Case No. 71577

In the Supreme Court of Nevada

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

JACQUELINE M. MONTOYA; AND KATHRYN A. BOUVIER,

Appellants,

vs.

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

Respondent.

Appellants' Appendix
from the Eighth Judicial District Court, Clark County
The Honorable Gloria Sturman
District Court Case No. P-09-066425-T

APPELLANTS' APPENDIX, VOLUME 9 OF 9[1]

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[1] This additional volume is filed in accordance with NRAP 30(b)(5).

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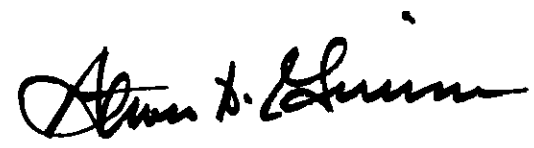

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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, Dated May 18, 1972, An Inter Vivos Irrevocable Trust.	CASE NO. P-09-066425 DEPT NO. XXVI (26) Date of Hearing: January 14, 2015 Time of Hearing: 10:00a.m.

OPPOSITION TO ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; AND, COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF

Kathryn A. Bouvier ("Kathryn") and Jacqueline M. Montoya ("Jacqueline") hereby oppose the MOTION TO DISMISS 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) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PER NRCP 12(b)(5)

("Eleanor's Motion"), filed herein on October 9, 2014, by Eleanor C. Ahern ("Eleanor"); and, they further hereby submit their COUNTERMOTION FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF, stating as follows:

It is respectfully submitted that once the Court understands the pertinent facts in this case and applies the law thereto it will be obvious that Eleanor's Motion is frivolous and a waste of time and expense to the Court and the parties in this case. On the other hand, it is further respectfully submitted that the Countermotion of Jacqueline and Kathryn set forth hereafter has merit and should be granted.

PERTINENT BACKGROUND FACTS

1. This Trust Case was actually commenced by Eleanor in 2009 with an unopposed Trust Petition (hereinafter referred to as the "2009 Petition") to obtain a Court order clarifying to whom subtrust benefits would be paid upon her death. A copy of Eleanor's 2009 Petition is attached as Exhibit "D" to Eleanor's Motion. The Trust involved was THE W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, dated May 18, 1972 (hereinafter referred to as "Trust No. 1"). The subtrust involved in the 2009 Petition was Trust No. 2, created under the provisions of Trust No. 1.

2. The Trust No. 1 provisions created two sub-trusts upon the death of original grantor, W. N. Connell, in 1979 (referred to as Trusts Nos. 2 and 3). Income allocated to Trust No. 2 was payable to Eleanor during her lifetime. Income and assets of Trust No. 3 belonged to Marjorie T. Connell (hereinafter "Marjorie"), one of the original trustors creating the Trusts. However, the Trust No. 2 provisions were not clear as to the designation of the successor beneficiaries entitled to the benefits under Trust No. 2 upon the death of Eleanor. On the other hand, the provisions for the designation of successor beneficiaries to the income and assets of Trust No. 3, after the death of Marjorie, were perfectly clear.

3. Therefore, Eleanor, following Marjorie's death, was advised by her former attorneys handling this Trust matter, **and she herself elected**, to petition the Court to make clear that her two daughters, Jacqueline and Kathryn, would inherit her benefits and the assets under Trust No. 2 upon her death. As the 2009 Petition proceedings will clearly demonstrate, the 2009 Petition and court action was a totally uncontested matter dealing only with Trust No. 2. Eleanor was the Petitioner and no other persons intervened in the proceedings.

4. On September 4, 2009, pursuant to Eleanor's 2009 Petition, the District Court took jurisdiction over Trust No. 1 (and the sub-trusts created thereunder), approved Eleanor's request for clarification, and ordered that Trust No. 1 and Trust No. 2 be reformed and clarified to provide that upon the death of Eleanor, the income rights which she had under Trust No. 2 and the assets therein, would pass to her two daughters, Jacqueline and Kathryn. This was obviously the intent of the original grantors of Trust No. 1, W. N. Connell and Marjorie T. Connell, as had been asserted in Eleanor's 2009 Petition.

5. Pursuant to the provisions of Trust No. 1, Trust No. 2, and Trust No. 3, up to the time, and at the time, of Eleanor's initial 2009 Petition in this Trust Case, and the September 4, 2009 Order entered by the Court clarifying entitlement after Eleanor's death, approximately 35% of the income earned by Trust 1, from Texas oil and mineral properties it owned, was being paid to Eleanor as the beneficiary under Trust No. 2. The remaining approximate 65% of the income earned by Trust 1 had been paid to Marjorie as the beneficiary of Trust No. 3 until her death in 2009.

6. After Marjorie's death and the entry of the Court's September 4, 2009 Order clarifying to whom the income and assets of Trust No. 2 would devolve after Eleanor's death, and for the next four years thereafter, the income of Trust No. 1 was continued to be paid in the same proportions, with approximately 35% going to Eleanor as the income beneficiary under Trust No. 2, and the remaining approximate 65% portion going to Jacqueline and Kathryn as beneficiaries under Trust No. 3. (Marjorie

designated Jacqueline and Kathryn as the beneficiaries by naming them as the beneficiaries under her MTC Living Trust, which Trust Marjorie also designated, by a power of appointment granted her under Trust No. 1, as the beneficiary of her interests under Trust No. 3.)

7. This consistent allocation of the income continued until approximately June, 2013, when Eleanor suddenly decided that she should receive all of the income from Trust No. 1, and she discontinued any payments to Jacqueline and Kathryn.

8. Thus, to reiterate, the division and distribution of income earned by Trust No. 1 (i.e., 35% to the beneficiary of Trust No. 2 and 65% to the beneficiary of Trust No. 3) was recognized, approved, and followed by the Trustees of the Trust and all beneficiaries from the death of original Trustor, W. N. Connell, in 1979, until the summer of 2013, when Eleanor, as Trustee of Trust No. 1, then decided that while she was alive, all of the Trust No. 1 income (the shares payable to both Trust No. 2 and Trust No. 3) should be paid to her. Therefore, she abruptly ceased distributing any of the Trust No. 1 income to Jacqueline and Kathryn beginning in June, 2013.

9. Eleanor, as Trustee of Trust No. 1, abruptly ceased paying any income from Trust No. 1 to Jacqueline and Kathryn, as beneficiaries under Trust No. 3, via the MTC Living Trust, in June, 2013, without filing any petition with the Court for instructions to clarify whether her position was correct or not. Neither did she discuss the reasoning or legal basis of her decision with Jacqueline or Kathryn. In suddenly stopping payments to Jacqueline and Kathryn, she went counter to 34 years of history and precedent in how the income of Trust No. 1 was allocated (i.e. 35% to Trust No. 2, and 65% to Trust No. 3). Eleanor's conduct left Jacqueline and Kathryn then, in 2013, with no other alternative but to seek Court assistance themselves in restoring to them their beneficial income rights under Trust No. 3, via their beneficial interests in the MTC Living Trust.

10. As the Court had already taken jurisdiction over Trust No. 1 with the filing of Eleanor's 2009 Petition in this Trust Case, Jacqueline, as Trustee of Marjorie

Connell's MTC Living Trust, and on her and Kathryn's behalf as beneficiaries, filed herein on September 27, 2013, the PETITION FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS 164.033(1)(A) (hereinafter "current Trust Petition"). The purpose of this current Trust Petition, which is now pending before the Court, was to resolve Eleanor's abrupt cessation of payments of income to Jacqueline and Kathryn from Trust No. 1 in June, 2013, and restore to them the income they are entitled to as beneficiaries under Trust No. 3. Jacqueline and Kathryn further believe that Eleanor's actions constitute a breach of her fiduciary duties as Trustee of the Trust, requiring her removal as Trustee and awarding to them the damages they have suffered, as well as damages for her wrongful conduct. Further, they submit that her belated claim to all of the Trust income is contrary to the Trust provisions and triggers the right to have the "no-contest clause" in the Trust applied to cause Eleanor to forfeit all rights to benefits under the Trust. Lastly, they submit that Eleanor's wrongful conduct and the litigation expenses it has caused to Jacqueline and Kathryn also justify the Court awarding them judgment against Eleanor for the attorney's fees and costs they have incurred.

11. The purpose of Eleanor's initial uncontested 2009 Petition in these proceedings was simply to have the Court interpret and reform the subtrust (i.e. Trust No. 2) to clarify to whom the income and assets of Trust No. 2 would be distributed after Eleanor's death. At the time of that 2009 Petition, at the time the Order on that Petition was granted in 2009, and for four years thereafter, there was no dispute between Eleanor and Jacqueline and Kathryn as to Trust No. 3's entitlement to 65% of the income from Trust No. 1. In fact, there had never before then been a dispute as to this distribution of income (35%/65%) between Trust No. 2 and Trust No. 3 from the date of W. N. Connell's death in 1979, until Eleanor's abrupt cessation of payments to Jacqueline and Kathryn in June, 2013.

12. In addition to the proceedings commenced with the current Trust Petition,

and approximately 6 months after the filing of the current Trust Petition to establish that Jacqueline and Kathryn have the right to 65% of the trust income from Trust No. 1, Eleanor, in 2014, filed a Will Contest in Case No. P-14-080595-E. Eleanor's purpose in filing the Will Contest is to try to prove that Marjorie's 2008 Will is invalid. If she accomplished that purpose, then it would be her position that the power of appointment that Marjorie exercised in her Will, appointing to her MTC Living Trust (and in turn to Jacqueline and Kathryn as beneficiaries under that Trust) all rights and interests under Trust No. 3 upon her death, is null and void, in which event the benefits under Trust No. 3 passed to her upon Marjorie's death.

13. Thus, Eleanor, in her quest to now claim the right to the income from Trust No. 3, has made two separate claims. Her first claim asserted in July, 2013 (by stopping payments to Jacqueline and Kathryn), is under the provisions of Trust No. 1 (and subtrusts thereunder) where she asserts that the trust terms in question require that she should be paid the income allocated to Trust No. 3, challenging and seeking to reverse 34 years of trust administration precedent. Her second claim and approach to claim all the income is with her Will Contest. By invalidating Marjorie's Will, she believes Marjorie would then not have successfully exercised her power of appointment granted to her under Trust No. 3, leaving the devolution of Trust No. 3 benefits to her upon Marjorie's death, instead of to Marjorie's MTC Living Trust (and Jacqueline and Kathryn as beneficiaries under that Trust).

14. Now, Eleanor has filed Eleanor's Motion asserting that Jacqueline's and Kathryn's current Trust Petition should be dismissed for failure to state a claim. More specifically, she asserts that the current Trust Petition is precluded under the legal theory of "claim preclusion". Eleanor asserts that when she filed her 2009 initial Petition in this Trust Case to clarify to whom benefits under Trust No. 2 would devolve upon her death, Jacqueline and Kathryn had a duty, under the legal theory of claim preclusion to assert their claim to income under Trust No. 3. By failing to do so in 2009 when Eleanor filed her initial 2009 Petition, Eleanor claims that they have

forfeited the right to now file an action claiming their right to the income under Trust No. 3, and challenging Eleanor's efforts in 2013 to cut off their income rights. Eleanor's Motion and assertions therein are preposterous!

15. Obviously, when Eleanor filed her initial uncontested 2009 Petition to clarify beneficial rights to Trust No. 2 upon her death, Jacqueline and Kathryn had no "claim" or cause of action to assert with respect to their right to receive the income under Trust No. 3. They had no "claim" because their right to receive the income was recognized, and had been recognized by all persons concerned, including Eleanor, since the death of W. N. Connell in 1979. This right was provided to them under the terms of Trust No. 1 and Trust No. 3, and Marjorie's MTC Living Trust. So, it would not have been possible, when Eleanor filed her initial 2009 Petition, for Jacqueline and Kathryn to have been aware that four years later, in 2013, Eleanor would suddenly do an about face and make a claim to the income under Trust No. 3, ignoring the said Trusts' terms and 34 years of precedent following such terms.

16. Prior to Eleanor's abrupt cessation of payments to Jacqueline and Kathryn in 2013, Jacqueline and Kathryn had no reason to suspect or predict that Eleanor would take the highly illogical and unsupportable position that she has the right to the income from Trust No. 3. Eleanor had not made any such claim to the income for 34 years, while not only receiving 35% of the income benefits under Trust No. 2, but also while serving as the Co-Trustee and successor sole Trustee of Trust No. 1, Trust No. 2 and Trust No. 3, tasked with properly administering and distributing the income thereunder. Eleanor's position, in now claiming all of the income, is tantamount to an admission on her part that she did not exercise her fiduciary duties properly as Trustee of the Trusts for 34 years. She is contradicting her own decisions and actions over that 34 year period in her current claim to the income allocated to Trust No. 3. Most importantly, it cannot be disputed that Eleanor's sudden change in making her claim to the income in 2013, was not known or predictable by Jacqueline and Kathryn four years earlier in 2009, so as to create in them a duty to make a claim then to the income,

or be precluded therefrom under the legal theory of claim preclusion, as illogically asserted in Eleanor's Motion.

17. Jacqueline's and Kathryn's claim under their current Trust Petition simply is a claim that did not exist in 2009 (since there was no dispute creating a claim at that time). Their claim, or more appropriately their cause of action, only came into existence in the summer of 2013, when Eleanor "out of the clear blue" decided to claim all of the income under Trust No. 3 and cut off their income stream, breaching her duties as Trustee of the Trust. Thus, it is utterly impossible for Jacqueline's and Kathryn's claim to the income under Trust No. 3, as asserted in their current Trust Petition, to be barred under the theory of claim preclusion as asserted in Eleanor's Motion.

18. On the other hand, Eleanor has now asserted and admitted, since the filing of the current Trust Petition, that she has believed that she was entitled to all of the income paid from Trust No. 1 to Trust No. 3 since the death of W. N. Connell in 1979. She has asserted that an attorney (who is now deceased) so advised her at that time, but she never took any action or made anyone else involved aware of her belief. Her excuse for not taking action or revealing her belief regarding her claim to all of this income prior to June, 2013, is that she allegedly did not want to alienate her mother, Marjorie, and have her otherwise disinherit her. She has also asserted in these proceedings (inconsistently) that she wanted to gift the income to Marjorie as a good will gesture. (This last excuse of course does not explain why she also "gifted" under this reasoning the income from Trust No. 3 to Jacqueline and Kathryn for four years after Marjorie's death until July, 2013.) Nonetheless, the fact Eleanor admits allegedly recognizing that she was purportedly entitled to all of the income for the last 34 years, but just did not want to "rock the boat", raises the issue of whether she, **herself**, is precluded from now claiming the right to all of the income from Trust No. 3 under the legal theory of claim preclusion, providing a legal basis to grant Jacqueline's and Kathryn's Countermotion for Summary Judgment on the claims asserted in their current

Trust Petition.

19. Eleanor, though now claiming that she has allegedly known she purportedly had the right to all of the income for the last 34 years, has not acted consistently with this alleged belief. First, as a beneficiary and second as a Co-Trustee or sole Trustee of Trust No. 1 and its subtrusts, she has approved and allowed 65% of Trust No. 1 income to be paid to the beneficiary of Trust No. 3. This inconsistent behavior, relied upon by Jacqueline and Kathryn, would also preclude Eleanor from making a claim to the income from Trust No. 3 under the legal theory of "waiver".

20. Jacqueline's and Kathryn's defenses to Eleanor's efforts to now claim the income from Trust No. 3 are further supported by the fact that when Marjorie died in 2009, Eleanor was provided with a copy of Marjorie's Will wherein Marjorie had appointed her interests under Trust No. 3 to her MTC Living Trust (and in turn thereunder to Jacqueline and Kathryn). Eleanor never raised any objection or challenge to this Will at that time, or to Marjorie's said Trust. Rather, Eleanor accepted a $300,000.00 bequest under the Trust from Marjorie. Further, in her initial 2009 Petition in these Trust proceedings, she indicated her recognition and approval of Marjorie's Will and Trust. This conduct further supports granting Jacqueline's and Kathryn's Countermotion for Summary Judgment, based on the assertion of the defenses of laches and waiver against Eleanor in these proceedings.

21. In now asserting a right to all of the income from Trust No. 3, and in her Will Contest challenge, Eleanor has waited until key witnesses who could give clear and convincing evidence relating to the claims have died. First, obviously, she has waited until four years after the death of Marjorie before making her claims. The testimony of Marjorie, one of the original grantors of the Trust, would be very persuasive in clarifying what she and W. N. Connell intended under the Trust as to the right to income during the balance of Marjorie's life.

22. While we have lost Marjorie's testimony due to her death in 2009, it would be highly illogical for Marjorie to have agreed to a Trust agreement wherein all

the income earned by the Trust No. 1, both that allocated to Trust No. 2 and that allocated to Trust No. 3, was payable to Eleanor, her and W.N. Connell's daughter, with Marjorie receiving no benefit. The Trust Marjorie and W. N. Connell created, was a typical AB Trust, wherein a portion of the Trust assets went to Marjorie as the survivor, upon W. N. Connell's death, distributed under Trust No. 3, and a portion (income only) would be payable to Eleanor, distributed to her under Trust No. 2. This fact is admitted by Eleanor in her 2009 verified Petition. Nonetheless, not having Marjorie's testimony in these proceedings is highly prejudicial to Jacqueline and Kathryn, because she would have explained: 1) that she was entitled to receive and had received the income under Trust No. 3 from and after the death of her husband, W. N. Connell, 2) that her receipt thereof was exactly what she and W.N. Connell intended, 3) that it was due to the proper allocation of assets and interpretation of the provisions of Trust No. 1, Trust No. 2, and Trust No. 3, upon her husband's death and in the filing of his Federal and Texas Estate Tax Returns, and 4) that such allocation was made by the attorneys and accountants assisting the Trustee of the Trusts in fulfilling her duties thereunder.

23. Second, the attorneys, accountants and other persons who were intimately involved, following W. N. Connell's death in 1979, in the allocation of assets between Trust No. 2 and Trust No. 3 under the provisions of Trust No. 1, are now also deceased. These professionals were tasked with assisting the Trustee of the Trusts in the proper filing of W. N. Connell's Federal Estate Tax Return and his Texas Estate Tax Return, wherein the allocations of property between Trust No. 2 and Trust No. 3 were made, in accordance with the provisions of Trust No. 1, Trust No. 2 and Trust No. 3. These allocations determined the right to income for the beneficiaries of Trust No. 2 and Trust No. 3. The testimony of these percipient witnesses would be vitally crucial in the present dispute between Eleanor and Jacqueline and Kathryn. But, Eleanor again has waited until they are all deceased before making her claim.

24. In addition to witness testimony, documents pertinent to the filing of W.

N. Connell's Estate Tax Returns cannot now be located, including the controlling Federal Estate Tax Return. Eleanor's delay in making her claim (first asserted in 2013) has permitted this valuable document to now be misplaced or destroyed. (Eleanor as Trustee of Trust No. 1 and its subtrusts should have kept a copy of the Return, but now alleges she has none.) Fortunately, a signed copy of the Texas Estate Tax Return, and a copy of the closing letter for the Federal Estate Tax Return are still in existence, corroborating Jacqueline's and Kathryn's right to the income under Trust No. 3, and proving that Eleanor is not entitled to such income. See respective Exhibits "A" (Texas Estate Tax Return) and "B" (IRS closing letter) attached hereto, which are incorporated herein by this reference. But, having a copy of the Federal Estate Tax Return would be very material evidence, which has now been lost over the years while Eleanor sat on her claim to the income, waiting for all this evidence to be lost.

25. Based upon the foregoing facts, Jacqueline and Kathryn submit:

A. That Eleanor's Motion should be denied. The legal theory of claim preclusion is not relevant with respect to their claims under their current Trust Petition, first arising in 2013 when Eleanor cut off their income from Trust No. 3. This is blatantly obvious, and Eleanor's Motion is frivolous and has caused them unnecessary legal expense and harassment in this Case.

B. Further, if any claim in this current Trust proceeding is subject to denial under the legal theory of claim preclusion, it is Eleanor's claim (belatedly asserted in 2013) to all of the income under Trust No. 3. She has admitted that she allegedly knew she had the claim, that a mistake was allegedly made in the allocations between Trust No. 2 and Trust No. 3 in the filing of W. N. Connell's Estate Tax Returns, but she declined to assert it with her initial 2009 Petition in this Trust proceeding.

C. Eleanor's claim to all of the Trust income, first asserted in or around June, 2013, is pathetically late. It is inconsistent with her conduct during the prior 34 year period. It is asserted after key witnesses and material documentary evidence are no longer alive or available, thus severely prejudicing and inhibiting Jacqueline and

Kathryn in their defense of her claim. Therefore, Eleanor's claim and position in these proceedings should be denied under the Statute of Limitations, and/or under the doctrines of laches and waiver as requested hereafter in Jacqueline's and Kathryn's Countermotion for Summary Judgment.

D. Further, Jacqueline and Kathryn have repeatedly requested Eleanor to provide them with an accounting of each of the Trusts, as required under Nevada law, but none has been forthcoming. Eleanor should be penalized for this default and be required to pay the fees and costs incurred by Jacqueline and Kathryn in having to seek the Court's assistance to obtain information regarding the Trust that they are legally entitled to. Further, given the acrimonious dispute between the parties as to the entitlement to income, some restraints and safeguards need to be placed to insure that Jacqueline and Kathryn receive the income in the event they prevail in this matter. Placing all income withheld from them during the last year and one-half, together with all accruing income from the Trust (not otherwise paid to them as herein requested) in a neutral bank account, with no withdrawal allowed without the Court's order, would be a proper step to protect Jacqueline and Kathryn's rights and interests in these proceedings. Jacqueline and Kathryn also believe Eleanor has breached her Trustee duties, not only in withholding the Trust income from them without proper cause, but also in misappropriating their Trust income which she should have been holding pending the Court's decision as to entitlement in these proceedings. Eleanor should be removed as the Trustee of the Trusts due to her improper conduct and obvious conflict of interest with Jacqueline and Kathryn.

E. For over one year now, Eleanor has been filing a multitude of frivolous petitions and motions, a frivolous Will Contest, a frivolous appeal to the Nevada Supreme, extensive but unnecessary discovery efforts, and other churning actions in these proceedings and in the Will Contest Case . Her purpose in doing so is obviously to harass and put financial pressure on Jacqueline and Kathryn to settle this case on Eleanor's ridiculously unfair terms. Eleanor has continued to receive income under

Trust No. 2 during this period. However, Eleanor has withheld the payment of any income (over $1,500,000.00) owed to Jacqueline and Kathryn, greatly inhibiting them in not only funding their fees and costs in this litigation, but in meeting their basic living expenses. While the Court recognized this unfairness and ordered in the May 13, 2014 hearing that Jacqueline and Kathryn could start receiving the Trust No. 3 income, the Court required that they post a bond first as a condition to receiving the income. Bonds are practically impossible to obtain nowadays, even with a willingness to pay a large premium. Thus, Jacqueline and Kathryn have not benefitted from the Court's decision from the May 13, 2014 hearing. A resolution of this unfair situation needs to be made.

Jacqueline and Kathryn request the Court to review again the issue of ordering the resumption of Trust income payments to them. While they have been deprived of over $1,500,000.00 during the last year, Eleanor has been receiving for her use and benefit her 35% share of the Trust income. If Jacqueline and Kathryn's position in this litigation prevails, Eleanor will likely owe them considerable damages, including not only attorneys fees and damages suffered due to Eleanor's breach of her fiduciary duties, but also the disgorgement by Eleanor of the $300,000.00 bequest she received under Marjorie's MTC Living Trust. Further, under the "no-contest" clause in Trust No. 1, Eleanor is subject to forfeiture of any further benefits under Trust No. 2 due to her wrongfully challenging the provisions for distribution.

In addition, it appears that the income allocated to Trust No. 3, which Eleanor is required to hold and safeguard pending the Court's decision herein as to entitlement, has already been wrongfully depleted by Eleanor, based upon the recent account statement received and information acquired from Eleanor and her counsel. Thus, not only could she have forfeited her right to further income benefits from the Trust, but she also appears to have wrongfully spent monies she was required to hold in the Trust's account pending the outcome of these proceedings. Based on these facts, she would not have the ability to repay Jacqueline and Kathryn all that she would owe

them. There is no security posted by Eleanor to pay these potential damages to Jacqueline and Kathryn in these proceedings should they prevail. Thus, Jacqueline and Kathryn are not being treated fairly in the withholding of income from them, while Eleanor continues to receive income to fund her litigation tactics in these proceedings.

Accordingly, Jacqueline and Kathryn request that either income payments of their 65% share of trust income resume to them, without their having to post a bond, or that Eleanor's 35% share be withheld from her also, pending the Court's decision in this Case. Eleanor is the wrongdoer in this Case. She, as a trustee with a fiduciary duty, in a most cavalier manner, stopped paying Jacqueline and Kathryn their income shares, without first consulting with them, and most importantly without getting direction from and approval of the Court. A trustee who wishes to reverse 34 years of trust administration practice and decisions, and who wants to make a self-serving claim to all benefits under the Trust, thereby severely damaging other trust beneficiaries, should be punished for acting without first seeking proper court approval and **allowing the other beneficiaries due process to protect their interests**. This malicious and inexcusable conduct of Eleanor alone justifies allowing a resumption of Trust payments to Jacqueline and Kathryn, and reimbursement of past payments withheld, pending the Court's decision in these proceedings.

LEGAL POINTS AND AUTHORITIES

A. CLAIM AND ISSUE PRECLUSION

The Nevada Supreme Court in *Five Star Capital Corporation v. Ruby,* 124 Nev. 1048, 194 P.3d 709 (2008), enunciated the elements and test required to establish the defenses of claim preclusion and issue preclusion. As the Court noted, much confusion has existed regarding these legal theories, and claim preclusion has often been referred to as "res judicata", and issue preclusion as "collateral estoppel". Eleanor's Motion seeks to have Jacqueline's and Kathryn's current Petition dismissed under the legal theory of claim preclusion.

In *Five Star Capital Corporation v. Ruby,* the Court held that to establish claim

preclusion it must be shown that:

1. The parties or their privies are the same;
2. The final judgment is valid; and
3. The subsequent action is based on the same claims or any part of them that were or could have been brought in the first case. *Id.* at 713.

Applying this test to Eleanor's Motion assertions clearly establishes that Jacqueline's and Kathryn's claim under their current Petition to 65% of the Trust income, first arising in 2013, is not barred under the doctrine of claim preclusion.

First, the 2009 initial Petition filed by Eleanor did not involve any other parties disputing the relief she was seeking. There was no contest involved. While Jacqueline and Kathryn benefitted from the Petition, they could only possibly be considered "privies" with Eleanor in the matter. There were no privies with a disputing party, as there was none. Thus, it is questionable that the first element of claim preclusion exists in applying that theory to the claim of Jacqueline and Kathryn against Eleanor four years later.

The second element necessary to establish claim preclusion, that of a final judgment, may appear to be present, but in actuality it is probably not even relevant to the claim made by Jacqueline and Kathryn in 2013. The only final decision in 2009 said, in essence, that Jacqueline and Kathryn would receive Eleanor's income rights and all assets of Trust No. 2 upon the death of Eleanor. That decision did not touch on or effect Trust No. 3 income rights. A reading of the initial verified Petition filed by Eleanor, attached as Exhibit "D" to Eleanor's Motion, shows throughout the Petition that all that was at issue, was the devolution rights to Trust No. 2 upon Eleanor's death. Further, while no issues were raised with regard to Trust No. 3 in the Petition, consistently throughout the Petition, Eleanor as the Petitioner states and confirms her recognition that Marjorie was the beneficiary of income rights under Trust No. 3, and that Jacqueline and Kathryn succeeded to Marjorie's rights as beneficiaries of Trust No. 3 upon Marjorie's death. Thus, in 2009 there was no dispute regarding Jacqueline's and

Kathryn's claim to the income from Trust No. 3, which they were forced to assert in 2013, after Eleanor cut off their income rights. The only final decision rendered with the 2009 Petition was that Jacqueline and Kathryn would also be the beneficiaries of Eleanor's income and the assets of Trust No. 2 upon Eleanor's death. Jacqueline's and Kathryn's claim to the income from Trust No. 3 is not at all inconsistent with Eleanor's Petition and the Court's decision in 2009, designating them also as the beneficiaries of the income and assets under Trust No. 2, upon Eleanor's death.

The third element is the clear and decisive determinant that Eleanor's Motion and assertion of claim preclusion against Jacqueline and Kathryn is frivolous. This element requires that "the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case". *Five Star Capital Corporation v. Ruby, supra*, at 713. Obviously, the 2013 claim of Jacqueline and Kathryn, to have restored to them the income payable to Trust No. 3, from which Eleanor had cut them off, was not a claim relating to the issues and matters addressed in Eleanor's 2009 Petition. Eleanor's 2009 Petition dealt only with the request to the Court that Trust No. 1 and Trust No. 2 be reformed and clarified to provide that the benefits of Trust No. 2 devolve to Jacqueline and Kathryn upon Eleanor's death. There was no issue at that time with respect to entitlement to income as the beneficiary of Trust No. 3.

In addition, it is patently obvious that Jacqueline and Kathryn "could not have brought" in 2009, with the filing of Eleanor's Petition, the claim they asserted in 2013 to have income restored to them. Their 2013 claim did not exist in 2009. Eleanor had not made her belated claim to all of the income from Trust No. 3 until 2013. It would be utterly imbecilic to assert that Jacqueline and Kathryn had some duty to know or predict in 2009 that Eleanor would contradict her own conduct as Trustee of Trust No. 1 and its subtrusts and the distribution allocations which had been in place and honored for 34 years, by claiming a right to all of the income in 2013. In her 2009 Petition, Eleanor, herself, makes it clear that she did not claim a right to the income from Trust

No. 3., but recognized that such income belonged to Marjorie while alive, and then to Jacqueline and Kathryn. It is mind-boggling for Eleanor to now assert that Jacqueline and Kathryn had any duty to ask the Court in 2009 to confirm the recognized practice of distributing Trust No. 3 income to them, when Eleanor, based upon her 2009 Petition, and conduct as the Trustee of Trust No. 1, Trust No. 2, and Trust No. 3 for the prior 30 years, had always displayed agreement with the income distribution allocation to and under Trust No. 3.

The Court in *Five Star Capital Corporation v. Ruby* explained why claim preclusion is not a viable defense for Eleanor in the current Petition and Trust Case. The Court noted at page 715 as follows:

> "As stated in Restatement (Second) of Judgments section 19, comment a, the purposes of claim preclusion are 'based largely on the ground that **fairness to the defendant**, and sound judicial administration, require that at some point litigation over the particular controversy come to an end' and that such reasoning may apply 'even though the substantive issues have not been tried, especially if the plaintiff has failed to avail himself of the opportunities to pursue his remedies in the first proceeding . . . .'" (Emphasis added.)

Clearly, it would be extremely unjust and unfair to expect Jacqueline and Kathryn, in 2009, to have had a "crystal ball" with which they could see in the future that Eleanor would take the action she took in 2013 to cut off their income from the Trust, so as to require them to have asserted a claim in 2009 to the income (even though there was no reason then to assert such claim as no one had opposed or challenged their right to the income for the previous 30 years).

On the other hand, Eleanor may be guilty of conduct requiring the application of claim preclusion to defeat her claim to all of the Trust income in 2013, and right to cut off Jacqueline's and Kathryn's right to the income. Since Eleanor has readily admitted she thought she had the claim to all of the income for the last 34 years, she alone was aware of this percolating (in her mind only) issue, and she alone could have brought the issue to the Court's, Jacqueline's and Kathryn's attention in 2009, rather than waiting until 2013. While the issues addressed in her 2009 Petition are quite different than the issues now pertinent in the current Petition and Trust proceeding, at

least Eleanor was aware of her claim and could have asserted it with her 2009 Petition, if that was necessary to avoid claim preclusion. This is why Jacqueline and Kathryn raised this issue previously in these proceedings.

In the recent case of *Williams v. Eighth Judicial District Court of the State of Nevada,* 2014 WL 3732892 (Table) (Nev.), the Nevada Supreme Court rejected the petitioners assertion of claim preclusion to defeat the subject claim. In that case it was alleged that Williams' first action related to a violation of a settlement agreement. Since the second case involved further alleged violations of the settlement agreement, the petitioners asserted Williams should have included his second claim in his first case, and failing to due so was then barred under the theory of claim preclusion. The Court, however, noted:

"... the claims at issue here are distinct from those in the previous case and could not have been brought in that matter, rendering petitioners' preclusion-based argument without merit (citing their decision in *Five Star Capital Corporation v. Ruby*)"

The claims in the *Williams* case related to the same settlement agreement. However, the claim in the second case was for a violation of the settlement agreement that occurred after the time of the first case. Obviously, therefore, the second claim could not have been brought with the first claim. This situation is comparable to the claims in the current Petition and Trust case involving Eleanor and Jacqueline and Kathryn. There was no way that Jacqueline and Kathryn could have known to raise a claim regarding entitlement to income from Trust No. 3 in 2009 when Eleanor filed her initial Petition to clarify entitlement to the benefits of Trust No. 2 upon her death. As in the *Williams* case, Jacqueline's and Katherine's claim did not arise until 2013, four years after the issues in Eleanor's 2009 Petition had been resolved and finalized.

In summary of this point, Jacqueline and Kathryn submit that Eleanor's Motion to Dismiss their claim to income under Trust No. 3 based upon the theory of claim preclusion should be denied. Further, since Eleanor's claim is frivolous and only asserted to harass Jacqueline and Kathryn and cause them additional unnecessary legal expense, they should receive an award of attorneys fees and costs against Eleanor

pursuant to NRS 18.010(2)(b).

B. COUNTERMOTION FOR SUMMARY JUDGMENT BASED UPON STATUTE OF LIMITATIONS LACHES, WAIVER, AND CLAIM PRECLUSION

In considering the granting of a motion for summary judgment, the Court is required to view the evidence in the light most favorable to the party against whom summary judgment is sought, and disputed but unresolved factual allegations of that party must be presumed correct unless clearly proven otherwise. The burden is on the movant to demonstrate that grounds for summary judgment exist. *Pacific Pools Constr. Co. v. McClain's Concrete, Inc.,* 101 Nev. 557, 706 P.2d 849 (1985). However, in opposing the motion, the party against whom it is sought must present specific facts rather than general allegations and conclusions to defeat the motion. *Bird v. Casa Royale W.,* 97 Nev. 67, 624 P.2d 17 (1981). Further, the purpose for NRCP Rule 56 should be effectuated, when the motion shows no genuine issues of fact remain. The party filing the motion, as clearly stated in the Rule, should be granted the judgment, so as not to be required to continue to waste time and expense litigating where the opposing party's position lacks merit. *Elizabeth E. V. ADT,* 108 Nev. 889, 839 P. 2d 1308 (1992).

Jacqueline and Kathryn respectfully submit that their current Petition should be summarily granted in that there are no material disputed facts relating to their defenses and rights under the Statute of Limitations, laches, waiver, and claim preclusion against Eleanor for wrongfully cutting off their income and beneficial rights under Trust No. 3. Eleanor's derelictions and belated behavior in asserting a claim to the income under Trust No. 3, in light of her inconsistent conduct during the prior 34 years, and the loss of material evidence due to the passage of time, which causes severe prejudice to Jacqueline and Kathryn, clearly support the granting of summary judgment to them at this time.

It should be noted that Eleanor has admitted that she was allegedly informed by

an attorney after the death of W. N. Connell, over 34 years ago, that she was entitled to the income payable to the beneficiary of Trust No. 3. This attorney is no longer practicing in Nevada and is now deceased. The point is that Eleanor admits she was aware that a mistake had allegedly been made in W.N. Connell's Federal Estate Tax Return and the allocation of Trust asset rights between Trust No. 2 and Trust No. 3 in 1979, over 34 years ago. Yet, she did not take any action to make a claim and assert her purported right to the income payable to Trust No. 3 until 2013. This would apparently mean that her claim should be barred by the Statute of Limitations, NRS 11.190(3)(d), which bars actions for relief on the ground of mistake unless asserted within 3 years from "discovery by the aggrieved party of the facts constituting the fraud or mistake". If, however, Eleanor's 2013 claim to the income payable to Trust No. 3 is not barred by the Statute of Limitations, it certainly should be barred under the equitable theories of laches, waiver and claim preclusion.

1. Laches- Applying the legal principles of laches to the facts, as stated above, presents a compelling case for granting summary judgment to Jacqueline and Kathryn under their current Petition. The Nevada Supreme Court in the landmark case of *Cooney v. Pedroli,* 49 Nev. 55, 235 P. 637 (1925), enunciated when it is appropriate to apply the doctrine of laches to defeat a claim. The plaintiff in *Cooney* sought an interest in real property 22 years after the defendant claimed the property, delaying taking any action for that long period of time, notwithstanding the defendant's claims to the property were all open and notorious and consistent with absolute ownership. Also, during the delay, a material witness died preventing the defendant from having the witness's testimony to support his case. The Court in considering the defense of laches held:

> "(I)f it appears that (the adverse party) ha(s) been deprived of any advantage they might have had if the claim had been seasonably insisted on, or if they be subjected to any hardship that might have been avoided by reasonably prompt proceedings, a court of equity will not interfere to give relief, but will remain passive (i.e., will apply the doctrine of laches to defeat the claim).
>
> **It is a very material circumstance to be considered in connection with the lapse of time that death of those who could have explained the transaction has**

intervened before the claim is made." *Id.* at 640. (Emphasis added.)

More recently, the Court reaffirmed its decision in *Cooney v. Pedroli* in the case of *Public Service Commission v. Sierra Pacific Power Company,* 103 Nev. 187, 734 P.2d 1245. In this more recent case, the Court noted that Sierra Pacific knowingly failed to assert its claims for six and one-half years. Having failed to do so, the Court determined its claims were lost under the doctrine of laches. The Court stated at page 1251 as follows:

> "Laches will be invoked when an actual or presumable change of circumstances makes it inequitable to grant relief. (Citation) In *Cooney v. Pedroli,* 49 Nev. 55, 62-63, 235 P. 637, 640 (1925), we declared that '**[w]henever the passage of time has brought in its train anything that works to the disadvantage of a party and makes it doubtful if equity can be done, relief will be denied.**'
>
> . . . .
>
> If Sierra had proceeded with diligence to challenge the Commission's interpretation of the statute or, at the least, had recognized and acted upon the Commission's relaxed approach to its earlier pronouncement, we are confident that much of the delay and prejudice could have been avoided or minimized." (Emphasis is the Court's.)

Applying the test enunciated in *Cooney v. Pedroli* and reaffirmed in *Public Service Commission v. Sierra Pacific Power Company* to the present litigation, it is clear that Eleanor's blatantly belated claim (made by cutting off income distributions to Jacqueline and Kathryn), first asserted in 2013, must be dismissed under the doctrine of laches. Eleanor admits believing she was entitled to all of the income from Trust No. 3 following the death of W. N. Connell in 1979. She admits she was advised over 30 years ago, by an attorney, that a mistake was purportedly made in the allocation of the income between the subtrusts. She asserts in her pleadings filed herein that she refrained from making a claim for two inconsistent reasons. On one hand, she has stated that she did not make a claim because she was afraid it would upset her mother, Marjorie, and would cause Marjorie to disinherit her to some extent in Marjorie's estate planning. On the other hand, but inconsistently, she asserts she was just being generous and wanted Marjorie to have 65% of the income during her life as a gift from Eleanor. In either case, she admits full awareness for over 34 years of her alleged right to all of the income, and a decision on her part to not reveal her awareness of or assert

her purported claim with those interested in and benefitted by the Trust. Thus, the first element for a finding of laches is present, that is, an awareness of a purported right to a claim which the claimant delays making for an inordinate period of time.

The allocation of income from Trust No. 1 between Trust No. 2 and Trust No. 3, was made according to the terms of Trust No. 1. It involved the filing in 1979, following W. N. Connell's death, of Federal and Texas State Inheritance Tax Returns wherein the maximum marital deduction was claimed through allocating an approximate 65% of the Texas oil properties to Marjorie. This fact is confirmed in Eleanor's own initial verified Petition filed in 2009, attached as Exhibit "D" to her Motion, as noted in Paragraph 15, on pages 3 and 4 thereof. This allocation was made pursuant to the terms of Trust No. 1, as noted in said Petition. This then set the basis and pattern for dividing thereafter the income received by Trust No. 1 between the two sub-trusts as required by Trust No. 1. All of the attorneys and accountants who could give testimony as to their calculations in making the allocation between Trust No. 2 and Trust No. 3 are now deceased. Further, no copy of the Federal Estate Tax Return can now be located. And, lastly, and of most importance, Marjorie, one of the two grantors establishing Trust No. 1 and its provisions for allocating its assets, is now deceased. The loss of all this documentary evidence and witness testimony greatly prejudices Jacqueline and Kathryn and inhibits the Court in now adjudicating the issues. Thus, the second and final element for a finding of laches is established, that is, prejudice to those opposing the claim.

While the history and precedent set for nearly 34 years, where the income has been allocated between Trust No. 2 and Trust No. 3, provides compelling proof that Eleanor's claim to all of the income is invalid, and the Texas Estate Tax Return and IRS Closing Letter provide further compelling proof thereof, Eleanor's delay in making her claim to all of the income until 2013, after all the percipient witnesses are deceased, and the Federal Estate Tax Return cannot be located, causes severe prejudice to Jacqueline and Kathryn in conclusively establishing their continuing right to 65% of

Trust No. 1 income. For all of these reasons, Jacqueline and Kathryn submit valid grounds exist under the doctrine of laches to deny and dismiss Eleanor's opposition to their current Petition and grant them summary judgment thereunder, determining that they are entitled to the all of the 65% share of Trust No. 1 income payable to Trust No. 3. It is hard to imagine or conceive of a more appropriate situation for applying the doctrine of laches, precluding Eleanor from now challenging their right to the income.

2. Waiver- The doctrine of waiver is similar in some respects to the doctrine of laches. If Eleanor's late action in challenging Jacqueline's and Kathryn's right to the 65% share of Trust No. 1 income paid to Trust No. 3 is not defeated under the doctrine of laches, it should nonetheless fail under the doctrine of waiver. "Waiver requires 'an existing right, a knowledge of its existence, and an actual intention to relinquish it, or conduct so inconsistent with the intent to enforce the right as to induce a reasonable belief that is has been relinquished.'" *McKeeman v. General American Life Insurance Company,* 111 Nev. 1042, 899 P.2d 1124, 1128 (1995). Certainly, Eleanor's conduct in delaying her challenge to the alleged income right under Trust No. 3 and her other inconsistent actions over the years, show a waiver of her rights to challenge Jacqueline's and Kathryn's right to the income at this time.

It must be remembered that Eleanor was not a passive, uninvolved party in the administration of Trust No. 1, Trust No. 2 and Trust No. 3 during the last 34+ years. She has not only been a beneficiary of Trust income under Trust No. 2, she has also served as the Trustee of these Trusts during this period of time and to the present day. In 2009, when Eleanor was preparing to file her initial 2009 Petition in these proceedings, Jacqueline had full time employment earning $120,000.00 a year. Because of her receipt of the bequest from Marjorie's MTC Living Trust granting to her a portion of the income from Trust No. 3, Jacqueline was then considering resigning from her employment to be a stay-at-home mother for the benefit of her children. She discussed her considerations with Eleanor, asking if Eleanor thought that the income Jacqueline would receive from Trust No. 3 would thereafter be adequate

and secure enough for her to give-up her employment. Eleanor assured Jacqueline that it would and, influenced by Eleanor's assurances, Jacqueline decided to leave her lucrative employment position. See Affidavit of Jacqueline Montoya, attached hereto as Exhibit "C" and incorporated herein by this reference, confirming these facts. Thus, Eleanor's sudden about face in claiming the income she said would be payable to Jacqueline causes Jacqueline severe prejudice, threatening her and her family's financial well-being. Kathryn too has made financial decisions based upon reliance of her right to income under Trust No. 3. The loss of such income would obviously also affect her and her family's well-being. See Affidavit of Kathryn Bouvier attached hereto as Exhibit "D" and incorporated herein by this reference.

It should further be noted that Eleanor was provided with a copy of Marjorie's Will immediately after Marjorie's death in 2009. She was notified of Marjorie's exercise of her Power of Appointment under the Will, leaving Marjorie's rights and benefits under Trust No. 3 to Marjorie's MTC Living Trust, and in turn to Jacqueline and Kathryn as beneficiaries under the MTC Living Trust. See Affidavit of David Straus, Esq. executed on April 9, 2014, which is attached hereto as Exhibit "E" and incorporated by this reference. Further, in filing her initial 2009 Petition in this Trust Case, Eleanor admitted in a footnote on page 4 the following:

"MARJORIE exercised this power of appointment prior to her death as indicated in Article Four of the Last Will and Testament of MARJORIE, dated January 7, 2008. A copy of MARJORIE's Last Will and Testament **is attached hereto as Exhibit "5."** The beneficiary of the exercise of the power of appointment was the MTC Living Trust, which contains provisions for the benefit of the Petitioner's issue." (Emphasis added.)

Notwithstanding she was fully aware of these facts, Eleanor declined to challenge Marjorie's Will and Trust and readily accepted, herself, a substantial bequest from the MTC Living Trust of $300,000.00.

To reiterate, shortly following Marjorie's death in 2009, Eleanor was aware of her Will, and aware of its effect in exercising a Power of Appointment giving, in essence, Marjorie's interest in Trust No. 3 to Jacqueline and Kathryn. Further, Eleanor accepted a $300,000 bequest which relied upon the effectiveness of documents

Marjorie executed on September 7, 2008, including her Will and the Amendment to her MTC Living Trust, which gave Jacqueline and Kathryn the right to the benefits under Trust No. 3. And lastly, in 2009, when Eleanor filed her initial Petition, Eleanor, under oath, asserted that she recognized that she did not have the right to any of the income from Trust No. 3.

All of these facts show clearly that Eleanor was fully aware that Jacqueline and Kathryn were entitled to the 65% share of Trust No. 1 income payable to Trust No. 3, and all of Eleanor's conduct and actions prior to July, 2013 were consistent with this income distribution. Thus, under the elements for a finding of waiver, as quoted above in *McKeeman v. General American Life Insurance Company,* Eleanor clearly waived her right to assert in 2013 any claim to the income from Trust No. 3. All of this history, conduct of Eleanor, and prejudice caused to Jacqueline and Kathryn by Eleanor's inconsistent and abrupt change of position in 2013, claiming then the income from Trust No. 3 after never having asserted such a claim for over 34 years, provides a clear legal basis to deny Eleanor's claim and grant Jacqueline's and Kathryn's Countermotion for Summary Judgment.

If this Trust Case were to proceed to trial, Jacqueline and Kathryn are very confident that the Court would rule in their favor on the merits of the dispute. While no copy of the Federal Estate Tax Return can be found evidencing the proper allocation of income earned by Trust No. 1 between Trust No. 2 and Trust No. 3, a copy of the Texas Estate Tax Return filed for the Estate of W.N. Connell has been located. The Texas Return states that it relied upon the division of assets and income set forth in the Federal Estate Tax Return. Specifically, page 4 of the Texas Return, titled as "Schedule C", reflects that a Form 706, the Federal Estate Tax Return, was previously filed and there is a statement on the form which provides as follows:

> *The following information should be furnished from Form 706, U.S. Estate Tax Return, filed or to be filed on behalf of this estate with the Internal Revenue Service.*

We also have the IRS Closing Letter for the Federal Estate Tax Return providing

information corroborating the Texas Estate Tax Return allocations with the Federal Estate Tax Return. See Exhibit "A" (Texas Estate Tax Return) and Exhibit "B" (IRS Closing Letter) which are attached hereto and incorporated herein by this reference. One can thus clearly understand and recognize that the allocation of assets between Trust No. 2 and Trust No. 3 upon the death of W. N. Connell, resulting in the income rights of Eleanor and Marjorie from Trust No. 1 thereafter, was properly made.

The allocation of benefits between Trust No. 2 and Trust No. 3, relied upon the obtaining of the maximum marital deduction for W. N. Connell's taxable estate. The expert witness Jacqueline and Kathryn have engaged to review the matter, Daniel T. Gerety, CPA, has explained with extensive detail and thorough explanation how the calculations were made in 1980 and has concluded that the allocations between the two sub-trusts were properly arrived at after the death of W.N. Connell. See copy of the Expert Report of Daniel T. Gerety, CPA, dated September 27, 2014, which is attached hereto as Exhibit "D" and hereby incorporated by this reference. Thus, all family members thereafter, up until Eleanor's unexplainable abrupt change of course in the summer of 2013, recognized the 35%-65% asset and income allocation required under the Trust.

However, the cost of this litigation is very damaging to Jacqueline and Kathryn. Where legal grounds exist to now resolve the litigation without the expense of a trial, relief should be granted. Eleanor's belated claim now to 100% of the income earned by Trust No. 1 should be denied, even without considering the possible merits of her claim, on the legal theories of laches and waiver. Jacqueline and Kathryn have previously indicated to the District Court that they feel Eleanor's claims and position in this case should be denied based upon laches and waiver. However, the District Court determined that before it would rule on this issue, and other Motions filed in the Trust Case proceedings, it would be time and cost efficient to first resolve the parties' claims in Case No. P-14-080595-E , the Will-Contest Case, also pending before the Court. Eleanor requested that the District Court postpone any further decisions in the

Trust Case, pending its decision in the subsequently filed Will-Contest Case. Nonetheless, now that Eleanor has chosen to bring the merits of the current Petition and Trust Case back on before the Court, it would be proper and fair to Jacqueline and Kathryn, that the Court hear and resolve their Countermotion for Summary Judgment.

3. Right to Accounting and Verification of Funds- NRS 165.141 requires a Trustee to provide an accounting to a beneficiary upon demand within 60 days thereafter. Jacqueline and Kathryn, through their counsel, have repeatedly requested an accounting from Eleanor during the last six months. None has been received. This is particularly troublesome in that Eleanor should be holding back over $1,500,000.00 in Trust income belonging to Jacqueline and Kathryn. Further, Eleanor has been acting unstable for over one year in disappearing, moving around, and being under the influence of others, whom Jacqueline and Kathryn believe have improper motives in influencing Eleanor's conduct. While patiently waiting to receive an accounting, Jacqueline and Kathryn have also asked simply for bank statements verifying the amount of funds in the Trust's account under Eleanor's control, and the receipts and distributions from the account.

Finally, at the Supreme Court Mediation-Settlement Conference held on October 14, 2014, Jacqueline and Kathryn were presented with a letter from an accountant verifying what funds were allegedly in the Trust account. However, this verification is very troubling in that it appears several hundred thousand dollars are missing from the funds (income allocated to Trust No. 3) which Eleanor should be holding secure for them in the account. In addition, this alleged verification still does not meet the legal obligations Eleanor has defaulted on in providing an accounting.

NRS 165.200 provides:

"When a trustee fails to perform any of the duties imposed upon the trustee by this chapter the trustee may be removed, the trustee's compensation may be reduced or forfeited, or other civil penalty inflicted, in the discretion of the court."

Jacqueline and Kathryn submit that an appropriate penalty for Eleanor's failure to provide the accounting is to require her to pay and reimburse to Jacqueline and Kathryn

$5,000.00 for attorney's fees and costs incurred in seeking the accounting, in this Countermotion, and as a penalty for Eleanor's wrongful conduct. Further, Eleanor's accounting dereliction adds to the grounds already existing due to her breach of duty to distribute Trust funds, and she should be removed as the Trustee of Trust No. 1, Trust No. 2, and Trust No. 3.

C. COUNTERMOTION FOR DAMAGES AND ASSESSMENT OF PENALTIES AND OTHER RELIEF AGAINST ELEANOR

Trust No. 1 contains a "no contest" clause which requires that a beneficiary forfeit his or her entitlements if he or she violates the clause by wrongfully litigating the Trust distribution provisions and rights thereunder. The "no contest" clause found in Article Tenth of the Trust provides for the following:

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

A similar "no contest" clause is found in Marjorie's Will and her MTC Living Trust.

By her actions in wrongfully stopping payments to Jacqueline and Kathryn from Trust No. 1, and claiming all the income for herself, Eleanor has violated the "no contest" clause in Trust No. 1, and the penalty for such violation should be assessed by terminating Eleanor's right to any further income as the beneficiary of Trust No. 2. Pursuant to NRS 163.00195(1), the enforcement of the "no contest" clause found in Trust No. 1 is mandatory.

By contesting Jacqueline's and Kathryn's right to the income payable to Trust No. 3, as beneficiaries under Marjorie's Will and her MTC Living Trust, Eleanor has violated the "no contest" clauses found in those documents. The penalty for such

violations is forfeiture of any benefits otherwise paid or payable to Eleanor under these estate planning documents. As stated above, pursuant to NRS 163.00195(1), the enforcement of the "no contest" clauses found in Marjorie's Will and the MTC Living Trust are mandatory. Eleanor received a $300,000.00 bequest under the MTC Living Trust provisions and, in the event her Will Contest challenge is denied, she should be required to disgorge this amount and repay it to the MTC Living Trust.

In addition, as noted above, Eleanor has breached her duties as the Trustee of Trust No. 1, Trust No. 2, and Trust No. 3, in wrongfully depriving Kathryn and Jacqueline of the income benefits they are entitled to receive. This breach of her duties should not only cause her dismissal as the Trustee, but she should also be required to pay to Kathryn and Jacqueline damages caused by her wrongful conduct. NRS 153.031(3)(b) provides for the following:

> *If the court grants any relief to the petitioner, the court may, in its discretion, order any or all of the following additional relief if the court determines that such additional relief is appropriate to redress or avoid an injustice:*
>
> > *(b) Order the trustee to pay to the petitioner or any other party all reasonable costs incurred by the party to adjudicate the affairs of the trust pursuant to this section, including, without limitation, reasonable attorney's fees. Except as otherwise provided in NRS 165.139, the trustee may not be held personally liable for the payment of such costs unless the court determines that the trustee was negligent in the performance of or breached his or her fiduciary duties.*

Lastly, Eleanor has wrongfully caused Kathryn and Jacqueline to incur substantial attorney's fees and costs in the Trust and Will Contest litigation in these proceedings. Her conduct has been frivolous and intended to harass Kathryn and Jacqueline, and justifies the award of fees and costs to Kathryn and Jacqueline and against Eleanor under NRS 18.010(b). Further, under NRS 153.031(3)(b), as noted above, and NRS 137.020(3), Jacqueline and Kathryn, as the parties successful in the Trust and Will Contest litigation, are entitled to an award of fees and costs against Eleanor

SUMMARY

Jacqueline and Kathryn request the following relief from the Court at this time:

A. That Eleanor's Motion be denied, and that they receive an award of attorney's fees and costs against Eleanor, pursuant to NRS 18.010(2)(b) for having filed her frivolous and harassing Motion.

B. That their Countermotion for Summary Judgment be granted for the reasons submitted above, namely that Eleanor's claim to a right of the income under Trust No. 3, first asserted by her in 2013 in stopping income payments to Jacqueline and Kathryn, is barred, by the Statute of Limitations, the doctrine of laches, the doctrine of waiver, and/or the doctrine of Claim Preclusion. Under NRCP Rule 56, where no material facts are subject to dispute and the law applied shows the movant is entitled to judgment, summary judgment should be granted to avoid further waste of time and expense to the moving party and the Court. Clearly, this is an appropriate case to grant summary judgment.

C. That Eleanor be sanctioned for having failed to provide them with a proper accounting of the Trust, including awarding fees and costs incurred to them, and further penalizing Eleanor. It should be ordered all accruing income received by Trust No. 1 for distribution between Trust No. 2 and Trust No. 3, and that presently being held by Eleanor, other than that which the Court allows to be distributed as requested above, be placed in a neutral bank account to not be further released without further Court order. Further, Eleanor should be removed as Trustee of Trust No. 1, Trust No. 2, and Trust No. 3, as she is not capable or fit to handle this important fiduciary duty.

D. That the Court reconsider its decision from the May 14, 2014 hearing, and allow Jacqueline and Kathryn to receive the income payable to Trust No. 3 during these proceedings without posting a bond, should these proceedings not be resolved within the next month, just as Eleanor has been entitled to continue receiving her share of the income. In the alternative. Eleanor should be required to post a bond to cover the potential damages, fees and costs she would suffer and owe to Jacqueline and Kathryn, should she not prevail in this case, to secure the payment thereof.

E. That it be determined that Eleanor has forfeited her rights and benefits under

Trust No. 1 and Trust No. 2, by wrongfully claiming all income earned by Trust No. 1 and attempting to deprive Kathryn and Jacqueline of their right to income under Trust No. 3.

F. In the event that Marjorie's Will Contest challenge is denied, that it be determined that Eleanor has forfeited her rights and benefits under Marjorie's Will and her MTC Living Trust, and that she be required to disgorge and pay back to the Trust the $300,000.00 bequest she accepted from the Trust, as a result of her wrongfully claiming that the Will is invalid.

Dated this 23rd day of December, 2014.

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By: /s/ Whitney Warnick
WHITNEY B. WARNICK, ESQ.
Nevada Bar No. 001573
801 S. Rancho Drive, Suite D-4
Las Vegas, Nevada 89016
Attorneys for Kathryn Bouvier

THE RUSHFORTH FIRM

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

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of THE RUSHFORTH FIRM, LTD. and that on the 23 day of December, 2014, I placed a true and correct copy of the foregoing **OPPOSITION TO ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; AND, COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR**

DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF, in the United States Mail, at Las Vegas, Nevada, enclosed in a sealed envelope with first class postage thereon fully prepaid, and addressed to the following:

Liane K. Wakayama, Esq.
Candice E. Renka, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

(On the same date, I also served a true and correct copy of each of the foregoing documents upon all counsel of record by electronically serving the same using the Court's electronic filing system.)

An Employee of The Rushforth Firm, Ltd.

EXHIBIT “A”

Form: 2Q30-1.02 (Rev. 9-78)

BOB BULLOCK
COMPTROLLER OF PUBLIC ACCOUNTS
STATE OF TEXAS

Copy

Do not write in above space

INHERITANCE TAX RETURN - NON-RESIDENT

Date Received *(Do not write in this space)*

Decedent's Name *(First, Middle, Maiden, Last)*	Date of Death	T CODE 90100 DEPOSIT CODE 110 AMOUNT
William M. Connell	November 24, 1979	
Residence (Domicile) at Time of Death *(City and State)* Boulder City, Nevada	Year in which domicile was established. 1936	

Marital Status: [X] Married [ ] Divorced [ ] Single [ ] Legally Separated [ ] Widow/Widower

If Married, Date of Marriage: June 2, 1942	Number of Children: one	Number of Children Surviving: one

Did the decedent, at any time during life, make any transfer of property within Texas in which any beneficial interest was retained? [ ] YES [X] NO	Did the decedent, within three years immediately prior to death, make any transfer of property within Texas without an adequate and full consideration? [ ] YES [X] NO	If "YES", please furnish complete information.
Did the decedent die testate? [X] YES [ ] NO If "YES" attach copy of will. If "NO" attach an affidavit of heirship.	Were letters testamentary or of administration granted for this estate? [ ] YES [X] NO	Date Granted

To whom granted? (Designate "Executor," "Executrix," "Administrator," or "Administratrix")

NAME	DESIGNATION	ADDRESS (Street & No., City, State, Zip Code)

Name of Court	Location of Court
Have ancillary probate proceedings been applied for and granted? [ ] YES [X] NO	County in Texas

Name of ancillary administrator or executor

Address

INHERITANCE TAX DUE

PART I Basic inheritance tax (From Schedule B)	PART II Federal credit for state death tax (From Schedule C)
$ -00-	$ 515.00

TAX DUE (PART I OR PART II, WHICHEVER IS GREATER)

$ 515.00

I declare that this return and any accompanying statements are true, correct and complete to the best of my knowledge. I understand that this return is subject to the fraudulent report provisions of TEX. TAX.-GEN. ANN. art. 1.12 (1969).

Name of Preparer	Phone (Area Code & No.)	Name of Executor, Administrator, Heir at Law	Phone (Area Code & No.)
Darrel Knight Assoc., Inc.-PC	915 695-2370	Marjorie Connell, Executrix	702 293-5391
Address (Street & No., City, State, Zip Code) 301 S. Pioneer, #102, Abilene, TX 79605		Address (Street & No., City, State, Zip Code) P O Box 710, Las Vegas, Nevada 89101	
sign here Preparer Darrel Knight	Date 12-16-80	sign here Executor, etc. X Marjorie Connell	Date 12-16-80

PLEASE NOTE: RETURN MUST BE SIGNED BY PERSONAL REPRESENTATIVE OF ESTATE AND PERSON PREPARING RETURN. A COPY OF DECEDENT'S WILL OR AFFIDAVIT OF HEIRSHIP MUST BE ATTACHED.

For assistance call Area Code 512 475-3603 or
TOLL FREE from anywhere in Texas
1-800-252-5555, Ext. 119, 120 or 121

MAIL TO: BOB BULLOCK
COMPTROLLER OF PUBLIC ACCOUNTS
INHERITANCE TAX DIVISION
CAPITOL STATION
AUSTIN, TEXAS 78774

TRF_000001

SCHEDULE A

PROPERTY SUBJECT TO TEXAS INHERITANCE TAX

Did the decedent at the time of death own an interest in real estate or minerals located within the State of Texas?
☒ Yes ☐ No If "Yes," list below.

Did the decedent at the time of death own an interest in any tangible personal property such as livestock, farm and ranching equipment, grain in storage, growing crops, all equipment used in connection with the drilling and producing of subsurface crude oil, gas or other minerals and any other tangible property having an actual situs in the State of Texas? ☐ Yes ☒ No If "Yes," list below.

All assets listed below must be clearly described and identified. If valuations are based upon appraisals, copies of such appraisals should accompany the return. If a formal appraisal of oil and gas leases and royalties is not made, a five-year payout based on the last twelve months prior to death will be used in determining the value of such mineral interest.

ALTERNATE VALUATION

An election to have the gross estate of the decedent valued as of the alternate date or dates is made by entering a check mark in the box set forth below:

☐ The executor elects to have the gross estate of the decedent valued in accordance with values as of a date or dates subsequent to the decedent's death as authorized under TEX. TAX.-GEN. ANN. art. 14.11 (Supp. 1976).

ITEM NO.	DESCRIPTION	SUBSEQUENT VALUATION DATE	ALTERNATE VALUE	VALUE AT DATE OF DEATH
			$	$
1	2,301 acres, pasture land, out of Block 39, T-5-S, Sections 38,47,48, W½37, Upton County, Texas. Separate property of decedent.			80,535.
2	Mineral rights, Upton County, Texas, ¼ interest in Dora Connell Estate. Separate property of decedent. Valued on a 5-year payout based on payments received 12 months prior to date of death.			32,677.
	TOTAL (Also enter under Schedule C, Page 4)		$	$113,212.

(If more space is needed, insert additional sheets of same size)

SCHEDULE B

COMPUTATION OF BASIC INHERITANCE TAX

- List all beneficiaries under the will of the decedent (including charitable bequests) or under the laws of intestacy who take any share of the estate.
- Attach a copy of the last will and testament or an affidavit of heirship if the decedent died intestate.
- If beneficiaries do not share the estate equally, attach a copy of the distribution indicating the items and amounts distributed to each beneficiary.
- If beneficiaries listed on the distribution schedule are not as specified in decedent's will, please explain (predeceased, disclaimed, etc.).

(1) Name and Address of Beneficiary	(2) Relationship of Beneficiary to Decedent	(3) Age of Beneficiary at date of death of Decedent	(4) Value of share of entire net estate wherever located (See Sch.B-3)	(5) Value of share of net Texas estate (See Sch.B-3)	(6) Tax at Texas rates on share of entire net estate (4). (See Tax Rate Schedule)	(7) Ratio of share of Texas net estate to share of entire net estate. (5)divided by(4)	(8) Texas Inheritance Tax (6) multiplied by (7)
			$	$	$		$
Marjorie Connell P. O. Box 710 Boulder City, Nevada 89101	wife	60	69,704	-0-	197.04	-0-	-0-
Eleanor M. Connell Hartman P. O. Box 710 Las Vegas, Nevada 89101	daughter	41	12,528	-0-	125.28	-0-	-0-
Robert Hartman P. O. Box 710 Las Vegas, Nevada 89101	son-in-law	43	-0-	-0-	-0-	-0-	-0-
TOTAL TEXAS INHERITANCE TAX-Col. 8 (TO BE CARRIED FORWARD TO PAGE 1, PART I)							$ -0-

(If more space is needed, insert additional sheets of same size)

SCHEDULE C

Copy

COMPUTATION OF PROPORTIONATE SHARE OF FEDERAL CREDIT FOR STATE DEATH TAX

HAS A FORM 706, U.S. ESTATE TAX RETURN BEEN FILED WITH THE INTERNAL REVENUE SERVICE? ☒ YES ☐ NO

The following information should be furnished from Form 706, U.S. Estate Tax Return, filed or to be filed on behalf of this estate with the Internal Revenue Service.
IF FORM 706 WAS NOT FILED, COMPLETE LINES 1 THROUGH 5 AND LINE 12

1. Value of property subject to Texas Inheritance Tax.	1. $ 113,212	
2. Total value of all other property.	2. 180,023	
3. Total gross estate (lines 1 plus 2)-(Same as recapitulation p. 3, U.S. Estate Tax Return)		3. 293,235
4. Funeral, administration expenses, debts of decedent, mortgage and liens (Schedules J & K, U.S. Estate Tax Return)	4. 10,936	
5. Total value of net estate wherever located.		5. 282,299
6. Other deductions (Total of Schedules L, M, N and O, U.S. Estate Tax Return)	6. 76,688	
7. Total allowable deductions (Line 4 plus line 6) (Same as Recapitulation, page 3, U.S. Estate Tax Return)		7. 87,624
8. Taxable estate for Federal Estate Tax purposes. (Line 3 minus line 7) (Same as page one U.S. Estate Tax Return, line 3)		8. 205,611
9. Adjustment to compute State Death Tax.	9. 60,000.00	
10. Federal adjusted taxable estate (line 8 minus line 9).		10. 145,611
11. a) Excess of gross estate tax over unified credit. (from line 12, page 1, form 706)	11a 18,596	
b) Maximum Federal Credit for State Death Tax. (Computed on Table C, Form 706)	11b 1,335	
c) Allowable Federal Credit for State Death Tax. (line 11a or 11b, whichever is smaller)		11c 1,335
12. Percentage of Texas gross estate to total gross estate. (line 1 divided by line 3)	12. 38.61%	
13. Portion of Federal Credit for State Death Tax allocated to the State of Texas. (line 11c multiplied by line 12). TO BE CARRIED FORWARD TO PAGE 1, PART II		13. 515 $

Copy

SCHEDULE B-1

William M. Connell Estate
Distribution of Net Estate Wherever Located
Supporting Schedule B-3

Net Taxable Estate Wherever Located		$282,299
Distribution to Marjorie Connell:		
Las Vegas rental property (Sch. A, Item 3, Form 706)	$37,500	
Stock and bonds (Sch. B, Form 706)	52,218	
Cash and First Trust Deeds (Sch. C, Form 706)	74,660	
Insurance proceeds (Sch. D, Form 706)	1,358	
Mobil home, furniture and automobiles (Sch. F, Items 3, 4, 5 and 6, Form 706)	11,250	
Marital bequest, 64.493% of 2,301 acres Upton Co., Texas land (Sch. A, Item 1, Form 706)	51,940	
Marital bequest, 64.493% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	21,074	
Distributive share of allowable deductions	(10,936)	(239,064)
Distribution to Eleanor M. Connell Hartman:		
Diamond Shrine Riva (Sch. F, Item 1, Form 706)	2,750	
35.507% of 2,301 acres, Upton Co., Texas land (Sch. A, Item 1, Form 706)	28,595	
35.507% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	11,603	(42,948)
Distribution to Robert Hartman:		
Gold Diamond Glycene wristwatch		(287)
		$ -0-

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SCHEDULE B-2

William M. Connell Estate
Distribution of Texas Estate
Supporting Schedule B-3

Net Texas Estate		$113,212
Distribution to Marjorie Connell:		
Marital bequest, 64.493% of 2,301 acres Upton County land (Sch. A, Item 1)	$51,940	
Marital bequest, 64.493% of mineral rights, Upton County, Texas (Sch. A, Item 2)	21,074	(73,014)
Distribution to Eleanor M. Connell Hartman:		
35.507% of 2,301 acres, Upton County land (Sch. A, Item 1)	28,595	
35.507% of mineral rights, Upton County, Texas (Sch. A, Item 2)	11,603	(40,198)
		$ -0-

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SCHEDULE B-3

William M. Connell Estate
Determination of Value of Taxable Share
Supporting Schedule B, Columns 4 & 5

Beneficiary	(a) Value of share of entire net estate wherever located	(b) % of share received to total of all Class A shares	(c) Exemption	(d) Pro rata share of exemption (b) x (c)	(e) Value of taxable share (a) - (d)
Marjorie Connell	$239,064	84.68%	$200,000	$169,360	$ 69,704
Eleanor C. Hartman	42,948	15.21%	200,000	30,420	12,528
Robert Hartman	287	.11%	200,000	25,000	-0-
Totals	$282,299	100.00%	-	-	$ 82,232

Beneficiary	(a) Value of share of Texas net estate	(b) % of share received to total of all Class A shares	(c) Exemption	(d) Pro rata share of exemption (b) x (c)	(e) Value of taxable share (a) - (d)
Marjorie Connell	$ 73,014	64.49%	$200,000	$128,980	-0-
Eleanor C. Hartman	40,198	35.51%	200,000	71,020	-0-
Robert Hartman	-0-	-0-	-0-	-0-	-0-
Totals	$113,212	100.00%	-	$200,000	-0-

EXHIBIT “B”

jt

Internal Revenue Service
District Director

Department of the Treasury

Date: OCT 30 1981

Estate of:
William M. Connell
Decedent's Social Security Number:
530-05-6631
Date of Death:
November 24, 1979
Person to Contact:
L. Peterson
Contact Telephone Number:
784-5262

WILLIAM M CONNELL ESTATE
MARJORIE CONNELL
1555 CIDY AVE
BOULDER CITY, NV 89005

Estate Tax Closing letter
(This is not a bill for tax due)

Our computation of the Federal Tax liability for the above estate is shown below. It does not include any interest that may be charged. You should keep a copy of this letter as a permanent record because your attorney may need it to close the probate proceedings for the estate. This letter is evidence that the Federal tax return for the estate has either been accepted as filed, or has been accepted after an adjustment that you agreed to.

This is not a formal closing agreement under section 7121 of the Internal Revenue Code. We will not reopen this case, however, unless Revenue Procedure 74-5, reproduced on the back of this letter, applies.

If you have any questions, please contact the person whose name and telephone number are shown above. Thank you for your cooperation.

Sincerely yours,

D. F. Swanson

District Director

Tentative tax		$ 56,596.00
Less: Aggregate gift taxes payable (for gifts made after 12-31-76)	$	
Unified credit	$ 38,000.00	
Credit for State death taxes	$ 515.00	
Credit for Federal gift taxes (on gifts prior to 1-1-77)	$	
Credit for foreign death taxes	$	
Credit for tax on prior transfers	$	
Total subtractions		$ 38,515.00
Net estate tax		$ 18,081.00
Penalties, if any		$

(over)

P.O. Box 4100, Reno, Nevada 89505
cc: Robert T. Ashworth, P/A

Letter 627(DO) (Rev. 2-78)

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EXHIBIT “C”

AFFIDAVIT OF JACQUELINE M. MONTOYA IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

JACQUELINE M. MONTOYA, being first duly sworn testifies as follows:

1. I am an adult, I have personal knowledge of the matters herein stated, and I am competent to testify to them in a Court of law.

2. I am a daughter of Eleanor Connell Hartman Ahern.

3. I have read the factual assertions made in the foregoing Opposition and Countermotion for Summary Judgment and I state that they are true and correct to the best of my knowledge and information.

4. In 2009, after the death of my Grandmother, Marjorie T. Connell, I was advised that under her Will and MTC Living Trust, I and my sister, Kathryn A. Bouvier, would be the equal beneficiaries of approximately 65% of the income received by the W.N. Connell and Marjorie T. Connell Living Trust, Dated May 18, 1972.

5. At the time I was fully employed working for a prominent employer in Las Vegas, Nevada, Wynn Las Vegas, as the executive director of weddings, and earning a base salary of $92,000 which together with commissions resulted in total yearly compensation of approximately $120,000.00.

6. At the time, I was also the mother of two minor children, twin boys, and our family relied upon my employment income and that of my husband for our living needs.

7. With the bequest made to me from the said Trusts, the MTC Living Trust and my contingent interest in Trust No. 2 of the W.N. Connell and Marjorie T. Connell Living Trust following

my mother's passing, I considered resigning from my employment to be able to tend my boys as a full-time mother.

8. Before making a decision to resign my employment, I wanted to make sure that the income derived from the Texas oil rights would be stable and continuing so as not to jeopardize my family's financial needs.

9. I therefore discussed these concerns with my mother, Eleanor. In December of 2009, while sitting at a table in my home, my mother readily confirmed to me that I had nothing to worry about regarding the stability and continuation of the income from the Trust as it was being paid to me. Eleanor looked at me while smiling and said that I should absolutely resign from my employment and that I should stay home to raise my boys.

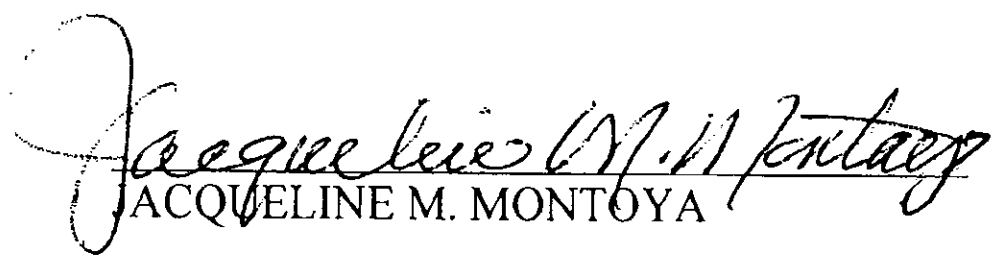
10. In reliance upon my mother's assurances regarding the Trust income, I discussed the matter with my husband and we agreed it would be a prudent and beneficial step benefitting our family and children for me to resign my employment and be able to spend more time with our children and having more time to spend with them. April 30, 2010 was my last day of employment with Wynn Las Vegas and I have not been employed since such date.

11. The cutting off of my Trust income by my mother in approximately June, 2013 has greatly harmed my family's financial welfare and made the decision to terminate my employment one I would most certainly not have made had I known she would attempt to challenge my right to the income as she did beginning in approximately June, 2013. In addition to the decision to terminate my employment, I have made decisions regarding the purchase of assets, the investment of assets, and the payments of debt obligations, which I would certainly not have made had I known that my mother would attempt to challenge my right to the income as she did beginning in approximately June, 2013.

12. This damage to my family's financial welfare has caused me a tremendous amount of emotional stress.

Dated this 22 day of December, 2014.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true.



JACQUELINE M. MONTOYA

EXHIBIT “D”

AFFIDAVIT OF KATHRYN A. BOUVIER IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

STATE OF TEXAS)
)ss.
COUNTY OF GALVESTON)

KATHRYN A. BOUVIER, being first duly sworn testifies as follows:

1. I am an adult, I have personal knowledge of the matters herein stated, and I am competent to testify to them in a Court of law.

2. I am a daughter of Eleanor Connell Hartman Ahern.

3. I have read the factual assertions made in the foregoing Opposition and Countermotion for Summary Judgment and I state that they are true and correct to the best of my knowledge and information.

4. In 2009, after the death of my Grandmother, Marjorie T. Connell, I was advised that under her Will and MTC Living Trust, I and my sister, Jacqueline M. Montoya, would be the equal beneficiaries of approximately 65% of the income received by the W.N. Connell and Marjorie T. Connell Living Trust, Dated May 18, 1972.

5. In the four years following my receipt of the bequest and share of the income from the Trusts, I and my husband have made financial decisions based upon the assurances from my mother, Eleanor, that the Trust income was secure, stable and would be continuing for us well into the future.

6. In reliance upon my mother's assurances regarding the Trust income, I have made decisions regarding the purchase of assets, business affairs, and other matters, which I would certainly not have made had I known she would attempt to challenge my right to the income as she did beginning in approximately June, 2013.

7. The cutting off of my Trust income by my mother in approximately June, 2013, has greatly harmed my family's financial welfare, in addition to causing a tremendous amount of emotional stress relating to such financial harm.

Dated this 22 day of December, 2014.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true.

KATHRYN A. BOUVIER

EXHIBIT “E”

AFFIDAVIT OF DAVID A. STRAUS

I, DAVID A. STRAUS, ESQ., being first duly sworn, deposes and says:

1. I am an attorney licensed in the State of Nevada, the State of California, and the State of Colorado. I am in good standing in each of these states.

2. I have been licensed to practice law in the State of Nevada since 1991.

3. I reside in Clark County, Nevada.

4. I am employed by and am the sole member of the Law Offices of David A. Straus, LLC.

5. Marjorie T. Connell ("Marjorie") was a long time estate planning client of mine.

6. I prepared the MTC Living Trust for Marjorie, dated December 6, 1995, and the restatement to the MTC Living Trust, dated January 7, 2008.

7. As Marjorie's attorney, I spoke with Marjorie on multiple occasions about the real property located in Upton County, Texas and the oil, gas, and mineral rights related to such property ("Texas Property"), all of which was previously deeded to "The W.N. Connell and Marjorie T. Connell Living Trust" ("Connell Family Trust") by Mr. Connell, Marjorie's husband.

8. Marjorie always represented to me that a portion of the Texas Property had been allocated to the Survivor's subtrust under the Connell Family Trust, which was known as Trust No. 3, for which she had been granted a power of appointment over the disposition of.

9. A reason Marjorie wanted to exercise a new Last Will and Testament in 2008 was her desire to exercise her power of appointment over Trust No. 3 to ensure that all of the assets that belonged to Trust No. 3, specifically the interest in the Texas Property, would belong, following her death, to the MTC Living Trust, which Marjorie decided to restate in its entirety in 2008.

10. Following Marjorie's passing in 2009, I sent a letter dated May 21, 2009, via certified mail, to Eleanor C. Ahern, in her capacity as Trustee of the Connell Family Trust, to advise her of the fact that Marjorie had exercised her power of appointment over Trust No. 3 in favor of

THE RUSHFORTH FIRM, LTD.
Telephone: 702-255-4552 / Fax: 702-255-4677
9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

of the MTC Living Trust. The exercise of the power of appointment over Trust No. 3 was done in Marjorie's Will dated January 7, 2008 and as such I provided Eleanor with a certified copy of the Will.

11. As to the Texas Property, I had multiple conversations with Jacqueline Montoya ("Jacqueline"), in her capacity as the Trustee of the MTC Living Trust, and in her capacity as a beneficiary of such Trust, together with Kathryn Bouvier ("Kathryn"), in her capacity as a beneficiary of the MTC Living Trust, regarding the need, based on Marjorie's exercise of the power of appointment over Trust No. 3 in favor of the MTC Living Trust, to effectuate a formal change in title to the Texas Property to the MTC Living Trust.

12. Based upon my recollection, I believe that Eleanor C. Ahern ("Eleanor") participated in at least one of these conferences regarding the need to change title to the Texas Property from the Connell Family Trust to the MTC Living Trust, as to the portion that had been allocated to Trust No. 3.

13. I do not recall during any of these conversations was there any objection by any of those present that Trust No. 3 had not been allocated a portion of the Texas Property when the estate tax return for Mr. Connell had been prepared following his death.

14. Although I would not have prepared the documents to legally change title of the share of the Texas Property from the Connell Family Trust to the MTC Living Trust, not being licensed in the state of Texas, I had offered my services to assist in finding and working with a Texas attorney who could accomplish this task.

15. My offer to assist with the transfer of the Texas Property was respectfully declined by Jacqueline, Kathryn, and Eleanor. I was informed that they were concerned with the fees and costs to effectuate the formal transfer of the proportional interest in the Texas Property to the MTC Living Trust and that their plan was to take care of the transfer in the future as they did not yet want to spend the legal fees necessary to accomplish this task.

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Las Vegas, Nevada 89134-0514

16. From those meetings in which the Texas Property interest belonging to the MTC Living Trust was discussed, I was confident that I had adequately done my job of explaining to them the need to cleanly separate the Texas Property in accordance with the exercise of Marjorie's power of appointment and in turn for each of the Connell Family Trust and the MTC Living Trust to each legally hold title to its proportional interest in the Texas Property.

17. In my discussions with Eleanor, she did not indicate to me that she felt that the MTC Living Trust did not have a legal interest in the Texas Property.

18. At the conclusion of these meetings, in collective sense, it was my impression and understanding that Jacqueline, Kathryn, and Eleanor had decided that they would forego the expense of making the legal transfer of the Texas Property and instead were choosing to divide the income in the same proportional interests belonging to the MTC Living Trust and Eleanor's interest in the Connell Family Trust.

19. It was my hope that they would take my advice, for both legal and tax purposes, and effectuate the legal transfer of the Texas Property with a Texas attorney.

20. I am willing and able to testify to all of the statements made herein.

I certify under penalty of perjury that the foregoing is true and correct.

DAVID A. STRAUS, ESQ.

SUBSCRIBED AND SWORN TO OR AFFIRMED by me on April 9, 2014.

NOTARY PUBLIC

JOSEFINA C. JONES
Notary Public State of Nevada
No. 06-107459-1
My Appt. Exp. June 26, 2014

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EXHIBIT “F”

Gerety & Associates
Certified Public Accountants

6817 S. Eastern Avenue, Suite 101
Las Vegas, Nevada 89119-4684
Phone: 702-933-2213
Fax: 702-933-2214
Website: www.geretycpa.com

September 27, 2014

Joseph Powell
The Rushforth Firm, Ltd.
9505 Hillwood Drive, Suite 100
Las Vegas, NV 89134-0514

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

Dear Mr. Powell:

You have asked that I provide my professional opinion regarding the allocation of assets of the W.N. Connell and Marjorie T. Connell Living Trust ("Trust") after the death of William M. Connell ("William") and then the death of Marjorie Connell ("Marjorie").

A copy of my credentials is attached as Exhibit 1. Our fees are based on the time required to review the facts, write this letter and respond to any questions. Kirstin Lambrecht has assisted me with the preparation of this letter and the analysis contained herein. Kirstin Lambrecht's billing rate is $335 an hour and my billing rate is $480 per hour.

This report is based on the facts and information I am aware of today. I reserve the right to modify this report should other information become available to me.

Summary of Opinion
The Texas Inheritance Tax Return ("Texas Return") I reviewed reconciles and agrees with the IRS closing letter I reviewed. I recomputed the maximum marital deduction to be $76,691 based on the assets reported on the Texas Return. The Texas Return, Schedule C, Line 6 reported $76,688 as other deductions which represented the marital deduction. The difference of $3 between my calculation of the maximum marital deduction and what was taken on the Texas Return is assumed to be rounding.

Per Article Third of the Trust Document, the Trustee was required to fund Trust No. 3 with a fractional interest in William's Separate Property with a value equal to the maximum marital deduction allowed under Federal law at the time of William's death.

The only assets identified as William's separate property on Schedule A of the Trust Document was Texas real estate and Texas mineral rights. In calculating the maximum marital deduction I assumed all other property was community property because William and Marjorie lived in a community property State for most of their lives and all property transferred to the Trust per Schedule A of the Trust Document was community property other than the Texas property. In order for the Trustee to arrive at the same marital deduction as I computed, she must have reported all property as community property on the estate tax return, other than the Texas property; otherwise the estate tax return would have reported a different marital deduction than what I computed.

Article Third of the Trust Document states, "In making the computations and allocations of the said property to Trust No. 3 as herein required, the determination of the character and ownership of the said property and the value thereof shall be as finally established for federal estate tax purposes. Based on the assets held by the estate, it would be mathematically impossible to arrive at the tax due

on the Federal Estate Tax Closing letter without treating all property, except for the Texas Property, as community property and the Texas property as separate property. Thus, all property, other than the Texas property, was characterized as community property as finally established for federal estate tax purposes. Therefore, other than assets which passed outside of the Trust, the only assets that could be used to fund the $76,688 marital deduction were the Texas property. Also, the marital deduction required to be funded under the Trust Document is $76,688, as finally established for federal estate tax purposes.

The Trustee's funding of the marital deduction with $73,014 of Texas property or a 64.493% fractional interest of the Texas property to Trust No. 3 was the only option the Trustee had at the time of funding based on the facts presented to me. There was no other way to fund the marital deduction based on the terms of the Trust.

Documents Reviewed in Order to Come to My Opinion

In order to prepare this report I was given the following information to review:

- The W.N. Connell and Marjorie T. Connell Living Trust Document (Exhibit 4)
- December 2, 1980 letter from Darrel Knight Associates, Inc. – P.C. which provided a valuation of land and royalties
- Internal Revenue Service Estate Tax Closing Letter for the William M. Connell Estate dated October 30, 1981 (Exhibit 5)
- Inheritance Tax Receipt from the Comptroller of Public Accounts State of Texas dated March 30, 1982 for the Estate of William M. Connell
- Texas Inheritance Tax Return – Non-Resident for William M. Connell signed by Marjorie Connell on December 16, 1980 (Exhibit 6)
- Letter to Daniel T. Gerety dated January 27, 2014 from The Rushforth Firm, Ltd. explaining the facts of the case

Analysis of Facts and Basis for Expert Opinion

I have been informed that there is a dispute as to the proper allocation of Texas land, oil, gas and mineral rights ("Texas property") that are titled in the Trust's name. The Trust was formed on May 18, 1972 by William and Marjorie ("Grantors") per the Trust Document. Grantors were Nevada residents at the time the Trust was established per the Trust Document. The Texas property, which was William's separate property, was transferred to the Trust in 1972 (Schedule A of Trust Document). The Texas property received by the Trust remained William's separate property during the Grantors' joint lives per the Trust Document. While both Grantors were living, the Trust was called Trust No. 1.

William died November 24, 1979 per the Texas Inheritance Tax Return and the IRS Estate Tax Closing Letter. Per Article Second C. of the Trust Document, upon William's death Trust No. 1 was to be divided into two separate trusts, Trust No. 2 and Trust No. 3. Trust No. 2 was designed as a "credit shelter trust" and Trust No. 3 was designed as a "marital trust".

Per Article Second C. 2. and 3. and Article Third, Trust No. 3 was to be funded with (a) Marjorie's separate property, (b) Marjorie's one-half (1/2) interest of the community property, (c) Marjorie's community property interest in any life insurance on William payable to the Trust, and (d) enough of a fractional share of William's separate property to equal the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the IRS Code, as a marital deduction, which are not a part of the Trust estate.

Per Article Second C. 4., the remaining portion of the Trust not allocated to Trust No. 3 was to be allocated to Trust No. 2. Per Article Fourth B., all income received by Trust No. 2 from the separate property of William shall be paid to the Residual Beneficiary. Should any real property located in Upton County, Texas, as listed on the original Schedule A, form a part of the corpus of Trust No. 2, the Residual Beneficiary shall be paid an additional payment from the income received from the Decedent's half of the community property which forms a part of the corpus of Trust No. 2, equal to all of the income received by Trust No. 2 from the real property located in Upton County, Texas. This additional payment will be noncumulative. All other income received by Trust No. 2 will be paid to Marjorie. Per Article First Eleanor Marguerite Connell Hartman ("Ellie") is the Residual Beneficiary referred to above.

Per Article Fifth A., the income of Trust No. 3 should be paid to Marjorie. Per Article Fifth B., Marjorie had a "General Power of Appointment" of the Principal of Trust No. 3, which gave her the power to appoint the Principal of Trust No. 3 to anyone she saw fit during her lifetime or at death. I have been told Marjorie, via her Will, exercised her power of appointment over Trust No. 3 and allocated it entirely to the MTC Living Trust. I have been told that Marjorie died in 2009 and that Jacqueline Montoya ("Jacqueline") and her sister Kathy are the beneficiaries of MTC Living Trust.

I have been told that a copy of William's Federal Estate Tax Return, Form 706 was unobtainable. However, I reviewed a copy of the IRS Estate Tax Closing Letter for the estate which shows that the tentative federal estate tax was $56,596, the unified credit was $38,000, the credit for State death taxes of $515 and the net federal estate tax was $18,081. I reviewed a Texas inheritance tax receipt for $515 which agrees to the State death tax credit reflected on the IRS Estate Tax Closing Letter. I also reviewed a signed copy of the Texas Inheritance Tax Return which reconciles to the IRS Estate Tax Closing Letter and lists all of the assets of the estate.

The Texas return lists the assets includable in William's taxable estate and the values of each asset. Per Schedule A of the Trust Document, William's only separate property was located in Texas. All other property transferred to the Trust listed on Schedule A of the Trust Document was shown as community property. I was told that the Grantors were married for a long period of time and had lived in a community property State for most of their marriage. Therefore, it is my understanding as a CPA and estate planning professional that there would be a presumption that all property would be community property, unless specifically titled otherwise. Under federal tax law, the taxable property listed on William's Texas Inheritance Tax Return should include his one-half of the community property interest and his interest in his separate property. The only Texas property (separate property) listed on the Texas Inheritance Tax Return was 2,301 acres of Texas pasture land valued at $80,535 and Texas mineral rights valued at $32,677. The total of William's separate property was $113,212. All other property listed would be presumed to be William's one-half of the community property.

Per the Trust Document, Article Second C. 3. and Article Third, as summarized previously, only William's separate property may be used to fund Trust No. 3 in order for William's estate to maximize the estate tax marital deduction. Article Third specifically states, "the Trustee shall allocate to Trust No. 3 from the Decedent's separate property the fractional share of said assets which is equal to the maximum marital deduction allowed for federal estate tax purposes, reduced by the total of any other amounts allowed under the Internal Revenue Code as a marital deduction which are not a part of this Trust estate. In making the computations and allocations of said property to Trust No. 3 as herein required, the determination and the character and ownership of said property and the value thereof shall be as finally established for federal estate tax purposes."

It appears the Trustee followed the terms of the Trust exactly as written when it allocated 64.493% of the Texas property to Trust No. 3. See Exhibit 2 which shows how the Trust assets should have been allocated between Trust No. 2 and Trust No. 3. Based on my calculations, the maximum marital deduction for William's estate was $76,691 or 67.741% of the separate property (76,691 / 113,212). Per the Texas return the estate took a $76,688 marital deduction. This is only a $3 variance from my calculations which is probably rounding. Per the Texas return, only $73,014 (51,940 + 21,074) or 64.493% of the Texas separate property was used to fund the marital deduction. Because the marital deduction taken on the return agrees with my calculations, the only explanation for the difference in the amount of separate property used to fund the marital deduction is that $3,674 (76,688 - 73,014) of assets passed to Marjorie outside of Trust No. 1. This may have been the life insurance of $1,358 plus possibly a bank account that Marjorie had right of survivorship on.

William's separate property would have been required to be transferred to Trust No. 3 in order to fully fund the allowable marital deduction. The maximum allowable marital deduction under Code Sec. 2056(c) in 1979 was the greater of $250,000 or 50% of the taxable estate before the marital deduction ("Adjusted Gross Estate"). If the estate consisted of community property, the $250,000 amount was reduced by the amount of community property net expenses, debt and losses includable in the Adjusted Gross Estate. Expenses, debt and losses are required to be allocated pro-rata between community and non-community property. Thus, the $250,000 limitation was reduced to $76,691 (250,000 - 173,309) see Exhibit 2. When calculating the 50% limitation the Adjusted Gross Estate had to be reduced by the net community property includable in the estate. Thus, the Adjusted Gross Estate of $282,299 was reduced to $108,990 (282,299 - 173,309). Therefore, the 50% limitation for William's estate was $54,495. The greater two limitations, $76,691 and $54,495, is $76,691, which is the maximum marital deduction William's estate was allowed to take. Exhibit 3 is a copy of Code Sec. 2056(c) prior to the amendment of Code Sec. 2056 in 1981 by P.L. 97-34, Sec. 403(a)(1)(A) and (B) ,which was effective for estates of decedents dying after 12/31/81.

Sincerely,
Gerety & Associates, CPAs

Daniel T. Gerety, CPA
President

Attachments

DANIEL T. GERETY, CPA

GERETY & ASSOCIATES, CPAS

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Daniel T. Gerety is the Owner and President of Gerety & Associates, CPAs. Dan specializes in estate and income tax planning for individuals and businesses including structuring large transactions such as the sale and purchase of a business. Throughout his career he has worked with many closely held businesses in many industries providing tax and business planning for them.

Dan started his accounting career with McGladrey & Pullen, LLP in 1982 and became a tax partner with that firm before he left in 2004 to start his own firm. He was a lead specialist for McGladrey & Pullen, LLP and RSM McGladrey, Inc. in gift and estate tax matters along with income taxation of trusts.

A native of Davenport, Iowa, Dan attended St. Ambrose College in Davenport where he obtained his Bachelor of Arts degree in Accounting and Business Administration. Among his current professional affiliations, he is a member of the American Institute of Certified Public Accountants and the Nevada Society of Certified Public Accountants. He is a past President of the Southern Nevada Estate Planning Council and the Central Illinois Estate Planning Council. He is a past member of the Nevada Society of Certified Public Accountants Taxation Committee. He currently sits on the board of the Las Vegas Chapter of the Nevada CPA Society, the Nevada State College Foundation, where he is chairman of the Planned Giving Committee, and the Grant a Gift Autism Foundation. As a CPA, Dan is allowed to practice before the IRS.

Dan is a consultant to a number of other CPA firms and law firms regarding estate and gift taxation matters, including supporting a number of attorneys as an expert witness in litigation matters regarding trust accounting issues, executive compensation, investment and business matters, and divorce work.

The most recent cases Dan has been an expert in are as follows:

- Mashelle Begovich and Mary Sophia Smith v. Mark S. Chase, Trustee of the Milos Sharkey Begovich Trust. Engaged to review investment and loan activities of Trustee for reasonableness and conslotation regarding malpractice claim.
- Susan Toma vs James Hansen, Dennis Toma Trust, Estate of Dennis Toma et al, Case No. A-13-681931-B. Consultation regarding malpractice claim.
- Crivello Loving Trust, Engaged to prepare a trust accounting.

- W.N. Connell and Marjorie T. Connell Living Trust. Engaged on February 4, 2014 as expert to provide opinion on the allocation and funding of sub-trusts.
- Lawrence A. Lapenta Family Trust. Prepared a trust accounting for the period January 6, 2006 through June 30, 2013, prepared letter of opinion, dated September 19, 2013, regarding reasonable trustee fees for this period and prepared letter of opinion, dated November 23, 2013, regarding reasonable amount to charge for trustee fees going forward.
- Grand Canal Shops II, LLC vs. Riccardo Iavarone. On October 10, 2012 I prepared an expert opinion report to rebut the expert opinion report of Michael L. Rosten dated September 27, 2012 regarding whether Riccardo Iavarone's actions made him the alter ego of Lanciani of Las Vegas, Inc. Deposition was taken March 26, 2013.
- In the Matter of Estate of Harvey Putter and the Harvey Putter Living Trust dated January 16, 2001. Prepared a Trust Accounting for the Period July 2, 2010 through April 30, 2012.
- Aimee Lynn Alterwitz vs. Daryl Alterwitz, et.al. Prepared report to rebut the Expert Report of George C. Swarts, CPA regarding actions taken by management of various closely held real estate developments including the refinancing, mergers, spin-offs and amendments made to various operating agreements of each of the closely held entities. Observed testimony of Mr. Swarts during his deposition and during arbitration. Case settled prior to arbitration ruling.
- Testamentary Trust of George A. Steiner Trust, Case No. P41337 consolidated with P42062. On June 14, 2012 prepared report analyzing the Twenty Third Accounting for the trust for the year ended December 31, 2011. On August 4, 2011, prepared expert report to rebut information contained in Objection to Twenty Second Accounting filed on behalf of Russell Steiner. Report contained analysis of how trustees' decisions affected the income beneficiaries financially, an analysis of what was principal vs. income, and whether the accounting provided to the court was in accordance with the Nevada Revised Statutes. On September 15, 2011 responded to rebuttal of my report. On November 1, 2011 wrote expert report on analysis of how corporate dividends of closely held consolidated group of corporations were classified on a partnership return. On June 14, 2012 wrote expert report of my analysis of the Twenty Third Accounting of the G. A. Steiner Trust. On September 26, 2012 wrote a rebuttal report to the Expert Opinions of Chris Wilcox, Peter K. Ellison and Curtis D. Trader. On October 27, 2013 wrote report regarding the 23rd and 24th Annual Accountings. On January 15, 2014 wrote rebuttal report to the Expert Opinions of Chris Wilcox, Curtis Trader, David Denis, Ronald Gilson, Craig Aronoff, and D. Gordon Smith.
- Steven L Dahl vs. Ronald Henry, Trustee of the Lloyd L. Dahl Testamentary Trust. On September 19, 2011 I prepared draft of expert witness report computing damages incurred by beneficiary from the Trustee's management of trust assets.
- Emil Frei, III vs. Daniel V Goodsell. Clark County District Court. Work entailed calculation of damages pertaining to a malpractice suit on estate planning matters. Deposition taken January 28, 2011 and Testimony given in District Court February 22, 2011
- Trail Gate, LLC and Nikko Capital Corp vs. Lloyd Manning, Kevin Hooks, Trail Gate Lenders, LLC, Catalyst RX, Bormann Development, Inc, DOES 1-10 and Roe

Corporations 1-X, Inclusive. Clark County District Court. Work entailed a rebuttal of other expert and calculation of monies due under development, construction, management and lease contracts. Deposition taken December 7, 2010.

- Reta Leseberg and Mark Leseberg vs. R. Glen Woods, Esq., and Woods Erickson Whitaker Miles & Mauruice. Clark County District Court. Dan's work was to rebut another experts report regarding damages in a conflict of interest suit. His deposition was taken September 22, 2010 and he assisted attorney in deposition of the other expert. Testimony given in District Court December 23, 2010.
- Eric Nelson v. Lynita Nelson divorce case. Clark County Family Court. Meeting with attorneys to help with negotiation of property settlement. Dan testified on October 20, 2010 regarding business and tax risks and values of various ongoing businesses and investments and whether tax attributes could be transferred in an divorce. Prepared expert report on March 21, 2011 regarding tax issues of ownership of LLC holding a Mississippi Casino which rebutted other CPAs report. Prepared expert report on July 5, 2012 regarding the accounting and separate identity of the Eric L. Nelson Nevada Trust. Report was used to counter alter-ego claim. Testified in Family Court on July 18th, July 19th, July 23rd, and August 20, 2012.
- Christian Buck and Anne Buck-Fenn, Christian & Anne Buck LLC v. John Hoffman and Leonard C. Buck. Second Judicial District Court of Nevada in and for the County of Washoe. This case went to trial. Dan's report and testimony in court involved determination of damages due to improper funding and management by the trustee.
- HSK Trust v. Jason Hecker. Clark County Probate Court. Gerety & Associates, CPAs prepared the trust accounting and Dan testified regarding the mismanagement of trust assets by the trustee.
- Christopher W. Chingros and Arthur S. Chingros v. Carolyn A. Chingros. Clark County District Court. Dan wrote a report regarding valuation of a limited partnership distributed and the underfunding of a trust upon death of grantor. Deposition taken June 30, 2010.
- Thomas A. Hantges, USACM Liquidating Trust v. Lucius Blanchard; Lucius Blanchard Children's Irrevocable Trust and Palomino Partners Limited Partnership. Michael W. Carmel, Chapter 11 Trustee for the Estate of Thomas A. Hantges v. Thomas A. Hantges and Trustees of the Hantges Children's Education Trust. USACM liquidating Trust v. Eagle Ranch, LLC; Eagle Ranch Residential, LLC; Willowbrook Residential, LLC, etc. United States Bankruptcy Court, District of Nevada. Expert report covered and reviewed all cash transactions and loans with USA Commercial Mortgage, accounting of loans and payback of loans between related entities, analyzed the set up of the Trust, reasonableness of the Trust's earnings, investment, profits, cash flow and amortization from loans with USA Commercial Mortgage and rebuttal of other expert witness' report.
- Rowell v. Frontier Logistics, LP. Dan helped determine the value of minority partner buyout of several LPs and S-Corps. He consulted with Frontier and attorneys to help arrive at a fair value to offer to buy out a disgruntled partner. He also reviewed many of the filings to give input on case. Case settled through Arbitration by American Arbitration Association in Houston, TX.

- Valeria Saint Clair v. Michael Foresta; dealing with trust and partnership accounting. Case was settled out of court.
- Thomas G. Wiley Trust. Clark County District Court. Dealt with dispute between co-trustees and preparation of proper trust accounting to determine personal vs. trust expenses. The accounting Dan prepared was accepted as part of the settlement agreement.
- Mark Brandenburg, as trustee of the Ghelfi Family Residual Trust v. Daniel E. Rubin, entailed the taxation of the share of profits in a partnership agreement and the allocations and taxation of these interests. Dan testified in the arbitration. Dan's testimony was accepted over the other experts in this case.
- Other cases have included two executive compensation suits. Michael Starr v. MGM Mirage, United States District Court, District of Nevada. Provided declaration of lost benefits. Klem Belt v. Health South, had deposition taken in Albuquerque, NM regarding lost benefits of terminating deferred compensation plan and split-dollar life insurance agreement. There have been a number of estate and trust accounting matters and one divorce case in which the attorneys on both sides relied on Dan's advice to tell them what the tax consequences would be, based on drafts of the property settlement agreements. Another case that went to arbitration was a lawsuit against Bank of America. Dan was Bank of America's expert witness. The case involved trustee matters and the taxation of life insurance.

Dan has been a Special Master to the Court twice. At one time, he was Co-Special Master to the Court with Governor Bob Miller and retired Judge Richardson on the William Perry case in Clark County District Court. He wrote the report that advised the Judge on what should be done with the money that was confiscated until it could be determined who the creditors were. The other case dealt with the valuation of a business and the split up of an estate between its heirs and was held in Clark County Probate Court. Dan evaluated the business valuations that were prepared, and the opinion of another accounting firm that was an expert on the case, and then advised the Judge on how to proceed.

Dan has spoken to numerous groups over the years including twice for the Illinois CPA Society's Real Estate Conference regarding asset protection and how real estate investments should be held. He has also spoken to the Southern Nevada CPA Society regarding estate tax planning. Dan has not authored any articles. Lorman Educational Services may have published one of the presentations that he co-wrote and presented titled Estate Planning in Nevada. Dan wrote the section titled Estate, Gift and GST Tax After the 2001 Tax Act. This talk was presented on February 19, 2002. His most recent presentations have been as follows:

- May 30, 2013, Presented Obama Care Changes Affecting Individuals and Business to clients and centers of influence.
- February 13, 2013, Presented Top Estate Planning Techniques for the National Business Institute.
- October 17, 2012, Federal Estate Tax Return, presented to Northern Nevada Estate Planning Council

- September 13, 2012, Tax Planning for Trust and Estates for the National Business Institute with Serena Baig, Robert L. Bolick, and Heidi C. Freeman.
- March 28, 2012, Part of panel of professionals leading discussion for Collaborative Succession Planning Workshop for Financial Planning Association of Nevada.
- November 8, 2011, Succession Planning for Law Firms, presented to the Las Vegas Association of Legal Administrators.
- June 6, 2011, Trust Administration: Preventing and Litigating Fiduciary Liability, Compliant Trust Taxation and Reporting, presented for NBI: National Business Institute.
- April 21, 2011, appeared on KLAV Radio Family Law & Order Show. Spoke on income tax issues for families and domestic partners.
- February 22, 2011, IRS Guidance on Filing Requirements for Domestic Partners, presented for the Gay & Lesbian Community Center of Southern Nevada.
- November 10, 2009, Choice of Entity, Presented to the Las Vegas Association of Legal Administrators.
- January 22, 2009, Deductibility of Fees Paid to Las Ventanas as Medical Expenses, presented for Las Ventanas, Las Vegas, NV
- October 22, 2008, Accounting for Estates And Trusts in Nevada, Presented for Lorman Educational Service. I covered Income Taxation of Trusts and Estates and Types of Trusts and Estates.
- February 6, 2008, Tax Update including Cover your Assets and Estate Planning Issues affecting Domestic Partners, presented for Because We aRe Different, Las Vegas, NV
- June 12, 2007, Choice of Entity, presented to Las Vegas Association of Legal Administrators.
- December 1, 2005, Cover Your Assets, Las Vegas, NV
- October 27, 2005 Current Year Tax Update, Las Vegas, NV
- July 30, 2004, Advanced Estate Planning and Creditor protection Strategies in Nevada, Presented for Lorman Educational Services with Richard and Steven Oshins, Las Vegas, NV. I presented on To Disclose or Not to Disclose a Sale to a Defective Trust on A Gift Tax Return and Postmortem Planning.
- June 15, 2004 Income Taxation for Trusts and Estates, Presented for RSM McGladrey, Inc Annual Tax Conference, Kansas City, MO
- February 26, 2004, Choice of Entity, Presented to the Society of Financial Service Professionals, Las Vegas, NV
- July 30, 2003, Estate Planning and Creditor protection Strategies in Nevada for Lorman Educational Services with Jeffrey Burr, Richard Oshins and Steven Oshins, Las Vegas, NV. I presented the Charitable Planning section of this seminar.
- July 11, 2002, Cover Your Assets, presented to the CFO Group, Las Vegas, NV
- May 22, 2002, Covering Your Assets, presented for Illinois CPA Society & Foundation 2002 Taxation on Real Estate Workshop, Chicago, IL
- May 05, 2002, Covering Your Assets, presented to Radiology Associates of Nevada, Las Vegas, NV

- February 19, 2002 Estate Planning In Nevada, presented for Lorman Educational Services with Stephen Nicolatus and Scott Swain, Las Vegas, NV
- October 16, 2001, Cover Your Assets, presented for the 28th Annual Illinois CPA Society & Foundation 2001 Real Estate Conference, Chicago, IL
- March 22, 2001, Cover Your Assets, presented to the Green Valley Rotary, Henderson, NV
- February 12, 2001, Cover Your Assets, presented to the Construction Financial Management Association, Las Vegas, NV
- January 30, 2001, Cover Your Assets, presented to the Las Vegas 100, Las Vegas, NV
- September 21, 2000, The Beneficiary controlled Dynasty Trust: Leveraging it with Installment Sales, GRAT Remainder Sales and Opportunity Shifting Strategies, Presented to the Nevada Society of CPA's Las Vegas Chapter with Steven Oshins, Las Vegas, NV
- I may have missed some above and I have presented many more times prior to 2000.

Exhibit 2
William Connell Jr Estate
November 24, 1979
Taxable Estate and Funding of Trust

	Assets Reported on Texas Return			Plus		Funding Allocation	
	50% of Community Prop.	Decedent's Separate Prop.	Taxable Estate	Survivor's 50% of Community	Total Assets	Total Trust 3	Total Trust 2
Las Vegas rental	37,500		37,500	37,500	75,000	37,500	37,500
Stocks and bonds	52,218		52,218	52,218	104,436	52,218	52,218
Cash	74,660		74,660	74,660	149,320	74,660	74,660
Insurance	1,358		1,358	1,358	2,716	1,358	1,358
Mobile home etc.	11,250		11,250	11,250	22,500	11,250	11,250
2301 Acres Upton Co		80,535	80,535	0	80,535	54,553	25,982
Mineral rights Upton		32,677	32,677	0	32,677	22,135	10,542
Diamond shrine riva	2,750		2,750	2,750	5,500	2,750	2,750
Gold wristwatch	287		287	287	574	287	287
Total	180,023	113,212	293,235	180,023	473,258	256,711	216,547
Allocation of expenses	(6,714)	(4,222)	(10,936)			0	(10,936)
Taxable estate before marital	173,309	108,990	282,299			256,711	205,611
Marital ded. for TX sep. prop.			(73,014)				
Marital ded. non-trust assets			(3,674)				
Taxable estate			205,611				
Estate tax on above			56,596				
Unified credit			(38,000)				
State tax credit / Texas Tax due			(515)				(515)
Balance federal estate tax due			18,081				(18,081)
							187,015
Computation of Marital Deduction							
Taxable estate before marital			282,299				
Exemption amount			(147,000)				
Marital deduction needed to zero out tax			135,299				
Maximum marital deduction allowed under Sec. 2056			250,000				
Less community property included in Estate			(173,309)				
Adjusted maximum marital deduction under Sec. 2056			76,691				
Total marital deduction taken on Texas return			(76,688)				
Variance			3				
Bill died 11/24/1979							
Exemption in 1979	147,000	18%	70%				
1979 table	Over	rate					
	0	18%					
	10,000	20%	1,800.00				
	20,000	22%	3,800.00				
	40,000	24%	8,200.00				
	60,000	26%	13,000.00				
	80,000	28%	18,200.00				
	100,000	30%	23,800.00				
	150,000	32%	38,800.00				
	250,000	34%	70,800.00				
	500,000	37%	155,800.00				
	750,000	39%	248,300.00				
	1,000,000	41%	345,800.00				
	1,250,000	43%	448,300.00				
	1,500,000	45%	555,800.00				
	2,000,000	49%	780,800.00				
	2,500,000	53%	1,025,800.00				
	3,000,000	57%	1,290,800.00				
	3,500,000	61%	1,575,800.00				
	4,000,000	65%	1,880,800.00				
	4,500,000	69%	2,205,800.00				
	5,000,000	70%	2,550,800.00				

Exhibit 3
Code Sec. 2056(c) in 1979

Prior to its deletion in 1981, by P.L. 97-34, Sec. 403(a)(1)(A), Code Sec. 2056(c) read as follows:

"*(c) Limitation on aggregate of deductions.*

"(1) Limitation.

"(A) In general. The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed the greater of—

"(i) $250,000, or

"(ii) 50 percent of the value of the adjusted gross estate (as defined in paragraph (2)).

"(B) Adjustment for certain gifts to spouse. If a deduction is allowed to the decedent under section 2523 with respect to any gift made to his spouse after December 31, 1976, the limitation provided by subparagraph (A) (determined without regard to this subparagraph) shall be reduced (but not below zero) by the excess (if any) of—

"(i) the aggregate of the deductions allowed to the decedent under section 2523 with respect to gifts made after December 31, 1976, over

"(ii) the aggregate of the deductions which would have been allowable under section 2523 with respect to gifts made after December 31, 1976, if the amount deductible under such section with respect to any gift required to be included in a gift tax return were 50 percent of its value.

For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account.

"(C) Community property adjustment. The $250,000 amount set forth in subparagraph (A)(i) shall be reduced by the excess (if any) of—

"(i) the amount of the subtraction determined under clauses (i), (ii), and (iii) of paragraph (2)(B), over

"(ii) the excess of the aggregate of the deductions allowed under sections 2053 and 2054 over the amount taken into account with respect to such deductions under clause (iv) of paragraph (2)(B).

"(2) Computation of adjusted gross estate.

"(A) General rule. Except as provided in subparagraph (B) of this paragraph, the adjusted gross estate shall, for purposes of subsection (c)(1), be computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed by sections 2053 and 2054.

"(B) Special rule in cases involving community property. If the decedent and his surviving spouse at any time, held property as community property under the law of any State, or possession of the United States, or of any foreign country, then the adjusted gross estate shall, for purposes of subsection (c)(1), be determined by subtracting from the entire value of the gross estate the sum of—

"(i) the value of property which is at the time of the death of the decedent held as such community property; and

"(ii) the value of property transferred by the decedent during his life, if at the time of such transfer the property was held as such community property; and

"(iii) the amount receivable as insurance under policies on the life of the decedent, to the extent purchased with premiums or other consideration paid out of property held as such community property; and

"(iv) an amount which bears the same ratio to the aggregate of the deductions allowed under sections 2053 and 2054 which the value of the property included in the gross estate, diminished by the amount subtracted under clauses (i), (ii), and (iii) of this subparagraph, bears to the entire value of the gross estate.

For purposes of clauses (i), (ii), and (iii), community property (except property which is considered as community property solely by reason of the provisions of subparagraph (C) of this paragraph) shall be considered as not 'held as such community property' as of any moment of time, if, in case of the death of the decedent at such moment, such property (and not merely one-half thereof) would be or would have been includible in determining the value of his gross estate without regard to the provisions of section 402(b) of the Revenue Act of 1942. The amount to be subtracted under clauses (i), (ii), or (iii) shall not exceed the value of the interest in the property described therein which is included in determining the value of the gross estate.

"(C) Community property—conversion into separate property.

"(i) After December 31, 1941. If after December 31, 1941, property held as such community property (unless considered by reason of subparagraph (B) of this paragraph as not so held) was by the decedent and the surviving spouse converted, by one transaction or a series of transactions, into separate property of the decedent and his spouse (including any form of coownership by them), the separate property so acquired by the decedent and any property acquired at any time by the decedent in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clauses (i), (ii), and (iii) of subparagraph (B), be considered as 'held as such community property.'

"(ii) Limitation. Where the value (at the time of such conversion) of the separate property so acquired by the decedent exceeded the value (at such time) of the separate property so acquired by the decedent's spouse, the rule in clause (i) shall be applied only with respect to the same portion of such separate property of the decedent as the portion which the value (as of such time) of such separate property so acquired by the decedent's spouse is of the value (as of such time) of the separate property so acquired by the decedent."

1972

Exhibit 4

TRUST AGREEMENT

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

THIS TRUST AGREEMENT, made this 18th day of May, 1972, by W. N. CONNELL and MARJORIE T. CONNELL, husband and wife, (hereinafter sometimes referred to as the "Grantors", when reference is made to them in their capacity as creators of this Trust and the transferrors of the principal properties thereof), and W. N. CONNELL and MARJORIE T. CONNELL, of Las Vegas, Nevada, (hereinafter sometimes referred to as the "Trustee" when reference is made to them in their capacity as the Trustee or fiduciary hereunder), and by this instrument revoke the previous revocable living trust made by us on the 1st day of Dec., 1971:

W I T N E S S E T H :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Powers of appointment over income and principal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EIGHTH: SPECIAL PROVISIONS.

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

B. Revocation and Amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of any interest in the assets of the trusts.

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

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

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

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

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

GRANTORS:

W. N. Connell
W. N. CONNELL

Marjorie T. Connell
MARJORIE T. CONNELL

TRUSTEE:

W. N. Connell
W. N. CONNELL

Marjorie T. Connell
MARJORIE T. CONNELL

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

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

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

NOTARY PUBLIC - STATE OF NEVADA
CLARK COUNTY
JUNE A. GAVIN
My Commission Expires May 2, 1975

SCHEDULE "A"

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

All of the Grantors' rights, title and interest in the following assets are hereby transferred to the Trustee as part of this trust estate and will be administered and distributed in accordance with the terms of the foregoing Trust Agreement.

The following real property interests constitute the community property of the Grantors:

1. Lots One (1) and Two (2) in Block Sixteen (16) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.

2. Lot Three (3), Block Six (6), Biltmore Addition to the City of Las Vegas, as shown by map thereof on file in Book 2 of Plats, Page 33, in the Office of the County Recorder of Clark County, Nevada.

3. Lots Fifteen (15) and Sixteen (16) in Block Fifteen (15) in the South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 14, in the Office of the County Recorder of Clark County, Nevada.

4. Lots Twenty-Two (22) and Twenty-Three (23) in Block Eleven (11) of South Addition to the City of Las Vegas as shown by map thereof on file in Book 1 of Plats, Page 51, in the Office of the County Recorder of Clark County, Nevada.

5. Lots Twenty-four (24) and Twenty-five (25) in Block Eleven (11) of South Addition to the City of Las Vegas, as shown by map thereof on file in Book 1 of Plats, page 51, in the Office of the County Recorder of Clark County, Nevada.

The following assets constitute the separate property of W. N. CONNELL:

1. Real Property:

(a) That portion of the North Half (N 1/2) of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 28, Township 20 South, Range 61 East, M.D.B.&M., described as follows:

Beginning at the point of intersection of the East Line of the Northwest Quarter (NW 1/4) of

the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) of said Section 28, said Township and Range, (hereinafter called Line 1) with the South boundary of Clark Avenue produced Westerly as the same is now established (hereinafter called Line 2); thence South along said Line 1 a distance of 378 feet; thence North 89° 36' West and parallel to said Line 2 a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning-

Together with an undivided 1/30th interest of, in and to all water flowing or otherwise produced from that certain artesian well located in the North Half of the South Half of the Southeast Quarter of Section 29, Township 20 South, Range 61 East, M.D.B.&M, known as the New Russell Well. Together with an undivided 1/30th interest in and to that certain pipe line connected to and running from said well Easterly to a point 100 feet West from said Line 1 above described; together with an easement for said pipe line in common with all the other owners of said pipe line along a strip of ground three feet in width, the center line of which is located approximately 150 feet South of and running parallel with said Line 2, and which strip extends from said well to a point 100 feet West from said Line 1; together with the right to enter thereon for the purpose of repairing, replacing and renewing said pipe line.

Reference: Deed # 180405, Book 35, pages 159 and 160.

(b) The West 1/2 of Section 37, all of Sections 38, 47 and 48 in Block 39, Township 5 South, T. & P. R.R. Co. Survey in Upton County, Texas.

2. Oil, gas and mineral rights on and under the following described real property in Upton County, Texas.

(a) Sections 31 and 42 of Block 38, Township 5 South, T. & P. R.R. Co. Survey.

(b) Sections 32, 33, 36, 37, 38, 40, 41, 44, 45, 47 and 48 of Block 39, Township 5 South, T. & P. R.R. Co. Survey.

(c) Sections 36 and 37 of Block 40, Township 5 South, T. & P. R.R. Co. Survey.

3. The oil, gas and mineral leases on the following described real property in Upton County, Texas.

(a) Sections 31 and 42 of Block 38, Township 5 South, T. & P. R.R. Co. Survey.

(b) Sections 32, 33, 36, 37, 38, 40, 41, 44, 45, 47 and 48 of Block 39, Township 5 South, T. & P. R. R. Co. Survey.

(c) Sections 36 and 37 of Block 40, Township 5 South, T. & P. R.R. Co. Survey.

The undersigned Grantors named in the foregoing Trust Agreement hereby certify that they have read said Trust Agreement and that it fully and accurately sets out the terms, trusts and conditions under which the trust estate therein described is to be held, managed and disposed of by the Trustee therein named; and, that they hereby approve, ratify and confirm the said Trust Agreement.

W. N. CONNELL

MARJORIE T. CONNELL

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

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

Notary Public in and for said County and State

NOTARY PUBLIC – STATE OF NEVADA
CLARK COUNTY
JUNE A. GAVIN
My Commission Expires May 9, 1972

Exhibit 5

jt

Internal Revenue Service
District Director

Department of the Treasury

Date: OCT 30 1981

Estate of:
William M. Connell
Decedent's Social Security Number:
530-05-6631
Date of Death:
November 24, 1979
Person to Contact:
L. Peterson
Contact Telephone Number:
784-5262

WILLIAM M CONNELL ESTATE
MARJORIE CONNELL
1555 CINDY AVE
BOULDER CITY, NV 89005

Estate Tax Closing letter
(This is not a bill for tax due)

Our computation of the Federal Tax liability for the above estate is shown below. It does not include any interest that may be charged. You should keep a copy of this letter as a permanent record because your attorney may need it to close the probate proceedings for the estate. This letter is evidence that the Federal tax return for the estate has either been accepted as filed, or has been accepted after an adjustment that you agreed to.

This is not a formal closing agreement under section 7121 of the Internal Revenue Code. We will not reopen this case, however, unless Revenue Procedure 74-5, reproduced on the back of this letter, applies.

If you have any questions, please contact the person whose name and telephone number are shown above. Thank you for your cooperation.

Sincerely yours,

District Director

Tentative tax		$ 56,596.00
Less: Aggregate gift taxes payable (for gifts made after 12-31-76)	$	
Unified credit	$ 38,000.00	
Credit for State death taxes	$ 515.00	
Credit for Federal gift taxes (on gifts prior to 1-1-77)	$	
Credit for foreign death taxes	$	
Credit for tax on prior transfers	$	
Total subtractions		$ 38,515.00
Net estate tax		$ 18,081.00
Penalties, if any		$

(over)

P.O. Box 4100, Reno, Nevada 89505
cc: Robert T. Ashworth, P/A

Letter 627(DO) (Rev. 2-78)

Exhibit 6

Form 2Q30-1.02 (Rev. 9-78)

BOB BULLOCK
COMPTROLLER OF PUBLIC ACCOUNTS
STATE OF TEXAS

Copy

Do not write in above space

INHERITANCE TAX RETURN - NON-RESIDENT

Date Received *(Do not write in this space)*

Decedent's Name *(First, Middle, Maiden, Last)*	Date of Death	T CODE 90100 DEPOSIT CODE 110 AMOUNT
William M. Connell	November 24, 1979	
Residence (Domicile) at Time of Death *(City and State)*	**Year in which domicile was established.**	
Boulder City, Nevada	1936	

Marital Status: [X] Married [ ] Divorced [ ] Single [ ] Legally Separated [ ] Widow/Widower

If Married, Date of Marriage: June 2, 1942	Number of Children: one	Number of Children Surviving: one

Did the decedent, at any time during life, make any transfer of property within Texas in which any beneficial interest was retained? [ ] YES [X] NO	Did the decedent, within three years immediately prior to death, make any transfer of property within Texas without an adequate and full consideration? [ ] YES [X] NO	If "YES", please furnish complete information.
Did the decedent die testate? [X] YES [ ] NO If "YES" attach copy of will. If "NO" attach an affidavit of heirship.	Were letters testamentary or of administration granted for this estate? [ ] YES [X] NO	Date Granted

To whom granted? (Designate "Executor," "Executrix," "Administrator," or "Administratrix")

NAME	DESIGNATION	ADDRESS (Street & No., City, State, Zip Code)

Name of Court	Location of Court
Have ancillary probate proceedings been applied for and granted? [ ] YES [X] NO	County in Texas

Name of ancillary administrator or executor

Address

INHERITANCE TAX DUE

PART I Basic inheritance tax (From Schedule B)	PART II Federal credit for state death tax (From Schedule C)
$ -00-	$ 515.00

TAX DUE (PART I OR PART II, WHICHEVER IS GREATER)

$ 515.00

I declare that this return and any accompanying statements are true, correct and complete to the best of my knowledge. I understand that this return is subject to the fraudulent report provisions of TEX. TAX.-GEN. ANN. art. 1.12 (1969).

Name of Preparer	Phone (Area Code & No.)	Name of Executor, Administrator, Heir at Law	Phone (Area Code & No.)
Darrel Knight Assoc.,Inc.-PC	915 695-2370	Marjorie Connell, Executrix	702 293-5391
Address (Street & No., City, State, Zip Code) 301 S. Pioneer, #102, Abilene, TX 79605		Address (Street & No., City, State, Zip Code) P O Box 710, Las Vegas, Nevada 89101	
sign here Preparer Darrel Knight	Date 12-16-80	sign here Executor, etc. X Marjorie Connell	Date X 12-16-80

PLEASE NOTE: RETURN MUST BE SIGNED BY PERSONAL REPRESENTATIVE OF ESTATE AND PERSON PREPARING RETURN. A COPY OF DECEDENT'S WILL OR AFFIDAVIT OF HEIRSHIP MUST BE ATTACHED.

For assistance call Area Code 512 475-3603 or
TOLL FREE from anywhere in Texas
1-800-252-5555, Ext. 119, 120 or 121

MAIL TO: BOB BULLOCK
COMPTROLLER OF PUBLIC ACCOUNTS
INHERITANCE TAX DIVISION
CAPITOL STATION
AUSTIN, TEXAS 78774

(June, 1975)

STATE OF TEXAS

Copy

APPLICATION FOR EXTENSION OF TIME TO FILE INHERITANCE TAX RETURN AND/OR PAY INHERITANCE TAX

(Articles 14.14(C) and/or 14.16(A) and (B) of Title 122A, Chapter 14, Revised Civil Statutes, 1925)

PART I – IDENTIFICATION

Name and Mailing Address of Application Preparer	
Darrel Knight Associates, Inc. - P.C. 301 South Pioneer, Suite 102 Abilene, Texas 79605	Inheritance Tax Return Due Date: August 24, 1980 Decedent's County of Residence - or County of Probate Proceedings: Clark County Decedent's Social Security Number: 530-05-6631

Decedent's First Name and Middle Initial	Decedent's Last Name	Date of Death
William N.	Connell, Jr.	Nov. 24, 1979

PART II – EXTENSION OF TIME TO FILE (Art. 14.14(C))

Extension Date Requested: Feb. 24, 1981

Reasons (state in detail):

The federal estate return is being prepared by a CPA in Nevada. He has not received all the information he needs to complete form 706 at this time. I am unable to complete the Texas return until I receive form 706 from Nevada.

PART III – EXTENSION OF TIME TO PAY (Art. 14.16 (A) and (B))

Extension Date Requested:

Reasons (state in detail):

Amount of estimated Inheritance Tax Due	-0-
Amount of Cash Shortage Claimed	
BALANCE DUE (Pay with this Application)	-0-

PART IV – SIGNATURE AND VERIFICATION

If prepared by Executor, Administrator or Person in Possession of Property. – Under penalties of Section 37.10, Title 8, Texas Penal Code, I declare that to the best of my knowledge and belief, the statements made herein are true and correct.

(Signature of executor, administrator or person in possession of property) (Title) (Date)

If prepared by Someone Other Than Executor, Administrator or Person in Possession of Property. – Under penalties of Section 37.10, Title 8, Texas Penal Code, I declare that to the best of my knowledge and belief, the statements made herein are true and correct, that I am authorized by the executor, administrator or person in possession of property to prepare this application and that I am:

- [ ] A member in good standing of the bar of the highest court of (specify jurisdiction)
- [X] A certified public accountant duly qualified to practice in (specify jurisdiction) State of Texas
- [ ] A personal representative (as defined in Article 14.00A(e), Taxation-General, Revised Civil Statutes of Texas) other than above.

Explain

[signature], CPA 8-22-30

(Signature of preparer other than executor, administrator or person in possession of property) (Date)

PART V – NOTICE TO APPLICANT – TO BE COMPLETED BY INHERITANCE TAX DIVISION

1. The Application For Extension of Time to File (Part II) is:
   - [X] Approved until February 24, 1981
   - [ ] Not approved because
   - [ ] Other
2. The Application For Extension of Time to Pay (Part III) is:
   - [ ] Approved
   - [ ] Not approved because
   - [X] Other not requested

Director H. P. Cabiness Date August 28, 1980

SCHEDULE A

PROPERTY SUBJECT TO TEXAS INHERITANCE TAX

Did the decedent at the time of death own an interest in real estate or minerals located within the State of Texas?
☒ Yes ☐ No If "Yes," list below.

Did the decedent at the time of death own an interest in any tangible personal property such as livestock, farm and ranching equipment, grain in storage, growing crops, all equipment used in connection with the drilling and producing of subsurface crude oil, gas or other minerals and any other tangible property having an actual situs in the State of Texas? ☐ Yes ☒ No If "Yes," list below.

All assets listed below must be clearly described and identified. If valuations are based upon appraisals, copies of such appraisals should accompany the return. If a formal appraisal of oil and gas leases and royalties is not made, a five-year payout based on the last twelve months prior to death will be used in determining the value of such mineral interest.

ALTERNATE VALUATION

An election to have the gross estate of the decedent valued as of the alternate date or dates is made by entering a check mark in the box set forth below:

☐ The executor elects to have the gross estate of the decedent valued in accordance with values as of a date or dates subsequent to the decedent's death as authorized under TEX. TAX.-GEN. ANN. art. 14.11 (Supp. 1976).

ITEM NO.	DESCRIPTION	SUBSEQUENT VALUATION DATE	ALTERNATE VALUE	VALUE AT DATE OF DEATH
			$	$
1	2,301 acres, pasture land, out of Block 39, T-5-S, Sections 38,47,48, W½37, Upton County, Texas. Separate property of decedent.			80,535.
2	Mineral rights, Upton County, Texas, ¼ interest in Dora Connell Estate. Separate property of decedent. Valued on a 5-year payout based on payments received 12 months prior to date of death.			32,677.
	TOTAL (Also enter under Schedule C, Page 4)		$	$113,212.

(If more space is needed, insert additional sheets of same size)

SCHEDULE B

COMPUTATION OF BASIC INHERITANCE TAX

- List all beneficiaries under the will of the decedent (including charitable bequests) or under the laws of intestacy who take any share of the estate.
- Attach a copy of the last will and testament or an affidavit of heirship if the decedent died intestate.
- If beneficiaries do not share the estate equally, attach a copy of the distribution indicating the items and amounts distributed to each beneficiary.
- If beneficiaries listed on the distribution schedule are not as specified in decedent's will, please explain (predeceased, disclaimed, etc.).

(1) Name and Address of Beneficiary	(2) Relationship of Beneficiary to Decedent	(3) Age of Beneficiary at date of death of Decedent	(4) Value of share of entire net estate wherever located (See Sch.B-3)	(5) Value of share of net Texas estate (See Sch.B-3)	(6) Tax at Texas rates on share of entire net estate (4). (See Tax Rate Schedule)	(7) Ratio of share of Texas net estate to share of entire net estate. (5)divided by(4)	(8) Texas Inheritance Tax (6) multiplied by (7)
			$	$	$		$
Marjorie Connell P. O. Box 710 Boulder City, Nevada 89101	wife	60	69,704	-0-	197.04	-0-	-0-
Eleanor M. Connell Hartman P. O. Box 710 Las Vegas, Nevada 89101	daughter	41	12,528	-0-	125.28	-0-	-0-
Robert Hartman P. O. Box 710 Las Vegas, Nevada 89101	son-in-law	43	-0-	-0-	-0-	-0-	-0-
TOTAL TEXAS INHERITANCE TAX-Col. 8 (TO BE CARRIED FORWARD TO PAGE 1, PART I)							$ -0-

(If more space is needed, insert additional sheets of same size)

SCHEDULE C

Copy

COMPUTATION OF PROPORTIONATE SHARE OF FEDERAL CREDIT FOR STATE DEATH TAX

HAS A FORM 706, U.S. ESTATE TAX RETURN BEEN FILED WITH THE INTERNAL REVENUE SERVICE? ☒ YES ☐ NO

The following information should be furnished from Form 706, U.S. Estate Tax Return, filed or to be filed on behalf of this estate with the Internal Revenue Service.
IF FORM 706 WAS NOT FILED, COMPLETE LINES 1 THROUGH 5 AND LINE 12

1. Value of property subject to Texas Inheritance Tax.	1. $ 113,212	
2. Total value of all other property.	2. 180,023	
3. Total gross estate (lines 1 plus 2)-(Same as recapitulation p. 3, U.S. Estate Tax Return)		3. 293,235
4. Funeral, administration expenses, debts of decedent, mortgage and liens (Schedules J & K, U.S. Estate Tax Return)	4. 10,936	
5. Total value of net estate wherever located.		5. 282,299
6. Other deductions (Total of Schedules L, M, N and O, U.S. Estate Tax Return)	6. 76,688	
7. Total allowable deductions (Line 4 plus line 6) (Same as Recapitulation, page 3, U.S. Estate Tax Return)		7. 87,624
8. Taxable estate for Federal Estate Tax purposes. (Line 3 minus line 7) (Same as page one U.S. Estate Tax Return, line 3)		8. 205,611
9. Adjustment to compute State Death Tax.	9. 60,000.00	
10. Federal adjusted taxable estate (line 8 minus line 9).		10. 145,611
11. a) Excess of gross estate tax over unified credit. (from line 12, page 1, form 706)	11a 18,596	
b) Maximum Federal Credit for State Death Tax. (Computed on Table C, Form 706)	11b 1,335	
c) Allowable Federal Credit for State Death Tax. (line 11a or 11b, whichever is smaller)		11c 1,335
12. Percentage of Texas gross estate to total gross estate. (line 1 divided by line 3)	12. 38.61%	
13. Portion of Federal Credit for State Death Tax allocated to the State of Texas. (line 11c multiplied by line 12). TO BE CARRIED FORWARD TO PAGE 1, PART II		13. 515 $

Copy

SCHEDULE B-1

William M. Connell Estate
Distribution of Net Estate Wherever Located
Supporting Schedule B-3

Net Taxable Estate Wherever Located		$282,299
Distribution to Marjorie Connell:		
Las Vegas rental property (Sch. A, Item 3, Form 706)	$37,500	
Stock and bonds (Sch. B, Form 706)	52,218	
Cash and First Trust Deeds (Sch. C, Form 706)	74,660	
Insurance proceeds (Sch. D, Form 706)	1,358	
Mobil home, furniture and automobiles (Sch. F, Items 3, 4, 5 and 6, Form 706)	11,250	
Marital bequest, 64.493% of 2,301 acres Upton Co., Texas land (Sch. A, Item 1, Form 706)	51,940	
Marital bequest, 64.493% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	21,074	
Distributive share of allowable deductions	(10,936)	(239,064)
Distribution to Eleanor M. Connell Hartman:		
Diamond Shrine Riva (Sch. F, Item 1, Form 706)	2,750	
35.507% of 2,301 acres, Upton Co., Texas land (Sch. A, Item 1, Form 706)	28,595	
35.507% of mineral rights, Upton Co., Texas (Sch. A, Item 2, Form 706)	11,603	(42,948)
Distribution to Robert Hartman:		
Gold Diamond Glycene wristwatch		(287)
		$ -0-

Copy

SCHEDULE B-2

William M. Connell Estate
Distribution of Texas Estate
Supporting Schedule B-3

Net Texas Estate		$113,212
Distribution to Marjorie Connell:		
Marital bequest, 64.493% of 2,301 acres Upton County land (Sch. A, Item 1)	$51,940	
Marital bequest, 64.493% of mineral rights, Upton County, Texas (Sch. A, Item 2)	21,074	(73,014)
Distribution to Eleanor M. Connell Hartman:		
35.507% of 2,301 acres, Upton County land (Sch. A, Item 1)	28,595	
35.507% of mineral rights, Upton County, Texas (Sch. A, Item 2)	11,603	(40,198)
		$ -0-

SCHEDULE B-3

William M. Connell Estate
Determination of Value of Taxable Share
Supporting Schedule B, Columns 4 & 5

Beneficiary	(a) Value of share of entire net estate wherever located	(b) % of share received to total of all Class A shares	(c) Exemption	(d) Pro rata share of exemption (b) x (c)	(e) Value of taxable share (a) - (d)
Marjorie Connell	$239,064	84.68%	$200,000	$169,360	$ 69,704
Eleanor C. Hartman	42,948	15.21%	200,000	30,420	12,528
Robert Hartman	287	.11%	200,000	25,000	-0-
Totals	$282,299	100.00%	-	-	$ 82,232

Beneficiary	(a) Value of share of Texas net estate	(b) % of share received to total of all Class A shares	(c) Exemption	(d) Pro rata share of exemption (b) x (c)	(e) Value of taxable share (a) - (d)
Marjorie Connell	$ 73,014	64.49%	$200,000	$128,980	-0-
Eleanor C. Hartman	40,198	35.51%	200,000	71,020	-0-
Robert Hartman	-0-	-0-	-0-	-0-	-0-
Totals	$113,212	100.00%	-	$200,000	-0-

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CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of THE W.N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST DATED May 18, 1972, An Inter Vivos Irrevocable Trust.	Case No.: P-09-066425-T Dept. No.: 26 Date of Hearing: January 14, 2015 Time of Hearing: 9:00 a.m.

ELEANOR C. AHERN'S (1) REPLY IN SUPPORT OF ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; (2) OPPOSITION TO COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF; AND (3) REPLY IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT

Eleanor Connell Hartman Ahern, as Trustee and Individually (hereinafter "Eleanor"), by and through her attorneys of record, the law firm of Marquis Aurbach Coffing, hereby files this Reply in Support of Eleanor C. Ahern's Motion to Dismiss Petition for Declaratory Judgment for Failure to State a Claim Upon Which Relief Can Be Granted ("Reply"); Opposition to Countermotion of Kathryn A. Bouvier and Jacqueline M. Montoya for Summary Judgment on Petition for Declaratory Judgment, for Damages and Assessment of Penalties, and for Other Relief ("Opposition"); and Reply in Support of Countermotion for Summary Judgment ("Reply"). The Replies and Opposition is made and based upon the pleadings and papers on file herein, the following memorandum of points and authorities, and any oral argument allowed at the time of hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Eleanor submits this Reply in Support of her Motion to Dismiss Jacqueline and Kathryn's Petition for Declaratory Relief filed September 27, 2013. The Petition for Declaratory Relief is the only pleading filed by Jacqueline and Kathryn in this case and requests a declaration that Eleanor is only entitled to 35% of the Oil Rights and Oil Income (collectively, the "Oil Assets") and that Jacqueline and Kathryn, as beneficiaries of the MTC Trust, are entitled to 65% of the Oil Assets. Eleanor requests that the Court dismiss the Petition for Declaratory Relief based on claim preclusion and estoppel.

Eleanor also submits this Opposition to Jacqueline and Kathryn's Countermotion for Summary Judgment. Jacqueline and Kathryn have failed to prove that they are entitled to judgment as a matter of law on their one and only claim for declaratory relief regarding ownership of the Oil Assets, and therefore, Eleanor requests that the Court deny the Countermotion for Summary Judgment.

Additionally, Eleanor submits this Opposition to Jacqueline and Kathryn's Countermotion for Damages and Assessment of Penalties and Other Relief Against Eleanor ("Countermotion for Assorted Relief"). The Countermotion seeks an assortment of relief based on claims Jacqueline and Kathryn have never alleged, defenses they have never alleged, and conclusions unsupported by law or fact in violation of EDCR 2.20(c). Accordingly, Eleanor requests that the Court deny the Countermotion for Assorted Relief.

Finally, Eleanor submits this Reply in Support of her Countermotion for Summary Judgment. Jacqueline and Kathryn have failed to establish any genuine issues of material fact, and Eleanor is entitled to judgment as a matter of law regarding Trust No. 2's 100% ownership of the Oil Assets. Therefore, the Court should grant Eleanor's Countermotion for Summary Judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND.

Eleanor hereby incorporates all of the facts and exhibits of her Omnibus Opposition to (1) Petition for Determination of Construction and Interpretation of Language Relating to Trust No

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

2, and (2) Petition for Construction and Effect of Probate Court Order; and Countermotion for Summary Judgment filed January 2, 2015 ("Omnibus Opposition"). Accordingly, this factual and procedural background is to highlight additional factual information and evidence for the Court's consideration particularly relevant to this Reply and Opposition.

A. THE TRUST.

Eleanor's father, W.N. Connell ("William") and her adoptive mother, Marjorie Connell, formed the W.N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972 (the "Trust").[1] William owned oil, gas, and mineral rights and leases on real property located in Upton County, Texas (the "Oil Rights").[2] The Oil Rights generated consistent monthly income (the "Oil Income") (collectively, with the Oil Rights, "Oil Assets").[3] The Oil Rights were William's separate property and remained such after he transferred the Oil Rights to the Trust.[4] The Trust was funded with (1) real property interests characterized as community property; (2) real property in Nevada[5] and Texas characterized as William's separate property; and (3) 100% title and ownership to the Oil Assets, characterized as William's separate property.[6]

B. WILLIAM ENSURED THAT ELEANOR WOULD BE ENTITLED TO ALL OF THE OIL INCOME DURING HER LIFE.

Before his death, William took several steps to ensure that Eleanor would be entitled to all of the Oil Income during her life.

---

[1] See Trust Agreement ("Trust Agreement"), attached to the Omnibus Opposition as Exhibit 3.

[2] See Declaration of Eleanor Connell Hartman Ahern dated December 11, 2014 at ¶ 4 ("Second Declaration of Eleanor"), attached to the Omnibus Opposition as Exhibit 4.

[3] Id.

[4] See Trust Agreement, Schedule A, attached to the Omnibus Opposition as Exhibit 3.

[5] See Grant, Bargain Sale Deed dated April 18, 1944, reflecting real property in Clark County, Nevada, as William N. Connell's sole and separate property, attached hereto as **Exhibit 8**.

[6] See Trust Agreement, Schedule A, pp. 1-3, attached to the Omnibus Opposition as Exhibit 3.

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Eleanor's Adoption: First, he insisted that Marjorie adopt Eleanor when Eleanor was 38 years old and already had her daughters, Jacqueline and Kathryn.[7] This would ensure that after William's death, Eleanor would be entitled to all the rights and benefits of being Marjorie's daughter, i.e. she could not be excluded from the legacy planning because she was not Marjorie's legal or biological daughter.

The Promise: Second, William made Marjorie and Eleanor promise on the family Bible to always take care of each other and never do anything to hurt one another.[8]

Trust No. 2: Third, William provided in the Trust that if he predeceased Marjorie, the Trust would split into two separate Trusts, Trust No. 2, a "Decedent's Trust" for the benefit of Eleanor during her lifetime and then her children, and Trust No. 3, a "Survivor's Trust" for the benefit of Marjorie.[9] While the Trust generally described the type of assets to be used to fund Trust No. 3 for Marjorie's benefit, the Trust very specifically carved out the Oil Assets as the assets to fund Trust No. 2 for Eleanor's benefit. From the plain terms of the Trust, William made his intent clear that Trust No. 2 would own 100% of the Oil Rights, with all the Oil Income being distributed to Eleanor during her lifetime and to her bloodlines after her death.[10]

Co-Trustee: Fourth, William provided in the Trust that Eleanor would be the co-trustee of Trust No. 2—another safeguard to ensure protection of the Oil Assets for Eleanor's benefit.[11]

Prohibiting Sale of Oil Rights: Fifth, the Trust instructed that the Oil Rights are not to be sold, again ensuring that the Oil Assets would provide for Eleanor during her lifetime and from generation to generation after her death.[12]

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[7] See Decree of Adoption filed on November 24, 1976 ("Adoption Decree"), attached to the Omnibus Opposition as Exhibit 6; see Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[8] See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[9] See Trust Agreement at Article Second, Section C.1., p. 3, and Article Fourth, Section A. attached to the Omnibus Opposition as Exhibit 3.

[10] See Trust Agreement, Article Fourth, attached to the Omnibus Opposition as Exhibit 3.

[11] See Trust Agreement, Article Second, Section C.6, attached to the Omnibus Opposition as Exhibit 3.

[12] See Trust at Article Fourth, C.3, attached to the Omnibus Opposition as Exhibit 3.

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William's actions before his death, including the specific Trust language, unambiguously evidence his intent that Eleanor receive 100% of the Oil Income during her life and that the Oil Assets serve as an heirloom assets for the generations to come after Eleanor.

C. ELEANOR HONORS HER FATHER'S WISHES.

After William died, Eleanor honored her promise made to her father that she would take care of her adoptive mother, Marjorie.[13] Eleanor was fortunate enough to have a very comfortable lifestyle with her then husband, Mr. Ahern.[14] Eleanor's comfortable lifestyle allowed her to supplement Marjorie's lifestyle, which was not as comfortable as Eleanor's at the time.[15] Since Marjorie had not been employed since 1955, Eleanor financially supported Marjorie by letting her receive 65% of the Oil Income until her death in 2009.[16] Eleanor did so even though she always understood that Trust No. 2 owned 100% of all of the Oil Rights and clearly designated Eleanor as the sole income beneficiary.[17] Eleanor never agreed to allow Marjorie to own any part of her father's separate, real property in Upton County, Texas or the Oil Assets.[18] Equally as important, no evidence exists where Eleanor, in writing, officially assigned, waived or transferred any part of her 100% beneficial interest in the Oil Assets to Marjorie.

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[13] See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[14] See Rough Draft Deposition of Jacqueline Montoya, January 6, 2014, excerpts of which are attached hereto as **Exhibit 7**, 64:14-19 (Jacqueline's Deposition).

[15] See id. at 65:23-25.

[16] See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[17] Id.

[18] Id.

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D. THE TAX RETURNS.

1. The Texas Tax Return.

Unbeknownst to Eleanor, Marjorie hired Texas CPA Darrel Knight ("CPA Knight") to prepare the Inheritance Tax Return for William (the "Texas Tax Return").[19] CPA Knight prepared the Tax Return reflecting the following distribution to Marjorie:

Marital bequest, 64.493% of 2,301 acres Upton Co., Texas land

Marital bequest, 64.493% of mineral rights, Upton Co., Texas.

Regardless of how creative CPA Knight was from a tax perspective to report Eleanor's generosity towards Marjorie to the IRS, the terms of the Trust remained in full force and effect and were never amended—Eleanor remained the sole income beneficiary entitled to all the Oil Income. Moreover, Eleanor never saw or approved the Texas Tax Return; in fact, she never saw it until around the time of the falling out with her daughters.[20]

2. The Alleged Federal Tax Return Form 706.

Kathryn and Jacqueline repeatedly allege that there exists a Federal Tax Return Form 706 ("Form 706") for William that reflects a similar marital bequest of approximately 65% of the Oil Rights and Oil Income to Marjorie. In fact, they allege that they requested the Form 706 from the IRS, but the IRS responded in a letter that it could not be located.[21] Notably, neither the alleged Form 706 nor the letter from the IRS has been produced in this litigation.[22] Nonetheless, the Form 706 would be as irrelevant as the Texas Tax Return. Eleanor never saw or approved

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[19] See Inheritance Tax Return – Non-Resident ("Tax Return"), attached to the Omnibus Opposition as Exhibit 10.

[20] See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[21] See Jacqueline and Kathryn's Opposition and Countermotion, pp. 10-11; see Jacqueline's Petition for Declaratory Judgment, filed September 27, 2013, p. 6, ¶ C.20.

[22] Nevada law presumes "[t]hat evidence willfully suppressed would be adverse if produced." NRS 47.250(3). Nevada courts have consistently enforced an adverse presumption and, at the very least, an adverse inference from evidence that was requested and willfully suppressed by a party. See, e.g., Douglas Spencer & Assoc. v. Las Vegas Sun Inc., 84 Nev. 279, 439 P.2d 473 (1968). At the very least, if evidence is inadvertently lost or destroyed, the court draws an inference that the evidence would be adverse if produced. See, e.g., Bass-Davis v. Davis, 122 Nev. 442, 134 P.3d, 103 (2006).

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either return at the time of filing, Eleanor never transferred Trust No. 2's ownership of the Oil Rights and Oil Income to Marjorie, and the tax returns did not transfer ownership to Marjorie.

E. DOCUMENTS EVIDENCING MARJORIE'S KNOWLEDGE THAT TRUST NO. 2 ALWAYS OWNED 100% OF THE OIL ASSETS.

As detailed in the Omnibus Opposition, the following documents demonstrate that Trust No. 2 always owed 100% of the Oil Assets, and Marjorie always knew this.

- Letters from Marjorie, dated May and June 1980, to Tesoro Crude Oil Company and Permian Corporation instructing them to amend the division orders to reflect that Eleanor is the Co-Trustee of Trust No. 2, acknowledging that Trust No. 2 is the legal owner.[23]
- Letter from Phillips Petroleum Company to Marjorie dated February 10, 1981, explaining the legal department's analysis that all disbursements of Oil Income were to be paid to Marjorie and Eleanor as co-trustees of Trust No. 2.[24]
- Hallco Petroleum, Inc. required that Marjorie and Eleanor obtain a separate tax identification number for Trust No. 2, which was obtained and is EIN #XX-XXX**7338**.[25]
- Letters from Marjorie to oil companies instructing them to make royalty checks payable to Marjorie and Eleanor as co-trustees and identifying the EIN Number for Trust No. 2.[26]
- Division Orders from 1989 to 2006, all identifying Trust No. 2 as the 100% owner, signed by Marjorie and Eleanor as the co-trustees, in the presence of witnesses, and indentifying Trust No. 2's EIN.[27]

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[23] See Letters dated May 19, 1980 and June 25, 1980 attached to the Omnibus Opposition as Exhibit 13.

[24] See 2-10-1981 Letter attached to the Omnibus Opposition as Exhibit 14.

[25] See Letter dated February 19, 1986, attached to the Omnibus Opposition as Exhibit 15; see IRS Letters responding to Inquiry of April 23, 2013 and June 24, 2013 ("IRS Letters"), attached to the Omnibus Opposition as Exhibit 16.

[26] See Letter dated August 4, 1994, attached to the Omnibus Opposition as Exhibit 17; see Handwritten Letter dated December 6, 1989 ("12-06-89 Letter"), attached to the Omnibus Opposition as Exhibit 18.

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- Marjorie's handwritten bookkeeping records for 1994, 1995, and 1999, identifying Trust No. 2 and Trust No. 2's EIN in bookkeeping records related to the Oil Income.[28]

F. JACQUELINE GAINS CONTROL OF THE OIL INCOME PAYMENTS.

In or about 1999, Jacqueline began assisting Marjorie with her finances, in particular, the income generated from the Oil Rights.[29] Jacqueline gained a better understanding of the value of the business when she was added as a signatory on the oil and gas bank account in 1999.[30] During this time, Eleanor was living in Idaho, caring for her companion and attending to his medical needs.[31] In or about 2006 or 2007, Jacqueline realized how valuable the Oil Assets were when a division order was signed by Marjorie and Eleanor.[32] Each month, Jacqueline would gather the checks from the post office box to which they were mailed from the various lessees and deposit them into the joint Wells Fargo bank account, which was in the name of Marjorie and Eleanor and referred to as the "oil and gas account."[33] From there, Jacqueline would divide the money, with 35% going to Eleanor, and 65% going to Marjorie.[34] Marjorie's health began to decline in about 2001 to 2002, and she eventually passed away in May 2009.[35]

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[27] See Division Orders from May 1, 1989 to June 1, 2006, collectively attached to the Omnibus Opposition as Exhibit 19.

[28] See Handwritten Notes from 1994 through 1999, attached to the Omnibus Opposition as Exhibit 22.

[29] See Jacqueline M. Montoya's Responses to Eleanor C. Ahern's First Set of Interrogatories signed on August 29, 2014 at Response to Interrogatory No. 23 ("Montoya's Responses to Interrogatories"), a copy of which is attached to the Omnibus Opposition as Exhibit 23.

[30] See Jacqueline's Deposition, 48:11-19.

[31] See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[32] See Jacqueline's Deposition, 46:9-15, 47:2-11.

[33] See Montoya's Responses to Interrogatories, Exhibit 23.

[34] Id.

[35] Id.; see Death Certificate of Marjorie Connell, attached to the Omnibus Opposition as Exhibit 2.

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1. Jacqueline And Kathryn Receive Millions Of Dollars.

After Marjorie's death, Jacqueline and Kathryn collectively received $3.5 million, which did not include any of the Oil Assets.[36] Additionally, after Marjorie's death, Jacqueline paid herself and Kathryn 65% of the Oil Income. Similar to Marjorie, Eleanor extended her generosity to her daughters, but always understood that she was the 100% current income beneficiary.[37] These payments resulted in the sisters receiving approximately $1,046,552 from the Oil Income in 2010 and 2011[38] and a lease bonus of approximately $1,122,870.[39] Thus, Jacqueline and Kathryn received over $2.1 million, and this does not include the Oil Income for 2009, 2012, or 2013.

2. Documents Evidencing Jacqueline And Kathryn's Knowledge That Trust No. 2 Always Owned 100% Of The Oil Assets.

After Marjorie's death in 2009 and continuing for almost four years, Jacqueline and Kathryn confirmed that only Trust No. 2 owned all of the Oil Rights as evidenced by several documents:

- Email from Jacqueline to attorney David Strauss acknowledging that Eleanor is only the trustee of Trust No. 2.[40]
- Consents filed with the probate court by Jacqueline and Kathryn, verifying the truth and accuracy of Eleanor's Petition, including that Eleanor is to receive all

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[36] See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[37] Id.

[38] See Financial Records, attached hereto to the Omnibus Opposition as Exhibit 33.

[39] See Letter dated April 6, 2012 from Jeffrey Johnston to Wells Fargo Bank instructing $1,727,493.60 representing the lease bonuses to be wired to the Trust bank account, attached to the Omnibus Opposition as Exhibit 32. It is believed that Jacqueline and Kathryn received 65% of this amount, which totals approximately $1,122,870.84.

[40] See Email dated July 28, 2009, attached to the Omnibus Opposition as Exhibit 24.

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the Oil Income during her lifetime, that Trust No. 2 owns the Oil Rights, and that Jacqueline and Kathryn are ***contingent income beneficiaries*** of Trust No. 2.[41]

- Letter from Jim Walton to Eleanor, who assisted Jacqueline in negotiating oil and gas leases with Apache Corporation, indicating that Jacqueline's signature was on the leases, which was incorrect and requesting that Eleanor sign the leases.[42]
- Mr. Johnston sent Jacqueline a letter enclosing the documentation to be signed by Eleanor for the Apache closing.[43] Jacqueline assisted in obtaining Eleanor's signature.[44]
- Eleanor again signed addendums to the Apache oil and gas leases.[45]

3. Title Never Transferred to the MTC Trust.

Title to the Upton County, Texas property and the Oil Rights never transferred to Trust No. 3, Marjorie's trust, or the MTC Living Trust dated December 6, 1995 (the "MTC Trust") where Marjorie purportedly exercised her power of appointment under Trust No. 3.[46] Title remains vested in the Trust.[47] In fact, Jacqueline and Kathryn knew that the MTC Trust did not own any of the Oil Assets because their attorney advised them a deed was needed to transfer any such interest.[48] Eleanor would have never agreed to sign a deed transferring any of the Oil Assets out of Trust No. 2. No deed was ever executed. Jacqueline and Kathryn's only

[41] See Petition to Assume Jurisdiction Over Trust; Confirm Trustee ("Petition to Assume Jurisdiction"); and Construe and Reform Trust filed on August 17, 2009; see Consents to Petition signed by Jacqueline Montoya and Kathryn Bouvier, attached to the Omnibus Opposition as Exhibits 25 and 26.

[42] See Letter dated January 30, 2013 from James A. Walton to Eleanor, attached to the Omnibus Opposition as Exhibit 28.

[43] See Letter dated April 4, 2012, attached to the Omnibus Opposition as Exhibit 29.

[44] See Montoya's Responses to Interrogatories at Response to Interrogatory No. 5, attached to the Omnibus Opposition as Exhibit 27.

[45] See Addendums to: Oil and Gas Lease, attached to the Omnibus Opposition as Exhibit 31.

[46] See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[47] Id.

[48] See Declaration of David Strauss, Esq. ¶ 11, attached to Jacqueline and Kathryn's Opposition and Countermotion as Exhibit E.

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explanation for never pursuing such a deed was that they did not want to incur the attorney fees for the preparation of a deed. Given the minimal cost typically associated with preparing a deed, it seems more likely that Jacqueline and Kathryn knew that Eleanor would never execute such a deed.

G. JACQUELINE AND KATHRYN ALIENATE ELEANOR.

Kathryn and Jacqueline did several things that alienated Eleanor and ultimately culminated in a falling out between Eleanor and her daughters and Eleanor's decision to stop sharing the Oil Income with Jacqueline and Kathryn. Specifically, (1) Jacqueline and Kathryn abandoned Eleanor when she was unwell, (2) Jacqueline called Elder Protective Services without consulting Eleanor, (3) Jacqueline called the police regarding Eleanor, (4) Eleanor learned of Jacqueline's irresponsible spending, and (5) Jacqueline and Kathryn attempted a foreign probate of Marjorie's will without notifying Eleanor.

1. Jacqueline And Kathryn Abandoned Eleanor When She Was Unwell.

In April 2011, Eleanor had a hernia operation.[49] Eleanor experienced vertigo and life threatening complications after the surgery.[50] She was rushed back to the hospital where she recovered for several days and nights.[51] Neither Kathryn nor Jacqueline visited Eleanor while she was in the hospital.[52]

In March 2012, Eleanor broke her leg—the same leg which she broke in 1972, which took seven years to heal, and is the cause of her current difficulty walking and needing a service dog.[53] The leg required surgery, and Eleanor had a severe, life threatening allergic reaction to the anesthesia. Eleanor spent 30 days recovering in the hospital.[54] Kathryn never visited, called,

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[49] See Eleanor's Declaration, attached hereto as **Exhibit 1**.

[50] Id.

[51] Id.

[52] Id.

[53] Id.

[54] Id.

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or sent flowers or a card to Eleanor during her hospital stay.[55] In fact, Eleanor has not spoken with Kathryn since the Spring of 2012, when Kathryn called her under false pretenses and demanded that Eleanor blindly trust Jacqueline and do as she asks.[56] Jacqueline visited Eleanor at most a few times a week for approximately fifteen minutes at a time.[57] Once she brought her twins to see Eleanor.[58] Neither Jacqueline nor Kathryn expressed any concern for Eleanor's life threatening condition.[59]

During the year period from the Spring of 2011 to the Spring of 2012, Eleanor had two hospital stays during which her life was at risk. Both times, Eleanor felt little to no concern or care from her daughters, and she felt abandoned.[60]

2. Jacqueline Called Elder Protective Services Without Consulting Eleanor.

On July 6, 2012, Jacqueline agreed to allow Eleanor to see Jacqueline's children, Eleanor's grandchildren, with the stipulation that Jacqueline "supervise" the visit.[61] The visit lasted approximately two hours, much of which Jacqueline spent in her car. Within minutes after Jacqueline and her children left, Eleanor received a telephone call from Elder Protective Services ("EPS"), who wanted to perform an immediate assessment at Eleanor's home. Eleanor scheduled an appointment to meet with the case worker on July 9, 2012 at the case worker's office.[62] Eleanor learned that Jacqueline had called EPS and reported that Eleanor's close friend and limited agent, Suzanne Nounna ("Suzanne") was financially exploiting Eleanor. Eleanor

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[55] Id.

[56] Id.

[57] Id.

[58] Id.

[59] Id.

[60] Id.; Jacqueline confirms that her relationship with Eleanor deteriorated during April 2012. Jacqueline's Deposition, 228-231.

[61] Id.; see Jacqueline's Deposition at 11:12-21.

[62] Id.

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explained that this was not the case, that Suzanne was a trusted friend, and that Eleanor had complete control and understanding of her finances and business affairs. EPS closed the case on July 25, 2012, determining that the claims of exploitation were not substantiated.[63] Eleanor was extremely hurt, upset, and angered that Jacqueline would lie to EPS and contact EPS without so much as discussing her alleged concerns with Eleanor.[64]

3. Jacqueline Called The Police Regarding Eleanor.

The day after EPS closed the case, July 26, 2012, Jacqueline called the police to perform a wellness check on Eleanor. Eleanor was out of town in Mammoth, California with friends. Jacqueline never spoke to Eleanor about whether Eleanor needed any assistance or a wellness check. In fact, Eleanor was fine. When Eleanor learned that Jacqueline had called the police to request a wellness check, she was hurt that her daughter would do such a thing without even talking with her, and was embarrassed to needlessly have the police involved in her affairs.[65]

4. Eleanor Learned Of Jacqueline's Irresponsible Spending.

In or about September 2012, Eleanor learned that Jacqueline had spent $80,000 in one month.[66] This caused Eleanor concern because it indicated careless, irresponsible spending. Eleanor wanted to discourage this type of mismanagement and preserve the Oil Income as an heirloom asset for her grandchildren, as her father had intended.[67]

5. Jacqueline And Kathryn Attempted A Foreign Probate Of Marjorie's Will Without Notifying Eleanor.

In the summer of 2013, Eleanor learned that Jacqueline, without any notice to Eleanor, had filed in July 2012 an application in Upton County, Texas to probate Marjorie's will as a foreign will (the "Texas Case").[68] The application contained false statements, including that

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[63] See EPS Assessment, Bates Nos. AHERN 560-59, attached hereto as **Exhibit 2**.

[64] See Eleanor's Declaration, attached hereto as Exhibit 1.

[65] Id.

[66] See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[67] Id.

[68] Id.

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Marjorie had no natural or adopted children, when Marjorie had adopted Eleanor decades earlier.[69] Other misstatements included that Marjorie owned oil, gas, and mineral rights in Upton County, Texas,[70] which was not true, and that the rights were a portion of the principal of Trust No. 3.[71] Eleanor then filed a Petition in Intervention and Motion to Set Aside the order in July 2013.[72]

Jacqueline and Kathryn's numerous hostile acts against Eleanor alienated her and caused Eleanor to feel completely abandoned and taken advantage of.[73] As a result, Eleanor had a falling out with her daughters and decided to stop the payments of 65% of the Oil Income to Jacqueline and Kathryn.[74]

H. JACQUELINE AND KATHRYN INITIATE LITIGATION.

Jacqueline and Kathryn—not Eleanor—initiated this litigation, and Jacqueline admitted as much.[75] First they filed the Texas Case. Then, reacting to Eleanor's exercise of her right not to share any of the Oil Income with them, they filed the Petition for Declaratory Judgment in September 2013.[76] Through the Petition for Declaratory Judgment, Jacqueline—not Eleanor—initiated litigation, claiming that she and Kathryn are entitled to 65% of the Oil Assets, despite the clear language of the Trust and the historical acknowledgement of Marjorie and Jacqueline that only Trust No. 2 owned the Oil Assets. In fact, the only legal proceeding Eleanor initiated was to reform the Trust to address the final distribution of Trust No. 2 after Eleanor's death since

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[69] Id.; see Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration and Order Probating Foreign Will and Appointing Independent Administrator, ¶ 5, Bates Nos. 570-82, attached hereto as **Exhibit 3**.

[70] Id. at ¶ 3.

[71] Id. at ¶12.

[72] See Petition in Intervention and Motion to Set Aside, filed July 12, 2013 in the Texas case, Bates Nos. AHERN 586-599, attached hereto as **Exhibit 4**.

[73] See Declaration of Eleanor, attached to the Omnibus Opposition as Exhibit 1.

[74] Id.

[75] See Jacqueline's Deposition, 27:11-18.

[76] See Petition for Declaratory Judgment, filed September 27, 2013.

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Marjorie predeceased Eleanor, and this was not addressed in the Trust.[77] All of Eleanor's actions within this case have been in defense to the Petition for Declaratory Relief.

I. JACQUELINE AND KATHRYN PREVENT DISTRIBUTION OF THE OIL INCOME.

In addition to initiating this litigation, Jacqueline and Kathryn's counsel also contacted all of the oil companies that lease the Texas land, informed them there was a dispute regarding the ownership of the Oil Rights, and caused all of the companies to suspend payments of the Oil Income.[78] Notably, the letters from Jacqueline's counsel enclosed Jacqueline's Petition for Declaratory Judgment as evidence of the lawsuit and the dispute—again, evidence that Jacqueline and Kathryn—not Eleanor—initiated this litigation. Mr. Johnston, Eleanor's Texas counsel, has been and continues to negotiate with the oil companies to unwind the suspended payments. Although Mr. Johnston has been able to negotiate an end to the suspensions with some of the oil companies, some are still withholding Oil Income payments. Jacqueline and Kathryn have not assisted with the unwinding of the suspension of the Oil Income payments.[79]

J. ELEANOR HAS PRESERVED THE OIL INCOME PAYMENTS.

Despite Eleanor, as the sole income beneficiary of Trust No. 2, always having been entitled to 100% of the Oil Income, and despite Jacqueline and Kathryn never posting a bond, Eleanor has preserved the Oil Income payments since November 12, 2013. In fact, Shawn D. King, CPA reviewed the Trust's bank account records and confirmed in a letter that the Oil Income from November 12, 2013 through October 15, 2014 totals $1,602,442,33, and 65% of that amount is $1,041,587.51. As of October 15, 2014, there was over $1.3 million in the

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[77] See Petition to Assume Jurisdiction Over Trust; Confirm Trustee; and Construe and Reform Trust, filed August 17, 2009.

[78] See Letters from Jacqueline's counsel to Plains Marketing and to Apache dated September 30, 2013, and response from Plains Marketing dated October 14, 2014, Bates Nos. AHERN 780-799, 800-821, 832-853, attached hereto as **Exhibit 5**; see Declaration of Jeffrey M. Johnston, Esq., Exhibit 2 to the Opposition to Motion to Enforce Settlement, filed December 11, 2014.

[79] See Declaration of Jeffrey M. Johnston, Esq., Exhibit 2 to the Opposition to Motion to Enforce Settlement, filed December 11, 2014.

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account, which is more than 65% of the Oil Income for the time period.[80] Moreover, Jacqueline and Kathryn are aware of this because Eleanor provided them Mr. King's letter at the Supreme Court settlement conference on October 15, 2014. Thus, Eleanor has preserved the Oil Income Payments in an amount more than the 65% share to which Jacqueline and Kathryn allege they are entitled.

III. SUMMARY OF UNDISPUTED FACTS.

1. The Trust now consists solely of Trust No. 2.[81]

2. Since William's death, Eleanor has been and remains the sole income beneficiary of Trust No. 2.[82]

3. Eleanor was only appointed and has only served as Co-Trustee over Trust No. 2 from the time of William's death until the time of Marjorie's death.[83]

4. Since Marjorie's death, Eleanor has been the sole trustee of Trust No. 2.[84]

5. Eleanor was never appointed a trustee over Trust No. 3.[85]

6. Since William's death, all royalty payments from the oil companies were always paid to Trust No. 2.[86]

7. From 1989 to 2006, all division orders issued by the oil companies were always signed by Marjorie and Eleanor, as Co-Trustees of Trust No. 2.[87]

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[80] See Letter from Shawn D. King, CPA dated October 15, 2014, Bates Nos. AHERN 600-601, attached hereto as **Exhibit 6**.

[81] See Jacqueline's Deposition, at 246:25, 247:1-11.

[82] See Jacqueline's Deposition at 85:16-21, 97:13-18.

[83] See Jacqueline's Deposition at 117:19-22, 247:6-7.

[84] Id.

[85] Id.

[86] See, e.g., Jacqueline's Deposition at 246:25, 247:1-11, 255:20-23.

[87] See Omnibus Opposition, Exhibit 19.

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8. From 1989 to 2006, Trust No. 2's Tax ID number was always used to identify the owner of all Oil Assets on the division orders signed by Marjorie and Eleanor, as Co-Trustees of Trust No. 2.[88]

9. On all division orders issued by the oil companies in relation to the Oil Assets, the Tax ID number for Trust No. 3 was never used.[89]

10. In all of Marjorie's correspondence to the oil companies and handwritten records, Trust No. 2's Tax ID number was always referenced in identifying the owner of the Oil Assets.[90]

11. In all of her communications to the oil companies, Marjorie never referenced Trust No. 3 or used Trust No. 3's Tax ID number to identify the owner of the Oil Assets.[91]

12. In all correspondence and division orders sent to the oil companies, Marjorie never mentioned that the Oil Assets were owned 35% by Trust No. 2 and 65% by Trust No. 3.[92]

IV. LEGAL ARGUMENT.[93]

The Court should rule in Eleanor's favor: (A) Jacqueline and Kathryn's arguments rest on four false premises; (B) the Court should grant Eleanor's Motion to Dismiss the Petition for Declaratory Relief; (C) the Court should deny Jacqueline and Kathryn's Countermotion for Summary Judgment; (D) the Court should deny Jacqueline and Kathryn' Countermotion for Assorted Relief; and (E) the Court should grant Eleanor's Countermotion for Summary Judgment (contained in the Omnibus Opposition), or, alternatively, enter findings of fact pursuant to NRCP 56(d).

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[88] Id.

[89] Id.

[90] See Omnibus Opposition, Exhibit 18 and 22; See also Jacqueline's Deposition at 156:15-25; 157:1-3.

[91] Id.

[92] Id.; See also Omnibus Opposition, Exhibit 19.

[93] On January 8, 2014, the Parties submitted to the Court a stipulation to dismiss the Will Contest with prejudice. As the Parties have settled all claims related to the Will Contest, this Reply and Opposition does not address any issues related to the Will Contest raised by Jacqueline and Kathryn's Opposition and Countermotion. Any references by Kathryn and Jacqueline to the Will Contest within their Opposition to Eleanor's Countermotion for Summary Judgment should be disregarded by the Court and stricken from the record.

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A. JACQUELINE AND KATHRYN'S ARGUMENTS REST ON FOUR FALSE PREMISES.

Jacqueline and Kathryn's arguments rest on four false premises, which flaw their logic throughout. These false premises are: (1) Trust No. 3 owns 65% of the Oil Assets; (2) Because Marjorie and later Jacqueline and Kathryn received a portion of the Oil Income, they own some portion of the Oil Assets; (3) Eleanor claims entitlement to benefits under Trust No. 3; and (4) Jacqueline and Kathryn's claims arose in June 2013. Each of these positions is fatally flawed.

1. False Premise #1: Trust No. 3 Owns 65% Of The Oil Assets.

The dispositive issue in this case is the ownership of the Oil Assets. As analyzed at length in the Omnibus Opposition, since the death of William, Trust No. 2 has always owned the Oil Assets. It is undisputed that Eleanor is the sole income beneficiary under Trust No. 2, and since Marjorie's passing, Eleanor is the sole trustee of Trust No. 2. In addition to the plain language of the Trust, it is clear that William's intent was to ensure that Eleanor received 100% of the Oil Income during her life, and that the Oil Assets would serve as an heirloom asset to be passed down Eleanor's bloodlines. Additionally, numerous documents evidence that Marjorie always acknowledged that Trust No. 2 was the sole owner of 100% of the Oil Assets, as demonstrated by: letters between Marjorie and the oil companies, the separate EIN for Trust No. 2 as required by the oil companies, the division orders from 1989 to 2006 identifying Trust No. 2 as the 100% owner, and Marjorie's handwritten bookkeeping records.[94] Moreover, numerous documents also evidence Jacqueline and Kathryn's acknowledgement that Trust No. 2 is the 100% owner of the Oil Assets, including: Jacqueline's email to David Strauss, Jacqueline and Kathryn's consents approving Eleanor's Petition to reform the trust, Jim Walton's letter indicating that Eleanor—not Jacqueline—must sign the oil leases, and Eleanor's signing of the Apache leases and addendums thereto.[95] And, Jacqueline admitted in her deposition that the division orders have always been signed by the trustee(s) of Trust No. 2, and only Trust No. 2's EIN was ever used in connection with the royalty payments.

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[94] These documents are itemized in the Factual and Procedural Background, Section E, *supra*, p. 7.

[95] These documents are itemized in the Factual and Procedural Background, Section F.2, *supra*, pp. 9-10.

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Moreover, no deed was ever executed transferring any of the Oil Assets to the MTC Trust as required by the Statute of Frauds. Royalties from "oil and gas and other minerals in the ground, is usually treated as real property." In re Shailer's Estate, 266 P.2d 613, 616 (Okla. 1954). Nevada's statute of frauds requires that all interests in land must be in writing, signed by the party creating or granting the interest, "unless by act or operation of law." NRS 111.205(1). This does not "prevent any trust from arising or being extinguished by implication or operation of law." NRS 111.205(2). "An oral agreement regarding real property is void and not final until put in writing." Waters v. Weyerhaeuser Mortgage Co., 582 F.2d 503, 506 (9th Cir. 1978).

In this case, the transfer could not be effectuated within the Trust. NRS 163.385 authorizes a trustee to "[a]cquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division becomes necessary in order to make distributions." Here, the MTC Trust was not created by the same "single instrument" as Trust No. 2. The MTC Trust is a separate Trust created by Marjorie. Additionally, a trust created in relation to real property is only valid unless created by operation of law or by a written instrument signed by the trustee. NRS 163.008. Here, there can be no transfer of any of the Oil Assets from Trust No. 2 to Trust No. 3 by operation of law without a written instrument because a written instrument is required by the statute of frauds. Therefore, without a written deed, the MTC Trust cannot, as a matter of law, own any of the Oil Assets.[96]

2. False Premise #2: Because Marjorie, And Later Jacqueline And Kathryn, Received A Portion Of The Oil Income, They Own Some Portion Of The Oil Assets.

Jacqueline and Kathryn's arguments wrongly conflate receipt with ownership. Trust No. 2 owns 100% of the Oil Assets. The fact that Eleanor allowed Marjorie to receive 65% of the Oil Income during Marjorie's life and for Jacqueline and Kathryn to receive 65% for a time period after Marjorie's death, does not change the legal ownership of the Oil Assets, which always remained with Trust No. 2.

[96] Jacqueline and Kathryn have submitted as Exhibit D to the Opposition to Eleanor's Countermotion for Summary Judgment a handwritten record purporting to be an intake sheet related to estate planning for Marjorie. Eleanor hereby objects to the Court's consideration of this document because it is inadmissible. It has not been authenticated and no foundation has been properly laid. See e.g., NRS 52.015.

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Similarly, the fact that Marjorie's CPA reported Marjorie's receipt of 65% of the Oil Income during her lifetime as a marital bequest is creative accounting for tax purposes. A state tax return is not conclusive evidence of ownership or title. See Benetic v. M/Y Athena Alexander, No. CV 00-06845 ABC (EX), 2001 WL 1843781, *1, *4 (C.D. Cal. Aug. 13, 2001) (9th Cir. 2004) (disregarding argument that a state tax return referencing a bill of sale was evidence of ownership of a boat); Engeman v. Engeman, 123 S.W.3d 227, 237 (Mo. Ct. App. 2003) (holding that witness testimony conflicted with tax returns and trial court must determine which statements were false).

Neither Marjorie, Jacqueline, nor Kathryn's receipt of a portion of the Oil Income nor the characterization of the receipt of that income on tax returns changes the legal ownership. Trust No. 2 always has and still does own 100% of the Oil Assets.

3. False Premise #3: Eleanor Claims Entitlement To Benefits Under Trust No. 3.

Throughout the Opposition and Countermotion, Jacqueline and Kathryn assert that Eleanor is claiming entitlement to benefits under Trust No. 3. This is patently false. Eleanor acknowledges that Marjorie was the sole beneficiary and trustee under Trust No. 3 and that Marjorie exercised her power of appointment under Trust No. 3, directing assets from Trust No. 3 to the MTC Trust, of which Kathryn and Jacqueline are beneficiaries. Importantly, it is undisputed that Trust No. 3 ceased to exist upon Marjorie's death. Thus, Eleanor never has and is not claiming any interest under Trust No. 3. In any event, Trust No. 3 never owned any of the Oil Assets—they were always owned solely by Trust No. 2. Eleanor is not claiming any interest under Trust No. 3, and any references to this false premise in the Opposition and Countermotion should be disregarded.

4. False Premise #4: Jacqueline And Kathryn's Claims Arose In June 2013.

Jacqueline and Kathryn posit that their claim to 65% of the Oil Income did not arise until Eleanor stopped allowing Jacqueline and Kathryn to receive a portion of the Oil Income in June 2013. This argument is detached from reality. Jacqueline took over the record keeping and transactions related to the Oil Income in or about 1999. Jacqueline obtained the checks,

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deposited them, and disbursed 65% to Marjorie until her death, and then to herself and her sister. Thus, Jacqueline saw that the checks were payable to Marjorie and Eleanor, as co-trustees of Trust No. 2. And, Jacqueline of course knew—it is undisputed—that Eleanor was only ever a co-trustee of Trust No. 2. Therefore, Jacqueline knew as early as 1999 that the Oil Income was all payable to and owned by Trust No. 2. If she thought this was inaccurate and that Trust No. 3 owned 65%, why did she not raise the issue back in 1999?

All the way into 2012, Jacqueline knew that Trust No. 2 owned 100% of the Oil Assets. In or about April 2012, Jacqueline assisted in obtaining Eleanor's signature on the Apache oil leases. Thus, Jacqueline knew that only Eleanor's signature was required on the oil leases, and therefore only Trust No. 2 had an ownership interest in the Oil Assets. Yet, Jacqueline and Kathryn did not raise the issue at any point between 1999 and 2012.

In fact, Jacqueline and Kathryn did not raise the issue until they filed the Petition for Declaratory relief in September 2013, after they alienated Eleanor and Eleanor decided to stop sharing the Oil Income with them in or about June 2013. The evidence is clear, however, that Jacqueline and Kathryn knew no later than 1999 that Trust No. 2 was and is the 100% owner of the Oil Assets. Thus, any claim would have arisen in 1999.

B. THE COURT SHOULD DISMISS KATHRYN AND JACQUELINE'S PETITION FOR DECLARATORY RELIEF.

The Court should grant Eleanor's Motion to Dismiss the Petition for Declaratory Judgment based on claim preclusion and estoppel. Claim preclusion bars the litigation of a claim when "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008). "This test maintains the well-established principle that claim preclusion applies to all grounds of recovery that were or could have been brought in the first case." Id. at 1054-55, 194 P.3d at 713. The "purposes of claim preclusion are 'based largely on the ground that fairness to the defendant, and sound judicial administration, require that at some point litigation over the particular controversy come to an end' and that such reasoning may apply 'even though

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the substantive issues have not been tried, especially if the plaintiff has failed to avail himself of opportunities to pursue his remedies in the first proceeding . . .' Consequently, the dismissal in the first suit is properly considered a final judgment for claim preclusion purposes." Id. at 1058, 194 P.3d at 715 (quoting Restatement (Second) of Judgments section 19, comment a).

Here, claim preclusion bars Jacqueline and Kathryn's claims because (1) Jacqueline and Kathryn were parties in the Reformation Action, (2) the Reformation Order is valid, and (3) Jacqueline and Kathryn's claims should have been brought in the Reformation Action. (4) Additionally, their claims are barred by estoppel.

1. Jacqueline And Kathryn Were Parties In The Reformation Action.

Jacqueline and Kathryn actively participated in the Reformation Action. In fact, they signed Consents stating, "I am a ***contingent beneficiary***" of the Trust; "I have read the Petition . . . and believe it to be ***true and correct*** to the best of my knowledge."[97] The Petition states, "As of the death of Marjorie, ***Trust No. 2*** owned land and oil gas shares in reserves and income located in Upton County, Texas (the "Oil Assets")."[98] It further states, "Pursuant to Article Fourth, which Article governs the administration of ***Trust No. 2***, all income from the Oil Assets is to be paid to the Petitioner as the "Residual Beneficiary" [***Eleanor***] during her lifetime."[99] And, the Petition states that the Oil Assets are "***the sole asset of Trust No. 2***."[100] Consequently, by signing the Consents, Jacqueline and Kathryn acknowledged and represented to this Court that they understood, that Trust No. 2 owns the Oil Rights and Oil Income and that Eleanor is entitled to 100% of the Oil Income during her life. Thus, Jacqueline and Kathryn actively participated in the Reformation Action and were parties to the action for purposes of claim preclusion.

Moreover, even if Jacqueline and Kathryn were not parties in the technical, procedural sense of the word, they were certainly in privity with Eleanor. "To be in privity, the person must

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[97] See Consents attached to the Petition, filed August 17, 2009, Exhibit 6.

[98] See Petition, filed August 17, 2009, p. 4, ¶ 18.

[99] See id. at pp. 4-5, ¶ 19.

[100] See id. at p. 5, n.4.

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have 'acquired an interest in the subject matter affected by the judgment through . . . one of the parties, as by inheritance, succession, or purchase.'" Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481-82, 215 P.3d 709, 718 (2009) (quoting Restatement (Second) of Judgments § 41(1) (1982)). In fact, the Restatement Second of Judgments specifically identifies beneficiaries as being in privity with trustees. Id. Here, Jacqueline and Kathryn are contingent beneficiaries of Trust No. 2, of which Eleanor is the trustee. And, as Eleanor's daughters, Jacqueline and Kathryn are certainly in privity with Eleanor, especially since the Reformation Action was finalized well before their falling out in or about 2012.

2. The Reformation Order Is Valid.

The Court's Reformation Order is valid. Jacqueline and Kathryn never filed a motion for reconsideration, an appeal, or any other challenge to the Reformation Order. Jacqueline and Kathryn argue that the Reformation Order is irrelevant to their claims in this case, which argument fails on its face. The Reformation Order granted the very Petition, to which Jacqueline and Kathryn consented, which affirmed the provisions of Trust No. 2, including that Trust No. 2 owns all of the Oil Rights and that Eleanor is entitled to all of the Oil Income during her life. In this case, the sole dispositive issue is the ownership of the Oil Rights and entitlement to the Oil Income. The Reformation Order, based on the Petition, addressed this issue.

3. Jacqueline And Kathryn's Claims Should Have Been Brought In The Reformation Action.

The third element of claim preclusion is met because Jacqueline and Kathryn could have and should have brought their claims in the Reformation Action. The third element of claim preclusion requires that, "the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." Five Star Capital, 124 Nev. at 1054, 194 P.3d at 713. Jacqueline and Kathryn specifically acknowledged in their Consents that they are contingent beneficiaries to Trust No. 2, Trust No. 2 owns all of the Oil Rights, and that Eleanor is entitled to all of the Oil Income during her lifetime. If Jacqueline and Kathryn truly think that Trust No. 3 has always owned 65% of the Oil Rights and that they have been entitled to 65% of the Oil Income since Marjorie's death, then they should (1) not have signed the Consents stating

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the contrary, and (2) they should have raised these claims immediately upon reviewing the Reformation Petition. Yet, they did the reverse by reviewing, approving, and consenting to the Reformation Petition.

The Opposition and Countermotion asserts that Jacqueline and Kathryn's claim is an entitlement under Trust No. 3, which was not addressed by the Reformation Petition. This argument does not hold water. The Reformation Petition specifically addressed and confirmed Trust No. 2's ownership of 100% of the Oil Rights and Eleanor's entitlement to 100% of the Oil Income during her life. To say that the Reformation Petition and the Reformation Order did not address Jacqueline and Kathryn's claim to 65% of the Oil Rights and Oil Income is disingenuous.

Finally, Jacqueline and Kathryn argue that their claim did not arise until June 2013 when Eleanor stopped sharing the Oil Income with them. As discussed above, this is a false premise. Marjorie and Jacqueline always knew that Trust No. 2 owned the Oil Rights. This is demonstrated by numerous documents where Marjorie and Jacqueline acknowledged this. Jacqueline, especially, having gained control over the recordkeeping and transactions related to the Oil Income in 1999, knew since then that Trust No. 2 owned all of the Oil Rights and that Eleanor was entitled to all of the Oil Income during her life. Jacqueline again confirmed that she knew this in 2012 when she tried to execute the Apache oil leases, but was instructed that only Eleanor could sign.[101]

Jacqueline always knew that Trust No. 2 owned the Oil Rights and that Eleanor was entitled to 100% of the Oil Income during her life. At the very latest, she learned this in 1999 and confirmed her knowledge in 2012. With this knowledge, if Jacqueline and Kathryn thought this was wrong and that Trust No. 3 owned 65% of the Oil Rights, then why did they not raise it during the 10 years between 1999 and 2009? And why did they sign consents confirming Trust No. 2's 100% ownership in 2009? Jacqueline and Kathryn were aware of any claim in 1999 at

[101] See Letter dated January 30, 2013 from James A. Walton to Eleanor, attached to the Omnibus Opposition as Exhibit 28.

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the latest. Thus, they should have and could have raised their claim to the Oil Rights during the Reformation Action. They failed to do so, and their claims are barred by claim preclusion.

4. Jacqueline And Kathryn's Claims Are Barred By Estoppel.

The Court should dismiss the Petition for Declaratory relief because estoppel bars the claims. Estoppel prevents a party from taking a position contrary to a previous position or action when another has relied on the prior position or acts in good faith and is injured by the party's change in position. Bankers Trust Co. v. Pacific Employers Insurance Co., 282 F.2d 106, 112 (9th Cir. 1960). "The doctrine of judicial estoppel, sometimes referred to as the doctrine of preclusion of inconsistent positions, is invoked to prevent a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process." Yniguez v. State of Ariz., 939 F.2d 727, 738 (9th Cir. 1991).

Here, Jacqueline and Kathryn's position that they are entitled to 65% of the Oil Rights and Oil Income through Trust No. 3 contradicts their Consents as well as all of the documentation evidencing that Marjorie and Jacqueline always knew that Trust No. 2 owns all of the Oil Rights and that Eleanor is entitled to receive 100% of the Oil Income during her life. Therefore, the Court should dismiss the Petition for Declaratory Relief based on estoppel.

C. THE COURT SHOULD DENY JACQUELINE AND KATHRYN'S COUNTERMOTION FOR SUMMARY JUDGMENT.

The Countermotion for Summary Judgment ("SJ Countermotion") is procedurally and substantively flawed. Summary judgment is appropriate when materials properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). "The substantive law controls which factual disputes are material and will preclude summary judgment." Wood, 121 Nev. at 731, 121 P.3d at 1031. A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. Valley Bank v. Marble, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989); SEC v. Seaboard Corp., 677 F.2d 1301, 1306 (9th Cir. 1982). The burden for demonstrating the absence of a genuine issue of material fact lies with the moving party, and the material lodged by

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the moving party must be viewed in the light most favorable to the nonmoving party. Hoopes v. Hammargren, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970).

In this case, viewing the facts in the light most favorable to Eleanor, Jacqueline and Kathryn are not entitled to judgment as a matter of law: (1) The SJ Countermotion improperly raises new claims and defenses never before pled, (2) the SJ Countermotion misconstrues Eleanor's defense of ownership as an affirmative claim, (3) no statute of limitations has expired on Eleanor's counterclaims, (4) laches does not bar Eleanor's counterclaims, (5) Eleanor has not waived her counterclaims, (6) claim preclusion is inapplicable to Eleanor's counterclaims, and (7) Jacqueline and Kathryn are not entitled to an accounting.

1. The Countermotion Improperly Raises New Claims And Defenses Never Before Pled.

The SJ Countermotion argues the statute of limitations, laches, waiver, claim preclusion, and right to an accounting. Yet, the ***only claim*** that Jacqueline and Kathryn have pled to date is for declaratory relief that Eleanor is only entitled to 35% of the Oil Assets and that Jacqueline and Kathryn, as beneficiaries of the MTC Trust, are entitled to 65% of the Oil Assets.[102] The only claims Eleanor has pled in this case are her counterclaims for intentional interference with contractual relations and enforcement of the Trust's no contest clause, as asserted in her Answer and Counterclaim.[103] Jacqueline and Kathryn's SJ Countermotion, however, argues the statute of limitations, laches, waiver, claim preclusion, and right to an accounting, none of which they have previously pled. The statute of limitations, laches, and waiver, must all be pled as affirmative defenses pursuant to NRCP 8, but Jacqueline and Kathryn have never pled affirmative defenses to Eleanor's counterclaims. Thus, the court should disregard the arguments in the countermotion regarding the statute of limitations, laches, and waiver. As to the accounting claim, Jacqueline and Kathryn have never pled a claim for an accounting, and this should be disregarded as well.

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[102] See Jacqueline's Petition for Declaratory Relief, pp. 17-18.

[103] See Eleanor's Answer and Counterclaim filed February 10, 2014.

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2. Eleanor's Ownership Is A Defense, Not A Claim.

As a preliminary matter, Jacqueline and Kathryn misconstrue Eleanor's defense of ownership as a claim. Jacqueline and Kathryn initiated this litigation with Jacqueline's Petition for Declaratory relief filed in September 2013. The Petition for Declaratory Relief asks this court to determine that Eleanor as trustee of Trust No. 2 is only entitled to 35% of the Oil Income, and Jacqueline and Kathryn, as beneficiaries of the MTC Trust are entitled to 65% of the Oil Income.[104] As a ***defense*** to these claims, Eleanor has raised Trust No. 2's 100% ownership of the Oil Assets and her entitlement to 100% of the Oil Income during her life.[105] Therefore, Eleanor has not raised a claim regarding ownership; rather, she has asserted her ownership as a defense against the declaratory relief claim of Jacqueline and Kathryn. Eleanor had no ability or duty to raise the defense of ownership until Jacqueline filed the Petition for Declaratory Relief, and Eleanor appropriately raised the defense in her Answer and Counterclaim. On summary judgment, Kathryn and Jacqueline bear the burden of proving their claim of entitlement to 65% of the Oil Assets, as this is their sole claim in this litigation.

3. No Statute Of Limitations Has Expired Regarding Eleanor's Counterclaims.

Eleanor timely filed her counterclaims for intentional interference with contractual relations and enforcement of the no contest clause.

The statute of limitations for a claim for intentional interference with contractual relations is three years. Stalk v. Mushkin, 125 Nev. 21, 27, 199 P.3d 838, 842 (2009); NRS 11.190(3)(c). Jacqueline, through counsel, began contacting all of the oil companies to report a dispute over ownership of the Oil Rights (which caused suspension of payments) in September 2013. Eleanor learned of these actions in or about September 2013, and she filed her counterclaim for intentional interference with contractual relations on February 10, 2014,[106] well within the three year statute of limitation.

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[104] See Jacqueline's Petition for Declaratory Relief, pp. 17-18 (prayer).

[105] See Eleanor's Answer and Counterclaim.

[106] See Eleanor's Answer and Counterclaim.

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Similarly, Eleanor's counterclaim for enforcement of the no contest clause is timely. "An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter" are subject to a six year statute of limitation. NRS 11.190(1)(b). Since Eleanor is seeking to enforce provision of the written Trust, this statute of limitation applies. Jacqueline and Kathryn contested the Trust when they filed their Petition for Declaratory Relief in September 2013, and Eleanor filed her counterclaim to enforce the no contest clause on February 10, 2014, less than one year later. Thus, Eleanor's counterclaim to enforce the no contest clause is timely.

4. Laches Does Not Bar Eleanor's Counterclaims.

Laches does not bar Eleanor's counterclaims because she promptly filed her claims for intentional interference with contractual relations and to enforce the no contest clause. "Laches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable." Carson City v. Price, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997) (internal quotations omitted). Laches requires not only a delay in enforcing one's rights, but also that the delay disadvantaged another. Id. "The condition of the party asserting laches must become so changed that the party cannot be restored to its former state. Applicability of the laches doctrine depends upon the particular facts of each case." Id. To determine whether a challenge is barred by the doctrine of laches, this court considers (1) whether the party inexcusably delayed bringing the challenge, (2) whether the party's inexcusable delay constitutes acquiescence to the condition the party is challenging, and (3) whether the inexcusable delay was prejudicial to others." Miller v. Burk, 124 Nev. 579, 598, 188 P.3d 1112, 1125 (2008).

Eleanor brought her counterclaim for intentional interference with contractual relations within five months of learning of Jacqueline and Kathryn's interference with the payment of the Oil Income by the oil companies. Likewise, she filed her counterclaim for enforcement of the no contest clause five months after Jacqueline filed the Petition for Declaratory Relief. As such,

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Eleanor was very prompt in filing her counterclaims. There was no delay and therefore could be no prejudice to anyone.

5. Eleanor Has Not Waived Any Claims.

Eleanor has not waived her counterclaims for intentional interference with contractual relations or enforcement of the no contest clause. "Waiver requires the intentional relinquishment of a known right. If intent is to be inferred from conduct, the conduct must clearly indicate the party's intention. Thus, the waiver of a right may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished. However, delay alone is insufficient to establish a waiver." Nevada Yellow Cab Corp. v. Dist. Ct., 123 Nev. 44, 49, 152 P.3d 737, 740 (2007). "[T]o be effective, a waiver must occur with full knowledge of all material facts." State, Univ. & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 987, 103 P.3d 8, 18 (2004) (internal quotations omitted). Waiver must be pled as an affirmative defense. NRCP 8; Sutton, 120 Nev. at 988, 103 P.3d at 19. "Whether there has been a waiver is a question for the trier of fact." McKellar v. McKellar, 110 Nev. 200, 202, 871 P.2d 296, 297 (1994).

Here, Jacqueline and Kathryn have not pled waiver as an affirmative defense to Eleanor's counterclaims as required by NRCP 8. Moreover, there is no evidence that Eleanor waived her right to assert her counterclaims for intentional interference with contractual relations or enforcement of the no contest clause—they were both raised timely in her Answer and Counterclaim filed in response to Jacqueline and Kathryn's Petition for Declaratory Relief. As a matter of law, Eleanor has not waived her counterclaims.

6. Claim Preclusion Is Inapplicable To Eleanor's Counterclaims.

Eleanor's counterclaims are not barred by claim preclusion because the Reformation Action had nothing to do with Jacqueline and Kathryn's interference with the oil lease payments or their contesting the Trust. Claim preclusion bars the litigation of a claim when "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." Five Star Capital, 124 Nev. at 1054, 194 P.3d at 713.

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As discussed above, the parties are the same in the Reformation Action and this case, and the Reformation Order is valid. However, the Reformation Action did not and could not involve Eleanor's counterclaims for intentional interference with contractual relations and enforcement of the no contest clause. These claims could not have been addressed in the Reformation Action because the events giving rise to the claims had not yet occurred. Specifically, Jacqueline did not contact the oil companies and causes suspension of the oil lease payment until September 2013, four years after entry of the Reformation Order. Similarly, Jacqueline and Kathryn did not contest the Trust until the filing of their Petition for Declaratory Relief in September 2013, four years after entry of the Reformation Order. Therefore, Eleanor's counterclaims could not have and did not exist during the Reformation Action. Thus, claim preclusion does not bar Eleanor's counterclaims.

7. <u>Jacqueline And Kathryn Are Not Entitled To An Accounting.</u>

Jacqueline and Kathryn are remainder beneficiaries. A remainder beneficiary is "a beneficiary who will become a current beneficiary upon the death of an existing current beneficiary or upon the occurrence of some other event that may occur during the beneficiary's lifetime . . . ." Here, Jacqueline and Kathryn are remainder beneficiaries of the Oil Rights and Oil Income under Trust No. 2, meaning they become beneficiaries upon Eleanor's death. A trustee is to provide an accounting to a remainder beneficiary upon request. NRS 165.137(1)(a); 165.141(1); 165.141(3). "An account shall be deemed approved by a beneficiary who received a copy of the account if no written objection thereto is given to the trustee within 120 days after the date on which the trustee provided the account to that beneficiary." NRS 165.137(1)(h).

In this case, Jacqueline and Kathryn are demanding summary judgment for an accounting. They have never before pled a claim for an accounting. And, they attach no evidence that they requested an accounting as required by statutes NRS 165.137 and 165.141. Therefore, they have failed to prove they are entitled to an accounting. Moreover, at the October 15, 2014 Supreme Court settlement conference, Eleanor provided an accounting to Jacqueline and Kathryn. The letter from CPA King detailed that the Oil Income from November 12, 2013 through October 15, 2014 totals $1,602,442,33, and 65% of that amount is $1.041,587.51. As of

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October 15, 2014, there was over $1.3 million in the account, which is more than 65% of the Oil Income for the time period.[107] Since neither Jacqueline nor Kathryn objected to this accounting within 120 days, it is deemed approved. NRS 165.137(1)(h). And since a trustee need not account to remainder beneficiaries more than once per year, no further accounting is required. NRS 165.137(1)(b).

Accordingly, the Court should deny the request for an accounting because it was never properly pled, no accounting was ever properly demanded, and an accounting was provided.

D. THE COURT SHOULD DENY THE COUNTERMOTION FOR DAMAGES, ASSESSMENT OF PENALTIES, AND OTHER RELIEF.

In the countermotion for damages, assessment of penalties, and other relief, Jacqueline and Kathryn barrage the Court with assorted claims for relief never before pled. The Court should deny all of the requests for relief as detailed in turn below.

1. The Court Should Deny The Request For Attorney Fees As Sanctions For Filing The Motion To Dismiss.

Jacqueline and Kathryn seek attorney fees as a sanction for Eleanor's filing the Motion to Dismiss, which they allege is frivolous under NRS 18.010(2)(b). As detailed above, Eleanor's Motion to Dismiss is well founded on Nevada's claim preclusion law. There is nothing frivolous or vexatious about a motion to dismiss based on sound legal and factual arguments. Therefore, the Court should deny the request for attorney fees as sanctions related to the Motion to Dismiss.

2. The Court Should Deny The Request To Enforce The No Contest Clause.

The countermotion requests that the Court enforce the no contest clause of the Trust, and the MTC Trust.[108] As for the MTC Trust, it is a wholly separate Trust created by Marjorie, under which Eleanor has no interest. Eleanor has never claimed an interest under the MTC Trust

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[107] See Letter from Shawn D. King, CPA dated October 15, 2014, attached hereto as **Exhibit 6**.

[108] The countermotion also seeks enforcement of the no contest clause in Marjorie's will, but the Will Contest has been settled, and the stipulation and order to dismiss with prejudice is with the Court for signature and entry. Any references by Kathryn and Jacqueline to the Will Contest within their Opposition to Eleanor's Countermotion for Summary Judgment should be disregarded by the Court and stricken from the record.

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nor contested its provisions; therefore, the no contest clause of the MTC Trust is inapplicable here.

As to the Trust, Eleanor has not contested the Trust. Jacqueline and Kathryn are contesting ownership of the Oil Rights and Oil Income via their Petition for Declaratory Relief. Eleanor has confirmed the provisions of the Trust and raised them as a defense against Jacqueline and Kathryn's Petition, which challenges the provisions of the Trust. The Trust's no contest clause is triggered when a person asserts:

> any claim to the assets of [the Trust] . . . or attack, oppose, or seek to set aside the administration and distribution of [the Trust] . . . or to have the same declared null and void or diminished, or to defeat or change any part of the provisions of the [T]rust . . . .[109]

Eleanor has not attacked, opposed, or sought to defeat any part of the Trust. In fact, she seeks to enforce its plain language and the intent of William by ensuring that Trust No. 2 remains the owner of all the Oil Rights and that Eleanor, as Trust No. 2's sole income beneficiary, receives all of the Oil Income during her life. Thus, Eleanor's seeking to enforce the Trust provisions does not trigger the no contest clause. Rather, it is Jacqueline and Kathryn's seeking to change the terms of the Trust to provide a 65% interest in the Oil Rights to Trust No. 3 that has triggered the no contest clause.

Moreover, under NRS 163.00195, the no contest clause cannot be enforced against Eleanor. Eleanor has only sought to enforce the terms of the Trust to effectuate William's intent. NRS 163.00195(2), (3). Also, even if Eleanor was "contesting" the Trust, which she is not, her interest under the Trust cannot be reduced or eliminated because she has defended this litigation in good faith. NRS 163.00195(4). Therefore, the Court should deny the countermotion seeking to enforce the no contest clause against Eleanor.

3. <u>The Court Should Deny Sanctions Related To The Accounting.</u>

Jacqueline and Kathryn seek sanctions against Eleanor for failure to provide an accounting. As discussed above, they are not entitled to an accounting absent a proper request as specified by statute. There is no evidence before the Court of any written, statutorily compliant

[109] See Trust Agreement, Article Tenth.

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request for an accounting. And, Eleanor provided an accounting on October 15, 2014, to which Jacqueline and Kathryn never objected. Thus, no sanctions are warranted. Additionally, the sanctions requested are that all the Oil Income monies currently being held by Eleanor be transferred to a "neutral account" and that Eleanor be removed as the trustee for Trust Nos. 1, 2, and 3. There is no need to move the funds, which are being held in a Wells Fargo account. And, Eleanor is only the Trustee of Trust No. 2, as Trust No. 1 technically ceased to exist upon William's death. Also, Eleanor never was a trustee of Trust No. 3, and Trust No. 3 ceased to exist upon Marjorie's death. The Court should deny any sanctions related to the accounting.

4. The Court Should Deny The Request For Reconsideration Of Its Prior Order.

The Countermotion goes on to request that the Court reconsider its July 7, 2014 Order re Pending Motions and Scheduling, in which the Court ordered that Eleanor should pay back 65% of the back Oil Income to Jacqueline and Kathryn if they posted a bond ("July Order"). Specifically, Jacqueline and Kathryn request that the Court reconsider that motion and order the funds released to Jacqueline and Kathryn, without a bond, and require Eleanor to post a bond to continue to receive her share of the Oil Income. This request should be denied for several reasons.

First, the July Order is currently on appeal. Second, the countermotion cites no legal authority for the Court to reconsider an order that is on appeal and which order was entered six months ago. Third, the Countermotion offers no legal authority for releasing all the Oil Income to Jacqueline and Kathryn without a bond and instead requiring Eleanor to post a bond. Failure to include a memorandum of points and authorities "may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported." EDCR 2.20(c). Accordingly, the Court should deny the reconsideration and all related relief requested because the request is untimely and contains no legal authority.

5. The Court Should Deny The Request That The Court Determine Eleanor Has Forfeited All Of Her Rights Under The Trust.

Jacqueline and Kathryn ask the Court to determine that Eleanor has forfeited all of her rights under the Trust by wrongfully claiming a right to the Oil Assets and Oil Income. Again,

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Jacqueline and Kathryn provide no legal or factual basis for this request, rendering it meritless under EDCR 2.20(c). Further, the only basis for such a request would be the no contest clause, which is not applicable, as discussed above. And, Eleanor has always defended against this litigation initiated by her daughters, asserting and affirming her rights under Trust No. 2. Thus, the Court should deny this request for a determination that Eleanor has forfeited all of her rights under the Trust.

V. CONCLUSION.

Eleanor respectfully requests that the Court (1) grant Eleanor's Motion to Dismiss the Petition for Declaratory Relief; (2) deny the Countermotion for Summary Judgment; (3) deny the Countermotion for Assorted Relief; and (3) grant Eleanor's Motion for Summary Judgment (contained in the Omnibus Opposition), or alternatively, make factual findings pursuant to NRCP 56(d).

Dated this 9th day of January, 2015.

MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **ELEANOR C. AHERN'S (1) REPLY IN SUPPORT OF ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; (2) OPPOSITION TO COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF; AND (3) REPLY IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of January, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[110]

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[110] Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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ELEANOR C. AHERN'S (1) REPLY IN SUPPORT OF ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; (2) OPPOSITION TO COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF; AND (3) REPLY IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT

Exhibit No.	Description
1	Declaration of Eleanor Ahern in Support of Reply and Opposition
2	EPS Assessment (Bates Nos. AHERN 560-569)
3	Application for Original Probate of Foreign Will and Issuance of Letters of Independent Administration (Bates Nos. AHERN 570-582
4	Petition in Intervention and Motion to Set Aside "Order Probating Foreign Will, and Appointment Independent Administrator" (Bates Nos. AHERN 586-599)
5	Letters (Bates Nos. AHERN 780-799; AHERN 800-821; AHERN 832-853)
6	Letter from Shawn King, CPA Enclosing Wells Fargo Letter (Bates Nos. AHERN 600-601)
7	Excerpts from Draft Transcript of Jacqueline Montoya
8	Deed (Bates Nos. AHERN 832-833)

Exhibit 1

DECLARATION OF ELEANOR C. AHERN IN SUPPORT OF (1) REPLY IN SUPPORT OF MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; AND (2) OPPOSITION TO COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF

Eleanor C. Ahern, declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am submitting this Declaration in Support of my (1) Reply In Support Of Motion To Dismiss Petition For Declaratory Judgment For Failure To State A Claim Upon Which Relief Can Be Granted; And (2) Opposition To Countermotion Of Kathryn A. Bouvier And Jacqueline M. Montoya For Summary Judgment On Petition For Declaratory Judgment, For Damages And Assessment Of Penalties, And For Other Relief ("Reply and Opposition").

JACQUELINE AND KATHRYN ABANDONED ME WHEN I WAS UNWELL.

3. In April 2011, I had a hernia operation. I experienced vertigo and life threatening complications after the surgery. I was rushed to the hospital where I recovered for several days and nights. Neither Kathryn nor Jacqueline visited me while I was in the hospital.

4. In March 2012, I broke my leg—the same leg which I broke in 1972, which took seven years to heal, and is the cause of my current difficulty walking and needing a service dog. The leg required surgery, and I had a severe, life threatening allergic reaction to the anesthesia. I spent 30 days recovering in the hospital.

5. Kathryn never visited, called, or sent flowers or a card during my hospital stay. In fact, I have not spoken with Kathryn since the Spring of 2012, when Kathryn called me under false pretenses and demanded that I blindly trust Jacqueline and do as she asks.

6. Jacqueline visited me at most a few times a week for approximately fifteen minutes at a time. Once she brought her twins, my grandchildren, to see me. Neither Jacqueline nor Kathryn expressed any concern for my life threatening condition.

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7. During both of these hospital stays, I felt little to no concern or care from my daughters, and I felt abandoned.

JACQUELINE CONTACTED ELDER PROTECTIVE SERVICES WITHOUT CONSULTING ME

8. On July 6, 2012, Jacqueline agreed to allow me to see her children, my grandchildren, with the stipulation that Jacqueline "supervise" the visit. The visit lasted approximately two hours, much of which Jacqueline spent in her car.

9. Within minutes after Jacqueline and her children left, I received a telephone call from Elder Protective Services ("EPS"), who wanted to perform an immediate assessment at my home. I scheduled an appointment to meet with the case worker on July 9, 2012 at the case worker's office.

10. During the meeting, I learned that Jacqueline had called EPS and reported that my close friend and limited agent, Suzanne Nounna ("Suzanne") was financially exploiting me. I explained that this was not the case, that Suzanne was a trusted friend, and that I had complete control and understanding of my finances and business affairs.

11. EPS closed the case, determining that the claims of exploitation were not substantiated. I later obtained a copy of the EPS Assessment from EPS via mail, a true and correct copy of which is attached to the Reply and Opposition as **Exhibit 2**.

12. I was extremely hurt, upset, and angered that Jacqueline would lie to EPS and contact EPS without so much as discussing her alleged concerns with me.

JACQUELINE CALLED THE POLICE ABOUT ME

13. I learned from a friend that the day after EPS closed the case, July 26, 2012, Jacqueline called the police to perform a wellness check on me. I was out of town in Mammoth, California with friends. Jacqueline never spoke to me about whether I needed any assistance or a wellness check. In fact, I was fine.

14. When I learned that Jacqueline had called the police to request a wellness check, I was hurt that my daughter would do such a thing without even talking with me, and I was embarrassed to needlessly have the police involved in my affairs.

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INTERFERENCE WITH THE OIL LEASES

15. Jacqueline and Kathryn's counsel contacted all of the oil companies that lease the Texas land, informed them there was a dispute regarding the ownership of the Oil Rights, and caused all of the companies to suspend payments of the Oil Income.

16. I first learned of this in or about the fall of 2013. For example, I received a fax from Apache Corporation on or about November 11, 2013, enclosing a letter from Jacqueline's counsel to Apache claiming there was a dispute and attaching Jacqueline's Petition for Declaratory Relief. A true and correct copy of this correspondence is attached to the Rely and Opposition as **Exhibit 5**.

ACCOUNTING

17. I have not received a written request from Jacqueline or Kathryn requesting an accounting of Trust No. 2.

18. In preparation for the Supreme Court Settlement Conference on October 15, 2014, I requested that a CPA, Mr. Shawn D. King, review the Wells Fargo account where I have been holding the Oil Income money to which Jacqueline and Kathryn claim they are entitled since November 12, 2013. Mr. King provided an accounting in letter form, dated October 15, 2014, which he provided to me. A true and correct copy of this accounting is attached to the Reply and Opposition as **Exhibit 6**.

19. I provided this to Jacqueline and Kathryn at the Supreme Court Settlement Conference. To date, I have not received an objection to this accounting form either Jacqueline or Kathryn.

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

Dated this 9 day of January, 2015.

Eleanor C. Ahern as Trustee + Individually

ELEANOR C. AHERN, as Trustee and Individually

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