nelson*, this Court explained that “courts retain the inherent power to grant a stay in the absence of a full bond,” and “a supersedeas bond should not be the judgment debtor’s sole remedy, particularly where other appropriate, reliable alternatives exist.” *Id.* at 834-35, 1253-54.

Before allowing a stay based on alternate security, the court should consider the following factors:

(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Id. at 836, 1254 (quoting *Dillion v. City of Chicago*, 866 F.2d 902 (7th Cir. 1981).

Here, the Trust is the perfect form of “alternative security.” Should the Former Trustee prevail in defending the Distribution Order, her advances will be

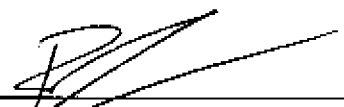
waiting for her in an interest bearing bank account. Accordingly, a stay of enforcement of the Distribution Order should issue without the posting of a bond.

V. CONCLUSION

For the aforementioned reasons, the Beneficiaries ask that enforcement of the January 5, 2016 Distribution Order be immediately stayed pending the outcome of the present appeal. The Beneficiaries further request that the stay issue without the imposition of a bond.

Respectfully submitted this 11th day of February 2016.

THE RUSHFORTH FIRM, LTD.

By: 
JOSEPH J. POWELL
State Bar No. 8875
DANIEL P. KIEFER
State Bar No. 12419
P. O. Box 371655
Las Vegas, NV 89137-1655
Telephone (702) 255-4552
fax: (702) 255-4677
e-mail: probate@rushforthfirm.com

*Attorney for Appellants and Movants,
Jacqueline M. Montoya and Kathryn
A. Bouvier*

EXHIBIT 1



CLERK OF THE COURT

JUDG
JOSEPH J. POWELL, ESQ.
Nevada Bar No. 008875
THE RUSHFORTH FIRM, LTD.
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134
Tel: (702) 255-4552
Fax: (702) 255-4677
joey@rushforth.net
Attorneys for Jacqueline M. Montoya

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

Date of Hearing: January 30, 2015
Time of Hearing: 10:00a.m.

An Inter Vivos Irrevocable Trust.

SUMMARY JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 JUGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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A PROFESSIONAL CORPORATION

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

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

6
7 
DISTRICT COURT JUDGE

8 Submitted by:

9 ALBRIGHT, STODDARD,
10 WARNICK & ALBRIGHT

11 By: 

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

14 *Attorneys for Kathryn A. Bouvier*

15 Approved by:

16 MARQUIS AURBACH COFFING

17 By:

18 LIANE K. WAKAYAMA, ESQ.
19 Nevada Bar No. 11313
CANDICE E. RENKA, ESQ.
20 Nevada Bar No. 11447
10001 Park Run Drive
Las Vegas, NV 89145
21 Tel: (702) 382-0711

22 *Attorneys for Eleanor Connell Hartman Ahern*
23
24
25
26
27
28

Submitted by:

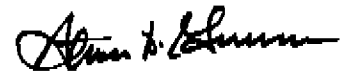
THE RUSHFORTH FIRM, LTD.

By: 

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

Attorneys for Jacqueline M. Montoya

EXHIBIT 2



CLERK OF THE COURT

ORDER

JOSEPH J. POWELL, ESQ.
Nevada Bar No. 008875
THE RUSHFORTH FIRM, LTD.
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134
Tel: (702) 255-4552
Fax: (702) 255-4677
joev@rushforth.net
Attorneys for Jacqueline M. Montoya

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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

An Inter Vivos Irrevocable Trust.

ORDER APPOINTING NEW TEMPORARY TRUSTEE

A hearing in this proceeding was held on March 20, 2015, for the Court to consider and resolve some of the remaining issues in this case following the hearing herein on January 30, 2015. At this hearing, the Court decided to appoint a new temporary Trustee for the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (hereinafter referred to as the "Trust"). Based upon the unrelated, third party candidates recommended by the parties, Mr. Fredrick P. Waid, Esq., by Jacqueline M. Montoya and Kathryn A. Bouvier, and Premier Trust, by Eleanor Connell Hartman Ahern, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Eleanor Connell Hartman Ahern is immediately removed as Trustee of the Trust, subject to the rulings made by the Court on March 26, 2015, and until further order of this Court. In her place and stead,

Mr. Fredrick P. Waid, Esq., is hereby appointed as the acting temporary successor Trustee of the Trust, with full authority to manage the Trust and its assets, including the Trust's interests in the Texas oil, gas and mineral property and interests in Upton County, Texas. ^{Communications about these interests with Montoya and Bouvier parties is subject to Confidentiality Agreement to} Mr. Waid's appointment as acting successor Trustee of the Trust is made on a temporary, interim basis, until further order of the Court. Mr. Waid shall function as the sole acting Trustee of the Trust, with all powers and authority provided to him under the terms of the Trust instrument and the applicable Nevada Revised Statutes relating to a trustee's powers. Consistent with Nevada law, Mr. Waid, as Trustee, shall also honor all fiduciary obligations owed to all of the beneficiaries of the Trust.


In her capacity as the former trustee of the Trust, and until such time that she might be reinstated by this Court to such position, Ms. Ahern shall fully cooperate with Mr. Waid in providing to him all pertinent information concerning the Trust's current business transactions and dealings and in making this transition in trusteeship of the Trust.


SO ORDERED this 30th day of March, 2015.


DISTRICT COURT JUDGE

Submitted by:
ALBRIGHT, STODDARD,
WARNICK & ALBRIGHT

THE RUSHEFORTH FIRM, LTD.

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

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

Approved as to form and content by:
MARQUIS AURBACH COFFING


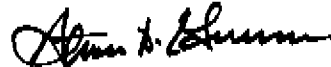
By: 
DALE A. HAYES, ESQ.
Nevada Bar No. 003430
LIANE K. WAKAYAMA, ESQ.
Nevada Bar No. 11313
10001 Park Run Drive
Las Vegas, NV 89145
Attorneys for Eleanor Connell Hartman Ahern

EXHIBIT 3



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **Cutting Off the 65% Income**

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

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

11 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

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

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

7
8
9 
DISTRICT COURT JUDGE

Submitted by:

10 MARQUIS AURBACH COFFING

11
12 By 

13 Dale A. Hayes, Esq.
14 Nevada Bar No. 3430
15 Liane K. Wakayama, Esq.,
16 Nevada Bar No. 11313
17 Candice E. Renka, Esq.,
18 Nevada Bar No. 11447
19 10001 Park Run Drive
20 Las Vegas, Nevada 89145
21 Attorneys for Eleanor Connell Hartman
22 Ahern, as Trustee
23
24
25
26
27
28

EXHIBIT 4


CLERK OF THE COURT

JUDGE
JOSEPH J. POWELL, ESQ.
Nevada Bar No. 008875
THE RUSHFORTH FIRM, LTD.
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134
Tel: (702) 255-4552
Fax: (702) 255-4677
joey@rushforth.net
Attorneys for Jacqueline M. Montoya

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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

An Inter Vivos Irrevocable Trust.

JUDGMENT AND ORDER APPROVING AWARD OF ATTORNEY'S FEES

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

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

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

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

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

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

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

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

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

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

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

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

13 4. Kathryn's and Jacqueline's request for an award of fees and costs incurred by their
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1 Texas counsel, prior to the commencement of these proceedings, totaling the sum of \$82,349.23, is
2 hereby denied.

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

4
5 
DISTRICT COURT JUDGE

6 Submitted by:

7 ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT

THE RUSHFORTH FIRM, LTD

8 By 

9 WHITNEY B. WARNICK, ESQ.
Nevada Bar No. 001573
801 S. Rancho Dr. #D-4
Las Vegas, NV 89106
Attorneys for Kathryn A. Bouvier

By 

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

11 Approved by:

12 BROWNSTEIN HYATT FARBER
13 SCHRECK, LLP

HUTCHISON & STEFFEN, LLC

14 By 

15 KIRK B. LENHARD, ESQ.
Nevada Bar No. 1437
TAMARA BEATTY PETERSON
16 Nevada Bar No. 5218
100 North City Parkway, Suite 1600
17 Las Vegas, NV 89106-4614
Attorneys for Eleanor Connell
18 Hartman Ahern

By 

RUSSEL J. GEIST, ESQ.
Nevada Bar No. 9030
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
Attorneys for Trustee,
Fredrick P. Waid

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

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

DISTRICT COURT JUDGE

Submitted by:

ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT

THE RUSHFORTH FIRM, LTD

By _____
WHITNEY B. WARNICK, ESQ
Nevada Bar No. 001573
801 S. Rancho Dr. #D-4
Las Vegas, NV 89106
Attorneys for Kathryn A. Bouvier

By _____
JOSEPH V. POWELL, ESQ.
Nevada Bar No. 008875
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134
Attorneys for Jacqueline M. Montoya

Approved by:

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

HUTCHISON & STEFFEN, LLC

By _____
KIRK B. LENHARD, ESQ
Nevada Bar No. 1437
TAMARA BEATTY PETERSON
Nevada Bar No. 5218
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
*Attorneys for Eleanor Connell
Hartman Ahern*

By _____
RUSSEL J. GEIST, ESQ.
Nevada Bar No. 9030
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
*Attorneys for Trustee,
Fredrick P. Wald*

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

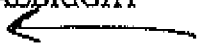
3 **IT IS SO ADJUDGED AND ORDERED** this ____ day of ~~May~~, 2015.


4
5 
DISTRICT COURT JUDGE

6 Submitted by:

7 ALBRIGHT, STODDARD, WARNICK
8 & ALBRIGHT

THE RUSHFORTH FIRM, LTD

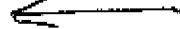
9 By 
WHITNEY B. WARNICK, ESQ
Nevada Bar No. 001573
801 S. Rancho Dr. #D-4
Las Vegas, NV 89106
Attorneys for Kathryn A. Bouvier

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

11 Approved by:

12 BROWNSTEIN HYATT FARBER
13 SCHRECK, LLP

HUTCHISON & STEFFEN, LLC

14 By 
KIRK B. LENHARD, ESQ
Nevada Bar No. 1437
TAMARA BEATTY PETERSON
Nevada Bar No. 5218
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Attorneys for Eleanor Connell
Hartman Ahern

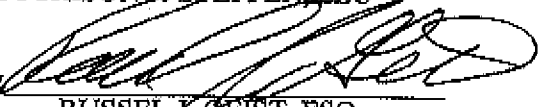
15 By 
RUSSEL J. GEIST, ESQ.
Nevada Bar No. 9030
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
Attorneys for Trustee,
Fredrick P. Waid

EXHIBIT 5


CLERK OF THE COURT

MOT
KIRK B. LENHARD, ESQ., Bar No. 1437
klenhard@bhfs.com
TAMARA BEATTY PETERSON, ESQ., Bar No. 5218
tpeterson@bhfs.com
BENJAMIN K. REITZ, ESQ., Bar No. 13233
breitz@bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135

Attorneys for Eleanor Connell Hartman Ahern

DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

**MOTION FOR DISTRIBUTION OF
TRUST INCOME IN ACCORDANCE
WITH THE COURT'S SUMMARY
JUDGMENT DATED APRIL 16, 2015
ON ORDER SHORTENING TIME**

Date of Hearing:

Time of Hearing:

Eleanor Connell Hartman Ahern, by and through her counsel of record, the law firm of Brownstein Hyatt Farber Schreck, LLP, hereby submits this Motion for Distribution Of Trust Income In Accordance With The Court's Summary Judgment Dated April 26, 2014 on Order Shortening Time. This Motion is made pursuant to EDCR 2.24 and is based upon the following Affidavit of Tamara Beatty Peterson, Esq., the Memorandum of Points and Authorities below, the papers and pleadings

///

///

///

///

///

on file in this case, and any oral argument requested by the Court.

DATED this 23rd day of September, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

KIRK B. LENHARD, ESQ., Bar No. 1437

klenhard@bhfs.com

TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

tpeterson@bhfs.com

BENJAMIN K. REITZ, ESQ., Bar No. 13233

breitz@bhfs.com

Las Vegas, NV 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

ORDER SHORTENING TIME

Good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the time for the hearing of the foregoing Motion be, and the same hereby is, shortened and the same will be heard on the 28 day of October, 2015 at 9:00 A.m. at the above-entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, in Department 26, Courtroom 3H.

DATED this 24 day of September, 2015.

BY: 

DISTRICT JUDGE 

Submitted by:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

KIRK B. LENHARD, ESQ., Bar No. 1437

klenhard@bhfs.com

TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

tpeterson@bhfs.com

BENJAMIN K. REITZ, ESQ., Bar No. 13233

breitz@bhfs.com

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

1 **AFFIDAVIT OF TAMARA BEATTY PETERSON, ESQ. IN SUPPORT OF**
2 **MOTION FOR DISTRIBUTION OF TRUST INCOME IN ACCORDANCE**
3 **WITH THE COURT'S SUMMARY JUDGMENT DATED APRIL 16, 2015**
4 **ON ORDER SHORTENING TIME**

5 STATE OF NEVADA }
6 COUNTY OF CLARK } ss.

7 Tamara Beatty Peterson, Esq., being duly sworn, states as follows:

8 1. I am a Shareholder with the law firm of Brownstein Hyatt Farber
9 Schreck, LLP, and counsel of record for Eleanor Ahern in this action. I make this
10 Affidavit in support of Ms. Ahern's Motion for Distribution of Trust Income In
11 Accordance With The Court's Summary Judgment Dated April 16, 2015. I have
12 personal knowledge of the matters set forth in this Affidavit and, if called as a
13 witness, could and would competently testify thereto.

14 2. Pursuant to the Court's Summary Judgment dated April 16, 2015, Ms.
15 Ahern is entitled to 35% of the Trust's income from the Texas oil properties.

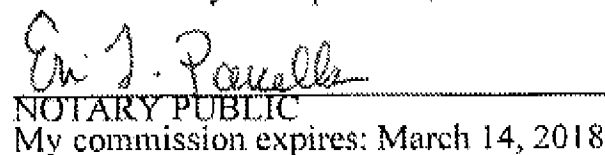
16 3. Ms. Ahern has not received any of her share of these funds from the
17 Court-appointed interim trustee, Mr. Fredrick P. Waid.

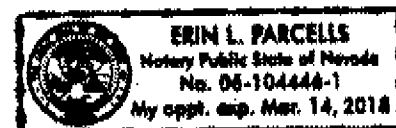
18 4. Ms. Ahern, being dependent on the Trust income for her livelihood,
19 requests that the Court hear this Motion on an Order Shortening Time so that she is
20 able to obtain the funds she needs to subsist, as well as to fund the continued
21 litigation of this matter.

22 DATED 23rd day of September, 2015.

23 
TAMARA BEATTY PETERSON, ESQ.

24 Subscribed and sworn to before me
25 on the 23rd day of September, 2015.

26 
NOTARY PUBLIC
27 My commission expires: March 14, 2018



MEMORANDUM OF POINTS AND AUTHORITIES

On April 1, 2015, this Court filed an Order appointing Fredrick P. Waid as the interim trustee ("Interim Trustee") of the Trust. (See Order Appoint New Temporary Trustee dated April 1, 2015, on file herein.) On April 16, 2015, this Court filed Summary Judgment in this matter stating, among others things, as follows: *"From and after the entry of this Summary Judgment, 35% of the Texas oil property income shall be distributed to Eleanor as beneficiary under subtrust 2. and 65% of the income shall be distributed equally between Jacqueline and Kathryn as beneficiaries under subtrust 3 and the MTC Living Trust."* (See Summary Judgment dated April 16, 2015, p. 15:15-19, on file herein.) The Summary Judgment was entered on April 17, 2015. (See Notice of Entry of Order on Order on Summary Judgment dated April 17, 2015, on file herein.) The Court entered judgment after finding that Ms. Ahern is entitled to 35% pursuant to the Trust documents, and the Court has not issued any other orders regarding the distribution of Trust income in this case. Nonetheless, the Interim Trustee is holding the money representing Ms. Ahern's 35% share.

Based on a partial accounting provided by the Interim Trustee on September 10, 2015, the Trust has earned a considerable sum of money since April 2015. The Interim Trustee has distributed to Jaqueline and Kathryn their share of this Trust income. However, as of the filing of this Motion, Eleanor has not received any of her share of the Trust income as provided in the Court's interpretation of the Trust documents and the Court's Summary Judgment.

Ms. Ahern requires an initial payment of \$30,000 to cover legal expenses for her current representation, and a monthly distribution of \$11,000 for living expenses and \$10,000 for continued legal expenses. A breakdown of living expenses is attached as Exhibit B.

On September 14, 2015, Ms. Ahern's counsel sent correspondence to the Interim Trustee requesting on Ms. Ahern's behalf that she receive, at minimum, a

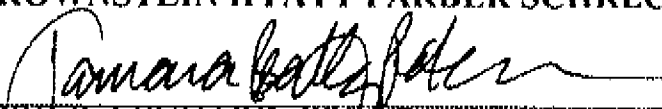
1 limited distribution of Trust Income of \$21,000 per month to help cover her living
2 expenses and to help fund her defense in this litigation. The Interim Trustee
3 refused. The correspondence is attached hereto as Exhibit A.

4 Through this Motion, Ms. Ahern, being dependent on the Trust income for
5 her livelihood, respectfully requests that the Court order the Interim Trustee to
6 make limited distributions consisting of an initial payment of \$30,000 and \$21,000
7 per month to cover her living expenses and to help fund her defense in this
8 litigation.

9 DATED this 23rd of September, 2015.

10
11 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

12 By:



13 KIRK B. LENHARD, ESQ., Bar No. 1437

klenhard@bhfs.com

14 TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

tpeterson@bhfs.com

15 BENJAMIN K. REITZ, ESQ., Bar No. 13233

breitz@bhfs.com

16 Las Vegas, NV 89106-4614

Telephone: 702.382.2101

17 Facsimile: 702.382.8135

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **MOTION FOR DISTRIBUTION OF TRUST INCOME IN ACCORDANCE WITH THE COURT'S SUMMARY JUDGMENT DATED APRIL 16, 2015 ON ORDER SHORTENING TIME** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 25th day of September, 2015, to the following:

TODD L. MOODY, ESQ.
tmoody@hutchlegal.com
RUSSEL J. GEIST, ESQ.
rgeist@hutchlegal.com
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
*Attorneys for Fredrick P. Waid,
Court-appointed Trustee*

JOSEPH J. POWELL, ESQ.
probate@rushforthfirm.com
THE RUSHFORTH FIRM, LTD.
P.O. Box 371655
Las Vegas, NV 89137-1655
*Attorneys for Jacqueline M. Montoya and
Kathryn A. Bouvier*



an employee of Brownstein Hyatt Farber Schreck, LLP

EXHIBIT A

EXHIBIT A

**Brownstein Hyatt
Farber Schreck**

September 14, 2015

Tamara Beatty Peterson
Attorney at Law
702.464.7046 tel
702.382.8135 fax
tpeterson@bhfs.com

VIA EMAIL

Fredrick P. Weid, Esq.
Hutchison & Steffen, LLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89146

RE: Distribution of Trust Income

Dear Fred:

As you know, this firm represents Ms. Eleanor Ahern in the matter of *The W.N. Connell and Marjorie T. Connell Living Trust ("Trust")*, dated May 18, 1972, Case No. P-09-068425-T, District Court of Clark County, Nevada. Ms. Ahern is a beneficiary of the Trust, for which you currently serve as Trustee pursuant to a Court order dated April 1, 2015.

On April 16, 2015, the Court granted Summary Judgment in this matter, stating, among other things, as follows.

From and after the entry of this Summary Judgment, 35% of the Texas oil property income shall be distributed to Eleanor as beneficiary under subtrust 2, and 65% of the income shall be distributed equally between Jacqueline and Kathryn as beneficiaries under subtrust 3 and the MTC Living Trust.

(See Summary Judgment dated April 16, 2015, p. 15;16-19.) The Summary Judgment was entered on April 17, 2015. (See Notice of Entry of Order on Summary Judgment dated April 17, 2015.) The Court entered judgment after finding that Ms. Ahern is entitled to 35% of the oil property income pursuant to the Trust documents, and the Court has not issued any other orders regarding the distribution of Trust income in this case.

Based on a partial accounting you provided on September 10, 2015, the Trust has earned considerable income since April 2015. Your previous accountings indicate that you have distributed 65% of the income to the other beneficiaries, Jacqueline and Kathryn, in accordance with the Court's order. However, as of the date of this letter, Ms. Ahern has not received any distributions of Trust income. While Ms. Ahern has appealed the order granting summary judgment and is reserving her right therein, there is no stay on the pending order and at a minimum Ms. Ahern still holds a 35% interest.

Through this letter, and without relinquishing her right to receive full distributions up to and including 35% now and in the future, Ms. Ahern requests in her capacity as beneficiary of the Trust that you distribute limited funds to her monthly to provide for her living expenses, including incremental litigation expenses necessary to defend against the new claims made by Jacqueline and Kathryn and protect Ms. Ahern's interest in the Trust. It is expected that Ms. Ahern's living expenses will total \$11,000 per month and that

100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
tel: 702.382.2101

Fredrick P. Wald, Esq.
September 14, 2015
Page 2

litigation costs will average approximately \$10,000 in the short term (given the opening appellate brief due October 20, 2015, and the evidentiary hearing scheduled for November 9, 2015).

Distributions can be sent to my office and made payable to Ms. Ahern and my Firm jointly. Please contact me if you have any questions or would like to discuss further. If I do not hear from you by close of business on Wednesday, September 16, 2015, I will presume that you are unwilling to provide Ms. Ahern with her living expenses and will file an emergency motion with the Court for the distribution of said funds.

Thank you for your attention to this matter.

Very truly yours,



Tamara Beatty Peterson, Esq.

cc: Todd L. Moody, Esq.
Russel J. Geist, Esq.

0181770001\13303558.1

Peterson, Tamara Beatty

From: Fredrick P. Waid <FWaid@hutchlegal.com>
Sent: Monday, September 21, 2015 4:38 PM
To: Parcels, Erin L.
Cc: Todd L. Moody; Russel J. Geist; Peterson, Tamara Beatty; Lenhard, Kirk B.
Subject: RE: Connell Trust / Eleanor Ahern

Dear Tammy and Kirk:

I have reviewed your letter of September 14, 2015, wherein you request that I make certain beneficiary distributions to Eleanor Ahern. After considering the totality of the circumstances including, but not limited to, Eleanor's admission to me that funds are owed by her to the trust (amount still undetermined, but estimated to be in the range of \$800,000 to over \$2,000,000) and the unresolved Fidelity Capital (\$500,000 funds) matter, I must respectfully decline and suggest that it would be more appropriate for the Court to decide whether distributions are warranted at this time. Please let me know if you will file such a Petition seeking distributions or whether you desire me to seek instructions from the Court with respect to your request. Thank you again for your efforts.

Sincerely,

Fred

Please see attached correspondence from Tamara Beatty Peterson, Esq.

Thank you,

Erin L. Parcels
Legal Secretary
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
702.464.7005 tel
ERParcels@BNHFS.com

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Fredrick P. Waid
Of Counsel



HUTCHISON & STEFFEN, LLC
(702) 385-2500
hutchlegal.com

Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.


EXHIBIT B

EXHIBIT B

EXHIBIT OF LIVING EXPENSES

DESCRIPTION OF EXPENSE	AMOUNT
Current rental Home lease ends November 1,2015	\$1,770.00
Automobile Payment	\$414.39
Automobile Insurance Payment	\$229.90
Food and veterinary supplements for service dog (Captain), food for other animals (cat and African Gray Parrot)	\$600.00
House cleaning (per physical limitations)	\$400.00
Fuel	\$500.00
Personal Items	\$495.00
Doctor Visits	\$575.00
Groceries	\$850.00
Assistance (\$18.75/hour x 8 hours/week x 30 days)	\$4,500.00
TOTAL	\$10,334.90

EXHIBIT 6



CLERK OF THE COURT

ORDER

Todd L. Moody (5430)
Russel J. Geist (9030)
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
(702) 385-2500
(702) 385-2086 FAX
tmoody@hutchlegal.com
rgeist@hutchlegal.com

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

DISTRICT COURT

CLARK COUNTY, NEVADA

In the matter of

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

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

ORDER INSTRUCTING TRUSTEE TO ADVANCE FUNDS

Date of Hearing: 11/04/15
Time of Hearing: 9:00 a.m.

A hearing was held on November 4, 2015 on a Motion for Distribution of Trust Income in Accordance with the Court's Summary Judgment Dated April 16, 2015 on Order Shortening Time ("Motion") filed by Eleanor Connell Hartman Ahern ("Eleanor"). Both Fredrick P. Waid, acting Successor Trustee ("Trustee") of The W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 ("Trust"), and Jacqueline M. Montoya and Kathryn A. Bouvier responded to the motion. Eleanor Connell Hartman Ahern ("Eleanor") was represented by Kirk Lenhard and Tammy Peterson of Brownstein, Hyatt, Farber & Schreck, LLP; the Trustee was represented by Todd L. Moody of Hutchison & Steffen, LLC; and Jacqueline M. Montoya and Kathryn A. Bouvier were represented by Joseph J. Powell of The Rushforth Firm. Having considered the Motion, the responses thereto, and the evidence and arguments presented at the time of hearing,

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

1 IT IS HEREBY ORDERED that the Motion is granted in part and denied in part, and
2 the Court instructs the Trustee as follows:

- 3 1. The Trustee will advance to Eleanor \$5,000.00/month for living expenses from
4 November 2015 to February 2016;
- 5 2. The Trustee will advance to Eleanor \$10,000.00/month, payable directly to
6 Brownstein Hyatt Farber Schreck, LLP, for ongoing attorney's fees from
7 November 2015 to February 2016; and
- 8 3. The Trustee will advance to Eleanor \$30,000.00, which may be paid in monthly
9 installments, payable directly to Brownstein Hyatt Farber Schreck, LLP, for past
10 attorney's fees.

11 IT IS FURTHER ORDERED that the Trustee is only required to advance funds if such
12 funds are available;

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

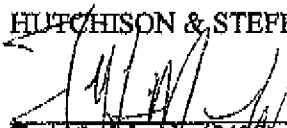
1 IT IS FURTHER ORDERED that the advanced funds are to be repaid by Eleanor upon
2 settlement or resolution of this case.

3 Dated this 29th day of November, 2015.

4
5 
6 District Court Judge

7 Submitted by:

8 HUTCHISON & STEFFEN, LLC

9 
10 Todd L. Moody (5430)
11 Russel J. Geist (9030)
12 10080 W. Alta Dr., Ste 200
13 Las Vegas, NV 89145
14 tmoody@hutchlegal.com
15 rgeist@hutchlegal.com

16 Attorneys for Fredrick P. Wald,
17 Court-appointed Trustee

18 Approved as to form and content:

19 BROWNSTEIN HYATT FARBER
20 SCHRECK, LLP

21 
22 Kirk B. Lenhard, Esq. (1437)
23 Tamara Beatty Peterson, Esq. (5218)
24 100 North City Parkway, Suite 1600
25 Las Vegas, NV 89106-4614
26 klenhard@bhfs.com
27 tpeterson@bhfs.com

28 Attorneys for Eleanor Ahern

EXHIBIT 7


CLERK OF THE COURT

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

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

10 In re the Matter of the
11
12 **THE W.N. CONNELL and MARJORIE T.**
13 **CONNELL LIVING TRUST, dated May 18,**
14 **1972**

15 A non-testamentary trust.

Case No.: P-09-066425-T
Department: 26 (Probate)
PC1 (Judge Sturman)

16 **MOTION FOR RECONSIDERATION ON ORDER SHORTENING TIME**

17 JACQUELINE M. MONTOYA ("Jacqueline") and KATHRYN A. BOUVIER ("Kathryn"), by
18 and through their counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM,
19 LTD., hereby submit this "Motion for Reconsideration on Order Shortening Time" in which they
20 hereby request that this Court reconsider and negate or, in the alternative, indefinitely suspend its
21 "Order Instructing Trustee to Advance Funds" dated December 29, 2015 ("Order"), which was the
22 result of and related to the "Motion for Distribution of Trust Income in Accordance with the Court's
23 Summary Judgment Dated April 16, 2015 on Order Shortening Time" filed on September 25, 2015
24 and the ""Reply in Support of Motion for Distribution of Trust Income" filed on October 27, 2015
25 (referred to collectively herein as the "Petition") which were filed by ELEANOR CONNELL
26 HARTMAN AHERN, by and through her counsel of record, TAMARA BEATTY PETERSON, Esq.
27
28

THE RUSHFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
PO Box 371655
Las Vegas, Nevada 89137-1655

THE RUSHFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
PO Box 371655
Las Vegas, Nevada 89137-1655

1 and KIRK B. LENHARD, Esq., of BROWNSTEIN HYATT FARBER SCHRECK, LLP. This Motion
2 is made and based upon the pleadings and papers on file, points made herein along with the cited
3 authority, the exhibits attached hereto, and any oral arguments that the Court may entertain.

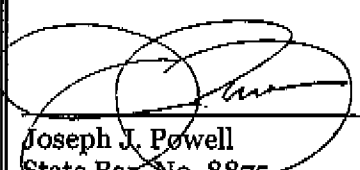
4 **ORDER SHORTENING TIME**

5 Upon the Declaration of Joseph J. Powell, Esq., and good cause appearing therefore,

6 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the time for hearing of the
7 above-entitled matter will be shortened and will be heard on the 29th day of January
8 2016, at the hour of 9:30 a.m. in Department 26 of the Eighth Judicial District Court, located
9 at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.
10

11 
DISTRICT COURT JUDGE

12 Respectfully submitted by:

13 
14 Joseph J. Powell
15 State Bar. No. 8875
16 1707 Village Center Circle, Suite 150
17 Las Vegas, NV 89134-0597
18 Attorneys for Jacqueline M. Montoya
and Kathryn A. Bouvier

11/14/16

Date

19 **DECLARATION OF JOSEPH J. POWELL, ESQ.**
20 **IN SUPPORT OF ORDER SHORTENING TIME**

- 21 1. I am over the age of 18 and have personal knowledge of the facts stated herein,
22 except for those stated upon information and belief, and as to those, I believe them
23 to be true. I am competent to testify to the facts stated herein in a court of law and
24 will so testify if called upon.
- 25 2. I am an attorney with The Rushforth Firm, Ltd., counsel for Jacqueline M. Montoya
26 and Kathryn A. Bouvier. I am submitting this declaration in Support of the Motion
27 for on an Order Shortening Time.
28

3. Based on this Court's "Order Instructing Trustee to Advance Funds" dated December 29, 2015, the Court has required that Fredrick P. Waid, the interim Trustee of The W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (the "Trust") to make distributions to Ms. Eleanor Ahern and to Ms. Ahern's attorneys, the Brownstein Hyatt Farber Schreck, LLP.
4. The required distributions that Mr. Waid is to make total \$90,000.
5. Should that Order take effect and Mr. Waid be required to distribute the combined sum of \$90,000 to Ms. Ahern and for the benefit of Ms. Ahern, immediate, irreparable harm to the Trust, and in turn to Ms. Montoya and Ms. Bouvier would occur.
6. Furthermore, NRCP 62(a) allows for an automatic stay of execution for a period of 10 days after service of written notice of entry of judgment. Notice of Entry of the December 29, 2015 Order was served on January 11, 2016. Therefore, the 10-day period before Mr. Waid can take action will expire on January 21, 2016.
7. As such, it is of critical importance that this Motion for Reconsideration occur prior to such time, as once Mr. Waid is required to take action on the Order, the irreparable harm and damage to the Trust, and in turn to Ms. Montoya and Ms. Bouvier, will occur and will render this Motion for Reconsideration entirely moot.
8. In light of the foregoing, there is good cause for having this Court hear the instant Motion on Order Shortening Time.

Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 14th day of January, 2016.


JOSEPH J. POWELL, ESQ.

LEGAL STANDARD ON A MOTION TO RECONSIDER

A court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 536 P.2d 1026 (1975). A district court may revise its orders at any time before the entry of final judgment. See NRCP 54(b); EDCR 2.24; DCR 13(7). The trial judge has great discretion on the question of a motion to reconsider. *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 606 P.2d 1095 (1980). A motion may be reheard upon production of new evidence, introduction of clarifying case law, and/or the court's original order was clearly erroneous. *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth*, 113 Nev. 21 737, 941 P.2d 486 (1997).

OVERVIEW

By its ruling, this Court is setting an extremely dangerous precedent that has far reaching consequences that adversely affect not only Jacqueline and Kathryn, but also the interim trustee, Fredrick P. Waid ("Fred"). Above all else, Jacqueline and Kathryn request that this Court either abandon or, at a minimum, temporarily suspend its Order until it has the opportunity to devote sufficient, additional time to further investigate the facts before it, via an evidentiary hearing, so that it may fully analyze and in turn digest said facts. Additionally this Court must require Ms. Ahern to submit substantiated, verifiable evidence before reaching it's determination, which is something that has not yet even occurred.

IMPROPER STANDARD OF REVIEW APPLIED TO FRED'S DECISION

It appears that this Court has failed to take into consideration that Fred already made a decision regarding Ms. Ahern's request for Fred to exercise his discretion to make distributions to her.

In his Response to Ms. Ahern's Petition filed on October 8, 2015, Fred set forth his logic as to why he is choosing not to make any distributions to Ms. Ahern at this time. Fred unequivocally

1 informed Ms. Ahern's counsel that he was denying the request for distributions to be made to Ms.
2 Ahern at this time given the circumstances. In his Response, Fred stated the following:

3 *The Interim Trustee's refusal to honor the request of Eleanor Ahern for a beneficiary*
4 *distribution does not violate the Court's summary judgement on April 16, 2015; to the*
5 *contrary, the Interim Trustee's refusal to distribute Trust funds is intended to comply with*
6 *that order. Since Ms. Ahern is entitled to only 35% of the Trust's income from the oil*
7 *properties and, by her own admission, she owes back to the Trust \$800,000, giving her*
8 *distributions before that money is returned would provide her a windfall and leave the*
9 *other beneficiaries short of their rightful distributions which were ordered by this Court*
10 *to be held in Trust. Moreover, since Ms. Ahern cannot be discharged as former trustee until*
11 *a formal accounting is provided, the Interim Trustee would appreciate her cooperation*
12 *before she receives any further distributions. Finally, under the terms of the Trust's*
13 *spendthrift provisions, the Interim Trustee has discretion to withhold distributions in light*
14 *of the concerns that are set forth in this response and those noted previously by this Court.*

15 Fred had every right to make this determination and this Court is not empowered with the ability
16 to challenge Fred's determination unless it first determines that Fred has exercised his discretion
17 inappropriately.

18 The standard of review of a trustee's exercise of discretion is found in NRS 163.419.
19 Subsection 1 of NRS 163.419 provides that "A court may review a trustee's exercise of discretion
20 concerning a discretionary interest only if the trustee acts dishonestly, with improper motive or
21 fails to act." Here, it is has not been established that Fred has acted in a manner that even gives this
22 Court the ability to review his discretion in not making any distributions to Ms. Ahern at this point
23 in time given the circumstances.

24 Reviewing Fred's exercise of discretion prior to a finding that he has acted inappropriately,
25 as is required by NRS 163.419(1), would be establishing an extremely dangerous precedent as it
26 would be in direct conflict with existing statutory requirements.

27 **MS. AHERN'S FAILURE TO VERIFY PETITION IS A FATAL FLAW**

28 Simply by oversight, this Court must not have recognized, and in turn take into
consideration, that Ms. Ahern did not present any admissible evidence in her Petition. Instead,
all that occurred was the presentation of unsworn, undeclared statements to this Court, which don't

1 constitute the filing of a permissible, recognizable petition under Nevada probate law. Specifically,
2 Ms. Ahern did not sign any verification in support of the Petition indicating that the information
3 that she was providing and the claims that she was making therein were being submitted to this
4 Court under penalties of perjury. Alternatively, Ms. Ahern did not provide any type of affidavit in
5 which she swore under penalties of perjury that the information that she was providing was truthful
6 and accurate.
7

8 The reality is that there is not a single assertion made in the Petition which is attested to by
9 Ms. Ahern as being truthful and accurate, and being made subject to penalties of perjury. Only
10 Attorney Peterson provided an affidavit with the Petition, which is attached hereto as Exhibit "A"
11 and is hereby incorporated by this reference.

12 As can clearly be seen, Attorney Peterson's affidavit merely provides generic "facts", none
13 of which speak, and verify under penalties of perjury, to the Petition's claim that Ms. Ahern is
14 effectively destitute and living an impoverished lifestyle. Due to the lack of the legally required
15 verification, the Petition must be immediately dismissed and the prior consideration stricken from
16 the record. Not unless and until such a petition is re-filed and accompanied by a verification that
17 has been signed by Ms. Ahern which comports with Nevada probate law could Ms. Ahern's petition
18 be deemed legally effectively to be brought and considered by this Court.
19

20 The usual and customary practice in the Clark County Probate Court is to file a petition
21 when one is seeking an order from this Court. The fact that Ms. Ahern labeled her petition a
22 "motion" and not a "petition" should be given no deference. The relief sought by Ms. Ahern must
23 be held to the same standard as that required of a petition. Therefore, the Court must disregard the
24 semantic of using the label of "motion" versus "petition".
25

26 To further illustrate and establish this point, NRS Chapter 132, titled "general provisions"
27 contains no definition of a "motion" and instead only contains a definition of a "petition".

28 NRS 132.270, which provides the definition of "Petition", states as follows:

1 *"Petition" means a verified written request to the court for an order.*

2 NRS 132.360, which provides the definition of "Verification", provides for the following:

3 *"Verification" means a declaration that a statement is true, made under oath or*
4 *affirmation under penalty of perjury for false statement.*

5 As discussed, Ms. Ahern has completely failed to comply with the statutory requirement that
6 her Petition be verified. Until Ms. Ahern corrects this defect, it is entirely inappropriate for this
7 Court to even consider her Petition.

8 Given the previous fraudulent statements that Ms. Ahern has made in this matter which
9 were sworn to under penalty of perjury, Jacqueline and Kathryn strongly suspect that Ms. Ahern's
10 failure to verify her Petition was in fact an intentional omission and was done by design.

11 **BURDEN OF PROOF BELONGS TO MS. AHERN**

12 Setting aside for the moment the fact that this Court should have never heard the fatally
13 defective Petition in the first place and the fact that this Court is not permitted to review Fred's
14 exercise of his discretion prior to a finding that he has acted improperly in exercising said
15 discretion, as the petitioner, Ms. Ahern was required to carry her burden of proof to validate and
16 support claims made in her Petition in seeking to have this Court mandate support payments from
17 The W.N. Connell and Marjorie T. Connell Living Trust ("Trust"). However, this burden of proof
18 was not satisfied.

19 Ms. Ahern has asserted in her Petition that she is effectively destitute and impoverished,
20 which is why she has had to go to various food banks to collect free subsistence supplies. However,
21 Ms. Ahern has completely failed to support her claims with any corroborating and supporting
22 evidence. Similarly, Ms. Ahern has made claims about her living expenses, but she has failed to
23 provide any supporting documentation for those expenses, which as noted she has not claimed are
24 accurate and truthful statements made under penalty of perjury. Ms. Ahern has essentially asked
25 that this Court to take her word for it that her representations are accurate, yet has failed to provide
26 that this Court to take her word for it that her representations are accurate, yet has failed to provide
27 that this Court to take her word for it that her representations are accurate, yet has failed to provide
28 that this Court to take her word for it that her representations are accurate, yet has failed to provide

1 any corroborating evidence whatsoever. This Court knows very well that the burden of proof on
2 a petition is to establish the claims made within it with supporting, corroborating evidence. This
3 Court has mistakenly assumed that Ms. Ahern provided adequate evidence, when in fact Ms. Ahern
4 has not provided any evidence whatsoever that would support her claims.

5
6 As this Court certainly understands, if an individual who is seeking protection through a
7 bankruptcy proceeding claims that they are insolvent, there is a requirement that they actually
8 establish that they do not have sufficient assets to satisfy their outstanding obligations. Likewise,
9 in a divorce or custody proceeding occurring in a family court matter in which the support of
10 another is at issue, the family court will require a showing of need as well as the ability to provide
11 support. When undertaking such analysis, the court will require substantial, corroborating proof
12 of the extent of the assets and the debt obligations of a party.

13
14 In this matter, Ms. Ahern is demanding that she receive support from the Trust because she
15 claims not to have sufficient assets that will allow her to support herself. This demand is made
16 despite concrete evidence, along with her own admission to Fred, as he has verified and attested
17 to via affidavit signed under penalties of perjury, that she owes the Trust significant amounts of
18 money that she improperly took. The demand is also made despite the fact that there is a pending
19 motion which seeks the enforcement of further damages for her conduct, including the
20 determination that the Trust's no contest clause must be enforced, which would retroactively divest
21 her of any interest in the Trust.

22
23 With that as the basis for her Petition, Ms. Ahern must be required to submit corroborating
24 proof of her claims that she has no resources on which to live and is impoverished. Ms. Ahern
25 should be required to submit a financial disclosure form that lists all of her assets and all of her
26 liabilities, in the same required standard used by other Clark County Courts. Jacqueline and
27 Kathryn respectfully submit that this Court should require Ms. Ahern to complete a disclosure
28 form, signed under penalties of perjury, that is similar to the "General Financial Disclosure Form"

1 that is employed by the Clark County Family Court. A blank "General Financial Disclosure Form"
2 is attached hereto as Exhibit "B" and is hereby incorporated by this reference.

3 Ms. Ahern must be required by this Court to disclose the extent of her assets and her current
4 income received. As previously shown to this Court by concrete evidence, Ms. Ahern currently
5 owns, via either business entities or trusts, three homes in Clark County. At the hearing on the
6 Petition, Attorney Peterson said the properties are being rented out. Ms. Ahern must be required
7 to disclose, with supporting evidence, the amount of rental income received from those properties.
8 Attorney Peterson made the claim that one of those properties has been sold according to Ms.
9 Ahern's representations. If that is in fact true, Ms. Ahern should be compelled to corroborate this
10 assertion and explain where the proceeds received from such purported sale went.

11
12 Additionally, as to Ms. Ahern's claimed monthly expenses, Ms. Ahern should be forced to
13 disclose how those computations have been arrived at, and to provide supporting evidence for
14 them. For example, Ms. Ahern claims that she rents a home. Ms. Ahern should be forced to
15 disclose the terms of such rental, providing a copy of the lease agreement.

16
17 As stated, all of the burden must be on Ms. Ahern to verify and corroborate with supporting
18 evidence the assertions that she is making. Simply stating that something is the case does not
19 make it so. Given Ms. Ahern's previous false representations to the Court, this Court cannot allow
20 Ms. Ahern's assertions to simply be accepted without evidentiary support as to do so would be to
21 relieve her of her burden of proof. Again, given the circumstances that she has created, it is Ms.
22 Ahern's obligation and burden of proof to establish the need for support due to a lack of assets.
23 This Court must not allow Ms. Ahern to avoid this burden of proof.

24
25 **DANGEROUS PRECEDENT**

26 On top of destroying the statutory requirement that a petition must be verified to even be
27 considered, along with obliterating the fundamental legal principle that a petitioning party seeking
28 support must actually establish through the production of sufficient, verifiable evidence that there

1 is actually a need for such support, should this Court not abandon or at least temporarily suspend
2 its Order, this Court also risks establishing the precedent that one who has committed fraudulent
3 acts and victimized others will be allowed by Nevada courts to use the victims monies to fund their
4 own defense. It is simply unfathomable that this Court would want to willingly establish such a
5 counterintuitive precedent.
6

7 It would be shocking to the conscious for a court to allow Bernie Madoff to use funds which
8 were fraudulently obtained from his victims to defend himself either civilly or criminally. Likewise,
9 it would be unbelievable to think that a court would allow a bank robber to use funds from the bank
10 robbery to hire counsel to defend themselves.

11 By allowing Ms. Ahern access to additional trust funds when she owes the Trust millions of
12 dollars to defend against efforts to hold her responsible for her actions is no different from these
13 two examples. Establishing such a precedent would put a chill on promoting Nevada as the ideal
14 jurisdiction in which to establish and administer a trust.
15

16 As part of its analysis, what this Court might fail to be taking into consideration is the reality
17 that Jacqueline and Kathryn are the remainder beneficiaries of the Trust. This means that upon
18 Ms. Ahern's death that any equalization and balancing of monies owed to Jacqueline and Kathryn
19 that have not yet occurred represents immediate, permanent loss to them. Unless Ms. Ahern lives
20 long enough to provide complete restitution to the Trust, any further payment to her or her
21 attorneys simply reduces the share of the ultimate beneficiaries, Jacqueline and Kathryn.

22 As can be verified by Fred, the undistributed, accumulated trust share owed to Jacqueline
23 and Kathryn from June of 2013 through April 2015 is approximately \$3,420,219.94, representing
24 only the income owed from their 65% interest in the Trust for the respective time frame. This
25 approximation represents straight damages to Jacqueline and Kathryn and does not take into
26 account any punishment damages that they have requested. Therefore, this means that until this
27 amount is distributed to them, they are not put back to where they should have been had Ms. Ahern
28

1 not acted inappropriately. It is estimated that it will take anywhere from 5 to 8 years for Jacqueline
2 and Kathryn to be put back to square and made whole, but this is entirely unknown as it is
3 dependent on the price of oil and oil production.

4
5 Therefore, despite this Court's perception that any monies distributed to Ms. Ahern from
6 the Trust at this time would be "advancements" to her, the reality is that any distribution to Ms.
7 Ahern or for her benefit are only advancements if there is adequate security and in turn a
8 probability of recovery of such security in the event that there is not full restitution, actively or
9 passively, from Ms. Ahern. Otherwise such advancements are not actually advancements at all, but
10 rather are gifts to her from the Trust. This Court must understand that "advancements" to Ms.
11 Ahern only add to her obligations of repayment to the Trust.

12
13 As previously stated, the functional equivalent of what this Court is ordering here is that of
14 a bank that has been robbed of \$3 million dollars to be forced to "loan" the robber another
15 \$90,000, thus further adding to the damage and loss to the bank. It is inconceivable that this is
16 truly what this Court, or any other court for that matter, would willingly want to establish a
17 precedent of.

18
19 Further, this Court recognized that there is the possibility that Ms. Ahern is concealing
20 assets. This Court recognized the possibility that Ms. Ahern has hidden assets belonging to the
21 Trust with others with the intent for those assets to be transferred back to her at a later date. This
22 describes the very definition of fraud and what a fraudulent transfer is. Until Ms. Ahern declares
23 her assets and liabilities under penalties of perjury, this Court cannot accurately assess what her
24 true financial situation is.

25 **NEWLY DISCOVERED EVIDENCE**

26
27 As part of Fred's "Trustee, Fredrick P. Waid's First Supplemental Production of Documents"
28 served on the parties on November 17, 2015, documents from Ms. Ahern's CPA, Ms. McNair, there
is documentation of a \$27,500 payment from Ms. Ahern to Brownstein Hyatt Farber Schreck, LLP,

1 in the form of a cashier's check dated July 15, 2015. The remitter of the payment is listed as the
2 "Elton Business Trust". A copy of the cashier's check is attached hereto as Exhibit "C" and is hereby
3 incorporated by this reference.

4 This newly discovered evidence triggers multiple questions. What is the Elton Business
5 Trust and what assets does the Elton Business Trust possess? What interest does Ms. Ahern have
6 in the Elton Business Trust? It would be a rational deduction that if Ms. Ahern is using funds from
7 the Elton Business Trust to pay her attorneys then obviously the Elton Business Trust is an asset
8 of hers. It is only logical that Ms. Ahern would be expected to declare and explain what this asset
9 is, and how it relates to her financial status given her unverified claims that she is destitute and
10 impoverished.

11
12 Pursuant to the Clark County Assessor's Site, at one time the real property located at 6105
13 Elton Avenue, Las Vegas, Nevada was owned by the Elton Business Trust, having been transferred
14 to such trust from Ms. Ahern, personally. Pursuant to the Assessor's Site, on June 8, 2015 a deed
15 was recorded which transferred the Elton Avenue Property from the Elton Business Trust to "Elton
16 Investment Group, LLC". What is Elton Investment Group, LLC and what assets does it possess?
17 What interest does Ms. Ahern have in Elton Investment Group, LLC? These are questions that Ms.
18 Ahern should be forced to provide this Court with answers to since she is seeking to have this Court
19 compel Fred to provide support to her.

20
21 As part of Fred's "Trustee, Fredrick P. Waid's First Supplemental Production of Documents"
22 served on the parties on November 17, 2015, there is documentation obtained from Town & Country
23 Bank. A letter/memorandum dated June 1, 2015 from Town & Country Bank is attached hereto as
24 Exhibit "D" and is hereby incorporated by this reference. In the letter/memorandum, it provides,
25 in relevant part, for the following:
26

27 *One of their investigators went to the house at 6105 Elton Ave, Las Vegas, NV.*
28 *They said the house was like a fortress. The investigator could not get in because*
the gates were locked and no one would answer the intercom. The second time she

1 *went she called the police to help her get inside. When she got to the front door a*
2 *Hispanic woman answered the door and said that Eleanor did not live there and*
3 *that she had been leasing the house for the last two years. She showed the officers*
4 *a copy of her lease. They discovered later that the house was sold in 2012 to a*
5 *business and that Eleanor Ahern did not own or have anything to do with the*
6 *house.*

7 Based on this information, it appears that there has been a renter in the Elton Property for
8 at least the last two years. With this being the case, where did this previous rent go and where does
9 the current rent go?

10 As part of Fred's "Trustee, Fredrick P. Waid's First Supplemental Production of Documents"
11 served on the parties on November 17, 2015, documents from Ms. Ahern's CPA, Ms. McNair, show
12 newly discovered evidence found in Ms. McNair's disclosures relating to Ms. Ahern's social security
13 payments. It appears that as of 2014 that Ms. Ahern's social security payments were almost \$2,900
14 per month. A copy of the social security benefit statement is attached hereto as Exhibit "E" and is
15 hereby incorporated by this reference. As previously stated, Ms. Ahern should be required to sign
16 and submit a general financial disclosure affidavit so that the full extent of assets, including all
17 income sources, is disclosed under penalties of perjury.

18 As part of Fred's "Trustee, Fredrick P. Waid's First Supplemental Production of Documents"
19 served on the parties on November 17, 2015, documents from Ms. Ahern's CPA, Ms. McNair, show
20 newly discovered evidence found in Ms. McNair's disclosures relating to Ms. Ahern's vehicles.
21 Attached hereto as Exhibit "F" and hereby incorporated by this reference is a AAA insurance
22 statement for the policy period of February 12, 2015 through February 12, 2016. The document
23 appears to indicate that two vehicles are insured. A 2005 Toyota and a 2011 Volvo. The statement
24 is sent to "Eleanor Ahern, Eleanor 'Ellie' Ahern Foundation", which triggers questions. Does Ms.
25 Ahern own two vehicles? Does the Eleanor 'Ellie' Ahern Foundation own the vehicles? What is the
26 Eleanor 'Ellie' Ahern Foundation? Does the Foundation own assets of its own? Does Ms. Ahern
27 receive an income stream from the Foundation? Does Ms. Ahern or the Foundation pay for the
28

1 insurance on the vehicles? Do the vehicles belong to another person? Do each of the vehicles
2 belong to separate persons?

3 Additionally as to the Foundation, as part of Fred's "Trustee, Fredrick P. Waid's First
4 Supplemental Production of Documents" served on the parties on November 17, 2015, documents
5 obtained from Wells Fargo Bank show newly discovered evidence. Specifically, on September 11,
6 2012 Ms. Ahern made four distributions to the "Eleanor Ellie Ahern Foundation" totaling the sum
7 of \$27,845.97. Collectively attached hereto as Exhibit "G" and hereby incorporated by this
8 reference are cashier's checks all dated September 11, 2012 in the amounts of \$2,784.60, \$5,569.19,
9 \$8,353.79, and \$11,138.39 to the Eleanor Ellie Ahern Foundation. Again, what assets belong to the
10 Foundation? What interest in the Foundation does Ms. Ahern have? Does Ms. Ahern receive
11 assets from the Foundation? Does Ms. Ahern receive compensation from the Foundation? As
12 previously stated, Ms. Ahern should be required to sign and submit a general financial disclosure
13 affidavit so that the full extent of assets and interests in business entities is disclosed under
14 penalties of perjury.
15

16
17 As part of Fred's "Trustee, Fredrick P. Waid's First Supplemental Production of Documents"
18 served on the parties on November 17, 2015, documents obtained from Town & Country Bank
19 show newly discovered evidence found in Ms. McNair's disclosures relating to Ms. Ahern's expenses
20 which raise reasonable questions as to whether Ms. Ahern is supporting others or merely herself.
21 For example, as reflected in the Town & Country Bank letter/memorandum, Exhibit "D", the
22 following statements were made:

23 *She came in with a female friend, Suzanne Nounna, and a large German Shepherd dog.*
24 *She stated the dog was a service dog. There was a third person, a man, in the group, but he*
25 *waited outside the bank. We were told it was because he and the dog had problems with each*
26 *other.*

27 *Again, as we asked questions, the phone would be put on mute and after a pause Ms. Ahern*
28 *would come back on the line to answer the question. Sometimes when she would unmute the*
phone we could hear a male voice talking to her.

1 Based on the recent evidence obtained from Ms. McNair and Town & Country Bank, which
2 was not available prior to the hearing, it appears that Ms. Ahern does in fact pay expenses for
3 others, which should be explained by Ms. Ahern in a financial disclosure signed under penalty of
4 perjury.

5 Attached hereto as Exhibit "H" are statements from the Omni Hotels & Resorts---Fort
6 Worth relating to what appear to be June and July 2014 stays. The records reflect that multiple
7 hotel rooms were used each night. The statements also reflect Ms. Ahern's name and also that of
8 Susan Nounna (curiously the reference is to "Susan" and not "Suzanne"). Does Ms. Ahern pay Ms.
9 Nounna's expenses to travel with her? Does Ms. Nounna travel with Ms. Ahern everywhere Ms.
10 Ahern goes? Does Ms. Ahern pay for Ms. Nounna's bills? Does Ms. Nounna have access to Ms.
11 Ahern's assets? Also as to Ms. Nounna, recently discovered evidence from Ms. McNair also reflects
12 a bill to Desert Oasis Clinic in which Ms. Nounna is listed as a "patient". The Desert Oasis Clinic
13 bill is attached hereto as Exhibit "I" and is hereby incorporated by this reference. Again, does Ms.
14 Ahern have an obligation to pay Ms. Nounna's expenses? Does she voluntarily support Ms.
15 Nounna? Is this why Ms. Ahern has claimed that she requires over \$10,000 per month to live on?
16

17 The recently discovered evidence also suggests that Ms. Ahern may also pay for expenses
18 for Jason Collins. Attached hereto as Exhibit "J" are statements from Comfort Suites in Oxford,
19 Alabama relating to a September 2014. The records reflect charges for "Jason Collins".
20

21 Recently discovered hotel charges for an October 7, 2014 stay in a Holiday Inn Express in
22 Tupelo, Mississippi, which are attached hereto as Exhibit "K" also reflect that they were incurred
23 by Jason Collins. The charges list an address in Elmira, New York. Does Mr. Collins reside in New
24 York?
25

26 Similarly, recently discovered hotel charges for an October 8, 2014 stay in a Comfort Inn in
27 North Little Rock, Arkansas, which are attached hereto as Exhibit "L" also reflect an New York
28 address, specifically Horseheads, NY 14845. Is this a charge for Mr. Collins as well? Does Mr.

1 Collins reside in Horseheads, New York as well as Elmira, New York or is the Horseheads address
2 relating to another person that Ms. Ahern pays expenses for? Does Ms. Ahern own real property
3 in New York?

4 Also, there is also a hotel charge for the M Resort in Las Vegas, Nevada relating to an
5 October 23, 2014 stay. The bill statement is attached hereto as Exhibit "M" and is hereby
6 incorporated by this reference. The document refers to the Connell Trust and lists an Elmira, New
7 York "address".
8

9 Additionally, there are billing statements from The Cliffs at Peace Canyon, a Las Vegas
10 resort, seemingly a timeshare which reflects a January 2015 stay. A copy of the statements are
11 attached hereto as Exhibit "N" and are hereby incorporated by this reference. Is this an asset of Ms.
12 Ahern? What are the expenses associated with this asset?

13 As part of Fred's "Trustee, Fredrick P. Waid's First Supplemental Production of Documents"
14 served on the parties on November 17, 2015, documents from Ms. Ahern's CPA, Ms. McNair, there
15 is documentation which suggests that Ms. Ahern might use aliases. In an a bill from "Dr. Kyle D.
16 Andrus, O.D., Optometry" relating to Ms. Ahern and a February 3, 2015 eye exam, Ms. Ahern is
17 referred to as "Ellie Margurite". This bill from Dr. Andrus is attached hereto as Exhibit "O" and is
18 hereby incorporated by this reference. In another bill, also from February 3, 2015, pertaining to
19 a dental exam with Virgin Valley Dental, LLC, which is attached hereto as Exhibit "P" and is hereby
20 incorporated by this reference, Ms. Ahern uses the name of "Eleanor Marguerite". Based on this
21 apparent use of aliases by Ms. Ahern, it would be of critical importance that Ms. Ahern verify, under
22 penalty of perjury, all aliases that she uses as there is a real possibility that she may hold assets
23 under a name other than Eleanor Ahern. This is again why it is critical that Ms. Ahern sign a
24 financial disclosure form under penalties of perjury so that the extent of all of her assets, regardless
25 of how title is held, is fully disclosed.
26
27
28

REQUEST FOR APPLICATION OF CONSISTENT STANDARD

As this Court might recall, Jacqueline, in her capacity as the trustee and a beneficiary of the MTC Living Trust, filed a petition on December 3, 2013, which was renewed on March 6, 2014, which was titled "Petition to Compel Trustee to Distribute Accrued Income and Future Income Received from Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches". A ruling on this Petition was initially postponed by this Court based on the hearing date occurring on January 14, 2014 and the Court feeling that this was too close to the original evidentiary hearing that was to occur on February 18, 2014. Technically speaking, the Court without considering the merits of the Petition, dismissed with the Petition without prejudice, with an understanding that should the evidentiary hearing not proceed as scheduled, which it did not, that Jacqueline could re-file the Petition, which is precisely what she did on March 6, 2014.

On May 13, 2014, the Petition, along with other pending petitions, was heard by this Court. An order was signed on July 2, 2014. In the "Order:Re Pending Motions and Scheduling", this Court ordered the following:

- a. *Beginning with the income paid to the Trust for the month of May, 2014, the approximate 65% share of the income from the Trust's ownership of income producing real property located in Upton County Texas, together with oil, mineral, and gas rights related to such real property, which income share had historically been paid or distributed to Marjorie T. Connell, while she was alive, and then to Jacqueline and Kathryn, until the dispute over entitlement thereto arose in these proceedings, shall be paid to Jacqueline as trustee of the MTC Trust for further distribution thereunder in equal shares to Jacqueline and Kathryn,*
- b. *Payment of this approximate 65% share of the income shall be conditioned upon Jacqueline and Kathryn posting a bond or other acceptable security facilitating the repayment and return of the income distributed to them back to Eleanor, in the event it is determined in these proceedings or in Case No. P-14-080595-E that Eleanor is entitled to such income. The bond or other security posted shall be in the estimated amount of the anticipated income to be distributed to Jacqueline and Eleanor from May, 2014, until January, 2015. The amount of anticipated income shall be based upon past income payments received from the Trust to the extent they are actually indicative of what the anticipated income will be, and any dispute over the amount in question must be settled by the Court. If the parties can agree on the bond or other security to be posted, they may submit a Stipulation and Order to the Court for approval of their arrangement. If they cannot reach an*

1 *agreement regarding the bond or other security to be posted, including the terms,*
2 *the amount and the nature thereof, then Jacqueline must file a Petition with the*
3 *Court requesting approval of the bond or other security proposed; Eleanor may*
4 *then oppose the same; and, after a hearing thereon, the Court will determine the*
5 *matter, including whether or not the bond or other security proposed is acceptable,*
6 *the amount required for the bond or other security, and any other terms desired*
7 *and appropriate to protect the interests of the parties.*

8 In summary, this Court ruled at the time that Jacqueline and Kathryn were entitled to
9 receive distributions from the Trust during the pendency of the dispute, but such entitlement was
10 conditioned on their ability to first post an adequate bond or provide other acceptable collateral to
11 fully protect Ms. Ahern. At the time, Ms. Ahern alleged that she would be damaged if any
12 distributions from the Trust were made to Jacqueline and Kathryn without adequate collateral in
13 the event that she prevailed in the litigation.

14 Fast forwarding to Ms. Ahern's Petition, there is confusion as to why Ms. Ahern is not being
15 treated in the same manner that Jacqueline and Kathryn were when the trustee had refused to make
16 distributions to them during the pendency of litigation that might result in a substantial change of
17 previous interests. In the here and now, Jacqueline and Kathryn are owed millions of dollars from
18 the Trust that Ms. Ahern wrongfully took from the Trust and they strongly believe that Nevada law
19 requires the enforcement of the no-contest clause contained in the Trust that would divest Ms.
20 Ahern of all interest in the Trust. In the same way that Ms. Ahern successfully convinced this Court
21 that she must be protected in the event that Jacqueline and Kathryn might ultimately be
22 determined to have no interest in the Trust, Jacqueline and Kathryn merely request that Ms. Ahern
23 be treated in the same manner that they were.

24 Given the damage that has already resulted to Jacqueline and Kathryn, with any additional
25 distributions to Ms. Ahern and her attorneys furthering such damage, Jacqueline and Kathryn
26 simply wish to have this Court remain consistent with its approach. As such, notwithstanding all
27 of the conditions that must first be satisfied, should Ms. Ahern establish to the satisfaction of the
28 Court that she deserves and warrants further distributions be made to her or applied for her

1 benefit, despite the circumstances, Jacqueline and Kathryn request that this Court make her
2 provide adequate security to the Trust.

3 Based on the previous ruling from this Court, occurring on October 14, 2015, Jacqueline and
4 Kathryn believed that this Court was applying the same standard. However, it appears that
5 something changed in the weeks that followed.
6

7 At the hearing on October 14, 2015, which was held to address Ms. Ahern's counsel's request
8 to withdraw, this Court seemingly applied the same standard that it previously did when Jacqueline
9 and Kathryn were in a desperate position to receive distributions that were being withheld from
10 them. However, unlike that prior situation, Jacqueline and Kathryn had done absolutely nothing
11 wrong to cause the then serving trustee to cut off distributions to them.

12 At that hearing, the Court stated that should Fred be otherwise inclined, the determination
13 to make distributions to Ms. Ahern's counsel for payment of legal fees would solely be his to make
14 and that he, himself, should determine what he felt adequate security to be to protect the interests
15 of the Trust, and in turn Jacqueline and Kathryn, the damaged parties. The Court made the
16 following statements in that regard:
17

18 *MR. MOODY: Thank you, Your Honor. And I appreciate this because I can kind of give the Court*
19 *a little bit of a status in this. So, first of all, I think it's important to know the bottom line is Ms.*
20 *Ahern owes money back to the trust.*

21 *THE COURT: Okay.*

22 *MR. MOODY: There's no question. We are in a discovery and recovery mode. We are trying to get*
23 *as much money back as we can. In order to do that, we're trying to find it and we're trying to*
24 *figure out where it is. We have significant concerns about some of the tax liabilities of the trust.*
25 *There were years not reported at all and there were years underreported. So, although there is*
26 *some money being held, we cannot represent to the Court yet that it is available for any type of*
27 *distribution. Obviously, with the Court's instruction, we would do that, but we have real concerns*
28

1 about that. (Taken from page 4 of hearing transcript)

2 *****

3 THE COURT: All right. Having consulted with counsel and the temporary trustee, given the fact
4 that he's not yet in a position to make a report to the Court, we don't have any numbers or
5 anything we can put on the record as to whether the alternative proposed by Ms. Peterson or her
6 firm to remain on the case is a viable option. The -- counsel if you wish to state the condition upon
7 which you would consider agreeing to a distribution that Ms. Peterson -- so Ms. Peterson can
8 explain to us why it -- what would be necessary for her to remain in this case.

9
10 MR. MOODY: I can tell you, Your Honor, that Mr. Waid has asked for some type of collateral or
11 security to protect the trust from any funds that are paid on Ms. Ahern's behalf for attorneys' fees.

12 THE COURT: Okay. Understand, Ms. Peterson, you're not authorized to agree to any such terms,
13 but the Court would grant the alternative relief which is to direct the trustee to make a distribution
14 to your firm as needed at this time in the event that Ms. Ahern did have collateral to secure the
15 trust, that they could get funds returned. Not that they would be clawed back from the firm, but
16 that Ms. Ahern would be able to provide security of some other asset that could be used to -- as
17 security for the funds. We would -- the cash would come from the trust but there would be security
18 for it.

19
20 MR. MOODY: And, Judge, I'm sorry to interrupt, but we do just want to have the right to examine
21 that collateral to make sure it's acceptable.

22 THE COURT: I understand.

23 MR. MOODY: It's not encumbered, that there is value there. (Taken from pages 5, 6, and 7 of
24 hearing transcript)

25 *****

26
27 THE COURT: We would have an order to show cause hearing then next Wednesday for
28 the additional information that has been requested and you can go ahead and submit your order

1 to withdraw with the understanding that Ms. Ahern would come in next week to provide the
2 additional information which you are not currently authorized to provide or, in the alternative,
3 if there's collateral for payment of your fees, then the trustee would automatically be authorized.
4 So you need to know which order to submit.

5 MS. PETERSON: Yes.

6
7 THE COURT: That the trustee is authorized to make the distribution based on whatever's --
8 collateral was offered that he finds acceptable, that's option A. Option B is: You're not going to be
9 able to make that work, you're going to need to withdraw, and the Court will sign your order
10 granting withdrawal, but with an understanding that there is a hearing next Wednesday at 9
11 a.m. on an order to show cause for the information that you're not authorized to put in your order.
12 Is that agreed? Is that understood? Anything else that we need, counsel? (Taken from page 9 of
13 hearing transcript)

14 *****

15
16 It is alarming and puzzling that the Court apparently changed its position in the subsequent
17 three weeks without any substantive change in circumstance during such time to support a
18 changed position. Again, other issues notwithstanding, Jacqueline and Kathryn must respectfully
19 ask that distributions to Ms. Ahern and her counsel only be made after adequate collateral is
20 presented to Fred in the same way that this Court previously treated their request.

21 **OUTLINE OF KEY FACTS AND POINTS/OUTLINE OF PRIOR COURT RULINGS**

22 For purposes of reference, an outline has been compiled of key points discussed herein.
23 Additionally, for possible reference to this Court's prior rulings, a summary chart is attached. Both
24 documents are collectively attached hereto as Exhibit "Q" and are hereby incorporated by this
25 reference.
26

27 **REQUEST FOR DEDICATED EVIDENTIARY HEARING**

28 Jacqueline and Kathryn submit that until this Court first determines that Fred Waid's

THE RUSHEFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
PO Box 371655
Las Vegas, Nevada 89137-1655

1 determination that it is not appropriate for him to distribute any funds to Ms. Ahern or for her
2 benefit was improperly made and was based on either his "dishonesty" or was made with "improper
3 motive", this Court may not review Fred's exercise of his discretion.

4 In the event that this Court first determines that Fred has improperly exercised his
5 discretion, then, at such time, Ms. Ahern must file a verified petition seeking support which would
6 be compliant with Nevada statutory law, and in turn submit evidentiary support for her claims of
7 being indigent and impoverished. After these steps have been completed, then, and only then, this
8 Court should dedicate an evidentiary hearing to hear Ms. Ahern's claims, while analyzing the extent
9 of her assets and liabilities.

10
11 Until such time, Jacqueline and Kathryn respectfully request that this Court either abandon
12 its Order entirely or, in the alternative, temporarily suspend the Order.

13 Respectfully submitted,

14 THE RUSHEFORTH FIRM, LTD.

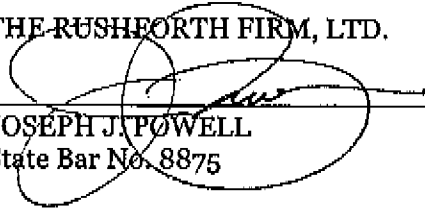
15
16 
17 JOSEPH J. POWELL
18 State Bar No. 8875
19
20
21
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23
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25
26
27
28

EXHIBIT A

1 AFFIDAVIT OF TAMARA BEATTY PETERSON, ESQ. IN SUPPORT OF
2 MOTION FOR DISTRIBUTION OF TRUST INCOME IN ACCORDANCE
3 WITH THE COURT'S SUMMARY JUDGMENT DATED APRIL 16, 2015
4 ON ORDER SHORTENING TIME

5 STATE OF NEVADA }
6 COUNTY OF CLARK } ss.

7 Tamara Beatty Peterson, Esq., being duly sworn, states as follows:

8 1. I am a Shareholder with the law firm of Brownstein Hyatt Farber
9 Schreck, LLP, and counsel of record for Eleanor Ahern in this action. I make this
10 Affidavit in support of Ms. Ahern's Motion for Distribution of Trust Income In
11 Accordance With The Court's Summary Judgment Dated April 16, 2015. I have
12 personal knowledge of the matters set forth in this Affidavit and, if called as a
13 witness, could and would competently testify thereto.

14 2. Pursuant to the Court's Summary Judgment dated April 16, 2015, Ms.
15 Ahern is entitled to 35% of the Trust's income from the Texas oil properties.

16 3. Ms. Ahern has not received any of her share of these funds from the
17 Court-appointed interim trustee, Mr. Fredrick P. Waid.

18 4. Ms. Ahern, being dependent on the Trust income for her livelihood,
19 requests that the Court hear this Motion on an Order Shortening Time so that she is
20 able to obtain the funds she needs to subsist, as well as to fund the continued
21 litigation of this matter.

22 DATED 23rd day of September, 2015.

23 
TAMARA BEATTY PETERSON, ESQ.

24 Subscribed and sworn to before me
25 on the 23rd day of September, 2015.

26 

27 NOTARY PUBLIC
28 My commission expires: March 14, 2018

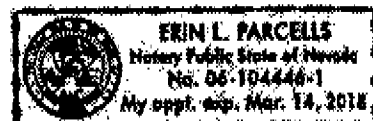


EXHIBIT B

MISC

Name: _____

Address: _____

Phone: _____

Email: _____

Attorney for _____

Nevada State Bar No. _____

_____ Judicial District Court

_____, Nevada

<p>_____</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>_____</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. _____</p> <p>Dept. _____</p>
--	--

GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? (*first, middle, last*) _____
2. How old are you? _____
3. What is your date of birth? _____
4. What is your highest level of education? _____

B. Employment Information:

1. Are you currently employed/ self-employed? (☒ check one)

☐ No

☐ Yes

If yes, complete the table below. Attached an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)

2. Are you disabled? (☒ check one)

☐ No

☐ Yes

If yes, what is your level of disability? _____

What agency certified you disabled? _____

What is the nature of your disability? _____

C. Prior Employment: If you are unemployed or have been working at your current job for less than 2 years, complete the following information.

Prior Employer: _____ Date of Hire: _____ Date of Termination: _____

Reason for Leaving: _____

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending _____ my gross year to date pay is _____.

B. Determine your Gross Monthly Income.

Hourly Wage

	×		=		×	52 Weeks	=		÷	12 Months	=	
Hourly Wage		Number of hours worked per week		Weekly Income				Annual Income				Gross Monthly Income

Annual Salary

	÷	12 Months	=	
Annual Income				Gross Monthly Income

C. Other Sources of Income.

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income			
Bonuses			
Car, Housing, or Other allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay			
Pension/Retirement:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support			
Child Support			
Workman's Compensation			
Other:			
Total Average Other Income Received			

Total Average Gross Monthly Income (add totals from B and C above)

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (automatically deducted from paycheck)	
2.	Federal Health Savings Plan	
3.	Federal Income Tax	
4.	Health Insurance Amount for you: _____ For Opposing Party: _____ For your Child(ren): _____	
5.	Life, Disability, or Other Insurance Premiums	
6.	Medicare	
7.	Retirement, Pension, IRA, or 401(k)	
8.	Savings	
9.	Social Security	
10.	Union Dues	
11.	Other: (Type of Deduction)	
Total Monthly Deductions (Lines 1-11)		

Business/Self-Employment Income & Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self-employment or businesses?
\$ _____

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising			
Car and truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and professional			
Mortgage or Rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and licenses (include est. tax payments)			
Utilities			
Other:			
Total Average Business Expenses			

Personal Expense Schedule (Monthly)

A. Fill in the table with the amount of money you spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me <input type="checkbox"/>	Other Party <input type="checkbox"/>	For Both <input type="checkbox"/>
Alimony/Spousal Support				
Auto Insurance				
Car Loan/Lease Payment				
Cell Phone				
Child Support (not deducted from pay)				
Clothing, Shoes, Etc...				
Credit Card Payments (minimum due)				
Dry Cleaning				
Electric				
Food (groceries & restaurants)				
Fuel				
Gas (for home)				
Health Insurance (not deducted from pay)				
HOA				
Home Insurance (if not included in mortgage)				
Home Phone				
Internet/Cable				
Lawn Care				
Membership Fees				
Mortgage/Rent/Lease				
Pest Control				
Pets				
Pool Service				
Property Taxes (if not included in mortgage)				
Security				
Sewer				
Student Loans				
Unreimbursed Medical Expense				
Water				
Other:				
Total Monthly Expenses				

Household Information

- A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attached a separate sheet if needed.

	Child's Name	Child's DOB	Whom is this child living with?	Is this child from this relationship?	Has this child been certified as special needs/disabled?
1 st					
2 nd					
3 rd					
4 th					

- B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1 st Child	2 nd Child	3 rd Child	4 th Child
Cellular Phone				
Child Care				
Clothing				
Education				
Entertainment				
Extracurricular & Sports				
Health Insurance (if not deducted from pay)				
Summer Camp/Programs				
Transportation Costs for Visitation				
Unreimbursed Medical Expenses				
Vehicle				
Other:				
Total Monthly Expenses				

- C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of eighteen. If more than 4 adult household members attached a separate sheet.

Name	Age	Person's Relationship to You (i.e. sister, friend, cousin, etc...)	Monthly Contribution

Personal Asset and Debt Chart

A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

Line	Description of Asset and Debt Thereon	Gross Value		Total Amount Owed		Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$	-	\$	=	\$	
2.		\$	-	\$	=	\$	
3.		\$	-	\$	=	\$	
4.		\$	-	\$	=	\$	
5.		\$	-	\$	=	\$	
6.		\$	-	\$	=	\$	
7.		\$	-	\$	=	\$	
8.		\$	-	\$	=	\$	
9.		\$	-	\$	=	\$	
10.		\$	-	\$	=	\$	
11.		\$	-	\$	=	\$	
12.		\$	-	\$	=	\$	
13.		\$	-	\$	=	\$	
14.		\$	-	\$	=	\$	
15.		\$	-	\$	=	\$	
Total Value of Assets (add lines 1-15)		\$	-	\$	=	\$	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than 5 unsecured debts, attach a separate sheet.

Line #	Description of Credit Card or Other Unsecured Debt	Total Amount owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$	
2.		\$	
3.		\$	
4.		\$	
5.		\$	
6.		\$	
Total Unsecured Debt (add lines 1-6)		\$	

CERTIFICATION

Attorney Information: *Complete the following sentences:*

1. I *(have/have not)* _____ retained an attorney for this case.
2. As of the date of today, the attorney has been paid a total of \$ _____ on my behalf.
3. I have a credit with my attorney in the amount of \$ _____.
4. I currently owe my attorney a total of \$ _____.
5. I owe my prior attorney a total of \$ _____.

IMPORTANT: Read the following paragraphs carefully and initial each one.

_____ I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

_____ I have attached a copy of my 3 most recent pay stubs to this form.

_____ I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.

_____ I have not attached a copy of my pay stubs to this form because I am currently unemployed.

Signature

Date

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury of the State of Nevada that the following is true and correct:

That on *(date)* _____, service of the General Financial Disclosure Form was made to the following interested parties in the following manner:

☐ Via 1st Class U.S. Mail, postage fully prepaid addressed as follows:

☐ Via Electronic Service, in accordance with the Master Service List, pursuant to NEFCR 9, to:

☐ Via Facsimile and/or Email Pursuant to the Consent of Service by Electronic Means on file herein to: _____

Executed on the ____ day of _____, 20__.

Signature

EXHIBIT C

26011107 NEW D108 850000-0000

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

CHASE

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

9517105371

91-2
1221

Valid after 7 years

CASHIER'S CHECK

Pay To The Order Of: **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

Resultant: **ELTON BUSINESS TRUST**

Date: **07/15/2015**

Pays: **TWENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS**

\$ 27,500.00 ****

Drawn: **JPMORGAN CHASE BANK, N.A.**

Paul Schreck

Senior Vice President
JPMorgan Chase Bank, N.A.
Phoenix, AZ

Do not include this box

Memorandum
Note: For information only. Comment has no effect on bank's payment.

09517105371# 11221000240 758551417#

EXHIBIT D

June 1, 2015

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

On April 2, 2015 Eleanor M. Ahern came into the bank just before 5:00 pm. The bank was getting ready to close. She came in with a female friend, Suzanne Nounna, and a large German Shepherd dog. She stated the dog was a service dog. There was a third person, a man, in the group, but he waited outside the bank. We were told it was because he and the dog had problems with each other. Ms. Ahern wanted to open a checking account in the name of a trust. She stated that she came all the way from Las Vegas, NV to open the account. Ms. Ahern originally gave us an address that turned out to be a mail drop. When we called to ask for her personal address she was hesitant to provide it. She did give us a residential address when pressed. She also gave us a contact telephone number that is not her own telephone number as well as her own personal number. Ms. Ahern opened the account with a Cashier's Check drawn on Wells Fargo Bank which was purchased at a branch here in St George. The amount of the check was \$146,517.38. The bank placed a 9 day hold on the check because the account was new.

Eleanor M. Ahern is the successor trustee of the W.N. Connell and Marjorie T. Connell Living Trust. She is also the sole beneficiary. Along with the trust papers we received a copy of Marjorie Connell's death certificate. We did not receive a copy of W.N. Connell's death certificate. We have requested a copy, but as of this date have not received it. We did not allow any activity in the account until we received a copy of W.N. Connell's death certificate. Also, included with the trust papers is an affidavit of certification of trust authorizing Ms. Ahern to use numerous aliases.

On April, 14, 2015 Eleanor called the bank to ask us to order in \$100,000 in cash. She wanted to withdraw that from her account in cash. When we questioned why she would want that amount of cash she muted the phone and after a short time came back on the phone and stated she wanted the cash to put in her vault. We told her at that time that it would take at least two weeks to order in that amount of cash. A short time later her Suzanne Nounna called and wanted to set up a time to introduce a "temporary trustee" over the phone. The Operations Manager took the phone call and asked to speak to Ms. Ahern. When Eleanor came on the phone the Operations Manager explained that we could not add a "temporary trustee" to the account without them coming to the bank to sign the signature card and to give us his personal information. Again, as we asked questions, the phone would be put on mute and after a pause Ms. Ahern would come back on the line to answer the question. Sometimes when she would unmute the phone we could hear a male voice talking to her. During this conversation she decided she did not need the \$100,000 in cash after all. We have not heard anything more about a "temporary trustee". A review of the trust papers showed that the trust designated the First National Bank of Nevada as the successor trustee if Eleanor M. Ahern was unable or declined to act as trustee.

T-T&C(UT) 000001

Each time we attempt to contact Ms. Ahern using either telephone number we have to leave a message. She does return our calls, but she is never alone when she does.

Ms. Ahern has been to the bank twice. She came in to open the account and once to pick up a copy of her statement and a copy of the opening deposit. Both times she was not alone. A different person was with her each time and she was traveling in a different car each time.

On May 8, 2015 the bank notified the Nevada Department of Aging that we were concerned that this was a case of elder abuse. They called us several times to report what they had done to investigate the report. One of their investigators went to the house at 6105 Elton Ave, Las Vegas, NV. They said the house was like a fortress. The investigator could not get in because the gates were locked and no one would answer the intercom. The second time she went she called the police to help her get inside. When they got to the front door a Hispanic woman answered the door and said that Eleanor did not live there and that she had been leasing the house for the last two years. She showed the officers a copy of her lease. They discovered later that the house was sold in 2012 to a business and that Eleanor Ahern did not own or have anything to do with the house. The Dept. of Aging closed the investigation for lack of contact.

On May 15, 2015 Town & Country Bank closed the account and issued a Cashier's Check for \$146,584.83. We sent the check to the mailing address at 8635 W Sahara Ave, Las Vegas, NV by certified mail. When we received the proof of receipt back we realized that Eleanor did not sign for the letter and check so we placed a stop payment on the Cashier's Check. As of this date the check has not tried to clear the bank.

On June 1, 2015 the bank received notice of a court ordered successor trustee and a request for copies of all bank documents pursuant to this account.

Town & Country Bank

Marte Eyre, CAMS

BSA/AML Officer

Town & Country Bank

435-215-2333

T-T&C(UT) 000002

EXHIBIT E

Your New Benefit Amount

8753487

BENEFICIARY'S NAME: ELEANOR C AHERN

Your Social Security benefits will increase by 1.5 percent in 2014 because of a rise in the cost of living. You can use this letter when you need proof of your benefit amount to receive food, rent, or energy assistance; bank loans; or for other business. Keep this letter with your other important financial documents.

How Much Will I Get And When?

• Your monthly amount (before deductions) is	\$2,892.90
• The amount we deduct for Medicare medical insurance is	\$104.90
(If you did not have Medicare as of Nov. 14, 2013 or if someone else pays your premium, we show \$0.00.)	
• The amount we deduct for your Medicare prescription drug plan is	\$0.00
(If you did not elect withholding as of Nov. 1, 2013, we show \$0.00.)	
• The amount we deduct for voluntary federal tax withholding is	\$0.00
(If you did not elect voluntary tax withholding as of Nov. 14, 2013, we show \$0.00.)	
• After we take any other deductions, you will receive on Jan. 15, 2014.	\$2,788.00

If you disagree with any of these amounts, you must write to us within 60 days from the date you receive this letter. We would be happy to review the amounts.

You may receive your benefits through direct deposit, a Direct Express® card, or an Electronic Transfer Account. If you still receive a paper check and would like to switch to an electronic payment, please visit www.godirect.org or call 1-800-333-1795.

What If I Have Questions?

Please visit our website at www.socialsecurity.gov for more information and a variety of online services. You also can call 1-800-772-1213 and speak to a representative from 7 a.m. until 7 p.m., Monday through Friday. Recorded information and services are available 24 hours a day. Our lines are busiest early in the week, early in the month, as well as during the week between Christmas and New Year's Day, it is best to call at other times. If you are deaf or hard of hearing, call our TTY number, 1-800-325-0778. If you are outside the United States, you can contact any U.S. embassy or consulate office. Please have your Social Security claim number available when you call or visit and include it on any letter you send to Social Security. If you are inside the United States and need assistance of any kind, you also can visit your local office.

SUITE 150
1250 S BUFFALO DR
LAS VEGAS NV

McNair CPA Docs 000064

EXHIBIT F

THIS VALUE OF

**ny Declarations
ted Policy
27, 2016**

This Declaration Page Replaces Any Previous Declaration Page. Please Read and Attach to Your Policy.

POLICY NUMBER: NV8 - 002357661
PROGRAM: AAA Select
TIER: H

AAA Insured Since 2007

Named insured(s) & Mailing Address**Sales Rep Name & Address**

AAA NV INS AGCY/310/CIO/LFI 006 - 7310
10076 S EASTERN AVE STE 100
HENDERSON NV 89052
(702) 352-9206

ELEANOR AHERN, ELEANOR 'ELLIE' AHERN FOUNDATION
8636 W SAHARA AVE # 549
LAS VEGAS NV 89117-5858

POLICY PERIOD

FROM: 02/12/15 TO: 02/12/16 TIME: 12:01 A.M.

DESCRIPTION OF VEHICLE (S).

YOU WILL BE BILLED SEPARATELY FOR ANY BALANCE DUE.

VEHICLE	YEAR	MAKE	MODEL	VEHICLE IDENTIFICATION	ZIP CODE
1	2005	TYTA	RAV4 BASE UTL4X4D	JTEHQ20V756032961	89120
4	2011	VLVO	XC60 UTL4X4D	VV4902DZ1B2174353	89120

Insurance is provided only with respect to the following coverages for which a specific limit of liability is shown. Subject to all conditions of this policy.

COVERAGES		LIMITS	VEHICLE INFORMATION			
			1	DED	4	DED
Bodily Injury	\$500,000/person \$500,000/accident	552			488	
Property Damage	\$100,000/accident	162			146	
Uninsured and Underinsured Motorist Bodily Injury	\$500,000/person \$500,000/accident	180			161	
Uninsured Motorist Property Damage Or Coll. Ded. Waived	\$500/accident	9			9	
Medical Payments	\$25,000/person	188			187	
Comprehensive (Less Deductible) Safety Glass (\$0 deductible)		80 incl.	500		124 incl.	500
Collision (Less Deductible)		207	500		336	500
Rental Car Reimbursement (Up to 30 Days)	\$30.00/day	27			27	
FULL TERM PREMIUM		1,409			1,482	
		By 12th			Monthly	229.90
AMENDED POLICY - CHANGED HOME PHONE		Heather	FULL TERM PREMIUM TOTAL		2,891.80	
			TOTAL CHARGES		0.80	

AMENDED POLICY - CHANGED HOME PHONE

FORMS AND ENDORSEMENTS

FD-302 (Rev. 11-27-70)

AA15NV 0305 AAAENV 01 10 AA15XX 07 14 AA01NV 05 09 AA11NV

LIST ONLY INDIVIDUALS

The Named Insured has identified the following individuals as List Only and does not wish coverage to apply to these individuals:

NONE

Capitulum *perforatum*


Authorized Representative

INCLUDED ARE:

SEE BACK OF THIS FORM FOR ADDITIONAL INFORMATION.

040305A10509

McNair CPA Docs 000581

EXHIBIT G

Site	Paid Date	Serial	Routing	Account	PC	Amount	Sequence #	Cr
VIEWPOINTE	20120912	745700404	10700543	4861511962	000039	2,784.60	4811109135	

8007457 Office AU #	11-24 121000	CASHIER'S CHECK		0745700404
Purchaser, Purchaser Account, Operator I.D.,	ELEANOR M AHERN TTE 8727648187 rno1830 rno1103			Credit Copy
PAY TO THE ORDER OF		***ELEANOR ELLIE AHERN FOUNDATION***		September 11, 2012
Two thousand seven hundred eighty-four dollars and 60 cents				***\$2,784.60**
PROCESS SAME DAY AS ISSUED				
WELLS FARGO BANK, N.A. 4015 S RAINBOW BLVD LAS VEGAS, NV 89103 FOR INQUIRIES CALL (800) 284-3122		06 0007457 0690071 09/12/2012 5:18:37PM	VOID IF OVER US \$ 2,784.60 NON-NEGOTIABLE	
#0745700404# 151820039204861 511962#				

WELLS FARGO BANK N.A. TEX 20120912 10021 PRT 04 1221-0527-84 4811109135	
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Site	Paid Date	Serial	Routing	Account	PC	Amount	Sequence #	Ci
VIEWPOINTE	20120912	745700438	10700543	4861511970	000039	5,569.19	4811109136	

0007457 CHECK AD #	11-24 121010	CASHIER'S CHECK		0745700438
Purchaser: ELEANOR M AHERN TTE Purchaser Account: 8737548187 Operator I.D.: nno1036 Peno1193		Credit Copy September 11, 2012		
PAY TO THE ORDER OF		***ELEANOR ELLIE AHERN FOUNDATION***		
Five thousand five hundred sixty-nine dollars and 19 cents		**\$5,569.19**		
PROCESS SAME DAY AS ISSUED				
WELLS FARGO BANK, N.A. 4016 S RAINBOW BLVD LAS VEGAS, NV 89103 FOR INQUIRIES CALL (800) 394-3122		06 0007457 0690071 09/12/2012 5:18:37PM		VOID IF OVER US \$ 5,569.19 NON-NEGOTIABLE
⑈0745700438⑈ ⑆51820039204861 511970⑈				

WELLS FARGO BANK N.A. TEX 20120912 0921 PKT 04 ⑈1221-0527-8⑈ 4811109136
--

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Site	Paid Date	Serial	Routing	Account	PC	Amount	Sequence #	Ci
VIEWPOINTE	20120912	745700439	10700543	4861511970	000039	8,353.79	4811109137	

0007457 Office AU #	11-24 1210(8)	CASHIER'S CHECK		0745700439
Purchaser: ELEANOR M AHERN TTX Purchaser Account: 8737543157 Operator I.D.: Hapo1830 Hapo1183				Credit Copy
PAY TO THE ORDER OF ***ELEANOR ELLIE AHERN FOUNDATION ***				September 11, 2012
Eight thousand three hundred fifty-three dollars and 79 cents				***\$8,353.79**
PROCESS SAME DAY AS ISSUED				
WELLS FARGO BANK, N.A. 4016 S RABINOW BLVD LAS VEGAS, NV 89103 FOR INQUIRIES CALL (480) 394-3122		06 0007457 0690071 09/12/2012 5:18:37PM		VOID IF OVER US \$ 8,353.79 NON-NEGOTIABLE
0745700439 1251820039214861 511970*				

WELLS FARGO BANK NA TX 29120712 PM21 PRT 04 1221-0527-84 4811109137
--

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Site	Paid Date	Serial	Routing	Account	PC	Amount	Sequence #	Ci
VIEWPOINT	20120912	745700285	10700543	4861511988	000039	11,138.39	4811109138	

0007457 Office AU #	11-24 121000	CASHIER'S CHECK		0745700285
Purchaser: Purchaser Account: Operator ID:	ELEANOR M AHERN TIE 8737648197 vmo1193			Credit Copy
PAY TO THE ORDER OF		***ELEANOR ELLIE AHERN FOUNDATION***		September 11, 2012
Eleven thousand one hundred thirty-eight dollars and 39 cents				***\$11,138.39**
		PROCESS SAME DAY AS ISSUED		
WELLS FARGO BANK, N.A. 4015 S RAINBOW BLVD LAS VEGAS, NV 89103 FOR INQUIRIES CALL (480) 394-3122		06 0007457 0690071 09/12/2012 5:18:37PM		VOID IF OVER US \$ 11,138.39 NON-NEGOTIABLE
⑈0745700285⑈ ⑆518200392⑆4861 511988⑈				

WELLS FARGO BANK NA TEX 20120912 E9021 PKT 04 ⑈1221-0527-8⑈ 4811109138	
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EXHIBIT H

OMNI HOTELS & RESORTS

fort worth

Eleanor (No Calls) Ahern
8635 W Sarah Ave #649
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 8 of 10
Folio No. :
Conf. No. : 40015959975
Cashier No. : 18098

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

07/16/14

Date	Description	Charges	Payments
07/10/14	6% State Occupancy Tax	16.74	
07/10/14	Room Charge	279.00	
07/10/14	9% City Occupancy Tax	25.11	
07/10/14	6% State Occupancy Tax	16.74	
07/10/14	Room Charge	262.33	
07/10/14	9% City Occupancy Tax	23.61	
07/10/14	6% State Occupancy Tax	15.74	
07/10/14	Valet Overnight 454-580	25.00	
07/10/14	Valet Overnight 558-141	25.00	
07/11/14	Select Guest Free Morning Beverage	0.00	
07/11/14	Select Guest Food	4.25	
07/11/14	Room Service	16.29	
07/11/14	Select Guest Free Morning Beverage	0.00	
07/11/14	Room Service	21.53	
07/11/14	Water Horse	31.00	
07/11/14	Water Horse	6.50	
07/11/14	Check		6,500.00
07/11/14	Room Charge	199.00	
07/11/14	9% City Occupancy Tax	17.91	
07/11/14	6% State Occupancy Tax	11.94	
07/11/14	Valet Overnight 454-580	25.00	
07/11/14	Valet Overnight 558-141	25.00	

1300 Houston Street
Fort Worth, Texas 76102
Phone: 817-535-6664 Fax: 817-882-8140

Omni 000032

OMNI HOTELS & RESORTS

fort worth

Eleanor (No Calls) Ahern
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 10 of 10
Folio No. :
Conf. No. : 40016959975
Cashier No. : 18098

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

07/16/14

Date	Description	Charges	Payments
07/15/14	9% City Occupancy Tax	17.91	
07/15/14	6% State Occupancy Tax	11.94	
07/15/14	Valet Overnight 454-580	25.00	
07/15/14	Room Charge	199.00	
07/15/14	9% City Occupancy Tax	17.91	
07/15/14	6% State Occupancy Tax	11.94	
07/15/14	Room Charge	249.00	
07/15/14	9% City Occupancy Tax	22.41	
07/15/14	6% State Occupancy Tax	14.94	
07/15/14	Room Charge	219.00	
07/15/14	9% City Occupancy Tax	19.71	
07/15/14	6% State Occupancy Tax	13.14	
07/16/14	Room Service	21.53	
07/16/14	Room Service	0.00	
07/16/14	Check Refund Check refund for credit balance from check		-2,505.81
Total		14,053.84	14,053.84
Balance			0.00

Thank you for staying at the Omni Fort Worth.

1300 Houston Street
Fort Worth, Texas 76102
Phone: 817-535-6664 Fax: 817-882-8140

Omni 000033

OMNI HOTELS & RESORTS

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 1 of 11
Folio No. : 408464
Conf. No. : 40015959975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/18/15

Date	Description	Charges	Payments
06/29/14	Deposit Transfer		228.85
	652 DEPOSIT TRANSFER		
06/29/14	Deposit Transfer		457.70
	646 DEPOSIT TRANSFER		
06/29/14	Room Charge	199.00	
	644		
06/29/14	9% City Occupancy Tax	17.91	
06/29/14	6% State Occupancy Tax	11.94	
06/29/14	Room Charge	199.00	
	646		
06/29/14	9% City Occupancy Tax	17.91	
06/29/14	6% State Occupancy Tax	11.94	
06/29/14	Room Charge	199.00	
	648		
06/29/14	9% City Occupancy Tax	17.91	
06/29/14	6% State Occupancy Tax	11.94	
06/29/14	Room Charge	199.00	
	652		
06/29/14	9% City Occupancy Tax	17.91	
06/29/14	6% State Occupancy Tax	11.94	
06/30/14	Room Service	56.90	
06/30/14	Room Service	73.27	
06/30/14	Kimbell Gift Shop	15.16	
06/30/14	Room Service	42.49	
06/30/14	Room Charge	199.00	
	646 --> 1415		
06/30/14	9% City Occupancy Tax	17.91	

OMNI HOTELS & RESORTS

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 2 of 11
Folio No. : 408464
Conf. No. : 40016959975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844880
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
06/30/14	6% State Occupancy Tax	11.94	
06/30/14	Room Charge	199.00	
	648 --> 1417		
06/30/14	9% City Occupancy Tax	17.91	
06/30/14	6% State Occupancy Tax	11.94	
06/30/14	Room Charge	199.00	
	652		
06/30/14	9% City Occupancy Tax	17.91	
06/30/14	6% State Occupancy Tax	11.94	
07/01/14	Whiskey & Rye	35.31	
07/01/14	Room Service	26.77	
07/01/14	Cast Iron Restaurant	50.00	
07/01/14	Bob's Steak & Chop House	144.08	
07/01/14	Cast Iron Restaurant	61.96	
07/01/14	Room Charge	199.00	
	646 --> 1415		
07/01/14	9% City Occupancy Tax	17.91	
07/01/14	6% State Occupancy Tax	11.94	
07/01/14	Room Charge	199.00	
	648 --> 1417		
07/01/14	9% City Occupancy Tax	17.91	
07/01/14	6% State Occupancy Tax	11.94	
07/01/14	Room Charge	199.00	
	652		
07/01/14	9% City Occupancy Tax	17.91	
07/01/14	6% State Occupancy Tax	11.94	
		27.73	

OMNI HOTELS & RESORTS

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 3 of 11
Folio No. : 408464
Conf. No. : 40015959975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
07/02/14	Cast Iron Restaurant		
07/02/14	Whiskey & Rye	29.36	
07/02/14	Starbucks	4.87	
07/02/14	Room Service	16.29	
07/02/14	Room Charge	199.00	
	646 --> 1415		
07/02/14	9% City Occupancy Tax	17.91	
07/02/14	6% State Occupancy Tax	11.94	
07/02/14	Room Charge	199.00	
	648 --> 1417		
07/02/14	9% City Occupancy Tax	17.91	
07/02/14	6% State Occupancy Tax	11.94	
07/02/14	Room Charge	199.00	
	652		
07/02/14	9% City Occupancy Tax	17.91	
07/02/14	6% State Occupancy Tax	11.94	
07/03/14	Room Service	21.53	
07/03/14	Room Service	37.05	
07/03/14	Room Service	38.56	
07/03/14	Starbucks	1.89	
07/03/14	Whiskey & Rye	10.66	
07/03/14	Water Horse	6.50	
07/03/14	Check		7,000.00
	Cashier Check: #0674700966 - Amount: \$7,000 - Suzanne Naunna		
07/03/14	Cast Iron Restaurant	37.48	
07/03/14	Cast Iron Restaurant	50.00	

OMNI HOTELS & RESORTS

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 4 of 11
Folio No. : 408464
Conf. No. : 40015959975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
07/03/14	Room Charge	199.00	
07/03/14	9% City Occupancy Tax	17.91	
07/03/14	6% State Occupancy Tax	11.94	
07/03/14	Room Charge	199.00	
07/03/14	9% City Occupancy Tax	17.91	
07/03/14	6% State Occupancy Tax	11.94	
07/03/14	Room Charge	199.00	
07/03/14	9% City Occupancy Tax	17.91	
07/03/14	6% State Occupancy Tax	11.94	
07/04/14	Cast Iron Restaurant	55.47	
07/04/14	Cast Iron Restaurant	40.81	
07/04/14	Whiskey & Rye	16.37	
07/04/14	Room Service	13.02	
07/04/14	Cast Iron Restaurant	51.81	
07/04/14	Cast Iron Restaurant	64.54	
07/04/14	Room Charge	199.00	
07/04/14	9% City Occupancy Tax	17.91	
07/04/14	6% State Occupancy Tax	11.94	
07/04/14	Room Charge	199.00	
07/04/14	9% City Occupancy Tax	17.91	
07/04/14	6% State Occupancy Tax	11.94	
07/04/14	Room Charge	199.00	
07/04/14	9% City Occupancy Tax	17.91	
07/04/14	6% State Occupancy Tax	11.94	
07/05/14	Starbucks	6.77	
07/05/14	Cast Iron Restaurant	45.47	

OMNI HOTELS & RESORTS

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 5 of 11
Folio No. : 408464
Conf. No. : 40015959975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
07/05/14	Cast Iron Restaurant	51.81	
07/05/14	Room Service	58.21	
07/05/14	Cast Iron Restaurant	100.00	
07/05/14	Room Service	14.98	
07/05/14	Room Charge	199.00	
07/05/14	9% City Occupancy Tax	17.91	
07/05/14	6% State Occupancy Tax	11.94	
07/05/14	Room Charge	199.00	
07/05/14	9% City Occupancy Tax	17.91	
07/05/14	6% State Occupancy Tax	11.94	
07/05/14	Room Charge	199.00	
07/05/14	9% City Occupancy Tax	17.91	
07/05/14	6% State Occupancy Tax	11.94	
07/06/14	Cast Iron Restaurant	69.54	
07/06/14	Room Charge	199.00	
07/06/14	9% City Occupancy Tax	17.91	
07/06/14	6% State Occupancy Tax	11.94	
07/06/14	Room Charge	199.00	
07/06/14	9% City Occupancy Tax	17.91	
07/06/14	6% State Occupancy Tax	11.94	
07/06/14	Room Charge	199.00	
07/06/14	9% City Occupancy Tax	17.91	
07/06/14	6% State Occupancy Tax	11.94	
07/07/14	Room Service	21.53	
07/07/14	Select Guest Food	3.93	
07/07/14	Cast Iron Restaurant	8.66	

OMNI HOTELS & RESORTS[®]

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 6 of 11
Folio No. : 408464
Conf. No. : 40015959975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
07/07/14	Select Guest Free Morning Beverage	0.00	
07/07/14	Cast Iron Restaurant	44.81	
07/07/14	Room Service	55.59	
07/07/14	Room Charge	199.00	
07/07/14	9% City Occupancy Tax	17.91	
07/07/14	6% State Occupancy Tax	11.94	
07/07/14	Room Charge	199.00	
07/07/14	9% City Occupancy Tax	17.91	
07/07/14	6% State Occupancy Tax	11.94	
07/07/14	Room Charge	279.00	
07/07/14	9% City Occupancy Tax	25.11	
07/07/14	6% State Occupancy Tax	16.74	
07/08/14	Cast Iron Restaurant	77.84	
07/08/14	Cast Iron Restaurant	46.97	
07/08/14	Cast Iron Restaurant	20.16	
07/08/14	Room Service	170.85	
07/08/14	Room Charge	199.00	
07/08/14	9% City Occupancy Tax	17.91	
07/08/14	6% State Occupancy Tax	11.94	
07/08/14	Room Charge	199.00	
07/08/14	9% City Occupancy Tax	17.91	
07/08/14	6% State Occupancy Tax	11.94	
07/08/14	Room Charge	279.00	
07/08/14	9% City Occupancy Tax	25.11	
07/08/14	6% State Occupancy Tax	16.74	
07/08/14	Valet Overnight	25.00	

OMNI HOTELS & RESORTS

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 7 of 11
Folio No. : 408464
Conf. No. : 40015959975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
	558-141		
07/09/14	Room Service	21.53	
07/09/14	Cast Iron Restaurant	46.97	
07/09/14	Cast Iron Restaurant	42.64	
07/09/14	Cast Iron Restaurant	155.88	
07/09/14	Room Service	47.73	
07/09/14	Room Charge	279.00	
07/09/14	9% City Occupancy Tax	25.11	
07/09/14	6% State Occupancy Tax	16.74	
07/09/14	Room Charge	279.00	
07/09/14	9% City Occupancy Tax	25.11	
07/09/14	6% State Occupancy Tax	16.74	
07/09/14	Room Charge	262.33	
07/09/14	9% City Occupancy Tax	23.61	
07/09/14	6% State Occupancy Tax	15.74	
07/09/14	Valet Overnight	25.00	
	558-141		
07/10/14	Visa		1,910.65
	XXXXXXXXXXXX7377 XX/XX		
07/10/14	Room Service	38.56	
07/10/14	Whiskey & Rye	18.53	
07/10/14	Cast Iron Restaurant	35.00	
07/10/14	Cast Iron Restaurant	50.00	
07/10/14	WIFI Internet access	4.95	
07/10/14	Room Charge	279.00	

OMNI HOTELS & RESORTS

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 8 of 11
Folio No. : 408484
Conf. No. : 40016959975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
07/10/14	9% City Occupancy Tax	25.11	
07/10/14	6% State Occupancy Tax	16.74	
07/10/14	Room Charge	279.00	
07/10/14	9% City Occupancy Tax	25.11	
07/10/14	6% State Occupancy Tax	16.74	
07/10/14	Room Charge	262.33	
07/10/14	9% City Occupancy Tax	23.61	
07/10/14	6% State Occupancy Tax	15.74	
07/10/14	Valet Overnight 454-580	25.00	
07/10/14	Valet Overnight 558-141	25.00	
07/11/14	Visa XXXXXXXXXXXX7377 XX/XX		1,956.80
07/11/14	Select Guest Free Morning Beverage	0.00	
07/11/14	Select Guest Food	4.25	
07/11/14	Room Service	16.29	
07/11/14	Select Guest Free Morning Beverage	0.00	
07/11/14	Room Service	21.53	
07/11/14	Water Horse	31.00	
07/11/14	Water Horse	6.50	
07/11/14	Check		6,500.00
07/11/14	Visa XXXXXXXXXXXX7377 XX/XX		-1,956.80
07/11/14	Visa XXXXXXXXXXXX7377 XX/XX		-1,910.65
		199.00	

OMNI HOTELS & RESORTS

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 9 of 11
Folio No. : 408464
Conf. No. : 40015958975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
07/11/14	Room Charge		
07/11/14	9% City Occupancy Tax	17.91	
07/11/14	6% State Occupancy Tax	11.94	
07/11/14	Valet Overnight 454-580	25.00	
07/11/14	Valet Overnight 558-141	25.00	
07/12/14	Room Service	21.53	
07/12/14	Starbucks SG Free Morning Beverage	0.00	
07/12/14	WIFI Internet access	4.85	
07/12/14	Room Charge	199.00	
07/12/14	9% City Occupancy Tax	17.91	
07/12/14	6% State Occupancy Tax	11.94	
07/12/14	Valet Overnight 454-580	25.00	
07/13/14	Room Service	21.53	
07/13/14	Room Charge	199.00	
07/13/14	9% City Occupancy Tax	17.91	
07/13/14	6% State Occupancy Tax	11.94	
07/13/14	Valet Overnight 454-580	25.00	
07/14/14	Room Service	21.53	
07/14/14	Select Guest Free Morning Beverage	0.00	
07/14/14	Room Charge	199.00	
07/14/14	9% City Occupancy Tax	17.91	
07/14/14	6% State Occupancy Tax	11.94	

OMNI HOTELS & RESORTS[®]

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 10 of 11
Folio No. : 408464
Conf. No. : 40015959975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
07/14/14	Valet Overnight 454-580	25.00	
07/15/14	Room Service	45.11	
07/15/14	Cast Iron Restaurant	217.84	
07/15/14	Cash		1,000.00
07/15/14	WiFi Internet access	4.95	
07/15/14	Room Charge	199.00	
07/15/14	9% City Occupancy Tax	17.91	
07/15/14	6% State Occupancy Tax	11.94	
07/15/14	Valet Overnight 454-580	25.00	
07/15/14	Room Charge	199.00	
07/15/14	9% City Occupancy Tax	17.91	
07/15/14	6% State Occupancy Tax	11.94	
07/15/14	Room Charge	249.00	
07/15/14	9% City Occupancy Tax	22.41	
07/15/14	6% State Occupancy Tax	14.94	
07/15/14	Room Charge	219.00	
07/15/14	9% City Occupancy Tax	19.71	
07/15/14	6% State Occupancy Tax	13.14	
07/16/14	Room Service	21.53	
07/16/14	Room Service	0.00	
07/16/14	Check Refund		-2,505.81
	Check refund for credit balance from check		
12/05/14	Rooms Bad Debt	-1,373.10	
Total		12,680.74	12,680.74

OMNI HOTELS & RESORTS

fort worth

Susan Nounna
8635 W Sarah Ave #549
Las Vegas NV 89117
United States

Room No. : 652
Arrival : 07/07/14
Departure : 07/16/14
Page No. : 11 of 11
Folio No. : 408484
Conf. No. : 40015958975
Cashier No. : 18477

INFORMATION INVOICE

Membership No. : SG 8203844890
A/R Number :
Group Code :
Company Name :

10/19/15

Date	Description	Charges	Payments
------	-------------	---------	----------

Balance		0.00	
---------	--	------	--

Thank you for staying at the Omni Fort Worth.

EXHIBIT I

Desert Oasis Clinic

6316 S. Rainbow Blvd., #100

Las Vegas, NV 89118

(702)310-9350

Page: 1

3/16/2015

Patient: Suzanne Noura
3128 Darby Falls Dr
Seal Beach, NV 89134

Chart #: NOUSU000

Case #: 2383

Date	Description	Procedure	Modify	Dx 1	Dx 2	Dx 3	Dx 4	Units	Charge
3/16/2015	Adrenal Support Formula (RLC Labs)	ADR SUPPT						1	36.00
3/16/2015	Liposomal Glutathione	LPO GLUT						1	55.00
3/16/2015	Argentyn 16 oz.	ARGY						1	80.00
3/16/2015	Credit Card Payment	CCPAY						1	-171.00

Provider Information

Provider Name: John A. Thompson D.O.
License: 807
EIN: 061768098
NPI: 1316193753

NOT A MEDICARE PROVIDER:
Do Not Submit This Bill To Medicare

Total Charges This Page: \$ 171.00
Total Payments This Page: -\$ 171.00
Total Adjustments: \$ 0.00
Total Account Balance: \$ 0.00

EXHIBIT J



BY CHOICE HOTELS

COLLINS, JASON

...

Oxford, AL 36203

Comfort Suites (AL231)

125 Davis Loop Road

Oxford, AL 36203

(256) 835-8873

GM.AL231@choicehotels.com

Account: 360769180

Date: 9/22/14

Room: 319 BAR

Arrival Date: 9/11/14

Departure Date: 9/22/14

Check In Time: 9/11/14 2:06 PM

Check Out Time:

Rewards Program ID:

You were checked out by:

You were checked in by: tgonsh

Total Balance Due: 0.00

Post Date	Description	Comments	Amount
9/11/14	Cash		(88.80)
9/11/14	Room Charge	#319 TRUST, CONNELL	80.00
9/11/14	Occupancy Tax		0.80
9/11/14	City / County Tax		4.80
9/11/14	State Tax		3.20
9/12/14	Cash		(88.80)
9/12/14	Room Charge	#319 AHERN, ELEANOR	80.00
9/12/14	State Tax		3.20
9/12/14	City / County Tax		4.80
9/12/14	Occupancy Tax		0.80
9/13/14	Room Charge	#319 AHERN, ELEANOR	80.00
9/13/14	City / County Tax		4.80
9/13/14	State Tax		3.20
9/13/14	Occupancy Tax		0.80
9/14/14	Room Charge	#319 AHERN, ELEANOR	80.00
9/14/14	Occupancy Tax		0.80
9/14/14	City / County Tax		4.80
9/14/14	State Tax		3.20
9/15/14	Guest Refund	Guest req all charges to CC	177.60
9/15/14	Room Charge	#319 AHERN, ELEANOR	80.00
9/15/14	State Tax		3.20
9/15/14	Occupancy Tax		0.80
9/15/14	City / County Tax		4.80
9/16/14	Room Charge	#319 COLLINS, JASON	80.00
9/16/14	City / County Tax		4.80
9/16/14	State Tax		3.20

Post Date	Description	Rooming	
9/16/14	Occupancy Tax		0.80
9/17/14	Room Charge	#319 COLLINS, JASON	80.00
9/17/14	Occupancy Tax		0.80
9/17/14	City / County Tax		4.80
9/17/14	State Tax		3.20
9/18/14	Master Card	Autopayment	(621.60)
		XXXXXXXXXXXX3392	
9/18/14	Room Charge	#319 COLLINS, JASON	80.00
9/18/14	Occupancy Tax		0.80
9/18/14	City / County Tax		4.80
9/18/14	State Tax		3.20
9/19/14	Room Charge	#319 COLLINS, JASON	80.00
9/19/14	Occupancy Tax		0.80
9/19/14	City / County Tax		4.80
9/19/14	State Tax		3.20
9/20/14	Room Charge	#319 COLLINS, JASON	80.00
9/20/14	Occupancy Tax		0.80
9/20/14	City / County Tax		4.80
9/20/14	State Tax		3.20
9/21/14	Room Charge	#319 COLLINS, JASON	80.00
9/21/14	City / County Tax		4.80
9/21/14	State Tax		3.20
9/21/14	Occupancy Tax		0.80
9/22/14	Master Card		(355.20)
		XXXXXXXXXXXX3392	

Totals Summary 9/16/14 - 9/22/14		
Room Charge		880.00
State Tax		35.20
City / County Tax		52.80
Occupancy Tax		8.80
Cash		(177.60)
Guest Refund		177.60
Master Card		(621.60)

This rate is eligible for partner rewards. If this rate is changed, you may no longer be entitled to partner rewards.

For your convenience, we have prepared this zero-balance folio indicating a 0.00 balance on your account. Please be advised that any charges not reflected on this folio will be charged to the credit card on file with the hotel. While this folio reflects a 0.00 balance, your credit card may not be charged until after your departure. You are ultimately responsible for paying all of your folio charges in full.

X _____
choiceprivileges.com

You could be saving free nights and other great rewards. Join Choice Privileges today, at www.choiceprivileges.com.

Thank you for your stay. Visit ChoiceHotels.com/VerifiedReviews to post your comments about your recent experience (Click the "Write a Review" button)

EXHIBIT K



83

10-08-14

Jason Collins Elmira NY 14901 United States	Folio No. :		Room No. :	328
	A/R Number :		Arrival :	10-07-14
	Group Code :		Departure :	10-08-14
	Company :	Lesuire	Conf. No. :	68963814
	Membership No. :		Rate Code :	IGCOR
	Invoice No. :		Page No. :	1 of 1

Date	Description	Charges	Credits
10-07-14	Room Accommodation	104.00	
10-07-14	State Tax - Room	7.54	
10-07-14	City Tax - Room	2.08	
10-08-14	MasterCard		113.62
Total		113.62	113.62
Balance		0.00	

Independently Owned and Operated by Little Properties, Inc.

Guest Signature: _____

I have received the goods and / or services in the amount shown hereon. I agree that my liability for this bill is not waived and agree to be held personally liable in the event that the indicated person, company, or associate fails to pay for any part or the full amount of these charges. If a credit card charge, I further agree to perform the obligations set forth in the cardholder's agreement with the issuer.

Holiday Inn Express Hotel & Suites
1612 McClure Cove
Tupelo, MS 38804
Telephone:(662) 620-8184 Fax:(662) 620-8189

EXHIBIT L



BY CHOICE HOTELS

Comfort Inn I-40 East (AR116)

5710 Pritchard Drive
North Little Rock, AR 72117
(501) 955-9453
GM.AR116@choicehotels.com

Account: 385266781

Date: 10/9/14

Room: 111 sec

Arrival Date: 10/8/14

Departure Date: 10/9/14

Check In Time: 10/8/14 9:59 PM

Check Out Time: 10/9/14 1:20 PM

Rewards Program ID:

You were checked out by: phill

You were checked in by: sdavis

Total Balance Due: 0.00

CONNELL, TRUST

1

HORSEHEADS, NY 14845

Date	Description	Amount	
10/8/14	Room Charge	#111 COLLINS, JASON	73.80
10/8/14	City / County Tax		1.48
10/8/14	State Tax		4.80
10/8/14	Occupancy Tax		3.69
10/8/14	Master Card		(83.77)
	XXXXXXXXXXXX3392		

Room Charge	73.80
State Tax	4.80
City / County Tax	1.48
Occupancy Tax	3.69
Master Card	(83.77)

Balance Due: 0.00

This rate is eligible for partner rewards. If this rate is changed, you may no longer be entitled to partner rewards.

choiceprivileges

You could be earning free nights and other great rewards. Join Choice Privileges today, at www.choiceprivileges.com.

Thank you for your stay. Visit ChoiceHotels.com/VerifiedReviews to post your comments about your recent experience (Click the "Write a Review" button)

EXHIBIT M



RESORT • SPA • CASINO
LAS VEGAS

CONNELL TRUST

ELMIRA NY 14901

12300 Las Vegas Boulevard
Henderson, Nevada 89044
(702) 797-1000

Page 1 10/24/2014 11:17 AM

Arrival Date: 10/23/2014
Departure Date: 10/24/2014
Group Code: BAR14
Check In Agent: KVALLE
Check Out Agent: RNEWSOM
Room Number/Suite ID: T1 2126
Number of Guests: 1
Reservation ID: 418345776744

Date	Ticket Number	Description	Charges	Credits	Balance
10/23/2014	T1 2126	ROOM CHARGE T1 2126	135.00		
		TAX	17.55		
10/24/2014	7199	IN-ROOM DINING	35.49		
		2126CO			
10/24/2014		RECEPTION MASTERCARD		188.04	
		*****3392			

Thank you for staying with us!

Total: \$.00

EXHIBIT N

Guest Folio

The Cliffs At Peace Canyon

1/13/2015 9:15:06PM

Page 1 of 1

Reservation: 199246

Visit Dates: 1/9/15 thru 1/21/15

Guest: Ahem, Eleanor

FOL: 3,087,007

8635 W. Sahara

Las Vegas, NV 89117

ROOM: 2035

Date	Description	Amount	Reference
1/9/15	Master Card Payment	-1,120.00	1768 pymt
1/9/15	Developer Rental	180.00	NightAudit
1/9/15	Room Tax	21.60	NightAudit
1/10/15	Developer Rental	180.00	NightAudit
1/10/15	Room Tax	21.60	NightAudit
1/11/15	Developer Rental	160.00	NightAudit
1/11/15	Room Tax	19.20	NightAudit
1/12/15	Developer Rental	160.00	NightAudit
1/12/15	Room Tax	19.20	NightAudit
1/13/15	Master Card Payment	-1,176.00	1910 pymt

Credit Card No. XXXXXXXXXXXX-339 Folio Balance: -1,634.40



Guest Signature

TimeShareWare NEXT

\\mas200sq\apps\1\TSWNext\reports\LasVegas\reports\bul\lins\Folio.rpt

Guest Folio

The Cliffs At Peace Canyon

1/20/2015 7:38:29PM

Page 1 of 1

Reservation: 199763

Visit Dates: 1/21/15 thru 1/25/15

Guest: Ahern, Eleanor

Connell Trust FOL: 3,076,761

ROOM: 2035

Date	Description	Amount	Reference
1/20/15	Master Card Payment	-716.80	2355 pymt

Credit Card No. XXXXXXXXXXXX-339 Folio Balance: -716.80

Guest Signature

EXHIBIT O

2/3/10

Dr. Kyle D. Andrus, O.D., Optometry
330 N. Sandhill Blvd., Suite A
Mesquite, NV 89027
702-346-2950

Statement of Charges and Payments

Fee Slip Number: 13709
Date Printed: 02/03/2015
Provider: Kyle D Andrus O.D.
Office Phone: 702-346-2950
License: OD206
NPX Number: 1316982028

To: Ellie Margurite
8635 W SAHARA AVE
#549
LAS VEGAS, NV 89117

Patient: 116721 Ellie Margurite
Chart #:
Home Phone: (607) 215-3902
Next Appt:

Posting Date	Ord #	SKU #	Qty Description	CPT	Diagnosis	Amount	Patient Balance
02/03/2015	0		1 Vt Inter	92082		71.00	
02/03/2015	0		1 OCT MAC	92134		75.00	
Total Current Charges						146.00	
02/03/2015	Payment Applied by Visa at Dr. Kyle D. Andrus, O.D.,					(146.00)	
Total Payments						(146.00)	
Balance Due							0.00
Other Open Items							0.00
NO PAYMENT NECESSARY							0.00

DR. KYLE D. ANDRUS, O.D.
330 N. SANDHILL BLVD., SUITE A
MESQUITE, NV 89027
(702) 346-2950

Sale

Merchant ID: 542929884215181

Term ID: 1K486705

Expiry Date: 02/15/15
Batch: 000001 Inv: 01 000001

MASTERCARD Entry Method: S

XXXXXXXXXX3392

Seq. #: 0001 Appr Code: 003178

Total: \$ 146.00

APPROVED

Employee: Tony

Initial: TONY

al)= 146.00

rust.

Amount Enclosed 0.00 Patient #
Check #
Chart #

Dr. Kyle D. Andrus, O.D., Optometry
330 N. Sandhill Blvd., Suite A
Mesquite, NV 89027
702-346-2950

116721

Statement Date
Patient

02/03/2015

Ellie Margurite

Ellie Margurite
8635 W SAHARA AVE
#549
LAS VEGAS, NV 89117

EXHIBIT P

STATEMENT OF SERVICES RENDERED

Virgin Valley Dental, LLC
760 W. Pioneer Blvd Suite 3
Mesquite, NV 89027

(702)346-3880

MA0382

1

02/03/2015

GUARANTOR NAME AND MAILING ADDRESS

Eleanor Marguerite
8835 W Sahara Ave #549
Las Vegas, NV 89117

PATIENT	TOOTH	SURF	DESCRIPTION	CHARGE	CREDIT
Eleanor			Periodic exam	40.00	
Eleanor			Xray (pa)	16.00	
Eleanor			X-ray (pa)	16.00	
Eleanor			x-rays (4 Bitewings)	54.00	
Eleanor			(perio mnt) Extensive Cleaning	120.00	
Eleanor			CreditCard in office THANK YOU		-246.00

PRIOR BALANCE	CURRENT CREDITS	CURRENT CHARGES	NEW BALANCE	DENTAL INS. EST.	PLEASE PAY
Virgin Valley Dental		246.00	0.00	0.00	0.00

760 W. Pioneer Blvd., #3
Mesquite, NV 89027
702-346-3880

2/3/2015
4:03 PM

Credit Card Transaction:
Charge

Amount: \$246.00
Card: ser: ELEANOR AHERN
Card type: 01111
Card: xxxx-xxxx-xxxx-3392
Approval Code: 0038E5
TransactionID: 7922 Approved
Response Code: 001
Reference Number: 341085730012350160

TIME	REASON

EXHIBIT Q

OUTLINE OF FACTS AND ARGUMENTS FOR MOTION FOR RECONSIDERATION

1. Interim Trustee, Fred Waid has already made a decision regarding Ms. Ahern's request for him to exercise his discretion to make distributions to her in light of the circumstances.
2. Fred Waid stated in his Response to Ms. Ahern's Petition, filed on October 8, 2015, the following:

The Interim Trustee's refusal to honor the request of Eleanor Ahern for a beneficiary distribution does not violate the Court's summary judgement on April 16, 2015; to the contrary, the Interim Trustee's refusal to distribute Trust funds is intended to comply with that order. Since Ms. Ahern is entitled to only 35% of the Trust's income from the oil properties and, by her own admission, she owes back to the Trust \$800,000 , giving her distributions before that money is returned would provide her a windfall and leave the other beneficiaries short of their rightful distributions which were ordered by this Court to be held in Trust. Moreover, since Ms. Ahern cannot be discharged as former trustee until a formal accounting is provided, the Interim Trustee would appreciate her cooperation before she receives any further distributions. Finally, under the terms of the Trust's spendthrift provisions, the Interim Trustee has discretion to withhold distributions in light of the concerns that are set forth in this response and those noted previously by this Court.

3. NRS 163.419(1) provides that "A court may review a trustee's exercise of discretion concerning a discretionary interest only if the trustee acts dishonestly, with improper motive or fails to act."
4. Until this Court first determines that Fred Waid's actions in rejecting distributions to Ms. Ahern, this Court must first find that Mr. Waid has acted "dishonestly" or "with improper motive" (bad faith).
5. Ms. Ahern failed to verify her Petition and such omission is a fatal flaw.
6. Pursuant to Nevada probate law, a petition must be verified by the petitioner.
 - NRS 132.270, which provides the definition of "Petition", states as follows:
"Petition" means a verified written request to the court for an order.
 - NRS 132.360, which provides the definition of "Verification", provides for the following:
"Verification" means a declaration that a statement is true, made under oath or affirmation under penalty of perjury for false statement.
7. Burden of proof belongs to Ms. Ahern to support showing of need
 - Ms. Ahern has completely failed to support unverified claims with any corroborating and supporting evidence.
 - Ms. Ahern should be required to complete a disclosure form, signed under

penalties of perjury, that is similar to the "General Financial Disclosure Form" that is employed by the Clark County Family Court.

--- From June of 2013 through April 2015, approximately \$3,420,219.94 is the amount of income owed to Jacqueline and Kathryn's 65% interest in the Trust for the respective time frame. (Approximate figure)

8. This Court runs the risk of establishing a dangerous precedent if the Order is not abandoned entirely, or at least temporarily suspended:

--- (1) Disrupting discretion of trustee without a finding of that the trustee has acted dishonestly or with improper motive/bad faith in exercising his discretion violates statutory requirement

--- (2) Allowing a petition to be brought without an accompanying verification violates statutory requirement

--- (3) Ordering "advancements", when millions of dollars are still owed to the Trust by Ms. Ahern, and Jacqueline and Kathryn are the remainder beneficiaries of the Trust, simply adds to the obligations of repayment to the Trust.

(a) The functional equivalent of what this Court is ordering here is that of a bank that has been robbed of \$3 million dollars to be forced to "loan" the robber another \$90,000, thus further adding to the damage and loss to the bank.

9. New evidence has been discovered, served on the parties on November 17, 2015

--- \$27,500 payment from Ms. Ahern to Brownstein Hyatt Farber Schreck, LLP, in the form of a cashier's check dated July 15, 2015. The remitter of the payment is listed as the "Elton Business Trust".

(a) What is the Elton Business Trust?

(b) What assets does it possess?

--- A letter/memorandum dated June 1, 2015 from Town & Country Bank which states that that there has been a renter in the Elton Avenue Property for at least the last two years. Elton Property is currently showed to be owned Elton Investment Group, LLC. What is the Elton Investment Group, LLC? What assets does it possess?

--- Letter regarding social security payments to Ms. Ahern. As of 2014, Ms. Ahern's social security payments were almost \$2,900 per month.

--- a AAA insurance statement for the policy period of February 12, 2015 through February 12, 2016. The document appears to indicate that two vehicles are insured. A 2005 Toyota and a 2011 Volvo. The statement is sent to "Eleanor Ahern, Eleanor 'Ellie' Ahern Foundation".

(a) What is the Eleanor Ellie Ahern Foundation?

- (b) What assets does it possess?
 - (c) Does Ms. Ahern receive monies from the Foundation?
- Wells Fargo Bank statements show newly discovered evidence. Specifically, on September 11, 2012 Ms. Ahern made four distributions to the "Eleanor Ellie Ahern Foundation" totaling the sum of \$27,845.97.
- New evidence suggests that Ms. Ahern supports others/pays their expenses
 - (a) Omni Hotels & Resorts---Fort Worth records show multiple hotel rooms being paid for
 - (b) Hotel rooms paid for Jason Collins
 - (c) medical services for Nounna and Jason Collins
- Does Ms. Ahern use aliases in which she holds assets in other names? Through other entities?
 - (a) "Dr. Kyle D. Andrus, O.D., Optometry" bill relating to Ms. Ahern's February 3, 2015 eye exam shows that Ms. Ahern is referred to as "Ellie Margurite".
 - (b) In a bill from a Virgin Valley Dental, LLC pertaining to a February 3, 2015 dental exam, Ms. Ahern uses the name of "Eleanor Marguerite".
- 10. It is critical that Ms. Ahern sign a financial disclosure form under penalties of perjury so that the extent of all of her assets, regardless of how title is held, is fully disclosed.
- 11. A dedicated evidentiary hearing is appropriate and should be held only after the following events have transpired:
 - (1) The Court determines that Fred Waid has acted dishonestly or with improper motive in declining to make any distributions to Ms. Ahern;
 - (2) Ms. Ahern re-files her Petition with a verification/affidavit under penalties of perjury that the statements and representations that she is making are accurate and factually supported;
 - (3) Ms. Ahern submits a "General Financial Disclosure Form", or the functional equivalent, under penalties of perjury.

CSERV
JOSEPH J. POWELL
State Bar No. 8875
THE RUSHFORTH FIRM, LTD.
P. O. Box 371655
Las Vegas, NV 89137-1655
Telephone: (702) 255-4552
fax: (702) 255-4677
e-mail: probate@rushforthfirm.com
Attorneys for Jacqueline M. Montoya
and Kathryn A. Bouvier

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of

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

A non-testamentary trust.

Case No. P-09-066425-T
Department: 26 (Probate)

CERTIFICATE OF SERVICE

Date of Hearing: January 27, 2016
Time of Hearing: 9:30 a.m.

I HEREBY CERTIFY that I am an employee of The Rushforth Firm, Ltd., and pursuant to NCRP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the MOTION FOR RECONSIDERATION ON ORDER SHORTENING TIME to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 20th day of January, 2016, to the following:

BROWNSTEIN HYATT FARBER SCHRECK, LLP
Tamara Beatty Peterson, Esq.
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106
Tel: (702) 382-2101

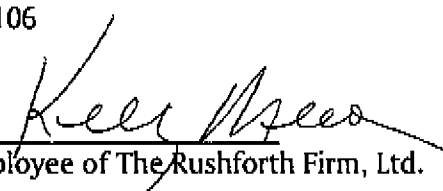

An employee of The Rushforth Firm, Ltd.

EXHIBIT 8


CLERK OF THE COURT

1 **RESP**
2 Todd L. Moody (5430)
3 Russel J. Geist (9030)
4 HUTCHISON & STEFFEN, LLC
5 10080 West Alta Drive, Suite 200
6 Las Vegas, Nevada 89145
7 (702) 385-2500
8 (702) 385-2086 FAX
9 tmoody@hutchlegal.com
10 rgeist@hutchlegal.com

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

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

15 In the matter of

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

18 THE W.N. CONNELL AND MARJORIE T.
19 CONNELL LIVING TRUST Dated May 18,
20 1972, an Inter Vivos Irrevocable Trust.

21 **RESPONSE TO MOTION FOR RECONSIDERATION**
22 **ON ORDER SHORTENING TIME**

23 Date of Hearing: 01/27/16
24 Time of Hearing: 9:30 a.m.

25 Fredrick P. Waid ("Trustee"), Trustee of the W.N. Connell and Marjorie T. Connell Living
26 Trust, dated May 18, 1972, (the "Trust"), by and through his attorneys of record, Hutchison &
27 Steffen, LLC, hereby responds to the Motion for Reconsideration on Order Shortening Time
28 ("Motion") filed by Jacqueline M. Montoya and Kathryn A. Bouvier on January 20, 2016. This
response is made and based on the pleadings and papers on file, and any oral argument the Court
may entertain at the time of hearing.

The Trustee does not intend to weigh in on the merits of the Motion, as the Trustee believes
the Motion is the continuation of the ongoing dispute between Jacqueline M. Montoya and Kathryn
A. Bouvier as beneficiaries of the Trust, and Eleanor Connell Hartman Ahern ("Ms. Ahern") as the
removed Trustee of the Trust. The Trustee's fiduciary duties are primarily to the Trust and all
beneficiaries under the terms of the Trust agreement.

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

1 Accordingly, while the Trustee does not take a position regarding the Motion, the Trustee
2 declares that he is bound to administer the Trust according to the terms of the Trust Agreement,
3 particularly in light of his commission from this Court upon appointment. Nevertheless, the Trustee
4 will follow the orders of the Court as it pertains to the Trust as the dispute between the
5 beneficiaries and the removed trustee continues to play out. However, the Trustee's duties under
6 the law require that he inform the Court of administrative factors and circumstances which may be
7 instructive to the Court's determination of the Motion, particularly regarding the ability to make
8 distributions or advances to Ms. Ahern given the information which the Trustee is currently aware
9 of and still uncovering.

10 AVAILABILITY OF FUNDS

11 The Court's Order Instructing Trustee to Advance Funds signed on December 29, 2015, and
12 filed on January 5, 2016, orders that the "Trustee is only required to advance funds if such funds
13 are available." As the Court and the parties are aware, the Trust has not made current income
14 distributions to Ms. Ahern since her removal as Trustee pending final accounting of prior years'
15 income, distributions and expenses administered by Ms. Ahern while she served as Trustee. There
16 are still outstanding subpoena requests for documents which are required for the accounting to be
17 completed.

18 With Ms. Ahern's own admission that she owes \$800,000 to the Trust and partial Trust
19 records indicating that amount to be significantly higher, the Trustee is in a difficult position
20 determining "if such funds are available" given the following:

21 1) **The continued lack of cooperation and disclosure by Ms. Ahern as it**
22 **relates to missing funds and records.** The Trustee has not been able to determine
23 the full extent of the funds misappropriated by Ms. Ahern, and therefore cannot
24 determine the amount which Ms. Ahern owes to the Trust as a result of her actions
as Trustee. The Trustee believes that before any distribution of income is made to
Ms. Ahern, this amount must be determined, and perhaps repaid.

25 2) **The prior and standing Order of this Court for payment of attorney's**
26 **fees by Ms. Ahern (not reduced to judgment and currently exceeding \$400,000).**
27 The Trustee believes that the Order of this Court does not require payment of
28 attorney's fees by Ms. Ahern from the Trust or from her share of Trust income. The
Trustee understands that Jacqueline M. Montoya and Kathryn A. Bouvier believe that
it was this Court's intention to require such payment and, ultimately, it may be the
only logical source for payments, but at present, there is no Court order requiring the

1 Trustee to make such payment from the Trust on behalf of Ms. Ahern.

2 3) **Pending issues between the IRS and Ms. Ahern.** The Trustee has
3 significant concerns that the actions of Ms. Ahern have generated massive personal
4 income tax liabilities with the IRS that have the potential of adversely affecting the
Trust. Pending amendments to the tax returns for prior years are likely to produce
additional income being allocated to Ms. Ahern.

5 4) **Obligations of the Trust to distribute 2013 and 2014 income to the MTC**
6 **Trust in the amount of \$2,297,181.12 (income received, but not distributed to**
7 **MTC).** This Court's Order to resume distributions of income to the MTC Trust cause
a significant liability to make up past income distributions not made by the removed
Trustee.

8 5) **Ms. Ahern's Social Security income of approximately \$2,900.00 per**
9 **month and rental or sale income from other properties.** As previously expressed
10 to the Court, Ms. Ahern has regular income to cover her living expenses. Given the
11 mounting deficit Ms. Ahern owes to the Trust and additional potential liabilities, the
Trustee finds it difficult to justify any advance of Trust funds to Ms. Ahern
compounding the problem and exposing the funds to other creditors.

12 6) **Estimated tax liabilities and penalties for 2012, 2013, and 2015.** The
13 Trustee is presently holding a reserve to cover the estimated tax liabilities and
14 penalties for 2012, 2013, and 2015. Without the opportunity to depose Ms. Ahern
15 and locate important documents, the Trustee's CPA estimates that the liability could
16 exceed the amount already held in reserve. The Trust income tax liability estimate
17 for tax year 2013 is presently \$307,000.00. For 2015, the amount is estimated to be
18 \$240,000.00 for a current total of \$547,000.00 in tax liabilities and penalties.

19 7) **Uncertainty of future royalty income given the current market conditions**
20 **and instability of oil prices and production.** The most logical way to resolve Ms.
21 Ahern's liability to the Trust is to withhold future distributions. However, the
22 uncertainty of future royalty income creates a significant concern over the ability of
Ms. Ahern's future income distributions to repay the liabilities. As the price of oil
continues to drop the length of time required to pay her obligations to the Trust will
increase.

23 8) **Obvious or assumed funding by Ms. Ahern of the Mann litigation and**
24 **continued efforts in that case.** Ms. Ahern's employment of the law firm of Smith
25 & Shapiro in the Mann litigation demonstrates a present ability to pay counsel in
26 other matters. In that regard, the Trustee shares Jacqueline M. Montoya and Kathryn
27 A. Bouvier's curiosity about what other resources Ms. Ahern has in other entities
28 which she has not disclosed to this Court.

Finally, the Trustee believes that the spendthrift provisions of the Trust as they relate to Ms.
Ahern's creditors, known and unknown, place a legal constraint on the Trustee distributing or
advancing her income interest to her attorneys at Brownstein Hyatt Farber Schreck, LLP. Indeed,
the Trustee has great respect for Ms. Ahern's counsel and believes that they rightly applied to the
Court for payment of their fees from the Trust rather than asking the Trustee, who has an

1 affirmative duty under NRS 166.120(4) to "disregard and defeat every assignment [of a beneficial
2 interest in a spendthrift trust] or other act, voluntary or involuntary, that is attempted contrary to
3 the provisions of this chapter."

4 Ms. Ahern's 35% share of Trust income from April 30, 2015, through January 7, 2016,
5 totals \$624,128.20. These funds are on deposit in a segregated Trust account at Wells Fargo Bank.
6 Again, with Ms. Ahern's admission of at least \$800,000 in liability, undistributed trust income of
7 \$2,297,181.12, estimated income tax liabilities of \$547,000.00, and the other contingencies set
8 forth above, it is reasonable to conclude that funds are not available for distribution or advance to
9 Ms. Ahern. Notwithstanding these complex issues, the Trustee understands its obligation to obey
10 orders of the Court. Additional instructions and clarification from the Court regarding the Trustee's
11 duty in light of the issues raised in this Reply would be appropriate and welcome.

12 Dated January 25, 2016.

13 HUTCHISON & STEFFEN, LLC

14 

15 Todd L. Moody (5430)
16 Russel J. Geist (9030)
17 10080 West Alta Drive, Suite 200
18 Las Vegas, Nevada 89145

19 *Attorneys for Fredrick P. Waid, Court-appointed Trustee*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC, and on this 16th day of January, 2016, I caused the above and foregoing document entitled **RESPONSE TO MOTION FOR RECONSIDERATION ON ORDER**

SHORTENING TIME to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via facsimile; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service submitted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

Kirk Lenhard, Esq.
Tamara Beatty Peterson, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite #1600
Las Vegas, NV 89106
Attorneys for Eleanor Ahern

Joseph J. Powell, Esq.
The Rushforth Firm
1707 Village Center Circle, Ste. 150
Las Vegas, NV 89134

Whitney B. Warnick, Esq.
Albright Stoddard Warnick & Albright
801 S. Rancho Drive, Ste. D-4
Las Vegas, NV 89106

*Attorneys for Jacqueline Montoya and
Kathryn Bouvier*



An employee of Hutchison & Steffen, LLC

EXHIBIT 9

1 TRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 * * * * *

5
6 In the Matter of the Trust of:)
7) CASE NO. P-09-066425
8 The W.N. Connell and Marjorie) DEPT. NO. XXVI
9 T. Connell Living Trust, dated)
May 18, 1972.) **Transcript of Proceedings**

10 BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE
11 **MOTION TO COMPEL: DEPOSITION OF ELEANOR AHERN; JACQUELINE**
12 **M. MONTOYA AND KATHRYN M. BOUVIER's MOTION TO STAY**
13 **EXECUTION OF ORDER PENDING THE HEARING OF THE MOTION FOR**
14 **RECONSIDERATION PURSUANT TO NRCP 62(B) ON OST AND MOTION TO**
15 **RECONSIDER ON OST**

16 WEDNESDAY, JANUARY 27, 2016

17 APPEARANCES:

18 For the Petitioner,
19 Eleanor Ahern:

KIRK LENHARD, ESQ.
TAMARA PETERSON, ESQ.

20 For the Trustee,
21 Frederick Waid:

TODD MOODY, ESQ.
JOSEPH POWELL, ESQ.
WHITNEY WARNICK, ESQ.

22 RECORDED BY:

KERRY ESPARZA, COURT RECORDER

23 TRANSCRIBED BY:

KRISTEN LUNKWITZ

24 Proceedings recorded by audio-visual recording, transcript
25 produced by transcription service.

1 WEDNESDAY, JANUARY 27, 2016 AT 10:32 A.M.

2

3 THE COURT: Will everybody make appearances while
4 I quickly send an e-mail to Roz and Sal, to them?

5 MR. LENHARD: Kirk Lenhard and Tammy Peterson on
6 behalf of Eleanor Ahern.

7 MR. WARNICK: Whitney Warnick, in an unbundled
8 capacity, appearing on behalf of Katherine Bouvier, with
9 respect to this motion.

10 THE COURT: Okay.

11 MR. POWELL: Joey Powell appearing on behalf of
12 Kathryn Bouvier and Jacqueline Montoya.

13 THE COURT: Thanks.

14 MR. MOODY: Good morning, Your Honor, Todd Moody,
15 bar number 5430, appearing for Fred Waid as trustee. Mr.
16 Waid is present.

17 THE COURT: Thank you. Sorry you guys had to wait
18 through that. I tried to do you earlier but you guys were
19 in another hearing so we'll -- we've got three things on, I
20 think it is. A Motion to Compel a Deposition of Eleanor
21 Ahern, a Motion to Stay, and then a Motion to Reconsider,
22 so I don't know what order we want to take them in. I
23 probably -- is it the Motion to Stay or the Motion to
24 Reconsider that would go first? I don't know which one.

25 MR. LENHARD: It's their motion so I --

1 THE COURT: Okay.

2 MR. LENHARD: So I guess I'll defer to them.

3 THE COURT: Okay.

4 MR. WARNICK: I think that's a good order, Your
5 Honor.

6 THE COURT: Okay. So, the Motion for
7 Reconsideration first? Okay. We'll do Motion for
8 Reconsideration. I've read it, so unless there's anything
9 to add.

10 MR. WHITNEY: Well, there's some things we have
11 got to point out, your Honor, because there's been some
12 Oppositions filed since the filing. We haven't had a
13 chance to respond to them that have raised additional
14 issues and so forth.

15 The first thing we would point out is, is that
16 we've come in before the Court on basically four bases for
17 seeking a Motion for Reconsideration. The first one is we
18 believe that the legal standard, with respect to the
19 trustee's discretion, has not been properly asserted by
20 Eleanor's counsel, that they have misconstrued what the
21 duties are of the trustee and the rights and the duties are
22 of the trustee and that needs to be clarified, which is
23 grounds for filing the Motion for Reconsideration.

24 We also submit, Your Honor, that we discovered
25 material evidence since the last hearing, which, in

1 addition, shows that Eleanor has a lot of assets and funds
2 available to her and is not in an impoverished situation as
3 she has feigned to the Court in this case.

4 There are other issues that need to be considered
5 when one of which is we have a pending motion before the
6 Court now to even have Eleanor have forfeited her rights to
7 any income under the trust because of the conduct that she
8 has committed and the misappropriations and other bad
9 conduct. So, that's hanging in the balance.

10 Going to the first issue there, counsel for
11 Eleanor have asserted that there's some type of a mandatory
12 discretion -- a mandatory distribution right now, with
13 respect to Eleanor receiving trust income. They've
14 asserted that the trustee can't exercise any discretion in
15 this manner now and just has to distribute income to her.
16 That's clearly not accurate. They're relying upon the
17 motion for Summary -- well, the Order for Summary Judgment
18 entered last April and that order was entered at a time
19 when Eleanor had come before the Court saying that she was
20 holding, in trust, over \$2,000,000 as security for payment
21 of monies owed to Jackie and Kathy. She came before the
22 Court asserting that she properly fulfilled her trust
23 duties and we find now that she has failed to file tax
24 returns, filed improper tax returns, and created a
25 liability for the trust of over \$500,000.

1 So, that Order was entered simply to clarify that
2 she wasn't entitled to all of the income and she was
3 wronged in her assertions and actions in this case. It
4 didn't create a situation where she's now entitled to a
5 mandatory distribution of any income coming in from the
6 trust.

7 Further, the trust itself provides discretion to
8 the trustee and the duty to the trustee to not distribute
9 funds to a beneficiary when that beneficiary has
10 misappropriated funds and owes monies back to the trust and
11 back to the other beneficiaries. The trust, in particular,
12 incorporates Nevada powers given to the trustee, in
13 particular, under NRS 163.375:

14 The trustee is given the authority and the duty to
15 settle disputes of this nature and his decision and
16 discretion in that case as to what he does in distributions
17 should be respected.

18 THE COURT: Okay. Are you -- which one are you
19 arguing?

20 MR. WARNICK: Pardon?

21 THE COURT: Are you --

22 MR. LENHARD: It seems like we are rearguing the
23 whole case. If you want to, I can do that, too.

24 THE COURT: Right.

25 MR. WARNICK: You'll get your chance.

1 THE COURT: So, I'm --

2 MR. LENHARD: Well, yeah. Give me an hour.

3 MR. WARNICK: I'm trying to argue --

4 THE COURT: Which motion are you arguing?

5 MR. WARNICK: This is the Motion for

6 Reconsideration.

7 THE COURT: Okay.

8 MR. WARNICK: We're arguing, first of all, that
9 the standard that they're relying upon as to the trustee's
10 discretion is not correct. And that under the trust, and
11 under Nevada law, the trustee has a duty and a right to
12 determine what distribution should be made and that
13 discretion should be respected unless its showing that he
14 has committed gross negligence, or bad faith, or breached
15 his fiduciary duties.

16 And I'm respectfully submitting, Your Honor, in
17 this case, Mr. Waid has not done that. He said in his
18 discretion he would not distribute anymore funds to Eleanor
19 and we should respectfully submit that that is the correct
20 standard and decision to be followed. That discretion
21 should be respected and that should be the end of this
22 matter. And there should be no requirement that he now has
23 to distribute any funds to Eleanor from the trust.

24 The second thing that is important to point out,
25 and this has come through evidence that we've discovered

1 since the last motion hearing, Eleanor clearly has funds
2 available to her. We know, Your honor, that during the
3 period that she was trustee and failed to distribute any
4 monies to Jackie and Kathy, that approximately \$4,000,000
5 of income came into that trust. She was relieved of her
6 trustee duties last April. She had collected all that
7 money and she had no distributed any of it to Jackie and
8 Kathy.

9 And now, since April 15th to the present, she's
10 saying: I'm out of funds. I'm impoverished. I had to go
11 to the Salvation Army, to the Lutheran church to get funds,
12 money, or food to live on. What happened to all of that
13 money from the time that she was relieved of her duties as
14 trustee, and had all of that money, and took all that
15 money, until the present?

16 Now, Mr. Waid has said he's able to recover about
17 1,000,000, maybe 600,000 of that over \$4,000,000. Well,
18 what happened to the rest of it? We know she didn't
19 properly pay income taxes on it. There's a big income tax
20 liability now which has to be handled by the trust. What
21 happened to those monies? She comes into court now and
22 says: Hey, I need money. I'm impoverished. I can't live.
23 I can't pay my attorney's fees.

24 Who has a duty to tell the Court what happened to
25 those funds? She has a duty first of all, because she was

1 the trustee when those funds were taken and
2 misappropriated. She can't be relieved of her duties as
3 trustee and exonerated any further until she files a proper
4 accounting with the Court and shows where those monies have
5 gone to. And the trustee has been trying to get her to do
6 that. He's been trying to take her deposition since last
7 April and she's --

8 THE COURT: Okay. How does this change anything
9 that was before the Court when we issued the Order? The
10 only thing I saw was we do now have -- and this is why
11 we're going to have a hearing. We're supposed to have a
12 hearing in a couple of weeks for Ms. Ahern to come in and
13 explain to the Court what she did. We -- I do now see --
14 like for example, the one exhibit that was interesting was
15 the letter from -- or, I don't know. Maybe it was a memo
16 or notes in the St. George bank where they seem to be
17 really well trained and spotted immediately that there were
18 some third persons who were exercising undue influence over
19 Ms. Ahern and were concerned and didn't let a certain
20 transaction go through. And, like I said, I wish all bank
21 people were that alert. I mean, that's a really the first
22 line of defense and they did a great job.

23 So, that was new. So, we now know that after her
24 removal she went and tried to, like, do some sort of
25 transaction with \$160,000. So, that was new. But I don't

1 know how that changes anything. I mean, that was the only
2 new thing I saw.

3 MR. WARNICK: Well, what it changes is she didn't
4 come in with any sworn statement, any affidavit, any
5 financial accounting to say that she was impoverished and
6 needed assistance from the Court. All we have are the
7 insinuations of her counsel based upon the fact she didn't
8 get any income, supposedly, from the trust since last
9 April, that that now means she's impoverished.

10 But we do know that she had \$4,000,000 that was at
11 her disposal and that she took somehow and has put
12 somewhere before she was relieved as trustee. So, she
13 comes into the Court and says: Well, since the time that I
14 was relieved as trustee, I've now run out of money. Well,
15 where did the 4,000,000, or 3,000,000, or whatever it is,
16 go to? And she hasn't come in with any sworn statement
17 saying I'm entitled to some assistance. I'm impoverished.
18 There's nothing before the Court from a sworn statement on
19 her behalf pinning her down --

20 THE COURT: Okay. And how is that a change? I
21 need something new or different that would be -- that would
22 give rise to reconsider.

23 MR. WARNICK: Well, apparently the Court didn't
24 feel last hearing that you were convinced that she really
25 had other funds, so we've attached Exhibits 1 through -- I

1 mean A through P which shows evidence of other funds that
2 she has available to her, other companies that she owns,
3 other foundations, other trusts, and these trusts have
4 paid, for instance, \$30,000 last July to her attorneys. We
5 know that she has paid \$2,800 to reinstate Fidelity Capital
6 company, where she had put \$500,000 into at one time and
7 then claimed it was missing. And that company went into
8 default and she reinstated and paid the monies to reinstate
9 that company while she's claiming that she's impoverished.

10 So, what we've done is we've showed the Court six
11 or seven different instances where she's had money
12 available, and this is evidence that we've discovered since
13 the last hearing, to show the Court that the Court should
14 now say: Hey, we just can't give Eleanor any more money
15 until she comes in and is candid with the Court and
16 presents to the Court a clear statement as to what her
17 finances are, what her ownership of companies are, what
18 income she has coming in.

19 For the Court to make a decision and say, well,
20 here's another \$90,000 Eleanor, without having her meet the
21 burden of showing the Court that she is entitled and needs
22 that money, is just not right. It hurts the trustee
23 because he's got liability to the IRS for over \$500,000.
24 It hurts Jackie and Kathy because they're owed over 2 and a
25 half million, probably over \$4,000,000, we think, when we

1 put everything together. And that money is owed to her by
2 Eleanor and Eleanor expects now to just come into this
3 Court and say -- through her attorneys, not through any
4 sworn statement on her behalf, I need more money, and
5 expects the Court to just say: Okay fine, Eleanor, here's
6 the money.

7 We have calculated that over the years, if income
8 comes in as it has been coming into the trust, it would
9 still take Eleanor about 10 years to repay to Jackie and
10 Kathy and to the IRS the monies that she owes. She's
11 nearly 80 years old.

12 THE COURT: Okay.

13 MR. WARNICK: They've criticized us for pointing
14 out her age and saying that that's a risky thing to rely
15 upon her ability to have income in the future, but that's a
16 fact. That's a hard fact that we have to recognize.

17 We also have to recognize the condition of the oil
18 market in the world today and the fact that this money cow
19 that is down there in Texas paying income to everybody is
20 going to end. And there might not be monies available and,
21 if that's the case, how's Eleanor ever going to pay back
22 everything that she has stolen from the trust and stolen
23 from Jackie and Kathy?

24 So, we're simply saying, Your Honor, until you get
25 the proper information and verification as to what

1 Eleanor's true financial condition is from her, under a
2 sworn statement, it would be improper to make any decision
3 overruling the trustee's discretion in this case to pay her
4 any more money.

5 THE COURT: Okay.

6 MR. WARNICK: Now, just as a closing, let me point
7 out that the trustee was involved in another case this
8 morning involving Eleanor. She has another attorney down
9 in another department arguing for her who's getting paid a
10 lot of money. He's incurred a lot of time. Where's she
11 getting the money to pay his fees? He's not coming into
12 the Court saying I'm not getting paid. We know he's
13 getting paid a good sum of money by her.

14 All of these facts show that she has money
15 available to her and she's not being candid with this
16 Court. She has the burden to prove that she is
17 impoverished and she can't do that without a sworn
18 statement, and a complete affidavit, and a financial
19 showing that she has the need.

20 THE COURT: Thank you.

21 MR. WARNICK: That's our position, Your Honor.

22 MR. POWELL: Your Honor, could I briefly address
23 the Court?

24 THE COURT: No. No.

25 MR. POWELL: On behalf of Jacqueline Montoya.

1 THE COURT: No. You get one.

2 MR. POWELL: Okay.

3 THE COURT: You get one. Okay.

4 MR. POWELL: Well, I just wanted to answer your
5 question as to what newly discovered information there was,
6 if that would clarify for the Court. Because there's --

7 THE COURT: No.

8 MR. POWELL: Okay.

9 THE COURT: We're good.

10 MR. POWELL: Thank you.

11 THE COURT: Thank you. I don't know if you want
12 to hear --

13 MR. LENHARD: The trustee had a document filed. I
14 assume they want to address the Court. I just assume go
15 last.

16 THE COURT: Yeah. I didn't know if the trustee
17 wished to --

18 MR. LENHARD: I want to hear what the trustee has
19 to say about this.

20 THE COURT: -- to be heard. I mean, I understand
21 that -- I understand the trustee's concerns that there's a
22 lot of liability.

23 MR. MOODY: Yeah. There is liability. I think,
24 Judge, were not taking a position one way or another on the
25 reconsideration. We wanted to stay and kind of show our

1 hand to the Court about concerns about the availability of
2 funds, which was a part of this Court's order. So, I would
3 like to address that.

4 You know, there are the concerns about what's
5 already owed back to the trust, which the Court is
6 completely familiar with. One of our concerns is about the
7 lack of cooperation that we have seen from Ms. Ahern which
8 will be addressed later on this morning, with regard to the
9 Motion to Compel her deposition. We have serious concerns
10 about IRS obligations, both from the trust and future
11 obligations from Ms. Ahern. There is still about 2.3
12 million that should have been distributed to the MTC trust,
13 and therefore the daughters, that has not been.

14 Tax liabilities for the years 2012 and 2013, there
15 is tremendous uncertainty right now about the future of
16 royalties because of the price of oil that's dropping.

17 And, Judge, one concern that we do have, and this
18 would be something that we would address with Ms. Ahern if
19 we are ever able to sit in front of her and ask some
20 questions, there is a separate litigation matter that is
21 pending in front of Judge Johnson. I can tell you that
22 that attorney, James Shapiro, represents Ms. Ahern, is
23 representing her zealously, and has never made any
24 representations to the Court that he does not have -- that
25 she does not have money to pay him. We don't -- we can't

1 say how he's being paid by her, but it is a concern.

2 Now, with regard to the availability of funds, the
3 Court, in its Order about the -- about directing Mr. Waid
4 to advance funds did give him discretion. That's never
5 been questioned, but we want to make it clear that under
6 the trust, income for her is defined as net income and if
7 we look at Nevada Statutes for help on defining what net
8 income is, we first look to NRS 164.785 sub (8), which
9 describes net income as:

10 The total receipts allocated to income during an
11 accounting period minus the disbursements made from
12 income during the period, plus or minus transfers under
13 NRS 164.780 to 164.925 inclusive to or from income
14 during the period.

15 To calculate disbursements that are made from
16 income, thereby reducing net income, NRS 164.900 and
17 164.920 give us an additional guidance about that. 164.900
18 considers:

19 Regularly recurring taxes assessed against
20 principle and expenses of a proceeding or other matter
21 that concerns primarily the income interest.

22 164.920 says that:

23 A tax required to be paid by a trustee based on
24 receipts allocated to income must be paid from income.

25 And, therefore, I just want to make the record

1 today that, you know, that availability of funds still lies
2 both by court order, by the trust, and by statute within
3 Mr. Waid's discretion and we are telling this Court and the
4 parties that are here today that Mr. Waid's decision based
5 on what has been withheld, those outstanding liabilities,
6 and where we are right now, that there are not funds
7 available to make any of those advancements.

8 THE COURT: Thank you. Mr. Lenhard.

9 MR. LENHARD: Thank you, Your Honor. I wanted to
10 go last because I wanted to hear what Mr. Waid was going to
11 add to this discussion. I'll remind counsel, and of course
12 the Court, this is on an OST, so our Reply certainly was
13 not tardy and we got it here yesterday so you at least know
14 what our position was.

15 THE COURT: Yes.

16 MR. LENHARD: I don't think I have to remind the
17 Court that it was two and a half months ago that we came
18 before you the first time saying we need assistance. You
19 granted orally, at that time in mid-November I believe it
20 was, our motion. The Order was substantively signed, I
21 think, in late December, early January.

22 THE COURT: Yeah.

23 MR. LENHARD: It's now the end of January, two and
24 a half months later, we've continued working, continued
25 trying to represent a very difficult client in a very, very

1 difficult situation. And now we have a surprise and the
2 surprise is: Oh by the way, you're not going to be paid.
3 Forget the Court Order. Forget what the Court said.
4 You're not going to be paid.

5 And I will give counsel credit for the sisters.
6 They've done a good job of extending this thing out and
7 bleeding Ms. Ahern and that's exactly what's happening
8 here.

9 You have had a chance to observe Eleanor Ahern a
10 couple times in this courtroom. I have observed Eleanor
11 Ahern a couple times in this courtroom. I've observed
12 Eleanor Ahern in my office, although I've lost contact with
13 her. She is deteriorating. A good deal of what Mr. Waid
14 is relying upon is the purported confession of Eleanor
15 Ahern as to what she misappropriated. If Eleanor Ahern is
16 not mentally capable, that confession becomes basically
17 inadmissible.

18 I don't have to remind the Court, or Mr. Waid for
19 that matter, or his counsel, that a confession standing
20 alone, whether it's good or bad, without the underlying
21 corpus to support that confession is also inadmissible.

22 So, yes, there are missing finds. I agree there
23 are missing funds. We don't know the amount yet. We are
24 talking about a relatively small amount to support Mrs.
25 Ahern until we get to trial and a relatively small amount

1 to support her so she can defend herself.

2 Can you imagine the mockery of justice that would
3 occur here today if Eleanor Ahern was appearing pro per to
4 defend her right to remain as a beneficiary of that trust,
5 challenged by this lawyer, this lawyer, and that lawyer?
6 How would she defend herself? Would she do her briefs in
7 crayons? That is outrageous.

8 I know this Court. I know this Judge. I've known
9 you as a private practitioner. I've known you a number of
10 years. You are a fair minded person. I don't think you
11 want anything to do with that type of hearing. We are the
12 only thing standing between that type of hearing and at
13 least a fair hearing for Eleanor Ahern, whenever this trust
14 hearing occurs, and that's going to be a serious hearing.

15 THE COURT: And this -- yes. It is. And but I
16 guess --

17 MR. LENHARD: So, I'm asking you, enforce your
18 order.

19 THE COURT: Right. I guess the question -- and I
20 understand why the trustee is taking the position that the
21 trustee has taken, because he's in this very awkward and
22 unique position where he owes duties to three people and I
23 believe that he has in -- at all times, wants to do the
24 right thing for everybody. And we have a real problem
25 here.

1 I mean, I think the word he used once is he felt
2 that she was under the influence of drifters and, you know,
3 now I've seen some of these -- this documents. I think
4 that that's -- you know, it may well be true. And I
5 understand and appreciate his concerns, but his concern
6 seems to be that she has placed herself in a situation
7 where she has huge liabilities that she owes to the
8 Internal Revenue Service and I don't know if we are ever
9 going to see her -- how she's going to get out from that
10 but, be that as it may, you know, his concern is that there
11 is no income for her because we will have this big tax
12 liability and that's what his concern is because he's got
13 to protect her from her tax liability.

14 And I understand his concern. I understand why he
15 wants to make a record on that. I appreciate the argument.
16 I see this is a little different from -- and I know there's
17 a lot of concern about the fact that previously, when the
18 daughters were contesting their right to get the 65
19 percent, I said we are not going to distribute it. We'll
20 hold it for you unless you can post a bond. Well, I
21 appreciate that that may have been overly onerous. Maybe
22 some other kind of security may have been appropriate, but
23 anyway, they were claiming a right to the 65 percent that
24 was in dispute.

25 Nobody has ever disputed that Ms. Ahern was

1 entitled to 35 percent all along. That was her 35 percent.
2 It's always been her 35 percent. It's still her 35
3 percent. The problem is, if she did misappropriate funds,
4 whether she did it herself or some third parties who did
5 not have her interest a heart somehow caused that to
6 happen, we have to have a trial to find out. But in the
7 meantime, I -- you know, I don't know how she's paying the
8 attorney in the other case. It's not really before me. I
9 can't really make a determination. I have no idea what
10 she's done to pay that other attorney.

11 But in this particular case, it just seems to be a
12 little different from the situation where the issue was
13 what do the daughters have to do in order to receive the 65
14 percent that was in dispute. The very real problem that we
15 have here though, and the hard thing to get around, is
16 that, in fact, there is no net income. So, at this point
17 in time, as I -- what I understand you're saying is that
18 there's nothing new. I mean, we kind of knew these things.
19 We knew that, although I didn't have the documents, the
20 trustee had told me that he felt there were third parties
21 who had influenced her inappropriately. We knew about the
22 problem with this fake Fidelity. We knew about all that.

23 Nevertheless, where she was the 35 percent
24 beneficiary always and unless until she is no longer the 35
25 percent beneficiary, which is a very real likelihood, if

1 she has, in fact, misappropriated that much money, she's
2 got -- faces a real problem, but in order to defend herself
3 from losing what she has held for I don't know how many
4 years, it's 30 or 40 years, isn't it, that she was -- it's
5 a long time, she was getting her 35 percent from this trust
6 and to deprive her of her income source from, like,
7 historically, you know, to leave her unrepresented is a
8 problem for me.

9 And I just, you know, that was her 35 percent that
10 she's entitled to fight to keep, I think. I appreciate the
11 trustee wanting to make a record that technically if I were
12 to say distribute it to her from net income she doesn't
13 have any net income due to her because she's got a huge tax
14 liability that he's really worried about. And I understand
15 he's worried about it on her behalf but my concern is that
16 we are facing not just the fact that she owes her daughters
17 for their attorneys' fees for having to fight her for this
18 65 percent when the whole thing was settled almost a year
19 and a half ago and she backed out if it, you know, if she
20 stands to lose the 35 percent that she's relied on and that
21 her father gave her in the '70s -- was it in the '70s that
22 she got her 35 -- started getting her 35 percent? It was a
23 really long time ago. She stands to lose that.

24 MR. WARNICK: Your Honor, could --

25 MR. LENHARD: Oh, I --

1 THE COURT: And for me, how do we --

2 MR. LENHARD: I wasn't done yet.

3 MR. WARNICK: Oh. I thought you were.

4 THE COURT: How do we --

5 MR. LENHARD: No. I'm just letting her --

6 THE COURT: How do we put a beneficiary who may
7 have acted inappropriately as a trustee, two different
8 roles, how do we put that beneficiary at that kind of risk?
9 She may have acted inappropriately in her role as trustee,
10 but she always was the beneficiary to that 35 percent and
11 to -- and we told her she couldn't have it and now they're
12 coming in and saying we can't represent her if she doesn't
13 have some amount of money.

14 And that's my -- a real problem for me because I
15 do have a concern that Mr. Lenhard has raised is that
16 you're depriving somebody of that kind of a property
17 interest knowing that there is a way to keep them
18 represented by counsel that, you know, we're not going to -
19 - I mean we've already told her she can't have the 65
20 percent, so now to tell her she can't have her 35 percent
21 while she's unrepresented by counsel really concerns me and
22 so that's my question, is: How is there any different --
23 anything different before me today to tell me that I should
24 reconsider that?

25 MR. LENHARD: Our position is there is nothing

1 different. This is the same argument before. As to the
2 finances they keep referring to, the so-called houses with
3 all the equity. Mr. Waid refused to accept those as
4 collateral because they were underwater.

5 THE COURT: Right.

6 MR. LENHARD: All these financial transactions
7 that they're concerned about, they've been aired before by
8 Mr. Waid. They can be aired again at the trial. My
9 concern is that this woman has representation.

10 I'm standing here today, frankly, over the
11 expressed instructions of my managing partner who's told me
12 to get out of here and I've said -- get out of this case
13 and I said: No. I'm stubborn and I'm going to ride this
14 out because there's something horribly wrong here. And I'm
15 not going to be a part -- and to the extent I can, without
16 losing my job, I guess, I'm going to try to represent her.

17 THE COURT: Okay.

18 MR. LENHARD: Because there's something wrong here
19 and I think you know it and I know these people know it.

20 THE COURT: Right. So, that's -- I don't know,
21 Mr. Waid, if you want to be heard on part of the trustee,
22 but I just, you know, the concern that I have, Mr. Warnick,
23 and you -- I know you were out for a little while and
24 you're here on a special appearance, and I understand the -
25 - how upsetting this is to the daughters who have fought

1 this for so long. But, you know, it's a different -- the
2 situation for me is different when were talking about her
3 35 percent. That was always her 35 percent that she is at
4 risk of losing because of actions she took whether under
5 the influence of some person who did not have her interest
6 at heart or just on her own. I mean --

7 MR. WARNICK: On her own account.

8 THE COURT: It's bad.

9 MR. WARNICK: I mean, we can't just say that she's
10 being influenced by other people. She's appeared and
11 testified and read a deposition with me.

12 THE COURT: Yeah.

13 MR. WARNICK: She seemed pretty spunky and pretty
14 alert at that time and we're trying to relieve her of her
15 own individual responsibility in here?

16 THE COURT: Right.

17 MR. WARNICK: I appreciate counsel's own testimony
18 on his own behalf, you know, saying how he's going to be
19 the knight in shining armor and come in here and saving
20 this lady, but the fact is this lady has caused the
21 problems. He doesn't have to represent her. He's doing it
22 because he's getting paid good monies and he wants more
23 good monies from this Court and we're saying you're taking
24 monies from us and putting us at risk in order to do that.
25 And who's at fault here? Eleanor is at fault.

1 THE COURT: Right. Okay.

2 MR. WARNICK: Now, there's one thing, there's some
3 additional information that's coming from the Court since
4 the last hearing. We've established that Eleanor's Social
5 Security income is not the 1,500 or \$1,600 that was
6 bantered around at the hearing. Its, in fact, almost
7 \$3,000. How can she be considered to be impoverished if
8 she's getting at least that amount of money each month from
9 the Social Security? She clearly isn't.

10 I would at least ask the Court not to consider
11 granting her anymore funds to live on. If the Court
12 considers its necessary to pay attorneys' fees then we
13 ought to see where those attorneys' fees are going to. Are
14 they going to fight other matters and other issues? Not
15 the issues that are before the Court?

16 THE COURT: No. The Order was very clear. It's
17 paid to Brownstein Hyatt. And the \$30,000 was her past
18 attorney's fees. \$10,000 a month going forward through the
19 trial was the order. It was a \$70,000 in attorneys' fees
20 which, you know, you know what it's cost to litigate this
21 case. You --

22 MR. WARNICK: But they'd already filed their
23 appeal back in October/November so they're saying that they
24 needed more attorneys' fees since then? What do they do
25 with those additional attorneys' fees?

1 THE COURT: For the trial. We've got a trial
2 coming up in a couple of weeks. In February. We're
3 scheduled for trial.

4 MR. WARNICK: But they've been prepared for that.
5 The other thing that they've admitted, Your Honor --

6 MR. LENHARD: Oh geez.

7 MR. WARNICK: -- the other thing that they've
8 admitted is that they're not even getting cooperation from
9 their party.

10 THE COURT: Yeah. That's going to be a real
11 problem. That's going to be a real problem.

12 MR. WARNICK: And how can they make any
13 allegations to the Court as to what the circumstances
14 financially are of this person?

15 THE COURT: And that's the thing, Mr. Warnick, we
16 are -- we stand -- we have the potential to deprive
17 somebody of 35 percent of -- you know, and they're right.
18 I mean, it's a fluctuating amount. I have never really
19 established how much it was. It's, I'm sure, less, and
20 less, and less as oil prices plummet. But still, it was a
21 vested right that she held for decades, decades.

22 MR. WARNICK: She doesn't vest the right to take
23 our class of it though.

24 THE COURT: She stands the right to lose it
25 because of what has happened and we need to know was that

1 because she intentionally did it? Or are we talking about
2 some third party? That's all I'm saying.

3 MR. WARNICK: Well, shouldn't they be bringing
4 that information in here before the Court?

5 THE COURT: Yeah. That's why we're having a
6 hearing in two weeks.

7 MR. WARNICK: That'd be interesting to see if they
8 bring that information to be before the Court.

9 THE COURT: In February. In February there's a
10 trial.

11 MR. WARNICK: They've not presented any documents
12 to verify that

13 THE COURT: She's got a chance. She's got a
14 chance to prove her case in a trial. That's what I said
15 was we were going to do this temporarily. This was pending
16 whether she was going to lose her 35 percent.

17 MR. WARNICK: I understand, Your Honor.

18 THE COURT: That's what the hearing's on and
19 that's all I've ever said. I haven't ordered anything
20 more. I don't see anything at this point in time. I
21 appreciate the point that the trustee has made that there
22 is no net income as a matter of fact. I understand that.
23 But --

24 MR. WARNICK: Are you concluding that she's
25 relieved of her ability to present evidence as to her

1 financial conditions because she might not be competent and
2 she might be able to influence the people and therefore she
3 doesn't have --

4 THE COURT: No. I have not --

5 MR. LENHARD: Wait. The issue of the IME's not
6 here yet.

7 THE COURT: I have not --

8 MR. LENHARD: I intend to argue in the IME when we
9 start talking about the depositions.

10 THE COURT: I have -- yeah. I have not made any
11 other rulings about what kind of discovery she has or what
12 she has to be producing. I'm simply saying for this
13 purpose, the motion that we heard back in November -- we
14 now have evidence, I have been given the documents, and I
15 see those documents, and I read them. Like I said, I was
16 very impressed by the work of the people in Utah who saw
17 this was a serious problem and wouldn't let her have access
18 to the funds. But my problem here is, I -- we pretty much
19 already knew that and we knew that that's why we needed to
20 have a trial.

21 And my concern has always been if you're going to
22 deprive somebody of an interest they have held for decades
23 because of something they've done, I think that she needs
24 competent legal representation in order to be able to have
25 that stand up.

1 MR. WARNICK: Does she need additional financial
2 assistance for her own support? There, I don't think she
3 does.

4 THE COURT: Okay. All right.

5 MR. WARNICK: Thank you, Your Honor. And I
6 understand your position. Thank you.

7 MR. MOODY: Judge, I have one request, Mr. Waid
8 has a statement for the Court and can we either have a
9 sidebar or can we go off the record so he can explain
10 something?

11 MR. LENHARD: Well, Mr. Waid is a witness.

12 THE COURT: Correct.

13 MR. LENHARD: And going to be a witness at a
14 trial.

15 THE COURT: He will be. Yeah. And that's why --
16 Yeah. I mean, he's --

17 MR. LENHARD: So, if Mr. Waid's giving statements,
18 maybe he should be under oath? We have the right to cross
19 examine. I don't like this.

20 MR. MOODY: Yeah. I think you'll see, Kirk.

21 Mr. LENHARD: Let's go to the sidebar, then. I'm
22 not --

23 THE COURT: Let's go to the sidebar.

24 [Bench conference began at 11:08 a.m. - not transcribed]

25 [Bench conference concluded 11:17 a.m.]

1 THE COURT: Okay. All right, going to back on the
2 record. Following a sidebar with counsel for the
3 respective parties and Mr. Waid and his attorney, the
4 parties have agreed that we have a short window where we
5 have to make certain decisions with respect to tax --
6 distributions for tax purposes. The deadline for which is
7 March 6th. I don't know, that's a Sunday. Do they give you
8 an extra day or does it need to be done by, like, the
9 Friday before? Because it's the IRS and March 6th is March
10 6th.

11 MR. WAID: Your Honor, I'll commit that Mr. Wilcox
12 and I can meet with Ms. Peterson and Mr. Lenhard this week.

13 THE COURT: Okay. Because we have -- we only
14 have, then, 30 --

15 MR. WAID: And other counsel.

16 THE COURT: We only, then, have a little over 30
17 days in which we have to make a decision, with respect to
18 some distributions and how we would treat this order for
19 distribution purposes because that's our tax problem.
20 March 6th is the deadline so the parties are going to work
21 on that expeditiously, as soon as possible, because I'm
22 going to deny the Motion for Reconsideration. I'm not
23 granting any additional sums. I'm not going to decrease
24 the sums. We have the Order in place. I think the
25 information that the Court had before in November is about

1 the same, except for the information Mr. Waid was able to
2 provide today, with respect to how much was received in --
3 between April and December of 2015 and how much the 35
4 percent would be of that money.

5 So, but that gives us with certain tax problems so
6 the parties have to deal with that very quickly because
7 that deadline is March 6th. So, the parties have agreed to
8 do that. The Motion's denied but we -- with the
9 understanding that we have to deal with this tax question
10 before we could do anything but the funds are, then, to be
11 -- as soon as we've got that resolved, we can distribute
12 the funds?

13 MR. LENHARD: Forthwith. How's that?

14 THE COURT: Okay. All right. So, the parties are
15 going to deal with that, hopefully in the next week or so,
16 so that we can get the funds distributed as soon as
17 possible because we certainly have no later than March 6th
18 with which to deal with this problem. So, okay. So, that
19 was denied.

20 The second request was that -- related to that was
21 that there be a stay in place, so that's a different
22 motion, and then we have Motion to Compel. So, next issue
23 is the stay. Stay of execution pending a hearing on the
24 Motion for Reconsideration. So, I think that that was just
25 a request for a stay. It's moot because we didn't really -

1 - no funds have been distributed and really can't be until
2 we deal with our -- this tax problem which we are asking
3 everybody to do -- deal with in good faith as soon as
4 possible so that we can --

5 MR. WARNICK: So, in essence, you've already ruled
6 on the Motion for a Stay. I don't think there's anything
7 more to argue on that.

8 THE COURT: Right. It was a stay, pending this
9 hearing. It's kind of mooted because the funds were not
10 distributed in the interim. So, I just think that that's
11 the order on the request for the stay is that since funds
12 still have not been distributed, that was moot and that the
13 complication we had before us today is simply one where we
14 have to deal with this question of how do -- the accounting
15 question for tax purposes.

16 MR. WARNICK: Can I just ask for a clarification.
17 On this tax issue, is it my understanding that we're going
18 to get together and try to resolve how best to solve a tax
19 issue for the benefit of everybody and, after that, if the
20 trustee still feels there are not funds in his discretion
21 available for distribution, you're still directing that
22 they get the 90,000 or are you saying that the trustees can
23 still exercise discretion in this matter depending upon
24 what is determined?

25 THE COURT: No. At that point in time, I believe

1 that it's -- given the additional information that was
2 provided by the trustee, I believe that if the tax issue
3 can be resolved, there will be funds available to make this
4 distribution on behalf of Ms. Ahern in the fashion that it
5 was ordered. And that I don't think that the -- I think
6 the trustee's concern is -- will be resolved. So, that
7 would be my order, is that it'd be done, but that's why the
8 parties have to act pretty quickly because he's got to have
9 everything prepared and to the IRS in about 30 days. It
10 just doesn't give him much time. So, you need to -- it
11 needs to be done quickly.

12 MR. POWELL: Can I just clarify your ruling for
13 purposes of the record?

14 THE COURT: Yes.

15 MR. POWELL: Thank you, Your Honor. I'll try to
16 be brief. Is the Court -- are we starting with a position
17 that the trustee has exercised his discretion and denied
18 the request for distributions. Correct?

19 THE COURT: No. No. It was -- my order was that
20 funds -- funds were being held. Her 35 percent was being
21 held. There was a request that a portion of the funds be
22 distributed. The trustee raised the concern that he didn't
23 feel that there was income available and in November there
24 was not because -- and we also that we have this big tax
25 liability. No. I made no finding with respect to the

1 trustee's action.

2 MR. POWELL: Previously, I meant, Your Honor. And
3 in terms of the November hearing. Because the trustee had
4 already taken a position of denying the request for
5 distribution. So, I just want to start that we're starting
6 off on the same basis that --

7 THE COURT: Oh. Well, yeah.

8 MR. POWELL: -- he had already made that
9 determination of I'm not --

10 THE COURT: He did.

11 MR. POWELL: Okay. So --

12 THE COURT: Right. But the things --
13 circumstances have changed. The one circumstance that has
14 changed is that we now have the end of the year income. We
15 now know what the total amount was in 2015.

16 MR. POWELL: Understood.

17 THE COURT: From April to December. We now know
18 what that amount is. We now know what the tax liability
19 would be on that amount and we -- and I believe there would
20 be net income. I believe that there would be. So, that's
21 my order.

22 MR. POWELL: Okay

23 THE COURT: Is that --

24 MR. POWELL: Okay. No. I understand.

25 THE COURT: -- the funds should be distributed.

1 MR. POWELL: With all deference to the Court, I
2 believe that, and counsel is free to clarify, I believe Mr.
3 Waid's initial position on this matter was: I don't
4 believe, in light of all circumstances, it's appropriate to
5 make any distributions whatsoever.

6 THE COURT: Correct.

7 MR. POWELL: Therefore, I'm denying the request.

8 THE COURT: Right.

9 MR. POWELL: Okay. So --

10 THE COURT: And my only point here is that I
11 believe there is net income -- there would be net income
12 sufficient if we can get an agreement on this -- on how to
13 handle this with respect to how it's reported to the IRS
14 for tax purposes.

15 MR. POWELL: Understood, Your Honor. And I think
16 that's the position they're taking today is that --

17 THE COURT: No. I think he's still taking the
18 position that he doesn't think he should distribute
19 anything.

20 MR. POWELL: Right.

21 THE COURT: My position is I believe there is net
22 income sufficient that he can. And that's my order.

23 MR. POWELL: Okay. But, just as Mr. Warnick was
24 clarifying is, your ruling as of today is: Once the tax
25 issue gets cleared up that there is -- the order is in

1 place that Mr. Waid is ordered to distribute the funds
2 immediately, regardless of the fact of if you should
3 subsequently determine that he doesn't determine funds are
4 available. Because I think the argument --

5 THE COURT: No. I think that you're
6 misunderstanding.

7 MR. POWELL: Okay.

8 THE COURT: My position has always been pay her
9 the money. That was always my position. His concern was
10 he didn't have net income. There were tax liabilities. I
11 think those are going to be resolved. I don't think his
12 concerns are there anymore. He does -- he has stated very
13 clearly, on the record, that he has a problem with
14 distributing this money.

15 MR. POWELL: Okay.

16 THE COURT: I understand that.

17 MR. POWELL: Okay.

18 THE COURT: But the main one for me was that there
19 was no net income and we had tax problems.

20 MR. POWELL: Okay.

21 THE COURT: I believe that can be addressed.

22 MR. POWELL: Okay. So, with that said then, is --
23 your position is that you are effectively -- I don't want
24 to put words in your mouth -- you are determining that
25 despite his desire not to distribute anything at this

1 point, you're --

2 THE COURT: Any other concerns he may have. Any
3 other concerns that he may have.

4 MR. POWELL: Okay. So, you're basically
5 overruling his discretion not to make any distributions?
6 That's the part I just want to clarify is. He's said, for
7 the record, in light of all circumstances, in light of
8 money still owed to the trust, he doesn't want to make any
9 distributions. He doesn't feel its appropriate to make any
10 distributions whatsoever to Ms. Ahern regardless of for her
11 personal use --

12 THE COURT: Right.

13 Mr. POWELL: -- or for payment of her attorneys'
14 fees. So, I just want to clarify for the record, you're
15 overruling his determination on that.

16 THE COURT: Correct.

17 MR. POWELL: Okay.

18 THE COURT: To the extent that I felt that the one
19 thing that had merit was this issue that we didn't know how
20 much income there was going to be to the 35 percent. We
21 now know that so that's been resolved.

22 MR. POWELL: Okay.

23 THE COURT: So, those concerns, I think, we can
24 address.

25 MR. POWELL: Okay.

1 THE COURT: And the other concern, I don't think -
2 - you know, until she doesn't have the right to the 35
3 percent anymore, she still has a right to the 35 percent.

4 MR. POWELL: Okay. So, your ruling is that Mr.
5 Waid has an obligation because she still has a 35 percent
6 interest to not withhold any distributions from her?

7 THE COURT: As a beneficiary.

8 MR. POWELL: As a beneficiary. Okay.

9 THE COURT: To her 35 percent that she still has
10 some rights.

11 MR. POWELL: Okay.

12 THE COURT: And we have to have a trial.

13 MR. POWELL: Okay. Understood. The other point
14 of clarification I just wanted to raise: In her -- I
15 believe she termed it as a motion, it was, again, an
16 unverified pleading.

17 THE COURT: Right.

18 MR. POWELL: Is it the Court's position that that
19 is inconsequential to the fact that it was not verified?

20 THE COURT: Yes.

21 MR. POWELL: Okay.

22 THE COURT: I don't -- to me, I don't care that it
23 was not verified.

24 MR. POWELL: Okay.

25 THE COURT: I understand that through discovery

1 you may seek other information. I don't -- whatever you do
2 in your discovery is fine.

3 MR. POWELL: Okay. Understood. And then the last
4 point of clarification, Your Honor, is, and again, not
5 trying to put words in your mouth, but just given what I
6 believe to be your concern here is that the concern is
7 because of the fact that the no contest clause is seeking
8 to be invoked, that that fact is what you are determining
9 is why it is critical for Ms. Ahern to have counsel.

10 THE COURT: Correct.

11 MR. POWELL: But for that, you wouldn't
12 necessarily come to the same conclusion that counsel --
13 that representation of her would be necessary?

14 THE COURT: It's critical. Right.

15 MR. POWELL: Okay.

16 THE COURT: She stands to lose a substantial
17 property interest.

18 MR. POWELL: Okay. And because of that, your
19 position is she must have representation to defend her
20 position on that?

21 THE COURT: It is -- she is at serious risk of
22 losing an established property right for which I believe
23 she is not capable of representing herself from defending
24 that.

25 MR. POWELL: Okay.

1 THE COURT: I just do think she is.

2 MR. POWELL: Understood. So, just the clarifying
3 point that I wanted to just bring up to you is: If --
4 because that petition that is on calendar, the trial that
5 we're having is also dealing with beyond enforcement of the
6 no contest clause. It's also dealing with damages issues
7 as well. If that petition was simply just about the
8 damages issue, would your opinion be that she also needs
9 representation on that because of the fact of what --

10 THE COURT: Probably. At this point, probably she
11 would.

12 MR. POWELL: Okay. Thank you, Your Honor. I
13 appreciate your clarifications. Thank you.

14 THE COURT: Yeah. Because it's -- it's such a big
15 amount.

16 MR. POWELL: Okay.

17 THE COURT: I don't know how else you'd collect it
18 from her.

19 MR. POWELL: Okay. Understood.

20 THE COURT: Is it -- not to be insensitive as it's
21 been pointed out, given her advanced age.

22 MR. POWELL: Okay.

23 THE COURT: It's going to be -- it'd be difficult
24 to collect it.

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

1 THE COURT: All right. Now we have Motion to
2 Compel.

3 MR. MOODY: I guess I'll start that, Your Honor.
4 As the Court's well aware, we have an Evidentiary Hearing
5 coming up on February 11th. Mr. Waid, as trustee, really
6 has four areas left of discovery that are important enough
7 to him. He would like to get that discovery before the
8 evidentiary hearing.

9 THE COURT: Okay.

10 MR. MOODY: Having said that, we're not going to
11 stand in the way. We're not going to be the ones asking
12 for a continuance because it's more money, and it's more
13 time, and everything else.

14 Two of those -- all four of those items are under
15 the umbrella of what we've already been in front of Your
16 Honor on. So, we came in front of the Court. We've got
17 the Motion to Compel the Deposition, the Court's
18 suggestion, and the parties agreed that the way to handle
19 that is to get a doctor to look at her to see if she's able
20 to sit for that deposition. So, we proposed an order.
21 We've gone back and forth and, quite frankly, I'm not sure
22 where we are, so I'm anxious to hear from Mr. Lenhard with
23 regard to that.

24 We think we've complied with exactly what the
25 Court asked us to do and put that into the Order. Mainly,

1 it's to look at her, tell us how her back's doing, can she
2 come to a deposition, and I guess this is important, to
3 know whether or not she can even show up on February 11th.
4 Obviously she's going to be an important part of that
5 hearing, as well as conducting a mini mental state
6 examination just to see how she's doing there and if that
7 care provider believes she needs a more thorough mental
8 examination, then that will be part of his or her report.
9 So, that's on the Motion to Compel.

10 With regard to the motion to Compel the
11 Authorization, there were three professionals we were
12 looking for information from: Jeff Johnston and his firm,
13 Johnston and Associates in Midland, Texas, Marquis Aurbach
14 and Coffing here in Las Vegas, and then Ryan Scharar who,
15 my error, was in identifying him to this Court previously
16 as an accountant. He is both an accountant and an attorney
17 and I identified him incorrectly as an accountant because
18 we're looking at him in his legal capacity and his former
19 firm, Anthony and Middlebrook. And I know that kind of
20 threw a wrench into the things here, but I want to make
21 that clarification to the Court.

22 THE COURT: And where is that firm located?

23 MR. MOODY: That firm is in Grapevine, Texas. So,
24 we're looking for those records. They would be very
25 helpful to us, prior to the evidentiary hearing. We're

1 also hoping to get Ms. Ahern, her deposition, if a doctor
2 says she can sit for that deposition, and under what, you
3 know, what accommodations do we have to provide for her,
4 which we're certainly willing to do if a doctor says we
5 need to. And I brought those with me.

6 THE COURT: Okay.

7 MR. MOODY: These are the same orders that I've
8 provided to counsel. I don't know if the Court wants them.

9 THE COURT: Okay.

10 MR. LENHARD: I think we can handle this real
11 quickly.

12 THE COURT: Okay.

13 MR. MOODY: Okay.

14 MR. LENHARD: Yeah. Aa you know, we've had some
15 trouble, as I've represented, communicating with our
16 client. I've spoken to Ms. Peterson. We can't sign
17 without her approval but we can say disapproved is the
18 content. We will not object. You submit the Order and get
19 the IME going.

20 THE COURT: Go ahead.

21 MR. MOODY: Can I approach?

22 MR. LENHARD: And I asked for the IME last time.
23 I'm in favor of this.

24 THE COURT: Okay. All right. So, I guess the
25 question is that when you say you're willing to accommodate

1 her, if it needs to be conducted up in, you know, the
2 Mesquite area, you're willing to go up to Mesquite and take
3 it where -- I mean, if she can only sit for, you know --

4 MR. MOODY: Absolutely.

5 THE COURT: -- four hours a day, or whatever.
6 Whatever he would allow.

7 MR. LENHARD: We just need -- if you recall, in
8 the IME, we need a physician to tell us a physically would
9 occur, which old people are deposed all the time. I
10 understand that.

11 THE COURT: Correct.

12 MR. LENHARD: And, number two, I'm a little bit
13 concerned about the psychological issue here and the
14 ability to be deposed. And we need to have that determined
15 quickly.

16 THE COURT: Okay.

17 MR. LENHARD: So, I'm not --

18 THE COURT: All right.

19 MR. LENHARD: You can get this signed today.

20 THE COURT: All right.

21 MR. MOODY: May I approach?

22 THE COURT: Okay. Certainly. So, okay. And then
23 -- so the Motion to Compel, is the Motion to Compel that
24 she actually be compelled to attend a deposition or is this
25 it? These two issues?

1 MR. MOODY: She was already compelled to attend
2 her deposition, Your Honor, but then a doctor's note was
3 provided that he had some health concerns.

4 THE COURT: Okay.

5 MR. MOODY: And was --

6 MR. LENHARD: Which led to this. Yeah.

7 THE COURT: Okay. All right. So, with respect to
8 the Order where it reads, approved as to form and content,
9 there is no signature so, I mean, should we write on there
10 something that counsel --

11 MR. LENHARD: Why don't we just put disapproved?
12 That way we're protected.

13 THE COURT: Okay.

14 MR. LENHARD: And we can proceed.

15 THE COURT: And signed without that approval okay?
16 So, just --- the record should read that the Order was not
17 approved by counsel for Ms. Ahern. The Court will not
18 require that the Order be approved and will note that it
19 was disapproved.

20 MR. LENHARD: Thank you, Judge.

21 THE COURT: But sign it in any event. It's the
22 27th. Okay. So, the record should reflect that in open
23 court we signed the Order on the Motion to Compel for the
24 deposition, indicating that -- interlineating on the
25 approved as to form and content for Ms. Ahern's counsel.

1 It was disapproved. There is no signature. The Court is
2 signing it anyway. The record should also reflect in open
3 court, the Court signed an order granting the request for
4 authorizations. And so what are you looking for, with
5 respect to this order, Mr. Moody? The same thing will be
6 done. It'll be indicated that it was disapproved by
7 counsel. The Court's going to sign it anyway, absent that
8 review and approval, and so I'm going to go ahead and we'll
9 enter this order as well. So, for this authorization, to
10 get records from these various invoices --

11 MR. LENHARD: To what are you going to make -- I
12 mean, you actually got the authorization. You got the IME.

13 MR. MOODY: Right.

14 MR. LENHARD: And obviously I'm going to call her
15 and try to get this doctor thing done as quickly as
16 possible because I need to know, also, what the status is.

17 MR. MOODY: Sure.

18 MR. LENHARD: We have -- February 11th is exactly
19 14 or 15 days from today.

20 THE COURT: Right.

21 MR. LENHARD: Are you going to get these
22 authorizations served, depositions taken, by February 11th,
23 as well as her deposition and the IME?

24 MR. MOODY: I can't imagine that we could get her
25 in for an IME, have a report back, and take her deposition

1 before February 11th.

2 THE COURT: Okay.

3 MR. LENHARD: What happens if we can't make
4 February 11th? I don't want to extend this out too much
5 either because of the cost to my firm.

6 THE COURT: No. Correct. Right.

7 MR. LENHARD: But I, frankly, want to know what
8 the Texas people add to this, so --

9 THE COURT: It looks like the only day we have is
10 March 18th. Yeah. The only date we have is March 18th.

11 MR. PETERSON: That's St. Louis.

12 MR. LENHARD: Yeah. We're in depositions. What
13 the next day available?

14 THE COURT: 16th through the 20th, we're pretty much
15 -- we're stuck in St. Louis.

16 THE COURT: Okay. In February, what is -- what do
17 we have else -- what other time do we have in February? We
18 don't really have much. We have the week of -- did we end
19 up with a trial the week of -- when did we do -- we need to
20 book a trial. Did we? Oh. We just have one. WE have the
21 following week. We have the 18th and 19th of February.

22 MR. LENHARD: Do you want to shoot for that, Todd?
23 Do you think we can pull it off?

24 THE COURT: One more week. Because otherwise,
25 we're looking at March and that's the week that you guys

1 aren't available.

2 MR. LENHARD: Do you think we can pull that off,
3 Todd?

4 MR. MOODY: I think we can shoot for it. I would
5 prefer an earlier date.

6 MR. LENHARD: We'll try to do it.

7 THE COURT: If the 11th is -- really, it's too
8 soon, and we also have this problem, you know, we've got to
9 deal with what we're going to do about this reporting of
10 the -- or distributing any funds. The accounting. So,
11 we've got all that to get accomplished in the next two
12 weeks. Unfortunately we would have some time available the
13 week of the 18th, but it really is pretty limited.

14 THE CLERK: We also have Monday, February 22nd.

15 THE COURT: Oh, that's true.

16 MR. LENHARD: How's that work for you?

17 MS. PETERSON: That's fine, February 22nd.

18 THE COURT: Yeah. Monday, February 22nd.

19 MR. LENHARD: We could make that work from our
20 end.

21 MR. MOODY: That'll be great.

22 THE COURT: Is Monday, February 22nd better? 10
23 a.m.?

24 MR. LENHARD: Well, we're going to obviously talk
25 to Todd -- Mr. Moody, outside in the hall and I'll try to

1 get these doctors lined up now.

2 THE COURT: Okay. Well, that gives you a little
3 bit longer. Monday, February 22nd. That's three -- give
4 you another -- it gives you three to four weeks. Because
5 the other -- the only -- the next time available is that
6 week in March and if that's not available for Ms. Ahern's
7 attorneys, then we'd be looking at a week in April and I
8 think --

9 MR. LENHARD: Lets --

10 THE COURT: Let's at least get started.

11 MR. LENHARD: I'll go on the record. We'll do
12 everything we can to cooperate Mr. Moody, limitations we
13 have.

14 THE COURT: And see if we can -- how we can do.
15 If Monday the 22nd is better, then that's fine. We can make
16 it work. Okay. So, Monday, February 22nd, 10 a.m.

17 MR. LENHARD: Thank you, Judge.

18 THE COURT: That gives you 10 additional days.

19 MR. LENHARD: Thank you, We'll promise we'll use
20 them.

21 MR. MOODY: Judge, can I get the orders back so I
22 can e-file those?

23 THE COURT: These are already back, so I'm giving
24 these Orders back to you in open court. Thank you, Mr.
25 Moody.

1 MR. MOODY: Thank you.

2 THE COURT: Thank you, Mr. Waid. We'll see you
3 guys. There -- to the extent that we need an Order, do you
4 guys want to do the Order? Or, it sounded like Mr. Powell
5 kind of was interested in doing the order. Mr. Powell, did
6 you want to do the Order on that?

7 MR. POWELL: The denial?

8 THE COURT: Is that because you made the -- you
9 wanted those specific findings in there. Do you want to
10 actually do the Order?

11 MR. POWELL: Yeah. I'll do it.

12 THE COURT: Just show it to Mr. Lenhard.

13 MR. LENHARD: Just run it by counsel.

14 MR. POWELL: I'll get the transcript and I'll do
15 it off that. Sure.

16 THE COURT: Yeah. I mean, because it sounds like
17 you felt you knew what you needed in it.

18 MR. POWELL: Yeah. Sure.

19 THE COURT: So --

20 MR. POWELL: Yeah. I'll be happy to do it.

21 THE COURT: Even though it's denied, I'll -- we'll
22 let you draft it.

23 ...

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MR. POWELL: Sure. Thank you, Your Honor.

MR. LENHARD: Thank you very much, Judge.

THE COURT: Thank you gentlemen and Ms. Peterson.

PROCEEDING CONCLUDED AT 11:39 A.M.

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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

EXHIBIT 10

1 MTN

2 WHITNEY B. WARNICK, ESQ.

3 Nevada Bar No. 001573

4 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

5 801 South Rancho Drive, Suite D-4

6 Las Vegas, Nevada 89106

7 Tel: (702) 384-7111

8 Fax: (702) 384-0605

9 gma@albrightstoddard.com10 *Attorneys for Kathryn A. Bouvier*

11 JOSEPH J. POWELL, ESQ.

12 Nevada Bar No. 008875

13 THE RUSHFORTH FIRM, LTD.

14 9505 Hillwood Drive, Suite 100

15 Las Vegas, Nevada 89134

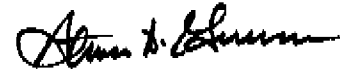
16 Tel: (702) 255-4552

17 Fax: (702) 255-4677

18 joey@rushforth.net19 *Attorneys for Jacqueline M. Montoya*

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

CASE NO. P-09-066425-T

DEPT NO. XXVI (26)

Date of Hearing: ^{July 22}~~June~~, 2015
 Time of Hearing: 9:00am

An Inter Vivos Irrevocable Trust.

**MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR
 AHERN; ENFORCEMENT OF NO-CONTEST CLAUSE; AND
 SURCHARGE OF ELEANOR'S TRUST INCOME**


Jacqueline M. Montoya ("Jacqueline") and Kathryn A. Bouvier ("Kathryn"), by
 and through their undersigned counsel, submit the following Motion for Assessment
 of Damages against Eleanor Ahern; Enforcement of No-Contest Clause; and, Surcharge
 of Eleanor's Trust Income.

This Motion is based upon the Affidavits and Points and Authorities submitted
 herewith, the pleadings and documents filed in this proceeding, and the argument of

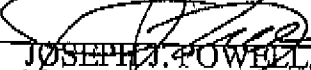
1 counsel at the hearing to consider this Motion.

2 DATED this 3rd day of June, 2015.

4 ALBRIGHT, STODDARD, WARNICK &
5 ALBRIGHT

6 By 
7 WHITNEY B. WARNICK, ESQ.
8 Nevada Bar No. 001573
9 801 S. Rancho Drive, Suite D-4
10 Las Vegas, Nevada 89016
11 Attorneys for Kathryn A. Bouvier

12 THE RUSHEORTH FIRM, LTD.


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

19 NOTICE OF MOTION

20 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the
21 undersigned will bring the foregoing MOTION FOR ASSESSMENT OF
22 DAMAGES AGAINST ELEANOR AHERN; ENFORCEMENT OF NO
23 CONTEST CLAUSE; AND SURCHARGE OF ELEANOR'S TRUST, on for
24 hearing before the above entitled Court on the 22 day of July, 2015, at
25 the hour of 9:00 o'clock am on said date, or as soon thereafter as counsel can be
26 heard.

27 DATED this 3rd day of June, 2015

28 ALBRIGHT, STODDARD, WARNICK &
ALBRIGHT

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

OVERVIEW

When Jacqueline, as trustee of the MTC Living Trust, filed her initial Petition in this proceeding to recover the 65% share of trust income she and her sister, Kathryn, were entitled to receive from The W. N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (the "Trust"), she and Kathryn were not aware of the extensive damages that Eleanor Connell Hartman Ahern ("Eleanor") would be causing them to incur. Now that nearly two years have elapsed since the filing of the Petition, the damages that Eleanor has caused to them far exceed the loss of their use and benefit of their 65% share of Trust income. In addition to the loss of interest they could have earned on the 65% share, as well as other financial losses and detriment they suffered due to being deprived of the income in meeting their living needs, they now are faced with a loss of most of the actual funds making up their 65% share, due to Eleanor's tortious and criminal conversion thereof. It is also apparent that the total amount due them as their 65% share has been mis-reported by Eleanor and she has failed to account for all Trust income and properly resolve the tax liability relating thereto with the IRS. Added to this is the extensive litigation fees and costs Eleanor forced Jacqueline and Kathryn to incur due to her filing and asserting frivolous claims and positions in this proceeding, including appealing several Court decisions to the Nevada Supreme Court without a justifiable basis for her appeals. All this has been done by Eleanor, while acting as trustee of the Trust for most of the time period in question, in an attempt to cower and force Jacqueline and Kathryn to either accept unfair settlement terms dictated by Eleanor, or face financial ruin due to the cost of continual litigation.

The Court has helped to rectify some of the damages Jacqueline and Kathryn have suffered due to Eleanor's wrongful conduct, in the Court's Summary Judgment rendered herein on April 16, 2015, in its Order entered on April 20, 2015, determining Eleanor breached her duties and should therefor be removed as trustee of the Trust, and in awarding them judgment against Eleanor for attorney's fees they have incurred in these proceedings. However, Eleanor's defiant and contemptuous behavior is still

1 impacting Jacqueline and Kathryn adversely, due to her refusal to cooperate with the
2 new trustee, Fredrick P. Waid, in recovering Trust funds she converted, and in
3 accounting for all of the Trust income received while she was trustee. Mr. Waid, as
4 noted in his reports, has also discovered that Eleanor has mismanged the Trust assets,
5 spent Trust funds improperly to pay her own litigating attorney fees, and has invested
6 or spent Trust funds on her own personal ventures in association with her cadre of close
7 personal advisors. Her perjurious misrepresentations to the Court made during the
8 course of these proceedings continues to mount as well.

9 In summary, Eleanor has made a complete mockery of the position of a trustee
10 with her tortious and criminal behavior. Eleanor, in complete bad faith and without any
11 justification whatsoever, unilaterally decided to cut off the income stream that was due
12 and payable to Jacqueline in her capacity as trustee of the MTC Living Trust, which is
13 the rightful owner of an approximate 65% interest in land located in Upton County,
14 Texas, together with the oil, gas, and mineral rights located in and on such land.
15 Eleanor took such action with the sole motive of financially crippling Jacqueline and
16 Kathryn, by cutting off and blocking the flow through of the income that rightfully
17 belonged to the MTC Living Trust, in hopes that she could then procure a favorable
18 settlement from Jacqueline and Kathryn which would reward her despicable behavior.

19 As light has been shed on this matter through the investigation of Fredrick P.
20 Waid, who this Court appointed after its removal of Eleanor, it has now been
21 established that Eleanor has wrongfully stolen and converted assets that did not belong
22 to her and which were mandated by this Court to be held in trust until her behavior
23 could be sorted through and the frivolous, bad faith nature of her actions could clearly
24 be seen by this Court. Eleanor has violated multiple orders of this Court, and in so
25 doing has also perjured herself on multiple occasions in a blatant attempt to cover her
26 misdeeds. While Eleanor may be facing criminal penalties for her actions, she must
27 also face the music from a damages perspective as well for her conversion and theft of
28 assets that did not belong to her. Not only should it now be declared that Eleanor has

1 forfeited her income interest share of the Trust as her conduct has directly violated the
2 terms of the Trust's no-contest clause, but she must also be held liable for treble
3 damages as well as punitive damages for her conduct.

4 The most reprehensible theft is theft which is the result of an "inside job" and
5 in this case Eleanor has not only financially harmed her own daughters, but she has
6 attempted as well to thwart the intentions and desires of her parents (who established
7 the Trust) by directly seeking to inflict damage on her daughters, the beloved
8 granddaughters of the Connells, in direct contravention of what her mother, Mrs.
9 Connell, expressly wanted. When a trustee, who is placed in such a position because
10 of an abundance of trust and faith that she will honor the wishes and directions of the
11 trust's creators, steals assets that do not belong to her, action must be taken to restore
12 and honor the intentions of the grantors and to fulfill the purpose of the Trust they
13 created. To leave such tortious behavior unpunished would encourage others to defy
14 their fiduciary duties and be contrary to public policy.

15 RELEVANT PROCEDURAL HISTORY

16 As this Court is intimately familiar with the complete procedural history that
17 has occurred in this matter, it is unnecessary to once again go through the whole history
18 of these proceedings. Rather, only the relevant history will be discussed herein.

19 In this Court's Order, titled "Order Denying Motion to Refer Contested Probate
20 Matter to Master-probate Commissioner per Edcr 4.16; Directing Payment of All Oil,
21 Gas, Mineral and Interest Roy a Ties and Rent to Eleanor C. Hartman, Also Known as
22 Eleanor C. Ahern, as Trustee of Trust No.2 of the W. N. Connell and Marjorie T.
23 Connell Living Trust Dated May 18, 1972; and Setting Calendar Call and Hearing",
24 which was signed on December 20, 2013, this Court ordered the following:

25 ***IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ELEANOR C.***
26 ***AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas,***
27 ***mineral and interest royalties and surface rent and the remaining sixty-five percent***
28 ***(65%) of such oil, gas, mineral and interest royalties and surface rent shall be held***
 in the Trust by ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as
 Trustee, until final resolution of this matter. [Emphasis Added]

1 Eleanor has clearly violated this Court's mandate and directive, by not only
2 misappropriating 65% of the funds which were to be locked up and simply held in trust
3 until a final case resolution, but by directly using the funds for her own personal
4 benefit. Mr. Waid, in taking over as the court appointed trustee of the Trust, and based
5 upon the still incomplete accounting made by Eleanor, has estimated that the gross sum
6 of monies that should have been held in the Trust's bank account, representing 65% of
7 the Trust income, should be in the neighborhood of \$2,660,000. Instead, Mr. Waid has
8 discovered that only \$10,000 was being held in the Trust's bank account with Wells
9 Fargo, thereby representing an approximate shortfall of \$2,650,000. Therefore, it
10 appears that Eleanor has converted or otherwise misappropriated approximately
11 \$2,650,000, in direct violation of this Court's order. The actual sum will ultimately
12 be determined by Mr. Waid when he has finally obtained access to all of the records
13 relating to the Trust income and the Trust account, which conveniently, but
14 contemptuously, Eleanor has declined to produce to him.

15 Eleanor during the course of these proceedings up to the time of her removal
16 as trustee, always represented to this Court and to the attorneys for Jacqueline and
17 Kathryn, that the monies that she was ordered to hold in trust were completely safe and
18 secure. It was only after Mr. Waid's appointment that he immediately began
19 discovering the fraud that has been perpetrated by Eleanor on this Court and Jacqueline
20 and Kathryn. Eleanor, herself, finally confessed that she misappropriated and owes to
21 the Trust (actually to Jacqueline and Kathryn) \$800,000. See "Affidavit of Fredrick
22 P. Waid, Trustee", executed May 6, 2015, which states in relevant part that "*I spoke*
23 *with Ms. Ahem on Thursday April 16, 2015, and was informed by her that she believed*
24 *she 'owed' the Trust \$800,000.*" However, it appears her own estimate of funds she
25 converted and misappropriated is understated, and that as of the date of this filing,
26 despite orders compelling her to return all funds to the Trust immediately, Mr. Waid
27 still has not been able to recover over \$1,100,000 of missing Trust funds.

28 ///

LAW AND ARGUMENT

1
2 1. *Eleanor breached her duties as trustee toward the Trust in accordance with*
3 *NRS 163.115 by misappropriating Trust assets for her personal benefit and relief is*
4 *sought pursuant to NRS 164.010 and 164.015.*

5 This Court has previously assumed jurisdiction of this Trust in accordance with
6 NRS 164.010.

7 Under the laws of the state of Nevada, a trustee of a trust has a fiduciary duty
8 towards the trust and its beneficiaries. See *Bank of Nevada v. Speirs*, 603 P. 2d 1074,
9 1076 (1979) ("A. . . trustee is a fiduciary who must act in good faith and with fidelity
10 to the beneficiary of the trust. He should not place himself in a position where it would
11 be for his own benefit to violate his duty to the beneficiary."). For that reason, the law
12 discourages self-dealing and interested transactions by the trustee in which the trustee
13 personally benefits to the detriment of the trust and its beneficiaries. See *Hoopes v.*
14 *Hammargren*, 725 P. 2d 238, 242 (1986) ("The essence of a fiduciary . . . is that the
15 parties do not deal on equal terms, since the person in whom trust and confidence is
16 reposed and who accepts that trust and confidence is in a superior position to exert
17 unique influence.")

18 The Court has expressly found that Eleanor breached her trustee duties. She
19 not only tortiously converted Trust funds to her own use, but she also violated the
20 prudent investor rule by investing Trust funds improperly. Pursuant to NRS 164.740,
21 "a trustee who invests and manages trust property owes a duty to the beneficiaries of
22 the trust to comply with the prudent investor rule as set forth in NRS 164.700 to
23 164.775, inclusive." Furthermore, NRS 164.715 states that a "trustee shall invest and
24 manage the trust property solely in the interest of the beneficiaries." The damages
25 caused to the Trust and its other beneficiaries (Jacqueline and Kathryn) includes the
26 loss of income which could have been earned by the Trust through wise and proper
27 investment of Trust funds.

28 ///

2. *The No-Contest provision of the Trust requires this Court to reduce Eleanor's share in the Trust to \$1.00.*

The Trust contains a No-Contest Clause in Article TENTH, that states as follows:

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

With the tortious conversion of the assets constituting 65% of the trust income, rightfully belonging to Jacqueline and Kathryn, Eleanor has made a substantial "attack" on the administration of the Trust. This wrongful taking of assets was also done directly in contravention to a court order mandating the opposite. Eleanor's wrongful misappropriation of Trust assets has contravened the distribution provisions of the Trust as established and intended by the grantors, W.N Connell and Marjorie T. Connell. There should be no question whatsoever that reasonable and right minded grantors, such as the Connells, would never want a beneficiary who, while acting as trustee of the Trust, has stolen assets they placed into their Trust, depriving other beneficiaries thereof, to remain as a beneficiary of their trust. By stealing assets that did not belong to her, and failing to distribute the assets to the rightful beneficiaries, Eleanor has reprehensibly attacked and set aside the grantors' wishes and intended administration and distribution of the Trust. When grantors state that they wish that the administration of their trust shall run smoothly, they obviously have in mind that theft of the Trust assets by the trustee is simply intolerable.

With this said, the Connells as grantors, and specifically Mrs. Connell who directly gifted the 65% of Upton County, Texas, land and income to the MTC Living

1 Trust for the benefit of Jacqueline and Kathryn, would want action taken to rectify the
2 breaches in the Trust administration by enforcement of the Trust's no-contest clause.
3 Otherwise, the Trust's no-contest clause would be rendered entirely toothless,
4 superfluous and of no effect.

5 A no-contest clause, like all other provisions contained in a trust or a will, is
6 to be interpreted in a logical and sensible manner. The Trust's no-contest provision,
7 quoted above, uses broad, expansive terms to convey the grantors' desire that "any
8 person" who "attacks" and disrupts the Trust administration and distribution shall
9 forfeit his or her benefits under the Trust. The Trust's no contest clause, as typically
10 do all such no-contest clauses, is intended to deter all misconduct which threatens the
11 proper administration and distribution of the Trust assets intended by the grantors. For
12 this reason, a laundry list of unacceptable actions is never given in a no-contest clause
13 because it is not intended to be viewed as a restrictive measure that is narrowly
14 construed.

15 With the discovery of the theft and conversion of the assets mandated to be
16 held by Eleanor in trust by this Court, the deceitful and fraudulent "accounting"
17 rendered by Eleanor to this Court in March of 2015, together with Eleanor's refusal to
18 cooperate with Mr. Waid, and in light of this Court's mandate for the immediate return
19 of assets, it has become crystal clear that Eleanor has attacked and intends to continue
20 to attack and oppose the proper administration of this Trust. Further, Eleanor has done
21 nothing but subject the Trust to ongoing administrative hassle, litigation, and game
22 playing both before and since being removed as trustee. Eleanor also now refuses to
23 cooperate in accounting for and tracing back all of the Trust income and expenditures
24 by her during her tenure as trustee of the Trust.

25 As the Court is aware, Jacqueline and Kathryn are also ultimate beneficiaries,
26 upon Eleanor's death, of the present entitlement Eleanor has to 35% of the Trust
27 income under subtrust 2. While terminating Eleanor's right to receive income at this
28 time may cause some financial issues for her, she has admitted that she has substantial

1 other assets, including monthly Social Security income of approximately \$1,800.00, to
2 meet her support needs. However, if the Court deemed it best to not declare a total
3 forfeiture of Eleanor's Trust income benefits, it could order that a sufficient amount of
4 her benefits be forfeited to Jacqueline and Kathryn until they have been fully
5 reimbursed for all the damages they have suffered due to her misconduct.

6 **3. Nevada Law Requires Enforcement of No-Contest Provisions to Carry Out the**
7 **Grantors' Intent**

8 NRS 163.00195, titled "Enforcement of no-contest clauses; exceptions",
9 provides for the following:

10 *1. Except as otherwise provided in subsections 3 and 4, a no-contest clause*
11 *in a trust must be enforced by the court.*

12 *2. A no-contest clause must be construed to carry out the settlor's intent.*
13 *Except to the extent the no-contest clause in the trust is vague or ambiguous,*
14 *extrinsic evidence is not admissible to establish the settlor's intent concerning*
15 *the no-contest clause. The provisions of this subsection do not prohibit such*
16 *evidence from being admitted for any other purpose authorized by law. Except*
17 *as otherwise provided in subsections 3 and 4, a beneficiary's share may be*
18 *reduced or eliminated under a no-contest clause based upon conduct that is*
19 *set forth by the settlor in the trust. Such conduct may include, without*
20 *limitation:*

21 *(a) Conduct other than formal court action; and*

22 *(b) Conduct which is unrelated to the trust itself, including, without*
23 *limitation:*

24 *(1) The commencement of civil litigation against the settlor's probate*
25 *estate or family members;*

26 *(2) Interference with the administration of another trust or a*
27 *business entity;*

28 *(3) Efforts to frustrate the intent of the settlor's power of*
attorney; and

(4) Efforts to frustrate the designation of beneficiaries related to
a nonprobate transfer by the settlor.

3. Notwithstanding any provision to the contrary in the trust, a beneficiary's
share must not be reduced or eliminated if the beneficiary seeks only to:

(a) Enforce the terms of the trust, any document referenced in or
affected by the trust, or any other trust-related instrument;

(b) Enforce the beneficiary's legal rights related to the trust, any
document referenced in or affected by the trust, or any trust-related

instrument; or

(c) Obtain a court ruling with respect to the construction or legal effect of the trust, any document referenced in or affected by the trust, or any other trust-related instrument.

4. Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not be reduced or eliminated under a no-contest clause in a trust because the beneficiary institutes legal action seeking to invalidate a trust, any document referenced in or affected by the trust, or any other trust-related instrument if the legal action is instituted in good faith and based on probable cause that would have led a reasonable person, properly informed and advised, to conclude that the trust, any document referenced in or affected by the trust, or other trust-related instrument is invalid.

5. As used in this section:

(a) "No-contest clause" means one or more provisions in a trust that express a directive to reduce or eliminate the share allocated to a beneficiary or to reduce or eliminate the distributions to be made to a beneficiary if the beneficiary takes action to frustrate or defeat the settlor's intent as expressed in the trust or in a trust-related instrument.

(b) "Trust" means the original trust instrument and each amendment made pursuant to the terms of the original trust instrument.

(c) "Trust-related instrument" means any document purporting to transfer property to or from the trust or any document made pursuant to the terms of the trust purporting to direct the distribution of trust assets or to affect the management of trust assets, including, without limitation, documents that attempt to exercise a power of appointment.

As established, in Nevada, a no-contest clause "must be enforced by the court." NRS 163.00195(1). With a few narrow exceptions, addressed below, "a beneficiary's share may be reduced or eliminated under a no-contest clause based upon conduct that is set forth by the settlor in the trust." *Id.* at (2).

Nevada law is not unique. The majority of states hold that "no-contest clauses are not only valid but also favored as a matter of public policy - because they discourage litigation and give effect to the purposes expressed by the testator or trustor." *Colburn v. N Trust Co.*, 151 Cal. App. 4th 439, 447, 59 Cal. Rptr. 3d 828, 834 (2007); see also *Burch v. George*, 7 Cal. 4th 246, 255, 866 P.2d 92, 97 (1994) ("[I]t is the testator's intentions that control, and a court must not rewrite the testator's will in such a way as to immunize legal proceedings plainly intended to frustrate the testator's unequivocally expressed intent from the reach of the no-contest clause.") (internal

1 quotations omitted).

2 As noted above, Nevada has narrow safe harbor provisions that allow a trust
3 beneficiary to seek some court intervention without violating no-contest provisions.
4 See NRS 163.00195(3) and (4). However, none of these exceptions apply to Eleanor's
5 breaches of the no-contest provisions. NRS 163.00195(3) (a), (b), (c) and (4) provide
6 four exceptions to enforcing a no- contest clause. The four exceptions are as follows:

7 *(3) Notwithstanding any provision to the contrary in the trust, a*
8 *beneficiary's share must not be reduced or eliminated if the beneficiary seeks only to:*

9 *a) Enforce the terms of the trust, any document referenced in or affected by the*
10 *trust, or any other trust-related instrument;*

11 *b) Enforce the beneficiary's legal rights related to the trust,*
12 *any document referenced in or affected by the trust, or any*
13 *trust-related instrument; or*

14 *c) Obtain a court ruling with respect to the construction or*
15 *legal effect of the trust, any document referenced in or*
16 *affected by the trust, or any other trust-related instrument.*

17 *(4) Notwithstanding any provision to the contrary in the trust, a*
18 *beneficiary's share must not be reduced or eliminated under a no contest*
19 *clause in a trust because the beneficiary institutes legal action seeking to invalidate*
20 *a trust, any document referenced in or affected by the trust, or any other trust-related*
21 *instrument if the legal action is instituted in good faith and based on probable cause*
22 *that would have led a reasonable person, properly informed and advised, to conclude*
23 *that the trust, any document referenced in or affected by the trust, or other*
24 *trust-related instrument is invalid.*

25 Eleanor's actions of theft and conversion of trust funds for her personal use that
26 were mandated to be held in trust by this Court most certainly do not fall within any of
27 the three exceptions quoted above under NRS 163.00195(3) (a), (b) and (c). Further,
28 Eleanor cannot claim an exception to enforcement of the no-contest clause under the
good faith and probable cause exception of NRS 163.00195(4) because that provision
is strictly limited to "*legal action seeking to invalidate a trust, any document*
referenced in or affected by the trust, or any other trust-related instrument." This
statutory provision is primarily intended to carve out good faith challenges to a
trustor's capacity and competency in establishing the trust, and is also a codification
of the exception to enforcement previously recognized and set forth in *Hannam v.*
Brown, 956 P. 2d 794 (1998), prior to the Legislature's passage of the statute.

1 The "probable cause" exception to enforcement of no-contest provisions found
2 in NRS 163.00195(4), as explained in *Hannam v. Brown*, excepts "good faith actions
3 based on probable cause." *Id.* at 798. Clearly, however, there is simply no good faith
4 reason or any probable cause to justify Eleanor's disturbing and tortious behavior with
5 regard to the Trust and the administration thereof.

6 Accordingly, Jacqueline and Kathryn respectfully submit that proper
7 enforcement of the Trust's provisions requires this Court to enforce the no-contest
8 provision against Eleanor, in compliance with the explicit desires of Grantors, the
9 Connells, reducing her share in the Trust to \$1.00.

10 ***4. Damages incurred by the Trust and its beneficiaries due to Eleanor's***
11 ***conversion of Trust assets should be trebled.***

12 The Supreme Court of Nevada, in *Evans v. Dean Witter Reynolds, Inc.*, 116
13 Nev. 598 (2000), discussed conversion as follows:

14 *Conversion is "a distinct act of dominion wrongfully exerted over another's personal*
15 *property in denial of, or inconsistent with his title or rights therein or in derogation,*
16 *exclusion, or defiance of such title or rights." Wantz v. Redfield, 74 Nev. 196, 198,*
17 *326 P.2d 413, 414 (1958). Further, conversion is an act of general intent, which does*
18 *not require wrongful intent and is not excused by care, good faith, or lack of*
19 *knowledge. 116 Nev. 598, 606*

20 Eleanor has clearly committed conversion against the Trust and its beneficiaries by
21 converting assets of the Trust in an amount believed to be approximately \$2,650,000
22 for her own personal benefit and use. In addition to having committed a serious tort,
23 Eleanor's misconduct also constitutes the crime of embezzlement as defined in NRS
24 205.300.

25 NRS 143.120(2) provides that a personal representative may seek to recover
26 treble damages against a person who has converted property belonging to the estate of
27 the personal representative. The definition of a "personal representative" under NRS
28 132.265 includes not only executors and administrators, but also a person "who
performs substantially the same function under the law governing their status" as that
of an executor or administrator. In the instant case, current trustee, Mr. Waid,

1 functioning in a capacity similar to that of a personal representative, has the right to
2 seek treble damages against Eleanor for her refusal and failure to return and reimburse
3 to the Trust the funds she has misappropriated and converted to her own use. His
4 office as trustee involves the same fiduciary duties over management of assets of
5 another for the benefit of another. If Eleanor's damages to the trust, which at present
6 it is believed total approximately \$2,650,000 which she has converted, are reduced to
7 judgment and trebled, that amount would equal approximately \$7,950,000. This
8 amount should be used to surcharge Eleanor's share in the Trust, for the benefit of
9 Jacqueline and Kathryn, if Eleanor's share is not otherwise reduced to \$1.00 through
10 the enforcement of the no-contest clause, which as previously stated is mandatory
11 under Nevada law based on the actions taken by Eleanor and the circumstances
12 surrounding such action.

13 ***5. Imposition of Punitive Damages against Eleanor***

14 Punitive damages are also warranted against Eleanor as she intentionally and
15 fraudulently breached her fiduciary duty and committed tortious and criminal acts in
16 converting and embezzling Trust funds. This Court has the authority to award punitive
17 damages "*in an action for the breach of an obligation not arising from contract, where*
18 *it is proven by clear and convincing evidence that the defendant has been guilty of*
19 *oppression, fraud, or malice.*" See, NRS 42.005(1). Once shown, a petitioner, "*in*
20 *addition to the compensatory damages, may recover damages for the sake of example*
21 *and by way of punishing the defendantan amount equal to three times the amount*
22 *of compensatory damages awarded to [Petitioner] if the amount of compensatory*
23 *damages is \$100,000 or more.*" Id.

24 In this context, fraud is defined as "*an intentional misrepresentation, deception*
25 *or concealment of a material fact known to the person with the intent to deprive*
26 *another person of his or her rights or property or otherwise injure another person.*"
27 See, NRS 42.001(2).

28 As such, Jacqueline and Kathryn request that this Court treble the approximate

1 \$2,650,000 that was improperly stolen and converted by Eleanor, resulting in the
2 amount now owed to them to be approximately \$7,950,000. This amount should be
3 used to offset Eleanor's share in the Trust, if Eleanor's share is not reduced to \$1.00
4 through the enforcement of the no-contest clause.

5 6. *In the event Eleanor's Trust Benefits are not Forfeited under the Trust's No-*
6 *Contest Provisions, Surcharging Eleanor's Trust Income to Reimburse the Damages*
7 *she has Caused would be Proper*

8 NRS 21.320 provides that "a judge or master may order property of the
9 judgment debtor not exempt from execution, in the hands of such debtor or any other
10 person, or due to the judgment debtor, to be applied toward the satisfaction of the
11 judgment." Thus, Jacqueline and Kathryn do not need to obtain and serve a Writ of
12 Execution and a Writ of Garnishment upon the trustee in order to have Eleanor's Trust
13 income benefits paid over to them towards satisfaction of the debts she now owes to
14 them. Rather, the Court is authorized to enter and order directing this equitable relief.
15 While the "spendthrift" provision in the Trust and NRS 21.090(dd) and NRS 21.080(2)
16 would normally prevent any execution upon her Trust income rights by general
17 creditors, under the facts of this case said clause and statutes should not prevent the
18 Court from ordering that restitution to Jacqueline and Kathryn of all damages caused
19 to them by Eleanor be made by surcharging Eleanor's Trust income benefits, assuming
20 such benefits were not otherwise forfeited under the Trust's no-contest provisions as
21 discussed above.

22 In the present case, it would be highly inequitable to allow the "spendthrift"
23 clause in the Trust to protect Eleanor from her tortious and criminal behavior. She has
24 clearly breached her duties as a trustee, and illegally converted Trust funds to her own
25 use. While the intent of a spendthrift clause is to ensure that the grantors' bequest goes
26 to those the grantors wish to benefit, a spendthrift clause is not intended by the grantors
27 to be used as a shield by a trustee, who is also a beneficiary, to thumb her nose at the
28 other beneficiaries that she has harmed and effectively say "You can't touch me!". No

1 right minded grantor would ever tolerate such a result.

2 Jacqueline and Kathryn submit that the present case of Eleanor's tortious and
3 criminal behavior justifies overriding the exemption from execution otherwise provided
4 under NRS 21.090(dd) and NRS 21.080(2). While the issue of a spendthrift trust's
5 exemption in cases where the beneficiary has committed a tortious or criminal act has
6 not come before the Nevada Supreme Court, case law from other jurisdictions where
7 this issue has arisen and the opinions of legal scholars on the issue, hold that execution
8 may proceed under public policy considerations.

9 In *Chinchurreta v. Evergreen Management, Inc.*, 117 Idaho 588 (App. Ct.
10 1989), the Court held a statutory exemption from attachment did not protect a
11 beneficiary healthcare provider against attachment by a judgment creditor of Medicare
12 payments. In numerous cases through the United States, and based upon public policy
13 reasons, the Courts have held that a statutory exemption from execution does not
14 protect a beneficiary from having his or her benefits garnished to pay child support or
15 alimony obligations. See, *Sokolsky v. Kuhn*, 405 So. 2d 975 (Fla. 1981); and, *Ward v.*
16 *Ward*, 164 N. J. Sup;er 354 (Sup. Ct. N.J. 1978. Jacqueline and Kathryn submit that
17 public policy would also bar Eleanor from attempting to isolate her Trust income
18 benefits from execution and garnishment, because Eleanor stole monies from them and
19 committed serious breaches of her fiduciary duties owing to them while acting as
20 trustee of the same Trust whereunder they all are beneficiaries.

21 Therefore, in the event the Court does not determine that Eleanor has forfeited
22 her Trust income benefits as above requested, Jacqueline and Kathryn respectfully
23 request that the Court enter an order, pursuant to NRS 21.320, directing that Fredrick
24 P. Waid, as trustee of the Trust pay over to Jacqueline and Kathryn the 35% share of
25 Trust income otherwise payable to Eleanor hereafter, until such time as full restitution
26 has been made to them of all the damages Eleanor has caused them as adjudged by the
27 Court.

28 This concept of not allowing a beneficiary to receive further assets from a trust

1 where the beneficiary has misappropriated trust assets, until the adversely affected
2 other beneficiaries are back to square one is not a foreign concept. As a court of
3 equity, this Court is empowered with the authority to right the wrong and make things
4 just and equitable. A good analysis of this authority is found in the early case of
5 *Koerner v. Pfaff*, 15 Ohio Dec. 81 (1904), the Court of Common Pleas of Ohio,
6 Franklin County, where the court of equity concluded that a trustee/beneficiary, who
7 had wrongfully taken assets not belonging to him, would receive no further entitlement
8 to trust assets until the other, innocent beneficiaries were made whole and received
9 what they were entitled to receive under trust. Following are relevant excerpts from
10 that case:

11 *"Where there are several beneficiaries and one of them takes a part in a breach of*
12 *trust, whereby a loss is occasioned, his interest in the trust property may be reached,*
13 *retained, and applied to make good the loss for the benefit of the other beneficiaries;*
14 *and this equity extends, not only to the interest while in the hands of the wrongdoing*
15 *cestui que trust, but also to those claiming it under or through him." 2 Pomeroy, Eq.*
16 *Jurisp. Sec. 1083, note.*

17 *"If a cestui que trust, whether tenant for life, or other person having a partial interest,*
18 *be responsible for having joined in a breach of trust, all the benefit that would have*
19 *accrued to him either directly or derivatively, either from that trust fund or in any*
20 *other estate comprised in the same settlement, may be stopped by the cestui que trust*
21 *or other person having a similar equity as against him, his assignees in bankruptcy,*
22 *or judgment creditors, the general creditors, and (except so far as the defense of*
23 *purchase for value without notice may be applicable) against all who claim under him,*
24 *until the amount impounded, with the accumulations has compensated the trust estate*
25 *for the loss for which that cestui que trust is responsible." 2 Hill's Lewin, Trusts 112.*

26 Underhill says:

27 *"The rule that a beneficiary in default shall take nothing out while in default applies*
28 *all the more to the case of a beneficiary who is also a trustee. In both cases he must*
29 *make good his indebtedness to the trust estate before he can obtain a share in it."*
30 *Underhill, Trusts 36.*

31 *Any other conclusion in my opinion would not only be contrary to the best*
32 *authorities both in this country and England, but it would be unjust and inequitable,*
33 *and would in addition defeat the purpose and intention of said testator, which was*
34 *to give each cestui que trust the full one-fourth of his estate remaining at the death*
35 *of Mrs. Bruck. To permit Philip to take out more than one-fourth of said entire estate*
36 *before the date of Mrs. Bruck's death, no part of which he has paid back to the*
37 *estate, and now to permit him to take in addition one-fourth of that which remains*
38 *of the estate, would not only give him a decided advantage over the others, but would*

1 *be giving him more than his father by express terms bequeathed and devised to him*
2 *in his said will, and would be giving to the other three beneficiaries much less than*
3 *was devised to them by said will.* [Emphasis Added]

4 The logic applied in the *Koerner v. Pfaff* case could not be more appropriately
5 stated by Jacqueline or Kathryn. Jacqueline and Kathryn implore this Court, as a court
6 of equity to apply the same logic and conclusion to this matter and reach the only
7 reasonable conclusion that can be made which is that, to the extent Eleanor's share is
8 not completely forfeited under the Trust's no-contest clause, her trust share should then
9 be surcharged, and Eleanor receive no further Trust income, until Jacqueline and
10 Kathryn have been fully reimbursed for the damages she has caused them.

11 **7. The Trust's "no-contest" provisions supersede the Trust's "spendthrift"**
12 **provisions.**

13 In addition to the public policy reasons for overriding Nevada's exemption laws,
14 should the Court deem it best to not fully enforce the no-contest provisions causing a
15 total forfeiture of Eleanor's benefist, then the Court should still use the "no-contest"
16 provisions against Eleanor to override the Trust's spendthrift provisions, and order a
17 surcharge of her income benefits to provide the means for Jacqueline and Kathryn to
18 recover the damages Eleanor has caused to them.

19 Enforcement of "no-contest" clauses in Wills and Trusts was well recognized
20 in the United States, prior to the enactment of NRS 137.005 and NRS 163.00195.
21 These statutes did not overturn the common law recognition of no-contest clauses in
22 Nevada as approved in *Hannam v. Brown*, 114 Nev. 350, 956 P.2d 794, 798 (1998).
23 Eleanor in her own briefing to the Court has previously noted that by law, the intent of
24 the grantors establishing the Trust should provide the guideline for how Trust
25 provisions are interpreted and applied. See, also, *Hannam v. Brown*, at 798, where the
26 Court states: "This court has historically construed trusts in a manner effecting the
27 apparent intent of the settlor." While W.N. Connell and Marjorie T. Connell in
28 establishing their Trust included a "spendthrift" clause in Article SIXTH of the Trust
to protect the Trust beneficiaries from creditor claims, they also most clearly and

1 forcibly declared that no beneficiary or other person associated with the Trust should
2 create litigation and disputes, or attacks upon the Trust management and distribution.
3 In weighing the importance of the "spendthrift" clause versus the "no-contest"
4 provisions in the Trust, it is submitted that the grantors would in no way sanction
5 Eleanor's tortious and criminal behavior and would want the "no-contest" provisions
6 to be given precedence.

7 Further, although spendthrift provisions in trusts are normally given great
8 recognition and enforcement, several equitable exceptions to their enforcement have
9 developed under the law, even without recourse to a no-contest clause. A good treatise
10 on the exceptions to their enforcement is found in the Restatement (Second) of Trusts,
11 Section 157 (1959). Therein it states:

12 "Although a trust is a spendthrift trust . . . , the interest of the beneficiary can be reached
13 in satisfaction of an enforceable claim against the beneficiary,

14 (b) for necessary services rendered to the beneficiary or necessary supplies
15 furnished him;
16 (c) for services rendered and materials furnished which preserve or benefit
17 the interest of the beneficiary . . .

18 In particular, one of the cases cited in the treatise is *Kirkpatrick v. United States*
19 *National Bank*, 502 P.2d 579 (Or. 1972), where the Court declared that a beneficiary's
20 trust benefit could, for public policy considerations, be held liable for a tort committed
21 and damages caused by the beneficiary, notwithstanding the trust had a spendthrift
22 provision otherwise insulating the benefits from creditor claims. *Id.* at 581. The Court
23 noted that while there are few court decisions on the issue, and some courts have held
24 otherwise, "legal writers contend that provisions of a spendthrift trust which would
25 prohibit recovery from trust funds for torts committed by the beneficiary are invalid as
26 against public policy (citing "Scott on Trusts" (3d ed.); "Griswold, Spendthrift Trusts
27 (2d ed.) And Restatement (Second) of Trusts, Section 157).

28 The obvious applicability of the exceptions to enforcement of "spendthrift"
clauses for public policy reasons is clearly present in the case of Eleanor and her
misconduct. It would be a great affront to public policy interests to allow Eleanor to

1 not lose her Trust income benefits where she has caused serious financial damages to
2 other Trust beneficiaries in breaching her duties as trustee and in converting funds
3 belonging to the other trust beneficiaries. Certainly insulating Eleanor from losing her
4 Trust income where she has been guilty of tortious and criminal behavior was not
5 intended by the Grantors of the Trust in providing a spendthrift clause in the Trust.
6 The spendthrift provision in the Trust, while broad in scope, does not mention being
7 exculpated from the beneficiary's own tortious or criminal conduct. And even if it did,
8 such would be contrary to public policy and should not be enforceable. But, in this
9 case, the Court does not need to address this yet unresolved legal issue in Nevada.
10 Rather, in conjunction with the "no-contest" provision in the Trust, the Court has full
11 authority to now declare Eleanor's Trust income benefits as forfeited or surcharged,
12 and to order that such benefits now be payable to Jacqueline and Kathryn.

13 RESERVATION OF RIGHT TO SUPPLEMENT

14 The discussion of Eleanor's acts and the damage amounts referenced herein are
15 based on information that has currently been discovered, but which is still subject to
16 further investigation by the current trustee, Fredrick P. Waid. As such, Jacqueline and
17 Kathryn expressly reserve the right to include further claims for damages and to adjust
18 the calculated amount of such damages as further needed once a final and conclusive
19 reporting has been submitted by Mr. Waid. This would include assessing Eleanor with
20 the fees and costs incurred by the trustee and his counsel.

21 CONCLUSION

22 Eleanor has breached her fiduciary duties owing to the Trust beneficiaries. She
23 repeatedly violated the prudent investor rule during her tenure as Trustee. Eleanor
24 maliciously and fraudulently converted approximately \$2,650,000 of Trust funds
25 for her own personal benefit. She frivolously has litigated in this case claims having
26 no merit and causing thousands of dollars of unnecessary litigation expense. Even after
27 being judicially removed as trustee, Eleanor persistently attacks, hinders, and opposes
28 the administration of the Trust by failing to be cooperative with Mr. Waid's

1 investigation, and she continues to fail to turn over assets belonging to the Trust that
2 she stole and converted for own personal use. For these reasons, the relief requested
3 herein is proper.

4 WHEREFORE, Jacqueline and Kathryn respectfully pray that this Court grant
5 the relief sought in this Petition in full, specifically determining and ordering that:

6 1. Eleanor Connell Hartman Ahern be personally liable for all costs reasonably
7 incurred by Jacqueline and Kathryn, including reasonable attorneys fees, court costs,
8 successor trustee fees, and any other costs due to Eleanor's misconduct, and in having
9 to be forced to account for and explain the Trust transactions for the time in question;

10 2. Eleanor is personally liable to the Trust and Jacqueline and Kathryn in the
11 amount of approximately \$2,650,000, or in such other amount as this Court shall deem
12 she converted from the Trust assets;

13 3. The No-Contest Clause, contained in Article TENTH of the Trust, applies to
14 Eleanor; that Eleanor violated the No-Contest Clause without any probable cause to do
15 so; and, that Eleanor's sole remaining interest in the Trust be reduced to \$1.00;

16 4. The amount of damages caused by Eleanor should be trebled as a result of
17 Eleanor's conversion, pursuant to NRS 143.120(3) and pursuant to NRS 42.005,
18 resulting in damages in the total amount of approximately \$7,950,000, which Eleanor
19 now owes to the Trust and Jacqueline and Kathryn;

20 5. That in the event a total forfeiture of Eleanor's Trust benefits is not declared
21 under the Trusts "no-contest" provisions, Eleanor's Trust income benefits should still
22 be surcharged, and it be ordered that her said benefits be paid over to Jacqueline and
23 Kathryn until such time as they have recovered from her all of the damages she has
24 caused to them as ordered by this Court; and

25 6. For such other and further relief as, to this Court, seems just and equitable

26 ///

27 ///

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ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
LAW OFFICES
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT


1 under these circumstances.

2 DATED this 3rd day of June, 2015.

3 ALBRIGHT, STODDARD, WARNICK
4 & ALBRIGHT

5 By 
6 WHITNEY B. WARNICK, ESQ.
7 Nevada Bar No. 001573
8 801 S. Rancho Drive, Suite D-4
9 Las Vegas, Nevada 89016
10 Attorneys for Kathryn A. Bouvier

11 THE RUSHFORTH FIRM, LTD.

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

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK
20 & ALBRIGHT and that on the 3 day of June, 2015, I placed a true and correct copy of
21 the foregoing MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR
22 AHERN AND ENFORCEMENT OF NO CONTEST CLAUSE in the United States Mail,
23 at Las Vegas, Nevada, enclosed in a sealed envelope with first class postage thereon fully
24 prepaid, and addressed to the following:

25 Kirk B. Lenard, Esq.
26 Tamara Beatty Peterson, Esq.
27 Brownstein Hyatt Farber Schreck
28 100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

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


An Employee of Albright, Stoddard, Warnick & Albright

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEVADA)
)ss
COUNTY OF CLARK)

JACQUELINE M. MONTROYA, being first duly sworn, states as follows:

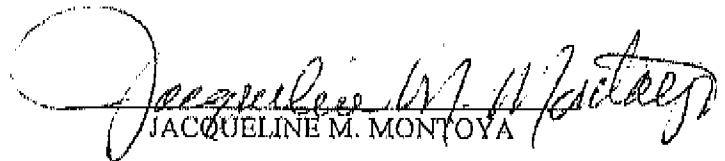
1. I have personal knowledge of the facts stated herein and I am competent to testify of them in a Court of law.
2. I have reviewed the factual assertions in the foregoing Motion and state that they are true and accurate to the best of my knowledge and information.
3. While these proceedings have caused me a great amount of grief and pain, in that I have been litigating with my mother whom I love, her actions and decisions have caused me, my family and my sister, Kathryn's family a great amount of suffering, both financially and emotionally.
4. As I have previously testified in these proceedings, I and my husband have been required to borrow monies from investment accounts set up for future support needs to meet ongoing living expenses for our family. Further, a great amount of money has been spent and wasted on litigation costs, crippling efforts to otherwise invest the funds used in beneficial areas.
5. I am also aware that my sister, Kathryn's damages and losses caused by our mother's wrongful conduct are even more egregious than mine, due to her not having adequate funds to deal with storm damages to her home and other creditor issues caused by her not receiving the trust income she was supposed to receive.
6. However, the damages we have suffered far exceed the litigation costs and loss of funds caused by my mother's wrongful conduct. We are still learning practically each day the adverse consequences which are resulting and happening from my mother's wrongful handling of the trust administration, failure to properly account for and pay income taxes, and

failure to properly safeguard and invest trust assets. The ramifications of her conduct have led, and will likely lead to more complicated dealings with the IRS, and other litigations issues. The time and cost it will take to resolve these issues will greatly magnify the total damages Eleanor has caused to us by her breaches of fiduciary duties and frivolous and harassing conduct towards us and our legal rights and interests.

7. If I felt my mother had any justifiable reason for her conduct in these proceedings, I would accept the fact that we had a difference of opinion on various issues. However, it has been clear from the start that my mother has not been acting properly, has been making frivolous and selfish claims, and has been duped into abandoning her family in favor of individuals who prey upon her tendency to be exploited for their own greed and self interest.
8. I know from the close association I had with my grandmother, Marjorie T. Connell, that the things my mother has done in causing and promoting this litigation violate her wishes and intentions, and those of my grandfather, W.N. Connell, in setting up their 1972 Trust.

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

Dated this 2nd day of June, 2015


JACQUELINE M. MONTOYA