

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.

Electronically Filed
May 03 2017 08:31 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 5 OF 8

(PAGES AA0962-1198)

JOSEPH J. POWELL (SBN 8875)
DANIEL P. KIEFER (SBN 12419)
1707 Village Center Cir., Suite 150
Las Vegas, NV 89134
Telephone (702) 255-4552
e-mail: probate@rushforthfirm.com
Attorneys for Appellants

INDEX TO APPELLANT'S APPENDIX

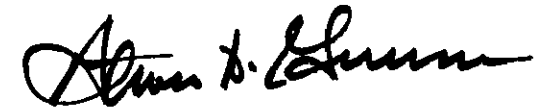
Description	Date Filed	Vol. No.	Page No.
Accounting and Report of Trust Activity From 2013-2015	02/01/17	8	AA1638-AA1648
Affidavit of Fredrick P. Waid, Trustee	05/06/15	4	AA0772-AA0776
Amended Notice of Appeal	07/29/15	4	AA0950-AA0961
Case Appeal Statement	10/26/16	8	AA1634-AA1637
Case Appeal Statement	05/18/15	4	AA0839-AA0844
Case Appeal Statement	04/07/15	3	AA0699-AA0703
Case Appeal Statement	07/31/14	2	AA0476-AA0481
Certificate of Mailing	09/27/13	1	AA0138-AA0139
Errata to Response to Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16	11/08/13	2	AA0262-AA0263
Judgment and Order Approving Award of Attorney's Fees	06/23/15	4	AA0929-AA0934
Motion to Strike Supplement to Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of no Contest Clause; and Surcharge of Eleanor's Trust Income	08/03/15	5	AA1011-AA1024
Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No-Contest Clause; and Surcharge of Eleanor's Trust Income	06/03/15	4	AA0845-AA0868

Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16	11/04/13	1	AA0142-AA0246
Notice of Appeal	10/19/16	8	AA1626-AA1633
Notice of Appeal Regarding Order Appointing New Temporary Trustee	04/07/15	3	AA0692-AA0698
Notice of Appeal	07/31/14	2	AA0474-AA0475
Notice of Appeal	05/18/15	4	AA0807-AA0838
Notice of Entry of Order Regarding Motion for Assessment of Damages; Enforcement of No Contest Clause; and Surcharge of Trust Income	09/28/16	8	AA1621-AA1625
Notice of Entry of Order to Show Cause	04/16/15	3	AA0706-AA0709
Notice of Entry of Order Re Pending Motions and Scheduling	07/08/14	2	AA0464-AA0473
Notice of Entry of Order	04/06/15	3	AA0688-AA0691
Notice of Entry of Order of Judgment and Order Approving Award of Attorney's Fees	06/30/15	4	AA0948-AA0949
Notice of Entry of Order	12/03/15	5	AA1194-AA1198
Notice of Entry of Order	04/20/15	4	AA0757-AA0763
Notice of Entry of Order Compelling Eleanor Ahern to Turn Over Trust Records to Acting Successor Trustee	04/24/15	4	AA0764-AA0767
Notice of Entry of Order Confirming Acting Successor Trustee	04/24/15	4	AA0768-AA0771
Notice of Entry of Order on Summary Judgment	04/17/15	4	AA0727-AA0746

Opposition to Motion for Assessment of Damages Against Eleanor Ahern, Enforcement of No-Contest Clause, and Surcharge of Eleanor's Trust Income	06/29/15	4	AA0935-AA0947
Order Compelling Eleanor Ahern to Turn Over Trust Records to Acting Successor Trustee	04/20/15	4	AA0755-0756
Order Re: Motion to Compel Eleanor Ahern's Authorization	12/01/15	5	AA1191-AA1193
Order Confirming Acting Successor Trustee	04/20/15	4	AA0753-AA0754
Order Regarding the Accounting, Breach of Fiduciary Duty Claims and Award of Attorney Fees	04/20/15	4	AA0748-AA0752
Order Appointing New Temporary Trustee	04/01/15	3	AA0686-AA0687
Order Denying Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16; Directing Payment of All Oil, Gas, Mineral and Interest Royalties and Rent to Eleanor C. Hartman, also Known as Eleanor C. Ahern, as Trustee of No. 2 of the W. N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972; and Setting Calendar Call and Hearing	01/06/14	2	AA0344-AA0348
Order Re Pending Motions and Scheduling	07/07/14	2	AA0456-AA0463
Order to Show Cause	04/16/15	3	AA0704-AA0705
Order Regarding Motion for Assessment of Damages; Enforcement of No Contest Clause; and Surcharge of Trust Income	09/19/16	8	AA1617-AA1620

Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(E), and NRS 164.033(1)(A)	09/27/13	1	AA0001-AA0137
Pre-Trial Memorandum	02/17/16	6	AA1199-AA1304
Receipt of Copy	04/17/15	4	AA0747
Receipt of Copy	11/08/13	2	AA0264
Recorder's Transcript, January 14, 2014	01/24/14	2	AA0349-AA0376
Recorder's Transcript, December 4, 2014	12/11/14	3	AA0494-AA0505
Recorder's Transcript, January 24, 2014	02/04/14	2	AA0377-AA0387
Recorder's Transcript, December 17, 2014	12/24/14	3	AA0506-AA0552
Recorder's Transcript, August 5, 2015	08/21/15	5	AA1025-AA1098
Recorder's Transcript, September 2, 2015	09/25/15	5	AA1099-AA1113
Recorders Transcript, November 4, 2015	11/18/15	5	AA1114-AA1190
Recorders' Transcript, March 3, 2016	Filed Under Seal	8	AA1521-AA1616
Recorder's Transcript, April 22, 2015	06/09/15	4	AA0777-AA0806
Recorder's Transcript, March 20, 2015	03/31/15	3	AA0596-AA0685
Recorder's Transcript, May 13, 2014	05/20/14	2	AA0396-AA0455
Recorder's Transcript, September 3, 2014	09/19/14	2	AA0482-AA0493
Recorder's Transcript, June 22, 2015	06/29/15	4	AA0869-AA0928
Recorder's Transcript, January 14, 2015	07/06/15	3	AA0553-AA0595
Recorder's Transcript, November 12, 2013	12/06/13	2	AA0274-AA0343

Recorder's Transcript, February 22, 2016	03/29/16	7	AA1305-AA1520
Recorder's Transcript, April 22, 2014	04/28/14	2	AA0388-AA0395
Reply of Eleanor C. Ahern to Response of Jacqueline M. Montoya to Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16	11/11/13	2	AA0265-AA0273
Response to Motion to Refer Contested Probate Matter to Master-Probate Commissioner Per EDCR 4.16	11/07/13	2	AA0247-AA0261
Summary Judgment	04/16/15	3	AA0710-AA0726
Supplement to Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's Trust Income	07/31/15	5	AA0962-AA1010
Verification for Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to NRS 30.040, NRS 153.031(1)(e)E, and NRS 164.033(1)(A)	09/27/13	1	AA0140-AA0141



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

In re the Matter of the

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

A non-testamentary trust.

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

**SUPPLEMENT TO MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR
AHERN; ENFORCEMENT OF NO CONTEST CLAUSE; AND SURCHARGE OF
ELEANOR'S TRUST INCOME**

Date of Hearing: August 5, 2015
Time of Hearing: 10:00 a. m.

JACQUELINE M. MONTTOYA ("Jacqueline") and KATHRYN A. BOUVIER ("Kathryn"), by
and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD.,
hereby Supplement their "Motion for Assessment of Damages Against Eleanor Ahern; Enforcement
of No Contest Clause; and Surcharge of Eleanor's Trust Income" ("Motion") which was filed on
June 3, 2015 and is set for hearing on August 5, 2015. Jacqueline and Kathryn respectfully
Supplement their Motion as follows:

A. SETTING THE RECORD STRAIGHT

Jacqueline and Kathryn wish to set the record straight and provide the following background story as to what has actually occurred here. Having been painted as being money hungry, uncaring daughters over and over in Ms. Ahern's pleadings, and also in oral arguments made throughout the nearly two years of court proceedings by Ms. Ahern's numerous attorneys over that time, they are simply sick and tired of this completely inaccurate portrayal and have had enough of it. Despite there being a very minuscule chance, they also present the accurate story of what has transpired over the last three years with the hope that one day, in the not-to-distant future, that Ms. Ahern might actually reflect upon the collateral damage that her poor decisions have caused. This information has no legal significance as to the issues that have occurred here, but after having to face the significant amount of abuse that they have been dragged through in this matter, they both feel that they can longer sit back in silence and must have the record reflect the actual account of what has occurred here while Ms. Ahern has decided to destroy the strong family dynamic that once existed.

For Jacqueline, the relationship she had with her mother was one she held in very high regard. She appreciated her mother being involved with her family and enjoyed the time she and her children spent with Ms. Ahern. From the time Ms. Ahern moved back to Las Vegas from Idaho which occurred in 2004, she was a valued member of Jacqueline's family life. They spent almost every weekend together with family BBQ's, movie nights on the couch, and outings with Ms. Ahern's grandchildren, as well as the annual family vacation to Disneyland. Ms. Ahern stayed the night many times at Jacqueline's house and generally accompanied them to church the day after. Ms. Ahern was present in Jacqueline's home many times throughout the week and joined in the nightly prayers with Jacqueline's children before leaving for her own home.

In 2009, when Mrs. Connell passed, Ms. Ahern reacted strangely on two incidents that Jacqueline recalls made her wonder what instigated these actions. The first was during a meeting

1 that Attorney David Strauss, Mrs. Connell's estate planning attorney, held in his office with
2 Jacqueline, Kathryn, and Ms. Ahern all present.

3 Upon arrival at this meeting, Ms. Ahern brought in "a friend" named Suzanne Nounna, as
4 well as Ms. Nounna's daughter, Ariella, who was approximately 12 years of age at the time of the
5 meeting. Ms. Ahern stated that she wanted Ms. Nounna and Ariella to be present throughout the
6 meeting regarding Mrs. Connell's estate plan. Both Jacqueline, Kathryn, and even Attorney Strauss
7 were a bit surprised by this request, but after seeing the determination in Ms. Ahern they
8 acquiesced and the meeting proceeded. The curious thing was that Ms. Nounna said she had to
9 have Ariella present, as Ariella supposedly had a life threatening issue and could die unexpectedly
10 if presented with any environmental triggers.

11 The next "curious detail" occurred a few months later when Jacqueline received a "demand
12 for monies" e-mail from her mother. Apparently, Ms. Ahern thought Jacqueline was stealing her
13 \$300,000 gift that was provided for under Mrs. Connell's Trust, the MTC Living Trust. As Trustee
14 of the MTC Trust, Jacqueline was doing her best to conclude all of the numerous details involved
15 with the trust administration and was working closely with Attorney Strauss and Corey Haina, the
16 MTC Living Trust Accountant. The response to this demand of Ms. Ahern's was actually
17 formulated by Attorney Strauss, as he had to provide support for how expeditiously Jacqueline was
18 working through the Trust Administration of the MTC Living Trust. Ms. Ahern subsequently
19 provided Jacqueline with an apology.

20 Things went back to normal with family unity, until in February 2012 when Ms. Ahern broke
21 her leg. She was admitted into Mountain View Hospital and proceeded to have surgery. She did
22 not, as was erroneously stated in her court pleadings, have any major issues or complications from
23 the surgery. She was coherent after surgery and requested that Jacqueline make the nurses some
24 homemade chocolate chip cookies, as they had taken such good care of her. Of course, Jacqueline
25 did this immediately. Ms. Ahern even stated to Jacqueline that she was not on "any pain
26
27
28

1 medications", as she felt so strong after surgery. However, because she was an older patient, she
2 stressed to her doctors that she would like to have in-patient rehabilitation at their facility next
3 door. Therefore, Ms. Ahern spent about 3 weeks learning how to get around in the wheelchair,
4 what exercises she needed to perform, strength training her upper body, and how to shower and
5 care for herself. Jacqueline visited Ms. Ahern every day in rehab, and returned in the evening with
6 her children so they could visit with their grandmother. They spent one Saturday watching Ms.
7 Ahern go through her exercises and the grandchildren got to see how the doctors worked on their
8 grandmother to make her stronger. Yet, when a friend of Jacqueline's was helping Ms. Ahern with
9 some tasks while she was in rehab, he asked her if she had seen Jacqueline recently. Ms. Ahern's
10 response was "Yes, she stopped by once or twice". That was a very strange comment about a
11 daughter who visited her every day! Upon Ms. Ahern's discharge, she hired a personal care taker
12 named Lynelle to help her with her daily house and personal care.

13
14 On April 4, 2012, the deal with Apache Corporation ("Apache") was coming to a close.
15 Jacqueline had spoken to her mother many times while she was in rehab regarding the details of
16 the new deal. One such detail was that the deal was at \$3,000 per acre, which was an amount no
17 one thought possible, but Ms. Ahern responded to this information with "My attorneys feel I can
18 get \$7,000 per acre". On April 4th, Jacqueline had brought over the lease to her mother, after
19 having issues with encryption and print errors for hours, as well as learning that Ms. Ahern's
20 notary was unavailable. Lynelle was present during this time. Jacqueline scheduled a notary that
21 made house calls and met him there at Ms. Ahern's home. Although throughout the day Ms. Ahern
22 and Jacqueline spoke numerous times about the upcoming signing with the notary, Jacqueline
23 found food and dishes all over the table where Ms. Ahern was seated. Despite this, Ms. Ahern
24 signed the Apache lease and Jacqueline was then forced to rush over to a Fed Ex location so that
25 the contracts would arrive in Texas the next morning, meeting the deadline. Later that same day,
26 in the evening, Ms. Ahern strangely requested that Jacqueline bring by the copy of the lease, but
27
28

1 Jacqueline was at dinner with her husband for their 17th wedding anniversary dinner. Jacqueline
2 e-mailed it over to Ms. Ahern that night. The next day, April 5, Jacqueline received a call from Jeff
3 Johnston stating that Ms. Ahern had faxed and called numerous times during the night and had
4 voided her agreement. Mr. Johnston was upset, as there was 3 groups of families involved, as well
5 as the Apache team, all of whom were relying on each other to complete the negotiations as
6 discussed. Jacqueline attempted to call her mother, but all calls were unanswered. Kathryn
7 attempted the same. Apparently Ms. Ahern, and an advisor, likely Ms. Nounna, spent the next day
8 talking with Mr. Johnston for hours in order to "understand" the lease, despite previously signing
9 the lease. Ms. Ahern and her advisor also spoke to Jim Walton for a few hours doing the same
10 thing.
11

12 In the end, Ms. Ahern signed the lease, but never called Jacqueline with an explanation for
13 her actions or avoiding Jacqueline's calls. However, on April 9, Jacqueline received a text that said,
14 "I received such joy when I thought of you today I pray you had a lovely day. Hugs mom".
15 Jacqueline finally decided to confront her mother on April 15 and told her mother how her actions
16 had made her feel. Lynelle was also present during this conversation. Ms. Ahern then sent an
17 apology letter to Jacqueline (copying similar letters to Mr. Johnston, Mr. Walton, and Mozelle
18 Miller and Bob Miller) explaining that Jacqueline did nothing wrong and that Ms. Ahern had
19 reacted improperly. Jacqueline thought the issue was done and over with, but found out in May
20 of 2012 that the issue had just escalated.
21

22 On May 12, Jacqueline dropped off Ms. Ahern's Mother's Day and Birthday gifts, since she
23 chose not to spend any time with them for those occasions. Once Jacqueline's boys gave her the
24 gifts, she came out of the house on crutches, in tears, saying "I thought you were trying to steal my
25 trust" and also made another attempt to apologize for all the negative behavior she had been
26 extending to Jacqueline. Jacqueline could not hold this conversation with her boys nearby so she
27 responded that she had no idea what her mother was talking about, but that they would have to
28

1 discuss it later due the nature of the conversation being something that should not occur in the
2 presence of her boys. On May 25, Lynelle called Jacqueline and asked her to meet with her. She
3 said there were some strange things happening in her Ms. Ahern's house that she wanted to make
4 Jacqueline aware of. Lynelle began with the date of May 9 when Jacqueline had tried to drop off
5 some papers for Ms. Ahern, she said that Ms. Nounna was throwing a birthday party for Ms. Ahern
6 that night. Apparently, Ms. Nounna pulled Lynelle aside to say "she would pay Lynelle out of her
7 own pocket for a week if Lynelle would stay with Ms. Ahern 24/7 and keep Jacqueline away".
8 Lynelle went on to say that Ms. Nounna told her that "I need you to pray over Ms. Ahern so she
9 doesn't go back to Jacqueline". Lynelle said she told Ms. Nounna "No". Lynelle also wanted
10 Jacqueline to know that Ms. Ahern had allowed Ms. Nounna to "borrow" her car for 8 weeks, but
11 that Ms. Ahern wanted it back. Lynelle observed Ms. Nounna attempt to placate Ms. Ahern, in
12 response for her demand that she no longer possess the vehicle, by saying she would return it soon.
13 When it was finally returned, Lynelle further stated that Ms. Nounna had put a big red bow on Ms.
14 Ahern's car, as if it were a gift, and gave it back to her saying "I spent \$5,000 on it getting it looking
15 nice again". Jacqueline thought that was strange as the car was less than a year old.

16
17
18 The last two details Lynelle shared with Jacqueline was that Ms. Nounna had said to her
19 "Jacqueline is trying to institutionalize her mom" and that Ms. Ahern never had any money on her,
20 as she always had to ask Ms. Nounna for her money when she needed it. When Jacqueline met with
21 her mother on May 25, she discussed these issues, as she was very concerned for her mother's
22 welfare. Ms. Ahern had responded that she loved Jacqueline very much and that "this behavior
23 would stop". However, Ms. Ahern ended the conversation strangely by saying, "I guess I am going
24 to have to choose between you and Suzanne".

25
26 In June of 2012, Jacqueline asked her mother if she would join her in family counseling, as
27 she was very worried about their family, their relationship, and even more so ----- her mother. Ms.
28 Ahern responded with a flippant answer of "When I am ready".

1 On July 4, Ms. Ahern sent Jacqueline a very cryptic text requesting 7 years of original bank
2 statements, etc. On July 6, Ms. Ahern asked Jacqueline and her boys to come to lunch. Following
3 lunch, Jacqueline sent a text asking Ms. Ahern to join them for dinner. Ms. Ahern responded she
4 was busy, but would love to next time and that she loved them all. However, weeks passed and Ms.
5 Ahern did not even call or text Jacqueline on her 47th birthday that year which was on the 19th of
6 July. This was followed by an extremely strange, and upsetting, event.

8 On July 25, Jacqueline was invited to a late birthday lunch with a friend that had worked
9 for her previously. Jacqueline was on US 95 passing by Ms. Ahern's house when she thought she
10 saw a white car pull out of the garage. Jacqueline pulled off the expressway and circled back to her
11 mother's house, as she, as noted, had not heard from her mother since July 6. Jacqueline pushed
12 through the gates with the boys in tow and knocked on the gate only to find the gate was unlocked.
13 They then knocked on the door and found it pushed open ----- also being unlocked. They saw in
14 the foyer a grocery bag from Whole Foods that held melted butter and some lemons in it. There was
15 a travel bag spread out over the entry hallway ----- blocking anyone from passing ----- as though
16 Ms. Ahern had dropped it upon being surprised or scared. Ms. Ahern's "boot" used for her broken
17 leg was laying there as well. Jacqueline felt immediately worried for her mother and told the boys
18 to wait while she checked out the house. The bed was not slept in and the dog was in the garage,
19 but the car was gone. There was a huge pile of mail on the kitchen counter that seemed to indicate
20 Ms. Ahern had just returned from a trip. Jacqueline called the Las Vegas Metro missing persons
21 division, as the scene she was witnessing really scared her. While she waited for an officer, she and
22 her boys waited at the kitchen table and Jacqueline called Ms. Ahern's friend, Sandy. Jacqueline
23 also reached out to a friend and asked if he would call her mother, since her mother had not
24 responded to any of Jacqueline's calls when she entered the house and found it in such disarray.
25 This is when Ms. Ahern's friend Sandy called back and said, "Your mom is fine, she said to stop
26 calling her friends and she will call you if she ever needs you". Another slap in the face to a
27
28

1 daughter worried about her mother.

2 Just as Metro arrived, her friend called back and said he had talked to Ms. Ahern, but only
3 to discuss business. But at least Jacqueline knew she was alright and unharmed. Jacqueline
4 cancelled her lunch plans and began to talk with the officer that had been dispatched to Ms. Ahern's
5 home. The officer asked many questions about what Jacqueline and her boys had found upon their
6 arrival, then wrote a report. After hearing some of the "strange" details of Jacqueline's experience
7 with her mother over the last few months, he suggested Jacqueline reach out to Elder Abuse
8 Services. When the officer left, Jacqueline asked him to stay while she locked up so he could
9 confirm the home was secured.
10

11 Ms. Ahern disappeared from the family without any further conversations at the end of July
12 2012. Not once during this 3 year period has Ms. Ahern reached out to her grandchildren. Ms.
13 Ahern has 4 grandkids in total, Jacqueline's two boys and Kathryn's two boys, who continue to love
14 her even during all of this drama. Never has there been a birthday card, Christmas card, letter,
15 email, text or call. It is a shame that Ms. Ahern has allowed money to destroy not only the
16 relationship she had with her kids, but also her grandchildren ----- who remain innocent through
17 all of this.
18

19 As a brief aside from the chronology of events, to clearly illustrate how emotionally removed
20 Ms. Ahern is from her grandchildren, and the Montoya and Bouvier families, during this past June
21 22 hearing when Kathryn saw Ms. Ahern in court she wanted to share a text from her oldest son
22 saying he loved his "Grammie". Kathryn approached her mother and the only words Ms. Ahern
23 said were "He has grown up". Not that she misses or loves her grandson, not that she wanted to
24 see him or even respond to him just that he grew up. That curt response did not preclude
25 Kathryn from offering Ms. Ahern her phone number in case she wanted to call to her or her
26 grandchildren, to speak to them in a non-threatening and non-litigation discussion manner. Ms.
27 Ahern stated she didn't know Kathryn's number even though it is the same number Kathryn has
28

1 had for the past 10 years.

2 On approximately August 8, 2012, Jacqueline contacted Elder Abuse / Protective Services.
3 Jacqueline called them shortly after talking with Ms. Ahern's computer guy - Bill. He had shared
4 with Jacqueline in this phone call that he had found Ms. Ahern on the floor in the "midst of filth
5 from her having a vertigo attack". He said Ms. Ahern stopped taking her vertigo medicine which
6 Jacqueline was unaware she even took anything for, not having had actively seen her mother for
7 over two months at such time. He said that Ms. Nounna took over Ms. Ahern's books because she
8 was not paying her credit card bills. This did not make sense to Jacqueline, as she and Kathryn's
9 distribution was less than Ms. Ahern's-----35% versus 32.5%. Therefore, if Jacqueline was able to
10 live on this amount with a family of 4 (and the same for Kathryn), then why was Ms. Ahern having
11 financial issues? Jacqueline became worried after this call, since it indicated Ms. Ahern had health
12 issues in addition to potentially being manipulated. Jacqueline told the person at Elder Services,
13 that Ms. Ahern was a beautiful 74 year old woman who took care of her home, car, person, and
14 worked in multi level marketing. She said that she was concerned though about an advisor in Ms.
15 Ahern's life that seemed to be controlling her financial decisions, as well as those of a personal
16 nature. She discussed the experience of the house being unlocked and groceries being left
17 unattended, the request Ms. Nounna made of Wells Fargo to withdraw a large sum of money, the
18 car that Ms. Ahern loaned to Ms. Nounna for 8 weeks, the comment Ms. Nounna made to Lynelle
19 about keeping Jacqueline away from Ms. Ahern for a week. The responder said to Jacqueline that
20 an older person sometimes gets very nervous later in life, but none of these circumstances seemed
21 to indicate she was being manipulated. Jacqueline was very distressed by the result of this call, as
22 she had hoped they would make a serious and thorough effort to research the people surrounding
23 her mother. Jacqueline was not made aware that this agency would in turn make a house check and
24 discuss this with her mother, as at no time did Jacqueline make that call to state that her mother
25 was unable to care for herself. The entire goal of Jacqueline's was for this agency to research the
26
27
28

1 leeches that are in Ms. Ahern's life.

2 Another incident was on August 19, 2012 when a friend of Ms. Ahern's contacted Jacqueline.
3 She said that another of Ms. Ahern's business reps was at a convention with Ms. Ahern and that Ms.
4 Ahern had proceeded to tell her "that my daughter is trying to institutionalize me", in reference to
5 Jacqueline. The rep was really worried and called the friend. The same person continued to tell the
6 friend that Ms. Ahern had shared that her computer guy (Bill) had bugged her home and phone.
7

8 Following the September 2013 mediation in Texas, which failed miserably, Jacqueline
9 delivered to her mother an album of their years together, and cards from her boys and her. Both
10 Jacqueline and Kathryn continue to be concerned for their mother, and hope some sort of a
11 relationship can be salvaged after this experience.

12 It now has been 3 years since Ms. Ahern's disappearance, and for the most part Jacqueline
13 has not seen her with the exception of court hearings or at depositions. However, in December of
14 2014, Jacqueline was surprised to meet a friend of hers that she had modeled with almost 30 years
15 ago. This friend and Jacqueline began to talk and Jacqueline just sensed in the conversation which
16 was about where the friend lived having horses and stables that this would be a place that her
17 mother would choose to live, despite owing 3 homes. So Jacqueline asked her if she knew Ms.
18 Ahern. This friend's face suddenly expressed a look of great surprise and then she said "Yes, I
19 cooked dinner and cookies for her over the last two years many times". She then asked Jacqueline
20 how she knew Ms. Ahern and of course Jacqueline explained. Then the friend explained that Ms.
21 Ahern had moved into an equestrian neighborhood and had rented the home across from her. The
22 friend went on to explain that Ms. Ahern had a person in her life that really worried the friend. The
23 friend said that the lady's name was Suzanne (in reference to Ms. Nounna) and that friend would
24 find Ms. Nounna and Ms. Ahern in the horse stalls talking in whispers with the security guard of
25 the complex. When the friend asked Ms. Ahern about it, Ms. Ahern responded that "Her (Ms.
26 Ahern's) daughter is trying to kill her". The friend was of course horrified to learn this ----- not
27
28

1 knowing Jacqueline was the daughter being accused. The friend also said that Ms. Ahern has a
2 personal body guard with her to ensure that the daughter (Jacqueline) can't kill her.

3 One last "incident" occurred in December of 2012, where another person Ms. Ahern is in
4 contact with through her business dealings notified Jacqueline that Ms. Ahern had talked with her
5 recently about Ms. Nounna making Ms. Ahern get involved with credit card fraud. The lady helped
6 Ms. Ahern rectify the fraud, but said she would need to call her back. Ms. Ahern said it would take
7 some time for her to answer, as she had to take the call in the bathroom since she wasn't allowed
8 to take calls.
9

10 On January 2015, Ms. Ahern's attorneys at Marquis Aurbach Coffing sent an email to
11 Attorney Powell stating that they had been requested to notify Jacqueline, and Kathryn as well, that
12 Ms. Ahern does not want any further gifts from her. Jacqueline and Kathryn had been sending
13 letters from the grandchildren, as well as photos of them so their grandmother could be appraised
14 of their lives. Apparently Ms. Ahern didn't care to know how her grandchildren were doing.
15

16 As stated, Jacqueline and Kathryn, having been accused of being "greedy" daughters and
17 the purpose of providing this background is the set forth the reality of what has really transpired,
18 given that Ms. Ahern is now on her fourth set of counsel and each one of them remain convinced
19 that Jacqueline and Kathryn are to "blame" for what has occurred here, each one ignoring the fact
20 that Ms. Ahern chose to leave her children and grandchildren, not the other way around.

21 **B. INTERIM TRUSTEE REPORT**

22 Subsequent to the filing of the Motion on June 3, 2015, the current serving trustee of "The
23 W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972 ("Trust"), Fredrick P.
24 Waid, has filed his "Interim Trustee Report" dated July 2, 2015 ("Report").
25

26 After a review of the Report, it is crystal clear and blatantly obvious that all of the damages
27 prayed for by Jacqueline and Kathryn are unquestionably warranted to be assessed against Ms.
28 Ahern. Furthermore, the verification by Mr. Waid, as an independent party to this matter, of the

1 theft and conversion of assets mandated to be held for Jacqueline and Kathryn confirms that this
2 Court must enforce the No Contest clause contained in the Trust, thereby terminating Ms. Ahern's
3 interest in the Trust.

4 The actions undertaken by Ms. Ahern as detailed in the Report amount to a complete and
5 utter disrespect of this Court in completely ignoring and thumbing her nose at this Court's
6 authority and previous rulings. Ms. Ahern has also clearly lied to this Court and her own counsels
7 on multiple occasions and refuses to honor this Court's outstanding orders. The actions also show
8 a complete disregard for Jacqueline and Kathryn and their financial and emotional well being. The
9 actions of Ms. Ahern are simply deplorable and unjustifiable. The actions can be described by a
10 wide range of adjectives, but include the actions of theft, fraud, deceit, manipulation, and
11 conversion, to name a few.

12 A thorough discussion of Mr. Waid's Report is appropriate.

13
14 **On or about Friday April 3, 2015, a copy of the Court's Order removing Ms. Ahern**
15 **as Trustee was provided to Wells Fargo Bank. On that day, it was determined that**
16 **only \$9,941.55 was on deposit at Wells Fargo Bank in accounts of the Trust.**

17 After successfully prevailing in this litigation and this Court determining that Jacqueline and
18 Kathryn were in fact entitled to 65% of the income generated by the Trust, as they had asserted all
19 along, Jacqueline and Kathryn had an extremely reasonable expectation that upon Mr. Waid taking
20 over as the trustee of the Trust that they would immediately receive a large distribution of cash that
21 they were always entitled to, but had been withheld from them since June of 2013. The
22 distribution to them would obviously ease the severe economic strain, and the accompanying
23 severe emotional stress and torment that accompanies being placed in a completely unexpected
24 financial predicament that they did not bring upon themselves, that they, and their respective
25 families, had to deal with since Ms. Ahern unilaterally decided that she was no longer going to be
26 making distributions to them, which they had relied on, and made life altering choices in reasonable
27 reliance of, since their grandmother's passing in 2009.

1 Instead of being able to enjoy the vindication of their rights, the survival of the persistent
2 name calling that was directed at them by all Ms. Ahern's attorneys, and the gamesmanship
3 displayed throughout which was intended to further financially break them that Ms. Ahern's
4 revolving door of attorneys subjected Jacqueline and Kathryn to, they then had to deal with the slap
5 in the face of being told by Mr. Waid that the money this Court required be waiting for them upon
6 their successful enforcement of their rights was simply gone. Imagine for just a second what kind
7 of a gut wrenching, emotional torment that would cause a reasonable person in their positions to
8 experience. Fighting a battle in which you have to expend an extreme amount of legal fees and deal
9 with the daily emotional roller coaster that is litigation and then to be told at the end of the draining
10 journey that the anticipated pay off from the victory is simply not there. This is what Ms. Ahern
11 thought, and still clearly thinks, was an acceptable occurrence. WHY? Her own greed! What kind
12 of person does this?!?!?!?! A person without any moral compass whatsoever. A person who only
13 thinks about herself. That is the type of person that puts her own daughters through this emotional
14 train wreck that she herself has caused.

15
16 Like the punishment that anyone else who would engage in these pathetic, unthinkable acts,
17 Ms. Ahern must now face the music and this Court must hold her completely responsible for these
18 actions. To do anything less than render full punishment to Ms. Ahern is to reward her for her
19 behavior and would set a dangerous precedent that this Court simply cannot allow to occur,
20 especially in this arena where the administration of trusts are built on a foundation of trust and
21 doing the right and proper things that one is entrusted by others to do. Anything short of full
22 punishment sends a message that is acceptable and permissible to ignore the law and to ignore
23 what this Court directs, simply because one feels like doing so. This Court has a prime opportunity
24 to not allow Ms. Ahern to get away with any of her actions and to send the message that is necessary
25 to Ms. Ahern-----You are responsible for your actions!

26
27
28 As this Court will clearly recall, Ms. Ahern, via her attorneys, vigorously fought the request

1 of Jacqueline and Kathryn to receive their 65% distribution during the pendency of this litigation.
2 Her attorneys argued that it would not be "fair" for Jacqueline and Kathryn to continue to receive
3 their 65% of the income from the Trust because "if" they did not prevail Ms. Ahern might have a
4 difficult time recovering those funds. Therefore, based on this, this Court stated that only if
5 Jacqueline and Kathryn could become fully bonded could they receive their income distributions.
6 Unfortunately, the bonding process was fruitless as Jacqueline and Kathryn were told that they
7 would have to put up dollar for dollar collateral to secure the necessary bonding, which they were
8 unable to do. So after all of this fuss about Ms. Ahern being protected just in case, please forgive
9 Jacqueline and Kathryn if the irony of this situation is not easily dismissed and shrugged away.
10 It should be very easy to understand and sympathize with the extreme level of anger and frustration
11 that Jacqueline and Kathryn experienced while learning that Ms. Ahern stole and converted the
12 money that she was expressly required to hold for Jacqueline and Kathryn and which she was
13 expressly prohibited by this Court from taking. Again, Ms. Ahern clearly has no regard whatsoever
14 for this Court's authority.
15

16
17 **On April 8, 2015, Ms. Ahern deposited into the Trust's account a cashier's check in**
18 **the amount of \$409,228.50. The cashier's check represented funds withdrawn on**
19 **March 20, 2015 from the Trust's account by Ms. Ahern after the hearing earlier in the**
20 **day in which she was removed as Trustee. The funds were withdrawn from a Wells**
Fargo Bank branch in Orange County, California just before the bank closed for
business that evening.

21 Jacqueline and Kathryn simply have no words to describe this conduct. This conduct speaks
22 for itself. As stated, Ms. Ahern, on the day that she was removed as trustee by this Court, knowing
23 that she has had an obligation to keep all funds protected in the Wells Fargo trust account decides
24 to rush to a Wells Fargo branch in Southern California and get there before closing to remove over
25 \$400,000. As Mr. Waid explains in his Report, there has been no explanation given by Ms. Ahern.
26 It is obvious what occurred here. The facts speak for themselves. The fact of the matter is that
27 there is no explanation other than this was blatant theft and conversion of assets that belonged to
28

1 Jacqueline and Kathryn.

2 On March 23, three days after her removal as Trustee, Ms. Ahern withdrew
3 \$500,000 from the Trust account at Wells Fargo Bank (St. George, Utah branch),
4 purchased a cashier's check payable to the Trust and deposite the same with US
5 Bank. Upon learning of these transactions Ms. Ahern's counsel withdrew its
6 Certificate of Compliance with the Court's order regarding the \$500,000 transfer
7 and moved the Court for permission to withdraw as counsel of record.

8 A pattern?!?!?!?! So Ms. Ahern's journey with an intent of theft and conversion of
9 proceeds belonging to Jacqueline and Kathryn continues from Orange County, California to St.
10 George, Utah. Once again, Ms. Ahern sees it fit to remove a half a million dollars of monies
11 belonging to Jacqueline and Kathryn so as to now take the total to over \$900,0000 in a three day
12 period after she was removed as trustee. In the process, her attorneys at Marquis Aurbach Coffing
13 decide that they no longer can represent a deceitful client who is committing criminal acts as she
14 pleases and obviously feel that they can no longer be part of the further deceit to this Court.

15 On April 16, 2015, Ms. Ahern delivered a \$700,000 cashier's check to her then
16 counsel at MAC. The check was in the form of a Wells Fargo cashier's check payable
17 to the Trust and dated February 18, 2015. The check was obtained by Ms. Ahern at
18 the St. George, Utah branch of the bank. No explanation has been provided or basis
19 determined for the withdrawal of funds from the Trust account, the intent of Ms.
20 Ahern, or where the check was held for approximately two months. This transaction
21 directly contradicts the declarations and representations as set forth in the Ahern
22 Brief and its exhibits. Clearly, as of the date of the signing and filing of the Ahern
23 Brief on March 13, 2015, \$700,000 of the \$1,997,573.18 declared therein was not on
24 deposit with Wells Fargo Bank, but was withdrawn on February 18, 2015, placed in
25 a cashier's check and held by Ms. Ahern or others until it was delivered to her then
26 counsel, who in turn delivered the funds to the Successor Trustee.

27 Lies, lies, and more lies from Ms. Ahern! Theft, theft, and more theft from Ms. Ahern! It
28 would be highly surprising, bordering on shocking, if Ms. Ahern, via her current counsel, will not
attempt to put a positive spin on this and attempt to offer an explanation for this. Whatever lie and
misrepresentation that Ms. Ahern will come up with, which must be made under penalty of perjury,
the fact remains that this Court has been lied to with such frequency and consistency, along with
Jacqueline and Kathryn, that no "explanation" should ever be accepted by this Court. As Mr. Waid
explains, over three months from this discovery have evaporated and yet Ms. Ahern still does not

1 feel compelled to provide any explanation to Mr. Waid. Her silence is deafening as to what has
2 occurred here. There is no justification. This was theft and conversion----plain and simple.

3 **Since Ms. Ahern's removal as Trustee, the Trust has located additional Trust funds**
4 **in banks located in Texas and Utah. On April 2, 2015, after Ms. Ahern was removed**
5 **as Trustee and before the Successor Trustee had access to or information about the**
6 **Trust's accounts, Ms. Ahern withdrew \$146,517.38 from the Trust's account at Wells**
7 **Fargo Bank (St. George, Utah branch location) and purchased a cashier's check in**
8 **the same amount, payable to the Trust. Ms. Ahern then opened an account, in the**
9 **name of the Trust, at Town & Country Bank located in St. George, Utah and**
10 **deposited the \$146,517.38 check. Town & Country Bank's compliance department**
11 **labeled the account as "suspicious" due to the behavior of Ms. Ahern.**

12 **On April 14, 2015, the day the Court issued its Order to Show Cause against Ms.**
13 **Ahern regarding the \$500,000 Fidelity Capital, Inc. matter, Ms. Ahern contacted the**
14 **bank and attempted to arrange an all cash withdrawal of \$100,000 from the Trust's**
15 **account. According to the bank's representative, Ms. Ahern claimed she, "wanted**
16 **the cash to put it in her vault." On May 15, 2015, Town & Country Bank elected to no**
17 **longer do business with the Trust or Ms. Ahern and administratively closed the**
18 **account.**

19 What else is there to say that has not yet been said?!?!?! Ms. Ahern's theft spree continues
20 and knows no limits.

21 **It is believed that Ms. Ahern opened another bank account at Zions Bank in St.**
22 **George, Utah in the name of the Trust after her removal as Trustee. Information as**
23 **to this account has not been verified. Confirmation and supplementation will follow**
24 **upon receipt of the information and any funds recovered will be credited to the new**
25 **Trust account.**

26 More and more and more confirmation of Ms. Ahern's actions AFTER her removal as
27 trustee, in direct and complete violation of this Court's orders.

28 Based on the reporting of Mr. Waid, to say that Ms. Ahern's hands were caught in the
proverbial cookie jar would be a massive understatement. The reality is that Ms. Ahern's hands
remain firmly stuck in the cookie jar that she continues to drag around with a massive trail of
crumbs being found in the wake of her path.

C. TIMELINE

It will likely be helpful for the sake of organization for this Court to review the following
timeline and sequence of events.

1 November 12, 2013-----Court orally orders Ms. Ahern to Jacqueline and Kathryn's 65%
2 share in Trust

3 December 20, 2013-----Court order signed requiring Ms. Ahern to hold Jacqueline and
4 Kathryn's 65% share in Trust

5 March 20, 2015-----Court orders removal of Ms. Ahern as trustee of Trust

6 March 20, 2015-----Hours after Court removes Ms. Ahern as trustee, Ms. Ahern
7 removes the amount of \$409,228.50 from the Well Fargo trust account via a Wells Fargo
branch located in Orange County, California shortly before closing of the branch

8 March 23, 2015-----Ms. Ahern travels to St. George, Utah and removes \$500,000 from
9 the Wells Fargo trust account via a Wells Fargo branch located in St. George, Utah

10 April 2, 2015-----Ms. Ahern removes the amount of \$146,517.38 from the Wells Fargo
trust account via a Wells Fargo branch located in St. George, Utah

11 April 14, 2015-----Ms. Ahern attempts to remove \$100,000 in cash from Town &
12 Country Bank located in St. George, Utah. Town & Country Bank refuses request

13 **D. NO RETURN OF THE \$500,000 CLAIMED TO HAVE BEEN HELD BY FIDELITY**
14 **CAPITAL**

15 On top of all of these actions, as of this date, as confirmed by conversation with Mr. Waid,
16 Ms. Ahern has still not produced the \$500,000 that she claimed was on deposit with Fidelity
17 Capital, which Fidelity Capital, via Mr. Perel subsequently denounced, and which is more fully
18 discussed below.

19 Despite being instructed and ordered on multiple occasions to immediately return those
20 funds dating back to April, the \$500,000 has still not been produced, nor has its whereabouts been
21 revealed. As fits the pattern with all of these previously described actions, Ms. Ahern does not
22 apparently feel that she owes Mr. Waid, or the actual victims of her crimes, Jacqueline and Kathryn,
23 any type of an explanation as to the status of the \$500,000. On information and belief, Jacqueline
24 and Kathryn believe that the money has either been spent by Ms. Ahern or is being hidden by Ms.
25 Ahern, possibly through the actions of co-conspirators. It is terrible, unjustifiable conduct on Ms.
26 Ahern's part, but par for the course of this litigation.

27 **E. "OFFICE RENTAL" WAS NOTHING MORE THAN A RENTAL HOME FOR**
28

SUZANNE NOUNNA

This Court will recall that as part of this fraud, that Ms. Ahern has continued to perpetuate on it and Jacqueline and Kathryn, that Ms. Ahern had previously represented that she needed to rent office space to transact trust business and store documents relating to the Trust because she did not have adequate space to do so in her personal residence.

In her "Brief Regarding Accounting, Fiduciary Duties, and Trust Administration", which was filed on March 13, 2015 ("Brief"), Ms. Ahern represented the following to this Court:

Eleanor rents office space where she and her assistants maintain the Trust records and perform Trust business. The location where Eleanor currently lives does not have suitable space for Eleanor to perform Trust business and store Trust records, so she rents an office at a cost of \$1,750 per month.

Interestingly, Ms. Ahern never listed the address for this so-called rental property. Instead of listing any documentation concerning this "office" with her Brief, she instead included a letter from Adele Joseph's of "Joseph's Properties", which was attached as Exhibit 8 to her Brief. Ms. Joseph's letter is dated March 5, 2015 (based on a handwritten date inscription next to Ms. Joseph's signature) and simply states the following:

Summary for your records,

Your office rent expense has been \$1750.00 a month since the beginning of 2013. It is paid as of the beginning of this month.

After discovery of the lease agreement by Mr. Waid, which is attached hereto as Exhibit "A" and is hereby incorporated by this reference, it crystal clear as to why Ms. Ahern did not want to provide any details about her "office". The "office" was really not an office at all. Instead it was a two bedroom townhome located in Spanish Trails, with an address of 6975 Emerald Springs Lane, Las Vegas, Nevada 89113. Why a townhome? Well that is because the townhome was actually being used as a home for Suzanne Nounna. Based on disclosure relayed to Attorney Powell from Mr. Waid, Mr. Waid has learned from the landlord of the townhome that Ms. Nounna had previously applied to rent the townhome and her application was denied. Apparently, not liking

1 the word "No", it appears that Ms. Ahern decided that she herself would rent the townhome for Ms.
2 Nounna, which as this Court will recall Ms. Ahern has made it known in several pleadings that Ms.
3 Nounna is part of her "advisory team", and then make the claim that this was the "office" space that
4 Ms. Ahern just had to have to administer the Trust, especially with the piles and piles of documents
5 that Ms. Ahern had led this Court to believe that she had to manage in her role as trustee. Despite
6 painting this picture of the enormous amount of records, Ms. Ahern has turned few records over
7 to Mr. Waid. Therefore, yet another lie, and more theft, from Ms. Ahern has been exposed.

9 Upon discovery of that Ms. Nounna was living in the townhome, the landlord, realizing that
10 she had been lied to by Ms. Ahern, immediately terminated the lease.

11 Mr. Waid has informed Attorney Powell that he intends to depose the landlord of the
12 townhome shortly and take her testimony under oath. It is assumed that once completed Mr. Waid
13 will supplement his Report to this Court, which will further detail all of his findings in this regard.

14 In the interim, Jacqueline and Kathryn, hereby request that this Court tack on all of the rent
15 paid for the townhome, that had ZERO benefit to the Trust, as damages owed by Ms. Ahern to
16 them, and in turn treble those damages since this was additional fraud, embezzlement, conversion,
17 and theft of funds that belonged to Jacqueline and Kathryn.

19 **F. DAMAGES ASSOCIATED WITH NON PAYMENT OF ESTATE TAXES**

20 As Mr. Waid has detailed in his Report, in reference to payments of taxes, "*It is undisputed*
21 *that no such quarterly payments were made by Ms. Ahern, as Trustee, from June 1, 2013 to*
22 *January 31, 2015. None are reported or reflected in the Ahern Brief and no payments were*
23 *reported to be received by the IRS*". What does this all mean? It means that Ms. Ahern's failure
24 to pay taxes that were obligated to be paid has further caused damage to Jacqueline and Kathryn.

25 Mr. Waid's Report further details the following:

26
27 *On Friday afternoon April 10, 2015, just two (2) business days before the April 15th tax*
28 *deadline, the Trust was notified by the tax preparer/advisor engaged by Ms. Ahern,*
Gammet and King CPAs, that the Trust 1) had underreported income for 2013, 2) that

1 *there was an estimated tax liability for 2014 of \$700,000, and 3) that Ms. Ahern had*
2 *distributed to herself all of her 35% share of prior years' Trust income. With limited*
3 *options and limited time, the Trust paid the estimated liability as calculated and estimated.*

4 *The underreporting of 2013 Trust income was verified with the IRS and in the process it*
5 *was discovered that the 2012 return was never filed by Ms. Ahern or the Trust. No*
6 *explanation has been provided or basis determined for the failure to abide by the Court's*
7 *order to pay estimated quarterly taxes for any time period, the failure to file a return for*
8 *2012, or the underreporting of Trust income for 2013.*

9 As this Court will certainly recall, on numerous occasions Ms. Ahern's previous counsel went
10 to great lengths to represent to this Court all of the fantastic work that Ms. Ahern was doing as
11 trustee. They made it a point to drill into this Court's head, as well as Jacqueline and Kathryn, that
12 the allegations and concerns from Jacqueline and Kathryn concerning Ms. Ahern's failure to
13 properly perform her trustee duties were completely unfounded and untrue and painted a picture
14 that Ms. Ahern was doing everything perfectly as she should and was in control of all facets of the
15 Trust. Yet, despite all of the other issues, and having CPAs supposedly assisting her, Ms. Ahern
16 never filed any tax returns and in turn now forces Mr. Waid to pick up the rubble of her neglect,
17 which in turn directly damages Jacqueline and Kathryn, since Mr. Waid has the obligation, as a
18 liable and responsible party in his capacity as trustee, to ensure that the IRS obligations of the Trust
19 are satisfied. As with every other false and fraudulent representation made by Ms. Ahern that
20 continue to be exposed, the extent of the damage caused by Ms. Ahern while serving as "trustee"
21 and after her removal simply continue to compound for Jacqueline and Kathryn. As such,
22 Jacqueline and Kathryn respectfully request that this Court award them damages related to tax
23 penalties and interest that they are now bearing the brunt of.

24 As Mr. Waid notes, the Trust was always been a pass through entity for taxation purposes
25 with the beneficiaries paying the tax directly on the income that they receive, via their personal
26 returns. Ms. Ahern's complete lack of doing her job as trustee in handling this issue, as well as her
27 unilateral stopping of payments to Jacqueline and Kathryn, has caused damage to Jacqueline and
28 Kathryn as they should have received their payments and then report them on their individual

returns, as they had done since their grandmother's passing in 2009.

**G. PAYMENT OF WILL CONTEST SETTLEMENT PROCEEDS PAID FROM
JACQUELINE'S AND KATHRYN'S OWN FUNDS**

As this Court will recall, on January 7, 2015, Jacqueline and Kathryn and Ms. Ahern stipulated to the dismissal of the Will Contest that Ms. Ahern had filed in regard to the Last Will and Testament of Marjorie T. Connell, which was executed by Mrs. Connell on January 7, 2008. On the following day, January 8, 2015, this Court issued an order which confirmed the agreement of the parties to the Will Contest, which included the requirement of Ms. Ahern's payment of the attorney fees and costs of Jacqueline and Kathryn to the tune of \$75,000 which related to the Will Contest.

Not only did it take nearly two months for the payment of the \$75,000 to be made by Ms. Ahern, but, based on information learned from Mr. Waid, it appears that Ms. Ahern did not pay the \$75,000 obligation from her own funds, as was required under the settlement agreement, but in reality used the monies belonging to Jacqueline and Kathryn, which were to be held in the Trust account, to make the payment to them. Therefore, Ms. Ahern wound up "paying" Jacqueline and Kathryn with their own funds. This is simply terrible conduct on Ms. Ahern's part and constitutes further theft, embezzlement, and conversion of the monies belonging to Jacqueline and Kathryn, which should also be trebled.

H. REAL PROPERTIES "OWNED" BY MS. AHERN

Ms. Ahern transferred three real properties originally in her name, or her revocable trust's name, the EAC Trust, to three separate trusts that she created, presumably "irrevocable" trusts. The three properties as follows:

6105 Elton Avenue, Las Vegas, Nevada, APN 138-35-515-002

1008 Vineyard Vine Way, N. Las Nevada, APN 139-09-720-054

7232 Willow Brush Street, Las Vegas, APN 126-13-816-006

1 As noted, Ms. Ahern transferred each of these properties into a separate trust that she
2 created. Attached as Exhibit "B" are the deeds for the all three properties, which are hereby
3 incorporated by this reference. On information and belief, Ms. Ahern has unilateral control over
4 each of the properties. This belief appears to be confirmed by Ms. Ahern's recent unilateral transfer
5 of the Elton Avenue Property from the "Elton Business Trust" to the "Elton Investment Group
6 LLC", effectuating such transfer in her capacity as the trustee of the Elton Business Trust.
7 Interestingly enough, Ms. Ahern's deed is dated May 13, 2015, yet her signature, occurring in front
8 of notary in Washington County, Utah, did not apparently occur until June 3, 2015.

10 Further, on information and belief, it is believed that Ms. Ahern placed these properties into
11 trusts as some sort of tax strategy, the integrity of which will likely want to be closely examined by
12 the IRS given the fraudulent and deceitful actions that Ms. Ahern has taken in this matter.

13 Based on the undeniable damage caused to Jacqueline and Kathryn, they respectfully
14 request that this Court immediately issue an order stating, and directing, that the Mr. Waid shall
15 take immediate possession of all three properties as recovery for the sums still outstanding and
16 unrecovered from the Trust. Once completed, it would be anticipated that Mr. Waid would then
17 liquidate those properties as recovery for the Trust.

19 For closing the discussion on this topic, there are two issues that require further analysis.
20 One issue is the transferring entity whose fingerprints are all over these transfers into Trusts----
21 Fidelity Capital. The second issue is the previously highlighted statement, discussed above, that
22 Ms. Ahern required an "office" to store the paperwork and documents associated with her role as
23 trustee.

24 As to Fidelity Capital, as this Court will readily remember, Fidelity Capital is nothing more
25 than a moving target. Ms. Ahern previously told this Court that Fidelity Capital held \$500,000 of
26 Jacqueline and Kathryn's funds. In fact, she supplied a letter from Mr. M. Perel (with apparently
27 Mr. Perel being unable to include his full first name) on Fidelity Capital "letterhead" dated with a
28

1 date of March 5, 2015 stating that Fidelity Capital was, in essence, holding \$500,000 safely and
2 soundly for the Trust. This was included as Exhibit 14 to her Accounting Brief. This Court will
3 recall that upon learning of this information this Court immediately ordered the collection and
4 return of the \$500,000 to the Trust account, which, as discussed above still has not occurred. In
5 a shocking and sudden turn of events (stated with tongue firmly embedded in cheek), Mr. M. Perel
6 reversed his previous statements contained in the March 5, 2015 letter and in a letter dated April
7 15, 2015 which was addressed to Ms. Ahern, Mr. Perel completely discredits his previous
8 statement, and in the process any credibility whatsoever, by claiming that Ms. Ahern has committed
9 fraud on Fidelity Capital and disavows that Fidelity Capital ever had the \$500,000 in the first place.
10 In the April 15, 2015 letter, Mr. Perel states that "*Due to your misrepresentations the proposed*
11 *funding has been withdrawn*".

12
13 To further illustrate the hoax that is being perpetrated on this Court, this Court may recall
14 that M. Perel was formerly Ms. Ahern's attorney as well. In fact, as proof of this fact, attached as
15 Exhibit "C" and hereby incorporated by this reference are letters from Mr. Perel. One letter is dated
16 July 10, 2012, while the other is also from July 10, 2012, judging by the date on the fax. As this
17 Court can clearly see from such communications, Mr. Perel presented himself as Ms. Ahern's legal
18 representative. These characters perpetually continue to linger in the shadows.

19
20 Quite the interesting about face by Mr. Perel after his previous reassurance, isn't it?!?!?
21 Such a drastic 180 degree turn might lead a reasonable person to conclude that something
22 fraudulent is, and continues to be, occurring based on the \$500,000 still missing, with no
23 explanation from Ms. Ahern.

24
25 As to the second issue, please recall Ms. Ahern's previous statement about her space issues
26 when she claimed the following:

27 *The location where Eleanor currently lives does not have suitable space for Eleanor to*
28 *perform Trust business and store Trust records, so she rents an office at a cost of \$1,750*
per month.

1 In sifting through the continual lies, Ms. Ahern would like this Court to believe that she needed to
2 rent a two bedroom townhome with Trust resources, assuredly consisting solely of Jacqueline and
3 Kathryn's 65% share of the Trust, where just coincidentally Ms. Nounna was found to be living in
4 and the lease was subsequently terminated thereafter, despite the facts that she owned, and
5 continues to "own", three separate properties and apparently none of the banker boxes of records
6 could be placed into any empty spaces in those locations. That simply does not compute and
7 reconcile given that Ms. Ahern is not apparently residing in any one of those properties. Is it also
8 coincidental too that Ms. Ahern has steadfastly refused to inform this Court where her actual
9 physical residence is?

11 There are long established rules regarding Trust and Trustee's fiduciary duties. Ms. Ahern
12 has broken all such well founded rules and by her conduct disqualified herself as a continual
13 beneficiary of the Trust. Ms. Ahern defrauded her daughters, this Court, and the intent of the
14 Trust's Settlers----her own parents. Whatever the case, the fact of the matter is that Ms. Ahern must
15 understand that there are severe repercussions for her behavior in this matter. Jacqueline and
16 Kathryn remain confident that this Court will impart this lesson on Ms. Ahern very clearly and very
17 loudly. The law and equity demand it.

19 CONCLUSION

20 In addition to the relief previously requested in their underlying Motion, Jacqueline and
21 Kathryn hereby now seek additional relief from this Court, based on new information learned
22 from Mr. Waid, as follows:

- 23 1) The return of all "rent" paid by Ms. Ahern from the Trust for the "office space"
24 consisting of the 6975 Emerald Springs Lane, Las Vegas, Nevada 89113, plus the
25 trebling of such "rent";
- 26 2) Directing that the three following properties:
27 6105 Elton Avenue, Las Vegas, Nevada, APN 138-35-515-002
28

1 1008 Vineyard Vine Way, N. Las Nevada, APN 139-09-720-054

2 7232 Willow Brush Street, Las Vegas, APN 126-13-816-006

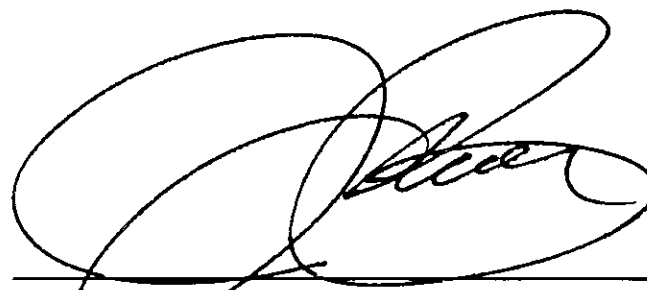
3 be immediately seized by Fredrick P. Waid, in his capacity as the current serving
4 trustee of "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18,
5 1972; and

- 6
7 3) Ms. Ahern be directed to make a payment of the amount of \$225,000 from her our
8 resources, or surcharged against her shares, as applicable, representing the amount
9 of \$75,000 stolen and converted from the Trust assets (and in turn trebled) for the
10 payment of the obligated amount of Ms. Ahern under the terms of the settlement of
11 the Will Contest relating to the Estate of Marjorie T. Connell, which was ratified, and
12 ordered, by this Court pursuant to its order dated January 8, 2015.

13 Of course, Jacqueline and Kathryn continue to reserve their right to file additional
14 supplements to their Motion, and seek additional remedies and damages, based on new
15 information discovered and in turn shared by Mr. Waid as his investigation and reporting continue.
16

17 Respectfully submitted,

18 THE RUSHFORTH FIRM, LTD.

19
20
21
22 

23 JOSEPH J. POWELL
24 State Bar No. 8875
25
26
27
28

EXHIBIT “A”

RESIDENTIAL LEASE AGREEMENT

for

6975 Emerald Springs Ln
Las Vegas, NV 89113

(Property Address)

31 EA - 3:30 PM



1. This AGREEMENT is entered into this 30th day of October, 2014 between

2 Sharon R. Walker, ("LANDLORD") legal owner of the property through the Owner's
3 BROKER, _____, ("BROKER") and

4 Tenant's Name: Eleanor M. Ahern Tenant's Name: _____

5 Tenant's Name: _____ Tenant's Name: _____

6 (collectively, "TENANT"), which parties hereby agree to as follows:

7 2. SUMMARY: The initial rents, charges and deposits are as follows:

	Total Amount	Received	Balance Due Prior to Occupancy
15 Rent: From <u>11/01/2014</u> , To <u>11/30/2014</u>	\$ <u>1,750.00</u>	\$ _____	\$ <u>1,750.00</u>
16 Security Deposit	\$ <u>1,750.00</u>	\$ _____	\$ <u>1,750.00</u>
17 Key Deposit	\$ _____	\$ _____	\$ _____
18 Admin Fee/Credit App Fee (Non-refundable)	\$ <u>50.00</u>	\$ <u>50.00</u>	\$ _____
19 Pet Deposit	\$ <u>500.00</u>	\$ _____	\$ <u>500.00</u>
20 Cleaning Deposit	\$ <u>250.00</u>	\$ _____	\$ <u>250.00</u>
21 Last Month's Rent Security	\$ _____	\$ _____	\$ _____
22 CIC Registration	\$ _____	\$ _____	\$ _____
23 Utility Proration	\$ _____	\$ _____	\$ _____
24 Sewer/Trash Proration	\$ _____	\$ _____	\$ _____
25 Other <u>Last Month Rent</u>	\$ <u>1,750.00</u>	\$ _____	\$ <u>1,750.00</u>
26 Other _____	\$ _____	\$ _____	\$ _____
27 Other _____	\$ _____	\$ _____	\$ _____
28 Other _____	\$ _____	\$ _____	\$ _____
29 TOTAL	\$ <u>6,050.00</u>	\$ <u>50.00</u>	\$ <u>6,000.00</u>

30 (Any balance due prior to occupancy to be paid in CERTIFIED FUNDS)

31 3. ADDITIONAL MONIES DUE: _____

32 4. PREMISES: Landlord hereby leases to TENANT and TENANT hereby leases from Landlord, subject to the terms
33 and conditions of the lease, the Premises known and designated as 6975 Emerald Springs Ln, Las Vegas,
34 NV 89113 consisting of two bedroom town hom ("the Premises").

35 5. TERM: The term hereof shall commence on November 1, 2014 and continue until
36 November 30, 2016, for a total rent of \$ 42,000.00, then on a month-to-month basis
37 thereafter, until either party shall terminate the same by giving the other party thirty (30) days written notice
38 delivered by certified mail (all calculation based on 30 day month).

39 6. RENT: TENANT shall pay rent at the monthly rate of \$ 1,750.00, in advance, on the 1st day
40 of every month beginning the 1st day of December, 2014 and delinquent after
41 3 days. There is no grace period. If rent is delinquent, it must be paid in the form of certified funds.

Residential Lease Agreement Rev. 05/12

Page 1 of 9

© 2012 Greater Las Vegas Association of REALTORS®

Landlord _____

Tenant EA Tenant _____

Tenant _____ Tenant _____

Property: 6975 Emerald Springs Ln

Really ONE Group, Inc, 10750 W Charleston Blvd #180 Las Vegas, NV 89135
Peter Georgiev

Produced with ZipForm® by zipLogix 18070 Fifteen 1/2 Road, Fraser, Michigan 48026 www.zipLogix.com

Phone: (702)898-1221

Fax: (702)405-3359

6975 Emerald Springs

1 7. PLACE OF PAYMENTS: TENANT shall make all payments payable to Sharon Walker
2 and shall mail such payments to: _____
3 _____ -or- _____ hand deliver such payments to
4 _____ during normal business hours.
5

6 8. ADDITIONAL FEES:

7
8 A. LATE FEES: In the event TENANT fails to pay rent when due, TENANT shall pay a late fee of
9 \$ 50.00 plus \$ 25.00 per day for each day after 3 days that the sum was due.
10

11 B. DISHONORED CHECKS: A charge of \$ 75.00 shall be imposed for each dishonored
12 check made by TENANT to LANDLORD. TENANT agrees to pay all rents, all late fees, all notice fees and all
13 costs to honor a returned check with certified funds. After TENANT has tendered a check which is dishonored,
14 TENANT hereby agrees to pay all remaining payments including rent due under this Agreement by certified funds.
15 Any payments tendered to LANDLORD thereafter, which are not in the form of certified funds, shall be treated as if
16 TENANT failed to make said payment until certified funds are received. LANDLORD presumes that TENANT is
17 aware of the criminal sanctions and penalties for issuance of a check which TENANT knows is drawn upon
18 insufficient funds and which is tendered for the purpose of committing a fraud upon a creditor.
19

20 C. ADDITIONAL RENT: All late fees and dishonored check charges shall be due when incurred and shall
21 become additional rent. Payments will be applied to charges which become rent in the order accumulated. All
22 unpaid charges or any fees owed by TENANT, including but not limited to notice fees, attorney's fees, repair bills,
23 utility bills, landscape/pool repair and maintenance bills and CIC fines will become additional rent at the beginning
24 of the month after TENANT is billed. TENANT'S failure to pay the full amount for a period may result in the
25 initiation of eviction proceedings. LANDLORD'S acceptance of any late fee or dishonored check fee shall not act as
26 a waiver of any default of TENANT, nor as an extension of the date on which rent is due. LANDLORD reserves the
27 right to exercise any other rights and remedies under this Agreement or as provided by law.
28

29 9. SECURITY DEPOSITS: Upon execution of this Agreement, TENANT shall deposit with LANDLORD as a
30 Security Deposit the sum stated in paragraph 2. TENANT shall not apply the Security Deposit to, or in lieu of,
31 rent. At any time during the term of this Agreement and upon termination of the tenancy by either party for any
32 reason, the LANDLORD may claim, from the Security Deposit, such amounts due Landlord under this Agreement.
33 Any termination prior to the initial term set forth in paragraph 5, or failure of TENANT to provide proper notice of
34 termination, is a default in the payment of rent for the remainder of the lease term, which may be offset by the
35 Security Deposit. Pursuant to NRS 118A.242, LANDLORD shall provide TENANT with a written, itemized
36 accounting of the disposition of the Security Deposit within thirty (30) days of termination. TENANT agrees, upon
37 termination of the tenancy, to provide LANDLORD with a forwarding address to prevent a delay in receiving the
38 accounting and any refund.
39

40 10. TRUST ACCOUNTS: BROKER shall retain all interest earned, if any, on security deposits to offset
41 administration and bookkeeping fees.
42

43 11. EVICTION COSTS: TENANT shall be charged an administrative fee of \$ 575.00 per eviction
44 attempt to offset the costs of eviction notices and proceedings. TENANT may be charged for service of legal
45 notices and all related fees according to actual costs incurred.
46

47 12. CARDS AND KEYS: Upon execution of the Agreement, TENANT shall receive the following:

48 1 Door key(s) 1 Garage Transmitter(s) _____ Other(s) _____
49 1 Mailbox key(s) _____ Gate Card(s) _____ Other(s) _____
50 _____ Laundry Room key(s) _____ Gate Transmitter(s) _____ Other(s) _____

51 Tenant shall make a key deposit (if any) in the amount set forth in paragraph 2 upon execution of this Agreement.
52 The key deposit shall be refunded within 30 days of Tenant's return of all cards and/or keys to Landlord or
53 Landlord's BROKER.
54

13. CONVEYANCES AND USES: TENANT shall not assign, sublet or transfer TENANT'S interest, nor any part thereof, without prior written consent of LANDLORD. TENANT shall use the Premises for residential purposes only and not for any commercial enterprise or for any purpose which is illegal. TENANT shall not commit waste, cause excessive noise, create a nuisance or disturb others.

14. OCCUPANTS: Occupants of the Premises shall be limited to no more than 3 E.A. persons and shall be used solely for housing accommodations and for no other purpose. TENANT represents that the following person(s) will live in the Premises: Eleanor M. Ahern and Staff E.A.

15. GUESTS: The TENANT agrees to pay the sum of \$ 25.00 per day for each guest remaining on the Premises more than 15 days. Notwithstanding the foregoing, in no event shall any guest remain on the Premises for more than 30 days. E.A.

16. UTILITIES: LESSEE shall immediately connect all utilities and services of premises upon commencement of lease. LESSEE is to pay when due all utilities and other charges in connection with LESSEE's individual rented premises. Responsibility is described as (T) for Tenant and (O) for Owner:

Electricity <u>T</u>	Trash <u>T</u>	Phone <u>T</u>	Other _____
Gas <u>T</u>	Sewer <u>T</u>	Cable <u>T</u>	Other _____
Water <u>T</u>	Septic <u>n/a</u>	Association Fees <u>O</u>	

a. TENANT is responsible to connect the following utilities in TENANT'S name: Electricity, Gas, Water, Trash, Sewer, Phone, Cable no later than Nov. 6 2014

b. LANDLORD will maintain the connection of the following utilities in LANDLORD's name and bill TENANT for connection fees and use accordingly: _____

c. No additional phone or cable lines or outlets shall be obtained for the Premises without the LANDLORD's written consent. In the event of LANDLORD's consent, TENANT shall be responsible for all costs associated with the additional lines or outlets.

d. If an alarm system exists on the Premises, TENANT shall obtain the services of an alarm services company and shall pay all costs associated therewith.

e. Other: n/a

17. PEST NOTICE: TENANT understands that various pest, rodent and insect species (collectively, "pests") exist in Southern Nevada. Pests may include, but are not limited to, scorpions (approximately 23 species, including bark scorpions), spiders (including black widow and brown recluse), bees, snakes, ants, termites, rats, mice and pigeons. The existence of pests may vary by season and location. Within thirty (30) days of occupancy, if the Premises has pests, LANDLORD, at TENANT's request, will arrange for and pay for the initial pest control spraying. TENANT agrees to pay for the monthly pest control spraying fees. The names and numbers of pest control providers are in the yellow pages under "PEST." For more information on pests and pest control providers, TENANT should contact the State of Nevada Division of Agriculture at www.agri.nv.gov.

18. PETS: No pet shall be on or about the Premises at any time without written permission of LANDLORD. In the event TENANT wishes to have a pet, TENANT will complete an Application for Pet Approval. Should written permission be granted for occupancy of the designated pet, an additional security deposit in the amount of \$ 500 will be required and paid by TENANT in advance subject to deposit terms and conditions aforementioned. In the event written permission shall be granted, TENANT shall be required to procure and provide to Landlord written evidence that TENANT has obtained such insurance as may be available against property damage to the Premises and liability to third party injury. Each such policy shall name LANDLORD and LANDLORD'S AGENT as additional insureds. A copy of each such policy shall be provided to Landlord or Landlord's BROKER prior to any pets being allowed within the Premises. If TENANT obtains a pet without written permission of LANDLORD, TENANT agrees to pay an immediate fine of \$500. TENANT agrees to indemnify LANDLORD for any and all liability, loss and

1 damages which LANDLORD may suffer as a result of any animal in the Premises, whether or not written
2 permission was granted.

3
4 19. **RESTRICTIONS:** TENANT shall not keep or permit to be kept in, on, or about the Premises: waterbeds, boats,
5 campers, trailers, mobile homes, recreational or commercial vehicles or any non-operative vehicles except as
6 follows: n/a

7 TENANT shall not conduct nor permit any work on vehicles on the premises.

8
9 20. **ALTERATIONS:** TENANT shall make no alterations to the Premises without LANDLORD's written consent. All
10 alterations or improvements made to the Premises, shall, unless otherwise provided by written agreement between
11 parties hereto, become the property of LANDLORD and shall remain upon the Premises and shall constitute a
12 fixture permanently affixed to the Premises. In the event of any alterations, TENANT shall be responsible for
13 restoring the Premises to its original condition if requested by LANDLORD or LANDLORD's BROKER.

14
15 21. **DEFAULT:** Failure by TENANT to pay rent, perform any obligation under this Agreement, or comply with any
16 Association Governing Documents (if any), or TENANT's engagement in activity prohibited by this Agreement, or
17 TENANT's failure to comply with any and all applicable laws, shall be considered a default hereunder. Upon
18 default, LANDLORD may, at its option, terminate this tenancy upon giving proper notice. Upon default,
19 LANDLORD shall issue a proper itemized statement to TENANT noting the amount owed by TENANT.
20 LANDLORD may pursue any and all legal and equitable remedies available.

21
22 22. **ENFORCEMENT:** Any failure by LANDLORD to enforce the terms of this Agreement shall not constitute a
23 waiver of said terms by LANDLORD. Acceptance of rent due by LANDLORD after any default shall not be
24 construed to waive any right of LANDLORD or affect any notice of termination or eviction.

25
26 23. **NOTICE OF INTENT TO VACATE:** TENANT shall provide notice of TENANT's intention to vacate the
27 Premises at the expiration of this Agreement. Such notice shall be in writing and shall be provided to
28 LANDLORD prior to the first day of the last month of the lease term set forth in section 5 of this Agreement.
29 In no event shall notice be less than 30 days prior to the expiration of the term of this Agreement. In the event
30 TENANT fails to provide such notice, TENANT shall be deemed to be holding-over on a month-to-month basis
31 until 30 days after such notice. During a holdover not authorized by LANDLORD, rent shall increase by
32 10.000 %.

33
34 24. **TERMINATION:** Upon termination of the tenancy, TENANT shall surrender and vacate the Premises and shall
35 remove any and all of TENANT'S property. TENANT shall return keys, personal property and Premises to the
36 LANDLORD in good, clean and sanitary condition, normal wear excepted. TENANT will allow LANDLORD to
37 inspect the Premises in the TENANT's presence to verify the condition of the Premises.

38
39 25. **EMERGENCIES:** The name, address and phone number of the party who will handle maintenance or essential
40 services emergencies on behalf of the LANDLORD is as follows: Sharon Walker Cell: (702) 768-2645

41
42
43 26. **MAINTENANCE:** TENANT shall keep the Premises in a clean and good condition. TENANT shall immediately
44 report to the LANDLORD any defect or problem pertaining to plumbing, wiring or workmanship on the Premises.
45 TENANT agrees to notify LANDLORD of any water leakage and/or damage within 24 hours of the occurrence.
46 TENANT understands that TENANT may be held responsible for any water and/or mold damage, including the
47 costs of remediation of such damage. TENANT shall be responsible for any MINOR repairs necessary to the
48 Premises up to and including the cost of \$ 50.00 . TENANT agrees to pay for all repairs,
49 replacements and maintenance required by TENANT's misconduct or negligence or that of TENANT's family, pets,
50 licensees and guests, including but not limited to any damage done by wind or rain caused by leaving windows
51 open and/or by overflow of water, or stoppage of waste pipes, or any other damage to appliances, carpeting or the
52 building in general. At LANDLORD's option, such charges shall be paid immediately or be regarded as additional
53 rent to be paid no later than the next monthly payment date following such repairs.

1 a. TENANT shall change filters in the heating and air conditioning systems at least once every month, at
2 TENANT's own expense. LANDLORD shall maintain the heating and air conditioning systems and provide for
3 major repairs. However, any repairs to the heating or cooling system caused by dirty filters due to TENANT
4 neglect will be the responsibility of TENANT.

5
6 b. TENANT shall replace all broken glass, regardless of cause of damage, at TENANT's expense.

7
8 c. In the case of landscaping and/or a swimming pool being maintained by a contractor, TENANT agrees to
9 cooperate with the landscape and/or pool contractor in a satisfactory manner. LANDLORD provided landscaping
10 maintenance is not to be construed as a waiver of any responsibility of the TENANT to keep and maintain the
11 landscaping and/or shrubs, trees and sprinkler system in good condition. In the event the landscaping is not being
12 maintained by a Contractor, TENANT shall maintain lawns, shrubs and trees. TENANT shall water all lawns,
13 shrubs and trees, mow the lawns on a regular basis, trim the trees and fertilize lawns, shrubs and trees. If
14 TENANT fails to maintain the landscaping in a satisfactory manner, LANDLORD may have the landscaping
15 maintained by a landscaping contractor and charge TENANT with the actual cost. Said costs shall immediately
16 become additional rent.

17
18 d. LANDLORD shall be responsible for all major electrical problems that are not caused by TENANT.

19
20 e. TENANT ___ shall -OR- X shall not have carpets professionally cleaned upon move out. If cleaned,
21 TENANT shall present LANDLORD or LANDLORD's BROKER with a receipt from a reputable carpet cleaning
22 company.

23
24 f. There ___ is -OR- X is not a pool contractor whose name and phone number are as follows: _____

25
26 If there is no such contractor, TENANT agrees to maintain the pool, if any. TENANT agrees to maintain the
27 water level, sweep, clean and keep in good condition. If TENANT fails to maintain the pool in a satisfactory
28 manner, LANDLORD may have the pool maintained by a licensed pool service and charge TENANT with the
29 actual cost. Said costs shall become additional rent.

30
31 27. ACCESS: TENANT agrees to grant LANDLORD the right to enter the Premises at all reasonable times and for all
32 reasonable purposes including showing to prospective lessees, buyers, appraisers or insurance agents or other
33 business therein as requested by LANDLORD, and for BROKER's periodic maintenance reviews. If TENANT fails
34 to keep scheduled appointments with vendors to make necessary/required repairs, TENANT shall pay for any
35 additional charges incurred which will then become part of the next month's rent and be considered additional rent.
36 TENANT shall not deny LANDLORD his/her rights of reasonable entry to the Premises. LANDLORD shall have
37 the right to enter in case of emergency and other situations as specifically allowed by law. LANDLORD agrees to
38 give TENANT twenty-four (24) hours notification for entry, except in case of emergency.

39
40 28. INVENTORY: It is agreed that the following inventory is now on said premises. (Check if present; cross out if
41 absent.)

<u>X</u> Refrigerator	___ Intercom System	___ Spa Equipment	___
<u>X</u> Stove	<u>X</u> Alarm System	___ Auto Sprinklers	___
<u>X</u> Microwave	___ Trash Compactor	___ Auto Garage Openers	___
<u>X</u> Disposal	___ Ceiling Fans	___ BBQ	___
<u>X</u> Dishwasher	___ Water Conditioner Equip.	___ Solar Screens	___
<u>X</u> Washer	___ Floor Coverings	___ Pool Equipment	___
<u>X</u> Dryer	<u>X</u> Window Coverings	___ Other	___

50
51 TENANT assumes responsibility for the care and maintenance thereof.

1 notify LANDLORD in writing and provide a copy of the assessment/inspection report. LANDLORD will then
2 have ten days to elect to correct such deficiencies and/or hazards or to terminate this agreement. In the event of
3 termination under this paragraph, the security deposit will be refunded to TENANT. (If the property was
4 constructed prior to 1978, refer to the attached Lead-Based Paint Disclosure.)
5

6 g. TENANT may display the flag of the United States, made of cloth, fabric or paper, from a pole, staff or in a
7 window, and in accordance with 4 USC Chapter 1. LANDLORD may, at its option, with 30 days notice to
8 TENANT, adopt additional reasonable rules and regulations governing the display of the flag of the United States.
9

10 h. TENANT may display political signs subject to any applicable provisions of law governing the posting of
11 political signs, and, if the Premises are located within a CIC, the provisions of NRS 116 and any governing
12 documents related to the posting of political signs. All political signs exhibited must not be larger than 24 inches
13 by 36 inches. LANDLORD may not exhibit any political sign on the Premises unless the tenant consents, in
14 writing, to the exhibition of the political sign. TENANT may exhibit as many political signs as desired, but may
15 not exhibit more than one political sign for each candidate, political party or ballot question.
16

17 **33. CHANGES MUST BE IN WRITING:** No changes, modifications or amendment of this Agreement shall be valid
18 or binding unless such changes, modifications or amendment are in writing and signed by each party. Such changes
19 shall take effect after thirty days notice to TENANT.
20

21 **34. CONFLICTS BETWEEN LEASE AND ADDENDUM:** In case of conflict between the provisions of an
22 addendum and any other provisions of this Agreement, the provisions of the addendum shall govern.
23

24 **35. ATTORNEY'S FEES:** In the event of any court action, the prevailing party shall be entitled to be awarded against
25 the losing party all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and
26 costs.
27

28 **36. NEVADA LAW GOVERNS:** This Agreement is executed and intended to be performed in the State of Nevada in
29 the county where the Premises are located and the laws of the State of Nevada shall govern its interpretation and
30 effect.
31

32 **37. WAIVER:** Nothing contained in this Agreement shall be construed as waiving any of the LANDLORD's or
33 TENANT's rights under the laws of the State of Nevada.
34

35 **38. PARTIAL INVALIDITY:** In the event that any provision of this Agreement shall be held invalid or
36 unenforceable, such ruling shall not affect in any respect whatsoever the validity or enforceability of the remainder
37 of this Agreement.
38

39 **39. VIOLATIONS OF PROVISIONS:** A single violation by TENANT of any of the provisions of this Agreement
40 shall be deemed a material breach and shall be cause for termination of this Agreement. Unless otherwise provided
41 by the law, proof of any violation of this Agreement shall not require criminal conviction but shall be by a
42 preponderance of the evidence.
43

44 **40. SIGNATURES:** The Agreement is accepted and agreed to jointly and severally. The undersigned have read this
45 Agreement and understand and agree to all provisions thereof and further acknowledge that they have received a
46 copy of this Agreement.
47

48 **41. LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NAC 645.640, _____ n/a
49 is a licensed real estate agent in the State(s) of _____ n/a, and has the following interest, direct
50 or indirect, in this transaction: ☐ Principal (LANDLORD or TENANT) -OR- ☐ family relationship or business
51 interest: _____ n/a
52
53

1 45. ADDITIONAL TERMS AND CONDITIONS: 1). Tenant reserves the right to buyout
2 prior to lease expiration date with a thirty(30) day written notice to
3 landlord and a penalty fee of one-month rent (\$1,750).
4 2). \$100 of the \$250 Cleaning Deposit will be non-refundable.
5 3). Tenant shall abide by all HOA Rules & Regulations.
6 4). Any HOA/parking fines related to tenant's occupancy or tenant's guests
7 will be paid by tenant.
8 5). All repairs/improvements over \$50 to be authorized by landlord/owner.
9 6). Tenant is aware this is an owner managed property and all communication
10 shall be between tenant and Sharon Walker who is the owner/landlord.
11
12
13
14
15
16
17
18
19

21 Sharon R. Walker
22 LANDLORD/OWNER OF RECORD NAME
23
24
25
26
27 MANAGEMENT COMPANY (BROKER) NAME
28
29
30
31 By
32 Authorized AGENT for BROKER SIGNATURE DATE
33
34 ☐ REALTOR@
35
36
37
38
39
40

Eleanor Ahern time 3:30pm
OCT 31, 2014
TENANT'S SIGNATURE DATE
Print Name: Eleanor M. Ahern
Phone: _____

TENANT'S SIGNATURE DATE
Print Name: _____
Phone: _____

TENANT'S SIGNATURE DATE
Print Name: _____
Phone: _____



LEASE ADDENDUM FOR DRUG FREE HOUSING

In consideration of the execution or renewal of a lease of the dwelling unit identified in the lease, Landlord and Tenant agree as follows:

1. Tenant, any member of Tenant's household, or a guest or other person under Tenant's control shall not engage in criminal activity, including drug-related criminal activity, on or near the subject leasehold premises. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, of controlled substance (as defined in section 102 of the Controlled Substance Act, 21 U.S.C. 802).
2. Tenant, any member of the Tenant's household, or a guest or other person under Tenant's control, shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or near the subject leasehold premises.
3. Tenant or members of the household will not permit the dwelling unit to be used for or to facilitate criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household or a guest.
4. Tenant or member of the household will not engage in the manufacture, sale or distribution of illegal drugs at any location, whether on or near the subject leasehold premises or otherwise.
5. Tenant, any member of the Tenant's household, or a guest or other person under Tenant's control shall not engage in acts of violence, including, but not limited to the unlawful discharge of firearms, on or near the subject leasehold premises.
6. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL VIOLATION OF THE LEASE AND GOOD CAUSE FOR TERMINATION OF TENANCY. A single violation of any of the provisions of the addendum shall be deemed a serious violation and a material noncompliance with the lease. It is understood and agreed that a single violation shall be cause for termination of the lease. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence.
7. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of the addendum shall govern.
8. This lease addendum incorporated into the lease executed or renewed this day between Landlord and Tenant.

Property Address 6975 Emerald Springs Ln, Las Vegas, NV 89113

Agent/Landlord Sharon R. Walker

Tenant Eleanor M. Ahern
Eleanor M. Ahern

Company _____

Tenant _____

Owner Sharon R. Walker

Tenant _____

Date _____

Date October 31, 2014



SMOKE DETECTOR AGREEMENT

This Agreement entered into the 30th day of October, 2014, between
Sharon R. Walker, Landlord
(by and through Landlord's Agent), and Eleanor M. Ahern
_____, Tenant.

In consideration of their mutual promises, Landlord and Tenant agree as follows:

1. Tenant is renting from Landlord the premises at 6975 Emerald Springs Ln, Las Vegas, NV 89113.
2. This agreement is an addendum and part of the rental agreement and/or lease between Landlord and Tenant.
3. The premises are equipped with smoke detection device(s).
4. It is agreed that Tenant will test the smoke detector within one hour after occupancy and inform Landlord or his/her Agent immediately if detector(s) is not working properly.
5. It is agreed that Tenant will be responsible for testing smoke alarm(s) at least once every week by pushing the "push to test" button on the detector for about five (5) seconds. To be operating properly, the alarm will sound when the button is pushed.
6. Tenant understands that said smoke detector(s) is a battery operated unit and it shall be Tenant's responsibility to insure that the battery is in operating condition at all times. If after replacing battery, any smoke detector(s) will not operate or has no sound, Tenant must inform Landlord or his/her Agent immediately in writing.
7. Landlord and his/her Agent recommend that Tenant provides and maintains a fire extinguisher on the premises.
8. The undersigned have read the above agreement and understand and agree to all provisions thereof and further acknowledge that they have received a copy of said agreement.

LANDLORD/AGENT

Sharon R. Walker

Eleanor Ahern
TENANT

Eleanor M. Ahern

TENANT

EXHIBIT “B”

Document Prepared by:

When recorded, please return to:
Fidelity Capital
8635 W. Sahara, #80
Las Vegas, NV 89117-5858

**Until a change is requested, all tax statements
Shall be sent to the following address:**

Fidelity Capital
8635 W. Sahara, #80
Las Vegas, NV 89117-5858

Inst #: 201212310003294

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$456.45 Ex: #

12/31/2012 02:03:22 PM

Receipt #: 1440594

Requestor:

FIDELITY CAPITAL

Recorded By: TAH Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Assessors Parcel No: 139-09-720-054

File No:

GRANT, BARGAIN, AND DEED SALE

KNOW BY ALL THESE PRESENTS THAT for the valuable consideration of Eighty Nine Thousand Three Hundred Twenty-Four dollars (\$89,324.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Eleanor Ahern of 6105 Elton Avenue, Las Vegas, NV 89107 (hereinafter referred to as the "Grantor"), does hereby grant, bargain, and sell unto Vineyard Vine BT of 1008 Vineyard Vine Way, N. Las Vegas, NV 89032 (hereinafter the "Grantee"), whether one or more, the following lands and property, together with all improvements located thereon, lying in the County of Clark, State of Nevada, to-wit:

See property description attached hereto as "Exhibit A".

Prior instrument reference: Tempo-Unit 4 Plat Book 96, Page 69, Lot 214 Block 9GEOID: PT N2 SE4 SEC 09 20 61, of the Public Records of the County Clerk of Clark County, Nevada.

Subject to (1) all general and special taxes for the current fiscal year, and (2) all covenants, conditions, restrictions, restorations, right, rights of way and easements now of record.

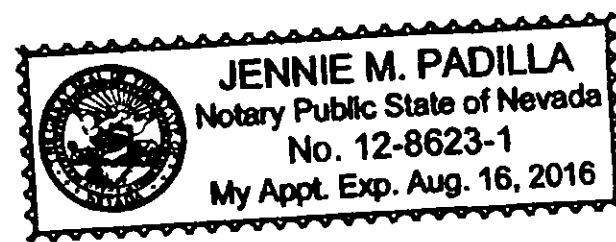
TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, hereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dec. 28 2012
Date

Eleanor Ahern +
Eleanor Ahern

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me
on December 28, 2012
by ELEANOR AHERN



Signature Jennie M. Padilla
Notary Public

My Commission Expires: 8/16/16

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 139-09-720-054
b. _____
c. _____
d. _____

2. Type of Property:

a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 89,324.00

b. Deed in Lieu of Foreclosure Only (value of property (_____)

c. Transfer Tax Value:

\$ 89,324.00

d. Real Property Transfer Tax Due

\$ 456.45

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Eleanor Ahern Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Eleanor Ahern

Address: 6105 Elton Avenue

City: Las Vegas

State: NV

Zip: 89107

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Vineyard Vine BT

Address: 1008 Vineyard Vine Way

City: Las Vegas

State: NV

Zip: 89032

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Fidelity Capital

Address: 8635 W. Sahara, #80

City: Las Vegas

Escrow # _____

State: NV

Zip: 89117-5858

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Document Prepared by:

When recorded, please return to:
Fidelity Capital
8635 W. Sahara, #80
Las Vegas, NV 89117-5858

**Until a change is requested, all tax statements
Shall be sent to the following address:**

Fidelity Capital
8635 W. Sahara, #80
Las Vegas, NV 89117-5858

Inst #: 201212310003293

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$479.40 Ex: #

12/31/2012 02:03:22 PM

Receipt #: 1440594

Requestor:

FIDELITY CAPITAL

Recorded By: TAH Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Assessors Parcel No: 126-13-816-006

File No:

GRANT, BARGAIN, AND DEED SALE

KNOW BY ALL THESE PRESENTS THAT for the valuable consideration of Ninety Three Thousand Nine Hundred Twenty-Four dollars (\$93,924.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Eleanor M. Ahern of 6105 Elton Avenue, Las Vegas, NV 89107 (hereinafter referred to as the "Grantor"), does hereby grant, bargain, and sell unto Willow Brush BT of 7232 Willow Brush Street, Las Vegas, NV 89166 (hereinafter the "Grantee"), whether one or more, the following lands and property, together with all improvements located thereon, lying in the County of Clark, State of Nevada, to-wit:

See property description attached hereto as "Exhibit A".

Prior instrument reference: Cliffs Edge POD 115, 116 & 117 Unit 3B, Plat Book 132, Page 76, Lot 105, Block F, GEOID: PT S2 SE4 SEC 13 19 59, of the Public Records of the County Clerk of Clark County, Nevada.

Subject to (1) all general and special taxes for the current fiscal year, and (2) all covenants, conditions, restrictions, restorations, right, rights of way and easements now of record.

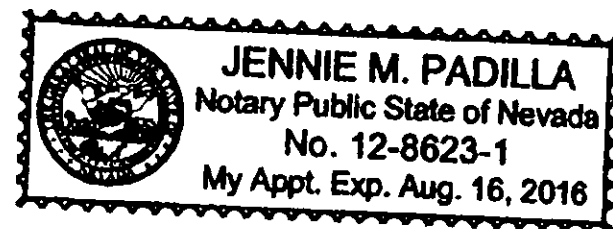
TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, hereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

December 28, 2012
Date

Eleanor M. Ahern
Eleanor M. Ahern

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me
on December 28, 2012
by ELEANOR M. AHERN



Signature Jennie M. Padilla
Notary Public
My Commission Expires: 8/16/16

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 126-13-816-006
b. _____
c. _____
d. _____

2. Type of Property:

a. ☐ Vacant Land b. ☒ Single Fam. Res.
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property

\$ 93,924.00

b. Deed in Lieu of Foreclosure Only (value of property (_____)

c. Transfer Tax Value:

\$ 93924.00

d. Real Property Transfer Tax Due

\$ 479.40

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Eleanor Ahern Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Eleanor M. Ahern
Address: 6105 Elton Avenue
City: Las Vegas
State: NV Zip: 89107

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Willow Brush BT
Address: 7232 Willow Brush Street
City: Las Vegas
State: NV Zip: 89166

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Fidelity Capital
Address: 8635 W. Sahara, #80
City: Las Vegas

Escrow # _____
State: NV Zip: 89117-5858

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

A.P.N.: 138-35-515-002
File No: 116-2485987 (CC)
R.P.T.T.: \$459.00 C

Inst #: 20150608-0000773
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$459.00 Ex: #
06/08/2015 08:58:00 AM
Receipt #: 2450149
Requestor:
FIRST AMERICAN TITLE INSURA
Recorded By: OSA Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded Mail To: Mail Tax Statements To:
ELTON INVESTMENT GROUP LLC
1818 INDUSTRIAL ROAD 101
LAS VEGAS, NV 89102

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Eleanor C. Ahern, Trustee on the ELTON Business Trust, dated December 21, 2011, who
acquired title as ELTON BT

do(es) hereby *GRANT, BARGAIN and SELL* to

ELTON INVESTMENT GROUP LLC

the real property situate in the County of Clark, State of Nevada, described as follows:

LOT FORTY (40) IN BLOCK THIRTEEN (13) OF CHARLESTON HEIGHTS TRACT NO. 41-A, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 7 OF PLATS, PAGE 56, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Subject to

1. All general and special taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: 05/13/2015

Eleanor C. Ahern, Trustee of the Elton
Business Trust

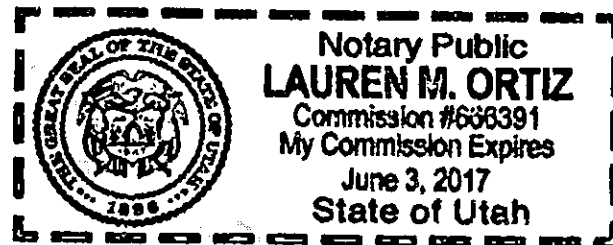
Eleanor C Ahern

By: Eleanor C. Ahern,, Trustee

STATE OF UT)
NEVADA)
COUNTY OF Washington)
CLARK) ss.

This instrument was acknowledged before me on June 3, 2015 by
* ~~ELTON BUSINESS TRUST.~~

Lauren M. Ortiz
Notary Public
(My commission expires: 06/03/2017)



This Notary Acknowledgement is attached to that certain Grant, Bargain Sale Deed dated **May 13, 2015** under Escrow No. **116-2485987**.

* Eleanor C. Ahern, Trustee of the Elton Business
Trust

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a) 138-35-515-002
b) _____
c) _____
d) _____

2. Type of Property

- a) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDERS OPTIONAL USE

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. a) Total Value/Sales Price of Property: \$90,000.00
b) Deed in Lieu of Foreclosure Only (value of (\$))
c) Transfer Tax Value: \$90,000.00
d) Real Property Transfer Tax Due \$459.00

4. **If Exemption Claimed:**

- a. Transfer Tax Exemption, per 375.090, Section: _____
b. Explain reason for exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____

Capacity: Agent

Signature: _____

Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: ELTON BUSINESS TRUST

Address: 1818 INDUSTRIAL ROAD 101

City: Las Vegas

State: NV Zip: 89102

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: ELTON INVESTMENT
GROUP LLC

Address: 1818 INDUSTRIAL ROAD
101

City: LAS VEGAS

State: NV Zip: 89102

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

First American Title Insurance

Print Name: Company

File Number: 116-2485987 CC/CC

Address: 2500 Paseo Verde Parkway, Suite 120

City: Henderson

State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

EXHIBIT “C”

MARTIN O. PEREL, ESQ.
10100 Santa Monica Blvd.
Los Angeles, CA 90067

July 10, 2012

10100 Santa Monica Blvd
Los Angeles, CA 90067

Attention: Mary Lou Cassidy

The purpose of this letter is to inform you that at the request of Wells Fargo Bank Eleanor Ahern has closed the bank account which was in direct violation of several Federal, State and Local Laws. Upon the request of Wells Fargo Bank Eleanor Ahern contacted me and upon review I informed her to comply with the banks long standing request to close this account in order to avoid any potential criminal charges against her or Jacqueline. This account was subject to closing by the bank if Eleanor had not done so. Wells Fargo Bank Corp. was very clear that they were not willing to lose their banking charter in order to allow the continuance of fraud. Eleanor did attempt to comply with the banks Regional Vice President's request with the cooperation of her daughter which was not attainable.

Identity theft is a federal crime as is check fraud. Once the documents were reviewed and I was satisfied of the legitimacy of the banks claim and potential actions, I insisted that my client cease her month long delay with compliance of their request.

Eleanor has opened a new bank account at Wells Fargo which is in compliance with Federal, State and Local laws and of which Wells Fargo is content to allow deposit. Wells Fargo had indeed informed Eleanor that they would no longer allow the deposit of checks into that subject account and fully intended to suspend all banking actions of this subject account and possibly press charges. Sufficely to say Wells Fargo now has a proper trust account open wherein all revenue checks will be deposited and appropriate payments will be made. Please forward to me all documents supporting your position regarding the monetary split.

Weekly Jacqueline Montoya may take any and all checks which may come into her possession to Michael Root's Office at 415 S. 6th Street, Las Vegas, NV 89101. She is to give them to Jennie Padilla and she will provide a receipted copy. This shall be done every Wednesday as needed by each week.

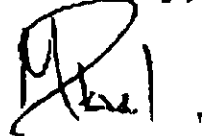
MARTIN O. PEREL, ESQ.
10100 Santa Monica Blvd.
Los Angeles, CA 90067

Once a month, a local, CPA FIRM will provide a complete accounting. Jacqueline Montoya may pick up checks once a month on the 8th at the office of Michael Root at 415 S. 6th Street, Ste. 203A, Las Vegas, NV 89101. Additionally once a month on the 8th she will be provided with full accounting records which will be from the local CPA firm. It is at that time she may sign any check requiring her signature.

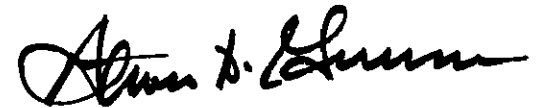
Please be advised I have contacted all oil and gas companies of a change of address from maverick and 710 to our offices at the request of Eleanor. **DO NOT CHANGE THIS PROVISION. IT IS IN EVERYONES BEST INTEREST. DO NOT HAVE ANY CONTACT WITH ANY OF THE LESSORS.**

Should you have any further questions please contact me in writing.

Sincerely,



Martin O. Perel, ESQ.



CLERK OF THE COURT

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

Attorneys for Eleanor Connell Hartman Ahern

DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

**MOTION TO STRIKE SUPPLEMENT
TO MOTION FOR ASSESSMENT OF
DAMAGES AGAINST ELEANOR
AHERN; ENFORCEMENT OF NO
CONTEST CLAUSE; AND
SURCHARGE OF ELEANOR'S TRUST
INCOME**

DATE OF HEARING:

TIME OF HEARING:

Eleanor Ahern, by and through her counsel of record, the law firm of
Brownstein Hyatt Farber Schreck, LLP, hereby files this Motion to Strike Kathryn
Bouvier and Jacqueline Montoya's (collectively, the "Sisters") Supplement
("Supplement") to Motion for Assessment of Damages, Enforcement of No-Contest
Clause, and Surcharge of Eleanor's Trust Income ("Motion"). This Opposition is

///

///

///

///

018177\0001\12542928.3

made and based upon the attached Memorandum of Points and Authorities, the pleadings and papers on file herein, and any argument by counsel at the hearing of this matter.

DATED this 3rd day of August, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Tamara Beatty Peterson

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

klenhard@bhfs.com

TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

tpeterson@bhfs.com

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

breitz@bhfs.com

Las Vegas, NV 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

Attorneys for Eleanor Connell Hartman Ahern

NOTICE OF MOTION

TO: All parties herein; and,

TO: Their respective counsel of record:

PLEASE TAKE NOTICE that Brownstein Hyatt Farber Schreck, LLP will bring the foregoing **MOTION TO STRIKE SUPPLEMENT TO MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR AHERN; ENFORCEMENT OF NO CONTEST CLAUSE; AND SURCHARGE OF ELEANOR'S TRUST INCOME** on for hearing before the above-entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, in Department XXVI, Courtroom 3H, on the 19th day of August, 2015, at 9:00 a.m. or as soon thereafter as counsel can be heard.

DATED this 3rd day of August, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Tamara Beatty Peterson

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

klenhard@bhfs.com

TAMARA BEATTY PETERSON, ESQ., Bar No. 5218

tpeterson@bhfs.com

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

breitz@bhfs.com

BROWNSTEIN HYATT FARBER SCHRECK, LLP

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

Attorneys for Eleanor Connell Hartman Ahern

I. INTRODUCTION

After missing the deadline to file a Reply brief, the Sisters file a document, which they refer to as a “supplement,” which provides only further conjecture and is devoid of any evidentiary support for their Motion. Indeed, if the strength of the Sisters’ legal arguments were measured by the number of exclamation points which permeate their submissions, and their purported factual assertions were considered without due process and without reference to actual evidence, their improper claims against Ms. Ahern might have some appeal, albeit superficial. However, the bluster of their rhetoric fails to camouflage the glaring fact that they lack any credible legal, procedural or factual basis to bring their Motion for damages and, more specifically, to file an unsupported rogue Supplement just days prior to the hearing on this matter. As stated aptly by the Sisters, the Supplement is wholly comprised of “information [that] has no legal significance.”¹ (Supp. at 2:11.)

It is also worth noting that, if submitted as evidence in support of the Motion, the content of the Sisters’ narrative is completely incongruous with the relief they are seeking. On the one hand, the Sisters paint a picture of a very loving (Supp. at 4:5-9), concerned (Supp. at 6:21), distressed (Supp. at 7:6-7), scared (Supp. at 7:23) daughter, Jacqueline, who sees her dear and “valued” (Supp. 2:20) mother acting “strangely” (Supp. at 2:27; 4:28), completely taken in by a couple of shysters (Nounna and Perel) who the daughters call “leeches” (Supp. at 10:1). On the other hand, Jacqueline and Kathryn decide, apparently, that they are “sick and tired” (Supp. at 2:6) of the “significant amount of abuse” (Supp. at 2:12) they have suffered as a result in this case and that the remedy for such behavior is to strip their mother’s rights entirely from the Trust, as outlined in the Motion, and to seek the

¹ Given the admitted baselessness of the supplement (coupled with the impropriety of the Motion), one cannot help but speculate whether counsel is attempting to take undue advantage of the Court’s ruling on the motion for attorneys’ fees. If nothing else, the Court should find that Ms. Ahern is not responsible for the Sisters’ fees incurred to file the Motion and the Supplement.

1 new and additional damages raised for the first time in the Supplement (the return
2 of the rent for office space; the transfer of three properties into the Trust; and
3 \$225,000 constituting treble damages for a \$75,000 allegedly misappropriated
4 payment).

5 This narrative incongruity aside, the Supplement (1) is untimely, (2) requests
6 new relief not sought in the Motion, (3) is not appropriate even if filed as a petition,
7 (4) provides absolutely no evidence in further support of the claims against Ms.
8 Ahern, and (5) is incompetent and inadmissible as evidence for the Court's
9 consideration on the Motion. Accordingly, and as discussed further below, the
10 Court can and should strike the Sisters' Supplement from the record.

11 **II.** 12 **RELEVANT PROCEDURAL HISTORY**

13 The Sisters filed their Motion for Assessment of Damages Against Eleanor
14 Ahern; Enforcement of No-Contest Clause; and Surcharge of Eleanor's Trust
15 Income on June 3, 2015, in which they requested millions of dollars in punitive
16 damages and the forfeiture of Ms. Ahern's life estate in the Trust. Ms. Ahern filed
17 her Opposition thereto on June 29, 2015, with permission from the Court.

18 The hearing on the Motion is scheduled for August 5, 2015, at 10:00 a.m.
19 Pursuant to EDCR 2.20(h) and (i), Plaintiffs were required to file a reply brief or a
20 supplement within five days of the hearing, or July 29, 2015. The Sisters never
21 filed a reply in support of their Motion.

22 On the afternoon of Friday, July 31, 2015, the Sisters filed an untimely
23 Supplement to the Motion. Although the Sisters' counsel provided a courtesy copy
24 at 3:49 p.m. on Friday afternoon, the Courts' electronic filing system did not serve
25 the Supplement until 8:53 a.m on Monday, August 3, 2015.

26 Given the late filing of the Sisters' Supplement, the first court day available
27 for Ms. Ahern to file this Motion to Strike was August 3, 2015. Ms. Ahern hoped
28 to file the Motion to Strike on an Order Shortening Time ("OST"), so that the Court

1 could avoid hearing improper evidence or argument at the hearing on the Motion to
2 assess damages against Ms. Ahern scheduled for Wednesday, August 5, 2015. To
3 that end, Benjamin K. Reitz, Esq., telephoned the Court to determine whether the
4 Court would accept an OST on the short timeline. (*See* Affidavit of Benjamin K.
5 Reitz, Esq. [“Reitz Aff.”], attached hereto, at ¶ 8.) The Court informed Mr. Reitz
6 that an OST was not possible, and therefore Ms. Ahern filed this Motion to Strike
7 in the normal course and provided a courtesy copy to the Court. (*Id.*)

8 III. 9 DISCUSSION

10 In Nevada, a motion to strike is proper under NRCP 12(f), governing the
11 striking of pleadings, and is also proper to remove incompetent and inadmissible
12 evidence from the record. *See* NRCP 12(f); *Levine v. Remolif*, 80 Nev. 168, 390
13 P.2d 718 (1964); *Leport v. Sweeney*, 11 Nev. 387 (1876); *Sharon v. Minnock*, 6
14 Nev. 377 (1871). Moreover, a court has inherent power to control its docket, and
15 therefore may strike documents filed in violation of the rules of procedure. *See*,
16 *e.g.*, *Metzger v. Hussman*, 682 F. Supp. 1109, 1110 (D. Nev. 1988) (district court
17 has the inherent power, outside of Rule 12(f), to strike a party's submissions).²

18 Here, as an initial matter, the Supplement is untimely as either a reply or a
19 supplement to the Motion, given the hearing date on August 5, 2015. *See* EDCR
20 2.20(h)-(i). The Sisters’ disregard for the rules of procedure in filing the Motion is
21

22 ² In *Afriat v. Afriat*, 61 Nev. 321, 117 P.2d 83 (1941), the Nevada Supreme
23 Court has stated that a motion to strike another motion is bad practice and will not
24 be granted. Here, Ms. Ahern does not move to strike the Sisters Motion. Rather,
25 Ms. Ahern moves to strike the Sisters Supplement—a rogue document—that should
26 have been filed as a petition in the first place and was improperly filed here.
27 Notably, *Afriat* cites cases that trace back to an 1864 case from Colorado, *Wier v.*
28 *Bradford*, 1 Colo. 14, 16 (1864), which suggests that a motion to strike court
submissions may be proper in certain circumstances. *See Afriat*, 61 Nev. at 1 (citing
Buehler v. Buehler, 38 Nev. 500, 151 P. 44, 45 (1915)) (citing *Wier*, 1 Colo. at 16).
In *Beuhler*, the Court stated that the motion to strike a motion to dismiss was not
proper in under the circumstances that case, but the court also stated that “[t]here
may arise cases where such a practice is justifiable and proper.” *Id.*

1 only compounded by the filing of the Supplement. *See Mazzeo v. Gibbons*, No.
2 2:08-CV-01387-RLH-PA, 2010 WL 3910072, at *2 (D. Nev. Sept. 30, 2010)
3 ("[T]he Court cannot allow litigants and practitioners (including sole practitioners)
4 to disregard deadlines, rules, or clear warnings.") (internal quotations and citations
5 omitted).

6 Second, Ms. Ahern has already asserted in her Opposition that the Sisters'
7 Motion should have been filed as a petition outlining the new allegations against
8 her. (Opp. at 3:14-27, 6:9-7:19, 8:4-16.) Like a petition or complaint, the Sisters'
9 Supplement offers no admissible evidence in support of their claims. To the extent
10 the Court construes the Supplement as a petition, it should be stricken as improper
11 under Rule 12(f).

12 Finally, if, as the Sisters claim, the Supplement constitutes additional
13 evidence in support of the Motion, (*see* Mot. at 20:13-20 re: Reservation of Rights),
14 the Supplement should be stricken as incompetent and inadmissible. In either
15 case—and there are no alternatives—the motion should be stricken.

16 **A. The Sisters' Supplement Is In Violation Of The Rules Of Procedure.**

17 EDCR 2.20 provides that upon the filing of a motion, the non-moving party
18 may file an opposition "[w]ithin 10 days after the service of the motion,...together
19 with a memorandum of points and authorities and supporting affidavits, if any,
20 stating facts showing why the motion....should be denied." EDCR 2.20(e). The
21 moving party—in this case the Sisters—may then "file a reply memorandum of
22 points and authorities not later than 5 days before the matter is set for hearing."
23 EDCR 2.20(h). (Thus, even if Plaintiff and his counsel argue the Supplement is
24 reply, it was not filed within the time frame allowed under EDCR 2.20(h), and
25 therefore, should be stricken.) Furthermore, the rules do not provide for a
26 subsequent filing. In fact, the rules expressly state that "[s]upplemental briefs will
27 only be permitted if filed within the original time limitations of paragraphs (a), (b),
28 or (d), or by order of the court." EDCR 2.20(i).

EDCR 2.20 is applicable to this action. Rule 2.01 of the Eighth Judicial District Court defines the scope of Rules under Part II of the EDCR, including EDCR 2.20: “The Rules in Part II govern the practice and procedure of *all civil actions, [and] all contested proceedings under Titles 12 and 13.*” EDCR 2.01. Title 12 governs “Will and Estates of Deceased Persons.” Title 13 governs “Guardianships, Conservatorships, [and] Trusts.” Because the Sisters brought this action under NRS Chapters 163-165, which fall under Title 13, EDCR 2.20 applies to this action.

After failing to file a reply brief in support of their motion to strip Ms. Ahern of her interests in the Trust, the Sisters file an untimely and procedurally improper Supplement to their original motion. The Sisters will no doubt contend that, in their Motion, they “reserved the right” to supplement the Motion. However, it is the Rules, not the Sisters, that determine when a supplement is proper. *See* EDCR 2.20(i). In fact, EDCR 2.20 states that a supplement “**will only be permitted**” if filed within the deadlines imposed by the Rule. The Sisters and their counsel do not provide the Court with any authority that permits them to file the Supplement under the conditions in this case, or that would permit the Court to consider the information in the Supplement when ruling on the (also procedurally improper) Motion.

In addition to their failure to comply with the deadlines imposed by the Rules, Plaintiffs improperly raise new arguments in their Supplement that were not raised in the Motion. *See, e.g., In re Sulfuric Acid Antitrust Litig.*, 235 F.R.D. 646, 652 (N.D.Ill.2006) (finding that an argument that is raised or not adequately developed for the first time until the reply brief is waived). In fact, the Sisters request entirely new **relief** that was never requested in the Motion, was never requested in a reply brief (which was never filed), and is unsupported by any evidence attached to the Motion or the untimely Supplement. Under these

1 circumstances, the Sisters' improper Supplement should be stricken from the record
2 and not considered by the Court.

3 **B. The Supplement Should Be Stricken Under NRCP 12(f).**

4 NRCP 12(f) provides as follows:

5 Upon motion made by a party before responding to a pleading or, if
6 no responsive pleading is permitted by these rules, upon motion made
7 by a party within 20 days after the service of the pleading upon the
8 party or upon the court's own initiative at any time, the court may
9 order stricken from any pleading any insufficient defense or any
redundant, immaterial, impertinent, or scandalous matter.

10 *Jordan v. State*, 121 Nev. 44, 61 n.32, 110 P.3d 30, 43, n.32 (2005) (abrogated on
11 other grounds).

12 As discussed in Ms. Ahern's Opposition, this declaratory action began with a
13 petition by the Sisters for a "straightforward declaration of rights and interests"
14 under the Trust. (*See* Petition for Declaratory Judgment Regarding Limited Interest
15 of Trust Assets Pursuant to 30.040, NRS 153.031(1)(e), and NRS 164.033(1)(A), p.
16 17:5, on file herein.) Thus, the allegations in the Motion should have been
17 submitted as a petition and the Sisters are required to prove their allegations by a
18 preponderance of the evidence or by clear and convincing evidence where
19 applicable. *See* NRS 153.031; NRS 155.180; Opp. at 6:9-7:19,

20 Here, like a petition or complaint, the so-called "Supplement" offers fresh
21 allegations without any evidentiary support. Should the Court construe the Sisters'
22 Supplement as an improper petition, there can be no clearer demonstration of
23 "redundant, immaterial, impertinent, or scandalous matter" under Rule 12(f). *Id.*
24 By the Sisters' own admission, the melodramatic commentary in the Supplement
25 has "no legal significance," and therefore seeks only to humiliate and shame Ms.
26 Ahern. (Supp. at 2:11.) The Sisters are using this Court as a public forum to air
27 their laundry (without the need to later account for it) by filing their "petition" as an
28

untimely Supplement to an improper Motion. On these grounds, the Court should strike the Sisters' Supplement in its entirety.

C. The Supplement Is Inadmissible and Incompetent As Evidence For The Court's Consideration On The Motion.

A motion to strike is proper after objectionable evidence may not properly remain in the record. *See, e.g., Levine v. Remolif*, 80 Nev. 168, 390 P.2d 718 (1964); *Leport v. Sweeney*, 11 Nev. 387 (1876); *Sharon v. Minnock*, 6 Nev. 377 (1871). A motion to strike may also be coupled effectively with an earlier objection. *See Gordon v. Hurtado*, 91 Nev. 641, 541 P.2d 533 (1975).

As stated in Ms. Ahern's Opposition, it is unclear upon what basis the Sisters brought their original Motion. Based on the facts alleged and relief requested, the Motion may be one for summary judgment, but no evidence is attached to the Motion or the untimely Supplement, and there is no petition on file asserting the underlying claims against Ms. Ahern. To the extent the Sisters contend that the Supplement constitutes evidence in support of their Motion, this evidence is wholly incompetent and should be stricken. The Supplement, like the Motion, contains only hearsay, argument, and speculation. The exhibits to the Supplement are not Bates-stamped and have not been authenticated. Even if they had been authenticated, the Sisters once again attempt to hopscotch over the requirement that liability must be proved, and instead provide only documents supporting an unsubstantiated amount of damages and execution of Ms. Ahern's assets.

///

///

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IV.
CONCLUSION**

Based upon their “reservation of right to supplement” in their Motion, the Sisters unilaterally decided that, at their leisure, they would present evidence to the Court on an ongoing and rolling basis to support their already extraordinary requests for relief. The Sisters’ Supplement violates the rules of procedure, and the information purported to be “evidence” in support of their allegations is wholly incompetent, unauthenticated, and inadmissible. Accordingly, the Supplement should be stricken in its entirety.

DATED this 3rd day of August, 2015.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Tamara Beatty Peterson
KIRK B. LENHARD, ESQ., Bar No. 1437
klenhard@bhfs.com
TAMARA BEATTY PETERSON, ESQ., Bar No. 5218
tpeterson@bhfs.com
BENJAMIN K. REITZ, ESQ., Bar No. 13233
breitz@bhfs.com
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135
Attorneys for Eleanor Connell Hartman Ahern

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **MOTION TO STRIKE SUPPLEMENT TO MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR AHERN; ENFORCEMENT OF NO CONTEST CLAUSE; AND SURCHARGE OF ELEANOR'S TRUST INCOME** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 3rd day of August, 2015, to the following:

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

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

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

**AFFIDAVIT OF BENJAMIN K. REITZ, ESQ. IN SUPPORT OF
MOTION TO STRIKE SUPPLEMENT TO MOTION FOR ASSESSMENT
OF DAMAGES AGAINST ELEANOR AHERN; ENFORCEMENT OF NO
CONTEST CLAUSE; AND SURCHARGE OF ELEANOR'S TRUST
INCOME**

STATE OF NEVADA }
COUNTY OF CLARK }:ss

I, BENJAMIN K. REITZ, ESQ., being first duly sworn, deposes and states:

1. I am an attorney at the law firm of Brownstein Hyatt Farber Schreck, LLP, counsel of record for Eleanor Connell Hartman Ahern. I am duly licensed to practice law within the State of Nevada. I have personal knowledge of the information contained in this affidavit and qualify as a competent witness if called upon to testify in connection with this matter.

2. Kathryn Bouvier and Jacqueline Montoya's (collectively, the "Sisters") filed their Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No-Contest Clause; and Surcharge of Eleanor's Trust Income on June 3, 2015, which requests millions of dollars in punitive damages and the forfeiture of Ms. Ahern's life estate in the Trust.

3. Ms. Ahern filed her Opposition thereto on June 29, 2015, with prior permission from the Court.

4. The hearing on the Motion is scheduled for August 5, 2015, at 10:00 a.m.

5. Pursuant to EDCR 2.20(h) and (i), Plaintiffs were required to file a reply brief or a supplement within five days of the hearing, or July 29, 2015.

6. The Sisters never filed a reply in support of their Motion.

7. On the afternoon of Friday, July 31, 2015, the Sisters filed an untimely Supplement to the Motion. Although the Sisters' counsel provided a courtesy copy

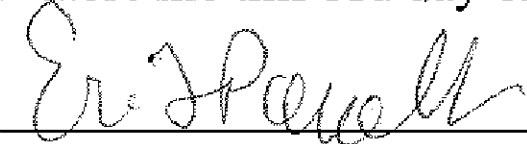
1 at 3:49 p.m. on Friday afternoon, the Courts' electronic filing system did not
2 actually serve the Supplement until 8:53 a.m. today, Monday, August 3, 2015.

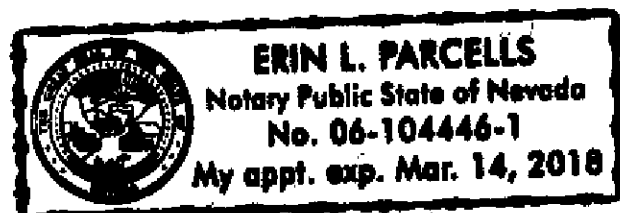
3 8. Given the late filing of the Sisters' Supplement, the first court day
4 available for my firm to file this Motion to Strike on behalf of Ms. Ahern was
5 August 3, 2015 (today). I attempted to file the Motion to Strike on an Order
6 Shortening Time ("OST"), so that the Court could avoid hearing improper evidence
7 or argument at the hearing on the Motion to assess damages against Ms. Ahern
8 scheduled for Wednesday, August 5, 2015. To that end, I telephoned the Court to
9 determine whether an OST was possible on the short timeline. The Court's Judicial
10 Executive Assistant told me it would not be possible to review and sign the Order
11 Shortening Time prior to 24 hours before the hearing deadline (as required), given
12 the late submission date. Therefore, because an OST was not available, Ms. Ahern
13 filed this Motion to Strike in the normal course and provided a courtesy copy to the
14 Court.

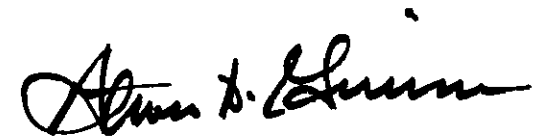
15 FURTHER AFFIANT SAYETH NAUGHT.

16
17 
BENJAMIN K. REITZ, ESQ.

18 SUBSCRIBED AND SWORN to
19 Before me this 3rd day of August, 2015.

20 
21 Notary Public, in and for said
22 County and State





CLERK OF THE COURT

TRAN

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-09-066425

DEPT. NO. XXVI

Transcript of Proceedings

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

**JACQUELINE M. MONTOYA'S AND KATHRYN A. BOUVIER'S MOTION FOR
ASSESSMENT OF DAMAGES AGAINST ELEANOR AHERN; ENFORCEMENT OF
NO-CONTEST CLAUSE; AND SURCHARGE OF ELEANOR'S TRUST INCOME**

WEDNESDAY, AUGUST 5, 2015

APPEARANCES:

For the Petitioner,
Eleanor Ahern:

KIRK LENHARD, ESQ.
TAMARA PETERSON, ESQ.

For Jaqueline Montoya
And Kathryn Bouvier:

JOSEPH POWELL, ESQ.

For the Trustee,
Frederick Waid:

TODD MOODY, ESQ.

RECORDED BY:

KERRY ESPARZA, COURT RECORDER

TRANSCRIBED BY:

KRISTEN LUNKWITZ

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

1 WEDNESDAY, AUGUST 5, 2015 10:27 A.M.

2 [Pause in the proceedings]

3 THE COURT: All right, *Connell*. We'll have
4 everybody make appearances.

5 MR. POWELL: Good morning, Your Honor. Joe
6 Powell, appearing on behalf of Jacqueline Montoya and
7 Kathryn Bouvier, who are both present in Court today.

8 THE COURT: And, for the record, Mr. Warnick has
9 substituted out and you're going to be representing --

10 MR. POWELL: Correct.

11 THE COURT: -- both.

12 MR. POWELL: I'm now --

13 THE COURT: Okay.

14 MR. POWELL: -- counsel for --

15 THE COURT: For both.

16 MR. POWELL: -- Ms. Bouvier, as --

17 THE COURT: Just --

18 MR. POWELL: -- well.

19 THE COURT: -- so -- for the record, we won't be
20 expecting Mr. Warnick --

21 MR. POWELL: Yes.

22 THE COURT: -- future.

23 MR. POWELL: Correct.

24 THE COURT: Okay. Great. Thanks.

25 MR. MOODY: Good morning, Judge. Todd Moody, bar

1 number 5430, for Fred Waid, Court-appointed Trustee. Mr.
2 Waid is here with me this --

3 THE COURT: Thank --

4 MR. MOODY: -- morning.

5 THE COURT: -- you.

6 MR. LENHARD: Good morning, Your Honor. Kirk
7 Lenhard and Tammy Peterson on behalf of Ms. Ahern. She's
8 also present in the courtroom.

9 THE COURT: Wonderful. My question about this --
10 and I -- before we discuss the merits of it, I'd like to
11 talk to all counsel about -- procedurally, are we -- is
12 this premature? Because -- and I'm not sure -- it looks
13 like the hearing on the contempt proceeding is on the 18th.
14 And I think Judge Gonzalez is going to hear it herself, --

15 MR. LENHARD: Correct.

16 THE COURT: -- instead of giving it to -- okay.
17 So that would just be my question, is: Do we need to have
18 that result one way or the other or does it affect this at
19 all? Because it seemed to me that there were certain -- I
20 know Mr. Powell's firmly of the opinion it is not, but it
21 seemed to me that some of the issues that Mr. Powell raises
22 are yet to be determined and kind of contingent on the
23 outcome. So I don't know what the -- what's the Trustee's
24 position, --

25 MR. MOODY: So, Judge, --

1 THE COURT: -- Mr. Moody?

2 MR. MOODY: -- let me speak first. And let me

3 just say that the Court will probably recognize the fact

4 that nothing has been filed by Mr. Waid --

5 THE COURT: Correct. Yeah.

6 MR. MOODY: -- with --

7 THE COURT: I understand --

8 MR. MOODY: -- respect to --

9 THE COURT: -- that.

10 MR. MOODY: -- the motion that we're here for

11 today. So we're not taking a position either substantively

12 or procedurally.

13 THE COURT: I understand.

14 MR. MOODY: But we're here -- if this is an

15 evidentiary hearing, Mr. Waid is prepared to testify.

16 He'll take the stand. He can talk about documents. He's

17 more than happy to do that for either side, so I'm actually

18 -- with that, I'm going to sit in the gallery with Mr. Waid

19 and offer any help that we can today.

20 THE COURT: Okay.

21 MR. MOODY: But we've not filed an opposition or a

22 response, a joinder. If there was something that could say

23 we take no position, that's what we would have filed.

24 THE COURT: Okay. Thank you.

25 MR. MOODY: Thanks, Judge.

1 THE COURT: Okay. So, Mr. Lenhard, if your issue
2 is -- if you believe that this is something that, once
3 Judge Gonzalez makes whatever her determination is, then
4 you need further evidence, as suggested by Mr. Moody, from
5 Mr. Waid or from whoever, we do have time later in the
6 month or -- we've lost our --

7 MR. LENHARD: You're going to --

8 THE COURT: -- week in --

9 MR. LENHARD: -- to be a bit --

10 THE COURT: -- October. Yeah?

11 MR. LENHARD: -- surprised by my position, but I
12 don't believe the contempt hearing has anything to do with
13 these proceedings.

14 THE COURT: Okay.

15 MR. LENHARD: And we're prepared to proceed --

16 THE COURT: Okay. Is this something that you need
17 an evidentiary hearing on?

18 MR. LENHARD: I don't think so.

19 THE COURT: Okay.

20 MR. LENHARD: It's briefed and it's -- and --

21 THE COURT: Okay.

22 MR. LENHARD: -- we're --

23 THE COURT: Great.

24 MR. LENHARD: -- ready to argue.

25 THE COURT: All right. So, then, Mr. Powell?

1 MR. LENHARD: I will make it clear: I'm objecting
2 to an evidentiary hearing because we feel a trial's
3 necessary and a trial by ambush is not appropriate.

4 THE COURT: Okay. So, not just that -- it's your
5 view that this is premature and that there should be a
6 trial on these issues?

7 MR. LENHARD: I -- I've set out in my pleadings
8 exactly what I'm going to argue and I'm prepared to argue
9 when my --

10 THE COURT: Okay.

11 MR. LENHARD: -- time comes --

12 THE COURT: Okay.

13 MR. LENHARD: -- this morning.

14 THE COURT: Got it. Okay. Got it.

15 MR. LENHARD: And I do feel there are a number of
16 procedural deficiencies with these proceedings this
17 morning.

18 THE COURT: Okay. Great. Okay. So, then, Mr.
19 Powell?

20 MR. POWELL: Your Honor, as you know, this is a
21 Court of equity. You have extraordinary powers as a Court
22 of equity, as a Probate Court that have been granted to you
23 by the Legislature. The point of a Court of equity is to
24 create remedies that are just and fair.

25 This Court has a desire and also an obligation, as

1 well, Your Honor, to protect people and innocent parties.
2 Probate Court has jurisdiction over all parties related to
3 a matter: Beneficiaries, Trustee, any other person that's
4 affected, including contingent beneficiaries.

5 Probate Court -- and this, I think, is where
6 there is a gap in understanding. Probate Court is not
7 about plaintiff versus defendant. It's a totality of the
8 circumstances situation. We are dealing with rights,
9 obligations, many things going on here.

10 As I said, the Court has to take into
11 consideration totality of the circumstances, all
12 circumstances, what's occurring, whose rights have been
13 affected, what obligations there were, what duties there
14 were, and, in turn, fashion remedies, given the
15 circumstances, which also include handing out punishment
16 when it's deserving and also awarding damages.

17 This Court has the power, but also a duty, to make
18 things right, just, and fair. In your order, Your Honor,
19 of March 20th, which was the order regarding accounting,
20 breach of fiduciary duty claims, and award of attorney's
21 fees, which you -- wound up signing on April 17th. You made
22 an interlineation in that order. You said, quote:

23 Based on the information available to the Court on
24 March 20th, 2015.

25 So your full ruling, with that added on, was:

1 Jacqueline and Kathryn's claim for breach of
2 fiduciary duty against Eleanor, as Trustee of the
3 Trust, is denied, as it related to the accounting,
4 based on information available to the Court on March
5 20th, 2015.

6 Your Honor, at that time, you, my clients, Ms.
7 Ahern's representatives at the time, made very definitive
8 statements. They painted a picture for Your Honor that
9 there was essentially \$2,000,000 sitting in a trust account
10 safe and secure, perfectly there. And Ms. Ahern all along
11 -- oh, she had done all of her fiduciary obligations.
12 There was no problems. There was no anything.

13 Well, you made a subsequent determination to
14 remove her as Trustee. You then appointed Mr. Waid. Mr.
15 Waid then looked at everything and what we knew then and
16 what this Court knew then is materially and substantially
17 different from what we know now, as evidenced by Mr. Waid's
18 report.

19 Throughout this procedure, you've made it a point
20 of stating that Ms. Ahern has retained the finest counsel,
21 where Mrs. Ahern is now on counsel number four. So I would
22 like to think that the representations of all prior
23 counsel, given their standing in the community, were done
24 completely with good faith because, if they weren't, then
25 there's issues there.

1 But, giving them the benefit of the doubt,
2 everybody in this matter has been bamboozled, including Ms.
3 Ahern's attorneys, as to what actually has gone on. The
4 evidence of this Your Honor is Mr. Waid's reporting to this
5 Court. Mr. Waid is an independent party here, appointed by
6 this Court to look at what really went on here, pulling
7 back the curtain to see what exactly went on.

8 THE COURT: Well, can we talk about what reporting
9 we've got from Mr. Waid? We never actually said, okay, Mr.
10 Waid, by X date, you've got to give us a full accounting.
11 And I'm not sure he could, even yet.

12 MR. POWELL: Correct. He's --

13 THE COURT: So I --

14 MR. POWELL: -- still --

15 THE COURT: -- guess that --

16 MR. POWELL: -- can't --

17 THE COURT: The question is: Do we first need
18 to say: --

19 MR. POWELL: I don't --

20 THE COURT: -- We need something from Mr. Waid
21 that gives us his actual report on the conditions? Because
22 he's given this Court some interim reports. I don't know
23 what he's going to report when he goes -- if he testifies
24 in the hearing with Judge Gonzalez, --

25 MR. POWELL: And --

1 THE COURT: I don't know.

2 MR. POWELL: And -- correct, --

3 THE COURT: So don't --

4 MR. POWELL: -- Your Honor, --

5 THE COURT: -- don't we need some sort of a
6 report, ask --

7 MR. POWELL: I don't --

8 THE COURT: -- that --

9 MR. POWELL: -- believe so, Your --

10 THE COURT: -- to the --

11 MR. POWELL: -- Honor.

12 THE COURT: -- best of his ability?

13 MR. POWELL: I think he has given you the best of
14 his ability as of now, given there are still questions that
15 Ms. Ahern has refused to answer from Mr. Waid. There's
16 still records. And I don't meant to have -- Mr. Moody can
17 jump up at any time here on behalf of Mr. Waid to report.
18 What we have now, I think, is more than enough to know
19 what's gone on here.

20 Ms. Ahern has defied your orders. She has lied in
21 this matter under penalty of perjury. She filed her
22 accounting, Your Honor, making very specific declarations:
23 This is what's happened. I'm holding this money. This
24 money is all there. I have done nothing wrong as Trustee.
25 I've done all my actions as Trustee. This and that.

1 Your Honor, the simplest way I can boil down this
2 argument to you, as evidenced by Mr. Waid's report, there
3 should have been over \$2,000,000, approximately, that was
4 sitting in an account. And, just so we're clear in the
5 context of this, what would this account have contained?
6 Well, Your Honor, going back to 2013, this would have had
7 the 65 percent that was in dispute for Jacqueline and
8 Kathryn. That's the money we're talking about here.

9 There was no requirement that Ms. Ahern -- she
10 wasn't leaving her 35 percent in this trust account. The
11 trust account was comprised of Jacqueline and Kathryn's 65
12 percent, Your Honor. It should have had well over
13 \$2,000,000 when Mr. Waid took the position of Trustee.

14 Your Honor, when he first looked at the account,
15 it had less than \$10,000. What more do we need to get into
16 as to that? The money was not there. Mr. Waid, basically
17 akin to what anyone would have to do, made a demand to get
18 the money back. He's got some of the money back well after
19 the fact, but the fact is the actions have already
20 occurred, Your Honor. You don't unwind and unring the bell
21 of what you already did.

22 Mr. Waid has reported to the Court what the issues
23 are. There wasn't tax filings. We were led to believe,
24 oh, there -- we're doing reportings to the IRS, we're doing
25 what a Trustee has to do, because the money is being held.

1 There was no tax filing done for 2013, Your Honor.
2 There's no tax filing done for 2014, Your Honor. Mr. Waid,
3 two days before the deadline, was told by Ms. Ahern's
4 accountant: Oh, by the way, we need the trust to pay,
5 basically \$700,000. That \$700,000 was not to be paid to --
6 for tax purposes. That was Jacqueline and Kathryn's money,
7 Your Honor.

8 This -- we have more than enough here -- and I can
9 go through it in substantial detail. We have more than
10 enough for you to render your ruling here.

11 THE COURT: Okay. And that's --

12 MR. POWELL: There's a clear --

13 THE COURT: Specifically, the relief that you're
14 requesting -- there's --

15 MR. POWELL: Multiple aspects.

16 THE COURT: Three things: Damages, --

17 MR. POWELL: Correct.

18 THE COURT: -- which would consist of what?

19 MR. POWELL: Well, Your Honor, there was
20 conversion of the assets. It didn't belong to Ms. Ahern.

21 THE COURT: Right. So are you looking for
22 independent -- like, tort damages, --

23 MR. POWELL: I'm looking --

24 THE COURT: -- like --

25 MR. POWELL: -- for -- I'm looking for treble

1 damages, and/or punitive damages, both of which, under NRS,
2 get us to tripling the damages.

3 THE COURT: Okay. And then you're also looking
4 for enforcing the no-contest clause to disinherit --

5 MR. POWELL: Correct.

6 THE COURT: -- Ms. Ahern, and then to surcharge
7 her income for -- to just replace the amount that she --
8 that should have been there?

9 MR. POWELL: If Ms. Ahern is not disinherited, our
10 request is that her share be held and surcharged to the
11 full extent until Jacqueline --

12 THE COURT: To pay --

13 MR. POWELL: -- and Kathryn --

14 THE COURT: -- this back.

15 MR. POWELL: -- are back to square, --

16 THE COURT: Okay.

17 MR. POWELL: -- including all the damages that
18 have been triggered here, Your Honor.

19 THE COURT: I'm going to let Mr. Lenhard address
20 his point because then I'm going to want to ask you: At
21 what point -- I think that's his -- I think this is his
22 position, which is: We're entitled to notice that the --
23 that you're seeking this and this is their first notice.
24 So I'll let Mr. Lenhard or Ms. Peterson --

25 MR. POWELL: Could I just clarify that real quick

1 though?

2 THE COURT: Yeah.

3 MR. POWELL: I'm not sure what notice is, given
4 the fact that we had filed the original petition on June
5 3rd. So there was substantial notice and has been
6 substantial notice of what's gone on here.

7 THE COURT: But June 3rd what?

8 MR. POWELL: June 3rd of 2015.

9 THE COURT: Okay. Okay. Fine. Just wanted to
10 make it very clear that this wasn't something that was
11 raised in the previous case because, see, that was my
12 problem, was that we settled the first part of the case,
13 the part of who gets 65, who gets 35. We settled that.
14 Who settled the -- who gets the 65 percent. We settled
15 that litigation. That was resolved.

16 So I just want to make really clear that this
17 isn't something that's already been released that was
18 settled through that other part of the litigation, where we
19 made the determination, okay, I think that this all goes to
20 the daughters and so we're going to resolve this, because
21 they had a settlement agreement in place. It fell through.

22 We had found that she wasn't bound by that
23 settlement agreement. So then we had the motion and the
24 Court found for the daughters. So that part of the case,
25 to me, we'd resolved that.

1 So your position is this is a new petition on
2 these issues. Got it. Just wanted to make really clear
3 that we're talking about -- this is something --

4 MR. POWELL: Well, I --

5 THE COURT: -- that's after the fact because of
6 the position we were in. I think we talked about this
7 before, that the whole point, when we said that -- when the
8 request was that the daughters should get some
9 distributions in the interim, they could if they could bond
10 for it. But that left it then in -- when they couldn't
11 bond for it under Ms. Ahern's control.

12 It's like, well, okay, then you've got to hold it
13 for them. If you're not going to be distributing it to
14 them and you're -- only on the requirement that they could
15 bond for it and -- because you don't want to claw it back,
16 then you've got to hang onto it, you've got to hold the
17 form.

18 So that's what we're talking about here, is that
19 issue of what was being done while she was acting as the
20 Trustee for those funds because, you know, the whole reason
21 of appointing Mr. Waid as an independent third-party
22 trustee to marshal the assets is that this trust has always
23 been managed perfectly fine by the beneficiaries. They've
24 done a -- you know, generations and all the other family
25 members, they all did perfectly fine.

1 You know, it was never anybody's intention that
2 Mr. Waid was going to have to run this thing forever. I
3 mean, he was going to come in, marshal the assets and get
4 it all in good shape, so he could turn it back over.
5 That's what he -- I'm sure what he really wants to do, is
6 get this all back in their hands.

7 So here's what we have to make this -- I guess
8 the point is: Who's he turning it over to? Because the
9 relief you're seeking is that Ms. Ahern would not get any
10 more money. If she does get money, it's got to be
11 surcharged and pay back the daughters.

12 MR. POWELL: Correct, Your --

13 THE COURT: Okay.

14 MR. POWELL: -- Honor.

15 THE COURT: Got it.

16 MR. POWELL: And, just procedurally though, what I
17 think -- just so you're clear as well, this Court's had
18 jurisdiction over this trust since 2009. 9.

19 THE COURT: Correct. Yes.

20 MR. POWELL: Jurisdiction didn't start in 2013.

21 THE COURT: Yes.

22 MR. POWELL: The other thing I feel the need to
23 point out, as well: Ms. Ahern filed an accounting. That -
24 - if you want to go to the point of what's triggered this,
25 it's the accounting.

1 THE COURT: Okay. Got it.

2 MR. POWELL: So there shouldn't be any surprise.
3 Marquis and Aurbach and Coffing, as Ms. Ahern's
4 representatives, filed the accounting. This stage of the
5 case, I guess, if you will, is an extension of that issue -
6 -

7 THE COURT: Got it.

8 MR. POWELL: -- again, triggered by Ms. Ahern's
9 actions.

10 THE COURT: Okay. Thanks. Mr. Lenhard?

11 MR. LENHARD: I prefer to use the podium, if I
12 can.

13 THE COURT: Certainly.

14 MR. LENHARD: I'm sure Mr. Waid would like to, at
15 some time, turn this trust over, if nothing more than he
16 won't have to talk to me anymore. He's probably getting
17 tired of me. In any event, let me remind the Court of
18 something that I don't think I really need to do.

19 Yes, you're a Court of equity, but you're also a
20 constitutional Court and you're bound by the provisions of
21 the Nevada Constitution, as well as the United States
22 Constitution. And that means a concept well known to
23 everybody in this courtroom is in play. It's due process.

24 THE COURT: I wrote that down before --

25 MR. LENHARD: I know.

1 THE COURT: -- you even said the words.

2 MR. LENHARD: I don't think I had to say the
3 words.

4 THE COURT: Right.

5 MR. LENHARD: And I'm not trying to insult you by
6 even --

7 THE COURT: Right.

8 MR. LENHARD: -- reminding you of these
9 requirements. But, whether Eleanor Ahern is a knave, a bad
10 person, or whatever, she is entitled to the same due
11 process rights as any other litigant. And that's the
12 problem we have with these proceedings today.

13 I come to Court today to defend what I understood
14 would be a Motion for the Assessment of Damages,
15 Enforcement of a No-contest Clause, and Surcharge of Trust
16 Income. I state that because I've been practicing a few
17 years, as you know, and normally in motion practice a
18 motion's filed, then an opposition is filed.

19 In this case, we filed our Opposition on, I
20 believe, June 29th. Then a Reply is filed a few days later.
21 Excuse me. In this case, a Reply wasn't filed. Instead we
22 received a document entitled, A Supplement. It was filed
23 on August 3rd, but we received it late Friday, July 31st by a
24 courtesy copy from counsel, which, of course, we
25 appreciate.

1 The original motion sought to strip Eleanor Ahern
2 of all rights under the trust and assert literally millions
3 of dollars -- assess literally millions of dollars of
4 punitive damages. The Supplement sought to expand the
5 relief sought in today's proceedings to include a return
6 for rent for office space apparently located in Spanish
7 Trail, a transfer of three real properties to the Trust
8 with nothing further, and an additional allocation of
9 treble damages in the sum of \$225,000 for an apparently
10 misappropriated payment.

11 As the Court's well aware, it is impossible for us
12 to file a reply before today's proceedings to a supplement
13 of that nature filed on Friday afternoon -- or evening, or
14 -- it was served on Friday evening. We attempted to do an
15 Order Shortening Time on a Motion to Strike. Of course,
16 the Court wouldn't execute it. We are now looking at a
17 motion to strike this document. It won't be heard until
18 August 19th. So, frankly, our Motion to Strike has little
19 relevance today. That's why I'm raising these issues.

20 Now, I don't agree with much in that Supplement,
21 but I am duty-bound to say a couple things about this
22 Supplement because I know this Court and this Court has
23 probably read the Supplement and you certainly heard
24 argument about the Supplement today.

25 First of all, let me remind the Court why my firm

1 and Ms. Peterson and myself were brought into this case.
2 We were retained, number one, as former criminal lawyers,
3 to keep Ms. Ahern out of jail, a worthy task. We were also
4 brought in to try to negotiate a resolution of this mess.
5 And we have been working hard with Mr. Waid in an effort to
6 accomplish that feat. We have been spectacularly
7 unsuccessful. We, also, were brought in to protect her
8 interest in the Trust and try to resolve how much she owed
9 Mr. Waid and we've been working hard to do that.

10 The reason I bring this up is I've gotten to know
11 and work with Ms. Ahern the last couple months and, even
12 though I don't agree with 99 percent of what's in that
13 Supplement, I do agree with a few comments and I'm going to
14 state those and I'm going to nudge up to my privileges
15 issues and not go any further.

16 There is no doubt in my mind there are third
17 parties that are influencing Ms. Ahern, third parties not
18 under my control. And this has been a continuing problem
19 for my representation and it's of great concern to me as an
20 attorney and as a person. I don't know if these people are
21 leeches, as described by Mr. Powell in the pleading, or
22 other members of the animal kingdom. I couldn't begin to
23 tell you.

24 But I'm telling you they are out there and I'm
25 concerned. And I will go no further because I cannot

1 violate my privilege. But, under these circumstances,
2 knowing what is in that Supplement -- and, by the way, what
3 I've just told you, I've had these conversations with Fred
4 Waid. He's raised these issues with me. He's concerned.
5 And it's raised my antennae.

6 But, knowing what we know about that circumstance,
7 and knowing what we know about the history of this case,
8 I'm asking you as an equitable person and, as well, as a
9 Constitutional Judge, is it fair to divest Eleanor Ahern,
10 under these circumstances, of all interest in the Trust and
11 assess about \$9,000,000 in punitive damages today, with
12 nothing more than a brief oral argument between counsel? I
13 would suggest that is preposterous.

14 THE COURT: Just for the record, Mr. Lenhard, I
15 would say I acknowledge Mr. Waid has raised these concerns.
16 Mr. Powell, for the record, has raised the concerns you
17 mentioned, pretty much from the beginning. Her daughters
18 have been very concerned about this. The Court is very
19 concerned about this.

20 MR. LENHARD: And I've gone as far as I can go in
21 what I can say.

22 THE COURT: And we all recognize that is an issue.
23 I don't know what the Court can do to assist, but I'm not
24 convinced the relief sought by Mr. Powell is going to be --
25 will assist us in that --

1 MR. LENHARD: Yeah.

2 THE COURT: -- regard.

3 MR. LENHARD: And I understand that.

4 THE COURT: But -- so, if that were the issue,
5 then that would be enough, but the concerns that I had here
6 were -- again, just to make clear, where the problem comes
7 up -- the problem comes up and that's why I was, like, well
8 do we need to have this contempt thing before an outcome
9 one way or the other because, really, it's all about these
10 accountings and the representations made and whether or not
11 there was --

12 MR. LENHARD: Judge, I can explain because I
13 wanted to frame the issue for you --

14 THE COURT: Okay.

15 MR. LENHARD: -- and put it in context. And I'm
16 going to go into now, jurisdictionally, why I think the
17 contempt hearing is something separate and apart from what
18 we're doing --

19 THE COURT: Okay.

20 MR. LENHARD: -- here today. Okay? And it starts
21 with the petition that's on file. This motion, filed June
22 3rd, is not a petition. The petition procedure is set out
23 in NRS 153.031 and it defines the statutory procedure for a
24 petition and what is to be in a petition filed in the
25 Probate Court.

1 This petition is a petition for declaratory
2 judgment regarding limited interest of Trust assets. It
3 has never been amended. There has never been an allegation
4 in that petition concerning conversion, never an allegation
5 in the petition concerning punitive damages, and never an
6 allegation in that petition concerning a loss of interest
7 in the Trust, itself.

8 So the charging document before this Court, the
9 Complaint in the civil context, does not have the prayer
10 for relief that's being sought here today and that is
11 number one. They have to amend that petition in accord
12 with 153.031. And, if they can't, which I'm going to
13 address in a second, that means this Court doesn't have
14 jurisdiction to hear the case, at least that portion of the
15 case being the damage portion.

16 But, once the petition is filed, it's also clear
17 under NRS 155.180 that a defendant or the objector, the
18 person being charged in the petition, has a right to a
19 trial on the issues of fact, has a right to a trial before
20 the Probate Judge, not a jury, but a right to a trial
21 before the Probate Judge. And we have the burdens of proof
22 that are in -- true in every civil case, either a
23 preponderance of the evidence on general compensatory
24 damages or clear and convincing on punitive damages.

25 We don't have that in these proceedings today.

1 This is not a trial. A trial anticipates discovery, the
2 right to prepare for trial, the right to call witnesses,
3 the right to, basically, do what you're supposed to do.

4 And I would cite also to you the case of *Cord*,
5 *C-O-R-D, versus Second Judicial District Court*, found at 91
6 Nevada 260. And I -- 553 Pacific Second 1355. It's a 1975
7 decision, where the Supreme Court specifically discussed
8 NRS 155.180 and determined that the Nevada Rules of Civil
9 Procedure provide, -- basically, control these type of
10 proceedings.

11 So, jurisdictionally right now, this motion is not
12 only premature, it's improperly broad. These sisters, the
13 movants, have to go back and amend their petition and, if
14 they want to conduct discovery and prepare for trial, we'll
15 do it and we'll try these issues in the proper fashion and
16 the proper form. What they are attempting to do,
17 basically, is circumvent the statutory and constitutional
18 requirements by way of this motion. I would assume the
19 Court will not allow that.

20 A lot has been made in this motion. And I will
21 address some of the merits of the motion, even though,
22 procedurally, I think we're not properly here today. First
23 is the no-contest clause, itself. You have been led to
24 believe by this motion that, somehow, the no-contest clause
25 is in full force and effect and somehow Ms. Ahern has

1 waived her rights under the Trust.

2 As the Court's well aware, first and foremost, Ms.
3 Ahern, statutorily and under the language of the Trust,
4 itself, had a right to challenge the language of the Trust.
5 I'll call attention to the Court to the tenth clause of the
6 Trust, which is the no-contest provisions:

7 The grantor specifically desired that these Trusts
8 created herein be administered and distributed without
9 litigation or a dispute of any kind.

10 And then it goes on to read: Or attack, oppose,
11 or seek to set aside the administration and
12 distribution of said Trust or to have the same declared
13 null and void.

14 Then we have the statutory scheme, which providers
15 under 163.00195:

16 Enforcement of no-contest clauses.

17 So the Legislature's weighed in on this very
18 issue. And what's the Legislature tell us in subsection 3:

19 Notwithstanding any provision to the contrary, in
20 the Trust a beneficiary share must not be reduced or
21 eliminated if the beneficiary seeks only to obtain a
22 Court ruling with respect to the construction or legal
23 effect of the Trust.

24 Also, under sub 4 of this statute, there is
25 specific language:

1 A Trust -- notwithstanding a provision to the
2 contrary in the Trust, a beneficiary share must not be
3 reduced or eliminated under a no-contest clause in a
4 Trust because the beneficiary institutes legal action
5 seeking to invalidate a Trust, any document referenced
6 in or affected by the Trust, or any other Trust related
7 instrument, if the legal action is instituted in good
8 faith and based on probable cause.

9 What did you rule when you eventually ruled on the
10 summary judgment? You ruled it was in good faith. So that
11 provision of the no-contest clause and that provision of
12 the statute takes that argument away.

13 So what do they come in with? They now argue
14 that, somehow, she has attacked the Trust because she has
15 engaged in misdeeds, because she has not acted properly as
16 a Trustee. That is not what this Trust says. They're
17 asking you to add language to the Trust document, itself,
18 and hold that the no-contest clause, which does not contain
19 that language, now does contain language that, if you act
20 poorly as a Trustee, you've waived your right to be a
21 beneficiary of the Trust.

22 They're also asking you to add language to Chapter
23 163, which would say, if you act poorly as a trustee, a no-
24 contest clause would be invoked. The Legislature didn't do
25 that. So they're asking you to legislate by adding

1 language to the Chapter 163, as well as now be a Trustor
2 and add language to the Trust. That's not the role of the
3 Court. So the no-contest clause, as far as we're
4 concerned, should not be before this Court today. So --

5 THE COURT: Can I --

6 MR. LENHARD: -- now --

7 THE COURT: -- just comment on a no-contest clause
8 very briefly?

9 MR. LENHARD: Uh-huh.

10 THE COURT: I'm not going to say you're absolutely
11 entitled to a trial on a no-contest clause because the only
12 decision on the will and trust no-contest clause language
13 is a case where I got upheld, but I think it's just a slip
14 decision. But I'll give the name of it: *Rogler*. R-O-G-L-
15 E-R. Ms. --

16 MR. LENHARD: R --

17 THE COURT: -- *Rogler* --

18 MR. LENHARD: -- O -- *Rogler*?

19 THE COURT: *Rogler*. Ms. *Rogler*, a attorney in
20 another jurisdiction, I forget where, was suing her family
21 trust. R-O-G-L-E-R.

22 MR. LENHARD: Okay.

23 THE COURT: It was crazy. One of the sisters took
24 this dad to -- it was all very nuts. But Ms. *Rogler* was a
25 serial litigant in numerous states, always representing

1 herself. She may remind you of other people who have
2 pursued lots of pro se litigation in this jurisdiction.
3 Janice Hayes is coming to mind.

4 I exercise -- I said that they could exercise a
5 no-contest clause on a summary judgment motion and the
6 Supreme Court said, yes, you can. You can grant summary
7 judgment on a no-contest clause. But it's -- there was no
8 evidence there and that was the whole point. She was never
9 able to prove anything. So I'll just tell you: *Rogler*
10 *versus Millard*. M-I-L-L-A-R-D.

11 So I'm not saying you are absolutely entitled to a
12 trial on a no-contest clause. Technically, I -- you know,
13 I have been upheld and granted summary judgment on this,
14 but it was under very unique circumstances and I'm not
15 convinced that we're there yet. That's why I said all
16 along, I understand you may not feel that we need to have a
17 hearing on the contempt issue and that would be at all
18 relevant here, but I don't know. I'm just -- to me -- this
19 just seems to me really premature.

20 MR. LENHARD: I didn't bring the motion.

21 THE COURT: I know.

22 MR. LENHARD: I'm just defending it.

23 THE COURT: I --

24 MR. LENHARD: I happen --

25 THE COURT: I know --

1 MR. LENHARD: -- to agree.

2 THE COURT: -- that Mr. Powell, having lived this
3 tortured history, -- as he pointed out, not just from 2003
4 [sic], but actually from 2009, this has gone on. There's a
5 lot of history here, but I'm not convinced that it's
6 appropriate at this point in time for summary judgment.

7 MR. LENHARD: Well, let me -- I'm still focused
8 right now on the no-contest clause, not the damages aspect,
9 --

10 THE COURT: Right.

11 MR. LENHARD: -- to this, which I'm going to get
12 to in a moment. But the no-contest clause, again, -- and
13 I'm not saying it's a jury issue, by the way, or a factual
14 issue. The language that they're seeking to enforce --
15 because, like I said, there's been a good faith rule, so I
16 think we have the statutory protection there. But the
17 language they're seeking to enforce is this attack
18 business. She behaved poorly and, therefore, we can attack
19 the no-contest provision because it's an attack on the
20 Trust.

21 That is not what the Trust says and that's not
22 what the Legislature says in Chapter 163. They don't cite
23 one case that holds that way. And there's a reason why
24 they don't cite one case that holds that way, because no
25 such case exists.

1 And what they're asking you to do -- and I'm
2 suggesting, again, I think that would be in excess of your
3 jurisdiction. They're asking you to rewrite the statute
4 and rewrite the Trust to satisfy what they want on their
5 no-contest argument.

6 THE COURT: Okay.

7 MR. LENHARD: Now, the damages portion of this is
8 somewhat troubling to me because now we're talking about
9 assessing significant damages without the benefit of any
10 trial, starting first with the conversion claims and the --
11 excuse me, the treble damages claims. First of all, as
12 they acknowledged in their pleading, treble damages -- the
13 treble damage claims are a Trust asset. In other words,
14 the party to bring a treble damage claim is Fred Waid, not
15 the sisters. They're not the proper party here.

16 Secondly, this is a declaratory relief action.
17 Remember that petition I talked about a few minutes ago
18 that's never been amended? This is not a declaratory
19 relief action seeking damages. This is not a declaratory
20 relief action seeking punitive damages. So how are we to
21 assess damages on a motion, when the original petition
22 doesn't even ask for damages?

23 Finally, we're talking about conversion. Do we
24 have a legal conversion here? I'm just raising the
25 questions. I think we're premature on all these issues

1 without discovery in an actual trial.

2 But can you convert money? Money's a fungible
3 good. The only way you can convert money in most
4 jurisdictions is if it was a specific, defined pile of
5 money with an X on it or whatever. Otherwise, it's a
6 fungible good and it's not subject --

7 THE COURT: But isn't --

8 MR. LENHARD: -- to conversion.

9 THE COURT: -- that Mr. Powell's point, is that we
10 knew what the money was here, it was the proceeds of the --

11 MR. LENHARD: It's a --

12 THE COURT: -- 65 percent? That's a specific --

13 MR. LENHARD: That has --

14 THE COURT: -- amount.

15 MR. LENHARD: -- been litigated so many times.

16 And, when we get ready for it, we'll brief the heck of
17 that.

18 THE COURT: Okay.

19 MR. LENHARD: -- because I've done a lot of
20 banking work. I've been down this road before.

21 THE COURT: Okay.

22 MR. LENHARD: I'm ready for that.

23 THE COURT: Okay.

24 MR. LENHARD: But we're not -- I would hope we're
25 not deciding that today.

1 THE COURT: Okay.

2 MR. LENHARD: It's not -- money is not a specific
3 chattel, is the point. But what we're talking about really
4 is income from the oil wells, income to the Trust that was
5 not accounted for properly. That's a contract claim.
6 That's a breach of contract claim. She has to repay it
7 once Mr. Waid decides what the amount is. That's what
8 we're talking about here.

9 THE COURT: Well, it's also her breach of duties
10 as a Trustee because these investments were not prudent --

11 MR. LENHARD: It may be, --

12 THE COURT: -- at a --

13 MR. LENHARD: -- but those --

14 THE COURT: -- minimum.

15 MR. LENHARD: -- are factual issues that'll have
16 to be decided. Won't they? Can you decide that on a
17 motion today? I'm glad he sees the humor in this. I
18 don't.

19 THE COURT: Well, --

20 MR. POWELL: Could I talk at any point of this?

21 THE COURT: Frankly, --

22 MR. POWELL: Because I --

23 MR. LENHARD: Well, wait --

24 MR. POWELL: -- thought --

25 MR. LENHARD: -- a minute.

1 MR. POWELL: -- this was --
2 MR. LENHARD: Hold on here.
3 MR. POWELL: -- my petition.
4 MR. LENHARD: It's my turn.
5 MR. POWELL: I thought it was --
6 MR. LENHARD: It's my --
7 MR. POWELL: -- my petition.
8 MR. LENHARD: -- turn to talk.
9 MR. POWELL: Not your turn.
10 THE COURT: Okay. Yes, --
11 MR. POWELL: It's my --
12 THE COURT: -- it is.
13 MR. POWELL: -- petition. You asked him for
14 procedural -- and he's gone now 15 minutes into --
15 THE COURT: Yeah.
16 MR. POWELL: -- the substance and the meat of the
17 petition.
18 THE COURT: Right. Yeah.
19 MR. LENHARD: Is this --
20 MR. POWELL: It's --
21 MR. LENHARD: -- the law --
22 MR. POWELL: -- my petition.
23 MR. LENHARD: -- of the jungle here or do --
24 THE COURT: Okay.
25 MR. LENHARD: -- counsel --

1 THE COURT: Thank you.

2 MR. LENHARD: -- speak in their turns?

3 THE COURT: Okay. Thank you, Mr. Powell. I
4 understand that you would like an opportunity to be heard,
5 so -- and we're going to do that right now. So, if you
6 could -- if we could -- that is -- it is my view. I just
7 think, of all of these issues, -- I appreciate your
8 argument on them, Mr. Lenhard, but my -- I -- to me, I'm
9 just trying to figure out, procedurally, where we are.

10 And I don't disagree with you. I do believe that
11 all of these issues -- as I said, I know it's frustrating
12 for the parties who've lived this, who have been fighting
13 this battle for years and years and years and years, long
14 before either of us were involved, find this very
15 frustrating to not be able to get to this point. I just
16 think it's premature.

17 MR. LENHARD: Frustration is not due process,
18 Judge. Whether they're frustrated with her or not,
19 frustrated with me or not, frustrated with Ms. Peterson or
20 not or the plethora of lawyers that have been in this
21 courtroom, there are trial requirements here --

22 THE COURT: -- Right.

23 THE COURT: -- and I'm just suggesting to the
24 Court: Put aside your frustration. Put aside that and
25 take a hard look at -- we're talking about millions of

1 dollars in damages --

2 THE COURT: Right.

3 MR. LENHARD: -- on an unverified pleading.

4 THE COURT: And that is my concern, Mr. Powell,
5 and as -- I would acknowledge the frustration because, as I
6 pointed out, Ms. Ahern's daughters have come before this
7 Court very early on and identified what the problem was and
8 I think it's been acknowledged that forces not present in
9 Court may have influenced the Trustee's action, the former
10 Trustee's actions.

11 And, because of that, we're all now in this
12 situation where Mr. Waid has an obligation to everybody to
13 try to marshal their assets and get them in order so that
14 it can be turned over. And he's being frustrated in that.
15 And, yes, some of this is, ultimately, possibly, going to
16 come down to Ms. Ahern's responsibility because she allowed
17 herself to be influenced by people who may not have had her
18 best interest at heart and certainly did not have the best
19 interests of the other beneficiaries at heart. I mean,
20 that's -- I understand Mr. Lenhard's position we shouldn't
21 be prejudging these things, but it seems pretty clear.

22 So that's my concern, though, is that, if you're
23 going to say, because of what appears -- I mean, very
24 clearly, if it were just -- there was a false report made
25 when an accounting was made of the Marquis Aurbach

1 accounting. It was just -- clearly there was no factual
2 support for that accounting.

3 It was fraudulent, for lack of a better term.
4 There's just, like, -- it just -- there was no evidence
5 that anything in that accounting was true.

6 MR. POWELL: I --

7 THE COURT: I don't --

8 MR. POWELL: -- would --

9 THE COURT: -- think --

10 MR. POWELL: -- go beyond --

11 THE COURT: I don't --

12 MR. POWELL: -- that, Your --

13 THE COURT: -- think --

14 MR. POWELL: -- Honor, --

15 THE COURT: I don't think Mr. Waid's been able to
16 confirm anything. So --

17 MR. POWELL: Your Honor, it's -- and what he --
18 but here's what he has been able to confirm, Your Honor,
19 and this -- above else, this is the crux of it: Two plus
20 two equals four, which is, the day Mr. Waid took over that
21 Wells Fargo account, which -- at the time, you'd already
22 made the ruling Jacqueline and Kathryn were entitled to
23 their 65 percent.

24 So Mr. Waid takes over. Their expectation,
25 completely reasonable, is that we're going to be getting 2

1 point blank million dollars. There was 9000 and --

2 THE COURT: I understand.

3 MR. POWELL: -- change in that. That is the
4 issue. The fraudulent accounting, all of that, that's part
5 of the analysis. The bottom line is there was not the
6 money where there was supposed to be.

7 THE COURT: Right.

8 MR. POWELL: They can argue until the cows come
9 home about due process. Where is the due process for
10 Jacqueline and Kathryn when they've lived this nightmare
11 for two plus years? They've had the financial torment.
12 They've had the emotional torment. Where's their due
13 process in this?

14 THE COURT: I understand.

15 MR. POWELL: What -- due process, oh, well, you
16 can't do this. You can't do that. Why did Ms. Ahern have
17 \$9,000 in an account that should have had over \$2,000,000
18 on the day that Mr. Waid took over? Where's that due
19 process?

20 Oh, you can't come after us without notifying us.
21 Where was the notification to Jacqueline and Kathryn that
22 there wasn't 2 point X million dollars for them the day Mr.
23 Waid took over? Imagine getting the phone call from Mr.
24 Waid, saying: Sorry to tell you. There's not the 2 point
25 X that you anticipated were there. There's 9,000 and

1 change in this account. Where is the equity, I guess, in
2 that? Where's the fairness? Where's the --

3 THE COURT: I --

4 MR. POWELL: -- reasonableness in --

5 THE COURT: I understand.

6 MR. POWELL: -- that?

7 THE COURT: I understand and I agree, Mr. Powell.
8 It's a -- I'm not saying it's not a serious concern, it's
9 not a big problem. And Mr. Waid has been working
10 assiduously and I think Mr. Lenhard's point is they've been
11 trying to cooperate.

12 There may have been, as I said, influences that
13 led to some of these funds being misdirected in a way that,
14 I think, that we all would view -- and I think I've said
15 previously, I don't think that was a prudent investment,
16 whoever these fidelity people were. So we've got all these
17 issues and --

18 MR. POWELL: What --

19 THE COURT: -- I understand --

20 MR. POWELL: I --

21 THE COURT: -- we've got all these issues, but
22 I'm not -- the point is: Is Ms. Ahern allowed to put on
23 any kind of a defense? I don't know what her defense would
24 be. I don't --

25 MR. POWELL: That's my --

1 THE COURT: -- know.

2 MR. POWELL: -- point, Your Honor. I don't know

3 what -- I can't present to you --

4 THE COURT: But --

5 MR. POWELL: -- firsthand knowledge of anything.

6 My knowledge is based on Mr. Waid's verified report to this

7 Court.

8 THE COURT: Right.

9 MR. POWELL: I can't verify any of this. As Mr.

10 Moody said, Mr. Waid is more than happy right now to take

11 the stand and to give you testimony under oath as to what

12 he has discovered.

13 THE COURT: Right. And I --

14 MR. POWELL: I don't --

15 THE COURT: -- think that's what --

16 MR. POWELL: -- have that --

17 THE COURT: -- we have to --

18 MR. POWELL: -- information, --

19 THE COURT: I think that's --

20 MR. POWELL: -- other than --

21 THE COURT: -- what we --

22 MR. POWELL: -- what --

23 THE COURT: -- have --

24 MR. POWELL: -- he's reported and --

25 THE COURT: I think --

1 MR. POWELL: -- what --

2 THE COURT: -- that's what --

3 MR. POWELL: -- communication --

4 THE COURT: -- we have to -- I think that's what

5 we have to have. We have to have an opportunity to be

6 heard because, as I said, we never gave Mr. Waid -- said,

7 okay, Mr. Waid: Okay, Mr. Waid. Here's the deadline. And

8 I -- he's not done.

9 MR. POWELL: He can't --

10 THE COURT: He --

11 MR. POWELL: -- be done.

12 THE COURT: He's not done. He can't be done.

13 MR. POWELL: Can't be done.

14 THE COURT: Because we don't know where the money

15 is. So, at some point in time, we need to know what it is

16 because, if there are damages, what are the damages? Right

17 now I don't know if we really know what the damages would

18 be. I don't know --

19 MR. POWELL: Well, --

20 THE COURT: -- what the --

21 MR. POWELL: -- and I've --

22 THE COURT: -- damages are --

23 MR. POWELL: -- pled, Your --

24 THE COURT: -- based on --

25 MR. POWELL: -- Honor, --

1 THE COURT: -- this.

2 MR. POWELL: -- is that, whatever Mr. Waid would

3 conclude, we would happily go along with that --

4 THE COURT: Right.

5 MR. POWELL: -- because Mr Waid obviously has a

6 duty as Trustee to make sure that he calculates all that

7 and --

8 THE COURT: And --

9 MR. POWELL: -- reports back to this --

10 THE COURT: -- he'll do --

11 MR. POWELL: -- Court what --

12 THE COURT: -- a fine job.

13 MR. POWELL: -- they are.

14 THE COURT: Absolutely.

15 MR. POWELL: We've merely asked that, whatever

16 they are, --

17 THE COURT: Okay.

18 MR. POWELL: -- they need to be trebled.

19 THE COURT: Okay. When I --

20 MR. POWELL: There needs --

21 THE COURT: -- started --

22 MR. POWELL: -- to be --

23 THE COURT: -- this --

24 MR. POWELL: -- punishment. You don't go into a

25 bank, steal the money, and then go: Eh, bad decision. I'm

1 going to return it without consequence. This is about
2 consequence.

3 THE COURT: And there --

4 MR. POWELL: You are --

5 THE COURT: -- certainly --

6 MR. POWELL: -- responsible --

7 THE COURT: -- are --

8 MR. POWELL: -- for actions, especially --

9 THE COURT: Sure.

10 MR. POWELL: -- in a fiduciary capacity. Not only
11 that, Your Honor, as Mr. Waid reported, this was after your
12 removal of her as Trustee. After your removal, she goes in
13 and does this. In a three-day spree, according to Mr. Waid
14 -- not according to Jacqueline and Kathryn, according to
15 Mr. Waid's reporting to this Court, verified there was over
16 9,000,000 missing. Within a two week span, there was over
17 \$1,000,000 missing. Whose money was that? Jacqueline and
18 Kathryn's money.

19 Again, due process. Where's the due process of
20 that? There was none. And I just want to go, for the
21 record, back to this clarification of this shell game that
22 we're going through of, oh, you can't just bring that
23 petition. Your original petition was a dec relief
24 petition.

25 Your Honor, in that dec relief petition, we asked

1 for damages in a very broad category of -- we want all
2 damages that this has triggered. How can I plead specific
3 damages when I don't know, after you've removed Ms. Ahern,
4 that there's money missing and that, all along, while Ms.
5 Ahern is Trustee, there's money missing? How can I not
6 know? Well, Ms. Ahern says, under penalty of perjury to
7 this Court: Here's my accounting. Everything is fine and
8 dandy.

9 THE COURT: And that's why Judge Gonzalez is
10 having a hearing in two weeks.

11 MR. POWELL: That's over, I believe, just the
12 \$500,000 issue, Your Honor. That's just one little small
13 component --

14 THE COURT: Right.

15 MR. POWELL: -- of this.

16 THE COURT: So -- and that's why I'm -- like I
17 said, I think -- this is a really big problem. I don't --

18 MR. POWELL: It's a --

19 THE COURT: -- want to --

20 MR. POWELL: -- huge problem.

21 THE COURT: I don't want to minimize this and I
22 want everybody to understand I take this very seriously.
23 This is a really big problem. And -- so that's why I said
24 we have to acknowledge that her daughters came in three
25 years ago and said: We've got a problem here. Somebody is

1 influencing our mother to act in a way that is totally
2 inconsistent with 30 years of family history.

3 MR. POWELL: Correct.

4 THE COURT: They told us.

5 MR. POWELL: Yeah.

6 THE COURT: And it's all been borne out. Mr. Waid
7 came in and said: We've got a problem here. I can't find
8 this money and my obligation is to everybody.

9 Ms. Ahern is his client -- is his beneficiary, as
10 well. He's got to exercise his duties to everybody and he
11 wants to do that. And all he wants to do is get this in
12 good shape so he can turn it back over because, as I've
13 said before, this family has managed their affairs very
14 efficiently for generations.

15 And I don't think Mr. Waid ever anticipated when
16 he took this on what this was going to entail. I certainly
17 didn't. I wouldn't have saddled somebody with this if we'd
18 had any concept of how bad this situation is.

19 MR. POWELL: But, Your Honor, if --

20 THE COURT: It's a --

21 MR. POWELL: -- you didn't --

22 THE COURT: -- really big deal.

23 MR. POWELL: If you didn't, we would have never
24 known. We would have never --

25 THE COURT: Correct.

1 MR. POWELL: -- known what actually was --

2 THE COURT: True.

3 MR. POWELL: -- going on --

4 THE COURT: That's a --

5 MR. POWELL: -- behind the --

6 THE COURT: -- good point.

7 MR. POWELL: -- curtain, Your Honor.

8 THE COURT: That's a good point, but here's my
9 thing: The consequences of that -- because we -- it's
10 happened. The consequences of that are what you're now
11 seeking and my problem with this has been, is this
12 something that we can decide on a summary judgment?

13 As I told Mr. Lenhard in the past, I have been
14 upheld when I have granted a request to exercise a no-
15 contest clause and disinherit somebody on summary judgment
16 motion. I -- you can do it. I have done it before and
17 I've been upheld. So I know that that statute -- the Court
18 will -- upheld summary judgment on that.

19 My position, and it's what I asked at the
20 beginning, is I didn't think I was there, that I had enough
21 evidence before me today to be able to say: Yes. I'm
22 going to exercise that power. Because I don't know -- as I
23 said before, I believed at the time that this was just a
24 good faith dispute over who's entitled to the 65 percent.

25 Spending the -- spending or transferring the money

1 is a different problem. And that's why I don't think I
2 have enough information on that. We know it happened, but
3 I need more information on it and I just think right now
4 that this is premature and I'm not saying that I -- it's --
5 I'm not saying that it's something that you cannot decide
6 on summary judgment, because I've done before and I've been
7 upheld.

8 I'm just saying I don't think we have enough
9 information on those aspects of -- what's the basis for me
10 to exercise that no-contest clause and cut off Ms. Ahern,
11 not just from the 65 percent, which I've already said isn't
12 hers, but from her original 35 percent. What has she done
13 that would violate her right to her 35 percent that her
14 father gave her, I don't -- like, 40 years or something?

15 I mean, it was a long time ago that she was given
16 that by her father. It -- does this operate to disinherit
17 her from that because she didn't properly act as a Trustee
18 for her daughters? That's the problem I've got with this
19 thing.

20 MR. POWELL: Well, and that's what the crux of
21 this is all going to boil down to.

22 THE COURT: Yeah.

23 MR. POWELL: And I can't present to you --

24 THE COURT: And that's --

25 MR. POWELL: -- any more evidence, Your Honor.

1 You're -- you are tasked with looking at the document as
2 it's read and then making a logical conclusion, is that if
3 a Trustee, who is also a beneficiary goes to the lengths to
4 take what is not theirs, also defying the Court order,
5 that's besides the point, but is put in a position of
6 trust, a fiduciary position, takes assets that don't belong
7 to her, -- and I -- and, again, Mr. Lenhard commented on my
8 laughing. I'll comment on his laughing.

9 THE COURT: Right.

10 MR. POWELL: I'm not sure, again, what is not
11 being understood that I can't tell you what went on with
12 the banks. What I can tell you is what Mr. Waid has
13 reported. Mr. Waid -- and --

14 THE COURT: Right.

15 MR. POWELL: -- if we're going to use the
16 opportunity, why not -- let's put Mr. Waid on the stand
17 right now and --

18 THE COURT: Because I'm --

19 MR. POWELL: -- you could --

20 THE COURT: -- catching an --

21 MR. POWELL: -- question him --

22 THE COURT: -- airplane in --

23 MR. POWELL: -- on your own.

24 THE COURT: -- an hour.

25 MR. POWELL: What's that?

1 THE COURT: We're not going to do it today. I'm
2 catching an airplane in an hour.

3 MR. POWELL: Okay.

4 THE COURT: So --

5 MR. POWELL: Understood.

6 THE COURT: -- we're not doing it today.

7 MR. POWELL: Understood.

8 THE COURT: But here's the thing: I -- that's an
9 issue for me. What exactly -- and at what point is Mr.
10 Waid going to say, I'm going to have to throw up my hands,
11 I can do no more for you, here's what I've been able to
12 reconstruct? He may be there today. He may not be there
13 today. I don't know. We didn't ask Mr. Moody that. So
14 Mr. Moody will get a chance to tell us, but that's my
15 position, --

16 MR. POWELL: Sure.

17 THE COURT: -- is that, for me, I can't get to
18 what are the damages, if any, --

19 MR. POWELL: Sure.

20 THE COURT: -- before we know Mr. Waid can say,
21 yes, I can tell you exactly. I can trace this for you. I
22 can lay it all out. Here are the records. Here's how
23 everything happened. Here's when it happened, because
24 that's significant.

25 MR. POWELL: Your Honor, that's all contained in

1 that report, which Mr. Waid is verifying for the Court. I
2 don't know -- what I am just telling you, and also --

3 THE COURT: I'm --

4 MR. POWELL: -- opposing counsel, is --

5 THE COURT: I believe --

6 MR. POWELL: -- I can't --

7 THE COURT: -- that Mr. --

8 MR. POWELL: -- offer --

9 THE COURT: -- Waid has done more since then and
10 has actually recovered more. Mr. Moody, am I correct that
11 Mr. -- I --

12 MR. MOODY: Yes. There has been more money
13 recovered since --

14 THE COURT: He's --

15 MR. MOODY: -- then.

16 THE COURT: He continues to do his work.

17 MR. POWELL: Oh, understandable.

18 MR. MOODY: But of course. If I could just
19 clarify a few --

20 THE COURT: Yeah.

21 MR. MOODY: -- things. Number one, there is a
22 hearing coming up in front of Judge Gonzalez on Tuesday,
23 August 18th.

24 THE COURT: Yeah.

25 MR. MOODY: That is not the contempt hearing.

1 That is the hearing to consider Ms. Ahern Motion to Dismiss
2 the --

3 MR. LENHARD: Todd, --

4 MR. MOODY: -- contempt hearing.

5 MR. LENHARD: -- I think it's the contempt
6 hearing, too. That's my understanding.

7 THE COURT: I -- that's --

8 MR. LENHARD: She's --

9 THE COURT: -- what I --

10 MR. LENHARD: -- going to --

11 THE COURT: -- thought it --

12 MR. LENHARD: -- hear the --

13 THE COURT: -- was --

14 MR. LENHARD: She's going to hear the Motion to
15 Dismiss before the contempt --

16 THE COURT: Yeah.

17 MR. LENHARD: -- hearing and --

18 THE COURT: That's the way I --

19 MR. LENHARD: -- decide --

20 THE COURT: -- read it.

21 MR. LENHARD: -- whether it goes forward. That's
22 my understanding.

23 THE COURT: That's the way I read it.

24 MR. MOODY: Okay. From her Clerk, that's not what
25 we understood.

1 THE COURT: Okay.

2 MR. MOODY: But --

3 MR. LENHARD: Did you talk to the JEA or the

4 Clerk?

5 MR. MOODY: We will do that because that was not -

6 -

7 THE COURT: Yeah.

8 MR. MOODY: -- my understanding, --

9 THE COURT: Because --

10 MR. MOODY: -- so --

11 THE COURT: -- I --

12 MR. MOODY: -- I'm glad to get that --

13 THE COURT: That's what I'd like to know. Yeah.

14 MR. LENHARD: And you'd better -- we'd like to

15 know that, too, I guess.

16 THE COURT: So, if --

17 MR. MOODY: Yeah.

18 THE COURT: -- the parties can clarify that for

19 the Court and then -- yeah. So I -- it -- I know Mr. Waid

20 has continued to work because, since he --

21 MR. MOODY: Well, --

22 THE COURT: -- made his initial report, I think

23 more money has been -- which triggered the whole contempt

24 thing because that's when I was like, oh my gosh, we --

25 you've got to do something about this.

1 MR. MOODY: Yeah. That hearing, if it goes
2 forward on that day, is limited to the 500,000 --

3 THE COURT: Right.

4 MR. MOODY: -- that was represented to be with
5 Fidelity Capital.

6 THE COURT: Right.

7 MR. MOODY: And the -- you know, it's limited to
8 this Court's Order to Show Cause, as to why that was not
9 transferred. Mr. Waid continues to work. We have
10 subpoenaed former counsel and asked for their records. We
11 may have a hearing coming up in front of you, Your Honor,
12 based on one of those.

13 There's a former attorney in Texas, who we've had
14 to go to Texas, open a separate case in order to get that
15 information. And, understandably, Ms. Ahern, until this
16 contempt hearing is resolved, isn't answering any
17 questions, --

18 THE COURT: Well, of course not.

19 MR. MOODY: -- exercising her Fifth Amendment
20 privilege. So we're doing what we can under the
21 circumstances.

22 THE COURT: Right.

23 MR. MOODY: There's still more to learn, but we're
24 working tirelessly. Mr. Waid, I don't know if you have
25 anything to add to that.

1 MR. WAID: Your Honor, I'm just in that unique
2 position. I'm trying to fulfill what the Court wants --

3 THE COURT: Acknowledged. Absolutely.

4 MR. WAID: -- and balance my obligations to both
5 Ms. Ahern --

6 THE COURT: Absolutely.

7 MR. WAID: -- and the other daughters.

8 THE COURT: It's a very difficult position. I
9 appreciate that.

10 MR. WAID: And I -- just for the record, too, I am
11 holding, I am distributing, the 65 percent on current
12 income and I am holding Ms. Ahern's sort of in trust, as
13 part of what I've considered -- until this Court gives me
14 further instructions.

15 THE COURT: Right.

16 MR. WAID: I don't believe there's a formal order
17 in place, but I think the Court -- the record would reflect
18 effectively there is a constructive trust over her issues -
19 -

20 THE COURT: Right.

21 MR. WAID: -- while the pendency of these things -
22 -

23 THE COURT: Because that's this whole --

24 MR. WAID: -- carry out.

25 THE COURT: -- ultimate outcome of what Mr. Powell

1 seeks, is either a surcharge or to disinherit her from
2 that. We have to make that determination. And, as I said,
3 disinheriting somebody from something that they were given
4 in their own capacity as their own -- or their own trust,
5 or whatever you'd want to call it, years, decades ago. I
6 don't -- that's a big job.

7 Surcharging's a little bit different and I think
8 that's Mr. Waid's point, is he's holding that, pending
9 being told do I surcharge? What am I supposed to be doing?
10 I -- and, as was pointed out by Mr. Moody, we're not going
11 to get any testimony from Ms. Ahern until she's no longer
12 under this threat of criminal proceedings because she
13 can't.

14 MR. WAID: Your Honor, if I could point out --

15 THE COURT: And it's just -- to me, this -- I just
16 can't see how we can go forward with this.

17 MR. WAID: But -- and I want all the parties to
18 know I will be very hesitant to file a final report --

19 THE COURT: Right.

20 MR. WAID: -- until and unless I can visit with
21 her and fill in some of the gaps --

22 THE COURT: Right.

23 MR. WAID: -- on the questions --

24 THE COURT: Right.

25 MR. WAID: -- because my conversations with many

1 of the former parties who've been involved, they either
2 can't, because of a privilege, answer my question, won't my
3 answer the question, or simply don't have the information.
4 And so she may be the only source. So I want to be very
5 clear. Regardless of these Courts rulings, I'm going to
6 need that information, or I'm going to state it exactly
7 that --

8 THE COURT: Right.

9 MR. WAID: -- inclusive for the following reasons:
10 Here's the money trail. But, even then, there is the rest
11 of the story that goes behind that.

12 THE COURT: And these are all the reason why --
13 and I appreciate, as I've said repeatedly, Mr. Powell, the
14 frustration of her daughters, of yourself as counsel, that
15 this has been a lengthy and time-consuming battle, and not
16 to mention expensive. And it's also a very unfortunate and
17 unpleasant situation because this is family. And it's
18 terrible the situation that they're in. And I feel for
19 them.

20 I'm not sure how much of it can be solved by
21 Court. It's certainly, I'm sure, -- is a very difficult
22 position for the Trustee because he's trying -- he wants to
23 help all of them get their assets marshaled so they can go
24 forward because this has been -- as I said, it's provided
25 for this family for generations and it's so unfortunate

1 that we're here today and this all has been interrupted.

2 And, you know, whether it's because of these
3 people who aren't here who led Ms. Ahern astray, I don't
4 know. We're going to have to find that out and that's why
5 I said I just don't see how I can go forward on the record
6 before me today.

7 Our next available opportunity is November 16th,
8 the week of November 16th for an evidentiary hearing. I
9 don't know if that's enough time for Mr. -- we, hopefully,
10 will get past whatever's going to happen with Judge
11 Gonzalez. Maybe that gives Mr. Waid a couple more months
12 after that to see what he can put together for us. And
13 then we can hear it.

14 As I said before, I'm not convinced you can only
15 do this on an evidentiary hearing because I have, in the
16 past, granted -- where there's -- where there is no
17 evidence, no dispute as to evidence, no-contest clause
18 enforcement. It's a pretty -- you know, there is a pretty
19 steep hill to get up on no-contest clauses.

20 MR. POWELL: Your Honor, I just --

21 MR. LENHARD: May I --

22 MR. POWELL: -- want to --

23 MR. LENHARD: -- speak? Am I allowed to speak --

24 THE COURT: In a minute here.

25 MR. LENHARD: All right.

1 THE COURT: So I'm just going to talk about it
2 now. I can't -- the next opportunity would be the week of
3 November 16th and I think --

4 MR. POWELL: That's fine, --

5 THE COURT: -- that --

6 MR. POWELL: -- Your Honor.

7 THE COURT: -- gives --

8 MR. POWELL: I just want --

9 THE COURT: -- us --

10 MR. POWELL: -- to make it clear --

11 THE COURT: -- like --

12 MR. POWELL: -- that I can't --

13 THE COURT: -- [indiscernible] months.

14 MR. POWELL: I don't have anything more, even
15 though I've --

16 THE COURT: Correct.

17 MR. POWELL: -- been charged with, oh, --

18 THE COURT: I --

19 MR. POWELL: -- I've pled improperly --

20 THE COURT: No. No.

21 MR. POWELL: -- and this and that.

22 THE COURT: No, Mr. --

23 MR. POWELL: I have nothing more --

24 THE COURT: No.

25 MR. POWELL: -- to do or can do here.

1 THE COURT: I need to know -- like I said, I don't
2 know what the damages will be --

3 MR. POWELL: Sure.

4 THE COURT: -- until such time as Mr. Waid says:
5 I can do no more.

6 MR. POWELL: Sure.

7 THE COURT: I cannot report any more to the Court.
8 I've done everything I can to try to marshal these assets
9 for all the beneficiaries.

10 MR. POWELL: Sure.

11 THE COURT: And I'm holding him in the following
12 fashion.

13 MR. POWELL: I understand, Your Honor.

14 THE COURT: We need that.

15 MR. POWELL: And that's why we pled --

16 THE COURT: We need that.

17 MR. POWELL: -- the way that we did --

18 THE COURT: Yeah.

19 MR. POWELL: -- with a general idea of what we
20 expected --

21 THE COURT: Right.

22 MR. POWELL: -- and thought should have been held
23 as part of the 65 percent --

24 THE COURT: Right.

25 MR. POWELL: -- and the rest we basically said:

1 This is our best --

2 THE COURT: Okay.

3 MR. POWELL: -- good faith answer --

4 THE COURT: All right. Fine.

5 MR. POWELL: -- in terms of that.

6 THE COURT: Thank you.

7 MR. POWELL: I just --

8 THE COURT: All right.

9 MR. POWELL: -- want to --

10 THE COURT: We're done.

11 MR. POWELL: I just want to make --

12 THE COURT: No. I'm done. I just want -- I'm

13 done.

14 MR. POWELL: Well, I just --

15 THE COURT: Any --

16 MR. POWELL: -- want to --

17 THE COURT: -- final --

18 MR. POWELL: -- ask you, procedurally, do I -- do

19 -- Mr. Lenhard is arguing -- so I don't want to have this

20 issue come November 19th. What I have pled and the way in -

21 - I have pled it, do you feel as though I need to redo

22 anything because I'm not --

23 THE COURT: No.

24 MR. POWELL: -- understanding. As a trust case, I

25 can plead whatever I want, --

1 THE COURT: Right.

2 MR. POWELL: -- just as the other side can plead
3 whatever they want.

4 THE COURT: Right.

5 MR. POWELL: You have jurisdiction, --

6 THE COURT: It's --

7 MR. POWELL: -- which is unlimited --

8 THE COURT: Exactly.

9 MR. POWELL: -- jurisdiction over the Trust in
10 every aspect.

11 THE COURT: Right.

12 MR. POWELL: Okay?

13 THE COURT: Yeah. I don't think that we need
14 anything more. I mean, --

15 MR. POWELL: Okay.

16 THE COURT: -- this is just further to the whole
17 issue of there were orders in place, which have apparently
18 been violated.

19 MR. POWELL: Sure.

20 THE COURT: What's the result of the fact that
21 those orders were --

22 MR. POWELL: Right. And, --

23 THE COURT: -- were --

24 MR. POWELL: -- again, --

25 THE COURT: -- violated.

1 MR. POWELL: -- just for purposes of the record,
2 the initial petition, the dec relief, --

3 THE COURT: Yeah.

4 MR. POWELL: -- said: We don't know the full
5 extent of the damages.

6 THE COURT: Correct.

7 MR. POWELL: We're pleading them and asking for
8 them anyway to reserve our right because we don't know --

9 THE COURT: Yeah.

10 MR. POWELL: -- what the full extent of the damage
11 --

12 THE COURT: Absolutely.

13 MR. POWELL: -- is here. Okay.

14 THE COURT: Understood. Understood.

15 MR. POWELL: Thank you, Your Honor.

16 THE COURT: Thank you. Mr. Lenhard, any questions
17 about that? I think that a hearing the week of November
18 16th is warranted.

19 THE CLERK: *Cuchi* [phonetic] is set --

20 THE COURT: Oh is it? *Cuchi* [phonetic]?

21 THE CLERK: *Cuchi* [phonetic]. [Indiscernible.]
22 *Curchi* [phonetic].

23 THE COURT: *Curchi* [phonetic]. They gave them the
24 whole week?

25 [Colloquy between the Court and the Clerk]

1 THE COURT: The -- what about the first couple
2 days of the Thanksgiving week, the Monday/Tuesday?

3 [Colloquy between the Court and the Clerk]

4 THE COURT: Oh, that's right. We gave them that
5 time.

6 THE CLERK: I mean, we could do a status check and
7 see --

8 THE COURT: Or you know what we could do? Because
9 the week before I'm not going to be here a lot of that week
10 -- I'd -- we'd have Monday, the 9th.

11 THE CLERK: Of November?

12 THE COURT: Right. Because the 11th, 12th, and 13th
13 I'm gone. What about Monday, the 9th?

14 THE CLERK: Oh that's -- yeah. Right before
15 Veteran's Day?

16 THE COURT: What about Monday, November 9th?
17 Because I'm told we've already given away the week of the
18 16th.

19 MR. POWELL: What time would we start? Like 10 --

20 THE COURT: 9:30.

21 MR. POWELL: -- a.m.? What's that?

22 THE COURT: 10. 10. 10. 10's good.

23 MR. POWELL: Okay.

24 THE COURT: 10 a.m? Yeah. Have a day, full day.

25 MR. POWELL: And how long would you --

1 THE COURT: Are you --

2 MR. POWELL: -- anticipate --

3 THE COURT: -- done, Mr. --

4 MR. WAID: No. I have a procedural question for
5 me. If this November 9th is going to be an evidentiary
6 hearing and, since I'm the one producing most of the
7 evidence and I'll be on the stand, are you going to issue
8 discovery cutoffs and deadlines? Are both -- I'd like to
9 hear from both sides.

10 THE COURT: Right.

11 MR. WAID: Are they going to -- because I'm trying
12 to run my parallel --

13 THE COURT: Right.

14 MR. WAID: -- and are they going to be
15 piggybacking on the people that I may be deposing and other
16 issues? I don't want to run two different tracks --

17 THE COURT: Correct.

18 MR. WAID: -- because I've -- I do have other
19 cases and --

20 THE COURT: Absolutely. Understood.

21 MR. WAID: I just don't know that I can get it
22 done. We're getting a lot --

23 THE COURT: All right.

24 MR. WAID: -- of resistance in Texas and I can't
25 reasonably predict how fast that's going to be --

1 THE COURT: Well, --

2 MR. WAID: -- resolved.

3 THE COURT: Right. We have until the -- after the
4 -- I don't know if they're going to be in a position to
5 comment until after they -- August 18th hearing, whatever
6 that hearing's on. But it gives you the month of September
7 and October.

8 MR. LENHARD: We'll certainly cooperate to the
9 extent we're able to with Mr. Waid's discovery efforts. In
10 fact, we'll dovetail those because I do want a trial on the
11 merits. That's what I've asked for and, if that's what
12 we're getting, we're happy with that. I would advise the
13 Court that, on the no-contest provision and whether it can
14 be resolved by summary judgment in this case, will be the
15 subject of additional briefing, which we will file --

16 THE COURT: Sure.

17 MR. LENHARD: -- at the end of October --

18 THE COURT: Right.

19 MR. LENHARD: -- well in advance of the hearing,
20 serving everybody, of --

21 THE COURT: So, --

22 MR. LENHARD: -- course.

23 THE COURT: -- if you did your discovery cutoff in
24 60 --

25 MR. LENHARD: Well, it couldn't be 60 days because

1 that's literally mid-September. I think you're going to
2 have to --

3 THE COURT: So --

4 MR. LENHARD: -- probably nudge it pretty close to
5 the trial date.

6 THE CLERK: 60 days is October 7th.

7 THE COURT: October 7th. Yeah. So we'll move it
8 to October 16th?

9 MR. LENHARD: That'd be fine from our side.

10 THE COURT: And then that gives two weeks for
11 additional -- or three weeks for additional briefing.
12 Three weeks.

13 MR. LENHARD: I think that's three weeks. Right.

14 THE COURT: Yeah. So three weeks for any -- a
15 supplement and then a supplemental reply.

16 MR. LENHARD: And my understanding is, if I
17 understand what you're ruling, we'll be trying damage
18 issues. Obviously, I guess, I assume punitive damage
19 issues and we will still, of course, reserve our
20 jurisdictional arguments and make them again so we --

21 THE COURT: Right.

22 MR. LENHARD: -- preserve them for the --

23 THE COURT: Right.

24 MR. LENHARD: -- record.

25 THE COURT: The no-contest and surcharges

1 issues. Yeah.

2 MR. LENHARD: Right. But that -- the surcharge
3 issues and the way I read the pleading that I'm addressing
4 here today, includes punitive damage aspects. So I'll be
5 addressing those also --

6 THE COURT: Sure.

7 MR. LENHARD: -- and we'll be addressing that in
8 our pretrial brief, --

9 THE COURT: Right.

10 MR. LENHARD: -- as far as the Court's authority
11 to award punitive damages.

12 THE COURT: Okay.

13 MR. LENHARD: All right?

14 THE COURT: And, --

15 MR. WAID: I just want --

16 THE COURT: -- certainly, --

17 MR. WAID: -- to make it --

18 THE COURT: -- if Mr. Waid is unable to do
19 anything because there just is -- I mean, there are third-
20 parties who may not cooperate. I -- certainly, it's not a
21 situation if he's filing a final report and asking to be
22 discharged. That's not what we're asking. We're just
23 asking for evidence on these issues that have been raised
24 because he's the third-party witness, who's --

25 MR. LENHARD: Would it help to --

1 THE COURT: -- going to have --
2 MR. LENHARD: -- have a --
3 THE COURT: -- the issue --
4 MR. LENHARD: -- status check the month before
5 Trial to --
6 THE COURT: I'm sure --
7 MR. LENHARD: -- see how --
8 THE COURT: -- it would.
9 MR. LENHARD: -- Mr. Waid's doing, like we do in
10 most civil cases?
11 THE COURT: I'm sure --
12 MR. WAID: Your Honor, --
13 THE COURT: -- it would.
14 MR. WAID: -- if I can clarify it, I want to be
15 real clear. My investigation and my report is going to
16 focus on the transactional history of the Trust, following
17 the monies.
18 THE COURT: Right.
19 MR. WAID: My evidence is not really tied to --
20 THE COURT: No.
21 MR. WAID: -- the motion that's --
22 THE COURT: It's not.
23 MR. WAID: -- pending, so that -- what I'm
24 suggesting is I don't want to be part of whatever discovery
25 they're going to be doing to prove-up or refute --

1 THE COURT: Right. But he -- Mr. --
2 MR. WAID: -- their --
3 THE COURT: -- Powell --
4 MR. WAID: -- motion.
5 THE COURT: -- is not relying on you to prove his
6 case. Your evidence will, --
7 MR. WAID: Fair enough.
8 THE COURT: -- of course, be relevant and it'll be
9 an item, I'm sure, of damages. He'll -- they'll, no doubt,
10 want to use your evidence and maybe call you as a witness
11 to prove its case.
12 MR. MOODY: So when would --
13 THE COURT: But you --
14 MR. MOODY: -- this --
15 THE COURT: -- are not doing his case for him.
16 Yeah. Nobody expects you to do that. You are in a
17 different position. Your job is to represent both sides in
18 helping to marshal their assets and put this Trust back
19 into good shape to be turned over to them to run for
20 themselves.
21 MR. MOODY: When would the Court like Mr. Waid's
22 supplemental accounting, whether complete or incomplete?
23 THE COURT: Same date.
24 MR. MOODY: The --
25 THE COURT: October --

1 MR. MOODY: By the --
2 THE COURT: -- 16th.
3 MR. MOODY: -- cut-off?
4 THE COURT: Yeah.
5 MR. MOODY: October 16th.
6 THE COURT: So do you want to have the -- a status
7 check two days before that on the 14th?
8 MR. LENHARD: Could we have it a week before? I
9 mean, --
10 THE COURT: On October 7th?
11 MR. LENHARD: Well, whatever a week before the 16th
12 --
13 THE COURT: Okay.
14 MR. LENHARD: -- is.
15 THE COURT: So October 7th?
16 MR. LENHARD: Your Honor, give us a little time to
17 see where we are.
18 THE COURT: But --
19 MR. WAID: I can only tell you this: We have had
20 preliminary discussions with the Internal Revenue Service
21 because of the prior years. I reasonably foresee that will
22 be a fairly protracted negotiation. I've done a lot of
23 dealings with the IRS and I don't see it getting resolved
24 before that time frame because I don't have the cash --
25 THE COURT: Right.

1 MR. WAID: -- to satisfy prior years' obligations.
2 So that's going to be a negotiated amount and, candidly,
3 they just don't respond that quickly. We have a filing
4 deadline in September, a extended deadline filing for
5 personal in October. I'm -- on that aspect of the case, I
6 probably will not get a definitive answer on how that will
7 be addressed until first quarter of next year.

8 THE COURT: Right. And that may well be a problem
9 in trying to go forward in November. And --

10 MR. WAID: I --

11 THE COURT: -- they -- the -- counsel can both
12 present their positions as to why they think we can't go
13 forward in November, but, you know, we're going to have
14 some sort of a hearing on this. I'm setting it for
15 November and I'm giving you some to see if you can get
16 there because this is the problem, that I don't know how
17 long it's going to take Mr. Waid to reconstruct this and to
18 recover as much as he can for all the parties, which is
19 what he's really working to try to do.

20 MR. POWELL: So I'm just not sure on your
21 statement of, all the parties, because, at this point,
22 there is no recovery that -- there is no harm to Ms. Ahern
23 at this point, I guess, --

24 THE COURT: Right.

25 MR. POWELL: -- would be the easiest way to say

1 this, Your Honor. So I'm not sure if -- again, if it's --
2 THE COURT: I don't know that. I don't know that
3 Ms. Ahern's --
4 MR. POWELL: Right.
5 THE COURT: -- money hasn't gone astray, as well.
6 MR. POWELL: If it has, that's her personal issue,
7 --
8 THE COURT: But, if you're going to --
9 MR. POWELL: -- which is --
10 THE COURT: -- try to --
11 MR. POWELL: -- above and beyond --
12 THE COURT: If you're -- Mr. Powell, if you want -
13 -
14 MR. POWELL: Yeah.
15 THE COURT: -- to surcharge it, --
16 MR. POWELL: Yeah.
17 THE COURT: -- he'd better find it for you.
18 MR. POWELL: Well, what we're seeking to surcharge
19 is, if you don't enforce the no-contest clause, --
20 THE COURT: Right. But --
21 MR. POWELL: -- we'd be --
22 THE COURT: -- that's my point.
23 MR. POWELL: Yeah.
24 THE COURT: That's my point.
25 MR. POWELL: Okay.

1 THE COURT: If she's divested of her share, if
2 she's being surcharged, you would hope Mr. Waid will have
3 found as much as possible as -- if her own money is astray,
4 as well. Now do you see what I'm saying? It would be --

5 MR. POWELL: Well, --

6 THE COURT: -- in everybody's --

7 MR. POWELL: -- I think --

8 THE COURT: -- interest

9 MR. POWELL: -- that puts an onus then on him
10 discovering something that goes above and beyond what the
11 context of this proceeding is, which is the --

12 THE COURT: He said he's --

13 MR. POWELL: -- W.N. --

14 THE COURT: -- holding --

15 MR. POWELL: -- Connell --

16 THE COURT: He's holding --

17 MR. POWELL: -- Trust.

18 THE COURT: -- her 35 percent.

19 MR. POWELL: Correct.

20 THE COURT: And I'm sure that, if he gathers her
21 other monies, he's got to ask the Court, what will I do
22 with this money, --

23 MR. WAID: Well, --

24 THE COURT: -- if some portion of it is also her
25 money. And that's what we have to figure out. I don't

1 know if -- when she was transferring money, if she was
2 transferring only the 65 percent, or she also was
3 transferring some part of her own money. Like I said, this
4 isn't that easy, Mr. Powell.

5 MR. POWELL: Well, that's, again, --

6 THE COURT: I'm done. Okay? We'll see you guys
7 all in --

8 MR. POWELL: Okay.

9 MR. WAID: Thank you, Your Honor.

10 THE COURT: -- October --

11 THE CLERK: October 7th --

12 THE COURT: -- 7th.

13 THE CLERK: -- at 9 o'clock --

14 MR. LENHARD: Thank you, --

15 THE CLERK: -- for a --

16 MR. LENHARD: -- Judge.

17 THE CLERK: -- status check.

18 THE COURT: Yeah. Good luck. See you all then.

19 [Off the record colloquy]

20

21 PROCEEDING CONCLUDED AT 11:35 A.M.

22 * * * * *

23

24

25

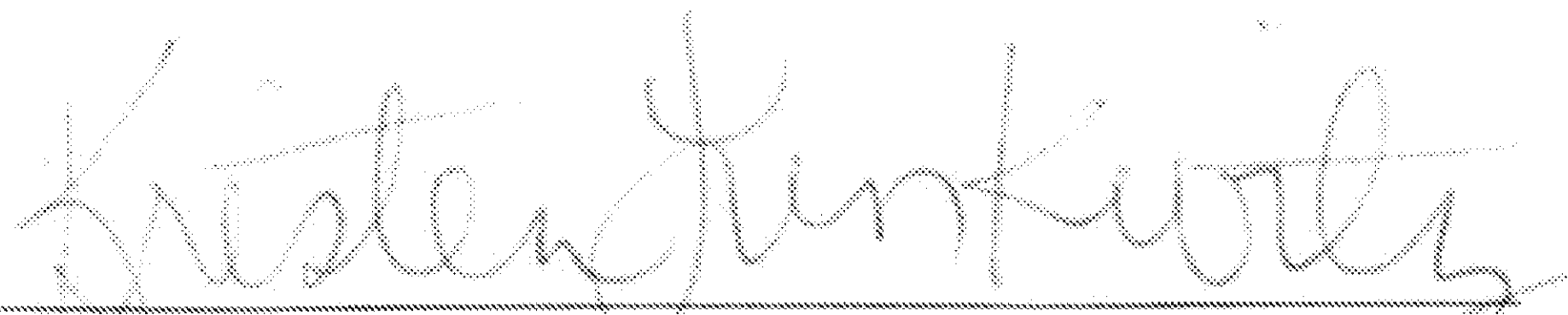
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

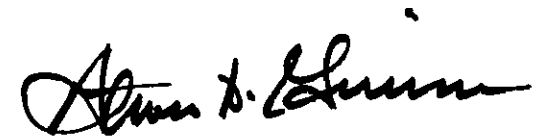
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in cursive script, reading "Kristen Lunkwitz", written over a horizontal dotted line.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



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

STATUS CHECK: EVIDENTIARY HEARING STATUS

WEDNESDAY, SEPTEMBER 2, 2015

APPEARANCES:

For the Petitioner,
Eleanor Ahern:

KIRK B. LENHARD, ESQ.

For Jaqueline Montoya
And Kathryn Bouvier:

JOSEPH POWELL, ESQ.

For the Trustee,
Frederick Waid:

TODD MOODY, ESQ.

RECORDED BY:

KERRY ESPARZA, COURT RECORDER

TRANSCRIBED BY:

KRISTEN LUNKWITZ

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

1 WEDNESDAY, SEPTEMBER 2, 2015 AT 8:58 A.M.

2

3 THE COURT: *Connell* 066425. Will everybody state
4 appearances for the record?

5 MR. MOODY: Good morning, Your Honor. Todd Moody,
6 bar number 5430, for Fred Waid, trustee.

7 MR. POWELL: Good morning, Your Honor. Joey
8 Powell appearing on behalf of Kathryn Bouvier and Jaqueline
9 Montoya.

10 MR. LENHARD: Kirk Lenhard on behalf of Eleanor
11 Ahern.

12 THE COURT: Okay. So I read the minutes. I don't
13 know if there's any kind of an order or anything yet from
14 Judge Gonzalez's hearing, but I read the minutes. So, as I
15 understand, she dismissed the contempt, saying that what
16 she -- there might be some evidence of was not what was
17 actually raised. So, that really -- seemed really more to
18 be the topic of our evidentiary hearing, which is, you
19 know, the \$2,000,000 or whatever.

20 So, are we going to be ready then? Is that -- are
21 we on track, because I -- we have reserved for you November
22 9th and 10th.

23 MR. LENHARD: I would think we would be on track.

24 THE COURT: Okay.

25 MR. LENHARD: I think everybody wants to try to

1 move this along.

2 THE COURT: Okay.

3 MR. LENHARD: Get it done.

4 THE COURT: Okay.

5 MR. LENHARD: I'm speaking just for myself,
6 obviously, I don't --

7 THE COURT: Yeah. Mr. Powell?

8 MR. POWELL: I would agree.

9 THE COURT: Okay. The real thing is Mr. Wade. If
10 he feels that, --

11 MR. POWELL: Correct

12 THE COURT: -- you know, he's going to have --
13 done enough that he --

14 MR. MOODY: So, Judge, let --

15 THE COURT: I saw that there was a lot of
16 discovery that you guys are doing. Texas, and places.

17 MR. MOODY: We are. We'll be in Texas in about
18 three weeks for four or five depositions, trying to figure
19 out what's going on.

20 Now, our understanding was that the upcoming
21 evidentiary hearing was regarding the Motion to Enforce the
22 No Contest Clause.

23 THE COURT: Okay.

24 MR. MOODY: Is that different than Your Honor's
25 understanding?

1 THE COURT: Well, I don't know, Mr. Powell, was
2 that --

3 MR. POWELL: It was basically like, kind of --

4 THE COURT: -- your impression that -- I thought
5 it was that we were -- when you had your -- you argued your
6 motion the last time with us, it's like we have to see what
7 happens with Judge Gonzalez, and then it seems like this is
8 really -- this is all subject of an evidentiary hearing.
9 And I just thought it was all going to be one, but maybe --

10 MR. POWELL: Well I guess it depends --

11 THE COURT: -- maybe I was the only person who
12 did.

13 MR. POWELL: Yeah, I mean I guess it depends on
14 what your -- what you intend to do, based on Judge
15 Gonzalez's dismissal of the contempt, because, obviously
16 that was -- you know, it's your prerogative to enforce or
17 initiate a contempt proceeding. So, I guess, whatever you
18 feel like you want to do, we can react off that. Because
19 the last time you had indicated that you felt like the
20 contempt proceeding needed to go to conclusion.

21 THE COURT: Right.

22 MR. POWELL: So I don't know what your thoughts
23 are, and what your -- you intend to do.

24 THE COURT: Right.

25 MR. POWELL: Because obviously, then that -- it --

1 if you feel like that needs to be settled first, before we
2 go forward with the others --

3 THE COURT: I think it is settled. It is settled.

4 MR. LENHARD: Well, there's not one pending at
5 this point.

6 THE COURT: Right.

7 MR. POWELL: Correct.

8 MR. LENHARD: Obviously, it was -- and, to be
9 candid, it was dismissed without prejudice.

10 THE COURT: Right.

11 MR. LENHARD: That the Court decided she wanted to
12 institute a new proceeding. And so I have to say that.

13 THE COURT: Right. And that's just my view was
14 that, it really seemed to me that everything that we argued
15 the last time Mr. Powell had a motion, those were all the
16 issues, essentially, that seemed more appropriate for an
17 evidentiary hearing. Was there going to be a surcharge?
18 All of those kinds of things.

19 MR. POWELL: Yeah.

20 THE COURT: That didn't seem like -- because it
21 seemed like the outcome of the contempt proceeding, I
22 think, was kind of --

23 MR. LENHARD: From my end --

24 THE COURT: -- kind of a lost cause.

25 MR. LENHARD: -- I certainly have no problem if

1 you want to wrap into a --

2 THE COURT: That's why -- but that was my concern.

3 MR. LENHARD: -- the hearing the surcharge issues,
4 the surtax issues, or whatever.

5 THE COURT: With -- I don't know if Mr. Waid will
6 be prepared on that, because he's, you know, he's the third
7 party. He's representing -- he's here to try to recover
8 assets for all of them. Not for any one person in
9 particular. But I kind of need to know what he's been able
10 to recover if we go -- before we go forward on that.

11 MR. LENHARD: Well, it's also Mr. Powell's motion,
12 so he does have a right, to some degree, to drive what's --

13 THE COURT: Yeah.

14 MR. LENHARD: -- being heard on the second.

15 THE COURT: But yeah -- but it's just -- if we're
16 kind of needing the information that Mr. Waid is working on
17 --

18 MR. POWELL: Correct.

19 THE COURT: So --

20 MR. WAID: Your Honor, I would suggest we keep it
21 on calendar for now.

22 THE COURT: Right.

23 MR. WAID: We just received, yesterday, an
24 additional request for more time from Wells Fargo to
25 produce more documents. We received a supplement yesterday

1 as well. So, it's trickling in. It's very complex
2 records. I hope to have most of them by September 11th.

3 THE COURT: Sure

4 MR. WAID: It's the date they provided us. We
5 should be able to complete most of these depositions by the
6 end of September.

7 THE COURT: I just think that --

8 MR. WAID: It will take me a couple of weeks to
9 put it together. I want to give them enough time to
10 respond.

11 THE COURT: Absolutely. Exactly. And that's why
12 --

13 MR. WAID: But I'd rather --

14 THE COURT: I just -- if -- we'll keep the dates.
15 I just guess it's a question of what's going to be on that
16 date. And it sounds to me like, just depending on what Mr.
17 Waid is able to recover from these third parties, because
18 you have to have that, in order that you can both, you
19 know, you can prepare, if we are going forward on all those
20 surcharge and those kinds of issues.

21 MR. POWELL: Sure

22 THE COURT: For right now, then, it is just
23 limited to the one issue then.

24 MR. WAID: All right.

25 THE COURT: Until we know if Mr. Waid can feel

1 that he's done what he can.

2 MR. WAID: Your Honor, just one clarification. I
3 have not discussed this with my good counsel, but based on
4 what you just described, that standing order that I first,
5 third, fourth day I was in the case, on the Fidelity money,
6 that half million dollars, --

7 THE COURT: Yeah.

8 MR. WAID: -- that still is unresolved, and that
9 was the genesis of you -- your Order to Show Cause, and
10 then the ultimate hearing with Judge Gonzalez. Now that
11 that's been pulled back, without prejudice, I just want to
12 be clear. I don't have a responsibility, yet, to file
13 another affidavit, or do anything else. The Court is not
14 asking me to do that.

15 THE COURT: No.

16 MR. WAID: But I still want the Court to be very
17 clear that that -- I still cannot account for those funds.

18 THE COURT: I understand that. And I believe that
19 Mr. Lenhard conceded that at the hearing on the Motion --
20 on the contempt.

21 MR. LENHARD: That's clear. I've conceded that
22 issue. Yes.

23 THE COURT: We don't know where that is, I guess.

24 MR. WAID: But in the interim, what would the
25 Court like me to do? I mean, that's a half a million

1 dollars that --

2 THE COURT: Absolutely.

3 MR. WAID: -- I'm very concerned about.

4 THE COURT: Well you're -- I understand your
5 concern. Your concern is for all three of your clients,
6 who all three have some percentage of a claim to the half a
7 million dollars, and, naturally, to the extent that Mr.
8 Lenhard's client can assist you in finding it and
9 recovering it for them, that's in everybody's best
10 interest.

11 MR. LENHARD: And, so you're clear, I have offered
12 her up for deposition now --

13 THE COURT: Okay.

14 MR. LENHARD: -- and I've suggested a protocol to
15 both counsel, both counsel for the sisters and counsel for
16 the trustee, as to maybe a way to make it more efficient.

17 THE COURT: Now that we don't have a 5th Amendment
18 problem, now we can move on with this.

19 MR. MOODY: So can we just put that on the record
20 about what our plan is on that, Mr. Lenhard?

21 MR. LENHARD: Sure. And I talked to Mr. Powell
22 coming over to the courthouse this morning about this.
23 I've suggested to counsel, subject to their agreement, I
24 can't force this, that they give me a set of written
25 questions. I've represented to them I will sit my client

1 down in my conference room with nobody else except Ms.
2 Petersen, myself, and my client, and we will get answers to
3 those. I will give them to both counsel and they can use
4 those as an outline for the deposition.

5 I'm not trying to get out of the deposition
6 itself. I'm trying to make it a little more efficient.

7 THE COURT: Yeah. I think that we all understand
8 there are certain constraints that, you know, no doubt,
9 exist.

10 MR. MOODY: That's correct.

11 THE COURT: So if that's a procedure that the
12 parties believe can work to efficiently get this done, then
13 that's great. So I think that we need -- but I certainly
14 think that -- separate and apart from anything I might
15 think, Mr. Waid, I know that your concern is for your -- is
16 for the people for whom you are standing in the shoes
17 fiduciary, and your concern for all three of these
18 beneficiaries, to recover as much of the money that seems
19 to have gone missing, as you can.

20 So I certainly think that that continues to be the
21 charge that you have, and even though there's not a
22 criminal proceeding pending anymore, maybe that will help
23 us get to a resolution through the probate process instead.

24 So, we'll leave the date on. You may or may not
25 have these surcharge issues on there. We'll probably need

1 another status check before the Evidentiary Hearing so that
2 you'll have time to know that you need to prepare for that.

3 MR. LENHARD: Sure.

4 THE COURT: So, there is a hearing on the 16th, but
5 we probably need something a little later in October.

6 MR. POWELL: Yeah, if I'm correct, I think just by
7 looking at the docket, the next -- there's two status
8 checks. One, I think is related to Mr. Mann's lien, or
9 attempted enforcement.

10 THE COURT: Yes. That's on the 16th, yeah,

11 MR. POWELL: Yeah, so that, just to be clear --

12 THE COURT: That's totally unrelated to you guys.

13 MR. POWELL: -- that doesn't effect, yeah, my
14 clients.

15 THE COURT: So, that's why I think we need a
16 status check after, you know --

17 MR. POWELL: Okay.

18 THE COURT: -- if Mr. Waid is able to gather some
19 records, or --

20 MR. POWELL: Okay.

21 THE COURT: -- you know, what he's able to do. So
22 maybe 30 days from there?

23 MR. MOODY: We'd like to keep Mann's on.

24 THE COURT: Yeah, that's on, but that's -- it's
25 not going to be about this.

1 MR. MOODY: Right.

2 MR. WAID: Right.

3 THE COURT: So, how about October 14th? So October
4 14th would be a status check for this purpose. For the
5 purpose of know -- we can establish, once and for all, what
6 we are going to be able to go forward with, at the
7 evidentiary hearing, based on, is Mr. Waid -- has he been
8 able to get you the information so that you can prepare or
9 are we going to need another date for that.

10 MR. POWELL: Okay.

11 THE COURT: And we might just -- we might be
12 limited in what we can do on the 9th and the 10th, just by
13 virtue of what you are able to gather.

14 MR. POWELL: Okay.

15 THE COURT: Okay.

16 MR. POWELL: Do we also, as well, want to set a
17 discovery cutoff, with the assumption that we would go
18 forward in November? Because I don't know if one's
19 actually been set the last go around.

20 THE COURT: Okay. Probably that -- as of that
21 date. We would need to know, as of October 14th, that --

22 MR. POWELL: Okay

23 MR. LENHARD: That's fine.

24 THE COURT: Anything that's related to the hearing
25 that's scheduled is going to have to be done by then.

1 MR. POWELL: Okay.

2 THE COURT: And that's why we'll know if Mr. Waid
3 says: Yes, --

4 MR. POWELL: Okay.

5 THE COURT: -- I'm prepared to come in and testify
6 about what I've been able to do, or no I'm not.

7 MR. POWELL: Okay.

8 THE COURT: So, we may have relatively limited
9 topics that we are able to discuss in November, but we'll
10 at least keep the hearing date on so you've got your
11 hearing date.

12 MR. POWELL: Okay.

13 MR. LENHARD: Okay.

14 THE COURT: Okay. So thanks very much. We'll see
15 you guys all here for this purpose in October -- October
16 14th, 9 a.m. These matters that are all on the 16th are
17 other matters related to Mr. Mann and his --

18 MR. POWELL: Right.

19 THE COURT: -- whatever he's got

20 MR. LENHARD: That's September 16, right?

21 THE COURT: September 16th. And there's also --
22 Mr. Waid's got a Motion to Unseal Records.

23 MR. POWELL: Yes.

24 MR. MOODY: That was a part of the -- our response
25 in the Mann adjudication motion.

1 THE COURT: Okay.

2 MR. LENHARD: You're seeking to unseal the
3 Complaint on the 16th. Correct?

4 MR. MOODY: Correct.

5 MR. LENHARD: All right. So I know what's going
6 on.

7 THE COURT: So that's -- yeah, so that's the 16th.
8 That's September 16th. That's all related to Mr. Mann.
9 It's totally unrelated to our issues.

10 MR. POWELL: Yeah. Right.

11 THE COURT: Okay.

12 MR. POWELL: Okay.

13 THE COURT: See everybody then. Thank you.

14 MR. LENHARD: Thank you.

15

16 PROCEEDING CONCLUDED AT 9:09 A.M.

17 * * * * *

18

19

20

21

22

23

24

25

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.

13

14

15

16

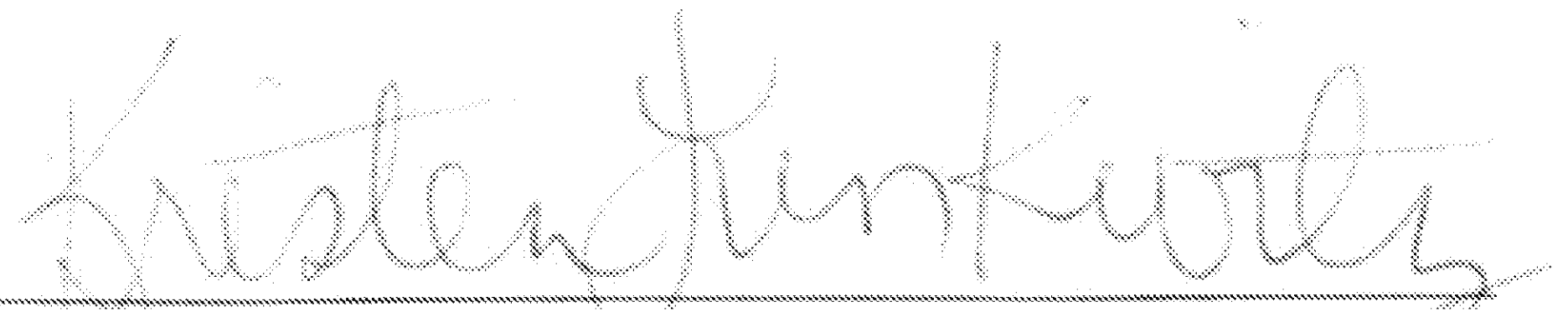
17

18

19

20

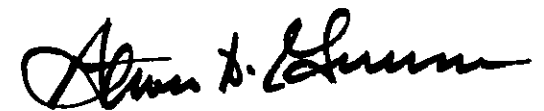
21

22 

23 KRISTEN LUNKWITZ

24 INDEPENDENT TRANSCRIBER

25



CLERK OF THE COURT

TRAN

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-09-066425

DEPT. NO. XXVI

Transcript of Proceedings

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE
**ELEANOR AHERN'S MOTION FOR DISTRIBUTION OF TRUST INCOME IN
ACCORDANCE WITH THE COURT'S SUMMARY JUDGMENT DATED APRIL
16, 2015 ON OST; FREDRICK WAID'S MOTION TO COMPEL ELEANOR
AHERN'S AUTHORIZATION TO ALLOW TRUSTEE TO OBTAIN
INFORMATION FROM ATTORNEYS AND OTHER PROFESSIONALS ON OST**

WEDNESDAY, NOVEMBER 4, 2015

APPEARANCES:

For the Petitioner,

Eleanor Ahern:

KIRK B. LENHARD, ESQ.

TAMARA PETERSON, ESQ.

For the Trustee,

Frederick Waid:

TODD MOODY, ESQ.

For Jacqueline Montoya

And Katherine Bouvier: JOSEPH POWELL, ESQ.

RECORDED BY:

KERRY ESPARZA, COURT RECORDER

TRANSCRIBED BY:

KRISTEN LUNKWITZ

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

WEDNESDAY, NOVEMBER 4, 2015 AT 9:22 A.M.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Mr. Waid?

MR. POWELL: Yeah. Mr. Waid and Mr. Moody, I think, are still over at that other hearing in -- so -- Department 20.

THE COURT: Okay. Got it. Okay. No problem. We'll call them another time.

[Case trailed at 9:22 a.m.]

[Case recalled at 10:25 a.m.]

THE COURT: 066425. My computer is dead, by the way. Roz talked to the IT guys. It is -- no. It is dead.

[Colloquy between the Court and the Clerk]

THE COURT: I hope you don't need anything on the computer. It's dead. So -- okay. This is the joys of being paperless. It works until the computer dies. So, anyway, we have a dead computer, but I think I've got everything I need.

All right. So, if everybody would state their appearances for the record. And I just -- I -- oh, I'm sorry. Everybody?

MR. POWELL: Good morning, Your Honor. Joey Powell appearing on behalf of Katherine Bouvier and Jacqueline Montoya. Jacqueline Montoya is present in the courtroom today.

THE COURT: Okay.

1 MR. MOODY: Todd Moody, bar number 5430, for Fred
2 Waid, the Court appointed trustee who's with me here.

3 THE COURT: Thank you. Okay.

4 MR. LENHARD: Kirk Lenhard and Tammy Peterson, on
5 behalf of Eleanor Ahern, who is also present today.

6 THE COURT: Thank you. Counsel are you remaining
7 in the case?

8 MR. LENHARD: Temporarily.

9 THE COURT: Never really --

10 MR. LENHARD: And I'll explain what I'm doing.

11 THE COURT: Never really clear on that. Okay.

12 Thank you very much. So we have two issues. One -- I hope
13 I'm not thinking about these being easy and not easy in the
14 wrong order. My -- I think the easier issue for me is this
15 Motion to Compel the Authorization, which is a fiduciary --
16 for the fiduciary exception analysis, which, I don't know --
17 - counsel, I know you didn't take a position on this one,
18 but I'll tell you what my position is on the fiduciary
19 exceptions.

20 This is what I and the Commissioner, Commissioner
21 Bulla, do on the fiduciary exceptions, generally. It's --
22 it is an exception to the attorney-client privilege, and,
23 you know, the case law that's been -- lays it out pretty
24 clearly, that to the extent that the trustee is getting
25 legal advice relevant to the administration of the trust,

1 there is -- it is not protected by the attorney-client
2 privilege. It is an exception to the attorney-client
3 privilege. And that's -- Commissioner Bulla and I --
4 that's our -- how we apply it in pretty much, in fact, they
5 just left, Mr. Solomon we -- this was hotly litigated.
6 This is the first time she and I looked at this four years
7 ago when I took over and this is what we came up with.

8 And this is -- it's pretty well laid out in this
9 case out of -- where's this from? Is it from Rhode Island?
10 Where is it from? Oh, Washington D.C., *Cobell*, C-O-B-E-L-
11 L, *versus Norton*, 212 FRD 24. It's a 2012 case. I mean,
12 it's pretty well established. I mean, granted it's in the
13 context of URESA and they talk about the fiduciary is the
14 person who is the URESA trustee, but it's the rule that
15 applies to trustees.

16 And that's -- I mean -- we have followed this rule
17 ever since we took over, so this is entirely consistent
18 with how the Commissioner and I have interpreted the
19 fiduciary exception to the attorney-client privilege. It
20 was first recognized in this country by Delaware, Court of
21 Chancery, in a seminal 1976 opinion, holding that:

22 Trust beneficiaries are entitled to inspect
23 opinions of counsel procured by the trustee to guide
24 him/her in administration of the trust.

25 That's pretty clearly stated. It's been the rule,

1 as far as I know, governing fiduciary law ever since, and
2 this is what Commissioner Bulla and I have -- once we came
3 to this conclusion, this is how we've applied it ever since
4 we took over four years ago. So that's -- that is my view
5 of the fiduciary exception.

6 However, I have a little concern about the
7 document the way you drafted it, with all due respect, no
8 offense Mr. Moody. I thought it was overbroad. The
9 Exhibit 18, I think it may be go beyond the scope of that
10 exception, with all due respect.

11 MR. MOODY: How would Your Honor have us limit
12 that?

13 THE COURT: It seems to me that this appears to be
14 both individually, or as trustee, and I, you know, I think
15 that exceeds the scope of the exception because if she had
16 the attorney-client relationship with them, individually,
17 that was her attorney-client relationship about advising, I
18 don't know, advising her about her own investments, say,
19 for example or something, then you're not entitled to that,
20 I don't think.

21 MR. MOODY: Well --

22 THE COURT: So that's my concern about it. I just
23 thought this document, where it specifically said,
24 individually and as trustees, I have a -- I'm concerned
25 about that. I understand the problem that you have here,

1 where somebody might claim that something was individual
2 but it was -- if it was paid for by the trust, that's a
3 different issue to be litigated at a different day.

4 MR. MOODY: So I think I can give Your Honor a
5 little background and maybe explain why this --

6 THE COURT: Right.

7 MR. MOODY: -- was as broad as it was.

8 THE COURT: Yeah.

9 MR. MOODY: Number one, and I think I laid this
10 out in the case law, the burden, really, is on Ms. Ahern to
11 distinguish which -- what representation was for her,
12 individually, versus what was for the trust. And if she
13 doesn't designate that and say what it was, then we really
14 don't know. There's an assumption that it was all for the
15 trust.

16 The other reason I did it this way is because in Texas
17 they do not recognize the fiduciary exception to the
18 attorney-client privilege. We want Texas to apply Nevada
19 law and with this Court's findings, then it's going to help
20 us go to Texas and say we understand what your law is, but
21 we're not dealing with Texas law. This is a Court Order
22 that deals with Nevada law on the fiduciary exception and,
23 therefore, give us what you got.

24 THE COURT: Right. Okay. I understand, but I
25 still have a problem with it.

1 MS. PETERSON: Yes, Your honor. We'd like to just
2 echo that the problem with this authorization is that
3 they're essentially asking the Court to order our client to
4 waive her individual attorney-client or accountant-client
5 privilege

6 THE COURT: Yeah.

7 MS. PETERSON: And this Court can't do that.

8 THE COURT: Right.

9 MS. PETERSON: Ms. Ahern has signed authorizations
10 in her capacity as the former trustee, made it clear when
11 we've been asked by the current trustee, made it clear that
12 she is not asserting any sort of privilege on behalf of the
13 trust. She's the former trustee. She is complying with
14 the Court's prior orders to provide information, but she is
15 not waiving her individual privilege in this authorization.

16 THE COURT: So, Mr. Moody, I'm not sure if I've
17 seen the one she signed. I thought that the last time we
18 talked that the problem is that the version that was signed
19 saying -- just waiving it as the trustee wasn't -- there
20 was something about it that wasn't acceptable in Texas, and
21 so you needed -- we needed one that would somehow satisfy
22 Texas. And I think there's probably a way to draft one
23 that would satisfy Texas, but that's my concern is, I --
24 you know, until we -- I know it's a hassle, but until we
25 have a finding saying -- or somebody there asserts a

1 privilege to -- saying to Nevada, you don't get it because
2 it's in her individual capacity, I can't -- I need a
3 finding saying she was using trust funds improperly to get
4 this advice for herself, and paying with trust funds, and
5 it wasn't really advice for the trust, it was advice
6 against the trust, or at the interest of the other
7 beneficiaries. I understand that's where we're headed, but
8 don't we have to have that finding before it can go there?

9 MR. MOODY: Well --

10 THE COURT: Because I think right now I'm just --
11 I think right now I -- that's the prerequisite to say in
12 her individual capacity.

13 MR. MOODY: So here's where we started, Your
14 Honor. Obviously, you know, after Mr. Waid was appointed,
15 we came in here, we obtained an order for Ms. Ahern to
16 cooperate with the trust in obtaining the trust records.
17 We have an accounting that was filed by her that is
18 inaccurate, and may be fraudulent, with misrepresentations
19 about what monies are where, and what they were used for.
20 So, Mr. Waid is trying to go to the sources, to those
21 individuals that provide professional services to her.
22 Obviously there's an overlap, you know.

23 It -- first, they get paid with trust funds and
24 they're doing some trust work and I -- granted, you know,
25 they may be doing some work for her, individually, trying

1 to challenge the very thing that we're arguing about, and
2 so it sounds like the burden is now on us to distinguish
3 what is trust related and what's not, and I don't think
4 that's where the case law that --

5 THE COURT: I'm not sure it's on us. I think the
6 burden is on the party producing it to seek protection.

7 MR. MOODY: Well, and they're doing that and
8 they're gaining protection because Ms. Ahern will not
9 authorize the production of those records.

10 THE COURT: But will she not authorize them in any
11 capacity because you weren't -- whatever -- I just -- I
12 can't remember -- and that's what I said, I can't pull up
13 any documents right now. My computer is dead, so I only
14 have what I have in front of me right now. I seem to
15 recall, I think I might have been provided with the version
16 that she had provided you, and I can't remember, there was
17 something about it now. That version of a release was --
18 could not be used in Texas to obtain what you needed to
19 obtain. There was something about her language, because
20 looking at the original authorization you provided in
21 Exhibit 2, and then the new version that is Exhibit 19.

22 I, you know, I kind of -- I see the distinction
23 here, and I -- so I guess the things is, my problem is, I
24 understand what you're saying, that if the providers in
25 Texas are using -- hiding behind the attorney-client

1 privilege, which, in -- which does not recognize the
2 fiduciary exception in Texas. She's a Nevada trustee, a
3 Nevada trust, so Nevada law would apply. Too bad, sorry
4 about that, no fiduciary exceptions is my position. But
5 here's my problem. Maybe it's a problem with the Texas
6 judges are not applying because they're not used to the
7 fiduciary exception. They're saying okay, well
8 automatically no.

9 MR. MOODY: Yeah, so I think I have it right in
10 front of me, Your Honor. She says you can provide
11 everything that's related to the trust, subject to the
12 following exclusions: The authorization --

13 THE COURT: Mr. Lee, do you want to get a copy of
14 it? Mr. Lee, could you get -- he's got a copy for me and
15 I'll read along. Thank you. Thanks. Are you going to
16 copy it for me? Thank you. He'll copy it and bring you
17 back your original. Thank you.

18 MR. MOODY: Okay. So in -- oh, you don't have it?

19 THE COURT: I -- is it one of your Exhibits?

20 MR. MOODY: I'm sorry?

21 THE COURT: Is it in one of -- is it one of your
22 exhibits to this pleading? Because I --

23 MR. MOODY: Yes. It is Exhibit 3 to this Motion.

24 THE COURT: Okay. Maybe it is here. Okay. Here
25 it is. Okay, got it. Sorry.

1 MR. MOODY: Okay. So you'll see in Paragraph 1:
2 Authorization, under signed hereby request and
3 authorizes the release of information subject to the
4 exclusions identified in Section 2 below.

5 THE COURT: Okay.

6 MR. MOODY: So these exclusions. This
7 authorization shall not apply to the following information:
8 Any and all privileged information.

9 So this immediately raises a problem in Texas --

10 THE COURT: Right.

11 MR. MOODY: -- because they say, we don't care who
12 it was for, whether it was the trust, or Ms. Ahern. We
13 don't recognize the fiduciary exception here and,
14 therefore, whether it was related to either, you don't get
15 it.

16 THE COURT: Okay.

17 MR. MOODY: And so the courts are backing them up
18 --

19 THE COURT: Okay. Thanks. Thanks a lot. Thanks
20 so much.

21 MR. MOODY: -- with regard to this.

22 THE COURT: Okay. You're -- yeah. I see. Okay,
23 you're right. Yeah I do have it.

24 MR. MOODY: So that's why we're looking for
25 something broader.

1 THE COURT: Okay. I agree. And she is not
2 entitled to protect privileged information in her capacity
3 as a trustee. She's not. I mean that's Nevada law. I
4 think -- we apply the fiduciary exception, so I understand
5 that. But, so I thought that the original version was fine
6 and it makes perfectly clear that concerning Eleanor
7 Connell Hartman, trustee, dated such and such a date, or
8 the trust itself without reference to its trustee,
9 including any and all insurance, etcetera.

10 Yeah, I mean it makes perfect sense to me.
11 Eleanor Ahern -- Connell Hartman Ahern and her trustee --
12 in her capacity as trustee of the trust to the following
13 successor trustee. I mean, I -- that's, to me, --

14 MR. MOODY: So the original, you're okay with?

15 THE COURT: Yeah. Oh Absolutely.

16 MR. MOODY: Okay.

17 THE COURT: Yeah.

18 MS. PETERSON: Would Your Honor consider, because
19 I think this needs to be clear, saying that any sort of
20 authorization, she's not authorizing the release of
21 information related to her individually. And that is her
22 privilege that she still has, regardless. And this --
23 there is no exclusion in that first offered exhibit and
24 that's why that one is too broad.

25 THE COURT: Okay. So in her capacity as trustee

1 of the trust only?

2 MS. PETERSON: As -- that'd be correct, Your
3 Honor, as the former trustee of the trust, she's
4 authorizing that.

5 THE COURT: Right. So as long as it's clear that
6 it's in her capacity -- that they're looking for
7 information in her capacity as trustee of the trust only,
8 then that's fine. Because you don't give them an automatic
9 something to hide. I mean, I see why now that I see it
10 front of me, I don't -- I just missed this the first time I
11 read this thing, about -- I couldn't figure out which was -
12 - which trust was -- which release was being sent.

13 So I can see why the exclusions are a problem
14 because you immediately take away privileged information
15 and raise the question in Texas, well what's privilege?
16 And under their view, everything's privileged. It's not
17 under ours, so that's my problem with it, is -- I -- while
18 I didn't appreciate that -- I understand that, ultimately,
19 the issue that's addressed in this revised number 19,
20 ultimately this is going to be the issue which is: Did
21 Mrs. Ahern obtain legal or accounting advice paid for by
22 trust funds, which was adverse to the trust or it's
23 beneficiaries? That's going to be a problem, but we have
24 to make that finding before I think we can compel her to go
25 beyond that and say we want your individual -- we want to

1 release all individual privileged documents as well because
2 I understand where it's going, but I think she's entitled
3 to have that finding made before she's compelled to give up
4 her privilege. Mr. Waid.

5 MR. WAID: Your Honor, if I can just maybe add a
6 little context to the circumstance of which I've sought
7 these records. After I was appointed, I reviewed the
8 pleadings on file, Ms. Ahern's accounting that she had
9 filed through Marquis and Aurbach, and I contacted the law
10 firms, accounting firms, and others who were paid with
11 trust funds, and I simply said I'd like to see what work
12 you did, if it benefitted the trust, if you rendered
13 opinions as to the tax issues relating to the trust and
14 it's future, and etcetera, etcetera, [indiscernible] on gas
15 leases and the rest.

16 Initially they said: Fine, we'll cooperate.
17 We'll send you everything you want because you were -- it
18 was obvious you were paid -- you paid -- the trust paid
19 with trust funds. Period of silence. I have to go back.
20 Now we're having to engage counsel. Again, a somewhat
21 agreement to cooperate.

22 It's only been in the recent past few weeks that
23 all of a sudden everyone is going for protective orders.
24 Initial cooperation with me. Initial cooperation with
25 Texas counsel, because of the time delay, and now Motions

1 for Protective Orders, with the caveat we're not doing
2 anything until we're ordered to do something.

3 THE COURT: Okay.

4 MR. WAID: And therein lies my dilemma.

5 THE COURT: And it's like --

6 MR. WAID: -- regardless of what we produce here -
7 -

8 THE COURT: I guess my question is what do you
9 need from this Court in order to get that? Do you need
10 something saying I am ordering Mrs. Ahern to make available
11 through whatever parties hold information obtained or
12 provided to her in her capacity as trustee to consent to
13 that production? Because I can't compel somebody in Texas.
14 I can compel the local law firm. I have got -- we got -- I
15 have no --

16 MR. WAID: Correct.

17 THE COURT: I'm sure that the local law firms will
18 comply.

19 MR. WAID: Your Honor, with all due respect to the
20 whole legal process and this is a Court of equity in
21 addition to being a Court of law, my challenge is I really
22 don't want to spend more time, effort, and money pursuing
23 these. I would appreciate the Court on its own motion
24 saying: I've already ordered Ms. Ahern's, a former
25 trustee, to cooperate. Cooperate. Give them the releases.

1 Get me the information. I'm not going to disseminate it.
2 I will agree not to put it in my final report, but I'm
3 entitled to see, here are trust dollars, where they went,
4 and how they were allocated. Produce a privilege log. But
5 that really doesn't solve my challenge.

6 THE COURT: So then, you need a release that would
7 compel production of any and all information that was
8 either obtained through payment from trust funds?

9 MR. WAID: Right.

10 THE COURT: Or was otherwise in her capacity --

11 MR. WAID: Right.

12 THE COURT: -- as trustee.

13 MR. WAID: Because the challenge is in Ms. Ahern's
14 accounting, it was declared under penalty of perjury: I
15 used these funds -- trust funds. I paid these firms on
16 behalf of the trust.

17 THE COURT: All right. Okay. So, but to the
18 extent if they were providing her any information, any
19 advice, any accounting, legal, whatever advice,
20 individually, then we're all understanding that unless and
21 until we can get over that next hump and say we're entitled
22 to know what you're individual privilege is, yeah, we're
23 entitled to have -- to compel you to give up your
24 individual privilege because that was -- there was some
25 finding that that was wrongful.

1 I mean, I understand the concept that it was paid
2 for by -- with trust funds, then whether she -- whether
3 that was in her capacity, individually, or in her capacity
4 as trustee, if it's paid for by the trust funds, that you
5 want it. But then she still might have received advice
6 that it hers, individually, that I don't know that we're
7 entitled to yet unless and until we have that finding that
8 you're -- that there is this -- well, what you're
9 ultimately looking for. This whole claw back and
10 everything. Mr. -- I think that's really what Mr. Powell's
11 clients are looking for.

12 MR. WAID: Right. But perhaps the Court can
13 advise us whether this Court will adopt or examine in
14 entering a finding of that, that the Court will adopt their
15 crime fraud exception.

16 THE COURT: Okay.

17 MR. WAID: They've already -- her counsel's
18 already raised criminal elements -- potential criminal
19 elements in this case. I've clearly reviewed financial
20 records and seen what was presented under oath, under
21 penalty perjury, was not true and not accurate. So we have
22 both crime and we have fraud. Texas has some recognition
23 of the crime fraud exception under the privilege.

24 So, perhaps give me a little guidance because I
25 don't want to continue spending money just trying to get

1 records.

2 THE COURT: Okay.

3 MR. WAID: That's my challenge. This is becoming
4 expensive.

5 THE COURT: Right.

6 MR. WAID: And that's not what I was appointed to
7 do.

8 THE COURT: Correct.

9 MR. WAID: We gather the information and --

10 THE COURT: I appreciate your intention to do this
11 in a way that is most cost effective.

12 So, I'm just trying to figure out what we -- what
13 you need in either in an order and that Ms. Ahern be
14 compelled to sign, because at this point I just -- I
15 understand the ultimate issue is this: Was there a crime
16 committed? But we already tried to go down that road once
17 and we don't have that finding of perjury. Somebody else
18 heard it, so I don't have that finding that I can rely on.

19 So what would I base saying that I'm compelling
20 Mrs. Ahern to sign this and what would you be looking for
21 with that? Are you looking for -- because I still think
22 she's entitled to her attorney-client privilege, which I
23 don't think that at any point I could ever compel her to
24 give up, unless we can show that whatever individual advice
25 she received, not advice she received for the trust and

1 paid for with trust funds, but any individual advice she
2 received paid for with trust funds, that I can invade that
3 privilege.

4 Don't I need to -- some sort of a finding that
5 there was, in fact, and isn't that what we're ultimately
6 trying to get to in having our evidentiary hearing?

7 MR. MOODY: So it sounds like we're somewhere
8 between the original authorization that we provided --

9 THE COURT: Right.

10 MR. MOODY: -- and the new one that we've asked
11 for.

12 THE COURT: Right. Because I still have a problem
13 with individual. I --

14 MR. MOODY: Okay.

15 THE COURT: I still have a problem with that.

16 MR. MOODY: So I --

17 THE COURT: I understand the concept, it's advice
18 paid for with trust funds or specifically for the trust in
19 her capacity, because I just -- anything that's individual
20 to her, I just have this -- I just --

21 MR. MOODY: So I just --

22 THE COURT: When can I ever invade the attorney-
23 client privilege?

24 MR. MOODY: I want to make sure I understand, Your
25 Honor. If it was paid for by trust funds, is Your honor

1 saying even though it benefitted her individually, it is
2 still protected by attorney-client privilege?

3 THE COURT: Well, here's my concern about that. I
4 think you're entitled to know if something was paid for
5 with trust funds.

6 MR. MOODY: Okay.

7 THE COURT: I'm not sure you're entitled to know
8 what it was. Do you see the distinction?

9 MR. MOODY: Okay.

10 THE COURT: Maybe I wouldn't -- maybe didn't make
11 that very clear. You're entitled to know if she was paying
12 an attorney with trust funds. You're entitled to know
13 that.

14 MR. MOODY: Okay.

15 THE COURT: I'm not sure you're entitled to
16 actually get, like, every letter that went. If it was in
17 her -- if it was to her, individually.

18 MR. MOODY: Okay. So it sounds like --

19 THE COURT: Am I parsing this too -- and I think
20 that this is ultimately what Mr. Waid wants. He may
21 ultimately be entitled to it, but I just think that until
22 we can say we are invading the attorney -- individual
23 attorney-client privilege, we have to first have made some
24 finding saying that you're entitled to this because this
25 was a fraud, and we still -- and that's what we're going to

1 get to next, is how are we ever going to get to that
2 hearing if we don't have legal counsel for us? See what
3 I'm saying?

4 So I -- is there a way -- I don't know if that's
5 sufficient for Mr. Waid, but that's -- he's tracing funds.
6 He's tracing funds. So, we're looking for payments made
7 from trust funds. You're entitled to know if payments were
8 made from trust funds.

9 MR. MOODY: Okay.

10 THE COURT: That's category one. And/or anything
11 having to do with her in her capacity as trustee.

12 MR. MOODY: All right. So we already know that
13 they were paid with trust finds.

14 THE COURT: Correct.

15 MR. MOODY: These three professionals that we're
16 looking at.

17 THE COURT: Any billing records, anything having
18 to do with payment from trust funds.

19 MR. MOODY: Okay. So we can ask for that.

20 THE COURT: Right.

21 MR. MOODY: And then anything trust related.

22 THE COURT: Correct.

23 MR. MOODY: Opinions.

24 THE COURT: Right.

25 MR. MOODY: Work.

1 THE COURT: I think that's well -- as we have
2 interpreted it here and, as far as I know, we haven't been
3 appealed on it yet. There's no caseloads come down. I
4 think this is just me and the Commissioner. Well, actually
5 Commissioner Yamashita and Commissioner Bulla. This is
6 kind of like our -- we're all trying to be consistent on
7 how we apply this fiduciary exception. And so that's our
8 view. Any trust beneficiaries are entitled to inspect
9 opinions of counsel procured by the trustee to guide him in
10 administration of the trust, and it goes on, and on, and
11 on.

12 As far as, you know, other kinds of advice and all
13 those correspondence, any of those kinds of things. The
14 trustee seeking to foreclose the beneficiaries' inquiry
15 into the trust administration must bear the burden of
16 showing that he or she acted in the capacity that rendered
17 the privilege applicable. That's her burden of proof. So
18 it's her burden of proof.

19 So at this point in time, I don't have anything
20 that tells me otherwise, but if there's something that is
21 individual to her, then I still think that before I can say
22 I'm invading that -- the -- does the privilege exist for
23 communication does not exclusively concern administration
24 of the trust. And it doesn't. I mean, it's broader than
25 that. I mean, if you're using trust funds, I think that's

1 what this opinion talks about, that you -- the trustees
2 can't claim their communications are related to a
3 litigation. That doesn't protect you. Just saying that
4 this is in anticipation of litigation doesn't protect you.
5 It still -- if it's for the trust, they still have to
6 produce it. They can't hide behind work product. They
7 can't hide behind any of those things at this point in
8 time. They just -- you just can't.

9 So, do you want to try drafting another version
10 that sort of incorporates this language and says that here
11 in Nevada we recognize the fiduciary exception? This
12 applies to communications about the trust. This applies to
13 opinions about the trust. This applies to work product
14 about the trust. It applies to everything -- well, the
15 product is the attorneys. It applies to everything that's
16 paid for by the trust, and it's something -- and unless --
17 the only exception being if it is -- if the work product is
18 to her, individually, then I think that's still protected
19 because that's her attorney-client privilege, individually.
20 But you're entitled to know if it's paid -- how it was paid
21 for.

22 MR. MOODY: All right.

23 THE COURT: So we can rewrite --

24 MR. MOODY: I think, then, with that direction,
25 I'll go back and work on that authorization.

1 THE COURT: I understand that it may not be
2 enough, that ultimately what Mr. Waid may need -- he may
3 need more, but I think we then have to -- before I'm
4 willing to go on this crime fraud thing, I think we have to
5 make that finding separately. And I don't think it's fair
6 to do that today when it's not been briefed and we haven't
7 actually had that hearing, because that's kind of our
8 ultimate issue here.

9 MR. MOODY: All right. So our Motion is granted.

10 THE COURT: It's granted.

11 MR. MOODY: We'll go back, draft an authorization,
12 and provide it to counsel for Ms. Ahern.

13 MS. PETERSON: Well, let's be clear. The Motion
14 is granted in part and denied in part, because their Motion
15 was to compel my client to waive her individual attorney-
16 client privilege. And I want to be clear, --

17 THE COURT: Right. And --

18 MS. PETERSON: -- the Court's not ordering her to
19 do that today.

20 THE COURT: I -- that it is without prejudice to
21 seek that. I don't think we have that finding necessary to
22 compel that at this point. I understand where you're
23 going. I understand it may ultimately be -- we may have no
24 choice, but at this point I don't think we're there yet.
25 So, at this point, I'm willing to go no further than

1 opinions of counsel, correspondence, anything related to
2 the trust. All communications related to the trust in her
3 capacity as trust that all -- they're entitled to that.
4 And beyond that, they're entitled to know if any advice was
5 paid for by the trust.

6 The only thing that's protected at this point in
7 time is if it was individual advice to her in her
8 individual capacity. It's protected without prejudice at
9 this point in time, Mr. Moody. I want to be clear, because
10 Ms. Peterson's correct. I'm not, yet, invading the
11 individual attorney-client privilege, but this is without
12 prejudice because that's where we're headed.

13 MR. MOODY: Got it. Loud and clear.

14 THE COURT: Okay.

15 MR. MOODY: Okay.

16 THE COURT: All right. Which gets us to the real
17 point, which is the distribution of income. Ms. Peterson?

18 MR. LENHARD: No, you get stuck with me.

19 THE COURT: Okay. Okay.

20 MR. LENHARD: And I'm going to use the podium, if
21 that's all right.

22 THE COURT: Certainly.

23 MR. LENHARD: Judge, a couple of minutes ago,
24 actually --

25 THE COURT: Is the -- Kerry, is the recording on?

1 Is the little red light on your mic --

2 THE COURT RECORDER: Yes. It's on.

3 MR. LENHARD: Yeah.

4 THE COURT: Okay great. Just wanted to make sure
5 if you were standing at the podium it was going to record
6 you. Okay good.

7 MR. LENHARD: All right. Thank you. A couple of
8 minutes ago you asked what we were still doing here.

9 THE COURT: Yeah.

10 MR. LENHARD: Because we had petitioned the Court
11 a little while ago to withdraw. I'm going to tell you that
12 I was troubled by the fact that my firm was making me
13 withdraw from this case because, you know, I've practiced
14 law now for 40 years, and I was concerned about the fact
15 that I have a client who, allegedly, has engaged in a
16 number of serious misdeeds in this Court. And I'm not
17 justifying those misdeeds, if they're proven to be
18 accurate, and, of course, Mr. Waide says there's a
19 confession and we'll deal with all that at the appropriate
20 time.

21 But what I was more worried about was the fact
22 that I was abandoning somebody to be bullied and pushed
23 around in a courtroom, only protected by a judge who's
24 supposed to be the individual mediator or the individual
25 arbitrator of these disputes. I didn't want to leave Ms.

1 Ahern to the mercy of Mr. Waid, Mr. Moody, or counsel for
2 the two daughters. I didn't think that was appropriate so,
3 despite the angst, let's say, of my managing partner, I'm
4 here today.

5 I haven't received an accounting for a significant
6 period of time in this case, as far as what income has been
7 received by the trust. I believe the 35 percent that first
8 went to the Summary Judgement Order is still my client's
9 interest in the trust. And I say still, because that's to
10 be decided at a later date. I believe that amount is
11 probably north of \$400,000. Yet, I have a client today who
12 is going to the food bank in Mesquite, going to the
13 Salvation Army in Mesquite, and the Seventh Day Adventist
14 Church for food. I have a client who cannot pay for legal
15 representation for a trial coming up in February where she
16 may lose all interest in the trust. You know, Mr. Powell
17 has an argument and he wants to make it, and he's entitled
18 to make that, of course he is. And we're going to have a
19 full blown trial sometime in February. My client, at age
20 79, she can't even hear for heaven's sake, is she going to
21 represent herself in these proceedings?

22 So I was bothered about the concept of leaving and
23 I decided despite the fact it would create a lot of flack,
24 a lot of objections, I would file for her living expenses
25 and we've done like a divorce proceeding. We've provided a

1 summary of why these expenses are necessary. I think it's
2 10 to \$11,000 a month. And I've also put in for fees. An
3 interim fee of \$30,000, and \$10,000 a month up until the
4 date of the trial.

5 I will tell you that that is a significant loss to
6 my law firm and that if Ms. Ahern prevails and retains her
7 interest in the trust, I will then settle that at that
8 point in time. I will tell you that my law firm is not the
9 least bit pleased about the fact I'm here doing this today,
10 but I feel an obligation, despite the allegations and the
11 misdeeds and so forth that she's purportedly committed.

12 Whether she's a bad person or not, she is entitled
13 to her day in court and she is entitled to effective
14 representation. If, in fact, there is \$400,000 on her
15 account, or more, being held by Mr. Waid, she should have
16 access to a small sum to live on and to represent herself
17 going into February. I don't think that is too much to
18 ask. Then, at that point in time, if Ms. Ahern prevails at
19 the trial, you can tax her interest in the trust and
20 arrange a repayment plan.

21 Judge, I'm also asking that we get a decision on
22 this promptly, and there is a reason, I want to be candid
23 with this Court. We intend on going to the Supreme Court
24 and asking them to review these proceedings. If, in fact,
25 she's denied access to fees, and access to her own expenses

1 --

2 THE COURT: Was there already an appeal filed?

3 MR. LENHARD: This would be a writ.

4 THE COURT: Okay.

5 MR. LENHARD: An emergency writ --

6 THE COURT: Is there --

7 MR. LENHARD: -- because she's going to trial on a

8 pro per basis --

9 THE COURT: Okay --

10 MR. LENHARD: -- if we're not granted fees --

11 THE COURT: Okay.

12 MR. LENHARD: -- and if she's not granted living

13 expenses. We want the Court to look at that.

14 THE COURT: Okay. So I guess -- I just -- I'm

15 trying to figure out, are we -- do we currently have any

16 issues on appeal?

17 MR. MOODY: Yes.

18 MS. PETERSON: Yes.

19 MR. LENHARD: Yes, you do.

20 THE COURT: Okay. Are we -- is part of this --

21 MR. LENHARD: That doesn't prevent us from filing

22 a writ of mandate --

23 THE COURT: Okay.

24 MR. LENHARD: -- or a writ of prohibition. I'm

25 not sure which one it would be.

1 THE COURT:: But I'm just trying to figure out for
2 when we talk about the attorneys' fees, Mr. Lenhard, is
3 that just -- are we talking about preparing for the trial?
4 Or is that also the appeal?

5 MR. LENHARD: Oh no. We are also -- we also have
6 to do the appeal.

7 THE COURT: Okay.

8 MR. LENHARD: We are losing on this. But that's
9 enough to keep me alive.

10 THE COURT: I just wanted to make clear what --
11 I'm just trying to figure out what the attorneys' fees --

12 MR. LENHARD: Right.

13 THE COURT: -- are for.

14 MR. LENHARD: But also, I said, I --

15 THE COURT: Because I think that was one question
16 they raised is: Why did you need this cut of money? I had
17 forgotten about we did have an issue already on appeal.

18 MR. LENHARD: We'll be able to stall it but we
19 have to file a brief next month.

20 THE COURT: Yeah. Okay.

21 MR. LENHARD: But I wanted to get in the clear
22 with the Court. You're certainly entitled to that. We're
23 asking you to rule today, and if you deny us, fine. Deny
24 us so we can go up and have the Court review --

25 THE COURT: Right.

1 MR. LENHARD: -- this whole thing.

2 THE COURT: Okay.

3 MR. LENHARD: Thank you.

4 THE COURT: Okay. I -- one issue that was raised
5 by, I don't know if it was Mr. Powell or Mr. Moody, there
6 are properties. Are they income producing properties,
7 there's -- because there's a rental home. She's living in,
8 currently in a rental property, but she owns some
9 properties, so are -- is there any way to turn those into
10 income producing properties?

11 MR. LENHARD: They're all under water.

12 THE COURT: Okay.

13 MR. LENHARD: They're all on the verge of being
14 lost.

15 THE COURT: Okay. All right.

16 MR. LENHARD: And that's what's been represented
17 to me. Let me put it that way, so we're clear. Okay. And
18 --

19 THE COURT: I just want to make sure. I mean, if
20 there was anything we could do to generate income.

21 MR. LENHARD: If there's an issue on --

22 MS. PETERSON: We did provide the information on
23 the properties to Mr. Waid.

24 MR. LENHARD: Thank you.

25 MS. PETERSON: It appears that one of those three

1 properties was sold back in June. The other two are not
2 held in the name of Ms. Ahern, are held in other business
3 trust names. As my understanding, that she controls those
4 business trusts, but both of those have mortgages and have
5 renters or income that is not sufficient.

6 THE COURT: Okay.

7 MS. PETERSON: It's -- they are under water as I
8 understand it.

9 THE COURT: The income to --

10 MR. LENHARD: Yeah. It doesn't --

11 MS. PETERSON: And we provided that information to
12 Mr. Waid.

13 THE COURT: Got it. Okay. Thank you, appreciate
14 that.

15 MR. LENHARD: Thank you.

16 MR. MOODY: I'm just going to stay here.

17 THE COURT: Sure. Fine.

18 MR. MOODY: Judge, as you know, we are not taking
19 a position one way or the other. We filed a response.

20 THE COURT: Right.

21 MR. MOODY: Very delicately titled it that way.

22 THE COURT: Correct.

23 MR. MOODY: I will say this. The last thing we
24 want to do is delay things anymore, but if this is going up
25 to the Supreme Court on a writ, I do want to point this

1 out. The original Motion asks for a distribution of net
2 income, that 35 percent. In Ms. Ahern's Reply, the request
3 is made to invade trust principal.

4 THE COURT: Right.

5 MR. MOODY: Which is a very different request --

6 THE COURT: Very different.

7 MR. MOODY: -- than we started out with. Not that
8 we're going to take an adversarial position, but at least I
9 think we have a right and responsibility as trustee to
10 point out to the Court what our position is, even if it's
11 complete deference to Your Honor about what to do with that
12 request regarding the invasion of trust principal. So --

13 THE COURT: Yeah. Can we talk about that?
14 Because I thought we -- this was the -- is there anything
15 in this trust other than oil and gas revenue? Because I
16 just didn't know what you could possibly invade? I mean,
17 it's not like you can sell, like, a share of an oil field.

18 MR. LENHARD: Well, so we're clear too, and if it
19 -- because we're in a rush.

20 THE COURT: Right.

21 MR. LENHARD: What we're seeking only to go
22 against is the 35 percent of hers.

23 THE COURT: Okay.

24 MR. LENHARD: So let's make that clear on the
25 record.

1 THE COURT: Okay

2 MR. LENHARD: No dispute.

3 THE COURT: Okay. I just wanted to make sure.

4 MR. WAID: The trust corpus is undividable. I

5 mean, it's an undivided interest in real property --

6 THE COURT: Yeah.

7 MR. WAID: -- and oil and gas revenues on that

8 property, and other properties.

9 THE COURT: Yeah, that's what I thought. I just

10 didn't --

11 MR. WAID: I can't invade and divide.

12 THE COURT: -- understand how we could possibly

13 invade it. From what I understood, it's just exactly that.

14 It was an interest that generates oil and gas revenue. And

15 so it's mineral rights. And I --

16 MR. LENHARD: Well, --

17 THE COURT: -- just don't know if there's any way

18 to -- they're not holding stocks and bonds.

19 MR. LENHARD: No, no, no, no. But they're holding

20 cash.

21 THE COURT: Well, okay. I just want to make that

22 clear that --

23 MR. LENHARD: Yeah.

24 THE COURT: -- there's not something that they

25 could go and sell.

1 MR. LENHARD: No, no, no. We're not suggesting
2 that.

3 THE COURT: Okay. Got that. Okay. Understood.

4 MR. LENHARD: They get oil and gas revenue every
5 month.

6 THE COURT: Okay.

7 MR. LENHARD: And we haven't seen an accounting
8 for quite a while, but we believe the 35 percent of the oil
9 and gas revenue that's being held by the trust is about
10 \$400,000.

11 THE COURT: okay. Now this is another issue, I
12 think, because it's a term of art and I know that Mr. Waid
13 is not -- has been really careful to not provide, like, a
14 final -- because he does not want to commit himself that,
15 as I understand this, that he knows, he can account for the
16 trust. And he's being very careful in not doing that right
17 now, because that's a term of art, and if he says here's my
18 accounting, he's telling us he can't find anything else and
19 this is what there is and I don't think he wants to go
20 there at this point.

21 MR. WAID: I'm not prepared to.

22 THE COURT: If there's a statement or some sort of
23 an income -- I mean, because I -- we do not want him, at
24 this point in time, to prepare a formal accounting because
25 that then places us in a position where this is the record

1 and none of us feels confident that we know where the money
2 went and we don't want an accounting. But there may be
3 some other way to -- I don't know if there's some interim
4 term, or some, like, less official term that is a statement
5 of income or something that might be possible. But I just
6 want to make it really clear, I don't -- I would not
7 expect, at this point, Mr. Waid to provide a formal
8 accounting. I don't think it's in anybody's interest that
9 we ask him to do so because none of us has given up hope
10 that he will be successful in his efforts to find what
11 happened to the money. And until that time, we don't want
12 him to file what would be termed an official accounting.
13 We don't want that at this point, but there might be some
14 interim kind of report that we can get.

15 MR. WAID: Your Honor, I'm willing to provide an
16 accounting from the date of my appointment --

17 THE COURT: Right.

18 MR. WAID: -- until today.

19 THE COURT: It's like the interim accounting.

20 MR. WAID: An interim accounting of just the
21 revenue that's been received, --

22 THE COURT: Right.

23 MR. WAID: -- checks that have been deposited into
24 the bank, --

25 THE COURT: Okay.

1 MR. WAID: -- cash that I have on hand now.

2 THE COURT: Great. I -- because we do not want a
3 formal accounting.

4 MR. WAID: It's fine.

5 THE COURT: I don't think it's anybody's -- are we
6 in agreement that's not in anybody's interest?

7 MR. WAID: I don't have the records yet, so --

8 THE COURT: And we can't ask him to do it. So
9 yeah, we can't get a formal accounting, but we certainly
10 can get you information, Mr. Lenhard, I think you're
11 entitled to it. Your client's entitled to it. And so that
12 would be part of this, is that we'll provide you with
13 information and -- because I don't know if there's \$400,000
14 being held or not. It was my understanding that there
15 wasn't because we were left in kind of the cash strapped
16 situation when the funds were withdrawn before the accounts
17 were turned over. So that's kind of part of our problem.
18 This starts from a not great position.

19 So -- but we can get information for you on an
20 interim income and expense report kind of thing. And
21 that's agreeable, Mr. Waid?

22 MR. WAID: Yes.

23 THE COURT: Okay. Great.

24 MR. WAID: I'll be happy to do so.

25 THE COURT: Okay. So as long as it's clear that

1 we're not asking anybody to invade the principal or provide
2 us with a formal accounting. Are we -- do you have
3 anything else to add, Mr. Moody?

4 MR. MOODY: No, Your Honor.

5 THE COURT: Okay. It's really Mr. Powell's
6 opposition. Okay. So, Mr. Powell.

7 MR. POWELL: Your Honor, the one thing in context
8 that I'd like to throw out to you right now is Mr. Waid and
9 Mr. Moody, this previous hearing that they were just at,
10 Ms. Ahern had representation over there, in the form of Mr.
11 Shapiro, which I have attached to my objection to you. Is
12 Mr. Shapiro working for free?

13 We -- what my biggest problem with the audacity to
14 come in and ask the Court for money is that we don't have
15 answers as to where the previous money went. We don't have
16 answered as to what the current assets that Ms. Ahern has.
17 As Mr. Waid and Mr. Moody have indicated to you before,
18 that's really going to be effectively the purpose of this
19 deposition is to get answers. We are acting in this
20 vacuum, essentially, right now, that Ms. Ahern, who is
21 present in this courtroom, cannot provide us with answers
22 as to where millions of dollars went. And that's just
23 absurd.

24 There needs to be -- you cannot have a trustee who
25 this court ordered hold this money in trust until

1 resolution of this matter who simply says, I'm not telling
2 you. That's not the way this works. As you astutely
3 pointed out, there's no criminal matter proceeding right
4 now. This is a fact finding mission for Mr. Waid that he
5 has been on since day one, effectively, when he takes over,
6 there should be millions of dollars that you ordered Ms.
7 Ahern to be holding for my clients and Mr. Waid, once again
8 --

9 THE COURT: Don't remind him. He's never going to
10 forgive me for this one.

11 MR. POWELL: What's that?

12 THE COURT: He's never going to forgive me for
13 this one. So please --

14 MR. POWELL: For getting -- well, the reality
15 though is that when he takes over, he finds \$10,000 in that
16 account, roughly. So, from that point in time until now,
17 he is trying to figure out: Where did these funds go and
18 how do I collect these? Can I even collect these?

19 So we're acting here as though somehow we're
20 seeking some mystery person to tell us where the money went
21 when such person is in this courtroom right now. And just
22 simply saying: I'm not telling you. Well that's not
23 acceptable, Your Honor.

24 And what compounds the salt in this wound is the
25 say is, I'm not telling you, and I want more money, and you

1 should be paying me more money. Well, no. The reality is
2 that my clients are in the hole and it's going to take my
3 clients years. If you do nothing else in this entire
4 matter, just for them to get back to square and undo the
5 damage, we're probably talking four, five, six years with
6 Ms. Ahern not seeing a penny, just for them to get back to
7 square one, which they should have been on the date that
8 Mr. Waid looked in that account and there should have been
9 those millions of dollars that you ordered her to hold and
10 then we would not be right here right now as to this
11 particular issue. Ms. Ahern could have appealed it.

12 That's the other thing that troubles me about this
13 so much as well. What right, in a Court of Equity, and,
14 Your Honor, with all due respect, Commissioner Yamashita
15 handles a lot of pro se people making arguments on things
16 that are just as important to them, just as valuable to
17 them in Probate Court every Friday. So this fallacy of,
18 well, Ms. Ahern -- there's a lot on the line for Ms. Ahern.
19 Well, she must have representation. Well she's had
20 representation all along the way. What we've discovered is
21 she's also used Jacqueline and Katherine's money to pay for
22 that representation.

23 Which that's the other frustrating part about this
24 is that now the attorneys are saying: Well, yeah we got
25 paid. Mr. Waid knows -- he has access to track the Wells

1 Fargo payments. He has seen that the checks that have been
2 written out for her representation. But, yet, now the
3 attorneys are saying: Well we're not providing you with
4 that information. Well, you got paid by trust funds, as
5 you've astutely pointed out. Well, you have to exactly
6 show what is exactly you did that benefitted the trust.

7 The problem we've had here from day one with Mr.
8 Burr's office with the representation is that if you want
9 to think about this really astutely and ethically, how
10 could one represent in -- under this fact pattern, also
11 represent the trustee and represent her, individually?
12 That's a conflict of interest. How could you do that? And
13 I had an issue from day one with Mr. Mugen [phonetic], and
14 I warned him, and said you better not be accepting trust
15 funds because this is a beneficiary versus beneficiary
16 dispute. I could care less that Ms. Ahern is claiming
17 that, well I'm acting as trustee and I'm responding to this
18 as trustee. This was nothing more than: I'm entitled,
19 individually, because obviously the trustee has no
20 beneficial interest in the trust, I'm claiming that I'm
21 entitled to 100 percent. That's a beneficiary
22 representation.

23 Mr. Waid knows what he has seen, where the money
24 has gone, but we don't have answers. He cannot fill in the
25 gaps alone because he can't see the files because what

1 they're saying is: Oh, privilege, privilege. Well, we
2 know, as you've pointed out, there is no privilege. You
3 want to take the trust funds and claim you didn't work for
4 the trust, you've got to share that information.

5 And I would point out, too, is Commissioner Bulla,
6 and I've been before here on this same issue, Your Honor,
7 she has said in many instances, if you're not sure, submit
8 it to me in-camera and I'll make the ultimate
9 determination. Well, I would respectfully submit to you if
10 any of these attorneys are conflicted about --

11 THE COURT: Well, we're not talking about them.

12 MR. POWELL: Right.

13 THE COURT: We're done talking about them.

14 MR. POWELL: Okay, fine.

15 THE COURT: We're not talking about that. This is
16 the question of --

17 MR. POWELL: But that still goes back to the same
18 issue, Your Honor, is that Jacqueline and Katherine's
19 monies were used against them. Ms. Ahern used them, the
20 monies that she was supposed to be keeping.

21 So now we're fast forwarding to this issue of,
22 well, she's gone through the money. Well, we -- that's
23 millions of dollars that have been gone through. We just
24 don't throw that out the window and go: Oh well, yeah,
25 well that's I guess water under the bridge. Let's talk

1 about the here and now. You can't just ignore what's
2 happened.

3 My clients have been financially harmed by this.
4 If we're going to talk about payment and attorneys' fees, I
5 didn't get paid for a while in this case either because I
6 did the right thing and said this is financially crippling
7 you. Don't pay me right now.

8 So, the other aspect of this is that if we believe
9 so strongly in a client's case, what stops us from acting
10 pro bono? There's no reason why, as attorneys, we can't --
11 if we're to believe so strongly in our client's case and
12 they need representation, well we can work for free. So,
13 that's another red herring here to tug on the -- this
14 Court's heart strings and that appalls me. There's no
15 right to say, well, she really needs representation, then
16 she really needs us to represent her. There's other
17 attorneys by the way, Your Honor, just to be clear, so
18 we're having this all in context, that have claimed that
19 they are also owed monies.

20 In Mr. Moody's Motion, there's a letter from
21 Candice Renka saying that Marquis Aurbach's owed \$150,000.
22 So, in the grand scheme of things that we're picking and
23 choosing who gets paid here and who doesn't get paid?
24 That's ridiculous.

25 The other problem I have here is that just a

1 couple weeks ago we were talking about Ms. Ahern had a ring
2 that's worth \$30,000. Where did that ring go, Your Honor?
3 Why exactly is that not being used? Again, the other
4 question I have is why is Mr. Shapiro apparently
5 representing her in another matter? He apparently is
6 getting paid.

7 So until we have effectively the functional
8 equivalent of a debtor's exam or we have a declaration
9 under oath as to these are my assets, these are where they
10 went, this is all premature. This is completely premature
11 because we're taking guesses that were getting factual,
12 accurate information from Ms. Ahern, and I would
13 respectfully submit that, given her actions, that -- she
14 does not get that benefit of the doubt here, whatsoever.

15 So until we have a deposition where Ms. Ahern
16 completely answers for where these monies have gone, this
17 is all premature. This is completely premature. It's not
18 fair. It's not right to my clients to say -- because this
19 is what I would submit to you, Your Honor. We are
20 effectively in an annuity situation here. Well, why is
21 that? Because the bottom line is Jacqueline and Katherine
22 are 100 percent beneficiaries of this trust when Ms. Ahern
23 passes. So the issue is, is that if Ms. Ahern should pass
24 in the next few years, my clients are never going to get
25 fully recovered. The only asset that they have is to get a

1 surcharge against what Ms. Ahern would otherwise have been
2 entitled to receive had she not gone to what she did.

3 And so until my clients are put back to square
4 one, it is unbelievably unfair for them to even be talking
5 about: Well, we're going to take more money out, and we
6 need this, and we need that. Wrong. Wrong. That's
7 totally unfair. And this is a Court of equity where
8 fairness is supposed to be the be all and end all as to
9 what the party's positions are.

10 Reality is, Ms. Ahern created this situation for
11 herself. Jacqueline and Katherine had nothing to do with
12 this. They have had to deal from day one when she
13 unilaterally stopped those payments. They've had to deal
14 with the collateral damage the entire time. They've had to
15 deal with the financial stress. They've had to deal with
16 the emotional stress.

17 As I've pointed out, Ms. Ahern can now experience
18 that. She can now experience what happens when you don't
19 get that check every month that you've been relying on.
20 She's made her bed, Your Honor. She can lay in it. And if
21 she wants to explain where the monies have gone, go ahead.
22 We've been asking for this. We've been asking for this.
23 Mr. Waid has been asking for this. Tell us what you have
24 done with the monies. If they're gone, say they're gone.
25 If you believe they can be recovered, explain. Give up the

1 road map to Mr. Waid. This is how I think you can recover
2 those monies. But you've got to explain. You can't, as a
3 trustee, hide behind and say: My lips are sealed. I'm not
4 telling you. You go figure it out. That is brazen
5 attitude to this Court. It's disrespectful to this Court.
6 It's disrespectful to my clients. It's also disrespectful
7 to Mr. Waid who can't do his job without getting answers.

8 And, again, it troubles me that Ms. Ahern is in
9 this courtroom and is -- we're acting as though: Well, we
10 have to figure out who the mystery person is that has all
11 the answers to this. And, again, that will be, hopefully,
12 at this deposition that is coming up, that will finally,
13 hopefully, get Ms. Ahern to give us answers under oath as
14 to what's gone on here. And until we get answers, these
15 requests are totally, completely premature and they're --
16 they should be completely ignored by this Court and said
17 no. Not happening. Not happening.

18 THE COURT: All right. Well I guess the -- I
19 understand what you're saying. I guess the concern that I
20 have here is that if the goal that we have is to find out
21 from the one person who has the information, can you help
22 us recover this money? Because hopefully she knows who she
23 gave it to. She either gave it to people who are holding
24 it for her --

25 MR. POWELL: -- or she spent it.

1 THE COURT: Or she spent it. Or they stole it.

2 MR. POWELL: Correct. So I don't -- and that's
3 exactly --

4 THE COURT: We don't have a whole lot of options.
5 There may be people -- I know that there's been a real
6 concern, and there's been a concern from day one, and as
7 I've said, you know, I regret that I did not get to the
8 point of understanding earlier how invidious these people
9 who surround her are. But it's a deep concern for the
10 Court that there are people who appear to have taken
11 advantage of her better nature and to the detriment of her
12 family and herself, because I would submit that it's
13 largely these persons who have left her in the position
14 that she is, where she is on public assistance, which must
15 be very humiliating for somebody who's always had a nice
16 stream of income from this family asset. I understand that
17 it is very distressing at her age to be placed in this
18 position, but as you pointed out, she could stop it
19 tomorrow by simply telling Mr. Waid where the money went.

20 MR. POWELL: Exactly.

21 THE COURT: My problem is how do we assist in
22 reaching that resolution, short of having her have legal
23 counsel? I am -- we all talked about it at the time that I
24 -- I don't know if it was Ms. Peterson or if it was Mr. --
25 or there was somebody else who came to one hearing that

1 wasn't Mr. Lenhard. We talked about the fact that -- and I
2 know that when Mr. Lenhard talked about leaving her at your
3 -- in your hands, unrepresented, that nobody in this case
4 has ever, I believe, ever treated Mrs. Ahern with anything
5 other than the respect due to her. I know that Mr. Waid
6 would not -- I understand your frustration and her
7 daughter's frustration. It is very disturbing to think
8 that people took advantage of her and somehow managed to
9 convince her to turn over all this money. It is
10 horrifying.

11 MR. POWELL: But I would submit to you, Your
12 Honor, is we don't know. We have always surmised that is
13 what's happened.

14 THE COURT: Correct. We --

15 MR. POWELL: But we've also seen expenses as well.

16 THE COURT: Well sure.

17 MR. POWELL: Ms. Ahern has, apparently, flown on
18 private jets.

19 THE COURT: No, and we --

20 MR. POWELL: She's cruised around the world and --

21 THE COURT: The thing is, Mr. Powell, I don't know
22 that that was her lifestyle always. It may have been her
23 lifestyle always. But maybe it's just a lifestyle that was
24 influenced by other people who were hangers on. So, I
25 can't really judge that yet until we've had this hearing.

1 And my thing is how do we assist you in getting to
2 the point where you can find out for your clients -- Mr.
3 Waid can find out for everybody, and because this is
4 ultimately benefit Ms. Ahern as well, where the money went.
5 Because there is a lot of money, some of which she had an
6 interest in, that is just gone. And, as we said, it's
7 either been stolen from her, she's given it to somebody to
8 hold for her to recover at a future date, or she spent it.

9 MR. POWELL: Correct.

10 THE COURT: And if she just went on a big buying
11 spree, I haven't seen any evidence of that. I understand
12 that there were some unusual expenses paid for by the trust
13 that were not appropriate. We'll get to all that in an
14 alternate hearing.

15 I'm just trying to say that at some point in time,
16 does it benefit us, at this point, as was pointed out by
17 Mr. Lenhard, to say we will advance this money, subject to
18 it being clawed back, surcharged, whatever, because we want
19 to get to that hearing. We want those answers. We want
20 them in a Court of law so that we can make the findings,
21 because right now we can't make certain findings. We can't
22 make findings that we have a fraud or crime exception,
23 because we have not proven that yet. You ultimately want
24 to get there, so don't we need to get there?

25 And I would say, again, as I've always said, that

1 whether she's paid them or not, Ms. Ahern has always had
2 the best counsel, and they have given her excellent
3 representation, certainly current counsel have headed off
4 one criminal charge so far. It's a criminal charge, and we
5 all need to be very cognizant of that, because it is a very
6 scary thing, and I think that's Mr. Lenhard's concern as
7 counsel for someone if you are leaving them facing
8 potentially criminal exposure and you're leaving them
9 unrepresented. It's a little different, with all due
10 respect.

11 I understand that every Friday, Commissioner
12 Yamashita deals with 150 matters, many of whom are pro se,
13 and are very serious in their own context to those
14 individuals. I understand that. We're talking here if our
15 concerns are correct, it is something that's been voiced in
16 here by everybody, but we can't -- we don't know it yet.
17 It's potentially -- has very serious ramifications. And I
18 understand Mr. Lenhard's ethical concern that he leaves a
19 person unrepresented facing that. It's not just about
20 returning grandma's Hanukkah china. I had that case. I
21 had a case about Hanukkah china. I really did. It was
22 really important to those people. Really important.
23 Everybody's in their own relative understanding. This has
24 a little bit another level in another layer.

25 And I understand the ethical concern that Mr.

1 Lenhard is raising here, as a former criminal defense
2 attorney who does -- also a lot of white collar crime.
3 This is -- when you withdraw and you leave a client facing
4 potentially fraud and/or criminal charges, it's a big deal.
5 And it's a burden on an attorney's ethics to say I'm just
6 going to walk away from this person and leave them, and I
7 know that he didn't mean anything disparaging about how
8 counsel have treated his clients, but just leaving him --
9 leaving his client in a position where she is exposed to
10 the very competent counsel on the other side who -- so
11 that's my concern, is that it seems to me that there is
12 some point where something can be done.

13 My concern has always been: I don't know that
14 there's any money. I don't know that there is any money
15 because this trust was left in a very precarious position.
16 There's a huge tax liability and I don't know that we can
17 say: Okay, well let's make a distribution here and we'll
18 get the -- we'll be able to get it back, ultimately, if we
19 don't even know if we have money to pay it. So that's part
20 of my concern.

21 MR. POWELL: Your Honor, we do have money to pay
22 it. The issue, though, now is that my clients, again, are
23 dealing with the damage of this.

24 And to your point on the criminal matter, I just
25 want to make it very clear, if you -- and I'm not going to

1 speak for Mr. Waid or Mr. Moody, but if criminal action is
2 going to be brought, respectfully, it's going to be on your
3 doing. I don't see my clients wanting to jail their 79
4 year old mother, who, by the way, if Ms. Ahern is ever
5 hungry, she is always welcome at Jacqueline's home. That's
6 an outstanding invite that, hopefully, these speakers are
7 picking up. She can always knock on the door and she will
8 be fed, she will be taken care of. So going to a food bank
9 seems a little absurd when Jacqueline is willing to do
10 this.

11 THE COURT: Okay.

12 MR. POWELL: So if your concern is that we are
13 leaving Ms. Ahern to the wolves, there are no wolves over
14 here.

15 THE COURT: Apparently homeless, because she's
16 renting a home. Okay. Fine. Thank you, Mr. Powell, I
17 appreciate that.

18 MR. POWELL: Well, I just want to make it clear
19 just -- because if that is on your mind, I don't know if --
20 all we are seeking is like anybody else in this situation
21 would. Do you have the money? Did you give the money
22 away? Is it spent? I -- we're not concerned with the
23 ramifications.

24 THE COURT: I understand. This whole thing can be
25 wrapped up tomorrow --

1 MR. POWELL: Yeah.

2 THE COURT: -- if she just told us that.

3 MR. POWELL: Exactly. Or if she told Mr. Waid
4 that.

5 THE COURT: With all due respect --

6 MR. POWELL: I don't even need to be present. I
7 could care less. If -- I am not here to grill Ms. Ahern, I
8 don't care. Mr. Waid is, like he said, is spinning wheels
9 here spending money, and I --

10 THE COURT: Okay. We're talking about two
11 different things here.

12 MR. POWELL: Okay.

13 THE COURT: Now, with all due respect, Mr. Waid
14 wants to do what he's been tasked by the Court to do. I
15 understand that. That's his job. He's doing this to the
16 best of his ability and he's being stonewalled. I
17 understand that.

18 But the problem that I have here is there is an
19 additional layer on here. There is a challenge. There is
20 a request to deprive her of her future interest in the 35
21 percent. There is a request to surcharge her for
22 everything else that's gone on. And if there was, on her
23 part and not these, you know, bad people, crime committed,
24 it might have been, we don't know, there's a reason why she
25 has to have legal protection because I understand your

1 clients want their money back, but that's a little
2 different from just saying Mr. Waid needs to find the
3 money. Do you see what I'm saying?

4 MR. POWELL: Well, okay. If --

5 THE COURT: If it weren't an issue of saying we
6 don't want her to have a dime in the future, dhe's given up
7 her right to that 35 percent because of her bad acts, we
8 don't want her to have any of the money that she should
9 have been accumulating because she's got to pay us back
10 first, if you're successful in your request for recovery of
11 records -- Mr. Lenhard said right away, if you're
12 successful in your request for recovery, it's a really big
13 deal.

14 And I -- and she's -- I can understand why she's
15 not willing to just go in to Mr. Waid and say: Here's the
16 story. Because she faces potential sanctions that are
17 huge, to use a [indiscernible] tem for it, huge.

18 MR. POWELL: But how exactly --

19 THE COURT: And I understand why Mr. Lenhard is
20 deeply concerned about leaving a client unrepresented when
21 facing that.

22 MR. POWELL: So my opinion -- my report to you,
23 Your Honor, and I'm not saying this flippantly.

24 THE COURT: Right.

25 MR. POWELL: I'm not saying this sarcastically.

1 Stay in the case.

2 THE COURT: Right.

3 MR. POWELL: Stay in the case.

4 THE COURT: Okay. Thank you. All right.

5 MR. POWELL: But --

6 THE COURT: Thank you.

7 MR. POWELL: Okay.

8 THE COURT: Mr. Waid.

9 MR. WAID: I just have just two concerns. One,
10 the information that we're all seeking, that this Court, in
11 order to rule on the pending motions, and probably future
12 motions that are going to be filed, I have to gather the
13 information first.

14 THE COURT: Right.

15 MR. WAID: And so I'm hopeful at the forthcoming
16 deposition, which I assume will still be on, that we can
17 have that measure of cooperation. It would help me if I
18 had some assurance in this matter to know that counsel's
19 still going to be here. My concern is this: Having spoken
20 to all the former counsel, it is a consistent pattern in
21 this case that counsel reaches a point where they either
22 withdraw because of conflict, they withdraw for ethical
23 considerations, as did Marquis and Aurbach, or similar
24 reasons. If we're going to go down this road, I think it's
25 important we have a commitment that Mr. Lenhard and Ms.

1 Peterson and their firm are actually going to be here
2 because right now we've blown our February date.

3 THE COURT: Right.

4 MR. WAID: I have no hesitation in telling you
5 that with what happened in the previous hearing in Judge
6 Johnson's Court, and with what's happening in Texas, I'm
7 not going to be ready in February, because I can't even --
8 I just can't do it.

9 THE COURT: Right. Okay. Well, so here's, I
10 guess, the concern that I have. Mr. Moody raised a concern
11 that we don't know what the assistance at \$18.75 an hour,
12 eight hours a week is. Don't know. I'm not inclined to
13 grant that. I do believe that some allowance is
14 appropriate. Attorneys' fees, my concern would be not paid
15 to Mrs. Ahern, but paid to counsel. And if they feel, as
16 you've raised a concern, if they have a concern about they
17 still aren't able to go forward for some other reason, but
18 if the budget that Mr. Lenhard is given us is what it is,
19 and if they -- as long as they remain in and you pay them
20 monthly, then, for me, that takes care of that concern.
21 I'm not paying the money to Ms. Ahern. So that's what I
22 would do.

23 I would grant this request in part, and I would
24 grant it as follows: I think a monthly allowance of \$5,000
25 is entirely appropriate. However, it would be -- and

1 that's paid to Ms. Ahern for -- to Mr. Lenhard, for Ms.
2 Ahern, however you want to handle it, Mr. Waid. However
3 you feel more comfortable, so long as the 35 percent
4 portion that you're holding, and I know you're accounting
5 for this because I know the work you do, you're accounting
6 for her 35 percent portion, so long as it's there. And
7 that's the thing that I still don't -- you know. I still
8 am not really clear that we've got some money to pay her
9 the \$5,000 a month living expenses.

10 MR. WAID: Well, Your Honor, I will tell you, I
11 just had to pay the IRS an additional amount of money for
12 2014. '11, '12, and '13, I can't complete until I get all
13 the rest of the information.

14 THE COURT: Right. Right.

15 Mr. WAID: So, it's not as if -- I don't want the
16 Court to feel that, unlike the previous orders that Ms.
17 Ahern was under when she was the trustee, --

18 THE COURT: Right.

19 MR. WAID: -- take this 65 percent, hold it in
20 reserve.

21 THE COURT: Right.

22 MR. WAID: I can't do that because I have other
23 liabilities.

24 THE COURT: Right.

25 MR. WAID: And a clock that's ticking in interest

1 and penalties.

2 THE COURT: You're right.

3 MR. WAID: That's why I'm trying to race to cut
4 those parts in pieces off.

5 THE COURT: It's a mess. I understand that.

6 MR. WAID: And --

7 THE COURT: But to the extent that there is \$5,000
8 that can be found for monthly living expenses, because
9 unlike, unlike the daughters who are of working age, I
10 understand and I recall that one of them quit their job and
11 was, then -- and it was a really good job. It was an
12 executive job at Wynn. I mean, it was a really good job in
13 reliance on this and then all the sudden was left with no
14 income. I understand the concerns they have about
15 fairness, that this is not fair. I appreciate their
16 concerns, however, and I understand that there's a portion
17 -- there is some Social Security income coming to Ms.
18 Ahern. That's why I said I think \$5,000 is perfectly
19 adequate. That's all she needs from the trust. But I also
20 think, again, and this is -- this would be after we pay her
21 attorneys. And it -- all I can really, at this point in
22 time, really all I can authorize is \$10,000 a month. So --

23 MR. WAID: One other caveat. What would be
24 helpful for me? Because I'm in the hot seat now with
25 respect to the IRS.

1 THE COURT: I understand.

2 MR. WAID: We just received, was it Monday?
3 Yesterday. We received part of a production from a former
4 accountant who was doing trust work, individual work, and
5 in that production was also information from Ms. Ahern,
6 individually. In addition to not filing and paying proper
7 taxes for the trust in prior years, it was apparent in the
8 production we received that she has issues, personally,
9 with the IRS. I don't want to be in a position where I'm
10 writing checks and then I'm dealing with the IRS. I would
11 respectfully ask that Mr. Lenhard and Ms. Peterson sit with
12 their client, resolve any issues disclosed to me so that I
13 don't get liened or my accounts that I'm guarding for the
14 trust, if they see checks going to her now, I want to make
15 sure that I don't get involved in her personal IRS matter.

16 THE COURT: Right.

17 MR. WAID: And I think that's fair.

18 THE COURT: I -- it's a nightmare. Okay. So how
19 -- what is your concern how we would do that so that it is
20 clear that the Court is advancing this -- is ordering the
21 advancement of this money? This is not money at this point
22 in time that she's entitled to receive, that she has any
23 interest in, because it's being, I don't know, held
24 somehow. I mean, is there some language that would protect
25 you from having your business -- the overall trust account

1 -- the overall whole trust account --

2 MR. WAID: Right.

3 THE COURT: -- lien by the IRS? Geez.

4 MR. WAID: I would like to not categorize it as a
5 distribution.

6 THE COURT: Okay.

7 MR. WAID: I'd like to categorize it as a Court
8 instruction.

9 THE COURT: Okay. All right.

10 MR. WAID: That would be easier for me. That way
11 I think I could be insulated from that.

12 THE COURT: Okay. And by you, you mean the trust.

13 MR. WAID: The trust.

14 THE COURT: The trust is not going to have to bear
15 her personal tax liability if she wasn't paying her taxes.

16 MR. WAID: It's an instruction --

17 THE COURT: Yeah. Okay.

18 MR. WAID: -- that you're ordering the payment of
19 these, whatever the Court sets, but it's not a
20 distribution.

21 THE COURT: Right.

22 MR. WAID: Because that's, I think, what would
23 trigger --

24 THE COURT: Right. We're not distributing her 35
25 percent -- a share of her 35 percent income. The Court is

1 giving her an allowance from -- is it allowance an adequate
2 word?

3 MR. WAID: We can try it.

4 THE COURT: Okay. Yeah. Then it's an allowance
5 and ordered by the Court.

6 MR. WAID: but I would like to not be surprised.
7 So, to the extent you could also ask Ms. Ahern to
8 cooperate, that I understand --

9 THE COURT: Right. Yeah. Okay. And now the
10 other thing that Mr. Lenhard has asked for is a 35 percent
11 --

12 MR. LENHARD: Before you go there, and obviously
13 that's near and dear to my heart, but --

14 THE COURT: Right.

15 MR. LENHARD: -- before you go there, I can't
16 discuss with Mr. Waid anything concerning her personal tax
17 issues --

18 THE COURT: Right.

19 MR. LENHARD: -- for heaven's sake.

20 THE COURT: I understand.

21 MR. LENHARD: And that's -- you understand my
22 problem with that.

23 THE COURT: I understand. I understand. This is
24 the whole thing where we talked about earlier, the problem
25 that we've got is if she's got individual tax problems,

1 those are hers, individually. And the trust is not liable
2 for her individual tax problems.

3 MR. WAID: And that's all I'm trying to protect in
4 this.

5 THE COURT: And I'm not sure that Mr. Lenhard is
6 her -- I'm sure he doesn't want to be her individual tax
7 attorney. If she needs representation dealing with tax
8 problems, she needs to go get it. She will be receiving a
9 court ordered allowance of \$5,000 a month. Her counsel
10 will be advanced fees of \$10,000 a month. They also ask
11 for a \$30,000 deposit and that's my big hang up is I don't
12 know if there's enough money to pay a lump sum of 30,000.

13 MR. WAID: I mean, I have funds, but I don't know
14 what the tax liability is going to be.

15 THE COURT: What the tax liabilities are. I --
16 I'm nervous about that one.

17 MR. WAID: And there's additional income coming
18 in. So, yes, I mean, I have more than \$30,000.

19 THE COURT: So, I guess my question is: If we can
20 provide Mr. Lenhard that in installments of some kind, if
21 he would accept installments on the 30,000? Because I'm
22 willing to grant it, but I -- you know, it needs to be --
23 I'm not -- I don't want to put everybody else at risk here.
24 We've got this tax problem.

25 MR. WAID: Your honor, just, I'll be brief, but I

1 don't want to open the door --

2 THE COURT: I understand.

3 MR. WAID: -- to potential issues that the IRS
4 comes in and says: Well, we're going to capture this now.
5 Understandably, in this tax year, I just issued over a
6 million dollar 1099 to her, and it doesn't take long with
7 seven-figure dollar amounts for the IRS to come knocking,
8 and that's what I'm trying to avoid, because that hurts
9 everybody.

10 THE COURT: Right.

11 MR. WAID: If they come in and assert some
12 priority position or aspect of this because the Court has
13 opened the door. I think we're all on the same page.

14 THE COURT: I know.

15 MR. WAID: Everybody's going to have some measure
16 of protection here. I just want to make sure that whatever
17 Mr. Moody writes in his Order helps me.

18 THE COURT: Okay. Well I --

19 MR. POWELL: Can I be heard just real quickly?

20 THE COURT: No, Mr. Powell, really. We're done.

21 MR. POWELL: Oh, Your Honor, please though. We
22 have a \$400,000 judgement against Ms. Ahern. Can we not
23 get that? Why are we jumped back in priority? That's not
24 fair. Come on.

25 THE COURT: I understand.

1 MR. POWELL: So, if were balancing equities, why
2 should Mr. Waid not be paying the \$400,000 that's owed to
3 us? That's -- I understand your mentality here, but in the
4 same respect, we have a pending judgement.

5 THE COURT: Right.

6 MR. POWELL: That's against -- so I'm failing to
7 understand here.

8 And just to be clear, because I need to preserve
9 the record, obviously, on this. You obviously understand
10 this. I have rights, obviously, now to --

11 THE COURT: Absolutely.

12 MR. POWELL: -- my clients do based on your ruling
13 today.

14 THE COURT: Right.

15 MR. POWELL: One point of clarification: \$5,000
16 in addition to the \$1,800 Social Security?

17 THE COURT: Right.

18 MR. POWELL: So, okay. In addition to?

19 THE COURT: Right.

20 MR. POWELL: \$10,000 monthly --

21 THE COURT: To counsel.

22 MR. POWELL: -- to counsel. Okay.

23 THE COURT: Not being paid to her to pay counsel,
24 being paid to counsel.

25 MR. POWELL: Direct. I understand. Understand.

1 THE COURT: In other words, the trust will -- I
2 don't know what kind of language Mr. Moody needs, but the
3 trust will advance funds subject to being -- I forget the
4 language -- Mr. Lenhard used some language that was like a
5 surcharge or a payback. It's a loan, basically. Is that -
6 - does that work?

7 MR. POWELL: That's the problem I have with your -
8 -

9 THE COURT: Is it a loan?

10 MR. POWELL: That's the problem I have though is
11 that you may be looking at this from a, we're protected
12 because there's a surcharge, but as I'm trying to convey to
13 you, there is no protection and the reason why there's no
14 protection is because, as of now, there's approximately --
15 and Mr. Waid can address this if he chooses, I believe
16 we're talking millions of dollars that are still owing to
17 my clients.

18 THE COURT: Oh yeah.

19 MR. POWELL: Here's the issue we have. If Ms.
20 Ahern is representing to this Court that she is now
21 indigent and has no assets to pay, if she were to pass next
22 week, Your Honor, the damage that my client -- to my
23 clients is done.

24 THE COURT: Correct.

25 MR. POWELL: It's locked in. It's over with. So

1 I just want to be very clear that what you're ruling today
2 is that there is no security that you are requiring on
3 these payments, because there is no such thing here, as of
4 right now, as a claw back, because we would only be secure
5 to the extent that we were back to square one, and then we
6 have the pending Motion to Disinherit, enforcing the no
7 contest clause. So I just want to be clear, for the
8 record, that your ruling today is that this is unsecured
9 funds because that's really, in essence, what we are doing
10 today.

11 Any dollars that come out from this point,
12 including, I would point out, the monies that Mr. Waid --
13 if Ms. Ahern is ultimately disinherited, well Jacqueline
14 and Katherine, again, bear the brunt of Mr. Moody's fees
15 and Mr. Waid's fees, because there is nothing to collect
16 against. So just for purposes of clarity in the record,
17 that is your ruling is that this is effectively an
18 unsecured situation, because I -- there's no such thing as
19 the trust being able to get back anything because of the
20 fact that Jacqueline and Katherine are 100 percent
21 beneficiaries. It'd be one thing if Ms. Ahern received a
22 right that survived her death here, but it doesn't.
23 Jacqueline and Katherine are 100 percent beneficiaries at
24 Ms. Ahern's passing, and/or, obviously, if you invoke the
25 no contest clause.

1 So, I just need it clear for purposes of
2 preserving the record, and obviously if my client's choose
3 to appeal your decision today, that that's effectively what
4 you're doing. What you're saying is there is no security
5 that Ms. Ahern is required to provide to receive these
6 distributions and/or the attorneys' fees.

7 THE COURT: What security would she provide?

8 MR. POWELL: Your Honor, well, --

9 THE COURT: Other than the funds have to be paid
10 back from --

11 MR. POWELL: We don't even know what she -- this
12 is my point in terms of it's premature is we don't know
13 what she has. We don't know. You're accepting her
14 representations right now that I don't have any money. But
15 as we just pointed out, there's a possibility one of the
16 three possibilities you just represented is she may be
17 holding the money in different accounts.

18 THE COURT: Sure.

19 MR. POWELL: So that's a possibility. So I don't
20 understand the rush. If we've got this deposition coming
21 up in two weeks, why can't we hold this off until the
22 deposition? Or better yet, why can't we speed this up and
23 crank this out tomorrow? Or, I respectfully would submit
24 to you, Your Honor, you, as the judge, have a right to
25 question Ms. Ahern right now under oath. If you want me to

1 take off and leave, I'm happy to leave here so that we can
2 actually get answers right now, because we could be chasing
3 our tails. This could be all chasing tails down and going
4 into a black hole here, and I feel like, respectfully, that
5 we're compounding this without knowing the facts and the
6 realities of what truly is going on.

7 Just as you would have in a bankruptcy proceeding
8 with a debtor is you have the debtor's exam, effectively,
9 to say what assets do you have? We're not just simply
10 taking your word for it when you're not submitting it under
11 oath. So, I respectfully submit to Your Honor, there is no
12 rush right now. If we -- if you want me to postpone and
13 kick out, take off calendar, my petition to invoke the no
14 contest clause, I'll do it. I'll do it. I'll take it off
15 calendar right now if that would pacify the pending issues
16 here. I think it's critical that we have Ms. Ahern have a
17 deposition. And again, if this needs to happen tomorrow,
18 now, whatever, there doesn't need to be attorneys' fees
19 wasted right now.

20 So what -- I don't understand the rush to make
21 this determination before we have Ms. Ahern under oath
22 explain where the assets are.

23 THE COURT: Okay. So --

24 MR. POWELL: If you want me -- I'd be happy to not
25 even ask a single question at --

1 THE COURT: Okay. Thank you.

2 MR. POWELL: -- that deposition if that's another
3 fear.

4 THE COURT: Okay. All right.

5 MR. POWELL: I've also represented on the record,
6 there is no intent whatsoever to seek criminal actions
7 against Ms. Ahern on my client's side. I can't control what
8 Mr. Waid does, I can't obviously control what you do, but
9 those are decisions, so that's why I think we -- it's so
10 imperative that we get the answers and we get them now
11 before we rush into a decision, because, again, with all
12 due respect, it's irreversible harm, theoretically, that's
13 occurring here, and that is simply is not fair to my
14 client.

15 THE COURT: Understood. Thank you.

16 MR. POWELL: If they were in a level position, --

17 THE COURT: Okay. Thank you.

18 MR. POWELL: -- I'd be okay with that.

19 THE COURT: All right. Thank you. So, I
20 understand the concern and so, at this point in time, we
21 still do have a lawyer. I understand Mr. Waid's concern
22 that we're not going to be able to make a February trial
23 date. I would make this effective for the -- through the
24 current trial date, so that would be through February,
25 February 1st, or whatever day of the month it is. February.

1 November to February. If it needs to be renewed at that
2 point in time, we can revisit it.

3 And certainly it should be very clear that both
4 this advancement or loan of living expenses for the
5 interim, and the loan or advancement of attorneys' fees are
6 to be paid back from whatever share of the trust may
7 ultimately be hers, are to be paid back because it is an
8 advance. It is not -- and you are right, it is to the
9 detriment of everybody else. She needs to pay it back
10 because we're lending her this money to fund her lifestyle
11 and her legal representation out of the trust.

12 So, but we have to be very careful how we put it,
13 because it may effect, and I certainly understand why Mr.
14 Waid's deeply concerned, because we not only have a huge
15 tax liability for the trust, but huge tax liabilities,
16 apparently, for Ms. Ahern, personally, that she needs to
17 deal with on her own. So, I understand it needs to be very
18 clear that this is simply there -- right now she has no
19 right to this money, but money will be lent to her, subject
20 to her paying it back. And it's temporary. It is for
21 these next four months.

22 But we certainly subject to them renewing it if
23 we have to continue this, which it's -- I just think we all
24 know we have to continue it, but at this point, I'm only
25 going -- I'm going with the date we have right now, the

1 February trial date, so we'll go through February.

2 MR. MOODY: One clarification, Your Honor.

3 THE COURT: Yeah.

4 MR. MOODY: With regard to both the ongoing
5 \$10,000 a month for attorney fees --

6 THE COURT: Right.

7 MR. MOODY: -- and the 30,000 past attorney fees -
8 -

9 THE COURT: I understand they want that in a lump
10 sum, but my question was: Is it possible to pay it in a
11 lump sum or do we need to do it in installments?

12 MR. MOODY: We'll figure that out.

13 THE COURT: Because I would award it, but --

14 MR. LENHARD: They can let us know on that.
15 That's fine.

16 THE COURT: It needs to -- but I'm not going to
17 put anything in jeopardy if, you know, if we're going to be
18 down to \$10,000 in the account again. I mean, we can't be
19 in that position again.

20 MR. MOODY: Mr. Waid's question is: Are those
21 funds identified for this litigation or can they also be
22 used for the appeals that are ongoing?

23 MR. LENHARD: Well, we're treating it as the --
24 it's our responsibility to get that appeal filed, the
25 opening brief, --

1 THE COURT: Yeah. It's --

2 MR. LENHARD: -- and the consolidate appeal --

3 THE COURT: I'm not talking about the litigation
4 with Mr. Mann. I mean, if that's --

5 MR. LENHARD: No. We're not in that.

6 THE COURT: No. This is --

7 MR. MOODY: We're talking about the Supreme Court
8 Appeals.

9 MR. LENHARD: Correct.

10 THE COURT: This litigation and that includes, as
11 the joys of probate, the interim appeals that they have
12 filed. I --

13 MR. MOODY: So, just as long as we know, these
14 will not be used for the other litigation involving David
15 Mann?

16 MR. LENHARD: No. That's -- we're not --

17 THE COURT: Absolutely not. That's why I said
18 this is money not paid to her, it is money paid to Mr.
19 Lenhard's law firm for their fees. \$10,000 a month plus
20 however the \$30,000 is going to be paid in whatever
21 installments.

22 MR. LENHARD: We've not appeared in the Mann
23 litigation.

24 THE COURT: Right. Absolutely clear.

25 MR. LENHARD: We refuse to appear in it. We will

1 not appear in it.

2 THE COURT: Absolutely. Just so it's perfectly
3 clear, this money is for this litigation to this law firm.

4 MR. LENHARD: And the appeal.

5 THE COURT: Right. The \$5,000 is to Ms. Ahern for
6 her living expenses. Again, however -- what language you
7 need and I don't, you know, greater minds of mine are going
8 to have to figure out what language you need so that it's
9 very clear that this is not money to which she has an
10 entitlement or a right in this point in time. It's a loan,
11 and it will be repaid.

12 MR. MOODY: I like the world advance.

13 THE COURT: Okay.

14 MR. MOODY: I mean, that -- we all have -- we
15 understand that as a term of art in our profession --

16 THE COURT: Yeah. Okay.

17 MR. MOODY: -- and I think it explains exactly how
18 it's intended.

19 THE COURT: Right. And it would be subject to
20 being repaid or offset. I mean, if she's entitled to some
21 award of her own, it's offset. It's to be -- in other
22 words, it's not just money that's going out the door.
23 Okay.

24 And, again, this is, as -- I believe, this is in
25 the best interest of all parties to make sure that Ms.

1 Ahern maintains representation to hopefully assist us in
2 all reaching the ultimate goal of recovering the money,
3 which I hope everybody understands. I appreciate Mr.
4 Lenhard and Ms. Peterson's ethical concerns. I think it's
5 valid and that's the reason why I'm granting it. Okay.

6 MR. LENHARD: Thank you, Judge.

7 THE COURT: All right. Thank you very much.

8 MR. MOODY: Judge, last thing with regard to the
9 deposition.

10 THE COURT: Right.

11 MR. MOODY: I assume that's going to go forward?

12 MR. LENHARD: Is that here, by the way?

13 MR. MOODY: It's here.

14 MR. LENHARD: All right. How do you set -- how
15 does that work? A courtroom deposition?

16 THE COURT: Yeah. You just bring in your court
17 reporter.

18 MR. LENHARD: All right.

19 THE COURT: Because it's not recoded on this.

20 MR. LENHARD: You've given us the courtroom
21 though?

22 THE COURT: You're given the courtroom and I don't
23 know. Mr. Moody, do you still want that, because you -- I
24 know at the time she was going to be unrepresented and I
25 know that was a concern for you, so do you still want to do

1 it here even though she is going to have counsel?
2 MR. MOODY: It's already set up.
3 THE COURT: Okay.
4 MR. MOODY: I think we can just go forward as
5 planned.
6 MR. LENHARD: Fine with me. Yeah.
7 THE COURT: Okay. All right. And so you noted --
8 do we have a copy of the Notice?
9 MR. MOODY: I'm sure you do.
10 THE COURT: Date and time.
11 MS. PETERSON: We do. I don't know if it was
12 filed.
13 THE COURT: Because it's not filed. It's not e-
14 filed, so if you could just send it to us?
15 MR. MOODY: We'll send a courtesy copy.
16 THE COURT: So we're sure we will have the door
17 locked and everything.
18 MR. LENHARD: Have you arranged for an
19 audiographer?
20 MR. MOODY: It's -- no, it's a videotape.
21 MR. LENHARD: No, no no, I understand that.
22 MR. MOODY: Oh.
23 MR. LENHARD: She reports to have hearing issues -
24 -
25 THE COURT: Okay.

1 MR. LENHARD: -- and I don't want to get in here
2 and get --

3 THE COURT: Okay.

4 MR. LENHARD: -- started with this thing and start
5 messing around with that.

6 MR. MOODY: No.

7 MR. LENHARD: So you should get arranged to get a
8 --

9 THE COURT: Okay. Off the record.

10

11 PROCEEDING CONCLUDED AT 11:48 A.M.

12 * * * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

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.

13

14

15

16

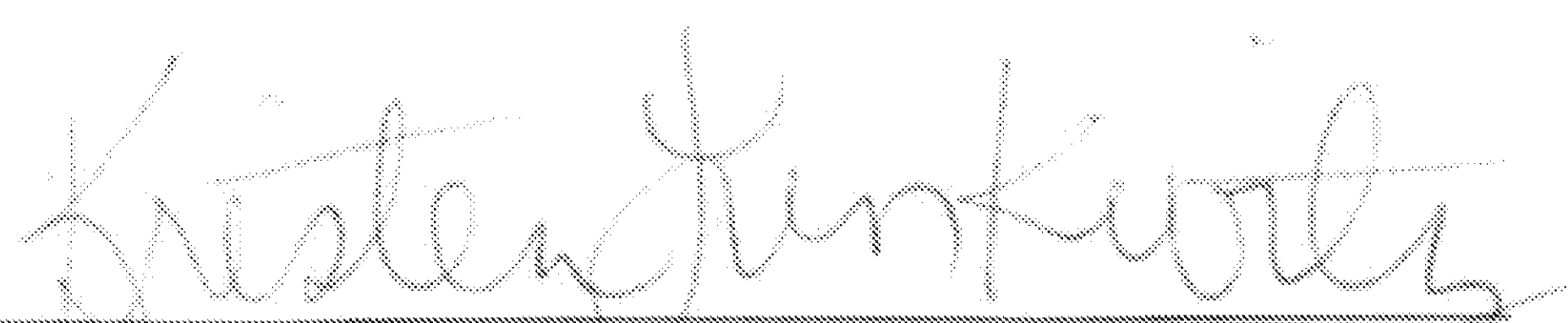
17

18

19

20

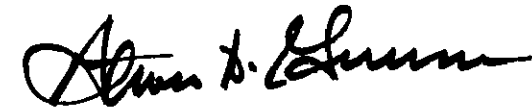
21

22 A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal dotted line.

23 KRISTEN LUNKWITZ

24 INDEPENDENT TRANSCRIBER

25



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 RE: MOTION TO COMPEL ELEANOR AHERN'S AUTHORIZATION

Date of Hearing: 11/04/15

Time of Hearing: 9:00 a.m.

A hearing was held on November 4, 2015 on a Motion for Compel Eleanor Ahern's Authorization to Allow Trustee to Obtain Information from Attorneys and Other Professional on Order Shortening Time ("Motion") filed by Fredrick P. Waid, acting Successor Trustee ("Trustee") of The W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 ("Trust"). There were no filed objections or responses to the motion. The Trustee was represented by Todd L. Moody of Hutchison & Steffen, LLC; Eleanor Connell Hartman Ahern ("Eleanor") was represented by Kirk Lenhard and Tammy Peterson of Brownstein, Hyatt, Farber & Schreck, LLP; and Jacqueline M. Montoya and Kathryn A. Bouvier were represented by Joseph J. Powell of The Rushforth Firm. Having considered the Motion and the evidence and arguments presented at the time of hearing,

///

HUTCHISON & STEFFEN

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

1 THE COURT FINDS that good cause exists for the Trustee to obtain records from
2 Jeffrey M. Johnston, Esq., and his firm, Johnston & Associates in Midland, Texas; Ryan
3 Scharar and his accounting firm, Anthony & Middlebrook, P.C., in Grapevine, Texas; and
4 Marquis Aurbach Coffing in Las Vegas, Nevada.

5 THE COURT FURTHER FINDS that professional services performed on behalf of
6 Eleanor Ahern individually are protected by the attorney-client and accountant-client privileges.

7 THE COURT FURTHER FINDS that the fiduciary exception to the attorney-client and
8 accountant-client privileges applies in this case; services performed on behalf of the Trust are
9 not privileged; and the beneficiaries of the Trust are entitled to that information.

10 THE COURT FURTHER FINDS that the Trustee is also entitled to any and all records
11 relating or referring to payments for services provided to Eleanor Ahern individually, including
12 redacted billing invoices reflecting work done and/or services performed for Eleanor Ahern
13 individually.

14 Having considered the same and good cause appearing,

15 IT IS HEREBY ORDERED that the Motion is granted in part and denied in part.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

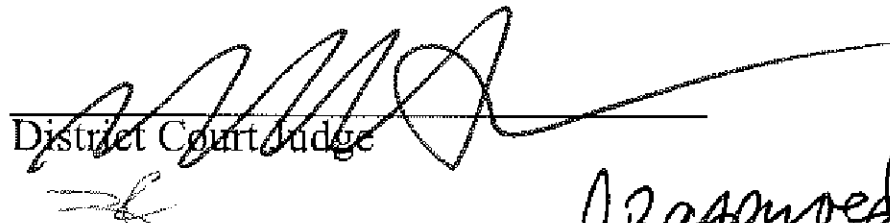
HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10050 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

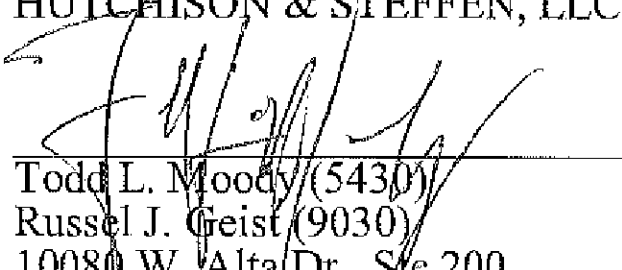
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED that Eleanor Ahern is compelled to sign an authorization consistent with the findings above.

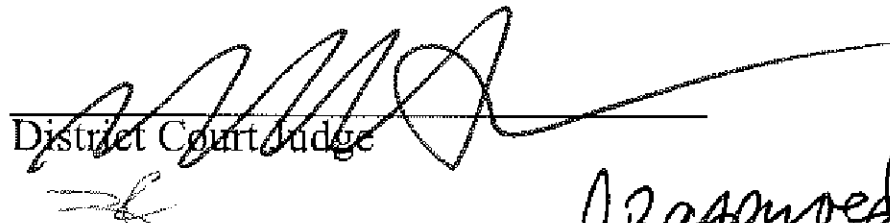
Dated this 23rd day of November, 2015.

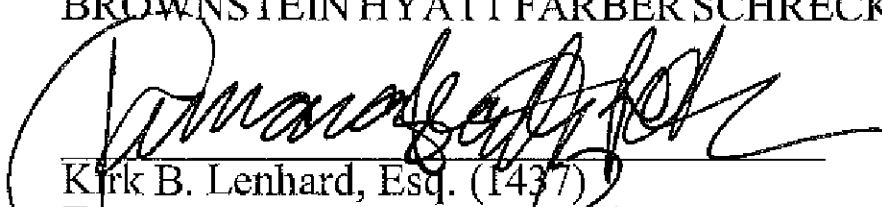

District Court Judge

Submitted by:
HUTCHISON & STEFFEN, LLC


Todd L. Moody (5430)
Russel J. Geist (9030)
10080 W. Alta Dr., Ste 200
Las Vegas, NV 89145
tmood@hutchlegal.com
rgeist@hutchlegal.com

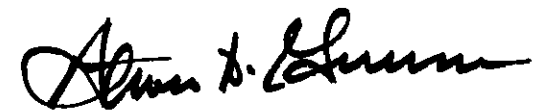
*Attorneys for Fredrick P. Waid,
Court-appointed Trustee*


Approved as to form and content
BROWNSTEIN HYATT FARBER SCHRECK, LLP


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

Attorneys for Eleanor Ahern

NOV 23 2015
10:00 AM
RECEIVED



CLERK OF THE COURT

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

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

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 In the matter of

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

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

13
14 **NOTICE OF ENTRY OF ORDER**

15 NOTICE IS HEREBY GIVEN that an *Order Re: Motion to Compel Eleanor Ahern's*
16 *Authorization* was entered in the above-entitled matter on December 1, 2015. A copy of the
17 Order is attached hereto.

18 DATED this 2 day of December, 2015.

19
20 HUTCHISON & STEFFEN

21
22 
Todd L. Moody (5430)
Russel J. Geist (9030)
23 10080 W. Alta Dr., Ste 200
Las Vegas, NV 89145
24 Phone: (702) 385-2500
tmoody@hutchlegal.com
rgeist@hutchlegal.com

25
26 *Attorneys for Fredrick P. Waid Court-*
27 *appointed Trustee*
28

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 and that on this 2 day of December, 2015, I caused a true and correct copy of the above and foregoing **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
- ☒ 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 substituted for the date and place of deposit in the mail; and/or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ to be hand-delivered;

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

Joseph J. Powell, Esq.
 The Rushforth Firm
 1707 Village Center Circle, Ste. 150
 Las Vegas, NV 89134
Attorneys for Kathryn A. Bouvier and Jacqueline M. Montoya

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


 An Employee of Hutchison & Steffen, LLC



CLERK OF THE COURT

1 **ORDR**

Todd L. Moody (5430)

2 Russel J. Geist (9030)

HUTCHISON & STEFFEN, LLC

3 10080 West Alta Drive, Suite 200

Las Vegas, Nevada 89145

4 (702) 385-2500

(702) 385-2086 FAX

5 tmoody@hutchlegal.com

rgeist@hutchlegal.com

6 *Attorneys for Fredrick P. Waid,*

7 *Court-appointed Trustee*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 In the matter of

Case No.: P-09-066425-T

Dept. 26

11 THE W.N. CONNELL AND MARJORIE T.
12 CONNELL LIVING TRUST DATED May
13 18, 1972, an Inter Vivos Irrevocable Trust.

14
15 **ORDER RE: MOTION TO COMPEL ELEANOR AHERN'S AUTHORIZATION**

16 Date of Hearing: 11/04/15

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

18 A hearing was held on November 4, 2015 on a Motion for Compel Eleanor Ahern's
19 Authorization to Allow Trustee to Obtain Information from Attorneys and Other Professional
20 on Order Shortening Time ("Motion") filed by Fredrick P. Waid, acting Successor Trustee
21 ("Trustee") of The W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972
22 ("Trust"). There were no filed objections or responses to the motion. The Trustee was
23 represented by Todd L. Moody of Hutchison & Steffen, LLC; Eleanor Connell Hartman Ahern
24 ("Eleanor") was represented by Kirk Lenhard and Tammy Peterson of Brownstein, Hyatt,
25 Farber & Schreck, LLP; and Jacqueline M. Montoya and Kathryn A. Bouvier were represented
26 by Joseph J. Powell of The Rushforth Firm. Having considered the Motion and the evidence
27 and arguments presented at the time of hearing,

28 ///

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

PECCOLE PROFESSIONAL PARK

10080 WEST ALTA DRIVE, SUITE 200

LAS VEGAS, NV 89145

1 THE COURT FINDS that good cause exists for the Trustee to obtain records from
2 Jeffrey M. Johnston, Esq., and his firm, Johnston & Associates in Midland, Texas; Ryan
3 Scharar and his accounting firm, Anthony & Middlebrook, P.C., in Grapevine, Texas; and
4 Marquis Aurbach Coffing in Las Vegas, Nevada.

5 THE COURT FURTHER FINDS that professional services performed on behalf of
6 Eleanor Ahern individually are protected by the attorney-client and accountant-client privileges.

7 THE COURT FURTHER FINDS that the fiduciary exception to the attorney-client and
8 accountant-client privileges applies in this case; services performed on behalf of the Trust are
9 not privileged; and the beneficiaries of the Trust are entitled to that information.

10 THE COURT FURTHER FINDS that the Trustee is also entitled to any and all records
11 relating or referring to payments for services provided to Eleanor Ahern individually, including
12 redacted billing invoices reflecting work done and/or services performed for Eleanor Ahern
13 individually.

14 Having considered the same and good cause appearing,

15 IT IS HEREBY ORDERED that the Motion is granted in part and denied in part.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10050 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

1 IT IS FURTHER ORDERED that Eleanor Ahern is compelled to sign an authorization
2 consistent with the findings above.

3 Dated this 23rd day of November, 2015.

4
5
6 District Court Judge

7 Submitted by:

8 HUTCHISON & STEFFEN, LLC

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

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

Approved as to form and content

BROWNSTEIN HYATT FARBER SCHRECK, LLP

18 Kirk B. Lenhard, Esq. (1437)
19 Tamara Beatty Peterson, Esq. (5218)
20 100 North City Parkway, Suite 1600
21 Las Vegas, NV 89106-4614
22 klenhard@bhfs.com
23 tpeterson@bhfs.com

Attorneys for Eleanor Ahern

24
25
26
27
28 RECEIVED