

In the Supreme Court of Nevada

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

JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER,

vs. Appellant,

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

Respondent.

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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 6 OF 8

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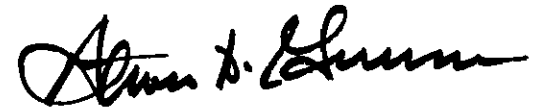
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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

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

A non-testamentary trust.

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

Date of Hearing: February 22, 2016

Time of Hearing: 10:00 a.m.

PRE-TRIAL MEMORANDUM

Jacqueline M. Montoya and Kathryn A. Bouvier, by and through their counsel of record, The Rushforth Firm, Ltd., hereby submit their Pre-Trial Memorandum regarding their "Motion for Assessment of Damages against Eleanor Ahern; Enforcement of No-Contest Clause; and, Surcharge of Eleanor's Trust Income" filed on June 3, 2015.

A. PARTIES AND TERMS

For ease of reference, the following parties and terms are used in this Memorandum:

A.1 Jacqueline M. Montoya and Kathryn A. Bouvier are referred to individually as "Jacqueline" and "Kathryn" and collectively as "Movants".

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1 A.2 Eleanor Ahern is referred to as "Ms. Ahern".

2 A.3 "The Trust" refers to THE W.N. CONNELL and MARJORIE T. CONNELL LIVING
3 TRUST, dated May 18, 1972 and includes Trust No.2 and the MTC Living Trust.

4 **B. ORDERS PREVIOUSLY ENTERED IN THIS MATTER**

5 B.1 Order Protecting 65% Income Interest. Following the hearing occurring on
6 November 13, 2013, this Court ordered Eleanor Ahern ("Ms. Ahern"), in her capacity as the trustee
7 of the Trust, to hold the entire 65% share that was in dispute in the Trust during the pendency of
8 said dispute. See "Order Denying Motion to Refer Contested Probate Matter to Master-Probate
9 Commissioner per EDCR 4.16; Directing Payment of All Oil, Gas, Mineral and Interest Royalties
10 and Rent to Eleanor C. Hartman, also known as Eleanor C. Ahern, as Trustee of Trust No.2 of the
11 W. N. Connell and Marjorie T. Connell Living Trust Dated May 18, 1972; and Setting Calendar Call
12 and Hearing", dated December 20, 2013 ("Order Protecting 65% Income Interest"). A copy of the
13 Order Protecting 65% Income Interest is attached hereto as Exhibit "A", Bates Numbers JMM0001-
14 JMM0006.
15

16 B.2 MSJ Order. On April 15, 2015, this Court entered its "Summary Judgment" Order
17 ("MSJ Order"). A copy of the MSJ Order is attached hereto as Exhibit "B", Bates Numbers
18 JMM0007-JMM0024. In the MSJ Order, this Court ordered the following:
19

20 (a) *Eleanor is ordered to provide by March 2, 2015 an accounting for the Texas*
21 *oil property income, including the providing of information to Jacqueline and Kathryn*
22 *showing the total income received, expenses incurred, and distributions made of the*
23 *income from the beginning of 2012 to the present. Any income which should have been*
distributed to Jacqueline and Kathryn during this time period, shall be accounted for and
reimbursed to them by Eleanor within 30 days from the date this judgment is entered."
24 (Finding section) Bates Number JMM0018 .

25 (b) *On or before March 2, 2015, Eleanor shall provide to Jacqueline and*
26 *Kathryn an accounting of the Texas oil property income received by the Trust from*
27 *January 1, 2012, through the entry of this Summary Judgment, showing the total income*
28 *received, expenses incurred, and any distributions made of the income. Within 30 days*
following the entry of this Summary Judgment, Eleanor shall reimburse and pay to
Jacqueline and Kathryn any portion of their 65% share of the Texas oil property income
which was not distributed to them during this period of time. (Order section) Bates

1 Number JMM0022.

2 B.3 Accounting Order. On April 20, 2015, this Court entered an Order Regarding the
3 Accounting, Breach of Fiduciary Duty Claims and Award of Attorneys [sic] Fees (the "Accounting
4 Order"), which clarified several items first addressed in the MSJ Order. The Accounting Order is
5 attached hereto as Exhibit "C", Bates Numbers JMM0025-JMM0030.
6

7 (a) First, the Accounting Order found that Ms. Ahern had "cut off [the] 65%
8 income stream" from the Trust to the Beneficiaries in June 2013. [See page 3, line 11 of
9 Accounting Order, Bates Number JMM0028.]

10 (b) Second, the Accounting Order adopted the information provided in Ms.
11 Ahern's March 13, 2015 accounting, which demonstrated that Ms. Ahern owes Jacqueline
12 and Kathryn a minimum of \$2,163,758.88 for her failure to distribute Trust income
13 between June 1, 2013 and January 31, 2015. [See page 2, line 7 of Accounting Order, Bates
14 Number JMM0027.]

15 (c) As part of the Accounting Order, this Court declared:

16 *The Court concludes as a matter of law that Eleanor breached her fiduciary*
17 *duties owed to Jacqueline and Kathryn by failing to retain a third-party trustee*
18 *and petition the Court to allow the 65% income stream to Jacqueline and Kathryn*
19 *to be cut off. As a result of Eleanor's breach of fiduciary duties, Eleanor shall be*
20 *removed as Trustee only over the 65% share of the Upton County, Texas oil assets.*
21 *Eleanor shall remain as Trustee over her 35% share of the Upton County, Texas oil*
22 *assets; however, a temporary successor Trustee shall be appointed over the entire*
23 *Trust until this litigation is finally resolved.* Bates Number JMM0029.

24 B.4 Judgment for Attorneys' Fees. On June 23, 2015, this Court entered its "Judgment
25 and Order Approving Award of Attorneys' Fees ("Judgment for Attorneys' Fees"), which awarded
26 Jacqueline and Kathryn judgment in the total amount of \$391,993.80, with interest accruing at the
27 legal rate from the date of entry. The Judgment for Attorneys' Fees is attached hereto as Exhibit
28 "D", Bates Numbers JMM0031-JMM0037.

C. RELEVANT FACTS AND LEGAL ARGUMENTS

C.1 Payments not Made. To this date, Jacqueline and Kathryn have not received a single cent of the monies that this Court has ordered them to receive from Ms. Ahern, a minimum of \$2,163,758.88 for her failure to distribute Trust income between June 1, 2013 and January 31, 2015, \$391,993.80 for attorney's fees, nor has the Trust received the \$500,000 that the Court had ordered Ms. Ahern to return to the Trust account (see Accounting Order, Bates Numbers JMM0025-JMM0030, and see Affidavit of Fredrick P. Waid, Trustee, dated May 6, 2015 regarding \$500,000 from Fidelity Capital, which is attached hereto as Exhibit "E", Bates Numbers JMM0038-JMM0043). As such, the damage that Ms. Ahern has caused to the Trust, and in turn Jacqueline and Kathryn as the damaged beneficiaries of the MTC Living Trust, remains pending and outstanding.

C.2 Income Payment. The first payment received by Jacqueline and Kathryn from the Trust occurred in April of 2015 and that was a payment for income received from oil payments received from Mr. Waid around that time frame after he had become trustee.

C.3 Other Previously Established Facts. The following facts are not in dispute:

- (a) Ms. Ahern was the sole Trustee of the Trust during the period in dispute;
- (b) Ms. Ahern as Trustee was the only person who had access to and was receiving the payments from the various oil companies;
- (c) Ms. Ahern was ordered by this Court to protect 65% of all payments that came in from the oil companies in November of 2013 and up until the date that she was suspended as a trustee, she had the duty to protect that 65%;
- (d) Ms. Ahern is the only party to this matter that knows what she did with the funds and where they went but refuses to account for where said funds have gone;
- (e) Ms. Ahern remains liable and responsible for every action that she has taken as a trustee of the Trust until she has obtained a discharge from this Court, which cannot

1 occur until after the preparation, and acceptance, of a final accounting.

2 C.4 Trustee's Burden of Proof; *Res Ipsa Loquitur*. This case is not a criminal matter.
3 It is a civil matter being handled under the jurisdiction of the Clark County Probate Court.
4 Jacqueline and Kathryn are the victims of Ms. Ahern's breaches of her fiduciary duties.

5 (a) One of a Trustee's chief duties is to account for the Trustee's actions and to
6 keep the Trust's beneficiaries reasonably informed. This has been codified in Nevada in
7 NRS Chapter 165.

8 (b) Because the trustee has a duty to disclose and explain all receipts and
9 disbursements under Nevada law, Jacqueline and Kathryn, as beneficiaries, have no burden
10 of proof. They are not criminal prosecutors. The damages and actions resulting from Ms.
11 Ahern's actions speak for themselves. The concept of *Res Ipsa Loquitur* applies, at least by
12 way of analogy. Ms. Ahern has the burden, as the trustee of the Trust, to explain:
13

14 (i) Why was there not, at a minimum, \$2,163,758.88 sitting in a
15 protected trust account ready for immediate distribution to Jacqueline and Kathryn
16 the very moment that Mr. Waid took control of the Trust account in early April of
17 2015?

18 (ii) Why was there less than \$10,000 in the trust's account?

19 (iii) Why has Ms. Ahern failed, repeatedly, to explain to Mr. Waid where
20 the money — money that this Court unequivocally ordered be protected for
21 Jacqueline and Kathryn — went?
22

23 C.5 Beneficiaries' Burden of Proof. In this case, the beneficiaries have no burden to
24 prove any facts beyond what has already been established. The questions of "how, what, where,
25 when, and why" that need to be filled in are not the responsibility of the victims in a trust matter,
26 nor are they the responsibility of Mr. Waid. Ms. Ahern has the legal obligation, in her capacity as
27 a former trustee, to explain her actions, and yet steadfastly refuses to do so. Ms. Ahern's silence
28

1 necessitates this Court taking judicial notice of her refusal to account for her actions and more
2 importantly why it is that Jacqueline and Kathryn have received not a single, solitary cent from the
3 Trust for the time period in which Ms. Ahern was ordered to protect the 65% portion of the Trust
4 income.

5 (a) A victim of theft need not be responsible for explaining why the thief did
6 what they did, nor does the victim need to find where the assets that they were deprived of
7 went or what they have now been converted into. Likewise, the plane crash victim, or their
8 family, need not explain why the plane crashed. Similarly, the car accident victim need not
9 explain why they were rear ended at a red light.
10

11 (b) A trust beneficiary has no control over what nefarious conduct a trustee may
12 be doing in the same way that a corporation has no control over the embezzlement of funds
13 by an employee who has had access to their vault.
14

15 C.6 Specious, "Red Herring" Arguments. In an attempt to divert the Court's attention
16 away from her misdeeds and away from her fiduciary duties, Ms. Ahern will assuredly attempt to
17 convince this Court that she need not explain things and that the burden to do so belongs to
18 Jacqueline and Kathryn to show what Ms. Ahern did. To adopt that position, this Court would have
19 to invalidate its prior orders. That is not what this evidentiary hearing is about. It is about holding
20 Ms. Ahern liable for her actions — actions which speak for themselves.

21 **D. ISSUES TO BE DETERMINED**

22 There are only three issues to be determined at this evidentiary hearing. They are:

23 D.1 Enforceability of No-Contest Clause. Do the actions of Ms. Ahern constitute a
24 violation of the no-contest clause found in the Trust, which requires Ms. Ahern to be retroactively
25 divested of her beneficial interest in the Trust?
26

27 D.2 Security Impound. If the no-contest clause does not divest Ms. Ahern of her share
28 of the Trust, should Ms. Ahern's beneficial interest in the Trust be entirely impounded until such

time as her interest has been fully charged with all damage that her actions have caused to the Trust and its other beneficiary, the MTC Living Trust?

D.3 Damages. What are the amount of damages that Ms. Ahern must be held responsible for?

E. NEVADA LAW REQUIRES ENFORCEMENT OF NO-CONTEST CLAUSES

E.1 NRS 163.00195, with emphasis added, states:

NRS 163.00195 Enforcement of no-contest clauses; exceptions.

1. *Except as otherwise provided in subsections 3 and 4, a no-contest clause in a trust must be enforced by the court.*

2. *A no-contest clause must be construed to carry out the settlor's intent. Except to the extent the no-contest clause in the trust is vague or ambiguous, extrinsic evidence is not admissible to establish the settlor's intent concerning the no-contest clause. The provisions of this subsection do not prohibit such evidence from being admitted for any other purpose authorized by law. Except as otherwise provided in subsections 3 and 4, a beneficiary's share may be reduced or eliminated under a no-contest clause based upon conduct that is set forth by the settlor in the trust. Such conduct may include, without limitation:*

(a) *Conduct other than formal court action; and*

(b) *Conduct which is unrelated to the trust itself, including, without limitation:*

(1) *The commencement of civil litigation against the settlor's probate estate or family members;*

(2) *Interference with the administration of another trust or a business entity;*

(3) *Efforts to frustrate the intent of the settlor's power of attorney; and*

(4) *Efforts to frustrate the designation of beneficiaries related to a nonprobate transfer by the settlor.*

3. *Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not be reduced or eliminated if the beneficiary seeks only to:*

(a) *Enforce the terms of the trust, any document referenced in or affected by the trust, or any other trust-related instrument;*

(b) Enforce the beneficiary's legal rights related to the trust, any document referenced in or affected by the trust, or any trust-related instrument; or

(c) Obtain a court ruling with respect to the construction or legal effect of the trust, any document referenced in or affected by the trust, or any other trust-related instrument.

4. Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not be reduced or eliminated under a no-contest clause in a trust because the beneficiary institutes legal action seeking to invalidate a trust, any document referenced in or affected by the trust, or any other trust-related instrument if the legal action is instituted in good faith and based on probable cause that would have led a reasonable person, properly informed and advised, to conclude that the trust, any document referenced in or affected by the trust, or other trust-related instrument is invalid.

5. As used in this section:

(a) "No-contest clause" means one or more provisions in a trust that express a directive to reduce or eliminate the share allocated to a beneficiary or to reduce or eliminate the distributions to be made to a beneficiary if the beneficiary takes action to frustrate or defeat the settlor's intent as expressed in the trust or in a trust-related instrument.

(b) "Trust" means the original trust instrument and each amendment made pursuant to the terms of the original trust instrument.

(c) "Trust-related instrument" means any document purporting to transfer property to or from the trust or any document made pursuant to the terms of the trust purporting to direct the distribution of trust assets or to affect the management of trust assets, including, without limitation, documents that attempt to exercise a power of appointment.

E.2 Mandatory Enforcement. In short, in Nevada a no-contest clause "must be enforced by the court." Because the statutory exceptions do not apply in this case, the Court does not have the discretion to choose to not enforce the no-contest clause contained in the Trust.

E.3 Reduction of Share. The W.N. and Marjorie T. Connell Trust dated May 18, 1972 , a copy of which is attached hereto as Exhibit "F", Bates Numbers JMM0044-JMM0058, contains a no-contest clause in Article TENTH, that states as follows:

*TENTH: NON-CONTEST PROVISION. The Grantors specifically desire that these trusts created herein be administered and distributed without litigation or dispute of any kind. **If any beneficiary** of these trusts or any other person, whether stranger, relatives or heirs, or any legatees or devisees under the Last Will and Testament of the Grantors or the*

1 successors in interest or any such persons, including any person who may be entitled to
2 receive any portion of the Grantors' estates under the intestate laws of the State of Nevada,
3 seek or establish to assert any claim to the assets of these trusts established herein, or
4 **attack**, oppose or seek to set aside the **administration and distribution of the said**
5 **trusts**, or to have the same declared null and void or diminished, **or to defeat or**
6 **change any part of the provisions** of the trust established herein, then in any and all
of the above mentioned cases any events, such person or persons shall receive One Dollar
(\$1.00) and no more in lieu of any interest in the assets of the trusts.
[Emphasis Added]

7 E.4 Conversion and Misappropriation. Ms. Ahern's acts of conversion and
8 misappropriation of trust funds are in direct defiance of this Court's explicit requirement that she
9 secure and retain, in trust, all funds pending the final resolution of the 65% entitlement. The Order
10 Protecting 65% Income Interest states, "*IT IS FURTHER ORDERED, ADJUDGED AND DECREED*
11 *that ELEANOR C. AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil,*
12 *gas, mineral and interest royalties and surface rent and the remaining sixty-five percent (65%)*
13 *of such oil, gas, mineral and interest royalties and surface rent* **shall be held in the Trust** by
14 *ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee, until final*
15 **resolution of this matter.**" **[Emphasis Added]**), Bates Numbers JMM0005-JMM0006.
16 Failure to comply constitutes a violation of the Trust's no-contest clause as such conduct is, not only
17 a willful violation of this Court's standing orders, but is an "attack" on the "administration and
18 distribution" of the Trust funds that Ms. Ahern had no entitlement to touch, let alone take for
19 herself. Further, Ms. Ahern's acts of conversion and misappropriation of trust funds belonging to
20 the 65% income AFTER she was removed as trustee of the Trust also constitute an attack on the
21 administration and distribution of the Trust and therefore constitute a violation of the Trust's no-
22 contest clause.
23

24 E.5 Intentional Frustration of Settlor's Intent and Court Orders. In Mr. Waid's "Interim
25 Trustee Report" dated July 2, 2015 ("Report"), which is attached hereto as Exhibit "G", Bates
26 Numbers JMM0059-JMM0072, he made the following revelations about what he discovered about
27 Ms. Ahern's conduct, clearly constituting an attack on the administration of the Trust and an attack
28

1 on the distribution of the Trust assets properly belonging to Jacqueline Montoya and Kathryn
2 Bouvier, as beneficiaries of the MTC Living Trust.

3 (a) In its MSJ Order, the Court entered this finding:

4 *On or about Friday April, 3, 2015, a copy of the Court's Order removing Ms. Ahern as*
5 *Trustee was provided to Wells Fargo Bank. On that day, it was determined that only*
6 *\$9,941.15 was on deposit at Wells Fargo Bank in accounts of the Trust.*

(Found on page 4 of the Report, Bates Number JMM0063)

7 (b) For purposes of context, Mr. Waid correctly noted in his Report that Ms.
8 Ahern had previously declared, under penalty of perjury to this Court, that all funds were
9 accounted for and remained in Trust. Mr. Waid stated:

10 *On March 13, 2015, Ms. Ahern, by and through her then counsel of record, Marquis*
11 *Aurbach Coffing ("MAC") filed its Brief Regarding Accounting, Fiduciary Duties, and*
12 *Trust Administration (Filed Under Seal), (the "Ahern Brief"). Ms. Ahern and MAC*
13 *represented that \$1,997,573.16 of Trust funds, representing the 65% share of the Trust*
14 *income, was being "held" by the Trust. (Found on page 3 of the Report, Bates Number*
15 *JMM0062)*

16 (c) Mr. Waid cited the following:

17 *On page 8, beginning at line 23, of the Ahern Brief, the following declaration is made*
18 *by Ms. Ahern's counsel:*

19 *"The total amount in the accounts is \$1,997,573.16 ... " and " ... - all of the funds*
20 *remain intact and are presently being held in trust. "*

(Found on Page 3 of the Report, Bates Number JMM0062)

21 (d) Mr. Waid further discovered and determined that:

22 *On April 8, 2015, Ms. Ahern deposited into the Trust's account a cashier's check in the*
23 *amount of \$409,228.50. The cashier's check represented funds **withdrawn on March***
24 ***20, 2015 from the Trust's account by Ms. Ahern after the hearing earlier in the***
25 ***day in which she was removed as Trustee.** The funds were withdrawn from a Wells*
26 *Fargo Bank branch in Orange County, California just before the bank closed for business*
27 *that evening. (Emphasis Added)*

(Found on Pages 4 through 5 of the Report, Bates Numbers JMM0063-JMM0064)

28 (e) Mr. Waid also discovered and determined the following:

On March 23, 2015, Ms. Ahern, by and through her then counsel of record, notified the
Court that the Trust had complied with the Court's order to transfer \$500,000 from the
Fidelity Capital, Inc. account to an FDIC insured institution. Contrary to the
representations made by Ms. Ahern and her counsel, the \$500,000 deposited with US

1 Bank was not from Fidelity Capital Inc., but from one of the Trust's accounts at Wells
2 Fargo Bank. **On March 23, 2015, three days after her removal as Trustee, Ms.**
3 **Ahern withdrew \$500,000 from the Trust account-at Wells Fargo Bank** (St.
4 George, Utah branch), purchased a cashier's check payable to the Trust and deposited the
5 same with US Bank. Upon learning of these transactions Ms. Ahern's counsel withdrew
its Certificate of Compliance with the Court's order regarding the \$500,000 transfer and
moved the Court for permission to withdraw as counsel of record. (Emphasis Added)

(Found on Page 5 of the Report, Bates Number JMM0064)

6 (f) Mr. Waid also reported the following discoveries:

7 On April 16, 2015, Ms. Ahern delivered a \$700,000 cashier's check to her then counsel at
8 MAC. The check was in the form of a Wells Fargo cashier's check payable to the Trust and
9 dated February 18, 2015. The check was obtained by Ms. Ahern at the St. George, Utah
10 branch of the bank. No explanation has been provided or basis determined for the
11 **withdrawal of funds from the Trust account**, the intent of Ms. Ahern, or **where the**
12 **check was held for approximately two months**. This transaction directly
contradicts the declarations and representations as set forth in the Ahern Brief and its
exhibits. Clearly, as of the date of the signing and filing of the Ahern Brief on March 13,
2015, \$700,000 of the \$1,997,573.18 declared therein was not on deposit with Wells Fargo
Bank, but was withdrawn on February 18, 2015 (Emphasis Added)

(Found on page 5 of the Report, Bates Number JMM0064)

14 (g) Mr. Waid further reported that:

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

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

(Found on Page 6 of the Report, Bates Number JMM0065)

26 (h) In addition to the misappropriation and conversion of the Trust funds, Mr.

27 Waid also detailed in his Report that Ms. Ahern had failed to make tax payments on the
28 money that she took. Mr. Waid stated his finding that:

1 *It is undisputed that no such quarterly payments were made by Ms. Ahern, as Trustee,*
2 *from June 1, 2013 to January 31, 2015. None are reported or reflected in the Ahern Brief*
3 *and no payments were reported to be received by the IRS.*

(Found on Page 11 of the Report, Bates Number JMM0070)

4 E.6 Failure to Comply with Tax Law. Ms. Ahern's failure to file timely tax returns and
5 her failing to pay taxes due at the Trust level, while taking all distributions has caused further
6 damages to the 65% interest, making such funds unavailable for distribution to Jacqueline and
7 Kathryn, as beneficiaries of the MTC Living Trust.

8
9 E.7 Settlors' Intent. The Trust was established by both Marjorie Connell and W.N.
10 Connell. Ms. Ahern's counsel, throughout this matter, has attempted to frame the Trust as though
11 it was established only by W.N. Connell. Not only is the mischaracterization completely inaccurate,
12 but it is entirely disrespectful to Mrs. Connell. The reality of the matter is that both Mrs. Connell
13 and Mr. Connell jointly created and established the Trust in 1972. The attempt to show that Mr.
14 Connell would not want his daughter to have the no-contest clause enforced against her is a bogus
15 and erroneous argument on multiple levels.

16 (a) The intent of both Settlers controls, not just of one of the spouses.

17 (b) The no-contest clause is written in plain English and is easy to understand.

18 The provisions of the no-contest clause contain no ambiguities whatsoever, nor are they
19 vague. NRS 163.00195(2) states, in pertinent part, that "extrinsic evidence is not admissible
20 to establish the settlor's intent concerning the no-contest clause."
21

22 (c) Ms. Ahern's attorneys have argued, without any evidentiary support
23 whatsoever, that Mr. Connell would not have wanted the no-contest clause to apply to his
24 daughter. Indulging this argument for a moment, if that was the case then the no-contest
25 clause could have, and surely would have, had an exclusion for Ms. Ahern that exempted it
26 from being enforced against her. It does not.

27 (d) Asserting that Mr. Connell would not want his daughter to lose her interest
28

1 in the Trust for her actions of conversion and misappropriation is unsupported conjecture
2 and speculation at its best. Even if there were evidence to support any theory that Mr.
3 Connell would not want any beneficiary, including his own daughter, to lose his or her
4 interest in the Trust for their wrongful actions, it would be inadmissible under NRS
5 163.00195(2).
6

7 (e) Child beneficiaries are not impliedly deemed exempt from enforcement of
8 no-contest clauses when the statute expressly declares that it is to be construed to carry out
9 the settlor's intent without reference to extrinsic evidence. To infer and speculate what type
10 of beneficiary should be exempt from a no-contest clause and what type of beneficiary
11 should not with no exceptions stated in the body of the trust instrument would be a severe
12 injustice to not only the settlors who created the document, but also those beneficiaries who
13 have acted appropriately. There is nothing within the four corners of the Trust document,
14 the standard in which the Trust is to be read and interpreted, to suggest that Mrs. Connell
15 and Mr. Connell did not want the no-contest clause to apply to Ms. Ahern, in the same way
16 that it would apply to Jacqueline and Kathryn. The language contained in the no-contest
17 clause refers to the conduct of "**any beneficiary**" (Emphasis Added).
18

19 **F. IMPOUNDING OF SHARE TO PROTECT OTHER BENEFICIARIES**

20 F.1 Impounding of Ms. Ahern's Trust Share. In the event that this Court does not divest
21 Ms. Ahern of her interest in the Trust via the application of the no-contest clause, Ms. Ahern's share
22 must be fully and entirely impounded until such time as all damages caused by her conduct have
23 been set off and collected against such share. The Restatement (Second) of Trusts unequivocally
24 requires Ms. Ahern's share to be impounded, in full, until such time as all damages have been set
25 off.
26

27 (a) § 257 "Impounding Share of Trustee-beneficiary", provides as follows:

28 *If a trustee who is also one of the beneficiaries commits a breach of trust, the other*

beneficiaries are entitled to a charge upon his beneficial interest to secure their claims against him for the breach of trust, unless the settlor manifested a different intention.

(b) Further, Comment f under § 257 provides for the following:

f. Spendthrift trust. The rule stated in this Section is applicable although the interest of the trustee-beneficiary is not transferable by him or subject to the claims of his creditors, unless the settlor has manifested a different intention. See § 152. Although his ordinary creditors cannot reach his interest under the trust and apply it to the satisfaction of their claims, his interest can be impounded for the benefit of the other beneficiaries of the trust to make good a liability which he incurs for breach of trust, unless the settlor has manifested a different intention. The rule is applicable to statutory spendthrift trusts.

If, however, the settlor has manifested an intention that the interest of the trustee-beneficiary should not be impounded for the benefit of the other beneficiaries of the trust to make good a liability for breach of trust, it cannot be impounded. The settlor who has given the other beneficiaries their interests can restrict those interests by denying them power to reach the interest of the trustee-beneficiary to make good a breach of trust committed by him. This is true even in States in which it is held to be against public policy to prevent ordinary creditors from reaching the interest of a beneficiary. On the question whether the settlor has manifested such an intention, various factors may be relevant, as, for example, the character of the breach of trust, whether wilful or negligent; the relationship between the settlor and the trustee-beneficiary and the other beneficiaries. The question is whether in view of all the circumstances the settlor would have desired to protect the trustee-beneficiary, not only as against the claims of ordinary creditors, but also against the claims of the other beneficiaries for breach of trust.

As to the extent to which by the terms of the trust the trustee may be relieved from liability for breach of trust, see § 222.

To the extent to which a trustee-beneficiary is thus relieved of liability, the other beneficiaries not only cannot insist on the impounding of the interest, but cannot hold him personally liable for a breach of trust.

(c) For ease of reference the text of § 222, "Exculpatory Provisions", provides:

(1) Except as stated in Subsections (2) and (3), the trustee, by provisions in the terms of the trust, can be relieved of liability for breach of trust.

(2) A provision in the trust instrument is not effective to relieve the trustee of liability for breach of trust committed in bad faith or intentionally or with reckless indifference to the interest of the beneficiary, or of liability for any profit which the trustee has derived from a breach of trust.

(3) To the extent to which a provision relieving the trustee of liability for breaches of trust is inserted in the trust instrument as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor, such provision is ineffective.) [End of § 222]

(d) Clearly, § 257 applies to this matter. There is no exception whatsoever

1 contained in Mrs. Connell and Mr. Connell's Trust that states that Ms. Ahern's share shall
2 not be impounded.

3 F.2 Charge Against Beneficiary's Share. In the *Restatement*, § 253 "Wrongful Dealing
4 with Trust Property by One Beneficiary", provides:

5 *If one of several beneficiaries misappropriates or otherwise wrongfully deals with trust*
6 *property causing a loss to the other beneficiaries, he is personally liable for the amount of*
7 *the loss, and his beneficial interest is subject to a charge therefor.*

8 (a) Further, Comment c under § 253 provides for the following:

9 *c. Spendthrift trust. The rule stated in this Section is applicable although the interest of the*
10 *beneficiary who misappropriates or otherwise wrongfully deals with the trust property*
11 *is not transferable by him or subject to the claims of his creditors, unless the settlor has*
12 *manifested a different intention. See § 152.*

13 (b) Certainly § 253 applies to this matter and requires Ms. Ahern's share to be
14 charged for all of the damages that she has caused to Jacqueline and Kathryn.

15 F.3 Liability to Trust. In the *Restatement*, § 251 Liability of Beneficiary to Trust Estate,
16 provides, "*If a beneficiary is under a liability to the trustee as such, his interest in the trust estate*
17 *is subject to a charge for the amount of his liability.*"

18 (a) Unquestionably, § 251 applies to this matter and requires Ms. Ahern's share
19 to be charged for all of the damages that she has caused to the Trust.

20 (b) In addition to the *Restatement of Trusts*, long existing case law echoes these
21 sentiments, with one case in particular perfectly voicing, and fixing, the precise issue
22 presented here. A good analysis of this authority is found in the early case of *Koerner v.*
23 *Pfaff*, 15 Ohio Dec. 81 (1904), the Court of Common Pleas of Ohio, Franklin County, where
24 the court of equity concluded that a trustee/beneficiary, who had wrongfully taken assets
25 not belonging to him, would receive no further entitlement to trust assets until the other,
26 innocent beneficiaries were made whole and received what they were entitled to receive
27 under trust. Following are relevant excerpts from that case:
28

1 (i) "Where there are several beneficiaries and one of them takes a part
2 in a breach of trust, whereby a loss is occasioned, his interest in the trust property
3 may be reached, retained, and applied to make good the loss for the benefit of the
4 other beneficiaries; and this equity extends, not only to the interest while in the
5 hands of the wrongdoing cestui que trust, but also to those claiming it under or
6 through him. " 2 Pomeroy, Eq. Jurisp. Sec. 1083, note.

7
8 (ii) "If a cestui que trust, whether tenant for life, or other person having
9 a partial interest, be responsible for having joined in a breach of trust, all the
10 benefit that would have accrued to him either directly or derivatively, either from
11 that trust fund or in any other estate comprised in the same settlement, may be
12 stopped by the cestui que trust or other person having a similar equity as against
13 him, his assignees in bankruptcy, or judgment creditors, the general creditors, and
14 (except so far as the defense of purchase for value without notice may be
15 applicable) against all who claim under him, **until the amount impounded,**
16 **with the accumulations has compensated the trust estate for the loss for**
17 **which that cestui que trust is responsible.**" 2 Hill's Lewin, Trusts 112.

18 Underhill says:

19
20 (iii) "The rule that a beneficiary in default shall take nothing
21 out while in default applies all the more to the case of a beneficiary who
22 is also a trustee. In both cases he must make good his indebtedness to
23 the trust estate before he can obtain a share in it. " Underhill, Trusts 36.
24 **[Emphasis added.]**

25 (iv) "Any other conclusion in my opinion would not only be
26 contrary to the best authorities both in this country and England, but
27 it would be unjust and inequitable, and would in addition defeat the
28

1 *purpose and intention of said testator, which was to give each cestui*
2 *que trust the one-fourth of his estate remaining at the death of Mrs.*
3 *Bruck. To permit Philip to take out more than one-fourth of said entire*
4 *estate before the date of Mrs. Bruce's death, no part of which he has*
5 *paid back to the estate, and now to permit him to take in addition*
6 *one-fourth of that which remains of the estate, would not only give him*
7 *a decided advantage over the others, but would be giving him more*
8 *than his father by express terms bequeathed and devised to him in his*
9 *said will, and would be giving to the other three beneficiaries much less*
10 *than was devised to them by said will. [Emphasis Added]*

11
12 F.4 Admissions. On multiple occasions, Ms. Ahern's counsel has stated on the record
13 that she owes money back to the Trust. Further, this Court has stated on the record, paraphrased,
14 that there are but three possibilities as where the money that Ms. Ahern has taken has gone: 1) She
15 has spent the money; 2) she still has the money and has hid the money; or 3) the money has been
16 given to others to hold for her. The reality is that until all of the damage that Ms. Ahern has
17 committed to the Trust, and by extension to Jacqueline and Kathryn, as beneficiaries of the MTC
18 Living Trust, Ms. Ahern's share must be impounded and used to pay off such damage. Ms. Ahern
19 should not be entitled to one red cent of such share until such moment comes, if it ever comes.
20

21 F.5 Ms. Ahern owes significant amounts of funds in damages, as will be discussed
22 further. Ms. Ahern is a 78 year old woman, claiming numerous medical ailments, and Jacqueline
23 and Kathryn are 100% remainder beneficiaries of the entire Trust, being that the MTC Living Trust
24 is the owner of 65% of the Upton County, Texas land and the income derived therefrom, and they
25 are the remainder beneficiaries under Trust No. 2. In short, there is no such thing as Ms. Ahern
26 assignees from which the 35% share can continue to be charged once Ms. Ahern passes. If at that
27 time the share has not fully restored the entire extent of the damages, then the damage to the Trust,
28

1 and to Jacqueline and Kathryn by extension via the MTC Living Trust, has been locked in. Until
2 the damage has been fully recovered and restored, any distributions to Ms. Ahern are essentially
3 distributions from the shares of Jacqueline and Kathryn.

4 F.6 Failure to Fully Impound Share Rewards Behavior. In the same way that a bank
5 robber does not dictate the terms of repayment of the monies stolen from the Bank, or the
6 embezzling executive does not dictate terms to the corporation in which he siphoned money from,
7 there cannot be any result other than full impoundment of Ms. Ahern's trust share. To arrive at any
8 other result would be to reward the conversion and misappropriation that Ms. Ahern committed
9 and would be unjust and inequitable to Jacqueline and Kathryn. It would condone the behavior of
10 Ms. Ahern and continue the damage to the Trust, and Jacqueline and Kathryn.

12 F.7 Constructive Trust and Related Principles. It is well established under numerous
13 legal theories and concepts, including the constructive trust principles, that one shall not benefit
14 from their wrong doing and must be stripped of any and all benefits resulting from their bad
15 actions. These every day principles are understood by the smallest of children. If one is not
16 punished for their wrong doing, then there is no disincentive not to engage in the same behavior
17 again. "I wish I didn't do that" is not an acceptable excuse or defense. The law is based on setting
18 rules which have been generated to govern behavior, which are to be followed, with repercussions
19 for behavior that does not conform to such rules.
20

21 F.8 No Alternatives. There is no statute nor case law that provides this Court any
22 alternative other than to declare that Ms. Ahern's share be fully impounded. There must not be any
23 factoring of circumstances brought into the equation. Justice and equity requires this Court to not
24 treat Ms. Ahern differently because of her age, and/or her relation to the victims in this matter.
25 Ms. Ahern should be treated in a manner no different than if the conduct was committed by a 25-
26 year-old male who they had no blood relationship to. To treat Ms. Ahern any differently is to create
27 an excuse for her conduct to the detriment of the Trust and to Jacqueline and Kathryn.
28

1 F.9 Accountability and Responsibility. If Nevada law relating to trustees and a trustee's
2 fiduciary duties is to be respected, Ms. Ahern must be subjected to damages for her conduct. The
3 full extent of the damages caused by Ms. Ahern's actions is not yet fully known because even though
4 Fred Waid has been acting as trustee since April of 2015, more than 10.5 months after his
5 appointment, Ms. Ahern's conduct and lack of cooperation has made the precise calculation of
6 damages by Mr. Waid impossible, as Mr. Waid has previously testified to, via his pleadings and
7 statements in open court. Ms. Ahern has employed a series of "professionals" who have steadfastly
8 refused to allow Mr. Waid to review their files, which would allow him some chance of reaching a
9 precise determination.
10

11 (a) At the present time, it is believed that the amount of damage to the Trust,
12 and in turn the MTC Living Trust, is over **\$3.4 million**.

13 (b) In a letter to Mr. Waid dated November 20, 2015 from Joseph Powell, Esq.,
14 which is attached hereto as Exhibit "H", Bates Numbers JMM0073-JMM0079, a breakdown
15 of this figure was noted to Mr. Waid. To date, Mr. Waid has not indicated that the
16 calculations made in the letter are faulty or incorrect. In short, based on the figures
17 obtained from other land owners who are in a very similar position as the Trust as to what
18 they receive in oil income payments from the various companies, and based on what Mr.
19 Waid has included in his Report, Jacqueline and Kathryn have calculated that they were
20 entitled to the following figures as beneficiaries of the MTC Living Trust:
21

- 22 • 2013— June of 2013 through December of 2013----65% share of income
23 equals \$616,868.09
- 24 • 2014—65% share of income equals \$2,192,351.85.
- 25 • 2015— January 2015 through April of 2015----65% share of income equals
26 \$611,000
27
28

G. CONVERSION AND TREBLE DAMAGES

G.1 Conversion. Ms. Ahern's action of taking assets from the Trust in defiance of this Court's Orders, both while serving as trustee, and after her removal as trustee, constitute her conversion of those assets for which she is liable to the Trust, and to the MTC Living Trust, as the victimized party.

G.2 The Supreme Court of Nevada, in *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598 (2000), discussed conversion as follows:

Conversion is "a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights. " Wantz v. Redfield, 74 Nev. 19"6, 198, 326P.2d 413,414 (1958). Further, conversion is an act of general intent, which does not require wrongful intent and is not excused by care, good faith, or lack of knowledge. 116 Nev. 598,606

G.3 NRS 143.120(2) provides that a personal representative may seek to recover treble damages against a person who has converted property belonging to the estate of the personal representative. The definition of a "personal representative" under NRS 132.265 includes not only executors and administrators, but also a person "who performs substantially the same function under the law governing their status" as that of an executor or administrator, which most certainly a trustee does.

G.4 In the instant case, Mr. Waid, functioning in a capacity similar to that of a personal representative, has the right to seek treble damages against Ms. Ahern for her refusal and failure to return and reimburse to the Trust the funds she has misappropriated and converted to her own use. His office as trustee involves the same fiduciary duties over management of assets of another for the benefit of another. If Ms. Ahern's damage to the trust, which at present it is believed total over \$3,400,000 which she has converted, are reduced to judgment and trebled, that amount would equal approximately \$10,200,000. This amount should be used to surcharge Eleanor's share in the Trust, for the benefit of Jacqueline and Kathryn, if Eleanor's share is not otherwise reduced to

1 \$1.00 through the enforcement of the no-contest clause, which as previously stated is mandatory
2 under Nevada law based on the actions taken by Eleanor and the circumstances surrounding such
3 action.

4 G.5 Surcharge. This amount should be used to surcharge Eleanor's share in the Trust,
5 for the benefit of Jacqueline and Kathryn, if Eleanor's share is not otherwise reduced to \$1.00
6 through the enforcement of the no-contest clause, which as previously stated is mandatory under
7 Nevada law based on the actions taken by Eleanor and the circumstances surrounding such action.

9 H. PUNITIVE DAMAGES

10 H.1 Tortious Acts. Punitive damages are also warranted against Ms. Ahern as she
11 intentionally and fraudulently breached her fiduciary duty and committed tortious acts in
12 converting and embezzling Trust funds. This Court has the authority to award punitive damages
13 *"in an action for the breach of an obligation not arising from contract, where it is proven by clear
14 and convincing evidence that the defendant has been guilty of oppression, fraud, or malice."* See,
15 NRS 42.005(1). Once shown, a petitioner, *"in addition to the compensatory damages, may recover
16 damages for the sake of example and by way of punishing the defendant an amount equal
17 to three times the amount of compensatory damages awarded to [Petitioner] if the amount of
18 compensatory damages is \$100,000 or more."* Id.

20 H.2 Fraud. In this context, fraud is defined as *"an intentional misrepresentation,
21 deception or concealment of a material fact known to the person with the intent to deprive
22 another person of his or her rights or property or otherwise injure another person."* See NRS
23 42.001(2). As established by Mr. Waid's Report, Ms. Ahern willfully and intentionally deceived this
24 Court, and Jacqueline and Kathryn, by claiming all funds that she was responsible to keep in trust
25 during the pendency of the dispute were "intact and are presently being held in trust". As such,
26 Jacqueline and Kathryn request that this Court treble the more than \$3.4 million that was
27 improperly stolen and converted by Ms. Ahern. This amount should be used to offset Ms. Ahern's
28

1 share in the Trust, if Ms. Ahern's share is not reduced to \$1.00 through the enforcement of the
2 no-contest clause.

3 **I. MOVANTS' WITNESS**

4 Fredrick P. Waid is expected to testify as to his knowledge of the facts and circumstances
5 at issue in the instant matter, including, but not limited to, his knowledge of the matters set forth
6 in the "Affidavit of Fredrick P. Waid, Trustee" executed and filed with this Court on May 6, 2015
7 and in the "Interim Trustee Report" dated July 2, 2015.

8 **J. EXHIBITS**

9
10 The Exhibits the Movants expect to produce at the hearing are itemized in Exhibit "I"
11 JMMoo80-JMMoo82, which is attached hereto and incorporated herein by this reference.

12 **K. CONCLUSION**

13 The law and the facts will lead the Court to conclude that:

14 K.1 The findings and decrees of the prior Court Orders in this matter — including those
15 summarized in Section B of this Memorandum — are confirmed without abatement.

16 K.2 Ms. Ahern has failed to comply with her duty to account, and her duty to cooperate
17 with Mr. Waid to account for all receipts and disbursements of Trust income and principal should
18 be reaffirmed.

19 K.3 Failure to produce evidence of a proper account for all receipts and disbursements
20 will result in an inference that any receipts and disbursements not accounted for have been
21 converted to Ms. Ahern's own use, and the doctrine of *res ipsa loquitur* will apply by analogy.

22 K.4 Ms. Ahern has breached the no-contest clause of the Trust, and her share is
23 retroactively reduced to one dollar (\$1). In the alternative, Ms. Ahern's interest in the trust is
24 impounded and all distributions to or for her shall cease until the damages she has caused to the
25 Trust and its beneficiaries have been paid and fully satisfied.

26 K.5 Ms. Ahern has triggered damages to the Trust and its beneficiaries, including the
27

1 Movants, and an evidentiary hearing, after an appropriate discovery, will be required to determine
2 the exact amount of those damages, for which Ms. Ahern will be liable to the Trust.

3 K.6 Ms. Ahern's conduct constitutes both negligence and a breach of fiduciary duties,
4 and, under NRS 153.031(3), she shall be required to disgorge any compensation received as trustee
5 and shall be personally liable for all damages caused by her conduct, including court costs and
6 reasonable attorneys' fees.

7
8 K.7 Because of Ms. Ahern's fraudulent conduct and her conduct that was intended to
9 frustrate the order of this Court, the award of treble damages and the award of punitive damages
10 are appropriate in this case, the amount of which shall be determined as part of the evidentiary
11 hearing relating to the damages.

12 Respectfully submitted by:

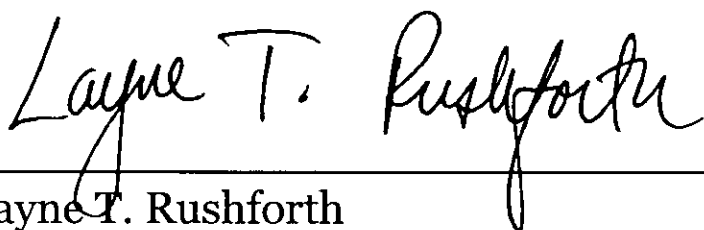
13 
14

15 Joseph J. Powell
16 State Bar. No. 8875
17 1707 Village Center Circle, Suite 150
18 Las Vegas, NV 89134-0597

FEB 17 2016

Date

19 Respectfully submitted by:

20 
21

22 Layne T. Rushforth
23 State Bar. No. 1004
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FEB 17 2016

Date

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9 e-mail: probate@rushforthfirm.com
10 Attorneys for Jacqueline M. Montoya
11 and Kathryn A. Bouvier

DISTRICT COURT
CLARK COUNTY, NEVADA

9 In the Matter of

10 THE W.N. CONNELL and MARJORIE T.
11 CONNELL LIVING TRUST, dated May 18,
12 1972,

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

13 A non-testamentary trust.

14 CERTIFICATE OF SERVICE

15 Date of Hearing: February 22, 2016
16 Time of Hearing: 10:00 a.m.

17 I HEREBY CERTIFY that I am an employee of The Rushforth Firm, Ltd., and pursuant to
18 NCRP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy
19 of the **PRE-TRIAL MEMORANDUM** to be submitted electronically for filing and service with the
20 Eighth Judicial District Court via the Court's Electronic Filing System on the 17th day of February,
21 2016, to the following:
22

23 BROWNSTEIN HYATT FARBER SCHRECK, LLP
24 Tamara Beatty Peterson, Esq.
25 100 North City Parkway, Suite 1600
26 Las Vegas, Nevada 89106
27 Tel: (702) 382-2101

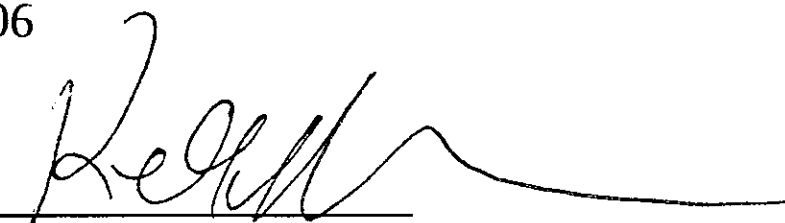
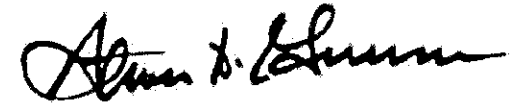
28 
An employee of The Rushforth Firm, Ltd.

Exhibit “A”

JMM0001

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CLERK OF THE COURT

ORDR

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Nevada Bar No. 10690
john@jeffreyburr.com
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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

THE W. N. CONNELL AND MARJORIE T. CONNELL
LIVING TRUST,
Dated May 18, 1972

Case No. P-09-066425-T

Dept. No. XXVI (26)

Date of Hearing: November 12, 2013

Time of Hearing: 9:30 a.m.

An Inter Vivos Irrevocable Trust.

**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 TRUST NO. 2
OF THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST DATED MAY
18, 1972; AND SETTING CALENDAR CALL AND HEARING**

THIS MATTER having come on for hearing on the 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) (the "Petition") filed by Petitioner JACQUELINE M. MONTOYA, who appears by and through her counsel of record, JOSEPH J. POWELL, Esquire, of THE RUSHFORTH FIRM, LTD., and ELEANOR C. AHERN, a/k/a ELEANOR C. HARTMAN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, appearing by and through her counsel of record, JOHN R. MUGAN, Esquire, and MICHAEL D. LUM, Esquire, of the law firm of JEFFREY BURR, LTD., in opposition to the Petition and the Court having reviewed the pleadings, including the Motion To Refer Contested Probate Matter To Master-Probate

1 Commissioner Per EDCR 4.16 filed herein by ELEANOR C. AHERN, a/k/a ELEANOR C.
2 HARTMAN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING
3 TRUST dated May 18, 1972, examined the evidence and heard the arguments of counsel, the Court
4 makes the following Findings Of Fact, Conclusions Of Law, and Order:

5 **FINDINGS OF FACT**

6 1. The Motion To Refer Contested Probate Matter To Master-Probate Commissioner
7 Per EDCR 4.16 should be denied per the discretion of the Court.

8 2. An evidentiary hearing will be necessary regarding the Petition and the parties shall be
9 entitled to conduct discovery herein. Accordingly, this matter should be set on a four week stack to
10 begin February 18, 2014 at 9:00 a.m., and a Calendar Call will be held on January 24, 2014 at 11:00
11 a.m. at which Trial Counsel (and any party in proper person) must appear.

12 3. Texas legal counsel for Petitioner JACQUELINE M. MONTOYA has notified in
13 writing the various lessees-payors of the Upton County, Texas, oil, gas, mineral and interest royalties
14 and surface rent to lessor-payee ELEANOR C. HARTMAN, also known as ELEANOR C.
15 AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST
16 dated May 18, 1972, including but not limited to Apache Corporation-oil and gas leases with owner
17 number 47052 and owner number 45572, Plains Marketing, L.P.-oil and gas leases with owner
18 number 0782216 and owner number 0488845, and Drag A Cattle Company, LLC-surface tenant, of
19 the Petition of JACQUELINE M. MONTOYA filed herein and requested that all such payments be
20 held in suspense until the resolution of this action. The following was stated and agreed to by legal
21 counsel of both parties herein in open Court and as set forth in the Petition:

22 A. There is currently no reasonable doubt and currently no legitimate title dispute as to the
23 continued right that ELEANOR C. AHERN, individually as beneficiary of Trust No. 2 of
24 THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May
25 18, 1972, is entitled to a minimum of thirty-five percent (35%) of such oil, gas, mineral
26 and interest royalties and surface rent from the Upton County, Texas;
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28

1 B. Petitioner JAQUELINE M. MONTOYA currently makes no claim to such thirty-five
2 percent (35%) share that has always been distributed to ELEANOR C. HARTMAN, also
3 known as ELEANOR C. AHERN;

4 C. The only current dispute between the parties is how the remaining sixty-five percent
5 (65%) share should be allocated;

6 D. Legal title of record to such Upton County, Texas, real estate and oil, gas, mineral and
7 interest rights is vested in ELEANOR C. HARTMAN, also known as ELEANOR C.
8 AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL
9 LIVING TRUST dated May 18, 1972, and

10 E. The last, peaceable, non-contested status quo between the parties was when all such oil,
11 gas, mineral and interest royalties and surface rent was paid to ELEANOR C.
12 HARTMAN, also known as ELEANOR C. AHERN, as Trustee.

13 None of the oil, gas, mineral and interest royalties and surface rent should be suspended but
14 should continue to be paid in a timely fashion to ELEANOR C. HARTMAN, also known as
15 ELEANOR C. AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL
16 LIVING TRUST dated May 18, 1972, during the pendency of this action, and ELEANOR C.
17 AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas, mineral and
18 interest royalties and surface rent and the remaining sixty-five percent (65%) of such oil, gas,
19 mineral and interest royalties and surface rent shall be held in the Trust by ELEANOR C.
20 HARTMAN, also known as ELEANOR C. AHERN, as Trustee until final resolution of this matter.

21 CONCLUSIONS OF LAW

22 Rule 4.16 of the Rules of Practice For The Eighth Judicial District Court Of The State Of
23 Nevada provides in part:
24

25 **“Rule 4.16. Contested matters and referrals to probate commissioner.**

26 (a) The probate judge may hear whichever contested matters the judge shall select, and
27 schedule them at the convenience of the judge’s calendar. The judge alone may also refer
28 contested matters pertaining to the probate calendar to a master appointed by the judge for
hearing and report.”

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ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion To Refer Contested Probate Matter To Master-Probate Commissioner Per EDCR 4.16 is denied per the discretion of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that an evidentiary hearing of this matter is set on the four week stack to begin February 18, 2014 at 9:00 a.m., and a Calendar Call will be held on January 24, 2014 at 11:00 a.m. at which Trial Counsel (and any party in proper person) must appear.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the various lessees-payors of the oil, gas, mineral and interest royalties and surface rent to lessor-payee THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972, including but not limited to Apache Corporation-oil and gas leases with owner number 47052 and owner number 45572, Plains Marketing, L.P.-oil and gas leases with owner number 0782216 and owner number 0488845, and Drag A Cattle Company, LLC-surface tenant, shall not suspend such payments, and are ordered to continue to make such payments in a timely fashion to ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as Trustee of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST dated May 18, 1972 during the pendency of this action, including the immediate payment of any past suspended payments.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ELEANOR C. AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas, mineral and interest royalties and surface rent and the remaining sixty-five percent (65%) of such oil, gas, mineral and

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1 interest royalties and surface rent shall be held in the Trust by ELEANOR C. HARTMAN, also
2 known as ELEANOR C. AHERN, as Trustee, until final resolution of this matter.

3 DATED: December 20, 2013.

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6 
DISTRICT JUDGE

7 Submitted by:

8 JEFFREY BURR, LTD.

9 
10 JOHN R. MUGAN, Esquire

Nevada Bar No. 10690

11 2600 Paseo Verde Parkway, Suite 200

Henderson, NV 89074

12 Attorneys for Trustee ELEANOR CONNELL HARTMAN AHERN

13 APPROVED:

14 
15 JOSEPH POWELL, Esquire

Nevada Bar No. 8875

16 The Rushforth Firm

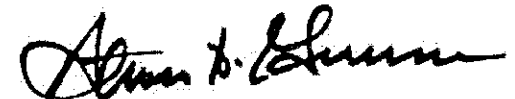
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17 Las Vegas, NV 89137-1655

18 Attorneys for Petitioner JACQUELINE M. MONTOYA
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Exhibit “B”

JMM0007



CLERK OF THE COURT

JUDG

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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

An Inter Vivos Irrevocable Trust.

SUMMARY JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 18. Nevertheless, and notwithstanding a tax identification number for subtrust
26 2 was the only tax identification number apparently given to the oil companies from
27 and after 1989, in the actual allocation of income received from the Texas oil property,
28 and in the issuance of K-1's and the filing of their Federal Income Tax Returns,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 JUGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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LAW OFFICES

A PROFESSIONAL CORPORATION

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

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

6
7 
DISTRICT COURT JUDGE

8 Submitted by:

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10 WARNICK & ALBRIGHT

11 By: 

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Exhibit “C”

JMM0025

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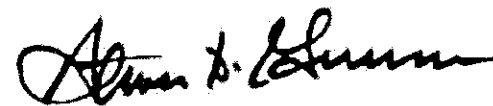
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Ahern, as Trustee



CLERK OF THE COURT

DISTRICT COURT**CLARK COUNTY, NEVADA**

In the Matter of

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

Case No.: P-09-066425-T

Dept. No.: 26

Date of Hearing: March 20, 2015

Time of Hearing: 10:00 a.m.

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

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

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

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

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

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

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

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

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

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

28

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

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

5 **Cutting Off the 65% Income**

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

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

11 **CONCLUSIONS OF LAW**

12 12. Pursuant to Nev. R. Civ. P. 56(b), "[a] party against whom a claim, counterclaim,
13 or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or
14 without supporting affidavits for a summary judgment in the party's favor as to all or any part
15 thereof." "The judgment sought shall be rendered forthwith if the pleadings . . . show that there
16 is no genuine issue as to any material fact that the moving party is entitled to judgment as a
17 matter of law." NRCP 56(c). The burden for demonstrating the absence of a genuine issue of
18 material fact lies with the moving party, and the material lodged by the moving party must be
19 viewed in the light most favorable to the non-moving party. Hoopes v. Hammargren, 102 Nev.
20 425, 429, 725 P.2d 238, 241 (1986). It is well settled in Nevada that the party opposing
21 summary judgment is entitled to all favorable inferences from the pleadings and documentary
22 evidence. See Mullis v. Nev. Nat'l Bank, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982). The non-
23 moving party, however, "must, by affidavit or otherwise, set forth specific facts demonstrating
24 the existence of a genuine issue for trial or have summary judgment entered against him."
Bulbman, Inc. v. Nev. Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

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

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

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

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

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

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

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

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

22
23
24 ///

25
26
27
28 ///

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(702) 382-0711 FAX: (702) 382-5816

IT IS SO ORDERED this 19 day of April, 2015.


By 
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Exhibit “D”

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CLERK OF THE COURT

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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

An Inter Vivos Irrevocable Trust.

JUDGMENT AND ORDER APPROVING AWARD OF ATTORNEY'S FEES

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

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

JMM0032

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

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

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

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

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

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

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

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

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

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

13 4. Kathryn's and Jacqueline's request for an award of fees and costs incurred by their

14 ///

21 ///

28 ///

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

IT IS SO ADJUDGED AND ORDERED this 4th day of June, 2015.


DISTRICT COURT JUDGE

Submitted by:

ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT

THE RUSHFORTH FIRM, LTD

By 

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*Attorneys for Trustee,
Fredrick P. Waid*

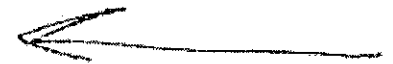
1 Texas counsel, prior to the commencement of these proceedings, totaling the sum of \$82,349.23, is
2 hereby denied.

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

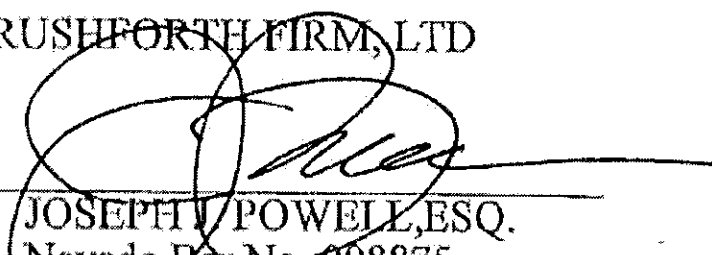
4 
5 DISTRICT COURT JUDGE

6 Submitted by:

7 ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT


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

THE RUSHFORTH FIRM, LTD


By 
JOSEPH POWELL, ESQ.
Nevada Bar No. 008875
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Las Vegas, Nevada 89134
Attorneys for Jacqueline M. Montoya

11 Approved by:

12 BROWNSTEIN HYATT FARBER
13 SCHRECK, LLP

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

HUTCHISON & STEFFEN, LLC

By 
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10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
*Attorneys for Trustee,
Fredrick P. Waid*

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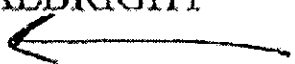
3 **IT IS SO ADJUDGED AND ORDERED** this ____ day of ~~May~~, 2015.


4
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DISTRICT COURT JUDGE

6 Submitted by:

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& ALBRIGHT

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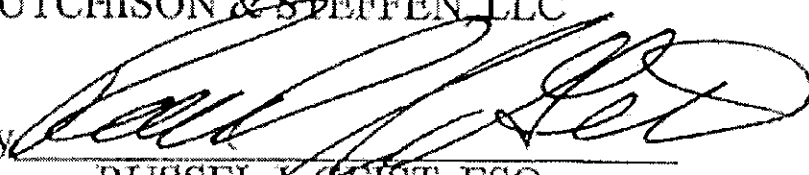
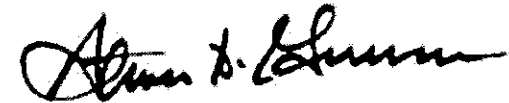
By 
18 RUSSEL J. GEIST, ESQ.
Nevada Bar No. 9030
10080 W. Alta Dr., Suite 200
19 Las Vegas, NV 89145
*Attorneys for Trustee,
Fredrick P. Waid*

Exhibit “E”

JMM0038



CLERK OF THE COURT

1 **AFF**

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

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

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 In the matter of

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

15 THE W.N. CONNELL AND MARJORIE T.
16 CONNELL LIVING TRUST Dated May 18,
17 1972, an Inter Vivos Irrevocable Trust.

18 **AFFIDAVIT OF FREDRICK P. WAID, TRUSTEE**

19 STATE OF NEVADA)
20) SS.
21 COUNTY OF CLARK)

- 22 1. I am over the age of 18 years and have personal knowledge of the facts stated
23 herein, except for those stated upon information and belief, and as to those, I
24 believe them to be true. I am competent to testify as to the facts stated herein in
25 a court of law and will so testify if called upon.
- 26 2. On March 20, 2015, I was appointed by the Court as acting temporary successor
27 Trustee of The W.N. Connell and Marjorie T. Connell Living Trust dated May
28 18, 1972, (the "Trust"). On that same day, and later confirmed in the Court's
Order dated April 1, 2015, Eleanor Ahern was removed as Trustee, for breach of

JMM0039

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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

1 her fiduciary duties.

2
3 3. During the hearing on March 20, 2015, the Court ordered Ms. Ahern to transfer
4 \$500,000, as reported in Ms. Ahern's accounting filed with the Court, from
5 Fidelity Capital Incorporated ("Fidelity"), a non-bank entity, to an FDIC insured
6 financial institution.

7
8 4. Within days after the hearing, Ms. Ahern's counsel at the time, Marquis Aurbach
9 Coffing ("MAC"), certified to the Court that the transfer of funds, as ordered,
10 was completed and that the funds from Fidelity were on deposit with US Bank.
11 After my appointment as Trustee, I discovered that the funds deposited with US
12 Bank, as reported to the Court, did not come from Fidelity, but came directly
13 from a cashier's check obtained by Eleanor from the Trust's account at Wells
14 Fargo Bank.

15
16 5. On April 14, 2015, at a hearing on Ms. Ahern's Motion for Stay Pending Appeal
17 on Order Shortening Time, I brought the Fidelity matter to the attention of the
18 Court and asked the Court to enforce its prior order regarding the return of the
19 \$500,000. The Court issued, from the bench, an Order to Show Cause with a
20 return hearing date set for the following week on Wednesday, April 22, 2015.
21 The Court further ordered Ms. Ahern, again, to return the Fidelity funds to the
22 Trust by 5:00 pm, Friday, April 17, 2015.

23
24 6. After the hearing on April 14, 2015, MAC coordinated a Court conference call
25 wherein they sought permission from the Court to withdraw from the case. The
26 Court instructed MAC to file an appropriate motion and the matter was set for a
27 hearing on Monday, April 20, 2015. On the record during the call, the Court
28


1 granted permission, with MAC's consent, for Ms. Ahern to communicate
2 directly with me in furtherance of her continued duty to cooperate, as previously
3 ordered by the Court.
4

- 5 7. I spoke with Ms. Ahern on Thursday April 16, 2015, and was informed by her
6 that she believed she "owed" the Trust \$800,000. I responded that she needed to
7 speak with counsel regarding her admission to me and that I did not have
8 sufficient financial information from the Trust to verify her admission.
9
- 10 8. On Friday April 17, 2015, Ms. Ahern did not comply with the Court's order
11 requiring the Fidelity funds to be returned to the Trust.
12
- 13 9. On Monday April 20, 2015, the Court granted Marquis' Motion to Withdraw.
14 At the hearing on the Order to Show Cause held on Wednesday April 22, 2015,
15 Tamara B. Peterson and Kirk B. Lenhard of Brownstein Hyatt Farber Schreck,
16 LLP, appeared on behalf of Ms. Ahern.
17
- 18 10. On Friday April 24, 2015, I met with Ms. Peterson and Mr. Lenhard to discuss
19 the case, including the Fidelity matter. Ms. Ahern's counsel informed me that
20 they had spoken with Fidelity's representative, who informed them that Fidelity
21 never had funds from the Trust on deposit. After counsel's disclosure, I
22 provided them with a copy of a letter filed with the Court by Ms. Ahern,
23 addressed to her as Trustee, wherein Fidelity confirms it has \$500,000 "on
24 deposit" for the Trust. I have attempted to contact Fidelity's representatives, but
25 have not been successful in communicating with anyone at the company.
26
- 27 11. On Tuesday May 5, 2015, Ms. Peterson provided to my counsel a copy of a letter
28

dated April 15, 2015 purportedly from Fidelity and addressed to "The William N. and Marjorie T. Connell Living trust dated 5/18/72" which refers to "accounting ending in 1734". The letter, with the salutation, "Dear Eleanor", is apparently signed by M. Perel, whom Ms. Peterson believes to be Martin Perel, and merely states, "Due to your misrepresentations the proposed funding has been withdrawn."


12. As of this date, the \$500,000, as ordered by the Court to be returned to the Trust, remains unaccounted for by Ms. Ahern.

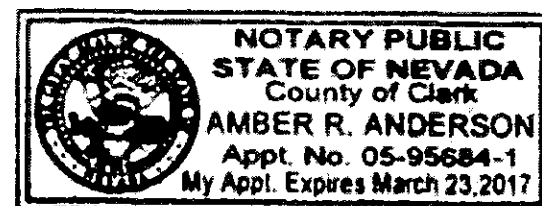
13. Since my appointment as Trustee and in the course of my investigation of the financial affairs of the Trust for 2013, 2014 and 2015 year to date, I have discovered numerous potential violations of other Court orders by Ms. Ahern regarding the expenditure and use of Trust funds. These matters will be brought to the Court's attention after the completion of an audit of Ms. Ahern's tenure as Trustee.


Fredrick P. Waid, Trustee

STATE OF NEVADA)
COUNTY OF CLARK) SS.

SUBSCRIBED and sworn to before
me this 10 day of May, 2015.


Notary Public



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC, and on this 16 day of May, 2015, I caused the above and foregoing document entitled **AFFIDAVIT OF FREDRICK P. WAID, TRUSTEE** to be served as follows:

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

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

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

Joseph J. Powell, Esq.
 The Rushforth Firm
 1707 Village Center Circle, Ste. 150
 Las Vegas, NV 89134
Attorneys for Jacqueline M. Montoya

Kirk Lenhard
 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

Exhibit “F”

JMM0044

1972

TRUST AGREEMENT

("The W. N. Connell and Marjorie T. Connell Living Trust")

THIS TRUST AGREEMENT, made this 15th day of May, 1972, by W. N. CONNELL and MARJORIE T. CONNELL, husband and wife, (hereinafter sometimes referred to as the "Grantors", when reference is made to them in their capacity as creators of this Trust and the transferrors of the principal properties thereof), and W. N. CONNELL and MARJORIE T. CONNELL, of Las Vegas, Nevada, (hereinafter sometimes referred to as the "Trustee" when reference is made to them in their capacity as the Trustee or fiduciary hereunder), and by this instrument revoke the previous revocable living trust made by us on the 1st day of Dec., 1971:

W I T N E S S E T H :

WHEREAS, the Grantors desire by this Trust Agreement to establish a revocable trust for the uses and purposes hereinafter set forth, to make provision for the care and management of certain of their present properties and for the ultimate disposition of the trust properties;

NOW, THEREFORE, the Grantors hereby give, grant, transfer, set over and deliver as the original trust estate, IN TRUST, unto the Trustee, who hereby declare that they have received from the Grantors all of the property listed on Schedule "A" (which schedule is attached hereto and made a part of this Trust Agreement), TO HAVE AND TO HOLD THE SAME IN TRUST, and to manage, invest and reinvest the same and any additions that may from time to time be made thereto, subject to the hereinafter provided trusts and the terms and conditions, powers and agreements, relating thereto.

Additional property may be added to the trust estate, at any time and from time to time, by the Grantors, or either of them, or by any person or persons, by inter vivos act or testamentary transfer, or by insurance contract or trust designation.

The property comprising the original trust estate during the joint lives of the Grantors shall retain its character as their community property or separate property, as designated on the attached Schedule "A". Property subsequently received by the Trustee during the joint lives of the Grantors shall be listed on an appropriate schedule annexed hereto and shall have the separate or community character ascribed thereto on such schedule.

FIRST: NAME AND BENEFICIARIES OF TRUST. The trusts created hereby shall be for the use and benefit of the Grantors and for ELEANOR MARGUERITE CONNELL HARTMAN, the daughter of W. N. CONNELL by a prior marriage, and for her issue as hereinafter provided. ELEANOR MARGUERITE CONNELL HARTMAN shall hereinafter be designated as the "Residual Beneficiary".

This trust shall be known and identified as the "W. N. Connell and Marjorie T. Connell Living Trust", and, for purposes of convenience, shall hereinafter be referred to as Trust No. 1.

SECOND: TRUST NO. 1. The Trustee shall hold, manage, invest and reinvest the trust estate and shall collect the income thereof and dispose of the net income and principal as follows:

A. Income. The Trustee shall pay equally to the Grantors, during their joint lives, all community net income of the trust estate and shall pay to each Grantor all separate net income from his or her respective share of the trust estate. Such income shall be paid to the Grantors unless the Trustee receives written notice from the Grantors that all income shall not be distributed but shall be accumulated by the Trustee and invested and reinvested as herein provided.

B. Principal. During the joint lives of the Grantors, the Trustee shall pay over and distribute to a Grantor such part or all of the principal of his or her separate property and his or her share of the community property placed in this initial trust by that Grantor as he or she shall demand in a writing directed to the Trustee.

C. Death of Either Grantor. Upon the death of the Grantor whose death shall first occur, the Trustee shall divide the trust estate, including all property received as a result of the decedent's death, as follows:

1. The trust estate and all property received as a result of the decedent's death shall be divided into two parts, each part to be administered as a separate trust to be known respectively as "Trust No. 2" and "Trust No. 3". Reference hereafter to the "Decedent" shall refer to either of the Grantors whose death shall first occur and reference to the "Survivor" shall refer to the other Grantor.

2. The Trustee shall allocate to Trust No. 3 (a) the Survivor's separate property interest in the trust estate; (b) the Survivor's one-half (1/2) interest in the community property of the trust estate, less a proportionate part of all amounts properly chargeable against all community property; and (c) the Survivor's community property interest in any policy of insurance on the life of the Decedent owned by the Grantors as community property and made payable to Trust No. 1.

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

4. The Trustee shall allocate to Trust No. 2, all the remaining portion of the trust estate not allocated to Trust No. 3, including, but not limited to, the Decedent's community property interest, if any, in any life insurance policy on the life of the Decedent payable to Trust No. 1.

5. In the event that property is received by the Trustee, by inter vivos or testamentary transfer and directions are contained in the instrument of transfer for allocation to or between Trust No. 2 or Trust No. 3, then the Trustee shall make allocation in accordance with such directions, anything to the contrary herein, notwithstanding.

6. It is the intention of the parties, that ELEANOR MARGUERITE CONNELL HARTMAN shall be a Co-trustee of the Decedent's separate property in trust in this Trust to the extent the term "Trustee", as hereinafter used, shall apply to her.

THIRD: MARITAL DEDUCTION. The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of the said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code as a Marital Deduction which are not a part of this trust estate. In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and ownership of the said property and the value thereof shall be as finally established for federal estate tax

purposes. This distribution is being made without regard to death taxes payable by reason of the Decedent's death, which taxes shall be paid from Trust No. 2 only.

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

A. Death of Decedent. Upon the death of the Decedent, the Trustee shall pay from the income or principal of this trust, the death taxes, probate and legal expenses, and the expenses of the last illness and funeral of the Decedent, provided, however, that no funds received by the Trustee as proceeds from a retirement plan qualified under the Internal Revenue Code shall be available for these purposes unless there are no other assets in the Survivor's estate, in which event funds from a qualified plan can be used, but only to the extent of these actual expenses.

B. Income. All income received by this Trust from the separate property of the Decedent shall be paid to the Residual Beneficiary. In the event any of the real property located in Upton County, Texas, as listed on the original Schedule "A" attached hereto, forms a part of the corpus of this Trust, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property, which forms a part of the corpus of this Trust, equal to all of the income received by this Trust from the real property located in Upton County, Texas. However, the provisions relating to the additional payment, shall be noncumulative, and in any calendar year in which the income received from the said community property is not sufficient to make full payment hereunder, the Trustee is directed to pay only the income which has been received by this Trust during that year, and not to carry forward any deficiency in payment to the next calendar year's income.

In the event the Residual Beneficiary predeceases the Survivor, the Residual Beneficiary's rights to receive income hereunder shall be paid to or for the benefit of her living children and the issue of any deceased child by right of representation; or in the event she dies without living issue, her income rights hereunder shall become those of the Survivor.

All other income received by this Trust shall be distributed to the Survivor.

All payments as provided in this Section shall be made at frequent intervals, but at least semi-annually.

C. Principal. The Trustee shall pay over and distribute the principal of the estate of Trust No. 2 as follows:

1. Power to make gifts. The Survivor shall have the discretionary power during his or her lifetime to direct the Trustee to pay over and distribute trust principal of the separate property in trust from the Decedent's Trust to or for the benefit of the Residual Beneficiary or any of her living issue; such power may be exercised by delivering to the Trustee a writing duly executed and acknowledged, wherein he or she specifies the amount of principal that should be paid over and distributed to the particular issue and in what proportions such principal shall be paid over and distributed. It is the Grantors' intent hereby to convey upon the Survivor a sprinkling power; said power is limited, however, to appointments made to and among the Residual Beneficiary or her living issue.

2. Power of invasion. If, in the opinion of the Trustee, the income from all sources of which the Trustee has knowledge shall not be sufficient to support, maintain, educate and provide for the Survivor or Residual Beneficiary or any issue of the Residual Beneficiary in their accustomed manner of living, or in the event of any emergency befalling these said parties, such as illness, accident or other distress, the Trustee is authorized to use and expend such part of the trust principal of Decedent's separate property in trust, as the Trustee may deem necessary or desirable to meet such needs or emergencies. The decision of the Trustee as to what shall constitute an emergency or the necessity or desirability of encroachment upon principal shall be conclusive upon all parties and the Trustee shall be relieved and exonerated hereunder if the Trustee acts in good faith in making such determination.

3. Sale of real property from Decedent's separate property. The Survivor is directed that in the event any additional money is needed for payment of funeral, last illness or other costs to settle any claims made against Decedent's estate, or in the event that the sale of Decedent's separate property is contemplated at any time, only the separate property of Decedent situated in Las Vegas, Clark County, Nevada, shall be sold to satisfy this obligation.

4. Sale of real property. In the event that any real property which is listed on Schedule "A" attached hereto as the Decedent's separate property, and, is a part of the corpus of Trust No. 2 is sold, the Grantors direct the Trustee to distribute the net proceeds from such sale, less any applicable income tax due because of such sale, to the Residual Beneficiary, free of trust. In the event the Residual Beneficiary is not living at the time of the said sale, the proceeds therefrom shall remain in this Trust, and shall be subject to all of the provisions as herein contained.

D. Definition of real property. The term "real property" as used in this Article FOURTH shall not include the mineral, oil and gas interests in Upton County, Texas, if the same are separately listed on Schedule "A" hereto.

FIFTH: TRUST NO. 3. The Trustee shall hold, manage, invest and reinvest the estate of Trust No. 3 and shall collect the income thereof and dispose of the net income and principal as follows:

A. Income. The Trustee shall pay to the Survivor during his or her lifetime all of the net income of the Survivor's trust estate in convenient, regular installments, but not less frequently than quarter-annually.

B. Powers of appointment over income and principal.

1. During his or her lifetime, the Survivor shall have the power to appoint all or any part of the principal and undistributed income, if any, of the estate of Trust No. 3 to himself or herself, or to any person or persons. Such power of appointment shall be exercisable in all events, but only by the Survivor's submitting to the Trustee written instructions expressly exercising such power.

2. Upon the death of the Survivor, he or she shall have the absolute power to appoint the entire principal and the undistributed income, if any, of the estate of Trust No. 3, or any part thereof, to his or her estate or to any person or persons. Such power of appointment shall be exercised only by a provision in the Last Will of the Survivor expressly exercising such power. Unless within ninety (90) days after the death of the Survivor the Trustee has actual notice of the existence of a Will exercising such power, it shall be deemed for all purposes hereunder that such power was not exercised.

C. Revocation and Amendments. The Survivor shall have the power to revoke, amend or terminate Trust No. 3 herein provided by delivering such amendments or revocation in writing to the Trustee provided that the Trustee's duties and liabilities cannot be increased without the Trustee's consent.

D. Death of Survivor. Upon the death of the Survivor, the Trustee shall distribute the trust estate in accordance with and to the extent provided by the Survivor's exercise of his or her power of appointment.

If and to the extent that the Survivor shall fail to effectively exercise the foregoing power of appointment, the principal and undistributed income of Trust No. 3 shall, upon his or her death, be distributed to the Residual Beneficiary, or to the heirs of her body if she is not then living.

SIXTH: SPENDTHRIFT PROVISION. Each and every beneficiary under the Living Trust and the various estates created hereunder is hereby restrained from and shall be without right, power or authority to sell, transfer, assign, pledge, mortgage, hypothecate, alienate, anticipate, bequeath or devise, or in any manner affect or impair his, her or their beneficial right, title, interest, claim and estate in and to either the income or principal of any claim created hereunder, or to any part thereof, during the entire term of said trusts; nor shall the right, title, interest, or estate of any beneficiary be subject to any right, claim, demand, lien or judgment of any creditor of any such beneficiary, nor be subject nor liable to any process of law or equity, but all of the income and principal, except as otherwise provided in this Trust Agreement shall by the Trustee be payable and deliverable to or for the benefit of only the before named and designated beneficiaries, at the times hereinbefore set out, and receipt by such beneficiaries shall relieve the Trustee from responsibility for such good faith distributions.

SEVENTH: POWERS OF TRUSTEE. To carry out the purposes of any trust created under this instrument and subject to any limitations stated elsewhere in this Trust Agreement, the Trustee is vested with the following powers with respect to the trust estate and any part of it, in addition to those powers now or hereafter conferred by law:

A. To continue to hold any property, including any shares of the Trustee's own stock and to operate at the risk of the trust estate any business that the Trustee receives or acquires under the trust as long as the Trustee deems advisable.

B. To manage, control, grant options on, sell, (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair trust property.

C. To lease trust property for terms within or beyond the term of the trust and for any purpose, including

exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

D. To borrow money and to encumber or hypothecate trust property by mortgage, deed of trust, pledge, or otherwise; to borrow money on behalf of one trust from any other trust created hereunder to guarantee any loan made during the lifetime of the Grantors.

E. To carry, at the expense of the trust, insurance of such kinds and in such amounts as the Trustee deems advisable to protect the trust estate and the Trustee against any hazard.

F. To commence or defend such litigation with respect to the trust or any property of the trust estate as the Trustee may deem advisable at the expense of the trust.

G. To compromise or otherwise adjust any claims or litigation against or in favor of the trust.

H. To invest and reinvest the trust estate in every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, stocks, preferred or common, shares of investment trusts, investment companies, and mutual funds and mortgage participations, which men of prudence, discretion and intelligence acquire for their own account, and to invest in any common trust fund administered by the Trustee and to lend money of one trust to any other trust created hereunder.

I. With respect to securities held in the trust, to have all the rights, powers and privileges of an owner, including, but not by way of limitation, the power to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, liquidations, sales and leases and incident to such participation to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscriptions or conversion rights.

J. Except as otherwise specifically provided in this instrument, the determination of all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and expenses thereon shall be governed by the provisions of the Nevada Principal and Income Law and shall be determined by the Trustee in the Trustee's discretion; provided, however, that all capital gain distributions from mutual funds should be allocated to principal.

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

EIGHTH: SPECIAL PROVISIONS.

A. Use of Home. The Trustee shall allow the Survivor to occupy and use until his or her death the home (or any interest therein) used by either or both Grantors as a principal residence at the time of the Decedent's death. The Trustee shall, at the discretion of the Survivor, sell such home, and if the Survivor so directs, purchase and/or build another comparable residence to be used as a home for the Survivor, and so on from time to time. The Survivor shall not be required to pay any rent for the use of such home.

B. Revocation and Amendment.

1. (Except as provided in paragraph 2 of this clause):

(a) This Trust Agreement, and the trusts evidenced thereby, may be revoked at any time during the joint lives of the Grantors by either of the Grantors delivering written notice of revocation to the Trustee and to the other Grantor.

(b) This Trust Agreement, and the trusts evidenced thereby, may be amended at any time and from time to time during the joint lives of the Grantors by the joint action of both Grantors delivering such amendment or amendments in writing to the Trustee provided that the Trustee's duties and liabilities cannot be increased without the Trustee's consent.

(c) From and after the death of the Decedent, this Trust Agreement may not be revoked, altered or amended, except as provided in relation to Trust No. 3.

(d) Upon any revocation of this Trust Agreement, during the Grantors' joint lives, the Trustee shall return to each Grantor his or her half of the community assets and to each Grantor his or her separate property, as indicated on Schedule "A".

2. In the event that any insurance on the life of either Grantor, owned by the other Grantor as his or her separate property, is payable to the Trustee or Trustees of any trust hereunder, then this Trust Agreement and the trusts evidenced thereby may be amended or revoked, insofar as they relate to such insurance, only by the Grantor who is owner of such insurance. The insured Grantor shall have no right to revoke or amend to that extent. This paragraph shall be construed as limiting the rights of the insured-Grantor and not as expanding the rights of the owner-Grantor.

C. Simultaneous Death. If there be no sufficient evidence that the Grantors died otherwise than simultaneously, then for purposes of this Trust Agreement, it shall be conclusively presumed for all purposes of administration and tax effect of this Trust Agreement that the Decedent shall be the Husband and the Survivor shall be the Wife.

D. Limitation of Trust Powers. Administrative control and all other powers relating to the various trust estates created hereunder, shall be exercised by the Trustee in a fiduciary capacity and solely for the benefit of the Survivor and the other beneficiaries as herein provided. Neither the Trustee, the Grantors, nor any other person, shall be permitted to purchase, exchange, reacquire or otherwise deal with or dispose of the principal of any of the various trust estates or the income therefrom, for less than an adequate and full consideration in money or money's worth; nor shall any person borrow the principal or income of the trust estates, directly or indirectly, without adequate interest in any case or without adequate security therefor.

E. Compensation of Trustee. The Trustee or successor Trustee, as herein provided, shall receive reasonable compensation for ordinary services performed hereunder. Reasonable compensation shall be based upon the then prevailing rates charged for similar services in the locality where the same are performed by other fiduciaries engaged in the trust business or acting as trustees.

F. Applicable Law. This Trust Agreement is executed under the laws of the State of Nevada and shall in all respects be governed by the laws of the State of Nevada; provided, however, the Trustee shall have the discretion, exercisable at any later time and from time to time, to administer Trust No. 1 pursuant to the laws of any jurisdiction in which the Trustee may be domiciled, by executing and acknowledging a written instrument to that effect and attaching the same to this Trust Agreement, and, if the Trustee so exercises the Trustee's discretion, as above provided, the various trust estates shall be governed by the laws of the other state or jurisdiction in which Trust No. 1 is then being administered.

G. Invalid Provisions. In the event any clause, provision or provisions of this Trust Agreement and the Living Trust created hereunder prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions, shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as legally possible. If any provision contained in this Trust Agreement shall otherwise violate the rules against perpetuities now or hereafter in effect in the State of Nevada or in any state by which this Living Trust may subsequently be governed, that portion of the Trust so effected shall be administered as herein provided until the termination of the maximum period authorized by law, at which time and forthwith, such part of the said trust estate so

affected shall be distributed in fee simple to the beneficiary or beneficiaries in the proportions in which they are then entitled to enjoy the benefits so terminated.

H. Incompetency of Beneficiary. During any period in which any beneficiary under this Trust Agreement is judicially declared incompetent, or in the opinion of the Trustee is unable to care for himself, the Trustee shall pay over or use for the benefit of said incompetent beneficiary any part or all of the net income or principal from his or her share of the trust estate, in such manner as the Trustee shall deem necessary or desirable for said beneficiary's support, maintenance and medical care.

I. Claimants. The Grantors have, except as otherwise expressly provided in this Trust Agreement, intentionally and with full knowledge declined to provide for any and all of their heirs or other persons who may claim an interest in their respective estates or in these trusts.

J. Headings. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Agreement.

K. Copies. This Trust Agreement may be executed in any number of copies and each shall constitute an original of one and the same instrument.

L. Construction. Whenever it shall be necessary to interpret this trust, the masculine, feminine and neuter personal pronouns may be construed interchangeably, and the singular shall include the plural and the plural the singular.

NINTH: LIFE INSURANCE POLICIES. With respect to any policies of life insurance under which the Trustee is designated as beneficiary, the Trustee shall deal with such policies as required by the following trust provisions, in addition to the general trust provisions hereinbefore and hereinafter set forth:

A. Custody of Insurance Policies. The Trustee shall have the custody of any policy of life insurance under which the Trustee is designated as beneficiary. However, the owner shall have the right to possession of said policy or policies upon written request to the Trustee.

B. Payment of Premiums. The Trustee shall be under no obligation to pay the premium of any policy or policies of insurance, nor to make certain that such premiums are paid by the Grantors or others, nor to notify any persons of the non-payment of such premiums; and, the Trustee shall be under no responsibility or liability of any kind in case such premiums are not paid.

C. Collection of Policy Proceeds. Upon the death of the insured under such policy or policies, the Trustee shall collect all proceeds due thereon and the Trustee shall make all reasonable efforts to carry out the provisions of this Trust Agreement, including the maintenance of or defense of any action or suit; provided, however, the Trustee shall be under no duty to maintain or enter into any litigation unless the expenses thereof, including counsel fees and costs, have been advanced or guaranteed in an amount and in a manner which is reasonably satisfactory. The Trustee may repay any advances made by the Trustee or reimburse itself for any such fees and costs expended in reasonable attempts for collection of such proceeds out of the principal or income of the trust.

D. Purchase of Assets. The Trustee is hereby authorized and empowered to apply any part or the whole amount of any insurance proceeds collected hereunder to purchase assets from the insured's estate which may be offered for sale by the legal representative of the insured's estate at a price equal to the value of such assets as fixed by competent authority for purposes of determining the liability of the insured's estate for death taxes or at such other price as may be agreed upon by the personal representative of the insured's estate.

TENTH: NON-CONTEST PROVISION. The Grantors specifically desire that these trusts created herein be administered and distributed without litigation or dispute of any kind. If any beneficiary of these trusts or any other person, whether stranger, relatives or heirs, or any legatees or devisees under the Last Will and Testament of the Grantors or the successors in interest of any such persons, including any person who may be entitled to receive any portion of the Grantors' estates under the intestate laws of the State of Nevada, seek or establish to assert any claim to the assets of these trusts established herein, or attack, oppose or seek to set aside the administration and distribution of the said trusts, or to have the same declared null and void or diminished, or to defeat or change any part of the provisions of the trust established herein, then in any and all of the above mentioned cases and events, such person or persons shall receive One Dollar (\$1.00) and no more in lieu

of any interest in the assets of the trusts.

ELEVENTH: DEATH OF ALL BENEFICIARIES. In the event the Residual Beneficiary shall predecease the Grantors without living issue or children of any deceased child, then the Grantors direct that all of the income and principal of any trusts created hereunder shall be distributed to the Shriners Hospitals for Crippled Children upon the death of the Survivor.

TWELFTH: SUCCESSOR TRUSTEE. In the event of the death or incapacity of either Grantor, the Survivor shall continue to serve as the sole Trustee of all of the trusts created hereunder. Upon the death or incapacity of the Survivor, the Grantors then nominate and appoint ELEANOR MARGUERITE CONNELL HARTMAN as the Trustee of all of the trusts created hereunder, or in the event that she is unable or unwilling to serve in the said capacity, then the Grantors nominate and appoint the FIRST NATIONAL BANK OF NEVADA to serve in the said capacity. No successor trustee shall have any responsibility for the acts or omissions of any prior trustee and no duty to audit or investigate the accounts or administration of any such trustee, nor, unless in writing requested so to do by a person having a present or future beneficial interest under a trust created hereunder, any duty to take action or obtain redress for breach of trust.

THIRTEENTH: ACKNOWLEDGEMENT, REPORTS, INSPECTION OF RECORDS. The Trustee hereby acknowledges receipt of and accepts the property and the estate of Trust No. 1 created hereunder on the terms and conditions stated and agrees to care for, manage and control the same in accordance with the directions herein specified, and to furnish to each beneficiary having income paid, distributed, credited or accumulated for his or her benefit, annually and more often if requested so to do, a statement showing

the condition of the trust property, the character and amounts of the investments and liabilities, and the receipts, expenses and disbursements since the last previous statement. The books of account of the Trustee in connection with the investments shall at all times be open to the reasonable inspection of the living beneficiaries or their duly qualified representatives, and such person or persons as they may designate for that purpose.

THIS TRUST AGREEMENT is accepted and executed by the Grantors and Trustee in the State of Nevada on the day and year first above written.

GRANTORS:

W. N. Connell
W. N. CONNELL

Marjorie T. Connell
MARJORIE T. CONNELL

TRUSTEE:

W. N. Connell
W. N. CONNELL

Marjorie T. Connell
MARJORIE T. CONNELL

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

On May 18th, 1972, personally appeared before me,
a Notary Public, W. N. CONNELL and MARJORIE T. CONNELL, who
declared to me that they executed the foregoing Trust Agreement.

June A. Gavin
Notary Public in and for said
County and State

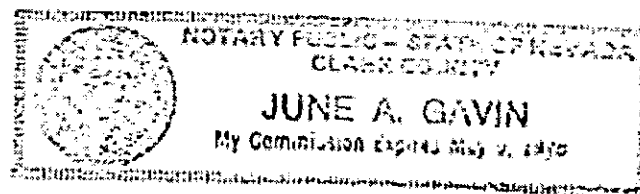


Exhibit “G”

JMM0059

1 **MISC**
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
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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

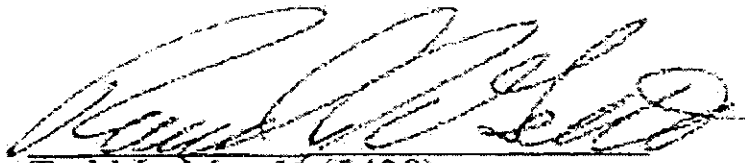
11 THE W.N. CONNELL AND MARJORIE T.
12 CONNELL LIVING TRUST Dated May 18,
1972, an Inter Vivos Irrevocable Trust.

13
14 **INTERIM TRUSTEE REPORT**
15 **(FILED UNDER SEAL PURSUANT TO COURT ORDER DATE FEBRUARY 11, 2015)**
16

17 Fredrick P. Waid, Successor Trustee of the W.M. Connell and Marjorie T. Connell
18 Trust, dated May 18, 1972, An Inter Vivos Irrevocable Trust, (the "Trust") by and through his
19 counsel of record, Hutchison & Steffen, files this Interim Trustee Report at the request of the
20 collective beneficiaries and their respective counsel. This report is being filed under seal due to
21 the fact it requires disclosure of information previously filed under seal by Ms. Ahern pursuant
22 to the Court Order dated February 11, 2015.

23 Dated this 2 day of July, 2015.

24 HUTCHISON & STEFFEN, LLC

25 

26 Todd L. Moody (5430)
Russel J. Geist (9030)
27 10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
28 *Attorneys for Fredrick P. Waid Court-appointed Trustee*

Interim Trustee Report
(Filed Under Seal Pursuant to Court Order Date February 11, 2015)

The information included herein and attached as exhibits to this report is strictly preliminary in nature and subject to amendment. Record requests from financial institutions, lease and mineral interest holders, former counsels for the Trust, tax preparers, Ms. Ahern and others are still pending. The Trust will file a complete report upon receipt of all requested records.

Additionally, based on information discovered and documents obtained from the Internal Revenue Service, amendments to prior year Tax Returns for the Trust, filed by Ms. Ahern as former Trustee, will be required. Such amendments may necessitate additional allocations, adjustments and/or assessments to the Trust beneficiaries pending confirmation and acceptance by the Internal Revenue Service and approval of the Court.

The purpose of this Interim Report is to provide preliminary information as to the holdings of the Trust as of the date of Ms. Ahern's removal as Trustee and other information as requested by the Court and the collective beneficiaries.

Historical Trust Administration

Created in 1972, the Trust's primary assets are oil, gas and other mineral rights located in Upton County, Texas. The Trust also owns a ranch in Upton County, Texas that is subject to a land lease for grazing, exploration and other uses. The primary income from the trust is royalty payments from oil, gas and pipeline companies. The Trust has two beneficiaries: Eleanor Ahern, who holds a 35% income interest for her lifetime and the MTC Trust, which holds a 65% undivided interest and is the remainder beneficiary of Ms. Ahern's interest.

From 2009, after the death of Marjorie T. Connell, until March 20, 2015, Eleanor Ahern served as Trustee of the Trust. For many years prior she had served as a Co-Trustee of the Trust. A dispute among the beneficiaries resulted in litigation. Ultimately, on January 6, 2014, the Court entered an Order permitting Ms. Ahern, as Trustee, to withhold all distributions to the MTC Trust, holder of a 65% interest in the Trust. The Court clarified its order on May 16,

1 2014, wherein it required the 65% split of Trust income to be held by Ms. Ahern, less any pro
2 rata expenses as specifically permitted and set forth in the Order.

3 On March 13, 2015, Ms. Ahern, by and through her then counsel of record, Marquis
4 Aurbach Coffing ("MAC") filed its Brief Regarding Accounting, Fiduciary Duties, and Trust
5 Administration (Filed Under Seal), (the "Ahern Brief"). Ms. Ahern and MAC represented that
6 \$1,997,573.16 of Trust funds, representing the 65% share of the Trust income, was being
7 "held" by the Trust. One week later at the conclusion of a hearing held on March 20, 2015, the
8 Court removed Ms. Ahern as Trustee.

9 Funds on Deposit on Date of Removal

10 On page 8, beginning at line 23, of the Ahern Brief, the following declaration is made
11 by Ms. Ahern's counsel:

12 *"The total amount in the accounts is \$1,997,573.16..." and "...— all of the funds*
13 *remain intact and are presently being held in trust."*

14 Exhibit 2 of the Ahern Brief titled "W N Connell and Marjorie T Connell 1972 Trust,
15 Receipts, Disbursements and Summary of Trust Accounts, June 1, 2013 through January 31,
16 2015" (the "Summary of Accounts") includes a line item (on the first unnumbered page)
17 reading:

18 *"Total Required to be Retained \$1,984,564.77"*

19 Exhibit 5 of the Ahern Brief is a Declaration by Ms. Ahern, who, on page 2 at line 22,
20 declares:

21 *"As of January 31, 2015, the Trust funds are in three separate interest bearing Wells*
22 *Fargo accounts, on account with Fidelity Capital, Inc. and on deposit with Johnson &*
23 *Associates being held in their Trust account."*

24 Additionally, Ms. Ahern, on page 2 at line 25, declares:

25 *"A true and correct copy of the Wells Fargo statements as received and maintained by*
26 *me in the ordinary course of my business as Trustee of the Trust is attached to the Brief*
27 *as Exhibits 13A, 13B and 13C."*

28

1 At a hearing before the Court on March 20, 2015, counsel for Ms. Ahern affirmed the
2 declarations, representations and assertions made in the Ahern Brief and attached exhibits.
3 Nothing in the transcript of the hearing indicates any position taken by MAC that is contrary to
4 the declarations of Ms. Ahern or MAC as set forth in the Ahern Brief and its exhibits. Counsel
5 did not report or even refer to any material change in the financial representations declared.

6 While Ms. Ahern's Declaration, signed on March 12, 2015, under penalty of perjury
7 pursuant to NRS Section 53.045, does not specifically affirm, reference or acknowledge Exhibit
8 2, the Summary of Accounts, a reasonable assumption is that the representations about Trust
9 funds held by the Trust were, in fact, true. The Ahern Brief, signed by counsel for Ms. Ahern,
10 does not assert its declarations regarding the Trust funds are limited by any specific time frame,
11 other than the signature and filing date of March 13, 2015.

12 At the same hearing, the Court removed Ms. Ahern as Trustee, ordered her to cooperate
13 with the Successor Trustee and to transfer \$500,000 from Fidelity Capital Inc. to an FDIC
14 insured institution. An Order was signed and entered by the Court on March 30, 2015. On
15 Wednesday April 1, 2015, after receiving and reviewing a copy of the March 30, 2015 Order
16 and the Ahern Brief, it was reasonably assumed that \$1,997,573.16 would be available for
17 transfer to a new account for the Trust as part of the succession of Trustees.

18 On or about Friday April 3, 2015, a copy of the Court's Order removing Ms. Ahern as
19 Trustee was provided to Wells Fargo Bank. On that day, it was determined that only \$9,941.55,
20 was on deposit at Wells Fargo Bank in accounts of the Trust. This information was provided to
21 Ms. Ahern's counsel at MAC, together with a request for a return of the funds declared to be on
22 deposit, as set forth in the Ahern Brief filed just 18 days prior.

23 Initial Return of Certain Trust Funds

24 On April 8, 2015, Ms. Ahern deposited into the Trust's account a cashier's check in the
25 amount of \$409,228.50. The cashier's check represented funds withdrawn on March 20, 2015,
26 from the Trust's account by Ms. Ahern after the hearing earlier in the day in which she was
27 removed as Trustee. The funds were withdrawn from a Wells Fargo Bank branch in Orange
28

1 County, California just before the bank closed for business that evening. The funds withdrawn
2 were used to purchase a cashier's check payable to the Trust. No explanation has been
3 provided or basis determined for the withdrawal of funds from the Trust account, the intent of
4 Ms. Ahern, or where the check was held from March 20, 2015 until April 8, 2015.

5 On April 13, 2015, the Trust recovered \$500,000 from an account at US Bank. On
6 March 23, 2015, Ms. Ahern, by and through her then counsel of record, notified the Court that
7 the Trust had complied with the Court's order to transfer \$500,000 from the Fidelity Capital,
8 Inc. account to an FDIC insured institution. Contrary to the representations made by Ms. Ahern
9 and her counsel, the \$500,000 deposited with US Bank was not from Fidelity Capital Inc., but
10 from one of the Trust's accounts at Wells Fargo Bank. On March 23, 2015, three days after her
11 removal as Trustee, Ms. Ahern withdrew \$500,000 from the Trust account at Wells Fargo Bank
12 (St. George, Utah branch), purchased a cashier's check payable to the Trust and deposited the
13 same with US Bank. Upon learning of these transactions Ms. Ahern's counsel withdrew its
14 Certificate of Compliance with the Court's order regarding the \$500,000 transfer and moved
15 the Court for permission to withdraw as counsel of record.

16 On April 16, 2015, Ms. Ahern delivered a \$700,000 cashier's check to her then counsel
17 at MAC. The check was in the form of a Wells Fargo cashier's check payable to the Trust and
18 dated February 18, 2015. The check was obtained by Ms. Ahern at the St. George, Utah branch
19 of the bank. No explanation has been provided or basis determined for the withdrawal of funds
20 from the Trust account, the intent of Ms. Ahern, or where the check was held for approximately
21 two months. This transaction directly contradicts the declarations and representations as set
22 forth in the Ahern Brief and its exhibits. Clearly, as of the date of the signing and filing of the
23 Ahern 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 a cashier's
25 check and held by Ms. Ahern or others until it was delivered to her then counsel, who in turn
26 delivered the funds to the Successor Trustee.

27 The \$409,228.50 cashier's check, the \$500,000 recovered from US Bank, and the
28

1 \$700,000 cashier's check were all deposited into a new account created for the Trust after Ms.
2 Ahern's removal. This total of \$1,609,228.50 represents funds returned to and recovered by the
3 Trust in the first two weeks after Ms. Ahern's removal as Trustee. The tracing of those funds to
4 specific Trust income is still ongoing. Wells Fargo Bank requested additional time to respond
5 to the subpoena served on it, based on the amount of records and the discovery that Ms. Ahern
6 conducted transactions at multiple banks in multiple states, including Nevada, California and
7 Utah. Further complicating the matter is the fact Ms. Ahern did not maintain a regular
8 checkbook for the Trust, instead utilizing cashier's checks for each Trust transaction. Ms.
9 Ahern, via her current counsel, has forwarded additional checks to the Trust representing 2015
10 Trust income.

11 Additional Recoveries of Trust Funds

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

20 On April 14, 2015, the day the Court issued its Order to Show Cause against Ms. Ahern
21 regarding the \$500,000 Fidelity Capital, Inc. matter, Ms. Ahern contacted the bank and
22 attempted to arrange an all cash withdrawal of \$100,000 from the Trust's account. According
23 to the bank's representative, Ms. Ahern claimed she, "wanted the cash to put it in her vault."
24 On May 15, 2015, Town & Country Bank elected to no longer do business with the Trust or
25 Ms. Ahern and administratively closed the account. A cashier's check was ultimately delivered
26 to the Trust and on June 10, 2015, \$146,584.83 was deposited in the Trust's new account. The
27 tracing of these funds to specific Trust income is still ongoing.

1 On July 21, 2014, Ms. Ahern opened a checking account, in the name of the Trust, at
2 First Capital Bank of Texas located in Midland, Texas. Oddly, the account was opened with
3 \$500.00 cash. On September 12, 2014, Ms. Ahern opened a savings account in the name of the
4 Trust at the same bank, but did not fund the account. The savings account maintained a \$0.00
5 balance until February 20, 2015, when Ms. Ahern deposited a check from Johnston &
6 Associates in the amount of \$72,088.75. This amount appears to be the same amount reported
7 in the Ahern Brief as being on deposit in the law firm trust account of Johnston & Associates
8 PC. On June 22, 2015, the Trust was notified by First Capital Bank of Texas that the funds
9 remain on deposit. The accounts are being closed and the funds will be deposited in the Trust's
10 new account upon receipt. The reconciliation of these funds to Trust income is still ongoing.

11 It is believed that Ms. Ahern opened another bank account at Zion's Bank in St. George,
12 Utah in the name of the Trust after her removal as Trustee. Information as to this account has
13 not been verified. Confirmation and supplementation will follow upon receipt of the
14 information and any funds recovered will be credited to the new Trust account.

15 Discrepancies in the Ahern Brief and 2015 Trust Income

16 The Ahern Brief, specifically the Accounting Summary, reflects only four (4) royalty
17 income deposits in January 2015. These deposits were all made on Friday January 2, 2015, the
18 day after New Year's Day, and total \$342,886.09. It is reasonable to conclude that this royalty
19 income was not paid by companies in January 2015, given the unlikely scenario that issuance,
20 delivery and deposit of all the checks occurred on January 2nd, assuming general business
21 closures on January 1st. Given this reasonable assumption, the Ahern Brief does not accurately
22 account for Trust income for January 2015, notwithstanding its assertions and declarations. For
23 accounting purposes, Trust income deposited and reported by Ms. Ahern for January 2015
24 should be allocated to 2014 and likely is part of the discrepancies discussed herein.

25 Based on information obtained from Ms. Ahern, the MTC Trust beneficiaries and other
26 royalty beneficiaries, it is estimated with reasonable probability that income paid to the Trust
27 for the first quarter of 2015 is as follows:

January 2015	\$171,925.56
February 2015	\$248,330.60
March 2015	\$153,168.34
Total	\$573,424.50

Post removal as Trustee, Ms. Ahern, via current counsel, has delivered royalty checks, all dated in March 2015 and payable to the Trust, totaling gross income of \$68,385.64. The remaining funds of \$505,038.86, assumed to have been paid during Ms. Ahern's tenure as Trustee, are yet to be accounted for by her, 65% of which totals \$328,275.25 for 1Q 2015.

At the time of Trustee succession, according to and using Ms. Ahern's and her previous counsel's calculations, the Trust should have been holding in its accounts the \$1,997,573.16, as declared, plus the \$573,424.50 for 1Q 2015 Trust income. The accuracy of the amount reported in the Ahern Brief is not consistent with the MTC Trust beneficiaries' calculations and information obtained directly from the Internal Revenue Service ("IRS") regarding income reported to the IRS as paid to the Trust for the calendar years 2012, 2013 and 2014. After receipt of all records and the reconciliation of all payments and all deposits, a supplemental report will be filed.

Estimated distributions of 2015 Trust income have been made through May of 2015, based on January to May 2015 Trust income totaling \$944,540.29. Ms. Ahern's 35% share of 2015 Trust income, totaling \$330,589.10 is being held by the Trust until further order of the Court. In the event it is determined that Ms. Ahern distributed any 2015 Trust income to herself prior to her removal as Trustee the amount held will be adjusted accordingly.

Trust Income Calculation and Reporting Discrepancies

The Accounting Summary attached to the Ahern Brief includes only the time period from June 1, 2013 to January 31, 2015. The beneficiaries of the MTC Trust, together with other Connell royalty recipients (who receive the exact amount of royalty income as the Trust with respect to mineral interests), calculate historic Trust revenue as follows:

2012:	\$2,795,248.32
2013:	\$1,255,892.20
2014:	\$2,585,096.96
2015:	\$ 573,424.50 (January to March 2015)

1 In the Accounting Summary attached to the Ahern Brief, the following figures referred
2 to as "royalty income" are reported as follows:

3 2012: Not provided
4 2013: Incomplete (June to December only)
5 2014: \$2,511,203.66
6 2015: \$ 342,886.09 (January 2015 only, see comments above)

7 IRS records indicate income reported to the Trust for the same periods as follows:

8 2012: \$ 283,533.00
9 2013: \$ 786,669.00
10 2014: \$3,372,849.00
11 2015: NA

12 The amount of gross income reported on tax returns filed by Ms. Ahern, as Trustee, for
13 the same periods is as follows:

14 2012: \$2,844,764.00
15 2013: \$ 380,307.00
16 2014: Extension filed, not yet prepared
17 2015: NA

18 Clearly, there are significant discrepancies that will need to be resolved and reconciled.
19 Again, all Trust records have been requested and upon receipt and verification, Chris L.
20 Wilcox, CPA and his accounting firm, JW Advisors, will prepare financial statements and
21 necessary tax documents as required.

22 Notwithstanding these discrepancies, there are some figures not in dispute. Specifically,
23 all parties to the instant case and beneficiaries of the Trust agree that only partial distributions
24 were made to the MTC Trust beneficiaries in 2013, no income or other distributions were made
25 to them during 2014, and no distributions were made to them before the removal of Ms. Ahern
26 as Trustee in 2015. Additionally, the MTC Trust beneficiaries have made certain demands
27 upon the Trust, based on the Court's orders and the discrepancies set forth above and herein.

28 The Court Order of April 20, 2015

Page 2, at line 25, of the Court's Order Regarding the Accounting, Breach of Fiduciary
Duty Claims and Award of Attorney Fees, filed on April 20, 2015, reads, in part:

"..., the Court finds that a total of \$2,163,758.88 shall be held in trust for the benefit of

1 *Jacqueline and Kathryn, which represents their 65% share of the total net income*
2 *received by the Trust from June 1, 2013 through January 31, 2015."*

3 Later in the Order on page 4, the Court denied the claim for breach of fiduciary duty
4 against Ms. Ahern as it related to the Accounting, but interlineated the following on line 17:

5 *"..., based on the information available to the Court on March 20, 2015."*

6 Since that Order, significant information regarding the "Accounting" referred to by the
7 Court and referenced herein as the Ahern Brief has been discovered and more information will
8 be forthcoming.

9 Court's Calculations, Funds Recovered and Estimated Shortfall

10 As previously indicated, only \$9,941.55 was on deposit in the Trust accounts disclosed
11 in the Ahern Brief. Thereafter, the Trust has received or recovered the following amounts:

12	\$ 409,228.50	Cashier's check dated March 20, 2015
	\$ 500,000.00	US Bank/Wells Fargo Bank transfers
13	\$ 700,000.00	Cashier's check dated February 18, 2015
	\$ 146,584.83	Cashier's check dated April 2, 2015/(Town & Country Bank)
14	\$ 72,088.75	Johnston & Associates/First Capital Bank of TX
	<u>\$1,827,902.08</u>	Total recovered/returned as of June 30, 2015

15 Using the Court's calculations of \$2,163,758.88 as the amount required by Ms. Ahern to
16 have held in trust and adding the unaccounted Trust income for 2015 of \$328,275.25, the
17 amount that should have been held, pursuant to the collective Court orders, is \$2,492,034.13,
18 calculated as follows:

19	\$ 2,163,758.88	Court's April 20, 2015 Order
20	\$ 328,275.25	65% share of first quarter 2015 Trust income
	<u>\$ 2,492,034.13</u>	Sub-total
21	<u>\$(1,827,902.08)</u>	Total recovered/returned as of June 30, 2015
	\$ 664,132.05	Estimate shortfall due by Ms. Ahern

22 As noted in the Affidavit of Fredrick P. Waid filed with the Court, Ms. Ahern directly
23 communicated to Mr. Waid that she believed she "owed the Trust" \$800,000.

24 Tax Payment and MTC Beneficiary Demands

25 On May 16, 2014, the Court entered its Order Granting Petition for the Release of Trust
26 Funds for the Payment of Administrative Expenses. The order specifically requires the
27

1 payment of certain administrative expenses, including, but not limited to, quarterly tax
2 payments. It is undisputed that no such quarterly tax payments were made by Ms. Ahern, as
3 Trustee, from June 1, 2013 to January 31, 2015. None are reported or reflected in the Ahern
4 Brief and no payments were reported to be received by the IRS.

5 On Friday afternoon April 10, 2015, just two (2) business days before the April 15th tax
6 deadline, the Trust was notified by the tax preparer/advisor engaged by Ms. Ahern, Gammet
7 and King CPAs, that the Trust 1) had underreported income for 2013, 2) that there was an
8 estimated tax liability for 2014 of \$700,000, and 3) that Ms. Ahern had distributed to herself all
9 of her 35% share of prior years' Trust income. With limited options and limited time, the Trust
10 paid the estimated liability as calculated and estimated.

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

16 Since inception, the Trust was never a "tax payer" with respect to any Trust income,
17 opting instead to pass through to its beneficiaries all net income, with each beneficiary bearing
18 full responsibility for any associated tax liability.

19 Notwithstanding the Court's calculations in its order of March 20, 2015, the MTC
20 beneficiaries have demanded that the Trust distribute an amount exceeding \$2,297,181.12
21 representing undistributed income of \$616,868.10 for 2013, and \$1,680,313.02 for 2014. They
22 assert they are entitled to the gross distributions that were ordered to be held by Ms. Ahern as
23 defined in the Court's orders. Additionally, they have demanded that their individual and
24 historic tax treatment be protected; meaning, they should only be assessed and issued K-1 tax
25 statements for years they actually received cash distributions from the Trust. In other words,
26 any tax liability incurred by the Trust during Ms. Ahern's tenure as Trustee should be borne by
27 her and her alone.

28

1 Based on the numerous financial discoveries after the removal Ms. Ahern as Trustee,
2 the MTC beneficiaries are also demanding that the Trust audit all the payments of
3 administrative expenses set forth in the Ahern Brief, all legal fees paid by Ms. Ahern, and all
4 other income and expenses not reported by Ms. Ahern. The Trust has noted these demands and
5 reserves the right to seek instructions from the Court on any matters necessary. The Trust has
6 also employed competent tax advisors to review and advise the Trust on the tax implications
7 presently facing the Trust as a result of Ms. Ahern's actions.

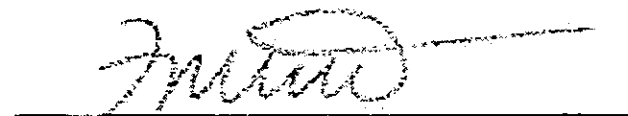
8 The Trust is aware that the MTC beneficiaries have also sought extraordinary damages,
9 remedies and relief from the Court. The Trust takes no position in those matters.

10 Summary

11 Based on the findings, calculations and information in the Court record, the discoveries
12 made after Ms. Ahern was removed as Trustee, the incomplete and inaccurate tax reporting and
13 the pending disclosure of additional financial information, it is difficult to quantify in this
14 Interim Trustee Report the liabilities of the Trust or its beneficiaries for 2012, 2013 and 2014.
15 The Trust has distributed all 2015 Trust income to date, with Ms. Ahern's distributions being
16 held, as noted above, and will continue to do so. By adopting this approach, it narrows the
17 focus and scope of issues to be resolved to prior years only.

18 It is apparent there will be options and alternatives to the handling of the tax issues/
19 liabilities for prior years. This analysis and any tax opinion obtained will be shared with all
20 beneficiaries. Upon completion of the audit and reconciliations, but prior to the filing of any
21 Tax Returns or Amended Returns for 2012, 2013 and 2014, the Trust will submit to all
22 beneficiaries a draft of a Final Report and its recommendations to the Court before setting the
23 matter for hearing and approval.

24 Respectfully submitted,

25 
26

27 Fredrick P. Waid, Trustee
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC, and on this 2nd day of July, 2015, I caused the above and foregoing document entitled **INTERIM TRUSTEE REPORT** to be served as follows:

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

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

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Attorneys for Jacqueline M. Montoya

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Attorneys for Eleanor Connell Hartman Ahern


An employee of Hutchison & Steffen, LLC

Exhibit “H”

JMM0073



The Rushforth Firm, Ltd.

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November 20, 2015

Sent via e-mail to Fwaid@hutchlegal.com and via U.S. mail

Fredrick P. Waid, interim trustee of The
W.N. and Marjorie T. Connell Living
Trust, dated May 18, 1972
c/o Hutchison & Steffen, LLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Re: Connell Trust matter
(Our File: 7242)

Dear Fred:

In light of Eleanor Ahern's decision to no show at her deposition that was scheduled for yesterday, November 19, 2015, my clients, Jacqueline M. Montoya ("Jacquie") and Kathryn A. Bouvier ("Kathy") have instructed me to make the following requests of you in your capacity as interim trustee of "The W.N. and Marjorie T. Connell Living Trust", dated May 18, 1972 (the "Trust").

REQUEST TO IMMEDIATELY CEASE AND DESIST IN FURTHER INVESTIGATIVE EFFORTS

Ms. Ahern's refusal to appear at her deposition yesterday further confirms the reality that she wishes to remain silent and is willfully choosing to provide no explanation as to what occurred with the monies that she was in control of, and ordered to secure and protect, which belonged to my clients, as trust beneficiaries through their interests in the MTC Trust, the sole current beneficiary of Trust No. 3, while she was serving as trustee of the Trust and during her suspension. Although you were not involved in this matter at the time, you should be aware that Ms. Ahern has the played the "injury card" before.

When Whitney Warnick and I tried to depose Ms. Ahern previously, she, again, willfully



missed her deposition. Her excuse, as explained to me by her counsel at the time, was that she had left town for on a trip that she had previously scheduled. I believe that we were notified on the eve before the scheduled deposition by Michael Lum of Jeffrey Burr's office. When we demanded that she return immediately to be deposed, Ms. Ahern conveniently secured a doctor's note indicating that she had fallen and that she was unable to travel and therefore could not return to Las Vegas to sit for her deposition. Based only on repeated threats of sanctions and threat of action to seek to hold her in contempt for failing to appear were Ms. Ahern's attorneys finally able to convince her that she did not have the option not to be deposed. As to Ms. Ahern's supposed previously scheduled trip, we subsequently were able to verify that her decision to leave town for a pre-planned trip was a bold faced lie. Ms. Ahern refused to show for her deposition because she wanted to visit Marjorie Connell's sister in Alabama who was living in a care facility due to her having severe dementia with the hope that Mrs. Connell's sister, a legally incompetent elderly women, could be badgered, unknowingly, into signing documentation that she might then be able to use for her frivolous Will contest case, which is the same Will contest in which she alleged that Mrs. Connell's signature had been forged on her Will when it was in fact signed in David Straus's office and witnessed by members of his staff. The documentation that you have received from Ms. McNair's file further verifies where Ms. Ahern was. It also verifies that Ms. Ahern rented a car and drove cross country, randomly picking lodging along the way. The point being there were not airline tickets to cancel or non-refundable hotel reservations to be taken into consideration, all of which is truly besides the point that one is not, pursuant to statute, entitled to skip out on their deposition because they feel like it. One can only cry "wolf" so many times and this is once again Ms. Ahern's ploy to avoid having to answer difficult questions.

Although Ms. Ahern apparently does not understand that it is not possible for a trustee to fail to account for her actions, since, as you know, Nevada law is very clear that a trustee must not be discharged until they provide an accounting for the time in which they served as trustee, it is her prerogative to choose not to cooperate to explain her actions. Ms. Ahern does not want to offer an explanation and it is my clients' position that it is not your job as a trustee to force Ms. Ahern to explain her actions when time after time it is abundantly clear that she is refusing to do so and wants to remain silent and uncooperative. The simple fact is that only Ms. Ahern knows what she did with my clients' monies, technically Trust monies that did not belong to her, that she was ordered by Judge Sturman to have guarded and protected, but which she chose not to do. As Judge Sturman astutely pointed out, there is but only three plausible explanations for what occurred with the Trust funds that rightfully belonged to Jacquie and Kathy, via their interest in the MTC Trust.

Either 1) Ms. Ahern has spent the funds, 2) Ms. Ahern has transferred the funds to others who are holding those funds for her, and have aided in this crime against the Trust/Jacquie and Kathy, with the intent to return the funds to Ms. Ahern when the coast is clear, or 3) Ms. Ahern's accomplices have double crossed her and taken the funds for themselves. Ms. Ahern knows what occurred, but is refusing to explain herself. Again, legally she must explain her actions while serving as trustee, but it is obvious that she does not feel that she is held to the same legal standard as others.

You have diligently and valiantly attempted to have Ms. Ahern explain where the monies have gone, yet you have repeatedly had doors slammed in your face. It is now time to quit and realize that you have gone as far as you can go on your journey. By trade and occupation you are not a detective, nor are you an investigator. Unless you discretely moonlight on top of your already



busy schedule, I have no evidence that you work for the Las Vegas Metropolitan Police Department.

However, despite your valuable and respected legal skills, you are a trustee and you do not have the skill set that is needed to investigate crimes and solve mysteries, like this one. The further reality is that you cannot force Ms. Ahern, nor any others that you suspect to have participated in this crime and fraud, to cooperate. You have collected valuable, irrefutable evidence to show that the monies were withdrawn from the Trust account and that taxes were not properly paid to the IRS. Again, you have reached the end of the road and are now once again staring squarely at a wall.

With all of this said, my clients must insist that you no longer spend time and resources on this matter and that you waive the white towel and concede that you can no longer move forward. Although your actions have been for the recovery of assets belonging to the Trust, the reality is that the recovery of the assets has been for the benefit of Jacquie and Kathy in seeking to mitigate the damage, caused by Ms. Ahern, to them, which as you know you have a fiduciary duty to protect. Jacquie and Kathy appreciate the efforts that you have made, but as your investigation has been to attempt to recover assets for them that have been stolen from them, I would respectfully assert that they too must have a say in instructing you to cease your efforts when it is clear that the financial burdens outweigh the benefits. I believe that we are now past that point. Please allow me to explain further.

You have already made a demand for Ms. Ahern to return all assets that rightfully belong to the Trust, which have been improperly taken and rightfully belong to Jacquie and Kathy, through their interest in the MTC Trust. Thankfully some assets were recovered by your efforts. However, it was then shortly realized thereafter that the recovery was in essence not really as substantial of a recovery as was initially thought as then you were informed that you had a significant pending obligation to the IRS on behalf of the Trust due to the fact that Ms. Ahern had not paid any taxes in 2014, thus shifting the burden back to the Trust. But, in spite of the standing request, the recovery of assets stolen from the Trust has been stalled out for some time. Although we are in complete agreement that all of your efforts and the efforts of Todd Moody and Russell Geist, your local counsel, as well as your Texas counsel, relating to the extraordinary work that has been triggered by Ms. Ahern's actions should otherwise be chargeable to Trust No. 2, the reality is that the additional costs of your services and that of your counsel still negatively impact Jacquie and Kathy in getting them back to where they should have been had Ms. Ahern acted appropriately, as every additional expense further serves to delay them getting back to square by reducing the resources of the Trust that would otherwise be distributable to them.

As you know, Jacquie and Kathy are owed several millions of dollars from the Trust due to Ms. Ahern's actions. They are also owed more than \$400,000 in attorney's fees. Based on reasonable projections, but subject to variables that none of us can control, the price of oil and the amount of oil that may or may not be able to be extracted from the Texas property, it would take approximately 5 to 8 years from today for Jacquie and Kathy to be made whole if Ms. Ahern does not receive a single cent from the Trust during that time frame, and under a theoretical assumption that no further penalties are assessed against Ms. Ahern to civilly punish her for her conduct. As you further know, if Ms. Ahern does not survive for the duration of the time frame then the losses to Jacquie and Kathy are locked in due to the fact that they are the 100% remainder beneficiaries of the Trust at the death of Ms. Ahern. On top of this, you are also aware that Jacquie and Kathy believe that the no-contest clause in the trust has been triggered by Ms. Ahern's actions which



results in the termination of Ms. Ahern's status, retroactively I might add, as a beneficiary of the Trust. Therefore, as you can appreciate, every additional dollar spent in this investigation drives Jacquie and Kathy further back from the finish line that represents them being put back to square. Further, it makes it increasingly more likely that they will never be made whole in light of the circumstances. This is why I feel that it is an appropriate request for your investigation efforts to conclude and for you to immediately render a final report to the Court with your findings.

REQUEST FOR TENDER OF FINAL REPORT

Please allow this to serve as a formal request for a final report to be provided to Judge Sturman which details your findings to date. Specifically, Jacquie and Kathy would expect that you will report what you have determined the amount of the monies owed to the Trust, and in turn to them which have not been able to be distributed to them would be. It is also understood that you will need to include a report as to your best estimate as to the amount of damages that they have incurred due to the responsibility that has fallen on the Trust due to Ms. Ahern's failure to pay taxes entirely in some years and for her under reporting of income in others. Obviously, it is appreciated that you will need to reserve the right to supplement your report should additional information become available, but the reality is that since you cannot obtain all information due to Ms. Ahern's willful failure to cooperate in providing you with information that she had access to, you can only be expected to report what you believe to be best and most accurate estimations based on the evidence and documentation that you have before you.

Ms. Ahern is certainly free to file an objection to your report, or, better yet, submit her own accounting to the Court. Whatever the case, it is necessary to conclude the investigation and to report what you know. As stated, you cannot be expected to morph into an investigator or a detective when the reality is that Ms. Ahern knows what actions she took and what happened to the funds. Because of this, the conclusion must be that Ms. Ahern took the funds for her personal use. If she wants to make another assertion as to what happened to the funds and explain her actions, which you have been demanding that she do since April when you discovered the theft and fraud, then she most certainly has the right to take any action that she chooses.

CALCULATION OF DAMAGES BY JACQUIE AND KATHY

As you know and have reported to the Court in your interim report, Jacquie and Kathy did not receive any income from the Trust from June of 2013 through the end of 2013. Additionally, they also did not receive any income from the Trust for all of 2014.

As to 2013 income, Jacquie and Kathy have received a breakdown of what the Millers, who as you know own adjacent property to the land owned by the Trust, as to what they received from the various oil companies in 2013. Based on the funds received from the Millers, Jacquie and Kathy assert that the Trust property should have generated the same amount, or even more, than that received by the Millers. Based on the numbers of the Millers, they received income of \$949,027.84 from June of 2013 through December of 2013. You are aware of the breakdown of these funds since you previously obtained these figures directly from the Millers as part of your investigation. 65% of this income of \$949,027.84 would total approximately \$616,868.09.

As to 2014 income, you have reported to the Court in your Interim Report that at a



minimum that the Trust generated income of \$3,372,849.00. Therefore, 65% of this income would total approximately \$2,192,351.85.

As to 2015 income, we do not know precisely what the income received for January, February, March, or April was as that predated your time as trustee. However, for the months of March through October, based on the numbers that you have confirmed, the Trust has averaged monthly income of approximately \$235,000 for that 6 month period. Assuming that this monthly income was the same or similar over those first four months, the total income for that time frame would be \$940,000. 65% of this amount would total approximately \$611,000.

Based on the foregoing, this would mean that Jacquie and Kathy were owed an undistributed, accumulated trust share of \$3,420,219.94, representing only the income owed from their 65% interest in the Trust for the respective years discussed.

On top of this, Jacquie and Kathy are owed over \$400,000 in attorney's fees from Ms. Ahern as ordered by this Court, which includes the interest factored in, for a total obligation of over \$3,820,219.94.

If you find any flaws in my calculations, please let me know. Otherwise, we will assume that your figure as to what Ms. Ahern owes to Jacquie and Kathy is approximately in this neighborhood.

DUTY OF LOYALTY AND ADJUSTMENT POWERS

As you are well versed in the duties that a trustee has, I will not go into great length to explain to you that which you are already know. However, I nevertheless must discuss certain duties and obligations that I feel that you are required to act on without delay.

The duty of loyalty is generally regarded by all legal treatises as the one duty that rises above all other duties that a trustee has and is the foundational obligation upon which the concept of a trustee is based. In this regard, Jacquie and Kathy assert that as you know that they have been harmed by the actions of Ms. Ahern that you have a duty, through your duty of loyalty to them, to ensure that such damage to them is remedied as quickly as possible. This means taking all incoming income and allocating it solely to the MTC Trust, less of course administrative expenses and tax obligations of the Trust. I respectfully assert to you that given the circumstances that there is not only no duty and no obligation to split incoming proceeds between the 65% and 35% interests, Trust No. 3 and Trust No. 2, respectively, but that there is an affirmative duty, borne out of the duty of loyalty and the power of adjustment of interests, to ensure that all incoming income not be divided into two categories, but rather that all income be distributed solely to the MTC Trust until the disparity of the income stolen by Ms. Ahern has created an equal division of assets. I wholeheartedly believe that the premise that the 35% income interest share should receive a cent of income is patently wrong until you have adjusted the disparity as to what was received by Ms. Ahern by directing such income only to the MTC Trust, which you know with certainty has been financially damaged by Ms. Ahern, the suspended trustee of the Trust. You know as well as I that by knowingly withholding any income from the MTC Trust, given the circumstances, is a violation of your duty of loyalty to my clients. For this reason, please allow this to serve as an immediate demand for the all current monies held by you, regardless of previous allocation, to be distributed to the MTC Trust.



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Letter to Fred Waid
November 20, 2015 – Page 6

Looking at this from the equitable adjustment perspective, I am confident that you would not dispute the fact that if you became trustee and discovered that the former trustee had taken 95% of income when they were only entitled to 35% that you would adjust the disparity until such time as the distributions were equalized and the aggrieved beneficiaries were made whole. Again, this is your duty to make adjustments and remedy disparities. For this reason, it is again reiterated the Trust should distribute all funds received, less of course administrative expenses and costs and tax liabilities, to the MTC Trust, who is the injured party, and should make no allocation to Trust No. 2.

I further assert that NRS 163.150 requires this action. NRS 163.150 provides for the following:

Where a person who is a trustee of two or more trusts has mingled the money of two or more trusts in the same aggregate of cash, or in the same bank, credit union or brokerage account or other investment, and a withdrawal is made therefrom by the trustee for his or her own benefit, or for the benefit of a third person not a beneficiary or creditor of one or more of the trusts, or for an unknown purpose, the withdrawal must be charged first to the amount of cash, credit or other property of the trustee in the mingled fund, if any, and after the exhaustion of the trustee's cash, credit or other property, then to the trusts in proportion to their interests in the cash, credit or other property at the time of the withdrawal.

CONCLUSION

Thank you for your attention to these matters and your anticipated actions in light of these demands.

Sincerely,

JOSEPH J. POWELL

joey@rushforth.net

cc: Tamara Peterson, Esq.
clients

Exhibit “I”

JMM0080

List of Jacqueline M. Montoya and Kathryn A. Bouvier's Trial Exhibits

<u>NO.</u>	<u>EXHIBIT</u>	<u>BATES NO.</u>	<u>OFFERED</u>	<u>OBJECTED</u>	<u>ADMITTED</u>
A	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 Trust No. 2 of the W. N. Connell and Marjorie T. Connell Living Trust Dated May 18, 1972; and Setting Calendar Call and Hearing, dated December 20, 2013	JMM0001- JMM0006			
B	Summary Judgment Order April 15, 2015	JMM0007- JMM0024			
C	Order Regarding the Accounting, Breach of Fiduciary Duty Claims and Award of Attorneys [sic] Fees April 20, 2015	JMM0025- JMM0030			
D	Judgment and Order Approving Award of Attorneys' Fees June 23, 2015	JMM0031- JMM0037			
E	Affidavit of Fredrick P. Waid, Trustee, dated May 6, 2015	JMM0038- JMM0043			
F	The W.N. and Marjorie T. Connell Trust, dated May 18, 1972	JMM0044- JMM0058			
G	Mr. Waid's "Interim Trustee Report" dated July 2, 2015	JMM0059- JMM0072			
H	Letter to Mr. Waid dated November 20, 2015 from Joseph Powell, Esq	JMM0073- JMM0079			

JMM0081

<u>NO.</u>	<u>EXHIBIT</u>	<u>BATES NO.</u>	<u>OFFERED</u>	<u>OBJECTED</u>	<u>ADMITTED</u>
I	List of Jacqueline M. Montoya and Kathryn A. Bouvier's Trial Exhibits	JMM0080- JMM0082			