

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,

Appellant,

vs.

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

Respondent.

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Clerk of Supreme Court

APPELLANT'S APPENDIX

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

APPELLANT'S APPENDIX, VOLUME 8 OF 8

(PAGES AA1521-1648)

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INDEX TO APPELLANT'S APPENDIX

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

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

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

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

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

1 TRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 * * * * *

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

10 BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE
11 **ALL PENDING MOTIONS; EVIDENTIARY HEARING; STATUS CHECK**

12 THURSDAY, MARCH 3, 2016

13 APPEARANCES:

14 For the Petitioner,
15 Eleanor Ahern:

KIRK LENHARD, ESQ.
TAMARA PETERSON, ESQ.

16 For the Trustee,
17 Frederick Waid:

TODD MOODY, ESQ.
RUSSEL GEIST, ESQ.

18 For Kathryn Bouvier and
19 Jacqueline Montoya:

JOSEPH POWELL, ESQ.
LAYNE RUSHFORTH, ESQ.

20
21 RECORDED BY:

KERRY ESPARZA, COURT RECORDER

22 TRANSCRIBED BY:

KRISTEN LUNKWITZ

23
24 Proceedings recorded by audio-visual recording, transcript
25 produced by transcription service.

1 THURSDAY, MARCH 3, 2016 AT 10:23 A.M.

2

3 THE COURT: All right. Ready? We're ready to go
4 on the record, then everybody can state appearances.

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

8 MR. RUSHFORTH: Layne Rushforth appearing on
9 behalf of the same movant.

10 MR. LENHARD: Kirk Lenhard and Tammy Peterson on
11 behalf of Ms. Ahern.

12 THE COURT: Okay.

13 MR. MOODY: Todd Moody and Russel Geist on behalf
14 of the Court appointed trustee, Fred Waid.

15 THE COURT: Okay. All right. We have a number of
16 things on calendar today, including wrapping up the motion
17 which we're here on which is the Motion to Enforce the No-
18 Contest Clause, but we do have a couple of other issues
19 that I thought we needed to deal with sort of
20 preliminarily, those being the -- there was a request to
21 submit documents in-camera and I think that was something
22 pertaining to a different -- some different litigation that
23 we might need to talk about first and then another thing
24 that I thought we probably should talk about was, I think,
25 there was a request on this medical report, for that to be

1 disclosed as well.

2 So, we can maybe address those issues first and
3 then I think we might also want to talk about the 65-day
4 Rule. So, Mr. Moody.

5 MR. MOODY: Thank you, Your Honor. I'll be brief.
6 I know this just -- the OST got signed, I think, on Monday
7 and it was filed on yesterday, but we did -- well, here's
8 the issue. We have in this Trial Memorandum, that was
9 filed under seal, some issues that I think are germane to
10 the *Mann* case in front of Judge Johnson. Really what we're
11 looking for, Your Honor, is specifically some of the
12 billing entries and some of the pleadings as they pertain
13 to Susanne Nuna [phonetic]. They are claiming attorney-
14 client privilege with Susanne Nuna as well as Ms. Ahern
15 and, under the crime fraud exception, with this issue of
16 undue influence being raised, I think that it may be the
17 door that opens the way to overcome the attorney-client
18 privilege through that.

19 And, so, before we filed that or put it in front
20 of Judge Johnson, because it was filed under seal in this
21 Court, we wanted the Court's permission and --

22 THE COURT: Okay.

23 MR. MOODY: -- we wanted the other parties to be
24 able to weigh in on it, but I can represent to the Court
25 that that case, the case we want to file this in, remains

1 under seal. And, so, I can assure everybody, including
2 this Court, that if we're allowed to file it, it, at least
3 for now, remains under seal.

4 THE COURT: Okay. And the reason that you need it
5 unsealed in this case in order to be refiled under seal in
6 Judge Johnson's case is there is no way to look at it from
7 another department since it's under seal. So Judge Johnson
8 couldn't go and access the -- it's an electronically stored
9 document. So, it -- but it's just he doesn't have any way
10 to access it if you were --

11 MR. MOODY: Well I guess I could --

12 THE COURT: -- to refer him to it, he would not be
13 able to look to access it.

14 MR. MOODY: I have a hard copy that I could file,
15 you know, but --

16 THE COURT: Right.

17 MR. MOODY: -- I don't think that that honors the
18 intent of sealing files. And, so, you know, out of an
19 abundance --

20 THE COURT: Right.

21 MR. MOODY: -- of caution, --

22 THE COURT: So you need something that says it's
23 unsealed for the purpose of being filed under seal in your
24 case in Department 20?

25 MR. MOODY: Exactly because I can tell you that

1 besides Judge Johnson, the other person that would be
2 seeing it is Ms. Ahern's attorney, James Shapiro, who
3 represents her and Susanne Nuna in that case in Department
4 20.

5 THE COURT: Okay. I got it. Okay. Thank you.
6 All right. So, we're going across the room. Mr. Powell,
7 do you take any position or Mr. -- sorry, about that. Mr.
8 Rushforth, any position on this issue?

9 MR. RUSHFORTH: We have no objection.

10 THE COURT: Thank you. All right.

11 MR. LENHARD: We don't take any position on it.
12 It's -- we're not the proper parties to be arguing it.

13 THE COURT: Okay. All right. So, if the request
14 is that a document that's under seal in this litigation be
15 unsealed, although technical -- I mean, technically, the
16 only reason to do that is to authorize Mr. Moody, who has a
17 hard copy of it in his possession but can't do anything
18 with that, to be able to file it under seal in a different
19 case that -- and that case, the entire case is sealed?

20 MR. MOODY: It is.

21 THE COURT: Okay. All right. Odd. Okay. So,
22 for purposes of this request, if you could specify in your
23 order the exact document to be unsealed and authorize that
24 that exact document then be filed for the limited purpose
25 of being filed in the other case, then the Clerk's Office

1 knows they can accept a document that's under seal here and
2 file it under seal there as well.

3 MR. MOODY: Thank you.

4 THE COURT: Okay.

5 [Colloquy between counsel]

6 MR. MOODY: Yeah, I --

7 THE COURT: And then our document remains sealed.

8 MR. MOODY: That's exactly right. So we're really
9 not asking for it to be unsealed --

10 THE COURT: No.

11 MR. MOODY: -- in this case. We're not going to
12 make it public.

13 THE COURT: No.

14 MR. MOODY: It'll just be filed in the other case
15 and --

16 THE COURT: Right. That this --

17 MR. MOODY: -- remain under seal.

18 THE COURT: A document that's under seal in this
19 case may be filed under seal in another case. So, however
20 way you want to frame it, we're not unsealing our document
21 permanently, we're just saying that it can be -- for
22 purposes of being filed in another department, it can be,
23 quote, unsealed, so that it can be refiled under seal there
24 and then resealed here.

25 MR. MOODY: Thank you, Judge.

1 THE COURT: So even though technically, physically
2 nothing happens, it's just that's how it gets from this
3 case to Judge Johnson's case remaining under seal.

4 MR. MOODY: Okay. Thank you.

5 THE COURT: Or maybe it's better to say it remains
6 under seal. I don't know. If the Clerk's Office has any
7 questions about the order, you can certainly refer them to
8 us and, yes, because sealed documents are very -- you know,
9 a very touchy thing. Okay. So that's the sealed document.
10 So that's number one.

11 The next item is, I think, that Mr. Powell, it was
12 your request with respect to the IME that was filed under
13 seal in this case or I -- was it under seal --

14 MR. POWELL: Their motion, Your Honor.

15 THE COURT: Yeah, so that -- and I think Mr.
16 Powell had objected --

17 MR. POWELL: We filed Opposition.

18 THE COURT: -- to it.

19 MR. POWELL: Yeah, an objection.

20 THE COURT: So, I don't know. Is that Ms.
21 Peterson? Is that Mr. -- the request to seal the IME
22 report, or Mr. Lenhard, who is going to take that?

23 MS. PETERSON: Your Honor, we ask to just submit
24 it in-camera.

25 THE COURT: Right.

1 MS. PETERSON: It would be our request that the
2 IME, because it contains personal health information, not
3 be permitted to be seen by the other beneficiaries or their
4 counsel. We are trying to comply with a Court order that
5 she attend an IME. We wanted to show that she did comply,
6 she did receive that, but there's no reason to file that in
7 a sealed capacity where parties could review it. It's a
8 personal health information.

9 THE COURT: Okay.

10 MR. RUSHFORTH: Your Honor, we have no objection
11 to it remaining confidential, but we see no purpose in
12 having it reviewed by anybody. Since they've conceded that
13 there's no objection to her sitting for a deposition,
14 there's really no purpose to having it reviewed in-camera
15 otherwise. So our position is that if it is reviewed in-
16 camera and it's being offered as some evidence of
17 something, then we have a right to see it. If it's just
18 that they're conceding that she doesn't have an excuse not
19 to sit for a deposition, I think we can just let it go and
20 not have it filed or reviewed by anybody.

21 MS. PETERSON: Well, Your Honor, I would say I
22 think you need to review it and then you can decide. If
23 you want to keep it under seal and allow the beneficiaries
24 or if you just want to keep it as a -- and just return it
25 back to us and not file it, but I do think that it should

1 be submitted for your review like you would any other
2 privileged document trying to determine if it's
3 sufficiently privileged. I think that would be
4 appropriate. You did order her to go to an IME. She did
5 sit for one.

6 MR. RUSHFORTH: And our position would be -- is
7 that there's really no reason for you to even see it unless
8 it's being offered as evidence, and then if it is being
9 offered as evidence for you to review, we need to know what
10 it's intended to prove and we should have an opportunity to
11 review it. So, if it's not needed for evidence, we'll
12 acknowledge that they -- that she sat for it, she complied
13 with the Court order. I don't think it's needed for any
14 other purpose.

15 THE COURT: And just for the record, I did review
16 it to see what it was the dispute was over. I mean, the
17 ultimate conclusion of the physician is that there's no
18 medical excuse for a -- sitting for the deposition. He
19 found no actual medical reason for her not to sit. So, you
20 know, that conclusion, I think, to the extent that Mr. Waid
21 or anyone was concerned about putting someone through a --
22 something -- when they're claiming a medical reason not to
23 do it and if you insist that they do it, then argue -- you
24 know, putting that person at any kind of a risk and I think
25 all it does is reassure the parties that a physician said

1 that there's medical reason why she can't do it. Having
2 taken a look at the things that -- the actual medical
3 condition that she is in, she's in pretty good medical
4 condition. I don't see that these things that she
5 complains about limit her ability. She was able to answer
6 questions for the physician. So, he said: I have no
7 medical reason to excuse her.

8 So, if that conclusion needs to be made available
9 so that the parties know that they can proceed and they are
10 not putting Mrs. Ahern's health at risk so they have that
11 level of confidence, then, you know, that much I can see
12 disclosing, just that the conclusion that I see no medical
13 reason why this person cannot sit for a deposition. I
14 think you're entitled to know that so that you have the
15 comfort of knowing if you could go forward with it, that
16 you are -- this physician has said there's -- that you
17 aren't putting her at risk.

18 SO, to the extent that that -- the medical
19 conclusion could be disclosed and that, actually, it's not
20 really even the -- in the IME itself, it's more of --
21 there's a, I guess, a telephonic inquiry about the final
22 page.

23 MS. PETERSON: I'm not sure what you mean about
24 the telephonic inquiry. I was just going to say, Your
25 Honor, I would -- I think we can say that this physician

1 did not see any physical reason she could not sit for a
2 deposition. He did make a recommendation for a further
3 evaluation and I think that that is --

4 THE COURT: Okay.

5 MS. PETERSON: -- the only issue that's still out
6 there.

7 THE COURT: Right. So, perhaps if counsel could
8 approach?

9 [Bench conference began at 10:32 a.m. - not transcribed]

10 [Bench conference concluded at 10:37 a.m.]

11 THE COURT: Okay. So, for the record, we are
12 returning documents that were submitted to the Court in-
13 camera review. The Court has indicated to counsel for the
14 parties the portion of one page that the Court finds
15 doesn't disclose any confidential medical information but
16 states the physician's conclusion and further
17 recommendation. That will be provided to all parties as a
18 confidential document filed under seal, again, so we don't
19 violation any HIPAA rights or rights of the -- of Ms.
20 Ahern, but can be disclosed to them so they have, for their
21 records, the opinion of the physician. It is not part of
22 his independent medical examination, but it is a -- sort of
23 more like an interoffice note in which he concisely states
24 his conclusion and his further recommendation.

25 So, even though it's not the medical report, it

1 takes out all of the confidential HIPAA information and
2 just discloses his ultimate conclusions. So, for that, we
3 will -- Ms. Peterson will make that available through a
4 confidential filing.

5 MS. PETERSON: Yes. Thank you, Your Honor.

6 THE COURT: And we seal when she submits that --
7 the ultimate document that will be sealed is that one page
8 and that's what will be submitted under seal and available
9 to the other parties to review them.

10 MR. MOODY: And can I just say, Your Honor, we did
11 not take a position on this --

12 THE COURT: Right.

13 MR. MOODY: -- but in light of the information, we
14 do intend to proceed with Ms. Ahern's deposition.

15 THE COURT: All right. Thank you. Okay. So, the
16 Motion to Review In-Camera was granted. The Opposition was
17 also granted to the extent that the Court will disclose the
18 physician's conclusion and further recommendation. Okay.
19 Anything else on that or does that handles both of those
20 issues? Okay.

21 All right. So then the -- then next, before we
22 get to the ultimate issue that we're here about, was the
23 remaining issue was the status check concerning our --
24 we're here on the 65th day tomorrow. So we're around the
25 64th day. So, thank you. Is that Mr. Geist's?

1 MR. GEIST: Yes. Thank you, Your Honor.

2 On behalf of Mr. Waid, who has petitioned this
3 Court for instructions regarding the unpaid distribution --
4 unpaid revenue that is currently being held in trust, in
5 short, the 65-day rule that the IRS has regarding
6 distributions for trust purposes indicate that if a
7 distribution is paid or credited after the end of the
8 previous tax year, but before the 65th day, the end of the
9 65th day of the next tax year, the trustee can take a
10 deduction, in essence, on that distribution and count it
11 towards the previous tax year.

12 Because Mr. Waid presently has approximately
13 \$624,000 representing Ms. Ahern's unpaid revenue received
14 by the trust and they are currently the issues before the
15 Court, Mr. Waid asks this Court for instructions regarding
16 the allocation, in essence, for income tax purposes, of
17 this \$624,000.

18 The two options -- well, the two options that the
19 trustee would like to raise, number one, is that the trust
20 can simply continue to hold onto these -- this unpaid
21 revenue and pay the income tax on that amount. The
22 consequence of that would be that the trust would pay a
23 maximum tax rate of 43.4 percent at an amount greater than
24 \$12,000 -- \$12,300 of taxable income, a significant amount
25 of taxes would be paid on that.

1 The other alternative would be to, because it is
2 Ms. Ahern's share of the revenue, allocate that amount,
3 pending a determination from this Court as to where that
4 actually gets paid to, but allocate or credit that amount
5 to Ms. Ahern in whole or in part in which that portion
6 that's allocated to her would be taxable to her at her
7 individual tax rate.

8 The trustee has a couple of concerns about that.
9 Number one, given the declarations that were made in Ms.
10 Ahern's trial brief, and previously, that she is having a
11 hard time paying for her living expenses, the trustee is
12 concerned that giving her that kind of allocation of income
13 could create a more significant income tax burden that she
14 probably would not be able to pay for.

15 The other concern is that even if we continue to
16 allocate this amount of unpaid revenue to her, and assuming
17 that she's not able to pay the income tax on that, or if
18 she has significant income tax liabilities presently, which
19 the trustee believes may be the case given he has to really
20 refile previous year tax returns, the concern is that the
21 IRS is going to have a continuing interest in her share in
22 the trust and, as a super creditor, could come in and
23 assert a claim over the unpaid revenue over and above what
24 she would get individually and over and above what the
25 Court may order as any other remedy that the Court fashions

1 in the future, which the trustee is not taking a position
2 on.

3 So, Mr. Waid has given some options to the Court,
4 which are, number one, the trust retains the unpaid revenue
5 and pays the tax on it and we've discussed the consequence
6 of that. The other is credit the unpaid revenue to Ms.
7 Ahern in whole or in part, or however the Court decides to
8 fashion that, and then pay the MTC Trust for any
9 outstanding liabilities. We're aware of a judgment that
10 needs to be paid. I don't know what the -- where that is
11 in the process.

12 THE COURT: And the reason you wouldn't want to
13 just pay the MTC Trust, the beneficiaries themselves
14 directly from this share is because then that'd sync them
15 to them. It's not income to them. It's a damage award
16 that they were given for the fees and costs. So that
17 wouldn't -- they shouldn't be paying the tax on it, --

18 MR. MOODY: Correct.

19 THE COURT: -- in other words?

20 MR. MOODY: Correct.

21 THE COURT: Okay.

22 MR. MOODY: Another option is to, again, credit
23 the unpaid revenue to Ms. Ahern and continue to hold the
24 unpaid revenue. Again, the IRS rules allow us to pay or
25 credit that amount of revenue to her. Again, this would

1 result in a significant income tax liability to Ms. Ahern,
2 which we are concerned about her ability to pay that in the
3 future. We have no indication of whether or not she can.
4 It's just a concern that a trustee has raised.

5 And then the last is to simply suspend her
6 interest in the trust and I think this would involve a lot
7 of moving parts, but this is certainly an option that the
8 trustee has come up with, and pay and credit the unpaid
9 trust revenue to the MTC Trust going forward until such
10 time as the Court feels that any obligations which I think
11 are under consideration would be satisfied.

12 That's what the trustee is asking this Court to
13 instruct him on. I'm sure the other parties have positions
14 that they wish to express. The Court's willing to -- or
15 the trustee is willing to defer to the Court on its
16 instructions regarding this. So we would like to turn that
17 over to --

18 THE COURT: Okay. Well, with respect to the final
19 option, the suspending Ms. Ahern's interest and credit the
20 unpaid 2015 revenue to the MTC Trust, then if you do that,
21 then the MTC Trust has to pay the taxes and that would be
22 that same high tax rate.

23 MR. MOODY: That's -- well, it wouldn't be the
24 same high tax rate, it would pass through or flow to to the
25 --

1 THE COURT: Right.

2 MR. MOODY: -- MTC Trust beneficiaries. So they
3 would pay the tax on their individual ordinary income tax
4 rate.

5 THE COURT: Right. But, I guess, that, again, is
6 my question is if it's being paid to them to satisfy the
7 award of attorneys' fees, then why are they paying the
8 taxes on it?

9 MR. MOODY: Mm-hmm. That's certainly a valid
10 question. I don't take a position on that.

11 THE COURT: Yeah. Okay. All right. Thanks.

12 MR. MOODY: Thank you, Your Honor.

13 MR. RUSHFORTH: Your Honor, speaking to answer
14 that last question you just had, our clients are willing to
15 take that distribution, pay the -- to the MTC Trust and
16 report the income tax with the understanding that we can
17 sort that out. We still -- we all acknowledge that we've
18 got to crunch numbers. We've got to do a final accounting.
19 We've got to assess damages. There's a lot of number
20 crunching that still needs to go on. And, so, our clients
21 are willing to let that come to the MTC Trust, knowing that
22 they're going to have a 2016 distribution that's going to
23 be reported as taxable income for the time being and yet
24 they think that -- our feeling is that that's the safest
25 way to take care of this issue and everything else, all the

1 number crunching, can sort that out in the rest and that
2 way we don't create extraordinarily high tax rates and we
3 don't give access to money to a trustee that committed
4 malfeasance. This is the safest way to go.

5 I am prepared, as part of the other motion that's
6 before the Court, to go into why there are other reasons
7 that the -- Ms. Ahern's interest should be suspended, but
8 I'll defer that to the next motion, but --

9 THE COURT: Okay. And I guess the --

10 MR. RUSHFORTH: -- for the purposes of --

11 THE COURT: -- question that I have is: How does
12 that different -- differ from the option number -- option B
13 that the trustee gave us, which was to credit the unpaid
14 trust revenue to Ms. Ahern and pay the MTC Trust for the
15 liabilities? The difference there is that then the tax
16 liability is Ms. Ahern's even though the money ultimately
17 goes -- it would be paid to the daughters.

18 MR. RUSHFORTH: But then -- that is giving her a
19 credit that we would rather she not get.

20 THE COURT: Mm-hmm. Okay. Thanks. All right.
21 So, Mr. Lenhard.

22 MR. LENHARD: Thank you, Judge. We also made a 5th
23 proposals on page 2 of our Reply and that was worked with
24 our accountants and I want to remind the Court of something
25 because I keep harping on this. November 4, you issued an

1 oral order, over objection from the sisters, stating that
2 Ms. Ahern would get interim attorneys' fees to cover her
3 defense costs as well as minimal living expenses. The
4 order was reduced to writing in early January. It's now
5 early March. Myself and my law firm, in reliance of the
6 good faith of your orders and the strength of your orders,
7 have soldiered on. We've defended in the Supreme Court,
8 we've defended here, and we've done our job.

9 To date, Mr. Waid has just refused to pay us and
10 he testified in open court that he basically is disobeying
11 your order.

12 There's an element of fairness here that seems to
13 be lacking. Whatever the Court does, whether it be
14 suspending, crediting, or whatever, you -- I am suggesting
15 -- I can't tell you what to do, but I am suggesting, in
16 fairness, your order has to be obeyed. I will not be made
17 whole by any way, shape, or form by the interim payment but
18 I had a right to rely upon that. And I'm standing here
19 asking the Court to enforce its own order and I don't think
20 that that is an unfair request in any way, shape, or form.

21 You -- I prefer the option we've given as far as
22 how to handle the funds, but I'll leave that to the Court
23 and the tax experts, but I want this Court to take into
24 account its order which has been willfully disobeyed now
25 for four months. Thank you.

1 THE COURT: All right. So, I just want to make
2 sure I understand what this proposal is that your -- you
3 have provided, Mr. Lenhard, just to make sure so that Mr.
4 Geist can respond to it. It's sort of a hybrid of
5 something that they had recommended as one of our options
6 and that was to credit the income to Ms. Ahern, she gets a
7 K-1, she reports it, it's her tax liability is her tax
8 liability, and that then the -- your suggestion though is
9 that the trustee would pay the taxes?

10 MR. LENHARD: Yes. That way you're assured of it
11 being paid.

12 THE COURT: Okay.

13 MR. LENHARD: Now that does not take into account,
14 and my client has approved me to represent today that we
15 need to have a deduction out of there and that's for
16 obedience of your order.

17 THE COURT: Okay.

18 MR. LENHARD: So the interim attorneys' fees are
19 paid and interim living expenses are paid. I think it
20 comes out to about \$90,000. So those numbers would have to
21 be reworked.

22 THE COURT: Okay. All right. So then -- and then
23 whatever the remainder is goes to pay --

24 MR. LENHARD: We would use that formula.

25 THE COURT: Go to pay the previously entered award

1 and whatever any other --

2 MR. LENHARD: Of course. And I don't care,
3 frankly, if the money eventually goes to pay their judgment
4 or whatever. You know, you can decide how to do that. I'm
5 just asking you to enforce your order at this point in
6 time. I'm having a hard time explaining to people why I
7 keep coming to this courtroom with a court order and
8 nothing --

9 THE COURT: Right.

10 MR. LENHARD: -- happens.

11 THE COURT: All right. Thanks.

12 MR. RUSHFORTH: Your Honor, do the flashing mics
13 indicate we're not on the record.

14 THE COURT: For the -- the system --

15 MR. LENHARD: Oh.

16 THE COURT: -- continues to record.

17 MR. LENHARD: Okay.

18 THE COURT: But it does need to be rebooted, so
19 Kerry sent a note to the appropriate people and they'll
20 come down and reboot the -- it does still record even
21 though -- unless and until she gets locked out. Once --
22 and it will ultimately get there if it doesn't get fixed.
23 So for right now, until she tells us that she's been locked
24 out, then we're good to continue, but we may have to take a
25 break when they come to reboot/reset it.

1 Okay. So, Mr. Geist.

2 MR. GEIST: Thank you, Your Honor.

3 With regard to Mr. Lenhard's comments about
4 enforcement of a prior order, I believe it's inappropriate
5 that, procedurally, that issue is not before the Court.
6 Ms. Ahern has not raised that issue in a motion that's
7 currently being heard. I understand his concern, but I
8 would point out that -- you know, jurisdictionally, of
9 course, this Court has the power to enforce this order and
10 -- but I would point out that there is a pending appeal
11 regarding that order. It certainly does not divest the
12 Court of its jurisdiction, however, there is an emergency -
13 -

14 THE COURT: But there's never been a stay.

15 MR. GEIST: I understand that.

16 THE COURT: Every time this comes up, I -- that's
17 what I keep saying is it's never been stayed. Nobody ever
18 -- it's not stayed.

19 MR. GEIST: I understand that, Your Honor, and --

20 THE COURT: So I don't understand.

21 MR. GEIST: -- I would remind the Court that on
22 the first day of the evidentiary hearing, Mr. Waid
23 testified that he is willing to comply with that order. He
24 understands that there is an Emergency Motion for a Stay
25 and I think it's reasonable for him to -- and for the Court

1 to simply wait until the Supreme Court makes the decision
2 on that.

3 THE COURT: Where's the Motion for --

4 MR. GEIST: But we are --

5 THE COURT: Where is the Motion for Stay? Is that
6 pending in the Supreme Court?

7 MR. GEIST: I --

8 MR. LENHARD: It's been pending for three weeks
9 now.

10 MR. GEIST: Yes.

11 THE COURT: At the Supreme Court?

12 MR. GEIST: Yes.

13 THE COURT: Okay.

14 MR. GEIST: Yes, Your Honor.

15 MR. LENHARD: Do I have to sue the trustee to
16 enforce your order? Is that what I'm being forced to do
17 here?

18 THE COURT: Yeah. That's --

19 MR. LENHARD: I will.

20 MR. GEIST: Again, Your Honor, --

21 THE COURT: -- a concern I have.

22 MR. GEIST: -- I don't think that issue is proper
23 before the Court.

24 THE COURT: Okay.

25 MR. GEIST: We can certainly deal with that.

1 The tax ramifications of this, certainly enforcing
2 that order, are what we're trying to discuss.

3 THE COURT: Right.

4 MR. GEIST: You had asked what the -- you had
5 asked Mr. Rushforth what the difference between B and C was
6 in our options in our Petition for Instructions. The
7 concern that the trustee has is that option B where we
8 credit the unpaid revenue to Ms. Ahern and pay the MTC
9 Trust, or any other party, outstanding liabilities that she
10 may owe, including attorneys' fees, that would most
11 certainly invite the scrutiny of the IRS if she currently
12 has outstanding tax liabilities or if she in the future
13 will incur tax liabilities based on that distribution or
14 credit of that revenue.

15 We believe that option D, where we reform the
16 trust, in essence, and suspend her share would give Mr.
17 Waid at least a colorable argument to the IRS that there is
18 a reason that he is not involving the IRS as a creditor of
19 Ms. Ahern, because, as we know, her share under the trust,
20 is a mandatory distribution of net income. If Mr. Waid
21 determines that there is net income, net of any expenses
22 that the trust has to other beneficiaries or his
23 professional fees or whatever the case may be, that is
24 mandatory to be distributed to her; however, her creditors
25 can stand in her shoes and certainly the IRS would assert

1 that position that it is above and beyond any other
2 creditor that she may have and take that.

3 So, we believe that that's the difference between
4 those two options. But, again, we leave it up to the Court
5 --

6 THE COURT: And the -- you did not address it and
7 it did just come in yesterday afternoon, the suggestion of
8 Mr. Lenhard in which, you know, I understood that they have
9 continued to object to the fact that this Court's order was
10 not being honored. I mean, that came up the very first day
11 of this trial. So, you know, it certainly is before the
12 Court that -- and I understood for very valid reasons that
13 Mr. Waid has in his exercise as her trustee that, you know,
14 he has to be careful that he doesn't do something that
15 exposes her to further liability or opens her up to a -- I
16 guess expose her to action by the IRS.

17 MR. GEIST: That's the biggest concern that we
18 tread lightly on these issues. I -- again, we under -- we
19 absolutely understand Mr. Lenhard's concern and we
20 understand the lengths that he has gone to and Mr. Waid is
21 willing to comply with that order, we just have this
22 serious tax issue that needs to be addressed. How is this
23 -- the order indicates that it is an advance. Are we to
24 interpret that that is a distribution, therefore, she bears
25 the income tax liability for that? If that's the case, if

1 all the parties agree, then we'll do that. Then what do we
2 do with the rest of the revenue? I think that's what would
3 like the Court's instruction and we will carry it out.

4 THE COURT: Okay. And the difference in suspend -
5 - this technical term, suspending, versus the request that
6 the other beneficiaries have made which is that she --
7 which is what is still pending, wrapping up this hearing,
8 is that the no-contest for -- clause be enforced and her
9 share is permanently revoked.

10 MR. GEIST: Yeah. Correct.

11 THE COURT: So, technically, in suspending, that
12 sends a message to the IRS that there is no current right
13 to her to receive any funds, therefore she doesn't have any
14 current tax liability?

15 MR. GEIST: I think --

16 THE COURT: I don't know if I'm understanding --

17 MR. GEIST: I think that's probably the way to
18 describe it.

19 THE COURT: I'm over --

20 MR. GEIST: Now the I --

21 THE COURT: -- simplifying this. The IRS is way
22 over my head.

23 MR. GEIST: And I hoped not to get into --

24 THE COURT: I hated that class.

25 MR. GEIST: -- the intricacies of the tax code or

1 any of the issues. I hope to keep it on that level.

2 THE COURT: I don't want to get into the IRS --

3 MR. GEIST: But I think you've got --

4 THE COURT: -- tax code.

5 MR. GEIST: -- that correct. It -- and I would
6 just point out that even if the Court takes that position
7 and we do suspend her interest for as long as it takes to
8 satisfy whatever the Court determines, I think the IRS
9 could still take the position that the trust says what it
10 says, she's entitled to that, and still could go after her.
11 But, again, we represent the trustee. We're asking the
12 Court for instructions regarding this so that the trustee
13 can at least say: I'm doing this, because this is what we
14 were told to do.

15 THE COURT: Right. And to get it all -- all the
16 paperwork and everything processed by the close of business
17 tomorrow, our 65th day.

18 MR. GEIST: Correct.

19 THE COURT: So that the trust doesn't have to pay
20 the enormous tax rate that --

21 MR. GEIST: Correct, Your Honor.

22 THE COURT: -- it would pay.

23 All right. So, I guess, in the end, what's in
24 everybody's best interest at --

25 MR. GEIST: Right.

1 THE COURT: -- this point in time. It's not, as
2 the trustee is operating for everybody's best interest, and
3 also we don't want to expose him to any questions from the
4 IRS that would bear on his performance of his abilities, of
5 his duties.

6 I -- with all due respect to Mr. Lenhard, I
7 appreciate their view that you just pay Ms. Ahern, pay her
8 taxes, and then the rest of it can go to other people. I
9 really am not convinced that that is in her best interest
10 and I understand that it's cleanest for them, but, you
11 know, with all due respect, I'm not convinced on that one.

12 I really -- I actually do believe that D is
13 probably our best option, which is to, quote, hold this in
14 suspense; however, I've got to say this one more time, why
15 have -- I just don't understand. Why have we not paid the
16 attorney fees and the living expenses? That order was
17 never stayed and, until it is, and until the Supreme Court
18 tells me I should never have let her have distributions
19 from the trust pending a resolution, she should not have
20 been allowed to pay her attorneys pending resolution, I
21 don't understand why they're not being paid and, at this
22 point in time, I just -- how does this affect you proposal
23 D? Because, for me, that's what's in everybody's best
24 interest is that we keep a level playing field here.

25 We've got very, very profound remedy that is being

1 sought by the other beneficiaries, one that is life
2 changing and deprives her of a property right that she has
3 had for 40 years. It's a big deal and you're being told
4 that I should do this -- there is no right to -- what we
5 call civil Gideon. You have no right to have a court
6 appointed attorney. I understand that, but I have a real
7 problem with taking the position that I'm going to deprive
8 somebody of property that they have lived on an expectation
9 of receiving, and have been receiving, and I understand
10 that there's a really serious allegation of extreme
11 malfeasance, arguably perhaps at influence of people who
12 don't have her best interest. I understand all of that.

13 Given all of that, I just don't understand why --
14 we don't have anything telling us any differently, that, in
15 fact, she does have money, that she doesn't have to stand
16 in line at the food bank. I don't have any of that. I
17 understand we have suspicions and I understand that there's
18 some real questions about -- as have been quoted by Mr.
19 Powell, you know, we've got a few options here. There's
20 only a few places this money could have gone and I don't
21 understand if it really is being held for her somewhere why
22 she's not recovering it so she can get herself out of this
23 situation. That's her choice. She's an adult. I can't
24 force her to do that, but until it's proven to me that it
25 is somewhere being held for her, then I have to assume some

1 -- either it's just been spent or some very bad people
2 stole it. And I don't understand why they're not being
3 prosecuted because that's a pretty serious crime in our
4 state and, you know, to take \$500,000 from a person over
5 the age of 60 with the intent to commit fraud is a really
6 serious crime and if those people did that, there are some
7 really serious detectives at the Las Vegas Metropolitan
8 Police Department who take those things incredibly
9 seriously and prosecute them to the fullest extent of the
10 law and people go to jail for that all the time.

11 So, if that's what's happened here, and perhaps
12 Mr. Waid will find that to be true, then there's a remedy
13 there, but I don't know how we're ever going to get the
14 money back. On the other hand, if it's just being held
15 somewhere for her, then that's the other option, and she
16 can end this all, and put all of us out of this misery, and
17 she's got a choice.

18 So, in the interim though, I'm in this position
19 where I'm told that this is somebody who is -- has been
20 forced to live on very reduced circumstances that she's not
21 accustomed to living on and has not -- is not equipped to
22 live on. Other people might roll with the punches, but
23 this is somebody who has been accustomed to receiving a
24 substantial income every year. I mean, this is a lot of
25 money and this is only like three-quarters of the year,

1 over \$600,000. And all of a sudden to be deprived of that,
2 it's -- it would, you know, it would take an adjustment and
3 I'm not sure that, you know, we have any other way until
4 it's proven for her to at least have a minimal lifestyle
5 and to represent herself in court because she can't
6 represent herself personally. She needs to have
7 representation. I think that's pretty clear.

8 So that's my question, is: Why have we not
9 honored that order?

10 MR. GEIST: Your Honor, so with your direction,
11 the 90,000 that we're talking about for her attorneys' fees
12 and living expenses, you're directing the trustee to pay
13 that, allocate that as income distributed to her, so for
14 income tax purposes, we will issue a K-1 to her, credited
15 for 2015, as part of her income taxes for last year. The
16 remaining 534,000, we're going to be suspending that, --

17 THE COURT: Suspending.

18 MR. GEIST: -- in essence, and credited and
19 allocated to the MTC Trust until further direction from
20 this Court. Correct?

21 THE COURT: In at least satisfaction of that --
22 the one award that we have.

23 MR. GEIST: Yeah. And I think that goes a long
24 way towards staving off some of the issues with the IRS. I
25 still think, still given that a distribution was made,

1 there may or may not be an income tax issue for last year.

2 THE COURT: And there may be some terminology, I
3 don't -- like I said, I try to avoid the revenue code. So
4 there might be some type of terminology that can be used
5 that makes it clear that this is an advance, that --

6 MR. GEIST: Well, --

7 THE COURT: -- her interest is suspended, but she
8 is being advanced some funds on her potential future
9 rights.

10 MR. GEIST: Yeah. The issue though is we either
11 credit it to her as income and it's either present year or
12 previous year tax year income, if we do it before the 65
13 days.

14 THE COURT: Right. Mm-hmm.

15 MR. GEIST: Or the trust pays it. So, if your
16 direction is we credit it to her --

17 THE COURT: The trust pays it.

18 MR. GEIST: Yeah. Then we'll do it as --

19 THE COURT: Whatever --

20 MR. GEIST: -- the previous year.

21 THE COURT: I think the new order would be
22 whatever has the least adverse income tax impact --

23 MR. GEIST: Okay.

24 THE COURT: -- for everyone and, as I said, I
25 would hope that -- and this is my concern here and I hope I

1 understand what Mr. Rushforth was telling us, is that the -
2 - if we're to pay the -- the first thing that we know is
3 that this award that's out there for the attorneys' fees.
4 If we're going to pay back the attorneys' fees through the
5 trust, because that's something that she -- there's an
6 order saying that she owes this money on these attorneys'
7 fees, I can -- I still have a concern and although -- as I
8 understand Mr. Rushforth, they're willing to take that
9 money as a distribution to them and pay the taxes on it
10 themselves.

11 So I guess that's my question because if we credit
12 it to Ms. Ahern and say we're paying off her debt, then
13 that's income tax to her that she can't pay. It's already
14 clear from what Mr. Lenhard has proposed that, you know,
15 the only way she could pay the income taxes due on that
16 would be if the trust paid him. And I'm not willing to go
17 there because, as I said, I'm just not convinced that she
18 should -- that the daughter should have to pay the income
19 tax on that money, but, on the other hand, I'm not willing
20 to say that she gets off -- that the trust is going to pay
21 any more for her liabilities, her income tax liabilities.
22 It's just not --

23 MR. RUSHFORTH: Your Honor, can we go off the
24 record for a minute and discuss some -- approach the bench
25 and discuss some --

1 THE COURT: Sure.

2 MR. RUSHFORTH: -- options?

3 THE COURT: Thanks.

4 [Bench conference began at 11:07 a.m. - off the record]

5 [Bench conference/recess concluded at 11:50 a.m.]

6 THE COURT: Okay. So we'll go back on the
7 record. Thanks. Are we ready to proceed -- so, are we
8 ready to proceed on the record?

9 MR. GEIST: I think we are, Your Honor. Thank
10 you.

11 THE COURT: Okay.

12 MR. GEIST: So, my understanding of what the
13 parties have discussed and what my understanding that the
14 Court's direction regarding our Petition for Instructions
15 is that the order to Mr. Waid that he advance a certain
16 amount to Ms. Ahern, and the order states if the funds are
17 available, that the payments for the living expenses to Ms.
18 Ahern are to be done net of her income tax liabilities.
19 Mr. Waid is to hold onto what would be her share of income
20 tax liabilities and distribute to her the net amount so
21 that he, in his own fiduciary capacity, will not incur a
22 personal liability to the IRS for having not paid the
23 income tax or have -- Ms. Ahern has not paid that income
24 tax on that distribution.

25 Our concern was that it was turned in advance, but

1 given the 65-day rule, we're going to have to count it as
2 either current year or previous year and we'd like to count
3 it as previous year distribution.

4 The amount that the Court has ordered that Mr.
5 Waid pay as the attorney's expenses for Ms. Ahern's
6 attorneys, Mr. Waid will make that payment and will treat
7 it as an expense of the trust, deduct it as such, and later
8 credit that amount against Ms. Ahern's future income
9 received in the trust or future revenue received in the
10 trust, subject to adjustments. Again, her share is
11 mandatory of -- mandatory payment of the net income.

12 I would just like to point out again that Mr. Waid
13 was subject to an order that was entered, I believe,
14 January 11th to make these payments. It did say that the
15 payments were to made if available, if the funds were
16 available. Mr. Waid's position has been that Ms. Ahern
17 herself has indicated that she owed the trust money. The
18 Restatement is clear that when a previous trustee commits a
19 breach of trust, --

20 MR. MOODY: Court's indulgence.

21 [Colloquy between Mr. Moody and Mr. Geist]

22 MR. GEIST: Thank you, Your Honor. The
23 Restatement is clear that when a trustee has committed a
24 breach of trust and has caused damage to the trust or to
25 the other beneficiaries, that that beneficiary is not

1 entitled to further distributions or further benefits from
2 that trust until that is made whole. That was the law that
3 Mr. Waid was relying on. He is, of course, willing to and
4 will comply with the Court's order to make these payments,
5 as indicated.

6 With respect to the payments for the living
7 expenses to Ms. Ahern, it's my understanding that Mr. Waid
8 will be holding those funds as a discretionary fund to pay
9 her living expenses. If she has medical needs, any other
10 needs, she can make an application either through her
11 attorneys or to the trustee directly and he will pay those
12 for her. It's the Court's order that she be able to live
13 and that these funds are available for her living expenses
14 and he will do that.

15 And the payment of the attorneys' expenses that
16 are made to Ms. Ahern's attorneys, again, that will be a
17 debit against Ms. Ahern to the trust that will come out of
18 her future revenue share as this Court so directs. That's
19 my understanding of what the parties have discussed and
20 what this Court has directed.

21 THE COURT: Okay. I believe you wish to make an
22 objection on the record, Mr. Rushforth?

23 MR. RUSHFORTH: I do.

24 THE COURT: Okay.

25 MR. RUSHFORTH: First, I'd like to repeat what Mr.

1 Geist said earlier is that I don't believe this issue on
2 the payment with respect to the order that was entered in
3 January is actually properly before the Court at this time.
4 There's been no motion related to that and it's just been
5 argument on a different order and so I just, for the
6 record, state I don't think this is a proper time to deal
7 with that issue.

8 Number two is that, you know, this is an order
9 that was appealed. First there was a Motion for
10 Reconsideration. The hearing was in November. The order
11 was entered in the record on January 5th, and then the
12 Notice of Entry of Order was on January 11th, and then there
13 was a Motion for Reconsideration, and then there was an
14 appeal, and almost -- in February, and almost concurrently
15 there was an emergency stay, and a request for response
16 within 14 days was made, and for some unknown reason beyond
17 our control, the Supreme Court has not responded to that.

18 And, so, we feel like this is inappropriate to
19 deal with this at this time because this was -- this is --
20 this ruling that you're ready to make at this time that Mr.
21 Geist has outlined really frustrates our appeal. And so we
22 go on the record and I just want to reinforce what Mr.
23 Geist said about the Restatement. Restatement of Trust,
24 Section 251, says:

25 If a beneficiary is under liable to the trustee --

1 And that's clearly on the record. It's been
2 admitted.

3 To the trustee assets, his interest in the trust
4 is subject to a charge for the amount of the liability.
5 He is not entitled to receive his share of the trust
6 without discharging his liability.

7 We object to any payment that is to or for Ms.
8 Ahern until there's a proper adjudication of whether or not
9 she's entitled to a share. And, so, we'd just state for
10 the record that we feel like it's appropriate to make the
11 payments that are in -- the funds should be -- not just
12 stayed as to a portion of it. As to -- we -- all of it
13 should go to the MTC Trust and that's our position.

14 THE COURT: Thank you. Anything from Mr. Lenhard
15 and Ms. Peterson?

16 MR. LENHARD: Ms. Peterson.

17 THE COURT: Ms. Peterson.

18 MR. LENHARD: We have nothing to add. We stand on
19 your record. Thank you.

20 THE COURT: Thank you. All right. I'll enter the
21 order as Mr. Geist has stated his understanding is. If you
22 prepare that, we'll get it signed and do you need that
23 signed before tomorrow in order to -- that Mr. Waid can
24 proceed and in compliance with the 65-day --

25 MR. GEIST: I can keep, in effect, the allocation

1 --

2 THE COURT: Okay.

3 MR. GEIST: -- and we'll just have the order --
4 you know, dated as --

5 THE COURT: Okay. Because the balance of the
6 funds then, the balance of the amount that Mr. Waid is
7 concerned about that is the 35 percent share will be dealt
8 with how? That's what -- we need to get that on the record
9 as to the balance of the 35 percent.

10 MR. GEIST: Correct, Your Honor. And --

11 THE COURT: How he's going to account for that.

12 MR. GEIST: And I believe that the option that
13 Your Honor was inclined to go with is you're going to
14 suspend that amount as part of Eleanor Ahern's
15 distribution. And, so, she is not entitled to that amount.

16 If we're referring to option D under Mr. Waid's
17 Petition, then that amount would be credited to and paid to
18 the MTC Trust at that point in time.

19 THE COURT: Correct.

20 MR. GEIST: And then, --

21 THE COURT: Okay.

22 MR. GEIST: -- as Mr. Rushforth had indicated
23 earlier, they're willing to account for that and we'll work
24 out the numbers as everything else -- as certainly Mr.
25 Waid's accounting is finalized with the final numbers in

1 the future.

2 THE COURT: And to the extent that they pay any
3 taxes on that that otherwise would have been paid by Ms.
4 Ahern, I think Mr. Lenhard calculated approximately
5 \$170,000, they'll report to Mr. Waid what that amount is --

6 MR. GEIST: Correct.

7 THE COURT: -- and he'll account for that in the
8 future?

9 MR. GEIST: Yes.

10 THE COURT: Okay. Because that was part of my
11 concern was this is what Ms. Ahern was ordered to pay, she
12 should bear the tax liability for it.

13 Okay. All right. So, if you'll -- you're going
14 to prepare that order?

15 MR. GEIST: I will prepare the order.

16 THE COURT: Best of luck.

17 MR. GEIST: Thank you.

18 THE COURT: Okay.

19 MR. GEIST: I will run it past counsel to make
20 sure I get it --

21 THE COURT: Okay.

22 MR. GEIST: -- correct.

23 THE COURT: All right. So, we've dealt with then
24 the Petition for Instructions.

25 MR. RUSHFORTH: Your Honor, with respect to the

1 other motion, because you have as a calendar item and what
2 not, if I -- I've got about 30 minutes and I think Mr.
3 Lenhard indicated about 15. If you have the time, I'd like
4 to go through --

5 THE COURT: Okay.

6 MR. RUSHFORTH: -- those arguments. If you don't
7 have --

8 THE COURT: Okay. I guess the question for Mr.
9 Lenhard is: Were you -- it was an evidentiary hearing.
10 Did you have any witnesses you wish to call?

11 MR. LENHARD: No. We've decided not to call Ms.
12 Ahern.

13 THE COURT: Okay. All right.

14 MR. LENHARD: And my estimation, by the way, I
15 don't want to be held to the 15 minutes, you know, when you
16 go second, obviously, --

17 THE COURT: Right.

18 MR. LENHARD: -- sometimes you have to play off
19 the first argument. It may be a few minutes longer, just
20 so --

21 THE COURT: Okay. All right.

22 MR. RUSHFORTH: May we proceed?

23 THE COURT: You may.

24 MR. RUSHFORTH: Okay. I have a PowerPoint that
25 I'm providing. May I approach?

1 THE COURT: You may. And then, for the record,
2 at the conclusion, we'll mark it as a Court's Exhibit and
3 the Clerk will keep it in the record.

4 MR. RUSHFORTH: Thank you, Your Honor.

5 Basically, I'm going to cover really three points,
6 but I'm going to try to do it in sufficient detail so that
7 there's no ambiguity about where we stand. The first issue
8 is going to be the no-contest clause. The second issue is
9 going to be if the no-contest clause doesn't apply, are
10 there any distributions that should come out to Ms. Ahern.
11 And then the third is really -- the third issue is just
12 basically saying that the objections and defenses that have
13 been raised are really irrelevant.

14 And, so, let's start with the no-contest clause.
15 In slide -- on page 2 of the slides, it's a summary, a
16 portion, an excerpt from NRS 163.00195, which is the trust
17 version of the no-contest clause legislation that was
18 adopted by the Nevada Legislature in 2009 and updated in
19 2011. And I will state for the record that I was on the
20 legislative committee that helped draft this legislation
21 and the purpose of this legislation was because there has
22 been a weakening of people wanting to follow the settlor's
23 intent and one of the paramount laws -- one of the
24 paramount purposes of Nevada trust law has been to carry
25 out the settlor's intent.

1 In subsection 1 of this section it says that
2 except for a couple of exceptions that we'll discuss in a
3 minute, a no-contest clause in a trust must be enforced.
4 This is to take the discretion out of the Court and, so,
5 subsection 2 says that it is to be construed to carry out
6 the settlor's intent. And subsection 2 goes onto say that
7 the settlor can specify conduct, not just a contest, but
8 any conduct that the settlor that defines can be construed
9 to trigger a forfeiture or a diminution of a beneficiary's
10 share.

11 So, the -- if you go to page 3 of the PowerPoint,
12 the statutory exceptions are in subsections 3 and 4.
13 Subsection 3 relates to a beneficiary's efforts to enforce
14 the trust instrument. That doesn't apply here. Subsection
15 4 relates to an action relating to the validity of the
16 document and it's the good faith exception that was created
17 in the *Hannam* case and this is really a statutory
18 confirmation of the *Hannam* case, but somewhat of a
19 limitation, but basically saying there had to be good faith
20 reliance on evidence showing the trust document to be
21 invalid. There's been no challenge of the validity of the
22 trust in this instance in terms of the actual settlor's
23 intent. So, those exceptions don't apply here.

24 Subsection 1 says you must enforce it unless it
25 fits within those two exceptions and they don't apply. And

1 so, unless the Court is willing to do a little legislative
2 action, a judicial legislation, it's quite clear that you
3 have to enforce the clause and to -- because there have
4 been issues raised about whether one of the settlors or one
5 of the grantors wanted or wouldn't want to have a
6 forfeiture, the statute goes onto say that extrinsic
7 evidence is not admissible. So really there cannot be a
8 mission there where the document is clear.

9 There's been an argument -- moving onto the slide
10 4. There's been an argument that the law, especially the
11 common law of [indiscernible] to forfeiture, and while that
12 considers to be the true -- the statute in 1 -- NRS 1 --
13 Chapter 1, 1.003 -- . -- 1 -- strike that. NRS 1.030
14 basically says that the common law is superseded by
15 statutory law and, clearly, NRS 163.00195 trumps the
16 importance of a forfeiture.

17 And in the construction of the no-contest clause,
18 the conduct is the key and what did the settlor define as
19 the conduct? And filing a petition to ask for more than
20 one is entitled is clearly a violation of the clause. And,
21 so, we're saying if you take overt actions, that's worse
22 than filing a petition because if you take funds that
23 aren't yours, it's not like asking for more money, it's
24 taking it and it's even worse.

25 So, the -- one of the arguments, moving to slide

1 5, one of the arguments that has been raised is that there
2 needs to be strict construction and the -- Ms. Ahern's
3 counsel wanted to say: Oh, we didn't attack anything or we
4 didn't do things. Well, there's a lot more words than just
5 attack. There's the word seek, there's a word -- there's a
6 lot of different things and it's contrary to the
7 legislative intent to require a settlor to enumerate every
8 possible violation. If -- requiring specific and detailed
9 examples is going to end up actually frustrating the intent
10 rather than carrying it out and, in construing contracts,
11 the Supreme Court has ruled that every word must be given
12 effect and no clause in a contract should be construed to
13 make it meaningless. Well, the arguments that have been
14 raised in this argument would actually really make the no-
15 contest clause meaningless if we require that every -- you
16 know, if the no-contest say, well, it doesn't apply unless
17 you actually embezzle funds, or it doesn't apply unless
18 this -- all that kind of stuff just renders it inadvertent.

19 So the legislative intent is: Let's carry out the
20 settlor's intent. So, now let's look at the actual no-
21 contest clause in the document, which is in Article 10.

22 Slide 6, quote:

23 The grantor specifically desire that the trust be
24 created herein be administered and distributed without
25 the litigation or dispute of any kind, close quote.

1 It's a fact and it's been established by
2 uncontroverted evidence that Ms. Ahern's conduct
3 necessitated this litigation. But for her conduct, we
4 wouldn't be here. So she's already frustrated the
5 settlor's intent.

6 Slide 7, quote: If any beneficiary should seek or
7 establish to assert any claim to the assets of these
8 trusts established herein, that violates the no-contest
9 clause.

10 Fact: Ms. Ahern removed assets from the trust
11 accounts even after she was removed as trustee. She also
12 asserted a claim to 100 percent of a trust that only gave
13 her 35 percent. She's clearly asserted the claim that was
14 not in the trust instrument.

15 So, the word claim, what is a claim? Well, the
16 position that I'm taking is that as a matter of law,
17 asserting a claim, if I file a petition, that's going to be
18 a violation of the no-contest clause. Well, conversion is
19 also a way of asserting a claim. It's seeking to get
20 assets that you're not entitled to and Ms. Ahern has
21 admitted she owes the trust money and she's, therefore,
22 admitted conversion and that's not excused. Conversion is
23 not excused by lack of wrongful intent, good faith, or lack
24 of knowledge.

25 And, although Ms. Ahern's counsel went to some

1 length at the last hearing to say that some of the property
2 has been returned, a return of property does not nullify
3 the conversion. So that is a -- the facts show that she
4 violated the intent of the no-contest clause.

5 Going to slide number 9: If any beneficiary
6 should seek or should attack, oppose, or seek to set
7 aside the administration and distribution of said trust
8 or to have the same declared null and void or
9 diminished or to defeat or change any part of the
10 trust, that's a violation of the no-contest clause.

11 Well, go to slide 10. She converted assets. She
12 the ignored fiduciary duties. And spent money, trust
13 money, for personal use. We -- one of the examples was
14 private airplanes and such and that clearly frustrates the
15 intent and it frustrates the proper administration and the
16 proper distributions of the trust. You can -- if you're
17 taking money, after you've been removed as a trustee, and
18 you go move money out of accounts that would be in the
19 hands of the successor trustee, you are frustrating the
20 administration of the trust and you're seeking to nullify
21 not only the trust, but the proper orders of the Court.

22 The Court found, on slide 11, in its April 20th
23 order, quote:

24 The Court concludes as a matter of law that
25 Eleanor breached her fiduciary duties.

1 Well, again, if a threat or a petition can violate
2 the no-contest clause, her conduct constitutes more than an
3 attempt to set aside the trust administration.

4 Now let's talk about the evidence in this case.
5 Slide 12. Ms. Ahern incurred inappropriate charges,
6 renting a private jet for tens of thousands of dollars, she
7 failed to repay the \$500,00 from Fidelity account, Ms.
8 Ahern has paid 700 to a million -- and a 100,000 to
9 \$1,000,000 for attorneys' fees to defend her conduct
10 without any benefit to the trust and attorneys' fees are
11 not properly paid out of the trust unless it benefits the
12 trust.

13 Her testimony also said that she interfered with
14 trust assets after being removed as the trustee and has
15 indicated that she jeopardized the trust and created
16 additional expenses for the trust and the beneficiaries by
17 properly -- failing to properly and timely comply with
18 federal tax law.

19 Now that's setting aside the proper administration
20 of the trust. She did things that nullified what was
21 intended by the grantors.

22 Going on to slide 14: If any beneficiary should
23 seek to have the same declared null and void or
24 diminished or to defeat or change any part.

25 She converted and diverted assets. She claimed

1 that she was entitled to the 65 percent when she wasn't.
2 That's clearly a frustration in trying to seek -- set aside
3 a part of the trust.

4 Okay. That's argument number one with the no-
5 contest clause. In my estimate, we have provided facts
6 that show that the no-contest clause has been violated
7 multiple times, over and over again, contrary to both the
8 statutory intent and the grantor's intent.

9 Slide 15. Now we're moving to argument number
10 two, is saying: Okay. Let's just say the no-contest
11 doesn't apply. If it does apply, we're done. But if it
12 doesn't apply and we're going to move on, if you're going
13 to come up with an exception that says that, oh she needs
14 money to live on, or she needs support, or she -- this is
15 really a harsh remedy, if you're going to create an
16 exception for that, then we go on to say: Okay. Even if
17 that's true, she shouldn't get a penny until every cent,
18 every cent of damages and restitution has been made. The
19 trust has to be made whole before she gets any benefit from
20 the trust.

21 Now in NRS Chapter 153.031 subsection (3):
22 Compensation can be reduced and if we can show negligence
23 or breach, which we clearly have, and the facts are not
24 only not controverted, they've been admitted, the trustee
25 can be personally liable for all costs of adjudication

1 including attorneys' fees.

2 Slide 16: Restatement of Trust, Section 100.

3 Quote:

4 A trustee who commits a breach of trust is
5 chargeable with (a) the amount required to restore the
6 values of the trust estate and trust distributions to
7 what they would have been if the portion of the trust
8 affected by the breach had been properly administered;
9 or (b), the amount of any personal benefit to the
10 trustee as a result of the breach.

11 Slide 17. Now this is still Restatement of Trust,
12 Section 100, but let's read comment 1 -- I mean, comment A:

13 The primary objectives of this rule if suit is
14 brought against a trustee and if that suit is
15 successful are: 1, to make the trust and it's
16 beneficiaries whole; and, 2, to ensure that the trustee
17 does not personally benefit from the breach.

18 That's why we very strenuously argued that she
19 shouldn't get her attorneys' fees paid for, she shouldn't
20 have her living expenses paid for because that benefits her
21 before the trust is made whole.

22 To have the trust make distributions, including
23 the payments of Ms. Ahern's attorneys' fees or taxes, would
24 allow her to benefit from the breach and would not make the
25 beneficiaries whole.

1 Now, punitive damages are not the general rule,
2 but the Restatement, comment D, in Section 100, says that,
3 after stating that exemplary damages are not normally
4 granted, but it says, quote:

5 In the egregious case, however, punitive damages
6 are permissible under the laws of many jurisdictions.
7 This is especially so if the trustee has acted
8 maliciously, in bad faith, or in a fraudulently or
9 particularly reckless or self-serving manner.

10 Well, all of that applies here and in our brief,
11 in our petition, we made an argument for treble damages and
12 we think that should apply.

13 Now going on to the Restatement Section 253 on
14 slide 19, quote:

15 If one of several beneficiaries misappropriates or
16 otherwise deals with trust property causing a loss to
17 the other beneficiaries, he is personally liable for
18 the amount of the loss and his beneficial interest is
19 subject to a charge therefor.

20 Now, up to this point, we've established that the
21 -- that there needs to be a charge against the share and I
22 don't think that's really been argued against.

23 257 goes on to say, Section 257 of the Restatement
24 of Trust says, quote:

25 If a trustee who is also one of the beneficiaries

1 commits a breach of trust, the other beneficiaries are
2 entitled to a charge upon his beneficial interest to
3 secure their claims against him for the breach of
4 trust.

5 Now, here's where we differ from the ruling that
6 you just made with the other order is that we think that
7 there can be no advances and there can be no benefit and
8 the Restatement of Trust, Section 257, Comment A,
9 Illustration 1 says:

10 A bequeaths \$100,000 to B and C in trust to pay
11 income to B for life and, on B's death, to pay the
12 principal of D. B makes an improper investment resulting
13 in the loss of \$10,000. B is not entitled to receive any
14 of the income until he's made good the loss.

15 And then there's a subsequent example that applies
16 to the same rule to the principal. So if you cause a loss,
17 whether it's of income or principal, you've got to restore
18 it before you get any distribution.

19 Section 251, Comment A: A beneficiary who owes
20 money to the trust, quote:

21 Is not entitled receive his share of the trust
22 estate without discharging his liability.

23 Comment B: When a beneficiary's interest is
24 subject to a charge, the trustee is under a duty to the
25 other beneficiaries to pay out any amount -- to refuse

1 to pay out any amount due to the charged beneficiary
2 until the charge is satisfied.

3 This is where we have said to -- there was a lot
4 of questions about the letter we wrote to Mr. Waid about
5 telling him that we were going to hold him responsible, if
6 he made a distribution, because under the law, if he makes
7 a distribution, when -- to a beneficiary who owes the trust
8 money and he does so, then he's subjecting himself to a
9 lawsuit because he can't do that. It's not appropriate.
10 He breaches his fiduciary duty by benefitting the
11 wrongdoer.

12 And then I just use the analogy that we've used in
13 our Petition and slide 23, compelling the trustee to make a
14 distribution to or for Ms. Ahern before she has made the
15 trust and its beneficiaries whole is like compelling a bank
16 to subsidize or finance the personal support and legal
17 defense of a person who has admitted robbing the bank. And
18 that's what we're being asked to do in this case. We have
19 a bank robber and the trust is being asked to subsidize
20 that and provide for her support and to provide for her
21 legal fees and that's just plain wrong. It's just like
22 asking the bank to help the bank robber with his legal
23 fees. That's just wrong.

24 Now let's go to the third level of the arguments
25 here and that's the specious defenses that they've raised.

1 One -- we're on slide 24.

2 The first one they keep bringing up is undue
3 influence. Number one, that is not applicable in this
4 situation. There is no defense against no-contest clause
5 or breach of fiduciary duties. You can sue whoever hurt
6 you or whoever did things. You might have a part -- and
7 action against somebody who took advantage of you, but
8 undue influence does not absolve them of liability. It
9 doesn't. If they were going to plead incompetence, that's
10 a different issue, but they haven't plead that and it --
11 so, undue influence is not a thing.

12 Point number two on undue influence, slide 25, Ms.
13 Ahern is actually estopped judicially from arguing any lack
14 of mental capacity because she took positions that she
15 wasn't under undue influence. Her prior counsel said,
16 quote:

17 And we have an EPS social worker saying there's no
18 undue influence. Eleanor is completely with it, very
19 intelligent, and capable of managing not only her
20 personal finances, but the finances of the trust, close
21 quote.

22 So, taking a contrary position at this point is
23 just wrong.

24 Now, let's get to the real issue. Undue influence
25 requires proof. They have offered no evidence of undue

1 influence and one of the things that we have to understand
2 here is that undue influence requires a high level of
3 proof. In the *Hegarty* case, which is an old, longstanding
4 case, it's been upheld. It states that, quote:

5 In order -- it's not quote yet. In order to
6 establish undue influence under Nevada law, quote:

7 It must appear either directly or by justifiable
8 inference from the facts proved that the influence
9 destroyed the free agency of the testator.

10 You and I can influence each other all right. If
11 my child comes to me and says, dad, leave me my entire
12 estate, and I said, well, you've got five brother and
13 sisters, well, no, leave it all to me. That's influence.
14 Now if they coerce me, if they say, dad, I'm not going to
15 feed you, I'm not going to help you with your dialysis
16 unless you give me your estate, that's undue influence.
17 That's coercion. There's been no level of undue influence
18 here.

19 The quote -- quoting from the same case in
20 *Hegarty*:

21 The mere possession of influence and the
22 opportunity and motive to exercise it are not
23 sufficient.

24 There's been no proof. In fact, what did they
25 offer? Let's go to slide 27. Even if the case -- undue

1 influence constituted a defense against no-contest clause
2 or against the withholding of distributions, the only proof
3 that they even did is they called Jackie or Jacqueline to
4 talk about the -- her concerns and suspicions that she
5 brought up in one of the pleadings that we filed on her
6 behalf. For the record, that information about her
7 concerns was provided with a disclaimer that that
8 information was not intended to have any legal
9 significance. She was just explaining what was going on.
10 No credible evidence of undue influence was presented. And
11 what did Ms. Ahern testify? She testified it was
12 essentially unreliable hearsay. What had been -- what
13 happened in her presence didn't amount to any proof of
14 anything. There was not even proof of influence, let alone
15 undue influence.

16 So, let's get to the conclusion. Number one, the
17 no-contest clause must be enforced. The grantor's intent
18 and the Legislature's intent coincides. Multiple
19 violations have been established by fact, even by
20 admission, and only one is needed to trigger the no-contest
21 clause.

22 Number two, slide 29, if the no-contest clause is
23 not enforced, Ms. Ahern cannot be paid any funds and no
24 distributions to or for her can be made until, one, the
25 damages triggered by her malfeasance have been accurately

1 determined, and that still remains to be done and I'm sure
2 an evidentiary hearing will be required, and then once we
3 determine what they have, they have to be fully satisfied.
4 And until that happens, her share needs to be frozen and
5 the Restatement is clear on that, on two points.

6 Number one, it would benefit the wrongdoer and,
7 number two, it would put the trustee in breach of trust to
8 the other beneficiaries and one of the duties of a trustee
9 is impartiality. You can't be impartial if you're favoring
10 a beneficiary that's a wrongdoer.

11 And then the defense is, the last slide, slide 30,
12 Ms. Ahern's, quote, defenses and arguments are really
13 smokescreen. They're red herrings. They throw the hunting
14 dogs off the scent and they're not supported by the law and
15 no evidence has supported them at all.

16 And, so, those are our arguments.

17 THE COURT: Thank you, Mr. Rushforth.

18 MR. RUSHFORTH: Thank you.

19 THE COURT: I did have a question about slide 29.

20 MR. RUSHFORTH: Okay.

21 THE COURT: Addresses really two issues, I think,
22 Mr. Lenhard might want to be prepared for and one is the
23 issue -- you say that in the event that the no-contest
24 clause is enforced, then she cannot be paid until the
25 damages have been ascertained. So it's not your position

1 that we have information today to know what those damages
2 are? That -- because I wasn't clear what the amount --

3 MR. RUSHFORTH: Yes.

4 THE COURT: -- that you --

5 MR. RUSHFORTH: Because we -- until Mr. Waid can
6 finish his accounting and --

7 THE COURT: Okay.

8 MR. RUSHFORTH: -- ascertain what were proper
9 trust expenses, what were personal expenses, what the tax
10 consequences are, all of those things have got to be sorted
11 through before we can really know what the full amount of
12 the damages are.

13 THE COURT: And then my question about punitive
14 damages is whether you were looking to treble that amount,
15 whatever that amount might be if it was later determined
16 there was a specific dollar amount or just punitive
17 damages, which would be some other amount intended to
18 punish, which --

19 MR. RUSHFORTH: Well, I'll --

20 THE COURT: -- is the true definition of punitive
21 damages.

22 MR. RUSHFORTH: Our argument would be that we're
23 entitled to punitive damages and we think that the statute
24 that we cited in NRS Chapter 143 gives us treble damages,
25 but if the Court isn't willing to apply that statute, we

1 still feel that we're entitled to some sort of exemplary
2 damages.

3 THE COURT: Okay. Because I just didn't know if
4 you were looking to have a specific amount determined and
5 then that amount trebled or if you're just looking for this
6 is so egregious, you can't, you know, as a trustee, you
7 can't do this. There's just punitive damages, just a
8 general concept of what punitive damages are, and just
9 should be assessed.

10 MR. RUSHFORTH: Well we're asking for treble.

11 THE COURT: Which requires a different kind of a
12 hearing to determine --

13 MR. RUSHFORTH: Right.

14 THE COURT: -- you know, what the person can pay
15 for -- under our statute for punitive damages.

16 MR. RUSHFORTH: Correct.

17 THE COURT: I was just trying to figure that out.

18 MR. RUSHFORTH: Yeah. We're asking for treble,
19 but then our fallback position if that doesn't --

20 THE COURT: Just punitive.

21 MR. RUSHFORTH: -- apply, then we'll go to
22 punitive.

23 THE COURT: Got it. Okay. Thank you.

24 And just, again, for the record, it will be a
25 Court's Exhibit.

1 MR. LENHARD: Going in reverse order, to answer
2 the question that the Court just asked, our position is the
3 Court is not in a position today to determine how much Ms.
4 Ahern's interest in the trust should be surcharged for any
5 malfeasance. That's subject to Mr. Waid's final accounting
6 and a future evidentiary hearing.

7 That is also true for the claim of punitive
8 damages, as it's being made today. The Court is not in a
9 position yet to assess punitive damages either by an amount
10 or even award in concept punitive damages until a later
11 hearing. What we're here today to argue about is whether a
12 no-contest clause is be enforced against my client and she
13 is to be removed as a beneficiary of the trust.

14 It's rather clear that our position is that that
15 remedy is inappropriate and that the appropriate remedy is
16 and always has been a surcharge of her interest in the
17 trust until the trust is made whole for any malfeasance
18 that she occurred or that she incurred. That would be
19 subject, again, to Mr. Waid's final report and assessment
20 of what those damages are and our opportunity to cross-
21 examine Mr. Waid, Mr. Rushforth's opportunity to examine
22 Mr. Waid so that the Court can then make a finding as to
23 the total amount of damage and then surcharge
24 appropriately. That has always been our position as to the
25 appropriate remedy.

1 But what brings us here today though is something
2 much more aggressive. It's an effort by two of the
3 beneficiaries to remove a third beneficiary from the trust
4 and I would suggest to the Court that that remedy is highly
5 inappropriate.

6 I'm not going to repeat what I said in opening
7 statement, nor am I going to repeat the basic points
8 established in the evidentiary hearing. It was only last
9 week, I believe, the beginning of last week, so I'm sure
10 that you remember everything that occurred. I will go
11 through certain basic points to tie into the basic language
12 of the trust and what you are being asked to do.

13 The no-contest clause, and Mr. Rushforth has
14 referred to the no-contest clause in his PowerPoint. I'm
15 going to refer though to specific language of the no-
16 contest clause. And give me just a second. I managed to
17 misplace it already.

18 One of the first clauses that I'm concerned about
19 is:

20 The grantor specifically desire that these trusts
21 created herein be administered and distributed without
22 litigation or dispute of any kind.

23 Now, I agree with Mr. Rushforth. If my client
24 misapplied funds, they had a right to petition the Court to
25 seek an accounting. That is not in reasonable dispute.

1 What is in dispute is their effort to remove a beneficiary
2 from the trust. That is an aggressive action that is not
3 called for under clause 10. In fact, that is in violation
4 of the specific provision without litigation or dispute of
5 any kind.

6 They have instituted litigation to remove a
7 beneficiary when the appropriate remedy is to surcharge
8 that beneficiary for any misappropriated funds. So they,
9 in truth, are in violation of clause 10, the no-contest
10 clause of the trust.

11 Now I think we can all agree on this record that
12 you have found that Mrs. Ahern has in fact misapplied trust
13 funds, disobeyed your order, and been untruthful to the
14 Court, all actions that generally would result in
15 surcharging her interest. But those actions don't justify
16 the additional step of attempting to remove her as a
17 beneficiary, contrary to the clear language of clause 10.

18 The law does [indiscernible] a forfeiture in this
19 state and that is the common law and it's not been changed
20 by statute.

21 There has been a reference and I'm now going to
22 refer you to some of the evidence that we did adduce.
23 There's been a reference to an attack on the trust and
24 that's been one of the justifications and the primary
25 justification in their moving papers for this motion. It's

1 the language: Attack, oppose, or seek to set aside the
2 administration, distribution of the said trust.

3 Well, how did Ms. Ahern attack the trust?
4 Apparently it's the misallocation of funds. If you look at
5 page 3, which is Exhibit -- to Exhibit G, which is Mr.
6 Waid's interim report, according to that report, and he
7 cites the Marquis and Aurbach document, \$1,984,564 should
8 have been retained in the trust at the time it was returned
9 over to him.

10 We clearly can concede that the designation of
11 accounts provided to Mr. Waid were incorrect, but the
12 person supposedly attacking the trust, and I walked Mr.
13 Waid through this exercise for this purpose. The purpose -
14 - the person supposedly attacking the trust helped Mr. Waid
15 retrieve funds. April 8th: \$409,228, those were obtained
16 in a cashier's check into the trust account. April 13:
17 \$500,000 from U. S. Bank was identified as Eleanor,
18 retained or retrieved by Mr. Waid. April 16: \$700,000 in
19 a cashier's check was forwarded to Marquis and Aurbach,
20 forwarded on to Mr. Waid.

21 So, within two weeks of his appointment, or within
22 a couple weeks of his appointment, I don't have it exactly
23 right, \$1,609,228.50 had been recovered. You were only a
24 couple of hundred thousand dollars off at that point in
25 time.

1 So, the attack -- let's keep it in perspective.
2 The person supposedly attacking -- misallocating all the
3 funds is helping the trustee retrieve the funds. I say
4 that not to justify Ms. Ahern's actions, but to suggest
5 that the remedy being sought, contrary to the language in
6 Paragraph 10, is highly inappropriate.

7 Now Mr. Waid went on to make the eventual
8 determination, based on the income received in the first
9 three months of 2015, he determined the trust shortfall was
10 \$664,000. As we all know, we've been attempting, and I
11 hate to use this word tender, whatever the appropriate word
12 is, we've been attempting to return some of the money to
13 the trust. We would virtually wipe out 80 percent of that
14 number with however we handle these funds that we've
15 offered to the Court last week and today.

16 That leaves really then the primary issues to be
17 resolved by the trustee are the tax issues, which we
18 clearly acknowledge that if Ms. Ahern has caused the trust
19 tax damages, her interest has to be surcharged for that,
20 but it's surcharged, not removed.

21 Now, it's also been alleged that Ms. Ahern has not
22 been cooperative with the trustee and that's a basis for
23 her removal. Well, as Mr. Waid admitted on the stand, her
24 counsel has agreed and worked with him to get the IME and
25 arrange for the deposition. We have certainly not been

1 opposing that deposition.

2 As counsel, we've not opposed the authorization.
3 We didn't get a signature. We didn't oppose his effort to
4 get an order for the authorization. So the cooperation
5 issue is really -- I -- to quote counsel, a red herring.

6 Now I'm asking you to contrast Eleanor's actions
7 now with the actions of the two sisters. First, they have
8 filed this petition to remove Eleanor as a trustee and I
9 again ask you and request you to read clause 10 closely and
10 ask you if it fits within the parameters of clause 10.
11 Clearly, it does not. They are the ones that are
12 attempting to violate the trustor's intent.

13 But it doesn't stop there. On November 20, 2015,
14 and I think it was our Exhibit E, I don't know how it was
15 responded to Exhibit E. I'm not sure how it was eventually
16 entered, Ms. Clerk. It's a letter dated November 20, 2015.
17 Do you have that in front of you, Your Honor?

18 THE COURT: Which --

19 MR. LENHARD: I'm going to read report -- a couple
20 of appropriate sections of it.

21 THE CLERK: What was the date?

22 THE COURT: November 20th, 2014 [sic].

23 MR. LENHARD: I may be referring to the wrong
24 exhibit number. We have some confusion in the last week,
25 if you recall.

1 THE CLERK: Exhibit E.
2 MR. LENHARD: Is it Exhibit E?
3 MS. PETERSON: It's also their H, I believe.
4 MR. LENHARD: Okay.
5 MS. PETERSON: Is that right?
6 MR. LENHARD: I'm sorry.
7 THE COURT: Yeah. I have the wrong stuff here.
8 Two sets of the same thing, I think. Okay.

9 MR. LENHARD: On November 20, the Rushforth Firm
10 sent correspondence to Mr. Waid requesting him to
11 immediately cease and desist in further investigative
12 efforts. The letter went onto state:

13 My clients must insist that you no longer spend
14 time and resources on this matter and that you waive
15 the white towel and conceded you can no longer move
16 forward. Your --

17 Down at the bottom of the paragraph, on page 3:

18 But as your investigation has been an attempt to
19 recover assets for them that have been stolen from
20 them, I would respectfully assert that they, too, must
21 have a say and instruct you to cease your efforts.

22 I asked Mr. Waid what he was doing on November
23 20th, 2015 and he told the Court the efforts he was
24 undertaking on behalf of the trust. This letter is a clear
25 violation of Paragraph 10, the no-contest clause, which

1 says:

2 Attack, oppose, or seek to set aside the
3 administration or distribution of said assets or to
4 have the same declared null or void or defeat or change
5 any part of the provisions of the trust established
6 herein.

7 Mr. Waid is attempting to administer the trust and
8 they are interfering with that action.

9 It goes on, on January 29th, when they send
10 correspondence to Mr. Waid. I have Exhibit F. It doesn't
11 matter if you look at it or not. We've discussed it
12 before. They sent correspondence to Mr. Waid saying if you
13 obey the Court's order, we're going to sue you. We're
14 going to hold you personally liable for obeying an order of
15 the Court which is in further administration of the trust,
16 once again, interfering with the administration of the
17 trust and violating clause 10, the no-contest clause.

18 I'm only pointing this out because this is a Court
19 of equity, they have unclean hands, and what I'm trying to
20 point out to the Court is, yes, my client has misallocated
21 funds. She's behaved poorly. They have interfered with
22 Mr. Waid's effort to end this trust, to locate assets, and
23 to appropriately allocate assets.

24 Under these circumstances, I'm suggesting to the
25 Court, it is appropriate to not remove Ms. Ahern from the

1 trust, but to surcharge her interest in the trust.

2 You've been shown a PowerPoint and I wanted to go
3 through a couple of these, if I can, with you. Actually,
4 bear with me just a second.

5 If a trustee -- this is page 20 and this is really
6 our circumstance, isn't it?

7 If a trustee, who is also one of the
8 beneficiaries, commits a breach of the trust, that's
9 Eleanor, the other beneficiaries are entitled to a charge
10 upon his beneficial interest to secure their claims against
11 him for the breach of the trust.

12 We are arguing for exactly that. We are arguing
13 for exactly that remedy, that her interest be surcharged
14 until such time as it's paid off in full. It does not call
15 for the removal from her from the trust.

16 Now, the undue influence issue, it's kind of a
17 sorry history and a sorry story, isn't it? But I will tell
18 you, as I refer to you the other day, proof of undue
19 influence is rarely by direct testimony. Rarely do you
20 have a victim come in and say: I was unduly influenced.
21 Instead, you've got to do it by indirect testimony. In
22 this case, we had directly from one of the moving
23 plaintiffs.

24 We went through the set the record straight
25 document. I'm not going to do it again. The record is

1 clear on the numerous items of influence of others upon Ms.
2 Ahern, but I am going to read to you a section from the EPS
3 document, which is an exhibit in this case and I think it
4 was filed under seal. So I don't know how I do this when I
5 read this into the record.

6 But in any event, I ask Ms. Montoya to verify this
7 clause of the EPS. She read it and she verified its
8 accuracy. So let me read it into the record and then I'm
9 going to ask you the question: Is this not indicative of
10 someone under the influence of others? And I'm not arguing
11 undue influence to excuse Ms. Ahern's actions. She still
12 has to pay the price if she was under the influence of
13 others and have her interest surcharged. What I'm arguing
14 is someone under this type of influence that had these type
15 of things happen to her should not be removed from the
16 trust. That's what I'm arguing. There's a significant
17 difference.

18 RP, which I believe is the reporting party,
19 states:

20 Client has been going into the West Cheyenne and
21 Jones branch since December of 2011. Client often
22 comes into the bank requesting large sums of cash,
23 50,000 or more. When asked why she needs so much cash,
24 client would state that God told her withdraw the money
25 or Sue told her to withdraw the money. Sometimes the

1 client would return and deposit the money back into the
2 account. God or Sue would tell her it's okay to
3 deposit the money back into the account. Reporting
4 party states that client's daughter, Jacqueline
5 Montoya, contacted the banker and stated somehow hers
6 and the client's address had been changed. Banker
7 notes that the new address was changed to Susanne
8 Nuna's address.

9 We believe that's Nuanna [phonetic]. Susanne is
10 the client's bookkeeper.

11 I wanted to bring that to the Court's attention
12 because I don't think anybody in this room is believing
13 that God is telling Eleanor Ahern to remove that money.

14 I don't believe, and you have to determine what
15 the trustor's intended by referring to Paragraph 10, but I
16 think it's clear from this record that someone has been
17 influencing the actions of my client. My client was a
18 trustee who was influenced by others. My client has to pay
19 the price of that influence. But to remove my client under
20 the circumstances that are presented to you would be a
21 gross injustice. She should be surcharged, she should be
22 pay the price, and the Court can do that in a separate
23 hearing, and the Court can determine what is the level of
24 damage. And if there's punitive damage, the Court can make
25 that determination, but to remove the beneficiary in light

1 of what's happened in this case, in light of the active
2 interference of the daughters in the administration of the
3 estate, in light of influence of others, again, I would
4 suggest is highly unfair.

5 Finally, I've got to refer to the bank robbery
6 slide. Compelling the trustee to make a distribution to or
7 for Mrs. Ahern before she has made the trust whole
8 [indiscernible] to subsidize or finance the personal
9 support and legal defense of a person who has admitted
10 robbing the bank. You know, I was a PE for a long time,
11 I've defended bank robbers. I've got to tell you, I've
12 never defended a bank robber yet that owned 35 percent of
13 the bank. So I don't see how the slide really adds to
14 anything here.

15 The end of the day, the appropriate remedy is what
16 I'm suggesting and I'll suggest it again. Her interest
17 should be surcharged. She should be granted a stipend or a
18 small living expense until she pays off her obligations in
19 full. That living expense can be handled, or doled out, or
20 distributed by the trustee or under the supervision of the
21 trustee. That way, the sisters, or these movants, will
22 eventually retrieve their funds.

23 Any other remedy is much, much too harsh and
24 contrary to the terms of that document. Thank you.

25 THE COURT: Thank you.

1 MR. LENHARD: And also, to -- I'd be remiss,
2 Judge, in also thanking you for your ruling earlier today
3 on the order.

4 THE COURT: Thank you. Okay. I'm assuming
5 there's -- the trustee takes no position? Thank you. All
6 right. Mr. Rushforth, in conclusion.

7 MR. RUSHFORTH: May I?

8 THE COURT: Yes.

9 MR. RUSHFORTH: I just want to --

10 MR. LENHARD: If you want, I'll get out of your
11 way.

12 THE COURT: And just for the record, Mr. Moody, I
13 think, is indicating the trustee takes no position.

14 MR. MOODY: The trustee takes no position.

15 THE COURT: Thank you.

16 MR. RUSHFORTH: I just want to -- just a couple of
17 things for the record.

18 Number one is that they want to apply the no-
19 contest clause against our clients for enforcing the no-
20 contest clause and there is an exception under NRS
21 163.00195 and that subsection (3) that says if you're
22 seeking to enforce the terms of the trust, that's an
23 exception. That's what we're trying to do.

24 Number two is that the bank robber applies, even
25 if there is a 35 percent owner.

1 Number two -- number three is that the restitution
2 doesn't eliminate the fact that -- the partial restitution
3 doesn't eliminate the damages and what not.

4 And one of the things that really wasn't addressed
5 was even if the no-contest clause doesn't apply, and I,
6 again, repeat creating an undue influence exception to the
7 no-contest clause is not within the purview of this Court,
8 that's a legislative function. They gave two exceptions
9 and not an undue influence exception, so you're going to
10 have to legislate a new exception to that. And that --
11 there -- the standard for undue influence has not been met
12 in this case. They haven't met it.

13 And, so, the final thing that I want to say is
14 that even if a no-contest clause doesn't apply for any
15 reason, not one penny should benefit Ms. Ahern under any
16 circumstances until that's been -- he read slide 20 but he
17 didn't read slide 21 that says no penny can come out until
18 it's been fully restored.

19 THE COURT: The question I have about the statute
20 on no-contest clause is it does state throughout that a
21 beneficiary's share may be reduced --

22 MR. RUSHFORTH: Or eliminated.

23 THE COURT: -- or eliminated.

24 So, do they give us -- and there's no test for the
25 difference between when do you reduce it versus when do you

1 eliminate it?

2 MR. RUSHFORTH: It's actually intended to mean it
3 may be reduced or eliminated as provided in the no-contest
4 clause. That's what the meaning of that statute is.

5 THE COURT: Okay. All right.

6 MR. RUSHFORTH: So the settlor --

7 THE COURT: Because it doesn't really say that and
8 --

9 MR. RUSHFORTH: Well, if you read it in context,
10 it says: The settlor may provide that the beneficiary's
11 share may be reduced or eliminated.

12 THE COURT: Okay.

13 MR. RUSHFORTH: And it's the settlor's provision
14 that is the governing thing.

15 THE COURT: Okay.

16 MR. RUSHFORTH: That's all.

17 THE COURT: All right.

18 MR. LENHARD: We would ask, obviously, you
19 strictly enforce the statute and read the statute as
20 written.

21 THE COURT: All right. Thanks. The concern that
22 I have here, and have had since the beginning, is that
23 instead of initiating litigation to determine whether the
24 action to -- the initial distributions of the 65 percent to
25 the beneficiaries was stopped without seeking prior Court

1 approval and that's -- at that point in time, ultimately,
2 the conclusion of that was that she should have asked for
3 direction from the Court as to whether that was an
4 appropriate determination, was Ms. Ahern really entitled to
5 the entire 100 percent and entitled to then stop the
6 distributions of the 65 percent.

7 So, ultimately, that was the conclusion. No, that
8 was inappropriate. You need to get permission from the
9 Court and the ultimate conclusion of the Court was: No,
10 you can't do that. The 65 percent was Mrs. Connell's to
11 give and she gave it as she wished to and, so, ultimately,
12 that determination was adverse to Ms. Ahern.

13 So, the question is then: Whether in just
14 stopping the payment, as she did, instead of seeking the
15 Court approval, that alone was probably not enough to
16 trigger either of these remedies that are being sought
17 here.

18 However, the misuse of the funds during that
19 period of time is the thing that has troubled the Court and
20 continues to trouble the Court to this point in time.
21 There may not have been either of these actions up to that
22 point in time, may not have resulted in the same kind of a
23 sanction because, ultimately, the decision -- when it gets
24 to her that she was not entitled to the 65 percent, that's
25 what it is, she still had her 35 percent, but the next step

1 was how did she use the funds during that period of time.
2 That's where we run afoul of what was intended and that's
3 where have a problem here and clearly she didn't do that in
4 violation of the no-contest clause to the extent of
5 bringing any kind of litigation, it was just miss -- she
6 misapplied -- she just didn't properly apply her duties as
7 a trustee.

8 So the question is: The fact that during that
9 period of time, when she was solely in control of the 100
10 percent being told to maintain the 65 percent, pending the
11 outcome of who was entitled to it, just a gross misuse of
12 those funds during that period of time.

13 I thought all along somebody probably needed to go
14 to jail. Judge Gonzalez didn't send her to jail. That's
15 her choice. She felt that that wasn't properly set up
16 since there is that type of contempt of a Court order
17 requires very specific findings before a person can be sent
18 to jail, as I've said here today. Somebody did something
19 really wrong and something that may, in fact, justify
20 criminal prosecution. It's pretty shocking to me what has
21 happened here.

22 But that's why I asked very specifically -- the
23 difference that I see between punitive damages and treble
24 damages because I'm not sure, ultimately, what damages
25 would be here if we're just looking at the surcharge,

1 before we talk about the no-contest clause. Punitive
2 damages are intended to punish and this seems to me to be a
3 very willful and malicious -- if we read our jury
4 instruction on liability for punitive damages, you know,
5 the conduct probably satisfies that. I don't have any real
6 concern that we can satisfy the standard for punitive
7 damages in this case.

8 But the question is: Do we also satisfy the
9 statute or is this just a -- just, by just I don't mean to
10 make it sound like this isn't -- this is a small thing,
11 because it was a very gross misuse of trust funds and they
12 clear -- I still believe to this day, contempt of this
13 Court's order, even though it was not punishable by
14 confinement in jail, I still think it's contempt of this
15 Court's order.

16 So, the question is: Does that contempt rise to
17 the level where Ms. Ahern should be deprived entirely for
18 all time of any claim to trust funds or is it a violation
19 under the Restatement which should be punished by having
20 her interest surcharged? And the reason why I ask about
21 the language of the statute saying reduced or eliminated as
22 the trustee -- the settlor directed in the trust, I just --
23 you know, I have some real questions and I've always had
24 questions from day one about what the settlor really meant
25 with this trust and what he really intended.

1 And specifically, what was said back in '70,
2 whenever this was written, 1972, that the trust be created
3 herein be administered and distributed without litigation
4 or dispute of any kind. The sanction's already been
5 imposed for the dispute of not coming to Court to ask for
6 guidance. What really happened here was just the trustee
7 improperly administering this trust and, as I said, to me,
8 even though there's no official finding of contempt in this
9 case, that's what I consider it to have been.

10 And, so, for me, it seems to me that this is a
11 case that is appropriate for a surcharge as opposed to the
12 enforcement of the no-contest clause because that's the
13 part of what she violated. She violated her duties as a
14 trustee, which is a very serious thing, and that's why, for
15 me, I ask -- and I want to make real clear that I don't
16 think a surcharge is limited just to everything that it's
17 taking for Mr. Waid to figure out where this money went and
18 to reconstruct it and to figure out how much that all is.
19 I think there is liability here for, at a minimum, treble
20 damages, and I say that seriously. I mean that at a
21 minimum. I think this is punitive damage time. I do. I
22 think that this is something that needs to be punished. No
23 trustee should be allowed to behave this way without
24 consequences. It's a very serious thing and I believe
25 should be -- should subject the trustee to some kind of

1 punishment and I think that's probably punitive damages.
2 That's why I wanted to distinguish with Mr. Rushforth, I
3 see it as different. I'm not saying it's one or the other.
4 It might be both, but I think the damage phase needs to go
5 forward.

6 At this point in time, as I said, I think we dealt
7 with the issues that might have triggered the no-contest
8 clause with the holding that she should not have taken
9 unilateral action to stop paying the 65 percent to her
10 daughters. She should have sought Court approval for that
11 and the ultimate outcome of that would have been: Sorry,
12 you lose. And so she did lose, but in the end, I think
13 that the question is more appropriately handled through a
14 surcharge and appropriate damages, as I said, for -- to be
15 determined at a future date, whether that's punitive or
16 trebling or both. I think it's pretty shocking and needs
17 to be dealt with in a very serious fashion.

18 So, I would reserve my ruling as to what exactly I
19 think is appropriate. I think you need to specifically
20 look at that issue and brief that issue because I think
21 it's a big deal, to impose punitive damages on an
22 individual is a very huge undertaking and it requires its
23 own separate hearing and I take it very seriously, however,
24 I do think that just looking at the standard set forth in
25 our jury instructions for jurors when they're to look at

1 punitive damages, we've met it and I don't have any doubt
2 that we have. However, whether there should also be some
3 other kind of damages imposed as to the actual amount
4 that's actually proven, through some other statutory
5 remedy, whether they're exclusive or they can be combined,
6 you know, I think those issues need to be addressed and so
7 we look forward to doing that when we can finally find a
8 hearing on this and I don't know when that is.

9 So I would hear what counsel --

10 MR. RUSHFORTH: What's your ruling as to the
11 withholding of all distributions? Our argument has been
12 that she should not have any further distributions until he
13 trust is made whole.

14 THE COURT: Okay. All right.

15 MR. RUSHFORTH: What's your ruling on that?

16 THE COURT: That is the statute -- the Restatement
17 of Trust so holds. They recently have cited to the
18 Restatement Third and so there's an indication the Court
19 wants to follow that law. I guess my question is, as I've
20 said here all along, you know, we are, nevertheless, a
21 Court of equity, but I find it's kind of shocking. As I
22 said, up until this point, we haven't -- there is no order
23 in place depriving her of any funds. As I said, there's
24 probably at least first quarter of 2016 income that should
25 be credited to her because we don't have an order in place

1 yet, she has the right to appeal this. So I would say
2 probably 30 days from Notice of Entry of Order -- I
3 wouldn't think it would go into effect until at least 30
4 days from Notice of Entry of Order because until then,
5 she's not been deprived of anything. So, only after that,
6 going forward, you know, I think that is -- unfortunately,
7 that is the remedy that the trust -- that the Restatement
8 suggests. So that's what I would say is that while --

9 MR. LENHARD: Are you ordering that at the close
10 of 30 days that she not receive any additional living
11 expenses? Just so I --

12 THE COURT: Correct.

13 MR. LENHARD: Okay.

14 THE COURT: Correct. And, so, that would be
15 ruling is that we haven't cut her off until we get an order
16 in place. She's got the right to appeal that order, so 30
17 days from entry of that order.

18 MR. RUSHFORTH: I'll prepare an order, Your Honor,
19 and if it's -- my understanding is that you are ruling as a
20 matter of law that the no-contest clause does not apply?

21 THE COURT: Correct. I believe that the exception
22 would be that we already dealt with what might have
23 triggered the no-contest clause when we said: No, you
24 should have filed -- you should have come to court and
25 asked for leave before you cut off the 65 percent. My

1 problem with this has been since the order went into place,
2 that she didn't properly maintain the funds. That, to me,
3 feels -- is her duty as a trustee and that's under the
4 Restatement appropriate for a surcharge and, as I said, I
5 think under Nevada law, --

6 MR. RUSHFORTH: And her conduct after --

7 THE COURT: -- possible additional damage.

8 MR. RUSHFORTH: -- she was removed as trustee
9 doesn't affect that?

10 THE COURT: No. That's where is aid -- that's
11 where you've got -- I said I thought it should be punished
12 by contempt.

13 MR. RUSHFORTH: But not by the no-contest?

14 THE COURT: They did not -- they were able to
15 successfully defeat my referral for contempt. I still
16 think that conduct was so egregious that it should be
17 punished in some way. That's why I said I think that we
18 need to take a look at punitive damages because --

19 MR. RUSHFORTH: Okay.

20 MR. LENHARD: But you're not awarding --

21 THE COURT: -- that is so --

22 MR. LENHARD: -- punitive damages in this order
23 yet.

24 MR. RUSHFORTH: No.

25 MR. LENHARD: That's in a separate hearing, so

1 we're clear.

2 THE COURT: That's what I said.

3 MR. LENHARD: Okay.

4 THE COURT: I said that requires a separate
5 hearing. That --

6 MR. LENHARD: All right.

7 THE COURT: -- requires a separate type of
8 briefing because it may be different from this concept of:
9 Are they entitled to have their damages trebled?

10 MR. LENHARD: Well there's all kinds of issues
11 with punitive damages.

12 THE COURT: There's a whole different issue there
13 and that's why is aid I think this conduct of just clear
14 contempt of the Court's orders needs to be punished in some
15 way and I think that's punitive damages, but I'm willing to
16 listen to whether instead a statutory approach of trebling
17 damages is the better way to go.

18 MR. LENHARD: Well you've got to find out first --

19 THE COURT: I think the conduct rises to punitive
20 --

21 MR. LENHARD: -- what the damages are.

22 THE COURT: -- damages.

23 Correct.

24 MR. LENHARD: And we've got to find out what he
25 can retrieve from other law firms and so forth.

1 THE COURT: And that's why I said --

2 MR. LENHARD: Yeah.

3 THE COURT: -- it may be the --

4 MR. LENHARD: Yeah.

5 THE COURT: -- damages can be trebled but the
6 thing that for -- is, for me, so shocking is this conduct
7 of violating the Court's orders, which I said I think
8 rises, if you just read the instruction, it rises to the
9 level of punitive damages for me.

10 MR. LENHARD: We'll fight -- I'll live to fight
11 that one another day.

12 THE COURT: Right.

13 MR. LENHARD: I just want to be certain that we're
14 clear that that's not part of the order today.

15 THE COURT: I'm not -- I am not awarding anything
16 now.

17 MR. LENHARD: Right.

18 THE COURT: We have to have a hearing on what the
19 damages are. I believe -- and that's why I said we have to
20 look at --

21 MR. LENHARD: You're keeping her in the trust.
22 Right? She's still in the trust?

23 THE COURT: She's still in the trust.

24 MR. LENHARD: Whenever it's paid back, she gets
25 her 35 percent. Whatever the award is, it's paid back, she

1 gets her 35 percent? That's the first thing.

2 THE COURT: That's her first thing.

3 MR. LENHARD: Okay. Secondly, so I'm clear, is
4 after 30 days from the Notice of Entry, she does not
5 receive a living stipend. Is that -- that's --

6 THE COURT: Correct.

7 MR. LENHARD: -- my understanding.

8 MR. RUSHFORTH: And can we also have --

9 THE COURT: Until that's -- until it's paid back.
10 Until --

11 MR. RUSHFORTH: And --

12 THE COURT: -- whatever the damages are determined
13 to be, are --

14 MR. LENHARD: I understand.

15 THE COURT: -- paid back.

16 MR. LENHARD: That's clear.

17 THE COURT: So, 30 days from the entry of this
18 order, then there would be no further advances of living
19 expenses.

20 MR. LENHARD: Okay.

21 MR. RUSHFORTH: And can I have it in the order
22 that the amounts that after the 30 days, the amounts that
23 would otherwise go to her, can be applied towards her
24 already adjudicated obligations like attorneys' fees and
25 things --

1 THE COURT: If they haven't been paid in full yet.
2 I mean, I don't know. The -- whatever is left of this
3 \$620,00, I don't know if that's -- if we're going to have -
4 - what's been adjudicated right now is the attorney fee
5 award which was 300 and something, wasn't it?

6 MR. LENHARD: There's more money coming in.

7 THE COURT: That's what I said. We've got first
8 quarter, 2016.

9 MR. RUSHFORTH: But --

10 MR. LENHARD: I think the trustee should be the
11 one distributing that, frankly.

12 MR. RUSHFORTH: Right. And --

13 THE COURT: We've got first quarter 2016.

14 MR. RUSHFORTH: But in the order, I can put in
15 that the trustee is authorized from this money that is not
16 being distributed to her, to start making it whole,
17 including the awards to --

18 THE COURT: Well, I think I would like to know
19 from the trustee -- not an accounting, but a report as to
20 how far he's gotten towards payment back because I think
21 the attorneys' fees award, there should be enough from this
22 624, minus whatever is being paid to pay the attorneys'
23 fees. Isn't there?

24 MR. RUSHFORTH: And that can be in the order that
25 that's appropriate?

1 THE COURT: That's coming out of the -- that's
2 coming out of 2015 money.

3 MR. RUSHFORTH: Okay. Good. I'll put it in the
4 order and I'll run it by counsel to make sure.

5 THE COURT: Yes. And that's why I said, they've
6 got 30 days from the Notice of Entry of Order to appeal
7 this, so --

8 MR. LENHARD: Just so I can get it on the record
9 for --

10 THE COURT: -- I'm -- that's why --

11 MR. LENHARD: -- purposes of --

12 THE COURT: -- saying it doesn't take effect until
13 then.

14 MR. LENHARD: -- what the Supreme Court is seeing.
15 The stipend that you had ordered between was what? 5,000 a
16 month that she gave? What was it, Mr. Waid?

17 MR. WAID: 5,000 for four months.

18 MR. LENHARD: 5,000 for --

19 MR. WAID: It ends in February.

20 MR. LENHARD: All right. So I would assume that
21 the stipend that she's not getting in the future would have
22 been \$5,000 a month, just so I can accurately put things in
23 our pleadings?

24 THE COURT: We hadn't gotten to that. This was to
25 get her through this hearing.

1 MR. LENHARD: Right.

2 THE COURT: That was the plan.

3 MR. LENHARD: So we hadn't even determined, it
4 could have been less.

5 THE COURT: Correct. I mean, could have been --

6 MR. LENHARD: Because, you know, it's somewhat
7 incredible to me that with all this money owed that the 3
8 or \$4,000 a month really makes a big difference.

9 THE COURT: I understand.

10 MR. LENHARD: And I'm going to be raising that,
11 you might expect.

12 THE COURT: It's a --

13 MR. LENHARD: Yeah.

14 THE COURT: That's why I said, for me, it's
15 equity, but yeah.

16 MR. RUSHFORTH: For the record, we have an award
17 of attorneys' fees to our firm for about \$400,000 and I
18 just --

19 THE COURT: I thought the total between Mr.
20 Stoddard --

21 MR. RUSHFORTH: Yes.

22 THE COURT: -- and your firm --

23 MR. RUSHFORTH: Right.

24 THE COURT: -- was 400?

25 MR. RUSHFORTH: But all that -- all the attorneys

1 that represent our clients and we just want to make sure
2 that the money that comes --

3 THE COURT: Right.

4 MR. RUSHFORTH: -- from the -- what's not going to
5 the 90,000 can be paid to us for those fees.

6 THE COURT: I think that was the previous order.

7 MR. WAID: It is the previous order, but if the
8 Court is going to specifically require me to pay those to
9 your firm, --

10 THE COURT: Yeah.

11 MR. WAID: -- or the firms, --

12 THE COURT: No.

13 MR. WAID: -- then I'm doing that pursuant to a
14 judgment against Eleanor, which triggers those same
15 problems again.

16 THE COURT: Yeah. And that's why I've said that
17 the money is being distributed and it's all going to be
18 accounted for later.

19 MR. WAID: I were paying those directly to MTC, --

20 THE COURT: Right.

21 MR. WAID: -- it becomes their tax liability, as a
22 distribution.

23 THE COURT: And then they get the tax -- they get
24 the money from the tax back.

25 MR. RUSHFORTH: But if you pay it to us as her

1 attorneys' fees, then it's distribution to her.

2 MR. WAID: It has to be because it would be for
3 her -- it's satisfying a judgment against her.

4 MR. GEIST: Correct. And I think that comes back
5 to -- sorry, Your Honor, to interrupt, but I think that
6 comes back to our Petition earlier, the tax --

7 THE COURT: That's the previous --

8 MR. GEIST: -- consequences.

9 THE COURT: Yeah. That's the previous order. I
10 mean, I don't think that's part of this order. This order
11 is --

12 MR. GEIST: But the --

13 THE COURT: -- simply --

14 MR. RUSHFORTH: But --

15 THE COURT: I'm denying the request to enforce the
16 no-contest clause. I think we've dealt with that. This,
17 to me, is the conduct both during the period of time she
18 was acting as trustee and should have been holding that 65
19 percent and then the attempt of the Court's orders in like
20 -- and lying to the Court about how much money she was
21 holding. That's what I think needs to be further punished.
22 So that's my -- I think that we need a surcharge, but we
23 have to determine what the damages are and then we have to
24 address whether it's treble damages, punitive damages, some
25 combination of both. That's -- and during that period of

1 time, she's not entitled to any money, but that's 30 days
2 from Notice of Entry of Order.

3 MR. RUSHFORTH: And after that 30 days, I want the
4 trustee to be able to start paying that \$400,000 --

5 THE COURT: That's -- that can be addressed at a
6 different time. I -- if you're viewing --

7 MR. RUSHFORTH: Why can't we address --

8 THE COURT: If you're viewing --

9 MR. RUSHFORTH: -- now?

10 THE COURT: I thought we were dealing with --

11 MR. RUSHFORTH: I mean, we have a judgment.

12 THE COURT: I thought that essentially the money
13 that was going to be paid now was --

14 MR. RUSHFORTH: Yeah, it's going to the MTC Trust.

15 THE COURT: Going to the MTC Trust.

16 MR. RUSHFORTH: I'm talking about 30 days from
17 now.

18 THE COURT: Should be enough to satisfy it,
19 shouldn't it?

20 MR. RUSHFORTH: It's not because --

21 THE COURT: Okay.

22 MR. RUSHFORTH: -- it's going to the MTC Trust as
23 --

24 THE COURT: Then I think we need to come back and
25 see, once the trustee has another interim report for us, or

1 some sort of a -- some sort of information, to how much
2 we're off because --

3 MR. GEIST: Your Honor, if I may?

4 THE COURT: -- I think we need some accounting on
5 here.

6 MR. GEIST: We certainly do.

7 THE COURT: I've lost track of the money.

8 MR. GEIST: We certainly do, and I think the first
9 step is we need to get Ms. Ahern's deposition to help
10 facilitate that, but --

11 THE COURT: Right.

12 MR. GEIST: -- just to reiterate, our previous
13 concern about suspending Ms. Ahern's distributions after
14 this 30 days and post entry lapses, that's going to create
15 an issue with the trustee where he is, you know, holding
16 onto, in essence, unless there's a reformation of the trust
17 regarding her share.

18 THE COURT: Her interest is suspended at the
19 present time.

20 MR. GEIST: I understand.

21 THE COURT: So she's not entitled to any -- to
22 anything right now and to the extent that she would be
23 getting, which I don't think we'd ever addressed, would be
24 getting any future distributions for --

25 MR. GEIST: Okay.

1 THE COURT: You know, I'm saying: No, pending, --
2 you know, she's not getting any more money personally, you
3 know, just the word personally, --

4 MR. GEIST: Right, but --

5 THE COURT: -- she's not to receive any future
6 personal distributions but they have the right to appeal
7 that.

8 MR. GEIST: Right.

9 THE COURT: So that's why I'm saying 30 days after
10 Notice of Entry of Order.

11 MR. GEIST: And after that point, if what she
12 would normally get under her 35 percent --

13 THE COURT: if she --

14 MR. GEIST: -- if that's going to the MTC Trust,
15 the IRS could come in and say: Under the terms of the
16 trust, she should be getting that, notwithstanding Your
17 Honor's order. So --

18 THE COURT: I --

19 MR. GEIST: -- our concern --

20 THE COURT: Her interest is suspended right now.

21 MR. RUSHFORTH: Here's the situation is that if
22 she is going to restore the trust, it's going to come from
23 taxable income.

24 MR. GEIST: Right.

25 THE COURT: Correct.

1 MR. RUSHFORTH: And, so, if you have income coming
2 in that she would normally get, and it starts now wiggling
3 down what she owes back to the trust, that's still going to
4 trigger a tax liability to her.

5 MR. GEIST: Correct.

6 MR. RUSHFORTH: So, what's your concern?

7 MR. GEIST: Our concern is: Is her interest
8 suspended or does she have taxable income coming in?

9 MR. RUSHFORTH: And --

10 THE COURT: Right now, it's suspended and until --
11 and if -- it would remain -- like I said, she's -- no more
12 money is being distributed. 30 days, give us 30 days from
13 Notice of Entry of Order. That gives you some time to work
14 this all out, figure --

15 MR. GEIST: Okay.

16 THE COURT: -- out what some of the numbers are,
17 and what kind of tax liabilities there are because there
18 are a lot of them.

19 MR. GEIST: Yes.

20 THE COURT: And I don't purport to understand any
21 of it.

22 MR. RUSHFORTH: Okay.

23 THE COURT: Don't come talk to me about taxes.

24 MR. GEIST: We'll work on the order with counsel.

25 THE COURT: So, all I'm saying, and make it

1 however you want to make it, I -- your order says she's
2 suspended. There's nothing that says that she's suspended
3 only for the 2015 income. It's suspended. We have to have
4 this hearing on what the damages are.

5 MR. RUSHFORTH: Okay. Thank you, Your Honor.

6 THE COURT: And decide how we're going to -- how
7 long it's going to take to earn all that back, but anyway.

8 MR. GEIST: So just to be clear on the record, --

9 THE COURT: So I'm denying -- yeah.

10 MR. GEIST: -- her mandatory distribution interest
11 is suspended by order of the Court?

12 THE COURT: It's suspended. It remains suspended
13 and that no distributions would be made to her --

14 MR. GEIST: Thank you.

15 THE COURT: -- in any kind of interim fashion for
16 -- starting 30 days from Notice --

17 MR. GEIST: 30 days.

18 THE COURT: -- of Entry of Order.

19 MR. GEIST: Thank you, Your Honor.

20 THE COURT: Okay. Good luck writing all that.
21 Okay. All right.

22
23 PROCEEDING CONCLUDED AT 1:06 P.M.

24 * * * * *

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

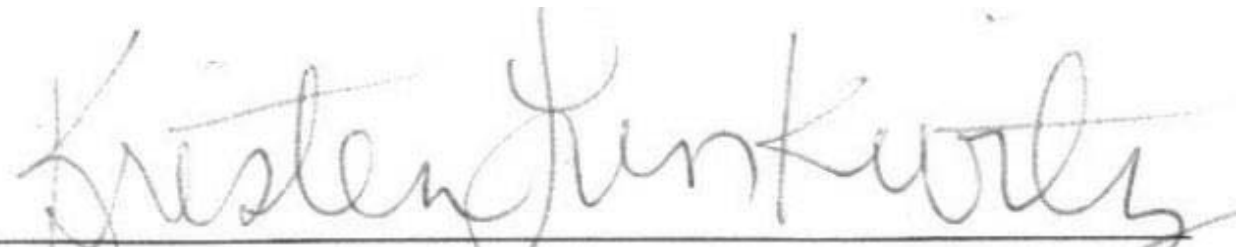
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22 KRISTEN LUNKWITZ

23 INDEPENDENT TRANSCRIBER

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CLERK OF THE COURT

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ORDER

DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

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

**ORDER REGARDING MOTION FOR
ASSESSMENT OF DAMAGES;
ENFORCEMENT OF NO CONTEST
CLAUSE; AND SURCHARGE OF
TRUST INCOME**

Date of Hearing: February 22, 2016
Time of Hearing: 9:30 a.m.

On June 3, 2015, Jacqueline M. Montoya and Kathryn A. Bouvier ("Movants" or "Ms. Montoya and Ms. Bouvier"), through counsel, filed a *Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's Trust Income* (the "Motion"), and on July 31, 2015, filed a Supplement to the Motion.

On June 29, 2015, Eleanor Connell Hartman Ahern ("Ms. Ahern"), through counsel, filed an opposition to the Motion and, on August 3, 2015, filed a *Motion to Strike Supplement to Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's Trust Income* ("Motion to Strike"). The Court has not yet ruled on the Motion to Strike.

The Court held an evidentiary hearing on February 22, 2016, which continued on March 3, 2016 (the "Hearings"). On February 22, 2016, legal arguments were presented by all parties, and the testimony of two witnesses, Fredrick Waid and Jacqueline Montoya, was offered. On March 3, 2016, the parties made closing arguments.

//

1 At the Hearings, Ms. Montoya and Ms. Bouvier were represented jointly by
2 attorneys Layne T. Rushforth, Esq., Joseph J. Powell, Esq., and Daniel P. Kiefer, Esq., of
3 The Rushforth Firm, Ltd; Ms. Ahern was represented by Tamara Beatty Peterson, Esq.,
4 and Kirk B. Lenhard, Esq., of Brownstein Hyatt Farber Schreck, LLP; and Fredrick P.
5 Waid, in his capacity as the acting trustee of The W.N. Connell and Marjorie T. Connell
6 Living Trust, dated May 18, 1972 (the "Trust"), was represented by Todd L. Moody, Esq.,
7 and Russel J. Geist, Esq., of Hutchison & Steffen, LLC.

8 After consideration of the evidence and arguments presented by the parties and
9 their counsel at the Hearings, and the papers and pleadings on file herein, the Court finds
10 as follows:

11 1. Ms. Ahern, as Trustee, did not comply with the Court order to protect the
12 65% share of the Trust that was to be segregated under the terms of the Trust for the
13 Movants, Ms. Montoya and Ms. Bouvier.

14 2. Ms. Ahern's failure to properly apply her duties as a Trustee does not
15 warrant imposition of the harsh remedy of imposition of the no-contest clause,
16 specifically her failure to seek Court approval before ceasing payments to the Movants.
17 Therefore, the Court will not enforce the no-contest clause as against Ms. Ahern as
18 beneficiary.

19 3. Ms. Ahern's failure to comply with the Court's Order to protect the
20 Movants' 65% share, however, resulted in a misapplication of the Trust income, which
21 deprived the Movants of funds owed to them under the terms of the Trust. Ms. Ahern's
22 misapplication of Trust funds warrants a surcharge against Ms. Ahern's 35% share of the
23 Trust, to be paid to Movants, in a total amount to be determined at a future hearing to be
24 set by this Court.

25 4. Additional briefing and argument is needed on the issues of punitive and
26 treble damages. It is expected that the additional briefing on such damages, and the
27 hearing on the total amount owed to Movants, will be scheduled after the Successor
28 Trustee, Fredrick P. Waid ("Mr. Waid") finalizes his accounting for the Court.

1 5. Until such time as the Court decides the total amounts owed by Ms. Ahern,
2 it is necessary to withhold all distributions to Ms. Ahern, other than those amounts
3 previously approved as advancements by the Court's *Order Instructing Trustee to*
4 *Advance Funds* dated December 29, 2015, which was entered on January 5, 2016. The
5 suspension of Ms. Ahern's share under this order will be effective thirty (30) days after a
6 Notice of Entry of Order is filed with respect to this Order. This ruling does not supersede
7 or modify the Court's *Order on Petition for Instructions Regarding Allocations of Eleanor*
8 *Ahern's 2015 Trust Unpaid Distributions*.

9 6. In further violation of this Court's Orders, Ms. Ahern removed some funds
10 from Trust accounts before turning those accounts over to the Successor Trustee, Mr. Waid.
11 Some funds have since been turned over to the Successor Trustee, however, until such
12 time as Mr. Waid can provide an Accounting the Court cannot rule on Ms. Ahern potential
13 liability. The exact amount of any damages resulting from these serious breaches of
14 fiduciary duty will be determined at a later evidentiary hearing.

15 7. NRS Chapter 165 imposes a fiduciary duty on Ms. Ahern, as Trustee, had
16 to account for all assets and income received by her and for all distributions made by her.
17 Although Ms. Ahern has been removed or suspended from her role as Trustee, she has
18 not be discharged from her fiduciary duties pending her compliance, and the Court's
19 approval of the accounting to be filed by the successor Trustee, Mr. Waid. The Court
20 found that the account Ms. Ahern filed, under penalty of perjury on March 13, 2015, titled
21 "Brief Regarding Accounting Fiduciary Duties, and Trust Administration", was
22 incomplete and intentionally inaccurate. Ms. Ahern, therefore, remains statutorily
23 obligated to cooperate with the successor Trustee, Mr. Waid, in furtherance of Mr. Waid's
24 accounting, until such time as the Court enters a full and complete discharge of Ms.
25 Ahern.

26 8. Movant's seek punitive damages, which requires a finding of willful and
27 malicious conduct. In the alternative, Movants seek treble damages for breach of fiduciary
28 duty. Ms. Ahern's conduct was shocking and needs to be dealt with in a serious fashion,

1 but the final decision on whether punitive and/or treble damages should be awarded in
2 addition to restitution will be made at the evidentiary hearing to be scheduled after Mr.
3 Waid concludes discovery and prepares his report and accounting to the Court.

4 9. After viewing an independent medical evaluation *in camera*, the Court
5 finds that Ms. Ahern is competent to sit for a deposition in this matter.

6 **ORDER**

7 Upon the Court's consideration of the evidence and arguments presented by the
8 parties and their counsel at the hearing on the Motion, and good cause appearing therefore:

9 1. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Movants'
10 request to enforce the no-contest clause against Ms. Ahern is denied.

11 2. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Trust
12 distributions to Ms. Ahern are suspended upon the following conditions:

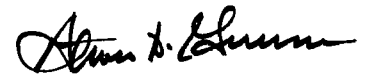
13 a. The suspension shall take effect thirty (30) days after notice of entry
14 of this Order is filed;

15 b. The suspension shall continue until Movants have been paid in an
16 amount to be determined at a hearing set by this Court following the completion of an
17 accounting of the Trust assets by the interim Trustee, Mr. Waid.

18 3. IT IS FURTHER ORDER ADJUDGED AND DECREED that Mr. Waid
19 shall prepare a report and a trustee's account, and upon completion, a hearing on the
20 amounts owed by Ms. Ahern, including any punitive or treble damages, shall be
21 conducted, unless the parties stipulate otherwise.

22
23 DATED this 13th of September, 2016.

24 
25 DISTRICT COURT JUDGE
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28



CLERK OF THE COURT

1 **NEOJ**

2 JOSEPH J. POWELL

3 State Bar No. 8875

4 THE RUSHFORTH FIRM, LTD.

5 P. O. Box 371655

6 Las Vegas, NV 89137-1655

7 Telephone: (702) 255-4552

8 fax: (702) 255-4677

9 e-mail: probate@rushforthfirm.com

10 Attorneys for Jacqueline M. Montoya

11 and Kathryn A. Bouvier

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 In the Matter of

15 THE W.N. CONNELL and MARJORIE T.
16 CONNELL LIVING TRUST, dated May 18,
17 1972,

Case No. P-09-066425-T

Department: XXVI (Probate)

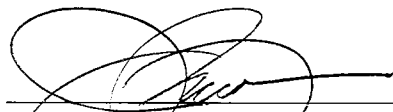
18 A non-testamentary trust.

19 **NOTICE OF ENTRY OF ORDER REGARDING MOTION FOR ASSESSMENT OF**
20 **DAMAGES; ENFORCEMENT OF NO CONTEST CLAUSE; AND SURCHARGE OF**
21 **TRUST INCOME**

22 NOTICE IS HEREBY GIVEN THAT:

23 The "Order Regarding Motion for Assessment of Damages; Enforcement of No Contest
24 Clause; and Surcharge of Trust Income" was entered on September 13, 2016 and filed on September
25 19, 2016, a copy of which is attached
26 hereto.

27 Respectfully submitted by:



28 Joseph J. Powell

State Bar No. 8875

9/28/16

Date


CLERK OF THE COURT

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ORDER

DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

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

**ORDER REGARDING MOTION FOR
ASSESSMENT OF DAMAGES;
ENFORCEMENT OF NO CONTEST
CLAUSE; AND SURCHARGE OF
TRUST INCOME**

**Date of Hearing: February 22, 2016
Time of Hearing: 9:30 a.m.**

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On June 29, 2015, Eleanor Connell Hartman Ahern ("Ms. Ahern"), through counsel, filed an opposition to the Motion and, on August 3, 2015, filed a *Motion to Strike Supplement to Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's Trust Income* ("Motion to Strike"). The Court has not yet ruled on the Motion to Strike.

The Court held an evidentiary hearing on February 22, 2016, which continued on March 3, 2016 (the "Hearings"). On February 22, 2016, legal arguments were presented by all parties, and the testimony of two witnesses, Fredrick Waid and Jacqueline Montoya, was offered. On March 3, 2016, the parties made closing arguments.

//

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2 attorneys Layne T. Rushforth, Esq., Joseph J. Powell, Esq., and Daniel P. Kiefer, Esq., of
3 The Rushforth Firm, Ltd; Ms. Ahern was represented by Tamara Beatty Peterson, Esq.,
4 and Kirk B. Lenhard, Esq., of Brownstein Hyatt Farber Schreck, LLP; and Fredrick P.
5 Waid, in his capacity as the acting trustee of The W.N. Connell and Marjorie T. Connell
6 Living Trust, dated May 18, 1972 (the "Trust"), was represented by Todd L. Moody, Esq.,
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8 After consideration of the evidence and arguments presented by the parties and
9 their counsel at the Hearings, and the papers and pleadings on file herein, the Court finds
10 as follows:

11 1. Ms. Ahern, as Trustee, did not comply with the Court order to protect the
12 65% share of the Trust that was to be segregated under the terms of the Trust for the
13 Movants, Ms. Montoya and Ms. Bouvier.

14 2. Ms. Ahern's failure to properly apply her duties as a Trustee does not
15 warrant imposition of the harsh remedy of imposition of the no-contest clause,
16 specifically her failure to seek Court approval before ceasing payments to the Movants.
17 Therefore, the Court will not enforce the no-contest clause as against Ms. Ahern as
18 beneficiary.

19 3. Ms. Ahern's failure to comply with the Court's Order to protect the
20 Movants' 65% share, however, resulted in a misapplication of the Trust income, which
21 deprived the Movants of funds owed to them under the terms of the Trust. Ms. Ahern's
22 misapplication of Trust funds warrants a surcharge against Ms. Ahern's 35% share of the
23 Trust, to be paid to Movants, in a total amount to be determined at a future hearing to be
24 set by this Court.

25 4. Additional briefing and argument is needed on the issues of punitive and
26 treble damages. It is expected that the additional briefing on such damages, and the
27 hearing on the total amount owed to Movants, will be scheduled after the Successor
28 Trustee, Fredrick P. Waid ("Mr. Waid") finalizes his accounting for the Court.

1 5. Until such time as the Court decides the total amounts owed by Ms. Ahern,
2 it is necessary to withhold all distributions to Ms. Ahern, other than those amounts
3 previously approved as advancements by the Court's *Order Instructing Trustee to*
4 *Advance Funds* dated December 29, 2015, which was entered on January 5, 2016. The
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6 Notice of Entry of Order is filed with respect to this Order. This ruling does not supersede
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9 6. In further violation of this Court's Orders, Ms. Ahern removed some funds
10 from Trust accounts before turning those accounts over to the Successor Trustee, Mr. Waid.
11 Some funds have since been turned over to the Successor Trustee, however, until such
12 time as Mr. Waid can provide an Accounting the Court cannot rule on Ms. Ahern potential
13 liability. The exact amount of any damages resulting from these serious breaches of
14 fiduciary duty will be determined at a later evidentiary hearing.

15 7. NRS Chapter 165 imposes a fiduciary duty on Ms. Ahern, as Trustee, had
16 to account for all assets and income received by her and for all distributions made by her.
17 Although Ms. Ahern has been removed or suspended from her role as Trustee, she has
18 not be discharged from her fiduciary duties pending her compliance, and the Court's
19 approval of the accounting to be filed by the successor Trustee, Mr. Waid. The Court
20 found that the account Ms. Ahern filed, under penalty of perjury on March 13, 2015, titled
21 "Brief Regarding Accounting Fiduciary Duties, and Trust Administration", was
22 incomplete and intentionally inaccurate. Ms. Ahern, therefore, remains statutorily
23 obligated to cooperate with the successor Trustee, Mr. Waid, in furtherance of Mr. Waid's
24 accounting, until such time as the Court enters a full and complete discharge of Ms.
25 Ahern.

26 8. Movant's seek punitive damages, which requires a finding of willful and
27 malicious conduct. In the alternative, Movants seek treble damages for breach of fiduciary
28 duty. Ms. Ahern's conduct was shocking and needs to be dealt with in a serious fashion,

1 but the final decision on whether punitive and/or treble damages should be awarded in
2 addition to restitution will be made at the evidentiary hearing to be scheduled after Mr.
3 Waid concludes discovery and prepares his report and accounting to the Court.

4 9. After viewing an independent medical evaluation *in camera*, the Court
5 finds that Ms. Ahern is competent to sit for a deposition in this matter.

6 **ORDER**

7 Upon the Court's consideration of the evidence and arguments presented by the
8 parties and their counsel at the hearing on the Motion, and good cause appearing therefore:

9 1. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Movants'
10 request to enforce the no-contest clause against Ms. Ahern is denied.

11 2. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Trust
12 distributions to Ms. Ahern are suspended upon the following conditions:

13 a. The suspension shall take effect thirty (30) days after notice of entry
14 of this Order is filed;

15 b. The suspension shall continue until Movants have been paid in an
16 amount to be determined at a hearing set by this Court following the completion of an
17 accounting of the Trust assets by the interim Trustee, Mr. Waid.

18 3. IT IS FURTHER ORDER ADJUDGED AND DECREED that Mr. Waid
19 shall prepare a report and a trustee's account, and upon completion, a hearing on the
20 amounts owed by Ms. Ahern, including any punitive or treble damages, shall be
21 conducted, unless the parties stipulate otherwise.

22
23 DATED this 13th of September, 2016.

24
25 
26 DISTRICT COURT JUDGE
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28


CLERK OF THE COURT

1 **NOAS**
LAYNE T. RUSHFORTH
2 State Bar No. 1004
JOSEPH J. POWELL
3 State Bar No. 8875
DANIEL P. KIEFER
4 State Bar No. 12419
THE RUSHFORTH FIRM, LTD.
5 P. O. Box 371655
6 Las Vegas, NV 89137-1655
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7 e-mail: probate@rushforthfirm.com
8 *Attorneys for Jacqueline M. Montoya*
and Kathryn A. Bouvier

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate

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

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

NOTICE OF APPEAL

A Non-Testamentary Trust.

NOTICE IS HEREBY GIVEN that Petitioners Jacqueline M. Montoya and Kathryn A. Bouvier hereby appeal to the Supreme Court of Nevada from the Order Regarding Motion for Assessment of Damages; Enforcement of No Contest Clause; and Surcharge of Trust Income (the "Order"), entered in this action on September 19, 2016, for which a Notice of Entry of Order was subsequently entered on September 28, 2016. A true and accurate copy of the Order is attached hereto as **Exhibit 1**.

Dated this 19th day of October 2016.

THE RUSHFORTH FIRM, LTD.

By: 

LAYNE T. RUSHFORTH

JOSEPH J. POWELL

DANIEL P. KIEFER

Attorneys for Jacqueline M. Montoya
and Kathryn A. Bouvier

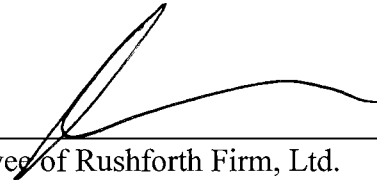
CERTIFICATE OF SERVICE

Pursuant to Rule 5(b), I hereby certify that service of the above **NOTICE OF APPEAL** was made via wiznet.com on this date as follows:

Todd Moody, Esq.
HUTCHISON & STEFFEN LLC
10080 W. Alta Drive #200
Las Vegas, Nevada 89145
Attorney for Interim Trustee

Kirk B. Lenhard, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106
Attorney for Eleanor Ahern

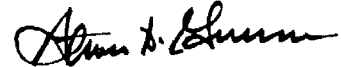
DATED this 19th day of October, 2016



Employee of Rushforth Firm, Ltd.

Exhibit 1

Exhibit 1



CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

12 In the Matter of

13 THE W.N. CONNELL and MARJORIE T.
14 CONNELL LIVING TRUST, dated May 18,
15 1972,

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

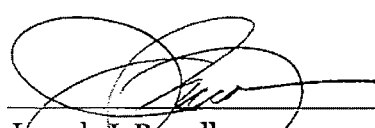
16 A non-testamentary trust.

17 **NOTICE OF ENTRY OF ORDER REGARDING MOTION FOR ASSESSMENT OF**
18 **DAMAGES; ENFORCEMENT OF NO CONTEST CLAUSE; AND SURCHARGE OF**
19 **TRUST INCOME**

20 NOTICE IS HEREBY GIVEN THAT:

21 The "Order Regarding Motion for Assessment of Damages; Enforcement of No Contest
22 Clause; and Surcharge of Trust Income" was entered on September 13, 2016 and filed on September
23 19, 2016, a copy of which is attached
24 hereto.

25 Respectfully submitted by:

26 
27 Joseph J. Powell
28 State Bar No. 8875

9/28/16

Date

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ORDER

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

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

**ORDER REGARDING MOTION FOR
ASSESSMENT OF DAMAGES;
ENFORCEMENT OF NO CONTEST
CLAUSE; AND SURCHARGE OF
TRUST INCOME**

Date of Hearing: February 22, 2016
Time of Hearing: 9:30 a.m.

On June 3, 2015, Jacqueline M. Montoya and Kathryn A. Bouvier ("Movants" or "Ms. Montoya and Ms. Bouvier"), through counsel, filed a *Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's Trust Income* (the "Motion"), and on July 31, 2015, filed a Supplement to the Motion.

On June 29, 2015, Eleanor Connell Hartman Ahern ("Ms. Ahern"), through counsel, filed an opposition to the Motion and, on August 3, 2015, filed a *Motion to Strike Supplement to Motion for Assessment of Damages Against Eleanor Ahern; Enforcement of No Contest Clause; and Surcharge of Eleanor's Trust Income* ("Motion to Strike"). The Court has not yet ruled on the Motion to Strike.

The Court held an evidentiary hearing on February 22, 2016, which continued on March 3, 2016 (the "Hearings"). On February 22, 2016, legal arguments were presented by all parties, and the testimony of two witnesses, Fredrick Waid and Jacqueline Montoya, was offered. On March 3, 2016, the parties made closing arguments.

//

1 At the Hearings, Ms. Montoya and Ms. Bouvier were represented jointly by
2 attorneys Layne T. Rushforth, Esq., Joseph J. Powell, Esq., and Daniel P. Kiefer, Esq., of
3 The Rushforth Firm, Ltd; Ms. Ahern was represented by Tamara Beatty Peterson, Esq.,
4 and Kirk B. Lenhard, Esq., of Brownstein Hyatt Farber Schreck, LLP; and Fredrick P.
5 Waid, in his capacity as the acting trustee of The W.N. Connell and Marjorie T. Connell
6 Living Trust, dated May 18, 1972 (the "Trust"), was represented by Todd L. Moody, Esq.,
7 and Russel J. Geist, Esq., of Hutchison & Steffen, LLC.

8 After consideration of the evidence and arguments presented by the parties and
9 their counsel at the Hearings, and the papers and pleadings on file herein, the Court finds
10 as follows:

11 1. Ms. Ahern, as Trustee, did not comply with the Court order to protect the
12 65% share of the Trust that was to be segregated under the terms of the Trust for the
13 Movants, Ms. Montoya and Ms. Bouvier.

14 2. Ms. Ahern's failure to properly apply her duties as a Trustee does not
15 warrant imposition of the harsh remedy of imposition of the no-contest clause,
16 specifically her failure to seek Court approval before ceasing payments to the Movants.
17 Therefore, the Court will not enforce the no-contest clause as against Ms. Ahern as
18 beneficiary.

19 3. Ms. Ahern's failure to comply with the Court's Order to protect the
20 Movants' 65% share, however, resulted in a misapplication of the Trust income, which
21 deprived the Movants of funds owed to them under the terms of the Trust. Ms. Ahern's
22 misapplication of Trust funds warrants a surcharge against Ms. Ahern's 35% share of the
23 Trust, to be paid to Movants, in a total amount to be determined at a future hearing to be
24 set by this Court.

25 4. Additional briefing and argument is needed on the issues of punitive and
26 treble damages. It is expected that the additional briefing on such damages, and the
27 hearing on the total amount owed to Movants, will be scheduled after the Successor
28 Trustee, Fredrick P. Waid ("Mr. Waid") finalizes his accounting for the Court.

1 5. Until such time as the Court decides the total amounts owed by Ms. Ahern,
2 it is necessary to withhold all distributions to Ms. Ahern, other than those amounts
3 previously approved as advancements by the Court's *Order Instructing Trustee to*
4 *Advance Funds* dated December 29, 2015, which was entered on January 5, 2016. The
5 suspension of Ms. Ahern's share under this order will be effective thirty (30) days after a
6 Notice of Entry of Order is filed with respect to this Order. This ruling does not supersede
7 or modify the Court's *Order on Petition for Instructions Regarding Allocations of Eleanor*
8 *Ahern's 2015 Trust Unpaid Distributions*.

9 6. In further violation of this Court's Orders, Ms. Ahern removed some funds
10 from Trust accounts before turning those accounts over to the Successor Trustee, Mr. Waid.
11 Some funds have since been turned over to the Successor Trustee, however, until such
12 time as Mr. Waid can provide an Accounting the Court cannot rule on Ms. Ahern potential
13 liability. The exact amount of any damages resulting from these serious breaches of
14 fiduciary duty will be determined at a later evidentiary hearing.

15 7. NRS Chapter 165 imposes a fiduciary duty on Ms. Ahern, as Trustee, had
16 to account for all assets and income received by her and for all distributions made by her.
17 Although Ms. Ahern has been removed or suspended from her role as Trustee, she has
18 not be discharged from her fiduciary duties pending her compliance, and the Court's
19 approval of the accounting to be filed by the successor Trustee, Mr. Waid. The Court
20 found that the account Ms. Ahern filed, under penalty of perjury on March 13, 2015, titled
21 "Brief Regarding Accounting Fiduciary Duties, and Trust Administration", was
22 incomplete and intentionally inaccurate. Ms. Ahern, therefore, remains statutorily
23 obligated to cooperate with the successor Trustee, Mr. Waid, in furtherance of Mr. Waid's
24 accounting, until such time as the Court enters a full and complete discharge of Ms.
25 Ahern.

26 8. Movant's seek punitive damages, which requires a finding of willful and
27 malicious conduct. In the alternative, Movant's seek treble damages for breach of fiduciary
28 duty. Ms. Ahern's conduct was shocking and needs to be dealt with in a serious fashion,

1 but the final decision on whether punitive and/or treble damages should be awarded in
2 addition to restitution will be made at the evidentiary hearing to be scheduled after Mr.
3 Waid concludes discovery and prepares his report and accounting to the Court.

4 9. After viewing an independent medical evaluation *in camera*, the Court
5 finds that Ms. Ahern is competent to sit for a deposition in this matter.

6 **ORDER**

7 Upon the Court's consideration of the evidence and arguments presented by the
8 parties and their counsel at the hearing on the Motion, and good cause appearing therefore:

9 1. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Movants'
10 request to enforce the no-contest clause against Ms. Ahern is denied.

11 2. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Trust
12 distributions to Ms. Ahern are suspended upon the following conditions:

13 a. The suspension shall take effect thirty (30) days after notice of entry
14 of this Order is filed;

15 b. The suspension shall continue until Movants have been paid in an
16 amount to be determined at a hearing set by this Court following the completion of an
17 accounting of the Trust assets by the interim Trustee, Mr. Waid.

18 3. IT IS FURTHER ORDER ADJUDGED AND DECREED that Mr. Waid
19 shall prepare a report and a trustee's account, and upon completion, a hearing on the
20 amounts owed by Ms. Ahern, including any punitive or treble damages, shall be
21 conducted, unless the parties stipulate otherwise.

22
23 DATED this 13th of September, 2016.

24
25 
26 DISTRICT COURT JUDGE
27
28


CLERK OF THE COURT

1 ASTA
LAYNE T. RUSHFORTH
2 State Bar No. 1004
JOSEPH J. POWELL
3 State Bar No. 8875
DANIEL P. KIEFER
4 State Bar No. 12419
THE RUSHFORTH FIRM, LTD.
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Telephone: (702) 255-4552 / Fax: (702) 255-4677
7 e-mail: probate@rushforthfirm.com
8 *Attorneys for Jacqueline M. Montoya
and Kathryn A. Bouvier*

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate

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

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

CASE APPEAL STATEMENT

A Non-Testamentary Trust.

Petitioners Jacqueline M. Montoya and Kathryn A. Bouvier hereby provide their Case Appeal
Statement in accordance with NRAP 3(a)(1).

The District Court Case Number and Parties (NRAP 3(a)(1)(A))

Judicial District County: Eighth

County: Clark

District Ct. Case No. P-09-066425-T

Appellants: Jacqueline M. Montoya and Kathryn A. Bouvier

Respondent: Eleanor C. Ahern a/k/a Eleanor Connell Hartman Ahern

Other Interested Party: Fredrick P. Waid, Court-Appointed Interim Trustee

The District Court Judge (NRAP 3(a)(1)(B))

Department: 26

County: Clark

Judge: Gloria J. Sturman

Appellants and Appellants' Counsel (NRAP 3(a)(1)(C))

Appellants Jacqueline M. Montoya and Kathryn A. Bouvier are represented in this appeal as follows:

Attorneys: Layne T. Rushforth, Joseph J. Powell and Daniel P. Kiefer

Telephone: 702-255-4552

Firm: THE RUSHFORTH FIRM, LTD.

Address: 1707 Village Center Circle, Suite 150 Las Vegas, Nevada 89134

Respondent and Respondent's Counsel (NRAP 3(a)(1)(D))

Respondent Eleanor C. Ahern a/k/a Eleanor Connell Hartman Ahern is represented in this appeal as follows:

Attorney: Kirk B. Lenhard

Tel. (702) 382-2101

Firm: BROWNSTEIN HYATT FARBER SCHRECK

Address: 100 North City Parkway Las Vegas, Nevada 89106-4614

Out of State Counsel (NRAP 3(a)(1)(E))

N/A

Appellants' Counsel in the District Court (NRAP 3(a)(1)(F)&(G))

Jacqueline M. Montoya and Kathryn A. Bouvier did not proceed in forma pauperis in the district court, but were represented by counsel as follows:

Attorneys: Layne T. Rushforth, Joseph J. Powell and Daniel P. Kiefer

Telephone: 702-255-4552

Firm: THE RUSHFORTH FIRM, LTD.

Address: 1707 Village Center Circle, Suite 150 Las Vegas, Nevada 89134

Commencement Date in the District Court (NRAP 3(a)(1)(H))

Original Commencement Date: August 17, 2009

Commencement Date Related to the Issues on Appeal: June 3, 2015

Brief Description of the Nature of the Action and Result ((NRAP 3(a)(1)(I))

On June 3, 2015, Jacqueline M. Montoya and Kathryn A. Bouvier, filed their Motion for Assessment of Damages against Eleanor Ahern; Enforcement of No-Contest Clause; and Surcharge of Eleanor's Trust Income. The district court denied that portion of the motion which seeks enforcement of the no-contest clause and this appeal ensued.

Previous Appeals in this Matter (NRAP 3(a)(1)(J))

Yes: Appeal No. 69737 (dismissed by stipulation of parties), and Appeal Nos. 66231; 67782; 68046 (consolidated and fully briefed).

Child Custody and Visitation Issues (NRAP 3(a)(1)(K))


N/A

Possibility of Settlement ((NRAP 3(a)(1)(L))

Previous settlement attempts have been unfruitful. The parties did previously reach a global settlement, but Ms. Ahern later reneged on the agreement. The petitioners moved to enforce the settlement agreement, but their motion was denied. Furthermore, petitioners do not believe that enforcement of the no-contest clause is an issue that can be resolved through settlement.

Dated this 26th day of October 2016.

THE RUSHFORTH FIRM, LTD.

By: 
LAYNE T. RUSHFORTH
State Bar No. 1004
JOSEPH J. POWELL
State Bar No. 8875
DANIEL P. KIEFER
State Bar No. 12419
P. O. Box 371655
Las Vegas, NV 89137-1655
Telephone: (702) 255-4552 / Fax: (702) 255-4677
e-mail: probate@rushforthfirm.com

*Attorneys for Jacqueline M. Montoya
and Kathryn A. Bouvier*

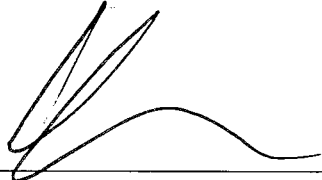
CERTIFICATE OF SERVICE

Pursuant to Rule 5(b), I hereby certify that service of the above **CASE APPEAL STATEMENT** was made via wiznet.com on this date as follows:

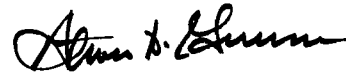
Todd Moody, Esq.
HUTCHISON & STEFFEN LLC
10080 W. Alta Drive #200
Las Vegas, Nevada 89145
Attorney for Interim Trustee

Kirk B. Lenhard, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106
Attorney for Eleanor Ahern

DATED this 26th day of October, 2016



Employee of Rushforth Firm, Ltd.



CLERK OF THE COURT

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

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

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 In the matter of

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

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

13
14 **ACCOUNTING AND REPORT OF TRUST ACTIVITY FROM 2013 TO 2015**

15 Fredrick P. Waid, Successor Trustee of the W.N. Connell and Marjorie T. Connell
16 Living Trust, dated May 18, 1972, (the "Trust"), hereby files this Accounting and Report of
17 Trust Activity from 2013 to 2015 ("Report"). During most of this time period, Eleanor Ahern
18 served as the sole trustee of the Trust and had exclusive access and control of all Trust checking,
19 savings and other accounts. The Successor Trustee filed an Interim Report under seal on July
20 6, 2015.

21 The Court is well aware of the litigation history in this case and a narrative recital is not
22 warranted in this Report. Since the Appointment of the Successor Trustee in April 2015, this
23 Court has issued numerous orders requiring Ms. Ahern to produce records, comply with
24 deposition notices and cooperate with the Successor Trustee's efforts to prepare an accounting
25 for time periods when she served as Trustee. In response to the Court's orders Ms. Ahern has
26 produced, through her various counsel, only limited records primarily consisting of forwarded
27 mail. She did not appear for any scheduled or ordered depositions notwithstanding the findings
28

HUTCHISON & STEFFEN

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

1 of the Court regarding fraud and other misconduct pursuant to hearings on the Motion to
2 Enforce the Trust's No Contest Clause.

3 Due to her failure to appear and cooperate as ordered, a significant portion of the
4 transactional history that occurred during Ms. Ahern's tenure as trustee cannot be reconciled or
5 explained. As such, and pursuant to Generally Accepted Accounting Principles (GAAP), the
6 Successor Trustee is unable to this provide the Court with definitive information or explain as
7 to the greatly expanded Trust expenditures, either in dollars spent or to whom those dollars were
8 paid, during the accounting period and Ms. Ahern's tenure as Trustee.

9 For clarification, in years prior to June 2013, the Trust expenditures were generally
10 limited to three categories, including (1) property taxes, (2) liability insurance premiums and (3)
11 limited professional fees for legal or accounting services. All other income/royalties were
12 distributed to the Trust beneficiaries who were individually responsible for any associated tax
13 liabilities. The Trust was designed to eliminate any taxable income at the Trust level with all
14 income passing to the respective 65% beneficiary, the MTC Trust ("MTC"), and the 35%
15 beneficiary, Eleanor Ahern as a lifetime beneficiary of income only.

16 During Ms. Ahern's tenure approximately thirty (30) other companies and/or individuals
17 were paid with Trust funds. (A list of payees and amounts is attached as Exhibit A.) Again, due
18 to Ms. Ahern's failure to answer questions under oath, the rationale and basis for the
19 expenditures remain unanswered and unclear. What is clear is that MTC did not receive a single
20 distribution of royalty income from the Trust between June 2013 and April 2015. Only after Ms.
21 Ahern was removed as Trustee by the Court did MTC once again begin receiving its share of
22 distributions. A significant number of expenses that were authorized by Ms. Ahern appear to
23 have provided no benefit to the Trust and cannot be deemed appropriate, deductible business
24 expenses as defined and permitted by the Internal Revenue Code.

25 After reviewing available records from the Internal Revenue Service, various banks, oil
26 and gas producers, common royalty recipients (*i.e.*, the Miller family, which shares an equivalent
27 25% royalty interest as the Trust) and partial reconciliations completed by the accounting firm
28

of Gammet & King CPAs, the Successor Trustee prepared the chart attached as Exhibit B, which sets forth the best available basis for calculation of royalties not paid to the MTC Trust, as required by the terms of the Trust and as determined by this Court's previous findings and orders.

MTC should have received royalty payments of \$481,010 for 2013, \$2,028,134 for 2014 and \$1,447,406 for 2015, totaling \$3,956,550. MTC received for the three (3) year period a total of \$2,214,497, with \$1,914,622 of the amount being paid after Ms. Ahern was removed as Trustee. The total undistributed royalties for the period is \$1,742,053.

The Successor Trustee takes no position as to the Court's imposition of damages relating to the conduct of Ms. Ahern. The Trustee has ongoing fiduciary duties to Ms. Ahern, notwithstanding her interest being temporarily suspended. Additionally, the Successor Trustee continues his efforts to recover certain tax payments made to the U.S. Treasury as a result of Ms. Ahern's failure to comply with and administer the Trust according to its terms and intent. It is anticipated that amended tax returns and refunds will be resolved and closed by mid-2017. As of the filing of this Report, Ms. Ahern has not identified or confirmed any successor counsel to represent her in this matter.

On Saturday, January 21, 2017, the Successor Trustee coordinated and participated with the Mesquite Police Department in a "well check" of Ms. Ahern. After inspecting her residence and interviewing her, the responding officer determined that Ms. Ahern had sufficient food, clothing and shelter and appeared to be in good health based on his observations and Ms. Ahern's declaration to the officer. It should be noted that the last mailing address provided by Ms. Ahern's former counsel is not the address where Ms. Ahern currently resides. She currently

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HUTCHISON & STEFFEN

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

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resides at 111 Paradise Pkwy., Mesquite, Nevada, 89027.

Dated this 1 day of ~~January~~^{February}, 2017.

HUTCHISON & STEFFEN



Todd L. Moody (5430)
Russel J. Geist (9030)
10080 W. Alta Dr., Ste 200
Las Vegas, NV 89145
Phone: (702) 385-2500
tmoody@hutchlegal.com
rgeist@hutchlegal.com
Attorneys for Fredrick P. Waid
Court-appointed Trustee

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN and that on this 1st day of February, 2017, I caused a true and correct copy of the above and foregoing **ACCOUNTING AND REPORT OF TRUST ACTIVITY FROM 2013 TO 2015** to be served as follows:

- ☒ [X] 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
- ☒ [X] pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ [] Pursuant to EDCR 7.26, to be sent via facsimile; and/or
- ☐ [] to be hand-delivered;

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

Via U.S. Mail Only:

Eleanor Ahern
111 Paradise Pkwy.
Mesquite, NV 89027

Via U.S. Mail Only:

Eleanor Ahern
400 Paradise Pkwy., Unit 111
Mesquite, NV 89027

Via Wiznet Only:

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

Via Wiznet Only:

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

Via Wiznet Only:

Daley A. Hayes, Esq.
Liane K. Wakayama, Esq.
Candice E. Rinka, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145


An Employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

EXHIBIT A

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

11:57 AM

02/01/17

WN CONNELL AND MARJORIE T CONNELL 1972 TRUST
CONNELL TRUST ACCTS #1254900135/8737649197/1985753274
 January 2013 through December 2015

Type	Date	Memo	Account	Split	Amount
AMERICAN EXPRESS					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Unknown Expe...	-5,000.00
Check	07/03/2014	CSH CK #674...	CONNELL TRUST #8737649197	Unknown Expe...	-10,000.00
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-10,000.00
AMERICAN PATROLS					
Check	03/05/2014	RE: AIRAERI...	CONNELL TRUST #1985753274	Unknown Expe...	-1,000.00
BANK OF AMERICA					
Check	03/05/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-2,000.00
BARBARA SHORTZ					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Counseling Ex...	-2,301.40
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Counseling Ex...	-3,000.00
Check	10/17/2014	CASH / CSH ...	CONNELL TRUST #1985753274	Counseling Ex...	-3,000.00
Check	12/19/2014	REF #9166	CONNELL TRUST #1254900135	Counseling Ex...	-8,600.00
BREATH OF LIFE SYSTEMS					
Check	12/19/2014	REF #9167	CONNELL TRUST #1254900135	Unknown Expe...	-5,198.46
BRENNAN LEGAL COUNSEL					
Check	05/13/2013	CSH CK #745...	CONNELL TRUST #8737649197	Legal Expense	-2,000.00
BURKS SECURITY					
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Security Expen...	-30,400.00
CENTURY LINK					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Telephone Exp...	-1,000.00
CIRRUS AVIATION SERVICES					
Check	03/17/2014		CONNELL TRUST #1985753274	Airline Expense	-23,160.60
Check	07/21/2014	CSH CK #674...	CONNELL TRUST #8737649197	Airline Expense	-7,709.91
CITY OF LAS VEGAS SEWER SERVICES					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Utilities Expense	-612.00
CLARK COUNTY ASSESSOR					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Taxes - Property	-7,000.00
CONNELL FAMILY FOUNDATION					
Check	05/08/2013	(NOT USED ...	CONNELL TRUST #8737649197	Unknown Expe...	-27,449.54
COX COMMUNICATIONS					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Cable Expense	-800.00
CURT BAGGETT					
Check	08/20/2013	CSH CK #745...	CONNELL TRUST #1985753274	Unknown Expe...	-1,000.00
Check	02/14/2014	RE: W/M CO...	CONNELL TRUST #8737649197	Unknown Expe...	-7,000.00
DAREL BURKS					
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Security Expen...	-3,000.00
Check	12/19/2014	REF #9164	CONNELL TRUST #1254900135	Security Expen...	-2,000.00
DAVID MANN					
Check	11/14/2014	RE: REIMBU...	CONNELL TRUST #1985753274	Unknown Expe...	-10,000.00
DCP MIDSTREAM					
Deposit	08/07/2013	CK #818622	CONNELL TRUST #8737649197	Gas/Oil Leases	62.54
DEE DETAILING CLEANING					
Check	12/31/2014	CSH CK #24...	CONNELL TRUST #1985753274	Janitorial Expe...	-550.00
DOUG EDWARDS					
Check	01/26/2015	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-10,000.00
ELEANOR M AHERN					
Check	03/06/2013	CSH CK #745...	CONNELL TRUST #8737649197	ELEANOR M A...	-17,548.22
Check	03/06/2013	LESS 3899.5...	CONNELL TRUST #8737649197	(UNKNOWN) ...	-17,548.22
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-2,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	(UNKNOWN) #...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	ELEANOR M A...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD J...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	(UNKNOWN) ...	-5,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-5,073.80
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-7,000.00
Check	09/11/2013	CSH CK #241...	CONNELL TRUST #1985753274	AHERN/POD ...	-11,000.00
Check	03/23/2015	CSH CK #084...	CONNELL TRUST #1254900135	Unknown Expe...	-100,000.00
EXPERT JET CHARTER					
Check	09/06/2014	CSH CK #578...	CONNELL TRUST #8737649197	Airline Expense	-53,003.90
FORENSIC SPECIALIST LIMITED					
Check	10/27/2014	REF #8699	CONNELL TRUST #1254900135	Unknown Expe...	-9,613.94
GAMMETT AND KING CPA'S					
Check	02/24/2014	RE: W/M CO...	CONNELL TRUST #1985753274	Accounting Ex...	-5,000.00
HANDWRITING LLC					
Check	12/31/2014	RE: CURT BA...	CONNELL TRUST #1985753274	Unknown Expe...	-5,477.00
INTERNAL REVENUE SERVICE					

11:57 AM

02/01/17

WN CONNELL AND MARJORIE T CONNELL 1972 TRUST
CONNELL TRUST ACCTS #1254900135/8737649197/1985753274
 January 2013 through December 2015

Type	Date	Memo	Account	Split	Amount
Check	12/29/2014	CSH CK #241...	CONNELL TRUST #1985753274	Income Taxes	-55,000.00
JAMES MANN					
Check	10/24/2014	REF #3765	CONNELL TRUST #1254900135	Unknown Expe...	-125,000.00
JASON COLLINS					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Unknown Expe...	-2,200.00
Check	07/03/2014	CSH CK #674...	CONNELL TRUST #8737649197	Unknown Expe...	-2,200.00
Check	07/11/2014	OVERPD BY ...	CONNELL TRUST #8737649197	Unknown Expe...	-2,200.00
Check	08/04/2014	CSH CK #241...	CONNELL TRUST #8737649197	Unknown Expe...	-2,200.00
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-22,000.00
Check	12/19/2014	REF #9165	CONNELL TRUST #1254900135	Unknown Expe...	-9,250.00
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-4,400.00
Check	01/31/2015	CSH CK #718...	CONNELL TRUST #1985753274	Unknown Expe...	-7,600.00
Check	02/18/2015	REF #1144	CONNELL TRUST #1985753274	Unknown Expe...	-6,600.00
JEFFREY BURR LAW FIRM					
Check	05/08/2014	CSH CK #649...	CONNELL TRUST #8737649197	Legal Expense	-50,000.00
Check	06/03/2014	REF #5032	CONNELL TRUST #8737649197	Legal Expense	-60,000.00
Check	10/17/2014	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-125,000.00
JEFFREY JOHNSTON & ASSOCIATES					
Check	06/10/2013	RE: LEGAL F...	CONNELL TRUST #8737649197	Legal Expense	-7,000.00
JET PARTNERS WORLDWIDE					
Check	11/06/2014	CSH CK #241...	CONNELL TRUST #1985753274	Airline Expense	-25,800.00
JOHNSTON & ASSOCIATES					
Check	06/05/2013	CSH CK #649...	CONNELL TRUST #8737649197	Legal Expense	-5,000.00
Check	08/07/2013	CONNELL TR...	CONNELL TRUST #8737649197	Legal Expense	-20,000.00
Check	08/15/2013	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-50,000.00
KINGDOM TITLE SOLUTIONS					
Check	12/29/2014	WIRE	CONNELL TRUST #1985753274	Unknown Expe...	-75,000.00
LARRY PRUCKA					
Check	04/07/2014	CPA / CSH C...	CONNELL TRUST #8737649197	Accounting Ex...	-4,000.00
Check	07/03/2014	CSH CK #674...	CONNELL TRUST #8737649197	Accounting Ex...	-2,000.00
LAURIE HOELTZEL					
Check	07/11/2014	CSH CK #674...	CONNELL TRUST #8737649197	Unknown Expe...	-740.00
LISA JOHNSON					
Check	06/10/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-2,000.00
LYNCH, CHAPPELL & ALSUP					
Check	01/10/2013	RE: Legal Fe...	CONNELL TRUST #8737649197	Legal Expense	-4,000.00
Check	05/13/2013	RE: HARPER...	CONNELL TRUST #8737649197	Legal Expense	-5,000.00
MARGARET WURDELLA					
Check	05/08/2014	CSH CK #649...	CONNELL TRUST #8737649197	Unknown Expe...	-3,500.00
MARGARET WURDELLA LIVING TRUST					
Check	02/27/2015	CSH CK #848...	CONNELL TRUST #1985753274	Unknown Expe...	-1,750.00
MARQUIS AURBACH COFFING					
Check	11/24/2014	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-15,000.00
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-21,782.28
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-21,000.00
Check	01/26/2015	CSH CK #241...	CONNELL TRUST #1985753274	Legal Expense	-30,394.22
Check	02/20/2015	WIRE	CONNELL TRUST #1985753274	Legal Expense	-75,000.00
MCNAIR & ASSOCIATES					
Check	05/13/2013	CSH CK #745...	CONNELL TRUST #8737649197	Accounting Ex...	-1,200.00
Check	08/07/2013	CSH CK #745...	CONNELL TRUST #8737649197	Accounting Ex...	-900.00
Check	07/03/2014	RE: CPA / CS...	CONNELL TRUST #8737649197	Accounting Ex...	-2,144.18
MTC LIVING TRUST					
Check	02/15/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-47,603.71
Check	05/09/2013	RE: LESS W...	CONNELL TRUST #8737649197	Unknown Expe...	-44,477.73
Check	06/11/2013	RE: GIFT 201...	CONNELL TRUST #8737649197	Unknown Expe...	-37,000.00
NEVADA POWER					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Utilities Expense	-1,000.00
OMNI HOTEL AND RESORTS					
Check	07/03/2014	REF: FORT ...	CONNELL TRUST #8737649197	Hotel Expense	-7,000.00
Check	07/11/2014	CSH CK #674...	CONNELL TRUST #8737649197	Hotel Expense	-6,500.00
PROPERTY SERVICES					
Check	10/27/2014	CSH CK #241...	CONNELL TRUST #1254900135	Rent Expense	-8,600.00
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Rent Expense	-6,000.00
PRUDENTIAL AMERICANA GRP					
Check	03/05/2014	RE: CONNEL...	CONNELL TRUST #1985753274	Rent Expense	-2,250.00
REAL ESTATE SERVICES					
Check	03/05/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-10,000.00

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WN CONNELL AND MARJORIE T CONNELL 1972 TRUST
CONNELL TRUST ACCTS #1254900135/8737649197/1985753274
 January 2013 through December 2015

Type	Date	Memo	Account	Split	Amount
Check	04/23/2014	CSH CK #241...	CONNELL TRUST #8737649197	Unknown Expe...	-90,000.00
Check	05/08/2014	CSH CK #649...	CONNELL TRUST #8737649197	Unknown Expe...	-50,000.00
Check	07/21/2014	CSH CK #574...	CONNELL TRUST #8737649197	Unknown Expe...	-150,000.00
REPUBLIC SERVICES					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Trash Expense	-420.00
ROBINSON REALTY					
Check	04/07/2014	CSH CK #291...	CONNELL TRUST #8737649197	Unknown Expe...	-2,500.00
RYAN SCHARAR					
Check	08/20/2013	REF #2561	CONNELL TRUST #1985753274	Legal Expense	-10,000.00
Check	08/20/2013	RE: ELEANO...	CONNELL TRUST #1985753274	Legal Expense	-20,000.00
SHAUNA BRENNAN					
Check	01/10/2013	RE: Legal Fe...	CONNELL TRUST #8737649197	Legal Expense	-5,000.00
SHERRY DOBER					
Check	06/10/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-1,000.00
SHORTZ CONSULTING					
Check	08/15/2013	REF #5534	CONNELL TRUST #1985753274	AHERN/POD ...	-35,000.00
Check	12/26/2014	CSH CK #241...	CONNELL TRUST #1985753274	Counseling Ex...	-31,200.00
STAN CRAWFORD ESQUIRE					
Check	05/08/2014	CSH CK #649...	CONNELL TRUST #8737649197	Legal Expense	-2,000.00
STERLING CLARK					
Check	11/24/2014	CSH CK #241...	CONNELL TRUST #1985753274	Unknown Expe...	-500.00
T MOBILE					
Check	12/31/2014	CSH CK #241...	CONNELL TRUST #1985753274	Cellular Expense	-1,000.00
TONY DAVE & ASSOCIATES					
Check	10/27/2014	RE: CONSUL...	CONNELL TRUST #1254900135	Unknown Expe...	-5,000.00
UPTON COUNTY APPRAISAL DISTRICT					
Check	02/25/2014	RE: 2013 TA...	CONNELL TRUST #1985753274	Taxes - Property	-3,199.06
Check	12/26/2014	RE: 2014 TA...	CONNELL TRUST #1985753274	Taxes - Property	-65,000.00
Deposit	02/28/2015	Overpayment ...	CONNELL TRUST #1254900135	Taxes - Property	25,799.78
W/M CONNELL TRUST					
Check	04/09/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-45,336.10
Check	02/18/2015	CSH CK #084...	CONNELL TRUST #1254900135	Unknown Expe...	-1,287,580.85
Check	03/23/2015	CSH CK #084...	CONNELL TRUST #1254900135	Unknown Expe...	-500,000.00
WATTS BUSINESS SERVICES					
Check	08/07/2013	CSH CK #745...	CONNELL TRUST #8737649197	Unknown Expe...	-500.00
WELLS FARGO					
Check	09/11/2013	MASTERCAR...	CONNELL TRUST #1985753274	Unknown Expe...	-25,000.00
Check	04/07/2014	RE: MASTER...	CONNELL TRUST #8737649197	Unknown Expe...	-10,000.00

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EXHIBIT PAGE ONLY

EXHIBIT B

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST

Royalty Calculations	2013	2014	2015	TOTALS
Connell Trust royalty income	\$740,015	\$3,120,206	\$2,226,779	\$6,087,000
Miller royalty income differential	<u>-\$1,319,276</u>	<u>-\$2,585,096</u>	<u>-\$2,090,389</u>	<u>-\$5,994,761</u>
	-\$579,261	\$535,110	\$136,390	\$92,239
65% of Connell income	\$481,010	\$2,028,134	\$1,447,406	\$3,956,550
Royalties received by MTC	<u>\$299,875</u>	<u>\$0</u>	<u>\$1,914,622</u>	<u>\$2,214,497</u>
Unpaid royalties due MTC	\$181,135	\$2,028,134	-\$467,216	\$1,742,053