

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,

vs. Appellant,

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

Respondent.

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Elizabeth A. Brown
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APPELLANT'S APPENDIX

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA STURMAN
District Court Case No. P-09-066425-T

APPELLANT'S APPENDIX, VOLUME 3 OF 8

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CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO. P-066425
DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

THURSDAY, DECEMBER 4, 2014

**RECORDER'S TRANSCRIPT OF PROCEEDING:
ALL PENDING MOTIONS**

APPEARANCES:

For Eleanor Ahern: MS. CANDICE RENKA, ESQ.
MS. LIANE WAKAYAMA, ESQ.

For Jacqueline Montoya: JOSEPH POWELL, ESQ.

For Kathryn Bouvier: WHITNEY WARNICK, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 THURSDAY, DECEMBER 4, 2014 AT 10:47 A.M.

2
3 THE COURT: Connell Trust. Okay, so that is 09-066425. We'll let – we
4 need everybody to state appearances, give us your names and bar numbers and
5 who you represent.

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

8 MR. WARNICK: Whitney Warnick on behalf of Kathryn Bouvier.

9 MS. RENKA: Candice Renka, Marquis Aurbach Coffing, and Liane
10 Wakayama on behalf of Eleanor Ahern.

11 THE COURT: Okay. I appreciate the difficult position that you're in,
12 Counsel, but you weren't here and so, it's not your fault. You have no idea
13 how angry I am at Mrs. Ahern, from a year ago in February when they showed
14 up – people sitting at the back of the room who'd flown in from Texas to talk
15 about these oil and gas liens and the litigation there.

16 Mrs. Ahern and her service dog who makes a big poop in the
17 hallway outside. You have no idea how angry I am at – they filed a counter
18 petition the day before, totally threw this whole trial off -- required the
19 Montoya's and both Bouviers' to hire additional Counsel. And now you're
20 coming in a month before she's scheduled to have her trial again, because she's
21 an elderly person entitled to a preference and saying: Oh, we're not ready
22 because she's hired her third new counsel. I'm sorry, but your client has to live
23 with the results of her action.

24 MS. RENKA: And you –

25 THE COURT: This is her – the consequences of what she has done and

1 the Court's not inclined to deal with the whims of this elderly lady. She needs
2 to be prepared to deal with her cause of action, here in Court, as scheduled.

3 MS. RENKA: Understood, Your Honor, and I apologize because obviously
4 we are not privy, at all, to what happened at prior hearings --

5 THE COURT: No, you're not.

6 MS. RENKA: -- we weren't here, but let me just state a couple of things
7 for the record. And again, I apologize, Your Honor, for any inconvenience that
8 has been caused before we were here. That is not our intent. We are not
9 trying to delay for no good reason. First of all, as far as prior Counsel, all of
10 what we know is that Mr. Mann appeared for less than 30 days, filed a Motion
11 to Withdraw and Ms. Ahorn -- Ms. Ahern was in our office on the 24th, before
12 the holidays, seeking Counsel because there were immediate things coming up
13 on calendar.

14 We appreciate that this has been going on for awhile and we are
15 not trying to delay. We simply are requesting a little bit of time to get up to
16 speed, because the way we understand the case right now, the Motion to
17 Enforce Settlement could be dispositive depending on this Court's decision on
18 that issue. So, we just want to be sure that we have all the facts and we can
19 put all the necessary evidence before the Court so that you can decide what
20 might be a dispositive motion in this case.

21 THE COURT: Okay. So if it -- if the issue is just the Motion to Enforce,
22 if we move the Motion to Enforce into January and if Motion to Enforce is
23 granted, case is over. If the Motion to Enforce is not granted you go to trial in
24 January, understood?

25 MS. RENKA: Yes, Your Honor, of course.

1 THE COURT: Okay. Counsel.

2 MS. RENKA: Your Honor, can I just state a couple more things for the
3 record?

4 THE COURT: Sure.

5 MS. RENKA: As far as our Motion to Continue, I know that there is also
6 a status check on several of the other matters which may be just a scheduling
7 issue.

8 THE COURT: Uh-huh.

9 MS. RENKA: But as far as the Motion to Continue, in the opposition, I
10 just want to be cautious, because in the opposition there were raised what we
11 consider to be confidential settlement negotiations outside of the Motion to
12 Enforce Settlement issues that are not properly brought before this Court. So
13 we just want to be careful about what is discussed and what is revealed in the
14 hearing today, because under NRS 48.105, some of that material is not
15 appropriate to be discussed in the litigation.

16 THE COURT: Uh-huh. All right.

17 MS. RENKA: And also, Your Honor, in the opposition for today, there
18 was also relief requested that we understand this Court has already ruled on,
19 which is the release of the oil income which this Court has ruled for a certain
20 time period, should be paid if a bond is posted. To our knowledge there has
21 been no bond posted and that order is on appeal, which gave rise to the
22 settlement issues, so we also just wanted to clarify that there is no formal
23 motion on today regarding the oil income which Your Honor's already ruled on.

24 And, as far as any trial proceeding in January, if the settlement is
25 not granted we would just like the opportunity to go through the dispositive

1 motion process and to address all of the pending motions that are on for a
2 status check today, some of which have not been opposed yet.

3 THE COURT: Okay. Counsel, where were we? It was my recollection
4 that we were going to have a trial.

5 MR. WARNICK: That's correct, Your Honor, we were put on the January
6 12th stack --

7 THE COURT: Uh-huh.

8 MR. WARNICK: -- and this was to be a calendar call to determine where
9 on that stack you would like us to be.

10 THE COURT: Uh-huh. The problem with my -- and that's going to be at,
11 you know, at 11 but we're almost at 11 now. The problem with that's -- your
12 client's case -- we've got an elderly person entitled to a prompt trial in this case
13 so, I mean, she'd be entitled to a preference. And I know that there were
14 people coming from out of state and so, you know, the week of the 12th, the
15 5th and the 12th of January are taken with a medical malpractice case where it's
16 bifurcated.

17 We're doing the first week of it this week, finishing up this
18 afternoon, and then we've got two more weeks in January. So that doesn't
19 leave us -- those -- about three weeks in January. The first week is a short
20 week, the -- that would be the week of the holiday is the first availability that
21 we would have.

22 So it's -- as has been requested, some additional time to respond on
23 this Motion to Enforce the Settlement Agreement. If we can give her that I can
24 -- we can then proceed one way or the other depending on the outcome. And I
25 don't know, are there any other issues? This is the problem with the way that

1 we have – we split probate. Are there any other – there seem to be some other
2 issues proceeding down with the Commissioner.

3 MR. WARNICK: I think one of the things that Counsel's not aware of is,
4 some of these motions they've been discussing that need to be – need to be
5 resolved are really kicked beyond the trial, so they're not coming up before the
6 Court – before the trial; they don't have to worry about those. I understand the
7 Court wants to resolve the Will contest case first, which is on the calendar as
8 you just said. So there's no need for them to worry about addressing those
9 other issues that pertain to the other proceedings.

10 What we have is the Motion to Enforce Judgment first, that's
11 granted, everything's resolved. If that's not granted then we go to the trial on
12 the Will contest case. If that's – depending on the results of that trial –

13 THE COURT: Uh-huh.

14 MR. WARNICK: -- then we go for it on the Trust matter. The only thing I
15 would ask Your Honor, and I know just hearing your calendar, I'm sure you're
16 just stacked to the limit before Christmas. The one thing with the Motion to
17 Enforce that we pointed out is, there's a lot of prejudice and a lot of issues,
18 financially, that are really very serious. And if there's any possible way we can
19 get the Motion to Enforce Judgment on before the end of the year --

20 THE COURT: The 17th.

21 MR. WARNICK: -- giving them additional time.

22 THE COURT: The only other date that we have is December 17th.

23 MR. WARNICK: That would be fine for us, that would give them more
24 time to respond, but since that motion could easily resolve this whole litigation
25 it would save a tremendous amount of cost and expense on the parties and

1 then, if we waited until January to do that we'd have to prepare on the motion,
2 plus get ready for the trial and there'd be a lot of extra expense in there --

3 THE COURT: Uh-huh.

4 MR. WARNICK: -- that might not be necessary if the Motion to Enforce is
5 granted.

6 THE COURT: Okay.

7 MR. WARNICK: That would be our only position, but I understand the
8 Court's calendar, and whatever you can work in and whether it was appropriate
9 we would appreciate.

10 THE COURT: Okay.

11 MS. RENKA: And the only other thing that I would say, Your Honor, is
12 that, regarding the four motions or petitions that are pending and that were on
13 for a status check today, it seems from what we've been able to gather so far,
14 that the underlying issue in all of them is the same, it's the oil income issue --

15 THE COURT: Uh-huh.

16 MS. RENKA: -- which would also be the central issue in the Will contest,
17 so there may be some value to hearing those and having decisions from Your
18 Honor on those before we work to proceed in a trial on the Will contest. And
19 that'd be the only thing I'd bring to the Court's attention.

20 THE COURT: Okay. So then with respect to the Motion to Enforce the
21 Settlement Agreement, if we did that one in December then we could move the
22 other oil income, the motions to all these petitions that remain for -- would be --
23 could be heard in January and then we could proceed with the trial well, okay.

24 MR. WARNICK: And just to let Your Honor know, there was a motion
25 filed by prior Counsel to dismiss on the allegation of claim preclusion.

1 THE COURT: Uh-huh.

2 MR. WARNICK: We have prepared a response to that motion as well as a
3 counter petition ourselves, and for some reason that we thought was set for
4 November 26th, but then when we tried to get this Motion to Enforce the
5 Judgment on for the same day, we were advised by the Court Clerk that no,
6 that it --

7 THE COURT: I was dark, yeah.

8 MR. WARNICK: -- it wasn't being heard.

9 THE COURT: Yeah, that was an error.

10 MR. WARNICK: So we would just like to advise the Court that --

11 THE COURT: See the problem is that we've got -- we deal with two
12 clerks offices because the -- all the probate stuff is done through the Family
13 Court Clerk's Office and --

14 MR. WARNICK: I know.

15 THE COURT: -- it makes it -- people don't talk.

16 MR. WARNICK: Well, what I'm trying to say is that, if we're going to go
17 forward on those other motions in January, assuming the motions in Court
18 judgment --

19 THE COURT: Uh-huh.

20 MR. WARNICK: -- is not granted, we would file a counter petition to their
21 Motion to Dismiss that would be heard at the same time.

22 THE COURT: Okay. All right. So January 14th would be when you
23 would hear all those -- everything else you're setting and then the -- we can
24 hear the -- just the Motion to Enforce Settlement Agreement on December 17th,
25 move all the other hearings that are currently pending. And I think there may

1 be a couple of them that were noticed for either the Commissioner – I don't
2 know if they're noticed for the Probate Commissioner or the Discovery
3 Commissioner.

4 MR. POWELL: Your Honor, there was one matter that was in front of the
5 Discovery Commissioner that an R&R should be getting signed –

6 THE COURT: Right.

7 MR. POWELL: -- any time now. That was on --

8 THE COURT: I appreciate the problem that you had Mr. Powell that, you
9 know, not knowing who had authority to –

10 MR. POWELL: Yeah.

11 THE COURT: -- sign it.

12 MR. POWELL: Yeah.

13 THE COURT: So, but you got that worked out with the – with the --

14 MR. POWELL: I believe so, yeah --

15 THE COURT: Okay.

16 MR. POWELL: -- because I actually appeared in front of Commissioner
17 Bulla two weeks ago, roughly, I want to say.

18 THE COURT: Right.

19 MR. POWELL: I think tomorrow –

20 THE COURT: Right.

21 MR. POWELL: -- has actually a two week mark in.

22 THE COURT: And for some reason they put the Motion to Withdraw in
23 front of the Probate Commissioner; I don't know.

24 MR. POWELL: I don't know.

25 THE COURT: I guess I can grant it, I don't care, but -- so that we will

1 move the Motion to Enforce the Settlement Agreement a week to December
2 17th so you know what's going on with that. And the other hearings will all be
3 moved to, to January. And then with respect to the trial the – how many days
4 do you think you need? Two?

5 MR. WARNICK: I would think two days would be appropriate.

6 THE COURT: Okay. Maybe –

7 MS. RENKA: We would think maybe three, Your Honor.

8 THE COURT: The 21st, 22nd, and 23rd?

9 MS. RENKA: Are those full –

10 THE COURT: Of January?

11 MS. RENKA: -- trial days, Your Honor?

12 THE COURT: The – Wednesday the 21st would be and Friday the 23rd
13 would be, so it'd be two and a half days.

14 MS. RENKA: And Your Honor, for the Motion to Enforce you said the
15 hearing is on December 17th.

16 THE COURT: Right.

17 MS. RENKA: So when would you like our opposition?

18 THE COURT: Okay. The opposition needs to be in – are you going to
19 want to respond to it or is it just –

20 MR. POWELL: Probably.

21 MR. WARNICK: We probably will, Your Honor.

22 THE COURT: If you could get your – how much – if you get your
23 opposition in in a week and then a reply in by the end – close of business on
24 Monday, so Thursday – next Thursday, and then a response by close of
25 business on Monday. So we've got Tuesday take a look at it before –

1 MR. WARNICK: Sure.

2 THE COURT: -- the hearing on Thursday -- on Wednesday rather.

3 [Court confers with Court Clerk]

4 THE COURT: Let's do 10 a.m. on the 10th.

5 COURT CLERK: 17TH?

6 THE COURT: 17TH rather, 10 a.m. on the 17th, 10 a.m. And then we'll
7 put everything else on the Probate calendar in January starting our trial the
8 following week, the 21st, 22nd, and 23rd.

9 MS. RENKA: So January 14th, is at 10 o'clock as well, Your Honor.

10 THE COURT: Let's see what's -- there's only -- there's four things on
11 right now. Mr. Powell you're going to be back, got lots of things on that day
12 on the January 14th.

13 MS. RENKA: Yes, Your Honor, we're both back on the Morton Rovner
14 Trust.

15 THE COURT: Yeah --

16 MS. RENKA: I think there's about nine --

17 THE COURT: -- so Morton Rovner.

18 MS. RENKA: -- petitions.

19 THE COURT: Yup. Yeah, Morton Rovner, busy day. Yeah, so we can do
20 10 o'clock that day as well because you're going to just be here all morning --

21 MR. POWELL: Okay.

22 THE COURT: -- so

23 [Court confers with Court Clerk]

24 THE COURT: Yeah, yeah, that's pretty voluminous so we'll take a look at
25 it. Thanks. All right, well we'll see you guys back then.

1 MS. RENKA: Okay, thank you, Your Honor.

2 THE COURT: Anything else? So yeah, with respect to the pre – a pretrial
3 then, we can just do your pretrial on the 14th when you're down here on all the
4 other petitions.

5 MS. WAKAYAMA: Your Honor, and we'll prepare the order for today's
6 hearing and run it by Counsel.

7 THE COURT: Okay. All right, thanks.

8 MS. WAKAYAMA: Thank you.

9 MR. WARNICK: Thank you, Your Honor.

10 THE COURT: Oh, I forgot, is that a jury trial?

11 MR. WARNICK: Yes, Your Honor.

12 MR. POWELL: Yes.

13 THE COURT: Okay. Did you say we could do it in two and a half days?

14 MR. POWELL: I think so.

15 THE COURT: Okay, great.

16 MR. POWELL: Hope so.

17 THE COURT: Great.

18 MR. POWELL: Thank you.

19


20 [Proceedings concluded at 11:01 a.m.]

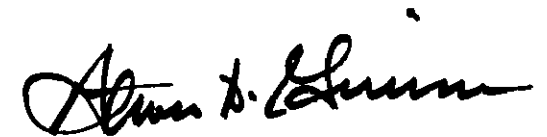
21

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

24

25


Kerry Esparza, Court Recorder/Transcriber
District Court, Department XXVI



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO. P-066425

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 17, 2014

RECORDER'S TRANSCRIPT OF PROCEEDING:
MOTION TO ENFORCE:
SETTLEMENT AGREEMENT

APPEARANCES:

For Petitioner Eleanor Ahern:

CANDICE E. RENKA, ESQ.
LIANE K. WAKAYAMA, ESQ.

For Jacqueline Montoya:

JOSEPH POWELL, ESQ.

For Kathryn Bouvier:

WHITNEY WARNICK, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 WEDNESDAY, DECEMBER 17, 2014 AT 10:16 A.M.

2
3 THE COURT: Connell 066425. Okay. And 080595 is the related case,
4 okay. Let everybody state appearances.

5 MR. WARNICK: Whitney Warnick on behalf of Kathryn Bouvier.

6 MR. POWELL: Joey Powell appearing on behalf of Jacqueline Montoya.

7 MS. RENKA: Good morning, Your Honor, Candice Renka, Liane
8 Wakayama for Eleanor Ahern. And Mrs. Ahern is under the weather and
9 apologizes for not being able to be in attendance today.

10 THE COURT: Okay. So this is a Motion to Enforce Settlement
11 Agreement. Mr. Warnick.

12 MR. WARNICK: Ms. Bouvier and Ms. Montoya are present, Your Honor,
13 also.

14 THE COURT: Okay. Presence will be noted for the record.

15 MR. WARNICK: Your Honor, there are basically two cases before the
16 Court in this proceeding: One is a Trust Litigation and one is a Will Contest.
17 The matters at stake in both of those cases are entitlement to oil royalty income
18 from properties in Texas; that's the underlying stake in both of those cases.
19 For 34 years, during the life of Marjorie Connell, one of the Trustor's of the
20 Trust, that oil income had been paid 65 percent to her and 35 percent to Mrs.
21 Ahern.

22 After Mrs. Connell's death in 2009, her share, pursuant to her Will
23 and Trust, went to my client and Mr. Powell's client, Mrs. Montoya and Mrs.
24 Bouvier, for another four years until approximately June of 2013. At that time,
25 Mrs. Ahern who was the Trustee of the Trust and received this oil income,

1 abruptly decided to just cut off that 65 percent share of the income to Mr.
2 Powell's and my client. In their opposition to our motion they've indicated that
3 she did that because of emotional reasons. She thought she was not being
4 treated nicely by her daughters, that they were alienated, so she made a
5 decision to just cut off that income.

6 We respectfully submit that there is no legal basis and no valid legal
7 basis for her having done that. If this matter went to trial we think it would be
8 easily shown that she just did that for personal reasons and didn't have a valid
9 legal basis. She as Trustee of the Trust, committed a serious breach of the
10 Trust at that time, in her duties as Trustee, and she would also be subject to
11 any penalties and damages that were caused by that action, as well as removal
12 as the Trustee.

13 Last summer, Your Honor entered an order saying that she wanted
14 to hear, first, the Will Contest case in this matter. And if in that contest case
15 Mrs. Ahern was unable to prove that Marjorie's Will was not valid, then she
16 would have another chance in the Trust dispute, thereafter, to try to still show
17 that she had some entitlement to that 65 percent share of the income that was
18 otherwise being paid to our clients.

19 In that same order, last summer, Your Honor indicated that because
20 there was going to be time delay, our clients could start receiving their 65
21 percent share of that income, since it was a difficult financial strain on them to
22 have that just cut off. If they would post a bond to secure repayment of that
23 money, in the event the Court later determined that Mrs. Ahern was entitled to
24 that money. Mrs. Ahern did not like that Court's order and so, she appealed
25 that to the Nevada Supreme Court.

1 The Nevada Supreme Court then appointed a Settlement Judge, Mr.
2 Robert Saint-Aubin, under their procedures to try to get cases settled on appeal
3 without having to have them heard by the Court; and the parties were set to
4 meet in mediation and settlement with Mr. Saint-Aubin on that appeal issue.
5 Prior to that time, both parties agreed and Mr. Saint-Aubin agreed to not only
6 mediate and try to settle the matter on appeal, but to try to reach a global
7 settlement of all of the issues in both the Trust Dispute and in the Will Contest.

8 Therefore, we met with Mr. Saint-Aubin, both the parties and their
9 Counsel, both – all met with Mr. Saint-Aubin on October 15th of this year. And
10 for about a half a day we went back and forth trying to settle and reach a
11 global settlement in all of the cases. We did not reach a global settlement on
12 that date, but upon leaving his offices it was agreed that we would continue to
13 try to reach a settlement, and Mr. Saint-Aubin directed us to keep him posted.
14 He would not make any report to the Supreme Court until it was a final
15 determination as to what had happened.

16 So thereafter, Counsel for the parties continued to negotiate and
17 see what the parameters are and what the objections were to any settlement,
18 and they got closer and closer and tried to reach a compromise and a global
19 settlement of these matters. They would go back to their clients and discuss
20 what had been discussed and then they'd go back and forth on the telephone
21 and also during depositions that were being taken at this time, in continuing to
22 try to see if they could reach a global settlement.

23 Finally, on October 22nd, the parties met in the offices of Mrs.
24 Ahern's attorneys', Mr. Mugan and Mr. Lum at that time, the Offices of Jeffrey
25 Burr. And they were prepared to take the depositions of our two clients', Mr.

1 Powell's and my client, but instead of taking those depositions, and because of
2 the progress that had been made, in the interim, since the Settlement
3 Conference with Mr. Saint-Aubin, they decided to continue and try to see if we
4 couldn't just reach a global settlement of the cases.

5 So, for that whole day on October 22nd, the parties went back and
6 forth, negotiating back and forth. Counsel would come – the parties were in
7 different rooms, and their attorneys would go back and forth and discuss with
8 them the offers and the counteroffers that were being made. They took a break
9 for lunch, about an hour and a half break, reconvened about 1 o'clock and
10 continued to negotiate up until about a little after 4 p.m. on that date.

11 At that time it was decided and agreed that the parties had reached
12 a global settlement of all of the issues in this case. And to memorialize that
13 settlement, the parties also decided they wanted to put the settlement terms on
14 the Court record. And they had a court licensed reporter there, and so they
15 asked the court reporter to take down the Settlement Agreement to – that they
16 would be dictating to her and to transcribe that Settlement Agreement into a
17 settlement statement, which we have attached to our Motion to Enforce the
18 Settlement.

19 It's clear in that settlement statement that the parties did, in fact,
20 reach a settlement of all the major issues and all the things that needed to be
21 resolved in that case. Following the dictation and the taking of that settlement
22 statement by the court reporter, she went back, transcribed that settlement
23 statement, and that's what we have and that's what we presented to the Court
24 in our Motion to Enforce the Judgment.

25 On that day, October 22nd, Mr. Powell was the last Counsel to leave

1 the Offices of Eleanor's Attorney and there, after 5 o'clock, and upon leaving
2 the offices he noticed that Mrs. Ahern was still there in the offices with her
3 attorneys. And we all, then, went back to our offices and each counsel for
4 each party notified Mr. Saint-Aubin, the Settlement Judge, that the parties had
5 reached a Global Settlement. He sent us back a letter the next day saying:
6 Congratulations. And then he went ahead and filed a report to the Supreme
7 Court saying that the parties had settled their dispute.

8 Thereafter, for about another five days, Mr. Powell, as he noted in
9 his affidavit attached to our reply, communicated with Mrs. Ahern's Attorneys,
10 and they were putting into effect the Settlement Agreement. Part of that was
11 cancelling the depositions, which had been set in that case and which no longer
12 needed to be taken because the case had been settled. These depositions were
13 actually set by Mrs. Ahern's Counsel, Mr. Lum and Mr. Mugan, so they
14 cancelled those depositions.

15 Mr. Lum also told Mr. Powell that he had about completed the
16 Stipulation and Order that was contemplated for under the Settlement
17 Agreement, to be submitted to this Court to dismiss the cases and to, you
18 know, to effectuate the settlement as it had been agreed to. Then, suddenly,
19 on October 28th we get a call from Mr. Lum, Eleanor's former Attorney, at that
20 time, saying that he and Mr. Mugan had just been dismissed as her attorneys',
21 and that they had no further ability to proceed with finalizing the Stipulation and
22 Order and settling out this case and going forward with the Settlement
23 statement – Agreement.

24 A few days after that, then, we received notice from a new
25 attorney, Mr. David Mann, that he had been engaged by Mrs. Ahern who now

1 represents her in these matters. And he said that she was not going to agree
2 that there was a settlement statement, that she was going to contest it and not
3 honor the Settlement Agreement that had been reached. He then contacted Mr.
4 Saint-Aubin, the Supreme Court Settlement Judge, and said: The parties
5 haven't reached a settlement now, and Mr. Saint-Aubin then had a duty to put
6 in the record that he -- and the status of it was, then he didn't know what was
7 going to happen.

8 In his prior report, when he said the parties had settled the case, he
9 said a Stipulation and Order of Dismissal would be submitted within 21 days
10 dismissing the procedures. And he had to change that statement because of
11 the information that was provided to him by Mrs. Ahern's new counsel. And
12 because of these actions and because Mrs. Ahern's new attorney, Mr. Mann
13 indicated that she was not going to honor the settlement statement, we then
14 filed this Motion to Enforce the Settlement. They have opposed that motion
15 now.

16 Well, let me just continue on. Mr. Mann was on the case for maybe
17 about a month and was prepared, I think, to go forward representing Mrs.
18 Ahern. We've attached a Complaint that he filed against her as an Exhibit to
19 our reply, wherein he says that he was dismissed and that she didn't comply
20 with her obligations as a client to provide him with information and meet with
21 him, and therefore, he had to withdraw from the case because she just totally
22 absented herself from communicating with him.

23 Thereafter, we then found out that Mrs. Ahern had engaged
24 additional new counsel -- her counsel who are presently here in this Court.
25 They have filed an Opposition to our Motion to Enforce Settlement Agreement,

1 and they basically have argued three points: The first point they argue is that
2 the Settlement Agreement cannot be honored because Mrs. Ahern did not sign
3 it. And they've cited two –

4 THE COURT: Uh-huh.

5 MR. WARNICK: -- Court Rules: The District Court Rules of Nevada and
6 the Eighth Judicial District Court Rules, which state that in the Settlement, if
7 the Settlement should be evidenced by the Signature of the Parties or it should
8 be evidenced by Minutes on the Court Record. And they believe that based
9 upon those – that case and those two rules, that because Mrs. Ahern did not
10 sign the settlement statement, only her attorneys agreed and said it was
11 settled, that that precludes the Court now from enforcing that Settlement.

12 However, if you look at the case that they're relying on, which is
13 the *Resnick v. Valente* case. That's 97 Nev. 615, on page 3, near the bottom
14 of that case, in that case, the Supreme Court was faced with a situation where
15 two attorneys had discussed the Settlement and one attorney thought it had
16 been reached. There was nothing in writing and the other attorney didn't
17 agree, and therefore, there was a litigation as to whether or not there was an
18 Enforceable Settlement Agreement.

19 And the Nevada Supreme Court said: No, there was no enforceable
20 agreement because all you have are two attorneys arguing about what they said
21 happened, and you're just trying to try this case by affidavit, and there's no
22 clear evidence of what that Settlement Agreement was that we can enforce.
23 And he cited in that case, then, the District Court Rule and the Eighth Judicial
24 District Court Rule, which indicated that you needed to have a written
25 statement by the party signed or something put on the Court Record.

1 Well, if you look at the paragraph near the end of that that decision,
2 by the Court, in this *Resnick* case, the Court made it clear that those two rules
3 did not control whether or not a valid settlement had been reached, rather the
4 controlling law is the case of *May* which we have cited in our motion. And in
5 that case, the Court pointed out that a Settlement Agreement is really a
6 contract. And so, what you need to do is determine if all of the terms of a valid
7 contract have been provided. Has there been a meeting of the minds? Has
8 there been consideration, and are all the material terms agreed upon? That is
9 what determines if there's a valid Settlement Agreement.

10 And in that *Resnick* case, the Court went on to say that the rules
11 that Counsel are relying on where they have to have a written signature of the
12 party on the Settlement Agreement, are not the controlling factor in determining
13 whether or not there's a Settlement Agreement. And I quote:

14 "The Court said, we are not saying that enforcement of the
15 supposed agreement by Counsel may not be accomplished in some
16 appropriate fashion. If suit on such an agreement was prosecuted,
17 the Court might consider such issues as the authority of counsel,
18 the nature of communications between counsel and client, and the
19 existence of the meeting of the minds of the parties. The Court
20 might then decide to award a judgment based on the contract of the
21 parties."

22 So, in other words, the Court's saying that there are those two
23 rules, but they're indicating those two rules deal with situations where you have
24 no evidence that the Court can point to to show that there's been a Settlement
25 Agreement. In that case, there were just two attorneys saying one thing and

1 another attorney saying another thing and the Court said: That's not enough
2 for us to say that a Settlement was reached. In our case, we have a settlement
3 statement transcribed by a court reporter, which probably in and of itself meets
4 the conditions of those two local rules that they're relying on. But, even if it
5 didn't, it does provide complete evidence that a Settlement Agreement was
6 reached between the parties.

7 They were negotiating all day long, they had their counsel present,
8 their counsel then met in the room with the court reporter and dictated the
9 terms of the Settlement and agreed that a Settlement had been reached, and it
10 was transcribed by the court reporter.

11 It should also be noted –

12 THE COURT: Well, I – I think that the issue is, that Ms. Connell raises, if
13 I read her affidavit correctly is that – that she did no negotiation. She was not
14 – there was no face to face negotiation. She was never in a room with her
15 attorney and the other side. She never – so whatever her attorneys may have
16 agreed to on the record was agreed to outside of her presence and without her
17 knowledge and consent.

18 I mean, the way I read it's, you know, she – I mean, maybe she did
19 agree to it at some point in time, just drives home and says: Ahh, I've changed
20 my mind, I'm backin' out, I don't know, but she says: I never agreed and I was
21 never in a room where I said I agreed. I never said I agreed to Mr. Mugan. I
22 never said I agreed to any of this; I didn't agree with.

23 So, the issue is, you know, can her attorneys bind her to something
24 – her former attorneys bind her to something that she says, I never agreed to
25 that?

1 MR. WARNICK: Well, that appears to be an issue of Agency Law .

2 THE COURT: Uh-huh.

3 MR. WARNICK: And Mr. Powell and myself, representing our clients,
4 who were there in the same offices as Mrs. Ahern -- she was just in another
5 office in the same office. All day long we're going back and forth talking about
6 settlement terms, presenting our proposal, then she would say: No, I don't
7 agree with that and be going back and forth.

8 We get to the end of the day and her attorneys come to us all hot,
9 excited and happy and say: We've reached a Global Settlement, let's put it on
10 the record. Her own attorneys were the ones who took the lead in that
11 dictation of the settlement statement; that's put on the Court's licensed court
12 reporter's record. We have the right to rely, under Agency Law, that her
13 attorneys had bodily conferred with her and that she'd given them authority to
14 act on her behalf, and clearly they had that authority.

15 As we pointed out, under Nevada Law, an attorney has clear
16 authority and has to, you know, you have to rely upon the agent, especially an
17 attorney when you're sitting in the same office as their -- and all together. Even
18 though she didn't come into the room and was there, our clients weren't in the
19 room when the attorneys dictated that settlement statement either. But I noted
20 in my papers that during that dictation of that settlement statement to the court
21 reporter, an issue did arise as to how to handle the Will Contest Proceedings,
22 and we had to take and recess for a few minutes. Mr. Mugan and Mr. Lum
23 went back to Mrs. Ahern and discussed how to handle that.

24 We went back to our clients and discussed how they'll handle that.
25 We came back in and had an agreement on that, and that then finalized the

1 settlement statement. So, Mrs. Ahern can certainly say: I didn't agree to that
2 and I didn't know what was going on. But, what really happened is, is after we
3 got out of that settlement meeting on October 22nd, and for five or six days
4 thereafter, everybody knew that a Settlement Agreement had been reached.
5 They acted upon that, they contacted the Supreme Court judge, the Settlement
6 Judge and said a Settlement had been reached. They were preparing the
7 Stipulation Order to have the case dismissed. They cancelled the depositions
8 that had been set in that case to go forward, and everybody knew that the
9 Settlement had been reached.

10 Now, Mrs. Ahern then says -- Mrs. Ahern says: No, I didn't -- I
11 didn't agree to that because I didn't have my team of advisers there that I
12 wanted to consult with and wanted them to say it was okay.

13 THE COURT: Uh-huh.

14 MR. WARNICK: So evidently, what happened is, is after she left that --
15 the offices on October 22nd and went home, she communicated with her team
16 of advisers and they didn't like the Settlement. And so, they then prevailed
17 upon her to start taking action to say that she disagreed with the Settlement.
18 She claims that she contacted her former attorneys', Mr. Mugan and Mr. Lum
19 that evening. Our information is that that did not occur and it did not make no
20 sense, because for the next six days they were working with us to effectuate
21 that Settlement Agreement, according to its terms: To cancel the depositions,
22 to finalize the Stipulation Order to dismiss the case.

23 And as a surprise to them on October 28th when they were advised
24 by Mrs. Ahern, that no, she's not going to go forward with that Settlement
25 Agreement.

1 THE COURT: Well, Ms. Ahern has sort of selectively picked and chosen
2 where she would consider waiving the – the privilege. And she has provided
3 this handwritten note here that she says she sent on October 22nd, the same
4 day as the Settlement: I need more time to consider this Settlement. She
5 doesn't say: I agree or disagree with it. "I need a day or two, I am not ready
6 to commit." Don't know what that means. "I'll talk to you later this week," so
7 --

8 MR. WARNICK: That's not what her attorneys represented and it's
9 important to note in the opposition that they filed they test an – an affidavit
10 from an attorney in Texas --

11 THE COURT: Correct.

12 MR. WARNICK: -- and that attorney in Texas states, right therein, that he
13 received a call from Mr. Mugan, Eleanor's attorney, in the latter part of that
14 day, on October 22nd, where Mr. Mugan told that Texas attorney: We have
15 reached a Settlement. So there's another clear admission, from Mrs. Ahern's
16 own Counsel, that they had reached a Settlement.

17 Now Mrs. Ahern, you know, if you're familiar with this case, which
18 you are – she's been taking a lot of irrational positions and doing a lot of
19 irrational things in this case. And it was probably not unexpected for us to find
20 out that she then, after the Settlement had been reached, to try to make some
21 objection to it, especially when she went back and consulted with those people
22 who are having a lot of influence upon her.

23 But, she herself was there in the offices with her own Nevada
24 Counsel and they had authority to act on her behalf. They clearly said that
25 we've reached a Settlement, and after a day long of negotiation for her to say:

1 I didn't know what we were doing, I didn't realize this was going on, is
2 ridiculous. [Sneeze heard]. Just her effort to try to prolong this litigation and
3 to back out of an agreement, which really is most fair and most beneficial to
4 her. I mean, that's the other aspect of this whole thing. That Settlement that
5 was reached was not something that was really beneficial to our clients. They
6 gave up 10 percent of their income rights just to settle this case because Mrs.
7 Ahern is their mother.

8 If they had any chance of trying to get some reconciliation in the
9 family relationships they thought: Let's get this ridiculous litigation settled, we
10 believe Mom's wrong, we believe she's basically irrational. We believe she's
11 under the influence of other people who are taking advantage of her, but let's
12 get this case settled and we'll give up 10 percent of what we really are entitled
13 to to settle the case.

14 They also agreed to not hold her responsible for all of her improper
15 conduct as a Trustee and breach of her fiduciary duties, as well as no contest
16 clauses under the Will and the Trust that could cause her to forfeit monies that
17 she had received because she wrongfully challenged the distribution of income
18 under there. They agreed to all of that because they loved her and they wanted
19 to get the case settled, so that's the really unfortunate thing.

20 THE COURT: Uh-huh.

21 MR. WARNICK: This case is -- that settlement is is really most beneficial
22 to her. But legally, we really submit that that is an Enforceable Settlement
23 Agreement. The issue that's before the Court is proof. Was there proof that a
24 Settlement Agreement was reached? And clearly, that settlement statement
25 leaves no doubt, and it's equivalent to coming into this Court, we believe --

1 THE COURT: Uh-huh.

2 MR. WARNICK: -- and putting it on the record before a court reporter.

3 And it leaves no doubt that the attorneys said a settlement statement had been
4 reached, agreement had been reached, and they set forth all of the terms that
5 are needed in that settlement statement. And then the -- the comments of her
6 own attorneys back and forth -- the Texas attorney communicating with Mr.
7 Mugan, agreed there was a Settlement.

8 And then the conduct after that date, after October 22nd, up until
9 the 28th, and effectuating that Settlement Agreement and going forward with it,
10 telling the Supreme Court Justice that -- Settlement Judge that had been
11 settled. And preparing the Stipulation and Order to Dismiss the Case and
12 cancelling depositions. There's no doubt that all of the attorneys and our
13 clients knew that a Settlement had been -- Agreement had been reached.

14 And we submit, there's really no doubt that Mrs. Ahern didn't
15 realize that also, that she just had settlement remorse afterwards and is now
16 trying to back out of that Settlement Agreement. They've also alleged that the
17 terms of the Settlement are not clear, but we submit, I've covered that in my
18 Reply Brief; and I believe that those terms are clear enough to have a clearly
19 enforceable contract.

20 THE COURT: Thank you.

21 MS. RENKA: Thank you, Your Honor, we have a pleading that was
22 previously filed in this case earlier that has the terms -- the terms of the Trust
23 Agreement and some consents that we'd like to discuss with Your Honor. If I
24 could either approach or give this copy to your Bailiff.

25 THE COURT: Sure.

1 MS. RENKA: Thank you very much.

2 [Marshal handed document to Court]

3 THE COURT: Thank you.

4 COURT MARSHAL: Judge.

5 MS. RENKA: Your Honor, in the Reply and in argument here before Your
6 Honor, there's a large misconception that we would like to address, and that is,
7 that Mrs. Ahern was only ever entitled to 35 percent or some lesser amount
8 than 100 percent of these oil income rights. And so, what we wanted to look
9 at to kind of get back to basics here is a Petition that was filed by Mrs. Ahern
10 back in 2009, in the very beginning of these proceedings. And there's five tabs
11 on the Petition, and so, I'd like to turn, first, to tab number one.

12 This Petition was filed, essentially, to reform certain portions of the
13 Trust that did not address the scenario where Marjorie, Eleanor's mother, would
14 pass before Eleanor which is, in fact, what happened. So this was filed to
15 basically reform those provisions of the Trust which were reformed, and the
16 remainder of the provisions of the Trust, including provisions about the oil
17 income, were confirmed and ratified.

18 So, if we turn to tab one at paragraph 18, all the copies are
19 highlighted.

20 "As of the death of Marjorie, which is Mrs. Ahern's mother,
21 Trust Number Two owned land and oil and gas shares in reserves
22 and income located in Upton County, the oil assets. The oil assets
23 have not been valued but for some time -- but are estimated to be
24 worth around 700,000."

25 Paragraph 19:

1 “Pursuant to Article Fourth, which article governs the
2 administration of Trust Number Two, all income from the oil
3 assets is to be paid to the Petitioner as the residual beneficiary;
4 that’s Mrs. Ahern during her lifetime.”

5 And onto the next page there’s a footnote after lifetime. It
6 mentions that Article Fourth also states:

7 “That all income received by Trust Number Two, other than
8 the oil assets, would be paid to Marjorie.”

9 It then notes that:

10 “However, the oil assets are the sole asset of Trust Number
11 Two.”

12 So, we have Trust Number Two owning 100 percent of the oil
13 assets. If you then float to tab number two, we have Jacqueline Montoya’s
14 consent to this Petition. She says:

15 “I am a contingent income beneficiary of the Trust in
16 paragraph 1.”

17 In paragraph 2, it states:

18 “I have read the Petition and believe it to be true and correct
19 to the best of my knowledge.”

20 Tab number three is the same exact consent from Kathryn. And tab
21 number four, if we want to look at it, is a copy of the actual Trust instrument
22 which states, essentially, the exact same thing. So, Eleanor, after Marjorie
23 passed, was always entitled to 100 percent of the oil assets or the oil income
24 as we’ve been calling them in this case.

25 During Marjorie’s lifetime, Eleanor – there were assets. There were

1 funds that Eleanor gave to her mother, 65 percent. I don't think there's any
2 dispute about that that she was assisting, supporting her mother. But the Trust
3 was never amended, nothing was ever changed. Eleanor is the income
4 beneficiary under Trust Number 2, which owns 100 percent of the oil assets.
5 She has been entitled to 100 percent and still is, nothing has changed that.

6 The fact that the daughters were receiving some money for some
7 period of years does not change the terms of the Trust, and Eleanor is entitled
8 to not pay her daughters that money during her life.

9 MR. WARNICK: Your Honor, I don't -- we can respond to all this, but
10 they're arguing the issues under the two cases that we've been litigating.

11 THE COURT: Okay.

12 MR. WARNICK: We've reached a Settlement Statement --

13 MS. RENKA: I'm getting there.

14 MR. WARNICK: -- and an Agreement that resolved all of these issues. I
15 mean, we're more than happy to go in and show that her representations --

16 THE COURT: Okay.

17 MR. WARNICK: -- here are not accurate.

18 THE COURT: Right. I mean, that's the reason we have this litigation.

19 MS. RENKA: And I'm getting there, Your Honor, as to how this ties into
20 the Settlement.

21 THE COURT: Uh-huh.

22 MS. RENKA: So there's a couple of reasons that we thought it was
23 important to go through this exercise with the Court. Number one, to show
24 that Eleanor's not doing anything irrational. She's not acting out of pure
25 emotion and acting irrationally. She had a falling out with her daughters and

1 she decided to stop giving them a percentage of her assets.

2 And Number two, she certainly didn't breach any duties as the
3 Trustee, she's free to give money, share money; it's her money. But most
4 importantly, for this particular motion is, this goes to why or another reason to
5 show the Court Eleanor's state of mind and why she never would have agreed
6 to a 55-45 split of this oil income in favor of her daughters, when she is clearly
7 entitled to a hundred percent.

8 And I'd also note that the division of the interim monies that's on
9 appeal there was never a bond posted, so that never came to fruition on this
10 Court's order. So with that backdrop, now, we get into settlement discussions.
11 At Jacqueline and Kathryn's request, in 2013, there was a mediation in
12 Midland, Texas with a private mediator. Eleanor had her Texas Counsel there, it
13 did not settle. We had the Settlement Conference here with Judge Saint-Aubin,
14 a Nevada Supreme Court Settlement Conference. Eleanor had her Texas
15 Counsel present, it did not settle.

16 This hasn't settled because Eleanor's entitled to a hundred percent,
17 and she would not agree to take a minority share. So now we move onto the
18 actual purported Settlement Agreement. This transcript is nothing more than a
19 transcription of a conversation between attorneys, it would be the same as if
20 they had put a recorder on the table and recorded the conversation; it has not
21 been reduced to writing. It has not been signed by the parties or counsel and it
22 was never entered into the Court's minutes as an order.

23 Now we heard a lot of discussion about the *Resnick* case. The
24 *Resnick* case is from 1981. Then we have *May v. Anderson* in 2005, which
25 basically confirms that a Settlement Agreement is a contract, all the elements

1 of contract have to be met and that a release is a material term. We then have
2 two cases from the Nevada Supreme Court in 2012 and 2014: *Jones v. Sun*
3 *Trust* and the *Power Company v. Henry* which both say: Not only does a
4 Settlement Agreement have to be a contract under *May*, it also has to be in
5 writing and signed by the parties or counsel or entered on the Court record,
6 pursuant to DCR 16 and EDCR 7.5. Both those cases rely on that.

7 So, obviously, as the case law has moved along we not only need
8 to be a contract under *May*, we need to be signed and in writing or entered on
9 the Court minutes to be enforceable. We simply don't have that here, Your
10 Honor. Eleanor wasn't even in the room when it was read on the record. And
11 then, if we move along to the terms, we have several material terms that are
12 either completely missing or uncertain and indefinite, which doesn't even get us
13 through the *May* requirements.

14 We have a discussion of back payments, but we're not sure if they
15 start in April 2013 or June 2013. We also have a mention of delayed
16 payments, delayed payments are never addressed or defined. We have a
17 discussion of the fees, costs and accounting for the back payments, but we
18 don't have any specifics. And most importantly, what's not addressed when
19 we're talking about fees is the attorneys' fees of Texas Counsel related
20 specifically to the suspension of the payments of the oil income that was
21 caused by Jacqueline and Kathryn notifying the oil companies that there was a
22 dispute, and causing all the oil companies to cease distributing oil income on the
23 Texas property.

24 Mr. Johnston, in Texas, is still negotiating with some of those oil
25 companies that still have not released the suspension on those payments. None

1 of this was addressed, and this is a significant amount of time and fees that
2 would obviously be material. We have future payments but no discussion of
3 similar things, fees, costs, and accounting.

4 We have a mention of Federal Income Tax when it comes to the
5 attorneys' fees and what the consequences might be related to the attorneys'
6 fees, but we have no other provisions built in for who might bear the burden, or
7 how these Federal Income Tax consequences are going to be addressed. This
8 all should have been discussed with CPAs and Counsel during the settlement
9 negotiations and it wasn't.

10 The release does not address these possible claims that the Trust
11 might have without the suspension of these oil assets. We have possible
12 tortious interference and possible slander of title claims that haven't been
13 addressed. Only this litigation before this Court was addressed, at all, in the
14 transcript. And we also have the contingency by the term of the transcript
15 itself. It says that the Settlement will be reduced to writing in a Stipulation and
16 Order, never happened. It says: It will be signed by Counsel and the parties,
17 never happened. It said it will be submitted to the Court for final approval,
18 never happened, and contingent upon complete performance of the parties.

19 Well, to have this particular Settlement Agreement contingent upon
20 complete performance doesn't even make sense, because performance would
21 be ongoing into the future for the payments. So, by its own terms, it couldn't
22 be final. And, as Your Honor was discussing before, there's an issue here of no
23 meeting of the minds. We have evidence from Eleanor that she didn't
24 participate, she didn't approve, she didn't agree, she didn't understand. We
25 have no evidence to rebut that.

1 The only evidence before the Court on a meeting of the minds –

2 THE COURT: That's because she has selectively chosen when and where
3 and as to what she's going to waive her attorney-client privilege. So I guess
4 that just kind of begs the question of, you know, by selectively waiving it, has
5 she waived it such that it would be appropriate to have counsel testify?

6 MS. RENKA: Well, respectfully, Your Honor, great pain – we went
7 through great pains, and so did Eleanor, to not waive the privilege. And that is
8 because Nevada Law is clear that, conveying facts is not waiving privilege.
9 And just because a fact such as, the case is settled, is conveyed to Counsel,
10 does not make it privileged; it's only communications between the client and
11 the attorney that are privileged.

12 THE COURT: Okay.

13 MS. RENKA: The only –

14 THE COURT: So then, as I said, she's very careful, and not only in her
15 own affidavit, but the affidavit of Counsel that is provided where he indicates
16 that: I had this initial conversation in which I was told there was a settlement
17 and then the – and then the call was dropped – the cell phone was dropped
18 because of a lost cell phone signal. [Cough heard]. Carefully he does not say:
19 I advised her against this. I told them I didn't agree – whatever. He – here's
20 my concern.

21 “I was never informed, throughout the day, of the details of
22 the terms of any proposals. I did not have any discussions with
23 Eleanor to gain an understanding of the details of proposals, and I
24 was not involved in discussions. Later that same evening I received
25 a telephone call from Eleanor and Suzanne at approximately 7 or 8

1 p.m.”

2 MS. RENKA: If we put what the conversations are, it's a Waiver of
3 Privilege.

4 THE COURT: Right. So what use is this to me in this analysis? It's of no
5 use to me.

6 MS. RENKA: Well, there's a couple uses, Your Honor, I mean --

7 THE COURT: He doesn't -- he doesn't say: She told me she'd agreed to
8 a Settlement, she didn't agree with Settlement. She told me the terms, nothing
9 here; it doesn't tell me anything, it's just that she called me.

10 MS. RENKA: And the -- the way we try --

11 THE COURT: That's nice.

12 MS. RENKA: The way we're trying to explain the story to Your Honor
13 without waiving privilege, it was not easy to do; obviously it would have been --

14 THE COURT: Clearer.

15 MS. RENKA: -- much easier to say: This happened, that happened, and
16 then you would understand our point. We're trying to show you that these
17 phone calls were made, discussions were held --

18 THE COURT: Because you anticipate the general principle that Counsel's
19 made, which is that, that it's agency, and that the parties are entitled to rely on
20 the assumption that Counsel is authorized to speak for their clients. And if
21 Counsel aren't allowed to speak for their clients then the whole concept of
22 attorneys negotiating settlements on behalf of their clients breaks down and,
23 you know, where are we? Nobody's ever going to be able to negotiate a
24 settlement ever again. The whole Settlement Conference Program that Mr.
25 Saint-Aubin, who is quite skilled at working on, is useless to us.

1 If attorneys don't have the ability to negotiate for their clients, what
2 is the point of ever talking to an attorney about settling a case without this?

3 MS. RENKA: Yes, I completely understand your concern, Your Honor,
4 and that's why Nevada has a presumption that an attorney can bind their client
5 in settlement negotiations, but it's a rebuttable presumption. And the only
6 evidence that we have here is Eleanor's rebutting that presumption, saying for
7 several reasons, that there wasn't authority.

8 First and foremost, she's saying: I never agreed to stop the
9 deposition that was supposed to go forward that day. I think it was set aside
10 for Jacqueline's deposition. She never agreed to vacate that and it was never
11 vacated. She wasn't able to talk to her advisory team whom she had always
12 consulted regarding this litigation, including in a mediation in Midland, and in the
13 Settlement Conference with Judge Saint-Aubin.

14 Jeff Johnston, whose declaration you have, has always been a part
15 of that advisory team because he is on the ground in Texas and he has all the
16 knowledge about the practical day to day realities of the oil income assets,
17 managing the property, the fees and costs associated with it. For instance, the
18 one big huge thing that probably would have been good to know during the
19 settlement --

20 THE COURT: She realizes that she's not settling a case in Texas, she's
21 settling a case in Nevada. I don't care what Mr. Johnston thinks about the oil
22 and gas revenues in Texas, it doesn't have anything to do with me.

23 MS. RENKA: Well, it does but --

24 THE COURT: What does she possibly think that Mr. Johnston's got
25 anything to do with this because --

1 MS. RENKA: I'll give you one –

2 THE COURT: -- he's not going to be here at the trial.

3 MS. RENKA: I'll give you one perfect example of why he is crucial. How
4 can you know or agree to splitting up, by percentages, oil assets when you
5 don't know what the price of oil is and what it's predicted to be, tomorrow, the
6 next day, the next month?

7 THE COURT: It's less and less every day.

8 MS. RENKA: But that's something you would want to know if you were
9 divvying up the percentages of income that's coming from oil, you have to
10 know things like that. She would also have to know what the tax
11 consequences were going to be, and those are things that –

12 THE COURT: And after he'd been – he apparently had come here from
13 Texas and Mr. Saint-Aubin, being a nice guy, lets him participate in the
14 Settlement Conference of a Nevada case, which Mr. Saint-Aubin, very skilled,
15 perhaps thought there would be some benefit in having this person, who had no
16 right to be there and no authority from the Court, to participate. Mr. Saint-
17 Aubin, nevertheless, out of the goodness of his heart, let Mr. Johnston
18 participate. Mr. Johnston does realize that, I'm sure.

19 MS. RENKA: I'm sure he does, Your Honor –

20 THE COURT: So –

21 MS. RENKA: -- but I mean I think he is crucial.

22 THE COURT: The fact that they – a week earlier, had the benefit of Mr.
23 Johnston's skill and knowledge -- I don't dispute the fact that I know nothing
24 about oil and gas, not a big commodity in Nevada. Maybe if we were talking
25 about lithium [laughter heard] we -- there might be some attorneys who had

1 some knowledge, but people in the valley don't really know much about oil and
2 gas, I'll grant you that. And I'm sure Mr. Saint-Aubin benefited from his
3 presence, that was a week earlier.

4 MS. RENKA: I understand, Your Honor. Well, we still have the rebuttable
5 presumption that an attorney can bind the client.

6 THE COURT: Right.

7 MS. RENKA: That here, we have evidence saying that: There was no
8 authority to bind Eleanor. That being the only evidence we have is to that
9 point, and we can't have other evidence because these Counsel weren't in the
10 room with Eleanor. Eleanor was never in the room with the parties or the court
11 reporter, so it's the only evidence that we have.

12 So the only evidence that we have before the Court is that there
13 wasn't authority and there wasn't a meeting of the minds. I mean, we
14 submitted that – we submitted that fax to Your Honor with proof of fax of
15 when it was sent, trying not to waive the privilege. And then we have, in Mr.
16 Powell's declaration, a statement that on October 28th, six days later, Mr. Lum
17 said he was still working on the settlement documents despite that written
18 correspondence. Clearly, there's an issue of authority here.

19 The only evidence we have is that Eleanor didn't give authority and
20 there was no meeting of the minds because, how could Eleanor agree to divvy
21 up, by percentages, these oil income assets, without knowing what the tax
22 consequences are going to be, without knowing what the price of oil is? And
23 why, given the background that we discussed in the beginning when she's
24 entitled to a hundred percent, would she take a minority share? It just doesn't
25 make sense, Your Honor.

1 And again, I'll reiterate that great care was taken not to waive the
2 privilege by trying to only convey facts to Your Honor and not communications
3 between attorney and client. And Mr. Johnston's declaration saying that he
4 talked to Mr. Mugan and Mr. Mugan said it was settled, that's just the facts.
5 The case is settled; there's no privilege there; there's no legal advice there;
6 that's not a waiver of privilege.

7 And Mr. Mugan saying that the case is settled is exactly the
8 problem here. There was no authority, there was no meeting of the minds.
9 And as I was discussing before, Your Honor, before we started discussing the
10 authority issues is, there's a lot of material terms that are clear and indefinite
11 and terms that are missing, like, what the price of oil is. How are we going to
12 deal with the Federal Income Tax consequences? Very important facts in a
13 case like this. We're not talking about a couple thousand dollars a month.

14 When 65 percent of the distributions were being made it was
15 \$60,000 a month, taxes, the price of oil, day to day fluctuations; that becomes
16 very important when you're talking about that much money. And as far as any
17 argument about Eleanor's prior Counsel, as far as Mr. Mann, for Your Honor's
18 information, there has been a Bar Complaint filed and there has been a motion
19 filed with Judge Tao to seal and stay that record, because we think that that
20 Complaint, on its face, waives a privilege that Mr. Mann does not have the right
21 to waive.

22 And we would ask, Your Honor, to strike any reference or even that
23 Complaint in the record, in this case, at least pending Judge Tao's decision on
24 sealing that.

25 THE COURT: I – I don't think it is in the record. I don't presume

1 anything from that case in the record. I think Mr. Warnick mentioned it but I
2 don't think it's –

3 MS. RENKA: It's attached to –

4 MR. WARNICK: It's attached –

5 MS. RENKA: -- their pleadings.

6 MR. WARNICK: -- as an Exhibit to our Reply now.

7 THE COURT: Okay.

8 MS. RENKA: If it is sealed, Your Honor, we'll be filing a notice of that –

9 THE COURT: Okay.

10 MS. RENKA: -- with Your Honor, as well. So, in conclusion, for all these
11 reasons that we've discussed today, Your Honor, there cannot be an
12 enforceable settlement in this case. We have no meeting of the minds, we
13 have no authority of Counsel to bind Eleanor; and the only evidence before this
14 Court is that there was no authority. We have serious problems with the
15 material terms, some are totally missing, and a lot of the ones that are there are
16 not certain and definite, as required by *May*.

17 On the face of the transcript, the contingencies within the transcript
18 were not met, no writing, no signature by the parties, no signature by Counsel,
19 not submitted to the Court for approval. And with that, Your Honor, we ask
20 you to deny the Motion to Enforce.

21 THE COURT: Thanks.

22 MR. WARNICK: Even though it makes no difference whether or not the
23 Settlement Agreement was reached, I'd just like to address, briefly, Counsel's
24 assertion that their client is entitled to a hundred percent of the oil income all
25 along and that she's just been a generous daughter, giving her mother 65

1 percent share for 34 years and letting her daughters also get that share.

2 THE COURT: Right. I don't think we need to talk about that because,
3 you know, they lost on that a long time ago, that's why we're having a trial. I
4 mean, that's the assumption, that's her position, that's fine; but if that was the
5 issue, I would have granted Mr. Solomon's Petition three years ago, we
6 wouldn't even be having a trial, so it's -- I don't need to hear it.

7 MR. WARNICK: Well, just to let you know, Mr. Solomon's Petition three
8 years ago, four years ago, had nothing to do with what's before the Court now.

9 THE COURT: Right. And that's why I said is: They tried to come in and
10 argue this, initially, when this case -- Mr. Powell will remember way back when,
11 that was the initial position that was taken was, she's entitled to 100 percent
12 of it. And the only reason why this was ever set for an evidentiary hearing was
13 because I couldn't find, on the record that she was. We have to have a hearing
14 on that. So that's what it's about, that's what the case is about.

15 MR. WARNICK: Well, yeah, yes.

16 THE COURT: So --

17 MR. WARNICK: And also, if you look at the Trust terms.

18 THE COURT: I -- she may not understand that but, you know, that's
19 what it's about.

20 MR. WARNICK: But the Trust terms also provide that this oil property
21 income -- they're asserting that it all went into Trust Number Two.

22 THE COURT: Correct.

23 MR. WARNICK: If you look at the Trust it says, clearly, on page 3 that
24 Trust Number Three will have a portion of that oil income --

25 THE COURT: Yeah.

1 MR. WARNICK: -- equal to the maximum Federal Tax deduction.

2 THE COURT: That's why I said we have -- we have to have a trial.

3 MR. WARNICK: Okay.

4 THE COURT: Based on this record, you couldn't make that determination,
5 that's why you have to have a trial. Like I said, she may not understand that --

6 MR. WARNICK: Okay.

7 THE COURT: -- but there's a reason why there's going to be a trial.

8 MR. WARNICK: There are a couple things they've argued about the
9 terms of the settlement statement not reflecting a clear Settlement Agreement.
10 The release says that: All claims known or unknown, contingent or
11 uncontingent, will be released by the parties. So, this allegation that the
12 tortious interference claim that Marjorie supposedly has against their daughters,
13 can still go forward, is rebutted clearly by the terms. Everything has been
14 settled and no more claims are going to be held. So that's about as clear as
15 you can get on any type of a release language I would believe. The argument
16 that Ms. --

17 THE COURT: Well, I guess my problem Mr. Warnick is is that, you know,
18 the case law -- the more recent case law has always been, if somehow if you're
19 not in a courtroom putting this on the record in a courtroom, you need to have
20 something signed and that's the -- the foreclosure mediation case where you've
21 got a mediator, a Court Appointed Mediator who's sitting there and he writes it
22 out and everybody signs it; and if you sign it you're bound.

23 I think that -- as I said, I don't think -- I don't think we can argue it.
24 I don't think Counsel's even attempting to argue that Mr. Mugan didn't have
25 the authority to negotiate for his client. There's no point in talking settlement

1 negotiations in any case, ever, if the attorney doesn't have the authority to
2 negotiate, you have the right to assume that. The problem is, you've got to
3 settle an agreement that the Counsel read into the terms. And if – if the parties
4 had come into the room and had it read to them and said: Yeah, I agree with
5 that, then we wouldn't even be – we wouldn't have that problem if somehow
6 there was some representation from the individuals that they consent to this.

7 Where it breaks down under, you know, the more recent case law
8 is that, it's not reduced to a writing or some sort of a position where – not an
9 attorney agrees to it, but where the individual on some sort of a record says:
10 Yes, I offer as my attorney, those are the terms I'm going to accept. You can
11 work out – because I agree with you, I think the rest of the terms you can work
12 out; that's the whole point of having to say: We're going to write a Settlement
13 Agreement is, you got to write it all out. You got to have a release, you got to
14 write all these things out, everybody understands that, and those are just
15 additional terms.

16 Because the framework's there it all could have been done at a later
17 date. My problem is that, where I'm breaking down here, as Counsel's pointed
18 out where – whether it's, you know, you can't call it buyer's remorse, some
19 settlement remorse sets in. And the minute Ms. Ahern gets a phone call
20 through to Suzanne after walking out of the office and Suzanne says: You
21 can't agree to that, or whatever Suzanne said to her.

22 And whatever Mr. Johnston said like: Oh my God, this has got
23 terrible – and maybe it does – maybe it was a really bad deal for her. And
24 maybe it really does have bad repercussions in Texas, that's a problem for them
25 to deal with in Texas; it doesn't have anything to do with my case. I don't

1 care, it doesn't have any bound -- any -- anything to do with this case, it just --
2 I'm sorry, it doesn't. This is just about the Trust. So, whatever issues she may
3 have had when she gets out of that room and talks to Suzanne and talks to the
4 attorney in Texas who's like: Oh My God, you're going to end up paying all
5 these taxes or whatever, I don't know; she never agrees.

6 We never -- we don't have anything telling us that she had ever told
7 Mr. Mugan: Okay, I'm okay with all that, that's great; I'll just tell Suzanne and
8 these people in Texas and we're all -- we're good to go. Maybe she told them
9 that, I don't know. She's very careful to not waive the privilege and tell us --
10 tell us that. All she says is: As a matter of fact, I sent this and we don't have
11 anything to rebut it to Mr. Burr. I don't know why they continued to work on it
12 if they got that from her. The fax transmittal says -- shows that she got it. I
13 don't know, it seems to be on Mr. Burr's letterhead. Whole thing's just weird.

14 So where she says: I need some more time to think about this,
15 which, you know, even her own note, after the fact isn't -- I don't agree with
16 this, I never gave you permission; it doesn't say any of that. It just -- I need
17 some time to think about this. And who knows, when she talks to Mr.
18 Johnston, maybe this was a horrible idea and it was going to cause all sorts of
19 bad repercussions and, I don't -- I know Texas doesn't have an income tax, but
20 they may have other kinds of taxes.

21 I -- that's what I just don't know. I don't know why she had this
22 concern, after the fact, and is now saying, for whatever it's worth: I never told
23 Mr. Mugan I'd agree to those terms.

24 MR. WARNICK: We think we understand why that happened because the
25 people who are influencing her are counting upon receiving and having control

1 of her funds and they were unhappy, they wanted more.

2 THE COURT: Uh-huh, uh-huh.

3 MR. WARNICK: They don't understand, really, what's going on, really,
4 legally, they just want more money. But that doesn't mean that because they
5 changed her mind that that then destroys the agreement that she agreed to and
6 that her attorneys agreed to –

7 THE COURT: Okay and see –

8 MR. WARNICK: -- and gave us permission to do.

9 THE COURT: -- see that's my – that's my problem. All of what happens
10 after the fact it – it's after the fact. I need something – if you look at these
11 more recent cases where they say: You sit down there at your Foreclosure
12 Mediation with your Foreclosure Mediation Judge, he writes out the terms, you
13 sign it. But the fact that you have to work out some terms later and you're
14 going to have to like, you know, take off a foreclosure sale or, you know, come
15 to sort of terms of a release later, doesn't affect the fact you've got a
16 settlement.

17 You've got a settlement when you sit down and somebody agrees
18 to the terms and you sign it. And where we don't have the person who would
19 have to sign signing anything saying: I agree – I agree that we're going to –
20 these are the -- this is what I'm going to work out. Or even saying on the
21 record: Yes, that's how we're going to settle this case. I agree on the record,
22 you know, we've got to work out a Settlement Agreement. I got to talk to my
23 tax attorneys because this may have bad tax consequences, it may affect
24 something.

25 MR. WARNICK: No, I understand what Your Honor is saying, it's really

1 an issue of proof.

2 THE COURT: Right.

3 MR. WARNICK: It's really an issue of: Is there satisfactory proof that a
4 contract was negotiated? And we submit, under the *Mann* case, because in the
5 *Mann* case they had the same issue there, there wasn't a signed thing and they
6 were arguing: No, no, we can't –

7 THE COURT: Uh-huh.

8 MR. WARNICK: -- have an agreement here because they didn't sign off
9 on the Release, and the Supreme Court said: No, that's not the test. The test
10 is: Was there sufficient proof that a contract had been consummated? In this
11 case, what more sufficient proof can you have than parties after they've
12 already agreed that they've reached the Settlement Agreement. Mrs. Ahern is
13 in one office, our clients' in another office; they agree that there's been a
14 Settlement Agreement and the attorneys then agree to come together and to
15 make sure that this is finalized. They ask a licensed court reporter to take
16 down the Settlement Agreement, and in there, say they settled the case.

17 THE COURT: Correct.

18 MR. WARNICK: That's equivalent to coming into Court and having the
19 attorneys do the same thing, and that doesn't require that the parties then –

20 THE COURT: I will tell you Mr. –

21 MR. WARNICK: -- have to each sign after.

22 THE COURT: -- Warnick, when I do Settlement Agreements, I make the
23 people stay, I make the attorneys state the terms, and I make the parties
24 themselves, on the record say: Yes, I understand; yes, I agree.

25 MR. WARNICK: I think that's a very wise thing to do, Your Honor, as you

1 can see here.

2 THE COURT: Yeah.

3 MR. WARNICK: But that doesn't mean that what we did was not a final
4 enforceable contract. So – but I understand Your Honor's concern, we just
5 submit that there's such clear evidence here --

6 THE COURT: Uh-huh.

7 MR. WARNICK: -- that those attorneys representing Mrs. Ahern agreed
8 with their agency authority, that we have a contract and there is absolutely no
9 question of fact as to that having occurred. And the fact that she then didn't
10 come in and then later confirm it in writing doesn't affect, under Contract Law,
11 the enforceability of that contract. I understand what Your Honor's saying –

12 THE COURT: Yeah.

13 MR. WARNICK: -- but we respectfully submit that that was a viable Final
14 Settlement Agreement. Why would we come in and sit down before a licensed
15 court reporter, take the time and the expense to do that?

16 THE COURT: Right, I mean, I understand that your clients believe they
17 had an agreement, that your clients acted in reliance on that agreement, that
18 your clients thought this whole thing was resolved and –

19 MR. WARNICK: And Mrs. Ahern did too, Your Honor, with her – with her
20 attorneys at that time. It was only after she left that office, went home and
21 talked with her advisors –

22 THE COURT: Uh-huh.

23 MR. WARNICK: -- that they changed her mind and said: No, no, we're
24 going to contest this.

25 THE COURT: Right.

1 MR. WARNICK: That, we submit, is not valid grounds to this –

2 THE COURT: Yeah, I, you know, as unfortunate as it is because I – as
3 I've said a number of times, I think Mrs. Ahern may not appreciate what this
4 case is about. And she may not understand that her belief that she's entitled to
5 a hundred percent is her belief. And it's why there's going to be a trial because
6 her belief may not be correct; I don't know, we have to have a trial.

7 And whatever advice she's getting in Texas, I understand it involves
8 oil and gas leases in Texas, doesn't have anything to do with the Trust. And
9 what may have been, unfortunately for her, a really good deal, has been –
10 unfortunately because she had second thoughts, I can't enforce it. She never
11 said anywhere on the record that she agreed to it, and here's the problem. It –
12 I don't know what's going to happen in this trial; I don't know what the
13 evidence is.

14 This could go really badly for her and she could end up in a much
15 worse position, to and including paying all the attorneys' fees, that she
16 apparently has issues with, or her daughters. This is conceivably going to be a
17 really bad idea on her part, and whatever her advisors may have advised her to
18 do, I'm not sure they understand what the whole point is here and what we're
19 talking about.

20 Because whatever the oil and gas concerns are in Texas, doesn't
21 have anything to do with interpreting a Trust under Nevada Law, and I think
22 they maybe missed that. And as I said, I appreciate Mr. Saint-Aubin allowing
23 people who had no authority and no right to be there, to participate because he
24 thought it might help Mrs. Connell settle her case.

25 It was a good experiment on his part, appreciate that he did that,

1 hopefully they learned something through talking to Mr. Saint-Aubin who's very
2 skilled, that maybe with new counsel they can discuss and make sure she
3 understands that this Court has never found she was ever entitled to a hundred
4 percent, ever. That's the problem. Just because she believes that doesn't
5 make it a fact, or more importantly, the law.

6 That's why we're having a trial. And if she's wrong it's worse for
7 her. If she's right she's going to come out great, because yeah, she'll get a
8 hundred percent. But if in the end it turns out she's wrong, it's going to be
9 really bad, like a way worse deal. And if she's not willing to settle the case
10 then that's what she's accepting and the risk that she's got to take, so we're
11 going to assume she understands the risks she's taking, and the Court will be
12 interpreting all these documents to see – to make that determination: Is she
13 right? She's entitled to 100 percent or the daughters' right, she's only entitled
14 to 35?

15 I just – I can't enforce a Settlement Agreement because they have
16 nothing that indicates she agreed, which I think under the more recent case
17 law, we've got to have something saying – whether she says it on record or
18 she says it – actually signs something in writing, I don't think the terms – I
19 think the terms are adequate. I think a Settlement Agreement was there; I just
20 have nothing telling me she agreed to it.

21 So, I'm going to have to deny the motion. We're going to go
22 forward and I just – I just – again, I want to make it really clear on the record
23 for Mrs. Connell and more importantly, perhaps, for these advisors, whoever
24 they may be, that they may not be giving her, you know, the best advice on
25 Nevada Law --

1 MR. WARNICK: Thank you.

2 THE COURT: -- and, you know, respectfully Counsel, Court's never ever,
3 ever found she's entitled to 100 percent --

4 MS. RENKA: Understood, Your Honor.

5 THE COURT: -- otherwise this case wouldn't even be happening.

6 MS. RENKA: Understood, Your Honor.

7 THE COURT: So, I just think somebody needs to --

8 MS. RENKA: Given your --

9 THE COURT: -- disabuse her of that idea.

10 MS. RENKA: Given your decision, Your Honor, can we address a couple
11 housekeeping items?

12 THE COURT: Sure.

13 MS. RENKA: Okay. So with Your Honor denying this today we have the
14 case moving forward, and currently we have, on January 14th, my
15 understanding is, essentially, five pending petitions and motions -- different
16 motions that have been pending for a while that were all filed in the Trust case.
17 Two points on that. I think we discussed last time that Your Honor potentially
18 -- decision on some of those motions could be dispositive of the Trust case and
19 potentially the Will case. And all of those Petitions were filed in the Trust case,
20 which, technically, is on appeal right now.

21 MR. WARNICK: Well, the only case is -- the only matter that's on appeal
22 in the Trust case is a portion of your order last summer saying that we -- our
23 clients could start receiving income if they could post a bond. They've never
24 been able to post a bond because the cost is just astronomical.

25 THE COURT: That's the -- that's the joy of probate work, you can appeal

1 bits and pieces of it and the rest of it just keeps plowing right along; there's no
2 stay. It's going forward. Like I said, I just think somebody needs to sit down
3 with her and explain that there's a lot of balls in the air here and this, you
4 know, have you seen Bob Vannah's commercial talking about the train barreling
5 down the tracks? That's what this is and, you know, she has a settlement here
6 that, you know, I've said, looks like a pretty reasonable agreement to me.
7 That's not what my – that's not what my job is here. I'm not here to settle the
8 case.

9 So she chose not to settle the case, that's her – she did that so –

10 MS. RENKA: So proceeding forth with trial, Your Honor.

11 THE COURT: You bet.

12 MS. RENKA: Briefing Schedule on trial briefs and other such things?

13 THE COURT: Shouldn't they all already be in? You know, I thought we
14 had a set.

15 MS. RENKA: And --

16 MR. WARNICK: At the last hearing Your Honor indicated we should have
17 a trial brief by January 14th.

18 THE COURT: Okay.

19 MR. WARNICK: And then --

20 MS. RENKA: And also the -- on those five pending motions set on the
21 14th --

22 THE COURT: Uh-huh.

23 MS. RENKA: -- they haven't all been briefed yet, so when would Your
24 Honor like oppositions and replies?

25 THE COURT: Okay. Well, working back from January 14th we need -- we

1 need replies on the 9th, which means, oppositions would be like a week from
2 today?

3 MR. WARNICK: Pardon?

4 THE COURT: I said, a week from today.

5 MR. WARNICK: Okay, that would be the – what's today? That'd be 24th
6 then, huh?

7 THE COURT: Uh-huh.

8 MR. WARNICK: Day before Christmas, very good.

9 THE COURT: Right.

10 MR. WARNICK: Just – we advised the Court at the last hearing that the
11 one motion they filed to dismiss the case, we have also prepared an opposition
12 to that and a countermotion to dismiss the case, which has not yet been filed
13 because of the settlement that we thought occurred.

14 THE COURT: Right.

15 MR. WARNICK: So we'll be filing that opposition and our counter petition
16 on or before the 24th.

17 THE COURT: If you can work out some other sort of a schedule great,
18 but, you know, I don't see what else we can do.

19 COURT CLERK: I have the pretrial conference on the Will Contest on the
20 13th, do you want to move that to the 14th so they'll be heard on that?

21 THE COURT: Okay. Uh-huh, Yeah, so because we were scheduled for a
22 pretrial conference on the Will Contest trial on Tuesday to do the – the Tuesday
23 before the trial starts. So since this trial's going to – since you're already going
24 to be here on the 14th we can – we can move it to the same day and move all
25 their hearings, to what, 10 o'clock? Give a specific --

1 COURT CLERK: Yes. I have trouble – I have trouble setting sessions
2 especially like pretrial to get – because I don't get it as a drop down.

3 THE COURT: Yeah, they don't –

4 COURT CLERK: So, if we all know it's 10 --

5 THE COURT: They don't – their menus not the same.

6 COURT CLERK: -- it probably will show up at 9, but it will be 10 again.

7 THE COURT: That's this issue of us having to deal with – with the
8 Family Court, which they have different – they have different settings than we
9 do in their – in their Odyssey, so we can't really deal with it the same way. So
10 we'll move everything so you don't have to come back on the 13th and the 14th,
11 just come back on the 14th at 10 a.m.

12 And if you can work out some other schedule but just like working
13 with something, we just need – we just need everything in no later than the
14 Friday before.

15 [Court and Court Clerk confer]

16 MR. POWELL: Your Honor, can I – can I just, for a couple minutes, just
17 really, just go on the record real quick just for purposes of preserving the
18 record.

19 THE COURT: Uh-huh.

20 MR. POWELL: I'm not asking you to change your opinion or anything like
21 that, but, really, why I want to go on record is just because what – the
22 statements I'm about to make did not – we're not able to get into our Reply.
23 We had a very short turnaround window and I've been still researching and
24 what not.

25 THE COURT: Uh-huh.

1 MR. POWELL: So if I can just have two minutes, basically the Court
2 record time just to put my statements on the record. May not be aware but
3 there is actually a case, a 2005 case known as *Kahn v. Morse & Mowbray* and
4 I'll give the cite for the purpose of the record, which is 121 Nev. 464. In
5 reading this case, it appears to me that this is basically our fact pattern,
6 verbatim. And if I could just read to the record the portions that I want to point
7 out. It states:

8 "The District Court found that the settlement was discussed
9 and that the parties had arrived at an agreement to settle the case,
10 including any and all claims that each party had or may have had
11 against any other party. The District Court determined that the
12 parties, together with counsel, met and memorialized their
13 agreement by verbally stating it to a certified court reporter.

14 Additionally, the District Court found that all the parties
15 intended the recorded settlement to be a final and binding
16 agreement on the parties, and that each of the parties agreed to the
17 terms expressed in that agreement, including the dismissal of any
18 and all claims between the respective parties.

19 The District Court noted that all three of the attorneys had the
20 opportunity to speak on the record and to provide any explanations,
21 supplements, or additions that the parties felt – that the attorneys
22 felt would better reflect the agreement of the parties, and to
23 express, freely, any concerns they had with the terms."

24 And I just want to note, Justice Gibbons made a statement that
25 said:

1 “The District Court found that there are no other defenses to
2 the enforcement of the Settlement Agreement, and that there was
3 no legal reason for not enforcing a settlement agreement; I agree.
4 THE COURT: Uh-huh.
5 MR. POWELL: Lastly, I just want to point out –
6 THE COURT: I think in – that was one where the parties were in the
7 room, as I recall that case?
8 MR. POWELL: It’s not clear from that record so –
9 THE COURT: Well –
10 MR. POWELL: -- that may be a distinction, you may be completely right --
11 THE COURT: Yeah, this –
12 MR. POWELL: -- but it –
13 THE COURT: Maybe I’m – maybe it’s just because I know John
14 Mowbray.
15 MR. POWELL: Oh, do you? Okay.
16 THE COURT: That’s my recollection of the case --
17 MR. POWELL: So I – I –
18 THE COURT: -- so.
19 MR. POWELL: -- just want to put that on the record, it looks like that is a
20 carbon copy --
21 THE COURT: That’s what I said --
22 MR. POWELL: -- of our fact pattern, but –
23 THE COURT: That’s why I said: I don’t have any problem doing a
24 verbally, but I think you have to have the people in the room and they have to
25 say on the record – even if they’re not in the room together, you have to say on

1 the record: Yeah --

2 MR. POWELL: Understood.

3 THE COURT: -- I understand what my -- because the attorneys are the
4 ones who are going to talk about the terms, absolutely, the attorneys are going
5 to have to talk about the terms.

6 MR. POWELL: Understood, Your Honor. And then the last point I just
7 want to make in response to their assertions about the application of EDCR is,
8 pursuant to, and this is a 2013 decision. The citation is 310 P.3d 574. It's
9 known as: *In re City Construction v. Lien Master Litigation*. The Court stated
10 there:

11 "We interpret statutes to conform to reason and public policy.

12 In so doing, we avoid interpretations that lead to absurd results."

13 Lastly, there is a 2014 decision, which I believe, if I'm not
14 mistaken, may be one of these cases that you're mentioning about the
15 foreclosures and the defaults and mediations and what not. But that, that case
16 is *Schleining v. Cap One, Inc.*, and again, a 2014 decision. The citation on
17 there is 326 P.3d 4 and in that case the Court stated:

18 "Determining whether strict or substantial compliance with a
19 statute as required, we examine whether the purpose of a statute or
20 a rule can be adequately served in a manner other than by technical
21 compliance with a statutory or rule language."

22 THE COURT: All right, and that --

23 MR. POWELL: And with that said.

24 THE COURT: -- and that's why, like I said, I think it's significant that
25 there was a Settlement Conference with Mr. Saint-Aubin who, as a court

1 appointed official, if he had said there was a settlement and wrote down
2 whatever he thought the terms were, that's different and –

3 MR. POWELL: Uh-huh.

4 THE COURT: -- I – and that's why I think, you know, these – there are a
5 lot of those cases in the mortgage foreclosure area where people have second
6 thoughts after attending those mortgage foreclosure mediation hearings and
7 have issues. But, they tend to pretty much enforce them if the foreclosure
8 mediator writes something down and has everybody sign off on it and says this
9 is a settlement, then they've got to settlement.

10 And so that's why I said, you know, I think it's interesting that they
11 – there was a mediation with Mr. Saint-Aubin and all these advisors, and
12 everybody was there, they didn't settle it. Because I think if he had done it, if
13 he had been there and actually been the one to say: Okay, I'm working out
14 these terms, I'm on the phone with these guys, these guys are telling me
15 what's going on, I'm approving all this, this is the settlement --

16 MR. POWELL: Understood.

17 THE COURT: -- you know, maybe then we might have had something we
18 could talk about. Because he's got the Court, you know, the Court authority.

19 MR. POWELL: Understood.

20 THE COURT: The – and she would have been out of luck but, you know.

21 MR. POWELL: Understood.

22 THE COURT: And I really – I remember that Mowbray situation, and my
23 recollection is they were in something very similar, in a deposition.

24 MR. POWELL: Uh-huh.

25 THE COURT: And, you know, yes, the attorneys say what the terms are,

1 but you've got the people sitting there and you get them to say, yes. And I
2 understand in this case getting everybody into a room is difficult --

3 MR. POWELL: Uh-huh.

4 THE COURT: -- but --

5 MR. WARNICK: Thank you, Your Honor.

6 MR. POWELL: Thank, Your Honor, appreciate your time.

7 THE COURT: That -- we have nothing else we can go on --

8 MS. RENKA: Thank you, Your Honor.

9 MR. POWELL: Thank you.

10 THE COURT: -- so --

11 MS. RENKA: We'll --

12 THE COURT: And I think that there was another -- another issue?

13 Something else you were going to -- okay, then if not then we'll see you guys
14 back here on the 14th.

15 MR. WARNICK: Thank you.

16 MS. RENKA: Thank you, Your Honor.

17 MR. POWELL: Thank you.

18 THE COURT: So, I don't know we're going to need an order on that, so if
19 you can just show it to Mr. Warnick before you send it over.

20 MS. RENKA: We will, Your Honor, thank you.

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MS. WAKAYAMA: Thank you.

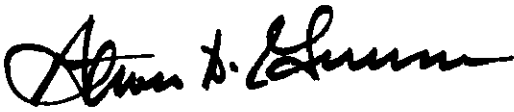
THE COURT: Okay.

[Proceedings concluded at 11:26 a.m.]

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



Kerry Esparza, Court Recorder/Transcriber
District Court, Department XXVI


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

)
In the Matter of the Trust of:) CASE NO. P-09-066425
)
THE W. N. CONNELL AND MARJORIE) DEPT. NO. XXVI
T. CONNELL LIVING TRUST, DATED)
MAY 18, 1972.) **Transcript of Proceedings**
)

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

WEDNESDAY, JANUARY 14, 2015

APPEARANCES:

For Eleanor Ahern: LIANE K. WAKAYAMA, ESQ.
CANDICE E. RENKA, ESQ.
For Jacqueline Montoya: JOSEPH J. POWELL, ESQ.
For Kathryn Bouvier: WHITNEY B. WARNICK, ESQ.

RECORDED BY: KERRY ESPARZA, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

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

1 WEDNESDAY, JANUARY 14, 2015 AT 1:12 P.M.

2

3 THE COURT: Okay. We'll go on the record in
4 *Connell* and discuss what we're doing here today. P-09-
5 066425. I'll let counsel state their appearances for the
6 record, please.

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

10 MR. POWELL: Good afternoon, Your Honor. Joey
11 Powell appearing on behalf of Jacqueline Montoya.

12 THE COURT: Okay.

13 MR. WARNICK: Whit Warnick appearing on behalf of
14 Kathryn Bouvier.

15 THE COURT: Okay. So we have a lot of motions on
16 and so we have discuss what we're doing and how this all
17 affects what's going on next week and also we've got some
18 future hearings that are kind of odd. So we need to
19 discuss our calendaring issues it appears.

20 So, we had this down as a Status Check for the
21 Petition of Determination of Construction and
22 Interpretation of Language Relating to Trust Number 2,
23 which we -- a Status Check on the Motion to Dismiss
24 Counterclaims, Status Check on the Petition for
25 Construction and Effect of Probate Court Order, and the

1 Status Check on Settlement and Trial Setting. For us, that
2 was all what's going to go to trial next week. It's the
3 status of this thing for trial next week. So that what we
4 assumed status check meant. That's what it means in my
5 world.

6 So, then we have a Motion for Leave to Amend
7 Pleadings and for other Relief against Eleanor Connell
8 Ahern. Opposition and Countermotion for Kathryn Bouvier
9 and Jacqueline Montoya and then we have these future
10 hearings. On January 16th, we have -- David Mann has a
11 Motion to Quash. On the -- February 11th, there's an
12 Emergency Motion to Compel David Mann to turn over
13 Documents, and on February 20th, there's a Status Check on
14 Compliance.

15 MR. WARNICK: Those two -- the Motion to -- with
16 Mr. Mann really have nothing to do with our proceeding,
17 Your Honor, not directly anyway.

18 MS. WAKAYAMA: And, Your Honor, just -- a
19 stipulation hasn't gotten down to the Court yet, but we did
20 sign one for Mr. Mann where the Motion to Compel and the
21 Motion to Quash will be heard all by the Discovery
22 Commissioner on February 11th.

23 THE COURT: Okay.

24 MR. WARNICK: So what we thought was happening
25 this morning were -- you were going to take all of the

1 motions that are pending, including the two Motions for --
2 Countermotions for Summary Judgment filed by the parties,
3 to possibly have a resolution of matters today.

4 THE COURT: Okay.

5 MR. WARNICK: I think counsel -- in fact, we
6 discussed this back and forth because we knew there were a
7 lot of things coming up and how to basically address maybe
8 what should be done and assuming that we were going to hear
9 all of those things, we had kind of tentatively agreed that
10 maybe the Motion to Amend Pleadings would be heard first
11 and then we would get into the Countermotions for Summary
12 Judgment. And those Countermotions for Summary Judgment we
13 believe really kind of incorporated and replaced all of the
14 other motions that have been filed before because the two
15 Countermotions for Summary Judgment really contained all of
16 the claims and the matters that we think the Court needs to
17 resolve. So we were thinking that you would hear the
18 Motion to Amend Pleadings and then hear the two
19 Countermotions for Summary Judgment today.

20 MS. WAKAYAMA: And, Your Honor, just for
21 clarification on the status check, too, in relation to the
22 trial that's set for the 21st, pursuant to a stipulation
23 entered into by all counsel and signed by Your Honor, the
24 will contest case and trial has been dismissed and vacated.
25 And so all that's involved right now is just the trust

1 litigation.

2 MR. WARNICK: That's correct, Your Honor.

3 MS. WAKAYAMA: Where there hasn't been a trial
4 setting --

5 MS. RENKA: In this case.

6 MS. WAKAYAMA: -- in this case.

7 MR. WARNICK: That's correct.

8 Part of our motions -- and the relief that we're
9 requesting, too, and this was earlier on -- as Your Honor
10 may remember, our clients' two daughters have not received
11 any income from the trust involved now for a year and a
12 half. And so we feel we've been basically really
13 financially handicapped. And so the delay in this matter
14 as it goes on furthers that situation and at one time last
15 summer, Your Honor entered an order saying that we could
16 receive that income if we would post a bond to guarantee
17 its repayment in the event that it was eventually
18 determined that our clients weren't entitled to it, but the
19 cost of a bond is so prohibitive and not even available
20 really for things of this nature that we're still in the
21 situation where this delay is really causing a lot of
22 financial stress and difficulty on our clients. Although,
23 at the same time, Mrs. Eleanor Ahern, on the other side, is
24 receiving her full 35 percent of the trust income and
25 spending it and doing as she please with it.

1 So that's -- creates a real problem financially
2 for our clients the longer this matter, you know, continues
3 and I guess our position would be that we would like to
4 just have everything kind of rolled into our Countermotion
5 and their Countermotion for Summary Judgment and maybe we
6 could address the Motion to Amend right now and Your Honor
7 could tell us if we need to file something formal or if
8 everything we filed here before really kind of takes care
9 of it and we don't need to do anything formal. Whichever
10 way you want to proceed on that, we'd be happy to do, but
11 that might be something to resolve today.

12 MS. RENKA: And that was filed yesterday, so Your
13 Honor does not have a written Opposition on that Motion.

14 THE COURT: What? The --

15 MS. RENKA: Motion to Amend.

16 THE COURT: The Motion to Amend. Yeah. I don't
17 have --

18 THE CLERK: Where is the Motion to Amend?

19 THE COURT: Yeah. We -- on the Motion to Amend,
20 then we have -- we have an Opposition and Countermotion and
21 then -- I don't know what it's an Opposition and
22 Countermotion to. Opposition and Countermotion of Kathryn
23 Bouvier and Jacqueline Montoya for Summary Judgment of
24 Petition for Declaration of Judgment for Damages and
25 Assessment of Penalties and for other Relief.

1 MS. RENKA: Essentially, there's two
2 Countermotions, Your Honor, that have -- Countermotions for
3 Summary Judgment filed by each party that have subsumed all
4 of the outstanding petitions and motions that were
5 previously before the Court. So, --

6 THE COURT: So, that was the Petition for
7 Determination of Construction and Interpretation of
8 Language?

9 MR. WARNICK: Correct.

10 THE COURT: The Motion to dismiss the
11 Counterclaims, the Petition for Construction and Effect of
12 Probate Court Order, --

13 MS. RENKA: As well as Ms. Ahern's Motion to
14 Dismiss based on Claim Preclusion.

15 MR. WARNICK: We agree with counsel, Your Honor,
16 that our Countermotions really do take into consideration
17 all of the prior reliefs and motions in request that were -
18 - the Motion to Amend was addressed, basically arguing that
19 in our initial pleadings where we simply said that we
20 wanted the Court to determine the right to the income under
21 the trust and that we felt we were entitled to our 65
22 percent and that damages would have been suffered because
23 of the denial of that. We did then go on to say a lot more
24 in our initial pleading.

25 They filed a Counter -- an objection to that

1 initial pleading, but thereafter in several petitions
2 before the Court and in other negotiations and other
3 things, we've argued all of the consequences of what we
4 think damages would be and claims and we put those all
5 together in our Countermotion for Summary Judgment and we
6 think they're all before the Court. But, I think,
7 Eleanor's counsel believes that we should still do
8 something more formal to tie all those matters together,
9 but they're clearly spelled out in our Countermotion and
10 also in the last document that we filed and went over.

11 So, maybe today Your Honor could tell us if it's
12 necessary to file a formal amended pleading or if all of
13 the things that have been filed and negotiated and
14 discussed all over the last year are sufficient to have put
15 on notice everybody what's really at stake.

16 MS. RENKA: And, again, Your Honor, as we just
17 received that yesterday, Your Honor has -- does not have
18 our response to that Motion to Amend.

19 THE COURT: Yeah. I guess that -- and I don't
20 know what your Opposition is, I wouldn't want to speak for
21 you, but I guess one concern is that -- we put the Motion
22 to Amend on calendar in -- because -- for order shortening
23 time when we had this hearing for next week, but there's no
24 proposed amended pleading attached. So, --

25 MR. WARNICK: We set forth that in our last

1 Opposition. We stated what our claims for relief would be
2 and our additional defenses that --

3 THE COURT: I would need a pleading. We need a
4 pleading.

5 MR. WARNICK: Well that's what we asked for in
6 the Motion is whether or not you want us to do that
7 formally or --

8 THE COURT: Yeah.

9 MR. WARNICK: -- if, as often is the case, it's a
10 -- where you've argued about it and everybody is knowing
11 about it during the whole petition, it can be assumed that
12 that's already been argued and it doesn't need to be
13 formal. So that's kind of what we're asking the Court --

14 THE COURT: Okay.

15 MR. WARNICK: -- what you want to do.

16 THE COURT: All right. I guess one thing that we
17 did have that I don't know if this is on. It appears to
18 have been mooted, and I don't even think it's on calendar,
19 and that's the Motion for Voluntary Dismissal Pursuant to
20 NRCP 41(a).

21 MS. WAKAYAMA: Yes, Your Honor. We actually
22 moved for voluntary dismissal of the will contest
23 subsequently after it was filed with this Court and noticed
24 for today. Counsel reached a stipulation and this Court
25 has approved that stipulation and the will contest has been

1 dismissed and the trial on the 21st has been vacated as
2 well.

3 MR. WARNICK: That's correct, Your Honor.

4 THE COURT: All right. Okay.

5 MS. WAKAYAMA: And we believe -- and I believe
6 the Notice of Withdrawal was also filed of that as well.

7 MS. RENKA: Of the Motion to Dismiss.

8 MS. WAKAYAMA: Of the Motion to Dismiss.

9 THE COURT: Okay. So that's maybe why it doesn't
10 show up because we still didn't have the pleading. Okay.

11 THE CLERK: Well it's on the other case. Was it
12 in the other case?

13 MS. RENKA: Yeah, it's in the will --

14 MS. WAKAYAMA: That's correct. Yes.

15 MS. RENKA: -- contest.

16 THE COURT: Okay. In the will contest.

17 MS. WAKAYAMA: It's in the will contest.

18 THE COURT: Okay. All right. So the -- just --
19 for the record, to the extent there was a will contest, a
20 Petition to Withdraw -- a Motion to Withdraw was mooted by
21 a stipulation. The will contest is dismissed. The trial
22 date is vacated and the will contest case can be closed?

23 MS. WAKAYAMA: That's correct, Your Honor.

24 MR. WARNICK: Correct, Your Honor.

25 THE COURT: Okay. So we'll close that case. All

1 right.

2 Now, then we move onto the next thing which is
3 what, if anything, do we need to hear today versus, you
4 know, is there a day to have like, you know, -- since we
5 don't have a trial next week, we have an opportunity to
6 actually hear things --

7 MS. WAKAYAMA: Your Honor, it's really your
8 convenience. You've had an incredible calendar this
9 morning. And so, you know, we're prepared to argue today
10 but if --

11 THE COURT: They took away 200 cases from me so I
12 could do more of this. So, if you saw the order on who got
13 what cases taken away, I got 200 cases taken away so I'd
14 have more time for you.

15 MS. WAKAYAMA: So it's really about -- it's
16 really the Court's convenience and we're flexible either
17 way.

18 THE COURT: Okay.

19 MS. RENKA: Since there's no trial, obviously,
20 Your Honor, it's not as pressing as it was --

21 THE COURT: Right.

22 MS. RENKA: -- previously.

23 THE COURT: Right. I -- but I understand Mr.
24 Warnick's concern is since -- is one of the issues would be
25 resolved by the argument is this whole issue of the -- I

1 guess just kind of the status quo order from early on that
2 Mrs. Ahern continues to receive the 335, but until we
3 determine what's happening with the 65, those entities are
4 supposed to be holding that money. I'm assuming they are.
5 Have we got an accounting for it?

6 MS. WAKAYAMA: Your Honor, there was an exhibit
7 attached to all of this briefing that shows the Wells Fargo
8 statement that more than the 65 percent received in the oil
9 income remains in the Wells Fargo Oil and Gas Bank account.

10 MS. RENKA: Pursuant --

11 THE COURT: Okay.

12 MS. RENKA: -- to the Court's earlier order in
13 this case.

14 THE COURT: Right. So --

15 MR. WARNICK: Your Honor, we know counsel aren't
16 aware of this because they weren't the counsel for Mrs.
17 Ahern at that time, but when that document was submitted,
18 it was understood by all counsel, Mrs. Ahern's counsel as
19 well as us, that it was a temporary stop [indiscernible]
20 because they had delayed and hadn't given to us the formal
21 accounting we needed.

22 That letter that was submitted only talks about
23 one bank account, it only talks about the one -- the money
24 coming into that bank account shows, and from the figures
25 we have as well as the representations that were made to us

1 in the settlement negotiations, which are admissible, --

2 THE COURT: They weren't there either. So --

3 MR. WARNICK: That's correct. Mrs. Ahern did not
4 have enough money to make up and repay to us the money that
5 she would owe under the settlement, indicating that she
6 spent part of our 65 percent.

7 So part of our concern is not only being able to
8 receive our 65 percent so our clients have the funds they
9 need to live on and pay their legal expenses, part of it is
10 that if Mrs. Ahern loses this case, she's going to be
11 without funds and she's going to owe us a tremendous amount
12 of funds. And if we have to post a bond in order to get
13 access to the 65 percent, there should be a hold put on
14 that 35 percent that she's receiving until the Court
15 resolves this case. She should not be allowed to use it or
16 spend it or whatever unless she wants to post a bond also
17 for that purpose.

18 THE COURT: I understand. Okay. Great.

19 So, I guess the question is what do we need to
20 deal with today? Is there -- are there some of these
21 things that we can argue under the date -- as I said, next
22 week opened up for me. So, --

23 MS. RENKA: We have no problem, Your Honor.
24 There is an enormous amount of briefing because there's two
25 Countermotions for Summary Judgment and Oppositions and

1 Replies and Sur-replies. So we have no problem moving this
2 a week or two so that Your Honor can absorb all of this and
3 everything is really intertwined, I think. And all of the
4 issues in all of the various petitions that were previously
5 filed separately are all really intertwined and they really
6 are all contained in these summary judgment motions now.

7 THE COURT: The one thing that I think that Mr.
8 Warnick mentioned, Mr. Powell, that your Motion for Leave
9 to Amend -- as I said, it doesn't have an actual pleading
10 attached to it, but it seemed like it was the kind of thing
11 that is appropriate to bring on an order shortening time.
12 I don't know what your opposition would be to that. Are
13 you ready to go forward on that one at least today?

14 MS. RENKA: Essentially, our position was that it
15 was served on us the day before the day we were getting our
16 Cross Motions on Summary Judgment heard and those issues
17 that are the subject of that Motion have been argued and
18 briefed in these pleadings. So that was our main
19 objection, Your Honor.

20 THE COURT: Okay.

21 MS. RENKA: And, again, as you said, there's no
22 amended -- a pleading attached, so it's hard to analyze it
23 completely.

24 THE COURT: Okay.

25 MR. WARNICK: I'm not understanding. Are they

1 going to object to the Motion to Amend or can we resolve
2 that now and say that basically they understand the relief
3 we're requesting, they understand the claims we've
4 asserted, we understand what they've requested, and we can
5 go forward with the Countermotion for Summary Judgment?

6 If that's what they're saying, then we're in
7 agreement with that and we're ready to just put before the
8 Court the two Motions for Counter Summary -- Countermotions
9 for Summary Judgment and that could resolve it --

10 MS. RENKA: We are --

11 MR. WARNICK: -- on how to proceed.

12 MS. RENKA: We're not stipulating, Your Honor.
13 We would object because there are several affirmative --
14 there are two affirmative claims that are being asserted
15 and there's several defenses that should have been plead
16 under NRCP 8 in response to Eleanor's counterclaims and
17 there was never a responsive pleading filed to those
18 counterclaims. So those defenses, we think, and this is
19 all in the briefing, Your Honor, have been waived and
20 certainly we should not be forced to address them without
21 having discovery, written depositions, and otherwise when we're
22 on the eve of Countermotions for Summary Judgment.

23 MR. WARNICK: And our position would be that
24 everything that they're talking about was clearly set
25 forth, argued about, negotiated over, put in the petitions

1 filed with the Court. They've been fully aware of it.
2 They know of all of the consequences. Your Honor even
3 warned them of the potential bad consequences at the last
4 hearing when the Motion to Settle was determined not to be
5 granted.

6 And so, they know about everything. There's no
7 surprise to them. It's not like they're being told about
8 something that they didn't know about. They're just saying
9 we didn't put something formally in originally pleadings to
10 say what all the relief was that we were seeking. We just
11 said we would be seeking additional damages and then we
12 followed that up with petitions thereafter.

13 We certainly filed the claim to settle the case
14 summarily on the grounds of laches way back in January of
15 19 -- of 2014. They've been fully aware of our position
16 and what we think -- how this case should be resolved and
17 the claims that we have.

18 THE COURT: Okay.

19 MR. WARNICK: But they're right. I mean, if
20 you're looking for something in our original pleading that
21 argued all of these things, it wouldn't be there spelled
22 out in black and white, but they've known about it and it's
23 been put forth and before the Court in supplemental
24 pleadings and motions and petitions that have been filed
25 and in all of the settlement negotiations that have gone

1 on.

2 THE COURT: Okay.

3 MR. POWELL: Just to add to that, Your Honor,
4 quickly, I think your minute order/notes, there was a
5 January hearing in 2014 and that was -- we had brought our
6 petition for the applicability of laches and what you had
7 said at that time is: We're only basically a month away,
8 essentially, from what was to be a trial date in February
9 on the whole trust issue and you had said that at that
10 point you were rejecting the petition for laches without
11 prejudice and you basically concluded -- you said,
12 foreshadowing may be something that you had a feeling of,
13 but you basically said: For some reason this doesn't all
14 get disposed of and concluded with in that February trial,
15 I'll revisit the issue.

16 So what we had done is basically had that -- that
17 had always been lingering prior to, again, the -- even that
18 February trial date that, as you know the circumstances
19 that we were all here and --

20 THE COURT: Right.

21 MR. POWELL: -- ready to go and it didn't go off.

22 So, --

23 THE COURT: Right and the -- because Ms. Connell
24 filed or Ms. Ahern had filed several --

25 MR. POWELL: Yeah, including a request for

1 punitive damages which --

2 THE COURT: Right.

3 MR. POWELL: -- you were -- had a response to
4 basically the --

5 THE COURT: Yeah, several --

6 MR. POWELL: -- week before.

7 THE COURT: Yes. Raised several new issues on the
8 eve o trial.

9 MR. POWELL: Exactly.

10 THE COURT: So that's kind of been the problem all
11 along here is we need to know what it is we're trying to
12 resolve [indiscernible] so that we know once and for all
13 and we can have some closure here for this case.

14 MR. POWELL: Yes.

15 THE COURT: So, I mean, for me, I think that with
16 respect to the Motion to Amend the Pleadings, we would need
17 to see what the amended pleading was and under the rules or
18 under the local rules, we're supposed to have an amended
19 pleading before we can have -- even hear a motion on an
20 amended pleading.

21 So I just think this needs to be continued to next
22 week so that we can get -- at least give them an
23 opportunity to oppose it. Even though there's not an
24 amended pleading here, we need to give them an opportunity
25 to oppose it and the question is: Are we going to do this

1 in a week, all of these motions, countermotions, and then
2 just -- I guess I just want to make sure because once we
3 take something off then, you know, it kind of drops off the
4 calendar and then we lose it. So, if we're satisfied that
5 the -- I don't know what motions there are but there are
6 countermotions. So, -

7 MS. RENKA: It's essentially two Countermotions
8 for Summary Judgment, --

9 THE COURT: Yeah.

10 MS. RENKA: -- Your Honor, that have subsumed
11 everything that had previously filed in separate petitions
12 along the way.

13 MS. WAKAYAMA: Correct.

14 THE COURT: So -- and those petitions were -- just
15 to make sure it's clear that -- because what's on for the
16 status checks were the things, like I said, I thought were,
17 you know, what were we going to be doing next week at the
18 trial.

19 The Petition for Determination of Construction and
20 Interpretation of Language Relating to the Trust Number 2,
21 is everybody satisfied that the Countermotions subsume that
22 petition?

23 MR. WARNICK: Yes, Your Honor.

24 MS. RENKA: Yes, Your Honor.

25 MS. WAKAYAMA: Yes, Your Honor.

1 MR. POWELL: They have, Your Honor, but I would
2 just point out, since that was my initial petition --

3 THE COURT: Right.

4 MR. POWELL: -- on behalf of Ms. Montoya, is that
5 is a lengthy pleading that sets forth all of the logic and
6 analysis in there. So, even though summary judgment has a
7 part of that, if that is something that -- the reason why
8 those were filed in the first place was because they
9 required, I felt, a significant breakdown of the issue.
10 And in terms of that Trust Number 2 is it's basically going
11 into the language of the trust and actually looking
12 precisely at what the language of the trust says.

13 So, to the extent that you would feel that that
14 would be helpful for you, I guess, to dedicate the time to
15 go through that, I would actually say: Yes, summary
16 judgments are competing, but to the extent that that is an
17 issue that you feel like you want to determine on its own,
18 I would be happy dedicating a hearing to dealing with that
19 specific issue.

20 Likewise, with the same thing about the
21 construction of that 2009 order and the effect of that
22 order because --

23 THE COURT: Okay. So that's the --

24 MR. POWELL: -- I feel like those are --

25 THE COURT: -- Petition for Construction and

1 Effect of Probate Order?

2 MR. POWELL: Yes. Because I feel like those are
3 two material decisions that really shape the whole crux of
4 this case beyond our argument about the applicability of
5 laches, but as to the merits of the case, if you feel like
6 you want to go that route -- our main position, again, is
7 that laches applies and makes the substantive and material
8 decisions irrelevant but, to the extent, and, again,
9 whatever your convenience is. If you feel like you want to
10 hear longest in time, you know, obviously that's your
11 decision.

12 THE COURT: Okay.

13 MR. POWELL: That's the order of ours -- basically
14 our argument is that laches applies but to the extent that
15 you feel that laches doesn't apply, then the two material
16 petitions on our end, in terms of the arguments and the
17 ones having the longest standing here, are those two
18 petitions that were originally filed, I think, in March of
19 '13 -- of '14.

20 MS. RENKA: And the Oppositions and responses to
21 those, Your Honor, have been subsumed in our briefing
22 that's before Your Honor in the Countermotions for Summary
23 Judgment in the Oppositions.

24 [Colloquy between the Court and the Clerk]

25 THE COURT: Okay. So, Ms. Dinmin [phonetic] has

1 some happy news for the law clerk. Ms. Dinmin [phonetic],
2 if you'd like to tell us what you found?

3 THE CLERK: So I --

4 THE LAW CLERK: Is it this?

5 THE CLERK: Is that 504 pages?

6 THE LAW CLERK: Probably.

7 THE CLERK: Is it Omnibus Opposition of --

8 THE LAW CLERK: Yeah.

9 THE CLERK: -- Petition for -- okay, because
10 that's not on --

11 THE COURT: It's not on calendar.

12 THE CLERK: -- here for some reason. I don't know
13 what they do at Family.

14 MS. RENKA: It was filed on the 24th.

15 THE COURT: Yeah, their Master Calendar --

16 MS. WAKAYAMA: Right.

17 THE COURT: -- doesn't necessarily --

18 MS. WAKAYAMA: So that's the --

19 THE COURT: They don't pick everything up at
20 Master Calendar apparently. MS. WAKAYAMA: -- Counter --
21 that's the other Countermotion.

22 THE CLERK: Well that was on the 2nd. So it should
23 have been on calendar.

24 MS. WAKAYAMA: Yeah.

25 THE CLERK: The only Countermotion that I'm

1 showing is Opposition and Countermotion of Kathryn and
2 Jacqueline for Summary Judgment of Petition for Declaration
3 --

4 MR. WARNICK: On the 23rd, right?

5 THE COURT: Yeah.

6 THE CLERK: -- Judgment --

7 THE COURT: Yeah. That was -- that's what's on
8 calendar --

9 THE CLERK: That's on today.

10 THE COURT: That's what's on calendar.

11 THE CLERK: But I don't know what that's
12 Opposition to because they don't have --

13 THE COURT: The other one --

14 THE CLERK: -- the motion --

15 MS. WAKAYAMA: It's Opposition to our
16 Countermotion --

17 MS. RENKA: Our Countermotion.

18 MS. WAKAYAMA: -- for Summary Judgment.

19 MS. RENKA: For Summary Judgment.

20 MS. WAKAYAMA: Since that was filed first and so
21 that's -- and I --

22 THE CLERK: Is that the 102 [indiscernible] filed
23 on January 2nd?

24 MS. WAKAYAMA: Is -- yes, Omnibus Opposition and
25 Countermotion. So those are the Countermotions that we are

1 referring to that are competing. Both sides are moving for
2 summary judgment.

3 MS. RENKA: And opposing anything that had been
4 previously unopposed.

5 MS. WAKAYAMA: Right.

6 THE COURT: Okay. Yeah. We may need one of Mr.
7 Olsen's -- where's Mr. Olsen when we need him and his nice
8 charts because --

9 MS. WAKAYAMA: We can do that, Your Honor. We're
10 happy to do that.

11 THE COURT: -- we probably do need one of these
12 nice charts that says everything that's on calendar because
13 they're not picking it up. I don't know how they're -- you
14 see, it's a separate Clerk's Office. So they don't pick
15 stuff up the same way here at District Court.

16 MS. RENKA: So does Your Honor need a list of the
17 briefs and then the dates that they were filed and then --

18 THE COURT: Right. Yeah.

19 MS. RENKA: -- what's out there right now?
20 Because we can --

21 THE COURT: yeah.

22 MS. RENKA: -- do that. It's confusing because
23 there's a lot of combination briefing.

24 THE COURT: They've got it. Yeah the --

25 THE LAW CLERK: Should we show this to --

1 THE COURT: Yeah, they've got it. Actually, we
2 need -- probably need one for Mr. Warnick and Mr. Powell.

3 THE LAW CLERK: Just as an example?

4 THE COURT: Yeah, because they've already got the
5 one from the previous case. So, --

6 MR. POWELL: I mean, I can tell you at least the
7 filings -- to go back in history is we filed on behalf of -
8 - I filed on behalf of Jacqueline Montoya in September, I
9 believe, of '13 was the initial Petition Seeking a
10 Declaratory Judgment. And then, at that point, there was -
11 - then you had set the trial date for that February and
12 then I had filed a Motion for Applicability of Laches in
13 December. That's again -- we had a January hearing and you
14 said we're a month away, let's just go. We're close enough
15 to trial, I just want to hear it. If for some reason that
16 doesn't go, bring a new laches argument again if you choose
17 and we can go from there.

18 And then -- so, as the trial didn't go in
19 February, then I had filed on consecutive days that -- the
20 applicability of or the interpretation of the trust number
21 2 language and then the -- I'm not sure which was one
22 before the other. The trust number 2 language one and then
23 the applicability or the construction of the 2009
24 petition/order.

25 So those were the ones from timeline. That's what

1 was done. Then they had filed the will contest and then
2 what had basically happened is they then argued is -- the
3 will contest actually needs to be heard before all of this
4 because if they prevail on the will contest, --

5 THE COURT: Right.

6 MR. POWELL: -- everything else is moot --

7 THE COURT: Right.

8 MR. POWELL: -- because the [indiscernible] never
9 gets exercised and you had said: Yes, you're right. Let's
10 go with that.

11 So, that had basically kind of put a hold on
12 everything that was pending and had been previously
13 submitted --

14 THE COURT: Right.

15 MR. POWELL: -- and so --

16 THE COURT: Yeah. So, here, Mr. Powell. I don't
17 know -- oh, we got two?

18 [Colloquy between the Court and the Law Clerk]

19 MR. POWELL: May I approach?

20 MS. WAKAYAMA: May we approach?

21 THE COURT: If you want to take these and counsel
22 already has -- it's a similar format to what their previous
23 matter that they just argued, what Mr. Olsen did for that
24 previous matter.

25 MR. POWELL: Oh I see.

1 THE COURT: It's kind of how we need to know so
2 that we have everything.

3 MR. POWELL: I've got ya.

4 THE COURT: And we've actually go everything.

5 MR. POWELL: Okay.

6 THE COURT: If somebody can make sure that that
7 occurs. They've got it. It's -- so it's just a
8 [indiscernible], counsel. So, if somebody can make sure
9 we've got it all because --

10 MR. POWELL: Yeah.

11 THE COURT: -- I mean, we may have here in this
12 stack everything we need, but then my question is: How
13 soon do we want to do this? Are you -- you know, are we
14 ready to do this like next week? Is it --

15 MR. POWELL: Absolutely. And that's why I was
16 saying is whatever you feel you need time wise, but the
17 longest in order is whatever. But, again, if we're going
18 back to the way beginning, --

19 THE COURT: Right.

20 MR. POWELL: -- the laches argument is first in
21 time, going back in history, which --

22 THE COURT: Okay.

23 MR. POWELL: -- to our point, is that does have -
24 - that is --

25 THE COURT: Okay.

1 MR. POWELL: -- the positions on our --
2 THE COURT: Well then I --
3 MR. POWELL: -- summary judgment.
4 THE COURT: To the extent that that's addressed in
5 your Motion to Amend, they need a chance to oppose that.
6 That's what I'm saying is are we ready to do that because
7 it sounds to me like that's what's addressed in your Motion
8 to Amend, although we don't have the pleading, but they get
9 a chance to oppose that. So that's my question is: Are we
10 then ready to go --
11 MR. POWELL: Well, yeah. And --
12 THE COURT: -- next --
13 MR. POWELL: I understand.
14 THE COURT: -- week? It sounds to me like you're
15 probably going to want to file an Opposition.
16 MR. POWELL: Well that's a question that I would
17 have for you is: Okay, they are --
18 THE COURT: And if we -- if that kind of leads
19 off, if we need to do that at the same time -- or at the
20 same time or before, they need a chance to oppose that and
21 we need a chance to get everything and be ready to go.
22 MS. RENKA: Can we see the draft pleading though
23 before file our Opposition?
24 THE COURT: Yeah. So that's my -- because it may
25 be: Okay, yeah, no, it's really not an issue, you're

1 really correct, everything has already been done.

2 MR. POWELL: Right. Right.

3 THE COURT: We do already know all of this.

4 MR. POWELL: Yeah.

5 THE COURT: If they actually can see the pleading.

6 So that's my question is I appreciate the fact that you
7 don't want to delay this any further because you need a
8 decision --

9 MR. POWELL: Yeah.

10 THE COURT: -- one way or the other whether these
11 ladies --

12 MR. POWELL: Right. Right.

13 THE COURT: -- are getting all this money and I
14 don't want to cause you -- push this out like some huge
15 amount of time, --

16 MR. POWELL: Right.

17 THE COURT: -- but as indicated, you know, that we
18 do have some time, not a whole lot, but just depending on
19 how fast you can get this all briefed and ready to go --

20 MR. WARNICK: Would it be better to do it this
21 way, too, Your Honor? Since our position is in the
22 original pleading we gave notice that there would be
23 additional damages that we would be asking for caused by
24 the consequences of Eleanor's conduct in stopping the
25 income coming in, and then, like I say, over the course of

1 the next year and in settlement negotiations, we talked
2 about all of these additional consequences. But would it
3 be better for us now to simply file a document, request for
4 an amended pleading, and just spell out there again that we
5 want to amend our original pleading and add these
6 additional matters so that they're very clear? And then if
7 they want to object to them, they can file in their Motion
8 to Object to our Motion to Amend, but then it's clear as a
9 [indiscernible], I think, --

10 THE COURT: Right.

11 MR. WARNICK: -- before the Court?

12 THE COURT: Right.

13 [Colloquy between the Court and the Clerk]

14 MS. RENKA: If we got a copy of the Proposed
15 Amended --

16 THE COURT: It's not so much me. I -- this is
17 what I get to tell you, but the -- you know, you've got to
18 give staff a break here, you guys.

19 MS. RENKA: If we got a copy --

20 THE COURT: We're all getting a little --

21 MS. RENKA: If we got a copy, Your Honor, of the
22 Proposed Amended Pleading, --

23 THE COURT: Correct.

24 MS. RENKA: -- we could easily -- from the time
25 that we receive that, we could get an Opposition on file

1 within --

2 THE COURT: Right.

3 MS. RENKA: -- you know, five to seven days, then

4 --

5 THE COURT: Right.

6 MS. RENKA: -- the Reply, and then whenever Your

7 Honor wants to set --

8 THE COURT: Well, let me tell you --

9 MS. RENKA: -- we can hear all of this.

10 THE COURT: About the best time we've got is on

11 the week of the 26th, we were supposed to have a jury trial

12 but it settled. Found out today. We've got somebody on

13 Monday. That is a probate week, so Wednesday is kind of

14 out. We've got calendars the other day. So, Friday, the

15 30th of January. What do you --

16 MS. RENKA: That's fine, Your Honor.

17 THE COURT: Do you think that you could make it

18 all work by --

19 MS. WAKAYAMA: That's fine.

20 THE COURT: -- Friday, the 30th?

21 MR. WARNICK: Is that to hear the Motion to Amend?

22 THE COURT: All of them. We'll put them all on

23 and, you know, it may be that if you -- depending on the

24 outcome of the Motion to Amend, I -- but just to put

25 everything on and to have like a day to have you argue all

1 of these things.

2 MR. POWELL: That would be excellent.

3 THE COURT: So is that --

4 MR. WARNICK: Can we start off with the Motion to
5 Amend and --

6 THE COURT: Is that --

7 MR. WARNICK: -- then we can get into the
8 Countermotions for Summary Judgment?

9 THE COURT: does that get sufficient time to get
10 an amended pleading and -- by -- Monday is a holiday. So
11 like a week from today and then they can file an
12 Opposition. We won't have time for a Reply, but if you can
13 give them the amended pleading. I don't know how long you
14 think you need for that amended pleading. It's going to --
15 I know -- we won't hold you to word for word and --

16 MR. POWELL: I would imagine we could cut and
17 paste because I think kind of what we're after is we'll do
18 -- we will do one master, probably what? They do one
19 master and it's everything under one roof and --

20 THE COURT: All right.

21 MR. POWELL: -- then it's -- it should be the
22 master --

23 THE COURT: Right. It's -- so --

24 MR. POWELL: Basically a master of consolidating
25 everything.

1 THE COURT: So, I mean, would it be possible to do
2 that by the end of the day on Tuesday, the 20th? I mean,
3 Monday is a holiday.

4 MR. POWELL: I would hope so because, I mean, for
5 us, it would just be a lot of cutting and --

6 THE COURT: Don't want to hold people up.

7 MR. POWELL: -- pasting. So, --

8 THE COURT: But then --

9 MR. WARNICK: Well, I would just prefer to just
10 spell it out in a -- you know, say we hereby want to amend
11 our original pleading and add these, blah, blah, blah,
12 blah, blah, blah, blah, blah things which have been
13 discussed and argued about all during the proceedings, but
14 just to make it clear, we'll put it in a -- in our amended
15 pleading of original pleadings. Then they can object to
16 that, if they want to, and the Court can make the decision.

17 THE COURT: Well yeah they -- you know, they
18 object to the request to amend pleadings. I mean, part of
19 their objection -- it may not be we don't like how you've
20 written your Complaint. It sounds to me like some of their
21 objections are -- you know, they've got to have their
22 objections that you just -- you know, time has run or
23 whatever.

24 So, anyway, I'm just trying to figure out a
25 timeline. If we can get -- if they can get it by the end

1 of the day Tuesday so they can then have one week to oppose
2 it and have it by the end of the day the following Tuesday,
3 which gives us like three days -- two days, at least,
4 before the hearing on the 30th.

5 MS. RENKA: Yeah, that's fine, Your Honor.

6 THE COURT: I mean, that's about the best we can
7 hope to do.

8 MR. POWELL: Yeah, and that's fine. I mean, they
9 --

10 THE COURT: Because then we launch into -- I don't
11 know. I think [indiscernible] starts --

12 MR. POWELL: If we can have a dedicated day where
13 we have -- everything is out on the table and you making
14 decisions, that's exactly what we're after on our side is
15 having everything clear and having --

16 THE COURT: Right.

17 MR. POWELL: -- basically a full dedicated day to
18 go through everything.

19 THE COURT: Yeah.

20 THE CLERK: So what time?

21 THE COURT: So Friday at 10.

22 THE CLERK: 10?

23 MS. WAKAYAMA: That works, Your Honor. Thank
24 you.

25 MR. WARNICK: Is that the 30th at 10?

1 THE COURT: Friday, the 10th -- Friday, January 30th
2 at 10.

3 MR. POWELL: And so, in theory, we would have
4 basically -- obviously with a break in between, but
5 basically 10 to 5 essentially that we could -- that we
6 would have your time?

7 THE COURT: Well we don't want to be here until 5
8 on a Friday, do we?

9 MS. RENKA: No.

10 MR. POWELL: No, but it --

11 THE COURT: Okay.

12 MR. POWELL: You know, I don't want to say
13 anything, whatever, but --

14 THE COURT: Yeah, no we will definitely go to
15 lunch.

16 MR. POWELL: It may be a quick decision for you,
17 it may not be a quick decision. So, I mean, --

18 THE COURT: We're going to go to lunch that day.

19 MR. POWELL: All right.

20 THE COURT: So, just to the extent that we have --
21 if you feel, Mr. Powell, that you still need to leave on
22 any of these issues that were here as status check items,
23 and I don't know if you guys have got the same calendar we
24 do, the Status Check on a Petition for Determination of
25 Construction and Interpretation of Language. That's a

1 previous law clerk. I don't know what he did with it. And
2 then the Petition for Construction and Effect of the
3 Probate Order, if you've got -- if you could give us
4 courtesy copies of those --

5 MR. POWELL: Oh yeah. Absolutely. Sure.

6 THE COURT: Okay. That would be appreciated.

7 MR. POWELL: Sure. Sure.

8 MS. RENKA: So, Your Honor, as far as the table
9 that you --

10 THE COURT: All the pleadings.

11 MS. RENKA: -- requested, do you want us to just
12 submit that with a cover letter to Your Honor or file it or
13 what did you want us to do with the chart that you needed?

14 THE COURT: We need to have some sort of guidance
15 like that. This is everything that you need to have and if
16 we don't have a pleading, we can tell you we need a
17 courtesy copy of it.

18 MS. RENKA: Do you want it filed or just like a
19 letter to Your Honor?

20 THE COURT: Oh it's -- just -- and CC the other
21 side, but send it to the Court and --

22 MR. POWELL: Is it easier if we just like e-mail
23 it with the PDFs for you guys --

24 THE COURT: Sure.

25 MR. POWELL: -- just to get it in like a -- just

1 a master e-mail and we can obviously copy -- each side can
2 copy each other.

3 THE COURT: When you say PDFs, you mean just the
4 chart?

5 MS. RENKA: The chart.

6 THE COURT: The chart, not the --

7 MS. RENKA: Just the chart.

8 MR. POWELL: Oh you -- okay, okay.

9 THE COURT: Not the pleadings.

10 MR. POWELL: Okay. I misunderstood you. I
11 thought --

12 THE COURT: Not the pleadings.

13 MR. POWELL: I thought you meant you actually
14 needed a PDF. Okay. Good. Okay.

15 THE COURT: No. What -- we need the chart.

16 MR. POWELL: Just the chart.

17 THE COURT: So we can --

18 MR. POWELL: Okay.

19 THE COURT: -- see what, if anything, we're
20 missing so we can request a courtesy copy of what we're
21 missing. I can tell you right now we don't have these two
22 old petitions. We don't have them.

23 MR. POWELL: Yeah, okay. So that's what I'd want
24 to clarify. You don't have those?

25 THE COURT: I don't have those.

1 MR. POWELL: And you need copies of those.

2 THE COURT: I don't have them so I know that we

3 are going to need them now.

4 MR. POWELL: I understand. Okay.

5 THE COURT: But -- yeah. Hard copies.

6 MR. POWELL: That's what I was wondering, do you

7 -- okay. So, basically when we do the chart, I'll send you

8 obviously those two that you're missing, --

9 THE COURT: Right.

10 MR. POWELL: -- and then you'll look at the chart

11 and go: We don't have those --

12 THE COURT: And say: Here's some that we don't

13 have.

14 MR. POWELL: -- send those in. Okay.

15 THE COURT: Yes.

16 MR. POWELL: I understand.

17 THE COURT: So if you can just send us this chart,

18 here's everything --

19 MR. POWELL: Yeah.

20 THE COURT: -- that we're -- that we think is

21 going to be on, --

22 MR. POWELL: Yeah.

23 THE COURT: -- here's all the pleadings that

24 relate --

25 MR. POWELL: Okay.

1 THE COURT: -- and the dates filed. And then we
2 can say: Oh, I'm missing this one, --
3 MR. POWELL: Got ya.
4 THE COURT: -- can you give me a courtesy copy?
5 MS. RENKA: Sure.
6 THE COURT: And I can tell you already I know what
7 we're going to missing. We're going to be missing are
8 those two petitions, --
9 MR. POWELL: Yeah.
10 THE COURT: -- the Construction and Interpretation
11 of Trust Number 2 and the Order.
12 MR. POWELL: Okay.
13 THE COURT: I -- we don't have them anymore.
14 Sorry.
15 MR. POWELL: Okay.
16 THE CLERK: What about the Motion to Dismiss --
17 THE COURT: The Motion to Dismiss --
18 THE CLERK: -- [indiscernible] --
19 THE COURT: The Motion to Dismiss Counterclaims,
20 that's been --
21 MR. WARNICK: That's another thing that was on
22 and they filed a Motion -- well, we filed a Motion to
23 Dismiss the Counterclaims. That hasn't been heard either,
24 but --
25 MR. POWELL: And everybody --

1 MR. WARNICK: -- [indiscernible] be resolved.
2 MR. POWELL: And definitely, again, those are
3 civil claims so --
4 THE COURT: Yeah.
5 MR. POWELL: -- which is one of the arguments we
6 brought back way back when that had the whole --
7 THE COURT: So --
8 MR. POWELL: -- jury trial -- the day of the jury
9 trial --
10 THE COURT: So that is still on.
11 MS. RENKA: Yes. Still going.
12 THE COURT: We're just going to leave everything
13 on.
14 MR. POWELL: Yeah.
15 THE COURT: Until you tell us differently. Send
16 us your chart, if you agree, if you disagree, whatever.
17 MR. POWELL: Right.
18 THE COURT: We're going to leave -- we're just
19 going to leave everything that was on today on and --
20 THE CLERK: So at this hearing, are we like taking
21 exhibits, witnesses? I mean, do I need to get --
22 THE COURT: No.
23 MS. RENKA: It's summary judgment.
24 THE COURT: It's summary judgment.
25 MR. POWELL: Yeah, just on the pleadings and so

1 it would be --

2 MS. WAKAYAMA: And, Your Honor, we'll work with

3 counsel on the chart before we send it off to you so --

4 THE COURT: Okay.

5 MS. WAKAYAMA: -- that way it's clear for

6 everybody.

7 MR. POWELL: Yeah. Perfect.

8 THE COURT: Okay.

9 MR. WARNICK: And just so I understand, assuming

10 Your Honor agrees we can argue all of our claims and so

11 forth, on the 30th, then we're going to have the ability for

12 both sides to argue our Countermotions for Summary Judgment

13 and have a decision from the Court on that basis?

14 THE COURT: Yeah.

15 MR. WARNICK: Okay.

16 MR. POWELL: Perfecct.

17 THE COURT: And we get to go to lunch.

18 MR. POWELL: Okay.

19 MS. RENKA: Okay.

20 MS. WAKAYAMA: Thank you, Your Honor.

21 THE CLERK: And you are all buying, so --

22 MS. RENKA: Thank you very much, Your Honor.

23 THE COURT: Okay. I appreciate --

24 MR. POWELL: Capriotti's Sandwich --

25 THE COURT: Thank you very much. Yeah, we

1 appreciate everybody's -- working with us today. I mean,
2 they just started sending things to us from Probate and it
3 just lands and we don't have any way to deal with it. So
4 we're working with the Commissioner so that maybe we can
5 sort of get our calendars under control.

6 MR. POWELL: Okay.

7 THE COURT: But --

8 MS. WAKAYAMA: Thank you, Your Honor.

9 THE COURT: -- welcome to the new world.

10 MR. POWELL: Yeah. Thank you, Your Honor.

11 MS. RENKA: Thank you, Your Honor.

12 THE COURT: So thank you very much. I appreciate
13 everybody's patience in waiting so long and we'll see you
14 on the 30th.

15 MR. POWELL: Okay.

16

17 PROCEEDING CONCLUDED AT 1:47 P.M.

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1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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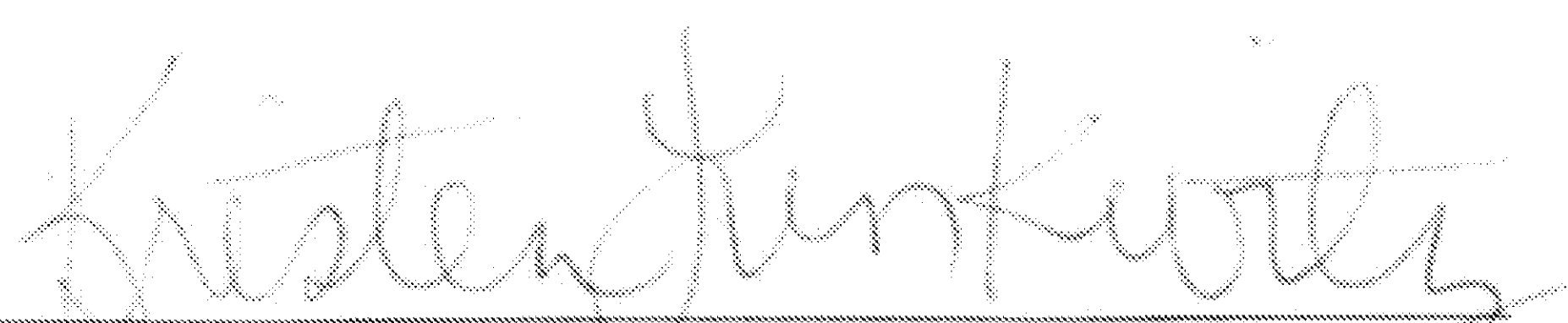
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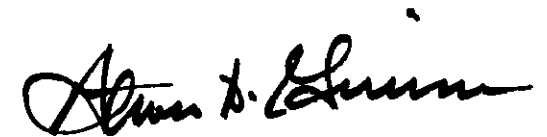
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22 A handwritten signature in cursive script, appearing to read 'Kristen Lunkwitz', is written over a horizontal dotted line.

23 KRISTEN LUNKWITZ

24 INDEPENDENT TRANSCRIBER

25



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER OF THE TRUST OF:)	
)	CASE NO. P-09-066425-T
THE W.N. CONNELL AND MARJORIE)	
T. CONNELL LIVING TRUST, DATED)	DEPT. XXVI
MAY 18, 1972)	
)	
)	
)	

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

FRIDAY, MARCH 20, 2015

TRANSCRIPT OF PROCEEDINGS
HEARING

APPEARANCES:

For the Trustee:

LIANE K. WAKAYAMA, ESQ.
DALE HAYES, ESQ.

For Jacqueline Montoya
and Kathryn Bouvier:

WHITNEY B. WARNICK, ESQ.
JOSEPH J. POWELL, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Friday, March 20, 2015 at 10:03 a.m.

2
3 THE COURT: This is Case P-09-066425. We'll let counsel state their
4 appearances for the record.

5 MS. WAKAYAMA: Good morning, Your Honor. Liane Wakayama and Dale
6 Hayes appearing on behalf of Eleanor Ahern as trustee.

7 MR. WARNICK: Whitney Warnick and Joey Powell appearing on behalf of
8 Jacqueline Montoya who's also present and Kathryn Bouvier.

9 THE COURT: Okay. All right. So today we -- I'll tell you what I've got for --
10 what I've reviewed for today's arguments.

11 We have a brief concerning -- from Mrs. Ahern concerning her
12 accounting, her fiduciary duties and trust administration. We had that filed under
13 seal because of the Court's concern that financial information about non-parties is
14 contained in there since the underlying income comes from property owned by
15 several family units. We then have -- that was filed on the 13th.

16 We have the brief filed by the petitioners, Ms. Montoya and Ms.
17 Bouvier, March 12th -- filed on March 12th.

18 Then we had supplemental briefs filed by both parties on the 18th and
19 an additional brief that we got on the 19th from Ms. Bouvier and Ms. Montoya.

20 So those are all the briefs. Then we had some correspondence from
21 Ms. Wakayama. So if you wanted to state what you -- you know, your
22 correspondence so we can make a record on that.

23 MS. WAKAYAMA: Sure. Your Honor, initially there was supposed to be
24 simultaneous briefing on the issues related to the accounting, the removal of
25 Eleanor Ahern as trustee, the attorney's fees and the best way for the trust to

1 continue.

2 Now it's snowballed into affidavits and declarations flying every which
3 way and that was because from Monday until yesterday afternoon we've received
4 three briefs from opposing counsel. So my concern when I received the first brief
5 on Monday was do I have sufficient time to obtain a declaration from Mr. Johnston
6 who is Texas counsel handling the oil transactions for the trust.

7 I had requested Mr. Warnick and Mr. Powell to stipulate that he may
8 appear telephonically. Unfortunately, the parties didn't agree so we held a
9 conference call with Your Honor on the 17th wherein it was Mr. Warnick, myself
10 and Your Honor discussing my request of, in the event I was not able to obtain a
11 declaration -- which I represented to Your Honor that I was really trying to get one,
12 but Mr. Johnston unfortunately was not in the office that day. He's been dealing
13 with some very serious medical issues with his wife.

14 And so in the event I was not able to obtain the declaration, would the
15 Court allow him to appear telephonically at today's hearing. The Court, after some
16 discussion, said you know what, you don't have a problem with that as long as the
17 playing field is fair and Mr. Warnick would have the opportunity to have Texas
18 counsel that authored their opinion letter, Mr. Murray, on the phone as well.

19 Fortunately, we were able to obtain a declaration from Mr. Johnston
20 which we filed on the 18th with our supplement. That afternoon I immediately
21 emailed Mr. Warnick and informed him that we no longer intend to have Mr.
22 Johnston appear telephonically at this hearing due to the fact that we were able to
23 obtain his declaration.

24 I don't hear anything from Mr. Warnick until yesterday morning telling
25 me that he intends to call witnesses on the telephone; Mr. Hillary Moore, as well as

1 Mr. Murray still even though we have the declaration of Mr. Johnston.

2 At this point I responded in the correspondence we attached to our
3 letter to the Court in which opposing counsel was also copied on to basically say,
4 you know, that's not the purpose of this. We're not turning this into an evidentiary
5 hearing. The only reason why I wanted that opportunity for Mr. Johnston is
6 because I don't have knowledge of the status of the pending oil transactions that he
7 is in the trenches with as we speak dealing with these oil companies. And so, you
8 know, you're kind of, respectfully, misinterpreting the whole purpose of allowing me
9 that opportunity to have him on the telephone.

10 So we did request a conference call with Mr. Warnick who -- you know,
11 I understand today's a busy day -- didn't respond to us. And so that prompted us to
12 have the letter to Your Honor saying, you know, we need some clarification here
13 because it's our understanding that now that the declaration is put forth with the
14 Court, there's no longer a need, unless the Court wants it, to have all these people
15 on the phone.

16 THE COURT: Okay. Well I've read all of them so, Mr. Warnick.

17 MR. WARNICK: I don't recall receiving that letter that she sent to the Court,
18 Your Honor. I'm sorry. I didn't receive the letter that she sent to you. We should
19 have got a copy of that.

20 But just one change in kind of the history she said there. When she
21 sent us a letter saying that she had been able to get Mr. Johnston's affidavit, I
22 responded back that we were also able to get affidavits from our two witnesses; Mr.
23 Moore and Mr. Murray. However, we would still feel it would be wise to have both
24 of those witnesses and her witness available at the hearing. I didn't say we were
25 going to necessarily call them at the hearing. I just said if the Court needs to have

1 additional information, it would be nice to have these people available on the phone
2 at the hearing. And that's basically what came down.

3 And so we were able to get affidavits from our two witnesses, but Your
4 Honor may have questions that still arise and, you know, it's -- we're trying to make
5 a wise decision here. And that's how it came down. So I wasn't situation where I
6 told her we're going to call these witnesses. We tried to cooperate. We were at the
7 hearing and Your Honor said it should be an even situation. We submitted
8 affidavits, they submitted their affidavit. So that's where we stand.

9 THE COURT: Okay. Yeah. And I think that the Court's well informed.
10 We've got all the affidavits from all the parties and as I said, all the briefs. Just
11 want to make sure that we've got all of them that everybody's filed, the last one
12 being the one filed yesterday on the 19th, the second supplement from Mr.
13 Warnick. So I think we've got all of them now. I don't think we need anything
14 further.

15 So we are ready to just proceed because we did have the issues of
16 accounting, attorney's fees, the issue of the best way forward with respect to
17 sub-trusts or operating as one trust, whether to remove Ms. Ahern as trustee of the
18 trust or split into sub-trusts, or put in a third party, or whatever. So those are all the
19 issues we have before us today.

20 So I don't know which is the order that you want to take them in, but I
21 believe, Mr. Warnick, this being your petition originally -- the original petition is, with
22 respect to going forward then, which is your preference?

23 MR. WARNICK: We're ready to proceed, Your Honor.

24 THE COURT: The accounting, is that the first issue to be addressed
25 probably --

1 MR. WARNICK: I think we can deal with --

2 THE COURT: -- with logical order?

3 MR. WARNICK: -- the one issue about whether or not the assets should
4 remain in the one main trust or separated very quickly. I think we're in agreement --
5 the parties are in agreement that it would be detrimental to split those off into
6 sub-trusts as we discussed because of the issues we put in our brief. If you want
7 me to address that and you want us to address that, we can probably get that out of
8 the way pretty quickly. I don't know if that would be counsel's preference or not.

9 MS. WAKAYAMA: That's fine, Your Honor. We can talk about that.

10 And just as a courtesy, we've prepared a binder just because of all the
11 briefs being filed this week with all the exhibits tabbed, but if Your Honor already
12 has something like that, I have one for you and one for --

13 THE COURT: Okay. I have a binder tabbed --

14 MS. WAKAYAMA: Okay.

15 THE COURT: -- with Exhibits 1 through 17. Are those all the exhibits?

16 MS. WAKAYAMA: Well for ours -- our initial brief there's 1 through 13 -- or
17 excuse me, 1 through 12 -- sorry, 1 through 17, you're right. And then we had their
18 briefing which attached 1 through 5 of the supplement. And then we have our
19 supplement which just attached Exhibit 18.

20 THE COURT: I think I've got them all.

21 MS. WAKAYAMA: And then their supplement which attached A through D.
22 And then the other supplement that came in yesterday.

23 So we just made it just in case if there wasn't --

24 THE COURT: Oh, A through D. Okay. Then I do have that, yeah.

25 MS. WAKAYAMA: -- a full binder.

1 MR. WARNICK: We'd be happy to have a copy too with your hard work.

2 THE COURT: I've got A through D on the supplement. And we've got the
3 second supplement which has just got -- oh, I guess there are two. All right. Sure.
4 I just have the one that's 1 through 17. So --

5 MS. WAKAYAMA: Okay.

6 THE COURT: -- if you've got the others, then -- spread it all a little bit more --

7 MS. WAKAYAMA: We thought it might be a little easier for everybody today.

8 THE COURT: Yeah.

9 MS. WAKAYAMA: May I approach, Your Honor?

10 THE COURT: You may. Thanks. Thank you.

11 MS. WAKAYAMA: You're welcome.

12 THE COURT: It's all -- all the exhibits are filed, although under seal.

13 MS. WAKAYAMA: That's correct, Your Honor.

14 THE COURT: Yeah. Okay. All right. I don't know that everything needed to
15 be filed under seal, that was -- the issue was just if we needed to disclose
16 information that related to non-parties since we have income from oil and gas
17 leases that are pro rata shared amongst three or four family units. But it's all under
18 seal anyway, so it is what it is. Okay.

19 On the sub-trusts?

20 MR. WARNICK: So are we addressing the issue of should the trust
21 beneficial interest be split off now? Is that what we're doing right now?

22 THE COURT: Yes.

23 MR. WARNICK: Okay. Your Honor, I'll just briefly state what our position is
24 set forth in our brief. The first point that Your Honor has noted before is that
25 eventually the interests of Jackie -- Jacqueline and Kathryn, not only as

1 beneficiaries of sub-trust number three, but they will also become beneficiaries of
2 all of sub-trust number two upon the death of Eleanor. So eventually all of the
3 interests of the trust will be in Jackie and Kathryn assuming that they outlive their
4 mother.

5 So because that's the case, to fracture those interests now and create
6 -- you know, separate them out would not be beneficial to them as future
7 beneficiaries of Eleanor's share -- more than Eleanor's share and all of the interests
8 and sub-trusts too. So we pointed that out initially. That's one reason why we don't
9 think a splitting off of these interests would be beneficial or in the best interest.

10 The second reason is --

11 THE COURT: Why not? Because the way the trust is set up at the current
12 time, if Eleanor has 35 percent, her daughters have 65 percent, then eventually
13 yes, they will have the whole 100 percent. In the interim, Eleanor, while she's
14 entitled to the income and use of the trust assets, can't sell it.

15 MR. WARNICK: Correct.

16 THE COURT: So why not just let her manage her money for her lifetime?
17 It's her money.

18 MR. WARNICK: We have no problem with her managing her money, Your
19 Honor. That would be our final request. If indeed Your Honor feels she should
20 remain as trustee of her interests, then we would say we have to split it off. That
21 would be our final request. But before we consider that -- before we get to that
22 point, we think it's still better to keep it from being split off.

23 The first reason is because eventually our clients receive Eleanor's
24 interest and if that's split off, the deeding of that and the confusion it causes with
25 the title and title companies and so forth, and just the expense would be an

1 unnecessary expense if everything was working well with all of the trusts. And it
2 wouldn't be to their advantage to have to then bring that back in and put it under
3 their ownership down the road when, you know, right now it's set up in a way that it
4 could be handled very easily. So initially it wouldn't be beneficial to them as future
5 beneficiaries under sub-trust two to split off the interests.

6 The second reason is, is that the cost of administration. You do a split
7 off, you have basically double the cost now. Each party has to have their own
8 attorneys negotiating leases, keeping track of the income and doing the things that
9 are being done by one person at the present time.

10 That was really the reason way back in 2009, as Your Honor may
11 recall when Marjorie died, that the parties decided not to split off their interests.
12 They agreed that they would keep it all still owned by the main trust and just take
13 the respective interest proportionately from the income coming in without splitting
14 off the interest in the main trust.

15 Marjorie agreed -- I mean Eleanor agreed to that because she wanted
16 Jackie to continue managing and running the trust as she had been doing for 10
17 years before with Marjorie. That worked smoothly until about 2012, 2013 when
18 Eleanor just decided to take over and dismiss Jackie and that's, you know, what
19 happened. But the parties originally recognized the benefits of keeping the
20 management under the main trust and not splitting it off into two separate entities
21 with additional costs and doubling the expenses that would incur.

22 The last reason is, is because, as has been noted in some of the
23 letters that we provided, the more fractured the interests in this oil become the more
24 people the oil companies have to deal with. And just from a practical matter,
25 there's more opportunity for someone to be non, you know, cooperative and to hold

1 up a deal for the rest of the family -- the rest of the extended family, which has
2 happened. And so splitting off those interests just creates greater possibility for
3 that to happen.

4 But our final position on that issue is, is that under the trust, Eleanor -- I
5 mean Marjorie's interest in sub-trust three, she had the right to pull that completely
6 out of the trust and manage it free of the trust on her own. That was transferred to
7 Jacqueline and Kathryn upon Marjorie's death. So only these two have the right to
8 really demand a split off if that has to be the case.

9 And so our position with respect to the split off is, is we would not like
10 to do it if we can have Eleanor replaced as trustee and get this thing back to
11 running smoothly and -- like it should be. But if Your Honor ultimately determines
12 that Eleanor should continue managing her 35 percent interest, then so be it. At
13 that point we would then feel we have to have a split off because we can't put up
14 with the management costs and the processes and the difficulties that she's caused
15 with the leasing.

16 So that's our position on the split off. I don't know if you want to hear
17 now from counsel on their position, Your Honor?

18 THE COURT: This is why I kind of think these are in the reverse order from
19 which they have to go.

20 MR. WARNICK: Is that okay then?

21 THE COURT: No. I'm just saying I don't think we're doing these in the right
22 order because I think that's kind of the ultimate issue.

23 MR. WARNICK: So you want me to go into the other issues then now?

24 THE COURT: Yeah.

25 MR. WARNICK: Okay. Let's deal with the breach issue which we think is the

1 removal of Eleanor as trustee in the trust.

2 THE COURT: Again, I think we're doing these in the reverse order from
3 which it makes sense to me. I think that you start with the accounting.

4 MR. WARNICK: Well okay. The accounting is part of the breach order.
5 We're going to put those with our breach argument, Your Honor. But I can
6 handle --

7 THE COURT: Okay.

8 MR. WARNICK: -- the accounting right now too.

9 If you look at that accounting, Your Honor, we were totally shocked
10 when we received the accounting. Unbeknownst to us, and without any agreement
11 or approval, Eleanor claims to have incurred over \$400,000 in expenses as trustee
12 during the last short period of time that she's been in as trustee. Such expenses,
13 except for a very minimal amount, were never incurred during the prior 34 years
14 that this trust was managed. Nevertheless, she sends us an accounting and in that
15 accounting she claims that she's only accountable to a little bit over \$2 million as 65
16 percent share that belongs now to Jackie -- Jacqueline and Kathryn.

17 As Your Honor may recall, at the last hearing it was determined that 65
18 percent of the trust income does belong to Jacqueline and Kathryn, and Eleanor
19 was required to provide an accounting so that she can reimburse and return that 65
20 percent to our clients. Well in her accounting, the first problem is, is that for the
21 period from June through January -- June 2013 through January 2015 she comes
22 up with about \$250,000 less than should be reported in the accounting.

23 The reason for that is because she hasn't reported all of the income in
24 the total period of 2013 which wasn't paid over to our clients. The reason we know
25 that's true -- and we pointed this out in our brief, it's in our supplement -- first

1 supplement after we received the accounting. The reason we know this is true is
2 because Jacqueline and Kathryn received information from their family -- extended
3 family members who have exactly the same interests as the Connell Trust has and
4 they know the amount of income that's come in over the years -- over that year and
5 a half period in time and they know what should have been reported and what they
6 should have. And based upon that, as Jacqueline has put in her affidavit, there's at
7 least \$250,000 shorted on the accounting that Eleanor provided.

8 The second problem with her accounting is that she claims that in
9 order -- well first of all, Eleanor, in her accounting, tries to show that she has
10 retained 65 percent of the trust income so that she hasn't breached her duties as
11 trustee. She's arguing that she decided to cut off paying the income to Jacqueline
12 and Kathryn back in 2013, but in so doing she says no, I've retained their share in
13 trust, I'm just holding it there, I'm doing this in good faith and I'm not breaching my
14 duties because I'm holding their interest in the trust. She's repeated that assertion
15 time and time again. Her accounting shows that that is not true. That is not true.

16 First of all, as we've just pointed out, there's \$250,000 missing initially
17 off the top that should have been included in that period of time as monies that
18 have not been paid over to our clients. Secondly, even with her own accounting
19 she says that she's \$13,000 in excess of what she should have in order to repay
20 our clients. She says that she's got \$13,000 in excess and that the balance in the
21 trust all should be paid over to our clients at the present time.

22 The problem is, is in order to get that 13,000 excess, she took a
23 30,000 -- \$37,000 payment that was made to our clients way back in June of 2013
24 and counted it as income accountable in her accounting period when actually that
25 37,000 was for prior months that hadn't been paid to them. So she can't use that

1 \$37,000 to try to bring her amount up to that necessary to show a 65 percent
2 retention of funds in the trust. So already she's \$24,000 short in her own
3 accounting.

4 More egregiously, if you look at that accounting, she is claiming a right
5 to rent property and charge the trust \$35,000 -- \$38,000. She's claiming the right to
6 hire individuals to do menial tasks and pay them \$35,000. She's claiming that she
7 also then is also entitled herself to being paid over \$200,000 as a trustee's fee
8 during this period of time. This should be shocking. I mean it's shocking to think
9 that anyone would have the audacity to even make such claims and assertions, but
10 that's basically what she's saying.

11 The reason she obviously did that in her accounting, and we believe
12 she did this all ex post facto, she realized she didn't have the 65 percent to show
13 the Court that she had been holding for Jackie and Kathryn while she was litigating
14 in this case. She came up short by several hundred thousand dollars. We
15 calculate over \$500,000 if you take into consideration the 250,000 that our
16 accounting shows isn't there. And so she's concocted these expenses to try to
17 reduce the amount that she has to be accountable for because she couldn't
18 otherwise show that she's retained the full 65 percent in the trust.

19 There is no justification for charging a six percent fiduciary fee in this
20 case. While she's noted that some banks who are professional corporations down
21 in Texas can charge six percent to manage gas and oil interests, this is a family
22 situation. We've attached the letter from Mozell Miller who's one of the other
23 extended family members and she's explained just exactly how this works. She's
24 explained the minimal cost that they've incurred over the years. We know for the
25 last 34 years, before Marjorie came in, no such costs were ever incurred.

1 Why during this last period of time has she now come up with over
2 \$400,000 in costs to try to make a balance in her accounting? Obviously because
3 she's short. She can't show the Court that she did in good faith retain 65 percent of
4 the trust income as Jackie's and Kathy's share as she should have been retaining
5 during the last year and a half of this litigation.

6 But there is no excuse for charging a six percent fee. If that was a
7 professional corporation charging that, they wouldn't be charging an extra fee for
8 rental, another \$35,000. They wouldn't be charging an extra \$35,000 for minimal
9 tasks performed by their employees. That would be a six percent fee of the overall
10 costs. But Kathryn -- I mean Eleanor is not a professional trustee, so it's not right to
11 compare her with some big bank that handles great big oil and gas interests for
12 people versus this little, small family matter where she's trying to charge that much
13 money.

14 In addition, as you recall back in 2009, the agreement of the parties
15 was that she -- that Kathryn -- that Jackie was going to take over and continue
16 management of the trust. There was never any notice given to Jackie and to Kathy
17 by Eleanor that beginning in 2013 she was going to start charging them a six
18 percent trustee's fee. Jackie and Kathy always have the right to pull their share
19 out. So it would be unfair from that standpoint for Eleanor now to just unilaterally
20 say I'm going to start charging a fee for my services when everybody knew this was
21 a cooperative, understood agreement that they were just working together to
22 minimize costs and not to have them be in excess.

23 The accounting also has several problems with respect to where the
24 monies are. They've alluded and asserted in their accounting that they had nearly
25 \$2 million in the accounts of which that is, they say, \$13,000 over what needs to be

1 in the accounts to pay back to Kathryn and Jackie.

2 However, \$72,000 of that money that they claim is in the account is
3 actually in the account of their own litigating attorney, Mr. Johnston, down in Texas.
4 He's been incurring fees and doing a lot of things just recently for them. We doubt
5 he's going to just say okay, fine, here's \$72,000 back to the trust. He's going to
6 undoubtedly want to be paid fees and he's got that on the retainer because that's
7 what it's for, for him.

8 In other words, she's put a large amount of actual trust funds in the
9 retainer of her own attorney and now is trying to take credit for those funds in that
10 trust account as being in the account of a trust as security for payment of Jackie
11 and Kathy. That's clearly a breach and a misuse of trust funds.

12 Another \$20,000 was given to a firm down in California that handles
13 foundation -- private foundation law. Nothing to do with the trust, but it does have
14 something to do with Eleanor and her close advisors who set up a foundation for
15 Eleanor and she is having all monies that come into her put into that foundation.
16 This was clearly monies used for Eleanor's own private interests by and through
17 her own advisors and not for trust benefit and it's not money there that's in the trust.

18 The biggest issue is that she claims in her accounting to have
19 \$500,000 in an account at Fidelity Capital Incorporated. Now maybe when Your
20 Honor first saw that letter from Mr. Peril saying there's \$500,000 there you reacted
21 the same way I did and thought well, Fidelity Capital's a great big nationwide
22 corporation that people invest in and it's a well-known company.

23 Well this is not that Fidelity Capital Incorporated. As we've noted in
24 Jackie's affidavit and the documents we attached to that, this Fidelity Capital is a
25 marginal Nevada corporation that during the time period it was given that \$500,000

1 was not even an active corporation, it was in default. And it's come into default and
2 out of default and was only reinstated last March -- this March -- March, 2015. And
3 yet Eleanor has put \$500,000 with that company.

4 What on earth is the reason for doing that? Well Mr. Peril, the
5 manager of that company, in the letter that he submitted saying he had \$500,000
6 with the accounting, turns out to be the same person who represented Eleanor a
7 couple of years ago when she was disputing with Jackie. He's an attorney. He's
8 also associated with Susan Noona, who's the close associate of Eleanor, who
9 we've mentioned all along is the person who's been influencing Eleanor into making
10 decisions. She's the person who set up Eleanor's private foundation, has been
11 helping her with her business affairs and is the person who influenced her to reject
12 the settlement that was -- the attorneys thought they had negotiated last October,
13 who's been very influential in Eleanor's life.

14 So Eleanor, we know through the direction of Mrs. Noona, has put
15 \$500,000 in this First Fidelity -- this Fidelity Capital Incorporated marginal
16 corporation, has no history that we can see of any ability to invest or to use the
17 funds properly to gain value for the trust. But most importantly, why would she just
18 move money out of the trust and put it in such a company -- a marginal company
19 unless it was motivated by her own personal interests and the comingling of those
20 interests with those of Mrs. Noona and Mr. Peril of Fidelity Capital.

21 That we feel, Your Honor, is a very critical situation. The monies are
22 not in the trust and they're -- the accounting, the monies are about \$600,000 short
23 of being in the trust. That alone is just appalling. I mean it's just unbelievable that
24 a trustee would do that, especially during this last year when we've been
25 demanding an accounting from Eleanor. We've been demanding and asserting that

1 there have been misuse of the funds and they've been denying all along no, no, no,
2 there hasn't been. We've got all the funds we need. We've kept all the funds that
3 need for the 65 percent interest.

4 Well, their accounting proves that that is not the case. Their
5 accounting proves that they are short, not only just in accounting figures, but they're
6 short in the actual possession of funds that should be in the trust account by at
7 least \$600,000. And when you add to that the \$400,000 that she wants to deduct
8 as expenses, this is really a shocking and an appalling accounting. It just -- I can't
9 believe that someone would actually put forth this accounting in any good faith
10 thinking that this was going to be an acceptable accounting to show that she has
11 performed her trustee's duties.

12 That's our position on the accounting, Your Honor.

13 THE COURT: Okay. Then Ms. Wakayama.

14 MS. WAKAYAMA: And Your Honor, I have a -- just an exhibit list of exhibits
15 that have already been produced in other pleadings, court orders, but also some
16 new information that addresses their briefing if I may approach?

17 THE COURT: Okay.

18 MR. WARNICK: I'm not sure what this is, Your Honor. Is this a bunch of new
19 stuff that she's just now serving upon us?

20 THE COURT: I think her position is this is all from -- taken from other
21 pleadings?

22 MS. WAKAYAMA: Yes. And there are a couple other documents that we
23 were able to obtain just this morning to refute some things, but we're going to walk
24 the Court through that. Some of it's also public record.

25 MR. WARNICK: Declaration of Lawrence Kruka, Martindale-Hubbell thing,

1 declaration of her.

2 MS. WAKAYAMA: Your Honor --

3 MR. WARNICK: I mean this is all --

4 MS. WAKAYAMA: -- may I explain this?

5 MR. WARNICK: -- at the last minute stuff.

6 MS. WAKAYAMA: May I explain this?

7 THE COURT: Sure.

8 MS. WAKAYAMA: Thank you. And just for the record, we did receive two
9 new declarations from Mr. Warnick just yesterday at 3:44.

10 THE COURT: Yes.

11 MS. WAKAYAMA: So basically, Your Honor, these are serious allegations
12 that Jacqueline and Kathryn are pursuing against their mother with very serious
13 consequences. And we do apologize that we are basically forced to scramble at
14 the last minute to make sure that there's a complete and accurate record here on
15 the allegations that are being made.

16 We would like to remind the Court that we're here today on summary
17 judgment and because of that, we ask this Court to only consider the evidence that
18 is admissible and nothing else.

19 We specifically object to the admissibility of Exhibit 1, 3 and 5 of their
20 brief; Exhibits A, B in relation to the printouts regarding Mark Peril as they failed to
21 lay the proper foundation; Exhibit C and D of their supplemental brief; and the rest
22 is based on all inadmissible hearsay. And the majority of what Mr. Warnick just
23 argued is based on speculation and I will show Your Honor why that is.

24 Now if Your Honor is inclined to grant summary judgment in favor of
25 Jacqueline and Kathryn in relation to their breach of fiduciary duty claims and their

1 attorney fee request, then attached to this, Exhibit 13 is my declaration in support of
2 56(f) relief. Normally if we had enough time we would brief this to Your Honor, but
3 that is my declaration in support of 56(f) relief.

4 The accounting. We ask this Court to keep in mind that attached as
5 Exhibit 9 to this supplement is the order. It's the order granting petition for release
6 of trust funds for the payment of administrative expenses, insurance premiums and
7 taxes attributable to trust property filed May 16, 2014.

8 Basically in that order Eleanor Ahern was authorized to pay ad valorem
9 taxes, administrative expenses which included professional fees for accountants.
10 So the Court needs to -- or it needs to be reminded that these administrative costs
11 were actually authorized at one point.

12 Now, also we'd like for the Court to keep in mind the income generated
13 by the Connell Trust over the 20 months of Ms. Ahern's trusteeship. It far eclipses
14 that of Jacqueline and Marjorie in their 34 years. What I mean by that is in 20 short
15 months, Ms. Ahern has successfully generated over \$3.6 million to this trust.

16 THE COURT: What did she do to generate the income?

17 MS. WAKAYAMA: She did quite a bit. So I'll go right to the trustee's fees.

18 Now she has been on the ground with Texas counsel to basically
19 unwind the suspensions. Now with this supplemental exhibit list, Exhibit 1, 2 and 3
20 are letters from Shawn Guerrero, Jacqueline's Texas attorney, that were sent to all
21 the oil companies in September 2013. These letters were previously attached to
22 the briefing in January.

23 It's interesting that Mr. Warnick says that \$250,000 is shorted in the
24 accounting. But what he fails to keep in mind is that there are still suspension
25 payments that are being withheld from the trust all caused by Jacqueline Montoya.

1 Ms. Ahern has been working with Texas counsel to basically unwind all
2 these deals. She's traveled to Midland many times to meet with Apache
3 representatives, which actually Apache was the biggest producer here, and was
4 able to -- excuse me, successfully unwind those suspensions.

5 And we're talking, Your Honor, about approximately 10 different oil
6 companies because what Mr. Warnick fails to inform this Court is that as a result of
7 Shawn Guerrero's letters, all income stopped. All. All income stopped to the trust.

8 If you would mind looking at Exhibit 2 to our brief, this is the accounting
9 from June 1st, 2013 through January 31st, 2015. If you look on the third page, it
10 lists the royalty income for Apache Corporation towards the bottom and Your Honor
11 will see that in October of 2013, there was a \$64,000 income stream to the trust.

12 Well there's a big gap between October to February 14 of 2014 and
13 that's due to the suspensions. That's why Ms. Ahern alleged intentional
14 interference with contractual relations against Ms. Montoya, because -- because of
15 Eleanor's efforts and being diligent on this, Apache released a huge amount -- it's
16 over half a million dollars -- to the trust because they were holding all of those other
17 months in suspense.

18 This Court also needs to know that Mr. Johnston recently discovered
19 the further breadth of Jacqueline's meddling. In April 2014, so prior to this Court
20 entering the order regarding the 35/65 ownership split, somehow Jacqueline got
21 Apache to create a new owner number on one well, naming her as co-trustee. This
22 is in section 42 of Apache's deal with the trust. So because of this, there is
23 currently \$84,000 in funds held in suspense with Apache alone. This is another
24 mess that Mr. Johnston and Mrs. Ahern are trying to rectify.

25 The other oil companies that are currently withholding payments to the

1 trust because of Jacqueline Montoya is Pioneer, DCP, Parsley Energy and possibly
2 Plains. So there's no shortage of a \$250,000 accounting in Ms. Ahern's records
3 because funds are still being held in suspense unlike the Millers. The Millers don't
4 have anything in suspense, so that's not an accurate comparison.

5 What else has Ms. Ahern done? Well, she's been actively trying to
6 correct the tax reporting errors caused by Cory Haina. Cory Haina failed to take
7 depletion deduction allowance for the oil and gas producing properties.

8 I would like to turn the Court's attention to Exhibit 17 of our
9 supplemental exhibits. This is the declaration of Larry Kruka that I just received this
10 morning. In it it states I have reviewed the 2009 and 2012 Connell Trust tax
11 returns. Paragraph five, the 2009, 2010 and 2011 tax returns were prepared by
12 Cory Haina. Six, Eleanor has stopped my assistance in amending the 2012 tax
13 return which can be amended until April 1st, 2015. Paragraph seven, to encourage
14 oil and gas expiration, the law allows individuals a tax deduction for 15 percent of
15 the gross sales of oil or gas.

16 If you go down to paragraph 10 and it shows you the missing depletion
17 deductions are as follows: Under Jacqueline's management by employing Cory
18 Haina, 2009, \$14,116; 2010, \$43,733; 2011, \$43,282. This is important.
19 Paragraph 11, while the 2012 return can still be amended, the earlier returns
20 cannot. So Jacqueline wasted over \$100,000 in trust money that could have
21 qualified as a deduction.

22 These are the steps that Mrs. Ahern has taken to try to rectify -- to try
23 to make sure that somebody who is actually qualified in oil and gas reporting tax
24 income is doing the right job, unlike Mr. Haina who is not qualified in this area.

25 They take issue with Larry Kruka's fee because Cory Haina only

1 charged a few hundred dollars a year. But Your Honor, I guess you get what you
2 pay for.

3 On top of fixing the accounting mess, Eleanor has overseen a number
4 of very complex transactions that Jacqueline never had. As testified by Mr.
5 Johnston, Eleanor has, quote, overseen and successfully closed on a number of
6 complex transactions.

7 She is involved, Your Honor. She is involved with this with Mr.
8 Johnston. It's not like she's just sitting back waiting for her check. She is involved.
9 She is on the ground, in the trenches with him. Because of her efforts, Mr.
10 Johnston testifies, millions of dollars have thus been generated for the Connell
11 Trust as the result of the consummated transactions in which Eleanor Ahern was a
12 material participant.

13 The import of all this is Jacqueline and Kathryn cannot point to one
14 missed opportunity for the trust under Eleanor's watch. She's also dealing right
15 now with an issue of possible trespassing by DCP who may have built a line -- a
16 pipeline on the property without the proper easement rights. That was actually an
17 issue raised by Jim Walton and Ms. Ahern is on top of it.

18 She audits payers for any errors which is shown in the examples of the
19 checks that Jacqueline and Kathryn attached to the brief that are being held for Jim
20 Walton because they were the wrong amounts. We were advised recently that new
21 checks have been reissued by Mr. Walton to correct these errors. Ms. Ahern also
22 researches the volatile markets to be well informed for creating additional income
23 streams for the trust.

24 So basically, Your Honor, she is doing exactly the job her father
25 intended her to do. And in fact, as testified by Mr. Johnston, she is not just signing

1 any form that the oil companies put in front of her regarding the pending production
2 sharing agreements with Apache right now as well as the Pioneer easement. She's
3 not just saying okay, great, sign, money please. She's actually involved in
4 negotiating better protection; terms that will better protect the trust for years to
5 come because, my understanding is, it's not just a six-month lease or something.
6 These leases -- these easements, they are in effect for decades to come.

7 So she should be allowed compensation for her efforts. And in fact,
8 the trust agreement allows for it. Article 8, section E: Reasonable compensation
9 shall be based upon the then prevailing rates charged for similar services in the
10 locality where the same are performed by other fiduciaries engaged in the trust
11 business or acting as trustees. It does not say that only trustees acting in an
12 individual capacity should not receive any compensation. It is very broad; for
13 similar services. And it allows for compensation at the prevailing rates charged for
14 similar services. This is consistent with Nevada law. NRS 153 --

15 THE COURT: Well isn't Nevada law allows what's reasonable, what your
16 time really is invested?

17 MS. WAKAYAMA: It actually just says -- 153.070, it allows the trustee
18 reasonable compensation. And so when we turn to the reasonable definition in the
19 trust, it's very broad in that sense.

20 And in fact, nobody disputes that the prevailing rate for managing oil,
21 gas and mineral rights which is not, as Your Honor pointed out at the January 30th
22 hearing, just managing the stock account. It's pretty entailed. It's pretty detailed
23 here. No one disputes that six percent of the revenue is the standard rate, and we
24 attached that fee schedule to Exhibit 12 of our brief.

25 And importantly, not one provision in the trust requires a beneficiary's

1 consent. This is just an allowed fee. And they want to act like your order -- your
2 recent order for the 35/65 split was in effect all the way back in June of 2013.

3 I think it's important too with the compensation and keeping in mind
4 that Eleanor has generated over \$3.6 million under her watch which, Your Honor,
5 actually is almost double the combined income for 2009, 2010 and 2011 looking at
6 Jacqueline's figures. But in Jacqueline's affidavit, Exhibit B, paragraph 13 she
7 testifies during the 34 combined years Marjorie T. Connell and I managed the trust,
8 no trustee fees were charged to the trust and the beneficiaries. In her
9 supplemental brief, page 5, line 7 she states that the 30 years Marjorie managed
10 the trust charging even a minimal fee was not felt to be appropriate.

11 But that's not what Jacqueline testified to in her deposition, Your
12 Honor. Her deposition is attached to this excerpt -- is attached to this supplemental
13 exhibit as Exhibit 6. And if you go on page 56, line 13, I asked her: After your
14 grandmother passed away in May 2009, were you receiving any type of
15 compensation from the oil and gas income in relation to handling the checks.

16 She goes on to say -- her answer: Right. So when my grandmother
17 passed I called. It was maybe three weeks after my grandmother passed and the
18 checks did come in and David had said that I need to post them to the account.
19 And he had advised that the 65 percent that my grandmother was normally
20 receiving would then go to our administrative trust account. And so I knew that I
21 needed to start doing some banking, but I felt a little uncomfortable because my
22 grandmother had passed and she wasn't there to kind of dictate as she did before.
23 So I called my sister and I called my mom and I said look, we can hire an
24 accountant to do my job, I can do my job, you guys just need to advise how you
25 want to handle this because now instead of your grandmother having that 65

1 percent, my sister and I were and I needed my mom to give us her feedback on
2 how she wanted it handled. And she said I want you to continue handling it. My
3 sister responded the same. I said okay then, that makes it easy. I can continue
4 what I've been doing and I said that I'd be happy -- that I'll be happy to even help
5 with preparing the taxes because I had helped with that as well.

6 My question: So did you --

7 Answer: So yes. There was a fee. I'm trying to remember what it
8 was, 250 I think. I think 250 per person.

9 Question: 250 a month?

10 Answer: From my mom and 250 for my sister.

11 So \$500 a month? That was my question.

12 Answer: Yes, I believe.

13 Question: And did that continue until June of 2013?

14 Answer: It did. But my mom and I had a conversation because I
15 started the first year my grandmother had passed and I had to prepare all the taxes
16 and it's a very big job to prepare everything and I cannot remember what we
17 discussed, but she kind of -- we had talked through that I would have an increase
18 for that amount as well. And I don't know if it was 1,000 or 3,000 for me doing the
19 taxes because I prepared all of the paperwork.

20 So if you add that up, the months, Jacqueline was paid a
21 compensation of approximately \$24,000. The difference between Jacqueline
22 Montoya's fees and Eleanor's fees is that Eleanor's just not sitting around waiting to
23 cash the checks. She's actively involved in the business deals and she's actively
24 involved with the decisions that need to be made on behalf of the trust. And so far
25 she's been doing a pretty good job.

1 Now, Jacqueline and Kathryn also want to compare the expenses from
2 2009 to 2012. Well first of all, Your Honor, we don't even know if these figures are
3 accurate. There's no supporting documentation attached to them at all, unlike the
4 accounting that Eleanor has provided to this Court. There are supporting
5 documentation to back up all the figures contained in the accounting prepared by
6 Gammet & King. So Jacqueline and Kathryn's claim that Eleanor somehow at the
7 last minute concocted all these administrative expense is unsupported by the
8 record. Completely. It's pure speculation and it ignores the admissible evidence.

9 The comparison also proves an important point, Your Honor. They're
10 comparing apples and oranges. Jacqueline and Kathryn, as a result of their
11 actions, are only concerned with getting the money, Your Honor. They're
12 shortsighted. They want instant gratification.

13 The same holds true in relation to the other property owners. Eleanor
14 has actually taken the time to seriously negotiate new term PSAs, the production
15 sharing agreements, new easement agreements, and any other agreement with the
16 oil companies to obtain better protection of their interests. So because of Eleanor's
17 prudent management, the Connell Trust potentially is in a better position today in
18 relation to its deals with Apache, Pioneer, DCP and all the other oil companies.

19 Jacqueline and Kathryn, they want to reap the rewards, but they sure
20 don't appreciate the price tag. They take issue with Texas counsel's \$52,000 in
21 attorney's fees that we put forward to this Court, Exhibit 5, Exhibit 10, were only
22 incurred in relation to the administration of the trust and not the litigation at all. I
23 don't know how else to say that, because what -- that's the fact.

24 So what exactly did Texas counsel do for the trust administratively?
25 Well, here's an example. Of this fee, \$10,500 was incurred to deal with a

1 condemnation threatened by DCP Sand Hills Pipeline in the spring of 2014.

2 Interesting enough, Your Honor, James Walton was involved in that in
3 trying to fix that issue. Guess what his fee was? Forty thousand dollars. They
4 don't take issue with that. He gets a 25 percent commission no matter what. But
5 for approximately four months, Jeff Johnston's firm had to try to fix this problem and
6 it was accomplished in July of 2014.

7 What else did they do? In 2014 there were several pipeline deals with
8 another DCP affiliate. The result? Mr. Johnston was able to successfully replace a
9 1950's easement with a new form that better protects the trust.

10 2014, another deal with an affiliate of Energy Transfer. Your Honor
11 knows about the current deals pending with Apache for the PSAs and Pioneer.
12 And let's not forget all the work that was done in relation to trying to unwind the
13 suspension that Jacqueline caused, and she should be responsible -- personally
14 responsible for this legal bill. There is no evidence that Mr. Johnston or Stan
15 Crawford, Texas counsel, have ignored their duties as officers of the court just to
16 make a quick buck.

17 You know it's interesting because Mr. Warnick takes issue with the
18 \$72,000 held in their client trust account. No one had a problem when 100 times
19 more than this was sitting in their trust accounts managed for the Apache deal.
20 They had \$7 million in their trust account and everything was dispersed as it was --
21 as they should, as attorneys have an ethical obligation in relation to their client trust
22 account.

23 But I think what's important here too is if you look at Exhibit 7 to our
24 supplement, prior to all of this briefing -- because remember the accounting period
25 was only through January of 2015 -- there's a deposit slip for the \$72,000 made

1 First Capital Bank February 20th, 2015 to the Connell Trust. So when Mr. Johnston
2 no longer needed to have that in his trust account, went ahead, distributed it right to
3 the trust account.

4 So this speculative evidence and accusations that somehow Mr.
5 Johnston and his -- and Stan Crawford are using this money to take their fees from
6 it is just not true, Your Honor.

7 MR. WARNICK: Your Honor, could I get that reference again where she just
8 said that Mr. Johnston paid it back? That's just new to us. It wasn't certainly in his
9 original letter.

10 THE COURT: Yeah. It's Exhibit 7, I believe, of the documents that were just
11 provided today.

12 MR. WARNICK: And what page would it be?

13 MS. WAKAYAMA: It's Exhibit 7 and there's only two pages.

14 Okay. Then we get to Martin Peril. We get into this tangled conspiracy
15 theory of Martin Peril. If anything, this shows the lengths that Jacqueline will go to
16 smear her mother. But I think what's important is that the Court really understand
17 what is being testified to here.

18 THE COURT: I have some concerns about Mr. Peril. Is he practicing law in
19 the State of Nevada? He's not licensed to do so here.

20 MS. WAKAYAMA: You know, I don't know. Your Honor, I don't know Mr.
21 Peril.

22 MR. POWELL: He's a California attorney.

23 THE COURT: Yeah. He's a California attorney. Is he practicing law in the
24 State of Nevada though? I've got some concerns about him.

25 MS. WAKAYAMA: Your Honor, I have no idea. I don't know the answer to

1 that. I know that the letter that they attached was authored by him -- or purportedly
2 authored by him through Beverly Hills, California. So unfortunately, I can't answer
3 that question for the Court.

4 So Jacqueline's affidavit, this is the second affidavit. It's Exhibit B.
5 This was attached towards the end of the binder, Your Honor, of their supplement.
6 Her testimony in paragraph eight is Fidelity Capital is organized with the Nevada
7 Secretary of State with the key officers listed as O. Martin, i.e. Mr. Peril and Susan
8 Noona, and with a registered agent named Zora Tujani. And behind her affidavit
9 she attaches this printout for the -- from the Nevada Secretary of State website for
10 Fidelity Capital Inc.

11 Now remember, Fidelity Capital Inc. is the company that Mr. Peril
12 wrote the letter on behalf of. It does not list Susan Noona, O. Martin or Zora Tujani
13 on this printout. They're not here.

14 So then you go to the fourth page and all of a sudden there's this
15 Fidelity Capital Investment Fund Business Trust, about how it's no longer active,
16 when it was formed, and then it has Susan Noona there and everything else. Well
17 given that the officers weren't listed for Fidelity Capital Inc. as Jacqueline Montoya
18 testified to under penalties of perjury, we looked on this Nevada Secretary of State
19 website, Exhibit 8. And you'll see that there's two companies highlighted there;
20 Fidelity Capital Inc. which is active, and Fidelity Capital Investment Fund Business
21 Trust which is revoked. They're two totally separate entities. Two totally separate
22 entities.

23 Mr. Peril advised this Court that the cash is on deposit of the \$500,000,
24 it's ready on demand. Given what we read about this conspiracy theory, we were
25 provided this morning Exhibit 15 of our supplemental exhibits, with another letter

1 from Mr. Peril advising that: Dear Eleanor, the purpose of this letter is to confirm
2 that we have \$500,000 on deposit for the William N. Connell and Marjorie T.
3 Connell Living Trust, dated May 18th, 1972. It is the cumulative total to date on the
4 account that was open in 2014 by Eleanor Ahern, the trustee -- the sole trustee.
5 This is available on demand. Your statement is enclosed. So you go to the next
6 page and there's the account statement. This is what we were provided to this
7 morning.

8 Jacqueline and Kathryn also take issue with the office space and
9 temporary help that Ms. Ahern has employed. Now as testified to by Ms. Ahern,
10 she does not have suitable space where she lives to keep all of the documents, the
11 records and perform her duties in relation to communicating with the oil companies,
12 et cetera.

13 The volume of her trust records has, understandably, increased
14 exponentially over the past year. But the import of it is Exhibit 8 of our brief shows
15 that there's a letter confirming that the monthly rent has been paid.

16 Now despite this admissible evidence as authenticated by Ms. Ahern in
17 her declaration, Jacqueline and Kathryn state that they suspect Eleanor Ahern is
18 renting an office space for, I quote, the benefit of those individuals and their private
19 interests who may have been influencing Eleanor Ahern's bad decisions for the last
20 several years.

21 Your Honor, this conspiracy theory has to stop. There's no evidence to
22 support it. They --

23 THE COURT: Well but I think that Mr. Warnick's point about that was that
24 even if one says that a reasonable fee may be charged by a trustee who's also a
25 beneficiary of the family trust, that these corporate trustees, which are a very

1 different thing and it's one thing to say a corporate trustee in Texas earns six
2 percent per year, but you know, for a person to do it, it's something entirely
3 differently, but that that would be a fee. You wouldn't expect there'd be a fee plus
4 you're going to pay my overhead. Isn't that what we call double dipping?

5 MS. WAKAYAMA: No. I don't think it's double dipping, Your Honor. What I
6 think it is, is that --

7 THE COURT: Okay. Passive revenue generator. How's that?

8 MS. WAKAYAMA: I'm sorry?

9 THE COURT: Passive revenue generator.

10 MS. WAKAYAMA: Well here's the issue, Your Honor. I think it's really
11 important that this Court found that Mrs. Ahern acted in good faith.

12 THE COURT: Okay. Let's -- we've got to talk about this.

13 MS. WAKAYAMA: Okay.

14 THE COURT: It's very different to say that with respect to a disinheritance
15 clause that the Court says I think a person had a good faith dispute here and
16 needed to have -- as I said, it would have been nice if she would have instead
17 come to Court and said can I do this. She didn't do that. She just did it and now,
18 you know, lots of consequences. Always better to ask for permission than
19 forgiveness. Okay.

20 Here's the deal. It's one thing to say okay, so she had a good faith
21 basis for that. I'm not going to say that this is a violation of the disinheritance
22 clause that disinherits her in her entirety. It's quite a different argument to say that
23 that good faith carries forward to any of this.

24 MS. WAKAYAMA: Okay. And Your Honor, the way that I would address that
25 -- and I understand the distinction -- but it is Ms. Ahern's understanding and belief

1 that she was entitled to incur, what she thought in her mind in good faith,
2 reasonable expenses.

3 THE COURT: Okay. So it was her money so she could spend it however
4 she wanted even after the Court said look, you're going to have to hold this money
5 in trust because until we make a determination that you are in fact doing the right
6 thing here, you need to act as if you're holding it in trust for your daughters. So
7 even knowing that, she could still spend it like it was her own money?

8 MS. WAKAYAMA: No. Your Honor, no. What I'm saying is, is that first of all,
9 that court order to have everything held in trust was not entered in June of 2013, it
10 was entered much later in the litigation.

11 THE COURT: Six months.

12 MS. WAKAYAMA: Regardless. What she has done, she was acting in good
13 faith in relation to what she thought was reasonable administrative trustee
14 expenses that would normally be allowed in relation to the administration of the
15 trust.

16 And you know, that's the thing, Your Honor. She has generated -- it's
17 not like she just sat and rented some office space and did nothing. She's been
18 active in these negotiations and she has, according to Mr. Johnston, been very
19 instrumental in these negotiations and dealings.

20 So in good faith she rented an office space. Now if the Court says you
21 know what, that wasn't -- you shouldn't have done that, I don't think that amounts to
22 breach of fiduciary duty, which in the State of Nevada the law says is analogous to
23 fraud. That's the *In Re Americo* decision.

24 She's not committing fraud by renting an office space and hiring people
25 to help her when it comes to, you know, copying, running to the bank, whatever she

1 needs them to do. And if you really look at it, you know, okay, she hired a staff --
2 temporary staff, about four people. It boils down to about \$1,700 per month. That's
3 about \$443 per person. That does not equate to a breach of fiduciary duty. She's
4 accounting for it.

5 And on top of it, Your Honor, she didn't even take into consideration or
6 ask for any type of reimbursement or anything like that when it came to her travel
7 expenses, which I do have credit card statements that she sent me this morning. I
8 haven't had a chance to look at all of them in detail, but what it basically amounts to
9 is about \$14,578.57 in travel expenses for her airline ticket, for her hotel room when
10 she was going down to meet with Apache and their representatives.

11 Same with the consulting fees. You know, where's the evidence to
12 support what Mr. Warnick is saying, that somehow these people are linked in this
13 conspiracy with Susan Noona and all these other people?

14 Just for the record, Your Honor, Eleanor is very insistent that this Court
15 understands that Ms. Noona has not received one penny from the trust of her
16 money, not one. Zero. Instead, what Fred Smith and Anthony Middlebrook
17 performed was, you know, related to tax savings for the trust as well as consulting
18 for charitable projects and other opportunities for the trust that they can invest and,
19 you know, best realize other available tax benefits, especially because some tax
20 benefits were lost for 2009 through 2011.

21 Jacqueline and Kathryn take issue with the expenses allowed in the
22 May 16, 2014 order. Your Honor specifically allowed accounting fees. That's the
23 \$8,000 to Lawrence Kruka who's in the process of rectifying the 2012 return to
24 make sure that all deductions are taken advantage of, and the \$5,000 to Gamett &
25 King.

1 As for the partial payment, Your Honor, at the January 30th hearing,
2 Jacqueline and Kathryn only took issue with the accounting from June 2013
3 through the present -- and we did it through January 31st of 2015. They do --
4 counsel didn't inform this Court that they received a \$30,000 partial payment. And
5 this partial payment, as reflected in the actual cashier's check in Exhibit 17, was
6 paid in June of 2013.

7 That's nothing they don't deny. They don't deny that they didn't receive
8 it. But now all of a sudden they want to raise a new issue where, you know, no,
9 there's an issue now with May 2013's income. Well where's the proof? They
10 haven't given this Court any proof of that. And it's Eleanor's position that it was in
11 relation to the June 2013 income. So the fact that they received the \$30,000 partial
12 payment in June of 2013, Gamett & King reduced the amount that needs to be held
13 in trust accordingly.

14 So Your Honor, we want to make sure that it's clear that maybe Ms.
15 Ahern made some mistakes and hired an office staff as, you know, we just talked
16 about, but she did do all of this in good faith. She really did. And it wasn't, you
17 know, something that was tantamount to fraud and a breach of her fiduciary duties.

18 We also want to point out the purported email from Mozell Miller that
19 says that she -- who knows if she authored it -- was totally shocked to hear about
20 some of the trust expenses. Well first of all, Your Honor, what's important for the
21 Millers, just like Jacqueline and Kathryn, are that they are somewhat, you know,
22 quick to jump the gun as well.

23 If you look at Jacqueline's deposition, supplement Exhibit 6, on page
24 218, we have the excerpt there. Basically this is Jacqueline's testimony that starts
25 on line 14 and a new paragraph on line 19. She's talking about the 2012 Apache

1 deal. Jacqueline testifies: And when that original conversation started, our cousins
2 had already had conversations with them, Bob and Mozell Miller. And Bob and
3 Mozell Miller had already agreed to a \$500 per acre agreement. Well lo and
4 behold, with Mr. Johnston's representation, the Apache deal actually closed for
5 \$3,000 per acre.

6 THE COURT: Yeah. Jacqueline says that's all her doing.

7 MS. WAKAYAMA: And Mr. Johnston actually testifies to the contrary, that it's
8 not his understanding that Jacqueline Montoya was the primary driving force in
9 those negotiations, and that's testified by the attorney who handled the deal.

10 So regardless, it shows that the Millers' way of doing business may be
11 far different from the Connell Trust and that's okay. It doesn't make one wrong or
12 one right. It's just different. And so you can't compare apples and oranges here.
13 You just can't do it.

14 And so under Eleanor's watch and as a result of her efforts, we would
15 just like the Court to focus on the fact of what the actual benefit received was, and
16 that was over \$3.6 million that was generated with more to come as there's deals
17 pending on the horizon. So we would ask that you deny the breach of fiduciary
18 duty claims as it relates to the accounting and any award of attorney's fees.

19 Does Your Honor want me to address the split in ownership or should I
20 wait till the end?

21 THE COURT: We're going to wait till the end.

22 MS. WAKAYAMA: Okay.

23 THE COURT: Okay. All right.

24 MR. WARNICK: We're dealing right now just with the accounting as I
25 understand it, Your Honor, right?

1 THE COURT: Right.

2 MR. WARNICK: Your Honor, that order that was entered back in May of
3 2014, that was before counsel was involved in the case. That was highly disputed
4 matter as Your Honor may recall. We were making sure that there wouldn't be any
5 fees paid out of the trust except for very necessary expenses, reasonable
6 accounting fees, taxes; that was it basically. There was never any agreement to
7 Eleanor receiving a fiduciary fee, a trustee's fee. If they had wanted one, that's
8 when they should have brought it up and put it in that order. If they would have
9 brought it to our attention then, then we could have dealt with this issue in the
10 proper way instead of having it crammed down our throat at the very end in order to
11 try and make the accounting balance. But there's no justification in that order for
12 what is being charged, even by the accountants.

13 Ms. Wakayama has raised the issue of Mr. Kruka coming in to
14 supposedly save a lot of money for the trust because they claim that the prior
15 accountant who was there during the time of Marjorie and part of the time of
16 Jacqueline managing the trust, they claim that prior accountant made a mistake
17 and didn't take a depletion allowance. Well that's not true, and we can refute that
18 very easily because that was discussed with Marjorie before she even died by Mr.
19 Haina and Marjorie told Mr. Haina basically that they had already taken the
20 depletion allowance under the other method for taking depletion (phonetic). You
21 can do it one of two ways --

22 MS. WAKAYAMA: Your Honor, just objection as to hearsay.

23 THE COURT: Correct. Yeah.

24 MR. WARNICK: Well we're just getting it at the last minute so we're trying to
25 do the best we can too.

1 But just to let you know that that still is a problem. Maybe the
2 accountant now is going to try to take that depletion allowance, but Mr. Haina said
3 that's going to be a red flag for an audit now against this trust. So that's not
4 something that was done incompetently or negligently or improperly. It was a
5 decision that was made by Marjorie, that she didn't want to run the risk of claiming
6 another type of depletion allowance when they had already taken the typical
7 depletion allowance earlier in the trust.

8 But getting back to this accounting now, they tried to justify the
9 \$500,000 in the account at First -- Fidelity Capital by saying that the Fidelity Capital
10 that we're concerned about, the bad company, is that investment fund which had its
11 charter revoked. Well if you look at the Secretary of State records that we attached
12 with Jacqueline's affidavit, and it's public record, you'll see that the Fidelity Capital
13 Incorporated in which Mr. Peril's letter says they have \$500,000 of the trust, was an
14 inactive and default company off and on for the last several years and was only
15 reinstated in March. And we've got that record attached to her affidavit. So both of
16 those Fidelity companies -- one is completely default and defunct and the Capital
17 one that they say the \$500,000 was in had just come back into existence.

18 But why on earth are they putting money into this company from the
19 trust? We know Mr. Peril has a connection with Ms. Noona because we've
20 attached the information you can obtain, public record, showing their connection on
21 several deals along with the other lady that is acting for Mrs. Noona.

22 Now is this just suspicion and being overly -- unreasonably suspicious
23 or is there something here that's really doesn't smell right and is clearly wrong?
24 They have not taken the opportunity to explain in any way why that money was put
25 with First -- with Fidelity Capital. And we submit, Your Honor, that that was a

1 breach of the trust, to transfer funds of the trust to this company and have this
2 company holding funds that doesn't belong even to Eleanor any longer.

3 THE COURT: And that's the prudent investor?

4 MR. WARNICK: Excuse me?

5 THE COURT: The prudent investor rule.

6 MR. WARNICK: I'm sorry, Your Honor.

7 THE COURT: Prudent investment -- it was not trying to be a prudent
8 investment?

9 MR. WARNICK: Yes. That would certainly come into place. We agree, yes.

10 If Mr. Johnston had paid back the \$72,000 he held in his trust account,
11 why didn't they just tell us that in their original documents instead of attaching to the
12 accounting that they filed in March saying that it was in his trust account? Now they
13 come up with a letter saying that a month before he had actually transferred it back
14 to the trust. I don't understand why that was done that way and why it's confusing
15 now as to whether or not he's still holding monies on behalf of the trust.

16 In trying to explain why we think there's a \$250,000 shortage in the
17 accounts, based upon what the other extended family members have received,
18 which is identical to what our trust should be receiving, counsel has asserted that
19 there's still a lot of money that hasn't come in from the companies that withheld
20 income way back in 2013 at the beginning of this case. We've been trying to get to
21 the bottom of this issue for at least seven or eight months. We've asked them show
22 us the records, show us who's not paying the money. This is ridiculous.

23 At the beginning of this case, Ms. Montoya, Jacqueline, tried to protect
24 her and her sister's interests by asking the trust companies to withhold payments of
25 income until the Court could decide who was entitled to what. Your Honor decided

1 well no, let's continue those income payments because Eleanor's entitled to 35
2 percent of it. So we were directed to tell these companies to pay the money that
3 they had been withholding back to the trust. The attorney in Texas sent a letter to
4 each one of these companies directing them to do that and as far as we know,
5 every company has paid back the money they were withholding.

6 The three companies that counsel has referenced, if you look back at
7 the accountings that Mrs. Montoya provided for 2009 to 2011, these companies
8 were paying less than a couple hundred dollars to \$1,000 annually in royalties.
9 That's not going to make a \$250,000 shortage in the income that should be in the
10 trust.

11 And we don't believe, Your Honor, that there are any companies that
12 are still withholding income. We think that's just been a straw man argument that
13 they've raised all along to try to justify Mr. Johnston spending a lot of money
14 claiming that this was a big damage caused by Jackie back in 2013 when they have
15 never provided any proof, any evidence to show that any other oil companies are
16 still withholding funds, and it certainly wouldn't amount to anywhere near the
17 \$250,000 that is short in the trust.

18 We can argue about who generated all this wonderful income for the
19 trust over the last couple of years, but in Jacqueline's affidavit she points out what
20 happened with that Apache deal which is really the big deal that generated the
21 three million plus assets -- income for the trust over the last couple years. In that
22 deal -- and we've got another affidavit here, Your Honor, that we'd like to submit.

23 THE COURT: Great.

24 MR. WARNICK: This is another affidavit of Mr. Moore. If I might approach,
25 Your Honor?

1 THE COURT: Is this in addition to the one that came yesterday?

2 MR. WARNICK: Yes, Your Honor. But it supplements what he said
3 yesterday because we wanted to clarify who really negotiated that Apache deal.

4 Counsel's argument is that Eleanor's entitled to this big fiduciary fee
5 because all of the wonderful things she's done for the trust when in essence she
6 has done really nothing but be a difficult, hard person to deal with, threatening
7 many deals that have been tried to be negotiated by other family members and
8 even by her own counsel, Mr. Johnston.

9 Mr. Moore could personally testify that Johnston himself told him that
10 he couldn't get with Eleanor to work on these deals because he couldn't get in
11 touch with her. Apache, as he points out in his letter here, had the same frustration
12 and problems. Eleanor hasn't been on ground running hard and doing a lot of
13 work. She's been derelict. She's been difficult and she's been doing it out of spite
14 for her own daughters because she wants to show who's in charge and she doesn't
15 care what happens and --

16 MS. WAKAYAMA: Objection; speculation.

17 MR. WARNICK: -- she doesn't care about cooperating with other people.

18 THE COURT: It's argument.

19 MR. WARNICK: But to say that Eleanor's responsible for all of the benefits
20 that have come into the trust in the several years is just not true.

21 Mr. Johnston ended up negotiating the lease that related to that
22 Apache deal after the benefits and the big bonus were already negotiated by the
23 family members, including Jacqueline Montoya. That's what Mr. Moore, one of the
24 participants in that, has said.

25 So there's just no excuse for the charging of that high fiduciary fee and

1 all the expenses that Mrs. Eleanor wants to charge to try to balance out her trust.

2 It's just so clear, Your Honor. We've been pressuring them for months
3 to get us an accounting because we suspected there was a misuse and a failure to
4 guard the trust funds. They come up with this accounting now and it's just so
5 obvious that they've tacked on these 400,000 plus expenses to try to get that figure
6 down to where they can hopefully try to show that there are funds that she did
7 retain in that trust.

8 THE COURT: Mr. Warnick, I'm a little confused about -- when you say
9 \$400,000 what you're referring to. We've got the 200 plus thousand trustee's fee
10 and then we have various other, you know, expenses that she's claiming that are
11 535. So I'm trying to figure out if -- are you talking about all of her other expenses
12 plus the trustee's fee for whatever that total or --

13 MR. WARNICK: No. We're talking about the trustee's --

14 THE COURT: Because I'm not -- I don't see 400,000 anywhere.

15 MR. WARNICK: If you take that 400 -- I mean that 500 plus that she claims
16 in expenses --

17 THE COURT: Right.

18 MR. WARNICK: -- you subtract the ad valorem taxes out of it.

19 THE COURT: Right.

20 MR. WARNICK: That's the balance is about \$400,000.

21 THE COURT: Okay.

22 MR. WARNICK: And we would admit that there should be some expense,
23 you know, for things that have been charged like, you know, postage and stamps
24 and things of that nature. But to otherwise try to claim a rent fee --

25 THE COURT: And if she did travel -- if she did travel, she's entitled to her

1 travel.

2 MR. WARNICK: She traveled, but did she do any good? Was she really
3 involved in anything down there? We don't think so, Your Honor. There's been no
4 evidence to prove that. She's never submitted an affidavit saying what she did or
5 what she needed to do down there. She picks up the phone and talks with her
6 attorney --

7 MS. WAKAYAMA: Objection; mischaracterizes the evidence.

8 MR. WARNICK: -- and that's all they has to do (sic) --

9 THE COURT: Both --

10 MR. WARNICK: To say that she has to travel down there and do something
11 is -- we don't see any benefit to the trust in doing that. And again, it's not a
12 reasonable expenditure of time.

13 So there's just no evidence to show that they have met their duty to
14 prove that there's been 65 percent of the trust funds held in abeyance by Eleanor.
15 In fact, it's just the opposite. She has funneled this money off to companies that
16 shouldn't be holding the money and we don't know if we can even get it back, she's
17 short in her overall accounting and she's concocted expenses to try to come up
18 with an accounting to justify the funds that she can't account for at this time.

19 There's been a lot of other things that counsel mentioned about things
20 that weren't done properly while Jackie was handling it. There's no proof of any of
21 those things.

22 THE COURT: I guess one thing that I didn't really sit down and look at and
23 try to go through and add up is, you know, is there a record that shows that she
24 was being paid a trustee fee or that she took out this 218 in a lump sum or, you
25 know, is it just your position that it's just all on paper, that that's just an amount that

1 was used to balance the books so to speak?

2 MR. WARNICK: That's what we suspect, Your Honor. I mean --

3 THE COURT: Well but I'm trying to -- like I said, I wasn't going to sit here
4 and read all these individual bank statements. I mean is there a paper trail that
5 shows, you know, monthly she was taking out X dollars and it adds up to this total
6 of 218 -- oh look, that was because I was taking six percent, or is she just balancing
7 -- she's balancing the books on paper by saying oh, that six percent there, that's --

8 MR. WARNICK: Precisely. And we -- and if they're going to do that
9 accounting and try to claim those fees and show what was done, that should have
10 been part of it. We're fairly certain this is just a last minute effort to try to solve a
11 breach of duty because she didn't keep the funds in the trust.

12 You know, we can argue about Mr. Johnston's fee and the amount that
13 he charged and what he was doing, but he never provided any statement showing
14 what he spent his time on and why he did it. You know, \$52,000 is grossly over
15 what was ever spent before by the trust during all of its administration for attorney's
16 fees.

17 MS. WAKAYAMA: Your Honor, just for the record, objection;
18 mischaracterizes the evidence.

19 MR. WARNICK: I'm sorry. I didn't catch that.

20 MS. WAKAYAMA: Mischaracterizes the evidence.

21 THE COURT: Okay.

22 MR. WARNICK: Oh, I'm sorry.

23 THE COURT: Overruled.

24 MR. WARNICK: Again, the Fidelity that we're concerned about is the one
25 that the letter's from and that's the one that's been a marginal company during the

1 last several years, just reinstated in March. And why they put the money in that
2 company, it seems like comingling and a misuse of the funds.

3 You know, they can argue that Eleanor has been an active trustee and
4 been doing more than the other people did before her, that she's really taken the
5 thing to heart and really got down into it and done a lot of stuff. I don't know if they
6 really think that we're going to believe that, that we're really going to accept that.

7 Now we know that she's been an elderly lady, that she's ill, that she
8 has a hard time doing a lot of things and they're trying to tell us that this lady has
9 just really taken this by the -- bull by the horns and really done a great job in
10 managing this trust. In actuality, when she wasn't able to establish that she was
11 entitled to 100 percent of the trust income, she tried to find another way to gouge
12 her -- Jacqueline and Kathryn by taking funds out as expenses that were concocted
13 after the fact. That's all she's doing.

14 You know, again, we can talk about this conspiracy theory that they
15 keep saying is just some ridiculous theory, but Your Honor has had enough
16 information over the course of this case to know what involvement Ms. Noona has
17 in the life of Eleanor. That it's been admitted in Eleanor's own affidavits that Mrs.
18 Noona is her close personal advisor. It was Mrs. Noona who, after the attorneys
19 had negotiated settlement, convinced Eleanor not to accept it.

20 MS. WAKAYAMA: Objection; mischaracterizes the record.

21 MR. WARNICK: It's in Eleanor's --

22 THE COURT: Overruled.

23 MR. WARNICK: -- own affidavits that she says that this is my close advisor
24 and that I wouldn't do anything without her approval. That's not a
25 mischaracterization of her own affidavit.

1 That \$37,000 that we've argued about, that they've tried to add to the
2 funds that were paid to our clients to reduce what they have to account for in June
3 of 2013, were funds that were owed to them for several months before and they
4 can't use that to try to account for monies that they should have there in the June to
5 January period.

6 In conclusion, Your Honor, we just feel that the accounting proves our
7 point, that Mrs. Eleanor is not capable and is not a trustworthy person, should not
8 be allowed to continue on as the trustee. We've got other arguments for the breach
9 and for the removal, but that's as far on the accounting right now.

10 THE COURT: Okay. So you've got -- you wish to discuss further removal
11 and/or breach.

12 I mean are breach and removal intertwined? I mean it appears to me
13 that that's --

14 MR. WARNICK: Yes, Your Honor.

15 THE COURT: -- like one issue. Okay. We'll talk about that next.

16 MR. WARNICK: They're intertwined. You know, on the breach part of it --

17 THE COURT: Because I guess my question was what's -- other than
18 removing the trustee, what's really the point of proving breach of fiduciary duty?
19 You do it to remove the trustee. What else is there that you can get from just
20 breach of fiduciary duty? It's a basis for removal of the trustee. What other -- are
21 there other damages? Are there other grounds that you're looking for relief on from
22 that breach of fiduciary duty?

23 MR. WARNICK: We just want her removed, Your Honor. We want to
24 remove -- and we've asked for of course, attorney's fees as our other -- third issue
25 that we brought up. But we want her removed.

1 In actuality, it would be in Eleanor's best interest to be removed as
2 trustee. The expenses for this trust operation would go back down to where they
3 were before she started taking over. There would be still a more effective
4 management of the trust. The Apache deal, which was really part of Jackie's term
5 and those in Texas and the other family members that negotiated with her, Jackie's
6 more than capable to handle these duties.

7 But if that's too difficult, to leave Jackie in there because of the
8 personal animosity in the family and so forth, then we would recommend that a
9 neutral trustee be appointed. We've submitted the name of Mr. Fred Wade who
10 Your Honor is I'm sure aware of. He's a fiduciary in many cases in this court in
11 other cases acting as either a trustee or a fiduciary capacity. He's a very capable
12 person. He would offer to handle these responsibility as the trustee in this case for
13 \$200 an hour. And, you know, if Jackie cannot be put in as the trustee, which
14 would really be the best economically for everybody --

15 THE COURT: And Mr. Wade wouldn't charge for office space.

16 MR. WARNICK: I don't think he charge any -- he says \$200 an hour. You
17 know, he's an attorney, but he's not licensed to practice in Nevada, but he's
18 licensed in Texas. But you know, we were highly confident that his fees would not
19 exceed \$10,000 a year.

20 THE COURT: Okay. So --

21 MR. WARNICK: And with a savings that would be compared to what
22 Eleanor's charging. But that would be our recommendation is that he is a very
23 capable person and I mean he's proven it. He's a fiduciary for many cases that are
24 before the Court in trust situations and other situations.

25 THE COURT: Okay. You said there are other issues with respect to breach

1 of fiduciary duty or is it just the accounting?

2 MR. WARNICK: Your Honor, I already pointed out the main issue. We go
3 back to just the cutting off of the income, the failure to handle that in a proper way
4 as a trustee. We understand Eleanor in her own mind could think anything she
5 wants. She could think that she was mistreated, that you know, really she was
6 entitled to 100 percent and that's her business if she wants to think that in her mind.
7 But when you switch that over and put that in the capacity of her acting as a
8 trustee, we just can't believe that a person in that capacity, who simply cuts off the
9 income of other beneficiaries and withholds that income for over a year and a half
10 and really doesn't even keep the income in the trust, acted in a proper fashion, but
11 really breached their duties.

12 They did self-dealing. She was only interested in her own self
13 interests. A trustee does not have that luxury. She has to separate out her own
14 self interests from the beneficiaries and she did not do that in this case. So that
15 would be the other breach.

16 We've mentioned some little things that -- I guess you could call them
17 little, but we've attached the affidavit of Jackie, a letter from counsel for Jackie to
18 counsel for Eleanor complaining of many breaches in the accounting of the trust in
19 the tax preparation issues, improperly, you know, reporting for the beneficiaries
20 what they needed to report on their tax returns and that letter's attached to the
21 affidavit of Jacqueline Montoya.

22 So there's a lot of other little things that she's done as trustee where
23 she hasn't done her job and hasn't made proper reports or provided proper
24 information. But the big issues we've hit there and that's the failure to keep the
25 funds in the trust, the misuse of the funds and the cutting off of the funds the way

1 she did.

2 MR. POWELL: Your Honor, could I just supplement real quick?

3 THE COURT: Sure, Mr. Powell.

4 MR. POWELL: Thank you, Your Honor. Going to the breach of fiduciary
5 duty and the self-dealing -- and this is what has driven my frustration with this is
6 that Ms. Ahern knew in 2009 that if there's any questions with the trust, you come
7 to the Court to get those resolved. So if she, as a beneficiary -- and again, this is
8 where this whole case, the distinction has always been. If she, as a beneficiary,
9 believed she had a rightful entitlement to 100 percent, she had the option to come
10 before this Court and say I think I'm entitled to 100 percent, I want to seek a
11 declaratory ruling to that effect. Okay.

12 If she communicated -- again, and it's the same person, but if she
13 communicated from her -- as her beneficiary status to her trustee status and said
14 this is an issue that needs to be resolved, almost kind of like you would have an
15 interpleader type of action, I'm not sure what should be going on here, you come to
16 the Court as trustee and you ask the Court for instruction.

17 I believe there's competing claims. Jacqueline and Kathy have been
18 receiving the 65 percent of the income since their grandmother's death. But I
19 believe -- and then again, as Eleanor, in her capacity as beneficiary says well no, I
20 actually believe that was wrong, that was incorrect, I'm entitled to 100 percent.
21 Okay.

22 Well Eleanor, as trustee, comes before this Court and asks. That's
23 what a trustee is obligated to do. A trustee cannot self-deal and do what's gone on
24 here and put our clients at the most disadvantageous position possible because
25 she's decided is you don't like it, come and get me. And that's been the attitude of

1 this from day one; you don't like it, come get us. That is not how a trustee behaves.
2 That goes against every principle of what a fiduciary is.

3 And as we've included in our initial brief, we have a great synopsis of
4 what the duty to avoid self-dealing includes. And if Ms. Ahern was not capable at
5 the time of basically saying is I can't be impartial here because I have a -- I am
6 making a claim that I'm entitled to more, then she had to recuse herself on that
7 issue and have a neutral party -- even a neutral, what I would deem to be a special
8 trustee, have that person come before the Court and present the sides. I've got
9 conflicting views as to who should actually be paid this or who shouldn't be paid
10 this.

11 That didn't happen. And that's where this fiduciary breach occurs, and
12 that's what's so annoying about this whole thing is because then it trumped up a
13 gigantic number of attorney's fees for Jacqueline and Kathryn. That is not
14 acceptable.

15 This was an easy solution, to come before this Court, and ask and
16 present the evidence and be done with it. That's what a trustee was obligated to
17 do. And like I said, if she was not capable of doing that because of the conflicting
18 position she was in where she, herself with a beneficiary hat on, is arguing I'm
19 entitled to 100 percent, then you have a duty to recuse yourself just like Your Honor
20 would on a case that you would have any interest in or any dealings with.
21 Everybody knows these obligations. You can't do what she did.

22 What she did was she dammed the river and basically said I'm going to
23 starve you out downstream and if you don't like it, come after me. Well that's what
24 we were forced to do and that's the absurdity of the whole point. We had a status
25 quo in place for 34 consecutive years, she sought to change it.

1 Again, if you're going to come and seek to change it, do so in the
2 proper way; give due process to our clients. That's how the court system works.
3 That's how a trust is supposed to function. It's fairness. Fairness. And we haven't
4 had that here, Your Honor. We have had basically again, you don't like it, come
5 and get me. Well, we had to come and get her and ultimately you ruled that no,
6 you don't have a right to that money.

7 So again, Ms. Ahern, she made a willful decision to choose that. She
8 should be stuck with dealing with the consequences of that.

9 She wants to ask for forgiveness? Well Your Honor, she caused a
10 severe amount of damage to our clients. That was inexcusable and totally,
11 completely avoidable here. And that can't be lost here. It wasn't done properly.
12 And not only that, you can't claim ignorance because she knew in 2009 that's what
13 you do.

14 So to claim ignorance and say I'm not sure that I could have even used
15 the court system and this and that, you knew darn well there was an issue in 2009
16 with who is the remainder beneficiary because the trust isn't clear. Well you come
17 to court in your capacity as trustee and you ask the Court, and the Court made a
18 ruling. And that's what should have happened here, not again, a damming of the
19 river and say I'm upstream, you don't like it, deal with it. And that's basically the
20 arrogance we've been dealing with for the last year and a half plus and my clients
21 going back to 2012 were dealing with.

22 The problem that we had here is that they were stuck in a position that
23 the trust was run in the way that it had been run. It was all a family situation, there
24 was nobody taking a trustee fee, they were minimizing costs and everybody was
25 enjoying the benefits of it.

1 And that's again, at the heart of why they didn't break this off in 2009.
2 There was no forewarning that we were ever going to be in this situation. But once
3 we were in this situation, Jacqueline and Kathy were proactive of saying we're
4 stuck here because the property is still titled in the main trust, I'm not the trustee.

5 Jacqueline never once claimed to be the trustee. She was -- as you
6 know, it was basically entrusted upon her by her grandmother to effectively teach
7 her the oil business and Jacqueline said I'm happy to do it, I'm happy to do it. My
8 grandmother's chosen me. My other -- the other two beneficiaries, my mother and
9 my sister have basically said your grandmother chose you to basically to learn the
10 family business and we're satisfied with you learning the family biz (sic) and
11 continuing it.

12 In 2012 abruptly, Eleanor says get out of my life, get away from the
13 trust and basically totally slams the door. Well again, they're in a no-win situation
14 now because legally the property is still titled the way it's titled. So they're in a
15 horrific disadvantageous position and what they try to do immediately is work out a
16 solution. And that's why it frustrates me to no end this -- which they've said again --
17 and Ms. Wakayama loves to throw around this penalty of perjury statement about
18 my client all the time.

19 Well, as you'll recall in their brief, Ms. Ahern says oh, the first time I
20 knew about this dispute was when Jacqueline files her petition for declaratory
21 judgment in 2013. Okay. So really, we're going to go with that statement even
22 though we've got tons and tons of evidence that shows otherwise; that there was
23 countless attorneys involved for Ms. Ahern before, Ms. Montoya had her own
24 attorney before dealing with this very solution.

25 And that again was at the heart of this Texas probate issue of why

1 Jacqueline went there in the first place was because she had basically been given
2 counsel that you've got to do something proactive here to get that 65 percent
3 interest that your grandmother exercised her power of appointment over and get it
4 out of there and get it over because again, you have no right to anything right now
5 when it's handled this way.

6 And so it's so disingenuous, Your Honor, to act like oh, I didn't know
7 there was a dispute. Oh, this is the first time I'm hearing about it.

8 And again, Ms. Wakayama's throwing around that my client said stuff
9 under penalty of perjury. Well Ms. Ahern should be held to that same standard.
10 There's a definitive statement in their brief that says the first time that Eleanor
11 Ahern became aware that there was a dispute over the 65/35 percent was when
12 Mr. Powell files the initial petition here in -- I think it was September of 2013.

13 So that's what we're dealing with, Your Honor. And that's infuriating to
14 deal with this constant mischaracterization and playing games here and you're
15 hurting people's lives here. That's what this has become too. Because we're not
16 just talking about money, we're talking about people's lives.

17 Ms. Montoya and Ms. Bouvier have relied on this income stream since
18 2009, Your Honor, 2009. That would be like any of us suddenly our employers say
19 you know what, you don't get a paycheck anymore and if you don't like it, come and
20 get me. There's a reliance. Ms. Montoya quit her job based on that and they've
21 made lifestyle choices based on that. And they've been -- had Ms. Ahern's hands
22 around their throat since she cut this income stream off.

23 And again, it's the damming the river down below example is you don't
24 like it, come and get me. A fiduciary does not behave in that manner. That's
25 repulsive behavior. And she knew what she was doing and it's -- there's no

1 justification for what was done because the simple solution was come to court.

2 There's a -- basically almost a quasi interpleader type of action that
3 could have been done and Your Honor could have made a very swift ruling. And
4 you also -- and as part of that, the trustee would say, Your Honor, should I keep
5 paying the income or should I hold off the income. That would be a very, very
6 simple solution. That didn't happen. It was unilaterally cut off; you don't like it,
7 come after me. Not appropriate behavior for a trustee. That's where the breach of
8 this fiduciary lies. It was self-dealing. It was self-motivated.

9 It was -- it basically almost worked except Ms. Ahern decided at the
10 last minute I don't like that settlement agreement. My clients were forced, basically,
11 out of financial necessity to say we can't continue to keep going. Fine. You want
12 10 percent more? Okay. Well we're in a bad disadvantageous position, we're
13 willing to resolve it to get this whole thing taken care of and be done with it. Then
14 Ms. Ahern, after -- I don't want to go through with that anymore. All right.

15 As Your Honor admitted -- stated, I'm sorry -- you stated very clearly at
16 that hearing, you said to counsel, Ms. Ahern's going to live with the consequences
17 of getting out of this agreement. Well part of getting out of that agreement is this,
18 Your Honor. Is this. We had all the issues resolved, she chose not to. So for us
19 now to again -- we are damaged here. We're not under the same terms of that
20 settlement agreement. And so Ms. Ahern has chosen to take what was behind
21 door number two and she should get the full brunt of what's behind door number
22 two which is the attorney fees and she should be removed as trustee. And that's
23 the bottom line here is that there is bad behavior here.

24 This is a court of equity where you're expected to come here with clean
25 hands. A trustee has a fiduciary obligation to come to the court with clean hands.

1 These hands are dirty as could be and this repulsive thing of well I didn't know, I
2 wasn't aware, I don't know how to do things, it's amazing how she's sophisticated in
3 some respects that she's controlling all these business dealings, but in other
4 respects like as again, coming to this Court and saying there's a dispute here, what
5 should I do, that never happens, Your Honor.

6 THE COURT: All right.

7 MR. POWELL: That's deplorable conduct.

8 THE COURT: Thank you.

9 Ms. Wakayama.

10 MS. WAKAYAMA: Your Honor, first of all, we have always disputed
11 counsel's interpretation of that 2009 petition and we just want to make that clear on
12 the record that we still do today. There is nothing in that petition where it shows
13 that going forward Ms. Ahern had specific knowledge that she was supposed to
14 come to this court and petition for instruction.

15 Be that as it may, hindsight's always 20/20 and what happened here is
16 that as trustee -- and everybody seems to forget the fact that she's been serving as
17 co-trustee since 1980.

18 What has Ms. Ahern done? She has went ahead and she has held,
19 from June 2013, after the partial payment of \$37,000, 65 percent in trust. That's
20 what the accounting shows. There's almost \$2 million held in trust.

21 So what is their damage? They take issue with the \$500,000. Well
22 then order her within 10 days to transfer it over to an FDIC insured bank account.

23 The fact that they continue to say that \$390,000 in attorney's fees,
24 that's how they've been damaged. First of all, they failed to do an analysis of the
25 *Brunzell* factors. They failed to provide any supporting documentation to this Court.

1 They failed to provide the necessary affidavits and I have a feeling, Your Honor,
2 that \$390,000 was not just incurred for their breach of fiduciary duty claim. I'm sure
3 a lot of it was incurred from what we just went through in relation to the ownership
4 of the 65/35 --

5 MR. WARNICK: It was absolutely, Your Honor.

6 MS. WAKAYAMA: -- which in that aspect --

7 MR. WARNICK: It was, of course. But this -- our fees are for the whole --

8 MR. POWELL: No dispute on that.

9 MR. WARNICK: -- trust case and we do have an affidavit -- we do have
10 affidavits to back up with our billing statements and --

11 THE COURT: Okay. So that's clear.

12 MR. HAYES: Excuse me, Judge. They get up and they talk for -- he talks,
13 he talks, no one interrupts.

14 THE COURT: Correct.

15 MR. HAYES: She has the opportunity to get up and speak and right away.
16 That's not the way we want to do it, right, Judge?

17 THE COURT: Correct.

18 MR. HAYES: Thank you.

19 THE COURT: You'll have your opportunity.

20 MR. WARNICK: I agree with that, but Your Honor, she interrupted me
21 several times during my talk too. I'm just trying to clarify something.

22 THE COURT: Okay. Please counsel, just have a seat. Thank you.

23 MS. WAKAYAMA: And whatever affidavits, we haven't seen any affidavits.
24 They haven't been filed with this Court.

25 And anyways, the whole thing with the accounting is it comes down to

1 the fact that there's documented evidence in front of this Court, admissible
2 evidence that almost \$2 million is being held in trust. Held in trust. And as soon as
3 the entire litigation is resolved, all appeal rights are exhausted, that money, once
4 that's settled, will go to the appropriate owners. That is not a breach of fiduciary
5 duty.

6 It's not -- self-dealing is the epitome of Ms. Ahern taking all the money
7 and going on vacations, and putting it in her own pocket and doing everything that
8 she wants to do with it. She didn't do that here. She used her 35 percent for what
9 she wanted to use it for, which this Court allowed her to do. And that 65 percent,
10 after good faith, reasonable administrative expenses that have all back up
11 documentation for is being held in trust.

12 How is that a breach of fiduciary duty? She is honoring her fiduciary
13 duty to make sure that those funds remain intact.

14 The other issue that Your Honor -- excuse me, that counsel raise in
15 relation to, you know, the suspensions that are -- you know, where's the proof. For
16 the record, I have never once been asked for proof of the suspension papers. Not
17 once. There's not one written correspondence to me, there's nothing asking for the
18 suspension proof.

19 But Mr. Johnston -- and we're happy to provide another declaration to
20 the Court -- has represented and advised me that \$84,000, just in relation to section
21 42 of the Apache transaction, is being held in suspense due to Jacqueline Montoya
22 asserting herself as co-trustee on one of the division orders, and that occurred in
23 April 2014.

24 In relation to the breach of fiduciary duties of how Ms. Ahern is just not
25 cooperating, she's difficult to deal with, she's you know, potentially jeopardizing

1 deals, she potentially jeopardized other deals, you have the affidavit -- or excuse
2 me, declaration of Mr. Johnston saying that that is not true.

3 We also have attached to our supplement packet that we provided to
4 the Court a detailed timeline of all of the dates that Mr. Johnston has spoke to all
5 the individuals of the Pioneer easement deal and the Apache deal as well. We are
6 not waiving any attorney-client privileges there. We just wanted to be completely
7 transparent for the Court to see that Ms. Ahern is in fact involved -- actively
8 involved with her counsel in trying to negotiate these deals.

9 You know, and the statements, Your Honor -- the statements in
10 relation to that Eleanor should have done this, could have done this, whatever it
11 might be, the important thing is to look at the end result, to look at the damage.
12 And the damage here, there is no damage. This is a 65 percent of all the oil
13 income from June 2013 to -- through January that's being held in trust.

14 THE COURT: Okay. Well let me ask you about that because you mentioned
15 something earlier that I'm still trying to figure out what you meant. You said that 65
16 percent's been held in trust and until such time as appeal rights have been
17 exhausted, then it would be paid. I've got a question about that --

18 MS. WAKAYAMA: Sure.

19 THE COURT: -- because it seems to me that while Ms. Ahern was disputing
20 her daughters' rights to the 65 percent, I said hold the funds in trust until it's time to
21 make that determination and if they can post a bond, then they can get the money.

22 MS. WAKAYAMA: Correct.

23 THE COURT: Correct. Okay. We've now made that determination. Your
24 client, as Mr. Powell so eloquently pointed out, was warned that the consequence
25 of being wrong is she would be wrong way worse than the deal. So she lost. Why

1 isn't she paying the money immediately because she lost, she's got to post the
2 bond?

3 MS. WAKAYAMA: Because, Your Honor, you ordered at the last hearing on
4 January 30th that the payment doesn't have to happen until 31 days after entry of
5 the order. That was your ruling.

6 THE COURT: I thought you said after the appeal is --

7 MS. WAKAYAMA: And what I meant by that, to clarify the record --

8 THE COURT: Okay.

9 MS. WAKAYAMA: -- was that in the event that Mrs. Ahern exercises her
10 appeal rights and posts a bond or deposits the money with the court --

11 THE COURT: Right.

12 MS. WAKAYAMA: -- or a trust account, whatever it might be and everything
13 is stayed, that would be a reason for her not to have to immediately pay it out is
14 what I meant by that. Meaning if Ms. Ahern --

15 THE COURT: Okay. You're not giving me any comfort.

16 MS. WAKAYAMA: No. Meaning if Mrs. Ahern -- obviously it has to be under
17 a court order to do this. If Mrs. Ahern files an appeal, requests this Court to stay --

18 THE COURT: Right.

19 MS. WAKAYAMA: -- any type of relief entered into that order including the
20 payment of the funds, and provided she obviously has to post a supersedeas bond,
21 whatever form that may be; whether it's the actual cash bond or whether it's, you
22 know, another mechanism, and this Court orders that everything is stayed with
23 maintaining the status quo that the 65 percent of the funds is still intact, then until
24 the appeal rights --

25 THE COURT: Does Mrs. Ahern realize she lost?

1 MS. WAKAYAMA: She does realize she lost, Your Honor.

2 THE COURT: I just wanted to make sure. It doesn't sound to me like that's
3 somebody who realizes she lost.

4 MS. WAKAYAMA: Your Honor, she understands she lost.

5 THE COURT: Okay.

6 MS. WAKAYAMA: She understands that. I'm just letting you know.

7 THE COURT: And we've already discussed the fact that while I said it's one
8 thing for her daughters to say you violated the no contest clause without good faith
9 and therefore, mom, you're stripped of your 35 percent. I wasn't going to go there.

10 It's very -- this is what's bothered me about this -- and I don't have Mr.
11 Powell's eloquence. He's lived this for the last year and a half. But it's troubling,
12 I'm sure you would concede, for any trustee who you're trying to -- no offense, he
13 did kind of make me laugh -- on the one hand to tell me is very sophisticated and
14 deserving of a six percent fee did not realize that before she cuts off one of the
15 beneficiaries -- two of the beneficiaries to 65 percent of these funds that she should
16 make sure that's okay.

17 MS. WAKAYAMA: But, Your Honor, here is --

18 THE COURT: I mean I'm really struggling with how that's anything other than
19 a breach of fiduciary duty.

20 MS. WAKAYAMA: Your Honor, I think it's form over substance the argument
21 because in relation --

22 THE COURT: Excuse me?

23 MS. WAKAYAMA: -- to the breach of fiduciary duty claim --

24 THE COURT: Right.

25 MS. WAKAYAMA: -- if Ms. Ahern believed that she was allowed to cut off

1 the income without a court order -- which I understand you have an issue with. If
2 she understood that, she still made sure that the 65 percent is held in trust.

3 THE COURT: Not until she was told to --

4 MS. WAKAYAMA: Well, Your Honor --

5 THE COURT: -- which was six months -- okay. Wow. Okay. Let's start all
6 over again.

7 MS. WAKAYAMA: But if we --

8 THE COURT: Okay. Let's start all over again.

9 MS. WAKAYAMA: If we take the accounting from June 2013, attached as
10 Exhibit 2, all the way through January 2015, we take all of the income that has
11 come into the trust and we take all of the administrative expenses out, 65 percent
12 remains intact. Sixty-five percent remains intact. So regardless if she came to the
13 Court and asked permission or not, the same result has happened. Sixty-five
14 percent remains intact.

15 THE COURT: Okay. All right. But we have to still get back to that first thing
16 is, a trustee must act in the best interests of everyone for whom she is a trustee. If
17 a trustee says this trust document is unclear, it is not clear whether the people who
18 are receiving 65 percent of the income have any right to that income, to just stop
19 paying that 65 percent without advising anybody that here's what we're going to do,
20 I will put this all in a trust account pending a resolution of this, she didn't do that.
21 She just stopped paying the money. And it was only after her daughters brought
22 this petition that it was made clear to her that she needed to put money aside.

23 Now you can say that today we can account for it all. Okay. Fine. But
24 we are still missing that very first thing. As I've said throughout this whole thing is
25 why -- when a trustee chooses to ask for forgiveness instead of permission, does

1 the trustee expect to be excused from a breach of fiduciary duty? That's shocking.

2 MS. WAKAYAMA: Your Honor, here's the issue, because we've always
3 disagreed from the beginning about the purpose, the interpretation of the 2009
4 petition, always -- and we understand the Court's ruling on that. But from Ms.
5 Ahern's perspective, through her lens, she has consents that say that Jacqueline
6 Montoya and Kathryn Bouvier are residual -- excuse me, contingent beneficiaries of
7 this trust. Contingent beneficiaries.

8 She's under the impression that she's 100 percent beneficiary. She
9 not only owes the fiduciary duties immediately to herself because according to her
10 understanding, that was never challenged in a court proceeding until September
11 2013, she is the only one entitled to all of this income. She is the only one she
12 owes immediate fiduciary duties to because of the fact under trust number two the
13 provisions allowed her to have all of the income.

14 She's under the impression that as trustee she only has to pay all the
15 income to herself -- to herself because of the evidence that shows that for the years
16 that followed -- and we understand Your Honor's ruling on that -- she was being
17 generous to her mother and to her daughters throughout that whole time.

18 So she was under the impression that the money coming in today,
19 while she's alive, belongs solely to her. And if there's no income left in the trust by
20 the time she dies, that's okay because Jacqueline and Kathryn, as contingent
21 beneficiaries, are only allowed to receive that income when she dies.

22 So that's the difference here. We not only --

23 THE COURT: Okay.

24 MS. WAKAYAMA: -- had a dispute --

25 THE COURT: And so she does not believe that she has any obligation when

1 these beneficiaries are receiving payments -- they're already receiving payments --
2 money is going to them and she makes this unilateral decision as trustee believing
3 that she is 100 percent entitled and she owes no duty to anybody but herself, she
4 doesn't have to get that in any way --

5 MS. WAKAYAMA: Only as it relates to the income. Only as it relates to the
6 income. Because there's a big difference here. The right to receive income, Ms.
7 Ahern --

8 THE COURT: Right.

9 MS. WAKAYAMA: -- was under the impression as trustee, she's 100 percent
10 entitled to receive that income.

11 THE COURT: But 65 percent of this income has been paid to others,
12 whether it was her mother or whether it was her daughters and she's still doing
13 that --

14 MS. WAKAYAMA: Because it was --

15 THE COURT: -- and she makes a choice that no, I was -- I'm actually
16 entitled to 100 percent here, I don't have to tell anybody why I'm doing this.

17 MS. WAKAYAMA: That's right, Your Honor.

18 THE COURT: I'm the trustee, I have the total 100 percent right to just stop
19 making payments to people who I believe to be contingent beneficiaries and it is not
20 necessary for me to go to court and say I believe -- this is my interpretation, I
21 believe this has been a generous but not legally obligated act, to be paying these
22 people this 65 percent all these years, therefore I believe I have every right to stop
23 paying them. Am I right?

24 MS. WAKAYAMA: See, Your Honor, and I think that we can't look at it in a
25 vacuum because the evidence that we put forward with the Court is this, is that for

1 over two decades Eleanor Ahern is co-trustee only of trust number two. Any
2 division order that needs to be signed, any lease that needs to be signed, she's
3 always signing it as co-trustee which she thinks is only under trust number two.

4 On top of that, every time a division order is issued by the oil
5 companies, they only use trust number two's tax ID number. All of the signs point
6 to trust number two, in her mind, as only being the one that owns 100 percent of
7 these oil rights. So she's thinking --

8 THE COURT: Okay. Well we're not going to rehash all that because she
9 lost.

10 MS. WAKAYAMA: Well no. I'm just saying --

11 THE COURT: Okay. But here's the thing -- this is what I'm saying is when a
12 person is standing in the shoes of a fiduciary and that person says I believe that I'm
13 making payments to somebody that doesn't deserve them, they don't deserve
14 them, not because they're bad children, but because they're not -- they're only
15 contingent beneficiaries, they have no right to this money, I don't have to pay it to
16 them. I am a fiduciary, I am a trustee, I am standing in these special shoes, but oh
17 gosh, I have been just out of the goodness of my heart giving this money to my
18 daughters all these years, they don't deserve it anymore, I don't want to pay it to
19 them anymore. That's my choice, I'm the trustee. I don't have to do this anymore.
20 I'm going to stop because I believe that this legal document tells me I don't have to
21 do it. And I am going to stop, not after going to court and saying am I correct in my
22 interpretation, am I running any risk that I am breaching a duty that I have either
23 through the legal document or through the fact that I've been doing it -- I have
24 voluntarily been making these payments and standing in this position of a fiduciary
25 voluntarily and I believe it needs to stop.

1 Does a fiduciary risk the finding of a breach of fiduciary duty by saying
2 I'm just going to stop without any kind -- anybody else telling me this is okay?
3 That's the problem here.

4 MS. WAKAYAMA: And I think that what may clarify the issue is that just like
5 Mr. Powell has articulated to this Court, there's two different hats here. There's
6 Eleanor as trustee --

7 THE COURT: Right.

8 MS. WAKAYAMA: -- there's Eleanor as beneficiary.

9 THE COURT: Okay.

10 MS. WAKAYAMA: And what my argument is in relation to, you know, the
11 division orders and the years and years of how the asset was actually managed is
12 that Mrs. Ahern is acting as a beneficiary in her mind by giving part of her beneficial
13 interest to Jacqueline and Kathryn. She's not, in her mind, paying them out of the
14 trust in her capacity as trustee the 65 percent. So in her mind she's doing this as a
15 gift, and she has testified to that. Her beneficial interest -- she's entitled to 100
16 percent. She's saying okay, you know what, for these years I will go ahead and
17 give you 65 percent of my beneficial interest. That's what happened here.

18 THE COURT: But at some point in time she takes off that beneficiary hat
19 and she becomes a trustee.

20 MS. WAKAYAMA: Sure.

21 THE COURT: She is a fiduciary.

22 MS. WAKAYAMA: But then you have the consents. You have the 2009
23 consents when she is wearing her trustee hat. The 2009 consents signed by
24 Jacqueline Montoya and Kathryn Bouvier admitting that they are contingent
25 beneficiaries. So in her trustee hat she's seeing this consent saying well, you know

1 what, I don't have the immediate fiduciary duties for the income to Jacqueline and
2 Kathryn. That happens later in relation to the income.

3 Now as it relates to the actual property, and I understand that the
4 property -- there's some language in there that Eleanor can't, you know, sell it or
5 whatever it might be. She didn't do that. That'd be a different story. She did not
6 believe or know or had any real like order telling her she owes fiduciary duties now
7 to these contingent beneficiaries. That's the difference.

8 She's not doing this as a trustee that thinks that there is an -- a typical
9 situation, Your Honor, all of these present beneficiaries. That's what Mr. Powell's
10 referring to, all these present beneficiaries that have equal undivided interests in
11 the corpus of the trust coming to the Court and saying you know what, I really don't
12 believe that they have a 30 percent interest in this trust corpus today, even though
13 the document makes them present, current beneficiaries. That's not the case here.

14 She was under the impression and under the understanding that they
15 were contingent. And aside from all of that, 65 percent is being held in trust. That
16 is not a breach of fiduciary duty, which in the State of Nevada would be analogous
17 to fraud. It's just not. And so for that reason, we'd ask that you deny the breach of
18 fiduciary duty claim and deny their award of attorney's fees.

19 THE COURT: Okay. All right.

20 MR. WARNICK: You know, we can give Eleanor the benefit of the doubt and
21 say in her own mind she really thought that was the case. That's not the question.
22 Is that a reasonable -- is that a reasonable thinking person?

23 THE COURT: Well as has been pointed out -- this is a summary judgment,
24 as Ms. Wakayama's pointed out. We -- you know, as a matter of law, does a
25 fiduciary owe any fiduciary duties to a contingent beneficiary? If she believes she is

1 the 100 percent income beneficiary -- Ms. Wakayama was correct in that -- 100
2 percent income beneficiary because the trust doesn't allow her to sell the property,
3 does she owe a duty --

4 MR. WARNICK: I would say she still owes a duty to the contingent
5 beneficiaries, but you know, as Your Honor pointed out, we've hashed all that out
6 before as what was really going on in the 2009 petition and it's just a total
7 misrepresentation to say that our clients consented to only being contingent
8 beneficiaries of the whole trust. They only consented to being contingent
9 beneficiaries under trust number two because they didn't receive their interest until
10 Eleanor died. That was the whole purpose of that 2009 petition.

11 THE COURT: Right. And we've hashed all that out before and that's why I
12 said like -- she lost on that. So that's not the argument. But the issue is if -- Ms.
13 Wakayama's position is it's Ms. Ahern's belief that she is a 100 percent income
14 beneficiary and as such, whether she owes -- now again, we have to keep separate
15 -- then when she puts on her fiduciary hat, she owes no fiduciary duty to anyone
16 else. But -- I'm just having a hard time because they were already receiving
17 money --

18 MR. WARNICK: Thirty-four years.

19 THE COURT: -- and how can you cut off somebody who's already getting
20 money?

21 MR. WARNICK: Thirty-four years. Not only that, Your Honor, but the
22 affidavits that were submitted in the course of that other hearing were Jackie and
23 Kathryn said they relied upon their mother's statements to them that they would
24 continue receiving that income. And remember the fact that Mrs. Eleanor, back in
25 her divorce and in her later estate planning, only admitted and stated she only had

1 a 35 percent interest.

2 I think we're just being too nice to Eleanor by giving her the benefit of
3 the doubt that she really thought she was entitled to the 100 percent. I don't
4 believe she thought that. I believe that was concocted in 2012 when she came
5 under the influence of her current advisors and she has tried to take advantage of
6 whatever she could way to get ahold of more money from the trust. But there's no
7 evidence up to that point in time of 2012 where she really thought she was entitled
8 to all of the income. No evidence whatsoever. So I just don't believe that Eleanor
9 really had that thought.

10 But even if she did, as Your Honor pointed out, if you're a duty -- a
11 trustee and you know what's been going on in the trust and how you've been
12 distributing the money in the trust, you've got a duty to do things properly.

13 THE COURT: Particularly when doing it the different way benefits you to the
14 exclusion of the others. I mean it's not like this is a third-party trustee. This is the
15 other 35 percent beneficiary who is also acting as a trustee and if she's entitled to
16 100 percent, it benefits only herself; income for life.

17 MR. WARNICK: I just think it's a very serious -- and I would still take
18 exception to their claim that the 65 percent is all safe and secure now. We can
19 show that that's not the case and --

20 THE COURT: Well I think Ms. Wakayama has indicated that, you know, if
21 you have a problem with the \$500,000 being in what appears to not qualify as a
22 prudent investment under our -- you know, the one thing we have adopted, the
23 Uniform Prudent Investor Act. So you know, if that's not a prudent investment
24 because it doesn't -- we don't have anything to indicate that it is, then she can put it
25 in an FDIC insured account and there you go.

1 My other question though is this -- like to this whole timing issue --
2 okay. Well anyway, okay, fine.

3 MR. WARNICK: It is a self-serving investment, Your Honor, though. We've
4 shown the connection between Mr. Peril and Mrs. Noona to Fidelity Capital. We
5 know how they're involved with Mrs. Ahern as a trustee. It's clearly a self-serving
6 investment which was unwise -- even if she did it in good faith, it was unwise for her
7 to put money like that out of the trust's control in the trust of a separate company
8 that could go bankrupt tomorrow.

9 And where do we get the funds then from to pay back Jackie and
10 Kathryn if it goes bankrupt tomorrow? It was defunct a few months ago, the
11 company was, and it was just reinstated in March of this year. That's just an
12 evidence of the money not being safe and secure and the fact that she has
13 breached her duties also.

14 So that's our main arguments. I think Your Honor has covered
15 everything else pretty well.

16 We do want to point out one thing, Your Honor. We submitted the
17 summary judgment -- proposed summary judgment way back -- 10 days after the
18 hearing. We haven't had an entry of that summary judgment.

19 THE COURT: The order --

20 MR. WARNICK: As we pointed out, it triggers the time for either appeal or
21 payment of the monies. This is just another delay tactic we believe, the fact that
22 they haven't put it forward.

23 THE COURT: Okay. All right.

24 MR. WARNICK: Thank you, Your Honor.

25 THE COURT: Okay. Yeah. Ms. Wakayama, on that order.

1 MS. WAKAYAMA: Your Honor, may I just --

2 THE COURT: Yeah.

3 MS. WAKAYAMA: May I just have that? We have been working with Your
4 Honor's chambers in order to get a written transcript of that hearing and we
5 received it -- I believe it was March 2nd. So we've had it in our possession for
6 about two weeks. Well this week has been, as Your Honor knows --

7 THE COURT: Kind of consumed. Yes.

8 MS. WAKAYAMA: -- how this week has been. But I will represent to the
9 Court I have prepared the competing order. On Wednesday of this week, I emailed
10 it to my client just to review and get whatever thoughts. And so that will be
11 forthcoming. I just --

12 THE COURT: Well we'll try to get it -- one of them turned around to you as
13 soon as possible.

14 MS. WAKAYAMA: I just wanted to be clear that we're not trying to hold up on
15 anything.

16 THE COURT: Okay. All right. Any other issues? We've talked about all of
17 them?

18 MR. WARNICK: Just, you know, Your Honor, you can get a videotape
19 immediately after a hearing.

20 THE COURT: Okay, fine. Yeah, never mind. Okay, here we go. The first
21 issue is the accounting. Everybody -- we all know that you got to pay the ad
22 valorem taxes. Nobody has an issue with that.

23 The concern I have is the issue on administrative expenses. I do have
24 a concern about taking a trustee fee and taking overhead. I don't think that you can
25 do both.

1 While Ms. Ahern might have been entitled to some sort of a fee,
2 arguably for her time, I don't think it's \$200,000 worth of time on top of all these
3 other staff and office space. And if she feels the need to have office space, if she
4 feels the need to have staff, then certainly she's entitled to have that, but she isn't
5 entitled to charge the trust because there's no indication that this was prorated.

6 That's my problem is was she paying 35 percent of this -- is this only
7 65 percent? It's just not clear.

8 I -- so she should not be charging 100 percent of these expenses
9 because there's some W-2's in here for these folks and it was \$14,000 to one of
10 these people, \$12,500, 7,000 and 2,000. So I guess that she's not charging all of it
11 to her daughters' trust, the 65 percent? I don't know. It's very confusing. But I
12 don't think you can do both. If you're going to have staff to assist you, then that's
13 out of your fee. So we need to back out one or the other of those.

14 And with all due respect to Ms. Ahern and, you know, what role she's
15 played or not played in this whole thing, I think it's the fee that's got to go, the
16 \$218,000. It's just not supported in any way. She is not a corporate trustee. She
17 is not entitled to the same fee as a corporate trustee.

18 You know, there's case law in Nevada from like 19- -- what is this -- 65,
19 *Harvey versus Streeter*, like the only case on what can a trustee charge. It was an
20 attorney. And they said well, you know, you have to have some people running this
21 company for this guy who's ill or something and one of them is an attorney so he's
22 entitled to his attorney's fee as an attorney fee. And then, you know, these other
23 people are entitled to some fees, but that's for their time. And that's what we just
24 don't have here.

25 We don't know what the time is. She probably would be entitled to

1 something for her time, but it's not \$200,000 with all due respect. She's not entitled
2 to the same fee that a corporate trustee would be. It's just totally unreasonable.

3 I am not convinced that the \$52,000 was earned in connection --
4 unrelated to the litigation to the benefit of the trust. Maybe it was, fine. So I just
5 think the easiest thing to do is to back out the \$218,000 out of that and, you know, if
6 she needed some help running these things otherwise and -- then fine. But the
7 \$218,000 has to come back out on the accounting.

8 The -- I do have a serious problem with the \$500,000 in this, you know,
9 Fidelity Capital. I don't know what Fidelity Capital is. We have nothing to indicate
10 to us that it satisfies any of the standards of the Uniform Prudent Investor Act. I do
11 think that it needs to be immediately placed into some, you know, insured
12 investment -- appropriate investment.

13 The -- so with respect to the accounting, those are my issues on the
14 accounting. I think then we get into this next issue of has there been a breach of
15 the fiduciary -- well I think that we had to deal with this 37,000. I don't -- it also
16 does appear to me that the \$37,000 has already been accounted for previously.
17 This was -- so it should not be charged -- or credited here. So that's another
18 \$24,000 I think that we're off.

19 Anyway, I just -- I have some issues with the accounting. The
20 accounting itself I don't think gives rise to this whole issue of has there been a
21 breach of fiduciary duty just paying yourself a fee, you know, whatever. To me, this
22 does not -- the accounting isn't the breach of fiduciary duty.

23 My problem with this breach of fiduciary duty, and I've tried to make
24 this really clear from day one is -- as I said, I don't have quite the emotion invested
25 that Mr. Powell does in this, but I have a concern that even if you believe you are

1 the 100 percent income beneficiary, they are not. You hold -- you're in the position
2 of a trustee and you got all fiduciary duties and if you believe that there is a conflict
3 there, then yes, it was a good point, get a third-party trustee, petition the court to
4 say I believe I'm entitled to this and I'll place everything in the hands of this third
5 party, but I'm going to fight to get my other 65 percent because I think it's wrong. I
6 think I have just been voluntarily making these payments.

7 But you can't just stop making payments to somebody and say I'm the
8 100 percent, I don't owe you any more duty as your trustee because you're not my
9 beneficiaries. You're only contingent beneficiaries. I no longer owe you a duty
10 because I've decided I'm the 100 percent beneficiary. Now I no longer owe you a
11 duty so I don't have any duty to breach. You can't do that.

12 You have to act in the best interest of everybody because at that point
13 in time, by saying I'm the 100 percent beneficiary, you are disadvantaging the 65
14 percent beneficiaries to your sole and exclusive benefit and you can't do that as
15 trustee.

16 If you put that all in the hand of a third party and went in and fought for
17 it, I wouldn't have any problem. But I just don't think you can do that to people in
18 whom you have been standing in the shoes as a trustee, even if you make the
19 determination that I'm probably wrong, this was out of the goodness of my heart to
20 my mother and now I've continued it with my daughters, but it's just time to stop, I
21 was wrong, it's not really theirs. I don't think you can then just stop and say that
22 you've done anything other than breach a fiduciary duty. So I think there has been
23 a breach of fiduciary duty here as to the 65 percent beneficiaries.

24 This brings us to our unfortunate point of how do we best deal with
25 that. Because if we remove Ms. Ahern from the entire thing -- that's what I've said

1 early on, why I said I think you have to deal with that last.

2 I don't know if you have anything further to say, Ms. Wakayama, on -- I
3 thought you addressed the removal. But I feel I have no choice but to remove her
4 as to the trustee of the 65 percent. It's her money. The other 35 percent of the
5 income is hers and if she can manage her own money, I think she should be
6 allowed to manager her own money. But I just don't think she can remain in control
7 of the other 65 percent.

8 And the question is, during the pendency -- because we've discussed
9 here that, you know, she has appeal rights, is she going to appeal this whole thing.
10 You know, what's the best thing to do? Should the whole thing be in the hands of a
11 third party? Should the 65 percent be in the hands of a third party? Does it make
12 sense to split it into the sub-trusts because, with all due respect, part of the reason
13 why this whole mess happened is because they never split it into sub-trusts the way
14 they should have 35 years ago.

15 MS. WAKAYAMA: May I address that, Your Honor?

16 THE COURT: Yes.

17 MS. WAKAYAMA: Now I'll refer this Court to Exhibit 11, the opinion letter of
18 Jeff Johnston and Stan Crawford. According to them, under Texas law, legal title
19 vests in the trustee. They cited the Texas *Bailey* and *Long* decisions. So until all
20 appeal rights have been exhausted, according to them, it is important to maintain
21 the status quo, and here's why.

22 THE COURT: Okay. I'm not going to let her keep any control over this. The
23 question is, do we put a third party in control of the whole thing? Because I think if
24 there's -- if we're going to have any of this go any further, then you need somebody
25 else in control. Because as I said, if she had put somebody else in control and

1 fought for her right to the 65 percent, she wouldn't be breaching any fiduciary
2 duties.

3 She cannot be trusted to maintain control over this money because
4 who knows what other inappropriate investments she'll put it in. I'm not going to --
5 you know, whatever she wants to do with her own money, I don't care. You're right,
6 it's her money to lose if she wants to during her lifetime or to hoard and leave to her
7 cats. It's her right.

8 MS. WAKAYAMA: Well, Your Honor, the only issue that is a concern
9 about --

10 THE COURT: Or wait a minute, I think it was a dog. I know she has a pet. I
11 can't remember -- I thought --

12 MS. WAKAYAMA: She has a service dog.

13 THE COURT: It's a dog. It's a dog. How could I forget the dog.

14 MS. WAKAYAMA: The only concern that we have in relation to, you know,
15 just kind of undoing the whole trusteeship is there are some pending deals on the
16 horizon that Jeff Johnston and Stan Crawford are handling right now.

17 THE COURT: And that's -- this idea that, you know, splitting this -- I
18 understand it -- I would like to leave her in control of her 35 percent. But that's why
19 I think that the only thing we can do is say there is one trustee for the 100 percent
20 until this is all resolved and then they can go their separate ways. But I think we
21 need -- I just think we need to put this in the hands of a third party.

22 MS. WAKAYAMA: And the only condition we would have on that, Your
23 Honor, is that this third party does work with Texas counsel in place right now --

24 THE COURT: Absolutely.

25 MS. WAKAYAMA: -- that has -- but not Shawn Guerrero, Jacqueline

1 Montoya's Texas counsel. It has to be these people that are in the trenches as we
2 speak. These people that have relationships with, you know, Kevin Crawford at
3 Pioneer, Jared Hobbs at Apache that are doing this job day in and day out on
4 behalf of the entire trust.

5 THE COURT: Well see, the thing is that whoever you put in this position,
6 they're going to be in the fiduciary position, they are acting as a corporate trustee --
7 as a third-party trustee. They're going to have to exercise their own best judgment
8 or they've got problems.

9 So we have to put this in the hands of somebody who can deal with
10 this without the emotion, without -- and just like help this family through this period
11 because this is a difficult period for this family and we don't want to interfere with
12 the other families. That's why I've said all along that I think that we need to be
13 sensitive in anything that we produce, that you know -- what was her -- Mozell --

14 MS. WAKAYAMA: Mozell Miller.

15 THE COURT: -- Mozell and then I don't -- I didn't understand who those
16 other people were.

17 MS. WAKAYAMA: Hillary Moore. It's actually a gentleman. He owns
18 some --

19 THE COURT: Is he like some other kind of a descendent? Is he like some
20 cousin or something?

21 MR. POWELL: He's a cousin.

22 MS. WAKAYAMA: You know what, I don't know.

23 THE COURT: I mean it's a complicated family tree. But whoever their
24 forbearer was that set this all up that, you know, keep this in the family, this was a
25 very wise thing that that person did.

1 And I understand that we have to help the people here locally
2 maximize their benefits, but to get through this litigation in a way that doesn't
3 jeopardize either their rights or the rights of these others. So I really think the only
4 thing for that is to put it in the hands of a third party until this is all resolved.

5 MS. WAKAYAMA: And the only condition we put on that, Your Honor, is that
6 this third party -- and we would actually request that it be somebody that the Court
7 chooses, not you know, Fred Wade or anybody else. Maybe it's -- I don't know,
8 Premier Trust or somebody. Somebody that's very, very neutral that this Court
9 selects in order to handle this trust in the interim of litigation.

10 But the only condition that we would really insist upon the Court to
11 make is that this neutral third party do not disrupt the system in place that Jeff
12 Johnston and Stan Crawford have. You know, I know it's been ugly and there's all
13 these statements flying every which way, but the truth of the matter is, these are oil
14 guys -- these are the oil experts. I mean even the Millers and Mr. Moore at one
15 time, they hired Jeff Johnston. He knows what he's doing, he's capable of handling
16 this and he understands his fiduciary duties in relation to, you know, cutting deals,
17 negotiating deals, et cetera.

18 And so that's the only thing that we would ask this Court to put in as a
19 condition, that the new trustee or neutral trustee must work with Jeff Johnston and
20 Stan Crawford so then that way there's not, you know, any kind of hiccups in these
21 deals on the horizon here in going forward.

22 THE COURT: Okay. So Mr. Warnick, Mr. Powell, on the issue of a -- as I
23 said, my goal -- I think the goal ultimately -- ideally in the end they manage their
24 own money and their own income and their own shares, ultimately. I think ideally
25 ultimately that's the goal. I don't see any reason why you need somebody in here

1 really long term, but I do see this as for the moment we need somebody in place
2 who is a neutral third party who is just going to navigate through this as a trustee
3 with everybody's interests at heart until we get through this litigation, however long
4 that takes.

5 And at some point you may have to revisit whether it is in everybody's
6 best interest to go with the sub-trusts. I agree with you right now, it probably isn't
7 until we know -- because we've got to have somebody managing this for us now. I
8 think the best thing is a third party because as I said, at some point -- they're
9 absolutely right, this is Mrs. Ahern's money to deal with during her life, this other 35
10 percent, however she wants to deal with it she should be allowed to deal with it.

11 MR. WARNICK: We never disputed that, Your Honor. We agree.

12 THE COURT: So at some point in time it's got to be back there. But
13 temporarily we've got to have somebody managing all of it. And unless we know
14 that we've got somebody managing the 65 percent who will and can work with Mrs.
15 Ahern to manage the whole, it doesn't do us any good. We have to have
16 somebody managing the 100 percent, I believe.

17 MR. WARNICK: And we've recommended Mr. Wade. I don't know why they
18 would object to Mr. Wade. I'm involved in another case with Mr. Wade now where
19 he's on the other side and we're actually adversaries. He's a very -- I think a very --
20 a person of high integrity. I don't think there's any reason to suspect that he
21 wouldn't do the best job for the least amount of money for the benefit of Eleanor
22 and for the benefit of our clients.

23 I mean if they want to suggest someone else, we'll be happy to
24 consider, but they haven't suggested anyone else. Mr. Wade is probably a
25 fiduciary in at least seven or eight cases that are presently before this Court where

1 the Court has trusted him in handling situations and, you know, we'd just like to get
2 this thing moving along. We don't want to have it delayed another 30, 40 days
3 while they try to decide who they want to have as the neutral trustee. We want to
4 get this resolved and moving along, and I think Mr. Wade would be an ideal
5 candidate and I don't see why they would have any objection. He would certainly
6 look at Mr. Johnston and say is he doing the right job, and investigate and if he is,
7 fine, we continue on with him.

8 MS. WAKAYAMA: Your Honor --

9 MR. WARNICK: But that's the trustee's duty.

10 MS. WAKAYAMA: -- I'm not familiar with Mr. Wade at all. I don't know if
11 Mrs. Ahern's familiar with Mr. Wade. I'm not saying that he's not capable. I'm
12 saying that I can't recommend him at this point. Who I can recommend is maybe
13 Premier Trust because it is a corporate fiduciary, they are governed by, you know,
14 regulations of their own. And so in order to put somebody like that in place, we --
15 you know, that would be our preference.

16 MR. WARNICK: I'm working with Premier Trust too. They just charged two
17 percent on a case that I handled for several years. Two percent trustee's fee is
18 what they charged in handling the estate. I know Mr. Dreschler who's in charge of
19 it. He's a capable person down there. But we're going to get a much higher --

20 MR. POWELL: It's a higher charge.

21 MR. WARNICK: -- charge.

22 THE COURT: It is a bigger expense. I mean --

23 MR. WARNICK: And they're going to have a right to charge it. And if they
24 want to save money for Mrs. Ahern, we should get a individual in there because this
25 is not a complicated situation.

1 MS. WAKAYAMA: Your Honor, if I could consult with my client just -- I mean
2 even until Tuesday to see if she is in agreement with having Premier Trust, then I
3 will let Mr. Warnick know and then we can proceed that way.

4 MR. WARNICK: How about Mr. Wade too? Would you check with her?

5 MS. WAKAYAMA: Your Honor, I don't know Mr. Wade.

6 MR. WARNICK: I'll be happy to provide you with a -- what they call that
7 thing? A --

8 MS. WAKAYAMA: I can provide her both and see which one she would like.

9 THE COURT: Respectfully, seriously, why am I going to be listening to Mrs.
10 Ahern's pick?

11 MR. POWELL: Exactly.

12 MS. WAKAYAMA: Well because you haven't removed her over her 35
13 percent and I think she should at least have some say in relation to who's going to
14 be temporarily managing all 100 percent.

15 THE COURT: Okay.

16 MS. WAKAYAMA: But that's our preference, Your Honor. Our preference
17 would be Premier Trust. Like I said, I don't know Mr. Wade.

18 THE COURT: It's -- I'm trying to do this tactfully. I think it's probably a more
19 expensive option. I think that's the most neutral thing I can say. It's going to be
20 expensive.

21 MR. POWELL: Yeah. And Your Honor, and as mentioned, Mr. Wade is
22 licensed in Texas.

23 THE COURT: Oh, yeah. That's a good point. I forgot about that.

24 MR. POWELL: So I mean he's an officer of the court in Texas anyway which
25 is where these negotiations are going to be taking place.

1 THE COURT: That's a good point.

2 MR. POWELL: And at the end of the day --

3 THE COURT: You mentioned him in the papers, but I did not see -- we don't

4 have his resume or fee schedule.

5 MR. POWELL: Oh, that's easily obtainable. Commissioner Yamashita

6 appoints him very, very frequently, so --

7 THE COURT: Yeah. I know. I just would like --

8 MR. POWELL: And yeah.

9 THE COURT: One question, Mr. Powell, is --

10 MR. POWELL: I would encourage them actually to talk with him --

11 THE COURT: -- do we know that he has the time for this?

12 MR. POWELL: Yes.

13 THE COURT: I mean because Premier Trust is set up as a large -- it's a

14 large corporate fiduciary. They deal with a lot. They're dealing with --

15 MR. POWELL: Yes.

16 THE COURT: There's more overhead and that's why that fee is going to be

17 likely significantly more. Again, attorneys stay just like neutral. It's going to be a lot

18 more expensive.

19 MR. POWELL: And that's what this comes down to is dollars and cents, Your

20 Honor.

21 THE COURT: Right.

22 MR. POWELL: That's the whole point of this is that --

23 THE COURT: And we don't know how long this is going to be.

24 MR. POWELL: Right.

25 THE COURT: I mean it might be a matter of weeks, it might be years. We --

1 you know, we want to make sure that we have somebody in there who can work
2 with everybody in everybody's best interests.

3 On the one hand you have the suggestion of a neutral -- and
4 everybody knows, Premier Trust, they are -- they're well named.

5 MR. POWELL: Right.

6 THE COURT: They are the leading company who does that work. It is -- this
7 is not one where the fee would be disproportionate to the assets. I will give you
8 that. A two percent fee in this particular situation, while it's going to be more
9 probably than Mr. Wade, no offense, there's enough here that it justifies that kind of
10 management. It's a different kind of management that you get there than from Mr.
11 Wade who, as an individual, you know -- I -- you know, it's a choice.

12 So if we can submit -- I know that your clients prefer Mr. Wade, but
13 have everybody take a look at the two -- because we've got 35/65 -- the two
14 respective options and give me your responses on Tuesday. I'll make a choice.

15 MR. POWELL: Okay.

16 THE COURT: As I've said, I do have concerns about the expense, but it's
17 less here where it appears that there is sufficient income that the expense is not as
18 big a burden.

19 MS. WAKAYAMA: And Your Honor, we would just -- excuse me, request the
20 CV of Mr. Wade to be delivered to us as soon as possible.

21 THE COURT: Right. So both sides have the right to take a look at both of
22 them and give me their thoughts on the two options that we have. As I said,
23 Premier Trust is aptly named. They are certainly a leader in that and you know,
24 she's got her money at Wells Fargo. Have you thought about -- is there somebody
25 in the trust department there?

1 MR. POWELL: I mean again, it's just -- it comes down to the dollars and
2 cents issue on these --

3 THE COURT: I just -- I don't know if Ms. Montoya dealt with Wells Fargo.

4 MR. POWELL: The other factor again, Your Honor, is again, as we've
5 discussed and you're very well aware of, these are almost like collective bargaining
6 type of negotiations because the family members -- and again, the other affected
7 parties -- and that's the issue is, is that these are basically negotiated in a group
8 context. Another factor to keep in mind.

9 At the end of the day, everybody's incentive; our clients', Ms. Ahern,
10 let's get the most money out of a deal we possibly can --

11 THE COURT: Right. Correct.

12 MR. POWELL: -- and be cost efficient about it.

13 THE COURT: Right. I guess --

14 MR. POWELL: You don't spend X amount of attorney's fees to get the same
15 amount or more. I mean that's something obviously in probate court, we have
16 people fighting over a \$500 car for \$10,000, and it's like this is not cost efficient,
17 guys. So --

18 THE COURT: And that's why I said we've got us enough here that it justifies
19 some expense. Whether it's Mr. Wade or Premier, or there might be somebody
20 else, but it just seems to me that -- as has been pointed out, that eventually -- I view
21 this as something where I don't see any reason why Ms. Ahern shouldn't be left in
22 control of her own money once we know what that is.

23 So at this point in time it probably makes -- on the one hand I
24 appreciate the idea that negotiating all this with one person that is an attorney in
25 that same state makes a lot of sense to me. And who knows, it may not be that

1 much more difficult dealing with a corporate fiduciary in these contexts because
2 obviously we have one corporate fiduciary from Texas who they've provided us with
3 a fee list for so they're used to doing this, dealing with corporate fiduciaries.

4 So it probably will not be that difficult for whoever it is has to negotiate
5 in Texas to deal with a corporate fiduciary because it appears they have a track
6 record and they know how to do it. My view was just that it would be easier to do it
7 with a person, but clearly corporate fiduciaries are not uncommon in dealing with
8 these kinds of interests so it shouldn't cause a problem. The question is whether
9 somebody local, for us, will have the kind of expertise needed to do that which is
10 kind of something that weighs in Mr. Wade's favor since he's also a Texas attorney.
11 So --

12 MS. WAKAYAMA: I'll make sure that I explain that all to the client.

13 THE COURT: Okay. And you will provide the information --

14 MR. POWELL: Yes.

15 THE COURT: -- fee chart, you know, whatever fee agreement he had and
16 the appropriate CV.

17 MS. WAKAYAMA: And Your Honor, just to be clear on --

18 THE COURT: And do you have a Premier one as well?

19 MR. POWELL: Yeah.

20 THE COURT: Okay. So you could just talk to your clients about --

21 MR. POWELL: We already -- we know everything about Premier so it
22 basically would just be I think a point of providing the other side.

23 THE COURT: Yeah. Perfect.

24 MR. POWELL: And again, they're free to contact Mr. Wade directly and have
25 -- we don't have to actively participate. Again, he's just a name we're throwing out

1 because he's -- Commissioner Yamashita's appointed him in so many different
2 cases and --

3 THE COURT: Right.

4 MR. POWELL: -- again, this is not a situation -- at the end of the day here,
5 both sides should be tugging on the same rope of let's maximize every possible
6 dollar --

7 THE COURT: Right. Okay.

8 MR. POWELL: -- because there's no disincentive that way.

9 THE COURT: So we'll make that decision on Tuesday --

10 MR. POWELL: Sure.

11 THE COURT: -- as to which to approve because you could give us your
12 respective clients' positions having reviewed both options with your clients.

13 MR. POWELL: Okay.

14 THE COURT: I don't want to make you do that right here in Court, but you
15 know, take the moment to -- a day to review it with your clients. End of the day
16 Tuesday give us a decision from your clients and I'll weigh all that and I'll pick.

17 Item number three, attorney's fees. Yes, I'll award attorney's fees. But
18 I agree with Ms. Wakayama, we have to satisfy the *Brunzell* factors in any order
19 that we make. The Court does not -- the Supreme Court has real issues with
20 attorney fee awards and we have to lay everything out --

21 MR. POWELL: Sure. Understood.

22 THE COURT: -- if we're going to do it.

23 So I just don't know if Ms. Wakayama feels that she's got a sufficient
24 record before her in which to say she feels she could properly address the specific
25 dollar amount requested. You say you've got an affidavit, so do we need some

1 more time then --

2 MS. WAKAYAMA: Yes, Your Honor.

3 THE COURT: -- to review the affidavit and respond to that? Okay. So then
4 that's what we'll do.

5 MR. POWELL: And Your Honor, we would like to again -- I don't know --
6 okay, we're in a sticky situation here because again, litigation is not yet concluded.

7 THE COURT: Right.

8 MR. POWELL: So I would submit again that our -- because obviously we
9 have explanations in there as to what we've done and whatever. I think that it
10 would be appropriate to submit our timesheets to you in-camera and ultimately you
11 decide.

12 THE COURT: Right.

13 MR. POWELL: The dollar amount's going to be the dollar amount. You
14 ultimately have the final say on saying yes, everything checks out and looks good
15 here. So --

16 THE COURT: Right. We --

17 MR. POWELL: -- I just want to be clear that we do not have any obligation to
18 share our time sheets, which again, have confidential information that basically as
19 to what we were doing.

20 THE COURT: Usually we do redactions. But okay, so we'll discuss it --

21 MS. WAKAYAMA: Your Honor, we would request that this round of briefing,
22 so to speak, be done formally; done with a motion for an award of attorney's fees
23 based on Your Honor's ruling, giving us a time for an opposition to review redacted
24 billing statements so that we understand --

25 THE COURT: They have requested attorney's fees. I will grant them subject

1 to proper foundation under *Brunzell*. So that's what we need to do next. And yes,
2 typically they are entitled to see redacted billing statements.

3 MR. POWELL: Okay.

4 THE COURT: Redacted for any attorney-client privilege.

5 MS. WAKAYAMA: And Your Honor, just to be clear for the temporary
6 trusteeship, is the condition that the status quo is to remain in place as it relates to
7 working with Jeff Johnston and Stan Crawford?

8 THE COURT: Absolutely not. That is left to the best -- to the discretion of
9 whoever the trustee is. The trustee has to exercise their discretion. I'm not going
10 to tell a trustee what to do. The trustee will exercise the trustee's discretion.

11 MR. WARNICK: Do you want to set a time to --

12 THE COURT: They've got a fiduciary obligation, so you know, it's on them.

13 MR. WARNICK: Do you want to set a time for submitting our *Brunzell*
14 information on attorney's fees so that they can review and --

15 THE COURT: You've already made your request. I've said I'll grant
16 attorney's fees, but I have to take a look at it.

17 So how much time do you need to do -- you've got your affidavits and
18 you need to do the redacted. Do you need like 10 days?

19 MR. POWELL: Yeah. Absolutely.

20 THE COURT: So within 10 days you'll have formal affidavit request saying
21 this is how much we're seeking and this is our redacted bills.

22 And then, Ms. Wakayama, you want at least 10 days I'm sure in
23 response or you need longer?

24 MS. WAKAYAMA: Yes, Your Honor. We would actually prefer it to be like in
25 a normal motion calendar so then that way --

1 THE COURT: Try to work our way to that date. So --

2 MS. WAKAYAMA: -- their motion is filed, we get the 10-days under the local

3 rules, they get a reply one week before the hearing instead of having all of this last-

4 minute briefing.

5 THE COURT: Okay --

6 MR. POWELL: So are we briefing individual --

7 MR. WARNICK: I think they want to file -- us to file a motion or application

8 for fees with our backup and *Brunzell*. She'll have an opportunity to respond to it

9 and then we'll have a hearing.

10 MR. POWELL: Okay. But basically just as to --

11 THE COURT: So if they do a --

12 MR. POWELL: -- as to the amounts is what we're after.

13 [Colloquy between the Court and the clerk]

14 THE COURT: Okay, so -- so we -- we'll put it on the calendar for May 13th?

15 MR. WARNICK: We file our motion within 10 days -- our application within

16 10 days with our *Brunzell* information and the backup -- redacted copies. They

17 then have what, 10 days to respond? And then we come back --

18 THE COURT: And you get a reply -- you have an opportunity for a reply.

19 MR. POWELL: Okay.

20 MR. WARNICK: May 13th at 10 a.m. again?

21 THE COURT: Pardon?

22 MR. WARNICK: Is it 10 a.m. on May 13th?

23 THE CLERK: That's probate, so --

24 THE COURT: It's a probate date.

25 THE CLERK: -- 9:00.

1 MR. WARNICK: Nine o'clock.

2 MR. POWELL: Oh, normal calendar actually.

3 THE COURT: It's a normal probate calendar. What we --

4 [Colloquy between the Court and the clerk]

5 THE COURT: You know, file it in the ordinary course and if they give you
6 any date other than May 13th, send over a stipulation and we'll move it because
7 they --

8 MR. WARNICK: They've done that in the past.

9 THE COURT: Yeah.

10 MR. WARNICK: I understand what you mean, yeah.

11 THE COURT: We're not quite sure in dealing with family court master
12 calendar, they -- sometimes they set things really super fast and sometimes they
13 put things way out. And -- because they're not used to our ordinary course here,
14 and district court is 30 days. And they're used to doing things on much shorter
15 notice that maybe don't accommodate this. So send us a stipulation because they
16 might put it on like who knows when. So send us a stipulation to get it on the day
17 you want it, but I think the 13th is -- would be the best day.

18 [Colloquy between the Court and the clerk]

19 MR. WARNICK: Should we prepare an order from this hearing or wait till
20 after?

21 THE COURT: Yeah, the -- so Ms. Denman can just move it. She said if you
22 just notify her that we filed it and they noticed it -- they put it on a different -- a
23 wrong day, can you move it for us. CC the other side and we'll do it that way. You
24 don't have to do a stipulation.

25 Yes, Mr. Warnick, we need you to do an order which is that, having

1 heard all this, the Court finds there has been a breach of fiduciary -- whatever I said
2 about the accounting, that I don't think that she is entitled to the fee and the
3 expenses, and since I have other questions I'm just -- I'll knock off the trustee's fee.

4 The other issue is the removal. I do think it was a breach of fiduciary
5 duty to not seek approval before just cutting them because I think she owed them a
6 duty no matter what.

7 Then we've got the third thing which is yes, you're entitled to attorney's
8 fees in addition.

9 Finally, on removal in the entirety, I think in the end she's going to need
10 to have control over her 35 percent, but I just don't see how we can do this until the
11 case is resolved, splitting it like this. We have to put it 100 percent in the hands of
12 a third party. So that's, you know, somebody -- I don't know how long that trustee
13 will be in place, but they'll be in place for the duration.

14 MS. WAKAYAMA: Your Honor, in relation to the -- I guess reports for
15 Tuesday, do you want them filed with the Court, do you want them --

16 THE COURT: You can just fax me and tell me what your --

17 MS. WAKAYAMA: Okay.

18 THE COURT: -- having consulted with my clients, here are their thoughts
19 about these two options for the Court's consideration, and then we'll pick one of
20 them.

21 MR. POWELL: Okay.

22 MS. WAKAYAMA: Great. Thank you, Your Honor.

23 MR. HAYES: Your Honor, do you plan on locking up your court? Because
24 we have a person coming to pick this stuff up.

25 THE COURT: Going to have a runner come and get it? Okay, sure. If they

1 can just buzz chambers, we'll come to open the door for them.

2 MR. HAYES: Thank you very much.

3 MS. WAKAYAMA: Thank you.

4 THE COURT: Because we'll lock it up so your stuff's safe there.

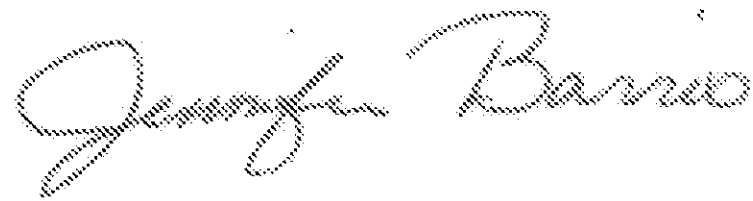
5 MS. WAKAYAMA: Thank you.

6 MR. POWELL: Thank you, Your Honor.

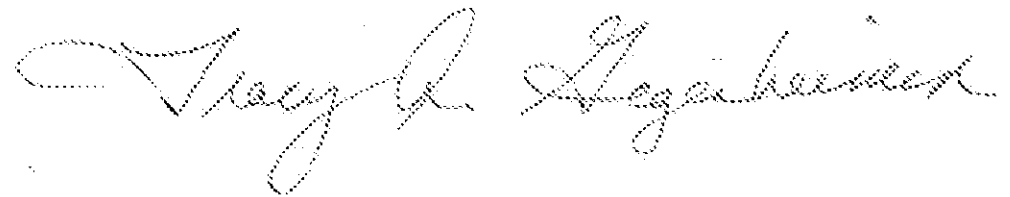
7 THE COURT: Okay.

8 [Proceedings concluded at 12:42 p.m.]

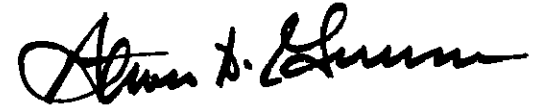
9 ATTEST: We hereby certify that we have truly and correctly transcribed the
10 audio/visual proceedings in the above-entitled case to the best of our ability.

11
12 

13 _____
14 Jennifer Barris, CET*D-668
15 Transcriber

16
17 

18 _____
19 Tracy A. Gegenheimer, CER-282, CET-282
20 Court Recorder/Transcriber



CLERK OF THE COURT

ORDR

JOSEPH J. POWELL, ESQ.
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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,

ASWA
ALBRIGHT · STODDARD · WARNICK · ALBRIGHT
LAW OFFICES
A PROFESSIONAL CORPORATION

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. ^{Communicated about these}
^{interests with Montoya & Bouvier parties is subject to a 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

THE RUSHEFORTH FIRM, LTD.

Submitted by:

ALBRIGHT, STODDARD,
WARNICK & ALBRIGHT

By: 

WHITNEY B. WARNICK, ESQ.

Nevada Bar No. 001573

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Attorneys for Kathryn A. Bouvier

By: 

JOSEPH J. POWELL, ESQ.

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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

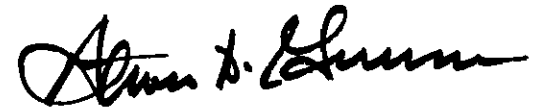
LIANE K. WAKAYAMA, ESQ.

Nevada Bar No. 11313

10001 Park Run Drive

Las Vegas, NV 89145

Attorneys for Eleanor Connell Hartman Ahern



CLERK OF THE COURT

Marquis Aurbach Coffing

Liane K. Wakayama, Esq.

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Candice E. Renka, Esq.

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crenka@maclaw.com

Attorneys for Eleanor Connell Hartman Ahern, as Trustee and Individually

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

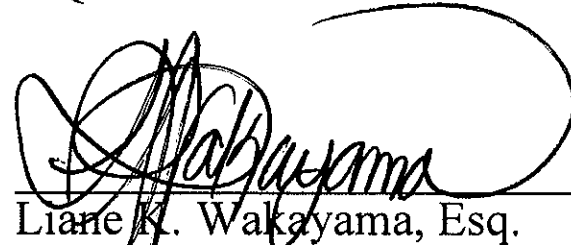
NOTICE OF ENTRY OF ORDER

Please take notice that an Order Appointing New Temporary Trustee was entered in the above-captioned matter on the 1st day of April, 2015, a copy of which is attached hereto.

Dated this 6th day of April, 2015.

MARQUIS AURBACH COFFING

By



Liane K. Wakayama, Esq.

Nevada Bar No. 11313

Candice E. Renka, Esq.

Nevada Bar No. 11447

10001 Park Run Drive

Las Vegas, Nevada 89145

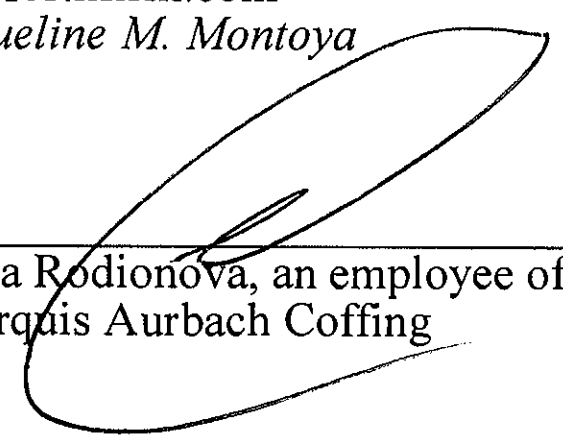
Attorneys for Eleanor Connell Hartman Ahern,
as Trustee and Individually

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 6th day of April, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

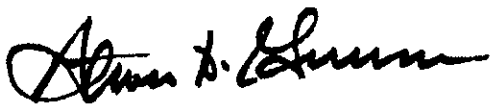
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bclark@albrightstoddard.com
gma@albrightstoddard.com
Attorney for Kathryn A. Bouvier

Joseph J. Powell, Esq.
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probate@rushforthfirm.com
Attorney for Jacqueline M. Montoya



Julia Rodionova, an employee of
Marquis Aurbach Coffing

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



CLERK OF THE COURT

ORDR

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Attorneys for Jacqueline M. Montoya

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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. ^{Communicated about these}
^{interests with Montoya & Bouvier parties is subject to a 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.

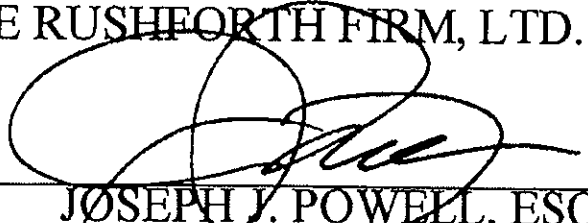
SO ORDERED this 30th day of March, 2015.


DISTRICT COURT JUDGE

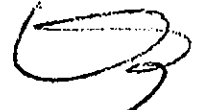
THE RUSHEORTH FIRM, LTD.

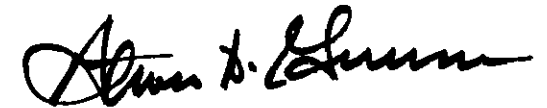
Submitted by:
ALBRIGHT, STODDARD,
WARNICK & ALBRIGHT

By: 
WHITNEY B. WARNICK, ESQ.
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Attorneys for Kathryn A. Bouvier

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Attorneys for Jacqueline M. Montoya

Approved as to form and content by:
MARQUIS AURBACH COFFING

By: 
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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



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.

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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

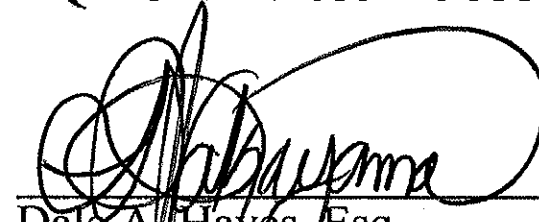
**NOTICE OF APPEAL REGARDING ORDER APPOINTING NEW TEMPORARY
TRUSTEE**

Eleanor Connell Hartman Ahern, as Trustee, by and through her attorneys of record, the law firm of Marquis Aurbach Coffing, hereby appeals to the Supreme Court of Nevada from the Order Appointing New Temporary Trustee, which was filed on April 1, 2015 and entered on April 6, 2015. A copy of the Notice of Entry of the Order is attached hereto as Exhibit 1.

Dated this 17th day of April, 2015.

MARQUIS AURBACH COFFING

By



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

Attorneys for Eleanor Connell Hartman Ahern,
as Trustee

CERTIFICATE OF SERVICE

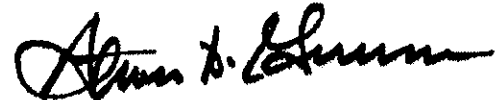
I hereby certify that the foregoing **NOTICE OF APPEAL REGARDING ORDER APPOINTING NEW TEMPORARY TRUSTEE** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 4th day of April, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Albright Stoddard Warnick & Albright		
Contact		Email
Barbara Clark, Legal Assistant		bclark@albrightstoddard.com
G. Mark Albright, Esq.		gma@albrightstoddard.com
Whitney B. Warnick		wbw@albrightstoddard.com
The Rushforth Firm, Ltd.		
Contact		Email
Joseph J. Powell		probate@rushforthfirm.com

Julia Rodionova, an employee of
Marquis Aurbach Coffing

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

Exhibit 1


CLERK OF THE COURT

Marquis Aurbach Coffing
Liane K. Wakayama, Esq.
Nevada Bar No. 11313
Candice E. Renka, Esq.
Nevada Bar No. 11447
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lwakayama@maclaw.com
crenka@maclaw.com

Attorneys for Eleanor Connell Hartman Ahern, as Trustee and Individually

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

NOTICE OF ENTRY OF ORDER

Please take notice that an Order Appointing New Temporary Trustee was entered in the above-captioned matter on the 1st day of April, 2015, a copy of which is attached hereto.

Dated this 6th day of April, 2015.

MARQUIS AURBACH COFFING

By



Liane K. Wakayama, Esq.
Nevada Bar No. 11313
Candice E. Renka, Esq.
Nevada Bar No. 11447
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Eleanor Connell Hartman Ahern,
as Trustee and Individually

MARQUIS AURBACH COFFING

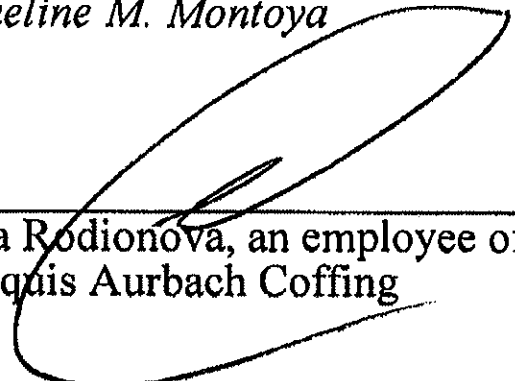
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 6th day of April, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Whitney B. Warnick, Esq.
Albright Stoddard Warnick & Albright
wbw@albrightstoddard.com
bclark@albrightstoddard.com
gma@albrightstoddard.com
Attorney for Kathryn A. Bouvier

Joseph J. Powell, Esq.
The Rushforth Firm, LTD.
probate@rushforthfirm.com
Attorney for Jacqueline M. Montoya



Julia Rodionova, an employee of
Marquis Aurbach Coffing

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


CLERK OF THE COURT

ORDR
JOSEPH J. POWELL, ESQ.
Nevada Bar No. 008875
THE RUSHFORTH FIRM, LTD.
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134
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WHITNEY B. WARNICK, ESQ.
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ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
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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

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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,

ASWA

ALBRIGHT · STODDARD · WARNICK · ALBRIGHT
LAW OFFICES
A PROFESSIONAL CORPORATION

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2 the Trust, with full authority to manage the Trust and its assets, including the Trust's interests
3 in the Texas oil, gas and mineral property and interests in Upton County, Texas, ^{Communicated} ~~about these~~
4 ~~interests with Montoya Bousier parties is subject to a Confidentiality Agreement to~~
Mr. Waid's appointment as acting successor Trustee of the Trust is made on a
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8 Consistent with Nevada law, Mr. Waid, as Trustee, shall also honor all fiduciary obligations
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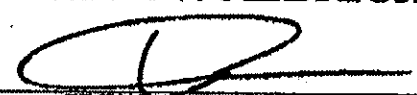
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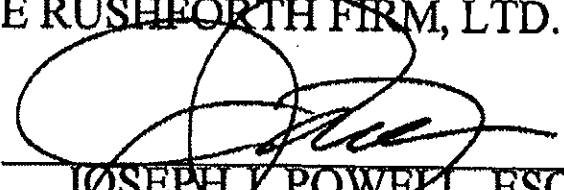
14 SO ORDERED this 30th day of March, 2015.


DISTRICT COURT JUDGE

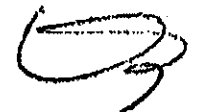
15 Submitted by:
16 ALBRIGHT, STODDARD,
17 WARNICK & ALBRIGHT

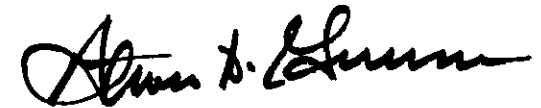
THE RUSHEORTH FIRM, LTD.

18 By: 
19 WHITNEY B. WARNICK, ESQ.
20 Nevada Bar No. 001573
21 801 South Rancho Drive, Suite D-4
22 Las Vegas, Nevada 89106
23 Tel: (702) 384-7111
24 Attorneys for Kathryn A. Bouvier

By: 
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Attorneys for Jacqueline M. Montoya

25 Approved as to form and content by:
26 MARQUIS AURBACH COFFING

27 By: 
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Nevada Bar No. 003430
LIANE K. WAKAYAMA, ESQ.
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Attorneys for Eleanor Connell Hartman Ahern



CLERK OF THE COURT

Marquis Aurbach Coffing

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lwakayama@maclaw.com
crenka@maclaw.com

Attorneys for Eleanor Connell Hartman Ahern, as Trustee

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

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CONNELL LIVING TRUST DATED May 18,
1972, An Inter Vivos Irrevocable Trust.

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

CASE APPEAL STATEMENT

Eleanor Connell Hartman Ahern, as Trustee, by and through her attorneys of record, the law firm of Marquis Aurbach Coffing, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

Appellant: Eleanor Connell Hartman Ahern

2. Identify the Judge issuing the decision, judgment, or order appealed from:

The Honorable Gloria Sturman

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: Eleanor Connell Hartman Ahern

Counsel for Appellant:

Dale A. Hayes, Esq.

Liane K. Wakayama, Esq.

Candice E. Renka, Esq.

Marquis Aurbach Coffing

10001 Park Run Drive

Las Vegas, Nevada 89145

1 4. Identify each respondent and the name and address of appellate counsel, if known,
2 for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as
3 much and provide the name and address of that respondent's trial counsel):

4 Respondent: Kathryn A. Bouvier
5 Counsel for Respondent:
6 Whitney B. Warnick, Esq.
7 Albright, Stoddard, Warnick & Albright
8 801 South Rancho Drive, Suite D-4
9 Las Vegas, Nevada 89106

10 Respondent: Jacqueline M. Montoya
11 Counsel for Respondent:
12 Joseph J. Powell, Esq.
13 The Rushforth Firm, LTD.
14 P.O. Box 371655
15 Las Vegas, Nevada 89137-1655

16 5. Indicate whether any attorney identified above in response to question 3 or 4 is
17 not licensed to practice law in Nevada and, if so, whether the district court granted that attorney
18 permission to appear under SCR 42 (attach a copy of any district court order granting such
19 permission):

20 Not Applicable.

21 6. Indicated whether appellant was represented by appointed or retained counsel in
22 the district court:

23 Appellant Eleanor Connell Hartman Ahern is represented by retained counsel, the
24 law firm of Marquis Aurbach Coffing.

25 7. Indicate whether appellant is represented by appointed or retained counsel on
26 appeal:

27 Appellant Eleanor Connell Hartman Ahern is represented by retained counsel, the
28 law firm of Marquis Aurbach Coffing.

 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
the date of entry of the district court order granting such leave:

 Not Applicable.

1 9. Indicate the date the proceedings commenced in the district court (e.g., date
2 complaint indictment, information, or petition was filed):

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

5 The underlying trust litigation commenced on September 27, 2013 as a result of
6 the Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets
7 Pursuant to NRS 30.040, NRS 153.031(1)(e) and NRS 164.033(a)(a) filed by
Jacqueline Montoya.

8 10. Provide a brief description of the nature of the action and result in the district
9 court, including the type of judgment or order being appealed and the relief granted by the
10 district court:

11 The trust litigation primarily involves a dispute over the rightful ownership of oil,
12 gas and mineral rights on real property as well as the real property itself located in
Upton County, Texas (the "Oil Assets") currently owned by The W.N. Connell
13 and Marjorie T. Connell Living Trust dated May 18, 1972 ("Trust"). The instant
Order that is being appealed concerns the appointment of a new temporary trustee
14 over the Trust given that the District Court entered summary judgment against the
Appellant on a breach of fiduciary duty claim. Specifically, the District Court
15 found that the Appellant breached her fiduciary duties owed to the Respondents
by stopping payment of 65% of the income generated from the Oil Assets in June
16 2013. The District Court made this finding even though the net 65% of the total
income from June 2013 through January 2015 remains held in trust for the
17 Respondents' benefit.

18 Concurrent with this appeal, the Appellant is requesting the District Court to stay
19 the Order in order to allow the Appellant to continue to act as Trustee over the
Trust so that deals currently pending with certain oil companies are not
20 jeopardized. Granting the requested stay is beneficial to the Trust and all
beneficiaries as a whole.

21 11. Indicate whether the case has previously been the subject of an appeal to or
22 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
23 number of the prior proceeding:

24 An Order in this case has previously been appealed to the Supreme Court on July
25 31, 2014, the caption of which is In the Matter of: The W.N. Connell and
Marjorie T. Connell Living Trust, Dated May 18, 1972, Supreme Court Case No.
66231.

26 12. Indicate whether this appeal involves child custody or visitation:

27 No.

1 13. If this is a civil case, indicate whether this appeal involves the possibility of
2 settlement:

3 Probably not at this stage given past failed settlement negotiations.

4 Dated this 7th day of April, 2015.

5 MARQUIS AURBACH COFFING

6
7 By 

8 Dale A. Hayes, Esq.

9 Nevada Bar No. 3430

10 Liane K. Wakayama, Esq.

11 Nevada Bar No. 11313

12 Candice E. Renka, Esq.

13 Nevada Bar No. 11447

14 10001 Park Run Drive

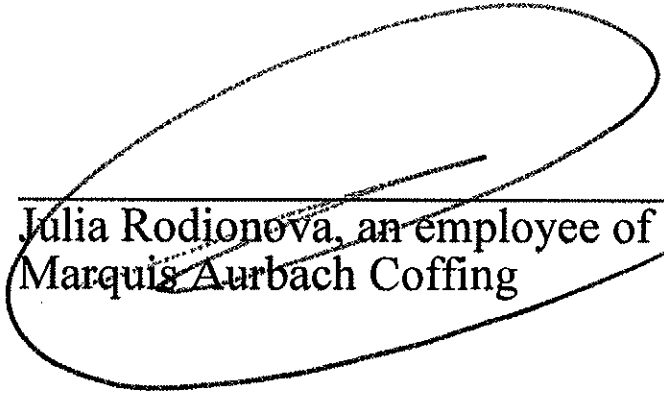
15 Las Vegas, Nevada 89145

16 Attorneys for Eleanor Connell Hartman Ahern,
17 as Trustee
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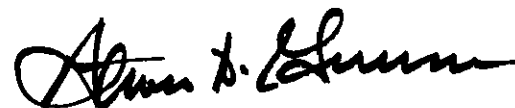
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 7th day of April, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Albright Stoddard Warnick & Albright		
Contact		Email
Barbara Clark, Legal Assistant		bclark@albrightstoddard.com
G. Mark Albright, Esq.		gma@albrightstoddard.com
Whitney B. Warnick		wbw@albrightstoddard.com
The Rushforth Firm, Ltd.		
Contact		Email
Joseph J. Powell		probate@rushforthfirm.com


Julia Rodionova, an employee of
Marquis Aurbach Coffing

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



CLERK OF THE COURT

ORDR

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 TO SHOW CAUSE

Date of Hearing: 04/22/15
Time of Hearing: 10:30 a.m.

TO: ELEANOR CONNELL HARTMAN AHERN, and her attorneys;
MARQUIS AURBACH COFFING:

YOU ARE HEREBY ORDERED to appear before this Court, Department 26, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada, 89155 (Courtroom 3H) at 10:30 a.m. on April 22, 2015, then and there to show cause, if any you have, why you should not be adjudicated guilty of contempt of Court and punished accordingly for failing to comply with this Court's order from the March 20, 2015, hearing, and return to Fredrick P. Waid, Court-appointed

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HUTCHISON & STEFFEN

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

1 Trustee of The W.N. Connell and Marjorie T. Connell Living Trust Dated May 18, 1972, an Inter
2 Vivos Irrevocable Trust ("Trust"), by the close of business (5:00 p.m. PST) on Friday, April 17,
3 2015, the \$500,000 held by Fidelity Capital Inc., the \$100,000 Cashier's Check dated March 23,
4 2015, made payable to Eleanor M. Ahern, and any other Trust funds held by Fidelity Capital Inc.

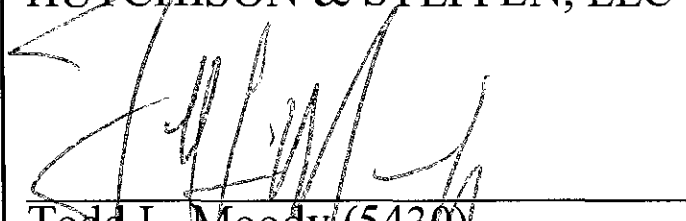
5 IT IS FURTHER ORDERED that Eleanor Connell Hartman Ahern shall make herself
6 available for deposition on or before Wednesday, April 29, 2015, and provide the addresses,
7 sufficient for service, for Suzanne Nounna and Ariella Holton, so they can be deposed.

8 Dated this 15 day of April, 2015.

9
10 
11 District Court Judge

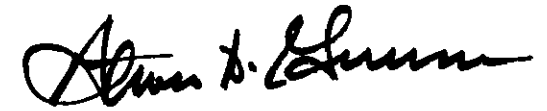
12 Submitted by:

13 HUTCHISON & STEFFEN, LLC

14 
15 Todd L. Moody (5430)
16 10080 W. Alta Dr., Ste 200
17 Las Vegas, NV 89145
18 Phone: (702) 385-2500
19 tmoody@hutchlegal.com

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

21
22
23
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26
27
28



CLERK OF THE COURT

1 **NEOJ**
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 Court-appointed Trustee*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 In the matter of

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

15 THE W.N. CONNELL AND MARJORIE T.
16 CONNELL LIVING TRUST DATED May
17 18, 1972, an Inter Vivos Irrevocable Trust.

18 **NOTICE OF ENTRY OF ORDER TO SHOW CAUSE**

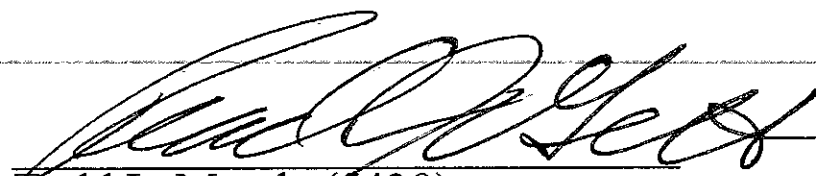
19 Date of Hearing: 04/22/15
20 Time of Hearing: 10:30 a.m.

21 TO: ELEANOR CONNELL HARTMAN AHERN, and her attorneys;
22 MARQUIS AURBACH COFFING:

23 YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that an ORDER TO SHOW
24 CAUSE was entered in the above-entitled matter on April 16, 2015, a copy of which is attached
25 hereto.

26 Dated this 16 day of April, 2015.

27 HUTCHISON & STEFFEN, LLC



28 Todd L. Moody (5430)
Russel J. Geist (9030)
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Las Vegas, NV 89145
Phone: (702) 385-2500
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tmoody@hutchlegal.com

Attorneys for Fredrick P. Waid, Court-Appointed Trustee

HUTCHISON & STEFFEN

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC, and on this 10th day of April, 2015, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** 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:

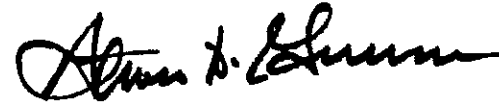
Whitney B. Warnick, Esq.
Albright Stoddard Warnick & Albright
801 S. Rancho Drive, Ste. D-4
Las Vegas, NV 89106
Attorneys for Kathryn A. Bouvier

Joseph J. Powell, Esq.
The Rushforth Firm
1707 Village Center Circle, Ste. 150
Las Vegas, NV 89134
Attorneys for Jacqueline M. Montoya

Dale A. Hayes, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145
Attorneys for Eleanor Connell Hartman Ahern



An employee of Hutchison & Steffen, LLC



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 TO SHOW CAUSE

Date of Hearing: 04/22/15
Time of Hearing: 10:30 a.m.

TO: ELEANOR CONNELL HARTMAN AHERN, and her attorneys;
MARQUIS AURBACH COFFING:

YOU ARE HEREBY ORDERED to appear before this Court, Department 26, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada, 89155 (Courtroom 3H) at 10:30 a.m. on April 22, 2015, then and there to show cause, if any you have, why you should not be adjudicated guilty of contempt of Court and punished accordingly for failing to comply with this Court's order from the March 20, 2015, hearing, and return to Fredrick P. Waid, Court-appointed

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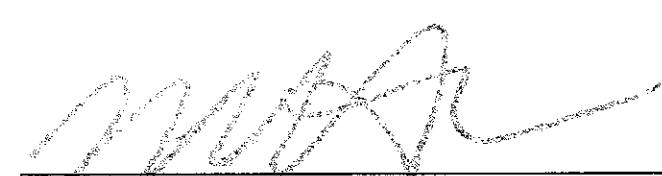
HUTCHISON & STEFFEN

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

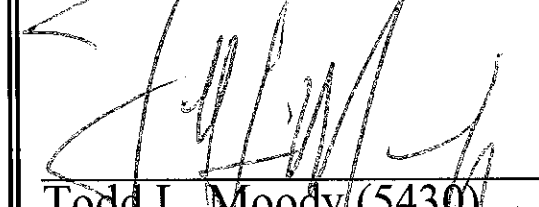
1 Trustee of The W.N. Connell and Marjorie T. Connell Living Trust Dated May 18, 1972, an Inter
2 Vivos Irrevocable Trust ("Trust"), by the close of business (5:00 p.m. PST) on Friday, April 17,
3 2015, the \$500,000 held by Fidelity Capital Inc., the \$100,000 Cashier's Check dated March 23,
4 2015, made payable to Eleanor M. Ahern, and any other Trust funds held by Fidelity Capital Inc.

5 IT IS FURTHER ORDERED that Eleanor Connell Hartman Ahern shall make herself
6 available for deposition on or before Wednesday, April 29, 2015, and provide the addresses,
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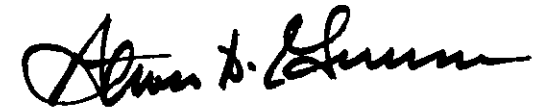
8 Dated this 15 day of April, 2015.

9
10 
11 District Court Judge

12 Submitted by:
13 HUTCHISON & STEFFEN, LLC

14 
15 _____
16 Todd L. Moody (5430)
17 10080 W. Alta Dr., Ste 200
18 Las Vegas, NV 89145
19 Phone: (702) 385-2500
20 tmood@hutchlegal.com

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



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

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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)(E), 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 ^{declared} a 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

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

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

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

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

27 6. Under these two Estate Tax Returns, a 64.493% interest in the Texas oil
28 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.

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

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

25 18. Nevertheless, and notwithstanding a tax identification number for subtrust
26 2 was the only tax identification number apparently given to the oil companies from
27 and after 1989, in the actual allocation of income received from the Texas oil property,
28 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.

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

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

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

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

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

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

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

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

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

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

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

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

15 JUGMENT

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

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

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

8 C. Eleanor's 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

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 15 day of February, 2015.

6
7 
DISTRICT COURT JUDGE

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