

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

In the Matter of

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

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Elizabeth A. Brown
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Case No. 73837

APPEAL

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

APPELLANT'S APPENDIX

VOLUME 7: AAPP 751 through AAPP 846

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1 impacting Jacqueline and Kathryn adversely, due to her refusal to cooperate with the
2 new trustee, Fredrick P. Waid, in recovering Trust funds she converted, and in
3 accounting for all of the Trust income received while she was trustee. Mr. Waid, as
4 noted in his reports, has also discovered that Eleanor has mismanged the Trust assets,
5 spent Trust funds improperly to pay her own litigating attorney fees, and has invested
6 or spent Trust funds on her own personal ventures in association with her cadre of close
7 personal advisors. Her perjurious misrepresentations to the Court made during the
8 course of these proceedings continues to mount as well.

9 In summary, Eleanor has made a complete mockery of the position of a trustee
10 with her tortious and criminal behavior. Eleanor, in complete bad faith and without any
11 justification whatsoever, unilaterally decided to cut off the income stream that was due
12 and payable to Jacqueline in her capacity as trustee of the MTC Living Trust, which is
13 the rightful owner of an approximate 65% interest in land located in Upton County,
14 Texas, together with the oil, gas, and mineral rights located in and on such land.
15 Eleanor took such action with the sole motive of financially crippling Jacqueline and
16 Kathryn, by cutting off and blocking the flow through of the income that rightfully
17 belonged to the MTC Living Trust, in hopes that she could then procure a favorable
18 settlement from Jacqueline and Kathryn which would reward her despicable behavior.

19 As light has been shed on this matter through the investigation of Fredrick P.
20 Waid, who this Court appointed after its removal of Eleanor, it has now been
21 established that Eleanor has wrongfully stolen and converted assets that did not belong
22 to her and which were mandated by this Court to be held in trust until her behavior
23 could be sorted through and the frivolous, bad faith nature of her actions could clearly
24 be seen by this Court. Eleanor has violated multiple orders of this Court, and in so
25 doing has also perjured herself on multiple occasions in a blatant attempt to cover her
26 misdeeds. While Eleanor may be facing criminal penalties for her actions, she must
27 also face the music from a damages perspective as well for her conversion and theft of
28 assets that did not belong to her. Not only should it now be declared that Eleanor has

1 forfeited her income interest share of the Trust as her conduct has directly violated the
2 terms of the Trust's no-contest clause, but she must also be held liable for treble
3 damages as well as punitive damages for her conduct.

4 The most reprehensible theft is theft which is the result of an "inside job" and
5 in this case Eleanor has not only financially harmed her own daughters, but she has
6 attempted as well to thwart the intentions and desires of her parents (who established
7 the Trust) by directly seeking to inflict damage on her daughters, the beloved
8 granddaughters of the Connells, in direct contravention of what her mother, Mrs.
9 Connell, expressly wanted. When a trustee, who is placed in such a position because
10 of an abundance of trust and faith that she will honor the wishes and directions of the
11 trust's creators, steals assets that do not belong to her, action must be taken to restore
12 and honor the intentions of the grantors and to fulfill the purpose of the Trust they
13 created. To leave such tortious behavior unpunished would encourage others to defy
14 their fiduciary duties and be contrary to public policy.

15 RELEVANT PROCEDURAL HISTORY

16 As this Court is intimately familiar with the complete procedural history that
17 has occurred in this matter, it is unnecessary to once again go through the whole history
18 of these proceedings. Rather, only the relevant history will be discussed herein.

19 In this Court's Order, titled "Order Denying Motion to Refer Contested Probate
20 Matter to Master-probate Commissioner per Edcr 4.16; Directing Payment of All Oil,
21 Gas, Mineral and Interest Roy a Ties and Rent to Eleanor C. Hartman, Also Known as
22 Eleanor C. Ahern, as Trustee of Trust No.2 of the W. N. Connell and Marjorie T.
23 Connell Living Trust Dated May 18, 1972; and Setting Calendar Call and Hearing",
24 which was signed on December 20, 2013, this Court ordered the following:

25 *IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ELEANOR C.*
26 *AHERN as beneficiary shall be entitled to thirty-five percent (35%) of such oil, gas,*
27 *mineral and interest royalties and surface rent and the remaining sixty-five percent*
28 *(65%) of such oil, gas, mineral and interest royalties and surface rent shall be held*
in the Trust by ELEANOR C. HARTMAN, also known as ELEANOR C. AHERN, as
Trustee, until final resolution of this matter. [Emphasis Added]

1 Eleanor has clearly violated this Court's mandate and directive, by not only
2 misappropriating 65% of the funds which were to be locked up and simply held in trust
3 until a final case resolution, but by directly using the funds for her own personal
4 benefit. Mr. Waid, in taking over as the court appointed trustee of the Trust, and based
5 upon the still incomplete accounting made by Eleanor, has estimated that the gross sum
6 of monies that should have been held in the Trust's bank account, representing 65% of
7 the Trust income, should be in the neighborhood of \$2,660,000. Instead, Mr. Waid has
8 discovered that only \$10,000 was being held in the Trust's bank account with Wells
9 Fargo, thereby representing an approximate shortfall of \$2,650,000. Therefore, it
10 appears that Eleanor has converted or otherwise misappropriated approximately
11 \$2,650,000, in direct violation of this Court's order. The actual sum will ultimately
12 be determined by Mr. Waid when he has finally obtained access to all of the records
13 relating to the Trust income and the Trust account, which conveniently, but
14 contemptuously, Eleanor has declined to produce to him.

15 Eleanor during the course of these proceedings up to the time of her removal
16 as trustee, always represented to this Court and to the attorneys for Jacqueline and
17 Kathryn, that the monies that she was ordered to hold in trust were completely safe and
18 secure. It was only after Mr. Waid's appointment that he immediately began
19 discovering the fraud that has been perpetrated by Eleanor on this Court and Jacqueline
20 and Kathryn. Eleanor, herself, finally confessed that she misappropriated and owes to
21 the Trust (actually to Jacqueline and Kathryn) \$800,000. See "Affidavit of Fredrick
22 P. Waid, Trustee", executed May 6, 2015, which states in relevant part that "*I spoke*
23 *with Ms. Ahem on Thursday April 16, 2015, and was informed by her that she believed*
24 *she 'owed' the Trust \$800,000.*" However, it appears her own estimate of funds she
25 converted and misappropriated is understated, and that as of the date of this filing,
26 despite orders compelling her to return all funds to the Trust immediately, Mr. Waid
27 still has not been able to recover over \$1,100,000 of missing Trust funds.

28 ///

LAW AND ARGUMENT

1
2 1. *Eleanor breached her duties as trustee toward the Trust in accordance with*
3 *NRS 163.115 by misappropriating Trust assets for her personal benefit and relief is*
4 *sought pursuant to NRS 164.010 and 164.015.*

5 This Court has previously assumed jurisdiction of this Trust in accordance with
6 NRS 164.010.

7 Under the laws of the state of Nevada, a trustee of a trust has a fiduciary duty
8 towards the trust and its beneficiaries. See *Bank of Nevada v. Speirs*, 603 P. 2d 1074,
9 1076 (1979) ("*A . . . trustee is a fiduciary who must act in good faith and with fidelity*
10 *to the beneficiary of the trust. He should not place himself in a position where it would*
11 *be for his own benefit to violate his duty to the beneficiary.*"). For that reason, the law
12 discourages self-dealing and interested transactions by the trustee in which the trustee
13 personally benefits to the detriment of the trust and its beneficiaries. See *Hoopes v.*
14 *Hammargren*, 725 P. 2d 238, 242 (1986) ("*The essence of a fiduciary . . . is that the*
15 *parties do not deal on equal terms, since the person in whom trust and confidence is*
16 *reposed and who accepts that trust and confidence is in a superior position to exert*
17 *unique influence.*")

18 The Court has expressly found that Eleanor breached her trustee duties. She
19 not only tortiously converted Trust funds to her own use, but she also violated the
20 prudent investor rule by investing Trust funds improperly. Pursuant to NRS 164.740,
21 "*a trustee who invests and manages trust property owes a duty to the beneficiaries of*
22 *the trust to comply with the prudent investor rule as set forth in NRS 164.700 to*
23 *164.775, inclusive.*" Furthermore, NRS 164.715 states that a "*trustee shall invest and*
24 *manage the trust property solely in the interest of the beneficiaries.*" The damages
25 caused to the Trust and its other beneficiaries (Jacqueline and Kathryn) includes the
26 loss of income which could have been earned by the Trust through wise and proper
27 investment of Trust funds.

28 ///

2. *The No-Contest provision of the Trust requires this Court to reduce Eleanor's share in the Trust to \$1.00.*

The Trust contains a No-Contest Clause in Article TENTH, that states as follows:

*TENTH: NON-CONTEST PROVISION. The Grantors specifically desire that these trusts created herein be administered and distributed without litigation or dispute of any kind. If any beneficiary of these trusts or any other person, whether stranger, relatives or heirs, or any legatees or devisees under the Last Will and Testament of the Grantors or the 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 any events, such person or persons shall receive One Dollar (\$1.00) and no more in lieu of any interest in the assets of the trusts. [Emphasis Added]*

With the tortious conversion of the assets constituting 65% of the trust income, rightfully belonging to Jacqueline and Kathryn, Eleanor has made a substantial "attack" on the administration of the Trust. This wrongful taking of assets was also done directly in contravention to a court order mandating the opposite. Eleanor's wrongful misappropriation of Trust assets has contravened the distribution provisions of the Trust as established and intended by the grantors, W.N Connell and Marjorie T. Connell. There should be no question whatsoever that reasonable and right minded grantors, such as the Connells, would never want a beneficiary who, while acting as trustee of the Trust, has stolen assets they placed into their Trust, depriving other beneficiaries thereof, to remain as a beneficiary of their trust. By stealing assets that did not belong to her, and failing to distribute the assets to the rightful beneficiaries, Eleanor has reprehensibly attacked and set aside the grantors' wishes and intended administration and distribution of the Trust. When grantors state that they wish that the administration of their trust shall run smoothly, they obviously have in mind that theft of the Trust assets by the trustee is simply intolerable.

With this said, the Connells as grantors, and specifically Mrs. Connell who directly gifted the 65% of Upton County, Texas, land and income to the MTC Living

1 Trust for the benefit of Jacqueline and Kathryn, would want action taken to rectify the
2 breaches in the Trust administration by enforcement of the Trust's no-contest clause.
3 Otherwise, the Trust's no-contest clause would be rendered entirely toothless,
4 superfluous and of no effect.

5 A no-contest clause, like all other provisions contained in a trust or a will, is
6 to be interpreted in a logical and sensible manner. The Trust's no-contest provision,
7 quoted above, uses broad, expansive terms to convey the grantors' desire that "any
8 person" who "attacks" and disrupts the Trust administration and distribution shall
9 forfeit his or her benefits under the Trust. The Trust's no contest clause, as typically
10 do all such no-contest clauses, is intended to deter all misconduct which threatens the
11 proper administration and distribution of the Trust assets intended by the grantors. For
12 this reason, a laundry list of unacceptable actions is never given in a no-contest clause
13 because it is not intended to be viewed as a restrictive measure that is narrowly
14 construed.

15 With the discovery of the theft and conversion of the assets mandated to be
16 held by Eleanor in trust by this Court, the deceitful and fraudulent "accounting"
17 rendered by Eleanor to this Court in March of 2015, together with Eleanor's refusal to
18 cooperate with Mr. Waid, and in light of this Court's mandate for the immediate return
19 of assets, it has become crystal clear that Eleanor has attacked and intends to continue
20 to attack and oppose the proper administration of this Trust. Further, Eleanor has done
21 nothing but subject the Trust to ongoing administrative hassle, litigation, and game
22 playing both before and since being removed as trustee. Eleanor also now refuses to
23 cooperate in accounting for and tracing back all of the Trust income and expenditures
24 by her during her tenure as trustee of the Trust.

25 As the Court is aware, Jacqueline and Kathryn are also ultimate beneficiaries,
26 upon Eleanor's death, of the present entitlement Eleanor has to 35% of the Trust
27 income under subtrust 2. While terminating Eleanor's right to receive income at this
28 time may cause some financial issues for her, she has admitted that she has substantial

1 other assets, including monthly Social Security income of approximately \$1,800.00, to
2 meet her support needs. However, if the Court deemed it best to not declare a total
3 forfeiture of Eleanor's Trust income benefits, it could order that a sufficient amount of
4 her benefits be forfeited to Jacqueline and Kathryn until they have been fully
5 reimbursed for all the damages they have suffered due to her misconduct.

6 **3. Nevada Law Requires Enforcement of No-Contest Provisions to Carry Out the**
7 **Grantors' Intent**

8 NRS 163.00195, titled "Enforcement of no-contest clauses; exceptions",
9 provides for the following:

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

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

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

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

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

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

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

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

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

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

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

instrument; or

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

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

5. As used in this section:

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

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

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

As established, in Nevada, a no-contest clause "must be enforced by the court." NRS 163.00195(1). With a few narrow exceptions, addressed below, "a beneficiary's share may be reduced or eliminated under a no-contest clause based upon conduct that is set forth by the settlor in the trust." Id. at (2).

Nevada law is not unique. The majority of states hold that "no-contest clauses are not only valid but also favored as a matter of public policy - because they discourage litigation and give effect to the purposes expressed by the testator or trustor." *Colburn v. N Trust Co.*, 151 Cal. App. 4th 439, 447, 59 Cal. Rptr. 3d 828, 834 (2007); see also *Burch v. George*, 7 Cal. 4th 246, 255, 866 P.2d 92, 97 (1994) ("[I]t is the testator's intentions that control, and a court must not rewrite the testator's will in such a way as to immunize legal proceedings plainly intended to frustrate the testator's unequivocally expressed intent from the reach of the no-contest clause.") (internal

1 quotations omitted).

2 As noted above, Nevada has narrow safe harbor provisions that allow a trust
3 beneficiary to seek some court intervention without violating no-contest provisions.
4 See NRS 163.00195(3) and (4). However, none of these exceptions apply to Eleanor's
5 breaches of the no-contest provisions. NRS 163.00195(3) (a), (b), (c) and (4) provide
6 four exceptions to enforcing a no- contest clause. The four exceptions are as follows:

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

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

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

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

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

25 Eleanor's actions of theft and conversion of trust funds for her personal use that
26 were mandated to be held in trust by this Court most certainly do not fall within any of
27 the three exceptions quoted above under NRS 163.00195(3) (a), (b) and (c). Further,
28 Eleanor cannot claim an exception to enforcement of the no-contest clause under the
good faith and probable cause exception of NRS 163.00195(4) because that provision
is strictly limited to "*legal action seeking to invalidate a trust, any document*
referenced in or affected by the trust, or any other trust-related instrument." This
statutory provision is primarily intended to carve out good faith challenges to a
trustor's capacity and competency in establishing the trust, and is also a codification
of the exception to enforcement previously recognized and set forth in *Hannam v.*
Brown, 956 P. 2d 794 (1998), prior to the Legislature's passage of the statute.

1 The "probable cause" exception to enforcement of no-contest provisions found
2 in NRS 163.00195(4), as explained in *Hannam v. Brown*, excepts "good faith actions
3 based on probable cause." *Id.* at 798. Clearly, however, there is simply no good faith
4 reason or any probable cause to justify Eleanor's disturbing and tortious behavior with
5 regard to the Trust and the administration thereof.

6 Accordingly, Jacqueline and Kathryn respectfully submit that proper
7 enforcement of the Trust's provisions requires this Court to enforce the no-contest
8 provision against Eleanor, in compliance with the explicit desires of Grantors, the
9 Connells, reducing her share in the Trust to \$1.00.

10 **4. Damages incurred by the Trust and its beneficiaries due to Eleanor's**
11 **conversion of Trust assets should be trebled.**

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

14 *Conversion is "a distinct act of dominion wrongfully exerted over another's personal*
15 *property in denial of, or inconsistent with his title or rights therein or in derogation,*
16 *exclusion, or defiance of such title or rights." Wantz v. Redfield, 74 Nev. 196, 198,*
17 *326 P.2d 413, 414 (1958). Further, conversion is an act of general intent, which does*
18 *not require wrongful intent and is not excused by care, good faith, or lack of*
19 *knowledge. 116 Nev. 598, 606*

20 Eleanor has clearly committed conversion against the Trust and its beneficiaries by
21 converting assets of the Trust in an amount believed to be approximately \$2,650,000
22 for her own personal benefit and use. In addition to having committed a serious tort,
23 Eleanor's misconduct also constitutes the crime of embezzlement as defined in NRS
24 205.300.

25 NRS 143.120(2) provides that a personal representative may seek to recover
26 treble damages against a person who has converted property belonging to the estate of
27 the personal representative. The definition of a "personal representative" under NRS
28 132.265 includes not only executors and administrators, but also a person "who
performs substantially the same function under the law governing their status" as that
of an executor or administrator. In the instant case, current trustee, Mr. Waid,

1 functioning in a capacity similar to that of a personal representative, has the right to
2 seek treble damages against Eleanor for her refusal and failure to return and reimburse
3 to the Trust the funds she has misappropriated and converted to her own use. His
4 office as trustee involves the same fiduciary duties over management of assets of
5 another for the benefit of another. If Eleanor's damages to the trust, which at present
6 it is believed total approximately \$2,650,000 which she has converted, are reduced to
7 judgment and trebled, that amount would equal approximately \$7,950,000. This
8 amount should be used to surcharge Eleanor's share in the Trust, for the benefit of
9 Jacqueline and Kathryn, if Eleanor's share is not otherwise reduced to \$1.00 through
10 the enforcement of the no-contest clause, which as previously stated is mandatory
11 under Nevada law based on the actions taken by Eleanor and the circumstances
12 surrounding such action.

13 ***5. Imposition of Punitive Damages against Eleanor***

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

24 In this context, fraud is defined as "*an intentional misrepresentation, deception*
25 *or concealment of a material fact known to the person with the intent to deprive*
26 *another person of his or her rights or property or otherwise injure another person.*"
27 See, NRS 42.001(2).

28 As such, Jacqueline and Kathryn request that this Court treble the approximate

1 \$2,650,000 that was improperly stolen and converted by Eleanor, resulting in the
2 amount now owed to them to be approximately \$7,950,000. This amount should be
3 used to offset Eleanor's share in the Trust, if Eleanor's share is not reduced to \$1.00
4 through the enforcement of the no-contest clause.

5 **6. *In the event Eleanor's Trust Benefits are not Forfeited under the Trust's No-***
6 ***Contest Provisions, Surcharging Eleanor's Trust Income to Reimburse the Damages***
7 ***she has Caused would be Proper***

8 NRS 21.320 provides that "a judge or master may order property of the
9 judgment debtor not exempt from execution, in the hands of such debtor or any other
10 person, or due to the judgment debtor, to be applied toward the satisfaction of the
11 judgment." Thus, Jacqueline and Kathryn do not need to obtain and serve a Writ of
12 Execution and a Writ of Garnishment upon the trustee in order to have Eleanor's Trust
13 income benefits paid over to them towards satisfaction of the debts she now owes to
14 them. Rather, the Court is authorized to enter and order directing this equitable relief.
15 While the "spendthrift" provision in the Trust and NRS 21.090(dd) and NRS 21.080(2)
16 would normally prevent any execution upon her Trust income rights by general
17 creditors, under the facts of this case said clause and statutes should not prevent the
18 Court from ordering that restitution to Jacqueline and Kathryn of all damages caused
19 to them by Eleanor be made by surcharging Eleanor's Trust income benefits, assuming
20 such benefits were not otherwise forfeited under the Trust's no-contest provisions as
21 discussed above.

22 In the present case, it would be highly inequitable to allow the "spendthrift"
23 clause in the Trust to protect Eleanor from her tortious and criminal behavior. She has
24 clearly breached her duties as a trustee, and illegally converted Trust funds to her own
25 use. While the intent of a spendthrift clause is to ensure that the grantors' bequest goes
26 to those the grantors wish to benefit, a spendthrift clause is not intended by the grantors
27 to be used as a shield by a trustee, who is also a beneficiary, to thumb her nose at the
28 other beneficiaries that she has harmed and effectively say "You can't touch me!". No

1 right minded grantor would ever tolerate such a result.

2 Jacqueline and Kathryn submit that the present case of Eleanor's tortious and
3 criminal behavior justifies overriding the exemption from execution otherwise provided
4 under NRS 21.090(dd) and NRS 21.080(2). While the issue of a spendthrift trust's
5 exemption in cases where the beneficiary has committed a tortious or criminal act has
6 not come before the Nevada Supreme Court, case law from other jurisdictions where
7 this issue has arisen and the opinions of legal scholars on the issue, hold that execution
8 may proceed under public policy considerations.

9 In *Chinchurreta v. Evergreen Management, Inc.*, 117 Idaho 588 (App. Ct.
10 1989), the Court held a statutory exemption from attachment did not protect a
11 beneficiary healthcare provider against attachment by a judgment creditor of Medicare
12 payments. In numerous cases through the United States, and based upon public policy
13 reasons, the Courts have held that a statutory exemption from execution does not
14 protect a beneficiary from having his or her benefits garnished to pay child support or
15 alimony obligations. See, *Sokolsky v. Kuhn*, 405 So. 2d 975 (Fla. 1981); and, *Ward v.*
16 *Ward*, 164 N. J. Sup;er 354 (Sup. Ct. N.J. 1978. Jacqueline and Kathryn submit that
17 public policy would also bar Eleanor from attempting to isolate her Trust income
18 benefits from execution and garnishment, because Eleanor stole monies from them and
19 committed serious breaches of her fiduciary duties owing to them while acting as
20 trustee of the same Trust whereunder they all are beneficiaries.

21 Therefore, in the event the Court does not determine that Eleanor has forfeited
22 her Trust income benefits as above requested, Jacqueline and Kathryn respectfully
23 request that the Court enter an order, pursuant to NRS 21.320, directing that Fredrick
24 P. Waid, as trustee of the Trust pay over to Jacqueline and Kathryn the 35% share of
25 Trust income otherwise payable to Eleanor hereafter, until such time as full restitution
26 has been made to them of all the damages Eleanor has caused them as adjudged by the
27 Court.

28 This concept of not allowing a beneficiary to receive further assets from a trust

1 where the beneficiary has misappropriated trust assets, until the adversely affected
2 other beneficiaries are back to square one is not a foreign concept. As a court of
3 equity, this Court is empowered with the authority to right the wrong and make things
4 just and equitable. A good analysis of this authority is found in the early case of
5 *Koerner v. Pfaff*, 15 Ohio Dec. 81 (1904), the Court of Common Pleas of Ohio,
6 Franklin County, where the court of equity concluded that a trustee/beneficiary, who
7 had wrongfully taken assets not belonging to him, would receive no further entitlement
8 to trust assets until the other, innocent beneficiaries were made whole and received
9 what they were entitled to receive under trust. Following are relevant excerpts from
10 that case:

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

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

26 Underhill says:

27 *"The rule that a beneficiary in default shall take nothing out while in default applies*
28 *all the more to the case of a beneficiary who is also a trustee. In both cases he must*
29 *make good his indebtedness to the trust estate before he can obtain a share in it."*
30 Underhill, Trusts 36.

31 *Any other conclusion in my opinion would not only be contrary to the best*
32 *authorities both in this country and England, but it would be unjust and inequitable,*
33 *and would in addition defeat the purpose and intention of said testator, which was*
34 *to give each cestui que trust the full one-fourth of his estate remaining at the death*
35 *of Mrs. Bruck. To permit Philip to take out more than one-fourth of said entire estate*
36 *before the date of Mrs. Bruck's death, no part of which he has paid back to the*
37 *estate, and now to permit him to take in addition one-fourth of that which remains*
38 *of the estate, would not only give him a decided advantage over the others, but would*

1 *be giving him more than his father by express terms bequeathed and devised to him*
2 *in his said will, and would be giving to the other three beneficiaries much less than*
3 *was devised to them by said will.* [Emphasis Added]

4 The logic applied in the *Koerner v. Pfaff* case could not be more appropriately
5 stated by Jacqueline or Kathryn. Jacqueline and Kathryn implore this Court, as a court
6 of equity to apply the same logic and conclusion to this matter and reach the only
7 reasonable conclusion that can be made which is that, to the extent Eleanor's share is
8 not completely forfeited under the Trust's no-contest clause, her trust share should then
9 be surcharged, and Eleanor receive no further Trust income, until Jacqueline and
10 Kathryn have been fully reimbursed for the damages she has caused them.

11 **7. The Trust's "no-contest" provisions supersede the Trust's "spendthrift"**
12 **provisions.**

13 In addition to the public policy reasons for overriding Nevada's exemption laws,
14 should the Court deem it best to not fully enforce the no-contest provisions causing a
15 total forfeiture of Eleanor's benefist, then the Court should still use the "no-contest"
16 provisions against Eleanor to override the Trust's spendthrift provisions, and order a
17 surcharge of her income benefits to provide the means for Jacqueline and Kathryn to
18 recover the damages Eleanor has caused to them.

19 Enforcement of "no-contest" clauses in Wills and Trusts was well recognized
20 in the United States, prior to the enactment of NRS 137.005 and NRS 163.00195.
21 These statutes did not overturn the common law recognition of no-contest clauses in
22 Nevada as approved in *Hannam v. Brown*, 114 Nev. 350, 956 P.2d 794, 798 (1998).
23 Eleanor in her own briefing to the Court has previously noted that by law, the intent of
24 the grantors establishing the Trust should provide the guideline for how Trust
25 provisions are interpreted and applied. See, also, *Hannam v. Brown*, at 798, where the
26 Court states: "This court has historically construed trusts in a manner effecting the
27 apparent intent of the settlor." While W.N. Connell and Marjorie T. Connell in
28 establishing their Trust included a "spendthrift" clause in Article SIXTH of the Trust
to protect the Trust beneficiaries from creditor claims, they also most clearly and

1 forcibly declared that no beneficiary or other person associated with the Trust should
2 create litigation and disputes, or attacks upon the Trust management and distribution.
3 In weighing the importance of the “spendthrift” clause versus the “no-contest”
4 provisions in the Trust, it is submitted that the grantors would in no way sanction
5 Eleanor’s tortious and criminal behavior and would want the “no-contest” provisions
6 to be given precedence.

7 Further, although spendthrift provisions in trusts are normally given great
8 recognition and enforcement, several equitable exceptions to their enforcement have
9 developed under the law, even without recourse to a no-contest clause. A good treatise
10 on the exceptions to their enforcement is found in the Restatement (Second) of Trusts,
11 Section 157 (1959). Therein it states:

12 “Although a trust is a spendthrift trust . . . , the interest of the beneficiary can be reached
13 in satisfaction of an enforceable claim against the beneficiary,

- 14 (b) for necessary services rendered to the beneficiary or necessary supplies
15 furnished him;
16 (c) for services rendered and materials furnished which preserve or benefit
17 the interest of the beneficiary . . .

18 In particular, one of the cases cited in the treatise is *Kirkpatrick v. United States*
19 *National Bank*, 502 P.2d 579 (Or. 1972), where the Court declared that a beneficiary’s
20 trust benefit could, for public policy considerations, be held liable for a tort committed
21 and damages caused by the beneficiary, notwithstanding the trust had a spendthrift
22 provision otherwise insulating the benefits from creditor claims. *Id.* at 581. The Court
23 noted that while there are few court decisions on the issue, and some courts have held
24 otherwise, “legal writers contend that provisions of a spendthrift trust which would
25 prohibit recovery from trust funds for torts committed by the beneficiary are invalid as
26 against public policy (citing “Scott on Trusts” (3d ed.); “Griswold, Spendthrift Trusts
27 (2d ed.) And Restatement (Second) of Trusts, Section 157).

28 The obvious applicability of the exceptions to enforcement of “spendthrift”
clauses for public policy reasons is clearly present in the case of Eleanor and her
misconduct. It would be a great affront to public policy interests to allow Eleanor to

1 not lose her Trust income benefits where she has caused serious financial damages to
2 other Trust beneficiaries in breaching her duties as trustee and in converting funds
3 belonging to the other trust beneficiaries. Certainly insulating Eleanor from losing her
4 Trust income where she has been guilty of tortious and criminal behavior was not
5 intended by the Grantors of the Trust in providing a spendthrift clause in the Trust.
6 The spendthrift provision in the Trust, while broad in scope, does not mention being
7 exculpated from the beneficiary's own tortious or criminal conduct. And even if it did,
8 such would be contrary to public policy and should not be enforceable. But, in this
9 case, the Court does not need to address this yet unresolved legal issue in Nevada.
10 Rather, in conjunction with the "no-contest" provision in the Trust, the Court has full
11 authority to now declare Eleanor's Trust income benefits as forfeited or surcharged,
12 and to order that such benefits now be payable to Jacqueline and Kathryn.

13 **RESERVATION OF RIGHT TO SUPPLEMENT**

14 The discussion of Eleanor's acts and the damage amounts referenced herein are
15 based on information that has currently been discovered, but which is still subject to
16 further investigation by the current trustee, Fredrick P. Waid. As such, Jacqueline and
17 Kathryn expressly reserve the right to include further claims for damages and to adjust
18 the calculated amount of such damages as further needed once a final and conclusive
19 reporting has been submitted by Mr. Waid. This would include assessing Eleanor with
20 the fees and costs incurred by the trustee and his counsel.

21 **CONCLUSION**

22 Eleanor has breached her fiduciary duties owing to the Trust beneficiaries. She
23 repeatedly violated the prudent investor rule during her tenure as Trustee. Eleanor
24 maliciously and fraudulently converted approximately \$2,650,000 of Trust funds
25 for her own personal benefit. She frivolously has litigated in this case claims having
26 no merit and causing thousands of dollars of unnecessary litigation expense. Even after
27 being judicially removed as trustee, Eleanor persistently attacks, hinders, and opposes
28 the administration of the Trust by failing to be cooperative with Mr. Waid's

1 investigation, and she continues to fail to turn over assets belonging to the Trust that
2 she stole and converted for own personal use. For these reasons, the relief requested
3 herein is proper.

4 WHEREFORE, Jacqueline and Kathryn respectfully pray that this Court grant
5 the relief sought in this Petition in full, specifically determining and ordering that:

6 1. Eleanor Connell Hartman Ahern be personally liable for all costs reasonably
7 incurred by Jacqueline and Kathryn, including reasonable attorneys fees, court costs,
8 successor trustee fees, and any other costs due to Eleanor's misconduct, and in having
9 to be forced to account for and explain the Trust transactions for the time in question;

10 2. Eleanor is personally liable to the Trust and Jacqueline and Kathryn in the
11 amount of approximately \$2,650,000, or in such other amount as this Court shall deem
12 she converted from the Trust assets;

13 3. The No-Contest Clause, contained in Article TENTH of the Trust, applies to
14 Eleanor; that Eleanor violated the No-Contest Clause without any probable cause to do
15 so; and, that Eleanor's sole remaining interest in the Trust be reduced to \$1.00;

16 4. The amount of damages caused by Eleanor should be trebled as a result of
17 Eleanor's conversion, pursuant to NRS 143.120(3) and pursuant to NRS 42.005,
18 resulting in damages in the total amount of approximately \$7,950,000, which Eleanor
19 now owes to the Trust and Jacqueline and Kathryn;

20 5. That in the event a total forfeiture of Eleanor's Trust benefits is not declared
21 under the Trusts "no-contest" provisions, Eleanor's Trust income benefits should still
22 be surcharged, and it be ordered that her said benefits be paid over to Jacqueline and
23 Kathryn until such time as they have recovered from her all of the damages she has
24 caused to them as ordered by this Court; and

25 6. For such other and further relief as, to this Court, seems just and equitable

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ALBRIGHT, STODDARD, WARNICK, ALBRIGHT
LAW OFFICES
A PROFESSIONAL CORPORATION


1 under these circumstances.

2 DATED this 3rd day of June, 2015.

3 ALBRIGHT, STODDARD, WARNICK
4 & ALBRIGHT

5 By 
6 WHITNEY B. WARNICK, ESQ.
7 Nevada Bar No. 001573
8 801 S. Rancho Drive, Suite D-4
9 Las Vegas, Nevada 89016
10 Attorneys for Kathryn A. Bouvier

11 THE RUSHFORTH FIRM, LTD.

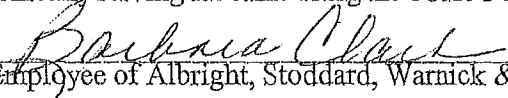
12 By 
13 JOSEPH L. POWELL, ESQ.
14 Nevada Bar No. 008875
15 9505 Hillwood Drive, Suite 100
16 Las Vegas, Nevada 89134
17 Attorneys for Jaqueline M. Montoya

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK
20 & ALBRIGHT and that on the 3 day of June, 2015, I placed a true and correct copy of
21 the foregoing **MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR**
22 **AHERN AND ENFORCEMENT OF NO CONTEST CLAUSE** in the United States Mail,
23 at Las Vegas, Nevada, enclosed in a sealed envelope with first class postage thereon fully
24 prepaid, and addressed to the following:

25 Kirk B. Lenard, Esq.
26 Tamara Beatty Peterson, Esq.
27 Brownstein Hyatt Farber Schreck
28 100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

(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 Albright, Stoddard, Warnick & Albright

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEVADA)
)ss
COUNTY OF CLARK)

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

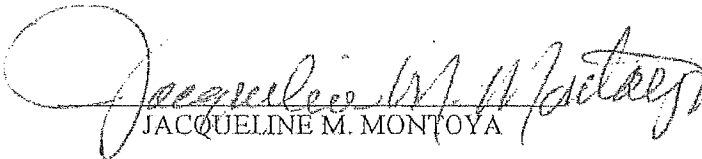
1. I have personal knowledge of the facts stated herein and I am competent to testify of them in a Court of law.
2. I have reviewed the factual assertions in the foregoing Motion and state that they are true and accurate to the best of my knowledge and information.
3. While these proceedings have caused me a great amount of grief and pain, in that I have been litigating with my mother whom I love, her actions and decisions have caused me, my family and my sister, Kathryn's family a great amount of suffering, both financially and emotionally.
4. As I have previously testified in these proceedings, I and my husband have been required to borrow monies from investment accounts set up for future support needs to meet ongoing living expenses for our family. Further, a great amount of money has been spent and wasted on litigation costs, crippling efforts to otherwise invest the funds used in beneficial areas.
5. I am also aware that my sister, Kathryn's damages and losses caused by our mother's wrongful conduct are even more egregious than mine, due to her not having adequate funds to deal with storm damages to her home and other creditor issues caused by her not receiving the trust income she was supposed to receive.
6. However, the damages we have suffered far exceed the litigation costs and loss of funds caused by my mother's wrongful conduct. We are still learning practically each day the adverse consequences which are resulting and happening from my mother's wrongful handling of the trust administration, failure to properly account for and pay income taxes, and

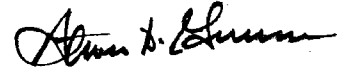
failure to properly safeguard and invest trust assets. The ramifications of her conduct have led, and will likely lead to more complicated dealings with the IRS, and other litigations issues. The time and cost it will take to resolve these issues will greatly magnify the total damages Eleanor has caused to us by her breaches of fiduciary duties and frivolous and harassing conduct towards us and our legal rights and interests.

7. If I felt my mother had any justifiable reason for her conduct in these proceedings, I would accept the fact that we had a difference of opinion on various issues. However, it has been clear from the start that my mother has not been acting properly, has been making frivolous and selfish claims, and has been duped into abandoning her family in favor of individuals who prey upon her tendency to be exploited for their own greed and self interest.
8. I know from the close association I had with my grandmother, Marjorie T. Connell, that the things my mother has done in causing and promoting this litigation violate her wishes and intentions, and those of my grandfather, W.N. Connell, in setting up their 1972 Trust.

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

Dated this 2nd day of June, 2015


JACQUELINE M. MONTOYA



CLERK OF THE COURT

OPPM

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Attorneys for Eleanor Connell Hartman Ahern

DISTRICT COURT

CLARK COUNTY, NEVADA

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

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

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

Date of Hearing: August 5, 2015

Time of Hearing: 10:00 a.m.

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

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

3 DATED this 29th day of June, 2015.

4
5 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

6 By: /s/ Tamara Beatty Peterson

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I.
INTRODUCTION

The Sisters' meritless and procedurally improper Motion seeks to circumvent due process by seeking punitive damages before issues of liability have been tried or even argued. By assuming as fact rulings that this Court has never made (i.e. with regard to conversion), the Sisters ask the Court for the extraordinary and breathtaking remedy of extinguishing Ms. Ahern's life estate in Trust income and seek to impose millions of dollars in punitive damages based on the conjecture that some indeterminate amount of compensatory damages exist. Despite well-settled law in Nevada that "the law abhors a forfeiture," the Sisters seek exactly that, along with a pound of flesh for good measure. Fortunately, due process and the rule of law require the occurrence of certain substantive and procedural safeguards before an elderly woman's livelihood is taken from her by her dissatisfied children.

As a preliminary matter, it is difficult to decipher the procedural basis for the Sisters' Motion or the legal standard of review. This declaratory action began with a petition by the Sisters for a "straightforward declaration of rights and interests" under the Trust. (*See* Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant to 30.040, NRS 153.031(1)(e), and NRS 164.033(1)(A), p. 17:5, on file herein.) However, the Motion seems now to request summary judgment (supported by mere allegations) on Ms. Ahern's liability for conversion, punitive damages, and loss of her interest in the Trust. Ms. Ahern was never put on notice of such allegations against her. Rather than file an "additional and related petition" to assert these allegations, (*id.* at 17:1), the Sisters filed this Motion containing numerous unsubstantiated accusations against Ms. Ahern and improperly expanded the scope of their request for declaratory relief. The Sisters point to no rule or statute authorizing the filing of this motion on the coattails of a declaratory judgment that is currently on appeal.

1 For the time being, the Sisters' Motion simply assumes that the Court will or
2 has already ruled that Trust income withheld from the Sisters constitutes
3 conversion, and on that basis seeks punitive measures against Ms. Ahern.
4 Acknowledging that there are no such findings in the record, nor any evidence
5 attached to the premature Motion whatsoever, the Sisters "expressly reserve the
6 right" to supplement the Motion at a later time. (Mot. at 20:17.) The Court should
7 not condone this procedural posture. Ms. Ahern has a due process right to defend
8 against such accusations and to know the evidence against her prior to the Court's
9 determination on these issues. Indeed, Ms. Ahern should not have been required to
10 respond to the Sisters' Motion until the underlying facts—which will surely be
11 disputed—have been developed and presented.¹

12 Secondly, the Court has already found that Ms. Ahern maintained a good
13 faith belief that she was the sole beneficiary of the Trust income, stating that "the
14 positions of each of the parties seeking the correct interpretation of the Trust
15 provisions as to entitlement to the Texas oil property, were not asserted in bad faith,
16 and that therefore good cause to impose the no-contest penalties does not exist."
17 (Summ. J. dated April 16, 2015, p. 15:24-26, on file herein.) Thus, to the extent
18 the Sisters rely on Ms. Ahern's posture in this litigation or her interpretation of the
19 plain Trust language to bolster their argument for forfeiture, the Sisters' request
20 must be denied.

21 In seeming acknowledgement of this fact, the Sisters now allege instead that
22 Ms. Ahern should lose her interest because she allegedly converted "65% of the
23 trust income," or "\$2,650,000," while she acted as trustee, and is now refusing to
24 cooperate with the newly appointed successor trustee, Fred Waid. (Mot. at 8:12,
25 20:22-28.) Notwithstanding the irrational notion that Ms. Ahern could have

26
27 ¹ In this basis, Ms. Ahern moves to strike the Motion and requests an award of attorneys'
28 fees incurred to provide this opposition. Should the Court permit the Sisters to refile the Motion
in the future at a more appropriate time, Ms. Ahern requests discovery on the issues raised in the
allegations.

1 maliciously converted funds while she in good faith believed that she was the sole
2 beneficiary of the Trust, the Sisters allege that such actions would constitute an
3 “attack” on the administration of the Trust for purposes of the no-contest clause.
4 (*Id.*) Such accusations do not implicate the no-contest clause, which must be
5 strictly construed², and do not give rise to punitive damages for at least four
6 reasons: (1) there is absolutely no admissible evidence before the Court that Ms.
7 Ahern converted any funds; (2) Ms. Ahern has been diligent in complying with Mr.
8 Waid’s requests (documentation of Ms. Ahern’s compliance is attached hereto as
9 Exhibit A); (3) the Sisters cannot assert a cognizable claim for conversion as a
10 matter of law; and (4) even assuming Ms. Ahern technically converted funds, she
11 did so under the good faith belief that she was the sole beneficiary of the Trust
12 income, and therefore there is no “oppression, fraud, or malice” to support the
13 imposition of punitive damages.³

14 Finally, the Sisters have not identified any damage to the Trust that would
15 warrant a surcharge against Ms. Ahern’s interest. As stated above and discussed
16 further herein, there is no evidence that Ms. Ahern converted any Trust assets.
17 Furthermore, the Sisters’ alleged damage for unspecified inconveniences caused by
18 the withholding of the income from the Texas oil property is not damage to the
19 Trust, (Mot. 3:7-22), and attorneys’ fees that have already been awarded against
20 Ms. Ahern personally cannot constitute damage against the Trust that would
21 warrant imposition of a surcharge. The Sisters further state without support that
22 “[t]he damages caused to the Trust and its other beneficiaries (Jacqueline and
23 Kathryn) includes the loss of income which could have been earned by the Trust
24

25 ² *In re Miller’s Estate*, 212 Cal. App. 2d 284, 297-98, 27 Cal. Rptr. 909, 917 (Ct. App.
26 1963) (“The policy against forfeitures is so strong that our courts, following the universal rule in
27 this country, insist upon a clear and unequivocal attack upon the will before invoking the penalty
28 contained in the in terrorem clause.”)

³ And addition, even assuming Ms. Ahern, *as trustee*, poorly managed the funds of the
Trust in a manner that might implicate the tort of conversion, such a finding does not mean per se
that Ms. Ahern “attacked” the trust administration for purposes of the no-contest clause.

1 through wise and proper investment of Trust funds.” (Mot. at 7:24-27.) The Sisters
2 cite to no law in support of these wholly speculative damages. In fact, the Sisters
3 could have posted a bond to receive their alleged portion of the income from the
4 Texas oil property. They elected not to do so, and therefore cannot blame Ms.
5 Ahern for these wholly speculative and non-existent damages. In light of the
6 foregoing, and the additional arguments set forth herein, the Court should deny the
7 Sisters’ Motion in its entirety.

8 II. 9 DISCUSSION

10 A. The Issues Raised In The Motion Are Premature And A Decision In 11 Their Favor Would Violate Due Process.

12 The Sisters’ Motion contains a section erroneously titled “Relevant
13 *Procedural* History” in which the Sisters assert numerous factual allegations
14 against Ms. Ahern. The Sisters provide no support for these allegations, other than
15 a single citation to the “Affidavit of Fredrick P. Waid, Trustee,” executed on May
16 6, 2015, which was filed independently of the Motion, and the affidavit of
17 Jacqueline Montoya which alludes to costs incurred by Ms. Montoya in litigating
18 this action and her feelings toward this case. The Sisters do not identify the
19 undisputed facts (or include evidence thereof) which would allow the Court to rule
20 on the issues set forth in the Motion (assuming that the Motion is one for summary
21 judgment). Yet, throughout the Motion, the Sisters ask the Court to apply alleged
22 “facts” to the law and rule that Ms. Ahern should pay punitive damages and lose
23 her interest in the Trust.

24 The Nevada Revised Statutes set forth the procedure for prosecuting the
25 Sisters’ claims. NRS 153.031 states that “a beneficiary may petition the court
26 regarding any aspect of the affairs of the trust.” Here, there is no petition on file
27 presenting the issues discussed in the Motion.⁴

28 ⁴ Notwithstanding the arguments set forth herein, it is unclear whether this is the proper
forum for claims of conversion against Ms. Ahern. This claim appears to be separate from “the

Secondly, once a petition is filed, NRS 155.150 requires that “[a]ll issues of fact in matters of an estate must be disposed of in the same manner as is by law provided upon the trial of issues of fact in a common-law action.” *See also* NRS 155.180; *Cord v. Second Judicial Dist. Court Dep’t No. 3*, 91 Nev. 260, 262, 533 P.2d 1355, 1356 (1975); *State v. Langan*, 32 Nev. 176, 105 P. 568, 569 (1909). That is, if the Sisters’ allege that Ms. Ahern has violated the law, they must prove it by a preponderance of the evidence, or clear and convincing evidence where applicable, and Ms. Ahern is entitled to a trial on all disputed facts. Here, there has been no evidence presented on the issues raised in the Motion, and the Sisters have wholly failed to meet their burden.

In fact, the entire Motion, including the estimated amount of punitive and treble damages, is based on the following factual contention: “[I]t appears that Eleanor has converted or otherwise [*sic*] misappropriated approximately \$2,650,000 in direct violation of this Court’s order.” (Mot. at 6:9-11.) Based on the Sisters’ contention alone, the Court is now asked to enter judgment that Ms. Ahern did in fact convert such funds, to assess punitive damages against her, and to strip all her interest in the Trust. Because this is both substantively and procedurally improper, is not ripe for this Court’s review, and for the reasons discussed herein and in consideration of due process, the Court must deny the Motion.

B. Punitive and/or Treble Damages Are Not Available.

1. The Sisters Admit They Do Not Have Standing To Request Treble Damages.

The Sisters admit that, “[i]n the instant case, current trustee, Mr. Waid, functioning in a capacity similar to that of a personal representative, has the right to seek treble damages against Eleanor.” (Mot. at 13:28-14:2.) However, the Sisters point to no statute that would authorize them personally to request treble damages.

affairs of the trust,” entitling Ms. Ahern to a jury before her peers.

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1 Accordingly, and in addition to the general procedural deficiencies in the Motion,
2 the Sisters request for treble damages to punish Ms. Ahern must be denied these
3 grounds.

4 **2. *Punitive Damages Are Not Available In This Action for Declaratory***
5 ***Relief.***

6 In addition to the fact that conversion has not been proven, this is a
7 declaratory relief action in which neither compensatory nor punitive damages were
8 sought. Thus, not only did the Sisters file this motion prematurely, before they
9 have any evidence to support their claims, but the claims themselves are brought
10 improperly as a dovetail to this action for declaratory relief. Even the statute cited
11 by the Sisters on Page 7 which may serve of the basis for the Motion—NRS
12 163.115—requires that “[a] proceeding under this section must be commenced by
13 filing a petition under NRS 164.010 and 164.015.” Because the Sisters have
14 asserted these new claims as arguments in this Motion, rather than as allegations in
15 a petition giving Ms. Ahern adequate notice and due process, the Motion must be
16 denied.

17 **3. *The Sisters Do Not Have A Cognizable Claim For Conversion.***

18 In order to properly present a claim of conversion, the Sisters must show that
19 Ms. Ahern wrongfully exerted an act of dominion *over plaintiffs’ property*, that the
20 act was in denial of the plaintiffs’ rights therein, or the act was in the exclusion of
21 plaintiffs’ rights in the property. *Ferreira v. P.C.H Inc.*, 105 Nev. 305, 704 P.2d
22 1041 (1989); *Wantz v. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958). “[I]t is not
23 essential that the plaintiff shall be the absolute owner of the property converted but
24 she must show that she was *entitled to immediate possession* at the time of the
25 conversion.” *Bastanchury v. Times-Mirror Co.*, 68 Cal. App. 2d 217, 236, 156 P.2d
26 488 (1945) (emphasis added). However, “a mere contractual right of payment,
27 without more, does not entitle the obligee to the immediate possession necessary to
28 establish a cause of action for the tort of conversion.” *See In re Bailey*, 197 F.3d

1 997 (9th Cir. 1999); *see also Imperial Valley Co. v. Globe Grain & Milling Co.*,
2 187 Cal. 352, 202 P. 129 (Sup. Ct. 1921). In addition, although Nevada has not
3 addressed the issue, numerous states do “not recognize a cause of action for
4 conversion of money unless it can be described or identified as a specific
5 chattel...The rule therefore is that an action for conversion of money will lie only
6 where there is an obligation to return the identical money delivered by the plaintiff
7 to the defendant.” *See In re Wal-Mart Wage & Hour Employment Practices Litig.*,
8 490 F. Supp. 2d 1091, 1102 (D. Nev. 2007).

9 Here, the Sisters did not have a right to immediate possession of the funds for
10 which they now seek recovery. Under their theory of the case, the Sisters were
11 beneficiaries of a separate trust which was entitled to payments from the Trust,
12 which itself was entitled to payments from income derive from the Texas oil
13 properties. At most, this is a contractual right, and therefore a claim for conversion
14 cannot lie.

15 In addition, the monies sought have not been described or identified as
16 specific chattel. The Sisters seek some unidentified amount of funds derived from
17 the Texas oil property, an amount which appears to fluctuate depending on the
18 production from the oil fields. The Sisters’ Motion cannot even identify the total
19 amount they believe to be in dispute. Accordingly, because unjust enrichment
20 would be the only potentially cognizable claim, there is no basis for the imposition
21 of punitive or treble damages.

22 **4. *The Sisters Cannot Establish Ms. Ahern Acted With “Oppression,***
23 ***Fraud, or Malice” Necessary For An Award Of Punitive Damages.***

24 The Court has found that Ms. Ahern held a good faith belief that she was
25 rightfully entitled to 100% of the income from the Texas oil properties. (*See*
26 *Summ. J.* dated April 16, 2015, p. 15:24-26.) In light of this finding, clearly there
27 can be no finding the Ms. Ahern acted with oppression, fraud or malice to justify
28 punitive remedies. NRS 42.005(1) requires the Sisters to “*prov[e] by clear and*

1 *convincing evidence* that a defendant has been guilty of *oppression, fraud or*
2 *malice...in addition to the compensatory damages.*” (Emphasis added.)

3 The Sisters have not even proven that Ms. Ahern is guilty of conversion or
4 that they are entitled to any compensatory damages, much less proven *by clear and*
5 *convincing evidence* that Ms. Ahern acted with oppression, fraud or malice. In fact,
6 the Sisters have not provided *any* evidence. They simply suggest that it possible
7 that at some point in the remote future the Trust may be entitled to a speculative
8 sum of money, estimated by the Sisters to be several million dollars, and on that
9 basis request several million dollars more in punitive damages.

10 Ms. Ahern, based on the plain language of the Trust documents, believed in
11 good faith that she was the sole beneficiary of the Trust income. Indeed, the Trust
12 documents specifically state that “all income from the Oil Assets is to be paid to
13 [Ms. Ahern] as the ‘Residual Beneficiary’ during her lifetime,” and in 2009 the
14 Sisters signed a consent which stated that, *upon the death of Ms. Ahern*, they would
15 receive equal shares of such funds. (See Motion to Dismiss dated Oct. 9, 2014, pp.
16 17:18-19, 7:16-18.)

17 The Sisters fail to explain, much less prove by clear and convincing
18 evidence, how Ms. Ahern could possibly have acted with oppression, fraud or
19 malice, given her subjective state of mind and the support of the written Trust
20 documents. Without more, much more, the Court cannot permit the Sisters to
21 bypass the procedural safeguards established by Nevada law and, thereby, strip Ms.
22 Ahern of her right to due process and her rights under the Trust.⁵

23 **C. The No-Contest Clause Is Not Implicated.**

24 The Sisters’ argument for enforcement of the no-contest clause is based on an
25 alleged “theft” from the Trust while Ms. Ahern acted as trustee. These new
26

27 ⁵ In addition to the issues of procedure and proof discussed throughout this opposition, the
28 Sisters have presented no evidence that the Trust has suffered any damage that would warrant a
surcharge. (See Section I, *supra*, p. 5:14-6:7.)

1 allegations against Ms. Ahern are not only nonsensical, given Ms. Ahern's belief
2 that she was the sole beneficiary, but have never been proven and the Sisters
3 provide no evidence in their Motion. Ms. Ahern would at minimum be entitled to
4 discovery on these issues and the opportunity to view the evidence against her and
5 present a defense.

6 Moreover, it is well-settled in Nevada that "[t]he law abhors a forfeiture."
7 *Organ v. Winnemucca State Bank & Trust Co.*, 55 Nev. 72, 26 P.2d 237, 238
8 (1933). Consistent with this view, no-contest provisions are looked upon with
9 disfavor and have been strictly construed. *See Estate of Kaila*, 94 Cal. App. 4th
10 1122, 114 Cal. Rptr. 2d 865 (2001) ("Although no-contest clauses are valid and
11 favored by the public policies of discouraging litigation and giving effect to the
12 testator's intent, they are also disfavored by the policy against forfeitures and
13 therefore are strictly construed and may not extend beyond what plainly was the
14 testator's intent."); *Saier v. Saier*, 366 Mich. 515, 520, 115 N.W.2d 279, 281 (1962)
15 ("[A]ll authorities agree that, even in those jurisdictions where conditions against
16 contest are held valid, such conditions are punitive and construable strictly.");
17 *Ivancovich v. Meier*, 122 Ariz. 346, 352, 595 P.2d 24, 30 (1979) (finding that in
18 terrorem clauses are strictly construed). It is Ms. Ahern's position that upon proper
19 presentation of any evidence against her, ultimately, her actions would fall outside
20 the scope of the Trust's no-contest clause, strictly construed, and that any such
21 actions did not constitute an "attack" on the Trust.

22 III. 23 CONCLUSION

24 Based upon their "reservation of right to supplement," the Sisters desire to
25 file this Motion and, at their leisure, present evidence to the Court on an ongoing
26 and rolling basis to support their extraordinary requests for relief. The Court cannot
27 permit this tactic. The fact is that this motion is premature. The Court should not
28 permit the Sisters to sidestep procedural and evidentiary requirements to prove their

1 allegations and give Ms. Ahern an opportunity to defend against such allegations.
2 Accordingly, because the Sisters' Motion fails to present any evidence supporting
3 their accusations and, even if evidence were presented, fails on its merits, the
4 Motion should be denied.

5 DATED this 29th day of June, 2015.

6
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **OPPOSITION TO MOTION FOR ASSESSMENT OF DAMAGES AGAINST ELEANOR AHERN, ENFORCEMENT OF NO-CONTEST CLAUSE, AND SURCHARGE OF ELEANOR'S TRUST INCOME** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 29th day of June, 2015, to the following:

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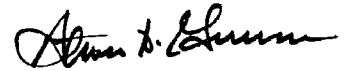
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN THE MATTER OF THE W.N.	.	
CONNELL AND MARJORIE T.	.	CASE NO. P-09-066425-T
CONNELL LIVING TRUST DATED	.	
May 18, 1972, An Inter Vivos	.	
Irrevocable Trust	.	
	.	DEPT. NO. XI
	.	
	.	Transcript of
	.	Proceedings
.....	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON ELEANOR AHERN'S MOTION
TO DISMISS CONTEMPT PROCEEDINGS**

TUESDAY, AUGUST 18, 2015

APPEARANCES:

FOR THE TRUSTEE:	TODD MOODY, ESQ.
FOR THE PETITIONER:	KIRK B. LENHARD, ESQ. TAMARA B. PETERSON, ESQ.
ALSO PRESENT:	FREDERICK WAID, ESQ. Trustee
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, AUGUST 18, 2015, 9:33 A.M.

2 (Court was called to order)

3 THE COURT: If I could go to the Connell Trust
4 issue. Can I see counsel at the bench. I have a question.

5 Turn on my white noise. Maybe not.

6 (Bench conference)

7 THE COURT: I'm reading your briefs last night, and
8 there is a reference to somebody named Kathleen Bouvier. I
9 know a person named Kathleen Bouvier who is the wife of my
10 son's soccer coach who currently lives in Montana. Is it the
11 same person?

12 MS. PETERSON: Mr. Powell is here in the courtroom.
13 We could ask him.

14 UNIDENTIFIED SPEAKER: I don't think it would be.

15 THE COURT: Okay. I just -- that's not a very
16 common name. Can you go confirm it's -- because, you know,
17 I've just got to make the disclosure, but I don't know it -- I
18 doubt it's the same person.

19 Where does Kathleen Bouvier live?

20 UNIDENTIFIED SPEAKER: In Texas.

21 THE COURT: Okay. It's not the same lady. Okay.
22 Thank you. You know, it's a small world.

23 (End of bench conference)

24 THE COURT: So I made disclosure to counsel that in
25 reading the brief it appeared that there might be someone with

1 a similar name to one of the potential beneficiaries that I
2 knew. We've established it is not the same person based upon
3 the state of their residence.

4 So at this point can we all identify ourselves for
5 purposes of the record, and then we'll hear the motion.

6 MR. MOODY: Good morning, Judge. Todd Moody, Bar
7 Number 5430, for Fred Waid, court-appointed trustee for the
8 Trust. Mr. Waid is here with me this morning.

9 THE COURT: Good morning.

10 MR. WAID: Good morning.

11 MR. LENHARD: Good morning, Your Honor. Kirk
12 Lenhard and Tammy Peterson on behalf of the defendant, I
13 guess. Bar Number 1437. I always hate to say that, because
14 you notice how old I am.

15 THE COURT: No, no. Remember, we all walked over
16 and got our bar numbers --

17 MR. LENHARD: Yes.

18 THE COURT: -- and it was based on when you showed
19 up at the window with Loretta on what your bar number was in
20 the old days. It's not the same anymore.

21 MR. LENHARD: Those are the really old days.

22 THE COURT: Yeah. It's your motion.

23 MR. LENHARD: Thank you, Judge.

24 THE COURT: And just for the record, you're a former
25 Public Defender; right?

1 MR. LENHARD: Yes, I am.

2 THE COURT: So you understand the contempt issues
3 that are here.

4 MR. LENHARD: I understand the criminal aspect of
5 this, and that's actually why the Marquis firm contacted my
6 office to take over this case. It seems like I'm always at
7 the end of a long day of motions in this court lately. I
8 promise I'll be well less than 10 minutes, although I have to
9 have a little fun with the Court here.

10 I think it's unfair to the rest of us that we're all
11 hung out to dry by the Peek/Pisanelli/Morris rule.

12 THE COURT: No. It's Peek and Dushoff.

13 MR. LENHARD: Okay.

14 THE COURT: Pisanelli and Morris have never abused
15 my time as badly.

16 MR. LENHARD: Well, Mr. Peek's a good friend, but I
17 know how he can go on.

18 In any event, this is a relatively easy motion to
19 argue today. We have an affidavit pursuant to Chapter
20 22.030(2) that really starts this case. As the Court is well
21 aware, the jurisdiction of this Court to hear a contempt
22 citation for a contempt that occurs outside the presence of
23 the Court is based on Chapter 22 and based on the contents of
24 the affidavit. In this case, of course, the affidavit is
25 filed by Mr. Waid, the present trustee. As the Court's well

1 aware, I represent the former trustee, who obviously has got
2 herself into some serious problems.

3 The affidavit -- and I have to point this out. The
4 affidavit really references two orders, and that's paragraph 3
5 and paragraph 5 of Mr. Waid's affidavit. And that would
6 appear to be the two orders that brings us here to Court
7 today. Both orders are from the bench. Both orders are not
8 reduced to writing until a later date. Both orders refer to
9 the transfer of \$500,000 from a Fidelity Capital account to an
10 FDIC-insured institution. That's Order Number 1, paragraph 3.

11 Order Number 2, paragraph 5, again an oral order
12 from the Court or from the bench, demands the return of the
13 felony funds to the Trust by April 17. Those are the only two
14 orders referenced by Mr. Waid in his affidavit.

15 As we now know, there is no Fidelity, and there are
16 no funds in that account. And I'll address that issue in a
17 second. But can this affidavit based on two oral orders be
18 the basis of a contempt citation? I think as the Court is
19 well aware under the Division of Child Services case, a 2004
20 Nevada Supreme Court decision, an oral order is ineffective
21 until it's reduced to writing. So the contempt citation today
22 that's being brought to the Court is based on two oral orders
23 before they are reduced to writing. And I point this out not
24 to be highly technical, but to point out the difference
25 between what Judge Sturman feels is the contempt and what is

1 the affidavit allegations of contempt.

2 I appeared in front of Judge Sturman on June 27th,
3 and we argued at that time whether this matter should be
4 remanded to you for this contempt hearing. At that time Judge
5 Sturman, if she repeated it once, she repeated it five or six
6 times, the violating order in her mind was the fact that my
7 client, Ms. Ahern, had failed to keep in her possession or in
8 the Trust's possession the 65 percent of the Trust assets that
9 were, due to Judge Sturman's order, owed to the two daughters.
10 So what we have here is Judge Sturman thinking the violation
11 going to you as one thing and we have the affidavit alleging
12 the violation as another thing.

13 I would suggest procedurally to put somebody in jail
14 under that context would be highly inappropriate. As you
15 know, the court -- the Supreme Court again has been very clear
16 actually involving this District as to what is necessary --

17 THE COURT: That was Judge Cherry or Hardcastle.
18 He's retired now.

19 MR. LENHARD: He is. And, as you know, we tried a
20 few cases against each other many, many, many years ago. He
21 was a D.A., I was a P.D.

22 But, in any event, as the Court has made very clear
23 and I think the Court's well aware of this, an order on which
24 a judgment of contempt is based must be clear and unambiguous,
25 and it must spell out the details of compliance in clear,

1 specific, and unambiguous terms so that the person will
2 readily know exactly what duties or obligations are imposed on
3 him, the who, what, where, and why of contempt.

4 What we have here for the who, what, where, and why,
5 we have Mr. Waid's affidavit and we have what Judge Sturman
6 said from the bench, and they simply don't match.

7 Finally -- and it's an interesting issue and it's
8 one that we can't find an answer to. Can impossibility be a
9 defense to a contempt citation? There is no doubt Ms. Ahern
10 filed an affidavit with the Court saying there were -- or,
11 excuse me, allowed an affidavit or allowed an accounting to be
12 filed with the Court alleging that \$500,000 were on deposit at
13 Fidelity Capital. As Mr. Waid has learned and I have learned,
14 Fidelity Capital didn't exist. This Mr. Perell [phonetic] --

15 THE COURT: That wasn't me. You still have
16 5 minutes.

17 MR. LENHARD: I didn't think I was anywhere near it.
18 It's a little bit unnerving.

19 In any event -- I lost my train of thought -- we
20 know that Mr. Perell didn't have the money, we know the money
21 wasn't wasn't at Fidelity Capital. Ms. Ahern couldn't comply
22 with the order referred to in Mr. Waid's affidavit in any
23 event. And what I'm stating is Ms. Ahern may have
24 contemptible conduct, she may have allowed a false affidavit
25 or a false accounting to be filed. That would be the subject

1 of a proper contempt hearing, not what we have before the
2 Court today.

3 Thank you, Judge. And I think I still have a couple
4 minutes for rebuttal.

5 THE COURT: Four.

6 MR. LENHARD: Thank you.

7 THE COURT: Mr. Moody. And I know this wasn't your
8 fight.

9 MR. MOODY: Yeah. And I want the Court -- I hope
10 you notice that our response was not an opposition.

11 THE COURT: I understand.

12 MR. MOODY: We specifically titled it a response
13 because of this very unique situation that we come into the
14 courtroom with. This affidavit that was filed by Mr. Waid at
15 Judge Sturman's request was never intended to be a charging
16 affidavit. That affidavit was provided because Judge Sturman
17 said, Mr. Waid, tell me what it is that you've found since you
18 got involved in this case as the trustee. The best witness in
19 this case, Judge, besides Ms. Ahern, who obviously because
20 she's facing contempt can't be testifying about this, is
21 probably Judge Sturman. But we don't bring judges in on
22 contempt hearings.

23 So perhaps our third best witness is Mr. Waid. And
24 at Judge Sturman's request he says, here's what I found and
25 here are the documents that I think are important for the

1 court to know. So I'm going to go through them very quickly.
2 Number one, there was an accounting filed by Ms. Ahern that
3 says, I have \$500,000 on deposit with this institution. She
4 filed that under penalty of perjury. It turns out that wasn't
5 true. She submits a letter from Fidelity that says, we have
6 your money on account with us. It turns out that that letter
7 was a sham. She files a notice of compliance regarding the
8 half a million dollars on deposit, and we learn that that's a
9 misrepresentation. Mr. Waid gets involved. He discovers that
10 the deposit didn't come from Fidelity; instead, it came from
11 Wells Fargo. So, Your Honor, what she did was she came in and
12 she said, I'm going to transfer money that belongs to the
13 Trust over to U.S. Bank but I'm going to tell the Court that
14 it came from Fidelity. And we've shown that it never did.

15 So we go into court after these revelations come
16 out, and Mr. Waid says to Judge Sturman, I want you to enforce
17 your court order regarding the return of this half a million
18 dollars. And Judge Sturman says, I'm going to do that, she
19 issues an order to show cause, and she gives Ms. Ahern the
20 opportunity to come in and comply with that. She doesn't.

21 The next thing that happens after Ms. Ahern's former
22 attorneys withdraw is we get vary astute counsel involved who
23 immediately provide to us another letter from Fidelity that
24 says, the money is no longer with us because of Ms. Ahern's
25 conduct. Which leads to the crescendo of the affidavit that

1 brings us in part here this morning which Mr. Waid files with
2 the Court.

3 Judge, we are not advocating contempt. Here's what
4 we are advocating. Ms. Ahern in this case as a former trustee
5 had an obligation to the beneficiaries. She got a second
6 responsibility when Judge Sturman says, I want you to hold
7 this money that you think is yours in a constructive trust
8 until we figure all these things out. She blew both of those
9 responsibilities. So if it takes contempt to get some
10 accountability, some transparency, and some cooperation from
11 Ms. Ahern, then so be it. But we think that the affidavit and
12 the documents, the exhibits that have been submitted in this
13 case show some conduct that needs some Court intervention.

14 THE COURT: Thank you.

15 MR. MOODY: Thanks.

16 THE COURT: Mr. Lenhard, anything else?

17 MR. LENHARD: Well, the answer certainly as far as
18 in the case of Ms. Ahern did require compliance, of course, is
19 a subpoena or a notice of deposition, put her under oath, and
20 make her answer the questions. If she doesn't answer the
21 questions properly, she's brought before the Court like any
22 litigant.

23 But on the issue of the impossibility let me remind
24 the Court we do have the Fidelity Capital, whatever that is,
25 by the way, I'm not representing it's even a valid entity, but

1 the letter from Fidelity Capital referenced by Mr. Moody says,
2 "Due to your misrepresentations, the proposed funding has been
3 withdrawn," not that money that Ms. Ahern had deposited had
4 been taken away. And it's important to make that distinction,
5 because in reality it appears the money was never there, which
6 again comes down to the fact can you have a contempt if you
7 cannot comply with the Court's order.

8 There may be bad conduct here, it may be allowing,
9 again, an accounting being filed by the law firm that was
10 inaccurate, it may be allowing an affidavit be filed that is
11 inaccurate. That would be the subject of another affidavit
12 brought to another day. But, again, if this is about seeking
13 the cooperation of Ms. Ahern, the rights and abilities of the
14 trustee and his counsel are clear. They can go through the
15 discovery process and compel her attendance.

16 As far as Ms. Ahern's misconduct, she is already
17 being punished. Her interests in the Trust are being taxed
18 heavily or surtaxed heavily for her misconduct. Eventually
19 Mr. Waid will determine how much she owes, and that interest
20 in the Trust will be taxed accordingly, if not worse. There
21 is a motion on file to take every asset she has from the Trust
22 and give it to the daughters.

23 So I think under these circumstances I would suggest
24 to the Court, what I think is certainly not important, I would
25 suggest to the Court that contempt is not appropriate here

1 today, that the matter be remanded back to Judge Sturman, and
2 that the trustee be instructed to go ahead and conduct
3 whatever appropriate discovery he feels is necessary. Thank
4 you.

5 THE COURT: Thank you.

6 The motion to dismiss the contempt proceedings is
7 granted. The contempt proceedings are very strictly construed
8 by the Nevada Supreme Court and require a clear and
9 unambiguous order which provides specific conduct that must be
10 accomplished prior to a contemnor facing the sanctions of
11 contempt. Here we do not have that. The orders that were
12 issued by the bench -- or from the bench by Judge Sturman do
13 not comply with that order. They're very similar to what
14 occurred with Judge Hardcastle in the case that Mr. Lenhard
15 referred to, and the order referring the matter to me for a
16 contempt hearing does not include any specific findings that
17 would be required on a typical order to show cause.

18 For that reason I'm granting the motion to dismiss
19 contempt proceedings without prejudice for it to be renewed in
20 accordance with other appropriate orders. 'Bye.

21 MR. LENHARD: Thank you, Your Honor.

22 MR. MOODY: Thank you.

23 MR. LENHARD: We'll prepare an order and we'll run
24 it by Counsel.

25 THE PROCEEDINGS CONCLUDED AT 9:48 A.M.

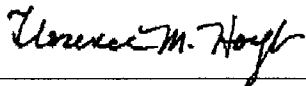
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

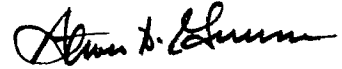
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER



CLERK OF THE COURT

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13 *Attorneys for Eleanor Connell Hartman Ahern*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

CASE NO.: P-09-066425-T

DEPT. NO.: XXVI

**ORDER GRANTING MOTION TO DISMISS
CONTEMPT PROCEEDING**

Date of Hearing: August 18, 2015

Time of Hearing: 8:30 a.m.

20 Eleanor Connell Hartman Ahern's Motion to Dismiss Contempt Proceeding having come
21 on regularly for hearing before this Honorable Court on August 18, 2015 at 8:30 a.m.; Kirk B.
22 Lenhard, Esq. and Tamara Beatty Peterson, Esq., of the law firm of Brownstein Hyatt Farber
23 Schreck, LLP, appearing on behalf of Eleanor Connell Hartman Ahern ("Ms. Ahern"); Todd L.
24 Moody, Esq. of the law firm of Hutchison & Steffen, LLC, appearing on behalf of Trustee
25 Fredrick Waid ("Mr. Waid"); and upon the Court's consideration of the pleadings and papers on
26 file herein, the arguments of counsel, the Court finds as follows:

- 27 1. There is no Court order in this case that is clear and unambiguous such that Ms.
28 Ahern would know what specific action was required to be taken by Ms. Ahern;
2. The orders issued by the Court do not comply with threshold requirements for
contempt proceedings; and

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3. There are no findings in the record that would be required for issuance of an Order to Show Cause why Ms. Ahern should not be held in contempt.

For the foregoing reasons, the Court will dismiss the contempt proceedings without prejudice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Eleanor Connell Hartman Ahern's Motion to Dismiss Contempt Proceeding is GRANTED;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Contempt Proceeding against Eleanor Connell Hartman Ahern is DISMISSED without prejudice.

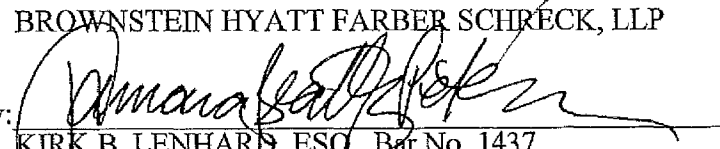
DATED this ~~10~~ ¹⁰ of ~~August~~ ^{September}, 2015.


DISTRICT COURT JUDGE

Submitted by:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By:


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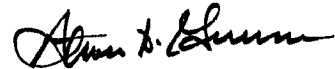
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CLERK OF THE COURT

PETN
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DISTRICT COURT
CLARK COUNTY, NEVADA

In re the Matter of the

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

A non-testamentary trust.

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

**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)**

Date of Hearing: October 11, 2013
Time of Hearing: 9:30 a. m.

JACQUELINE M. MONTOYA ("Jacqueline"), as both an individual and also in her capacity as the trustee of the "MTC Living Trust" dated December 6, 1995, by and through her counsel of record, JOSEPH J. POWELL, Esq., of THE RUSHFORTH FIRM, LTD., hereby respectfully seeks a declaration that ELEANOR C. AHERN, also known as Eleanor Marguerite Connell Hartman, both individually and in her capacity as the trustee of "The W.N. Connell and Marjorie T. Connell Living Trust" ("Trust"), dated May 18, 1972, is

1 entitled to only a 35% proportion of all income generated from gas, oil, and mineral leases,
2 which are owned partially by the Trust and partially owned by another trust established by
3 Marjorie T. Connell and in turn a declaration that Jacqueline and her sister, KATHRYN A.
4 BOUVIER ("Kathryn") are entitled to the other 65% proportionate share of the income
5 generated from these same gas, oil, and mineral leases. Jacqueline respectfully declares as
6 follows:
7

8 **A. OVERVIEW**

9
10 Recently, Mrs. Ahern has asserted, without providing any logic or authority to
11 support such assertion, that she is entitled to 100% of the proceeds from the leases for
12 the Texas property and has refused to distribute the 65% proportion that has been
13 distributed to Jacqueline and Kathryn since Mrs. Connell's death in May of 2009, and
14 was previously distributed to Marjorie for the previous 29 years.
15

16 **B. JURISDICTION OVER TRUST**

17 B.1 This Court already has jurisdiction over "The W.N. Connell and Marjorie T.
18 Connell Living Trust", dated May 18, 1972 ("Trust") and in turn Ms. Ahern. Pursuant to the
19 "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for Construction of and
20 Reform of Trust Instrument", dated September 4, 2009, this Court assumed jurisdiction
21 over the Trust and confirmed Ms. Ahern as trustee of the Trust.
22

23 B.2 Additionally, on information and belief, Ms. Ahern has continued to serve in
24 the role as trustee of the Trust from that point in time through the present.

25 B.3 There is nothing that has been discovered after review of the court file which
26 indicates that any petition to remove this Court's jurisdiction over the Trust was ever filed
27 subsequent to the September 4, 2009 Order.
28

C. BACKGROUND HISTORY

C.1 W.N. Connell, also known as William N. Connell, and Marjorie T. Connell ("Marjorie") established "The W.N. Connell and Marjorie T. Connell Living Trust" on May 18, 1972.

C.2 By the express terms found on page one of the Trust instrument, the Trust revoked and entirely replaced a previous trust that was executed by the Connells on December 1, 1971, which was described as a "revocable living trust".

C.3 A copy of the Trust is attached hereto as Exhibit "A" and is hereby incorporated by this reference.

C.4 During the joint lifetimes of the Connells, all of the Trust assets were to be administered as prescribed under "Trust No. 1", which was a general, undivided "pot" trust.

C.5 After the death of the predeceased grantor, the Trust was to be divided into two subtrusts, known respectively as "Trust No. 2" and "Trust No. 3".

C.6 In describing the subtrusts in general, yet not entirely completely precise terms, Trust No. 2 was what would commonly be referred to as the "Decedent's Trust", while Trust No. 3 was what would commonly be referred to as the "Survivor's Trust". However, Trust No. 3 was also to serve as a "marital" trust as well. As to this marital trust component of Trust No. 3, Section Third of the Trust, titled "Marital Deduction" contains the following clause:

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 the death taxes payable by reason of the Decedent's death, which taxes shall be paid from Trust No. 2 only.

C.7 As to the Texas property, and more precisely the acreage and accompanying rights in minerals, gas, and oil on such acreage, which is the focus of this Petition, there is certainly a reference to that land and those rights being Mr. Connell's separate property.

C.8 As outlined on schedule A for the Trust, which was executed the same day as the Trust, there is clear reference to real property in Upton County, Texas and oil, gas, and mineral rights/leases being the separate property of Mr. Connell. A copy of Schedule A of the Trust is attached hereto as Exhibit "B" and is hereby incorporated by this reference.

C.9 W.N. Connell died on November 24, 1979. Mr. Connell died as a resident of Boulder City, Nevada.

C.10 Therefore, Trust No. 3 became Marjorie's trust, meaning that she was free to amend the provisions of it or to revoke it entirely as she saw fit. Specifically, Marjorie was given a power of appointment over Trust No. 3.

C.11 As to Trust No. 2, it became irrevocable upon Mr. Connell's death. The provisions of Trust No. 2 expressly state that all income generated from it shall be paid to the "Residual Beneficiary" which was/is Ms. Ahern. As it relates to income distributions, Trust No. 2 also contained the following statement:

In the event that 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 from the real property located in Upton County, Texas.

C.12 Trust No. 2 also stated that "All other income received by this Trust shall be

1 | *distributed to the Survivor*".

2 | C.13 As to principal distributions from Trust No. 2, Marjorie, as the surviving
3 | Trustor, had various powers over principal distributions.

4 | C.14 On May 6, 1980, Marjorie and Ms. Ahern executed a document titled
5 | "Substitution of Trustee". A copy of the "Substitution of Trustee" is attached hereto as
6 | Exhibit "C" and is hereby incorporated by this reference.

7 | C.15 The purpose of the "Substitution of Trustee" was to add Ms. Ahern as a co-
8 | trustee with Mrs. Connell of the "separate property of W.N. Connell presently held in the
9 | above-entitled Trust" in accordance with the terms of Trust No. 2.

10 | C.16 On December 16, 1980, a state of Texas "Inheritance Tax Return----Non-
11 | Resident" was executed by the tax preparer, Darrell Knight of Darrell Knight Assoc. Inc.-PC,
12 | out of Abilene, Texas, and Mrs. Connell, in her capacity as executrix of the Estate of Mr.
13 | Connell, for Mr. Connell. A copy of the Texas Return is attached hereto as Exhibit "D" and
14 | is hereby incorporated by this reference.

15 | C.17 In the schedules attached to the Texas Return, there is reference to land in
16 | Upton County, Texas and also mineral rights on that same land being split in a proration
17 | close to 65%/35% (the precise split was 64.493% and 35.507%), with the schedules
18 | reflecting "ownership" by Marjorie of the larger amount and "ownership" by Ms. Ahern of
19 | the smaller amount.

20 | C.18 A Federal Estate Tax Return, Form 706, was also prepared and filed in 1980
21 | for Mr. Connell as well. In fact, the Form 706 was prepared prior to the Texas Return and
22 | was the basis for the allocation and figures reflected on the Texas Return. It was a Nevada
23 | accountant who calculated the applicable allocations, including the marital deduction

1 percentage. Therefore, all of the intricate calculations, including the allocations between
2 Trust No. 2 and Trust No. 3, were done for purposes of the Form 706. As such, Mr. Knight
3 simply took those percentages from the Form 706 and in turn applied them to the appraised
4 value of the surface and minerals in Upton County, Texas.
5

6 C.19 Both the Form 706 and the Texas Return were submitted together to both the
7 IRS and the state of Texas. A closing letter was later received from the IRS approving of the
8 Form 706 and the amount that had been submitted as owing tax. Similarly, the State of
9 Texas, via the State Comptroller, also accepted the Texas Return as well. Copies of both of
10 those documents can be submitted upon request of this Court.
11

12 C.20 Unfortunately, a copy of the Form 706 that was filed for Mr. Connell's estate
13 cannot be located. Despite the diligent efforts of Jacqueline to locate a copy of the Form
14 706 she has simply had no success in finding it. These efforts have included Jacqueline, in
15 her capacity as the personal representative of Marjorie's estate, making a request to the
16 Internal Revenue Service. After searching their records, the IRS informed Jacqueline that
17 they were unable to locate a copy of the Form 706 that was filed. A copy of the letter from
18 the IRS which informed Jacqueline of this fact can be provided upon the request of this
19 Court. In addition, to seeking a copy of the Form 706 directly from the IRS, Jacqueline has
20 spent numerous hours looking through all of the records that she has copies of, which has
21 included looking through storage sheds and safe deposit boxes.
22

23 C.21 Despite not being able to locate a copy of the Form 706, as noted above, the
24 proof of the figures reflected therein is evidenced by the those which were in turn reflected
25 on the Texas Return. Therefore, the Texas Return is the only surviving document that can
26 be used to establish the proof of the allocations between the No. 2 and No. 3 subtrusts.
27
28

1 C.22 Marjorie died on May 1, 2009. Marjorie died as a resident of Clark County,
2 Nevada.

3 C.23 Up to the date of her death, Marjorie was receiving approximately 65% of the
4 income generated by the various oil, gas, and mineral rights' leases that had been signed
5 over the years from the time of Mr. Connell's death. Therefore, she had been receiving
6 distributions from these income sources for approximately 29 years. At no time did Ms.
7 Ahern ever dispute that allocation of the income distributions between herself and Marjorie.
8 In fact, Ms. Ahern, in her capacity as a co-trustee of the Trust, signed every document,
9 including oil and gas leases, division orders, and tax returns, etc.
10

11 C.24 Even Ms. Ahern's divorce documentation from 1984 acknowledges and
12 documents the 65%/35% split. For purposes of privacy, such documentation can be
13 provided to this Court for *in camera* review should this Court request it.
14

15 C.25 In the Last Will and Testament of Marjorie T. Connell, which was executed
16 by Marjorie on January 7, 2008, which is attached hereto as Exhibit "E" and is incorporated
17 herein by this reference, Marjorie exercised her power of appointment over Trust No. 3 of
18 the Trust. Specifically, under section 4.1 of her Will, which was titled "Exercise of Power
19 of Appointment Granted by William N. Connell", Marjorie declared the following:
20

21 *In the W.N. Connell and Marjorie T. Connell Living Trust dated May 18,*
22 *1972, Article Fifth Trust No. 3 Paragraph B(2) of the Trust, I was granted*
23 *a testamentary power of appointment. I hereby exercise that power of*
24 *appointment and appoint the entire principal and the undistributed income*
25 *in Trust No. 3, if any, on my death to JACQUELINE MONTOYA and*
26 *KATHRYN ANNE BOUVIER to be distributed in trust in accordance with*
the provisions of the MTC LIVING TRUST dated December 6, 1995, as
restated on January 7, 2008.

27 C.26 To ensure that Marjorie's exercise of the power of appointment was
28

1 recognized by Ms. Ahern, in her capacity as the now sole trustee of the Trust due to
2 Marjorie's passing, a letter dated May 21, 2009 was sent to Ms. Ahern by Marjorie's estate
3 planning attorney, David A. Strauss, notifying her of the such action being taken by
4 Marjorie under the terms of her Will. A copy of the Attorney Strauss' letter to Ms. Ahern
5 is attached hereto as Exhibit "F" and is incorporated herein by this reference.
6

7 C.27 Marjorie executed the MTC Living Trust on December 6, 1995. Mrs. Connell
8 subsequently executed a restatement of the MTC Living Trust on January 7, 2008. A copy
9 of the MTC Living Trust is attached hereto as Exhibit "G" and is incorporated herein by this
10 reference.
11

12 C.28 The current beneficiaries of the MTC Living Trust are Jacqueline and Kathryn,
13 with Jacqueline serving as the sole trustee.
14

15 C.29 As noted above, on September 4, 2009, Ms. Ahern, as trustee of the Trust,
16 obtained the "Order Assuming Jurisdiction Over Trust, Confirm Trustee, and for
17 Construction of and Reform of Trust Instrument". As can be seen from the title of the
18 Order, the Order had the effect of confirming the intended construction of Trust No. 2 in
19 compliance with the stated intent of Mr. Connell, while at the same time reforming Trust
20 No. 2.
21

22 C.30 As to Trust No 2, the Order, in part, confirmed that following the death of Ms.
23 Ahern, the beneficiaries of Trust No. 2 would be Jacqueline and Kathryn, in equal shares.
24 The Order also had the effect of establishing that upon the resignation or incapacity of Ms.
25 Ahern that the trustee of Trust No. 2 would be Jacqueline, or, if she was unable to serve,
26 then Kathryn.
27

28 C.31 As will be detailed further herein, since Marjorie's death, Jacqueline and

1 Kathryn have been receiving approximately 65% of the income generated from the various
2 leases that have been signed regarding the Texas properties, with Ms. Ahern continuing to
3 receive the remaining 35% as she has been for approximately the last 33 years.
4

5 **D. PETITION FOR DECLARATORY RULING REGARDING INTERESTS IN TEXAS**
6 **PROPERTY AND INCOME GENERATED FROM LEASES**

7 D.1 This Petition is brought pursuant to NRS 30.040, NRS 153.031(1)(e), and NRS
8 164.033(1)(a).

9 D.2 NRS 30.040 provides for the following:

10 *1. Any person interested under a deed, written contract or other writings*
11 *constituting a contract, or whose rights, status or other legal relations are*
12 *affected by a statute, municipal ordinance, contract or franchise, may have*
13 *determined any question of construction or validity arising under the*
14 *instrument, statute, ordinance, contract or franchise and obtain a*
15 *declaration of rights, status or other legal relations thereunder.*

16 *2. A maker or legal representative of a maker of a will, trust or other*
17 *writings constituting a testamentary instrument may have determined any*
18 *question of construction or validity arising under the instrument and obtain*
19 *a declaration of rights, status or other legal relations thereunder. Any*
20 *action for declaratory relief under this subsection may only be made in a*
21 *proceeding commenced pursuant to the provisions of title 12 or 13 of NRS,*
22 *as appropriate.*

23 D.3 NRS 153.031(1)(e) provides for the following:

24 *1. A trustee or beneficiary may petition the court regarding any aspect of*
25 *the affairs of the trust, including:*

26 *(e) Ascertaining beneficiaries and determining to whom property is to pass*
27 *or be delivered upon final or partial termination of the trust, to the extent*
28 *not provided in the trust instrument;*

D.4 NRS 164.033(1)(a) provides for the following:

1. The trustee or an interested person may petition the court to enter an
order:

1 (a) *If the trustee is in possession of, or holds title to, property and the*
2 *property or an interest in it is claimed by another.*

3 D.5 As stated out the outset of this Petition, within the last few months Ms. Ahern
4 has asserted, without providing any logic or authority to support such assertion, that she
5 is entitled to 100% of the proceeds from the leases for the Texas property and has refused
6 to distribute the 65% proportion that has been distributed to Jacqueline and Kathryn since
7 Mrs. Connell's death in May of 2009, and was previously distributed to Marjorie for the
8 previous 29 years.
9

10 D.6 Specifically, Jacqueline and Kathryn have not received distributions for the
11 months of July, August, and September of 2013. Previous distributions had been averaging
12 in the range of \$30,000 to each for Jacqueline and Kathryn. Therefore, as of the date of
13 this filing, Jacqueline and Kathryn have experienced losses in excess of approximately
14 \$100,000 each.
15

16 D.7 As noted, there has been absolutely no explanation from Ms. Ahern as to why
17 and under what authority she feels justified in undoing 33 years of precedent and now
18 believes that she is entitled to 100% of the income from the leases. It seems as though the
19 only answer being offered by Ms. Ahern is "because".
20

21 D.8 As noted above, the allocation of a 65%/35% of the ownership of the Texas
22 land and the leases involving the land, and more specifically what is actually in the soil and
23 beneath it, was done in 1980. There is nothing to indicate that this allocation was done
24 improperly at the time that it was done. Furthermore, there were professionals advising
25 Marjorie as to how to accomplish this task as evidenced by the Form 706 as reflected in the
26 Texas Estate tax return.
27
28

1 D.9 Therefore, Jacqueline and Kathryn are extremely perplexed as to what has
2 occurred in Ms. Ahern's mindset that would prompt her to believe that she is now entitled
3 to 100% of the income from these leases despite 33 years of established precedent without
4 complaint or assertion of mistake.
5

6 D.10 As established, the allocation of the 65%/35% split occurred a very long time
7 ago and under the supervision and expertise of professionals. There is absolutely nothing
8 to suggest that this allocation was inappropriately done in 1980 and Ms. Ahern has never
9 once asserted anything to this effect, either during the 29 years following the death of Mr.
10 Connell in which Marjorie was receiving 65% of the income, nor the past 4 years since
11 Marjorie's death in which the 65% has been equally divided between Jacqueline and
12 Kathryn.
13

14 D.11 Furthermore, this allocation was accepted by both the state of Texas, via the
15 Comptroller, and the IRS. If either entity felt that the allocation being made was being done
16 improperly, then both of these entities would surely have voiced concern. Likewise, as a co-
17 trustee, Ms. Ahern had ample opportunity to voice a belief that the allocation was done
18 improperly and to seek its redress. However, no such action was ever taken and no proof
19 of mistake or error has ever been documented. Therefore, it must be determined that the
20 allocation was properly made in 1980, which is why it is also logical that for the past 33
21 years the allocation has been accepted and followed by Ms. Ahern without incident.
22

23 D.12 Even in the off chance that the allocation was not done with complete
24 precision, it is simply too late to question and rehash the issue, as returns have been filed
25 and accepted and rights have become vested under numerous equitable principles. Just as
26 with statutes of limitations, or even with the offering of subsequently discovering a will of
27
28

1 a decedent years after a probate has been conducted and concluded, there simply becomes
2 a point in time when it is simply too late to seek redress of an issue.

3 D.13 As to why Ms. Ahern has only recently chosen to assert that she is entitled to
4 100% of the income derived from the leases, only she herself knows the motivation behind
5 this. However, the exponential increase in the value of the leases/royalties derived from
6 them may have played a significant role in her unwarranted determination.
7

8 D.14 To get full appreciation of what has occurred here, and why the actions of Ms.
9 Ahern are so reprehensible and unacceptable, it is necessary to look back at the relevant
10 factors that are at play and what has transpired over the last 33 years.
11

12 D.15 Marjorie managed the 1972 Connell Trust properties until her death in 2009.
13 She did the active negotiating with oil companies and surface users and consulted other
14 relatives on decisions on the properties.
15

16 D.16 Around the year 2000, Marjorie's health began to fail. She was still a resident
17 of Las Vegas, as was Jacqueline. Marjorie requested that Jacqueline help her with the
18 record keeping, deposits, and other aspects of managing the Texas oil and gas properties.
19

20 In respecting Marjorie's instructions, Jacqueline checked the mail, kept the records, and
21 deposited the run checks. Marjorie and Ms. Ahern handled the leases and division orders,
22 and the signing and copying of all documents. At no time did, Jacqueline ever act as trustee,
23 but instead she acted at the direction of Marjorie who was a co-trustee. Again, Jacqueline
24 was an aide to her grandmother and acted at her grandmother's direction.

25 D.17 The money from the 1972 Connell Trust continued to be divided between Ms.
26 Ahern and the MTC Living Trust in the same manner in which it had been divided since
27 1980: 65% and 35%. The routine administrative duties followed by Jacqueline each month
28

1 included gathering the checks from the trust post office box and depositing them into an
2 account in the name of Marjorie Connell and Ms. Ahern, which has been a longstanding
3 account that was originally opened by Marjorie and Ms. Ahern in 1980. This account has
4 always been referred to and commonly known by the parties as the "oil and gas account."
5

6 D.18 As soon as all the income checks were in the bank from the various leases in
7 effect, at approximately the first of the month, Jacqueline would proceed to divide the
8 money, with 35% going to Ms. Ahern, and 65% going to Marjorie. Following Marjorie's
9 passing, the 65% that previously went to Marjorie would now be divided between
10 Jacqueline and Kathryn equally. Within the first few days of each month, the two parties,
11 Ms. Ahern and Marjorie, which became three parties at the death of Marjorie, were able to
12 rely on their share of the previous month's income from the various leases being reflected
13 in their own individual bank accounts.
14

15 D.19 As part of this process, Jacqueline routinely and faithfully put the financial
16 records on computer concerning the leases and the associated business expenses in tracking
17 this information, allocated the money from the leases, and gave updates to Ms. Ahern and
18 Kathryn.
19

20 D.20 In recent times, Jacqueline, with the assistance of other professionals, has put
21 in a tremendous amount of time and energy in negotiating new leases for the Texas
22 properties, which, as noted above, was a task that had previously been done by Marjorie.
23 Once the terms of a new lease, or the renewal of a previous lease, had been agreed upon and
24 reviewed by professionals specializing in the field, Jacqueline gave Ms. Ahern the original
25 documents and Ms. Ahern would sign them in the presence of a notary, and return the
26 original and copies to Jacqueline. When production was developed in any well, Jacqueline
27
28

1 would get the division order from the mail and deliver it to Ms. Ahern to be signed and then
2 returned the document to the oil and gas purchaser for payment.

3 D.21 Once the proceeds from the various leases were received and deposited in the
4 "oil and gas account", Jacqueline divided the net income in the exact percentages that they
5 had followed since 1980. Additionally, Jacqueline also dealt with an accountant in
6 California, Corey Haina of Fast Tax, who had done the income taxes for approximately 8 to
7 9 years for Marjorie, furnishing him with the 1099's and Jacqueline's records reflect the
8 amount of money received from each purchaser of the oil and gas. Following Marjorie's
9 passing, Ms. Ahern was agreeable to continue to have Mr. Haina continue to prepare the
10 necessary returns.
11

12 D.22 In addition to these tasks, Jacqueline also kept all of the check stubs and
13 totaled them at year end for tax purposes. Jacqueline reconciled the income with the 1099's
14 and gave all interested parties a three page summary at year end.
15

16 D.23 As a matter of habit, the only time Jacqueline did not issue 100% of the
17 income from the oil and gas account was when she started withholding a percentage of the
18 income around the July runs so that there would be sufficient funds to pay the *ad valorem*
19 taxes due in Upton County, Texas when that bill was received in October. Ms. Ahern was
20 aware of this hold back for this purpose and verbally approved of such practice on multiple
21 occasions. All expenses, income tax, accounting and legal fees, *ad valorem* taxes, and any
22 miscellaneous expenses, such as office supplies, were dutifully deducted from distributions.
23

24 All expenditures were reported to Ms. Ahern annually on the year-end report from
25 Jacqueline. So that there is no confusion as to what capacity Jacqueline was acting since
26 Marjorie's passing, it is necessary to keep in mind that Jacqueline has been serving as the
27
28

1 sole trustee of the MTC Trust since Marjorie's death.

2 D.24 As stated above, a significant increase in value derived from the leases, and
3 one in particular, occurred in 2012. In this time frame, a very lucrative lease was entered
4 into with Apache Corporation covering part of the property in Upton County, Texas. The
5 total bonus on this lease totaled in the millions, and Ms. Ahern, Jacqueline and Kathryn
6 together received a total of \$1.7 million. This bonus was divided in the usual 65%/35% ratio.
7

8 D.25 The signing of the lease leading to the bonus occurred in approximately April
9 of 2013. On approximately July 4th and July 5th of 2013, a fair amount of time after the \$1.7
10 million bonus was received, without any warning or explanation, Ms. Ahern had the post
11 office box closed where income checks generated by the leases were mailed to.
12 Additionally, at this same point in time, Ms. Ahern subsequently instructed the bank where
13 the "oil and gas" account was located to take no direction from Jacqueline and to refuse to
14 speak with her. For purposes of clarification, Jacqueline had been given signatory rights
15 on the account by Marjorie to act on her behalf and as such access to the funds of the
16 account to carry out the tasks that Jacqueline had performed at Marjorie's request, as has
17 been detailed above.
18
19

20 D.26 The monthly payments from the income generated from the leases continued
21 to be received from Ms. Ahern after the above actions were taken towards Jacqueline and
22 Kathryn. The checks were smaller than they should have been and were distributed later
23 than they had been when Jacqueline was making the distributions to each of the personal
24 accounts. However, as noted above, all distributions stopped in July of 2013, when no
25 checks were received by either Jacqueline or Kathryn.
26
27

28 D.27 Given the actions that were occurring, counsel based in Texas for Jacqueline

1 and Kathryn contacted the Texas counsel for Ms. Ahern to attempt to get an understanding
2 of why Ms. Ahern was taking these actions. The explanation from Ms. Ahern's counsel was
3 that Ms. Ahern was entitled to 100% of the income from the leases and that any further
4 distributions to Jacqueline and Kathryn would be gifts to them given by Ms. Ahern. To
5 cement this position, the June 2013 distributions to Jacqueline and Kathryn were smaller
6 than they otherwise should have been. On the deposit slip with the checks it was noted that
7 the amounts were "gifts". To reiterate, following the June 2013 distributions, no additional
8 distributions have been forthcoming to Jacqueline and Kathryn.
9

10
11 D.28 As stated above, there is no justification for what is occurring and as such it
12 is crucial that this Court render an order declaring that Ms. Ahern has only a 35% interest
13 in the proceeds generated from the oil, gas, mineral leases and that the remaining 65%
14 belongs to the MTC Trust. As established, a 65%/35% split has been occurring for 33 years
15 now and there is no reason nor justification for upsetting this long standing precedent and
16 practice.
17

18 D.29 Therefore, Jacqueline respectfully requests that this Court take all necessary
19 action and make such rulings as are appropriate to force the status quo back into place.
20

21 E. DAMAGES

22 Jacquie and Kathryn have incurred substantial attorney's fees and costs in having
23 to seek this declaratory judgment based on the unwarranted actions of Ms. Ahern. As such,
24 Jacquie, on both her behalf and on behalf of Kathryn, hereby requests that this Court hold
25 Ms. Ahern responsible for the damages that she has triggered by her unjustifiable and
26 unwarranted actions. This request is made based on the provisions of NRS 153.031(3)(b),
27 based on the applicability of that provision through NRS 164.005. However, the amount
28

1 of damages will be discussed and set forth in an additional related petition that will be filed
2 shortly hereafter. Therefore, for the sake of clarity, the request for damages is hereby made
3 and preserved, but topic will be addressed in great detail in a related petition so as not to
4 distract or confuse the straightforward declaration of rights and interests that is sought
5 herein.
6

7 **F. PRAYER**

8 JACQUELINE M. MONTOYA hereby prays for an Order of this Court:

9 F.1 Declaring that:

10 (a) ELEANOR C. AHERN, also known as Eleanor Marguerite Connell
11 Hartman, both individually and in her capacity as the trustee of "The W.N. Connell
12 and Marjorie T. Connell Living Trust", dated May 18, 1972, is entitled to only a 35%
13 proportion of all real property located in Upton County, Texas, including the income
14 generated from gas, oil, and mineral leases relating to such Upton County, Texas real
15 property; and
16

17 (b) JACQUELINE M. MONTOYA, in her capacities as a beneficiary and
18 as the trustee of "MTC Living Trust" dated December 6, 1995, and in her capacity as
19 a beneficiary of the power of appointment exercised by Marjorie T. Connell over
20 Trust No. 3 of the "The W.N. Connell and Marjorie T. Connell Living Trust", dated
21 May 18, 1972, and KATHRYN A. BOUVIER, in her capacity as a beneficiary of the
22 "MTC Living Trust" dated December 6, 1995, and in her capacity as a beneficiary of
23 the power of appointment exercised by Marjorie T. Connell over Trust No. 3 of the
24 "The W.N. Connell and Marjorie T. Connell Living Trust", dated May 18, 1972, are
25 entitled to a 65% proportionate share of all income generated from gas, oil, and
26
27
28

THE RUSHFORTH FIRM, LTD.
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9505 Hillwood Drive, Suite 100
Las Vegas, Nevada 89134-0514

1 mineral leases relating to Upton County, Texas real property.

2 F.2 Granting such other and further relief as the Court shall deem appropriate.

3
4 Respectfully submitted,

5 THE RUSHFORTH FIRM, LTD.

6
7 
8

9
10 JOSEPH J. POWELL
State Bar No. 8875

Exhibit "A"

1972

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 portion of the trust estate not allocated to Trust No. 3, including, but not limited to, the Decedent's community property interest, if any, in any life insurance policy on the life of the Decedent payable to Trust No. 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Powers of appointment over income and principal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EIGHTH: SPECIAL PROVISIONS.

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

B. Revocation and Amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of any interest in the assets of the trusts.

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

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

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

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

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

GRANTORS:

W. N. Connell
W. N. CONNELL

Marjorie T. Connell
MARJORIE T. CONNELL

TRUSTEE:

W. N. Connell
W. N. CONNELL

Marjorie T. Connell
MARJORIE T. CONNELL

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

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

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

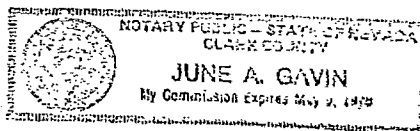


Exhibit "B"

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. 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 Agree-
ment 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
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 acknowledged to me that they executed the foregoing Trust
Agreement.

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

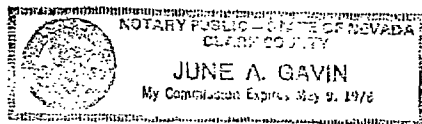


Exhibit "C"

1248 1208700
SUBSTITUTION OF TRUSTEE

MARJORIE T. CONNELL, surviving Trustee of the W. N. CONNELL AND MARJORIE T. CONNELL LIVING TRUST, made and entered into on May 18, 1972, by and between W. N. CONNELL and MARJORIE T. CONNELL, as Grantors, and W. N. CONNELL and MARJORIE T. CONNELL, as Trustee, hereby substitutes and appoints ELEANOR MARGUERITE CONNELL HARTMAN, daughter of W. N. CONNELL, as Co-Trustee of the separate property of W. N. CONNELL presently held in the above-entitled Trust. This substitution is made pursuant to the terms of said Trust. due to the decease of W. N. CONNELL, who passed away November 24, 1979.

Marjorie T. Connell
MARJORIE T. CONNELL

The undersigned, ELEANOR MARGUERITE CONNELL HARTMAN, also known as ELEANOR C. HARTMAN, hereby consents to serve as Co-Trustee of the separate property of W. N. CONNELL in the above-entitled Trust.

Dated this 6th day of May, 1980.

Eleanor Marguerite Connell Hartman
ELEANOR MARGUERITE CONNELL HARTMAN
Eleanor C. Hartman

STATE OF NEVADA)
COUNTY OF CLARK) ss

On this 6th day of May, 1980, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared MARJORIE T. CONNELL, known to me to be the person whose name is subscribed to the within instrument, and who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

On this 6th day of May, 1980, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared ELEANOR MARGUERITE CONNELL HARTMAN, known to me to be the person whose name is subscribed to the within instrument, and who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

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13. Notary Public - State of Nevada
14. CLARK COUNTY
Gino Di Marco
My Appointment Expires Mar. 2, 1982

CLARK COUNTY ALABAMA
JOHN L. ... BORDER
RECORDED & INDEXED

JAN 7 2 25 PM '80

FEB 22 1964
 DEPUTY
 OFFICIAL RECORDS
 ROOM - DEPARTMENT

Exhibit "D"

Copy

INHERITANCE TAX RETURN - NON-RESIDENT

Date Received (Do not write in this space)

Decedent's Name (First, Middle, Maiden, Last) William M. Connell		Date of Death November 24, 1979	T CODE <input checked="" type="checkbox"/> 90100 DEPOSIT CODE <input checked="" type="checkbox"/> 110 AMOUNT
Residence (Domicile) at Time of Death (City and State) Boulder City, Nevada		Year in which domicile was established. 1936	
Marital Status: <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Single <input type="checkbox"/> Legally Separated <input type="checkbox"/> 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? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Did the decedent, within three years immediately prior to death, make any transfer of property within Texas without an adequate and full consideration? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
Did the decedent die testate? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If "YES" attach copy of will. If "NO" attach an affidavit of heirship.		Were letters testamentary or of administration granted for this estate? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
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? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		County in Texas	
Name of ancillary administrator or executor			
Address			

INHERITANCE TAX DUE

<p>PART I Basic inheritance tax (From Schedule B)</p> <p>\$ -00-</p>	<p>PART II Federal credit for state death tax (From Schedule C)</p> <p>\$ 515.00</p>
<p>TAX DUE (PART I OR PART II, WHICHEVER IS GREATER)</p> <p>\$ 515.00</p>	

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 (1959).

Name of Preparer Darrel Knight Assoc., Inc.-PC	Phone (Area Code & No.) 915 695-2370	Name of Executor, Administrator, Heir at Law Marjorie Connell, Executrix	Phone (Area Code & No.) 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: <i>Darrel Knight</i>	Date 12-16-80	Sign here: <i>Marjorie Connell</i>	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

(June, 1975)

STATE OF TEXAS

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 William N.	Decedent's Last Name Connell, Jr.	Date of Death 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)

☒ 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

Robert S. Smith, CPA

8-22-80

(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:

☒ 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

☒ Other not requested

Director

H. D. Collins

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, W $\frac{1}{2}$ 37, Upton County, Texas. Separate property of decedent.		\$	\$ 80,535.
2	Mineral rights, Upton County, Texas, $\frac{1}{2}$ 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.

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? <input checked="" type="checkbox"/> YES <input type="checkbox"/> 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 \$

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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)	<u>11,603</u>	(42,948)

Distribution to Robert Hartman:

Gold Diamond Glycene wristwatch	<u>(287)</u>
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\$ -0-